



**Minutes
Board of Adjustment Meeting
February 7, 2023, 5:30 p.m.
Virtual Zoom Platform and City-County Building 330**

Members Present:

Byron Stahly, Burton Federman, Tracy Egeline, Time Tholt, Andy Shirtliff

Call to Order and Roll Call

Chair Stahly called the meeting to order shortly after 5:30. Roll call was taken, and a quorum was established (4 Board members)

Minutes

The minutes of the January 3, 2023 meeting were approved as written. Vice-Chair Federman abstained from voting as he was not in attendance at that meeting.

Election of Officers

(0:00:43) With some discussion about some members tenures on the Board, Tracy Egeline was elected Chair and Tim Tholt was elected Vice-Chair.

Public Hearing Items

(0:06:13) Staff read the three standards of Section 11-5-5 and the seven standards that may be considered.

Item 1

Staff Presentation and Questions for Staff

(0:09:49) Mr. Alvarez provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. No public comment had been received on the application.

(0:13:38) Chair Egeline asked to see the site plan again and asked if Mr. Alvarez knew how those lines had been decided upon or if it was the easiest way. Mr. Alvarez stated that is a better question for the applicant, but that the applicant and the building division worked together on determining how to best position the lines.

Applicant Presentation and Questions for the Applicant

(0:14:42) Mike Newhouse, on behalf of the owners, responded to Chair Egeline's question about the orientation of the lines, and that it was at the request of the Building Division, explaining that the carport on 1727 Golden St was built without a permit prior to the current occupants of the home. Mr. Newhouse was able to find the carport in aerial maps going back to 1993 and the occupant bought the property in 2002. The building

division was going to require that the covered carport or patio be brought up to current fire codes, which was going to be more than the owner could afford. Because of this the decision was made to put the jog in the boundary line to accommodate the building division's request. Additionally, the final plan has not yet finalized, as the applicant is waiting to get the variance. Chair Egeline noted that it is less than 10 feet, and the applicant does not have 10 feet to work with. Commissioner Shirtliff asked how the other property owner felt about the change to the property line. Mr. Newhouse explained that the other property owner would have preferred to keep the property line on the existing dense, which would have only been a foot away from the covered patio, but due to the costs to bring the patio up to fire code both property owners understood this was the best they could come up with and are both on board with the change. Additionally, the property owners plan on moving the fence line to match what is on the drawing if this variance is approved and the final plats are filed.

Public Comment/Board Discussion

(0:17:53) Chair Egeline opened the hearing up to public comment. There was no public comment on this item. Board discussion was opened. Mr. Stahly stated that it was good to get the fire explanation being the reason behind the variance, otherwise it looked like they wanted to split it the best they could down the middle, but now the board has the explanation of why that was needed, and with that doesn't see any issues with the proposal and is inclined to approve it. Chair Egeline stated that she was of the same mind, in that it is as equal as it can be. There was no additional board discussion.

Motion

(0:19:24) Mr. Sathly motioned to approve a variance from section 11-4-2 to decrease the side lot line setback from 8 feet to 5 feet for properties with the legal description of Lot 3A of Block 8 and Lot 2 of Block 8 of the Carson Addition to the City of Helena, Lewis and Clark County with the condition that the plat must be filed within one year. Mr. Federman seconded the motion. The motion passed unanimously (5:0).

Item 2

Staff Presentation and Questions for Staff

(0:20:35) Mr. Alvarez provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. No public comment had been received on the application.

(0:25:33) Mr. Stahly made a comment that the board has seen a lot of these variance applications in the past, and it has likely been about a year and a half since the last variance of this kind was brought before the board. He also made comment about the city's sign ordinance being difficult to work with and that the Board was told that the city would be looking at the ordinance, so it is hard for the Board to look at this and make a determination with that being in limbo, but that they would do their best, but encouraged the city to move forward as quickly as possible [with the new sign



ordinance]. Mr. Alvarez stated that the city's intent with the sign ordinance is to not have the signage in a given area competing with each other; the city does not want people to continuously try to one up. For an area like this, where there have been frequent variances given, and asked that the Board try to think of what the standard in the area should be and where that line has been drawn and see if the proposed variance is in keeping with where that line has been moved to by Boards in the past.

Applicant Presentation and Questions for the Applicant

(0:28:23) Brian Barkemeyer of YES SignCo, on behalf of US Foods, stated that they are keeping in the same parameters that the other businesses have been allowed to operate under in the same area for similar business types, and not attempting to overshadow anyone and simply have an equal opportunity for advertisement. Mr. Federman asked about the lighting of the sign. Mr. Barkemeyer stated that the sign is an LED illuminated static sign, and that there is no animation.

Public Comment and Board Discussion

(0:29:25) The item was opened for public comment. There was no public comment in the room or online.

(0:29:55) Chair Egeline stated that from her quick calculations the average size of the four signs [noted in the presentation] in the area is 455 ¼ square feet, and if the four signs are added together, the signage is proportional to the building in her opinion and is not distracting or competing with any neighbors. Additionally, she noted that there is traffic in front and on the side of the building, so the placement of the signage on the building is appropriate. Mr. Federman stated that he did not believe that the applicant was asking for anything unusual from the rest of the commercial in that area and did not see anything wrong with the increases.

(0:31:28) Mr. Stahly stated that he ran some calculations based on the size of the other buildings and proportionally the proposal is quite a bit more signage. His preference would be to see the ones of the sides be a little smaller but didn't feel that was worth holding them up because it looks good and it fits with what is in that area, however that "line in the sand" does get raised a bit every time. Mr. Stahly reiterated that he can go with the proposal in front of the Board based on the area and other signs in that area. Commissioner Shirliff agreed that the proposal is proportional to the size of the building. Commissioner Shirliff noted that he had been to the store and that there are apartments proposed to be built to the south and some zoning has been changed for those projects, so it may be difficult for people living in that area, but in terms of size he questioned if this will be the new standard for signs in a commercial corridor. People will be able to see it, but his concern is the people that are going to be living next door. Vice-Chair Tholt stated he concurred with everyone, that this is an appropriate area, but that he would be in favor of cutting down on the signage on the sides in order to meet the square footage that is closer to average in that area. Chair Egeline asked to see the elevations of the building again.

(0:33:53) Chair Egeline stated the Board was in agreement on the front sign, but asked for suggestions for the side signs. Looking at the elevations Chair Egeline noted that there would not be anything blocking the northern sign, but that one the southern side there

would be the apartment building going in next to the building and asked how far back that would be. Mr. Alvarez stated that the last site plan he saw wasn't finalized, so they could conceivably change the plans, but the last design had the building running predominantly east to west along the southern boundary line of the lot. Mr. Alvarez noted that the property in question sits at a higher grade than the proposed apartments. Chair Egeline noted that with the location the apartments are proposed to be on the site, there should be adequate distance for someone to see the signage. Commissioner Shirliff asked if there would be a stand alone sign in front of the business that says Chef Store on it as well. Mr. Alvarez stated that they had already been approved for a free-standing sign, and there were no issues with it when it was handled separately.

(0:36:50) Mr. Federman asked if the owner of the proposed apartment building notified [of this application]. Mr. Alvarez confirmed they had been and that they had not provided comment. Chair Egeline asked what the Board's options were in terms of proceeding with the application, as it seemed that the Board was hoping to get the signs on the side smaller but was unsure of how to proceed. Mr. Alvarez stated that there were a number of ways the Board could handle it, for instance they could approve 360 square feet of signage for the front and north elevation and no signage on the south or approve some other number. It would be handled as a condition or the Board could ask the applicant to come back with a new proposal as opposed to trying to come up with something on the fly, however it is up to the board to decide.

(0:39:12) Chair Egeline stated that if the Board wants to see something smaller then they need to provide guidelines to the applicant and asked for discussion on the idea. Vice-Chair Tholt suggested that the applicant change the total square footage to the 450 square foot average in the area. He did not think the front sign needed to change in size. Mr. Federman asked what percentage of the wall the sign is compared to the side of the building. It was noted that it was thought to be 25%. Chair Egeline stated that she had gone back to the percentages she had and that they are asking to change it from 200 to 540, and the average of the for examples they gave is 545, so it is smaller than the average, but if the Board wanted to say make it $\frac{3}{4}$ of what is proposed here, that is 405 square feet. Mr. Federman asked what the rationale behind the percentage less. Chair Egeline stated that it's a compromise and that the Board is setting a precedent with this. Mr. Alvarez provided the information that the coverage of the signs are less than 5% of the wall. Mr. Stahly stated that he was okay with 177 sq ft on the front of the buildings, and doing a 75% reduction on the sides, they come out at about 135 sq ft each which would be 447 total and thought the Board could approve something like total allowable to 447 sq ft with some clarity on the size of the various signs.

(0:45:09) Commissioner Shirliff added that he thought the Board needed to create less work for the applicant, and a compromise could be keeping the front sign at 189 and then the side signs should be reduced. Mr. Alvarez explained that the Board can speak in terms of approval for the sign in front and then the signs to be reduced by 75% on both sides. Mr. Tholt stated that would be agreeable to him, which was a total of 447 sq ft, with reduction of the two side signs to 135 sq ft each. Mr. Stahly stated that his calculations were a bit off when he stated the main sign as 177 sq ft, and that his intent was to keep the front sign to prevent a redesign on the front, but make the side signs smaller.

Motion

(0:47:02) Mr. Stahly made a motion to approve a variance from Section 11-23-10 to increase the allowable aggregate square footage of wall signs from 200 square feet to 477 square feet, further broken down as 177 square feet for the front sign and not more than 135 square feet for each side wall sign, north and south, for a property legally described as Lot 8A on COS #3395855 of the Custer Landing Major Subdivision City of Helena, Lewis and Clark County, Montana with the condition that the sign permit must be obtained within one year.

Mr. Tholt mentioned the discrepancy in the total sign square footage and the motion was amended to read 447 square feet instead of 477 square feet. Mr. Tholt seconded the motion with the amendment. The motion passed unanimously (5:0).

Item 3

Staff Presentation and Questions for Staff

(0:48:43) Mr. Alvarez explained to the Board that upon discussion between the applicant and staff, staff is requesting that this item be tabled, and it is hoped to get the alley adjacent to the home to the east vacated prior to bringing the item before the board.

Motion

(0:49:56) Mr. Stahly moved to table the item. A vote was called and passed unanimously.

Item 4

Staff Presentation and Questions for Staff

(0:50:12) Mr. Alvarez provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. Two public comments had been received on the application.

(0:54:33) Mr. Federman asked about the number of signs. Mr. Alvarez confirmed there are two being proposed and explained that sign #1 is proposed to be placed closer to the overpass on the eastern corner of the site and that sign #2 is proposed to be 37 feet tall and 192 sq ft on its face will be on the most southernly corner of the site. Vice-Chair Tholt asked if the 3rd variance being requested applies to both signs or just #1 or #2. Mr. Alvarez stated that the intent was to apply it just to #2, additionally it is modified with the wording, "a free-standing sign."

Applicant Presentation and Questions for the Applicant

(0:57:39) A representative for the applicant, a staff member of YESCO sign company, stated that he did the sign flagging out there and that the representative from Maverik seemed to be having some technical issues.

(1:00:28) Rich Pickett with Maverik stated that he thought it best to address the variance requests individually. Mr. Pickett explained that they are requesting to have two signs as opposed to a single sign is the size of the project, which incorporates 2 lots, but

they understand that it is not considered two lots, but one continuous parcel, so ideally they would like to have 2 signs, 1 to attract traffic from the highway. Mr. Pickett noted that convenience stores like theirs get most of their traffic to the store from passing traffic rather than the destination place where people look to find a place to get gas, so they like to attract people as they are passing by with the sign and then the second sign is something that would be more informational that would show the prices of gas for the different options in addition to advertising their Bonfire Grill as well as the Maverik sign itself. The purpose of the second variance was, as Mr. Alvarez said, a consideration to the slope on the site that slopes very far from the highway system itself. The plan that was shown with the signage and the grade will be raised approximately 8 to 11 feet to put the building in, so the site is in a valley coming off the highway, but the side of the finished floor of the building is being raised, so based upon these factors they are asking for 11 feet so that they can get the sign out of the ground from the valley created by the highway and the property. The third request would apply to the western or southern sign, the one closest to the roundabout only, and would enlarge the sign so they could get more information on that particular free-standing sign, which would equate to approximately 42 extra square feet, and stated as an example of size it would be slightly larger than an average parking stall while acknowledging the concerns of the neighbors and the possible intrusion into their sightlines. The last request is that they usually get a 37-foot sign as opposed to a 34-foot sign from their supplier with their sign package, and request to get that extra three feet in order to keep with the standards they have for their signage.

(1:05:08) Mr. Federman asked if Mr. Pickett was privy to the previous application. There were some technical issues and Mr. Federman stated that he thought this is why applicants should be represented in-person, especially for an application with multiple variances and with the opposition in the neighborhood. Mr. Pickett stated that he could see Mr. Federman's point but noted that Maverik was told that they would be able to present their application via the online meeting, but that they would not have an issue to having a representative in attendance in person. Mr. Stahly asked for a clarification on the site plan and if the sign elevations for the east sign are finished grades or grades from before the site being filled. Mr. Pickett stated that the contours on the site plan are as it is existing with the current grading, which means that they are raising it where the building will sit about 8-11 feet across the site of the store. He also noted that the Board is not seeing that the site and roadway that goes around the back of the proposed store have been raised above the existing grade that is being shown in the contours. Chair Egeline asked if the first request for two signs is not granted which one would they keep. Mr. Pickett stated that would be something that would be discussed internally and with city staff to come to that determination.

Public Comment and Board Discussion

(1:11:05) Mr. Larry Miller, 945 Mendocino Dr, spoke in opposition to the variances noting his previously submitted written comments. Mr. Miller noted that certain sign positions causing the signs to be "right outside" his back windows being his primary objection to the project. Mr. Miller went over some of his other comments contained in his written public comment including concerns over future development and what the city wants

they entry points to look like and encouraged the Board to approve a single sign at a different height.

(1:16:17) Mr. Randall Green, a commercial real estate broker in Helena, spoke in support of the project. Mr. Green related that he has been involved in the development of this area since Nob Hill and the commercial sites in Nob Hill were initially laid out, and that this parcel has always been intended for this type of development, and that there is not currently any type of food or beverage business in the area. Mr. Green also noted the elevation issues that are involved in developing the site.

(1:18:06) Mr. Pat McCutcheon, owner of one of the lots in Nob Hill, spoke in support of the application, stating that when the lot was originally purchased in the mid-2000s it was with the intent of developing it just as the applicant is proposing. Mr. McCutcheon talked about the history of the property and path to development and noted that when the road was built the elevation changed, so he can see why a higher sign is needed for wayfinding, and that it is important to a business to have appropriate signage for customers to know where they are.

(1:20:27) Ms. Christy Austin, of PEC, stated her and her firm's support of the variances for the same reasons Mr. Green and Mr. McCutcheon had stated. Ms. Austen stated that it would be a great benefit to the whole community and is what this property was intended. There was no additional public comment and board discussion started.

(1:21:42) Chair Egeline suggested the Board go through each variance, starting with the request for 2 signs as opposed to 1, and asked Mr. Alvarez to pull up the photos of the site from the highway. Mr. Federman stated that since the site is so close to the neighborhood, he did not see that the second sign as being necessary. Mr. Stahly stated that he thinks that this project is a good use of the B-2 zoning, but that is not the issue at hand, it is the signage being requested. Mr. Stahly noted that the Board had discussed if their variances to the sign ordinance are prudent, and based on this location, and setting precedents, he uses MDT wayfinding when traveling more than big signs and tools like Google, and with that said 1 sign is appropriate for the development. Commissioner Shirliff stated that he keeps going back and forth between the homeowners in the area and the people who will use this business and agrees that having a store there to buy food and fuel would be great for everyone, but 2 signs is too much, and also agrees that MDT wayfinding would be appropriate. Vice-Chair Tholt stated his agreement with the previous statements, and also would support only one sign in the location.

(1:26:19) Chair Egeline asked if the other variances should be discussed before a vote. Mr. Alvarez told her it was in her purview to make that decision. Chair Egeline called for a motion on the first variance request.

Motion #1

(1:28:10) Vice-Chair Tholt moved to deny the variance from section 11-23-10 to increase the allowable number of free-standing signs from one to two for a property with a legal description of Lots 2 and 3 of Block 1 COS #3100615 at the Nob Hill subdivision of City of Helena, Lewis and Clark County, Montana. Mr. Stahly seconded the motion. The



motion passed unanimously (5:0) Mr. Federman stated that by granting the variance it would confer special that other properties had not received.

Board Discussion

(1:30:02) Mr. Stahly stated that variances #2 and #4 intermingle with only one sign going up, and it isn't determined where it will be placed, and there are grade limitations on the property, so he would not be able to approve a height variance until seeing something new with one sign. Chair Egeline suggested that those two variances be tabled and move on to discussion of the third requested variance. Mr. Federman noted that the third variance was similar to what was being discussed in the previous application and there is enough signage on the property that there is no need to increase another 40 square feet and would vote no. Chair Egeline asked to see the picture of the increase of signage and stated that she looks at these signs to check for competitive pricing and would not want to put anyone at an advantage or disadvantage. Commissioner Shirliff asked if Mr. Alvarez would zoom in on the Bonfire Grill portion of the sign to see the square footage on that and if eliminating it would get the sign closer to the allowable square footage. Mr. Alvarez stated without that part of the sign it would still be over by about 20 square feet. Vice-Chair Tholt stated that these are pretty standard signs and is more apt to approve this one. Mr. Stahly stated that he would also consider an increase in the square footage of signs like these, where he knew other variances had been approved. There was no further discussion and Chair Egeline asked for a motion.

Motion #2

(1:35:11) Mr. Stahly moved to deny the variance from section 11-23-10 to increase the level height of the free-standing sign from 34 feet to 45 feet for the northernmost freestanding sign for property with legal description of Lots 2 and 3 of Block 1 COS #3100615 at the Nob Hill subdivision of City of Helena, Lewis and Clark County, Montana. Commissioner Shirliff asked for clarification on if this variance had been tabled. Chair Egeline asked if it could be tabled or would it need to be denied now. Mr. Alvarez stated that now that a motion had been made, that is the motion that needs to be considered. Chair Stahly suggested that there should be some discussion before a vote. Vice-Chair Tholt asked if there was any advantage to tabling vs denial. Mr. Alvarez stated he would not think the applicant will come back with a package that is not a material change, and would not want to restart the process, and tabling allows the applicant to bring it back. Mr. Alvarez also gave examples of how the applicant could tweak their current proposal if the variance[s on height] were to be tabled. Chair Egeline suggested that the Board table those two variances. Vice-Chair Tholt reminded that the Board needed to vote on the motion to deny first. Mr. Stahly noted the motion required a second, so this will be discussion and then there will be a call for the question on the motion. Commissioner Shirliff stated he brought that up as he thought it was mentioned to table variance 2 and 4. Chair Egeline stated she did not make a motion. There was some additional discussion about the confusion over tabling the variances. Mr. Stahly stated he would vote in support of his motion. Vice-Chair Tholt stated that that he would prefer to table so would vote against the motion. Mr. Alvarez suggested that if the Board is certain that they will not approve any sign at 45 feet then they can vote for denial, or however they want for this variance and then table number 4 or table 3 and 4 and they could come back with a single sign request. There was some discussion on exactly which variance the motion was referencing, and it was clarified it was for item 2. The motion was seconded, and a vote was taken. The motion failed.

(1:41:39) Vice-Chair Tholt moved to table variance #2; a variance from section 11-23-10 to increased allowable height from free standing sign from 34 feet to 45 feet to the northern free standing sign for property with the legal description of Lots 2 and 3 of Block 1 COS #3100615 at the Nob Hill subdivision of City of Helena, Lewis and Clark County, Montana. Mr. Stahly seconded the motion. A vote was taken and the motion passed.

Motion #3

(1:42:45) Vice-Chair Tholt moved to approve a variance from section 11-23-10 to increase allowable area of a free standing sign from 150 square feet to 192 square feet for the Southern free standing sign for property with the legal description of Lots 2 and 3 of Block 1 COS #3100615 at the Nob Hill subdivision of City of Helena, Lewis and Clark County, Montana with the condition that the sign be installed within one year of approval. Chair Stahly seconded the motion. The motion passed (4:1).

Motion #4

(1:44:52) Commissioner Shirliff moved to table a variance from section 11-23-10 to increase the allowable height of a free-standing sign from 34 feet to 37 feet for the southern freestanding sign for a property with a legal description Lots 2 and 3 of Block 1 COS #3100615 at the Nob Hill subdivision of City of Helena, Lewis and Clark County, Montana. Vice-Chair Tholt seconded the motion. Vice-Chair Tholt asked if the Board could give the applicant some direction for the sake of everyone's time. Mr. Federman stated that he would not vote for the northern sign to increase in height. Mr. Stahly stated that the Board needed to be careful is saying what they would and would not support until there is a new proposal in front of them. Chair Egleine stated that the pictures from the interstate were very helpful for showing height, and that it would be helpful when this returns to the Board. A vote was taken and the motion passed. Mr. Alvarez noted that when the tabled items are brought back they will be publicly and legally noticed again and explained how the department's neighbor notices work.

Member Communications / Proposals for next Agenda

(1:49:59) Mr. Alvarez noted there are a couple of applications for the March 7 meeting.

Public Comment

(1:50:51) Mr Miller stated that when Mr. Alvarez initially walked through explaining the proposal he made mention of Eastern not northerner for the second item and that makes quite a difference for a property owner with a daylight basement facing the site. There was no additional public comment.

Adjournment

(1:52:20) The meeting was adjourned.