



BOARD of ADJUSTMENT

AGENDA

Tuesday, September 29, 2020 – 12 PM | Council Chambers, City Hall

1. Call meeting to order | Pledge of Allegiance
2. Welcome new members and Officer appointments: (a) Chairperson & (b) Acting Chairperson.
3. Approval of Minutes: (a) Regular Meeting – August 17th
4. Old Business
 - a. None.
5. Public Hearings
 - a. None.
6. New Business | The Board accepts public comment at the end of each item.
 - a. Appeal to a Board of Adjustment's Decision.

On August 20th, Clifford Kimerly of 622 Kentucky Street sought a variance to install a six-foot high fence in the required front yard. Section 11(1) of Chapter Four of the Zoning Ordinance only allows fence heights of four feet in any required front yard. The R-1 District specifies a front yard of 25 feet from the lot line inward.

With only having three members due to resignations of two members, the Board heard the request as advised by the City Attorney since that was the Board's complement at the time, and the City did not want to delay the project. Despite a vote of two to one in support of the request, the variance was not granted since Chapter 26, Section #3 of the Ordinance requires four affirmative votes to grant a variance or an appeal.

Now, with full complement of members, staff is re-presenting the request to have the Board render a decision consistent with the described Ordinance provision.
7. Public Comment – **Members of the audience may comment on any non-agenda item. State Statute limits the Planning Board from discussing any introduced item. The Board limits each person to three minutes to ensure there is sufficient time for all comments. The Board respects all comments and will have staff follow up any questions.**
8. City Planner & Staff Comments
9. Announcement of the next meeting
 - a. October 12th at 12 PM: If a meeting is necessary, rescheduling will need to occur since the date is a federal holiday (Columbus Day).
10. Adjournment

**The Board of Adjustment for the City of Deer Lodge meets in the Council Chambers
300 Main Street, Deer Lodge, MT 59722**

For Further Information Contact

City Administrator & Planner | Brian P. Bender, ICMA-CM, AICP CEP, CFM
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Board of Adjustments

MINUTES

The Board of Adjustment met on Thursday, August 20, 2020 at 12 PM in Council Chambers, City Hall.

Members Present:	Warner Bair, Ken Kimerly, & Julie Thompson
Members Absent:	None
Mayor:	Absent
CAO:	Brian Bender
Council Member:	None
Staff:	Matt Bowdish
Consultants:	None
Guests:	Please see sign-in sheet

1. Call Meeting to Order – Pledge of Allegiance

Mr. Bender called the meeting to order at 12:04 and all present recited the Pledge of Allegiance.

2. Approval of Minutes

a. March 9th

A motion to approve the minutes was moved by Member Thompson and seconded by Member Bair. The minutes were approved unanimously.

3. Old Business

None.

4. Public Hearings

Mr. Bender asked the Board to nominate an interim chairperson to facilitate the hearings.

Member Thomson motioned to appoint Member Bair as interim chairperson. Member Bair seconded the motion. The Board approved the motion through a vote of three to zero.

a. Susanna Ellis of 424 Center Street to deviate from the front yard setback requirements of the R-1 District to accommodate the placement of a detached garage. The request also

seeks relief from the provision contained in Section 2 of Chapter Four of the Zoning Ordinance prohibiting the placement of an accessory building in any required front yard. The subject property is 900 Milwaukee Avenue.

Chairperson Bair opened the hearing.

Mr. Bender offered a brief summary and identified the property on a PowerPoint presentation. He continued by noting the City Council at their August 3rd session granted the petitioner a Right-of-Way Encroachment Permit thereby reducing the actual setback dimension required by the petitioner. He also said the City did not received any opposition from the public regarding the request.

The petitioner explained the structure would be stick-built and will replace a similar sized garage destroyed by a fire several years ago.

Member Thompson asked if the garage would occupy the same location.

The petitioner said it will occupy the same location since there is no other space to place it.

Chairperson Bair asked if the gravel in the yard had any connection to the garage project.

The petitioner said the gravel is there to stabilize the yard when parking vehicles.

The petitioner acknowledged the approval conditions listed in the Staff Report.

Member Thompson motioned with Member Kimerly seconding to grant the requested variances (front yard setback and an accessory structure in the required front yard) to Susanna Ellis. The Board approved the motion through a vote of three to zero.

- b. Clifford Kimerly of 622 Kentucky Street to allow for the placement of a six-foot high fence in the required front yard. Section 11(1) of Chapter Four of the Zoning Ordinance only allows fence heights of four feet in any required front yard. The R-1 District specifies a front yard of 25 feet from the lot line inward.

Chairperson Bair opened the hearing.

Mr. Bowdish described the request's specifics and identified the subject property on an aerial image shown on the PowerPoint presentation.

Member Thompson questioned why the Zoning Ordinance prohibits fences higher than four feet in the required front yard.

Mr. Bender explained ordinances limit the height to ensure first responders can view the front door from the street.

Chairperson Bair asked if the Fire Chief offered any comments regarding the height.

Mr. Bender said the Fire Chief was not asked to provide comments, but the Police Chief said he had no concerns with the proposed fence.

Chairperson Bair questioned the placement of the gate for the driveway.

Joni Scott (representing the petitioner) responded to the questions regarding how the proposed fence will coexist with the existing hedge and the use of the driveway on the southern portion of the lot.

Chairperson Bair asked the Board if they grant the request would they approve similar requests.

Chairperson Bair questioned staff on the responses provided to the approval criteria in the Staff Report. He continued by noting the absence of similar height fences along Kentucky Avenue.

Mr. Bowdish clarified responses to the approval criteria.

Member Thompson motioned with Member Kimerly seconding to grant the requested variance (a fence higher than four feet in the required front yard) to Clifford Kimerly. The motion failed due to a vote of two to one. An approval requires the quorum of the entire Board.

- c. Dusty and Sarah Tate of 1748 Eastside Road to allow for the placement of a single-family residence on a lot with a front yard setback of five feet instead of 25 feet as required by Section 5(i) of Chapter Fifteen of the Deer Lodge Zoning Ordinance for the R-1 District. The subject property is a corner lot, therefore requires two front yard setbacks. The subject property is at 1000 Milwaukee Ave.

Chairperson Bair opened the hearing.

Mr. Bowdish summarized the request and explained the scenes of the subject property shown by several images on the PowerPoint presentation. He continued by saying he responded to questions the neighbors had with the request.

The petitioner described his intent with the property and reason he removed the hedges and trimmed the trees. He continued by saying those actions alone increased the visibility at the intersection between Milwaukee Avenue and Carter Street.

The Board discussed impact the proposed setback will have on the adjacent properties. The members agreed the impact would be minimum since these properties contain dwellings placed equally close to lot lines.

Mr. Bowdish noted the petitioner intends to submit a Right-of-Way Encroachment Permit to acquire a portion of the City's property to reduce the dimensional element of the setback variance.

Member Kimerly motioned with Member Thompson seconding to grant the requested variances (front yard setback) to Dusty & Sarah Tate. The Board approved the motion through a vote of three to zero.

5. New Business – *The Board accepts public comment at the end of each item.*

a. None.

6. Public Comment – *Members of the Audience may comment on any non-agenda item. State Statute limits the Board of Adjustment from discussing any introduced item. The Board limits each person to three minutes to ensure there is sufficient time for all comments. The Board respects all comments and will have staff follow up on any questions.*

None.

7. City Planner & Staff Comments

a. Board membership (two vacancies).

Mr. Bender noted the Mayor is accepting letters of interest to present to the City Council on September 8th.

Mr. Bender provided the Board with updates on various projects and permitting history since March.

8. Announcement of the Next Meeting

a. September 14th at 12 PM, if necessary.

The Board confirmed the date and time.

Chairperson Bair acknowledged the efforts of Member Thompson to work beyond her conflict of interest.

9. Adjournment

Chairperson Bair adjourned the meeting at 12:55 PM.

Prepared by: Brian Bender

Warner Bair, Interim Chairperson

Date

Board of Adjustment

Members

Warner Bair | Ken Kimerly | Julie Thompson

Mayor
Diana J. Solle
Chief Administrative Officer
Brian P. Bender
City Attorney
Peter Elverum
Public Works Superintendent
Trent Freeman
Treasurer
Judi Whitney
Utility Billing Clerk
Gena Micu

Board of Adjustment

Warner Bair
Ken Kimerly
Julie Thompson

Deer Lodge

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Board of Adjustment Staff Report

<u>Report Date:</u>	08.05.20	<u>Meeting Date:</u>	08.17.20
<u>Petitioner(s):</u>	Clifford Kimerly	<u>Address:</u>	622 Kentucky St
<u>Property Owner(s):</u>	Clifford Kimerly	<u>Zoning:</u>	R-1 Residential, Single-Family, Low Density District
<u>Agent:</u>	None	<u>Geocode(s):</u>	28-1578-05-1-24-07-0000
<u>Submitted Items:</u>	Application & Site Plan	<u>Staff:</u>	Matthew Bowdish

REQUEST

The petitioner (Clifford Kimerly) seeks a variance from the R-1 Zoning District front yard fence height requirement to allow for a 6-foot tall fence to surround 622 Kentucky Street. Chapter #4, Section #11(1) of the Deer Lodge Zoning Ordinance limits fences to a height of four feet within a required front yard.

SUMMARY OF NOTEWORTHY TOPICS

The July 29th and August 5th editions of the *Silver State Post* contained the legal notice of the request. The notices were also posted on the City's website and the bulletin board at City Hall. Staff mailed thirty-four notices of the hearing to adjacent property owners and received no comments.

Staff advises the Board that the request is not the result of a code compliance action but rather the petitioner seeking approval to replace an existing hedge with the proposed fence. The improvements comply with all other applicable provisions of the R-1 District.

In their application, the petitioners noted concerns about noise from Kentucky Street traffic and the stopping of vehicles at the storage units across Kentucky St. They also noted the fence would be located approximately one foot away from the sidewalk.

ACTION

Approve the variance. This action is consistent with Staff's analysis contained in this Report. The Board of Adjustment may include conditions with their eventual motion.

SITE CHARACTERISTICS

The subject property is a 30,000-square foot lot on the west side of Kentucky Street situated between Van Gundy and W. College Avenues. The property is an interior lot with only one street frontage (Kentucky St). The property contains a 3,012-square foot residence built in 1876 and a 450-square foot garage built in 1900.

➤ Surrounding Zoning & Land Use

North: R-1: Residential, Single-Family, Low Density District | Residential

East: R-1: Residential, Single-Family, Low Density District | Residential

South: R-1: Residential, Single-Family, Low Density District | Residential

West: R-1: Residential, Single-Family, Low Density District | Residential

VISUAL EXHIBITS



Subject property from Kentucky St facing southwest.



Subject property from Kentucky St facing west.

APPROVAL CRITERIA

Section #7 of Chapter #24 of the City's Zoning Ordinance contains the following approval criteria. The Board of Adjustment shall make findings of fact based upon evidence produced at a public hearing setting forth and showing that the following circumstances exist:

- (a) In considering all proposed variances to the ordinance, the board shall, before making any findings in a specified case, first determine that the proposed variance will not amount to a change in the use of the property to a use which is not permitted within the district.

Petitioner:

The variance approval will not change the use of the property. It is solely a residence.

Staff Analysis:

Staff finds the granting of the variance will not alter the residential use and character of the property.

- (b) That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other lands in the same district and that literal interpretation of the provision of this ordinance would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this ordinance.

Petitioner:

Lilac bushes border the sidewalk. Bushes are above 6 feet, and most likely have been that way for some time.

Staff Analysis:

Staff notes the subject property is not negatively influenced by physical characteristics such as size, shape, topography, or location. However, the placement of the existing hedge represents the presence of a special circumstance.

- (c) That the special conditions and circumstances do not result from the actions of the applicant.

Petitioner:

YES

Staff Analysis:

Staff observes the subject property contained the overly tall hedges when the applicants purchased the property.

- (d) That granting the variance requested will not confer a special privilege to the subject property that is denied other lands in the same district.

Petitioner:

We don't know if other's have applied for this variance in this district – we don't think we would consider this a special privilege.

Staff Analysis:

Staff finds the request would not grant special privileges to the subject property denied to other properties in the R-1 District since adjoining properties have hedges or other visual blockages that exceed the four-foot height restriction.

- (e) That granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

Petitioner:

Just home owners wanting to beautify our property as well as our neighborhood. It would definitely be a property as well as neighborhood improvement and not harm or hinder public safety.

Staff Analysis:

Staff observes the granting of the variance will not introduce substantial harm to adjacent properties or the public at large since the proposed fence is similar to the existing shrub. The proposed fence may be more safe for passers-by since the existing hedge crowds and grows above the sidewalk, reducing the space available to walk.

- (f) The Board of Adjustment shall further make a finding that the reasons set forth in the Application of Appeal justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land.

Petitioner:

YES

Staff Analysis:

The variance is the minimum relief from Chapter #4, Section #11(1) of the Zoning Ordinance to allow the petitioner to build a fence consistent with that being installed around the rest of the property.

- (g) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Petitioner:

YES

Staff Analysis:

Chapter 4, Section 11 of the Zoning Ordinance describes regulations relating to safety, especially with fence materials. The proposed fence will be an improvement to public safety from the current hedge.

- (h) The fact that property may be utilized more profitably will not be the sole element of consideration before the Board of Adjustment.

Petitioner:

YES

Staff Analysis:

Granting the variance does not enable the petitioner to generate financial income without first receiving other City approvals.

CONCLUSION

By evaluating the request against all eight approval criteria, staff considers the request is consistent with the intent of the R-1 Zoning District and Chapter 4, Section 11 (Fences, Walls, and Hedges) of the Zoning Ordinance. A review of the subject property confirms the conditions described by the petitioner with the submitted materials.

RECOMMENDATION

Staff recommends the Board of Adjustment to grant a variance to allow the installation of a six-foot, tall fence within the required front yard. Staff suggests the Board of Adjustment attach the following conditions to their decision:

1. The petitioner abides by all representations, testimony, and materials submitted during the hearing process, to the extent, those items were not negated by the Board of Adjustment, and to the extent they are not inconsistent with the spirit or letter of explicit conditions to the granted variance.
2. The granted variance is for the property improvement submitted with this application (a six-foot, tall fence to surround the property, including within the required front yard).
3. The petitioner obtains a City of Deer Lodge Building Permit and comply with all applicable provisions of the International Residential Building Code.