



BOARD OF ADJUSTMENTS

AGENDA

Thursday, July 14, 2021 – 12 PM | Council Chambers, City Hall

1. Call meeting to order
2. Approval of Minutes
 - a. May 10, 2021
3. Public Comment – Limit to three minutes per person
4. Old Business:
 - a. None
5. Public Hearing:
 - a. Conestoga Lane Lot 10 Setback Variance – Jordan
6. New Business:
 - a. Vote on Approval of Conestoga Lane Lot 10 Setback Variance – Jordan
7. Committee Comments or Concerns
8. Announcement of the next meeting
 - a. TBD
9. Adjournment

Board of Adjustment Members

Dan Williamson (Chair) | Dusty Tate | Lisa Cole
Ken Kimerly | Julie Thompson | Tom Goddard

CITY OF DEER LODGE

Board of Adjustments

MINUTES

The Board of Adjustment met on Monday, May 10, 2021 at 12 PM in Council Chambers, City Hall.

Members Present:	Ken Kimerly, Julie Thompson, Lisa Cole, & Tom Goddard
Members Absent:	Dan Williamson, Dusty Tate
Mayor:	Diana Solle
CAO:	Jordan Green
Council Member:	None
Staff:	Cyndi Thompson
Consultants:	None
Guests:	Please see sign-in sheet

1. Call Meeting to Order – Pledge of Allegiance

CAO Green called the meeting to order at 12:00 PM.

2. Approval of Minutes

a. November 9, 2020

Member Thompson motioned to approve minutes. Member Cole seconded the motion. The minutes were approved unanimously.

3. 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.

4. Old Business

a. None.

5. Public Hearings

a. 405 Dixon Variance – CAO Green

The petitioners, Warner, and Katherine Bair, seek a variance from the City of Deer Lodge Zoning Code to replace an existing, eight-foot, dilapidated fence between 405 Dixon St and 702 Missouri Ave with a fence of the same height. Under Chapter 4, Section 11 of the Zoning Ordinance, fences located on lot lines cannot exceed six feet in height. The petitioners own both properties and desire to use 405

Dixon St as a guest house. The proposed fence replacement serves to supply privacy as well as improve the property's visual and built quality.

The April 21 edition of the Silver State Post contained the legal notice of the request. The notice was also posted on the City's website and the bulletin board at City Hall. Staff mailed nine notices of the hearing to adjacent property owners and received the following comments: support from Amber Gates of 700 Missouri, support from Anthony Pierce of 406 Dixon, and support from Diane Mannix of 610 Missouri.

On April 9th, Katherine Bair approached me inquiring about the process to replace the fence. I referred her to Dan Green, the City of Deer Lodge building inspector, who informed her she needed to apply for a Variance to permit the fence replacement. She completed the application and paid for the building permit the same day. Upon learning that the Variance application required a fee, she paid the fee on April 22nd.

Staff recommends the Board of Adjustment to grant a variance to replace the 8-foot fence between the properties of 405 Dixon, 700 Missouri Ave, and 702 Missouri Ave with a fence of the same height that stairsteps down to a 4-foot, 8-inch fence for the rest of the fence line. 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 replacement of an existing 8-foot fence stair stepping down to a 4-foot, 8-inch fence).
3. The petitioners comply with all applicable provisions of the International Residential Building Code and the City of Deer Lodge Building Permit granted to the petitioners.

6. New Business:

405 Dixon Variance – CAO Green

Member Thompson motioned to approve the variance at 405 Dixon. Member Goddard seconded the motion. 4 Yeas, 0 No's, 2 Absent.

7. Committee Comments or Concerns:

None

8. Announcement of the Next Meeting

- a. June 14, 2021 at 12 PM, if necessary.

9. Adjournment

CAO Green adjourned the meeting at 12:11 PM.

Prepared by: Cyndi Thompson, City Clerk

Dan Williamson, Chairperson

Date

Board of Adjustment

Members

Dan Williamson, Chairperson | Ken Kimerly | Julie Thompson | Dusty Tate | Lisa Cole | Tom Goddard

Mayor
James Jess
Chief Administrative Officer
Jordan Green
City Attorney
Peter Elverum
Public Works Superintendent
Trent Freeman
Treasurer
Stanley Glovan
Utility Billing Clerk
Gena Micu

City of
Deer Lodge

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Board of Adjustment
Dan Williamson (Chair)
Ken Kimerly
Julie Thompson
Dusty Tate
Lisa Cole
Tom Goddard

Board of Adjustment Staff Report

<u>Report Date:</u>	07.12.22	<u>Meeting Date:</u>	07.14.22
<u>Petitioner(s):</u>	Sherry Touchette	<u>Address:</u>	None
<u>Property Owner(s):</u>	Sherry Touchette	<u>Zoning:</u>	R-5 Northside Residential District
<u>Agent:</u>	Rebecca McNeil	<u>Geocode(s):</u>	28-1678-33-1-08-10-0000
<u>Submitted Items:</u>	Application,	<u>Staff:</u>	Jordan Green

REQUEST

The petitioner, Sherry Touchette, and her agent Rebecca McNeil, seek a variance from the City of Deer Lodge Zoning Code to exceed setback minimums on one side of her property by 4 inches to accommodate the placement of a residential foundation. The property is located in the R-5, Northside Residential District and is accessed via Conestoga Drive. It is not yet addressed. Under of the City of Deer Lodge Zoning Ordinance, side yard setbacks in the R-5 Zoning District must be at least 5 feet.

SUMMARY OF NOTEWORTHY TOPICS

The July 6th and 13th editions of the *Silver State Post* contained the legal notice of the request. The notice was also posted on the City's website and the bulletin board at City Hall. Staff mailed nine notices of the hearing to adjacent property owners and received no comments.

City staff were made aware of the potential violation of the setback requirement of 5 feet after the foundation construction had begun. The City had received all necessary building permits for the new construction, but there was a discrepancy in the concrete pour that led to the foundation being poured 4 foot 8 inches from the property line instead of the full 5 feet.

ACTION

Approved the variance. This action is consistent with Staff’s analysis contained in this Report. The Board of Adjustment may include new or revised conditions with their eventual motion.

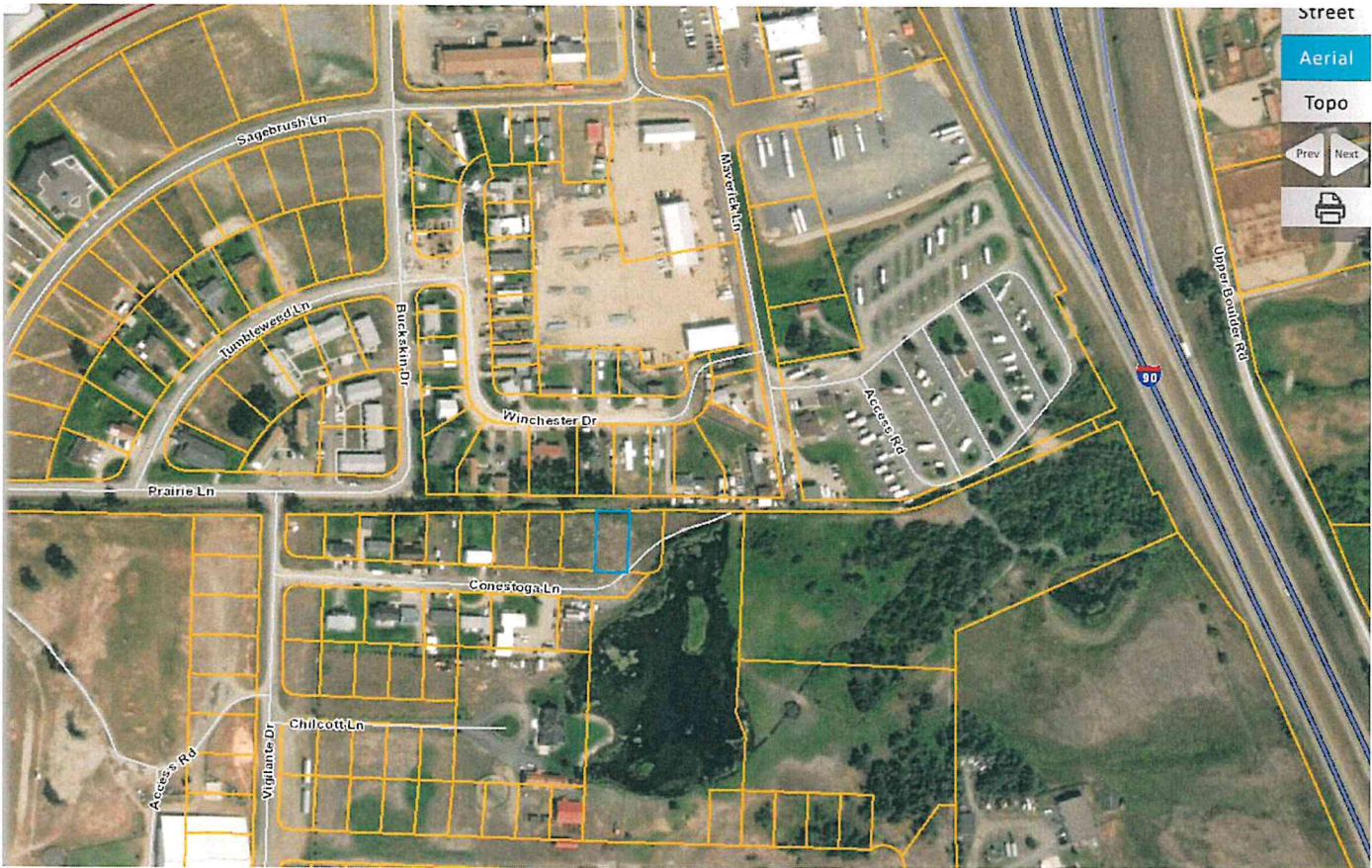
SITE CHARACTERISTICS

The property is located in the Warren Acres Subdivision, Block 8, Lot 10 and is approximately 11,855 square feet. It is accessed by the recently annexed Conestoga Lane and is zoned as R-5, Northside Residential District. The agent, Rebecca McNeil, has begun construction of a manufactured home on the property. However, her contractor placed the foundation in a way that exceeded the 5-foot minimum setback by 4 feet on the west side of the lot, adjacent to Lot 9. As City staff were made aware of this, development has ceased until the setback variance can be approved.

➤ Surrounding Zoning & Land Use

- North: R-5: Northside Residential District
- East: R-5: Northside Residential District – Empty lot
- South: County
- West: R-5: Northside Residential District – Empty lot

VISUAL EXHIBITS



Location of the Subject Property

APPROVAL CRITERIA

Section #7 of Chapter #27 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.

Staff Analysis:

Staff finds the variance would not amount to a change in use of the property as the setback exceedance is kept to a minimum. The foundation is for a residential structure and is consistent with the R-5, Northside Residential District zoning.

- (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.

Staff Analysis:

Staff finds the current condition of the foundation to exceed setback minimums, but not so in a way that is due to the actions of the petitioner. Not granting the variance would have substantial impacts on the property owner's use of their property to build a residential structure.

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

Staff Analysis:

Staff finds that the actions of the applicant have not created the special conditions the require the application for a variance. The location of the foundation was an error.

- (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.

Staff Analysis:

Staff finds that the variance requested will not confer special privileges. The setback variance is minor.

- (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.

Staff Analysis:

Staff finds that there is no material detriment to the public welfare or injurious to properties in the vicinity of the property. There is very little extra impact that a 4-inch setback variance will have on the character of the district, the ability of adjacent property owners to enjoy their property, and the provision of public health and safety.

- (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.

Staff Analysis:

As the foundation is already in place, the variance is necessary for the reasonable use of the land. It is the minimum variance able to be made due to the current conditions of the site and also the relatively minor distance the setback has been exceeded.

- (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.

Staff Analysis:

Chapter 19, Section 1 of the Zoning Ordinance describes the intent of the R-5 District is to accommodate a variety of housing types on smaller lots having access to municipal services. Also, that the R-5 District maintains the well-established neighborhood character of the northside of the City and serves as a transition to adjacent community facilities and commercial properties. Staff finds the proposed variance does not have any conflict with the purpose described in Chapter 19, Section 1.

Furthermore, the 2015 Growth Policy's Housing policies lists four Action Items under Objective #9.2. Action #9.2b contains the following language: *Relax bulk and dimensional requirements*. Granting this variance will be in line with the Growth Policy's goals of relaxing dimensional requirements for the sake of the highest and best use of the property.

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

Staff Analysis:

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

CONCLUSION

By evaluating the requests against all eight approval criteria, staff considers the request is consistent with the intent of the R-5 Zoning District. 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 exceed setback minimums on one side of the applicant's property by 4 inches to accommodate the placement of a residential foundation. 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 petitioners comply with all applicable provisions of the International Residential Building Code and the City of Deer Lodge Building Permit granted to the petitioners.