

BOARD OF ADJUSTMENTS MEETING MINUTES

March 24, 2024, Board of Adjustments meeting was called to order at 6:00PM in the City Council Chambers at 206 Main Street, Three Forks, MT 59752.

PRESENT: Board of Adjustments Board Members Alex Blackburn, Reagan Hooton, and Ken Fendler were present in City Hall; and Michele McLeod was present via Zoom. Bill Walton was absent. Floodplain Administrator/Zoning Official Kelly Smith and City Planner Randy Carpenter were present at City Hall. City Attorney Susan Swimley attended via Zoom as well. (Zoom is a virtual meeting tool allowing people to attend remotely, which started as an option during the COVID-19 pandemic and the City has continued to offer for meetings.) There was a quorum with the attendance of four members, and the meeting was held. The minutes were completed via recording after the meeting by City Clerk Crystal Turner.

Public present at City Hall were John Sinrud, Ken Gibson, Sean McKenna and Clint Struble.

Alex Blackburn called the meeting to order. Roll call was taken, and the meeting was held with four (4) members present. He reminded the public this meeting was recorded.

There was no **PUBLIC COMMENT** for items not on the agenda.

CONSENT AGENDA: Minutes from June 30, 2022

Alex Blackburn moved to approve the minutes from the meeting December 1, 2022. Michelle McLeod seconded the motion.

Motion Passed Unanimously.

Chairman Blackburn introduced the new Board members Ken Fendler and Reagan Hooton, and he noted Reagan also serves on the City Council.

Appointment of Chair and Vice Chair

Alex Blackburn offered to remain as chair since others were new to the Board. I nominate myself for Chairman and will take any others for Vice Chair. (Michele McLeod said I see you looking at me for the Vice Chair.) Without any other nominations a vote was called for.

Motion Passed 4:0.

PUBLIC HEARINGS:

Public Hearing and Decision on a Variance Request by Sean McKenna (GV Builds, LLC / Laurel Hills, LLC) for Lot 7, Block 32 of Three Forks Original Townsite, more commonly known as 306 E. Fir Street. The variance request is for an 8-foot setback of the 15-foot required setback in #11-6A-6 for an enclosed entryway (vestibule) and stairs.

Staff Report: City Planner Randy Carpenter read the staff report into the record completely. He stressed to the Board that Montana case law is clear that a hardship is not a problem that you create yourself. "For example, if you build

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your house in such a manner that you cannot expand a room without encroaching into a required yard, you have created that situation, and the ordinance does not recognize that as a legitimate hardship. The important point is whether the applicant would be deprived of property rights.” Randy stated that Mr. McKenna would like to keep the vestibule and stairs that have already been built without a zoning permit. The Zoning Code requires that all structures be 15 feet from the property line. The vestibule is currently 9.5 feet from the property line; the stairs are currently 7 feet from the property line. Staff believes because the original structure, which according to the State of Montana records says was built in 1956, was built closer to the property line than the Zoning Code allows because it was built prior to the Code. The Code allows these pre-existing nonconforming uses to exist, but not to expand upon them. If the applicant receives a variance from the Board of Adjustments the vestibule could remain in the location it is now. If the applicant does not receive a variance, he would need to remove the structure and adhere to current Codes.

Application Testimony: Clint Struble spoke on behalf of the applicant Sean McKenna/GV Builds, LLC. He said there are some untruths about this property that he would like to clear up. “The entryway that was erected is actually smaller than the original stairs if you do not count the steps. If you count the original steps, the newly built ones are roughly 18 inches outside that old footprint. The deck part of the variance we are requesting is to increase the lot footage coverage allowed,” Mr. Struble said. Randy Carpenter said the request for the deck is a separate variance and will be heard next. Mr. Struble returned to his testimony regarding the steps and vestibule. “We are trying to get this to look nice like the others in the neighborhood I believe got variances and built steps closer to the lot line. This property was in quite a state of disrepair when Mr. McKenna purchased it. There was sewage in the basement. Repairing the existing concrete steps by pouring new concrete over them would have made them out of building code by making each riser too high. They had pieces that were broken off the edges around the stairs.

Mr. Struble then distributed pictures of other homes in the neighborhood which are 5 foot 2 inches, 7 foot, and other less-than-zoning requirements, which he assumes they all obtained variances for. He said this property is scheduled to close in April and then the entire renovation process will begin and be completed within 30 days. Kelly Smith stated that the first two pictures shown to the Board are in a different zoning district and therefore have different setback requirements. Alex Blackburn asked what zoning district the first two pictures are in. She answered, “Central Business District.”

Board Comments/Questions: There were no board questions at this time.

Public Comment: Alex Blackburn read a letter from Whitney Carr into the record noting her opposition and stating she believed the homeowner should have to follow the rules like everyone else in the neighborhood.

Applicant Rebuttal: Sean McKenna said in regard to Ms. Carr’s statement that the entire property has been in disrepair for two years, he took off three truckloads of garbage left on the property and removed all the broken windows, put a new roof on it – spent thousands of dollars doing what we have done to it. “I take object to saying this property is in disrepair when there are lots of other properties in worse neglected conditions which are currently lived in. As far as I’m concerned, what happened when previous owners were there, I could care less because I can’t change that. We are trying to bring a family into town, so God forbid we don’t have squatters living in town living right across the street for a park where little kids play,” Mr. McKenna said.

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Board Discussion/Motion/Etc.: Alex Blackburn stated the vestibule was built without any building permit or inquiry into zoning? Mr. McKenna said he had done work in Three Forks before and knew we do not have a building department so knew he did not have to get a building permit. “As far as I knew, if I was working within the existing footprint I didn’t have to. But I talked to Kelly, and she said I would have to ask for a variance. The concrete steps and stoop that was there was cracking and broken on the edges and we talked about overlaying it with new concrete. The stoop was deteriorating and had cracks and holes, it was totally unsafe. Doing the encapsulation would make the risers 11 inches high. They are already 9 inches. International Building Code is trip + riser at 18 inches. No building inspector would approve it. So we knocked the top of it off, made a vestibule a little bit smaller than the previous stoop and made it safe so no one would trip and break their leg,” Mr. McKenna said.

Chairman Blackburn posed, “But it could have been modified, without the vestibule?” Mr. McKenna said yes but it would have cost about four times what he did. Chairman Blackburn asked what the setback would be if the existing vestibule and stairs were left as is? Mr. McKenna said he believes it is 7 feet. He continued to explain his reasoning. Reagan Hooton said she walks by the property a lot and noticed the existing garage comes out farther than the stairs and assumes it was given a variance. Mr. McKenna said it is closer than the vestibule/stairs. Chairman Blackburn asked if there is a permit required for the work that was done? Kelly Smith answered yes, any time you do any construction you are required to obtain a zoning permit. Chairman Blackburn asked if it is possible to acquire that permit now to bring it all up to code? Kelly replied, “Yes, but only if the Board grants this variance.”

Mr. McKenna commented that the potential buyer’s realtor said in an email that once she obtains the property, she would need to come to City Hall to get a building permit. Ms. Smith replied that the realtor said that though; City Hall is not telling people they need to obtain a building permit. When people call and question that kind of thing City Hall tells them they will need a zoning permit.

Chairman Blackburn read the board questions aloud and asked each member their reply to the following:

1. **Is the hardship self-imposed by the property owner?**

Board Comment: Ken Fendler said yes. Reagan Hooton said yes. Michele McLeod agreed.

2. **Did the condition creating the hardship or zoning regulation(s) identified as having created the hardship exist prior to the property owner’s purchase of the land? (Chairman Blackburn clarified, “Were these rules in effect when the applicant purchased this land?”)** [Both Clint Struble and Sean McKenna argued they did not increase the nonconformity. Mr. Struble explained square footage, which is decreased, not cubic footage because it is enclosed – and argued Ms. Smith’s determination of that vestibule being larger is incorrect. City Attorney Susan Swimley interrupted the discussion and said she is having trouble with the process – that the applicant presentation and public comment were already done, and that public comment was closed. “Is she wrong?” she asked. Chairman Blackburn agreed the Board was now asking and answering these questions. Mrs. Swimley encouraged the Chair to inform the rest of those in the meeting the stage the Board is in so that the Board can get to the end of the process, rather than the back-and-forth discussions.] **Chairman Blackburn clarified, “Did the vestibule add to square footage, and living space?”** Randy Carpenter explained that if an illegal, nonconforming steps exist, and you enclose that, you have enlarged the nonconformance of the original steps. Kelly Smith added the ordinance says that any “structure” as defined in the Zoning Code (which she read to the Board) requires a zoning permit and must meet the setbacks.]

Board Comment: Chairman Blackburn said enclosing this structure does increase the nonconformity. Reagan Hooton agreed the zoning regulation was in effect. Michele McLeod agreed as well.

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3. **Will the granting of this variance be in the public interest?**

Board Comment: Ken Fendler said no. Reagan Hooton said yes. Michele McLeod said yes. Alex Blackburn said any time one is looking to bring something to code, to make it a safe entrance, it is a benefit to the public.

4. **Will a literal enforcement of the zoning ordinance result in unnecessary hardship due to conditions unique to the property?**

Board Comment: Reagan Hooton questioned Randy Carpenter if the legal nonconformance considered "unique"? Michele McLeod said the hardship would be, to repair what is there, and the vestibule. Alex Blackburn said despite the economical hardship, the existing concrete stairs could have been repaired/replaced, so his answer would be "no" to this question. Ken Fendler said no. Reagan Hooton agrees. Michele McLeod agrees.

5. **Will the spirit of the zoning ordinance be observed and substantial justice done by granting the variance?**

Board Comment: Alex Blackburn said no, it could have been done differently.

Alex Blackburn said the question, "Would the spirit of the zoning ordinance?" in his opinion would be to follow the ordinance. Michele McLeod added, "Granted there were already steps there in disrepair, we are not talking about repairing the same existing. We are talking about increasing – however you define square footage. It did not change the use of the property to have these stairs or vestibule there. I think the spirit of the ordinance was not followed.

6. **Will the failure to grant this variance render the property unsuitable for the permitted and conditional uses for which the property is zone?**

Board Comment: Alex Blackburn said in his opinion, granting this variance does not leave the property unusable. The stairs could have fit there without the vestibule. This is not a hardship that can be recognized. "The failure to grant this variance does not render this property unusable," Alex stated. All four members agreed.

Chairman Blackburn asked if the Board had any recommended conditions. There were no recommendations. Michele McLeod apologized since she is not in the state currently, and has not been able to drive by the property, asked for clarification on where the vestibule was. Once orientated to the property, she asked if the stairs went to the side rather than towards E. Fir Street, if that would help eliminate the encroachment into the setback. It was explained that would not work. Kelly Smith showed pictures on screen so Michele could see the existing condition.

There was board discussion on whether removing the walls, but leaving the stoop/stairs were allowed, could the Board accept that as a condition. Discussion regarding the new steps relating to International Building Code.

Alex Blackburn moved to approve the variance as stated. Reagan Hooton seconded the motion.

Motion Failed 2:2 (Alex Blackburn and Michele McLeod opposed.)

Susan Swimley asked if the Board is missing a member tonight, you could table this until there is a full board and ask the applicant to wait; have the fifth member listen to the recording and come back with their decision at a later date. The Board agreed they need a super majority in order to approve.

The variance is denied.

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There will be a letter stating this decision provided to the applicant which would start the 30-day appeal if the applicant wishes to appeal the Board's decision.

Public Hearing and Decision on a Variance Request by Sean McKenna (GV Builds, LLC / Laurel Hills, LLC) for Lot 7, Block 32 of Three Forks Original Townsite, more commonly known as 306 E. Fir Street. The variance request is for a lot coverage maximums. The City of Three Forks Ordinance 11-6A-5 requiring "not more than 35% of the lot shall be occupied by the principal and accessory buildings". The request is for a variance of up to 43.5% lot coverage (8.5% variance) or an additional 600 square feet.

Staff Report: City Planner Randy Carpenter read his staff report into the record. He stressed to the Board that Montana case law is clear that a hardship is not a problem that you create yourself. "For example, if you build your house in such a manner that you cannot expand a room without encroaching into a required yard, you have created that situation, and the ordinance does not recognize that as a legitimate hardship. The important point is whether the applicant would be deprived of property rights."

Applicant Presentation: Clint Struble spoke on behalf of the applicant, Sean McKenna. He stated he understands they are asking for 192 square feet to the property, not the 600 as Kelly Smith stated. He talked about other properties which may have exceeded the lot coverage, but those may be in other zoning districts he realizes after the last hearing. Specifically, he cited a new home built two doors down from this property that appears to be 3 feet from the property line on one side, and 6 feet from the other side which if it is in a different zoning district would be irrelevant but he has difficulty thinking it meets lot coverage. (Kelly Smith said that it does and both neighboring properties have actually built their fences onto this property out of compliance, but the property owners have allowed those fences to stay until mended. She also added there is more distance than what Mr. Struble stated, to those fences.) Mr. Struble added they are here tonight prior to building the proposed deck, and not after-the-fact.

Board Discussion/Questions: Michele McLeod asked what deck size would be in compliance. "Would there even be able to be a deck at all?" she asked. Randy Carpenter said the existing structures already exceed the lot coverage limit. The current buildings are at 40% and the applicant is asking to get to 43.5%. The deck size would be 192 square feet. Michele McLeod asked if there are any other issues with this deck: setbacks from the side yard, or rear yard? The answer is no.

Public Comments: John Sinrud? Spoke that in his opinion this is not about them building it but the people that are purchasing it to be able to use their property. It was already an illegal, nonconforming use and it's 3%, it's a deck, I think that's a public benefit personally.

Applicant Rebuttal: No rebuttal.

Public Comment Closed.

Board Discussion/Motion/Etc.: Chairman Blackburn asked if anyone on the board it would not be in the public's interest by granting this variance? He asked, "I assume you are taking down the existing deck and..." There was confusion about the 600 feet. Kelly Smith said, "The 600 feet is what is above the 35% lot coverage allowed." She brought up the drawing, also in the Board's packets, of the proposed deck.

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1. Is the hardship self-imposed?

Board Comment: Alex Blackburn said, "In essence, yes you are creating this." He asked if there were other board comments, to which there were none.

2. Did the condition creating the hardship or zoning regulation(s) identified as having created the hardship exist prior to the property owner's purchase of the land?

Board Comment: Alex Blackburn said yes, this hardship exists prior to the applicant's request.

3. Will the granting of this variance be in the public interest?

Board Comment: Michele McLeod said she believes so.

4. Will a literal enforcement of the zoning ordinance result in unnecessary hardship due to condition unique to the property?

Board Comment: Michele McLeod said this property is already in noncompliance, and a deck would be beneficial to the property and the neighborhood she thought. "Because this is a narrow lot, I think the deck would increase the enjoyment of the property, you don't really have the luxury of adding square footage for usable space of this property." Alex Blackburn, Ken Fendler and Reagan Hooton agreed.

5. Will the spirit of the zoning ordinance be observed, and substantial justice done by granting the variance?

Board Comment: All board members said yes.

6. Will the failure to grant this variance render the property unsuitable for the permitted and conditional uses for which the property is zoned?

Board Comment: Alex Blackburn and Michele McLeod said no.

Alex Blackburn moved to approve the variance as written. Ken Fendler and Michele McLeod seconded in unison.

Motion Passed 4:0.

Public Hearing and Decision on a Variance Request by Kenneth Keltz Gibson and Barrett Logan Snyder for Lots 1 & 2, Block 4 of the Northwest Townsite, more commonly known as 623 E. Neal Street. The request is for a variance from Floodplain Ordinance #12-1-9-C2e, which requires all residential new construction to be constructed on suitable fill that is at least 2 feet above Base Flood Elevation (BFE). Applicants request is to build on piers, instead of fill. The BFE at this location is currently 3+ feet above the ground level and based on the new proposed FEMA maps the BFE would be 6+ feet above the existing ground.

Staff Report: City Planner Randy Carpenter read his staff report into the record. He stressed to the Board that Montana case law is clear that a hardship is not a problem that you create yourself. "For example, if you build your house in such a manner that you cannot expand a room without encroaching into a required yard, you have created that situation, and the ordinance does not recognize that as a legitimate hardship. The important point is whether the applicant would be deprived of property rights."

Kelly Smith said the City's ordinance was adopted in 2011. "There have been 2 model regulation updates since then, but the City has not adopted a revision. At the time of adoption, the community wanted 2-feet above base flood elevation. This lot is actually one of the areas deepest in the floodplain because both Madison and Jefferson Rivers floodplains hit it. Even with our Jefferson River floodplain mitigation project this property will still not be out of the floodplain because of the Madison River. The State has now allowed for (and she showed a picture to all in the meeting of a home built on piers) this type of structure to be built in its updates to the model regulations," Kelly said.

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She added, "To keep water and rain on the property would be very difficult. So, this would be a good option for this property." Chairman Blackburn clarified, "This is allowed by the State of Montana now, just not in Three Forks' ordinance?" Kelly agreed, "It's not in our ordinance as an option, because our ordinance says you must bring in fill. But the State has allowed it now. I think they were thinking we didn't want this in Three Forks or Montana because of our harsh winters and pipes could freeze, but I wasn't here at that time," she said.

Applicant Presentation: John Sinrud spoke on behalf of the applicants. He rolled out drawings and topography maps on the table and hoped that Michele McLeod could follow along on FP1. He directed them next to page C1, "This is what would happen if we were to comply with the current spirit of the law. If we wanted garages, the slope on the driveways would go from 11.27% to 10.99% and now we could deal with even higher. We would have to bring a retaining wall all the way around it as well. We could meet the spirit of the law, but the footing and retaining walls may not work exactly," Mr. Sinrud said. He showed pictures of the subject property along with the existing structures in the vicinity. He showed existing retaining walls which were 2 feet tall. (At this time there were side discussions going on making it difficult to hear all conversations for the record.) Mr. Sinrud stressed that piers are now allowed. "Bringing in fill would be quite expensive, and I know cost is not a consideration, but this would not match the rest of the neighborhood either," he added.

Board Discussion/Questions: Reagan Hooton asked, "You are also trying to keep the water onsite as well, right?" Kelly Smith answered that when you build in the floodplain it is a requirement to keep the water onsite so it does not flood neighboring properties. Ken Gibson added that it will be very difficult to keep water onsite when you are building grade that steep, "We would be displacing the water." Kelly replied there are other properties that have put in dry wells to address these issues, but if there were a major flood (water coming from another location not just rainwater retained onsite) it would not help. Alex Blackburn said he has built on piers, both in Montana and in Florida, so he understands the concept and is just trying to understand how it improves floodplain. Mr. Sinrud further explained the 3:12 pitch, 16 piers would be installed, chases go through for the utilities so there will not be any issues with those. We will need to figure out the complexities of breakaways, but the chases themselves will be roughly 30-inches. "If we need to install a space heater too, we will. But with the 3:12 pitch we will be 3-feet over the height limit, which is our next variance request. That is to provide a garage. Carports really, not a traditional garage, which would be tandem parking. I know we are 8 foot 6 inches, and we can move and play with this to stay within the setback – which we plan to set back the entrance from 7th Avenue East 25-feet back." Kelly Smith explained the front yard setback is 15 feet, and by definition the front yard would be considered on Neal Street. Mr. Sinrud continued with his presentation of the proposed dwelling structure, complete with deck, first and second levels. "There will be transom windows in the master bedrooms," he added. Randy Carpenter asked if the intent was to have a triplex on one lot? Mr. Sinrud said the intent is a triplex on the two lots, which are collectively owned. He added they may subdivide them in the future, to which Kelly Smith informed him he could not do that if they remained in the floodplain. He said he believed that was correct, but the triplex would go across the lot lines. There were comments about the stairs and meeting the setbacks, which were decided would be discussed at the conditional use permit hearing.

Ken Fendler asked Mr. Sinrud to explain further the chases. Mr. Sinrud said, "Now we will have to go through and work with the city sewer and water to see what their requirements are and what may or may not be required within the chases. We are still in, we'll say discovery right now, to figure out what needs to be there." (Mr. Sinrud was pointing to other locations to explain where the chases may be located to Mr. Fendler, but the recording did not

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provide enough detail to make specifics in these minutes.) Randy Carpenter explained to the Board of Adjustment that the discussion regarding a conditional use permit will be heard before a different board, and that is because it is conditionally allowed use for multifamily.

Chairman Blackburn asked if there were any other board questions?

Public Comments: There was no public comment.

Applicant Rebuttal: No rebuttal.

Public Comment Closed.

Board Discussion/Motion/Etc.:

1. Is the hardship self-imposed?

Board Comment: All board members stated no.

2. Did the condition creating the hardship or zoning regulation(s) identified as having created the hardship exist prior to the property owner's purchase of the land?

Board Comment: The board said yes, the floodplain drives the city.

3. Will the granting of this variance be in the public interest?

Board Comment: Ken Fendler said yes. Alex Blackburn added it most definitely would be to provide multifamily as well. Michele McLeod and Reagan Hooton agreed.

4. Will a literal enforcement of the zoning ordinance result in unnecessary hardship due to condition unique to the property?

Board Comment: Alex Blackburn said yes, because it would be so high. "We are not talking about a couple feet, and currently I don't know what that would do to overall height," he said. All members agreed.

5. Will the spirit of the zoning ordinance be observed, and substantial justice done by granting the variance?

Board Comment: All members said yes.

6. Will the failure to grant this variance render the property unsuitable for the permitted and conditional uses for which the property is zoned?

Board Comment: Alex Blackburn said technically no, but yes because it makes it very high and maybe even an eyesore to the City.

Alex Blackburn moved to approve the variance as written. Michele McLeod seconded the motion.

Motion Passed 4:0.

Public Hearing and Decision on a Variance Request by Kenneth Keltz Gibson and Barret Logan Snyder for Lots 1 & 2, Block 4 of the Northwest Townsite, more commonly known as 623 E. Neal Street. Applicants are requesting a variance from Three Forks City Ordinance 11-6A-9 requiring a maximum building height of 36-feet for a dwelling. The request is for a little over a 3-foot variance for the dwelling height of 39 feet, 1 inch.

Staff Report: City Planner Randy Carpenter started to read his staff report into the record. Mr. Sinrud said he appreciated the formalities but would allow Mr. Carpenter to skip the reading so they can go into discussion. Mr. Carpenter said he would prefer to read it.

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Applicant Presentation: John Sinrud spoke on behalf of the applicants. He said they are proposing to maintain a 3:12 pitch, but could do a 2:12 pitch. Alex Blackburn asked if they could utilize a different design (so much rustling of papers on the table or near the recorder, the secretary could not hear if there were any other comments during this moment). Mr. Sinrud continued with the front elevation, the transom window, the flat façade and could potentially work with a break if they can have an engineer design the trusses a little differently. Reagan Hooton asked about the transom window and then the ceiling's proximity. Mr. Sinrud said a 2:12 pitch would require a steel roof rather than a shingle roof at a 3:12 pitch.

Board Discussion/Questions: Kelly Smith asked if they had checked with the [Pogreba] Airport Affected Area regulations. Mr. Sinrud said they had not yet. Kelly reviewed the map and said that she was pretty sure the property was not in the flight patch. She confirmed it was not in the airport affected building height area. Reagan Hooton said, "It seems to me that we are sort of setting a precedent here on what we vote on." The board members agreed. "I don't know where the 36 feet [limitation] came from, but in thinking about that and in the future, we may have to change the code or we're going to be doing this a lot," she said. Alex Blackburn asked how many homes that are three stories are really in the area, or potentially to built. It was discussed and agreed that it would most likely be for multifamily homes. Kelly Smith added that the issue would be more that the City does not have a ladder truck so fire safety would be the issue. Michele McLeod clarified there are maybe 10 feet that would be above the height limit, overall for the whole building, not the full roof pitch. Yes, that is correct.

Public Comments: There was no public comment.

Applicant Rebuttal: No rebuttal.

Public Comment Closed.

Board Discussion/Motion/Etc.: Chairman Blackburn asked if there were any comments. Michele McLeod said, as a neighbor of the proposed development, "When I first got the documents without seeing the plans I was concerned. But after seeing it, I think it will be a wonderful addition to the area and I like the look of the 'Gallatin Valley sort of style' that I think will look great."

1. Is the hardship self-imposed?

Board Comment: Alex Blackburn and Michele McLeod said yes.

2. Did the condition creating the hardship or zoning regulation(s) identified as having created the hardship exist prior to the property owner's purchase of the land?

Board Comment: All board members said yes, the zoning ordinance does not allow for higher, but the building requirements of the flood ordinance do require it.

3. Will the granting of this variance be in the public interest?

Board Comment: Ken Fendler said yes. Alex Blackburn said his concern is that the fire truck could not reach the height but that is not something easily remedied. Michele McLeod said the design would not be in the public interest if left without a variance, but the structure is definitely in the public's interest.

4. Will a literal enforcement of the zoning ordinance result in unnecessary hardship due to condition unique to the property?

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Board Comment: Michele McLeod said yes, because it would cost more in materials, but I know that is not what we can base it on. Alex Blackburn added, "Technically if we enforce it, it would create a hardship but it would not look good in the rest of the neighborhood. Reagan Hooton agreed it is not creating an unnecessary hardship because the applicant could change the design. (Mr. Sinrud added the variance is self-imposed, but does the Board want to see this design or the design that would fit in the code?) Alex Blackburn agreed it could create an unnecessary hardship by enforcing the zoning code as written.

5. Will the spirit of the zoning ordinance be observed, and substantial justice done by granting the variance?

Board Comment: Alex Blackburn said by granting the variance, we put ourselves in a potential hazard because of the fire truck. Reagan Hooton questioned if the limit is 36-feet, what is the extra feet not allowing the fire department to do? Kelly Smith said she does not know, because she does not know how high the water pressure will spray from the hose. She added that the "old hospital" which is also over 36-feet high, was required to install a ladder on the exterior of the building for fire escape safety. Alex Blackburn recommended the Board add a condition asking the fire department to review the application for the potential safety of the residents and neighbors, so they are not creating a hazard to the rest of the community.

6. Will the failure to grant this variance render the property unsuitable for the permitted and conditional uses for which the property is zoned?

Board Comment: All board members said no.

Chairman Blackburn said the design is nice, but he does have concern for fire safety and does not think the Board can ignore that.

Chairman Blackburn stated he would move to approve with the condition that the roof line be reapproached to fall within out 36-feet height? Randy Carpenter said that would deny the variance. Chairman Blackburn clarified, he could move to approve as is, and we can vote on approving or denying. Randy Carpenter said the Board could consider a 1-foot variance which would be the 2:12 pitch. Reagan Hooton said that would be 37-foot max height. John Sinrud clarified that if the Board were to ask him a question during the Executive Session, he could respond. The Board asked Mr. Sinrud the question noted above. Mr. Sinrud said they could make the design smaller or have ladders out the windows for safety reasons.

Alex Blackburn moved to approve [the variance request] as written. Ken Fendler seconded the motion.

Motion Failed 3:1 (Alex Blackburn, Reagan Hooton and Michele McLeod opposed.)

(Chairman Blackburn asked if the Board wanted to consider another motion or leave as is. The Board opted to leave it as is. Ken Gibson had a conversation with Kelly Smith about the fire truck and ladder, but the Board was discussing the below.)

With no other items to come before the Board, Chairman Blackburn moved to adjourn the meeting. Michele McLeod seconded the motion. **Motion Passed Unanimously** and the meeting at 8:06PM.

Randy Carpenter thanked the applicants for clear plans and transparency. Alex Blackburn thanked them for their patience tonight.