

**CITY BOARD OF ADJUSTMENT**

MINUTES: FEBRUARY 2, 2011

*To approved by a motion on March 2, 2011*

Name	Title	01/06/11	02/02/11	03/02/11	04/06/11	05/04/11	06/01/11	07/06/11	08/03/11	09/07/11	10/05/11	11/02/11	12/07/11
Jeff Bollman	Chairman	1	1										
Paul Cox	Boardmember	1	1										
Daniel Eggen	Vice Chairman	1	1										
Neil Kiner	Boardmember	1	1										
Barbara Walborn	Boardmember	1	E										
Vacant	Boardmember	-											
Vacant	Boardmember	-											

TOTAL NUMBER OF APPLICATIONS 2011	01/06/11	02/02/11	03/03/11	04/06/11	05/04/11	06/01/11	07/06/11	08/03/11	09/07/11	10/05/11	11/02/11	12/07/11	TOTAL
Variance	1	1											2

Chairman Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met in the City Council Chambers.

Chairman Bollman asked Nicole Cromwell to introduce the City Board of Adjustment Members and Planning Department Staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; and Tammy Deines, Planning Clerk.

**Public Comment:**

Chairman Bollman opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There was none. Chairman Bollman closed the public comment period at 6:06 p.m.

**Approval of minutes: January 5, 2011**

Chairman Bollman called for approval of the January 5, 2011 minutes.

**Motion:**

*On a motion by Boardmember Cox, and seconded by Boardmember Kiner, the minutes of January 5, 2011 were approved as corrected with a 4-0 voice vote.*

### **Disclosure of Conflict of Interest**

There was no disclosure of conflict of interest.

### **Disclosure of Outside Communication**

Nicole Cromwell explained there are times that applicants communicate directly with Board members and this should be communicated to the Board members in a public forum. She stated that written ex-parte communication to the Board is available to the public in the Ex-Parte Notebook. Staff received a phone call from Theodore and Irene Kinsell, 1236 North 31<sup>st</sup> Street, Billings, Montana. The Kinsells voiced no objections to this variance request.

### **PUBLIC HEARINGS:**

Chairman Bollman asked Ms. Cromwell to read the determinations for granting a variance as well as review the rules for the procedure by which the public hearings will be conducted. Ms. Cromwell reviewed the procedures by which the meeting is conducted and the determinations for granting a variance. She pointed out that there are two vacancies on the Board of Adjustment and that opportunities will be given to the applicants if they wish to delay their application until a full Board is available. The next meeting will be March 2, 2011.

### **Public Hearings:**

Ms. Cromwell read the legal description and gave the Staff presentation which reviewed the request and recommendation below.

**City Variance #1085 – 1243 N 31<sup>st</sup> Street - First English Lutheran Church – Day Care - A** variance request from Section 27-604 requiring a maximum fence height in a front yard of 3 feet to allow a maximum fence height of 4 feet in a front yard for the purpose of increasing the height of an existing fence to comply with State of Montana licensing requirements for a daycare facility outdoor play space in a Residential 7,000 (R-70) zone on Lots 25-29, and the North ½ of Lot 30, Block 5 North Elevation Subdivision, 1<sup>st</sup> Filing and the vacated 80 feet of Elevation Street, a .73 acre parcel of land. Tax ID: A11574; First English Lutheran Church, owner and Ken Heikes, agent. Planning staff is recommending conditional approval of the proposed variance.

### **RECOMMENDATION**

Staff is recommending the following conditions for the variance request:

1. The variance is to increase the fence height in the front yard setback from 3 feet to 4 feet for the purpose of increasing the existing fence height to comply with state licensing requirements. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 25-29 and the North ½ of Lot 30, Block 5, North Elevation Subdivision and the vacated 8- feet of Elevation Street, generally located at 1243 N 31<sup>st</sup> Street.
3. The proposed 4-foot fence shall be located and developed in substantial conformance with the submitted site plan.
4. The applicant shall receive approval for a new fence permit within 90 days of Board approval. Construction of the 4-foot fence shall be completed within 6 months of Board approval.

5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
6. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Ms. Cromwell reviewed the criteria for review and the staff findings for this application.

### **Discussion**

Chairman Bollman called for questions and discussion from the members of the Board.

In response to a question by Jeff Bollman, Nicole Cromwell stated that part of this property is zoned Medical Corridor, (MC). She pointed out the Zoning Code states that this zoning reverts to commercial zoning. She explained that under the relative criteria, the fence code refers to any district and provides exemptions to some districts but not the medical corridor. She noted that all districts have a requirement of a maximum front yard height of 36” and said that this particular lot where the fence and use is located has R-7,000 zoning. Ms. Cromwell said that Chairman Bollman pointed out that granting the variance may impinge on the clear vision of the neighbor who has a driveway opening 8-feet south of the existing fence line. In response to a question by Boardmember Cox, she clarified the new clear vision standards. She said that the existing fence sits about a foot behind the sidewalk. She stated that there is no geographic challenge other than the fact that they are unable to place the play area in the rear yard since the church is built close to the rear property line. She said that the hardship of the property is the location of the building in relation to the fenced area, as moving the fence may have an adverse effect on their day care license. Boardmember Eggen pointed out that a correction is needed on a typographical error to change a denotation of 8- to 80.

### **Public Hearing**

Chairman Bollman asked the members of the Board for questions or discussion. At 6:24 p.m., Chairman Bollman opened the public hearing and called for the applicant’s presentation or for proponents of City Variance #1085 – 1243 N 31<sup>st</sup> Street.

### **Applicant**

#### **Ken Heikes, (no address given)**

Mr. Heikes is the agent for the First English Lutheran Church. Mr. Heikes said that the church was built in 1954 and that the grassy area is needed to meet the requirements of the State Licensing Bureau for the daycare. He explained they are required to have a four-foot fence constructed by March 31, 2011, or their license will be in jeopardy due to safety considerations. He said that Christy Jenson, director of “Shirley’s Place I & II” is in attendance this evening. He asked that this request be approved. He said that Mr. Meinhardt, who owns property south of the church, has said that they are fine with this proposal. Mr. Heikes said that he has driven in the adjacent driveway and it should not pose a problem. Mr. Heikes said that the intent is to have the 3-foot fence removed and replaced with 4-foot pickets.

**Kristy Jenson, (no address given)**

Ms. Jenson is the director of “Shirley’s Place I & II”. She stated that the State requires childcare centers to have 75 square feet of outdoor space and 25 square feet of indoor space per child. She said that they are licensed for 55 children. Boardmember Cox asked about adjusting the play area to address the visibility in the clear vision triangle. Ms. Jenson explained that they would have to ask the State for a variance for the number of children that can play in the area at a time. Mr. Heikes asked for clarification of the clear vision standards and it was given by Boardmember Bollman. Mr. Heikes voiced concern that this would create a landscaping issue for the church and commented that he said that he is unsure of what this would solve.

**Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. Further discussion followed by Staff and the members of the Board on the clear vision triangle requirements. Boardmember Cox commented that there are other living fences in this area that are over the current height requirement. Nicole Cromwell stated that Staff would have to re-advertise to grant a variance from the clear vision standards. She said that the public notification goes out next Wednesday for the March 2, 2011 Board of Adjustment meeting; and this would allow the applicant action prior to their March 31, 2011 deadline. Ms. Jenson stated that they have to have this completed. Nicole Cromwell said that no permit was obtained for the existing fence for this property. In response to a question by Boardmember Kiner and the need for an additional condition, Nicole Cromwell said that the fence in the current location does not meet the current standards for clear vision. Boardmember Bollman said that the Board could approve the variance but the applicant would be unable to get a permit due to the inability to comply with the clear vision triangle requirements. He said that the applicant needs to amend the variance request to include a variance for the clear vision standards. He suggested that Staff re-advertise this application to add the language to the variance request which could be heard March 2, 2011. Mr. Heikes commented that the neighbors may object to the 5-foot setback for the fence. Nicole Cromwell explained that the clear vision standards have changed and now requires the 5-foot set back off the sidewalk. Boardmember Bollman suggested to Staff continuing the public hearing and asking the applicant to submit the completed site plan which may suffice to define the clear vision issue. Mr. Heikes said that they will have to request an extension from the State on the time line, and that they can meet with Ms. Cromwell at 10:30 a.m. tomorrow. Boardmember Bollman said that he would rather get this corrected especially for a clear vision issue with a daycare center.

**Motion:**

**A motion was made by Boardmember Kiner and seconded by Boardmember Cox to continue the public hearing for City Variance #1085 – 1243 N 31<sup>st</sup> Street until March 2, 2011 to allow Staff to re-advertise this application to include language for a variance from the clear vision standards.**

**Discussion:**

Chairman Bollman called for discussion on the motion. There was none.

**Motion carried unanimously with a 4-0 voice vote.**

**Other Business/Announcements:**

- A. Announcement: The next City Board of Adjustment will be held on Wednesday, March 3, 2011.

**Adjournment: 6:55 p.m.**

***On a motion by Boardmember Eggen and seconded by Boardmember Kiner the meeting was adjourned with a 4-0 voice vote.***

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**Chairman Jeff Bollman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**