

MINUTES OF THE MEETING
OF THE
GREAT FALLS BOARD OF ADJUSTMENT/APPEALS
October 4, 2018

CALL TO ORDER

The meeting of the Great Falls Board of Adjustment/Appeals was called to order by Chair Jule Stuver at 3:00 p.m. in the Commission Chambers of the Civic Center.

ROLL CALL & ATTENDANCE

Great Falls Board of Adjustment/Appeals members present:

Mr. Jule Stuver, Chair
Mr. Joe McMillen
Ms. Aspen Northerner
Mr. Kyle Palagi
Ms. Krista Smith

Great Falls Board of Adjustment/Appeals members absent:

None

Planning Staff members present:

Mr. Craig Raymond, Director Planning & Community Development
Mr. Thomas Micuda, Deputy Director Planning & Community Development
Ms. Connie Tryon, Sr. Administrative Assistant

Others present:

Mr. Joseph Cik, Assistant City Attorney

Mr. Raymond affirmed a quorum of the Board was present.

MINUTES

Chair Stuver asked if there was a motion to approve the meeting minutes as stated for June 18, 2018. Mr. Stuver noted a correction. Ms. Smith` moved to approve the minutes as corrected, seconded by Mr. Palagi. All in favor, the minutes were approved.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Variance Requests North 40 Outfitters 1000 3rd Street NW and 121 Northwest Bypass

Ms. Smith disclosed she had a conflict of interest with the project and recused herself from any discussion and action.

Mr. Micuda said CSWW Inc., dba North 40 Outfitters, is requesting variances for commercial property that is formerly the home of K-mart and Big Bear. The proposed project is 12.99 acres and will include 133,800 square feet of store, a garden center, 391 parking spaces, and 23,560 square feet of screened, secured product display. The applicant is requesting five separate variances, four of which are related to landscaping and one related to parking.

Mr. Micuda reviewed aerial and zoning maps, the site plan, and site photos of the proposed project. Mr. Micuda reviewed the code provisions for each variance and discussed briefly the portions of the code that trigger the variance request. The first variance request is for parking, and code does not allow for parking areas to be used for storage of merchandise, which conflicts with the applicant's desire to have screened outdoor product display. The second variance request is for landscaping. Whereas code requires boulevard trees every 35 feet, the applicant has proposed more of a framing of the boulevards not compliant with code. The third, fourth and fifth variances are also landscape variances pertaining to the required 15% of gross property area required to be landscaped, curbed, landscaped islands in parking lots, and tree/shrub counts.

Mr. Micuda discussed the variance to allow outdoor merchandising, which staff supports at some level. While display of products outdoors is common in this zone, the application did not specify how large the area of display would be, or how many parking spaces would be used for the display. As such, there is no property-specific hardship. Aesthetics, required parking count, and a shared parking agreement with Buffalo Wild Wings (BWWs) are all concerns that need to be carefully considered when making a decision on this particular variance.

Mr. Micuda then discussed the variance requests to not require 15% interior landscaping and not require the correct tree and shrub counts. He said these two variances are supported by staff, as these requirements demonstrate significant hardship. He also said the variance request to not require full compliance with landscaped parking islands is supported by staff, and hardship is demonstrated related to the circulation needed for large vehicles in the parking areas. The site plan currently does propose 20 curbed, landscaped islands and six painted islands, which is very close to code requirements.

Finally, Mr. Micuda said the last variance is not one staff supports. Staff does not feel hardship is adequately met for the request to not require planting boulevard trees every 35 feet. To be compliant, the applicant would need two more trees on the Northwest Bypass and five more on 3rd Street NW. All adjoining businesses that have boulevard trees, and all business are visible, therefore the visibility argument presented by the applicant is not sufficient. Visual impact can be mitigated through tree selection and pruning. The applicant also raised concerns about traffic visibility due to the trees.

Mr. Micuda concluded that three of the variances are supportable due to reasonable hardship. The variance to allow parking lot merchandising could be supported if the applicant can demonstrate reasonable balance between product display and parking accommodations for customers and adjoining owner, BWWs. If the Board decides to support the final variance requesting not compliance with boulevard trees, the Board would need to develop alternate findings to support their decision. Mr. Micuda reviewed the recommendation with the conditions as listed in the staff report, and reiterated that three variances are supported, one could be supported under the right circumstances, and one is not supported.

PETITIONER'S PRESENTATION

Wayne Wike, 5109 Alaska Trail, North 40 Outfitters, said he tried to teach staff about the business and explained North 40's demographics are heavily geared towards outside merchandising during all seasons. He discussed large vehicles unloading and loading, and said the less obstructions, the safer it is. He thoroughly reviewed the proposed site renderings and visuals of what the applicant's desired site would look like.

Curt Wike, 5109 Alaska Trail, North 40 Outfitters, said to give a little background on the property, since the late 70's there has been a shared parking agreement which still exist today. Assuming the variance is granted, the shared parking will continue with BWWs, and the parking agreement will be updated. They will make sure BWWs has ingress and egress on Northwest Bypass. He said BWWs does have concerns on visibility and access, including where the bullpen for outdoor display would go, and they worked together on configuring where that display would be placed on the site.

Mr. Wike said North 40 Outfitter disagrees with staff's position on the variance request. He said boulevard trees would reduce business visibility as well as visibility to the access points, as the renderings showed very clearly. The boulevard trees would plug up the only remaining two site corridors. He reiterated the renderings being presented are what North 40 Outfitters would like the site to look like.

Mr. Wike discussed the applicant's disagreements of staff opinion as stated in the staff report, including the difference between the properties of the store on 10th Avenue South the proposed one in question regarding boulevard trees, access points, and site corridors. There was also disagreement that the only site blockage is the U.S. Bank building on the corner of the lot.

Mr. Wike said staff's opinion that 'there is lengthy building exposure along 3rd Street NW and the existing pole sign eases concerns about visibility' is one North 40 agrees with, but only if additional boulevard trees are not planted. He also said he would like to address the existing pole sign, as it will need to be refaced and they do not want to have to go back to the Board of Adjustment and requested the Board grant a request to reface the sign at this meeting.

Mr. Curt Wike said they don't agree with the opinion that because Arby's, BWWs, and U.S. Bank put boulevard trees in compliance with code it can be used as an argument against North 40. He pointed out the U.S Bank and BWWs fully support their proposed project without the full complement of boulevard trees. He also expressed disagreement with staff's opinion that this particular variance request does not meet the spirit of Title 17, and said he does not believe this is contrary to public interest. He discussed surveys in the Growth Policy, and how they pertained to supporting the variances requested by North 40 Outfitters. He requested the Board grant the

variance requests as submitted, with the additional request of allowing the existing pole sign be allowed any changes that need to be made.

Wayne Wike, 5109 Alaska Trail, North 40 Outfitters, said their team is very excited about the project and thanked City staff and the Board.

Joseph Cik, Assistant City Attorney, said the sign height was not included in the variance application and recommended the Board vote on the application as presented and not include the sign as part of the request. If sign height is an issue in the future they will have to come forth with another request, as it cannot be part of an application that has already been completed.

OPPORTUNITY FOR BOARD MEMBERS TO ASK QUESTIONS

Mr. McMillen asked if the bullpen would be the only place equipment would be displayed, or if there were other items that would be in the parking lot. Wayne Wike said some items will be secured and some will be unsecured. The request for the variance is to use the parking lot as they see fit. Mr. McMillen asked if they knew what parking spots would be taken for those displays, and Mr. Wike said it will depend on what parking spots are being used.

Mr. Stuver asked what type of screening would be used for the bullpen. Wayne Wike said powder coated steel posts with powder coated wire grid. Mr. Stuver also inquired about their determination on the number of landscaped islands, and Mr. Wike said that was driven by modeling a semi-truck and track on the lot to establish flexibility.

Mr. Palagi asked where on the site deliveries would be. Mr. Wike said outdoor product display would be delivered on the access on the west side of the property.

Mr. Stuver asked whether the applicant considered using only one of the two stores for outdoor display. Mr. Wike said customers would not like that. Mr. Stuver asked if the bullpen could be a grassy area, and Mr. Wike said not with the weight of the forklifts.

Mr. Palagi asked since the developer did not meet the 15% of greenspace required by code, what percentage of the property was greenspace. Tyson Kraft, Nelson Architects, said he had not done a recent calculation but believed the number to be about 3-4%.

Mr. Stuver asked why the parking islands that looked as though they could have trees planted did not have any. Wayne Wike said visibility.

PROPOSERS OPPORTUNITY TO SPEAK

Brett Doney, Great Falls Development Authority, spoke in favor of granting all variances for the proposed project to support infill development and vitality of the community.

Ryan Smith, Nelson Architects, echoed Mr. Doney's sentiments, and said this will be a drastic improvement to the site as it stands today.

Ed Venetz, 939 2nd Street North, said he wrote a letter in support of the variance requests, and asked the Board to approve the requests.

Cara Piccono, 88 Elk Drive, said she too wrote a letter of support for granting the variance requests, and reiterated her favorable opinion due to safety and site improvements.

OPPONENTS OPPORTUNITY TO SPEAK

There were no opponents.

BOARD DISCUSSION AND ACTION

Ms. Northerner asked how tall the pole sign was as it exists. Mr. Micuda said he was unsure, but it maybe 30- 40 feet in height. Ms. Northerner asked if it may have to go through another variance process. Mr. Raymond said that because it was not part of the original application or part of the public notice process, the sign cannot be discussed.

Mr. Palagi inquired about adopting all the variances opposed. Mr. Micuda said staff would need to work with the Board to develop alternate findings of fact regarding the parking lot agreement and boulevard trees.

MOTION: That the Board of Adjustment, based on the Findings for the Basis of Decision approve the application of CSWW Inc. dba North 40 Outfitters for the requested variances of City Code Title 17, Chapter 36 Parking and Chapter 44 Landscaping, subject to the conditions of approval, with the exception of Condition #3, that boulevard trees must comply with code requirements.

Made by: Mr. Palagi
Second: Ms. Northerner

Mr. McMillen clarified that the motion grants all variances with the exception of the boulevard trees, and Mr. Micuda said yes.

Mr. Palagi said he feels there was adequate hardship demonstrated in the renderings for the boulevard trees.

Mr. Stuver disagreed, and said every business in town has these requirements and has to deal with the visibility issue. He agreed with staff opinion and said the concerns can be mitigated with height of trees, trimming, etc. There was no demonstrated hardship.

Mr. McMillen agreed with Mr. Stuver and said appealing aesthetics are important and the Board needs to hold up the code on the boulevard trees. He said if the applicant chose the correct trees and kept them trimmed, visibility would not be an issue.

Ms. Northerner said she believes there is more of a safety concern pulling in and out of the access when adding the boulevard trees. The better the visibility, the safer the site.

Mr. Palagi said his concern was how far setback the site was, and he doesn't believe in pushing a project out over a couple of trees. Mr. Stuver said again, two trees would not make or break a project and it is not a necessary hardship.

VOTE: Ms. Northerner and Mr. Palagi voted in favor of the motion, and Mr. Stuver and Mr. McMillen voted against. The motion failed with a 2-2 vote.

MOTION: That the Board of Adjustment, based on the Findings for the Basis of Decision approve the application of CSWW Inc. dba North 40 Outfitters for the requested variances of City Code Title 17, Chapter 36 Parking and Chapter 44 Landscaping, subject to the conditions of approval, with the exception of Condition #3, that boulevard trees must comply with code requirements.

Made by: Mr. McMillen
Second: Mr. Palagi

Mr. Raymond clarified Mr. McMillen wanted to essentially make the same motion as previous and was in favor of granting all variances. Mr. McMillen said yes.

Mr. Stuver stated again he did not believe the boulevard trees was a hardship.

Mr. Palagi said he still does believe the hardship is there and by adding trees the visibility is cluttered, thus detracting the business from wanting to use that locating.

Mr. McMillen said he agreed with Ms. Northerner on the potential safety issue and visibility is a problem.

Chair Stuver called for a brief recess to develop findings of fact to support the motion.

MOTION: That the Board of Adjustment approve the application of CSWW Inc. dba North 40 Outfitters - Wayne Wike for the requested variances of City Code Title 17, Chapter 36 Parking and Chapter 44 Landscaping, subject only to the conditions of approval #1 and #2 as stated in the staff recommendation, and based on the Findings for the Basis of Decision as set forth by staff, with amendment of the findings as follows:

1. **The variance is not contrary to the public interest.** For the requested variance from boulevard tree requirements, granting a variance would not be contrary to the public interest, as it is in the public interest to see that the property is developed and intersections that have clear sight lines and visibility are maintained.
2. **A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.** The building is so far set back from the street making the building difficult to view if boulevard trees are required.
3. **The spirit of this Title would be observed and substantial justice done by granting the variance.** This is because the building is so far back from the streets and adjacent buildings block the view of the applicant's building, as a result, the spirit of this Title is better observed by granting the variance

Made by: Mr. McMillen
Second: Mr. Palagi

Mr. Stuver called for public comment.

Curt Wike, 5109 Alaska Trails, North 40 Outfitters, clarified the motion was to approve the variance requests as submitted and Mr. Raymond said yes.

VOTE: All being in favor, the motion carried 4-0.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, Chair Stuver adjourned the meeting at 5:06 p.m.