

**MINUTES OF THE MEETING
GREAT FALLS BOARD OF ADJUSTMENT/APPEALS
July 9, 2020**

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, at the Civic Center.

ROLL CALL & ATTENDANCE

Great Falls Board of Adjustment/Appeals members present:

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

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. Erin Borland, Planner III
Ms. Shelley Francis, Permit Technician
Ms. Jamie Nygard, Sr. Administrative Assistant

Others present:

Ms. Sara Sexe, 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 4, 2020. Ms. Northerner moved to approve the minutes, seconded by Ms. Smith. All in favor, the minutes were approved.

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS

Mr. Palagi stated that his company, TD&H Engineering, works with NeighborWorks and submitted a proposal to design the project being presented. However they did not work on it and stated that his judgement would not be impaired.

BOARD ACTIONS REQUIRING PUBLIC HEARING

2000 21st Ave S, Lot 1, Block 2 of the Meriwether Crossing Subdivision – Variance from the Official Code of the City of Great Falls (OCCGF) § 17.20.4.010 regarding the required side yard setback allowed in the underlying R-3 Single-family high density zoning district for the Meriwether Crossing Planned Unit Development

Ms. Borland, Planner III, gave some background about the variance being requested. In 2018, NeighborWorks Great Falls (NWGF), came forward to the City with a subdivision and gained approval to allow annexation, establishment of a Planned Unit Development (PUD), and a major subdivision for two parcels of land that totaled 20.5 acres. The proposed lots ranged from 5,948 square feet to 6,989 square feet. She stated that NeighborWorks had done this before in the Thaniel Addition and Castle Pines. In the Thaniel Addition, the lots were a little too big and they needed to make sure that they could keep the lots and housing affordable, so that they could maintain all the credits that they obtain for the program. Therefore, they were looking to propose smaller lots. She stated that in the next five years, ten families each year will work together to construct their own homes funded by the United States Department of Agriculture Rural Development Agency. The lots are still under county jurisdiction. Once all of the houses are built, the annexation will be filed. All of the lots have already been approved for annexation. The project is currently in the first phase.

As the houses were starting to be built, NeighborWorks noticed an error in the platting of the lots in Block 2 on 21st Avenue South. The lot is very narrow. Lot 7 of Block 2 was platted wider than planned, which affected the width of Lot 1. Due to the construction of the nine other houses already underway, there is no way to adjust the lot lines on the plat in advance of the requested development of Lot 1. They have all met the setbacks set forth by the PUD. Ms. Borland presented the draft plat that went through City Commission, which looked correct, but somewhere along the process when NeighborWorks went to file the plat, there was a deviation. Ms. Borland also presented the PUD Zoning Standards that were approved for the lots. She stated that there are two things on the list that directly affect the development for the applicant. The first is that the minimum lot width for newly created Mutual Self-Help lots is 60 feet and this lot is 52 feet wide. This is considered to be a minor deviation, so this piece can be administratively approved. The second piece is that the minimum side yard setback is 6 feet which is not a change from the underlying R-3 Zoning District. Therefore this would be a variance request to the underlying R-3 code. The requested variance is for a deviation to the side-yard setback. Ms. Borland presented a site map. The applicant is requesting a 5 feet 4 inches side-yard setback on the east, which is 8 inches short of what is required per the R-3 district. On the west side the request is for a 6 inch side-yard setback. That is the best possible way for the house to fit on the lot. If it can stay over 5 feet from the east property line, than it will not get into code with fire ratings. Ms. Borland did show a picture of the lot staked out. The 6 inch side-yard setback is on 20th Street, which has an 80 foot right of way. Ms. Borland did also remind the board that due to the fact that the lots are still under County jurisdiction until the houses are built, the variance can be granted but will not be in full effect until the Annexation Resolution for this phase is recorded.

Ms. Boland presented to the board the findings for the basis of decision. The intent of the side-yard setbacks in the land development code are to have adequate distance between structures and buffering for certain land uses. When this error was found on the plat, staff looked and there was not going to be a way to meet the required minimum standards with the PUD as well as the underlying zoning district. If the variance is granted, there still will be adequate space between

the two structures. The larger right of way will give extra space between the house and 20th Street, therefore it would not be contrary to the public interest.

Due to the error on the plat, a literal enforcement of the minimum side-yard setback would create a very narrow buildable area on the lot. The applicant would have to build a very narrow house. The houses are all the same size based on the program and therefore it would be unfeasible to build on the lot. The houses are already being built and the foundations are in the ground except for the applicant's proposed home. This makes it unfeasible to replat and gain the ten feet back. A single-family house that is consistent with the development, would not be able to be built, therefore creating the hardship for the applicant. The proposed development does otherwise conform to the standards of the PUD, with the approval of the minor deviation for reduced lot width. By granting the variance, the intent of the zoning code is still being met. Staff does recommend that the board grant the variance for the side-yard setback, with the conditions of approval. A new amended plat would be filed. The applicant shall comply with all of the requirements for the building permit, including compliance with the ordinance 3193, which is the PUD standards. Finally the variance will take effect upon recording the annexation resolution, in conjunction with the phase of the subdivision.

PETITIONER'S PRESENTATION

Keith Nelson, NeighborWorks, 509 1st Ave S, and Judy Nesmith, 4246 5th Ave N, the applicants, presented to the board that the families that are involved with the self-help program put in a lot of work and some of them take years to even qualify for the program. Mr. Nelson stated that Ms. Nesmith is one of those people. He stated that they have set houses that they build and the house that is picked is already put together. He stated that it is very unfortunate that this had to happen and that it took so long to find the deviation. There were a lot of variations that were looked at, including a different house plan. Everything has already been approved through USDA and Community Frameworks. The build is already three quarters of the way through. The only house not dug yet is Ms. Nesmith's. Mr. Nelson is asking for the board's consideration on the variance, so the project can continue. Ms. Nesmith stated that she considers it a real privilege to be a part of the project.

OPPORTUNITY FOR BOARD MEMBERS TO ASK QUESTIONS

Ms. Smith asked Mr. Nelson how long it has been since the error was found. Mr. Nelson responded that it has been a couple of months. He stated that he draws all of the site plans for NeighborWorks. He has been working off of the original draft plat for over a year. When they started staking off the properties he noticed that when they got to Ms. Nesmith's lot, that it was a little close. That is when the error was discovered and Mr. Nelson immediately called the engineer to come and look. One property line got moved on a nearby lot and it shifted the whole project. Because all the foundations are in, besides Ms. Nesmith's, they cannot be moved. Mr. Nelson got together with City Staff and the engineers to come up with the best solution.

Ms. Smith stated the reason for asking is that the project went to bid quite a while ago for the dirt work so she looked up the site plan and noticed right away that the lot was smaller. She is curious how it got so far off and how it was just recently discovered. Mr. Nelson responded that they only stake out each lot as the excavator comes in. They started on one side of the street

and then went to the other side and worked backwards. Ms. Smith stated that she was curious, as it was evident there was a problem in 2018. Mr. Nelson stated that with all of the other lots going on at the same time and so many pieces to it, that it was just a complete oversight.

Mr. Stuver asked if the lots that are directly north and south of the lot, across the street, will be offset at a different distance from the street, due to the variance. Mr. Nelson replied that the only lot that is affected, is just the one being requested for the variance. Ms. Borland also responded that Lot 1, which is directly across the street, is in the PUD and Public Works is looking at it for a water booster station. As a result, there will not be a house on the lot directly across from this one.

PROPONENTS OPPORTUNITY TO SPEAK

Jolene Schalper, 405 3rd St NW Suite 203, Great Falls Development Authority, stated that mistakes happen and they applaud the City staff for working for the public interest and applauds NeighborWorks for continuing to be a home builder for our neighbors and community members that need housing. She urges approval of the variance.

Michael Flood, 1420 36th Ave NE #6, is going to be in the next build and is in support of the variance.

Colleen Burlinger, 122 2nd Ave S. in Belt, noted that Lot number 5 belongs to her. She has been in on this since the beginning and stated that Ms. Nesmith is the master framer of the group. She is hoping that the variance goes through because Ms. Nesmith is the remaining one in the process and she wants her as a neighbor and in her community.

Georgette Cope, 4608 Diana Dr #2, is here in support of the variance and hopes that they can remain neighbors. She is on Lot 1 of the project.

Ms. Borland stated that Fred Burrow who lives across the street, came into the Planning and Community Development office yesterday and was not able to attend the meeting but wanted to give his support for the variance.

OPPONENTS OPPORTUNITY TO SPEAK

There was none.

BOARD DISCUSSION AND ACTION

MOTION: That the Board of Adjustment, based on the Findings for the Basis of Decision, approve the variance request from OCCGF Title 17, Chapter 20, Article 4, Exhibit 20-4, maximum side yard setback of principal and accessory buildings, subject to the conditions of approval.

Made by: Mr. Palagi
Second: Mr. McMillen

Ms. Smith stated that she had a few concerns about the variance. She just recently built a fence and worries that just leaving 6 inches for a fence is going to be of concern. There is a little patio area there and it will be right on the lot line and wants to know how that is going to be addressed. Ms. Smith also stated that she is surprised that this error got this far.

Mr. Nelson responded that NeighborWorks is planning to put up a privacy fence from the alley right up to the corner of the house. It will be right on the property line. There will not be a fence on 20th Street.

Mr. Raymond did also address the board in regards to the error and how the internal process is being looked at. He stated that in his old jurisdiction, staff would hand carry the plat to have it recorded. That way there is a tighter chain of custody of the official document that gets recorded. If there are any errors, it would lie solely on City Staff.

Mr. Palagi stated that mistakes happen and as an engineer, a design professional can do the best they can but that doesn't mean that it is always perfect. The goal is to do the best you can to come up with a solution to satisfy both parties and he believes that is what this variance does.

Ms. Northerner stated that there was a mistake made, but it was not the applicant's fault and she was the most powerless person in the whole situation to find and fix the problem. It is a hardship for her, and that is the only reason why she supports it.

Ms. Smith stated that she agreed with Ms. Northerner and that the applicant is not the one that caused this situation and would like to see NeighborWorks make sure that they are a little more careful with these in the future, so it can be avoidable.

VOTE: All in favor, the motion passed. 5-0 (Approval of the variance)

PUBLIC COMMENT

Colleen Burlinger, Lot #5, stated that the other seven neighbors were working and could not attend the meeting, but are all behind Ms. Nesmith.

COMMUNICATIONS

Mr. Raymond did let the board know that the City Commission amended an Ordinance requiring name and address for the record. It will no longer be required. City Attorney Sexe, stated that the person can give their address if they want or state whether or not they are a city resident. There were some privacy concerns.

ADJOURNMENT

There being no further business, Chair Stuver adjourned the meeting at 3:38 p.m.