

**MINUTES OF THE MEETING  
OF THE  
GREAT FALLS BOARD OF ADJUSTMENT  
February 16, 2012**

**CALL TO ORDER**

The regular meeting of the Great Falls Board of Adjustment was called to order by Chair Pro Tem Peterson at 3:00 p.m. in the Commission Chambers of the Civic Center.

**ROLL CALL & ATTENDANCE**

Great Falls Board of Adjustment Members present:

Mr. Tim Peterson  
Mr. Jeff Foster  
Mr. Chris Ward  
Ms. Kim Martin

Great Falls Board of Adjustment Members absent:

Mr. Casey Cummings

City Staff Members present:

Mr. Mike Haynes, AICP, Director, Planning and Community Development  
Mr. Charlie Sheets, City Development Review Coordinator  
Ms. Lisa Kunz, City Clerk

**MINUTES**

Chair Pro Tem Peterson asked if there were any amendments to the minutes of the November 3, 2011 meeting, and there were none. Mr. Foster moved to adopt the minutes as received. Mr. Ward seconded, and all being in favor, the motion passed.

**OLD BUSINESS**

There was no old business.

**NEW BUSINESS**

**Election of Officers**

Chair Pro Tem Peterson opened the nominations for Chairman for 2012. Mr. Foster nominated Tim Peterson for Chairman. Chair Pro Tem Peterson called for any other

nominations. Mr. Ward nominated Casey Cummings for Chairman. Chair Pro Tem Peterson called for the vote. Mr. Peterson received one vote for Chairman. Mr. Cummings was voted the new Chairman for 2012 with a vote of 3 in favor.

Chair Pro Tem Peterson opened the nominations for Vice Chairman. Mr. Foster nominated Tim Peterson for Vice Chairman. Chair Pro Tem Peterson called for any other nominations. There were no other nominations for Vice Chairman. Chair Pro Tem Peterson called for the vote. All being in favor, Tim Peterson was elected Vice Chairman for 2012.

**BOA2012-1, 1326 Central Avenue**  
**Request for Side Yard Setback Variance**  
**(Applicant: Dupuis, Inc., John Dupuis)**

**PLANNING STAFF REPORT & RECOMMENDATION**

Mr. Sheets stated that the meeting was being streamed live via the internet and would also be aired at 10:00 a.m. the next morning on the City cable channel.

Mr. Sheets stated he was entering the Staff report into the record. He presented the basis of decision for a dimensional variance as outlined in Title 17.16.32.040 of the City code as follows:

A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exist:

1. The variance is not contrary to the public interest.
2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.
3. The spirit of the Title (Land Development Code) would be observed and substantial justice done by granting the variance.

The property is zoned C-5 Central business periphery district and is 18,829 square feet. Current lot coverage is about 30 percent, including the commercial business called the Viking Shop, a 4-unit apartment building and a 4-stall detached garage. The proposed addition is 768 square feet for an accessory studio apartment.

The applicant is requesting a zero side yard setback from the east property line adjacent to 14<sup>th</sup> Street South. City Code requires a 10-foot side yard setback. When the existing commercial business was built in 1992, the property was zoned B-1 and had no side yard requirement.

Mr. Sheets stated that the applicant was requesting to build an addition that would project  $\pm 2.5$  feet beyond the existing east façade of building. Staff could not support that request but did support an alternate variance that would allow a reduced side yard setback for an addition to be kept in line with the existing east elevation.

For the alternate variance staff finds the following:

1. The variance is not contrary to the public interest.
2. A literal enforcement would create additional construction costs and result in an arbitrary 7'6" recess from the east elevation of the existing Viking Shop.
3. The existing side yard setback provides adequate room and protection to maintain and promote sound development patterns for the subject property and neighborhood.

Staff finds adequate basis and hardship for the alternate variance and supports the granting of the reduction of the side yard setback if the owner keeps the addition in line with the existing east elevation of the building.

One public comment was received by staff which stated, "They need to move on and find another property to fit their needs. It sits along a highway and a ZERO side yard setback is not acceptable. 20 ft. at least."

Mr. Sheets concluded his review of the staff report and offered to answer any questions from the Board. Mr. Foster asked what the current setback is, and Mr. Sheets said the building was at 6 inches from the east property line (at the closest point; where there is a projection or "bump-out" from the east façade of the building). There was discussion clarifying exactly where the building was in relation to the setback and how much the projection "bumps out" from the east building facade. Mr. Haynes stated that the applicant proposes to build out in-line with the projection, but that staff supports an addition in-line with the main facade, not the projection.

Mr. Foster requested clarification on staff's position that granting the variance as proposed by the applicant would not be in the public interest, and also that a literal enforcement would result in unnecessary hardship to the applicant. Mr. Sheets stated that was correct.

#### PETITIONER'S PRESENTATION

Mr. Dupuis stated he did not know there was a problem with lining up the new addition with the bump-out when initially designing the addition. He stated that the window bump-out has a foundation which is part of the original structure. He said there is a Northwestern Energy transformer that requires 5 feet of clearance, which means he cannot locate the building back from where it is proposed because Northwestern Energy would charge \$6,000 to move the transformer box. That doesn't include any phone company lines. He also said he is already removing two trees and does not want to

remove another tree. He said that changing the line of the building would remove 64 square feet of addition space, which is almost 10 percent of the proposed addition. He noted that the south end is parking lot and he can't expand much in that direction without causing parking issues.

#### PROPOSERS OPPORTUNITY TO SPEAK

There were no proposers.

#### OPPOSERS OPPORTUNITY TO SPEAK

There were no opposers.

#### BOARD QUESTIONS FOR STAFF

Mr. Ward inquired of staff whether the project had been reviewed for green space and aesthetics, and Mr. Sheets explained that the project has been reviewed by the Design Review Board and that board was in favor of the applicant replacing any trees that are removed for this project. Mr. Haynes explained that at the time of review, the site plan was drawn incorrectly creating confusion over the setback. Mr. Ward inquired if the project has to go back to the Design Review Board and whether there is adequate green space. Mr. Sheets explained the project does not need to be sent back to the Design Review Board, and there is adequate green space. Mr. Ward had questions about Design Review Board approval and setback requirements and Mr. Haynes explained that the Design Review Board is more concerned with the design aspect of projects.

Mr. Ward stated this was the first time he remembered that the Board of Adjustment is dealing with aesthetic issues. Mr. Haynes stated that staff was not in favor of allowing the addition to be built in-line of the bump-out, which would give the appearance of a later addition, but also wanted to strike a balance and were supportive of a lesser variance.

Mr. Foster stated he thought the variance request was more about maintaining the character of the zoning district than it was about aesthetics.

#### BOARD DISCUSSION AND ACTION

Mr. Foster stated that if the bump-out is part of the existing foundation, in his opinion, the spirit of the title is secure if the addition is in line with the bump-out. Mr. Ward agreed and did not see that allowing the applicant to build as proposed is contrary to the public interest. In addition, he did not think it was harmful to aesthetics, but that projects are often built with differences in elevations to create visual interest. Mr. Peterson stated he did not think it was the Board's place to make decisions on aesthetic issues, and did

not see a problem with the proposed plan as is. Mr. Ward stated that if the issue was appearance, the project should go back to a board that deals with those criteria.

Mr. Ward said he preferred that staff respond to the application rather than propose alternatives.

There being no further discussion, the following motion was put forth:

MOTION: That the Board of Adjustment approve the variance of Dupuis, Inc. John Dupuis, 1326 Central Avenue, as shown in the submitted conceptual development plans contained within the staff report, for the requested variance of City Code Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, and allow a zero side yard setback from the east property line for the accessory living space expansion to the rear of the existing commercial retail building.

Made by: Mr. Foster  
Second: Mr. Ward

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

Mr. Sheets advised the petitioner on the next procedural steps.

## **COMMUNICATIONS**

City Commission appointments, reappointments and appreciation of service letters were received without comment.

## **ADJOURNMENT**

The meeting was adjourned at 4:42 p.m.