

MINUTES OF THE MEETING
OF THE
GREAT FALLS BOARD OF ADJUSTMENT
April 4, 2013

CALL TO ORDER

The 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, Vice Chair
Mr. Chris Ward
Ms. Kim Martin
Mr. Jeffry Foster

Great Falls Board of Adjustment Members absent:

Mr. Casey Cummings, Chair

Planning Staff Members present:

Mr. Mike Haynes, AICP, Director, Planning and Community Development
Ms. Galen Amy, Planner I
Ms. Phyllis Tryon, Sr. Administrative Assistant

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

MINUTES

Chair Pro Tem Peterson asked if there were any changes to the minutes of the November 29, 2012 meeting of the Board of Adjustment/Appeals. Ms. Martin moved to approve the minutes of the meeting and Mr. Foster seconded. All being in favor, the motion passed.

Action Minutes of the Board of Adjustment/Appeals. Please refer to the audio/video recording of this meeting for additional detail.

ELECTION OF CHAIR AND VICE CHAIR FOR 2013

Mr. Foster moved to nominate Mr. Ward as Chair for 2013. Mr. Peterson seconded. There being no other nominations, and all being in favor, Mr. Ward was elected Chair for 2013. Mr. Peterson nominated Mr. Foster as Vice Chair. Ms. Martin seconded. All being in favor, Mr. Foster was elected Vice Chair for 2013.

OLD BUSINESS

There was no old business.

NEW BUSINESS

**BOA2013-01, 1511 3rd Avenue Southwest
Variance: Garage Height and Area Permitted**

Galen Amy, Planner I, reviewed the staff report for the request from applicant/owner Fred Walton for a variance for garage height and garage area limitations for 1511 3rd Avenue Southwest. Ms. Amy entered the staff report into the record. She reviewed the basis of decision for a dimensional variance as listed in the staff report. The subject property is zoned R-1 Single-family suburban district and is approximately ± 1.03 acres. The applicant is proposing a 40-foot x 19-foot, 5-inch garage addition as well as a 20-foot, 7-inch x 12-foot addition to the existing detached garage.

The applicant is requesting a variance to the garage area limitation of 1,800 square feet in order to construct a 1,023.76 square foot addition to the existing detached garage, part of which would be 7 feet, 1 inch higher than the single-story residence. The subject property is zoned R-1 Single-family suburban and City Code permits the maximum garage area of 1,800 square feet for parcels that are 1 acre and higher. City Code also requires accessory structures, like garages, not be higher than the uppermost elevation of the principal building.

Ms. Amy stated that the proposed addition is consistent with the use of the subject property and the character of the surrounding neighborhood, and that the garage area requirement and height restrictions represent clear hardship, is uncharacteristic of the surrounding neighborhood, and constrains reasonable development of the site.

Ms. Amy said that since the writing of the staff report, staff has received a written statement from Harlan Greenwood claiming the applicant has stated he intends to use the proposed garage addition for the repair and maintenance of FedEx trucks. After speaking with Mr. Greenwood and now also fearing that this variance may accommodate a vehicle repair business, property owners Cheryl and Ed Higgins, who originally supported the variance application, now have concerns about the intended use of the proposed garage addition. Ms. Amy said that the Higgins's originally signed the neighbor support letter, but the letter states that the applicant intends to use the shop for storage and repair of personal vehicles and does not mention anything about a possible business use.

Prior to processing the application, staff advised the applicant of how the proposed garage addition could and could not be used. The applicant signed a General Agreement acknowledging their understanding that second dwelling units and commercial businesses are not permitted in the R-1 zoning district. This agreement also states that if the property owner seeks to obtain a home occupation permit, they shall conform with the requirements put forth by the Official Code of the City of Great Falls, which explicitly states that a vehicle repair business is prohibited as a home occupation, per Section 17.20.7.070.

Ms. Amy reviewed the staff findings as listed in the staff report. She noted that a portion of the subject property has been paved. The existing structures and the proposed garage would total $\pm 14\%$ lot coverage, which is well under the 30% limit permitted by City Code. The proposed garage addition is consistent with uses in the neighborhood. Ms. Amy also reviewed the Conditions of Approval as listed the staff report. She concluded her review of the staff report and offered to answer any questions from the Board.

PETITIONER'S PRESENTATION

Fred Walton, 1511 3rd Avenue Southwest, said he would not be operating a repair business, but that he owns the FedEx vehicles and he intends to repair his own vehicles to avoid the cost of high repair bills. He said this would not increase vehicle traffic. Mr. Foster asked Mr. Walton to clarify that he owns these FedEx vehicles and would not be operating a business to repair other people's vehicles. Mr. Walton concurred. Ms. Martin asked how many FedEx vehicles he owns, and Mr. Walton said there are 10 vehicles. He said he is not looking to increase his fleet but needs to maintain them. Mr. Peterson asked if the vehicles would be parked on Mr. Walton's property. Mr. Walton stated that only vehicles being repaired would be on his property and the rest are parked at the FedEx terminal. He said he does not want the vehicles stored on his property, and that he is not looking to clutter the property. He purchased this property on November 30, 2012 and said he has worked to improve the property since then.

PROPOSERS OPPORTUNITY TO SPEAK

Linda Turner, 224 14th Street Southwest, said the back of her property is adjacent to Mr. Walton's property. She said that since the previous owner paved the subject property, she has run-off onto her property. She had questions about diesel noise, an oil pit, and exhaust fumes if this application is approved. She said she lives in a quiet neighborhood and she is concerned about the vehicle repair and the effect on her property.

Mr. Peterson and Mr. Foster said it is not the place of this Board to discuss an oil pit. Mr. Haynes clarified that Ms. Turner is an opponent, not a proponent. There were no proponents.

OPPONENTS OPPORTUNITY TO SPEAK

Cheryl Higgins, 1517 3rd Avenue Southwest, said their property faces Mr. Walton's property. They put up a deck, and the former property owner of the subject property had a junk car repo business. The Higgins's planted trees and put up a barrier to hide the neighbor's yard from view. She expressed concern that there will be mechanic noise all day in this quiet neighborhood.

Harlan Greenwood, 1531 3rd Avenue Southwest, said they would like to know what is going to happen on the subject property. The previous owner had a wrecker business that got bigger and bigger until the owner filed bankruptcy. He said he didn't want the noise of vehicles running without mufflers. He said people have good intentions, but with 10 vehicles to repair, he wondered how many spare parts would be stacking up, how many oil barrels there might be, and whether there would be noise until 10:00 p.m.

PETITIONER'S CLOSING

Mr. Walton said he understood the neighbor's concerns and that at his home in Black Eagle, the neighboring property was a mess for years until he bought the property and cleaned it up. He said he has no intention to work all hours of the night, and his vehicles stay well maintained. He does not intend to start a mechanic shop, have spare parts or oil barrels standing on the property, or put in an oil pit. He said all he can do is promise the neighbors they won't have to tolerate noise. He said he does not want to disturb the entire neighborhood.

PUBLIC COMMENT

There was no public comment.

BOARD DISCUSSION AND ACTION

Mr. Foster asked if the Board should take into account the terms of the General Agreement. Ms. Amy said the agreement was to provide an understanding for the applicant about what is and is not permitted on his property.

Ms. Martin said the Board's decision is about the garage addition variance but not about noise, etc. Mr. Haynes said staff's understanding of what is happening in the garage has changed over time. The business issue is separate from the variance, but a home occupation will require signatures of support from the neighbors and the applicant may not have the support of that home occupation from the neighbors. However, he said the decision on this variance should be based on the merits of the application, the size and the height of the garage. Mr. Peterson asked if the applicant would still have to go through the home occupation process if this application were approved today. Mr. Haynes said he would.

There was Board discussion about the merits of such a variance and comparisons to other variances the Board has dealt with.

PUBLIC COMMENT

Chair Pro Tem Peterson reopened the Public Hearing and received public comment. Mr. Greenwood said that nothing had ever been done to stop the previous owner from running a home occupation business illegally out of the subject property. The Board noted that they are not in the position to approve or deny a home business.

BOARD DISCUSSION AND ACTION

The Board asked if the General Agreement was part of the Conditions of Approval. Ms. Amy said it did not need to be included, and that the Board had the ability to add conditions as they see fit. The conditions included in this staff report are standard for applications.

Mr. Foster said he struggles with item number two of the basis of decision for a dimensional variance in the staff report, which states: a literal enforcement would result in unnecessary hardship, owing to conditions unique to the property. He said he understands this is a more rural area of the City. Mr. Haynes said this relates to the location and size of this property and the limitations on the size of garages, which generally is to protect neighbors. He said the limit in size is less of a concern when lots are 1 acre or more in size. He noted that even with an expanded garage, the lot would be well below the maximum building coverage allowed, and that in looking at homes in the district, there are a lot of homes that historically have large garages or shops where people store multiple vehicles and have shops. Mr. Foster asked if the point of the new code is to phase out those type of structures. Mr. Haynes said that was a reasonable assumption, but another viewpoint is to look at what an individual can do with his property compared to what others have done in the same district.

Ms. Amy said that working with property owners and trying to be reasonable involves moving forward with circumstances individual to each property. She noted that the paving on this site is

a unique condition of this property. Mr. Haynes pointed out that such uses do not necessarily need to be perpetuated, which makes decisions on variances difficult. Mr. Foster said he continued to struggle with such variances. Ms. Martin said the building coverage was still under the maximum allowed if the Board approved this application. Mr. Ward stated that limiting the garage size to 1,800 square feet when lot coverage was allowed up to 30% did not make sense. Mr. Haynes explained that the maximum percentages make sense if you consider the 7,500 square foot standard City lot size. The R-1 district is unique in the City in that it is the one district characterized by large lot sizes, which can accommodate uses not allowed elsewhere in the City, such as raising chickens.

Mr. Peterson said this seemed to be a reasonable request. He said the applicant was approaching this the right way by requesting a variance. He said he respected the concerns of the neighbors, but that Mr. Walton still would have to follow the right process to have a home business. Mr. Foster said this proposed addition did not seem unreasonable. Mr. Peterson asked if the proposed addition would be higher than the residence, and Ms. Amy said it would be. Mr. Foster said he liked the right of property owners to make use of their property, but realizes that by living in a City, we have a social compact with neighbors. Mr. Ward asked if paving was a Code issue, and Mr. Haynes said it is not. However, there are Codes which address drainage issues. Mr. Ward said he preferred to be a stickler on the issue of hardship owing to "conditions unique to the property." However, he said the Board granted a similar variance in the same block area about 18 months ago. He asked Mr. Haynes if a cupola was placed on the house, would the garage addition then be within the normal requirements, and Mr. Haynes said that was true. Mr. Haynes said on a normal City lot, you would want a home to be the primary structure on the property, but when you consider an acre-size lot, those concerns are not as significant.

There was no further discussion.

MOTION: That the Board of Adjustment approve with conditions the application of Fred Walton at 1511 3rd Avenue Southwest, as shown in the site plans contained in the staff report, for the requested variance of City Code, 17.20.4.020, Exhibit 20-4, Maximum building height of detached garage.

Made by: Ms. Martin
Second: Mr. Ward

VOTE: The vote was 3-1, with Mr. Foster voting against the motion.

MOTION: That the Board of Adjustment approve the variance of City Code, 17.20.7.060, Exhibit 20-9, Garage area limitations, to construct a 1,023.76 square foot addition to the existing garage subject to the conditions listed in the staff report.

Conditions of Approval:

1. The proposed project shall be developed consistent with the conditions in this agenda report, all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. If after the approval of the conceptual development plan as amended by this Board, the owner proposes to expand or modify the conceptual development plans, the Director of the Planning and Community Development Department shall determine in writing if such

proposed change would alter the concept for one or more review criteria. If such proposed change would alter the plan, the proposal shall be resubmitted for review as a new application.

Made by: Ms. Martin
Second: Mr. Ward

VOTE: The motion passed by a vote of 3-1. Mr. Foster voted against the motion.

The Board requested a simplification of the suggested motions in the future. Staff agreed.

COMMUNICATIONS

There were no communications.

ADJOURNMENT

The meeting was adjourned at 3:49 p.m.