

## **APPROVED MINUTES**

City of Libby City Council meeting as Board of Adjustments held a public hearing on Monday, June 5, 2023 in Council Chambers at City Hall to obtain public comment regarding a variance application to construct an 8 ft tall privacy fence at 515 Dakota.

### **CALL TO ORDER:**

Mayor Williams called the meeting to order at 6:30 pm.

The Pledge of Allegiance was completed and Roll Call commenced. Present were Mayor Williams, Councilors Gary Beach, Melissa Berke, Zach McNew, Hugh Taylor, Kristin Smith, and Brian Zimmerman, Administrator Samuel Sikes, City Clerk-Treasurer Leann Monigold.

Mayor Williams explained the Public Hearing was to take public comment regarding a request the City Council meeting as the Board of Adjustments had received regarding the height of a fence at 515 Utah Avenue. Explaining the application is to build an 8 ft. fence on property that is lower than the street

Mr. Willoughby explained his property is below street level and the property across the street and other three corners are even or above street level. His property sits about four feet lower and would like to make a larger fencing area for the grandkids and dog.

Councilor Smith asked for clarification, according to the application the request was for the side and rear of the property. Mr. Willoughby explained it would be three sides, along the rear, side, and front, level with the houses.

### **PUBLIC COMMENT:**

Jennifer Nelson, 1026 Washington, asked for a correction, the property is not located at 515 Utah, it is located at 515 Dakota. Ms. Nelson had concerns, since the city already allows for a 6 ft. fence it should be sufficient instead of an 8 ft. fence making a blockade look around town and gave examples of how it could impact the city and surrounding neighbors.

Councilor Zimmerman understood the fact if his property were level it would be a 6 ft. fence but since it sits in a hole an 8 ft. fence would give him that same privacy.

Mayor Williams explained as part of the approval process, eight finding of fact must be gone through and read the following:

- A. In considering all proposed variances to this chapter, the board shall, before making any findings in a specified case, first determine that the proposed variance will not amount to a rezone and constitute a change in the district boundaries shown on the official zoning map.**

Mayor Williams said it would not change zoning or district boundaries.

- B. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this chapter.**

Council discussed the differences in the surrounding properties and how the fence would look if it was constructed at 6 feet since his property sat much lower.

- C. That the special conditions and circumstances do not result from the actions of the applicant.**

Mr. Willoughby stated there have been no changes since they bought the house in 1997. Councilor Zimmerman recollected growing up that property was considered a mud pit because that is where all the water used to run.

- D. That granting the variance requested will not confer a special privilege to subject property that is denied other lands in the same district.**

Council agreed it would not.

- E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.**

Councilor Smith appreciated Ms. Nelson's comments and agreed they were valid but this is a unique situation. This would not be materially detrimental but when moving forward with the fence ordinance a lot of the issues Ms. Nelson brought up needs to be addressed.

Councilor McNew mentioned most cities and counties have a 6 ft. ordinance because they are easier to climb over than an 8 ft. fence.

- F. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land.**

Councilor Smith stated Fish, Wildlife, and Parks recommends a 7 ft. fence for deer and curious if 7 ft. would work for the applicant. Mr. Willoughby said the fence is not for deer it is about privacy and mentioned another option would be to haul dirt in and make it even with the road then a 6 ft. fence would be great but would be very costly.

**G. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.**

Councilor McNew inquired if the fence would be even or higher than the neighbor's fence. Mr. Willoughby stated there are no neighbors where the fence will be built and described the fence across the street and next door.

**H. The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.**

Council Beach, in consideration of Ms. Nelson's response to casting shadows on the neighbors, after looking at the drawings there should not be any neighbor directly impacted by the location of the fence.

**Council Comments:**

Councilor Berke agreed an 8 ft. fence would be fine because the how property dips down it would be even with the 6 ft. fences.

Councilor Beach

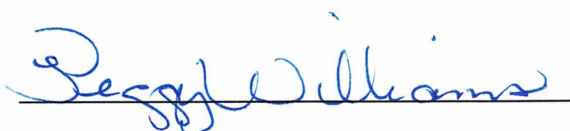
Councilor Smith **MADE a MOTION** to grant the variance to Mr. Willoughby for an 8 ft. fence on his property at 515 Dakota and Councilor Zimmerman **SECONDED**.

Councilors Beach, Berke, McNew, Smith, Taylor, and Zimmerman voted **FOR**.

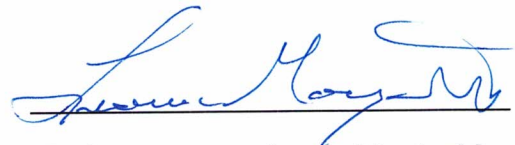
**MOTION PASSED.**

**ADJOURNMENT:**

Mayor Williams adjourned the meeting at 6:48 pm.



Mayor, Peggy Williams



Clerk-Treasurer, Leann Monigold