

**MINUTES OF THE MEETING**  
OF THE  
**GREAT FALLS BOARD OF ADJUSTMENT/APPEALS**  
January 9, 2014

**CALL TO ORDER**

The meeting of the Great Falls Board of Adjustment/Appeals was called to order by Chairman Chris Ward 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. Chris Ward, Chair  
Mr. Jeffrey Foster, Vice Chair  
Ms. Kim Martin  
Mr. Tim Peterson

Great Falls Board of Adjustment/Appeals Members absent:

Mr. Dave Nelson

Planning Staff Members present:

Mr. Craig Raymond, Director Planning & Community Development  
Ms. Sara Sexe, City Attorney  
Ms. Galen Amy, Planner II  
Mr. Gregg Benson, Planner I  
Ms. Phyllis Tryon, Sr. Administrative Assistant

Others present:

Mr. Matt Meade, attorney  
Mr. Greg Smith, attorney  
Mr. Mark Harant, contractor  
Mr. Preston Burrow, draftsman  
Mr. Jay Nash, owner of Pretty Girls

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

MINUTES

Chair Ward asked if there were any changes to the minutes of the October 3, 2013 meeting of the Board of Adjustment/Appeals. Seeing none, the minutes were approved as presented.

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

## ELECTION OF OFFICERS FOR 2014

Chair Ward called for nominations for Board Chair for 2014. Mr. Peterson nominated Mr. Ward, seconded by Mr. Foster. There were no other nominations. All being in favor, Mr. Ward was elected Chair for 2014.

Chair Ward called for nominations for Board Vice Chair for 2014. Mr. Foster nominated Ms. Martin, seconded by Mr. Peterson. Ms. Martin nominated Mr. Peterson for Vice Chair, and there was no second. The vote was three in favor of Ms. Martin, and one vote for Mr. Peterson. Ms. Martin was elected Vice Chair for 2014.

## OLD BUSINESS

There was no old business.

## NEW BUSINESS

### **BOA2013-08, 1015 24<sup>th</sup> St. South – Jay Nash “Pretty Girls”**

#### STAFF IDENTIFICATION OF ISSUE

Craig Raymond presented a review of the history of this matter with the City Planning & Community Development Department. He said that early in the summer of 2013, Preston Burrow asked to meet with Mr. Raymond and City zoning staff to review the permitting process to reconstruct the Pretty Girls building, which had been previously destroyed by fire. Mr. Raymond said they visited about the permitting process and the requirements for submitting building plans, and he informed Mr. Preston of the requirement to engage an architect for this proposed project. Mr. Burrow expressed disagreement on the need to engage an architect, but said he would do so. At a later meeting, Mr. Preston said he had hired Bruce Davidson, a licensed architect, to work on the project.

When a formal permit application was submitted, there was no stamp or seal from an architect, nor did any of the provided engineering stamps appear to qualify as a registered design professional in responsible charge of the project. Mr. Raymond said he rejected the plans as incomplete, and Mr. Burrow subsequently appealed informally to him and asked him to reconsider his decision. Mr. Raymond said he further researched the subject and after careful consideration, reaffirmed his position in a letter to Mr. Burrow dated August 22, 2013.

#### PETITIONER'S IDENTIFICATION OF ISSUE

Mr. Meade spoke as the petitioner's attorney. He said that the former Pretty Girls building, owned by Jay Nash, burned down on October 29, 2012, and ever since then, the owner has been working to rebuild, providing his own designs. Mr. Harant is the lead contractor, who engaged Mr. Burrow as the draftsman for the project. Mr. Meade explained the process and requirements by the City that the owner dealt with in trying to rebuild. He said that after eight months of this process, the applicant was then told the application was denied because an architect is required for the project.

Mr. Meade identified three issues on behalf of his client. He said that foremost, they do not believe an architect is required for this project. He stated that this building is not defined as a

public building and they believe an exemption applies for an architectural seal. The second issue is that it is Mr. Raymond's discretion as to whether a project engineer is required, no objective criteria have been given, and there are a number of engineer stamps related to this project. The third issue is that they believe a stamp can be either an engineer stamp or an architect stamp, and with the engineer stamps already on this project, they do not believe an architect stamp is required.

#### PETITIONER'S COMMENTS / TESTIMONY ON APPEAL

Mark Harant, 129 20<sup>th</sup> Street, Black Eagle, MT, provided testimony on this appeal. Mr. Meade asked a variety of questions related to Mr. Harant's occupation and his work on this project. Mr. Harant provided his background experience and skills. He said Mr. Nash provided designs for the project. Preston Burrow provided drafting skills. The project was originally expected to break ground in May 2013 and be completed by late September 2013.

Mr. Harant described his first steps in relation to this project and said he knew there would be hurdles because of the type of business this was. He described some hurdles they encountered, including changing bathroom design, parking and drainage, landscaping, sidewalk replacement and ADA compatibility issues, HVAC units, building colors and design. The Design Review Board approved this project.

Mr. Harant provided testimony as to the engineers involved and the current status of the project, which is on hold pending being issued a permit. He said he was not aware an architect of record would be needed for this project until mid-July or August. He said he became frustrated with the issues on this project and said it is not a complex project; he estimated an architect's seal could cost \$25,000.

At this point in time, Chair Ward disclosed that he is employed by TD&H Engineering since that company did some soil testing on this project, although he was not formerly aware of this project. Neither the City nor the client's attorney found that to be a problem with this appeal.

Mr. Harant answered various questions from the Board members. Mr. Foster asked Mr. Harant to expound on his comment that he anticipated roadblocks because of the type of business this is, which he did. There were questions about how the plans were drawn. Mr. Peterson said knowledge of the International Building Code did not appear evident from plans included in the Board's materials. Ms. Sexe provided the Board with some blueprints for the project and then questioned Mr. Harant on details of his involvement in this project, and whether he knows Mr. Burrow to be licensed by the State as an architect or engineer. Mr. Harant said Mr. Burrow is not licensed as either of those. Ms. Sexe inquired about whether two other projects Mr. Harant said he had been involved with were remodeling projects, and he said they were.

Preston Burrow, 49 Embury Lane, said he has been a building contractor, carpenter and taper, and has worked in the construction industry. He said he went through a 4-year carpentry apprenticeship and took architectural classes in college. He described his work experience in Montana and his involvement with the Pretty Girls project. He said he worked from Mr. Nash's design and tried to make it acceptable. He explained some of the Design Review Board recommendations, and said it might have been May 2013 when he was first informed that an architectural seal would be required. He said there are endorsements for the project from a soils engineer, landscape architect, and structural, electrical, mechanical and truss engineers. He

said this is not a complex project and he has never been required to provide an architectural seal on a project he has worked on, even in other states.

Ms. Sexe asked him to clarify when he took architectural classes, which he thought was in the early 1980s. He said he has never before had to have an architect in responsible charge on a project. Ms. Sexe asked Mr. Burrow questions about his involvement in the design aspect of the project. He stated he is a draftsman.

Jay Nash, 555 Eden Road, owner of the subject business and property, provided testimony on this appeal. Mr. Meade asked a variety of questions related to the background history of this project. Mr. Nash said that Pretty Girls burned down in October 2012. He estimated a monthly loss of revenue at \$30,000 for a poor month of revenue. He wanted to rebuild with the same size building as the one that burned, but the Director of Planning & Community Development at that time explained all the issues involved. They were required to remove footings under the parking lot and remove a water main, and the cost of demolition was much higher than anticipated. Mr. Meade presented a design that Mr. Nash drew for the subject project. Mr. Nash said it was one of many he drew, and that he designed the building. He had drafting in high school and a class in college, and drafting is his hobby.

Mr. Nash provided information as requested by Mr. Meade about the issues he has faced with this project. He said reiterated all the changes in his design requested by the City, and said that when the City requested a holding pond, he was done. In addition, the former building had tenants, and he was told by the City he could not rebuild the same size building, and therefore will not be able to have tenants. He confirmed for Mr. Meade that he expected hurdles due to the nature of the business.

Ms. Sexe asked Mr. Nash how many commercial buildings he has built from the ground up. He said none. Mr. Nash answered questions from the Board. Mr. Peterson asked what reasons the City had given Mr. Nash about the reduction in building size. Mr. Nash asked Rick Pavlonnis to address this question.

Rich Pavlonnis, 1909 1<sup>st</sup> Avenue South, said he had spoken with Michael Haynes, former Director of Planning & Community Development, about the building size, and Mr. Haynes told him a new building must comply with the most recent City Codes, including parking, landscaping, and setback requirements.

#### STAFF COMMENTS / TESTIMONY ON APPEAL

Craig Raymond, 1501 25<sup>th</sup> Avenue South, Director of Planning & Community Development and Building Official for the City of Great Falls, answered questions from Ms. Sexe about the plan review for this project. She asked why Mr. Raymond decided this project needed a design professional in responsible charge. He said this is not an exempt structure, which is the primary reason. Additionally, he said such a professional not only would draw the structure, but would also coordinate all the other professionals involved in the project and ensure there are no special conflicts, as well as being qualified to do so. Before coming to his decision, he researched State law and City Code and also researched how other jurisdictions handle such projects.

Ms. Sexe asked Mr. Raymond to explain the restrictive structural stamp on the blueprints for this project. Mr. Raymond said the structural engineer, Mr. Miller, stamped certain construction

detail pages, but noted he is only taking responsibility for his limited scope of work for the specific pages on which the stamp is found. He did not stamp the foundation or framing plans.

Mr. Raymond said the hurdles mentioned in other testimony was the result of the former building being a non-conforming structure. A non-conforming structure, if destroyed, needs to be reconstructed to the maximum extent feasible in compliance with the current code. He said the old structure was significantly out of compliance, including setbacks, parking, and landscaping.

Ms. Sexe asked what effect the nature of the business had on Mr. Raymond's decision making process. He said none whatsoever. Ms. Sexe asked Mr. Raymond to view the design document provided to the Board. He said, in his experience, it is not a design but a floor plan or a concept. Ms. Sexe asked him if he had ever told Mr. Burrow he wouldn't need an architectural stamp for this project, and Mr. Raymond said he did not.

Mr. Meade asked Mr. Raymond to give objective criteria as to when a sketch becomes a design. Mr. Raymond said this sketch is not remotely complete, and a design needs to have complete relationship with different spaces and how they work together, as well as meeting code requirements. He said virtually every aspect of a building has code requirements pertaining to it. Mr. Meade asked if he ever approved projects that did not meet code requirements, and Mr. Raymond said he hoped not. He said that construction documents get red-lined because they do not meet code requirements or do not provide information that the Planning & Community Development Department needs to see in order to approve. Mr. Meade asked that if Mr. Raymond believed Mr. Nash was the true designer, would he believe also that an exemption would apply to this project. Mr. Raymond said yes.

Mr. Raymond answered questions from the Board regarding what makes a project exempt from the requirement of a design professional in responsible charge and whether both an architect and engineer are required on projects. Mr. Raymond explained that a large project may require both, but this particular project would not. Chair Ward asked him to clarify what constitutes an exempt project. After providing information on the subject, Mr. Raymond explained that the framing, foundation, floor, and elevations plans for this project were not stamped by an engineer or architect. These particular plans also include aspects of construction and code such as exits, exterior envelope, energy code and handicap accessibility, etc. Mr. Raymond reiterated that this project is not exempt from an engineering or architectural seal, and in addition, he has the discretion to require a seal for this project. He said he based his decision on State law, which is further enforced by the International Building Code and City Code.

Marty Byrnes, 56 Rising Sun Lane, Cascade, said he is an architect and managing partner of CTA Architects and Engineers, which has 360 employees, including structural, mechanical and electrical engineers, as well as draftsmen. He said to become a licensed architect, a person must study for five years at an accredited school and then work for a licensed architect for three years. From there, a person is eligible to take the architectural exam, which takes about 4 days. In addition, there is a requirement for continuing education and license fees. He said his company spends about \$120,000 annually in license fees and an additional \$16,000-\$20,000 for code books.

Mr. Ward asked Mr. Byrnes if he agreed that State law provides for certain projects to proceed without a licensed design professional. Mr. Byrnes said residential projects are excluded below 8 units. The Board requested Mr. Byrnes to look at the plans before them, and asked if he thought they could be considered design plans. He said it is a sketch and a start. Mr. Peterson

asked what the most important aspect of a design should be. Mr. Byrnes said design begins before you enter the site, and described details involved in planning a commercial building.

Mr. Nash stated that he knew what he wanted for this building and made it clear to the City from the beginning.

#### PETITIONER'S CLOSING

Mr. Meade said the burden of proof is on the City to show they did not wrongly deny this application. He said that it is Mr. Raymond's job to see who the designer of this project is and to prove that Mr. Nash was not the actual designer. He said Mr. Nash was trying to build a building that had already existed, and was trying to delegate out portions that he already knew. He said there still has not been given an objective standard, in light of the MCA, as to how much of the design can be delegated, and if Mr. Nash is in fact the designer, the exemption does apply.

Mr. Meade talked about the definition of a "public building" according to Title 37. He said it is also important to remember that design plans can be red-lined when it comes to safety issues. He reiterated that Mr. Nash designed this project based on a previous existing building and there is no clear definition of what qualifies as a design; therefore, he is the designer and this appeal should be approved.

The Board asked for clarification about whether an architectural stamp was required by the City, or if an engineering stamp on all the necessary documents would have been acceptable. Mr. Meade agreed that the Building Official would have accepted the plans with an engineering stamp, but he said, according to the letter sent to the applicant, it looked like an architect's stamp was also required. He also said this is not a complex project and there is no need for an engineering stamp for the remaining portions.

Sara Sexe, City Attorney, #2 Park Drive South, said that with regard to the burden of proof, the reference in the Municipal Code indicates that in instances where an applicant appeals an administrative decision to the Board of Adjustment, the administrative unit or department making said decision has the burden of proof to show that the decision is consistent with the Title (the Municipal Code). She said the Municipal Code of the City of Great Falls has adopted the International Building Code (IBC), as has Montana Code. The IBC indicates, at 107.3.4, that when it is required that documents be prepared by a registered design professional, the Building Official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in charge. Montana Code also allows for requiring someone to be the master of the project. She said this has to be a licensed professional.

Ms. Sexe reviewed reasons as to why the design drawings were not accepted by the Building Official. She noted the restrictions on the structural engineering blueprints and the reference to exemptions in Montana Code. She said the exemptions cannot be applied to alterations to a building that affect the structural integrity of the building. This is a ground to ceiling building and not a remodel project, and is a project that deals with structural integrity. She also said that if there had been a design professional in charge, a lot of the issues the applicant has encountered would probably have been avoided.

Mr. Foster asked where in the Code is the information on structural integrity. Ms. Sexe said it is in 37.65.103 subpart 2, subpart a. Mr. Ward asked if a design professional was designated on

the building permit application. Ms. Sexe said there was not. Mr. Ward asked if an owner can waive that, and Ms. Sexe clarified that a Building Official "shall be authorized to require." Mr. Ward asked the basis of the City's decision, and Ms. Sexe said that building officials have to look at the IBC as well as Municipal Code in making determinations and there are multiple factors involved. There were further questions and discussion about exemptions and how it relates to this application.

#### PUBLIC COMMENT

Mr. Harant said he is trying to work with the City and get projects going. He talked about the expense of an architect for smaller projects and the costs to everyone when there are obstacles to moving forward.

Mr. Burow said structural plans that were not stamped was an oversight, and could be red-lined.

#### BOARD DISCUSSION AND ACTION

Chair Ward called for a motion prior to discussion. He asked staff if the decision must be unanimous, and Ms. Sexe quoted City Code and said that a minimum vote of four members of the Board is required to overturn in whole or part an administrative interpretation or decision.

Ms. Martin said she did not think Mr. Raymond made his determination based on the type of business involved. There was discussion about stamping the design.

MOTION: Based upon the evidence presented at the Public Hearing, including the Staff Report with attachments, the Building Official was correct in his determination that non-exempt projects shall be prepared under the supervision of and sealed by a responsible, registered design professional in charge. Therefore I move that the determination of the Building Official be affirmed.

Made by: Ms. Martin

There was no second on the motion.

There were questions and discussion about how a vote would affect this appeal. Mr. Meade said that they would like it for the record, if nothing else, for a burden of proof. There was lengthy discussion about whether or not this project is exempt from having a licensed design professional and what constitutes an exempt project.

Mr. Foster motioned to table the discussion. There was no second.

MOTION: Based upon the evidence presented at the Public Hearing, including the Staff Report with attachments, the Building Official was correct in his determination that this project should have been prepared under the supervision of and sealed by a responsible, registered design professional in charge. Therefore I move that the determination of the Building Official be affirmed.

Made by: Mr. Peterson  
Second: Ms. Martin

VOTE: Two members (Ms. Martin and Mr. Peterson) voted in favor and two (Mr. Foster and Mr. Ward) were opposed to this motion. The motion did not pass.

MOTION: Based upon the evidence presented at the Public Hearing, including the Staff Report with attachments, the Building Official was correct in his determination that the project must be prepared under the supervision of and sealed by a responsible, registered design professional in charge, based on his discretion under the building code and City statutes.

Made by: Mr. Ward  
Second: Mr. Peterson

VOTE: Two members (Ms. Martin and Mr. Peterson) voted in favor and two (Mr. Foster and Mr. Ward) were opposed to this motion. The motion did not pass.

#### PUBLIC COMMENT

There was no public comment.

#### ADJOURNMENT

Mr. Foster moved to adjourn the meeting. Ms. Martin seconded, and Chair Ward adjourned the meeting at 6:32 p.m.