

CITY OF FALLON – BOARD OF ADJUSTMENT
MINUTES
55 West Williams Ave
Fallon, Nevada
July 26, 2023 - 6:00 p.m.

The City Board of Adjustment met on the above date in the Council Chambers, City Hall, 55 West Williams Avenue, Fallon, Nevada.

Present:

Board Member Kim Barrenchea
Board Member Sheila Scholz
Board Member Charlie Arciniega
Board Member Dusty Casey
City Engineer Derek Zimmey
Deputy City Attorney Sean Rowe

The meeting was called to order by Board Member Kim Barrenchea at 6:00 p.m.

Board Member Kim Barrenchea inquired if the agenda had been posted in compliance with NRS requirements.

City Engineer Derek Zimmey advised that the agenda was posted in compliance with the NRS requirements.

Public Comments

Board Member Barrenchea inquired if there were any public comments. She noted that comments are to be general in nature, not relative to any agenda items. No action may be taken on a matter raised under this item until the matter has been specifically included on an agenda as an item upon which action will be taken.

No comments were noted.

Consideration and possible approval of Board of Adjustment meeting minutes for June 15, 2022. (For possible action)

Board Member Charlie Arciniega made a motion to approve the Board of Adjustment meeting minutes for June 15, 2022, without any corrections or additions; seconded by Board Member Sheila Scholz and the motion carried with a 3-0 vote by the Board.

Nomination and Election of Board Chairman. (For possible action)

Board Member Barrenchea said that at the decision of the Board, this item would be tabled for the next meeting.

Consideration and possible approval of an application by Kelli Brothers, 538 Keddie Street (APN #001-029-12), for a variance in an R-1 zone to operate a massage

business out of her home. (For possible action)

Kelli Brothers stated that she has been a massage therapist here in town for just over nine years. My previous location was out on the Reno Highway and it was sold. I moved to a new location, was there for three months and that building was sold so I must move again. I would like to use the spare bedroom in my home to work out of my home. Due to the nature of my business, I have one person at a time. It is very quiet. I have two parking spaces in my driveway and am currently making a third one. I currently have a roommate living in the house with me now, but she is leaving. So, I will only have my personal vehicle and then the other vehicle from my client so I will not be taking up any street parking. I only see clients during business hours and I will not put up a sign or do any advertising outside my home. I don't usually take any new clients but maybe one or two new each year. Most of my clients are ones that I have seen for many years. I am not putting my address on the internet or any other advertising and will only be given out to existing clients.

Board Member Kim Barrence asked what her hours would be.

Kelli Brothers stated that she normally works from 11 am to 6 pm.

Board Member Sheila Scholz stated that she had some concerns. I live close to there but not on Keddie. Keddie is a very busy street and it is a thoroughfare for traffic all the way from Venturacci, all the way down to Taylor and then all the way down to Maine Street. I am concerned about that aspect of it. I have noticed, at times, a lot of cars parked on the street and it's hard for people to get by. If you're saying that you're going to be in the driveway, I am assuming that people can park in your driveway, clients can park in your driveway.

Kelli Brothers affirmed that that is her intention.

Board Member Sheila Scholz stated that she has an overall concern when looking in the packet. I have a letter from a person who lives close to you, up the street a little bit and she is very concerned. She is a long-time Fallonite, longer than I have been here, I think maybe a native, and so I guess I do have a concern about that traffic at times.

Kelli Brothers stated that she only sees about 4 clients in an entire day, if that matters.

Board Member Sheila Scholz stated that the other thing that seems concerning is that once we might approve your situation, then, it makes me worry that everybody thinks that they can do the same thing. I know I am going way ahead forward and it might not even be real but it is something that I have thought about in looking over the packet. Those are my concerns for you and the Board.

Board Member Charlie Arciniega asked how long she has been practicing at her second location.

Kelli Brothers stated that she has been in her current spot since December of 2022 and she was informed in March 2023 that the building was sold. I have until December of 2023 to move out.

Board Member Charlie Arciniega asked if she was still working out of that location.

Kelli Brothers affirmed.

Board Member Charlie Arciniega asked if she had looked for other options for after the expiration of her current location in December.

Kelli Brothers stated that she had looked for other options. A lot of the commercial spaces that are available are way too big of a footprint and I cannot afford that.

Board Member Charlie Arciniega inquired of the City of any other letters or comments from the public. I know that there was a send out, notifying all the neighbors but have there been any other comments from that letter?

City Engineer Derek Zimney stated that he had received several phone calls with

questions but the only one that wanted to make a formal comment was the one that was included in the packet. Most of them had questions as they didn't have her hours and parking situation, since they only received the cover letter that stated that she was applying to the Board. The only person who felt strongly enough to make a comment was Ms. Anne McMillan and her letter is included. We have some neighbors from directly behind her, here tonight. This is everything that has been received to date.

Board Member Kim Barrenchea asked for any public comments.

Nancy Johnson addressed the Board. I am located at 537 Dani Street which is back behind and just a little off from said property. Our concerns are the same things that were stated in the letter included in the packet regarding the traffic and parking. We were concerned about the business hours and I think you nailed those down already. We were wondering what normal business hours those would be? So, those are some of our concerns. As you mentioned, the issue of having, once this happens, that possibility of the neighborhood not being such a quiet residential neighborhood. We already have, across from us, somebody that I don't think has a variance in place, that seems to operate something out of their house and the traffic there definitely impacts us. I am really concerned about those issues. I think that that addresses my concerns whatever the Board decides.

Board Member Kim Barrenchea stated that in the past, every variance that comes in front of them is on a one-to-one basis and they never had anything to do with the other. If you're concerned about overpopulating these businesses in their home, they must come in front of the variance board and they must be looked at as an individual.

Nancy Johnson stated that she understands. I think that it sets precedence with that issue. That is a concern.

Board Member Kim Barrenchea stated that as far we know, and I have been on this board for 20+ years, we have never had a precedence set from one business to another. We treat each business separately. There have been denials before.

Nancy Johnson stated that her concerns had been addressed.

Board Member Dusty Casey inquired about the four (4) patients a day. From 11:00 a.m. to 6:00 p.m. Which days a week do you usually see patients?

Kelli Brothers replied with Monday through Friday. I work one Saturday a month and those hours are from 10:30 am to 2:00 pm.

Board Member Dusty Casey asked about the average appointment time.

Kelli Brothers stated that her appointments are about one hour.

Board Member Dusty Casey asked how she scheduled patients.

Kelli Brothers stated that she schedules each patient with one half hour between clients.

Board Member Dusty Casey asked if she had ever employed any other employees in other locations.

Kelli Brothers stated that she had never employed anyone and does not plan on doing so in the future.

Board Member Dusty Casey reiterated that Ms. Brothers saw roughly four (4) patients a day and the cars won't necessarily overlap due to appointment scheduling. How many parking spots do you have in front of your home? I drove by but it looks you can maybe fit two (2).

Kelli Brothers stated that in her current driveway, she has two (2) spots and is making a third. Directly in front of my house, there are two (2) spots to park. My neighbors do have several vehicles that sometimes come over into my property but that is why I am making the third parking spot in front of my house in the driveway.

Board Member Dusty Casey concluded that she would have five (5) parking spots.

Kelli Brothers agreed with him.

Board Member Charlie Arciniega stated that he understands that a stand-alone facility could be cost prohibitive. Have you explored any options as far as maybe a sublet or something like that? Maybe a back space of somebody's current retail or business location?

Kelli Brothers replied she had. I have been in other people's businesses before, just renting a room but it always came down to issues of noise and the environment being too loud or disruptive for my clients.

Board Member Charlie Arciniega stated that as other Board members have expressed, I too have a concern in a residential neighborhood, having a business set up, and I am not sure that that is something that I would agree with, but that is just where I sit right now.

Board Member Dusty Casey stated he had a question for the City. Are there conditional approvals that we can do as far as she mentioned, no signage, no employees? Can we conditionally approve an application?

Deputy City Attorney Sean Rowe stated that this Board can place conditions on its approval. If you desire to approve this, you will have to find that there are special circumstances that apply. That these circumstances or conditions don't apply equally across the board, across to other properties in that region, and that the granting of the variance is necessary to substantial justice to the applicant but also while it will not result in material damage or prejudice to the other properties that are in the vicinity. If you make those findings that this is appropriate, then you can place conditions as you see fit or necessary to achieve those purposes.

Board Member Sheila Scholz asked how you would handle a complaint from another renter or someone who lives on that street, if they are concerned about it or if something would happen in the future if approved?

Deputy City Attorney Sean Rowe stated that it would depend on what this Board does. If the variance is granted and conditions are placed upon the variance that are then exceeded or violated in any way, then that would be the basis for action taken by the City. Otherwise, if you just grant an open-ended variance or without any special conditions then the City would have little to no ability to rectify that situation as long as the scope of the variance has not been exceeded.

Board Member Sheila Scholz stated that that is a little concerning to her.

Deputy City Attorney Sean Rowe agreed. From the discussion of precedence, that is what you need to be concerned about. If you are granting at home businesses, that have clients, that actually come into the residence for services or retail purposes, then if you are going to grant a variance, you need to tailor it to the circumstance and why you believe it still meets those priorities of the zoning ordinances.

Board Member Sheila Scholz stated that she had one more question. I don't know how relevant this is but I looked at the map that was sent out in our packet and it looks like, to me, that many of those houses, more than not, are renters and the house belongs to someone else, many of whom do not live here. That is a concern to me if the renters were upset with something that you wanted to do and I am hoping that they will talk to you but we don't know if that always happens. I don't know how much the landlords would be available to deal with that if it came down to that. I am assuming that if there were problems, that is who you would address, would be the owner, not the renter, is that correct?

Deputy City Attorney Sean Rowe stated that he believes you could consider the impact on both. The land use regulation is for the benefit of the owners of the property but that also is implicitly runs to anybody renting. This is a residential area, an R-1, the most exclusive zoning that a city or government entity can have so it is the most limited of types of zoning

designations that most zoning codes provide. That said, you do have the authority, as a variance board, and as set forth an ordinance and in Nevada Revised Statutes to vary from that. If you make those specific findings that this is necessary for the applicant and does not negatively affect adjoining parcels.

Board Member Dusty Casey stated that given that it is all circumstantial. Each case, as you mentioned, comes before the Board, and with what we have heard from Ms. Brothers, I don't see a significant impact to the surrounding residents, assuming these conditions as she outlined were not to change. Four cars over the course of seven hours, and I completely understand the neighborhood's concern because if I lived in that neighborhood, I wouldn't want a bunch of cars coming in and out of there either. Given these circumstances, I don't really see the impact. We have somebody who is trying to make a living and I understand her circumstances, trying to find a place suitable in town. It is a small town and it is tough. I would be okay with a conditional approval. I have some conditions outlined but they would be things like no staff, no double booking, the hours that were outlined, and no overlapping patients. Maybe I am getting too detailed but with the schedule that you have outlined, if that schedule was met, I don't have a problem with it. I would be concerned if you wanted to have signage, possibly hire staff in the future or sublet a room to another therapist and then there are more clients, etcetera, because that would be a major disruption to the neighborhood, given what you have said, I don't see an impact, personally.

Board Member Sheila Scholz asked Ms. Brothers if she had spoken with her neighbors about this prospect.

Kelli Brothers said she had not directly approached her neighbors.

Board Member Sheila Scholz stated that she had concerns. I live close to that neighborhood; I am not affected by it. I walk down Keddie Street almost every day. I really do have some pretty serious concerns about that road being used as much as it is for cars and stuff and then as well as walking. Obviously, I walk on the sidewalks. I would hate to set a precedent of something like this in R-1, that is one of the best areas to live in. I would never want that to go away, even though a lot of the people there are renting, I have never seen any problems around there, except for the traffic can get rough sometimes. I would hate to see that part of the neighborhood change.

Board Member Dusty Casey asked Deputy City Attorney Sean Rowe what the exceptions were to R-1 zoning, outside of a school and certain things like that.

Deputy City Attorney Sean Rowe stated that he would look up the zoning ordinance for R-1, single family residence. It can be a single-family dwelling of a permanent nature. Public parks, playgrounds, Parochial schools, or other public uses but not a sanitorium or hospital, importantly. Accessory uses customarily an incident to those other uses when located on the same lot and providing that they are not closer than fifteen (15) feet to a main building. Furthermore, zoning does permit an additional single-family dwelling provided that it is not less than the required lot area. There is a minimum square footage on the lots. Some R-1 lots even permit two (2) dwelling units given that the lot is of significant and adequate size to work within the structure of the ordinance.

Board Member Charlie Arciniega questioned the Board if outlined criteria were provided for Ms. Brothers or if the motion would have to be specific for the record.?

Deputy City Attorney Sean Rowe stated that for the record, he believes that Dusty Casey's articulation, that he previously made, sounds like the start of a motion. If he wants to make a motion and include what proposed criteria he would require, that will help staff in generating any kind of minutes of orders or findings necessary to approve this item.

Board Member Charlie Arciniega stated that due to High Desert Massage currently

having a physical location, he would like to suggest that, if there is a motion made, the variance would not take effect until after the termination of High Desert's current lease. Do you currently have a lease?

Kelli Brothers replied that she does have a lease. That is why I was allowed to stay. Everybody else in the building got kicked out, as of April.

Board Member Charlie Arciniega stated that he would recommend that if someone were to make a motion, that would be when the variance would begin, upon termination of the current lease. You said four (4) people a day? Up to four (4)? Is that a fixed number?

Kelli Brothers stated that that is her average number of clients per day. Today, I only had three (3) clients because one (1) was a longer appointment. Occasionally, I have five (5) clients but not very often because it is hard on me.

Board Member Charlie Arciniega asked if up to four (4) would be satisfactory.

Kelli Brothers stated if that is the requirement, she will make that work.

Board Member Charlie Arciniega asked for clarification on the hours of business.

Kelli Brothers stated that most days I start at 12:00 p.m. but on Thursdays, I start an hour earlier.

Board Member Charlie Arciniega stated that he is trying to nail down any kind of particulars. Monday through Friday, including one (1) Saturday per month. I would really like to see you continue to look for a location outside of your home as it is an R-1 zone. You can conduct your business in a commercial zone or in a business setting.

Board Member Kim Barrenchea stated that she has lived in an R-1 zone commercial building and it has not affected anyone on the block. It has been there since 1998, and I know that people can run those types of businesses, and this is a big business, compared to what she wants to do. Now, they did put restrictions on that business and they followed it pretty good. So, I suggest that we go ahead and put some restrictions on this and give her a shot and approve it. I have been living on that street since 1990, and they have been there since 1998, and I have not a problem with them and they live right next door to me.

Deputy City Attorney Sean Rowe stated that it is the pleasure of the board to approve or deny this and to place whatever conditions that you articulate or see fit to preserve the integrity of that neighborhood.

Board Member Sheila Scholz asked what the protocol would be. Let's just say that some of those conditions, that we might look at tonight, and they were not followed, do we have any recourse to that if we have approved that?

Deputy City Attorney Sean Rowe stated that it would certainly result in revocation of the Board's decision.

Board Member Sheila Scholz inquired about the people who are currently living in the affected houses. Again, most of these houses are rentals, they are not the property owner, would they be convoluted to do that? I am thinking that the property owner would have to be involved in that at some point and from what I saw, most of the property owners are not here as they are elsewhere. I just really want to make sure that... I am sorry, I don't mean to discredit you in any way, I just think in R-1, we want to be careful. I have had a couple of my neighbors, who know that I sit on this Board, talk to me about this and they are very concerned too. I am not going to mention names or anything like that but we are all there.

Deputy City Attorney Sean Rowe stated that violation of the conditions would be the same as any violation of the City's Zoning Ordinance that is declared a public nuisance and the City can take action without it even coming before this Board. If somebody could bring a request for this Board to hear this item, it really shouldn't arise to that because the city can enforce the Zoning Ordinance. The City Engineer, who is here tonight, is primarily

responsible for tasks with those kinds of responsibilities and he and his successors and office would be similarly able to enforce that.

Board Member Dusty Casey stated that because it is a business, could part of that action be revoking the business license or suspending it?

Deputy City Attorney Sean Rowe stated yes, certainly.

Board Member Dusty Casey motioned, to approve the application by Kelli Brothers, 538 Keddie Street, (APN #001-029-12) for a variance in an R-1 Zone to operate a massage business out of her home with the following conditions: based on hours of 11:00 a.m. to 6:00 p.m., Monday through Friday, and one (1) Saturday per month. No staffing allowed. No on-site advertising. No sub-letting to other businesses, therapists, etc. No overlapping of patients.

Board Member Charlie Arciniega asked if this motion would include not activating this variance until the current lease is up at her current present location.

Board Member Dusty Casey stated that he would agree to that.

Deputy City Attorney Sean Rowe asked if there was a second.

Board Member Kim Barrenchea asked if there was a second.

Deputy City Attorney Sean Rowe stated that the Chair could second the motion and that there would need to be three (3) votes in favor for approval.

Board Member Dusty Casey stated that we can entertain anything but we would have to have a discussion on the record.

Board Member Kim Barrenchea stated we should table this issue for a few months and maybe revisit it at that time. This would also afford us the opportunity to have a full board.

Board Member Dusty Casey proposed that if revisited, for fairness to the applicant, the Board should set a meeting time and assure Ms. Brothers that the Board will address this again. What we would like her to come back to us with is if there are any conditions that might change our discussion. This may include her showing us that she has applied to other places, if that makes the committee feel better. I just think we need to outline that for her.

Board Member Sheila Scholz stated that it would make her feel better to have a list of people that she has tried to rent from, and was not able to, and came to a point where nothing was available. That might help me be more willing to approve this right now.

Board Member Kim Barrenchea asked Ms. Brothers to get some statements from her neighbors stating that they are okay with your endeavor. That would help tremendously.

Board Member Sheila Scholz agreed.

Board Member Dusty Casey added that he agreed also. If you can get some support from the neighborhood as well and explain to them your hours and what we have discussed here today to help conditionally approve this.

Board Member Kim Barrenchea asked if we could set another date for her to reappear.

Deputy City Attorney Sean Rowe agreed, this could be tabled. If the Board has preference on a day, you can discuss what days you are available and then formally table this to that date and we will call a continued agenda for that day.

Board Member Dusty Casey said he would propose two months. This would put us out at the end of September or the first part of October. That way, if this Board doesn't approve it, she still has time remaining on her lease to make other arrangements.

Board Member Sheila Scholz stated that she will be out-of-town toward the very end of October, so if we wanted to do that and get it done, I would be okay with that. My daughter is getting married at the end of October in Texas.

City Engineer stated that Deb and I will put together a list of dates in September and October. We will get everyone's availability, notify the neighborhood appropriately, preferably having all five (5) Board members in attendance, and we will shoot for

September/October. It is tough to pick a date on the spot, so we are happy to do that. Traditionally, Variance Board Meetings have been held on Wednesday nights so, if that is not possible, they can be held at any time.

Deputy City Attorney Sean Rowe made comment that it is certainly not set by ordinance.

No further comments were noted.

Board Member Charlie Arciniega stated that he agreed with Derek and Deb setting some dates and sending them out to us. I move to table this agenda item until an as-yet-to-be-determined date; seconded by Dusty Casey and the motion was approved on a 3-0 vote by Board.

Public Comments

Board Member Barrenchea inquired if there were any public comments.
No comments were noted.

Adjournment

There being no further business to come before the Board of Adjustment, Board Member Kim Barrenchea adjourned the meeting at 6:39 p.m.

Board Member Kim Barrenchea

Attest: _____
Derek Zimney, City Engineer