

## **NOTICE OF DECISION OF THE PANORA ZONING BOARD OF ADJUSTMENT**

On October 21<sup>st</sup> at 5:30 P.M., a duly noticed meeting of the Panora Zoning Board of Adjustment, there appeared Shelia Allen of 620 W Main Street, with Andrew Wicket and Ross Norem speaking on her behalf, seeking a variance to chapter 165.40 (4A) Supplementary District Regulations, Accessory Buildings: No accessory building may be erected in any required front yard and no separate accessory building may be erected within five (5) feet of a main building. In addition, Allen was requesting a variance to the setbacks in chapter 165.22 (7) Agricultural District (AG), Bulk Regulations: Minimum front yard setback of 40 feet and side yard setback of 25 feet. Ms. Allen requested to build a detached garage with the proposed front yard setback of 23 feet and a side yard setback of 6-7 feet. In addition, there appeared Mitchell and Abigail Kearns of 823 E Main Street, seeking a variance to chapter 165.40 (5) Supplementary District Regulations, Fences: Fences or hedges up to four (4) feet high above grade may be located on any remaining part of a lot. Fences or hedges up to six (6) feet high above grade may be erected in the rear yard or side yard of any lot. The Kearns were requesting to keep an 8-foot fence that was installed prior to a permit being obtained.

A variance is an approval of the size of a lot, or the size or location of a building or structure, that does not meet the requirements of the Panora Zoning Ordinance. It does not change the Ordinance itself, but changes how it applies to a specific property. The Board of Adjustment is authorized to grant a variance if they find that, because of some unusual and unique characteristic of a property, a strict application of the Zoning Ordinance would result in a hardship so severe for the owner that it would be almost the same as taking the property. The Board may not grant a variance that is contrary to the purpose of the Zoning Ordinance.

Before a variance can be granted, the applicant must show the zoning regulations “actually prohibit or unreasonably restrict” the use of the property. In other words, it must be impossible or unreasonable to use the property without a variance. Mere convenience, or a desire to maximize profit does not justify a variance. Furthermore, if the applicant caused the hardship, or was aware of it when they purchased the property, a variance is not justified. Before a variance can be granted, the Board must find beyond a reasonable doubt that all of the following conditions exist:

- (1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district; and
- (2) That such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district in the vicinity; and
- (3) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the ordinance or the public interest.

A copy of the applications for variance submitted by Allen and the Kearns are attached hereto.

In regards to the Allen variance request, after hearing comments from all parties present and considering staff's recommendation, Fitzgerald made a motion to table the request, subject to further review, seconded by Wood. With the roll being called by Chairperson Humphreys, the following members voted aye: Fitzgerald, Humphreys, Olson, Wood. Campbell was absent from the proceedings. A follow-up meeting was scheduled on October 28<sup>th</sup> at 5:00 p.m. to render a decision on the request.

In regards to the Kearns variance request, based upon the variance application submitted, and the comments provided at the meeting, the Board makes the following findings of fact:

1. The grading of 819 W Main, located west of the Kearns property was built up to a height that does not generally exist for a neighboring property in this zoning district with the construction of Dollar General.
2. In order to address the grading, an 8-foot fence is needed to maintain the privacy afforded by said fence in the side and rear yard of the property.
3. The property owner at 819 W Main is supportive of the 8-foot-high fence and it would not be contrary to the public interest while still maintaining the purpose of the ordinance.

As a result of the above findings of fact, documentation, and testimony, the Board concludes:

DECISION: It is the decision of the Panora Zoning Board of Adjustment on a motion by Fitzgerald, second by Olson, and a unanimous vote of the members present that the application for variance submitted by Mitchell and Abigail Kearns is approved in part and denied in part as follows:

1. The application is approved with regards to the fence located in the side and rear yard of the west property line, which may remain at the current height of 8 feet.
2. The application is denied with regards to the fence located in the front yard, which must comply with the zoning ordinance and therefore must be a maximum of 4 feet in height.

By: \_\_\_\_\_  
Mark Humphreys, Chairperson