

**WHITEFISH BOARD OF ADJUSTMENT
MINUTES
JANUARY 5, 2016**

- A. Call to order and roll call:** The meeting was called to order at 6:00 p.m. Members present were Herb Peschel, Josh Akey, Brandon Jacobson, Mike Kelley, Steve Qunell and Planner II Bailey Minnich.
- B. Appointment of Chair and Vice-Chair:** Mike Kelley made a motion second by Brandon Jacobson to keep Herb Peschel as Chair and Josh Akey as Vice-Chair. The motion passed unanimously.
- C. Communications from the Public:** (This time is set aside for the public to comment on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The chair has the option of limiting such communications depending on the number of citizens who want to comment and the length of the meeting agenda.) No Public Comment
- D. Approval of the Board of Adjustment Minutes of the September 1, 2015 meeting:** Mike Kelley made a motion, second by Josh Akey to approve the September 1, 2105 Board of Adjustment minutes. The motion passed unanimously.
- E. Old Business:** none
- F. Public Hearings:**
- a. A variance request by Whitefish Hotel Group to construct the elevator shaft on the Block 46 Hotel an additional 18 inches above the 45 feet height limitation of the WB-3 zoning, for a maximum height of 46 feet 6 inches. The property is located at 650 E. 3rd St. (WZV 15-05)**

Planner II Bailey Minnich gave the staff report. The applicant is requesting a variance from the maximum building height to construct an elevator shaft. The property is located at 650 E. 3rd Street and is zoned WB-3 (General Business District). The maximum building height in WB-3 is 45 feet with certain exemptions including elevator shafts. Elevator shafts are not included as structures.

Staff brought this issue up during the Conditional Use Permit process of the conflicting maximum building height and was to be verified at the time of the building permit. During review staff overlooked the overall building height as shown on the plans as approximately 48 feet. It was discovered on-site construction that the height was actually closer to 50 feet. The property owner was then contacted. No other adjustments to the design of the building are possible, the smallest variance requested in order to accommodate an elevator to the roof to allow for public access is 46 feet 6 inches, which the applicant is requesting.

A legal was placed in the paper on December 16, 2015 and land owners within 150-feet were notified on December 11, 2015. At the time of the report no comments have been received. The Whitefish Hotel has been approved through a Conditional Use Permit (CUP) for a roof top a

patio. The Fire Department stated an elevator with emergency medical ambulance cot must be required for public access to the roof.

The applicant is requesting a variance to extend the elevator shaft to a maximum of 46 feet, 6 inches. Staff finds no evidence that a similar application has ever been requested within the WB-3 district. It does appear that other buildings in the downtown have features that exceed the maximum height of 45 feet.

The request is to the overall building height including the proposed elevator shaft. The access to the roof-top patio needs to be made ADA compatible and allow emergency personnel to reach the area. The ground is relatively flat and other businesses within the WB-3 have features that exceed 45 feet building height.

The applicant is not claiming economic hardship. The hotel was approved to design through a CUP. Staff recommends approval of the variance request.

Steve Qunell asked and Bailey reported The Galleries is less than 45 feet, 22 Lupfer does not have an elevator but are less than 45 feet, and the City Hall is 44 feet 9 ¾ inches. Casey's is at 46 feet which are on the actual plans.

PUBLIC HEARING

Aaron Walsh with Montana Creative is the architect for this project. This was an oversight with not only himself but also the City staff. During the process they had gone out to the elevator manufacturer for the type of height requirements needed for the elevator, which came back as 48 feet 9 inches which was shown in the plans throughout the design process. Once in construction the bidding process went out and came back with a different manufacture that had required a different height to 50 feet 11 inches.

Herb asked and Aaron said during the drawing process, he drew the plans to 48 feet 9 inch height, did not catch the clause restricting down to 45 feet for this zone including stairway towers and elevator shafts. A certain height requirement is needed for elevators for crush area above an elevator cab, there is certain hoist cable beam above that and structure of building above that. There is no commercial elevator that can meet that height requirement that meets all applicable codes.

The elevator shaft was built at 50 feet 11 inches, and they were not happy of what it looked like from design aesthetics, and at this point Bailey notified Aaron of the clause. The best way to handle this is to go through a variance process.

At the point of applying for the variance, they went back to all of the elevator manufacturers. They went with a different elevator manufacture and were able to get the height as low as it can go. Aaron applied for 46 feet 6 inches, but unfortunately they cannot meet that height and are now at 46 feet 11 inches. Aaron feels the visual impact of the 1 foot 11 inch height is very minimal at this point.

Mike Kelley asked and Aaron stated that if this is declined the hotel will not have public access to the roof top patio. ADA rules state that you have to provide similar type uses at all locations.

The hotel does not have a large outside space that somebody in a wheel chair can access. The area on the roof would not become accessible. Because of the space given up for the CUP requirements, they felt the roof would be a viable space to allow gatherings other than inside.

Brandon Jacobson asked and Aaron said if this would have been caught in the design process they would have applied for a Planned Unit Development process rather than a CUP because of the height restriction and the difficulty of designing an elevator to meet the requirements. Aaron doesn't know of a design method now to change the design of the building to meet the requirement.

Steve asked and Aaron stated the final is 46 feet 11 1/8 inches which includes the top cap. Aaron stated that this is being built according to the different manufacture drawings. Steve asked Aaron stated that elevators have a certain height requirement that we have no control over. In the review process they did not consider the roof top patio another floor, there is no other built element on the roof.

Jeff Biddel represents the Whitefish Hotel owners group and stated they had received letters from Schindler Elevator stating there is no commercially approved elevator that can meet the requirements of 45 feet. Otis Elevator came back with what is being proposed at 46 feet 11 inches. Every effort has been made.

Dan Cutforth, 224 Spokane Avenue, owner of The Downtowner Inn, was present because he was interested in how this situation was going to be handled. He stated he doesn't know the solution; but it looks like the town is going to have look at changing the zoning conditions.

Herb Peschel made a motion second by Mike Kelley to approve the variance request WZV 15-05 by Whitefish Hotel Group to construct the elevator shaft for the maximum height of 46 feet 11 inches located at 650 East 3rd Street. The motion passed unanimously.

G. New Business- none

H. Good and Welfare

- a. **Matters from the Board-** The Board would like to welcome Steve Qunell to the committee. Steve stated that this is something to look at regarding the elevator height. Josh asked and Bailey stated that she and Wendy are looking at doing a text amendment to include this clause to the beginning section to restrictions to building heights and in multiple locations in the code. Bailey stated that elevations are not given during the CUP process only at the building permit process.

b. Matter from staff

I. Adjournment: Herb adjourned the meeting at 6:44 p.m.