

**CITY BOARD OF ADJUSTMENT**

MINUTES: January 7, 2015

Name	Title	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15
Jeff Bollman	Chairman	1											
James Olson	Board member	1											
Paul Hagen	Vice Chair	1											
Frank Chesarek	Board member	1											
Matthew McDonnell	Board member	1											
Martin Connell	Board member	1											
Mark Noennig	Board member	1											

TOTAL NUMBER OF APPLICATIONS 2015	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15	TOTAL
Variance	1												1

Chairman Bollman called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3<sup>rd</sup> Avenue North.

Chairman Bollman asked Zoning Coordinator Nicole Cromwell to introduce the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Dave Green, Planner I, and Tammy Deines, Planning Clerk.

**Others in Attendance:** Jamie Eisenbarth, applicant

**Public Comment**

Chairman Bollman opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There was none. Chairman Bollman closed the public comment period.

**Approval of the December 3, 2014 Meeting Minutes**

Chairman Bollman called for approval of the December 3, 2015 minutes.

**Board member Connell made a motion and Board member Hagen seconded to approve the December 3, 2014 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote, 7-0.**

### **Disclosure of Conflict of Interest**

Chairman Bollman asked for disclosures of conflict of interest. There was none.

### **Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum. Staff received the following communications:

- 12/29/14 Memo from Jeffrey Griffin and Amy Drought, 2211 Oak Street, Billings, Montana in opposition to City Variance #1206.
- 12/28/14 Letter from Brian & Molly Harrington, 501 Chancery Lane, Billings, Montana in favor of City Variance #1206.

### **Public Hearings**

Chairman Bollman stated the Board will open a public hearing and allow public comment this evening. Ms. Cromwell reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. She stated four votes of the Board of Adjustment are required to pass a variance. This evening there are 7 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1206 and presented the Board with the staff report for this request.

**Item #1 Variance #1206 – 2222 Virginia Lane – Rear Setback** - A variance from 27-308 requiring a minimum rear setback of 20 feet to allow a rear setback of 7 feet for a proposed addition and attached garage on Lot 8, Blackacre Subdivision, a 15,500 square foot parcel of land. Tax ID: A03137C.

### **REQUEST**

**The applicant is requesting a variance from 27-308 requiring a minimum rear setback of 20 feet to allow a rear setback of 7 feet and 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 34% for a proposed addition and attached garage on Lot 8, Blackacre Subdivision, a 15,500 square foot parcel of land. Tax ID: A03137C. Jamey Eisenbarth and Donald Christiansen are the owners.**

### **RECOMMENDATION**

Staff recommends Denial of the variance request to increase lot coverage to 34% and decrease the required rear yard setback from 20 feet to 7 feet. Planning staff has reviewed this variance and is forwarding a recommendation of denial of the request to increase lot coverage and reduce the rear setback for an addition to the existing house based on the criteria for variances as presented within this report. Staff finds that the proposed variance request does not meet the criteria for a variance. There is no hardship other than one created by the owner and building designer. The lot is not large enough to accommodate the proposed addition and attached garages. The applicant states it will be difficult to market the house in the future without a two car garage. Future resale of a house is not a criterion for hardship in the criteria for a variance. The staff did not find other property in the area with similar or comparable setback or lot coverage exceedances with 1 exception, the property on Spruce Street. Granting the variance as requested would confer on this applicant a special privilege denied to other owners in the area.

Staff is recommending denial for this variance; however should the Board of Adjustment grant the variance staff is recommending the following conditions for the increase of lot coverage and the reduction in rear setback:

1. The variance is to increase the minimum lot coverage from 30% to 34% for a proposed addition to an existing home and to reduce the required rear setback from 20 feet to 7 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 8, Blackacre Subdivision, 2<sup>nd</sup> Filing generally located at 2222 Virginia Lane.
3. The small shed visible on the aerial view picture must be removed from the property as it was not included in the 34% lot coverage request.
5. The owner will submit a building permit application within 1.5 years of Board of Adjustment approval and complete the construction within 3 years of Board of Adjustment approval.
6. Failure to begin or complete the approved actions on the variance will void the approved variance.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Dave Green said applicant Jamie Eisenbarth has made some revisions to the original proposal is available for a presentation. Staff has not reviewed the revised proposal for this application.

### **Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. Board member Connell asked if the change in plans has changed Staff's recommendation, and Dave Green replied he has not had enough time to review the new plans. Board member Connell asked if this request should be tabled to allow staff time to revisit this submittal. Chairman Bollman suggested keeping holding the public hearing and taking testimony and continuing it until the next meeting. In response to a question by Board member Hagen, Dave Green stated there was a variance granted on this property in 2012. Board member Chesarek asked what was eliminated in the plan to create the 7 feet. Dave Green deferred this question to the applicant, who said the new plan has reduced the lot coverage overage considerably.

### **Public Hearing**

At 6:18 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1206.

### **Proponents**

#### **Jamey Eisenbarth, 2222 Virginia Lane, Billings, Montana**

Mr. Eisenbarth is the property owner. He distributed a new site plan to the members of the Board along with an e-mail from their architect. He said the new plan is at about 32% lot coverage. The west side of the property does not have an alley so 12-ft garage doors are needed to keep the turning radius. Mr. Eisenbarth stated the west facing neighbor said they are in agreement with the proposal if they don't have any more setback than they already have. He explained the new plan pushes the garage in to 7-ft setback and they removed the second story above the garage. Mr. Eisenbart stated he is asking to keep the garage consistent with the current garage and requesting an additional 2% in lot coverage.

### Discussion

Board member Connell asked if they have considered a single garage door. Mr. Eisenbarth said they have made several considerations but the new plan is definitely livable. He clarified and said the second story living space has been reduced and it will not be within the setback. Board member Chesarek asked if the shed will be removed. Mr. Eisenbarth replied the shed will remain as it contains the pool equipment. He said they love the location and are trying to stay in keeping with the neighborhood.

Board member Olson asked Planner Green to clarify the primary objection to the new plan. Dave Green stated they haven't reviewed the new plan but he thinks in this instance staff would recommend approval. He pointed out the deck areas are open to the outside which is living outdoor space; and the neighbors are in agreement and have submitted a letter of approval for the second variance. He stated there is no hardship of the land but the angle of the lot could be considered.

Zoning Coordinator Cromwell said staff's thought was to consider the entire neighborhood to find something similar. The previous variance was granted to reduce the lot area for an additional dwelling unit which is contributing to the overage. She said the applicant's only alternative is to purchase property from the adjacent owner to accommodate the plan. The hardship is an unusual access to the property and the lot size. In response to a question by Board member Noennig, Dave Green stated the new plan would have 32.5% lot coverage which is a reduction of 300 square feet from the original request. He said he saw seen the plans but has not had the opportunity to discuss the proposal with the architect. Board member Noennig suggested postponement of a decision until the next meeting to allow the applicant to put the new design into a formal request.

### Opponents

Chairman Bollman called for opponents of City Variance #1206. There was none. Chairman Bollman closed the public hearing, and called for a motion.

### Motion

**Board member Noennig made a motion and it was seconded by Board member Connell to continue the public hearing for City Variance #1206 until the February 4, 2015 meeting to allow to allow the applicant to put the new design into a formal request and allow staff to make a recommendation.**

### Discussion

Chairman Bollman called for discussion on the motion. The Board asked how the applicant feels about this proposal. Mr. Eisenbarth stated he expected this answer. He stated if the request is approved, he intends to break ground in April. He said he will not do the project if the request is denied. Board member Connell commended Mr. Eisenbarth for talking to the neighbors about his proposal. Board member Chesarek stated based on staff's comments, he would entertain a substitute motion for approval of the variance.

### Motion

**Board member Chesarek made a substitute motion and Matthew McDonnell seconded the motion stating based on considerations presented on the new plan and staff's opinion to conditionally approve the alternate plan submitted by the applicant which would be 32.5 percent lot coverage and for a rear setback of 14 feet and include the conditions as follows:**

1. The variance is to increase the minimum lot coverage from 30% to 32.5% for a proposed addition to an existing home and to reduce the required rear setback from 20 feet to 14 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 8, Blackacre Subdivision, 2nd Filing generally located at 2222 Virginia Lane.
3. The owner will submit a building permit application within 1.5 years of Board of Adjustment approval and complete the construction within 3 years of Board of Adjustment approval.
4. Failure to begin or complete the approved actions on the variance will void the approved variance.
5. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

**Discussion**

Board member Olson voiced concern with the Board making a decision without the final staff recommendation. Zoning Coordinator Cromwell stated the record of findings is sufficient with the meeting minutes and recording. Board member Bollman stated he comfortable with the new plan as there is a lot of open air and the proposal is not out of character with the homes in the neighborhood.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

**The motion passed 7-0. City Variance #1206 is conditionally approved.**

**Discussion**

Chairman Bollman asked the members of the Board for questions and discussion on the motion. There was none.

**Other Business/Announcements:**

- The next City Board of Adjustment meeting will be held on **Wednesday, February 4, 2015.**
- Election of Officers for the 2015 City Board of Adjustment

**Motion**

**Board member Connell made a motion and it was seconded by Board member Noennig to nominate Jeff Bollman to serve as the City Board of Adjustment President for the 2015 term. Board member Hagen made a motion and it was seconded by Board member Connell to nominate Matthew McDonnell to serve as the City Board of Adjustment Vice President for the 2015 term.**

**The motion carried with a unanimous voice vote.**

- Agenda Quick: Nicole Cromwell gave a brief over of the Agenda Quick software currently used by the City Clerk for City Council agendas and minutes. She stated staff is working with the software developer and the City Clerk to move forward with a similar process for the Zoning Boards and Commissions.

Adjournment: 6:45 p.m.

**ATTEST: DRAFT to be approved on February 4, 2015**

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**Jeff Bollman, Chairman**

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**Tamara L. Deines, Planning Clerk**