



Yellowstone County Board of Adjustment

Minutes

February 12, 2015

The County Board of Adjustment met on Thursday, February 12, 2015 in the 1st Floor Conference Room, of the Miller Building located at 2925 3rd Avenue North. Chairperson Hecker called the meeting to order at 4:00 p.m.

Name	Title	02/12/2015												
Bruce Reiersen	Board member	E												
Carlotta Hecker	Chairperson	1												
Delores Terpstra	Board member	1												
Robert Bailey	Vice Chairperson	1												
VACANT		-												

Chairperson Hecker introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Dave Green, Planner I; Tammy Deines, Planning Clerk.

Attending: Commissioner John Ostlund; Commissioner Jim Reno; Jeff Isom

Public Comments

Chairperson Hecker opened the public comment portion of the meeting and asked if anyone wished to speak on an item not on today’s agenda. There was none. Chairperson Hecker closed the public comment portion of the meeting.

Approval of Minutes: December 11, 2014

Motion

Board member Terpstra made a motion and it was seconded by Board member Bailey to approve the December 11, 2014 minutes with a correction to denote Board member Reiersen making the motion instead of Board member Bailey. The motion carried with a unanimous voice vote.

PUBLIC HEARINGS:

Chairperson Hecker read the determinations for granting a variance and Zoning Coordinator Nicole Cromwell reviewed the rules for the procedure by for conducting public hearings. Nicole Cromwell noted a correction to the agenda sequencing. She stated Commissioner Reno has requested the agenda be reordered for the Board to consider County Variance #272 prior to County Variance #271 due to an impending meeting this evening. Chairperson Hecker granted this request with concurrence from the Board.

Nicole Cromwell read the legal description and reviewed the staff report with a PowerPoint presentation for the audience.

Item #1. County Variance #272-1011 Brandywine Lane-Detached Accessory Building

A variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence. The proposed detached garage on Tract 1B will be owned by the property owner directly west at 2821 Saratoga Trail. Tax ID: D05023 & D05023A (pending).

REQUEST

This is a variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence. The proposed detached garage on Tract 1B will be owned by the property owner directly west at 2821 Saratoga Trail. Tax ID: D05023 & D05023A (pending), Larry and Kathy Vaira owners Tract 1A, Jeff Isom and Cindy Taul owners Tract 1B.

The Planning Division is forwarding a recommendation of Denial.

REASONS

This is a request for a variance from Section 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence.

The two property owners have requested this variance to be able to construct a 3,200 square foot storage building on each lot. In the zoning code definitions they define a 'Principal Use' and 'Accessory'. The different uses are based on the zoning. This property is zoned Residential 9600.

Staff is recommending denial of the variance, however should the County Board of Adjustment approve the variance staff would recommend the following conditions of approval:

1. A variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96). A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residences. No other variance is intended or implied by this approval.
2. The variance is limited to Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane.
3. A principal building, residence, must be constructed within 5 years of this variance approval on both Tracts 1A and 1B, C/S 3240.
4. The owners of Lot 1A, Block 5, generally located at 2821 Saratoga Trail, Jeff Isom and Cindy Taul owners, could as an alternative to Condition 3 aggregate the lot they currently

have a house on with the tract of land to make one lot which would give them a principal use on the 'new' lot. Then construct an additional detached structure of 1,400 square feet to give them a maximum of 3,200 square feet as requested in the variance. The aggregation would need to be done within 2 years of approval of the variance.

5. The use of the new accessory building will be limited to the personal use of the property owners.
6. No construction will take place before 7 am or after 8 pm.
7. Failure to begin or complete actions by the time specified will void the variance granted.
8. 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

Chairperson Hecker asked the Board for questions and discussion. In response to a question by Chairperson Hecker, Dave Green stated there is not another road exiting from the rear of this parcel; and neither parcel has a house although there are existing utilities. Chairperson Hecker pointed out the proposed garage would have to be placed in the center of the lot.

Public Hearing

Chairperson Hecker opened the Public Hearing and asked if anyone would like to speak in favor or against Yellowstone County Variance #272.

Jeff Isom, 2821 Saratoga Trail, Billings, Montana

Mr. Isom said initially C/S 3240 was one parcel. The owner attempted to build a house but the basement digging filled with water from sub irrigation. He said the parcel is unbuildable due to the high water table and the commercial buffer zone. He stated he understands the R-9600 zoning requirements for detached structures and that even though the lot size would allow for several houses that is not his intent. He would like to build a shop to store their equipment. The Covenants and Restrictions preclude aggregation of the property. He stressed the importance of having drainage available to make the property buildable. He said this parcel should have never been zoned R-9600 but it was done so to sell the property. He said the neighbors are not opposed to this proposal. Per request of Chairperson Hecker, Mr. Isom explained the irrigation system and flows on this parcel. Board member Bailey asked about the timeframe for rezoning as proposed by staff, and Zoning Coordinator Nicole Cromwell explained the process for a zoning submittal.

Larry Vaira, 2822 Saratoga Trail, Billings, Montana

Mr. Vaira owns the 3.6 acres north of this parcel. He said it has a permit for the septic system; and there is an existing well and a pond. He said the parcel is wet from the groundwater and the previous owner was unable to build a house due to the high water table. He pointed out the berm and piping they installed to address the drainage issues. Mr. Vaira said his long range plans are to build a single level house. He said the neighbors are supportive of this request and he should have encouraged their attendance to voice their support.

Commissioner Jim Reno, PO Box 35000, Billings, Montana 59107

Commissioner Reno thanked the Board members for reordering the agenda to accommodate their request. He commented this Board has an important job and stated that in his role as Commissioner, he listens to the neighbors' testimonies of support. He commended the Chairman for her site visit and thanked the applicant for their work to clean up this parcel as it has alleviated the neighbors' complaints. He disclosed to the Board Mr. Isom built a porch on his home. He said one of the

reasons folks choose to live in the skirted area outside the city is to have big lots for their “stuff”. He said the owner is not trying to squeeze a large building on a small lot as this is a huge lot. The Commissioner said he would hope this Board will give some consideration for a positive recommendation in this case. He said there would be dissenting neighbors if this was a zoning hearing for a commercial zone, and this proposal is “the best of both worlds” as the lots are unbuildable.

Commissioner John Ostlund, PO Box 35000, Billings, Montana 59107

Commissioner Ostlund stated these are large lots with groundwater and irrigation issues. The request for a shop to be used for inside storage is a viable request and he encouraged the Board to give consideration.

Discussion

Board member Bailey asked Mr. Isom if he would be in agreement with the staff recommended Conditions of Approval. Mr. Isom stated he has no intension of building a house on this property as he already has a home. He said this parcel will not percolate for a septic system, and he cannot build it out far enough due to the separation distance. Board member Terpstra asked if he would be willing to rezone the property. Board member Bailey asked for clarification of the definition of “principal building” and it was given by Nicole Cromwell. Mr. Isom stated the neighborhood is not in favor of Community Commercial zoning. Mr. Vaira asked if the rezoning would allow animals. Nicole Cromwell stated livestock is allowed in R-9600 zones within the County if there is enough land area per animal. Mr. Vaira said he has no intention of having livestock. He said the community likes what they have done with the cleanup. He commented that he intends to build a house eventually but does not know if he will get it built within five years. Chairperson Hecker pointed out that at some point this land could be resold and approval of this variance would set a precedent for R-9600 zoning applications. She said the proposal for rezoning made more sense; her concern is that a new owner will do storage and there may not be another way to exit the property without going through the neighborhood. Board member Terpstra asked if a housing structure would be required if the Board approves the rezoning to Agricultural Suburban. Nicole Cromwell stated in this instance, the applicant could build a ship but it would be limited to the size of 3,000 square feet. She explained the application review process for a County zone change and said the Board of County Commissioners will have the final determination. She reminded the Board a unanimous decision is needed for approval of this request as there are only three members attending this evening. She suggested if the Board has concern with a motion for approval and the applicants have expressed hesitation on the alternate Conditions suggested by staff; the Board could modify the Conditions of Approval to state an application for a zone change will be made within a certain time frame. In response to a question by Board member Bailey, Nicole Cromwell stated Agricultural Suburban zoning only requires one acre minimum lot area. Commissioner Ostlund asked for clarification on the allowable detached building size with a recommendation of approval with a condition for a zone change application. Nicole Cromwell stated if the variance is approved for two 3,200 square foot buildings, (one per tract), there would be a Condition of Approval to apply for zone change within a certain time frame instead of a condition to construction a house. This would not preclude the applicant from building a house on the parcel at a future date. Board member Bailey said he prefers the second option to approve the variance with the additional condition the applicant applies for a zone change.

Motion

Board member Bailey made a motion and Board member Terpstra seconded the motion to approve Yellowstone County Variance #271 with the conditions below:

1. A variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96). A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residences. No other variance is intended or implied by this approval.
2. The variance is limited to Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane.
3. The use of the new accessory building will be limited to the personal use of the property owners.
4. The applicants will apply for a zone change to Ag-Suburban in 4 months from the date of the board of adjustment approval date of February 12, 2015.
5. No construction will take place before 7 am or after 8 pm.
6. Failure to begin or complete actions by the time specified will void the variance granted.
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.

The motion carried with a unanimous voice vote.

Item #2: Variance #271 – 527 Klenck Lane – A variance from 27-620(g) 11, requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower in a Heavy Industrial (HI) zone on a 2,252 square foot leased portion on the north end of an unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane. Tax ID: D05451

REQUEST

This is a variance from 27-620(g) 11, requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower in a Heavy Industrial (HI) zone on a 2,252 square foot leased portion on the north end of an unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane. Tax ID: D05451, Marte M Nelson Trust owner, Kevin T Howell, Digital Skylines, Inc. agent representing Verizon Wireless.

Mr. Green stated staff received no letters of objection to this request. The Planning Division is forwarding a recommendation of conditional approval. Staff is recommending conditions of approval as follows:

1. The variance requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower. No other variance is intended or implied by this approval.
2. The variance is limited to unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane.

3. The wireless tower shall be constructed in substantial conformance to the drawings submitted to the planning department with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. The owner will submit a building permit application within 3 years of Board of Adjustment approval and complete the construction within 4 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.

Discussion

Chairperson Hecker asked the Board for questions and discussion. In response to a question by Chairperson Hecker, Dave Green stated the zoning does not allow for housing on this parcel and gave clarification on the locations of nearby towers. Chairperson Hecker ask why the applicant requested a 3-year window. Dave Green explained this will allow the applicant to determine this is the appropriate location for the service they are trying to provide and obtain the appropriate permits. The applicant will lease a portion of this parcel. Board member Terpstra asked if there is any conflict between the towers and applicant Mr. Howell stated there is none.

Public Hearing

Chairperson Hecker opened the Public Hearing and asked if anyone would like to speak in favor or against Yellowstone County Variance #271.

Kevin T Howell, President, Digital Skylines, Inc. Representing Verizon Wireless, 11340 N 105th Place, Scottsdale, Arizona

Mr. Howell represents Verizon Wireless. He said the reasoning for obtaining a location as far north as possible is to serve the southern end of the Heights instead of only serving the freeway. There is no residential in this area and the small piece of this parcel is not large enough for an industrial building. He said this will serve Lockwood and save building another tower in the southern end of the Heights. Mr. Howell said they have peroxided towers to remove the shine from the tower in other areas and would find this as an acceptable Condition of Approval. The Board did not express interest in this suggestion. He said the construction conditions are not a problem as the Verizon maintenance window is 11:00 p.m. to 5:00 a.m.

Chairperson Hecker asked if anyone else would like to speak in favor or against Yellowstone County Variance #271. There was none. Chairperson Hecker called for a motion.

Motion

Board member Terpstra made a motion and Board member Bailey seconded the motion to approve Yellowstone County Variance #271 with the conditions recommended by staff.

The motion carried with a unanimous voice vote.

Other Business

A. Elections for the 2015 officers

Motion

Board member Terpstra made a motion and it was seconded by Board member Bailey to nominate Carlotta Hecker to serve as Chairperson of the Yellowstone County Board of Adjustment for the 2015 term. Board member Terpstra made a motion and it was seconded by Chairperson Hecker to nominate Board member Bailey to serve as Vice Chairman for the Yellowstone County Board of Adjustment for the 2015 term.

The motions carried with a unanimous voice vote.

B. Due to a lack of agenda items, the March 12, 2015 Yellowstone County Board of Adjustment meeting is cancelled.

Adjournment:

The meeting adjourned at 5:10 p.m.

ATTEST:

Chairperson Hecker, Chairperson, Yellowstone County Board of Adjustment



Tamara L Deines, Planning Clerk