

CITY BOARD OF ADJUSTMENT

MINUTES: October 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	1	1	1	1	1	1	-	-	1		
James Olson	Board member	1	E	1	1	1	1	1	-	-	1		
Paul Hagen	Board member	1	1	E	1	E	1	1	-	-	1		
Frank Chesarek	Board member	1	1	1	1	1	1	1	-	-	1		
Matthew McDonnell	Vice Chairman	1	E	1	1	1	1	1	-	-	A		
Martin Connell	Board member	1	1	1	1	1	1	1	-	-	1		
Mark Noennig	Board member	1	1	1	1	1	1	1	-	-	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	2	4	2	2	1	0	0	2			13

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 3rd Avenue North.

Chairman Bollman introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Wyeth Friday, Planning Division Manager; Dave Green, Planner II, and Tamara Deines, Planning Clerk.

Attending: Gina Loos, John Loos, June Richardson, Blake Richardson, Katy Richardson, Chad Torgrimson, Layne Scheveck

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 June 3, 2015 Meeting Minutes

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

Board member Connell made a motion and Board member Hagen seconded to approve the June 3, 2015 meeting minutes with a correction on a motion vote, “7-0”.

The motion carried with a unanimous voice vote, 6-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest.

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

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.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		1		
James Olson		1	Yes-2107 Colton Blvd	
Paul Hagen		1		
Frank Chesarek		1		
Matthew McDonnell				1
Martin Connell		1		
Mark Noennig		1		

Staff received the following communications: Letter dated 9/25/2015 from Donald and Christine Tyler in support of Variance #1219.

Letter dated 9/24/15 from Larry and Dawn Lofthouse in opposition to City Variance #1220. Letter dated 9/28/2015 from Doug and Kathie Haacke in opposition to City Variance #1220. Message dated 9/30/2015 from Ronald & Margaret Sannes in opposition to City Variance #1220. Letter received 9/30/2015 from Shirley Lynde in opposition to City Variance #1220. Letter dated 9/30/2015 from Judie A. Gage in opposition to City Variance #1220. Letter dated 10/01/2015 from Blake and June Richardson in opposition to City Variance #1220. Letter received 10/05/2015 in opposition to City Variance #1220. Letter dated 10/03/2015 from Cynthia Embretson in opposition to City Variance #1220.

Public Hearings

Chairman Bollman reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. He reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. He stated four votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 6 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1216 and presented the Board with the staff report for this request. Staff received one letter in support of this request.

Item #1 City Variance #1219 - 3903 Palisades Park Drive – Fence Height, Dave Green, Planner II – A variance from BMCC Section 27-604 requiring a maximum fence height of 6 feet on the side or rear property line to allow a maximum fence height of 7 feet with an additional 2 feet for an attached pergola on the north property line to replace a damaged 7.5-foot fence in a Residential 9,600 (R-96) zone, on Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing, a 10,195 square foot parcel of land. Tax ID: C03167.

RECOMMENDATION

Staff recommends conditional approval of the variance. Staff is recommending the following conditions for the increased maximum lot coverage variance request:

1. The variance is to increase the maximum fence height from 6 feet to 7 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing generally located at 3903 Palisades Park Drive.
3. Construction of the fence will be in substantial conformance with the submitted site plan and shall meet all other required City regulations, with the exception of this variance for fence height.
4. The applicant will receive a fence permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the fence will be completed within 18 months of Board of Adjustment approval.
5. Construction activity is not to start before 7 am and will end by 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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

Chairman Bollman asked the members of the Board for questions and discussion. Board member Olson asked if the fence would block the southerly view of the property. Dave Green referred to site photographs and pointed out the large trees bordering the property on the opposite site. He explained that this variance is for the side property line to replace a damaged fence to allow a maximum fence height of 7 feet. He clarified and said the height would include the pergola on the top of the fence and could encompass the side or rear fence.

Public Hearing

At 6:15 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1219.

Gina Loos, 3208 Laredo Place, Billings, Montana

Ms. Loos is speaking in opposition to this variance. She has lived at this address for almost 27 years and her backyard abuts this property. She said the application information submitted is incorrect and there is no description of materials. She submitted photos of her yard and the fencing for the Board to review.

Her items of concern include:

- The existing fence is located on her property. A survey was conducted on their yard was surveyed in 1989. The fences put are located almost 2-ft on her property. A survey was conducted in July and it verified the 1989 survey.

- The Sellers had proposed a 6-foot fence but it is 7-feet and the vines have grown making the fence another 3-foot higher. The 84 inches does not include the top of the pergola. There are 10-foot tall poles on her property. They have one of the larger lots and on the bottom of the parcel the fencing looks like a "Great Wall of China".
- The applicant removed the shade trees and she has contacted the Police Department as her yard was torn up.
- If the variance is approved, the fence will block her view. The 7-foot fences are on 9 inches of concrete. She referred to the site photo and explained the topography of her lot.
- She voiced concern with the effect on her property values.
- She is asking the fence be placed on his property. She said they stopped the construction as she contacted the City. She said the pergola will not be at 84".

Discussion

Board member Olson asked if the posts are located where the concrete was poured. Boardmember Chesarek said this request is for a 7-foot fence adjacent to the rolling terrain including the pergola. Dave Green said the 10 foot poles will have to be removed, and the applicant was told to stop construction and obtain a variance. If the variance is denied, the applicant could construct a 6-foot fence on his property. Ms. Loos said she is fine with the 7 foot overall height but it has to be on the applicant's property. Board member Chesarek said this Board does not handle property line disputes.

Dave Green stated the Planning Department will not issue a fence permit if the applicant is proposing to construct it on someone else's property. If the variance is approved, the Code Enforcement Division will follow up on this case to ensure the conditions of the variance are followed. He pointed out that the Condition of Approval #2 is specific to this property: "The variance is limited to Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing generally located at 3903 Palisades Park Drive."

Board member Chesarek asked Dave Green if the staff recommendations change knowing this information. Dave Green stated the request for the variance is not for the neighbor's lot. He suggested amending the conditions to state the 7 foot fence height includes the entire structure, all inclusive.

At 6:48 p.m., Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Connell made a motion and Board member Hagen seconded the motion to deny City Variance #1219.

Discussion

Chairman Bollman called for discussion on the motion. Boardmember Noennig said the applicant has no right to place the fence on the neighbor's property. He commented he doesn't know how the applicant could build fence when there is an encroachment from the pool.

Board member Chesarek commented it is his inclination to vote in favor of the motion. Even so, if the Planning Department says this meets the criteria and the applicant does what he is required to do; there is an obligation to conditionally grant the request.

Board member Noennig stated he is disappointed the applicant is not in attendance. Boardmember Connell stated he believes the applicant asked for this variance with the intent of deceiving the staff and there is no need to reward bad behavior. Boardmember Bollman said the application does not clearly state the proposed fence height.

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 6-0. City Variance #1219 is denied.

Item #2 City Variance #1220 – 2107 Colton Boulevard – Fence Height – Wyeth Friday, Planning Division Manager. A variance from BMCC Section 27-604 requiring a maximum fence height of 4 feet in the front yard setback to allow a 6 foot fence in the front yard setback along the west property line in a Residential 9,600 (R-96) zone, on Lot 9, Block 6 of Barth-Fortin Subdivision, a 10,085 square foot parcel of land. Tax ID: A02878.

RECOMMENDATION

Staff recommends denial of the variance. Staff is recommending denial of variance and complete compliance with the existing fence height that is in the clear vision area. Staff is not recommending approval of the variance, so there is no time limit for meeting variance conditions. The fence should be brought into compliance with all requirements. The granting of this variance would not allow a use that is not allowed in the zoning district. Fences are an allowed use in all residentially zoned districts in the city. It is the height of the allowed fence that currently does not meet the regulations.

Wyeth Friday stated Staff received eight letters regarding this variance. Staff and made them available to the Board and to the public in the communications notebook.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Per Boardmember Hagen’s request, Wyeth Friday clarified the front setback requirement and stated the front setback requires a maximum 4-foot fence height for the first 20 feet from the front property line.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1220.

Chad Torgrimson, 2107 Colton Boulevard, Billings, Montana

Mr. Torgrimson is the applicant. He said explained he had referred to the City of Billings website for his initial information and started construction as he read that no building permit is required if the fence ranged from 3-6 feet in height and later discovered a permit is needed. After receiving a notice, he obtained a fence permit. He referred to a copy of the fence permit included in the staff presentation. Mr. Torgrimson said he modified the fence to 30" tall and will remove the bar as he

isn't finished with the fence. He said he has issues with the adjacent neighbor and said he has no privacy. He said he has no privacy as this family cannot seem to "mind their own business" and they have cameras pointed towards his property. He is asking for the 30" to remain and continue with the remaining 6-foot back. He said has met the clear vision requirement and pointed out there are several fences over 6-foot along Colton Boulevard that are built to the concrete. He reiterated he wishes to be able to use the yard with some privacy without the neighbors peeking through the fence into his yard. He said he has went through the proper channels and obtained a permit. He voiced frustration with receiving letters from the City after the fence is built stating it has to be changed. He said he has incurred costs in time and money, and he feels someone will have to pay for the changes in the fence.

Layne Scheveck, 37 Alderson, Billings, Montana

Mr. Scheveck is an attorney. He stated he is an interested party as he in the process of purchasing Chad Torgrimson's house. His said he has known Mr. Torgrimson for 10-15 years. He said he has personally experienced the Richardson's lack of good faith, and they do have cameras pointed towards the Torgrimson's windows. He pointed out the spray paint on the curbing and said it is not up to code. Mr. Scheveck stated Chad relied on the City's permit to bring the fence to code. He noted the slope of the lot and said when backing out a vehicle there is a clear view of who is coming or going. He spoke about the harmony of the community and mentioned there are other 6-foot fences on Colton Boulevard. He said ultimately Mr. Torgrimson wants his privacy, and has no complaints with other neighbors. Mr. Scheveck urged the Board to grant this variance.

Mr. Scheveck responded to Board member Bollman that he is still purchasing this property and is aware of these issues and the relationships with the neighbors. Mr. Scheveck stated he hopes to make amends. He said there is no safety risk with the 30" height. Board member Noennig asked Mr. Scheveck if he is aware of the other submitted letters of opposition Mr. Scheveck said all of the letters have the same type of verbiage and it seems the Richardsons are orchestrating the letters. Per Mr. Scheveck clarified said he personally would like to see the variance granted as he likes his privacy. Board member Chesarek asked how far the neighbor's house and Mr. Tomgrimson's house are from the front property line. The applicant stated both houses are about 50 feet from the front property line. Board member Chesarek said this issue is the clear vision and variances cannot be granted on the basis of people looking through a fence.

June Richardson, 2111 Colton Boulevard, Billings, Montana

Ms. Richardson has lived at this address since 1997. She exhibited a letter from the City approving a handicapped designated parking permit for the special transit bus to pick up her daughter. She stated the fence is unsafe for those wanting to back out of the driveway and Colton Boulevard is extremely busy due to the increased use of the Catholic School practice fields. She provided the Board with a photograph of a large vehicle parked which further block their views. She reiterated there is no privacy on Colton Boulevard and she needs to be able to see children before exiting a vehicle out onto the street. Ms. Richard said there are no other 6-foot fences in the front yard with the exception of one located in the back yard. She said he fence is located on her property and is not straight as it waivers around a tree. They had a survey conducted in June 2012. Mr. Torgrimson has a survey conducted in August 2013 which confirmed the previous survey front and rear survey marks. She said her driveway not shown on his fence application. She would prefer to have a few more feet of 30" fencing in order to have clearance. She stressed the need to be able to back out of her driveway and be able to see to have a safe exit. She explained they purchased security cameras due to the vandalism on their and they are pointed towards their property. Board member Noennig commented on the examples of clear vision issues and asked if they all took place prior to the 30" fence cut out.

Ms. Richardson stated there is not enough space to see down the road as there is only 8 feet. She said she would like to see the 3-foot height for another few feet or have the fence removed and have the applicant go through the proper procedure to have rebuilt. She insisted the existing fence is on her property. Board member Noennig reminded of this Board’s jurisdiction and asked Ms. Richardson to focus on the issue of the fence.

Blake Richardson, 2111 Colton, Billings, Montana

Mr. Richardson is June Richardson’s spouse. Mr. Richardson said this relationship started when Mr. Torgrimson found out he worked for the police department. Mr. Richardson said they have a surveillance system but they are unable to see into Mr. Torgrimson’s house. Mr. Richardson asked that they are asking that the applicant abide by the code which requires a 30” height for the first 10 feet and 48” for the next, and that he remove the top rail to improve the clear vision. He said the City painted the curb due to the parking issues.

Rebuttal

Layne Scheveck, 37 Alderson, Billings, Montana

Mr. Scheveck said the survey string is still located on the property line. He pointed out the property line and the fence line on a posted presentation photo. The Richardsons believe there is a jointly owned tree but the roots fall under Mr. Torgrimson’s property line. Mr. Torgrimson stated he put fence up to ensure it is on his property line and the tree is on his property. The previous fence was built in 2003.

Per request of the Board, Wyeth Friday clarified the height restriction and pedestrian clear vision requirements per the Zoning Code.

Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Board member Connell seconded the motion to deny City Variance #1220 with reasons presented by staff and make the fence subject to the existing code.

Discussion

Chairman Bollman called for discussion on the motion. He stated this is purely a safety issue, and having the fence height at 4-feet within the front setback will provide some visibility for pedestrians and traffic on Colton Boulevard. Board member Noennig stated he does not like to see this kind of controversy between neighbors and hopes that it will improve with the new ownership. He stated he does not see a hardship in this case and feels the best way to resolve this dispute is to fall back on the law.

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 6-0. City Variance #1219 is denied.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on **Wednesday November 4, 2015** to consider one variance request.
- When the City Attorney provides more information to staff on the recent ruling, staff will bring it forward to this Board.

Adjournment: 7:00 p.m.

ATTEST: DRAFT. To be Approved by a motion on November 4, 2015

Jeff Bollman, Chairman



Tamara L Deines, Planning Clerk