

**CITY BOARD OF ADJUSTMENT**

MINUTES May 4, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Board member	-	-	1	E	1							
James Olson	Board member	-	-	1	1	E							
Paul Hagen	Board member	-	-	1	1	1							
Frank Chesarek	Vice Chairman	-	-	1	1	1							
Oscar Heinrich	Board member	-	-	1	1	1							
Martin Connell	Board member	-	-	1	1	1							
Mark Noennig	Chairman	-	-	1	1	1							

TOTAL NUMBER OF APPLICATIONS 2016	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/03/16	09/07/16	10/05/16	11/02/16	12/07/16	TOTAL
Variance	0	0	2	1	3								6

Chairman Noennig 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.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I; and Robbin Bartley, Administrative Support.

**Attending:** Travis McDowell, Jane BlackEagle, Robert Leach, Jeff Ivie, Rob Morehead, Andrew Gutierrez, Lee Humphrey, Toni Humphrey

**Public Comment**

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

**Approval Meeting Minutes**

Board member Connell made a motion for the approval of April 6, 2016 minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 6-0. 2 misspellings of Mr. Noennig’s name are to be corrected.

**Disclosure of Conflict of Interest**

Chairman Noennig asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		x	
James Olson			x
Paul Hagen		x	
Frank Chesarek		x	
Oscar Heinrich		x	
Martin Connell		x	
Mark Noennig		x	

**Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members or visit the site and this should be communicated to the Board members in a public forum.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		x	no	
James Olson				x
Paul Hagen		x	yes 2	
Frank Chesarek		x	no	
Oscar Heinrich		x	Yes 3	
Martin Connell		x	Yes 3	
Mark Noennig		x	no	

Nicole Cromwell notes, for the record, a communication received on Variance # 1226 has been forwarded to all board members. Karen Husman acknowledges 2 letters received regarding Variance # 1228 and forwarded to board members and a copy of each of these is in the ex parte notebook.

**Public Hearings**

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting for reviewing and acting on each variance. She 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.

Nicole Cromwell read the legal description for **Variance request #1226**

**Variance 1226 – 123 S 27<sup>th</sup> St – Riverstone Health – Land Use Contrary to Zoning** – A request to conduct a hearing to receive public comment on a proposed expansion of the Riverstone Health Clinic on Lots 1-8, Block 163, Billings Original Town and the south ½ of the vacated 2<sup>nd</sup> Ave South, in the South 27<sup>th</sup> Street Corridor zone. The proposed expansion will not meet the setback requirements, buffer yard requirements, and some of the landscaping requirements in the S 27<sup>th</sup> Street Corridor zone. The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. Tax ID: A00949

**RECOMMENDATION**

Staff recommends the Board of Adjustment hold the public hearing and receive public comment.

**Discussion**

Chairman Noennig asked the members of the Board for questions and discussion.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1226**.

There were none.

**Board Discussion- NONE**

**Karen Husman presented:**

**Variance 1227 – 2307 11<sup>th</sup> Ave North – Lot Area** – A variance request from 27-308 requiring a minimum lot area of 19,200 square feet for 2 duplex dwellings, in a Residential 7,000 (R-70) zone, on Lot 4, Block 1 of Sunnyside Subdivision, 1<sup>st</sup> Filing to allow a minimum lot area of 13,500 square feet. Tax ID: A16258

**RECOMMENDATION**

Staff recommends denial of the variance.

**Discussion**

Chairman Noennig asked the members of the Board for questions and discussion. Board member Heinrich asked regarding previously allowed variances being existing buildings. Staff confirmed this.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1227**.

**Travis McDowell, 2029 Forest Park Drive, Billings**

Mr. McDowell handed out of photo of adjacent properties. Also submitted was an overview of all adjacent properties in the area not in conformance. The owner needs to build 4 units to make the project financially feasible. All setbacks and lot coverages are met, everything except the lot size does not meet zoning requirements for 2 duplex units. They will be townhomes thereby available for leasing or buying.

Commission Heinrich asked staff for clarification on what is needed for the staff recommendation to be for approval. Staff replied a larger lot is needed, 19,200 square feet.

Vice Chairman Chesarek asked about the proposed changes to the original application. Were the changes made before or after? Mr. McDowell explained the changes were proposed during the process. The front and rear setbacks were adjusted because staff indicated access could not be from the alley side. However, the changes did not affect the staff recommendation.

Chairman Noennig inquired as to the specifics of “economically feasible” and Mr. McDowell deferred to the developer for answers.

**Rob Morehead, 1014 N 32<sup>nd</sup> Street, owner**

Mr. Morehead passed out handouts with overview of the lot size and proposed lay out. He is an engineer by training and so asked the Board members to look at the surrounding area. Across the alley is a four plex. Each unit is 1750 sq ft. and across the street is a multiplex, each unit is 2300 sq. ft. The proposed density is 3375 sq. ft. There is plenty of room per unit because it is such an oversized lot. The majority of units on this block fall in this category. If it is a multifamily unit more than likely it exceeds square footage. This is economic, to build quality we need to increase the density on the lot. He can build an inexpensive duplex or he can build a better structure if more density is allowed.

These rentals are licensed as individual townhomes and could be sold in the future. However, this is not the original intention.

Board member Hagen confirmed Mr. Morehead is the contractor building south of the Boulder School. Board member Connell asked what the hardship will be if the variance is not granted. He went on to explain the Board of Adjustment is mandated by State law to grant or deny variances based on the criteria. Mr. Morehead explained if he could not increase the density he would be forced to build structures of lesser quality.

Chairman Noennig asked what the value of the lot is. Mr. Morehead indicated he paid \$45,000.00 but there is demolition has to happen and many other expenses pertaining to the lot. Board member Heinrich asked how many units in the immediate area he would estimate to be in non-conformance to the zoning. Mr. Morehead had no information as he had not checked into it.

Mr. McDowell, as agent, replied 6 units.

Board member Heinrich asked if it would be considered a hardship.

Nicole explained hardship under criteria is physical hardship with the property and is not applicable to other properties in the district. The owner did not create the hardship.

**Opposed**

**Jane Black Eagle 1101 North 24<sup>th</sup>, Billings**

Ms. Black Eagle pointed her property location on the map. She described many parking issues in the area and feels more density will increase the problem. She also has concerns about overuse of the alley stating there are more broken windows and traffic.

Vice Chairman Chesarek asked if she had seen the presented drawing and did the proposal look as if it addressed the parking issue. She replied if it were followed, yes, it is an improvement.

**Robert Leach, 2240 Green Forest Drive, Billings**

Mr. Leach agrees with the described parking issues. Additionally, the alley is narrow and sloped, heavy rain brings wash outs frequently and there is not much room to even accommodate more garbage receptacles. He does not believe higher density benefits the neighborhood. He also contends Mr. Morehead knew the zoning of the lot when he purchased it and there is no hardship in his opinion.

**Rebuttal**

Mr. McDowell explained they will be required to pave the alley and install storm drainage by city engineering and stated the alley is a standard 20 feet wide. Board member Bollman asked if the proposed garages would be rented out separately as is the practice in the area. The garages are attached and will have a door into the dwelling and would not be rented separately.

**Discussion**

Board member Connell discussed the parameters of decisions made by the BOA, we need to be able to prove hardship. Board member Hagen agrees with Board member Connell criteria must be followed has to go with the Staff recommendation. Nicole Cromwell reminded the board they cannot grant a request greater then applied for but can grant less. A triplex is not allowed in an R-7000 but a duplex is allowed and a single family dwelling.

Chairman Noennig talked about spot zoning. Nicole said it is possible the surrounding properties with variances for more density also had no hardship. Board member Bollman made argument condition #1 and #2 are sometimes hard to reconcile. The surrounding properties have higher density. Chairman Noennig, asked for an explanation of balancing and discretion of the criteria. Board member Bollman replied regarding existing conditions. Board member Heinrich pointed out the staff provided alternative at the end of the report. Chairman Noennig explained possibly a hardship need not be the only criteria for granting or denying.

Chairman Noennig called for a motion.

**Motion**

Vice Chairman Chesarek made a motion and Board member Bollman seconded the motion to conditionally approve **City Variance #1227** with the conditions and Findings of Fact presented by Staff. An amendment to duplex and a single family dwelling has been added.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	x			
James Olson				x
Paul Hagen		x		
Frank Chesarek	x			
Oscar Heinrich	x			
Martin Connell		x		
Mark Noennig	x			

**The motion passed 4-2. City Variance #1227 is conditionally approved.**

Karen Husman presenting:

**Variance #1228 – 811 N 23<sup>rd</sup> Street – Lot Area** – a variance request from 27-308 requiring a minimum lot area of 13,000 square feet for 1 duplex and 1 single family residence, in a Residential 6,000 (R-60) zone, on Lots 19 & 20, Block 289, Billings Original Town, to allow a minimum lot area of 7,000 square feet for three existing dwelling units. Tax ID: A02110

**RECOMMENDATION**

**Staff recommends conditional approval of the variance.**

**Discussion**

Chairman Noennig asked the members of the Board for questions and discussion. Board member Connell asked staff if the variance was originated as a result being red tagged. Staff has no information on a red tag. Assumedly this is a result of doing renovations. Staff is aware the

applicant has received CDBG grant. Board member Connell asked where the entrance to the basement is. The applicant can elaborate on this. Board member Heinrich stated there is no record of 3 residences and 3 addresses on this lot, so there is no evidence of it being a legal duplex. Staff answered with explanation of the need to be updated and in compliance to current codes. Board member Bollman asked if the units in the duplex must be disconnected with no access to each other. Staff gave the definition of a duplex includes separate entrances and no access to each other. Nicole Cromwell explained the Department of Revenue does not assess downstairs dwelling units are below grade.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1228**.

**Andrew Guterrez, 811 N 23<sup>rd</sup> Street, Billings**

Mr. Guterrez explained the house/duplex was moved on site during the 1980’s. His grandmother lived upstairs and he and his mother lived below. Sometime after he acquired it the downstairs was flooded and had to be gutted. Upon applying for the permits to do the renovation he was informed of the zoning requirements. Mr. Guterrez pointed out the entrances for the 3 different dwellings. Staff asked if there is a connecting door in the duplex and Mr. Guterrez said there is and will be deleted. Chairman Noennig asked if he or anyone had been paying rent. Mr. Guterrez explained his mother paid rent to the grandmother.

**Discussion**

Board member Connell stated it is not a duplex. Board member Heinrich said it will be now. Chairman Noennig talked about it being a non-conforming duplex but if the downstairs occupants were paying rent to the upstairs occupant is a duplex. Board member Bollman and Nicole agreed the zoning has not changed from the 1980’s to present day. If the building had been moved a foundation permit would have included the basement improvements and there is no evidence either way. Board member Heinrich explained really then this is a cleaning up of the books. Chairman Noennig explained it had never been zoned for 3 units, only 2. Board member Connell voiced his appreciation for the applicant trying to do it right/legally and should not be denied.

Chairman Noennig called for a motion.

**Motion**

Board member Heinrich made a motion and Board member Connell seconded the motion to conditionally approve **City Variance #1228** with the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	x			
James Olson				x
Paul Hagen	x			
Frank Chesarek	x			
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion passed 6-0. City Variance #1228 is conditionally approved.**

**Other Business/Announcements:**

There will be a meeting on June 1, 2016.

Adjournment: 7:13 p.m.

**ATTEST: DRAFT. To be approved by a motion on June 1, 2016**

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**Robbin Bartley, Administrative Support I**

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**Mark Noennig, Chairman**