

CITY BOARD OF ADJUSTMENT

MINUTES July 6, 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	1	1					
James Olson	Board member	-	-	1	1	E	1	E					
Paul Hagen	Board member	-	-	1	1	1	1	1					
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1					
Oscar Heinrich	Board member	-	-	1	1	1	1	1					
Martin Connell	Board member	-	-	1	1	1	E	1					
Mark Noennig	Chairman	-	-	1	1	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	3	6						15

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 3rd 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; Dave Green, Planner II and Robbin Bartley, Administrative Support.

Attending: Dennis Randall, Victor Sisk, John Robinson, Nancy Robinson, Tina Lorenz, Billie Parrott, Bob Bushing, Mike Mitzel, Charles Swiesz, Brad Sinclair, Matt Robertson, Paul Cox.

Public Comment

Chairman 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 Bollman made a motion for the approval of June 1, 2016 minutes with corrections. Board member Connell seconded the motion. Minutes were approved by unanimous voice vote 6-0.

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 Chesarek made public his affiliation with EEC but stated he did not know the individuals here representing Variance #1231.

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

Board member Hagen disclosed the owner at Roosevelt Ave (Variance #1234) came outside and explained about the garage and its location. Board member Connell disclosed regarding Variance #1234, he met Drew Lorenz at the site.

Board member Connell asked Mr. Lorenz if it is a multifamily or single family dwelling. Mr. Lorenz stated it is a single family dwelling.

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 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 #1231**:

Karen Husman presenting:

Return Item - Variance 1231 – 316 Miles Avenue – Side and Rear Setbacks – A variance request from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet, in a Residential Multi-family-Restricted (RMF-R) zone, on Lots 39 & 40, Block 12, Suburban Subdivision, a 7,000 square feet parcel of land. The proposed variance is to allow the owner to finish the construction of a partially completed structure. Tax ID: A15964.

This structure was started in January of 2011. A building permit application was initiated for a 2 story residential structure. After review, corrections from the City Building and Planning departments for structural issues and setbacks were sent to the applicant for changes needed before a permit could be issued. In April of 2012, the pending building permit expired. A new application was required to go forward with construction. In addition, a couple of Code Enforcement cases have been opened in regards to the property. The case notices compliance to building code and zoning requirements and a building permit is required to complete the structure.

RECOMMENDATION

Planning Staff is recommending **denial** of **Variance #1231**.

If the board chooses to approve this Variance, Staff has outlined 8 draft conditions.

1. The variance request is from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to on Lots 39 & 40, Block 12, Suburban Subdivision.
3. This variance is limited to the existing structure. If the existing structure were destroyed by any means, it must be reconstructed to the current setbacks and site development requirements in place at the time it is reconstructed.
4. There will be no construction between 8 p.m. and 7 a.m. daily.
5. The applicant must submit and obtain a building permit to complete the renovations within 6 months of this variance approval.
6. In addition to an approved building permit issuance, the applicant must receive the required building inspections and obtain a certificate of occupancy to verify compliance within 18 months of the building permit issuance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
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

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 #1231**.

Bob Bushing, EEC

Mr Bushing is new to the project within the last 2 months. A new set of plans have been drawn and are ready for submittal addressing the building codes upon the approval of this variance request.

Mark Noennig asked about any neighbors viewpoints. Mr. Bushing stated he received 3 phone calls from neighbors having received letters regarding the request. None of the 3 neighbors had objections to the variance after it was explained to them. Their wish was to see the structure completed.

Mike Mitzel, owner

Mr. Mitzel explained why the project is not complete. Board member Connell asked what year the bank repossessed 314 Miles and who the current owner is of 314 Miles. Mr. Mitzel explained he owns 316 Miles and his neighbor, John and Nancy Robinson own 314 Miles.

John Robinson, 314 Miles

Mr. Robertson is the neighbor who bought the property at 314 Miles from the bank when Mr. Mitzel defaulted on his loan. He wants to see the house completed at 316 Miles. Mike is a good neighbor. I would like to see the neighborhood improved esthetically. Board member Connell asked if he knew the building is not in compliance. Chairman Noennig asked for clarification about Mr. Robinson's understanding of the structure.

Opposed

None

Chairman Noennig called for a motion.

Board member Connell made a motion and Board member Bollman seconded the motion to deny **City Variance #1231** with the Findings of Fact presented by Staff.

Board member Connell also indicated Code Enforcement should immediately be notified to remove the structure, adding it should have been done years ago.

Discussion

Board member Connell stated the structure does not fit the neighborhood. It was built without permission and if we want people to follow the guidelines of the City of Billings then we must enforce them. He visited the site, it is not an appropriate building for the site and needs to come down.

Board member Chesarek asked for clarification. His understanding from the previous meeting was the building was compatible but the issues remained regarding setbacks. Staff indicated Mr. Chesarek's statement was correct.

Chairman Noennig spoke with clarification for the board and audience. Mr. Mitzel's father had a stroke and he was relying on his father to "do the leg work" regarding the permitting and such.

The building does not meet set back requirements. Everything else is compliant. Chairman Noennig indicated he would resist this motion based on Board member Olson's previous thought everyone is entitled to a mistake and the applicant was now trying to make it right.

Board member Hagen agrees with Board member Connell. The process in the City is to acquire a building permit and this was not done.

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 to deny **passed 4-2**. City Variance #1231 is denied.

Nicole Cromwell read the legal description into the record for Variance 1232.

Karen Husman presented:

Variance 1232 – 549 Wheatstone – Side Setback – A variance request from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 6 feet 5 inches (6’5”), in a Planned Development zone with underlying zoning of Residential 9,600 (PD-R96), on Lot1, Block 19, Harvest Subdivision, 3rd Filing, a 7,090 square foot parcel of land. The proposed variance is to allow the owner to add a second story over the existing attached garage. Tax ID: C09694.

RECOMMENDATION

Planning Staff is recommending **conditional approval** of Variance #1232.

Discussion

Chairman Noennig asked the members of the Board for questions for Staff. Board member Heinrich asked about setbacks for 1 story verses 2 story structures. The house was constructed in 1982 and the same setback requirements existed then. Chairman Noennig confirmed the 1982 setback requirements.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1232.

Victor Sisk, owner

Mr. Sisk indicated he could move the walls however he believes, structurally, the building is more sound without changing the walls. He explained his property is pie shaped changing the setback from the front to back of the building. It is 6.5 feet at one end and 8 feet at the other.

Opposed

None

Discussion

None

Chairman Noennig called for a motion.

Motion

Board member Bollman made a motion and Board member Hagen seconded the motion to conditionally approve **City Variance #1232** 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 #1232 is conditionally approved.

Nicole Cromwell read the legal description into the record for Variance 1233.

David Green presenting:

Variance 1233 – 2345 King Avenue West – Signage – A variance from 27-705(b) requiring a maximum sign area of 32 square feet and a sign height no taller than 8 feet above grade to allow a sign area of 160 square feet and 16 feet in height in a Residential Professional (RP) zone on Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision, a 2.11 acre parcel of land. Tax ID: C01664.

Dave Green indicated traffic studies show there are approximately 28,000 cars a day here and 40,000 during the holidays. King Ave West has a posted speed of 35mph, he joked about all of us knowing better. .

RECOMMENDATION

Planning Staff is recommending **conditional approval** of **Variance #1233**.

Discussion

Board member Heinrich asked if an EMD would be OK? Staff replied it cannot be the only sign and is limited to 40 percent of the overall sign.

Chairman Noennig asked how many tenants are at this complex. This was deferred to the agent.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1233**.

Matt Robertson, Agent

This building is in transition. It was originally built for 5 tenants and was used for the Veteran’s Administration. It is located at one of the busiest intersection in Billings and because of the access the address is hard to find. Recruiting occupants is a challenge because it is so difficult to find.

Board member Heinrich asked if more handicapped parking is to be added in the front? The applicant will follow the city code. Board member Heinrich also requested the No Exit sign to King Ave West be reinstalled.

Paul Cox, Sign Products

Mr. Cox is here to answer technical questions about sign. City code requirements for sign permit will be followed.

Chairman Noennig asked how many tenants will be listed on the sign. There are 5 spaces available for 5 occupants/tenants.

Mr. Cox explained the difficulties in signing this space and indicated there is a moratorium on 3rd party signs which eliminates the ability to have a sign in the back.

Opposed

None

Chairman Noennig called for a motion.

Motion

Board member Chesarek made a motion and Board member Hagen seconded the motion to **conditionally approve City Variance #1233** per the conditions and Findings of Fact presented by Staff.

Board member Bollman indicated the zoning in this area is incorrect and based on , although he is not usually in favor of a sign variance, he believes the variance is necessary.

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 to conditionally approve Variance request #1233 passed with a 6-0 vote.

Nicole Cromwell read the legal description into the record for Variance 1234.

David Green presenting:

Variance 1234 – 4129 Roosevelt – Side Setback – A variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum 1-foot side setback in Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. The variance would allow the addition of an attached garage. Tax ID: A06949.

Discussion

RECOMMENDATION

Planning Staff is recommending **conditional approval** of **Variance # 1234.**

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1234.**

Drew Lorenz, owner

Mr. Lorenz explained why he is building the garage and owns the property next door also with the 15 foot space between the house and the property in question.

Chairman Noennig asked if the neighboring house is a rental and does this house have a garage? Mr. Lorenz confirmed it is a rental and the garage is on the other side.

Opposed

None

Chairman Noennig called for a motion.

Motion

Board member Bollman made a motion and Board member Heinrich seconded the motion to **conditionally approve** **City Variance #1234** per the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Absta in	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 #1234 is conditionally approved.

Nicole Cromwell read the legal description into the record for Variance 1235.

Nicole Cromwell presenting:

Variance 1235 – 607 4th Avenue N – Clear Vision – A variance from 27-615(a) requiring any permanent structure in a clear vision area at an intersection controlled by a traffic signal to be 30 inches in height or less, to allow a permanent structure over 30 inches in height to encroach up to 4 feet into the required clear vision area, as proposed in the AASHTO analysis for the traffic signal controlled intersection. The variance would allow the construction of a new building. Tax ID: D05887

Discussion

Board member Heinrich clarified the City of Billings Clear Vision Code is in violation but the AASHTO requirements are not.

Staff also explained with the current zoning, a traffic engineer could INCREASE the Clear Vision requirement but not DECREASE it.

Chairman Noennig and staff discussed the intersection.

Board member Heinrich asked if the codes will come together. Staff replied we are getting closer.

He also asked if this property is part of the EBURD. Staff explained it is in TIF District but not part of the EBURD.

Board member Connell believes this property is annexed in but is not in the TIF.

Board member Heinrich asked if the building location was for aesthetics. Staff explained it is not for aesthetics but rather for good urban form.

RECOMMENDATION

Planning Staff is recommending **conditional approval** and adoption of the AASHTO requirements with the findings of the 7 criteria for **Variance #1235**.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1235**.

Dennis Randall, Sanderson Stewart

Mr. Randall explained the present Clear Vision codes were developed to be simple but they certainly do not fit every situation, this being one of them. It has been well reviewed by traffic as well.

Opposed

None

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 #1235** per the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Absta in	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 #1235 is conditionally approved.

Nicole Cromwell read the legal description into the record for Variance 1236.

Nicole Cromwell presenting:

Variance 1236 – 317 S 30th St – Side Setback – A variance from 27-308 requiring a minimum 5-foot side setback for a principal structure (residence) and from 27-310(i) requiring a minimum 3-foot side setback for a detached garage, to allow a minimum ½-foot side setback for each existing structure in Residential Multi-family- Restricted (RMF-R) zone on the South 10 feet on Lot 20 and all of Lot 21, Block 167, Billings Original Town, a 4,900 square foot parcel of land. The variance would allow the issuance of a re-build letter for the existing buildings at the current non-conforming side setback. Tax ID: A01109.

Discussion

Board member Chesarek asked if the purpose of this Variance is to obtain a rebuild certificate. Staff replied in the affirmative.

RECOMMENDATION

Planning Staff is recommending **conditional approval** and adoption of the findings of the 7 criteria for **Variance #1236**.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1236**.

Billie Parrot, Century 21 agent

Ms. Parrot explained closing has been postponed on the sale of this property waiting on the outcome of this Variance.

Opposed

None

Chairman Noennig called for a motion.

Motion

Board member Connell made a motion and Board member Hagen seconded the motion to conditionally approved **City Variance #1236** per the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Absta in	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 #1236 is conditionally approved.

Other Business/Announcements:

There will be a meeting on August 3, 2016.

Adjournment: 7:28 p.m.

ATTEST: DRAFT. To be approved by a motion on August 3, 2016

Robbin Bartley, Administrative Support I

Mark Noennig, Chairman