



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, November 1, 2017 @ 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

Call the meeting to order.

Introduction of City Board of Adjustment Members and Planning Department Staff.

Public Comment

Approval of Minutes:

The minutes of the Board meeting of October 4, 2017.

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. **City Variance 1269 –719 Terry Avenue – Lot Area** - A variance from Section 27-308 requiring a minimum lot area of 13,000 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 7,000 square in a Residential 6,000 (R-60) zone, on Lots 9 & 10 and the east 22.3 feet of Lot 11, Block 5, Yellowstone Addition, a 7,000 square foot parcel of land. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A18926
Presented by Karen Husman, Planner I.

Other Business/Announcements

Adjournment

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to bartleyr@ci.billings.mt.us

City Board of Adjustment

Meeting Date: 11/01/2017

Information

Subject

The minutes of the Board meeting of October 4, 2017.

Attachments

BBOA_2017_10_04_draft

CITY BOARD OF ADJUSTMENT

MINUTES October 4, 2017

Name	Title	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	07/06/2017	08/02/2017	09/06/2017	10/04/2017	11/01/2017	12/06/2017
Jeff Bollman	Board member	1	1	E	1	E	1	1	1	1	E		
Dave Hagstrom	Board member	1	1	1	1	1	1	1	1	1	E		
Paul Hagen	Board member	1	1	1	1	1	1	1	1	1	E		
Frank Chesarek	Vice Chairman	1	1	E	1	1	1	1	1	1	1		
Oscar Heinrich	Board member	1	1	E	1	1	1	1	1	E	1		
Martin Connell	Board member	1	1	1	1	E	1	1	1	1	1		
Mark Noennig	Chairman	1	1	1	E	1	E	1	1	1	1		

TOTAL NUMBER OF APPLICATIONS 2017	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	07/06/2017	08/02/2017	09/06/2017	10/04/2017	11/01/2017	12/06/2017	TOTAL
Variance	1	1	7	2	1	3	1	3	1	1			20

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.

The City Board of Adjustment members and Planning Department staff introduced themselves. Attending Staff members are Monica Plecker, Planning Division Manager, Karen Husman, Planner I and Robbin Bartley, Administrative Support.

Attending: Trina White

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 Connell made a motion for the approval of September 6, 2017 minutes. Board member Chesarek seconded the motion to approve. Minutes were approved by unanimous voice vote 4-0.

Disclosure of any Conflict of Interest, Ex Parte Communications and Site Visits

A new form has been implemented for any disclosures. If any Board member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here.

Public Hearings

Chairman Noennig 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.

Karen Husman read the legal description for **Variance #1267**:

Return Item - City Variance 1267 –2409 Rosewyn Lane - A variance from Section 27-308 requiring a minimum 3-foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554

RECOMMENDATION

Planning Staff is recommending denial of the findings for granting a variance.

The applicant has asked to withdraw the Variance application.

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1267**.

Discussion

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Connell seconded the motion to approve withdrawal of **City Variance #1267**.

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

The motion to approve withdrawal of **City Variance #1267** passed 4-0.

Karen Husman presenting:

City Variance 1268 –919, 919 ½, 921 N 25th Street – Lot Area - A variance from Section 27-308 requiring a minimum lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20-foot rear setback to allow a 6-foot rear setback in a Residential 7,000 (R-70) zone, on a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A16441

RECOMMENDATION

Planning Staff is recommending conditional approval of the variance, based on the criteria for granting a variance.

1. The variance is to allow a lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20 foot rear setback to allow a 6 foot rear setback in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing generally located at 919 and 921 N 25th St.
3. Any future re-construction of the existing structures will require compliance with other all other zoning regulations and city ordinances that apply at the time of re-construction.
4. 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.

Questions for Staff:

Board member Heinrich asked if all 3 apartments are legal. Staff explained the structures were built prior to zoning and are legally non-conforming without the variance approval. The variance will allow them to rebuild what is existing on the property.

Public Hearing opened at 6:09pm

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1268**.

Trina White, agent and possible buyer

A rebuild letter is necessary for financing. She is the agent for this property and the potential buyer.

OPPOSED

NONE

The public hearing was closed at 6:11 PM.

Discussion

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Connell seconded the motion to approve **City Variance #1268**.

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

The motion to approve **City Variance #1268** passed 4-0.

Other business:

The next meeting will be on November 1, 2017.

The meeting adjourned at 6:13PM.

ATTEST: DRAFT. To be approved by a motion November 1, 2017.



City Board of Adjustment

Meeting Date: 11/01/2017

SUBJECT: Variance #1269 - 719 Terry Avenue

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1269 –719 Terry Avenue – Lot Area - A variance from Section 27-308 requiring a minimum lot area of 13,000 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 7,000 square in a Residential 6,000 (R-60) zone, on Lots 9 & 10 and the east 22.3 feet of Lot 11, Block 5, Yellowstone Addition, a 7,000 square foot parcel of land. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A18926

Presented by Karen Husman, Planner I.

RECOMMENDATION

Conditional approval.

APPLICATION DATA

OWNERS: Stephen & Charlene Brown
PURPOSE: To allow the financing and sale of an existing duplex & SFD
LEGAL DESCRIPTION: Lots 9 & 10 & the east 22.3 ft of Lot 11, Blk 5, Yellowstone Add
ADDRESS: 719 Terry, 719 ½ # 1 & 2
EXISTING LAND USE: Residential & Multi Family
PROPOSED LAND USE: Residential & Multi Family
EXISTING ZONING: R-60

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property – Records show there have been 22 variance requests in this subdivision. Of the variance requests, four were for a change in non-conforming use (all approved), six were for lot size/area (one denied), eight were for setbacks (one denied), two for lot coverage (approved), one for fence height (approved), and one for lot size and setbacks (approved).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-60
Land Use: Residential & Residential Multi Family
SOUTH: Zoning: R-60
Land Use: Residential & Residential Multi Family
EAST: Zoning: R-60
Land Use: Residential & Residential Multi Family
WEST: Zoning: R-60
Land Use: Residential & Residential Multi Family

BACKGROUND

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 13,000 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 7,000 square feet in a Residential 6,000 (R-60) zone, on Lots 9 & 10 and the east 22.3 feet of Lot 11, Block 5, Yellowstone Addition, a 7,000 square foot parcel of land. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time.

The BOA has reviewed seven similar variances in this subdivision for lot area, and denied one of those requests. The remaining variances were conditionally approved. Several dwellings in the area date from the same time period, those properties have similar nonconforming lots for the number of dwelling units and may be over lot coverage or not have required setbacks. The proposed variance is not out-of-character for this area and neighborhood.

Staff received comments from the City Building division concerning the duplex structure. Building staff pointed out that the Yellowstone County tax records show both structures on the lot to be single family dwellings. The Building Division has no permits of record that show renovations to the property or conversion to a duplex. Building staff was also concerned the duplex structure did not meet the required setbacks for Building Code. Staff did not receive any comments from other City Divisions or from the surrounding property owners concerning this variance request.

Approval of this variance would allow the structures to be reconstructed on the property, however it would not allow it to be constructed in the same location, as it does not meet the current setback requirement for the Building Code, or the Zoning Code.

SUMMARY

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval of the request based on the criteria for variances as presented within this report. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other property owners in the neighborhood. Six similar variances have been granted in this area and there are similar development densities in the neighborhood.

RECOMMENDATION

Staff recommends conditional approval of the variance, based on the criteria for granting a variance.

Attachments

Zoning Map & Site Photos
Applicant letter & site plan
Determinations

Zoning Map & Site Photos



Surrounding Zoning



ATTACHMENT
Site Photographs



Subject Property



East side of the subject property looking toward the duplex.

ATTACHMENT
Site Photographs, Continued



West side of the subject property looking at the duplex



North side of property looking from alley at duplex



East



West

Attachment Applicant letter & Site Plan

September 21, 2017

To Mark Noennig, Chair Board of Adjustments,

In 1992 my husband Steve and I bought a triplex, 719 Terry Avenue, 1 and 2, and refinanced it in 2001 with a 30 year, fixed rate conventional bank loan, (I have enclosed a copy of the loan document), all in line with a legal, conforming property.

We bought this triplex not only as an investment for our future, but also as a source of income. Our rentals are our business and livelihood, our sole source of income. We have never had a property manager, and rarely hire professionals. Steve does all the work himself. Our plan was to sell our investments in our later years to secure our retirement.

It is now 2017, we are in our sixties, (our later years), and it is time to sell Terry. We have been told the zoning rules have changed and our property is now "non-conforming." Which means to me it was legal in 2001 when we refinanced, but not legal now. Really? It is non-conforming, illegal, because our lot is zoned RU6000, is 7000 sq. ft. and zoning now requires a triplex to be on a 8,500 sq. ft. lot.

So what are the consequences for the owner of a non-conforming property who is trying to sell? There are no conventional 30 year fixed rate loans for these properties because banks can't sell the note on the secondary market, and if it burns down it cannot be rebuilt. This makes our property much less attractive to buyers than similar conforming properties that qualify for conventional 30 year bank loans with attractive interest rates, and the ability to rebuild if destroyed by fire. Meaning, properties that have 1,500 sq. ft. more than ours, or that have variances.

How do we overcome the financing and rebuild negatives enough to attract a buyer? Why would a buyer choose our triplex over a conforming triplex? They wouldn't. No reason to. We will have to list our property for significantly less money than fair market value, which is the value of comparable conforming properties. The market will dictate how much we will have to discount our property in order to find a buyer, but I personally would not want a property for any price that I could not rebuild if fire destroyed it. Though I find out I have one! So I question if we can find a buyer at all.

The bottom line is we bought and owned this property in good faith that it was as presented, and through no fault of our own, the rules were changed on us and our investment that we thought would help secure our retirement, is less valuable than similar properties in the neighborhood, and very difficult if not impossible to sell.

The variance application process can be daunting. It is certainly not made easy for people and that's unfortunate. I sympathize with those who do not have the confidence, ability or help to do it, for everyone should have access to all the advantages available. And the non-refundable \$500. application fee would give anyone pause, knowing the work involved and money spent can be all for nothing if the application is denied, which would feel as if insult were added to injury.

But the consequences and disadvantages of owning a non-conforming property are such that as unpleasant as the variance process is, it is preferable to an illegal property. We are asking for a lot size variance so our triplex is legal and conforming, so we as the owners benefit from our investment in the same way as neighbors of similar conforming properties.

Thank-you for your time and consideration.

Charlene Brown

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are not any special circumstances that exist in this situation other than the lot is less than required for current zoning requirements and the structures were built in the 1940's, before the current zoning was in place.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

The subject property is in a subdivision where most development occurred in the 1940s and 1950s. Six similar variances have been granted in the neighborhood and there are several other properties in the neighborhood that exhibit similar development density and setbacks. Denying the variance would deprive the applicant of rights commonly enjoyed by other tracts in the same district.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

The variance will not allow the applicant any special privileges. Similar variances have been granted in the area and other properties are developed with smaller lot area some with variance approval, others without the benefit of a zoning variance.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

1. The variance is to allow a minimum lot area of 7,000 square feet for a two-family dwelling and a single family dwelling on an undivided parcel. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 9 & 10 and the east 22.3 feet of Lot 11, Block 5, Yellowstone Addition, generally located at 719 and 719 ½ #1 & #2 Terry Avenue.
3. Any future re-construction of the existing structures will require compliance with other all other zoning regulations and city ordinances that apply at the time of re-construction.
4. 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.

- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

No time limit is required since no construction is planned at this time.

- 7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**

The granting of this variance would not allow a use that is not allowed in the zoning district – two-family dwellings and single family dwellings are allowed in the R-60 zone.