



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, December 6, 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 November 1, 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 1270 –204 Wyoming Avenue – Lot Area** - A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for an existing two-family dwelling on an undivided parcel to allow a minimum lot area of 6,500 square in a Residential 7,000 (R-70) zone, on Lots 45 & 46, Block 15, West Side Subdivision, a 6,500 square foot parcel of land. The purpose of the variance is to allow the re-financing of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A17948A. 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: 12/06/2017

Information

Subject

The minutes of the Board meeting of November 1, 2017.

Attachments

BBOA_2017_11_01_draft

CITY BOARD OF ADJUSTMENT

MINUTES November 1, 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	1	
Dave Hagstrom	Board member	1	1	1	1	1	1	1	1	1	E	1	
Paul Hagen	Board member	1	1	1	1	1	1	1	1	1	E	1	
Frank Chesarek	Vice Chairman	1	1	E	1	1	1	1	1	1	1	1	
Oscar Heinrich	Board member	1	1	E	1	1	1	1	1	E	1	1	
Martin Connell	Board member	1	1	1	1	E	1	1	1	1	1	1	
Mark Noennig	Chairman	1	1	1	E	1	E	1	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	1		21

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 and Robbin Bartley, Administrative Support.

Attending: Stephen and Charlene Brown

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 October 4, 2017 minutes. Board member Chesarek seconded the motion to approve. Minutes were approved by unanimous voice vote 7-0.

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

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.

Nicole Cromwell read the legal description for **Variance #1269**:

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

RECOMMENDATION

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

1. The variance is to allow a minimum lot area of 7,000 square feet for a two-family dwelling & a single family. No other variance is intended or implied with this approval.
2. The variance is limited to the legally described property
3. Any future re-construction of the existing structures will require compliance with other all other regulations, ordinances & codes that apply at the time of re-construction.
4. These conditions shall run with the land

Questions for Staff:

Board Member Heinrich asked if there had been any comments from surrounding property owners. Staff's reply was no. He also asked if setback requirements would have to be met on a rebuild. Yes, all setbacks would have to be met. Zoning was implemented after the build of these structures.

Chairman Noennig **opened the public hearing at 6:06 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1269**.

Charlene Brown, owner: In 1992 she and her husband bought the 3 dwellings and refinanced it in 2001 with a conventional 30-year mortgage. The property was then in line for legal conforming lending. Since that time, bank regulations and new zoning has been implemented making our investment a "legal non-conforming" property. We are ready to sell the property and retire but potential buyers are unable to get financing, thus the Variance request. We need a rebuild letter so that our property is more saleable and valuable on the market.

OPPOSED

None

Discussion- NONE

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Bollman seconded the motion to approve **City Variance #1269**.

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

The motion to approve with conditions, City Variance #1269 passed 7-0.

The public hearing was closed at 6:10 PM.

Other business:

The next meeting will be on December 6, 2017.

The meeting adjourned at 6:12 PM.

ATTEST: DRAFT. To be approved by a motion December 6, 2017.



City Board of Adjustment

Meeting Date: 12/06/2017

SUBJECT: Variance #1270 - 204 Wyoming Avenue

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1270 –204 Wyoming Avenue – Lot Area - A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for an existing two-family dwelling on an undivided parcel to allow a minimum lot area of 6,500 square in a Residential 7,000 (R-70) zone, on Lots 45 & 46, Block 15, West Side Subdivision, a 6,500 square foot parcel of land. The purpose of the variance is to allow the re-financing of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A17948A. Presented by: Karen Husman, Planner I

RECOMMENDATION

Conditional Approval.

APPLICATION DATA

OWNERS: Jean Neyrinck
AGENT: Nicolle K. Ament
PURPOSE: To allow the financing of an existing duplex
LEGAL DESCRIPTION: Lots 45 & 46, Block 15, West Side Subdivision
ADDRESS: 204 Wyoming Avenue
EXISTING LAND USE: Duplex
PROPOSED LAND USE: Duplex
EXISTING ZONING: R-70

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property –There have been 12 variance requests in this subdivision-

- 2 for setbacks and lot area (1 denied);
- 2 for setbacks, lot area, and lot coverage;
- 1 for setbacks;
- 4 for lot area/size (three denied);
- 2 for lot coverage; and
- 1 for setbacks, lot area/size, lot coverage, and non-conforming use.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Single and two-family dwellings
SOUTH: Zoning: R-70
Land Use: Single and two-family dwellings
EAST: Zoning: R-70
Land Use: Single and two-family dwellings
WEST: Zoning: R-70
Land Use: Single and two-family dwellings

BACKGROUND

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for an existing two-family dwelling to allow the re-financing of an existing duplex (two-family) dwelling on a 6,500 square foot parcel at 204 Wyoming Avenue. No construction or reconstruction is proposed at this time.

Several properties in this neighborhood have applied for zoning variances. Two applications were for setbacks and lot area/size, and 1 of those was denied. Two were for lot size variance to allow an existing single family dwelling to convert to a duplex, both were denied. Two were for existing duplexes on smaller lots, both were granted with conditions.

The proposed variance is not out-of-character for this area and neighborhood. There are at least six properties in this neighborhood with lot sizes smaller than allowed for the existing structures that have not been granted a zoning variance. All of these locations were constructed prior to the current zoning (pre-1972). This duplex was constructed in 1917 as is the duplex to the west (206 Wyoming Avenue). Staff did not receive any comments from other City Divisions or from the surrounding property owners concerning this variance request.

RECOMMENDATION

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval of the request based on the determinations for granting variances as presented within this report.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

ATTACHMENT
Site Photographs



Subject Property



ATTACHMENT
Site Photographs, Continued



North



South



East



West

Attachment
Applicant letter & Site Plan

To All parties associated with application by Nicolle Ament for lot area variance at 204 Wyoming Ave, Billings, MT

From Jean Neyrinck

Date: Nov. 7, 2017

As former owner and continued neighbor of the duplex at 204 Wyoming Ave, I am fully in support of Nicolle Ament's submitting an application for lot area variance, allowing a duplex as her property. Nicolle is purchasing this property from me on a contract for deed.

This property was constructed as a 2 living unit duplex in the early 1900's, long before current zoning areas were designated. On the south there are two additional duplexes, also constructed long ago as 2 living units in each. To the west is a home with 2 apartments, an across the street to the north is a home with 3 apartments.

All of these multifamily uses, as well as numerous apartments and duplexes in the surrounding neighborhood, were in place when I purchased my first home here in 1954, with that usage continuing to the present. For some reason, unknown by me, when zoning designation were established, they did not agree with what had been constructed and lived in over many years.

I, and my heirs, wish for this kind of multifamily neighborhood to continue.



Jean Neyrinck
205 Wyoming Ave
Billings, MT 59101

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 1917, 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 early 1900's. Four similar variances have been granted in the subdivision and there are at least 6 properties in the neighborhood that exhibit similar development density. 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 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 an existing two-family dwelling a minimum lot area of 6,500 square feet in a Residential 7,000 zone. No other variance is intended or implied with this approval.
2. The variance is limited to a portion of Lots 45 & 46, Block 15, West Side Subdivision, generally located at 204 Wyoming 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-70 zone.