

CITY BOARD OF ADJUSTMENT

MINUTES March 7, 2018

Name	Title	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/05/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018
David Mitchell	Board member	1	1	1									
Dave Hagstrom	Board member	1	1	A									
Paul Hagen	Board member	1	1	E									
Frank Chesarek	Vice Chairman	1	E	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 2018	01/03/201	02/07/201	03/07/201	04/04/201	05/02/201	06/06/201	07/05/201	08/01/201	09/05/201	10/03/201	11/07/201	12/05/201	Total
Variances	2	2	3										7

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 Tammy Deines, Planning Clerk.

Attending: Stephen Gountanis; Nancy & LaVern Peterson; Molly Harrington; Rex Dietz; Brian Harrington; Marshall Phil, Blueline Engineering.

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 February 7, 2018 minutes. Board member Mitchell seconded the motion to approve. Minutes were approved by unanimous voice vote 6-0.

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

There were no disclosures of Conflict of Interest. Boardmember Noennig disclosed a conversation about the site visit for Variance #1275.

Site Visits: Board member Noennig, Board member Hagen, Board member Heinrich; and Board member Connell made site visits to the property for Variance #1275. Board member Noennig, Board member Chesarek; Board member Hagen; Board member Mitchell; Board member Heinrich; and Board member Connell made site visits to the property for Variance #1276. Board member Chesarek; Board member Hagen; Board member Heinrich; and Board member Connell made site visits to the property for Variance #1277.

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.

Item #1:

Nicole Cromwell read the legal description for **Variance #1275**: Karen Husman presented:

City Variance 1275 – 5205 Cabernet Lane – Lot Coverage to 31% and Garage Setback of 10 feet - A variance from Section 27-308 requiring a maximum lot coverage of 30% (4,049 sf) to allow a maximum lot coverage of 31% (4,184 sf) and from Section 27-308 requiring a minimum setback for a garage entrance from a street of 20 feet to allow a 10-foot setback in a Residential 9,600 (R-96) zone, on Lot 9, Block 5 of Vintage Estates Subdivision, a 13,497 sf parcel of land. The purpose of the variance is to allow the addition of a 336 square foot canopy over a concrete patio on the northwest of the home and to allow the garage entrance on Vineyard Way. Tax ID: A32046

Ms. Husman pointed out the variance request for the 10-foot setback is recommended by staff, as the garage approach for the second garage on the side street was overlooked during zoning compliance review of the building permit.

Recommendation: Staff recommends conditional approval for the 10-foot setback for the garage approach and denial of the variance to allow 31% maximum lot coverage.

1. Ms. Husman reviewed the Determinations for Variance #1275 staff recommendation. There are not any special circumstances that exist in this situation other than the patio cover was constructed without building permit approval, and the side street garage setback of 10 feet was missed during plan review.
2. The subject property is in a newer subdivision with vacant parcels and homes newly constructed and under construction. There have been similar variances granted for setbacks in and no variances granted to exceed the lot coverage within the same district. Denying the variance for setback would deprive the applicant of rights commonly enjoyed by other tracts in the same district, however denying the lot coverage variance to allow 31% would not deprive the applicant of rights commonly enjoyed by other tracts in the same district.
3. The variance for setback of 10 feet will not allow the applicant any special privileges. Similar variances have been granted in the area. The variance to allow 31% lot coverage would allow the applicant a special privilege that is denied by this Chapter for other land within the same area.

Discussion:

Chairman Noennig asked the Board for questions and discussion. Boardmember Connell-asked who is the architect for this project. He stated he made a site visit to this property. He voiced concern with the City's inspections with this building. Ms. Husman explained that the permit was issued with an approved 10-foot setback instead of the 20-foot setback. Boardmember Connell voiced concern

with the review process and said he would be upset if he owned this subdivision. Boardmember Heinrich asked if there is any way for the canopy to be acceptable. Ms. Husman explained the total lot coverage of the patio.

Public Hearing

At 6:13 p.m., Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1275**.

Steve Goutanis, 2612 Southridge Drive, Billings, Montana

Mr. Goutanis stated he is the contractor, and the building plans were drawn by Impact Drafting. He said he checked the lot lines and setbacks with the City's Plan Reviewer prior to construction, and he was not aware of the 20-ft set back requirement. He said the owners asked to have the patio covered and he purchased the materials for the project during the framing process. The City's inspector realized the 1% overage on the lot coverage which amounts to a 11-ft X 12-ft section. Per Boardmember Hagen's request, he clarified the location of the steps. He said the inspector did not catch the incorrect side setback. Inspections were done throughout the process. Mr. Goutanis said this is his first experience in 12 years he has had this difficulty. Board member Noennig asked if with his experience, he should have had some inclination of this issue. Ms. Cromwell said in addition to the Planning Division, the Engineering Division provides review as well. In this case, the error was missed by Planning, Engineering, and the Building Inspector. Boardmember Noennig acknowledged the unique nature of the building and location on the lot. Boardmember Connell stated these errors affect the aesthetics of the subdivision. Boardmember Noennig asked how to make the patio compliant. Mr. Goutanis pointed out the difficulty of removing the supports due to the way it is constructed; and the need for redesign to accomplish this. In response to question by Boardmember Chesarek, Mr. Goutanis stated there are five builders in this subdivision, with Rick Dorn owning the remainder of the lots. The subdivision is projected to be completed by spring. Mr. Goutanis sent letters of explanation with contact information to the neighboring residents.

Rex Dietz, 1135 Vineyard Way, Billings, Montana

Mr. Dietz lives across the street from this property and has contracted to purchase this house. He is happy with the current construction. The neighbors he spoke with have no concerns with this project. As for the garage setback, he does not expect to have parking in front of the garage. The patio will provide protection from the elements. They were in the process of siding the structure when the inspector arrived. Boardmember Chesarek asked Mr. Dietz about the cost of reconstruction. Mr. Dietz estimated \$6,000-8,000, and if made to comply, it will leave a gap over the porch.

There was no one else wanting to speak in favor or in opposition to City Variance #1275. The public hearing was closed at 6:31 PM. Chairman Noennig called for a motion.

Motion

Boardmember Chesarek made a motion to conditionally approve **City Variance #1275**. Boardmember Connell seconded the motion.

The conditions are as follows:

1. The variance from Section 27-308 requiring a minimum setback for a garage entrance from a street of 20 feet to allow a 10-foot setback and from the 30% maximum lot coverage to allow 31% in a (R-96) zone. No other variance is intended or implied with this approval.

2. The variance is limited to Lot 9, Block 5 of Vintage Estates Subdivision, 5205 Cabernet Lane.
3. The applicant must submit the amended trusses for the covered patio structure for review and approval from the building division within 30 days of approval of this variance.
4. Any future re-construction of the existing structure will require compliance with all other zoning regulations and City ordinances that apply at the time of re-construction.
5. 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 called for discussion on the motion. Boardmember Connell commented the City should put the burden on the architect. Inspectors are supposed to catch the errors prior to construction. The garage is distasteful with the variance for the 10-foot setback. Boardmember Chesarek asked how many parking places are in the front of the property. Ms. Husman stated it is a five-car garage with four available parking spots in the driveway which is 20 feet from the street. Chairman Noennig said there is 10 feet available on the side yard garage. Boardmember Chesarek said he will vote to conditionally approve the variance on the basis the engineering has been done, and there is no concern from the neighborhood. The Board suggested an additional condition that the trusses are acceptable. Boardmember Heinrich voiced concern as there have been previous instances where the Board made others comply. Boardmember Noennig said each circumstance is different, and in this case, he cannot find an option that is sensible. He commented there is a difference between making a mistake and a deliberate violation of rules. Boardmember Connell stated there has to be some degree of understanding with these instances and he cannot see that this would hurt the neighbors or anyone else. Boardmember Mitchell asked if the original building permit had a patio. Ms. Husman said the stamped plans onsite showed the structure did not have a covered patio. She explained the 30% allowable lot coverage is the code in most of the residential construction zones, and doesn't include concrete and sidewalks.

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

The motion to conditionally approve **City Variance #1275** passed, 4-2

Item #2:

Nicole Cromwell read the legal description for **Variance #1276**: Karen Husman presenting.

City Variance 1276 – 501 Chancery Lane and 2220 Virginia Lane – Arterial and Front Setback

- A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a front setback of 13 feet and from Section 27-602(a) requiring a minimum 70-foot setback to the centerline of a minor arterial street (Virginia Lane) to allow a 43-foot setback to the centerline in a Residential 9,600 (R-96) zone, on Lot 2, Black Acre Subdivision and Lot 7 of Black Acre Subdivision 2nd Filing, a 31,425 square foot parcel of land. The purpose of the variance is to allow the construction of a new

detached garage. Tax IDs: A03134 and A03137B

Recommendation:

Staff recommends denial based on the determinations for variance review.

Ms. Husman reviewed the determinations for City Variance #1276:

1. There are no special conditions or circumstances that exist which are peculiar to the land, the lot or something inherent in the land which causes a hardship. The hardship is caused by wanting to build a detached garage into the setback.
2. The subject property is in a subdivision where most homes were built in the early to mid-1900's. Denying the variance would only deprive the applicant the ability to build a detached garage in the location they want to build it.
3. The variance would allow the applicant to build into the setback and arterial setback according to the zoning regulations of the City of Billings a special privilege not generally enjoyed in this neighborhood. There have been a few setback variances granted in the surrounding neighborhood, none of them were for arterial setback.
4. Staff is recommending denial of the variance, however granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy.

Discussion:

Chairman Noennig asked the Board for questions and discussion. Board member Connell asked if the structure could be set back further on the lot to comply with the setback requirements. Staff commented the request might have been made so the building does not restrict the view shed. Per request of Board member Heinrich, Ms. Husman gave clarification on the variances granted for the adjacent parcel. Board member Mitchell asked if the northern parcel be sold if the building is built on the property line.

Chairman Noennig **opened the public hearing at 6:55 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1276**.

Brian Harrington, 501 Chancery Lane, Billings, Montana

Mr. Harrington is the property owner. He pointed out the side of the house on the site map, and stated the existing shed provides buffering against Virginia Lane. He said they plan to install fencing if the variance is denied. He pointed out existing the landscaping, berming, and a well. The current shed is located 13 feet from the sidewalk.

Molly Harrington, 501 Chancery Lane, Billings, Montana

Ms. Harrington is the co-owner for this property. She explained that their initial plan was to replace the shed. It became apparent the eaves of the building would almost touch their home when considering the setback requirements. Another reason for this proposal is it will affect the existing landscaping. In response to query by Board member Hagen, Ms. Harrington stated they would consider a 15-foot setback.

OPPOSED: No one spoke in opposition of City Variance #1276. Chairman Noennig closed the public hearing and called for a motion.

Motion

Board member Chesarek made a motion to deny **City Variance #1275**. Board member Noennig seconded the motion.

Discussion

Chairman Noennig asked the Board for questions and discussion. Board member Connell voiced concern with encroaching on an arterial setback which are created for long term expansion of the City of Billings. He stated he feels a garage could be constructed to meet the arterial setback and he did not hear justification of the criterion for a hardship. Zoning Coordinator Nicole Cromwell pointed out the first three of the seven criterion for approval of a variance. Board member Mitchell asked for additional information on the property to the north. Ms. Cromwell commented on the previous variance history in this area. She pointed out this is a request for a detached garage which has specific requirements. The setback requirement is 20-feet from the street regardless whether the garage door faces the street or not.

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

The motion to deny **City Variance #1276** passed, 5-1.

Item #3:

Nicole Cromwell read the legal description for **Variance #1277**:

City Variance 1277 – 744 Yellowstone Avenue – Lot Area – A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for two (2) dwelling units to allow a minimum lot area of 7,000 square feet in a Residential 7,000 (R-70) zone, on Lots 31 & 32, Block 55 of Suburban Homes Addition. The purpose of the variance is to allow a second address to be assigned to the property. Tax ID: A15672

Recommendation

Staff is forwarding a recommendation of conditional approval based on the determinations for approval of variances as provided within this report.

1. There are no special conditions or circumstances with the land that create a hardship. However, there are other properties in this area that contain separate addresses on a lot.
2. There are several properties within this subdivision with less than the required lot area for multiple dwelling units. There have been six variances granted in this subdivision for two dwelling units on lots that are smaller than what is required by current zoning. Denying the variance would deprive the applicant of rights commonly enjoyed by other property owners in the same neighborhood.
3. The variance will not allow the applicant any special privileges. Similar variances have been granted in the area and other properties are similarly developed without the benefit of a zoning variance.
4. Granting this variance will be in harmony with the general purposes and intent of the zoning regulations and Growth Policy.

Staff is recommending the following conditions for this variance request:

1. The variance is to decrease the minimum lot size from 9,600 square feet to 7,000 square feet for two existing single family homes. No other variance is intended or implied with this approval. This variance does not include wall height.
2. The variance is limited to Lots 31 & 32, Block 55 of Suburban Homes Addition generally located at 744 Yellowstone Ave.
3. Any future re-construction or remodeling of the existing structures will require compliance with all Building Codes, Fire Codes, Engineering Codes, Zoning Regulations, and city ordinances that apply at the time of re-construction with the exception of the variance request.
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.

Discussion:

Chairman Noennig asked the Board for questions and discussion. In response to question by Board member Heinrich, Ms. Husman stated there is an approved building permit for a garage with an art studio on the second level. Board member Mitchell asked where the utilities are connected and Staff stated currently the utilities are to the home. The plan is to restructure the wiring with a new meter. Board member Chesarek said the issue is to install a second meter on the garage. Board member Noennig commented pottery making sounds like a business. To answer further queries by the Board, Staff explained the applicant is looking to move into the property and have a separate utility to track the cost of their art working. The art studio is an allowed use and a business license will be needed required. A new address would be assigned on Yellowstone Avenue. The separate address for hookup is required by Northwestern Energy, and an approved variance request is needed to accommodate the power company.

Chairman Noennig opened the public hearing at 7:25 PM and asked if there was anyone wishing to speak in favor or against City Variance #1277.

Laverne Peterson, 811 Judicial Ave. Billings, Montana

Mr. Peterson is the property owner. He purchased this home while attending college; and kept it as rental when he and his wife relocated to the Heights. Mrs. Peterson would like to build a studio to accommodate ceramic crafting. A separate meter is needed as currently there are renters in the home. He stated they were unaware of the need for a variance to install an electrical meter on the garage until they were informed by Northwestern Energy of the need to have two addresses. Board member Connell asked if they have quote for hookup expense, and it was noted an onsite quote will be done if the variance is approved. Mr. Peterson said the current meter is located at the back of the house. Board member Connell suggested considering having the electrician install a separate box.

Nancy Peterson, 811 Judicial Ave. Billings, Montana

Mrs. Peterson said she is a teacher and she works with clay and needs a studio. The house is not wired to take on the power needed for a kiln. The gas company also made a similar request. The garage is plumbed for water but will run on the main line and is permitted.

OPPOSED No one spoke in opposition to City Variance #1277. Chairman Noennig closed the public hearing at 7:35 p.m. and called for a motion.

Motion

Board member Heinrich made a motion to conditionally approve **City Variance #1275** as presented by staff. Board member Mitchell seconded the motion.

Discussion

Chairman Noennig asked the Board for questions and discussion. There was none.

Board member	Yes	No	Not Present
David Mitchell	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 #1277**, passed -0.

Other Business:

The next City Board of Adjustment meeting is scheduled for Wednesday, April 4, 2018 in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North.

The meeting adjourned at 7:50 PM.

**ATTEST: DRAFT. To be approved by a motion April 4, 2018.
Tamara L. Deines, Planning Clerk**