

## CITY BOARD OF ADJUSTMENT

MINUTES May 2, 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	E	1							
Dave Hagstrom	Board member	1	1	A	1	1							
Paul Hagen	Board member	1	1	E	1	1							
Frank Chesarek	Vice Chairman	1	E	1	E	E							
Oscar Heinrich	Board member	1	1	1	1	1							
Martin Connell	Board member	1	1	1	1	1							
Mark Noennig	Chairman	1	1	1	1	1							

TOTAL NUMBER OF APPLICATIONS 2018	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	TOTAL
	<b>Variance</b>	2	2	3	2	3							

Chairman pro tem Hagstrom 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:** Mitch Goplen, Claudia Welborn, Kristin Evans, Spencer Beddes. Donna Gilluly, Pat Davies, Jay Buffington, Tim Reedy, Vicki Moyer, Shaun Shahan, Mike Yakawich, Donald Ross, Frank Nienaber, Alice Golden

**Public Comment**

Chairman pro tem Hagstrom opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

Motion for reconsideration of Variance 1279. Mitch Goplen, Tim Reedy, Claudia Welborn, Kristen Evans, Donna Gilluly, Alice Golden and Spencer Bennes in support of Variance 1279. Donald Ross is in support of Dialysis Center. Mike Yakawich, City Council Ward I, thanked the Board.

Chairman Noennig arrived at 6:11pm

Board member Hagen made a motion to reconsider the approval of Variance 1279 that was denied April 4, 2018 at the Board of Adjustment meeting. Board member Hagstrom seconded the motion. Board member Heinrich asked for clarification of the motion and second and point of order. He asked if a person could second the motion if he was not in attendance for the original hearing. Staff replied that any member may second a motion. Chairman Noennig asked if this is the hearing and if it is debatable. Staff replied that it is not debatable and then checked the book. Staff then stated is not amendable, but is debatable. Chairman Noennig then asked if the motion would be to rehear or take a new vote. Staff replied this motion is not to approve, it is to rehear and reconsider the previous motion to approve with conditions.

**Discussion**

Board member Connell spoke in support to rehear with all information necessary. Board member Heinrich asked what issues were given that were in error. We made a decision based on the information that was provided by Billings Clinic. Board member Heinrich believes the decision has been made. We do not have information as to why it should be brought back. Chairman Noennig stated he would not like to address the credibility of the witnesses but rather the factors. Board member Connell does not believe that the previous info was correct or gave sufficient details. Board member Connell stated going forward he will insist on the previous 5-year history of relevant Variances. He wishes to ask some of the witnesses some hard questions to which he knows the answers. Board member Heinrich wants his voice to be heard. He is objecting to this motion to reconsider.

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 rehear and reconsider Variance #1279 carries with a 5-1 vote.

**Approval Meeting Minutes**

Board member Hagen made a motion for the approval of April 4, 2018 minutes. Board member Connell 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**

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.

**Chairman Noennig has a client involved with Variance 1282 and will be recusing himself.**

**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 #1280**: Nicole Cromwell presenting.

**City Variance 1280 – 1333 N 27<sup>th</sup> St – Lot Area, setbacks** - A variance from Section 27-310(e) requiring dwelling units in a Community Commercial (CC) zone meet the same requirements as a Residential Multi-family-Restricted (RMF-R) zone to allow a lot area of 7,336 square feet for 8 (eight) attached dwelling units; reduce the required front setback from 15 feet to 0 feet; reduce the required arterial centerline setback from 60 feet to 50 feet; reduce the required side setbacks from 8 feet (2-story) to 0 feet in a Community Commercial (CC) zone, on Parcel 1A1, C/S 463. The purpose of the variance is to allow the conversion of a vacant office building to eight 1-bedroom apartments. The east half of the 1953 office building has been demolished. Tax ID: A16558

**Recommendation:**

Staff recommends conditional approval based on the findings of the 7 criteria for Variance 1280.

**Questions for Staff:**

Board member Heinrich- The City Council did the variance for the parking not the BOA, how does that happen? Staff explained that in 1985 the City Council removed the off street parking regulations from zoning and put them with a site development ordinance. This is regulated by the Building Department and Engineering. Therefore, approvals are done through the City Council.

Chairman Noennig- What is the square footage? Staff explained that only a duplex would be allowed.

Board member Heinrich - Concurrent applications? Building permit application on March 30.

Board member Hagstrom asked Staff to review the change of use. What was the previous plan? Staff explained that originally the plan was to build 16 units without a full kitchen which fall under a different code. The applicant changed plans to 8 complete units.

Board member Heinrich -will alley improvements be required? Staff replied Engineering will state the regulations.

Chairman Noennig **opened the public hearing at 6:38 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1280**.

**Shaun Shahan, Bozeman, MT**

Downtown needs viable housing for the people who work here. Clientele could include graduate students, MSUB students, single professionals. He would like to accommodate. 90 percent of our young professionals are forced to get housing on the West end.

Board member Connell asked have you solved the water seepage problem from the Ditch. All is new and repaired. The water was draining from the roof to the foundation; it was not the Ditch.

**OPPOSED**

None

**Discussion**

**The public hearing was closed at 6:44 PM.**

BOARDMEMBER HEINRICH made a motion and BOARDMEMBER HAGEN seconded the motion to approve **City Variance #1280 with conditions**.

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 #1280**, passed **Not Present**

**City Variance #1281**. Karen Husman presenting:

**City Variance 1281 – 604 S 35<sup>th</sup> St – Lot Area, setbacks** – A variance from Section 27-308 requiring a minimum lot area of 7,000 for 2 dwelling units to allow a minimum lot area of 6,600 square feet, from 27-308 requiring a minimum rear setback of 20 feet to allow a rear setback of 0 feet; from 27-308 requiring an 8-foot side setback for a 2-story structure to allow a side setback of 0 feet in a Residential 6,000 (R-60) zone on the east 88 feet of Lots 10-12, Block 220, Billings Original Town. The purpose of the variance is to allow the removal of existing detached garages & carports and reconstruct a new garage with an apartment above. Tax ID: A01632

**Recommendation:**

Staff recommends conditional approval based on the findings of the 7 criteria for Variance 1281.

**Questions for Staff:**

Board member Connell asked if there had been any input from the neighbors? 2 letters.  
 Board member Heinrich asked if they would demolish the old carport and have separate utilities. Yes, the old structures will be demolished. It is unknown if they will have separate utilities. If 2 addresses are given, the utilities will be separate.  
 Board member Hagstrom stated they are requesting zero setbacks on either side, are there others in the neighborhood? None. The site plan showed an actual setback of 3 feet.

Chairman Noennig **opened the public hearing at 6:52 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1281**.

**Jay Buffington, owner**

Mr. Buffington stated this is a dwelling for his disabled brother in law. Original garage was very narrow. The new dwelling will go in the original footprint. The footprint will be the same, fire resistant walls to neighbors. We have no storage and new building will house lawn tools etc.

Board member Hagstrom asked if there are other variances? Staff replied there are 3 existing structure, none new construction.  
 Chairman Noennig asked how the footprint be the same if the building is being moved and larger.

**OPPOSED**

None

**The public hearing was closed at 7:01 PM.**

**Discussion**

Board member Heinrich will we be approving a 0 or 3-foot setback? Staff recommends a 3-foot setback.

Board member Hagstrom asked if this sets a precedence? Staff replied there are already many in the area. A rebuild letter anticipates new construction.

BOARDMEMBER HEINRICH made a motion and CHAIRMAN NOENNIG seconded the motion to approve **City Variance #1281** with 3-foot side and rear setbacks instead of 0 foot.

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, <b>City Variance #1281</b> , passed <b>Not Present</b>			
[REDACTED] the legal description for <b>Variance #1282</b> : Karen Husman presenting.			
<b>City Variance 1282 – Lenhardt Square – Building Height</b> – A variance from Lenhardt Square PD Exhibit “B” as amended requiring a maximum building height of 34 feet to allow a maximum building height of 46 feet in the PD-MF-4 zone, on Parcel 2A of C/S 2063, a 19.13-acre parcel of land. The purpose of the variance is to allow the construction of 2 new 86-unit 3-story apartment buildings. Tax ID: D00514A.			

**Recommendation:**

Staff recommends conditional approval of the variance based on the findings of the 7 criteria.

**Questions for Staff:**

Board member Heinrich asked what is the height of the apartments across the road. 3 story/46-48 feet

Board member Connell asked if the height of these buildings will be the same as the surrounding buildings. Yes

Chairman pro tem Hagstrom **opened the public hearing at 7:15 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1282**.

**Gary Owen, Sanderson Stewart**

Representing Bill Hanser. Height is being requested for economical and aesthetic design. 3 story multi-family is like to the neighborhood.

Current height was established by the PUD originators; they support the Variance. This will increase the density. It is within walking distance to commercial, retail and medical facilities. Increasing height allows for density and increases ground space. All of this conforms to the 2016 Growth Policy.

Board member Hagen asked if this property is directly west of St Vincent's? Yes, very close. Board member Heinrich confirmed the variance is only for height.

**Frank Nienaber, 5810 Sam Snead Trail**

Altering heights are required. 4/12 pitch is the minimum acceptable pitch for asphalt shingles.

**OPPOSED**

None

**Discussion**

**The public hearing was closed at 7:21 PM.**

BOARDMEMBER HEINRICH made a motion and BOARDMEMBER HAGEN seconded the motion to approve **City Variance #1282**.

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			Recused

The motion to approve with conditions, <b>City Variance #1282</b> , passed <del>5</del> <b>Not Present</b>			
<b>Other business:</b>			
How information is presented to the Board. Marty would suggest a chart listing the variances in the area of the last 5 years. He suggests this to substantiate board decisions. More emphasis needs to be on a fair consideration. His wish is to stay out of litigation. Applicable Variances in the area.			

Board member Connell would like direction when an address is not listed. He believes that site visits by Board members should be required. He has never regretted doing a site visit, but has regretted not going.

**The meeting adjourned at 7:38 PM.**

**ATTEST: APPROVED by a motion June 6, 2018.**

