

**CITY BOARD OF ADJUSTMENT**

MINUTES October 3, 2018

Name	Title	0	0	0	0	0	0	0	0	0	0	1	1	1
		1	2	3	4	5	6	7	8	9	0	0	1	2
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		0	0	0	0	0	0	1	0	0	0	0	0	0
		3	7	7	4	2	6	1	1	5	3	8	5	
		/	/	/	/	/	/	\	/	/	/	/	/	
		2	2	2	2	2	2	2	2	2	2	2	2	2
		0	0	0	0	0	0	0	0	0	0	0	0	0
		1	1	1	1	1	1	1	1	1	1	1	1	1
		8	8	8	8	8	8	8	8	8	8	8	8	8
David Mitchell	Member	1	1	1	E	1	E	1	-	1	1			
Dave Hagstrom	Member	1	1	A	1	1	1	1	-	1	1			
Paul Hagen	Member	1	1	E	1	1	1	1	-	1	E			
Frank Chesarek	Member	1	E	1	E	E	E	1	-	E	E			
Oscar Heinrich	Member	1	1	1	1	1	1	E	-	1	1			
Martin Connell	Member	1	1	1	1	1	1	1	-	E	E			
Mark Noennig	Chair	1	1	1	1	1	1	E	-	1	1			

TOTAL NUMBER OF APPLICATIONS 2018	0	0	0	0	0	0	0	0	0	0	1	1	1	TOTAL
	1	2	3	4	5	6	7	8	9	0	0	0	0	
	/	/	/	/	/	/	/	/	/	/	/	/	/	
	0	0	0	0	0	0	1	0	0	0	0	0	0	
	3	7	7	4	2	6	1	1	5	3	8	5		L
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	2	2	2	2	2	2	2	2	2	2	2	2	2	
	0	0	0	0	0	0	0	0	0	0	0	0	0	
	1	1	1	1	1	1	1	1	1	1	1	1	1	
	8	8	8	8	8	8	8	8	8	8	8	8	8	
<b>Variance</b>	2	2	3	2	3	1	1	-	1	2				17

Chair 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 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:** Jo Barringer, Peggie Gaghen, Brian Hoemer, Diann Thompson, Charles Hamwey, Lance Renstrom, Kim Olsen

**Public Comment**

Chair Noennig opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

**Approval Meeting Minutes**

Member Heinrich made a motion for the approval of September 5, 2018 minutes. Member Mitchell 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 Member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here.

Nicole Cromwell explained an email has been received regarding Variance #1287 has been forwarded to Board members. Chair Noennig explained a possible conflict.

**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 #1286**.  
Karen Husman presenting:

**City Variance 1286 – 78 Mountain View Blvd – Front Setback** - A variance from Section 27-310(i) requiring a minimum front setback of 20 feet for a detached structure to allow a minimum front setback of 14 feet in a Residential 9,600 (R-96) zone on Lot 21 and the North 57 feet of the East 2 feet of Lot 22, Panoramic Heights Subdivision, a 10,414 square foot parcel of land. Tax ID A12566

**Recommendation:**

Staff recommends denial of the variance.

**Questions for Staff:**

Member Heinrich inquired who complained thru Code Enforcement, are there any variances for sheds in the front yard? One anonymous complaint.

Chair Noennig **opened the public hearing at 6:09 PM** and asked if there was anyone wishing to speak in favor or against **City Appeal Variance #1286**.

**John Hoff, owner**

Was informed by the building department that he did not need a building permit because of the size of the building, there is a 20 foot setback requirement. He was confused where to measure from and therefore the shed does not meet the requirement. He indicated the terrain on the property dictates this being the only place for the building. Mr. Hoff presented photos to show his hardship was the unlevel ground. He said quality siding and windows were used for construction.

Member Hagstrom asked who had told him where to measure from? He said he measured the 20-foot

setback from the edge of the street, he thought that was his property line. No survey was done. He is short 6 feet. He measured from where the pavement ends.

Member Heinrich asked what is the hardship. He said he has no level spot thus dictating the shed location.

Chair Noennig discussed the finishing of the shed after he was found in violation. Mr. Hoff admits to having finished the building after having been found in violation.

**Brian Hoerner, 80 Mountain View Blvd, neighbor**

Mr. Hoerner is a neighbor and knows what it is like to try and build level in this area.

He is in favor of the shed remaining.

**OPPOSED**

**Peggy Gaghen, 87 Mountain View Blvd**

Ms. Gaghen has lived there since 1970. She is surprised a structure is allowed in this area even if it met setback requirements. She thinks this will set a precedence and it is an eyesore. The other variances eluded to, are very different. This shed degrades the neighborhood.

**Charles Hamwey, 1010 Grand Ave**

This property is zoned R-9600 with 20 foot setbacks. Wonders if the owner of the shed has enough room at the back of the lot to accommodate he shed. He agrees this is an eyesore. He feels it inhibits future home sales in the area. He recommends denial of the variance.

**Rebuttal**

Mr. Hoff asked for a continuance, a 30 day delay.

**Discussion**

Member Heinrich confirmed the City will take anonymous Code Enforcement complaints. Should the motion to continue be approved? This request was denied as there is no new information to be presented and the only reason for asking for a continuance is the short board. Chair Noennig and Member Hagstrom commended Mr. Hoff on the appearance of the shed, however, the concern in approving this is the possible influx of others wanting to not meet setback requirements. There is no hardship to be considered.

**The public hearing was closed at 6:34 PM.**

Member Heinrich made a motion to deny and Member Hagstrom seconded the motion to **deny City Variance #1286**.

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 #1286**, passed 4-0.

Nicole Cromwell read the legal description for **Variance #1287**. She also advised the owner 2 of the surrounding property owners were not notified of this Variance application. One of these property owners is here, the other is not. Chair Noennig ruled to continue with the hearing in spite of the risks explained regarding the notifications.

Karen Husman presenting:

**City Variance 1287 – 3230 Country Club Circle – Front Setback** - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet for a proposed new single family residence in a Residential 9,600 (R-96) zone on Lot 1A and Lot 2, Block 7, Country Club Heights Subdivision, a 20,824 square foot parcel of land. Variance 1117 was conditionally approved for these lots in 2012, but expired in 2015. Tax IDs A05699 & A05670 Staff also requested to change condition #1 from one single family dwelling to two, one on each lot. Thus eliminating having to come before the board again. Also, the owner has proactively contacted Trail Net regarding the Myers Trail shown on the plat. An easement will be improved so Trail access is assured.

**Recommendation:**

Staff recommends conditional approval of the variance.

1. The variance is to decrease the required front setback from 20 feet to 10 feet for the purpose of constructing two single family dwellings. One on each lot. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 1A and Lot 2 of Block 7, Country Club Heights Subdivision generally located at 3230 Country Club Circle.
3. The applicant shall receive approval for a building permit within one (1) year of and

- construction shall be completed within three (3) years of Board approval.
4. Failure to begin or complete actions required by this approval within the time limits shall void this variance.
  5. All construction will require compliance with all other zoning regulations and City ordinances apply at the time of construction.
  6. These conditions shall run with the land described and shall apply to all current and subsequent owners, etc.

**Questions for Staff:**

Member Mitchell asked if the trail stops at the alley. No it does not. The alley is not vacated. Member Heinrich asked about the setbacks for two single dwellings. There are no legal ramifications. Please include change to condition #1 as requested by staff.

Chair Noennig **opened the public hearing at 6:55 PM** and asked if there was anyone wishing to speak in favor or against **City Appeal Variance #1287**.

**Jeff Kanning, owner**

This property has remnants of the old Myers Trail platted in 1950. He has no intention of blocking trail access. Create an 8 foot easement on Lot 2 to add public access easement. The original plat was approved with restrictions allowing 10 foot front setbacks. When annexed the zoning required a 20 foot setbacks. He is not able to get a building permit without the variance for the 10 foot setback. A discussion ensued regarding the need to delay this hearing for 30 days in order to obtain approval from the surrounding property owners not notified. Mr. Kanning would like to begin his building project, time is of the essence.

**Kim Olsen, 2112 Country Club, neighbor**

She was not contacted this time, but was the 1st variance. She is in favor and wants the trail protected.

**Tom Tilley, 2210 Pryor Lane**

He is a frequent user of this trail. He was a GIS coordinator for the City of Billings for a number of years and the aerial view does not match up to the plat. He is in favor if the Myers Trail is protected with access and documented as such.

**OPPOSED**

None

**Discussion**

There was discussion regarding adding a condition regarding the easement. Member Hagstrom agrees with the conditions and states the owner is the only one at risk. Member Mitchell confirms the owner will dedicate the easement but who will maintain it?

**The public hearing was closed at 7:14 PM.**

Chair Noennig made a motion and Member Mitchell seconded the motion to approve **City Variance #1287**.

**With conditions as specified as indicated by Staff, on the basis specified by the Staff, condition #1 be change to two single family dwellings, one on each lot and there be an additional condition #5, the applicant agrees to provide for an easement to access the Myers Trail to be presented with his building application.**

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 #1287**, passed 4\*-0.

**Other business:** The next meeting is November 8, 2018, one day later than the normal meeting date due to a State holiday on Tuesday November 6, Election Day.

**The meeting adjourned at 7:21 PM.**

**ATTEST: DRAFT. To be approved by a motion November 8, 2018.**