

CITY BOARD OF ADJUSTMENT

MINUTES July 3, 2019

Name	Title	0	0	0	0	0	0	0	0	0	0	1	1	1
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David Mitchell	Member	-	-	-	E	E	E	1						
Dave Hagstrom	Member	-	-	-	1	1	1	1						
Paul Hagen	Member	-	-	-	1	1	1	E						
Jeff Bollman	Member	-	-	-	1	E	1	E						
Oscar Heinrich	Member	-	-	-	1	1	1	1						
Martin Connell	Member	-	-	-	1	1	1	1						
Mark Noennig	Chair	-	-	-	1	1	1	1						

TOTAL NUMBER OF APPLICATIONS 2019	0	0	0	0	0	0	0	0	0	1	1	1	T
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	9	9	9	9	9	9	9	9	9	9	9	9	
Variance	-	-	-	1	1	2	2						6

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 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: Dave Hawkins, Leona Lee, Brian Lee, Steve Lauer, Barbara Hawkins

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

Meeting minutes for the June 5, 2019 meeting have been delayed. Clerk was out.

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

A form is used for any disclosures. If any Member circled yes to a Conflict of Interest or Ex Parte Communication, it is 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.

Chair Noennig recused himself from City Variance 1295, Member Connell presided.

City Variance – 1295 – 3410 Flagstone Dr. – To allow an 8 foot fence - A variance from 27-604(c) requiring a maximum of 6 feet in height to allow an 8 foot fence/wall in an Residential 9,600 (R-96) zone, on Block 1, Lot 3, Castlewood Sub. 3rd Filing, S27, T1N, R25E, a 10,943 square foot parcel of land. The purpose of the variance is to allow construction of an 8-foot fence adjacent to Zimmerman Trail. Tax ID: A20383
City Ward 4.

Recommendation:

Staff recommends conditional approval of the proposed variance.

Staff proposes the following conditions of approval:

1. The variance is to allow an eight-foot fence in the rear yard adjacent to Zimmerman Trail only. No other variance is intended or implied with this approval.
2. The variance is limited to Block 1, Lot 3, Castlewood Sub. 3rd Filing, generally located at 3410 Flagstone Drive.
3. The applicant shall meet all other city code requirements with the exception of this variance.
4. The property owner must submit and receive approval of a fence permit within 6 months of approval of this variance, and complete construction within one year.
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.

Questions for Staff:

Member Connell opened the public hearing at 6:08PM and asked if there was anyone wishing to speak in favor or against **City Variance 1295.**

Rebuttal

Close hearing 6:09PM

Member Heinrich made a motion to conditionally approve and Member Mitchell seconded the motion for **City Variance 1295 with staff recommendations.**

Member	Yes	No	Not Present
David Mitchell	X		
Dave Hagstrom	X		
Paul Hagen			X
Jeff Bollman			X
Oscar Heinrich	X		
Martin Connell	X		
Mark Noennig			Recused

The motion to approve **City Variance 1295** passed 4-0 with staff recommendations.

Chair Noennig presiding.

City Variance – 1296 –The South East corner of Rosebud and S 31st Street West – Lot coverage. A variance from Section 27-308 requiring a maximum of 30 % lot coverage to allow 40% to in a Residential -8000 (R-80) zone, on Block 15, Lots 7A, 8A, 9A, 10A & 11A, in S12, T1S, R25E of Lampman Subdivision, with five lots containing a total of 63,134 square feet. Tax ID: C07956, C07957, C07958, C07959 & C07960. City Ward 5.

Recommendation:

Planning staff has reviewed this application and is recommending denial of Variance 1296 based on the Determinations for granting a variance.

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 no special circumstances that exist which are peculiar to the land. The applicant has not stated a hardship with the property. The code allows 30% lot coverage could be built to meet the size allowed by the zoning regulations.

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;

Allowing the variance would give the applicant rights not commonly enjoyed by other tracts in the same district. There have not been any similar variances granted in the area or surrounding neighborhoods. The variance would allow the applicant special privileges. Other lots in this subdivision have developed as defined by the zoning code.

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;

Granting this variance would not confer a special privilege to this applicant as similar structures have been built over the maximum lot coverage under the code. Granting the variance requested will not confer on the applicant a special privilege that is denied by this Chapter to other land in the same district.

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. Lot coverage restrictions prohibit excessive building in all zoning districts.

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 denial of variance. If the Board chooses to approve the variance, staff would recommend the following conditions for the variance request:

1. The variance is to allow a maximum of 34 % lot coverage. No other variance is intended or implied with this approval.
2. The variance is limited to Block 15, Lots 7A, 8A, 9A, 10A & 11A, in of Lampman Subdivision, Tax ID's: C07956, C07957, C07958, C07959 & C07960.
3. The applicant shall meet all other city code requirements with the exception of this variance.
4. The property owner must submit and receive approval of building permits within 1 year of approval of this variance, and complete construction on the lots within 4 years.
5. Failure to complete the requirements of these conditions shall void the variance.
6. 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.

7. 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

Staff is recommending denial of the variance. If the Board chooses to approve the variance staff would recommend a permit within 1 year and completion of construction within 4 years.

8. 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.

Granting this variance will not approve a use that is not otherwise allowed in the R-80 zoning district. Residential single-family dwellings and duplexes are allowed in the R-80 district.

Questions for Staff:

Member Heinrich confirmed the zoning for the area across the street is Community Commercial. The lots being considered in this Variance were discussed as to their building status.

Chair Noennig **opened the public hearing at 6:14PM** and asked if there was anyone wishing to speak in favor or against **City Variance 1296**.

Barbara Hawkins, 2617 Westfield Drive, Billings, MT

The lot area calculations are now based on the roof square footage and not foundation square footage. I received a call from Jeannette in Planning, stating the lot coverage included the roof and therefore I am not meeting the requirements and a Variance request was necessary. Our new building permit application is at 33 percent lot coverage because we have enhanced our original plans with a larger garage and master suite. Jeannette calculated the area at 37 percent. Nicole suggested we apply for a blanket Variance to include all lots.

Member Hagstrom stated he has always thought lot coverage was based on foundation square footage. Staff replied if the overhang is over 1.5 feet, the roof is calculated in the lot coverage.

Chair Noennig asked what was to be built on each lot.

Member Mitchell asked if all the three interior lots are the same size. They are very close in size.

Member Hagstrom asked if the design is 33 percent lot coverage why is the request for 40%. Ms. Hawkins replied, we were told we were using 37 percent, so we are trying to cover our bases.

Brian Lee, 4115 Kaitlin Court, Billings, MT

Mr. Lee is in favor of the duplex and variance. These duplexes will have ground level entry. They will have a larger master bedroom and bath. These residences will be ADA compliant.

Chair Noennig asked what will be done if 30 percent is required. Mr. Lee said revisions would need to be made.

Dave Hawkins, 2617 Westfield Drive, Billings, MT

We have developed single-family residences all over Billings since 1989. We have never been before the Board of Adjustment for a variance request.

Now that the discrepancy is clarified, 33.8 % is what we need. We are okay with conditions if implied.

Chair Noennig asked what the projections definition is 27-310 explains allowed projections. He also asked what a basis for hardship might be.

Steve Lauer, 8 Monroe Street, Billings, MT

Stated he is in favor of the Variance.

Leona Lee, 4115 Kaitlin Court, Billings, MT

Stated she is in favor of the Variance.

Member Heinrich asked staff when Project RE:Code will be finished and how the new code will effect these lots. Staff replied it is likely if the applicant waited until January 2020, the lots would be conforming.

Member Connell stated he is in favor of approving the variance. Development should not be hindered by unnecessary rules. These rules may soon be revised.

Chair Noennig asked what the projected time frame to build is. Mr. Lee replied immediately.

Rebuttal

Close hearing 6:44pm

Member Heinrich made a motion to approve the variance with changes to determination number 3 to “Granting this variance would not confer a special privilege to this applicant as similar structures have been built over the maximum lot coverage under the code. Granting the variance requested will not confer on the applicant a special privilege that is denied by this Chapter to other land in the same district”, and adding the standard recommended conditions with the exception of condition number one shall state no more than 34 percent lot coverage. Member Connell seconded the motion to approve **City Variance 1296, with the stated conditions.**

Member	Yes	No	Not Present
David Mitchell	X		
Dave Hagstrom	X		
Paul Hagen			X
Jeff Bollman			X
Oscar Heinrich	X		
Martin Connell	X		
Mark Noennig	X		

The motion to approve **City Variance 1296**, passed 5-0 with Board stated conditions.

Other Business:

Three Variances next month

The meeting adjourned at 6:55 PM.

ATTEST: DRAFT. To be approved by a motion August 7, 2019.