

**CITY BOARD OF ADJUSTMENT**

MINUTES August 7, 2019

Name	Title	01/02/2	02/06/2	03/06/2	04/03/2	05/01/2	06/05/2	07/03/2	08/07/2	09/04/2	10/02/2	11/06/2	12/04/2
David Mitchell	Member	-	-	-	E	E	E	1	1				
Dave Hagstrom	Member	-	-	-	1	1	1	1	1				
Paul Hagen	Member	-	-	-	1	1	1	E	E				
Jeff Bollman	Member	-	-	-	1	E	1	E	E				
Oscar Heinrich	Member	-	-	-	1	1	1	1	1				
Martin Connell	Member	-	-	-	1	1	1	1	E				
Mark Noennig	Chair	-	-	-	1	1	1	1	1				

TOTAL NUMBER OF APPLICATIONS 2019	01/02/2019	02/06/2019	03/06/2019	04/03/2019	05/01/2019	06/05/2019	07/03/2019	08/07/2019	09/04/2019	10/02/2019	11/06/2019	12/04/2019	TOTAL
Variance	-	-	-	1	1	2	2	3					9

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:** Mike Kautzman, Regina Griemsman, Brandy Coffin.

**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 and July 3, 2019.

Member Heinrich motioned to approve the June 5, 2019 minutes, Member Mitchell seconded. All voted in favor.

Member Mitchell motioned to approve the July 3, 2019 minutes. Member Hagstrom seconded. All

voted in favor.

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

A 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.

**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.

**Variance 1297 - 2239 Fairview Place.** The applicant is requesting 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 20, Block 7, Country Club Heights Sub, a 22,861 square foot parcel of land. The purpose of the variance is to allow a 10-foot front setback to accommodate stairs and possibly front porch.

Presented by Karen Husman, Planner I

**Recommendation:**

Staff recommends conditional approval of the proposed variance.

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the required front setback from 20 feet to 10 feet for the purpose of constructing a single family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 20, Block 7, Country Club Heights Subdivision, generally located at 2239 Fairview Place.
3. The site shall be developed in substantial conformance to the site plan presented to the BOA, that reflects the 10 foot front setback. No other nonconformity shown on the site plan is/are considered with this variance approval.
4. The applicant shall receive approval for a building permit within one (1) year of Board approval. Construction shall be completed within three (3) years of Board approval.
5. There will be no construction activity before 7 am or after 8 pm.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. All construction will require compliance with all other zoning regulations and City ordinances that apply at the time of construction.
  
8. 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 Heinrich asked if this were built today, would it have been allowed. A blanket variance may have a applied.

Chair Noennig asked if this is this a vacant lot, staff deferred more questions to the agent.

Chair Noennig asked how will the new zoning wil affect this lot. A minimal set back will apply but no lot coverage limitations.

**Chair Noennig opened the public hearing at 6:11 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1297**.

**Mike Kautzman, 1225 Juniper Drive, Billings, MT**

We purchased this lot to build a home. It is a half acre lot. The land has geographical restrictions due to rock.

Member Heinrich asked where the 8 foot variance referred to is. It is the neighboring property. Chair Noennig asked if the properties line up, do they sit on the street the same. This home be farther back from the street then the neighboring homes.

**Rebuttal**

**Close hearing 6:14 PM**

Member Heinrich made a motion to approve and Member Hagstrom seconded the motion to **approve** **City Variance #1297 with staff recommendations.**

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Not Present</b>
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 #1297**, passed 4-0 with staff recommendations.

**Variance 1298 - 1121 N 32nd Street.** The applicant is requesting a variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 40% in order to remove an existing older garage and construct a new larger garage that will allow parking 2 vehicles in a Residential 7,000 zone, on Lot 38, Block 11, North Elevation Sub. 1st Filing, a 7,000 square foot parcel of land. The purpose of the variance is to allow a proposed 780 square foot garage. Presented by; Karen Husman, Planner I.

**Recommendation:**

**Staff recommends conditional approval of the variance.**

Staff is recommending the following conditions for the variance request;

1. The variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 40% based on the lot area of 7,000 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 38, Block 11, North Elevation Subdivision, generally located at 1121 North 32nd Street.
3. The site shall be developed in substantial conformance to the site plan presented to the BOA.
4. The applicant will submit a building permit application within six months of Board approval and construction will be completed within eighteen months of variance approval.
5. There will be no construction activity before 7 am or after 8 pm.
6. Failure to start or complete actions required in this approval will void the variance.
7. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.
8. 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 Heinrich confirmed this is a cleaning up of the books. Staff said in January the new zoning will allow 60%

Member Heinrich asked if staff had received any opposition. None

Chair Noennig **opened the public hearing at 6:19 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1298**.

### **Brandy Coffin, 1121 North 32nd Street, Billings, MT**

They need a garage that will house their truck and the current structure is in need of replacement.

Member Heinrich asked what is the excavation you are doing. It is a retaining wall.

### **Addison Sessions, 1117 North 32nd Street, Billings, MT**

He is in favor of the new garage.

### **Rebuttal**

### **Close hearing 6:22 PM**

Member Mitchell made a motion to approve and Member Heinrich seconded the motion to approve **City Variance #1298 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	X		

The motion to approve **City Variance #1298**, passed 4-0 with staff recommendations.

**City Variance 1299 – 2325 Central Ave. - To allow an arterial setback of 54 feet from centerline**

The applicant is requesting variance from Section 27-602(b) requiring a minimum setback of 60 feet from the centerline of Central Avenue (a principle arterial street) to allow 54 feet, and from section 27-310(g)(2) requiring a maximum of 4 feet permitted projection into the front setback to allow 6, in a Community Commercial (CC) Zone, on the east 130 feet of Lot 3, Block 12, Sweet Acres Sub. 6<sup>th</sup> Filing, a 22,495 square foot parcel of land. The purpose of the variance is to allow an outside covered patio 54 feet from the centerline of an arterial street. Tax ID: A20203

**Recommendation:**

Planning staff has reviewed this application and is recommending **denial** of Variance #1299 based on the Determinations for granting a variance.

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.
2. There is adequate space on the lot to build a covered patio area without encroaching into the setback.
3. The variance would allow the applicant a special privilege not generally enjoyed in this neighborhood and area along Central Avenue.

**Questions for Staff:**

Chair Noennig stated the canopy is an add on.

Member Heinrich asked if a building permit had been issued, NO.

Will the new zoning allow this? Staff explains no arterial setbacks have been proposed yet in the new code.

Chair Noennig asked if this would then be acceptable, this might meet the requirements? Staff explains, it would not likely be in violation, but the new code has not yet been adopted.

Member Hagstrom confirmed there are no other encroachments by neighboring businesses. Arterial setbacks are created for expansions. He is concerned that approval will set future precedence.

Member Mitchell asked if there were no roof is it still an encroachment. A retractable awning is not an encroachment.

Chair Noennig **opened the public hearing at 6:37 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1299**.

**Regina Griemsman, 3949 Teal Street, Billings, MT**

Ms. Griemsman is the owners daughter. They thought the addition would enhance the ADA compliance. Also giving sidewalk cover in bad weather.

Chair Noennig discloses his previous relationship with the owners.

Member Hagstrom asked why a building permit was not obtained. The outside was not included on the inside renovation building permit.

Chair Noennig asked will you object to conditions, not to be enclosed.  
Does the applicant want to extend the decision for 30 days.

Member Mitchell asked staff if we can condition to approve with no payment for demolition, etc. We cannot condition eminent domain.

**Gena Gale Demis, 3014 Shady Lane, Billings, MT**

Ms. Demis is the owner. It was a mistake between the builder and myself. She accepts responsibility.

Member Heinrich asked if they wish to postpone the decision for 30 days when a more board members may be present. NO

**Rebuttal**

**Close hearing 6:51 PM**

Member Mitchell made a motion to **deny** and Member Heinrich seconded the motion to **deny** **City Variance #1299 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	X		

The motion to deny **City Variance #1299**, passed 4-0 with staff recommendations.

**Other Business:**

**The meeting adjourned at 6:54 PM.**

**ATTEST: Approved by a motion September 4, 2019.**

