

**Yellowstone County Board of Adjustment
Meeting Minutes, June 13, 2019
Approved by a motion September 12, 2019**



The County Board of Adjustment met on June 13, 2019 in the 1st Floor Conference Room of the Miller Building located at 2925 3rd Avenue North. Chairperson Boucher called the meeting to order at 4:00 p.m.

| Name | Title | 03/08/2018 | 05/10/2018 | 11/08/2018 | 01/10/2019 | 06/13/2019 | | | | | |
|------------------------|--------------|------------|------------|------------|------------|------------|--|--|--|--|--|
| Blaine Poppler | Vice Chair | 1 | 1 | 1 | 1 | 1 | | | | | |
| Carlotta Hecker | Board member | 1 | 1 | 1 | 1 | E | | | | | |
| Troy Boucher | Chairman | 1 | 1 | 1 | 1 | 1 | | | | | |
| Tyler Bush | Board member | - | - | - | E | 1 | | | | | |
| Vacant | | - | - | - | | | | | | | |

Chairman Boucher introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I, Tammy Deines, Planning Clerk

Others in Attendance: Jack Sprague, Janice Gill, Tom Watson, Brandon Brown, Bob Spoott, Beau Nave

Public Comments: There were no public comments.

Approval of Minutes January 10, 2019

Motion

Board member Bush made a motion and Board member Poppler seconded the motion to approve the January 10, 2019 meeting minutes as submitted. The motion passed with a unanimous voice vote.

Disclosure of Conflict of Interest: There were no disclosures of conflict of interest.

Disclosure of Exparte Communication

There were no disclosures of exparte communication from the Board. Letters of Opposition: John Clayton, 665 Emerald Eagle Drive, Billings, MT; Paul Hawkins, (E-mail); Dan Geigher, (E-mail)

PUBLIC HEARINGS:

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the

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hearing and presentation processes for the meeting for reviewing and acting on each variance.

Item #1: County Variance #292-120 Sunlight Circle. Karen Husman, Planner I, presenting.
Nicole Cromwell read the rules and procedures for a public hearing and the legal ad for County Variance #292.

REQUEST

County Variance – #292 – 120 Sunlight Circle – Variance to allow detached structure larger than the maximum - A variance from section 27-308 requiring a maximum detached structure size of 1,447sf to allow a maximum of 2,800 sf in a Residential- 9600 (R-96) zone, on Block 2, Lots 5 & 6, Emerald Eagle Estates Subdivision, a .92-acre parcel of land. The purpose of the variance is to allow a detached accessory structure of 2,800 square feet. Tax ID: C15082 & C15083.

RECOMMENDATION:

The Planning Division is recommending denial of the application.

STAFF DETERMINATION

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 up to two 1,447 square foot detached accessory buildings on the lot. The detached garages could be built to meet the size allowed by the zoning regulations. The existing single-family dwelling is on one lot as a primary structure, the adjacent lot is contiguous and in the same ownership and the intent is to aggregate the lots.

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 confer a special privilege to this applicant, as similar sized detached barns and garages are not apparent in this subdivision and in similar neighborhoods. Granting the variance requested will confer on the applicant a special privilege that is denied by this Chapter to other land in the same district.

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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 not in harmony with the general purpose and intent of the zoning regulations and the growth policy.

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 has no conditions for a recommendation of denial.

6. 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

There would be no time limit with a recommendation of denial.

7. 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-96 zoning district. Detached garages and accessory buildings are allowed in the county residential zoning districts, however, the size requested is inconsistent with limitations placed on property in the district.

Discussion

Chairperson Boucher called for questions and discussion from the members of the Board.

There was none. In response to question by Board member Poppler, Karen Husman explained that based on the size between .25 acre and 1 acre, 1-acre and above is allowed a 1,500 square feet maximum building. If aggregated, two total buildings would be allowed.

Public Hearing

Chairperson Boucher opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #292.

Jack Sprague, 110 Sunlight Circle, Billings, Montana

Mr. Sprague explained that although two units would be allowed he would rather have 2,800 sf. He noted the neighbors' concerns of lowering property values and said it is not his intent to devalue the property. Mr. Sprague said this proposed building would be attractive as it will not be a pole barn. He desires having one shop instead of two buildings located 8-feet apart. He said he has never offered this land for sale. Board member Popper noted the Declaration of Restrictions provided by staff is not an amended document. (Recording date May 17, 2005). Clarification was given by staff for allowances if the parcel is aggregated, being he would be allowed two 1,400 square feet buildings with a minimum of 8 feet apart. It was noted that Covenants and Restrictions are CCRs are a civil issue. Discussion followed by the Commissioners and Mr.

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Sprague regarding corrections needed to revise the Covenants. Mr. Sprague noted a posted proposed landscaping plan for the secondary adjacent parcel. He provided a conceptual drawing of the proposed shop, which will tie into the architectural design of his residence.

Public Hearing

Chairman Boucher opened the Public Hearing and asked if there is anyone wishing to speak in favor or against County Variance #292.

Janice Gill, 55 Sunlight Circle, Billings, Montana

Ms. Gill asked why Mr. Sprague would need something so large if he is not going to run his business there.

Beau Nave, 660 Noblewood Circle, Billings, Montana

Mr. Nave commented there is a house located on Lacy Street with a 1,600 square foot shop, and he stated he doesn't know why Mr. Sprague could not do the same thing. Board member Poppler pointed out the subdivision east of this property is unzoned, which would allow for the shop.

Jack Sprague, 110 Sunlight Circle, Billings, Montana

Mr. Sprague said is he disappointed in John Clayton as he has helped him in many instances. He explained that Mr. Clayton is hurt, as he did not move forward with changing the Covenants. Therefore, they have a strained relationship.

Brandon Brown, 85 Sunlight Circle, Billings, Montana

Mr. Brown asked for clarification on the zoning if this application is approved, and Staff stated this would not change the zoning.

Chairman Boucher closed the public hearing and called for a motion.

Motion

Board member Poppler made a motion and Board member Bush seconded the motion to forward a recommendation to the Board of County Commissioners of denial of County Variance #292 with the Findings and Criterion presented by Staff.

Discussion

Board member Poppler stated there are seven criterion that have to be met and this application does not meet any of the criterion. He said he is inclined to not vote in favor of this application due to this fact and as there seems to be question how the project will fit with the CCRS. Board member Boucher said the role of Board of Adjustment is to act in a quasi-judicial manner. Meaning, the Board is not to change the Zoning Code but to determine if it meets the criterion.

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The motion carried with a unanimous voice vote. 3-0. Variance #292 is denied.

Other Business/Announcements

- **Announcement:** The July 11, 2019 Yellowstone County Board of Adjustment meeting is cancelled due to a lack of applications. The next meeting will be held as legally announced and advertised.

Adjournment: Adjourned 4:31 p.m.

APPROVED BY A MOTION SEPTEMBER 12, 2019

