

CITY BOARD OF ADJUSTMENT

MINUTES January 6, 2021

Name	Title	01/06/2021	02/03/2021	03/03/2021	04/07/2021	05/05/2021	06/02/2021	07/07/2021	08/04/2021	09/01/2021	10/06/2021	11/03/2021	12/01/2021	
David Mitchell	Member	1												
Dave Hagstrom	Member	1												
Paul Hagen	Member	1												
Jeff Bollman	Vice Chair	1												
Oscar Heinrich	Member	1												
Martin Connell	Member	1												
Mark Noennig	Chair	1												
TOTAL NUMBER OF APPLICATIONS 2021		01/06/2021	02/03/2021	03/03/2021	04/07/2021	05/05/2021	06/02/2021	07/07/2021	08/04/2021	09/01/2021	10/06/2021	11/03/2021	12/01/2021	TOTAL
Variance		4												4

Vice Chair Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met virtually thru Zoom <https://zoom.us/j/95905224215>.

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 Assistant.

Attending:

Public Comment

Vice Chair Bollman opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There was none.

Approval of Meeting Minutes

Meeting minutes for November 4, 2020.

Motion

Board Member Heinrich moved and Board Member Mitchell seconded the motion to approve the November 4, 2020 minutes. The motion carried with a unanimous voice vote.

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

Board Member Mitchell had no ex parte communications, has no conflicts of interest and visited all but Variance 1323 locations.

Board member Hagstrom had no ex parte communications, has no conflicts of interest and visited no sites.

Board member Hagen had no ex parte communications, has no conflicts of interest and visited 2 sites.

Vice Chair Bollman had no ex parte communications, has no conflicts of interest and visited no sites.

Board member Heinrich had no ex parte communications, has no conflicts of interest and visited all sites.

Board member Connell had no ex parte communications, has no conflicts of interest and visited no sites.

Chairman Noennig had some discussion with Bill Hanser and Dave Goodrich. He finds it necessary to recuse himself from the discussion and vote for Variance 1324 and visited no sites.

Board Member Heinrich made a motion to change the Public Hearing order to 1323, 1322, 1325 and lastly 1324. Board Member Connell seconded the motion. All board members voted in favor.

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.

City Variance 1323 – 718 S. 31st St. – Side setback - A variance from 27-308 requiring a 5-foot side setback to allow 2-foot side setback in a Residential-6000 (R-60) zone, on Block 225, Lot 4, Billings Original Townsite, a 3,500 square foot parcel of land. The purpose of the variance is to allow the existing single family dwelling a rebuild letter. Tax ID: A01676

RECOMMENDATION

Planning staff has reviewed this application & is recommending approval of Variance #1323. Based on the Determinations for granting a variance.

1. The variance is to reduce the side setback for a single-family dwelling on a 3500 square foot parcel of land from 5 feet to 2 feet to conform to zoning in order to allow a rebuild letter. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 225, Billings Original Townsite generally located at 718 S 31st Street.

3. The applicant/and/or property owner shall meet all other city code requirements with the exception of this variance.
4. 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:

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:21PM and asked if there was anyone wishing to speak in favor or against **City Variance 1323**.

Applicant: David Goodridge, Agent

Favor

NONE

Opposed

NONE

Discussion

At 6:22PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Hagen seconded the motion to approve **City Variance 1323** with staffs findings of fact.

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 1323 passed with a 7-0 vote.

City Variance 1322– 2621 Downer Lane - Garage side setback – A variance from 27-310(i) requiring an 8-foot side setback on a detached accessory structure over 18 feet in height to allow 3-foot side setback in a Residential-9600 (R-96) zone, on Lot 4 of Downer Acres, an 11,292 square foot parcel of land. The purpose of the variance is to allow renovation and addition to an existing garage, or remove and replace the detached garage in the same location. Tax ID: A06379

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1322. Based on the Determinations for granting a variance.

1. To allow a variance from Section 27-308 requiring a minimum 5 foot setback from the side property line in a R-96 zone to allow 3 foot side setback. No other variance is intended or implied.
2. is limited to Lot 4 of Downer Acres Subdivision, 2624 Downer Lane.
3. will apply for and receive approval of a building permit within 1 year and complete construction within 2 years, failure will void the variance.
4. No construction activities prior to 7:00am or after 8:00 PM daily.
5. shall meet all other city code requirements except this variance.
6. Conditions run with the land described and apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for staff:

Board member Heinrich asked if it is possible to ask for firmer plans and can we change the application to specify remodel or rebuild.

Board member Bollmam asked what is the threshold for requiring an 8-foot setback. Staff replied anything less than 18 feet high would require a 3-foot set back.

Board member Hagstrom confirmed this is a 11,292 square foot lot zoned R9600.

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:32PM and asked if there was anyone wishing to speak in favor or against **City Variance 1322**.

Applicant: Thomas J. & Janet Blenkinship, Jeff Wollschlager, Agent/Not Present

Favor

NONE

Opposed

NONE

Discussion

Board members asked if the adoption of RE:Code would change setback requirements. Staff replied all new accessory structures will require a 5-foot setback.

At 6:36PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Bollman seconded the motion to delay for 30 days the vote on **City Variance 1322**.

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 delay City Variance 1322 passed with a 7-0 vote.

City Variance – 1325 – 2607 Copper Blvd– Lot Area & Setback - - A variance from 27-308 requiring a minimum lot size of 19,200 square feet for two single family dwellings, to allow a minimum lot size of 6,250 square feet, and from 27-308 requiring a 20-foot rear setback to allow a 3-foot rear setback in a Residential-9600 (R-96) zone, on Block 3, Lots 25-26, Amvet Park Sub, a 6,250 square foot parcel of land. The purpose of the variance is to allow two existing single-family dwellings to be reconstructed in order to acquire a rebuild letter. Tax ID: A02310

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1325. Based on the Determinations for granting a variance.

1. The variance is to allow a minimum lot area of 6,250 square feet for 2 single family dwellings and 3-foot rear setback for the easterly single-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Block 3, Lots 25-26 of Amvet Park Sub., 2607 Copper Blvd.
3. The applicant shall meet all other city code requirements with the exception of this variance.
4. 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:

Board member Heinrich asked if rebuild letters will still be necessary when RE:Code is adopted. Staff replied rebuild letters will still be required/necessary in some situations.

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:47PM and asked if there was anyone wishing to speak in favor or against **City Variance 1325**.

Applicant: Helen M. Peterson, Dislorei Small Rodriquez & Kevin Lonebear, Agent/Not Present

Favor

NONE

Opposed

NONE

Discussion

At 6:49PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1325** with staffs findings of fact.

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 1325 passed with a 7-0 vote.

City Variance – 1324 – NW of the intersection of Georgina Dr. & 44th St. W – lot area, lot Coverage, density- A variance from Lenhardt Square PD Exhibit “B” as amended increasing the maximum density from 10 units per acre to 17.2 units per acre and to allow a variance from parking in Article V.B.4. to reduce enclosed parking from 2 enclosed spaces per dwelling unit to .75 covered spaces per apartment dwelling 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 development to be more consistent with the PD-MFR zone. A previous variance (Variance 1282) was granted and this variance will amend those conditions of approval.

Tax ID: D00514A

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1324. Based on the Determinations for granting a variance.

1. A variance from Lenhardt Square PD increasing the maximum density to 17.2 units per acre & allow a variance from parking to reduce enclosed parking to .75 covered spaces per apartment in the PD-MF-4 zone. No other variance is intended or implied with this approval.
2. The variance is limited to Parcel 2A of C/S 2063.
3. The applicant shall meet all other city code requirements for the PD with the exception of this variance.
4. 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.

Staff received 16 exparte emails in opposition from surrounding property owners and the applicant responded. These emails and response have been forwarded to the Board previous to the meeting for review.

Questions for staff:

Board member Hagen asked if all letters received were in opposition. Staff replied traffic, ingress and egress safety and parking were major areas of concern.

Board member Hagstrom asked about a previous Variance request for an increase in density that was approved by the Board. Staff explained the density increase request was a height increase, enabling the applicant to increase story levels. Also, a Special Review was approved by City Council to allow multi-unit buildings, more than 4 units in a structure. This Variance request is to numerically adjust the density per acre, allowing more density than is required in the Planned Development.

Board member Hagstrom stated he had not had the opportunity to read all submitted letters and asked staff if there were any adjacent neighbors addressing the density or were they all traffic concerns. Staff indicated density concerns were related to traffic increase. The density is consistent with the PD, it has always been multi-unit. The properties to the south are in this same density level (16-18 units). This request is not out of the ordinary for this or other PDs.

Board member Mitchell stated he assumes a Traffic Impact Study was done by City Engineering with this density. He asked to confirm a TIS was done with approval and was a permit issued. Staff directed these concerns to the applicant.

Vice Chair Bollman asked about the density on Interurban. Staff replied the density is greater on Interurban with a different underlying zoning. Will any other action be required by City Council.

Board member Heinrich wishes to confirm the underlying density is more than the PD requirement. Staff replied, no, the lot to the south is more dense. He then asked how Project RE:Code will effect this. Staff indicated it is a PD, their PD will carry over.

Board member Mitchell asked if it is easier to get a Zone change than a Variance? If they changed the zoning they would not need a variance, correct? Staff clarified his question asking if he is suggesting changing the underlying zone. Upon clarification Board member Mitchell asked again if a variance would be necessary if the zoning was changed. Staff asserted this is correct, however a Zone change

is more difficult and it takes more time.

Public Hearing

Vice Chairman Bollman opened the public hearing at 7:04PM and asked if there was anyone wishing to speak in favor or against **City Variance 1324**.

Applicant: Bill Hanser, 2916 Thousand Oaks, Billings, MT

Good Evening Chairman Bollman and Members of the Board

My name is Bill Hanser
I live at 2916 Thousand Oaks Street, Billings, MT

I am the current owner of Parcel 2A in the Lenhardt Square Planned Unit Development. In 2018 I had made a variance request for some additional units to make the project financially viable. However, changes in the interim to the storm water management guidelines added considerable cost to the site development. This made the project financially unfeasible, and the land has sat undeveloped since. This is unfortunate because there is a strong need for affordable, quality, living spaces in our city, and the high cost of construction makes it prohibitive for most developers to enter the apartment marketplace.

Great Hall Partners is an experienced development group with numerous, successful, apartment projects. They have placed the property under contract, and using their experience and expertise have developed a modified design. This new design provides an improved neighborhood and will be a strong addition to the greater community. It offers:

Safer egress to the subdivision by the addition of a primary entrance at the roundabout at Monad and Shiloh Road

Although this new design requests a reduction in covered parking spaces, It will actually provide more overall parking spaces, with less on street parking

The new design offers Improved traffic flow,
Increased green space and quality of life for residents,
An improved storm water retention design at a lower cost of construction,
Increased areas for snow removal and storage,
And most importantly it creates quality, affordable, housing units in the Billings community

These modifications do require another slight increase in density, but it will also create a much better overall product for the residents of Billings and the adjoining neighbors. I strongly support the Great Hall Partners variance request.

The Founders of the Lenhardt Square PUD are also in agreement and support of this request. This design is well within the design guidelines of the Planned Unit Development, and it will bring this project into closer alignment with the already built elements of the PUD.

I would like to introduce John Casper from Great Hall Partners to speak.

John Casper, 1700 42nd St S, Fargo, ND

Currently we have 250 apartment units in different areas. We see the need for well kept affordable housing in the community which led us to Mr. Hanser and this opportunity. We are familiar and have done projects in different communities. There are a few issues that make this project feasible, the storm water retention requirement added costs, which we are able to resolve by increasing the density. We want a safe and attractive project with green space to attract occupants. Our goal is more green space. The project is approved for 237 units as it sits now. The variance we are requesting would allow for more green space, less street parking, more site parking, better access to the development.

Board member Hagen asked what the plan is for storm water retention. There will be an inground boulder storage under the parking area. By changing some of the building locations, a larger green space is possible for community use.

Board member Hagen inquired as to the material to be used for the underground piping. Steel or large PVC is the standard.

Vice Chair Bollman asked the difference in units approved now and what this variance would allow. His understanding is it is approved for 237 now and if approved it would be as many as 300 units.

Currently 237 units are approved, the current plan is to build 282 units, the request is for up to 300 units. The request is an additional 3.6 units per acre. It is currently approved at 13.6 units per acre, the request is for up to 17.2 units per acre. This is inline with other multi-family developments in the area.

Opposed:

Mike Creeden, 685 Clarks River Rd, Laurel, MT

He recognizes there is currently a large density of people residing in this area. He cares about the community, although he does not currently reside there. He points out there are no shopping amenities, such as grocery stores or gas in the community therefore requiring tenants to frequently leave and return from the development. His concern is the increased density, he questions the reasoning behind the increase. He opposes this matter completely, he believes it to be selfish and a detriment to the community.

Sonny Kindsfater, 4733 Georgina

She claims this is to be a gradual change from the apartments and townhouses to single family residences on the west, duplexes and triplexes on the east. In 2016 Janice Lenhardt Rehberg sat at her table discussing where to put in a round a bout for egress off King Ave. According to Ms. Kindsfater, Ms. Rehberg guaranteed her the property in question was to be single family residences. She was unaware of the previous approval of Variance 1282. She is totally against the density increase.

Anthony Seitz, 4631 Georgina

He moved to this community 3 years ago. All the lots adjacent to this property are 1 acre lots. He was under the impression the density was to be a little less transitioning to the 1 acre lots, now they want to increase the density. He voiced concerns about City services, such as Police and Fire, being able to serve these areas. The density should be dispersed throughout the City and not all in one place. This is just an attempt to make more money on a vacant piece of land. Plenty of profit is possible with the current approved density. The property values will be ruined if high density is placed on top of single family neighborhoods. It will also ruin their quality of life.

Sara Creeden, 4733 Georgina

She is disappointed the Board members did not take the time to read all letters written in opposition. She is concerned with the density of this part of Billings. It is straining the Police and Fire resources. The schools are in jeopardy. There is complete disregard for an established subdivision with no gradual density from the Happy Homes Apartments to the Georgina Subdivision. The original plans called for single family residences on smaller than 1 acre lots and now are proposing townhomes and multifamily residences. She requests plans be submitted with less density, more green space, trails and considerations to City resources.

Vice Chair Bollman reminded listeners only Mr. Hagstrom had voiced an inability to read all letters of opposition. Vice Chair Bollman had read them all.

Rebuttal: Bill Hanser

It was frequently mentioned the property adjacent to Georgina was to be single family. This is incorrect, the property was always zoned for four plexes at a minimum. The site plan submitted actually includes greater green space and garden areas. There is a softening density to the Georgina subdivision.

John Casper

Access is being approved for residences. Value is being shown for site parking rather than street parking to alleviate traffic issues. The new site plan, in general, is a nicer looking arrangement than the previous plans. The number of units has increased, but the number of buildings has decreased.

Vice Chair Bollman asked if approval was granted would the applicant be agreeable to additional conditions possibly implemented by the Board.

Discussion

Board member Mitchell asked if a Traffic Impact Study had been completed. Brian of Sanderson Stewart replied a TIS had been completed for the approved 237 units. The recommendation was to provide a connection from the end of 44th Street to Monad. Creating a secondary access and alleviating existing burdens.

Board member Mitchell pointed out the opposition being voiced regarding traffic issues for Georgina and was looking for some completed plans to alleviate those issues.

Georgina to the west is a private easement and not a public road. The road would have to be barricaded to eliminate traffic to the general public. Georgina is proposed as a future collector tying in to 56th.

Vice Chair Bollman asked staff if the increased density were approved, would a new TIS be triggered. Staff does not believe it would, however City Engineering would make the determination based on a site plan submittal.

Board member Heinrich asked staff if there are public meetings involved with this Planned Unit Development. No pre-app meetings are required with a Variance. He then asked if Police, Fire and the School District had submitted any comments regarding this Variance application. Staff advised

the application packets are sent out to agents for comments, including Police, Fire and Schools. No comments were received. Board member Heinrich asked if comments were ever received, to which Staff replied in the affirmative.

A caller insisted he be allowed to Rebut in opposition to the Variance. Vice Chairman Bollman denied the request as the caller had already been given the opportunity to comment. The caller insisted he be heard; Vice Chairman Bollman granted the caller one minute.

Board member Mitchell asked if Georgina has been improved to 52nd. No, it has not.

The planned access is at the existing Monad with a new planned access at 48th and King Ave. There is no plan or advantage to having an exit out of Georgina.

Board member Heinrich confirmed if this Variance is not approved, building in the area is still allowable.

Board member Hagstrom reminded the Board what the new density would be.

Additional comments allowed, Mike Creeden, 685 Clarks River Rd, Laurel, MT

Opponents deserve the opportunity to rebutt. It comes down to ¼ acre green space as the buffer zone adjacent to Georgina subdivision. We understand it is going to happen, we do not approve of the increased density. We appreciate the Board chairman having read the letters of opposition, but others did not. There is enough opposition in this matter, all the engineers speaking for this development are being paid by Mr. Hanser, we in the community do not have the funding to hire engineers to speak in our behalf.

At 7:59PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Mitchell made a motion and Board Member Heinrich seconded the motion to approve **City Variance 1324** with staffs findings of fact and to conform to the site plan as submitted agreeing to submit an amendment of the Traffic Impact Study if required by City Engineering.

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 1324 failed with a 3-3 vote.

Other Business: Board member Connell read a written statement regarding his opposition to continuing Board meetings virtually:

“The special circumstances of COVID caused going to ZOOM meetings a requirement. The new Governor is planning to remove the restrictions and it is mandatory that we go back to in person meetings as soon as possible. The Board needs the personal interactions to more fairly perform their duties. Holding ZOOM meetings are preventing the general public from participating in the Board of Adjustment meetings, hearings by reoccurring and undo burdens such as having to use the computer and the telephone. Every since we started these, I have had complaints from people that we are cutting them out and I think the problem with these ZOOM meetings is they make it expeditious for the beauracray but they do not protect the public. I believe it is our job to protect the public.”

There are 5 Variances to be considered at February’s meeting. We should vote on Chair and Vice Chair at this meeting,

Project RE:Code will have a second reading at City Council January 11, 2021.

ADJOURNMENT: The meeting adjourned at 8:10PM.

ATTEST: APPROVED

