

CITY BOARD OF ADJUSTMENT
MINUTES April 5, 2023

Name	Title	01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	
		David Mitchell	Member	1	E	-	R	E	S	I	G	N	E	D
Dave Hagstrom	Member	1	1	1	1									
George Warmer	Member	E	1	1	1									
Jeff Bollman	Vice Chair	1	1	E	E									
Oscar Heinrich	Chair	Z	1	1	Z									
Chris Hayes	Member	1	E	1	1									
Josh Sayer	Member	1	1	1	1									
TOTAL NUMBER OF APPLICATIONS 2023		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	TOTAL
Variance		1	4	3	4*									11
Appeal					1									1

* Returning variance

Chair Heinrich called the meeting to order at 6:00p.m.

Chair Heinrich 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: Patrick Weber, Jeff Wollschlager, Rudy Grossman, Ron Reichenbach, George Reichenbach, Keith Shirley, Jason Norman (zoom), Kolten Knatterud (zoom)

Public Comment

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

Approval of Meeting Minutes

Meeting minutes for February 1, 2023 and March 1, 2023. - APPROVED

Disclosure of Exparte Communications: NONE
Disclosure of Site Visits: Hagstrom and Heinrich, ALL
Disclosure of Conflict of Interest: Warmer 1361, recused

Public Hearings

Return Item - City Variance 1361 – Angel Oak Lane, The Timbers Sub – Attached Garage Location Entry – A variance from Section 27-307, Table 27-300.6, A11 (Attached Garage Location and Entrance) to allow attached garage space in the front half of structures and allow the garage entrance to face the street frontage, in a Mixed Residential 1 (NX1) zone, on Lots 1 through 27 of Block 1, The Timbers Subdivision (final plat pending). The total area affected is 4.9 acres of land. Tax ID: D05250 (part)

Recommendation:

Planning staff recommends denial of Variance 1361 and adoption of the findings of the review criteria.

Recommended Conditions: If the Board chooses to approve Variance 1361.

1. This approval is to allow the garage on the front of the building adjacent to street frontage on lots 7, 8 & 9 only in The Timbers Subdivision (final plat pending). No other variance is intended or implied.
2. The applicant will apply for and receive approval for the first building permit within 1 year and complete construction on the first dwelling within 3 years of BOA approval. Failure to meet the time limits of this condition will void the variance. All remaining lots will have completed construction within 7 years of BOA approval. Failure to construct within this time frame will require a new application and action from the BOA.
3. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
4. Development of the parcels shall be in substantial conformance to the submitted site plans, minor modifications are allowed.
5. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
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, leaseholders, heirs and assigns.

Questions for staff: NONE

Public Hearing opened at 6:06 PM

Applicant: Ali Mitchell, 1263 Timber South Blvd

Why NX1 zone? City PND requires an NX zone in a PND over 40 acres. Neighbors concerned with high density zoning housing. NX1 allows 1-4 units. The location is based on wetlands. The City Council is considering a code change to allow front or side load garages.

Kolten Knatterud, IMEG, 175 N 27th St, STE 312

This is a working process, annexation and zoning. The alley access caused a loss of lots. The text amendments to the code are expected but have not occurred yet.

David Mitchell

We are asking for these special conditions for lots 7,8 and 9 only. There are other lots in the area enjoying the front load garages.

Jeff Wollschlager, 3711 Corbin Drive

He is in favor of this for density, design & location limits.

Questions for Applicant:

Boardmember Hagstrom asked for the location of the lots and if alternatives have been considered.

Staff explains the ew code and need for rear loading garages. Some uses are done well.

In Favor: None

Opposed: None

Public Hearing closed at 6:45 PM

Discussion:

Board member Hagstrom stated special conditions exist and this is in harmony with zoning. He moves for approval of 3 lots stating trying to meet density raises the price of all houses. He does not believe it sets a precedent nor does it confer any special privilege.

Motion

Board Member Hagstrom made a motion and Board Member Hayes seconded the motion to **approve** the City Variance 1361 with staff conditions and recommendations, stating there are special conditions that exist. It is in harmony with zoning, there is a hardship. Conditions 1 & 4.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer			x	
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to **approve** City Variance 1361 passed with a 4-0 vote.

Appeal 23-01 – 918 Howard Avenue – Appeal the Determination that corrugated steel is not a commonly used fence material and the structure in question is not a fence – The Zoning Coordinator, in cooperation with the Code Enforcement Division made the determination that corrugated steel is not a

commonly used fence material in a residential zone is relation to the fence re-constructed at 918 Howard Avenue (BMCC Section 27-1209.E.1). The property owner now appeals such determination. The property is legally described as Lots 37 & 38, Block 18 of Broadwater Subdivision and is zoned N1-First Neighborhood. Tax ID: A03641

The Board may affirm, modify or reverse the determination of the Zoning Coordinator in this matter. BMCC 27-1616.

Recommendation:

Planning staff requests the Board of Adjustment affirm the determination of the Zoning Coordinator that metal panels are not materials commonly used for fencing within residential zone districts in Billings. Planning staff also requests the Board affirm the determination the structure as shown and constructed meets the definition of a "fence" requiring the submittal of a fence permit from the Planning Division. Any submitted fence permit can only be approved if found to be in compliance with the zoning code.

Alternatives

The Board of Adjustment may take one of the following actions:
Affirm in whole the Administrative Decision that the structure is a fence, requires a permit, and may not be constructed from metal panels
Affirm in part and reverse in part the Administrative Decision
Reverse in whole the Administrative Decision
Delay Action on the Appeal until the next Board meeting
Allow the appellant to withdraw the Appeal. Any appeal requires the affirmative vote of four or more members of the Board to reverse, in whole or in part, the Administrative Decision. Any decision of the Board may be appealed to district court by any party. Once a decision is made, no new appeal or variance for this property concerning this fence may be submitted to the Board of Adjustment for one year.

Applicant: Jason Norman, 633 Howard

Mr. Norman presented many photos of like fences in the area and state wide. Chair Heinrich was quick to point out we are only considering Billings, MT and municipal code. He converted the garage to a SFR which was permitted by the City of Billings. There was a lot of criminal activity before the conversion. The Central Terry Task Force area is a high crime area. The final project was a metal enclosure. He contacted the building division after completion and was told he did not need a permit. He was noticed in 10/2022 that a permit was required. The Planning staff said the material used was not allowed in Billings. He appealed to the Board. He states this is not a fence and is a good product to use. No damage from hail. It is aesthetic and has had no objections from the neighbors.

Motion

Board Member Warmer made a motion and Board Member Sayer seconded the motion to to recognize this as a fence.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to **approve** Appeal 23-01 passed with a 5-0 vote.

Motion

Board Member Warmer made a motion and Board Member Hagstrom seconded the motion to to grant the appeal, material is appropriate for this fence.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to **approve** Appeal 23-01 passed with a 5-0 vote.

Public Hearings

City Variance 1363 – 636 Key City Drive – Residential use on the ground floor in the front 30 feet in a re-built –
A variance request from Section 27-1002, and Table 27-1000.1 requiring any residential use in a CMU1 zone district be located at least 30 feet behind the front facade, on the East ½ of Lot 10, Block 1 Key City Subdivision, a 9,618 sf parcel of land. The variance would allow the owner to re-build a severely damaged residential structure without building a mixed use structure. Tax ID: C00709

Recommendation:

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report.

Recommended Conditions:

1. The variance is to allow a residential dwelling to occupy the entire first floor of a structure in a CMU1 zone. No other variance is intended or implied with this approval.
2. The variance is limited to the East ½ of Lot 10, Block 1 Key City Sub, a 9,618 sf parcel of land, generally located at 636 Key City Drive.
3. The approval is to allow the reconstruction of the existing structure in its current location **within the existing footprint as submitted by applicant at this variance.**
4. A building permit shall be obtained within 6 months and all construction and renovations shall be completed within 1 year of BOA approval.
5. The applicant shall meet all other city code requirements with the exception of this 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.

Questions for staff: NONE

Public Hearing opened at 7:59 PM

Applicant: Jeff Wollschlager, 3711 Corbin Drive

He asks for approval for reconstruction.

Questions for Applicant: NONE

In Favor: NONE

Opposed: NONE

Public Hearing closed at 8:07 PM

Discussion:

Motion

Board Member Hayes made a motion and Board Member Warmer seconded the motion to **approve** City Variance 1363, with the change to condition #3 and findings and recommendation of staff.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to approve City Variance 1363 passed with a 5-0 vote.

City Variance 1364 – 315 Cody Circle – Rear Yard Location, Rear Setback, Building Height, and Minimum Separation from Principal Structure – A variance from Section 27-305, Table 27-300.4 – A.7 (Rear Yard Location for Accessory Building), A.8 (Minimum Rear Setback of 3 feet), B.13 (Height of Accessory Structure), and Section 27-1803 (Detached accessory structure Requires 6-foot minimum separation) in an N2 zone district on Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land. If approved, the variance will allow an existing detached accessory to remain in place. Tax ID: C08098

Recommendation:

Planning staff recommends **denial** of Variance 1364 and adoption of the findings of the review criteria.

Recommended Conditions: If the Board chooses to approve.

1. This approval is to allow a variance request from Section 27-305, Table 27-300.4 -- A.7 (Rear Yard Location for Accessory Building), A.8 (Minimum Rear Setback of 3 feet), B.13 (Height of Accessory Structure), and Section 27- 1803 (Detached accessory structure Requires 6-foot minimum separation) in an N2 zone district on Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land. If approved, the variance will allow an existing detached accessory structure to remain in place. No other variance is intended or implied.
2. The variance is limited to 315 Cody Circle, Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land.
3. The applicant will apply for and receive approval for a building permit within 6 months. Failure to meet the time limits of this condition will void the variance.
4. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
5. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
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, leaseholders, heirs and assigns.

Questions for staff:

Public Hearing opened at 8:10 PM

Applicant: Scott Ireton, 315 Cody Circle

He stated he was ripped off by the contractor he hired. He does not want to tear down the building.

Questions for Applicant: NONE

In Favor: NONE

Opposed:

Rudy Grossman, Ron Reichenbach and George Reichenbach, and Kieth Shirley, all neighbors to this building, stated it is an eye sore and does not fit the neighborhood. It does not meet the CCR's or setback requirements.

Rebuttal:

The garage is 4 feet taller than my house. He had a permit but not for this building. Code complaints have been made and Rudy is always mad at him. If it has to come down, then it needs to come down.

Public Hearing closed at 8:24 PM

Discussion :

Motion

Board Member Hagstrom made a motion and Board Member Hayes seconded the motion to deny the **City Variance 1364 with staff conditions and recommendations.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to deny City Variance 1364 passed with a 5-0 vote.

City Variance 1365 – 6410/6412 Southern Bluffs Lane – Location of Garage and Garage Entry – A variance from Section 27-308, Table 27-300.7 – A.11 (Attached garage location and garage entry location) in an NX2 zone district to allow an attached garage in the front half of the proposed structure and a street front garage entry, on Lot 6, Block 1, Falcon Ridge Estates, 2nd Filing on an 11,402 sf parcel of land. Tax ID: A35151.

Recommendation:

Planning staff recommends conditional approval of Variance 1365 and adoption of the findings of the review criteria.

Recommended Conditions:

1. This approval is to allow a variance from Section 27-308, Table 27-300.7 -- A.11 (Attached garage location and garage entry location) in an NX2 zone district to allow an attached garage in the front half of the proposed structure and one street front garage entry for each unit in the duplex. No other variance is intended or implied.
2. The variance is limited to Lot 6, Block 1 of Falcon Ridge Estates, 2nd Filing, at 6410-6412 Southern Bluffs Lane.
3. The applicant will apply for and receive approval for a building permit within 1 year and complete construction within 3 years of BOA approval. Failure to meet the time limits of this condition will void the variance.
4. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
5. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
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, leaseholders, heirs and assigns.

Questions for staff: NONE

Public Hearing opened at 8:29 PM

Applicant: Megan Boshert, Agent, no address given

Questions for Applicant: NONE

In Favor:

Opposed:

Public Hearing closed at 8:30 PM

Discussion : NONE

Motion

Board Member Sayer made a motion and Board Member Warmer seconded the motion to approve the **City Variance 1365 with staff conditions and recommendations.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Vacant				
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman				X
Oscar Heinrich	x			
Chris Hayes	x			
Josh Sayer	x			

The motion to approve City Variance 1365 passed with a 5-0 vote.

Other Business: No meeting in May, 2023

ADJOURNMENT: The meeting adjourned at 8:34 PM.

ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.
Robbin Bartley, Administrative Assistant.