

City Board of Adjustment
March 4, 2015
Minutes

On March 4, 2015, Chairman Bollman 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.

Chairman Bollman asked Zoning Coordinator Nicole Cromwell to introduce the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Dave Green, Planner I, and Tammy Deines, Planning Clerk.

Others in Attendance: Bill Stene; Wayne Brownson

Public Comment

Chairman 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. Chairman Bollman closed the public comment period.

Approval of the February 4, 2015 Meeting Minutes

Chairman Bollman called for approval of the February 4, 2015 minutes.

Board member Connell made a motion and Board member Chesarek seconded to approve the February 4, 2015 meeting minutes as submitted.

The motion carried with a unanimous voice vote, 5-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest. Staff noted an email received from Eric Bassey.

Disclosure of Outside Communication

Nicole Cromwell explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum.

Public Hearings

Chairman Bollman stated the Board will open a public hearing and allow public comment this evening. Ms. Cromwell reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. She stated four votes of the Board of Adjustment are required to pass a variance. This evening there are 5 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1206 and presented the Board with the staff report for this request. He stated he received two citizens' calls in support of this request.

Item #1

Variance #1208 – 4120 and 4120 ½ Buchanan, Lot Area - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings, David Schreder, owner.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 39 and 40, Block 2, Fairview Subdivision generally located at 4120 and 4118 Buchanan Avenue.
3. Any future construction to replace either currently existing building will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or reconstruction.
4. No construction or demolition activity will take place before 7 am or after 8pm.
5. Should the applicant wish to build a detached garage instead of a 2nd dwelling unit they must meet all current zoning, building and fire department requirements in place at the time of construction.
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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Board member Connell asked for clarification on the proposal for a “shop” and it was given by Dave Green. He stated the applicant may have a garage for personal use and not commercial use. Board member Noennig noted there is no time limit or direct plan at this time and asked if there is usually a proposal. Nicole Cromwell said this is due to the fact the applicant is unsure of the plan for this property. Jim Olson asked if this could be included in the conditions of approval.

Public Hearing

At 6:18 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1208.

Proponents

David Schreder, Billings, Montana

Mr. Schreder is the property owner. He said he has torn down the house down. He plans to construct a 1,000 square foot home with a basement and no garage. The footprint will be similar to the site plan presented but a little larger. He would not have an objection with the inclusion of a condition of approval for a timeframe for completion. Mr. Schreder has owned the property since last April. He does not plan to remove the back house.

Opponents

Chairman Bollman called for opponents of City Variance #1208.

Steve Hoolihan, 4134 Buchanan, Billings, Montana

Mr. Hoolihan owns a construction company and is invested in the neighborhood. He owns the neighboring house to the east and just completed demolition. He is in favor of construction of a new house but has issue with the variance is the remaining unit is in deplorable condition and structurally unsound. As a neighbor and someone that is invested in the neighborhood he is opposed to the rental unit located in the rear of the property. Per request of Board member Noennig, Mr. Hoolihan explained his concern. Mr. Green stated the front structure had code violations and was unsecured. He did not look at the back house so cannot vouch for its stability. Mr. Hoolihan offered photographs of the second structure he had taken to the Board. He said the Board could allow the structure to remain or not allow the new building which would force the applicant to demolish the back house in order to comply.

Drew Lorenz, 4129 Roosevelt, Billings, Montana

Mr. Lorenz is purchasing an adjacent property. He stated that they have made major upgrades to his properties. He is excited about the construction of the new home as most of the homes on Buchanan are in a state of disrepair. He would like to have the second home be of new construction as the existing structure has a poor roof system. Board member Connell commented these types of concerns are not related to the City Board of Adjustment and should be referred to the City Code Enforcement Division.

Nicole Cromwell said the variance is for two structures. When Mr. Shreder applied, he said he did not want a variance for the back house for setbacks as he did not have any intent of doing anything at this time. She said the State of Montana does not have a minimum for property and the landlord tenant law governs living spaces. Should the structure be come considered a dangerous structure, the City Code Enforcement Division would be considered.

Jim Olson asked Ms. Cromwell for an explanation of the options available to the applicant should the variance be denied. Discussion followed by the Board.

Rebuttal

David Schreder, Billings, Montana

Mr. Schreder stated he has been in the renovation business for 30 years. He said he is aware of the current state of the roof and intends to fix it. He stated a new structure would be very small if it is constructed. Board member Bollman asked if he had considered a variance. Mr. Schreder said he has not poured a foundation and is willing to be flexible. The footprint cannot exceed 40% or 2400 square feet. He is willing to commit to fix the roof and has siding planned.

At 6:40 Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Noennig made a motion and Board member McDonnell seconded the motion to conditionally approve City Variance #1208 with the conditions and Findings of Fact presented by Staff with an additional condition that the rear building's roof and siding be repaired within a year and a two year time frame for construction of the primary house.

Discussion

Board member Chesarek asked if the applicant is agreeable to the additional condition of approval. Nicole Cromwell explained the process for enforcing a condition of approval. Board member Noennig commented he understands the objections but the applicant purchased the property with two residences. He said the motion is a reasonable compromise as it is enforceable. Nicole Cromwell concurred and stated the variance could be voided for failing to comply with the variance. Board member Bollman stated that he does not feel this is legal as it does not pertain to the variance. Nicole Cromwell stated conditions are placed to perform or complete actions or to somehow mitigate approval of the variance that may somehow have an affect on the surrounding property owners. Board member Bollman stated he respectfully disagrees. Nicole Cromwell pointed the Board to the criterion listed as determinations in the staff report. She said this is a legitimate disagreement and said she is unaware of any zoning district that prescribes color or interior. She said generally building codes are separate from zoning codes.

Motion

Jeff Bollman made a motion for a substitute motion and it was seconded by Board member Noennig to table the motion for thirty days in order to obtain an opinion from the City Attorney's office.

Discussion

Board member Connell stated he opposed to the substitute motion. The applicant is agreeable to the delay.

Chairman Bollman called for a roll call vote.

Jeff Bollman, Yes. James Olson, Yes. Paul Hagen, Not present. Frank Chesarek, No. Matthew McDonnell, No. Martin Connell No. Mark Noenning, Yes.

The motion passed 4-2. City Variance #1208 is delayed until April 1, 2015.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion on the motion. There was none.

Item #2

Variance #1209 – 519 Avenue D, Detached Garage Wall Height - A variance from 27- 310(i) requiring the wall height of a detached garage to be no taller than the wall height of the residence to allow a 12-foot wall height for a new 936 square foot detached garage in a R-60 zone, on Lots 7 & 8, Block 1, Pioneer Park Subdivision, a 13,200 square foot parcel of land. Tax ID: A12858.

REQUEST

The applicant is requesting a variance from 27-310(i) requiring the wall height of a detached garage to be no taller than the wall height of the residence to allow a 12-foot wall height for a new 936 square foot detached garage in a R-60 zone, on Lots 7 & 8, Block 1, Pioneer Park Subdivision, a 13,200 square foot parcel of land. Tax ID: A12858, and Wayne and Judy Brownson, owners

Staff is recommending the following conditions for the variance request:

1. The variance is to allow the wall height of a detached garage to be taller than the wall height of the residence. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 7&8, Block 1, Pioneer Park Subdivision generally located at 519 Avenue D.
3. The applicant will meet all other City of Billings codes, including building, fire, engineering and zoning, other than side wall height, with the proposed new detached structure.
4. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 2 years of permit issuance.
5. There shall be no construction or demolition work on the site before 7 am or after 8 pm daily.
6. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
7. 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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Board member Olson, Dave Green stated the average height is generally between 9-11 feet for most residential buildings. Dave Green pointed out the lot topography and said the structure will not be largely visible.

Public Hearing

At 6:18 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1209.

Proponents

Wayne and Judy Brownson, 519 Avenue D, Billings, Montana

Mr. Brownson is the property owner. He said there is a considerable amount of traffic in the alley due to the location of the four-plexes. He pointed out the existing structures in the neighborhood and the lot layout within the neighborhood. He said is planning a 4-12 pitch but his home is a tall house with a height of 18 feet and a tall foundation. He is approaching retirement and would like to have the height in the structure to accommodate installation of a lift in the garage.

Opponents

Chairman Bollman called for opponents of City Variance #1209. There was none. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Olson made a motion and Chesarek seconded the motion to conditionally approve City Variance #1209 with the conditions and Findings of Fact presented by Staff.

Chairman Bollman called for a roll call vote.

Jeff Bollman, Yes. James Olson, Yes. Paul Hagen, Not present. Frank Chesarek, Yes. Matthew McDonnell, Yes. Martin Connell, Yes. Mark Noenning, Yes.

The motion passed 6-0. City Variance #1209 is conditionally approved.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion on the motion. There was none.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on Wednesday, April 1, 2015.

Adjournment: 6:21 p.m.

ATTEST: DRAFT to be approved on March 4, 2015