

CITY BOARD OF ADJUSTMENT

MINUTES: April 1, 2015

Name	Title	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15
Jeff Bollman	Chairman	1	1	1	1								
James Olson	Board member	1	E	1	1								
Paul Hagen	Board member	1	1	E	1								
Frank Chesarek	Board member	1	1	1	1								
Matthew McDonnell	Vice Chairman	1	E	1	1								
Martin Connell	Board member	1	1	1	1								
Mark Noennig	Board member	1	1	1	1								

TOTAL NUMBER OF APPLICATIONS 2015	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15	TOTAL
Variance	1	1	2	5									9

On April 1, 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 Jeannette Vieg, Receptionist.

Others in Attendance:

Dave Hawkings, Barbara Hawkings, Walt Backer, Steven Houlihan.

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 March 4, 2015 Meeting Minutes

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

Board member Connell made a motion and Board member Chesarek seconded to approve the March 4, 2015 meeting minutes as submitted. Chairman Bollman mentioned that one correction be made on page 4, Item # 2, there is a discussion where it is repeated twice. Chairman Bollman moved that the second mention is struck from the records.

The motion carried with a unanimous voice vote, 7-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		1	
James Olson		1	
Paul Hagen		1	
Frank Chesarek		1	
Matthew McDonnell		1	
Martin Connell		1	
Mark Noennig		1	

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.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		N	N	
James Olson		N	N	
Paul Hagen		N	A	
Frank Chesarek		N	N	
Matthew McDonnell		N	N	
Martin Connell		N	A	
Mark Noennig		N	N	

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 7 Board members attending. A simple majority will approve requests.

Ms. Cromwell stated that she received a communication from the City Attorney’s office in response to a question that the board wanted answered regarding a proposed condition for Variance #1208. A copy of that memo is in the notebook. Anyone who is interested in reading the memo may look at it.

Planner Dave Green reviewed the application for Variance request #1208 and presented the Board with the staff report for this request.

Item #1

Return Item - Variance #1208 – 4120 and 4120 ½ Buchanan, Lot Area: 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. This application was continued from the March 4, 2015 Board of Adjustment meeting.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area¹ 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. This application was continued from the March 4, 2015 Board of Adjustment meeting.

Because the applicant has demolished the existing front house and dug a hole in anticipation of constructing a new house staff has added conditions 4 and 5.

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. The owner will submit a building permit application within 1 year of Board of Adjustment approval and complete the construction within 2 years of Board of Adjustment approval.
5. Failure to begin or complete the approved actions on the variance will void the approved variance.
6. No construction or demolition activity will take place before 7 am or after 8pm.
7. 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.
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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

There was none.

Public Hearing

At 6:13 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, property owner. 745 Pickett Lane, Billings, MT 59101. Mr. Schreder intends to apply for a building permit. Asked if he could answer any question on the status of the back house, which has been fixed up on the inside, not the outside. No questions were asked.

Opponents

Chairman Bollman called for opponents of City Variance #1208.

Steven Houlihan, 4134 Buchanan Ave., Billings, MT 59101. Feels that the back house is a deterrent to the neighborhood. Does not think that repairing the house would benefit the overall appeal of the house due to its deplorable condition and structurally unsound. Would love to see the street improve, but do not feel the house fits into the idea of improvement. Read to the Board of Adjustment 27-1505. Does not feel this variance would be in the best interest of the neighborhood, and he feels the idea of R6000 is not what this house represents.

Board member Connell presented Mr. Houlihan with a copy of the Attorneys opinion, and stated he thinks the applicant is going to fix the houses as stated.

Rebuttal

There was none.

At 6:20 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Board member Connell 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	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0.

Item #2

Variance #1210 – 1220 Concord Drive, Front Setback for Detached Garage: The applicant is requesting a variance from 27-310(i) requiring a 20 foot setback from a street for a new detached garage to allow a 10.5 foot setback to S. Plainview street in a Residential 7,000 (R-70) zone, on Lot

5, Block 2, Centerview Subdivision, 2nd Filing, a 5,720 square foot parcel of land, Tax ID: A04329, Roger and Barbara Boss, owners.

REQUEST

The applicant is requesting a variance from 27-310(i) requiring a 20 foot setback from a street for a new detached garage to allow a 10.5 foot setback to S. Plainview street in a Residential 7,000 (R-70) zone, on Lot 5, Block 2, Centerview Subdivision, 2nd Filing, a 5,720 square foot parcel of land, Tax ID: A04329, Roger and Barbara Boss, owners.

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

1. The variance is to allow the reduction of the required front setback of 20 feet to allow a front setback of 10 feet 6 inches, i.e. to match the setback of the existing house. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 5, Block 2, Centerview Subdivision, 2nd Filing, generally located at 1220 Concord Drive.
3. The applicant will meet all other City of Billings codes, including building, fire, engineering and zoning, other than the requested variance, with the proposed new detached structure.
4. The applicant will build the detached garage in substantial conformance to the drawing submitted with this variance request.
5. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 2 years of permit issuance.
6. There shall be no construction or demolition work on the site before 7 am or after 8 pm daily.
7. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Board member McDonnell asked if the alley is abandoned. Mr. Green states it is an alley.

Public Hearing

At 6:28 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1210.

Proponents

Discussion

Roger Boss, Applicant. Will be happy to answer any questions. No questions proposed.

Opponents

Rebuttal

There was none. At 6:30 p.m. Chairman Bollman closed the public hearing, and called for a vote.

Motion

Board member Olson made a motion and Board member Hagen seconded the motion to conditionally approve City Variance #1210 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1210 is conditionally approved.

Item #3

Variance 1213 –724 Custer Avenue, Side Setback - A variance from 27-308 requiring an 8-foot side setback for a 2 story structure to allow a 1-foot 9-inch side setback for a 2nd story addition to an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land. Tax ID: A18941

REQUEST

A variance from 27-308 requiring an 8-foot side setback for a 2 story structure to allow a 1-foot 9-inch side setback for a 2nd story addition to an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land. Tax ID: A18941

Staff is recommending the following conditions for the decrease in setback from 8 feet to 1 foot 9 inches:

1. The variance is to allow a 1 foot 9 inches to the side property line for the construction of a 2nd story on an existing dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land generally located at 724 Custer Avenue.

3. The 2nd story space shall be constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. The owner will submit a building permit application for the 2nd story addition within 3 months of Board of Adjustment approval and complete the construction within 18 months of Board of Adjustment approval.
6. Failure to begin or complete the approved actions on the variance will void the approved variance.
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.

Board member Connell, if this is not approved, would they would have to go back to what the house was before? Ms. Cromwell, yes they would have to go back to what it was. Yes, the deck was with the original house. What about the Fire Department approval? Is that part of the building? Ms. Cromwell replied that the Building Division would review it as a residential structure for a one or two family and because it is so close to the property line, they would likely require a fire rated construction on that west wall. Board member Connell, why would they not need a variance for 2 families? Ms. Cromwell, because it is an existing condition. There is no internal connection between the units.

Public Hearing

At 7:34 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1213.

Proponents

Jane Kersnot, owner. 724 Custer, Billings, MT 59101. Have owned the property for 20 years. This house is an FHA home and has never had a inside entrance. When the house needed to be reroofed due to the hail damage I asked my ex to do it because he is a contractor and I trust his work. When he started tearing the roof off he discovered that everything was rotted. My son has lived up stairs since I have owned the place and he is now married and has a son and it is not big enough for them. The contractor said this would be the perfect opportunity to build up the walls so that they could build 2 bedrooms up there. The contractor built up the walls for this purpose and I thought this would be a good idea so my son could continue to live there. There would be room enough for the three of them to stay there and not have to find a different place.

Board member Noennig asked if the contractor was the one who did all the applications and said there was not going to be a full story there, do he know? Ms. Kersnot, it is my understand that my contractor told them what he was doing and drew them a picture, apparently there was a misunderstanding because they said that if he had built the walls 6 feet up there would be no problem, but he built them 8 feet up and that is how it became an issue. He said he honestly did not hear the 6 foot wall requirement. It was a misunderstanding for him. It may have been that something was said and he didn't hear it.

Opponents

Rebuttal

There was none. At 7:53 p.m., Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Connell seconded the motion to conditionally approve City Variance #1213 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1213 is conditionally approved.

Item #4

Variance #1211 – 2244 Fairview Place, Fence Height and location in a clear vision zone - A variance from 27-615(c) requiring a structure or fence within a required clear vision of an alley or a driveway to be 30 inches in height or less to allow the replacement of an existing 6-foot fence in a Residential 9,600 (R-96) zone, on Lot 16, Block 6, Country Club Heights Subdivision, a 13,067 square foot parcel of land.

REQUEST

A variance from 27-615(c) requiring a structure or fence within a required clear vision of an alley or a driveway to be 30 inches in height or less to allow the replacement of an existing 6-foot fence in a Residential 9,600 (R-96) zone, on Lot 16, Block 6, Country Club Heights Subdivision, a 13,067 square foot parcel of land.

Staff is recommending the following conditions for the requested variance:

1. The variance is to allow a 6-foot fence in the required clear vision area for an alley and a driveway for the re-construction of an existing 6 foot fence. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 16, Block 6 of Country Club Heights Subdivision generally located at 2244 Fairview Place.
3. The fence shall be re-constructed in substantial conformance to the drawings submitted to the Planning Division with this application.

4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. If the alley is ever developed, the fence will be brought in to compliance with clear vision regulations in place at that time and at the property owners' expense.
6. The owner will submit a fence permit application within 3 months of Board of Adjustment approval and complete the construction within 6 months of Board of Adjustment approval.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Board member Connell, because others have those conditions, are we doing the right thing regarding clear vision blocking? Just because it concerns me as you drive around town, just because things are built that way is it for the greater good. If you back out of the garage, you will be in the grass area before you can see any vehicles approaching. I do like the part that if the alley was upgraded, the fence will have to be changed.

Ms. Cromwell, on the second criteria, for similar variances and look at existing uses, this type of fence construction is common in this neighborhood, a similar clear vision variance has been granted in this area. Have had variances for setbacks, setbacks for garages that were reduced, only one had been denied for front setback from 20 to 10. There had been concern regarding a great deal of runoff and storm water concern. There have been a couple of different locations where clear vision was not an issue, one was down on S 28th a fence was allowed on a corner due to being a dead end with very little traffic. We don't want to approve if it has a negative impact on public safety. There have been no complaints or concerns from any neighbors on this street.

Board member Olson, since it is an abandoned alley does the clear vision make a difference. Ms. Cromwell, clear vision standard applies to alleys along with driveways. The driveway is relevant because it is used. Board member Olson, why is alley relevant? Because it is there.

Board member Chesarek, how wide is the alley? Ms. Cromwell it is 20 feet. Board member Chesarek, whose fence is across the alley, and is it okay. Ms. Cromwell, I don't know. Board member Noennig, the current fence has an angle? Why does the new one have a 90? It seems to me that the clear vision problem would be somewhat limited if it was replaced in the original angle. Ms. Cromwell, the angle does not provide clear vision at this point. Board member Chesarek, are we giving special consideration because it is an unused alley? Condition of approval regarding the alley. Clear vision triangle was explained.

Public Hearing

At 6:51 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1211.

Proponents

Discussion

Neil Kiner, Agent. 1432 Teton Ave, Billings, MT 59101. I am the agent for the property owners I have some experience dealing with issues like this. A couple of issues I want to hone in on. Site triangles are confusing animals. What I would like to stress is the intent of what I am trying to

accomplish with this variance. The height request on this corner here, with the alley obviously not being built, there is no chance of vehicles ever exiting the alley. Prefer a 6' fence for privacy. Fence currently has an angle to it, they are open to changing this since they do not want to lose variance over that. Would like to still request the 90 angle at the driveway. Would like to separate the height variance and the 90 angle. Questions? Board member Mark Noennig, could you explain the 90 angle on the driveway again. Why do you need that?

Mr. Kiner, the 90 corner would take care of the underbrush issue and make it part of the back yard. More concerned about the alley height issue.

Any more questions?

Opponents

Rebuttal

There was none. At 6:55 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member McDonnell made a motion and Chesarek seconded the motion to conditionally approve City Variance #1211 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member Connell would like to move to a substitute motion to amend it by the driveway putting the fence at a 45 angle and then accept everything else. I am concerned about the sight vision. Board member Hagen seconded it.

Board member Chesarek, I am reading the conditions put down by the Planning Board that if you don't grant this thing you are denying the same rights given to the neighbors. I don't see any basis for us to alter and improve from what they have asked us to consider. Basically you are blocking clear vision. Clear vision is a big issue. Since the alley possibly will never see traffic, you are gaining a win/win. The 45 angle is a good comprise.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell		1		
Martin Connell	1			
Mark Noennig	1			

The motion passed 6-1. City Variance #1211 is conditionally approved.

Item #5

Variance #1212 – This is a variance from 27-602 requiring any new structure be setback 70 feet to the centerline of a minor arterial street to allow a 65 foot setback to the centerline of Poly Drive for a new home in a Residential 9,600 (R-96) zone, on Lot 41, Block 3, Poly Vista Estates Subdivision, a 11,718 square foot parcel of land.

REQUEST

This is a variance from 27-602 requiring any new structure be setback 70 feet to the centerline of a minor arterial street to allow a 65 foot setback to the centerline of Poly Drive for a new home in a Residential 9,600 (R-96) zone, on Lot 41, Block 3, Poly Vista Estates Subdivision, a 11,718 square foot parcel of land.

Staff is recommending the following conditions for the decrease in setback from 70 feet to 65 feet:

1. The variance is to allow a 65-foot setback to the centerline of Poly Drive for the construction of a garage space. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 41, Block 3 of Poly Vista Estates Subdivision generally located at 3759 Poly Drive.
3. The additional garage space shall be constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. The owner will submit a building permit application within 3 months of Board of Adjustment approval and complete the construction within 18 months of Board of Adjustment approval.
6. Failure to begin or complete the approved actions on the variance will void the approved variance.
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.

There was none.

Public Hearing

At 7:07 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1212.

Proponents

Barbara Hawkins, owner. 2617 Westfield Drive, Billings, MT 59106. When we developed these two cul-de-sacs the city asked us to widen Poly Drive. We widened the North side of Poly Drive. Our request for the five feet is not going to affect any kind of provision. When we submitted for the building permit we were unaware of the extra requirement for set back since the last building was built prior to 1999. A three car garage is standard when we build houses now and when we put the house on the lot there is a no access zone, the drive approach needs to be on the north corner of the lot. The people who we are building the house for want a garage on the south side to buffer the road noise. In order to get the garage on the lot we had to turn it and when we did the corner of the garage encroached on the set back. Any questions? None.

Dave Hawkins, owner. 2617 Westfield Drive, Billings, MT 59106. The house right across the street to the east you will notice their driveway is a little bit to the south, we had to put in the driveway approach there due to the no access zone. Had to tilt the garage due to the way the owners wanted to approach their garage. The two cul-de-sacs have different intersections which have influence on how the driveway approach is built. This portion of Poly is up for reconstruction, but they won't be

increasing the size of Poly on the North side, they will on the South side. They will be re-paving Poly and installing storm drains. Any questions? None.

Walt Backer, 6312 Grey House Way, Billings MT 59106. I will be moving to this spot if everything goes okay. One of the things that started this is when Poly was defined as an arterial instead of being a collector. Someone decided from N 27th all the way to 38th because of the traffic flow, Poly should be designated as a minor arterial. On the other side of Shiloh, Poly is still a collector so this setback does not apply. When people sell their house they will have to come to you to get a variance. Any questions? None.

Motion

Board member Noennig made a motion and Olson seconded the motion to conditionally approve City Variance #1212 with the conditions and Findings of Fact presented by Staff.

Discussion

There was none. At 7:16, Chairman Bollman closed the public hearing and called for a motion.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1212 is conditionally approved.

Other Business/Announcements

Roll call on disclosure, site visit vs exparte. Would be recorded in the minutes, it can be corrected in the draft minutes.

- The next City Board of Adjustment meeting will be held on **Wednesday, May 6, 2015.**

Adjournment: 7:55 p.m.

ATTEST: APPROVED BY A MOTION MAY 6, 2015



Chairman Jeff Bollman

Jeanette Vieg, Receptionist