

**CITY BOARD OF ADJUSTMENT**

MINUTES: May 6, 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	1							
James Olson	Board member	1	E	1	1	1							
Paul Hagen	Board member	1	1	E	1	E							
Frank Chesarek	Board member	1	1	1	1	1							
Matthew McDonnell	Vice Chairman	1	E	1	1	1							
Martin Connell	Board member	1	1	1	1	1							
Mark Noennig	Board member	1	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
<b>Variance</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>2</b>								<b>10</b>

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 3<sup>rd</sup> 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 Karen Husman, Planning Assistant.

**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 April 1, 2015 Meeting Minutes**

Chairman Bollman called for approval of the April 1, 2015 minutes.

**Board member Noennig made a motion and Board member Chesarek seconded to approve the April 1, 2015 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote, 6-0.**

**Disclosure of Conflict of Interest**

Chairman Bollman asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		N	
James Olson		N	
Paul Hagen			<b>Absent</b>
Frank Chesarek		N	
Matthew McDonnell		N	
Martin Connell		N	
Mark Noennig		N	

**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				<b>Absent</b>
Frank Chesarek		N	N	
Matthew McDonnell		N	N	
Martin Connell		Y 2ND	Y	
Mark Noennig		N	N	

**Public Hearings**

Chairman Bollman asked Ms. Cromwell to review the procedure, she 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 in favor of the Board of Adjustment are required to pass a variance. This evening there are 6 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1214 and presented the Board with the staff report for this request.

**Item #1**

**Variance #1214 – 742 and 744 Calhoun Lane, lot size -** A variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zoning district on Lot 4, Block 5, Pinnick Subdivision 3rd Filing, an 8,826 square foot parcel of land. No new construction is planned but the variance, if approved, would allow the owner to re-build in the future, Tax ID: A20199, Judson Group LLC, owner.

**RECOMMENDATION**

The Planning Division is recommending conditional approval and adoption of the findings of the 7 criteria for Variance #1214. Staff is recommending the following conditions:

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 5, Pinnick Subdivision 3rd Filing generally located at 742 and 744 Calhoun Lane.
3. This variance is to be able to rebuild the duplex should the current structure be damaged by more than 50% replacement cost. Any future construction to replace the existing duplex will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction with the exception of lot square footage.
4. No construction or demolition activity will take place before 7 am or after 8pm.
5. 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.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1214.

### **Proponents**

#### **Greg Judson, 3165 Parkhill Dr., Billings, Montana**

Greg Judson, Judson Group, LLC, said they had more than one appraisal done on the property and from those appraisals had concluded the proposal is the highest and best use of the land.

**Yvonne Schmeling, 4626 Murphey**, asked why they were requesting a variance for a duplex.

Chairman Bollman explained the application for a variance was not to add another duplex, but to allow the existing one to remain although the lot size is smaller than what would be allowed for a duplex. He clarified the applicant would not be building another structure, and the application was for only the one lot.

### **Opponents**

Chairman Bollman called for opponents of City Variance #1214.

There were none.

Chairman Bollman closed the public hearing, and called for a motion.

### **Motion**

**Board member Olson made a motion and Board member Connell seconded the motion to conditionally approve City Variance #1215 with the conditions and Findings of Fact presented by Staff.**

**Discussion**

Chairman Bollman called for discussion on the motion. There was none.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	<b>X</b>			
James Olson	<b>X</b>			
Paul Hagen				<b>x</b>
Frank Chesarek	<b>X</b>			
Matthew McDonnell	<b>X</b>			
Martin Connell	<b>X</b>			
Mark Noennig	<b>X</b>			

**The motion passed 6-0. City Variance #1214 is conditionally approved.**

**Item #2:**

Variance #1215 – 503 Avenue D, Lot Area – Request for A variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone, Lot 1 of Block 1 Pioneer Park Subdivision, an 8,338 square foot parcel of land. The variance would allow the construction of 1 new single family dwelling. Tax ID: A12852, Rusty and Tiffany Gackle, Pauline Gackle owners.

Dave explained the original site plan submitted was to allow a duplex and a house on the lot, but the applicant had mistakenly submitted the wrong plan. He showed the board the amended/updated site plan with the connected patio cover. This covered area connected the two structures and under the Unified Zoning Code definitions was now considered a tri-plex. Dave said the lot area variance for a tri-plex would be less for the required lot size of 8,500 square feet so the variance request would be to allow the tri-plex on a lot size of 8,338 square feet. The request was for a greater area, so the hearing can still continue for less than what was asked for, if they were requesting more, the hearing would have to be postponed and the public notices resubmitted.

**RECOMMENDATION**

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 1 of Block 1 Pioneer Park Subdivision, an 8,338 square foot parcel of land generally located at 503 Avenue D.
3. The garage and additional dwelling unit shall be constructed in substantial conformance to the site drawings submitted to the planning department with this application, meaning size and location on lot not style of building.
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 1 year of Board of Adjustment approval and complete the construction within 2 years 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 Noennig asked for an explanation of the connection that makes it a tri-plex.

Dave clarified the reason and the code description for a duplex.

Nicole explained definition for a building that is connected is to be connected by a common wall, common floor, or common roof. She said this tri-plex meets the connection requirements under the code with the patio cover roof that connects both buildings.

Board member Noennig said he was not supportive of that definition in the regulations.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1215.

### **Proponents**

#### **Rusty, Tiffany Gackle, 503 Avenue D, applicants, Billings, Montana**

Rusty Gackle said he believes there is more than three feet to the property line at the alley, but he was sure there is six feet from the alley tracks/driving area on the alley. The property line is at least 3 feet from the proposed wall of the new building. He said they needed a garage anyway so they wanted to build another unit to possibly add to the value and possibly an income for them.

Board member Olson asked if the applicant had heard the complainants concerns at 1718 Virginia Lane.

Rusty said he had not heard the complaint.

The Board allowed the Gackles to read and respond to the email letter sent to staff in opposition to the variance.

Board member Olson asked what the height of the new structure would be.

Rusty said it was 26 feet at it's highest point. He said they were trying to make it uniform to the existing building.

Board member Chesarek asked if the existing duplex could be rebuilt without the variance.

Dave said the existing duplex did not currently meet the minimum setbacks and may not be reconstructed where it is built.

Nicole explained the existing duplex and what could be rebuilt with and without the variance granted. The minimum setback for the side (clarification was made for corner lots and allowances on each side street) of a single story is 5 feet, and for a 2-story is 8 feet minimum required.

Chairman Bollman said the request for the variance setback simply is for a setback reduction for a 2 story building from 8 feet to 3 feet, it does not specify to reduce the setback for only the new construction. He interpreted the application to be for all buildings on the lot and not just the new structure or addition so it would bring the existing building into compliance as well as the new.

Rusty responded to the letter of opposition by explaining how he had been talking to the neighbors about the property, but did not know this particular neighbor. He said they would have at least 6 off street parking spaces. He said the goal was to make it uniform with the existing building. He said he did not know the exact location of the property line at the side, but it may be 5 feet. He said the rendition of the proposal was not as clear and didn't give the look of the building they were actually going for. The new structure will resemble the existing house and aesthetically pleasing to the neighborhood.

### **Opponents**

Chairman Bollman called for opponents of City Variance #1215.

There were none.

Chairman Bollman closed the public hearing, and called for a motion.

### **Motion**

**Board member Chesarek made a motion and Board member Olson seconded the motion to conditionally approve City Variance #1215 with the conditions and Findings of Fact presented by Staff.**

### **Discussion**

Chairman Bollman called for discussion on the motion.

Board member Connell stated that he had spoken to Board member Paul Hagen (who was not present at this meeting) regarding the site. He said did not like the architectural features, but said he felt it was because of the architectural rendition of the proposal that was deceiving.. It is important to know where your lot lines are.

Chairman Bollman said the neighborhood was primarily multi-family from duplexes to apartments and he felt the density of one more unit on this property is not an issue in the neighborhood. He said there was such a mixture in the neighborhood that this would not be anything different from what was existing.

Board member Connell suggested the applicant go and speak to the neighbor that was concerned with the property and communicate to them the intent and explain the design more clearly for them.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	<b>x</b>			
James Olson	<b>x</b>			
Paul Hagen				<b>x</b>
Frank Chesarek	<b>x</b>			
Matthew McDonnell	<b>x</b>			
Martin Connell	<b>x</b>			
Mark Noennig	<b>x</b>			

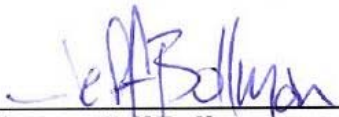
**The motion passed 6-0. City Variance #1215 is conditionally approved.**

**Other Business/Announcements:**

- The next City Board of Adjustment meeting will be held on **Wednesday, June 3, 2015.**

Adjournment: 7:00 p.m.

**ATTEST:**

  
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**Chairman Jeff Bollman**

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**Karen Husman, Planning Assistant**