

**CITY BOARD OF ADJUSTMENT**

MINUTES August 3, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Board member	-	-	1	E	1	1	1	E				
James Olson	Board member	-	-	1	1	E	1	E	R				
Paul Hagen	Board member	-	-	1	1	1	1	1	1				
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1	E				
Oscar Heinrich	Board member	-	-	1	1	1	1	1	1				
Martin Connell	Board member	-	-	1	1	1	E	1	1				
Mark Noennig	Chairman	-	-	1	1	1	1	1	1				

TOTAL NUMBER OF APPLICATIONS 2016	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/03/16	09/07/16	10/05/16	11/02/16	12/07/16	TOTAL
<b>Variance</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>3</b>					<b>18</b>

Chairman Noennig 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.

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 Support.

**Attending:** Susan Tippetts, Clara Jane Ballard, Trent Sizemore, Konnie Sizemore, Theresa Ball, Mark Ball, Richard Clark, Caleb Bruski, Doug Wild, Robert Hamlin, John Hernandez, Caryle Streeter, Stanley Burns

**Public Comment**

Chairman Noennig opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none. Chairman Noennig closed the public comment period.

**Approval Meeting Minutes**

Board member Heinrich made a motion for the approval of July 6, 2016 minutes with corrections. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 4-0. Change Chairman Noennig’s site visit to NO.

**Disclosure of Conflict of Interest**

Chairman Noennig asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman			x
██████████			
Paul Hagen		x	
Frank Chesarek			x
Oscar Heinrich		x	
Martin Connell		x	
Mark Noennig		x	

**Disclosure of Outside Communication**

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

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman				x
██████████				
Paul Hagen		No	all	
Frank Chesarek				x
Oscar Heinrich		No	all	
Martin Connell		No	all	
Mark Noennig		No	no	

**Public Hearings**

Zoning Coordinator 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. She stated four votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 4 Board members attending. A unanimous vote is necessary to approve requested variances.

Nicole Cromwell read the legal description for **Variance #1237**:

Karen Husman presenting:

**Variance 1237 – 1119 25<sup>th</sup> St West – Lot Area** - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a 2-family dwelling, to allow a minimum lot area of 8,840 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 1 of Lillis Subdivision, 2<sup>nd</sup> Filing. The variance would allow the issuance of a re-build letter for the existing 2-family dwelling in order to secure re-financing. Tax ID: A10205.

### **RECOMMENDATION**

Staff recommends conditional approval of the **Variance #1237**.

### **Discussion**

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

Board member Heinrich asked what needed to be done to make this into a conforming apartment. Staff explained under the zoning requirements as long as it has its own access, no joint access within and one egress window would be required. Separate utilities are not required, and it has been rented. Board member Heinrich asked if there are any other apartments in the area. Staff is not aware of any. He also inquired regarding any Surrounding Property Owner comments. One neighbor came to the office and is here to comment.

Chairman Noennig inquired why staff is recommending approval. Staff replied based on the conditions for review and it was constructed prior to zoning it appears to be a conforming duplex. For these reasons conditional approval is being recommended. Chairman Noennig stated based on the “grandfathering in” of this apartment it is conforming.

### **Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1237**.

### **Caleb Bruski, owner**

Mr. Bruski has a child on the way and he and his wife are trying to refinance. Zoning it as a single family residence puts the loan to value ratio at par. They are wanting a variance and a zoning letter as a duplex to satisfy the banks requirements.

Chairman Noennig stated the bank would not be happy if the home was in violation of zoning. He asked how long the Bruski’s have lived there. Mr. Bruski replied they have lived there 8 years and the basement apartment has been rented continually. The kitchen in the basement was not great until this year. This year he completed the plumbing and electrical.

### **Opposed**

### **Mark Ball, 2502 Burlington Ave**

Mr. Ball and his wife have been in their home for 20 years. They have seen many changes in neighborhood infrastructure, residents and such. There have been many updates to his property made with sacrifices along the way. A 6 foot fence has been constructed the lawn is well irrigated and they have installed new windows and siding which gives his residence great curb appeal. Because of the

orientation, the alley is the only access. The applicant's house is small with limited parking. Renters bring extra vehicles parking along his and others property. Mr. Ball considers parking by others along his property, although on the public street, to be inconsiderate, unfair and unacceptable. The extra vehicles create hiding places and therefore a security issue. Access is now being limited by new construction in the neighborhood, namely the Good Lutheran Church. Most houses in the neighborhood were built in the 1950s and are small with limited parking. There are no other multi-family units here. This duplex zoning variance is completely unwanted.

**Teresa Ball, 2502 Burlington Ave**

Mrs. Ball is completely unaware that the applicant has lived there 8 years. The duplex approval would be setting a bad precedence. Residents are doing a u-turn and going over the curb to park along the Ball's fence. The current zoning is there for a reason. She is unaware of it being a duplex rental before this year. She is concerned about future owners and their renters because the variance follows the property.

**Richard Clark, 1207 25<sup>th</sup> Street W**

Mr. Clark is opposed to the Variance. He has lived in his home for 30 years and has not seen it rented out until this year. It was not a duplex before zoning in his opinion because the wiring and plumbing in the basement were not usable. He would like to see the variance denied.

**Stanley Burns, 1113 25<sup>th</sup> Street W**

Mr. Burns' opposition is regarding property values now and in the future. How will a duplex affect his and surrounding property values. He also has spent a lot of time and money improving his property. There is a nice cohesion of neighbors and some are not here to oppose the variance because they do not want to make a problem.

**Rebuttal**

Mr. Bruski admits he has not spoken to his tenants about where they park. He has made many improvements to the subject property and has a nice lawn. He does take pride in his home. If he moves he intends to keep it as a rental property, therefore having a say in the activities at this residence. The wiring was not there true, and the plumbing needed work. A duplex zoning will not affect the value of the neighbor's properties. He takes pride in his home and lawn and has made many improvements since moving in.

Chairman Noennig confirmed with Mr. Bruski it has been rented for most of the time, possibly just over a year vacant. There is a connecting door between the upstairs and downstairs apartment.

Chairman Noennig asked about the abandonment of the nonconforming status by not renting the basement continually. Staff replied occupancy is not the only issue, remodeling would have to take place deleting the basement apartment for the nonconforming status to be abandoned.

Board member Connell thinks it was not built as a duplex and thinks the variance should be denied.

Chairman Noennig understands that after 1 year of nonuse (renting), the duplex status is void. Staff replied it may not have a connecting door to qualify in the duplex definition.

Chairman Noennig stated he can rent it out without the duplex zoning. Staff confirmed this to be true.

Board member Heinrich expressed his frustration in that rebuild letters are usually for something incredibly specific. He does not think the variance should be granted.

Board member Hagen said there is no guarantee the house will not be sold. Once the variance is granted as a duplex it follows the property. For this reason he is opposed.

Chairman Noennig reiterated whether he gets financing or not, he can rent it. Board member Connell stated the variance allows it to be designated as a duplex and rebuilt as a duplex. This affects the whole neighborhood. There are no other duplexes in the area.

Chairman Noennig called for a motion.

Board member Heinrich made a motion and Board member Hagen seconded the motion to deny **City Variance #1237** with the Findings of Fact presented by Staff with the exception of #4.

Staff indicated the motion is contrary to the Findings and therefore an explanation is necessary.

Board member Heinrich stated the findings of fact could indicate approval or denial and therefore he agrees with the Findings of Fact to deny. The Variance is not in harmony with the general purpose of intent for the property.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman				x
Paul Hagen	x			
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion to deny Variance #1237 passed 4-2.**

**Nicole Cromwell read the legal description into the record for Variance #1238.**

**Karen Husman presented:**

**Variance 1238 – 4532 Vaughn Lane – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone on Lot 14, of Cowley Subdivision, a 7,500 square foot parcel of land, generally located at 4532 Vaughn Lane. Tax ID: A05715.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of **Variance #1238.**

**Discussion**

Chairman Noennig asked the members of the Board for questions for Staff.

Chairman Heinrich asked if there are comments from the Surrounding Property Owners. Staff indicated there were no responses to the letters sent out. He then asked if it previously had a carport. Are the carports across the street legal? Staff replied no building permits were found.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1238.**

**Clara Ballard, owner, 4532 Vaughn Lane**

Mrs. Ballard is 87 years old and has owned the home since 1959. She is a widow for 25 years and would like to stay in her own home with some construction changes. She would like to install a door off the car port to access the house with groceries and she would like to keep her car under cover. She stated the 2 car ports across the street are grandfathered in and she would like to build a car port like the one at 4525 Vaughn. She has been driving accident free all her life and would like to stay independent. The car port would help eliminate the ice and snow during the winter and make it easier for her.

**Opposed**

None

Chairman Noennig called for a motion.

**Motion**

Board member Heinrich made a motion and Board member Connell seconded the motion to conditionally approve **City Variance #1238** with the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman				x
Paul Hagen	x			
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion passed 4-0. City Variance #1238 is conditionally approved.**

**Nicole Cromwell read the legal description into the record for Variance #1239.**

Karen Husman presenting:

**Variance 1239 – 3840 Hickok Circle – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new residence in a Residential 9,600 (R-96) zone on Lot 11, Block 2 of Sand Cliff Subdivision, a 1.045-acre parcel of land, generally located at 3840 Hickok Circle. Tax ID: A21165.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of **Variance #1239**.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1239**.

**Doug Wild, Classic Design Homes, 1605 Shiloh Road, Billings, MT 59106**

Mr. Wild is the agent for the owner, Robert Hamlin. Frankly, to build further back on this lot is not practical or possible due to the rocks and topography. The home to the west is much closer than the 20 foot recommended setback. Between property line and the road is about 12 feet at the closest. There would still be 20 to 25 feet to the road. There is no encroachment of public Right of Way.

Chairman Noennig asked the total square footage of the house. Mr. Wild replied that on 3 levels the house is about 7000 square feet.

**Robert Hamlin, 1200 Calico Ave, Billings, MT owner**

He wished to reemphasize the position of the house being approximately 14.5 feet from the curb.

**Opposed**

**Trent Sizemore, 3830 Hickok Circle, Billings, MT**

Mr. Sizemore disputes his neighbor's setbacks without measuring. He acknowledges the right to build but believes the rules need to be followed. He does not want this house to hit him in the face when he turns south on Hickok Circle off of Highway 3. Public safety is an issue because when turning off Highway 3 on to Hickok Circle many times you must turn quickly due to traffic behind you. When there is ice in the winter, vehicles turning here often slide out of control. The lot is irregular, but no different than the neighbors. The owner has owned it for 25 years. 5 feet doesn't seem like much but is enough to be a problem. The garages will be 5 feet closer to the street, shortening the driveway by 5 feet. He disputes the hardship because 5 garages are in access and the change is more of a want for more space to accommodate than a need due to a hardship. He believes there are solutions without the variance. Redesign and move the house.

Chairman Noennig is not clear on the driveway access and reason for setbacks.

**Caryle Streeter, 3820 Hickok Circle, Billings, MT**

Ms. Streeter has witnessed accidents at this location in the winter and does not believe it is a buildable lot. Mr. Hamlin has created problems for the neighbors on many occasions. He will be blocking the view off Highway 3 with his garages and they are going to be hit. Where are his visitors going to park? Hickok Circle is very narrow. It is a very dangerous on the approach.

Board member Connell agrees the approach needs to be changed.

Chairman Noennig inquired whether she has considered the drawings that have been presented today. She replied no.

**John Hernandez, 3850 Hickok Circle, Billings, MT**

Mr. Hernandez is concerned with a road to the rear for RV's that Mr. Hamlin is proposing. He also agrees with the other concerns voiced. Mr. Hamlin used to own Mr. Hernandez's house and there are easements behind.

Board member Heinrich asks about zoning on the Sorenson's property.

**Rebuttal**

Mr. Hamlin explains he did not own the house, only the land where Mr. Hernandez lives. He does have an easement behind. Mr. Hernandez does not live at 3850 Hickok Circle, it is being rebuilt.

Mr. Wild agrees safety is a concern. The house is being positioned so that backing out will not be an

issue. It is a difficult lot to build on. The rule is if you need an exception you apply for a variance and that is what is being done. He does not believe that seeing that house directly should be considered in this process. In his experience, people generally do not want vacant lots built on in their neighborhood.

Board member Hagen confirmed 5 garages.

Chairman Noennig asked what would change if the variance were denied. Mr. Wild explained that the house would need to be redesigned and construction is limited. Also some of the views from the house would change. It would be more difficult to access the necessary areas to construct the home.

Board member Connell visited the property and blocking the views has nothing to do with the Board of Adjustments discretion. He also reiterated the building code. Stating that the codes dictate the heights of structures not this Board. The access safety issue is valid the way the road is engineered however Mr. Hamlin is at the most risk. The hardship of the lot is a reality.

Chairman Noennig called for a motion.

**Motion**

Board member Heinrich made a motion and Board member Hagen seconded the motion to **conditionally approve City Variance #1239** per the conditions and Findings of Fact presented by Staff.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman				x
██████████				
Paul Hagen	x			
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion to conditionally approve Variance request #1239 passed with a 4-0 vote.**

**Other Business/Announcements:**

There will be a meeting on September 7, 2016.

There is a vacancy on the Board. James Olson resigned.

Adjournment: 7:35 p.m.

**ATTEST: DRAFT. Approved by a motion on September 7, 2016**

