

CITY BOARD OF ADJUSTMENT

MINUTES: January 7, 2009

Troy Boucher, Chairman Pro Tem called the meeting to order at 6:01 p.m. The City Board of Adjustment met in the City Council Chambers.

Name	Title	01/07/09	02/04/09	03/04/09	04/01/09	05/06/09	06/03/09	07/01/09	08/05/09	09/02/09	10/07/09	11/04/09	12/02/09
Jeff Bollman	Boardmember	1											
Barbara Walborn	Boardmember	1											
Lyn McKinney	Boardmember	1											
Troy Boucher	Chairman Pro Tem	1											
Daniel Eggen	Boardmember	1											
Brent Nelson	Boardmember	A											
Paul Cox	Boardmember	1											

TOTAL NUMBER OF APPLICATIONS 2009	01/07/09	02/04/09	03/04/09	04/01/09	05/06/09	06/03/09	07/01/09	08/05/09	09/02/09	10/07/09	11/04/09	12/02/09	TOTAL
Variance	2												

Chairman Boucher asked Nicole Cromwell, Zoning Coordinator to introduce the City Board of Adjustment Members and Planning Department Staff. The following staff was in attendance:

- Nicole Cromwell, Planner II/Zoning Coordinator
- Dave Green, Planner I
- Elizabeth Allen, Planning Clerk

Public Comment:

There were none.

Approval of minutes:

On a motion by Boardmember Eggen, seconded by Boardmember Walborn and approved with a 6-0-1 voice vote the minutes of December 3, 2008 were approved.

PUBLIC HEARINGS:

Chairman Boucher asked Ms. Cromwell to read the determinations for granting a variance as well as review the rules for the procedure by which the public hearings will be conducted.

Ms. Cromwell reviewed the procedures by which the meeting is conducted. She read the determinations for granting a variance.

Public Hearings:

Item #1: City Variance #1040 – 1427 and 1429 Avenue C – A variance from BMCC 27-308 requiring a minimum lot area of 14,000 square feet for two duplex dwellings on a single lot, to allow a lot area of 10,500 square feet for two existing duplexes, in a Residential 6,000 (R-60) zone, on Lots 11-13, Block 6, Evergreen Subdivision. Tax ID: A06728. Darryl and Karen Scott, owners; Jeff Kanning of Collaborative Design and Marylou Affleck, agents.

Ms. Cromwell read the legal description and **Dave Green** reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. He said staff is forwarding a recommendation of conditional approval.

Discussion:

Boardmember Eggen asked what the living area for the duplexes. **Mr. Green** clarified the square footage of the duplexes.

Applicant:

Jeff Kanning, Collaborative Design Architects, Boardmember of the Interfaith Hospitality Network. They have already begun looking at what changes they would like to make and what upgrades they are planning. They received a grant from the Mayor's Committee on Homelessness for \$145,000 to update this property. They will be moving families into this property and they will have the families at the property for one year during which time they receive counseling and help to get back on their feet. They do not have any problem with the conditions. He is an architect and has already been looking at the property and what will need to be done in order to bring it up to code.

Boardmember Bollman asked if the applicant knows when the property was converted. Jeff Kanning stated that he doesn't know when the property was converted.

Adella Honor 1123 17th St W, Director of the Interfaith Hospitality Network. They have a case manager who works with the families in the network. They have mostly families consisting of single mothers with children. They are very selective about who they accept into the program. They have rental and other agreements with the families that they place to make sure that the property is well taken care of and that they work and that their children go to school. Part of the agreement to move into the properties is that they continue case management to keep them on track. They have a 50 year agreement with the City so they will be keeping this property and using it for a long time.

Proponents:

Judy Johnson, 212 Emerald Hills Dr, President of Interfaith Hospitality Network. They are a 503C program. They house families in the different churches included within their network and it can be very difficult for the families to live like that. Rent in Billings right now is high and low income housing is very difficult to find. This is a way that they are able to help the homeless in Billings and help them to get back on their feet. This property will help to encourage and guide their clients to a more successful life.

Opponents:

Warren George, 1411 Ave C, he has lived in the area since 1978. He feels that this will create problems with the existing housing. He is also concerned that this will devalue the property in the area. He also feels that granting one variance in this area will allow other variances to have a foothold in the area. Traffic in the alley is very bad and parking is very difficult in this area. He is opposed to the variance and to IFHN's proposal

Garry Haffer, 1431 Ave C, lives in the 5-plex next door. Most of the neighborhood is single family housing. Allowing this variance will make this neighborhood even more congested. He is also concerned that adding extra bedrooms to the duplexes will make the area even more dense.

Kirk McCormic, 1409 Ave C, there are problems with the traffic in the area. He also owns a non-conforming property in the area. He is concerned because he has trouble getting through the alley because there is currently an RV parked there.

Wally Streeter, owns 1424, 1450 Ave B, this is a nice single family area. He doesn't want to see it change. This will add difficulties and devalue properties. This property has been changed twice without a building permit.

Nancy Graff 1420 Ave C, several of the neighbors are offended that they have been determined low income families. Adding a new complex to this area will hurt the neighborhood. Most of the properties are owned by older residents and new children in the neighborhood will be a disruption. She is also concerned that there is no school in the area for the children. She is concerned that if single mothers move into this property they will have the fathers coming by and harassing them.

Rebuttal:

Jeff Kanning stated that this is a mixed use area. There are other properties that a multi-family in the area. They will be putting in new sidewalks, on site parking, and a play area for the children. The people that they will be moving in have the ability to become higher income, they just need help to get back on their feet. They never classified the neighborhood as low income. The IFHN will be the landlord and will care for the property.

Boardmember Bollman asked if they have decided where the off street parking will be. Jeff Kanning stated that they have looked at the site and found the areas where they will be placing the off street parking. They may not add another bedroom to the front units. That is just a proposal at this time.

Boardmember Eggen asked if the clients will have cars. If many of them are low income or were recently homeless it doesn't seem like they would have cars. Jeff Kanning stated that IFHN supplies a van to help the people get around. Not many of the clients have cars. They will also be bringing the property up to code as far as ADA standards.

The public hearing closed at 6:41 p.m.

Motion:

On a motion by Boardmember McKinney, seconded Boardmember Walborn and approved with a 4-2-1 voice vote Variance #1040 was approved with the following conditions:

1. Any rebuilds or remodel of the structures on the subject property, including those contemplated in conjunction with this variance, will need to be done in compliance with the City's adopted building code, zoning code, which includes setbacks (with the exception of the rear setback, Variance #112 granted an 8 foot setback from alley), lot coverage and other City regulations in place at the time of rebuild, with the exception of lot size.
2. If the applicant proceeds with the proposed addition to the front building on the lot, they will have to address all site related codes from the City Engineering Division.
3. The applicant will hire an architect to inspect the two structures on the subject property to determine if they are constructed to meet the current required building codes for duplexes. If they do not meet the required building codes, the architect must determine what must be done to meet the current required building codes for duplexes and complete any code compliance issues to be in compliance with this variance request.

Discussion:

Boardmember Cox stated that there are no special conditions for this property to allow the addition and the only hardship is to allow the property to change hands. He would be concerned about a density increase in the neighborhood. He feels that fire protection in the area with the new addition of the bedroom will be decreased.

Boardmember Bollman has been conflicted about the variance. Looking at the front property and the fact that it is not being taxed as a duplex makes him wonder when it was converted.

Boardmember Eggen feels that the county tax records are often wrong and it is hard to make a decision just based on tax records.

Boardmember Walborn feels that this will be penalizing the new owners for the actions of the previous owners. **Boardmember Walborn** asked if the property will be tax exempt. It will not be. She feels that it will be taxed as a duplex once they begin the building permit process.

Ms. Cromwell reminded the board that they need to articulate exactly why they dissent against staff recommendation if they choose to deny with emphasis on the 7 criteria.

Boardmember Boucher asked if there will be an increase in the number of families. Jeff Kanning stated that they will not be increasing the number of units. They would like to add another bedroom to accommodate families with two children of different sexes.

Motion:

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman		x		
Barbara Walborn	x			
Lyn McKinney	x			
Troy Boucher	x			
Daniel Eggen	x			
Brent Nelson				x
Paul Cox		x		

Item #2: City Variance #1041 – 3 Alderson and 1308 Division Street – A variance from BMCC 27-308 requiring a minimum lot area of 12,000 square feet for two single-family dwellings on a single lot, to allow a lot area of 6,525 square feet for two existing single family dwellings; from BMCC 27-308 requiring a 10 foot minimum side adjacent to a street setback to allow a 9 foot side adjacent to street setback (Division Street); from BMCC 27-308 requiring a 5 foot minimum side yard setback to allow a 2 foot side yard setback; and from BMCC 27-602 requiring an 80 foot minimum setback to the centerline of a principal arterial street (Division Street) to allow a 44 foot setback to the centerline of Division Street in a Residential Multi-family-Restricted (RMF-R) zone, on Lots 1, Block 7; South 100 feet of Lots 1 & 2; South 100 feet of Lots 1 & 2, North 20 feet of the South 100 feet & the West 5 feet of the North 40 feet of Lot 3, the East 15 feet of the North 45 feet of Lot 4, Block 7, Westside Addition Subdivision. Tax ID: A17749. Gary Minert, owner and Leslie Atkins of Red Door Realty, LLC, agent.

Ms. Cromwell read the legal description and **Dave Green** reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. He said staff is forwarding a recommendation of conditional approval.

Discussion:

Boardmember Bollman asked if the City Engineering office had any comment regarding the arterial setback. **Mr. Green** stated that they had no concerns. **Boardmember Cox** asked if there is any history as to why the property is so strangely shaped. **Mr. Green** said that he has no history on the subdivision of this property.

Applicant:

Leslie Atkins, 219 West Main Street, they hope to have the variance approved. The property is well constructed and well maintained. Both units have off street parking. They have both been remodeled in the past five years. It would be a very strong hardship if the variance was not granted because

Proponents:

There were none.

Opponents:

There were none.

Undecided:

Liz Shceely, 28 Grand, she has questions regarding why the variance is required. She wants to know why the property was able to be insured before now and it cannot be now. She would like to know if this type of variance will affect the other people in the neighborhood. She is not certain when the current owners bought the property but it was sold sometime in 1999. She is not really for or against this variance until she has the answers to these questions.

Rebuttal:

Leslie Atkins stated that the problem is not insurance, it is financing. Financing has become very difficult to come by and they are unable to finance without a rebuild letter.

The public hearing closed at 6:41 p.m.

Motion:

On a motion by Boardmember Cox, seconded by Boardmember Bollman and approved with a 6-0-1 voice vote Variance #1014 was approved with the following conditions:

1. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City's adopted building code and zoning code, which includes the approved variance setbacks and lot size in this application, and other City regulations in place at that time of rebuild.

Discussion:

Boardmember Cox stated that the Board is hearing a lot more of these types of variances. He asked **Ms. Cromwell** if she thought the Board will continue to see so many and why they are seeing so many now.

Ms. Cromwell explained that financing became very difficult after 9/11 and after the two major hurricanes.

Boardmember Walborn asked if anything would be buildable on this lot if there was no variance.

Ms. Cromwell stated that this property is basically un-buildable without a variance. The lending requirements have become much more stringent.

Motion:

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman	X			
Barbara Walborn	X			
Lyn McKinney	X			
Troy Boucher	X			
Daniel Eggen	X			
Brent Nelson				X
Paul Cox	X			

Other Business:

The Board delayed the election of Officers until the February meeting.

Adjournment:

The meeting was adjourned at 7:11 p.m.

Troy Boucher, Chairman-Pro-Tem

ATTEST:

Elizabeth Allen, Planning Clerk