

CITY BOARD OF ADJUSTMENT

MINUTES: April 1, 2009

Draft: to be approved on May 6, 2009

Troy Boucher, Chairman called the meeting to order at 6:00 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	1	1	1								
Barbara Walborn	Boardmember	1	1	1	1								
Lyn McKinney	Vice-Chair	1	1	1	1								
Troy Boucher	Chairman	1	1	1	1								
Daniel Eggen	Boardmember	1	1	1	1								
Brent Nelson	Boardmember	A	A	A	1								
Paul Cox	Boardmember	1	1	1	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	1	1	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

Tamara Deines, Planning Clerk

Public Comment:

Chairman Boucher 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 Boucher closed the public comment period at 6:01 p.m.

Approval of minutes:

Motion:

On a motion by Boardmember Eggen, seconded by Boardmember Wellborn and approved as submitted with a 6-0-1 voice vote the minutes of March 4, 2009 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 and the determinations for granting a variance.

Public Hearings:

Item #1: City Variance #1044 – 6737 Cove Creek Dr - A variance from BMCC 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 32% for a 16 ft by 18 ft addition to an existing home on a 7,682 square foot parcel, in a Residential 7,000 – Restricted (R-70-R) zone, Lots 37, Block 3, Copper Ridge Subdivision. Tax ID: A33072. Donald & Glenda Hochhalter, owners. Council Ward IV, Planner: Nicole Cromwell

Ms. Cromwell read the legal description. She 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.

REQUEST

The applicant is requesting a variance from Section 27-308 BMCC to allow 32% lot coverage where code allows maximum lot coverage of 30%. The increased lot coverage is for a proposed 16 foot by 18 foot addition to an existing home in a Residential 7,000 - Restricted (R-70-R) zone. The property is a 7,682 square foot parcel, legally described as Lot 37, Block 3, Copper Ridge Subdivision. The property is addressed 6737 Cove Creek Drive. Staff is recommending Denial of the proposed variance.

Ms. Cromwell noted that there have been two previous variances requested in the Falcon Ridge Estates Subdivision that were denied in 2007. She pointed out that the criterion describes consideration of a hardship if the land has a geographical difference that doesn't allow use of the lot in accordance with the zoning regulations. She stated that there is no difference with this lot than any other subdivision and that the applicants are already close to the maximum lot coverage of 30%. She stated that the proposed addition to the home would put the applicant over maximum allowable lot coverage, and if granted, may grant a special privilege that others in the subdivision have been unable to enjoy. She reviewed the staff recommended conditions should the Board recommend approval of the variance:

1. The applicant must build the addition to meet all current codes, building and zoning, with exception of variance request, and in substantial conformance to the drawing submitted with this application. The applicant must obtain a building permit by October 1, 2009 and have the building constructed by April 1, 2010.
2. The granting of this variance would not allow a use that is not allowed in the zoning district, single-family dwellings are an allowed use in the R-70-R zone.

Ms. Cromwell called for questions from the members of the Board.

Discussion:

Chairman Troy Boucher asked the members of the Board for questions or discussion. Boardmember Eggen referred to the site plan and asked if it depicted a setback encroachment on the south east corner of the house. Ms. Cromwell clarified and stated that this is a depiction of the roof overhang and that the current structure meets the setback. Boardmember Cox asked if the Covenants and Restrictions for this property would prevent approval of this application. Ms. Cromwell responded that this request would have to be approved by the subdivision Copper Ridge Architectural Review Board. She briefly scanned Covenants and Restrictions and found no apparent restrictions.

Chairman Boucher opened the public hearing at 6:17 p.m. and called for proponents of City Variance #1044, 6737 Cove Creek Drive, Billings, Montana.

Proponents:

Applicants

Donald Hochhalter, 6737 Cove Creek Drive, Billings, Montana

Mr. Hochalter stated that he is the owner of this property. He submitted copies of the Copper Ridge Architectural Review Board's recommendation to the members of the Board of Adjustment. He stated that they have no objections to the proposed addition. He explained that he and his wife had considered moving to another property but this may be cost prohibitive. He said that this option was suggested to them during an open house by an Oakland realtor. He said that the setback restrictions for this property are met. Boardmember Cox asked Mr. Hochalter who had made the suggestion. Mr. Hochalter stated that it was Rachel Cox, and Boardmember Cox recused himself as Rachel Cox is his wife. Boardmember Eggen asked Mr. Hochalter if the staff recommended conditions of approval would be acceptable. Mr. Hochalter said that he would be in agreement and that he has a contractor available if this application is approved.

Chairman Boucher opened called for opponents of City Variance #1044, 6737 Cove Creek Drive, Billings, Montana.

Opponents:

Dorothea Woodington 6735 Cove Creek Drive, Billings, Montana

Ms. Worthington submitted photos to the members of the Board. She said that she is a new home owner in this subdivision. She stated that the subdivision master plan positions homes to allow for a view of the rims, and that this is one of the reasons that they chose to purchase their home. She said that the proposed addition would obstruct their view if this is approved.

Rebuttal:

Chairman Boucher called for rebuttal.

Donald Hochhalter, 6737 Cove Creek Drive, Billings, Montana

Mr. Hochalter pointed out that there is a two story home across from their house that reduced the views in the neighborhood that was allowed as it met the required setbacks.

Chairman Boucher asked if there was anyone else wishing to speak in favor or against Variance #1044. There was none. Chairman Boucher closed the public hearing at 6:21 p.m. and called for a motion.

Motion:

Boardmember Eggen forwarded a motion of approval of Variance #1044 with the staff recommended conditions.

Motion failed for lack of a second.

Motion:

On a motion by Boardmember Bollman, seconded by Boardmember McKinney Variance #1044 was denied with a 4-2-1 roll call vote.

Discussion:

Chairman Boucher called for discussion on the motion. Boardmember Walborn pointed out that there were two similar requests for variances that were previously denied. She stated that she does not see this request as a hardship and does not wish to set a precedent in this neighborhood. Boardmember Bollman concurred and stated that he agrees with the staff determinations.

Chairman Boucher called for the roll call vote:

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

Item #2: City Variance #1045-443, 443 ½, 445 Miles and 409 5th St West - A variance from BMCC 27-308 requiring a minimum lot area of 14,500 square feet for a single family dwelling and a triplex dwelling on a single parcel, to allow a minimum lot area of 10,500 square feet, in a Residential Multi-Family-Restrict (RMF-R) zone, Lots 21-23, Block 9, Yellowstone Addition. Tax ID: A19010. Steve Zimmerer is the owner. Council Ward III, Planner: Nicole Cromwell

Ms. Cromwell read the legal description. She 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.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 14,500 square feet for an existing single family dwelling and an existing triplex dwelling on a single parcel, to allow a minimum lot area of 10,500 square feet, in a Residential Multi-Family-Restrict (RMF-R) zone. The property is legally described as Lots 21-23, Block 9, Yellowstone Addition and is given

the addresses of 443, 443 ½ & 445 Miles Avenue and 409 5th St West. No work is planned on either building, but the variance would allow the owner to re-build the dwelling units if necessary in the future. Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell stated that Staff received no letters of objection or inquires from the surrounding property owners concerning this request. She reviewed the staff recommended conditions of approval.

Discussion:

Chairman Boucher asked the members of the Board for questions or discussion. In response to a question by Chairman Boucher, Ms. Cromwell stated that the structures were built in 1944 and in 1959. Boardmember Walborn asked when the current zoning regulations were adopted. Ms. Cromwell replied that the existing City Zoning Code was adopted in 1972.

Applicant:

At 6:33 p.m., Chairman Boucher called for presentation by the applicant.

Steve Zimmerer, 928 Broadwater Ave, Billings, MT

Mr. Zimmerer thanked Ms. Cromwell for her presentation. He stated that they are not going to expand the structures and that they submitted this application in response to a request by their lender for a rebuild letter.

There were no further questions from the members of the Board. Chairman Boucher opened the public hearing at 6:34 p.m. and called for proponents of City Variance #1045, 443, 443 1/2 , 445 Miles and 409 5th Street West, Billings, Montana.

Proponents:

There were none.

Chairman Boucher and called for opponents of City Variance #1045, 443, 443 1/2 , 445 Miles and 409 5th Street West, Billings, Montana.

Opponents:

There were none.

The public hearing closed at 6:35 p.m.

Motion:

On a motion by Boardmember Walborn and seconded by Boardmember Nelson and approved with a 7-0 roll call vote Variance #1045 was conditionally approved with the following conditions:

1. The variance is to reduce the required lot area from 14,500 square feet to 10,500 square feet, for one single family dwelling and one tri-plex dwelling and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lots 21-23, Block 9 of Yellowstone Addition Subdivision.

3. 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 zoning variance from the required lot area in this application, and other City regulations in place at that time of rebuild.

4. 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 Boucher called for discussion on the motion. There was none. Chairman Boucher called for the roll call vote:

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:

Item #1: City of Billings Board of Adjustment By-Law Amendments: Nicole Cromwell, Zoning Coordinator: Ms. Cromwell noted that she had forwarded to the members of the Board the e-mail notice from City Attorney Bonnie Sutherland regarding the City Board of Adjustment's need to adopt new rules based on the recently adopted Boards and Commission ordinance. The consensus of the Board was to forward the draft 2007 Board of Adjustment By-Laws to the City Attorney's office and request notification of any conflicting sections.

Item #2: Ms. Cromwell stated that there is a potential for several variance applications in May. She reminded the members of the board of a need for a quorum and asked that they contact her as soon as possible if they have schedule conflicts with the meeting time.

Adjournment:

The meeting was adjourned at 6:40 p.m.

Draft to be approved on May 6, 2009.

Troy Boucher, Chairman

ATTEST:

Tamara L. Deines, Planning Clerk