

CITY BOARD OF ADJUSTMENT

MINUTES: May 6, 2009

Draft to be approved on June 3, 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	E							
Barbara Walborn	Boardmember	1	1	1	1	1							
Lyn McKinney	Vice-Chair	1	1	1	1	1							
Troy Boucher	Chairman	1	1	1	1	1							
Daniel Eggen	Boardmember	1	1	1	1	1							
Brent Nelson	Boardmember	A	A	A	1	E							
Paul Cox	Boardmember	1	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	4								

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
- Lora Mattox, Planner II/Transportation Planner
- Tamara Deines, Planning Clerk
- Candi Beaudry, Planning & Community Services Director
- Jani McCall, City Council Ward

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: April 1, 2009

Motion:

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

** Note: Boardmember Walborn arrived at 6:05 p.m.

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:

**Boardmember Lyn McKinney asked to be recused from the public hearing of Variance #1046-Grand Avenue-Billings Senior High School as she is a faculty member.

Item #1: City Variance #1046 – 425 Grand Avenue – Billings Senior High School – A request to conduct a public hearing to allow Land Use Contrary to Zoning for a public agency on public property, for a new electronic message display (EMD) sign contrary to BMCC Sections 27-706.e; 27-705.c.3 and 27-708 on Block B, Lot 1 High School Subdivision, a 9.23 acre parcel of land, in a Public (P) zone. Tax ID A09098. The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use. Billings School District #2, owner and Epcon Sign Group, agent. Council Ward I, Planner: Lora Mattox 247-8622

Ms. Cromwell read the legal description. Planner Lora Mattox 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

This item is being brought to the Board of Adjustment for a Public Forum to allow School District #2 to utilize public land contrary to local zoning regulations. This authority is shown on the attached copy of MCA 76-2-402. Specifically, this is a request from Senior High School and Epcon Sign to allow the installation of new electronic message display (EMD) sign contrary to BMCC Sections 27-706.e; 27-705.c.3 and 27-708. The sign is proposed to advertise events at Billings Senior High School and will replace the current sign. State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. As illustrated in MCA 76-2-402(2), the Board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

Ms. Mattox noted as stated by State statute, no action by the Board is required for this submittal. Ms. Mattox called for questions from the members of the Board. There were none. Chairman Boucher opened the public hearing at 6:09 p.m. and called for proponents of City Variance #1046, 425 Grand Ave, Billings, Montana.

Proponents:

Bob Burris, 3816 Tanager Lane, Billings, Montana

Mr. Burris stated that he is a teacher and counselor at Billings Senior High School. He said that they are changing the insert and not the sign itself. Mr. Burris stated that they wish to use this message board to announce school and community events.

Opponents:

Chairman Boucher asked if there was anyone else wishing to speak in favor or against Variance #1046. There was none. Chairman Boucher closed the public hearing at 6:10 p.m.

Item #2: City Variance #1047 – 146 Terry Avenue – A variance from 27-310(i) requiring a minimum setback of 20 feet from a street approach to allow an 8 foot setback for a proposed new 484 square foot detached garage with a drive approach on 2nd Street West on the North 90 feet of Lot 10 & the West 8 1/3 feet of the North 90 feet of Lot 11, Block 9, Suburban Subdivision, a 3,000 square foot parcel in a Community Commercial (CC) zone. Tax ID: A15889. Joe Sherman, owner. Council Ward I, Planner: Lora Mattox 247-8622

Ms. Cromwell read the legal description. Planner Lora Mattox 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 27-310(i) requiring a minimum setback of 20 feet from a street approach to allow an 8 foot setback for a proposed new 484 square foot detached garage with a drive approach on 2nd Street West on a 3,000 square foot parcel of land. The property is legally described as the North 90 feet of Lot 10 and the West 8 1/3 feet of the North 90 feet of Lot 11, Block 9, Suburban Subdivision. The property is in a Community Commercial (CC) zone. Staff is recommending conditional approval of this application.

Ms. Mattox stated that this application was previously approved, but the applicant had some confusion regarding the placement of his property lines when he started the project. She reviewed the staff recommended conditions of approval:

1. The detached garage may be built with the 8 foot front setback but must meet all other applicable codes, including zoning, building and engineering.
2. No vehicles shall be parked in front of the garage to ensure that there is no encroachment onto or over the public right-of-way (sidewalk/boulevard).

Discussion:

Chairman Boucher asked the members of the Board for questions or discussion. Boardmember Eggen asked how far along the applicant is with the construction of this project. Ms. Mattox stated that the applicant cleared the area and started the foundation, but went no further when he discovered the property line discrepancy.

Applicant:

Chairman Boucher called for presentation by the applicant.

Joe Sherman, 146 Terry Billings, Montana

Mr. Sherman stated that he has not started construction on this project as he was unsure of the location of his property lines and that he wished to get approval from the Board prior to moving forward.

There were no further questions from the members of the Board. Chairman Boucher opened the public hearing at 6:14 p.m. and called for proponents of City Variance #1047-146 Terry Ave., Billings, Montana

Proponents:

There were none.

Chairman Boucher called for opponents of City Variance #1047-146 Terry Ave., Billings, Montana

Opponents:

There were none.

The public hearing closed at 6:15 p.m.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember Walborn and approved with a 5-0 roll call vote Variance #1047 was conditionally approved with the following conditions:

1. The detached garage may be built with the 8 foot front setback but must meet all other applicable codes, including zoning, building and engineering.
2. No vehicles shall be parked in front of the garage to ensure that there is no encroachment onto or over the public right-of-way (sidewalk/boulevard).

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	1			
Lyn McKinney	1			
Troy Boucher	1			
Daniel Eggen	1			
Brent Nelson				X
Paul Cox	1			

Item #3: **City Variance #1048 – 3026 Hunter’s Ridge Loop** – A variance from 27-615 requiring a clear vision area measured within a triangular area formed by the intersecting street centerlines and a straight line joining such intersecting lines at points one hundred and ten (110) feet distant from the point of intersection measured along the centerlines of the streets to allow a clear vision area measured 25 feet along the north property line and 60 feet along the east property line for a proposed new duplex dwelling on Lot 15, Block 2, Hunter’s Ridge Subdivision, a 9,636 square foot parcel in a Residential 7,000 (R-70) zone. Tax ID: A31524. A.R. Junkert Construction, owner and Best Realty, agent. Council Ward V, Planner: Lora Mattox 247-8622

Ms. Cromwell stated that the Planning Department has received a written request from the applicant to withdraw the request for Variance#1048 – 3026 Hunter’s Ridge Loop.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember McKinney and approved with a 5-0 roll call vote Variance #1048 was withdrawn.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				X
Barbara Walborn	1			
Lyn McKinney	1			
Troy Boucher	1			
Daniel Eggen	1			
Brent Nelson				X
Paul Cox	1			

Item #4: City Variance #1049 – 3014 Shady Lane – A variance from 27-604 requiring any fence, wall or hedge to be 3 feet in height or less in any front yard to allow a 6 foot wall, fence or hedge in the front yard; a variance from 27-615 requiring a clear vision area measured ten (10) feet into the lot from the edge of the of the property line, and twenty (20) feet parallel to the street measured from the edge of the drive approach (north and south) to allow a 6 foot wall, fence or hedge within this clear vision area for a proposed new 6 foot wall, fence or hedge on Lot 5, Shady Lane Subdivision, a 8,223 square foot parcel in a Residential 9,600 (R-96) zone. Tax ID: A13881. Genia Demis, owner and Robert L. Stephens, agent. Council Ward IV, Planner: Nicole Cromwell 247-8662

At 6:17 p.m. 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. She submitted a copy of the approved building plan for the proposed fence. Ms. Cromwell stated that Staff received written comments from adjacent property owners Margaret and Dale Vermillion, and that Staff had forwarded them to the members of the Board.

**Boardmember Walborn recused herself from the public hearing for this application.

REQUEST

The applicant is requesting a variance from BMCC 27-604 requiring any fence, wall or hedge to be 3 feet in height or less in any front yard and from BMCC 27-615 requiring a clear vision area measured ten (10) feet into the lot from the edge of the property line, and twenty (20) feet parallel to the street measured from the edge of the drive approach (north and south) to allow a 6 foot wall, fence or hedge in the front yard and within the clear vision area required for the drive approach. The applicant was granted variances in November 2008 for lot coverage, building setbacks and reconstruction greater than 50% of the replacement value for a nonconforming structure. The property is an 8,223 square foot parcel of land in a Residential 9,600 (R-96) zone, on Lot 5, Shady Lane Subdivision. Genia Demis is the owner and Robert L. Stephens, Jr of the Southside Law Center is the agent.

Staff is recommending conditional approval. The proposed conditions are as follows:

1. The Variance approval shall be limited to Lot 5 of Shady Lane Subdivision as shown on the site plan dated March 10, 2009 and submitted with the application.
2. The variances approved are the following: 1) a 6 foot wall within the front setback for the entire length of frontage along Shady Lane and along the first 20 feet west of Shady Lane along the north and south property lines; 2) allow a 6 foot wall within the required clear vision area for the proposed drive approach on the south end of the property.
3. The applicant shall apply for a fence permit from the Planning Division within 30 days of Board of Adjustment approval.
4. The construction of the wall must be completed on or before June 6, 2010.
5. These conditions of this 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.
6. Failure to comply with these conditions of approval shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

Discussion:

Chairman Boucher asked the members of the Board for questions or discussion. Boardmember Eggen asked for clarification on verbiage “fence permit” and “wall” used in the staff report and application and it was given by Ms. Cromwell. Boardmember Eggen asked why staff is recommending a year’s timeframe for the completion of the project when it is stated that it would be completed on September 1, 2009. Ms. Cromwell stated that staff recognized that due to weather conditions, it may be difficult to complete the concrete project this year. She continued and stated that Dr Vermillion’s concerns were regarding the on the west side of the property and that she provided a photo to that effect for the members of the Board to review. She suggested that a condition may be added to address the entire wall. She commented that there was some concern about the ability of the City to provide garbage pickup service. She stated that Ken Behling, City of Billings Solid Waste Superintendant stated that garbage trucks are to back up Shady Lane as it is the City’s policy not to back garbage trucks into traffic. She said that the Solid Waste Division has no concerns with the proposed wall on the property line as it should not impede garbage service. Ms. Cromwell stated that the engineer for the project had indicated to her that the grade is supposed to be the same on both sides of the footing. In response to a question by Boardmember Boucher, Ms. Cromwell stated that the wall will be backfilled to the same level on both sides. She pointed out that the photo on the west side depicts the wall that will retain the soil and that there will be bracing between the retention wall and the house every seven feet. In response to a question by Boardmember Cox, she stated that this wall is specially engineered for the soil type and that the Building Division has no issue with this. Boardmember Walborn spoke from the audience and stated that they were told that the ditch company has an agreement that the wall would be 3 foot high on the south property line and not six feet high as stated on this variance application.

Applicant:

At 6:38 p.m., Chairman Boucher called for presentation by the applicant.

Robert Stevens, 2910 Minnesota Ave, Billings, Montana

Mr. Stevens is the agent for the applicant. He stated that the applicant will have no difficulty meeting the recommended dates for the completion schedule. He said that he has not seen Dr. Vermillion's letter. Mr. Stevens said that the architectural stone will be on the outside perimeter of the fences. He pointed out that the topography of the ground does not lend itself to any other solution and that approval of the variance is necessary to complete the landscape plan. Mr. Stevens said that he finds the information about Ditch company surprising and that the installation of the culvert should have addressed their concerns. He stated that he is unaware of an agreement regarding the height of the fence. He asked the members of the Board to approve the variance with the recommended conditions given by Staff.

There were no further questions from the members of the Board. Chairman Boucher opened the public hearing at 6:42 p.m. and called for proponents of City Variance #1049 3014 Shady Lane., Billings, Montana

Proponents:

There were none.

Chairman Boucher called for opponents of City Variance #1049 3014 Shady Lane., Billings, Montana

Opponents:

Dr. Dale Vermillion, 3020 Shady Lane, Billings, Montana

Dr. Vermillion stated that he owns the adjacent lot that is located north of this property and land on the west side as well. He said that one of his concerns with this request is that at this point there is a four foot wall that comes out to the property line and that allowing the applicant to place a 6-foot wall on top of the retaining wall will create a 10-foot wall on the street level. He said that he feels that the grade should be at street level and not at the top of the retaining wall which will create a "fortress like" effect. He said that he is not against having an attractive wall as long as it goes completely around the property and that he does not want to have cinder blocks facing their property along the west side property line. Dr. Vermillion said that the dirt is sloughing along the west side of the property where a 12-14 foot trench for the footing has been dug. He stated that he would prefer to have the footing abutting the trench wall or to have the applicant fill in behind it as they will loose their bushes and plants into the trench. He asked the members of the Board if they have visited the site and Boardmember Boucher responded that he had done so. Dr. Vermillion continued and stated that a six foot wall on the edge of the cul de sac would impede garbage service. He said that it has not been his experience that the garbage trucks have backed up into Shady Lane, but have instead pulled into their driveway and then backed into the cul de sac. He stated that he felt the completion date should be September 1, 2009 instead of the Staff recommended completion date of June 6, 2010, as the applicant started this project 2003. There were no questions from the members of the Board.

Rebuttal

Chairman Boucher called for rebuttal of City Variance #1049.

Robert Stevens, 2910 Minnesota Ave, Billings, Montana

Mr. Stevens stated that Dr. Vermillion's concerns are legitimate. He stated that no differential grade will be backfilled and that the exterior surface face of the wall throughout. As to the grade, he pointed out that they are working with the grade level of the doorway. He said that they are addressing the previous encroachment to the City right-of-way and stated that they have no objection to the September 1 2009 completion date.

Chairman Boucher closed the public hearing at 6:51 p.m.

Ms. Cromwell asked to give the members of the Board a point of clarification. She posted a photograph and clarified Mr. Steven's statement. She said that street grade will appear to be higher than 6 feet as in the curb area there will be fill, footings, and then a 6-foot fence on top of this. She pointed out that the landscape plan that was submitted shows trees and shrubs between the curb line and the property line to show some softening. Boardmember Eggen noted the photo on page 6 of 10 of the staff report which portrays a lower profile of the dirt and asked how this plays into the variance if there is a 10-ft appearance. Ms. Cromwell responded that it doesn't illustrate it completely on the plans that were submitted. She referred to the plan and gave clarification. Discussion followed by members of the Board. Boardmember Boucher asked a question regarding the 3 foot fence height requirement by the High Ditch Company. Ms. Cromwell suggested that a condition of approval be added stating that the applicant will submit in writing that an agreement has been reached with the High Ditch Company on the height of the fence on the southern portion of the property.

Chairman Boucher asked if the applicant had further comment and Mr. Steven's stated that he had no further comment. Chairman Boucher asked for further comment from Dr. Vermillion. Dr. Vermillion stated that he wished to have assurance from the applicant on the west side that filling the trench will not be a problem for them.

Motion:

On a motion by Boardmember Walborn and seconded by Boardmember Nelson and approved with a 4-0-1 roll call vote Variance #1049 was conditionally approved with the staff recommended conditions and additional Board recommended conditions:

1. The Variance approval shall be limited to Lot 5 of Shady Lane Subdivision as shown on the site plan dated March 10, 2009 and submitted with the application.
2. The variances approved are the following: 1) a 6 foot wall within the front setback for the entire length of frontage along Shady Lane and along the first 20 feet west of Shady Lane along the north and south property lines; 2) allow a 6 foot wall within the required clear vision area for the proposed drive approach on the south end of the property.
3. The applicant shall apply for a fence permit from the Planning Division within 30 days of Board of Adjustment approval.
4. The construction of the wall must be completed on or before *September 1, 2009*.
5. These conditions of this 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.
6. Failure to comply with these conditions of approval shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

7. *Backfilling will be done on the west side of the property behind the wall to protect the shrubs and to avoid further erosion.*
8. *The applicants will produce in writing that agreement has been reached with the High Ditch Company regarding the fence height on the south side of the property.*
9. *On the east side, there be a 6 foot height along the as measured from the street street side level.*
10. *The fence will be aesthetically consistent on the outside face.*

Discussion:

Chairman Boucher called for discussion on the motion. Boardmember Cox voiced concern with the ability for garbage and fire trucks to maneuver around the fence. Boardmember Eggen suggested moving the construction completion date to October 1, 2009 to allow for potential construction delays. Boardmember McKinney responded that the neighbors have waited six years for completion of this project. Chairman Boucher asked Mr. Stevens if the September 1, 2009 construction deadline is feasible. Mr. Stevens stated that the September 1, 2009 date is acceptable, but the additional time would be welcome. He stressed that approval of the variance is an integral part of the landscape plan. He stated that he is uncertain what the condition of approval stating a requirement of a 6-foot wall height will do to the ability to perform the landscaping plan. He said that this condition is unworkable with the way that the landscaping plan has been set up. Chairman Boucher suggested that a substitute motion may need to be offered to allow them to proceed with the plans that have been submitted thus far. In response to a question by Boardmember McKinney regarding the height of the trees and shrubs, Ms. Cromwell clarified the proposed landscaping with the Boardmembers on the site plan. Boardmember McKinney stated that the neighbors have been held hostage and that a fortress persona would not be good. She said that she would accept a substitute motion. Chairman Boucher asked if the ditch company was noticed of this public hearing and Ms. Cromwell responded that they were not on her legal listing for notification. She commented that the original variance remediated issues with the ditch by installing a culvert and that the wall would not be a difficulty unless it would encroach on the ditch company's ability to service the ditch.

On a motion by Boardmember McKinney and seconded by Boardmember Boucher and to amend the motion for Variance #1049 was conditionally approved with a 4-0-1 roll call vote (Boardmember Walborn abstained for a conflict of interest) with the following conditions:

1. The Variance approval shall be limited to Lot 5 of Shady Lane Subdivision as shown on the site plan dated March 10, 2009 and submitted with the application.
2. The variances approved are the following: 1) a 6 foot wall within the front setback for the entire length of frontage along Shady Lane and along the first 20 feet west of Shady Lane along the north and south property lines; 2) allow a 6 foot wall within the required clear vision area for the proposed drive approach on the south end of the property.
3. The applicant shall apply for a fence (wall) permit from the Planning Division within 30 days of Board of Adjustment approval.
4. Either before or at the time of the permit application for the 6 foot wall, the applicant shall provide a letter from the High Ditch Company stating their approval of the construction of the 6 foot wall along the south property line where the ditch crosses the applicant's property.
5. The construction of the wall must be completed on or before October 1, 2009.
6. The applicant shall backfill the land adjacent to the west property line as soon as practicable to preserve the shrubs on the adjacent property and avoid further erosion.

7. The exterior finish of the wall will be aesthetically consistent around the entire perimeter.
8. These conditions of this 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.
9. Failure to comply with these conditions of approval shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

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:

Zoning Coordinator Nicole Cromwell gave a brief description of the variance applications that will be reviewed in June, 2009

Announcements:

Zoning Coordinator Nicole Cromwell stated that she has not received a reply from the City Attorney's office regarding the update of the City Board of Adjustment ByLaws. She said that she will bring this information the members of the board as soon as it is received.

Adjournment:

The meeting was adjourned at 7:30 p.m.

Corrected and approved on June 3, 2009.

Troy Boucher, Chairman

ATTEST:

Tamara L. Deines, Planning Clerk