

CITY BOARD OF ADJUSTMENT

MINUTES: June 3, 2009

Draft to be approved on July 1, 2009

Lyn McKinney, Vice Chairman called the meeting to order at 6:02 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 | 1 | | | | | | |
| Barbara Walborn | Boardmember | 1 | 1 | 1 | 1 | 1 | 1 | | | | | | |
| Lyn McKinney | Vice-Chair | 1 | 1 | 1 | 1 | 1 | 1 | | | | | | |
| Troy Boucher | Chairman | 1 | 1 | 1 | 1 | 1 | E | | | | | | |
| Daniel Eggen | Boardmember | 1 | 1 | 1 | 1 | 1 | 1 | | | | | | |
| Brent Nelson | Boardmember | A | A | A | 1 | E | 1 | | | | | | |
| Paul Cox | Boardmember | 1 | 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 | 2 | | | | | | | |

Vice Chairman McKinney 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:

Vice Chairman McKinney 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.

Vice Chairman McKinney closed the public comment period at 6:04 p.m.

****Board member Eggen arrived at 6:05 p.m.**

Approval of minutes: May 6, 2009

Vice Chairman McKinney called for approval of the May 6, 2009 minutes. Boardmember Eggen noted several typographical corrections and submitted them to Planning Clerk Tammy Deines.

Motion:

On a motion by Boardmember Wellborn seconded by Boardmember Bollman the minutes of May 6, 2009 were approved as corrected with a 5-0-1 voice vote.

PUBLIC HEARINGS:

Vice Chairman McKinney 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 #1050 – 1111 5th St West – A variance from 27-308 requiring a minimum lot area of 7,000 square feet for one dwelling unit to allow an existing nonconforming lot area of 5,250 square feet to be reduced 525 square feet to 4,725 square feet on the North ½ of Lots 21-23, Block 33 Suburban Homes Addition, a 5,250 square foot parcel in a Residential 7,000 (R-70) zone. Approval of the variance would allow a lot line to be adjusted 7 feet between 1111 5th St West and 443 Lewis Avenue. Tax ID: A 15148. Robert E. Hill, owner and Atlas Engineering, agent. Council Ward III, Planner: Nicole Cromwell 247-8662

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 7,000 square feet for an existing single family dwelling to allow an existing nonconforming lot area of 5,250 square feet to be reduced by 525 square feet to allow a 4,725 square foot parcel, in a Residential 7,000 (R-70) zone. The property is legally described as the North ½ of Lots 21-23, Block 33 of Suburban Homes Addition and is addressed as 1111 5th Street West. No work is planned on the residence but this variance will allow the lot line between this property and the property at 443 Lewis Avenue to be adjusted to a corrected location.

Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell distributed photos to the members of the Board that were included with this application. She gave an overview of 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. In response to a question by Boardmember Bollman, Ms. Cromwell stated that a lot aggregation will have to be submitted to adjust the north-south property boundaries.

She reviewed the staff recommended conditions of approval:

1. The variance is to reduce the required lot area from its current area of 5,250 square feet to 4,725 square feet for one single family dwelling and no other zoning variance is intended or implied with this approval.
2. The variance is limited to the North ½ Lots 21-23, Block 33 of Suburban Homes Addition Subdivision.
3. A lot line relocation exempt plat shall be filed with the Planning Division within 6 months of Board of Adjustment approval.
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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Bollman asked if the duplex at 443 Lewis will be considered conforming should the variance be approved. Nicole Cromwell stated 443 Lewis will remain a single-family lot area and that the property owner would have to submit for a variance to re-construct a duplex. Boardmember Eggen asked why it has taken so long for the applicant to resolve this issue. Nicole Cromwell stated that the owner can address this and she noted that many of the lots were created with single ownership. Boardmember Eggen asked if the variance will satisfy any issues related to the sale of the property. Ms. Cromwell said that Planning would refer to this variance should a rebuild letter for this property be submitted. She stated that they would have to comply with the setback requirements for building. In response to Boardmember Eggen, Ms. Cromwell explained the exempt plat review process. Boardmember Walborn asked what prompted the request for the lot change. Boardmember Cox commented on the need for the Planning Department to have tools to review these types of requests and accommodate the existing housing. Ms. Cromwell stated that the lending rules have tightened and has prompted several applications for variances. Jeff Bollman said that he has suggested having a mechanism for a special designation for this type of neighborhood such as an overlay district.

Applicant:

Vice Chairman McKinney called for presentation by the applicant.

Robert E. Hill, 1111 5th Street West, Billings, Montana

Mr. Hill said that he has applied for this variance in order to legally move the property line and eliminate any further legal problems should he decide to sell the house. He said that he does not wish to pay taxes on property he is not using. He gave a brief history of this property and the installation of the fence line. He said that the house fire at 443 Lewis took place three or four years ago.

Mr. Hill said that the neighbor is agreeable to this request. Daniel Eggen suggested notifying the Department of Revenue as July 1 is their deadline. Ms. Cromwell said that if the variance is approved; Atlas Engineering may submit the check print review of the exempt plat. She said that it may be possible to have it be recorded at the Yellowstone County Clerk & Recorder's office by July 1, 2009.

Vice Chairman McKinney opened the public hearing at 6:37 p.m. and called for proponents or opponents of City Variance #1050, 1111 5th Street West, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 6:10 p.m.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember Bollman and approved with a 6-0-1 roll call vote Variance #1050 was conditionally approved with the following conditions:

1. The variance is to reduce the required lot area from its current area of 5,250 square feet to 4,725 square feet for one single family dwelling and no other zoning variance is intended or implied with this approval.
2. The variance is limited to the North ½ Lots 21-23, Block 33 of Suburban Homes Addition Subdivision.

3. A lot line relocation exempt plat shall be filed with the Planning Division within 6 months of Board of Adjustment approval.
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:

Vice Chairman McKinney called for discussion on the motion. There was none.

Vice Chairman McKinney 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 | | | |

Item #2: City Variance #1051 – 407 S 31st St – A variance from 27-308 requiring a minimum lot area of 12,000 square feet for two dwelling units to allow the reconstruction of a previously demolished fire damaged dwelling unit on a 10,500 square foot parcel Lots 16-18, Block 201, Billings Original Town, in a Residential 6,000 (R-60) zone. The parcel contains one dwelling unit and is proposed to reconstruct a second dwelling unit. Tax ID: A01409. Eric & Shelly Basye, owners and Dave Hagstrom, agent. Council Ward I, Planner: Nicole Cromwell 247-8662

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 said that she received comment from Bev Hull who is in favor of this application and feels that this would be a good addition to the neighborhood.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 12,000 square feet for two dwelling units to allow the reconstruction of a previously demolished fire damaged dwelling unit on a 10,500 square foot parcel, in a Residential 6,000 (R-60) zone. The property is legally described as Lots 16-18, Block 201 of Billings Original Town and is addressed as 407 South 31st Street. The applicant would like to construct a new single family home on the property. There is an existing, small single family home on the rear of the parcel.

Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell reviewed the staff recommended conditions of approval:

1. The variance is to reduce the required lot area from its current area of 12,000 square feet to 10,500 square feet for two single family dwellings and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lots 16-18, Block 201 of Billings Original Town.

3. The applicant shall apply for a building permit for the additional single family dwelling within 6 months of Board of Adjustment approval.
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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Walborn asked if there will be enough separation distance between the two houses. Ms. Cromwell said that there is a requirement of 10 feet separation distance. She pointed out the setbacks for this property: at least 5 ft from the side property line; 15-feet from the front property line; and 20-feet from the rear property line. In response to a question by Boardmember Bollman, Ms. Cromwell stated that they would have to physically connect with a breezeway to be considered a duplex. Several options for this property were discussed by the members of the Board.

Applicant:

Vice Chairman McKinney called for presentation by the applicant.

Dave Hagstrom, 324 South 34th Street, Billings, Montana

Mr. Hagstrom is the agent for Eric & Shelly Basye, owners. He said that he feels that the application is self explanatory. In response to Boardmember Nelson, he said that there is parking from a multi-plex across the alley. There were no further questions from the members of the Board.

Vice Chairman McKinney opened the public hearing at 6:49 p.m. and called for proponents or opponents of City Variance #1051, 407 South 31st Street, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 6:50 p.m.

Motion:

On a motion by Boardmember Walborn and seconded by Boardmember Eggen and approved with a 6-0-1 roll call vote Variance #1051 was conditionally approved with the following conditions:

1. The variance is to reduce the required lot area from its current area of 12,000 square feet to 10,500 square feet for two single family dwellings and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lots 16-18, Block 201 of Billings Original Town.
3. The applicant shall apply for a building permit for the additional single family dwelling within 6 months of Board of Adjustment approval.
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:

Vice Chairman McKinney called for discussion on the motion. There was none. Vice Chairman McKinney 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/Announcements:

1. Zoning Coordinator Nicole Cromwell gave a brief description of the variance application that will be reviewed in July, 2009 and noted that Planner Lora Mattox will be attending in her stead. Boardmember Walborn announced that she will not be in attendance.
2. Zoning Coordinator Nicole Cromwell stated that she received a response from City Attorney Bonnie Sutherland regarding the 2007 Draft City Board of Adjustment ByLaws. Ms. Sutherland said that the 2007 Draft would have to be presented to the City Council for approval or an alternative would be to adopt the procedures as outlined in the City Zoning Regulations. Discussion followed by the members of the Board. Staff will forward copies to the members of the Board as requested by Vice Chairman McKinney and a discussion item will be added to the next City Board of Adjustment meeting.

Adjournment:

A motion was made by Boardmember Eggen and seconded by Boardmember Bollman to adjourn the meeting.

Motion carried unanimously. The meeting was adjourned at 7:05 p.m.

Draft to be approved on July 1, 2009.

Lyn McKinney, Vice Chairman

ATTEST:

Tamara L. Deines, Planning Clerk