

CITY BOARD OF ADJUSTMENT

MINUTES: November 4, 2009

Approved as submitted on December 2, 2009

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	09/03/09	10/07/09	11/04/09	12/02/09
Jeff Bollman	Boardmember	1	1	1	1	E	1	1	1	E	E	1	1	
Barbara Walborn	Boardmember	1	1	1	1	1	1	1	E	A	1	E	1	
Lyn McKinney	Vice-Chair	1	1	1	1	1	1	E	1	E	E	1	1	
Troy Boucher	Chairman	1	1	1	1	1	E	1	E	E	1	E	1	
Daniel Eggen	Boardmember	1	1	1	1	1	1	1	E	1	1	1	1	
Brent Nelson	Boardmember	A	A	A	1	E	1	E	1	E	E	1	1	
Paul Cox	Boardmember	1	1	1	1	1	1	E	1	1	1	1	1	

Chairman Troy Boucher called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the City Council Chambers.

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	09/03/09	10/07/09	11/04/09	12/02/09	TOTAL
Variance	2	1	1	2	4	2	1	1	2	8	2		

Chairman Troy Boucher asked Nicole Cromwell to introduce the City Board of Adjustment Members and Planning Department Staff. Staff members that are present are Nicole Cromwell, Zoning Coordinator; and 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: October 7, 2009

Chairman Boucher called for approval of the October 7, 2009 minutes. A correction on page two was requested by Boardmember Bollman to change “Paul Gatzemeier Cox” to “Paul Cox”. Boardmember Bollman discussed format changes with Planning Clerk Tammy Deines prior to the meeting. These changes will be addressed.

Motion:

On a motion by Boardmember McKinney and seconded by Boardmember Cox the minutes of October 7, 2009 were approved with corrections submitted by Boardmember Bollman, with a 7-0 voice vote.

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. She noted that under State Law, four Board members are required to approve a variance and said that a simple majority will be required this evening as there is a full board in attendance of this evening. Chairman Boucher asked the members of the Board for disclosure of applicant contact. There was none.

Public Hearings:

Item #1: City Variance #1064 -1625 Riverstone Street – A variance from 27-308 requiring a minimum setback of 5 feet to allow a minimum side setback of 0 feet for an existing structure on Lot 15, Block 12, Cottonwood Grove Subdivision, 2nd Filing in a Residential 7,000 (R-70) zone. Edward & Regina Sermon, owners and Sanderson Stewart, agent.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum setback of 5 feet to allow a minimum side setback of 0 feet for an existing structure on Lot 15, Block 12, Cottonwood Grove Subdivision, 2nd Filing in a Residential 7,000 (R-70) zone. The property is 7,681 square feet and is addressed as 1625 River Stone Street. The owners are Edward and Regina Sermon and Sanderson Stewart is the agent.

Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell 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. She stated that this appears to be a builder's error and the structure was built into the setback and beyond the property line. She pointed out similar variances that have been granted in this area.

She reviewed the staff recommended conditions of approval:

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the required side setback for a residential structure from 5 feet to 0 feet. No other variance is intended or implied with this approval. The City Engineering Division will control the amount of encroachment allowed within the utility right-of-way. This variance allows the building to be setback 0 feet from the property line at the location shown of the approved site plan.
2. The variance is limited to Lot 15, Block 12, Cottonwood Grove Subdivision, 2nd Filing. The 0-foot side setback is approved for the general location as shown on the submitted site plan.
3. This variance does not permit the applicant to install any other property improvements such as fencing, irrigation and similar accessory uses, in the City's utility right-of-way. The City Engineering Division may or may not permit further improvements at their sole discretion.

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 asked the members of the Board for questions or discussion. Boardmember Eggen asked how and when this request came about. Nicole Cromwell stated that she thought that it happened last spring when measurements were taken for the right-of-way. She stated that the applicant and the engineer are in the audience and can give further clarification. As requested by Boardmember Eggen, she gave information on the encroachment permit. Boardmember Bollman asked if the other violations and requests for a variance in this area were as severe. Nicole Cromwell said that there similar requests but there were no other variances with a request for a setback of "0". Discussion followed by the members of the Board regarding the circumstances surrounding a obtaining a rebuild letter. Nicole Cromwell said that a condition of approval could be added to state that the structure would have to be rebuilt within the conforming setback. In response to a question by Boardmember Bollman, Nicole Cromwell stated that discussions with the City regarding the right-of-way have not occurred. Boardmember Eggen asked for clarification on the location of the utilities on this property and it was given by Nicole Cromwell.

At 6:23 p.m., Chairman Boucher opened the public hearing at and called for the applicant presentation or for proponents of City Variance #1064, 1625 River Stone Street, Billings, Montana.

Applicant

Will Ralph, Sanderson & Stewart, 1300 North Transtech Way, Billings, Montana

Mr. Ralph stated that he was the engineer and project manager for the 2nd filing of the subdivision. He said that he is in attendance with Jim Dawson, the builder of this home. Boardmember Bollman asked what will happen if the variance is denied. Mr. Ralph replied and said that the only option is to move the garage out of the right-of-way which would be a major impact to the existing home. He said that he has had discussions with City Engineer Travis Harris who suggested that the variance would be the best option. He said that they are unsure why this happened. Boardmember Eggen asked if the conditions are acceptable to the applicant and Mr. Ralph said that they are in agreement with the proposed conditions.

Jim Dawson, Dawson Builders, (no address given)

Mr. Dawson said that he would like to offer an explanation for this situation. He said that when he purchased the lot he was given a plot plan that did not show the setbacks. He stated that the City approved the plot plan as drawn under erroneous circumstances and a City building inspector noticed the discrepancy during an inspection for the foundation. He said that this was totally unintentional. Boardmember Boucher asked if Mr. Dawson has copies of the plot plan that he was working off of. Mr. Dawson said that he could provide them. Boardmember Bollman asked if the utility right of way was shown on the plot plan. Mr. Dawson said that they were aware of the 5-ft setback but were not aware of the 20-ft right of way adjacent to this lot for the utilities. He stated that the City did not pick up on this during the process of permitting. Mr. Dawson said that at his request they had the engineers re-staked the lot but the stake was moved. He said that they found out later that even though they had re-dug the basement hole; they were still not in compliance with the setback requirements.

Ed Sermon, 1625 Riverstone, Billings, Montana

Mr. Sermon stated that he is the homeowner of this property. He said that he appreciates the concern of the Board on this matter. He said that they wish to help out in any way to make this work and offered to buy 1.1 feet of the right-of-way as a means of resolving this issue. He said that it came to their attention when they attempted to install a sprinkler system. He said that several measurements have been taken and that no one will know for certain where the property line is located unless they take up his driveway. He pointed out that they have a 2-car garage as they were aware of the setback requirements. He commented that they were not aware of the stormwater drainage pond at the time of purchase. He said that his concern is that this issue is addressed so that it will not be a hindrance to future property owners. In response to a question by Boardmember Nelson, Mr. Sermon said that he would be in agreement with having an encroachment fee as explained by Ms. Cromwell. Boardmember Cox asked if Mr. Sermon would be in agreement with the need to disrupt the property should utilities need to be addressed. Discussion followed on the need for assuming responsibility of fixing the ground should it settle after the City works in the right-of-way. Mr. Sermon stated that he is aware of this need.

Chairman Boucher called for opponents of City Variance #1064, 1625 Riverstone Street, Billings, Montana.

Phil Frank, 1411 Cook Ave Billings, Montana

Mr. Frank stated that he owns lots 13 and 14 which are adjacent to this property. He asked for clarification on the property line overage and Nicole Cromwell stated that the structure encroaches 1.11 feet, not assuming the overhang. Mr. Frank said that he is familiar with this problem and that the stipulation of the purchase agreement was that Engineering Inc. would resurvey the property. He said that he was informed by Engineering Inc. and by the City that the drainage pond was designed for normal stormwater drainage and that it does overflow at times.

Chairman Boucher called for rebuttal. There was none. Chairman Boucher closed the public hearing at 6:46 p.m.

Motion:

Boardmember Walborn made a motion and it was seconded by Boardmember Nelson to conditionally approve Variance #1064 with the following conditions:

1. The variance is to decrease the required side setback for a residential structure from 5 feet to 0 feet. No other variance is intended or implied with this approval. The City Engineering Division will control the amount of encroachment allowed within the utility right-of-way. This variance allows the building to be setback 0 feet from the property line at the location shown of the approved site plan.
2. The variance is limited to Lot 15, Block 12, Cottonwood Grove Subdivision, 2nd Filing. The 0-foot side setback is approved for the general location as shown on the submitted site plan.
3. This variance does not permit the applicant to install any other property improvements such as fencing, irrigation and similar accessory uses, in the City's utility right-of-way. The City Engineering Division may or may not permit further improvements at their sole discretion.
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. Boardmember Cox commented on the rebuild letter and asked if a special privilege would be extended. Boardmember Bollman said that there is not a hardship for rebuilding the structure.

A motion was made by Boardmember Bollman and seconded by Boardmember Cox to amend the original motion to add a condition of approval that the variance applies to the current structure and would not apply to the rebuilt structure.

Discussion

Chairman Boucher called for discussion on the motion. Boardmember Nelson commented that it seems like we are adding more hardship. Boardmember Walborn concurred with his statement. Boardmember Bollman said that if the structure is destroyed this would be the time to come into compliance. He said that there is no other issue to preclude this such as the topography. He pointed out that the driveway encroaches as well. Boardmember Eggen called for the question.

Chairman Boucher called for the roll call vote on the amendment to the original motion.

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

The amendment to the original motion fails with a roll call vote of 3-4.

Chairman Boucher called for a roll call vote on the original motion.

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

City Variance #1064 to allow a minimum side setback of 0 feet for an existing structure on Lot 15, Block 12, Cottonwood Grove Subdivision, 2nd Filing in a Residential 7,000 (R-70) zone has been conditionally approved with a roll call vote of 5-2.

Item #2: City Variance #1065 – 903 Princeton Avenue – A variance from 27-308 requiring a minimum lot area of 19,200 square feet for a two single family dwellings to allow a lot area of 7,000 square feet for 2 existing structures on Lots 1 & 2, Block 9, College Subdivision, 2nd Filing in a Residential 9,600 (R-96) zone. Cecily Graf, owner and Laurie Sticka, agent.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 19,200 square feet for two single family dwellings to allow a lot area of 7,000 square feet in a Residential 9,600 (R-96) zone. The property is legally described as Lots 1 & 2, Block 9, College Subdivision, 2nd Filing, and is addressed at 903 Princeton Avenue. No work is planned on either structure but this variance will allow the existing dwelling units to be re-built if destroyed or damaged.

Staff is recommending denial of the proposed variance.

Ms. Cromwell 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. She pointed out that it was noted in the staff report that Planning and other City staff have reviewed this application and are forwarding a recommendation of denial for the variance based on the determinations for review provided within the report. The lot development pre-dates current zoning but is unusual in the neighborhood, no similar variances have been granted to provide relief from lot area to this degree and granting the variance would be granting a special privilege not enjoyed by other owners within the district. There is no particular hardship with the shape or topography of the lot that prevents to owner from using the lot in conformity with the zoning regulations.

Discussion:

Chairman Boucher asked the members of the Board for questions or discussion. Boardmember Nelson asked if there are any other similar property types in the neighborhood. Ms. Cromwell said that there were three examples of properties coded and taxed as a duplex that were built as two attached single family dwellings within 600 feet of this property. She stated that under the current zoning code, these structures could not be rebuilt as duplexes as it is not an allowed use in the zoning district. In response to a question by Boardmember Eggen, Ms. Cromwell replied and said that the subject property is being taxed as two residential homes. Boardmember Eggen commented that over the years staff has recommended approval for requests for variances on other similar type properties throughout Billings. Nicole Cromwell stated that there is not any example of the Board of Adjustment having a precedent in this area. She pointed out that there aren't that many properties similar to this development for comparison in this neighborhood.

At 6:40 p.m. Chairman Boucher opened the public hearing and called for applicant presentation of City Variance #1065, 903 Princeton Ave., Billings, Montana.

Applicant, Nancy Graff, 1428 Avenue C, Billings, Montana

Ms. Graff said that there will not be any change in the use of the property should the variance be granted. She said that they are asking that the lot remain re-buildable, especially if the larger home

is destroyed. She asked for clarification of Determination #1. She said that several other properties have the second house facing the offset street and pointed them out on a posted map. Ms. Graff said that the layout of this property is similar to other houses in the subdivision. Boardmember Nelson asked if the houses are on the same lot. Ms. Graff explained that there are similar configurations with the same lot sizes involved. Boardmember Boucher asked if the home is for sale. Ms. Graff replied and said that they are selling the property as is and not as separate properties. She said that the rebuild letter is needed for the new owners. In response to Boardmember Walborn, Nicole Cromwell said that in her review she looked at property records and duplexes in the area. She posted the address map of this neighborhood. Discussion followed by members of the Board.

Lorie Sticka, 4610 Sticka Circle, Billings, Montana

Ms. Sticka stated that she is struggling with the fact that this is a legal nonconforming lot and that there is not the right to return it to its original condition. She commented on staff's statement that this property is out of character to the neighborhood. She pointed out that there are two houses at 946 Princeton, and three houses located at 103 Princeton. She said that this is not the norm but not uncommon in this area. She said that without the rebuild letter, they do not have the right to put this back to the way it was. She voiced concern that their property values will be affected if the main house is destroyed. She noted that Variance #1064 was approved this evening. She said if this variance is denied, they are being denied the chance to rebuild and they have not broken any rules.

Chairman Boucher called for proponents of City Variance #1065, 903 Avenue, Billings, Montana.

Proponents:

Ross Clark, 904 Yale, Billings, Montana

Mr. Clark stated that he purchased his property from Mrs. Graff seventeen years ago. He said that this property is not an eyesore. He commented that there are several of these types of properties along Veterans Park. He said that he feels that this property should be grandfathered to exist as it was done before zoning.

Brook George, 2640 Glenwood, Billings, Montana

Mr. George stated that he is in agreement with Ross Clark and the Graffs. He said that the property has always been meticulously maintained. He asked for clarification on the requirements for rebuilding. He commented that if the smaller property is used as a rental it may add value to the neighborhood but he is concerned with the propensity for rental property. He said that the second property may be a concern from a rental standpoint. Nicole Cromwell explained that if one or both of the structures were destroyed by 50% of the replacement value, the property owner could build to the current zoning standards. Regarding the rental, she said that the Code does not require an owner to live on the property.

Chairman Boucher called for opponents of City Variance #1065, 903 Princeton Avenue, Billings, Montana. There were none. Chairman Boucher closed the public hearing at 7:25 p.m.

Motion:

Boardmember Eggen made a motion and seconded by Boardmember Bollman to approve the variance as requested by the applicants with the standard conditions of approval as below:

1. The variance is to reduce the required lot area from 19,200 square feet to allow a lot area of 7,000 square feet for two (2) existing single family homes. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 1 & 2 of Block 9, College Subdivision, 2nd Filing generally located at 903 Princeton Avenue.
3. If the dwelling units are re-constructed in the future, they must meet all other requirements of the zoning regulations with the exception of the variances noted above. The reconstruction must also comply with all other City of Billings regulations including but not limited to building code and site development codes in place at the time of reconstruction.
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. He commented on limiting this request to the existing site plan. Boardmember Cox said that if this variance is approved, the neighboring property owner of the garage conversion will request a variance as well. He said that this may become the norm for this neighborhood. He commented that this is an important vote for this neighborhood and that the staff recommendation of denial is to protect the neighborhood. He said that he will vote against the motion. In response to a question by Boardmember Walborn, Nicole Cromwell stated that a building permit was not issued for the neighboring property to convert the garage to living space. Boardmember Walborn said that allowing this variance would not set precedence as the applicant has not circumvented the rules. Nicole Cromwell said that it may set precedence for the vacant lots north of this property. Boardmember Boucher asked if there is any other way of addressing this issue without granting a variance. Boardmember Bollman stated that the only way to deal with these types of issues is to have some type of overlay district to formalize some of the grandfathered nonconforming lot area issues. He said this property has been in existence for 60 years and similar to the properties on located on Lewis, Clark and Yellowstone Avenues. He said that he feels this property is unique and they have abided by the rules that were in effect in the 40's and 50's. Boardmember Walborn asked if a stipulation could be made that this variance could not be used for new building in the area. Nicole Cromwell stated that this could not be done as a condition of approval as conditions made on a single property cannot apply to other properties. Boardmember Bollman said that this should be noted in the minutes for historical reference. Boardmember Eggen commented that there was a lot of political clout when the blanketed R-9600 zoning classification was recommended for this neighborhood as the majority of the lots are 7,000 square feet. Boardmember Bollman said that it was done to keep duplexes out of the neighborhood. Boardmember Walborn said that the applicants followed the rules at the time and it seems unfair to ask them to change. She said that it does not seem right to deny financing for the property through denial of the variance.

Chairman Boucher called for the roll call vote:

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

City Variance #1065 is to allow a lot area of 7,000 square feet for two dwelling units in a Residential 9,600 (R-96) zone and was conditionally approved with a roll call vote of 5-2.

Other Business/Announcements:

- A. Nicole Cromwell announced that this Board will meet on Wednesday, December 2, 2009 and that two applications have been submitted for review. Boardmember Eggen and Boardmember Cox will not be in attendance.

- B. Ms. Cromwell reminded the members of the Board whose terms will expire in December 2009 to either submit an application for 2010 or a letter of resignation to the City Administration Department.

- C. Discussion was held by the members of the Board on the progress of the property located at 3014 Shady Lane. An update was given by Nicole Cromwell.

- D. Boardmember Bollman asked to have the new draft by-laws as an item for discussion at the next Board meeting.

Adjournment: 7:45pm

Approved as submitted on December 2, 2009.

Chairman Troy Boucher

ATTEST:

Tamara L. Deines, Planning Clerk