

CITY BOARD OF ADJUSTMENT

MINUTES: February 3, 2010

Draft to be approved by a motion on March 3, 2010

Name	Title	01/06/10	02/03/10	03/03/10											
Jeff Bollman	Boardmember	-	1												
Barbara Walborn	Boardmember	-	E												
Lavern Bass	Boardmember	-	1												
Vacant		-	-												
Daniel Eggen	Boardmember	-	1												
Vacant		-	-												
Paul Cox	Boardmember	-	1												

TOTAL NUMBER OF APPLICATIONS 2010	01/06/10	02/03/10	03/03/10												TOTAL
Variance	0	2													

Ms. Cromwell called for a motion for a Chairman Pro Tem in the absence of a Chairman of the Board.

Motion

On a motion by Boardmember Cox and seconded by Boardmember Bollman Boardmember Eggen was selected to serve as Chairman Pro tem for this meeting with a 4-0 voice vote.

Chairman Pro Tem Daniel Eggen called the meeting to order at 6:05 p.m. The City Board of Adjustment met in the City Council Chambers.

Chairman Pro Tem Eggen 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 Pro Tem Eggen 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 Pro Tem Eggen closed the public comment period at 6:08 p.m.

Approval of minutes: December 2, 2009

Chairman Pro Tem Eggen called for approval of the December 2, 2009 minutes. Boardmember Bollman called for corrections on page 4 and page 5 of the December 2, 2009 minutes. Corrections were noted by Planning Clerk Tamara Deines.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember Bollman minutes of December 2, 2009 were approved with corrections with a 4-0 voice vote.

PUBLIC HEARINGS:

Chairman Pro Tem Eggen 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. She stated that a unanimous vote in favor of the variance will be needed for any application to be approved this evening. She said the applicant has the opportunity to withdraw or delay the request for thirty days.

Public Hearings:

Item #1: Return Item City Variance #1067 – 2409 Rosewyn Lane – A variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a lot area of 7,000 square feet for 1 existing structure and one proposed structure and the subdivision of one (1) 14,000 square foot lot in to two (2) lots of 7,000 square feet each on Lot 3, Srite Acres Subdivision in a Residential 9,600 (R-96) zone. Tax ID A14554. Kincaid Land, LLC, owner and Sanderson Stewart, agent. The public hearing on this item was continued from the December 2, 2009 meeting.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a lot area of 7,000 square feet for 1 existing structure and one proposed structure and the subdivision of one (1) 14,000 square foot lot in to two (2) lots of 7,000 square feet each on Lot 3, Srite Acres Subdivision, in a Residential 9,600 (R-96) zone. The property is addressed at 2409 Rosewyn Lane. If the variance is approved, an additional address will be assigned to any new lot or structure. The applicant intends to subdivide the 14,000 square foot lot to create two 7,000 square foot lots. This application was submitted in April 2008, and staff recommended denial of the request. The Board considered the matter on June 4, 2008, and voted 3-2 to conditionally approve the variance. However, the variance was not approved since 4 affirmative votes are required by state law to approve any variance. The applicant was then required to wait 1 year before submitting another variance for the property. On November 2, 2009, the application was resubmitted and a public hearing was opened on December 2, 2009. On December 2, 2009, the Board had only 4 members in attendance and would have to vote unanimously to approve the requested variance. The applicant requested a continuation of the public hearing until February 3, 2010. The Board granted the continuance.

Staff is recommending denial of the proposed variance, citing the reasons below:

1. There are not any special circumstances that exist in this situation.
2. This property is not similar to other properties in the area.
3. If granted, this variance will confer a special privilege on this owner.
4. There are only two lot area variances in the immediate neighborhood.

Ms. Cromwell stated she has received a letter from the applicant requesting this Board's recommendation be delayed until the next meeting on March 3, 2010. She said this application was originally scheduled for the Board's review on December 2, 2009; but only four members attended that meeting. She stated the applicant and agent are attending this evening and are available for questions. Discussion followed by the members of the Board on the request for a delay. Members of the Board requested Staff give a short overview of this application. 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 noted the history of variances that have been granted in this area.

Discussion:

Chairman Pro tem Eggen asked the members of the Board for questions or discussion. In response to a question by Boardmember Cox, Nicole Cromwell noted this application was previously denied on June 4, 2008. Boardmember Bass referred to the applicant's exhibit map and pointed out there are two lots depicted on Poly Drive of less than 7,000 square feet. Nicole Cromwell stated most of the houses in this neighborhood were constructed in the early 40's and 50's, which was prior to the initiation of the City Zoning Code in 1972. She stated this map was submitted with the application as an exhibit and said no variances were granted to properties on that map. She said Mr. Bill Agnew, 2413 Elizabeth, Billings, Montana, contacted her by phone today to register his strong opposition to this variance. He said he was unable to attend the meeting this evening and was not able to forward a letter due to technical difficulties with his computer.

At 6:12 p.m., Chairman Pro Tem Eggen opened the public hearing and called for the applicant's presentation or for proponents of City Variance # 1067 – 2409 Rosewyn Lane.

Applicant

Pat Davies, P.E., Sanderson Stewart, 1300 North Transtech Way, Billings, Montana

Mr. Davies stated he is the representative for this applicant. He asked the Board grant a continuance of this hearing in hopes there will be a full board in attendance at the next scheduled hearing on March 3, 2010.

Chairman Pro Tem Eggen opened the public hearing and called for proponents of City Variance #1067 – 2409 Rosewyn Lane.

Connie Wardell, 1302 24th Street West, Billings, Montana

Ms. Wardell stated she owns property located at 2416 Poly Drive. Ms. Wardell said she feels this proposal would greatly improve this area and she encouraged the members of the Board to approve this variance request. She said the house on this property was built in 1955 and at time it was not in the City limits nor was there zoning in place.

Opponents

Chairman Pro Tem Eggen called for opponents of City Variance #1067. There was none. The public hearing was closed at 6:15 p.m.

Motion:

Chairman Pro Tem Eggen made a motion and it was seconded by Boardmember Bollman to continue the public hearing and delay the hearing of City Variance #1067 until March 3, 2010.

Discussion:

Chairman Pro tem Daniel Eggen called for discussion on the motion. There was none.

Chairman Pro tem Daniel Eggen called for the roll call vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
LaVerne Bass	1			
Jeff Bollman	1			
Paul Cox	1			
Daniel Eggen	1			
Barbara Walborn				X
Vacant	-	-	-	-
Vacant	-	-	-	-

City Variance#1067 has been delayed until March 3, 2010.

Item #2: City Variance #1068 – 502 South 33rd Street – A variance from 27-310(i) requiring a minimum front setback for a garage entrance of 20 feet to allow a front setback of 18 feet for an existing garage entrance on a 7,560 square foot parcel on the north 4 feet of Lot 10 and Lots 11 & 12, Block 206, Billings Original Town in a Residential 6,000 (R-60) zone. Tax ID A01469. Irma House Inc., owner and Jake Romero, agent.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-310(i) requiring a minimum front setback of 20 feet for a garage to allow a minimum of 18 feet in a Residential 6,000 (R-60) zone on a 7,560 square foot lot. The subject property is described as the North 4 feet of Lot 10 and Lots 11 and 12, Block 206, Billings Original Town and is addressed as 502 South 33rd Street.

Staff is recommending conditional approval of the proposed variance with the following conditions:

1. The variance is to reduce the required garage entrance setback from the street from 20 feet to 18 feet. No other variance is intended or implied with this approval.
2. The variance is limited to North 4 feet of Lot 10 and Lots 11 and 12, Block 206, Billings Original Town generally located at 502 S 33rd Street.
3. The submitted building permit 09-2285 must be approved within 90 days of board approval and the construction authorized by this permit completed within 18 months of building permit 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.

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 noted the history of variances granted in this area.

Discussion

Chairman Pro tem Eggen asked the members of the Board for questions and discussion. Nicole Cromwell stated she discovered an error on the site plan this afternoon and the request has been updated for a setback of 16 feet and not the 18 feet as shown on the application. She said the advertised variance was for the garage setback of 18 feet. Boardmember Bass asked Ms. Cromwell if this building would have met the setback if it had been delivered with the garage door facing the alley. Nicole Cromwell said it would have, as it would be 10 feet off of the alley. Boardmember Eggen pointed out the breezeway connecting the two buildings was part of the original approved construction in 2006. He asked if it meets the height restrictions. Nicole Cromwell stated it is within the zoning requirements as it is 26.5 feet tall. She explained the criteria for attached structures and said every garage entrance – attached or detached - must be at least 20 feet from an approach off the street. She said building permit (#09-2285) to construct a second residential unit has been approved by the City Engineering and Building Departments and is pending on tonight's decision. She commented there is a lot of building code to be met for this project. Boardmember Eggen asked how this variance came about. Nicole Cromwell explained that a complaint was received by the Building Department stating construction was taking place to convert the upper story of this building to a residential use without a building permit. When inspected by the Code Enforcement officer it was discovered the garage door was off 5th Avenue South and not the alley. She said she conferred with a Plans Examiner today and asked if the garage door could be structurally moved. She said the Plans Examiner stated the west wall is not a bearing wall and it could be moved to the alley side of the building.

Ms. Cromwell said she had received three letters in support of this application. Boardmember Eggen asked if staff is still recommending conditional approval with this request's change of circumstance going from 18 feet to 16 feet. Nicole Cromwell stated that her recommendation would remain the same on the basis that three similar variances were approved in this general area and there are several older garages in this area that have as little as 10 feet from the property line to the entrance of the garage. She stated Mr. Tom Reich, 514 S. 33rd Street, contacted her and voiced concern that the change from 18 feet to 16 feet was a "doubling of the variance". In response to a question by Boardmember Bollman, Ms. Cromwell said the request for a garage setback of 18 feet was included in the application request and the letter itself. Boardmember Cox asked if fire hydrants will be affected by this structure and Ms. Cromwell responded it would not. Boardmember Bollman read aloud a section of city code which says that an application cannot be withdrawn or amended after it has been legally advertised. He stated he feels this application has been amended and the intent is the advertised request is what should be considered or granted. Boardmember Cox said he feels the spirit of the request has not changed. Boardmember Bollman voiced concern for a potential challenge of this Board's decision. He suggested it may be more appropriate to re-advertise this request with the correction. Nicole Cromwell stated she can agree with this interpretation. Boardmember Cox said he believes the applicant is following the intent and spirit of the request. Boardmember Bollman stated this is not what was legally advertised and the surrounding properties owners were not notified of this change. Nicole Cromwell said there is no time constraint on this application and it could wait for

another thirty days to allow for clarification, re-advertising and notification to surrounding property owners.

Pro Tem Chairman Eggen called for presentation by the applicant.

Applicant

Les Jordan, (no address given)

Mr. Jordan stated that he is representing Irma House, as the applicant was unable to attend tonight's meeting. Regarding the setback discrepancy, Mr. Jordan stated he measured the distance from the back edge of the sidewalk to the garage door, and found it to be 18' 6". Boardmember Bollman asked if the property line is at the sidewalk and stated setbacks are measured from the property line. Mr. Jordan stated he could not be absolutely sure the property line was at the back edge of the sidewalk but it appeared to be in that location. Mr. Jordan continued and the steel building was built by "Ironbuilt Steel Buildings". He stated there are two major girders on the alley side and it would be difficult to move the garage door to the other side as the building. It was not designed for the garage door on the west wall. He stressed it would be a dramatic change to move the door. He noted there is an existing garage across the street that is not even eight feet from the sidewalk. He said this property is an improvement in the South side. Mr. Bollman asked for further clarification on the original request. Mr. Jordan said it is his understanding the building was ordered; the building permit was obtained; and a variance was approved for a building that was different from the structure that was setting on the ground. He said the applicant had a change of plans prior to the building being set. Mr. Jordan said the applicant is not a builder and did not realize that it could not be changed as it was a kit.

Randy Hafer, High Plains Architects, 2720 Minnesota Ave., Billings, Montana

Mr. Hafer stated this is a pre-engineered prefabricated structure and that it would be very difficult to modify at this point. He pointed out there is not enough room for a vehicle to access the garage from the alley. A full car length does not exist within the ground floor west from the alley. He stated as best as he can tell the property line is at the sidewalk and there is 18 feet from the sidewalk to the structure. He said the 18 foot dimension as it is shown on the site plan is correct and apologized if the site plan drawing is incorrect. He said he was physically there when the setbacks were measured. In response to a question by Boardmember Cox, Nicole Cromwell stated she is working off of the drawings. Mr. Jordan stated a corner survey pin has been located and Nicole Cromwell pointed out the location of the pin on the site map. Discussion followed by the members of the Board and concern was voiced the measurements do not match. Boardmember Cox voiced concern with what was advertised. Randy Hafer asked the Board allow this request to be continued until the next meeting to allow for clarification.

Connie Wardell, 1302 24th Street West, Billings, Montana

Ms. Wardell commented she can see why there are a lot of homeless people in Billings if it takes this much discussion to approve this type of variance. She said she cannot conceive how the Board can deny this request where the applicant has provided a house and a dwelling. Ms. Wardell noted the City Council has copies of all the written comments available for the public to review at their meeting. She requested this be incorporated into the Board of Adjustment meetings so other people who are interested can access this information without special requests to the Planning staff or Board members.

Pro Tem Chairman Eggen asked if there was anyone else wishing to speak in favor or against City Variance #1068.

Marian Dozier, 3923 3rd Ave. S., Billings, Montana

Ms. Dozier stated she lives in this area and has worked for 35 years to upgrade the neighborhood. She asked this variance be denied, as there is no hardship. She said she does not feel it is possible the kit came with door on the wrong side. She stated she has a relative who recently built a garage from a kit and did not have this problem. Ms. Dozier stated Mr. Romero already had a variance on the back of the lot and now is asking for a variance to the side. She said she does not feel this was a “fine project from the get-go”, and it should be between the contractor and Mr. Romero to fix the problem and not the City. She said this project started out as an oversized garage that was to be connected to the house. She asked Staff verify the lot coverage with the continuance of the hearing.

Rebuttal

Pro Tem Chairman Eggen called for rebuttal.

Les Jordan, (no address given)

Mr. Jordan spoke regarding the issue of providing housing. He explained the Irma House is a home for recovering alcoholics and helps a lot of people. He said the covered area between the two buildings was included in the original plans and permit and does not exceed the allowable 40% lot coverage.

Pro Tem Chairman Eggen closed the public hearing at 7:22 p.m. and called for a motion.

Motion:

Boardmember Eggen made a motion and it was seconded by Boardmember Bollman to have Staff do a site visit to this property to verify the property lines and setbacks and re-advertise the request to reflect the actual existing setbacks. The Board will delay action on City Variance #1068 until the next City Board of Adjustment meeting on March 3, 2010.

Discussion:

Chairman Pro Tem Eggen called for discussion on the motion. Boardmember Bass states he wishes to take care of this request tonight as it will not make a difference on his vote.

Boardmember Cox stated he feels the applicant is following the spirit of the request, but the legality of the change of setback is in question. Boardmember Bollman said the application is flawed and it should be investigated and re-advertised at the appropriate setback. He said the application should return for another hearing. He stated there should be a delay because there is a known issue.

Chairman Pro Tem Eggen said he concurs with both sides, but feels that it should be re-advertised.

Chairman Pro tem Daniel Eggen called for a voice vote.

Boardmember	Yes	No	Abstain	Not Present
LaVerne Bass	1			
Jeff Bollman	1			
Paul Cox	1			
Daniel Eggen	1			
Barbara Walborn				X
Vacant	-	-	-	-
Vacant	-	-	-	-

Motion carried unanimously with a 4-0 vote. City Variance #1068 will be delayed until the next City Board of Adjustment meeting on March 3, 2010.

Other Business/Announcements: 6:20 p.m.

- A. City Board of Adjustment ByLaws: It was the consensus of the Board that this will be addressed at the next meeting as both vacancies may be filled. Boardmember Bass requested Staff mail him a hard copy of the ByLaws.
- B. Nicole Cromwell announced this Board will meet on March 3, 2010 and with the two continuances, there will be five applications to review.
- C. Chairman Pro Tem Eggen asked if the meeting should be changed to another day of the week to allow for better attendance. Discussion followed by the members of the Board. Nicole Cromwell stated the schedule is tight as there are several other meetings during the week. It was decided to add this discussion as an agenda item for the next meeting.
- D. Boardmember Bollman asked the members of the Board about Ms. Wardell's request for the availability of hardcopies of communications received by Staff at the meetings. Discussion followed by the members of the Board. Pro Tem Chairman Eggen suggested adding a phrase to the agenda template to address this concern and asked this be a discussion item at the next meeting.

Adjournment: 6:44 p.m.

On a motion by Boardmember Bollman and seconded by Boardmember Bass the meeting was adjourned with a 4-0 voice vote.

Draft to be approved by a motion on March 3, 2010.

Chairman Pro Tem Daniel Eggen

ATTEST:

Tamara L. Deines, Planning Clerk