

CITY BOARD OF ADJUSTMENT

MINUTES: April 7, 2010

Approved by a motion on July 7, 2010

Name	Title	01/06/10	02/03/10	03/03/10	04/07/10	05/05/10									
Verne Bass	Boardmember	-	1	1	1	-									
Jeff Bollman	Chairman	-	1	1	1	-									
Paul Cox	Boardmember	-	1	1	1	-									
Daniel Eggen	Vice Chairman	-	1	1	1	-									
Neil Kiner	Boardmember	-	1	1	1	-									
Barbara Walborn	Boardmember	-	1	1	1										
Terry Matson	Boardmember	-	-	E	A	-									

TOTAL NUMBER OF APPLICATIONS 2010	01/06/10	02/03/10	03/03/10	04/07/10	05/05/10										TOTAL
Variance	0	2	5	0	-										7

Chairman Jeff Bollman called the meeting to order at 6:07 p.m. The City Board of Adjustment met in the Billings Parnly Library 4th Floor Large Conference Room, which is located at 510 North Broadway, Billings, Montana.

Chairman Bollman 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 Bollman 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 Bollman closed the public comment period at 6:12 p.m.

Approval of minutes: March 3, 2010

Chairman Bollman called for approval of the March 3, 2010 minutes. Ms. Cromwell noted Citizen Marion Dozier’s letter which was submitted to Staff and forwarded by e-mail to the members of the Board. Ms. Dozier voiced concern with the statement below which was included on page 9-19 of the March 3, 2010 meeting minutes, and had asked the Board for its consideration.

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Les Jordan, (no address given)

... Mr. Jordan said that he took notes at the last meeting and the minutes included a statement by Ms. Dozier “that there are some types of neighbors you want and some types of neighbors you do not want”; and he stated that he found this statement almost discriminatory.

Discussion followed by the members of the Board. Boardmember Bollman suggested inserting a notation that no such statement made by Ms. Dozier on February 3, 2010 as it is not in the minutes. Nicole Cromwell distributed her handwritten notes from the February 3, 2010 meeting to the members of the Board and asked for the Boardmembers’ recollection. Following further discussion, it was decided that it would be appropriate to place an addition into the minutes that the meeting minutes of February 3, 2010 do not reflect this statement.

Motion

A motion was made by Boardmember Eggen and it was seconded by Boardmember Walborn to correct page 9-19 of the February 3, 2010 meeting minutes to reflect the following:

Les Jordan, (no address given)

Mr. Jordan said that the breezeway was not built due to that this is a nonprofit organization and incoming funding for this project has been slow. He said that there were not enough funds to pour the concrete and construction on the apartment was started before the building was built. He said that he does not feel that this affects Ms. Dozier in any way. Mr. Jordan said that he took notes at the last meeting and the minutes included a statement by Ms. Dozier “that there are some types of neighbors you want and some types of neighbors you do not want”; and he stated that he found this statement almost discriminatory. (Mr. Jordan said that this property will be an asset to the neighborhood as the Irma House has done a lot of good things for people, including him.

The BOA checked the minutes of Feb. 3, 2010, and no such statement by Ms. Dozier was made or recorded as alleged by this testimony.)

The motion carried with a unanimous voice vote. The February 3, 2010 minutes are approved as corrected.

Disclosure of Conflict of Interest

Zoning Coordinator Nicole Cromwell explained that this agenda item was discussed at the last meeting and was added in response to a public comment received. She pointed out that the City Council has an agenda section for disclosures and maintains a disclosure notebook. No conflicts of interest were disclosed by the members of the Board.

Disclosure of Outside Communication

Nicole Cromwell explained there are times that applicants communicate directly with Board members and this should be communicated to the Commission. She stated that written ex-parte communication to the Board is available to the public in the Ex-Parte Notebook. Ms. Cromwell stated that Ms. Dozier’s letter has been made available to the public in the notebook.

Boardmember Walborn disclosed a note received from Marion Dozier regarding Variance #1068.

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PUBLIC HEARINGS: There are no public hearings.

Other Business/Announcements:

A. City Board of Adjustment Bylaws:

At 6:20 p.m., Chairman Bollman asked Nicole Cromwell to open this agenda item. She stated that City Attorney Bonnie Sutherland is unavailable this evening due to a schedule conflict. Ms. Cromwell referred to the Staff memo. She explained that in 2009, City Council reworked a section of the City Code that deals with Boards and Commissions; which in effect voided the existing Bylaws and substituted Section 02-500. She clarified and said that the difference is that this Board is not advisory and the powers are delegated to this Board by the City Council. She said that City Council has the right to reserve to themselves any right to the Board of Adjustment. She pointed out that City Council has routed Special Reviews through the City Zoning Commission and that the only appeal from this Board's decision is through District Court. Ms. Cromwell commented that City Attorney Bonnie Sutherland is not sure that the Board must have its own separate Bylaws and stated that the Bylaws must be approved by City Council with a majority vote of this Board. Nicole Cromwell asked if the Board could articulate a reason for having their own Bylaws

Boardmember Cox asked why the Board would want to have separate Bylaws. The Board's discussion considered duties of the Zoning Coordinator as the staff liaison, the defining of what constitutes an excused absence; ex parte communication and exclusion of the member's right to vote; and the definition of "a change in circumstance". Boardmember Walborn commented on the labor expended by members of the Board on a revision of the Bylaws that was submitted and voided by the City Council. Boardmember Kiner asked about the 1991 minutes and Nicole Cromwell posted them on the screen for discussion. Boardmember Walborn said that their earlier discussion was trying to define "a change in circumstance". Nicole Cromwell stated that Ms. Sutherland has recommended a change in the regulations rather than in the Bylaws. Boardmember Walborn stated that she feels strongly that this should be clear as direction is needed for those applicants who have a change in circumstance. Nicole Cromwell said that the language could be removed from the Code as it is completely unique to the Board of Adjustment. She suggested that in this situation another hearing could be conducted under "Roberts Rules of Order" and a text amendment would be needed to remove this statement from the code. Discussion followed by the members of the Board on section 27-15-06, "if an applicant or administrative review of a variance..." Nicole Cromwell stated that the Board can ask the City Zoning Commission to initiate the text amendment to remove the language. Boardmember Bollman said that the Board could direct the chairman to write a letter to the Zoning Commission requesting initiation of a text amendment to the City Zoning Code.

Boardmember Bollman, read aloud Section 2-507b-11, "reconsideration", which states that motion shall be made by a member that voted with the majority. He said that this is different than the language stating that it must be on the prevailing side. He said that this should be clarified and addressed by Ms. Sutherland. Barbara Walborn asked for an explanation of the intent of this statement.

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Following discussion, the members of the Board decided to have the Chairman of the Board of Adjustment write a letter to the Zoning Coordinator to request that the City Zoning Commission initiate the text amendment to review the language.

Boardmember Bollman pointed out that a "Sign-in sheet" is required in City Code. He suggested that the members of the Board re-read City Code section 500 to become familiar with it and commented that some changes to the Agenda format may be needed.

B. Announcements:

1. Boardmember Bollman will not be present at the May 5, 2010 meeting.
2. Nicole Cromwell stated that staff received one variance application to be reviewed at the May 5, 2010 meeting and that the next City Board of Adjustment meeting will be held in the City Council Chambers.
3. Boardmember Neil Kiner will be absent for the June 2, 2010 meeting.

Adjournment: 7:22p.m.

Approved by a motion on July 8, 2010.

Chairman Jeff Bollman

ATTEST:

Tamara L. Deines, Planning Clerk