

CITY BOARD OF ADJUSTMENT

MINUTES: December 1, 2010

To be approved by a motion on January 5, 2011

Name	Title	01/06/10	02/03/10	03/03/10	04/07/10	05/05/10	06/02/10	07/07/10	08/04/10	09/01/10	10/06/10	11/03/10	12/01/10
Verne Bass	Boardmember	-	1	1	1	-	-	E	R	R	R	R	R
Jeff Bollman	Chairman	-	1	1	1	-	-	1	1	1	1	1	1
Paul Cox	Boardmember	-	1	1	1	-	-	1	E	1	1	1	1
Daniel Eggen	Vice Chairman	-	1	1	1	-	-	1	1	1	1	1	1
Neil Kiner	Boardmember	-	1	1	1	-	-	1	1	1	1	1	1
Barbara Walborn	Boardmember	-	1	1	1	-	-	1	E	1	1	1	1
Terry Matson	Boardmember	-	-	E	A	-	-	A	R	R	R	R	R

TOTAL NUMBER OF APPLICATIONS 2010	01/06/10	02/03/10	03/03/10	04/07/10	05/05/10	06/02/10	07/07/10	08/04/10	09/01/10	10/06/10	11/003/1	12/01/10	TOTAL
Variance	0	2	5	0	0	0	1	0	5	2	1	2	16

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

Chairman Bollman asked Nicole Cromwell to introduce the City Board of Adjustment Members and Planning Department Staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; and Tammy 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 6:06 p.m.

Approval of minutes: November 3, 2010

Chairman Bollman called for approval of the November 3, 2010 minutes.

Motion:

On a motion by Boardmember Eggen, and seconded by Boardmember Walborn, the minutes of November 3, 2010 were approved as submitted.

Disclosure of Conflict of Interest

There was no disclosure of conflict of interest.

Disclosure of Outside Communication

Nicole Cromwell explained there are times that applicants communicate directly with Board members and this should be communicated to the Board members in a public forum. She stated that written ex-parte communication to the Board is available to the public in the Ex-Parte Notebook. No items were received by Staff other than what was submitted the members of the Board in the meeting packets.

PUBLIC HEARINGS:

Chairman Bollman 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 pointed out that there are two vacancies on the Board of Adjustment and that opportunities will be given to the applicants if they wish to delay their application. The next meeting will be January 5, 2011.

Public Hearings:

Item #1: City Variance #1081 – 1203 Cortez Avenue – A variance request from Section 27-310(i) requiring a 20 foot front setback for any accessory building entrance from a street to allow a 3.5 foot front setback for an existing accessory building in a Residential 7,000 (R-70) zone on Lot 1, Block 2, High Sierra Subdivision, 4th Filing located at 1203 Cortez Avenue a 8,976 square foot parcel land. Tax ID A32194, Jimmy and Angela Pippin, owners.

Ms. Cromwell read the legal description and opened with a PowerPoint presentation which reviewed the request and recommendation below.

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 3.5 foot setback for an existing 574 square foot accessory building to cover a recreational vehicle with a drive approach on High Sierra Boulevard. The property is legally described as Lot 1, Block 2, High Sierra Subdivision, 4th Filing and is 8,976 square feet in lot area in a Residential 7,000 (R-70) zone.

RECOMMENDATION

Staff recommends denial of Variance #1081.

Ms. Cromwell reviewed the criteria for review and the staff findings for this application. She pointed out that the City Engineering Department commented that this building encroaches into the utility easement. She noted that in general, utility companies allow encroachments into the easement but they make property owners aware that they are not financially liable. She stated that there is not an existing approach; instead the applicant drives over the boulevard and sidewalk into the canopy. She related that the applicant said that this happens approximately four times a year. She said that there are no similar structures in the neighborhood or similar variances. In addition, she stated that the proposed canopy and storage of the recreational vehicle violates the terms of the covenants and

restrictions for the neighborhood. She stated that this structure was constructed without a building permit and said that granting this variance would confer a special privilege to this applicant that is denied to others in the same area.

Discussion

Chairman Bollman called for questions and discussion from the members of the Board. In response to a question by Barbara Walborn, Nicole Cromwell noted page 15 of the staff report and reviewed the Covenants and Restrictions for this subdivision. Neil Kiner asked if the Homeowners' Association for this subdivision had approached staff regarding this request. Nicole Cromwell replied and said that they had not. Daniel Eggen asked how the Homeowners Association would carryout a protest. Nicole Cromwell stated that each lot owner would have to file suit. It was noted that there are at least fifty lots in this subdivision and most of them are developed. Barbara Walborn asked if the applicants would be civilly at risk even if the variance be granted, and Nicole Cromwell stated that this would be the case. Daniel Eggen inquired regarding the applicants' need of an encroachment permit. Nicole Cromwell stated that it is not needed since the City has no interest in these utilities. Daniel Eggen asked if curb access is necessary. Nicole Cromwell said that the City Engineering Department indicated through a review comment that a condition of approval for the building permit would require a curb cut and a drive approach. Daniel Eggen asked about building permits that are issued in retrospect and Nicole Cromwell stated that the Building Division doubles the fee charged for the permit. Nicole Cromwell distributed additional photos for the Board's review.

Public Hearing

Chairman Bollman asked the members of the Board for questions or discussion. At 6:24 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation or for proponents of City Variance #1081 – 1203 Cortez Avenue.

Applicant

Jimmy Pippin, 1203 Cortez Avenue, Billings, Montana

Mr. Pippin greeted the members of the Board and read the dissertation below into the record.

*Submitted by applicant
Jimmy Pippin 12/01/10
D. Davis
P. Clark*

We moved to Montana 2 years ago and had saved to be able to erect a temporary RV cover like the one we had at our previous residence. When we returned after the tornado hit, we dug into our emergency fund to be able to erect the RV cover immediately to protect the motor home from any future hail storms. (We did have a damaging hail storm shortly after it was erected.) We had asked the contractor that built our house if there would be a problem with doing this and she said it was our property, she didn't see any reason why we couldn't do that. Since the time it was erected, we found out that a permit was indeed needed, and all the restrictions that went with it.

This cover is basically a storage cover. I believe the idea of a 20 foot setback for a garage was to keep cars parked outside the garage from interfering with sidewalks, which is not the case with ours. It is behind our fence. If a hail storm did come through, it would cause extensive damage to the motor home. The roof, fiberglass covers, and paint alone would cost thousands of dollars, plus the loss of use. We do have insurance, however, aftermarket paint jobs never last like the factory paint job. We have taken steps to insure the cover doesn't interfere with views and have done landscaping to keep the property looking good.

We spoke with Steve McFarland from NW Energy, and received a letter from Walt Backer, Division Engineer, saying "We cannot prevent you from encroaching upon that easement. Any obstruction that you place within that easement may have to be removed or replaced if we had to maintain any of our buried facilities. Your RV covering is encroaching within that easement by one foot. This should not pose any problems in the future for North Western Energy." We also spoke with Jim Rowse at Bresnan, and Charles Simpson at Qwest and were told the same thing. Charles Simpson suggested we put a small sign on the cover "For Easement Access contact Jim Pippin, 259-5609". As for the anchors, we have talked with the company that built the cover. We will install 4 more anchors and have a sign made if we are allowed to keep the cover. The cover is not permanent, so can be moved temporarily if necessary for easement access.

Because of the way the lot is with the 4 foot grade break, it would take extensive excavation and changes to the underground irrigation to move it back 20 feet. Most of the properties around here do not have that issue to deal with. It is unique to our lot.

This is a new subdivision, so although there are no structures like this now, in the future people may have a need for a similar structure. We have landscaped around the cover so the view would be of trees instead of the cover. It will take a couple years for the aspen trees to gain some height, but we would think the trees would hide the cover and the motor home would remain out of site.

If this variance is not granted, it would provide a financial hardship on us. We have already spent \$5,000 and excavating to move it back would be thousands more. We do want to keep the motor home at our residence to keep it safe as it has already been broken into while parked in a lot. We purchased this house because it would accommodate the motor home. We were told the motor home had to be hidden

We are requesting a zoning variance, which has nothing to do with the covenants. If you would take the time to drive around the area, you would find numerous RV's, tow trailers, trailers, speed boats, drift boats (to include the neighbor behind us) in conspicuous site year round. It makes me wonder why so much time was spent on covenants when the pertinent request here applies to zoning setbacks. We have spoken with 9 neighbors of which only one had a minor complaint, and that was about the cover itself. They said they really didn't mind if they were not selling their house. We have a house 3 houses down on Cortez that has sold in this time frame. The cover has been up less that 3 months and they have had their house on the market for well over a year. (For sale by owner for close to a year and with a realtor for 9 months.) The RV cover is only blocking the view of our home. There is no other view being obstructed. We would be willing to speak with any prospective buyer about any concerns over the cover.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. He asked if the park surface is gravel. Mr. Pippin explained that there is a concrete pad for the front and back tires. He said that the RV is 37.5 feet long and the cover is 40 feet long. In response to a question by Chairman Bollman, Mr. Pippin stated that the contractor built the home and told them that they could do “what ever they wanted” when that had asked about this structure. Mr. Pippin said that in retrospect, they should have asked the City. He described the anchoring of the cover and said that anchors are required 10-ft on center to comply with HUD requirements. He said that this structure is able to withstand snow loads and 90-mph winds. Daniel Eggen asked Mr. Pippin what his recourse will be should this variance be denied. Mr. Pippin said that he will have to take the cover down and will have to be given away if he is unable to sell or store it. He pointed out that this structure is a 12 gauge building, and would be difficult to reassemble as it has so many pieces. Daniel Eggen asked about the timeframe for compliance should the variance be denied. Nicole Cromwell stated that Staff would generally work with the owner on a time frame to have the building removed taking in consideration weather conditions.

Opponents

Chairman Bollman called for anyone else wishing to speak in favor of City Variance #1081. There was none. Chairman Bollman called for opponents of City Variance #1081. There was none. Chairman Bollman offered the applicant the opportunity to delay. Mr. Pippin thanked Chairman Bollman for this opportunity, but stated that they would like to move forward. Chairman Bollman closed the public hearing at 6:37 p.m.

Motion:A motion was made by Boardmember Eggen and seconded by Boardmember to approve Variance #1081. The building permit shall be procured in thirty days.

Discussion:

Chairman Bollman called for discussion on the motion. Chairman Bollman suggested delaying this decision. He stated that he is unable to support the motion as this is an after the fact variance with several significant issues with easements and covenants. Daniel Eggen concurred and said that he has mixed feelings.

Chairman Bollman called for the roll call vote on the motion.

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

The motion fails 0-4 and City Variance #1081 is denied.

Item #2: City Variance #1082 – 3114 12th Avenue North - A variance request from Section 27-308 requiring a maximum lot coverage of 30% to allow a lot coverage of 31%; a variance request from Section 27-310(g) requiring a maximum projection for an open exterior deck of 2 feet into a side setback and 8 feet into a rear setback to allow a 3 foot project in to the required 5 foot side setback and a 15 foot projection into the required 20 foot rear setback to allow the re-construction of an existing nonconforming open exterior deck in a Residential 7,000 (R-70) zone on the East 65 feet of Lots 25-27, Block 11, North Elevation Subdivision, 1st Filing located at 3114 12th Avenue North a 4,875 square foot parcel of land. Tax ID A11711, Jeremiah and Catherine Young, owners and Tim Becker, agent.

Ms. Cromwell read the legal description and opened with a PowerPoint presentation which reviewed the request and recommendation below.

REQUEST

The applicant is requesting a variance to increase the maximum lot coverage from 30% to 31% and to increase the allowed projection for an open exterior deck in the side yard from 2 feet to 3 feet and in the rear yard from 8 feet to 15 feet to allow the reconstruction of an existing deck. The parcel is 4,875 square feet and is zoned Residential 7,000 (R-70). The legal description is the East 65 feet of Lots 25-27, Block 11, North Elevation Subdivision and the street address is 3114 12th Avenue North. The property owners are Jeremiah and Catherine Young and the agent is Tim Becker.

RECOMMENDATION

Staff recommends conditional approval of the proposed variances. Staff is recommending the following conditions for the variance request:

1. The variance is to 1) increase the allowable lot coverage to 31%; 2) allow a 3-foot projection into the 5-foot side setback and 3) allow a 15-foot projection into the 20-foot rear setback for the purpose of reconstructing an attached open exterior deck. No other variance is intended or implied with this approval.
2. The variance is limited to the East 65 feet of Lots 25-27 of Block 11, North Elevation Subdivision generally located at 3114 12th Avenue North.
3. The proposed renovation and addition to the exterior open deck shall be located and developed in substantial conformance with the submitted site plan.
4. The applicant shall receive approval for a building permit within 6 months of Board approval. Construction of the attached exterior open deck shall be completed within 18 months of Board approval.
5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
6. 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 reviewed the criteria for review and the staff findings for this application.

Discussion

Chairman Bollman asked the members of the Board for questions or discussion. There was none.

Public Hearing

At 6:49 p.m., Chairman Bollman opened the public hearing and called for the applicant’s presentation or for proponents of City Variance #1082 – 3114 12th Avenue North.

Applicant

Tim Becker, (no address given), Billings, Montana

Mr. Becker stated that he is the agent for applicants, Jeremiah and Catherine Young. He said that the problem is that the lots were platted after the house was built. He pointed out that the side yard is what would be considered the back yard of the house; but it is unusable as such due to the space limitation. He said that they request to go larger on the deck is to include a stairway. He stated that the existing deck is substandard and that significant structural re-arrangement inside the house would be needed if the variance is not allowed. Mr. Becker said that the applicants’ intent is to comply as shown in the application. He stated that the new deck will be aesthetically pleasing and constructed with mahogany decking with steel railing.

Proponents

Chairman Bollman called for anyone else wishing to speak in favor of City Variance #1082.

Jeremiah Young, 3114 12th Avenue North, Billings, Montana

Mr. Young requested that this variance request be permitted. He said that this is the oldest house in the neighborhood and is architecturally significant. He stated that he would like to make this home a “gem of the neighborhood”. In response to a question by Chairman Bollman, Mr. Young said that they have no intent to cover the deck.

Opponents

Chairman Bollman called for opponents of City Variance #1082. There was none. Chairman Bollman closed the public hearing at 6:54 p.m.

Motion:

A motion was made by Boardmember Walborn and seconded by Boardmember Kiner to conditionally approve Variance #1082 with the conditions recommended by staff.

Discussion:

Chairman Bollman called for discussion on the motion. There was none. Chairman Bollman called for the roll call vote on the motion.

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

City Variance#1082 is conditionally approved as recommended by staff 4-0.

Item #3: City Variance #1083 – 412 Hallowell Lane – A variance from 27-308 requiring 8,500 square feet of lot area for a 3-plex dwelling to allow 7,500 square feet for an existing legally nonconforming 3-plex dwelling in a proposed Residential 6,000 (R-60) zone on a 50 foot by 150 foot parcel in the north east corner of Lot 3 in the southeast quarter of Section 9, T1S, R26E located at 412 Hallowell Lane. No work is proposed on the structure however if approved, the variance would allow the owner to re-construct a 3-plex dwelling in the future if necessary. Tax ID D01626, Lean2 LLP, owner and Marshall Phil, Blueline Engineering, agent.

Ms. Cromwell read the legal description and opened with a PowerPoint presentation which reviewed the request and recommendation below.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 8,500 square feet for a triplex multi-family dwelling to allow a lot area of 7,500 square feet in a Residential 6,000 (R-60) zone. The variance application is for an existing 3-family dwelling located at 412 Hallowell Lane. The original zoning of the parcel was Public and the City Council approved a zone change to Residential 6,000 (R-60) on November 22, 2010. No work is planned on the structure and this variance would allow the triplex to be re-built if destroyed or damaged in the future.

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

1. The variance is to reduce the required lot area from 8,500 square feet to 7,500 square feet for one triplex dwelling at 412 Hallowell Lane. No other variance is intended or implied with this approval.
2. The variance is limited to a 50 foot by 150 foot lot in the northeast corner of Lot 3, Section 9, T1S, R26E generally located at 412 Hallowell Lane. .
3. If the triplex is re-constructed in the future it must meet all other requirements of the zoning regulations with the exception of the variance 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 Bollman asked the members of the Board for questions or discussion. Nicole Cromwell pointed out photos that depict the interior view of the structure that were submitted to the Board. Neil Kiner asked what triggered the zone change and variance request. Nicole Cromwell stated that the applicant applied for financing and Staff would not issue a rebuild letter. She pointed out that if the variance were denied, the lot is large enough to allow a duplex by right. As to if the building was always a triplex, she said that the structure was build in 1927 and testimony was received at City Council for the zone change request that there was a fire in the structure in either 1989 or 1990. Daniel Eggen commented that it could have been a motel in the 1920's and 1930's. Barbara Walborn asked if the property will be updated with the Department of Revenue to reflect the existing conditions. Nicole Cromwell explained that generally the records for existing structures are based on building permits and are captured by the Department of Revenue. She said that a condition may

be added to request that the applicant go to the Department of Revenue and correct the record upon approval of the variance.

Public Hearing

Chairman Bollman opened the public hearing and called for the applicant's presentation or for proponents of City Variance #1082 – 3114 12th Avenue North.

Applicant

Marshal Phil, Blueline Engineering, (no address given), Billings, Montana

Mr. Phil is the agent for Lean2 LLP. He stated that the applicant purchased the property two years ago with a contract for deed with the understanding that permanent financing would be obtained within two years. He stated that no opposition was posed by the neighbors on the zone change request for this property. He concurred with Ms. Cromwell's comment regarding the building permit status and said that it has been functioning as a triplex since that the late 80's. Mr. Phil pointed out that the site does not exceed the maximum lot coverage for the zoning classification and does not encroach anywhere on the building setback. He said that financing could be obtained as a duplex but this would greatly impact the value of the home. He noted that the owner has made several improvements to the site including general maintenance. He said that there are three clearly defined doors to the units; and that utilities include one electrical hook-up, three separate gas services, and a single water meter to the site. In response to a question by Daniel Eggen regarding garbage collection, Mr. Phil said that there is a 300 gallon trash receptacle. He commented that there are some oddities with this parcel. He stated that the discrepancies with the Department of Revenue may come from the fact that this parcel was not annexed and remained when the park was created. He said that changes will be made to the tax base should the variance be approved. In response to a question by Chairman Bollman, he pointed out the entrances to the units on a posted site map. He said that there is one common entry which splits to the other units and a secondary rear entry on the west side of the structure.

Opponents

Chairman Bollman called for opponents of City Variance #1083. There was none. Chairman Bollman closed the public hearing at 7:15 p.m.

Discussion

Chairman Bollman called for questions and discussion. Neil Kiner asked Nicole Cromwell if a building permit would be required to separate the electric meters. Nicole Cromwell replied that she is not familiar with that section of code but the applicant would have to meet all of the building code requirements if building "from scratch".

Motion

A motion was made by Dan Eggen and it was seconded by Neil Kiner to approve Variance #1083 with the conditions recommended by staff and an additional condition that the applicant notify the Department Revenue of the property usage as a triplex rather than a single family structure.

Chairman Bollman called for the roll call vote on the motion.

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

City Variance #1083 is approved 4-0.

Other Business/Announcements:

- A. Announcement: The next City Board of Adjustment will be held on Wednesday, January 5, 2011.

Adjournment: 7:25 p.m.

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

Chairman Jeff Bollman

ATTEST:

Tamara L. Deines, Planning Clerk