

**CITY BOARD OF ADJUSTMENT**

MINUTES: MARCH 2, 2011

*To approved by a motion on April 6, 2011*

Name	Title	01/06/11	02/02/11	03/02/11	04/06/11	05/04/11	06/01/11	07/06/11	08/03/11	09/07/11	10/05/11	11/02/11	12/07/11
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	E	E									
Vacant	Boardmember	-	-	-									
Vacant	Boardmember	-	-	-									

TOTAL NUMBER OF APPLICATIONS 2011	01/06/11	02/02/11	03/03/11	04/06/11	05/04/11	06/01/11	07/06/11	08/03/11	09/07/11	10/05/11	11/02/11	12/07/11	TOTAL
Variance	1	1	4										6

Chairman Bollman called the meeting to order at 6:00 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 6:02 p.m.

**Approval of minutes: February 2, 2011**

Chairman Bollman called for approval of the February 2, 2011 minutes. Jeff Bollman requested a correction under “Other Business” to correct the next meeting date to March 2, 2011. Daniel Eggen, asked that the address, 1243 N 31<sup>st</sup> Street - First English Lutheran Church, Billings, Montana be added to the applicant’s subject lines.

**Motion:**

***On a motion by Boardmember Cox, and seconded by Boardmember Kiner, the minutes of February 2, 2011 were approved as corrected with a 4-0 voice vote.***

### **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 no outside communication was received by Staff.

### **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 there are two vacancies on the Board of Adjustment and opportunities will be given to the applicants if they wish to delay their application until a full Board is available. The next meeting will be on April 6, 2011.

### **Public Hearings:**

Ms. Cromwell read the legal description and gave the Staff presentation which reviewed the request and recommendation below. She distributed two exhibits to the members of the Board.

1. **Return Item - City Variance #1085 – 1243 N 31<sup>st</sup> Street - First English Lutheran Church – Day Care** - A variance request from Section 27-604 requiring a maximum fence height in a front yard of 3 feet to allow a maximum fence height of 4 feet in a front yard and from Section 27-615 (c) requiring a fence of 30 inches or less in height in a clear vision area for a driveway to allow a fence height of 4 feet. The purpose of the variance requests is to increase the height of an existing fence to comply with State of Montana licensing requirements for a daycare facility outdoor play space. The property is zoned Residential 7,000 (R-70) and is described as Lots 25-29, and the North ½ of Lot 30, Block 5 North Elevation Subdivision, 1<sup>st</sup> Filing and the vacated 80 feet of Elevation Street, a .73 acre parcel of land. Tax ID: A11574; First English Lutheran Church, owner and Ken Heikes, agent.

### **REQUEST**

The applicant is requesting a variance to increase the fence height in a front yard of 3 feet to 4 feet and to increase the fence height in a clear vision area for a driveway from 30 inches to four feet. The variance request is to bring the fence in to compliance with State of Montana licensing requirements for a daycare facility outdoor play space in a Residential 7,000 (R-70) zone at the First English Lutheran Church, Shirley's Place II Day Care. The subject property is located at 1243 N 31<sup>st</sup> Street on the northwest edge of the Medical Corridor Permit zoning district but the subject lots are zoned Residential 7,000 (R-70). The total property size is 31,799 square feet and is described as Lots 25-29, and the North ½ of Lot 30, Block 5 North Elevation Subdivision, 1<sup>st</sup> Filing and the vacated 80 feet of Elevation Street. The First English Lutheran Church is the owner and Ken Heikes is the agent. An initial hearing was held on February 1, 2011. The hearing was continued to March 1, 2011, since it was discovered the fence would also need a variance from the clear vision regulations. This variance was not advertised and therefore could not be granted at the February 1, 2011, hearing. Planning staff is recommending conditional approval of the proposed variances.

## **RECOMMENDATION**

Staff is recommending the following conditions for the variance request:

1. The variance is to increase the fence height in the front yard setback from 3 feet to 4 feet and to increase the height of a fence in a clear vision area for a driveway from 30 inches to 4 feet for the purpose of increasing the existing fence height to comply with state licensing requirements. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 25-29 and the North ½ of Lot 30, Block 5, North Elevation Subdivision and the vacated 8- feet of Elevation Street, generally located at 1243 N 31<sup>st</sup> Street.
3. The proposed 4-foot fence shall be located and developed in substantial conformance with the submitted site plan dated Feb 7, 2011. The fence material and style shall be either Option A or Option B as submitted on the “Fencing Options” document.
4. The applicant shall receive approval for a new fence permit within 90 days of Board approval. Construction of the 4-foot fence shall be completed within 6 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 called for questions and discussion from the members of the Board. Dan Eggen asked how many permits are necessary and if a penalty will be charged. Nicole Cromwell explained separate permits are issued for electrical, engineering, and public utility lines. She noted Planning will make notation on the building permit signage and fencing is needed. She said there is no penalty for planning permits but under the building code, the Building Department charges twice the normal fee. She stated a fence permit will be required but it will not be double the amount of the fee.

### **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 #1085 – 1243 N 31<sup>st</sup> Street.

### **Applicant**

#### **Ken Heikes, 2126 North Place, Billings, Montana**

Mr. Heikes is the agent for the First English Lutheran Church. Mr. Heikes said they are in this situation, as the State of Montana requires a four-foot fence to maintain their licensing as a daycare. He said representatives Kristy Jenson and Alan Godfrey are attending this evening. Mr. Heikes complemented Ms. Cromwell and the Planning Staff for their work with this application. Neil Kiner asked Mr. Heikes if the proposed positioning of the fence will follow the shaded area on the site plat. Jeff Bollman asked about the amount of square footage of open area needed and if the

clear vision area for fencing will affect their license. Mr. Heikes said their license is for 52 children, and 75 square feet per child is needed.

**Alan Godfrey, Saint Vincent’s Hospital, 1233 North 30<sup>th</sup> Street, Billings, Montana**

Mr. Godfrey said he is the architect representing St. Vincent Health Care. Mr. Godfrey said they are allowed 51.5 children but they usually do not have the maximum allowable number all at one time. He said their business plan would be affected if the clear vision variance is not approved. Mr. Godfrey stated he has a directive from the Board of the Directors the daycare stays in the black in order to operate. He explained the daycare use is new. He said a Special Review was applied for in 1980, and they were notified by the City they did not have to apply again. Mr. Godfrey stated denial of the clear vision triangle variance would add cost to the rebuild of the fence.

**Discussion**

Chairman Bollman asked the members of the Board for questions and discussion.

**Motion:**

**A motion was made by Boardmember Cox and seconded by Boardmember Kiner to approve City Variance #1085 – 1243 N 31<sup>st</sup> Street until March 2, 2011 with the conditions recommended by Staff.**

**Discussion:**

Chairman Bollman called for discussion on the motion. Daniel Eggen noted the site plan and said the length of the bushes is as offensive as the picket fence. He said he doesn’t see how a squared corner would be detrimental versus having a 90 degree design. Neil Kiner concurred and said it would create wasted space. Jeff Bollman stated he is uncomfortable with squaring off the clear vision area from the safety point of view. He voiced concern as this is a daycare center and there may be pedestrians. Paul Cox said he felt this is covered in the language.

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

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman	<b>1</b>			
Paul Cox	<b>1</b>			
Daniel Eggen	<b>1</b>			
Barbara Walborn	<b>A</b>			
Neil Kiner	<b>1</b>			
Vacant	-	-	-	-
Vacant	-	-	-	-

***The motion carries 4-0 and City Variance #1085 is conditionally approved.***

Chairman Bollman called for presentation of agenda item #2, City Variance #1086-244 & 246 Burlington Avenue. Ms. Mattox reviewed the criteria for review and the staff findings for this application. She explained a duplex cannot be refinanced if it has a commercial use.

**Item #2-City Variance #1086 – 244 & 246 Burlington Avenue** – A variance request from Section 27-308 requiring a minimum lot area of 9,600 for a duplex dwelling to allow a minimum lot area of 4,885 square feet for an existing duplex and a minimum lot area of 2,115 square feet for a remainder lot with a nonconforming use (beauty salon); from Section 27-308 requiring a minimum rear setback of 20 feet to allow a 15-foot setback for an existing duplex; and from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 38% for an existing duplex on a new lot of 4,885 square feet in a Residential 7,000 (R-70) zone on Lots 24 & 25, Block 19, West Side Subdivision a 7,000 square foot parcel of land. Tax ID: A18020; Lily M. Smith, owner.

### **REQUEST**

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 9,600 for a duplex dwelling to allow a minimum lot area of 4,885 square feet for an existing duplex and a minimum lot area of 2,115 square feet for a remainder lot with a nonconforming use (beauty salon); from Section 27-308 requiring a minimum rear setback of 20 feet to allow a 15-foot setback for an existing duplex; and from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 38% for an existing duplex on a new lot of 4,885 square feet in a Residential 7,000 (R-70) zone on Lots 24 & 25, Block 19, West Side Subdivision, a 7,000 square foot parcel of land. The property owner is Lily M. Smith. Planning staff is recommending conditional approval of the proposed variance.

### **RECOMMENDATION**

Staff is recommending the following conditions for the variance request:

1. The variance is to reduce the minimum lot size for a duplex from 9,600 square feet to 4,885 square feet, reduce the minimum lot size for a remainder lot from 7,000 square feet to 2,115 square feet, reduce the minimum rear setback from 20 feet to 15 feet, and all the maximum lot coverage to be increased from 30% to 38% for an existing duplex. No other variances are intended or implied with this approval.
2. The variance is limited to Lots 24 & 25, Block 19, West Side Subdivision generally located at 244 & 246 Burlington Avenue.
3. The applicant shall have the existing garage and beauty salon on proposed Lot 25A reviewed by the Building Division for any Building Code modifications required. This could include but is not limited to the installation of fire walls and parapets. The applicant has 2-years to bring these structures into building code compliance.
4. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
5. 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 called for questions and discussion from the members of the Board. Daniel Eggen asked about the coverage on Lot 25A. Nicole Cromwell explained this is a nonconforming use of the property. She stated the applicant did not request a lot coverage variance

for Lot 25A and it would revert to the residential use if the beauty salon was destroyed. In response to a question Neil Kiner, Ms. Mattox stated they would not be able to split the lot until the variance has been granted and the ownership will remain with Ms. Smith. She pointed out the proposed new lot line as a point of clarification.

### **Public Hearing**

At 6:39 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation for City Variance #1086 – 244 & 246 Burlington Avenue.

### **Applicant**

#### **Lily Smith, owner, 244 & 246 Burlington Ave, Billings, Montana**

Ms. Smith is not in attendance this evening.

Chairman Bollman asked there was anyone else wishing to speak in favor or against City Variance #1086-244 & 246 Burlington Avenue. There was none. Chairman Bollman closed the public hearing.

### **Motion:**

**A motion was made by Boardmember Eggen and seconded by Boardmember Cox to approve City Variance #1086-244 & 246 Burlington Avenue with the conditions recommended by Staff.**

### **Discussion:**

Chairman Bollman called for discussion on the motion. Paul Cox stated he finds the layout of the lot confusing. Neil Kiner asked if an unusable future lot would be created by granting the variance. Chairman Bollman noted it has a nonconforming use and setbacks now. Nicole Cromwell said nonconforming uses can continue or could be changed to another conforming use through the City Council. She explained if Ms. Smith sells in the future, there is a way to use the existing structure for another use if they go through process. Neil Kiner voiced concern with the minimal use of space. Chairman Bollman commented this is typical in this area. He said he is familiar with this property; and the business does not seem to generate a lot of traffic. Chairman Bollman noted a similar variance on 3<sup>rd</sup> Street West for a deck and a rear property setback variance. Staff noted if the structure on 25A is destroyed multiple variances will be required. Chairman Bollman commented this is not out of character for what is already in the neighborhood. In response to a question by Daniel Eggen, Lora Mattox stated the duplex is vintage 1940 and the beauty parlor, 1940. Neil Kiner asked if a condition is needed for fire code compliance. Nicole Cromwell said this would involve the wall of the garage was within 5 feet of the property line. She stated there is potential the Building Department may allow a "no build easement" from the adjacent property owner to prevent construction of another building in this area. Staff noted there was no correspondence from the applicant regarding the conditions of approval.

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

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman	<b>1</b>			
Paul Cox	<b>1</b>			
Daniel Eggen	<b>1</b>			
Barbara Walborn				<b>1</b>
Neil Kiner	<b>1</b>			
Vacant	-	-	-	-
Vacant	-	-	-	-

***The motion carries 4-0 and City Variance #1085 is conditionally approved.***

Chairman Bollman called for presentation of agenda item #3, City Variance #1087-2319 Alderson Avenue. Ms. Mattox reviewed the criteria for review and the staff findings for this application.

**Item #3: City Variance #1087 – 2319 Alderson Avenue** – A variance request from Section 27-308 requiring a minimum lot area of 10,000 square feet for a 4-plex multifamily dwelling to allow a lot area of 8,400 square feet; from Section 27-308 requiring a maximum lot coverage of 40% to allow a maximum lot coverage of 41%; and from Section 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a 5-foot side setback for an existing 4-plex multifamily dwelling in a Residential 6,000 (R-60) zone on the east 60 feet of Lot 3, Block 1 of Arnold Subdivision Amended Lot 13 a 8,400 square foot parcel of land. The variance, if granted, would allow the owner to re-build the existing structures if damaged in the future. No construction or re-building is planned at this time. Tax ID: A02393; Harold and Yvonne Thomson, owners.

### **REQUEST**

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 10,000 square feet for a 4-plex multifamily dwelling to allow a lot area of 8,400 square feet; from Section 27-308 requiring a maximum lot coverage of 40% to allow a maximum lot coverage of 41%; and from Section 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a 5-foot side setback for an existing 4-plex multifamily dwelling in a Residential 6,000 (R-60) zone on the east 60 feet of Lot 3, Block 1 of Arnold Subdivision Amended Lot 13 a 8,400 square foot parcel of land. The variance, if granted, would allow the owner to re-build the existing structures if damaged in the future. No construction or re-building is planned at this time. Harold and Yvonne Thomson, owners. Planning staff is recommending conditional approval of the proposed variance.

1. The variance is to decrease the minimum lot size from 10,000 square feet to 8,400 square feet for an existing 4-plex, to increase the maximum lot coverage to 41%, and to reduce the side setback for a 2-story structure from 8 feet to 5 feet for the purpose to re-build the existing structures. No other variance is intended or implied with this approval.
2. The variance is limited to the east 60 feet of Lot 3, Block 1 of Arnold Subdivision Amended Lot 13 generally located at 2319 Alderson Avenue.

3. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City's adopted building code and site development code. With the exception of the minimum lot size required, maximum lot coverage, and side setback for a 2-story structure, all other zoning code requirements will apply.
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 called for questions and discussion from the members of the Board. Neil Kiner asked regarding the approximate distance from the fencing on the west to the next adjacent structure. Ms. Mattox deferred to the property owners. She noted an aerial photo and pointed out there is quite a bit of space is depicted on the site map.

### **Public Hearing**

At 6:55 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation for City Variance #1087-2319 Alderson Avenue.

### **Applicant**

#### **Yvonne Thomson, Owner, 425 S. 5<sup>th</sup> Street, Forsyth, Montana**

Ms. Thomson said they were prompted to forward this request as their lender said this property cannot be sold or loans given if the variance is not granted. Ms. Thomson pointed out the fence line belongs to the neighbor to the west of this property.

### **Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. There was none. Chairman Bollman called for a motion.

### **Motion:**

**A motion was made by Boardmember Kiner and seconded by Boardmember Cox to approve City Variance #1087-2319 Alderson Avenue with the conditions recommended by Staff.**

### **Discussion:**

Chairman Bollman called for discussion on the motion. Neil Kiner asked Nicole Cromwell if there is any issue with the rebuilding of the fence. Nicole Cromwell said fences on the property line are considered shared. She said the Building Code is not triggered unless the property line is moved.

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

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman	<b>1</b>			
Paul Cox	<b>1</b>			
Daniel Eggen	<b>1</b>			
Barbara Walborn				<b>1</b>
Neil Kiner	<b>1</b>			
Vacant	-	-	-	-
Vacant	-	-	-	-

***The motion carries 4-0 and City Variance #1087 is conditionally approved.***

Chairman Bollman called for presentation of agenda item #4, City Variance #1088-2208 Alderson Avenue. Ms. Mattox reviewed the criteria for review and the staff findings for this application.

**Item #4 City Variance #1088 – 2208 Alderson Avenue** – A variance request from Section 27-308 requiring a minimum lot area of 17,500 square feet for a 9-plex multifamily dwelling to allow a lot area of 15,729 square feet and from Section 27-310(g) requiring a maximum projection in a side yard of 2 feet to allow a maximum projection of 4 feet for an existing 9-plex multifamily dwelling. A variance request from Section 27-310(i) requiring a minimum side setback of 8 feet for an accessory structure over 18 feet in height to allow a minimum side setback of 5 feet for a proposed addition to an accessory structure in a Residential 6,000 (R-60) zone on Lot 3A, Block 1 Arnold Subdivision 1<sup>st</sup> Filing a 15,729 square foot parcel of land. Tax ID: A02369; Arnold Clark, Susan Bell and Mary Bell, owners; Scott Swanson, Eggart Engineering, Inc., agent

**REQUEST**

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 17,500 square feet for a 9-plex multifamily dwelling to allow a lot area of 15,729 square feet and from Section 27-310(g) requiring a maximum projection in a side yard of 2 feet to allow a maximum projection of 4 feet for an existing 9-plex multifamily dwelling. A variance request from Section 27-310(i)1 requiring a minimum side setback of 8 feet for an accessory structure to allow a minimum side setback of 5 feet for a proposed addition to an accessory structure in a Residential 6,000 (R-60) zone on Lot 3A, Block 1 of Arnold Subdivision a 15,729 square foot parcel of land. Arnold Clark, Susan Bell and Mary Bell, owners and Scott Swanson, Eggart Engineering, Inc., is the agent. Planning staff is recommending conditional approval of the proposed variance.

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the minimum lot size from 17,500 square feet to 15,729 square feet for an existing 9-plex, to increase the maximum projection into a side yard from 2 feet to 4 feet and to decrease the side setback from 8 feet to 5 feet for a detached accessory structure over 18 feet in height. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 3A, Block 1 of Arnold Subdivision generally located at 2208 Alderson Avenue.
3. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City’s adopted building code and site development code. With the exception of the

minimum lot size required, maximum side projection, and side setback for detached accessory over 18 feet in height, all other zoning code requirements will apply.

4. The applicant shall receive approval for a building permit within 6 months of Board approval. Construction of the garage addition 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.

### **Discussion**

Chairman Bollman called for questions and discussion from the members of the Board.

Chairman Bollman asked if the addition on the garage will trigger stormwater review. Lora Mattox said this would take place only if it is rebuilt in the future. In response to further question by Daniel Eggen, she said anything over a duplex would trigger enforcement of the stormwater regulations as it kicks it into commercial development.

### **Public Hearing**

At 7:05 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation for City Variance #1088-2208 Alderson Avenue.

### **Applicant**

#### **Scott Swanson, Eggart Engineering, 6819 King Ave West, Billings, Montana**

Mr. Eggart said they are going above 18 feet, as there is a setback requirement change and a need for a variance in the side yard. In response to a question by Paul Cox, Mr. Swanson said there is parking in front of the garages off of the alley, the garage doors, and the west and south sides of the garage. He stated there is access to the garage off of the alley and no access off of Alderson.

Chairman Bollman asked if there was anyone wishing to speak in favor or against City Variance #1088-2208 Alderson Avenue. There was none. Chairman Bollman closed the public hearing at 7:08 p.m.

### **Motion:**

**A motion was made by Boardmember Cox and seconded by Boardmember Eggen to approve City Variance #1088-2208 Alderson Avenue 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	<b>1</b>			
Paul Cox	<b>1</b>			
Daniel Eggen	<b>1</b>			
Barbara Walborn				<b>A</b>
Neil Kiner	<b>1</b>			
Vacant	-	-	-	-
Vacant	-	-	-	-

*The motion carries 4-0 and City Variance #1088 is conditionally approved.*

**Other Business/Announcements:**

- A. Announcement: The next City Board of Adjustment will be held on Wednesday, April 6, 2011.

**Adjournment: 7:11 p.m.**

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

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**Chairman Jeff Bollman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**