

**CITY BOARD OF ADJUSTMENT**

MINUTES: JUNE 4, 2011

*To approved by a motion on July 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	1	1	1						
Paul Cox	Boardmember	1	1	1	1	1	1						
Daniel Eggen	Vice Chairman	1	1	1	1	1	E						
Neil Kiner	Boardmember	1	1	1	1	1	1						
Barbara Walborn	Boardmember	1	E	E	1	1	1						
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	4	5	3							18

Chairman Bollman called the meeting to order at 6:08 p.m. The City Board of Adjustment met in the City Council Chambers.

Chairman Bollman asked Planner Lora Mattox to introduce the City Board of Adjustment members and Planning Department staff. Ms. Mattox is presenting this evening in the absence of Zoning Coordinator Nicole Cromwell. Attending Staff members are Wyeth Friday, Planning Division Manager; Lora Mattox, Transportation Planner; 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 6:10 p.m.

**Approval of minutes: April 6, 2011**

Chairman Bollman called for approval of the April 6, 2011 minutes. He requested a correction on page seven, line three to change the typographical error “b” to “by”.

**Motion**

**A motion was made by Paul Cox and seconded by Neil Kiner to approve the April 6, 2011 minutes as corrected.**

**Motion carried unanimously, 4-0.**

### **Approval of minutes: May 4, 2011**

Chairman Bollman called for approval of the May 4, 2011 minutes.

### **Motion**

**A motion was made by Paul Cox and seconded by Barbara Walborn to approve the May 4, 2011 minutes as submitted.**

**Motion carried unanimously, 4-0.**

### **Disclosure of Conflict of Interest**

There was no disclosure of conflict of interest.

### **Disclosure of Outside Communication**

Lora Mattox explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum. Copies of the following communications were submitted to the Board:

- 5/31/11 e-mail from Ralph and Jayne Myhre, 4342 Wells Place, Billings, Montana in opposition to Variance #1097
- 5/31/11 e-mail from Cordell S. Ringel, 4229 Wells Place, Billings, Montana in opposition to Variance #1097
- 5/31/11 e-mail from Lisa Haskins, 110 JB Stetson ST, Billings, Montana in opposition to Variance #1097

### **PUBLIC HEARINGS:**

Chairman Bollman asked Ms. Mattox 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. Mattox reviewed the procedures by which the meeting is conducted and the determinations for granting a variance. It was noted 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 is July 6, 2011.

### **Public Hearings:**

Chairman Bollman stated the public hearing will be opened and this Board will allow public comment this evening. One letter of opposition was received from Citizen Randy Schmitz, 4107 Wells Place, Billings, Montana at the May 4, 2011 meeting. Ms. Mattox read the legal description and Wyeth Friday gave the Staff presentation which reviewed the request and recommendation below.

**Item #1--City Variance #1097 – 517 Shiloh Road – Faith Chapel** – The applicant is requesting a variance from 27-1414(1) requiring a maximum sign area of 32 square feet for a “bulletin board” for a religious institution in the Shiloh Corridor Overlay District to allow a maximum sign area of 66 square feet; a maximum sign height of 6 feet to allow a maximum sign height of 13 feet; and requiring low intensity lighting to allow an internally illuminated sign and an electronic message display sign. A variance from 27-1415 requiring a maximum sign area for a church (semi-public use) of 16 square feet for a freestanding sign to allow a maximum sign area of 66 square feet; a maximum sign height of 6 feet to allow a sign height of 13 feet; and requiring low intensity lighting to allow an internally illuminated sign and an electronic message display. The property is zoned Residential 9,600 (R-96) and Community Commercial (CC) on Tract 1, C/S 3106 (R-96) and Tract 1, C/S 3230

(northwest corner CC, remainder R-96), a 16.727 acre parcel of land. International Church of the Foursquare is the owner and Epcon Sign Group, Tony Thelen, is the agent. Planning staff is recommending denial of the proposed variances.

Planning Division Manager Wyeth Friday opened this agenda item with a PowerPoint presentation. He noted the Board of Adjustment opened the public hearing on May 4, 2011, and at the request of the applicant, continued the public hearing until June 1, 2011. He stated that the original approval contained a condition for removal of two monument signs and as of today, the condition has been met. He continued and reviewed the reasons for denial of this request being there are no special circumstances with this property; no similar variances granted in the area; it will not deprive this owner of rights enjoyed by others in the same district; and it is not in conformance with the Shiloh Overlay zoning or the intent of the Shiloh Overlay District.

### **Discussion**

Chairman Bollman called for questions and discussion by the members of the Board. In response to a question by Paul Cox, Wyeth Friday clarified the location of the proposed sign in the R-9600 zoned property. Jeff Bollman asked if the existing sign on Broadwater Avenue would remain if this request is approved and Wyeth Friday stated the existing sign on Shiloh Road would be replaced. Jeff Bollman noted Electronic Messaging Displays, (EMDs), are not allowed in the R-9600 district and asked how this use can be approved.

### **Public Hearing**

At 6:30 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation or for proponents of City Variance #1097.

### **Tony Thelen, Epcon Sign Group, 6185 Ironwood Drive, Billings, Montana**

Mr. Thelen stated he is the agent for Foursquare Properties, owner. Mr. Thelen presented several display boards. He gave the dimensions of the message center and monument sign. He stated that it will be placed in the commercially zoned area of the property. He said if approved there will be two monument signs and pointed out this property existed prior to the Shiloh Overlay District. He stated the sign is low intensity, low impact; ties in with the building itself; and will be aesthetically pleasing within the intent of the corridor itself. He said the veterinary clinic blocks the view as one is traveling north on 32<sup>nd</sup> Street West. Clarification was given to Jeff Bollman regarding the site plan and the placement of the sign. In response to a question by Barbara Walborn, Mr. Thelen said the signs were removed two weeks ago. She asked if there is any assurance that the sign will be removed given the applicant's past practice. In response to a question by Paul Cox, Mr. Thelen said that this building is used for several community events, school district meetings, tax polling location, and the atrium has an espresso café and a book store.

### **Greg McCall, 1615 Front Street, Billings, Montana**

Mr. McCall stated he is attending this evening as he is in favor of this proposal. He said that he has researched this request and does not understand the staff recommendation for denial as there are commercial uses and the sign will be located in a commercial district. Mr. McCall commented regardless of zoning, a church is not allowed the same freedom so to speak as a commercial property. He noted that churches used to fall in primarily residential neighborhoods but in this case, they should be allowed the same opportunities as a commercial entity. He said ultimately it is a land use issue and if a form based code were in place, would be a good design. He commented that this church is open seven days a week and there are public activities and open to the public.

**Kevin Hoffman, Billings, Montana**

Mr. Hoffman stated the construction of the new building included substantial landscaping, bike racks, and an easement for the bikeway in order to create a beautiful campus. He said they want the signage to add to the scope and the design of the building. He distributed a handout to the members of the Board to illustrate the frontage along Shiloh Road, which is 1,050 feet. Mr. Hoffman said this request would be permissible for a commercial entity and they have a coffee shop and book store on the premise. Mr. Hoffman stated Faith Chapel is an organization that provides a positive community influence and a great first impression. He posed the question to the Commission asking the same rights and privileges be given to an organization that services others as a commercial entity. In response to a question by Paul Cox, Mr. Hoffman noted existing businesses in the district, including a casino, McDonalds, Gold Smith Jewelry, and the adjacent veterinary clinic.

**Anthony George, 2955 Colonial Place, Billings, Montana**

Mr. George stated he is in favor of the variance. Mr. George gave an overview of the organization's community activities, volunteer hours, and contributions. He said they serve the community by sponsoring events, City Council working groups, Eagle Scout groups, and is currently a rallying place for flood victims. Mr. George said the EMD sign would be used to advertise such events.

**Michael Wall, (no address given)**

Regarding the two signs that were left on the property, Mr. Wall said there has been a change of leadership and were not aware that the signs were to be removed until they received the staff report. He said they have removed the signs and apologized to the City for this issue. He promised that the sign will be replaced should this request be approved. Mr. Wall said their hardship is the unintended consequences for the way Shiloh was built, including visibility and accessibility issues. He said that any regular sign that would be allowed will be dwarfed in comparison to the size of the building. He commented they have had several persons stop and ask about the use of this building and have had some confusion. He said they wish to invite people along in their journey and this is currently difficult with the signage. Mr. Wall pointed out that they existed prior to the district and said this would have been previously allowed. He stated there is a commercial entity in the building for coffee shop, a book store, and an atrium that is open seven days a week. Mr. Wall said they wish to have one sign that meets both applications.

At 6:49 p.m. Chairman Bollman asked if there was anyone present wishing to speak against City Variance #1097.

**David Bruder, 3764 Heritage Drive, Billings, Montana**

Mr. Bruder said he is not complaining against the church. He stated the idea is to have a nice looking corridor with the landscaping. Mr. Bruder pointed out the current signage on the property. He said a lot of cars come to this facility on a daily basis and do not seem to have any difficulty navigating to the property. He said the proposed sign will change the atmosphere of the corridor and is not needed; and the sign will not be close to the exits anyway. He said a hospital complex is proposed to be built across the road and will have large signage.

**Jerilyn Bruder, 3764 Heritage Drive, Billings, Montana**

Ms. Bruder stated she agrees with David Bruder's comments. She said she feels that if an EMD is allowed on Shiloh Road, another will be allowed on Broadwater Avenue.

**Oscar Heinrich, 4210 Wells Place, Billings, Montana**

Mr. Heinrich stated he participated and worked with the committee in the creation of the Shiloh Overlay District. He said this sign defeats the purpose of the Shiloh Overlay District and may set precedence for EMDs Shiloh Road. Mr. Heinrich requested denial of this proposal.

**Rebuttal**

Chairman Bollman called for rebuttal.

**Michael Wall, (no address given)**

Mr. Wall said the reason sign is not near the exit, is they are trying to straddle the attention. He said this is a commercial as a well as a non-commercial entity and they should be allowed the same rights as others.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1097. There was none. Chairman Bollman closed the public hearing and called for a motion from the Board.

**Motion**

**A motion was made by Paul Cox and seconded by Barbara Walborn to approve City Variance #1097 – 517 Shiloh Road – Faith Chapel, with the condition the existing sign be removed at the time of the installation of the new sign; the sign located within community commercial zoning, the sign is installed within six months of approval of this variance; and the signage will fulfill the requirements of the Community Commercial zoning.**

**Discussion**

In response to a question by Barbara Walborn, Lora Mattox said that this recommendation is based on the Shiloh Overlay District and the special circumstance sign code. Paul Cox commented he feels that this is part of the hardship as this is an entirely different venue due to the traffic. He said jacking up the sign would require another variance, and this property does not fit the norm of a church in the residential area. Neil Kiner asked what restrictions are unique to the overlay district. Wyeth Friday responded that the overall intent of the Shiloh Overlay District is to address the aesthetics and the overall corridor as people enter Billings. He said the sign code sections are somewhat similar to other commercial districts. He said to meet certain criteria; it is encouraged to use signage that is smaller than what is allowed and to gain "points within the project". Neil Kiner reiterated and asked regarding the restrictions for the EMD signage. Wyeth Friday stated EMDs are allowed within some of the commercial districts within the Shiloh Overlay District and the code specifies in terms of each types of sign. He said in these terms, this is not that far away from some of the displays in the district but the requirements would have to be considered. Jeff Bollman pointed out that wall signs are allowed in this district and are specifically spelled out within the commercial districts. In response to a question by Paul Cox, Wyeth Friday said the veterinary business would be allowed an EMD sign. Neil Kiner said he finds the EMD signage distracting. Jeff Bollman voiced concern about the proposed EMD and its overall size. He said it seems to be an attempt to go without the existing regulations and stated he does not wish to open the door for future variances. Paul Cox took exception, and said this is a legal sign except this is considered a church facility. He said he

does not understand the staff’s recommendation for denial as it is not an illegal sign other than the location. He said he feels this is a “different animal”. Jeff Bollman agreed that it is a unique entity, but the Shiloh Overlay District is not that old. He stated there are other churches within the corridor and approval will set precedence. Paul Cox noted a church further south of this property that is grandfathered from the code restrictions for a sign over the height limitations. He said he is voting in favor of this variance. Barbara Walborn commented on other churches that do not have this signage. She said as new as the Overlay District is, she opposed to a change.

Chairman Bollman called for a vote on the motion.

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

**City Variance #1099 is denied, 2-2.**

Chairman Bollman asked Ms. Mattox for presentation of agenda item #2-City Variance 1098. Ms. Mattox read the legal description and gave the Staff presentation which reviewed the request and recommendation below.

**Item #2: City Variance #1098 – 15 West Wicks Lane – Fire Station #6 – Land Use Contrary to Zoning**– A request to use public land contrary to zoning in order to construct an 80-foot monopole wireless communications tower with a 12’ X 26’ ground equipment shelter and a perimeter block wall of 6 feet in height. Towers in excess of 50 feet are required to receive special review approval. MCA 76-2-402 allows any public agency to use public land contrary to zoning provided a public hearing is held by the Board of Adjustment. The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use. The property is described as Tract 2B of C/S 1981 amended, in a Public (P) zone, a 52,751 square foot parcel of land. Tax ID D05232A; City of Billings, owner and Kevin Howell, Digital Skylines, agent.

Planner Lora Mattox opened with a PowerPoint presentation of the Staff report for this request.

**Discussion**

Chairman Bollman called for questions and discussion from the members of the Board. There was none.

**Public Hearing**

At 7:15 p.m., Chairman Bollman opened the public hearing and called for the applicant’s presentation or for comments on City Variance #1098 – 15 West Wicks Lane – Fire Station #6.

## Discussion

Jeff Bollman queried Ms. Mattox regarding the setbacks requirements for towers. Lora Mattox responded that they would have to be 20 feet from the rear setback of the publically zoned parcel. Wyeth Friday spoke to the setbacks regarding the height of the tower, and a 15-foot set back for accessory structures. He said it will be closer on the east side and the building may be in compliance. Lora Mattox pointed out the residential and neighborhood commercial zoned parcels adjacent to this property.

## Applicant

### Kevin Howell, Digital Skylines, 1134 North 5<sup>th</sup> Place, Scottsdale, Arizona(no address given), Billings, Montana

Mr. Howell is the agent for Verizon Wireless. He said the nearest tower is 1-1.5 miles away. Mr. Howell explained that they are in need of more capacity. He said that often Covenants and Restrictions have prohibitions for towers but this location fits operationally for the fire station. He said the land immediately east of this property was used for a commercial entity. He stated they held a neighborhood meeting in the Heights. Mr. Howell said they are working on seven new sights around Billings, Montana; and new sites in Sheridan, Wyoming; Casper, Wyoming; and Kalispell, Montana. He said there has been extensive growth in the industry and the use has compounded. He they need to be closer to residences as 25% of homes no longer have landlines and the bulk of wireless data is residential and not commercial uses. He explained that the closer the device is to the sight, the faster the speed of the transmittal.

### Tina Volek, City Administrator, (no address given)

Ms. Volek stated on behalf of staff and the owner of the parcel, she would like to indicate support for this project. She said the tower will provide backup service for emergency and non-emergency services and enhance network capacity. She stated the applicant has made available additional tower space at a minimal cost to the City.

Chairman Bollman asked if there was anyone in attendance wishing to comment on Variance #1098. There was none. Chairman Bollman closed the public hearing at 7:24 p.m.

**\*\*The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.**

Chairman Bollman called for presentation of agenda item #3, City Variance #1099-King Avenue East – Holiday Inn Express. Ms. Mattox reviewed the criteria for review and the staff findings for this application.

**Item #3: – City Variance #1099 – King Avenue East – Holiday Inn Express** – A variance from 27-1005 requiring a maximum building height of 40 feet to allow a maximum building height of 57 feet for a proposed new hotel in an Entryway General Commercial (EGC) zone on Lot 7A, Block 1 Miller Crossing subdivision 2<sup>nd</sup> Filing a 2.279 acre parcel of land. Tax ID: A34239, South Billings Center LLC, owner and Sanderson Stewart, agent.

Planner Lora Mattox opened this agenda item with a PowerPoint presentation of the Staff presentation.

## **REQUEST**

The applicant is requesting a variance from BMCC 27-1005 requiring a maximum building height of forty (40) feet to allow a maximum height of fifty-seven (57) feet in an Entryway General Commercial (EGC) zone. South Billings Center, LLC is the owner and Sanderson Stewart is the agent. Staff is recommending conditional approval of the proposed variance.

## **RECOMMENDATION**

Staff is recommending the following conditions for the variance request:

1. The variance is for a maximum building height of 57 feet and no other variance is intended or implied by this approval.
2. The variance applies to Lot 7-A, Block 1 of Miller Crossing 2<sup>nd</sup> Filing.
3. The proposed building will be located and oriented in substantial conformance with the submitted site plan.
4. The applicant will receive building permit approval within one 1 year of the Board of Adjustment approval of the variance. Construction of the hotel will be completed within 3 years of Board of Adjustment approval.
5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.

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. There was none.

## **Public Hearing**

At 7:29 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation for City Variance #1099 – King Avenue East – Holiday Inn Express.

## **Applicant**

### **Mac Fogelsong, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana**

Mr. Fogelsong is the agent for the owner, South Billings Center, LLC. He said the site plan orientation was created with respect to the neighbors and they have approached the Burger King whose primary concern is sight lines. Mr. Fogelsong stated the proposed building would be pushed back and he pointed out the landscaping buffer. He said he brought exhibits for the members of the Board to give a sense of the zoning height requests relative to the building height. He stated this project was discussed at the South Billings Boulevard discussion groups and there will be some financial benefits to other projects in the area. He used the Holiday Inn Express property located in Lockwood for an example. Mr. Fogelsong asked for support of this proposal with the conditions recommended by Staff.

### **Richard Dice, (no address given)**

Mr. Dice stated he is a boardmember of the SBURD development. He voiced concern that they had not been informed and this will fall within their development. He said the variance may be



premature. Mr. Dice stated development is needed to bring more people into this area and the development board had hired a consulting firm to address the slow pace of development in this area.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1099. There was none. Chairman Bollman closed the public hearing at 7:36 p.m.

**Motion:**

**A motion was made by Boardmember Walborn and seconded by Boardmember Kiner to approve City Variance #1099 – King Avenue East – Holiday Inn Express with the conditions recommended by Staff.**

**Discussion:**

Chairman Bollman called for discussion on the motion. Lora Mattox explained this area is a part of the Tax Increment Finance District but this development is not applying for any TIFD funding. In response to a question by Paul Cox, she said there are adequate services for this building. She stated she spoke to the building official who had no concerns with the construction of this building.

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

*The motion carries 4-0 and City Variance #1099 is conditionally approved.*

**Other Business/Announcements:**

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

**Motion**

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

**Adjournment: 7:40 p.m.**

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**Chairman Jeff Bollman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**