

**CITY BOARD OF ADJUSTMENT**

MINUTES: January 4, 2012

*Approved by a motion on March 7, 2012*

Name	Title	01/04/12	02/01/12	03/07/12	04/04/12	05/02/12	06/06/12	07/05/12	08/01/12	09/05/12	10/05/12	11/07/12	12/05/12
Jeff Bollman	Chairman	1											
Paul Cox	Boardmember	1											
Daniel Eggen	Vice Chairman	1											
Neil Kiner	Boardmember	1											
Barbara Walborn	Boardmember	1											
Marlene Walter	Boardmember	1	-	-	-	-	-	-	-	-	-	-	-
Vacant	Boardmember	-	-	-	-	-	-	-	-	-	-	-	-

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

Chairman Bollman called the meeting to order at 6:02 p.m. The City Board of Adjustment met in the City Council Chambers.

Chairman Bollman asked Zoning Coordinator Nicole Cromwell to introduce the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Lora Mattox, Transportation Planner; and Tammy Deines, Planning Clerk.

**Others in Attendance:**

Darcie Mickelberry, 101 Avenue E, Billings, Montana; Travis McDowell, 2029 Forest Park Drive, Billings, Montana; LaShawn Bernhardt 4163 Vaughn Lane, Billings, Montana; Patrick Weber, 2210 Anna Drive, Billings, Montana; Sara Ellis, 1058 Ginger Avenue, Billings, Montana; Skip Godfrey, 4146 Clevenger, Billings, Montana

**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 6:03 p.m.

**Motion**

**Boardmember Walborn made a motion and it was seconded by Boardmember Eggen to amend the agenda to move the approval of the meeting minutes to the end of this meeting agenda.**

**The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest**

Chairman Bollman asked for disclosures of conflict of interest. There was none.

**Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum. No written communications were 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. Ms. Cromwell explained the voting process for this meeting, as there are only six members and one vacancy on the Board of Adjustment. She stated opportunities will be given to the applicants if they wish to delay their application until a full Board is available. The next meeting is March 7, 2012.

**Public Hearings:**

At 6:06 p.m., Chairman Bollman stated the public hearing will be opened and this Board will allow public comment this evening. Ms. Cromwell read the legal description. Planner Lora Mattox gave the Staff presentation which reviewed the request and recommendation below.

**Item #1: City Variance #1113 – 4163 Vaughn Lane** – A variance from 27-310(i) requiring a maximum detached accessory building be no larger than 1,383 square feet to allow a detached accessory building of 2,560 square feet in a Residential 9,600 (R-96) zone on Lot 8, Homecroft Acres Subdivision, a 35,937 square foot parcel of land. Tod and LaShawn Bernhardt, owners and Travis McDowell, agent.

**REQUEST**

The applicant is requesting a variance from 27-310(i) requiring a maximum detached accessory building be no larger than 1,383 square feet to allow a detached accessory building of 2,560 square feet in a Residential 9,600 (R-96) zone on Lot 8, Homecroft Acres Subdivision, a 35,937 square foot parcel of land. Tax ID A09178A; Tod and LaShawn Bernhardt, owners and Travis McDowell, agent. Planning staff is recommending denial of the variance request to construct a 2,560 square foot detached accessory structure. Staff recommends conditional approval to construct a 1,500 square foot detached accessory structure.

**RECOMMENDATION**

**Staff recommends denial of the variance to construct a maximum detached accessory structure of 2,560 square feet and to recommend conditional approval of a variance to allow the construction a maximum detached accessory structure of 1,500 square feet.**

Staff is recommending the following conditions for the variance request for construction of a maximum detached accessory structure of 1,500 square feet:

1. The variance is to allow a maximum detached accessory structure of 1,500 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 8, Homecroft Acres Subdivision, generally located at 4163 Vaughn Lane.
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 increase in the maximum detached accessory allowed, 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 shall be completed within 18 months of Board approval.
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 by the members of the Board. In response to a question by Daniel Eggen, Lora Mattox stated the site plan choice would not affect the approval process. Daniel Eggen pointed out the plan for the building shows elevations but does not state the type of siding. Lora Mattox explained the applicant would have to comply with the zoning requirement for horizontal siding for a detached accessory structure. Daniel Eggen asked about storm water management on the lot. Lora Mattox stated Staff received no comments from the Engineering Division. Nicole Cromwell said this will be reviewed by the City Engineering Department, and all storm water runoff from the roof would be required to be maintained on site.

Jeff Bollman asked about the location of the drain field. Lora Mattox deferred this question to the applicant. Jeff Bollman asked about the lot size of the property located on Hallowell for Variance #789. Lora Mattox clarified and stated the lot size is approximately 35,000 square feet and is very similar to this property.

### **Public Hearing**

At 6:15 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1113-4163 Vaughn Lane.

### **Travis McDowell, 2029 Forrest Park Drive, Billings, Montana**

Mr. McDowell is the agent and represents applicants Tod and LaShawn Bernhardt. Mr. McDowell said the applicant feels the detached structure would be a better fit for this neighborhood rather than attaching it to the existing home. He stated the drain field is located directly to the left of the proposed garage structure. In response to a question by Marlene Walter, Mr. McDowell stated there is room to replace the drain field in the event of a failure. He noted there is only one restroom in the proposed structure.

### **LaShawn Bernhardt, 4163 Vaughn Lane, Billings, Montana**

Ms. Bernhardt is the property owner. She stated they have a large lot and wish to have something usable for storage and to park vehicles. Ms. Bernhardt stated she wishes to have the larger facility now rather than add on later. She said they could do an attached garage without the approval of this

variance request, but it would be ugly. She stated she wishes to tuck it behind the house for the sake of the community. She said she wants to move forward with the project and it is a matter of deciding whether to attach or detach the structure. She pointed out the lot is rectangular and it makes more sense to place the structure behind the house instead.

Daniel Eggen asked Ms. Bernhardt if she would be willing to live with a 1,500 square foot building as proposed by Staff. Ms. Bernhardt replied, "No." She said she would be willing to budge but if this request is denied, they will attach the structure to the house. Travis McDowell stated the building will be similar in size to the original 2,500 square foot proposal.

At 6:19 p.m. Chairman Bollman asked if there was anyone wishing to speak for City Variance #1113.

**Patrick Weber, Sunset Construction, LLC, 2210 Anna Drive, Billings, Montana**

Mr. Weber is the contractor for LaShawn Bernhardt. He said he has spoke with subcontractors regarding the extra restroom. He said with the drain field may be replaced with an updated system depending on the approved location for the structure.

Chairman Bollman asked if there was anyone wishing to speak against City Variance #1113.

**Skip Godfrey, 4146 Clevenger, Billings, Montana**

Mr. Godfrey pointed out his property's location on the posted surrounding zoning map and noted it is directly across a small irrigation ditch from this property. Mr. Godfrey stated he is adamantly opposed to the proposed location of the detached structure. He commented a building of size with a roof 18.5 feet tall may have adverse affects on his property and not be desirable for the neighbors in the cul de sac. He said Ms. Bernhardt had previously circulated a petition throughout the neighborhood for a dance studio. He stated a dance studio would be in conflict with a normal use of a residence, assuming there would be traffic coming and going throughout the day.

Mr. Godfrey commented on the traffic from school children going to Riverside Junior High or Orchard Elementary School. He said the additional traffic on Vaughn may add to the problems with dust. He said he hates to see a building big with high of a roof line located across from the center of his property.

**Rebuttal**

Chairman Bollman called for rebuttal.

**LaShawn Bernhardt, 4163 Vaughn Lane, Billings, Montana**

Ms. Bernhardt stated in undertaking this variance process, she circulated a petition and spoke with all of the neighbors. She said she has approximately 25 statement of support from her surrounding neighbors in favor of the building process and would be happy to submit them to this Board.

Ms. Bernhardt stated the project has taken another line to being just a garage. She said they have had instances with Mr. Godfrey's roommate in past, and the police have been involved with instances of profanity directed towards her children. She stated she feels Mr. Godfrey may have personal reasons for not wanting to have this project continue.

Boardmember Cox asked regarding the mention of a different use for a garage other than storage. Ms. Bernhardt said this was a "dream" was shut down; and will not be pursued at this time. She explained she teaches dance and has rented a facility for the last 20 years. She said this is not

the primary purpose of the proposed building but it may be used for a last minute practice occasionally.

Chairman Bollman closed the public hearing and called for a motion from the Board.

**Motion**

**A motion was made by Daniel Eggen and seconded by Paul Cox to conditionally approve the variance to construct a 1,500 square foot detached accessory structure with the conditions recommended by staff.**

**Discussion**

Neil Kiner asked for clarification of the motion. Boardmember Eggen restated the motion.

**Motion**

**A motion was made by Daniel Eggen and seconded by Paul Cox to deny the variance to construct a maximum detached structure of 2,560 square feet and to conditionally approve the variance to allow the construction of a maximum detached accessory structure of 1,500 square feet with the conditions recommended by staff."**

**Discussion**

Paul Cox spoke in favor of motion as approval of the larger structure may be extending a special privilege. He said there is no hardship and approval may set a precedent which would be hard to overcome within similarly zoned properties.

Neil Kiner stated a clear case was not presented as to hardship. In response to a question by Barbara Walborn, Nicole Cromwell said there will be no alley access to the subdivision to the rear of this property.

Boardmember Walborn asked how large the building would be if it is built as an attached structure. Lora Mattox stated the primary structure is 2,384 square feet, and if the building is attached, it will be a 2,384 square foot garage.

Jeff Bollman agreed there was no hardship with this variance, and it is a significant departure of over 1,000 square feet of structure size. Neil Kiner said the staff recommendation for a 1,500 square foot structure is already more than technically allowed, and is a good faith effort by Staff.

Barbara Walborn asked about the roofline should the building be attached. Lora Mattox commented the current roof line for the split level home is over 18 feet and asked if the detached structure would not be much taller.

Chairman Bollman called for a voice vote.

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

**The motion carries.**

**Approval of the September 7, 2011 Meeting Minutes**

Chairman Bollman called for the approval of the September 7, 2011 meeting minutes. The following amendment was requested by Planning Clerk Tammy Deines who noted a duplicate entry on page 3, and said she will delete the duplicate phrase, *At 6:14 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1105.*

**Motion**

**A motion was made by Daniel Eggen and seconded by Jeff Bollman to approve the September 7, 2011 meeting minutes with corrections and amendments.**

**The motion carried with a unanimous voice vote.**

**Approval of the December 7, 2011 Meeting Minutes**

Chairman Bollman called for the approval of the December 7, 2011 meeting minutes. Jeff Bollman requested the following amendment on page 10 of 12 deletion of the phrase, *“Jeff Bollman stated this is the highest and best use”*.

**Motion**

**A motion was made by Neil Kiner and seconded by Jeff Bollman to approve the December 7, 2011 meeting minutes with corrections.**

**The motion carried with a unanimous voice vote.**

**Other Business/Announcements:**

- A. Announcement: The next City Board of Adjustment meeting Wednesday, February 1, 2012 will be cancelled due to a lack of agenda items.
- B. Announcement: Jeff Bollman welcomed Marlene Walter to the City Board of Adjustment. There is one remaining vacancy on this Board.
- C. **2012 City Board of Adjustment Elections**  
Chairman Bollman asked the members of the Board for nomination for the 2012 City Board of Adjustment officers.

**Motion**

**Paul Cox made a motion and it was seconded by Daniel Eggen to nominate Jeff Bollman for the position of Chairman of the City Board of Adjustment for the 2012 term**

**Motion carried with a unanimous voice vote.**

**Motion**

**Paul Cox made a motion and it was seconded by Daniel Eggen to nominate Neil Kiner for the position of Vice Chairman of the City Board of Adjustment for the 2012 term.**

**Motion carried with a unanimous voice vote.**

**Adjournment: 6:42 p.m.**

**Motion**

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

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**Chairman Jeff Bollman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**