

CITY BOARD OF ADJUSTMENT

MINUTES: April 11, 2012

Approved with corrections by a motion on May 2, 2012

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

TOTAL NUMBER OF APPLICATIONS 2011	01/04/12	02/01/12	03/07/12	04/11/12	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	0	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. He welcomed James Olsen as a new member of the City Board of Adjustment.

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: Applicant Evelyn Emerson; Citizen LeAnne Adels; Citizen Don Olsen; Citizen Jolane Jones; Applicants Steve and Maureen Kienitz; Applicants Jamey Eisenbarth and Don Christensen; Citizen Mona Clark

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 6:04 p.m.

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.

Approval of the March 6, 2012 Meeting Minutes

Chairman Bollman called for the approval of the March 6, 2012 meeting minutes. Daniel Eggen requested the Attendance and Applications be updated.

Motion

A motion was made by Daniel Eggen and seconded by Barbara Walborn to approve the March 6, 2012 meeting minutes with corrections as stated.

The motion carried with a unanimous voice vote.

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.

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 and Lora Mattox gave the Staff presentation which reviewed the request and recommendation below.

Item #1: Variance #1115 – 3250 Durland Drive – Rear Setback and Building Height – A variance from 27-308 requiring a minimum rear setback of 20 feet to allow a 10 foot rear setback and from a maximum building height of 34 feet for a proposed single family dwelling in a Residential 9,600 zone (R-96) on Lot 22, Block 5, Wilshire Heights Subdivision 8th Filing an 8,116 square foot parcel. Tax ID: A21577, Steven and Maureen Kienitz, owners. The Board of Adjustment approved this variance in 2009, and the time limit to construct the dwelling has expired.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a 20 foot minimum rear setback to allow a 10 foot minimum rear setback and from a maximum building height of 34 feet for a new residential dwelling on Lot 22, Block 5, Wilshire Heights Subdivision in a Residential 9,600 (R-96) zone. The property is 8,116 square feet and is addressed as 3250 Durland Drive. The owners are Steve and Maureen Kienitz.

The Board of Adjustment approved this variance in 2009, and the conditions of approval included time limits in obtaining a building permit and completing construction. This time limit has expired and the applicant has to re-apply for the variance.

Variance request #1115 included a variance from the maximum building height of 34 feet in a residential zone. After meeting with the applicant, it was determined that their site plan elevations would meet the zoning requirements for maximum height and therefore they are requesting that the variance for increased maximum height be eliminated from this request.

Staff is recommending conditional approval of the proposed variance with the following conditions for the variance request:

- 1. The variance is to decrease the required rear setback from 20 feet to 10 feet. No other variance is intended or implied with this approval.**
- 2. The variance is limited to Lot 22, Block 5 of Wilshire Heights Subdivision, 8th Filing. The dwelling will be constructed in the general location as shown on the submitted site plan.**
- 3. The applicant will be solely responsible for management of any existing or future stormwater runoff from the site.**
- 4. A building permit application must be submitted within 6-months of Board of Adjustment approval.**
- 5. The dwelling must be completed within 1 year of the issuing of a building permit. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the 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 by the members of the Board. Marleen Walter asked for clarification on the maximum building height of 34 feet. Lora Mattox noted the site plan, clarified the elevation differences of the property, and commented there was some confusion as to how this should be measured. In response to a question by Daniel Eggen, Lora Mattox explained the storm water management plan will have to provide easements to allow stormwater to flow to the storm drain. She further stated the building will have to be constructed so the water does not drain onto another property or if it is to be detained, the plans will have to be submitted with the building plans.

Public Hearing

At 6:19 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1114-3250 Durland.

Steven Kienitz, 1639 St Johns Avenue, Billings, Montana

Mr. Kienitz is the property owner. He stated they submitted this request as the house is designed to go lengthwise and it would have backed up to the rear property line. He noted a ten-foot setback is needed. In response to a question by Marleen Walter, Mr. Kienitz said they had submitted for a variance in 2009. Daniel Eggen asked if Mr. Kienitz is comfortable with the 6 month time frame for the building permit and Mr. Kienitz replied they are in agreement with this requirement.

At 6:17 p.m. Chairman Bollman asked if there was anyone wishing to speak for City Variance #1115. There was none.

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

Motion

A motion was made by James Olsen seconded by Marleen Walter to conditionally approve Variance #1115-3250 Durland Drive with the conditions recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. Clarification was given to Barbara Walborn that the structure must be completed within one year of building permit approval.

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			
James Olsen	1			

The motion carries.

Item #2: Variance #1116 – 3612 6th Avenue South – Lot Area – A variance from 27-308 requiring a minimum lot area of 7,000 square feet for an existing duplex to allow a minimum lot area of 3,500 square feet in a Residential 6,000 zone (R-60) on the west half of Lots 11 & 12, Block 21, Southwest Addition a 3,500 square foot parcel. Tax ID: A14119, Evelyn Emerson, owner. 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.

Ms. Cromwell read the legal description and Lora Mattox gave the Staff 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 7,000 square feet for an existing duplex to allow a minimum lot area of 3,500 square feet in a Residential-6000 (R-60) zone. The property is legally described as the west half of Lots 11 & 12, Block 21, Southwest Addition and has an address of 3612 6th Avenue South. 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.

Staff is recommending conditional approval of the proposed variance with the following conditions for the variance request:

- 1. The variance is to reduce the required lot area from 7,000 square feet for an existing duplex dwelling to 3,500 square feet. No other variance is intended or implied with this approval.**
- 2. The variance is limited to the west half of Lots 11 & 12, Block 21, Southwest Addition generally located at 3612 6th Avenue South.**

3. Approval of the variance does not exempt the property from compliance with other adopted city codes at the time of any needed reconstruction including but not limited to building codes, site development and other zoning regulations.

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 by the members of the Board. Daniel Eggen asked regarding the Department of Revenue's tax designation for this property. Lora Mattox stated this property is taxed as a single family dwelling. Nicole Cromwell explained that the Department of Revenue does not tax for more than a single family dwelling if the second residence is below grade. Lora Mattox referred to the posted photos. Boardmembers noted it reflects two meters and two addresses.

Public Hearing

At 6:19 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1116-3612 6th Avenue South.

Leann Adelson, Evelyn Emerson, 3612 6th Avenue South, Billings, Montana

Ms. Adelson is representing the property owner, Evelyn Emberson. She explained there is no interior stairway. Marleen Walter asked why the variance is requested. Ms. Adelson stated the lot size only allows for a single family dwelling. She said they would like to sell this property and the potential buyers are unable to get a bank loan.

At 6:27 p.m. Chairman Bollman asked if there was anyone wishing to speak for City Variance #1116. There was none.

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 Barbara Walborn to conditionally approve Variance #1116-3612 6th Avenue South with the conditions recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. James Olsen asked if an appraisal has triggered the variance and financing issue.

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			
James Olsen	1			

The motion carries.

Item #3: Variance #1117 – 3230 Country Club Circle – Front Setback – A variance from 27-308 requiring a minimum front setback of 20 feet to allow a 10 foot front setback for a proposed single family dwelling in a Residential 9,600 zone (R-96) on Lots 1A and Lot 2, Block 7, Country Club Heights Subdivision a 20,824 square foot parcel. Tax ID: A05669 and A05670, Brian and Jolane Jones, owners.

Ms. Cromwell read the legal description and gave the Staff presentation which reviewed the request and recommendation below.

REQUEST

The applicant is requesting a variance from Section 27-308 requiring a minimum 20-foot front setback for a proposed new dwelling to allow a 10-foot front setback in a Residential 9,600 (R-96) zone on Lots 1A and Lot 2, Block 7, Country Club Heights Subdivision a 20,824 square foot parcel of land. Brian and Jolane Jones are the owners. Planning staff is recommending conditional approval of the proposed variance.

- 1. The variance is to decrease the required front setback from 20 feet to 10 feet for the purpose of constructing a dwelling. No other variance is intended or implied with this approval.**
- 2. The variance is limited to Lots 1A and Lot 2 of Block 7, Country Club Heights Subdivision generally located at 3230 Country Club Circle.**
- 3. The applicant shall receive approval for a building permit within 12 months of Board approval. Construction of the addition shall be completed within 36 months of Board approval.**
- 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 by the members of the Board. Marleen Walter asked how the park will be accessed. Nicole Cromwell referred to page 9 of 12 of the staff report and the photos that were submitted by the applicant. She said the trail is not prescriptive but permissive as the owner had permitted pedestrians to use the access the park. She stated the applicants have a plan to relocate the trail to the west of the property or further north of the

proposed house. Marleen Walter said that logically, people may be possessive of the existing path Nicole Cromwell said the applicants are engaged in the process of having a solution. Jeff Bollman referred to the site plan and the watershed line. Nicole Cromwell said there is a break in the topography as the water goes both directions.

Public Hearing

At 6:40 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1117-3230 Country Club Circle.

Jolane Jones, 4570 Ironhorse Trail, Billings, Montana

Mrs. Jones is the property owner. She explained the setback was requested due to the topography of the property. She stated they are not in a position to begin construction as their current home is on the market and requested the timeline be increased to 36 months for a building permit; and the construction completion deadline increased to 5 years. Mrs. Jones said if the request is denied, they will return to this Board to amend the request for this variance. She said they are in conversation with the City to discuss options with regard to moving the trail west of the house as they wish to accommodate the neighbor's concerns.

In response to a question by Barbara Walborn, Ms. Jones said the trail may have happened naturally.

Citizen Don Olsen, 2129 Fairview Place, stated it is the original oxen trail and has been there for over a hundred years. A boardwalk was constructed so the previous owner could access his adjacent home with a wheel chair.

Daniel Eggen asked if there is a reason for the timeframes and if they can be expanded. Nicole Cromwell state law requires a time limit be assigned but the Board may expand them. Jeff Bollman commented that the property owners may change and not be aware of the notification with longer timelines.

Don Olsen, 2112 Fairview Place

Mr. Olsen stated they own a nearby vacant lot. He commented on the variances that have been granted and which is considered the precedent. Nicole Cromwell said the precedent is set through the Board of Adjustment. He spoke in favor of keeping the access to the trail. He asked about his lot. Nicole Cromwell said the history would be behind them should they submit.

At 6:46 p.m. Chairman Bollman asked if there was anyone wishing to speak for City Variance #1117. There was none.

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

Motion

A motion was made by Barbara Walborn and seconded by Marleen Walter to conditionally approve Variance #1117-3230 Country Club Circle with the conditions recommended by staff. Condition of #3 will be amended to state, "The applicant shall receive approval for a building permit within 3 years of Board approval. Construction of the dwelling shall be completed within 5 years of Board approval."

Discussion

Chairman Bollman called for discussion on the motion. Marleen Walter commented given the economic situation the request for an extended timeline seems reasonable as higher end properties take longer to sell and there may be complications. James Olsen concurred.

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			
James Olsen	1			

The motion carries.

Item #4: Variance #1118 – 2222 Virginia Lane – Lot Area – A variance from 27-308 requiring a minimum lot area of 19,200 square feet for two single family dwellings to allow a lot area of 15,500 square feet for a planned remodel of an existing accessory building to complete and second dwelling unit in a Residential 9,600 zone (R-96) on Lot 8, Blackacre Subdivision a 15,500 square foot parcel. Tax ID: A03137C, Jamey Eisenbarth and Donald Christiansen, owners.

Ms. Cromwell read the legal description and gave the Staff presentation which reviewed the request and recommendation below. She clarified the legal advertisement and pointed out that the accessory is not yet constructed but it is planned.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for one existing dwelling and the planned remodel of an accessory building to accommodate a second detached dwelling in a Residential 9,600 (R-96) zone on Lot 8, Blackacre Subdivision, 2nd Filing, a 15,500 square foot parcel. Jamey Eisenbarth and Donald Christiansen are the owners. Planning staff is recommending conditional approval of the proposed reduction of the minimum lot size from 19,200 to 15,500 for two dwelling units.

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

- 1. The variance is to decrease the minimum lot size from 19,200 square feet to 15,500 square feet for existing two single-family dwellings. No other variance is intended or implied with this approval.**
- 2. The variance is limited to Lot 8, Blackacre Subdivision, 2nd Filing generally located at 2222 Virginia Lane.**

3. The owner will submit a building permit application within 180 days of Board of Adjustment approval and complete the construction within 3 years of Board of Adjustment approval.

4. Failure to begin or complete the approved actions on the variance will void the approved 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 by the members of the Board. Nicole Cromwell clarified the definition of a residence in response to a question by Barbara Walborn, stating if the facilities within the structure include a kitchen, bathroom, and a sleeping area it is considered a residence. Marleen Walter asked about the dimensions of the structure and it was given by applicant Jamey Eisenbarth. Daniel Eggen noted some inconsistencies in the denotation of the timeline between 180 days and 6 months. Nicole Cromwell stated she will address these to be consistent.

Public Hearing

At 6:58 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1118-2222 Virginia Lane.

Jamey Eisenbarth , 2222 Virginia Lane, Billings, Montana

Mr. Eisenbarth is the property owner. He stated he purchased the home in October and is requesting the variance to allow for the second dwelling on the property. He said the trellis system does not have to attach to the structures if it is an issue. Mr Eisenbarth stated the project will start within a few weeks of the variance approval. He commented they have worked with the property owners to the south and this should be a nice addition to the neighborhood. James Olsen asked what would happen if the pool house should be a rental and Nicole Cromwell gave the criterion for a rental. Mr. Eisenbarth said he does not wish to be a landlord.

At 7:04 p.m. Chairman Bollman asked if there was anyone wishing to speak for City Variance #1118. There was none.

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 Barbara Walborn to conditionally approve Variance #1118-2222 Virginia Lane with the conditions recommended by staff.

Condition #3 will be updated to read, “ **The owner will submit a building permit application within 6 months of Board of Adjustment approval and complete the construction within 3 years of Board of Adjustment approval.**”

Discussion

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

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			
James Olsen	1			

The motion carries.

Other Business/Announcements:

- A. Announcement: The next City Board of Adjustment meeting will be held on Wednesday, May 2, 2012.

Adjournment: 6:42 p.m.

Motion

On a motion by Boardmember Daniel Eggen and seconded by James Olsen the meeting was adjourned with a unanimous voice vote.

Chairman Jeff Bollman

ATTEST:

Tamara L. Deines, Planning Clerk