

CITY BOARD OF ADJUSTMENT

MINUTES: December 5, 2012

Approved by a motion on January 3, 2013

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

TOTAL NUMBER OF APPLICATIONS 2012	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	2	0	7	2	1	2	0	2	22

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

Others in Attendance: James and Janet Haar, Timothy and Katherine Schruth, owners; and Jeff Wollschlager, agent. Scott and Kacey Olson, owners.

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 6:01 p.m.

Approval of the October 3, 2012 Meeting Minutes

Chairman Bollman called for the approval of the October 3, 2012 meeting minutes. Daniel Eggen requested a correction on page one to change his designation. Page 4, clarify the last sentence to read, "He pointed out the proposed garage in his backyard would not in his neighbor's view shed".

Motion

A motion was made by Barbara Walborn and seconded by Marleen Walter to approve the October 3, 2012 meeting minutes with corrections.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest. Jim Olson has a conflict of interest on Variance #1133 and will recuse himself for this hearing.

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.

The following communications were received by staff:

11/18/12: City Variance #1132. Email in Opposition. Laura K Robinson, 527 Highland Park Drive

11/20/12: City Variance #1132: Letter of Opposition. James W. Fenimore, 711 Highland Park Drive

11/23/12: City Variance #1132. Letter of Opposition. Lois M Otto, 2525 Whittier Place

11/24/12: City Variance #1132. Letter in Opposition. Barbara A. Graf, 633 Highland Park Drive

11/26/12: City Variance #1132. Letter of Opposition. Kayhan Ostovar, 575 Highland Park Drive

11/28/12: City Variance #1132: Letter of Opposition. Teresa Otto, 2522 Irving Place

11/30/12: City Variance #1132. Letter of Opposition. Lynda Moss, 552 Highland Park Drive

12/02/12: City Variance#1132. Letter in Opposition. Sue Hart, 639 Highland Park Drive

12/4/12: City Variance #1132. Letter in Opposition. Lee and Andrea Groom, 2510 Longfellow Place

12/04/12: City Variance #1132. Email in Opposition through Ed Kemmick, Billings Gazette, Wendelin Campbell, 617 Highland Park Drive

12/04/12: City Variance #1132. Petition in Opposition.

12/13/12: City Variance #1132. Email-Withdrawal request. Timothy P Schruth, CFP, UBS Financial Services

11/17/12: City Variance #1133. Letter in Favor. John Forslund; Kelly Koch 1910 Beverly Hill Blvd

12/03/12: City Variance #1133. Email in Favor. Bonnie Smith, Bozeman, Montana /Ed Kemmick, Billings Gazette

12/04/12: City Variance #1133. Email in Favor. Kay and Ron Erickson, 1901 Beverly Hill Blvd.

Public Hearing:

At 6:04 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 gave the Staff presentation which reviewed the request and recommendation below.

Item 1 Variance #1132 – 630 Highland Park Drive – Lot Area – A variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 dwelling units to allow a minimum lot area of 18,709 square feet for two proposed new dwelling units on Lot 7, Block 4, Highland Park Subdivision. Tax ID: A08992. James and Janet Haar, Timothy and Katherine Schruth, owners and Jeff Wollschlager, agent.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 dwelling units in a Residential 9,600 (R-96) zone on Lot 7, Block 4 of Highland Park Subdivision, an 18,709 square foot parcel. The applicant proposes to demolish an existing single family dwelling and build 2 new single family dwellings. James and Janet Haar, Timothy and Katherine Schruth are the owners and Jeff Wollschlager is the agent. Planning staff is recommending denial of the proposed variance.

Nicole Cromwell stated the applicant has submitted a request to withdraw the application and she recommended to the Board approval of this request.

Motion

A motion was made by Barbara Walborn and it was seconded by Neil Kiner to accept the request to withdraw City Variance # 1132.

Discussion

Chairman Bollman called for discussion on the motion.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman	1			
Paul Cox	1			
Daniel Eggen	1			
Barbara Walborn	1			
Marleen Walter	1			
James Olson	1			
Neil Kiner	1			

The motion carried, 7-0.City Variance #1132 is withdrawn.

Chairman Bollman dismissed those who were in attendance for City Variance #1132 and thanked them for attending. A citizen asked when the applicant could reapply. Nicole Cromwell explained the applicant could submit another application within the next application deadline in January and the notification process would be followed. She said the neighbors would have to convene and hire an attorney to draft an amendment to the Covenants.

**Jim Olson left the meeting.

Item 2. Variance #1133 – 1907 Beverly Hill Boulevard – Setback for Accessory Structure – A variance from 27-310(i) requiring a minimum front setback of 20 feet for an accessory structure to allow a minimum front setback of 5.5 feet on Lot 2, Block 1, Hi-Line Subdivision a 8,250 square foot parcel of land. Tax ID: A09022. Scott and Kacey Olson, owners.

REQUEST

The applicant is requesting a variance from BMCC 27-310(i) requiring a minimum front setback of 20 feet for an accessory structure to allow a minimum front setback of 5.5 feet for an existing accessory building (a treehouse) in a Residential 9,600 (R-96) zone. The property is legally described as Lot 2, Block 1, Hi-Line Subdivision, an 8,250 square foot parcel of land. The address of the property is 1907 Beverly Hill Boulevard and the owners are Scott and Kacey Olson.

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

1. The variance is to reduce the required front setback from 20 feet to 5.5 feet for the existing tree house. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 2, Block 1, Hi-Line Subdivision generally located at 1907 Beverly Hill Boulevard.
3. The existing tree house structure will not be re-constructed if it is damaged or destroyed by more than 50% of its replacement value at the time of destruction.
4. No addition to the existing tree house will be allowed.
5. The owner will ensure the structure is secured from unauthorized entry.
6. Approval of the variance does not exempt the property from compliance with other adopted city codes including but not limited to building codes, site development and other zoning regulations.
7. 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 Neil Kiner, Nicole Cromwell referred to page 8 of the staff report and said she thought the setback may land near the furthest existing tree house post. She said a setback variance would be needed for any structure in the front yard. In response to a question by Daniel Eggen, Nicole Cromwell pointed out the ladder is it is not considered an encroachment as it could be removed. Daniel Eggen asked how the replacement value is defined. Nicole Cromwell said the homeowner would need to be aware of the conditions and staff would rely on them to consult with staff to see if it applies to the fifty percent rule. Jeff Bollman commented on the billboard regulation for destruction and Nicole Cromwell said the conditional language was taken from the nonconforming section of the zoning code. Dan Eggen asked who will monitor or verify the entrance to the tree house is secure and Nicole Cromwell replied staff would respond if a complaint was submitted to this regard. Neil Kiner commented this seems unnecessary. Dan Eggen said there is a liability to the homeowner and it would be in their best interest to pursue this variance. In response to a question by Marleen Walter, Nicole Cromwell said the tree house was finished this past summer. Paul Cox asked if the condition for the variance would run with the current and future property owners. Nicole Cromwell said the Board has conditioned a variance that would expire in five – ten years and the nonconforming improvement would have to be modified. She said she has not heard of a condition running with property ownership.

Public Hearing

At 6:25 p.m., Chairman Bollman opened the public hearing and called for proponents of City Variance #1133-1907 Beverly Hill Boulevard.

Kacey Olson, 1907 Beverly Hill Boulevard, Billings, Montana

Ms. Olson is the property owner. She asked the Board for approval of the variance request. She said the intention was to provide a special place for kids and encourage outdoor activity and the boys and their friends have enjoyed the tree house. They have had no complaints from the neighbors.

Ms. Olson said the posts violate the setback codes but does not obstruct the view. She commented through this process they have learned they live in a wonderfully supportive neighborhood; and there are rules for structures that are built in trees. She stated the Code Enforcement Division has been helpful and professional in pointing to options. Ms. Olson said the boys have learned the value of asking for permission first rather than forgiveness later. She said they have a lock, the ladder can be removed, and the boys are responsible for keeping the tree house locked. In response to Daniel Eggen's question, Mr. Olson stated they find the conditions presented acceptable.

Dillan Olson, 1907 Beverly Hill Boulevard, Billings, Montana

Mr. Dillan Olson stated his Grandpa built the tree house for his eight year old brother Logan. Being twelve, he loves to talk and hang out with his friends. He said his grandfather spent \$1000 and lots of personal time constructing the tree house, which includes a pulley and provides a great snowball base. Mr. Olson stated the tree house has brought his family closer and made them extremely happy. He said he would love to keep it as it provides a place to sleep and get away from adults. Overall he would be extremely disappointed if they have to tear it down and has been praying they can keep it.

Logan Olson, 1907 Beverly Hill Boulevard, Billings, Montana

Mr. Logan Olson stated his Grandpa gave him the tree house for his birthday. The tree house is important to him as it was a gift and his grandpa spent a lot of money and time on it. He likes to use the pulley to have lunch in the tree house; play with “Legos”; and play up there with his brother and friends. Sometimes his cat comes up to the tree house too. Mr. Olson said if the tree house has to be taken down, he would be very sad as he spent a lot of his summer hammering nails and putting up wall boards with his grandpa. He said he would miss its unique design. Mr. Olson stated his grandpa is really nice. He closed and asked, “Please would you let us keep it City Council?”

Tom Caudle, 1926 Beverly Hill Blvd., Billings, Montana

Mr. Caudle stated is supports this request. He said the tree house is not an obstacle when coming around the corner or in the line of sight.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1133. 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 it was seconded to approve City Variance # 1133 with the conditions recommended by staff.

Paul Cox discussed an amendment to the motion to address protection of future property owners.

Motion

A motion was made by Paul Cox, and seconded by Daniel Eggen to change Condition of Approval #7: “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”, to state the variance run with current property ownership only in order to protect future property owners.

Discussion

Chairman Bollman called for discussion on the motion. The Board asked for Ms. Olson’s opinion on the amendment to the motion. Ms. Olson said it is hard to say whether the tree house would be a selling point or take away from the home and it may depend on who purchased the property. The requirement to go through the approval process may be a deterrent. She said she would rather not go that route, as the here and now is her current concern. She said she would rather not have a condition for future property owners as it may deter from a future sale of the property.

Chairman Bollman called for a vote on the amendment to the original motion.

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

The amendment to the original motion fails, 3-3.

Discussion

Neil Kiner condition said he does not feel Condition of Approval #5 is necessary as it would not be policed. Jeff Bollman stated the condition would be enforced through Code Enforcement Division and City Court. He commented he visited the site; the tree house is not as ominous from the street as in the photo. Barbara Walborn said she does not feel it is obtrusive as other items she has seen.

Chairman Bollman called for a vote on the original motion.

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

The original motion carried, 6-0. City Variance #1133 is conditionally approved.

Other Business/Announcements:

- A. Announcement: The next City Board of Adjustment meeting will be held on Thursday, January 3, 2013.

Adjournment: 6:44 p.m.

ATTEST: Approved by a motion on January 3, 2013

Chairman Jeff Bollman

Tamara L. Deines, Planning Clerk