

CITY BOARD OF ADJUSTMENT

MINUTES: May 1, 2013

Approved by a motion on June 5, 2013

Name	Title	01/03/13	02/06/13	03/06/13	04/03/13	05/01/13	06/05/13	07/03/13	08/07/13	09/04/13	10/02/13	11/06/13	12/04/13
Jeff Bollman	Chairman	1	1	1	E	E							
Paul Cox	Vice Chairman	1	1	1	1	1							
Daniel Eggen	Boardmember	1	1	1	1	1							
Neil Kiner	Boardmember	E	E	1	1	1							
Barbara Walborn	Boardmember	1	1	1	E	1							
Marlene Walter	Boardmember	1	1	1	E	1							
James Olson	Boardmember	1	E	1	1	A							

TOTAL NUMBER OF APPLICATIONS 2013	01/03/13	02/06/13	03/06/13	04/03/13	05/01/13	06/05/13	07/03/13	08/07/13	09/04/13	10/02/13	11/06/13	12/04/13	TOTAL
Variance	3	4	1	6	3								17

In the absence of Chairman Jeff Bollman, Vice Chairman Cox called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the City Council Chambers.

Vice Chairman Cox 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; and Planning Division Manager Wyeth Friday, who is taking minutes in the absence of Tammy Deines, Planning Clerk.

Others in Attendance: Agent Kya Schroeder; Applicant/Owner Jerry T Ray; Connie Ray; Jeff Schornhard, Kelly Inns; Mary Anderson, agent; Zene Johnson, Valerie Dangerfield, Allen Barta, Sheila Foos.

Public Comment:

Vice Chairman Cox 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. Vice Chairman Cox closed the public comment period at 6:05 p.m.

Approval of the April 3, 2013 Meeting Minutes

Vice Chairman Cox called for the approval of the April 3, 2013 meeting minutes. Corrections: Page 5 of 13, Condition of Approval #1, add “feet” for continuity.

Motion

A motion was made by Neil Kiner and seconded by Barbara Walborn to approve the April 3, 2013 meeting minutes with corrections.

The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest

Vice Chairman Cox asked for disclosures of conflict of interest. Boardmember Kiner stated he has a conflict of interest on City Variance #1149 and will recuse himself during that portion of the meeting.

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.

Neil Kiner stated he will be abstaining from voting on Variance #1149 as he had exparté communication with Applicant Jerry Ray. Marlene Walter disclosed she had a conversation with Applicant Jerry Ray but not regarding this application. Barbara Walborn disclosed she had a conversation with Applicant Jerry Ray. Nicole Cromwell noted that Dave Ward, developer of the GSA Office Building, called Nicole to say he is in favor of the EBURD FBC as it stands now. Paul Cox stated from time to time his firm, Sign Products, has done work for La Quinta Inns and Jerry Ray but not in relation to these variance requests.

Public Hearing:

At 6:09 p.m., Vice Chairman Cox stated the public hearing will be opened and this Board will allow public comment this evening. Ms. Cromwell reviewed the hearing process and presentation process for the meeting for how each variance will be reviewed and acted upon. She said four votes are needed to approve a variance. Tonight, with Mr. Kiner abstaining on one variance, Variance #1149 will need a unanimous vote from the Board.

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

Item 1: Variance #1148 – 5720 South Frontage Road – LaQuinta Inn and Suites – Height

Variance - A variance from 27-309 requiring a maximum building height of 45 feet to allow a maximum height of 49 feet in an HC zone on Lots 4 and 5, Block 1, Kelly Subdivision, a 5.53-acre parcel of land. Tax ID: A28396. Kelly Inns, owner and Kya Schroeder of Lightowler Johnson Associates is the agent.

REQUEST

The applicant is requesting a variance from BMCC 27-309 requiring a maximum building height of forty-five (45) feet to allow a maximum height of forty-nine (49) feet in a Highway Commercial (HC) zone. The property is legally described at Lots 4 and 5, Block 1, Kelly Subdivision and is generally located at 5720 South Frontage Road. The site previously developed as the Big Splash Water Park. The owner is Kelly Inns and the agent is Kya Schroeder of Lightowler Johnson Associates. Staff is recommending conditional approval of the proposed variance.

Staff is recommending 6 conditions for the variance request:

1. The variance is for a maximum building height of 49 feet, excluding parapets and no other variance is intended or implied by this approval.
2. The variance applies to Lots 4 and 5, Block 1, Kelly Subdivision generally located at 5720 South Frontage Road.
3. The proposed building will be located and oriented in substantial conformance with the submitted site plan.
4. The applicant will apply for a building permit within 3 years of the Board of Adjustment approval of the variance. Construction of the hotel will be completed within 5 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.
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

Vice Chairman Cox asked the members of the Board for questions and discussion.

Neil Kiner pointed out that the parapet and tower are taller than the variance requested 49 feet. Nicole Cromwell explained that the parapet and tower are not counted and considered exempt as it is unoccupied space. Paul Cox pointed out that the parapet is probably a false front. Daniel Eggen asked if the City has considered amending the height limit for the Highway Commercial zone to accommodate the applications for new hotels. Nicole Cromwell stated the height limit has not been considered for amendment. Daniel Eggen asked about the process to amend the regulations and Nicole Cromwell gave an explanation.

Public Hearing

Vice Chairman Cox opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1148. There was testimony from the applicant, Jeff Schornhard, Kelly Inns. Vice Chairman Cox closed the public hearing at 6:22 p.m.

Motion

A motion was made by Neil Kiner and it was seconded by Barbara Walborn to approve City Variance #1148- 5720 South Frontage Road with the conditions recommended by staff.

Discussion

Vice Chairman Cox called for discussion on the motion. Neil Kiner said it might be prudent to consider the changes to the zoning regarding the height limitations.

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 motion carried, 5-0. City Variance #1148 is conditionally approved.

Motion

A motion was made Daniel Eggen and it was seconded by Neil Kiner to reorder the agenda and move Agenda Item #3, Variance #1150, to be heard before Agenda Item #2, Variance #1149.

The motion carried with a unanimous voice vote.

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

Item 3: Variance #1150 – 29 Jackson St – Lot Area – A variance from 27-308 requiring a minimum lot area of 7,000 for 2 existing single family homes to allow a lot area of 6,250 square feet in an R-60 zone on Lots 38 and 39, Block 1 of State Realty Addition. Tax ID: A14609. Augusta Lee Bennett, owner and Mary Anderson, agent.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet for 2 existing dwellings in a Residential 6,000 (R-60) zone on Lots 38 and 39, Block 1 of State Realty Addition Subdivision, a 6,250 square foot parcel. Augusta Lee Bennett is the owner and Mary Anderson is the agent. Planning staff is recommending conditional approval of the proposed reduction of the minimum lot size.

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 7,000 square feet to 6,250 square feet for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 38 and 39, Block 1 State Realty Addition Subdivision generally located at 29 Jackson Street.
3. Any future re-construction of one or both structures will require compliance with other all other zoning regulations (with the exception of this variance and Variance #1009) and city ordinances that apply at the time of re-construction.
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

Vice Chairman Cox asked the members of the Board for questions and discussion. Marlene Walter asked about the approximate size of the rear house. Nicole Cromwell stated the front house was built in 1925 and was 916 square feet; the rear house is about 600 square feet. Marlene Walter asked if there is any tax revenue for the building currently. Nicole Cromwell replied she did not think there was any value of the structure now. In response to a query by Daniel Eggen, Nicole Cromwell said the Department of Revenue will acknowledge the building when a permit is applied for.

Public Hearing Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1150. There was none.

Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1150. There was none. Vice Chairman Cox closed the public hearing at 6:33 p.m.

Motion

A motion was made by Barbara Walborn and it was seconded by Marlene Walter to approve City Variance #1150 - 29 Jackson Street with the conditions recommended by staff.

Discussion

Vice Chairman Cox called for discussion on the motion. Marlene Walter said affordable housing is needed and necessary and she commended anyone who takes the time and effort to do that. Daniel Eggen observed that the Board has seen other property recently doing rehabilitation projects.

Vice Chairman Cox called for a vote on the 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 motion passes 5-0. City Variance #1150 is conditionally approved.

**Neil Kiner left the meeting at 6:32 pm since he was abstaining from Variance #1149.

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

Item 2: Variance #1149 – 2018 4th Ave N, 2023 3rd Ave N and 220 N 20th Street – Landscaping

Variance for new Parking Lots - A variance from 27-1815 requiring frontage buffer yards and interior parking lot landscaping to allow the application of the previous parking lot landscaping requirements at 27-1106 in the EBURD – Rail Spur Village (EBURD-RSV) and EBURD – Rail Spur Village Main Street (EBURD-RSVMS) on Lots 17A & 18A, Block 37 and Lots 11 and 12, Block 65 of Billings Original Town, a 39,600 square foot parcel of land. Tax IDs: A00196D, A00196C and A00448. JEM, LLC, owner and Jerry Ray, agent.

REQUEST

The applicant is requesting a variance from BMCC 27-1815 requiring street trees, minimum tree canopy coverage (at 20-year maturity), frontage buffer requirements and 50-foot maximum distance from a parking space to a landscaped area, to allow the application of previous landscape requirements under 27-1106 for 2 new parking lots in the EBURD – Rail Spur Village (EBURD-RSV) and EBURD – Rail Spur Village Main Street (EBURD-RSVMS). The property is legally described as Lots 17A & 18A, Block 37 and Lots 11 and 12, Block 65 of Billings Original Town and are generally located at 2018 4th Ave N, 2023 3rd Ave N and 220 N 20th Street. The total area for the 4th Ave N and 3rd Ave N property is 32,600 square feet and the lot area for 22 N 20th Street is 7,000 square feet. The 4th Ave N and 3rd Ave N site has been used as an equipment storage site and the

220 N 20th Street property was used as a residential property until the dwelling was demolished in 1998. The owner is JEM, LLC and the agent is Jerry Ray.

RECOMMENDATION

Staff is recommending denial of the proposed variances.

Nicole Cromwell explained the application, and said in her review she considered the application through the old Controlled Industrial, (CI), zoning and the new EBURD Form Based Code, (FBC), zoning. She explained the differences between the two codes for landscaping requirements, including the requirements for the number of trees; landscaping area; fencing; and shrubs.

She noted requirement differences for both the large parking lot and the small parking lot under the variance request. She reinforced the fact that corner lots in the new EBURD FBC are critical to support pedestrian activity and circulation and clarified why more landscaping is required.

Nicole Cromwell continued with the presentation including several photos of the property, and explained the staff recommendation of denial of the variance. She said there have been no variances in the EBURD under the new FBC, and pointed out the code was recently adopted in October 2012. She noted there are non-conforming parking lots in the area that have been in existence for a long time. The FIB and GSA building parking lots are landscaped to previous standards but are very close to meeting the new code. She explained the street trees are required in the new code to encourage pedestrian activity and activity on the street.

She stated the variance is not in conformance with the EBURD Master Plan, and said the lack of landscaping was pointed out during the master planning process. She said one of the goals of the Master Plan is to encourage landscaping in the redevelopment of the district to achieve the goals of a walkable, pedestrian friendly, environment. She also pointed out that there are areas in the parking lot site plan submitted that could be landscaped regardless and do not affect the number of spaces.

Discussion

Vice Chairman Cox asked the members of the Board for questions and discussion. Paul Cox asked for clarification and said the applicant would like not to do any landscaping. Nicole Cromwell clarified that the applicant wishes to apply the old code to this property.

Daniel Eggen asked about the new HAWK signal at 4th Avenue North and 20th Street, and what the specifics of the fencing are for the district. Nicole Cromwell stated the maximum height for fencing is 6' and it must have posts or columns. Front yard fences must have some opacity for viewing through it. She said the fence material may be brick, stone, vinyl, composites, steel, etc. Prohibited materials include chain link, wire, and razor wire. The minimum allowable fence height in frontage areas is 4 feet. There are color specifics as well with person gates to exit and enter the property. She said the code is very specific on fencing, landscaping, tree requirements, and tree cover.

Paul Cox asked if opacity of fencing be addressed for clear vision areas. Nicole Cromwell answered it was not specifically addressed but it would be factored into the design. She said she thought the setbacks would work.

Daniel Eggen asked about the FIB and GSA meeting the new FBC requirements. Nicole Cromwell said they would meet the requirements with some additional landscaping and modifications. She said they do not need to come into compliance now and the code addresses these changes.

Barbara Walborn asked if the GSA building did not need to comply since it is a Federal building. Nicole Cromwell said the GSA building is privately owned so it is required to meet the codes that apply when the permitting process starts.

Marlene Walter asked about the location of the Food Bank building.

Barbara Walborn pointed out there are several areas of Billings with large trees that have damaged the sidewalks. Nicole Cromwell explained a City Forester is now on staff that manages the planting of trees in the boulevards and right-of-ways who will ensure proper planting techniques. Paul Cox commented when trees die there are requirements for maintaining landscaping in perpetuity. Nicole Cromwell pointed out the new code allows for rain gardens and storm water control to water landscaping and not just relying on irrigation systems.

Public Hearing

Vice Chairman Cox opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1149.

Applicant

Jerry Ray JEM LLC, 2245 54th Street West, Billings, Montana

Mr. Ray is the agent for the applicant, JEM LLC. Mr. Ray stated he is the owner of the properties that will become a national forest, and he wished to clarify that Ms. Cromwell is not a forester. Mr. Ray distributed a document to the Board depicting a cost of \$30,000 to draw up his landscape plan, and said he did not want to pay for that.

Mr. Ray explained he went to landscaping companies and had A-1 Landscaping drew up a plan for him for both lots. He passed out the A-1 landscape estimate and information, and said it was drawn up to meet the EBURD code. He passed around a photo of the parking spaces with his interpretation of the landscaping requirements as per A-1 Landscaping. He showed that it cost \$49,000 more to do this lot under the new FBC than under the old code to landscape his parking areas. He said under this program he would have to pave the alley which has a projected cost of \$60,000. Mr. Ray stated he was opposed to the code from the beginning of the FBC process. He said he pushed through a change to the code to allow parking lots on corner lots. He explained the dimensions of parking spaces and said that he can't build the lot for parking to meet the landscaping requirements. He said he could understand planting the trees to allow street people to sleep under, and this cannot be any worse than the landscaped bunkers on Montana Avenue. He commented people don't follow the landscaping rules around the City now.

Mr. Ray said the original zoning was fine. He pointed out the parking lot for the Western Security Bank located at Grand Avenue and 24th Street West and said it has no trees or curbs. It is wide open, clean, stripped, and well lit. Mr. Ray provided a letter written by a civil engineering from Treasure State Engineering to the members of the Board, and said he has done a lot of parking lots. Mr. Ray said the engineer stated the lot could not be cleared of snow and ice with that much foliage coverage; and lighting would be difficult due to the trees and branches. He said the landscaping expense under the old code for this property would be \$9,000.

Mr. Ray said his existing lots have been used for equipment, and cars. He stated it can stay the same as it is now and the City can't do anything about it but he wants to do some improvements as there is a need for parking. He said GSA is not going to add to the landscaping. He asked the members of the Board if they had questions.

Discussion

Paul Cox asked if Mr. Ray had attended the EBURD meetings when the EBURD Code was developed. Mr. Ray acknowledged his daughter and partner Jennifer and her efforts to amend the code. He stated he fought with Steve Zeier the whole way. He said if he can't do the project, he won't do it.

Vice Chairman Cox asked if there were others asking to speak in favor of City Variance #1149.

Proponents

Sheila Foos – 314 North 20th Street, Billings, Montana

Ms. Foos stated she is in favor of the variance. She said the Billings area is semi-arid and a lot of trees are not conducive to the arid area. Ms. Foos stated the area is light industrial and not for pedestrians to walk. She commented people do not walk in the area now.

Vice Chairman Cox asked if there was anyone wishing to speak against City Variance #1149.

Opponents

Steve Zeier, BIRD, 1413 4th Avenue North, Billings, Montana

Mr. Zeier said he represents the BIRD and noted a letter was submitted by the BIRD to this Board. He said he is here to answer questions about the letter.

Marlene Walter asked why corner lots are so important and not suggested to be used for parking lots. Mr. Zeier explained corner lots set the tone and character for the streetscape. He said at first parking at corners was prohibited but the draft was changed to allow parking lots.

Paul Cox asked how many meetings were conducted prior to the FBC code adoption. Mr. Zeier said there were three public meetings over a year and a half, and numerous other meetings. He stated he personally met with Mr. Ray in his office. He explained the Master Plan came before the code process; and the Master Plan guided the need for the code changes.

Nicole Cromwell clarified that the corner lot at 220 North 20th Street has two frontages affected as there are frontage buffering requirements that apply to corner lots.

Barbara Walborn asked if it is true that the corner lot could not be used for a parking lot. Nicole Cromwell said the application of the landscaping code would limit the drive aisle width for two way traffic and the City Engineering Division could accommodate the narrower aisle with a variance.

Vice Chairman Cox asked if the Board had other questions for Mr. Zeier. There were none. Mr. Cox asked if there was anyone else wishing to speak in favor or against City Variance #1149.

Allen Barta, 4095 Nighthawk Road, Billings, Montana

Mr. Barta is a property owner at 2111 4th Avenue North. He stated he is for landscaping minimums or maximums. He said he has people approach him for parking needs. He said he is learning the requirements and is in favor of landscaping making it look good. He said he is learning on this and wondering about the variance process. His questions pertained more to the review process if he applied for a variance and how this affects the property. He commended Ms. Cromwell on her presentation as it was well thought out. He is for landscaping and wondered if there is a "happy medium".

Vice Chairman Cox called for rebuttal.

Rebuttal

Jerry Ray JEM LLC, 2245 54th Street West, Billings, Montana

Mr. Ray stated the Controlled Industrial zoning calls for a tree every 40 feet in the boulevard and leaves it up to the developer to design the interior parking areas. He said he didn't know what they will do with the street people as they may enjoy the shade. He said he would put landscaping across the front to make it look nice but he is not in favor of installing gates. Mr. Ray continued and discussed the building frontage types and requirements for windows and doors. He said this should be decided by the Building and Fire Departments. The market dictates what should be built.

Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1149. There was none. Vice Chairman Cox closed the public hearing at 7:34 pm and said he would entertain a motion on the application. Marlene Walter said she thought that the large lot should conform to the new standards and the small lot should be given a variance.

Motion

A motion was made by Barbara Walborn to approve the variance request and it was seconded by Dan Eggen for approving of the landscaping variance for 2018 4th Ave N and 2023 3rd Ave N and for the proposed variance for 220 N 20th Street.

Discussion

Vice President Cox called for discussion. Dan Eggen asked if the approval is to be separated between the two lots.

Motion

Marlene Walter made a motion and it was seconded by Dan Eggen to amend the original motion to approve the variance request for Lots 11 and 12, Block 65 of Billings Original Town (220 N 20th Street), and deny the variance request for Lots 17A and 18A, Block 37 of Billings Original Town (2018 4th Ave N and 2023 3rd Ave N).

Discussion

Vice Chairman Cox called for discussion on the motion. Barbara Walborn said she feels the Board will see a lot of people requesting variances. Nicole Cromwell stated this is not a criterion for variances. Barbara Walborn said the smaller lot has a hardship for parking spaces, and Dan Eggen concurred with Barbara's comments. Paul Cox said the smaller lot would use the old Controlled Industrial regulations and the large lot would use the EBURD Form Based Code regulations. He spoke to the precedent of the variance decision at this point, and stressed this is an important vote as it sets a precedent. Barbara Walborn said she thinks the larger lot should meet the regulations, but the smaller lot should not. Marlene Walter said the smaller lot lends itself to be a nice parking lot. Barbara Walborn asked for clarification of the fencing requirements.

Vice Chairman Cox called for a vote on the 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	1

The motion passes 4-0. The Board of Adjustment voted 4-0 to approve the variance request for Lots 11 and 12, Block 65 of Billings Original Town (220 N 20th Street). The variance for Lots 17A and 18A, Block 37 of Billings Original Town (2018 4th Ave N and 2023 3rd Ave N) is denied.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on June 5, 2013.
- Boardmember Eggen requested an agenda item for the June 5 meeting to discuss building height requirements.

Adjournment:

Motion

At 7:45 p.m. Barbara Walborn made a motion and it was seconded by Daniel Eggen to adjourn.

The motion carried with a unanimous voice vote.

ATTEST: Approved by a motion on June 5, 2013

Vice Chairman Paul Cox

Tamara L. Deines, Planning Clerk