

CITY BOARD OF ADJUSTMENT

MINUTES: June 5, 2013

Corrected and approved by a motion on July 10, 2013

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

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	4							21

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, Zoning Coordinator; Planner Lora Mattox; Tammy Deines, Planning Clerk.

Others in Attendance: Kelly McCarthy; Mathew McDonald, Jerry Ray, Perry Moler, Jim Majerus, Susan Little, Mark Sewell

Approval of the May 1, 2013 Meeting Minutes

Chairman Bollman called for the approval of the May 1, 2013 meeting minutes. Neil Kiner requested a correction on page 3, Discussion on the motion, change “the zoning” to “future changes to the zoning”. Page 4, Dan Eggen made the motion and Neil Kiner seconded.

Motion

A motion was made by Jim Olson and seconded by Neil Kiner to approve the May 1, 2013 meeting minutes with corrections.

The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest

Chairman Bollman 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. Staff noted receipt of an e-mail regarding Variance #1153, and the May 30, 2013 letter from the Billings Industrial Revitalization District is available in the exparté notebook.

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. There was none.

Request for Reconsideration of City Board of Adjustment Decision-Variance #1149

Chairman Bollman acknowledged Staff's receipt of a May 30, 2013 letter from the Billings Industrial Revitalization District, BIRD, requesting the Board reconsider the granting of and vacate City Variance #1149 after receiving a presentation on the EBURD Code, its history and intent and that the Board provide a new hearing to consider all sides of the issues." He explained this variance was heard at the May 1, 2013 Board of Adjustment meeting and he was not in attendance. He stated a motion for reconsideration would have to be made by Boardmember Paul Cox or Boardmember Dan Eggen. Neither Boardmember offered a motion for reconsideration at this time.

Zoning Coordinator asked Chairman Bollman to recognize those that wish to comment on this issue.

Jerry Ray, 2646 Grand Avenue, Billings, Montana

Mr. Ray stated this is "his deal". He stated he understood that both Boardmembers said "no" to the request for reconsideration. He said according to "Roberts Rules" this issue is over and done. He asked the Board to close this issue and move on.

Kelly McCarthy, 625 Yellowstone Avenue, Billings, Montana

Mr. McCarthy stated he is the Treasurer of the Billings Industrial Revitalization District, (BIRD), and is representing them this evening. Mr. McCarthy asked the Board for reconsideration of the previous decision on City Variance #1149; and request vacation and re-visitation of the decision.

Mr. McCarthy read aloud and reviewed the May 30, 2013 letter. He acknowledged culpability and a missed opportunity with "Item C", helping the Board with an understanding of the EBURD code as it is very new. He explained several thousands of have been invested to get to this point, with a great deal of it coming from the landowners themselves to rejuvenate the property.

Mr. McCarthy said the area in question is zoned for affordable housing and some commercial; and the request does not meet that. He said the parking in lot in question would fit into that but the parcel in question is not zoned industrial. He reiterated the BIRD is requesting a vacation of the previous action, and if honored, they will do a better job of providing information to make a decision.

Matthew McDonald, 703 North 30th Street, Billings, Montana

Mr. McDonald distributed handouts to the members of the Board. He stated Jeffery Hunnes is not present this evening. Mr. McDonald gave an overview of the development of the EBURD Master Plan and the corresponding code, which was an eighteen month development process.

Mr. McDonald stated at the last meeting Boardmember Walter and Boardmember Walborn disclosed exparté communication with applicant Jerry Ray, but they did not communicate what was said. He

reported all four Board members stated they did not know what the EBURD was all about, and it is their job to provide the information. Mr. McDonald stated he feels the decision was incorrect, and a specific statement is needed as to what took place with the exparte communication. He asked for the Board's reconsideration of the variance granting a rehearing for the July 3, 2013 meeting.

Jerry Ray, 2646 Grand Avenue, Billings, Montana

Mr. Ray stated had no exparte communication with any of the Board members, and this particular zoning thing never came up. Mr. Ray said the people are scared of this code. He commented it has been a parking lot, and they want him to spend \$60,000 on improvements. Mr. Ray stated the Board made a decision, and according to "Robert's Rules" this is done and Nicole should move this meeting on.

Chairman Jeff Bollman apologized, and stated he should have opened the meeting for public comment.

Kelly McCarthy, 625 Yellowstone Avenue, Billings, Montana

Mr. McCarthy stated the adoption of the code was adopted unanimously by all the landowners. Regarding the additional landscape requirement, Mr. McCarthy stated landowners can get help from the Tax Increment Finance District, (TIFD), to get help paying for weed mitigation.

Jerry Ray, 2646 Grand Avenue, Billings, Montana

Mr. Ray said the Federal Building does not begin to meet the criterion for landscaping for the EBURD or parking requirements. Mr. Ray stated this has already been voted on and hashed. "Move on".

Discussion

Nicole Cromwell explained the process for reconsideration under "Roberts Rules". She said if the Board should vote to reconsider, a specific date, time, and place would have to be set to take additional testimony on the motion made at the meeting on May 1, 2013. Staff would notify property owners, place a legal notice, and the Board would consider this as a new application.

Jim Olson asked what would take place if the Board decides to keep the motion to deny the variance. Nicole Cromwell replied there would be no reconsideration after this meeting. In response to further question by Boardmember Jim Olson, Nicole Cromwell stated the denial of the variance cannot have a similar variance applied for again for one year.

Chairman Bollman asked Boardmembers Dan Eggen and Paul Cox for a decision. Citizen Jerry Ray interjected and asked if Chairman Bollman is begging for a vote. Chairman Bollman stated he wished to be clear, as it is likely this will be moved forward to District Court for a hearing.

Neither Boardmember Eggen nor Boardmember Cox forwarded a motion for reconsideration.

Chairman Bollman closed this portion of the meeting at 6:27 p.m. and moved on to Regular Business.

Public Hearing:

At 6:11 p.m., Chairman Bollman 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. Ms. Cromwell read the legal description and Lora Mattox gave the Staff presentation which reviewed the request and recommendation below.

Item #1: Variance #1151 – 714 & 716 N 32nd Street – Lot Area – A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a duplex dwelling to allow a lot area of 7,000 square feet in an R-70 zone on Lots 4 and 5, Block 23 of North Elevation Subdivision 3rd Filing. Tax ID: A11935. Perry Moler, Jr. owner.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for a duplex dwelling to allow a minimum lot area of 7,000 square feet in a Residential 7,000 (R-70) zone on Lots 4 and 5, Block 23 of North Elevation Subdivision, 3rd filing. Perry Moler, Jr. is the owner. 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 9,600 square feet to 7,000 square feet for a duplex dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 4 and 5, Block 23 North Elevation Subdivision 3rd Filing generally located at 714 and 716 N. 32nd Street.
3. Any future re-construction of the structure will require compliance with other all other zoning regulations (with the exception of this variance) 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

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

Public Hearing

At 6: 32 p.m. Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1151.

Perry Moler, 714 and 716 North 32nd Street, Billings, Montana

Mr. Moler stated the building is over 100 years old and existed prior to the current zoning going into effect, and commented on the multi-family housing and zoning in the surrounding area.

Jeff Bollman closed the public hearing at 6:33 p.m. and called for a motion.

Motion

A motion was made by Neil Kiner and it was seconded by Paul Cox to approve City Variance #1151-714 & 716 N 32nd Street with the Conditions and Findings of Fact stated and recommended by staff.

Discussion

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

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 #1151 is conditionally approved.

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

Item #2: Variance #1152 – 2310 and 2312 Yellowstone Avenue – Lot Area – A variance from 27-308 requiring a minimum lot area of 9,600 square feet for 1 existing duplex to allow a lot area of 9,000 square feet in an R-70 zone on the east 60 feet of Lot 13, Block 2 Arnold Subdivision 2nd Filing. Tax ID: A02482A. Jim and Cheryl Majerus, owners.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for a duplex dwelling to allow a lot area of 9,000 square feet in a Residential 7,000 (R-70) zone. The property is legally described as the East 60 feet of Lot 13, Block 2, Arnold Subdivision, 2nd Filing and is generally located at 2310/2312 Yellowstone Avenue. The owner is Jim and Cheryl Majerus. The variance, if granted, would allow the owner to re-build the existing structure if damaged in the future. No construction or re-building is planned at this time. Planning staff is recommending conditional approval of the proposed variance.

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the minimum lot size from 9,600 square feet to 9,000 square feet for an existing duplex dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to the East 60 feet of Lot 13, Block 2, Arnold Subdivision, 2nd Filing, generally located at 2310/2312 Yellowstone Avenue.
3. Any future re-construction of the existing structure will require compliance with other all other zoning regulations 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

Chairman Bollman asked the members of the Board for questions and discussion. There were none.

Public Hearing

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1152.

Jim Majerus, 4135 Pine Cove Road, Billings, Montana

Mr. Majerus is the owner of this property. He said there are several of these structures in a row that all have the same issues. He stated they are very close to meeting the requirements and would like to finance the property in the future.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1152. There was none. Chairman Bollman closed the public hearing at 6:38 p.m.

Motion

A motion was made by Jim Olson and it was seconded by Neil Kiner to approve City Variance #1152 – 2310 and 2312 Yellowstone Avenue with the conditions recommended by staff.

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
Marlene Walter				1
James Olson	1			
Neil Kiner	1			

The motion passes 5-0. City Variance #1152 is conditionally approved.

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

Item #3: Variance #1153 – 1810 and 1812 Virginia Lane – Setbacks, Lot Coverage and Lot Area

A variance from 27-308 requiring a minimum lot area of 7,000 square feet for 1 existing duplex to allow a lot area of 6,143 square feet; from 27-308 requiring a minimum front setback of 15 feet to allow a 9-foot front setback; from 27-308 requiring a minimum rear setback of 20 feet to allow a 3.5-foot rear setback; from 27-308 requiring a maximum lot coverage of 40% to allow a maximum lot coverage of 54% and from 27-602 requiring a minimum 70-foot setback to the centerline of a minor arterial street to allow a 39-foot centerline setback in an R-60 zone on the north 58.5 feet of Lots 1 and 2, Block 8 of Clanton Heights and the un-platted land adjacent to Lot 1. Tax ID: A05045 Alice Kay Carpenter, owner.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet for 1 existing duplex to allow a lot area of 6,143 square feet; from 27-308 requiring a minimum front setback of 15 feet to allow a 9-foot front setback; from 27-308 requiring a minimum rear setback of 20 feet to allow a 3.5 –foot rear setback; from 27-308 requiring a maximum lot coverage

of 40% to allow a maximum lot coverage of 54% and from 27-602 requiring a minimum 70-foot setback to the centerline of a minor arterial street to allow a 39-foot centerline setback in an R-60 zone on the north 58.5 feet of Lots 1 and 2, Block 8 of Clanton Heights Subdivision and the unplatted land adjacent to Lot 1. The owner is Alice Kay Carpenter. The variance, if granted, would allow the owner to re-build the existing structure if damaged in the future. No construction or re-building is planned at this time. Planning staff is recommending conditional approval of the reduction of the minimum lot size from 7,000 square feet to 6,143 square feet for a duplex unit; reduction of the minor arterial setback from 70 feet to 45 feet; and to reduce the rear setback from 20 feet to 5 feet. Staff is recommending denial of the request to reduce the front yard setback from 15 feet to 9 feet and the request to increase lot coverage from 40% to 54%.

RECOMMENDATION

Staff recommends conditional approval of the reduction of the minimum lot size from 7,000 square feet to 6,143 square feet for an existing duplex; reduction of the minor arterial setback from 70 feet to 45 feet; and to reduce the rear setback from 20 feet to 5 feet. Staff is recommending denial of the request to reduce the front yard setback from 15 feet to 9 feet and the request to increase lot coverage from 40% to 54%

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the minimum lot size from 7,000 square feet to 6,143 square feet for an existing duplex dwelling; decrease the minor arterial setback from 70 feet to 45 feet; reduce the rear yard setback from 20 feet to 5 feet. No other variance is intended or implied with this approval.
2. The variance is limited to the north 58.5 feet of Lots 1 and 2, Block 8 of Clanton Heights and the un-platted land adjacent to Lot 1, generally located at 1810/1812 Virginia Lane.
3. Any future re-construction of the existing structure will require compliance with other all other zoning regulations 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

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Dan Eggen, Lora Mattox noted the building has a brick façade and clarified to help him correlate the alleyway to the front of the parcel. She pointed out the Blanco Blanco Beauty Shop, which has a 0 rear yard setback to Boardmember Olson.

In response to a query by Neil Kiner, Lora Mattox stated she sent out the correspondence with her contact information but had not visited with the applicant. She said the objective is to obtain refinancing for the property as a duplex if destroyed. She continued with an explanation for the staff recommendation for the setbacks on this property. She said comments were received from the City Building Division on the 3.5 foot rear setback stating future construction would have to include a one hour firewall. Neil Kiner and members of the Board clarified the allowable square footage for lot coverage. Dan Eggen asked if there are future plans for Virginia Lane expansion. Lora Mattox replied there is no anticipation of changes to Virginia Lane as it is a minor arterial. Discussion followed.

Public Hearing

At 6:54 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1153.

Applicant

Alice Carpenter, Billings, Montana

Ms. Carpenter is the owner of the property. She stated this is a refinancing request and would like reconsideration for denial of the front setback. Ms. Carpenter stated the structure has been the same since 1952, and she is confused with the fact that the garage and patio consummates the space.

Proponents

Susan Little, 1203 Rimrock Road, Billings, Montana

Ms. Little said she sees nothing wrong with approving this request, including the variance request for the front set back.

Chairman Bollman asked if there was anyone wishing to speak against City Variance #1153. There was none. Chairman Bollman called for a motion.

Motion

Jim Olson made a motion and it was seconded by Neil Kiner to approve City Variance # 1153 with the conditions and Findings of Fact presented by staff.

Discussion

Chairman Bollman called for discussion on the motion. Neil Kiner stated he feels 15 feet is a reasonable compromise. Paul Cox said he is in favor of the motion, as there are several multiplexes in this area; this acceptable; and it makes for a nice residence. Jeff Bollman noted there are several nonconforming structures in this neighborhood.

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 #1153 is approved.

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

Item #4: Variance #1154 – 3421 and 3423 Winchell Lane – Lot Area – A variance from 27-308 requiring a minimum lot area of 9,600 square feet for 1 existing duplex to allow a lot area of 7,700 square feet; from 27-308 requiring a maximum lot coverage of 30% to allow lot coverage of 35%; from 27-308 requiring a minimum rear setback of 20 feet to allow a 15-foot rear setback in an R-70 zone on Lot 14, Block 3 of Patricia Subdivision. Tax ID: C02184. Mark Sewell, owner.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for 1 existing duplex to allow a lot area of 7,700 square feet; from 27-308 requiring a maximum lot coverage of 30% to allow lot coverage of 35%; from 27-308 requiring a minimum rear setback of 20 feet to allow a 15 foot rear setback in an R-70 zone on Lot 14, Block 3 of Patricia Subdivision. Mark Sewell, owner. The variance, if granted, would allow the owner to re-build the existing structure if damaged in the future. No construction or re-building is planned at this time. Planning staff is recommending conditional approval of the proposed variance.

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the minimum lot size from 9,600 square feet to 7,700 square feet for an existing duplex dwelling; decrease the rear yard setback from 20-feet to 15-feet; and to increase lot coverage from 30% to 35%. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 14, Block 3 of Patricia Subdivision generally located at 3421 and 3423 Winchell Lane.
3. Any future re-construction of the existing structure will require compliance with other all other zoning regulations 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

Chairman Bollman asked the members of the Board for questions and discussion. Dan Eggen noted most of the other lots are 7000 square feet. Nicole Cromwell noted a blanket request of this type may be submitted in by property owners in July.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1154.

Applicant

Mark Sewell, 3324 Winchell , Billings, Montana

Mr. Sewell is the property owner. He stated he would like to remove the hindrance for financing with this variance. He said this structure was designed for a mixed dwelling.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1153. There was none. Chairman Bollman closed the public hearing at 7:34 pm and said he would entertain a motion on the application.

Motion

Dan Eggen made a motion and it was seconded by Neil Kiner to approve City Variance # 1154 with the Conditions and Findings of Fact presented by staff.

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				

The motion passes 5-0. City Variance #1154 is approved.

Other Business: Discussion of allowable building heights in commercial zones.

Jeff Bollman asked Zoning Coordinator Nicole Cromwell to open this agenda item. Nicole Cromwell provided information on existing heights in the existing zoning districts. She said she discussed this with the building official who offered a chart depicting the matrix for type of construction and building height limitations. (Table 503, “ Allowable Building Heights and Areas”). She suggested the Zoning Commission consider initiating an amendment to the current zoning code. She pointed out the building code does not take in account aesthetics.

Motion

Daniel Eggen made a motion and it was seconded by Paul Cox to have Staff draft a letter to be reviewed and submitted to the City Zoning Commission to consider increasing the height limitations in accordance with relevant data in Highway Commercial, (HC), and Entryway General (EG), Zones. Staff is to return the letter to the Board of Adjustment for review and a signature by the Chairman at the August meeting.

Discussion

Jeff Bollman disagreed with the motion and stated these issues are cyclical; once the hotel building boom is over this will not be considered again. He pointed out this language change will apply to all properties with this zoning classification.

Neil Kiner said an increase in allowable heights will increase density, which is not a bad thing. Jeff Bollman commented on increasing the height of structures on Main Street, and said these instances are isolated due to the surge of hotels.

Paul Cox said the reasoning is not just aesthetic as the variances submitted for mechanical reasons. Jeff Bollman commented on a consideration for something similar to the bonus given in the residential zones for roof pitch.

Dan Eggen commented on the National Builders design requirements. Nicole Cromwell said form based code relates to stories instead of height limits. Jeff Bollman noted form based code may address other issues especially in older neighborhoods with historic structures.

Paul Cox stated they need to find a way to respond to the current trend, and suggested the letter to the Zoning Commission as a viable option.

Other Business/Announcements:

--Due to the Independence Day holiday, the next City Board of Adjustment meeting will be held on July 10, 2013. The Board will hold three public hearings for the application submittals.

Adjournment:

Motion

At 7:37 p.m., Neil Kiner made a motion and it was seconded by Jim Olson to adjourn.

The motion carried with a unanimous voice vote.

ATTEST: Corrected and Approved by a motion on July 10, 2013

Vice Chairman Paul Cox

Tamara L. Deines, Planning Clerk