

## CITY BOARD OF ADJUSTMENT

MINUTES: July 10, 2013

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

| TOTAL NUMBER OF APPLICATIONS<br>2013 | 01/03/13 | 02/06/13 | 03/06/13 | 04/03/13 | 05/01/13 | 06/05/13 | 07/10/13 | 08/07/13 | 09/04/13 | 10/02/13 | 11/06/13 | 12/04/13 | TOTAL |
|--------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-------|
| Variance                             | 3        | 4        | 1        | 6        | 3        | 4        | 3        |          |          |          |          |          | 24    |

Vice Chairman Paul 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; Planner Dave Green; Tammy Deines, Planning Clerk.

**Others in Attendance:** Dennis H. Renier; Kathleen Renier; Jennifer Mickelson; Richard Mickelson; Andrew Moulaison; Sheryl Garretson; Don Garretson; Ken Peterson; Britt A. Romain; Mike Yakawich; Nellani Reese; John Reese

### Approval of the June 5, 2013 Meeting Minutes

Vice Chairman Cox called for the approval of the June 5, 2013 meeting minutes.

--Page 3 of 11. Change time stamp to 6:27 p.m.

--Page 1 of 11, Approval of the May 1, 2013 Meeting Minutes: change "June 5, 2013" to "May 1, 2013".

-- Page 6 of 11 Clarify the motion for City Variance 1152 to reflect the 2310 and 2312 Yellowstone Avenue property address.

--Page 9-11, Mark Sewell testimony, change "mixed dwelling" to second "mixed use dwelling". -----

--Page 10, change the motion to have Staff draft a letter to be submitted to the City Zoning Commission with Paul Cox seconding instead of Neil Kiner.

### **Motion**

A motion was made by Jim Olson and seconded by Neil Kiner to approve the June 5, 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. Nicole Cromwell pointed out Staff received two letters of testimony on City Variance #1155 and Variance #1156 which are available in the ex parte 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.

### **Public Hearing:**

At 6:04 p.m., Vice Chairman Cox 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 #1155 – 3012 9<sup>th</sup> Ave South – Lot Area** – A variance from 27-308 requiring a minimum lot area of 22,000 square feet for 1 existing 8-plex and 1 single family dwelling to allow a lot area of 7,420 square feet in an R-60 zone on Lots 11, 12 and the North 3 feet of Lot 10, Block 240, Billings Second Addition Subdivision. Tax ID: A01822. Red Gate #2 LLC, owner and Britt Romain, agent

### **REQUEST**

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 22,000 square feet for a single family unit and an 8-unit multi-family dwelling to allow a minimum lot area of 7,420 square feet for existing structures in the Residential 6,000 (R-60) zone. The property is legally described as Lots 11 & 12 and the North 3 feet of Lot 10, Block 240, Billings Second Addition Subdivision. This property is located on a corner and has two addresses. The single family unit is addressed 3012 9<sup>th</sup> Avenue South and the 8 unit apartment building is addressed 902 South 30<sup>th</sup> Street. County tax records refer to the property as 3012 9<sup>th</sup> Avenue South. No work is planned on the buildings, but the variance would allow the owner to re-build the dwelling units if necessary in the future.

Staff is recommending denial of the proposed variance. Granting this variance to be able to replace the existing 8 unit structure and single swelling or possibly a new 9 unit structure on a very small lot would confer a privilege that others in the immediate neighborhood do not have.

### **Discussion**

Vice Chairman Cox asked the members of the Board for questions and discussion. Daniel Eggen asked for clarification on the current lot coverage which Mr. Green estimates is approximately 60%.

### **Public Hearing**

At 6: 23 p.m. Vice Chairman Cox opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1155.

**Kenneth D Peterson, Attorney, 424 48<sup>th</sup> Street West, Billings, Montana**

Mr. Peterson is the agent for Red Gate #2, LLC. Clarification was given regarding the public hearing procedure and Mr. Peterson distributed a handout to the members of the Board. He said this is a property rights case. He commented if the zoning is too onerous it constitutes a taking of the property. He referred to the letter submitted by the South Side Task Force and said he feels they were misinformed as Mr. Romain had no opportunity to appear. He stated this structure has been there forever and sits on two lots. He said this is a hardship as should the building be destroyed; the current structure could not be rebuilt to comply with the current regulations. The variance will not change the neighborhood or ever as there is no intent to do anything with it. He stated if this request is denied, this will be an unnecessary hardship as it would be almost impossible to produce any income off of this property. Mr. Peterson said they believe applying conditions will make this request workable. He said the applicant would agree to provide six onsite parking spots if the structure were destroyed more than 50%. He referred to page 6-12 of the staff report, Attachment B.

Mr. Peterson reiterated the subject buildings are eighty years old and cover two lots. He said the buildings existed before the area was developed. He stated there have been other variances granted in the area and there are more reasons to grant this one than others as there is a great need for low income housing. Mr. Peterson stated this instance is a private individual dealing with private property. He suggested the following conditions of approval:

1. Build nothing larger than the footprint of the existing buildings.
2. Build six parking spots
3. The term of the variance would be good for a period of 20-30 years.

He continued and stated the use is clearly allowed and this has been acknowledged by staff. He stated there is no reason not to grant this variance as it has no effect on the public.

**Britt Romain, 4640 Rimrock Road, Billings, Montana**

Mr. Romain is the agent for Red Gate #2, LLC. He stated this property has been owned by a slum lord prior to his ownership. He pointed out he has upgraded the property and said the tenants that leave buy houses. He pointed out a posted photo of the 10-plex across the street and the cars parked nearby. He stated the house next door covers 80% of the lot.

Mr. Romain said his renters lease his property due to the access to bus service. He explained his complex has one or two bedroom units and are usually rented by elderly patrons who do not drive. He feels he has contributed to the community but cannot speak to the future. He stated he does not intend to sell the property but wishes to keep what he has. He said he provides a service to low income persons and this complex fits the best use of the area. He asked why it is not allowable now as the building could not have been put there if there was not a variance in place. Mr. Romain said the neighborhood “grew up” with this building and the houses were built around it. He said he pulled the corresponding variance minutes which showed the applicant did not support his request. He stated he is unsure of how to satisfy the deficiencies, and asked why more parking spaces are needed when there is a sparsely used parking lot in the area. He said City Variance #916 allowed two duplexes to be built in an R-6000 zone. Mr. Romain stated he would rather have one four-plex instead of two duplexes which were allowed in Variance #916.

**Opponent**

Vice Chairman Cox called for opponents of City Variance #1155.

**Mike Yakawich, 206 S 32<sup>nd</sup> Street, Billings, Montana**

Mr. Yackawich stated he represents the South Side Task Force, and said he respects the applicant since there is no question in terms of Mr. Romain as an owner. He said the Southside Task Force has 200 members with about 30 active members. They are looking at the future and it looked like the applicant intended to sell the property. Mr. Yackawich said placing a nine-plex on the property would be too much infill. He said the traffic is heavy and dense. The task force's primary concern is the potential dense infill in an area they wish to encourage a duplex be built. He thanked the members of the Board. In response to a question by Paul Cox, Mr. Yakawich stated there were fifteen members in attendance at the neighborhood meeting; a quorum is nine members.

**Rebuttal**

Vice Chairman Cox called for rebuttal.

**Kenneth D. Peterson, Attorney, 424 48<sup>th</sup> Street West, Billings, Montana**

Mr. Peterson stated if the variance is not granted and the property is destroyed more than 50% there would be no low income rentals. He would like to suggest delaying the decision in order to work with staff to create some conditions of approval regarding parking, landscaping, and maybe building an eight-plex.

**Britt Romain, 4640 Rimrock Road, Billings, Montana**

Mr. Romain said the traffic would not change if the variance is approved, as it has been the same for the last eight years. He stated he has placed this property into an LLC for his sons.

Paul Cox closed the public hearing at 6:54 p.m. and called for a motion.

**Motion**

**A motion was made by Jim Olson to approve City Variance #1155-3012 9<sup>th</sup> Ave South with the contingency conditions written by staff and the applicant.**

**The motion died for a lack of a second.**

**Discussion**

Vice Chairman Cox called for discussion on the motion. The Board suggested tabling this decision. Zoning Coordinator stated the staff recommendation includes Findings of Fact. The Board is asking for conditions for consideration.

Boardmember Neil Kiner said the biggest issue would be the reduction of units. Barbara Walborn commented this was built prior to zoning. Paul Cox said approval would include the conditions staff would recommend. Jim Olson stated this will not change the neighborhood; it is not contrary to public interest as low income housing is needed; and the applicant is willing to work on the parking requirement. Barbara Walborn said she agrees with the taking of property view due to the age of the property. Neil Kiner spoke to the uses have changed over the life of the property. He said his issue is there is too much building for the lot. The Board discussed conditions of approval.

**Motion**

**Barbara Walborn made a motion and it was seconded by Dan Eggen to approved City Variance #1155-3012 9<sup>th</sup> Avenue South with the following conditions:**

1. The variance is for the future reconstruction of the 8-plex structure on the subject properties. No other variance is intended or implied by this approval.
2. The variance applies to Lots 11 & 12 and the North 3 feet of Lot 10, Block 240, Billings Second Addition Subdivision generally located at 3012 9<sup>th</sup> Avenue South and 902 South 30<sup>th</sup> Street.
3. The new 8-plex structure, if ever rebuilt, will cover no more than 40% of the lot area.
4. If the single family residence addressed as 3012 9<sup>th</sup> Avenue South is destroyed by more than 50% it will not be rebuilt.
5. The owner will provide a minimum of 6 off street parking spaces at the time of the re-construction of the 8-plex.
6. Any future re-construction of the 8-plex structure will require compliance with all other zoning regulations and city ordinances that apply at the time of re-construction.
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**

In response to a question by Boardmember Kiner, Nicole Cromwell explained the parking requirements and said eight off street parking spaces would be required at this time. She said site development is administered by City Engineering and granted by City Council. Neil Kiner suggested a condition using compliance with off street parking requirements.

| Boardmember     | Yes      | No | Abstain | Not Present |
|-----------------|----------|----|---------|-------------|
| Jeff Bollman    |          |    |         | <b>1</b>    |
| Paul Cox        | <b>1</b> |    |         |             |
| Daniel Eggen    | <b>1</b> |    |         |             |
| Barbara Walborn | <b>1</b> |    |         |             |
| Marlene Walter  |          |    |         | <b>1</b>    |
| James Olson     | <b>1</b> |    |         |             |
| Neil Kiner      | <b>1</b> |    |         |             |

**The motion carried, 5-0. City Variance #1155 is conditionally approved**

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

**Item #2: Variance #1156 – Variance #1156 – 3730 and 3724 Vickery Court – Fence Height** – a variance from 27-604 requiring a maximum fence height of 6 feet to allow a maximum fence height of 8 feet in an R-9600 (R-96) zone. The property is legally described as Lots 11 & 12, Block 3, Poly Vista Estates Subdivision. Tax ID’s: A29570 and A29571.

**REQUEST**

The applicant is requesting a variance from 27-604 requiring a maximum fence height of 6 feet to allow a maximum fence height of 8 feet in an R-9600 (R-96) zone. The property is legally described as Lots 11 & 12, Block 3, Poly Vista Estates Subdivision. The properties are owned by Richard and

Jennifer Mickelson and Dennis and Kathleen Renier. 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 fence height of 8 feet on the side and back fences of the subject properties, no other variance is intended or implied by this approval.
2. The variance applies to Lots 11 & 12, Block 3, Poly Vista Estates Subdivision generally located at 3730 and 3724 Vickery Court.
3. The proposed fences will be located and built in substantial conformance with the submitted site plan.
4. The applicant will receive a fence permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the fence will be completed within 18 months 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. Per request of members of the Board, Dave Green clarified the location of the fence lines on a posted draft site plan. Neil Kiner asked if there is any difference between the north/south and the east/west property lines for allowable fence heights. Dave Green stated both would be allowed a 6-foot fence height. Nicole Cromwell asked about clear vision and it was noted that the fence does not breach the line of site as depicted on the drawing.

### **Public Hearing**

At 7:32 p.m. Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1156.

### **Rich Mickelson, 3730 Vickery Court, Billings, Montana**

Mr. Mickelson is the owner of this property and is representing both properties. He said stipulations for proper drainage were given at the time of development and they established the fence line together. Due to the topography, the fence only provides about four foot of privacy and the applicants wish to establish the original intent of property. He pointed out the area of intent for the proposed eight foot high fencing, and said they would maintain the current fencing's termination point. Daniel Eggen asked if an architectural review would be required and Mr. Mickelson said their Homeowners' Association does not require this. He explained the CCRS defer to the City Code and said he did not believe there were any specific requirements for fencing.

### **Jennifer Mickelson, 3730 Vickery Court, Billings, Montana**

Ms. Mickelson said their request is to add the additional two feet to the existing fencing and match the colors. She stated the Homeowners' Association is not established in this neighborhood and there are three vacant homes in the neighborhood that have not sold yet. Ms. Mickelson commented there were issues between the builder and the Ditch Association. She said they have to do the entire fence line because of the way the lots were set.

Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1156. There was none. Vice Chairman Cox closed the public hearing at 7:40 p.m.

**Motion**

**A motion was made by Neil Kiner and it was seconded by Daniel Eggen to approve City Variance #1156 with the Conditions and Facts and Findings recommended by staff.**

**Discussion**

Vice Chairman Cox called for discussion on the motion. There was none.

| Boardmember     | Yes      | No | Abstain | Not Present |
|-----------------|----------|----|---------|-------------|
| Jeff Bollman    |          |    |         | <b>1</b>    |
| Paul Cox        | <b>1</b> |    |         |             |
| Daniel Eggen    | <b>1</b> |    |         |             |
| Barbara Walborn | <b>1</b> |    |         |             |
| Marlene Walter  |          |    |         | <b>1</b>    |
| James Olson     | <b>1</b> |    |         |             |
| Neil Kiner      | <b>1</b> |    |         |             |

**The motion passes 5-0. City Variance #1156 is conditionally approved.**

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

**Item #3: Variance #1157 – 2215 George Street – Lot Coverage** – A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 38% for the purpose of constructing a new detached garage (400 sf) and a new attached sunroom (337 sf) in an R-70 zone on Lot 24A, Block 5, Briggs Subdivision 2<sup>nd</sup> Filing, a 7,688 square foot parcel of land. Tax ID: C05621. John and Mellani Reese, owners.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 38% for the purpose of constructing a new detached garage (400 sf) and a new attached sunroom (337 sf) in an R-7000 (R-70) zone on a 7,688 square foot parcel of land. The property is described as Lot 24A, Block 5, Briggs Subdivision 2<sup>nd</sup> Filing, John and Mellani Reese, owners. Planning staff is recommending conditional approval of the proposed increased lot coverage.

**RECOMMENDATION**

Staff recommends conditional approval .Staff is recommending the following conditions for the increased maximum lot coverage variance request:

1. The variance is to increase the maximum lot coverage from 30% to 38%. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 24A, Block 5, Briggs Subdivision 2<sup>nd</sup> Filing generally located at 2215 George Street.
3. Construction of the structures will be in substantial conformance with the submitted site plan and shall meet all other required City regulations, with the exception of this variance.

4. The applicant will receive a building permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the garage and sunroom will be completed within 18 months 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.

### **Discussion**

Vice Chairman Cox asked the members of the Board for questions and discussion. In response to a question by Boardmember Kiner, Dave Green stated there is currently a fenced back yard on this property.

### **Public Hearing**

At 7:45 p.m., Vice Chairman Cox opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1157.

### **Applicant**

#### **John Reese, 2215 George Street, Billings, Montana**

Mr. Reese is the property owner. He said enclosing the sunroom is more efficient as it can be used year round. They need extra space for access and extra parking for his mother who plans to move there in the fall. They researched the neighborhood, and found other properties in the area that exceed the allowable lot coverage.

Daniel Eggen asked if they are able to meet the other setback requirements. Mr. Reese said there should be plenty of room in between and in the back. They intend to install a new vinyl fence along with a section of the neighbors fencing at their expense. He said they do not intent to attach the new garage to the main house with a breezeway or covered walkway.

#### **Melanie Reese, 2215 George Street, Billings, Montana**

Ms. Reese stated they were victims of the BB gun shooting spree and two of their vehicles were hit. She said the crime rate has gone up since Buffalo Wild Wings has opened and they wish to reclaim their space. She noted a market analysis stated the value of the house would increase by \$40,000 with the improvements.

#### **Andrew Moulaison, 741 Avenue F, Billings, Montana**

Mr. Moulaison stated they took the surrounding structures in consideration, and the new structures will aesthetically match the existing structures. The garage is intended to be 20' X 20'.

Vice Chairman Cox asked if there was anyone else wishing to speak in favor or against City Variance #1157. There was none. Vice Chairman Cox closed the public hearing at 7:54 p.m.

### **Motion**

**A motion was made by Daniel Eggen and it was seconded by Jim Olson to approve City Variance #1157 with the Conditions and Facts and Findings recommended by staff.**



| Boardmember     | Yes      | No | Abstain | Not Present |
|-----------------|----------|----|---------|-------------|
| Jeff Bollman    |          |    |         | <b>1</b>    |
| Paul Cox        | <b>1</b> |    |         |             |
| Daniel Eggen    | <b>1</b> |    |         |             |
| Barbara Walborn | <b>1</b> |    |         |             |
| Marlene Walter  |          |    |         | <b>1</b>    |
| James Olson     | <b>1</b> |    |         |             |
| Neil Kiner      | <b>1</b> |    |         |             |

**The motion passes 5-0. City Variance #1157 is conditionally approved.**

**Other Business:**

**Discussion of allowable building heights in commercial zones.**

**Motion**

Daniel Eggen made a motion and it was seconded by Neil Kiner 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.

**Other Business/Announcements:**

--The next City Board of Adjustment meeting will be held on August 7, 2013. The Board will hold three public hearings for application submittals.

**Adjournment:**

**Motion**

**At 7:57 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:**

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**Vice Chairman Paul Cox**

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**Tamara L. Deines, Planning Clerk**