

CITY BOARD OF ADJUSTMENT

MINUTES: September 4, 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 | 1 | 1 | | | |
| Paul Cox | Vice Chairman | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | | |
| Daniel Eggen | Boardmember | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | | |
| Neil Kiner | Boardmember | E | E | 1 | 1 | 1 | 1 | 1 | E | 1 | | | |
| Barbara Walborn | Boardmember | 1 | 1 | 1 | E | 1 | E | 1 | 1 | 1 | | | |
| Marlene Walter | Boardmember | 1 | 1 | 1 | E | 1 | E | E | E | E | | | |
| James Olson | Boardmember | 1 | E | 1 | 1 | A | 1 | 1 | 1 | 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 | 3 | 3 | 4 | | | | 25 |

Chairman Jeff Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3rd Avenue North.

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; Dave Green; Planner I; Tammy Deines, Planning Clerk

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 6:08 p.m.

Approval of the July 10, 2013, August 7, 2013 Meeting Minutes

Approval of the July 10, 2013 and August 7, 2013 meeting minutes is delayed.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest

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. Staff received a letter dated August 14, 2013 from Kristi L Tolliver in favor of City Variance #1163. Staff received a copy of the County Club Heights Subdivision Covenants and Restrictions in regard to City Variance #1164.

Public Hearing:

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.

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

Item #1: Variance #1161 – 604/606 N 23rd Street – Lot Area - A variance from 27-308 requiring a minimum lot area of 7,000 square feet for an existing 2-family dwelling to allow a lot area of 5,250 square feet in a R-60 zone on Lots 2 and 3, Block 271 Billings First Addition, North ½ of Lot 2, a 5,250 square foot parcel of land. The applicant is not proposing any construction but the variance will ensure the ability to re-construct a 2-family dwelling if necessary in the future. Tax ID: A01982. David Oberly and Karen Ehresman, owners .

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet for an existing 2-family dwelling to allow a lot area of 5,250 square feet in a Residential 6000 (R-60) zone on Lots 2 and 3, Block 271, Billings First Addition, North ½ of Lot 2, a 5,250 square foot parcel of land. The applicant is not proposing any construction but the variance will ensure the ability to re-construct a 2-family dwelling if necessary in the future. Tax ID: A01982 David Oberly and Karen Ehresman, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance with the following conditions:

1. The variance from 27-308 requiring a minimum lot area of 7,000 square feet for an existing 2-family dwelling to allow a lot area of 5,250 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 2 and 3, Block 271, Billings First Addition, North ½ of Lot 2 generally located at 604/606 North 23rd Street.
3. Any future re-construction of the existing structure will require compliance with 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. Daniel Eggen asked about the Department of Revenue records. Mr. Green stated this property has been taxed as a duplex since 1936.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1161. There was none

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

Motion

A motion was made by Boardmember Kiner and it was seconded by Boardmember Eggen to approve City Variance #1161-604/606 N 23rd 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, 6-0. City Variance #1161 is conditionally approved.

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

Variance #1162 – 2304 Spruce Street – Setback - A variance from 27-308 requiring a minimum rear setback of 20 feet to allow a minimum rear setback of 0 (zero) feet for the construction of a 575 square foot garage addition to an existing home in a R-96 zone on Lots 1 and 2, Block 17, Grandview Subdivision, a 12,000 square foot parcel of land. Tax ID: A08315. Matthew and Kate Hamlin, owners.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum rear setback of 20 feet to allow a minimum rear setback of 0 (zero) feet for the construction of a 575 square foot garage addition to an existing home in a Residential 9600 (R-96) zone on Lots 1 and 2, Block 17, Grandview Subdivision, a 12,000 square foot parcel of land. Tax ID: A08315, Matthew and Kate Hamlin, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance with the following conditions:

1. The variance is to reduce the required rear setback from 20 feet to 0 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 1 and 2, Block 17, Grandview Subdivision generally located at 2304 Spruce 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 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

Chairman Bollman asked the members of the Board for questions and discussion. Neil Kiner asked about the proposed modifications to the curb and cutter. Dave Green stated the City Engineering Division will dictate the access points to the property. Daniel Eggen asked about Condition of Approval #4 and noted the variance is for the garage. Dave Green said the garage portion of the project has to be completed within 18 months of obtaining the building permit.

Public Hearing

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1161.

Proponents

Kate Hamlin, 2304 Spruce, Billings, Montana

Matthew and Kate Hamlin are the property owners. Ms. Hamlin stated she is agreement with the Staff presentation and report.

Opponents

There were none.

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

Motion

A motion was made by Boardmember Olson and it was seconded by Boardmember Kiner to approve City Variance #1162 with the conditions and Findings of Fact recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. Paul Cox noted this is not considered a special privilege or a precedent as there has been other variances granted in this area.

| 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 5-1, with Paul Cox voting against. City Variance #1162 is conditionally approved.

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

Variance #1163 – 641 Burlington Avenue – Lot Area - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 existing single family dwellings to allow a lot area of 7,000 square feet in a R-70 zone on Lots 20 and 21, Block 48, Suburban Homes Addition. The applicant is not proposing any construction but the variance will ensure the ability to re-construct one or both single family dwellings if necessary in the future. Tax ID: A15498. Don and Terri Summers, owners

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 existing single family dwellings to allow a lot area of 7,000 square feet in a Residential 7000 (R-70) zone on Lots 20 and 21, Block 48, Suburban Homes Addition. The applicant is not proposing any construction but the variance will ensure the ability to re-construct one or both single family dwellings if necessary in the future. Tax ID: A15498, Don and Terri Summers, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 existing single family dwellings to allow a lot area of 7,000 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 20 and 21, Block 48, Suburban Homes Addition generally located at 641 Burlington Avenue.
3. Any future re-construction of the existing structure will require compliance with 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 was none.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1163.

Applicant

Don Summers, 641 Burlington, Billings, Montana

Mr. Summers is the property owner. He explained to the Board he is requesting this variance as he is in the process of refinancing this property.

Chairman Bollman asked if there was anyone wishing to speak against City Variance #1163. There was none. Chairman Bollman called for a motion.

Motion

Boardmember Walborn made a motion and it was seconded by Boardmember Paul Cox to approve City Variance # 1163 with the conditions and Findings of Fact presented by staff.

Discussion

Chairman Bollman called for discussion on the motion. Jeff Bollman commented housing in the rear of the lots is not uncommon 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 6-0. City Variance #1163 is approved.

Ms. Cromwell read the legal description and Dave Green gave the Staff presentation which reviewed the request and recommendation below. He noted the Covenants and Restrictions were included in the packets.

Variance #1164 – 3205 Green Terrace Drive – Setback - A variance from 27-308 requiring a minimum front setback of 20 feet for a proposed garage addition to allow a 10 foot front setback in a R-96 zone on Lot 22, Block 7 Country Club Heights Subdivision, a 18,034 square foot parcel of land. Tax ID: A05685. Klay Spearman, owner and Travis McDowell, agent.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum front setback of 20 feet for a proposed garage addition to allow a 10 foot front setback in a Residential 9600 (R-96) zone on Lot 22, Block 7 Country Club Heights Subdivision, an 18,034 square foot parcel of land. Tax ID: A05685, Klay Spearman, owner and Travis McDowell, agent.

RECOMMENDATION

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum front setback of 20 feet for a proposed garage addition to allow a 10 foot front setback. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 22, Block 7 Country Club Heights Subdivision generally located at 3205 Green Terrace Drive.
3. The applicant will submit and obtain a building permit for the garage within 6 months and have the garage building within 18 months.

4. The applicant will construct the garage to match the architecture of the existing home, which includes but is not limited to the roof line, brick color and type and exterior details of the existing home.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed garage with the exception of this variance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Jim Olson, Agent Travis McDowell gave clarification on the roof height of the garage. Dave Green said a condition of approval could be added to address the height limitation for the overall building. Travis McDowell said a height limit of 16 or 18 feet from the finished floor elevation would be acceptable. Barbara Walborn asked if this structure would comply with the Covenants and Restrictions for this property. Dave Green read aloud condition of approval #3, which states Lot 22 of Block 7 shall have a minimum front setback of 10 feet. He said this proposal would be in compliance with the Covenants and Restrictions for this subdivision.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor of City Variance #1164.

Applicant

Travis McDowell, 2029 Forrest Park Drive, Billings, Montana

Mr. McDowell is the agent for property owner. He said the owner wishes the structure to be an asset to the area. He explained there will steps to transition from one level to the next. Boardmember Eggen asked about retainage of the dirt and rock for erosion. Mr. McDowell said there will be a soils report and they anticipate some structural challenges. Boardmember Cox asked if there is any water retainage and Travis McDowell said they may install a drain tile around the foundation. Jim Olson asked if the structure will block the neighbors' view shed and Mr. McDowell stated this should not be an issue.

Opponents

Chairman Bollman asked if there was anyone wishing to speak against City Variance #1164.

John Kirk, 3206 Green Terrance Drive, Billings, Montana

Mr. Kirk stated his mother's home is directly south of this property. He distributed several photographs to staff and the members of the Board. He voiced concern the garage will come close to dwarfing the actual structure itself. He said he and his mother are opposed to this variance as it may affect surrounding property owners. Mr. Kirk said Mr. Spearman has a useable garage with an internal access and he doesn't see the need for the additional garage. Mr. Kirk stated the applicant does not suffer any hardship. He said the steepness of the land exists and others are not allowed the privileges requested by the petitioner. He commented on the disparity between the City codes and the Covenants. He noted the variance is requesting more than one garage which is in violation of the covenants limiting owners to one garage. Mr. Kirk stated the move-in storage structure has been in place for a number of months. He said they have the right to sue and bring legal action, but it is their

intention this will not be required if the committee will enforce the Covenants and Restrictions. He asked why this cannot be done on the other side of the property and he stated they do not wish to have the garage built in front of the property.

Deanna White, 2245 Fairview Place, Billings, Montana

Ms. White’s property is directly east of Mr. Spearman’s house. She said she is experiencing some cracks in her house and they have had boulders and dirt knock down fencing. Ms. White said proposed garage would block the view and tampering with the rocks may endanger the west side of her house. She feels the owner should find other places for the large vehicles. Ms. White stated she needs assurance nothing further would be done that would affect the shared property line.

Boardmember Walborn inquired regarding compliance with the side setbacks. Dave Green explained they would comply with the City required side setbacks. Even so, they would not be in compliance with the Covenants and Restrictions requirement for the side setback. He commented if the structure is built the applicant could be liable under the Covenants and Restrictions, but the City doesn’t enforce Covenants and Restrictions.

John Kirk, 3206 Green Terrace Drive, stated they would move forward with legal action if the structure is built as proposed as the west side of the property is manageable. He said they are not for the absence of a garage but the placement. Travis McDowell stated the west side of the property may be doable but it is cost prohibitive. He pointed out the additional 10 feet is needed for a structure that fits in with the existing neighborhood. He said they would comply with the covenants if needed.

Eloise Kirk, 3206 Green Terrace Drive, stated she has lived in her home since 1963. She reported an incident that took place the 1960’s when a boulder had rolled into the bedroom of this property.

Motion

Boardmember Daniel Eggen made a motion and it was seconded by Boardmember Walborn to approve City Variance # 1164 with the conditions and Findings of Fact presented by staff. Condition #3, Adding the building completed within 18 months, and a height restriction of 16 feet as measured from the finished floor of the garage.

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 Board of Adjustment voted 3-3 and the motion failed. City Variance #1164 is denied.

Other Business/Announcements:

--The next meeting will be held on October 2, 2013.

--Nicole Cromwell stated the letter to the Zoning Commission regarding building height will be submitted for consideration at the next meeting on October 2, 2013.

Adjournment: 6:50 p.m.

Motion

Boardmember Kiner made a motion and it was seconded by Boardmember Eggen to adjourn. Paul Cox will be absent.

The motion carried with a unanimous voice vote. The meeting was adjourned at 6:50 p.m.

ATTEST:

Chairman Jeff Bollman

Tamara L. Deines, Planning Clerk