

CITY BOARD OF ADJUSTMENT

MINUTES: February 5, 2014

Approved by a motion on March 5, 2014

Name	Title	01/03/14	02/05/14	03/05/14	04/02/14	05/07/14	06/04/14	07/02/14	08/06/14	09/03/14	10/01/14	11/06/14	12/03/14
Jeff Bollman	Chairman	E	E										
James Olson	Vice Chairman	1	E										
Paul Hagen	Boardmember	1	E										
Frank Chesarek	Boardmember	1	1										
Matthew McDonnell	Boardmember	1	1										
Martin Connell	Boardmember	1	1										
Mark Noennig	Boardmember	1	1										

TOTAL NUMBER OF APPLICATIONS 2014	01/03/14	02/05/14	03/05/14	04/02/14	05/07/14	06/04/14	07/02/14	08/06/14	09/03/14	10/01/14	11/06/14	12/03/14	TOTAL
Variance	3	4											7

Nicole Cromwell opened this meeting and announced that in the absence of the Chairman and the Vice Chairman, the Board will elect a Chairman Pro Tem to chair this meeting. Ms. Cromwell described the public hearing and presentation processes for the meeting and explained how each variance will be reviewed, and acted upon. She said four votes are needed to approve a variance, and there are four members in attendance this evening. A unanimous vote will be needed to approve a variance or to overturn an administrative decision. Applicants have the opportunity to request or have the Board of Adjustment continue until the next meeting.

Motion

Frank Chesarek made a motion and it Matthew McDonnell seconded to nominate Marty Connell as Chairman Pro Tem for this meeting. The motion carried with a unanimous voice vote.

Chairman Pro Tem Connell called the meeting to order at 6:00 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 Pro Tem Marty Connell 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; and Tammy Deines, Planning Clerk.

Attending: Applicant Laurie Taylor; Mike Tuss, CTA Architects; Citizen Mark Shipstone; Citizen Juliet Spalding; Appellants Cameron Scott; Jason Radtke; Tara Radtke; Cameron Scott; Citizen Bruce Issacson; Officer Tanya Punt, City Code Enforcement Division

Public Comment:

Chairman Pro Tem Connell 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. The public comment period was closed at 6:05 p.m.

Approval of the January 2, 2014 Meeting Minutes

Chairman Pro Tem Connell called for approval of the January 2, 2014 minutes.

--Boardmember Noennig asked for a spelling correction of his last name throughout the document.

--A correction is need on the last page 1st paragraph/motion to change “Paul Chesarek” to “Paul Hagen”.

Mark Noennig made a motion and Matthew McDonnell seconded to approve the January 2, 2014 meeting minutes as corrected.

The motion carried with a unanimous voice vote, 4-0.

Disclosure of Conflict of Interest

Chairman Pro Tem Marty Connell asked for disclosures of conflict of interest. There were no 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. She stated one letter was received by staff regarding Variance #1177. Evelyn M. McDaniel, 1254 Yellowstone River Road, Billings, Montana.

Public Hearing:

Chairman Pro Tem Connell 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 #1174 – 635 & 637 Alderson Avenue – Lot Area - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units to allow a minimum lot area of 7,000 for 2 existing dwellings and from 27-308 requiring a minimum 20-foot rear setback to allow a 17-foot rear setback in a Residential 7,000 (R-70) zone on 18 & 19, Block 49, Suburban Homes Addition. Tax ID: A15520.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units to allow a minimum lot area of 7,000 for 2 existing dwellings and from 27-308 require a minimum 20-foot rear setback to allow a 17-foot rear setback in a Residential 7,000 (R-70) zone on Lots 18 & 19, Block 49, Suburban Homes Addition. Tax ID: A15520, Eugene and Dolores Jurovich, owners and Laurie Taylor, 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 lot area of 9,600 square feet for 2 existing single family dwellings to allow a lot area of 7,000 square feet and from 27-308 requiring a minimum 20-foot rear setback to allow a 17-foot rear setback in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 18 & 19, Block 49, Suburban Homes Addition generally located at 635 and 637 Alderson 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 Pro Tem Marty Connell asked the members of the Board for questions and discussion. Frank Chesarek noted there are several other parcels with similar structure configurations. Dave Green agreed and said these property owners may come forward in the future with variance applications.

Chairman Pro Tem Marty Connell called for presentation by the Applicant.

Laurie Taylor, 2519 Sunnyview Lane, Billings, Montana

Ms. Taylor is the agent for property owners Eugene and Dolores Jurovich. She said the owners are elderly and have decided to sell the property. They are requesting this variance for loan purposes and they can proceed once the variance has been approved.

Public Forum

Chairman Pro Tem Connell opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1174. There was none. Chairman Pro Tem Connell closed the public hearing and called for a motion.

Motion

A motion was made by Boardmember McDonnell and it was seconded by Boardmember Chesarek to approve City Variance #1174-635 & 637 Alderson Avenue with the conditions and findings of fact recommended by staff.

Discussion

Chairman Pro Tem Connell called for discussion on the motion. There was none. Chairman Pro Tem Connell called for a roll call vote for City Variance #1174.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				1
James Olson				1
Paul Hagen				1
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passes. City Variance #1174 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 #1175 – 415 Broadwater, Broadwater Elementary School Addition, Land Use Contrary to Zoning – A request to conduct a public forum to allow land use contrary to zoning by a public agency on public land for the purpose of constructing an addition to Broadwater Elementary School in a Public zone on Lots 1-21 & 35-46, Block 29 of Suburban Homes Addition, a 2.62 acre parcel of land. The new addition will be within the 10 foot side adjacent to street setback on Wyoming Avenue and 4th Street West; a fence taller than 6 feet is planned for the playground perimeter and within the 20 foot front yard setback and the 10-foot side adjacent to street setback. Tax IDs: A15061 & A15068

REQUEST

This item is being brought to the Board of Adjustment for a Public Forum to allow School District #2 to construct an addition to Broadwater School in a Public zone. Public agencies may use public land contrary to zoning if a public hearing is held before the Board of Adjustment. This authority is shown on the attached copy of MCA 76-2-402. Specifically, this is a request from School District #2 to allow the construction of an addition to the existing Broadwater School building and to reconfigure the play area and parking lots currently located on the site.

State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

Public Forum

Chairman Pro Tem Connell opened the Public Forum. Boardmember Noennig asked if the existing buildings will be used for classrooms. Dave Green replied the primary building will remain intact and be used for administration and classrooms.

Mike Tuss, CTA Architects, 13 North 23rd Street, Billings, Montana

Mr. Tuss is representing School District #2. He said the old building will be preserved with some exterior restorations and will primarily be used for classroom space. A three story addition is planned to provide administrative offices; classrooms; a gymnasium; a library; and cafeteria space. He distributed renderings to the members of the Board. Mr. Tuss said the proposed perimeter fence is intended to be built as designed. They have discussed installing a site obscuring fence along the alleyway to limit the students’ access to the alley from the playground.

Discussion

Chairman Pro Tem Connell asked the members of the Board for questions and discussion. Boardmember McDonnell commented he feels this is an excellent proposal.

****State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.**

Item #3: Variance #1176 – 820 N 31st Street – McKinley Elementary School Addition, Land Use Contrary to Zoning – A request to conduct a public forum to all land uses contrary to zoning by a public agency on public land for the purpose of constructing an addition to McKinley Elementary School in a Public zone on Lots 1-24, Block 29 of Foster’s Addition, a 2.06 acre parcel of land. The new addition will be within the 10 foot side adjacent to street setback on 9th Street North; a fence taller than 6 feet is planned for the playground perimeter and within the 20 foot front yard setback and the 10-foot side adjacent to street setback. Tax ID: A07164.

REQUEST

This item is being brought to the Board of Adjustment for a Public Forum to allow School District #2 to construct an addition to McKinley School in a Public zone. Public agencies may use public land contrary to zoning if a public hearing is held before the Board of Adjustment. This authority is shown on the attached copy of MCA 76-2-402. Specifically, this is a request from School District #2 to allow the construction of an addition to the existing McKinley School building and to reconfigure the play on the site.

State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

Discussion

Chairman Pro Tem Connell asked the members of the Board for questions and discussion. There was none.

Public Forum

Chairman Pro Tem Connell opened the public forum asked if there was anyone else wishing to speak in favor or against City Variance #1176.

Mike Tuss, CTA Architects, 13 North 23rd Street, Billings, Montana

Mr. Tuss is representing School District #2. He submitted renderings to the members of the Board. He said a similar strategy to the Broadwater School proposal is envisioned and will include a cafeteria on the lower level and the gymnasium above. Mr. Tuss said construction will begin at the terminus of the school year and the intent is to have the school occupied at the start of the school year in 2015. The district is studying options for temporarily relocating part of the classrooms while the lower grade levels will remain in operation in the existing school. In response to a question by Boardmember Noennig, Mr. Tuss explained the intent is to have the new structure aesthetically sympathetic to the existing structure.

****State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.**

Variance #1177 – 1207 Yellowstone River Road – Appeal of an Administrative Decision regarding a Home Occupation – An appeal of the Zoning Coordinator’s Determination that a “mobile tattoo” business is not an allowed home occupation except for the office operations of such a business according to Section 27-606 BMCC. Offering tattooing, piercing or other body alterations (classified as SIC 7299) is not an allowed use in the Residential Professional (RP) zone (Section 27-306) and therefore not an allowed home occupation. The appeal requests the ability to provide tattoo, body piercing and other body alterations within the mobile (converted bus) unit while it is parked at their residence.

REQUEST: Appellants Jason Radtke, Tara Radtke, Cameron Scott and Erin Arney of 1207 Yellowstone River Road, have appealed the determination of Zoning Coordinator Nicole Cromwell that a “mobile tattoo” business is not an allowed home occupation except for the office operations of such a business according to her interpretation and application of Section 27-606 of the Unified Zoning Regulations. Offering tattoo, body piercings and other body alterations is classified in the Standard Industrial Classification system as SIC 7299. Uses in this category are not allowed in the Residential Professional zone and therefore not an allowed home occupation. The subject property is within the city limits and is described as Lot 12, Block 1, Primrose Subdivision and is owned by David Bruce Isaacson. Mr. Isaacson resides at 1213 Yellowstone River Road, directly east and adjacent to the subject property. There is a vacant parcel to the west. This parcel is owned by Mr. Montoya who resides at 1117 Hawthorne Lane directly north of the subject property.

On or about October 1, 2013, the appellants established a “mobile tattoo” home occupation at 1207 Yellowstone River Road. The appellants submitted an application for a City of Billings Business Tax Determination (Business License). Within 10 days of submitting the Business License application, the Code Enforcement Division received 2 complaints regarding the banner sign placed on the fence and the operation of the “mobile tattoo” business in the driveway of the home. The “mobile tattoo” is operated within a converted school bus parked on the driveway. On October 23, 2013, Code Enforcement Officer Tanya Punt, sent a notice of violation to the residents informing them of the violations of the Home Occupation regulations and the sign regulations. On October 31, 2013, the appellants met with Officer Punt and the Zoning Coordinator concerning the operation of the “mobile tattoo” business at this location. The Zoning Coordinator explained the restrictions in the residential zones and their right of appeal. The Zoning Coordinator conditionally approved the Business License so long as no tattoo services were rendered on the property until the Board of Adjustment had made its determination on the appeal.

The receipt of an appeal stays all enforcement proceedings related to the zoning violation at issue. Pursuant to Section 27-1505, BMCC, the City Board of Adjustment must hear the appeal within a reasonable time, not to exceed 30 days. The appeal stays all proceedings of any action, which includes the code enforcement action. The Board may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination.

Chairman Pro Tem Connell asked Zoning Coordinator Nicole Cromwell for the Staff Presentation.

Zoning Coordinator Nicole Cromwell reiterated in considering the request from the applicants, the Board may consider all the facts and findings of both parties and may affirm in whole or in part the Zoning Coordinator's determination. In addition, the Board may by a concurring vote of 4 members reverse or modify the Zoning Coordinator's decision.

The BOA may determine the following:

- Reverse the determination and allow the mobile tattoo business as a home occupation.
- Affirm the determination the mobile tattoo business is not an allowed home occupation.
- Modify in whole or in part the determination including conditions of the modification.

The BOA determination should be supported by testimony and information received regarding the appeal

Zoning Coordinator Nicole Cromwell continued with a PowerPoint presentation and an overview of the Staff report below.

STAFF INTERPRETATION

Zoning Coordinator Nicole Cromwell conducted research on the development of the code for Home Occupations at Section 27-606. In 1972, the City adopted the current zoning regulations and home occupations were defined and regulated at that time:

Section 3.45 Home occupation

"Home occupation" means an occupation or profession customarily conducted, entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the dwelling purposes, and does not change the character thereof; provided that no more than 25 percent of the dwelling unit total area may be used for the home occupation. There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation. No equipment shall be used in such a home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.

In 1977, the definition was refined to read as follows:

Article II Definitions

Home Occupation – *An occupation carried on by an occupant of a dwelling as an accessory activity to the main residential use of the building, and meeting the following restrictions:*

- a. *No person shall be employed other than residents of said dwelling.*
- b. *No commodity shall be sold on the premises other than produced on the premises.*
- c. *The occupation shall be conducted wholly within the dwelling or an accessory building.*
- d. *Floor area devoted to the occupation shall not exceed 25% of the total ground area occupied by the buildings on the lot.*
- e. *The occupation shall not be objectionable to adjacent residences due to noise, vibration, glare, fumes, odors, hours of operation, traffic, electrical interference, etc.*
- f. *There shall be no sign other than those allowed by the Resolution in residential districts.*
- g. *There shall be no display or evidence apparent from the exterior of the lot that the premises are being used for any purpose other than that of a dwelling.*

In 1997, the City and Yellowstone County zoning codes were unified and at that time the current code was put in place in a separate section from the definitions:

SEC. 27-606. HOME OCCUPATIONS.

A Home Occupation is defined as an occupation carried on by an occupant of a dwelling, which is located in a residential zoning district, as an accessory and incidental activity to the main residential use of the building.

The Planning Department recognizes that the restrictions set forth in this section do not anticipate all possible types of Home Occupations. Therefore, to guide the Planning Department in the enforcement of this section, the department has adopted the following policies:

- (1) The Home Occupation should not generate traffic before 7:30 a.m. or after 6:00 p.m.
- (2) The occupation should not generate, on average, more than four (4) vehicle trips to the residence during any hour.

The Home Occupation shall comply with all of the following restrictions:

- (a) The occupation to be performed must be a use which is allowed outright in the Residential Professional (RP) zoning district. In addition, the following uses, listed by Standard Industrial Classification (S.I.C.), may also be allowed:

<u>S.I.C. Number</u>	<u>Description</u>
7231	Beauty Shops
7241	Barber Shops
7251	Shoe Repair Shops
7291	Tax Return Preparation Services
7631	Watch, Clock and Jewelry Repair
76--	Office Only for Miscellaneous Repair Services
7911	Dance Studios, Schools and Halls

Uses not listed above may be allowed with written approval from the Zoning Coordinator, if they meet the spirit and intent of this section and will conform to all of the restrictions of this section.

- (b) No person shall be employed other than the residents of the dwelling.
- (c) The occupation shall be conducted entirely within the dwelling or an accessory building.
- (d) The floor area devoted to the occupation shall not exceed five hundred (500) square feet or twenty-five (25) percent of the total ground area occupied by the buildings, whichever is less.
- (e) The occupation shall not produce light, noise, vibration, glare, fumes, odors, electrical interference, etc., which is inconsistent with the character of the residential area.
- (f) There shall be no sign advertising or calling attention to the home occupation on the premises.

- (g) There shall be no display, evidence or activity apparent from the exterior of the lot which would indicate that the premises are being used for any purpose other than that of a dwelling.
- (h) There shall be no group instruction, assembly or activity for greater than five (5) persons.
- (i) One (1) business vehicle that is associated with the Home Occupation and which does not exceed eight thousand (8,000) pounds Gross Vehicle Weight (G.V.W.), may be parked or stored on the premises. In addition, there shall be no outside storage of materials or equipment related to the Home Occupation, except the one (1) allowed business vehicle.

The code does allow the Zoning Coordinator some latitude to determine whether an unlisted use will “meet the spirit and intent” of the home occupation regulation and may be allowed. In practice, most home occupations are listed either in Section 27-606 or in the use table for Residential Professional zoning districts. Other uses listed in the 7299 SIC category include:

7299 Miscellaneous Personal Services, Not Elsewhere Classified

Establishments primarily engaged in providing personal services, not elsewhere classified.

- Babysitting bureaus*
- Bartering services for individuals*
- Birth certificate agencies*
- Blood pressure testing, coin-operated*
- Buyers' clubs*
- Car title and tag service*
- Checkroom concessions or services*
- Clothing rental, except industrial launderers and linen supply*
- Coin-operated service machine operation: scales, shoeshine, lockers,*
- College clearinghouses*
- Comfort station operation*
- Computer photography or portraits*
- Consumer buying service*
- Costume rental*
- Dating service*
- Debt counseling or adjustment service to individuals*
- Depilatory salons*
- Diet workshops*
- Dress suit rental*
- Electrolysis (hair removal)*
- Escort service*
- Genealogical investigation service*
- Hair removal (electrolysis)*
- Hair weaving or replacement service*
- Locker rental, except cold storage*
- Marriage bureaus*
- Massage parlors*
- Porter service*
- Quilting for individuals*
- Rest room operation*
- Scalp treatment service*

Shopping service for individuals
Steam baths
Tanning salons
Tattoo parlors
Turkish baths
Tuxedo rental
Valet parking
Wardrobe service, except theatrical
Wedding chapels, privately operated

Only tax preparation services (SIC 7291) are allowed in the Residential Professional zoning district and are an allowed home occupation. Several of the uses listed in 7299 may, with written permission of the Zoning Coordinator, be allowed as home occupations. For example, genealogical investigation services may be allowed since these are typically small office type operations with very few clients. In addition, shopping service for individuals may be allowed as the activity primarily occurs off the residential property and goods are delivered to the clients' residence. Many of the listed uses in 7299 would not be compatible with the spirit or intent of the home occupation regulations. Tattoo parlors, an outdated term but descriptive, are one of the listed uses in SIC 7299. Based on the site specific characteristics of the proposed home occupation, the Zoning Coordinator determined this was not an allowable home occupation.

The appellants are requesting the Board reverse the Zoning Coordinator determination that the use is not an allowed use as a home occupation. In addition, the appellants are requesting the Board also consider allowing the use to continue for a 1-year period while they search for a permanent business location where they would have an office, studio and parking for the "mobile tattoo" studio bus.

In considering the request from the applicants, the Board may consider all the facts and findings of both parties and may affirm in whole or in part the Zoning Coordinator's determination. In addition, the Board may by a concurring vote of 4 members reverse or modify the Zoning Coordinator's decision.



PHONE: (406) 247-8647

Attachment A – Notice of Violation October 23, 2013

CODE ENFORCEMENT DIVISION

“PROTECTING QUALITY OF LIFE IN BILLINGS”

PLANNING & COMMUNITY SERVICES DEPARTMENT

2825 3RD AVENUE NORTH 4TH FLOOR

BILLINGS, MONTANA 59101

FAX: (406) 657-8327

EMAIL: AdamsT@ci.billings.mt.us



ISAACSON, DAVID BRUCE
OR CURRENT RESIDENT
1207 YELLOWSTONE RIVER RD
BILLINGS, MT 59105

Case Number: CE-13-02402

NOTICE OF CITY CODE VIOLATION

Oct 23, 2013

In Billings, we value neighborhood and community efforts to maintain a beautiful City. We also rely on property owners to do their part in keeping our City safe and attractive. City Ordinances regulate some property owner responsibilities that are necessary to ensure Billings remains an appealing community in which to live and prosper. The property identified below, located within the City of Billings, Yellowstone County, has been inspected and found to be in violation of Billings Municipal City Code:

Violation Description

Violation Detail

27-606 (f) Signs in R Zone for Home Occupation

Date Est: 10/23/2013

Violation Description

SECTION 27-606(f) - There shall be no sign advertising or calling attention to a home occupation.

Violation Detail

27-606 Business in R Zone

Date Est: 10/23/2013

Violation Description

SECTION 27-606 - A home occupation is a business operated by the occupant of a dwelling located in a residential zone that is accessory to the residential use of the building. Home occupations must comply with the code limiting the types of businesses, hours of operation, and square footage allowed. Please see entire code Sec. 27-606 for these limitations.

1207 YELLOWSTONE RIVER RD

PRI-001-012

TAX ID #C01387I

Violations Details: tattoo parlor being ran out of the home

Date Inspected: 10/22/2013

In order to avoid fines or penalties, you are required to **cease the home occupation of Tattoo parlor at this address. It is not an approved home occupation.**



PHONE: (406) 247-8647

Attachment A – Notice of Violation October 23, 2013

CODE ENFORCEMENT DIVISION

"PROTECTING QUALITY OF LIFE IN BILLINGS"

PLANNING & COMMUNITY SERVICES DEPARTMENT

2825 3RD AVENUE NORTH 4TH FLOOR

BILLINGS, MONTANA 59101

FAX: (406) 657-8327

EMAIL: AdamsT@ci.billings.mt.us



We always attempt to work with property owners in correcting City Code violations and we courteously advise you that this violation must be corrected within ten (10) days of the date of this notice; otherwise, the City will take appropriate legal action.

Violation of a City Ordinance or failure to comply with written notice of correction constitutes a misdemeanor. Any person who fails to comply with the requirements of the City Ordinance *"shall upon conviction thereof be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both, and in addition shall pay all costs and expenses involved. Each day such violation continues shall be considered a separate offense."*

FOR THE SAKE OF A SAFE AND ATTRACTIVE COMMUNITY, your prompt attention and cooperation in resolving this matter is greatly appreciated. If for some reason, you are unable to correct the above violation within the time set forth, or if you have any questions, please call the Code Enforcement Officer.

By _____
Tanya Punt, 657-8288
Code Enforcement Officer

Discussion

Boardmember Chesarek asked about the citation. Nicole Cromwell said Staff received two complaints and a notice was sent by the City Code Enforcement Division in response. In response to further question by Boardmember Chesarek, Nicole Cromwell suggested this type of business could be legally operated in a permanent location zoned Neighborhood Commercial or Community Commercial. Boardmember Noennig pointed out this use is not allowed in a Residential Professional zoning district. Nicole Cromwell referred to the listed uses in the staff report and clarified the SIC numbers and the specific uses. She stated the use has to meet all of the criterion and restrictions for home occupations. Mark Noennig asked regarding the weight of the vehicle and Nicole Cromwell said she does not have this information but it would be denoted on the vehicle's registration. Mark Noennig pointed out the listing for tattoo parlors in SIC 299. Nicole Cromwell explained this use would not be allowed as a use in the residential zone and would have to be considered as a case by case basis to be allowed as a home occupation.

Appellants

Tara Radtke, 1207 Yellowstone River Road, Billings, Montana

Ms. Radtke is an event coordinator and business associate with Cameron Scott and Jason Radtke, owners of the mobile tattoo and piercing studio, "The Workshop". She asked this Board to consider a provision from 27-606 for this business and a request for a temporary six month to one year variance to allow the business to occasionally provide service at their licensed and insured mobile studio and give them time to secure a permanent location in an approved zoned area with parking for the bus. She explained if a permanent location is obtained, the bus will only be used for events or mobile purposes.

Ms. Radtke said their reasoning for this request is the mobile business is not a home occupation as it is a separate entity from their home and does not impede on the daily life within the home. The office space is attached to the home and is located in a private space for consultations. During hours of operation, there would be up to two vehicles in the driveway. The bus was inspected by RiverStone Health and given complete licensure by Yellowstone County. Ms. Radtke submitted copies of their licenses and photos of the mobile studio to the Board and stated all artists within Yellowstone County have to be individually licensed.

Ms. Radtke said approximately three clients per week request procedures be completed on the premises but ninety percent of their clients prefer receiving services at their residence. She stated there is no signage at the home base that is not permanently attached to the mobile unit. Their neighbor and adjacent property owner Bruce Issacson has given them permission to use the driveway for the mobile unit and if the variance is denied, use his property to park the studio. Ms Radtke said they are located next to a vacant corner lot; the inside of the bus is curtained for privacy; and they recently installed lighting covers powered by generator or from the home. She said the noise level is no louder than a running diesel truck and the generator is only used for mobile events and it does not have to be running for all of these hours. Ms. Radtke stated this type of business is new to Yellowstone County and she asked this Board to allow the variance in order to provide something original and unique to this industry.

Jason Radtke, 1207 Yellowstone River Road, Billings, Montana

Mr. Radtke is co-owner with Cameron Scott. In response to a question by Boardmember Noennig, Jason Radtke explained the “Workshop” is just a part of the business. He said they intend to look for a shop in an area zoned for this type of use; then the bus will be used for events and mobile uses only. Boardmember Chesarek asked why the appellant hasn’t considered finding a location where they can operate out of the vehicle and if it is legal to operate in some else’s driveway. He asked how they meet the health requirements for restroom facilities. Mr. Radtke said RiverStone Health requires them to have access to an approved restroom facility while in operation. Ms. Tara Radtke interjected and said they have applied for a variance with RiverStone Health to use private restroom facilities when working at a client’s residence. She said it would be up to Mr. Radtke’s business to determine if the private facility is acceptable.

Mark Noennig noted Ms. Radtke’s comment that she understands the requirements of the code. He said he feels this business does not comply with the regulations and he asked Mr. Radtke if he agrees. Mr. Radtke said they have adjusted their hours of operation to 10:00 a.m. to 8:00 p.m. to comply with the requirements. He stated the services are conducted entirely in the bus and there is signage on the bus. Boardmember Noennig pointed out there is activity on the exterior of the lot indicating they are using the location for purposes other than the dwelling. He asked if they were aware when they started the business they may be in violation of the requirements. Mr. Radtke said initially they had a sign and were not aware of the requirements until they were notified by the Code Enforcement Division. Boardmember Noennig said he is struggling to find that this business complies with the Code. He asked Nicole Cromwell if there is flexibility to give a temporary or partial approval of the request. Nicole Cromwell said within the Zoning Code section for appeals of administrative decisions, the Board has the ability to modify or place conditions on her administrative decision.

Cameron Scott, (no address given)

Mr. Scott stated he is a co-owner with Jason Radtke. He explained they are trying to be an established community based tattoo shop and are requesting a variance as this is the first business of this kind. He said they are in the position to do something mobile to be competitive as there are so many other similar shops. Mr. Scott stated they are in the process of applying for a variance for the use of private restrooms with RiverStone Health. He said they are trained in sanitation and RiverStone Health and Environmental Health trusts them to make these decisions.

Bruce Issacson, 1213 Yellowstone River Road, Billings, Montana

Mr. Issacson stated he has resided at 1213 Yellowstone River Road for the last 38 years and also owns the property at 1204 Yellowstone River Road. He said the applicants have done everything conceivable to get this new business “off the ground”. He related he has never had anyone park on Yellowstone River Road and cross the street to get to his or his son’s residence. He commented on the site distances from neighboring properties to 1213 Yellowstone River Road. Mr. Issacson said the subject property was cited for several years for weed management issues but later MDU improved the lot. He said there should be no complaints and commented on some dissention with a neighbor. Chairman Pro tem Connell cautioned Mr. Issacson and asked him to keep his testimony relevant. Mr. Issacson said this business is not detrimental to traffic and if necessary, he would allow them to park the unit on the back portion of this property. Ms. Radtke added that the residents living at

1117 Hawthorne initially gave permission to park the bus on the property but have since withdrawn their permission.

Mark Shipstone, 1106 Yellowstone River Road, Billings, Montana

Mr. Shipstone voiced concern with the potential of parking the bus while idling 10-15 feet from his house. He stated this is a residential neighborhood and it should be kept as such. He said there have been instances with more than two parked cars sticking out from the driveway into the roadway, and alleyway access will be restricted with cars parked in the alleyway. He said they initially had a 15-foot sign but they had to take it down. Mr. Shipstone stated this is not a business he wants to have in his neighborhood as it could reduce the value of his property; and he doesn't want customers coming across his lawn to go to the tattoo business. He said there are several duplexes in the area and the additional traffic isn't needed. Mr. Shipstone related there have been two murders in the last year within three blocks of his house. He stated he wishes to have peace and quiet and not live in a business district.

Boardmember McDonnell asked how long bus has been parked at this location. Mr. Shipstone said he thought about six to eight months. In response to further question by Boardmember McDonnell, Mr. Shipstone stated the traffic activity is directly related to the tattoo business and there is no parking available along Yellowstone River Road. He said is very strongly opposed to this business and this location is not geared for a commercial enterprise.

Juliet Spalding, 1724 Natalie Street, Billings, Montana

Ms. Spalding stated she is attending and speaking this evening as a Heights resident and concerned citizen. Ms. Spalding said this neighborhood deserves respect, and she drives by this neighborhood twice a day and intentionally chooses this route due to the beauty of the area. Ms. Spalding said she has no issues with the operation itself but is against having it in this neighborhood as there is zoning in place to prevent businesses operating in neighborhoods. She pointed out the regulations for home occupations are in place to ensure the occupation does not have an impact on the neighborhood. She said this occupation is in operation after dark and she feels it has an impact on the neighborhood. She pointed out that it is possible to see clients receiving services while driving by the property even with the bus windows partially covered. She said the advertising on the bus is blatant and home occupations should not have advertising. Ms. Spalding submitted information and diagrams on gross vehicle weight limit for various truck classifications to the Board. She noted that based on the diagrams it would appear the bus does not meet the 8,000 pound gross vehicle weight maximum allowed for home occupation vehicles. She said prior to the installation of the headlight covers, the bus' headlights were shining on the neighbor to the north. She stated she doesn't know how they are doing mobile operations as she has only seen the bus moved once. She said she understands the need for entrepreneurs but this is not appropriate for a residential neighborhood; a zone change would be needed to make this an allowed use. Ms. Spalding requested this Board uphold the Zoning Coordinator's decision and enhance the decision with requirements to have the business cease; the bus moved from this location immediately; and allow no temporary use variance. She pointed out they have had this business for six months which is ample time to relocate; and the Heights has several parking lots available for this purpose. Ms. Spalding stated she personally feels the residential zones within the City of Billings and the Heights should be treated as neighborhoods and have residences that can be walked by without viewing customers receiving tattoos or piercings.

Bruce Issacson, 1213 Yellowstone River Road, Billings, Montana

Mr. Issacson adamantly stated he has resided at this location for 38 years and has never seen anyone walk across Mr. Shipstone's property to get to this property. He said the road is extended in this area to allow cars to park without sticking out into the road. Mr. Issacson commented the minute the

mobile home park was built there was a difference with traffic, the keeping of Yellowstone River Road, and the park. He said the sign was removed after immediately the reprimand was received, and there is more than 10-15 feet between his house and Mr. Shipstone's residence. In response to question by Boardmember Noennig, Mr. Shipstone stated he is not compensated by the business for allowing the business to park on his property.

Tara Radtke, 1207 Yellowstone River Road, Billings, Montana

Ms. Radtke said they recently covered the bus headlights to prevent them from shining into the neighbor's house. She stated they are trying to comply with City Code and licensing requirements as this business will not be held back. She emphasized will have clients on the property in the office for consultations and drawing times whether the bus is there or not; and this is an allowable use.

Zoning Coordinator Nicole Cromwell addressed Chairman Pro Temp Connell and the Board. She pointed out there has been a lot of testimony and some rebuttal. She suggested that considering the fact this appellant deserves the full measure of this Board in its decision making she would recommend continuing this hearing to the March 5, 2014 meeting.

Cameron Scott, (no address given)

Mr. Scott stated this is a temporary situation for their business and they are asking for a six month allowance to give them time to get another shop. He said they do not wish to leave Billings as they have family here. He promised this is a temporary situation as they will be in a street shop. He said they are not trying to hurt anyone and he said he is appreciative of this forum.

Discussion

Boardmember Chesarek asked about the Code Enforcement process and the Board's purview. Nicole Cromwell explained the Code Enforcement process stops immediately once an appeal is filed. The Board votes on the Administrative decision that this business and this use as currently operated is not allowed as a Home Occupation. The Code Enforcement process would be started or not depending on the decision of the Board. If the process is restarted, there is generally a second notice followed with an allowance of ten days for compliance and consultation with the City Attorney. It may or may not be taken to another step. Even so, the Appellants could appeal the Board of Adjustment's decision to the District Court and stop the Code Enforcement procedures again.

Discussion

In response to Boardmember Noennig, Nicole Cromwell explained additional testimony would be taken to the next hearing if the public hearing is continued. Appellant Tara Radtke stated she would like to postpone to the next meeting. Nicole Cromwell advised the Board of the need to make a motion and take a vote to either close the public hearing or grant Appellant Radtke's request to continue the public hearing and postpone a decision for 30 days. Boardmember Noennig commented he appreciates the Appellants' position and this has been a good hearing. In his view the code is specific, and he does not feel another hearing is productive and he recommends closing the public hearing.

Motion

Mark Noennig made a motion and it was seconded by Matthew McDonnell to close the public hearing and render a decision on the Appellants' appeal.

Discussion

Nicole Cromwell reminded the Board in the procedures outlined within the Zoning Code once a public hearing is closed, a decision must be rendered within ten days which will not allow enough time for another public hearing.

Chairman Pro Tem Connell called for discussion on the motion. There was none. Chairman Pro Tem Connell called for a vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				1
James Olson				1
Paul Hagen				1
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passes and the public hearing is closed.

Discussion

Chairman Pro Tem Connell asked Nicole Cromwell to reiterate the Board’s choices for a decision. The BOA may determine the following:

- Reverse the determination and allow the mobile tattoo business as a home occupation.
- Affirm the determination the mobile tattoo business is not an allowed home occupation.
- Modify in whole or in part the determination including conditions of the modification.

Motion

Boardmember Mathew McDonnell made a motion and it was seconded by Boardmember Frank Chesarek to affirm the Administrative determination the mobile tattoo business is not an allowed home occupation modified in part including a condition for a 3 month time frame granted to cease and desist and move the bus from its current location.

Discussion

Chairman Pro Tem Connell called for discussion on the motion. Boardmember McDonnell commented he understands the Appellants’ desire to get a new location.

Boardmember Noennig stated the issues are obvious and the enforcement time process will result in an orderly move of the bus. He disagrees with the motion as they have been at the location for 6 months.

Boardmember Chesarek said he is in agreement with the determination. He said he likes the initiative of the mobile tattoo business as it shows some entrepreneurial effort. Even so, he would not appreciate having the bus located in his neighborhood and the bus needs to be moved. He stated he is not going to vote for the motion.

Boardmember Connell stated there are professional persons with businesses that rent buildings and it isn’t fair competition for someone to put a bus in the driveway. He said the mobile business may

work but it should not be in a driveway. The neighborhood deserves the right for a peaceful existence and the business does not comply with the major components of the ordinance. He said he it is incumbent on this Board to state it does not comply with the ordinance and support the administrative decision.

Chairman Pro Tem Connell called for a vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				1
James Olson				1
Paul Hagen				1
Frank Chesarek		1		
Matthew McDonnell	1			
Martin Connell		1		
Mark Noennig		1		

The motion fails.

Motion

A motion was made by Boardmember Chesarek and it was seconded by Boardmember Noennig to affirm the determination the mobile tattoo business is not an allowed home occupation.

Discussion

Chairman Pro Tem Connell called for discussion on the motion. Boardmember Noennig reiterated this decision is not personal or negative toward the business but they need to comply with the ordinance. He commented it may be the ordinance needs to be changed and exceptions made to allow for this type of business as it is unique.

Chairman Pro Tem Marty Connell called for a vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				1
James Olson				1
Paul Hagen				1
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion carries, 4-0. The City Board of Adjustment affirmed the Administrative determination that the mobile tattoo business is not an allowed home occupation.

Chairman Pro Tem advised the Appellants’ to set up a meeting with Zoning Coordinator Nicole Cromwell if they need to discuss or obtain further information on how to proceed with their business.

Other Business/Announcements:

- A. Nicole Cromwell explained the resource materials distributed to the members of the Board. She encouraged members to visit sites of pending applications prior to meetings and offered her contact information.
- B. The next City Board of Adjustment meeting will be held on **Wednesday, February 4, 2014.**
- C. Election of Officers will be held at the next meeting March 5, 2014.
- D. Marty Connell relinquished the Chairman Pro Tem to Boardmember Chesarek. He suggested using the text below in the City Variance application form to notify applicants they are subject to Montana Annotated Code when they offer testimony.

Montana Code Annotated 2013

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

45-7-202. False swearing. (1) A person commits the offense of false swearing if the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the person does not believe the statement to be true and:

- (a) the falsification occurs in an official proceeding;
- (b) the falsification is purposely made to mislead a public servant in performing an official function; or
- (c) the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) through (7) of [45-7-201](#) apply to this section.

(3) Except as provided in [13-35-240](#), a person convicted of false swearing shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. [94-7-203](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-7-203](#); amd. Sec. 5, Ch. 407, L. 2007.

Provided by Montana Legislative Services

<"">

Motion

Marty Connell made a motion and it was seconded by Mark Noenning to adopt the MCA 47-7-202. False swearing-language for City Variance applications subject to the City Attorney's approval.

Discussion

Nicole Cromwell asked if it would be helpful to cite the statutes themselves specifically on the form and Marty Connell stated will accept this suggestion as part of the motion. Mark Noennig explained the difference between false swearing and perjury within the code being the materiality of the statement.

Chairman Pro Tem Chesarek called for a vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				1
James Olson				1
Paul Hagen				1
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion carried.

Pro tem Connell resigned his position to Boardmember Chesarek.

- E. Exparté Communication-Marty Connell stated he mailed the members of the Board copies of the California statue on exparté communication. He said he feels the guidelines for exparté communication submitted to City Council by City Attorney Brent Brooks is incomplete.

Motion

Boardmember Connell made a motion and it was seconded by Boardmember McDonnell to have Boardmember Noennig work with City Attorney Brent Brooks to generate guidelines for exparté communications for the City Board of Adjustment.

Discussion

Chairman Pro Tem Chesarek called for discussion on the motion. Nicole Cromwell stated she received a response from City Attorney Brent Brooks. Mr. Brooks offered to attend a Board discussion at future meeting to talk about exparté communications, and he suggested having this discussion prior to working on the guidelines.

Marty Connell withdrew the motion.

Suggestion was made to schedule a time aside from this meeting. Nicole Cromwell said a public notice would have to be published two weeks in advance. The Board asked that Nicole Cromwell schedule a meeting for this purpose.

- F. Marty Connell commented on the need to discuss the recording of the meeting. He feels the meeting can be recorded but the file should be destroyed after the Clerk completes the meeting minutes. Discussion followed on the need to notify attendees the meeting is recorded. Nicole Cromwell said the discussion is whether the recording is considered public record and do they need to be archived and saved according to the Records Retention rules for the State of Montana.
- G. Marty Connell suggested avoiding singling out board members with a voice roll call. Mark Noennig commented on the need for a three minute time limit on testimony.

H. Marty Connell requested the addition of a future agenda item to consider moving the City Board of Adjustment meeting time to 4:00 p.m.

Adjournment: 8:20 p.m.

ATTEST: Approved by a motion on March 4, 2014.

Chairman ProTem Marty Connell

Tamara L. Deines, Planning Clerk