

CITY BOARD OF ADJUSTMENT

MINUTES: April 2, 2014

Approved by a motion on May 7, 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	1	1								
James Olson	Vice Chairman	1	E	1	E								
Paul Hagen	Boardmember	1	E	1	1								
Frank Chesarek	Boardmember	1	1	1	E								
Matthew McDonnell	Boardmember	1	1	E	1								
Martin Connell	Boardmember	1	1	1	1								
Mark Noennig	Boardmember	1	1	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	3	4									14

Chairman Bollman 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 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; and Tammy Deines, Planning Clerk.

Attending: Trina White; Lauren Waterton, Sanderson Stewart

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 6:02 p.m.

Approval of the March 5, 2014 Meeting Minutes

Chairman Bollman called for approval of the March 5, 2014 minutes.

Paul Hagen made a motion and Mark Noennig seconded to approve the March 5, 2014 meeting minutes as submitted.

The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest. Chairman Bollman, noted Agenda Item #3, Variance #1180, and said he is a State employee; the parcel immediately to the east is owned and managed by the State of Montana Department of Resources but has no personal or financial interest.

Board member Noennig disclosed he represented the Ironwood Homeowners Association over the proposed use of one of the lots as access to this property when it was under prior ownership. This case has been resolved and is not particularly relevant.

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.

- Dan Houser E-mail to Dave Green, dated 3/26/14 regarding Variance #1180
- Luella Previnger, 2340 Rosewyn Avenue, letter of objection to City Variance #1183

Public Hearings

Chairman Bollman stated the Board will open a public hearing and allow public comment this evening. Ms. Cromwell reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. She stated four votes of the Board of Adjustment are required to pass a variance. This evening there are six Board members attending. A simple majority will approve requests.

Item #1: Return Item - Variance #1180 – C/S 3030, Tract 1 (Price Subdivision) – Building

Height – A variance from 27-308 requiring a maximum building height of 34 feet to allow a maximum building height of 50 feet for new dwellings to be constructed in the proposed Price Subdivision, in a residential 9,600 (R-96) zone, on Tract 1, C/S 3030, a 166-acre parcel of land. Tax ID: D04555.

REQUEST

The applicant is requesting a variance from 27-308 requiring a maximum building height of 34 feet to allow a maximum building height of 50 feet for new dwellings to be constructed in the proposed Price Subdivision, in a residential 9,600 (R-96) zone, currently on Tract 1, COS 3030, a 166-acre parcel of land. Tax ID: D04555, Larry and Amy Price, owners, and Sanderson Stewart, agent. Since the last Board of Adjustment meeting on March 5, the applicant has provided drawings that show what the proposed 50 foot tall homes would look like from property to the south in the Yellowstone Country Club and from Ironwood Estates Subdivision to the west. The applicant also is asking to amend the variance request to just apply it to the future Lot 1 of Price Subdivision.

Amended Variance Request

The applicant has submitted a revised request for the variance, asking that the variance be only for proposed Price Subdivision Lot 1 and for a total height of 48 feet. The Board of Adjustment may consider the original variance request or the lesser request for the variance on the single lot.

The applicant has asked for a height that will accommodate larger homes on very large lots in a private gated subdivision. The proposed Price Subdivision will have lots that range from 10.6 acres

for the smallest lot to 75.49 acres for the largest lot. There will be 5 lots total on 166.34 acres. The proposed Price Subdivision has received preliminary approval but still has to complete the process for final approval. As mentioned above, there have been two variances granted for height in the immediate area in Ironwood Subdivision to the west. The lots in Ironwood are smaller lots with comparable heights to what is being requested with this variance.

RECOMMENDATION:

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review as provided within this report and similar variances granted by the Board of Adjustment. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other properties in the neighborhood.

Should the BOA approve the initial variance applied for staff is recommending 6 conditions for the variance request:

1. The variance is for a maximum building height of 50 feet and no other variance is intended or implied by this approval.
2. The variance applies to Tract 1, COS 3030, the future Price Subdivision, Lots 1 through 5, Block 1.
3. Should any of the lots in the proposed Price Subdivision be subdivided this variance would only apply to lots of 1 acre or larger.
4. The applicant must act to execute the variance on each lot on or before March 5, 2021. If any lot included in this variance remains unimproved on March 6, 2021, the requirements for the underlying zoning district applicable at that time shall apply to such lots and this variance shall no longer be valid for those unimproved lots.
5. The applicant shall meet all other current building, engineering and zoning codes of the City of Billings, with the exception of height for the 7 year period.
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 as outlined in previous conditions.

Should the BOA approve the Revised Variance Request staff is recommending 7 conditions for the variance request:

1. The variance is for a maximum building height of 48 feet and no other variance is intended or implied by this approval.
2. The variance applies only to the future Price Subdivision, Lot 1, Block 1.
3. The applicant must obtain a building permit within 1.5 years and have the house constructed within 3 years.
4. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
5. The applicant will construct the home in substantial conformance to the drawings submitted with this variance request most specifically in the location shown.
6. The applicant shall meet all other current building, engineering, fire and zoning codes of the City of Billings.
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 as outlined in previous conditions.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Board member Noennig asked for clarification on the location of Lot 1 in reference to Tommy Armour Drive. Dave Green referred to a posted aerial photo of the area. Board member Noennig noted per Dan Houser's email that he is more concerned with the two lower lots in the subdivision. Boardmember Connell asked for elevation information and Dave Green deferred the question to the applicant's agent.

Chairman Bollman called for presentation by the Applicant.

Lauren Waterton, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana

Ms. Waterton is the agent for property owners Larry and Amy Price. She said the applicant considered the comments from the last meeting and decided it would be prudent to focus on Price Subdivision Lot 1, as there is information available for this parcel and the modification to the variance request is pertaining only to Lot 1.

Board member Connell asked about the difference in elevation between Tommy Armour Drive and Lot 1. Ms. Waterton portrayed a simulated view of the property via "Google Earth". She said the applicant applied for a foundational building permit but construction has not begun. She noted an overall ground elevation difference of 43 feet to Tommy Armour Drive; Lot 1 is approximately 75 acres; and the request has reduced the maximum allowable height request from 50 to 48 feet.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1180.

Favor

Frank Neinaber, Studio 4 Architects, 3419 Central Avenue, Suite B, Billings, Montana

Mr. Neinaber is the architect for the project on Lot1. Mr. Neinaber stated they strived to not break the pseudo line of the rims and the design will use natural materials to blend in with the surrounding landscape.

Opposition

Dan Houser, Yellowstone Club Estates, 3803 Ben Hogan Lane Billings, Montana

Mr. Houser stated was is in opposition to the original request, but is happy with the revision of the variance as his primary concern is with Lots 2 and 3. He submitted photos to the members of the Board of a 24' elevation point from his backyard to consider should a structure be built on Lot 2 or Lot 3 which are adjacent to his rear yard.

Rebuttal

Lauren Waterton, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana

Ms. Waterton had nothing further.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1180. There was none. Chairman Bollman closed the public hearing and called for a motion.

Motion

Board member Chesarek made a motion to approve the original request to allow a maximum building height of 50 feet for new dwellings to be constructed in the proposed Price Subdivision, in a residential 9,600 (R-96) zone, on Tract 1, C/S 3030, a 166-acre parcel of land with the conditions and findings of fact recommended by staff.

The motion died for a lack of a second.

Motion

Board member Connell moved and Board member Hagen seconded the motion to deny the original request to allow a maximum building height of 50 feet for new dwellings to be constructed in the proposed Price Subdivision, in a residential 9,600 (R-96) zone, on Tract 1, C/S 3030 and the revised request asking that the variance be only for proposed Price Subdivision Lot 1 and for a total height of 48 feet.

Discussion

Board member Connell stated he is disappointed that everyone has missed the point but Mr. Houser, being should the original variance be approved the house would be constructed 91 feet from Mr. Houser's back yard. He commented on comparing the elevation to Ironwood Subdivision, where it is flat and add the elevation to it. He stated he finds it repugnant to compare this to Ironwood's requirement for 48 feet when the comparison is for a higher piece of property. He said he visited the site and a building on Lot 2 would obscure the view of the Rimrocks. He voiced concern as it may be more difficult to forward objections to subsequent applications, and he is opposed for this reason.

Board member Chesarek said he would not describe Ironwood subdivision as flat and there are several tall houses.

Boardmember Bollman concurred and said there is a significant elevation gain.

Boardmember Noennig commented with the adjustment for elevation changes, the allowable height is 41.4 feet, which presents a 6'6" difference in height. He stated he is inclined to vote against the original variance and support the amended request as there are no objections to Lot 1.

Board member McDonnell concurred with Board member Noennig's comments.

Motion

Chairman Bollman made a substitute motion and Boardmember Noennig seconded to conditionally approve the revised variance request City Variance #1180 to allow a maximum building height of 48 feet for structures in the future Price Subdivision Lot 1, Block 1 with the conditions and findings of fact recommended by staff and with an addition to Condition of Approval #2 to state, "The variance applies only to the future Price Subdivision, Lot 1, Block 1, only in the building envelope most specifically in the location shown in the drawings submitted with this variance request."

Discussion

Chairman Bollman called for discussion on the motion. He commented he made the substitute motion as he previously had concerns with the original request, but considering the information and drawings provided, this is a good compromise. He stated variances on Lots 2 and 3 would be considered on their own merits and looked at specifically, which would be good as there are some concerns with the ridgeline location of the home sites.

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 passed, 4-2. City Variance #1180 is conditionally approved.

Item #2. Variance #1181 – 135 Lewis Avenue – Lot Coverage - A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 33.5% (2,334 square feet) for the removal of a 234 square foot detached garage and re-building of a larger detached garage of 600 square feet in a Residential 7,000 (R-70) zone on Lots 18 & 19, Block 10, West Side Addition Subdivision, a 7,000 square foot parcel of land. Tax ID: A17829.

Dave Green gave a presentation and recommended conditional approval to the board.

Staff recommends conditional approval of the variance Should the BOA approve the Revised Variance Request staff is recommending 7 conditions for the variance request:

1. The variance is for a maximum building height of 48 feet and no other variance is intended or implied by this approval.
2. The variance applies only to the future Price Subdivision, Lot 1, Block 1.
3. The applicant must obtain a building permit within 1.5 years and have the house constructed within 3 years.
4. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
5. The applicant will construct the home in substantial conformance to the drawings submitted with this variance request most specifically in the location shown.
6. The applicant shall meet all other current building, engineering, fire and zoning codes of the City of Billings.
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 as outlined in previous conditions.

Discussion

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

Public Hearing

At 6:44 Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1181.

In Favor

David McFarland, 135 Lewis Avenue, Billings, Montana

Mr. McFarland is the applicant/owner. He said they plan to remove the existing garage as it is dilapidated. He said their plan is to use the extra space for a garage. He said he is interested in maintaining a setback to the alleyway to allow access for his vehicles.

In Opposition

There was none. Chairman Bollman called for a motion.

Motion

Board member Chesarek made a motion and Board member Hagen seconded to approve City Variance #1181 with the conditions and findings of fact recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. There was none. Chairman Bollman called for a roll call vote for City Variance #1118

Board member	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 passed 6-0. Variance #1181 is conditionally approved.

Item #3: Variance #1182 – 817 & 819 N 26th Street – Lot Area - A variance from 27-308 requiring a minimum lot area of 14,000 square feet for 2 existing duplex dwellings to allow a minimum lot area of 7,000 square feet in a Residential Multi-family zoning district on Lots 15 & 16, Block 23, Foster Addition Subdivision. No new construction is planned. The variance would allow the owner to re-build in the future if necessary. Tax ID: A07196.

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

1. The variance from 27-308 requiring a minimum lot area of 14,000 square feet for 2 existing duplex dwellings to allow a minimum lot area of 7,000 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 & 16, Block 23, Foster Addition Subdivision generally located at 817 and 819 North 26th 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. Boardmember Noennig asked if this request for a variance is considered a “rebuild letter”. Dave Green explained no letter will be issued without going through the variance process. In response to Board member McDonnell, Dave Green said 22 variances were submitted for properties in this area with 18 variances granted starting in the early 70’s when zoning came into effect.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1182.

In Favor

David L Overturf, 817 N 26th Street, Billings, Montana

Mr. Overturf is the applicant/owner. Mr. Overturf said this request came through the loan process to satisfy the lender; there will be no change of use or occupancy.

Boardmember Noennig commented the variance process is triggered when this is required by the prerogative of the lender for reconstruction. Nicole Cromwell explained that prior to 2008 this type of request was not standard operating procedure but due to several major disasters, rebuild letters are required and the Division issues several every year. Board member Bollman clarified and said if everything was destroyed it cannot be built exactly as it exists today, as it would have to meet the current code requirements. Nicole Cromwell said a Zoning Clarification permit may be submitted and issued for properties that are in compliance but need this information.

Tina White, 1145 Delphinium, Billings, Montana

Ms. White stated she is a realtor and this a very common request for lenders who are considering non-conforming properties for loans.

In Opposition

There was no one in opposition to this request.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1182. There was none. Chairman Bollman closed the public hearing at 7:02 p.m., and called for a motion.

Motion

Board member Connell made a motion, and it was seconded by Hagen to approve City Variance #1181-135 Lewis Avenue with the conditions and findings of fact recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. Boardmember Noennig reiterated that this is the only appropriate avenue and there was not an arbitrary decision to require the variance.

Chairman Bollman called for a roll call 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 passed 6-0. City Variance #1182 is conditionally approved.

Item #4: Variance #1183-2405 Rosewyn Lane-minimum lot area of 9,600 square feet to allow a minimum lot area of 7,038 square feet for the purpose of constructing a single family dwelling in a Residential 9,600 (R-96) zone, on Lot 3B, Srite Acres Subdivision. Variance #1067 previously granted on March 3, 2010, allowed 1 year for the owner to apply for building permit and this was not accomplished so the variance expired. Tax ID: A14554A.

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 to allow a minimum lot area of 7,038 square feet for the purpose of constructing a single family dwelling in an R-96 zone. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 3B, Srite Acres Subdivision generally located at 2405 Rosewyn Lane.
3. The applicant will submit and obtain a building permit for the single family home within 1.5 years and have the home built within 2.5 years.
4. The applicant will construct the home in substantial conformance to the drawings submitted with this variance request.
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 single family home 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.
8. 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

Dave Green noted one letter of opposition dated March 17, 2014, was received from Citizen Luella Previnger, 2340 Rosewyn Avenue, stating she feels the proposed variance will not serve the public interest, and this is a self imposed hardship that the property owners have created in the past.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Board member Noennig, Dave Green stated this property was considered for variances three times. He said the Board granted the second request for a variance but the property owners did not complete the home within the time allowed. Nicole Cromwell said the first variance failed as the owner at the time was not a good property manager and surrounding residents felt the request was too dense for the R-9600 zoning.

Public Hearing

At 7:13 Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1183.

In Favor

Trina White, 1145 Delphinium, Billings, Montana

Ms. White is the agent for property owners, Thomas and Cheryl Mogan. She said the property owners have decided to sell this property, and an attractive house would be a benefit to the neighborhood.

Jim Coleman, 1328 Cortez, Billings, Montana

Mr. Coleman is the buyer and proposed builder for this lot. Mr. Coleman stated he plans to be respectful to the neighborhood as he feels it is his duty. He is proposing a simple craftsman type house with attractive landscaping. There is a large tree he would like to maintain. He hopes to be an asset to the neighborhood instead of a hindrance. He said this is a highly sought after neighborhood and he has no concerns with the timeframe for building construction.

In Opposition

There was none. Chairman Bollman called for a motion.

Motion

Board member Chesarek made a motion and Board member McDonnell seconded to approve City Variance #1183 with the conditions and findings of fact recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion. There was none. Chairman Bollman called for a roll call vote for City Variance #1183.

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 passed 6-0. Variance #1183 is conditionally approved.

Other Business/Announcements:

1. **Exparte' Communications**

At the March 5, 2014 meeting, members of the Board of Adjustment asked that Zoning Coordinator Nicole Cromwell send the 2006 City Attorney's exparte' memo to the members of the Board and members compose and forward specific questions regarding the vagueness of the memo to Chairman Bollman.

It was the consensus of the Board to allow time for a response from the City Attorney's office.

2. **Proposed change to language on the City Variance application form to add MCA citation for False Swearing and Perjury:** At the March 5, 2014 meeting, following discussion on this item, Board members Connell and Noennig asked for a meeting with City Administrator Tina Volek in order to consider the facts. Chairman Bollman suggested scheduling a meeting with City Administrator Tina Volek, either in advance or following a regularly scheduled Board of Adjustment meeting.

Board member Connell said he discussed this with City Administrator Tina Volek, who said she would revisit this issue. Board members suggested drafting an e-mail for consideration and forward it to Director Candi Millar and City Administrator Tina Volek.

3. Meeting Attendance: Boardmember Connell announced he will be absent for the June 4, 2014 meeting.

Adjournment: 7:20 p.m.

ATTEST: Approved by a motion on May 6, 2014.

Chairman Jeff Bollman

Tamara L. Deines, Planning Clerk