

CITY BOARD OF ADJUSTMENT

MINUTES: May 7, 2014

Approved with corrections by a motion on June 4, 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	1							
James Olson	Vice Chairman	1	E	1	E	1							
Paul Hagen	Board member	1	E	1	1	1							
Frank Chesarek	Board member	1	1	1	1	1							
Matthew McDonnell	Board member	1	1	E	1	1							
Martin Connell	Board member	1	1	1	1	1							
Mark Noennig	Board member	1	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	3								14

Chairman 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; and Karen Husman, Planning Assistant.

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.

Approval of the April 2, 2014 Meeting Minutes

Chairman Bollman called for approval of the April 2, 2014 minutes.

Mark Noennig made a motion and Jim Olson seconded to approve the April 2, 2014 meeting minutes with minor corrections.

The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest;

Cromwell said there were 3 communications received. There were 2 emails and 1 letter to the board.

Jim Olson recused himself from Variance #1185.

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.

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 7 Board members attending. A simple majority will approve requests.

David Green reviewed the variance request for 4142 Banbury Place, and presented the board with staffs report regarding the request.

Item #1: Variance #1184 – 4142 Banbury Place – Lot Coverage – A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 34% for the purpose of constructing a single family dwelling with a covered patio in a Residential 7,000 (R-70) zone, on Lot 26, Block 1 of Legends West Subdivision, a 7,790 square foot parcel of land. Tax ID: A30459.

REQUEST

The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 34% for the purpose of constructing a single family dwelling with a covered patio in a Residential 7,000 (R-70) zone, on Lot 26, Block 1 of Legends West Subdivision, a 7,790 square foot parcel of land. Tax ID: A30459, Todd and Nancy Kinkead, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

1. The variance is only from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 34%. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 26, Block 1 of Legends West Subdivision generally located at 4142 Banbury Circle.
3. Any construction activities must take place between 7 am and 8 pm
4. The applicant is required to comply with all other building, engineering and zoning regulations, with the exception of the lot coverage, that apply at the time of construction.
5. The covered back patio cannot be enclosed at a future time to create interior living space.

6. The applicant will obtain a building permit within 1 year and have the construction of the home complete with in 2 years.

7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Discussion

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

There were none.

Chairman Bollman called for presentation by the Applicant.

Todd & Nancy Kincaid, 4142 Banbury Place, Billings, Montana

Mr. & Mrs. Kincaid are the property owners, they were present and concurred with staff's recommendation.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1184.

Proponents

There were none.

Opponents

There were none.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1184. There was none. Chairman Bollman closed the public hearing and called for a motion.

Motion

Frank Chesarek moved and Mark Noennig seconded to conditionally approved City Variance #1184-4142 Banbury Place with the conditions recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	X			
James Olson	X			
Paul Hagen	X			
Frank Chesarek	X			
Matthew McDonnell	X			
Martin Connell	X			
Mark Noennig	X			

The motion passed, 7-0. City Variance #1181 is conditionally approved.

Board member Mark Noennig disclosed that he had represented the applicant of Variance #1185 for another matter totally unrelated.

Mr. Green reviewed the application for Variance request #1185 and presented the board with staffs report regarding the request.

Item #2. Variance #1185 – Variance #1185 – 3340 46th St West – Setback – A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet from Laredo Drive and 46th Street West for the purpose of construction a single family dwelling in a Residential 9,600 (R-96) zone, on Lot 2, Block 1 of Zabawa Subdivision a 23,610 square foot parcel of land. Tax ID: A30371.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet from Laredo Drive and 46th Street West for the purpose of construction a single family dwelling in a Residential 9,600 (R-96) zone, on Lot 2, Block 1 of Zabawa Subdivision a 23,610 square foot parcel of land. Tax ID: A30371, Kurt Haeker owner, Nathan Blanding, 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 to allow a minimum front setback of 10 feet from Laredo Drive and 46th Street West for the purpose of construction a single family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 2, Block 1 of Zabawa Subdivision generally located at 3340 46th Street West.
3. The applicant will submit and obtain a building permit for the house within 1.5 years and have the house built within 3 years.
4. The applicant will construct the house at the stated setbacks 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 house with the exception of this variance.
7. The applicant will obtain a Geotechnical report to submit with the building permit and follow the recommendations listed in the report for foundation and footings.
8. The applicant will provide the required drawings to city engineering to show how they will be handling run off from the property.
9. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
10. 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.

Board member Hagen expressed concern regarding the large boulders on the rear of the property. Board member Connell asked if there were anything in place that would hold the city harmless if there were rocks coming off of the rim rock adjacent to the property. Ms. Cromwell said there hasn't been language in any subdivision for that type of situation. She said the city would likely deal with those cases as they come up. There had been discussion about putting in conditions during subdivision review. Board member Connell expressed concern with the boulders on the line.

Board member Noennig asked where the measurements were taken from. Mr. Green explained and demonstrated on the site plan where the setback was measured from. There was discussion regarding the topography of the land and the location of the existing boulders on the lot that would restrict the building location of the house. There was discussion regarding the location of the driveway.

Chairman Bollman asked when this subdivision was approved. Mr. Green stated in 1998. He added they were required to submit a geotechnical report on this lot with the subdivision approval.

Mr. Green said there had been 4 other similar variances approved for front setback. On the east end of Laredo Street there have been 4 variances approved for a 10 foot front setback and another on 39th Street.

Board member Hagen asked if there was sufficient drainage for the flow of storm water runoff. Mr. Green said the Engineering Division would be responsible for reviewing and approving storm water runoff and drainage on the property, as well as requiring any geotechnical reports. He said typically they would need to provide detailed information on how it would drain from the hillside to and from the property.

Board member Chesarek asked for clarification of the shared driveway. Mr. Green said it is currently providing access to 3 lots. He said it is a shared driveway for those lots and is not part of the public right of way.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1185.

Proponents

Nathan Blanding, 539 Clark Avenue, Billings, Montana

Blanding is the applicant, current property owner.

Mr. Blanding clarified the setback lines for the front and sides of the property. He said the 3 lots share the driveway and pointed out the access points for each parcel. He said they had done extensive research with a number of contactors who would be able to excavate the property so that the home can be placed and modify the storm drainage to ensure this property as well as the surrounding properties would not be negatively impacted from the development of this lot. Mr. Blanding explained how the current water runoff flowed from the hillside and pointed out the

existing swales that support it. He also said the insurance companies have no concern with the site and felt the site was somewhat secure for the home construction.

Mr. Blanding clarified for the Board the request is for 6 feet from the edge of the porch to the property line, and 15 feet from the other property line.

Ms. Cromwell said the 10 foot setback allows 4 feet of unenclosed porch area to (project) encroach into that front setback area.

Opponents

Stan Hoggit, 4533 Palisades Park Drive, said he was concerned with approving this project. Mr. Hoggit expressed his concern about the ground freezing and contracting in the area that previously caused two large rocks to come down. He said he was wondering if the Planning Department had an engineering study done on the lot with regard to the possibility of rock slides as well as water runoff. Mr. Hoggit was also concerned that there had not been sufficient review during the subdivision. He said he was opposed to the Variance.

There was discussion and clarification on the use of the driveway and access to each parcel in the subdivision.

Tom Bennet, 4549 Palisades Park Drive.

Mr. Bennett explained to the Board the lots arranged and used by the shared driveway.

Boardmember McDonnell asked if Mr. Hoggit was opposed to the request for the setback variance. Mr. Hoggit stated he was concerned with the water runoff and the problems developing this lot would cause. Board member Chesarek asked if he had any issue with the setback reduction. Mr. Hoggit said he was not opposed to the setback reduction.

Brian Anderson 4546 Palisades Park Drive

Mr. Anderson said he had issues with the setback because by building the house where they are proposing it would be blocking two of the natural drainage that would redirect the flow into his property. He said currently he does not have any water runoff onto his property but felt the coulee existing cannot handle additional water that drains from the existing runoff. He said he did not know if moving the house back 20 feet would affect the water runoff and felt that putting it where they are proposing would negatively affect the flow of the water. Mr. Anderson said the previous variances that had been approved are from 42 Street West to the east, and are in an entirely different topographic area that currently did not have any water runoff issues. Mr. Anderson said if they insisted on building on the lot they are proposing they should have to adhere to the required setbacks for the lot. He felt that the cost to move the boulders should not be classified as a hardship.

Darrel Bell,

Mr. Bell said he wrote a letter on his views and he was against the variance.

Rebuttal:

Mr. Blanding thanked the people that had concerns with the lot, and said that he will be making sure that the house and the foundation will be secure and that the lot will be modified to allow for the

storm water flow. He said that they would adhere to engineering standards while building this house and will also ensure that the drainage is minimized during construction.

Board member Noennig asked staff what the actual purpose was for setback area from property lines. Mr. Green said mostly front and rear yard areas are for utilities and aesthetics, sides are mostly for fire code. Side setbacks are based on the fire safety requirements to have a minimum separation between structures, anything less than 10 feet between structures is required to have a fire rated wall to slow down a fire if it gets close from the adjacent structure.

Motion

Board member Martin Connell made a motion and Board member Mark Noennig seconded to approve City Variance #1185 with the conditions and findings of fact recommended by staff, with an additional condition that would hold the city harmless for any water or mud damage.

Discussion

Chairman Bollman called for discussion on the motion.

Board member Connell was concerned with the future possibility of the run off mud or rocks and the liability or accusation that may be on the City if the home is damaged by water or rock. Board member Noennig said he agrees however those issues should have been reviewed during the subdivision process. He didn't think the condition would be appropriate for this application for variance and was not sure how it could be implemented.

Board member Chesarek said he respects the right to build but did not feel the conditions would be appropriate. He said the motion should be regarding the reduction in setback.

Board member Noennig said he agreed as well, but the engineering conditions do not have anything to do with the setback reduction. He felt that this board was to approve or deny the setback, not the aesthetics of the building. He said there is no question as to if they can or cannot build the house, because they can still build a house on the lot.

Board member Connell said he was not sure the setback reduction would change or affect the water runoff, but he felt that not approving the variance would be appropriate in this case.

Discussion

Chairman Bollman called for any other discussion on the motion. There was none. Chairman Bollman called for a roll call vote for City Variance #1185.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman		X		
James Olson			x	
Paul Hagen		X		
Frank Chesarek		X		
Matthew McDonnell		X		
Martin Connell		X		
Mark Noennig		X		

Variance #1185 is denied.

Board member Noennig moved to reconsider the motion with the original recommendation with staff conditions, there was no second and the motion failed.

Item #3: Variance #1186 – 735 Terry Avenue – Setback - A variance from 27-308 requiring a minimum rear setback of 20 feet and a minimum side setback of 5 feet for the purpose of converting a detached garage to a single family dwelling in a Residential 6,000 (R-60) zone, on Lot 2, Block 1 of Frickle Subdivision, a 7,000 square foot parcel of land. Tax ID: A18930A.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum rear setback of 20 feet and a minimum side setback of 5 feet for the purpose of converting a detached garage to a single family dwelling in a Residential 6,000 (R-60) zone, on Lot 2, Block 1 of Frickle Subdivision, a 7,000 square foot parcel of land. Tax ID: A18930A, Judith Guardina Living Trust owner, Zach Kilwein, agent.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum rear setback of 20 feet and a minimum side setback of 5 feet for the purpose of converting a detached garage to a single family dwelling in a Residential 6,000 (R-60) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 2, Block 1 of Frickle Subdivision generally located at 735 Terry Avenue.
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.

Discussion

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

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1186.

Proponents

Zach Kilwein, 203 South 35th St, Billings, Montana

Mr. Kilwein is the agent for applicant/owner, Judith Guardina Living Trust.

Opponents

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1186. There was none. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion, and it was seconded by Board member McDonnell to approve City Variance #1186-735 Terry Avenue with the conditions and findings of fact recommended by staff.

Discussion

Chairman Bollman called for discussion on the motion.

Chairman Bollman called for a roll call vote on the motion.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	X			
James Olson	X			
Paul Hagen	X			
Frank Chesarek	X			
Matthew McDonnell	X			
Martin Connell	X			
Mark Noennig	X			

The motion passed 7-0. City Variance #1186 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.

City Attorney Brent Brooks and City Administrator Tina Volek were present for discussion. Mr. Brooks explained the difference between exparte communication and communication with another board member regarding an application.

There was a discussion and with examples explaining the difference and how to handle different scenarios to ensure they are not inappropriately discussing an application with the public or an applicant.

The Board expressed their gratitude to the attorneys and administrator for their willingness to attend the meeting and address their concerns.

Adjournment: 7:20 p.m.

ATTEST:

Chairman Jeff Bollman

Karen Husman, Planning Assistant