

**CITY BOARD OF ADJUSTMENT**

MINUTES: July 2, 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        | 1        | 1        |          |          |          |          |          |
| James Olson       | Vice Chairman | 1        | E        | 1        | E        | 1        | 1        | 1        |          |          |          |          |          |
| Paul Hagen        | Board member  | 1        | E        | 1        | 1        | 1        | 1        | 1        |          |          |          |          |          |
| Frank Chesarek    | Board member  | 1        | 1        | 1        | 1        | 1        | 1        | 1        |          |          |          |          |          |
| Matthew McDonnell | Board member  | 1        | 1        | E        | 1        | 1        | E        | 1        |          |          |          |          |          |
| Martin Connell    | Board member  | 1        | 1        | 1        | 1        | 1        | E        | 1        |          |          |          |          |          |
| Mark Noennig      | Board member  | 1        | 1        | 1        | 1        | 1        | 1        | 1        |          |          |          |          |          |

| TOTAL NUMBER OF APPLICATIONS<br>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        | 7        | 3        |          |          |          |          |          | 24    |

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 3<sup>rd</sup> 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.

**Others in Attendance:** Britt Romain; Attorney Ken Peterson; Gregg Propp; Don Vanica, MDT Right-of-Way Specialist; Matthew Lundgren; Karen Kelly

**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 June 4, 2014 Meeting Minutes**

Chairman Bollman called for approval of the June 4, 2014 minutes.  
on

**Board member Noennig made a motion and Board member Connell seconded to approve the June 4, 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.

- Marty Connell reported he is on the Rotary Committee and has participated in fundraising for the Friendship House and has donated to the cause.
- Paul Hagen has been involved in the Rotary with the Friendship House fundraiser and has donated to the cause.
- Nicole Cromwell received a phone call from Greg Propp, Property Management, Variance #1190
- Nicole Cromwell disclosed a discussion in her office with Attorney Ken Peterson concerning the application and the process for Variance #1190

**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.

Ms. Cromwell reviewed the application for Variance request #1190 and presented the board with the staff report for this request. She stated staff received no additional information during the 30-day delay for this application. She pointed out two diagrams submitted to the Board by Don Vanica, MDT depicting the existing and proposed locations for the mobile homes.

**Item #1 (Return Item) Variance #1190 – 2222 Bench Blvd and 2226 Bench Blvd – Setbacks** - A variance from 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to allow a minimum front setback of 0 feet, a minimum arterial setback of 38 from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park in a Highway Commercial (HC) zone, on Tract 1, C/S 220, a 43,500 square foot parcel of land. Tax ID: D05186.

**REQUEST**

The applicant is requesting a variance from 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to allow a minimum front setback of 0 feet, a minimum arterial setback of 38 feet from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park in a Highway Commercial (HC) zone, on Tract 1, C/S 220, a 43,500 square foot parcel of land. Red Gate #1, LLC is the owner and Britt Romain is the agent. The Bench Boulevard re-construction project will require the sale of property from this lot

for additional right of way.

## **RECOMMENDATION**

Staff recommends conditional approval of Variance #1190 and adoption of the findings as stated below.

1. A variance from Section 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to allow a minimum front setback of 0 feet, a minimum arterial setback of 38 from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park. No other variance is intended or implied with this approval.
2. The variance is limited to Tract 1 of C/S 220 generally located at 2222 and 2226 Bench Boulevard.
3. The applicant will maintain a minimum side-by-side distance between manufactured home units of at least 15 feet as required by Section 14-308 BMCC.
4. The applicant will obtain any required permits when replacing manufactured home units within the park including but not limited to electrical, gas, plumbing or for accessory structures such as decks, stairs and storage sheds as required by the Building Code in place at the time the activity occurs.
5. The number of units in the manufactured home park shall not exceed 12 units at any time.
6. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

## **Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. Board member Bollman asked if the Board can approve a variance different than was applied for by the applicant. Nicole Cromwell explained that the Board can approve less of a variance than the applicant's request.

## **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1190.

## **Proponents**

### **Gregg Propp, 1550 Poly Drive, Billings, Montana**

Mr. Propp said this trailer court was established in 1987. Mr. Romaine has owned the property since 2002 and he has enjoyed 100% occupancy. He said the inability to replace a trailer would be financially crippling to Mr. Romaine. Mr. Propp said the widening of Bench Boulevard will beautify the frontage, and the requested variance will allow Mr. Romaine to continue to operate the property as presently operated. Board member Noennig asked if the property is for sale and if an analysis of the quantitative difference in value has been conducted. Mr. Propp replied that the value of the overall property would be impacted due to the decrease in property value. The trailers vary in age from 1960-1970's but have been substantially upgraded. In response to a question by Board member Chesarek, Mr. Propp stated there no sewer services available.

**Ken Peterson, 424 48<sup>th</sup> Street West, Billings, Montana**

Mr. Peterson represents Mr. Romain. He said Mr. Romain is concerned about the need for a variance for a fence. Nicole Cromwell stated the fence would be included in the setback request. Per Mr. Peterson's request, Ms. Cromwell posted the six conditions of approval. He said a 0 setback is required for a fence and a mobile home. If the variance is not granted, the concern is the applicant would be bound by the required setbacks for the zoning. Mr. Peterson asked if a granted variance would continue to be in place if one of the units is replaced. He stated they feel strongly the 0-ft front setback is recommended by staff and is needed. In response to a question by Board member Bollman, Ken Peterson said "wobble room" is needed if the homes need to be moved or there is a need to get between the mobile home and the fence.

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

Mr. Romain is the agent for applicant/owner Red Gate Mobile #1. Mr. Romain asked that the Board grant this request. In response to a question by Board member Bollman, Mr. Romain explained that the existing homes meet the 15-foot separation, and the 0-foot setback is needed to place the fence. Discussion followed on the extension of the eave of the mobile home into the right-of-way. Nicole Cromwell clarified said the eave can project two-feet into the setback. Board member Chesarek asked if the front two trailers could be replaced now or in the future if the variance is granted. He commented on the need for further discussion with MDT to compensate for damages. Mr. Romain said this is a long process. He plans to sell the park but the State is not interested in purchasing the property.

**Don Vanica, MDT Right-of Way Specialist, 424 Morey Street, Billings, Montana**

Mr. Vanica is attending as a MDT representative. He explained he was confused with what the variance was doing and received clarification prior to this meeting. He noted the drawings he submitted to clarify the locations of the pavement to the mobile home, the shoulder widths, and the location of the sidewalk. He noted the proposal for the sloped design of the sidewalk on a rendering. MDT has met with the applicant, who told them the variance is needed for relocating the trailers.

Board member Hagen asked about the location of the 6-foot privacy fence and Mr. Vanica said more than likely the fence will be built on the property line. Board member Noennig asked about the setbacks, and Mr. Vanica stated there will be two-feet behind the property line for the first trailer. He said they are in discussions with Mr. Romain but the outcome of the variance will provide a clear view of the options available.

**Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1190. There was none. Chairman Bollman closed the public hearing, and called for a motion.

**Motion**

**Board member Connell made a motion, and it was seconded by Board member Olson conditionally approve of Variance #1190 with the conditions presented by staff and adoption of the findings of fact.**

**Discussion**

Chairman Bollman called for discussion on the motion. Board member Bollman asked if the approval of the variance limits the setback variance to a mobile home park. Board members referred to the language in Condition of Approval #1” ...for an existing 12-unit manufactured home park. No other variance is intended or implied with this approval.”

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

| Board member      | Yes      | No       | Abstain | Not Present |
|-------------------|----------|----------|---------|-------------|
| Jeff Bollman      |          | <b>1</b> |         |             |
| James Olson       | <b>1</b> |          |         |             |
| Paul Hagen        | <b>1</b> |          |         |             |
| Frank Chesarek    |          | <b>1</b> |         |             |
| Matthew McDonnell | <b>1</b> |          |         |             |
| Martin Connell    | <b>1</b> |          |         |             |
| Mark Noennig      | <b>1</b> |          |         |             |

**The motion passed 5-2, with Board members Bollman and Chesarek voting against the motion. City Variance #1190 is conditionally approved.**

Dave Green reviewed the application for Variance request #1194 and presented the board with the staff report for this request.

**Item #2. Variance #1194 – 3123 8<sup>th</sup> Avenue South – Friendship House Classroom Addition – Side Adjacent to Street** - A variance from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow a setback of 0 feet for the purpose of constructing a classroom addition to an existing building in a Residential 6,000 (R-60) zone, on Lots 19 -24, Block 225, Billings Original Town, a 21,000 square foot parcel of land. Tax ID: A01686.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow a setback of 0 feet for the purpose of constructing a classroom addition to an existing building in a Residential 6,000 (R-60) zone, on Lots 19-24, Block 225, Billings Original Town, a 21,000 square foot parcel of land. Tax ID: A01686.

**RECOMMENDATION**

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

1. The variance from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow a setback of 0 feet for the purpose of constructing a classroom addition to an existing

building in a Residential 6,000 (R-60) zone. No other variance is intended or implied with this approval.

2. The variance is limited to Lots 19-24, Block 225, Billings Original Town generally located at 3123 8th Avenue South.

3. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 3 years of permit issuance.

4. There shall be no construction or demolition work on the site after 8 pm and or before 7 am daily.

5. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.

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

### **Discussion**

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

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1194.

### **Proponents**

#### **Friendship House of Christian Service, Inc., 3123 8<sup>th</sup> Ave S, Billings, Montana**

Mr. Kelly McCarthy is a representative for the Friendship House. He gave a short PowerPoint presentation and stated there is an extreme need for their services. They are expanding their current kitchen to better serve the children and families in their programs. As a result, they are sacrificing some of the classroom space to expand the kitchen and designate a formal dining room. They are proposing an addition for a classroom on the west side of the building. The new facility will allow them to better serve the at-risk and low income families on the south side. He discussed diagonal parking as a parking solution, similar to the Garfield Center, and has a request submitted to City Traffic Engineer Terry Smith. They have a potential leased lot for bus parking, and a possible purchase opportunity for workforce housing with parking.

#### **Matthew Lundgren, 4251 Ironhorse Trail, Billings, Montana**

Mr. Lundgren stated this is possible due to the donation of the Rotary Club. The additional space will allow them to serve more children in the community with healthy meals, after school programming, and other services. Board member Noennig asked regarding the funding for this program. Mr. Lundgren said they obtain their funding from on-third local donors; one-third churches, and one-third grants. Construction will begin as soon as possible as the funding is readily available.

#### **Karen Kelly, CTA, 1246 Miles Avenue, Billings, Montana**

Ms. Kelly stated a certain amount of playground area is required and the proposed plan will provide good continuity and the ability for good supervision for the children. In response to question by Board member Connell, CTA has completed this work as a pro bono project.

**Opponents:** There was none.

**Motion**

**Board member Olson made a motion and Board member Hagen seconded the motion for conditional approval of City Variance #1194 with the conditions and finding presented by staff.**

**Discussion**

Chairman Bollman called for discussion on the motion. Chairman Bollman called for a roll call vote for City Variance #1194.

| Board member      | Yes      | No | Abstain | Not Present |
|-------------------|----------|----|---------|-------------|
| Jeff Bollman      | <b>1</b> |    |         |             |
| James Olson       | <b>1</b> |    |         |             |
| Paul Hagen        | <b>1</b> |    |         |             |
| Frank Chesarek    | <b>1</b> |    |         |             |
| Matthew McDonnell | <b>1</b> |    |         |             |
| Martin Connell    | <b>1</b> |    |         |             |
| Mark Noennig      | <b>1</b> |    |         |             |

**The motion passed, 7-0. Variance #1194 is conditionally approved.**

Mr. Green reviewed the application for Variance request #1195 and presented the board with the staff report for this request.

**Item #3: Variance #1195 – 331 & 331 ½ Alderson Avenue – Lot Area and Setbacks – A** variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units to allow 7,000 square feet; from 27-308 requiring a rear setback of 20 feet to allow a rear setback of 7 feet; from 27-308 requiring a side setback of 5 feet to allow a side setback of 3 feet; and from 27-310(i) requiring a side setback of 3 feet to allow a 1 foot side setback for an existing garage in a Residential 7,000 (R-70) zone, on Lots 15 & 16, Block 22, West Side Subdivision a 7,000 square foot parcel of land. Tax ID: A18090. No building or re-construction is planned but the variance would allow the owner to re-build any of the structures in the future if necessary

**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 7,000 square feet; from 27-308 requiring a rear setback of 20 feet to allow a rear setback of 7 feet; from 27-308 requiring a side setback of 5 feet to allow a side setback of 3 feet; and from 27-308(i) requiring a side setback of 3 feet to allow a 1 foot side setback for an existing garage in a Residential 7,000 (R-70) zone, on Lots 15 & 16, Block 22 West side Subdivision a 7,000 square foot parcel of land. Tax ID: A18090. No building or re-construction is planned but the variance would allow the owner to re-build any of the structures in the future if necessary. Mark Morehead, owner; Travis McDowell, agent.

**RECOMMENDATION**

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

1. The variance is from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units to allow 7,000 square feet; from 27-308 requiring a rear setback of 20 feet to allow a rear setback of 7 feet; from 27-308 requiring a side setback of 5 feet to allow a side setback of 3 feet; and from 27-308(i) requiring a side setback of 3 feet to allow a 1 foot side setback for an existing garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 & 16, Block 22 West side Subdivision generally located at 331 and 331 ½ Alderson Avenue.
3. Any future re-construction of the existing structure will require compliance with all Building Codes, Fire Codes, Engineering Codes, Zoning Regulations, and city ordinances that apply at the time of re-construction with the exception of the variance request.
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.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1195.

### **Proponents**

#### **Travis McDowell, 2029 Forest Park Drive, Billings, Montana**

Mr. McDowell is the agent for applicant Mark Morehead. He explained the required setbacks and lot area for two dwelling units in R-7000 zoning and said this property does not comply as the existing structures were built prior to the current zoning requirements. Currently, the existing structures are used as two separate dwelling units and the applicants would like for this use to remain the same. In response to question by Board member Olson, Mr. McDowell stated the request is for financing purposes.

### **Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1195. There was none. Chairman Bollman closed the public hearing, and called for a motion.

### **Motion**

**Board member McDonnell made a motion and it was seconded by Board member Chesarek to approve City Variance #1195 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 on the motion.

| Board member      | Yes      | No | Abstain | Not Present |
|-------------------|----------|----|---------|-------------|
| Jeff Bollman      | <b>1</b> |    |         |             |
| James Olson       | <b>1</b> |    |         |             |
| Paul Hagen        | <b>1</b> |    |         |             |
| Frank Chesarek    | <b>1</b> |    |         |             |
| Matthew McDonnell | <b>1</b> |    |         |             |
| Martin Connell    | <b>1</b> |    |         |             |
| Mark Noennig      | <b>1</b> |    |         |             |

**The motion passed 7-0. City Variance #1195 is conditionally approved.**

**Other Business/Announcements:**

The next City Board of Adjustment meeting is scheduled for August 6, 2014.

**Adjournment: 7:20 p.m.**

**ATTEST:**

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**Chairman Jeff Bollman**

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**Tamara L Deines, Planning Clerk**