

## CITY BOARD OF ADJUSTMENT

MINUTES: August 6, 2014

Name	Title	01/03/1	02/05/1	03/05/1	04/02/1	05/07/1	06/04/1	07/02/1	08/06/1	09/03/1	10/01/1	11/06/1	12/03/1
Jeff Bollman	Chairman	E	E	1	1	1	1	1	E				
James Olson	Board member	1	E	1	E	1	1	1	1				
Paul Hagen	Vice Chair	1	E	1	1	1	1	1	1				
Frank Chesarek	Board member	1	1	1	1	1	1	1	1				
Matthew McDonnell	Board member	1	1	E	1	1	E	1	1				
Martin Connell	Board member	1	1	1	1	1	E	1	1				
Mark Noennig	Board member	1	1	1	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	7	3	2					26

Vice Chair Hagen 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 3<sup>rd</sup> Avenue North.

Vice Chair Hagen 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**

Vice Chair Hagen 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. Vice Chair Hagen closed the public comment period.

### **Approval of the July 2, 2014 Meeting Minutes**

Vice Chair Hagen called for approval of the July 2, 2014 minutes.

**Board member Connell made a motion and Board member McDonnell seconded to approve the July 2, 2014 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote.**

### **Disclosure of Conflict of Interest**

Vice Chair Hagen asked for disclosures of conflict of interest.

### **Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum.

### **Public Hearings**

Vice Chair Hagen 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 6 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1196 and presented the board with the staff report for this request.

**Item #1 Variance #1196 – 1914 Alderson Avenue – Setbacks & Lot Coverage** - A variance from 27-308 requiring a minimum side setback of 5 feet to allow 2.5 feet; requiring a minimum rear setback of 20 feet to allow 13 feet for the enclosed buildings and 0 feet for the covered patio and requiring a maximum of 30% lot coverage to allow a maximum of 33% lot coverage in a Residential 7,000 (R-70) zone, Lots 25 and 26, Block 2, Thompson Subdivision, a 6,000 square foot parcel of land. No building or re-construction is planned at this time but the variance would allow re-construction in the future if necessary. Tax ID: A17053.

### **REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow 2.5 feet; requiring a minimum rear setback of 20 feet to allow 13 feet for the enclosed buildings and 0 feet for the covered patio; and requiring a maximum of 30% lot coverage to allow a maximum of 33% lot coverage in a Residential 7,000 (R-70) zone, Lots 25 and 26, Block 2, Thompson Subdivision, a 6,000 square foot parcel of land. Tax ID: A17053, Jan and Maria O'Brien, owners and Bill Stene, agent.

### **RECOMMENDATION**

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum side setback of 5 feet to allow 2.5 feet; requiring a minimum rear setback of 20 feet to allow 13 feet for the enclosed buildings and 0 feet for the covered patio; and requiring a maximum of 30% lot coverage to allow a maximum of 33% lot coverage 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 25 and 26, Block 2, Thompson Subdivision generally located at 1914 Alderson Avenue.
3. Any future re-construction of the existing structures 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**

Vice Chair Hagen asked the members of the Board for questions and discussion. There were none

**Public Hearing**

Vice Chair Hagen opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1196.

**Proponents**

**Bill Stene, 2355 Clyde Road (listing agent), Billings, Montana**

Mr. Stene is the agent for applicants Jan and Maria O'Brien. He said he concurred with staff's recommendation.

**Opponents**

There was none.

Vice Chair Hagen asked if there was anyone else wanting to speak in favor or against City Variance #1196. There was none. Vice Chair Hagen closed the public hearing, and called for a motion.

**Motion**

**Board member Olson made a motion, and it was seconded by Board member Cheserek to \_ conditionally approve of Variance #1196 with the conditions presented by staff and adoption of the findings of fact.**

**Discussion**

Vice Chair Hagen called for discussion on the motion. There was none.

Vice Chair Hagen called for a roll call vote on the motion.

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

**The motion passed 6-0. City Variance #1196 is conditionally approved.**

Dave Green reviewed the application for Variance request #1197 and presented the board with the staff report for this request.

**Item #2 Variance #1197 – 1147 North 25<sup>th</sup> Street – Lot Area** – 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 in a Residential 7,000 (R-70) zone on the North 50 feet of Lot 2, Block 2, Sunnyside Subdivision, 1<sup>st</sup> Filing. Tax ID: A16270

### **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 in a Residential 7,000 (R-70) zone on the north 50 feet of Lot 2, Block 2, Sunnyside Subdivision, 1st Filing. Tax ID: A16270, Cheryl Timmermans, owner.

### **RECOMMENDATION**

Staff recommends conditional approval of the variance.

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units to allow 7,000 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 2, Block 2, Sunnyside Subdivision, 1st Filing generally located at 1147 North 25th Street.
3. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or 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**

Vice Chair Hagen asked the members of the Board for questions and discussion. There was none.

Dave said he had one phone call from a resident that was opposed to the variance stating that they felt there were enough rentals in the area.

Board member McDonnell asked if there were sufficient off street parking for this lot. Mr. Green said parking required is 2 spaces per dwelling unit and there was enough room to provide for that onsite. He clarified with 2 dwelling units they would be required to provide a total of 4 spaces on the lot. The spaces could be inside a garage or on a prepared parking surface.

Vice Chair Hagen opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1197.

### **Proponents**

There were none.

### **Opponents:**

**Glenn Robison; 1143 N 25 St.** said he had spoken to Ms. Timmermans previously regarding the sale of her property for the use of a duplex. He said he didn't initially have an issue with the duplex, but after researching similar situations was concerned with reducing the value of his property with the proposal she is looking at. He felt it would bring in renters who do not have pride of ownership and would not take care of the property. He said renters have historically been known for deteriorating

the integrity of a primarily owner occupied neighborhood. He presented staff and the Board with a letter from Jeff and Karen Cooley from 1122 N 25<sup>th</sup> who were not in favor, but were not able to attend the meeting.

Katie Kogsden; 1135 N 25<sup>th</sup> St. said she was concerned with the property being developed and the run off from that property and mitigation of storm water as well as traffic and parking. She has small children and the traffic control and speed of traffic in that area are insufficient for the number of vehicles that travel through it. She is opposed to the variance.

Bob Leshner; 1140 N 25<sup>th</sup> St. said he is opposed to the variance for the development of the property. He said believed a duplex would increase the water runoff to the other properties. He said he was concerned that a duplex there would decrease property values. He was concerned with parking availability and the deterioration of the neighborhood. He said his retirement was at 65 and saved his money and worked on his home and felt Ms. Timmermans could do the same.

Annette Robison; 1143 N 25<sup>th</sup>St. is concerned with the water runoff, parking and traffic flow. She said the rentals to the north were deteriorating the neighborhoods. She said they had purchased their home in a small neighborhood and liked the owner occupied area they lived in. She is concerned with parking and vandalism and increased crime that are typically brought in with rental property. She did not agree with Staff recommendation and felt the applicants reasons for wanting a variance were not legitimate. She felt it would decrease her property value.

Lynne Erickson 1148 N 25<sup>th</sup> St. said her house is right across the street and is not as bad as it looks in the picture that Staff had provided in their report. She is in the process of updating and fixing up her property and it has a new paint on it. She said she cannot park in front of her house because there is a hydrant in front and she had no off street parking. She is concerned with parking issues and deterioration of the neighborhood.

Charlie Hamwey, 1123 N 26<sup>th</sup> St. said he has lived there for 15 years. He said the north park task force has been attempting to better this neighborhood. He pointed out that 1973 the zoning for these neighborhoods was placed on the property to allow single family dwellings on 7000 square foot lot and the majority of homes in this neighborhood are single family owner occupied homes. The applicants lot is a sloping lot and is not adequate to have another dwelling on it. He felt the variance would not be good for the neighborhood, whoever might buy the property would put a duplex rental on it and it would deteriorate the neighborhood.

Debbie Heidema; 1142 N 24<sup>th</sup> St. is concerned with the value of the property deteriorating. She said she witnessed the neighbor property to her fathers in a similar neighborhood turned to 8- plex apartment and it diminished the value of all of the neighboring property.

### **Rebuttal**

#### **Cheryl Timmermans, 1147 N 25<sup>th</sup> Street, Billings, Montana**

Ms. Timmermans is the property owner and applicant. She said 5 years ago she was given an idea of what her property would be worth if she could use the basement apartment. She doesn't have a handy man to help her do any of the maintenance and upgrades to her home. She said she had spoken to a realtor (Ms. Robison) who previously said it would be a good idea to sell the property as a duplex and later changed her mind by telling her it was not a good idea at this time. She said she doesn't have a

realtor or a developer and only wants to get the best use of her property. She just wanted to optimize her property the best she could.

**Motion**

**Board member Connell made a motion and Board member McDonnell seconded the motion to deny City Variance #1197 because it does not meet the criteria;** 1. *There are no special conditions or circumstances with the land that create a hardship.* 2. *The subject property is in a subdivision that began developing many years ago and over the years many changes and additions have happened that may or may not meet current code. The applicant has opportunity to upgrade the property without adding another dwelling unit.* 4. *Granting the variance would not be in harmony with the existing neighborhood.*

**Discussion**

Vice Chair Hagen called for discussion on the motion.

Board member Connell explained his motion and reasons stating; because the neighborhood is predominantly single family dwellings, owner occupied, most of the properties that have more than one dwelling unit and are used for rental purposes are in poor repair, and detract from the neighborhood. He said there are considerable new buildings going in and newer houses being built in the neighborhood as well. There is a new home (not shown in presentation) very near to the subject property that the owner has put at least \$150,000 into upgrading and fixing the property. This approval will not improve the neighborhood. Board member Connell continued stating that the North Park Task Force is working again to revitalize this district. They plan to work toward acquiring TIF district funding to help in the revitalization of these neighborhoods. He said the intent is to promote primarily single family housing in this district.

Board member Noennig asked if there was a non-conforming basement apartment. Mr. Green clarified there had been an apartment in the past but the code will allow non-conforming uses unless it has not been use for more than a year, then it reverts to its original use of the single family dwelling.

Board member McDonnell commended the neighbors for standing together to preserve their neighborhood.

Vice Chair Hagen called for a roll call vote for City Variance #1197.

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

**The motion passed, 6-0. Variance #1197 is denied.**

**Other Business/Announcements:**

The next City Board of Adjustment meeting is scheduled for September 2, 2014.

**Adjournment: 6:45 p.m.**

**ATTEST: APPROVED BY A MOTION SEPTEMBER 3, 2014**

**Paul Hagen, Vice Chair**

**Karen Husman, Planning Assistant**