

MINUTES OF THE MEETING
OF THE
GREAT FALLS BOARD OF ADJUSTMENT
June 20, 2013

CALL TO ORDER

The meeting of the Great Falls Board of Adjustment was called to order by Chair Ward at 3:00 p.m. in the Commission Chambers of the Civic Center.

ROLL CALL & ATTENDANCE

Great Falls Board of Adjustment Members present:

Mr. Chris Ward, Chair
Mr. Jeffry Foster, Vice Chair
Mr. Tim Peterson
Ms. Kim Martin

Great Falls Board of Adjustment Members absent:

Mr. Casey Cummings

Planning Staff Members present:

Mr. Craig Raymond, Interim Director Planning & Community Development
Ms. Galen Amy, Planner I
Ms. Phyllis Tryon, Sr. Administrative Assistant

Mr. Raymond affirmed a quorum of the Board was present.

MINUTES

Chair Ward asked if there were any changes to the minutes of the April 4, 2013 meeting of the Board of Adjustment/Appeals. Mr. Foster moved to approve the minutes of the meeting and Ms. Martin seconded. All being in favor, the motion passed.

Action Minutes of the Board of Adjustment/Appeals. Please refer to the audio/video recording of this meeting for additional detail.

OLD BUSINESS

There was no old business.

NEW BUSINESS

**BOA2013-02, 121 Riverview 3 East
Variance: Side Yard Setback**

Galen Amy, Planner I, reviewed the staff report for the request from applicant/owner Darrell and Tamara Ogg of 121 Riverview 3 East for a side yard setback. The subject property is zoned R-2 Single-family suburban district. The applicant is requesting a 5-foot side yard setback from the northeast property line in order to construct an addition to the existing residence which will be comprised of a 33-foot, 4-inch by 27-foot, 9-inch attached garage with additional living space above. City Code requires an 8-foot setback. Ms. Amy said that in 2005, City zoning was assigned primarily according to lot size without consideration of existing setbacks, such as were developed in this residential district over the past 50 years. An aerial view of the neighborhood shows that most of the homes in the area have less than an 8-foot side yard setback.

Ms. Amy said the property owner had garnered support for this project from all the immediate neighbors. The applicant has submitted a site plan to staff showing the proposed addition to the existing residence. It appears there is sufficient space in the proposed location to build the addition. The residences bordering the subject property are single-story, but there is a two-story residence on the same block to the southwest.

A notice of this public hearing was mailed to neighboring residences and published in the *Great Falls Tribune* on June 2, 2013. Due to a staff error listing the side yard setback request as one foot different than the actual request, notice was published again in the *Great Falls Tribune* on June 9, 2013. As a courtesy, Neighborhood Council Coordinator, Patty Cadwell, provided information to Neighborhood Council 2 on June 11, 2013. As of this date, staff has not received any comments on this application.

Ms. Amy reviewed the Findings of Fact and Conditions of Approval as listed in the staff report. The Conditions of Approval are as follows:

1. The proposed project shall be developed consistent with the conditions in this agenda report, all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. If after the approval of the conceptual development plan as amended by this Board, the owner proposes to expand or modify the conceptual development plans, the Director of the Planning and Community Development Department shall determine in writing if such proposed change would alter the concept for one or more review criteria. If such proposed change would alter the plan, the proposal shall be resubmitted for review as a new application.

Ms. Amy noted a correction in the staff report, which stated the location of the side yard setback for this variance request was on the west side of the property. The request is concerning a side yard setback variance for the northeast property line. She concluded her presentation and offered to answer any questions from the Board.

Mr. Foster asked if the Board needed to consider the height of the proposed building as part of this variance. Ms. Amy said the only request for this application before the Board was concerning a variance for the side yard setback. Mr. Foster asked why the Conditions of Approval for this application were relevant to the Board. Ms. Amy said the Conditions are

standard for approval of any application so that if any major changes are made to a conceptual plan, the Director of Planning and Community Development can determine if the new proposed plan is consistent with the plan acted on by the Planning Advisory Board. Mr. Foster said his only reservation with the Conditions of Approval is that the Board is only deciding upon the setback and not the conceptual plans. Chair Ward said he has the same question about the Conditions of Approval. Mr. Raymond said that as long as aspects of the project are in compliance with zoning code, the only consideration this Board has is about the variance request.

Mr. Ward said these Conditions of Approval are included in lots of variance requests, and he has not seen anyone come back to the Board of Adjustment. Ms. Amy said these Conditions are not part of Municipal Code; she said the purpose is to ensure that the Board's decision is based on the information presented to them.

PETITIONER'S PRESENTATION

Darrell Ogg, 121 Riverview 3 East, asked that if he changed his secondary floor plan, would he be required to come before this Board a second time. Ms. Martin said the matter would only come before this Board again if the applicant proposed to change the approved side yard setback. Ms. Amy concurred with that statement.

Mr. Ogg expressed his appreciation to the Board for their time, and said he was working to improve his home for his family.

PROponents OPPORTUNITY TO SPEAK

There were no proponents.

OPponents OPPORTUNITY TO SPEAK

There were no opponents.

PETITIONER'S CLOSING

The petitioner did not wish to close.

PUBLIC COMMENT

There was no public comment.

BOARD DISCUSSION AND ACTION

Mr. Foster asked Ms. Amy if the condition unique to this property was that the City zoned this district R-2 and set a setback at 8 feet, and now the Board is being asked to approve a different setback with conditions. Ms. Amy said this is a blanket zoning district with applicable development standards, and if it was a vacant City lot, the standards would be enforced. However, the condition unique to this property is that the property owner is appealing to the Board for the opportunity to enjoy the rights that property owners surrounding his property have enjoyed prior to the 2005 zoning change.

Mr. Ward said there have been a lot of Riverview variances for this same issue. He said the substantial justice of treating people fairly in this neighborhood causes him to not search too hard for a unique condition. He said this is not what he thinks of as a unique condition because a lot of the lots in Riverview are like this one. Ms. Martin said she thinks the zoning has to do with improving the City as it grows, and that in future R-2 zoning districts, there will be 8-foot setbacks. Mr. Foster said Riverview is an anomaly and he did not see a reason why Mr. Ogg should not be able to have his variance. He said all the lots in Riverview are unique. Ms. Martin agreed and said that is how lenders feel, as they like to compare properties.

Mr. Foster said he has no problem approving the variance, but as far as the Conditions of Approval, he did not think that was a Board issue. Mr. Ward said that a variance is not attached to a specific property but is related to a specific project. If the applicant does not complete this project and five years from now decides to construct a new project, this particular variance would not apply and the applicant would need to come before this Board with a new variance request. Mr. Amy concurred with that assessment. Mr. Peterson said that neighbors have given approval of this project based on pictures from the applicant, and Mr. Ward's statement makes sense to him. Mr. Foster said he likes the idea of having conditions of approval so that if the applicant changes the plan, he has to come back to the Board. He said he just wanted to make sure that is something this Board should do. Ms. Amy stated that the Board also has the ability to impose conditions as they see fit.

There was no further discussion.

MOTION: That the Board of Adjustment approve the variance as written in the staff report with the Conditions proposed, and incorporate page 4 of the staff report.

Page 4 of the staff report reads as follows:

I move that the Board of Adjustment (approve with conditions) the application of Darrell and Tamara Ogg, owners of the property addressed 121 Riverview 3 East and legally described in the staff report, as shown in the conceptual development plans contained in the staff report, for the requested variance of City Code 17.20.4.010 Exhibit 20-4, Minimum side yard setback reduction from 8 feet to 5 feet for the west-northeast side property line, for the proposed addition to the existing residence subject to the following conditions:

1. The proposed project shall be developed consistent with the conditions in this agenda report, all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. If after the approval of the conceptual development plan as amended by this Board, the owner proposes to expand or modify the conceptual development plans, the Director of the Planning and Community Development Department shall determine in writing if such proposed change would alter the concept for one or more review criteria. If such proposed change would alter the plan, the proposal shall be resubmitted for review as a new application.

Made by: Mr. Foster
Second: Mr. Peterson

VOTE: All being in favor, the motion passed.

**BOA2013-03, 112 8th Street Southwest
Variance: Side Yard Setback**

This agenda item is postponed for the next Board of Adjustment meeting. Due to the time frame for public notice, instead of the proposed July 11 meeting date, the meeting would need to be held on July 18. Staff will poll the Board to see if they can attend a meeting on July 18.

PUBLIC COMMENT

Mr. Ogg thanked the Board for their approval.

COMMUNICATIONS

There were no communications.

ADJOURNMENT

There being no further business, Mr. Peterson moved to adjourn the meeting, seconded by Mr. Foster. All being in favor, the meeting was adjourned at 3:25 p.m.