



BOARD OF ADJUSTMENT

Thursday, August 30th, 2018 ALDC 3rd Floor Conference Room

Meeting called by Bill Johnson

Type of meeting Variance Meeting

Minutes taken by Carlye Hansen

Members Present: Bill Johnson, Chairman; Donna Kostelecky, Vice-Chair; Glenn Gutcheck

Staff: Chas Ariss, P.E., Planning Director Carlye Hansen, Planning Department Secretary

AGENDA TOPICS

Approval of Minutes

Motion was made by Glenn Gutcheck to table approval of minutes for both March 27th, 2017; seconded by Donna Kostelecky. Motion passes 3-0.

VARIANCES

Rosemarie Silzly

Request by applicant, Rosemarie Silzly, for a variance to allow establishment of a 0.81 acre of land with a single-family dwelling to sell, where the current development standard for this area is a minimum lot size of 2.5 acres, as currently required by the ADLC Code of Ordinances, Article XXIV- Opportunity Development District, Section 2-25 – Developmental Standards, (3) – Minimum Lot Size. The subject property is currently addressed a 19 South Hauser, and is legally described as: Opportunity Original Townsite, S15, T04N, R10W, Lot 45A, Acres 7.92, 417D. It lies within the Opportunity Development District (ODD).

Staff Report

Chas Ariss, Planning Director, reviewed the staff report put together by him and his office. Chas explained that Ms. Silzly has come in to ask to split off a portion of her 7.92 acre property that she has a house on and she is wanting to sell this. The majority of this area is used for grazing beyond the residential grounds. The reason for needing the variance is that the current zoning for the Opportunity Development District is 2.5 acre minimum lot size. The district has numerous nonconforming lots as far as the 2.5 acre minimum goes. This area was developed long before the municipal code was put in place and no one really knows if there was an inventory of properties out there prior to the 2.5 acre minimum being established. That being said, there has been a preliminary inventory now of all the lots out there and roughly 70% are at or below 2.5 acres. There is basically exiting land use out there that does not comply with the current code and most of

the variances of this sort will be related to such things such as a lot split, where the result separation will be under 2.5 acres.

Questions from the Board:

Bill Johnson asked why we have the ordinances. Chas was under the understanding that Mr. Horne who was responsible for writing the DPS felt that they were probably just looking at having a rural lot size thinking of things such as individual septic and having enough boundary around those to provide for no impact of septic systems on adjoining wells. Typically, a 1 acre lot size is what DEQ looks at as far as having adequate separation. In Ms. Silzly's case, by having the smaller lot size, there is no impact to adjoin property and there has been no negative feedback from adjoining neighbors and this seems to be consistent with the nature of the development district.

Donna Kostecky asked about the specs moving forward with new construction, however, this house was built in 1916.

Applicant Statement:

Ms. Silzly states that she is getting to old to maintain this property and that she is the last of the family and she just cannot keep up with the property herself anymore and she does have a buyer who wants to buy the property and pay taxes and keep the property up. She states that there is no one adjoining this property other than her and the land behind this is used for grazing for her cows as she still has a few of these left.

Questions from the Board

Bill Johnson reconfirmed that there is only one house on this property.

Glenn Gutcheck questioned the size of the property and how much will be split off, which will be 1 acre. The survey has been done by Tom Moodry.

Public Comment:

None at this time.

Motion made by Donna Kostecky to approve the variance application by Rosemarie Silzly, pending standard conditions of weed control, seconded by Glenn Gutcheck. Motion passes 3-0.

Vern Tuss

Request by Applicant, Vern Tuss, for a variance to allow for subdividing a piece of family property and is requesting establishment of two parcels of land, one being 1.16 acres, and other being 0.97, where the current development standard for this area is a minimum lot size of 2.5 acres currently required by the ADLC Code of Ordinances, Article XXIV – Opportunity Development District, Section 2-275 – Developmental Standards, (3) - Minimum Lot Size. The subject property is #4 Stewart Street, and is legally described Opportunity Original Townsite, S16, T04 N, R10 W, Lot 90B, Acres 1.31. It lies within the Opportunity Development District (ODD).

Staff Report

Chas Ariss, Planning Director, reviewed the staff report put together by him and his office. This is similar in context to the variance above. The Tuss family is looking to split an existing piece of family property. As it stands now, the current lot doesn't even meet the 2.5 acres. There are two houses, two wells, two septic systems. The newest house was built in 1975. Mr. Tuss' parents have died and the two brothers are just looking at basically splitting the property up and one take a parcel and the other take the other parcel and have distinct ownership of the parcels. Again, this is pre-existing and what they are essentially looking for is a lot line adjustment, but they, too, are looking for a variance to get past the 2.5 acre minimal lot size. There will be no new construction on these properties.

Questions from the Board

None at this time.

Applicant Statement:

Vern Tuss, Jr, stated that he and his brother are the ones on the journey to split up this property. His father had three places, they are planning on selling one that was completely separate, and now they want to split this one. There is no grazing land, just one big yard. There is no septic impact, well impact, school impact. They tried to keep this along a natural boundary so it will not look odd and they have already had a preliminary plat done by Tom Moodry.

Questions from the Board

Donna Kostelecky questioned the driveways. She sees that it comes in and then splits. Will there be two separate driveways? He states that he will do his own driveway along the fence line that will be built.

Public Comment

None at this time.

Motion is made by Glenn Gutcheck to approve the variance application by Vern Tuss; seconded by Donna Kostelecky. Motion passes 3.0.

Robert Robitaille

Request by Applicant, Arthur Robitaille, for a variance to allow for two homes to be built on the same lot which is 7.89 acres in size, where the current development standard for this area is one unit per lot of record, currently required by the ADLC Code of Ordinances, Article XIX – Spring Hill Development District (SHDD), Section 24-222 – Permitted Uses, (1) Single Family Unit (one unit per lot of record). The subject property is legally described as Barker Creek Tracts, S28, T05N, R12W, Acres 7.89, Tract 5A of COS 414C, in W2NW4. This property is located within the Spring Hill Development District (SDDD).

Staff Report

Chas Ariss, Planning Director, reviewed the staff report put together by him and his office. Out in the West Valley/Spring Hill area, there is a 7.89 acre property that Art Robitaille and a friend of his purchased. The representations from the realtor were that they would be able to put multiple structures on the property. When they came to the Planning Department to inquire about that, we informed them that the current zoning limits the number of residential structures to one per lot of record. They stated that Ed Silverstein from Clearwater Realty told them that this is what they could do. However, based on what our code says, Chas informed them that they would need to apply for a variance for this reason and to see if the neighbors would be acceptable to this type of development given that the road going into the property is private, is a single lane, and is privately maintained and so we left it at that. We then came to find that one of these gentleman actually built a “tiny house” on the property that they did not come and get a building permit for. Based on the current structure, this does not meet our requirements for things such as compliance with the Montana Energy Conservation Code, structural foundation requirements, etc. This is an existing structure and is painted a vivid blue and definitely sticks out on the hillside, and honestly the Planning Department was surprised this was there as there had been no mention of this to them when evaluating, relative to filing a variance to the Board of Adjustment.

Questions from the Board

Bill Johnson asked how the Planning Department goes about enforcing a violation of building code. Chas stated that we would cite them for failure to obtain a building permit and look to find some remedy. This is a misdemeanor as to what they have done and Chas wants to leave this to the Board’s discretion here about how they would like to proceed with that.

Donna Kostelecky asked how we knew there would be more buildings and this was conveyed to us by Mr. Robitaille. Donna asked what would happen if they moved the house adjacent to the garage, would this be considered one house then, and Chas stated that there would have to be a common wall between them.

Applicant Statement

Mr. Robitaille is not present at this hearing and he has no representation at this time.

Public Comment

Jim McFarland and his wife, Bonnie – They own an adjacent lot and they sold Mr. Robitaille the property from the LLC that was formed for the property out there. They were unaware that they were going to build ten structures, and they thought that only a single family residence would be built on that property. They feel that the “tiny house” is an eyesore for the rest of the residences in this area. They would prefer that the existing ordinances be maintained since this is a new construction. Bonnie’s only objection of the “tiny house” is that it is on a hillside on a mountain and the colors do not fit into the scheme out there in that area.

Gloria Steiner – Is not happy with all of the different structures and the colors that will be chosen. If there is going to be a shooting range, she wanted to be sure that this is even legal.

Nancy Ivankovich – Objects to multiple structures due the impact on the drain fields and the bridge that is privately maintained. She fears a commercial venture there. She doesn’t see a Pitbull sanctuary or a shooting range as peaceful. She goes to her land and home for peace. She objects strongly to multiple residential structures on that property.

Jack Ivankovich – States that this structure was built illegally, was not built to code and anyone can see that and as far as he concerns, when someone pulls this, puts up piece of “shit”, then this needs to be torn down. This will send a signal out to folks who come here to Anaconda that they have to follow the rules like everyone else does.

Larry Hollinder – Mr. Hollinder states that his family built their residence up in this area 80 year ago. He says there are a lot of residences up there who have kept their properties up to the highest of standards. Unfortunately, they did have to take out a lot of trees over the past years due to the beetle kill and he does miss the trees. He definitely does not want a “piece of crap” up there. They are 100% in following the rules as they are and not giving this variance to Mr. Robitaille.

There were several letters from residents attached to the packet, one from the Hollinder Family as a whole, and Mr. David Chisholm. These letters are also in opposition to the variance presented by Mr. Robitaille.

*Motion is made by Donna Kostelecky that the variance by Arthur Robitaille **not be approved** and that county pursue the fine that was discussed by Chas Ariss, Planning Director; seconded by Glenn Gutcheck. Motion passes 3-0*

Tami Martin

Request by Applicant, Tami Martin, for a variance to allow for establishment of an AirBNB to be run out of her home at 500 East Commercial. The current development standard does not allow for Tourist Homes in this area currently required by the ADLC Code of Ordinances, Article VIII – Goosetown Neighborhood Conservation District (GNCD). The subject property is legally described as Anaconda Original Townsite, S03, T04 N, R11 W, Block 2, Lot 13A. This property is located within the Goosetown Neighborhood Conservation District (GNCD).

Staff Report

Chas Ariss, Planning Director, reviewed the staff report put together by him and his office. There has been several issues that have crept up over the last six to nine months regarding the establishment of AirBNB/VRBO/Bed and Breakfast establishments within ADLC. Right now we are finding that there are

over five dozen of these businesses that exist with ADLC all without active business licenses, only a very few have done their due diligence. This has made it so that the county will need to address the broader issue in regards to zoning and planning and allowance of these types of operations and with or without business licensees. However, Ms. Martin has come forward. She owns a house on East Commercial and she happens to sit on the edge of the development district that this disallows the use of property for tourist homes and those sort of businesses. She has submitted a variance application to state that she wants to rent out a specific room in her house through AirBNB. She has done a very nice job renovating and she has presented information to us in regards to cleanliness, security of the property, and the fire safety aspects. In general, this does appear to be a suitable location for an AirBNB type rental, however, again the zoning prohibits that type of use.

Questions from the Board

Donna Kostelecky asked for definition of the terms such as tourist homes, AirBNB, vacation homes, etc. Chas stated that at this time we need to clean up our codes and make these changes and bring the codes more up to date with the changing trends. He states that we would probably be better to support this from the standpoint of economic growth within the community and we need to establish a specific code and standards to deal with such. There will be provisions associated with these such as MT taxing, state registration, fire standards, sanitation standards, safety, ADA structures. We would need to set up these ordinances and use the business licenses as a way to monitor these businesses. Ms. Martin was not solicited to come in, she just came in as she felt this was the right thing to do and we did look at the location and this does look suitable.

Chas feels that this house is in good repair and in a good location. However, at this time in these situations, he wants to remain neutral and defer decisions and bring the facts to the Board of Adjustment.

Applicant Statement

Ms. Martin is not present at this hearing as she is out of the country and she has no representation at this time.

Public Comment

There was an objection by a neighbor, Mr. Glenn, regarding occupancy and parking, but unfortunately parking is an issue throughout the community with houses being so very close together and not many garages. The issue that will need to be addressed is occupancy and this will need to be reviewed when the ordinance and standards are written. Mr. Glenn is against the approval of this variance.

Another neighbor, Jayne Mitchell, had questions regarding folks walking on her new sod. This woman also issues with parking and occupancy, as above. As far as the new sod, this woman has put up fence around this and this should not be an issue. Ms. Mitchell is against the approval of this variance.

Motion is made by Glenn Gutcheck that we approve the variance with the condition that this will be given for one year and then will need another review, at which time the County will have had time to write an ordinance and set standards for said businesses; seconded by Donna Kostelecky. Motion passes 3-0.

Old Business

None at this time

New Business

None at this time

Miscellaneous

A. Matters from the Board

None at this time

B. Matters from the Staff

None at this time

Adjournment:

Meeting adjourned at 5:20 p.m.

Bill Johnson, Chairman

Carlye Hansen, Planning Department Secretary

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