

BOARD of ADJUSTMENT



Joe Bazzoli
Commission Chair

~Meeting Minutes~
December 4, 2018

Leah Carlson
Staff Liaison

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<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

The meeting was called to order at 7:00 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Annette Bieghler, Steve Bush, Marshall Comstock, Mark Monson, Tim Thomson

MEMBERS ABSENT: Laurene Sorensen

STAFF IN ATTENDANCE: Leah Carlson, Mike Ray, Anne Peterson

1. Approval of Minutes from November 19, 2018.

Monson moved approval of the minutes as presented by staff.

RESULT:	ACCEPTED
MOVER:	Monson
SECONDER:	Comstock
ABSTENTION:	Bazzoli

Motion carried by acclamation.

2. Public Hearing: Proposal for Variance at 951 S Meadow Street – LUP2018-0033

Carlson presented the Variance application to reduce the required 5-foot side yard setback to 0 feet to accommodate a garage. City Council previously approved a lot line adjustment that would have provided the required setback but when the neighbor quit claimed the property, the neighbor's mortgage company required recasting. That could take 60-90 days and the applicant has an interested buyer for his property. Staff's opinion was that the request does not satisfy criteria 1 & 2 and therefore recommended denial of the of the application.

Comstock asked if the building permit was approved based on the lot line adjustment and staff said yes. Comstock asked how far the neighboring house is from the new property line and the type of construction of the addition; both questions were deferred to the applicant. Comstock asked if the Variance was simply to satisfy the mortgage company; staff said no, and added that if the Variance is denied the applicant may be forced to remove 5 feet of the addition to bring it into compliance. Bazzoli asked if a 0 lot line would affect the property in the future and staff said no, as long as building code is met with hardy board and sheetrock for fire protection. Comstock said his interpretation of the building code is the additional fire proofing would not be required if the addition is more than five feet from the neighboring *structure*, not the property line. Staff said an approved variance would expire in one year if no building permits are pulled. Bieghler asked what precedent would be set if this is approved.

Open public hearing at 7:12 pm.

John Davis, 951 S Meadow, said City staff explained his options for an addition with regard to setbacks, etc. The neighbor was willing to quit claim the needed 5 feet in exchange for applicant building approximately 100 feet of fence for them. The quit claim was recorded and applicant proceeded with his

addition using post and beam construction, engineered laminated beams, trusses to match the roof pitch of the home, siding to match the home, and 2x6 walls inside. There is no drywall or windows on north side and the one-foot overhang on the gable reaches exactly to the property line. Davis subsequently decided to sell his home and the title search raised a concern by the neighbor's mortgage company with regard to how the quit claim was done, and is requiring the neighbor to recast his mortgage, which is a lengthy process. Davis is requesting the Variance to enable him to sell his house even if the mortgage recast isn't approved. He shared before and after pictures of the garage addition.

Monson asked the status of the quick claim deed and Davis said he quit claimed the five feet of side yard back to the neighbors in an effort to uncomplicated thing. Thomson asked why the recast decision is not black and white, and Davis replied they are reappraising the property and it could take another 30-60 days, which he fears will impact the pending sale of his home. Bush asked why the quit claim deed wasn't recorded until approximately a year after the construction. Davis said everyone thought it had been completed but the County had no record of it so it had to be re-done.

Aaron Jordan, 933 S Meadow, said he understood that if the Variance is approved the lack of setback on Davis' home could potentially affect his property's resale value but he wasn't concerned because of the large amount of area between the two structures. His home is also currently listed for sale, but no offers are being accepted on it until the recast process is complete, just to keep it from becoming more complicated.

Bieghler asked Davis what happens with the property line and the fence if the Variance is approved. Davis answered that the reconstructed fence is built 5 feet to the north of the current property line. If the recast doesn't go through it will be five feet into the neighbor's yard from the property line.

Public hearing closed at 7:40 pm.

Comstock said the City had been satisfied from a zoning and building perspective based on the quit claim deed, and the structure was permitted and passed all inspections. Bazzoli asked if the Board could approve with a condition that the recast must be approved, in order allow Davis' pending sale to proceed. Staff didn't think that condition was valid because the applicant had no control over it. Comstock said approving the Variance would bring the structure into conformance regardless of what happens with the mortgage. Monson's opinion was the applicant had done everything right and necessary and had no way of knowing the neighbor's mortgage company would take issue with the quit claim deed. He said he understood Bieghler's concern of setting precedent, but he was aware of a similar situation years ago in which the applicant knowingly built an illegal structure and requested a variance after the fact which was approved. He thought the Board should figure out how to justify this request because Davis had done everything above board and with permission.

Comstock rationalized the required criteria as follows:

- #1 Being on the corner makes the applicant's setbacks larger than normal. Comstock thought it was important to note the different shape of applicant's lot than others in the neighborhood, and the neighboring house was set back much further than required by code.
- #2 Comstock said the everyone had approached this in good faith and it could be an undue hardship to require applicant to remove part of his addition to make it compliant.
- #3 The nearest neighbor is in favor of the request and says it won't unduly affect his property.

Bazzoli asked Bush his opinion as a title officer. Bush said this a normal problem for title officers to facilitate, and said the curative process for a partial property release or recast is a fairly simple but takes a little time. He thought the applicant shouldn't have quit claimed the property back to his neighbor, thereby putting his garage addition into non-compliance. Monson asked if an approved variance would become moot if the recast is approved and the quit claim goes through. Staff said any variance would apply only to this circumstance and the existing lot line, not to the new property line created by the quit claim. Bieghler

thought approving a Variance would make a complicated situation even worse. Bazzoli saw it as a safety net in case the recast isn't approved. Comstock thought the Board should focus on the fact that it was a permitted structure, the applicant demonstrated due diligence throughout the process, and the neighbor was in agreement with the request. Monson thought a Variance approval would be "temporary" in the sense that once the recast and quit claim are complete, then the garage will conform with setback regulations. Bush said on the other hand, approving the Variance would negate the need for the property owners to enter into a quit claim deed.

Comstock moved approval of the variance and directed staff to prepare the RCS to support the decision as follows: #1 special conditions and circumstances exist which are peculiar to the property because it's a corner lot, how the house is set on the lot, and how the neighbor's house is set on its parcel; #2 special conditions exist and undue hardship would exist if the variance is not approved. The applicant acted in good faith with the necessary permits and inspections but mortgage paperwork is causing the problem; #3 the variance does not conflict with the public interest nor is it injurious to persons in the vicinity.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Comstock
SECONDER:	Thomson

Motion carried by roll call vote.

3. Board Communications

None.

4. Other Business

The RCS approval meeting was scheduled for Monday, December 10 at 5:30pm in Mayor's Conference Room.

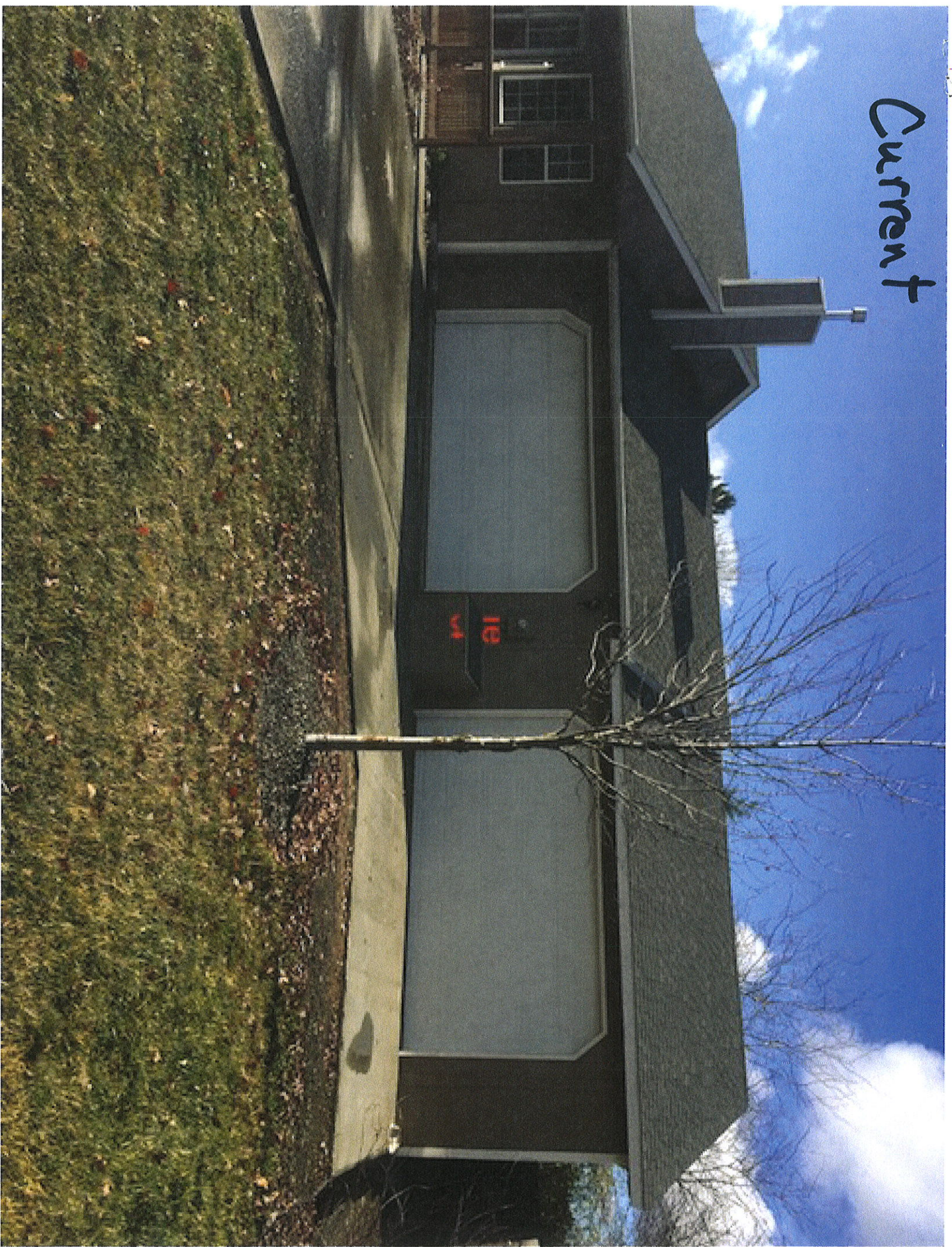
Adjournment

The meeting adjourned at 8:19 pm.


Joe Bazzoli, Chair

12/10/18
Date

Current



Summer 2016



Winter 2016

