



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, April 1, 2015 @, 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

Call the meeting to order.

Introduction of City Board of Adjustment Members and Planning Department Staff.

Public Comment

Approval of Minutes:

The minutes of the Board meeting of March 4, 2015.

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff

a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.

C. Reading of notices of the public hearings on the following items:

Public Hearings:

- A. **Variance #1208 – 4120 and 4120 ½ Buchanan, Lot Area:** The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings, David Schreder, owner. This application was continued from the March 4, 2015 Board of Adjustment meeting.
- B. **Variance #1210 – 1220 Concord Drive, Front Setback for Detached Garage:** The applicant is requesting a variance from 27-310(i) requiring a 20 foot setback from a street for a new detached garage to allow a 10.5 foot setback to S. Plainview street in a Residential 7,000 (R-70) zone, on Lot 5, Block 2, Centerview Subdivision, 2nd Filing, a 5,720 square foot parcel of land, Tax ID: A04329, Roger and Barbara Boss, owners.
- C. **Variance 1213 –724 Custer Avenue, Side Setback -** A variance from 27-308 requiring an 8-foot side setback for a 2 story structure to allow a 1-foot 9-inch side setback for a 2nd story addition to an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land. Tax ID: A18941
- D. **Variance #1211 – 2244 Fairview Place, Fence Height and location in a clear vision zone -** A variance from 27-615(c) requiring a structure or fence within a required clear vision of an alley or a driveway to be 30 inches in height or less to allow the replacement of an existing 6-foot fence in a Residential 9,600 (R-96) zone, on Lot 16, Block 6, Country Club Heights Subdivision, a 13,067 square foot parcel of land.
- E. **Variance #1212 –** This is a variance from 27-602 requiring any new structure be setback 70 feet to the centerline of a minor arterial street to allow a 65 foot setback to the centerline of Poly Drive for a new home in a Residential 9,600 (R-96) zone, on Lot 41, Block 3, Poly Vista Estates Subdivision, a 11,718 square foot parcel of land.

Other Business/Announcements

A. Ex Parte Disclosure Procedure-Discussion and Vote

Adjournment

Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone [247-8676](tel:247-8676). Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony. Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone [247-8676](tel:247-8676). Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at [247-8610](tel:247-8610) or e-mail at deinest@ci.billings.mt.us.

City Board of Adjustment

Meeting Date: 04/01/2015

Information

Subject

The minutes of the Board meeting of March 4, 2015.

Attachments

March 4 Draft Minutes

City Board of Adjustment
March 4, 2015
Minutes

On March 4, 2015, Chairman Bollman 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 3rd 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: Bill Stene; Wayne Brownson

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 February 4, 2015 Meeting Minutes

Chairman Bollman called for approval of the February 4, 2015 minutes.

Board member Connell made a motion and Board member Chesarek seconded to approve the February 4, 2015 meeting minutes as submitted.

The motion carried with a unanimous voice vote, 5-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest. Staff noted an email received from Eric Bassey.

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 5 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1206 and presented the Board with the staff report for this request. He stated he received two citizens' calls in support of this request.

Item #1

Variance #1208 – 4120 and 4120 ½ Buchanan, Lot Area - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings, David Schreder, owner.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 39 and 40, Block 2, Fairview Subdivision generally located at 4120 and 4118 Buchanan Avenue.
3. Any future construction to replace either currently existing building will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or reconstruction.
4. No construction or demolition activity will take place before 7 am or after 8pm.
5. Should the applicant wish to build a detached garage instead of a 2nd dwelling unit they must meet all current zoning, building and fire department requirements in place at the time of construction.
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 Connell asked for clarification on the proposal for a “shop” and it was given by Dave Green. He stated the applicant may have a garage for personal use and not commercial use. Board member Noennig noted there is no time limit or direct plan at this time and asked if there is usually a proposal. Nicole Cromwell said this is due to the fact the applicant is unsure of the plan for this property. Jim Olson asked if this could be included in the conditions of approval.

Public Hearing

At 6:18 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1208.

Proponents

David Schreder, Billings, Montana

Mr. Schreder is the property owner. He said he has torn down the house down. He plans to construct a 1,000 square foot home with a basement and no garage. The footprint will be similar to the site plan presented but a little larger. He would not have an objection with the inclusion of a condition of approval for a timeframe for completion. Mr. Schreder has owned the property since last April. He does not plan to remove the back house.

Opponents

Chairman Bollman called for opponents of City Variance #1208.

Steve Hoolihan, 4134 Buchanan, Billings, Montana

Mr. Hoolihan owns a construction company and is invested in the neighborhood. He owns the neighboring house to the east and just completed demolition. He is in favor of construction of a new house but has issue with the variance is the remaining unit is in deplorable condition and structurally unsound. As a neighbor and someone that is invested in the neighborhood he is opposed to the rental unit located in the rear of the property. Per request of Board member Noennig, Mr. Hoolihan explained his concern. Mr. Green stated the front structure had code violations and was unsecured. He did not look at the back house so cannot vouch for its stability. Mr. Hoolihan offered photographs of the second structure he had taken to the Board. He said the Board could allow the structure to remain or not allow the new building which would force the applicant to demolish the back house in order to comply.

Drew Lorenz, 4129 Roosevelt, Billings, Montana

Mr. Lorenz is purchasing an adjacent property. He stated that they have made major upgrades to his properties. He is excited about the construction of the new home as most of the homes on Buchanan are in a state of disrepair. He would like to have the second home be of new construction as the existing structure has a poor roof system. Board member Connell commented these types of concerns are not related to the City Board of Adjustment and should be referred to the City Code Enforcement Division.

Nicole Cromwell said the variance is for two structures. When Mr. Shreder applied, he said he did not want a variance for the back house for setbacks as he did not have any intent of doing anything at this time. She said the State of Montana does not have a minimum for property and the landlord tenant law governs living spaces. Should the structure be come considered a dangerous structure, the City Code Enforcement Division would be considered.

Jim Olson asked Ms. Cromwell for an explanation of the options available to the applicant should the variance be denied. Discussion followed by the Board.

Rebuttal

David Schreder, Billings, Montana

Mr. Schreder stated he has been in the renovation business for 30 years. He said he is aware of the current state of the roof and intends to fix it. He stated a new structure would be very small if it is constructed. Board member Bollman asked if he had considered a variance. Mr. Schreder said he has not poured a foundation and is willing to be flexible. The footprint cannot exceed 40% or 2400 square feet. He is willing to commit to fix the roof and has siding planned.

At 6:40 Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Noennig made a motion and Board member McDonnell seconded the motion to conditionally approve City Variance #1208 with the conditions and Findings of Fact presented by Staff with an additional condition that the rear building's roof and siding be repaired within a year and a two year time frame for construction of the primary house.

Discussion

Board member Chesarek asked if the applicant is agreeable to the additional condition of approval. Nicole Cromwell explained the process for enforcing a condition of approval. Board member Noennig commented he understands the objections but the applicant purchased the property with two residences. He said the motion is a reasonable compromise as it is enforceable. Nicole Cromwell concurred and stated the variance could be voided for failing to comply with the variance. Board member Bollman stated that he does not feel this is legal as it does not pertain to the variance. Nicole Cromwell stated conditions are placed to perform or complete actions or to somehow mitigate approval of the variance that may somehow have an affect on the surrounding property owners. Board member Bollman stated he respectfully disagrees. Nicole Cromwell pointed the Board to the criterion listed as determinations in the staff report. She said this is a legitimate disagreement and said she is unaware of any zoning district that prescribes color or interior. She said generally building codes are separate from zoning codes.

Motion

Jeff Bollman made a motion for a substitute motion and it was seconded by Board member Noennig to table the motion for thirty days in order to obtain an opinion from the City Attorney's office.

Discussion

Board member Connell stated he opposed to the substitute motion. The applicant is agreeable to the delay.

Chairman Bollman called for a roll call vote.

Jeff Bollman, Yes. James Olson, Yes. Paul Hagen, Not present. Frank Chesarek, No. Matthew McDonnell, No. Martin Connell No. Mark Noenning, Yes.

The motion passed 4-2. City Variance #1208 is delayed until April 1, 2015.

Discussion

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

Item #2

Variance #1209 – 519 Avenue D, Detached Garage Wall Height - A variance from 27- 310(i) requiring the wall height of a detached garage to be no taller than the wall height of the residence to allow a 12-foot wall height for a new 936 square foot detached garage in a R-60 zone, on Lots 7 & 8, Block 1, Pioneer Park Subdivision, a 13,200 square foot parcel of land. Tax ID: A12858.

REQUEST

The applicant is requesting a variance from 27-310(i) requiring the wall height of a detached garage to be no taller than the wall height of the residence to allow a 12-foot wall height for a new 936 square foot detached garage in a R-60 zone, on Lots 7 & 8, Block 1, Pioneer Park Subdivision, a 13,200 square foot parcel of land. Tax ID: A12858, and Wayne and Judy Brownson, owners

Staff is recommending the following conditions for the variance request:

1. The variance is to allow the wall height of a detached garage to be taller than the wall height of the residence. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 7&8, Block 1, Pioneer Park Subdivision generally located at 519 Avenue D.
3. The applicant will meet all other City of Billings codes, including building, fire, engineering and zoning, other than side wall height, with the proposed new detached structure.
4. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 2 years of permit issuance.
5. There shall be no construction or demolition work on the site before 7 am or after 8 pm daily.
6. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
7. 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. In response to a question by Board member Olson, Dave Green stated the average height is generally between 9-11 feet for most residential buildings. Dave Green pointed out the lot topography and said the structure will not be largely visible.

Public Hearing

At 6:18 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1209.

Proponents

Wayne and Judy Brownson, 519 Avenue D, Billings, Montana

Mr. Brownson is the property owner. He said there is a considerable amount of traffic in the alley due to the location of the four-plexes. He pointed out the existing structures in the neighborhood and the lot layout within the neighborhood. He said is planning a 4-12 pitch but his home is a tall house with a height of 18 feet and a tall foundation. He is approaching retirement and would like to have the height in the structure to accommodate installation of a lift in the garage.

Opponents

Chairman Bollman called for opponents of City Variance #1209. There was none. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Olson made a motion and Chesarek seconded the motion to conditionally approve City Variance #1209 with the conditions and Findings of Fact presented by Staff.

Chairman Bollman called for a roll call vote.

Jeff Bollman, Yes. James Olson, Yes. Paul Hagen, Not present. Frank Chesarek, Yes. Matthew McDonnell, Yes. Martin Connell, Yes. Mark Noenning, Yes.

The motion passed 6-0. City Variance #1209 is conditionally approved.

Discussion

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

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on Wednesday, April 1, 2015.

Adjournment: 6:21 p.m.

ATTEST: DRAFT to be approved on March 4, 2015



City Board of Adjustment

Meeting Date: 04/01/2015

SUBJECT: Variance #1208 - 4118 and 4120 Buchanan Avenue

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

Variance #1208 – 4120 and 4120 ½ Buchanan, Lot Area: The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. Tax ID: A06958. The owner intends to demolish and reconstruct one of the existing dwellings, David Schreder, owner. This application was continued from the March 4, 2015 Board of Adjustment meeting.

RECOMMENDATION

Staff is recommending Conditional Approval.

APPLICATION DATA

OWNER: David Schreder

AGENT: None

LEGAL DESCRIPTION: Lots 39 and 40, Block 2, Fairview Subdivision

ADDRESS: 4118 and 4120 Buchanan Avenue

CURRENT ZONING: Residential 6000

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 6,250

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Surrounding Property – Records show there have been 7 variance requests in the surrounding neighborhood. The variance requests have been for fence heights, setbacks, and multiple dwelling units on a small lot. Four of the seven variances were for 2 dwelling units on a lot too small to meet current zoning requirements.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-60 Land Use: Residential
SOUTH:	Zoning: R-60 Land Use: Residential
EAST:	Zoning: R-60 Land Use: Residential
WEST:	Zoning: R-60 Land Use: Residential

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings on Lot 40, Block 2, Fairview Subdivision. The applicant is proposing to remove the building on the front of the lot and rebuild a new home. According to the county information available, the two existing homes were built in 1935 and 1940. County records also show the addresses as being 4118 and 4120 Buchanan Avenue, the front house being 4120.

This is an older neighborhood in Billings and there are several properties in the area that have more than one dwelling unit on them as well as multiple other structures in various states of repair. Some properties have obtained a variance in this neighborhood while others have not. The applicant states that he wishes to remove the front house and rebuild it at sometime in the future. The applicant makes mention of either a shop or a rental property. Because these lots are zoned residential, the applicant can rebuild a residence, or should he decide to not rebuild a residence, he could build a detached garage. The detached garage would be for the use of the residence and not something that could be rented out to someone, or used to run a business out of. It would be for personal use only. If a garage was constructed, it would have to meet all the zoning regulations as well as building, fire and engineering regulations.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report. As with many neighborhoods of this age, multiple buildings were often built on the lot for additional housing for extended family members or as rental property. While out posting this property, staff observed several properties with multiple dwelling structures on them. Some of the lots may have more units on them than what current zoning allows for the lot size. This neighborhood is in need of some revitalization and a

new dwelling unit would be a welcomed new addition to the area.

At the March 4, 2015 Board of Adjustment meeting this application was presented to the board. There were some surrounding property owners at the meeting who spoke in opposition to the application. Their main objection was the fact the a house on the back of the property would be remaining on the lot. It was their belief that the house was in serious disrepair, was an eyesore, dangerous and needed to be removed also. Their hope was the variance would be denied requiring the property owner to demolish the back house in order to build a new home on the lot.

The property owner, in rebuttal, said he has been working on the back small home, he stated he had replaced the windows, doors, wiring, carpet and repaired the walls on the inside. He planned to repair the roof and put new siding on the house so he can rent it out along with the new home on the front of the lot.

The public hearing was closed and the board discussed the variance request. A motion was made to approve the variance with an additional condition to the ones suggested by staff. The additional condition was for the applicant to have the roof and new siding installed on the remaining house within one year of the variance approval. Further discussion ensued and it was debated whether that type of condition was legal to impose. An alternate motion was proposed to delay the variance request for 30 days to be able to obtain a legal opinion from city legal staff on whether the proposed additional condition can be legally imposed.

Since this process began in February, the applicant has been working on the site and has now removed the front house. There are some updated pictures of the site attached to this staff report.

RECOMMENDATION

Staff recommends Conditional Approval.

APPROVED BY CITY ADMINISTRATOR

Attachments

Determinations

Attachments

Current site Photos

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances with the land that create a hardship. In this situation, the structures were built prior to the current zoning requirements.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

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. There have been a number of variances granted to date in this neighborhood.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting this variance would not confer a privilege to this applicant that others in the subdivision do not have. There are several small lots in this subdivision and surrounding neighborhood that have multiple dwelling structures on them.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Because the applicant has demolished the existing front house and dug a hole in anticipation of constructing a new house staff has added conditions 4 and 5.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,250 square feet in a R-60 zone for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 39 and 40, Block 2, Fairview Subdivision generally located at 4120 and 4118 Buchanan Avenue.
3. Any future construction to replace either currently existing building will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.
4. The owner will submit a building permit application within 1 year of Board of Adjustment approval and complete the construction within 2 years of Board of Adjustment approval.
5. Failure to begin or complete the approved actions on the variance will void the approved variance.
6. No construction or demolition activity will take place before 7 am or after 8pm.

7. Should the applicant wish to build a detached garage instead of a 2nd dwelling unit they must meet all current zoning, building and fire department requirements in place at the time of construction.

8. 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.

6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to submit a building permit application within 1 year and complete the project within 2 years of the variance approval.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not already allowed in the zoning district – R-60 zoning allows 2 dwelling units on a single lot.

ATTACHMENTS

- A: Surrounding Zoning & Site Location
- B: Site Photographs
- C: Application Form
- D: Applicant Letter
- E: Proposed Site Plan

ATTACHMENT A
Surrounding Zoning & Site Location



Subject
Property ★

ATTACHMENT B
Site Photographs



Subject Property from the front



Subject property from the back

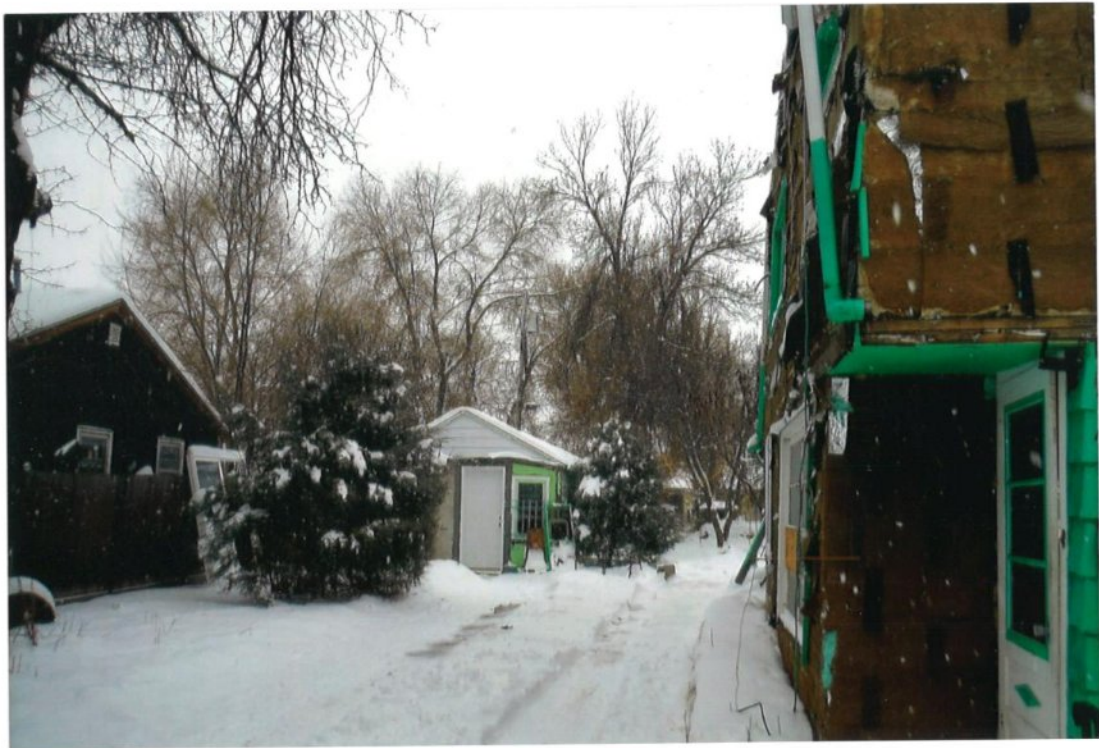
ATTACHMENT B
Site Photographs, Continued



North east of subject property



Looking west from subject property



Pictures provided by applicant

ATTACHMENT B
Site Photographs, Continued



Subject Property



Aerial Photograph

ATTACHMENT C
Application form

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1208 - Project # P2-15-000011

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings-Yellowstone County Unified Zoning Regulations.

TAX ID # A06958 CITY ELECTION WARD # 3 / 1

Legal Description of Property: lots 34 & 40 Fairview Sub
Block 2 Lot 40

Address or General Location (If unknown, contact City Engineering): 4120 + 4120 1/2 Buchanan

Zoning Classification: R 6000

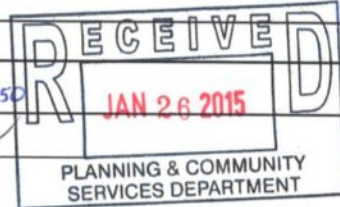
Size of Parcel (Area & Dimensions): each lot 55x125 6,250

Covenants or Deed Restrictions on Property: Yes _____ No

If yes, please attach to application

Variance(s) Requested: FOR Lot 40 TO Leave & rebuild existing House
APP. 650 sq ft TO Reduce Lot AREA for 2 units

Facts of Hardship: lots apply to zoning code



*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): DAVID SCHREDER

(Recorded Owner) same

(Address) 745 THICKET LN

(Phone Number) _____ (email) Sarah.Schredler@mv.com

Agent(s): 406 690 8703

(Name) same

(Address) same

(Phone Number) same (email) _____

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: David Schredler Date: _____
(Recorded Owner)

ATTACHMENT D

Applicant Letter

DAVID Schrader
745 Thicket Ln
Bldg MT 59101
406-690-8703

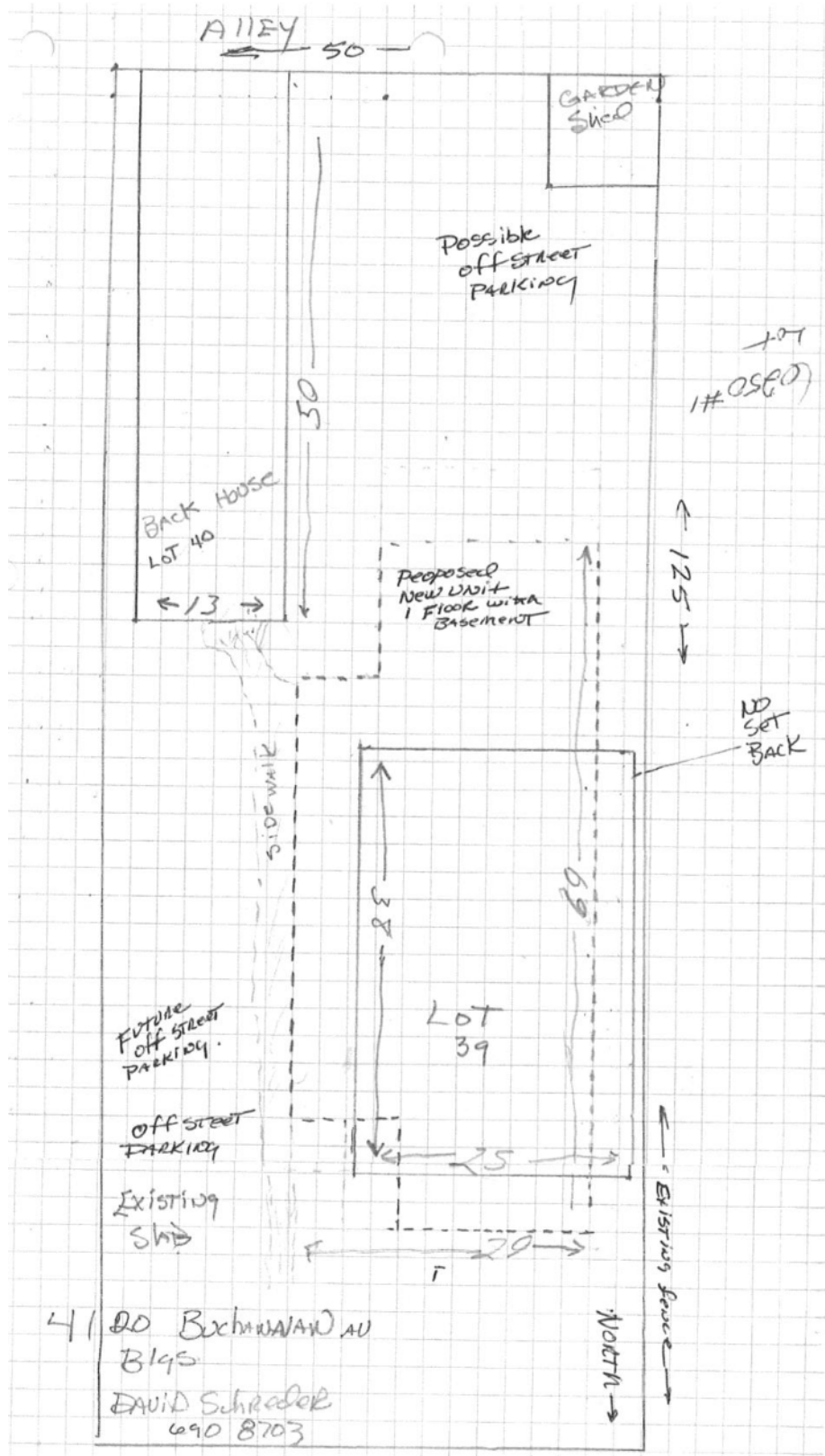
Dear Chair Person

I seek a VARRANCE for 4018
Buchanan. to be able to ReBuild
it and keep it as a Rental or Shop.
The Home in FRONT I intend to
TEAR DOWN & Rebuild some time,
will a VARRANCE ~~AND~~ MAKE it
A legal property, AND Allow me
to Build on The front of The 2 Lots,
COMBINED.
AND A VARRANCE I UNDERSTAND will DO
THIS.

THANKS FOR YOUR CONSIDERATION,

DAVID Schrader
Pawnee School

ATTACHMENT E
Site Plan



ATTACHMENT F
Current Site Photographs



Subject Property from the front



Subject property from the east looking south west

ATTACHMENT F
Current Site Photographs, Continued



Subject property



Property to the east of the subject property



City Board of Adjustment

Meeting Date: 04/01/2015

SUBJECT: Variance #1210 - 1220 Concord Drive

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

Variance #1210 – 1220 Concord Drive, Front Setback for Detached Garage: The applicant is requesting a variance from 27-310(i) requiring a 20 foot setback from a street for a new detached garage to allow a 10.5 foot setback to S. Plainview street in a Residential 7,000 (R-70) zone, on Lot 5, Block 2, Centerview Subdivision, 2nd Filing, a 5,720 square foot parcel of land, Tax ID: A04329, Roger and Barbara Boss, owners.

RECOMMENDATION

Staff is recommending Conditional Approval.

APPLICATION DATA

OWNER: Roger and Barbara Boss

AGENT: None

LEGAL DESCRIPTION: Lot 5, Block 2, Centerview Subdivision 2nd Filing

ADDRESS: 1220 Concord Drive

CURRENT ZONING: Residential 7000 (R-70)

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 5,720 Square Feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

There have been 5 variance requests in this subdivision, 4 of the 5 variances have been granted. The requests ranged from required setbacks, lot coverage, and lot size too small for multiple dwelling units. The one that was denied was for a 4 plex on a very small lot.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70/Community Commercial (CC)
 Land Use: Residential/Commercial

SOUTH: Zoning: R-70
 Land Use: Residential

EAST: Zoning: Residential 60 (R-60)
 Land Use: Residential

WEST: Zoning: R-70
 Land Use: Residential

BACKGROUND

REASONS

The applicant is requesting a variance from Section 27-310(i) requiring a 20 foot setback from a street for a new detached garage to allow a 10.5 foot setback to S. Plainview Street in a Residential 7,000 (R-70) zone, on Lot 5, Block 2, Centerview Subdivision, 2nd Filing, a 5,720 square foot parcel of land, generally located at 1220 Concord Drive. The applicant wishes to build a detached garage on the property. In the letter submitted by the applicant, he wishes to have a garage to get personal vehicles and yard equipment inside a secure building. According to ORION data from the state, surrounding homes in the neighborhood were constructed from the mid to late 1950's.

The lots in this neighborhood along South Plainview Street are smaller than others in the immediate neighborhood. Staff also noticed that the residential lots in this neighborhood are all less than 7,000 square feet which is the required minimum lot size in R-70 zoning. The subject property is one of the smaller lots at 5,720 square feet and, although the address is Concord, the front door faces South Plainview Street. This house has been set on the lot facing South Plainview Street and if it met current requirements using South Plainview Street as the front, the house would be only 8.5 feet wide. This is because the lot is approximately 48.5 feet deep from South Plainview and R-70 zoning requires a 20 foot front and rear setback, leaving only 8.5 feet of buildable space if actual setbacks were met. This same issue carries over to trying to accommodate any kind of a detached garage structure on the property.

Section 310(i) requires a 20 foot front setback for a detached structure. Because of utilities already buried in the yard to serve the property, there is not enough room to move the proposed detached garage to meet the front setback and not interfere with the utilities. Utility companies have minimum separation requirements between differing utilities, relocating utilities in the yard would have to meet new requirements and possibly result in more room required for utilities. The new proposed garage would, with this variance, line

up with the house at the requested setback and not interfere with the utilities underground.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report. Staff finds that because of the utilities location in the yard and the narrowness of the lot and the direction the house has been placed on this lot, the applicant has few options for a detached garage. The proposed variance would provide the applicants with a garage on their property that will meet their needs and provide a secured area for vehicles and other personal items.

Planning staff did receive on call from a surrounding property owner asking questions for clarification about the variance but there have not been any other comments from the surrounding neighbors at the time this staff report was completed.

RECOMMENDATION

Staff recommends conditional approval of the variance.

RECOMMENDATION

Staff recommends Conditional Approval

APPROVED BY CITY ADMINISTRATOR

Attachments

Determinations

Attachments

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special circumstances that exist with the topography of the lot but there is issue with the utilities on the lot the narrowness of the lot.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

The subject property is in a subdivision where most development occurred in the mid to late 1950's. All the residential single family homes along South Plainview Street are very close to the paved street. There are some properties within this subdivision with multiple buildings on a single lot.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

The variance will not allow the applicant any special privileges. A detached structure is allowed in this zoning area. There are several houses in the neighborhood that have detached garages on the lot with the house. The lots directly across South Plainview Street from the subject property both have detached garages on similar sized lots.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

1. The variance is to allow the reduction of the required front setback of 20 feet to allow a front setback of 10 feet 6 inches, i.e. to match the setback of the existing house. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 5, Block 2, Centerview Subdivision, 2nd Filing, generally located at 1220 Concord Drive.
3. The applicant will meet all other City of Billings codes, including building, fire, engineering and zoning, other than the requested variance, with the proposed new detached structure.
4. The applicant will build the detached garage in substantial conformance to the drawing submitted with this variance request.
5. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 2 years of permit issuance.

6. There shall be no construction or demolition work on the site before 7 am or after 8 pm daily.
7. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
8. 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.

6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff is recommending an 18 month time limit to obtain an approved building permit and 2 years to complete the project from the time of permit issuance.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district detached garages are allowed in the R-70 zone.

ATTACHMENTS

- A: Surrounding Zoning & Site Location
- B: Site Photographs
- C: Applicant Letter
- D: Site Plan

ATTACHMENT A
Surrounding Zoning & Site Location



Subject
Property 

ATTACHMENT B
Site Photographs



Subject Property



Subject Property looking south east toward the alley proposed location of detached garage



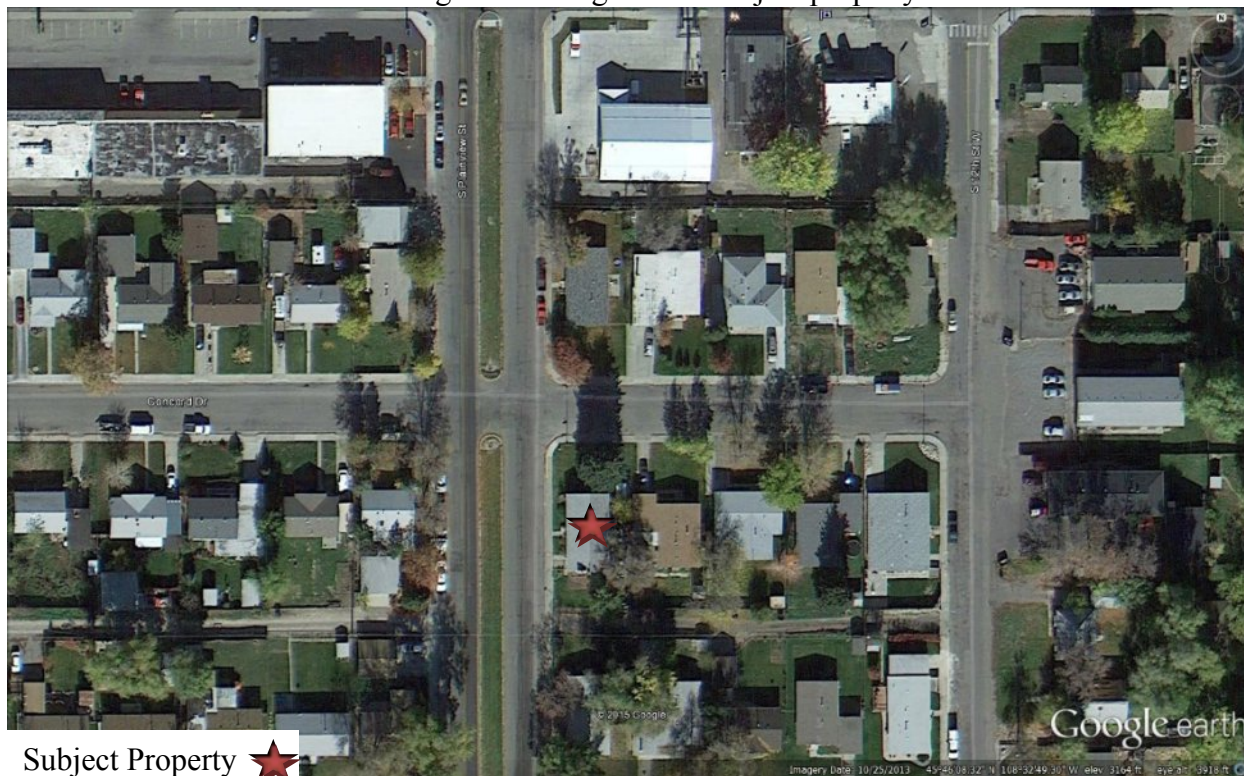
View north from subject property



Looking north west across S. Plainview Street



Looking south along face of subject property



Subject Property 

Aerial View

ATTACHMENT C
Applicant and Applicant Letter
APPLICATION FOR

CITY VARIANCE ID: Billings Variance # 1210 - Project # P2-15-00033

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings-Yellowstone County Unified Zoning Regulations.

TAX ID # A04329 CITY ELECTION WARD # 3

Legal Description of Property: CENTERVIEW SUBD 2ND FILING B2,45
SECTION 08, TOWN O1 S, RANGE 26 E

Address or General Location (If unknown, contact City Engineering): 1220 CONCORD DRIVE

Zoning Classification: R7000

Size of Parcel (Area & Dimensions): 5720 sq. ft.

Covenants or Deed Restrictions on Property: Yes _____ No

If yes, please attach to application

Variance(s) Requested: DRIVEWAY & SIDE SETBACK FOR
PROPOSED NEW GARAGE Drive approach setback 10.5 ft
instead of the required 20 ft

Facts of Hardship: SMALL LOT & UTILITY CORRIDOR AT BACK
OF PROPERTY WHERE NEW GARAGE IS PROPOSED.

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Roger W. Boss
(Recorded Owner)
1220 CONCORD DRIVE, BILLINGS, MT. 59101
(Address)
248-1496 rbboss@msn.com
(Phone Number) (email)

Agent(s): _____
(Name)

(Address)

(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: Roger Boss Date: 2/25/15
(Recorded Owner)

Response to questions for Request for Variance at 1220 Concord Dr., Billings, MT

1. A. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?

The original placement of the house on the property in 1956 is a drawback as to how I can use the property today in conformance with the Zoning Regulation requirements.

The placement of a new garage on the property only fits and makes sense on the south side of the property. To meet the current setback requirement of 20' off the street I would have to move the existing incoming natural gas line. I have met with a representative of MDU on site and their requirements will greatly affect the cost of the project. Their proposal as to not stacking utilities close to each other would be to run the new gas line within inches of the property line with my neighbor. There is currently a fence on this property line, but should it need to be replaced in the future, the gas line could conflict with digging and setting new posts.

1.B. Why is there a need for the intended use of the property at this location?

I would like to build a garage for the secure storage of at least one personal vehicle, personal lawn and garden equipment and other personal property.

2.B. Prepare a written statement addressed to the Chairperson of the Board of Adjustment. State what is intended to be done with the property, including new construction or change in the use of the property, and why the variance is being sought.

See attached letter.

Roger W. & Barbara J. Boss
1220 Concord Dr.
Billings, MT 59101

February 23, 2015

Re: Centerview Subd. 2nd Filing, Section 08, Town 01S, Range 26E, Lot: 5, Block: 2

To Chairperson of the Board of Adjustment,

My intent is to build a single oversized garage on my property to securely store one personal vehicle and other yard and garden items that are typically stored in a garage. I am seeking a variance that will align the front of the new garage with the existing house instead of having a 20' setback off of the street. This variance still allows for the needed clear vision zone required at the alley entrance. the variance, if granted, will allow me to construct the garage without having to pay additional costs to utility companies to move and stack incoming existing utilities and keep a reasonable utility corridor intact should future repairs be needed.

Thank you for your consideration in this matter.

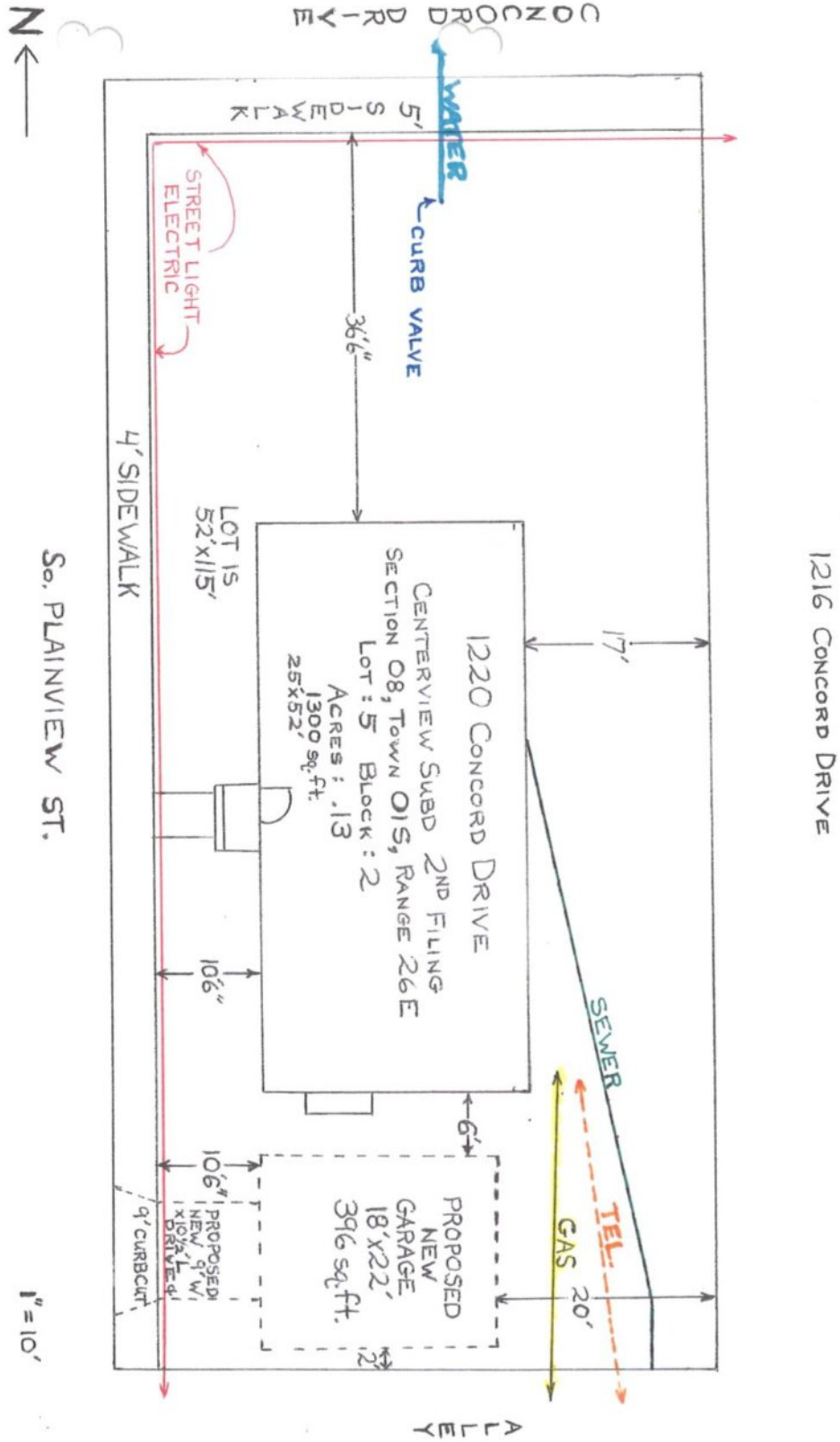
Sincerely,

Roger W. Boss Barbara J. Boss

Roger W. & Barbara J Boss, owners
1220 Concord Dr.
Billings, MT 59101

ATTACHMENT D

Site Plan





City Board of Adjustment

Meeting Date: 04/01/2015

SUBJECT: Variance 1213 - 724 Custer Ave - Side Setback

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Variance 1213 –724 Custer Avenue, Side Setback - A variance from 27-308 requiring an 8-foot side setback for a 2 story structure to allow a 1-foot 9-inch side setback for a 2nd story addition to an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land. Tax ID: A18941

RECOMMENDATION

The Planning Division is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1213.

APPLICATION DATA

OWNER: Jayne Christenot

AGENT: None

LEGAL DESCRIPTION: East 12.3 feet of Lot 40, Lots 41 & 42, Block 5 Yellowstone Addition Subdivision

ADDRESS: 724 Custer Avenue

CURRENT ZONING: R-60

EXISTING LAND USE: Single family dwelling

PROPOSED USE: Same with 2nd story

SIZE OF PARCEL: 5,600 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

The BOA has reviewed 12 similar variances in this area since 1978. Three of these applications have been denied and 9 have been approved. Since 2010, the BOA has reviewed 3 similar variances and approved 2 of those variances. One was for an addition to connect an existing detached garage with a dwelling resulting in less than the required 5 foot setback for the connected garage (502 Miles Avenue). The second approved variance was for an existing 2-story structure with a 2-foot side yard setback. The variance allowed the owner to re-finance and insure the existing structure at 415 Cook Avenue. The third variance was denied for a 1-foot side setback for a proposed carport addition at 416 Terry Avenue.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-60 Land Use: Single family residence
SOUTH:	Zoning: R-60 Land Use: Single family residence
EAST:	Zoning: R-60 Land Use: Single family residence
WEST:	Zoning: R-60 Land Use: Single family residence

BACKGROUND

The owner started a re-roofing project in October 2014. The applicant's contractor discovered rotten lumber when tearing off the old roofing material. The contractor did not alter the roofing permit but proceeded to remove the rotten lumber, and install new lumber essentially raising the roof line from an attic space on the second floor to a full 2nd story on the structure. The Code Enforcement Division received a complaint about the new construction without an approved permit. The contractor came into the Building Division in response to the complaint and submitted a new application stating the new lumber was necessary to support the roof and the upper story would remain less than a full story height wall. This modified building plan was approved. Another inspection by Code Enforcement revealed a full 8-foot wall height for a 2nd story addition to the original structure. The applicant and contractor were informed the full 2nd story addition would require a zoning variance since the structure was setback less than 8 feet from the west side property line.

The applicant states the need to provide living space on the 2nd story for relatives who assist with her daily living activities. The applicant has submitted a site plan and floor plans for the existing and proposed 2nd story living space. There appears to be a 2nd kitchen area on the upper floor, but no bedroom spaces are shown. It appears the 2nd floor space has an outside entrance from the back yard but no interior access between the 1st floor and the 2nd floor. The applicant states in her letter she purchased the home 20 years ago and the loan stated the attic bedroom had a separate entrance.

Two story dwellings are not common in this neighborhood. Many homes were built in the 1930s and 1940s and did not require more than a few feet for a side yard setback. The applicant indicates on the site plan the fence is not placed on the property line and is about 1 foot inside the property line. The total width of this lot is 40 feet from east to west. The site plan indicates the width of the house is 23 or 24 feet with a 14-foot side yard on the east side of the home. This leaves either 2 feet or 3 feet for the west side setback. The site plan indicates there is 1 foot and 9 inches between the west side of the structure and the fence. Since it is uncertain where the property line is located in relation to the fence, the Planning Division advertised the requested setback at 1 foot 9 inches.

Research of the property records indicates this property has paid and continues to pay solid waste fees for a "2-family" residence although the Department of Revenue assesses the structure as a single family dwelling with an attic living space. There is no interior connection between the first floor and the attic space. This has not changed with the addition of the 2nd story. The 2nd floor is accessed from a stairwell and deck on the rear of the structure.

Residential construction less than 5 feet from a property line normally requires fire-rated construction for the wall closest to the property line. This may also include any eaves and roof decking for the area of the structure closer than 5 feet. If the variance is approved, a building permit for the 2nd story addition including any interior plumbing or heating will be required. The Building Division will determine at that time the specific construction requirements for the addition.

The Planning Division is recommending conditional approval of the requested side setback variance. Although there are few examples of 2 story structures in the neighborhood, the Board of Adjustment has approved several similar variances in this neighborhood to reduce side yard or front yard setbacks. The adjacent property has a single story garage approximately 3 feet from the common property line, so the 2nd story addition is not crowding the adjacent home. Many homes in the neighborhood are constructed between 3 and 5 feet from at least 1 of the side property lines. The lot does present a hardship peculiar to this property. Most lots in this neighborhood are at least 50 feet wide while this lot is only 40 feet wide. This is the result of how the lots were platted in the early part of the last century. The Planning Division is recommending several conditions of approval to ensure the project is completed in a timely fashion and appropriate permits are issued.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1213.

APPROVED BY CITY ADMINISTRATOR

Attachments

Review Criteria Determinations

Zoning Map

Site Plan and Applicant Letter

Site Photos

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are special conditions or circumstances that exist which are peculiar to the land that prevent the applicant from conformance with the zoning requirements. The lot is only 40 feet in width while the majority of lots in this subdivision are at least 50 feet in width.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

The Planning Division discovered several residences built between 3 and 5 feet of property lines in this subdivision. The BOA has granted 9 similar side setback variances in the area. Denying this variance would deprive the applicant of rights commonly enjoyed by surrounding property owners.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood. Staff discovered numerous properties in the area within the required setback for residences. The BOA has granted 9 similar variances from the side setback in this area.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

Granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the decrease in setback from 8 feet to 1 foot 9 inches:

1. The variance is to allow a 1 foot 9 inches to the side property line for the construction of a 2nd story on an existing dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land generally located at 724 Custer Avenue.
3. The 2nd story space shall be constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.

5. The owner will submit a building permit application for the 2nd story addition within 3 months of Board of Adjustment approval and complete the construction within 18 months of Board of Adjustment approval.

6. Failure to begin or complete the approved actions on the variance will void the approved variance.

7. 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.

6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to submit a building permit application within 3 months and complete the project within 18 months of the variance approval.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district – 2-story dwellings are allowed in the R-60 zone.

Zoning Map



Applicant Site Plan and Letter

To The Chairman of the board of Adjustment,

I am a single disabled woman and I own the house at 724 Custer Ave. My daughter, Samantha Forslund, has been separated from her husband for almost a year now and is living with me while she attends school full time. She has two small children, Hayden 6 yrs old, and Spencyr 2 yrs old at the end of March who also live with me. When I bought the house some 20 yrs ago, FHA approved the loan listing the upper level with a separate entrance as a 3rd bedroom for my son, Michael Freund, who lives up there still. He has since been married to Tanya and has a 13 yr old stepson that lives with them as well. It is important to me that my son stays close to help me, and to take care of the things I can no longer do myself, but his son needs his own room, my roof was severely damaged due to hail in May of 2014 so it was at that time I hired my daughter's father, Ken Christner, to replace the roof because I trust him and his work. He took it upon himself, at his own expense, to help me out by building up the walls on the 2nd level, since the whole roof had to be torn down as it had three layers on it and was rotted. Nicolas, my 13 yr old grandson was thrilled that he would finally get his own room, and I was thrilled that the upper level would be big enough for my son and his family so they could

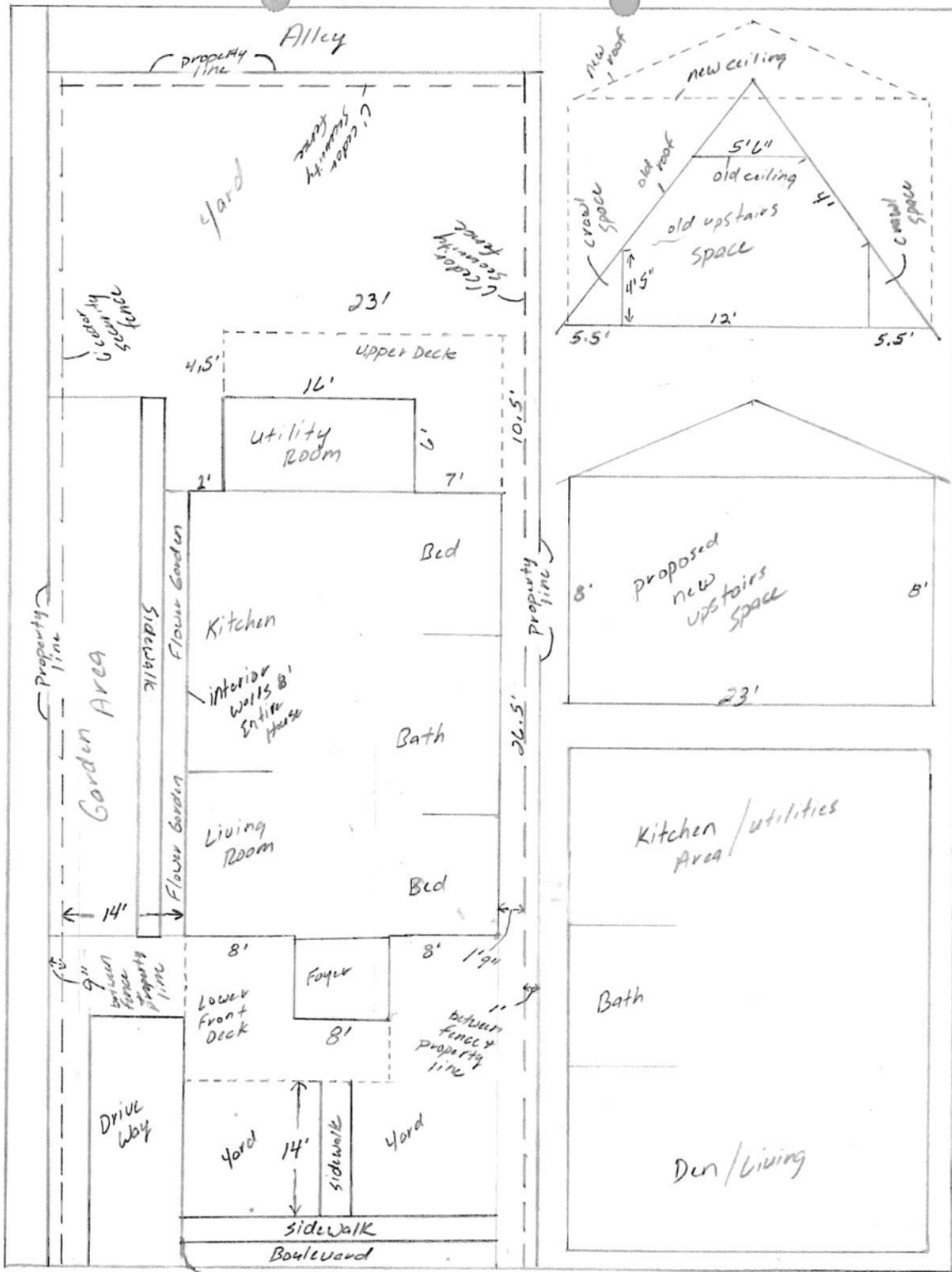
continue to live up there and provide for his son Nicolas properly.

It was not until the building inspector, Dick Taylor, came by on Oct 24th to advise me that I may need an appeasement, but by then the walls and roof were already built. It is my understanding that had Ken built the walls 6 feet instead of the standard 8 feet that an appeasement would not have been necessary. Ken states he does not recall having been told this even though I was informed that he had been told. He lives and works 60 hours weeks at an oil company in North Dakota, and can only get here to work on the upper level on weekends or if he can take time off, so its quite possible this was something he simply missed because he is a very busy man. For this misunderstanding I apologize. I am appealing to you at this time to approve my request for the appeasement and I am sorry it has taken me so long to grasp what happened and what needs to be done. Ken has provided the cost of the appeasement, I obtained a certified copy of the homeowners name around me, and my son Michael has put together a site plan to best of his ability but the only thing to change is the 8 foot walls on the upper level.

Thank you for your consideration,

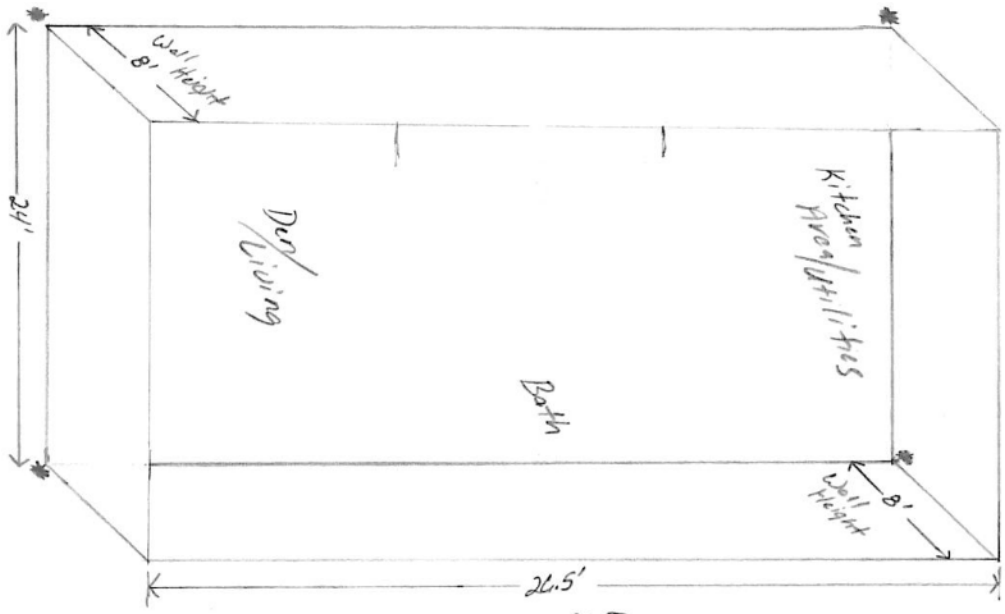
Sincerely, Jayne Christenot

Entire 6' cedar fence built inside property line



Custer Ave

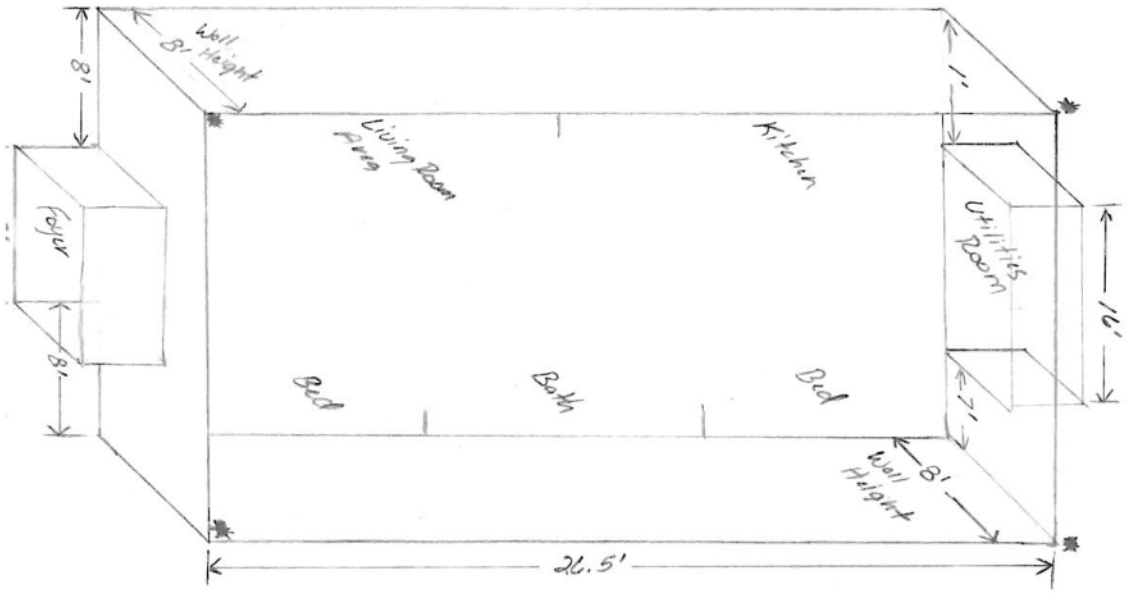
Upstairs
Floor plan directly
below stairs
(sit top of
down stairs
on down stairs)



only thing
changing is
making upstairs
bigger
(matching to
bottom
floorplan)

Clear fence on
west side of house is
1 foot inside property
line and on east side
is 9 inches inside
property line

Downstairs
Floorplan



Site Photos



Subject Property from Custer Avenue



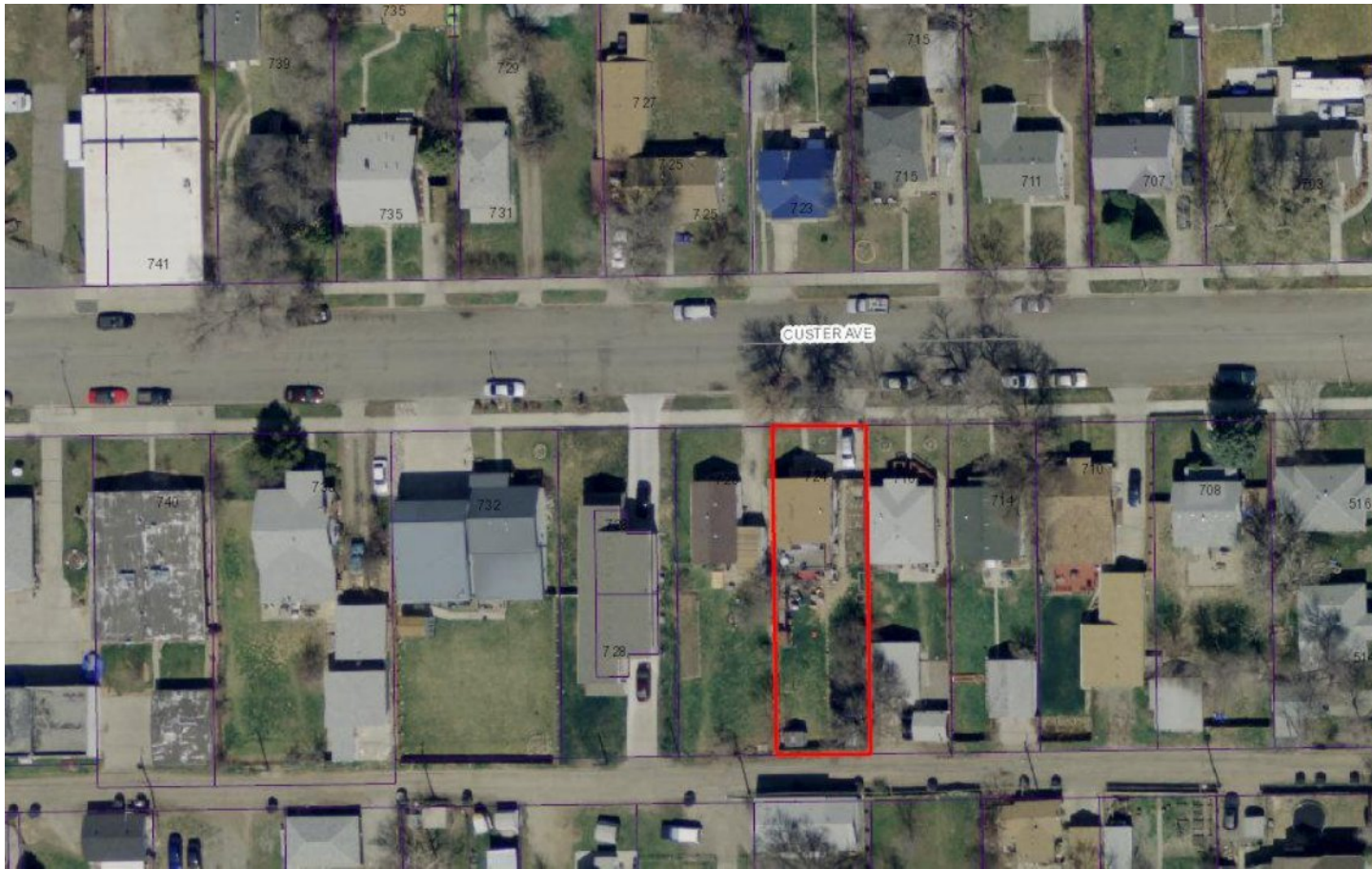
Subject Property from alley



View of adjacent property on the west



View south west from Custer Avenue



Aerial of Subject Property



City Board of Adjustment

Meeting Date: 04/01/2015

SUBJECT: Variance 1211 - 2244 Fairview Place - Clear Vision area

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Variance #1211 – 2244 Fairview Place, Fence Height and location in a clear vision zone - A variance from 27-615(c) requiring a structure or fence within a required clear vision of an alley or a driveway to be 30 inches in height or less to allow the replacement of an existing 6-foot fence in a Residential 9,600 (R-96) zone, on Lot 16, Block 6, Country Club Heights Subdivision, a 13,067 square foot parcel of land.

RECOMMENDATION

Staff is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1211.

APPLICATION DATA

OWNER: Roger and Susan Santala

AGENT: Neil Kiner, In Through the Outdoor, LLC

LEGAL DESCRIPTION: Lot 16, Block 6, Country Club Heights Subdivision

ADDRESS: 2244 Fairview Place

CURRENT ZONING: R-96

EXISTING LAND USE: Single family dwelling

PROPOSED USE: Same

SIZE OF PARCEL: 13,067 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

There have been several variances granted in the Country Club Heights Subdivision for setbacks from an arterial street (Rimrock Road), front property lines and rear property lines. Four recent variances (1999 to present) concerned front setbacks for either garages, new dwellings, or additions to dwellings. One of those variances was denied at 3205 Green Terrace Drive for a garage addition in 2013.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96
 Land Use: Single family dwellings

SOUTH: Zoning: R-96
 Land Use: Single family dwellings

EAST: Zoning: R-96
 Land Use: Single family dwellings

WEST: Zoning: R-96
 Land Use: Single family dwellings

BACKGROUND

The applicant is requesting this variance in order to re-build an existing 6-foot fence that borders their south and west property lines along an unconstructed alley and parallel to Green Terrace Drive. There are 2 clear vision areas that apply to this fence - 1 for the unconstructed alley and 1 for the driveway up to the garage. The clear vision areas were delineated and noted on the applicant's fence permit submitted last fall to the Planning Division. The permit was approved to re-construct the 6 foot fence only in that area not affected by the clear vision area. The applicant was informed a variance would be necessary to complete the re-construction of the fence in the clear vision areas.

The alleys that were platted in the Country Club Heights Subdivision are all 20 feet in width but were never constructed. Electrical service lines exist in the alleys as well as city sewer service lines. Garbage collection service is provided at curb side and not in the alley and the alleys do not have regular vehicle traffic other than service vehicles for repairing or inspecting utility lines. The clear vision area for the alley is measured from the property line since no sidewalk exists.

The existing driveway is 28 feet from the curb to the garage door facing Green Terrace Drive. The clear vision area for the driveway and the alley must be measured from the property line since no sidewalk exists along the east side of Green Terrace Drive. The clear vision area would exclude any fence over 30 inches in height 14 feet east of the property line on Green Terrace Drive (Please see Attached Site Plans). An existing shed in the southwest corner of the property is also in the clear vision area although it is not visible since it is inside the existing fence. The 14 feet combined with the existing 12-foot grass boulevard results in a 26-foot clear zone between the pavement and any obstruction. There are several other corner properties in the Country Club Heights Subdivision and nearby subdivisions that also have undeveloped alleys as well as fences or hedges. These locations

are 2100 Fairview Place (east end of this block), 1601 Rimrock Road, 2904 Radcliff Drive, 2904 Stanford Drive, 2904 17th St West, 2220 Rimrock Road, 2815 Woody Drive, 2237 Fairway Drive, and 2046 Fairway Drive. These clear vision areas along un-constructed alleys do not appear to have any effect on traffic or pedestrian safety. Clear vision areas for driveways are also intended to provide traffic and pedestrian safety especially since vehicles are backing into the travel lane and across sidewalks. There is no sidewalk at this location or within the Country Club Heights Subdivision. The current fence is angled at 45 degrees as it approaches the driveway. This angle likely met the previously required clear vision area for driveways of 10 feet up the edge of the driveway and 20 feet south along the property line. The applicant proposes to remove this angled portion and replace it with a 90 degree turn to clean up this open area of property south of the concrete driveway. The applicant currently uses this area adjacent to the driveway for storage of outdoor equipment. There is some overgrowth of shrubbery and trees in this location as well.

The Planning Division reviewed the application and the 7 criteria for variances and is recommending conditional approval. There does not appear to be any physical hardship with the property except that it is located at a street intersection with an un-constructed alley bordering the south property line. The lot is regularly shaped and has sufficient area to accommodate the residence and outdoor activities. The staff does find that a literal interpretation of the clear vision requirements would deprive this owner of rights commonly enjoyed by other property in the subdivision and this district. The 12-foot grass boulevard, part of the public right-of-way for Green Terrace Drive, provides ample clear vision for any vehicles backing out of the driveway as well as any service vehicles using the un-constructed alley. There are several similar properties in the subdivision and in the surrounding areas that have fences within the required clear vision area for un-constructed alleys and for driveways. The City Engineering Division has asked for a condition of approval that requires the applicant to bring the fence into compliance with the clear vision regulations at their expense if the alley is ever constructed in the future. Approval of the variance will not confer on this applicant a special privilege that is denied to other property owners in the area. Variance applications to allow obstructions in a clear vision area are not common. One variance was granted in 2006 for property at the intersection of S 28th Street and 11th Avenue South for the construction of a new building at the intersection. A clear vision variance was issued for a 4 foot fence in the front yard of property at 1243 N 31st Street in 2011. The Planning Division is recommending several conditions of approval for the requested variance that ensure compatibility with the neighborhood.

RECOMMENDATION

Planning Division staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1211.

APPROVED BY CITY ADMINISTRATOR

Attachments

Review Criteria Determinations

Applicant Site Plan and Letter

Zoning Map

Site photos

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances that exist which are peculiar to the land that prevent the applicant from conformance with the zoning requirements. The lot is a corner lot that is ample for the intended use and is bordered on the south by an un-constructed alley.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

Several of the neighboring properties in this subdivision and surrounding subdivisions are bordered by unconstructed alleys that have similar fences or hedges built or planted in the required clear vision area for these alleys. In addition, there are several home in this area that have fences or plantings over 30 inches in height bordering driveways. The 12-foot grass boulevard, part of the adjacent public right of way, exists throughout the subdivision and provides amply clear vision area for most driveways. There have been 2 clear vision variance requests granted in the past 10 years, one of those for a fence of 4 feet in a front yard and clear vision area of a driveway. Denying this variance would deprive the applicant of rights commonly enjoyed by surrounding property owners.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood. Staff discovered several other properties in the subdivision with fences or hedges within the required clear vision area of the unconstructed alleys and for driveways. The BOA has granted 2 similar variances from the clear vision regulations. The City Engineering Division had no objection to granting the variance and requested 1 condition of approval.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

Granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the requested variance:

1. The variance is to allow a 6-foot fence in the required clear vision area for an alley and a driveway for the re-construction of an existing 6 foot fence. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 16, Block 6 of Country Club Heights Subdivision generally located at 2244 Fairview Place.

3. The fence shall be re-constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. If the alley is ever developed, the fence will be brought in to compliance with clear vision regulations in place at that time and at the property owners' expense.
6. The owner will submit a fence permit application within 3 months of Board of Adjustment approval and complete the construction within 6 months of Board of Adjustment approval.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
8. 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.

6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to submit a fence permit application within 3 months and complete the project within 6 months of the variance approval.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district – fences are allowed in the R-96 zone.

Applicant Site Plan and Letter

VARIANCE APPLICATION

TO: CITY OF BILLINGS BOARD OF ADJUSTMENT
FROM: NEIL KINER, AGENT
SUBJECT: VARIANCE APPLICATION FOR 2244 FAIRVIEW PLACE
DATE: FEBRUARY 25, 2015

Members of the City of Billings Board of Adjustment:

The property owners of 2244 Fairview Place, Roger and Susan Santala, are replacing their existing fence, and respectfully request a variance from Section 27-604.

The existing fence extends to the southwest property corner at a 6'-0" height, and it is the owners' desire is for the new fence to maintain the 6'-0" to the property corner. However, when obtaining a fence permit last fall, it was discovered that the plat on record shows an alley running east/west between the subject property and the properties to the south. The alley, however, was never built and the 20'-0" of alley, has for all intents and purposes, has become part of (maintained by) the property owner to the south. See photos.

In addition to this alley corner visibility fence height variance request, the property owner also seeks a second determination for corner visibility at the concrete driveway approach that abuts Fairview Place. The existing fence has been built with a 45 degree angle, but it is the desire of the owners to have the new fence built with a 90 degree angle at the driveway approach. It should be noted that a 12' grass boulevard would still be maintained outside the fence, which provides ample visibility for vehicles backing out of the driveway onto Fairview Place.



Looking east along platted alley - property has 'become' part of neighbor's yard



Corner of fence requesting height variance from stepping down in height

VARIANCE APPLICATION - CONTINUED



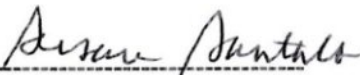
View of grass boulevard
west of existing fence



Existing 45 degree fence – area
would potentially be enclosed
in back yard with 90 degree fence

Thank you for the consideration given to this request.

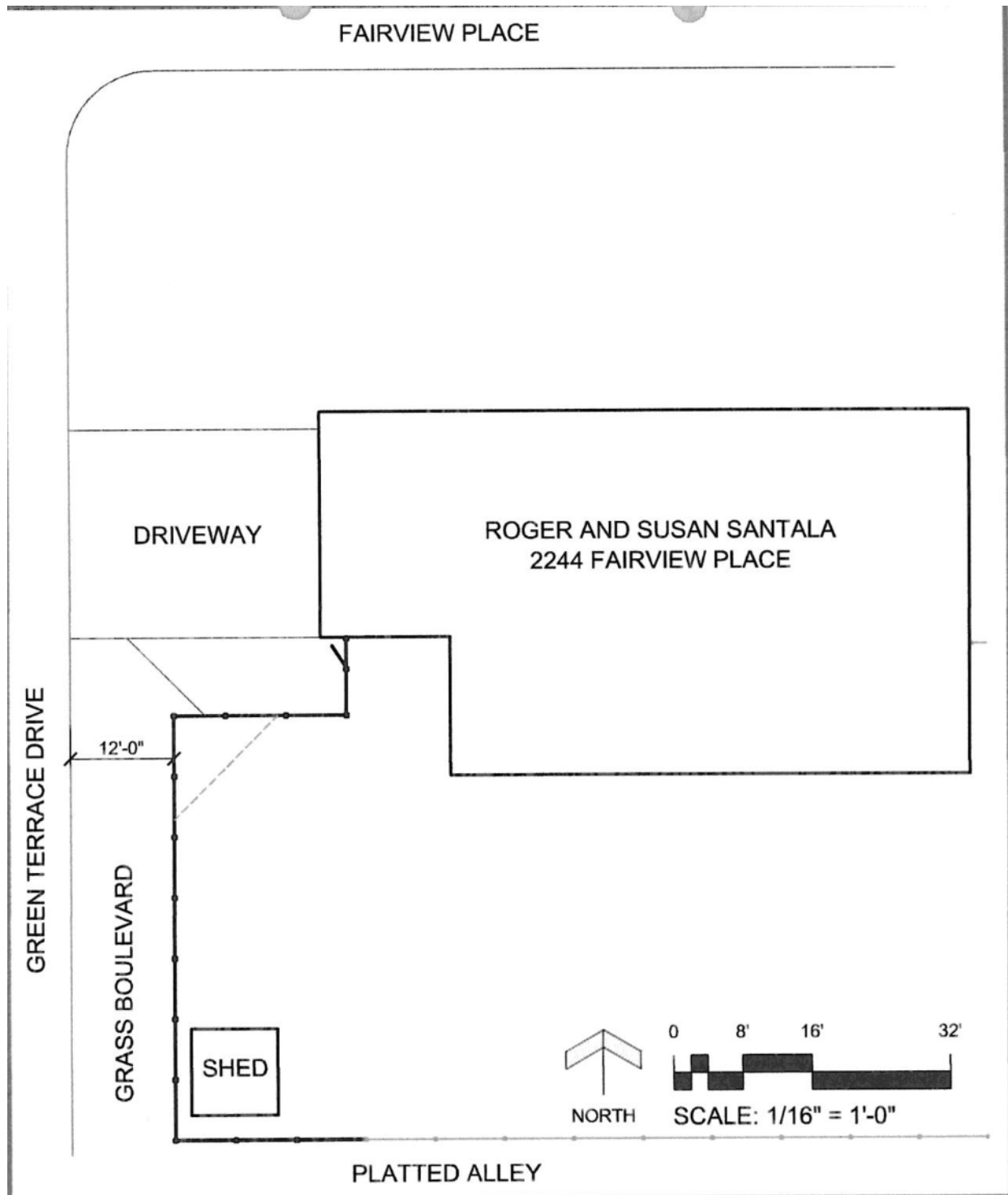
Sincerely,



Roger and Susan Santala 2/25/15
2244 Fairview Place



Neil Kiner, Landscape Architect 2/25/15
Agent



Drawn By
 Checked By
 Date
 Project #
 Cad File:

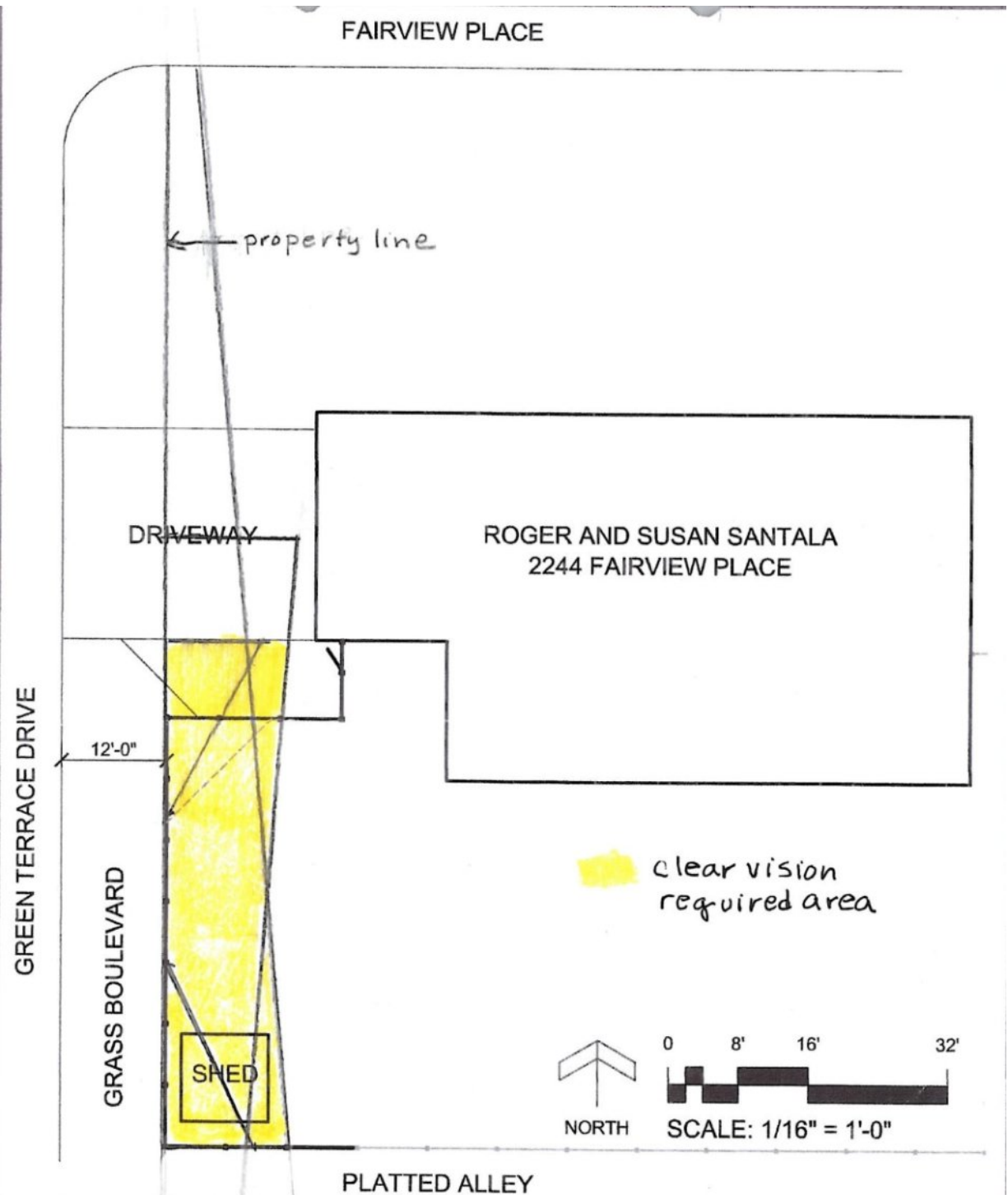
NK
 NK
 02/25/15

IN THROUGH THE
 OUTDOOR, LLC


BELLEVUE, MT
 (409)850-0481
 © 2015

SANTALA RESIDENCE
 2244 FAIRVIEW PLACE
 FENCE VARIANCE REQUEST

SHEET#
 1



Drawn By
 Checked By
 Date
 Project #
 Cad File

IN THROUGH THE
 OUTDOOR, LLC
 NK
 02/25/15

 BILLINGS, MT
 (406) 653-0461
 © 2015

SANTALA RESIDENCE
 2244 FAIRVIEW PLACE
 FENCE VARIANCE REQUEST

SHEET#
 1

Site Photos



Subject Property from Fairview Place



Subject Property driveway off Green Terrace Drive



View along south property line on un-constructed alley from Green Terrace Drive



View north along west property line at Green Terrace Drive



Aerial of Subject Property



City Board of Adjustment

Meeting Date: 04/01/2015

SUBJECT: Variance 1212 - 3759 Poly Drive - Arterial setback

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Variance #1212 – This is a variance from 27-602 requiring any new structure be setback 70 feet to the centerline of a minor arterial street to allow a 65 foot setback to the centerline of Poly Drive for a new home in a Residential 9,600 (R-96) zone, on Lot 41, Block 3, Poly Vista Estates Subdivision, a 11,718 square foot parcel of land.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1212.

APPLICATION DATA

OWNER: Lais Development

AGENT: Dave and Barbara Hawkins

LEGAL DESCRIPTION: Lot 41, Block 3, Poly Vista Estates

ADDRESS: 3759 Poly Drive

CURRENT ZONING: R-96

EXISTING LAND USE: Single family residence under construction

PROPOSED USE: same with additional garage space

SIZE OF PARCEL: 11,718 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

The BOA has approved 1 variance in Poly Vista Estates Subdivision for a fence taller than 6 feet on a common property line. There are 2 variances granted in Reimers Park Subdivision to reduce the arterial setback from 80 feet to the centerline of Rimrock Road. Three other variances have been granted in the area for side setbacks or lot area but not for arterial setbacks. The BOA approved an arterial setback variance for 1905 Poly Drive on February 4, 2015.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-96 Land Use: Single family residence
SOUTH:	Zoning: R-96 Land Use: Single family residence
EAST:	Zoning: R-96 Land Use: Single family residence
WEST:	Zoning: R-96 Land Use: Single family residence

BACKGROUND

The applicants are constructing a new home at 3759 Poly Drive and desire to include a 3 car garage. The proposed 3rd stall on the garage will intrude 5 feet into the required arterial centerline setback of 70 feet. The applicant modified the building plans to remove the 3rd stall from the garage while the variance is pending. Poly Drive is a minor arterial street and the zoning regulations require a 70 foot setback from the centerline for any new residential structure. Many of the adjacent properties were constructed prior to this arterial setback requirement. Poly Drive ends at 38th Street West and this section of the street west of Zimmerman Trail is not as heavily traveled as the eastern section of Poly Drive. The intent of the arterial setback requirements is to ensure residential homes or structures do not need to be purchased in the future if the road is expanded. The City intends to re-construct this section of Poly Drive west of Zimmerman Trail this summer.

The Planning Division discovered 26 residences built within the required arterial setback on Poly Drive from Zimmerman Trail to 38th Street West. (Please see the Site Photos Attachment). The property itself does not present a hardship as a result of topography or lot shape. The lot is large enough for the residence and meets all the other requirements for setbacks, lot coverage and building height. Denying this variance would result in depriving this owner of rights commonly enjoyed by many other property owners within the area. The city does not have plans to expand Poly Drive west of 38th Street West. The BOA has previously approved arterial setback variances in this area of Billings including a variance for 1905 Poly Drive on February 4, 2015. The requested variance is similar to the variance granted in February. Approval of the variance will not confer a special privilege to this applicant that is denied to other property in the area. The Planning Division is recommending conditions of approval that ensure the project is in harmony with the existing neighborhood.

RECOMMENDATION

Planning Division staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1212.

APPROVED BY CITY ADMINISTRATOR

Attachments

Review Criteria Determinations

Zoning Map

Site Plan and Applicant Letter

Site Photos

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances that exist which are peculiar to the land that prevent the applicant from conformance with the zoning requirements. The lot is a corner lot that is ample for the intended use and is bordered on the south by a minor arterial street.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

The Planning Division discovered 26 residences built within the required arterial setback of Poly Drive between Zimmerman Trail and 38th Street West. This represents the majority of homes along this section of Poly Drive. Most of those structures are between 50 feet and 60 feet of the centerline of Poly Drive. This section of Poly Drive remains a minor arterial although traffic volume is low west of Zimmerman Trail. The BOA has granted 3 arterial setback variances in the area. Denying this variance would deprive the applicant of rights commonly enjoyed by surrounding property owners.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood. Staff discovered numerous properties in the area within the required setback for Poly Drive. The BOA has granted 3 similar variances from the arterial setback in this area. The City Engineering Division had no objection to granting the variance.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

Granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the decrease in setback from 70 feet to 65 feet:

1. The variance is to allow a 65-foot setback to the centerline of Poly Drive for the construction of a garage space. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 41, Block 3 of Poly Vista Estates Subdivision generally located at 3759 Poly Drive.
3. The additional garage space shall be constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.

5. The owner will submit a building permit application within 3 months of Board of Adjustment approval and complete the construction within 18 months of Board of Adjustment approval.

6. Failure to begin or complete the approved actions on the variance will void the approved variance.

7. 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.

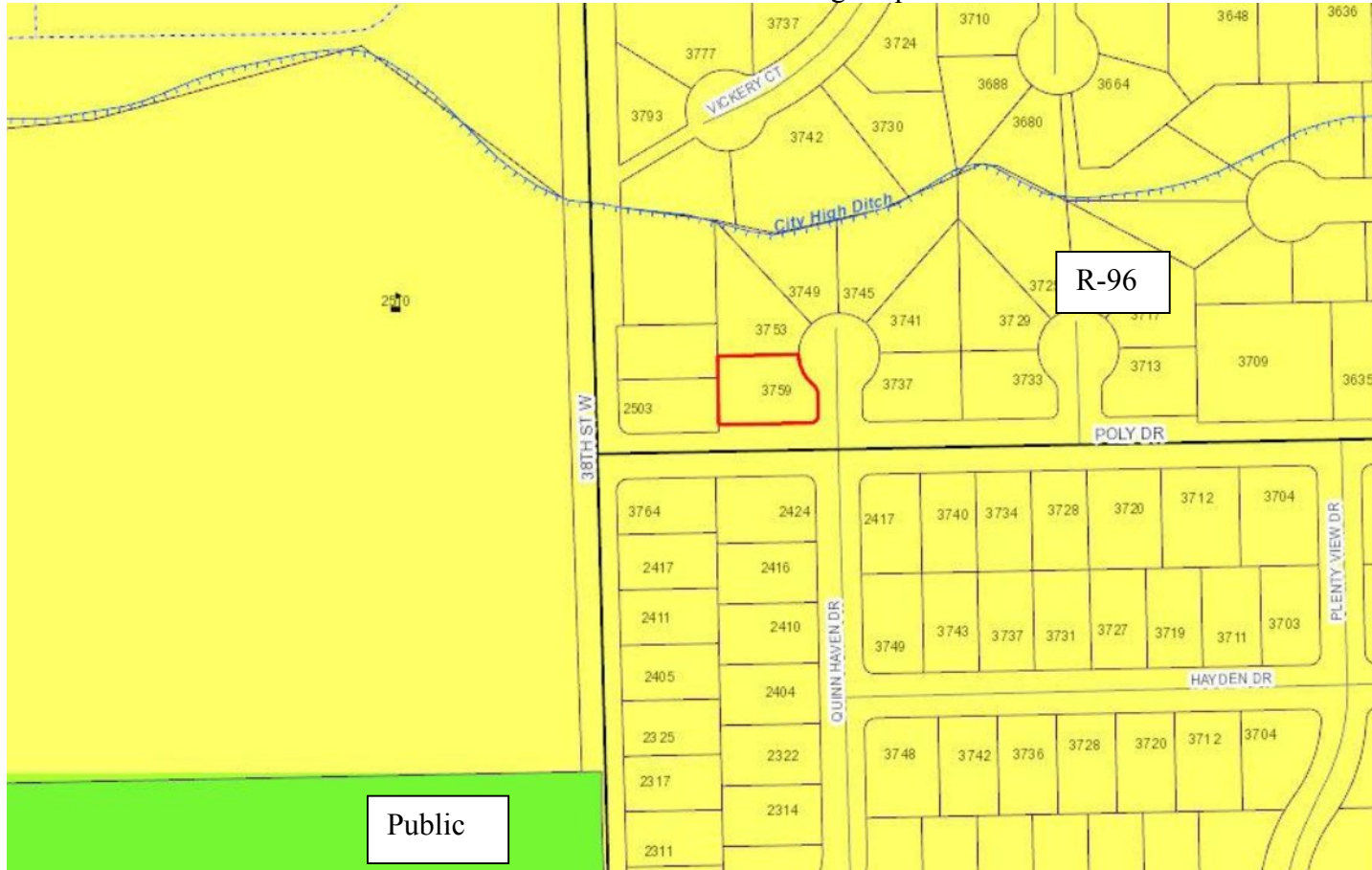
6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to submit a building permit application within 3 months and complete the project within 18 months of the variance approval.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district – garages are allowed in the R-96 zone.

Zoning Map



Applicant Site Plan and Letter

February 26, 2015

TO: City of Billings
Billings, MT

RE: Variance for 3759 Poly Drive

Poly Drive is named a minor arterial requiring a 70' setback from the center line to any structure being built. We have a buyer who wants to build a house with a 3 car garage and position the house so the garage is on the street side of the lot, placing the bedrooms on the north side of the lot. When we developed the cul-de-sac in 1999 we were required to widen Poly on the north side and install curb, gutter and city sidewalks. The entrance to the cul-de-sac has a no access area on this lot which covers the majority of the lot frontage. The driveway has to be on the north side of the lot. We tilted the house as we positioned it to have the drive way meet with the drive approach. When we turned the house the south 4'9" of the third car stall was encroaching into the 70' setback.

This is the last vacant lot on this cul-de-sac and would finish the infill for this property. Completing this cul-de-sac of residential homes which is what it was developed for.

Everything is completed as far as widening the street, curb, gutter and sidewalk and there should be nothing to hamper any plans the city might have in the future for this area.

February 26, 2015

TO: Chairperson of the Board of Adjustment
Billings, MT

RE: Variance for 3759 Poly Drive

We have started a new construction house on the lot located at 3759 Poly Drive. Due to the city naming Poly Drive a minor arterial in this area, we have found the requirement to be 70' setback from the center line of Poly. At the entrance to the cul-de-sac to the North of Poly Drive we were required to have a no-access zone for the majority portion of the lot where we are building a new house. This is a pre-sold house and the buyer wanted a 3 car attached garage. They want their bedrooms to be opposite the street side of the house. In order to fit the house on the lot and tilt it to face the driveway on the north side of the lot, the south corner of the third stall encroaches 4'9" into the 70' setback. We were given the permit to start the house with only a two stall garage. The buyer wants the third car stall and we are asking for a variance to the 70' setback in order to build the third stall.

This is the last vacant lot on this cul-de-sac and would finish the infill for this property.

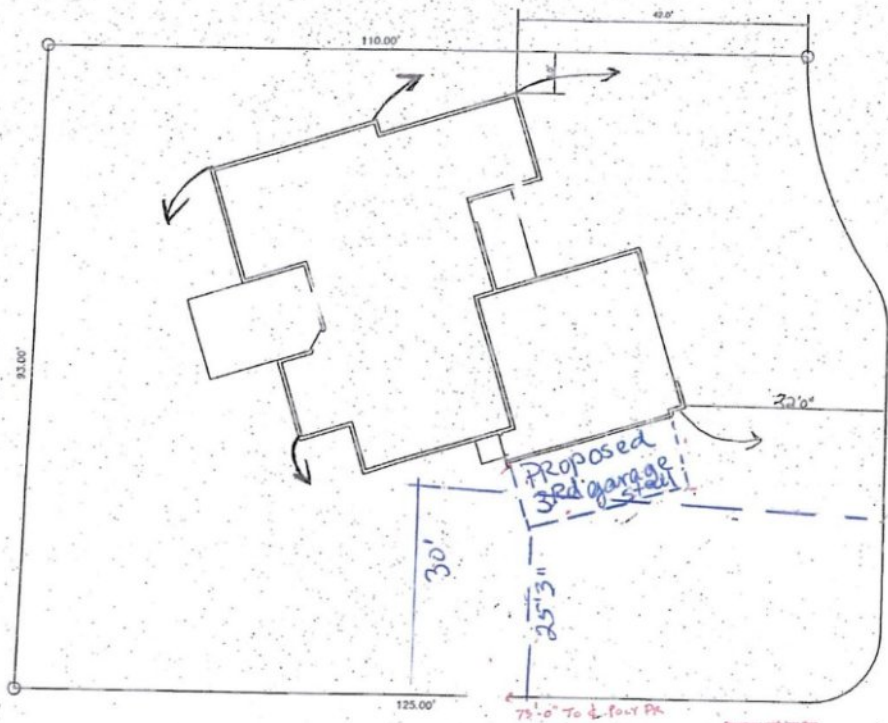
We developed this cul-de-sac and the one to the east in 1999. When we did so, we were required to widen Poly Drive on the North side and install curb, gutter and sidewalk. There is no need for further widening and therefore we believe this would not interfere with any plans the city might have in the future for improvements on Poly Drive.

Thank you for your consideration on this matter.

Cordially,



Barbara Hawkins, Vice President
LAIS Development, Inc.

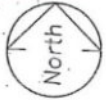


PLOT PLAN.

SCALE: 1/8" = 1'-0"

LEGAL DESCRIPTION

LOT 41 BLOCK 3
 POLY VISTA ESTATES SUBDIVISION
 ADDRESS: 3759 POLY DRIVE
 BILLINGS, MONTANA
 Lot sq ft 11,715
 Building sq ft 8,720
 Lot Coverage 23%



DELETED
 5/15/2011

Site Photos



Subject Property from Poly Drive



Subject Property



View east across cul de sac



View south across Poly Drive



Aerial of Subject Property



Lots between Zimmerman Trail and 38th Street West with nonconforming arterial setbacks