



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, May 6, 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: April 1, 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. **Item #1: Variance #1214 – 742 and 744 Calhoun Lane - Lot size:** The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zoning district on Lot 4, Block 5, Pinnick Subdivision, 3rd Filing, an 8,826 square foot parcel of land. No new construction is planned but the variance, if approved, would allow the owner to re-build in the future, Tax ID: A20199. Judson Group LLC, owner.
- B. **Item #2: Variance #1215 – 503 Avenue D, Lot coverage, setbacks:** The applicant is requesting a variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone, Lot 1 of Block 1 Pioneer Park Subdivision, an 8,338 square foot parcel of land. The variance would allow the construction of 1 new single family dwelling. Tax ID: A12852, Rusty and Tiffany Gackle, Pauline Gackle owners

Other Business/Announcements

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. 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. 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 or e-mail at deinest@ci.billings.mt.us.

City Board of Adjustment

Meeting Date: 05/06/2015

Information

Subject

Approval of Minutes: April 1, 2015

Attachments

2015_04_01_BBOA_Minutes_Draft

CITY BOARD OF ADJUSTMENT

MINUTES: April 1, 2015

Name	Title	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15
Jeff Bollman	Chairman	1	1	1	1								
James Olson	Board member	1	E	1	1								
Paul Hagen	Board member	1	1	E	1								
Frank Chesarek	Board member	1	1	1	1								
Matthew McDonnell	Vice Chairman	1	E	1	1								
Martin Connell	Board member	1	1	1	1								
Mark Noennig	Board member	1	1	1	1								

TOTAL NUMBER OF APPLICATIONS 2015	01/07/15	02/04/15	03/04/15	04/01/15	05/06/15	06/03/15	07/01/15	08/05/15	09/02/15	10/07/15	11/04/15	12/02/15	TOTAL
Variance	1	1	2	5									9

On April 1, 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 Jeannette Vieg, Receptionist.

Others in Attendance:

Dave Hawkings, Barbara Hawkings, Walt Backer, Steven Houlihan.

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 March 4, 2015 Meeting Minutes

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

Board member Connell made a motion and Board member Chesarek seconded to approve the March 4, 2015 meeting minutes as submitted. Chairman Bollman mentioned that one correction be made on page 4, Item # 2, there is a discussion where it is repeated twice. Chairman Bollman moved that the second mention is struck from the records.

The motion carried with a unanimous voice vote, 7-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		1	
James Olson		1	
Paul Hagen		1	
Frank Chesarek		1	
Matthew McDonnell		1	
Martin Connell		1	
Mark Noennig		1	

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.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		N	N	
James Olson		N	N	
Paul Hagen		N	A	
Frank Chesarek		N	N	
Matthew McDonnell		N	N	
Martin Connell		N	A	
Mark Noennig		N	N	

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

Ms. Cromwell stated that she received a communication from the City Attorney’s office in response to a question that the board wanted answered regarding a proposed condition for Variance #1208. A copy of that memo is in the notebook. Anyone who is interested in reading the memo may look at it.

Planner Dave Green reviewed the application for Variance request #1208 and presented the Board with the staff report for this request.

Item #1

Return Item - 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.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area¹ 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.

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 reconstruction.
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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

There was none.

Public Hearing

At 6:13 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, property owner. 745 Pickett Lane, Billings, MT 59101. Intends to apply for a building permit. Asked if he could answer any question on the status of the back house, which has been fixed up on the inside, not the outside. No questions were asked.

Opponents

Chairman Bollman called for opponents of City Variance #1208.

Steven Houlihan, 4134 Buchanan Ave., Billings, MT 59101. Feels that the back house is a deterrent to the neighborhood. Does not think that repairing the house would benefit the overall appeal of the house due to its deplorable condition and structurally unsound. Would love to see the street improve, but do not feel the house fits into the idea of improvement. Read to the Board of Adjustment 27-1505. Does not feel this variance would be in the best interest of the neighborhood, and he feels the idea of R6000 is not what this house represents.

Board member Connell presented Mr. Houlihan with a copy of the Attorneys opinion, and stated he thinks the applicant is going to fix the houses as stated.

Rebuttal

There was none.

At 6:20 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Board member Connell 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	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0.

Item #2

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.

REQUEST

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.

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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Boardmember McDonnell asked if the alley is abandoned. Mr. Green states it is an alley.

Public Hearing

At 6:28 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1210.

Proponents

Discussion

Roger Boss, Applicant. Will be happy to answer any questions. No questions proposed.

Opponents

Rebuttal

There was none. At 6:30 p.m .Chairman Bollman closed the public hearing, and called for a vote.

Motion

Board member Olson made a motion and Board member Hagen seconded the motion to conditionally approve City Variance #1210 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1210 is conditionally approved.

Item #3

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

REQUEST

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

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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Board member Connell, if this is not approved, would they would have to go back to what the house was before? Ms. Cromwell, yes they would have to go back to what it was. Yes, the deck was with the original house. What about the Fire Department approval? Is that part of the building? Ms. Cromwell replied that the Building Division would review it as a residential structure for a one or two family and because it is so close to the property line, they would likely require a fire rated construction on that west wall. Board member Connell, why would they not need a variance for 2 families? Ms. Cromwell, because it is an existing condition. There is no internal connection between the units.

Public Hearing

At 7:34 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1213.

Proponents

Jane Kersnot, owner. 724 Custer, Billings, MT 59101. Have owned the property for 20 years. This house is an FHA home and has never had a inside entrance. When the house needed to be reroofed due to the hail damage I asked my ex to do it because he is a contractor and I trust his work. When he started tearing the roof off he discovered that everything was rotted. My son has lived up stairs since I have owned the place and he is now married and has a son and it is not big enough for them. The contractor said this would be the perfect opportunity to build up the walls so that they could build 2 bedrooms up there. The contractor built up the walls for this purpose and I thought this would be a good idea so my son could continue to live there. There would be room enough for the three of them to stay there and not have to find a different place.

Board member Noennig asked if the contractor was the one who did all the applications and said there was not going to be a full story there, do he know? Ms. Kersnot, it is my understand that my contractor told them what he was doing and drew them a picture, apparently there was a misunderstanding because they said that if he had built the walls 6 feet up there would be no problem, but he built them 8 feet up and that is how it became an issue. He said he honestly did not hear the 6 foot wall requirement. It was a misunderstanding for him. It may have been that something was said and he didn't hear it.

Opponents

Rebuttal

There was none. At 7:53 p.m., Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Connell seconded the motion to conditionally approve City Variance #1213 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1213 is conditionally approved.

Item #4

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.

REQUEST

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.

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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion.

Board member Connell, because others have those conditions, are we doing the right thing regarding clear vision blocking? Just because it concerns me as you drive around town, just because things are built that way is it for the greater good. If you back out of the garage, you will be in the grass area before you can see any vehicles approaching. I do like the part that if the alley was upgraded, the fence will have to be changed.

Ms. Cromwell, on the second criteria, for similar variances and look at existing uses, this type of fence construction is common in this neighborhood, a similar clear vision variance has been granted in this area. Have had variances for setbacks, setbacks for garages that were reduced, only one had been denied for front setback from 20 to 10. There had been concern regarding a great deal of runoff and storm water concern. There have been a couple of different locations where clear vision was not an issue, one was down on S 28th a fence was allowed on a corner due to being a dead end with very little traffic. We don't want to approve if it has a negative impact on public safety. There have been no complaints or concerns from any neighbors on this street.

Board member Olson, since it is an abandoned alley does the clear vision make a difference. Ms. Cromwell, clear vision standard applies to alleys along with driveways. The driveway is relevant because it is used. Board member Olson, why is alley relevant? Because it is there.

Board member Chesarek, how wide is the alley? Ms. Cromwell it is 20 feet. Board member Chesarek, whose fence is across the alley, and is it okay. Ms. Cromwell, I don't know. Board member Noennig, the current fence has an angle? Why does the new one have a 90? It seems to me that the clear vision problem would be somewhat limited if it was replaced in the original angle. Ms. Cromwell, the angle does not provide clear vision at this point. Board member Chesarek, are we giving special consideration because it is an unused alley? Condition of approval regarding the alley. Clear vision triangle was explained.

Public Hearing

At 6:51 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1211.

Proponents

Discussion

Neil Kiner, Agent. 1432 Teton Ave, Billings, MT 59101. I am the agent for the property owners I have some experience dealing with issues like this. A couple of issues I want to hone in on. Site triangles are confusing animals. What I would like to stress is the intent of what I am trying to

accomplish with this variance. The height request on this corner here, with the alley obviously not being built, there is no chance of vehicles ever exiting the alley. Prefer a 6' fence for privacy. Fence currently has an angle to it, they are open to changing this since they do not want to lose variance over that. Would like to still request the 90 angle at the driveway. Would like to separate the height variance and the 90 angle. Questions? Board member Mark Noennig, could you explain the 90 angle on the driveway again. Why do you need that?

Mr. Kiner, the 90 corner would take care of the underbrush issue and make it part of the back yard. More concerned about the alley height issue.

Any more questions?

Opponents

Rebuttal

There was none. At 6:55 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member McDonnell made a motion and Chesarek seconded the motion to conditionally approve City Variance #1211 with the conditions and Findings of Fact presented by Staff.

Discussion

Board member Connell would like to move to a substitute motion to amend it by the driveway putting the fence at a 45 angle and then accept everything else. I am concerned about the sight vision. Board member Hagen seconded it.

Board member Chesarek, I am reading the conditions put down by the Planning Board that if you don't grant this thing you are denying the same rights given to the neighbors. I don't see any basis for us to alter and improve from what they have asked us to consider. Basically you are blocking clear vision. Clear vision is a big issue. Since the alley possibly will never see traffic, you are gaining a win/win. The 45 angle is a good comprise.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell		1		
Martin Connell	1			
Mark Noennig	1			

The motion passed 6-1. City Variance #1211 is conditionally approved.

Item #5

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.

REQUEST

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.

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.

Discussion

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

Public Hearing

At 7:07 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1212.

Proponents

Barbara Hawkins, owner. 2617 Westfield Drive, Billings, MT 59106. When we developed these two cul-de-sacs the city asked us to widen Poly Drive. We widened the North side of Poly Drive. Our request for the five feet is not going to affect any kind of provision. When we submitted for the building permit we were unaware of the extra requirement for set back since the last building was built prior to 1999. A three car garage is standard when we build houses now and when we put the house on the lot there is a no access zone, the drive approach needs to be on the north corner of the lot. The people who we are building the house for want a garage on the south side to buffer the road noise. In order to get the garage on the lot we had to turn it and when we did the corner of the garage encroached on the set back. Any questions? None.

Dave Hawkins, owner. 2617 Westfield Drive, Billings, MT 59106. The house right across the street to the east you will notice their driveway is a little bit to the south, we had to put in the driveway approach there due to the no access zone. Had to tilt the garage due to the way the owners wanted to

approach their garage. The two cul-de-sacs have different intersections which have influence on how the driveway approach is built. This portion of Poly is up for reconstruction, but they won't be increasing the size of Poly on the North side, they will on the South side. They will be re-paving Poly and installing storm drains. Any questions? None.

Walt Backer, 6312 Grey House Way, Billings MT 59106. I will be moving to this spot if everything goes okay. One of the things that started this is when Poly was defined as an arterial instead of being a collector. Someone decided from N 27th all the way to 38th because of the traffic flow, Poly should be designated as a minor arterial. On the other side of Shiloh, Poly is still a collector so this setback does not apply. When people sell their house they will have to come to you to get a variance. Any questions? None.

Motion

Board member Noennig made a motion and Olson seconded the motion to conditionally approve City Variance #1212 with the conditions and Findings of Fact presented by Staff.

Discussion

There was none. At 7:16, Chairman Bollman closed the public hearing and called for a motion.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 7-0. City Variance #1212 is conditionally approved.

Other Business/Announcements

Roll call on disclosure, site visit vs exparte. Would be recorded in the minutes, it can be corrected in the draft minutes.

- The next City Board of Adjustment meeting will be held on **Wednesday, May 6, 2015.**

Adjournment: 7:55 p.m.

ATTEST: DRAFT to be approved on May 6, 2015

Jeff Bollman, Chairman

Jeanette Vieg, Receptionist



City Board of Adjustment

Meeting Date: 05/06/2015

SUBJECT: Variance #1214 - 742 and 744 Calhoun Lane

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

Item #1: Variance #1214 – 742 and 744 Calhoun Lane - Lot size: The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zoning district on Lot 4, Block 5, Pinnick Subdivision, 3rd Filing, an 8,826 square foot parcel of land. No new construction is planned but the variance, if approved, would allow the owner to re-build in the future, Tax ID: A20199. Judson Group LLC, owner.

RECOMMENDATION

Staff is recommending Conditional Approval.

APPLICATION DATA

OWNER: Judson Group, LLC

AGENT: Greg Judson

LEGAL DESCRIPTION: Lot 4, Block 5, Pinnick Subdivision 3rd Filing

ADDRESS: 742 and 744 Calhoun Lane

CURRENT ZONING: Residential 7000 (R-70)

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 8,826 square feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Surrounding Property – Records show there have been 5 variance requests in the surrounding neighborhood. The variance requests have been for fence heights, setbacks, and lot coverage. Four of the five variances were granted one was denied. The one denied was for an 8 foot tall fence in residential zoning.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
 Land Use: Residential

SOUTH: Zoning: Entryway General Commercial
 Land Use: Residential

EAST: Zoning: R-96/County
 Land Use: Residential

WEST: Zoning: R-70
 Land Use: Residential

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zoning district on Lot 4, Block 5, Pinnick Subdivision, 3rd Filing. The applicant is wishing to obtain a rebuild letter for the property so they are able to get new financing or in case of sale. According to the county information available the duplex was constructed in 1975.

On this block of Murphy Avenue between Newman Lane and Calhoun Lane there are 14 properties, 9 of the 14 have a duplex on them. This filing of Pinnick Subdivision was recorded in 1966. All the duplexes on this section of Murphy Avenue were built from 1975 to 1985; the single family homes were built between 1973 and 1979 with one exception of 1940. This neighborhood is right next to possible future commercial development. As stated earlier most of the existing structures on Murphy Avenue between Newman Lane and Calhoun Lane are duplexes. Murphy Avenue is a higher density neighborhood and is a good buffer area to separate the possible future commercial development from the single family homes farther to the north.

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 feels this is a good use of land and a good fit in this established neighborhood.

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 conditions or circumstances with the land that create a hardship. In this situation, the structure was built on a lot that is smaller than what is required by current zoning.

- 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 in the 1970's and the majority of the structures on this block are duplexes. Denying this variance would deprive the applicant of a rights commonly enjoyed by other tracts in the same district.

- 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. This duplex fit into the surrounding neighborhood very well.

- 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 variance request:

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,826 square feet for an existing 2-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 5, Pinnick Subdivision 3rd Filing generally located at 742 and 744 Calhoun Lane.
3. This variance is to be able to rebuild the duplex should the current structure be damaged by more than 50% replacement cost. Any future construction to replace the existing duplex will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction with the exception of lot square footage.
4. No construction or demolition activity will take place before 7 am or after 8pm.
5. 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**

The requested variance is to ensure the future opportunity to rebuild a duplex on the lot should the existing one be damaged beyond 50% of replacement cost. There is no proposal to rebuild at this time; therefore it is not appropriate to place a time limit on this variance approval.

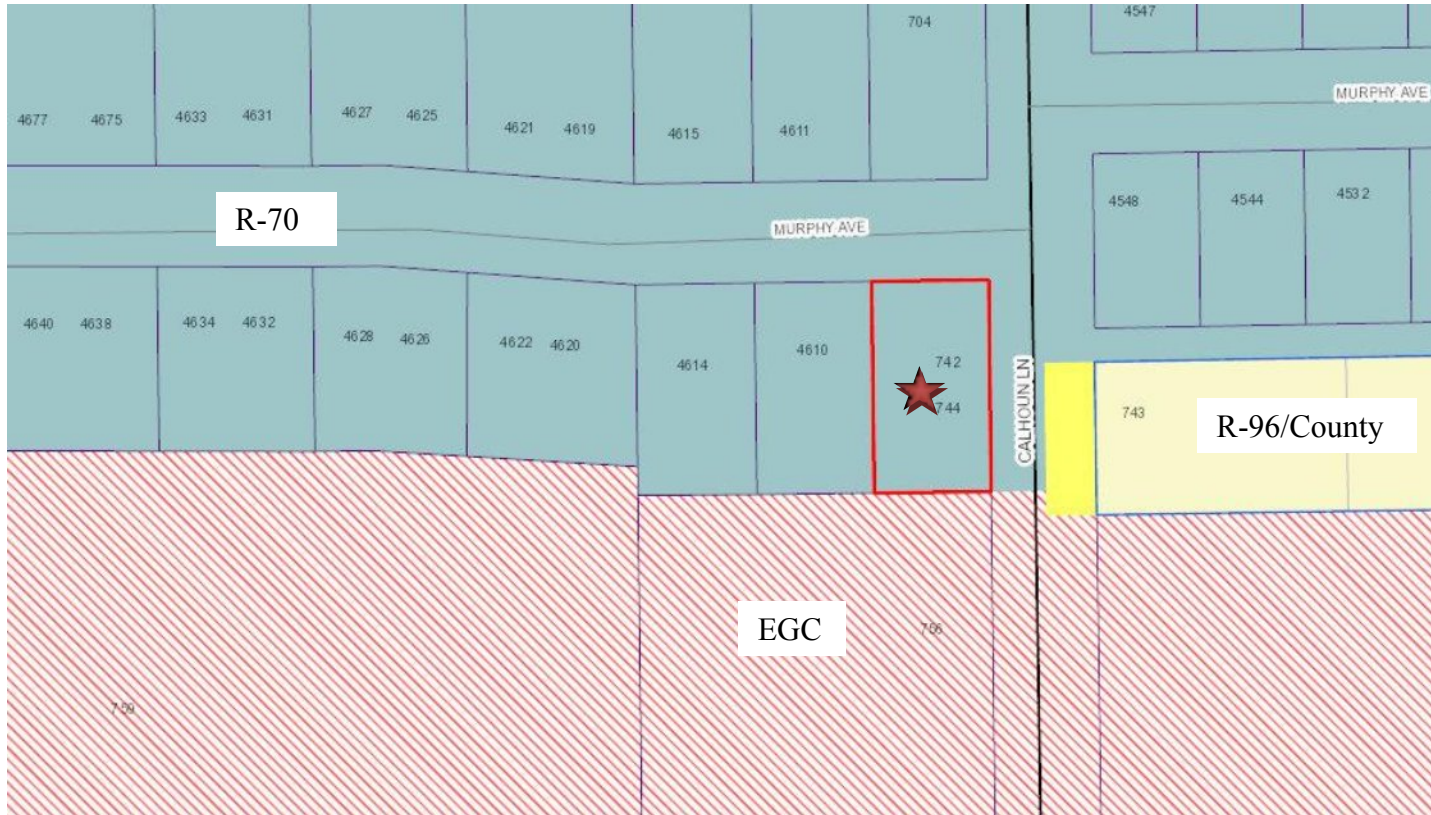
7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not already allowed in the zoning district – R-70 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



From Subject looking west

ATTACHMENT B
Site Photographs, Continued

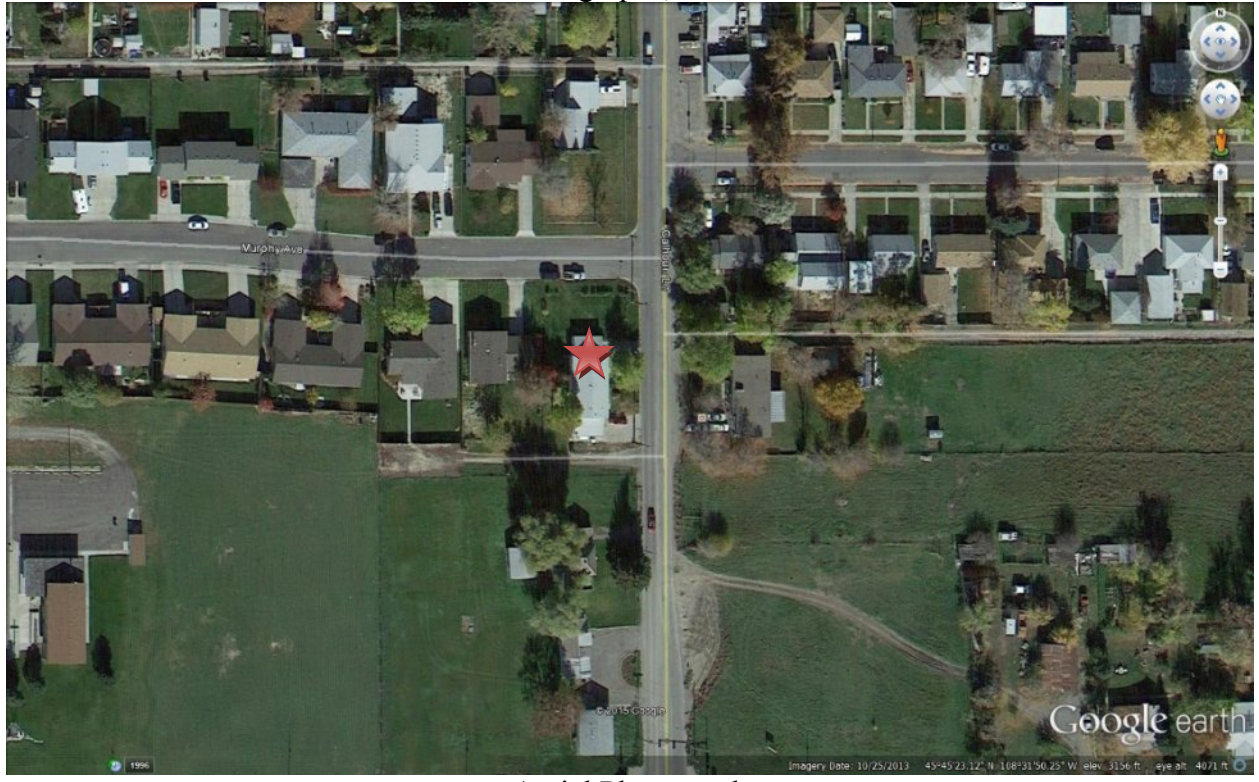


Looking east from subject property across Calhoun



Looking north across Calhoun from subject property

ATTACHMENT B
Site Photographs, Continued



Subject Property



Aerial Photograph

ATTACHMENT C
Application form
APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1214 - Project # P2-15-00050

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 # A20199 CITY ELECTION WARD # 3 (BILLINGS)

Legal Description of Property: PINNICK SUBD 3RD FILING, 509, TOLS,
R26E, BLOCK 5, LOT 4.

Address or General Location (If unknown, contact City Engineering): 742 and 744 Calhoun
Lane, Billings, MT, 59102

Zoning Classification: Residential 7000

Size of Parcel (Area & Dimensions): 0826 s.f.

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: "Letter of Rebuild" by city for use
of land for duplex of same dimensions as current building.
(see attached description)

Facts of Hardship: Sale and transfer of deed to a new mortgagee
borrow is not possible without the "letter of rebuild".
Insurance companies will not insure the property as a duplex

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

Owner(s): JUDSON GROUP LLC

(Recorded Owner)

3165 Parkhill Drive, Billings, MT, 59102

(Address)

406-690-0373

(Phone Number)

(email)

Agent(s): GREG JUDSON

(Name)

3165 Parkhill Dr, Billings, MT, 59102

(Address)

406-690-0373

(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: [Signature] Date: 3/16/2015

(Recorded Owner)

ATTACHMENT D
Applicant Letter

To the: Chairperson of the Board of Adjustment,
742 Calhoun Lane “Letter of Rebuild Request”

March 9, 2015

This is a request of the city to provide a letter of rebuild as a two- family multiplex structure. The property appears to have always been zoned Residential 7000. And the original structure was built and used as a duplex. However, although it appears that the city approved its construction in 1975, no variance to the zoning was recorded. This is a request to record the accepted best use of the specific lot as a duplex by providing and recording a letter of rebuild for such usage.

The property known as 742 Calhoun Lane has two street addresses, 742 Calhoun and 744 Calhoun. The building is a side by side duplex that was built as a duplex in 1975. The property tax records indicate the identity as a 2-family structure. The lot is highly suitable for a duplex built in the way that this is designed. There is a lot of open landscaped area around the entire perimeter. It is likely that some of the lots adjacent to it will be developed multi-family. And many (if not most) of the nearby lots (within 1500 feet) are already built as duplex multifamily units.

This area is a great area to increase the number of multi-family units. With its centralized location in the city, the proximity to high traffic capacity roads, retail and industrial businesses, this area in general is great for multi-family development. The best usage of this land is a duplex with the same “footprint” as what is currently built.

Respectfully,

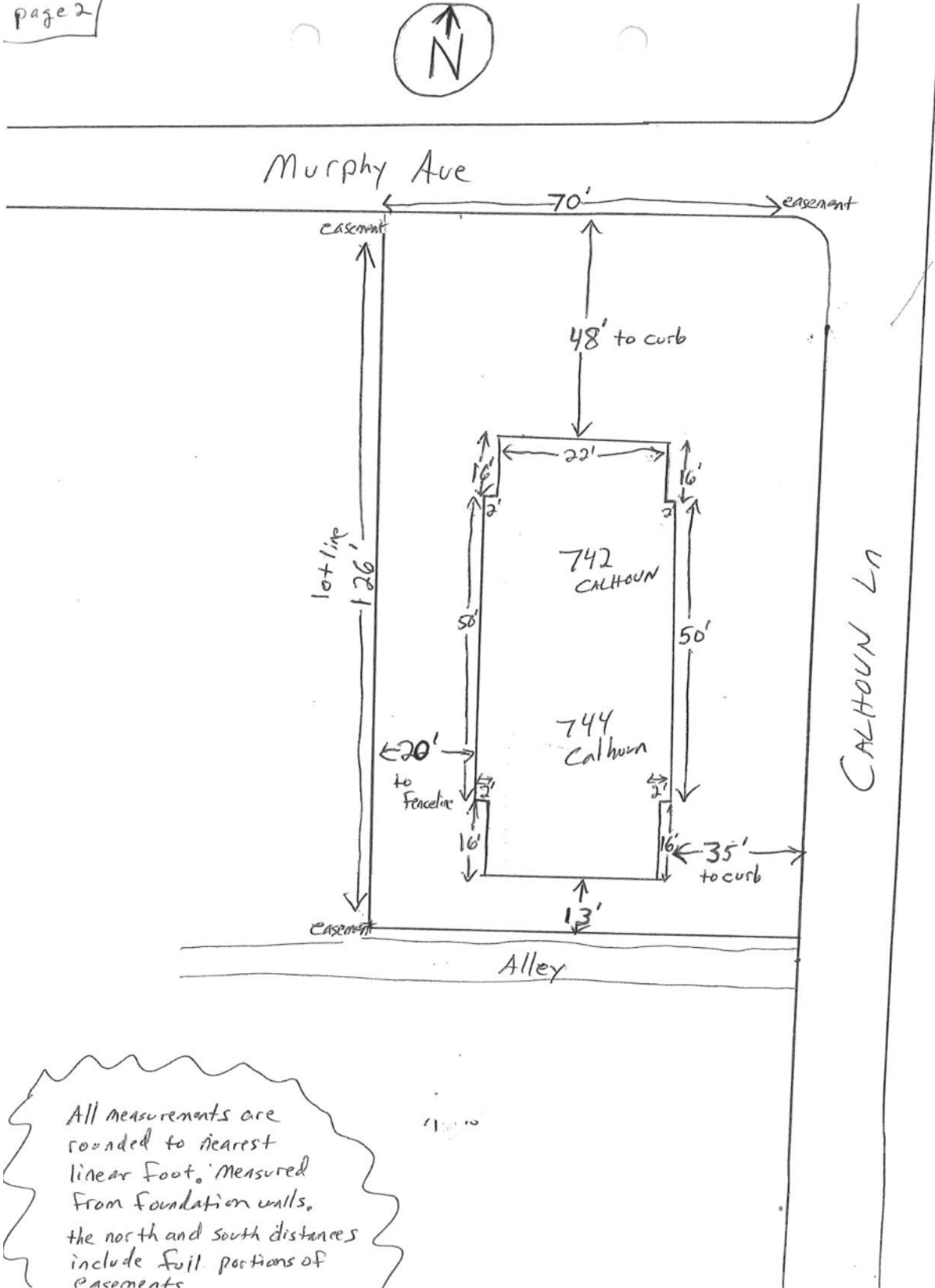
Greg Judson

Judson Group LLC

ATTACHMENT E

Site Plan

page 2/



All measurements are rounded to nearest linear foot. Measured from foundation walls. the north and south distances include full portions of easements



City Board of Adjustment

Meeting Date: 05/06/2015

SUBJECT: Variance #1215 - 503 Avenue D

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

Item #2: Variance #1215 – 503 Avenue D, Lot coverage, setbacks: The applicant is requesting a variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone, Lot 1 of Block 1 Pioneer Park Subdivision, an 8,338 square foot parcel of land. The variance would allow the construction of 1 new single family dwelling. Tax ID: A12852, Rusty and Tiffany Gackle, Pauline Gackle owners

RECOMMENDATION

Staff is recommending Conditional Approval.

APPLICATION DATA

OWNER: Rusty and Tiffany Gackle, Pauline Gackle

AGENT: None

LEGAL DESCRIPTION: Lot 1, Block 1, Pioneer Park Subdivision

ADDRESS: 503 Avenue D

CURRENT ZONING: Residential Multi Family - Restricted (RMF-R)

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 8,338 Square Feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

There have been 6 variance requests in this subdivision, 5 of the 6 variances have been granted. The requests ranged from required setbacks, lot coverage, detached structure wall height, 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: RMF-R Land Use: Residential/Multi Family
SOUTH:	Zoning: Residential 6000 (R-60) Land Use: Residential
EAST:	Zoning: RMF-R Land Use: Residential/Multi Family
WEST:	Zoning: R-60 Land Use: Residential/Multi Family

BACKGROUND

REASONS

The applicant is requesting a variance from Section 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone. The variance would allow the construction of 1 new single family dwelling over a garage at 503 Avenue D. The existing lot area is 8,338 square feet. The Orion Data from the state show the original dwelling on this site was built in 1954.

The applicant is before the Board of Adjustments asking for a variance from rear and side setbacks and setback for a 2-story structure. This neighborhood is diverse with housing options. This block has 15 lots and 10 of those 15 lots have multifamily or multiple detached dwelling units on them. One of the 15 has a church located on it, leaving four lots with single family dwellings units on them. There are four lots with 4-plex units on them which in current zoning requires 10,000 square foot lots. Those four lots range in size from 6,696 square feet to 7,038 square feet. These 4-plexes were built in 1955 and 1956. In the future, these property owners may find they will be in need of a variance to either sell or refinance these structures.

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval of the request to reduce the side and rear setback and the setback for a 2 story building. The building north of this property is uphill and even though that structure and the structure on the subject property are both 2 stories, the one to the north is taller because of the grade change. The proposed new building will fit into the

neighborhood where there are already quite a few housing choices and some of the buildings are on quite small lots. These three units, if the variance is approved, would be on a larger lot than the four 4-plex buildings on the same block along Avenue E.

After the property was posted, the applicant called to say that he believed the wrong site plan was submitted to the Planning Division. The one that they are going to use has the existing building and the new building connected with a breezeway. This would reduce the lot size required to 8,500 square feet instead of the advertised 13,000. The current lot size is 8,338, so this is a difference of 162 square feet. The setbacks requests would remain the same. Staff asked the applicant to supply us with the correct site plan and it is a separate attachment with this staff report. See the attachment labeled Corrected Proposed Site Plan.

At the time of the writing of this report staff has not heard any comments from surrounding neighbors.

RECOMMENDATION

Staff recommends conditional approval of the variance.

RECOMMENDATION

Staff recommends Conditional Approval

APPROVED BY CITY ADMINISTRATOR

Attachments

determinations

attachments

Corrected Proposed Site Plan

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, but multifamily housing is common in this neighborhood.

- 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;**

Four lots on this block have 4-plex multifamily dwelling units that do not have the required lot size. Of the 15 lots on this block 10 have multifamily dwelling units on them. Denying this variance would deprive the applicant rights commonly enjoyed by many on this block.

- 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.

- 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. They are in a residential multifamily zone they just don't have the lot size required by current zoning, but neither do several of the neighbors with existing multifamily dwellings on small lots.

- 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:

1. The variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 3 feet; from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum setback of 3 feet; and from 27-308 requiring a minimum lot area of 13,000 square feet for a 2-family dwelling and a single family dwelling on an undivided lot in a Residential Multi-family-Restricted (RMF-R) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 1 of Block 1 Pioneer Park Subdivision, an 8,338 square foot parcel of land generally located at 503 Avenue D.
3. The garage and additional dwelling unit shall be constructed in substantial conformance to the site drawings submitted to the planning department with this application, meaning size and location on lot not style of building.
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 1 year of Board of Adjustment approval and complete the construction within 2 years 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 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 allowed in the zoning district – detached garages are allowed in the RMF-R zone.

ATTACHMENTS

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

ATTACHMENT A
Surrounding Zoning & Site Location



Subject Property ★

ATTACHMENT B
Site Photographs



Subject Property



View of Subject Property looking west from 5th

ATTACHMENT B
Site Photographs, Continued



View east from subject property to apartments across Virginia Lane



View south east to multifamily housing across Virginia Lane



Apartment behind subject property



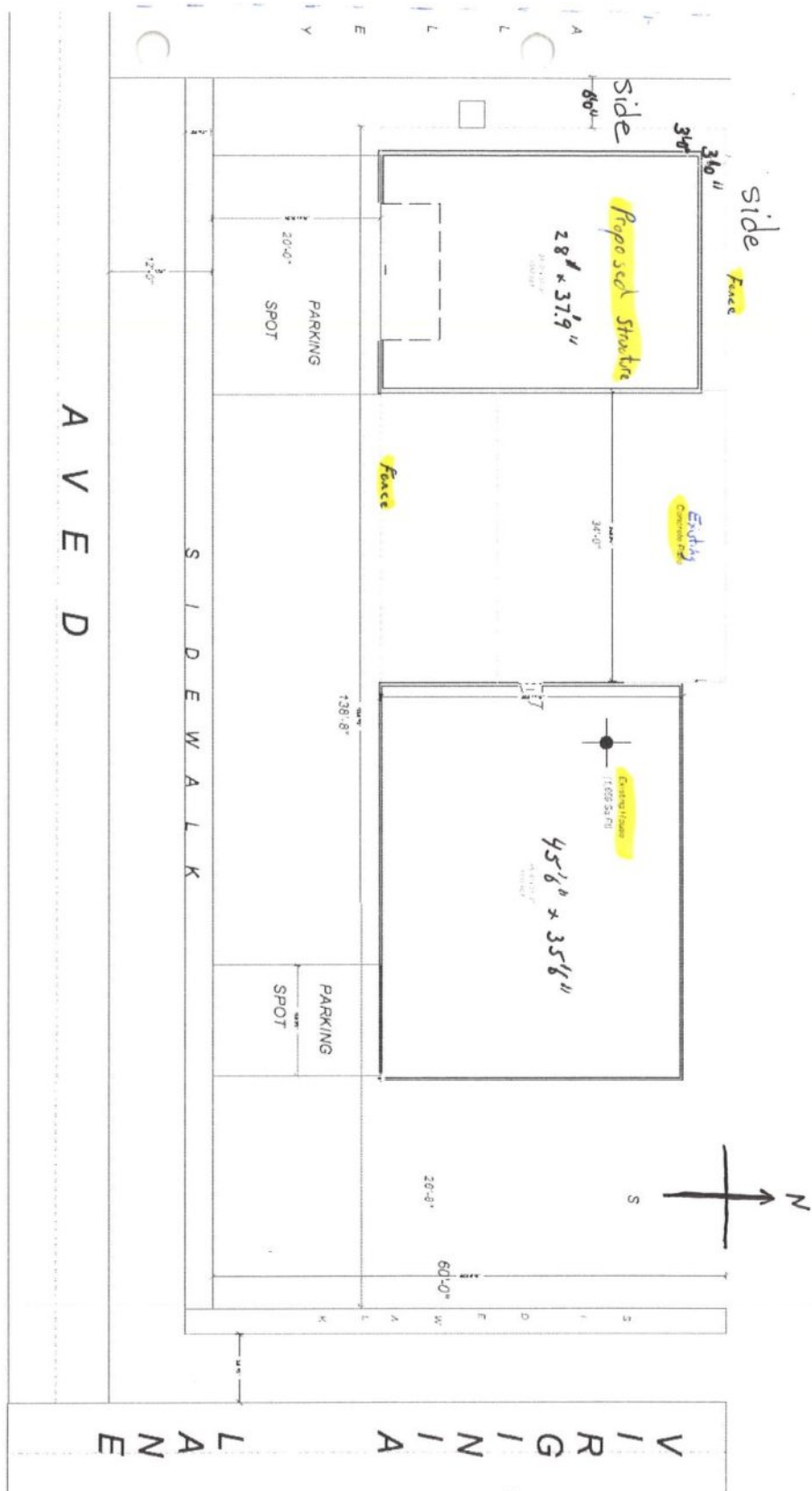
View of subject property with Apartment building behind

ATTACHMENT B
Site Photographs, Continued

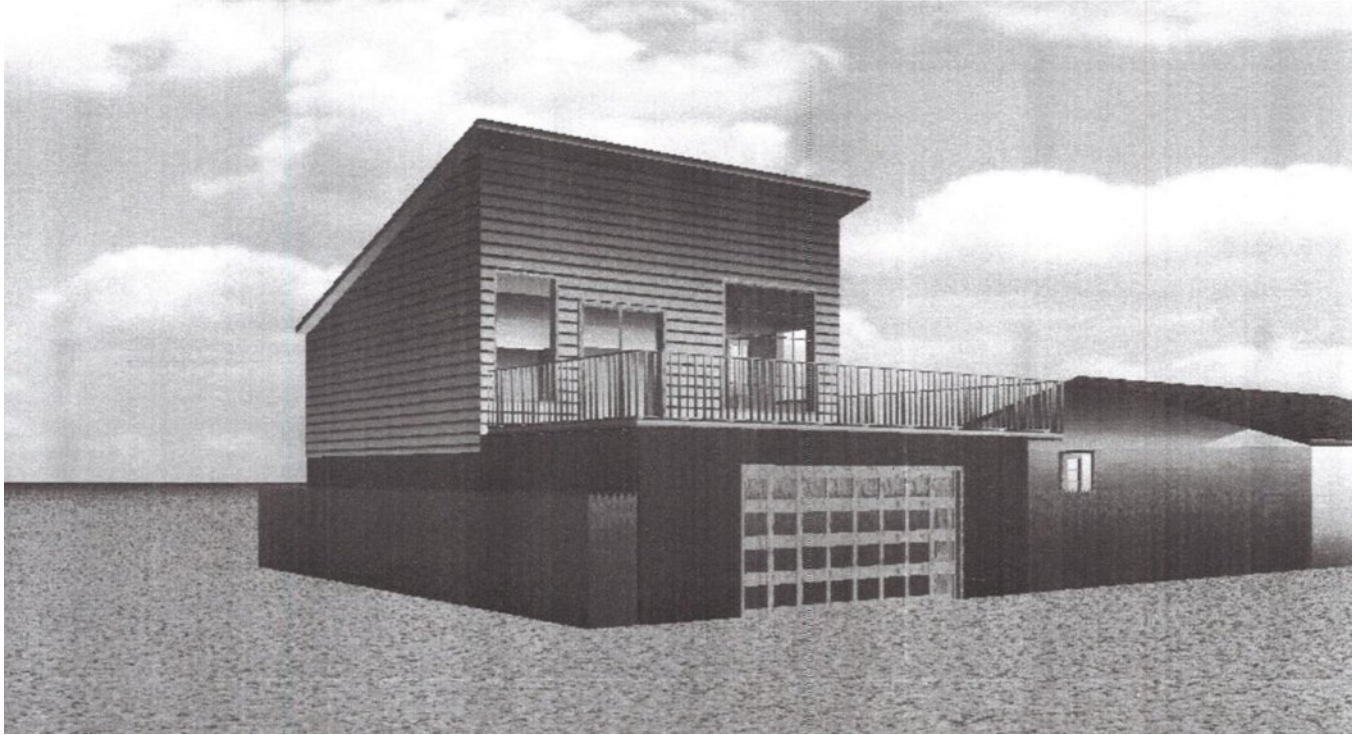


Aerial View of Subject property ★

ATTACHMENT C
Site Plan and Elevations



New structure at its peak would be 28' tall or less ^(26')



Possible appearance of proposed new structure

ATTACHMENT D
Applicant Letter and Application

Rusty & Tiffany Gackle

503 Avenue D
Billings, MT 59102
406-671-3874
rusty@rustygackle.com

March 30, 2015

City Board of Adjustment
210 N. 27th St.
Billings, MT 59101

Dear Chairperson:

I am writing to seek approval for a variance from City Zoning Regulation Requirements. My family purchased a new home on December 30, 2014, and intend to build a two-car detached garage with a second story mother-in-law/studio apartment above. The new structure will measure 24 feet wide (east-to-west) and 37'9" long (north-to-south).

Zoning Regulations require us to leave a 15-foot setback from the back property line and a 15-foot setback from the front. We are requesting approval to shorten the rear setback to as little as three feet from our back fence, which appears to run adjacent to the rear property line, and as little as three feet from the property line along the alley. Allowing the building to be pushed back closer to the rear of the property will ensure sufficient off-street parking for residents and our guests, particularly during the school year, since most street parking gets used by Senior High students on school days.

We would additionally request a variance in the number of dwelling units allowed on the property. Our property is zoned Residential Multifamily Restricted; our lot is 8,338 SF, which allows two dwelling units. If we had just 162 more SF of lot, three units would be allowed according to Zoning Requirements. Our house has a footprint of 1,698 SF, which covers about 21% of our lot. Adding the new garage with apartment will only increase our lot coverage to 30%, well within the 55% maximum for RMFR zoning. Being so conveniently located to downtown Billings, the hospital corridor, the airport, and the Interstate, this area is perfect for corporate/executive rentals. As you probably know, the demand for these higher-end units is quite high right now. Many of our neighboring structures are multi-family residences with four or more units, so we believe this would be a well-suited inclusion to our neighborhood and would in no way cause any detriment to any of our neighbors. Thank you for your consideration.

Sincerely yours,



Rusty Gackle



APPLICATION FORM

ID: Billings Variance # 1215 - Project # PZ-15-0005-8

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 # A12852 CITY ELECTION WARD # 3

Legal Description of Property: PIONEER PARK SUBD, S31, T01N, R26E, BLOCK 1, LOT 1

Address or General Location (If unknown, contact City Engineering): 503 AVENUE D BILLINGS, MT 59102

Zoning Classification: RESIDENTIAL MULTI-FAMILY RESTRICTED

Size of Parcel (Area & Dimensions): 8338 SF

Covenants or Deed Restrictions on Property: Yes No [checked]

If yes, please attach to application

Variance(s) Requested: • LESSEN SETBACK REQUIREMENTS (SEE ATTACHED LETTER) • ALLOW THREE DWELLING UNITS • existing structure 8' side setback to 3' on north and west up/down 2-family

Facts of Hardship: • NEED TO KEEP SPACE FOR LAWN & PARKING • JUST SHORT REQUIRED LOT SQUARE FOOTAGE (SEE ATTACHED LETTER)

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

Owner(s): RUSTY & TIFFANY GACKLE, PAULINE GACKLE (Virginia D LLC) (Recorded Owner) 503 AVENUE D, BILLINGS, MT 59102 (Address) 406-671-3874 (Phone Number) RUSTY @ RUSTYGACKLE.COM (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: [Signature] Date: 25 MAR 2015 (Recorded Owner)

