



CITY BOARD OF ADJUSTMENT

AGENDA-Wednesday, June 3, 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 May 6, 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 1216 -1934 Poly Drive - Detached Garage Setback -** A variance from 27-310(i) requiring a minimum front setback of 20 feet (Dahlia Lane) to allow a minimum 10-foot front setback for a new detached garage of 840 square feet in a Residential 9,600 (R-96) zoning district on Lot 6 (Less 10 feet), Block 3, Sweeney-Carlson Subdivision, a 19,248 square foot parcel of land. Tax ID: A16889.

- b. **Item #2 - Variance 1217 – 3402/3404 and 3406/3408 Gallatin Place – Lot area –** A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a duplex dwelling to allow a minimum lot area of 8,540 square feet (3402/3404) and 8,099 square feet (3406/3408) for 2 existing duplex dwellings in a Residential 7,000 (R-70) zone, Lots 1 & 2, Block 2 of Patricia Subdivision. No new construction is planned but if the variance is approved, the duplexes could be re-built in the future if damaged or destroyed. Tax IDs: C02163 and C01264.

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: 06/03/2015

Information

Subject

The minutes of the Board meeting of May 6, 2015

Attachments

BBOA_2015_05_06_Minutes_DRAFT

CITY BOARD OF ADJUSTMENT

MINUTES: May 6, 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	1							
James Olson	Board member	1	E	1	1	1							
Paul Hagen	Board member	1	1	E	1	E							
Frank Chesarek	Board member	1	1	1	1	1							
Matthew McDonnell	Vice Chairman	1	E	1	1	1							
Martin Connell	Board member	1	1	1	1	1							
Mark Noennig	Board member	1	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	4	2								10

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 Karen Husman, Planning Assistant.

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 April 1, 2015 Meeting Minutes

Chairman Bollman called for approval of the April 1, 2015 minutes.

Board member Noennig made a motion and Board member Chesarek seconded to approve the April 1, 2015 meeting minutes as submitted.

The motion carried with a unanimous voice vote, 6-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest.

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

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				Absent
Frank Chesarek		N	N	
Matthew McDonnell		N	N	
Martin Connell		Y 2ND	Y	
Mark Noennig		N	N	

Public Hearings

Chairman Bollman asked Ms. Cromwell to review the procedure, she 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 in favor of the Board of Adjustment are required to pass a variance. This evening there are 6 Board members attending. A simple majority will approve requests.

Planner Dave Green reviewed the application for Variance request #1214 and presented the Board with the staff report for this request.

Item #1

Variance #1214 – 742 and 744 Calhoun Lane, lot size - 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

The Planning Division is recommending conditional approval and adoption of the findings of the 7 criteria for Variance #1214. Staff is recommending the following conditions:

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.

Discussion

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

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1214.

Proponents

Greg Judson, 3165 Parkhill Dr., Billings, Montana

Greg Judson, Judson Group, LLC, said they had more than one appraisal done on the property and from those appraisals had concluded the proposal is the highest and best use of the land.

Yvonne Schmeling, 4626 Murphey, asked why they were requesting a variance for a duplex.

Chairman Bollman explained the application for a variance was not to add another duplex, but to allow the existing one to remain although the lot size is smaller than what would be allowed for a duplex. He clarified the applicant would not be building another structure, and the application was for only the one lot.

Opponents

Chairman Bollman called for opponents of City Variance #1214.

There were none.

Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Olson made a motion and Board member Connell seconded the motion to conditionally approve City Variance #1215 with the conditions and Findings of Fact presented by Staff.

Discussion

Chairman Bollman called for discussion on the motion. There was none.

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

The motion passed 6-0. City Variance #1214 is conditionally approved.

Item #2:

Variance #1215 – 503 Avenue D, Lot Area – Request for 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.

Dave explained the original site plan submitted was to allow a duplex and a house on the lot, but the applicant had mistakenly submitted the wrong plan. He showed the board the amended/updated site plan with the connected patio cover. This covered area connected the two structures and under the Unified Zoning Code definitions was now considered a tri-plex. Dave said the lot area variance for a tri-plex would be less for the required lot size of 8,500 square feet so the variance request would be to allow the tri-plex on a lot size of 8,338 square feet. The request was for a greater area, so the hearing can still continue for less than what was asked for, if they were requesting more, the hearing would have to be postponed and the public notices resubmitted.

RECOMMENDATION

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

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.

Discussion

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

Boardmember Noennig asked for an explanation of the connection that makes it a tri-plex.

Dave clarified the reason and the code description for a duplex.

Nicole explained definition for a building that is connected is to be connected by a common wall, common floor, or common roof. She said this tri-plex meets the connection requirements under the code with the patio cover roof that connects both buildings.

Boardmember Noennig said he was not supportive of that definition in the regulations.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1215.

Proponents

Rusty, Tiffany Gackle, 503 Avenue D, applicants, Billings, Montana

Rusty Gackle said he believes there is more than three feet to the property line at the alley, but he was sure there is six feet from the alley tracks/driving area on the alley. The property line is at least 3 feet from the proposed wall of the new building. He said they needed a garage anyway so they wanted to build another unit to possibly add to the value and possibly an income for them.

Boardmember Olson asked if the applicant had heard the complainants concerns at 1718 Virginia Lane.

Rusty said he had not heard the complaint.

The Board allowed the Gackles to read and respond to the email letter sent to staff in opposition to the variance.

Boardmember Olson asked what the height of the new structure would be.

Rusty said it was 26 feet at it's highest point. He said they were trying to make it uniform to the existing building.

Boardmember Chesarek asked if the existing duplex could be rebuilt without the variance.

Dave said the existing duplex did not currently meet the minimum setbacks and may not be reconstructed where it is built.

Nicole explained the existing duplex and what could be rebuilt with and without the variance granted. The minimum setback for the side (clarification was made for corner lots and allowances on each side street) of a single story is 5 feet, and for a 2-story is 8 feet minimum required.

Chairman Bollman said the request for the variance setback simply is for a setback reduction for a 2 story building from 8 feet to 3 feet, it does not specify to reduce the setback for only the new construction. He interpreted the application to be for all buildings on the lot and not just the new structure or addition so it would bring the existing building into compliance as well as the new.

Rusty responded to the letter of opposition by explaining how he had been talking to the neighbors about the property, but did not know this particular neighbor. He said they would have at least 6 off street parking spaces. He said the goal was to make it uniform with the existing building. He said he did not know the exact location of the property line at the side, but it may be 5 feet. He said the rendition of the proposal was not as clear and didn't give the look of the building they were actually going for. The new structure will resemble the existing house and aesthetically pleasing to the neighborhood.

Opponents

Chairman Bollman called for opponents of City Variance #1215.

There were none.

Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Board member Olson seconded the motion to conditionally approve City Variance #1215 with the conditions and Findings of Fact presented by Staff.

Discussion

Chairman Bollman called for discussion on the motion.

Boardmember Connell stated that he had spoken to Boardmember Paul Hagen (who was not present at this meeting) regarding the site. He said did not like the architectural features, but said he felt it was because of the architectural rendition of the proposal that was deceiving. important to know where your lot lines are.

Chairman Bollman said the neighborhood was primarily multi-family from duplexes to apartments and he felt the density of one more unit on this property is not an issue in the neighborhood. He said there was such a mixture in the neighborhood that this would not be anything different than what was existing.

Boardmember Connell suggested the applicant go and speak to the neighbor that was concerned with the property and communicate to them the intent and explain the design more clearly for them.

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

The motion passed 6-0. City Variance #1215 is conditionally approved.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on **Wednesday, June 3, 2015.**

Adjournment: 7:00 p.m.

ATTEST:

Jeff Bollman, Chairman

Karen Husman, Planning Assistant



City Board of Adjustment

Meeting Date: 06/03/2015

SUBJECT: Variance 1216 - 1934 Poly Drive - Detached Garage Setback

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Item #1 - Variance 1216 -1934 Poly Drive - Detached Garage Setback - A variance from 27-310(i) requiring a minimum front setback of 20 feet (Dahlia Lane) to allow a minimum 10-foot front setback for a new detached garage of 840 square feet in a Residential 9,600 (R-96) zoning district on Lot 6 (Less 10 feet), Block 3, Sweeney-Carlson Subdivision, a 19,248 square foot parcel of land. Tax ID: A16889.

RECOMMENDATION

The Planning Division is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1216.

APPLICATION DATA

OWNER: Patrick & Crystal Hopper

AGENT: None

LEGAL DESCRIPTION: Lot 6 (less 10 ft), Block 3, Sweeney-Carlson Subdivision

ADDRESS: 1934 Poly Drive

CURRENT ZONING: R-96

EXISTING LAND USE: Single family home

PROPOSED USE: Same with detached garage off Dahlia Lane

SIZE OF PARCEL: 19,248 square feet

CONCURRENT APPLICATIONS

Building Permit BP-15-01355.

APPLICABLE ZONING HISTORY

Planning Division search of the zoning history in this area shows 4 similar variances since 1972. The most recent variance was to decrease the centerline setback for a new detached garage at 1905 Poly Drive that was approved earlier this year. The earliest variance was for 1918 Parkhill Drive to decrease the front setback to 7 feet, the rear setback to 9.5 feet and increase the lot coverage to 32%. This lot was an unusually small lot (~5,600 square feet) and only has 3 sides. A variance granted in 2004 allowed a 6 foot solid fence in the clear vision area at the intersection of 21st St West and Iris Lane for property located at 2104 Iris Lane. In 2012, the Board granted a variance for a front setback of 5.5 feet for a treehouse in the front yard of 1907 Beverly Hill Boulevard. A variance in 2003 was granted for 9150 Mariposa Lane to decrease the side setback from 8 feet to 6'11" for a 2nd story addition. In addition to these similar variances, there appears to be at least 7 similar properties in the neighborhood without variances that have short setbacks from garages to the front property lines. These include property at 2101 Mariposa Lane, 2420 21st St West, 2403 Dahlia, 2222 Lilac Lane, 1801, 1814 and 2518 Darlene Lane (off Augusta Lane). These shorter setbacks appear to have been original from construction prior to the current zoning regulations and range from 7 feet to 15 feet.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-9600 Land Use: Single Family Residential
SOUTH:	Zoning: R-9600 Land Use: Single Family Residential
EAST:	Zoning: R-9600 Land Use: Single Family Residential
WEST:	Zoning: R-9600 Land Use: Single Family Residential

BACKGROUND

This is an application to reduce the required setback from a street property line from 20 feet to 10 feet for the entrance to a new detached garage. The applicants, Patrick & Crystal Hopper, are interested in providing additional storage space for automobiles and household goods. Mr. Hopper was notified of a previous variance application for 1905 Poly Drive to reduce the 70-foot centerline setback for Poly Drive to 50 feet for a new detached garage. At about the same time, Mr. Hopper started contacting staff in the Planning Division and Building Division to discuss his proposed new detached garage. The subject property has an address of 1934 Poly Drive, however the home and driveway are accessed from Dahlia Lane, the side street that borders the property to the east. There was apparent miscommunication and misunderstanding concerning the entrance to the proposed garage. When Mr Hopper submitted his building permit at the end of March, it

was returned for correction of the required setback by Planning Assistant, Karen Husman. Mr. & Mrs. Hopper's letter for the variance explains their version of the series of the events that led to this application. The letter is attached.

The property is a large lot that is typical of this neighborhood around Poly Drive. However, the applicant has several challenges with this corner lot including the existence of an underground shelter directly south of the existing driveway off Dahlia Lane, the required 70 foot setback to the centerline of Poly Drive (north) and the proper location of property lines (the applicant has not surveyed the property in relation to the garage project). The original subdivision of Sweeney-Carlson shows Lot 6 with a north to south width of 133.5 feet. Subsequently the south 10 feet of this lot was deeded to Lot 5. Lot 6 now should measure 123.5 feet north to south along Dahlia Lane and 142 feet from east to west. The applicants may not be aware of this north to south measurement since the site plan submitted shows the total north to south dimension of about 143 feet. There also appears to be an error in the site plan on the east to west total dimension. The site plan appears to show an east to west dimension of about 173 feet. The actual east to west dimension is about 142 feet. The width of right of way dedicated by this subdivision was 25 feet and the 2nd Filing of Sweeney Carlson Subdivision to the east also dedicated 25 feet to Dahlia Lane. The total width of Dahlia Lane at this location is 50 feet. In any case, the area of interest for the variance is the required front setback for a new detached garage. The actual dimensions of the lot are only pertinent to determine whether the new detached garage could be located on the lot in conformance with the zoning requirements. The applicant has described the difficulties with the lot in detail in their letter to the Board and the need for the storage space and garage space.

The property is in an established neighborhood on Poly Drive. The lot is regular in shape and has no significant topographic features. There are several issues with the lot that prevent the owner from easily placing the garage entrance at least 20 feet from the property line on Dahlia Lane as is required by the zoning code. First, there is an old underground shelter structure directly south of the existing driveway. The owner does not intend to remove the structure at this time. The existing home is approximately 44 feet from the property line on Dahlia Lane and there was a large attached carport in the same location where the detached garage is proposed. Attaching the proposed garage would be possible but would trigger several modifications to the existing home that would increase the cost. For example, there are electrical service boxes, vents and hose bibs on the east wall of the house that would need to be relocated. The required building separation for a new detached structure is 6 feet, so attaching the garage would still not bring the structure into full compliance with the zoning setback of 20 feet. The garage would still need 4 additional feet to achieve the required setback. The final issue with the property is the required setback to the centerline of Poly Drive. It appears the proposed garage will meet the arterial setback from Poly Drive in its current location. If the garage were to be placed further north - past the north side of the house - and setback the required 20 feet from Dahlia Lane, it would be within the required 70-foot arterial setback for Poly Drive. The applicant has stated a new driveway off Poly Drive is possible but not practicable.

The Planning Division has reviewed the zoning history for the area and noted 5 similar variances have been approved. The latest variance, Variance 1207 for 1905 Poly Drive, was conditionally approved by the Board. The oldest variance was for 1918 Parkhill Drive to decrease the front setback to 7 feet, the rear setback to 9.5 feet and increase the lot coverage to 32%. This location has an odd shaped triangular lot of small dimensions and 2 street frontages. A variance approved in 2003 for 1950 Mariposa Lane allowed a 2nd story addition at a reduced setback of 6'11". The property at 2104 Iris Lane was allowed to place a 6-foot privacy fence within the clear vision area at the intersection of Iris Lane and 21st St West in 2004. In 2012, the Board approved a 5.5-foot front setback for a tree house in the front yard of 1907 Beverly Hills Boulevard. Planning staff also notes at least 7 properties in the neighborhood with less than the required 20 setback for garages at 2101 Mariposa Lane, 2420 21st St West, 2403 Dahlia Lane, 2222 Lilac Lane and 1801, 1814 and 2518 Darlene Lane (off Augusta Lane). These 7 properties do not have variances on file but were likely constructed prior to the current zoning requirements. The garage setback for these properties range from 7 feet to 15 feet.

The Planning Division is recommending conditional approval of the requested variance. The property has 3 hardships with the parcel that are not the result of action by the current owner and do not apply to other property in the neighborhood. In addition, there are similar properties with less than 20 foot setbacks for garages in the neighborhood without variances. At least 5 similar variances have been granted in the neighborhood. Granting the variance will not confer a special privilege on this owner that is denied to similarly situated property owners. The granting of the variance will be in harmony with purposes and intent of the zoning code. Dahlia Lane is a 50 foot right of way with 34 feet of road pavement but without sidewalks. The property has 8 feet of area beyond the property before the pavement of Dahlia Lane intersects. This will initially provide a driveway of 18 feet in front of the proposed new garage. This length of driveway will accommodate a parking space for most passenger vehicles and not obstruct the pavement on Dahlia Lane. If sidewalks are constructed on Dahlia Lane, the parking space in front of the garage will be reduced to 10 feet on the property. The Planning Division is recommending conditions of approval to mitigate any potential impacts to the surrounding neighbors.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1216.

APPROVED BY CITY ADMINISTRATOR

Attachments

[review Criteria](#)

[Zoning Map](#)

[Site photos](#)

[Applicant Site Plan and letter](#)



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. Although the lot is a regular shape, there is an underground shelter structure south of the existing driveway, the existing placement of the dwelling is not far enough setback from Dahlia Lane to accommodate a detached or attached garage and moving the garage to the north will impinge on the required arterial setback for Poly Drive. These are special conditions that apply to this lot that do not apply to other lots within the 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;

The Planning Division research identified 5 previous variances in the immediate area including a variance granted a few months ago for 1905 Poly Drive and variances for setbacks, obstructions in clear vision areas and lot coverage. The Planning Division identified at least 7 properties in the neighborhood with garage setbacks ranging from 7 feet to 15 feet. Most were likely constructed prior to the current zoning requirements for a 20 foot setback. 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 at 7 properties with similar garage setbacks from streets and 5 similar variances.

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 20 to 10 feet:

1. The variance is to allow a 10 foot setback from the east property line for the purpose of constructing a new 840 square foot detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 6, (less south 10 feet), Block 3, of Sweeney-Carlson Subdivision, generally located at 1934 Poly Drive.
3. The detached garage 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 complete the Building Permit process for BP-15-01355 within 3 months of Board of Adjustment approval. The owner will complete the construction within 18 months of Board of Adjustment approval.
6. The owner will not park or store any vehicle on the driveway so it extends over the pavement of Dahlia Lane.
7. If sidewalks are constructed in the future on the west side of Dahlia Lane, the owner will not park or store any vehicle on the driveway so it extends over the pavement of the sidewalk.
8. Failure to begin or complete the approved actions on the variance will void the approved variance.
9. 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.

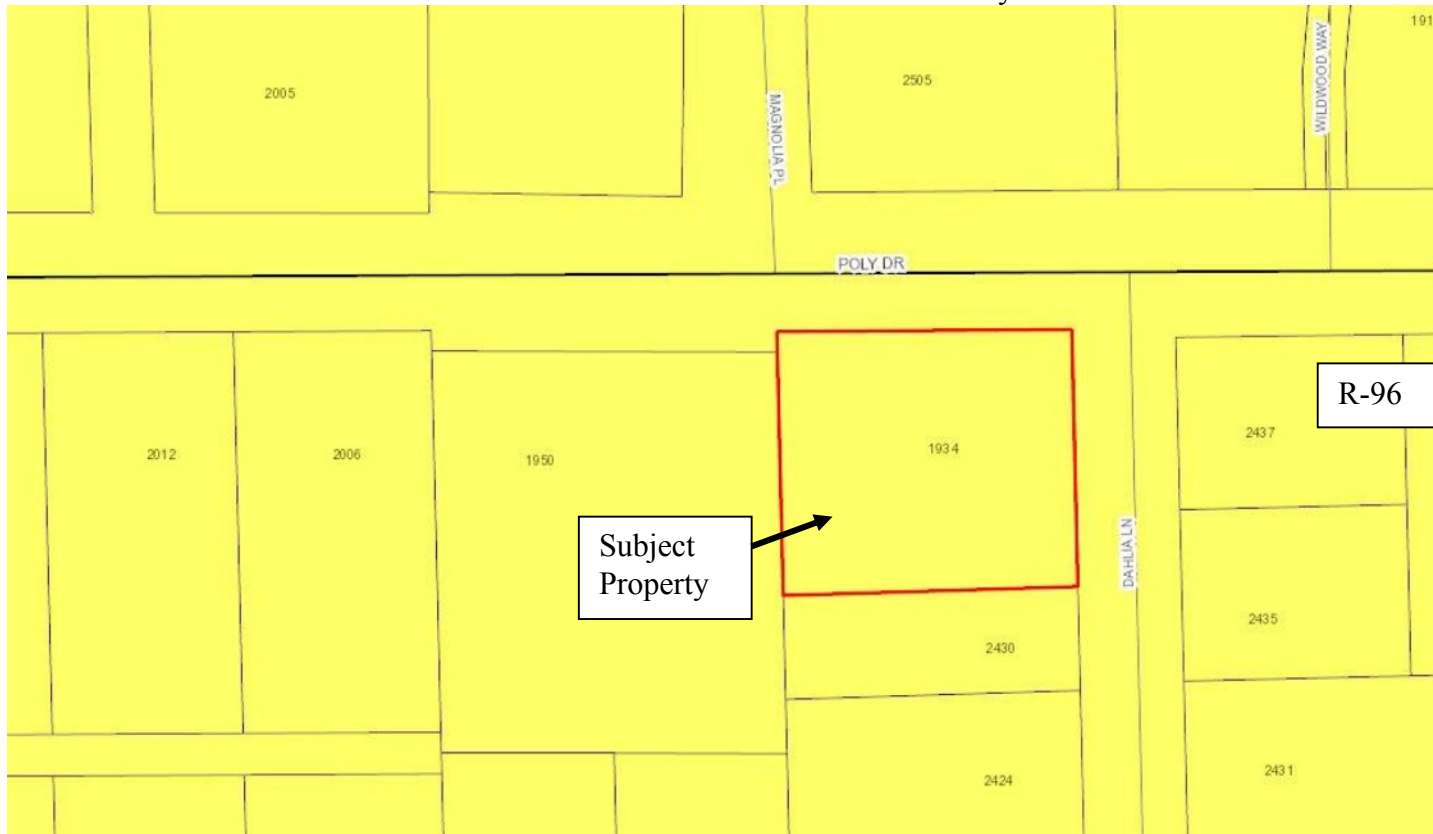
6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to complete the pending 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 – detached garages are allowed in the R-96 zone.

Zoning Map
Variance #1216 – 1934 Poly Drive



Site Photos
Variance #1216 – 1934 Poly Drive



Subject Property from intersection of Poly Drive & Dahlia Lane



Subject Property view south along Dahlia Lane



View of east side of dwelling from Dahlia Lane



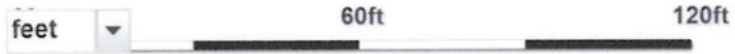
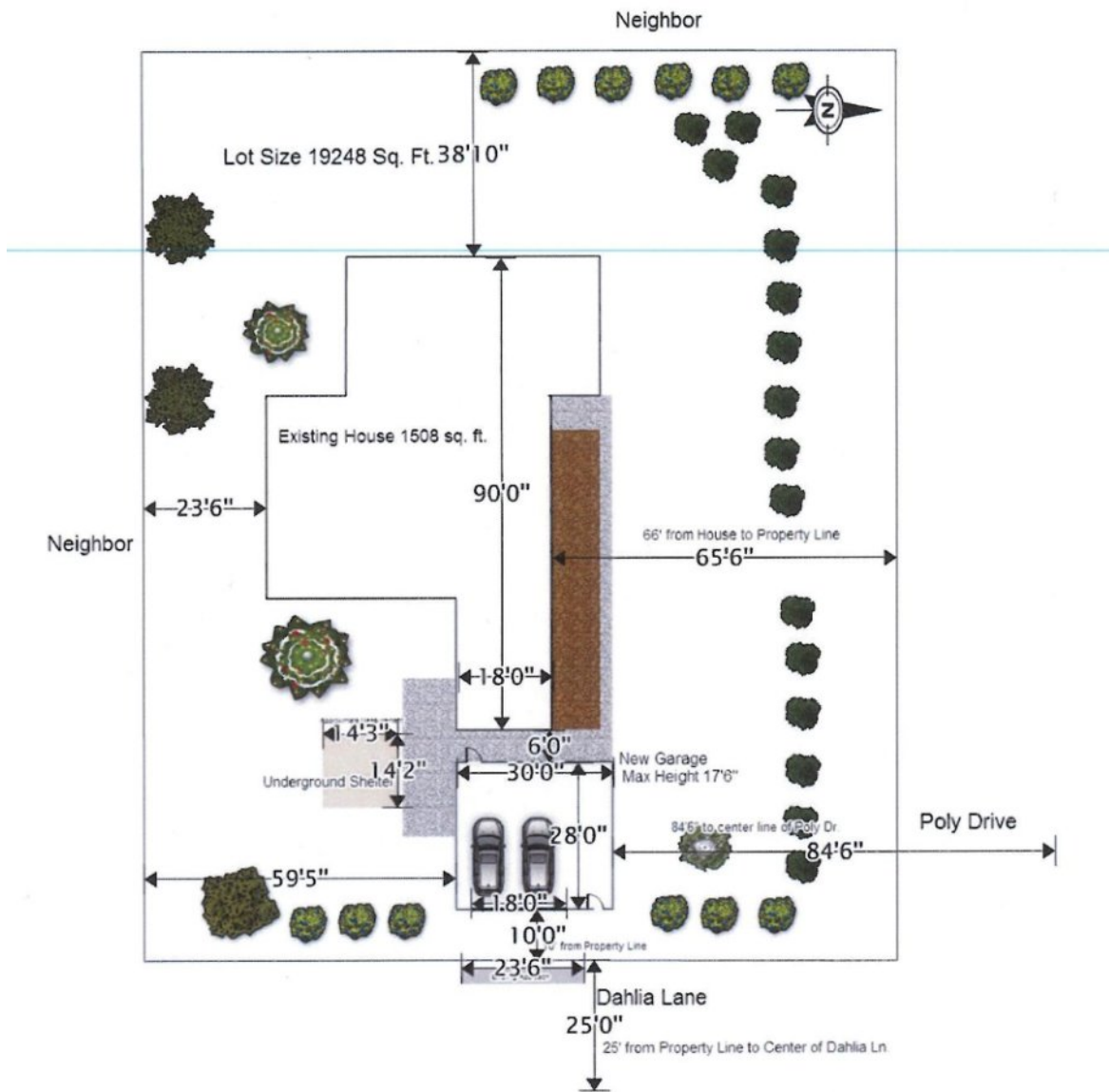
View south along Dahlia Lane

Aerial of Subject Property



Subject Property – Carport since removed

Applicant Site Plan and Letter



Pat and Crystal Hopper
1934 Poly Dr.
Billings, MT 59102
406-534-2206

To the Chairperson of the Board of Adjustment,

This letter is being written in accordance with the City of Billings Variance Application. At the address listed above we are seeking a variance request in order to build a detached garage on the east side of the existing house facing Dahlia Lane and utilizing an existing approach. Per the Planning Division there is only 44' from the end of the existing house to the property line. With the 20' property line setback and the 6' requirement between structures this leaves a space of 18' in which to build a garage in accordance with zoning.

Because this is also a Poly Dr. address there is a 70' setback on the North side of the house which prohibits moving the garage in that direction with enough space to build. Previous occupants installed an underground shelter in the SE quadrant of the property which restricts us from moving the garage or facing it that direction. There really is no other place to put a garage on this property.

We understand that an approach could be installed from Poly Dr. but the cost of that and the amount of the concrete for the driveway that would also be required is far more than we can afford.

We are requesting a variance to allow us to start building closer to the property line on the east side by 10'. We request to place the front of the garage 10' from the property line and allow us to build a 28'x30' garage in this space. We would like to use this space because the approach is already established and the amount of driveway needed is within our means.

We lost both of Pat's parents in the last year and a half and inherited this property. Due to grief and hardship with the family we find ourselves with 2 households' furnishings, tools and keepsakes still; we have not had the time or space to begin reducing the amount of items we now possess. This property has not ever had ample storage space and we are currently renting

a storage unit to keep it all safe. The storage unit is full and the lease is about to run out and we need a safe place to store our loved ones' belongings as we go through them and determine what to keep. We intend to install a bonus room in the rafters of the garage so the property will finally have room for storage.

This letter and variance request would have come to you at least 3 months ago if we'd known all the setbacks and requirements for building a garage on this property. Pat met and talked to City Planner David Green about our plan. David Green told Pat, because the property lines are not known, that he should measure 35' from the center line of Dahlia Lane toward our property. This rule of thumb should help us determine where the property line was at and where we could start building. At this time no mention was made that we would also have to be 20' from the property line. Pat spent 2 months calling and talking to David Green who on multiple occasions told Pat that our plan was fine and there should be no problems.

When I filled out all the paperwork to submit for a building permit the entire office, including David Green, changed their story about what was acceptable for us to do and not do. Wyeth Friday, Planning Manager, told me to my face several times that the Planning Division did not know where my property lines were at, nor would they put any effort in to coming out and measure and determining if we recorded them correctly. Wyeth also told Pat that he drove by our property to look at the existing approach off Dahlia Lane and told Pat that it would work for us.

Building Division staff, including Jess Phillips and Harry Hoving, and David Green gave us 3 different answers about how far this detached garage would have to be from the existing house. The answers we were given were 3', 6' and 10'. We are still not sure what the right answer is.

I drew our property map and submitted for a building permit only to have it denied because the detached garage we envisioned was not set back far enough from the property line on Dahlia Lane. According to Karen Husman, whose name is on the denial letter, the garage in the plan was only 10' back from the property line. Apparently I should have been talking to Karen all along. Why she should sit at her desk and listen to Wyeth tell me that no one knows where my property lines are is beyond my scope of understanding.

At this point I was beyond frustrated with the system and the lack of service by this division of public servants. I called the Mayor's office and began emailing the mayor along with Candi Millar, Planning Division Director. I was about ready to find a lawyer and take this story of lies and misinformation to the Gazette. When Candi called me back she said she had talked to her staff and was told that everyone was under the impression that we intended to approach the garage from Poly Dr. and that is why this was such a miscommunication. There's simply no way, unless the entire staff was not listening to us for 2 months that this could have been thought. It would seem to me that Candi's staff all lied to her as well.

This property is nearly unusable with the setbacks that the City has enforced on it. We can really only build an 8' structure on the North side of the property and an 18' structure on the East side. We should have sold it and moved on with our lives. And it doesn't help that in 2006 a nearby house was built that does not meet the setback requirements and was in fact built without a building permit; this information was relayed to the Adjustment Board by David Green when my husband was in attendance.

The Planning and Building Divisions have been misinforming us, lying to us and covering for each other for months. This all started because we wanted to be good citizens who followed the rules and did what was right. But for that we are being punished and told we cannot build a garage on our property; should we have done what the house in 2006 did and not asked permission?

Because the hardships with the property itself, the setbacks and with the hardships we've endured at the hands of the City of Billings Planning and Building Divisions we are now asking for you to grant our variance request and so we can all go about our lives.

We appreciate your consideration.

Sincerely,

Pat and Crystal Hopper

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1216 - Project # 02-15-0086

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 # A16889 CITY ELECTION WARD # IV

Legal Description of Property: Sweeny-Carlson Subd, 536, TOWN, R25E, Block 3, Lot 6, Less 10 FT LT 6

Address or General Location (If unknown, contact City Engineering): 1934 Poly Dr

Zoning Classification: Residential - 9600

Size of Parcel (Area & Dimensions): 19248 Sq. Ft

Covenants or Deed Restrictions on Property: Yes No



If yes, please attach to application

Variance(s) Requested: Build front of detached garage 10' from property line facing Dahlia Lane instead of the zoned 20' regulation

Facts of Hardship: Underground shelter in SE corner of Lot, 70' setback from Poly, existing house, 2+ months of misinformation by City of Billings Planning Division

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

Owner(s): Elvin Patrick and Crystal J Hopper
(Recorded Owner)
1934 Poly Dr, Billings, MT 59102
(Address) 406-534-2206 (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: Crystal Hopper (Recorded Owner) Date: 5-1-15



City Board of Adjustment

Meeting Date: 06/03/2015

SUBJECT: Variance 1217 - 3402/3404 & 3406/3408 Gallatin Place - Lot Area

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Item #2 - Variance 1217 – 3402/3404 and 3406/3408 Gallatin Place – Lot area – A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a duplex dwelling to allow a minimum lot area of 8,540 square feet (3402/3404) and 8,099 square feet (3406/3408) for 2 existing duplex dwellings in a Residential 7,000 (R-70) zone, Lots 1 & 2, Block 2 of Patricia Subdivision. No new construction is planned but if the variance is approved, the duplexes could be re-built in the future if damaged or destroyed. Tax IDs: C02163 and C01264.

RECOMMENDATION

The Planning Division is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1217.

APPLICATION DATA

OWNER: Batt Properties LLC

AGENT: Nelson Battenschlag

LEGAL DESCRIPTION: Lots 1 & 2, Block 2, Patricia Subdivision

ADDRESS: 3402/3404 & 3406/3408 Gallatin Place

CURRENT ZONING: R-70

EXISTING LAND USE: 1 duplex on each lot

PROPOSED USE: same

SIZE OF PARCEL: 8,540 square feet Lot 1; 8,099 square feet Lot 2

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

This property was subdivided in the County in 1960 and subsequently annexed to the city in 1967 or 1968 when the duplexes were constructed. At the time of annexation, the property was zoned Residential 7,000. This zoning allows duplexes but the lots were not the current required size for 2 dwelling units. Many lots in this subdivision have legally non-conforming duplexes due to the lot area. In 2013, the Board of Adjustment approved zoning variances for lot area for 16 properties with duplexes in this subdivision. These 2 properties chose not to participate in those applications in 2013. If this variance is granted for Lots 1 & 2, there will be an additional 9 lots in this subdivision without lot area variances for duplex dwellings on lots less than 9,600 square feet.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: A-1
 Land Use: Peter Yegen Golf Course

SOUTH: Zoning: R-70
 Land Use: Duplex dwellings

EAST: Zoning: R-70
 Land Use: Duplex and single family dwellings

WEST: Zoning: R-70
 Land Use: Duplex dwellings

BACKGROUND

This is an application to reduce the required lot are for existing duplexes in the Patricia Subdivision located south off Broadwater Avenue. The property addresses are 3402/3404 and 3406/3408 Gallatin Place, a small cul-de-sac off Broadwater Avenue. The duplexes were constructed in 1968 at the time of annexation to the city. The property was zoned R-70 at the time of annexation. The subdivision has a mixture of duplex dwellings and single family dwellings. Few of the existing duplexes are on lots large enough under current zoning requirements for 2 dwelling units. After 2008, lending institutions and mortgage finance companies tightened rules and now require a "re-build" letter for most residential property. If the property does not receive a positive re-build letter, the owner may have to resort to costly finance instruments or sell the property to a cash buyer. This may in turn lead to dis-investment in the property and a general decline in the marketability and taxable value of property.

In 2013, the Board of Adjustment granted 16 properties in this subdivision lot area variances so they can be re-built if necessary in the future. Michael Oliver, a senior real estate broker at Prudential Floberg in 2013, sent a letter to all the duplex property owners advising them of the opportunity to submit a group variance request. Fifteen property owners submitted a variance as a group in 2013. One property owner submitted an application as an individual. This property owner is now submitting a variance as an individual for 2 lots he owns in Patricia Subdivision.

The Planning Division is recommending conditional approval based on the findings of the

7 criteria. The requested variance is based on a hardship with the land, being the lot area, that was not created by the property owner. There is no way for the owner to modify the lot to comply with the zoning requirements. The Board of Adjustment has approved similar variances for 16 other properties in this subdivision. The requested variance is in harmony with the purpose and intent of the Zoning Regulations. Granting this variance will not confer on this owner a special privilege denied to other property in the same area. The Planning Division is recommending several conditions for this variance.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings for the 7 criteria for Variance 1217.

APPROVED BY CITY ADMINISTRATOR

Attachments

Review Criteria

Zoning Map

Site photos

Site Plan and Applicant Letter

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. Although the lots are a regular shape the current lot area is not conforming to the requirement for duplexes in the R-70 zone. There is no way to re-configure the lots to provide a conforming lot area. The duplexes were constructed in 1968 as duplexes and have not been converted from single family dwellings.

- 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 research identified 16 previous variances in the immediate area. The Planning Division identified at least 9 properties in the neighborhood with duplexes on lots less than 9,600 square feet. A lot area variance was also granted in the Central Acres Subdivision to south in 1979 to allow two 5-plexes on lots less than 11,500 square feet.

- 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 16 properties have been granted lot area variances in this subdivision and 1 lot area variance granted in the Central Acres Subdivision. Nine additional properties in Patricia Subdivision have duplexes on lots less than 9,600 but do not have variances.

- 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 20 to 10 feet:

1. The variance is to allow a duplex or 2 units on Lot 1, Block 2 (8,450 square feet) and a duplex or 2 units on Lot 2, Block 2 (8,099 square feet), Patricia Subdivision. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 1 & 2 of Block 2 Patricia Subdivision, generally located at 3402/3404 and 3406/3408 Gallatin Place.
3. Any future re-construction of the existing structure will require compliance with other all other zoning regulations and city ordinances that apply at the time of re-construction.

4. 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.

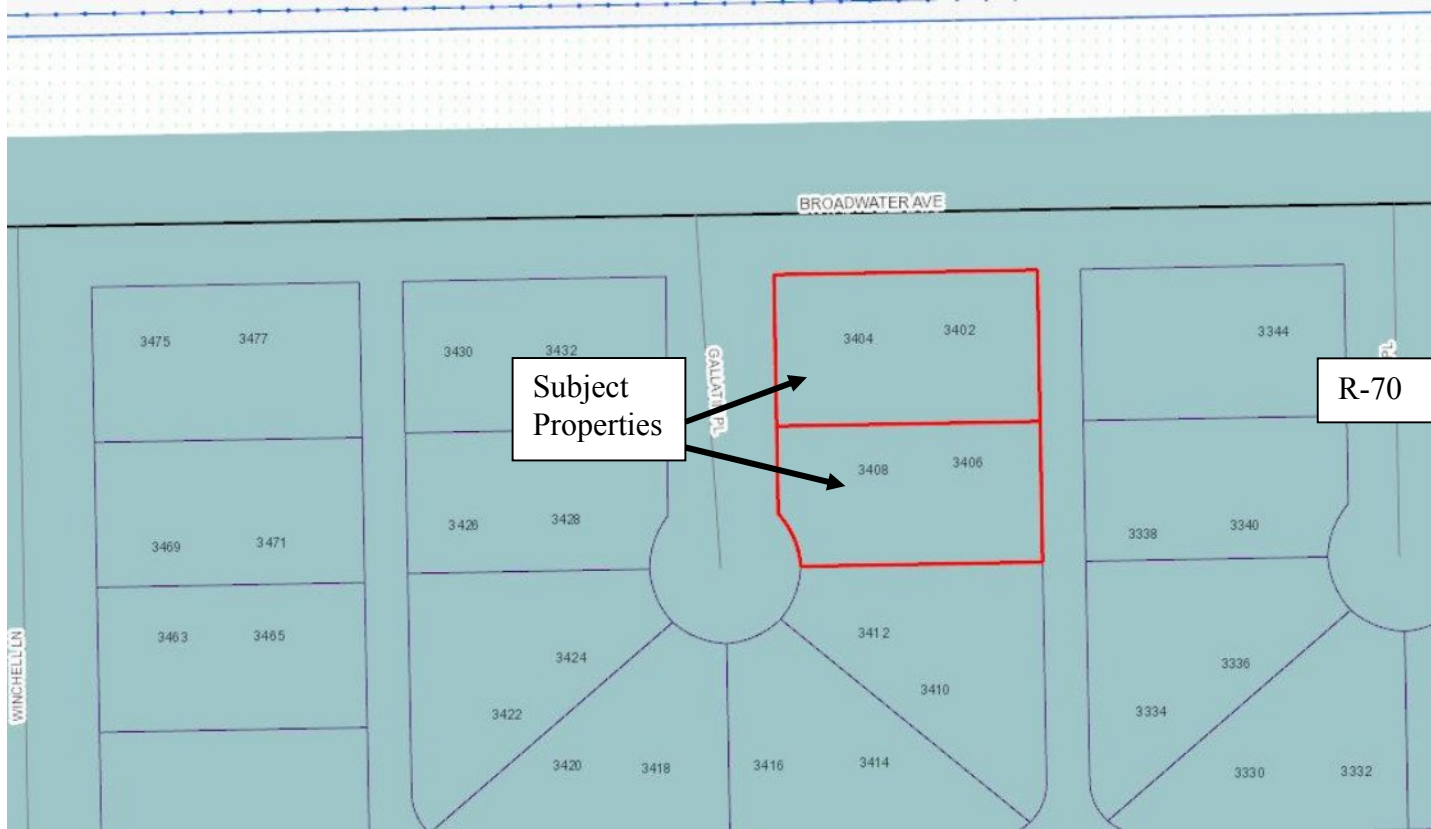
- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

The requested variance is to ensure the future opportunity to rebuild the existing structure. 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 allowed in the zoning district – duplex dwellings are allowed in the R-70 zone.

Zoning Map
Variance #1217 – 3402/3404 and 3406/3408 Gallatin Place



Patricia Subdivision – Lots remaining without lot area variances



Site Photos
Variance #1217 – 3402/3404 and 3406/3408 Gallatin Place



Subject Property from Gallatin Place



View south on Gallatin Place cul-de-sac



View north to Broadwater Avenue intersection



View west across Gallatin Place

Aerial of Subject Property



Subject Properties

APPLICATION FORM

CITY VARIANCE ID: Billings Variance # 1217 - Project # PZ-15-00087

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 # C02163 / C02164 CITY ELECTION WARD # Ward 5

Legal Description of Property: Block 2, Lot 2 (C02163) 1968
Patricia Sub Block 2, Lot 2 (C02164) 1968

Address or General Location (If unknown, contact City Engineering): 3402 / 3406
1 DUPLEX ON EACH NON-CONF. LOT SIZE Gallatin PL

Zoning Classification: RESIDENTIAL 7000

Size of Parcel (Area & Dimensions): 8540-SF-C02163 8099-SF-C02164

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance(s) Requested: Allow Rebuild of any Existing
Structure(s)
2 PROPERTIES EACH WITH 1 DUPLEX

Facts of Hardship: ADVERSE VALUE

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

Owner(s): Batt Properties LLC
(Recorded Owner)

(Address) 3722 Harry Cooper PL
BILLINGS, MT. 59106

(Phone Number) _____ (email) battenschlag@yahoo.com

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: 7-29-20
(Recorded Owner)

Nelson R. Battenschlag - owner