



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, October 7 @, 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 August 5, 2015 and September 2, 2015 meetings were canceled due to a lack of agenda items.

The minutes of the Board meeting of **July 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.
 1. Reading of rules for the procedure by which the public hearings will be conducted.
 2. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. **Item # 1. City Variance #1219, Dave Green, Planner II** - The applicant is requesting a variance from BMCC Section 27-604 requiring a maximum fence height of 6 feet on the side or rear property line to allow a maximum fence height of 7 feet on the north property line to replace a damage 6.5-foot fence in a Residential 9,600 (R-96) zone, on Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing, a 10,195 square foot parcel of land. Tax ID: C03167, David and Norma Sellers, owners.
- b. **Item #2. City Variance #1220 – 2107 Colton Blvd. – Front Yard Fence Height, Dave Green, Planner II** - A variance from BMCC Section 27-604 requiring a maximum fence height of 4 feet in the front yard setback to allow a 6 foot fence in the front yard setback along the west property line in a Residential 9,600 (R-96) zoning district on Lot 9, Block 6, Barth-Fortin Subdivision, a 10,085 square foot parcel of land. Tax ID: A02878

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: 10/07/2015

Information

Subject

The minutes of the Board meeting of **July 1, 2015.**

Attachments

BBOA-2015_07_01_Minutes_DRAFT

CITY BOARD OF ADJUSTMENT

MINUTES: July 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	1	1						
James Olson	Board member	1	E	1	1	1	1						
Paul Hagen	Board member	1	1	E	1	E	1						
Frank Chesarek	Board member	1	1	1	1	1	1						
Matthew McDonnell	Vice Chairman	1	E	1	1	1	1						
Martin Connell	Board member	1	1	1	1	1	1						
Mark Noennig	Board member	1	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	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 Wyeth Friday, Planning Division Manager; Nicole Cromwell, Zoning Coordinator, and Tamara Deines, Planning Clerk.

Attending: Ken Kunkel, Sandy Kunkel, Lucinda Battenschlag, Crystal Hopper

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 June 3, 2015 Meeting Minutes

Chairman Bollman called for approval of the June 3, 2015 minutes.

Board member Connell made a motion and Board member Hagen seconded to approve the June 3, 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		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		1		
James Olson		1		
Paul Hagen		1		
Frank Chesarek		1	Yes	
Matthew McDonnell		1		
Martin Connell		1	Yes	
Mark Noennig		1	Yes	

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

Zoning Coordinator Nicole Cromwell reviewed the application for Variance request #1216 and presented the Board with the staff report for this request.

Item #1 City Variance #1218 – 2252 George Street – Lot Coverage - A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 39% for the construction of a new 864 square foot detached garage in a Residential 7,000 (R-70) zoning district on Lot 4, Valley View Acres Subdivision, a 7,922 square foot parcel of land. Tax ID: C09350.

RECOMMENDATION

The Planning Division is recommending conditional approval with the following conditions:

Staff is recommending the following conditions for the increased maximum lot coverage variance request:

1. The variance is to increase the maximum lot coverage from 30% to 39%. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Valley View Acres Subdivision generally located at 2252 George Street.
3. Construction of the detached garage will be in substantial conformance with the submitted site plan and shall meet all other required City regulations, with the exception of this variance for lot coverage.
4. The applicant will receive a building permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the garage will be completed within 18 months of Board of Adjustment approval.
5. Construction activity is not to start before 7 am and will end by 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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. .

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1218. There was none. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Olson made a motion and Board member McDonnell seconded the motion to conditionally approve City Variance #1216 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	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell	1			
Martin Connell	1			
Mark Noennig	1			

The motion passed 6-0. City Variance #1218 is conditionally approved.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on **Wednesday August 5, 2015.**

Adjournment: 7:00 p.m.

ATTEST: DRAFT. To be Approved by a motion on July 1, 2015

Jeff Bollman, Chairman

Tamara L. Deines, Planning Clerk



City Board of Adjustment

Meeting Date: 10/07/2015

SUBJECT: Variance #1219 - 3903 Palisades Park - Fence Height

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

Item # 1. City Variance #1219, Dave Green, Planner II - The applicant is requesting a variance from BMCC Section 27-604 requiring a maximum fence height of 6 feet on the side or rear property line to allow a maximum fence height of 7 feet on the north property line to replace a damaged 6.5-foot fence in a Residential 9,600 (R-96) zone, on Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing, a 10,195 square foot parcel of land. Tax ID: C03167, David and Norma Sellers, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance.

APPLICATION DATA

OWNER: David and Norma Sellers

AGENT: None

LEGAL DESCRIPTION: Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing

ADDRESS: 3903 Palisades Park Drive

CURRENT ZONING: Residential 9600

EXISTING LAND USE: Residential

PROPOSED USE: Same

SIZE OF PARCEL: 10,195 square feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

There have been a few variances in the surrounding neighborhood that have been applied for and granted and some that were denied. There have been 16 variances applied for in the neighborhood. Of those 16 variances, 13 were granted and 3 were denied. The ones that were granted included front setback reductions, lot size reductions, arterial setbacks reduced, rear setback reduction, and two fence height variances (one fence variance was a front fence from 3 feet to 5 feet and the other was for a rear and side fence height from 6 feet to 8 feet). The three that were denied were for rear, 20' to 2', and side, 5' to 0' setback reductions. A side setback from 5' to 1' 8" was denied and a front setback from 20' to 5' was denied.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: Residential 9600 (R-96) Land Use: Residential
SOUTH:	Zoning: R-96 Land Use: Residential
EAST:	Zoning: R-96 Land Use: Residential
WEST:	Zoning: R-96 Land Use: Residential

BACKGROUND

The applicant is requesting a variance from Section 27-604 requiring a maximum fence height of 6 feet on the side or rear property line to allow a maximum fence height of 7 feet on the rear side yard along the north property line to replace a damaged 6.5-foot fence. The property is in a Residential 9,600 (R-96) zone and is 10,195 square feet in size.

This area of Billings is built at the foot of the Rims. The subject property is ‘downhill’ from the north fence on the side property line behind the house. There is a natural drainage that runs at the back property lines of the properties in this part of the subdivision with the north elevations higher than the ones on the south. With the properties on the north being higher, a common fence on the shared rear property line would appear shorter on the north property than on the south property.

The applicant submitted pictures and states that the fence on their property now is 77 inches tall and has been for 17 years. They are asking to be able to rebuild a new fence that is 7 feet tall will a decorative trellis top on it that could possibly be used for growing hanging vines or for other decorative purposes. The variance would be to allow the subject property a taller fence to provide a greater amount of privacy from a property that is uphill from them.

While posting the property, one of the pictures taken between homes shows that the back yards to the north are at a higher elevation to the back of the house than the back yards to the south for the homes on Palisades Park Drive. Back yards to the north were visible from Palisades Park Drive. Front yards on homes on Palisades Park Drive are higher than their back yards but still lower than back yards are to the north (See attached photos).

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.

RECOMMENDATION

Staff recommends Conditional Approval

Attachments

Variance 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 special circumstances existing on this property that would create a hardship. The subdivision where the subject property is located is below the Rims here in Billings. The house to the north of the subject property is at a higher elevation than the subject property. A 6 foot fence on the shared 'backyard' location appears much less than 6 feet on the uphill, north, side than it does on the subject property.

- 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;**

There have been other properties in the surrounding neighborhoods that have requested and have obtained a height variance for fences. The basic reason for fences is to provide a bit of privacy in your own back yard. When there are abrupt grade changes that result in one property being higher than one next to it a 6 foot fence does not provide much privacy for either property. The literal interpretation of the code for fence height would not provide the same amount of privacy in this neighborhood as it would in one that there are minimal to no grade changes between lots.

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

The variance will not allow the applicant any special privileges. There have been other fence height variances in the surrounding neighborhoods with one variance for an 8 foot fence height that was granted.

- 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. This would be to allow the subject property a taller fence to provide a greater amount of privacy from a property that is uphill from them.

- 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 increased maximum lot coverage variance request:

1. The variance is to increase the maximum fence height from 6 feet to 7 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing generally located at 3903 Palisades Park Drive.

3. Construction of the fence will be in substantial conformance with the submitted site plan and shall meet all other required City regulations, with the exception of this variance for fence height.
4. The applicant will receive a fence permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the fence will be completed within 18 months of Board of Adjustment approval.
5. Construction activity is not to start before 7 am and will end by 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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

The applicant will obtain a fence permit within 6 months of approval of this variance and have the construction completed within 18 months of 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. Fences are an allowed use in all residentially zoned districts in the city.

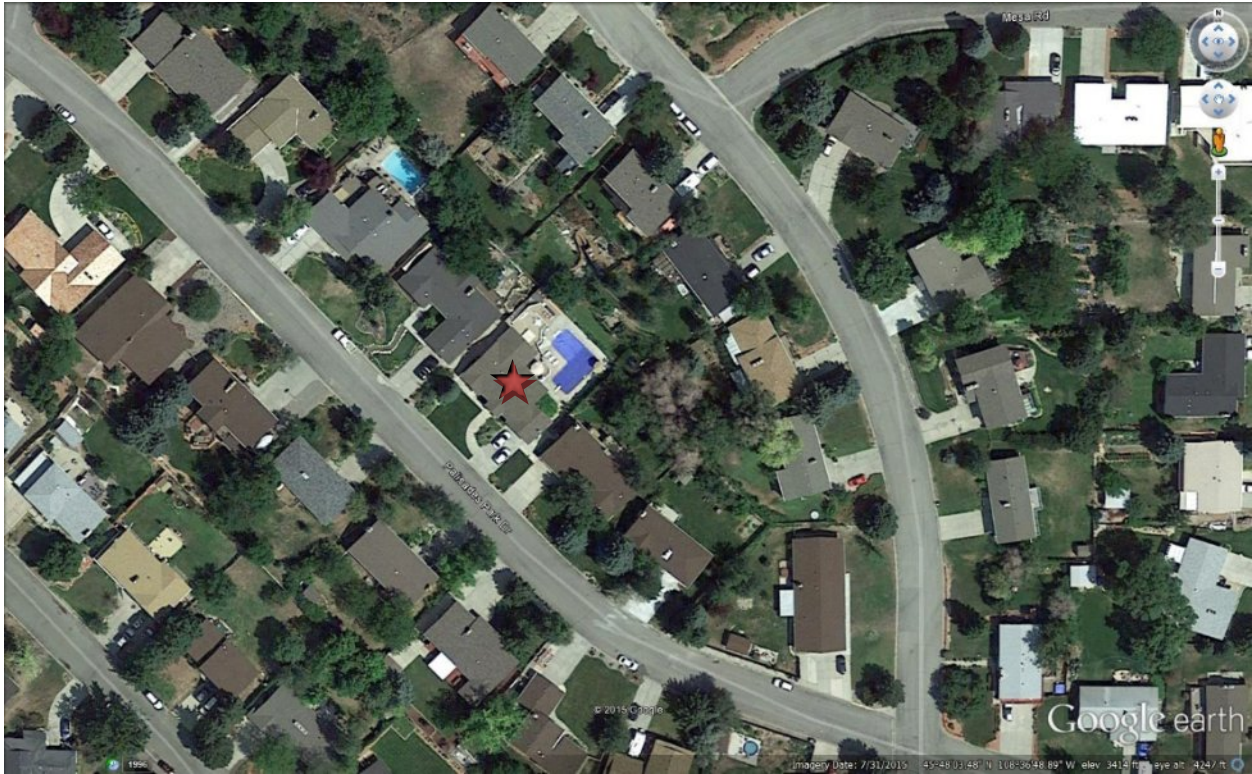
ATTACHMENTS

- A: Surrounding Zoning & Aerial View
- B: Site Photographs
- C: Application form
- D: Applicant Supplied Photos

ATTACHMENT A
Surrounding Zoning & Site Location



Subject property ★



ATTACHMENT B
Site Photographs



Subject Property



Looking north west from subject property

ATTACHMENT B
Site Photographs, Continued



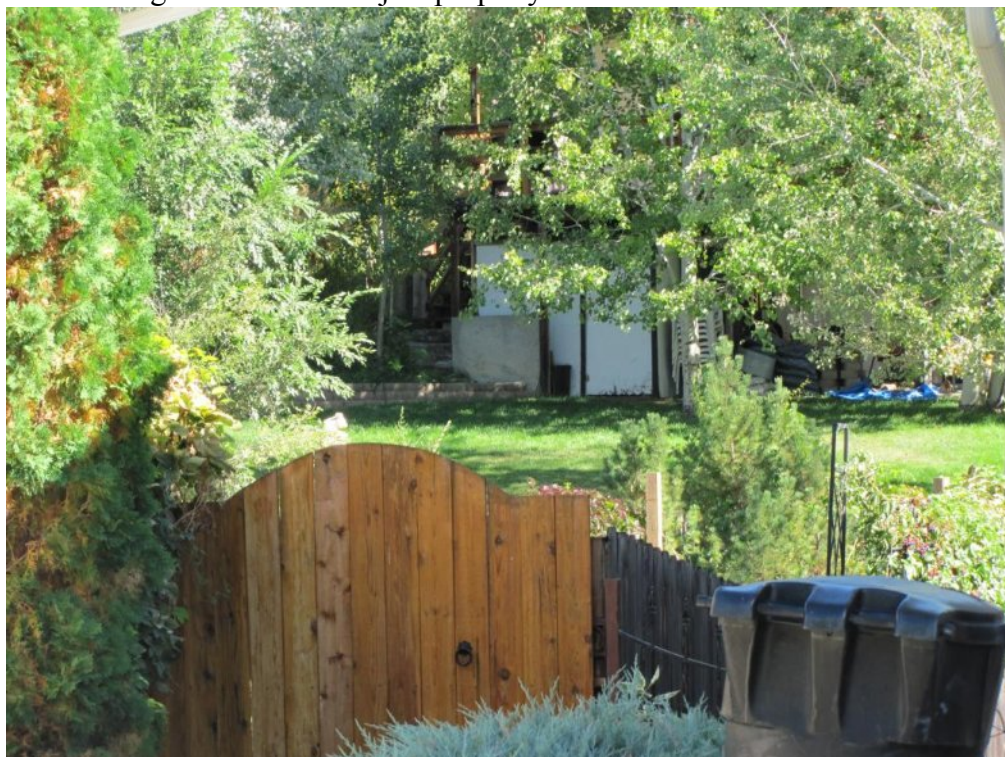
Looking east from subject property



Looking south east of subject property



Looking between the subject property and the house to the east toward



the property to the north where the back yard is higher than the subject property

ATTACHMENT C

Application form

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1219 - Project # P2-15-0060

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 # C03167 CITY ELECTION WARD # 4?

Legal Description of Property: Section 28, Town 01 N, Range 25 E

Lot: 04A Block: 008 Palisades Park Sub 1st Filing

4 4B Block @ Palisades Park Sub 2nd Filing

Address or General Location (If unknown, contact City Engineering): 3903 Palisades

Park Dr. Billings, MT

Zoning Classification: residential

Size of Parcel (Area & Dimensions): .23 10,195 sF

Covenants or Deed Restrictions on Property: Yes No



If yes, please attach to application

Variance(s) Requested: I would like to increase the North fence to 84' (inches) tall with a Pergola Topper to hold vines. (see pictures attached)

Facts of Hardship: I have no ability to have trees for shade. I have a fence that is on the property line of people that are not cruts get along with. The fence has stood 88 inches for 17 yrs.

See Attached pictures

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

Owner(s): David a. Sellers / Normd J. Sellers

(Recorded Owner) 3903 Palisades Park Dr. Billings, MT 59102

(Address) (406) 655-1659 (Phone Number) certified224@msn.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: Norma Seller Date: 8/3/15

(Recorded Owner)

Attachment D
Applicant provided photos



77" inch tall
fence Before it
Blew Down -



77" inch
fence (north)
Before it Blew
Down - (note
View Deck Built
By neighbor at
Top of Fence
(north)



Backyard
of Neighbor
that "our" fence
blew into. (the
pine 2x4 are keeping
fence upright until
insurance adjuster
showed - (note the
"fine" landscape)

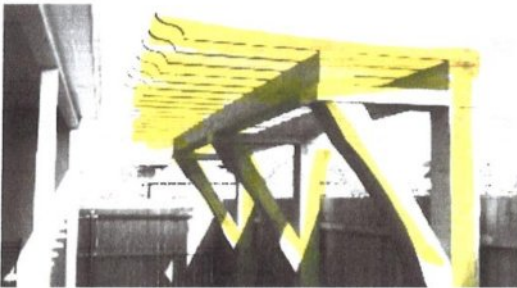


ergolas, Arbors and Decks in Lubbock, TX

8/28/15, 3:53 PM



Similar to this
only not as chunky
and large.



The note says 'Similar to this only not as chunky and large'.



City Board of Adjustment

Meeting Date: 10/07/2015

SUBJECT: City Variance #1220 - 2107 Colton Boulevard - Front Yard Fence Height

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Wyeth Friday

Information

REQUEST

Item #2. City Variance #1220 – 2107 Colton Blvd. – Front Yard Fence Height, Dave Green, Planner II - A variance from BMCC Section 27-604 requiring a maximum fence height of 4 feet in the front yard setback to allow a 6 foot fence in the front yard setback along the west property line in a Residential 9,600 (R-96) zoning district on Lot 9, Block 6, Barth-Fortin Subdivision, a 10,085 square foot parcel of land. Tax ID: A02878

RECOMMENDATION

Staff recommends denial of the variance request and complete compliance with the existing portion of the fence that is in the Clear Vision Area for its height not to exceed 30 inches.

APPLICATION DATA

OWNER: Chad Torgrimson

AGENT: None

LEGAL DESCRIPTION: Lot 9, Block 6

ADDRESS: 2107 Colton Blvd.

CURRENT ZONING: Residential 9600

EXISTING LAND USE: Single Family Residential

PROPOSED USE: Single Family Residential

SIZE OF PARCEL: 10,085 square feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Surrounding Property

City Variance #938 – 2104 Iris Lane – Approved June 1, 2004 - A variance to allow construction of a 6' fence in the 10' X 20' Clear Vision Area at the intersection of the Alley and 21st Street West in an R-960 Zone on Lot 5, Block 4, Barth-Fortin Subdivision. Planning staff recommended denial.

No other variances for fences were found in the neighborhood surrounding the subject property. Only two other variances in addition to the one referenced above were found and they were for front yard set back reductions for structures.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: Residential Multi-Family Restricted Land Use: Multi-family dwellings
SOUTH:	Zoning: Residential 7000 (R-70) Land Use: Single Family Residential
EAST:	Zoning: R-70 Land Use: Single Family / Multi-Family
WEST:	Zoning: R-70 Land Use: Multi-Family dwellings

BACKGROUND

This variance request is the result of an initial code enforcement violation for a new 6' high fence being built on the west property line in the front yard setback of the subject property at 2107 Colton Boulevard. The fence was constructed without a fence permit and a code enforcement violation was reported (See attached photo dated 3/26/15). The property owner was provided notice and applied for a fence permit for the fence. At the time the fence permit was reviewed and issued, the required clear vision area for the adjacent driveway on the neighbors property at 2111 Colton Boulevard was identified by Planning staff at the intersection of the driveway with Colton Boulevard. However, the additional requirement that fences in the 20' front yard setback in R-960 zoning may not exceed 4' in height was not noted on the permit.

The applicant partially reduced the fence height to the required clear vision area of 30" from the centerline of the sidewalk back 10' into the property. Complete compliance with the existing portion of the fence that is in the Clear Vision Area for its height not to exceed 30 inches has still not been met with structural portions of the fence projecting above the 30" maximum. The fence also still does not meet the front yard setback height limitation of 4' feet for approximately another 10-12 feet into the property. The fence also in the clear vision area retained structural pieces above the 30" height requirement that have never been removed (See attached photo dated 4/22/15). The applicant was noticed on April 8, 2015 of the front yard setback violation for the fence. It was then discovered by Planning staff in discussions with the applicant that the fence permit issued on April 15, 2015 had noted the clear vision requirement but had not specifically noted the front yard setback requirement on the permit face.

The Planning staff then discussed remedies with the applicant's attorney and determined that applying for a variance was the only remedy if the applicant would not bring the fence into compliance voluntarily with the regulations. The Planning Division agreed to waive the variance application fee given the staff's omission of the front yard setback on the fence permit site plan. It should also be noted that on all fence permit applications, a note is provided that states: "This permit will allow a property owner to place a fence on their property. Except in Agricultural-Open Space (A-1), Controlled Industrial (CI) and Heavy Industrial (HI) zones or planned developments, NO fence may exceed 48 inches within the required front yard setback (emphasis added). Maximum fence height outside the front setback shall not exceed 6 feet in height. Applicable clear vision triangles shall remain free of any object over 30 inches in height. The property owner should act on this permit within one (1) year of approval."

Colton Boulevard in this area is designated a Collector Street by the City's Functional Classification Map. The street has a posted speed limit of 35 mph. There are churches and schools in the neighborhood. Driveways of the residential properties in this area are directly off of Colton Boulevard. A curb walk sidewalk is in place along the frontage of the properties in the area of the neighborhood. While the Clear Vision Area is the main tool in the Zoning Regulations to ensure visibility for motorists and pedestrians or cyclists in conflict areas, the maximum fence height of 4' in residential front yard setbacks is also intended to provide safety and visibility for both property owners and users of the road corridor, and it is important for public safety responders that approach properties from the public streets.

The front yard setback requirement for fences applies to all residential zoning districts across the City. The front yard fence height was increased in 2012 by an amendment by the City Council from 3' to 4'. Staff had found that those operating licensed day care businesses were required by the State to have a 4' minimum fence for areas

where children played. Staff also found that pet owners could better control their animals with an slightly taller fence. It was determined during the code amendment process for the fence height, that the purpose of protecting public safety would still be met with an increase in the height to 4'. While there are existing fences that may not meet this requirement because of age or because they may have been built without a permit, generally the fence height limitation of 4' in front yard setback is adhered to and enforced.

Planning staff has reviewed this application and is forwarding a recommendation of denial for the variance based on the determinations for review provided within this report. Staff found that while the front yard setback requirement was not noted on the permit site plan by staff when the applicant applied for a fence permit after the fence was built, there is no circumstances with the subject property that would create a hardship for meeting the 4' height, the permit does call out the maximum 4' height for fences in front yard setbacks on the permit, and there have been no similar variances approved along Colton Boulevard in the area that would deprive the applicant of rights commonly enjoyed by other tracts in the same district.

RECOMMENDATION

Staff recommends denial of the variance request and complete compliance with the existing portion of the fence that is in the Clear Vision Area for its height not to exceed 30 inches.

Attachments

Determinations

Attachments

DETERMINATIONS

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

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

There are no special circumstances existing on this property that would create a hardship. The subject property is relatively flat and there are no physical obstacles that would prevent the fence from meeting the 4' maximum fence height in the front yard setback and the clear vision requirements.

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

There has only been one fence height variances in the surrounding neighborhoods that was granted for a clear vision area at an alley and street intersection, and staff had recommended denial of that variance request. A literal interpretation of the front yard fence height and clear vision area requirements does not deprive the applicant of 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;**

The variance will confer on the applicant a special privilege that other properties in this area of Colton Boulevard do not enjoy. There has only been one fence height variances in the surrounding neighborhoods that was granted for a clear vision area at an alley and street intersection, and staff had recommended denial of that variance request.

- 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 not in harmony with the general purpose and intent of the zoning regulations and the growth policy. This would be to allow the subject property a taller fence in the front yard setback which reduces visibility for public safety along the public road corridor.

- 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 denial of variance and complete compliance with the existing fence height that is in the clear vision area.

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

Staff is not recommending approval of the variance, so there is no time limit for meeting variance conditions. The fence should be brought into compliance with all requirements.

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

The granting of this variance would not allow a use that is not allowed in the zoning district. Fences are an allowed use in all residentially zoned districts in the city. It is the height of the allowed fence that currently does not meet the regulations.

ATTACHMENTS

- A: Surrounding Zoning & Aerial View
- B: Site Photographs
- C: Application form

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1220 - Project # P2-15-00161

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 # A02878 CITY ELECTION WARD # _____

Legal Description of Property: LOT 9 Block 6 of Barth-Fortin Subdivision

Address or General Location (If unknown, contact City Engineering): _____

2107 Colton Blvd Billings MT 59102

Zoning Classification: ~~R96~~ R96

Size of Parcel (Area & Dimensions): 10,085 FT, 23 acre 129,26 FT X 78 FT

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: I request a variance to allow my fence to stand as built per the permit I received from the Billings Zoning office. Permit # R01-15-01942. Front set back 10 FT from center of sidewalk as per original permit drawing.

Facts of Hardship: I received a permit from your office to build a fence with all dimensions on the permit I had for a built the fence to the permit specs months later was could not build it.

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

Owner(s): Chad Torgrimson

(Recorded Owner) 2107 Colton Blvd. Billings mt 59102

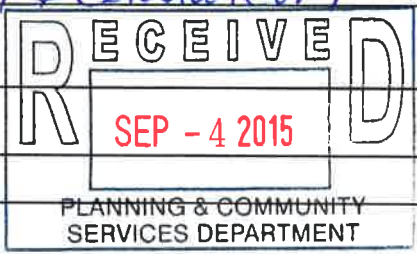
(Address) 406-861-7867 TOR10FF1@yahoo.com

(Phone Number) (email)

Agent(s): _____
(Name)

(Address)

(Phone Number) (email)



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

Signature: [Handwritten Signature] Date: 8-27-15
(Recorded Owner)



Google earth

feet
meters

200

900





Subject property at
2107 Colton Blvd.



Looking west from subject property
at fence between subject property
at 2107 Colton Blvd. and neighboring
property at 2111 Colton Blvd. Fence
has structure above 30" in the Clear
Vision Area and a portion of the
fence is above the 4' in front yard
setback of 20'



Looking east from subject property at fence between subject property and neighboring property that faces 21st Street West. The fence shown is in the back and rear side yard of the neighboring property. No fence permit for the fence was found on file and the driveway of the subject property was expanded (note new concrete panel) sometime after the fence was built, based on historic photos.



Looking east at existing fence on the subject property from in front of neighboring property at 2111 Colton Blvd.



PHONE: (406) 247-8676

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
2825 3RD AVENUE NORTH, 4TH FLOOR
BILLINGS, MONTANA 59101
FAX: (406) 657-8327



EMAIL: AdamsT@ci.billings.mt.us

TORGRIMSON, CHAD W
2107 COLTON BLVD
BILLINGS, MT 59102

CASE NUMBER: CE-15-00609

Apr 08, 2015

**SECOND & FINAL NOTICE
NOTICE OF VIOLATION**

YOU ARE HEREBY NOTIFIED that a recent inspection found a violation of Billings, Montana City Code:

City Code Description

Violation Detail

27-604(h) Fence Permit Required
Date Est: 03/23/2015

Violation Description

SECTION 27-604(h) - Any fence between a height of three and six feet shall require a permit from the Planning Department. Any retaining wall exceeding a height of four feet or any fence exceeding a height of six feet shall require a permit from the Building Department.

Violation Detail

27-604(a) Fence or Wall
Date Est: 03/23/2015

Violation Description

SECTION 27-604(a) - Fences, walls and hedges are allowed within any required yard provided that no fence, wall or hedge over four (4) feet in height shall be placed within the front setback. Fences or walls not located in the front setback shall not exceed six (6) feet in height. No fence shall be placed or maintained in the public right of way. Height, for the purposes of this code, shall be defined as the vertical distance from the top rail, board or wire to the ground directly below.

LOCATION 2107 COLTON BLVD

YOU ARE HEREBY REQUIRED to please come in and get a fence permit and comply with the proper height of the fence in the front yard. If this is not done a citation will be written at the above named location. Failure to remedy this violation within ten (10) days of the date of this notice may result in appropriate legal action by the City of Billings. If for some reason, you are unable to correct the above mentioned violation within the time set forth or if you have any questions, please call the Code Enforcement Officer at the number listed below.



CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
2825 3RD AVENUE NORTH, 4TH FLOOR
BILLINGS, MONTANA 59101



PHONE: (406) 247-8676

FAX: (406) 657-8327

EMAIL: AdamsT@ci.billings.mt.us

PLEASE BE ADVISED, violations of this section or failure to comply within the requested time period may be a municipal infraction and may result in civil penalties as specified in section 18-1304 of the City Code.

Your prompt attention and cooperation in resolving this matter is appreciated.

By _____
Don Vegge, 657-8313,
Code Enforcement Officer



04/22/2015 12:43



PHONE: (406) 237-6146

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
2825 3RD AVENUE NORTH 4TH FLOOR
BILLINGS, MONTANA 59101
FAX: (406) 657-8327



EMAIL: AdamsT@ci.billings.mt.us

TORGRIMSON, CHAD W
2107 COLTON BLVD
BILLINGS, MT 59102

Case Number: CE-15-00609

COURTESY NOTICE

Mar 27, 2015

In Billings, we value neighborhood and community efforts to maintain a beautiful City. We also rely on property owners to do their part in keeping our City safe and attractive. City Ordinances regulate some property owner responsibilities that are necessary to ensure Billings remains an appealing community in which to live and prosper. The property identified below, located within the City of Billings, Yellowstone County, has been inspected and may be in violation of Billings, Montana City Code:

City Code Description

Violation Detail

27-604(h) Fence Permit Required

Date Est: 03/23/2015

Violation Description

SECTION 27-604(h) - Any fence between a height of three and six feet shall require a permit from the Planning Department. Any retaining wall exceeding a height of four feet or any fence exceeding a height of six feet shall require a permit from the Building Department.

Violation Detail

27-604(a) Fence or Wall

Date Est: 03/23/2015

Violation Description

SECTION 27-604(a) - Fences, walls and hedges are allowed within any required yard provided that no fence, wall or hedge over four (4) feet in height shall be placed within the front setback. Fences or walls not located in the front setback shall not exceed six (6) feet in height. No fence shall be placed or maintained in the public right of way. Height, for the purposes of this code, shall be defined as the vertical distance from the top rail, board or wire to the ground directly below.

2107 COLTON BLVD
BFS-006-009
TAX ID #A02878

Inspection Details: 6 foot fence put in without a fence permit, in the front
Date Inspected: 03/26/2015



CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
2825 3RD AVENUE NORTH 4TH FLOOR
BILLINGS, MONTANA 59101



PHONE: (406) 237-6146

FAX: (406) 657-8327

EMAIL: AdamsT@ci.billings.mt.us

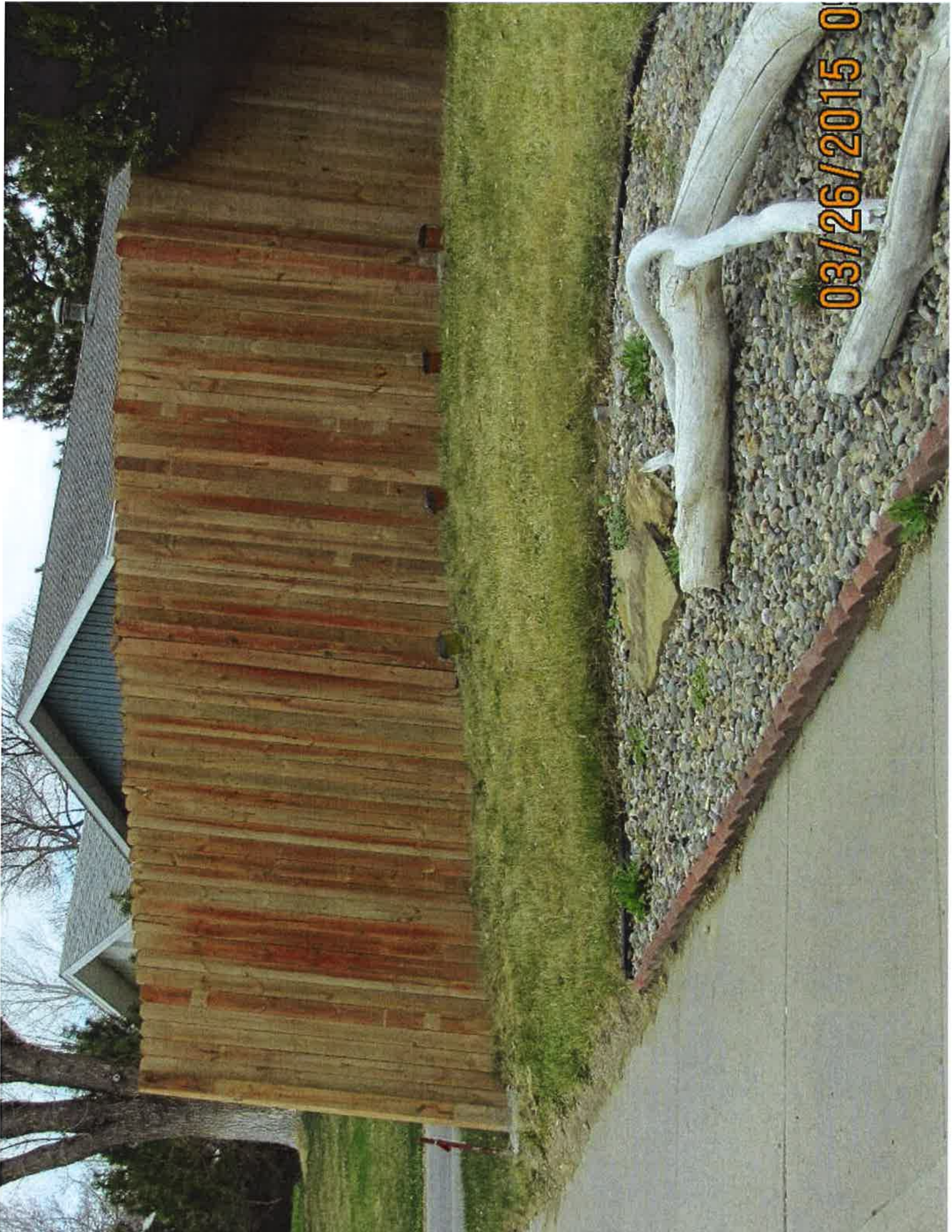
Please take the following action(s) to remedy the potential violation: a fence permit needs to be obtained at the above address, the fence is in violation as it can not be 6' in the front setback and needs to be reduced in height. See the planning clerk to obtain the permit.

We always attempt to work with property owners in correcting City Code violations and we courteously advise you this violation must be corrected within ten (10) days of the date of this notice. If for some reason, you are unable to correct the above violation within the time set forth, or if you have any questions, please call the Code Enforcement Officer at the number listed below.

PLEASE BE ADVISED, violations of this section or failure to comply within the requested time period may be a municipal infraction and may result in civil penalties as specified in section 18-1304 of the City Code.

FOR THE SAKE OF A SAFE AND ATTRACTIVE COMMUNITY, your prompt attention and cooperation in resolving this matter is greatly appreciated.

By _____
Don Vegge, 657-8313
Code Enforcement Officer



03/26/2015 0



City of Billings and Yellowstone County
Zoning Jurisdiction Fence Permit
 2825 3rd Ave. North, 4th Floor, Billings, MT 59101



Easements and property lines are the responsibility of the property owner.
 BEFORE YOU DIG – CALL 1-800-424-5555

Property Address: 2107 Colton Blvd.

Applicant Name: Chad Torgerson **Mailing Address:** 2107 Colton Blvd. Billings

Phone: 406-254-1341 **E-mail:** 59102

Agent Name: _____ **Mailing Address:** _____

Phone: _____ **E-mail:** _____

Property Information:

Replacement? _____ ****Replacement fences must meet current codes.**

Fence Material: Wood **Retaining Wall?** Yes No

Zoning: R96 **Height** 6 ft

Front Setback: _____ (feet) ****Fences over 4 feet are required to be behind the front setback in most zoning districts.**

Clear Vision:

Corner lot? Yes/No **If "Yes", is it a controlled intersection? Circle what applies:**
 Traffic Signal Yield Stop sign

Clear Vision? Yes/No **If "Yes", see the attached examples and circle those that apply:**

- | | | | | |
|---------------------------------|--|----------------------------------|--------------------------------------|--|
| <u>(a) Driveway & Alley</u> | (1b) Central Business District Driveway & Alley | (1c) Minor Street Stop | (2b) All-Way Stop | (2c) Minor Street Yield |
| (2d) Traffic Signal | (2e) Central Business District Stop Sign or Traffic Signal | (3a) "Uncontrolled" Intersection | (3b) 2-Leg Uncontrolled Intersection | (3c) Uncontrolled Permanent "T" Intersection |

OFFICE USE ONLY

Fee: \$19.00 **Receipt #:** _____ **Permit #** PUN-15-01942

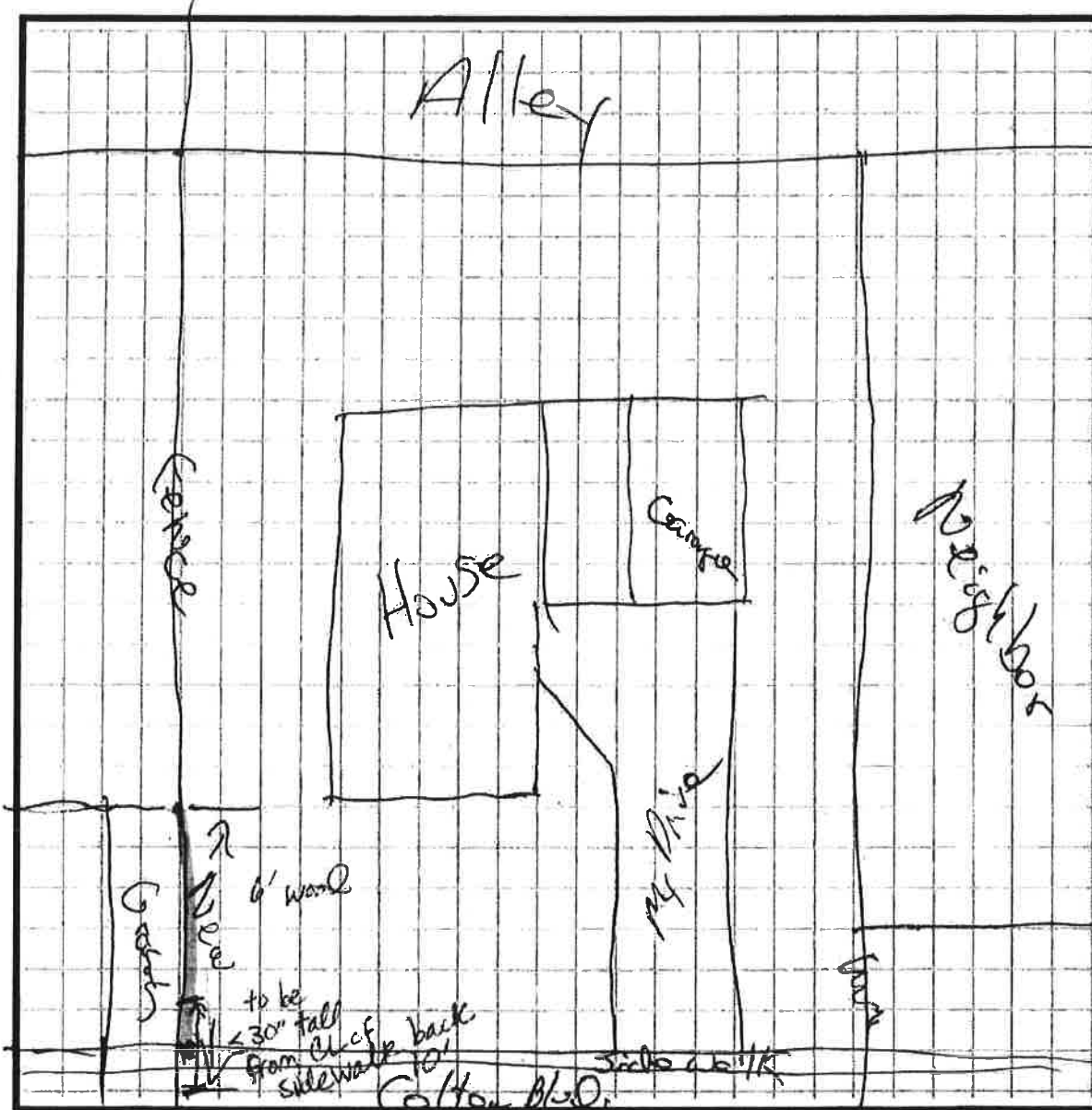
Site Visit Required? _____ **Yes/No** **Notify Code Enforcement?** _____ **Yes/No**



City of Billings and Yellowstone County Zoning Jurisdiction Fence Permit



Use the space provided below to show existing lot lines, structures, all drive approaches (including neighboring drive approaches), streets, alleys, proposed fence location, and height.



This permit will allow a property owner to place a fence on their property. Except in Agricultural-Open Space (A-1), Controlled Industrial (CI) and Heavy Industrial (HI) zones or planned developments, **NO** fence may exceed 48 inches within the required front yard setback. Maximum fence height outside the front setback shall not exceed 6 feet in height. Applicable clear vision triangles shall remain free of any object over 30 inches in height. The property owner should act on this permit within one (1) year of approval.

By signing this permit, I agree to follow all applicable regulations governing location and size of fences on my property.

APPLICANT SIGNATURE:

DATE:

4-15-15

PLANNING APPROVAL:

DATE:

4/15/15