



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, March 2, 2016 @ 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

Motion. Approval of Minutes: October 7, 2015 and November 4, 2015

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

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. **Variance #1223 – 304 16th Street West– Lot Area** – A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units in a Residential 7,000 (R-70) zoning district on Lot 3, Block 1 of Parker-Ellis Subdivision to allow a minimum lot area of 8,059 square feet for an existing duplex dwelling. Tax ID: A12614. Presented By: Karen Husman, Planner I.

- b. **Variance #1224 – Clear Vision at Intersections – Silver Creek Estates** – A variance from Section 27-615 requiring a prescribed clear vision at street intersections and from Section 27-604 prescribing a maximum fence height in a clear vision zone to allow an AASHTO specific clear vision zone at the intersections of Gold Creek Trail and 50th St West; Elk Ridge Trail and 46th St West; and Silver Creek Trail and 46th St West in a Residential 9,600 (R-96) zone on Lots 1 and 36, Block 1; Lots 1 and 20, Block 2; and Lots 1 and 27, Block 5 of Silver Creek Estates. Tax IDs: A35826, A35861, A35884, A 35927, and A35953. Presented by Nicole Cromwell, AICP, Zoning Coordinator

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 Robbin Bartley, Administrative Support, at 247-8676 or e-mail at bartleyr@ci.billings.mt.us

City Board of Adjustment

Meeting Date: 03/02/2016

Information

Subject

Motion. Approval of Minutes: October 7, 2015 and November 4, 2015

Attachments

CityBOA_2015-10_07_draft.pdf

CityBOA_2015_11_04_draft

CITY BOARD OF ADJUSTMENT

MINUTES: October 7, 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	1	-	-	1		
James Olson	Board member	1	E	1	1	1	1	1	-	-	1		
Paul Hagen	Board member	1	1	E	1	E	1	1	-	-	1		
Frank Chesarek	Board member	1	1	1	1	1	1	1	-	-	1		
Matthew McDonnell	Vice Chairman	1	E	1	1	1	1	1	-	-	A		
Martin Connell	Board member	1	1	1	1	1	1	1	-	-	1		
Mark Noennig	Board member	1	1	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	1	0	0	2			13

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 introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Wyeth Friday, Planning Division Manager; Dave Green, Planner II, and Tamara Deines, Planning Clerk.

Attending: Gina Loos, John Loos, June Richardson, Blake Richardson, Katy Richardson, Chad Torgrimson, Layne Scheveck

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 with a correction on a motion vote, “7-0”.

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	Yes-2107 Colton Blvd	
Paul Hagen		1		
Frank Chesarek		1		
Matthew McDonnell				1
Martin Connell		1		
Mark Noennig		1		

Staff received the following communications: Letter dated 9/25/2015 from Donald and Christine Tyler in support of Variance #1219.

Letter dated 9/24/15 from Larry and Dawn Lofthouse in opposition to City Variance #1220. Letter dated 9/28/2015 from Doug and Kathie Haacke in opposition to City Variance #1220. Message dated 9/30/2015 from Ronald & Margaret Sannes in opposition to City Variance #1220. Letter received 9/30/2015 from Shirley Lynde in opposition to City Variance #1220. Letter dated 9/30/2015 from Judie A. Gage in opposition to City Variance #1220. Letter dated 10/01/2015 from Blake and June Richardson in opposition to City Variance #1220. Letter received 10/05/2015 in opposition to City Variance #1220. Letter dated 10/03/2015 from Cynthia Embretson in opposition to City Variance #1220.

Public Hearings

Chairman Bollman reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. He reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. He 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 #1216 and presented the Board with the staff report for this request. Staff received one letter in support of this request.

Item #1 City Variance #1219 - 3903 Palisades Park Drive – Fence Height, Dave Green, Planner II – 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 with an additional 2 feet for an attached pergola on the north property line to replace a damaged 7.5-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.

RECOMMENDATION

Staff recommends conditional approval of the variance. 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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Board member Olson asked if the fence would block the southerly view of the property. Dave Green referred to site photographs and pointed out the large trees bordering the property on the opposite site. He explained that this variance is for the side property line to replace a damaged fence to allow a maximum fence height of 7 feet. He clarified and said the height would include the pergola on the top of the fence and could encompass the side or rear fence.

Public Hearing

At 6:15 p.m., Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1219.

Gina Loos, 3208 Laredo Place, Billings, Montana

Ms. Loos is speaking in opposition to this variance. She has lived at this address for almost 27 years and her backyard abuts this property. She said the application information submitted is incorrect and there is no description of materials. She submitted photos of her yard and the fencing for the Board to review.

Her items of concern include:

- The existing fence is located on her property. A survey was conducted on their yard was surveyed in 1989. The fences put are located almost 2-ft on her property. A survey was conducted in July and it verified the 1989 survey.

- The Sellers had proposed a 6-foot fence but it is 7-feet and the vines have grown making the fence another 3-foot higher. The 84 inches does not include the top of the pergola. There are 10-foot tall poles on her property. They have one of the larger lots and on the bottom of the parcel the fencing looks like a "Great Wall of China".
- The applicant removed the shade trees and she has contacted the Police Department as her yard was torn up.
- If the variance is approved, the fence will block her view. The 7-foot fences are on 9 inches of concrete. She referred to the site photo and explained the topography of her lot.
- She voiced concern with the effect on her property values.
- She is asking the fence be placed on his property. She said they stopped the construction as she contacted the City. She said the pergola will not be at 84".

Discussion

Board member Olson asked if the posts are located where the concrete was poured. Boardmember Chesarek said this request is for a 7-foot fence adjacent to the rolling terrain including the pergola. Dave Green said the 10 foot poles will have to be removed, and the applicant was told to stop construction and obtain a variance. If the variance is denied, the applicant could construct a 6-foot fence on his property. Ms. Loos said she is fine with the 7 foot overall height but it has to be on the applicant's property. Board member Chesarek said this Board does not handle property line disputes.

Dave Green stated the Planning Department will not issue a fence permit if the applicant is proposing to construct it on someone else's property. If the variance is approved, the Code Enforcement Division will follow up on this case to ensure the conditions of the variance are followed. He pointed out that the Condition of Approval #2 is specific to this property: "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."

Board member Chesarek asked Dave Green if the staff recommendations change knowing this information. Dave Green stated the request for the variance is not for the neighbor's lot. He suggested amending the conditions to state the 7 foot fence height includes the entire structure, all inclusive.

At 6:48 p.m., Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Connell made a motion and Board member Hagen seconded the motion to deny City Variance #1219.

Discussion

Chairman Bollman called for discussion on the motion. Boardmember Noennig said the applicant has no right to place the fence on the neighbor's property. He commented he doesn't know how the applicant could build fence when there is an encroachment from the pool.

Board member Chesarek commented it is his inclination to vote in favor of the motion. Even so, if the Planning Department says this meets the criteria and the applicant does what he is required to do; there is an obligation to conditionally grant the request.

Board member Noennig stated he is disappointed the applicant is not in attendance. Boardmember Connell stated he believes the applicant asked for this variance with the intent of deceiving the staff and there is no need to reward bad behavior. Boardmember Bollman said the application does not clearly state the proposed fence height.

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 #1219 is denied.

Item #2 City Variance #1220 – 2107 Colton Boulevard – Fence Height – Wyeth Friday, Planning Division Manager. 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) zone, on Lot 9, Block 6 of Barth-Fortin Subdivision, a 10,085 square foot parcel of land. Tax ID: A02878.

RECOMMENDATION

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

Wyeth Friday stated Staff received eight letters regarding this variance. Staff and made them available to the Board and to the public in the communications notebook.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Per Boardmember Hagen’s request, Wyeth Friday clarified the front setback requirement and stated the front setback requires a maximum 4-foot fence height for the first 20 feet from the front property line.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1220.

Chad Torgrimson, 2107 Colton Boulevard, Billings, Montana

Mr. Torgrimson is the applicant. He said explained he had referred to the City of Billings website for his initial information and started construction as he read that no building permit is required if the fence ranged from 3-6 feet in height and later discovered a permit is needed. After receiving a notice, he obtained a fence permit. He referred to a copy of the fence permit included in the staff presentation. Mr. Torgrimson said he modified the fence to 30" tall and will remove the bar as he

isn't finished with the fence. He said he has issues with the adjacent neighbor and said he has no privacy. He said he has no privacy as this family cannot seem to "mind their own business" and they have cameras pointed towards his property. He is asking for the 30" to remain and continue with the remaining 6-foot back. He said has met the clear vision requirement and pointed out there are several fences over 6-foot along Colton Boulevard that are built to the concrete. He reiterated he wishes to be able to use the yard with some privacy without the neighbors peeking through the fence into his yard. He said he has went through the proper channels and obtained a permit. He voiced frustration with receiving letters from the City after the fence is built stating it has to be changed. He said he has incurred costs in time and money, and he feels someone will have to pay for the changes in the fence.

Layne Scheveck, 37 Alderson, Billings, Montana

Mr. Scheveck is an attorney. He stated he is an interested party as he in the process of purchasing Chad Torgrimson's house. His said he has known Mr. Torgrimson for 10-15 years. He said he has personally experienced the Richardson's lack of good faith, and they do have cameras pointed towards the Torgrimson's windows. He pointed out the spray paint on the curbing and said it is not up to code. Mr. Scheveck stated Chad relied on the City's permit to bring the fence to code. He noted the slope of the lot and said when backing out a vehicle there is a clear view of who is coming or going. He spoke about the harmony of the community and mentioned there are other 6-foot fences on Colton Boulevard. He said ultimately Mr. Torgrimson wants his privacy, and has no complaints with other neighbors. Mr. Scheveck urged the Board to grant this variance.

Mr. Scheveck responded to Board member Bollman that he is still purchasing this property and is aware of these issues and the relationships with the neighbors. Mr. Scheveck stated he hopes to make amends. He said there is no safety risk with the 30" height. Board member Noennig asked Mr. Scheveck if he is aware of the other submitted letters of opposition Mr. Scheveck said all of the letters have the same type of verbiage and it seems the Richardsons are orchestrating the letters. Per Mr. Scheveck clarified said he personally would like to see the variance granted as he likes his privacy. Board member Chesarek asked how far the neighbor's house and Mr. Tomgrimson's house are from the front property line. The applicant stated both houses are about 50 feet from the front property line. Board member Chesarek said this issue is the clear vision and variances cannot be granted on the basis of people looking through a fence.

June Richardson, 2111 Colton Boulevard, Billings, Montana

Ms. Richardson has lived at this address since 1997. She exhibited a letter from the City approving a handicapped designated parking permit for the special transit bus to pick up her daughter. She stated the fence is unsafe for those wanting to back out of the driveway and Colton Boulevard is extremely busy due to the increased use of the Catholic School practice fields. She provided the Board with a photograph of a large vehicle parked which further block their views. She reiterated there is no privacy on Colton Boulevard and she needs to be able to see children before exiting a vehicle out onto the street. Ms. Richard said there are no other 6-foot fences in the front yard with the exception of one located in the back yard. She said he fence is located on her property and is not straight as it waivers around a tree. They had a survey conducted in June 2012. Mr. Torgrimson has a survey conducted in August 2013 which confirmed the previous survey front and rear survey marks. She said her driveway not shown on his fence application. She would prefer to have a few more feet of 30" fencing in order to have clearance. She stressed the need to be able to back out of her driveway and be able to see to have a safe exit. She explained they purchased security cameras due to the vandalism on their and they are pointed towards their property. Board member Noennig commented on the examples of clear vision issues and asked if they all took place prior to the 30" fence cut out.

Ms. Richardson stated there is not enough space to see down the road as there is only 8 feet. She said she would like to see the 3-foot height for another few feet or have the fence removed and have the applicant go through the proper procedure to have rebuilt. She insisted the existing fence is on her property. Board member Noennig reminded of this Board’s jurisdiction and asked Ms. Richardson to focus on the issue of the fence.

Blake Richardson, 2111 Colton, Billings, Montana

Mr. Richardson is June Richardson’s spouse. Mr. Richardson said this relationship started when Mr. Torgrimson found out he worked for the police department. Mr. Richardson said they have a surveillance system but they are unable to see into Mr. Torgrimson’s house. Mr. Richardson asked that they are asking that the applicant abide by the code which requires a 30” height for the first 10 feet and 48” for the next, and that he remove the top rail to improve the clear vision. He said the City painted the curb due to the parking issues.

Rebuttal

Layne Scheveck, 37 Alderson, Billings, Montana

Mr. Scheveck said the survey string is still located on the property line. He pointed out the property line and the fence line on a posted presentation photo. The Richardsons believe there is a jointly owned tree but the roots fall under Mr. Torgrimson’s property line. Mr. Torgrimson stated he put fence up to ensure it is on his property line and the tree is on his property. The previous fence was built in 2003.

Per request of the Board, Wyeth Friday clarified the height restriction and pedestrian clear vision requirements per the Zoning Code.

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

Motion

Board member Chesarek made a motion and Board member Connell seconded the motion to deny City Variance #1220 with reasons presented by staff and make the fence subject to the existing code.

Discussion

Chairman Bollman called for discussion on the motion. He stated this is purely a safety issue, and having the fence height at 4-feet within the front setback will provide some visibility for pedestrians and traffic on Colton Boulevard. Board member Noennig stated he does not like to see this kind of controversy between neighbors and hopes that it will improve with the new ownership. He stated he does not see a hardship in this case and feels the best way to resolve this dispute is to fall back on the law.

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 #1219 is denied.

Other Business/Announcements:

- The next City Board of Adjustment meeting will be held on **Wednesday November 4, 2015** to consider one variance request.
- When the City Attorney provides more information to staff on the recent ruling, staff will bring it forward to this Board.

Adjournment: 7:00 p.m.

ATTEST: DRAFT. To be Approved by a motion on November 4, 2015

Jeff Bollman, Chairman



Tamara L Deines, Planning Clerk

CITY BOARD OF ADJUSTMENT

MINUTES: November 4, 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	1	-	-	1	1	
James Olson	Board member	1	E	1	1	1	1	1	-	-	1	1	
Paul Hagen	Board member	1	1	E	1	E	1	1	-	-	1		
Frank Chesarek	Board member	1	1	1	1	1	1	1	-	-	1	11	
Matthew McDonnell	Vice Chairman	1	E	1	1	1	1	1	-	-	A		
Martin Connell	Board member	1	1	1	1	1	1	1	-	-	1	1	
Mark Noennig	Board member	1	1	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	1	0	0	2	2		15

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 introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Dave Green, Planner II, Karen Husman, Planner I; and Tamara Deines, Planning Clerk.

Attending: Eugene L. Sherrodd, Alex Tommerup, AT Architecture

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 October 7, 2015 Meeting Minutes

The approval of the October 7, 2015 meeting minutes is delayed.

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	V1221	
Paul Hagen		1		
Frank Chesarek		1		
Matthew McDonnell				1
Martin Connell		1		
Mark Noennig		1		

Staff received the following communications:

Public Hearings

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes 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 Karen Husman reviewed the application for Variance request #1216 and presented the Board with the staff report for this request. Staff received one letter in support of this request.

Item #1. City Variance #1221 - 145 Alderson Avenue - Karen Husman, Planner I. The applicant is requesting a variance from BMCC Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 37% for the addition of an accessible entrance to an existing church in a Residential 7,000 (R-70) zone, on Lots 21-23, Block 8 of West Side Addition, a 10,500 square foot parcel of land. Tax ID: A17783.

RECOMMENDATION

Staff recommends conditional approval of the variance. Staff is recommending the following conditions for the variance request:

Staff is recommending the following conditions for the variance request:

1. The variance is only from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 37%. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 21-23, Block 8 of West Side Addition Subdivision generally located at 145 Alderson Avenue.
3. Any construction activities must take place between 7 am and 8 pm
4. The applicant is required to comply with all other building, engineering and zoning regulations, with the exception of the lot coverage, that apply at the time of construction.
6. The applicant will obtain a building permit within 1 year and have the construction complete within 2 years.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Board member Connell asked which criterion staff considered for this recommendation. Ms. Husman stated this request will not significantly impact the neighborhood. Six other variances were submitted in this area, and five out of six were granted. This request will bring the church into ADA conformance.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1221.

Alex Tommerup, AT Architecture, 2010 Wentworth, Billings, Montana

Mr. Tommerup represents applicant, Great Plains Gathering. He stated this is a small 300-square foot addition to provide ADA accessibility. The church wishes to accommodate their members with these needs.

At 6:10 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Olson made a motion and Board member Noennig seconded the motion to conditionally approve City Variance #1221 with the conditions and Findings of Fact presented by Staff.

Discussion

Chairman Bollman called for discussion on the motion. Board members suggested that staff add the notation of the other variances granted in the neighborhood to the criterion of approval

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 #1221 is conditionally approved.

Item #2 City Variance #1222. Dave Green, Planner II The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 40% to allow a maximum lot coverage of 45% and Section 27-310 requiring a maximum detached garage size of 1,000 square feet to allow a maximum detached garage size of 1,152 square feet in a Residential 6,000 (R-60) zone, on Lots 20 and 21, Block 219, Billings Second Addition, a 7,000 square foot parcel of land. Tax ID: A01626, Eugene and Brenda Sherrodd, owners.

RECOMMENDATION

Staff recommends conditional approval of the variance. Staff is recommending the following conditions for the variance request:

1. The variance is to increase the maximum lot coverage from 40% to 45% and to increase the detached structure maximum size from 1,000 square feet to 1,152 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 20 and 21, Block 219, Billings Second Addition generally located at 617 South 35th 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 and maximum size.
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. Board member Connell asked if there is a hardship related to this request. Dave Green stated there are not any special circumstances existing on this property that would create a hardship but they are in a neighborhood that has properties that appear to be exceeding the allowable lot coverage and detached accessory size. There are several properties within this subdivision that have received variance approval for various zoning requirements. It also appears that several properties have constructed

outside the zoning requirements without variance approval including the maximum lot coverage allowed while this applicant is going through the proper channels. The property adjacent to the subject property appears to be at 42% lot coverage without a variance. No input was received from the neighbors.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1222.

Eugene Sherrod, 617 S 35, Billings, Montana

Mr. Sherrod said he submitted this request as the existing garage is too small as the placement of the hot water heater and the furnace is constriction.

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

Motion

Board member Connell made a motion and Board member Chesarek seconded the motion to conditionally approve City Variance #1221 with the conditions and Findings of Fact presented by Staff.

Discussion

Chairman Bollman called for discussion on the motion.

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

The motion passed 6-0. City Variance #1222 is conditionally approved.

Other Business/Announcements:

- The **Wednesday December 2, 2015** City Board of Adjustment meeting is cancelled due to the lack of applications. The next meeting will be on Wednesday, January 6, 2016.

Adjournment: 6:26 p.m.

ATTEST: DRAFT. To be approved by a motion on January 6, 2016

Jeff Bollman, Chairman



Tamara L Deines, Planning Clerk



City Board of Adjustment

Meeting Date: 03/02/2016

SUBJECT: City Variance #1223- 304 16th Street West

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Karen Husman

Information

REQUEST

Variance #1223 – 304 16th Street West– Lot Area – A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units in a Residential 7,000 (R-70) zoning district on Lot 3, Block 1 of Parker-Ellis Subdivision to allow a minimum lot area of 8,059 square feet for an existing duplex dwelling. Tax ID: A12614. Presented By: Karen Husman, Planner I.

RECOMMENDATION

The Planning Division is forwarding a recommendation of conditional approval.

APPLICATION DATA

OWNERS: Reagan Lefdahl Geffre
AGENT: Jonathan Porta
PURPOSE: To reduce the minimum lot area of 9,600 square feet for 2 dwelling units in a Residential 7,000 to allow a minimum lot area of 8,059 square feet for an existing duplex
LEGAL DESCRIPTION: Lot 3, Block 1 of Parker-Ellis Subdivision
ADDRESS: 304 16th Street West
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: R-70

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

There are several lots in adjacent neighborhoods and two on the same block that are nonconforming for lot area with either duplexes or multiple units on a property. According to Planning Division staff research, the Board has reviewed 20 similar variance requests in the area of this application and has approved 13 and denied 7.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Residential single family and multi family
SOUTH: Zoning: R-70
Land Use: Residential single family
EAST: Zoning: NC
Land Use: Residential and commercial
WEST: Zoning: R-70
Land Use: Residential single family and multi family

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for two dwelling units in a Residential 7,000 (R-70) zoning district on Lot 3, Block 1 of Parker-Ellis Subdivision to allow a minimum lot area of 8,059 square feet for an existing duplex dwelling. The applicant is wishing to obtain a rebuild letter for the property so he is able to get new financing, or in case of future sale of the property. According to the County property information available, the existing duplex was constructed in 1973.

The lot is in an older part of Billings and most of the surrounding lots were developed before zoning regulations existed. There are several lots in adjacent neighborhoods and two on the same block that are nonconforming for lot area with either duplexes or multiple units on a property. The Board has reviewed 20 similar applications in the area and has approved 13 and denied 7 applications. Granting this variance would not be granting a special privilege to this property owner since other properties are similarly situated and similar variances have been granted in the past. On this block of 16th Street, there are two existing duplexes constructed in 1971 with lots of 7,500 square feet. The applicant would like to re-finance the property and the financing agent is requiring assurance the property could be re-built if damaged. A lot area variance is required to ensure the re-build.

Planning staff has reviewed this application and are forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other property in the neighborhood.

RECOMMENDATION

The Planning Division is forwarding a recommendation of Conditional Approval for Variance #1223.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

Attachment A Zoning Map



Attachment B
Site Photos



Subject Property



Subject Property across Howard

Attachment B Continued
Site Photos



Looking North on 16th st.



Looking South on 16th st.

Attachment C
Applicant Letter

Jonathan Porta
1603 Howard Ave.
Billings, MT 59102

Chairperson of the Board of Adjustment
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

February 1st, 2016

Re: 304 16th St. W - Lot size variance request

Dear Chairperson:

A lot size variance is being sought for the multifamily property located at 304 16th St. W.

The property has two dwellings, and, as such, does not conform to the current zoning of Residential 7000 due to the lot size. Residential 7000 requires a lot size of 9600 sq. ft. or greater for a property with two dwellings. The lot upon which 304 16th St W is built is 8059 sq. ft., which is 1541 sq. ft. too small under Residential 7000.

Currently, the property is being used as two dwelling units. There are no plans to modify the property, or to change its use in anyway.

Due to the current non-conforming status of the property, the owner, Reagan Lefdahl Geffre, is unable to sell the property. Lenders refuse to lend money on a property that may not be rebuildable if a loss were to occur.

The inability to sell the property is creating a financial hardship on the owner. The requested lot size variance is to allow the owner to enjoy the same rights to transfer or sell their property as is commonly enjoyed by other property owners within the district.

Thank you for your consideration of this variance request.

Sincerely,



Jonathan Porta
Agent



Attachment E

DETERMINATIONS

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

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

There are no special conditions or circumstances with the land that create a hardship. In this situation, the structure was built prior to the current zoning requirements on a lot that is smaller than what is required by current zoning.

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

The subject property is in a subdivision that began developing many years ago and over the years many changes and additions have happened that may or may not meet current code. Denying the variance would 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 not allow the applicant any special privileges. Similar variances have been granted in the area and other properties are developed with smaller lot area without the benefit of a zoning variance.

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

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

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

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 8,059 square feet in a R-70 zone for an existing duplex. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 3, Block 1 of Parker-Ellis Subdivision generally located at 304 16th Street West.
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. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

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

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

The granting of this variance would not allow a use that is not already allowed in the zoning district – R-70 zoning allows 2 dwelling units on a single lot.



City Board of Adjustment

Meeting Date: 03/02/2016

SUBJECT: Variance 1224 - Silver Creek Estates Intersections - Clear Vision

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Variance #1224 – Clear Vision at Intersections – Silver Creek Estates – A variance from Section 27-615 requiring a prescribed clear vision at street intersections and from Section 27-604 prescribing a maximum fence height in a clear vision zone to allow an AASHTO specific clear vision zone at the intersections of Gold Creek Trail and 50th St West; Elk Ridge Trail and 46th St West; and Silver Creek Trail and 46th St West in a Residential 9,600 (R-96) zone on Lots 1 and 36, Block 1; Lots 1 and 20, Block 2; and Lots 1 and 27, Block 5 of Silver Creek Estates. Tax IDs: A35826, A35861, A35884, A 35927, and A35953. Presented by Nicole Cromwell, AICP, Zoning Coordinator

RECOMMENDATION

The Planning Staff recommends conditional approval of the proposed variances.

APPLICATION DATA

OWNER: Boyer Properties, LLC - Laura Boyer

AGENT: KLJ - Gordon Bean, P.E.

LEGAL DESCRIPTION: Lots 1 & 36, Block 1; Lots 1 & 20, Block 2; Lots 1 & 27, Block 5 of Silver Creek Estates

ADDRESS: Intersections of 46th St West and Silver Creek Trail and Elk Ridge Trail; Intersection of 50th St West and Gold Creek Trail

CURRENT ZONING: R-96

EXISTING LAND USE: Vacant subdivision lots

PROPOSED USE: Same with perimeter subdivision fencing

SIZE OF PARCEL: 62.68 acres - entire subdivision area

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

The Silver Creek Subdivision received a zone change for 3 of the large interior lots from R-96 to R-70 in 2015. The subdivision has not requested variances of record.

Rimrock West subdivisions to the east has been granted several building height variances and 1 fence height variance. Cottonwood Grove Subdivision to the southwest has been granted a clear vision variance for a lot located at 5421 Summerstone Street. The lot is located on an interior street corner. A building permit review error allowed a portion of the attached 3-car garage to be within the clear vision area for the intersection of Summerstone Street and Archstone Street. The staff recommended denial and the Board approved the variance without conditions. Mont Vista Subdivision to the west, applied for an engineering review of its clear vision area for the intersection of Mont Vista Drive and 54th St West and for the intersection of Rimrock Road and 54th St West. These intersections are allowed to present an engineering study and have clear vision areas determined administratively by the City

Engineering due to the designated speed limit on 54th St West. The Board approved a clear vision variance in 2015 for 2244 Fairview Drive for a replacement fence that would stay in an alley clear vision area and a driveway clear vision area. Conversely, the Board denied a clear vision variance for 2107 Colton Boulevard for a property line fence in the clear vision area for a neighbor's driveway. In 2006, the Board approved a clear vision variance for new construction at 1565 Park Place at the intersection of Park Place and N 16th Street.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-96 Land Use: Vacant Subdivision lots
SOUTH:	Zoning: R-96 Land Use: Single family residence
EAST:	Zoning: R-96 Land Use: Single family dwellings
WEST:	Zoning: R-96 Land Use: Vacant Subdivision lots

BACKGROUND

The applicant is requesting clear vision variances for three new intersections for the Silver Creek Estates Subdivision. There are two intersections on 46th St West, a designated collector street, and one intersection on 50th St West, a designated local street. The clear vision requirements for each of these stop controlled intersections is 10 feet along the intersecting street and 75 feet along the collector street at the property lines, or 55 feet along the local street at the property lines. The code requires measurement along the property lines and not along the back of a sidewalk for street intersections so future expansion of the street for additional lanes will not create clear vision issues with existing structures, fences, or landscaping.

There is one exception in the code where the property line is more than 20 feet from the back of the major street line to adjust the clear vision area to a local street clear vision area - or 10 feet by 55 feet rather than 10 feet by 75 feet. The current construction of 46th St West, the collector street, does not require a center turn lane so the curb line is more than 20 feet from the property line. This allows the application of a stop-controlled local street clear vision area. The applicant is proposing to provide a 25 foot by 25 foot clear vision area for all three street intersections.

In 2009, the city proposed major revisions to the clear vision requirements in the zoning code. The revisions were proposed after a code-compliant but unsafe 6 foot wall was constructed on the south west corner of Virginia Lane and Rimrock Road. Prior to the code revisions, the clear vision area for all stop-controlled intersections was 25 feet by 25 feet. The wall constructed met the code requirements but because of the street alignments and the speed of the vehicles on Rimrock Road, the clear vision area was not large enough to provide safety for vehicles turning east or west onto Rimrock Road. The City Traffic Engineer, Terry Smith, prepared the re-draft of the clear vision requirements to ensure stop controlled and uncontrolled intersections were assigned standard engineering clear vision areas for most configurations. The code was drafted to allow for some administrative variations for clear vision areas where the streets were not perfectly aligned, where streets had significant curves close to intersections, or where speed limits were posted over 45 mph.

KLJ (Kadmas, Lee & Jackson) Engineers prepared an engineering study for the City Traffic Engineer for the intersection of 46th St West and Silver Creek Trail and Elk Ridge Trail. The City Engineer has accepted this engineering study as sufficient for both intersections and has no concerns with the proposed 25 foot by 25 foot clear vision areas for these intersections. The current and anticipated volume of traffic on 46th St West would not warrant the existing 10 foot by 55 foot clear vision area. The proposed 25 foot by 25 foot clear vision area is also outside the engineering analysis for a safe clear vision zone based on the future expansion of the collector street.

The companion variance request is to allow a fence taller than 4 feet in a "front yard" of the two corner lots at each of these intersections. Each of the 6 lots subject to the variance request have front yards along the intersecting streets - Silver Creek Trail, Elk Ridge Trail and Gold Creek Trail. The fence regulations at 27-604 allow a maximum fence height of 4 feet in any front yard setback. The front yard setback is 20 feet from the front property line. A portion of the fence at the intersection will be over 4 feet. The applicant states in its letter to the Board the intention to insert a transition panel along the diagonal portion of each fence to go from 6 feet to 4 feet but some of

this fencing will be over the maximum of 4 feet in some area of the required front yard setback.

The Planning Staff has reviewed the requested variance and is recommending conditional approval based on the review criteria for variances. There is no hardship with the land that will prevent the applicant from using the property in conformance with the clear vision requirements or the maximum fence height in front yards. However, most of the adjacent lots in Rimrock West Estates to the east and River Rock Estates to the south have fences that could not be approved under the 2009 code revisions for clear vision areas. Some fences on corner lots in Rimrock West Estates also were constructed in apparent violation of pre-2009 clear vision requirements for driveways. The Board has approved several clear vision variance requests, in particular those variances that have no objection from the City Traffic Engineer or staff. Denying this variance would deny this applicant rights commonly enjoyed by others in the area and similar variances have been conditionally approved in the past. The proposed 25 foot by 25 foot clear vision areas will provide a more regular perimeter fence construction that still will protect traffic and pedestrian safety at these intersections.

The Planning Division recommends the following conditions of approval:

1. The variance approved is from 27-615(b) to allow a clear vision of 25 feet by 25 feet as measured at the property lines and as shown on the site plan and a variance from 27-604(c) to allow a fence over 4 feet in height in the front yard setback as shown on the site plan.
2. The variance is limited to Lots 1 & 36, Block 1; Lots 1 & 20, Block 2; and Lots 1 & 27, Block 5 of Silver Creek Estates Subdivision.
3. Construction of the fence at the corner lots will be done with site specific fence permits for each lot. Such permit shall be accompanied by an individual site plan and elevation drawing of the proposed fence.
4. Fence permits for the corner lots on 46th St West will be submitted within 30 days of Board approval and the construction completed within 3 months.
5. Fence permits for the corner lots on 50th St West will be submitted within 3 years of Board approval and the construction completed with 3.5 years of Board approval.
6. No construction on any fence will occur between 8 pm and 7 am daily.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

RECOMMENDATION

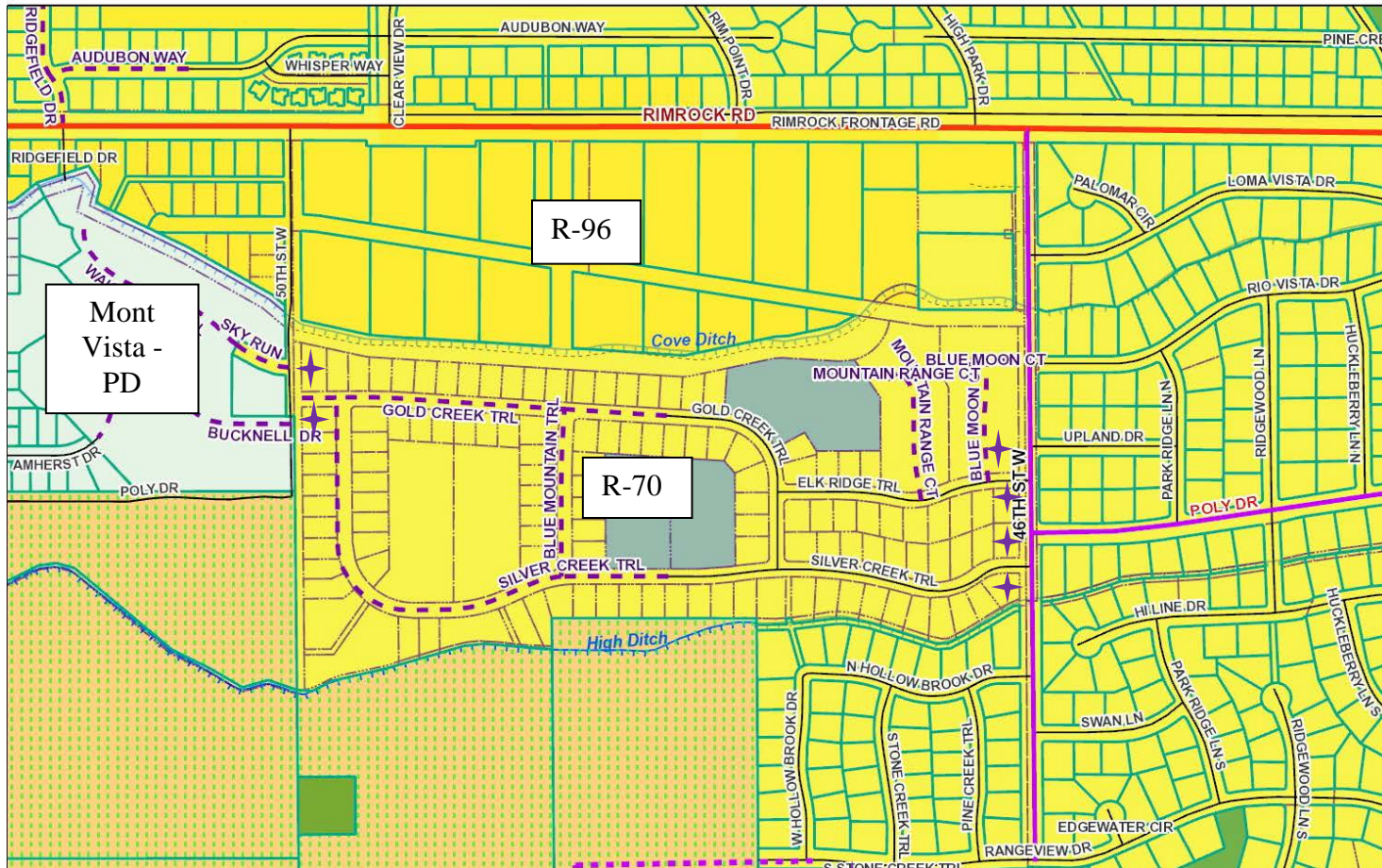
Staff recommends conditional approval and adoption of the findings of review criteria for Variance 1224.

Attachments

Zoning Map and Site Photos
Site Plans and Applicant Letter
Review Criteria Determinations

Surrounding Zoning
Variance 1224 - Silver Creek Estates

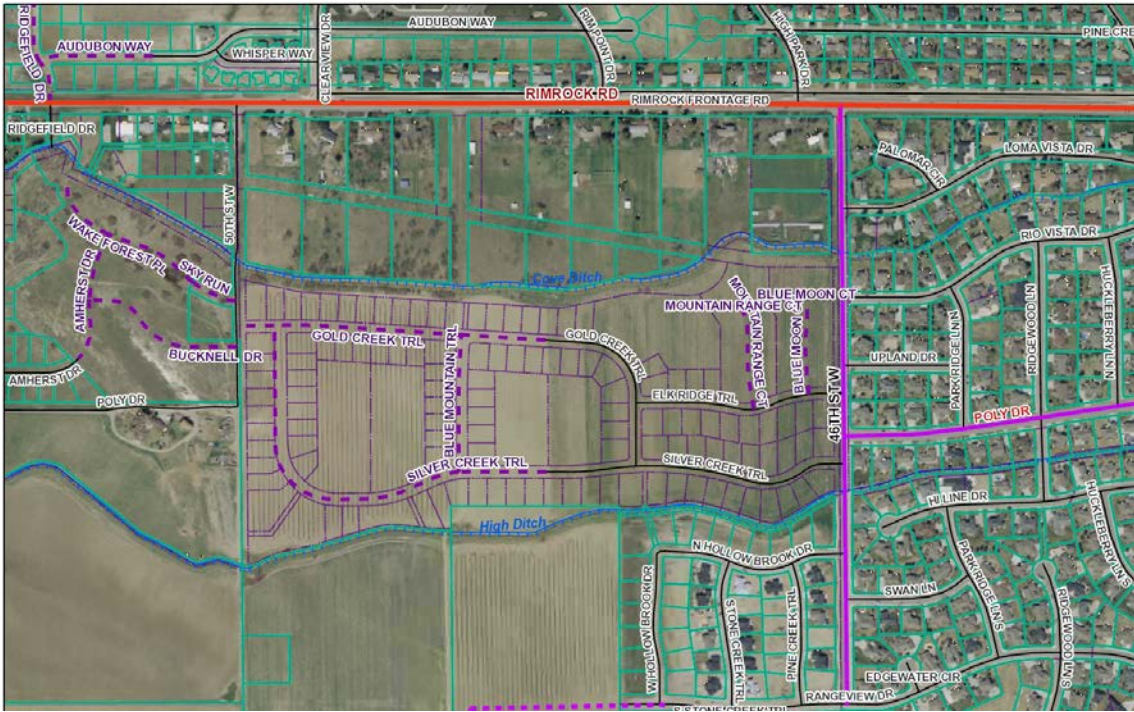
Silver Creek Estates



Subject Properties



Site Photos
Silver Creek Estates



Lots at the corner of 46th St West and Silver Creek Trail (Lot 1, Block 1 and Lot 1, Block 2)



South west corner of 46th St West & Silver Creek Trail (Lot 1, Block 1)



North west corner of 46th St West and Elk Ridge Trail (Lot 1 Block 5)



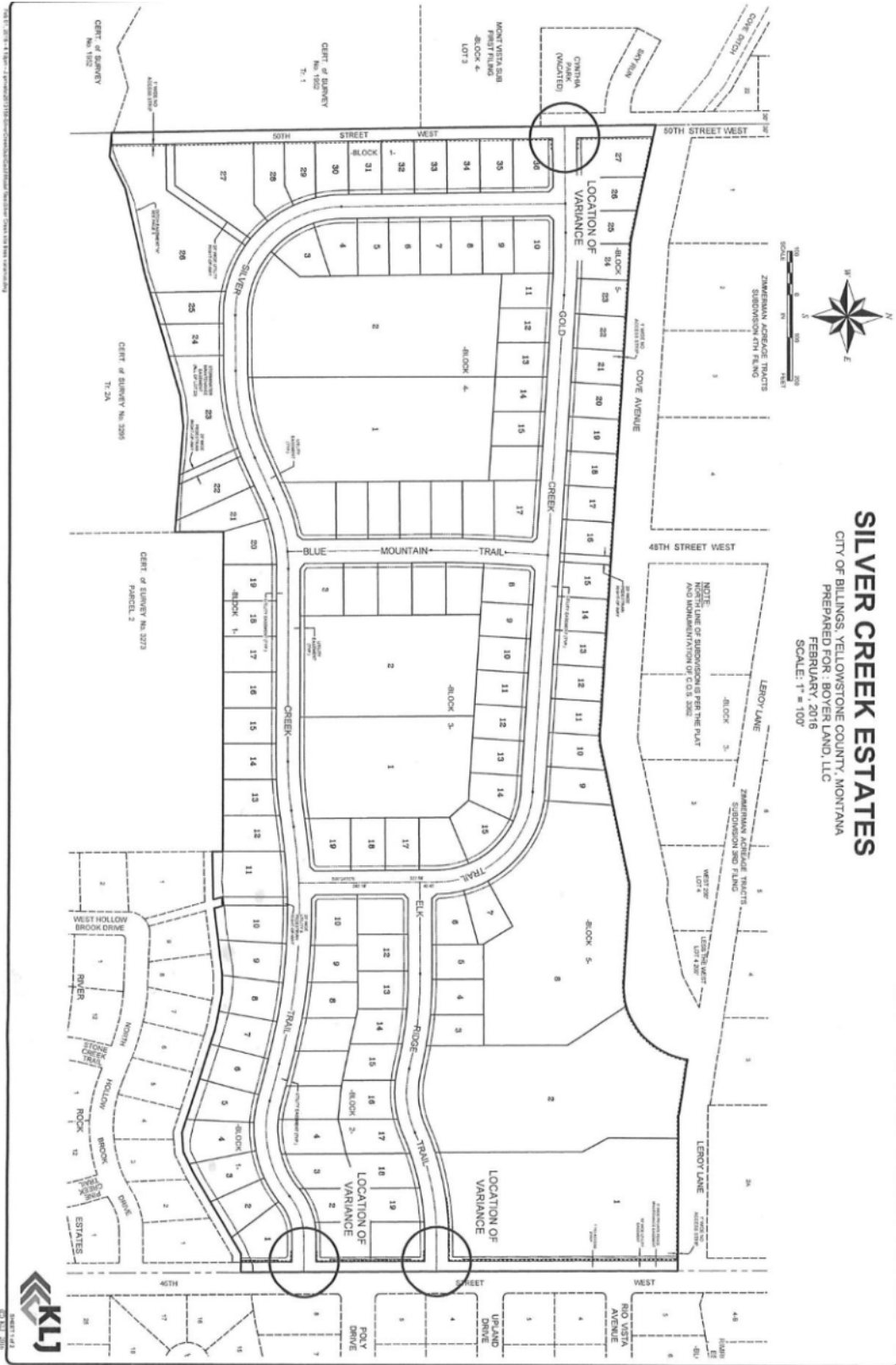
Greater than 20 feet

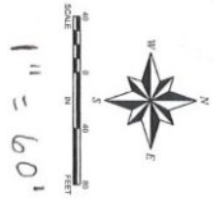
View south on 46th St West at Elk Ridge Trail intersection



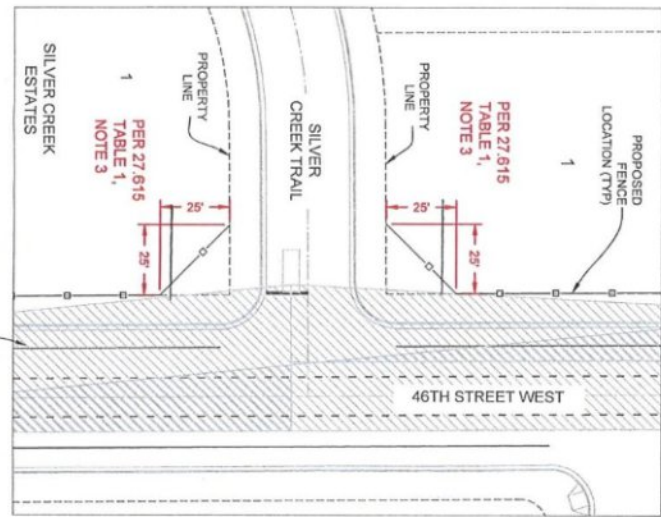
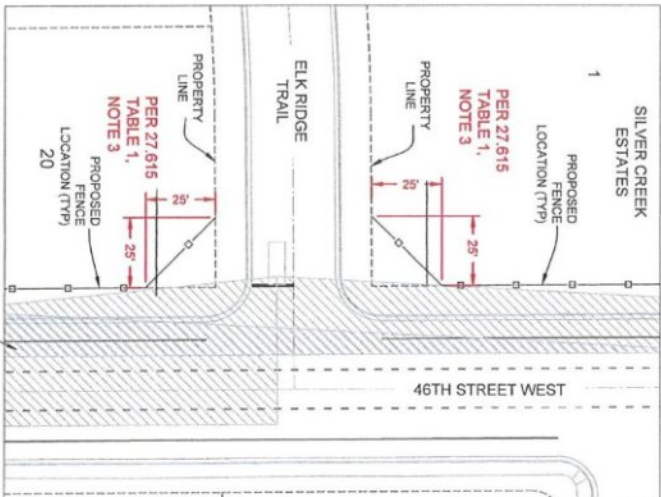
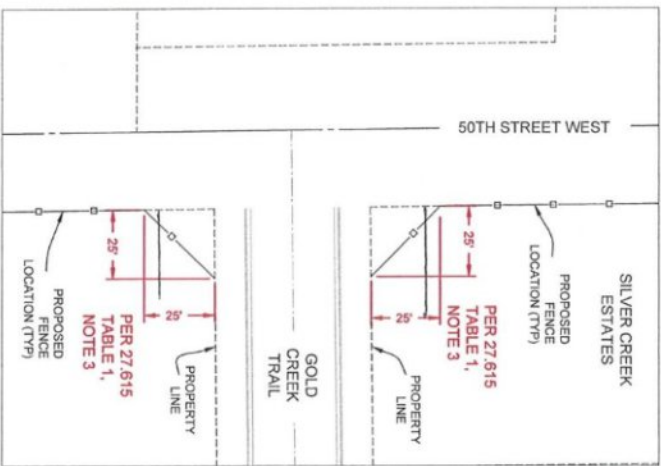
View north on 46th St West from Silver Creek Trail intersection

Application and Site Plans
 Variance 1224 – Silver Creek Estates





SILVER CREEK ESTATES
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
 PREPARED FOR : BOYER LAND, LLC
 FEBRUARY, 2016
 SCALE: 1" = 100'



City of Billings

VARIANCE APPLICATION

Supplemental Information
Silver Creek Estates
Clear Vision Triangle and Front Yard Fence Height

January 29, 2016

Chairperson, Billings Board of Adjustment
C/O Planning & Community Services
2825 3rd Ave North 4th Floor
Billings MT 59101

RE: Variance Requests Silver Creek Estates.

Specific Variances Requested:

1. §27-615 Visibility At Intersections.
Table - 1 Minor Street Stop, entering a Local Street: - 10' x 55' along property lines.
2. §27-604 Fences, Walls and Hedges.
(c) Fence height, front yard 4 feet; and
(d) Fence height, clear vision zone.

Answers to Questions:

§27-615:

- 1A. We believe that our alternate design of the clear vision triangle (25' x 25') provides adequate sight distances given the posted speed limits along 46th and 50th Streets. Design calculations are attached as part of this application.
- 1B. Our modified design increases the amount of lot area required for the clear vision area from 275 square feet to 312.5 square feet. It also provides a cleaner residential lot line for maintenance and upkeep.

§27-604:

- 1A. The fence height in the front yard setback is 4 feet and we would like to have a transition panel from 6 to 4 feet similar to what exists in the neighborhood.
- 1B. This transition panel will provide additional headlight screening and back yard privacy on each of the corner lots in our subdivision.
2. The use of the property is for the residential platted subdivision Silver Creek Estates. All uses within the subdivision are to be consistent with the prevailing zoning with the further restrictions in the Covenants, Conditions and Restrictions imposed by the developer.

Analysis of Request

Standard:

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;

Response:

The intent of the regulations, to provide clear vision areas that allow for unobstructed views when entering the traffic flow, can be met with an alternative design that is much more aesthetically that the standard established by the code.

The proposed clear vision area 25' x 25' provides more than the minimum AASHTO sight distance to oncoming traffic for the 35 mph posted limit on 46th and 50th Streets West.

Other lands in the neighborhood have applied alternate designs to the clear vision areas our proposal to modify the shape of the clear vision area and provide for a transition panel with heights from 4 feet to 6 feet outside of the front yard setback is in keeping with prior decisions by the City of Billings. Pictures of fencing at intersections in the neighborhood.

Standard:

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;

Response:

As identified in #1 above there are a number of examples of approaches to compliance with the clear vision area requirements in the neighborhood surrounding Silver Creek Estates. All the developer is requesting is to substitute an alternative design for their project that does not sacrifice public safety.

Standard:

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;

Response:

All uses on the lots within the Silver Creek Estates Subdivision will be consistent with the prevailing zoning of the City of Billings. In addition, the developer has voluntarily prepared and recorded Covenants, Conditions and Restrictions that further limit the uses and potentially objectionable activities on all lots within the development.

Standard:

4. That granting the variance will be in general harmony with the general purpose and intent of this chapter and with the comprehensive plan;

Response:

The general purpose for all zoning standards is to promote the general health, welfare and safety of residents of the jurisdiction. Where an alternative design can be proposed

that accomplishes these goals while not having a detrimental impact based on nationally adopted standards, the developer submits that the purpose of the zoning and the comprehensive plan have been complied with.

The desire to have a unique entrance to our development is not inconsistent with other developments in the neighborhood. We submit that allowing for minor modifications in design while providing compliance with adopted street design standards makes for a more interesting neighborhood.

Standard:

5. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformance 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;

Response:

The developer understands that a petition for variance may result in the imposition of conditions to assure compliance with the purpose and intent of the zoning regulations. The developer will comply with any reasonable conditions imposed by the Board of Adjustment.

Standard:

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

Response:

The developer understands the desire of the board to see action on the part of an applicant and will work with all due diligence to complete the fencing of the clear vision areas according to our preferred design. In no case should the project require more than 18 months from the date of approval.

Standard:

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.

Response:

The request DOES NOT create a use in the district that is not contemplated by the prevailing zoning. Similarly, the request does not create a special privilege to this owner as there are numerous examples of providing visibility at intersections in the area of our development.

Our strongest statement supporting our request is that our design is fully AASHTO compliant. As such, the board is not conferring any privilege but allowing for flexibility in acceptable design that complies with the purpose and intent of the zoning regulations.

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 not any special circumstances existing on this property that would create a hardship that is peculiar to this land. The applicant could use the property in conformance with the adopted regulations.

- 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 are several subdivisions and properties within the area that have either received variances from the clear vision requirements or have perimeter fences with similar setbacks for clear vision. Construction of a perimeter fence in conformance with the adopted regulations (10 feet by 55 feet) would deprive this property owner of rights commonly enjoyed by other property in the same district. There are several fences constructed in adjacent subdivision that appear to be out of compliance with the clear vision requirements, but no record of a variance is on file.

- 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. Other properties in the area appear to have fences within the established clear vision areas for driveways or street intersections. The applicant has prepared and submitted a site specific engineering study for the proposed clear vision areas. The study has been accepted by the City Traffic Engineer.

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

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

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

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

1. The variance approved is from 27-615(b) to allow a clear vision of 25 feet by 25 feet as measured at the property lines and as shown on the site plan and a variance from 27-604(c) to allow a fence over 4 feet in height in the front yard setback as shown on the site plan.
2. The variance is limited to Lots 1 & 36, Block 1; Lots 1 & 20, Block 2; and Lots 1 & 27, Block 5 of Silver Creek Estates Subdivision.
3. Construction of the fence at the corner lots will be done with site specific fence permits for each lot. Such permit shall be accompanied by an individual site plan and elevation drawing of the proposed fence.

4. Fence permits for the corner lots on 46th St West will be submitted within 30 days of Board approval and the construction completed within 3 months.
5. Fence permits for the corner lots on 50th St West will be submitted within 3 years of Board approval and the construction completed with 3.5 years of Board approval.
6. No construction on any fence will occur between 8 pm and 7 am daily.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The applicant will obtain a fence permit for the 4 corner lots on 46th St West within 30 days of approval and complete these fence sections within 3 months. The lots on 50th Street West are due in a later phase of the subdivision. Staff is proposing a 3 year time limit for fence permits and a 3.5 year time limit for completion for these 2 lots.

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.