



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, April 6, 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

Approval of Minutes:

The minutes of the Board meeting of March 2, 2016.

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
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:

Variance 1225 – 1048 N 23rd St – Lot Area – A variance from Section 27-308 requiring a minimum lot area of 20,000 square feet for 2 four-plexes (8 dwelling units) in a Residential Multi-family-Restricted (RMF-R) zoning district on the North 100 feet of Lot 1, Block 8, Sunnyside Subdivision, 2nd Filings to allow a minimum lot area of 14,000 square feet for 1 existing four-plex and 1 proposed four-plex and to allow the creation of two 7,000 square foot lots. Tax ID: A16392. Presented by Karen Husman, Planner I.

Public Hearings:

Other Business/Announcements

Election of officers for the 2016 Board year.

Adjournment

Information on the preceding item(s) may be obtained at the City-County Planning Division, 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 Assistant, at 247-8676 or e-mail to bartleyr@ci.billings.mt.us

City Board of Adjustment

Meeting Date: 04/06/2016

Information

Subject

The minutes of the Board meeting of March 2, 2016.

Attachments

CityBOA_2016_03_02

CITY BOARD OF ADJUSTMENT

MINUTES: March 2, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Chairman	-	-	1									
James Olson	Board member	-	-	1									
Paul Hagen	Board member	-	-	1									
Frank Chesarek	Board member	-	-	1									
Oscar Heinrich	Board member	-	-	1									
Martin Connell	Board member	-	-	1									
Mark Noennig	Board member	-	-	1									

TOTAL NUMBER OF APPLICATIONS 2016	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/03/16	09/07/16	10/05/16	11/02/16	12/07/16	TOTAL
Variance	0	0	2										

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.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I; Robbin Bartley, Administrative Support; and Tammy Deines, Planning Clerk.

Attending: Jonathan Porta 1603 Howard Ave Billings, MT 59102, Reagan Geffre 2048 Phoebe Drive Billings, MT 59105, Gordon Bean 1216 Custer Billings, MT 59101

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 Meeting Minutes

The approval of the October 7, 2015 meeting minutes had been delayed. Board member Olson made a motion for the approval of October 7, 2015 and November 4, 2015 minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous vote 7-0.

Disclosure of Conflict of Interest

Chairman Bollman asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		x	
James Olson		x	
Paul Hagen		x	
Frank Chesarek		x	
Oscar Heinrich		x	
Martin Connell		x	
Mark Noennig		x	

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		x		
James Olson		x	#1223-yes	
Paul Hagen		x	#1223-yes	
Frank Chesarek		x		
Oscar Heinrich		x	#1223 & #1224-yes	
Martin Connell		x		
Mark Noennig		x		

Staff received the following communications: None

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

Nicole Cromwell reviewed the application for Variance request #1223 and Karen Husman presented the Board with the staff report for this request.

Item #1. Variance 1223 – 304 16th St 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.

RECOMMENDATION

Staff recommends conditional approval of the variance. Staff is recommending the following;

1. The variance from Section 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 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.

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 #1223.

Jonathan Porta, 1603 Howard Ave, Billings, MT 59102

Mr. Porta currently lives at 304 16th Street West and is requesting the Variance for financing purposes. He has no other plans for the dwelling at this time.

At 6:13 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Chesarek made a motion and Board member Olson seconded the motion to conditionally approve City Variance #1223 with the conditions and Findings of Fact presented by Staff.

Discussion

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

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

The motion passed 7-0. City Variance #1223 is conditionally approved.

Chairman Bollman asked for the presentation of Variance # 1224. Nicole Cromwell presenting.

Item #2 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.

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 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.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Board member Noennig asked where the 6 foot or 4 foot fences are. Nicole explained the transitional areas where the fence would angle from 6 foot to 4 foot.

Public Hearing

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1224.

Gordon Bean, 1216 Custer Ave Billings, MT

Mr. Bean of KLJ is an agent for the owner Laura Boyer, Developer.

The reason for asking for this variance is the developer realized this fencing was going to look different than the development to the south. The developer wished the job to look intentional. The transition panels look nice and we wish to imitate them. Board member Noennig stated it appears the 25 x 25 is a better deal. Why are you changing it? Mr. Bean stated the long taper isn't appealing to the eye and does not match other existing fences.

At 6:30 p.m. Chairman Bollman closed the public hearing, and called for a motion.

Motion

Board member Cheserek made a motion and Board member Connell seconded the motion to conditionally approve City Variance #1224 with the conditions and Findings of Fact presented by Staff.

Discussion

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

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

The motion passed 7-0. City Variance #1224 is conditionally approved.

Other Business/Announcements:

- Mr. Oscar Heinrich was introduced and talked about his previous credentials with the YC Zoning Board, YC Board of Adjustment and working with the Shiloh and West End Master Plans.
- Election of officers for the 2016 Board year is delayed and is to be put on the April agenda.

Board member Olson made a motion to adjourn and Board member Connell seconded.

Adjournment: 6:34p.m.

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

Jeff Bollman, Chairman

Robbin Bartley, Administrative Support



City Board of Adjustment

Meeting Date: 04/06/2016

SUBJECT: City Variance #1225- 1048 North 23rd Street

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Karen Husman

Information

REQUEST

Variance 1225 – 1048 N 23rd St – Lot Area – A variance from Section 27-308 requiring a minimum lot area of 20,000 square feet for 2 four-plexes (8 dwelling units) in a Residential Multi-family-Restricted (RMF-R) zoning district on the North 100 feet of Lot 1, Block 8, Sunnyside Subdivision, 2nd Filings to allow a minimum lot area of 14,000 square feet for 1 existing four-plex and 1 proposed four-plex and to allow the creation of two 7,000 square foot lots. Tax ID: A16392. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning Staff is recommending conditional approval.

APPLICATION DATA

OWNERS: Mark Wright
AGENT: Territorial Landworks, Inc., Jordan Ornquist
PURPOSE: To reduce the minimum required lot size from 10,000 square feet for an existing 4-plex dwelling to allow 7,000 square feet, and creation of a second 7,000 sf lot for a proposed 4-plex.
LEGAL DESCRIPTION: North 100 feet of Lot 1, Block 8, Sunnyside Subdivision, 2nd Filing
ADDRESS: 1048 North 23rd Street
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: RMFR:

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Records show there have been 21 variance requests in this subdivision. The variance requests have been for lot coverage, setbacks, increase in non-conforming use and multiple dwelling units on small lots. Three of the 21 variances were denied and they included change in non-conforming uses, decrease in parking, and a lot area variance for a duplex.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Residential
SOUTH: Zoning: R-70
Land Use: Residential
EAST: Zoning: R-70
Land Use: Residential Multi-Family & Single Family
WEST: Zoning: R-70

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 20,000 square feet for 2 four-plexes (8 dwelling units) in a Residential Multi-family-Restricted (RMF-R) zoning district on the North 100 feet of Lot 1, Block 8, Sunnyside Subdivision, 2nd Filing to allow a minimum lot area of 14,000 square feet for 1 existing four-plex and 1 proposed four-plex, and to allow the creation of two 7,000 square foot lots. According to the County information available, the existing structure that contains the four-plex was built in 1936.

This is an older neighborhood in Billings and there are several properties in the area that have more than one dwelling unit on them. There have been variances that have been granted in the area for three-plexes and five-plexes on smaller lots than what is allowed by current zoning. There are other properties in the neighborhood that have multiple dwelling units on smaller lots. Some properties have obtained variances in this subdivision while others have not. The existing 14,000 square foot lot would allow two additional units to be added to the existing structure to make a maximum of six units in one six-plex on the property. Because of the age of the existing building, there would be significant upgrading required to bring it to current building code requirements and site development requirements in order to add additional units.

The applicant would like to subdivide the property into two lots. One of the lots would be undeveloped and the other would contain the existing four-plex. The applicant is proposing construction of another four-plex on the newly created 7,000 square foot lot for a total of 8 units on two lots. The applicant would need a variance for the existing four-plex on one of the lots and an variance to build a new four-plex on one of the lots.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance for the existing four-plex on a 7,000 square foot lot (proposed lot 1B). Staff is not recommending a variance for allowing a new four-plex on the proposed lot 1A as there is no existing structure that creates a hardship under the criteria. Other variances in the neighborhood have been for existing multi-family structures. The new vacant lot would be in conformance with the zoning regulations as a 7,000 square foot parcel of land and would allow two dwelling units by right. There are other lots in the neighborhood that have this same allowance under zoning. Allowing the variance as proposed by staff would allow for 6 dwelling units total on the two parcels.

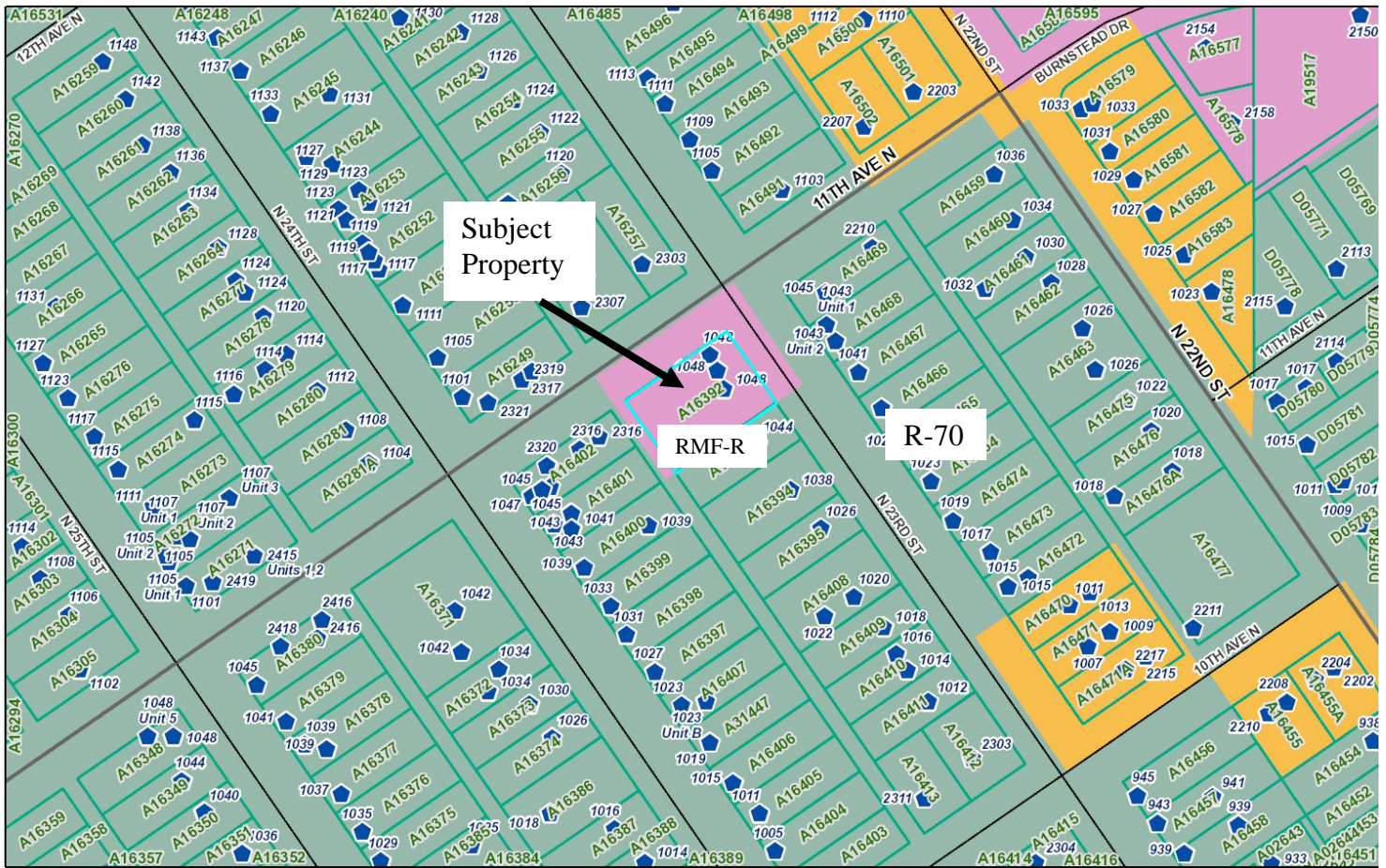
RECOMMENDATION

Planning Staff is recommending conditional approval of Variance #1225 based on the determinations for granting a variance.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

ATTACHMENT A
Surrounding Zoning & Site Location





ATTACHMENT A
Site Photographs



Subject Property



ATTACHMENT A
Site Photographs, Continued

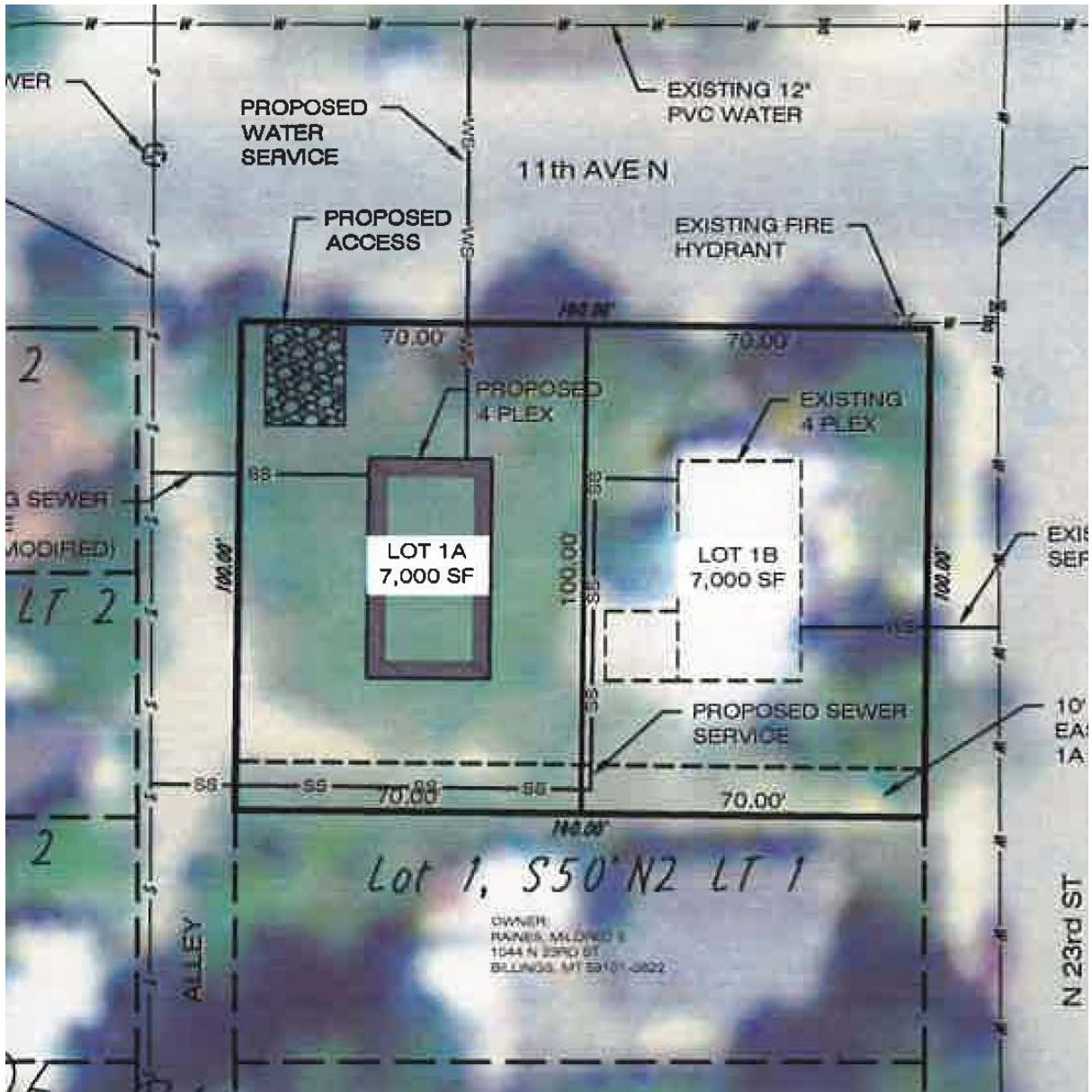


North East of subject property along 23rd St.



South west of subject property

Attachment B
Site Plan



Attachment B
Application and Applicant Letter

APPLICATION FORM

CITY VARIANCE ID: Billings Variance # 1225 Project# PZ-16-023

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

TAX ID # A16392 CITY ELECTION WARD # I

Legal Description of Property: Lot 1, Blk 8 Sunnyside Subd 2nd Filing

Address or General Location (If unknown, contact City Engineering): 1048 N. 23rd St Billings
MT 59101

Zoning Classification: RMF-R

Size of Parcel (Area & Dimensions): 14,000 sq ft +

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance(s) Requested: Separate existing Framerplex into own legal and establish separate Framerplex lot on remaining ground.

Facts of Hardship: Shortage of affordable housing in area, many examples of grandfathers' subdivisions with more units in area on less sq lot square footage

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

Owner(s): Mark A. Wright
(Recorded Owner)
P.O. Box 123, Billings MT 59103-0123
(Address)
406-598-2725 markwright12@gmail.com
(Phone Number) (email)

Agent(s): Terrestrial Sandwiches, Inc
(Name)
3333 2nd ave N suite 100, Billings MT 59101
(Address)
406-721-0142
(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: Mark A. Wright Date: 11/23/15
(Recorded Owner)



February 17, 2016

City Board of Adjustment
Planning Division
2825 3rd Ave. North, 4th Floor
Billings, MT 59101

RE: Request for Variance
Block 8, Lot1, N100 FT LT 1 of Sunnyside Subdivision 2nd Filing, Located in Section 32, T1N, R26E,
Yellowstone County, MT.

Dear Chairperson:

Mark Wright owns the property at 1048 N 23rd St. in Billings. He intends to subdivide the property into two lots. One of the proposed lots is currently undeveloped. The other proposed lot would contain an existing 4-plex. The empty lot would be developed with a 4-plex similar to the existing one.

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

This lot is zoned residential multi-family restricted (RMF-R). Zoning regulation requirements specify a minimum lot size of 10,000 square feet for four attached units per CCBM Sec. 27-308. The proposed lot sizes are 7,000 square feet each.

The property is in an area that has improvements that appear to be nonconforming to permissible lot size, coverage, and zoning designation. Please refer to the attached photo exhibits for examples. The proposed development would be consistent with the neighborhoods appearance and characteristics.

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

The intended development serves to increase desirable affordable housing.

Thank you for consideration of our request.

Sincerely,
Territorial-Landworks, Inc.

Jordan Ornnquist, E.I.

Enclosures: Preliminary Plat (includes site plan)
Site Photos Exhibit

C. File and Scan (w/ enclosures)

\\TLI-MSL-FILE1\Tli work\1_ACTIVE FILES\2015 Projects\3923 - Mark Wright 23rd St. Subdivision\4_PLANNING\Variance Application\tr.2016-02-10.BOA.Variance Request.doc
Wednesday, February 17, 2016, 9:08 AM



3333 2nd Ave North Suite 100 | Billings, Montana 59101
406/248-9000 phone | 406/721-5224 fax
www.TerritorialLandworks.com

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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. The existing 4-plex structure is currently in conformance with lot size restrictions for RMF-R zoning districts. The property owner could add up to 2 additional units attached to the existing four-plex without a variance or lot split. However, remodeling the existing four-plex to add two new units would trigger extensive upgrades to the existing structure to meet building code as well as current site development requirements. There also have been variances that have been granted in the area for three-plexes and five-plexes on smaller lots than what is allowed 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. There have been variances that have been granted in the area for three-plexes and five-plexes on smaller lots than what is allowed by current zoning. There are other properties in the neighborhood that have multiple dwelling units on smaller lots. Some properties have obtained variances in this subdivision while others have not. Therefore, allowing the applicant a variance for an existing four-plex on a 7,000 square foot lot does not deprive the applicant of rights commonly enjoyed by other properties in the same district.

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

Granting this variance for the existing four-plex on a 7,000 square foot lot would not confer a privilege to this applicant that others in the subdivision do not have. There are many small lots in this subdivision that have existing multi-family buildings on them. But granting a variance for a newly created 7,000 square foot parcel that has not existing building on it, would confer on the applicant a special privilege.

- 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 for the existing four-plex 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 for the existing four-plex:

1. The variance from 27-308 requiring a minimum lot area of 10,000 square feet for 4 dwelling units to allow 7,000 square feet. No other variance is intended or implied with this approval.

2. The variance is limited to the proposed lot 1B, Block 8, Sunnyside Subdivision, 2nd Filing generally located at 1048 North 23rd Street.
3. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The requested variance is to ensure the future opportunity to rebuild one 4-plex on a 7,000 square foot lot. 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 – RMF-R zoning allows four-plexes.