



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, May 4, 2016, 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> 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 April 6, 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**  
**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 1226 – 123 S 27<sup>th</sup> St – RiversStone Health – Land Use Contrary to Zoning** – A request to conduct a hearing to receive public comment on a proposed expansion of the RiverStone Health Clinic on Lots 1-8, Block 163, Billings Original Town and the south ½ of the vacated 2<sup>nd</sup> Ave South, in the South 27<sup>th</sup> Street Corridor zone. The proposed expansion will not meet the setback requirements, buffer yard requirements, and some of the landscaping requirements in the S 27<sup>th</sup> Street Corridor zone. The City Board of Adjustment has no power to approve, deny, or attached conditions to the proposed use. State law (**MCA 76-2-402**) requires a forum before the Board of Adjustment to receive public comment. Presented by Nicole Cromwell, Zoning Coordinator
  
- b. **Variance 1227 – 2307 11<sup>th</sup> Ave North – Lot Area** – A variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 duplex dwellings, in a Residential 7,000 (R-70) zone, on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing to allow a minimum lot area of 13,500 square feet. Tax ID: A16258. Presented by Karen Husman, Planner I.
  
- c. **Variance 1228 – 811 N 23<sup>rd</sup> St – Lot Area** – A variance request from 27-308 requiring a minimum lot area of 13,000 square feet for 1 existing duplex and 1 existing single family residence in a Residential 6,000 (R-60) zone, on Lots 19 & 20, Block 289, Billings Original Town, to allow a minimum lot area of 7,000 square feet for the three existing dwelling units. Tax ID: A02110. Presented by Karen Husman, Planner I.

## **Other Business/Announcements**

## **Adjournment**

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> 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](mailto:bartleyr@ci.billings.mt.us)



**City Board of Adjustment**

**Meeting Date:** 05/04/2016

**SUBJECT:**

**PRESENTED BY:** Robbin Bartley

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**Information**

**REQUEST**

The minutes of the Board meeting of April 6, 2016

**RECOMMENDATION**

**APPLICATION DATA**

OWNER:  
AGENT:  
LEGAL DESCRIPTION:  
ADDRESS:  
CURRENT ZONING:  
EXISTING LAND USE:  
PROPOSED USE:  
SIZE OF PARCEL:

**SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: Land Use:
SOUTH:	Zoning: Land Use:
EAST:	Zoning: Land Use:
WEST:	Zoning: Land Use:

**BACKGROUND**

**RECOMMENDATION**

Staff recommends

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**Attachments**

CityBOA\_2016\_04\_06

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**CITY BOARD OF ADJUSTMENT**

MINUTES: April 6, 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	E								
James Olson	Board member	-	-	1	1								
Paul Hagen	Board member	-	-	1	1								
Frank Chesarek	Board member	-	-	1	1								
Oscar Heinrich	Board member	-	-	1	1								
Martin Connell	Board member	-	-	1	1								
Mark Noennig	Board member	-	-	1	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
<b>Variance</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>									<b>3</b>

Board member Noennig, Chairman pro tem, 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 3<sup>rd</sup> 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; and Robbin Bartley, Administrative Support.

Attending: Kolten Knatterud and Mark Wright

**Public Comment**

Mark Noennig, Chairman pro tem, opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none. Chairman pro tem Noennig closed the public comment period.

**Approval Meeting Minutes**

Board member Connell made a motion for the approval of March 2, 2016, minutes. Board member Heinrich seconded the motion. Minutes were approved by unanimous voice vote 6-0.

**Disclosure of Conflict of Interest**

Chairman pro tem Noennig, asked for disclosures of conflict of interest.

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

**Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members or visit the site and this should be communicated to the Board members in a public forum.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman				<b>x</b>
James Olson		<b>x</b>		
Paul Hagen		<b>x</b>	yes	
Frank Chesarek		<b>x</b>		
Oscar Heinrich		<b>x</b>	yes	
Martin Connell		<b>x</b>	yes	
Mark Noennig		<b>x</b>		

**Public Hearings**

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearings 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.

Nicole Cromwell read the legal description for **Variance request #1225** and Karen Husman presented the Board with the staff report for this request.

**Variance 1225 – 1048 N 23<sup>rd</sup> 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, 2<sup>nd</sup> 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

**RECOMMENDATION**

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.

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, 2<sup>nd</sup> Filing generally located at 1048 North 23<sup>rd</sup> 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.

### **Discussion**

Chairman pro tem Noennig asked the members of the Board for questions and discussion.

Board member Chesarek asked why a variance is needed. Ms. Husman replied in order to add on to the existing 4 plex, all current codes would have to be brought to current standards. The existing building was built in 1936. Also off street parking for 6 units would be required. No off-street parking spaces are currently provided. If the lot is split a new structure can be built on the second "vacant" lot.

Board member Heinrich asked what is staff recommending. Ms. Husman explained the recommendation is to allow the variance to split the lot but not to allow an additional 4-plex be built on the new "vacant" lot.

Board member Heinrich clarifies that Lot B is being created, reducing the existing lot size from 14,000 square feet to 7,000 square feet for the existing 4-plex and allows the other Lot B to build a duplex.

### **Public Hearing**

Chairman pro tem Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1225**.

### **Mark Wright, owner**

Mr. Wright stated he is the owner and wishes to fulfill the renter's needs in the area.

Board member Olson asked what you will do if request is not granted to build a new a 4-plex. Board member Connell expressed concerns regarding parking on the street. Mr. Wright explains his parking plan stating that parking will be provided on the property for the new 4-plex. Board member Connell inquires as to how many parking spaces are being added. Mr. Wright stated 4 spots are being added.

Chairman pro tem Noennig asked what you would rather do - leave it the same or except the recommendation. Mr. Wright replied he would accept a triplex or duplex conditional approval.

Board member Chesarek asked why he is splitting the property. Ms. Cromwell reminded the board they can grant less than the request but not more. Board member Olson asked if the Board voted against the recommendation, what findings would have to be made. Ms. Cromwell replied the board would need to use the criteria given and make a different finding.

**Kolten Knatterud, 3333 2<sup>nd</sup> Ave N Suite 100, agent**

Mr. Knatterud stated the applicant is comfortable with the proposal for the new 4-plex because of other properties in the area. A 4-plex becomes a commercial building, so additional site development requirements would apply. A duplex is a residential review and does not incur storm water requirements

Board member Chesarek asked about existing 6-plexes, 2 duplexes, 4-plexes and another duplex all on 7000 foot lots in the close proximity.

Board member Olson then inquired about the applicant’s rent structure.

One Ex parte letter was written by a neighbor and is in the notebook. The property owner to the south expressed concerns about parking and traffic as well as noise.

At 6:27 p.m. Chairman pro tem Noennig, chairman pro tem, closed the public hearing, and called for a motion.

Board members chose to have a discussion before the motion.

Board member Heinrich asked for clarification about how many variances were applied for in this situation. He is confused about the recommendation and then not recommending the requested variance for a new 4-plex. Ms. Husman clarified the recommendation to split the lot and not recommend the approval of a 4-plex on the new lot.

**Discussion, happened before the motion**

Chairman pro tem Noennig called for a motion. Board members Connell, Heinrich, and Noennig asked Ms. Husman and Ms. Cromwell to explain the hardships involved. Board member Olson is concerned about changing the neighborhood. He also expressed concerns about parking.

**Motion**

Board member Heinrich made a motion and Board member Hagen seconded the motion to conditionally approve **City Variance #1225** with the conditions and Findings of Fact presented by Staff.

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

**The motion passed 4-2. City Variance #1225 is conditionally approved.**

**Other Business/Announcements:**

There is a meeting next month. There are 2 variances and 1 land use contrary to zoning.

Election of officers for the 2016.

Board member Olson made a motion to elect Jeff Bollman for Chairman. Board Member Heinrich seconded the motion.

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

Board member Marty Connell made a motion to elect Mark Noennig for Chairman. Board member Frank Chesarek seconded the motion.

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

Board member Noennig was elected Chairman with a 5-1 vote.

Board member Marty Connell nominated Board member Chesarek as Vice Chairman. Board member Noenning seconded.

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

Board member Chesarek was elected Vice Chairman with a roll call vote, 6-0.

Adjournment: 6:44 p.m.

**ATTEST: DRAFT. To be approved by a motion on May 4, 2016**

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**Robbin Bartley, Administrative Support I**

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**Mark Noenning, Chair pro tem**



## City Board of Adjustment

**Meeting Date:** 05/04/2016

**SUBJECT:** Variance 1226 - 123 S 27th St - Land Use Contrary to Zoning

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Variance 1226 – 123 S 27th St – RiversStone Health – Land Use Contrary to Zoning** – A request to conduct a hearing to receive public comment on a proposed expansion of the RiverStone Health Clinic on Lots 1-8, Block 163, Billings Original Town and the south ½ of the vacated 2nd Ave South, in the South 27th Street Corridor zone. The proposed expansion will not meet the setback requirements, buffer yard requirements, and some of the landscaping requirements in the S 27th Street Corridor zone. The City Board of Adjustment has no power to approve, deny, or attached conditions to the proposed use. State law (**MCA 76-2-402**) requires a forum before the Board of Adjustment to receive public comment. Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

Staff recommends the Board of Adjustment hold the public hearing and receive public comment.

#### APPLICATION DATA

OWNER: Yellowstone Health Partnership, Shelli Ritz

AGENT: CTA, Dayton Rush

LEGAL DESCRIPTION: Block 163, Lots 1-18, Billings Original Town, and a portion of the vacated 2nd Avenue South

ADDRESS: 123 South 27th Street

CURRENT ZONING: South 27th Street Corridor

EXISTING LAND USE: Parking Lot

PROPOSED USE: Expansion of RiverStone Health Clinic and new parking lots

SIZE OF PARCEL: 4.3 acres

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

##### Subject Property

The subject property, Block 163, Lots 1-18, Billings Original Town was changed from RMF-R to the South 27th St Corridor zoning in November, 1983. The northern half of the RiverStone Health Campus, Block 141 and 142, was placed in the Central Business District (CBD) zone in February, 1982.

##### Surrounding Property

Land Use Contrary to Zoning public hearings have been conducted in the area of the subject property for the Montana Women's Prison in 2011 to allow a taller fence and expansion of the outdoor facilities to the east of the building.

## **SURROUNDING LAND USE & ZONING**

NORTH: Zoning: CBD  
Land Use: Existing RiverStone Health Clinic

SOUTH: Zoning: S 27th Street Corridor  
Land Use: Residential and commercial uses

EAST: Zoning: S 27th Street Corridor  
Land Use: Single family and multi-family dwellings

WEST: Zoning: S 27th Street Corridor  
Land Use: Meadow Gold Dairy, Northern Plains Resource Council & multi-family dwelling

## **BACKGROUND**

Yellowstone Health Partnership intends to expand the RiverStone Health Clinic to the south of the existing building along the existing building setback. The proposed expansion will be in the South 27th St Corridor zone. This zone has requirements for setbacks, landscaping and bufferyards not currently required for the existing clinic and parking areas north of the vacated portion of 2nd Avenue South that lie in the CBD zone. The building will be setback 8 feet from the property line along S 27th Street to match the existing building. The S 27th St Corridor zone requires a minimum building setback of 20 feet from the front property line. In addition, arterial setbacks requirements apply in the S 27th St Corridor zone and this also requires a minimum 20-foot front setback from S 27th Street.

This is a request to use public land for public purposes contrary to zoning. State statute allows public agencies to use land contrary to zoning after a public hearing is held by the local Board of Adjustment. As illustrated in MCA 76-2-402(2), the Board shall have no power to deny the proposed use but shall act only to allow a public hearing for comment on the proposed use.

The submitted site plan shows the proposed building and new parking areas along with the proposed landscaping. The development will be similar to the existing building and landscaped grounds. The applicant has made an effort to conform to the intent of the S 27th St Corridor zoning requirements.

## **RECOMMENDATION**

Staff recommends the Board of Adjustment hold the public hearing and allow public comment.

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### **Attachments**

Zoning Map and Site Photos  
Site Plan

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Variance 1226 – Land Use Contrary to Zoning  
Zoning Map and Site Photos

123 S 27th St



123 S 27th St





Subject Property



View north on S 27<sup>th</sup> Street

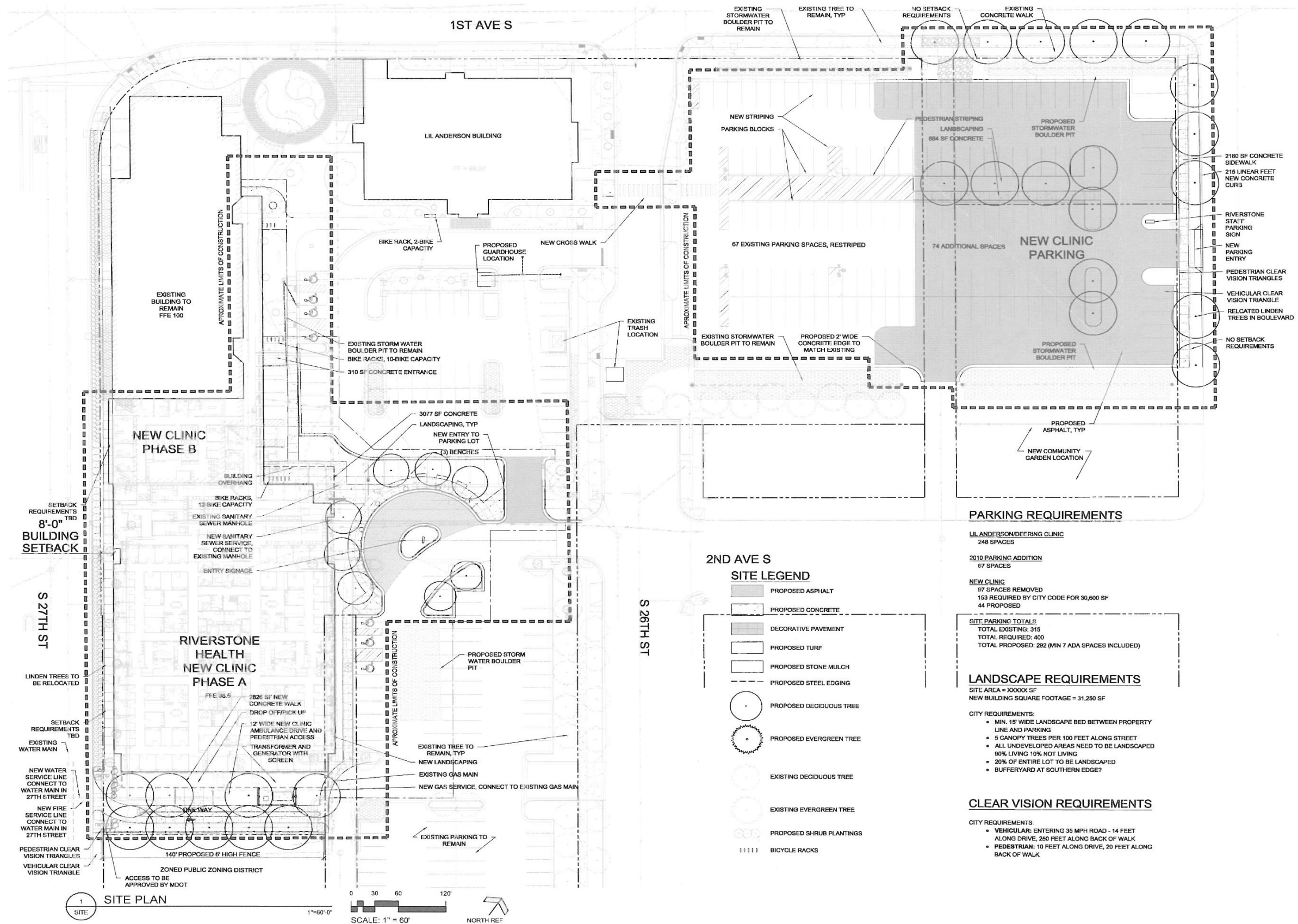


View south on S 27<sup>th</sup> Street



View north west across S 27<sup>th</sup> Street

# Variance 1226 – Land Use Contrary to Zoning Site Plan



### 2ND AVE S SITE LEGEND

- PROPOSED ASPHALT
- PROPOSED CONCRETE
- DECORATIVE PAVEMENT
- PROPOSED TURF
- PROPOSED STONE MULCH
- PROPOSED STEEL EDGING
- PROPOSED DECIDUOUS TREE
- PROPOSED EVERGREEN TREE
- EXISTING DECIDUOUS TREE
- EXISTING EVERGREEN TREE
- PROPOSED SHRUB PLANTINGS
- BICYCLE RACKS

### PARKING REQUIREMENTS

**LIL ANDERSON/DEFERRING CLINIC**  
248 SPACES

**2010 PARKING ADDITION**  
67 SPACES

**NEW CLINIC**  
67 SPACES REMOVED  
153 REQUIRED BY CITY CODE FOR 30,600 SF  
44 PROPOSED

**SITE PARKING TOTALS**  
TOTAL EXISTING: 315  
TOTAL REQUIRED: 400  
TOTAL PROPOSED: 292 (MIN 7 ADA SPACES INCLUDED)

### LANDSCAPE REQUIREMENTS

SITE AREA = XXXXX SF  
NEW BUILDING SQUARE FOOTAGE = 31,250 SF

**CITY REQUIREMENTS:**

- MIN. 15' WIDE LANDSCAPE BED BETWEEN PROPERTY LINE AND PARKING
- 5 CANOPY TREES PER 100 FEET ALONG STREET
- ALL UNDEVELOPED AREAS NEED TO BE LANDSCAPED 80% LIVING 10% NOT LIVING
- 20% OF ENTIRE LOT TO BE LANDSCAPED
- BUFFERYARD AT SOUTHERN EDGE?

### CLEAR VISION REQUIREMENTS

**CITY REQUIREMENTS:**

- VEHICULAR: ENTERING 35 MPH ROAD - 14 FEET ALONG DRIVE, 250 FEET ALONG BACK OF WALK
- PEDESTRIAN: 10 FEET ALONG DRIVE, 20 FEET ALONG BACK OF WALK

**1 SITE PLAN**

SCALE: 1" = 60'

NORTH REF



## City Board of Adjustment

**Meeting Date:** 05/04/2016

**SUBJECT:** City Variance #1227 - 2307 11th Avenue North

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1227 – 2307 11th Ave North – Lot Area** – A variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 duplex dwellings, in a Residential 7,000 (R-70) zone, on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing to allow a minimum lot area of 13,500 square feet. Tax ID: A16258. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Planning Staff is recommending denial.

#### APPLICATION DATA

**OWNERS:** Propriedad LLC

**AGENT:** Travis McDowell

**PURPOSE:** To reduce the minimum required lot size from 19,200 square feet for 2 duplex dwellings to allow 13,500 square feet.

**LEGAL DESCRIPTION:** West 90 feet of Lot 4, Block 1, Sunnyside Subdivision, 1st Filing

**ADDRESS:** 2307 11th Avenue North

**EXISTING LAND USE:** Residential

**PROPOSED LAND USE:** Residential

**EXISTING ZONING:** Residential-7000 (R-70)

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

Records show there have been 22 variance requests in this subdivision. The variance requests have been for lot coverage, setbacks, increase in non-conforming use, and multiple dwelling units on a small lot. Three of the 22 variances were denied and they included change in non-conforming use, decrease in parking, and a lot area variance for a duplex. Most recently, Variance #1225 was conditionally approved for an existing four-plex on a 7,000 square foot lot, but denied for a new four-plex on a 7,000 square foot lot.

#### 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  
Land Use: Residential Multi-Family

## **BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for two duplex dwellings (four dwelling units), in a Residential 7,000 (R-70) zone, on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing to allow a minimum lot area of 13,500 square feet.

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 duplexes, tri-plexes, four-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 in multiple structures on smaller lots. Some properties have obtained variances while others have not. The applicant would like to demolish the existing single family house that has extensive fire damage, and construct two new duplex structures.

Planning staff has reviewed this application and is forwarding a recommendation of denial for the variance to allow two new duplex dwellings on the property, as there is no existing structures that create a hardship under the criteria for granting a variance. Other variances in the neighborhood have been for existing multi-family structures. The vacant lot would be in conformance with the zoning regulations as a 13,500 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.

## **RECOMMENDATION**

Planning Staff is recommending denial of City Variance #1227 based on the criteria for variances.

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### **Attachments**

Zoning Map & Site photos  
Applicant Letter & Site Plan  
Determinations

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# Attachment A

## Site Photos



**Attachment A**



**Attachment A**



Attachment A



**Attachment B**

**Application**



**APPLICATION FORM**

ID: Billings Variance # 1227 - Project # PZ-16-00051

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings Zoning Regulations.

TAX ID # A16250 CITY ELECTION WARD # 1

Legal Description of Property: Block 1, Lot 4, Sunny side Subdivision, 1st Filing

Address or General Location (If unknown, contact City Engineering): 2307 11th Avenue North

Zoning Classification: R7000

Size of Parcel (Area & Dimensions): 150'0" x 90'0", 13,500 s.f.

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance(s) Requested: Allow construction of 2-duplexes on a lot that doesn't the minimum lot area required per R7000 zoning

Facts of Hardship: In R7000 zoning, each duplex requires a minimum of 9,600 sq ft on lot area. The lot is only 13,500 sq ft, so we need the variance in order to construct 2-duplexes.

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

Owner(s): Proprieted LLC  
(Recorded Owner) P.O. Box 20853 Billings, MT 59104  
(Address) 406-208-7691 rmorehead@bigsky.net  
(Phone Number) (email)

Agent(s): Travis McDowell  
(Name) 2029 Forest Park Drive Billings, MT 59102  
(Address) 697-2173 travced@msn.com  
(Phone Number) (email)

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

Signature: [Signature] Date: 4-4-16  
(Recorded Owner)

## Attachment B

### Applicant Letter



Dear Chairperson of the Board of Adjustment,

The existing house that is on this property is in poor condition and needs to be demolished. We request a variance that would allow us to rebuild two duplexes in its place. The duplexes will be within the maximum lot coverage allowed in this zoning district and all setback requirements will be adhered to. Preliminary plans and exterior elevations for the proposed duplexes have been included. Additionally these duplexes will provide 13 off street parking spaces (4 within garages) that are greatly needed in this area. We feel that these duplexes would be an asset to the neighborhood and would fit in well with the existing neighborhood.

Sincerely,

Travis McDowell

A handwritten signature in black ink, appearing to read "Travis McDowell", written in a cursive style.

# Attachment B

## Site Plan

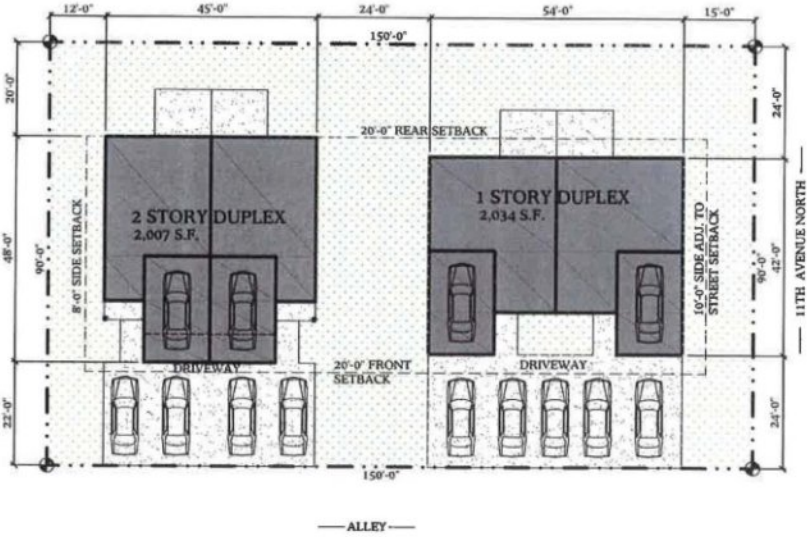
**LEGAL DESCRIPTION**  
 2307 11th AVENUE NORTH  
 BLOCK 1, LOT 4 W90 FT S2 LT 4  
 SUNNYSIDE SUBDIVISION, 1ST FILING  
 13,500 s.f.

**CONSTRUCTION TYPE - VB**  
**OCCUPANCY CLASSIFICATION - R-3**

**PARKING :**  
 1.5 SPACES PER 2 BED UNIT  
 4 UNITS x 1.5 = 6 spaces required  
**PARKING PROVIDED:**  
 Garage Parking = 4 spaces  
 Driveway Parking = 9 spaces  
**Total Parking = 13 spaces provided**

**LOT COVERAGE**  
 ZONING = R7000  
 MAX LOT COVERAGE = 30%  
**MAX COVERAGE**  
 13,500 x .30 = 4,050 s.f.  
**ACTUAL COVERAGE**  
 DUPLEXES = 4,041 S.F. = 29.9%

Conc. driveway = 2,466 s.f.  
 Conc. patios = 480 s.f.  
 Buildings = 4,041 s.f.  
 Total Impervious Surface = 6,987 s.f. (52%)  
 Landscaping / Grass = 6,513 s.f. (48%)



**SITE PLAN**  
 1" = 20'-0"



## Attachment C

### 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 there is no existing nonconforming structure. The property owner could add two dwelling units by right to the property if the existing single family dwelling were removed.

- 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 duplexes, three-plexes, four-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.

A literal interpretation of the regulations might deprive the applicant of rights commonly enjoyed by other property in the same district in situations where non-conforming existing development exists. However, variances that have been approved have been focused on existing structures and not variances for situations where a lot is vacant and subject to new construction. In cases of new construction, the hardship for making a variance request is absent.

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

Granting this variance would not confer a privilege to this applicant that others in the subdivision do not have. There are many small lots in this subdivision that have multi-family buildings on them. However, variances that have been approved have been focused on existing structures and not variances for situations where a lot is vacant and subject to new construction. In cases of new construction, the hardship for making a variance request is absent.

- 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 the growth policy. However, the zoning regulations general purpose is guiding the future development of land. In this case, the parcel is being completely redeveloped and the zoning guides the new development to conform to lot size restrictions.

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

Staff is recommending denial of the variance. However, if the Board chooses to approve the variance, Staff is recommending the following conditions for the variance request:

## Attachment C

1. The variance request from 27-308 requiring a minimum lot area of 19,200 square feet for 2 duplex dwellings, in a Residential 7,000 (R-70) zone, to allow a minimum lot area of 13,500 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing, 2307 11th Avenue North.
3. The site plan submitted is not approved with this variance, the site plan must meet all review criteria and be approved with the Master Site Plan review.
4. Prior to building permit submittal, an application for Master Site Plan Review must be submitted to the City Planning Division.
5. An application for each of the two duplexes must be submitted to the City of Billings Building Division within one year of variance approval.
6. 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**

An application for each of the two duplexes must be submitted to the City of Billings Building Division within one year of 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 – Residential-7000 (duplexes are allowed in this district if the appropriate lot size is met).



## City Board of Adjustment

**Meeting Date:** 05/04/2016

**SUBJECT:** City Variance #1228 - 811 North 23rd Street

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1228 – 811 N 23rd St – Lot Area** – A variance request from 27-308 requiring a minimum lot area of 13,000 square feet for 1 existing duplex and 1 existing single family residence in a Residential 6,000 (R-60) zone, on Lots 19 & 20, Block 289, Billings Original Town, to allow a minimum lot area of 7,000 square feet for the three existing dwelling units. Tax ID: A02110. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Andrew Gutierrez  
**PURPOSE:** To reduce the minimum required lot size from 13,000 square feet for an existing duplex and an existing single family dwelling to allow 7,000 square feet for 3 dwelling units.  
**LEGAL DESCRIPTION:** Lots 19 & 20, Block 289, Billings Original Town  
**ADDRESS:** 811 North 23rd Street  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential  
**EXISTING ZONING:** Residential-6000 (R-60)

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

**Surrounding Property** – Records show there have been 22 variance requests in this subdivision. The variance requests have been for lot coverage, setbacks, increase in non-conforming use and multiple dwelling units on a small lot. Four of the 22 variances were denied and they included change in non-conforming use, decrease in parking, a lot area variance for a duplex, and a lot area variance for a four-plex.

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: R-60  
Land Use: Residential single family  
**SOUTH:** Zoning: R-60  
Land Use: Residential Multi-Family  
**EAST:** Zoning: R-60  
Land Use: Residential Multi-Family & Single Family  
**WEST:** Zoning: Public  
Land Use: Fire Station #1 and 911 Center

## **BACKGROUND**

The applicant is requesting a variance from 27-308 requesting a variance from 27-308 requiring a minimum lot area of 13,000 square feet for one duplex and one single family residence, in a Residential 6,000 (R-60) zone, on Lots 19 & 20, Block 289, Billings Original Town, to allow a minimum lot area of 7,000 square feet for three existing dwelling units. 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 duplex, three-plexes, four-plex 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 while others have not.

The existing 7,000 square foot lot allows two dwelling units under the zoning. According to the County information available, the existing structures were constructed in 1920 and 1945. The County records available also indicate two single family dwellings are on the property. The applicant would like a variance for three dwelling units including a single family dwelling and a duplex. The applicant is claiming that the duplex second dwelling unit was a basement apartment that had extensive flood damage. The basement had been gutted and replacement and reconstruction of the apartment unit had been started. However, in order to finish the reconstruction, the applicant will need the lot size variance to completely restore the unit as a duplex and meet building codes.

Staff has heard from one property owner who was opposed to the variance. The adjacent property owner has concerns about the additional unit, stating she has lived in the neighborhood for 60 years. During the time she has been living there, she claims the front house was brought in from another location and was not a duplex when it was placed on the property and had not been used as one. Staff's research on the property back to 1990, found no evidence that the front dwelling had been placed on the property. Staff also did not find any past evidence it had been used as a duplex.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for a variance to allow a duplex and a single family dwelling based on the determinations for granting a variance. Other variances in the neighborhood have been for existing multi-family structures. There are other lots in the neighborhood that have this same allowance under zoning.

## **RECOMMENDATION**

Planning Staff is recommending conditional approval of Variance #1228 based on the determinations for granting a variance.

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### **Attachments**

Zoning Map & Site Photos  
Applicant Letter  
Determinations

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**ATTACHMENT A**  
Site Photographs



Subject Property



ATTACHMENT A  
Site Photographs, Continued



of subject property

**Attachment A**



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**Andrew Gutierrez**

811 North St  
Billings, MT 59101  
(406)855-7565

21st April 2016

Planning Division  
2825 3rd Ave North-4th floor  
Billings, MT 59101

To whom it may concern,

I am seeking a lot size variance for 811 North 23rd st Billings, Mt 59101. To restore it to its original state, and allow for 1 duplex and 1 single family residence. There are currently two houses on the lot one of them was originally built for a duplex having egress windows,plumbing, and its own entrance. It received massive water damage in the basement resulting in it having to be gutted out.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Gutierrez', with a stylized flourish at the end.

**Andrew Gutierrez**

## Attachment C

### 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 structures appear to have been built prior to the zoning restrictions in place.

- 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 existing duplex, three-plexes, four-plex 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 while others have not. Therefore, allowing the applicant a variance for an existing duplex and single family dwelling on a 7,000 square foot lot gives the applicant 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 a duplex and single family dwelling 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.

- 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 13,000 square feet to allow a minimum of 7,000 square feet for three existing dwelling units. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 19 & 20, Block 289, Billings Original Town.
3. Any future construction or re-construction of the existing structures will require compliance with all other zoning regulations and City ordinances that apply at the time of construction or re-construction.
4. The applicant must submit for a building permit to complete the renovations of the basement dwelling unit for the duplex within 6 months of this variance approval and must bring the basement unit of the duplex to meet current codes.

## Attachment C

5. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The requested variance is to ensure the future opportunity to rebuild one duplex and a single family dwelling on a 7,000 square foot lot. The applicant must submit for a building permit to complete the renovations of the basement duplex within 6 months of this variance approval.

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

The granting of this variance would not allow a use that is not already allowed in the zoning district – Residential -6000 zoning allows duplexes and single family dwellings.