



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, June 1, 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 May 4, 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 1229 – 1430 Country Manor Blvd – Side adjacent to Street** – A variance from Section 27-309 requiring a side adjacent to street setback of 10 feet to allow a minimum side adjacent to street setback of 5 feet for the construction of an outdoor patio pergola on Lot 3, Block 1, Circle Fifty Subdivision, a 21,505 square foot parcel of land in a Community Commercial (CC) zone. The proposed pergola will provide shade on an existing 464 square foot patio on the east end of the multi-tenant building. Tax ID: A26426. Presented by Nicole Cromwell, Zoning Coordinator

- b. **Variance 1230- 211 Fair Park Drive** - The applicant is requesting a variance request from 27-308 requiring a minimum front setback of 20 feet to allow a minimum setback of 19 feet; and from Section 27-310(g) requiring a maximum projection of 4 feet in a front setback to allow a maximum projection of 8 feet for the addition of a new entryway and new front stoop in a Residential 7,000 (R-70) zone, on Lot 29, Block 3 of Central Heights Subdivision, 1st Filing, an 8,360 square foot parcel of land. Tax ID: A04497. Presented by Karen Husman, Planner I.

- c. **Variance 1231- Setback variance**– A variance request from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet, in a Residential Multi-family-Restricted (RMF-R) zone, on Lots 39 & 40, Block 12, Suburban Subdivision, a 7,000 square feet parcel of land. The proposed variance is to allow the owner to finish the construction of a partially completed structure. Tax ID: A15964. 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, 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: 06/01/2016

Information

Subject

The minutes of the Board meeting of May 4, 2016.

Attachments

CityBOA_2016_05_04

CITY BOARD OF ADJUSTMENT

MINUTES May 4, 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	Board member	-	-	1	E	1							
James Olson	Board member	-	-	1	1	E							
Paul Hagen	Board member	-	-	1	1	1							
Frank Chesarek	Vice Chairman	-	-	1	1	1							
Oscar Heinrich	Board member	-	-	1	1	1							
Martin Connell	Board member	-	-	1	1	1							
Mark Noennig	Chairman	-	-	1	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
Variance	0	0	2	1	3								6

Chairman Noennig 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; and Robbin Bartley, Administrative Support.

Attending: Travis McDowell, Jane BlackEagle, Robert Leach, Jeff Ivie, Rob Morehead, Andrew Gutierrez, Lee Humphrey, Toni Humphrey

Public Comment

Chairman Mark Noennig 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 Noennig closed the public comment period.

Approval Meeting Minutes

Board member Connell made a motion for the approval of April 6, 2016 minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 6-0. 2 misspellings of Mr. Noennig’s name are to be corrected.

Disclosure of Conflict of Interest

Chairman Noennig 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 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		x	no	
James Olson				x
Paul Hagen		x	yes 2	
Frank Chesarek		x	no	
Oscar Heinrich		x	Yes 3	
Martin Connell		x	Yes 3	
Mark Noennig		x	no	

Nicole Cromwell notes, for the record, a communication received on Variance # 1226 has been forwarded to all board members. Karen Husman acknowledges 2 letters received regarding Variance # 1228 and forwarded to board members and a copy of each of these is in the ex parte notebook.

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 #1226**

Variance 1226 – 123 S 27th St – Riverstone 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 attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. Tax ID: A00949

RECOMMENDATION

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

Discussion

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

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1226**.

There were none.

Board Discussion- NONE

Karen Husman presented:

Variance 1227 – 2307 11th Ave North – Lot Area – A 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, on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing to allow a minimum lot area of 13,500 square feet. Tax ID: A16258

RECOMMENDATION

Staff recommends denial of the variance.

Discussion

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

Board member Heinrich asked regarding previously allowed variances being existing buildings. Staff confirmed this.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1227**.

Travis McDowell, 2029 Forest Park Drive, Billings

Mr. McDowell handed out of photo of adjacent properties. Also submitted was an overview of all adjacent properties in the area not in conformance. The owner needs to build 4 units to make the project financially feasible. All setbacks and lot coverages are met, everything except the lot size does not meet zoning requirements for 2 duplex units. They will be townhomes thereby available for leasing or buying.

Commission Heinrich asked staff for clarification on what is needed for the staff recommendation to be for approval. Staff replied a larger lot is needed, 19,200 square feet.

Vice Chairman Chesarek asked about the proposed changes to the original application. Were the changes made before or after? Mr. McDowell explained the changes were proposed during the process. The front and rear setbacks were adjusted because staff indicated access could not be from the alley side. However, the changes did not affect the staff recommendation.

Chairman Noennig inquired as to the specifics of “economically feasible” and Mr. McDowell deferred to the developer for answers.

Rob Morehead, 1014 N 32nd Street, owner

Mr. Morehead passed out handouts with overview of the lot size and proposed lay out. He is an engineer by training and so asked the Board members to look at the surrounding area. Across the alley is a four plex. Each unit is 1750 sq ft. and across the street is a multiplex, each unit is 2300 sq. ft. The proposed density is 3375 sq. ft. There is plenty of room per unit because it is such an oversized lot. The majority of units on this block fall in this category. If it is a multifamily unit more than likely it exceeds square footage. This is economic, to build quality we need to increase the density on the lot. He can build an inexpensive duplex or he can build a better structure if more density is allowed.

These rentals are licensed as individual townhomes and could be sold in the future. However, this is not the original intention.

Board member Hagen confirmed Mr. Morehead is the contractor building south of the Boulder School. Board member Connell asked what the hardship will be if the variance is not granted. He went on to explain the Board of Adjustment is mandated by State law to grant or deny variances based on the criteria. Mr. Morehead explained if he could not increase the density he would be forced to build structures of lesser quality.

Chairman Noennig asked what the value of the lot is. Mr. Morehead indicated he paid \$45,000.00 but there is demolition has to happen and many other expenses pertaining to the lot. Board member Heinrich asked how many units in the immediate area he would estimate to be in non-conformance to the zoning. Mr. Morehead had no information as he had not checked into it.

Mr. McDowell, as agent, replied 6 units.

Board member Heinrich asked if it would be considered a hardship.

Nicole explained hardship under criteria is physical hardship with the property and is not applicable to other properties in the district. The owner did not create the hardship.

Opposed

Jane Black Eagle 1101 North 24th, Billings

Ms. Black Eagle pointed her property location on the map. She described many parking issues in the area and feels more density will increase the problem. She also has concerns about overuse of the alley stating there are more broken windows and traffic.

Vice Chairman Chesarek asked if she had seen the presented drawing and did the proposal look as if it addressed the parking issue. She replied if it were followed, yes, it is an improvement.

Robert Leach, 2240 Green Forest Drive, Billings

Mr. Leach agrees with the described parking issues. Additionally, the alley is narrow and sloped, heavy rain brings wash outs frequently and there is not much room to even accommodate more garbage receptacles. He does not believe higher density benefits the neighborhood. He also contends Mr. Morehead knew the zoning of the lot when he purchased it and there is no hardship in his opinion.

Rebuttal

Mr. McDowell explained they will be required to pave the alley and install storm drainage by city engineering and stated the alley is a standard 20 feet wide. Board member Bollman asked if the proposed garages would be rented out separately as is the practice in the area. The garages are attached and will have a door into the dwelling and would not be rented separately.

Discussion

Board member Connell discussed the parameters of decisions made by the BOA, we need to be able to prove hardship. Board member Hagen agrees with Board member Connell criteria must be followed has to go with the Staff recommendation. Nicole Cromwell reminded the board they cannot grant a request greater then applied for but can grant less. A triplex is not allowed in an R-7000 but a duplex is allowed and a single family dwelling.

Chairman Noennig talked about spot zoning. Nicole said it is possible the surrounding properties with variances for more density also had no hardship. Board member Bollman made argument condition #1 and #2 are sometimes hard to reconcile. The surrounding properties have higher density. Chairman Noennig, asked for an explanation of balancing and discretion of the criteria. Board member Bollman replied regarding existing conditions. Board member Heinrich pointed out the staff provided alternative at the end of the report. Chairman Noennig explained possibly a hardship need not be the only criteria for granting or denying.

Chairman Noennig called for a motion.

Motion

Vice Chairman Chesarek made a motion and Board member Bollman seconded the motion to conditionally approve **City Variance #1227** with the conditions and Findings of Fact presented by Staff. An amendment to duplex and a single family dwelling has been added.

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 4-2. City Variance #1227 is conditionally approved.

Karen Husman presenting:

Variance #1228 – 811 N 23rd Street – Lot Area – a variance request from 27-308 requiring a minimum lot area of 13,000 square feet for 1 duplex and 1 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. Tax ID: A02110

RECOMMENDATION

Staff recommends conditional approval of the variance.

Discussion

Chairman Noennig asked the members of the Board for questions and discussion. Board member Connell asked staff if the variance was originated as a result being red tagged. Staff has no information on a red tag. Assumedly this is a result of doing renovations. Staff is aware the

applicant has received CDBG grant. Board member Connell asked where the entrance to the basement is. The applicant can elaborate on this. Board member Heinrich stated there is no record of 3 residences and 3 addresses on this lot, so there is no evidence of it being a legal duplex. Staff answered with explanation of the need to be updated and in compliance to current codes. Board member Bollman asked if the units in the duplex must be disconnected with no access to each other. Staff gave the definition of a duplex includes separate entrances and no access to each other. Nicole Cromwell explained the Department of Revenue does not assess downstairs dwelling units are below grade.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1228**.

Andrew Guterrez, 811 N 23rd Street, Billings

Mr. Guterrez explained the house/duplex was moved on site during the 1980’s. His grandmother lived upstairs and he and his mother lived below. Sometime after he acquired it the downstairs was flooded and had to be gutted. Upon applying for the permits to do the renovation he was informed of the zoning requirements. Mr. Guterrez pointed out the entrances for the 3 different dwellings. Staff asked if there is a connecting door in the duplex and Mr. Guterrez said there is and will be deleted. Chairman Noennig asked if he or anyone had been paying rent. Mr. Guterrez explained his mother paid rent to the grandmother.

Discussion

Board member Connell stated it is not a duplex. Board member Heinrich said it will be now. Chairman Noennig talked about it being a non-conforming duplex but if the downstairs occupants were paying rent to the upstairs occupant is a duplex. Board member Bollman and Nicole agreed the zoning has not changed from the 1980’s to present day. If the building had been moved a foundation permit would have included the basement improvements and there is no evidence either way. Board member Heinrich explained really then this is a cleaning up of the books. Chairman Noennig explained it had never been zoned for 3 units, only 2. Board member Connell voiced his appreciation for the applicant trying to do it right/legally and should not be denied.

Chairman Noennig called for a motion.

Motion

Board member Heinrich made a motion and Board member Connell seconded the motion to conditionally approve **City Variance #1228** with the conditions and Findings of Fact presented by Staff.

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 6-0. City Variance #1228 is conditionally approved.

Other Business/Announcements:

There will be a meeting on June 1, 2016.

Adjournment: 7:13 p.m.

ATTEST: DRAFT. To be approved by a motion on June 1, 2016

Robbin Bartley, Administrative Support I

Mark Noennig, Chairman



City Board of Adjustment

Meeting Date: 06/01/2016

SUBJECT: Variance 1229 - 1430 Country Manor Blvd - Front Setback

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Variance 1229 – 1430 Country Manor Blvd – Side adjacent to Street – A variance from Section 27-309 requiring a side adjacent to street setback of 10 feet to allow a minimum side adjacent to street setback of 5 feet for the construction of an outdoor patio pergola on Lot 3, Block 1, Circle Fifty Subdivision, a 21,505 square foot parcel of land in a Community Commercial (CC) zone. The proposed pergola will provide shade on an existing 464 square foot patio on the east end of the multi-tenant building. Tax ID: A26426. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning Staff is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1229.

APPLICATION DATA

OWNER: Dringale Family Partnership

AGENT: John Heenan

LEGAL DESCRIPTION: Circle Fifty Subdivision, Block 1, Lot 3

ADDRESS: 1430 Country Manor Boulevard

CURRENT ZONING: Community Commercial (CC)

EXISTING LAND USE: Multi-tenant retail building - Local Kitchen & Bar - tenant for application

PROPOSED USE: Pergola cover for existing outdoor patio

SIZE OF PARCEL: 21,505 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

The subject property is zoned CC and has been in this zone since its annexation to the city in April 1984. There are no variances of record in the Circle Fifty Subdivision but several special reviews (conditional uses) have been approved to locate liquor licenses, the veterinary clinic to the north of the subject property and for drive through services. In surrounding neighborhoods, several variances have been granted for setbacks, lot coverage limitations and building height. All of these variances were granted in residential areas. In 1996, the BOA granted a variance to the A+ RV and mini-storage business at 3209 & 3213 Grand Avenue to reduce the setback from a residential zone from 15 feet to 0 feet.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: CC
Land Use: Veterinary Clinic

SOUTH: Zoning: CC
Land Use: Carbone's Pizzeria - Bottles and Shots Liquor Store
EAST: Zoning: CC
Land Use: Atlantis Casino and Red Door Lounge
WEST: Zoning: CC
Land Use: Shiloh Express Town Pump

BACKGROUND

This is an application to place a permanent structure - a pergola cover - over an existing outdoor patio on the east end of the multi-tenant building at 1430 Country Manor Boulevard. The existing patio is 5 feet from the back of the sidewalk and the proposed pergola will cover the patio and will also be within the required 20-foot front setback for this building. The legal advertisement referred to the "side adjacent to street" setback in Section 27-309 as the requested variance when in fact the variance is from the front setback requirement. The building is not oriented to face the street as the lot is long and has a narrow street property line of only 81 feet. The east/west orientation of the building infers the street side of the building be considered a side adjacent to the street. Section 27-309 requires a front building setback of 20 feet but allows a 4-foot projection into the setback for canopies. A canopy must be attached to a building and not be a self-supporting structure. The pergola structure is proposed as a self supporting structure, but it will not have a significant separation from the building wall. The pergola will be considered a part of the existing building due to the lack of separation.

There is an existing paved and fenced patio on the property that is within 5 feet of the back of the sidewalk on Country Manor Boulevard. The patio provides seasonal outdoor dining for patrons of the Local Kitchen & Bar restaurant. The restaurant has used temporary umbrellas although wind and weather hamper the consistent use of the area for patrons. The proposed pergola will provide a stable and more weather-proof solution for the restaurant. The property is fully developed and alternative locations for the outdoor patio are not feasible due to the physical limitations of the site.

The Planning Division has reviewed the application and is recommending conditional approval. The subject property has a physical hardship not applicable to other land in the same district. The lot is more than 4 times in length than width and the existing 8,800 square foot building is not oriented to the street. There has been at least one similar variance in the same area in a CC zone to reduce a setback and numerous residential setback variances have been granted in the surrounding neighborhoods. The patio and outdoor seating are existing uses in the street front setback on the property. The addition of a 464 square foot pergola over the existing patio will not be detrimental to the surrounding properties or neighborhood. The Planning Division staff is recommending several conditions to mitigate any potential impacts to the area.

RECOMMENDATION

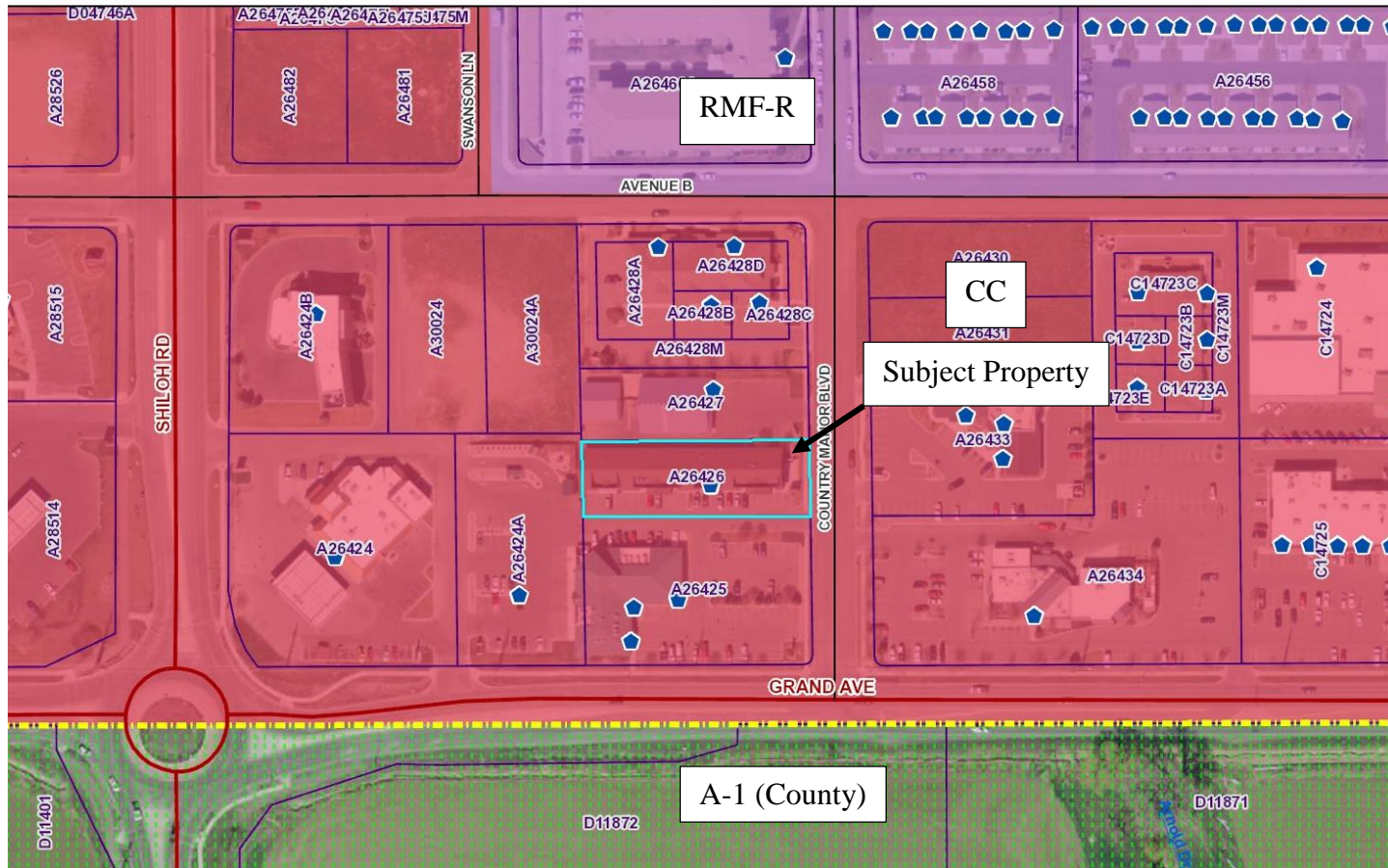
Staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1229.

Attachments

Zoning Map and Site Photos
Applicant Letter and Site Plan
Findings of the Review Criteria

Variance 1229 – 1430 Country Manor Blvd – Front Setback for Pergola
Zoning Map and Site Photos

1430 Country Manor Blvd Var 1229



1430 Country Manor Blvd Var 1229





Subject Property



View north on Country Manor Boulevard



View west into parking lot



View south from adjacent veterinary clinic



View south east across Country Manor Blvd – towards Grand Avenue

**Variance 1229 – 1430 Country Manor Boulevard
Applicant Letter and Site Plans**

Variance Application Statement

Local Kitchen & Bar
1430 Country Manor Blvd.
Billings, MT 59102

Dear Chairperson of the Board of Adjustment:

The reason for the Local Kitchen & Bar (Local) to be submitting this variance application is to allow the installation of a stand-alone pergola over the existing patio. The existing patio currently lies five feet within the ten foot, side adjacent to street, setback as outlined in the Billings Code of Ordinances, Sec. 27-309. The use of the patio nearly doubles the number of customers we can serve at a time, the Local would like to be able to utilize this space both on the patio 'shoulder seasons' and during times of light rain or inclement weather. The ability to add this stand-alone pergola would allow the Local to utilize the patio to its full capability.

Thank You,

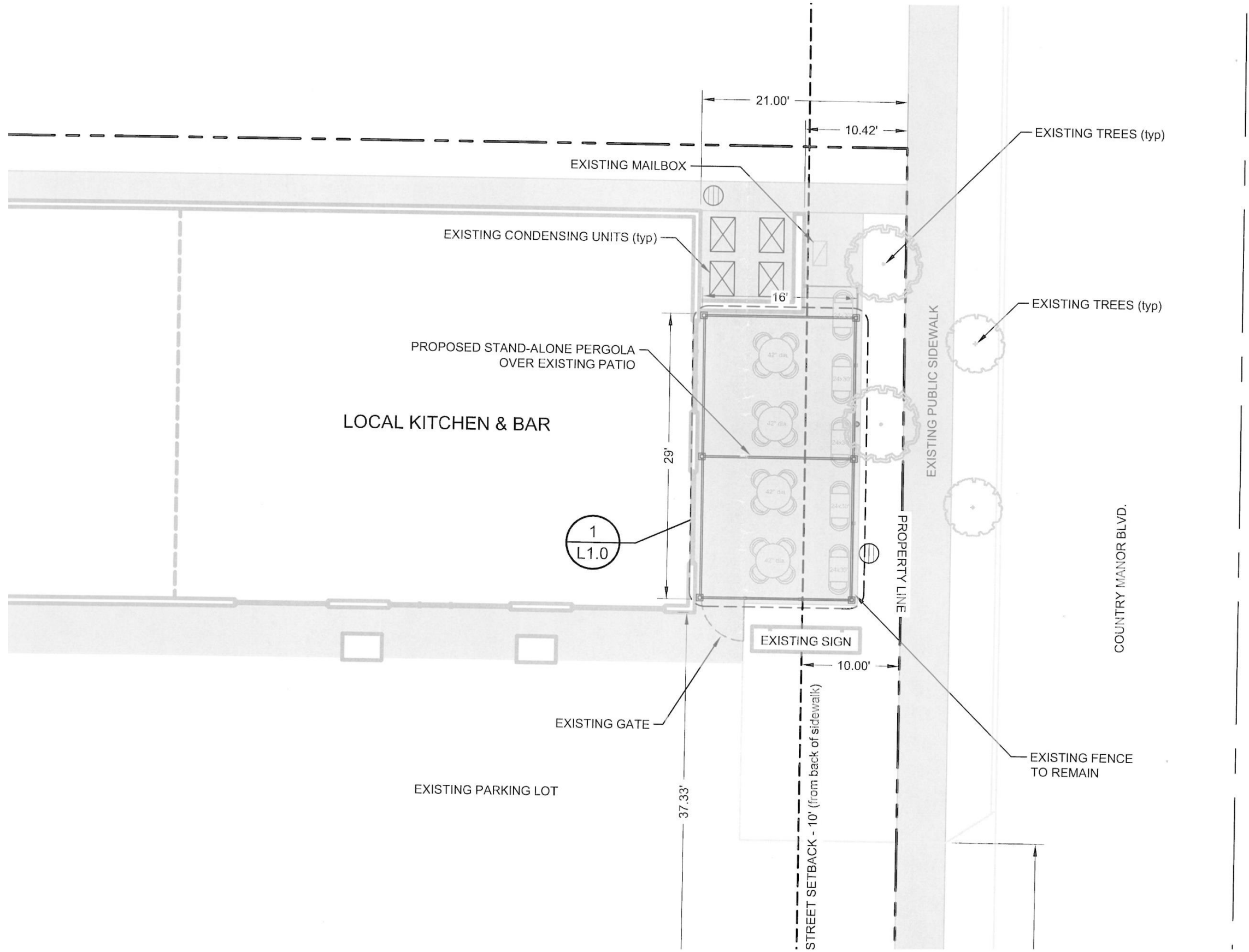
Local Kitchen & Bar

Local Kitchen & Bar

Site Photos



PZ-16-000717
RECEIVED
APR 29 2016
PLANNING & COMMUNITY
SERVICES DEPARTMENT



EXISTING MAILBOX

EXISTING CONDENSING UNITS (typ)

LOCAL KITCHEN & BAR

PROPOSED STAND-ALONE PERGOLA
OVER EXISTING PATIO

1
L1.0

EXISTING GATE

EXISTING PARKING LOT

EXISTING SIGN

STREET SETBACK - 10' (from back of sidewalk)

PROPERTY LINE

EXISTING PUBLIC SIDEWALK

EXISTING TREES (typ)

EXISTING TREES (typ)

EXISTING FENCE
TO REMAIN

COUNTRY MANOR BLVD.

21.00'

10.42'

16'

29'

37.33'

10.00'

DETERMINATIONS

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

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

There are special circumstances existing on this property creating a hardship that is peculiar to this land. The lot is narrow and the existing building is not oriented to the street front property line. The only available area not devoted to parking and drive aisles is on the east end of the building. There are no other areas on the property for an outdoor patio. The applicant could use the property in conformance with the adopted regulations and keep the outdoor patio in its current semi-useful state using umbrellas.

- 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 properties in the area that have received variances from the setback requirements for new buildings or building additions. The A+ RV and mini-storage complex at 3209/3213 Grand Avenue received a variance to reduce a setback from a residential zone from 15 feet to 0 feet for new construction of mini-storage warehouses. The patio and fencing existing on the site will not increase. The proposed pergola will be not be an enclosure but a more permanent solution than umbrellas. Denial of the variance would deprive this owner of benefits enjoyed by other property 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. Other similar variances have been granted for new construction and for building additions.

- 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 is from Section 27-309 requiring a 20-foot front setback to allow a 5-foot front setback for the proposed un-enclosed 464 square-foot pergola cover for the existing patio.
2. The variance is limited to Lot 3, Block 1 Circle Fifty Subdivision generally located at 1430 Country Manor Boulevard.
3. The pergola will remain an unenclosed cover for the patio area.

4. The applicant shall submit a building permit for the pergola structure within 6 months of Board approval. The structure will be completed within 18 months of Board approval.
5. No construction or site work will commence before 7 am or go past 8 pm daily.
6. Failure to begin or complete the approved actions on the variance will void the approved variance.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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 building permit for the pergola within 6 months of Board approval and complete the construction within 18 months of Board approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district. Pergolas and patio covers are an allowed use in all commercial zoned districts in the city.



City Board of Adjustment

Meeting Date: 06/01/2016

SUBJECT: City Variance #1230 - 211 Fair Park

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Karen Husman

Information

REQUEST

Variance 1230- 211 Fair Park Drive - The applicant is requesting a variance request from 27-308 requiring a minimum front setback of 20 feet to allow a minimum setback of 19 feet; and from Section 27-310(g) requiring a maximum projection of 4 feet in a front setback to allow a maximum projection of 8 feet for the addition of a new entryway and new front stoop in a Residential 7,000 (R-70) zone, on Lot 29, Block 3 of Central Heights Subdivision, 1st Filing, an 8,360 square foot parcel of land. Tax ID: A04497. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning Staff is recommending conditional approval.

APPLICATION DATA

OWNERS: Leslie A. Hergenrider

AGENT: ATWood Architecture

PURPOSE: To reduce the minimum front setback of 20 feet to allow a minimum setback of 19 feet; a maximum projection of 4 feet

in a front setback to allow a maximum of 8 feet for a new entryway and front stoop

LEGAL DESCRIPTION: Lot 29, Block 3, Central Heights Subdivision

ADDRESS: 211 Fair Park Drive

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 three variance requests approved in this subdivision. The variance requests have been for lot size and setbacks. One for reduced separation between principle and accessory structures, one reduced lot size to allow an existing multi family, and one for lot size and setbacks.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Residential single family
SOUTH: Zoning: R-70
Land Use: Residential
EAST: Zoning: R-70
Land Use: Residential Single Family
WEST: Zoning: R-70
Land Use: Residential

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum setback of 19 feet; and from Section 27-310(g) requiring a maximum projection of 4 feet in a front setback to allow a maximum projection of 8 feet into the front yard setback for the addition of a new entryway and new front stoop. According to the County information available, the home on the subject property was built in 1956, prior to the zoning regulations being put in place.

The applicant would like to build a new entryway where the front stoop is now on the front of the existing house in an effort to build a new stairway to the basement. The new stairway would provide easier access to the basement as well as be the most cost effective alternative for construction.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for a variance to allow a minimum front setback of 19 feet and a maximum projection of 8 feet into the front setback for the addition of a new entryway and new front stoop. There are other lots in the neighborhood that have similar front porches and stoops that appear to project into the front yard setback similar to the one proposed. However, like this proposal, there is still significant setback from the porches and stoops to the front property lines.

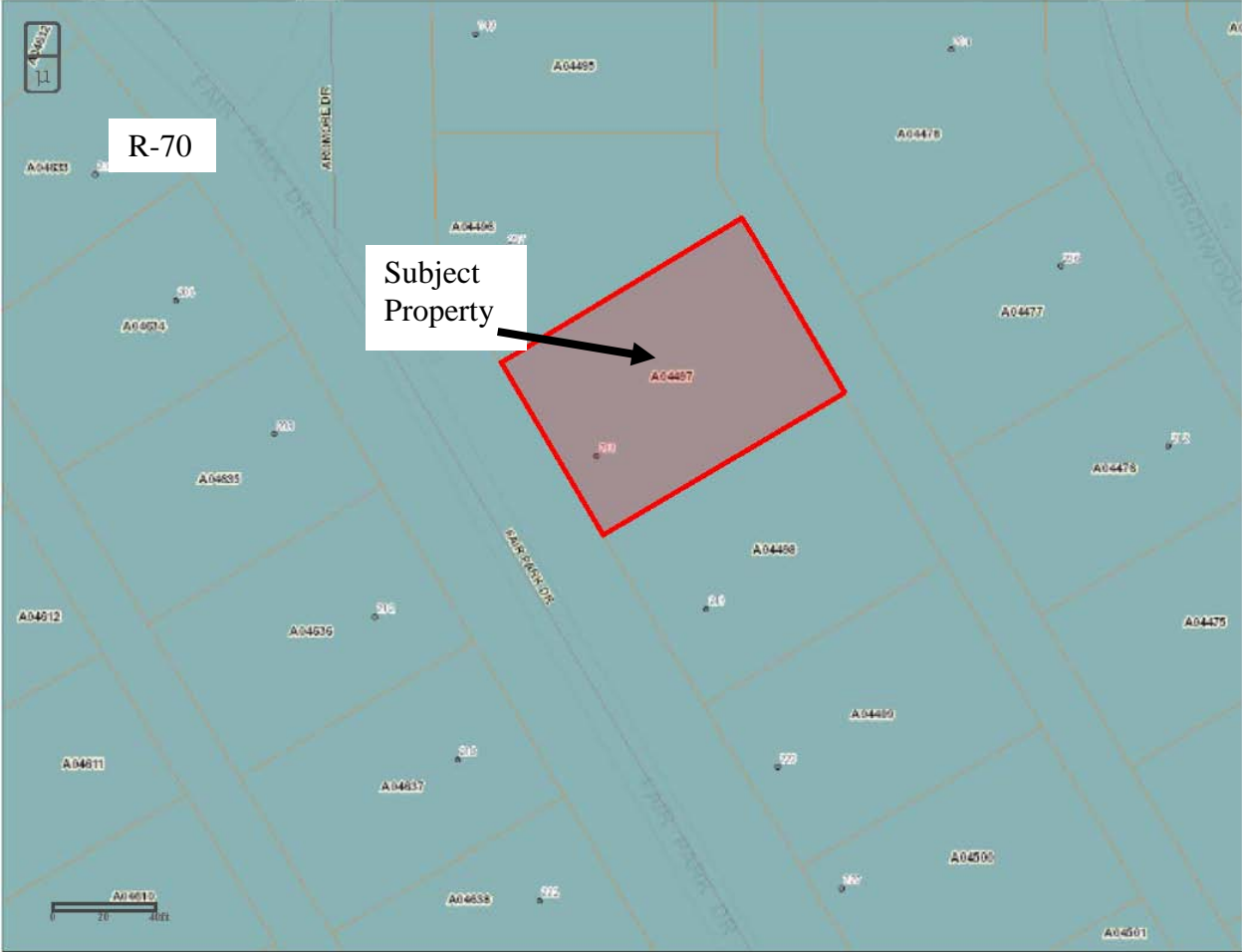
RECOMMENDATION

Planning Staff is recommending conditional approval of City Variance #1230 based on the criteria for variances.

Attachments

Zoning Map & Site Photos
Site Plan & Applicant Letter
Determinations

ATTACHMENT A
Surrounding Zoning & Site Location



ATTACHMENT A
Site Photographs



Subject Property



Looking South

ATTACHMENT A
Site Photographs, Continued



Looking south



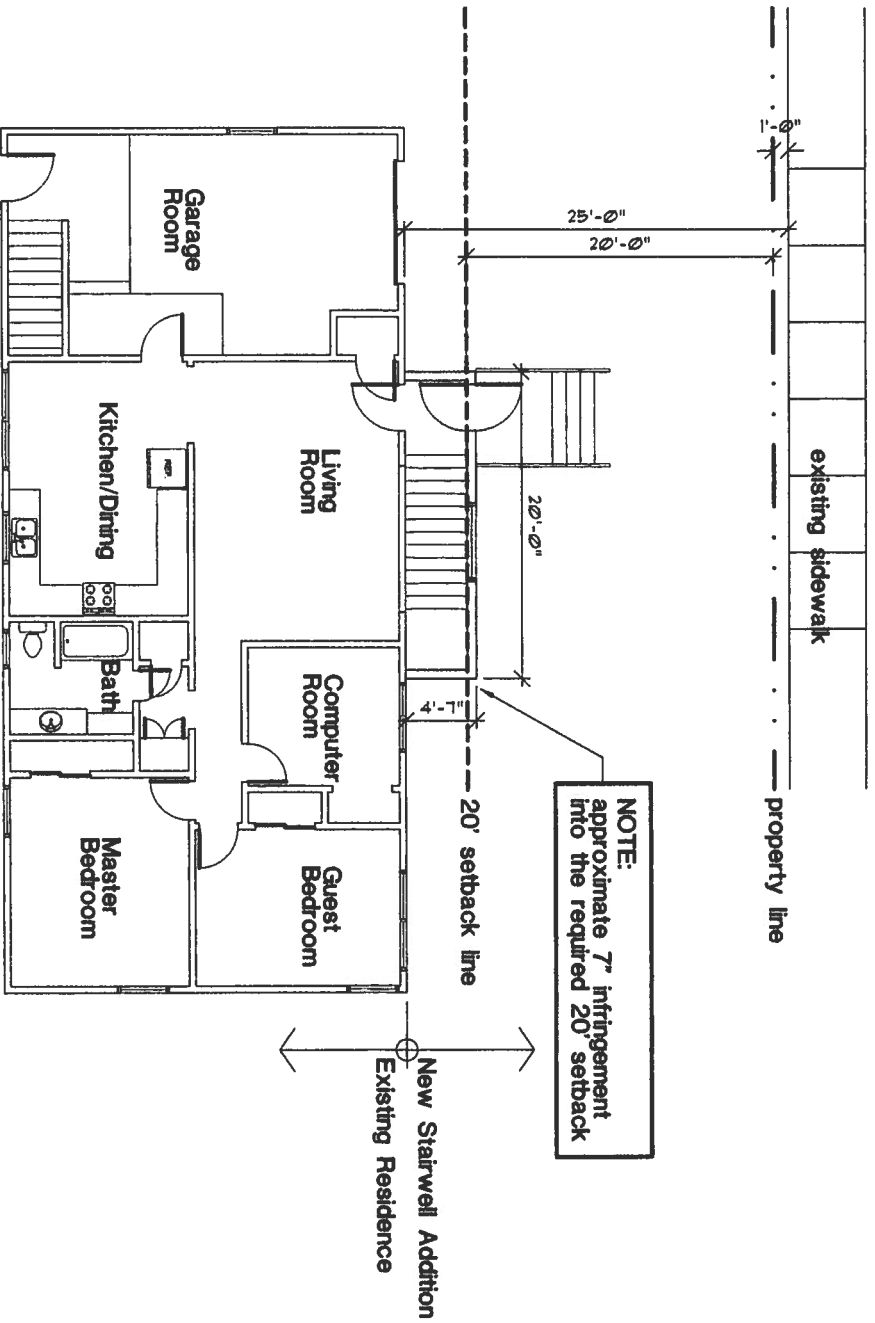
Looking North

PRELIMINARY CONCEPT LAYOUT STUDY FOR:
THE HERGENRIDER RESIDENCE

211 FAIR PARK DRIVE BILLINGS, MONTANA

1/8" = 1'

Fair Park Drive



VARIANCE APPLICATION

1A- What reasons prevent you from using the property in conformance with Zoning Regulation requirements?

The current stairs to access the basement of the house has some safety concerns (the access is through the garage) and thus I would like to add an addition to avoid the garage. Building the access on the backside of the house has problems with utilities (gas, electrical power and sewer) entering the house on that side. I would like to add 4 feet 7 inches by 20 feet addition to the front of the house to install stairs.

1B- Why is there a need for the intended use of the property at this location?

The addition of the stairs to the front of the house will improve safety concerns for exiting the house in case of fire (reducing the number of doors to open and close and more direct route to exit). The current access is through the attached garage and causes a person to open and close two doors.

2- Prepare a written statement address to the Chairperson of the Board of Adjustment. State what is intended to be done with the property, including new construction or change in the use of property, and why the variance is being sought.

I would like to construct an addition (4 feet 7 inches x 20 feet) to the front of the house for stairs to access the basement. The construction of the addition on the backside of the house is restricted due to that utilities (gas, electrical power and sewer) enter the house on this side.

3- Prepare a dimensioned site plan:

See attachments.

4- Site Plan

See attachments

5- Photographs maybe submitted and are often helpful.

6- Obtain from the Planning & Community Services Department a three hundred (300) foot radius map showing all property which lies within 300 feet of the exterior boundaries of the subject property.

See attachments

7- Obtain certified list of names and addresses of owners of all property shown within 300 foot radius on the map as provided by Planning & community Services Department.

See attachments

DETERMINATIONS

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

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

There are no special conditions or circumstances with the land that create a hardship. In this situation, the structure was built prior to the zoning restrictions that are now 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 are other lots in the neighborhood that have similar front porches and stoops that appear to project into the front yard setback similar to the one proposed. However, like this proposal, there is still significant setback from the porches and stoops to the front property lines. Therefore, allowing the applicant a variance for the front setback of 19 feet and a maximum of an 8 foot projection for the addition of a new entryway and new front stoop 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 would not confer a privilege to this applicant that others in the subdivision do not have. As stated in #2 above, There are other lots in the neighborhood that have similar front porches and stoops that appear to project into the front yard setback similar to the one proposed.

- 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 request from 27-308 requiring a minimum front setback of 20 feet to allow a minimum setback of 19 feet; and from Section 27-310(g) requiring a maximum projection of 4 feet in a front setback to allow a maximum projection of 8 feet for the addition of a new entryway and new front stoop. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 29, Block 3 of Central Heights Subdivision, 1st Filing.
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 with the exception of this variance approval.

4. Approval of this variance does not include approval for a change in use from a single family dwelling to a two family dwelling. If the basement is to be modified into a separate dwelling unit, it will require an additional variance approval for the lot size in this zoning district.
5. The applicant must submit and obtain a building permit to complete the renovations within 6 months of this variance approval.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The requested variance is to ensure the future opportunity to rebuild the proposed front entryway and stoop. The applicant must submit for a building permit to complete the renovations 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.



City Board of Adjustment

Meeting Date: 06/01/2016

SUBJECT: City Variance #1231 - 316 Miles Avenue

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Karen Husman

Information

REQUEST

Variance 1231- Setback variance– A variance request from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet, in a Residential Multi-family-Restricted (RMF-R) zone, on Lots 39 & 40, Block 12, Suburban Subdivision, a 7,000 square feet parcel of land. The proposed variance is to allow the owner to finish the construction of a partially completed structure. Tax ID: A15964. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning Staff is recommending denial.

APPLICATION DATA

OWNERS: Michael J. Mitzel
AGENT: EEC, Inc.
PURPOSE: To reduce the minimum side setback of 8 feet for a 2-story structure to allow 5 feet and a minimum rear setback of 15 feet to allow 10 feet
LEGAL DESCRIPTION: Lots 39 & 40, Block 12, Suburban Subdivision
ADDRESS: 306 Miles Avenue
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: Residential Multi Family-Restricted (RMF-R)

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Surrounding Property – Records show there have been 10 variance requests in this subdivision. The variance requests have been for lot size, setbacks, lot coverage, and fence height. Nine were approved, one was denied.

SURROUNDING LAND USE & ZONING

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

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet, in a Residential Multi-Family-Restricted (RMF-R) zone, on Lots 39 & 40, Block 12, Suburban Subdivision, a 7,000 square feet parcel of land. The proposed variance is to allow the owner to finish the construction of a partially completed structure. According to the County property information available, the subject property was built in 2011.

The property owner applied for a building permit in January of 2011 to build a two-story residential structure. During the application review process, the application and plans were reviewed by City departments and the applicant was sent two lists of corrections - one from the Planning Division and one from the Building Division. The corrections needed to be addressed in order to receive an approved permit to build the new building. Included with those corrections was the Planning Division notice of the required setbacks that needed to be met in order to build the 2 story structure proposed. Corrections to the original plans were not submitted, and in April of 2012 the pending building permit application expired. The applicant would have then had to resubmit the plans with the requested corrections in order to acquire a building permit for the structure. In 2012, there were four Code Enforcement cases opened against the property. Two included notice that a building permit was required for the structure and it would need to be in compliance with zoning setbacks for the district. There are other lots in the neighborhood that have similar allowances under zoning, however they were constructed prior to zoning.

Planning staff has reviewed this application and is forwarding a recommendation of denial for the variance to allow a minimum side setback of 5 feet for a 2-story structure and to allow a minimum rear setback of 10 feet where a 15-foot rear setback is required. The recommendation is based on the determinations for granting a variance as outlined in the attached determinations.

RECOMMENDATION

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

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Background Information
Determinations

ATTACHMENT A
Surrounding Zoning & Site Location



ATTACHMENT A
Site Photographs



Subject Property





ATTACHMENT A
Site Photographs



Looking across Miles Ave



Looking West

ATTACHMENT A
Site Photographs, Continued



Looking East



April 29, 2016

Nicole Cromwell, Zoning Coordinator
City of Billings - Planning & Community Services Department
2825 3rd Avenue North – 4th Floor
Billings, MT 59101

RE: Variance Request
316 Miles Avenue
Billings, Montana 59101

Nicole,

Attached are the documents for a variance request for 316 Miles Avenue, Billings, Montana.

Answer to question 1.A: What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?

The existing structure is built with a five foot (5') side yard on the west and a ten foot (10') rear yard on the south. The current requirements are eight foot (8') side yard for a two (2) story structure and a fifteen foot (15') rear yard.

Answer to question 1.B: Why is there a need for the intended use of the property at this location?

The site is in a Residential Multi-family Restricted zoning district. The existing, partially completed, two story structure consists of a garage on the first level and a single family dwelling unit on the second level. The completed project will be in keeping with the general intent and purpose of the Zoning Regulation requirements. The owner wishes to complete the project and clean up the site to improve the neighborhood.

If there are any questions or you require any additional information, please contact me or Kevin Lundin at our office.

Thank you in advance for your consideration.

Sincerely,

Eggart Engineering and Construction
Robert Bushing, Architect
720 Lohwest Lane
Billings, MT 59106



April 29, 2016

Chairperson of the Board of Adjustment
City of Billings

RE: Variance Request
316 Miles Avenue
Billings, Montana 59101

Chairperson,

The owner, Mike Mitzel, is seeking a variance to the side and rear yard requirements as described in the Billings Montana – Code of Ordinances, Chapter 27 – Zoning.

The site is in a Residential Multi-family Restricted zoning district. There is an existing, partially completed, two story structure on the site. The building consists of a garage on the first level and a single family dwelling unit on the second level. The owner wishes to complete the project and clean up the site to improve the neighborhood.

The existing structure is built with a five foot (5') side yard on the west and a ten foot (10') rear yard on the south. The current requirements are eight foot (8') side yard for a two (2) story structure and a fifteen foot (15') rear yard. There are structures in the vicinity that have similar conditions regarding location on the lot. The completed project will be in keeping with the general intent and purpose of the Code of Ordinances.

Thank you in advance for your consideration.

Sincerely,

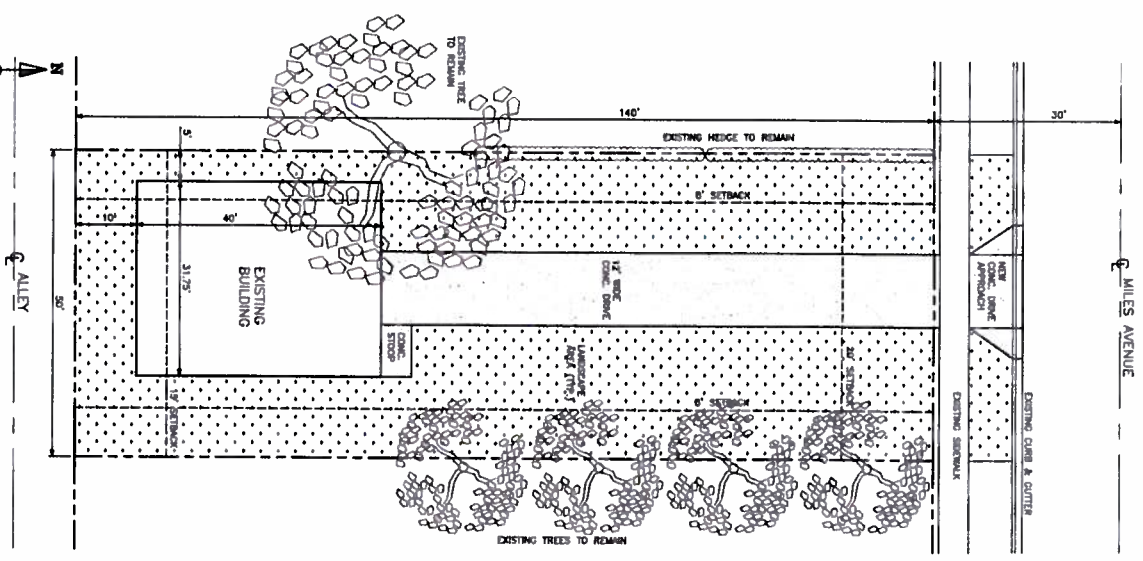


Michael J. Mitzel, Owner
481 Constitution Avenue
Billings, MT 59105

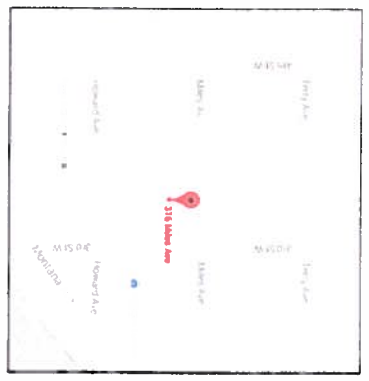


Eggart Engineering and Construction, Agent
Robert Bushing, Architect
720 Lohwest Lane
Billings, MT 59106

1 SITE PLAN
 316 MILES AVENUE, BILLINGS, MONTANA
 SUBURBAN SUBDIVISION, BLK 12, LOT 39-40
 SCALE (1/8"=1'-0")
 SCALE (LAND): 1"=10'



2 VICINITY MAP
 NO SCALE



ZONING INFORMATION:
 ZONING CLASSIFICATION: RESIDENTIAL MULTI-FAMILY RESTRICTED
 BUILDING FOOTPRINT: 1,270 S.F.
 LOT AREA: 7,000 S.F.
 MAXIMUM LOT COVERAGE: 55%
 ACTUAL LOT COVERAGE: 18.1%
 MAXIMUM BUILDING HEIGHT: 40'-0"
 ACTUAL BUILDING HEIGHT: 24'-3" +/-
 REQUIRED LANDSCAPE AREA: 573 S.F.
 ACTUAL LANDSCAPE AREA: 4,607 S.F.

RECEIVED
 9102 8 - AM
 PLANNING & COMMUNITY SERVICES DEPARTMENT

Drawn By: HS
 Checked By:
 Date: 04-22-2016
 Project #: MITZEL
 Cadd file:



EGGART ENGINEERING COMPANY
 720 LOHWEST LANE
 BILLINGS, MT 59106
 OFFICE: 406-839-9151
 FAX: 406-839-9150
 www.eccmt.com

MIKE MITZEL'S SHOP
 SUBURBAN SUBD,
 S04, T01 S, R26 E,
 BLOCK 12, LOT 39-40
 316 MILES AVE
 BILLINGS, MT 59101

VARIANCE REQUEST
 SHEET#: C101



CITY OF BILLINGS

BUILDING DIVISION

510 N. BROADWAY
BILLINGS, MT 59101
OFFICE (406) 657-8270
FAX (406) 657-8252

RESIDENTIAL PLAN REVIEW CORRECTION LIST

Corrections and comments are that of the Building Division only.

The processing of plans may be delayed if all required items are not properly resubmitted.

ADDRESS: 316 Miles Ave. PLAN REVIEW # 11 - 111
DATE: 1 - 20 - 2011 CHECKED BY: Harry Hoving

1. Provide revised setback dimensions / building location for this project that will meet the requirements of City – County Planning Department.
2. Provide structural design / calculations to identify how the 24"x24" footing will support the imposed beam / column loads with the soil bearing pressure of 1,500 pounds per square foot as identified per the Foundation Soils Observation report submitted.
3. Provide design information to identify how the exit / means of egress will meet the requirements of section R311.4.1 of the 2006 I.R.C. The required exit from habitable space to the exterior cannot travel through a garage. Identify the minimum exit door and stairway sizes and widths.
4. Provide the individual truss design profiles / design criteria from the engineered roof truss manufacturer for this project.
5. Provide structural design / calculations for the beams / headers supporting point and concentrated loads of the roof system at the window openings of this project. Identify the type size of beam / header at the 9 and 10 foot window / door openings.
6. Provide notations / information on the plans to identify the insulation and glazing values of this project that will meet the minimum requirements of the 2009 I.E.C.C. Identify insulation requirements at the heated areas of the lower level.
7. Provide load calculations / worksheets for the HVAC system (Manual J & S or other documentation) for this project.



CITY-COUNTY PLANNING DEPARTMENT
510 North Broadway - 4th Floor
Billings, Montana 59101
PHONE (406)657-8246 – FAX (406)657-8327



PLANNING DEPARTMENT (406) 657-8246
PLAN REVIEW CORRECTION LIST

THE FOLLOWING CORRECTIONS AND/OR ADDITIONAL INFORMATION MUST BE ADDRESSED BEFORE A BUILDING PERMIT CAN BE ISSUED:

ADDRESS:	316 Miles	PLAN REVIEW NUMBER:	11-111
CONTRACTOR:	Mitzel Construction	DATE:	January 19, 2011
OWNER:	Mike Mitzel	REVIEWED BY:	Karen Miller
ARCHITECT:			

**CORRECTIONS AND COMMENTS ARE THAT OF THE
PLANNING DEPARTMENT ONLY**

The processing of plans may be delayed if all the required items are not properly resubmitted.

Corrections:

1. The property is located in a Residential Multi-Family Restricted (RMFR) Zoning District. The proposed building must be relocated to meet the 8 foot side setback for a 2-story structure and 15 foot rear setback for a principal structure in the RMFR. In order to build the proposed structure, it must meet the minimum setback requirements from the property line. RMFR zoning district requires:
 - Front: 15 feet
 - Side: 5 feet
 - (second story): 8 feet
 - Rear: 15 Feet
 - Garage approach from the street: 20 feet
2. Please note: In order to build the proposed structure it must meet the setback and lot coverage restrictions of the Unified Zoning Code, or the property owner must apply for and receive approval of a lot size variance from the City Board of Adjustment. PLEASE NOTE: if approval of the variance is not received you will need to resubmit your amended plans including an amended site plan



PHONE: (406) 247-8647

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
510 N. BROADWAY 4TH FLOOR
BILLINGS, MONTANA 59101
FAX: (406) 657-8327



EMAIL: BalterMe@ci.billings.mt.us

MITZEL, MICHAEL J
314 MILES AVE
BILLINGS, MT 59101

Case Number: CE-12-01300

NOTICE OF CITY CODE VIOLATION

Jul 31, 2012

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

Violation Description

Violation Detail

6-201 Building Permit Required
Date Est: 06/21/2012

Violation Description

SECTION 6-201 - The adopted building code(s) shall regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the city and its jurisdictional area providing for issuance of permits and collection of fees and penalties.

Violation Detail

27-308 Residential Setback
Date Est: 06/21/2012

Violation Description

SECTION 27-308 - No building, structure or land shall hereafter be used or occupied in any residential zone unless in compliance with all the setbacks as specified in this code.

Violation Detail

27-601(a)(8) Open Storage > 5 Days in R Zone
Date Est: 07/27/2012

Violation Description

SECTION 27-601(a)(8) - In any residential zone the open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.

COPY



PHONE: (406) 247-8647

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
510 N. BROADWAY 4TH FLOOR
BILLINGS, MONTANA 59101
FAX: (406) 657-8327



EMAIL: BalterMe@ci.billings.mt.us

316 MILES AVE
SUN-012-039,40
TAX ID #A15964

Violations Details: Construction of garage/dwelling unit without approved building permit at 316 Miles Avenue and junk and equip on the property

Date Inspected: 07/13/2012

In order to avoid fines or penalties, you are required to **get a building permit and clean up the property or a citation will be written**

We always attempt to work with property owners in correcting City Code violations and we courteously advise you this violation must be corrected within ten (10) days of the date of this notice otherwise, the City may take appropriate legal action.

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

FOR THE SAKE OF A SAFE AND ATTRACTIVE COMMUNITY, your prompt attention and cooperation in resolving this matter is greatly appreciated. If for some reason, you are unable to correct the above violation within the time set forth, or if you have any questions, please call the Code Enforcement Officer.

By _____
Don Vegge, 657-8313
Code Enforcement Officer

COPY



PHONE: (406) 247-8647

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
510 N. BROADWAY 4TH FLOOR
BILLINGS, MONTANA 59101
FAX: (406) 657-8327



EMAIL: BalterMe@ci.billings.mt.us

MITZEL, MICHAEL J
481 CONSTITUTION AVE
BILLINGS, MT 59105

Case Number: CE-12-01574

NOTICE OF CITY CODE VIOLATION

Aug 14, 2012

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

Violation Description

Violation Detail

27-601(a)(8) Open Storage > 5 Days in R Zone
Date Est: 07/13/2012

Violation Description

SECTION 27-601(a)(8) - In any residential zone the open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.

Violation Detail

6-201 Building Permit Required
Date Est: 07/27/2012

Violation Description

SECTION 6-201 - The adopted building code(s) shall regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the city and its jurisdictional area providing for issuance of permits and collection of fees and penalties.

**316 MILES AVE
SUN-012-039,40
TAX ID #A15964**

Violations Details: open storage of junk, equipment, tires barrels and misc debris and junk
Date Inspected: 07/13/2012



PHONE: (406) 247-8647

CODE ENFORCEMENT DIVISION
"PROTECTING QUALITY OF LIFE IN BILLINGS"
PLANNING & COMMUNITY SERVICES DEPARTMENT
510 N. BROADWAY 4TH FLOOR
BILLINGS, MONTANA 59101

FAX: (406) 657-8327

EMAIL: BalterMe@ci.billings.mt.us



In order to avoid fines or penalties, you are required to **please remover any trailers and debris from the property. If you plan to pursue a variance request come in to the planning office at 510 N Broadway 4th floor and get a variance packet to start the process. You need to start that process as soon as possible.**

We always attempt to work with property owners in correcting City Code violations and we courteously advise you this violation must be corrected by the end of the month, August 30, 2012, otherwise, the City may take appropriate legal action.

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

FOR THE SAKE OF A SAFE AND ATTRACTIVE COMMUNITY, your prompt attention and cooperation in resolving this matter is greatly appreciated. If for some reason, you are unable to correct the above violation within the time set forth, or if you have any questions, please call the Code Enforcement Officer.

By _____
Dave Green
Code Enforcement Officer



Code Enforcement Division

"Serving Billings, Broadview and Yellowstone County"

Planning & Community Services Department

510 North Broadway, 4th Floor

Billings, Montana 59101

Fax: (406) 657-8327

Phone: (406) 657-8246



Mike Mitzel
481 Constitution Avenue
BILLINGS, MT 59105

November 28, 2012

RE: 316 Miles Avenue

Dear Mr. Mitzel:

I am writing to you again about your property at 316 Miles Avenue. I have tried your phone number but there is no answer and the system says your voice mail box is full so I can't leave a message either. I drove by 316 Miles on 11-27-2012 and you have made some good progress on cleaning the place up, there are a few more things but substantially better than before.

I am going to close the case. If I get a complaint again I guess we will start over again at that time. About your house, the only way to get that completed is to have the Board of Adjustments approve a Variance for lot setbacks, side and back. You are kind of dead in the water with the house until you get that variance, so that is up to you at this point.

Please keep the place clean so I don't have to come back to bug you, I prefer to leave people alone.

If you have any questions regarding these matters please contact me at 247-8611.

Sincerely,

A handwritten signature in blue ink, appearing to be "D Green".

Dave Green
Code Enforcement Officer



Yellowstone County, Montana

[Commissioners](#) [Departments](#) [Contacts](#) [Site Map](#) [Home](#)

Orion Detail

Disclaimer: Not all fields are currently maintained. The accuracy of the data is not guaranteed. Please notify the Appraisal/Assessment Office (406-896-4000) of any inaccuracies.

[Back to Search Form](#)

[Property Tax Detail](#)

Owner Information

Primary Owner: MITZEL, MICHAEL J
Tax ID: A15964
Geo Code: 03-0927-04-4-12-16-0000
Property Address: 316 MILES AVE BILLINGS 59101
Legal Description: SUBURBAN SUBD, S04, T01 S, R26 E, BLOCK 12, Lot 39 - 40
Property Type : RU - Residential Urban

To view recorded documents, please login to the [Clerk & Recorder Search](#). (will open in a new tab) and copy/paste the recording number into the search form.

Deed Documents:	Recording #	Document type	Recorded Date	Document Date	Book	Page
	3439353			9/25/2007	0034	39353
	3439352			9/25/2007	0034	39352
	3438834			9/19/2007	0034	38834
	3239762			7/9/2003	0032	39762
	3023609			10/21/1998	0030	23609
	1845217			9/11/1996	0018	45217
	3438834	Warranty Deed				

Site Data

Neighborhood Code:	03-0965-2	Location:	5 - Neighborhood or Spot
Parking type:	800.2	Fronting	4 - Residential Street%
Utilities:	3 - On and Off Street	Parking Prox	3 - On Site%
Lot Size:	1, 4	Access:	1
	7000 Sq. Ft.	Topography:	1

Residential Building Data

Type:	SFR	Index	0.96
Year Built:	2011	ECF	1.23
Year Remodeled:		Degree Remodeled	
Effective Year:	2011	Utility:	Fair (6)
Style:	08 - Conventional	Exterior:	1 - Frame - 5 - Maintenance Free Aluminum/Vinyl/Steel
Story Height:	2.0	Condition:	Average (7)
Roof Type:	3 - Gable	Roof Material:	10 - Asphalt Shingle
Foundation:	2 - Concrete	Basement:	0 - None
Central	3 - Gas	Grade-Factor:	40.85
Percent Complete:	40 - 0.4	CDU:	

Bedrooms:	2	Full Baths:	1	
Family Rooms:	0	Half Baths:	0	Addl Fixtr: 3
1st Floor:	372	2nd Floor:	1240	
Additional Area:	0	Bsmt Fnsh:		
Basement:	0	Heated Flr:		
Half Floor:	0	Daylight		
		Basement:		
Attic:	0	Built-in		
		Garage:		
Attic Type:	0 - None	Masonry F/P:		
Total:*	1612	F/P Stacks:		
		Pre Fab F/P:		

* includes finished, unfinished & attic footprint area(s).

Residential Building Additions

Addition Code	Area(Sq Ft)
19 - Garage, Frame, Finished	868

Any comments or questions regarding the web site may be directed to the [webmistress](#).

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 constructed illegally.

- 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. Therefore, allowing the applicant a variance does not deprive the applicant of rights commonly enjoyed by other properties in the same district. However, the intent of the codes in place is to move neighborhoods and zoning districts toward compliance over time and try and address legally-non conforming structure and not have new structures built illegally that then must have variances from the codes.

- 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. However, other variances have been granted for setbacks of existing structures that were constructed prior to zoning. In this case, the structure was constructed with full knowledge it was not in compliance with current zoning and building codes.

- 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 growth policy in so far that residential development is expected in residential zoning districts and infill projects on vacant lots in neighborhoods supports efficient delivery of services and neighborhood stability. However, granting this variance does not necessarily meet the general purpose and intent of the zoning regulations in that the intent of the codes in place is to try and move neighborhoods and zoning districts toward compliance over time and not have new structures built illegally that then must have variances from the codes.

- 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;**

The Planning Division is recommending denial of this variance request. However, if the Board of Adjustment chooses to approve the variance; staff is recommending the following conditions for the variance:

1. The variance request is from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet. No other variance is intended or implied with this approval.

2. The variance is limited to on Lots 39 & 40, Block 12, Suburban Subdivision.
3. This variance is limited to the existing structure. If the existing structure were destroyed by any means, it must be reconstructed to the current setbacks and site development requirements in place at the time it is reconstructed.
4. There will be no construction between 8 p.m. and 7 a.m. daily.
5. The applicant must submit and obtain a building permit to complete the renovations within 6 months of this variance approval.
6. In addition to an approved building permit issuance, the applicant must receive the required building inspections and obtain a certificate of occupancy to verify compliance within 18 months of the building permit issuance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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 requested variance is for the structure that has been partially constructed without the required permits. The applicant must submit and obtain an approved building permit to complete the construction within 6 months of this variance approval and obtain a certificate of occupancy to verify compliance within 18 months of the building permit issuance.

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.