



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, July 6, 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 June 1, 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. **Return Item - Variance 1231 – 316 Miles Avenue – Side and Rear Setbacks** – 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
  
- b. **Variance 1232 – 549 Wheatstone – Side Setback** – 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 6 feet 5 inches (6’5”), in a Planned Development zone with underlying zoning of Residential 9,600 (PD-R96), on Lot 1, Block 19, Harvest Subdivision, 3<sup>rd</sup> Filing, a 7,090 square foot parcel of land. The proposed variance is to allow the owner to add a second story over the existing attached garage. Tax ID: C09694. Presented by Karen Husman, Planner I.
  
- c. **Variance #1233 - 2345 King Avenue North - Sign Variance** - The applicant is requesting a variance from 27-705(b) requiring a maximum sign area of 32 square feet and a sign height no taller than 8 feet above grade to allow a sign height of 16 feet, a sign width of 10 feet, and a sign area of 90 square feet per side in a Residential Professional (RP) zone on Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision, a 2.11-acre parcel of land. PA Prospects, LLC, is the owner and Matt Robertson is the agent. Presented by Dave Green, Planner II.
  
- d. **Variance #1234 - 4129 Roosevelt Avenue - Side Setback** - The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 1 foot in a Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. The variance would allow the addition of an attached garage. Tax ID: A06949. Presented by Dave Green, Planner II.
  
- e. **Variance 1235 – 607 4<sup>th</sup> Avenue N – Clear Vision** – A variance from 27-615(a) requiring any permanent structure in a clear vision area at an intersection controlled by a traffic signal to be 30 inches in height or less, to allow a permanent structure over 30 inches in height to encroach up to 4 feet into the required clear vision area, as proposed in the AASHTO analysis for the traffic signal controlled intersection. The variance would allow the construction of a new building. Tax ID: D05887. Presented by Nicole Cromwell, Zoning Coordinator
  
- f. **Variance 1236 – 317 S 30<sup>th</sup> St – Side Setback** – A variance from 27-308 requiring a minimum 5-foot side setback for a principal structure (residence) and from 27-310(i) requiring a minimum 3-foot side setback for a detached garage, to allow a minimum ½-foot side setback for each existing structure in Residential Multi-family- Restricted (RMF-R) zone on the South 10 feet on Lot 20 and all of Lot 21, Block 167, Billings Original Town, a 4,900 square foot parcel of land. The variance would allow the issuance of a re-build letter for the existing buildings at the current non-conforming side setback. Tax ID: A01109. Presented by Nicole Cromwell, Zoning Coordinator

## **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:** 07/06/2016

---

**Information**

**Subject**

The minutes of the Board meeting of June 1, 2016.

---

**Attachments**

CityBOA\_2016\_06\_01

---

**CITY BOARD OF ADJUSTMENT**

MINUTES June 1, 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	1						
James Olson	Board member	-	-	1	1	E	1						
Paul Hagen	Board member	-	-	1	1	1	1						
Frank Chesarek	Vice Chairman	-	-	1	1	1	1						
Oscar Heinrich	Board member	-	-	1	1	1	1						
Martin Connell	Board member	-	-	1	1	1	E						
Mark Noennig	Chairman	-	-	1	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	3							9

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 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:**

Leslie A. Hergenrider, Kurtis Grow, Bob Bushing, Mike Mitzel

**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 Heinrich made a motion for the approval of May 4, 2016 minutes. Board member Olson seconded the motion. Minutes were approved by unanimous voice vote 6-0.

**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 Chesarek made public his affiliation with EEC but stated he did not know the individuals here representing Variance #1231.**

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		x	none	
James Olson		x	none	
Paul Hagen		x	all	
Frank Chesarek		x	none	
Oscar Heinrich		x	all	
Martin Connell				x
Mark Noennig		x	#1231	

**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 and presented **Variance request #1229**:

**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

**RECOMMENDATION**

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

**Discussion**

Chairman Noennig asked the members of the Board for questions and discussion. Board member asked if alcohol is served on the patio. Board member Heinrich replied in the affirmative.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1229**.

No one in favor, no one opposed, no rebuttal and no discussion.

Chairman Noennig called for a motion.

Board member Chesarek made a motion and Board member Hagen seconded the motion to conditionally approve **City Variance #1229** 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 #1229 is conditionally approved.**

**Nicole Cromwell read the legal description into the record.**

**Karen Husman presented:**

**Variance 1230 – 211 Fair Park Drive – Front Setback and Projection in Front Yard – 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, 1<sup>st</sup> Filing, a 8,360 square foot parcel of land. Tax ID: A04497.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of **Variance #1230** with 7 criteria for Variance #1230.

**Discussion**

Chairman Noennig asked the members of the Board for questions for Staff.

Chairman Noennig asked for clarification of the # 2 “determination”. Board member Heinrich asked if both garages will be kept. Staff stated there is no information about removing or remodeling the garage. Board member Heinrich confirmed the intent being an extension to the front. Board member Heinrich ask if the property behind is zone approved. Staff has no information regarding said property.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1230**.

**Leslie Hergenrider, 211 Fairpark Drive, Billings, MT**

Mr. Hergenrider explained the variance request is due to the utilities in back. The staircase installation would require disturbance of the sewer, water and power lines.

Board member Heinrich confirmed that both garages will be kept.

Chairman Noennig asked for explanation regarding the need for front access.

**Opposed**

None

**Discussion**

None

Chairman Noennig called for a motion.

**Motion**

Board member Chesarek made a motion and Board member Olson seconded the motion to conditionally approve **City Variance #1230** 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 #1230 is conditionally approved.**

**Nicole Cromwell read the legal description into the record.**

Karen Husman presenting:

**Variance 1231 – 316 Miles Avenue – Side and Rear Setbacks** – 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.

This structure was started in January of 2011. A building permit application was initiated for a 2 story residential structure. After review, corrections from the City Building and Planning departments for structural and setbacks were sent to the applicant for changes needed before a permit could be issued. In April of 2012 the pending building permit expired. A new application was required to go forward with construction. In addition, a couple of Code Enforcement cases have been opened in regards to the property. The case notices spelled out that compliance to building code and zoning requirements and a building permit is required to complete the structure.

**RECOMMENDATION**

Planning Staff is recommending **denial** of **Variance #1231**.

Board member Bollman asked if construction was started without a building permit. Staff does not have that information and once submitted, corrections were sent out and the building was either started before they applied or started before the building permit was issued. Board member Bollman asked about other adjacent Variances. Staff replied regarding the particulars of the adjacent properties. There were no variances for a two story structure.

Board member Olson asked what is the bases for denial. Staff replied the structure was constructed without a building permit, it was not there preexisting to zoning, it is not considered legally nonconforming because it was not there prior to the zoning was in place.

Chairman Noemig stated that he was at this property and noticed that some adjacent properties had two residences on them. Is it zoned for more than one residence? Staff replied it is a 7000 square foot lot two residences are allowed by current zoning. He then asked staff if the distance from the structure to the alley lot line had been measured by staff. His pace calculation to the fence line is 8 feet. Perhaps the fence is off. Typically the fence is on the lot line. Staff explained that the alley fences are not always accurately put on the property line.

He then inquired, if denied, if the structure were one story, would it meet the setback requirements? Staff stated a single level structure wouldn't meet the setback requirements in the rear.

Board member Olson asked if the variance is denied, where this leaves the applicant. Would the building have to be moved? Staff said the structure would have to be moved to meet the setbacks. However, if the variance were approved, Staff has provided alternate conditions that would apply. Staff went on to explain the conditions relating to the structure being destroyed and the placement of the rebuild. A rebuild would have to meet the correct zoning requirements.

Board member Chesarek asked about the setback requirements and how destroyed would it have to be to be forced to meet conditions and building codes. Staff indicated 50 percent. He then confirmed at that time the foundations and all would have to be redone.

Board member Bollman explained all building code requirements would have to be in compliance regardless.

If the board chooses to approve this Variance, Staff has outlined 8 conditions.

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.

Board member Chesarek asked if these conditions were reasonably attainable. Staff believes they are. Board member Heinrich explained these are the same conditions. Staff replied that building code compliance or a Certificate of Occupancy is not usually required in the conditions but in this instance the building is already built and needs to be permitted and inspected. Building permits are not enforced by Planning but a Certificate of Occupancy issued by the Building department would indicate compliance to the code.

### **Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1231**.

### **Bob Bushing, w/EEC 720 Lohwest Lane, Billings, Mt 59106**

Mr. Bushing explained that he was not involved from the beginning. He does have copies of the building department and planning department comments. He fully intends to submit new plans for permitting. They are ready with the necessary corrections upon approval of this Variance.

Board member Olson asked if the walls were covered or if obtaining inspections is a big deal. Mr. Bushing deferred to the owner Mike Mitzel. Mr. Mitzel confirmed the open walls. Mr. Bushing explains he is ready to submit plans for permitting and a Certificate of Occupancy based on the present location of the building. The plans detail the structural and exiting requirements, etc. Mr. Chesarek asked if the plans will meet permitting requirements and Mr. Bushing they will easily. Chairman Noennig then asked if the basement is the garage. Mr. Bushing said yes and that it is to remain a garage. Chairman Noennig noticed the location of the garage door and asked if it will remain. Mr. Bushing and Mr. Mitzel confirmed it is not intended to be moved. Chairman Noennig

asked if the intent is to have another building on the front of the lot being that the current structure is placed at the rear. The applicant replied there is no plan to build in the front.

**Mike Mitzel, 8412 Shorthorn Drive, Billings, Mt 59104**

Mr. Mitzel explained the reasons for not having necessary permits. He was working with his father building homes when this building was started. His father had a stroke during this time and Mr. Mitzel thought his father had obtained the necessary permits for building. His father was 2 years in recovery. He is now retired and Mr. Mitzel claims he does not believe this is how things should be done. He went on to say that the foundation and concrete meet code requirements. He also indicated that the missing information required by the building department were on the new plans and were not structural but informational. He is confident that the structure will pass inspection. Darren Ruff did the rough in electrical and their plumbing contractor hooked up the sewer.

Chairman Noennig asked why it was started without permits or meeting correct setbacks. Mr. Mitzel said he could not give a fair answer and he thought his father had the permits although the information he had was for a one story structure. They used pins in the alley to identify property lines.

Chairman Noennig asked why the building is placed at the back of the lot and why is the garage door where it is. Mr. Mitzel had no explanation. Chairman Noennig asked what he will do if the variance is denied. Mr. Mitzel would work with EEC to see what is possible cost wise. No redesign has been considered yet. Mr. Mitzel would like it to not be a total loss.

Cost estimates

Board member Olson asked if he had been red tagged during the building process. Mr. Mitzel explained that he had tried to get the electrical hooked up but could not for lack of an electrical permit.

Board member Bollman inquired about his building of other houses. Did he not have inspections during the construction process and did it not occur to him that no inspections were happening during this build? Mr. Mitzel said it did occur to him but it was not the greatest time of his life.

Chairman Noennig asked if he knew he was not in compliance on anything. Mr. Mitzel replied, Yes, my attitude was bad. I did know I was not being inspected and I stand behind the building being structurally correct.

Board member Olson expressed the need to make a decision. Chairman Noennig asserted that the public meeting was still in progress and that the applicant was still speaking.

**The Public Hearing was closed.**

**Discussion**

Board member Olson asked what is the decision to made and what is the best answer. Board member Heinrich asked Board member Olson what he proposed. Board member Chesarek asked if it normal to have alternate conditions provided for approval when denial is recommended. It is not out of the question. Staff explained alternate conditions are often provided in case additional information is provided at the public hearing that leads the Board members to a different finding of fact. Board member Chesarek suggested that it is not out of the question to let the applicant "fix" this. Mr. Bushing stated that Mr. Mitzel is comfortable with the alternative recommendations for approval and what would happen if the structure should be damaged to the point of necessary replacement. He also addressed the need and desire to improve the appearance of the structure. Board member Chesarek is inclined to go with the alternative recommendations to approve the Variance. Board member

Bollman discussed the normalcy of the alternative recommendations being presented. Chairman Noennig said it is notable no neighbors came this evening to protest the variance. He also stated he is aware it is a big chore to change the location of the structure. Mr. Bushing interjected that he had received three phone calls from neighboring properties that claimed no issue with the proposal. Chairman Noennig said it is good information for the board to hear.

Board member Hagen asked Board member Chesarek what alternative recommendations he is referring to. Board member Chesarek said he is in favor of granting the applicant with the 8 conditions by Staff. He explained that it would be cost prohibited to have to tear it down and start over. He believes this is a hardship and the neighbors have no objection. Board member Hagen shared his concerns regarding the applicant not having a building permit stating that should have been done. Board member Bollman agreed stating this is especially true for persons who build houses. Board member Heinrich also agreed since this has been a situation since 2011 and there have been many opportunities to correct this.

Board members Hagen and Heinrich are discouraged because they seemingly “thumbed their nose” at the process.

Board member Heinrich took umbrage with the discussion period including the applicant and agent stating the Public Hearing was closed, this time is only for Board member discussion and the applicant and agent should not comment.

Chairman Noennig called for a motion.

**Motion**

Board member Bollman made a motion and Board member Heinrich seconded the motion to **deny** **City Variance #1231** per 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 to deny Variance request #1231 failed with a 3-3 vote.**

Board member Chesarek offered an alternative motion to approve **Variance #1231** with the alternate conditions set forth by Staff and Board member Olson seconded the motion.

**Discussion**

Board member Bollman asked the Board what the hardship is. Board member Chesarek replied regarding the expense stating the hardship is financial. Board member Bollman retorted it is self-imposed. Board member Chesarek reminded everyone that Mr. Mitzel was working for his dad, who is not in attendance, and following his lead assuming that he was taking care of the necessary permitting.

Chairman Noennig then asked staff procedural questions regarding the what ifs of this new motion failing. Staff advised the Chairman of the option to delay the action for not more than 30 days, take additional information and renotice. Board member Bollman mentioned that 4 votes are needed to approve the Variance.

Board member Heinrich disagreed with the notion of a decision being made by an absent Board member who would only review the audio with no ability to question the applicant and such and make an appropriate determination.

Staff advised the Chairman the Public Hearing would have to be reopened and the only reason for delaying the action would be to obtain additional information.

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 to approve with alternate conditions failed with a 3-3 vote.

**Discussion**

Options were discussed to proceed. To table and rehear this at next meeting or leave the building as it is and wait one year and apply for a new Variance. The applicant was in favor of tabling the action to the next meeting.

Board member Chesarek a motion to table the decision and reopen the public hearing at the July 6, 2016 meeting and Board member Olson seconded.

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 5-1 to reopen public hearing on July 6, 2016 and Staff to present again. Board member Heinrich recommends new information be presented.

The action to City Variance #1231 is to be presented and reconsidered on July 6, 2016.

**Other Business/Announcements:**

There will be a meeting on July 6, 2016.

Adjournment: 7:03 p.m.

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

-----  
**Robbin Bartley, Administrative Support I**

-----  
**Mark Noennig, Chairman**



## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** City Variance #1231 - 316 Miles Avenue

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

**PRESENTED BY:** Karen Husman

---

### Information

#### REQUEST

**Return Item - Variance 1231 – 316 Miles Avenue – Side and Rear Setbacks** – 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

## **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. This application was heard at the City Board of Adjustment meeting on June 1, 2016, and continued to the July meeting in order for the Board to further review the application. 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 structure on 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.

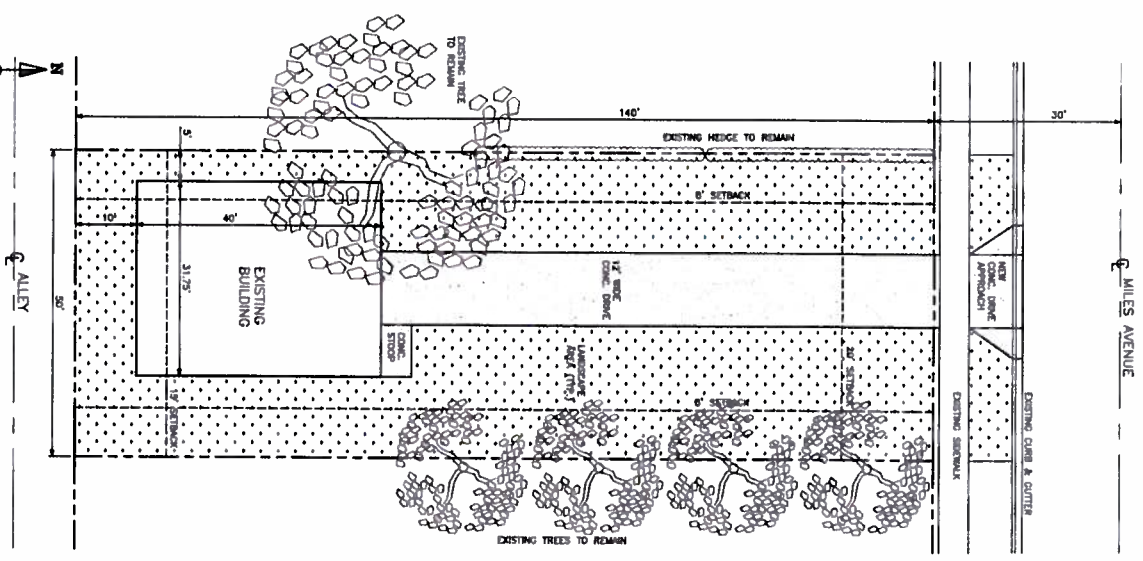
Thank you in advance for your consideration.

Sincerely,

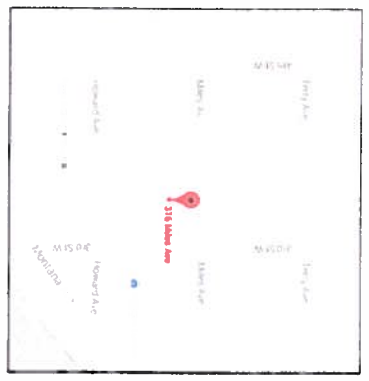
  
\_\_\_\_\_  
Michael J. Mitzel, Owner  
481 Constitution Avenue  
Billings, MT 59105

  
\_\_\_\_\_  
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.eecmt.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 - 4<sup>th</sup> 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 4<sup>TH</sup> 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 4<sup>TH</sup> FLOOR  
BILLINGS, MONTANA 59101  
FAX: (406) 657-8327



EMAIL: [BalterMe@ci.billings.mt.us](mailto: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 4<sup>TH</sup> FLOOR  
BILLINGS, MONTANA 59101  
FAX: (406) 657-8327



EMAIL: [BalterMe@ci.billings.mt.us](mailto: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 4<sup>TH</sup> FLOOR  
BILLINGS, MONTANA 59101

FAX: (406) 657-8327

EMAIL: [BalterMe@ci.billings.mt.us](mailto: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 4<sup>th</sup> 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, 4<sup>th</sup> 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

[View Codes](#)

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

### Residential Building Data

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

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

\* 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 is denied to other land in the same district. 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 would recommend 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.



## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** City Variance #1232- 549 Wheatstone Dr. South

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

**PRESENTED BY:** Karen Husman

---

### Information

#### REQUEST

**Variance 1232 – 549 Wheatstone – Side Setback** – 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 6 feet 5 inches (6'5"), in a Planned Development zone with underlying zoning of Residential 9,600 (PD-R96), on Lot 1, Block 19, Harvest Subdivision, 3rd Filing, a 7,090 square foot parcel of land. The proposed variance is to allow the owner to add a second story over the existing attached garage. Tax ID: C09694. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Victor and Minta Sisk

**AGENT:** None

**PURPOSE:** To reduce the minimum side setback of 8 feet for a 2-story structure to allow 6'5" feet

**LEGAL DESCRIPTION:** Lot 1, Block 19, Harvest Subdivision, 3rd Filing

**ADDRESS:** 549 Wheatstone Drive South

**EXISTING LAND USE:** Residential Single Family

**PROPOSED LAND USE:** Residential Single Family

**EXISTING ZONING:** PUD (underlying zoning R-96)

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

Records show there has been one variance granted in this subdivision for an arterial setback from 70' to allow 63.5'.

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: PUD

Land Use: Residential Single Family

**SOUTH:** Zoning: PUD

Land Use: Residential Single Family

**EAST:** Zoning: PUD

Land Use: Residential Multi Family

**WEST:** Zoning: PUD

Land Use: Residential 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 6 feet 5 inches (6’5”), in a Planned Development zone with underlying zoning of Residential 9,600 (PD-R96), on Lot 1, Block 19, Harvest Subdivision, 3rd Filing, a 7,090 square foot parcel of land.

The proposed variance is to allow the owner to add a second story over the existing attached garage. This additional living space would create more room for a growing family. They would like to put the outside wall on the north side of the garage in line with the existing wall. Placing the wall where the zoning requires at 8 feet would possibly jeopardize the structural integrity of the wall.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for a variance to allow a minimum side setback of 6 feet 5 inches (6’5”).

**RECOMMENDATION**

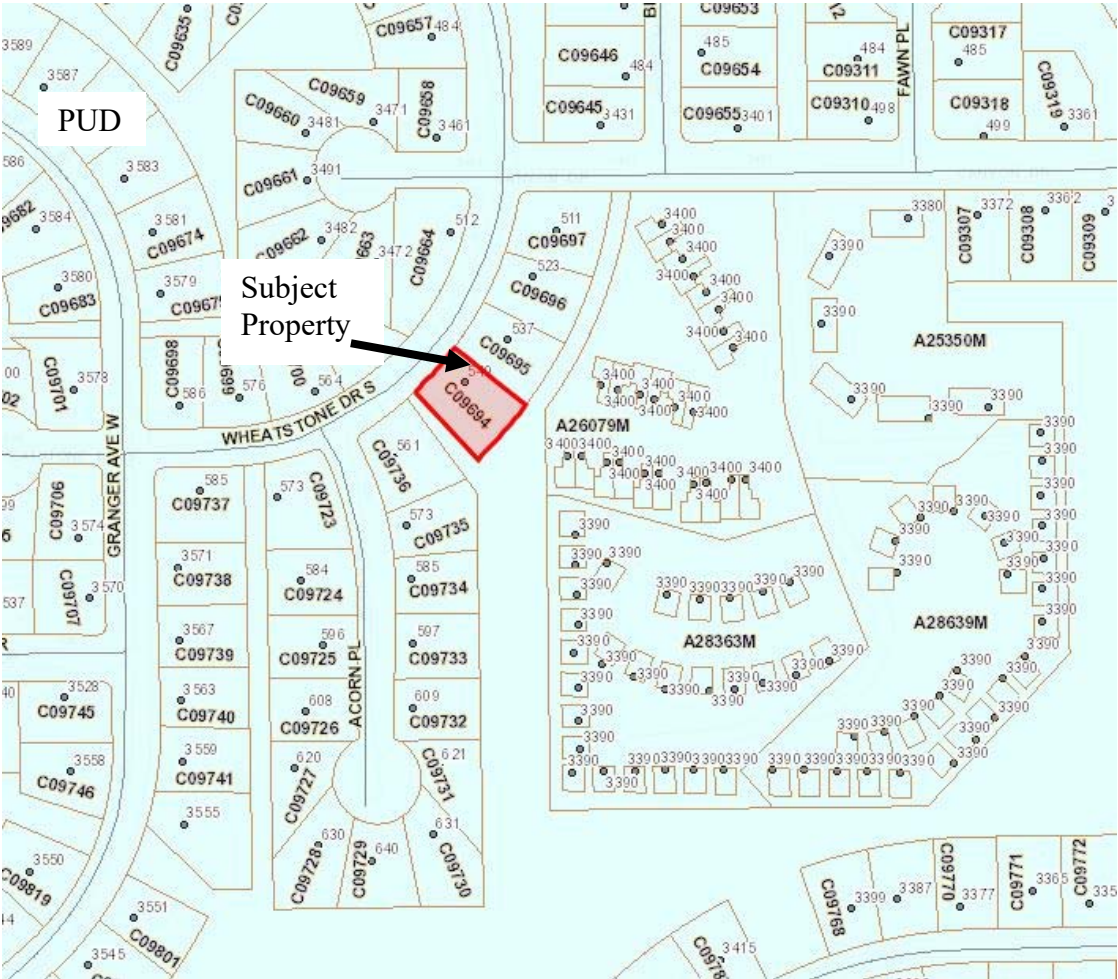
Planning Staff is recommending conditional approval of City Variance #1232 based on the criteria for variances.

---

**Attachments**

- Zoning Map & Site Photos
  - Applicant Letter & Site Plan
  - Determinations
-

**ATTACHMENT A**  
Surrounding Zoning & Site Location





**ATTACHMENT A**  
Site Photographs



Subject Property



ATTACHMENT A  
Site Photographs, Continued



Side adjacent to the bike path.



**ATTACHMENT A**  
**Site Photographs, Continued**



**Rear of property**



**Adjacent Property**

**Attachment B**  
**Applicant Letter to the Board**

May 15, 2016

549 Wheatstone Drive South  
Billings MT 59102

Plan Review Number 16-884

Chairperson of the Board of Adjustment  
Planning & Community Services Department  
City-County Planning Department  
Variance Application – City of Billings

2. Prepare a written statement addressed 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 the property, and why the variance is being sought.

Chairperson:

I am planning to make a change to my existing property and put a family room addition above my existing garage. My family is growing and I am in need of the additional space for a family room. I am seeking this variance because I want to put the outside wall on the north side of the garage in line with the existing wall of the garage as it is now. To move the outside wall of the addition above the garage to conform with the zoning regulations would make the addition less structurally sound. The north wall will be stronger placed on the existing wall that is already there, plus give me additional square footage needed in the family room.

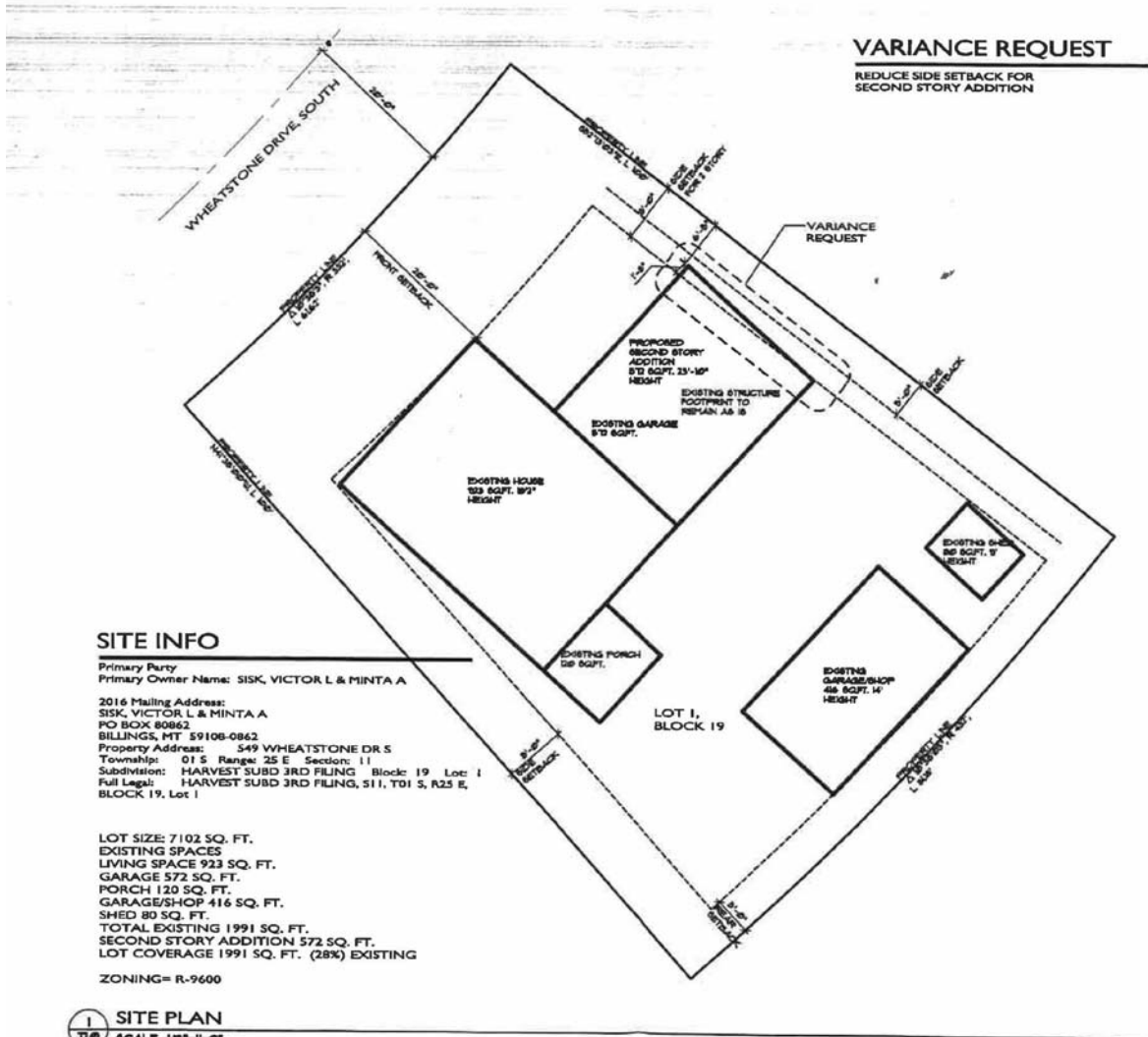
Thank You,

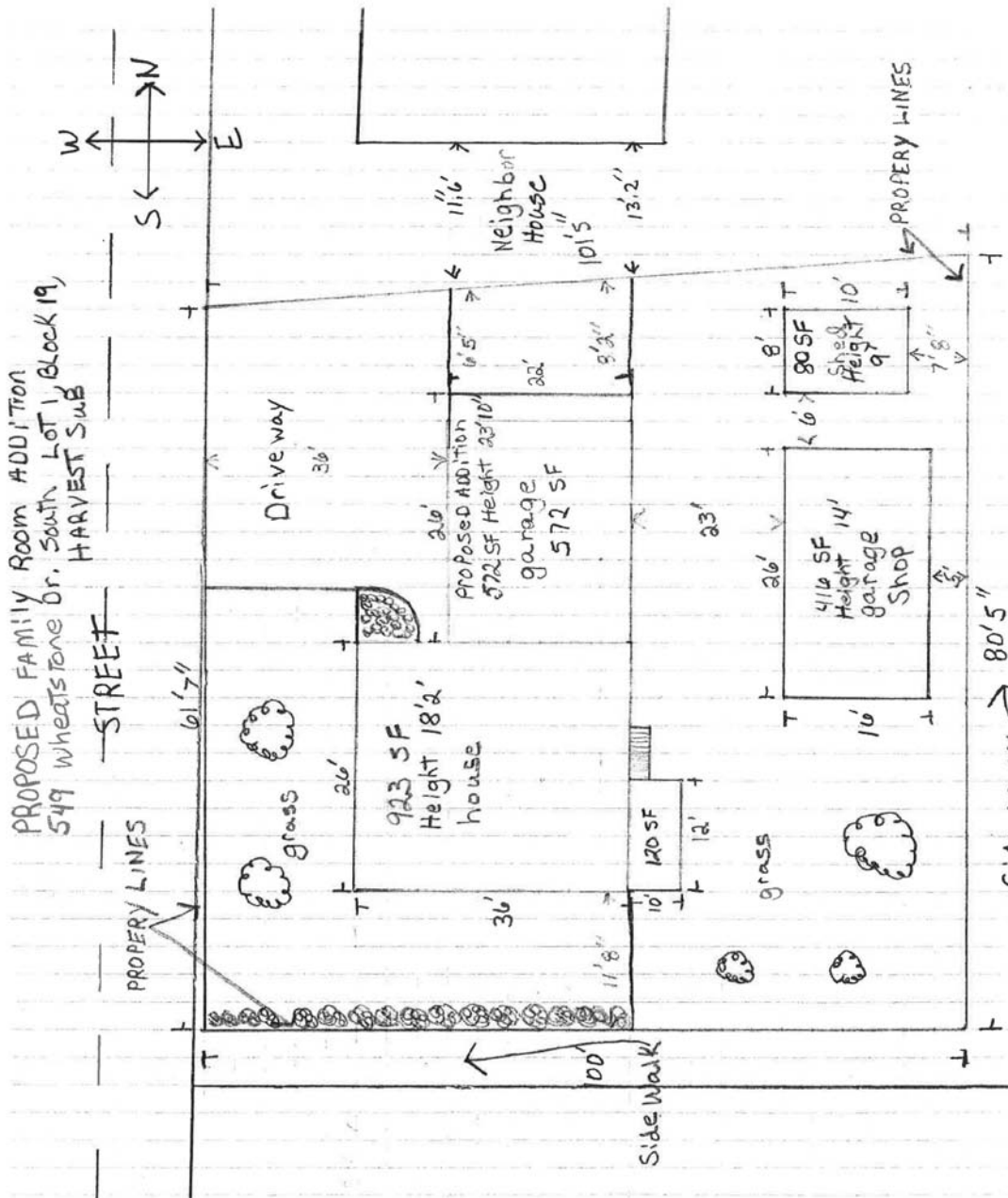


Victor Sisk

Minta Sisk

# Attachment B Site Plan





## **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 according to the zoning restrictions in place. Addition of a second story is possible without the variance, but it may be difficult to construct an aesthetically pleasing second story over the garage that is structurally sound and adheres to the two-foot difference at one corner (a 1' 8" x 12' triangular edge).

- 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 no special circumstances existing on this property creating a hardship that is peculiar to this land, however during the construction of the original garage attached to the house, the front corner of the garage is closer to the property line than the back corner.

- 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.

- 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 side setback of 8 feet for a 2-story structure to allow a minimum side setback of 6 feet 5 inches (6'5"). No other variance is intended or implied with this approval.
2. The variance is limited to Lot1, Block 19, Harvest Subdivision, 3<sup>rd</sup> 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.
4. The applicant must submit and obtain a building permit to complete the renovations within 6 months of this variance approval.
5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
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**

The requested variance is to ensure the future opportunity to rebuild the structure as it is. 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. Residential two story homes are allowed in this Planned Development.



## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** Variance #1233 - 2345 King Avenue North - Sign Variance

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

**PRESENTED BY:** David Green

---

### Information

#### REQUEST

**Variance #1233 - 2345 King Avenue North - Sign Variance** - The applicant is requesting a variance from 27-705(b) requiring a maximum sign area of 32 square feet and a sign height no taller than 8 feet above grade to allow a sign height of 16 feet, a sign width of 10 feet, and a sign area of 90 square feet per side in a Residential Professional (RP) zone on Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision, a 2.11-acre parcel of land. PA Prospects, LLC, is the owner and Matt Robertson is the agent. Presented by Dave Green, Planner II.

#### RECOMMENDATION

Staff recommends conditional approval of the proposed variances. Staff is recommending 6 conditions for the variance request:

1. The variance is for a maximum sign height of 16 feet and 10 feet wide. No other variance is intended or implied by this approval.
2. The variance applies to Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision.
3. The proposed sign structure will be located and oriented in substantial conformance with the submitted site plan. Minor adjustments to the site plan are allowed and may be required.
4. The applicant will apply for and receive approval of a sign permit within one 1 year of the Board of Adjustment approval.
5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
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.

#### APPLICATION DATA

OWNER: PA Prospects, LLC

AGENT: Matt Robertson

LEGAL DESCRIPTION: Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision

ADDRESS: 2345 King Avenue West

CURRENT ZONING: Residential Professional

EXISTING LAND USE: Professional Offices

PROPOSED USE: Professional Offices

SIZE OF PARCEL: 2.11 acres

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

There have been four variances granted in the immediate neighborhood. All four were sign related, one for sign height from 30 feet tall to 40 feet tall, one for 2 free standing signs in a shorter distance of street frontage than what is required, one for a sign square footage increase from 175 square feet to 250 square feet, and one for a sign square footage increase from 175 square feet to 228 square feet.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: Residential Professional (RP) Land Use: Residential, rental properties and owner occupied
SOUTH:	Zoning: Community Commercial (CC) Land Use: Qdoba, Shopko, Costco
EAST:	Zoning: Controlled Industrial (CI) Land Use: Lithia Auto Dealership
WEST:	Zoning: RP Land Use: Residential Duplex rental units

## **BACKGROUND**

The applicant is requesting a variance to replace an existing sign on the property that is 8 feet tall and 10 feet wide to a sign that is 16 feet tall and 10 feet wide. This proposed sign will allow the applicant to have a sign with multiple business names on it for the office spaces available to lease. The majority of businesses desire the opportunity to have a sign near a street frontage to advertise the business and also help clients find the business. The current sign size limits the ability to advertise the businesses that occupy the property.

King Avenue West from the I-90 exit to South 32nd Street West is 6 lanes with a center turn lane at intersections. It carries between 28,000 and 29,000 vehicles a day. During the months of November and December, it can reach about 40,000 vehicles a day. The posted speed limit is 35 miles an hour, and with 3 lanes of traffic traveling west, and 3 traveling east, there are many things a driver needs to pay attention to. This property also has only one entrance into it from King Avenue West that is one lane into the multi-tenant building. This development is designed to have multiple professional office tenants in the building and each business would like to be able to have a sign to help people locate them. A sign is intended to alert drivers of stores and services available in the buildings where the sign is located. With the amount of traffic and speeds which people are moving, a sign needs to be easily visible and large enough to be quickly read. There are a large number of signs along the King Avenue West Corridor that are very large and easily read in different zoning districts. Some have received variances to have a larger sign.

Residential Professional zoning has a very limited sign size since it is a buffer zoning between housing and other heavier traffic businesses, and also is sometimes in neighborhoods that are primarily residential. The corner of King Avenue West and South 24th Street West is one of the busiest intersections in the City of Billings. This Residential Professional zoning sign size makes it difficult to draw people's attention to the offices on this parcel of land. The existing sign structure, which was installed in 1997, is 8 feet tall and 10 feet wide with a total sign area of 32 square feet on each side. The proposed sign structure is 16 feet tall and 10 feet wide with 90 square feet of sign face available on both sides. With the amount of traffic at the intersection of two major streets in Billings, a 32 square foot sign on a 6 lane road with up to 29,000 vehicles a day is not readily visible to those looking to find a specific office or use.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variances based on the determinations for review as provided within this report and similar variances granted by the Board of Adjustment. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other property in the neighborhood. Four similar sign variances have been granted. There are other properties in the area with larger signs than are currently allowed by the respective zoning districts where the property is located.

## **RECOMMENDATION**

Staff is recommending conditional approval of the proposed variance.

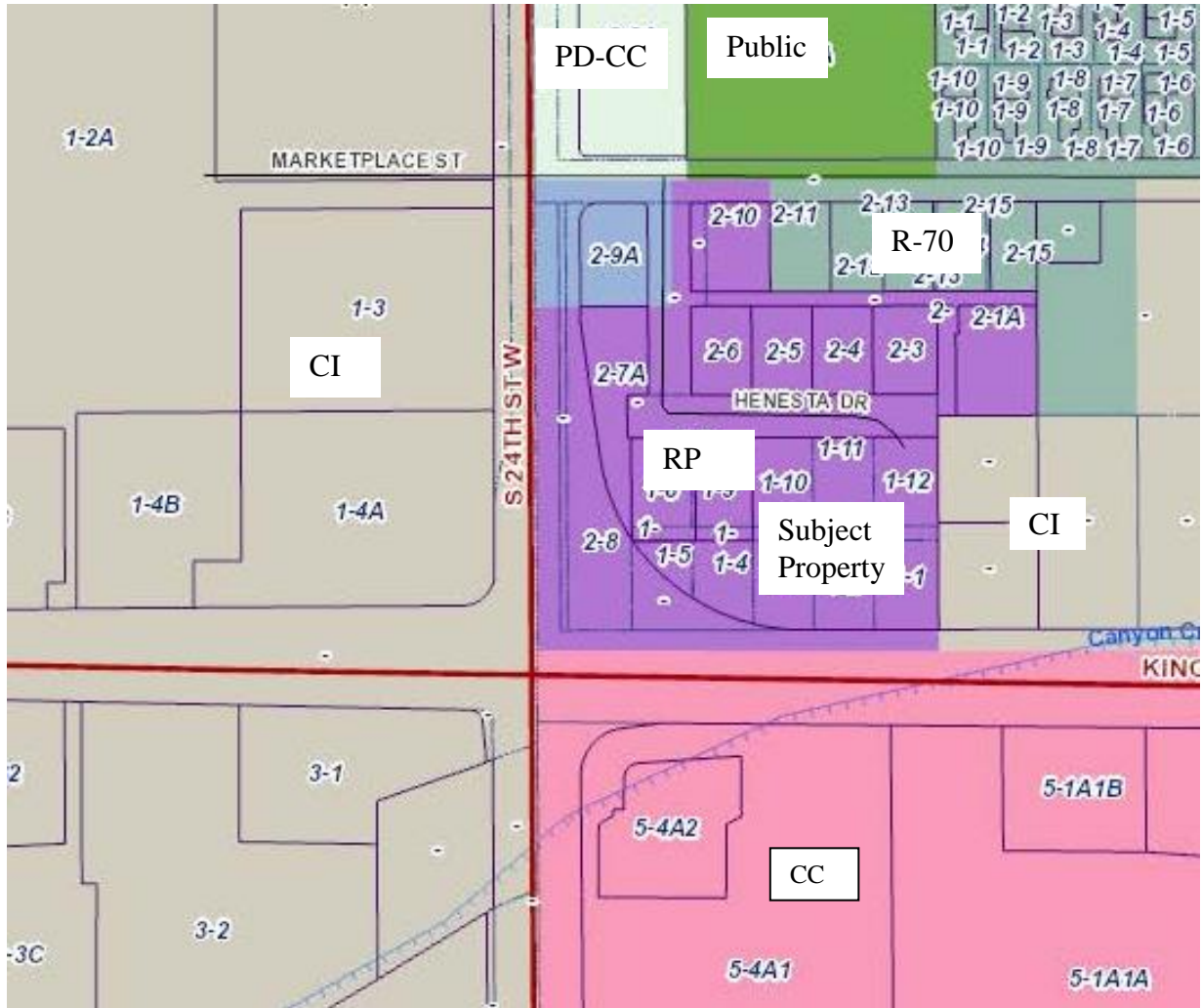
---

## **Attachments**

Zoning Map and Site Photos  
Applicant Letter and Sign Plan  
Determinations

---

Zoning Map



Site photographs



Subject Property view north and west from existing entrance off King Avenue West



View of King Avenue West facing east



View south across King Avenue West



View of existing sign from south east corner of subject property



View of subject property looking north west



Aerial View

# Proposed Sign



PHOTO RENDERING

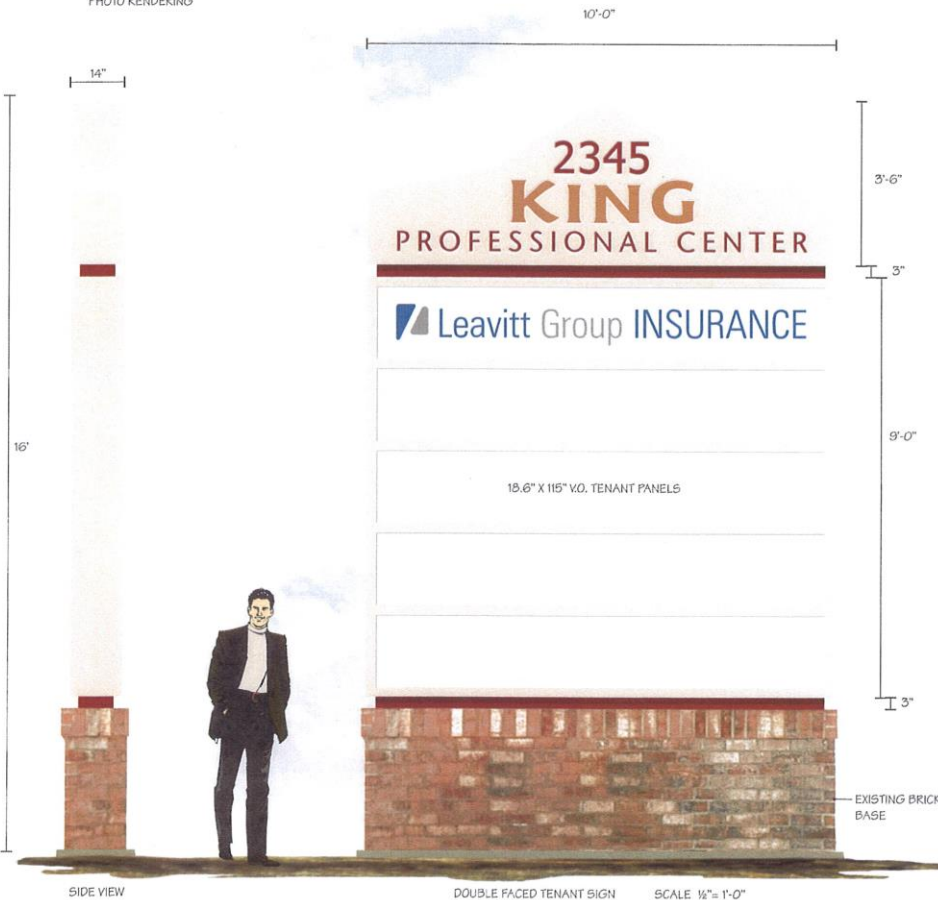


EXISTING MONUMENT SIGN

**DESIGN**  As Designed  
 With Changes  
 Approved for Production

X  
 Date Signature \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



**A** MANUFACTURE AND INSTALL ONE DOUBLE FACED TENANT SIGN, UPPER CABINET IS FABRICATED ALUMINUM WITH ALUMINUM FACES. PAINT FINISH FACES AND RETURNS LIGHT BEIGE/IVORY (MATCH BUILDING COLOR). ROUTE COPY AND LOGO AREAS FROM FACE AND BACK WITH WHITE ACRYLIC. APPLIED 2630-49 BURGUNDY AND 2630-131 GOLD METALLIC VINYL FILMS APPLIED TO THE ACRYLIC. ILLUMINATE FROM INTERIOR WITH SLOAN SIGN BOX II WHITE LED LIGHTS. LOWER TENANT CABINET IS FABRICATED LARGE ACCESS EXTRUDED ALUMINUM WITH DIVIDER BARS FOR 5 TENANTS. PAINT FINISH TO MATCH UPPER CABINET, WHITE POLYCARBONATE TENANT FACES. (APPLIED VINYL GRAPHICS FOR TENANTS AT LATER DATE ON SEPARATE ORDERS). ILLUMINATE CABINET FROM INTERIOR WITH SLOAN SIGN BOX II WHITE LED LIGHTS. FABRICATED METAL LOWER AND MIDDLE REVEALS PAINTED BURGUNDY. MOUNT SIGN TO EXISTING BRICK BASE. (VERIFY EXISTING AND ADD REQUIRED STEEL SUPPORT PIPE). REMOVE EXISTING SIGN CABINET AND REMAINING ADDRESS NUMERALS FROM THE BASE.

<b>SIGN PRODUCTS, INC.</b> 1425 MONAD, BILLINGS, MT 59104 Phone (406) 592-8346 Fax (406) 592-9684	<b>CLIENT</b> KING AVE PROFESSIONAL BILLINGS, MT	<b>DATE</b> 01-26-16	<b>DESIGN #</b> 16302-16	<b>DESIGNER</b> TP	This design is the property of Sign Products Inc. and all rights to its use or reproduction are reserved
		<b>SCALE</b> 1/2" = 1'-0"	<b>SALES</b> TP	<b>SHEET #</b> 1 OF 1	

## Applicant Letter

Chairperson of the Board of Adjustment  
City Board of Adjustment  
2825 3<sup>rd</sup> Avenue North  
Billings, MT 59101

June 1<sup>st</sup>, 2016

Dear Sir or Madame;

The property at 2345 King Avenue West is an established office/ professional center. The property recently changed ownership. The new owner is investing in a major remodel to retain existing tenants as well as to appeal to perspective new business tenants.

A signage variance is being sought to attract business tenants to the location with high business name visibility on a major arterial (King Avenue). The existing sign does not have sufficient space to list all of the tenants in the building. Location identification has been difficult in the past with many clients passing the location before identifying they were at the correct address. King Avenue West is a six-lane major arterial with turning lanes. The speed limit is 35 mph. The building location turn off is near the traffic light which requires positioning oneself within plenty of distance so as to compete with traffic that is positioning for the turn lanes. The location needs to be highly visible to allow the time needed to position for exit. The proposed new sign solves the visibility issues and aids in the location being a draw for business tenants.

Thank you for your consideration.

Sincerely,



Jerry Nelson  
PA Prospect LLC.

VARIANCE APPLICATION – CITY OF BILLINGS

1. Answer the following questions:

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

The property has a King Avenue West address and is a professional office space for five (5) tenants. King Avenue West is a six-lane major arterial with turn lanes and 35 mph speed limit. Clients/customers approaching the building on King Avenue West need to be able to identify the location quickly so as to position themselves to exit King Avenue. The existing sign does not allow listing space for all five (5) tenants. It also does not have the visibility needed to be able to position oneself with respect to traffic to prepare for exiting King Avenue.

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

The existing monument sign does not have sufficient space for all of the Tenants in the building. The building is comprised of five (5) professional office suites. All five tenants need to be able to show their location to their clients/customers in a visible location that traffic approaching on King Avenue can easily view.

A handwritten signature or scribble, possibly a name, written in black ink. It consists of several overlapping loops and a long, sweeping tail that extends downwards and to the right.

## DETERMINATIONS

Prior to approval, the Board of Adjustment shall ensure that the determinations for variances, as outlined below, have been satisfied:

- 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 that exist which are peculiar to the lot that are not applicable to other lots in the same district. The surrounding properties are zoned for heavier traffic use and are allowed to have larger signs, which are easier to see on a road with 6 driving lanes and a posted speed limit of 35 mph. This parcel, because of zoning, is not allowed a large enough sign to be easily seen on a road with the above mentioned conditions.

- 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 Board of Adjustment has granted four similar sign variances in a subdivision across the street. Other businesses in the area that have much heavier traffic and ease of access have requested and received variances for larger signs. This property owner is requesting the same privilege.

- 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 will not confer on the applicant a special privilege because the Board of Adjustment has granted sign variances to other land owners in the same area with requests for much larger heights and square footages than this applicant is requesting. However, the zoning of this property is different than the zoning of many of the other properties in the area which creates a difference in sign size allowances.

- 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;**

Granting this variance will meet the general purposes 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 6 conditions for the variance request:

1. The variance is for a maximum sign height of 16 feet, sign width of 10 feet, and sign area of 90 square feet per side. No other variance is intended or implied by this approval.
2. The variance applies to Lots 1-5 & Lots 10-12, Block 1 of Justiss Subdivision.
3. The proposed building will be located and oriented in substantial conformance with the submitted site plan. Minor adjustments to the site plan are allowed.

4. The applicant will apply for a sign permit within one 1 year of the Board of Adjustment approval of the variance.
  5. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
  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**  
Staff is recommending the applicant/agent have 1 year to submit a sign permit application.
- 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 properties in the district.**  
The granting of this variance would not allow a use that is not allowed in the zoning district. Signs are allowed in this zoning district.



## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** Variance #1234 - 4129 Roosevelt Avenue - Side Setback

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

**PRESENTED BY:** David Green

---

### Information

#### REQUEST

**Variance #1234 - 4129 Roosevelt Avenue - Side Setback** - The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 1 foot in a Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. The variance would allow the addition of an attached garage. Tax ID: A06949. Presented by Dave Green, Planner II.

#### RECOMMENDATION

Staff recommends Conditional Approval of the variance request. Staff is recommending the following conditions:

1. The variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 1 foot in a Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land generally located at 4129 Roosevelt Avenue.
3. The garage shall be constructed in substantial conformance to the site drawings in terms of size and location as submitted to the Planning Division.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. The owner will submit a building permit application within 1 year of Board of Adjustment approval and complete the construction within 2 years of Board of Adjustment approval.
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.

#### APPLICATION DATA

OWNER: Drew Lorenz

AGENT: None

LEGAL DESCRIPTION: Lots 15 & 16, Block 2 of Fairview Subdivision

ADDRESS: 4129 Roosevelt Avenue

CURRENT ZONING: Residential 6000

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 6,357 square feet

#### CONCURRENT APPLICATIONS

None

### **APPLICABLE ZONING HISTORY**

There have been 9 variance requests in the surrounding neighborhood, all of the variances have been granted. The requests ranged from required front, side and rear setbacks, to lot coverage, fence height and a lot size too small for multiple dwelling units.

### **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: Residential 6000 (R-60) Land Use: Residential
SOUTH:	Zoning: Public Land Use: Orchard Elementary
EAST:	Zoning: R-60 Land Use: Residential
WEST:	Zoning: R-60 Land Use: Residential

### **BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 1 foot in a Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. The variance would allow the addition of an attached garage. The County Property data shows the original dwelling on this site was built in 1943.

The applicant is before the Board of Adjustments asking for a variance from a side setback for an attached garage on his property. This neighborhood is diverse with some houses built in 1920, some in the 1940's, one in 2012, and one in 2015. The one built in 2015 received a variance from this Board to demolish an existing home and build a new home on a lot that already had two dwelling units on it. The variance was because the lot was too small to meet current zoning requirements for two homes. This is one of the older neighborhoods in Billings and many structures were built before zoning was in place or enforced. When staff was posting the property and observing the neighborhood, it was noted that several lots on Roosevelt had structures built along property lines, that included covered decks, garages, and homes. This was also noticed on Buchanan, which is one street to the north. Other property owners in the neighborhood have built structures over the years that do not meet the current code requirements of the City of Billings. This property owner, as stated in his letter to the Board, is asking to build an attached garage that will add value to the home. Also, according to the owner, the garage will help stop trespassing of vehicles and pedestrians across the property.

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval of the request to reduce the side setback from 5 feet to 1 foot. The proposed new garage will fit into the neighborhood where there are already other structures that are close to property lines or on property lines. At the time of the writing of this report, staff has not heard any comments from surrounding neighbors.

### **RECOMMENDATION**

Staff recommends Conditional Approval of the variance request.

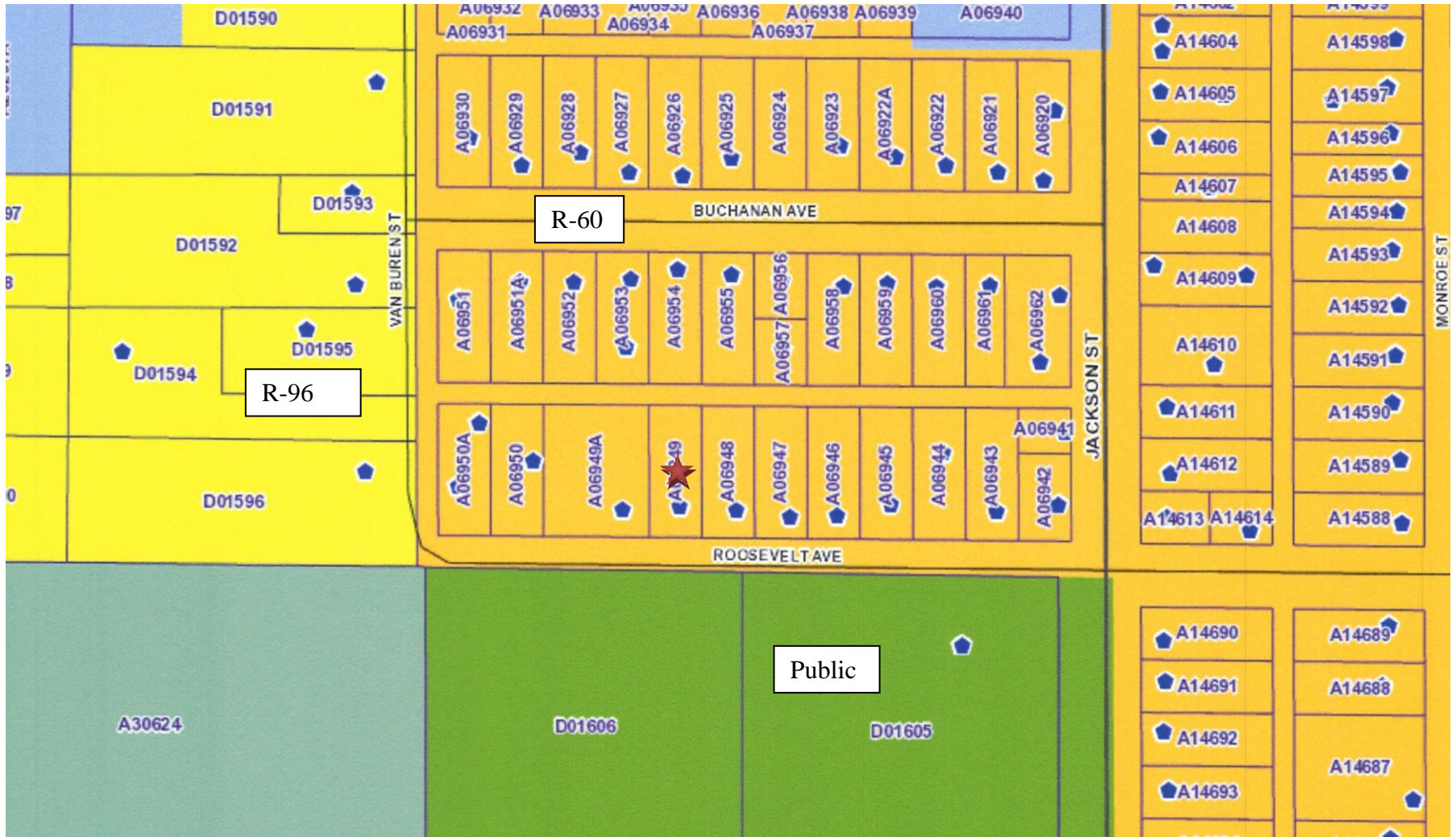
---

### **Attachments**

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

---

Surrounding Zoning & Site Location

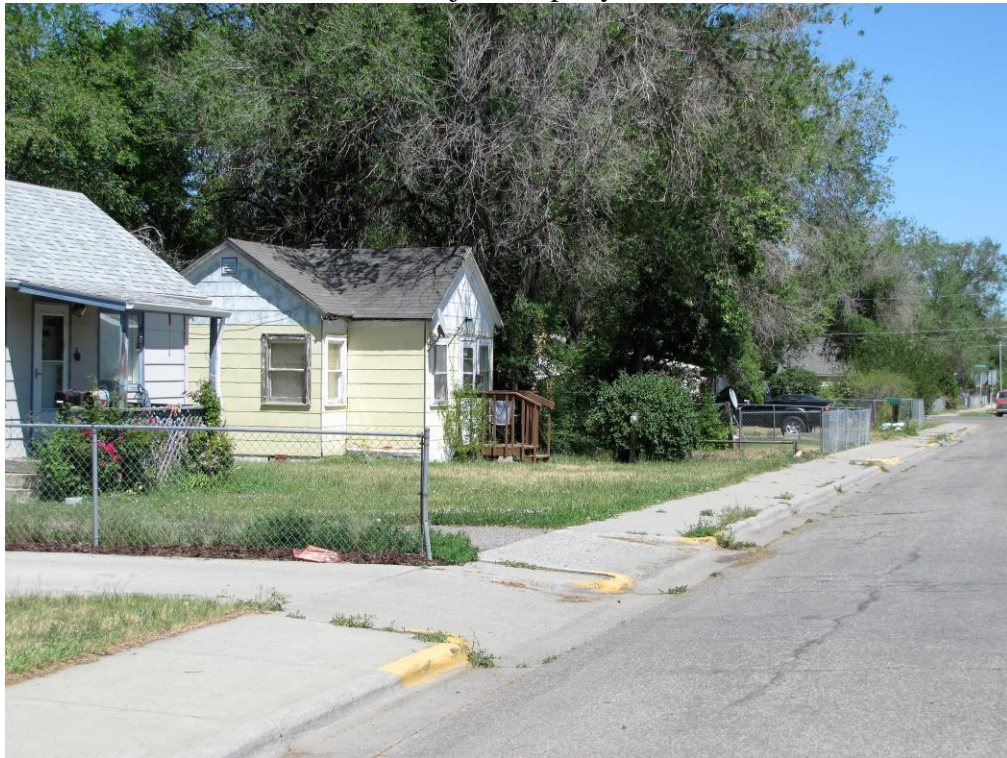


Subject Property ★

Site Photographs



Subject Property



View looking east along Roosevelt Avenue



View west from subject property



View south across Roosevelt Avenue



Covered patio on the property east of subject property



View of attached garage on property to the east of the subject property



View of detached garage very near side property line east of subject property



View of house on rear property line west of subject property



Picture from applicant showing distance to neighbor's house from shared fence



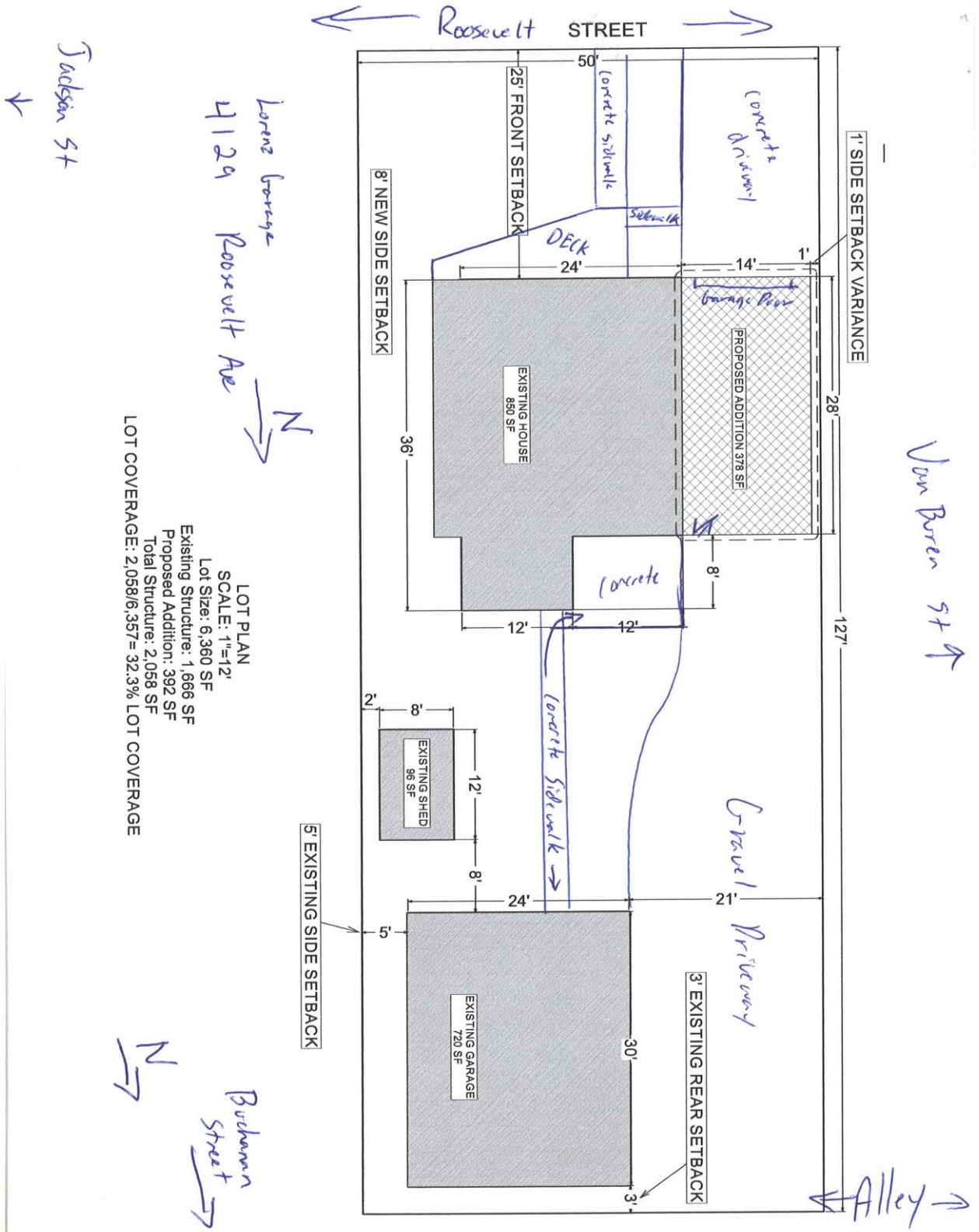
Picture from applicant showing driveway from Roosevelt to alley

**ATTACHMENT B**  
Site Photographs, Continued



Aerial View of Subject property ★

Site Plan



LOT PLAN  
 SCALE: 1"=12'  
 Lot Size: 6,360 SF  
 Existing Structure: 1,666 SF  
 Proposed Addition: 392 SF  
 Total Structure: 2,058 SF  
 LOT COVERAGE: 2,058/6,357=32.3% LOT COVERAGE

Lorenz Garage  
 4129 Roosevelt Ave  
 Jackson St

Buchanan Street

Applicant Letter and Application

To: Mr. and/or Mrs. chairperson of the Board of Adjustment

Tira Lorenz and I, Drew Lorenz, of 4129 Roosevelt Ave Billings Montana, would like to build a new construction garage on our driveway. The garage will be attached to our house. The reason for the zoning variance request, is we would like to build closer to our west property line than the setback of 5 feet.

Thank you for your consideration

Drew Lorenz

## Questions:

A: The Zoning Regulation requires a 5 foot setback from the west side of our property. Tira and I would like to add an attached garage to our house. To do this, we would like to build closer than the 5 foot setback to our property line. This would make the garage wide enough to easily open car doors inside of the garage and not hit walls

B. Tira and I would like to build this garage, so she can drive into the garage from Roosevelt Ave and/or back out onto Roosevelt Ave. Our current garage is challenging to drive forward in or back into from the alley.

We would also like to build this garage to limit foot traffic through our property.

Our property is located on the north side of Orchard Elementary School. We have a driveway that connects between Roosevelt Ave and our alley. This encourages foot traffic. We installed fences to limit car traffic. Before the fences, on average, we had a car drive through our property once a week. Now we have gates left open or witness people and/or kids walking through. We are concerned that one of these individuals will hurt themselves and we will be responsible for damages. With no view from the street to alley or visa versa, we feel the foot traffic will diminish

## RECOMMENDATION

Staff recommends Conditional Approval of the variance request.

## 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 that exist which are peculiar to the land, but many properties in the area have structures very close to the property line.

- 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;**

Four properties on this street have structures very close to or on the property lines. There are others properties in the neighborhood that also have buildings very close to or on property lines. Denying this variance would deprive the applicant rights commonly enjoyed by many in this neighborhood.

- 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 the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood.

- 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;**

Granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy. They are in a residential zone surrounded by residential zoning with homes built on them in an older neighborhood. It is a common practice on new homes being built to have an attached garage.

- 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:

1. The variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 1 foot in a Residential 6,000 (R-60) zone on Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 & 16, Block 2 of Fairview Subdivision, a 6,357 square foot parcel of land generally located at 4129 Roosevelt Avenue.
3. The garage shall be constructed in substantial conformance to the site drawings in terms of size and location as submitted to the Planning Division.
4. No construction activity will be done before 7 a.m. or after 8 p.m.

5. The owner will submit a building permit application within 1 year of Board of Adjustment approval and complete the construction within 2 years of Board of Adjustment approval.
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**

Staff recommends the applicant be required to submit a building permit application within 1 year and complete the project within 2 years of the variance approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district – attached garages are allowed in the R-60 zone.

**ATTACHMENTS**

- A: Surrounding Zoning & Site Location
- B. Site Photographs
- C: Site Plan and Elevations
- D: Applicant Letter and Application



## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** Variance 1235 - 607 4th Ave N

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

---

### Information

#### REQUEST

**Variance 1235 – 607 4th Avenue N – Clear Vision** – A variance from 27-615(a) requiring any permanent structure in a clear vision area at an intersection controlled by a traffic signal to be 30 inches in height or less, to allow a permanent structure over 30 inches in height to encroach up to 4 feet into the required clear vision area, as proposed in the AASHTO analysis for the traffic signal controlled intersection. The variance would allow the construction of a new building. Tax ID: D05887. Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

Planning staff is recommending conditional approval and adoption of the findings of the 7 criteria for Variance 1235.

#### APPLICATION DATA

OWNER: Peter Yegen, Jr Family Trust

AGENT: Howa Design

LEGAL DESCRIPTION: C/S 2212, Parcel 1

ADDRESS: 607 4th Avenue N - aka 411 N 7th Street

CURRENT ZONING: CI

EXISTING LAND USE: Vacant

PROPOSED USE: Splish Splash Car Wash

SIZE OF PARCEL: 1.3 acres

#### CONCURRENT APPLICATIONS

Building Permit #BP-16-01440 - Footing and Foundation

#### APPLICABLE ZONING HISTORY

Subject Property - County Variance 49 was granted in 1978 to reduce the side adjacent to street setback for a new structure from 10 feet to 5 feet.

Surrounding property - Three additional setback variances have been granted in the immediate vicinity including 1 for the Pacific Steel screening fence installed along 6th Avenue North to reduce the arterial setback from 80 feet to 38 feet. Two variances were granted for 1123 1st Avenue North to reduce the side adjacent to street setback from 10 feet to 2.5 feet and the front setback from 20 feet to 0 feet.

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: CI  
Land Use: Railroad leased land

SOUTH: Zoning: CI  
Land Use: Auto Sales

EAST: Zoning: Public  
Land Use: Metra Park  
WEST: Zoning: CI  
Land Use: Elevation Church

## BACKGROUND

This is an application to allow a permanent encroachment in the defined clear vision area at a signalized intersection and to accept the proposed AASHTO (American Association of Street and Highway Traffic Officials) engineered clear vision area to govern this property at the intersection of 4th Avenue North and Exposition Drive. The property owner, Peter Yegen Jr. Trust, has entered an agreement with the developer to place a new Splish Splash Car Wash on this parcel of land. The property was annexed to the city in 2015 and placed within the Tax Increment Finance district adopted for the East Billings Urban Renewal district. The zoning of Controlled Industrial is the original zoning of the property since 1973 when the County adopted zoning.

Prior to 2009, the zoning code requirements for clear vision at intersections stipulated a 25 foot by 25 foot clear vision triangle at all traffic controlled intersection whether controlled by a signal or by a stop sign. The City Traffic Engineer determined the simplified versions of clear vision triangles were not adequate to address all of the intersection types especially when the geometry of the intersection was not a uniform 90 degree angle with no changes in elevation of either street. In 2009 and again in 2012, the City Council and County Commissioners adopted amendments to the clear vision requirements to encompass most of the traffic situations encountered in the Billings area. The code amendment for traffic controlled intersections was specifically written so that road geometry with angles of intersection of less than 90 degrees or with speeds higher than 35 mph would be at the determination of the City Traffic Engineer. The code did not anticipate the need to have a staff determination in the case where the angle of intersection was greater than 90 degrees as is the case with this subject property.

The property owner and developer met with the city staff at least twice to review a proposed site design. The original design placed the car wash facility at the north end of the property away from all the adjoining streets. The city staff requested the site design attempt to mirror and emulate the East Billings Urban Renewal form where buildings frame the street rather than the parking lot. The site was redesigned with effort to accomplish a better urban form and placed the car wash facility along the east property line that faces the Metra Park facility. The design requirements for the facility made this the most appropriate location for the new building. It was not discovered until the footing and foundation plan was submitted for building permit review the small corner of the south east end of the facility was in the defined clear vision triangle.

The applicant's agent, Josh Howa, and traffic engineers from Sanderson Stewart analyzed the intersection using the standard AASHTO method. This method is more refined and is accepted by most city and county traffic engineers as a legitimate alternative to a "cookie cutter" clear vision standard.

The City Traffic Engineer, Terry Smith, has reviewed the AASHTO analysis and drawings and finds the proposed clear vision area acceptable for traffic safety at this intersection. The Planning staff has reviewed the 7 criteria for this variance and is recommending conditional approval. The staff finds the lot is an unusual shape and its location at the intersection of 3 streets may be a hardship in this case. The applicant can re-design the project to meet the standard clear vision area but the form and placement of the structure would be a detriment to the long term urban vitality of the area. The staff finds there have been several precedent variances granted in the immediate vicinity that support granting this variance so it does not deprive this owner of rights commonly enjoyed by other property owners. The proposed variance will meet the intent of the zoning regulations and adopted growth policies for this area of Billings. The City Traffic Engineer believes the proposed analysis using the AASHTO model will provide commensurate traffic safety at this intersection. The Planning staff is recommending several conditions of approval in the attached Findings of the Review Criteria.

## RECOMMENDATION

Staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1235.

---

### Attachments

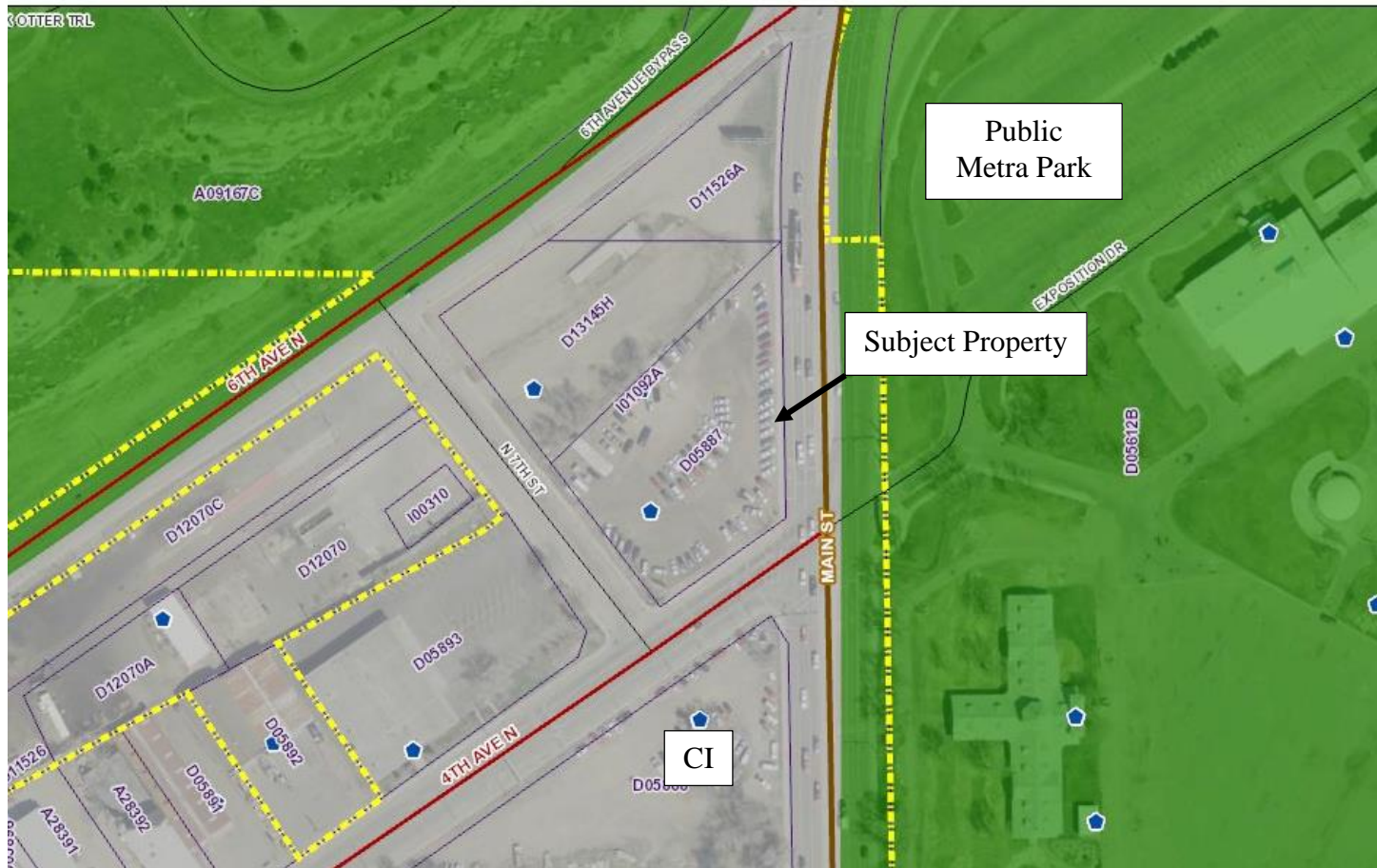
Zoning Map and Site Photos  
Review Criteria Findings  
Applicant Letter and Site Plan

---

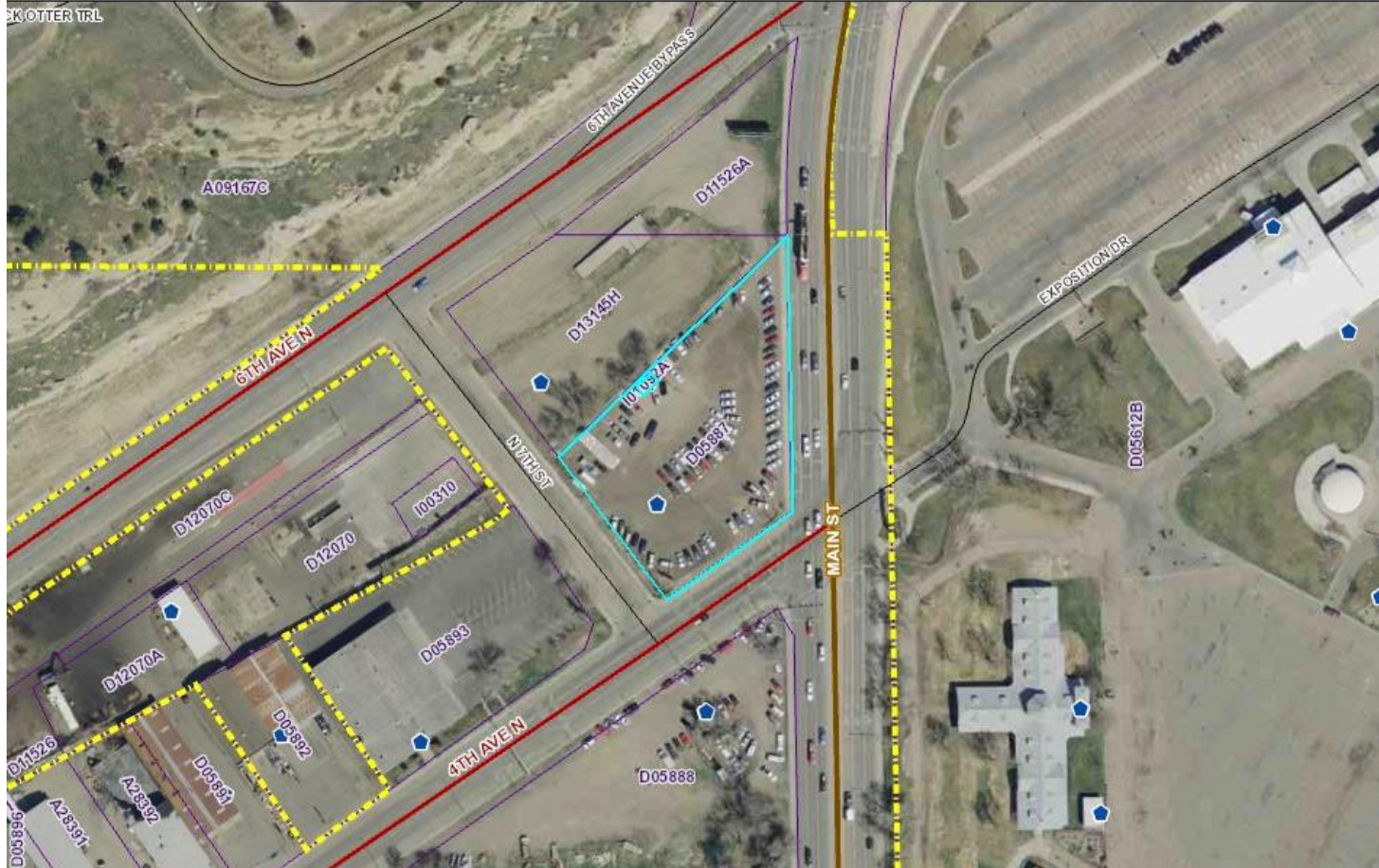


Variance 1235 – 607 4<sup>th</sup> Ave N (aka 411 N 7<sup>th</sup> Street) – Clear Vision Area at 4<sup>th</sup> Ave N and Exposition Drive  
Zoning Map and Site Photos

411 N 7th St - Variance 1235



411 N 7th St - Variance 1235





Subject Property



View east to intersection of 4<sup>th</sup> Ave N and Exposition Drive



View north along Exposition Drive from signalized intersection



View south along Exposition Drive from signalized intersection



View west along 4<sup>th</sup> Avenue North



View east across Exposition Drive

## **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 an odd geometry with 3 street frontages including 2 principal arterial streets with multiple lanes of traffic. The property corner at the signalized intersection is more than 90 degrees of angle creating a hardship to meet the prescribed clear vision area. The applicant could use the property in conformance with the adopted regulations and push the proposed building to the north end of site. This would not be in keeping with the adopted urban form for the East Billings Urban Renewal District and the adopted Gateway Master Plan for this area.

- 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 subject property received a variance in 1978 to reduce the side adjacent to street setback from 10 feet to 5 feet. Pacific Steel on the corner of 6<sup>th</sup> Ave N and N 7<sup>th</sup> Street received an arterial setback variance from 80 feet to 38 feet in 1982. The property at 1123 1<sup>st</sup> Ave N received two setback variances to reduce the side adjacent to street from 10 feet to 2.5 and the front setback from 20 feet to 0 feet. The majority of structures along 4<sup>th</sup> Avenue N were built at or near the sidewalk. The EBURD Form-based hybrid code for properties west of the subject property are now required to build within this same setback area to frame the street and maintain the urban form in this area. 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 including the 2008 Growth Policy and the Gateway Master Plan.

- 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 clear vision variance request:

1. The variance is from Section 27-615(a) – Table 1 and Section 27-618 – Figure 2d to allow the installation of a permanent structure over 30 inches in height for the proposed car wash facility.

2. The variance is limited to Parcel 1 of C/S 2212 generally located at 607 4<sup>th</sup> Ave N (aka 411 N 7<sup>th</sup> Street).
3. The Board specifically adopts the AASHTO clear vision analysis prepared by D.J. Clark of Sanderson Stewart.
4. The footing and foundation site plan is the location of the facility the applicant will construct on this site.
5. The applicant shall submit a building permit for the remaining structure and site improvements within 6 months of Board approval. The structure will be completed within 3 years of Board approval.
6. No construction or site work will commence before 7 am or go past 8 pm daily.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The applicant will obtain a building permit for the proposed structure, facilities and site development within 6 months of Board approval and complete the construction within 3 years 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. Car washes are an allowed use in the CI zone.

Variance 1235 – 607 4<sup>th</sup> Ave N (aka 411 N 7<sup>th</sup> St)  
Applicant Letter and Site Plans

June 06, 2016

City of Billings  
Planning & Community Services Department  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101

Re: Variance Application for Vision Triangle at  
Car Wash to Comply with AASHTO Regulations  
601 N. 4<sup>th</sup> Avenue  
Billings, MT 59101  
Job No.: 1501-01  
PR: # BP-16-01440

Statement for the Chairperson of the Board of Adjustment:

The intended use which meets current zoning regulations is for an express car wash. The variance being sought is to replace the generic vision triangle requirements with specific AASHTO regulations for this condition. At advice and support from the Planning Department Staff, we are hereby submitting the attached materials for consideration.

The following items are specifically targeted to answering the specific variance application questions. Thank you for your time and consideration for this variance process.

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

Response: Building is situated so it does not quite meet ordinance for adopted clear vision triangle. During the planning and preliminary city review process we explored alternatives for building location and configuration. The Owner's original preferred concept had the building sited east to west along the north property line and met ordinance standards. At great expense due to added retaining walls and business functionality the Owner agreed to move the building to align with the east property at the request of planning staff as to align with future EBURD District standards that were and still are not yet adopted.

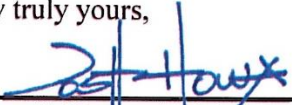
We are submitting with this application Exhibit "A", a very clear and reasonable alternative compliance method proposed that meets AASHTO requirements. Building encroaches in vision triangle from stop bar but not in AASHTO triangles based on 14.5' and 18.0' back from edge of traveled way. The same is true for analysis of left turn from minor approach in the inner left turn lane.

Unfortunately, this condition was not apparent during initial project review process with the city. As reviewed, there have been several recent examples of similar developments who received favorable outcome through this similar variance process.

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

Response: At special request of planning staff, the Owner agreed to locate the building in the configuration currently identified. This configuration best aligns with planning visions of the future EBURD district ordinances.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Joshua E. Howa", written over a horizontal line.

---

Joshua E. Howa, AIA / Owner's Representative

Cc: File

P:\81105\_06\_CS\_2212\_T1\_Splint\_Splint\_PMCADD\_C3DBASE\_DWG\81105\_06\_SITE\_BASE.dwg, Model, 5/17/2016 11:22:47 AM, dclark, 1:10

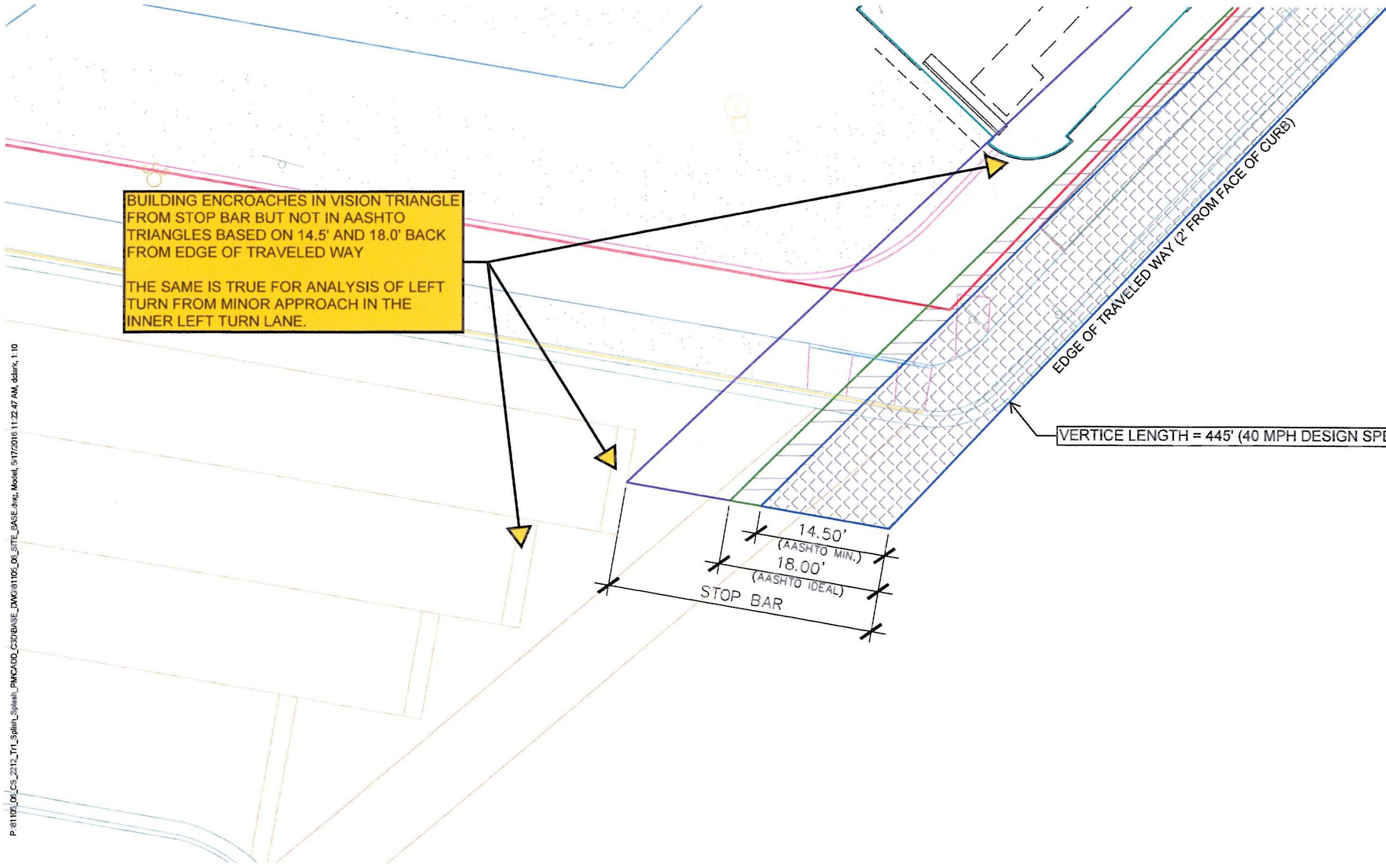
BUILDING ENCROACHES IN VISION TRIANGLE FROM STOP BAR BUT NOT IN AASHTO TRIANGLES BASED ON 14.5' AND 18.0' BACK FROM EDGE OF TRAVELED WAY

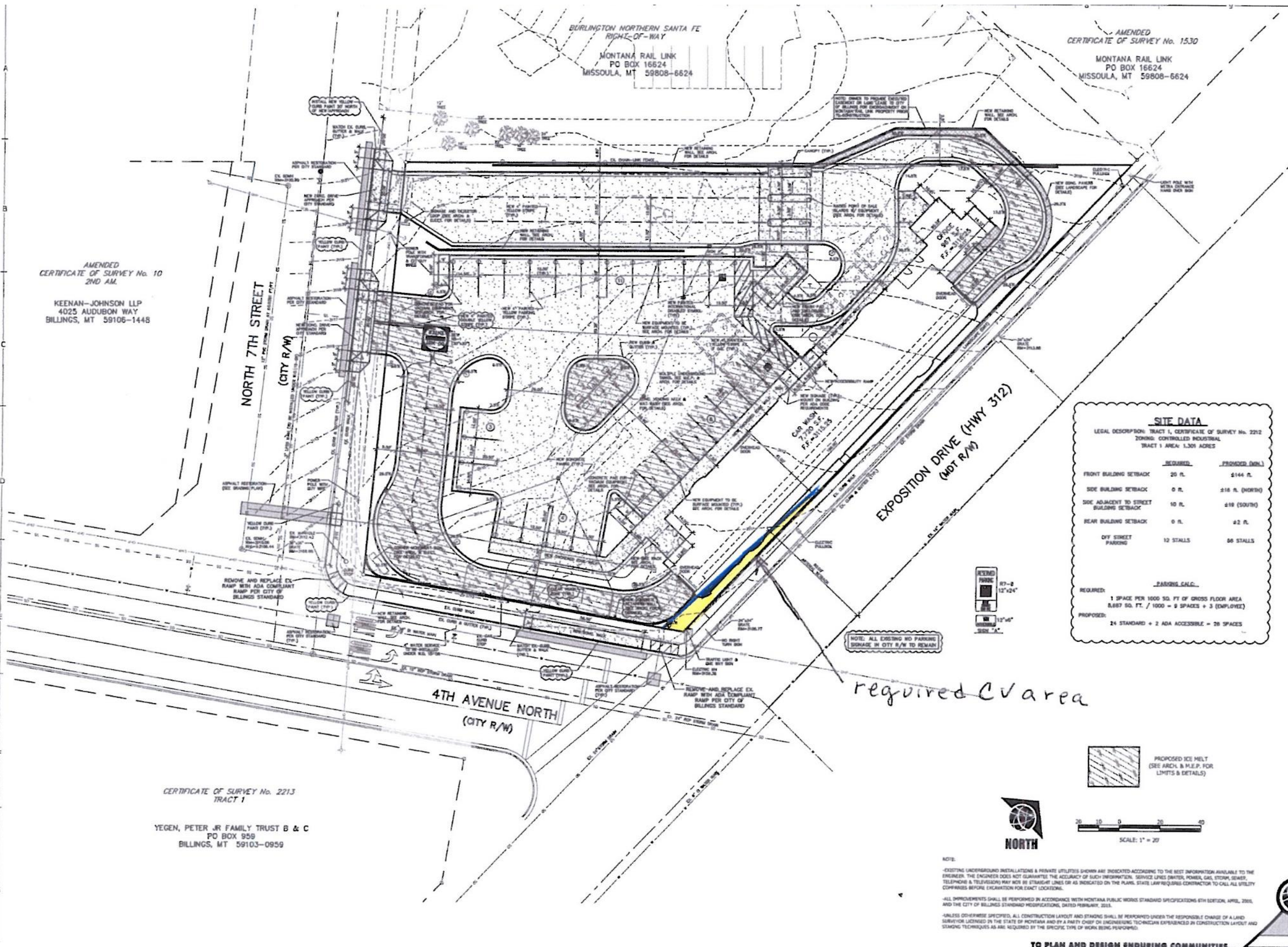
THE SAME IS TRUE FOR ANALYSIS OF LEFT TURN FROM MINOR APPROACH IN THE INNER LEFT TURN LANE.



VERTICE LENGTH = 445' (40 MPH DESIGN SPEED)

EDGE OF TRAVELED WAY (2' FROM FACE OF CURB)





AMENDED  
CERTIFICATE OF SURVEY No. 10  
2ND AM.  
  
KEENAN-JOHNSON LLP  
4025 AUDUBON WAY  
BILLINGS, MT 59106-1448

BURLINGTON NORTHERN SANTA FE  
RIGHT-OF-WAY  
  
MONTANA RAIL LINK  
PO BOX 16624  
MISSOULA, MT 59808-6624

AMENDED  
CERTIFICATE OF SURVEY No. 1530  
  
MONTANA RAIL LINK  
PO BOX 16624  
MISSOULA, MT 59808-6624

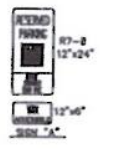
CERTIFICATE OF SURVEY No. 2213  
TRACT 1  
  
YEGEN, PETER JR FAMILY TRUST B & C  
PO BOX 959  
BILLINGS, MT 59103-0959

SITE DATA		
LEGAL DESCRIPTION: TRACT 1, CERTIFICATE OF SURVEY No. 2212		
ZONING: CONTROLLED INDUSTRIAL		
TRACT 1 AREA: 1.301 ACRES		
	REQUIRED	PROPOSED (DCL)
FRONT BUILDING SETBACK	20 FT.	2144 FT.
SIDE BUILDING SETBACK	0 FT.	216 FT. (NORTH)
SIDE ADJACENT TO STREET BUILDING SETBACK	10 FT.	219 (SOUTH)
REAR BUILDING SETBACK	0 FT.	42 FT.
OFF STREET PARKING	12 STALLS	88 STALLS
PARKING CALC.		
REQUIRED: 1 SPACE PER 1000 SQ. FT. OF GROSS FLOOR AREA		
8887 SQ. FT. / 1000 = 8 SPACES + 3 (EMPLOYEE)		
PROPOSED: 24 STANDARD + 2 ADA ACCESSIBLE = 26 SPACES		

NOTE: ALL EXISTING NO PARKING ZONING IN CITY R/W TO REMAIN

*required CV area*

PROPOSED ICE MELT  
(SEE ARCH. & M.E.P. FOR LIMITS & DETAILS)



NOTE:  
 -EXISTING UNDERGROUND INSTALLATIONS & PRIVATE UTILITIES SHOWN ARE INDICATED ACCORDING TO THE BEST INFORMATION AVAILABLE TO THE ENGINEER. THE ENGINEER DOES NOT GUARANTEE THE ACCURACY OF SUCH INFORMATION. SERVICE LINES (WATER, POWER, GAS, SEWER, CABLE, TELEPHONE & TELEVISION) MAY NOT BE STRAIGHT LINES OR AS INDICATED ON THE PLANS. STATE LAW REQUIRES CONTRACTOR TO CALL ALL UTILITY COMPANIES BEFORE EXCAVATION FOR EXACT LOCATIONS.  
 -ALL IMPROVEMENTS SHALL BE PERFORMED IN ACCORDANCE WITH MONTANA PUBLIC WORKS STANDARD SPECIFICATIONS 6TH EDITION, APRIL, 2003, AND THE CITY OF BILLINGS STANDARD SPECIFICATIONS, DATED FEBRUARY, 2011.  
 -UNLESS OTHERWISE SPECIFIED, ALL CONSTRUCTION LAYOUT AND STAKING SHALL BE PERFORMED UNDER THE RESPONSIBLE CHARGE OF A LAND SURVEYOR LICENSED IN THE STATE OF MONTANA AND BY A PARTY CHIEF OR UNDERSTANDING TECHNICIAN EXPERIENCED IN CONSTRUCTION LAYOUT AND STAKING TECHNIQUES AS ARE REQUIRED BY THE SPECIFIC TYPE OF WORK BEING PERFORMED.

**SANDERSON STEWART**  
www.sandersonstewart.com



DATE:	05/11/2014
FILE:	81105_06_SITE_PROD.DWG
PROJECT NO.:	81105.06
CAD:	ATV
QUALITY ASSURANCE:	
REVISIONS:	
DATE	DESCRIPTION
04/01/14	BID SET
05/11/14	CITY COMMENTS

**SPLASH SPLASH CAR WASH**  
TRACT 1, CERTIFICATE OF SURVEY NO. 2212  
BILLINGS, MONTANA  
SITE PLAN





## City Board of Adjustment

**Meeting Date:** 07/06/2016

**SUBJECT:** Variance 1236 - 317 S 30th St - Side Setback

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

---

### Information

#### REQUEST

**Variance 1236 – 317 S 30<sup>th</sup> St – Side Setback** – A variance from 27-308 requiring a minimum 5-foot side setback for a principal structure (residence) and from 27-310(i) requiring a minimum 3-foot side setback for a detached garage, to allow a minimum ½-foot side setback for each existing structure in Residential Multi-family-Restricted (RMF-R) zone on the South 10 feet on Lot 20 and all of Lot 21, Block 167, Billings Original Town, a 4,900 square foot parcel of land. The variance would allow the issuance of a re-build letter for the existing buildings at the current non-conforming side setback. Tax ID: A01109. Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

The Planning staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1236

#### APPLICATION DATA

OWNER: Ann Nelson

AGENT: Jami Clark

LEGAL DESCRIPTION: Billings Original Town, Block 167 the South 10 feet of Lot 20 and Lot 21

ADDRESS: 317 S 30th Street

CURRENT ZONING: RMF-R

EXISTING LAND USE: Single family dwelling

PROPOSED USE: Same with the ability to re-build at the same setback

SIZE OF PARCEL: 4,900 square feet

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

Subject Property: None

Surrounding property: There are 16 locations in the surrounding neighborhood with applications for variances from lot area or from setbacks (front, side or rear). All but one of those applications have been approved. The one variance denied was for lot area requirements for an existing 6-unit building at 624 S 31st Street. The BOA found the structure to out of character for the area, and had been converted without a permit from a single family home to a six unit apartment building at some time in the past. The surrounding property owners also did not support the requested variance due to continual disturbances from the tenants. At least 5 of the approved variances were for a zero side setback.

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: RMF-R

Land Use: Single family, two family and multi-family dwellings

SOUTH: Zoning: RMF-R  
Land Use: Single family, two-family and multi-family dwellings  
EAST: Zoning: RMF-R  
Land Use: Single family, two-family and multi-family dwellings  
WEST: Zoning: RMF-R  
Land Use: Single family, two-family and multi-family dwellings

## BACKGROUND

This is an application for a side setback variance for an existing dwelling and existing detached garage from 5 feet (dwelling) to 1/2-foot and from 3 feet (garage) to 1/2-foot. The property owner cannot secure a re-build letter allowing the re-construction of these 2 structures without a variance. The re-build letter is necessary to secure financing of the property for a new owner. The property is an unusual size for this zoning district where the minimum is 6,000 square feet. The lot is only 35 feet in total width and 140 feet in depth from the street to the alley. Reconstruction would be allowed so long as the minimum side, front and rear setbacks are met. In this case, the 2 side setbacks of 5 feet each amount to nearly 1/3 of the lot width. A re-constructed dwelling would have to be no more than 25 feet in width across the front. Re-locating the building footprint for re-construction of the dwelling would be a hardship. The detached garage is accessed from the alley and is 20 feet in width. It is located 1/2-foot from the side property and allows an additional surface parking space between the north side of the garage and the adjacent property line. Re-locating the garage footprint would probably also require re-location of the sanitary service line that runs from the rear of the house out to the alley. Reducing the footprint of the garage would result in less than 2 covered parking spaces. This is a hardship with this lot that is not applicable to other property within the area.

The subject dwelling was constructed in 1910 and is a single family dwelling. The dwelling and garage are in good condition and although the property is smaller than expected, it is not the smallest lot in single ownership in this area of Billings. The applicant does not intend to modify or expand the dwelling or garage so the variance is to obtain financing for a new owner. Since 2008, the lending rules and regulations have been tightened so most existing homes need a re-build letter from the local jurisdiction prior to lending on the property. This area of Billings has a number of homes, two-family dwellings and multi-family dwellings on lots less than the current requirement and built closer to property lines than normally allowed. The principal purpose of a side setback for dwellings and garages is to ensure safety from fire and to allow unimpeded access to all sides of a building if there is an emergency. Secondly, the side setback serves as an area where roof drainage can be absorbed on the owner's property.

The BOA has granted at least 15 variances in this area of Billings to reduce side, front or rear setbacks both for existing buildings and for additions to homes or garages. In some cases, the BOA has imposed conditions requiring any re-built structure to meet the required setbacks but this is not required. In this case, imposing a future side setback may result in a hardship requiring the owner to build a structure out of character for the area, or so minimal in first floor square footage to be unsuitable for family occupancy.

The Planning staff has reviewed the request and the 7 criteria for variances and is recommending conditional approval. The size and narrow width of the lot is a hardship as are the existing conditions for utility services to the property. Re-construction of the dwelling can be conditioned so that all building and life safety codes are observed when this occurs in the future. The same conditions can apply to the garage as well. The Planning staff received no letters of comment or concern from the surrounding property owners. The existing dwelling does have rain gutters that keep roof run off from leaving the property. The Planning staff is recommending several conditions for approval to mitigate any future potential impacts from the re-construction at the 1/2-foot side setback from the south property line. These conditions are contained in the attachment for the Review Criteria Findings.

## RECOMMENDATION

Planning staff recommends conditional approval and adoption of the findings of the 7 criteria for Variance 1236.

---

### Attachments

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

---



Variance 1236 – 317 S 30<sup>th</sup> Street – Side Setback  
Zoning Map and Site Photos

317 S 30th St - Variance 1236







Subject Property



View of subject property and property to the south



View south along S 30<sup>th</sup> Street



View west across S 30<sup>th</sup> Street



View north along S 30<sup>th</sup> St



Near by properties on S 30<sup>th</sup> Street

## **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 smaller than currently required and has only 35 feet in width. The location of utility service lines will make compliance with current side setbacks at the time of re-building a hardship.

- 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. In addition, there are number of dwellings on the same block and in the same neighborhood that do not meet current side setbacks but do not have variances of record. 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 existing and 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 including the 2008 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 clear vision variance request:

1. The variance is from Section 27-308 requiring side setback of 5 feet to allow a side setback of ½-foot for the existing dwelling and from Section 27-310(i) requiring a minimum 3-foot side setback to allow a minimum ½-foot side setback for the existing detached garage.
2. The variance is limited to the South 10 feet on Lot 20 and all of Lot 21, Block 167, Billings Original Town, a 4,900 square foot parcel of land, generally located at 317 S 30<sup>th</sup> ST.
3. The dwelling and detached garage may be reconstructed in the future at the existing ½-foot side setback. All other zoning requirements except the side setback must be met at the time of re-construction.
4. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of re-construction.

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 owner is not planning any construction at this time so no time limits are recommended or necessary.

**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. Dwellings and detached garages are an allowed use in the RMF-R zone.

Variance 1236 – 317 S 30<sup>th</sup> St  
Applicant Letter and Site Plans

Ann K. Nelson  
317 S. 30<sup>th</sup> St  
Billings, MT 59101

June 1, 2016

Attn: Chairperson of the Board of Adjustment

Hello,

My name is Ann Nelson and I own the property located at 317 S. 30<sup>th</sup> St, Billings, MT 59101. My home is currently for sale and we have an accepted contract on it. The purchaser is obtaining an FHA loan which requires an FHA appraisal. The appraiser stated in his report that the south side of my dwelling is located too close to the south property line and is not in accordance with the 5 ft side set back requirement. This is preventing FHA from allowing financing for the purchaser because they require a "rebuild" letter stating the home could be rebuilt as it exists. Under current zoning regulations, the home could not be rebuilt in its exact location. I currently have FHA financing on my home and this issue was not included in the appraisal when I purchased the home three years ago. I also have not had any problems obtaining home owners insurance on the property. I am seeking a variance and rebuild letter from the city that we can provide to FHA saying that my home could be rebuilt as it exists. In all practicality an owner would most likely NOT rebuild the home in the same spot and on the same 100+ year old foundation but FHA needs to know that it is possible. My home was built in 1910 as was my next door neighbor to the south. I am not looking to alter the property in any way and neither is the purchaser. We would greatly appreciate if the city will grant the variance so we can carry on with our lives. I can be reached at 406-652-6563 or you can contact my real estate agent, Jami Clark, at 406-696-2215. Thank you in advance for your assistance.

Regards,



Ann K. Nelson



Site Plan  
317 S. 30th Street

S 30TH ST

BOULEVARD

SIDEWALK

HOUSE  
(936 SF)

PATIO

GARAGE

ALLEY

7.5'

6.0'

21.6'

0.5'

140.0'

10.5'

14.5'

19.0'

10.0'

25.0'

20.0'

Site Plan  
317 S. 30th Street