



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, August 3, 2016, 6:00 p.m.**  
**Miller Building, 1st Floor Conference Room**  
**2825 3rd Avenue North, Billings, Montana**

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of City Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of July 6, 2016.

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

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

**Regular Business:**

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

**Public Hearings:**

- a. **Variance 1237 – 1119 25<sup>th</sup> St West – Lot Area** - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a 2-family dwelling, to allow a minimum lot area of 8,840 square for an existing 2-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 1 of Lillis Subdivision, 2<sup>nd</sup> Filing. The variance would allow the issuance of a re-build letter for the existing 2-family dwelling in order to secure re-financing. Tax ID: A10205.
  
- b. **Variance 1238 – 4532 Vaughn Lane – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone on Lot 14, of Cowley Subdivision, a 7,500 square foot parcel of land, generally located at 4532 Vaughn Lane. Tax ID: A05715.
  
- c. **Variance 1239 – 3840 Hickok Circle – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new residence in a Residential 9,600 (R-96) zone on Lot 11, Block 2 of Sand Cliff Subdivision, a 1.045-acre parcel of land, generally located at 3840 Hickok Circle. Tax ID: A21165.

#### **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:** 08/03/2016

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**Information**

**Subject**

The minutes of the Board meeting of July 6, 2016.

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**Attachments**

CityBOA\_2016\_07\_06

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**CITY BOARD OF ADJUSTMENT**

MINUTES July 6, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Board member	-	-	1	E	1	1	1					
James Olson	Board member	-	-	1	1	E	1	E					
Paul Hagen	Board member	-	-	1	1	1	1	1					
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1					
Oscar Heinrich	Board member	-	-	1	1	1	1	1					
Martin Connell	Board member	-	-	1	1	1	E	1					
Mark Noennig	Chairman	-	-	1	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	6						15

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; Dave Green, Planner II and Robbin Bartley, Administrative Support.

**Attending:** Dennis Randall, Victor Sisk, John Robinson, Nancy Robinson, Tina Lorenz, Billie Parrott, Bob Bushing, Mike Mitzel, Charles Swiesz, Brad Sinclair, Matt Robertson, Paul Cox.

**Public Comment**

Chairman 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 Bollman made a motion for the approval of June 1, 2016 minutes with corrections. Board member Connell 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	no	
James Olson				x
Paul Hagen	x		all	
Frank Chesarek		x	no	
Oscar Heinrich		x	all	
Martin Connell	x		all	
Mark Noennig		x	?	

**Board member Hagen disclosed the owner at Roosevelt Ave (Variance #1234) came outside and explained about the garage and its location. Board member Connell disclosed regarding Variance #1234, he met Drew Lorenz at the site.**

**Board member Connell asked Mr. Lorenz if it is a multifamily or single family dwelling. Mr. Lorenz stated it is a single family dwelling.**

**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 and acting on each variance. She stated four votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 6 Board members attending. A simple majority will approve requests.

Nicole Cromwell read the legal description for **Variance #1231**:

Karen Husman presenting:

**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.

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 issues 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 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**.

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

### **Discussion**

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

### **Public Hearing**

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

### **Bob Bushing, EEC**

Mr Bushing is new to the project within the last 2 months. A new set of plans have been drawn and are ready for submittal addressing the building codes upon the approval of this variance request.

Mark Noennig asked about any neighbors viewpoints. Mr. Bushing stated he received 3 phone calls from neighbors having received letters regarding the request. None of the 3 neighbors had objections to the variance after it was explained to them. Their wish was to see the structure completed.

### **Mike Mitzel, owner**

Mr. Mitzel explained why the project is not complete. Board member Connell asked what year the bank repossessed 314 Miles and who the current owner is of 314 Miles. Mr. Mitzel explained he owns 316 Miles and his neighbor, John and Nancy Robinson own 314 Miles.

### **John Robinson, 314 Miles**

Mr. Robertson is the neighbor who bought the property at 314 Miles from the bank when Mr. Mitzel defaulted on his loan. He wants to see the house completed at 316 Miles. Mike is a good neighbor. I would like to see the neighborhood improved esthetically. Board member Connell asked if he knew the building is not in compliance. Chairman Noennig asked for clarification about Mr. Robinson's understanding of the structure.

### **Opposed**

None

Chairman Noennig called for a motion.

Board member Connell made a motion and Board member Bollman seconded the motion to deny **City Variance #1231** with the Findings of Fact presented by Staff.

Board member Connell also indicated Code Enforcement should immediately be notified to remove the structure, adding it should have been done years ago.

### **Discussion**

Board member Connell stated the structure does not fit the neighborhood. It was built without permission and if we want people to follow the guidelines of the City of Billings then we must enforce them. He visited the site, it is not an appropriate building for the site and needs to come down.

Board member Chesarek asked for clarification. His understanding from the previous meeting was the building was compatible but the issues remained regarding setbacks. Staff indicated Mr. Chesarek's statement was correct.

Chairman Noennig spoke with clarification for the board and audience. Mr. Mitzel's father had a stroke and he was relying on his father to "do the leg work" regarding the permitting and such.

The building does not meet set back requirements. Everything else is compliant. Chairman Noennig indicated he would resist this motion based on Board member Olson's previous thought everyone is entitled to a mistake and the applicant was now trying to make it right.

Board member Hagen agrees with Board member Connell. The process in the City is to acquire a building permit and this was not done.

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 **passed 4-2**. City Variance #1231 is denied.

Nicole Cromwell read the legal description into the record for Variance 1232.

**Karen Husman presented:**

**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 Lot1, 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.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of Variance #1232.

**Discussion**

Chairman Noennig asked the members of the Board for questions for Staff. Board member Heinrich asked about setbacks for 1 story verses 2 story structures. The house was constructed in 1982 and the same setback requirements existed then. Chairman Noennig confirmed the 1982 setback requirements.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1232.

**Victor Sisk, owner**

Mr. Sisk indicated he could move the walls however he believes, structurally, the building is more sound without changing the walls. He explained his property is pie shaped changing the setback from the front to back of the building. It is 6.5 feet at one end and 8 feet at the other.

**Opposed**

None

**Discussion**

None

Chairman Noennig called for a motion.

**Motion**

Board member Bollman made a motion and Board member Hagen seconded the motion to conditionally approve **City Variance #1232** 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 #1232 is conditionally approved.**

**Nicole Cromwell read the legal description into the record for Variance 1233.**

David Green presenting:

**Variance 1233 – 2345 King Avenue West – Signage** – 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 area of 160 square feet and 16 feet in height 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. Tax ID: C01664.

Dave Green indicated traffic studies show there are approximately 28,000 cars a day here and 40,000 during the holidays. King Ave West has a posted speed of 35mph, he joked about all of us knowing better. .

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of **Variance #1233**.

**Discussion**

Board member Heinrich asked if an EMD would be OK? Staff replied it cannot be the only sign and is limited to 40 percent of the overall sign.

Chairman Noennig asked how many tenants are at this complex. This was deferred to the agent.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1233**.

**Matt Robertson, Agent**

This building is in transition. It was originally built for 5 tenants and was used for the Veteran’s Administration. It is located at one of the busiest intersection in Billings and because of the access the address is hard to find. Recruiting occupants is a challenge because it is so difficult to find.

Board member Heinrich asked if more handicapped parking is to be added in the front? The applicant will follow the city code. Board member Heinrich also requested the No Exit sign to King Ave West be reinstalled.

**Paul Cox, Sign Products**

Mr. Cox is here to answer technical questions about sign. City code requirements for sign permit will be followed.

Chairman Noennig asked how many tenants will be listed on the sign. There are 5 spaces available for 5 occupants/tenants.

Mr. Cox explained the difficulties in signing this space and indicated there is a moratorium on 3<sup>rd</sup> party signs which eliminates the ability to have a sign in the back.

**Opposed**

None

Chairman Noennig called for a motion.

**Motion**

Board member Chesarek made a motion and Board member Hagen seconded the motion to **conditionally approve City Variance #1233** per the conditions and Findings of Fact presented by Staff.

Board member Bollman indicated the zoning in this area is incorrect and based on , although he is not usually in favor of a sign variance, he believes the variance is necessary.

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 conditionally approve Variance request #1233 passed with a 6-0 vote.**

**Nicole Cromwell read the legal description into the record for Variance 1234.**

David Green presenting:

**Variance 1234 – 4129 Roosevelt – Side Setback** – A variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum 1-foot side setback in 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.

**Discussion**

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** of **Variance # 1234.**

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1234.**

**Drew Lorenz, owner**

Mr. Lorenz explained why he is building the garage and owns the property next door also with the 15 foot space between the house and the property in question.

Chairman Noennig asked if the neighboring house is a rental and does this house have a garage? Mr. Lorenz confirmed it is a rental and the garage is on the other side.

**Opposed**

None

Chairman Noennig called for a motion.

**Motion**

Board member Bollman made a motion and Board member Heinrich seconded the motion to **conditionally approve** **City Variance #1234** per the conditions and Findings of Fact presented by Staff.

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

**The motion passed 6-0. City Variance #1234 is conditionally approved.**

**Nicole Cromwell read the legal description into the record for Variance 1235.**

Nicole Cromwell presenting:

**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

**Discussion**

Board member Heinrich clarified the City of Billings Clear Vision Code is in violation but the AASHTO requirements are not.

Staff also explained with the current zoning, a traffic engineer could INCREASE the Clear Vision requirement but not DECREASE it.

Chairman Noennig and staff discussed the intersection.

Board member Heinrich asked if the codes will come together. Staff replied we are getting closer.

He also asked if this property is part of the EBURD. Staff explained it is in TIF District but not part of the EBURD.

Board member Connell believes this property is annexed in but is not in the TIF.

Board member Heinrich asked if the building location was for aesthetics. Staff explained it is not for aesthetics but rather for good urban form.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** and adoption of the AASHTO requirements with the findings of the 7 criteria for **Variance #1235**.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1235**.

**Dennis Randall, Sanderson Stewart**

Mr. Randall explained the present Clear Vision codes were developed to be simple but they certainly do not fit every situation, this being one of them. It has been well reviewed by traffic as well.

**Opposed**

None

Chairman Noennig called for a motion.

**Motion**

Board member Heinrich made a motion and Board member Connell seconded the motion to **conditionally approve City Variance #1235** per the conditions and Findings of Fact presented by Staff.

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

**The motion passed 6-0. City Variance #1235 is conditionally approved.**

**Nicole Cromwell read the legal description into the record for Variance 1236.**

Nicole Cromwell presenting:

**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.

**Discussion**

Board member Chesarek asked if the purpose of this Variance is to obtain a rebuild certificate. Staff replied in the affirmative.

**RECOMMENDATION**

Planning Staff is recommending **conditional approval** and adoption of the findings of the 7 criteria for **Variance #1236**.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1236**.

**Billie Parrot, Century 21 agent**

Ms. Parrot explained closing has been postponed on the sale of this property waiting on the outcome of this Variance.

**Opposed**

None

Chairman Noennig called for a motion.

**Motion**

Board member Connell made a motion and Board member Hagen seconded the motion to conditionally approved **City Variance #1236** per the conditions and Findings of Fact presented by Staff.

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

**The motion passed 6-0. City Variance #1236 is conditionally approved.**

**Other Business/Announcements:**

There will be a meeting on August 3, 2016.

Adjournment: 7:28 p.m.

**ATTEST: DRAFT. To be approved by a motion on August 3, 2016**

\_\_\_\_\_  
**Robbin Bartley, Administrative Support I**

\_\_\_\_\_  
**Mark Noennig, Chairman**



## City Board of Adjustment

**Meeting Date:** 08/03/2016

**SUBJECT:** City Variance #1237 - 1119 25th St. West

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

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1237 – 1119 25<sup>th</sup> St West – Lot Area** - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a 2-family dwelling, to allow a minimum lot area of 8,840 square feet for an existing 2-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 1 of Lillis Subdivision, 2<sup>nd</sup> Filing. The variance would allow the issuance of a re-build letter for the existing 2-family dwelling in order to secure re-financing. Tax ID: A10205.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Caleb Bruski

**AGENT:** None

**PURPOSE:** To reduce the minimum required lot size from 9600 square feet for an existing duplex to allow 8,840 square feet for 2 dwelling units.

**LEGAL DESCRIPTION:** Lot 10, Block 1, Lillis Subdivision, 2<sup>nd</sup> filing

**ADDRESS:** 1119 25th Street West

**EXISTING LAND USE:** Residential

**PROPOSED LAND USE:** Residential Multi family

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

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

Records show there have been 10 variance applications in this subdivision. Nine of them were for setbacks and 5 of those were approved. Four were denied. One application was for lot area and was conditionally approved.

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: R-70  
Land Use: Single Family Dwellings

**SOUTH:** Zoning: R-70  
Land Use: Single Family Dwellings

**EAST:** Zoning: R-70  
Land Use: Single Family Dwellings

**WEST:** Zoning: R-70

**BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for a 2-family dwelling, to allow a minimum lot area of 8,840 square for an existing 2-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 1 of Lillis Subdivision, 2nd Filing. The variance would allow the issuance of a re-build letter for a 2-family dwelling in order to secure re-financing.

This is an older neighborhood in Billings and there are no records to indicate there are multifamily dwellings in this subdivision. There have been 10 variance applications in this subdivision. There are no other properties in the neighborhood that have multiple dwelling units. The applicant is asking for a variance to allow two units on a property that staff found no history of being a multi-family dwelling in the tax records or building permit records. However, the applicant has supplied evidence that indicates there is a basement apartment and the structure meets the definition of a duplex. It appears the home had been modified at some point in the past and has been used as a two-unit structure. Staff has no way to verify the basement unit was constructed prior to zoning. The photos supplied by the applicant show some upgrading in appliances and doors, but do indicate the age of the kitchen and one bedroom have materials (closets, cabinets and countertops) that look like they could be from the 1960s or 70's.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance to allow a duplex dwelling on the property based on the criteria for granting a variance. Other variances in the neighborhood have been for setbacks and one for lot area.

**RECOMMENDATION**

Planning Staff is recommending conditional approval of City Variance #1237 based on the criteria for variances.

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**Attachments**

- Zoning Map & Site photos
  - Applicant Letter & Site Plan
  - Basement Photos & Floor Plan
  - Determinations
-

**ATTACHMENT**  
Surrounding Zoning & Site Location





**ATTACHMENT**  
Site Photographs



Subject Property



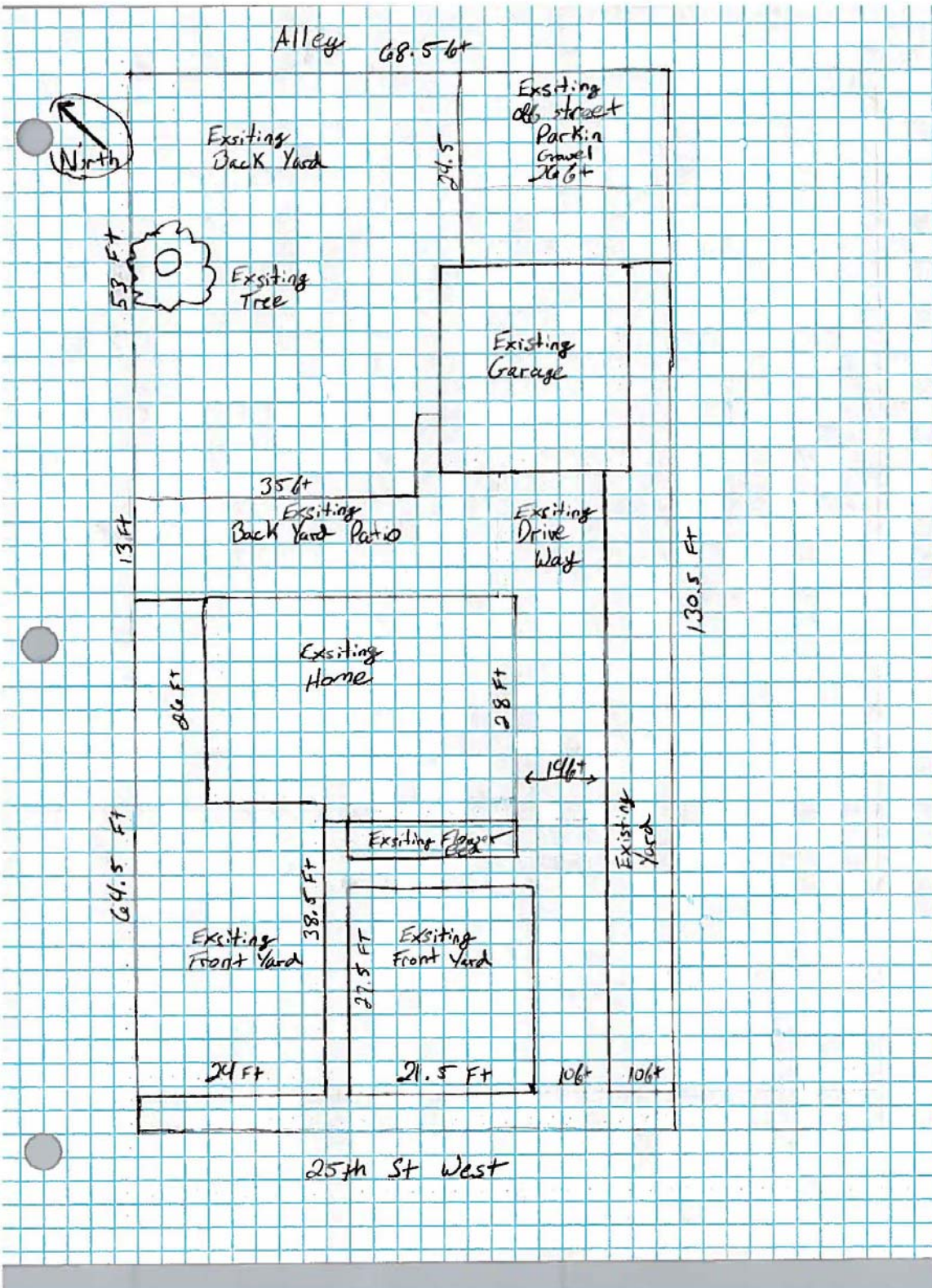
ATTACHMENT  
Site Photographs, Continued



**Attachment**  
**Applicant Letter**

My name is Caleb Bruski and I am seeking a variance on my property to be able to allow my house to become a conforming duplex. At this point in time the house is split into 2 two bedroom housing units (up/down duplex). My property lot is 760 sq ft shy of meeting the minimum requirements for lot size. The reason I would like to have the variance is that I have recently found out that I will be having my first child. I am working with the bank to do a refinance. At this time we are hung up with the refinance do to my home a non-conforming duplex. Thank you for your time and considerations.

Attachment  
Site Plan



ATTACHMENT  
Basement Photos



Kitchen

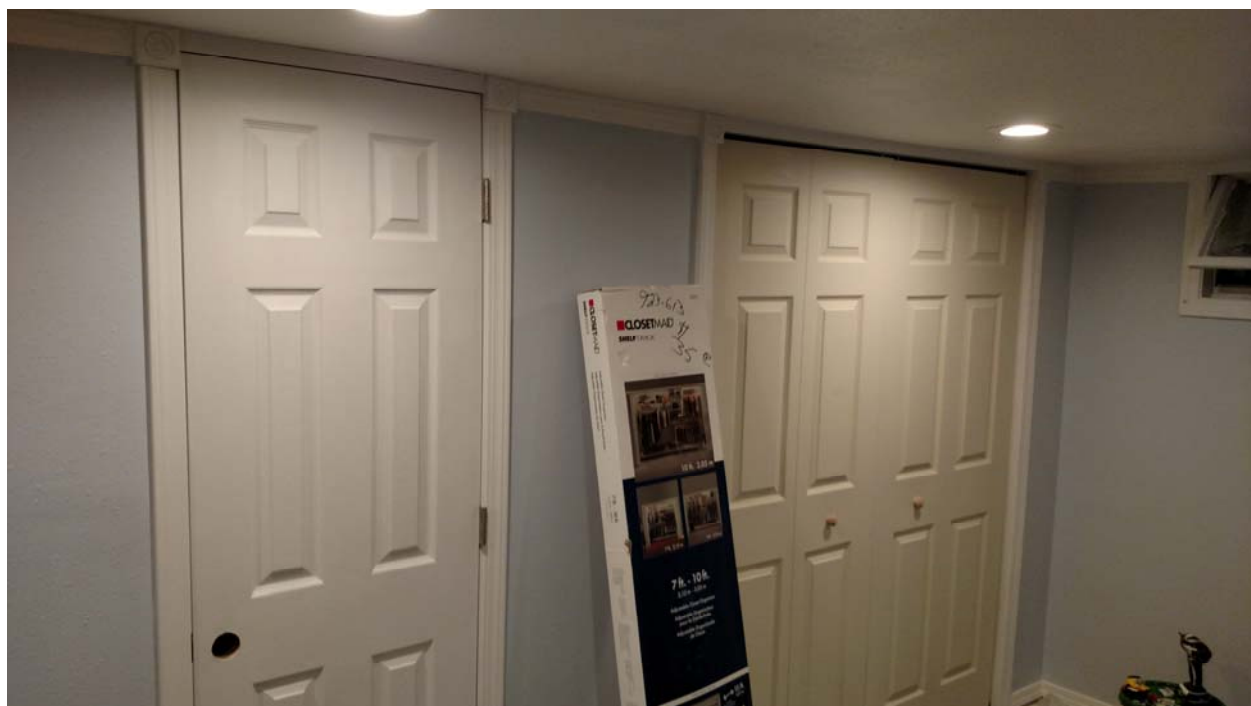


Kitchen

ATTACHMENT



Bedroom 1

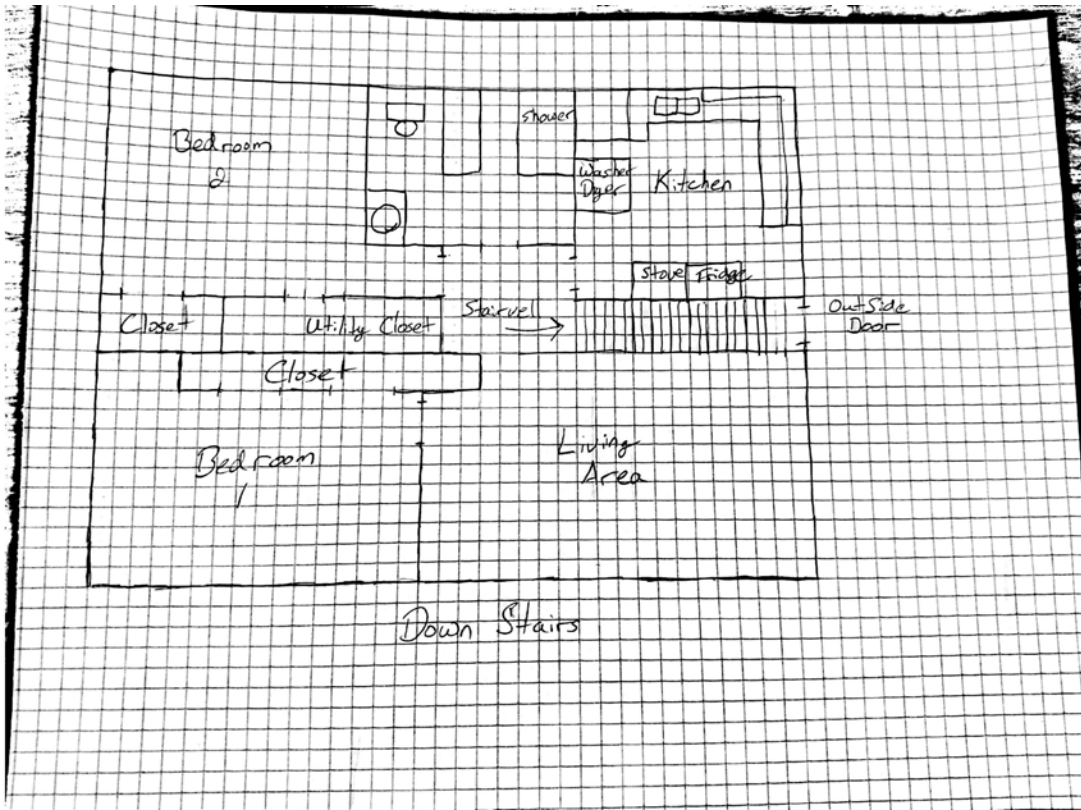


Bedroom 2

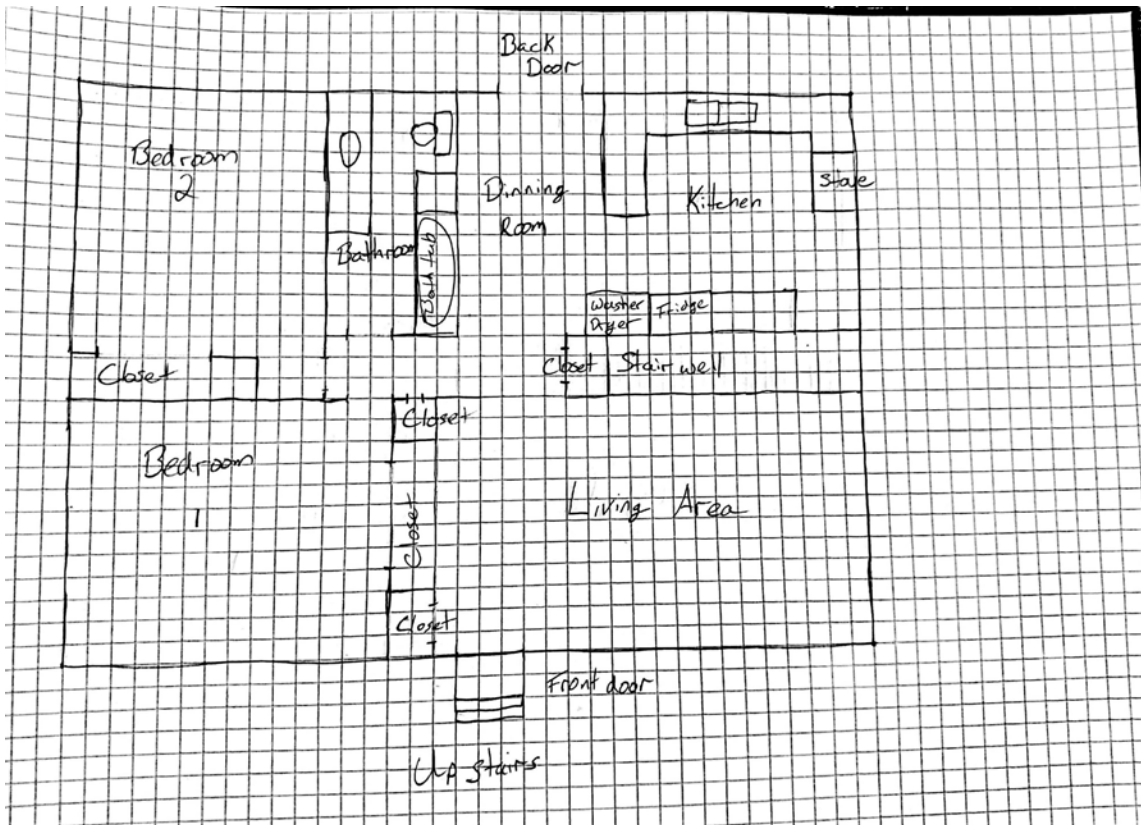
Attachment  
Bathroom



Attachment  
Floor Plan



Scanned by CamScanner



Scanned by CamScanner

## **DETERMINATIONS**

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

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

There are no special conditions or circumstances with the land that create a hardship in this situation. The structure was built prior to zoning and there is some evidence to determine the existing structure has been used as or had been constructed as a duplex dwelling.

- 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 has been developed with single family dwellings. Therefore, denying the applicant a variance for a duplex on an 8,840 square foot lot does not deprive the applicant of rights commonly enjoyed by other properties in the same district.

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

While there are duplexes on non-conforming lots in other areas of the City and lot size variances have been granted in other locations for duplexes, granting this variance for a duplex on an 8,840 square foot lot in this subdivision would confer a privilege to this applicant that others in the subdivision do not have.

- 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. Duplex dwellings are allowed in the R-70 Zoning District if the lot meets the size requirements.

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

Staff is recommending the following conditions for the variance request;

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum of 8,840 square feet for two dwelling units. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 10, Block 1 of Lillis Subdivision, 2nd 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, including renovations or additions.
4. This variance approval allows conformance with the zoning regulations for the lot size. The variance in no way indicates conformance with any other code, including but not limited to, the International Uniform Building Code Regulations.
5. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The requested variance is to ensure the future opportunity to rebuild one duplex on a 8,840 square foot lot.

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

The granting of this variance would not allow a use that is not already allowed in the zoning district – Residential -7000 zoning allows duplexes and single family dwellings.



## City Board of Adjustment

**Meeting Date:** 08/03/2016

**SUBJECT:** City Variance #1238- 4532 Vaughn Lane

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

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1238 – 4532 Vaughn Lane – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone on Lot 14, of Cowley Subdivision, a 7,500 square foot parcel of land, generally located at 4532 Vaughn Lane. Tax ID: A05715.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Clara Jane Ballard  
**AGENT:** None  
**PURPOSE:** To reduce the minimum front yard setback from 20 feet to 15 feet.  
**LEGAL DESCRIPTION:** Cowley Subdivision, Lot 14  
**ADDRESS:** 4532 Vaughn Lane  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential  
**EXISTING ZONING:** Residential-7000 (R-70)

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

Records show there have been no variance applications in this subdivision. No records were found to indicate there were any variance applications in the surrounding subdivisions.

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: R-70  
Land Use: Single Family Dwellings  
**SOUTH:** Zoning: R-70  
Land Use: Single Family Dwellings  
**EAST:** Zoning: R-70  
Land Use: Single Family Dwellings  
**WEST:** Zoning: R-70

**BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone on Lot 14, of Cowley Subdivision, a 7,500 square foot parcel of land, generally located at 4532 Vaughn Lane. Tax ID: A05715.

There have not been any variance applications in this subdivision or the surrounding neighborhoods. There are non-conforming carports on two properties directly across the street from the subject property on Vaughn. The two carports were likely constructed before zoning restrictions were in place. The two existing carports do not currently meet the front setback minimum requirement of twenty (20) feet, so if they were destroyed beyond the 50% of the replacement cost at the time, they could not be rebuilt as they stand without an approved variance.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone, based on the determinations for granting a variance.

**RECOMMENDATION**

Planning Staff is recommending conditional approval of City Variance #1238 based on the criteria for variances.

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**Attachments**

- Zoning Map & Site Photos
  - Applicant Letter & Site Plan
  - Determinations
- 
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**ATTACHMENT**  
Site Photographs



Subject Property



Looking East

ATTACHMENT  
Site Photographs, Continued



Looking North



Looking West

30 June 2016

To The Chairperson of the Board of Adjustment,

I, Clara Jane Ballard, residing at 4532 Vaughn Lane, Billings, Mt 59101, desire to build a carport at said address.

I am seeking a variance on my property as a carport would be closer to the sidewalk than the legal 20 feet,

There are two nice carports across the street from me in front of their homes, grandfathered in. I would have mine built to compliment theirs should I be given permission.

I am 87 years old, a widow for 25 years and living alone. My car is important to me and keeps me independent. I would so appreciate having a roof over it.

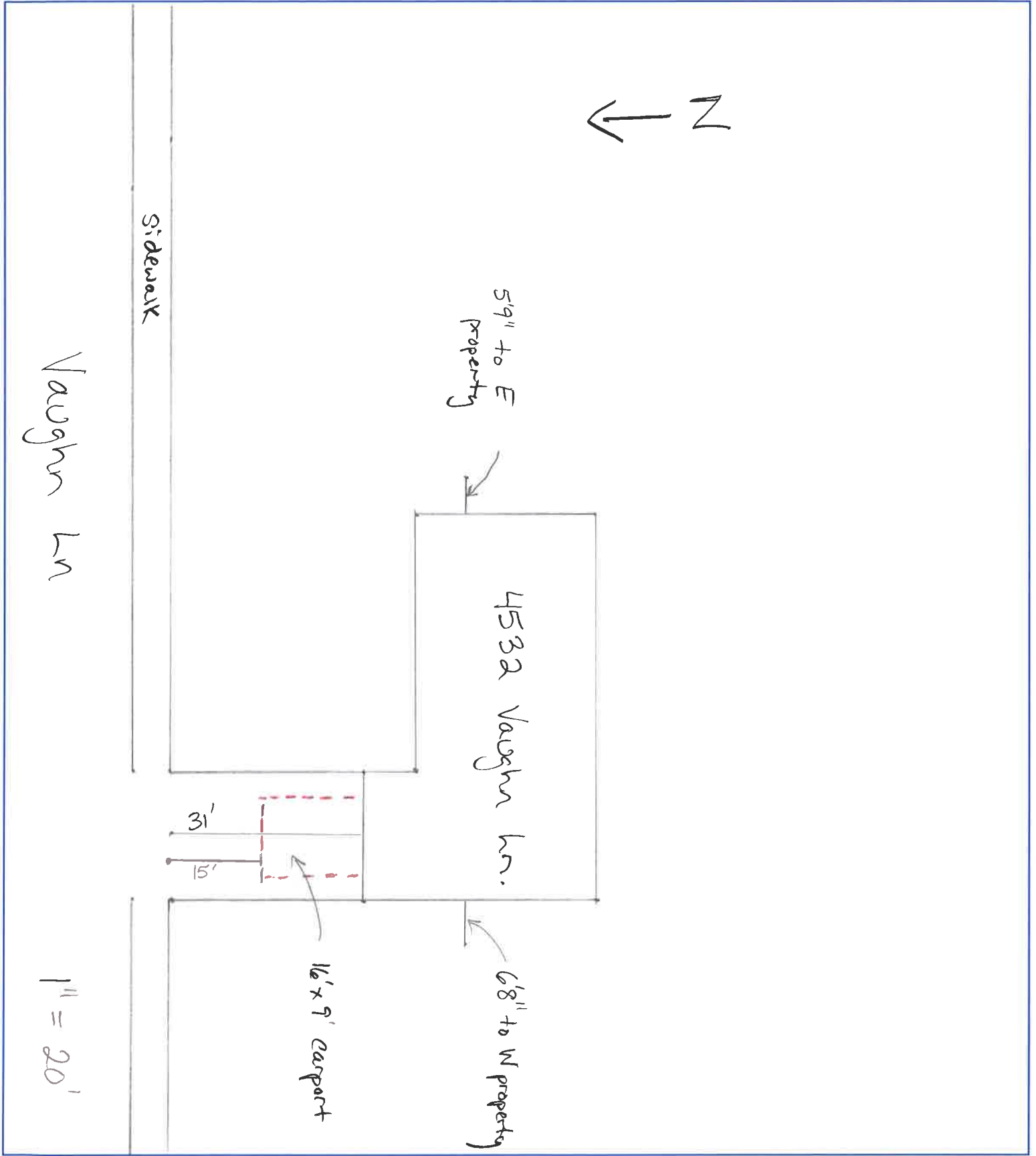
I desire to stay in my home but with advancing years, it would be so helpful to not have my car covered with snow when I need it for transportation.

I have been driving for many, many years and proud to have an accident free record.

Should you be able to grant me this variance and thus permission to have a carport built, I will be most appreciative.

Sincerely,

Clara Jane Ballard





4529-Vaughn Ln

4525-Vaughn Ln



4532-Vaughn Lane

## **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.

- 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 has been developed with single family dwellings. There are other properties with carports that extend beyond the minimum required setback of 20 feet in the subdivision on the same street.

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

Granting this variance would not confer a privilege to this applicant that others in the subdivision do not have.

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

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

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

Staff is recommending the following conditions for the variance request;

1. The variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new carport in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
  2. The variance is limited to Lot 14, of Cowley Subdivision, 4532 Vaughn Lane.
  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 new construction will require compliance with all other zoning regulations and city ordinances that apply at the time of construction.
  5. The applicant must submit for a building permit within 6 months of this variance approval.
  6. No construction activity will be done before 7 a.m. or after 8 p.m.
  7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

The applicant must submit for a building permit to build a carport 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 -7000 zoning allows single family dwellings, and attached accessory structures.



## City Board of Adjustment

**Meeting Date:** 08/03/2016

**SUBJECT:** City Variance #1239-3840 Hickok Circle

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

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1239 – 3840 Hickok Circle – Front Setback** - A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new residence in a Residential 9,600 (R-96) zone on Lot 11, Block 2 of Sand Cliff Subdivision, a 1.045-acre parcel of land, generally located at 3840 Hickok Circle. Tax ID: A21165.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Robert & Janice Hamlin  
**AGENT:** Classic Design Homes, Doug Wild  
**PURPOSE:** To reduce the minimum required front setback from 20 feet to 15 feet  
**LEGAL DESCRIPTION:** Lot 11, block 2, Sand Cliff Subdivision  
**ADDRESS:** 3840 Hickok Circle  
**EXISTING LAND USE:** Vacant  
**PROPOSED LAND USE:** Residential  
**EXISTING ZONING:** Residential-9600 (R-96)

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

Records show there have been three variance applications in this subdivision. One of them was for setbacks, one for building height, and one for sidewalks. Two of them were approved, one was denied.

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: R-96  
Land Use: Single Family Dwellings  
**SOUTH:** Zoning: R-96  
Land Use: Single Family Dwellings  
**EAST:** Zoning: R-96  
Land Use: Single Family Dwellings  
**WEST:** Zoning: R-96  
Land Use: Single Family Dwellings

**BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new residence in a Residential 9,600 (R-96) zone on Lot 11, Block 2 of Sand Cliff Subdivision, a 1.045-acre parcel of land, generally located at 3840 Hickok Circle.

The subdivision is located at the edge of the rimrocks in the northwest area of Billings. The lot has a significant slope to the rear of the property, limiting the potential building area to the front of the parcel. The subject property sits at the edge of a rimrock face that is very rocky, so it would also be difficult to cut into the land for any type of construction on the rear side slope of the property. The proposed site plan indicates the garage approach would be angled accessing the garage(s) from the side to reduce possible parking issues encroaching into the sidewalk with the fifteen-foot setback.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance to allow the reduction of the front yard setback from 20 feet to 15 feet on this parcel of land, based on the determinations for granting a variance.

**RECOMMENDATION**

Planning Staff is recommending conditional approval of City Variance #1239 based on the criteria for variances.

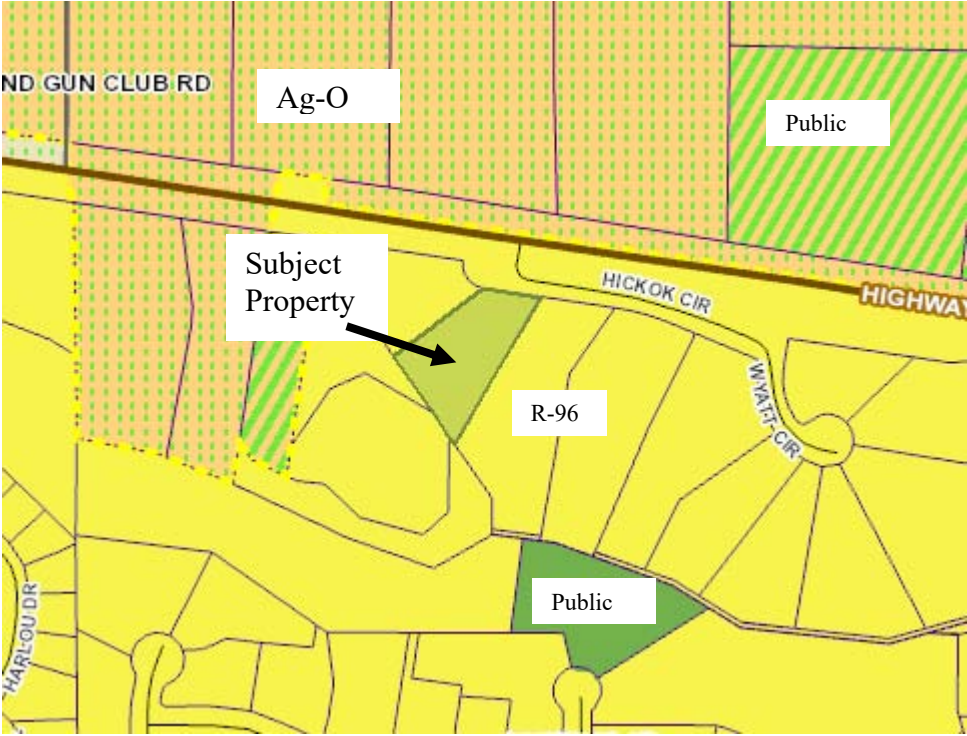
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**Attachments**

Zoning Map & Site Photos  
Applicant Letter & Site Plan  
Determinations

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**ATTACHMENT**  
Surrounding Zoning & Site Location





**ATTACHMENT**  
Site Photos



Subject Property



Looking to the West

ATTACHMENT  
Site Photos, Continued



Looking East



Looking North



Looking South East



Looking North (from the subject property).

6-30-2016

Regarding :

3840 Hickok Cr.

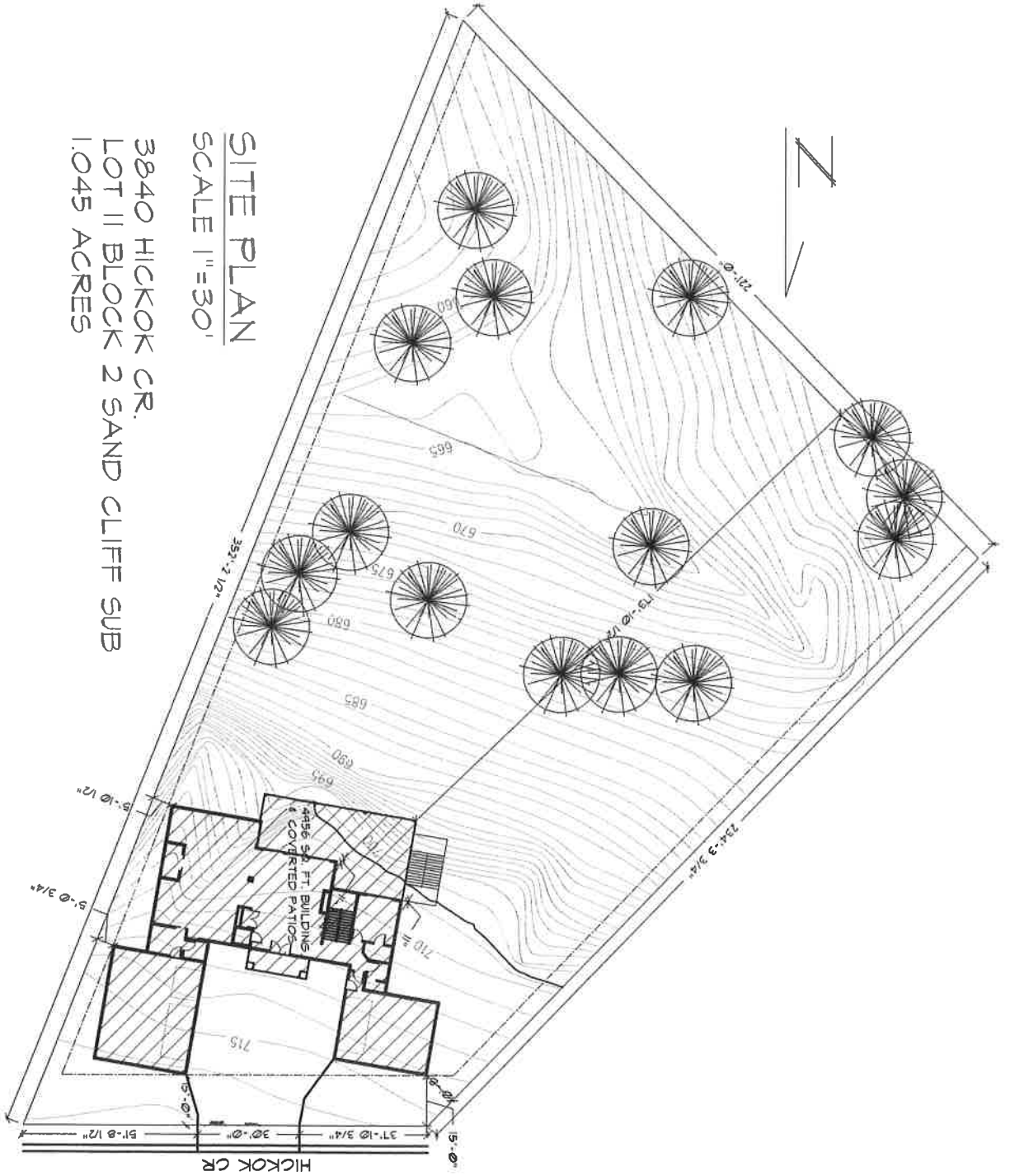
Sand Cliff Sub lot 11 block 2

Chairperson of the Board of Adjustment

We are planning to build a single family home at 3840 Hickok. Due to the excessive slope that exists on this residential site, we are seeking a variance to reduce the front setback to 15'. The existing slope and cliff face make it difficult to build a home with the prescribed 20' setback.

Doug Wild, Classic Design Homes

Agent for Robert and Janice Hamlin



**SITE PLAN**

SCALE 1"=30'

3840 HICKOK CR.  
 LOT II BLOCK 2 SAND CLIFF SUB  
 1.045 ACRES

## **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 conditions or circumstances with the land that create a hardship in this situation. The parcel of land has limited building area due to the extreme slope at the rear side of the property.

- 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;**

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 this variance would not confer a privilege to this applicant that others in the subdivision and similar subdivisions along the rimrocks do not have.

- 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.

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

Staff is recommending the following conditions for the variance request;

1. The variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 15 feet for a new residence in a Residential 9,600 (R-96) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 11, Block 2, Sand Cliff Subdivision, 3840 Hickok Circle.
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. 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.
5. The applicant must submit for a building permit within 6 months of this variance approval.
6. No construction activity will be done before 7 a.m. or after 8 p.m.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The requested variance is to ensure the opportunity to build a single family dwelling on this parcel of land 15 feet from the front property line. The applicant must submit for a building permit 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 -9600 zoning allows single family dwellings.