



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, January 4, 2017, 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 December 7, 2016.

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff

The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

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

Public Hearings:

- a. **Variance 1248 - 1413 18th St West - Lot Area and Setbacks** -The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 5,166 square feet for the re-construction of two dwelling units; from 27-308 requiring a minimum 20 foot front yard setback to allow a minimum 15 foot front yard setback in a Residential 7,000 (R-70) zone on the south 65 feet of Lot 12 and Lot 13, and the south 65 feet of the west 20 feet of Lot 14, Block 6, Kober Subdivision, 3rd Filing, a 5,166 square foot parcel of land. Tax ID: A09751. Presented by Karen Husman, Planner I.

Other Business/Announcements

Adjournment

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to bartleyr@ci.billings.mt.us

City Board of Adjustment

Meeting Date: 01/04/2017

Information

Subject

The minutes of the Board meeting of December 7, 2016.

Attachments

BBOA_20161207

CITY BOARD OF ADJUSTMENT

MINUTES December 7, 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	A	1	E	1	1
James Olson	Board member	-	-	1	1	E	1	E	R	R	R	R	R
Paul Hagen	Board member	-	-	1	1	1	1	1	1	E	1	1	1
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1	A	A	1	E	1
Oscar Heinrich	Board member	-	-	1	1	1	1	1	1	1	1	1	1
Martin Connell	Board member	-	-	1	1	1	E	1	1	1	1	1	1
Mark Noennig	Chairman	-	-	1	1	1	1	1	1	1	E	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	3	3	1	1	3	26

Chairman Noennig called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3rd Avenue North.

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

Attending: Walter & Sherry Herbert, Darryl Weber, Quentin Eggart

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 Heinrich made a motion for the approval of November 2, 2016, minutes. 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.

Chairman Noennig disclosed a possible conflict, he has formerly represented Greg Eggart.

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

Disclosure of Outside Communication

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

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		x	no	
██████████				
Paul Hagen		x	all	
Frank Chesarek		x	no	
Oscar Heinrich		x	all	
Martin Connell		x	all	
Mark Noennig		x	no	

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.

Nicole Cromwell read the legal description for **Variance #1245**:

Karen Husman presenting:

Variance 1245 – 103 Alderson/1302 1st St West – Lot Area - A variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 7,000 square feet in a Residential 7,000 (R-70) zone for an existing duplex dwelling on Lots 1 & 2, Block 8 of West Side Addition Subdivision, a 7,000 square foot parcel of land. The applicant is not planning any construction, but if approved would allow the re-building if needed in the future of a duplex (2-family) dwelling on these lots. Tax ID: A17773.

RECOMMENDATION

Planning Staff is recommending conditional approval.

Board member Heinrich confirmed this request is to obtain a rebuild letter.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1245**.

Walter Herbert, 1005 O'Malley Drive, Billings 59102

Mr. Herbert is selling this property and the potential buyer's insurance is requiring a rebuild letter. Chairman Noennig asked if homeowners insurance was requiring this or title insurance. Mr. Herbert confirmed it is the homeowner's insurance in order to obtain bank financing.

Sherry Herbert, 1005 O'Malley Drive, Billings 59102

Mrs. Herbert reiterated the zoning must match the property.

Opposed

NONE

Board member Chesarek made a motion and Board member Connell seconded the motion to approve City Variance #1245 with the Findings of Fact presented by Staff.

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

The motion to approve City Variance #1245 passed 6-0.

Karen Husman presenting:

Variance 1246 – 2730 41st St West - Accessory Building Area - A variance from 27-310(i)(3) requiring a maximum floor area of 1,500 square feet per detached accessory structure and not more than 2,000 square feet total detached accessory structure floor area to allow 2,200 square feet for a single detached structure and a total of 3,000 square feet of detached accessory structure area in a Residential 9,600 (R-96) zone on Lots 5 through 10, of Westfield Subdivision, a 3.731 acre parcel of land. Tax IDs: C02266 & C02267.

RECOMMENDATION

Planning Staff is recommending denial.

Chairman Noennig asked staff to clarify the plan and if this structure could be a dwelling. Staff replied with the correct setbacks, yes.

Board member Hagen confirmed the 1500 square foot maximum in the City for a detached accessory structure.

Board member Heinrich inquired regarding any outside remarks. Staff replied there has been no communication either way regarding this application.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1246**.

The applicant is not present.

Staff reminded the board about a previously approved oversized garage approximately 2 miles away in 2014.

Opposed

NONE

Discussion

Board member Connell supports the staff recommendation to deny.

Board member Heinrich agrees

Chairman Noennig asked if a building permit had already been issued. Karen replied a permit is in review for the house and attached garage. Chairman Noennig commented he is usually swayed by the proponents but there is no opposition either. He does not feel it necessary to make the exception.

Board member Bollman made a motion and Board member Heinrich seconded the motion to deny City Variance #1246 with the Findings of Fact presented by Staff.

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

The motion to deny is City Variance #1246 passed 6-0.

Karen Husman presenting:

Variance 1247 – 3416 6th Ave S – Lot Area - A variance from 27-308 requiring a minimum lot area of 6,000 square feet to allow a minimum lot area of 5,250 square feet for the proposed boundary line adjustment and aggregation to create two (2) 5,250 square foot lots for development of single family dwellings in a Residential 6,000 (R-60) zone on Lots 13, 14 & 15, Block 219, Billings Second Addition, a 10,500 square foot parcel of land. Tax ID: A01624.

RECOMMENDATION

Planning Staff is recommending conditional approval.

Chairman Noennig asked for clarification why 4 dwellings allowed, staff replied 3 lots combined equals 10,500 square feet. In R-6000 zoning, 10,000 square feet is necessary for 4 dwellings in one building.

Board member Heinrich confirmed if the lot was not split a condo would be necessary to sell them separately.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1247**.

Quinton Eggart, agent

Mr. Eggart noted the conflict of interest of Mark Noennig.

After consideration, Mr. Eggart advised the owner to request a Variance to create lots for 2 single family homes, able to be conventionally financed and easily accessed. These dwellings could be rentals or for sale.

Opposed

NONE

Board member Chesarek made a motion and Board member Heinrich seconded the motion to approve City Variance #1247 with the Findings of Fact presented by Staff.

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

The motion to approve City Variance #1247 passed 6-0.

The public hearing was closed at 6:32pm.

Other Business/Announcements:

The next meeting will be on January 4, 2016.

Adjournment: 6:34 p.m.

ATTEST: DRAFT. To be approved by a motion on January 4, 2017.



City Board of Adjustment

Meeting Date: 01/04/2017

SUBJECT: City Variance #1248- 1413 18th Street West

THROUGH: Wyeth Friday

PRESENTED BY: Karen Husman

Information

REQUEST

Variance 1248 - 1413 18th St West - Lot Area and Setbacks -The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 5,166 square feet for the re-construction of two dwelling units; from 27-308 requiring a minimum 20 foot front yard setback to allow a minimum 15 foot front yard setback in a Residential 7,000 (R-70) zone on the south 65 feet of Lot 12 and Lot 13, and the south 65 feet of the west 20 feet of Lot 14, Block 6, Kober Subdivision, 3^d Filing, a 5,166 square foot parcel of land. Tax ID: A09751. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning Staff is recommending conditional approval to allow reconstruction of one duplex on the property and the reduction of the front setback from 20 feet to 15 feet for the structure, not including driveways that will still be required to have 20 feet for garage approach.

APPLICATION DATA

OWNERS: Christopher & Barbara Cox

AGENT: Josh Schaefer

PURPOSE: To allow a lot of 5,166 sf for an existing duplex & reconstruction of 2 dwelling units, allow reduction to 15' for the front yard setback

LEGAL DESCRIPTION: Lot 12 and Lot 13 and the south 65 feet of the west 20 feet of Lot 14, Block 6, Kober Subdivision, 3^d Filing,

ADDRESS: 1413 18th St. West

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: Residential-7,000 (R-70)

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property –None

Surrounding Property – Records show there have been 5 variance applications in this subdivision; 3 were for lot coverage and 2 were for reduction in setback.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Residential single family & multi family
SOUTH: Zoning: CC
Land Use: Commercial Retail
EAST: Zoning: R-70
Land Use: Residential single family & multi family
WEST: Zoning: R-70
Land Use: Residential single family & multi family

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a minimum lot area of 5,166 square feet for the re-construction of two dwelling units, and from 27-308 requiring a minimum 20-foot front yard setback to allow a minimum 15-foot front yard setback in a Residential 7,000 (R-70) zone.

There have been five variance applications in this subdivision. Three were for lot coverage (all three conditionally approved), and two were for setbacks (one approved, one denied). Staff found four properties smaller than the minimum required square footage for the number of units on the property (two were single family dwellings, two were duplex dwellings). The applicant is requesting an approval to build two separate dwelling units on this smaller lot. There were not sufficient findings to support approval of two single family dwellings on this lot, however there are sufficient findings to support reconstruction of the existing duplex dwelling.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for Variance request #1248, to allow reconstruction of a duplex, and allow the reduction of the front setback from 20 feet to 15 feet based on the determinations for granting a variance.

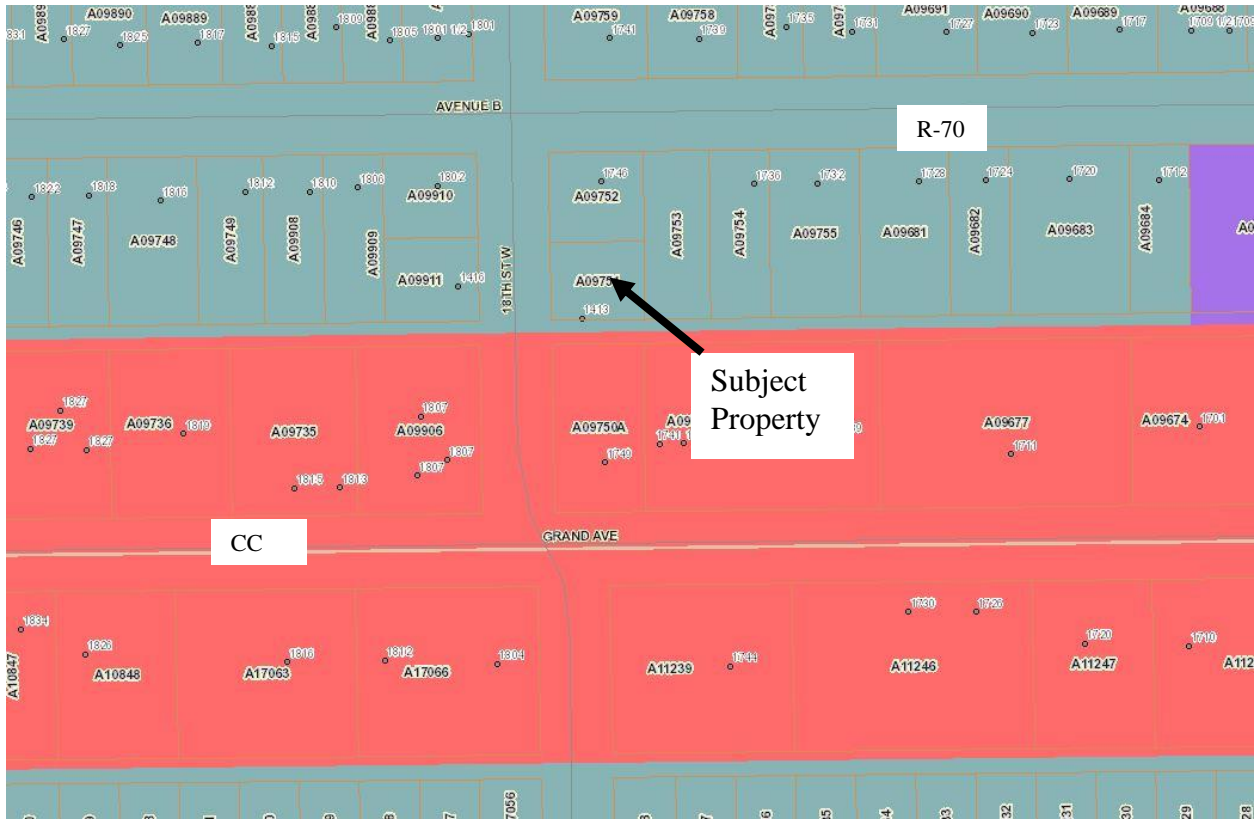
RECOMMENDATION

Planning Staff is recommending conditional approval of City Variance #1248 based on the criteria for variances.

Attachments

Zoning Map & Site Photos
Applicant letter & Site Plan
Determinations

ATTACHMENT A
Surrounding Zoning & Site Location





ATTACHMENT
Site Photographs



Subject Property.



Subject Property

ATTACHMENT
Site Photographs, Continued



Looking East (toward the property from the street frontage)



Looking East down the alley



Looking North



Looking South



Looking west



Looking Southwest

Attachment B
Application and Applicant Letter



APPLICATION FORM

CITY VARIANCES DEPARTMENT ID: Billings Variance # 1248 - Project # P2-16-0001

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

TAX ID # A09751 CITY ELECTION WARD # 3

Legal Description of Property: Kober Subd 3rd filing, 536, Tol N, R2SE, Block 6, Lot 13, & 65' Lt 12 & 565' of W20' Lt 14

Address or General Location (If unknown, contact City Engineering): 1413 18th St W,

Billings, mt

Zoning Classification: R7000

Size of Parcel (Area & Dimensions): 5166 Sq Ft recorded $79.5 \times 65 = 5167.5 \text{ Sq Ft}$
 $79.5 \times 68 = 5406.0$

Covenants or Deed Restrictions on Property: Yes No (3 # of alley) - 1953 resolution

If yes, please attach to application

Variance(s) Requested: In the 40+ years I have owned/lived @ this address, it has been a duplex & want to keep this lot as such. Asking for 15' front yard variance as building on south side of alley also built on edge of alley - hard to get cars into driveway (space) because of the corner of the building.

Facts of Hardship: My husband had a stroke in June, he continues to walk, every day to the house (therapy). I also have a grandson who is special needs - this as a duplex townhouse or condo's helps keep the family together for emergency reasons and mental stability for my husband. We all help each other & are there for each other.

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

Owner(s): Christopher & Barbara Cox

(Recorded Owner)

1413 18th St W, Billings, MT

(Address)

406-256-2743 (D) 406-591-5565 (C) bc Cox@co.yellowstone.mt.gov

(Phone Number)

(email)

Agent(s): Josh Schaefer

(Name)

2300 Elizabeth St Billings MT 59102

(Address)

406-208-1855

josh@schaefermt.com

(Phone Number)

(email)

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

Signature: Barbara Cox Date: 12-2-16

(Recorded Owner)

1. A. & B. H. has been a duplex for over 50 years. We need 2 family dwelling for my self & husband & my daughter who has a special needs son. We need to be there for each family. My daughter has problems renting because of her son & she can't own... no credit. My husband needs the family for therapy because of his stroke. If we can not use as always, we can not use the property at all - not usable as is.
2. I want to rebuild to code a living place that is comfortable and where my grandchildren can have a nice place to play. We want to stay with a duplex - just a bit different for comfort.
- 3- plans submitted with paperwork.

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. The applicant is requesting this variance in order to reconstruct the existing structure on a non-conforming lot.

- 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. There have been variances that have been granted in the area for existing properties that do not meet the current required setback distance from property lines. There are other properties in the neighborhood that have single family and duplex dwelling units on smaller lots. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, allowing the applicant a variance for one (1) two-family dwelling on a 5,166 square foot lot would not deprive the applicant rights commonly enjoyed by other properties in the district.

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

Granting this variance for two single family dwellings on a 5,166 square foot parcel would give the applicant a special privilege; however, granting the variance for one two-family dwelling (duplex) on a 5,166 square foot lot for the existing duplex would not confer a privilege to this applicant that others in the subdivision do not have. There are small lots in this subdivision that have existing duplex buildings on them.

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

The variance approval (as recommended by Staff) 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 20 foot front yard setback to allow a minimum 15 foot front yard setback, and allow one two-family dwelling on a 5,166 square foot parcel, in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to the south 65 feet of Lot 12 and Lot 13 and the south 65 feet of the west 20 feet of Lot 14, Block 6, Kober Subdivision, 3rd Filing, a 5,166 square foot parcel of land.
3. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.

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

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

The property owner shall apply for a building permit to reconstruct the existing duplex within 1 year after demolition of the existing structure. If the intention is to remodel the structure the property owner must comply with all Building codes included in remodeling and shall be completed within one year.

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 two-family dwellings (duplexes).