



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, February 1, 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 January 4, 2017.

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. **City Variance 1249 – Lot Area** - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,300 square feet for the demolition of an existing single family residence and construction of 2 new single family structures in a Residential Multi-family-Restricted (RMF-R) zone on the east 20 feet of Lot 29 and Lot 30, Block 9, Yellowstone Addition Subdivision, a 6,300 square foot parcel of land. Tax ID: A19013. Presented by Nicole Cromwell, Zoning Coordinator

Other Business/Announcements

Adjournment

Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 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. Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 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: 02/01/2017

Information

Subject

The minutes of the Board meeting of January 4, 2017.

Attachments

BBOA_20170104

CITY BOARD OF ADJUSTMENT

MINUTES January 4, 2017

Name	Title	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	08/02/2017	08/03/2016	09/06/2017	10/04/2017	11/01/2017	12/06/2017
Jeff Bollman	Board member	1											
Dave Hagstrom	Board member	1											
Paul Hagen	Board member	1											
Frank Chesarek	Vice Chairman	1											
Oscar Heinrich	Board member	1											
Martin Connell	Board member	1											
Mark Noennig	Chairman	1											

TOTAL NUMBER OF APPLICATIONS 2016	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	08/02/2017	08/03/2016	09/06/2017	10/04/2017	11/01/2017	12/06/2017	TOTAL
Variance	1												1

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 Wyeth Friday, Director Planning and Community Services, Nicole Cromwell, Zoning Coordinator, and Robbin Bartley, Administrative Support.

Attending: Barbara 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 Connell made a motion for the approval of December 7, 2016 minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 7-0.

Disclosure of Conflict of Interest

Chairman Noennig asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		x	
Dave Hagstrom		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?	Comments
Jeff Bollman	x		n	Email to staff from APO
Dave Hagstrom		x	n	
Paul Hagen		x	y	
Frank Chesarek		x	n	
Oscar Heinrich	x		n	Email to staff from APO
Martin Connell	x		y	Email to staff from APO
Mark Noennig	x		y	Email to staff from APO

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 #1248**:

Nicole Cromwell presenting:

Variance 1248 – 1413 18th St West - Lot Area and Setbacks - 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 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

RECOMMENDATION

Planning Staff is recommending conditional approval.

Questions for Staff:

BOARD MEMBER **Connell** stated there are 2 garage doors and asked if they will be abandoned or demolished in the reconstruction? Staff replied the existing structure will be demolished. The applicants will be building from the ground up.

BOARD MEMBER **Hagstrom** asked if a common wall would be necessary on the attached carport. Staff advised a covered structure could attach and meet the condition. The carport cannot be independent of the two structures.

BOARD MEMBER **Bollman** asked for clarification regarding the front yard setback requirements. Staff explained that if a carport were constructed there, the roofline would need to be 20 feet back.

CHAIRMAN **Noennig** stated that no special language is required regarding a garage since none has been proposed. However a garage structure would require the same 20 foot setbacks.

BOARD MEMBER **Heinrich** stated that as long as the applicant conforms to everything regarding a duplex on that property, they could build anything. Staff said this is correct.

CHAIRMAN **Noennig** asked the difference between the 2 residences and the duplex. Staff replied that the lot coverage requirements is still the same, 30 percent. Which limits this structure to about 1500 square feet. The proposed roof coverage is 1200 square feet, no more than 300 square feet of patio coverage is acceptable.

CHAIRMAN **Noennig** asked for clarification regarding Staff's recommendation of a duplex rather than 2 separate buildings being that the lot coverage requirements for zoning are the same. Staff explained it was an aesthetics issue and building bulk.

BOARD MEMBER **Hagstrom** asked if a duplex must be attached. Staff explained a zone change that allowed the property owner to choose attached or 2 single family residences.

BOARD MEMBER **Bollman** stated there is no condition that the applicant must comply with a site plan and therefore a garage could be placed anywhere. Staff did ask the applicant about off street parking. There must be at least 2 spaces for each unit. The applicant expects to put a parking area in the back and used the proposed driveway area.

BOARD MEMBER **Hagen** asked about the concrete driveway which would disappear if the buildings are brought together.

BOARD MEMBER **Heinrich** asked how high a duplex can be. Staff replied 34 feet. He then inquired as to surrounding property objections, to which Staff indicated the one email received. One addition question if they build two structures, in the future can the property be split? Staff indicated that it may not be split.

Are there any other like sites in the neighborhood? Staff replied there are 5 variances in this area. None were for duplexes. There are 4 other non-conforming properties.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1248**.

Barbara Cox, applicant,(no address given)

Mrs. Cox and her husband have owned this property for 40 years. The City has denied her remodeling plans piece by piece. There is a large Code Enforcement file on this property. Her husband had a stroke and is now disabled. This variance is necessary as they need a home and without it, they cannot rebuild 2 units. The 2 units are necessary to house Mrs. Cox and her husband and the second dwelling will house their daughter and special needs grandson. As a family living close enables them to help each other in so many ways.

BOARD MEMBER **Chesarek** asked Mrs. Cox if she would have any issues conforming to the

conditions set forth and how soon she intended to start the demolition and rebuild. Mrs. Cox indicated there would be no problems conforming and the process would begin as soon as the contractor is given the go ahead.

BOARD MEMBER **Connell** asked if the building plans were ready. A Line is working on them now and is waiting for the variance approval and conditions. He then asked Mrs. Cox if she is comfortable with the staff recommendations. She replied affirmatively.

Opposed

NONE

Discussion

BOARD MEMBER **Connell** likes to see reclamation. Mrs. Cox is happy with the conditions and therefore he supports the variance.

BOARD MEMBER **CHESAREK** made a motion and BOARD MEMBER **HEINRICH** seconded the motion to approve City Variance #1248 with the Findings of Fact presented by Staff.

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

The motion to approve City Variance #1248 passed 7-0.

The public hearing was closed at 6:35 PM.

Other Business/Announcements:

Ex Parte Communications Memorandum/Wyeth Friday presenting.

This is from an agreement between Billings Industrial Revitalization District and The City of Billings Board of Adjustment. Mr. Jerry Ray requested a Variance in the East District Urban Renewal district several years ago. The Board's decision was split, part of the variance was approved and the other not. The BURD sued as did Mr. Ray.

As a result, more training is necessary regarding Ex Parte Communications.

BOARD MEMBER **HEINRICH** mentioned he receives invitations to the events in the BURD and questioned whether he should go. Mr. Friday thought it should not be a problem. He pointed out the City Attorneys definition of Ex Parte. We will be having a training session on Ex Parte communication in the near future for all the Boards and Commissions.

The next meeting will be on February 1, 2017.

Adjournment: 6:46 p.m.

ATTEST: DRAFT. To be approved by a motion on February 1, 2017.



City Board of Adjustment

Meeting Date: 02/01/2017

SUBJECT: Variance 1249 - 434 Terry Avenue - Lot Area

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

City Variance 1249 – Lot Area - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,300 square feet for the demolition of an existing single family residence and construction of 2 new single family structures in a Residential Multi-family-Restricted (RMF-R) zone on the east 20 feet of Lot 29 and Lot 30, Block 9, Yellowstone Addition Subdivision, a 6,300 square foot parcel of land. Tax ID: A19013. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff recommends conditional approval based on the findings of the 7 criteria for Variance 1249.

APPLICATION DATA

OWNER: Joann and John Stevens

AGENT: Robert White - Grace Construction

LEGAL DESCRIPTION: Yellowstone Addition, Block 9, East 20 feet of Lot 29 and Lot 30

ADDRESS: 434 Terry Avenue

CURRENT ZONING: RMF-R

EXISTING LAND USE: Single family dwelling and garage

PROPOSED USE: Two new single family dwellings

SIZE OF PARCEL: 6,300 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property - This is the original zoning of the subject property since 1972.

Surrounding Property - There have been at least 10 lot area variances submitted in the surrounding neighborhood. Nine of these variances have been approved. One variance was denied for a proposed new 8-plex on lots at 727 and 731 Terry Avenue. Twenty-nine other variances for setback, lot coverage or fence height have also been submitted in the area. Four of the variances for setbacks have been denied and the remainder approved.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: RMF-R
Land Use: Single family and multi-family dwellings

SOUTH: Zoning: RMF-R
Land Use: Single family and multi-family dwellings

EAST: Zoning: RMF-R
Land Use: Single family and two family dwellings

WEST: Zoning: RMF-R
Land Use: Single family and multi-family dwellings

BACKGROUND

This is a variance request to allow the demolition of a single family dwelling and garage and the construction of 2 new single family dwellings on a lot less than 7,000 square feet. The adjacent property at 438 Terry Avenue was deeded the west 5 feet of Lot 29, probably to resolve a building setback issue with the front house on this 2 dwelling property. This decreased the size of the subject property, 434 Terry, from 7,000 square feet to 6,300 square feet. The property is within one of the oldest residential neighborhoods in Billings. Many of the homes and dwellings were constructed prior to the adoption of the current zoning code in 1972. The existing home on the subject property was constructed in 1920. The two single family homes at 438 Terry to the west were also constructed in 1920. Three homes on the block of Terry were built in 1900 and 4 were built in 1910. Several more were constructed in the 1920s. The multi-family dwellings at the west end of the block were constructed in the early 1950s.

The surrounding zoning is all RMF-R, the original zoning applied in 1972. Other zoning in the neighborhood includes R-60 and Neighborhood Commercial (NC). The area is a well developed neighborhood with a mixture of housing options sometimes within the same block as is the case of the subject property. Fifth Street West is the closest arterial street and serves as the main north/south route to other parts of the city from either Broadwater Avenue or Central Avenue. The average daily traffic on 5th Street West is about 5,500 to 6,000 vehicles per day. Traffic counts are always taken when schools are not in session so average daily traffic during the school year is likely much higher due to the proximity of Broadwater Elementary School and Senior High School on Grand Avenue. There is very little "cut through" traffic on Terry Avenue.

The Planning staff is recommending conditional approval of the proposed variance. There are several similar properties in the neighborhood where variances have been granted for lot area, and it appears the smaller lot area resulted from a building siting error going back to 1920 on the adjacent lot at 438 Terry Avenue. There are many lots with a "front house, back house" arrangement in the neighborhood. The proposed variance meets the guidelines of the 2016 Growth Policy to build housing options in existing neighborhoods where they fit in and the City's Infill Policy including supporting additional dwelling units on under-developed lots. The staff is recommend conditions of approval to ensure the property is developed as planned in a timely fashion to minimize disruption to the neighborhood.

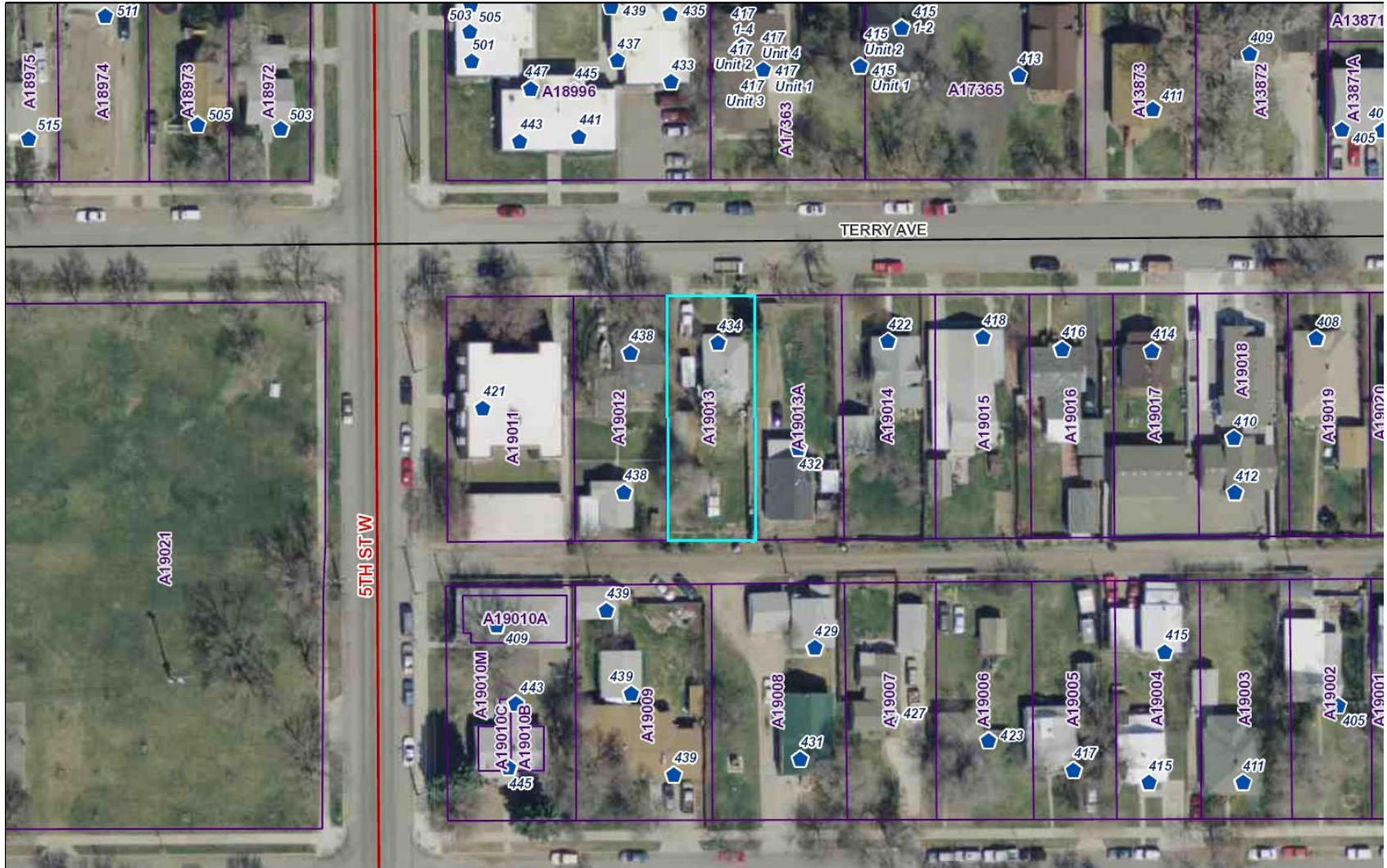
RECOMMENDATION

Staff recommends conditional approval based on the findings of the 7 criteria for Variance 1249.

Attachments

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

Var 1249





Google





Subject Property



View east along Terry Avenue



View west along Terry Avenue



View north west across Terry Avenue



View east down Terry Avenue



View south into subject property

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 to the west at 438 and 438 ½ Terry Avenue appears to have built a dwelling in 1920 that was too close to the east property line. The subject property at 434 Terry deeded the west 5 feet of its property to resolve the setback issue. The result was the reduction of the lot area for 434 Terry from 7,000 square feet to 6,300 square feet. The remaining lots on this block of Terry Avenue are “whole” lots and do not have portions of lots deeded to adjacent lots.

- 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 to allow existing dwellings to be re-built or to add dwelling units to lots that are less than the required lot area. Eleven variances for lot area have been accepted and 10 of those were approved. One variance for 727 Terry was denied. This variance requested a variance to allow a proposed new 8-plex dwelling on a 14,000 square foot property. The BOA found the variance would have granted a use that was not common in the area and would be a special privilege to the applicant. There are several properties in the immediate area developed beyond the current zoning allowances for lot area including 2 multi-family apartments on the corner of Terry Avenue and 5th St West, and six units on a lot directly north of subject property. 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 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;**

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy including the 2016 Growth Policy and the City’s Infill 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 lot size variance request:

1. The variance is from Section 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,300 square feet for the demolition of an existing single family residence and construction of 2 new single family structures in a Residential Multi-family-Restricted (RMF-R) zone.

2. The variance is limited to the east 20 feet of Lot 29 and Lot 30, Block 9, Yellowstone Addition Subdivision, a 6,300 square foot parcel of land, generally located at 434 Terry Avenue.
3. The owner will apply for a demolition permit for the existing structures within 6 months of Board approval.
4. The owner will remove any and all tree stumps from the grass boulevard between the sidewalk and the curb. The owner will plant at least 1 street tree in the boulevard to replace the dead trees that are to be removed. Applications for a tree planting permit must be obtained from the City Parks Department prior to planting.
5. The owner will apply for a building permit for the 1st new structure on the property within 8 months of Board approval.
6. The owner will complete the construction of the first new dwelling within 18 months of Building Permit issuance.
7. The owner will apply for a building permit for the 2nd new dwelling within 24 months of Board approval.
8. The owner will complete the construction of the second dwelling within 18 months of the Building Permit issuance.
9. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application for the dwelling units.
10. Failure to begin or complete the actions required by this variance approval will void the variance.
11. 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 Planning staff recommends a demolition permit be submitted for the existing structures within 6 months of the Board approval. Also, staff recommends a building permit application for the first dwelling be submitted within 8 months of Board approval and the construction on this dwelling be completed within 18 months of building permit issuance. Finally, staff recommends the building permit application for the 2nd dwelling be submitted within 24 months and completed within 18 months of 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 allowed in the zoning district. Single family dwellings are allowed uses in the RMF-R zone.

Variance 1249 – 434 Terry Avenue
Applicant Letter and Site Plans



APPLICATION FORM

ID: Billings Variance # 1249 - Project # PZ-1700001

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 # A19013 CITY ELECTION WARD # 1

Legal Description of Property: YELLOWSTONE ADD BLOCK 9 LOT 29
E 20 FT LT 29-30

Address or General Location (If unknown, contact City Engineering):
434 TERRY AVE

Zoning Classification: RESIDENTIAL MULTI-FAMILY RESTRICTED

Size of Parcel (Area & Dimensions): 45' X 140' 6300 SQFT

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: LOT SIZE TO ALLOW (2) TWO DWELLING
UNITS

Facts of Hardship: LOT SIZE IS 700 SQFT LESS THAN NEEDED
7000 SQFT FOR 2 DWELLINGS.

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

Owner(s): JOANN AND JOHN STEVENS
(Recorded Owner)
1042 HICKORY AVE, BILLINGS MT 59101-6740
(Address)
(406) 698-8800 (Phone Number) (email)

Agent(s): ROBERT V WHITE
(Name)
805 YELLOWSTONE AVE, BILLINGS, MT 59101
(Address)
(406) 672-6642 (Phone Number) robtbwhite@yahoo.com (email)

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

Signature: [Signature] Date: 3 Jan 2017
(Recorded Owner)

3 Jan 2017

Grace

CONSTRUCTION

Robert White
805 Yellowstone Ave
Billings, MT 59101
(406) 672-6642

Planning & Community Services Dept
2825 3rd Ave North, 4th Floor
Billings, MT 59101
(406) 247-8676

Dear Chairperson of the Board of Adjustment,

I am applying on behalf of my friend and client, Joann Stevens, for a variance to allow the construction of two dwellings on her property, 434 Terry Ave, Billings, MT, Tax ID: A19013. The property is zoned Residential Multi-Family Restricted yet is only 6300 sqft, 700 sqft less than the needed 7000 sqft for two dwellings.

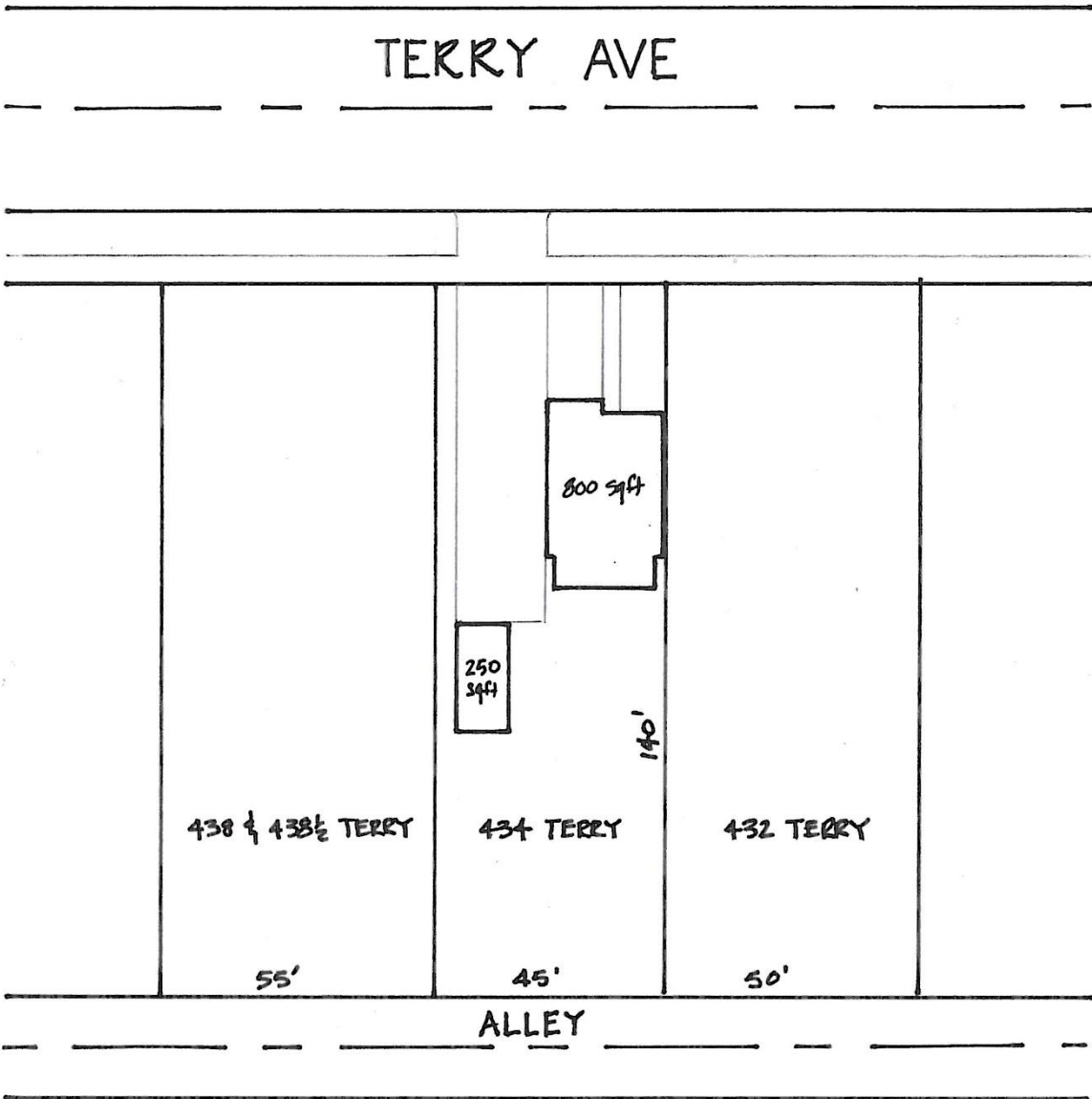
Mrs. Stevens wishes to construct an accessible retirement dwelling for her and her husband, John, and a separate dwelling for either her daughter or a caretaker. We intend to remove the existing structures on the property: an 800 sqft 1920 bungalow, a 250 sqft detached garage, and a small freestanding storage shed. We intend to build two dwellings, not to exceed a total of 3465 sqft on the first floors, to conform to the 55% lot coverage zoning requirement.

The neighborhood contains a good mix of single and multi-family residences leading us to believe that this project would not detract but add to the character and value of the area.

Thank you,



Robert White



SITE MAP

SCALE : 1" = 30'-0"

Existing Structures

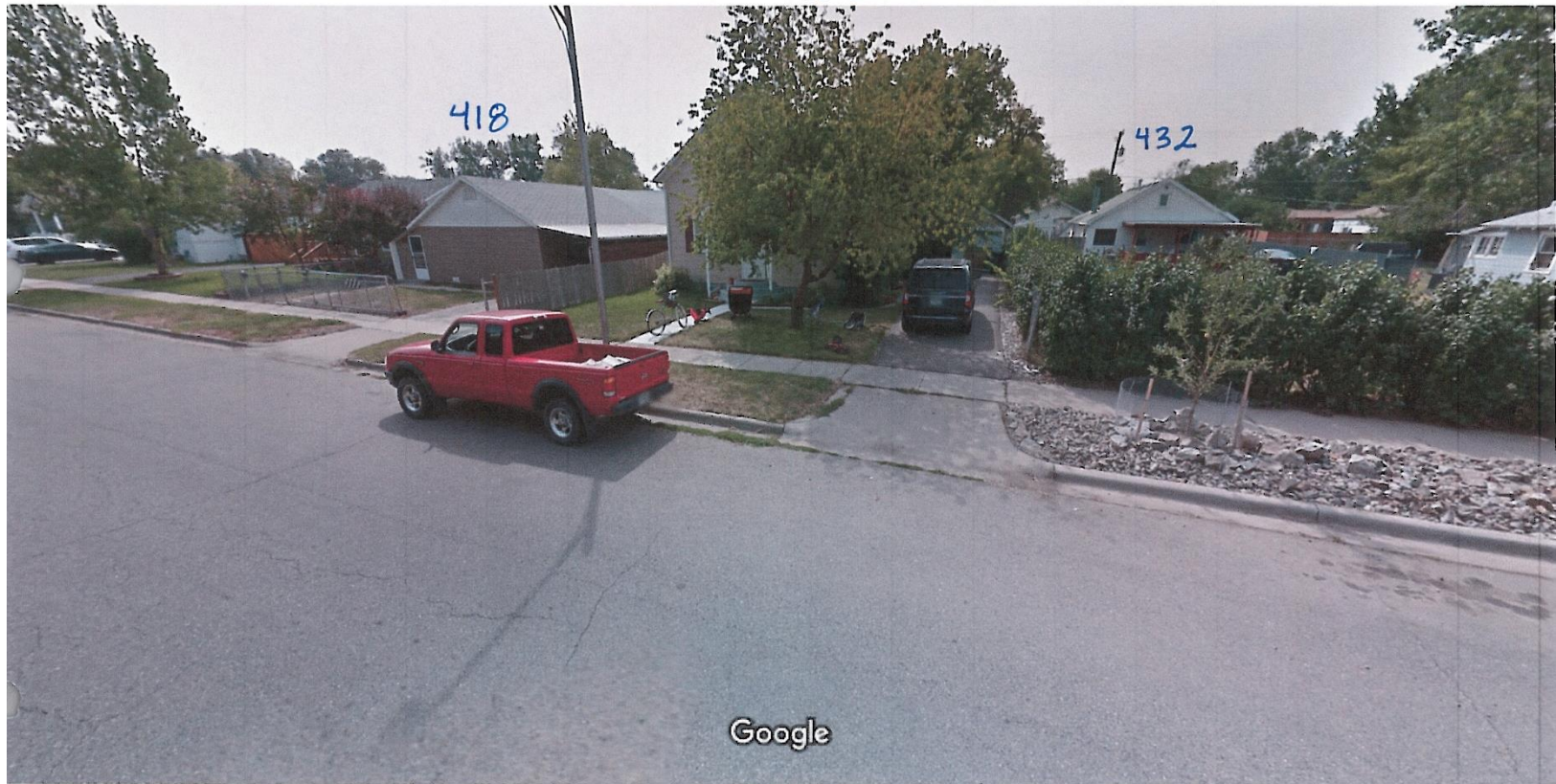


Billings, Montana
Street View - Aug 2015



Billings, Montana

Street View - Aug 2015



Billings, Montana

Street View - Aug 2015

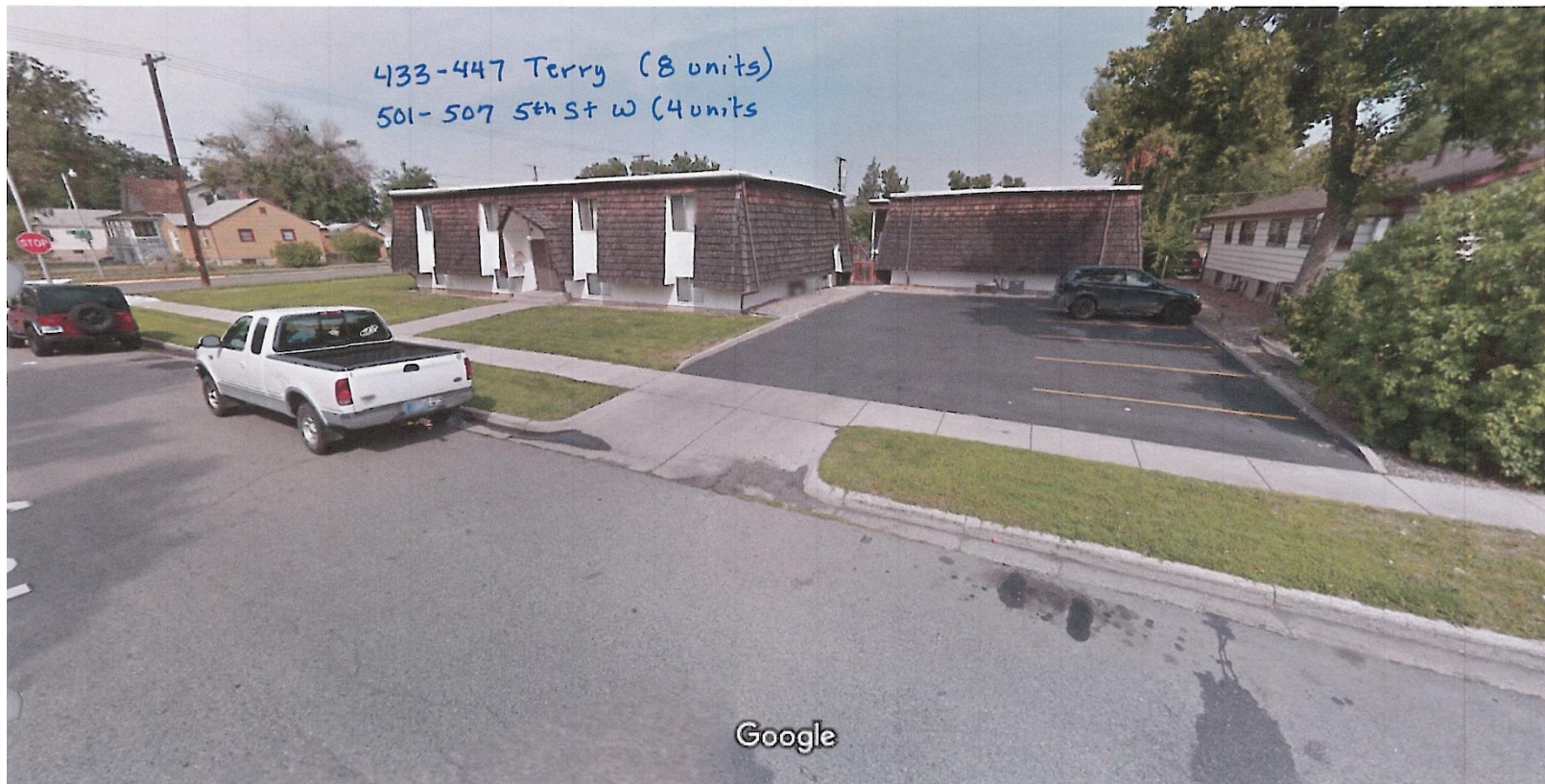


Image capture: Aug 2015 © 2017 Google

Billings, Montana

Street View - Aug 2015





433-447 Terry (8 units)
501-507 5th St W (4 units)

Google

Image capture: Aug 2015 © 2017 Google

Billings, Montana

Street View - Aug 2015