



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, March 1, 2017 @ 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> Avenue North, Billings, Montana**

**NOTICE TO THE PUBLIC**

**Public Comment:**

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

**Call the meeting to order.**

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

**Public Comment**

**Approval of Minutes:**

a.

The minutes of the Board meeting of February 1, 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 1250 – 1147 O’Malley Drive – Detached Garage** - A variance from 27-310(i) requiring a maximum garage foot print of 1,013 square feet to allow a detached garage foot print of 1,250 square feet; to allow a side wall height greater than 10 feet to allow a sidewall height of 15.5 feet; and from the required 8-foot side setback for a structure over 18 feet in height to allow a 5-foot side setback in a Residential 9,600 (R-96) zone, on Lot 1, and the West 1.67 feet of Lot 2, Block 2 of Neidemire Subdivision, a 11,745 square foot parcel of land generally located at 1147 O’Malley Drive. Tax ID: A11290. Presented by Karen Husman, Planner I
  
- b. **Variance 1251 – 2315 9<sup>th</sup> Avenue N – Land Use Contrary to Zoning (LUCZ) – new 911 Center** - A request to conduct a public forum for the proposed construction of a new 911 Communication Center for the City of Billings and Yellowstone County in a Residential 7,000 (R-70) zone, on the South ½ of Lot 3, Block 9, Sunnyside Subdivision 2<sup>nd</sup> Filing, a 21,000 square foot parcel of land. The property is generally located at 2135 9<sup>th</sup> Avenue North. The proposed facility will not meet the required front or side adjacent to street setback requirements, will install an 80-foot communications tower, and will have generators and transformers near the east property line. The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. Tax ID: A16423. Presented by Karen Husman, Planner I
  
- c. **Variance #1252 – 906 N. 32<sup>nd</sup> Street**-The applicant is requesting a variance from 27-308 requiring a minimum 5-foot side setback to allow a 2-foot side setback for a proposed 380 square foot addition to an existing dwelling in a Residential 7,000 (R-70) zone, on the North 15 feet of Lot 8 and Lot 9, Block 19 of North Elevation Subdivision, 3<sup>rd</sup> Filing, an 8,024 square foot parcel of land generally located at 906 N 32<sup>nd</sup> Street. Tax ID: A11840. Presented by Karen Husman, Planner I.
  
- d. **City Variance #1253- 2401 & 2405 Sunnyview Lane:** The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 dwelling units in a Residential 9,600 (R-96) zone, on Lot 2, and the North 30 feet of Lot 3, Block 3 of Pleasant Acres Subdivision to allow a minimum lot area of 10,400 square feet for two existing dwelling units, generally located at 2401 and 2405 Sunnyview Lane. The owner and buyer require a lot area variance in order to finance the sale of the property and no construction or re-construction is contemplated. Tax ID: A12905. Presented by Karen Husman, Planner I.
  
- e. **Variance 1254 – 3933 Shiloh Road – Building Height** – A variance from 27-309 requiring a maximum building height of 45 feet to allow a maximum building height of 50 feet in a Community Commercial (CC) zone on Tract 1B1 of C/S 2277 in the proposed Shiloh Commons Subdivision, a 9.38 acre parcel of land generally located on the northeast corner of Shiloh Road and Central Avenue. Presented by Nicole Cromwell, Zoning Coordinator

- f. **Variance 1255 – 1010 N 24<sup>th</sup> St – Projection in Front Setback** – A variance from 27-310(g) requiring a maximum projection in the required 20-foot front setback of 4 feet, to allow a maximum projection of 7 feet into the required 20-foot front setback for a proposed new front deck in a Residential 7,000 (R-70) zone, on the North 50 feet of the South 125 feet of Lot 4, Block 7, Sunnyside Subdivision, 2<sup>nd</sup> Filing, a 7,000 square foot parcel of land generally located at 1010 N 24<sup>th</sup> Street. Presented by Nicole Cromwell, Zoning Coordinator
- g. **Variance 1256 - 1413 18th St West - Lot Area and Setbacks** -The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 30% (1,550 square feet) to allow a maximum lot coverage of 40% (2,066 square feet) for the re-construction of two dwelling units; 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<sup>rd</sup> Filing, a 5,166 square foot parcel of land (or 5,406 square feet including the north 3 feet of the alley as deeded in 1954). Presented by Nicole Cromwell, Zoning Coordinator

### **Other Business/Announcements**

### **Adjournment**

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

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

**City Board of Adjustment**

**Meeting Date:** 03/01/2017

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**Information**

**Subject**

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**Attachments**

BBOA\_20170201\_draft

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## CITY BOARD OF ADJUSTMENT

MINUTES February 1, 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	1										
Dave Hagstrom	Board member	1	1										
Paul Hagen	Board member	1	1										
Frank Chesarek	Vice Chairman	1	1										
Oscar Heinrich	Board member	1	1										
Martin Connell	Board member	1	1										
Mark Noennig	Chairman	1	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											2

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, and Robbin Bartley, Administrative Support.

**Attending:** Robert White

**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 Chesarek made a motion for the approval of January 4, 2017 minutes. Board member Connell 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	
Dave Hagstrom		x	y	
Paul Hagen		x	y	
Frank Chesarek		x	n	
Oscar Heinrich		x	y	
Martin Connell		x	y	
Mark Noennig		x	n	

**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 #1249**:

Nicole Cromwell presenting:

**Variance 1249 – 434 Terry Ave - 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.

**RECOMMENDATION**

Planning Staff is recommending conditional approval.

### **Questions for Staff:**

Board member **Bollman** asked if a site plan of the new construction had been submitted. Staff explained a site plan was not required to apply for the variance and if approved the applicant would be required to meet all set back and lot coverage requirements.

Board member **Heinrich** asked how much parking is required with a 2 unit build. Staff replied 2 spaces for each dwelling. He then inquired if access from the alley is allowed? It is.

Board member **Hagen** mention the lot size seeming to be very small and indicated his concern that 2 dwellings would make it very crowded. Staff reminded the board of the 55 percent lot coverage requirement in this area and pointed out other large dwellings in the immediate area.

Board member **Heinrich** asked if there were any negative responses from the surrounding property owners. There were none.

Chairman **Noennig** confirmed this lot is 700 square feet shy of the 7000 square foot requirement. Board member **Heinrich** asked what could be constructed after demolition if this variance were denied. One single family dwelling.

Chairman **Noennig** confirmed the 55 percent requirement applies whether 1 or 2 dwellings are constructed.

### **Public Hearing**

Chairman **Noennig** opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1249**.

### **Robert White, agent**

The original intent was a total remodel. However, the owner would rather start new, demolishing all the existing buildings and building 2 units, one for herself and the other for a family member or caretaker. They have considered the parking requirements. A 2 story building in the front and rear. The rear being handicap accessible.

No site plans have been started as they are waiting on this variance approval.

Board member **Chesarek** asked if the conditions set forth for approval were acceptable and what the time frame is for the dwelling construction.

Mr. **White** indicated the conditions were agreeable and the intention was to build both dwellings immediately and simultaneously.

### **Opposed**

NONE

### **Discussion**

Board member **BOARD MEMBER Heinrich** made a motion and **BOARD MEMBER Chesarek** seconded the motion to approve **City Variance #1249** 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 #1249 passed 5-2.

**The public hearing was closed at 6:18 PM.**

**Other business:**

Chairman Noennig requested a sign in sheet for Ex Parte Communications, Conflict of Interests and Site visits. The Board was in favor and this will be implemented at the next scheduled meeting.

The next meeting will be on March 1, 2017.

**The meeting adjourned at 6:21 PM.**

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



**City Board of Adjustment**

**Meeting Date:** 03/01/2017

**SUBJECT:** Variance 1250- 1147 O'Malley Drive

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

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**Information**

**REQUEST**

**City Variance 1250 – 1147 O’Malley Drive – Detached Garage** - A variance from 27-310(i) requiring a maximum garage foot print of 1,013 square feet to allow a detached garage foot print of 1,250 square feet; to allow a side wall height greater than 10 feet to allow a sidewall height of 15.5 feet; and from the required 8-foot side setback for a structure over 18 feet in height to allow a 5-foot side setback in a Residential 9,600 (R-96) zone, on Lot 1, and the West 1.67 feet of Lot 2, Block 2 of Neidemire Subdivision, a 11,745 square foot parcel of land generally located at 1147 O’Malley Drive. Tax ID: A11290. Presented by Karen Husman, Planner I

**RECOMMENDATION**

Planning staff recommends denial based on the findings of the 7 criteria for Variance 1250.

**APPLICATION DATA**

**OWNERS:** Mark Morhead  
**AGENT:** Travis McDowell, Bluewater Design  
**PURPOSE:** Allow a detached garage foot print of 1,250 square feet  
**LEGAL DESCRIPTION:** Lot 1, & the West 1.67 feet of Lot 2, Block 2 of Neidemire Subdivision  
**ADDRESS:** 1147 O’Malley Drive  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential  
**EXISTING ZONING:** Residential-9,600 (R-96)

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

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

**Surrounding Property** - Records show there have been five variances in the surrounding neighborhoods, all were for setbacks.

**SURROUNDING LAND USE & ZONING**

**NORTH:** Zoning: R-96  
Land Use: Residential single family  
**SOUTH:** Zoning: R-96  
Land Use: Residential single family  
**EAST:** Zoning: R-96  
Land Use: Residential single family

WEST: Zoning: R-96  
Land Use: Residential single family

**BACKGROUND**

The applicant is requesting a variance from 27-310(i) requiring a maximum garage foot print of 1,013 square feet to allow a detached garage foot print of 1,250 square feet and requesting a variance from the wall height restriction of no higher than the wall height of the existing single family dwelling. The existing SFD wall height is 10 feet, they are requesting a wall height of 15'5" for the proposed garage. In order to build the proposed garage as submitted, they would also need a variance from the setback restrictions for a structure over 18 feet in height from an 8 foot side setback to 5 foot side setback as proposed in a Residential 9,600 (R-96) zone.

There have been five variance applications in surrounding subdivisions and all were for setbacks (all conditionally approved). Staff did not find any properties in the vicinity with a larger garage than allowed, or any similar to what is being requested by the applicant. There were not sufficient findings to support approval of a garage larger than what is allowed, however there are sufficient findings to support reconstruction of the existing garage with an increased size to the maximum allowed square footage of 1,013 square feet for a detached structure and reduced setbacks.

Planning staff has reviewed this application and is forwarding a recommendation denial for Variance request #1250, based on the determinations for granting a variance.

**RECOMMENDATION**

Staff recommends denial based on the findings of the 7 criteria for Variance 1250.

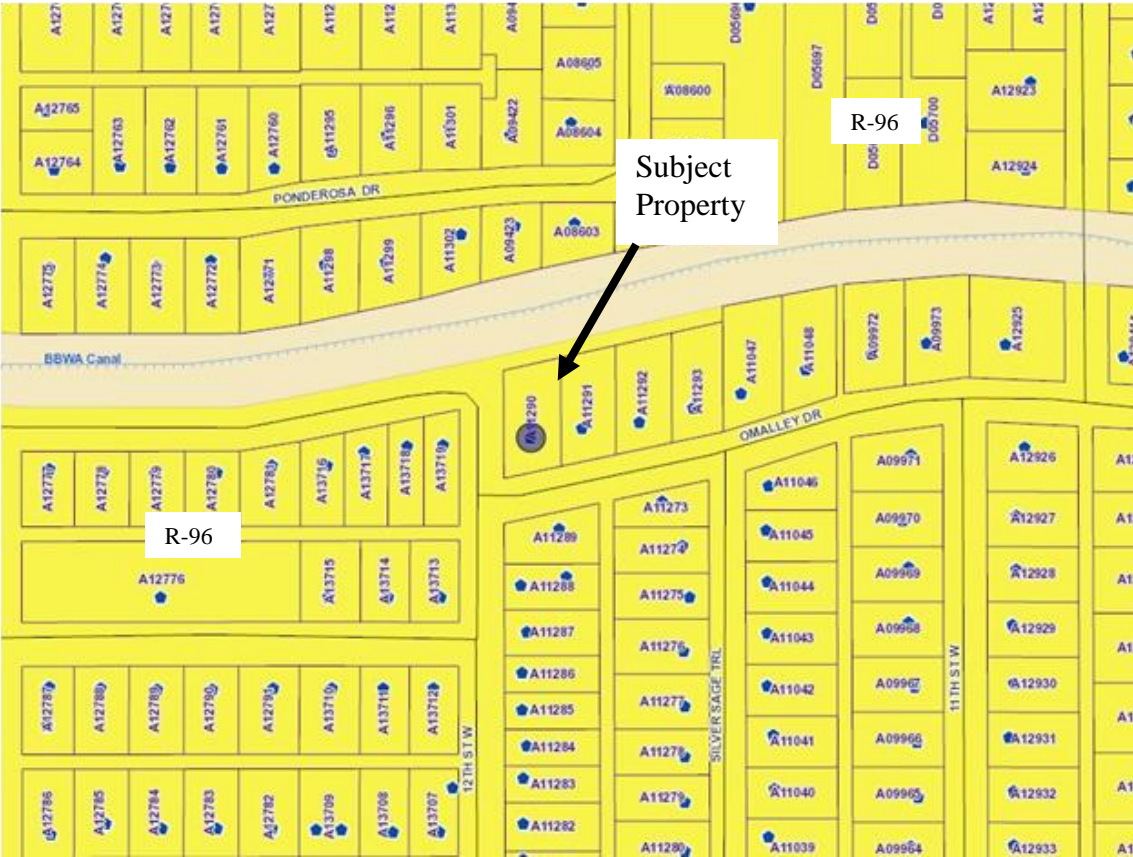
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**Attachments**

Zoning Map & Site Photos  
Applicant Letter & Site Plan  
Determinations

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**ATTACHMENT A**  
Surrounding Zoning & Site Location



**ATTACHMENT**  
Site Photographs



Subject Property.



Looking East

Subject Property



Looking West



Looking South

ATTACHMENT  
Site Photographs, Continued



Looking East toward the north side (rear) of the property from 12<sup>th</sup> St.

Dear Chairperson of the Board of Adjustment,

The owner would like to construct a detached 1,250 s.f. garage on this property. Under the current zoning regulations, only 1,013 s.f. would be allowed. The owner feels that the proposed garage size is needed to adequately store his vehicles. This size of garage would be allowed if it were attached to the existing house, but the roof lines and configuration of the existing house prohibit this. We also request to be allowed a sidewall height of 15'-5" on the proposed detached garage. The existing house has a sidewall height of 10'-0". Due to site grading and the proposed bonus room above the garage, we feel that matching this structure to the existing sidewall height of the house would be difficult. All site setbacks and lot coverage requirements will be adhered to. The alley abuts the big ditch, so there will be approximately 130' to any structures on the north side of ditch.

The owner would like to replace the current garage with a new garage that is over the allowed lot coverage in order to have more covered vehicle parking and to make the garage usable from the alley side of the property. The garage will be constructed of similar siding, roofing & rock wainscot as the existing residence, so it will blend in nicely with the existing residence and neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis McDowell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Travis McDowell

**Attachment**  
**Application and Applicant Letter**

**APPLICATION FORM**

CITY VARIANCE

ID: Billings Variance # 1250 - Project # PZ-17-00009

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 # A11290

CITY ELECTION WARD # 3

Legal Description of Property: Block 2, Lot 1 and 41.67' Neidemire Subdivision



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

1147 O'Malley Drive

Zoning Classification: R9600

Size of Parcel (Area & Dimensions): 11,745 s.f. 150'-0" x 78.34'

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance(s) Requested: Allow a 1,250 s.f. detached garage - 1,013 s.f. is allowed by code. Allow a sidewall height of 15'-5" on proposed detached garage - existing sidewall height of house is 10'-0"

Facts of Hardship: A 1250 s.f. detached garage would be allowed if attached to the house, but would not work with existing roof lines. Limiting the sidewall height to 10'-0" would not allow for bonus space above garage.

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

Owner(s): Mark Morehead

(Recorded Owner)

1147 O'Malley Drive Billings, MT 59102

855-5010

(Phone Number)

mmorehead@bigskyed.com

(email)

Agent(s): Travis McDowell - Bluewater Design

(Name)

2029 Forest Park Drive Billings, MT 59102

647-2173

(Phone Number)

travis@bluewaterdesignmt.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: \_\_\_\_\_ Date: \_\_\_\_\_

(Recorded Owner)

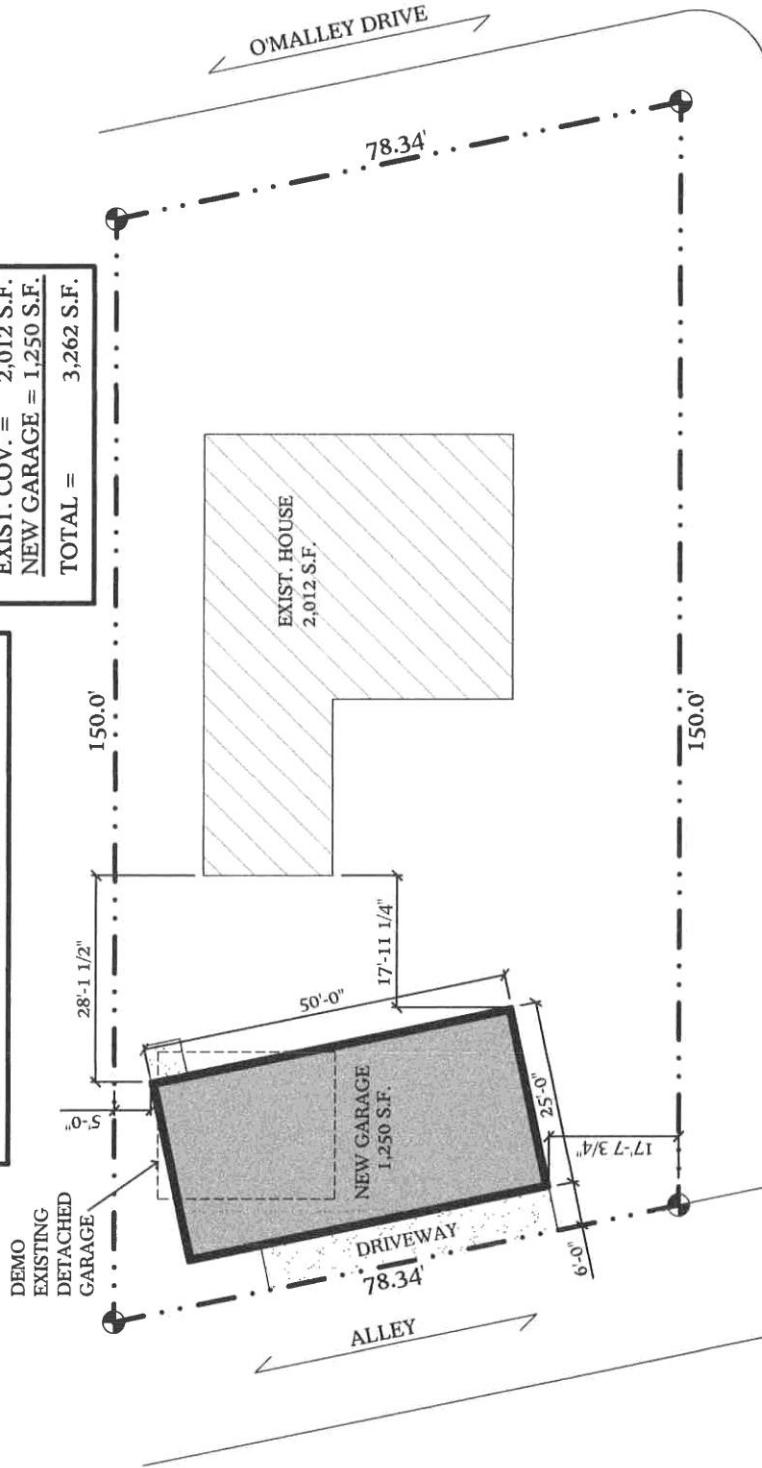
**P Z-17-00009**

City Variance Application 2016-2017

**Attachment  
Site Plan**

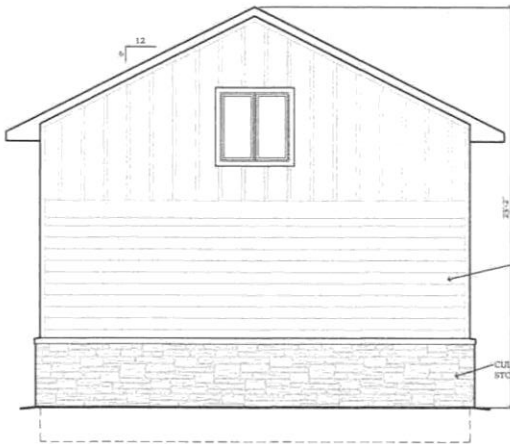
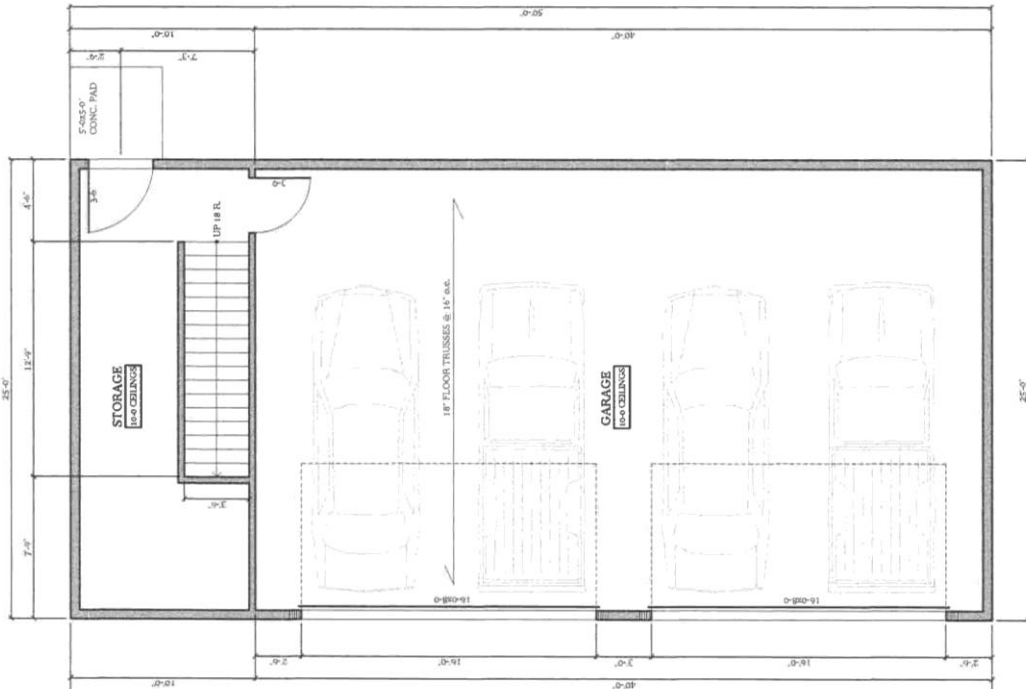
**LEGAL DESCRIPTION**  
 NEIDEMIRE SUBDIVISION  
 LOT 1 & W 1.67' LOT 2, BLOCK 2  
 1147 O'MALLEY DRIVE

**LOT COVERAGE**  
 MAX COVERAGE  
 11,745 x .30 = 3,523 s.f.  
 ACTUAL COVERAGE  
 EXIST. COV. = 2,012 S.F.  
 NEW GARAGE = 1,250 S.F.  
 TOTAL = 3,262 S.F.

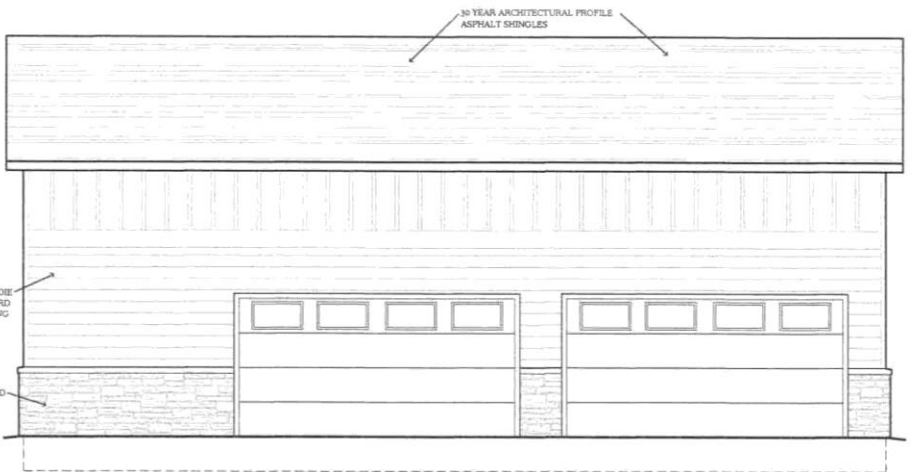


**SITE PLAN**  
 1" = 20'-0"

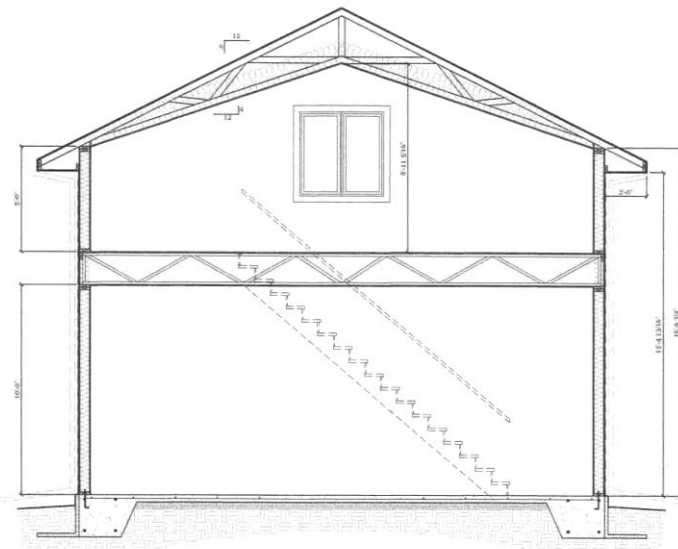
# Elevation & Layout Proposed



**WEST ELEVATION**  
1/8" = 1'-0"



**NORTH ELEVATION**  
1/8" = 1'-0"



**BUILDING SECTION**  
3/16" = 1'-0"

## 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 circumstances that exist which are peculiar to the land. The applicant wishes to replace an old garage building with a new one that is larger than currently allowed under zoning. While the proposed height of the new garage will meet the height limitations in this zoning district, the height and mass of the proposed detached garage is significant compared to the homes and garages in the immediate area of the subject 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;**

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. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would not deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, denying the applicant a variance for a garage larger than allowed 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 a detached garage foot print of 1,250 square feet and a variance from the wall height restriction of no higher than the wall height of the existing single family dwelling at 10feet, to a height of 15'5" for the proposed garage, and a variance from the setback restrictions for a structure over 18 feet in height from 8 feet side to 5 feet as proposed in a R-96 zone would confer on the applicant a special privilege that others in the district 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 approval is not 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;**

**If the Board chooses to approve Variance #1250;** Staff is recommending the following conditions for the variance request;

1. The variance from 27-310(i) requiring a maximum garage foot print of 1,013 square feet to allow a detached garage foot print of 1,250 square feet; to allow a side wall height greater than 10 feet to allow a sidewall height of 15.5 feet; and from the required 8-foot side setback for a structure over 18 feet in height to allow a 5-foot side setback 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 1, and the West 1.67 feet of Lot 2, Block 2 of Neidemire Subdivision, a 11,745 square foot parcel of land generally located at 1147

O'Malley Drive. Any future construction will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.

3. The applicant will submit and obtain a building permit for the addition within 6 months of variance approval and have the addition completed within 1 year.
4. The applicant will construct the addition in substantial conformance to the drawings submitted with this variance request.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed garage with the exception of this variance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

*If the variance is approved*; the property owner shall apply for a building permit and construct the garage within 1 year after demolition of the existing structure.

**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 detached accessory structures.



## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** City Variance #1251 - Land Contrary to Zoning - 2315 9th Avenue North

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1251 – 2315 9th Avenue N – Land Use Contrary to Zoning (LUCZ) – new 911 Center** - A request to conduct a public forum for the proposed construction of a new 911 Communication Center for the City of Billings and Yellowstone County in a Residential 7,000 (R-70) zone, on the South ½ of Lot 3, Block 9, Sunnyside Subdivision 2nd Filing, a 21,000 square foot parcel of land. The property is generally located at 2135 9th Avenue North. The proposed facility will not meet the required front or side adjacent to street setback requirements, will install an 80-foot communications tower, and will have generators and transformers near the east property line. The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. Tax ID: A16423. Presented by Karen Husman, Planner I

#### RECOMMENDATION

The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment.

#### APPLICATION DATA

**OWNERS:** City of Billings  
**AGENTS:** CTA Architects Engineers  
**PURPOSE:** Conduct a public forum for the proposed construction of a new 911 Communication Center  
**LEGAL DESCRIPTION:** Sunnyside Subdivision, 2nd, Block 9, Lot 3  
**ADDRESS:** 2315 9th Avenue North  
**EXISTING LAND USE:** Vacant land  
**PROPOSED LAND USE:** 911 Communication Center  
**EXISTING ZONING:** R-7000

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

There have been 15 similar applications by public agencies in the community to use land contrary to zoning since 2002. The applications include improvements to schools, fire stations, water facilities, the City of Billings Landfill, Dehler Park, the Billings Logan Airport, and the Yellowstone County Detention facility. The state law provision that exempts local agencies from local zoning compliance provides an opportunity for the public to provide comment and eliminates the need for one government authority to approve, deny or place conditions on the necessary public improvements of another public agency. Many public agency projects are subject to other permitting and development permissions ranging from financial authority and building code compliance to state and federal environmental policy conformance. Some of these processes also offer the opportunity to provide public

comment.

## **SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-70  
Land Use: Residential Single Family & Multi-family  
SOUTH: Zoning: R-60 & RMF  
Land Use: Residential Single Family & Multi-family  
EAST: Zoning: R-70  
Land Use: Residential Single Family  
WEST: Zoning: R-70  
Land Use: Residential Single Family

## **BACKGROUND**

This is a request to conduct a public forum for the new 911 Communication Center in a Residential Zoning District. Use of land contrary to zoning is allowed by state statute MCA 76-2-402 after a Public Forum is held before the local Board of Adjustment. State law does not give the authority to the Board of Adjustment to approve or deny the request but does allow the Board to receive public comment on the use.

### **State Statute**

**76-2-401. Definitions.** As used in [76-2-402](#), the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

**History:** En. Sec. 1, Ch. 397, L. 1981.

**76-2-402. Local zoning regulations – application to agencies.** Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

**History:** En. Sec. 2, Ch. 397, L. 1981.

## **RECOMMENDATION**

The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA **76-2-402**) requires a forum before the Board of Adjustment to receive public comment.

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## **Attachments**

Applicant Letter & Site Plan  
Zoning Map & Site Photos

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Attachment  
Letter to Board



PIONEERING ENVIRONMENTS

February 6, 2017

Chairperson of the Board of Adjustment  
Planning & Community Services Department  
2825 3rd Ave North, 4th Floor  
Billings, MT 59101

Dear Chairperson,

The City of Billings is proposing the Development of a new 911 call center for the City of Billings located at 2315 9th Avenue North. The property is zoned residential 7000 and directly adjacent to the City fire station.

The new building is 9,200 sf. Single story, maximum height 24'. The building is located 60' from the north property boundary, 22' from alley on east side of site, 6" from south boundary and 4' from west property boundary. The site contains (2) emergency generators and an approximately 80' communication tower located on the north side of the building. The north property line is secured and screened from the adjacent property with an 8' solid fence/wall. The north end of the site contains a parking lot that is enclosed with a 6' fence for security with controlled access gates. 6% of the site is landscaped. Other site amenities include an enclosed garden space for staff, secure bike parking and restoration of boulevard sidewalk surrounding the site as well as asphalt paving in the ally.

The project is not in compliance with the following zoning items;

- **Property setbacks and buffer yards.** The size of the building does not allow for the required buffer yards. It was determined that a two story building would be more obtrusive to the neighborhood and cost prohibited. To connect to the neighborhood and fit the surroundings the ROW is being landscaped and sidewalks are being restored.
- **Communication tower** The tower is and essential component of the 911 call center
- **Landscape lot coverage.** Due to space constraints from the program and required components the landscape coverage area is not being met. The boulevard and ROW will be landscaped to fit the building into the neighborhood
- **No Special Review Application.** This public project is pursuing Land Use Contrary to zoning

The 911 call center's proposed location is centrally located within the City of Billings and adjacency to other public services such as the City Fire making this site and ideal location for the 911 call center.

The project is an essential service for a safe and health city. In addition to public safety this project meets the needs and goals identified in the 2016 growth policy;

- **Essential Investments** - Important infrastructure for the safety of all of Billings.
- **Place Making** - Establishment of a public building that is integral to a vibrant community.
- **Community Fabric** - Developing an attractive and aesthetically pleasing building on a site that was once a blighted and abandoned.
- **Mobility and Access** - Centrally located within a walkable neighborhood and adjacent to other essential services.

Sincerely,  
CTA Architects Engineers

A handwritten signature in black ink that reads "Brad Sperry". The signature is written in a cursive, flowing style.

Brad Sperry

**Attachment**  
**Application and Applicant Letter**

Z-17-00011

**APPLICATION FORM**

**CITY Land Use Contrary to Zoning      ID: City Variance # 1251      - Project # \_\_\_\_\_**

The undersigned as owner(s) of the following described property hereby request a Public Hearing on a Land Use Contrary to Zoning from the terms of the City of Billings Zoning Regulations.

**TAX ID # A16423      CITY WARD # 1**

**Legal Description of Property: SUNNYSIDE SUBD 2ND FILING, S32, T01 N, R26E, BLOCK 9, Lot 3, S2LT3**

**Address or General Location (If unknown, contact County Public Works): \_\_\_\_\_**

2315 9<sup>th</sup> Avenue North

**Zoning Classification: R70**

**Size of Parcel (Area & Dimensions): 0.48 Acres    140'x150'**

**Covenants or Deed Restrictions on Property:    Yes \_\_\_\_\_    No x \_\_\_\_\_**

If yes, please attach to application

**Brief explanation of the Project:**

Development of a new 911 call center for the City of Billings. New building is 9,200 Sf. Single story. Max height 24'. The building is located 60' from the north property boundary, 22' from alley on east side of site, 6' from south boundary and 4' from west property boundary. Site contains (2) emergency generators and an approximately 80' communication tower located on the north side of the building. The north property line is secured and screened from the adjacent property with an 8' -10' solid wall or fence. The north end of the site contains a parking lot with 17 spaces.

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

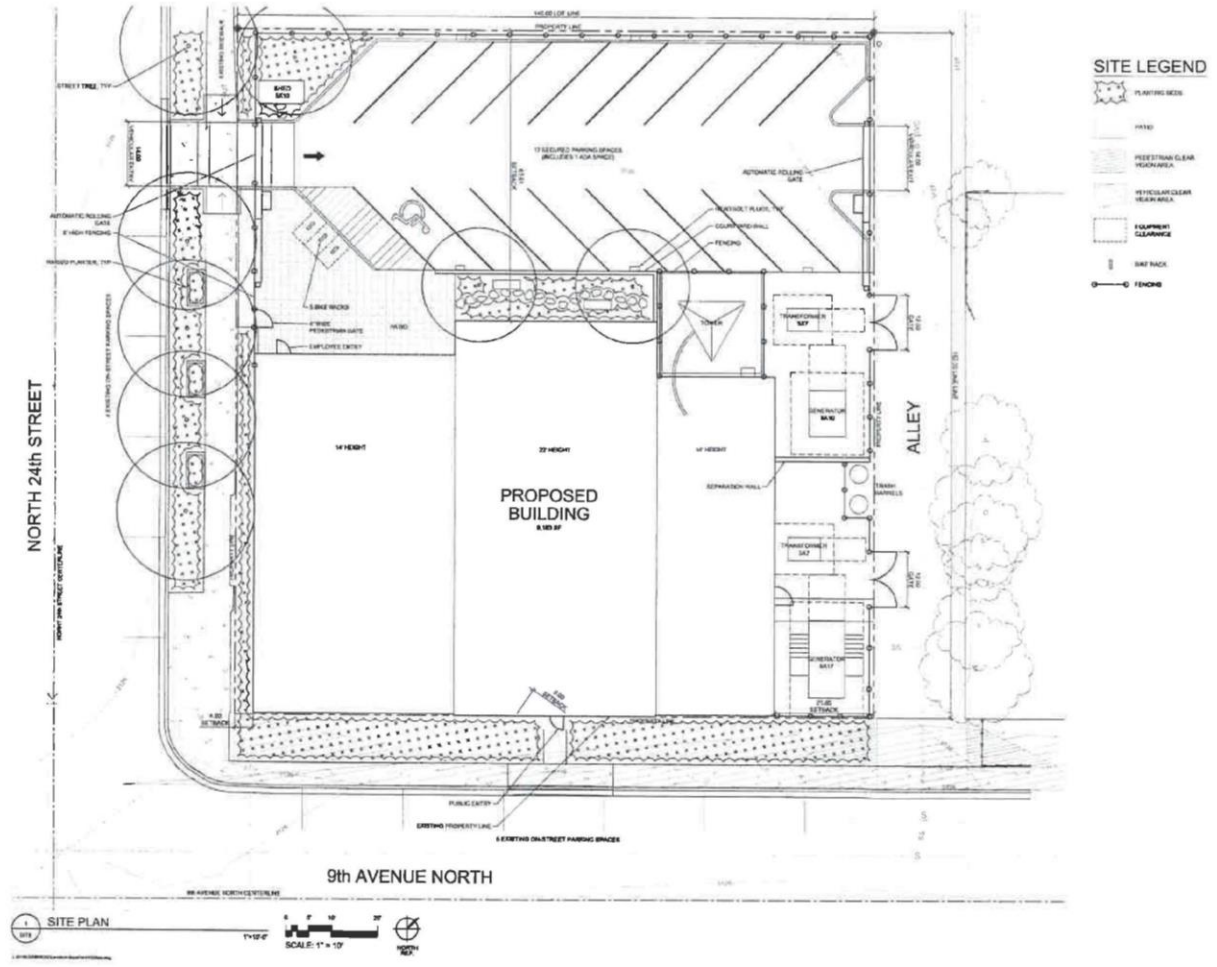
**Owner(s): City of Billings - 911 Comm Center**  
(Recorded Owner)

2224 Montana Ave. Billings, MT 59101  
(Address)

406-657-8237      robbins@ci.billings.mt.us  
(Phone Number)      (email)



# Site Plan





**Attachment**  
Site Photos



Attachment





## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** City Variance #1252- 906 N 32nd Street

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance #1252 – 906 N. 32nd Street**-The applicant is requesting a variance from 27-308 requiring a minimum 5-foot side setback to allow a 2-foot side setback for a proposed 380 square foot addition to an existing dwelling in a Residential 7,000 (R-70) zone, on the North 15 feet of Lot 8 and Lot 9, Block 19 of North Elevation Subdivision, 3rd Filing, an 8,024 square foot parcel of land generally located at 906 N 32nd Street. Tax ID: A11840. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Staff recommends conditional approval of the variance.

#### APPLICATION DATA

**OWNERS:** Dusty & Kara Eaton  
**AGENT:** Dusty Eaton  
**PURPOSE:** allow a 2-foot side setback for a proposed 380 square foot addition  
**LEGAL DESCRIPTION:** Lot 8 and Lot 9, Block 19 of North Elevation Sub., 3rd Filing  
**ADDRESS:** 906 N. 32nd St.  
**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 24 approved variance applications in this subdivision

#### SURROUNDING LAND USE & ZONING

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

## **BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum 5-foot side setback to allow a 2-foot side setback for a proposed 380 square foot addition to an existing dwelling in a Residential 7,000 (R-70) zone.

There have been 24 approved variance applications in this subdivision. Eleven of them were requests to decrease the required setback distance. The First filing of the North Elevation Subdivision was platted around 1900. This particular subdivision began developing over 100 years ago as a single family housing neighborhood. Several of the surrounding properties have more than one dwelling unit on them. Many of them have a structure that is built very close to the side property line. Some properties in this neighborhood have obtained a variance while some of them have not. The property owner is requesting the variance to be able to add an addition to the existing house for additional space.

## **RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation conditional approval for Variance request #1252, based on the determinations for granting a variance.

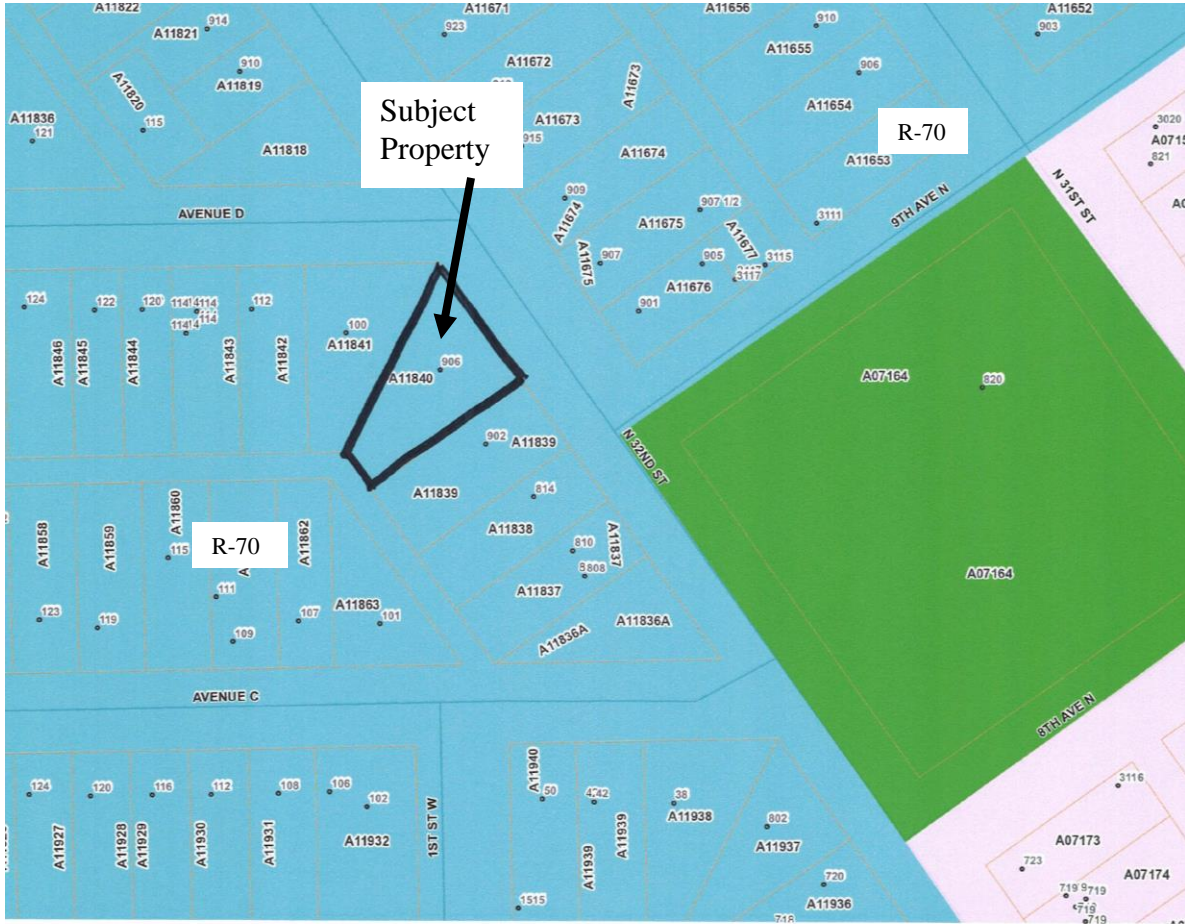
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### **Attachments**

Zoning Map & Site Photos  
Applicant letter & Site Plan  
Determinations

---

**ATTACHMENT A**  
Surrounding Zoning & Site Location



**ATTACHMENT**  
Site Photographs



Subject Property.



Looking North



Looking South



East



Looking east at a similar setback.





February 6, 2017

Board of Adjustment  
City of Billings

Re: Variance Request  
906 N 32<sup>nd</sup> St

Dear Chairperson,

Thank you for the opportunity to provide information in regard to a proposed variance request for my personal residence at 906 N 32<sup>nd</sup> St.

I am proposing a small addition to our existing historic home. We have a growing family and need to add additional space to make the home more functional. We are committed to staying in this historic area near downtown, but also need to provide more space for our growing family.

The home sits on a large corner lot which has a triangular shape. In order to efficiently construct the small addition in a rectilinear way on a triangular lot, it crosses the sideyard setback in one small location, totaling only 9 s.f. Due to the property being a large corner lot, the neighbors are set back from this addition and therefore should see minimal impact. This area is also densely landscaped which creates good visual separation between homes. As an architect in this community, the design for this addition will be historically sensitive, scaled appropriately, and will match the existing home in design, color, and materials. Once complete, the addition will look as if it's always been a part of the home.

If it's possible, I would ask for the following timeline for the variance:

- o Apply for a Building Permit: Within 12 months of variance approval
- o Complete Project: Within 18 months of building permit being issued

This timeline helps with my planning, design, financing, etc.

Thank you for your time and consideration.

Sincerely,

Dusty Eaton, AIA

A handwritten signature in black ink, appearing to read 'Dusty Eaton', written over a horizontal line.

**Attachment**  
**Application and Applicant Letter**

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance #** 1252 **- Project #** P2-17-0004

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 # A11840 CITY ELECTION WARD # \_\_\_\_\_

Legal Description of Property: \_\_\_\_\_

NORTH ELEVATION SUB 3RD FILING, S32, T01 N, R26 E, BLOCK 19, LOT 9, & N15 FT LT 8

Address or General Location (If unknown, contact City Engineering): 906 N. 32ND ST.

Zoning Classification: R7000

Size of Parcel (Area & Dimensions): AREA: 8,024 SF (Triangular shaped lot - reference site plan for dimensions)

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance(s) Requested: Requesting a variance for one small corner of a building addition to cross the sideyard setback. This only occurs in one location and totals 9 s.f. The proposed addition is 380 s.f. and therefore, the 9 s.f. is 2% of the total proposed addition.

Facts of Hardship: We have a growing family and need to expand our residence in order to accommodate an additional bedroom. We are committed to staying downtown and supporting the historic areas of Billings. Due to the triangular shape of the lot, the addition crosses the sideyard setback in one small location.

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

Owner(s): Dusty & Kara Eaton

(Recorded Owner) \_\_\_\_\_

(Address) 906 N 32nd St

(Phone Number) 406-698-1816 deaton@aearchitects.com

(email) \_\_\_\_\_

Agent(s): Dusty Eaton

(Name) \_\_\_\_\_

(Address) 906 N 32nd St

(Phone Number) 406-698-1816 deaton@aearchitects.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:  \_\_\_\_\_ Date: 1/31/17  
(Recorded Owner)



Attachment  
Rendering of new addition



BEFORE ADDITION

EXISTING      ADDITION  
←-----|-----→



PROPOSED ADDITION - RENDERING

## 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 circumstances that exist which are peculiar to the land. The applicant wishes add on the existing single family 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 where most homes were built in the early 1900's. There have been 25 variance requests in the surrounding neighborhood many of them for setback and lot coverage.

- 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. This is an old subdivision and Staff observed several properties that were closer to the property line than allowed.

- 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 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 5-foot side setback to allow a 2-foot side setback for a proposed 380 square foot addition to an existing dwelling in a Residential 7,000 (R-70) zone, an 8,024 square foot parcel of land generally located at 906 North 32<sup>nd</sup> Street. No other variance is intended or implied with this approval.
2. The variance is limited to the North 15 feet of Lot 8 and Lot 9, Block 19 of North Elevation Subdivision, 3<sup>rd</sup> Filing, generally located at 906 N 32<sup>nd</sup> Street. Tax ID: A11840.
3. The applicant will submit and obtain a building permit for the addition within 12 months of variance approval and have the addition completed within 18 months.
4. The applicant will construct the addition in substantial conformance to the drawings submitted with this variance request.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed addition with the exception of this variance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.

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

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

If the variance is approved; the property owner shall apply for a building permit to construct the addition within 12 months and complete construction within 18 months.

**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 districts allow residential remodeling and additions to existing structures.



## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** City Variance #1253- 2401 & 2405 Sunnyview Lane

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**City Variance #1253- 2401 & 2405 Sunnyview Lane:** The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 dwelling units in a Residential 9,600 (R-96) zone, on Lot 2, and the North 30 feet of Lot 3, Block 3 of Pleasant Acres Subdivision to allow a minimum lot area of 10,400 square feet for two existing dwelling units, generally located at 2401 and 2405 Sunnyview Lane. The owner and buyer require a lot area variance in order to finance the sale of the property and no construction or re-construction is contemplated. Tax ID: A12905. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Staff recommends conditional approval of the variance.

#### APPLICATION DATA

**OWNERS:** Gordon & Anne Bolt  
**AGENT:** Marlin & Sharon Dunlap, Contract Buyers  
**PURPOSE:** allow 2 dwelling units on a 10,400 SF lot  
**LEGAL DESCRIPTION:** Lot 2, & the N 30 feet of Lot 3, Block 3 of Pleasant Acres Sub  
**ADDRESS:** 2401 & 2405 Sunnyview Lane  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential  
**EXISTING ZONING:** Residential-9,600 (R-96)

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

**Subject Property – None**

**Surrounding Property –** Records show there have been 3 variance applications in the surrounding neighborhoods (one for lot size and 2 for fence height).

#### SURROUNDING LAND USE & ZONING

**NORTH:** Zoning: R-96  
Land Use: Residential single family  
**SOUTH:** Zoning: R-96  
Land Use: Residential single family  
**EAST:** Zoning: R-96  
Land Use: Residential single family

WEST: Zoning: R-96  
Land Use: Residential single family & Multi Family.

## **BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 19,200 square feet for 2 dwelling units in a Residential 9,600 (R-96) zone, on Lot 2, and the North 30 feet of Lot 3, Block 3 of Pleasant Acres Subdivision to allow a minimum lot area of 10,400 square feet for two existing dwelling units, generally located at 2401 and 2405 Sunnyview Lane. The owner and buyer require a lot area variance in order to finance the sale of the property and no construction or re-construction is contemplated

There have been three variance applications in the surrounding subdivisions, one for lot size and two for fence height. There are several lots in this neighborhood and the surrounding subdivisions that are smaller than the minimum required lot size. Staff found two properties that contain two dwelling units on smaller lot size than allowed. One had been granted a zone change to Residential- 7000 and is currently conforming to zoning with one duplex on a 9,800 square foot lot. The other is currently non-conforming with two dwelling units on a lot of 7,869 square feet.

Planning staff has reviewed this application and is forwarding a recommendation conditional approval for Variance request #1253, based on the determinations for granting a variance.

## **RECOMMENDATION**

Staff is recommending Conditional Approval of Variance 1253.

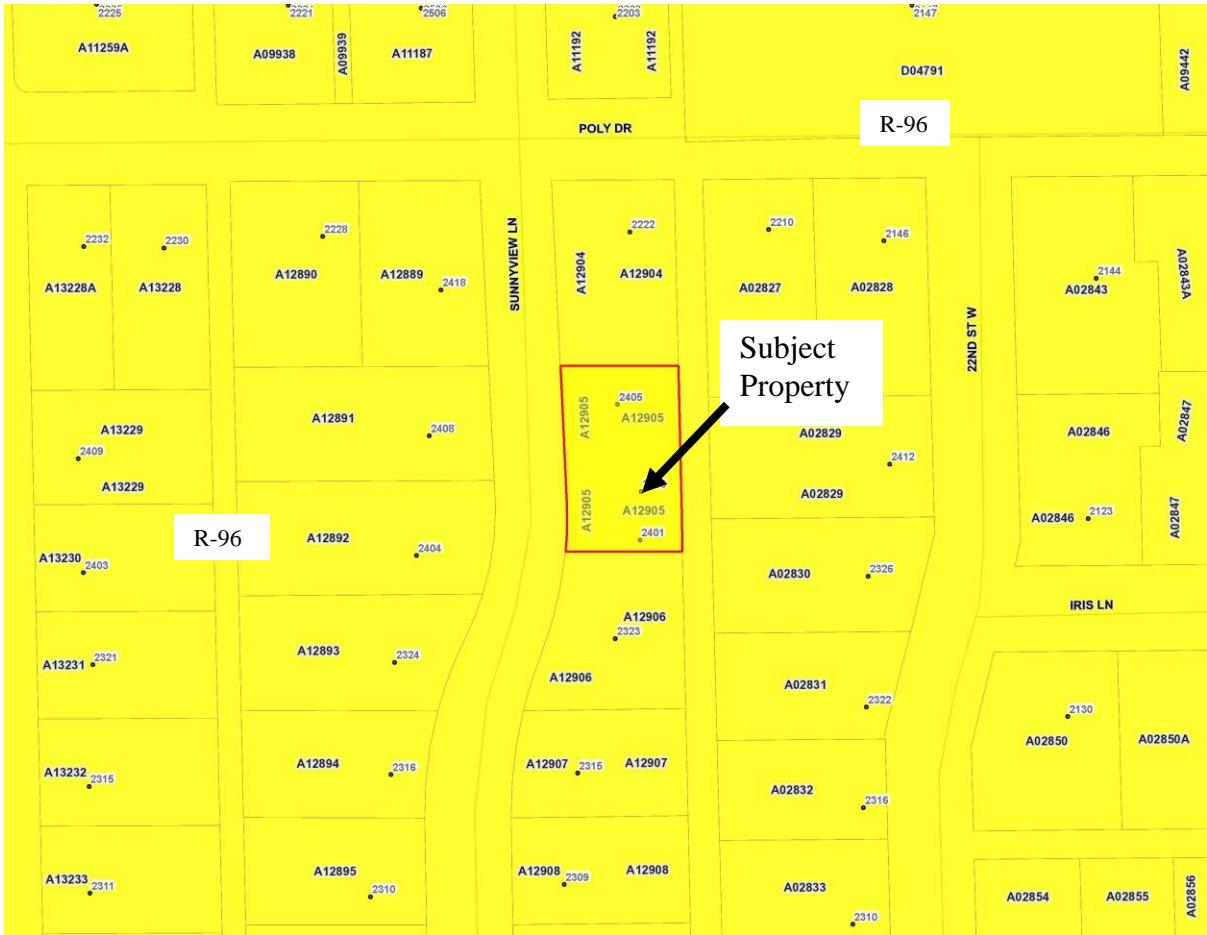
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### **Attachments**

Zoning Map & Site Photos  
Applicant Letter & Site Plan  
Determinations

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**ATTACHMENT**  
Surrounding Zoning & Site Location



**ATTACHMENT**  
Site Photographs



Subject Property.



House #1



House #2



Looking North



Looking South

Attachment  
Applicant letter

Marlin & Sharon Dunlap  
2401 Sunnyview Ln.  
Billings, MT 59102

Chairperson  
Board of Adjustment

Our intended usage for the property is to be an owner occupant and to rent the other house. We do not intend to change the usage of the property from what it has been for many years.

We have been occupying the property at 2401 Sunnyview Lane as renter for 6 years and have opportunity to purchase the property and both houses. But all the lenders and insurance agents we have talked with have indicated that they can offer us nothing in way of financing or insurance without the variance and rebuild letter.

If you have any other questions, please call us.

Thank you for your consideration.

Sincerely,  
Marlin & Sharon Dunlap

**Attachment**  
**Application**

**APPLICATION FORM**

CITY VARIANCE

ID: Billings Variance # 1253 - Project # 17-0015 <sup>p2-</sup>

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 # A12905 CITY ELECTION WARD # (4) Billings

Legal Description of Property: Block 3, Lot 2, Pleasant Acres

Address or General Location (If unknown, contact City Engineering): 2401 + 2405 Sunnyview Ln. Billings, MT 59102

Zoning Classification: \_\_\_\_\_

Size of Parcel (Area & Dimensions): 8133

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, please attach to application

Variance(s) Requested: \_\_\_\_\_



Facts of Hardship: Buildings built in 1930 + 1941. Need Re-build letter for financing, with Western Security Bank.

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

Owner(s): Anthony Franza FR for Anne Botte (Botte)  
(Recorded Owner)  
4135 IRON HORSE TRL. BILLING MT. 59106  
(Address)  
406-698-6104 (Phone Number) \_\_\_\_\_ (email)

Agent(s): LEGACY LAW CENTER SOL LOVAS, ATTORNEY  
(Name)  
2817 2nd Ave No Ste 207 BILLINGS, MT 59101  
(Address)  
406-252-7522 (Phone Number) Sollovas@lovaskaw.com (email)

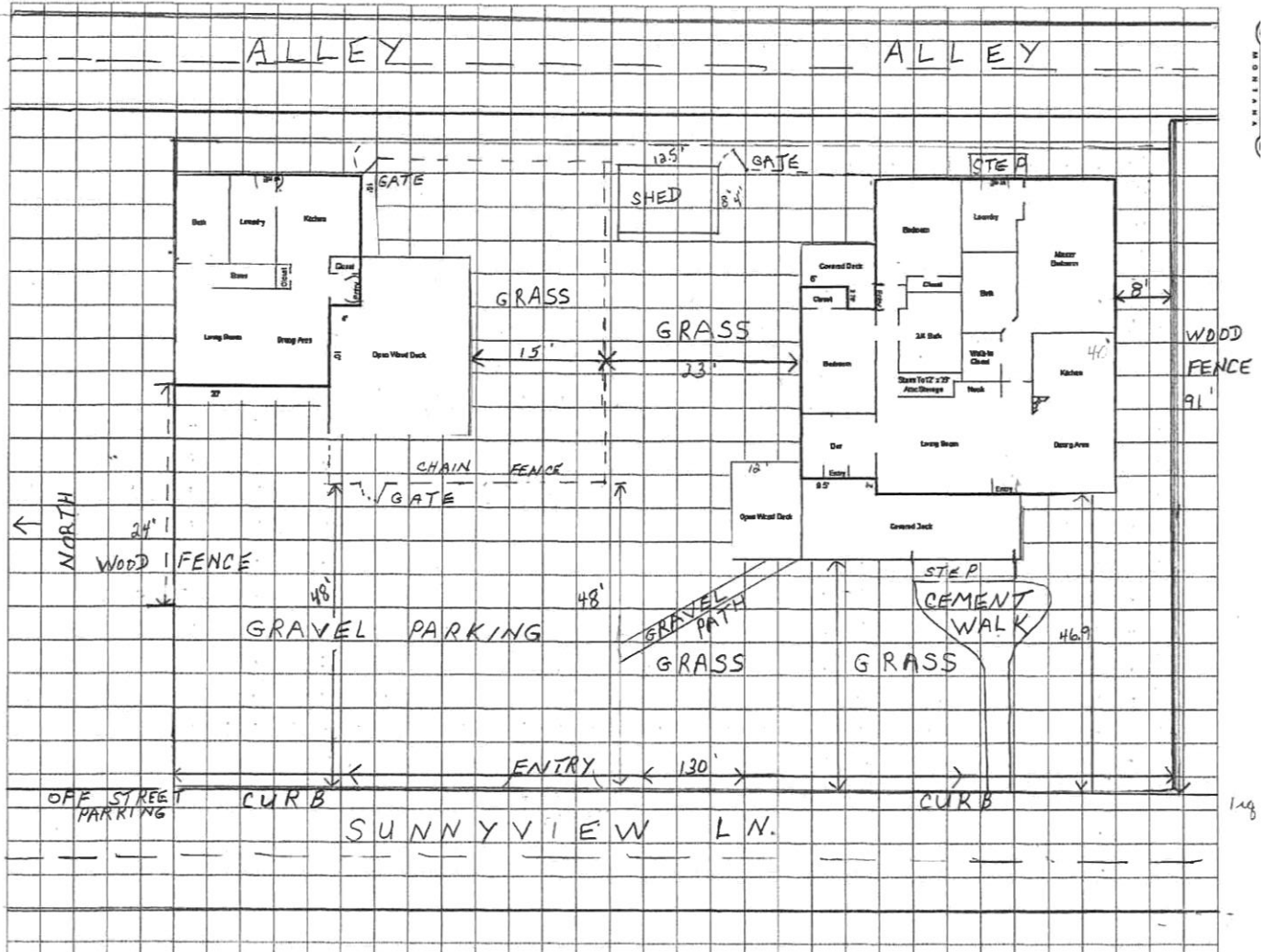
I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: Anthony Franza FR for Anne Botte Date: 2/6/17  
(Recorded Owner)

AGENT BUYER OF PROPERTY

MARLIN DUNLAP + SHARON Applicants  
2401 SUNNYVIEW LN. Bllgs MT 59102  
254-1340 652 2299  
C = 939-7039

ATTACHMENT  
Site Plan



## DETERMINATIONS

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

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

There are no special circumstances that exist which are peculiar to the land. The applicant wishes finance the property and needs to acquire a rebuild letter.

2. **That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

The subject property is in a subdivision that began developing many years ago and over the years many changes and additions have happened that may or may not meet current code. There have been variances that have been granted in the area for existing smaller lots than what is allowed by current zoning. There are other properties in the neighborhood that have multiple dwelling units on smaller lots. Therefore, allowing the applicant a variance for two existing single family dwellings on a lot of 10,400 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;**

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 approval 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 lot area of 19,200 square feet for 2 dwelling units in a Residential 9,600 (R-96) zone, and the to allow a minimum lot area of 10,400 square feet for two existing dwelling units. No other variance is intended or implied with this approval.
2. The variance is limited to the North 30 feet of Lot 3, Block 3 of Pleasant Acres Subdivision generally located at 2401 and 2405 Sunnyview Lane.
3. Any future construction or re-construction of the existing structures 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 requested variance is to ensure the future opportunity to rebuild the two existing single family dwellings on the existing 10,400 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 -9600 zoning districts allow residential structures.



## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** Variance 1254 - 3933 Central Avenue - Building Height

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Variance 1254 – 3933 Shiloh Road – Building Height** – A variance from 27-309 requiring a maximum building height of 45 feet to allow a maximum building height of 50 feet in a Community Commercial (CC) zone on Tract 1B1 of C/S 2277 in the proposed Shiloh Commons Subdivision, a 9.38 acre parcel of land generally located on the northeast corner of Shiloh Road and Central Avenue. Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

Planning staff recommends conditional approval.

#### APPLICATION DATA

OWNER: Grant Road, LLC

AGENT: Dan Carr

LEGAL DESCRIPTION: Tract 1B1 of C/S 2277 - future subdivision Shiloh Commons

ADDRESS: 3933 Central Avenue

CURRENT ZONING: CC

EXISTING LAND USE: Vacant

PROPOSED USE: 4 mixed use (retail/apartments) building and 1 retail building

SIZE OF PARCEL: 9.38 acres

#### CONCURRENT APPLICATIONS

Preliminary Subdivision Plat for Shiloh Commons approved by the City Council January 2017.

#### APPLICABLE ZONING HISTORY

**Subject Property:** The subject property was granted a zone change from R-96 to CC in April 2002.

**Surrounding Property:** A 2015 zone change to Planned Development Zoning was approved for the Billings Clinic property (80 acres northwest of subject property) will allow buildings up to 10-stories in the interior of the site. Faith Chapel to the north was granted several special reviews to expand the church over the last 20 years. The last expansion included a building 54 feet in height. Churches and similar institutions are allowed to exceed normal height limits through a special provision in Section 27-310(f). The MSUB Health Sciences building to the east is 52 feet in height. The MSUB property is zoned Public and there are no height limits in this zoning district. Six building height variances in commercial zones have been approved in similar zoning districts for new construction.

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96 and CC  
Land Use: Faith Chapel and Shiloh Veterinary Clinic

SOUTH: Zoning: PD-Shiloh Village  
Land Use: Vacant

EAST: Zoning: Public  
Land Use: MSUB - COT campus  
WEST: Zoning: NC & R-150  
Land Use: Convenience store and County low-density subdivision

## **BACKGROUND**

This is a variance request to allow an additional 5 feet in building height for the proposed Shiloh Commons mixed-use development on a 9.38 acre parcel of land on the northeast corner of Central Avenue and Shiloh Road. The current building height limit of 45 feet in the CC zoning does not accommodate mixed uses within single structures. Typically, ground floor retail will require a 12 to 14 foot ceiling height resulting in a building of less than 4 stories. Building height limits in the zoning code have not been updated in 45 years. Building code requirements in contrast have been modified dozens of times to require greater fire and life safety protection, in many cases adding height to commercial buildings to accommodate these new code requirements.

The 2001 West Billings Neighborhood Plan, indicated this intersection as the location of a new Neighborhood Center commercial development. Neighborhood Centers were defined in the Plan as "compact commercial villages" roughly 30 to 40 acres in area (10 to 12 acres on each corner of the intersection). These commercial villages would provide a variety of retail, services and entertainment as well as incorporate higher density residential uses. This vision for "node" development at arterial intersections is just becoming evident in West Billings. The challenge of the West Billings Plan is to not allow commercial strip development similar to what occurred along Grand Avenue, Broadwater Avenue, and Central Avenue from downtown to 24th St West.

Central Avenue and Shiloh Road are both high-volume traffic corridors. Shiloh Road carries about 13,000 vehicles per day at Central Avenue and Central Avenue carries about 6,500 vehicles per day just east of Shiloh Road. Both arterial streets have excess capacity to handle additional traffic at this location. Shiloh Commons will be preparing a Traffic Accessibility Study to determine and mitigate any potential traffic impacts from the development. The proposed development will include 144 apartments and 62,000 square feet of retail/commercial space. The current site plan shows 523 parking spaces, only 128 of those spaces in structured parking.

The 2016 Growth Policy for the City of Billings has a stated policy of encouraging development adjacent to existing city limits and where city infrastructure already existing. The Policy is to ensure "the City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options". In addition, the 2016 Growth Policy adopted 7 themes with growth guidelines. The proposed development and requested variance is supported by these policies and guidelines including the 2011 Infill Policy, and the West Billings Plan.

The Planning staff has reviewed the proposed variance and the 7 criteria for variances and is recommending conditional approval based on those proposed findings. There are no special circumstances with the land itself that would prevent the owner from constructing a building within the 45 foot height limit. The land is level and a uniform shape. Conversely, surrounding properties have buildings of similar height without the benefit of variances and denial of the proposed variance would deprive this owner of rights enjoyed by others in the neighborhood. In addition, the City has approved variances in similar commercial zoning districts for new construction. Granting the variance would not confer a special privilege to this owner that is denied to others in similar situations. Since the development is a mixed use project where uses and residents will be active on site 24 hours/day, Planning staff is recommending several conditions of approval to help mitigate any potential impacts to surrounding property and future users of the property.

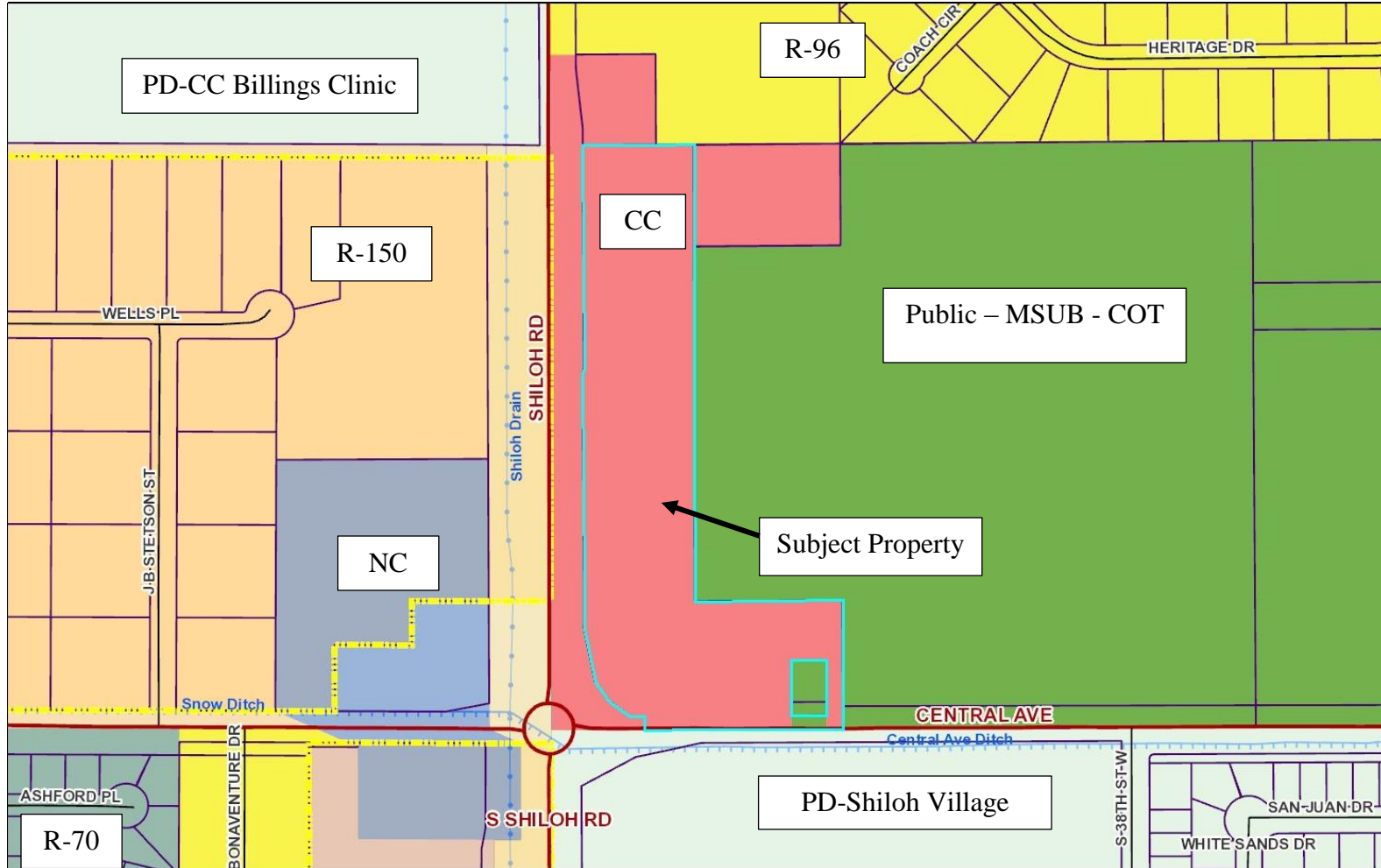
## **RECOMMENDATION**

Planning staff recommends conditional approval and adoption of the findings of the review criteria.

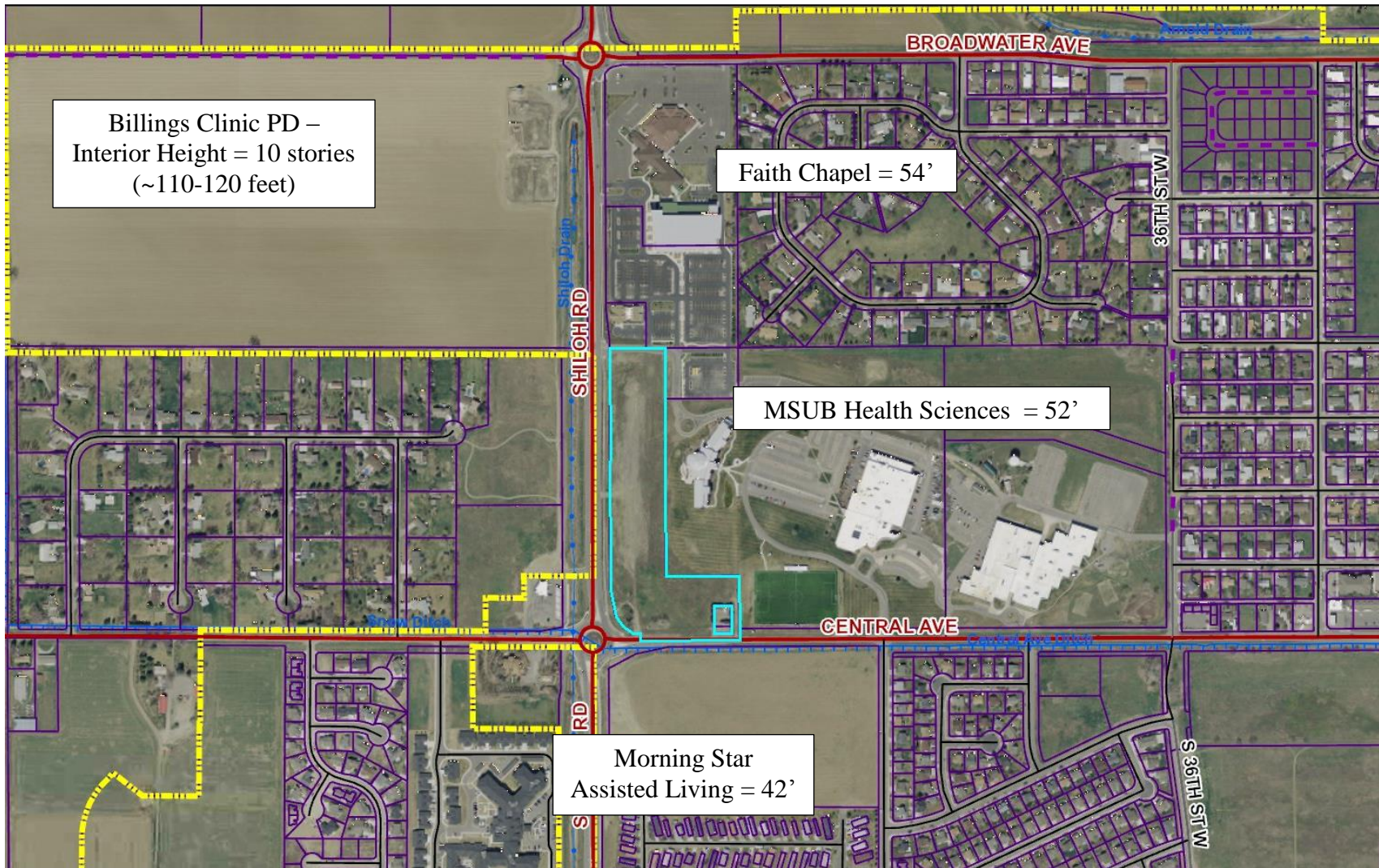
Zoning Map and Site Photos  
Proposed Findings of the Review Criteria  
Applicant Letter and Site Plan

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Variance 1254 – 3933 Central Avenue – Building height from 45 feet to 50 feet  
Zoning Map and Site Photos



# Var 1254 Building Height







Subject Property



View south along Shiloh Road to Central Ave round-about



View north along Shiloh Road towards Faith Chapel



View east to Health Sciences Building @ MSUB



View west across Shiloh Road



View north west across Shiloh Road

## **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 physical special circumstances existing on this property creating a hardship that is peculiar to this land or lot. The lot is level and has a regular shape. Adjacent lots are similar in nature.

- 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 been allowed to build taller than the zoning regulations allowed by a provision allowing taller structures for certain types of uses (Section 27-310(f) Height exceptions). These exceptions apply to the MSUB buildings to the east, Faith Chapel to the north and Morning Star assisted living to the south west. Morning Star and Faith Chapel are in residential zones. MSUB campus is in a Public zone and there are no height limits in this zoning district. While each of these adjoining land uses did not require a zoning variance to build these taller structures, they do establish an expectation of building massing and height in the area. A recent zone change for Billings Clinic property to the north west, will allow up to 10-story buildings in the interior of this 80-acre parcel. Buildings within 150 feet of the north, south and west boundaries are limited to 45 feet in height. Building heights within 500 feet of Shiloh Road will be limited to 45 feet as well. Several building height variances have been granted in similar situations for new commercial or mixed use developments including 2 in Miller Crossing and 1 in Southgate Subdivision both near the S. Billings Boulevard interchange. A variance for the Radisson Hotel at Midland Road near the King Ave West interchange was granted in May 1984. This variance allowed the hotel a building height of 84 feet. A variance was granted to the new hotel (La Quinta) on South Frontage Road in May 2013 and allowed a building height of 49 feet for this new construction. A literal interpretation of the zoning regulations for this zone would deprive this owner of similar rights enjoyed by others 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. Similar buildings are in the immediate vicinity and similar variances have been granted for new construction in similar situations.

- 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 building height variance request:

1. The variance is from Section 27-309 requiring a maximum building height of 45 feet to allow a maximum building height of 50 feet, excluding parapets, stair towers, elevator shafts, and similar un-occupied roof top structures. The variance is limited to C/S 2277 Tract 1B1, a 9.38 acre parcel of land, generally located at 3933 Central Avenue.
2. The owner will apply for the first building permit within 12 months of Board approval.
3. The owner will complete the exterior of the first new building within 18 months of Building Permit issuance.
4. There will be no construction activity before 7 am or after 8 pm daily.
5. Completion of all structures will occur within 6 years of Board approval.
6. The site plan will be modified to show pedestrian connections from the public sidewalk to the interior sidewalks at not more than 300 feet between connection points.
7. Pedestrian crossings of any drive aisle will have pavement markings and signage to alert drivers.
8. Off-street parking spaces provided will not exceed the minimum required by city codes. This maximum will be calculated based on all uses on the subject property as a whole.
9. The site plan will be modified to show tree plantings at a maximum spacing of 40 feet on center along both sides of any sidewalk – public or private – except sidewalks and public spaces directly adjacent to buildings.
10. Signage on the property or buildings will not exceed 30 feet above grade.
11. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application.
12. Failure to begin or complete the actions required by this variance approval will void the variance.
13. 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 the first building permit be submitted for the first structure be submitted within 12 months of Board approval and the exterior completed on this building within 18 months of building permit issuance. Finally, staff recommends all construction be completed within 6 years of Board approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district. Retail uses and residential uses are allowed in the Community Commercial zone.

Variance 1254 – 3933 Central Avenue  
Applicant Letter and Site Plans

February 1, 2017

To whom it may concern:

Grant Road LLC is requesting a height variance on our upcoming project (Shiloh Commons) which will be located at the northeast corner of Shiloh Road and Central Avenue. There will be four buildings in total and each one will have underground parking, a floor of retail, and three floors of residential apartments.

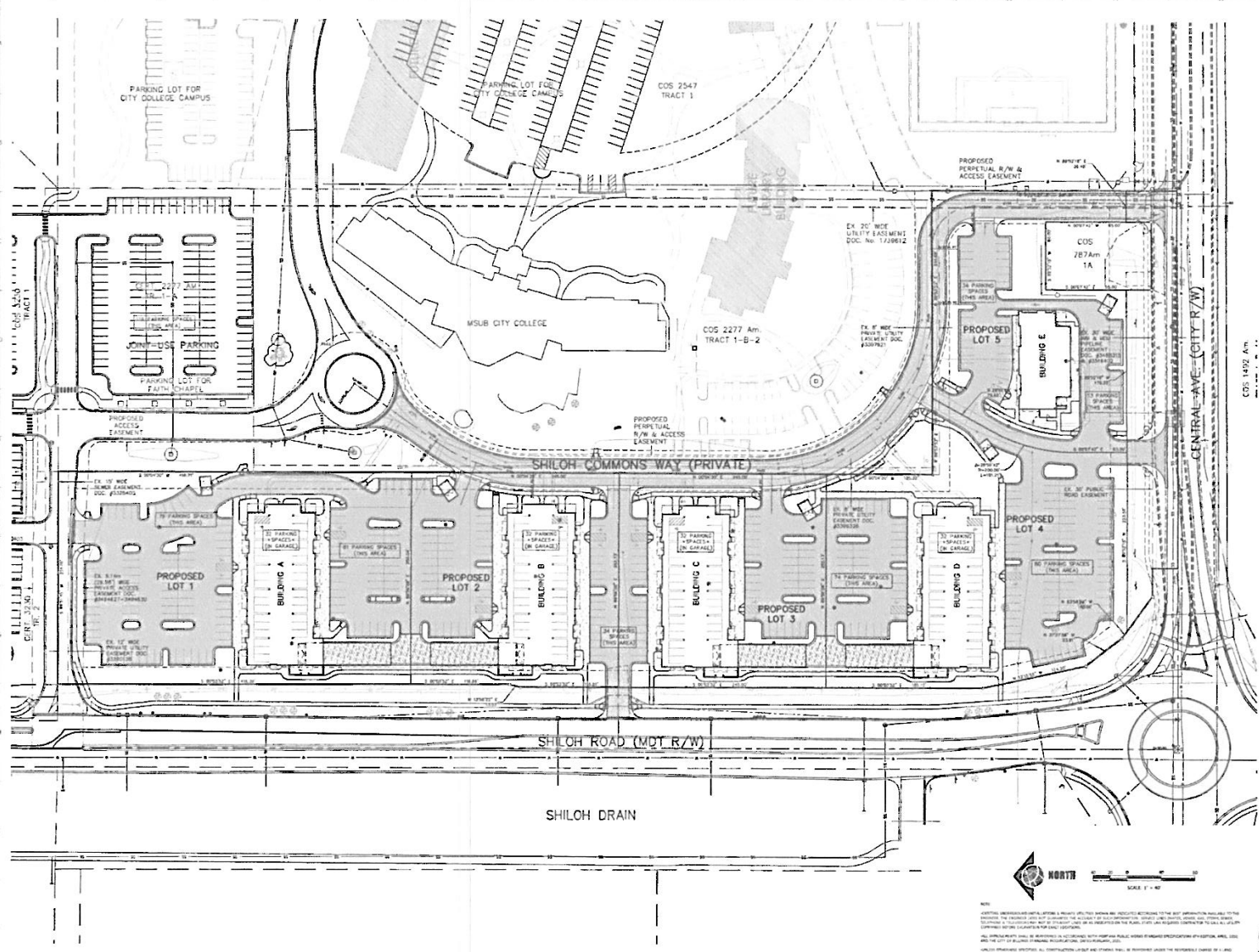
This mixed-use project incorporates several of the design elements mentioned in the Shiloh Corridor Overlay (Section 27-1400) zoning article. We feel the design of Shiloh Commons will help the city achieve the overall purpose behind this special zoning district. Its modern styling, coupled with 144 luxurious living spaces will make this a highly desirable destination for retail patrons, apartment renters, and people looking for a good meal.

Due to these buildings having underground parking as well as the height needed to accommodate the retail space, the finished rooftop height is estimated at 48'4-7/8". Grant Road LLC would like to request a variance to go from 45' to 50' (not including parapets, stair towers, or elevator shafts). This variance will allow this project to proceed as planned.

Thank you for your consideration,



Dan Carr  
Grant Road LLC



**SANDERSON STEWART**  
 ARCHITECTS

NO.	REVISION
1	ISSUED FOR PERMITTING
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COS 1492 Am.

**SHILOH COMMONS**  
 TRACT 1-B, CERTIFICATE OF SUBDIVISION, 2017  
 BILLINGS, MONTANA  
 OVERALL SITE PLAN



NOTES:  
 1. ALL DIMENSIONS UNLESS OTHERWISE NOTED ARE IN FEET AND INCHES. DIMENSIONS TO FACE UNLESS NOTED OTHERWISE.  
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STUDIO  
ARCHITECTS **4**



STUDIO 4  
ARCHITECTS



## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** Variance 1255 - 1010 N 24th St - Front Yard Projection

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Variance 1255 – 1010 N 24<sup>th</sup> St – Projection in Front Setback** – A variance from 27-310(g) requiring a maximum projection in the required 20-foot front setback of 4 feet, to allow a maximum projection of 7 feet into the required 20-foot front setback for a proposed new front deck in a Residential 7,000 (R-70) zone, on the North 50 feet of the South 125 feet of Lot 4, Block 7, Sunnyside Subdivision, 2<sup>nd</sup> Filing, a 7,000 square foot parcel of land generally located at 1010 N 24<sup>th</sup> Street. Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

Planning staff is recommending conditional approval.

#### APPLICATION DATA

OWNER: Aaron James Higginbotham

AGENT: None

LEGAL DESCRIPTION: North 50 feet of the South 125 feet of Lot 4, Block 7 Sunnyside Subdivision, 2<sup>nd</sup> Filing

ADDRESS: 1010 N 24<sup>th</sup> Street

CURRENT ZONING: R-70

EXISTING LAND USE: Residence

PROPOSED USE: Same with new front deck entrance

SIZE OF PARCEL: 7,000 square feet

#### CONCURRENT APPLICATIONS

Pending Building Permit #BP-16-7916.

#### APPLICABLE ZONING HISTORY

**Subject Property:** None

**Surrounding Property:** There have been 11 setback variances submitted in the Sunnyside Subdivision since 1972. Ten of those have been granted and 1 was withdrawn.

#### SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-70 Land Use: Residential
SOUTH:	Zoning: R-70 Land Use: Residential
EAST:	Zoning: R-70 Land Use: Residential
WEST:	Zoning: R-70 Land Use: Residential

## **BACKGROUND**

This is a variance request to allow the owner to replace a concrete stairway and landing at the front entrance to an existing residence. The replaced landing and stairway will consist of a 4-foot by 12-foot wooden deck with a stair way down to the front walk. The existing home, previously used as a two-family dwelling, is constructed 17 feet from the front property line. This is 3 feet closer than the current zoning requires for a front setback (20-foot minimum). Projections for unenclosed decks are allowed within the required 20-foot setback. In the front yard the maximum projection allowed is 4 feet - or 16 feet from the front property line. The request would allow the front deck to be 13 feet from the front property line - a 7-foot projection into the required setback.

This property is in one of the oldest neighborhoods in Billings. Many homes were constructed in conformance with codes adopted before the current zoning (May 1972) and consequently do not always meet current requirements. This home was constructed in 1911 - 106 years ago. The home is well maintained and the current owner is investing in property upgrades including new windows, new electrical service and a new roof in 2016. The proposed project will allow the owner to replace an older concrete stoop with an outdoor seating area and deck.

Zoning records indicate 11 setback variances have been processed in this neighborhood and only 1 was withdrawn. Ten have been approved for small front, side, rear or arterial setbacks for new construction. Planning staff has determined at least 14 properties on N 24th St from 9th Ave North to 12th Ave N (3 blocks) are similarly situated. The residences, or the front porches, are closer to the front property line than is currently required. The proposed new deck would have a similar setback to these other properties.

Planning staff has reviewed the request and the review criteria for variances and is recommending conditional approval. The proposed variance is similar to previous variances granted in this neighborhood, is similar to other property within the same district, and denial of the variance would deprive this owner a privilege enjoyed by others in the area. There are similar front decks and porches at 1016, 1031 and 1033 N 24th Street. Planning staff is recommending conditions of approval to ensure and potential impacts to surrounding properties are mitigated.

## **RECOMMENDATION**

Planning staff recommends conditional approval and adoption of the findings of the review criteria.

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### **Attachments**

Zoning Map and Site Photos

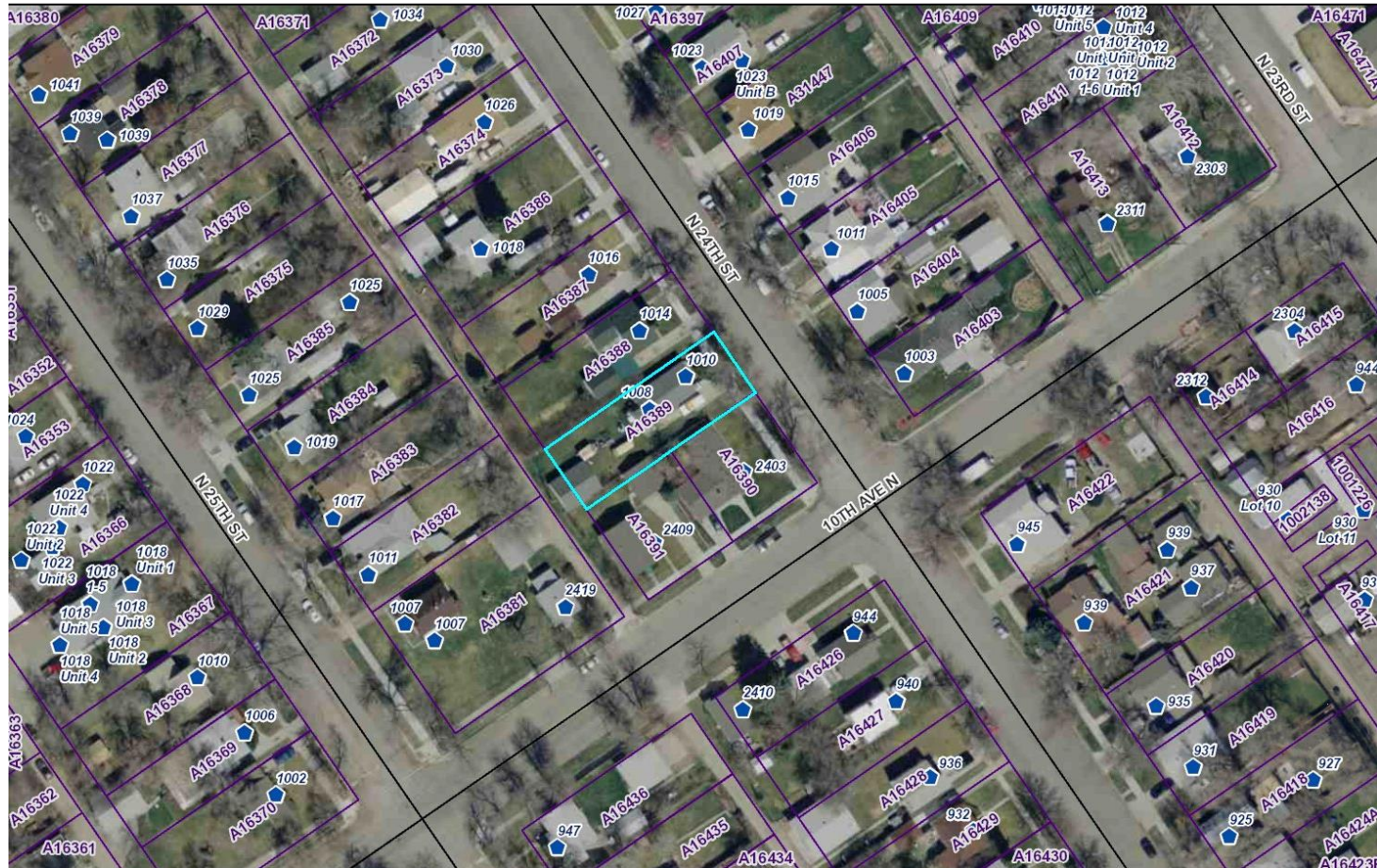
Proposed Findings of the Review Criteria

Applicant Letter and Site Plan

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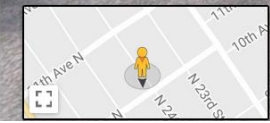


# Var 1255 Front Yard Projection

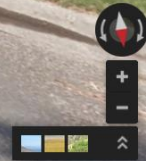


1014 N 24th St  
Billings, Montana  
Street View - Aug 2015

1010 N 24<sup>th</sup> St



Google





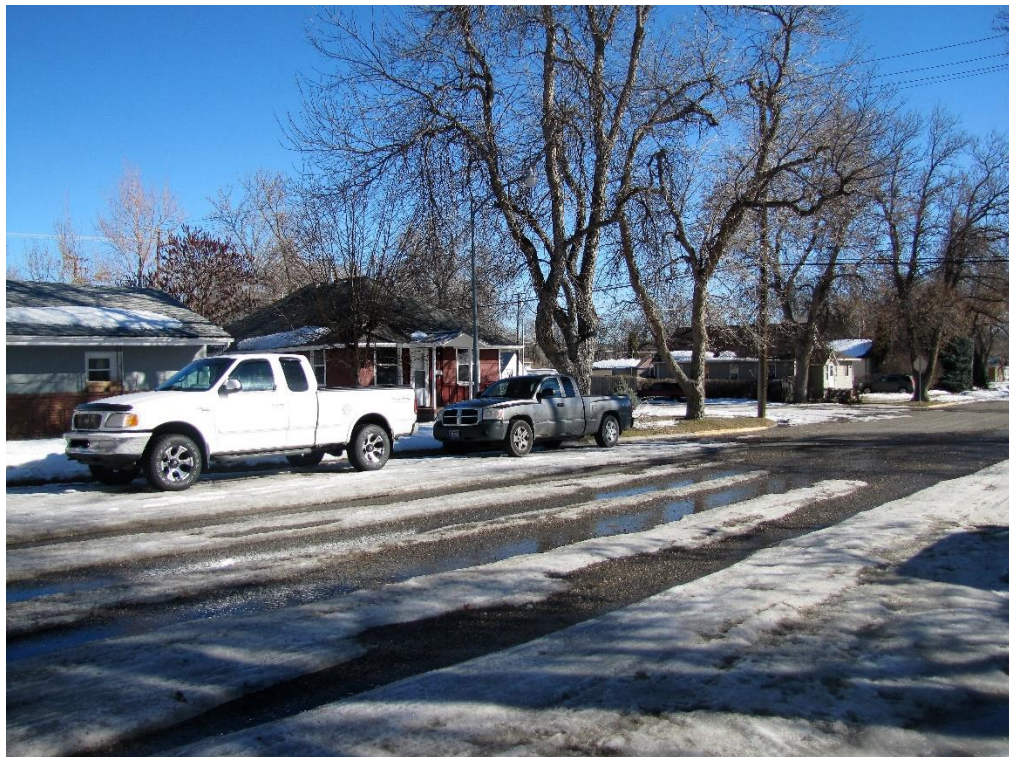
Subject Property



View north along N 24<sup>th</sup> St



View east across N 24<sup>th</sup> St



View south east across N 24<sup>th</sup> St



View north up N 24<sup>th</sup> St



View north west on N 24<sup>th</sup> St

## **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;**

The current setback of the residence built in 1911, is 17 feet from the front property line. This is a special condition applicable to this lot. The building setback will not allow a projection in the front setback more than 1 foot closer to the property line.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

There are several dwellings within a 3 block area of N 24<sup>th</sup> St that do not have the full 20-foot front setback for a dwelling. Many of these were constructed before May 1972, when the current zoning went into effect. In addition, 3 other dwellings on this block of N 24<sup>th</sup> St have front yard decks closer than 16 feet to the front property line. A literal interpretation of the zoning regulations for this zone would deprive this owner of similar rights enjoyed by others in the same district. The City has processed 11 setback variances in the neighborhood and all but 1 have been approved.

- 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. Several residences on N 24<sup>th</sup> St have less than the required setback and more projections in the front setback than normally allowed. Similar variances have been granted for new construction in similar situations.

- 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 building height variance request:

1. The variance is from Section 27-310(g) requiring a maximum front yard projection of 4 feet into the required setback to allow a maximum projection of 7 feet into the required front setback. No other variance is intended or implied. The variance is limited to North 50 feet of the South 125 feet of Lot 4, Block 7, Sunnyside Subdivision, 2<sup>nd</sup> Filing, generally located at 1010 N 24<sup>th</sup> St.
2. The owner will apply for a building permit within 6 months of Board approval.
3. The owner will complete the deck within 12 months of Board approval.
4. There will be no construction activity before 7 am or after 8 pm daily.
5. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application.

6. Failure to begin or complete the actions required by this variance approval will void the variance.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The Planning staff recommends the building permit application be submitted within 6 months and the front deck completed within 12 months of Board approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district. Residential uses are allowed in the R-70 zone.

Variance 1255 – 1010 N 24<sup>th</sup> St  
Applicant Letter and Site Plans

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1255 - Project # P2-17-0001?

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 # A16389 CITY ELECTION WARD # \_\_\_\_\_

Legal Description of Property: N50 S125 LOT 4, BLK 7, SUNNYSIDE SUBD 2<sup>ND</sup> FIL

Address or General Location (If unknown, contact City Engineering): 1010 N 24<sup>th</sup> ST,  
BILLINGS, MT

Zoning Classification: R7000

Size of Parcel (Area & Dimensions): 7,000 SF 50'x140'

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance(s) Requested: REPLACE PRIOR concrete Landing & STEPS with  
WOOD DECK & STEPS for front entry. Front setback variance

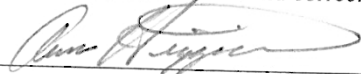
Facts of Hardship: ORIGINALLY built as duplex and would like to leave as  
such.

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

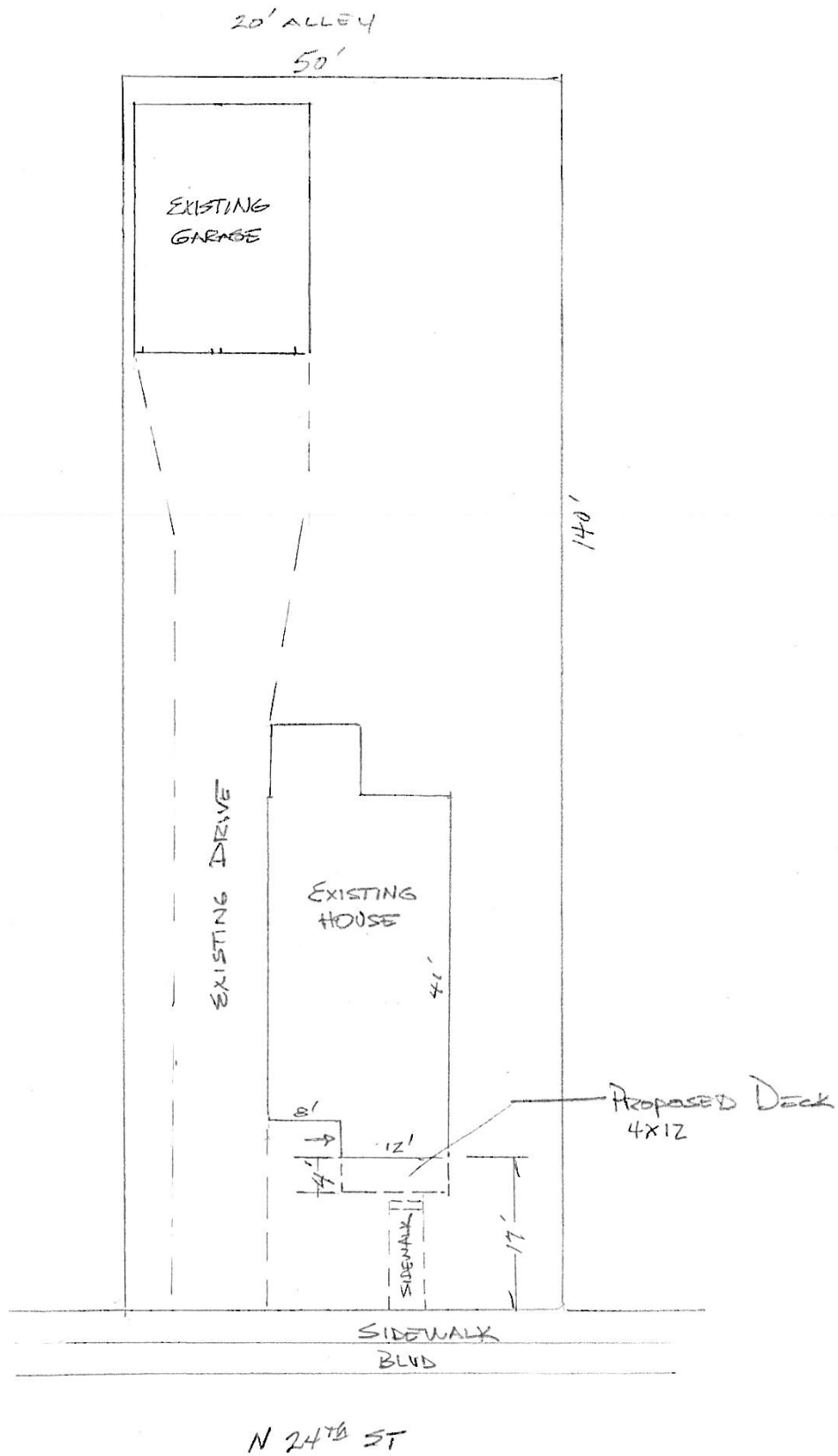
Owner(s): Aaron JAMES Higginbotham  
(Recorded Owner)  
1315 Bitterroot DR  
(Address)  
406-690-2458 Boulderdesigns1@gmail.com  
(Phone Number) (email)

Agent(s): \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(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:  Date: 2-04-17  
(Recorded Owner)

PLAT PLAN  
1010 N 24<sup>TH</sup> ST





## City Board of Adjustment

**Meeting Date:** 03/01/2017

**SUBJECT:** City Variance #1256 - 1413 18th Street West

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Variance 1256 - 1413 18th St West - Lot Area and Setbacks** -The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 30% (1,550 square feet) to allow a maximum lot coverage of 40% (2,066 square feet) for the re-construction of two dwelling units; 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<sup>rd</sup> Filing, a 5,166 square foot parcel of land (or 5,406 square feet including the north 3 feet of the alley as deeded in 1954). Presented by Nicole Cromwell, Zoning Coordinator

#### RECOMMENDATION

Planning Staff is recommending conditional approval to allow reconstruction of one duplex on the property with a maximum lot coverage of 40% or 2,066 square feet.

#### APPLICATION DATA

OWNERS: Christopher & Barbara Cox

AGENT: Josh Schaefer

PURPOSE: To allow the re-construction of 1 duplex with adequate footprint to accommodate 2 families

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<sup>rd</sup> Filing,

ADDRESS: 1413 18<sup>th</sup> St. West

EXISTING LAND USE: Two family dwelling

PROPOSED LAND USE: Same

EXISTING ZONING: R-70

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

**Subject Property:** Variance 1248 approved in January 2017, to allow less lot area than required for a duplex and to allow a 15 foot front setback.

**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 maximum lot coverage of 30% (1,550 square feet) to allow the re-construction of the two-family residence of adequate footprint and area. The applicant received a variance for lot area requirements and for the front setback in January 2017. A lot coverage variance request was not submitted at the time. In addition, it was discovered during staff research the lot area did not include the area deeded to this property in 1954. This property consists of the north 3 feet of the platted alley, or 238 square feet. The applicant is asking for this area to be included in the lot area for the purpose of this variance. The total lot coverage would be 40% of the larger lot area or 2,128 square feet.

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 one structure measuring 56 feet north to south and 38 feet from east to west. The single structure would be a 2-family dwelling. Each half of the dwelling would have a footprint of 1,064 square feet. There are no proposed covered parking spaces on the property. The applicant will need to provide at least 4 off-street parking spaces. The spaces can be accessed from the alley and will likely take up the remaining rear yard space. There is an existing storage shed on the northeast corner of the property that will need to be removed. This lot coverage is not included in the proposed variance.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval based on the proposed findings of the review criteria. If the property were zoned R-60 instead of R-70, no variance from lot coverage would be required. The new duplex will be oriented to the street compared to the previous duplex that was oriented to the alley. The prior issues of outdoor storage on the property will be eliminated and a "hole" in the neighborhood will be replaced with new construction that provides a type of housing choice that is rare in this neighborhood. Staff prepared a clean site plan with the proposed dimensions of the new duplex since the site plan submitted by the applicant was not completely accurate and too many details were included. The staff has reviewed the proposed 40% lot coverage in light of the additional lot area and is recommending approval of the 2,128 square feet in lot coverage. The additional property was deeded to this lot but never included in the assessed lot area. Planning staff is recommending several conditions of approval to mitigate any potential impacts to the surrounding property.

## **RECOMMENDATION**

Planning Staff is recommending conditional approval and adoption of the findings of the review criteria.

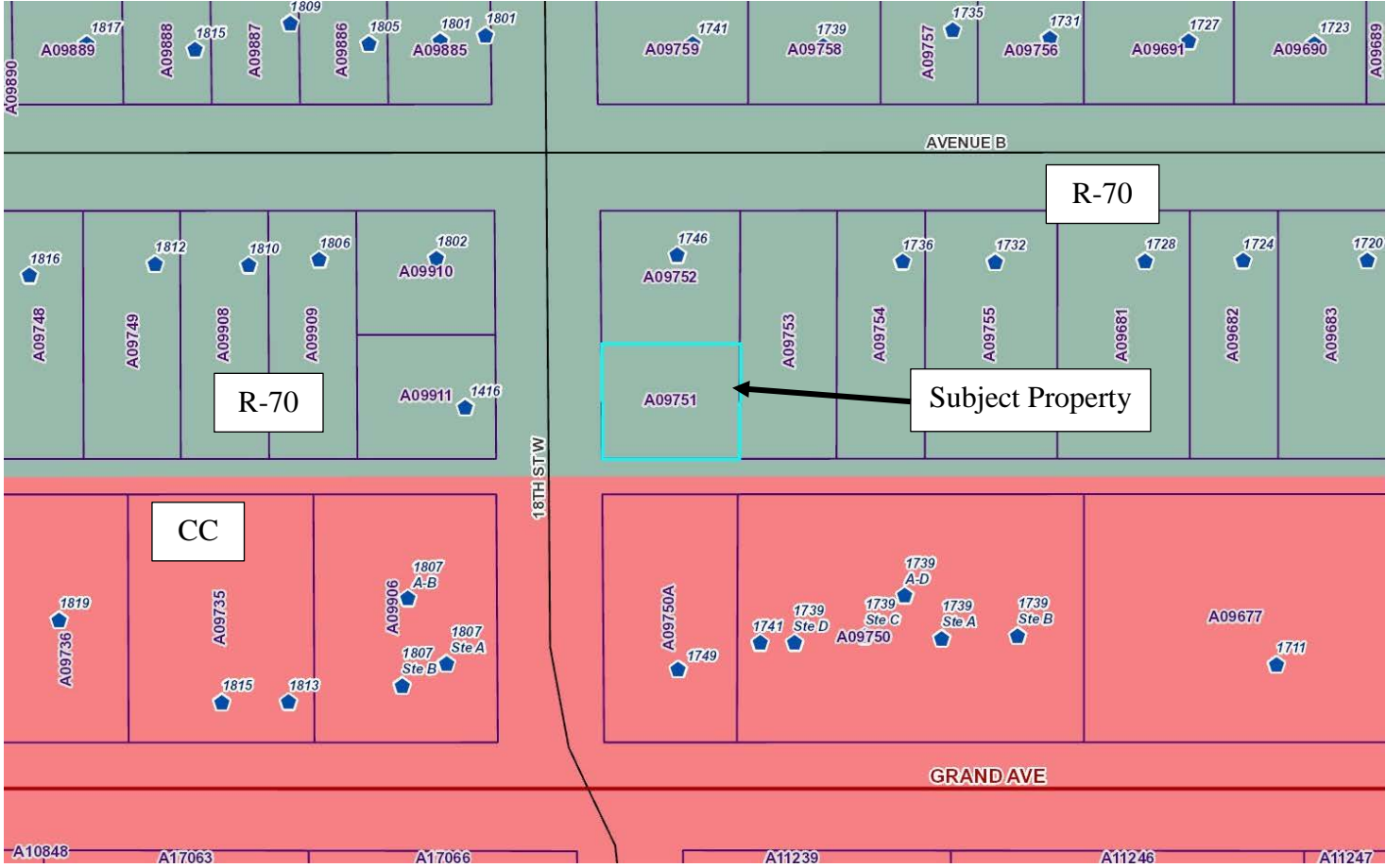
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### **Attachments**

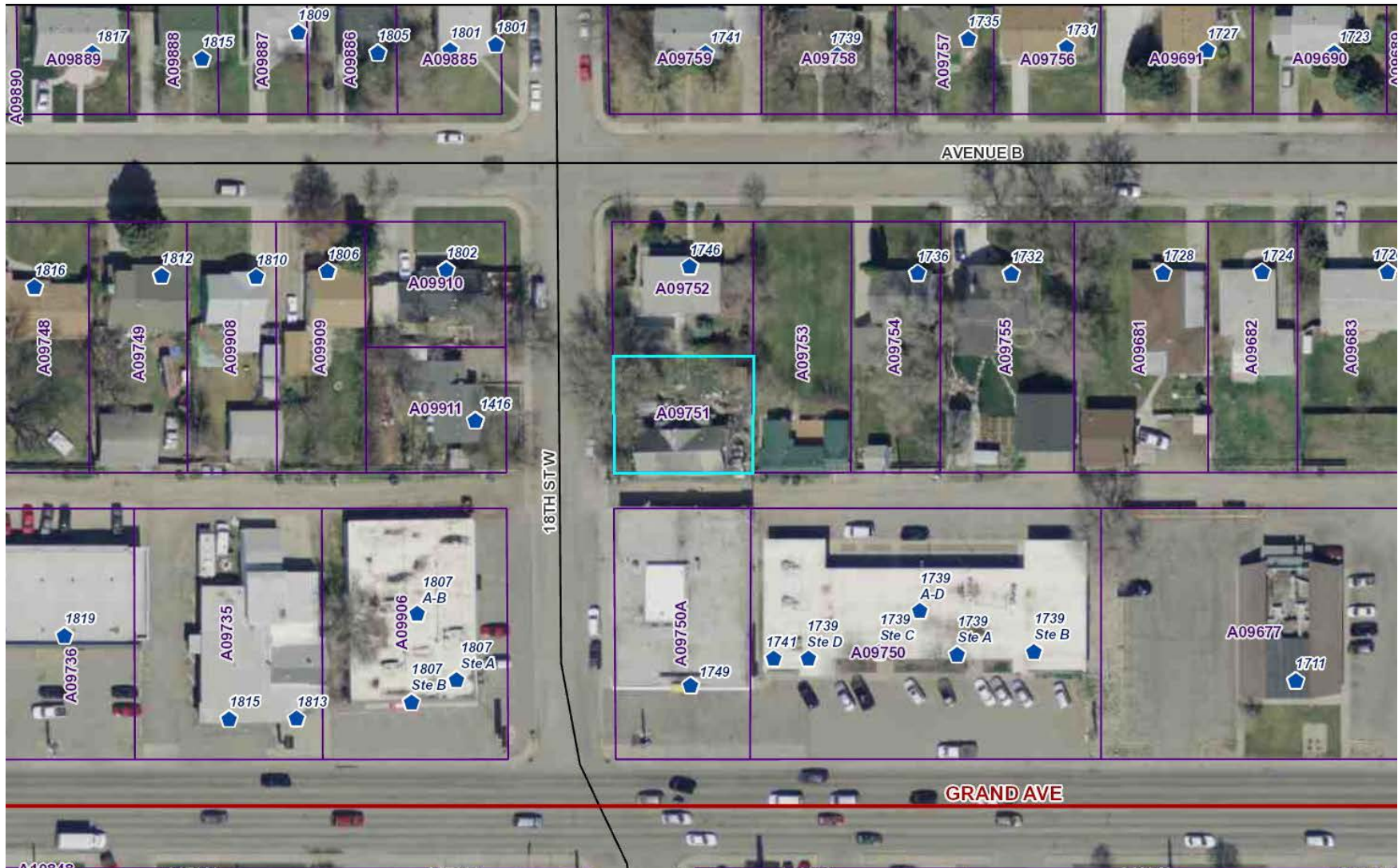
Zoning Map and Site Photos  
Proposed Findings of the REview Criteria  
Applicant Letter and Site Plan

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Variance 1256 – 1413 18<sup>th</sup> St West – Lot Coverage  
Zoning Map and Site Photos

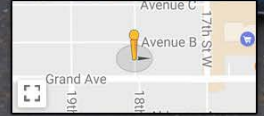


# Var 1256 Lot Coverage



1462 18th St W  
Billings, Montana  
Street View - Aug 2015

1413 18<sup>th</sup> St West





Subject Property



View southeast to alley – rear of buildings on Grand Avenue



View south down 18<sup>th</sup> St West to Grand Avenue



View southwest across 18<sup>th</sup> St West



View west across 18<sup>th</sup> St West



View northeast of 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 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 property that is less than 9,600 square feet. A previous variance (Variance 1248) granted the applicant the ability to re-construct a two-family dwelling on a lot of 5,166 square feet. During this review process planning staff discovered 238 square feet of land area (the north 3 feet of the alley) was deeded to the property in 1954 but never added to the lot area by the Department of Revenue. This brings the lot area to 5406 square feet.

- 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. The former duplex on the property, recently demolished in preparation for re-construction, was constructed in 1946, and according to the owner was an agricultural building that was converted to this use. There have been variances that have been granted in the area for additional lot coverage. 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 to increase the lot coverage to 40% on a 5,406 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 40% lot coverage on this property would not be granting a special privilege to this owner. Other lot coverage variances have been granted and other property in the neighborhood are over the 30% maximum without the benefit of a variance.

- 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 maximum lot coverage of 30% to allow a maximum lot coverage of 40% based on the lot area of 5,406 square feet. 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, 3<sup>rd</sup> Filing, and the north 3 feet of the alley, a 5,406 square foot parcel of land.

3. The applicant will submit a building permit application within 4 months of Board approval.
4. The applicant will complete the construction of the approved two-family dwelling within 18 months of building permit approval.
5. There will be no construction activity before 7 am or after 8 pm.
6. The applicant will remove the existing storage building on the north east corner of the property once the duplex construction is completed.
7. Failure to start or complete actions required in this approval will void the variance.
8. 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.
9. 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 6 months of Board approval and complete the construction within 18 months of building permit 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 – R-70 zoning allows two-family dwellings (duplexes).

Variance 1256 – 1413 18<sup>th</sup> St West  
Applicant Letter and Site Plans



APPLICATION FORM

ID: Billings Variance # 1256 - Project # 12-17-6008

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 # A09951 CITY ELECTION WARD # 3

Legal Description of Property: Kober Subd 3<sup>rd</sup> filing, 236, T01 N, R25E, Block 6 Lot 8 & 65' Lt 12 & 95' of W20' Lt 14

Lot size 5,166 Sq ft + 238 (3' of alley vacation) = 40% = 2,141 max  
Address or General Location (If unknown, contact City Engineering): 1413 18<sup>th</sup> St W,

Billings, MT

Zoning Classification: R 7000

Size of Parcel (Area & Dimensions): recorded - 5166 Sq ft 5/16 (5406)

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance(s) Requested: Because of the 3ft added from ownership into alley I would like variance moved from 30% to 40% Larger area of building is needed in building. My designer said 6 people - even 2 - the stairs (according to code) would be wall to wall with existing 5 ft.

Facts of Hardship: 6 people cannot live in the previous sq ft listed. Sq ft should reflect actual sq ft owned. Not 'foot print' from old dem'd Building.

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

Owner(s): Barbara & Christopher Cox  
(Recorded Owner)  
1413 18<sup>th</sup> St W, Billings, MT  
(Address)  
406-591-5565 bcx@co.yellowstone.mt.gov  
(Phone Number) (email)

Agent(s): Josh Schaefer  
(Name)  
2300 Elizabeth St Billings, MT  
(Address)  
406-208-1855 Josh@schaefer.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.

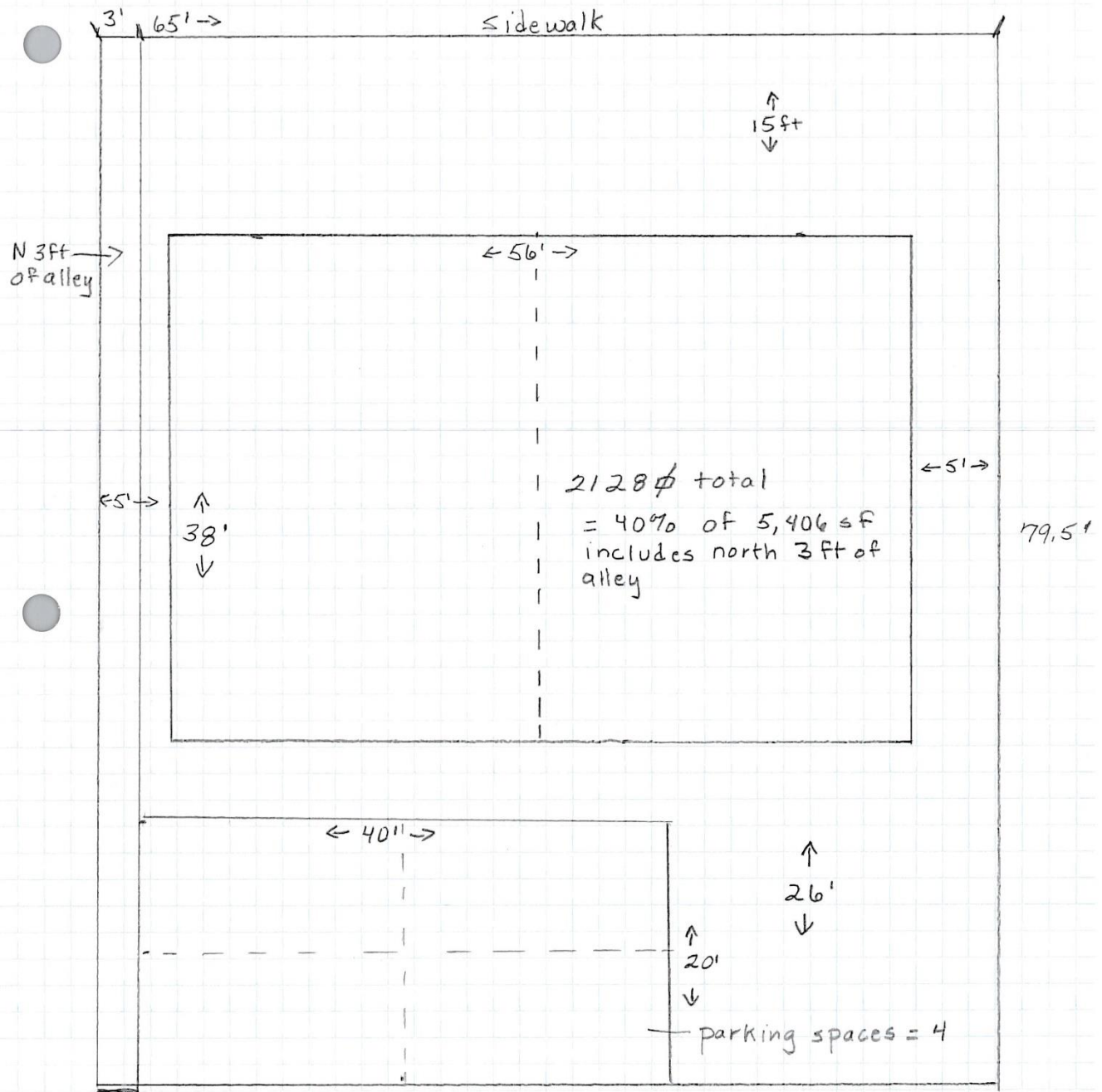
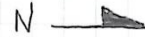
Signature: Barbara Cox Date: \_\_\_\_\_  
(Recorded Owner)

1. A. There is not room in the current  
footage for living. According to my  
designer stairs according to him / each  
they would go "wall to wall"

B. Small children (4) need room in  
the home.

2. We just need enough room to  
put a family of six & to keep duplex  
the same, we are asking for same  
footage for both sides. I don't  
want my grandchildren to be  
scrunched up. Room - needed. Please.

Variance 1256  
N. 18th Street



4 off-street parking spaces required  
(BMCC 6-1203)

1 inch = 10 ft

← 18th St W →

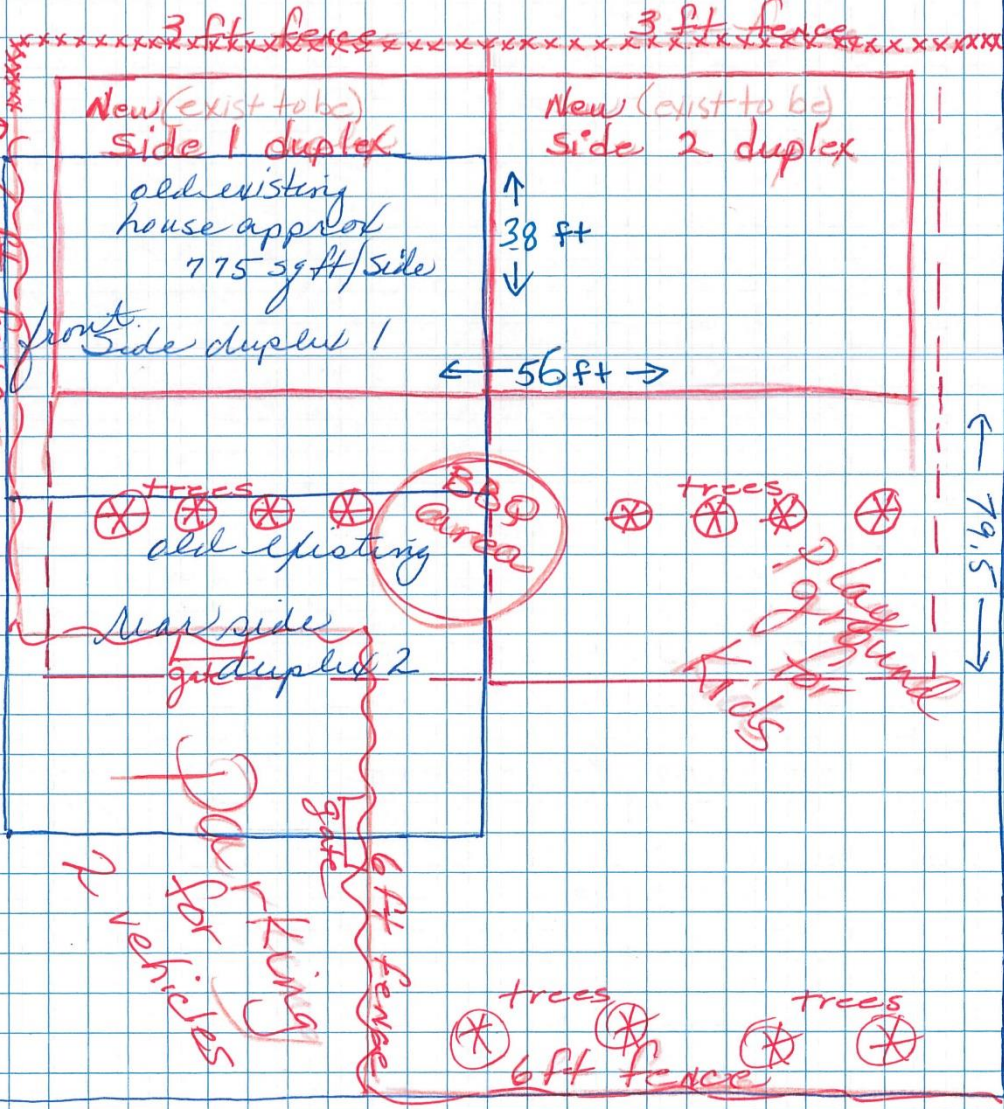
15' setback ← 65' →

15' setback

Building Request from 30% to 40%

NEIGHBOR PROPERTY ↓

3 ft of alley (vacation resolution) owned by property owner



← 79.5' →

1 inch = 10 ft

Recorded sqft 79.5 x 65 = 5167.5  
 corrected sqft 79.5 x 68 = 5406.0

- (56 x 38) total = 5406.0 sqft
- request / New construction duplex & fence & enhancements
- old existing building (demolished)