



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, June 7, 2017 @ 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

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

Call the meeting to order.

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

Public Comment

Approval of Minutes:

1. Minutes of May 3, 2017 meeting.

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 1260 – Lot Area** - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 2,125 square feet for a 2-family dwelling; from 27-308 requiring a minimum front setback of 15 feet to allow a minimum setback of 13 feet; from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow 4 feet; and from 27-308 requiring a minimum side setback of 5 feet to allow 3 feet for an existing 2-family dwelling in a Residential Multi-family-Restricted (RMF-R) zone on the west 85 feet of Lot 13, Block 165, Billings Original Town, a 2,125 square foot parcel of land. If approved, the variance will allow the owner to complete building renovations. Tax ID: A01079. Presented by Karen Husman, Planner I.
- b. **City Variance 1261 – 2205 Tree Lane– Side Setback for two story** - A variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum 5-foot side setback to allow the addition of a second story above an existing 2-car garage, in a Residential 9,600 (R-96) zone on Lots 2 & 3, Block 2 of Crawford Subdivision, a 14,690 square foot parcel of land. Tax ID: A05776. Presented by Karen Husman, Planner I
THE APPLICANT HAS REQUESTED WITHDRAWAL OF CITY VARIANCE APPLICATION 1261.
- c. **City Variance 1262 – 1025 Cook Avenue – Side Setback** - The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a 2-foot side setback for an addition to an existing dwelling in a Residential 6,000 (R-60) zone on Lots 13 and 14, Block 19 of Broadwater Subdivision, a 7,000 square foot parcel of land. Tax ID: A03652. Presented by, Karen Husman, Planner I

Other Business/Announcements

Adjournment

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

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

City Board of Adjustment

Meeting Date: 06/07/2017

Information

Subject

Minutes of May 3, 2017 meeting.

Attachments

BBOA_2017_05_03

CITY BOARD OF ADJUSTMENT

MINUTES May 3, 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 | E | 1 | E | | | | | | | |
| Dave Hagstrom | Board member | 1 | 1 | 1 | 1 | 1 | | | | | | | |
| Paul Hagen | Board member | 1 | 1 | 1 | 1 | 1 | | | | | | | |
| Frank Chesarek | Vice Chairman | 1 | 1 | E | 1 | 1 | | | | | | | |
| Oscar Heinrich | Board member | 1 | 1 | E | 1 | 1 | | | | | | | |
| Martin Connell | Board member | 1 | 1 | 1 | 1 | E | | | | | | | |
| Mark Noennig | Chairman | 1 | 1 | 1 | E | 1 | | | | | | | |

| TOTAL NUMBER OF APPLICATIONS 2017 | 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 | 7 | 2 | 1 | | | | | | | | 12 |

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

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

Attending: Frank & Gloria Perusich

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 Oscar Heinrich made a motion for the approval of April 5, 2017 minutes Chairman Noennig seconded the motion. Minutes were approved by unanimous voice vote 5-0.

Disclosure of any Conflict of Interest, Ex Parte Communications and Site Visits

A new form has been implemented for any disclosures. If any Board member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here.

Public Hearings

Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. He reviewed the hearing and presentation processes for the meeting and acting on each variance.

Nicole Cromwell read the legal description for **Variance #1259**:

City Variance 1259 – 922 Royal Avenue – Lot Coverage – A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 36% (3518 sf +) in a Residential 9,600 (R-96) zone on Lot 12, Block 6, Kingston Place Subdivision, a 9,917 square foot parcel of land, for the purpose of construction of a 112 square foot patio cover. Tax ID: A33729.

RECOMMENDATION

Planning Staff is recommending conditional approval and adoption of the findings of the 7 criteria.

Questions for Staff:

Board member Hagstrom asked if granting this variance will set a precedent? The neighborhood has large homes. Lot coverage variances do not seem to be common in the area but there are 2 lots on Royal where the homes exceed the 30% maximum but do not have variances of record.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1259**.

Frank Perusich, 922 Royal Ave, Billings, MT, owner

Mr. Perusich indicated the less grass to mow the better. He would like to have this covered patio area. His wife doesn't like mosquitos.

OPPOSED

None

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Hagen seconded the motion to approve **City Variance #1259** 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 #1259 passed 5-0.

The public hearing was closed at 6:30 PM.

Other business:

The next meeting will be on June 7, 2017.

The meeting adjourned at 6:30 PM.

ATTEST: DRAFT. To be approved by a motion June 7, 2017.



City Board of Adjustment

Meeting Date: 06/07/2017

SUBJECT: Variance 1260-201 S 29th Street

THROUGH: Wyeth Friday

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1260 – Lot Area - A variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 2,125 square feet for a 2-family dwelling; from 27-308 requiring a minimum front setback of 15 feet to allow a minimum setback of 13 feet; from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow 4 feet; and from 27-308 requiring a minimum side setback of 5 feet to allow 3 feet for an existing 2-family dwelling in a Residential Multi-family-Restricted (RMF-R) zone on the west 85 feet of Lot 13, Block 165, Billings Original Town, a 2,125 square foot parcel of land. If approved, the variance will allow the owner to complete building renovations. Tax ID: A01079. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning staff recommends conditional approval based on the findings of the 7 criteria for Variance 1260.

APPLICATION DATA

OWNERS: Park Real Estate Services, LLC
AGENT: Nathan & Heidi Matelich
PURPOSE: Allow a minimum lot area of 2,125 square feet for a 2-family dwelling, front setback to 13', side adjacent to street to 4', side to 3'
LEGAL DESCRIPTION: West 85 feet of Lot 13, Block 165, Billings Original Town
ADDRESS: 201 S 29th Street
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: RMF-R

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property - None.

Surrounding Property - Records show there have been 18 variance applications in this subdivision on residential properties; 1 was for lot coverage and lot size (approved), 1 was for reduction in setbacks and increase in lot coverage (approved), 7 were for setback reduction (all were approved), 1 was for height of a structure (approved), 1 was for a change in non-conforming use (approved), 7 were for reduced lot size allowance (6 approved, 1 denied).

SURROUNDING LAND USE & ZONING

| | | |
|--------|-----------|-----------------------------------|
| NORTH: | Zoning: | CBD |
| | Land Use: | Residential & Commercial |
| SOUTH: | Zoning: | RMF-R |
| | Land Use: | Residential single & Multi-family |
| EAST: | Zoning: | RMF-R |
| | Land Use: | Residential single & Multi-family |
| WEST: | Zoning: | RMF-R |
| | Land Use: | Residential single & Multi-family |

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 2,125 square feet for attached 2 dwelling units; from 27-308 requiring a minimum front setback of 15 feet to allow a minimum setback of 13 feet; from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow 4 feet; and from 27-308 requiring a minimum side setback of 5 feet to allow 3 feet for an existing duplex dwelling in a Residential Multi-family-Restricted (RMF-R) zone on the west 85 feet of Lot 13, Block 165, Billings Original Town, a 2,125 square foot parcel of land. If approved, the variance will allow the owner to complete building renovations. The owner had begun some renovation work on the building and then discovered that to receive permits for the renovation a variance for the zoning requirements would need to be approved.

There have been 18 similar variance applications in this subdivision on residential properties; one was for lot coverage and lot size (approved), one was for reduction in setbacks and increase in lot coverage (approved), seven were for setback reduction (all were approved), one was for height of a structure (approved), one was for a change in non-conforming use (approved), seven were for reduced lot size allowance (six approved, one denied). In addition, there are at least seven lots that are a non-conforming lot size for the number of dwelling units currently constructed on them without variance approval.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for Variance request #1260, based on the determinations for granting a variance.

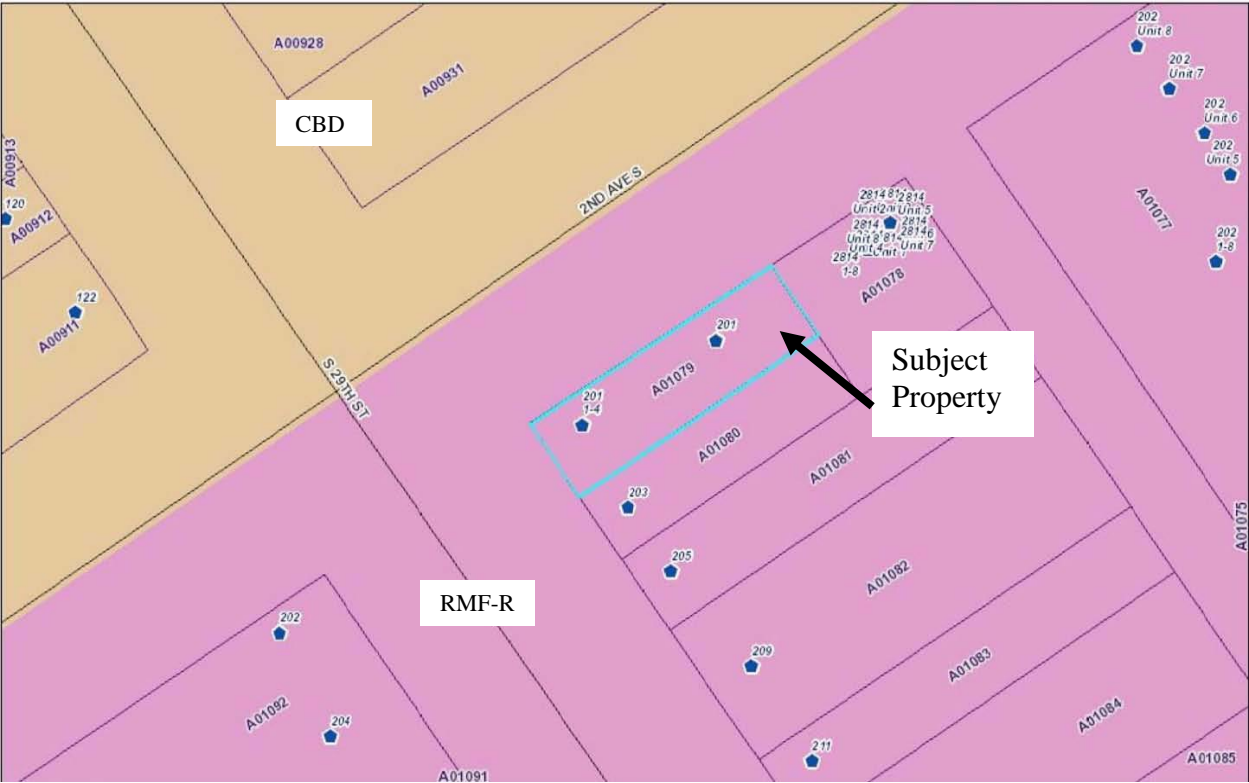
RECOMMENDATION

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

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

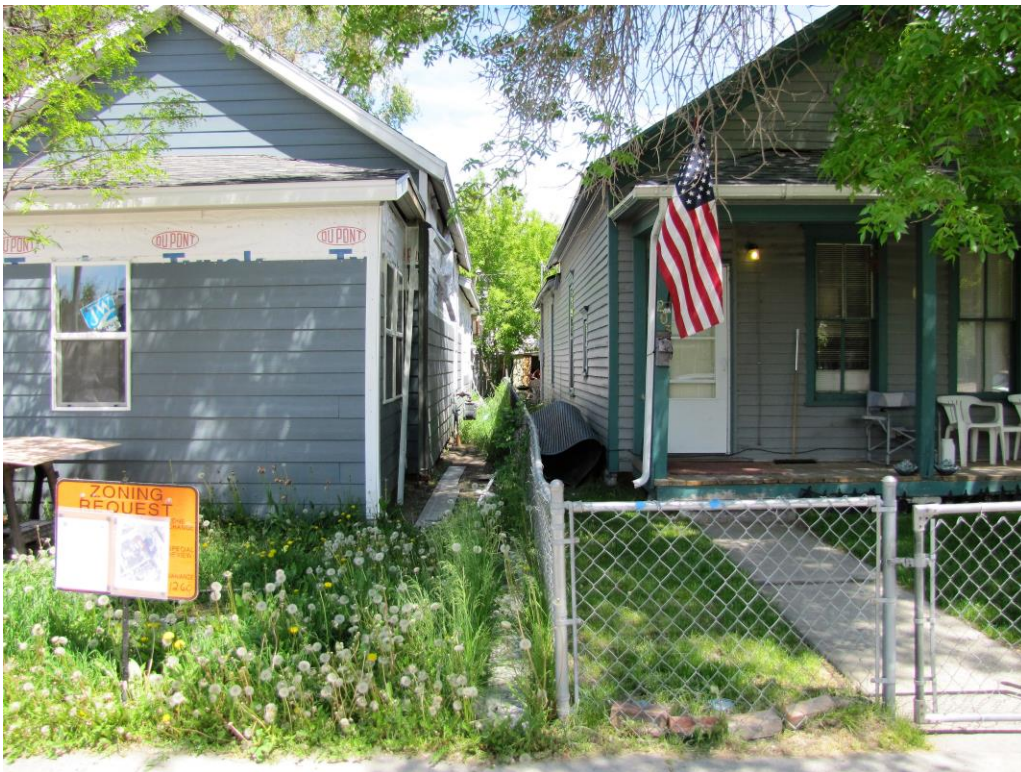
ATTACHMENT A
Surrounding Zoning & Site Location



ATTACHMENT



Subject Property



looking Northeast

ATTACHMENT



Looking North



Looking South

ATTACHMENT



Looking East



Looking West

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1260 - Project # P2-17-00068

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

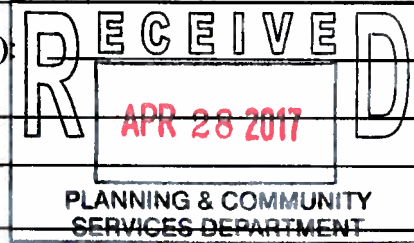
TAX ID # A01079 CITY ELECTION WARD # 1

Legal Description of Property:

BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 165, Lot 13, W 85'

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

201 S 29th St, Billings, MT 59101



Zoning Classification: Residential Multi-Family Restricted

Size of Parcel (Area & Dimensions): 2,125 SF Lot

Covenants or Deed Restrictions on Property: Yes No X

If yes, please attach to application

Variance(s) Requested: Variance to allow for a legal duplex at 201 S 29th St; Front Setback 15' to 13' side adjacent to street from 10' to 4'; side setback from 5' to 3'

Facts of Hardship: Duplex built in 1910 does not comply with current zoning requirements for size of lot Owner is not able to complete renovation of duplex without variance

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

Owner(s): Peak Real Estate Services LLC -- Nathan & Heidi Matelich

(Recorded Owner)

41 Ave B, Billings, MT 59101

(Address)

406-781-6889

nathanmatelich@gmail.com

(Phone Number)

(email)

Agent(s): Same As Owner

(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.

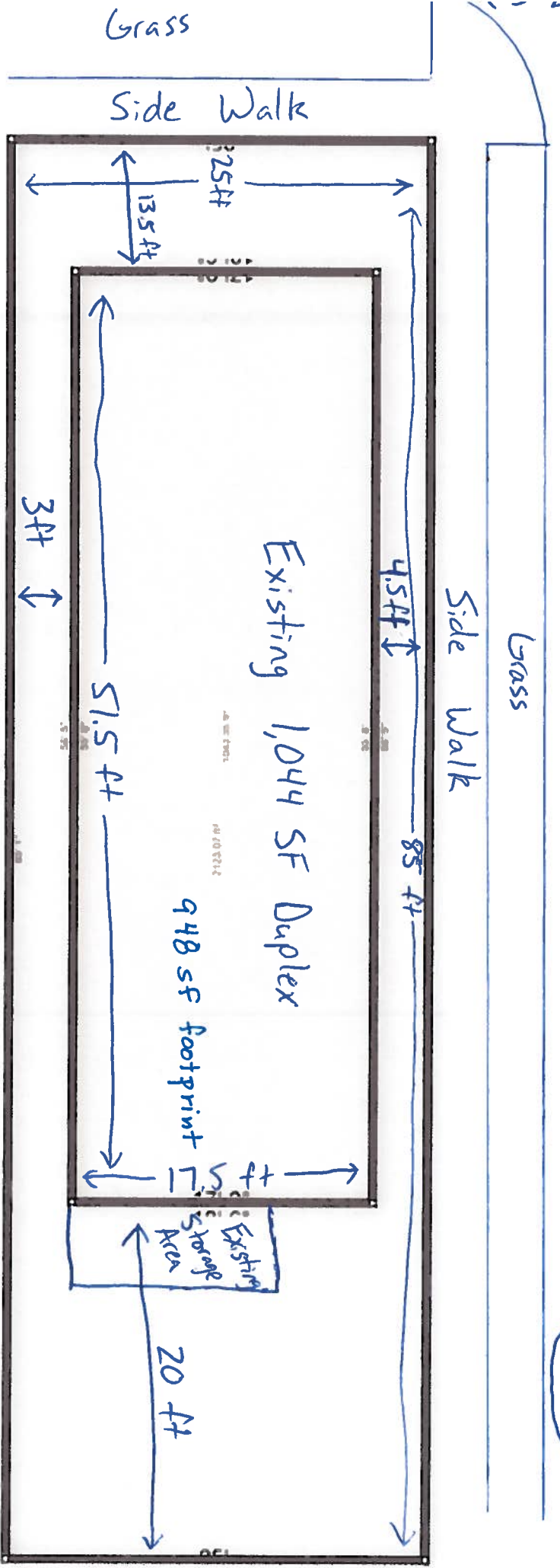
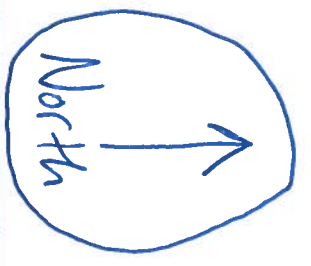
Signature: [Handwritten Signature]

(Recorded Owner)

Date: 4-28-17

201 S 29th Street Site Plan

← 2nd Ave S →



Variance Application

For

Peak Real Estate Services LLC

Owner: Nathan & Heidi Matelich

Property: 201 S 29th St, Billings, MT 59101

Phone: 406-781-6889 | Email: nathanmatelich@gmail.com

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

201 S 29th St is a 1,044 SF duplex located on the south side of Billings. This duplex was built in 1910 and sits on a 2,125 SF lot. The current zoning of this property is Residential Multi-Family Restricted. Currently it has 2 separate gas meters and 2 separate electricity meters that provide separate utility services for each side of the duplex. Each side of the duplex contains 1 bedroom, 1 bathroom, 1 kitchen, 1 living room/dining room and it's own independent furnace and hot water heater. To the best of our knowledge, this property was been used a duplex for a very long time which can be evidenced by the 2 old electric meters that are so old that our electrician highly recommended upgrading the electrical service on both meters due to safety concerns.

When we purchased 201 S 29th St in October 2015, we planned on completely renovating this old, rundown duplex. It had so much deferred maintenance that the roof was leaking, the electrical in the whole duplex was a fire hazard, mold has taken over the crawl space, the majority of the windows could not be opened and the siding was so bad that this duplex was the ugly ducking on the block. Surprisingly enough, there were 2 separate tenants living in this duplex when we bought it.

As we are looking to complete this renovation and turn the ugly ducking into the nicest looking building on the block, we are unable to get the electrical, plumbing and construction permits that we need to finish because the lot in the original Billings townsite is too small to meet current zoning requirements.

Why is there a need for intended us of the property at this location?

As a real estate agent, investor and landlord, I pride myself on providing high quality, affordable housing in Billings. I get excited when I can take buildings that are rundown and even hazardous to live in and turn them into a home where people can feel comfortable in while not breaking the bank. There was a recent study done by BillingsWorks that came up with the conclusion that the #1 reason why Billings employers cannot grow and attract outside talent is because there is a lack of affordable housing in Billings. I'm working to change that one property renovation at a time. There is both a huge need for affordable housing and housing in close proximity to a vibrant downtown – especially if One Big Sky Center gets built 4 blocks north of this location. It is not so much that I'm even changing the current use of this building as much as comply with Billings codes and regulations during my duplex remodel as I believe it is always best to do things the right way.

Written Statement:

Dear Chairperson of the Board of Adjustment,

I'm bringing this variance application before you today because I want to make a difference in Billings and develop it into a place that I am proud to live in. While everyone has their own way of giving back to the community, I view my role as both turning properties that are ugly duckings into something of beauty and concurrently providing affordable housing for the hard working citizens of Billings.

I do not intent to change the use of this existing duplex. I am not planning on adding an addition to this property. Most simply, I am planning on replacing and/or renovating every aspect of this duplex (roof, siding, windows, gutters, electrical, plumbing, hot water heaters, bathrooms, kitchen, bedrooms, etc) and turn this eyesore into the most beautiful piece of property on the block.

The reason why I need this variance is that now that I stripped parts of the building down to the studs to replace systems such as the electrical & plumbing, I am required to obtain this variance in order to make this a legal duplex so I can get the permits needs to finish the electrical and plumbing – and ultimately restore this duplex to a livable space.

I believe that my renovation of this duplex at 201 S 29th St compliments the following areas of the 2016 Billings Growth Guidelines:

- **Essential Investments:** Infill development & development near existing City infrastructure may be the most cost effective
- **Essential Investments:** Neighborhoods that are safe and attractive and provide essential service are much desired
- **Strong Neighborhoods:** Zoning regulations that allow a mixture of housing types providing housing options for all age groups and income levels.
- **Strong Neighborhoods:** Neighborhoods that are safe and attractive and provide essential services are much desired
- **Home Base:** A mix of housing types that meet the needs of a diverse population is important
- **Home Base:** Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe.
- **Home Base:** Homes that are safe and sound support a healthy community.
- **Home Base:** Energy efficiency housing can reduce energy consumption.
- **Prosperity:** Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses.

I have included pictures and documentation of what this property was like when I bought it and a glimpse of what it will look like when completed with beautiful midnight blue hardy board siding, new windows, white trim and architectural shingles.

I thank you for your time and consideration.

Nathan Matelich



DETERMINATIONS

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

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

There are no special conditions or circumstances with the land that create a hardship. The applicant is requesting this variance in order to reconstruct the existing structure on a non-conforming lot.

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

The subject property is in a subdivision that began developing many years ago. There have been variances that have been granted in the area for existing properties that do not meet the current required setback distance from property lines. There are other properties in the neighborhood that have single family and duplex dwelling units on smaller lots. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, allowing the applicant a variance for one (1) two-family dwelling on a 2,125 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;**

The variance will not allow the applicant any special privileges. The request will be in harmony with the higher density in the area. Granting this variance will not confer a privilege to this applicant that others in the subdivision do not have. There are small lots in this subdivision that have existing duplex buildings on them.

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

The variance approval is in harmony with the general purpose and intent of the zoning regulations and the 2016 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 7,000 square feet to allow a minimum lot area of 2,125 square feet for a 2-family dwelling; from 27-308 requiring a minimum front setback of 15 feet to allow a minimum setback of 13 feet; from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow 4 feet; and from 27-308 requiring a minimum side setback of 5 feet to allow 3 feet for an existing 2-family dwelling in a Residential Multi-family-Restricted (RMF-R) zone. No other variance is intended or implied with this approval.
2. The variance is limited to the west 85 feet of Lot 13, Block 165, Billings Original Town, a 2,125 square foot parcel of land.
3. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application for the dwelling units.

4. The owner will apply for a building permit for the renovations on the property within 6 months of Board approval. Construction shall be completed within 1 year.
5. Failure to begin or complete the actions required by this variance approval will void the variance.
6. 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.
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 property owner shall apply for a building permit to renovate the structure and must comply with all Building codes included in remodeling and shall be completed within one year. Upon completion receive a "Certificate of Final Inspection" for verification of work completed in compliance with the Building Code.

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 –Multi-Family Restricted zoning allows two-family dwellings (duplexes).



City Board of Adjustment

Meeting Date: 06/07/2017

SUBJECT: Variance 1261- 2205 Tree Lane

THROUGH: Wyeth Friday

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1261 – 2205 Tree Lane– Side Setback for two story - A variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum 5-foot side setback to allow the addition of a second story above an existing 2-car garage, in a Residential 9,600 (R-96) zone on Lots 2 & 3, Block 2 of Crawford Subdivision, a 14,690 square foot parcel of land. Tax ID: A05776. Presented by Karen Husman, Planner I
THE APPLICANT HAS REQUESTED WITHDRAWAL OF CITY VARIANCE APPLICATION 1261.

RECOMMENDATION

Planning staff recommends conditional approval based on the findings of the 7 criteria for Variance 1261.

APPLICATION DATA

OWNERS: Angela Gainan

AGENT: Travis McDowell

PURPOSE: To allow a minimum 5-foot side setback to allow the addition of a second story above an existing 2-car garage

LEGAL DESCRIPTION: Lots 2 & 3, Block 2 of Crawford Subdivision

ADDRESS: 2205 Tree Lane

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-9600

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

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

Surrounding Property - Records show there has been 1 variance application in this subdivision for setback on a detached structure (denied). There have been 7 variance applications in the adjacent subdivisions, 3 for setbacks (all approved), 2 for lot size (1 approved & 1 denied), 1 for lot coverage and setbacks (approved), 1 for lot size and setbacks (approved).

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 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum 5-foot side setback to allow the addition of a second story above an existing 2-car garage. The property is in a Residential 9,600 (R-96) zone on Lots 2 & 3, Block 2 of Crawford Subdivision, a 14,690 square foot parcel of land. The applicant is planning to construct a master bedroom suite over the existing garage. The second story would require an 8-foot setback. Structurally and esthetically, the new construction would be best over the existing wall of the garage that is currently at 5 feet from the property line. The new construction will be 23 feet, 8 inches at its highest point. Although the structure may not be as esthetically pleasing, the applicant could still construct the second story at 8 feet from the property line without a variance approval. There have been variances approved in the surrounding neighborhoods for setbacks, however none were for a second story setback reduction allowance.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for Variance request #1261, based on the determinations for granting a variance.

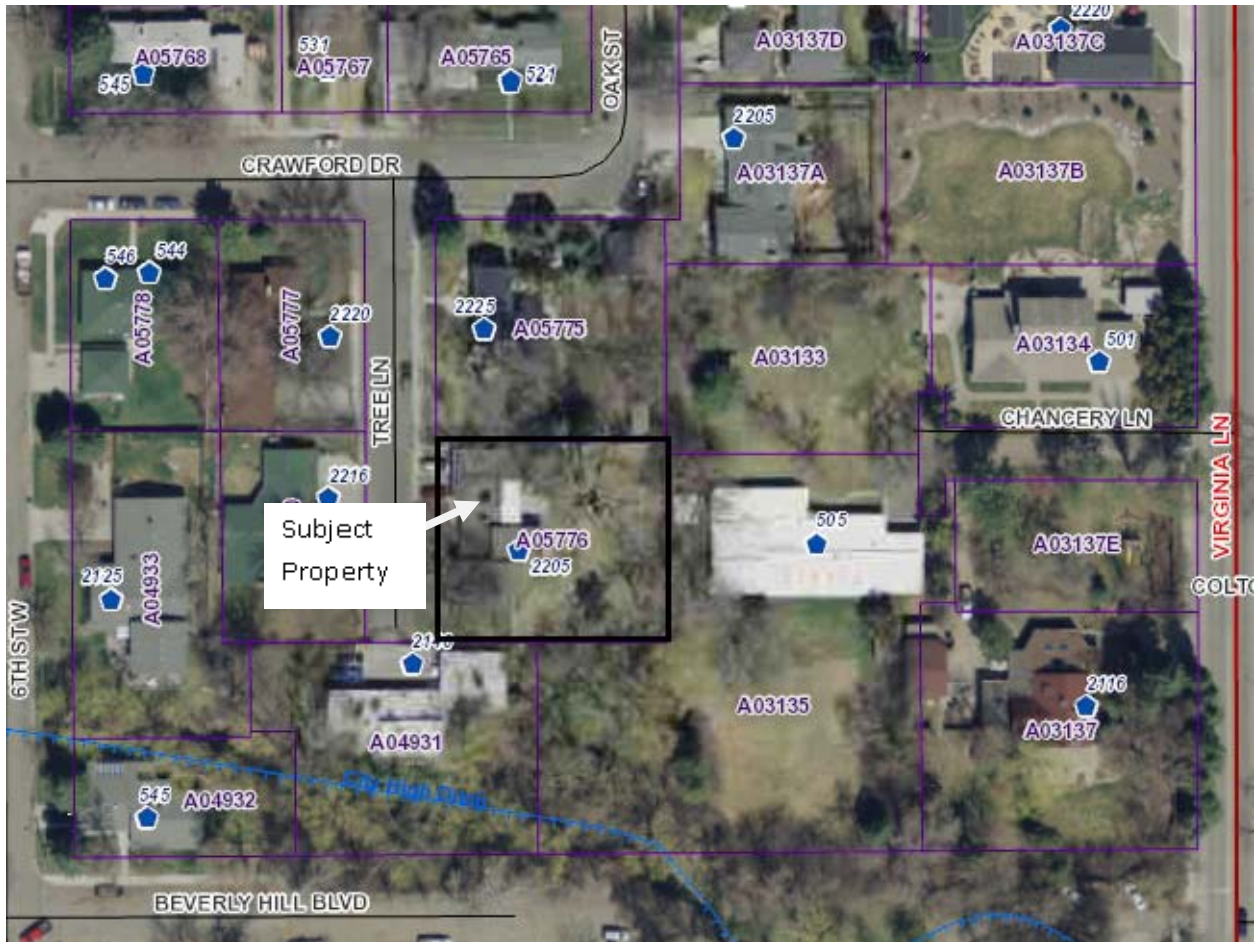
RECOMMENDATION

Staff recommends conditional approval based on the findings of the 7 criteria for Variance #1261.

Attachments

Zoning Map & Site Photos
Applicant letter & site plan
Determinations
Withdrawn

ATTACHMENT
Zoning Map & Site Photos



ATTACHMENT



Looking East



Southeast

ATTACHMENT



Subject Property Garage



Looking South

ATTACHMENT



Looking Northeast



Looking North

ATTACHMENT
Applicant Letter & Site Plan

Dear Chairperson of the Board of Adjustment,

The owner would like to construct a master bedroom suite over the existing garage. The existing garage is located 5' from the North property line. The second story master bedroom suite would require that there is an 8' side setback. Both structural & aesthetically, the project is best suited for us to build above the existing garage walls. This requires an 8' side setback.

The owners are planning on installing new windows, siding & roofing for the existing home. The proposed new construction will match the existing style of the home. The completed project will fit in nicely with surrounding neighborhood.

All other zoning requirements will be met for this property. The highest portion of the proposed addition will be 23'-8", which is well under the allowable 34'-0". With the new addition, the total lot coverage will be 2,580 s.f., while the allowable coverage is 4,407 s.f.

Sincerely,



Travis McDowell

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

- The existing garage is located 5' from the North property line of the site. The owners would like to build a master bedroom suite over the garage. Two story buildings require an 8' side setback. In order to make this project feasible, we would need to have a variance that would allow the use of a 5' setback on the North side of this property.

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

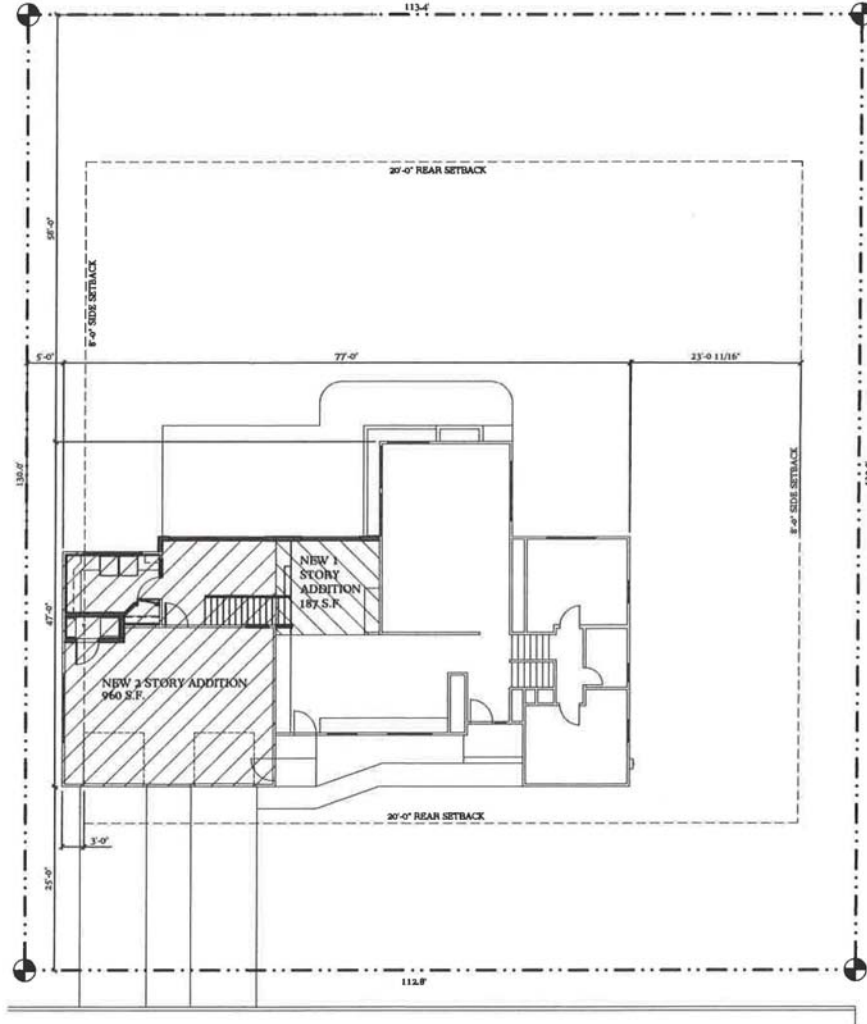
- There is a need for a variance on this property in order to provide a master bedroom suite for the owners over the existing garage.

LEGAL DESCRIPTION

BLOCK 2, LOT 2 - 3 - 14,690 s.f.
CRAWFORD SUBDIVISION
2205 TREE LANE

LOT COVERAGE

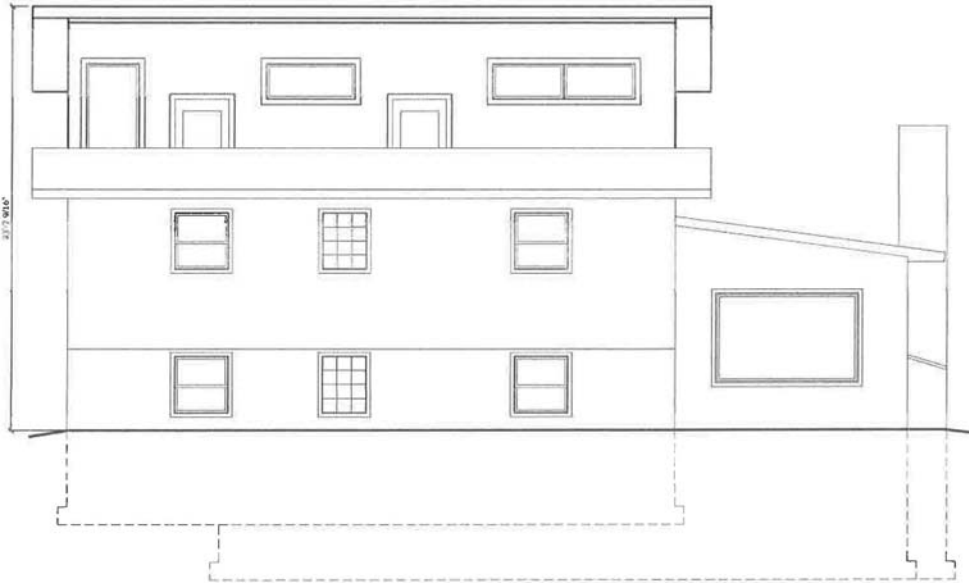
MAX COVERAGE
14,690 x .30 = 4,407 s.f.
ACTUAL COVERAGE
EXIST. & NEW = 2,580 S.F.



SITE PLAN

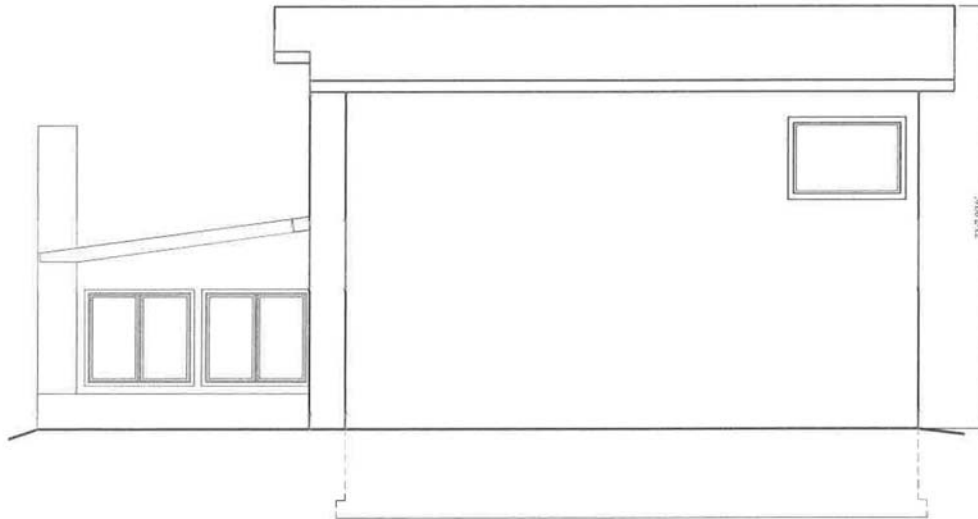
1" = 20'-0"

← TREE LANE →



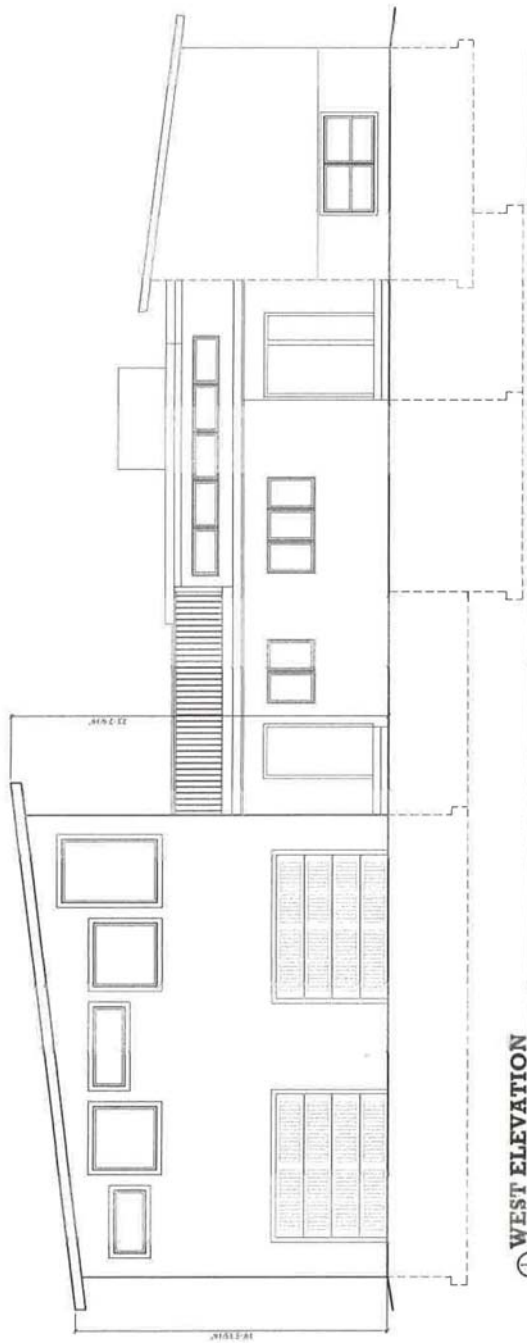
SOUTH ELEVATION

1/8" = 1'-0"

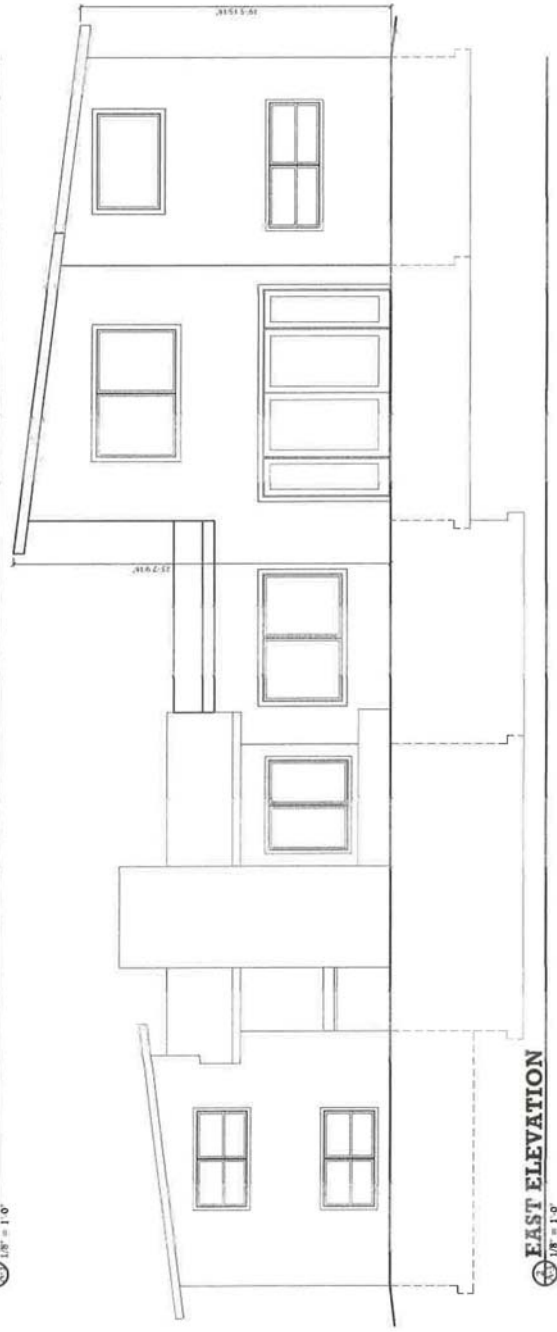


NORTH ELEVATION

1/8" = 1'-0"



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

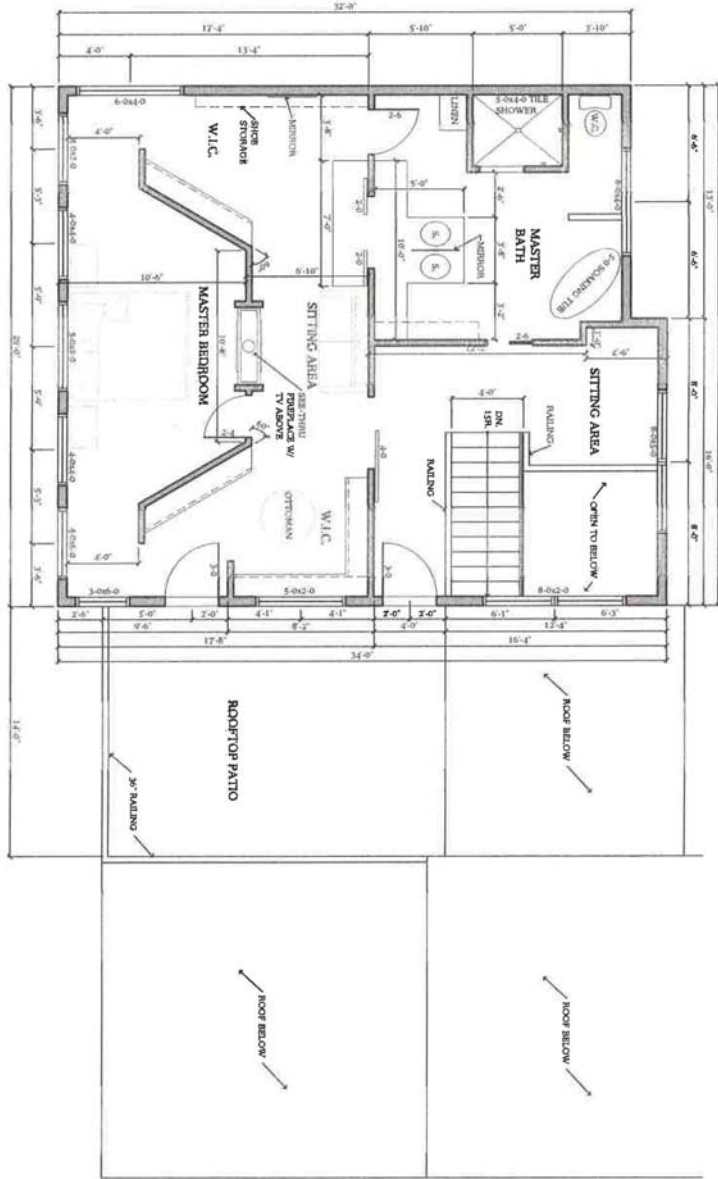


EAST ELEVATION
1/8" = 1'-0"



NEW UPPER FLOOR PLAN

1/8" = 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 conditions or circumstances with the land that create a hardship. The applicant is requesting this variance in order to construct an addition of a second story over the existing garage that currently is at 5 feet from 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;**

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. 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, denying the applicant a variance to construct a second story at 5-foot setback rather than the required 8 feet would 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;**

The variance will not allow the applicant any special privileges. 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 2016 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;**

1. The variance from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum 5-foot side setback to allow the addition of a second story above an existing 2-car garage, in a Residential 9,600 (R-96) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 2 & 3, Block 2 of Crawford Subdivision, a 14,690 square foot parcel of land. Tax ID: A05776.
3. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application for the addition.
4. The owner will apply for a building permit for the renovations on the property within 6 months of Board approval. Construction shall be completed within 1 year.
5. Failure to begin or complete the actions required by this variance approval will void the variance.

6. 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.
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 property owner shall apply for a building permit for the addition and must comply with all Building codes included in remodeling and shall be completed within one year. Upon completion receive a "Certificate of Final Inspection" for verification of work completed in compliance with the Building Code.

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 additions to single family dwellings.



05/26/17

RE: Variance #1261 2205 Tree Lane

Tammy Deines:

Please withdraw our application for variance at 2205 Tree Lane. My client is going a different direction with this project & the variance will no longer be required.

Thank you,

Sincerely,

A handwritten signature in black ink that reads 'Travis McDowell'. The signature is written in a cursive, flowing style.

Travis McDowell



City Board of Adjustment

Meeting Date: 06/07/2017

SUBJECT: City Variance # 1262-1025 Cook Avenue

THROUGH: Wyeth Friday

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1262 – 1025 Cook Avenue – Side Setback - The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a 2-foot side setback for an addition to an existing dwelling in a Residential 6,000 (R-60) zone on Lots 13 and 14, Block 19 of Broadwater Subdivision, a 7,000 square foot parcel of land. Tax ID: A03652. Presented by, Karen Husman, Planner I

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for Variance request #1262, based on the determinations for granting a variance.

APPLICATION DATA

OWNERS: Charles & Jane G. Bisbee
AGENT: Same
PURPOSE: Allow a 2-foot side setback to allow an addition to an existing dwelling
LEGAL DESCRIPTION: Lots 13 and 14, Block 19 of Broadwater Subdivision
ADDRESS: 1025 Cook Avenue
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: Residential-6000 (R-60)

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property – Records show there have been 14 variance applications in this subdivision; 4 were for lot size (3 approved 1 denied), 4 involved non-conforming uses (3 approved, 1 denied), 5 were for setbacks (all approved), 1 for lot size and setbacks (denied).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-60
Land Use: Residential single family & multi-family
SOUTH: Zoning: Public
Land Use: Public School
EAST: Zoning: R-60
Land Use: Residential single family & multi-family & 1 non-conforming commercial
WEST: Zoning: R-60

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a 2-foot side setback to allow an addition to an existing dwelling in a Residential 6,000 (R-60) district. There have been 14 variance applications in this subdivision. Five of the variances were for requests to decrease the required setback distance. Many properties in the neighborhood have a structure that is built very close to the property line.

The property owner is requesting the variance to be able to add an addition to the existing house for additional space. The home currently has an open covered porch on one side and the owners plan to convert it into living space with a remodel that will simply remove what is there and build onto the house in conformance with the building code. The existing patio extends four feet into the setback and the plan is to go to three feet into the setback with the new structure, resulting in a 2-foot side yard setback to the property line.

The Planning Division staff heard from the neighbor to the east at 1021 Cook after the surrounding property notices were sent out about concerns that when the remodel was constructed that it was 2 feet setback from the property line. The neighbor stated that they had located property lines in the past when constructing a fence. Staff encouraged the neighbor to attend the Board of Adjustment Meeting to learn more about the variance and provide comment if desired. Staff did not receive any other comments on this variance application.

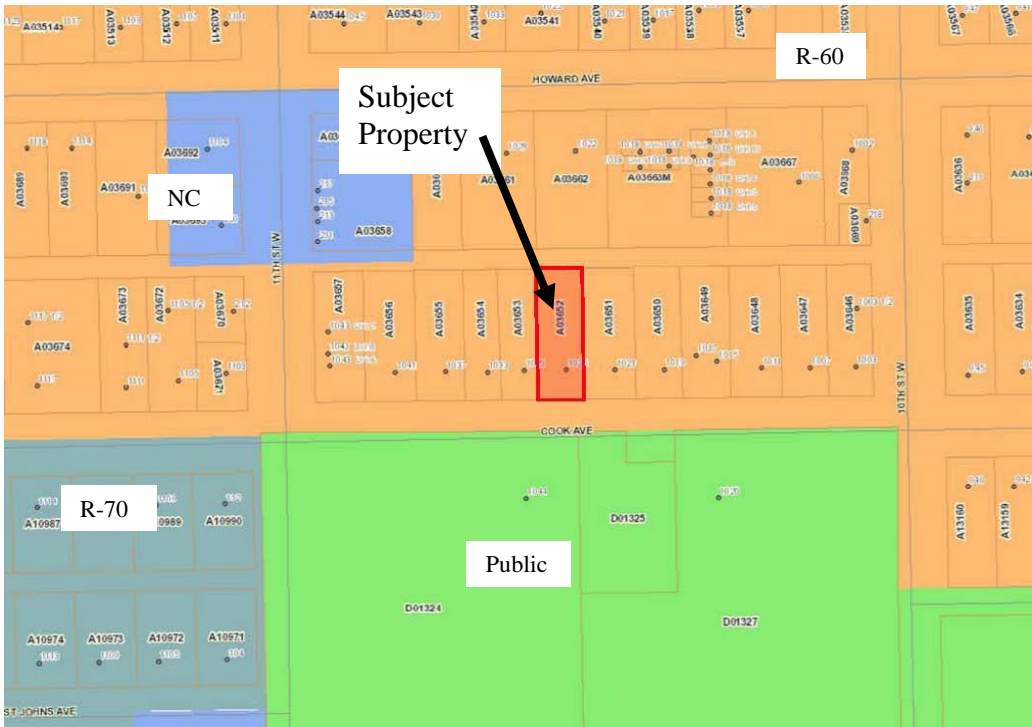
RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for Variance request #1262, based on the determinations for granting a variance.

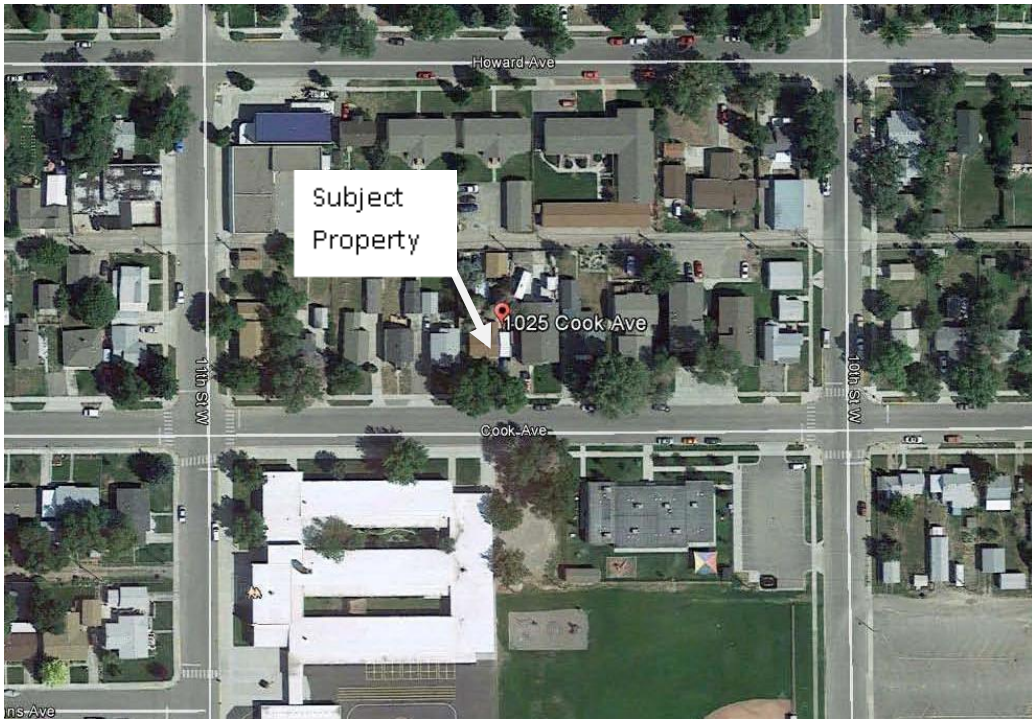
Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

ATTACHMENT
Surrounding Zoning & Site Location



Surrounding Zoning



ATTACHMENT



Subject Property- facing North



Facing South

ATTACHMENT



Facing East



Facing West

Attachment
Application, Applicant Letter and Site Plan

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1262 - Project # P2-17-0002 ⁰⁰⁰⁷²

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 # A03652 CITY ELECTION WARD # 3

Legal Description of Property: Broadwater Subd, S05 T01 S, R26E, Block 19 Lts, 13+14

Address or General Location (If unknown, contact City Engineering): 1025 Cook Ave Billings MT 59102

Zoning Classification: Residential 6000

Size of Parcel (Area & Dimensions): 7000 sq ft 50' x 140'

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance(s) Requested: Grant new structure be built up to 2' from property line as per UBC/IRC standard. Exceeding City Zoning Code of 5' set back from property line

Facts of Hardship: No other suitable or allowable location. Will use location of current structure so as not to change current properties foot print

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

Owner(s): Charles E and Jane B Bisbee
(Recorded Owner)
(Address) 1025 Cook Ave Billings MT 59102
(Phone Number) 406-896-9051 (email) bizzco10@bresnan.net

Agent(s): N/A
(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: Charles E Bisbee (Recorded Owner) Date: 4-29-2017

To: Chairperson of the Board of Adjustment
From: Charles and Jane Bisbee
Ref: 1025 Cook Ave Building Permit

We are writing you to request a review of a proposed building project at this address. We currently have a partially enclosed and covered patio attached to our house that we wish to enclose into a four season use.

The patio has a metal lean to type roof that we wish to change to match the existing roof of the house. We would also like to fully enclose only what is currently framed in, and make a structural floor that would become a full time usable space.

We are trying to make the space into an extra room in an effort to make more room within the current residence for my wife. She is suffering from a degenerative mobility disability and it is getting harder for her to get around. The laundry area we now have is in a corner of the second bedroom, and the kitchen is very small with an eat-in dining area. The new enclosure would allow us to move the laundry out of the bedroom and use the remaining space for a dining area. Thus making it easier for her to access the laundry and give more room in the kitchen as well for us to move around for meal preparations.

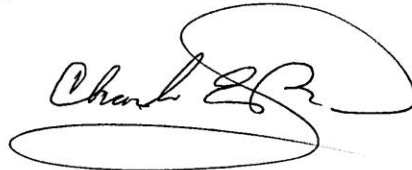
You will see in attached plans we do not intend to use any more space for this than what is already taken up by the patio structure. In fact the proposed new structure will be two feet further back from the property line as the current one is now. We also feel that the removal of the old metal sheeting roof and making one that will follow the current roof line would be not only more aesthetic but help keep drainage away from the neighbor's property.

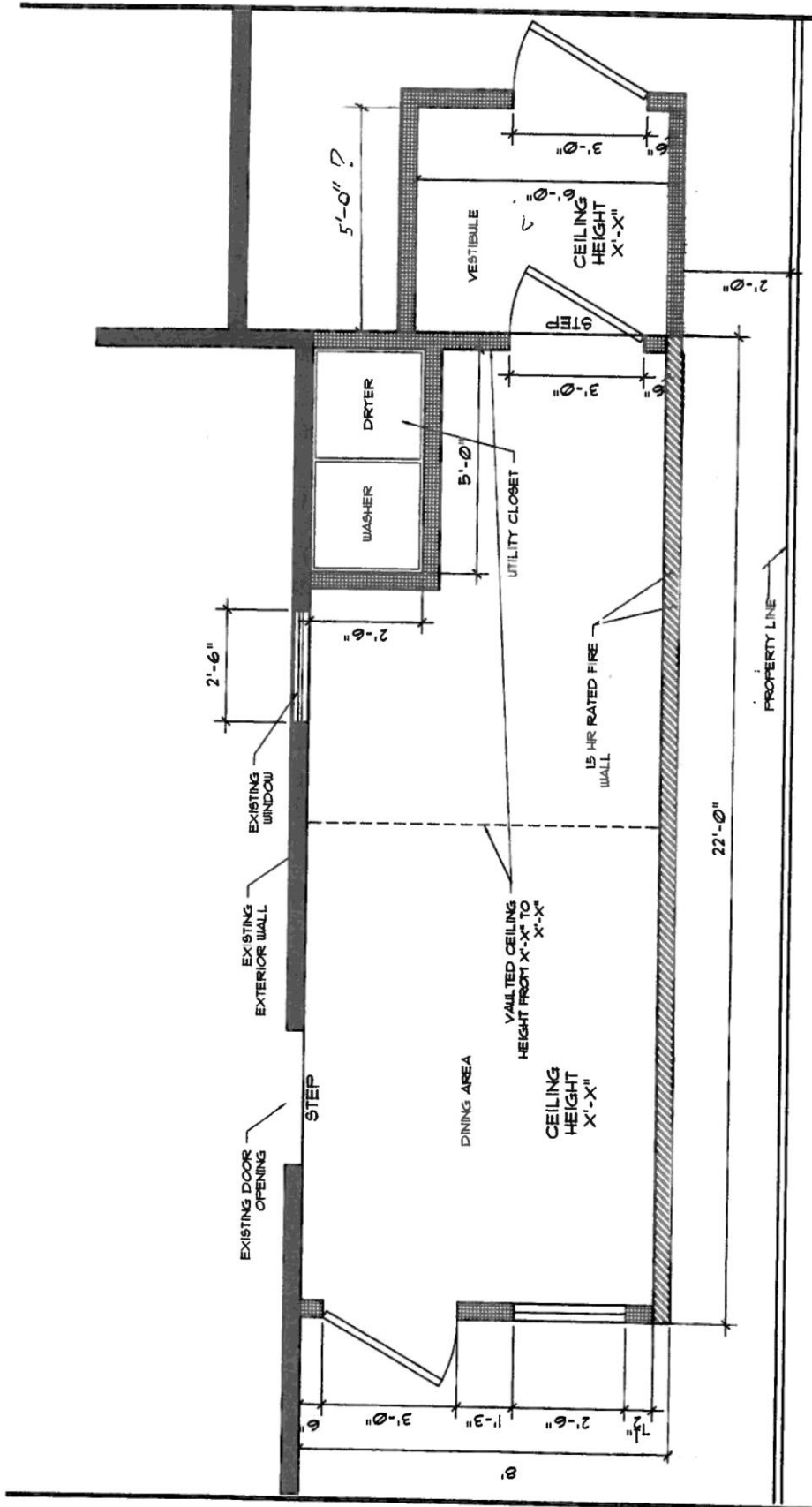
We have no space on the other end of the house without encroaching to close to the other neighbor's house. The rear of the house also cannot be used without building underneath a large tree. Our homeowners insurance will not allow this as they have already made us trim the tree in the past and building any closer would require complete removal of a very large and healthy tree.

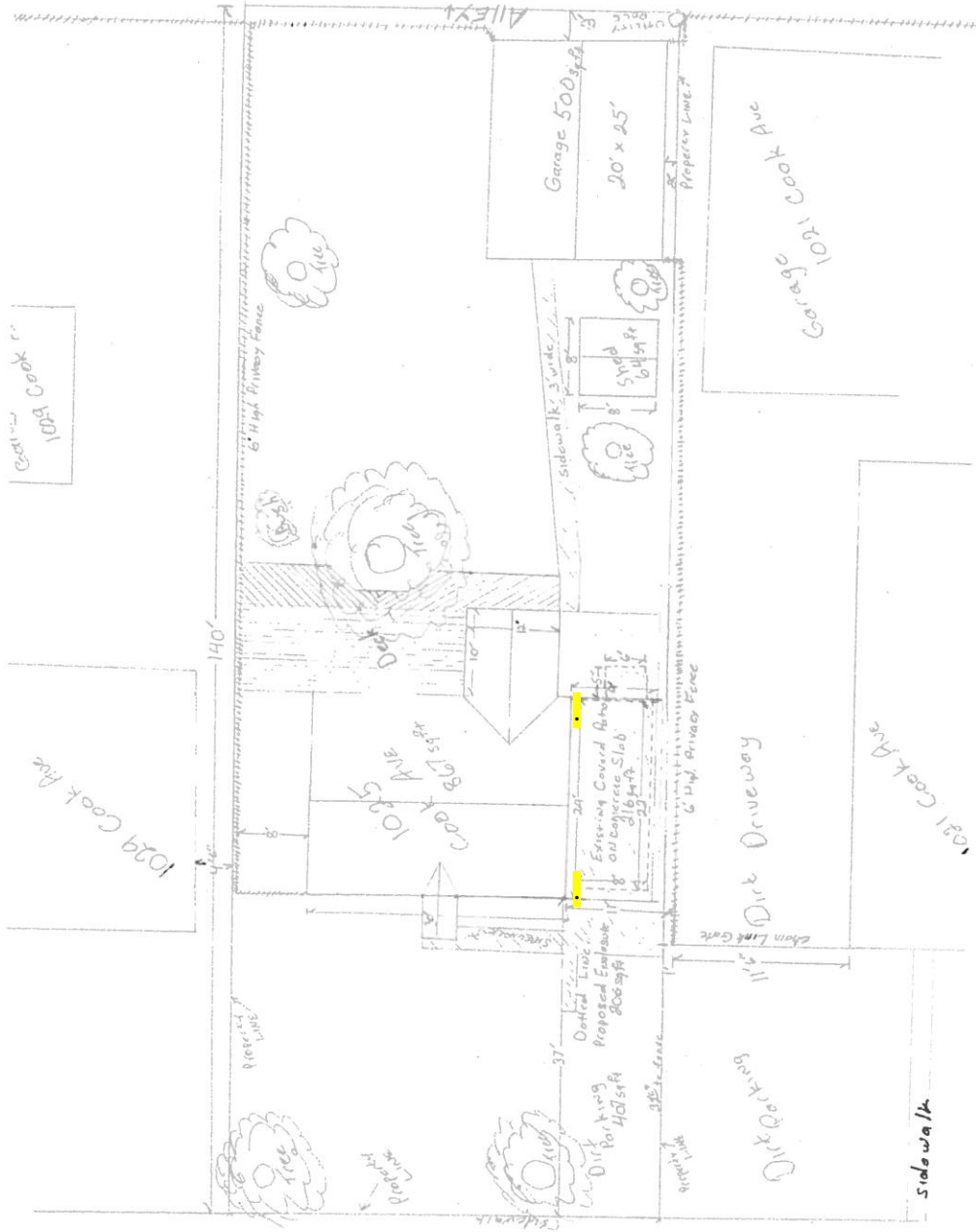
The location we have chosen is already taken up by a patio structure, which would be totally remodeled and the new enclosure put into the same space. There is also a concrete slab present which is within two feet of the property line, which is closer than we intend to build. The city planner's office has told us we need to be no closer than five feet from the property line if we make a new structure. There is a total of ten feet to the property line and we would like to build out only eight feet being two feet from this line. Any less than this would make the new structure too narrow to properly use and not worth the investment.

I checked first with the city building department as was told that the International Residential Building Code allowed for building up to two feet from a property line if the facing wall is of 1.5 hr fire rated construction. This was what we had planned until our contractor went in for permit and was told "no" as we had gone within five feet, the city's ordinance limit towards a property line.

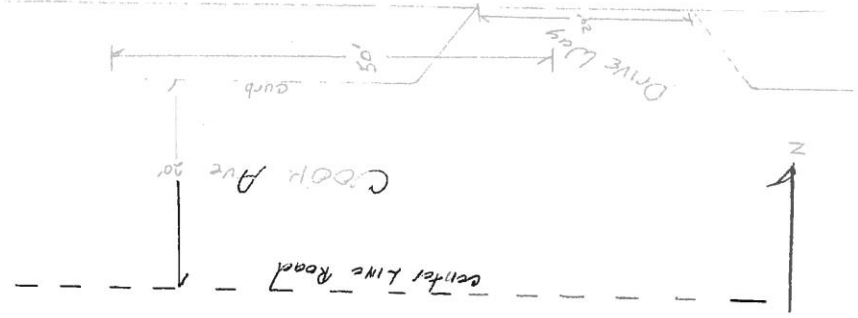
Our intention is to abide by the IRC/UBC for the fire wall and all other proper construction. The new structure would not impose upon the neighbor's property or the drive access anymore, in fact even less, than the current structure. Therefore we are asking you to grant the variance from the five feet to the proposed two foot construction from the property line.

A handwritten signature in black ink, appearing to read "Charles Bisbee", is written over a large, loopy circular scribble.





Site Scale: 1" = 10'



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 to 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 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. 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, denying the applicant a variance to construct an addition with a 2-foot setback rather than the required 5 feet would 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 would not confer a privilege to this applicant that others in the subdivision do not have. There have been 5 variance requests granted in this subdivision for setbacks.

- 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 addition to an existing dwelling in a Residential 6,000 (R-60) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 13 and 14, Block 19 of Broadwater Subdivision, a 7,000 square foot parcel of land. generally located at 1025 Cook Ave. Tax ID: A03652
3. The applicant will submit and obtain a building permit for the addition within 6months of variance approval and have the addition completed within 12 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 6 months and complete construction within 12 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 -6000 zoning districts allow residential remodeling and additions to existing structures.