



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, October 4, 2017 @ 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

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

Call the meeting to order.

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

Public Comment

Approval of Minutes:

1.

The minutes of the Board meeting of September 6, 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. **Return item: City Variance 1267 –2409 Rosewyn Lane** - A variance from Section 27-308 requiring a minimum 3 foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554. Presented by Karen Husman, Planner I

- b. **City Variance 1268 –919, 919 ½, 921 N 25th Street – Lot Area** - The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20-foot rear setback to allow a 6-foot rear setback in a Residential 7,000 (R-70) zone, on a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A16441. 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: 10/04/2017

Information

Subject

Attachments

BBOA_2017_09_06_draft

CITY BOARD OF ADJUSTMENT

MINUTES September 6, 2017

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

TOTAL NUMBER OF APPLICATIONS 2017	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	07/06/2017	08/02/2017	09/06/2017	10/04/2017	11/01/2017	12/06/2017	TOTAL
Variance	1	1	7	2	1	3	1	3	1				20

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

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

Attending:

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 August 2, 2017 minutes. Board member Hagen seconded the motion with the following corrections: Variance 1266, the NO votes were called by Jeff Bollman and Oscar Heinrich, Martin Connell voted in the affirmative. Minutes were approved by unanimous voice vote 6-0.

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.

Chairman Noennig, Board members Hagen and Connell discussed their site visit before the meeting and spoke of the possible options.

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. She reviewed the hearing and presentation processes for the meeting and acting on each variance.

Nicole Cromwell read the legal description for **Variance #1267**:

Karen Husman presenting:

City Variance 1267 –2409 Rosewyn Lane - A variance from Section 27-308 requiring a minimum 3-foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554

RECOMMENDATION

Planning Staff is recommending denial of the findings for granting a variance.

Questions for Staff:

Board member Connell wished to clarify that we are talking about the shed not the pool. Staff affirmed and added the shed contains plumbing and electrical. The Building department requires a permit for anything containing electrical and plumbing regardless of the size. It also requires a firewall for anything in a 5-foot setback area.

Chairman Noennig asked for setback requirement clarification. The building code requires 3-foot setback and a fire wall or a 5-foot setback.

Chairman Noennig asked what the distance is now between the house and pool shed. 5 foot 6 inches.

Staff indicated the shed is possibly setting on the property line or is over it.

Board member Bollman confirms this variance is for the north property line. Correct, other permits would have to be approved. Board member Bollman stated the east property line issue would also be in question and could we delay action and rehear this because there are 2 issues that need to be resolved.

Nicole Cromwell –the site plan is not accurate. Setbacks are not required for on or under the ground.

Karen Husman- if you choose to delay, an abandonment of the alley from engineering could be pursued. They could also negotiate with the neighbor to the north for an easement.

Chairman Noennig - assuming that the property lines were determined, there is still an issue of setbacks and building code requirements.

Board member Bollman –A lot variance was done in 2010. No setback variances for detached structure setbacks in the area

Public Hearing opened at 6:22pm

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1267**.

Cheryl Morgan, 2409 Rosewyn, owner

The shed cannot be seen from the Poly Food Basket. The Poly Food Basket has a retaining wall that was not finished. She finished the wall to retain the mud that was encroaching on her property, at her expense.

Board member Chesarek asked the applicant if she agrees that the shed is on the property.

Cheryl Morgan – the current survey indicates the shed is on the property line. The previous survey did not indicate this. She was unaware of the necessary building permit because it is less than 200 square feet.

Don Thompson, Thompson Pools

He believes the pool shed can be altered, the previous rules said you could build to the property line. The City cannot tell him where the alley width begins. He claims the City will never use it as an alley.

Board member Hagen asked if the pool can be 3 foot shorter and move the shed in 3 foot. Yes at a considerable expense. The shed was there when the pool was installed.

Cheryl Morgan points to the photos submitted showing other sheds in the alley. She is upset about the weeds and junk.

OPPOSED

None

The public hearing was closed at 6:42 PM.

Discussion

Board member Chesarek reiterates the issues. He believes this is out of the realm of this board.

Chairman Noennig explains the other issues at hand to prevent a denial. If denied, a one year waiting period is mandatory and the code enforcement does not stop.

Chairman Noennig – gives the applicant an opportunity to withdraw the variance application or continue it for 30 days.

Chairman Noennig made a motion and BOARD MEMBER Bollman seconded the motion to continue **City Variance #1267** for 30 days.

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 continue City Variance #1267 passed 5-1.

Other business:

The next meeting will be on October 4, 2017.

The meeting adjourned at 6:52 PM.

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



City Board of Adjustment

Meeting Date: 10/04/2017

SUBJECT: City Variance # 1267- 2409 Rosewyn Lane

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

Return item: City Variance 1267 –2409 Rosewyn Lane - A variance from Section 27-308 requiring a minimum 3 foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554.

Presented by Karen Husman, Planner I

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of denial for Variance #1267, based on the determinations for granting a variance at the August 6, 2017, Board of Adjustment meeting. The applicant considered options and decided to withdraw this application. **Per the attached written request; the applicant has requested withdrawal of this application because they have decided to remove the structure.**

APPLICATION DATA

OWNERS: Cheryl Morgan

PURPOSE: To decrease the minimum structure side setback from 3' to 0'

LEGAL DESCRIPTION: Srite Acres Subdivision, Lot 3A

ADDRESS: 2409 Rosewyn Lane

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-9600

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property – Variance #1028, lot size variance to allow 14,000 sf for 2 sfd. (denied in 2001); Variance #1067, lot size variance to allow a 7,309 square foot lot in a R-9600 zoning district (approved in 2010).

Surrounding Property – There have been 5 variance requests in this area. Three were for lot size (two approved one denied), two were for setbacks (one approved and one denied).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96
Land Use: Commercial
SOUTH: Zoning: R-96
Land Use: Residential
EAST: Zoning: R-96
Land Use: Residential
WEST: Zoning: R-96
Land Use: Residential

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum 3-foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location.

In this particular area of Billings, many of the homes and accessory buildings were built in the late 1930's. There are several examples of accessory structures in the area that are closer to the property line than what is required under the current zoning regulations. Staff review of the surrounding neighborhoods found a number of storage sheds that may not meet the current setback requirements, none appeared to be anything other than storage and would not require a building permit. In addition, Staff research found there is an existing ten-foot alley dedicated with the original subdivision that has never been improved by the City. Many of the property owners have assumed the property was their own and used it as such. In this situation, because the property owner did not get a permit for the structure and it was not reviewed for compliance prior to construction, it appears they have started to build on property that is not owned by them. According to the site plan submitted, the measurements indicate the new structure encroaches into the dedicated alley as shown on the recorded plat. Variance requests can be considered for property within the Zoning Jurisdictional area owned by the applicant. If the structure is not encroaching into the platted alley, the rear setback would also be in question as the structure may be at a 0 setback from the rear property line as well.

The building division provided the following comments with regard to this application: 1. The pool equipment shed is required to have a building permit. Only accessory residential STORAGE sheds under 200 sf are exempt from permitting. If the structure is used for anything other than storage, i.e. pool equipment, then a building permit is required regardless of the building size. Plumbing and electrical permits are also required and must be obtained by the state licensed professionals doing the installation. 2. The wall facing the property line and the side walls within 5' of the property line are required to be 1-hr rated. No openings or projections (eaves or overhangs) are permitted within 2' of the property line. 3. Even if the variance is approved, the pool shed may not meet building code requirements and may still need to be re-built or significantly remodeled to meet all code requirements.

RECOMMENDATION

The applicant has requested withdrawal of this application because they have decided to remove the structure.

Attachments

Withdrawal Request
Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

9-21-17

Please withdraw Variance #1267

Thank you-

Cheryl Morgan
2409 Rosewyn Ln.
59102
697-3153



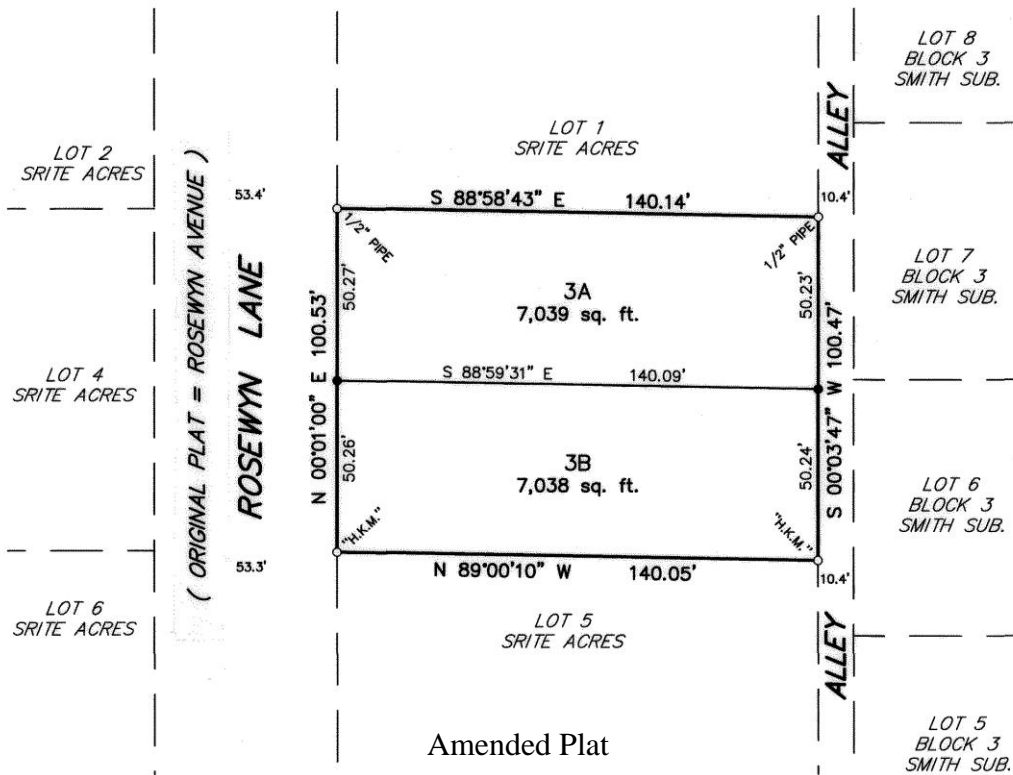
ATTACHMENT
Surrounding Zoning & Site Location



ATTACHMENT
Site Photographs



Aerial Photograph



ATTACHMENT
Site Photographs



Looking West subject property

ATTACHMENT
Site Photographs, Continued



North side of the subject property



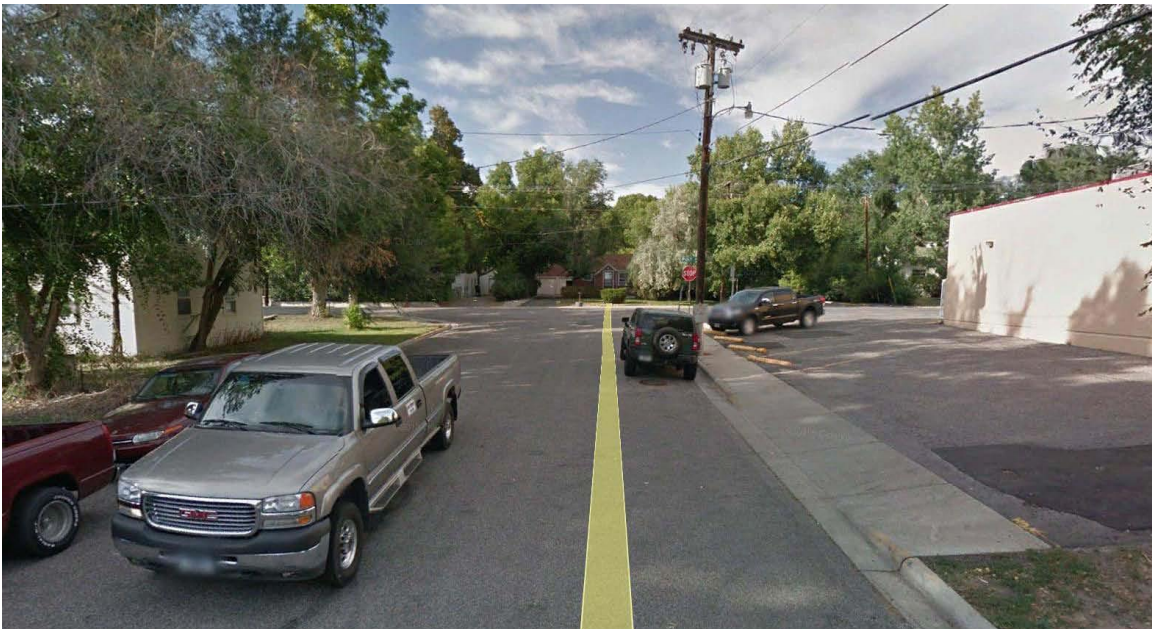
Subject property accessory structure

ATTACHMENT

Site Photographs, Continued



Looking east



Looking North

ATTACHMENT
Site Photographs, Continued



Looking south

ATTACHMENT

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1267 **- Project #** PZ-17-00136

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 # A14554 CITY ELECTION WARD # 4

Legal Description of Property: Write Acres
Lot 3A

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

2409 Rosewyn Ln.

Zoning Classification: R-96

Size of Parcel (Area & Dimensions): See print out 7,309 SF

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance(s) Requested: allow small storage shed - 1/2 mechanical
3 Ft required 1/2 storage
4" provided

Facts of Hardship: Storage shed should be no problem as it cannot be seen by neighbors. Approved swimming pool needs utility room to put the swimming pool equipment. Pictures included

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

Owner(s): Cheryl Morgan

(Recorded Owner)

2409 Rosewyn Ln.

(Address)

Billings, MT 59102 697-3153

(Phone Number)

(email) mom.gram.morgan@

brsnan.net

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: Cheryl Morgan Date: 8-7-17

(Recorded Owner)

utility room

where several neighbors have same type of sheds up next to fences

ATTACHMENT
Applicant Letter

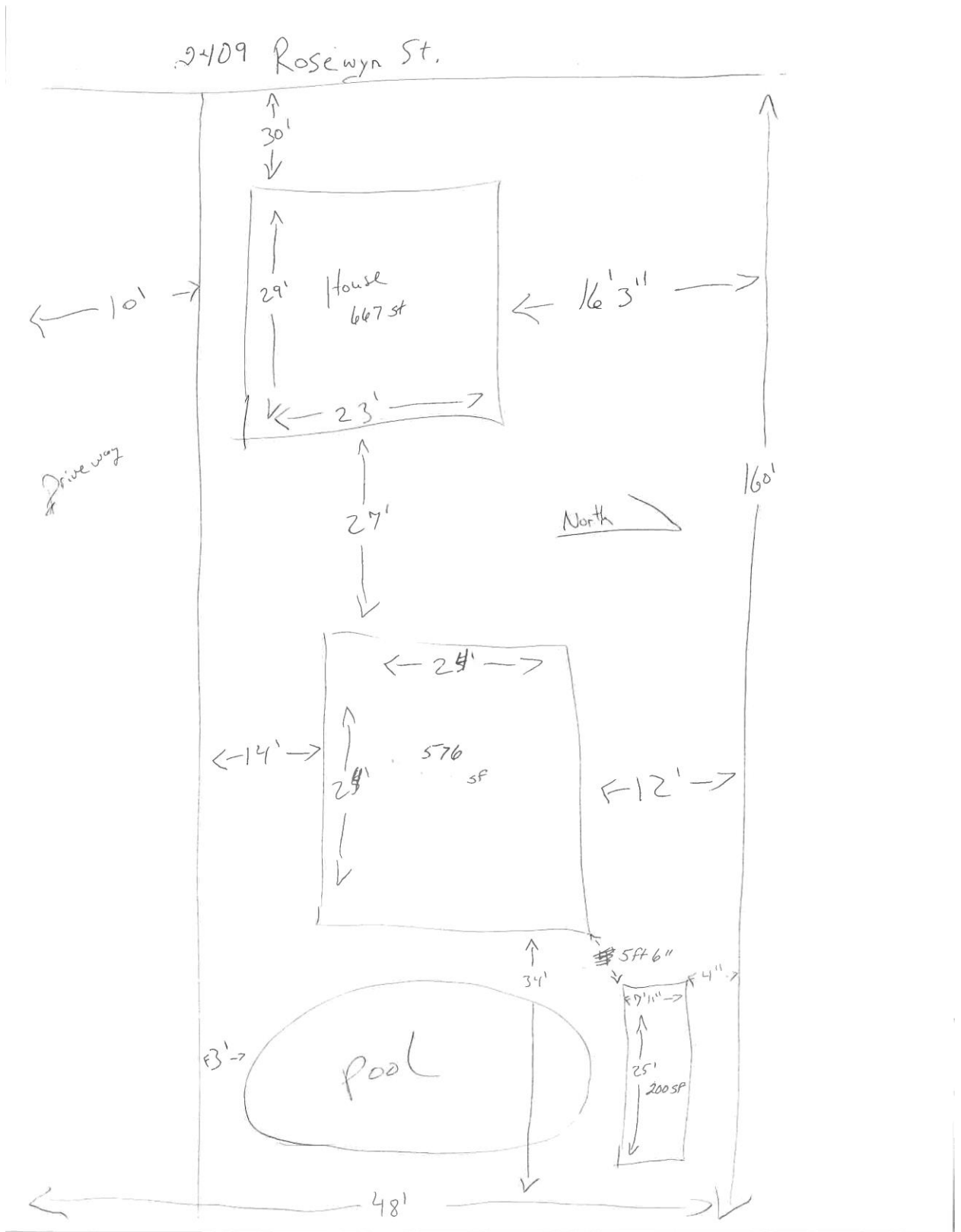
- (1) (a) Due to space constraint
& need for swimming pool
utility room & storage,
it blocks nobody's view,
vs the dog wash @ Poly
Food Basket next door which
is much higher than the fence.
- (1) (b) See above.

(2) See above for reasons. Construction
will match garage & house.
House is about 70 years old
& 1/2 of the properties on this
street is out of compliance.
(Pictures attached)

(3) Site plan on separate sheet.

Cheryl Morgan
8-7-17
2409 Rosewyn Ln.
Billings, MT 59102

ATTACHMENT
Site Plan



DETERMINATIONS

Variance #1267

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 complete a non-conforming structure partially completed without benefit of a building permit. The placement of the structure appears to be partially in a dedicated alley owned by the City of Billings.

- 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 and lot size. There have not been any variances approved, nor did staff find any non-conforming properties for an equipment shed that contained electrical and/or plumbing. 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 setback for less than allowed (zero feet at side) 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 would confer a privilege to this applicant that others in the subdivision do not have. There are no variance requests granted in this subdivision for setbacks on an equipment shed.

- 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. Approval of this variance would not promote the health, safety and general welfare of the neighborhood residents.

- 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 has no conditions for a variance that cannot be granted for building partially on property that is not owned by the applicant.

- 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;**

Time limit can be set for removal of the structure to make it compliant on the subject property and not in the platted alley.

- 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, so long as they are constructed on property owned by the applicant.



City Board of Adjustment

Meeting Date: 10/04/2017

SUBJECT: Variance #1268- 921 N 25th St.

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1268 –919, 919 ½, 921 N 25th Street – Lot Area - The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20-foot rear setback to allow a 6-foot rear setback in a Residential 7,000 (R-70) zone, on a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A16441. Presented by Karen Husman, Planner I.

RECOMMENDATION

Planning Staff recommends conditional approval of the variance, based on the criteria for granting a variance.

APPLICATION DATA

OWNERS: KPP LLC
AGENT: Trina White
PURPOSE: to allow the financing and sale of an existing duplex & SFD
LEGAL DESCRIPTION: a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing
ADDRESS: 921 N 25th St.
EXISTING LAND USE: Residential & Multi Family
PROPOSED LAND USE: Residential & Multi Family
EXISTING ZONING: R-70

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property – Records show there have been twenty-three variance requests in this subdivision. The variance requests have been for lot coverage, setbacks, increase in non-conforming use and multiple dwelling units on a small lot. Three of the twenty-three variances were denied and they included one change in non-conforming use, Variance #1147 was denied for a request to approve 7,000 square feet for 2 new dwelling units in an R-70, and Variance #1225 was conditionally approved for an existing fourplex on a 7,000 sf lot but denied for a new fourplex on a 7,000 sf lot.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70
Land Use: Residential & Residential Multi Family
SOUTH: Zoning: R-70
Land Use: Residential
EAST: Zoning: R-70
Land Use: Residential
WEST: Zoning: Public
Land Use: School

BACKGROUND

The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20-foot rear setback to allow a 6-foot rear setback in a Residential 7,000 (R-70) zone, on a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing. The purpose of the variance is to allow the financing and sale of an existing property and no construction or reconstruction is proposed at this time.

Several dwellings in the area date from the same time period and ten of those properties have similar nonconforming lots for the number of dwelling units and may be over lot coverage or not have required setbacks.

The BOA has reviewed fifteen similar variances in this subdivision for lot area, and denied two of those requests. The remaining thirteen variances in the subdivision have been approved. There are ten similar properties in the area with similar nonconforming lots. The proposed variance is not out-of-character for this area and neighborhood. Staff did not receive any comments from other City Divisions or from the surrounding property owners concerning this variance request.

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval of the request based on the criteria for variances as presented within this report. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other property in the neighborhood. Thirteen similar variances have been granted in this area and there are similar development densities in the neighborhood.

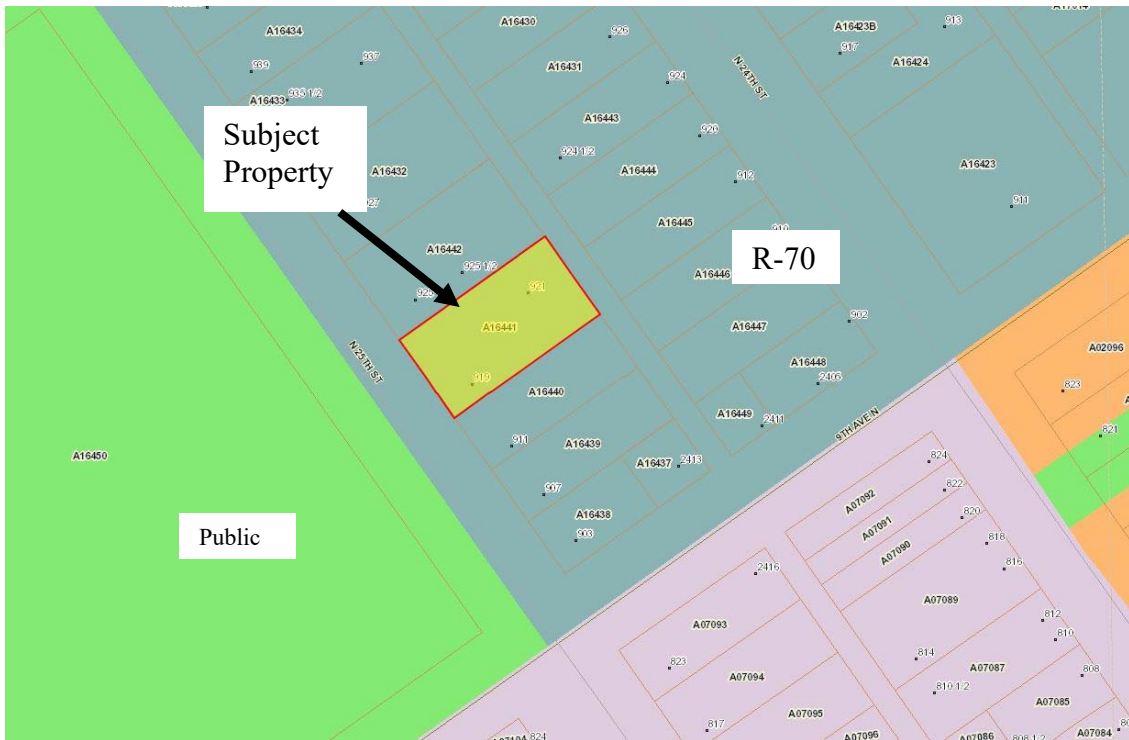
RECOMMENDATION

Planning Staff recommends conditional approval of the variance, based on the criteria for granting a variance.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

Zoning Map & Site Photos



Surrounding Zoning



ATTACHMENT
Site Photographs



Subject Property



ATTACHMENT
Site Photographs, Continued



South



North



North of subject property

Attachment
Applicant letter & Site Plan

September 6, 2017

Paul Noennig, Chairman

Board of Adjustments

Attached is the variance paperwork on 919- 921 North 25th Street, Billings.

The property is currently being used as a up/down duplex with an additional single family 2 bedroom rental unit on the property. The current owner is the Estate of Randal Kreiter, although the tax code shows a KBP LLC. The property had been used as an up/down rental with an additional single family home for many years. Mr Kreiter had owned this property for approx 11 years. He passed away suddenly in a motorcycle accident in October 2015.

The tenant in the single family 2 bedroom home has been there for 2+ years, and he intends to continue to occupy the property. The up/down duplex has been rented for many many years by the same occupants at a reduced rate until Mr Kreiter passed away. Those individuals have since moved and the estate has rented the property at current market rates. Again, those individuals intend to continue to occupy the property.

Since the property is in an estate the personal representative, assigned by the courts, is attempting to liquidate the assets. The property was listed as a tri-plex as there are three individual units, with three individual kitchens, living rooms, etc.

The purchaser has attempted to procure financing on the property as a tri-plex. The appraiser appraised the property as the "highest and best use" as a tri-plex. To secure a loan, we are attempting to be granted a variance on the tri-plex.

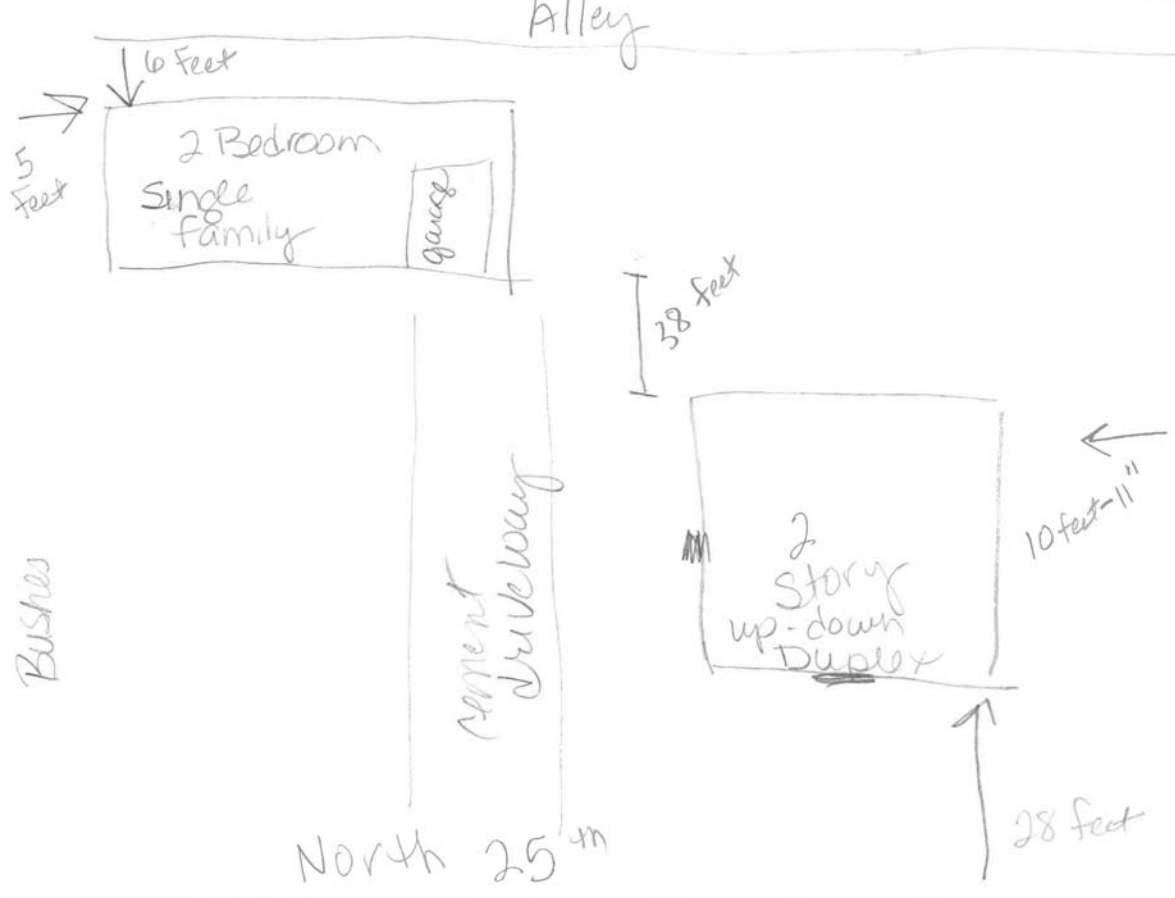
The surround properties are a mix of single family and multifamily units. The property sits across from Dehler Park and has adequate off street parking for all current occupants.

In addition to the multi-family variance, a setback variance for the 2 bedroom single family home would be required. This structure was built sometime 60+ years ago and is 6 feet from the alley (a 20 foot setback is required).

Thank you for your consideration.

Trina White, Broker

Attachment



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 not any special circumstances that exist in this situation other than the lot is less than required for current zoning requirements and the structures were built in 1940, before the current zoning was in place.

- 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 development occurred in the 1940s and 1950s. Thirteen similar variances have been granted in the neighborhood and there are at least 10 properties in the neighborhood that exhibit similar development density and setbacks. Denying the variance would deprive the applicant of rights commonly enjoyed by other tracts 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 variances have been granted in the area and other properties are developed with smaller lot area without the benefit of a zoning 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 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 reduction in minimum lot size variance request:

1. The variance is to allow a lot area of 16,600 square feet for a two-family dwelling and a single family dwelling on an undivided parcel to allow a minimum lot area of 10,410 square feet and from Section 27-308 requiring a 20 foot rear setback to allow a 6 foot rear setback in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to a portion of Lot 3, Block 10 Sunnyside Subdivision 2nd Filing generally located at 919 and 921 N 25th St.
3. Any future re-construction of the existing structures will require compliance with other all other zoning regulations and city ordinances that apply at the time of 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**

No time limit is required since no construction is planned at this time.

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 – two-family dwellings and single family dwellings are allowed in the R-70 zone.