



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, February 7, 2018 @ 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

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

Call the meeting to order.

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

Public Comment

Approval of Minutes:

The minutes of the Board meeting of January 3, 2018.

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 1273 - 2303 1st Ave South** - A variance from Section 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77% (16,240 sf total) in a Controlled Industrial (CI) zone, on Lots 1 through 6, Block 135 of Billings Original Town, a 21,000 sf parcel of land. The purpose of the variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. Presented by: Karen Husman, Planner I

- b. **City Variance 1274 – 1727 Yellowstone** - The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for two (2) dwellings units and Section 27-308 requiring a minimum 20 foot rear setback to allow a 0-foot rear setback in a Residential 7,000 (R-70) zone, on Lot 7, Block 4 of Burg Subdivision, 2nd Filing, an 8,400 square foot parcel of land. The purpose of the variance is to allow the sale and financing of the subject property and no construction or reconstruction is proposed at this time. Tax ID: A03841. 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: 02/07/2018

Information

Subject

The minutes of the Board meeting of January 3, 2018.

Attachments

BBOA_2018_01_03

CITY BOARD OF ADJUSTMENT

MINUTES January 3, 2018

Name	Title	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/05/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018
David Mitchell	Board member	1											
Dave Hagstrom	Board member	1											
Paul Hagen	Board member	1											
Frank Chesarek	Vice Chairman	1											
Oscar Heinrich	Board member	1											
Martin Connell	Board member	1											
Mark Noennig	Chairman	1											

TOTAL NUMBER OF APPLICATIONS 2018	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/05/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018	TOTAL
Variance	2												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 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 Connell made a motion for the approval of December 6, 2017 minutes. Board member Hagen seconded the motion to approve. Minutes were approved by unanimous voice vote 7-0.

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

Nicole Cromwell read the legal description for **Variance #1271**:

City Variance 1271 –802/804 Lewis Avenue – Lot Area - A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for 2 existing dwellings on an undivided parcel to allow a minimum lot area of 8,028 square in a Residential 7,000 (R-70) zone, on Lot 3 & that part of Lot 2 north of the alley, Block 1 of Rickman Subdivision and the 5 feet of the abandoned adjacent alley on the west. The purpose of the variance is to allow the re-financing of an existing property and no construction or reconstruction is proposed at this time. Tax ID: A13277

Recommendation: Conditional approval.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 existing single family dwellings to allow a lot area of 8,028 square feet in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 3 & that part of Lot 2 north of the alley, Block 1 of Rickman Subdivision and the 5 feet of the abandoned adjacent alley on the west generally located at 802/804 Lewis Avenue.
3. Any future re-construction of the existing structure will require compliance with 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.

Questions for Staff:

Board member Heinrich asked if this Variance was for the purpose of obtaining a rebuild letter. He asked Staff to please explain what a rebuild letter is.

Chairman Noennig **opened the public hearing at 6:11 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1271**.

Thomas J. Grimm, owner –not present

OPPOSED

None

Discussion

The public hearing was closed 6:12 PM.

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Heinrich seconded the motion to approve **City Variance #1271**.

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

The motion to approve with conditions, City Variance #1271 passed 7-0.

Nicole Cromwell read the legal description for **Variance #1272**:

City Variance 1272 –802 Avenue B, 1420/1424 8th St West – Lot Area & Setback - A variance from Section 27-308 requiring a minimum lot area of 7,000 square feet for a duplex to allow a minimum lot area of 6,201 square feet (proposed Lot 2B) and from 27-308 requiring a 15-foot front setback (8th St West) to allow a minimum front setback of 8 feet (proposed Lots 2B and 2A) in a Residential 6,000 (R-60) zone, on the east 87.5 feet of Lot 2, Block 1 of Algeo Subdivision. The purpose of the variance is to allow the subdivision of the property so the existing up/down duplexes can be sold separately. No construction or reconstruction is proposed at this time. Tax ID: A02167

Recommendation: Conditional approval.

Planning staff has reviewed this application & is recommending conditional approval of Variance #1272. Based on the determinations for granting a variance.

1. The variance is to allow a minimum lot area 6,201 sf for an existing duplex & allow a 15-foot front setback & a minimum front setback of 8 feet. No other variance is intended or implied with this approval.
2. The variance is limited to the legally described property at 1420 and 1424 8th St W.
3. Any future re-construction will require compliance with other all other codes & ordinances that apply
4. These conditions of approval shall run with the land described

Questions for Staff:

Board member Heinrich –asked if the applicant wishes to split the lot for resale. Staff indicated the Variance request is to split the property, obtain a rebuild letter and explained that setback requirements would still have to be met. Will there be future problems if Ave B were widened. In that case the City would buy right of way.

Chairman Noennig **opened the public hearing at 6:20 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1272**.

Maxine P. Allman, owner
Clay Schwartz, agent

OPPOSED

None

Discussion

The public hearing was closed at 6:21 PM.

BOARD MEMBER Chesarek made a motion and BOARD MEMBER Hagen seconded the motion to approve **City Variance #1272.**

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

The motion to approve with conditions, City Variance #1272 passed 7-0.

Other business:

The next meeting will be on February 7, 2018.

The meeting adjourned at 6:22 PM.

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



City Board of Adjustment

Meeting Date: 02/07/2018

SUBJECT: Variance #1273- 2303 1st Avenue South

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1273 - 2303 1st Ave South - A variance from Section 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77% (16,240 sf total) in a Controlled Industrial (CI) zone, on Lots 1 through 6, Block 135 of Billings Original Town, a 21,000 sf parcel of land. The purpose of the variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. Presented by: Karen Husman, Planner I

RECOMMENDATION

Planning staff is recommending denial, based on the findings of the 7 criteria.

APPLICATION DATA

OWNERS: Mark Sevier

PURPOSE: The purpose of the variance is to allow the addition of a 2,400 square foot un-enclosed canopy to the southwest corner of the building

LEGAL DESCRIPTION: Lots 1 through 6, Block 135 of Billings Original Town

ADDRESS: 2303 1st Ave S

EXISTING LAND USE: Dovetail Designs

PROPOSED LAND USE: Same

EXISTING ZONING: CI

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property – There have been four variance requests to exceed the maximum lot coverage in this subdivision. Two of the requests were for residential properties (one was denied), and two of them were for commercial properties (both were approved).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: CI
Land Use: Commercial & Industrial
SOUTH: Zoning: CC
Land Use: Commercial Office
EAST: Zoning: CI
Land Use: Commercial & Industrial
WEST: Zoning: CI
Land Use: Commercial & Industrial

BACKGROUND

The applicant is requesting a variance 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77%, in order to construct a new canopy to cover an existing work area. The applicant would like to add 2,400 square foot of covered space. The proposed canopy is 490 square feet over the maximum allowed lot coverage.

The hardships shown by the applicant are not the types of hardship considered for granting a variance. Variances are provided in order to prevent “unnecessary hardship”, which typically refers to hardship inherent in the physical characteristics of the land. The applicant has not shown any type of hardship based upon the physical surroundings, shape of or the topography of the property. Setback and lot coverage standards are established in order to prevent the overcrowding of land and to maintain adequate open space. By establishing such standards, the City is able to protect the health and general welfare of the community.

There have been two commercial variances granted in this subdivision for additional lot coverage. Variance #174 for 3018 1st Avenue North, was granted in 1978 for an existing nonconforming structure, prior to the zone change to Central Business District (CBD). The current zoning for this parcel allows 100 percent lot coverage. Variance #614 for 2120 3rd Avenue North, was granted in 1990 to allow a new addition to an existing structure, although staff had recommended denial based on their findings for the criteria of hardship. The current zoning of the parcel at 2120 3rd Ave North is EBURD - Rail Spur Village and this zoning allows between 75 and 90 percent lot coverage depending on the type of building.

The applicant would like to add 2,400 square feet of canopy coverage to the south side of the building. The applicant could add 1,910 square feet without a variance approval. By adding on to the building beyond what is allowed, the applicant is creating the hardship.

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of denial for the variance based on the findings of the 7 criteria and determinations within this report.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

Attachments- Surrounding Zoning



Ariel Photo



Photos



Subject Property



Looking NW on S 23rd

Photos Continued



South Across 1st Ave S



Looking East

Applicant Letter



December 27, 2017

Established 1979

Planning and Community Services Dept.
2825 3rd Ave North, 4th Floor
Billings, MT 59101

Variance Application
Dovetail Designs & Millwork Inc
2303 1st Ave S
Billings, MT 59101

Lots 1-6, Block 135, Billings Original Township

Chairman, Board of Adjustments.

I moved my architectural millwork shop into this building in 1993. At this time, there was a 30' x 60' canopy over a concrete slab of the same size. The rest of the lot was gravel. This canopy gave us cover in storage of materials, and shipping and receiving of products.

We have just finished installing an 80' boulder pit, paving the entire 9100 sq. ft. lot, and repairing the structure carrying the canopy. We have allowed for a 5' strip of ground inside the perimeter fence for planting of 7 trees next spring. We now want to extend the above mentioned 30' canopy the entire length of the 140' building.

1.A) I am applying for a variance because extending the canopy will result in total area covered by structure to exceed the 75% allowable by 2%.

Lot size 150' X 139.90' = 20986'

Building size 85'-9" x 140' = 12,005'

Proposed canopy size 30' x 140' = 4200'

Total area covered by structure = 16,205'

Percentage of lot covered by structure = 77%

1.B) This extension of the canopy will give us an additional 2400 sq. ft. of covered space, which will be utilized in facilitating deliveries, shipments, and outside storage. To shrink the canopy to fit the 75% coverage would not be functionally or aesthetically pleasing.

2) This extension of the canopy will not change the function of the property, just make it more efficient in handling large amounts of stored wood. As we will be putting our dust collector on top of the canopy, the wind protection allowed by a wall on the west end will keep sawdust from blowing off the property.

3) See attached site plan prepared by Sanderson Stewart Engineers.

2301 1st Ave. So.
Billings, MT 59101
(406) 248-5010
Fax (406) 248-8277
E-mail: marksevier@aol.com

**DOVETAIL DESIGNS
& MILLWORK INC.**

4) See full size prints prepared by Sanderson Stewart. ^{Established 1979}

4.l) Height of canopy will match existing canopy height of 17'.

5) See attached photos.

6) See attached radius map showing all property within 300' of the exterior boundaries of the property.

7) See attached Certified List of Property Owners as supplied by the Dept. of Revenue and the County Clerk and Recorder.

7A) See attached mailing list on supplied gummed labels.

8) See attached check # 26845 for \$540.00 Commercial Application Fee and \$45.00 deposit for the zoning request sign to be returned at the first public hearing.

Thank you for your consideration in approving this variance.

Sincerely,

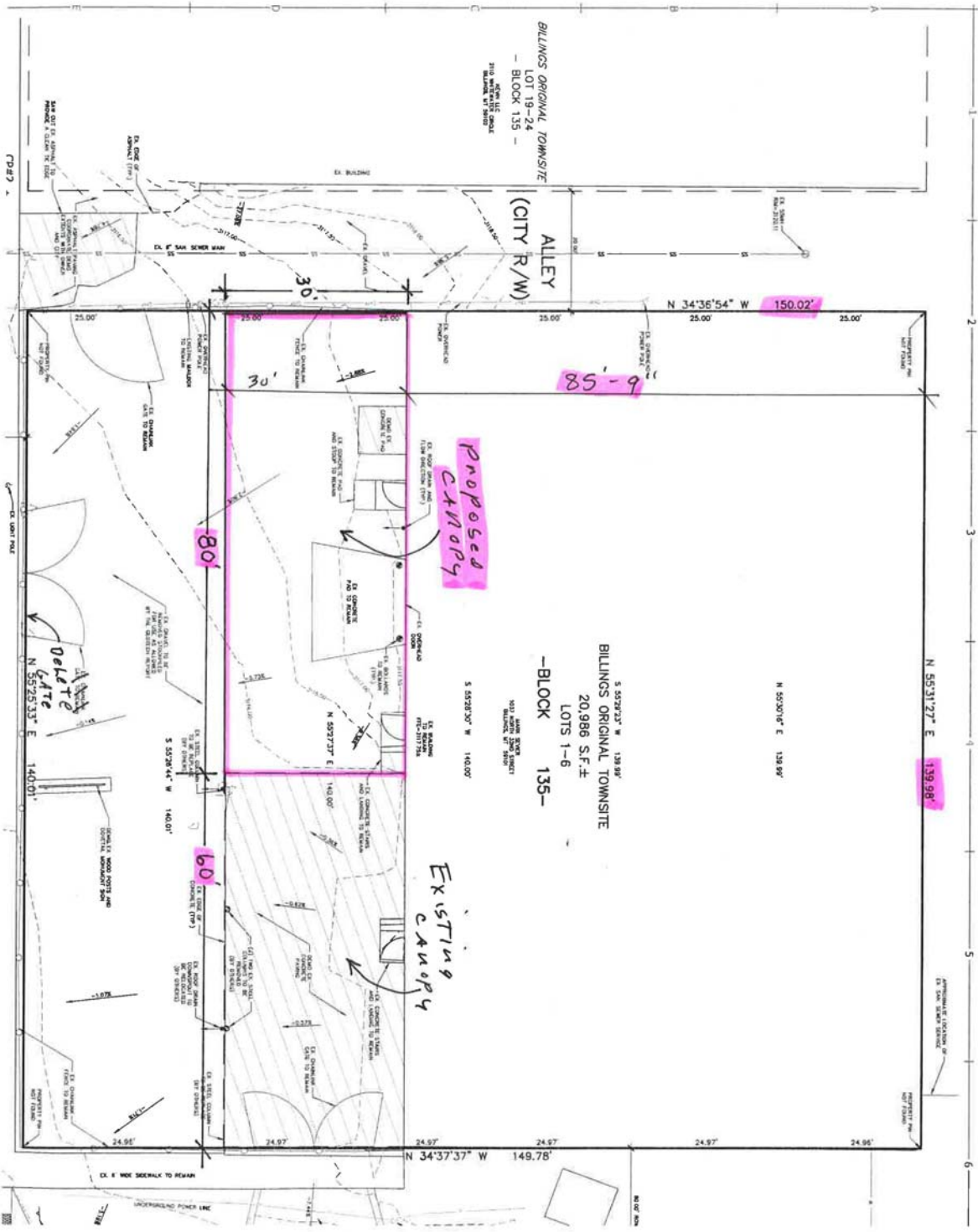


Mark Sevier

President, Dovetail Designs & Millwork Inc.

2301 1st Ave. So.
Billings, MT 59101
(406) 248-5010
Fax (406) 248-8277
E-mail: marksevier@aol.com

Site Plan



VARIANCE 1273
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. In this situation, the structure was built prior to the current zoning requirements. The existing commercial structure is currently in conformance with lot coverage restrictions for CI zoning districts. The property owner could add up to 1,910 square feet to maximize the lot coverage to 75%. The applicant is asking to increase the lot coverage to 77% for an addition of 2,400 square feet of covered area (490 square feet more than allowed).

- 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 have been variances that have been granted in the area for setbacks and clear vision areas. There have been two commercial variances for lot coverage, one similar variance granted for lot coverage on a commercial lot. Therefore, allowing the applicant a variance for 77% lot coverage 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. There has been one similar variance approved in this subdivision on block 64, granted by the BOA in 1990, although staff recommended denial of the variance, with valid determinations.

- 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 for a new structure or addition would *not* be in harmony with the general purpose and intent of this Chapter and with the Growth Policy. Setback and lot coverage standards are established in order to prevent overcrowding of land and to maintain adequate open space.

- 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 formulated the following conditions, **if the Board of Adjustment votes to approve** the variance;

1. The variance from Section 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77% (16,240 sf total) in a Controlled Industrial (CI) zone, a 21,000 sf parcel of land. The purpose of the variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. No other variance is intended or implied with this approval.

2. Construction shall be in substantial conformance to the submitted site plan.
3. A building permit shall be acquired and construction completed within 1 year of approval of this variance.
4. No construction before 8 a.m. or after 9 p.m.
5. The variance is limited to Lots 1 through 6, Block 135 of Billings Original Town.
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;

The requested variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. Upon variance approval, construction shall be completed within one year of approval of the variance.

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 – Controlled Industrial zoning districts allow the existing use and its expansion.



City Board of Adjustment

Meeting Date: 02/07/2018

SUBJECT: City Variance #1274 - 1727 Yellowstone Ave.

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1274 – 1727 Yellowstone - The applicant is requesting a variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for two (2) dwellings units and Section 27-308 requiring a minimum 20 foot rear setback to allow a 0-foot rear setback in a Residential 7,000 (R-70) zone, on Lot 7, Block 4 of Burg Subdivision, 2nd Filing, an 8,400 square foot parcel of land. The purpose of the variance is to allow the sale and financing of the subject property and no construction or reconstruction is proposed at this time. Tax ID: A03841. Presented by: Karen Husman, Planner I

RECOMMENDATION

Conditional Approval.

APPLICATION DATA

OWNER: Jacob Platt
LEGAL DESCRIPTION: Lot 7, Block 4 of Burg Subdivision 2nd Filing
ADDRESS: 1727 Yellowstone Avenue
CURRENT ZONING: R-70
EXISTING LAND USE: Residential
PROPOSED USE: Residential
SIZE OF PARCEL: 8,400 sf

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

There have been four variance applications in this subdivision all were for setbacks, all approved. There have been 10 similar variances for multiple units on a parcel of land smaller than what is allowed granted in the surrounding neighborhoods (nine approved, one was denied).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Residential- 7000 (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
Land Use: Residential single family

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for 2 dwelling units and Section 27-308 requiring a minimum 20 foot rear setback to allow a 0-foot rear setback in a Residential 7,000 (R-70) zone, on Lot 7, Block 4 of Burg Subdivision 2nd Filing, an 8,400 square foot parcel of land for two existing single family dwellings.

The lot is in an older part of Billings and most of the surrounding lots were developed before zoning regulations existed. The applicant is wishing to obtain a rebuild letter for the property so they are able to complete the sale of the property. According to the county information available, the existing dwellings were constructed in 1954, prior to current zoning regulations. There have been similar variances approved in the area, 10 for lot size (one denied) and four variances for setbacks (all approved). The majority of the lot size variance applications were for multiple dwelling units in one or more buildings. One was for an existing single family dwelling and a proposed new single family dwelling (this was denied 1998) to allow two dwellings on a 9,600 square foot lot in a Residential-6000 (R-60) zone, varying from the 12,000 square foot requirement at that time. The current regulation for R-60 would allow 2 single family dwellings on a 7,000 square foot lot.

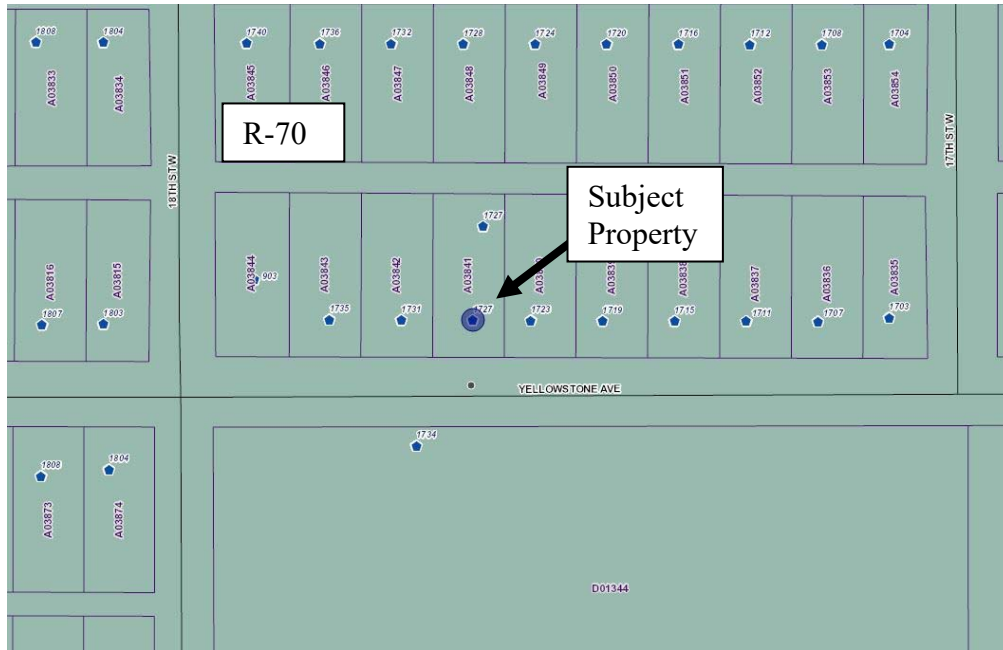
RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report. Staff finds that the proposed variance would provide the applicant similar rights that are enjoyed by other property in the neighborhood.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

Zoning Map



Ariel Photo



Site Photos



Subject property



South Across Yellowstone



East



West



North toward rear of property



House #2 at alley



Looking from Alley to front house

Application



APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1274 - Project # 18-00001

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 # A03841 CITY ELECTION WARD #

Legal Description of Property: LOT 7, BLOCK 4, BURG SUBD 2ND FILING

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

1727 Yellowstone Ave.

Zoning Classification: Residential 7000

Size of Parcel (Area & Dimensions): 140' x 60' 8,400 SF

Covenants or Deed Restrictions on Property: Yes No X

If yes, please attach to application

Variance(s) Requested: I am requesting a Variance to the R7000 zoning regulation so that I can sell my property on 1727 Yellowstone Ave. My lot is 8,330 sq. Zoning Requires 9,600 SF for a 2 unit property. Rear set back to zero for 2nd dwelling.

Facts of Hardship: Potential Home Buyers cannot purchase my home using FHA or VA financing because of the current zoning regulations.

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

Owner(s): PLATT, JACOB R

(Recorded Owner) 1608 FRONT ST. BILLINGS, MT. 59101

(Address) (406) 850-7698 jacobplatt@rocketmail.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: [Handwritten Signature] (Recorded Owner)

Date: 12/29/17

Applicant Letter

Jacob Platt
1727 Yellowstone Ave.
Billings, MT 59101

Dear Chairperson of the Board of Adjustment,

12/31/17

My name is Jacob Platt and I have been a homeowner and resident in Billings, Montana for the last 16 years. I purchased my property on 1727 Yellowstone Ave. as a first time home buyer using FHA financing 15 years ago. My wife and I have just gotten married and are trying to purchase a new home to start our lives together. I am having difficulty selling my property because of current zoning regulations. Potential homebuyers, cannot purchase my property right now using FHA or VA loan financing. I have had multiple offers on my home that I have had to turn down because of these zoning regulations. This is causing hardship for my family and I am hoping that the city of Billings is willing to make an exception to the R7000 zoning regulation so I can sell my property.

When I purchased the property 15 years ago, I did not have an issue using an FHA loan. Due to stricter guidelines, changes have been made to meet approval for both VA and FHA loans. The rental on my property was there when I purchased it, even though it did not conform to R7000. I have included a letter from the Planning and Community Services Department stating that the city of Billings is aware of the operation of the rental within its legal nonconforming status. In fact, there was a tenant residing in the rental when I moved onto the property. My home was operating as a 2 home lot and had housed many previous tenants. I have had many renters since I purchased the home and I have operated the property in conformance with its legal non-conforming status.

The rental on 1727 Yellowstone has been a good home to many residents in Billings. My rental is affordable and provides safe housing in a good neighborhood. I have had no complaints from the city, the neighbors, or the general public for using the property as a rental property for the past 15 years.

I have a potential home buyer for my property that cannot get financing unless this variance is approved. The variance approval would not change the past, current, or future use of the property but merely allow the property to be sold to the buyer obtaining FHA financing. We currently have a buy/sell agreement to close on the sale of the home in February. If the variance is not approved the buy/sell will be terminated and the buyer will be forced to find another home.

The approval of this variance would have no change in its current usage or negative impact upon the city and the surrounding community. I realize that my lot size is not large enough to meet R7000 current zoning standards. I am hoping that you will make an exception and approve the variance so I can get a buyer to purchase my property. Thank you for your consideration.

Respectfully,

Jacob Platt

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 both of the homes on the property were built in 1954, 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. There have been nine similar variances granted in the surrounding neighborhoods. 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.

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 decrease the minimum lot size from 9,600 square feet to 8,400 square feet for two existing single family dwellings and to allow a zero-foot setback to the rear of the second dwelling along the alley property line. No other variance is intended or implied with this approval.
2. The variance is limited to the Lot 7, Block 4 of Burg Subdivision, 2nd Filing, 1727 Yellowstone Avenue.
3. Any future re-construction of the existing structures will require compliance with 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 – single family dwellings are allowed in the R-70 zone.