

**CITY BOARD OF ADJUSTMENT**

MINUTES April 4, 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	1	1	E								
Dave Hagstrom	Board member	1	1	A	1								
Paul Hagen	Board member	1	1	E	1								
Frank Chesarek	Vice Chairman	1	E	1	E								
Oscar Heinrich	Board member	1	1	1	1								
Martin Connell	Board member	1	1	1	1								
Mark Noennig	Chairman	1	1	1	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
<b>Variances</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>2</b>									<b>9</b>

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

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I and Tammy Deines, Planning Clerk.

**Attending:** Pat Davies, Sanderson Stewart; Tim Reedy, Stephen Lethert, Cara Auch, Lindsay Daniel, Ray Smith

**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 Heinrich made a motion for the approval of March 7, 2018 minutes. Board member Connell seconded the motion to approve. Minutes were approved by unanimous voice vote 5-0.

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

There were no disclosures of Conflict of Interest

**Site Visits:**

**BVAR 1278:** Board member Hagen, Board member Heinrich

**BVAR 1279:** Board member Hagen, Board member Heinrich

**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.

**Item #1:**

Nicole Cromwell read the legal description for **Variance #1278:** Karen Husman presented:

**Variance 1278-1134 Jordan Avenue** - The applicant is requesting a variance from Section 27-308 requiring a minimum rear setback of 20 feet to allow a minimum rear setback of 8 feet and from 27-308 requiring a maximum lot coverage of 30% (2,133 sf) to allow a maximum lot coverage of 31% (2,204 sf) in a Residential 7,000 (R-70) zone, on Lot 12, Block 2, Celestial Subdivision, a 7,109 sf parcel of land. The purpose of the variance is to allow the addition of 2 bedrooms to the north side of the home. Tax ID: A28748. Presented by Karen Husman, Planner I.

Nicole Cromwell read the determinations and gave the staff recommendation.

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

1. There are not any special circumstances that exist in this situation other than the applicant wishes to add on the house for a growing family.
2. The subject property is in a newer subdivision with vacant parcels and homes newly constructed and under construction. There have been similar variances granted for setbacks and lot coverage within the same district. Denying the variance for setback and lot coverage would deprive the applicant of rights commonly enjoyed by other tracts in the same district.
3. The variance for setback of 8 feet and 31% lot coverage will not allow the applicant any special privileges. Similar variances have been granted in the area.
4. 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;

**RECOMMENDATION**

Staff recommends conditional approval of the variance. Staff is recommending the following conditions:

1. The variance from 27-308 requiring a minimum rear setback of 20 feet to allow a setback of 8 feet and from the maximum lot coverage of 30% (2,133 sf) to allow a maximum lot coverage of 31% (2,204 sf) to allow an addition into the rear yard. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 12, Block 2, Celestial Subdivision generally located at 1134 Jordan Avenue.
3. The applicant will submit and obtain a building permit for the new addition within 1 year and have it completed within 2 years.
4. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
5. The applicant shall meet all other city code requirements for the proposed

addition, as well as meet the requirements of the CCRs and subdivision requirements, with the exception of this variance.

6. A variance and/or approval must be obtained from the Habitat for Humanity in order to allow a basement (restricted under covenants and restrictions) and a copy of the approval shall be provided to the City Planning and Building Divisions when submitting the building permit application.

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.

### **Discussion:**

Chairman Noennig asked the Board for questions and discussion. In response to a question by Board member Heinrich, Ms. Husman said the applicant wishes to purchase the parcel directly behind this property. She noted the variance will only approve the setbacks and lot coverage and not construction of a basement, which must be approved by the Homeowners' Association and Habitat for Humanity. Board member Hagstrom asked if the house has been built. Ms. Husman clarified and stated the variance request is for the proposed addition.

### **Public Hearing**

At 6:11 p.m., Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1278**.

### **Lindsay Daniel, 1130 Jordan Circle, Billings, Montana**

Ms. Daniel is a neighbor of the Auch's and she spoke in favor of this application.

### **Stephen Lethert, 32 Whitebird Creek Road, Columbus, Montana**

Mr. Lethert is the Power of Attorney for the property owner to the north. Ms. Husman clarified for Mr. Lethert that this variance request has no effect on the property to the north. Mr. Lethert is in favor of this application. The applicant is trying to purchase this property and is negotiating a contract with intent to purchase with an option to purchase by July 1, 2018.

### **Cara Auch, 1134 Jordan Circle, Billings, Montana**

Ms. Auch is the applicant. She stated there is a contract that progresses to a contract of deed. She stated they are working with Habitat for Humanity to amend the Covenants and Restrictions to allow the proposed basement under the two new bedrooms. She introduced Mr. Lonnie Smith, 918 Steffanich, Billings, Montana, who stood with her in support. Per Board member's Hagstrom's request, Ms. Auch explained she has a conventional 30-year loan with zero percent interest. The purchase of the property to the north has nothing to do with this variance request and will not jeopardize her current loan. Ms. Auch explained there is a 20-foot setback in her back yard in addition to an 8-foot utility easement. When applying, she thought the acquisition of the property behind hers would be an asset to this request.

Chairman Noennig asked if there is anyone else wishing to speak in favor or against City Variance #1278. There was none. Chairman Noennig disclosed he wrote the covenants for Habitat for Humanity but it would not be a conflict of interest in this case. He called for a motion. .  
The public hearing was closed at 6:31 PM. Chairman Noennig called for a motion.

**Motion**

**Board member Heinrich made a motion to conditionally approve City Variance #1278 with the conditions recommended by staff. Board member Hagen seconded the motion.**

**Discussion**

Chairman Noennig called for discussion on the motion. There was no further discussion. Chairman Noennig called for a vote on the motion.

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 conditionally approve **City Variance #1278** passed, 5-0.

**Item #2:**

Nicole Cromwell read the legal description for **Variance #1279**. She pointed out a correction of the legal and the notice for this application as the applicant made some changes to the application as the Legal ad was posted. Board members received the revised agenda in the packets.

Karen Husman presenting.

**Item #2: Variance #1279 - N25th St and 7th Avenue N** - The applicant is requesting a variance from Section 27-309 requiring a minimum front setback of 20 feet to allow a 2-foot front setback and from Section 27-309 requiring a minimum side adjacent to street setback of 10 feet to allow an 8-foot side adjacent to street setback in a Residential Professional (RP) zone, on Lots 4-12 and 17-21 of Block 59 Foster’s Addition and Lots 4-11 of Block 269 Billings First Addition, a 1.12 acre parcel of land. The purpose of the variance is to allow the construction of a new medical clinic. Tax IDs: A01966, A01967, A01968, A07375 & A07379.

**Presented by Karen Husman, Planner I, who reviewed the staff report and gave the proposed determinations for Variance #1279.**

1. There are no special conditions or circumstances with the land that create a hardship. In this situation, an effort was made to utilize the property. Designing a facility with several stories in order to meet the required setbacks is less desirable for the type of facility they would like to build at this location.
2. There have been similar variances granted in the area for setbacks as well as others. Therefore, allowing the applicant a variance from the required 10-foot side adjacent to street setback to allow 8 feet and from front setback of 20 feet to allow a 2-foot, does not deprive the applicant of rights commonly enjoyed by other properties in the same district.
3. Granting this variance would not confer a privilege to this applicant that others in the district do

not have. There have been similar variances granted in this and the surrounding subdivisions.

4. The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy. The development of this parcel is encouraged infill development the Growth Policy supports, as well as an asset to the neighborhood;

### **RECOMMENDATION**

Staff recommends conditional approval of the variance. Staff is recommending the following conditions for the variance request:

1. The variance is from 27-309 requiring a minimum side adjacent to street setback of 10-feet to allow a setback of 8 feet and the front setback of 20 feet to allow a 2-foot. No other variance is intended or implied with this approval.
2. The variance is limited to the south Lots 4-12 and 17-21 of Block 59 Foster's Addition and Lots 4-11 of Block 269 Billings First Addition, generally located at the SW corner of 7th Ave. W & N 25 St.
3. The applicant will submit and obtain a building permit for the structure within 1 year and have the construction completed within 3 years.
4. The structure shall be built in substantial conformance to the site plan submitted with this application. The applicant must show compliance with the clear vision area requirements, and if needed the site plan modified to meet the code.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. The applicant shall meet all other city code requirements for the proposed clinic with the exception of 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.

### **Discussion**

Chairman Noennig called for questions and discussion from the members of the Board. Board member Hagen asked for clarification of the required and requested setbacks and it was given by Ms. Husman. Board member Heinrich asked if a zone change to another zoning classification could be made to remove the need for this variance. Ms. Husman replied no other classification would meet this need as it is not located in the Central Business District, which has no lot coverage maximums. Chairman Noennig asked why the applicant cannot build within the current zoning restrictions. Ms. Husman stated the applicant indicated this is the most feasible plan for this type of clinic. Board member Heinrich asked if there are any other similar properties in this area with approved variances. Ms. Husman said similar variances have been granted for Billings Clinic.

### **Public Hearing**

Chairman Noennig **opened the public hearing at 6:28 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1279**.

### **Pat Davies, P.E., Sanderson Stewart, 1300 N Transtech Way, Billings, Montana**

Mr. Davies represents the applicant, Paul Passman, Dialysis Clinic Inc. Jim Reedy, Billings Dialysis Clinic is in attendance. To clarify why they have requested the variance, Mr. Davies stated they have conducted several site studies based on the program. The plan was "pushed back" into the setback to include the adequate drop off space for patients, drive alley access; and meet the goal for additional

parking. The main face of the building is within the setback but the columns encroach into the setback. Mr. Davies said part of the design goal is to provide greenspace to create an attractive view for patients in the treatment space. Chairman Noennig noted that part of the proposed treatment room would be lost if the building on the 7th Ave side was reduced; and he asked if the space is needed. Mr. Davies stated this plan is based on the most efficient use of space and code requirements for treatment spaces. Mr. Davies pointed out this building encroaches into the clear vision area. He offered an exhibit based on the AASTO standard. Ms. Cromwell stated this would not apply and if the building cannot be moved, it will require another variance request submittal. Mr. Davis explained the proposed building encroaches into the clear vision area by six feet. Ms. Cromwell noted a bulb-out into the existing right of way on the proposed site plan. She commented there are provisions in the clear vision standards that the City Engineer can modify the standards at the intersection based on the width of the boulevard without a variance. Mr. Davies acknowledged their intent for this proposal, and Board member Heinrich asked if there is a possibility they will change the site plan and not include the bulb-out. He commented if the building would comply with the setback requirements, the clear vision issue would be resolved. Mr. Davies agreed but stated it would not meet the need for space in the clinic. He said the proposal is for a single story building. Board member Heinrich asked if they have considered abandonment of the alley for more space. Mr. Davies said there has been some discussion but the issue of existing utility and sewer lines precludes it from becoming a buildable space, and it is used by other property owners for garbage collection. Board member Heinrich asked if they have considered purchasing the adjacent property to the east to provide more buildable space for this project.

**Mitch Goplin, 2243 St Andrews Drive, Billings, Montana**

Mr. Goplin is representing Billings Clinic in conjunction with DCI, Inc. He asked the Board to consider approval of the variance request with the understanding it has to meet all other requirements. He stated they are aware of clear vision process, and will apply for another variance if needed. As far as the location of the proposed building, he stated this is a dialysis clinic. The site plan is pushed to the north as 80% of their patients are in wheelchairs and they wanted the southern exposure for the winter season. The project is financially limited and they will not acquire the alley but feel they can make some improvements. They do not wish to move the building as the parking would be lost on the west side of the lot. He said this project is for a specialty clinic sized to meet the patient volumes needed.

In response to question by Board member Heinrich, staff provided clarification on the setbacks for the alleyway. Mr. Goplin stated due to the transient population, they are working on the security aspect of the parking design to avoid employees working late hours having to park further away from the building. They also do not wish to create adverse conditions for the neighbors when making deliveries. Board member Hagstrom asked about the size of the proposed bump-out on 7<sup>th</sup> Avenue North and the total square feet of the clinic. Mr. Goplin stated the bump-out is approximately 500 square feet, and the clinic is proposed to be a one-story 14,300 square-foot building with a vaulted roof. The goal is to create daylight and an enhanced experience for patients while there for long periods of time. He said there are specific design areas as there is a required square footage for patients. Board member Heinrich asked if drawings of the interior building are available? Mr. Goplin noted the site plan said they have spent three months and several iterations of functionality as it is a very intense and specific building design.

**Tim Reedy, 2811 Beth Drive, DCI Inc., Billings, Montana**

Mr. Reedy said this facility will serve 215 dialysis patients in Billings, the surrounding area, and have the capacity to serve fifty patients who are choosing to stay at home. The current plan has 36 care stations. They have considered a plan with 30 care stations but with the current rate of growth of 3-5%

per year, this will only provide service for about 12 years instead of the 20-year plan. He provided explanation of the treatment area and stated removal of the back wall will limit the number of stations and the number of patient stations. This facility will have 35 staff members supporting patients. Mr. Reedy said they considered purchasing the adjacent property but it did not make financial sense based on the asking prices. He asked that the Board grant this variance.

**Randy Hafer, (no address given)**

Mr. Hafer said the plan speaks of potential to expand the alley with a 2-foot easement and he is not in favor of this. He owns property with townhouses across the alleyway and working on a proposal to purchase the lot to develop five additional townhouses, which would require alley access. They do not want a cut through street. Mr. Hafer said he met with this applicant during the neighborhood meeting and they responded with a change of plan on an access from 26<sup>th</sup> Street. He said the proposal for the alley easement is unexpected and he is not in favor.

**Opposition**

**Jan Hafer, (no address given)**

Ms. Hafer stated they own 631 N 26th Street. She stated she is in favor of the clinic but not this location as this parcel is surrounded by residential properties. She said construction of the building this close to the sidewalk is not allowed due to the setbacks. She feels this is more of a residential area and it should be more contained.

**Rebuttal**

**Pat Davies, 1300 N Transtech Way, Billings, Montana**

Mr. Davies said there has been discussion on potentially widening the alley and acquiring easements but they do not have the easement at this point. Ms. Cromwell clarified and stated easements of alley widths or expansions are not granted through zoning requests.

At 6:57 p.m. Chairman Noennig closed the public hearing. He recognized Tim Reedy who pointed out the site plan for the town homes indicates they are located on the setback line. Ms. Cromwell said the Planned Development zone for that parcel has different setbacks.

**Discussion:**

Chairman Noennig asked the Board for questions and discussion. Board member Hagstrom asked if this is a clear violation of setbacks why staff's recommendation is in favor and is there a hardship? Ms. Husman referred to the Findings and said it is not a clear hardship but a variance for lot area and setbacks granted in 1982 for Billings Clinic for property in Fosters Addition Subdivision Lots 1-12 Block 26. She said there were several variances granted: five for arterial setbacks, nine for setbacks for collector streets, others for lot coverage; and another for clear vision. Based on precedence of approval of previous requests and the fact it met most of the criterion with the exception of the hardship. She said with the added conditions, there should be no adverse impact. Staff received no input from citizens in opposition to this request. Board member Connell commented the hospitals have taken over this area but the community needs to accommodate these needs. He understands Mr. Hafer's concerns with the encroachments and pointed out the history of 39 approved variances.

**Motion**

**Board member Connell made a motion to conditionally approve City Variance #1279 with the conditions presented by staff. Board member Noennig seconded the motion.**

**Discussion**

Chairman Noennig asked the Board for questions and discussion. Board member Heinrich stated he feels this is a good project there are too many “ifs” with the bulb-outs and setbacks. He is having difficulty voting in favor. He asked when the applicant may reapply if they withdraw the request. Staff responded an application can be submitted in a year or the applicant may request a 30-day delay prior to this vote. Nicole Cromwell pointed out the clear vision issue is not a part of this variance. Chairman Noennig said the conditions say the requirements have to be met. Board member Hagstrom said he feels 30 spaces will meet the need for this clinic, and he is inclined to vote in opposition. Board member Connell said the applicant has a superior engineering firm who could design a second floor.

Chairman Noennig called for a vote on the motion.

<b>Board member</b>	<b>Yes</b>	<b>No</b>	<b>Not Present</b>
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 #1279**, fails 3 opposed-2-favor.

**Other Business:**

The next City Board of Adjustment meeting is scheduled for Wednesday, May 2, 2018 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North. Four applications will be heard.

**ADJOURNMENT:** The meeting adjourned at 7:10 PM.

**ATTEST: DRAFT. To be approved by a motion May 2, 2018.**  
**Tamara L. Deines, Planning Clerk**