



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, June 6, 2018 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 May 2, 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. **Appeal – Variance 1283 – 2213 2nd Ave N – Fence Materials** – An appeal from an administrative decision to not allow the use of salvaged wood from the deconstruction of pallets used to transport appliances and glass. Section 27-604(e) of the Zoning Regulations prohibits the use of salvaged materials for use in the construction of fences. The subject property is legally described as the East 44.5 feet of Lots 23 & 24, Block 63, Billings Original Town, a 2,250 square foot parcel of land. Presented by Nicole Cromwell, Zoning Coordinator

- b. **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.

The Board of Adjustment held a public hearing on April 4, 2018, for Variance 1279 and voted 2-3 on a motion to approve the variance application based on the determinations by staff with the conditions recommended. The motion failed. At its meeting of May 2, 2018, the BOA voted to reconsider the motion at its meeting on June 6, 2018. 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: 06/06/2018

Information

Subject

The minutes of the Board meeting of May 2, 2018.

Attachments

BBOA_2018_05_02_draft

CITY BOARD OF ADJUSTMENT

MINUTES May 2, 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	1							
Dave Hagstrom	Board member	1	1	A	1	1							
Paul Hagen	Board member	1	1	E	1	1							
Frank Chesarek	Vice Chairman	1	E	1	E	E							
Oscar Heinrich	Board member	1	1	1	1	1							
Martin Connell	Board member	1	1	1	1	1							
Mark Noennig	Chairman	1	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
Variance	2	2	3	2	3								12

Chairman pro tem Hagstrom 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: Mitch Goplen, Claudia Welborn, Kristin Evans, Spencer Beddes. Donna Gilluly, Pat Davies, Jay Buffington, Tim Reedy, Vicki Moyer, Shaun Shahan, Mike Yakawich, Donald Ross, Frank Nienaber, Alice Golden

Public Comment

Chairman pro tem Hagstrom opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

Motion for reconsideration of Variance 1279. Mitch Goplen, Tim Reedy, Claudia Welborn, Kristen Evans, Donna Gilluly, Alice Golden and Spencer Bennes in support of Variance 1279. Donald Ross is in support of Dialysis Center. Mike Yakawich, City Council Ward I, thanked the Board.

Chairman Noennig arrived at 6:11pm

Board member Hagen made a motion to reconsider the approval of Variance 1279 that was denied April 4, 2018 at the Board of Adjustment meeting. Board member Hagstrom seconded the motion. Board member Heinrich asked for clarification of the motion and second and point of order. He asked if a person could second the motion if he was not in attendance for the original hearing. Staff replied that any member may second a motion. Chairman Noennig asked if this is the hearing and if it is debatable. Staff replied that it is not debatable and then checked the book. Staff then stated is not amendable, but is debatable. Chairman Noennig then asked if the motion would be to rehear or take a new vote. Staff replied this motion is not to approve, it is to rehear and reconsider the previous motion to approve with conditions.

Discussion

Board member Connell spoke in support to rehear with all information necessary. Board member Heinrich asked what issues were given that were in error. We made a decision based on the information that was provided by Billings Clinic. Board member Heinrich believes the decision has been made. We do not have information as to why it should be brought back. Chairman Noennig stated he would not like to address the credibility of the witnesses but rather the factors. Board member Connell does not believe that the previous info was correct or gave sufficient details. Board member Connell stated going forward he will insist on the previous 5-year history of relevant Variances. He wishes to ask some of the witnesses some hard questions to which he knows the answers. Board member Heinrich wants his voice to be heard. He is objecting to this motion to reconsider.

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 rehear and reconsider Variance #1279 carries with a 5-1 vote.

Approval Meeting Minutes

Board member Hagen made a motion for the approval of April 4, 2018 minutes. Board member Connell seconded the motion to approve. 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 has a client involved with Variance 1282 and will be recusing himself.

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 #1280**: Nicole Cromwell presenting.

City Variance 1280 – 1333 N 27th St – Lot Area, setbacks - A variance from Section 27-310(e) requiring dwelling units in a Community Commercial (CC) zone meet the same requirements as a Residential Multi-family-Restricted (RMF-R) zone to allow a lot area of 7,336 square feet for 8 (eight) attached dwelling units; reduce the required front setback from 15 feet to 0 feet; reduce the required arterial centerline setback from 60 feet to 50 feet; reduce the required side setbacks from 8 feet (2-story) to 0 feet in a Community Commercial (CC) zone, on Parcel 1A1, C/S 463. The purpose of the variance is to allow the conversion of a vacant office building to eight 1-bedroom apartments. The east half of the 1953 office building has been demolished. Tax ID: A16558

Recommendation:

Staff recommends conditional approval based on the findings of the 7 criteria for Variance 1280.

Questions for Staff:

Board member Heinrich- The City Council did the variance for the parking not the BOA, how does that happen? Staff explained that in 1985 the City Council removed the off street parking regulations from zoning and put them with a site development ordinance. This is regulated by the Building Department and Engineering. Therefore, approvals are done through the City Council.

Chairman Noennig- What is the square footage? Staff explained that only a duplex would be allowed.

Board member Heinrich - Concurrent applications? Building permit application on March 30.

Board member Hagstrom asked Staff to review the change of use. What was the previous plan? Staff explained that originally the plan was to build 16 units without a full kitchen which fall under a different code. The applicant changed plans to 8 complete units.

Board member Heinrich -will alley improvements be required? Staff replied Engineering will state the regulations.

Chairman Noennig **opened the public hearing at 6:38 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1280**.

Shaun Shahan, Bozeman, MT

Downtown needs viable housing for the people who work here. Clientele could include graduate students, MSUB students, single professionals. He would like to accommodate. 90 percent of our young professionals are forced to get housing on the West end.

Board member Connell asked have you solved the water seepage problem from the Ditch. All is new and repaired. The water was draining from the roof to the foundation; it was not the Ditch.

OPPOSED

None

Discussion

The public hearing was closed at 6:44 PM.

BOARDMEMBER HEINRICH made a motion and BOARDMEMBER HAGEN seconded the motion to approve **City Variance #1280 with conditions**.

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 #1280**, passed 6-0.

Nicole Cromwell read the legal description for **Variance #1281**. Karen Husman presenting:

City Variance 1281 – 604 S 35th St – Lot Area, setbacks – A variance from Section 27-308 requiring a minimum lot area of 7,000 for 2 dwelling units to allow a minimum lot area of 6,600 square feet, from 27-308 requiring a minimum rear setback of 20 feet to allow a rear setback of 0 feet; from 27-308 requiring an 8-foot side setback for a 2-story structure to allow a side setback of 0 feet in a Residential 6,000 (R-60) zone on the east 88 feet of Lots 10-12, Block 220, Billings Original Town. The purpose of the variance is to allow the removal of existing detached garages & carports and reconstruct a new garage with an apartment above. Tax ID: A01632

Recommendation:

Staff recommends conditional approval based on the findings of the 7 criteria for Variance 1281.

Questions for Staff:

Board member Connell asked if there had been any input from the neighbors? 2 letters.

Board member Heinrich asked if they would demolish the old carport and have separate utilities. Yes, the old structures will be demolished. It is unknown if they will have separate utilities. If 2 addresses are given, the utilities will be separate.

Board member Hagstrom stated they are requesting zero setbacks on either side, are there others in the neighborhood? None. The site plan showed an actual setback of 3 feet.

Chairman Noennig **opened the public hearing at 6:52 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1281**.

Jay Buffington, owner

Mr. Buffington stated this is a dwelling for his disabled brother in law. Original garage was very narrow. The new dwelling will go in the original footprint.

The footprint will be the same, fire resistant walls to neighbors. We have no storage and new building will house lawn tools etc.

Board member Hagstrom asked if there are other variances? Staff replied there are 3 existing structure, none new construction.

Chairman Noennig asked how the footprint be the same if the building is being moved and larger.

OPPOSED

None

The public hearing was closed at 7:01 PM.

Discussion

Board member Heinrich will we be approving a 0 or 3-foot setback? Staff recommends a 3-foot setback.

Board member Hagstrom asked if this sets a precedence? Staff replied there are already many in the area. A rebuild letter anticipates new construction.

BOARDMEMBER HEINRICH made a motion and CHAIRMAN NOENNIG seconded the motion to approve **City Variance #1281** with 3-foot side and rear setbacks instead of 0 foot.

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 #1281**, passed 6-0.

Nicole Cromwell read the legal description for **Variance #1282**: Karen Husman presenting.

City Variance 1282 – Lenhardt Square – Building Height - A variance from Lenhardt Square PD Exhibit “B” as amended requiring a maximum building height of 34 feet to allow a maximum building height of 46 feet in the PD-MF-4 zone, on Parcel 2A of C/S 2063, a 19.13-acre parcel of land. The purpose of the variance is to allow the construction of 2 new 86-unit 3-story apartment buildings. Tax ID: D00514A.

Recommendation:

Staff recommends conditional approval of the variance based on the findings of the 7 criteria.

Questions for Staff:

Board member Heinrich asked what is the height of the apartments across the road. 3 story/46-48 feet

Board member Connell asked if the height of these buildings will be the same as the surrounding buildings. Yes

Chairman pro tem Hagstrom **opened the public hearing at 7:15 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1282**.

Gary Owen, Sanderson Stewart

Representing Bill Hanser. Height is being requested for economical and aesthetic design. 3 story multi-family is like to the neighborhood.

Current height was established by the PUD originators; they support the Variance. This will increase the density. It is within walking distance to commercial, retail and medical facilities. Increasing height allows for density and increases ground space. All of this conforms to the 2016 Growth Policy.

Board member Hagen asked if this property is directly west of St Vincent's? Yes, very close.
Board member Heinrich confirmed the variance is only for height.

Frank Nienaber, 5810 Sam Snead Trail

Altering heights are required. 4/12 pitch is the minimum acceptable pitch for asphalt shingles.

OPPOSED

None

Discussion

The public hearing was closed at 7:21 PM.

BOARDMEMBER HEINRICH made a motion and BOARDMEMBER HAGEN seconded the motion to approve **City Variance #1282**.

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			Recused

The motion to approve with conditions, **City Variance #1282**, passed 5-0.

Other business:

How information is presented to the Board. Marty would suggest a chart listing the variances in the area of the last 5 years. He suggests this to substantiate board decisions. More emphasis needs to be on a fair consideration. His wish is to stay out of litigation. Applicable Variances in the area.

Board member Connell would like direction when an address is not listed. He believes that site visits by Board members should be required. He has never regretted doing a site visit, but has regretted not going.

The meeting adjourned at 7:38 PM.

ATTEST: DRAFT. To be approved by a motion June 5, 2018.



City Board of Adjustment

Meeting Date: 06/06/2018

SUBJECT: Appeal - Variance 1283 - 2213 2nd Ave North

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

Appeal – Variance 1283 – 2213 2nd Ave N – Fence Materials – An appeal from an administrative decision to not allow the use of salvaged wood from the deconstruction of pallets used to transport appliances and glass. Section 27-604(e) of the Zoning Regulations prohibits the use of salvaged materials for use in the construction of fences. The subject property is legally described as the East 44.5 feet of Lots 23 & 24, Block 63, Billings Original Town, a 2,250 square foot parcel of land. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff recommends the BOA sustain and uphold the administrative decision to not allow the use of salvaged wood for this fence.

APPLICATION DATA

OWNER: Diana Bachmann
 AGENT: None
 LEGAL DESCRIPTION: East 44.5 feet of Lots 23 & 24, Block 63, Billings Original Town
 ADDRESS: 2213 2nd Ave N
 CURRENT ZONING: Central Business District (CBD)
 EXISTING LAND USE: Single family dwelling with chainlink & wire fencing
 PROPOSED USE: Same with wood fencing made from wood salvaged from wooden pallets
 SIZE OF PARCEL: 2,250 square feet

CONCURRENT APPLICATIONS

Fence Permit - PLN-18-01043 - application received and denied on March 22, 2018.

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	Zone Change Special Review	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2213 2nd Ave N	City ZC 346	March 15, 1982	CC to CBD	Yes	Original CBD adoption
SURROUNDING PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2223 Montana	City Variance 85	May 25, 1976	located parking across the street	Yes	
2407 Montana	City Variance 77	Jan 22, 1976	>50% lot coverage	Yes	
2421 1st Ave N	City Variance 32A	Sept 28, 1981	fence height & clear vision	No	
2120 3rd Ave N	City Variance 614	April 3, 1990	0 setback & 79% lot coverage	Yes	
315/317 N 24th St	City Variance 307	March 30, 1982	front setback to 10 ft	No – withdrawn	CBD adopted variance moot
401 N 23rd St	City Variance 1	Jan 1, 1973	front setback to 10 ft	Yes	
None	Appeal Variance 863	March 2, 2002	Bruce Simon commonly used fence materials	No	Request was for metal panels to be used for fencing

4432 S Frontage	Appeal Variance 1136	Jan 3, 2013	Electric fence inside a perimeter fence	Yes	BOA found a fence inside another fence is not a fence for zoning purposes
-----------------	-------------------------	-------------	--	-----	--

SURROUNDING LAND USE & ZONING

NORTH: Zoning: CBD
 Land Use: 8-unit apartment building

SOUTH: Zoning: CBD
 Land Use: Single family and multi-family dwellings

EAST: Zoning: CBD
 Land Use: Hog Wild Cafe

WEST: Zoning: CBD
 Land Use: 5-unit apartment house

BACKGROUND

This is an appeal of the Planning Staff administrative decision regarding the denial of a fence permit for property located at 2213 2nd Ave North in downtown Billings. The property is zoned Central Business District (CBD) and is one the few single family dwellings that still exists in this densely developed area. The owner, Diana Bachmann, was concerned about the security of her small outdoor spaces and dwelling. The current fencing was a short chain link and wire fence that offered no privacy. Ms. Bachmann decided to place recycled wood from pallets on the existing fence structure to provide more privacy and security. The work was started without a fence permit.

On March 14, 2018, the Code Enforcement Division received a complaint about a fence started without a permit at 2213 2nd Ave N. The CE Officer confirmed the potential violation and instructed the owner in writing to go to the Planning Division to file a fence permit application. The owner filed a fence permit application on March 22, 2018, The Planning staff reviewed the application and ultimately denied the request due to the use of the salvaged material.

Ms. Bachmann was advised there was not an option for a variance since she used salvaged material, a prohibited material for fencing. Section 27-604(e): *"All fences in residential, agricultural and commercial zoning districts shall be constructed from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to special review."* She was also advised if she believed the Planning staff had made an error, she could file an appeal. Ms. Bachmann filed an appeal on April 20, 2018.

The crux of the issue before the Board of Adjustment is what constitutes "salvaged" materials. The Zoning Regulations do provide a definition of "salvage" at Section 27-201: *"Something saved as valuable or useful from trash, rubbish, worn out equipment, or junk."* The letter of appeal states the wood slats have come from *"clean, good solid wood of pallets used for holding/bracing glass and/or appliances."*

The question here is whether or not these wood slats should be considered salvaged material. It appears the wood slats were *"saved as something valuable or useful"* and it also appears the materials were from worn out equipment (the pallets). Staff believes it correctly interpreted and applied the zoning regulations.

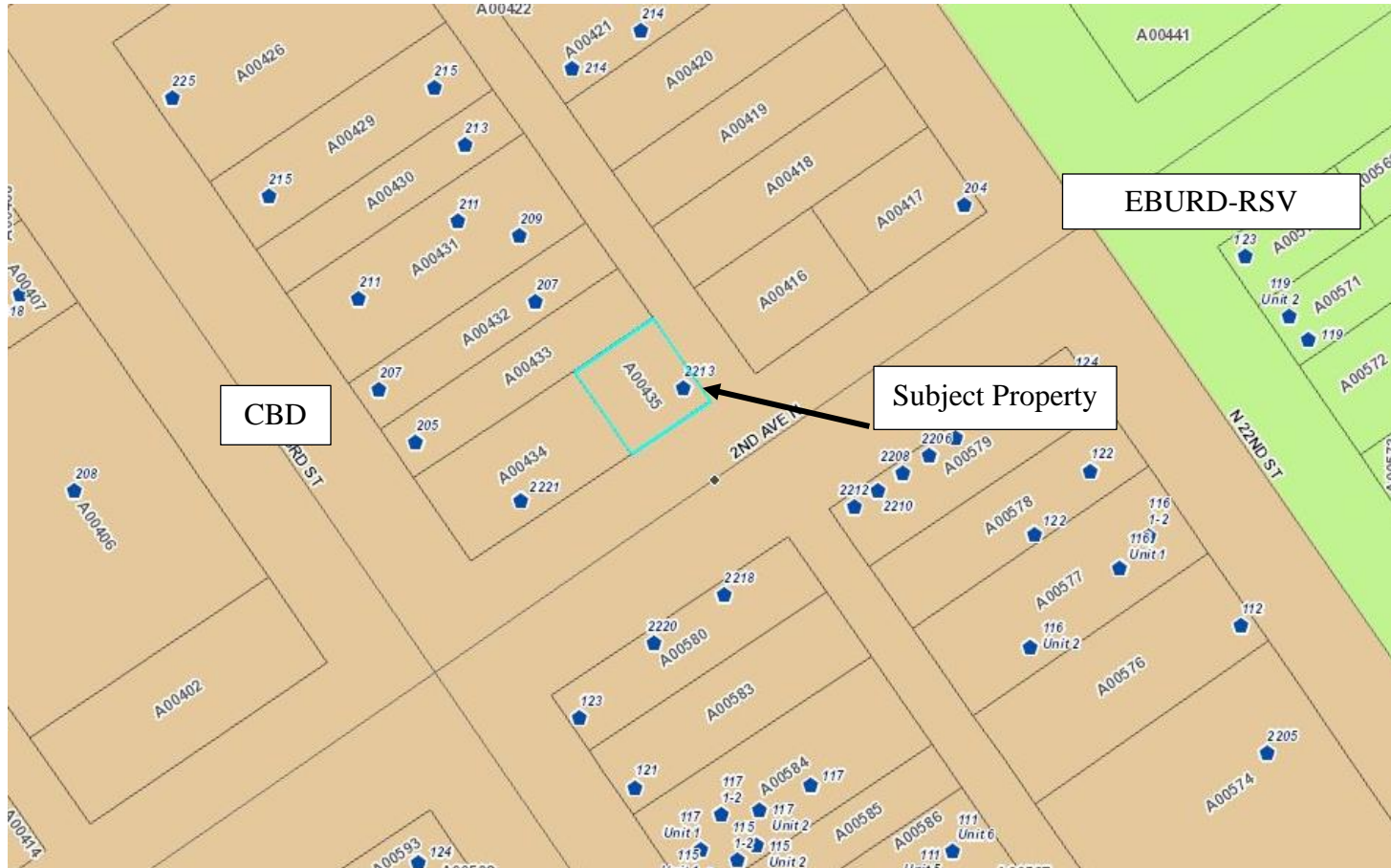
RECOMMENDATION

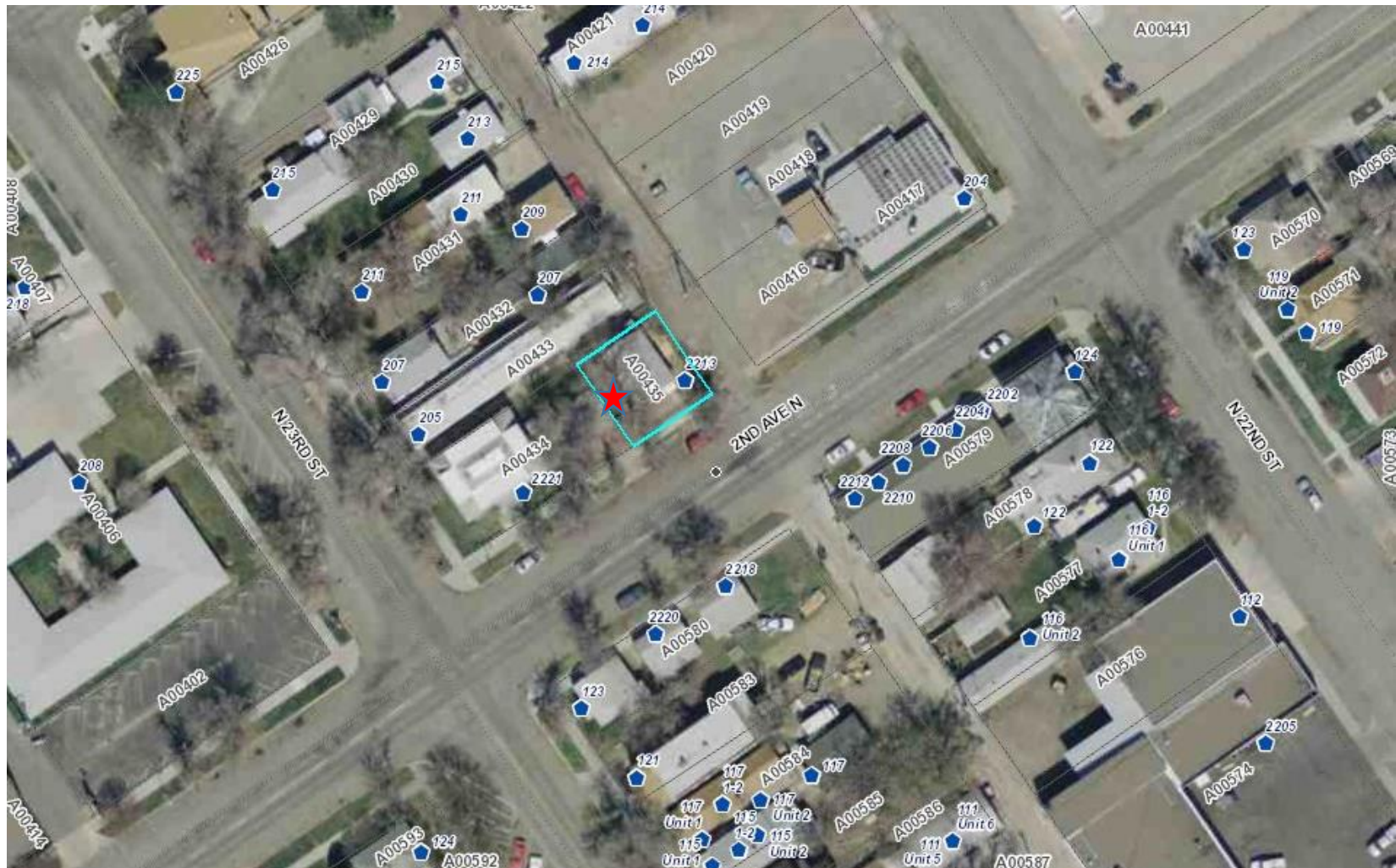
Planning staff recommends the BOA in affirm in whole the application of the zoning regulations regarding the prohibition of salvaged materials for use in a fence at 2213 2nd Ave North.

Attachments

- Zoning Map and Site Photos
 - Appellant Letter and Site Plan
 - Findings
-

Appeal - Variance 1283 – 2213 2nd Ave N – Fence material
Zoning Map and Site Photos





Subject Property Photos



Subject property – 2213 2nd Ave N



View north east across subject property



View west from alley along 2nd Ave N



View north and west from alley

Appeal - Variance 1283 - 2213 3rd Ave No - Fence Materials
Applicant Letter and Site Plans

April 20, 2018

To: City Board of Adjustment
c/o Nicole M. Cromwell, AICP
Zoning Coordinator
Billings City-County Planning Division

From: Diana Kay Bachmann
2213 2nd Avenue North
Billings, MT 59101
406-661-7393, 406-697-7303

Re: PLN. Fence Permit, Project # PLN-18-00581

Thank you for considering my appeal of the above permit's denial on March 22, 2018.

I believe the denial is a misinterpretation of the fence code:

- ① The fence is made of wood, a commonly used fence material as listed in Sec. 27-604, Fences, Walls and Hedges, Article 27-600.
- ② Also, on the Fence Permit issued 03/22/18 by Jeanette Vieg, under "Specific Information Requested", "Fence Materials," wood is listed.
- ③ The denial, however, states pallet slats.
- ④ Sec. 27-604 (c) states fencing materials shall not be constructed from wood pallets. I have no wood pallets up as my fence -- it is made of wood slats/pickets - some of which have come from clean, good solid wood of pallets used for holding/bracing glass and/or appliances. Pictures are provided -- the fence has yet to be finished: sanded down, evened out and painted depending on the Board's decision. There are no nails, screws, hazards sticking out.

Finally, I had this new fence put up to cover and replace the old, worn wire and chain-link fences to

improve, enhance and secure my property;
to be an active participant in the downtown
Billings improvement/beautification areas; and
to be a good neighbor.

Thank you very much for your consideration.

Sincerely,

Diana Kay Bachmann

2213 2nd Avenue North
Billings, MT 59101

406-661-7393, 406-697-7303

April 20, 2018

Attachments: Photos of above residence
and fence taken
April 3, 2018, snow on ground
and April 18, 2018, ground dry.

P2-18-00068



P2-18-00068



4/17/2018

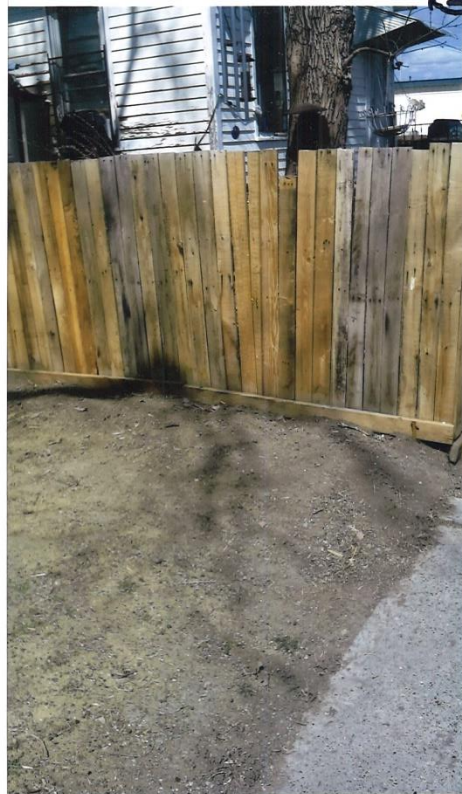
Dear Code Enforcement,

My name is Ralph Studer I own Property at 2221st Av. N. The property borders 2213rd: Ave. N. The property at 2213 has received a notice of code violation. The owner has appealed this notice and I am writing to support her appeal. I understand the code if material is used improperly. In the case of 2213 the material used may have come from a source that has a negative connotation. But there was a lot of time and attention used in choosing the boards and how they have been put together. (The project is not finished). As America moves to reuse products, stop waste and extend the life of the land fill here in Billings this project is an excellent example of this philosophy. On top of that not everyone can afford hundreds of dollars to improve their property. Speaking of improving property, as a neighbor I believe this fence has provided many benefit to the owner and neighborhood. She has dogs and this keeps them more reserved toward area activity. It covers the many different material that made up the previous fence. This fence will match the house and be a big improvement when finished, which is very welcome to me as a neighbor. As we continue to have many transients up and down the alley and street this solid fence will offer a lot more security to the single female homeowner. If this fence is finished properly I encourage you to make an exception in this case. Thank You for your consideration.

Ralph P Studer

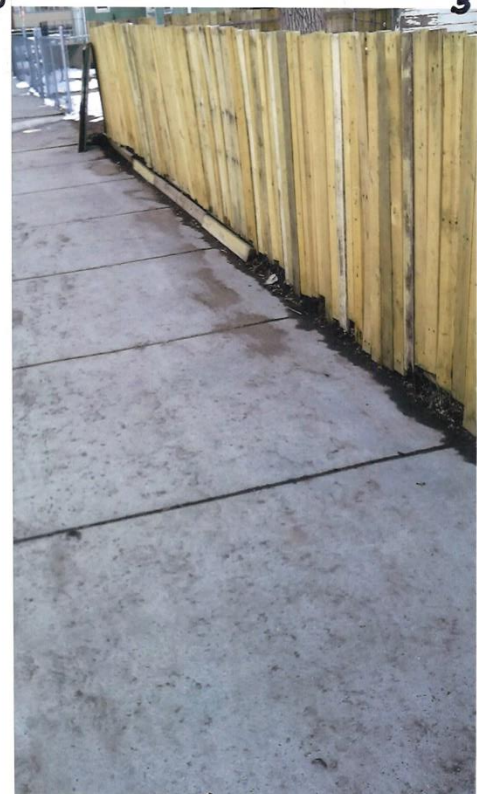


April 3, 2018 →



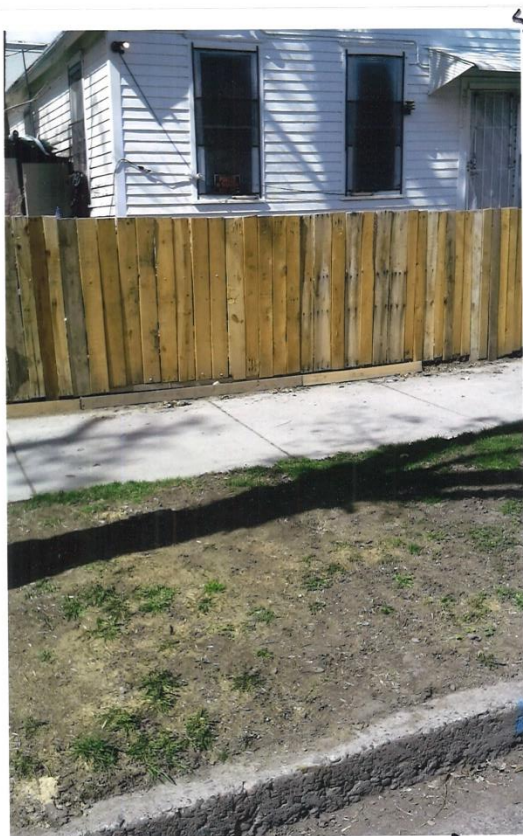
April 18, 2018 →

West Side Unfinished

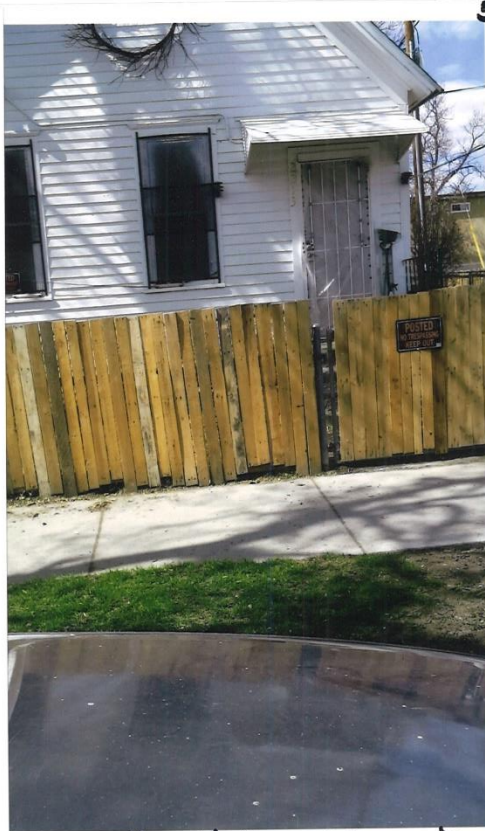


April 3, 2018 →

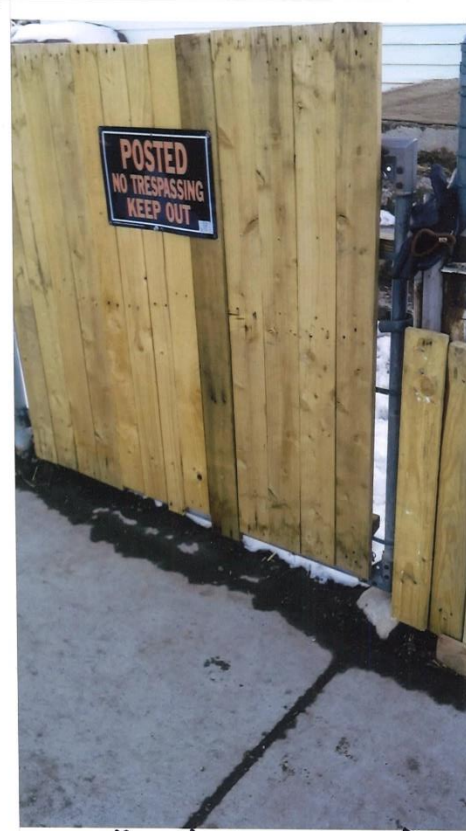
Front Unfinished



April 18, 2018 →

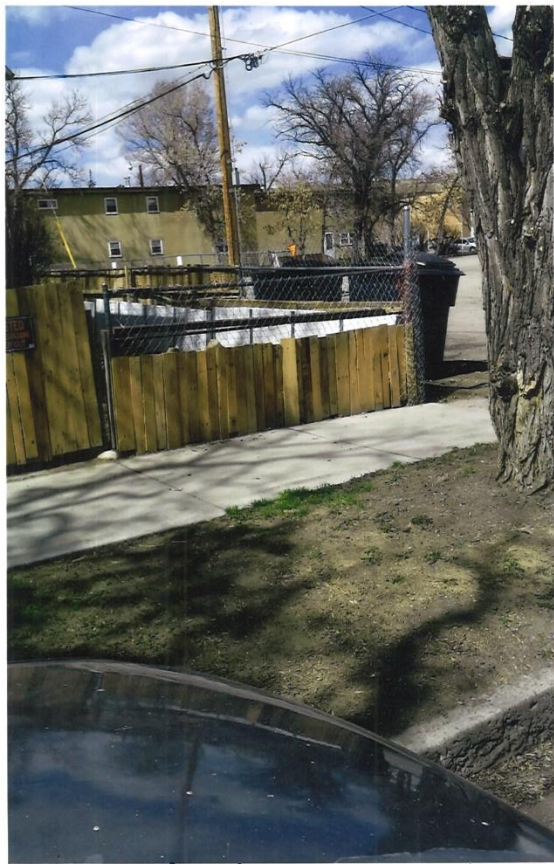


April 18, 2018 →



April 3, 2018 →

Front Gate Unfinished



7
April 18, 2018 →

Front at alley not finished



8
April 18, 2018 →



9
April 18, 2018 →

Alley Not finished



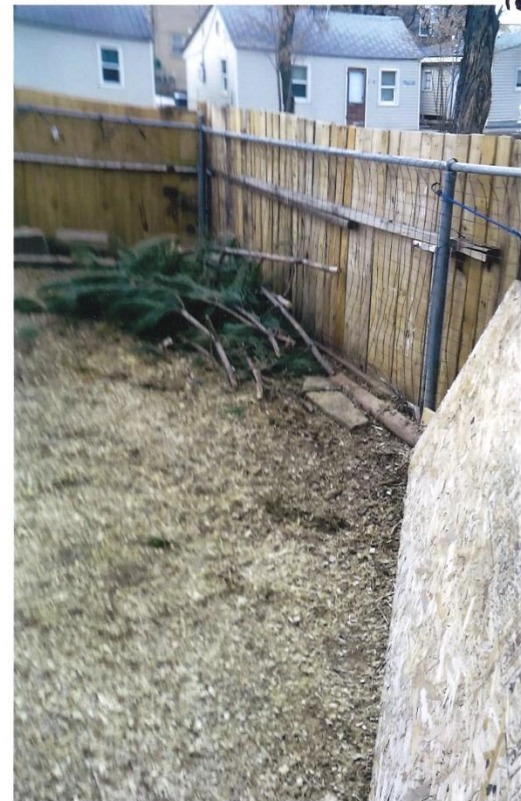
10

April 3, 2018 →
Alley Not Yet Finished



11

March 23, 2018 →



12

March 23, 2018 →
Old Fence Outside
New Fence



City of Billings and Yellowstone County
Zoning Jurisdiction Fence Permit

2825 3rd Ave. North, 4th Floor, Billings, MT 59101



Easements and property lines are the responsibility of the property owner.
BEFORE YOU DIG - CALL 811

Property Address: 2213 2nd Ave. No., Billings, MT 59101
 Applicant Name: Diana Kay Bachmann Mailing Address: Same
 Phone: 406-661-0793 E-mail: dkb.pets.kr@gmail.com
 Agent Name: _____ Mailing Address: _____
 Phone: _____ E-mail: _____

Property Information:

Replacement? Yes **Replacement fences must meet current codes.
 Fence Material: Wood Slats Retaining Wall? Yes No
 Zoning: CBD Height 4'
 Front Setback: _____ (feet) **Fences over 4 feet are required to be behind the front setback in most zoning districts.

Clear Vision:

Corner lot? Yes No If "Yes", is it a controlled intersection? Circle what applies:
 Traffic Signal Yield Stop sign
 Clear Vision? Yes No If "Yes", see the attached examples and circle those that apply:
 (1a) Driveway & Alley (1b) Central Business District Driveway & Alley (1c) Minor Street Stop (2b) All-Way Stop (2c) Minor Street Yield
 (2d) Traffic Signal (2e) Central Business District Stop Sign or Traffic Signal Intersection (3a) "Uncontrolled" Intersection (3b) 2-Leg Uncontrolled Intersection (3c) Uncontrolled Permanent "T" Intersection

OFFICE USE ONLY

Fee: \$25.00 Receipt #: 158617 Permit # PLN-18-00581
 Site Visit Required? Yes No Notify Code Enforcement? Yes No

CE 18 01043

denial

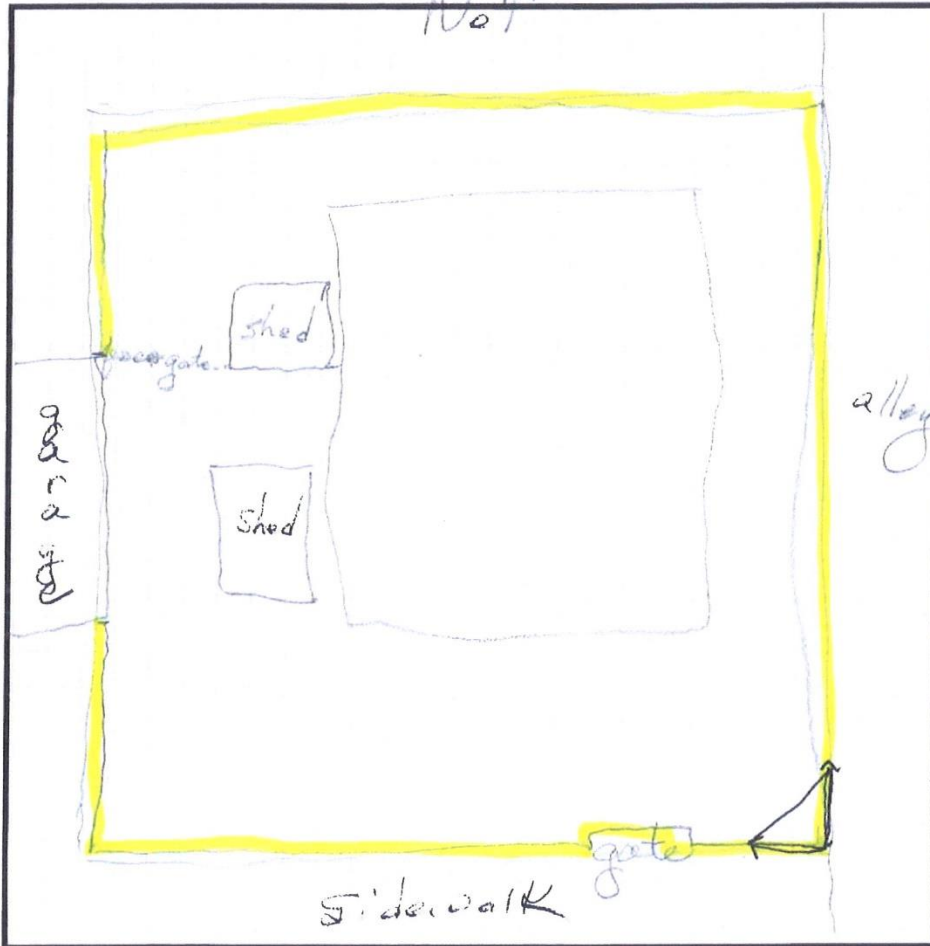
Tanya



City of Billings and Yellowstone County Zoning Jurisdiction Fence Permit



Use the space provided below to show existing lot lines, structures, all drive approaches (including neighboring drive approaches), streets, alleys, proposed fence location, and height.



This permit will allow a property owner to place a fence on their property. Except in Agricultural-Open Space (A-1), Controlled Industrial (CI) and Heavy Industrial (HI) zones or planned developments, **NO** fence may exceed 48 inches within the required front yard setback. Maximum fence height outside the front setback shall not exceed 6 feet in height. Applicable clear vision triangles shall remain free of any object over 30 inches in height. The property owner should act on this permit within one (1) year of approval.

By signing this permit, I agree to follow all applicable regulations governing location and size of fences on my property.

APPLICANT SIGNATURE: Diana Kay Bachman DATE: 03/22/18

PLANNING APPROVAL: Janelle Deig DATE: 3/22/18

Findings
Appeal - Variance 1283 – 2213 2nd Ave N

The standards of review for an appeal are different from a variance request. An appeal alleges there was an error in interpretation of the written code, a misapplication of the code requirements or some other mistake occurred during the administrative review.

The BOA is authorized to affirm, reverse (in whole or in part), or modify the decision of the Planning staff on zoning issues. Section 27-1505(f) states: “*the Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement or decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.*”

While an appeal may be taken by a single property owner, a decision on the appeal would apply to all property within the city limits.

1. Did the Planning Staff correctly interpret the zoning code language?

Section 27-604(e) specifies the types of materials allowed and prohibited for the use in constructing fences within residential or commercial zoning districts. The code states the following: “*All fences in residential, agricultural and commercial zoning districts shall be constructed from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to special review.*” The appellant states the wood used for the construction of this fence has in fact been salvaged from wooden pallets. The code specifically prohibits the use of wood pallets or salvaged material. The Planning staff believes it has correctly interpreted the language of Section 27-604(e) of the zoning regulations. The code language uses “shall” to affect an absolute requirement.

2. Did the Planning Staff misapply the code requirement?

The subject property is within the Central Business District (CBD) zoning district. This district is considered to be a “commercial” zoning district. The code regarding fencing materials at 27-604(e) applies to all “*residential, agricultural and commercial*” zoning districts. The Planning Staff believes it has correctly applied the zoning requirement.

3. Did the Planning Staff make any other error when applying the code requirements?

Planning Staff has reviewed the administrative files regarding this appeal including the fence permit application (PLN-18-00581) and the Code Enforcement case file (CE-18-01043). On March 14, 2018, a complaint was received in our office about a fence under construction without a permit at the subject property. A CE Officer was assigned to investigate and contact the owner if the alleged non-permitted activity was underway. A notice was sent on the same date notifying the owner to get a fence permit. The permit was submitted on March 22, 2018. The Planning Staff reviewed the application and denied the permit due to the use of salvaged materials from wooden pallets. The Zoning Code does define “salvage” in Section 27-201: “*Something saved as valuable or useful from trash, rubbish, worn out equipment, or junk.*” Planning Staff believes it has not made any other errors when applying the code requirements.



City Board of Adjustment

Meeting Date: 06/06/2018

SUBJECT: Variance 1279 - N25th St and 7th Avenue N

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

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.

The Board of Adjustment held a public hearing on April 4, 2018, for Variance 1279 and voted 2-3 on a motion to approve the variance application based on the determinations by staff with the conditions recommended. The motion failed. At its meeting of May 2, 2018, the BOA voted to reconsider the motion at its meeting on June 6, 2018. Presented by Karen Husman, Planner I.

RECOMMENDATION

Staff recommends conditional approval of the variance.

APPLICATION DATA

OWNERS: Dialysis Clinic Inc.

AGENT: Sanderson Stewart – Pat Davies

PURPOSE: To allow a minimum side adjacent to street setback of 8-feet and a front setback of 2-feet.

LEGAL DESCRIPTION: Lots 4-12 & 17-21 Block 59 Foster’s Addition

ADDRESS: SW corner of 7th Ave. W & N 25 St.

EXISTING LAND USE: Residential & Commercial

PROPOSED LAND USE: Medical

EXISTING ZONING: RP

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
609 N 26th St	NONE				
SURROUNDING PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA

801 N 29th St.	129	3/29/77	Side Setback & lot coverage	Yes	New Construction
	329	9/28/82	Front Setback & lot coverage	Yes	New Construction
611 N. 27th St.	239	1/8/80	Front setback reduction to 0'	Yes	New Construction
Block 57, lots 9-12 Fosters Add.	266	9/30/80	Front Setback & Height	Yes	New Construction
Block 41, lots 1-3 Fosters Add	298	7/26/83	Height, Front Setback, Arterial Setback	Yes	New Construction
703 N 29th St.	375	10/25/83	Lot size, All setbacks & Lot Cov.	No	New Construction
2413 9th Ave N	525	4/87	Side & rear setbacks	Yes	New construction
Block 59, Lot 5 Fosters Add	604	9/27/83	Side Setback	No	New Construction
824 N 25th St.	662	4/7/92	Side Adjacent to street	Yes	New Construction
1127 N 25th St	680	9/92	Side setback	Yes	New construction
Block 59 Lots 13-21 Fosters Add	933	6/1/04	Clear Vision area, Side Adjacent to St Setback	Yes	New Construction
820 N. 31st St.	1176	2/5/14	Side Adj to Str. Setback, Fence height, land contrary to zoning	Yes	New Construction

SURROUNDING LAND USE & ZONING

NORTH: Zoning: RMF & RP

Land Use: Residential Multi-Family & Single Family & some Commercial

SOUTH: Zoning: CBD

Land Use: Commercial

EAST: Zoning: RMF

Land Use: Residential Multi-Family & Single Family

WEST: Zoning: CC

Land Use: Commercial

BACKGROUND

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.

The Board of Adjustment held a public hearing on April 4, 2018, for Variance 1279 and voted 2-3 on a motion to approve the variance application based on the determinations by staff with the conditions recommended. The motion failed. At its meeting of May 2, 2018, the BOA voted to reconsider the motion at its meeting on June 6, 2018.

There have been similar variances approved in this area of Billings. Variance #933 was conditionally approved for Block 59, lots 4-21 of Fosters Addition, in 2004, to allow 1'6" encroachment into the clear vision area and 5' side adjacent to street setback. This variance was granted for lots 13-21 located on the corner of North 25th Street and 7th Avenue North. Additionally, there have been eight other similar variances granted in this subdivision.

This variance application is for a proposed dialysis clinic. The applicant has stated they have lead an extensive design effort, and looked at many alternatives to accommodate the requirements for a modern dialysis clinic. As a result, the building layout has been maximized for the program which has limited flexibility to down-size the proposed footprint or split the footprint across multiple stories. There is an expanded drop-off need to serve patients, and utilizing curb-side drop off is not preferred. The proposed plan is to provide a covered off-street drop-off area that is all weather and adjacent to the main entrance from off North 25th Street. There will be patient parking within the North 25th Street parcel and staff parking across the alley.

The City Engineering Division had concerns with the clear vision area restrictions as outlined in our City Code. The developer would be required to provide evidence this would not encroach into the clear vision zone, and a condition of approval has been recommended to reflect this concern. No other City departments had any concerns.

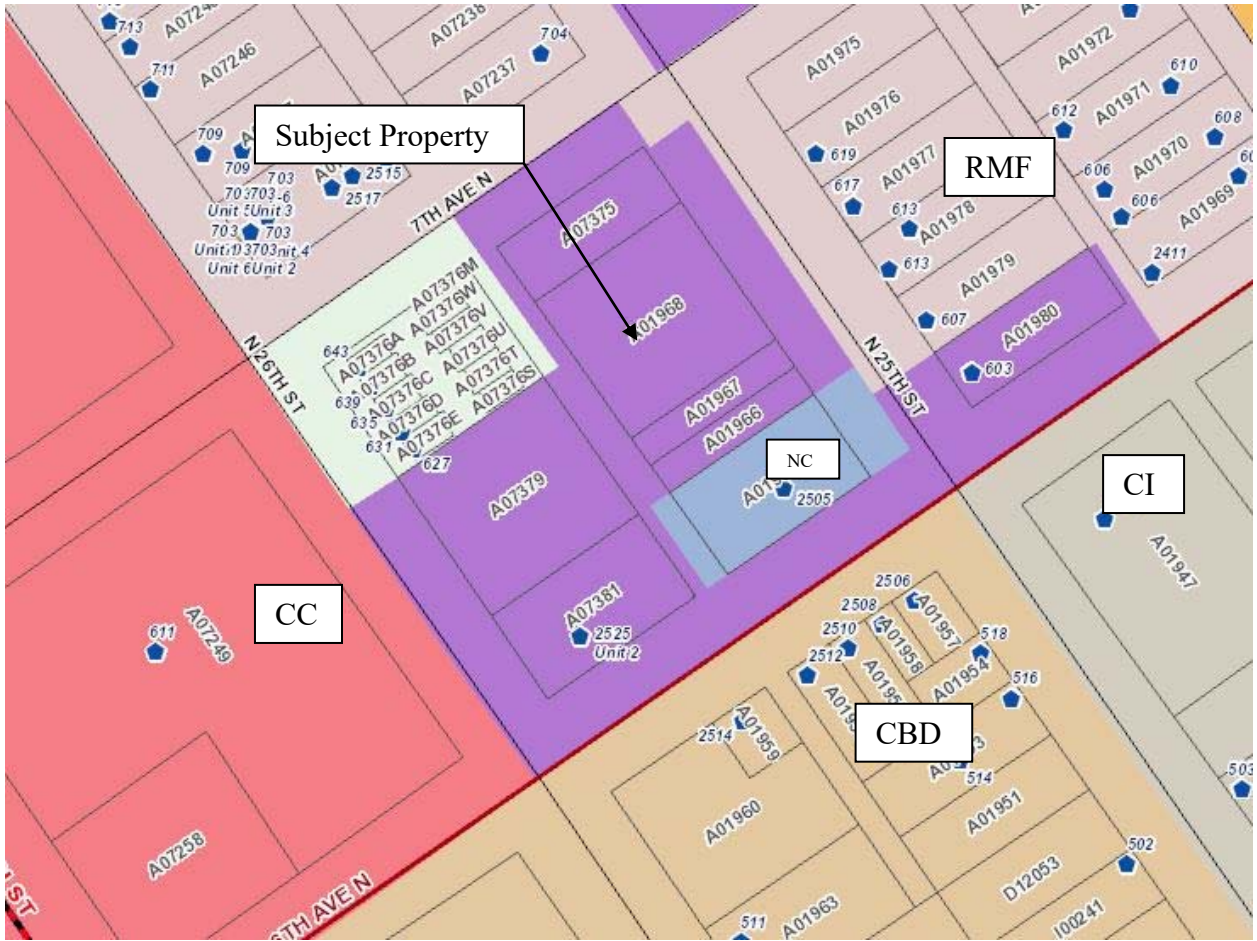
RECOMMENDATION

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.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

ATTACHMENT
Surrounding Zoning & Site Location



ATTACHMENT
Site Photographs



Subject Property



Looking southwest

ATTACHMENT
Site Photographs, Continued



Looking south



Looking east

ATTACHMENT
Site Photographs, Continued



Looking North

ATTACHMENT
Application

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1279 **- Project #** P2-18-00048

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 # A01968, A07375, A01967, A01966, A07379 CITY ELECTION WARD # 1

Legal Description of Property: Lots 4-12 and 17-21, Block 59 of Fosters Addition Subdivision
Billings First Addition Block 269, Lots 4-11

Address or General Location (If unknown, contact City Engineering): _____
SW corner of 7th Ave. W & N. 25th St.

Zoning Classification: Residential Professional

Size of Parcel (Area & Dimensions): Approximately 1.12 acres (see attached Exhibit)

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: Building encroachment into the North building setback, approx. 8ft.

Please cover letter for expanded justification request for variance.

Facts of Hardship: This community-oriented medical facility has building and site requirements that traditional urban commercial properties do not normally face, such as drop-off needs to serve a special needs community. This need makes efficient site design challenging.

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

Owner(s): Dialysis Clinic Inc.

(Recorded Owner)

1633 Church Street Suite 500; Nashville, TN 37203-2948

(Address)

(Phone Number)

(email)

Agent(s): Sanderson Stewart (c/o Pat Davies, PE)

(Name)

1300 North Transtech Way, Billings, MT 59102

(Address)

406-656-5255

pdavies@sandersonstewart.com

(Phone Number)

(email)

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

Paul Passman

Digitally signed by Paul Passman
DN: cn=Paul Passman, o=Dialysis Clinic, Inc.,
ou=DCI, email=spaul.passman@dcinc.org,
c=US
Date: 2018.01.01 14:59:38 -0600

Signature: _____ Date: _____

(Recorded Owner)

ATTACHMENT
Applicant Letter

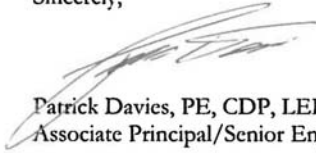
Ms. Nicole Cromwell
March 5, 2018
Page 2

To maintain and respect the urban street character, it is desirable to have one curb cut off North 25th Street and have the patient drop-off towards the center of the parcel. To accommodate the use and internal site circulation, the building will need to push into the north setback by eight (8) feet.

This is an urban area of downtown Billings and the request of the encroachment should not have an adverse effect on the surrounding properties or neighborhood. This project will bring much needed improvements and community benefit to an area in need of investment.

If you have any questions, or need anything else from the applicant or myself, please contact me at 406/656-5255.

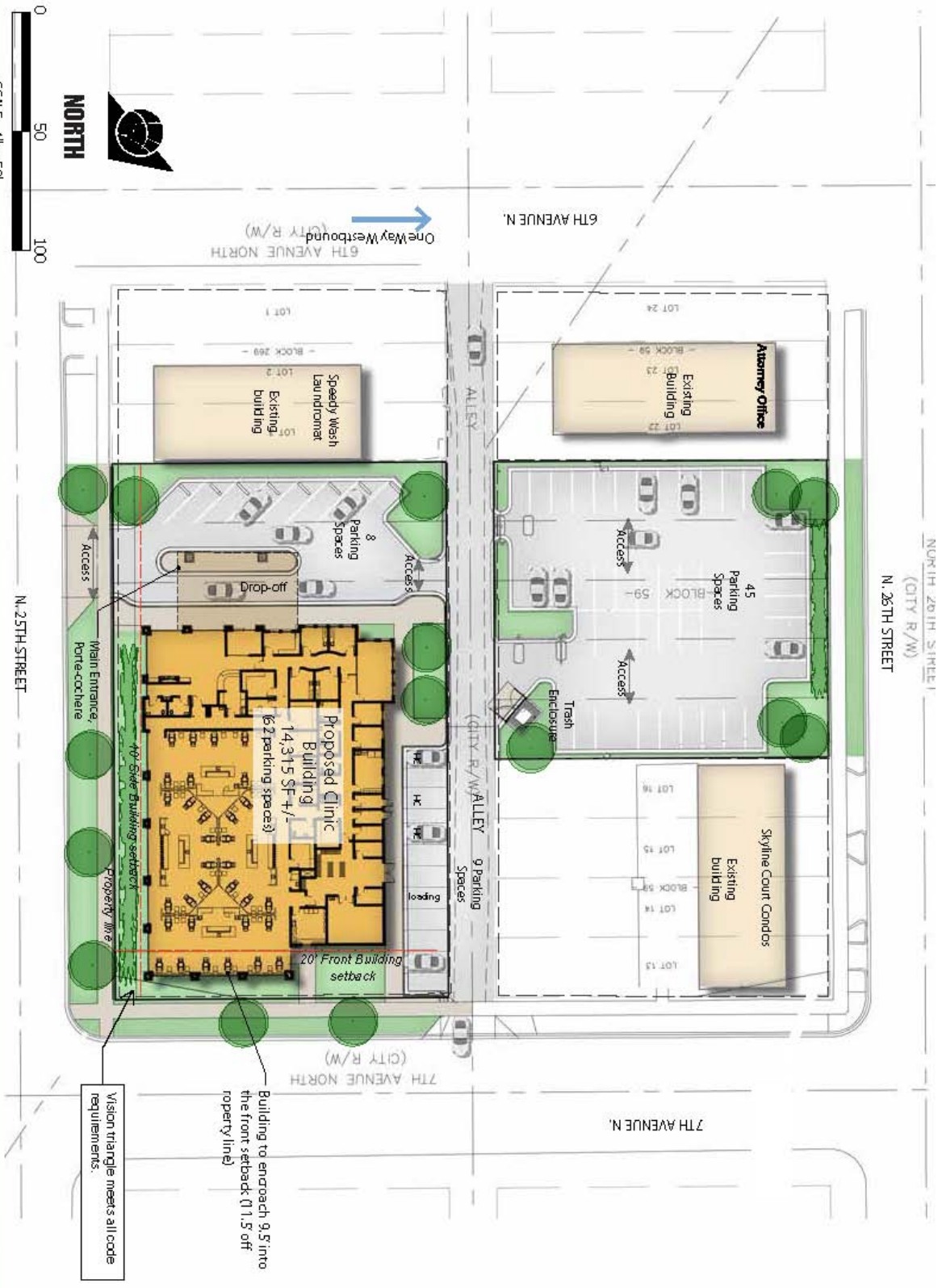
Sincerely,



Patrick Davies, PE, CDP, LEED AP
Associate Principal/Senior Engineer

CSS/hav
P:17047.01_Variance_Request_Application

ATTACHMENT Site Plan



PROPOSED DETERMINATIONS FOR VARIANCE #1279

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

- 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. The development of this parcel is encouraged infill development the Growth Policy supports, as well as an asset to the neighborhood.

- 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 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.

PROPOSED DETERMINATIONS FOR VARIANCE #1279

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.

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

Staff is recommending the applicant have 1 year to obtain the building permit for the structure and 3 years to complete the construction.

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.