



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Thursday, November 8, 2018 @ 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> 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.**

- a. Mayor Cole presents Board of Adjustment appreciation plaque to Chesarek Family.

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of October 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. **Return Item - City Variance 1284 – 1324 O’Malley Dr – Front Setback for an Attached Garage** - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback in a Residential 9,600 (R-96) zone, on Lots 11 & 12 of Block 1, Carlson Subdivision, a 9,980 square foot parcel of land. The purpose of the variance is to allow the construction of a new attached garage. The variance request for a 4-foot rear setback was previously approved in July 2018. Presented by Karen Husman, Planner I.
- b. **Variance 1288 - 6416 Elysian Road - Land Use Contrary to Zoning** - A request to conduct a public forum to gather comment on a proposed sign contrary to the City Sign Code requirements for all schools limiting the maximum sign height to 5 feet. The proposed sign structure is 12 feet tall. (Section 27-706.e, BMCC) The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. The property is C/S 832, Parcel 1A, 19.93 acres in area and is zoned Public. Presented by Monica Plecker, Planning Division Manager
- c. **City Variance 1289 – 41 Sunset Dr – Lot Coverage** - The applicant is requesting variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33% for a proposed 1,170 square foot addition to an existing single family residence in a Residential 9,600 (R-96) zone on Lot 9A, Block 11, Hilltop Subdivision 2nd Filing, a 11,250 square foot parcel of land. Presented by Monica Plecker, Planning Division Manager

**Other Business/Announcements**

**Adjournment**

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> 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](mailto:bartleyr@ci.billings.mt.us)

**City Board of Adjustment**

**Meeting Date:** 11/08/2018

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**Information**

**Subject**

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

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**Attachments**

BBOA\_2018\_10\_03\_draft

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**CITY BOARD OF ADJUSTMENT**

MINUTES October 3, 2018

Name	Title	0	0	0	0	0	0	0	0	0	0	1	1	1
		1	2	3	4	5	6	7	8	9	0	0	1	2
		/	/	/	/	/	/	\	/	/	/	/	/	/
		0	0	0	0	0	0	1	0	0	0	0	0	0
		3	7	7	4	2	6	1	1	5	3	8	5	
		/	/	/	/	/	/	\	/	/	/	/	/	
		2	2	2	2	2	2	2	2	2	2	2	2	2
		0	0	0	0	0	0	0	0	0	0	0	0	0
		1	1	1	1	1	1	1	1	1	1	1	1	1
		8	8	8	8	8	8	8	8	8	8	8	8	8
David Mitchell	Member	1	1	1	E	1	E	1	-	1	1			
Dave Hagstrom	Member	1	1	A	1	1	1	1	-	1	1			
Paul Hagen	Member	1	1	E	1	1	1	1	-	1	E			
Frank Chesarek	Member	1	E	1	E	E	E	1	-	E	E			
Oscar Heinrich	Member	1	1	1	1	1	1	E	-	1	1			
Martin Connell	Member	1	1	1	1	1	1	1	-	E	E			
Mark Noennig	Chair	1	1	1	1	1	1	E	-	1	1			

TOTAL NUMBER OF APPLICATIONS 2018	0	0	0	0	0	0	0	0	0	0	1	1	1	TOTAL
	1	2	3	4	5	6	7	8	9	0	0	0	0	
	/	/	/	/	/	/	/	/	/	/	/	/	/	
	0	0	0	0	0	0	1	0	0	0	0	0	0	
	3	7	7	4	2	6	1	1	5	3	8	5		
	/	/	/	/	/	/	/	/	/	/	/	/	/	
	2	2	2	2	2	2	2	2	2	2	2	2	2	
	0	0	0	0	0	0	0	0	0	0	0	0	0	
	1	1	1	1	1	1	1	1	1	1	1	1	1	
	8	8	8	8	8	8	8	8	8	8	8	8	8	
<b>Variance</b>	2	2	3	2	3	1	1	-	1	2				17

Chair 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 Robbin Bartley, Administrative Support.

**Attending:** Jo Barringer, Peggie Gaghen, Brian Hoemer, Diann Thompson, Charles Hamwey, Lance Renstrom, Kim Olsen

**Public Comment**

Chair Noennig opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

**Approval Meeting Minutes**

Member Heinrich made a motion for the approval of September 5, 2018 minutes. Member Mitchell seconded the motion to approve. Minutes were approved by unanimous voice vote 4-0.

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

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

Nicole Cromwell explained an email has been received regarding Variance #1287 has been forwarded to Board members. Chair Noennig explained a possible conflict.

**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 #1286**.

Karen Husman presenting:

**City Variance 1286 – 78 Mountain View Blvd – Front Setback** - A variance from Section 27-310(i) requiring a minimum front setback of 20 feet for a detached structure to allow a minimum front setback of 14 feet in a Residential 9,600 (R-96) zone on Lot 21 and the North 57 feet of the East 2 feet of Lot 22, Panoramic Heights Subdivision, a 10,414 square foot parcel of land. Tax ID A12566

**Recommendation:**

Staff recommends denial of the variance.

**Questions for Staff:**

Member Heinrich inquired who complained thru Code Enforcement, are there any variances for sheds in the front yard? One anonymous complaint.

Chair Noennig **opened the public hearing at 6:09 PM** and asked if there was anyone wishing to speak in favor or against **City Appeal Variance #1286**.

**John Hoff, owner**

Was informed by the building department that he did not need a building permit because of the size of the building, there is a 20 foot setback requirement. He was confused where to measure from and therefore the shed does not meet the requirement. He indicated the terrain on the property dictates this being the only place for the building. Mr. Hoff presented photos to show his hardship was the unlevel ground. He said quality siding and windows were used for construction.

Member Hagstrom asked who had told him where to measure from? He said he measured the 20-foot

setback from the edge of the street, he thought that was his property line. No survey was done. He is short 6 feet. He measured from where the pavement ends.

Member Heinrich asked what is the hardship. He said he has no level spot thus dictating the shed location.

Chair Noennig discussed the finishing of the shed after he was found in violation. Mr. Hoff admits to having finished the building after having been found in violation.

**Brian Hoerner, 80 Mountain View Blvd, neighbor**

Mr. Hoerner is a neighbor and knows what it is like to try and build level in this area.

He is in favor of the shed remaining.

**OPPOSED**

**Peggy Gaghen, 87 Mountain View Blvd**

Ms. Gaghen has lived there since 1970. She is surprised a structure is allowed in this area even if it met setback requirements. She thinks this will set a precedence and it is an eyesore. The other variances eluded to, are very different. This shed degrades the neighborhood.

**Charles Hamwey, 1010 Grand Ave**

This property is zoned R-9600 with 20 foot setbacks. Wonders if the owner of the shed has enough room at the back of the lot to accommodate he shed. He agrees this is an eyesore. He feels it inhibits future home sales in the area. He recommends denial of the variance.

**Rebuttal**

Mr. Hoff asked for a continuance, a 30 day delay.

**Discussion**

Member Heinrich confirmed the City will take anonymous Code Enforcement complaints. Should the motion to continue be approved? This request was denied as there is no new information to be presented and the only reason for asking for a continuance is the short board. Chair Noennig and Member Hagstrom commended Mr. Hoff on the appearance of the shed, however, the concern in approving this is the possible influx of others wanting to not meet setback requirements. There is no hardship to be considered.

**The public hearing was closed at 6:34 PM.**

Member Heinrich made a motion to deny and Member Hagstrom seconded the motion to **deny City Variance #1286**.

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 deny **City Variance #1286**, passed 4-0.

Nicole Cromwell read the legal description for **Variance #1287**. She also advised the owner 2 of the surrounding property owners were not notified of this Variance application. One of these property owners is here, the other is not. Chair Noennig ruled to continue with the hearing in spite of the risks explained regarding the notifications.

Karen Husman presenting:

**City Variance 1287 – 3230 Country Club Circle – Front Setback** - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet for a proposed new single family residence in a Residential 9,600 (R-96) zone on Lot 1A and Lot 2, Block 7, Country Club Heights Subdivision, a 20,824 square foot parcel of land. Variance 1117 was conditionally approved for these lots in 2012, but expired in 2015. Tax IDs A05699 & A05670 Staff also requested to change condition #1 from one single family dwelling to two, one on each lot. Thus eliminating having to come before the board again. Also, the owner has proactively contacted Trail Net regarding the Myers Trail shown on the plat. An easement will be improved so Trail access is assured.

**Recommendation:**

Staff recommends conditional approval of the variance.

1. The variance is to decrease the required front setback from 20 feet to 10 feet for the purpose of constructing two single family dwellings. One on each lot. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 1A and Lot 2 of Block 7, Country Club Heights Subdivision generally located at 3230 Country Club Circle.
3. The applicant shall receive approval for a building permit within one (1) year of and

- construction shall be completed within three (3) years of Board approval.
4. Failure to begin or complete actions required by this approval within the time limits shall void this variance.
  5. All construction will require compliance with all other zoning regulations and City ordinances apply at the time of construction.
  6. These conditions shall run with the land described and shall apply to all current and subsequent owners, etc.

### **Questions for Staff:**

Member Mitchell asked if the trail stops at the alley. No it does not. The alley is not vacated. Member Heinrich asked about the setbacks for two single dwellings. There are no legal ramifications. Please include change to condition #1 as requested by staff.

Chair Noennig **opened the public hearing at 6:55 PM** and asked if there was anyone wishing to speak in favor or against **City Appeal Variance #1287**.

### **Jeff Kanning, owner**

This property has remnants of the old Myers Trail platted in 1950. He has no intention of blocking trail access. Create an 8 foot easement on Lot 2 to add public access easement. The original plat was approved with restrictions allowing 10 foot front setbacks. When annexed the zoning required a 20 foot setbacks. He is not able to get a building permit without the variance for the 10 foot setback. A discussion ensued regarding the need to delay this hearing for 30 days in order to obtain approval from the surrounding property owners not notified. Mr. Kanning would like to begin his building project, time is of the essence.

### **Kim Olsen, 2112 Country Club, neighbor**

She was not contacted this time, but was the 1st variance. She is in favor and wants the trail protected.

### **Tom Tilley, 2210 Pryor Lane**

He is a frequent user of this trail. He was a GIS coordinator for the City of Billings for a number of years and the aerial view does not match up to the plat. He is in favor if the Myers Trail is protected with access and documented as such.

### **OPPOSED**

None

### **Discussion**

There was discussion regarding adding a condition regarding the easement. Member Hagstrom agrees with the conditions and states the owner is the only one at risk. Member Mitchell confirms the owner will dedicate the easement but who will maintain it?

### **The public hearing was closed at 7:14 PM.**

Chair Noennig made a motion and Member Mitchell seconded the motion to approve **City Variance #1287**.

**With conditions as specified as indicated by Staff, on the basis specified by the Staff, condition #1 be change to two single family dwellings, one on each lot and there be an additional condition #5, the applicant agrees to provide for an easement to access the Myers Trail to be presented with his building application.**

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 #1287**, passed 4\*-0.

**Other business:** The next meeting is November 8, 2018, one day later than the normal meeting date due to a State holiday on Tuesday November 6, Election Day.

**The meeting adjourned at 7:21 PM.**

**ATTEST: DRAFT. To be approved by a motion November 8, 2018.**



**City Board of Adjustment**

**Meeting Date:** 11/08/2018

**SUBJECT:** Variance #1284-1324 O'Malley

**THROUGH:** Monica Plecker

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Return Item - City Variance 1284 – 1324 O’Malley Dr – Front Setback for an Attached Garage** - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback in a Residential 9,600 (R-96) zone, on Lots 11 & 12 of Block 1, Carlson Subdivision, a 9,980 square foot parcel of land. The purpose of the variance is to allow the construction of a new attached garage. The variance request for a 4-foot rear setback was previously approved in July 2018. Presented by Karen Husman, Planner I.

**RECOMMENDATION**

Staff recommends conditional approval of the variance.

**APPLICATION DATA**

OWNERS: Joel Parker

PURPOSE: To allow a minimum front setback of 12 feet

LEGAL DESCRIPTION: Lots 11 & 12 of Block 1, Carlson Subdivision

ADDRESS:1324 O’Malley

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-96

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1324 O'Malley	<b>1284 (Previous)</b>	July 11, 2018	Rear Setback	Yes	
SURROUNDING PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1421 Crawford	404	11/1/94	Front & Side SB	No	New Construction
2018 12th St. W	180	5/30/78	Side Setback	Yes	New construction
1202 Colton	527	11/27/84	SAS SB to 6.5'	Yes	
	638	6/2/87	SAS SB to 4.5'	No	
1606 Crawford	378	10/25/83	Arterial SB	Yes	New construction
1206 O'Malley	430	9/25/84	Side SB	Yes	New construction
1639 Avenue F	303	12/29/81	Lot Size & rear SB	No	New construction
1440 Avenue C	140	abt 1977	Side SB	Yes	New construction
1427 Avenue C	112	abt 1977	Lot Area & rear SB	Yes	Existing Structure

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: PD  
Land Use: Residential Multifamily & Commercial  
SOUTH: Zoning: R-96  
Land Use: Residential Single Family  
EAST: Zoning: R-96  
Land Use: Residential Single Family  
WEST: Zoning: R-96  
Land Use: Residential Single Family

## **BACKGROUND**

The applicant is requesting a variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback in a Residential 9,600 (R-96) zone, on Lots 11 & 12 of Block 1, Carlson Subdivision, a 9,980 square foot parcel of land. The purpose of the variance is to allow the construction of a new attached garage. The applicant brought the application in June 2018 requesting only a rear setback variance. This variance was conditionally granted by the Board. The applicant discovered after the approval he mis-measured the location of the front property line along O'Malley Drive. This re-submitted application is to allow a reduction in the front setback from 20 feet to 12 feet from the O'Malley Dive property line.

There have been similar variances approved in this area of Billings. The applicant is requesting the variance in order to add additional garage space to the lot. If approved, this would allow a 12- foot front setback. This particular parcel is an irregular shape at the end of a block. There are no properties on the north side of O'Malley and this is a low volume residential street. There is no sidewalk on this side of O'Malley Drive and a driveway in front of the new attached garage would allow parking on the driveway without encroaching on the pavement of the public road. The only difference between the site plan submitted in July and this new site plan is the proper location of the front property line. The applicant has not modified the building plan.

## **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.

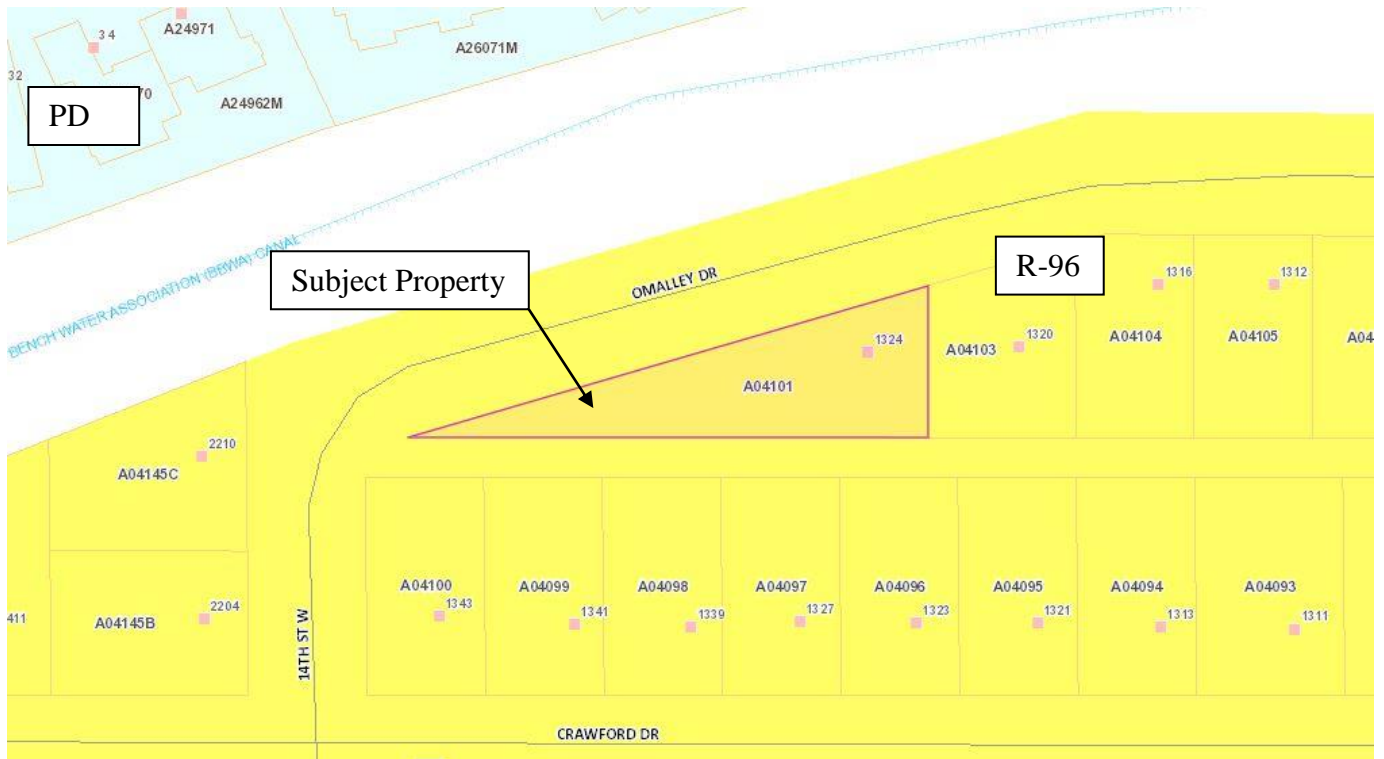
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### **Attachments**

Zoning Map & Site Photos  
Application, Applicant letter & Site plan  
Determinations

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**ATTACHMENT**  
Surrounding Zoning & Site Location



Subject property 

**ATTACHMENT**  
Site Photographs



**Subject Property**



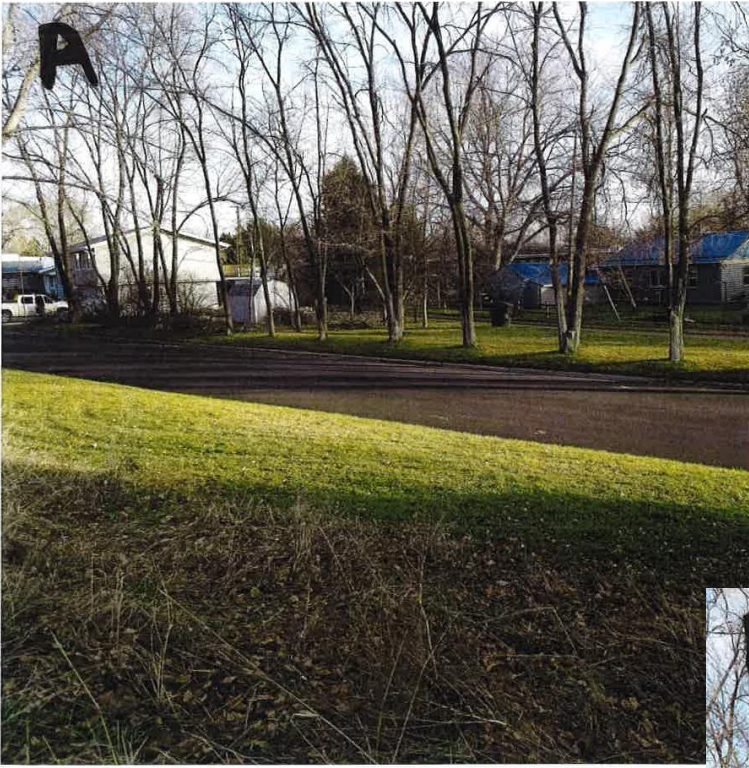
Looking west



Looking South



Looking East



**ATTACHMENT**  
Application form

**APPLICATION FORM**

CITY VARIANCE

ID: Billings Variance # 1284 - Project # 12-18-00158  
amend conditions of approval

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 # 517 84 3013 CITY ELECTION WARD # \_\_\_\_\_

Legal Description of Property: Car/50A SUBD Bk 1 Lot 11

Address or General Location (If unknown, contact City Engineering): 1324 O'Malley DR

Zoning Classification: R9600

Size of Parcel (Area & Dimensions): 303 7 1/2 7 1/2

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance(s) Requested: 12-13 Feet Back of Property line to the front of the new garage. Leaving 25 feet

Facts of Hardship: from back of curb to the front of the new garage property line 11 feet inside of property. Very odd lot

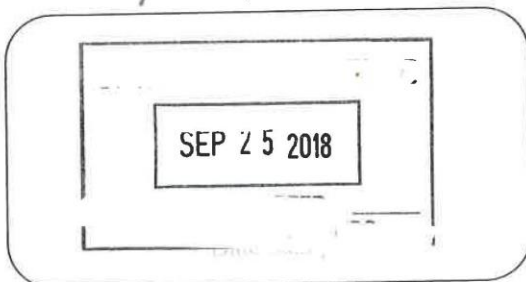
\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Joel W Parker  
(Recorded Owner)  
1324 O'Malley DR Billings  
(Address)

(Phone Number) \_\_\_\_\_ (email) \_\_\_\_\_  
Agent(s): 406 690 2310 JOEL@AFMEDWC.COM  
(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: Joel W Parker Date: 9-25-18  
(Recorded Owner)



**ATTACHMENT**  
Applicant Letter

Joel W. Parker  
1324 O'Malley Dr.  
Billings, MT 59102  
406-690-2310

May 23, 2018

To whom it may concern,

I Joel Parker purchased my fathers home at 1324 O'Malley Dr. from his estate in December of 2017.

I would like to build an attached heated garage to this home as there is exiting garage now. (This garage would be much smaller and shorter than the existing building)

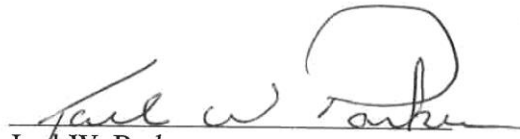
I have 2 vehicles, snowmobiles, motorcycles, lawnmowers, I also have rental properties and I have many electric tools to take care of , which cannot be left out in the open or the weather.

This is a very large corner lot with very few neighbors on a very secluded street.

I have already checked with the immediate neighbors and no one cares if I build a garage.

I grew up in this house and I plan to spend the rest of my life here however I do really need a garage here.

Thank you,

  
Joel W. Parker



## VARIANCE #1284 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;**

The lot is an odd shape that prevents addition to the existing home without extending into 1 or more of the required setbacks.

**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 an older subdivision. There have been similar variances granted for setbacks within the same district. Denying the variance for setback 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 for a front setback of 12 feet would 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. It will allow use of the land in conformance to the zoning regulations.

**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 amendment of the conditions approved at the July 2018 meeting to the following conditions:

1. The variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback and a minimum rear setback of 20 feet to allow a setback of 4 feet to allow an attached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 11 & 12 of Block 1, Carlson Subdivision generally located at 1324 O'Malley Drive.
3. The applicant will submit and obtain a building permit for the new addition within 1 year and building completion within 2 years of variance approval. Failure to complete the project within required timeline will void the variance.
4. The construction shall be in substantial conformance to the site plan submitted with the amended application seen at the November 8, 2018 public hearing.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed addition, with the exception of this variance.

7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

**6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

The applicant will submit and obtain a building permit for the new addition within 1 year and have it completed within 2 years.

- 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 with attached garages are allowed in the R-96 zone.



## City Board of Adjustment

**Meeting Date:** 11/08/2018

**SUBJECT:** City Variance #1288 - Land Use Contrary to Zoning - 6416 Elysian Road

**THROUGH:** Monica Plecker

**PRESENTED BY:** Monica Plecker

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### Information

#### REQUEST

**Variance 1288 - 6416 Elysian Road - Land Use Contrary to Zoning** - A request to conduct a public forum to gather comment on a proposed sign contrary to the City Sign Code requirements for all schools limiting the maximum sign height to 5 feet. The proposed sign structure is 12 feet tall. (Section 27-706.e, BMCC) The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment. The property is C/S 832, Parcel 1A, 19.93 acres in area and is zoned Public. Presented by Monica Plecker, Planning Division Manager

#### RECOMMENDATION

The City of Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment.

#### APPLICATION DATA

OWNER: Elysian School District #23

AGENT: Bob Whalen

LEGAL DESCRIPTION: C/S 832 Parcel 1

ADDRESS: 6416 Elysian Road

CURRENT ZONING: Public

EXISTING LAND USE: K-8th grade school

PROPOSED USE: Freestanding sign taller than allowed in the Public Zone

SIZE OF PARCEL: 19.93 acres

#### CONCURRENT APPLICATIONS

Sign Permit Application

#### APPLICABLE ZONING HISTORY

There have been 16 similar applications by public agencies in the community to use land contrary to zoning since 2002. The applications include improvements to schools, fire stations, water facilities, the City of Billings Landfill, Dehler Park, the Billings Logan Airport, the Yellowstone County Detention facility and most recently the new 911 Communication Center. The state law provision that exempts local agencies from local zoning compliance provides an opportunity for the public to provide comment and eliminates the need for one government authority to approve, deny or place conditions on the necessary public improvements of another public agency. Many public agency projects are subject to other permitting and development permissions ranging from financial authority and building code compliance to state and federal environmental policy conformance. Some of these processes also offer the opportunity to provide public comment.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: CI, R-150, HC, NC Land Use: Industrial, Residential Single Family and Vacant
SOUTH:	Zoning: PUD Land Use: Agricultural
EAST:	Zoning: PUD Land Use: Residential Single Family and Agricultural
WEST:	Zoning: PUD Land Use: Agricultural

## **BACKGROUND**

This is a request to conduct a public forum to gather comment on a proposed sign contrary to the City Sign Code for all schools limiting the maximum sign height to 5 feet in a public zone. Use of land contrary to zoning is allowed by state statute MCA 76-2-402 after a Public Forum is held before the local Board of Adjustment. State law does not give the authority to the Board of Adjustment to approve or deny the request but does allow the Board to receive public comment on the use.

### **State Statute**

**76-2-401. Definitions.** As used in MCA 73-2-402, the following definitions apply:

1. "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.
2. "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

**History:** En. Sec. 1, Ch. 397, L. 1981.

**76-2-402. Local zoning regulations – application to agencies.** Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

1. The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.
2. The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

**History:** En. Sec. 2, Ch. 397, L. 1981.

## **RECOMMENDATION**

The City Board of Adjustment has no power to approve, deny or attach condition to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment.

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### **Attachments**

Application and Proposed Sign  
Zoning Map and Site Photos

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**ATTACHMENT**  
**Application**

**APPLICATION FORM**

CITY Land Use Contrary to Zoning ID: City Variance # 1288 - Project # P2-18-0052  
FEE: \$483.00

The undersigned as owner(s) of the following described property hereby request a Public Hearing on a Land Use Contrary to Zoning from the terms of the City of Billings Zoning Regulations.

TAX ID # 000862 CITY WARD # 3

Legal Description of Property: Elysian School SE 1/4 of Section 13 + the NE 1/4 of Section 14 T. 15. R. 15E PMN and in the SW 1/4 of Section 18 and the NW 1/4 of Section 19 T. 15. R. 15E  
Address or General Location (If unknown, contact County Public Works): C/S 832 Parcel 1A

6416 Elysian Road, Billings, MT.

Zoning Classification: Public

Size of Parcel (Area & Dimensions): 19.932 gross acres

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Brief explanation of the Project:  
Elysian School K-8 would like to install an Reader Board / Sign in front of Elysian School. Taller than allowed.  
14sf EMD, 12ft height (5ft max) 36.5 sf total area (1-side)

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

Owner(s): Elysian School Dist #23  
(Recorded Owner)  
6416 Elysian Rd., Billings, MT. 59101  
(Address)  
(406) 656-4101 rob@elysianschool.org  
(Phone Number) (email)

Agent(s): Bob Whitaker  
(Name)  
6416 Elysian Rd., Billings, MT. 59101  
(Address)  
(406) 656-4101 rob@elysianschool.org  
(Phone Number) (email)

I attest that all the information presented herein is factual and correct.

Signature: Bob Whitaker Date: 9/20/18  
(Recorded Owner)



## Proposed Sign



<b>DESIGN</b>	<input type="checkbox"/> As Designed
	<input type="checkbox"/> With Changes
X Date: _____	
Scale: _____	
Date: _____	

APPROXIMATE SIGN LOCATION



C MANUFACTURE AND INSTALL ONE D/F GROUND SIGN. FABRICATED ALUMINUM CABINET WITH INTERNAL FRAME, ALUMINUM FACES IN UPPER SECTION OF CABINET. COPY IS 1/8" DEEP CLEAR ACRYLIC WITH APPLIED 3630-20 WHITE VINYL FILM, PUSH THRU APPLICATION ON FACE. ILLUMINATE FROM INTERIOR WITH SLOAN SIGN BOX II WHITE LED LIGHTS. 1/2" SQUARE CHANNEL ACCENT BARS. FABRICATED SHEET METAL LOWER POLE COVER, PAINT FINISH BARS AND LOWER POLE COVER MP 05856 YELLOW CANDLE. PAINT CABINET MP 04836 OBSIDIAN. INSET INSTALL TWIN PAK ELECTRONIC MESSAGE UNITS. TIME-O-MATIC WATCHFIRE SERIES FULL COLOR LED UNITS. 16MM PIXEL PITCH WITH A 36 X 126 LAMP MATRIX. DELL LAPTOP CONTROLLING COMPUTER. IGNITE OP CONTROLLING SOFTWARE, 4G WIRELESS MODEM WITH 5 YEAR CELLULAR DATA PLAN. COMMUNICATIONS, TEMP SENSOR AND WEB TRAINING INCLUDED. MOUNT SIGN TO SUPPORT STEEL SET INTO A CONCRETE FOOTING/MOW PAD.



**SIGN PRODUCTS, INC.**  
 1425 MONAD, BILLINGS, MT 59104  
 PH: (406) 252-9342 FAX: (406) 252-9864

**CLIENT**  
 ELYSIAN MIDDLE SCHOOL  
 BILLINGS, MT

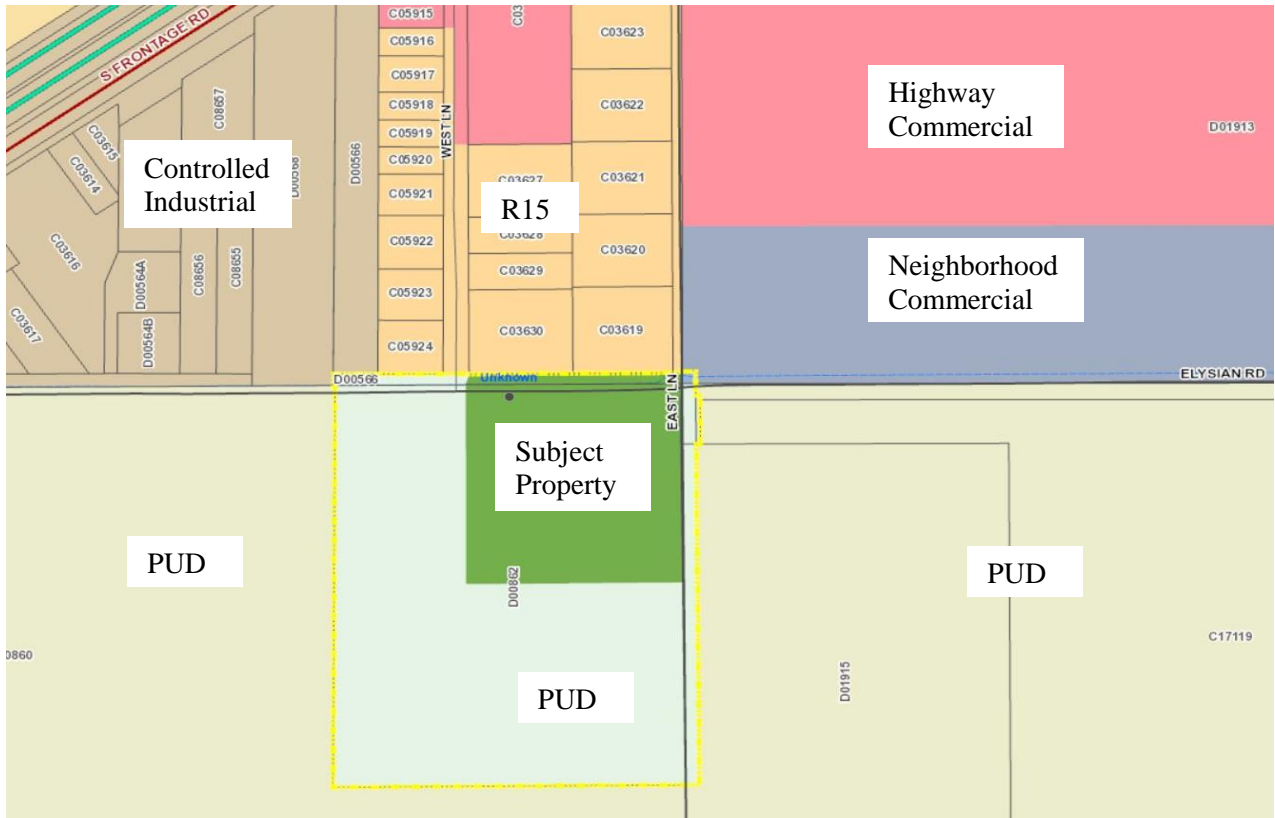
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**SALES**  
 TONY D.

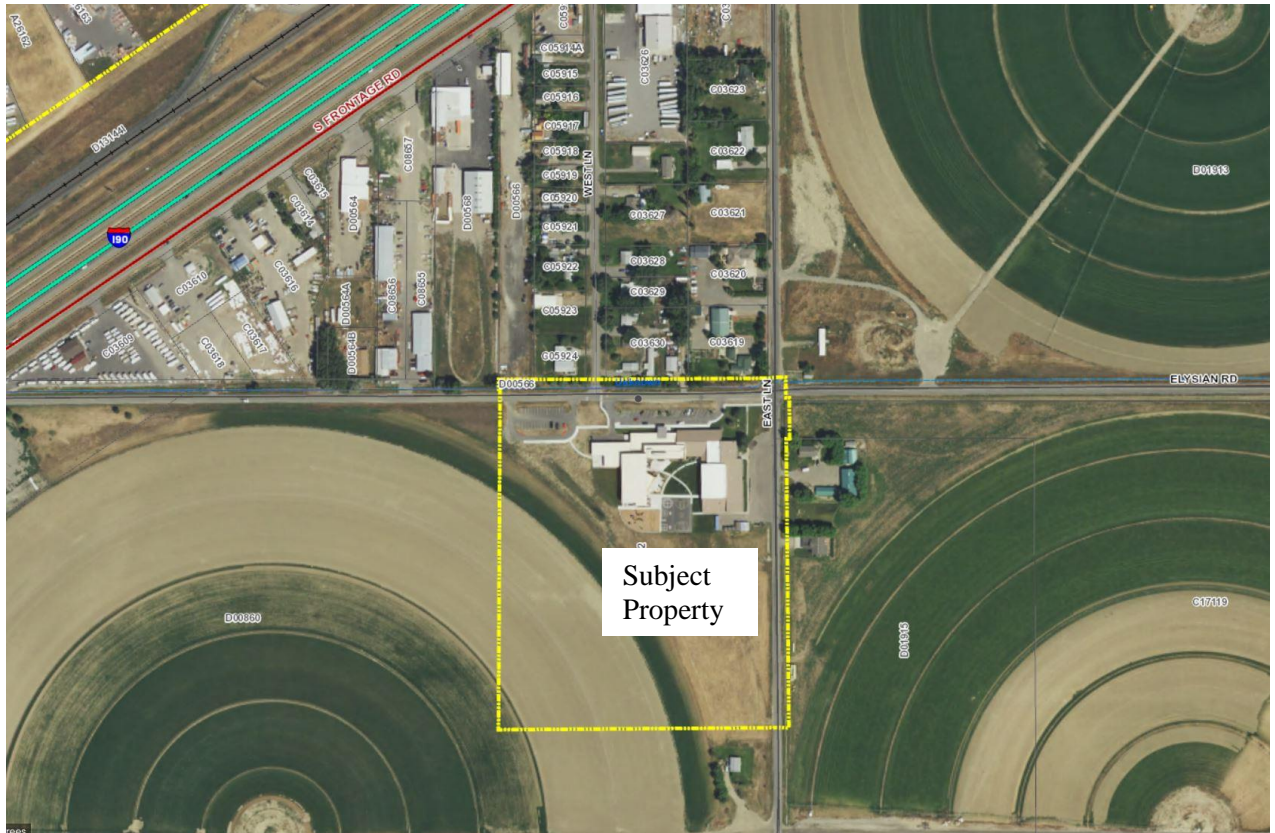
**DESIGNER**  
 TP  
**SHEET #**  
 1 OF 2

This design is the property  
 of Sign Products Inc.  
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 or reproduction are reserved

**ATTACHMENT**  
**Zoning Map and Site Location**



Aerial Photo



**Site Photos**



**Site Photos**



**Site Photos**





**City Board of Adjustment**

**Meeting Date:** 11/08/2018

**SUBJECT:** City Variance #1289 - 41 Sunset Drive

**THROUGH:** Monica Plecker

**PRESENTED BY:** Monica Plecker

**Information**

**REQUEST**

**City Variance 1289 – 41 Sunset Dr – Lot Coverage** - The applicant is requesting variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33% for a proposed 1,170 square foot addition to an existing single family residence in a Residential 9,600 (R-96) zone on Lot 9A, Block 11, Hilltop Subdivision 2nd Filing, a 11,250 square foot parcel of land. Presented by Monica Plecker, Planning Division Manager

**RECOMMENDATION**

Staff recommends denial for the increase in the maximum lot coverage for this zone from 30% to 33% to allow the construction of a 1,170 square foot addition.

**APPLICATION DATA**

OWNER: Kacie Rodahl  
 AGENT: N/A  
 LEGAL DESCRIPTION: Lot 9A, Block 11 of Hilltop Subdivision, 2nd Filing Amended  
 ADDRESS: 41 Sunset Drive  
 CURRENT ZONING: R-96  
 EXISTING LAND USE: Residential  
 PROPOSED USE: Residential  
 SIZE OF PARCEL: 11,250 sq.ft.

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)
41 Sunset Drive	None			
SURROUNDING PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)
110/112 Hilltop Road	216	6/26/79	Front SB	Yes
681 Garnet Ave	64	9/30/75	Side SB	Yes
16/18 Hilltop Road	505A	9/22/86	Minimum Lot Size	Yes
16/18 Hilltop Road	508	10/14/86	Side SB	No
622 Valle Vista Avenue	625	9/4/90	Front SB	Yes

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-96  
 Land Use: Residential

SOUTH: Zoning: R-96  
Land Use: Residential  
EAST: Zoning: R-96  
Land Use: Residential  
WEST: Zoning: PD - Summer Hill  
Land Use: Residential

## **BACKGROUND**

The applicant is requesting a variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33% for a proposed 1,170 square foot addition to an existing single family residence in a Residential 9,600 (R-96) zone on Lot 9A, Block 11, Hilltop Subdivision 2nd Filing, an 11,250 square foot parcel of land.

The applicant desires to construct a 1,170 square foot addition to the existing single family residence. This square footage would put the property out of compliance by exceeding the 30% lot coverage by 256 square feet. The applicant states that the addition is needed to accommodate an expanding family. The addition is proposed to be 39 feet x 30 feet and would match the current house. The additional square footage would allow an additional 3 bedrooms and 1 bathroom. If the variance is not approved, this could mean a loss of a bedroom for the expanding family.

The variance request is to increase the maximum lot coverage for this zone from 30% to 33% to allow the construction of a 1,170 square foot addition. There have been 4 variances granted in this subdivision, however, no request has been for increased lot coverage.

Planning staff has reviewed this application and is forwarding a recommendation of denial of the request to increase the maximum lot coverage from 30% to 33% based on the determinations for review provided within this report.

## **RECOMMENDATION**

Staff recommends denial for the increase in the maximum lot coverage for this zone from 30% to 33% to allow the construction of a 1,170 square foot addition.

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### **Attachments**

Applicant Letter and Site Plan  
Zoning Map and Site Photos  
Site Plan  
Determinations

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**ATTACHMENT**  
**Applicant Letter**



Kacie Rodahl  
41 Sunset Dr.  
9/28/18

Dear Chairperson of the Board of Adjustments –

I am the owner and resident of the house at 41 Sunset Dr. in Billings Heights. We would like your approval to add an addition to our existing house. The addition that we propose is 1,170 sq. ft. According to the Variance for our property we are only allowed an addition 914 sq. ft. to stay at 30% of our lot. Currently our Lot is 11,250 sq. ft and our current property is 2,328 sq. ft.

The addition we propose is 39 ft x 30 ft. Esthetically this would match the current house structure and make it feel like it was not an addition. The addition would provide an additional 3 bedrooms and 1 bathroom for our growing family. Without the additional 256 sq. ft we would lose 1 bedroom and severely shirk the bathroom size.

Currently we have myself, my sister and our 5 children living in the house. We spent the summer looking at what would be best for our family. We looked at different houses throughout Billings and we always came back to our current location. Both my sister and I have lived on that street for 25 years. Our Parents and the kid's grandparents live across the street at 701 Sapphire. We are a close family and the kids love living across the street from their grandparents. This is our home and we would just love to make it work better for our family.

Thank you in advance for considering our proposal.

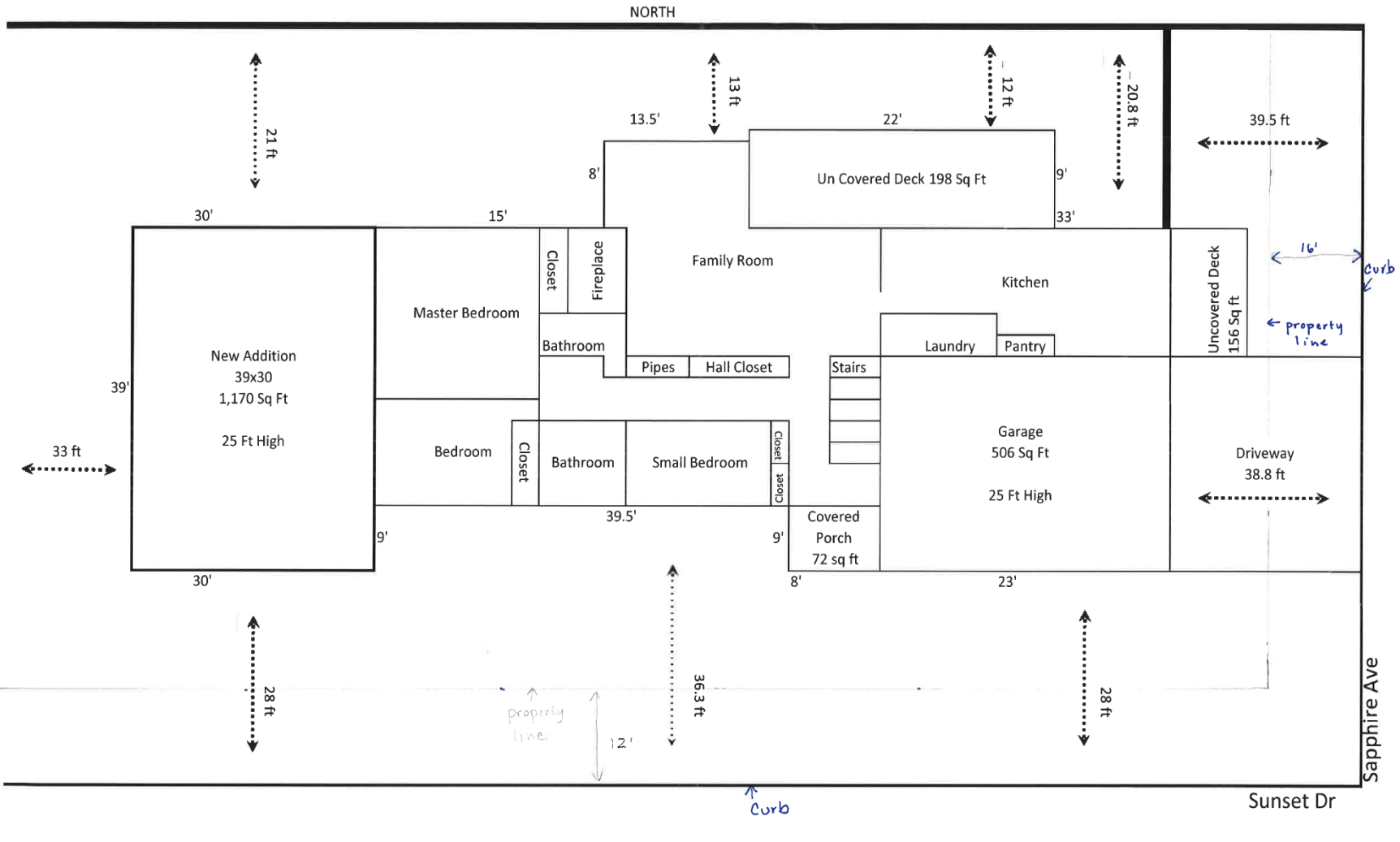
Kacie Rodahl

# ATTACHMENT Site Plan

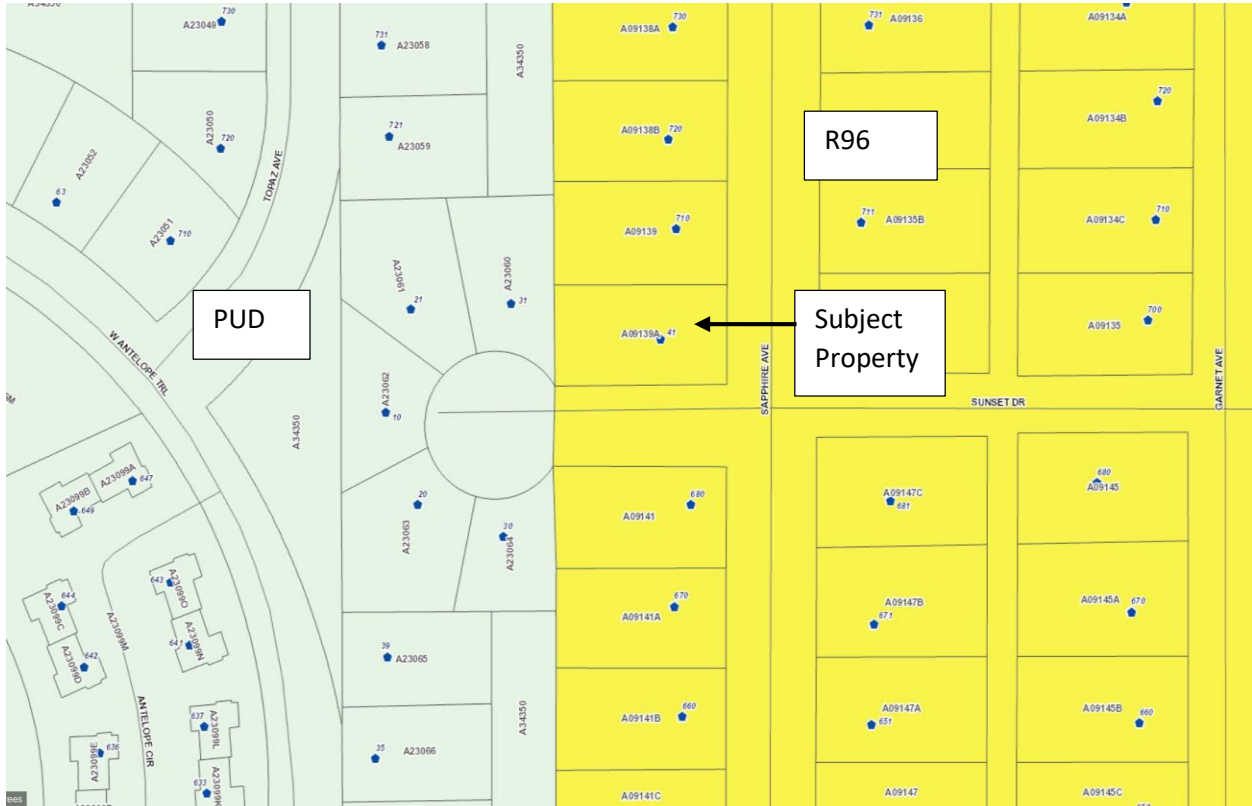
Full Lot Plan 41 Sunset

Lot - 11,250 Sq Feet  
 Existing House - 1,755 Sq Ft Up, 573 Sq Ft Basement = 2,328 Sq Feet  
 Addition - 1,170 Sq Feet

Wood Fence



**ATTACHMENT**  
**Zoning Map and Site Location**



Aerial Photo



**Site Photos**



Site Photos

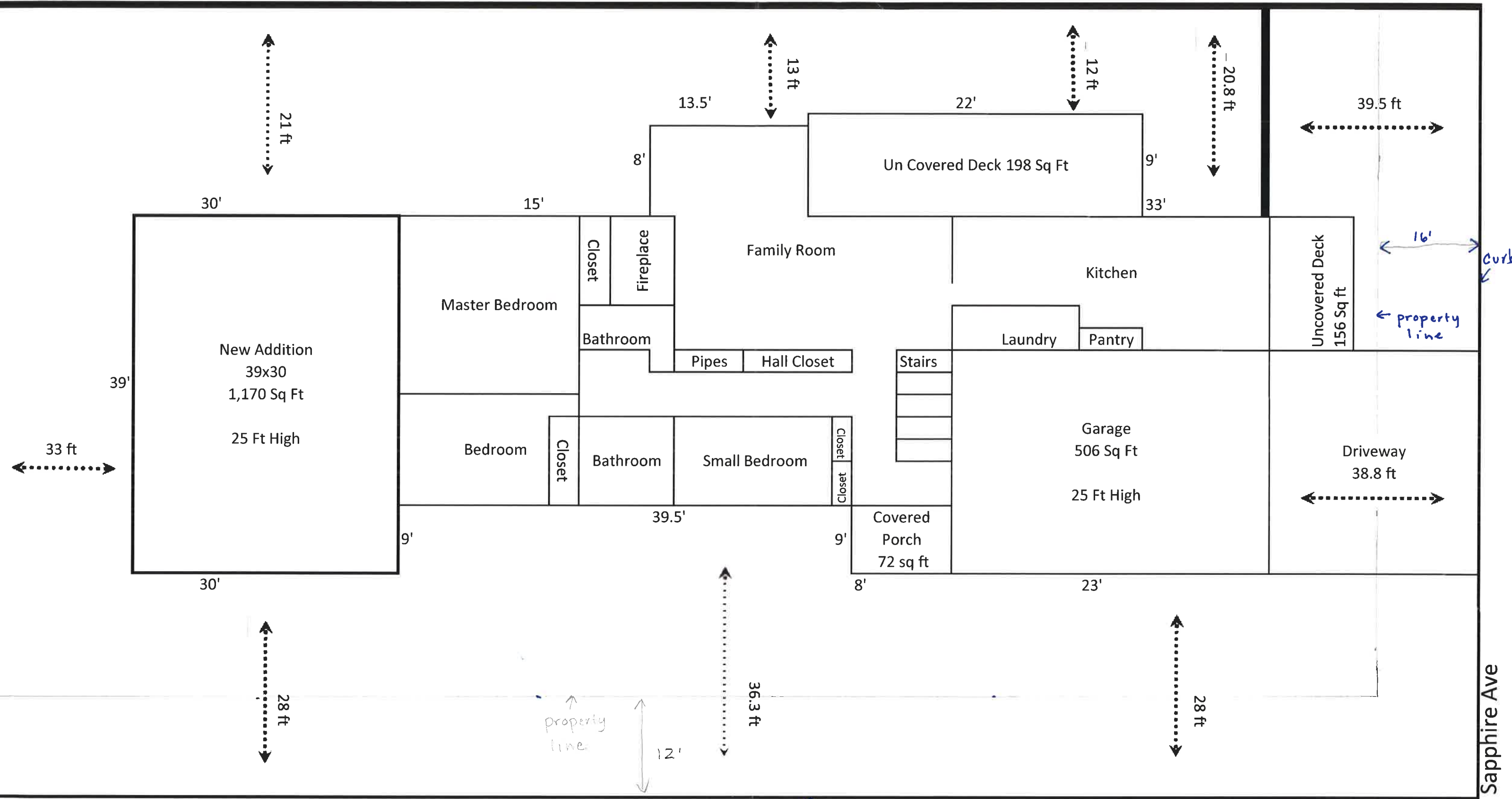


**Site Photos**





NORTH



Sapphire Ave

Sunset Dr

33 ft

21 ft

28 ft

36.3 ft

12'

28 ft

39.5 ft

16'

38.8 ft

30'

15'

13.5'

13 ft

22'

12 ft

20.8 ft

8'

9'

39'

New Addition  
39x30  
1,170 Sq Ft  
25 Ft High

Master Bedroom

Cl  
set

Fire  
place

Family Room

Kitchen

Bath  
room

Pipes

Hall  
Closet

Stairs

Laundry

Pantry

Uncovered Deck  
156 Sq ft

Bedroom

Cl  
set

Bath  
room

Small Bedroom

Cl  
set

Garage  
506 Sq Ft  
25 Ft High

Covered  
Porch  
72 sq ft

39.5'

9'

8'

23'

30'

9'

property  
line

curb

property  
line

curb

## VARIANCE #1289 DETERMINATIONS

The Board of Adjustment (BOA) 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. The home was constructed in 1975 on a 11,250 square foot lot.

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

There have been 4 other variances granted in this subdivision. These variances were for setbacks and minimum lot size. There have been no variances requested for exceeding maximum lot coverage.

**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 to allow 33% lot coverage would allow the applicant a special privilege that is denied by this Chapter for other land within the same 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 denial of the variance request. However, if the BOA decides to grant the variance, the following conditions could be recommended:

1. The variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 33% in a (R-96) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 9A, Block 11 of Hilltop Subdivision, 41 Sunset Drive.
3. The applicant must submit building permits for the new addition within 6-months of BOA approval and complete construction within 1 year of building permit issuance.
4. 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.
5. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

**6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

If the BOA determines to grant the variance, staff would recommend that the applicant must submit for building permit for the new addition within 6-months with completion of the addition a year after building permit approval.

**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-96 zone.