



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

NOTICE TO THE PUBLIC

Public Comment:

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

Call the meeting to order.

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

Public Comment

Delayed. Approval of Minutes: June 5, 2019

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. **Variance #1295**The applicant is requesting a variance from 27-604(c) requiring a maximum of 6 feet in height to allow an 8 foot fence/wall in an Residential 9,600 (R-96) zone, on Block 1, Lot 3, Castlewood Sub. 3rd Filing, S27, T1N, R25E, a 10,943 square foot parcel of land. The purpose of the variance is to allow construction of an 8 foot fence adjacent to Zimmerman Trail. Tax ID: A20383. Presented by; Karen Husman, Planner I.

- b. **Variance #1296** The applicant is requesting a variance from 27-308 requiring a maximum of 30 % lot coverage to allow 40% in a Residential -8000 (R-80) zone, on Block 15, Lots 7A, 8A, 9A, 10A & 11A, of Lampman Subdivision, with five lots containing a total of 63,134 square feet. Presented by Karen Husman, Planner I.

Other Business/Announcements

Adjournment

Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 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. Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 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 Tammy Deines, Planning Clerk, at 247-8610 or e-mail at deinest@ci.billings.mt.us.



City Board of Adjustment

Meeting Date: 07/03/2019

SUBJECT: Variance #1295 - 2410 Flagstone Drive

THROUGH: Nicole Cromwell

PRESENTED BY: Karen Husman

Information

REQUEST

Variance #1295 The applicant is requesting a variance from 27-604(c) requiring a maximum of 6 feet in height to allow an 8 foot fence/wall in an Residential 9,600 (R-96) zone, on Block 1, Lot 3, Castlewood Sub. 3rd Filing, S27, T1N, R25E, a 10,943 square foot parcel of land. The purpose of the variance is to allow construction of an 8 foot fence adjacent to Zimmerman Trail. Tax ID: A20383. Presented by; Karen Husman, Planner I.

RECOMMENDATION

Staff recommends conditional approval of the variance.

APPLICATION DATA

OWNERS: Charles & Jolynn Sommers

PURPOSE: Allow an 8 foot fence

LEGAL DESCRIPTION: Block 1, Lot 3, Castlewood Subd., 3rd Filing

ADDRESS: 3410 Flagstone Dr.

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
None					
SIMILAR PROPERTY					
3629 Vickery Drive	Variance 811	Jan 5, 2000	8-foot fence	Yes	grade change between lots
3724 & 3730 Vickery Court	Variance 1156	July 10, 2013	8-foot fence	Yes	grade change between lots
4505 Loma Vista Dr	Variance 882	Nov 14, 2002	10-foot fence	Yes	To prevent basketballs from escaping on to Rimrock Rd
2740 Gregory Drive S	Variance 816	May 2 2000	9-foot fence	Yes	grade change between lots and Rimrock Rd

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96

Land Use: Residential Single Family

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 a maximum of 6 feet in height to allow an eight-foot fence. The purpose of the variance is to allow construction of an eight-foot fence adjacent to Zimmerman Trail. Attached photos provide evidence the Zimmerman Trail right of way (ROW) appears to be several feet higher than the grade of the bottom edge of the existing fence. In this instance, the topography of the land is the primary reason for the variance.

The applicant would like to have an eight-foot fence to prevent pedestrians as well as vehicles from having a clear visual into their back yard. Having an eight-foot fence would buffer the residents from view, and allow their yard more privacy.

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.

SUMMARY

Proposed DETERMINATIONS for Variance 1295:

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 special circumstances that exist in this situation. The subject property is at an elevation lower than the right of way (ROW) known as Zimmerman Trail. A six-foot fence does not give the owner the same privacy as it would if the ROW was level with the property.

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

The subject property is in a subdivision where there have been several lot size variances. Denying the variance would deprive the applicant of rights commonly enjoyed by other tracts in the same district. Other tracts in the district have a fence that obstructs the view of their yard and provides a privacy the subject property does not have due to the higher elevation of the ROW.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;

The variance will not allow the applicant any special privileges. The circumstances in this situation show the eight foot fence would allow the property owner the same privacy as other properties that have adjacent property at the same grade level.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy.

5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;

Staff is recommending the following conditions for the variance request:

1. The variance is to allow an eight-foot fence in the rear yard adjacent to Zimmerman Trail only. No other variance is intended or implied with this approval.
2. The variance is limited to Block 1, Lot 3, Castlewood Sub., 3rd Filing, generally located at 3410 Flagstone Drive.
3. The applicant shall meet all other city code requirements with the exception of this variance.
4. The property owner must submit and receive approval of a building permit within 6 months of approval of this variance, and complete construction within one year.
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

The property owner shall complete construction of the new fence within one year of approval of the variance.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district – fences are allowed in the R-96 zone.

RECOMMENDATION

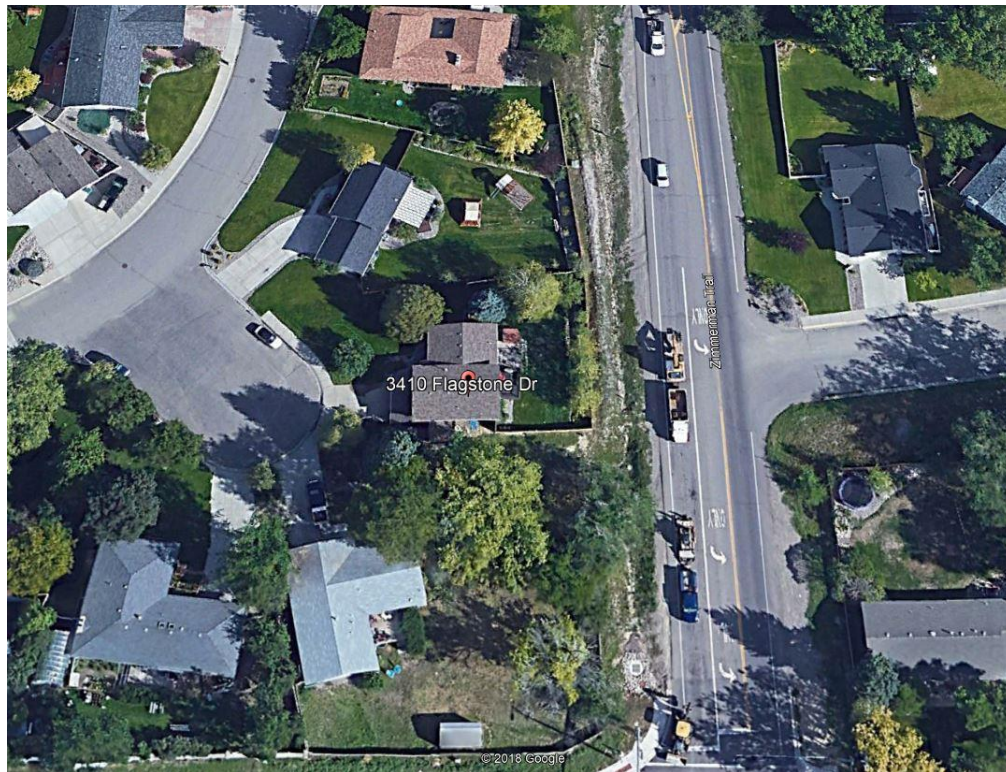
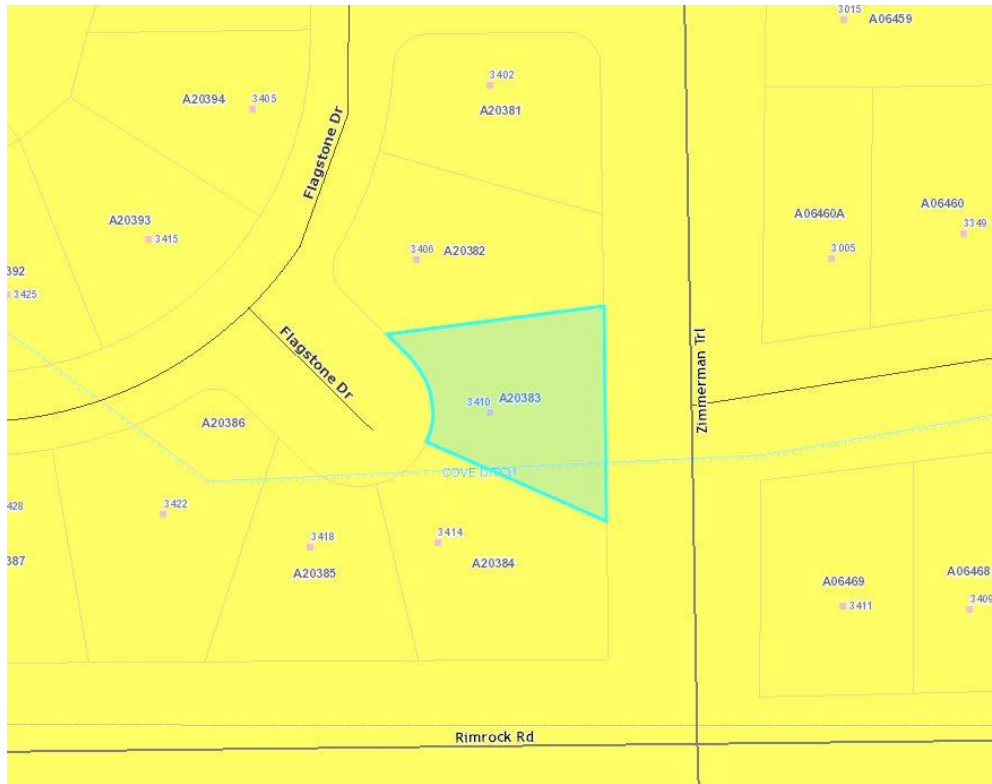
Staff recommends Conditional Approval.

Attachments

Zoning Map & Site Photos
Application & Applicant letter
Site Plan

Attachments

Zoning Map & Site Photos





Subject Property



West



North



West from Zimmerman



Google photo looking west from Zimmerman



Southwest from Zimmerman

Application & Applicant Letter

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1295 - Project # P2-19-00076

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 # A20383 CITY ELECTION WARD # 4 (Gibbs, Renning)

Legal Description of Property: Castlewood Subd 3rd Filing, S27, T01, N, R25E, Block 1, Lot 3

Address or General Location (If unknown, contact City Engineering): 3410 FLAGSTONE DR

Zoning Classification: Residential

Size of Parcel (Area & Dimensions): 10943 sf

Covenants or Deed Restrictions on Property: Yes _____ No
If yes, please attach to application Not aware of any.

Variance(s) Requested: Up to an 8' Fence

Facts of Hardship: Adjacent to Zimmerman (not at an intersection) Trail traffic noise is exceptionally bad - hoping for better noise barrier.

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

Owner(s): Charles & Jolynn Sommers
(Recorded Owner)
3410 Flagstone Dr, Billings, MT 59102
(Address)
Billings, MT chuckcsa@180com.net
(Phone Number) (email)
(406)697-1359

Agent(s):
(Name)
(Address)
(Phone Number) (email)

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

Signature: Charles A Sommers Date: 5/31/19
(Recorded Owner)



Chuck Sommers

From: Chuck Sommers [Chuckcsa@180com.net]
Sent: Monday, June 03, 2019 12:17 PM
To: Chuck Sommers
Subject: FW: Fence Variance
Attachments: 20190602_202516.jpg; 20190602_202858.jpg

To: The Chairperson of the Board of Adjustment;

We are requesting a Variance from the zoning regulations for fence height due to the extremely disturbing noise issues that come from traffic on Zimmerman Trail. We are simply trying to enjoy the use of our backyard but find that it is becoming more and more difficult to do so given the increased noise produced by the constant traffic on Zimmerman Trail. Since we plan to invest in a new fence on our property we would appreciate your consideration in allowing us increase the height of our fence including retaining wall to 8'. We believe this will allow a better buffer from the extreme noise pollution caused by the Zimmerman Trail traffic.

This will not cause any traffic control sight issues as we are not on an intersection that would require seeing around our fence for any oncoming traffic. In fact, we believe the new fence will be a big improvement over our existing fence with regard to aesthetics. Attached you will find a diagram that indicates the portion of our fence that we are requesting this variance to 8'.

We also have a plat showing the location of our lot within our subdivision.

We are also including photos that show that our backyard is actually about 3' – 4' below the level of the Zimmerman Trail road. This puts us at a deficit for privacy and noise at the outset.

We appreciate your consideration of this variance request and we sincerely hope you are able to agree that is reasonable and justifiable.

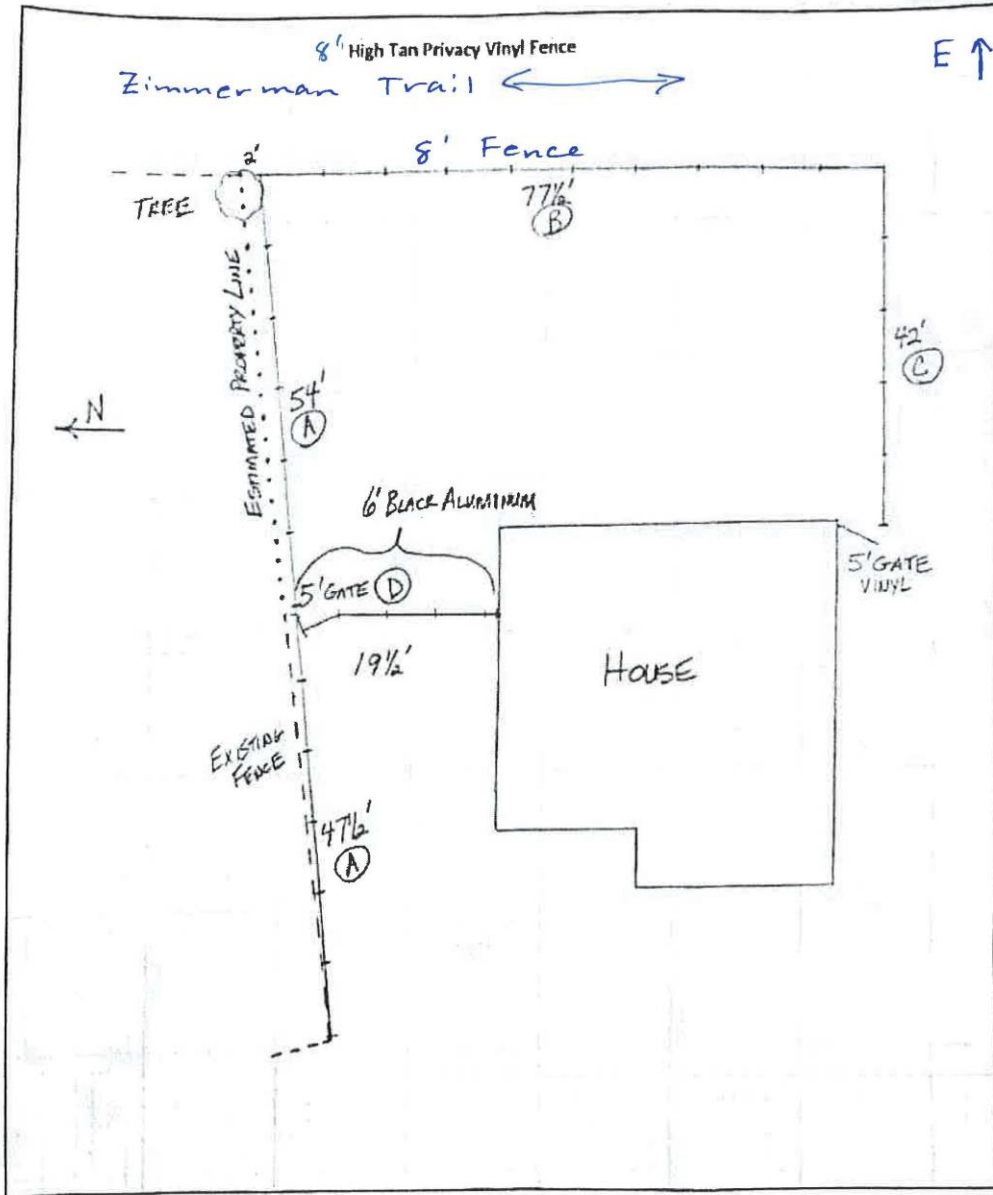
Respectfully submitted by,

Chuck & JoLynn Sommers
3410 Flagstone Dr.
Billings, MT 59102
406-252-3459 or 406-697-1359

CREATIVE VINYL FENCING

235 Airport Road
BILLINGS, MONTANA 59105
(406) 259-5200

Name Chuck Sommers
Address 3410 Flagstone Dr.
City Billings State MT Zip 59102
Phone 697-1359 or 252-3459 Date 5/29/2019



Scanned by CamScanner

Site Plan



City Board of Adjustment

Meeting Date: 07/03/2019

SUBJECT: Variance #1296- Southeast corner of Rosebud and S 31st St. West

THROUGH: Nicole Cromwell

PRESENTED BY: Karen Husman

Information

REQUEST

Variance #1296 The applicant is requesting a variance from 27-308 requiring a maximum of 30 % lot coverage to allow 40% in a Residential -8000 (R-80) zone, on Block 15, Lots 7A, 8A, 9A, 10A & 11A, of Lampman Subdivision, with five lots containing a total of 63,134 square feet. Presented by Karen Husman, Planner I.

RECOMMENDATION

Staff recommends denial of the variance.

APPLICATION DATA

OWNERS: Lais Development & Rosebud Development

AGENT: Barbara Hawkins

PURPOSE: Lot Coverage from 30% to 40%

LEGAL DESCRIPTION: Block 15, Lots 7A, 8A, 9A, 10A & 11A, Lampman Subdivision

ADDRESS: Rosebud and 31st Street

EXISTING LAND USE: Vacant/Residential

PROPOSED LAND USE: Residential Multi family

EXISTING ZONING: R-8000

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SIMILAR PROPERTY					
2920 Rosebud Drive	774	Aug 4, 1998	Lot cov to. 31%	N	
3061 Daystar	899	June 12, 2003	Lot cov to 39%	N	for proposed 2-family dwelling

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-8000

Land Use: Vacant/Residential Single family and multi-family

SOUTH: Zoning: Community Commercial

Land Use: Commercial

EAST: Zoning: Residential-9600

Land Use: Residential Single Family

WEST: Zoning: Residential-6000

Land Use: Residential Single Family (Condominiums)

BACKGROUND

The applicant is requesting a variance from a maximum of 30 % lot coverage to allow 40% lot coverage. The variance request is to allow 40% lot coverage on five lots in Block 15 in the Lampman Subdivision. The applicant has constructed one duplex on lot 11A, and would like to build duplexes on the remaining four lots that are similar and very close to 40% lot coverage when including garages.

The applicant has stated they built a duplex on lot 11A in 2012 and it was at 34% lot coverage. However City records indicate this permit was issued for 27% lot coverage at the time. They have submitted for a new building permit for lot 9A and were not granted the building permit as it was for 36% lot coverage. Staff research did not find any similar variances in this neighborhood or district.

SUMMARY

STAFF DETERMINATIONS for Variance 1296

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

1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;

There are no special circumstances that exist which are peculiar to the land. The applicant has not stated a hardship with the property. The code allows 30% lot coverage and the proposed duplex could be built to meet the size allowed by the zoning regulations.

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;

Allowing the variance would give the applicant rights not commonly enjoyed by other tracts in the same district. There have not been any similar variances granted in the area or surrounding neighborhoods. The variance would allow the applicant special privileges. Other lots in this subdivision have developed as defined by the zoning code.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;

Granting this variance would confer a special privilege to this applicant as similar developments have been build and met the maximum lot coverage under the code. Granting the variance requested will confer on the applicant a special privilege that is denied by this Chapter to other land in the same district.

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 not in harmony with the general purpose and intent of the zoning regulations and the growth policy. Lot coverage restrictions prohibit excessive building in all zoning districts.

5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;

Staff has no conditions for a recommendation of denial.

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;

There would be no time limit with a recommendation of denial.

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.

Granting this variance will not approve a use that is not otherwise allowed in the R-80 zoning district. Residential

single family dwellings and duplexes are allowed in the R-80 district.

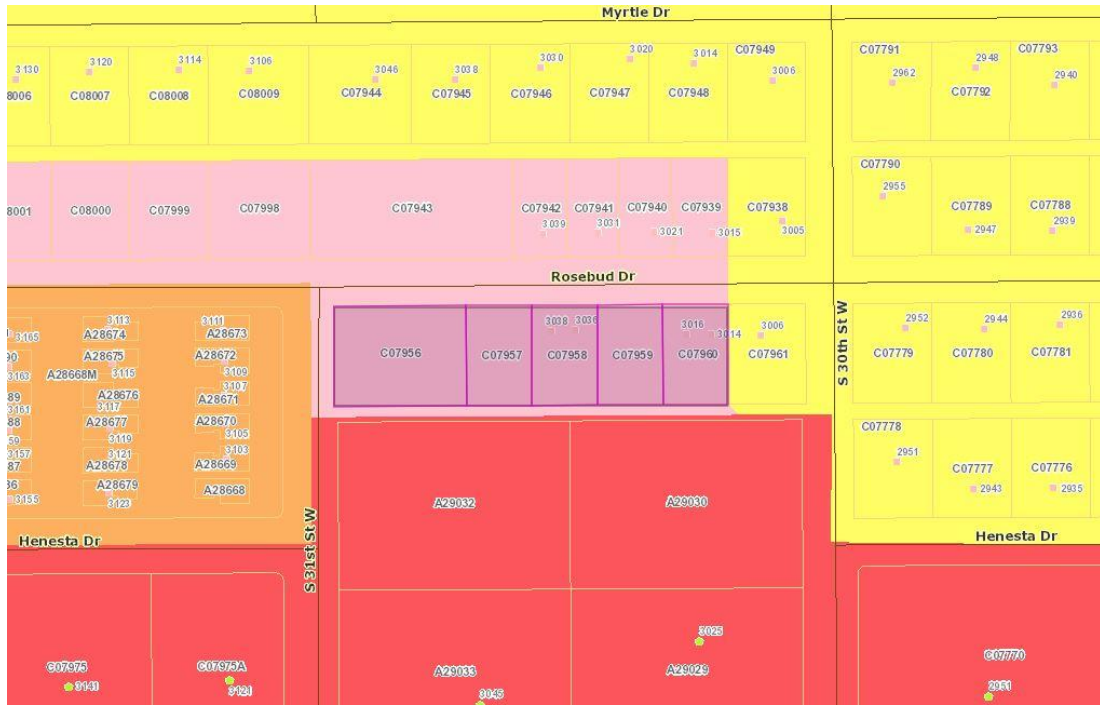
RECOMMENDATION

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

Attachments

Zoning Map & Site Photos
Application & Applicant letter
Site Plan

Attachments Zoning Map & Site Photos





Subject Property



East



West



North

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1296 - Project # P2-19-00085

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 # C07959, C07958, C07957 CITY ELECTION WARD # _____

Legal Description of Property: ^{+C07956} lots 7A, 8A, 9A, 10A, 11A Block 15 Lampman
Subdivision

Address or General Location (If unknown, contact City Engineering): 3D-- Block of Rosebud
(4 lots) Adjacent to 31st St. W + 3 lots to the east

Zoning Classification: R8000

Size of Parcel (Area & Dimensions): 52,650 sq FT 120' deep x 438.75' wide

Covenants or Deed Restrictions on Property: Yes _____ No

If yes, please attach to application

Variance(s) Requested: Lot coverage increase to 40% from
30%

Facts of Hardship: To Build a duplex with 1280 sq ft on each
side and a double car garage 21 1/2' x 22'

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

Owner(s): LAIS Development + Rosebud Development
(Recorded Owner)
745 Henesta Place, Billings, MT 59102
(Address)
406-672-6151 montana broker@yahoo.com
(Phone Number) (email)

Agent(s): Barbara Hawkins
(Name)
745 Henesta Place, Billings, MT 59102
(Address)
406-672-6151 montana broker@yahoo.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.

Signature: Barbara Hawkins Date: 5/29/19
(Recorded Owner)



May 31, 2019

To: Chairperson of the Board of Adjustment

We are the owners of Lots 7A-11A, Block 15 in Lampman Subdivision. We have built several homes on both sides of Rosebud between 30th and 31st streets west. In 2012 we built a duplex on lot 7A with approximately 1270 square feet and double car garages for each unit. We still own both sides of that duplex. After 7 years we applied for a building permit to build a duplex three lots down from this duplex. The plan is very much the same with a few changes, mainly extending the garage to allow for a large pickup and adding a foot to the master bedroom to allow for a nicer master bath. We plan to offer these as individual units for sale and already have customers wanting to purchase them. Our intention is to build 4 more duplexes from the same or similar plan. All of the side, front and back set backs are met, however, we were informed that our plan did not meet the 30% lot coverage for R8000 zoning. The plan we turned in was at 36% and even the duplex we built in 2012 was at 34% due to the fact the plan reviewer was using roof square footage to calculate lot coverage. We are requesting a blanket variance for the remaining lots including the lot we have already built on to allow 40% lot coverage to bring 3014 and 3016 Rosebud into compliance and allow us to build the duplexes on the remaining lots.

We believe this would be a good addition to the neighborhood since these lots back up to commercial property and would provide a buffer for the single family homes to the north that are already built and for those that will be built in the future.

Cordially,



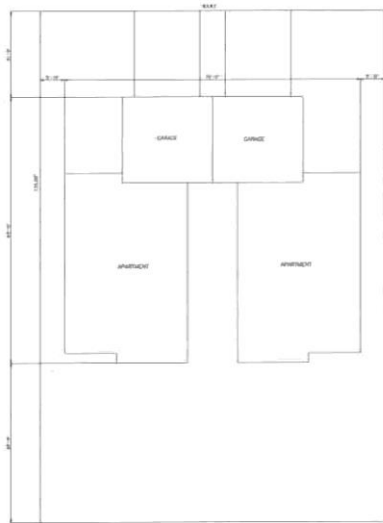
Barbara Hawkins, agent
LAIS Development, Inc.
Rosebud Development LLC

Variance request for Lots 7A-11A, Block 15 Lampman Subdivision

- A. We applied for a building permit to build a duplex on lot 9A with 1280 sq feet on each side and a double car garage 21 1/2' x 22'. The planning department calculated lot coverage based on roof square footage and informed us we were at 36%. The plans meet all the side, front and back setbacks and are very much like the duplex we built on lot 7A in 2012. We were also informed that the duplex we built in 2012 did not meet the 30% lot coverage, yet we were issued a building permit without this being mentioned at the time. We planned to build duplexes like this on the remaining lots on the south side of Rosebud as they back up to commercial property and are across the street to the west from multi-family condos.

- B. These duplexes will provide a buffer for the single family houses already built on the north side of Rosebud. There is a great demand for smaller housing such as these and it will be a nice addition to the area filling in some vacant lots in the city that are now covered in weeds and vegetation.

ROSEBUD



LEGAL DESCRIPTION
LOT 10
SECTION 10
T10N R10E
LOT 10
SALINE AND ADJACENT WARRICK - 4119 SQ. FT.
LOT 10 - 100

PLOT PLAN

SCALE 1/8" = 1'-0"



FRONT ELEVATION

SCALE 1/8" = 1'-0"