



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, December 4, 2019 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

Motion. Approval of Minutes: November 6, 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 1304 - 711 N 15th St - Lot Area and Setbacks.** This is a variance request from Section 27-308 requiring a minimum lot area of 13,000 square feet for a single family dwelling and a duplex dwelling to allow a minimum lot area of 7,500 square feet: from 27-308 requiring a three (3) foot side setback to allow a minimum of 2.5 feet and 1.3 feet, in a Residential-6000 (R-60) zone, on Block 2, lot 47-48, North Park Subdivision a 7,500 square foot parcel of land. The purpose of the variance is to allow an existing duplex and single family dwelling, and two out buildings to be rebuilt on the site in the future. 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: 12/04/2019

Information

Subject

Motion. Approval of Minutes: November 6, 2019

Attachments

CityBOA_2019_11_06_DRAFT

CITY BOARD OF ADJUSTMENT

MINUTES November 6, 2019

Name	Title	01/02/2019	02/06/2019	03/06/2019	04/03/2019	05/01/2019	06/05/2019	07/03/2019	08/07/2019	09/04/2019	10/02/2019	11/06/2019	12/04/2019	
David Mitchell	Member	-	-	-	E	E	E	1	1	1	-	E		
Dave Hagstrom	Member	-	-	-	1	1	1	1	1	1	-	1		
Paul Hagen	Member	-	-	-	1	1	1	E	E	E	-	1		
Jeff Bollman	Member	-	-	-	1	E	1	E	E	E	-	E		
Oscar Heinrich	Member	-	-	-	1	1	1	1	1	1	-	1		
Martin Connell	Member	-	-	-	1	1	1	1	E	E	-	1		
Mark Noennig	Chair	-	-	-	1	1	1	1	1	1	-	1		
TOTAL NUMBER OF APPLICATIONS 2019		01/02/2019	02/06/2019	03/06/2019	04/03/2019	05/01/2019	06/05/2019	07/03/2019	08/07/2019	09/04/2019	10/02/2019	11/06/2019	12/04/2019	TOTAL
Variance		-	-	-	1	1	2	2	3	2	-	2		13

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 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 Tamara Deines, Planning Clerk.

Attending: Al Towleron, Bob & Sonja Edelman; Jerry Odegard; Doug Kory; Greg Reid, WWC Engineering; Tom Zurbuchen; Eric Bennett; Greg Judson

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. There was none. Member Heinrich visited both sites.

Approval of Meeting Minutes

Meeting minutes for August 7, 2019; September 4, 2019. (The October 1, 2019 meeting was canceled).

Motion

Member Heinrich motioned to approve the August 7, 2019 minutes and September 4, 2019 minutes. Member Hagen seconded. The motion carried with a unanimous voice vote.

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

A form has been implemented for disclosures. If any Member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here. There was none.

Public Hearings

Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting and acting on each variance.

Item #1 City Variance 1302 205-205.5 Terry Ave – Lot size and setbacks - A variance from Section 27-308 requiring a minimum lot area of 6,000 square feet for a single family dwelling to allow a minimum lot area of 3,825 square feet: from 27-308 requiring a twenty (20) foot rear setback to allow a minimum of 2.5 feet; in a Residential-6000 (R-60) zone, on Block 6, Lots 3-5 of Suburban Subdivision, a 10,500 square foot parcel of land. The purpose of the variance is to allow a division of the property with two existing single-family dwellings into one 3,825 square foot parcel and one 6,675 square foot parcel, and to allow the northern parcel a rear setback of 2.5 feet. Tax ID: A15823.

Recommendation:

Staff recommends conditional approval of the proposed variance.

Staff is recommending the following conditions for the variance request:

1. The variance is to allow a minimum lot area of 3,825 square feet: from 27-308 requiring a twenty (20) foot rear setback to allow a minimum of 2.5 feet; No other variance is intended or implied with this approval.
2. The variance is limited to Block 6, Lots 3-5 of Suburban Subdivision, generally located at 205 & 205.5 Terry Avenue.
3. Evidence will be provided to show the property along the alley will have legal and physical access from Terry Avenue.
4. Preliminary plat for the proposed relocation of lot lines will be submitted within one year of approval of variance.
5. The applicant shall meet all other city code requirements with the exception of this variance.
6. 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, leaseholders, heirs and assigns.

Discussion

Chair Noennig called for questions and discussion from the members of the Board. Board member Heinrich noted the garage would be removed and asked if there are conditions to address the easements. Ms. Husman explained these items would be addressed when the exempt survey for a boundary line relocation is submitted. Board member Noennig asked for clarification on the access to the two homes. Karen Husman provided clarification and posted a proposed site plan. She said an easement or dedication would be needed to provide access to both homes.

Public Hearing

Chairman Noennig opened the public hearing at 6:11 PM and asked if there was anyone wishing to speak in favor or against City Variance #1302.

Eric J. Bennett, 205 Terry Ave., Billings, MT 59106

Mr. Bennett clarified and said the garage does not have to be removed. Documentation of ownership and an agreement for use of the garage will be needed. In response to question by Board member Heinrich, Mr. Bennett stated that the intent is for the storage unit to remain on the property.

Chair Noennig asked if there is anyone wishing to speak in favor or against City Variance #1302. There was none. At 6:13 pm, Chairman Noennig closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion to and Board Member Connell seconded the motion to conditionally approve City Variance #1302 with the six conditions of approval and Findings of Fact.

Member	Yes	No	Not Present
David Mitchell			X
Dave Hagstrom	X		
Paul Hagen	X		
Jeff Bollman			X
Oscar Heinrich	X		
Martin Connell	X		
Mark Noennig	X		

The motion to conditionally approve **City Variance #1302** passed with a unanimous roll call vote.

Item #2 City Variance 1303 – 2001 Lake Hills Drive – To allow a front setback of 15 feet for a garage - A variance from Section 27-308 requiring a minimum front setback of 20 feet for a garage to allow a minimum front setback of 15 feet for a new 4-unit townhome with attached garages in a Residential Multi-Family Zone (RMF) zone on Lot 4, Block 13, Lake Hill Sub, 18th filing, a 14,400 square foot parcel of land. The purpose of the variance is to allow a 15-foot front setback for the attached garages.

Recommendation

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

1. The variance is to decrease the required front setback from 20 feet to 15 feet for the purpose of

constructing attached four-unit townhomes with attached garages. No other variance is intended or implied with this approval.

2. The variance is limited to on Lot 4, Block 13, Lake Hills Subdivision, 18th filing, generally located at 2001, 2003, 2005, 2007 Lake Hills Drive.

3. The site shall be developed in substantial conformance to the site plan presented to the BOA, reflecting the 15-foot front setback. No other nonconformity shown on the site plan is/are considered with this variance approval.

4. Construction shall be completed within 18 months of Board approval.

5. Failure to complete actions required by this approval within the time limits set forth shall void this variance.

6. All construction will require compliance with all other zoning regulations and City ordinances that apply at the time of construction.

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

Background

Ms. Husman and Ms. Cromwell explained that this application is due to a plan review error in the Master Site Plan review process. Planning staff reviewed the project as a Master Site Plan and issued approval for the proposed 15' setback in June 2019. During the staff review it was believed that the intent of the zoning regulation was met since there was more than 20' of separation from the sidewalk to the garage structure was provided. Following a complaint this fall, staff further researched the item and discovered 20' was required from the property line not the sidewalk. Staff advised Mr. Boeshen to stop work and apply for a variance. The staff report acknowledges staffs error in approving the site plan by using the distance to the sidewalk rather than property line.

Recommendation

Planning staff has reviewed this application & is recommending conditional approval of Variance #1303 based on the Determinations for granting a variance. Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the required front setback from 20 feet to 15 feet for the purpose of constructing attached four-unit townhomes with attached garages. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 4, Block 13, Lake Hills Subdivision, 18th filing, generally located at 2001, 2003, 2005, 2007 Lake Hills Drive.
3. The site shall be developed in substantial conformance to the site plan presented to the BOA that reflects the 15-foot front setback. No other nonconformity shown on the site plan is/are considered with this variance approval.
4. Construction shall be completed within 18 months of Board approval.
5. Failure to complete actions required by this approval within the time limits set forth shall void this variance.
6. All construction will require compliance with all other zoning regulations and City ordinances that apply at the time of construction.

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

Discussion

Chair Noennig called for questions and discussion from the members of the Board. Board member Heinrich asked what will happen if the variance request is denied. Nicole Cromwell said potentially the City Planning office would issue a halt notice on the project and ask that the builder bring the foundation into conformance. In response to question by Board member Hagstrom, staff said a complaint was received from a neighbor that the building does not meet the required setback. Chairman Noennig asked for clarification on the review process. Ms. Cromwell stated a Master Site Plan was submitted which is required when there are more than two buildings that share a common lot. During the staff review, it was believed the intent was met as the setback was met. Section 27-308 stated RMF-R zoning allows a 15-foot setback with a footnote. The error is that it does not meet the minimum from setback of 20-feet. Board member Hagen asked if the retention pond would be covered. Board member Hagstrom said the property line is actually 8.4-feet from the sidewalk, which is part of the right-of-way. Board member Heinrich pointed out the difference between the required setback for a garage and the required setback for a house.

Public Hearing

Chairman Noennig opened the public hearing at 6:27 pm and asked if there was anyone wishing to speak in favor or against City Variance #1303.

Greg Reid, WWC Engineering, 51 N 15th St #1, Billings, MT 59106

Mr. Reid explained the error in the required setback was not caught during the proposal, and this setback was carried through to the initial submittal. Discussions with staff did not identify the need for a variance. The foundation is in the ground and the neighbor notified staff with a code enforcement complaint. He said this variance makes sense as the purpose of the front setback of 20-feet so a vehicle has enough room to park without parking on the sidewalk. A four-plex must meet the required storm water and for this lot, the backyard must act as a storm water area. He stated they have determined it is safer to push the house forward and have a deeper pond area. He believes the variance request is warranted. Board member Heinrich asked if the other houses meet the storm water requirements. Greg Reid said there is a low infiltration rate on this particular site. Zoning Coordinator Cromwell pointed out the storm water requirements have significantly changed in the last few years.

Opposition

Alan Towlerton, 658 Hillcrest Drive, Billings, Montana

Mr. Towlerton stated he is disappointed in this mess and the way we got here. He feels the developer has the primary responsibility to conform to the regulations. He said it is visually intrusive. He feels the terms of a solution and any associated costs should be borne by the developer. Mr. Towlerton said the builder continued to work while the variance was in process, which will make it more difficult to bring the structure into conformance. He said new truck models range from 22-24 feet in length and the probability of a truck parked on this driveway is high. Mr. Towlerton spoke to the need for an allowance for additional parking area to allow truck parking.

Terry Odegard, 2101 Lake Hills Drive, Billings, Montana

Mr. Odegard thanked the Board members for their time and service. Mr. Odegard gave background on his work history and his experience with builders. He believes in due diligence and accountability. He suggested this is a "stupid mistake" and the person in error should have attended this meeting. He said his concern is if they can make a simple mistake, they can make a big mistake. He asked, "What is justice?" He said another four-plex is scheduled to be built across from his lot. He gave a photo to the Board of the over dig that has been left from this project.

Doug Cary, 1943 Lake Hills Drive, Billings, Montana

Mr. Cary stated he is the complainant. He said the builders poured the foundation on Columbus Day and he contacted the Planning Department the following day. He said he spoke with the owner/builder, Kenn Boeschen, and told him he may want to seek a variance. He also discussed with Mr. Boeschen regarding the parking issues and the location of the garbage receptacles as they are often placed on the street and left there. He pointed out the existing limitations to an adequate parking area that does not conflict with the sidewalk. He said the driveway is too tight to park a pickup. He said he does not see any other way other than granting the variance due to the large expense of rectifying the issues on the property. Mr. Cary spoke of a potential lawsuit due to the City's errors. He provided a list of notices to the Board and asked, "What is going on?" He stated he did not receive a notice and he is located 120-feet south of the lot in question. In response to question by Chairman Noennig, Mr. Cary pointed out that his property tax identification number does not appear on the notification list. Discussion followed on whether the setback would be met if the garage sizes were reduced and the front of the building is flat instead of protruding. Mr. Cary said he spoke the owner who seemed to be conducive to pouring the driveway with an additional slab alongside with green space or purchasing a gang mailbox to free up a parking space in front of the four-plex.

Bob Edelman, 2026 Lake Hills Drive, Billings, Montana

Mr. Edelman said the last variance that went into effect was to change the driveway configuration. The vehicles park in front of his house as there is not enough a room to park a larger vehicle. He stated this is an error on the City's part for allowing this structure, and something needs to be done to avoid having vehicles forced to park on the street. He said he did not receive notification of the meeting. Ms. Cromwell verified that this address is on the certified notification list.

Ron Hill, 142 Annandale, Billings, Montana

Mr. Hill is a developer/builder and has been actively building homes in Lake Hills for several years. He stated he believes the variance needs to be denied to avoid setting a precedence. He feels the suggestion to shorten the garage length is a good idea. He said the builder has not conformed to the City's request to cease. It was discovered staff had measured the setbacks from the sidewalk. He said a redesign is needed if the specifications are not met. Mr. Hill said the property owner is in a rush as he wishes to do a 1031 Exchange for the builder's benefit. Mr. Hill reviewed the Staff determinations. Determination #1-This has been applicable to other lands in the area and this application is not peculiar to the land, and it is the law. Determination #2 & #3-are weak determinations as the last variance was granted over 26-27 years ago, and there should have been more comparisons. Determination #4- Set back rules are 20 feet. (15-ft plus 5-ft for the garage). If granted, Mr. Hill feels the variance would be a special privilege to get his 1031 Exchange done in time. He feels the builder is arrogant as he failed to show up for this hearing and did not stop work when notified by the City. Mr. Hill asked that the Board deny the variance request or cutback the size

of the foundation.

Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana

Mr. Zurbuchen stated somebody made a very expensive mistake, and chances are it is going to cost the City. Mr. Zurbuchen said as a taxpayer, he would rather pay now than when the street is widened to the full width in the future. When the street is widened, there will be no legal off street parking on a 4-plex. He feels if the variance is approved, it will grant a special privilege as everybody else is conforming. He said the Board cannot grant a special privilege today and then and ask the taxpayers and the City to fix it in the future. He asked the Board to "Get it right now".

Rebuttal

Greg Reid, WWC Engineering, 51 N 15th St #1, Billings, MT

Mr. Reid responded to the questions brought up during the public hearing as to what can be done with this property. He said he is unable to answer the suggestion of altering the front of the garage, as the owner is not in attendance, which is regrettable. Board member Hagstrom said that from the site plan it looks as if the building could have been moved 3-feet towards the pond. Mr. Reid said he thinks the three options are to decrease building size; slide the building back and potentially deal with a variance on the storm water; or deal with a variance on the front.

At 7:11 pm, Chairman Noennig asked if there is anyone else wanting to speak in favor or against City Variance #1303. There was none. Chairman Noennig closed the Public Hearing and called for a motion.

Motion

Board member Connell made a motion and it was seconded by Board member Hagen to deny City Variance #1303.

Zoning Coordination Cromwell pointed out to the Chairman this motion is in conflict to the Staff Findings and she requested findings to support the motion for denial. Chairman Noennig called for discussion and questions for staff.

Board member Connell withdrew the motion.

Board member Heinrich commented that per City code a vehicle cannot park over a sidewalk. Ms. Cromwell agreed and stated this is considered a parking violation. Board member Heinrich asked if Project Recode will affect this situation. Ms. Cromwell said it will not, as at least 20-feet to the property line is needed to park a vehicle in the front of a residence. Board member Heinrich asked if granting this variance will set a precedent. Ms. Husman stated findings are needed to warrant the same type of variance. Chairman Noennig asked regarding the widening of the street. Ms. Cromwell said the right of way is 80-feet wide. Regarding the plan for the development of the street, the engineer said that if it met the minimum requirement for a collector street, it would require an additional 1.5-feet on either side. Chairman Noennig reiterated that if the minimum collector street width is met, the sidewalk could be shortened or moved to allow for a 20-foot driveway and sufficient width to the street.

Ms. Cromwell gave a clarifying example. Lake Elmo Drive is a collector street built to the maximum width and amenity for a collector street, where this street is not currently built to the maximum width. In response to question by Board member Heinrich, Ms. Cromwell stated only one variance was previously granted as noted in the Staff Findings and Determinations.

Motion

Board member Connell made a motion to deny City Variance #1303 on the following grounds: 1. It grants a special privilege to land owner and developer. 2. The developer failed to cease working when notified by the City so this could be worked out in an amicable fashion. 3. It is not good for the neighborhood. 4. This is another example of the City Planning Department passing off their mess to the Board of Adjustment. 5. The developer did not attend this hearing to defend his position. Board member Hagen seconded the motion and stated he does not see where the lay of this land creates a unnecessary hardship per Determination #1 and Determination #3.

Discussion

Board member Connell strongly voiced his frustration and said there are fifteen ways the storm water area could have been designed fifteen different ways. He said although there is fear of a lawsuit, the courts serve a purpose as they arbitrate and come up with reasonable solutions to difficult problems. He asked why this Board should be put in this position and said he stated he resents it.

Zoning Coordinator Cromwell interjected and explained a lawsuits would be brought forward on the grounds and basis and findings of this Board but the court sit as a super Board of Adjustment and grant the variance. Instead, the court would determine whether the variance was granted or not by the Board of Adjustment in a reasonable fashion. If not, it will be returned the to the Board to be approved. Board member Connell said the lawsuit will be from the landowner and builder for the mistakes made coming up to this variance request. Chairman Noennig said there are two different issues and he doesn't feel whether or not the City is liable from the State is directly related to the variance. He said in his experience he does not recall a case where you can have a stop hold against the government like they do for private parties. Board member Connell said he feels denial of the variance will give the developer a means of finding an amicable means of a solution with the landowners who had vaid points to consider. Chairman Noennig advised basing a decision based on Findings and determinations, and not on the behaviour of the applicant. Board member Heinrich asked if the intent of the motion is to reverse Determination #1 and Determination #7. Zoning Coordinator said this is an allowed use. The special priveledge is denoted in Determination #3. Chairman Noennig stated the motion is to deny Variance #1303 and called for a roll call vote.

Member	Yes	No	Not Present
David Mitchell			X
Dave Hagstrom	X		
Paul Hagen	X		
Jeff Bollman			X
Oscar Heinrich	X		
Martin Connell	X		
Mark Noennig	X		

The motion to deny City Variance #1303 carries 5-0. City Variance #1303 is denied.

Other Business: The next City Board of Adjustment meeting will be held on Wednesday, December 3, 2019. The Board will consider one variance application.

ADJOURNMENT: The meeting adjourned at 7:25 PM.

ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.
Tamara L. Deines, Planning Clerk



City Board of Adjustment

Meeting Date: 12/04/2019

SUBJECT: City Variance 1304 - 711 N. 15th Street - Lot Area and Setbacks

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

Variance 1304 - 711 N 15th St - Lot Area and Setbacks. This is a variance request from Section 27-308 requiring a minimum lot area of 13,000 square feet for a single family dwelling and a duplex dwelling to allow a minimum lot area of 7,500 square feet: from 27-308 requiring a three (3) foot side setback to allow a minimum of 2.5 feet and 1.3 feet, in a Residential-6000 (R-60) zone, on Block 2, lot 47-48, North Park Subdivision a 7,500 square foot parcel of land. The purpose of the variance is to allow an existing duplex and single family dwelling, and two out buildings to be rebuilt on the site in the future. Presented by; Karen Husman, Planner I

RECOMMENDATION

Staff recommends conditional approval of the variance.

APPLICATION DATA

OWNER: Mindy McCord

PURPOSE: To allow existing structures to remain on the lot.

LEGAL DESCRIPTION: Block 2, lot 47-48, North Park Subdivision

ADDRESS: 711 N 15th Street

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING:R-60

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SIMILAR PROPERTY					
721,723 N 16th St	1104	8/3/11	Lot size for 3plex	Y	
604 N 23rd St	1161	9/4/13	Lot size for duplex	y	
722 N 17th St	1063	10/7/09	Lot size for duplex & sfr	N	
1723 & 1727 8th Ave N	1060	10/7/09	Lot size for triplex and sfr	Y	

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-60
Land Use: Residential & Multi Family
SOUTH: Zoning: R-60
Land Use: Residential & Multi Family
EAST: Zoning: R-60
Land use: Residential & Multi Family
WEST: Zoning: RMH
Lane use: Residential

BACKGROUND

This is a variance to allow a minimum lot area of 7,500 square feet and allow a minimum of 2.5 feet and 1.3 feet for side setbacks in a Residential-6000 (R-60) zone. The applicant is requesting an allowance for an existing duplex and an existing single family dwelling to remain on a lot that is less than the required 13,000 square feet. The request is for financing purposes in an effort to renovate, upgrade, and maintain the existing units. The lot is in an older part of Billings and most of the surrounding lots were developed in the 1940's and 50's, prior to the implementation of the 1972 zoning. The proposed zoning for this property and surrounding properties as part of Project Re:Code is Mixed Residential 1 or NX1. This zone is intended to allow a variety of housing choices including single family, two-family and three or four unit buildings. The proposed minimum lot area in the NX1 is 7,000 regardless of the number of units on the property. The proposed NX1 side property line setbacks are five feet. Maintaining the units on this parcel through a variance now meets the criteria for variances and also will fit well with the proposed new zoning to be implemented in 2020.

SUMMARY

Proposed DETERMINATIONS for Variance 1304

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

1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;
There are not any special circumstances that exist in this situation other than the lot is less than required under the 1972 zoning for a duplex and a single family dwelling on the property. The existing structures were built in 1937 and 1945, before the current zoning was in place.
2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;
The subject property is in a subdivision where much of the development occurred in the early to mid 1900's. There have been similar variances granted in the surrounding neighborhoods. Denying the variance would deprive the applicant of rights commonly enjoyed by other tracts in the same district.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;
The variance will not allow the applicant any special privileges. Similar variances have been granted in the area. There are also similar properties that have not obtained variances.
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.
Approval of this variance would allow the applicant to improve an older structure and make needed upgrades to the structures.
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 Variance 1304:

1. The variance is to decrease the minimum lot area for a single family dwelling and a duplex dwelling to allow

a minimum lot area of 7,500 square feet, to allow a minimum of 2.5 feet and 1.3 feet side setbacks. No other variance is intended or implied with this approval.

2. The variance is limited to Block 2, lot 47-48, North Park Subdivision, generally located at 711 N. 15th Street.
3. The applicant shall meet all other city code requirements in making any modifications to the structures with the exception of this variance.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

No building permits are required as the buildings are existing. However, future improvements or remodeling of the structures may require building or other City permits.

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 – residential single family and two family dwellings are allowed in the R-60 zone.

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

Application, Applicant Letter, Site Plan



East



South east



South west



North west

Application, Applicant letter & site Plan

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1304 - Project # PZ-19-00225

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 # A12069 CITY ELECTION WARD # _____

Legal Description of Property: North Park Subd. S33, T01 N, R62E
Block 2, Lot 47-48

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

711 N. 15th St. Billings MT 59101

Zoning Classification: Residential 6000

Size of Parcel (Area & Dimensions): 50' x 150' 7500 sq feet

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: See attached

Facts of Hardship: Existing buildings do not meet code requirements. Variance is sought such that a loan and proper insurance may be obtained on the subject property so that they can be maintained and repaired in the event of unforeseen circumstances.
*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Mindy McCord
(Recorded Owner)
6908 Kirby Rd Shepherd MT 59079
(Address)
406-200-3008 mindynmccune@gmail.com
(Phone Number) (email)

Agent(s): _____
(Name)

(Address)

(Phone Number) (email)

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

Signature: [Signature] Date: _____
(Recorded Owner)



To: Chairperson of the Board of Adjustment

Re: 711 N 15th Variance Application

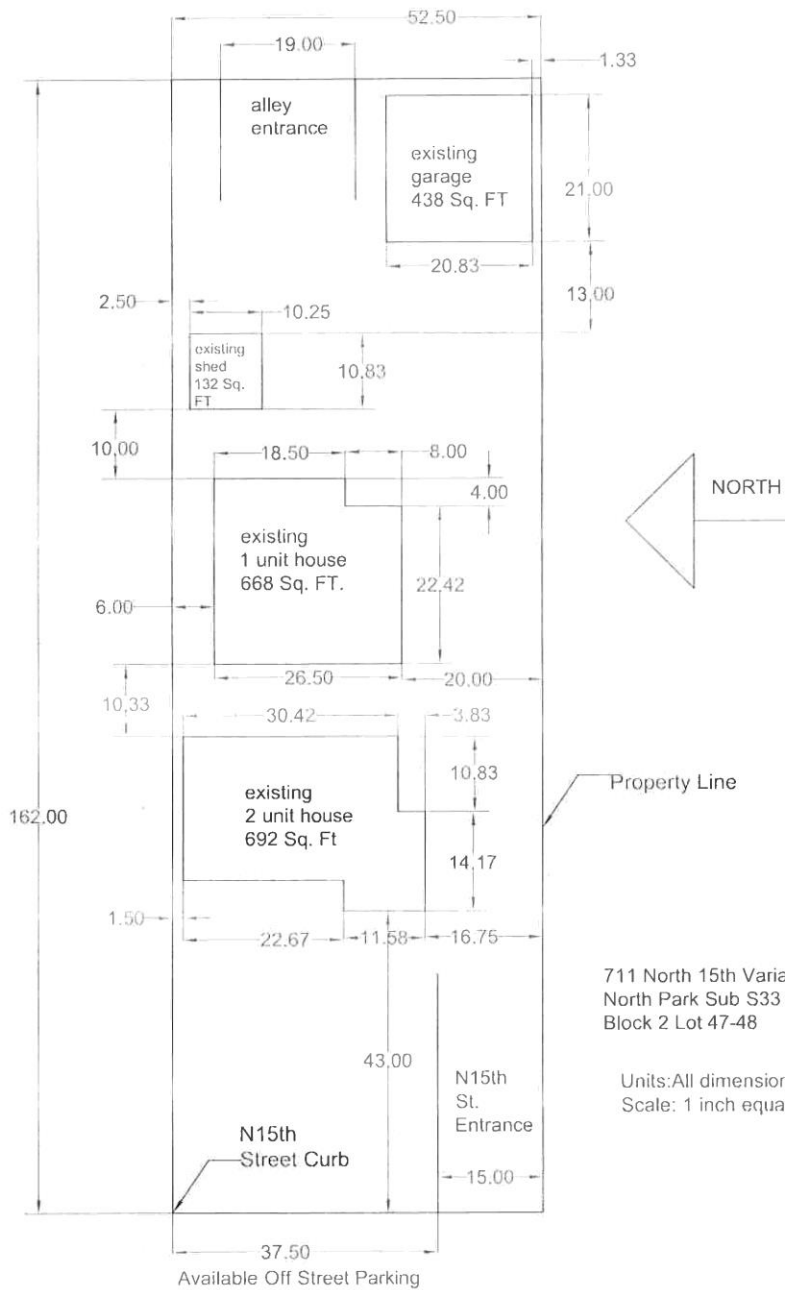
The request is being made to accept/approve the variance on 711 N 15th St in Billings, MT. The subject property has an existing duplex, and single family home on a 7500 sq foot property. Existing code requires 13,000 sq foot. The front house does not meet the set back requirement from the north property line and the garage does not meet the set back requirement from the south property line. The buildings as they are have been there since approx 1965 (based on recollection of the previous owner). I have come into possession of the property and was not aware of the compliance issues. No changes are being proposed to the existing land, and the variance is being requested to ensure the existing buildings comply with the city code requirements. To make the buildings physically comply would require demolition of the entire lot, and rebuilding only the front duplex and the back garage. Thank you for the consideration in this matter.

Regards,



Mindy McCune (Formerly McCord)

Property Owner of 711 N 15th St.



711 North 15th Variance request
 North Park Sub S33 T01 N, R26 E,
 Block 2 Lot 47-48

Units: All dimensions in feet
 Scale: 1 inch equals 20 feet