



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, March 4, 2020 @ 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.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of December 4, 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. **City Variance 1305** - 1324 O'Malley - Setbacks - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback and requiring a minimum rear setback of 20 feet to allow a 4-foot rear 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 BOA previously approved this request under Variance 1284 on November 8, 2018. Tax ID: A04101. Presented by Karen Husman, Planner I.
  
- b. **City Variance 1306** - 2200 Block of Overland Ave - Height - A variance from 27-309 requiring a maximum building height of 45 feet to allow 55 feet in a Highway Commercial (HC) zone, on Lot 4B-1, Block 3, Hogan Homestead Subdivision, a 3.5 acre parcel of land. The purpose of the variance is to allow a new four-story hotel. Presented by; Karen Husman, Planner I.

### **Other Business/Announcements**

### **Adjournment**

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)

**City Board of Adjustment**

**Meeting Date:** 03/04/2020

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**Information**

**Subject**

The minutes of the Board meeting of December 4, 2019.

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**Attachments**

BBOA\_2019\_1204

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**CITY BOARD OF ADJUSTMENT**

MINUTES December 4, 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	1	
Dave Hagstrom	Member	-	-	-	1	1	1	1	1	1	-	1	1	
Paul Hagen	Member	-	-	-	1	1	1	E	E	E	-	1	1	
Jeff Bollman	Member	-	-	-	1	E	1	E	E	E	-	E	E	
Oscar Heinrich	Member	-	-	-	1	1	1	1	1	1	-	1	E	
Martin Connell	Member	-	-	-	1	1	1	1	E	E	-	1	1	
Mark Noennig	Chair	-	-	-	1	1	1	1	1	1	-	1	1	
<b>TOTAL NUMBER OF APPLICATIONS 2019</b>		<b>01/02/2019</b>	<b>02/06/2019</b>	<b>03/06/2019</b>	<b>04/03/2019</b>	<b>05/01/2019</b>	<b>06/05/2019</b>	<b>07/03/2019</b>	<b>08/07/2019</b>	<b>09/04/2019</b>	<b>10/02/2019</b>	<b>11/06/2019</b>	<b>12/04/2019</b>	<b>TOTAL</b>
<b>Variance</b>		-	-	-	1	1	2	2	3	2	-	2	1	<b>14</b>

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 Tamara Deines, Planning Clerk.

**Attending:** Jeremy & Mindy McCune; Samantha Schmitt

**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.

**Approval of Meeting Minutes**

Meeting minutes for November 6, 2019

## **Motion**

**Board Member Heinrich moved and Board Member Mitchell seconded the motion to approve the November 6, 2019 minutes with corrections submitted by Board member Noennig. 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. Site Visits were conducted by Board member Mitchell, Board member Heinrich, and Board member Hagstrom.

## **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 – 1304 – 711 N 15th Street – Lot size and setbacks** - A variance 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 remain on the property, a rebuild letter would be required. Tax ID: A12069

## **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.

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  
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, leaseholders, heirs and assigns.
5. 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.
6. 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.

### **Discussion**

Chair Noennig called for questions and discussion from the members of the Board. Ms. Husman stated the applicants are not intending to expand or enlarge the structures and have applied for this variance for purpose of obtaining a loan.

### **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 #1304.

### **Jeremy McCune, 6908 Kirby Road, Shepherd, Montana**

Mr. McCune stated they purchased this property a year ago and the lender notified them of the need to comply with the zoning. He said this request is for lending purposes and to allow the structure to be rebuilt if it is destroyed. In response to question by Board member Hagstrom, explanation was given that there is no other requirement than the variance. The R-6000 classification does not allow for the two separate structures. The front duplex is insured as one and the back house insured as one. This is a pre-existing structure, and the applicant wishes to have everything as it is supposed to be.

Chair Noennig asked if there is anyone wishing to speak in favor or against City Variance #1304. 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 Mitchell seconded the motion to conditionally approve City Variance #1304 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 #1304 passed** with a unanimous roll call vote.

**Other Business:** The City Board of Adjustment meeting scheduled for Wednesday, January 8, 2020 is canceled.

**ADJOURNMENT:** The meeting adjourned at 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:** 03/04/2020

**SUBJECT:** Variance 1305 - 1324 O'Malley - Setbacks

**THROUGH:** Monica Plecker

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**City Variance 1305** - 1324 O'Malley - Setbacks - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback and requiring a minimum rear setback of 20 feet to allow a 4-foot rear 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 BOA previously approved this request under Variance 1284 on November 8, 2018. Tax ID: A04101. Presented by Karen Husman, Planner I.

**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 in the summary section of this report.

**APPLICATION DATA**

OWNERS: Joel Parker

PURPOSE: To allow a minimum front setback of 12 feet & rear setback of 4 feet to build an attached garage

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

ADDRESS: 1324 O'Malley Drive

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 Drive	1284	11/2018	Front & Rear Setbacks	Yes	Attached Garage
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 requested a variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback and requiring a minimum rear setback of 20 feet to allow a 4-foot rear 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. Previously, the board approved this request under Variance 1284 on November 8, 2018. The time limits for construction of the proposed attached garage have expired. A new variance is required.

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 rear setback of four feet and the front yard setback at twelve feet. This particular parcel is an odd shape that would not allow any significant useful addition to the home. This application was previously approved in 2018 with conditions that require the applicant to apply for a building permit within one year. A new variance approval is required to allow the applicant additional time to acquire a building permit and start construction.

## SUMMARY

### VARIANCE 1305 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 additions to the existing home without extending into one 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 and a rear setback of four 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 the following conditions:

1. This approval is for a 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 one year and building completion within two 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 this application.
5. Construction or demolition activity, including excavation and foundation preparation, 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 attached garage within one year and have it completed within two 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.

## **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 in the summary section of this report.

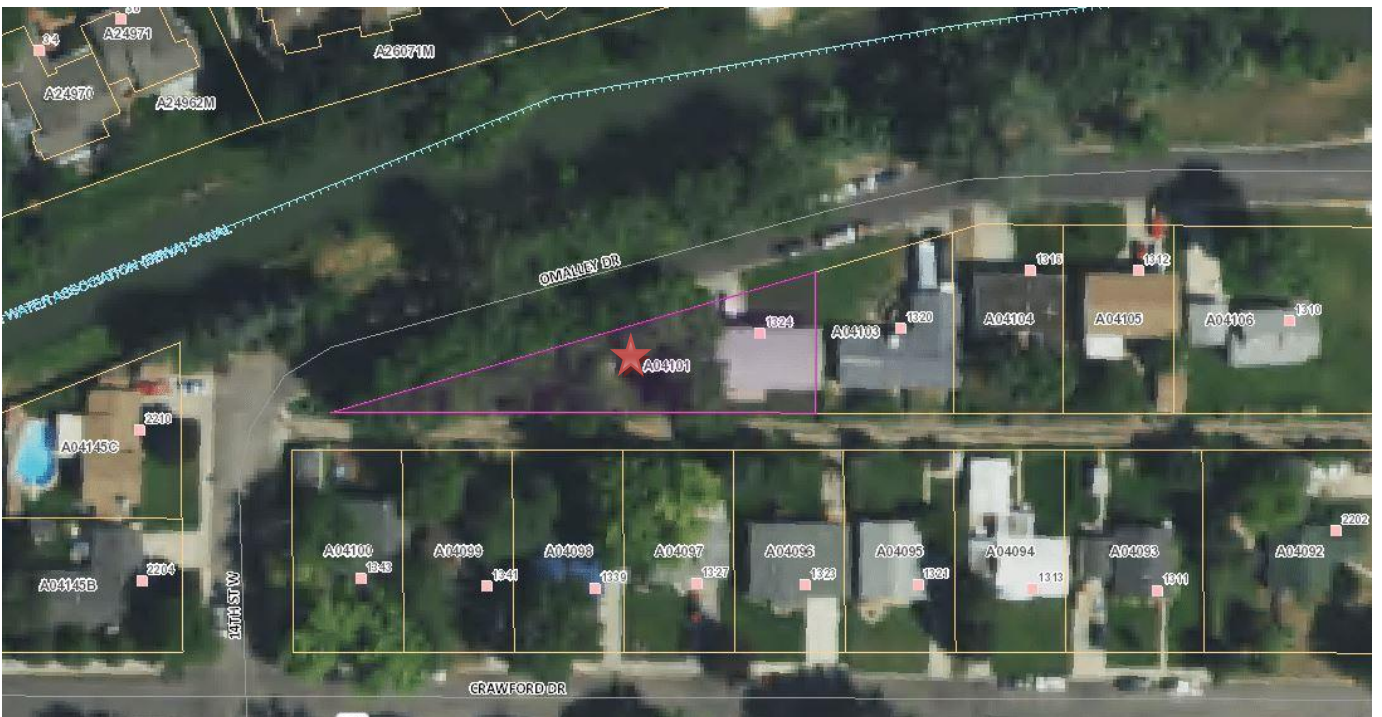
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### **Attachments**

Zoning Map & Site Photos  
Application & Applicant Letters  
Site Plan

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**ATTACHMENT**  
Surrounding Zoning & Site Location



Subject property 

**ATTACHMENT**  
Site Photographs



**Subject Property**



Looking east



Looking west



Looking West

**ATTACHMENT**

Application form

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance #** 1305 **- Project #** PZ-20-00035

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 # 517-84-3073 CITY ELECTION WARD # \_\_\_\_\_

Legal Description of Property: Carlson Subdivision  
Block 1 Lot 11

Address or General Location (If unknown, contact City Engineering): 1324  
O'Malley Billings, Mt 59102

Zoning Classification: R 9600

Size of Parcel (Area & Dimensions): East 71' X south 291' X North 303' X West 7 1/2'

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

If yes, please attach to application

Variance(s) Requested: 1 12' setback off property line (North Front)  
2 4' setback off property line (south back)

Facts of Hardship: Existing property lines do not allow a  
20' setback for proposed Addition

\*\*\* 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) \_\_\_\_\_  
(Address) 1324 O'Malley Dr. Billings, MT 59102  
(Phone Number) 406-690-2310 (email) Debbie@afmedinc.com

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: Joel W. Parker Date: 01-29-2020  
(Recorded Owner)



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

April 10<sup>th</sup>, 2019

Re: Building Permit and Variance Extension

To whom it may concern,

I would like to get approved for a two year extension on my building permit and a two year extension on both front and back variance.

As I still have a couple of months of rehab from a shoulder surgery and I still need to schedule a second surgery (which is a hip surgery) and this will require more physical therapy.

Please let me know if anything else is needed for these extensions.

Thank you,

Joel W. Parker

Copies of permits enclosed



Michael Groover DO  
Steven Klepps, MD  
Michael Yorgason, MD  
Zach Scheer, MD  
Kyle Lybrand, MD

Alan Dacre, MD  
Anthony Roccisano DO  
David Shenton, MD  
Nicholas Beck MD

2900 12th Ave. No  
Billings, MT 59101

Date of Service: April 3, 2019 Patient: Joel Parker Page: 1

Thomas Owen, MD  
Gregory McDowell, MD  
Lindsey Beck DO  
Roger Bentley MD  
James Elliott, MD  
Dean Sukin, MD  
Ben Phipps, MD  
Brian Drake DO  
Heather Hansen, MD

#140W or #100E  
406-237-5050

re:Parker, Joel 1/3/1959

4/3/2019

To whom it may concern,

Joe Parker is currently undergoing rehabilitation following a surgical procedure, and is also contemplating a second procedure as he shows improvement from the first.

Because of the medical issues, and they're prolonged rehabilitative course, it would not be possible for him to begin a construction process he has scheduled and has obtained a permit for from the city.

The hope this letter is that he can extend out the timeline for use of the building permit, to allow him to undertake a project as he is medically able to do that.

You've any questions please do not hesitate to contact me

James Elliott, MD



**PLANNING DIVISION**  
"SERVING BILLINGS, BROADVIEW AND YELLOWSTONE COUNTY"  
**PLANNING & COMMUNITY SERVICES DEPARTMENT**  
2825 3<sup>RD</sup> AVENUE NORTH, 4<sup>TH</sup> FLOOR  
BILLINGS, MONTANA 59101  
PHONE: (406)247-8676 FAX: (406) 657-8327



July 12, 2018

CITY VARIANCE #1284  
Project Number: 18-00092

Joel Parker  
1324 O'Malley Drive  
Billings, MT 59102

Dear Applicant;

This is to inform you of the action taken by the City Board of Adjustment (BOA) at its July 11, 2018 meeting on your request for a variance from Section 27-308 requiring a minimum rear setback of 20 feet to allow a 4-foot rear 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. Tax ID: A04101.

The Board of Adjustment voted 5-0 to conditionally approve your variance request.

The conditions are as follows:

1. The variance from 27-308 requiring a minimum rear setback of 20 feet to allow a setback of 4 feet to allow an addition into the rear yard. 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 6 months and have it completed within 1 year. Failure to complete the project within required timeline will void the variance.
4. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
5. The applicant shall meet all other city code requirements for the proposed addition, 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, lease holders, heirs and assigns.

If you have any questions, please contact me at 247-8684 or by email at [husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us).

Sincerely yours,

Karen Husman  
Planner I



**PLANNING DIVISION**  
"SERVING BILLINGS, BROADVIEW AND YELLOWSTONE COUNTY"  
**PLANNING & COMMUNITY SERVICES DEPARTMENT**  
2825 3<sup>RD</sup> AVENUE NORTH, 4<sup>TH</sup> FLOOR  
BILLINGS, MONTANA 59101  
PHONE: (406)247-8676 FAX: (406) 657-8327



November 9, 2018

CITY VARIANCE #1284  
Project Number: 18-00092

Joel Parker  
1324 O'Malley Drive  
Billings, MT 59102

Dear Applicant;

This is to inform you of the action taken by the City Board of Adjustment (BOA) at its November 8, 2018 meeting on your request for 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. Tax ID: A04101.

The Board of Adjustment voted 4-0 to conditionally approve your variance request.

The conditions are as follows:

1. This approval is for a 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 (approved in July 2018) 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.

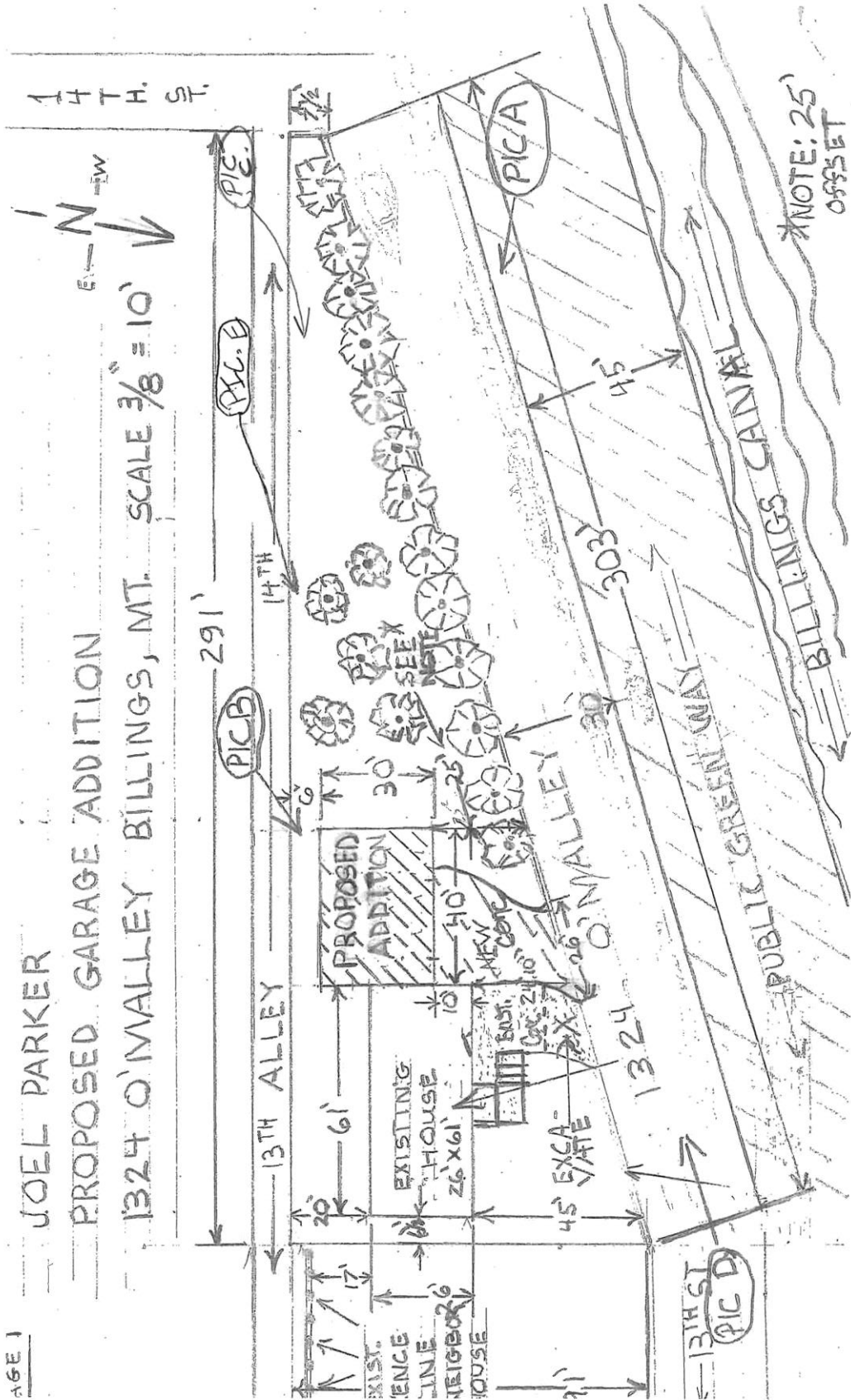
If you have any questions, please contact me at 247-8684 or by email at [husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us).

Sincerely yours,

A handwritten signature in cursive script that reads "Karen Husman".

Karen Husman  
Planner I

**ATTACHMENT**  
Site Plan





**City Board of Adjustment**

**Meeting Date:** 03/04/2020

**SUBJECT:** Variance 1306 - 2200 Block of Overland Ave - Height

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**City Variance 1306** - 2200 Block of Overland Ave - Height - A variance from 27-309 requiring a maximum building height of 45 feet to allow 55 feet in a Highway Commercial (HC) zone, on Lot 4B-1, Block 3, Hogan Homestead Subdivision, a 3.5 acre parcel of land. The purpose of the variance is to allow a new four-story hotel. Presented by; Karen Husman, Planner I.

**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.

**APPLICATION DATA**

**OWNERS:** Veeder Homestead, LLC  
**AGENT:** Eric Simonsen, Simonsen Architect  
**PURPOSE:** To allow 4-story hotel at 55 feet height  
**LEGAL DESCRIPTION:** Hogan Homestead Sub, Block 3, Lot 4B-1  
**ADDRESS:** Generally located on 2200 Block of Overland Avenue  
**EXISTING LAND USE:** Vacant  
**PROPOSED LAND USE:** Hotel  
**EXISTING ZONING:** HC

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
<b>SIMILAR PROPERTY</b>					
5500 Midland Rd.	411	5/29/84	Height 85'	Y	HC
2036 Overland Ave.	470	9/24/85	Height 40'	Y	HC
231 Main St	844	7/5/01	Height 60.5'	Y	CC
4950 Southgate Dr.	884	12/3/02	Height 43'	Y	EGC
4819 Midland Rd.	998	11/9/06	Height 44'	Y	EGC
4770 King Ave. E	1099	6/1/11	Height 57'	Y	EGC
4863 King Ave. W	1140	2/6/13	Height 45'	Y	EGC
5720 S. Frontage Rd.	1148	5/1/13	Height 49'	Y	HC
4700 Blk of King Ave W	1168	11/6/13	Height 45'	Y	EGC

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: HC  
Land Use: Medical Office Building  
SOUTH: Zoning: HC  
Land Use: Commercial office  
EAST: Zoning: HC  
Land Use: Commercial office  
WEST: Zoning: HC  
Land Use: Commercial office

## **BACKGROUND**

The applicant is requesting a variance from 27-309 requiring a maximum building height of 45 feet to allow 55 feet in a Highway Commercial (HC) zone, on Lot 4B-1, Block 3, Hogan Homestead Subdivision, a 3.5 acre parcel of land. The purpose of the variance is to allow a new four-story hotel. The proposed zoning for this parcel under Project ReCode is Corridor Mixed Use - 2 (CMU2). The proposed draft regulations have no absolute maximum height in feet but 4-story buildings are allowed by right.

Buildings within 150 feet of the north, south and west boundaries are limited to 45 feet in height. Several building height variances have been granted in similar situations for new commercial or mixed use developments including two in Miller Crossing Subdivision and one in Southgate Subdivision, both near the South Billings Boulevard interchange with Interstate 90. A variance for the Radisson Hotel at Midland Road near the King Ave West interchange was granted in May 1984. This variance allowed the hotel a building height of 84 feet. A variance was granted to the new hotel (La Quinta) on South Frontage Road in May 2013 and allowed a building height of 49 feet for new construction.

## **SUMMARY**

### **DETERMINATIONS FOR Variance 1306**

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 physical special circumstances existing on this property creating a hardship that is peculiar to this land or 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 are several properties in the area that have been allowed to build taller than the regulations at 27-309 allow by a special provision allowing taller structures for certain types of uses (Section 27-310(f) Height exceptions). A literal interpretation of the zoning regulations for this zone would deprive this owner of similar rights enjoyed by others 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 buildings are in the immediate vicinity and similar variances have been granted for new construction in similar situations.

**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 including the 2016 Growth Policy and the City's Infill 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 building height variance request:**

1. The variance is from Section 27-309 requiring a maximum building height of 45 feet to allow 55 feet in a Highway Commercial (HC) zone, excluding parapets, stair towers, elevator shafts, and similar un-occupied roof top structures.
2. The variance is limited to Lot 4B-1, Block 3, Hogan Homestead Subdivision, a 3.5 acre parcel of land (Tax ID #A24997A).
3. The owner will apply for a building permit within 12 months of Board approval.
4. There will be no construction activity before 7 am or after 8 pm daily.
5. Completion of construction will occur within six years of Board approval.
6. The site plan will be modified to show pedestrian connections from the public sidewalk to the interior sidewalks at not more than 300 feet between connection points.
7. Pedestrian crossings of any drive aisle will have pavement markings and signage to alert drivers.
8. The site plan will be modified to show tree plantings at a maximum spacing of 40 feet on center along both sides of any sidewalk – public or private – except sidewalks and public spaces directly adjacent to buildings.
9. Signage on the property or buildings will not exceed 30 feet above grade.
10. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application.
11. Failure to begin or complete the actions required by this variance approval will void the variance.
12. 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 Planning staff recommends the building permit be submitted within 12 months of Board approval and the construction completed within six years of Board 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. Hotels and motels are allowed in the HC 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.

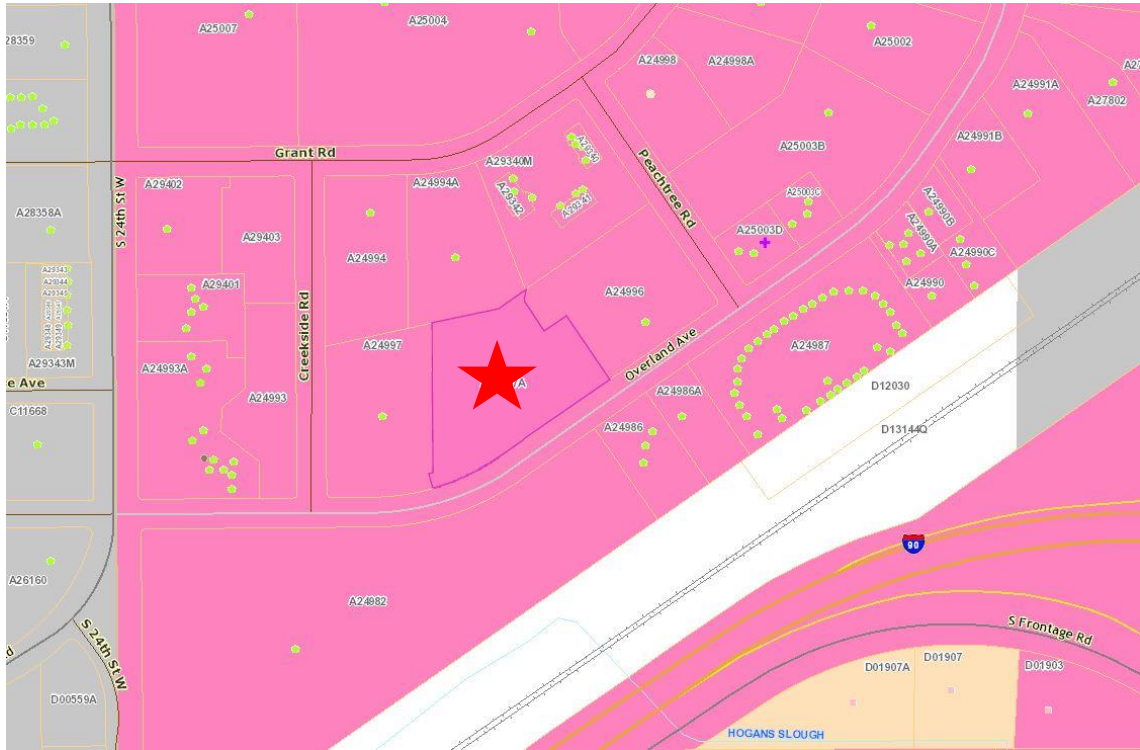
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**Attachments**

Zoning Map & Site Photos  
Application & Applicant Letters  
Site Plan

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# Attachments



 Subject Property





Subject Property



Looking Northwest



East



South



West

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance #** 1306 **- Project #** P2-20-00036

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 # A24997A CITY ELECTION WARD # THREE(3)

Legal Description of Property: HOGAN HOMESTEAD SUBDIVISION, S18, T01, R26E, BLOCK 3, LOT 481 AND (15)

Address or General Location (If unknown, contact City Engineering): HOMESTEAD SUBDIVISION, OVERLAND AVENUE

Zoning Classification: HIGHWAY COMMERCIAL

Size of Parcel (Area & Dimensions): 152,823 SQUARE FEET 440' X 347' AVERAGE

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance(s) Requested: VARIANCE FOR HEIGHT TO ALLOW 54'-0" HEIGHT, IN HIGHWAY COMMERCIAL THAT ALLOWS 45 FEET HT.

Facts of Hardship: \_\_\_\_\_

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

Owner(s): Veeder Homestead, LLC  
(Recorded Owner)  
2795 Enterprise Avenue, Ste 6, Billings, MT 59102  
(Address)  
406-248-9157  
(Phone Number) (email)

Agent(s): Eric Simonsen, Simonsen Architect  
(Name)  
406-256-9060 eric@simonsenarchitect.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: David A. Veeder Date: January 29, 2020  
(Recorded Owner)



## CITY OF BILLINGS VARIANCE REQUEST

Responses to questions in application packet:

1a. What prevents you from using this property in conformance with the zoning regulation requirements?

The Courtyard by Marriot Hotel requires 137 hotel rooms to adequately serve the guest numbers expected for the new Yellowstone Kelly Event Center to be constructed just to the west of the proposed hotel. The economics of the entire project requires the number of hotel rooms. When hotel construction of the Courtyard by Marriot is for 137 rooms, four floors are required when utilizing the normal Marriot building design. Four floors requires a minimum of approximately 55 feet above grade which is in excess of the 45 foot height in the zoning regulations for Highway Commercial where the property resides.

1b. Why is there a need for the intended use of the property at this location?

The existing former Carmike Theatre that will become a conference and event center, with a proposed Pre-function area requires a hotel to properly service the facility. The original masterplan intended for the Hogan Homestead subdivision to have multiple high-rise office buildings in this area and hotels within the subdivision. With the proximity to the interstate, nearby shopping as well as local and regional businesses, this area would benefit from a Marriot Courtyard level hotel that currently does not exist on the west end of Billings.

2. Prepare a written statement addressed to the Chairperson of the Board of Adjustment. State what is intended to be done with the property, including new construction or change in the use of the property, and why the variance is being sought.

The City of Billings has a need for additional conference and event center new construction in the west end at or near this location off of Overland Avenue. The use of the presently constructed portion of the old former Carmike facility as an office building has not been economic and its use is being converted from all office building to a combination office and meeting with conference center ability. In addition, a Pre-function Area is being constructed new and added to the south end of the existing building to add event center space. This new office, convention, and event space is in keeping with the original Homestead Business Park as it was contemplated by its founders (Bruce Crippen and others) in the 1970's. It was designed as a unique, multi-use business park. A brochure from the original subdivision concept with drawings and renderings is included with this submission.



