



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, May 6, 2020 @, 6:00 p.m.**  
**Virtual Video Conferencing Environment**  
**Billings, Montana**

**NOTICE TO THE PUBLIC**

**Public Comment:** Due to the COVID-19 health concerns, the format of the County Zoning Commission meeting will be held in a virtual videoconferencing environment. The normal hearing room on the 1<sup>st</sup> Floor at 2825 3<sup>rd</sup> Ave North (Miller Building) will be closed during the meeting and no one will be attending this hearing in person. Public comment will be taken only during the Public Comment periods as indicated on the agenda, and during the Public Hearings under the Regular agenda. Comments may be sent to Board via email before 1:00 PM on Tuesday, May 5, 2020. All emails received prior to this time will be read into the record for the public hearing. The Public may call in during specific Public Comment periods at (406)237-6196. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary. Live coverage can be viewed in two locations;

<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks> and  
<https://stream.lifefizecloud.com/extension/1855349/e260973d-3e40-46d3-9427-a4d331c10d38>

**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 March 4, 2020.

**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 - 1307 – 2133 Fairview Place** – A variance from Section 27-308, requiring a 20-foot front setback to allow a 10-foot setback in a Residential-9600 (R-96) zone, on Lot 11A, Block 7, Country Club Heights Sub., a 22,491 square foot parcel of land. The purpose of the variance is to allow a dwelling to be constructed closer to the front property line. Presented by Karen Husman, Planner I.
- b. **Variance 1308 - City Variance 1308 – 3112, 3116 & 3120 Solar Blvd.** – Lot size - The applicant is requesting a variance from Section 27-308, requiring a minimum 8,000 square feet for a dwelling in a Residential 8,000 (R-80) zone, on Lots 1 and 2, Block 3, Terra West Subdivision, 3rd filing, in Villas on the Park Condominiums, a combined 20,012 square foot parcel of land. The purpose of the variance is to allow the existing three homes on Lots 1 and 2 to conform to zoning in order to dissolve the condominium and create three lots of not less than 6,650 square feet each. Presented by: Karen Husman, Planner I
- c. **Variance 1309 - 1017 Wicks Lane** -The applicant is requesting a variance from Section 27-602 (a), requiring a minimum 80 foot setback from the centerline of an arterial street in a Residential – 7000 (R-70) zone to allow 60 feet from the arterial street centerline, on C. S. 1462 parcels 1 and 2, C.S. 1463, parcels 1 and 2, and C.S. 13, a combined 3.016 acre parcel of land. The purpose of the variance is to allow the construction of a new home at 60 feet from the arterial street. Presented by: Karen Husman, Planner I
- d. **Variance 1310 - 2604 Emerson Place** - The applicant is requesting a variance from Section 27-308 requiring a minimum 5 foot setback from the side property line in a Residential – 9600 (R-96) zone to allow 3 foot side setback, on Lot 4, Block 1, Highland Park Subdivision, 2nd Filing, a 12,046 square foot parcel of land. The purpose of the variance is to allow the construction of a garage addition with an attic living space. Presented by: Karen Husman, Planner I
- e. **Variance 1311- 1836 Yellowstone Ave.** - The applicant is requesting a variance from Section 27-308 requiring a maximum 30% lot coverage in a Residential – 7000 (R-70) zone to allow 31% on Lot 12, Block 5, Burg Subdivision, 3rd Filing, an 8,400 square foot parcel of land. The purpose of the variance is to allow the construction of a detached garage of 960 square feet (108 sf over the maximum). Presented by: Karen Husman, Planner I.

## **Other Business/Announcements**

## **Adjournment**

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, Admin. Support, at 247-8676 or e-mail at [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov).

**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

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**Information**

**Subject**

The minutes of the Board meeting of March 4, 2020.

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**Attachments**

BBOA\_2020\_0304

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**CITY BOARD OF ADJUSTMENT**

MINUTES March 4, 2020

Name	Title	01/01/2020	02/05/2020	03/04/2020	04/01/2020	05/06/2020	06/03/2020	07/01/2020	08/05/2020	09/02/2020	10/07/2020	11/05/2020	12/02/2020	
David Mitchell	Member	-	-	A										
Dave Hagstrom	Member	-	-	1										
Paul Hagen	Member	-	-	1										
Jeff Bollman	Member	-	-	E										
Oscar Heinrich	Member	-	-	E										
Martin Connell	Member	-	-	1										
Mark Noennig	Chair	-	-	1										
<b>TOTAL NUMBER OF APPLICATIONS 2020</b>		<b>01/01/2020</b>	<b>02/05/2020</b>	<b>03/04/2020</b>	<b>04/01/2020</b>	<b>05/06/2020</b>	<b>06/03/2020</b>	<b>07/01/2020</b>	<b>08/05/2020</b>	<b>09/02/2020</b>	<b>10/07/2020</b>	<b>11/05/2020</b>	<b>12/02/2020</b>	<b>TOTAL</b>
<b>Variance</b>		-	-	2										2

Chair Noennig called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3<sup>rd</sup> Avenue North.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I; and Robbin Bartley, Administrative Assistant.

**Attending:**

**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 December 4, 2019

## **Motion**

Board Member Hagstrom moved and Board Member Connell seconded the motion to approve the December 4, 2019 minutes. 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.

**City Variance 1305 – 1324 O’Malley Dr. –Setback for an Attached Garage** - A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback 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.

## **RECOMMENDATION**

Planning staff has reviewed this application & is recommending conditional approval of Variance #1305. Based on the Determinations for granting a variance.

1. This approval allows a 12’ front setback 4’ rear setback for an attached garage. No other variance.
2. Limited to Lots 11 & 12 of Block 1, Carlson Subdivision generally located at 1324 O’Malley Drive.
3. Submit & obtain a building permit within 1 year/ complete const. within 2. Failure will void the variance.
4. Construction shall be in conformance to the site plan submitted.
5. No construction or demolition activity, prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other requirements.
7. These conditions of variance approval shall run with the land .

## **Questions for staff:**

**None**

## **Discussion**

Chair Noennig called for questions and discussion from the members of the Board

## **Public Hearing**

Chairman Noennig opened the public hearing at 6:10 PM and asked if there was anyone wishing to speak in favor or against City Variance #1305.

**Joel Parker, 1324 O'Malley**

Lives on the site, requesting the variance to setbacks because of pie shaped property.

**Opposed**

**Kelly Holmes,**

Is here on behalf of her parents, she explains this is a business, not a residence. The Affiliated Medical Agency. the property is not used as a residential property. The offices are in the basement. The traffic has increased significantly. The neighbors with children are posting “kids at play” signage to slow traffic. This property is being used in a commercial capacity.

Board member Connell advised Ms. Holmes we are the BOA, you are in the wrong venue for your complaint.

Staff member Nicole Cromwell will refer this complaint to Code Enforcement.

Chair Noennig stated neighbors must be 300 feet from the property line to receive notice

**Rebuttal**

Mr Parker states it is a busy place. Yes, he does insurance. The bulk of my business is done at the Walmart. This is my primary residence.

Chair Noennig asked are you directing people to come to your basement office. Mr. Parker answered “It is possible”.

At 6:24 pm, Chairman Noennig closed the Public Hearing and called for a motion.

**Motion**

Board Member Connell made a motion to and Board Member Hagen seconded the motion to conditionally approve City Variance #1305 with the seven conditions of approval and Findings of Fact

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Not Present</b>
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 #1305 passed** with a unanimous roll call vote.

**City Variance 1306 – Hogan Homestead Sub. Blk. 3, Lot 4B-1 – Height variance for hotel -** 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.

### **RECOMMENDATION**

Planning staff has reviewed this application & is recommending conditional approval of Variance #1306 based on the Determinations for granting a variance.

1. Variance allow a height of 55' in an HC zone
2. It is limited to Lt 4B-1, Blk. 3, Hogan Homestead Sub.
3. The owner will apply for a building permit within 12 months of Board approval.
4. No construction activity before 7 am or after 8 pm daily.
5. Completion of construction within 6 years of 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 along both sides of any sidewalk – public or private
9. Signage on the property or buildings will not exceed 30 feet above grade.
10. Will meet all required codes applicable at the time of Building Permit application.
11. Failure to begin or complete the actions required will void the variance.
12. These conditions of variance approval shall run with the land.

### **Questions for staff:**

None

### **Discussion**

Chair Noennig called for questions and discussion from the members of the Board

### **Public Hearing**

Chairman Noennig opened the public hearing at 6:31 PM and asked if there was anyone wishing to speak in favor or against City Variance #1306.

### **Tim Purit, Simonsen Architect**

There were no letters of opposition

Board member Hagen asked if the old theater will be an event center in conjunction with the Hotel. Mr. Puritt indicated it will be used in conjunction with the hotel, but different ownership.

Chair Noennig asked if the existing theater will be renovated. Yes.

There was none. At 6:35 pm, Chairman Noennig closed the Public Hearing and called for a motion.

**Motion**

Board Member Hagstrom made a motion to conditionally approve and Board Member Hagen seconded the motion to conditionally approve City Variance #1306 with the twelve conditions of approval and Findings of Fact.

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Not Present</b>
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 #1306** passed with a unanimous roll call vote.

**Other Business:**

**ADJOURNMENT: The meeting adjourned at 6:42 PM.**

**ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.**  
*Robbin Bartley, Administrative Assistant.*



**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

**SUBJECT:** Variance 1307- 2133 Fairview Place

**THROUGH:** Monica Plecker

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Variance - 1307 – 2133 Fairview Place** – A variance from Section 27-308, requiring a 20-foot front setback to allow a 10-foot setback in a Residential-9600 (R-96) zone, on Lot 11A, Block 7, Country Club Heights Sub., a 22,491 square foot parcel of land. The purpose of the variance is to allow a dwelling to be constructed closer to the front property line. Presented by Karen Husman, Planner I.

**RECOMMENDATION**

Staff recommends conditional approval of the variance.

**APPLICATION DATA**

OWNERS: Big Time Construction, LLC

AGENT: Aaron Langford

PURPOSE: Reduce the front setback to 10 feet

LEGAL DESCRIPTION: Lot 11A, Block 7, Country Club Heights Sub

ADDRESS: 2133 Fairview Place

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-9600

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
3221 Arvin Road	515	2/1987	Front SB to 2'	yes	New detached garage
2241 Fairview Place	800	7/1999	Front SB to 8'	Yes	New SFD
2239 Fairview Place	804	9/1999	Garage SB 5'10" Front SB 3'	Yes No	New SFD
3025 Leann Blvd	859	1/2002	Front SB to 15'	Yes	Addition to existing SFD
3205 Green Terrace Dr.	1164	8/2013	Front SB to 10'	No	Proposed garage addition
3230 Country Club Cir.	1117	10/2018	Front SB to 10'	Yes	New SFD
3230 Country Club Cir.	1287	10/2018	Front SB to 10'	Yes	New SFD
2239 Fairview Place	1297	8/7/19	Front SB to 10'	Yes	New SFD

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: Public  
Land Use: Public Park (rimrocks)  
SOUTH: Zoning: R-96  
Land Use: Residential Single Family  
EAST: Zoning: R-96  
Land Use: Residential Single Family  
WEST: Zoning: R-96  
Land Use: Residential Single Family

## **BACKGROUND**

The applicant is requesting a variance from Section 27-308, requiring a 20-foot front setback to allow a 10-foot setback in a Residential-9600 (R-96) zone. The purpose of the variance is to allow a dwelling to be constructed closer to the front property. The north half of the lots in this area are vertical portions of the rimrocks. A 20-foot front setback is physically impossible due to the slope of the property north of the street. There are similarly situated lots within this subdivision, some have encroached into the setback area without a variance approval, and some have variances on file. The original subdivision was platted in 1957 prior to current zoning.

The covenants and restrictions for the subdivision contemplated all the lots within Block 7 would need a decreased front setback due to topography. The covenants allow a 10-foot minimum front setback for all lots in Block 7. Covenants and restrictions are not enforced by the City, but if a covenant is less stringent than a local code, the more restrictive requirement applies. Many surrounding homes were built in the late 1950s and early 1960s prior to annexation and zoning in the city limits. It appears many of the homes on this portion of Fairview Place have been built to the 10-foot front setback line. Staff has received one letter in support of the variance (see attachment).

## **SUMMARY**

### **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 property is located in the Country Club Heights Subdivision. Although the lot is much larger than required by zoning in R-96 zone, the buildable area is quite restricted due to the extreme topography on the north end of the lots. The topography of the lot creates a hardship that is not applicable to other lots in the same district since most surrounding homes were built prior to the current zoning (1972). These surrounding homes were specifically allowed a 10-foot front setback by the subdivision covenants in place prior to zoning.

**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 the majority of the homes were constructed between 1960 and 1970. Many were set back 10 feet from the front property line as allowed by the covenants in place at the time prior to zoning. Denying the variance would deprive this owner of rights commonly enjoyed by other lots in the area and 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 and many adjacent homes encroach on the required zoning setbacks without the benefit of a zoning variance.

**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 decrease the required front setback from 20 feet to 10 feet for the purpose of constructing a single family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 11A, Block 7 of Country Club Heights Subdivision, generally located at 2133 Fairview Place.
3. The site shall be developed in substantial conformance to the site plan presented to the BOA, that reflects the 10 foot front setback.
4. The applicant shall receive approval for a building permit within one (1) year of Board approval. Construction shall be completed within three (3) years of Board approval.
5. There will be no construction activity (including grading or equipment operation) before 7 am or after 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. All construction will require compliance with all other zoning regulations and City ordinances that apply at the time of construction.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

The recommended conditions of approval require the approval of a building permit within 1 year and completion of the improvements within 3 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 – residential dwellings are an allowed use in the R-96 zone.

**RECOMMENDATION**

Planning staff has reviewed this variance and is forwarding a recommendation of conditional approval based on the criteria for variances as presented within this report.

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**Attachments**

Zoning Map & Site photos  
Application & Applicant Letter  
Site Plan  
Letter of Support

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Attachments  
Zoning Map & Site Photos





Subject Property



Northwest



East

Application – Applicant letter

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance # 1307** - Project # P2-20-0052

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 # A05676 CITY ELECTION WARD # 4

Legal Description of Property: Country Club Height  
S26, T01N, R2SE, Block 7, Lot 11A

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

2133 Fairview Place Billings, MT 59103

Zoning Classification: Zoning Residential 9600

Size of Parcel (Area & Dimensions): \_\_\_\_\_

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

If yes, please attach to application

Variance(s) Requested: Reduce front setback from 20 foot  
to 10 foot

Facts of Hardship: Boulders, Steep Slope, City has approved  
reduced setbacks for rimlots previously

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

Owner(s): Big Time Construction LLC - Aaron Langford

(Recorded Owner)

(Address)

(Phone Number)

PO Box 1431  
Billings MT 59103 langford.aaron@gmail.com  
406-672-9995

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: \_\_\_\_\_ Date: 3/2/2020

(Recorded Owner)



Dear Chairperson fo the Board of Adjustment,

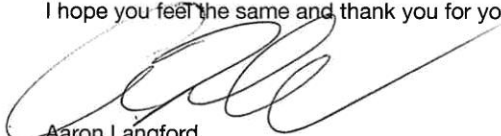
I , Aaron Langford, am requesting a variance of building setback from the street, Fairview Place. It is my intent to reduce the front setback from the street from 20 feet to 10 feet. This change in city code would allow the construction of a single family residence at 2133 Fairview Place. Furthermore, it would not significantly alter the native topography of the site and allow the natural slopes and large boulders to remain in the same way as they have been.

I am not asking for a change of use, I believe a single family residence is the highest and best use for the site as approved by the city when the covenants were originally drafted, with the reduced setback.

I am not asking for special or unique treatment, every home on Fairview place has altered setback requirements to account for the severe slope and large boulders.

The variance is being sought to create a safe construction environment where few rocks need removal, the natural slope remains similar to its native conditions and creates little disturbance to the community as a whole. I believe keeping natural topography present as best as possible is in the best interest of everyone.

I hope you feel the same and thank you for your consideration.



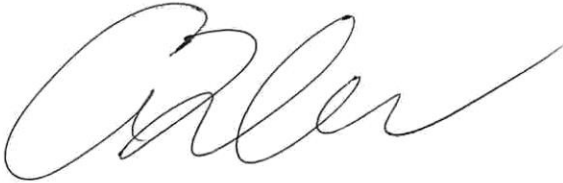
Aaron Langford

1.)

A. The Country Club Height Subdivision has historically allowed lots north of Fairview Place, with their rear frontage against the rims, to reduce the city required 20 foot setback from 20 feet to 10 feet. The reasons for this change are outlined below:

- Very large boulders exist on the site and significantly prohibit the available usage of land.
- Significantly altering the topography of the site would increase the risk of destabilizing the hill side during construction, reducing the front setback would allow a natural home to be nestled in among large boulders.
- The slope of the lot is very steep and presents considerable construction challenges and further destabilizing the hillside were a 20 foot setback to be implemented.
- The city approved covenants for the neighborhood allowed the rim lots to reduce front setback requirements.

B. There is a need for a single family residence at this location, as zoned by the city and approved in the covenants. The highest and best use for this land is single family dwelling.

A handwritten signature in cursive script, appearing to read "C. Allen".



Site Plan

March 26, 2020

City-County Planning Division  
2825 3<sup>rd</sup> Ave North, 4<sup>th</sup> Floor  
Billings, MT 59101



Re: City Variance #1307  
Project Number :PZ-20-52

Dear Staff of the City/ County Planning Division

This is to inform you of our opinion on the matter of City Variance #1307-2133 Fairview Place- Front Yard Setback variance from 20 foot setback to 10 foot setback. We are the owners of 2 properties within the area of notification; the properties with the tax ID of A05674 and A05667.

We do not object to the reduction in front yard setbacks requested by the property owner and would encourage the review board to approve the reduced setback.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Olsen".

Donald J. Olsen

A handwritten signature in black ink, appearing to read "Kimberly A. Olsen".

kimberly A. Olsen



**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

**SUBJECT:** Variance 1308-3112, 3116, 3129 Solar Blvd

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Variance 1308 - City Variance 1308 – 3112, 3116 & 3120 Solar Blvd.** – Lot size - The applicant is requesting a variance from Section 27-308, requiring a minimum 8,000 square feet for a dwelling in a Residential 8,000 (R-80) zone, on Lots 1 and 2, Block 3, Terra West Subdivision, 3rd filing, in Villas on the Park Condominiums, a combined 20,012 square foot parcel of land. The purpose of the variance is to allow the existing three homes on Lots 1 and 2 to conform to zoning in order to dissolve the condominium and create three lots of not less than 6,650 square feet each. Presented by: Karen Husman, Planner I

**RECOMMENDATION**

Staff recommends conditional approval of the variance.

**APPLICATION DATA**

OWNERS: Burrows Family Trust, Marlene Grimm & Daniel & Karen Kohm

AGENT: Lynette Burrows

PURPOSE: To allow homes on lots less than the required 8,000 sf

LEGAL DESCRIPTION: Lots 1 and 2, Block 3, Terra West Subdivision, 3rd filing

ADDRESS: 3112, 3116, 3120 Solar Blvd.

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-80

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
<b>SIMILAR PROPERTY</b>					
Lots 1-3 Blk 4, Terra West, 3rd	838	5/2001	Lot size	Y	SE corner of Daystar & Energy Blvd

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-80 & Terra West PD  
Land Use: Residential - Single Family Dwellings  
SOUTH: Zoning: R-70 & Terra West PD  
Land Use: Residential - Single Family, Two-Family & Multi-family Dwellings  
EAST: Zoning: R-80  
Land Use: Residential - Single Family Dwellings  
WEST: Zoning: Terra West PD  
Land Use: Residential - Single Family & Multi-family Dwellings

## BACKGROUND

This is a variance request from Section 27-308, requiring a minimum 8,000 square feet for a single family dwelling in a Residential 8,000 zone for lots in The Villas on the Park Condominiums, a combined 20,012 square foot parcel of land. The purpose of the variance is to allow the existing three homes on Lots 1 and 2 to conform to zoning in order to dissolve the condominium and create three lots of not less than 6,650 square feet each.

When the five unit project was planned, the developer/contractor intended to build five single family dwellings on four lots. The four lot area is just over 40,000 square feet, enough lot area to construct five single family homes. In order to proceed with the project they would have had to resurvey the property making it five lots. Instead, they constructed three of the homes on two lots approximately 10,000 square feet each, and three homes on two lots just over 10,000 square feet each by creating a condominium complex. There has been one similar variance approved in this area of Billings. The property is in a high density residential area and although there is not a historic amount of variances granted in the area, there are similar property with multiple units, some attached and some detached.

## SUMMARY

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 three single family dwellings were constructed on two parcels of land that are not large enough for three dwelling units unless combined with the adjacent lots (the condominium parcels). The existing structures were built in conjunction with two other homes to create a condominium complex. The owners would like to dissolve the condominium and in order to do this they must create legally conforming lots that are less than 8,000 square feet.

**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 has been one similar variance granted in the surrounding neighborhood. 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. A similar variance has 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.

Approval of this variance would allow the applicant to bring the property into conformance with the current zoning code and acquire a rebuild letter for financing purposes.

**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 the existing three homes on Lots 1 and 2 to conform to zoning in order to dissolve

the condominium and create three lots of not less than 6,650 square feet each. No other variance is intended or implied with this approval.

2. The variance is limited Lots 1 and 2, Block 3, Terra West Subdivision, 3rd filing, in The Villas on the Park Condominiums, generally located at 3112, 3116, & 3120 Solar Blvd.
3. The applicants will submit the application for minor subdivision review within twelve months of variance approval.
4. The applicant shall meet all other city code requirements with the exception of this variance.
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 applicants shall submit the subdivision plat application within 6 months of variance 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 –residential dwellings are allowed in the R-80 zone.

#### **RECOMMENDATION**

Staff recommends conditional approval, based on the determinations detailed in the summary section of this memo.

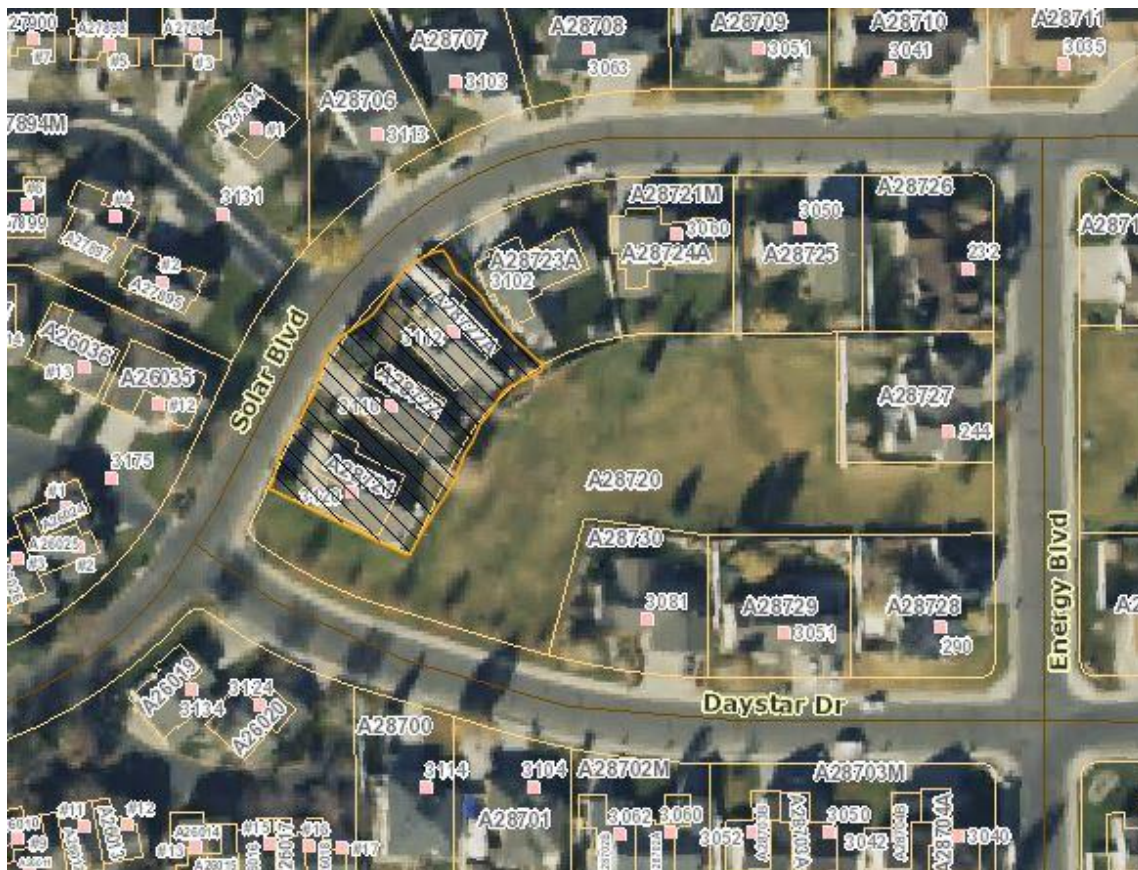
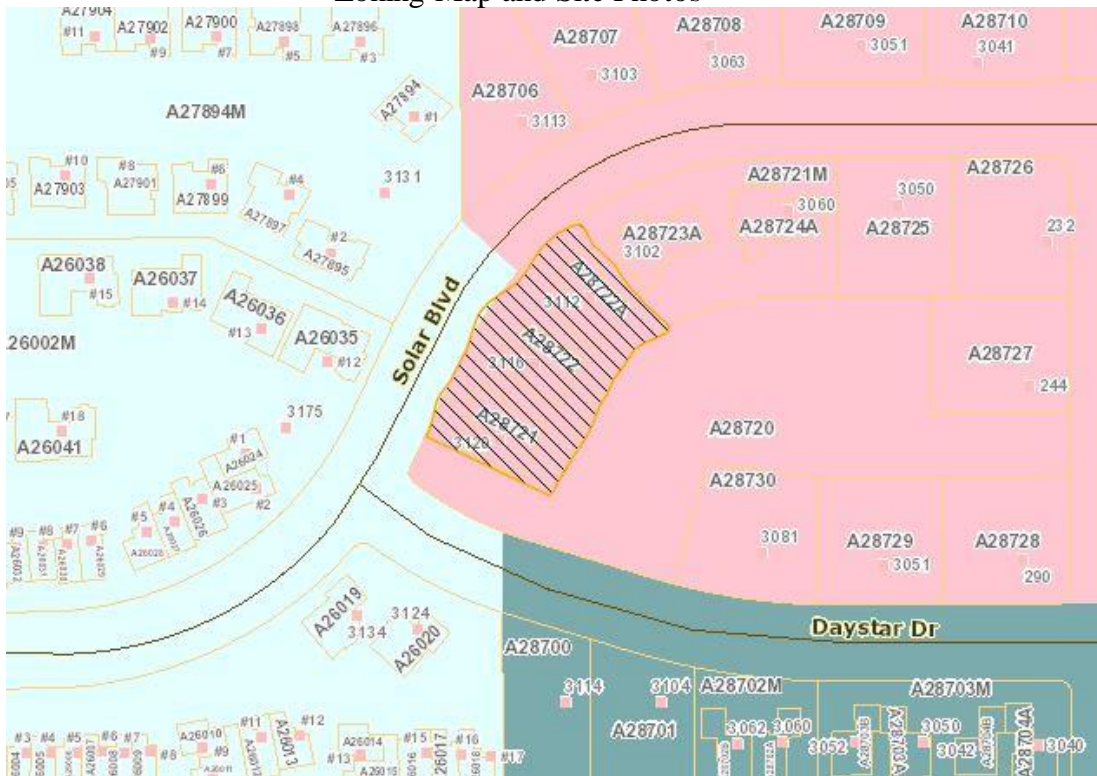
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#### **Attachments**

Zoning Map & Site photos  
Application & Applicant Letter  
Site Plan

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### Zoning Map and Site Photos





Subject Property



Southeast



Northeast





CITY VARIANCE

APPLICATION FORM

ID: Billings Variance # 1308 - Project # P2-20-00053

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 # A-28722, A28722, A28721 CITY ELECTION WARD # A28721M

Legal Description of Property: Unit numbers 3112, 3116, 3120 of Villas on the Park located on lots 1, 2, 3 & 4, Block 3 of Terra West Subdivision, 3rd filing in the City of Billings, Yellowstone County, Montana  
Address or General Location (If unknown, contact City Engineering):

3112, 3116 & 3120 Solar Blvd, Billings MT

Zoning Classification: Condo

Size of Parcel (Area & Dimensions): full parcel ~ 20,012'; 3112 = ~ 6655'; 3116 = ~ 6710'

Covenants or Deed Restrictions on Property: Yes X No \_\_\_\_\_  
If yes, please attach to application Bylaws 3120 = ~ 6655  
SEE attached for dimensions

Variance(s) Requested: Approve the 3 homes to be on lots that are smaller than the typical 8,000 sq feet.

Facts of Hardship: SEE attached

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

Owner(s): Lynette M. Burrowes Burrowes Family 1995 Living Trust  
(Recorded Owner)  
3120 Solar Blvd, Billings MT  
(Address)  
(971) 255-9304 lmbmmt@gmail.com  
(Phone Number) (email)

Agent(s): Lynette Burrowes, Trustee of the Burrowes Family 1995 Living Trust  
(Name)  
13170 SW Forest Glen Ct, Beaverton OR 97008  
(Address)  
(971) 255-9304 lmbmmt@gmail.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: SEE signature above Date: 2/27/20  
(Recorded Owner)

SEE attached addendum



**Addendum to City Variance Application form:**

Facts of hardship: Some background info.....When the 5 unit project was completed, the developer/contractor appears to have circumvented the system by making this a condo project. The four lot area is just over 40,000 square feet, which was plenty of room to build 5 single family dwellings on 8,000 square foot lots. But they would have had to have it surveyed from 4 lots to 5. Instead, they built 3 homes on 2 lots that were approximately 10,000 square feet each. And then 2 homes each on a full lot of just over 10,000 square feet each.

As a 'condo' project, declarations of unit ownership were filed as well as bylaws for the project. In reading the declarations of unit ownership, the property owners do 'own' the dirt, so they are not true condos. The bylaws were set up and an HOA was established, on paper. The HOA was never set up, there are no true common areas and no shared expenses. There has never been an HOA meeting as there was no purpose for meetings nor the HOA – even on paper.

Because of the condo designation and the lack of an active, funded, HOA, Fannie Mae (FNMA) would consider this a non-warrantable condo project. I do have significant knowledge in this part of the process as I have been a mortgage loan underwriter for many years. And condo financing has become increasingly difficult over the past several years.

When any one of the property owners sell, unless they obtain financing that will not be sold on the secondary market, financing would be difficult. The units would not qualify at all for government financing.

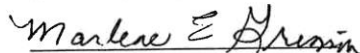


In order to provide prospective buyers the financing options they deserve, the 5 homes need to be converted to single family dwellings. The 3 units built over 2 lots need to have a variance to accept a lot size of less than the typical 8,000 square feet.

Once the variance has been approved, the properties will be surveyed to create new legal descriptions for the 5 free standing, individual homes. Also, the declarations of unit ownership and the bylaws will be extinguished.

**Owner(s) continued:**

Marlene E. Grimm  
3116 Solar Blvd, Billings MT  
(406) 656-3302  
[grimmme@charter.net](mailto:grimmme@charter.net)

✓ Daniel Joseph and Karen L. Kohm  
3112 Solar Blvd, Billings MT  
(406) 799-3880  
[d\\_kohm@msn.com](mailto:d_kohm@msn.com)

		
Marlene E. Grimm	Daniel Joseph Kohm	Karen L. Kohm
2-27-2020	2/27/2020	2/27/2020
Date	Date	Date

To: City of Billings Planning Board  
From: Individuals affected by Villas on the Park variance request  
Re: Variance request  
Date: February 26, 2020

We, the undersigned individuals, are the owners of record of 3060 and 3102 Solar Boulevard, Billings MT.

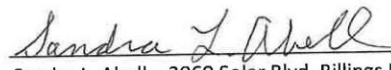
We are aware of and support the variance application being submitted to the planning board to have 3112, 3116 and 3120 Solar Boulevard, Billings MT to be approved at a lot size less than the typical 8,000 square feet for a single family residence.


It is our intent, once the variance is approved, to have all five homes (3060, 3102, 3112, 3116 and 3120) surveyed and have them identified as single family residences as well as have the recorded condo/townhome documents extinguished.


We have engaged Tyler Dugger of Tolliver Law Office to assist us in completing the legal documents necessary to complete this task.

Thank you for your assistance,

  
Dale E. Abell – 3060 Solar Blvd, Billings MT

  
Sandra L. Abell – 3060 Solar Blvd, Billings MT

  
Dennis C. McGinnis – 3102 Solar Blvd, Billings MT

  
Bonnie L. McGinnis – 3102 Solar Blvd, Billings MT





**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

**SUBJECT:** Variance 1309- 1017 Wicks Lane

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Variance 1309 - 1017 Wicks Lane** -The applicant is requesting a variance from Section 27-602 (a), requiring a minimum 80 foot setback from the centerline of an arterial street in a Residential – 7000 (R-70) zone to allow 60 feet from the arterial street centerline, on C. S. 1462 parcels 1 and 2, C.S. 1463, parcels 1 and 2, and C.S. 13, a combined 3.016 acre parcel of land. The purpose of the variance is to allow the construction of a new home at 60 feet from the arterial street. 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: Travis McDowell & Trent Parks

AGENT: Trent Parks

PURPOSE: To allow 60 foot centerline arterial setback

LEGAL DESCRIPTION: Tracts 1 & 2, CS 1463, Tracts 1&2, CS 1462, CS 13

ADDRESS: 1017 Wicks Lane

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-70

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VAR #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
<b>SIMILAR PROPERTY</b>					
2903 and 2910 Reimers Park Dr	40	9/9/1977	Art. SB 30' to 15'	Y	
1905 Poly Dr.	1207	2/4/2015	Art SB 70' to 50'	Y	
3759 Poly Dr.	1212	3/4/2015	Art. SB 70' to 65'	Y	

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-70  
Land Use: Residential  
SOUTH: Zoning: R-70  
Land Use: Residential  
EAST: Zoning: R-70  
Land Use: Residential  
WEST: Zoning: R-70  
Land Use: Residential

## **BACKGROUND**

This is a variance from Section 27-602 (a), requiring a minimum 80 foot setback from centerline of an arterial street in a Residential – 7000 (R-70) zone to allow 60 feet, on C. S. 1462 parcels 1 and 2, C.S. 1463, parcels 1 and 2, and C.S. 13, a combined 3.016 acre parcel of land. The purpose of the variance is to allow the construction of new residential structures at 60 feet from centerline of Wicks Lane.

There have been two similar variances approved since 2015 in Billings, two on Poly Drive and one was approved in 1977 on Rimrock Road at Reimers Park Drive. The property is in a higher density residential area and although there is not a historic amount of variances granted in the area, there are similar property with multiple units, some attached and some detached, that have been constructed within the arterial setback (less than 80 feet from centerline).

## **SUMMARY**

### **VARIANCE 1309 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;**

There are no special conditions or circumstances that exist which are peculiar to the land that prevent the applicant from conformance with the zoning requirements. The lots are a combined 3.016 acre parcel of land that is ample for the intended use and is bordered on the south by an arterial street, and to the west by the bicycle and pedestrian trail.

**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 Planning Division discovered 15 residences built within the required arterial setback of Wicks Lane between Hawthorne Lane and Bench Blvd. Most of those structures are between 50 feet and 60 feet of the centerline of Wicks Lane. The BOA has granted three similar arterial setback variances. Denying this variance would deprive the applicant of rights commonly enjoyed by other property owners.

**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 the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood. Staff discovered numerous properties in the area within the required arterial 80 feet to centerline setback for Wicks Lane. The City Engineering Division had no objection to granting the variance.

**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;**

Granting the variance does not conflict 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 decrease in arterial centerline setback from 80 feet to 60 feet:

1. The variance is to allow a 60-foot setback to the centerline of Wicks Lane for the construction of residential dwellings on the property. No other variance is intended or implied with this approval.
2. The variance is limited to C. S. 1462 parcels 1 and 2, C.S. 1463, parcels 1 and 2, and C.S. 13, a combined 3.016 acre parcel of land generally located at 1017 Wicks Lane.
3. The parcels shall be developed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m. daily.
5. The owner/applicant will submit a Master Site Plan Review application within one year, and building permit application within two years of Board of Adjustment approval for the structures that fall within the arterial setback and complete the construction within five years of BOA approval.
6. Failure to begin or complete the approved actions on the variance will void the approved variance.
7. All construction will require compliance with all other zoning regulations and City ordinances that apply at the time of construction.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

Staff recommends the applicant be required to submit a Master Site Plan Review application within one year, and building permit application within two years of Board of Adjustment approval for the structures that fall within the arterial setback and complete the construction within five years of BOA approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district – single family dwellings are allowed in the R-70 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 and Letter  
Site Plan

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Subject Property



North



West



East



South



North east

**APPLICATION FORM**

CITY VARIANCE

ID: Billings Variance # \_\_\_\_\_ - Project # P2-20-00078

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 # See Legal, no Tax ID is currently assigned CITY ELECTION WARD # \_\_\_\_\_  
Legal Description of Property: Tract 1/2 of C.O.S 1463, Tracts 1/2 of C.O.S 1462 and C.O.S 13

Address or General Location (If unknown, contact City Engineering): 1017 Wicks Lane

Zoning Classification: Residential 7000

Size of Parcel (Area & Dimensions): 3.016 Acres, 183 Wide by 660.63 deep

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

If yes, please attach to application

Variance(s) Requested: Front set back to be ~~75~~ 60 feet. Current requirement is 80 ft.

Facts of Hardship: To match the existing homes on Wicks Lane to provide continuity with the existing neighborhood.

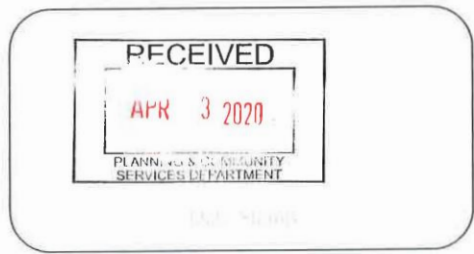
\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Travis McDowell + Trent Parks  
(Recorded Owner)  
2344 Gleneagles Blvd  
(Address) (406) 208 4146 ParksT@gmail.com  
(Phone Number) (email)

Agent(s): Trent Parks  
(Name) 2344 Gleneagles Blvd  
(Address) (406) 208 4146 ParksT@gmail  
(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: 4/1/20  
(Recorded Owner)



1. A) Current regulation requirements at this property require an 80 foot set back from the center of Wicks Lane.  
B) The construction of new homes on this property have created a need for this variance request.

To the Chairperson of the Board of Adjustment:

This variance being sought will be for new construction located at 1017 Wicks Lane in Billings, Montana. Please see the attached new construction site plan for reference.

We are seeking this variance to match the existing homes on Wicks lane to provide continuity in the existing neighborhood. This layout would also improve green space for our new residents by increasing their back-yard area by 20 feet for 4 of the new homes.

Thanks for your consideration,

Trent Parks





**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

**SUBJECT:** Variance 1310 - 2604 Emerson Place

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Variance 1310 - 2604 Emerson Place** - The applicant is requesting a variance from Section 27-308 requiring a minimum 5 foot setback from the side property line in a Residential – 9600 (R-96) zone to allow 3 foot side setback, on Lot 4, Block 1, Highland Park Subdivision, 2nd Filing, a 12,046 square foot parcel of land. The purpose of the variance is to allow the construction of a garage addition with an attic living space. 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: Darryl & Alison Weber

AGENT: Jeff Wollschlager, A-Line Drafting

PURPOSE: Side setback for a new attached garage of 3 feet

LEGAL DESCRIPTION: Blk. 3, Lot 4, Highland Park Sub., 2nd Filing

ADDRESS: 2604 Emerson Place

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					
<b>SIMILAR PROPERTY</b>					
2523 Irving Place	872	7/2/02	Side SB 3'	Y	
925 Jackson	1142	4/4/13	Side SB 3'	Y	
7 Alderson Ave	1143	4/4/13	Side SB 3'	Y	
415 Cook Ave	1146	4/4/13	Side SB 3'	Y	
1014 N. 32nd St.	1170	12/5/13	Side SB 1'	Y	Detached garage

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-96  
Land Use: Residential  
SOUTH: Zoning: R-96  
Land Use: Residential  
EAST: Zoning: R-96  
Land Use: Residential  
WEST: Zoning: R-96  
Land Use: Residential

## **BACKGROUND**

This is a variance request from a minimum 5-foot setback from the side property line in an R-96 zone to allow 3-foot side setback. The purpose of the variance is to allow the construction of a garage addition with an attic living space. The applicant is requesting the variance to allow removal of an existing garage and rebuilding in the same location a new garage a little larger with attic living space (this is not a request for an accessory dwelling unit). There have been similar variances granted in the surrounding neighborhoods, granting the variance would not be out of character for the neighborhood.

## **SUMMARY**

### **Proposed DETERMINATIONS for Variance 1310**

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 existing structure was built in 1951, prior to zoning regulations. The property owner would like to remove the old garage and rebuild a new garage in the same location.

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

The subject property is in a subdivision where much of the development occurred in the 1950'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.

**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 rebuild the existing garage and bring the property into conformance with the current zoning code and acquire a rebuild letter for financing purposes.

**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. This approval is to allow a variance from Section 27-308 requiring a minimum 5 foot setback from the side property line in a Residential – 9600 (R-96) zone to allow 3 foot side setback to rebuild an attached garage with attic space (not for an ADU). No other variance is intended or implied.
2. The variance is limited to Lot 4, Block 1, Highland Park Subdivision 2<sup>nd</sup> Filing, 2604 Emerson Place.
3. The applicant will apply for and receive approval of a building permit within 1 year and complete

construction within 2 years of BOA approval. Failure to meet the time limits of this condition will void the variance.

4. There will be no construction activities prior to 7:00 am or after 8:00 PM daily.
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, 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;**

Staff is proposing a time limit of one year acquire building permit approval and two years to complete construction.

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

The granting of this variance would not allow a use that is not allowed in the zoning district – single family dwellings with attached garages are allowed in the R-96 zone district.

### **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

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Subject Property



Northwest



North



Northeast



West



South



Subject Garage

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance #** \_\_\_\_\_ **- Project #** P2-20-00077

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 # \_\_\_\_\_ A08981 \_\_\_\_\_ CITY ELECTION WARD # \_\_\_\_\_ 4 \_\_\_\_\_

Legal Description of Property: HIGHLAND PARK SUBD 2ND FILING BLOCK:3 LOT 4

Address or General Location (If unknown, contact City Engineering): 2604 EMERSON PL.  
BILLINGS, MT 59102

Zoning Classification: R-9600

Size of Parcel (Area & Dimensions): 90.00' x 133.85': 12,046 SF

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

If yes, please attach to application

Variance(s) Requested: 3'-0" SIDE SETBACK FOR ATTACHED GARAGE W/  
SECOND STORY BONUS LIVING SPACE

Facts of Hardship: EXISTING GARAGE IS 2'-0"± FROM PROPERTY LINE WITH A FAILING RETAINING WALL ON THE PROPERTY  
LINE. GARAGE AND RETAINING TO BE DEMOLISHED AND REPLACED WITH NEW CONSTRUCTION. NEW  
GARAGE WILL BE INCREASED IN DEPTH AND REDUCED IN WIDTH TO A 3'-0" SETBACK

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

Owner(s): \_\_\_\_\_

(Recorded Owner) WEBER, DARRYL L & WEBER, ALISON M

(Address) 2604 EMERSON PL. BILLINGS, MT 59102

(Phone Number) 406-670-3934 (email) coachdweb@msn.com

Agent(s): \_\_\_\_\_

(Name) A-Line Drafting & Design, Jeff Wollschlager

(Address) 725 Grand Ave. Billings, MT 59102

(Phone Number) 406-321-2280 (email) alinedrafting@gmail.com

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: *Darryl L Weber* (Recorded Owner) Date: 4/1/20



3-27-20

## 2604 Emerson Pl. Variance

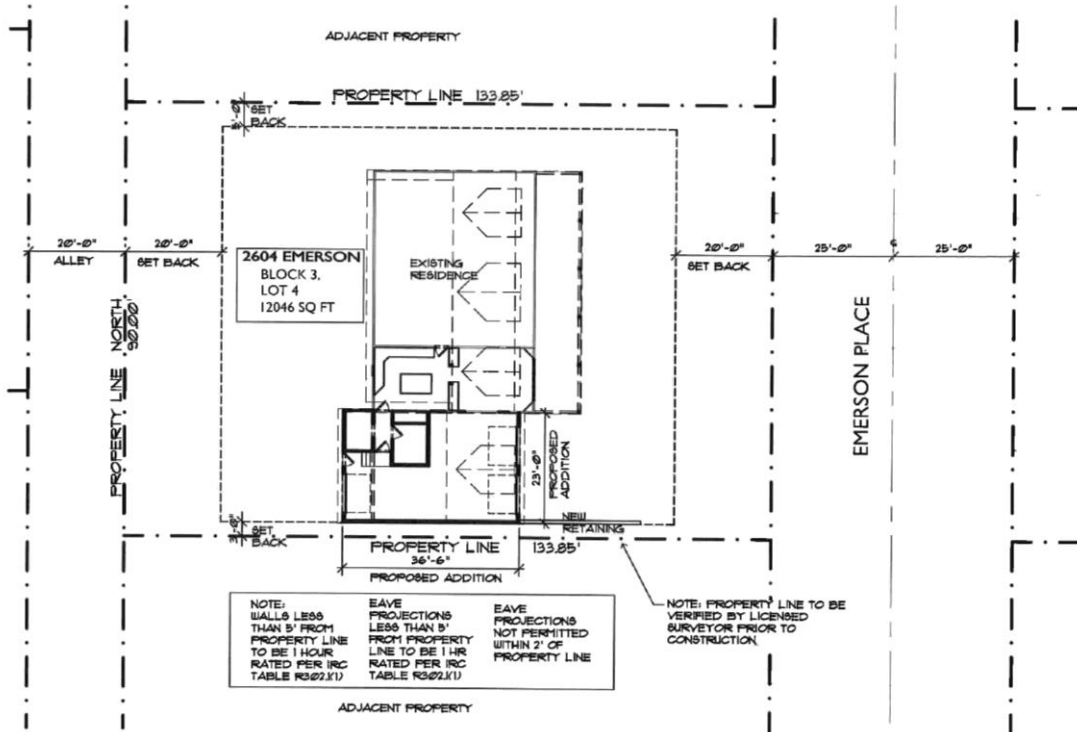
Subject: 2604 Emerson PL. Billings, MT 59102

Chairperson of the Board of Adjustment:

We are requesting a variance for a 3'-0" side setback for an attached garage with "Bonus" living space above. There is an existing garage and a failing retaining wall currently in place. The existing garage is approximately 2'-0" to 2'-6" from the side property line. The existing retaining wall is falling apart and is assumed to be on the subject property "tight" to the property line. We are proposing demolishing the existing garage and retaining wall and replacing with new construction. We are proposing the new garage to be 3'-0" from the property line. The new concrete retaining wall will extend from the proposed garage foundation to replace the old retaining wall. The existing and proposed retaining is approximately 30" +/- of grade transition. The new garage will be further from the property line than the existing. The new garage will be deeper in length as the old garage depth was not suitable for mid-sized vehicles. The proposed new construction will be engineered and meet all applicable building and local codes. A licensed surveyor will verify the property line and approved setback prior to construction. With the approval of this variance it will be an improvement to the existing site conditions and provide a usable garage to minimize on street parking and multiple vehicles in the existing driveway.

Sincerely,

Homeowners of 2604 Emerson



1 SITE PLAN



1 FRONT ELEVATION  
SCALE: 1/4"=1'-0"



2 SIDE ELEVATION  
SCALE: 1/4"=1'-0"





**City Board of Adjustment-Virtual Video Conference**

**Meeting Date:** 05/06/2020

**SUBJECT:** Variance 1311- 1836 Yellowstone Ave.

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

**Variance 1311- 1836 Yellowstone Ave.** - The applicant is requesting a variance from Section 27-308 requiring a maximum 30% lot coverage in a Residential – 7000 (R-70) zone to allow 31% on Lot 12, Block 5, Burg Subdivision, 3rd Filing, an 8,400 square foot parcel of land. The purpose of the variance is to allow the construction of a detached garage of 960 square feet (108 sf over the maximum). 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 the summary section of this report.

**APPLICATION DATA**

OWNERS: Darren Moewes

AGENT: Matt Lee, A-Team Contracting

PURPOSE: To allow 31% lot coverage for a new detached garage

LEGAL DESCRIPTION: Lot 12, Block 5, Burg Subdivision, 3rd Filing

ADDRESS: 1836 Yellowstone Ave.

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

EXISTING ZONING: R-70

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
<b>SIMILAR PROPERTY</b>					
5205 Cabernet Lane	1275	3/8/18	31% LC	Y	
1134 Jordan Circle	1278	4/5/18	31% LC	Y	
41 Sunset	1289	11/19/18	33% LC	Y	
922 Royal Ave.	1259	5/5/17	39% LC	Y	
2215 George	1218	7/2/15	39% LC	Y	
145 Alderson Ave	1221	11/5/15	37% LC	Y	
617 S 35th St.	1222	11/5/15	45% LC	Y	Var from 40%
3421 Winchell Lane	1154	6/6/13	35% LC	Y	
2215 George	1157	7/11/13	38% LC	Y	
4182 Bainbridge Circle	1167	11/7/13	31% LC	Y	
1014 N 32nd St.	1170	12/5/13	38% LC	Y	

## **SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-70

Land Use: Residential

SOUTH: Zoning: R-70

Land Use: Residential

EAST: Zoning: R-70

Land Use: Residential

WEST: Zoning: R-70

Land Use: Residential

## **BACKGROUND**

The applicant is requesting a variance to allow 31% lot coverage. The purpose of the variance is to allow the construction of a detached garage of 960 square feet. There have been similar variances approved in this area of Billings. The lot coverage variance would allow the applicant to construct a garage 108 square foot over the maximum allowed lot coverage of 30%. The majority of homes in the subdivision were built in the 1950's, prior to zoning. There have been similar variances granted within the district for 31% up to 39%, one granted from 40% to 45%.

The applicant is proposing a new garage structure that exceeds the maximum by 108 square feet. This detached garage on the alley side of the property would not be out of character for the neighborhood.

## **SUMMARY**

### **VARIANCE #1311 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;**

There are not any special circumstances that exist in this situation other than the applicant wishes to add a new garage.

**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 with most of the homes build in the 1950's. There have been similar variances granted for lot coverage within the same district. 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 for 31% lot coverage will 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.

**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. The variance from 27-308 requiring a lot coverage of 30% ( 2,520 sf) to allow a maximum lot coverage of 31% (2,628 sf) to allow a new detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 12, Blk 5, Burg Sub. generally located at 1836 Yellowstone Ave.

3. The applicant will submit and obtain a building permit for the new garage within 1 year and have it completed within 2 years.
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. Failure to begin or complete actions required by this approval within the time limits set forth shall void 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 within 1 year and have it completed within 2 years of BOA approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district – single family dwellings with detached garages are allowed in the R-70 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.

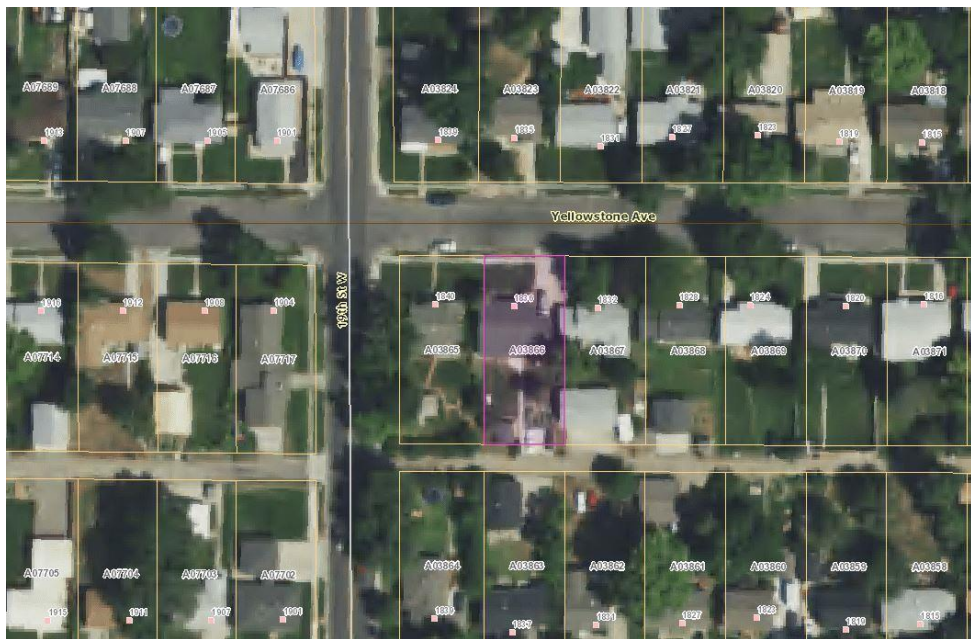
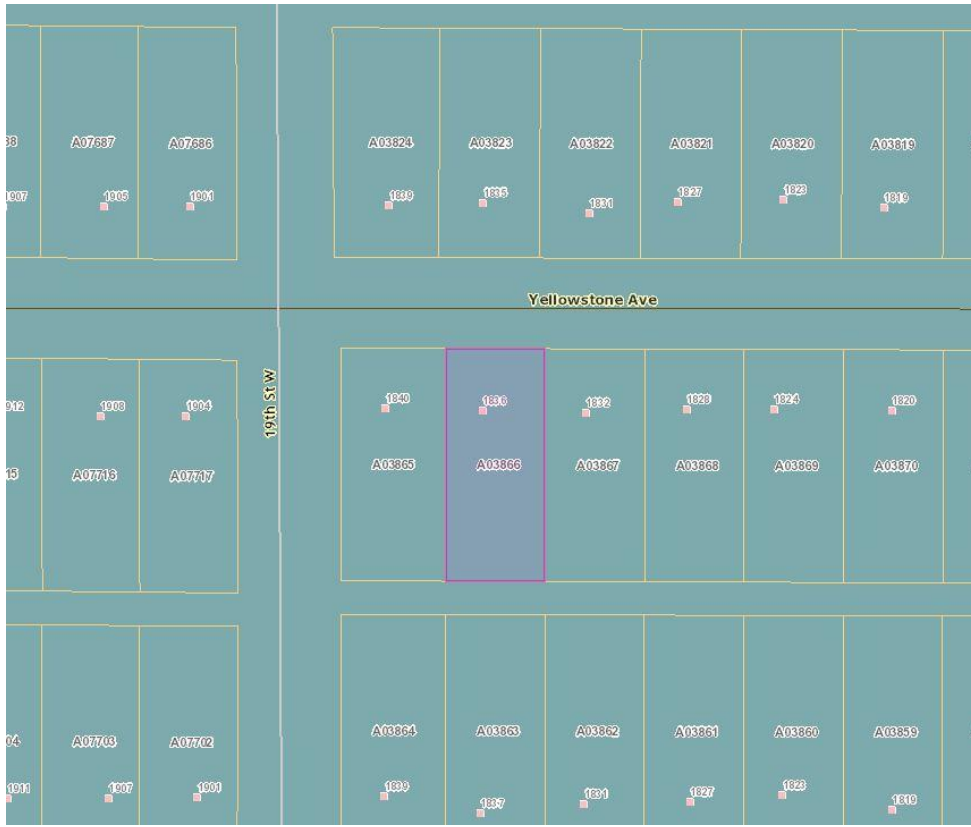
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**Attachments**

Zoning Map & Site photos  
Application & Applicant Letter  
Site Plan

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# Zoning Map and Site Photos





Subject Property



East



North



Southwest



West

Application & Applicant Letter

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # \_\_\_\_\_ - Project # \_\_\_\_\_

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 # AD3866 CITY ELECTION WARD # Billings, Burg

Legal Description of Property: Burg Sub D 3RD FILING, 506, T01 S, R26 E, Block 5, Lot 12

Address or General Location (If unknown, contact City Engineering): 1836 Yellowstone Ave Billings 59102

Zoning Classification: Residential 7000

Size of Parcel (Area & Dimensions): 8400 sq ft

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

If yes, please attach to application

Variance(s) Requested: 186sf increase to allow for Garage to be built to meet the growing family needs

Facts of Hardship: No on site parking for family vehicles, No secure site for valuables

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

Owner(s): MOEWES, DARRON J

(Recorded Owner) 1836 Yellowstone Ave Billings MT 59102

(Address) 406-670-1379 Moewes & charter.net

(Phone Number) (email)

Agent(s): Matt Lee - A-Team Contracting

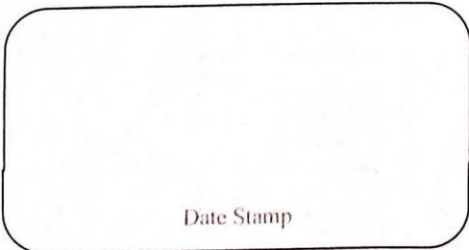
(Name) 5625 Walter Hagen Dr Billings 59106

(Address) 406-427-6537 Matt@Ateammt.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: Darron J Moewes Date: 4-6-2020  
(Recorded Owner)





## Variation Request for 1836 Yellowstone Ave, Billings

To whom it may concern,

This letter is to address the following requirements as per the City of Billings Variance Application 2020-2021 updated Nov 8, 2019.

1. Answer the following questions:
  - a. **What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?** Currently the property has a single home with a single car garage. The amount of area needed to build a garage to store the families vehicles will require a variance to be granted. Currently the usable square footage of the lot is 2520sf (30% of 8400sf) and we are asking that a variation of an additional 188sf (2708sf) be allowed to build the required structure.
  - b. **Why is there a need for the intended use of the property at this location?** Currently the property has a single family residence with a small attached storage area. The family has grown and has multiple vehicles for all the family members and currently the vehicles are unable to be parked out of elements. The recent hail storms have repeatedly damaged vehicles and put a huge financial burden on the family. By allowing the vehicles to be parked in the structure they would not be damaged from the storms. Also the family is removing a shed on the property that has had items gone missing over time as it's near the alleyway. By having the garage this will mitigate property loss and allow for a secure storage area.
2. Prepare a written statement addressed to the Chairperson of the board of adjustment. State what is entered to be done with the property, including a new construction or change in the use of the property, and why the variance is being sought.
  - a. **PLEASE SEE ATTACHED LETTER**
3. Prepare a dimensioned site plan as follows:
  - a. One full sized site plan and one reduced copy of the site plan at 8 ½ x 11 or 11x17. **Attached**
  - b. Scale of the full sized site plan shall not be less than 1"=40'.
4. If applicable, the site plan must include but not be limited to the following:
  - a. North arrow - **added to site plan**



- b. The locations and dimensions of all vehicle points of Ingress and egress, drives, alleys, and off-street parking spaces. **Added to site plan**
  - c. Illustrated lot size showing lot line dimensions. **Attached**
  - d. The locations and dimensions of all existing and proposed buildings, structures and improvements including those which will be removed. Please label all information. **On site plan and attachments**
  - e. Show Setback from all property lines for existing and proposed buildings. **On Site plan**
  - f. Show the centerline of major and minor arterial streets. **Attached**
  - g. Illustrate the square footage of existing and proposed structures. **On diagrams**
  - h. Names and locations of adjacent streets, alleys, properties etc. **Labeled**
  - i. Other pertinent features. **None**
5. Photographs - **attached**
6. Obtain from the Planning & community services department a radius map showing all the properties which lies within 300ft of the exterior boundaries of the subject property. **Attached**

Darren J. McCreary  
Homeowners Signature

4-5-20  
Date

Matt Lee  
Contractors Signature

4/4/20  
Date

V/r

Matt Lee, Owner  
A-Team Contracting  
406.927.6537  
matt@ateammt.com

**Variance Request for 1836 Yellowstone Ave**  
**Billings MT, 59102 Garage**

**To: The Chairperson of the Board of Adjustment**  
**From: Moewes, Darren (Homeowner)**

Dear Chairperson,

I'm writing this letter seeking a variance to be granted for the shop on my property located at 1836 Yellowstone Ave in the Burg Subdivision. The reason I'm asking for this Variance is due to the Hardships that will be placed on my family if the variance is not permitted.

Currently my family situation has changed and our family has had more vehicles due to additional drivers. Our vehicles have been repeatedly hit by hail storms and it has caused us a tremendous amount of financial burden with the amount of vehicles that needed to be repaired. Currently the property has one small garage that will allow for one vehicle to be stored currently. My wife and I would like to be able to park our vehicles inside and out of the elements along with the family members vehicles and personal belongings.

We are asking for a Lot Variance increase of 188sf to accommodate the garage being built. This will allow for our vehicles to be parked indoors and secured. Additionally we are removing the shed on the property to reduce the size of the variance and will store all the lawn care tools and family bikes. We have had issues in the past with items going missing from our property and having the garage will help us secure these items in a safer manner.

Yellow stone AVE



DRIVEWAY  
SLAB

ENTRY DECK  
80 SQ.FT.

MAIN STRUCTURE  
1014 SQ.FT.

GARAGE  
264 SQ.FT.

PATIO OVERHANG  
390 SQ.FT.

100MP OVERHEAD  
LINE BACK FEEDING  
EXTERIOR PANELS ON  
HOUSE

NEW 3/4" x 8"  
CONCRETE PAD

PROPOSED  
DETACHED  
GARAGE  
960 SQ.FT.

EXISTING 100MP  
OVERHEAD LINE FROM  
ALLEN PARK RECREATION  
CENTER TO BE REMOVED  
BY SERVICE PROVIDER

REMOVED  
12X16  
SHED

EXISTING  
PARKING  
SLAB

PROPERTY  
INFORMATION

LOT SIZE = 8,401 SQ.FT.  
EXISTING MAIN STRUCTURE = 1014 SQ.FT.  
EXISTING MAIN GARAGE = 264 SQ.FT.  
EXISTING PATIO OVERHANG = 390 SQ.FT.  
EXISTING ENTRY DECK = 80 SQ.FT.  
EXISTING 12X16 SHED TO BE REMOVED  
PROPOSED DETACHED GARAGE = 960 SQ.FT.  
STRUCTURES TOTAL = 1014+264+390+80+960 = 2708 SQ.FT.  
STRUCTURE TO LOT RATIO (COVERED) = 2708/8401 = 32.2%

1 SITE PLAN  
SCALE = 1/4"=1'-0"

Graphic scale bar showing 0, 10, 20, 30 feet. Below the scale bar is the text: A1.2 960 SQ.FT. SHOP 1336 YELLOWSTONE AV BILLINGS MT PRAIRIE VALLEY CONSTRUCTION, LLC

ALLEY