



VIDEO CONFERENCE FORMAT

NOTICE TO THE PUBLIC

****ATTENTION****

Due to the COVID-19 health concerns, this meeting will be held in a virtual videoconferencing environment. Zoning Commission members will attend the meeting via a remote location, using a virtual meeting method. The regular meeting rooms will be closed during the meeting. In order to honor the Right of Participation and the Right to Know in Article II, sections 8 and 9, of the Montana Constitution, the City/County Planning Division is making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook:
<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
 - Email: bartleyr@billingsmt.gov
- Call in during the Public Comment periods as indicated on the agenda:
 - Citizens may call in during specific Public Comment periods at **406.237.6165**.
All callers will be placed 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 limited to 3 minutes of testimony as is customary.
Future delivery methods may be explored as best practice is learned.

Please direct questions to Administrative Secretary Robbin Bartley at bartleyr@billingsmt.gov or 406-247-8676

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 January 6, 2021, February 3, 2021 and March 3, 2021.

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 Exparte Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- Opening of public hearings.
- Reading of rules for the procedure by which the public hearings will be conducted.
- Reading of notices of the public hearings on the following items:

Public Hearings:

- a. Variance 1331 - Blue Creek Rd and Santiago Blvd - This is a variance from Section 27-406 requiring a Front Build-To zone of 5 to 20 feet to allow an 80-foot setback from the front property line on Blue Creek road to accommodate a Floodplain Boundary for a new 5,400 square-foot commercial structure in a Corridor Mixed Use 1 (CMU1) zone, on Lot 1 of Essman Subdivision, a 27,907 square-foot parcel of land.

Other Business/Announcements

Adjournment

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

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to bartleyr@ci.billings.mt.us

Date: 05/05/2021
Title:
Presented by:
Department: Planning & Community Services
Presentation:

Information

RECOMMENDATION

The minutes of the Board meeting of January 6, 2021, February 3, 2021 and March 3, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

ALTERNATIVES

- City Council may:
- Approve; or,
 - Not Approve

FISCAL EFFECTS

Attachments

January 6, 2021
February 3, 2021
March 3, 2021

CITY BOARD OF ADJUSTMENT

MINUTES January 6, 2021

| Name | Title | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | |
|--|------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------|
| | | | | | | | | | | | | | | |
| David Mitchell | Member | 1 | | | | | | | | | | | | |
| Dave Hagstrom | Member | 1 | | | | | | | | | | | | |
| Paul Hagen | Member | 1 | | | | | | | | | | | | |
| Jeff Bollman | Vice Chair | 1 | | | | | | | | | | | | |
| Oscar Heinrich | Member | 1 | | | | | | | | | | | | |
| Martin Connell | Member | 1 | | | | | | | | | | | | |
| Mark Noennig | Chair | 1 | | | | | | | | | | | | |
| TOTAL NUMBER OF APPLICATIONS 2021 | | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | TOTAL |
| Variance | | 4 | | | | | | | | | | | | 4 |

Vice Chair Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met virtually thru Zoom <https://zoom.us/j/95905224215>.

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

Vice Chair Bollman 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 4, 2020.

Motion

Board Member Heinrich moved and Board Member Mitchell seconded the motion to approve the November 4, 2020 minutes. The motion carried with a unanimous voice vote.

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

Board Member Mitchell had no exparte communications, has no conflicts of interest and visited all but Variance 1323 locations.

Board member Hagstrom had no exparte communications, has no conflicts of interest and visited no sites.

Board member Hagen had no exparte communications, has no conflicts of interest and visited 2 sites.

Vice Chair Bollman had no exparte communications, has no conflicts of interest and visited no sites.

Board member Heinrich had no exparte communications, has no conflicts of interest and visited all sites.

Board member Connell had no exparte communications, has no conflicts of interest and visited no sites.

Chairman Noennig had some discussion with Bill Hanser and Dave Goodrich. He finds it necessary to recuse himself from the discussion and vote for Variance 1324 and visited no sites.

Board Member Heinrich made a motion to change the Public Hearing order to 1323, 1322, 1325 and lastly 1324. Board Member Connell seconded the motion. All board members voted in favor.

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 1323 – 718 S. 31st St. – Side setback - A variance from 27-308 requiring a 5-foot side setback to allow 2-foot side setback in a Residential-6000 (R-60) zone, on Block 225, Lot 4, Billings Original Townsite, a 3,500 square foot parcel of land. The purpose of the variance is to allow the existing single family dwelling a rebuild letter. Tax ID: A01676

RECOMMENDATION

Planning staff has reviewed this application & is recommending approval of Variance #1323. Based on the Determinations for granting a variance.

1. The variance is to reduce the side setback for a single-family dwelling on a 3500 square foot parcel of land from 5 feet to 2 feet to conform to zoning in order to allow a rebuild letter. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 225, Billings Original Townsite generally located at 718 S 31st Street.

3. The applicant/and/or property owner shall meet all other city code requirements with the exception of this variance.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for staff:

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:21PM and asked if there was anyone wishing to speak in favor or against **City Variance 1323**.

Applicant: David Goodridge, Agent

Favor

NONE

Opposed

NONE

Discussion

At 6:22PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Hagen seconded the motion to approve **City Variance 1323** with staffs 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 approve City Variance 1323 passed with a 7-0 vote.

City Variance 1322– 2621 Downer Lane - Garage side setback – A variance from 27-310(i) requiring an 8-foot side setback on a detached accessory structure over 18 feet in height to allow 3-foot side setback in a Residential-9600 (R-96) zone, on Lot 4 of Downer Acres, an 11,292 square foot parcel of land. The purpose of the variance is to allow renovation and addition to an existing garage, or remove and replace the detached garage in the same location. Tax ID: A06379

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1322. Based on the Determinations for granting a variance.

1. To allow a variance from Section 27-308 requiring a minimum 5 foot setback from the side property line in a R-96 zone to allow 3 foot side setback. No other variance is intended or implied.
2. is limited to Lot 4 of Downer Acres Subdivision, 2624 Downer Lane.
3. will apply for and receive approval of a building permit within 1 year and complete construction within 2 years, failure will void the variance.
4. No construction activities prior to 7:00am or after 8:00 PM daily.
5. shall meet all other city code requirements except this variance.
6. Conditions run with the land described and apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for staff:

Board member Heinrich asked if it is possible to ask for firmer plans and can we change the application to specify remodel or rebuild.

Board member Bollman asked what is the threshold for requiring an 8-foot setback. Staff replied anything less than 18 feet high would require a 3-foot set back.

Board member Hagstrom confirmed this is a 11,292 square foot lot zoned R9600.

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:32PM and asked if there was anyone wishing to speak in favor or against **City Variance 1322**.

Applicant: Thomas J. & Janet Blenkinship, Jeff Wollschlager, Agent/Not Present

Favor

NONE

Opposed

NONE

Discussion

Board members asked if the adoption of RE:Code would change setback requirements. Staff replied all new accessory structures will require a 5-foot setback.

At 6:36PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Bollman seconded the motion to delay for 30 days the vote on **City Variance 1322**.

| 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 delay City Variance 1322 passed with a 7-0 vote.

City Variance – 1325 – 2607 Copper Blvd– Lot Area & Setback - - A variance from 27-308 requiring a minimum lot size of 19,200 square feet for two single family dwellings, to allow a minimum lot size of 6,250 square feet, and from 27-308 requiring a 20-foot rear setback to allow a 3-foot rear setback in a Residential-9600 (R-96) zone, on Block 3, Lots 25-26, Amvet Park Sub, a 6,250 square foot parcel of land. The purpose of the variance is to allow two existing single-family dwellings to be reconstructed in order to acquire a rebuild letter. Tax ID: A02310

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1325. Based on the Determinations for granting a variance.

1. The variance is to allow a minimum lot area of 6,250 square feet for 2 single family dwellings and 3-foot rear setback for the easterly single-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Block 3, Lots 25-26 of Amvet Park Sub., 2607 Copper Blvd.
3. The applicant shall meet all other city code requirements with the exception of this variance.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for staff:

Board member Heinrich asked if rebuild letters will still be necessary when RE:Code is adopted. Staff replied rebuild letters will still be required/necessary in some situations.

Public Hearing

Vice Chairman Bollman opened the public hearing at 6:47PM and asked if there was anyone wishing to speak in favor or against **City Variance 1325**.

Applicant: Helen M. Peterson, Dislorei Small Rodriguez & Kevin Lonebear, Agent/Not Present

Favor

NONE

Opposed

NONE

Discussion

At 6:49PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Heinrich made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1325** with staffs 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 approve City Variance 1325 passed with a 7-0 vote.

City Variance – 1324 – NW of the intersection of Georgina Dr. & 44th St. W – lot area, lot Coverage, density- A variance from Lenhardt Square PD Exhibit “B” as amended increasing the maximum density from 10 units per acre to 17.2 units per acre and to allow a variance from parking in Article V.B.4. to reduce enclosed parking from 2 enclosed spaces per dwelling unit to .75 covered spaces per apartment dwelling in the PD-MF-4 zone, on Parcel 2A of C/S 2063, a 19.13-acre parcel of land. The purpose of the variance is to allow development to be more consistent with the PD-MFR zone. A previous variance (Variance 1282) was granted and this variance will amend those conditions of approval.

Tax ID: D00514A

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1324. Based on the Determinations for granting a variance.

1. A variance from Lenhardt Square PD increasing the maximum density to 17.2 units per acre & allow a variance from parking to reduce enclosed parking to .75 covered spaces per apartment in the PD-MF-4 zone. No other variance is intended or implied with this approval.
2. The variance is limited to Parcel 2A of C/S 2063.
3. The applicant shall meet all other city code requirements for the PD with the exception of this variance.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Staff received 16 exparte emails in opposition from surrounding property owners and the applicant responded. These emails and response have been forwarded to the Board previous to the meeting for review.

Questions for staff:

Board member Hagen asked if all letters received were in opposition. Staff replied traffic, ingress and egress safety and parking were major areas of concern.

Board member Hagstrom asked about a previous Variance request for an increase in density that was approved by the Board. Staff explained the density increase request was a height increase, enabling the applicant to increase story levels. Also, a Special Review was approved by City Council to allow multi-unit buildings, more than 4 units in a structure. This Variance request is to numerically adjust the density per acre, allowing more density than is required in the Planned Development.

Board member Hagstrom stated he had not had the opportunity to read all submitted letters and asked staff if there were any adjacent neighbors addressing the density or were they all traffic concerns. Staff indicated density concerns were related to traffic increase. The density is consistent with the PD, it has always been multi-unit. The properties to the south are in this same density level (16-18 units). This request is not out of the ordinary for this or other PDs.

Board member Mitchell stated he assumes a Traffic Impact Study was done by City Engineering with this density. He asked to confirm a TIS was done with approval and was a permit issued. Staff directed these concerns to the applicant.

Vice Chair Bollman asked about the density on Interurban. Staff replied the density is greater on Interurban with a different underlying zoning. Will any other action be required by City Council.

Board member Heinrich wishes to confirm the underlying density is more than the PD requirement. Staff replied, no, the lot to the south is more dense. He then asked how Project RE:Code will effect this. Staff indicated it is a PD, their PD will carry over.

Board member Mitchell asked if it is easier to get a Zone change than a Variance? If they changed the zoning they would not need a variance, correct? Staff clarified his question asking if he is suggesting changing the underlying zone. Upon clarification Board member Mitchell asked again if a variance would be necessary if the zoning was changed. Staff asserted this is correct, however a Zone change

is more difficult and it takes more time.

Public Hearing

Vice Chairman Bollman opened the public hearing at 7:04PM and asked if there was anyone wishing to speak in favor or against **City Variance 1324**.

Applicant: Bill Hanser, 2916 Thousand Oaks, Billings, MT

Good Evening Chairman Bollman and Members of the Board

My name is Bill Hanser

I live at 2916 Thousand Oaks Street, Billings, MT

I am the current owner of Parcel 2A in the Lenhardt Square Planned Unit Development. In 2018 I had made a variance request for some additional units to make the project financially viable. However, changes in the interim to the storm water management guidelines added considerable cost to the site development. This made the project financially unfeasible, and the land has sat undeveloped since. This is unfortunate because there is a strong need for affordable, quality, living spaces in our city, and the high cost of construction makes it prohibitive for most developers to enter the apartment marketplace.

Great Hall Partners is an experienced development group with numerous, successful, apartment projects. They have placed the property under contract, and using their experience and expertise have developed a modified design. This new design provides an improved neighborhood and will be a strong addition to the greater community. It offers:

Safer egress to the subdivision by the addition of a primary entrance at the roundabout at Monad and Shiloh Road

Although this new design requests a reduction in covered parking spaces, It will actually provide more overall parking spaces, with less on street parking

The new design offers Improved traffic flow,
Increased green space and quality of life for residents,
An improved storm water retention design at a lower cost of construction,
Increased areas for snow removal and storage,
And most importantly it creates quality, affordable, housing units in the Billings community

These modifications do require another slight increase in density, but it will also create a much better overall product for the residents of Billings and the adjoining neighbors. I strongly support the Great Hall Partners variance request.

The Founders of the Lenhardt Square PUD are also in agreement and support of this request. This design is well within the design guidelines of the Planned Unit Development, and it will bring this project into closer alignment with the already built elements of the PUD.

I would like to introduce John Casper from Great Hall Partners to speak.

John Casper, 1700 42nd St S, Fargo, ND

Currently we have 250 apartment units in different areas. We see the need for well kept affordable housing in the community which led us to Mr. Hanser and this opportunity. We are familiar and have done projects in different communities. There are a few issues that make this project feasible, the storm water retention requirement added costs, which we are able to resolve by increasing the density. We want a safe and attractive project with green space to attract occupants. Our goal is more green space. The project is approved for 237 units as it sits now. The variance we are requesting would allow for more green space, less street parking, more site parking, better access to the development.

Board member Hagen asked what the plan is for storm water retention. There will be an inground boulder storage under the parking area. By changing some of the building locations, a larger green space is possible for community use.

Board member Hagen inquired as to the material to be used for the underground piping. Steel or large PVC is the standard.

Vice Chair Bollman asked the difference in units approved now and what this variance would allow. His understanding is it is approved for 237 now and if approved it would be as many as 300 units.

Currently 237 units are approved, the current plan is to build 282 units, the request is for up to 300 units. The request is an additional 3.6 units per acre. It is currently approved at 13.6 units per acre, the request is for up to 17.2 units per acre. This is inline with other multi-family developments in the area.

Opposed:

Mike Creeden, 685 Clarks River Rd, Laurel, MT

He recognizes there is currently a large density of people residing in this area. He cares about the community, although he does not currently reside there. He points out there are no shopping amenities, such as grocery stores or gas in the community therefore requiring tenants to frequently leave and return from the development. His concern is the increased density, he questions the reasoning behind the increase. He opposes this matter completely, he believes it to be selfish and a detriment to the community.

Sonny Kindsfater, 4733 Georgina

She claims this is to be a gradual change from the apartments and townhouses to single family residences on the west, duplexes and triplexes on the east. In 2016 Janice Lenhardt Rehberg sat at her table discussing where to put in a round a bout for egress off King Ave. According to Ms. Kindsfater, Ms. Rehberg guaranteed her the property in question was to be single family residences. She was unaware of the previous approval of Variance 1282. She is totally against the density increase.

Anthony Seitz, 4631 Georgina

He moved to this community 3 years ago. All the lots adjacent to this property are 1 acre lots. He was under the impression the density was to be a little less transitioning to the 1 acre lots, now they want to increase the density. He voiced concerns about City services, such as Police and Fire, being able to serve these areas. The density should be dispersed throughout the City and not all in one place. This is just an attempt to make more money on a vacant piece of land. Plenty of profit is possible with the current approved density. The property values will be ruined if high density is placed on top of single family neighborhoods. It will also ruin their quality of life.

Sara Creeden, 4733 Georgina

She is disappointed the Board members did not take the time to read all letters written in opposition. She is concerned with the density of this part of Billings. It is straining the Police and Fire resources. The schools are in jeopardy. There is complete disregard for an established subdivision with no gradual density from the Happy Homes Apartments to the Georgina Subdivision. The original plans called for single family residences on smaller than 1 acre lots and now are proposing townhomes and multifamily residences. She requests plans be submitted with less density, more green space, trails and considerations to City resources.

Vice Chair Bollman reminded listeners only Mr. Hagstrom had voiced an inability to read all letters of opposition. Vice Chair Bollman had read them all.

Rebuttal: Bill Hanser

It was frequently mentioned the property adjacent to Georgina was to be single family. This is incorrect, the property was always zoned for four plexes at a minimum. The site plan submitted actually includes greater green space and garden areas. There is a softening density to the Georgina subdivision.

John Casper

Access is being approved for residences. Value is being shown for site parking rather than street parking to alleviate traffic issues. The new site plan, in general, is a nicer looking arrangement than the previous plans. The number of units has increased, but the number of buildings has decreased.

Vice Chair Bollman asked if approval was granted would the applicant be agreeable to additional conditions possibly implemented by the Board.

Discussion

Board member Mitchell asked if a Traffic Impact Study had been completed. Brian of Sanderson Stewart replied a TIS had been completed for the approved 237 units. The recommendation was to provide a connection from the end of 44th Street to Monad. Creating a secondary access and alleviating existing burdens.

Board member Mitchell pointed out the opposition being voiced regarding traffic issues for Georgina and was looking for some completed plans to alleviate those issues.

Georgina to the west is a private easement and not a public road. The road would have to be barricaded to eliminate traffic to the general public. Georgina is proposed as a future collector tying in to 56th.

Vice Chair Bollman asked staff if the increased density were approved, would a new TIS be triggered. Staff does not believe it would, however City Engineering would make the determination based on a site plan submittal.

Board member Heinrich asked staff if there are public meetings involved with this Planned Unit Development. No pre-app meetings are required with a Variance. He then asked if Police, Fire and the School District had submitted any comments regarding this Variance application. Staff advised

the application packets are sent out to agents for comments, including Police, Fire and Schools. No comments were received. Board member Heinrich asked if comments were ever received, to which Staff replied in the affirmative.

A caller insisted he be allowed to Rebut in opposition to the Variance. Vice Chairman Bollman denied the request as the caller had already been given the opportunity to comment. The caller insisted he be heard; Vice Chairman Bollman granted the caller one minute.

Board member Mitchell asked if Georgina has been improved to 52nd. No, it has not.

The planned access is at the existing Monad with a new planned access at 48th and King Ave. There is no plan or advantage to having an exit out of Georgina.

Board member Heinrich confirmed if this Variance is not approved, building in the area is still allowable.

Board member Hagstrom reminded the Board what the new density would be.

Additional comments allowed, Mike Creeden, 685 Clarks River Rd, Laurel, MT

Opponents deserve the opportunity to rebutt. It comes down to ¼ acre green space as the buffer zone adjacent to Georgina subdivision. We understand it is going to happen, we do not approve of the increased density. We appreciate the Board chairman having read the letters of opposition, but others did not. There is enough opposition in this matter, all the engineers speaking for this development are being paid by Mr. Hanser, we in the community do not have the funding to hire engineers to speak in our behalf.

At 7:59PM, Vice Chairman Bollman closed the Public Hearing and called for a motion.

Motion

Board Member Mitchell made a motion and Board Member Heinrich seconded the motion to approve **City Variance 1324** with staffs findings of fact and to conform to the site plan as submitted agreeing to submit an amendment of the Traffic Impact Study if required by City Engineering.

| 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 | | | Recused |

The motion to approve City Variance 1324 failed with a 3-3 vote.

Other Business: Board member Connell read a written statement regarding his opposition to continuing Board meetings virtually:

“The special circumstances of COVID caused going to ZOOM meetings a requirement. The new Governor is planning to remove the restrictions and it is mandatory that we go back to in person meetings as soon as possible. The Board needs the personal interactions to more fairly perform their duties. Holding ZOOM meetings are preventing the general public from participating in the Board of Adjustment meetings, hearings by reoccurring and undo burdens such as having to use the computer and the telephone. Every since we started these, I have had complaints from people that we are cutting them out and I think the problem with these ZOOM meetings is they make it expeditious for the beauracracy but they do not protect the public. I believe it is our job to protect the public.”

There are 5 Variances to be considered at February’s meeting. We should vote on Chair and Vice Chair at this meeting,

Project RE:Code will have a second reading at City Council January 11, 2021.

ADJOURNMENT: The meeting adjourned at 8:10PM.

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

CITY BOARD OF ADJUSTMENT

MINUTES February 3, 2021

| Name | Title | Applications | | | | | | | | | | | | |
|--|------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------|
| | | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | |
| David Mitchell | Member | 1 | E | | | | | | | | | | | |
| Dave Hagstrom | Member | 1 | 1 | | | | | | | | | | | |
| Paul Hagen | Member | 1 | 1 | | | | | | | | | | | |
| Jeff Bollman | Vice Chair | 1 | 1 | | | | | | | | | | | |
| Oscar Heinrich | Member | 1 | 1 | | | | | | | | | | | |
| Martin Connell | Member | 1 | 1 | | | | | | | | | | | |
| Mark Noennig | Chair | 1 | 1 | | | | | | | | | | | |
| TOTAL NUMBER OF APPLICATIONS 2021 | | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | TOTAL |
| Variance | | 4 | 5* | | | | | | | | | | | 9 |

One return Variance from January 6, 2021 meeting.

Chair Noennig called the meeting to order at 6:05p.m. The City Board of Adjustment met virtually thru Zoom <https://zoom.us/j/95905224215>.

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 January 6, 2021.

Board member Connell requested a direct transcript of his statement regarding future meetings via Zoom be added to the January 6, 2021 meeting minutes. So noted and will be added.

The approval will be delayed. Chair Noennig sited a correction stating he called for public comment, this will be corrected. Vice Chair Bollman asked if he had indeed voted yes on Variance 1324. This was reviewed from the recorded ZOOM meeting; **his yes vote was confirmed thru ZOOM video review.**

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

Board member Hagstrom had no exparte communications, has no conflicts of interest and visited 1322.

Board member Hagen had no exparte communications, has no conflicts of interest and visited all sites.

Vice Chair Bollman had no exparte communications, has no conflicts of interest and visited no sites.

Board member Heinrich had no exparte communications, has no conflicts of interest and visited all sites.

Board member Connell had no exparte communications, has no conflicts of interest and visited no sites.

Chairman Noennig had no exparte, has no conflicts of interest and visited no sites.

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.

RETURN ITEM: City Variance 1322– 2621 Downer Lane - Garage side setback – A variance from 27-310(i) requiring an 8-foot side setback on a detached accessory structure over 18 feet in height to allow 3-foot side setback in a Residential-9600 (R-96) zone, on Lot 4 of Downer Acres, an 11,292 square foot parcel of land. The purpose of the variance is to allow renovation and addition to an existing garage, or remove and replace the detached garage in the same location. Tax ID: A06379

RECOMMENDATION

Planning staff has reviewed this application and is recommending conditional approval of Variance #1322. Based on the Determinations for granting a variance.

1. This approval is to allow a 3 foot side setback. No other variance is intended or implied.
2. Limited to Lot 4 of Downer Acres, 2624 Downer Lane.
3. The applicant will apply for and receive approval of a building permit within 1 year & complete construction within 2 years. Failure to meet the time limits will void the variance.
4. The garage shall be constructed in substantial compliance with the plans submitted with this application.

5. There will be no construction activities prior to 7:00AM or after 8:00 PM daily.
6. Shall meet all other city code
7. These conditions of variance approval shall run with the land described

Questions for staff:

Board member Heinrich asked if the applicant is present. Are they tearing down the old garage? Staff indicated they are adding on to existing by building up and out. Under the new code, 5 foot setbacks will be applicable.

Public Hearing

Chair Noennig opened the public hearing at 6:15PM and asked if there was anyone wishing to speak in favor or against **City Variance 1322**.

Applicant: Thomas J. & Janet Blenkinship, Jeff Wollschlager, Agent

Not present, was invited, was advised to appear so the Board could question.

Favor

NONE

Opposed

NONE

Discussion

At 6:17PM, Chair Noennig closed the Public Hearing and called for a motion. Board member Hagstrom asked if staff had received any opposition. None was received. He also asked if there were other similar variances in the neighborhood. Yes, there are several.

Motion

Board Member Bollman made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1322** with staffs findings of fact and conditions, modify Condition #2 to reflect the correct address from 2624 Downer to 2621 Downer.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1322 passed with a 6-0 vote.

City Variance 1326 – 2801 3rd Ave N – EMD sign size - A variance from 27-705.C.3.a, requiring an Electronic Message Display sign to be part of a permanent graphic display wall sign and when not part of a permanent graphic display to have a frame of not less than 8-inches in width, to allow two EMD wall signs (one for each street frontage) to not be part of a permanent graphic wall sign, and to have a frame of less than 8-inches, in a Central Business District (CBD) zone, on Block 45, Lot 1A, Billings Original Townsite, an 17,812 square foot parcel of land. The purpose of the variance is to allow two electronic message display (EMD) signs of 34 square feet each. Tax ID: A00262

2 letters of support were received from Staff of the Alberta Bair Staff. These letters have been forwarded to the Board.

RECOMMENDATION

Planning Staff has reviewed this application and after consideration is recommending conditional approval of Variance #1326. The criteria for making a recommendation to the BOA are not clearly determined in this case. The determinations made by staff could indicate a recommendation of approval or denial. Staff believes a recommendation of conditional approval would allow restrictive conditions to reduce the potential impact of the EMD sign at a busy intersection in downtown Billings.

1. The variance is to allow two EMD wall signs (one for each street frontage of no more than 34 square feet each) to not be part of a permanent graphic wall sign, and to have a frame of less than 8-inches. No other variance is intended or implied by this approval.
2. The variance applies to Block 45, Lot 1A, Billings Original Townsite, generally located at 2801 3rd Avenue North.
3. The proposed EMD signs will be located and oriented in substantial conformance with the submitted site plan.
4. The EMD will be static display only, with a hold time of no less than 1 minute for each message.
5. There will be no changing messages between 10:00pm and 7:00am. A single static message may be displayed during this time.
6. No video or animated display will be shown at any time.
7. The applicant will update it's pending permit within 6 months of the Board of Adjustment approval of the variance.
8. The signs will be installed within 1 year of Board of Adjustment approval of the variance.
9. Upon installation of EMD signs they will remain functional at all times. If at any time the display is broken or inoperable for 30 days, the sign will be repaired or it will be removed permanently.
10. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
11. 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.

Questions for staff:

Board member Connell asked the significance of condition #5. Staff is prohibiting sign change so as not to distract traffic. Board member Connell stated he feels this is beaurocratic overreach. Chair Noennig asked if the applicants agree to this condition. The applicant has made no comments regarding the conditions. If the Board chooses to remove a condition, they may.

Board member Heinrich asked if Re:Code had also been updated. Are flashing red or green allowed. The new code is not color specific, but limits flashing.

Board member Bollman asked if there is a restriction without the variance. He also asked if the variance were denied, why are we not using Land Contrary to Zoning. Staff replied it is not a public agency using public land, so Contrary to Zoning is not applicable. Board member asked what the variance is for. Staff replied the variance is to use a 5 inch black frame rather than an eight inch black frame.

Board member Bollman asked if this were to be a traditional marquee rather than an EMD, would a variance be necessary. Staff indicated it would not.

Public Hearing

Chair Noennig opened the public hearing at 6:36PM and asked if there was anyone wishing to speak in favor or against **City Variance 1326**.

Applicant:

Jan Dietrich, 2018 Green Terrace

Design questions should be directed to Kevin Nelson, designer.

Board member Heinrich asked if she has any objections to the conditions.

A static presentation is chosen for the all the reasons indicated.

Jody Grant, 4356 Palisades Park

This sign can be dimmed. The time is not an issue, however as soon as a show is over, the sign is changed to the new and coming show.

Kevin Nelson, Cushing Terrell, 3945 Parkwood Drive

This sign can be programmed to do most anything needed. Timing, display options are not an issue. The facility can choose how to display.

Board member Connell wants condition #5 to be removed.

Staff reiterated the changing is not meant to indicate the wording cannot be changed but rather the wording may not change minute to minute and flash.

Favor

Ron Yates, 1820 Mulberry

He Chair of the Board of Directors, please remove condition #5.

Tony Duncan, 4110 Ironhorse Trail

The sign is very programable, the next show can be programmed into the sign and change automatically.

Opposed

NONE

Discussion

At 6:48PM, Chair Noennig closed the Public Hearing and called for a motion.

Motion

Board Member Connell made a motion and Board Member Hagen seconded the motion to approve **City Variance 1326** with staff findings of fact and recommendations, removing condition #5.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1326 passed with a 6-0 vote.

City Variance 1327 -3002 Alpine Drive – Lot Coverage & setbacks - A variance from 27-308 requiring a maximum lot coverage of 30% to allow 33% lot coverage, and from 27-310(i) requiring an 8 foot side and rear setback for a detached structure to allow 3 foot side setback and 0’ rear setback for a detached accessory structure in a Residential-9600 (R-96) zone, on Block 1, Lot 2A Amended, Reimers Park Subdivision, an 13,660 square foot parcel of land. The purpose of the variance is to allow lot coverage of 33% and rear setback for a detached structure 18’ in height to 0’. Tax ID: A13162

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1327. Based on the Determinations for granting a variance.

1. Variance to allow a maximum lot coverage of 33% to allow a new detached garage of 1,000 sf to have 3’ side & 0’ rear setback. No other variance is intended or implied with this approval.
2. Variance is limited to Block 1, Lot 2A Amended, Reimers Park Subdivision. generally located at 3002 Alpine Drive.
3. Applicant will submit and obtain a building permit for the new garage within 1 year and have it completed within 2 years.
4. The applicant will submit a site plan for building permit approval in substantial conformance with the site plan submitted for this variance.
5. The applicant will provide documentation from the cove ditch company they approve the request to locate a structure as shown on the site plan in close proximity to the ditch.
6. Construction activity will not occur prior to 7 am or after 8 pm daily.
7. The applicant shall meet all other city code requirements for the proposed addition with the exception of this variance.
8. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
9. Conditions 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.

Questions for staff:

Board member Heinrich asked if staff has received any opposition. No correspondence has been received, opposed or in favor.

Public Hearing

Chair Noennig opened the public hearing at 6:56PM and asked if there was anyone wishing to speak in favor or against **City Variance 1327**.

Applicant:

Kyle Huss, 213, N. Broadway, agent
He has nothing to add to the staff report.

Favor

NONE

Opposed

NONE

Discussion

At 6:57PM, Chair Noennig closed the Public Hearing and called for a motion.
Board member Hagen asked if the house right across the street less than 33 percent lot coverage?
Staff does not have the information, it may be 2 lots.

Motion

Board Member Hagen made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1327** with staffs findings of fact and conditions.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1327 passed with a 6-0 vote.

City Variance 1328 –1115 N 25th St – Lot Area, setbacks- A variance from 27-308 requiring a minimum lot size of 9,600 square feet for two single family dwellings, to allow a minimum lot size of 7,000 square feet, and from 27-308 requiring a 20-foot rear setback to allow a 3-foot rear setback, and from 27-310(i) requiring a 3 foot side setback for a detached structure to allow 1 foot side setback in a Residential-7000 (R-70) zone, Block 2, Lot 3, Sunnyside Subdivision, a 7,000 square foot parcel of land. The purpose of the variance is to allow existing structures a rebuild letter for financing purposes.
Tax ID: A16274

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1328. Based on the Determinations for granting a variance.

1. The variance is to allow a minimum lot area of 7,000 square feet for 2 single family dwellings, a 3-foot rear setback and a 1-foot side setback. No other variance is intended or implied with this approval.
2. The variance is limited to Block 2, lot 3, Sunnyside Subdivision, 1115 N 25th St.
3. For the purposes of this variance the rear house (768 sf) and the carport (312 sf) are attached as shown on the site plan and documented photos.
4. The applicant shall meet all other city code requirements with the exception of this variance.
5. These conditions 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.

The applicant needs a rebuild letter.

Questions for staff:

Public Hearing

Chair Noennig opened the public hearing at 7:02PM and asked if there was anyone wishing to speak in favor or against **City Variance 1328**.

Applicant:

David Goodrich, agent, 811 N. 31st
He is available for questions.

Favor: NONE

Opposed: NONE

Discussion

At 7:03PM, Chair Noennig closed the Public Hearing and called for a motion.

Motion

Board Member Bollman made a motion and Board Member Heinrich seconded the motion to approve **City Variance 1328** with staffs findings of fact and conditions.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1329 passed with a 6-0vote.

City Variance 1329 – 1116 2nd St W – Side setbacks- A variance from 27-308 requiring a 5-foot side setback for a single-family dwelling to allow a 1-foot setback for the north side and 0’ setback for the south side of an existing structure in a Residential-7000 zone, on Block 19, South 37.5’ of lots 43-46, a 3,730 square foot parcel of land. The purpose of the variance is to allow existing structure a rebuild letter for financing purposes. Tax ID: A18033

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1329. Based on the Determinations for granting a variance.

1. The variance is to allow a 1-foot setback for the north side and 0’ setback for the south side of an existing structure on a 3,730 square foot lot to conform to zoning in order to allow a rebuild letter. No other variance is intended or implied with this approval.
2. The variance is limited to Block 19, South 37.5’ of lots 43-46, West Side Subdivision generally located at 1116 2nd Street West.
3. The applicant/and/or property owner shall meet all other city code requirements with the exception of this variance.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for staff:

Public Hearing

Chair Noennig opened the public hearing at 7:06PM and asked if there was anyone wishing to speak in favor or against **City Variance 1329**.

Applicant:

Favor:NONE

Opposed: NONE

Discussion

At 7:10PM, Chair Noennig closed the Public Hearing and called for a motion.

Motion

Board Member Hagstrom made a motion and Board Member Bollman seconded the motion to approve **City Variance 1329** with staffs findings of fact and conditions.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1329 passed with a 6-0 vote.

Other Business: Mark Noennig and Jeff Bollman were unanimously acclamated to Chair and Vice Chair to the Board for 2021. Motion was made by Board member Heinrich and seconded by Board member Connell.

All Board members declined the assignment for use of a City owned IPAD for meeting attendance and/or meeting agenda and packet material review.

ADJOURNMENT: The meeting adjourned at 7:17PM.

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

CITY BOARD OF ADJUSTMENT

MINUTES March 3, 2021

| Name | Title | Applications | | | | | | | | | | | | |
|--|------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------|
| | | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | |
| David Mitchell | Member | 1 | E | 1 | | | | | | | | | | |
| Dave Hagstrom | Member | 1 | | 1 | | | | | | | | | | |
| Paul Hagen | Member | 1 | 1 | 1 | | | | | | | | | | |
| Jeff Bollman | Vice Chair | 1 | 1 | 1 | | | | | | | | | | |
| Oscar Heinrich | Member | 1 | 1 | E | | | | | | | | | | |
| Martin Connell | Member | 1 | 1 | E | | | | | | | | | | |
| Mark Noennig | Chair | 1 | 1 | 1 | | | | | | | | | | |
| TOTAL NUMBER OF APPLICATIONS 2021 | | 01/06/2021 | 02/03/2021 | 03/03/2021 | 04/07/2021 | 05/05/2021 | 06/02/2021 | 07/07/2021 | 08/04/2021 | 09/01/2021 | 10/06/2021 | 11/03/2021 | 12/01/2021 | TOTAL |
| Variance | | 4 | 5* | 1 | | | | | | | | | | 10 |

One return Variance from January 6, 2021 meeting.

Chair Noennig called the meeting to order at 6:04 p.m. The City Board of Adjustment met virtually thru Zoom <https://zoom.us/j/95905224215>.

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 January 6, 2021 and February 3, 2021 has been delayed.

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

Board member Hagstrom had no exparte communications, has no conflicts of interest and visited no sites.

Board member Hagen had no exparte communications, has no conflicts of interest and visited 1 site.

Vice Chair Bollman had no exparte communications, has no conflicts of interest and visited no sites.

Board member Connell had no exparte communications, has no conflicts of interest and visited no sites.

Chairman Noennig had no exparte communications, has no conflicts of interest and visited no sites.

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 – 1330 – 906 N. 32nd St.– Side Yard setback and LC- A variance from 27-308 requiring a 5-foot side setback to allow a 3-foot side setback, and from 27-308 requiring a maximum lot coverage of 30% to allow 31% maximum lot coverage, for an addition to the existing home and garage in a Residential-7000 (R-70) zone, on Block 19, Lot 6, & the North 15 feet of Lot 8, North Elevation Subdivision 3rd Filing, an 8,024 square foot parcel of land. The purpose of the variance is to allow expansion of the existing home and garage. Tax ID: A11840

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance #1330. Based on the Determinations for granting a variance.

1. This variance is to allow 3-foot side setback for addition to an existing dwelling and garage generally located at 906 North 32nd Street. No other variance is intended or implied with this approval.
2. It is limited to the North 15 feet of Lot 8 and Lot 9, Block 19 of North Elevation Subdivision, 3rd Filing.
3. The applicant will submit for & obtain a building permit for the addition within 12 months and have it completed within 24 months.
4. The applicant will construct the addition in substantial conformance to the drawings submitted with this variance request.
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 ...
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
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.

Questions for staff:

Board member Hagen asked if the existing garage be replaced? – Deferred to applicant

Public Hearing

Chair Noennig opened the public hearing at 6:16PM and asked if there was anyone wishing to speak in favor or against **City Variance 1330**.

Applicant: Dusty & Karen Eaton, 906 N 32nd, Billings, MT

They are very committed to being in this area of town and maintaining the historic look. They will be tearing down the existing garage and replacing it.

Favor

NONE

Opposed

NONE

Discussion

At 6:21PM, Chair Noennig closed the Public Hearing and called for a motion.

Motion

Board Member Mitchell made a motion and Board Member Hagen seconded the motion to approve **City Variance 1330** with staff findings of fact.

| MEMBER | YES | NO | ABSTAINED | 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 approve City Variance 1330 passed with a 5-0 vote.

Other Business:

ADJOURNMENT: The meeting adjourned at ***PM.

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

Board of Adjustment

Date: 05/05/2021
Title: Variance 1331 - Blue Creek Rd and Santiago Blvd
Presented by: Nicole Cromwell
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

The Planning staff is recommending conditional approval and adoption of the findings of the variance criteria for this application.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This is a variance from Section 27-406 requiring a Front Build-To zone of 5 to 20 feet to allow an 80-foot setback from the front property line on Blue Creek road to accommodate a Floodplain Boundary for a new 5,400 square-foot commercial structure in a Corridor Mixed Use 1 (CMU1) zone, on Lot 1 of Essman Subdivision, a 27,907 square-foot parcel of land.

The Corridor Mixed Use 1 (CMU1) zone district is a new zoning for the city that requires buildings to be closer to the street with less parking on the front and more street frontage landscaping. The City Council adopted the new zoning districts and regulations in January 2021. The zone districts now require a minimum and maximum front build-to area along the street for mixed use zoning districts. The purpose of the build-to area is to ensure the street frontage is used for maximum potential for commercial businesses. Parking is restricted to side yards, rear yards or internal parking areas behind buildings that frame the street.

The new regulations also allow variances from any numerical limitation or requirement in the code and this includes the build-to area. There are some small variations allowed through and administrative process, however larger deviations still require a review and approval by the Board of Adjustment. The same basic criteria for variances have carried through from the previous zoning regulations since these criteria are outlined in state law. These criteria include a finding of physical hardship with the lot that prevents compliance with the zoning and that other properties in the district have received similar variance or have developed without the granting of a variance to the code requirement.

Planning staff has reviewed this application and find the proposed variance is intended to preserve and protect a designated flood plain for Blue Creek. The proposed site design and layout is not substantially different from adjoining developments and will fit in with the nearby developments. In order to enhance the site and mitigate some potential impacts from project, staff is proposing several conditions of approval.

Before granting the requested variance, the Board of Adjustment shall consider the findings of the review criteria (Sec 27-1627.D)

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 is a special circumstance with this parcel that does not apply to other parcels in the area. The lot has a designated 100-year flood plain. Occupied structures are discouraged from locations within the flood plain. Parking or non-occupied structures can be allowed with some conditions imposed by the flood plain manager. The variance from the build-to requirement of this zone district will allow this project to be built away from the flood plain.

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

This is the first variance requested from the new build-to requirement for the mixed use zone district. The previous zoning required minimum setbacks but did not impose maximum setbacks. There is no applicable or similar zoning variance history to the application. Planning staff did find there were several zoning variances granted in the area to accommodate the previous minimum zoning setbacks due to proximity to pipelines and flood plains. This is a similar request to accommodate a flood plain.

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

The zoning history in the area shows several granted variances for arterial setbacks, front and rear setbacks to allow for new buildings or for remodeling of existing buildings. Granting this variance will not confer on this applicant any special privilege.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Zoning Code and with the growth policies.

The proposed site plan will be similar to several others on the east side of Blue Creek Road and will be in harmony with the zoning and growth policy for Billings and for the general area.

5. In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. 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 Zoning Code.

Planning Staff is recommending the following conditions of approval:

1. The variance is limited to Lot 1 of Essman Subdivision generally located on the northeast corner of the intersection of Blue Creek Road and Santiago Boulevard.
2. The variance is from Section 27-406 requiring a maximum setback of 20 feet from the front property line - Blue Creek Road - to allow a maximum setback of 80 feet from the front property line. No other variance is intended or implied.
3. The applicant or developer will install 8 street frontage trees along the Blue Creek Rd property line and 5 street frontage trees along Santiago Blvd. No evergreen trees may be used in these locations. All other minimum requirements of the Landscaping regulations (Section 27-1300) shall be met.
4. All outdoor lighting, with the exception of signage, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. Light pole standards must be 15 feet in height or less. Height includes the fixture, the base and the supporting pole.
5. No fascia on the building or canopy may be internally illuminated.
6. There shall be no construction activity prior to 7 am or after 8 pm daily.
7. The applicant/developer shall apply for a building permit within 12 months of Board approval and complete the development within 3 years of Board approval. Completion includes all buildings, landscaping, parking and other site structures and amenities.
8. Failure to begin or complete the project according to the time periods within this approval will void the variance.
9. 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 BOA 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 recommending a 1-year time period to apply for a building permit and 3 years to complete the development.

7. Under no circumstances shall the BOA 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 proposed use of the building is an allowed use in the CMU1 zone district.

ALTERNATIVES

The Board of Adjustment may

- Approve the findings of the review criteria as proposed by Planning staff and conditionally approve the variance application; or,
- Change the findings of the review criteria as proposed by Planning staff and deny the variance application; or
- Allow the application to be withdrawn at the request of the applicant; or
- Delay action on the variance application to a future Board meeting.

FISCAL EFFECTS

Approval or denial of the proposed variance will have no effect on the Planning Division budget.

Attachments

Zoning Map and Site Photos
Application and Letter
Chart of Zoning History
Site Plan



Subject property from Blue Creek Road view east



View south from subject property along Blue Creek Road



Blue Basket north of subject property on Blue Creek Road



Quanta Subdivision west of subject property across Blue Creek Road



View south and east across subject property to Blue Creek Storage

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1331 - Project # PLNX-21-00083

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings Zoning Regulations.

PROPERTY TAX ID # D01951A CITY ELECTION WARD # 3

Legal Description of Property: Essmann Subdivision (21), S20, T01S, R26E, Lot 1

Address or General Location (If unknown, contact City Engineering): Northeast of the intersection of Blue Creek Rd. and Santiago Blvd.

Zoning Classification: CMU1

Size of Parcel (Area & Dimensions): 27,907 sf (0.64 ac)

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: Variance to not have to build to corner.

Facts of Hardship: There is a FEMA floodplain on the western third of the property and the property slopes from east to west making it nearly impossible to build on the lot.

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

Owner(s): No Cash Water, LLC
(Recorded Owner) P.O. Box 80945, Billings, MT 59108
(Address) (406) 591-1101 jeff@jeffessmann.com
(Phone Number) (email)

Agent(s): Robert Neihart, PE
(Name) 608 N. 29th St., Billings, MT 59101
(Address) (406) 384-0080 rob@performance-ec.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: [Signature] Date: 3/26/2021
(Recorded Owner)





April 2, 2021

Board of Adjustments
2825 3rd Ave. North
Billings, MT 59101

Dear Chairperson,

On behalf of Ess-Tech, LLC, Performance Engineering, LLC, is writing to request a formal variance from the City of Billings Zoning Code. The property in question is located at 2007 Blue Creek Road, Billings, MT 59108, currently zoned CMU1. The Owner intends to develop the lot with a 5,400 square foot building and parking lot as illustrated in the schematic. The building will include shop/storage units and retail space. Current CMU1 regulations require a lot to have a Front Build-to Zone of 5 to 20 feet. Due to a FEMA designated floodplain on the western portion of the property and topographic constraints on the lot, meeting the build-to zone would be nearly impossible. Attached is a site map showing the proposed layout of the development.

A. What reasons prevent you from using the property in conformance with the Zoning Regulation requirements?

The tract of interest is zoned CMU1 which requires a front build-to zone of 5 to 20 feet. The western third of the lot (technically the front) is in a FEMA designated floodplain. In order to build a structure within that floodplain would require the building to be built 2 feet above the Base Flood Elevation (BFE). In addition, the lot slopes from east to west which makes it nearly impossible to construct the building high enough and still provide drainage away from the building and into the stormwater collection system in the parking lot. We are requesting a variance from the front build-to zone requirement to allow for the construction of a building and parking lot to be built on the existing lot. The property can be built out to meet the remaining criteria set forth in the new zoning regulations.

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

The proposed development plan is to construct a building that will include space for shop and retail space. The project fits within the neighborhood, with a gas station/convenience store to the north, a water fill station to the east, and storage units to the south which are all zone commercial. This area of Blue Creek Road is a prime location for a development such as this, with easy access to Blue Creek Road and the great Billings area. CMU1 will allow this type of development, but the property does not allow for a building to be constructed on the front of the lot due to the floodplain and site topography. Developments of this type is at a premium with supply short of demand. The project allows the owner to meet that demand while increasing property values, resulting in increased tax revenue for the City of Billings.

C. Explain any demolition, construction, or reconstruction intended for all structures.

The property is currently undeveloped. The proposed development includes the construction of a 5,400 square foot building with associated site infrastructure such as a parking lot, curb and gutter, landscaping, water/sewer services, and a stormwater conveyance system.

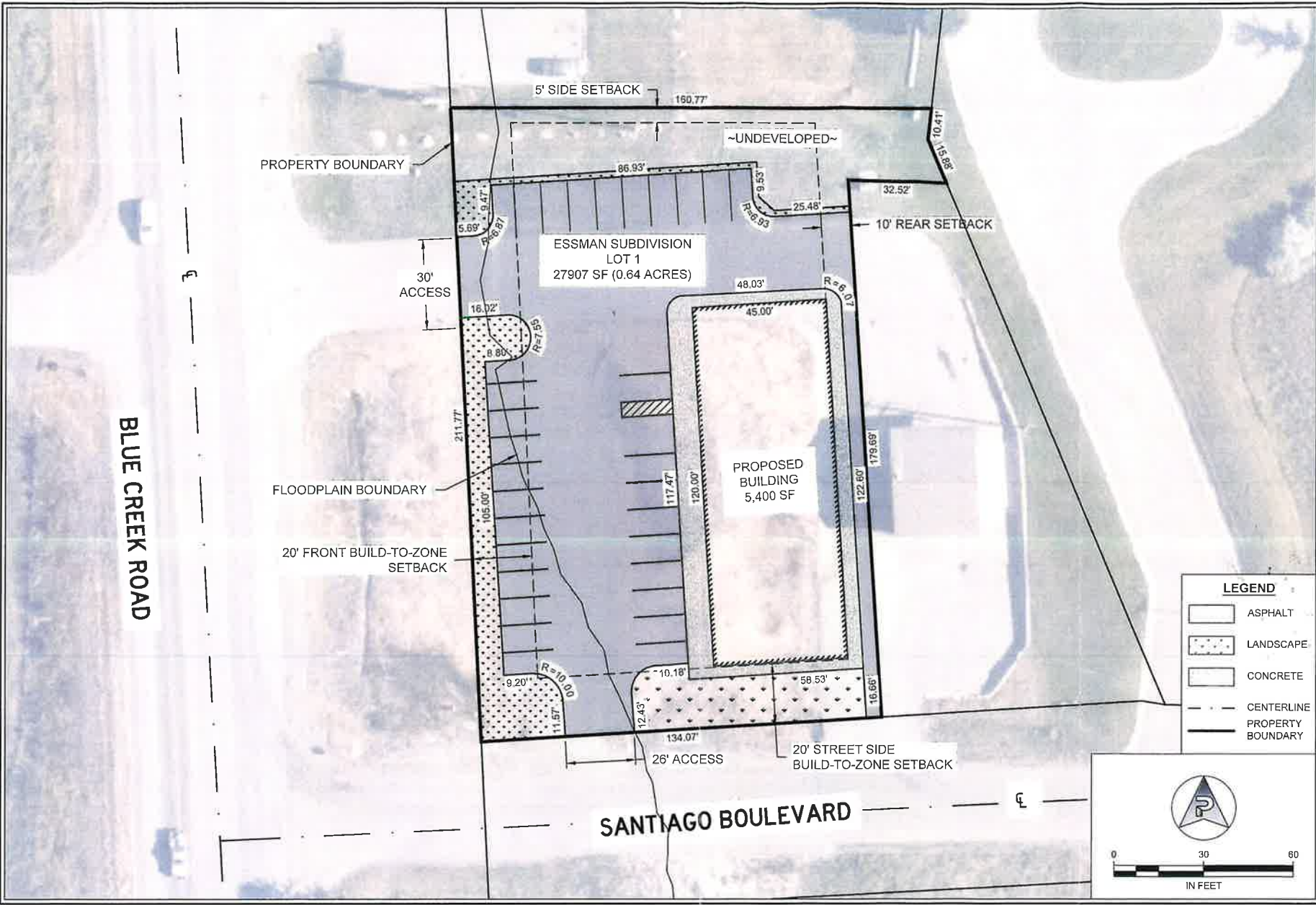
If you have any questions or concerns regarding the application please do not hesitate to contact Robert Neihart, PE by email at rob@performance-ec.com or by phone at (406) 384-0080. We look forward to discussing the proposed variance with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Neihart".

Robert Neihart, PE
Project Manager

| SUBJECT PROPERTY | VARIANCE # | DATE | FOR | APPROVED (Y/N) | ADDITIONAL DATA |
|---|--------------------------------|-------------|------------------|-----------------------|------------------------------------|
| Essman Sub (C/S 566 Tract 1C) | County Zone Change 169 | 2/28/1978 | R-150 to NC | Y | |
| | City Special Review 804 | 2/27/2006 | Car Wash | Y | Not constructed |
| SURROUNDING PROPERTY | VARIANCE # | DATE | FOR | APPROVED (Y/N) | ADDITIONAL DATA |
| C/S 566 Tract 2 | County ZC 249 | 8/28/1979 | R-150 to NC | Y | |
| Blue Basket Gas Station & Convenience Store | County SR 90 | 11/9/1979 | Gas Station | Y | |
| | County Var 139 | 10/9/1992 | Arterial & Front | Y | |
| Cedar Park Sub | County Var 44 | 1/13/1978 | Lot Area | Y | Multiple Lots |
| | County Var 76 | 7/16/1982 | Rear Setback | Y | 4513 San Fernando |
| | County Var 90 | 3/9/1984 | Front Setbacks | Y | Multiple Lots |
| Sam Snead Trail | County Var 82 | 3/11/1983 | Rear Setbacks | Y | Multiple Lots Pipeline Easement |
| 5150 Jellison Rd | County SR 160 | 8/9/1985 | Recycling Center | Y | |
| 3738 Blue Creek Rd | County Var 174 | 3/12/1997 | Arterial Setback | Y | Addition to SFR |
| 3406 Blue Creek Rd | County Var 150 | 3/8/1995 | Arterial Setback | Y | |
| 758-784 Moccasin Tr | City Var 523 | 4/28/1987 | Arterial Setback | Y | Repair/Replace near Flood Plain |
| 560 Wigwam Tr | City Var 1008 | 6/6/2007 | Arterial Setback | Y | New garage |



BLUE CREEK ROAD

SANTIAGO BOULEVARD

PROPERTY BOUNDARY

FLOODPLAIN BOUNDARY

20' FRONT BUILD-TO-ZONE SETBACK

5' SIDE SETBACK

10' REAR SETBACK

20' STREET SIDE BUILD-TO-ZONE SETBACK

30' ACCESS

26' ACCESS

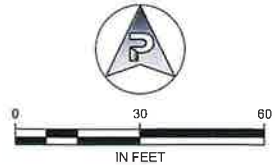
ESSMAN SUBDIVISION LOT 1
27907 SF (0.64 ACRES)

PROPOSED BUILDING
5,400 SF

~UNDEVELOPED~

LEGEND

- ASPHALT
- LANDSCAPE
- CONCRETE
- CENTERLINE
- PROPERTY BOUNDARY



ESS-TECH STORAGE

BILLINGS, MONTANA

| | |
|-------------|-------------------|
| DESIGNED BY | QUALITY ASSURANCE |
| AWM | BYL |
| DRAWN BY | CHECKED BY |
| DATE | DATE |
| REV BY | DATE |
| | CHG BY |
| | |
| | |

VARIANCE EXHIBITS
SITE PLAN

SHEET TITLE

| | |
|----------------|----------|
| PROJECT NUMBER | 2020-163 |
| SHEET NUMBER | 1 OF 1 |
| DRAWING NUMBER | 1 |

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