



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, January 5, 2022, 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> Avenue North, Billings, Montana**

NOTICE TO THE PUBLIC

**\*\*ATTENTION\*\***

***In the event a quorum of the Council is present, no City-related decisions will be made during this meeting or event.***

The City Board of Adjustment will hold its public hearing in the 1<sup>st</sup> Floor Conference Room at 2825 3<sup>rd</sup> Avenue North (Miller Building). All interested persons are invited to attend in person or view the meeting on-line on the Billings-Planning & Community Services Facebook Page here;

<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>

A public comment phone line is available for on-line viewers to provide testimony during the specific Public Comment periods announced by the Chairman during the hearings. The call in phone number is (406)237-6165. 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.

Written comments may also be sent to Board via email before 1:00 PM on Wednesday, January 5, 2022. All emails received prior to this time will become part of the record for the public hearings. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)

**Call the meeting to order.**

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

**Public Comment**

**Approval of Minutes: December 1, 2021**

The minutes of the Board meeting of December 1, 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 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. **Item 1. City Variance 1338 – 2716 7<sup>th</sup> Ave N – Allow DU on 1<sup>st</sup> floor** - A variance from 27-1002.A.2 requiring a residential use in the Downtown Support (DX) zone to be either on the 2<sup>nd</sup> floor of a structure or at least 30 feet behind the front façade on the first floor of a structure to allow a residential dwelling to occupy the entire first floor of a structure in a Downtown Support (DX) zone, on Lots 13-14, Block 41, Fosters Addition, an 7,000 sf parcel of land. The purpose of the variance is to allow an existing structure to be renovated to its original use as a residential duplex with a dwelling in the basement and a dwelling on the first floor. Tax ID: A07267
- b. **Item 2. City Variance 1339 – Mountain Mudd Kiosks– allow temporary use structures larger than 120 sf at 16 Shiloh Rd, 2975 Grand Ave & 4001 Montana Avenue** - A variance from Section 27-1009(A)(3)(b)(4)(i) requiring a group 3 temporary use structure to be a maximum floor area of 120 square feet to allow: 1) a 160 square foot structure in a Neighborhood Mixed Use (MNU) zone on Parcel 1A, Certificate of Survey 2727M, a 1.587 acre parcel of land located at 16 Shiloh Rd; 2) a 250 square foot structure in a Commercial Mixed Use 1 (CMU1) zone, on Lot 18A, Block 7, Westwood Estate 3<sup>d</sup> Filing, a 39,207 sf parcel of land located at 2975 Grand Avenue; and 3) a 360 square foot structure in a Corridor Mixed Use 1 (CMU1) zone, on Lots 1 thru 8, Block 24, Yellowstone Addition, a 21,000 sf parcel of land located at 4001 Montana Ave. The purpose of the variance is to allow group 3 temporary use structures at the described locations larger than the maximum allowed floor area 120 square feet. Tax ID: D11891, A18486B; A19303

## **Other Business/Announcements**

## **Adjournment**

**City Board of Adjustment**  
**Meeting Date:** 01/05/2022

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**Information**

**Subject**

The minutes of the Board meeting of December 1, 2021.

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**Attachments**

CityBOA\_2021\_1201

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**CITY BOARD OF ADJUSTMENT**

MINUTES December 1, 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	-	1	-	E	1	-	-	-	E	
Dave Hagstrom	Member	1		1	-	1	-	1	E	-	-	-	1	
Paul Hagen	Member	1	1	1	-	1	-	1	1	-	-	-	1	
Jeff Bollman	Vice Chair	1	1	1	-	1	-	1	E	-	-	-	E	
Oscar Heinrich	Member	1	1	E	-	1	-	E	1	-	-	-	E	
Martin Connell	Member	1	1	E	-	1	-	1	1	-	-	-	1	
Mark Noennig	Chair	1	1	1	-	1	-	1	1	-	-	-	1	
<b>TOTAL NUMBER OF APPLICATIONS 2021</b>		<b>01/06/2021</b>	<b>02/03/2021</b>	<b>03/03/2021</b>	<b>04/07/2021</b>	<b>05/05/2021</b>	<b>06/02/2021</b>	<b>07/07/2021</b>	<b>08/04/2021</b>	<b>09/01/2021</b>	<b>10/06/2021</b>	<b>11/03/2021</b>	<b>12/01/2021</b>	<b>TOTAL</b>
<b>Variance</b>		<b>4</b>	<b>5*</b>	<b>1</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>2</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>16</b>

\*One return Variance from January 6, 2021 meeting.

Chair Noennig called the meeting to order at 6:00 p.m.

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, (virtually).

**Attending:** Wil Ralph, Charlie Yegen

**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 were none.

### **Approval of Meeting Minutes**

Meeting minutes for August 4, 2021.

Board member Hagstrom motioned for approval of the August 4, 2021 minutes, Board member Hagen seconded. Approved by unanimous voice vote.

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

Board member Mitchell was not in attendance.

Board member Hagen had no ex parte communications, has no conflicts of interest and visited 0 sites.

Board member Heinrich was not in attendance.

Board member Connell had no ex parte communications, has no conflicts of interest and visited 0 sites.

Chairman Noennig had no ex parte communications, has no conflicts of interest and visited 0 sites.

Board member Bollman was not in attendance.

Board member Hagstrom had no ex parte communications, has no conflicts of interest and visited 0 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 1337 – Cardwell Ranch – Southeast of Grand Ave and Zimmerman Trail -**

**Increase building height to 50 feet** - A variance from the Cardwell Ranch east 80 Planned Development zone Article IV.C.3 requiring a 45-foot maximum height to allow 50 feet in on Lots 2, 3A, 4A, 5, 6A, & 7A, Block 2 Cardwell Ranch Subdivision 1<sup>st</sup> Filing, a 16.05-acre parcel of land. The purpose of the variance is to allow an increase in maximum height for Cardwell Ranch Apartment Homes to develop a roof design that complies with the aesthetic intent of the Cardwell Ranch Design Standards. Tax ID: A34325, A34327, A34330, A34328, A34326, A34329

### **RECOMMENDATION**

Planning staff has reviewed this application & is recommending conditional approval of Variance 1337 based on the proposed findings of the review criteria.

#### Recommended Conditions;

1. The approval is for a variance from Cardwell Ranch PD C.3 as amended increasing the maximum height from 45 feet to 50 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 2, 3A, 4, 5, 6A, and 7A, Block 2, Cardwell Ranch Subdivision.
3. The applicant shall meet all other city code requirements as well as Cardwell Ranch Planned Development requirements with the exception of this variance.
4. The applicant will submit a building permit within 3 years of Board approval and complete construction within 5 years of the first building permit approval.

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.

### **Questions for staff:**

Board Member Hagstrom asked about the diagrams provided regarding height. Staff deferred to the applicant.

### **Public Hearing**

Chair Noennig opened the public hearing at 6:09 PM and asked if there was anyone wishing to speak in favor or against **City Variance 1337**.

### **Applicant: Wil Ralph, Braxton Development, 1735 S 19<sup>th</sup> Ave, Suite B, Bozeman, MT**

A lower height requirement would create rooflines that are not in proportion with the overall architectural theme.

There are 9 foot ceilings in this Class A development. The 5/12 roof pitch is estetically pleasing and handles the snow load well. All conditions are agreeable.

Board member Hagen asked what percentage of the buildings are at 49 feet. Mr. Ralph replied there are 10 buildings with this height, there are 13 total buildings.

Board member Hagstrom asked what it would be like at the required 45 foot. Mr. Ralph replied they would have to be flat roofs with membrane roofing.

Chair Noennig stated in the alternative, the 9-foot ceilings could be reduced. Mr. Ralph explained in a Class A development, the 9-foot ceilings are imparative.

Chair Noennig asked who put into place the Cardwell Ranch design guidelines. Mr. Ralph explained they were established approximately 12 years ago when the Yegens made a huge master development plan.

### **Favor**

#### **Charlie Yegen, 211 N. 30th**

We have had a few opportunities to look at different development ideas and strategies. We have had the privilege of working thru many opportunities and helping the City with tax revenue. We have been incredibly fortunate. Braxton are the only ones who approached with breaking the line of site. They are not keen on flat roofs and have presented favorable ideas for siding and estetics. Mr. Yegen is very comfortable with the design concepts proposed the quality of the end product and the communication existing between them. This property was acquired in the spring of 1889 by Mr. Yegen's great grandfather Everett Cardwell. They have been able to keep it in agricultural land for many years. This development is a natural progression of the City expanding from east to west. Mr. Yegen feels this high quality project will be good for the community and for the Yegens.

Chair Noennig asked how much the rent will be. Mr. Yegen replied \$1800.00 to \$2200.00, approximately 2 dollars per square foot, based on market conditions.

**Opposed**

NONE

**Discussion-NONE**

At 6:29PM, Chair Noennig closed the Public Hearing and called for a motion.

**Motion**

Board Member Hagstrom made a motion and Board Member Connell seconded the motion to approve **City Variance 1337**, with staff recommendations & conditions.

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell				<b>X</b>
Dave Hagstrom	<b>X</b>			
Paul Hagen	<b>X</b>			
Jeff Bollman				<b>X</b>
Oscar Heinrich				<b>X</b>
Martin Connell	<b>X</b>			
Mark Noennig	<b>X</b>			

**The motion to approve City Variance 1337 passed with a 4-0 vote.**

**Other Business:** Three board members have reached their term limits. The Board of Adjustment will meet on January 5, 2022.

**ADJOURNMENT: The meeting adjourned at 6:30PM.**

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

**Board of Adjustment**

**Date:** 01/05/2022  
**Title:** Variance 1338- 2716 7th Ave N.  
**Presented by:** Karen Husman  
**Department:** Planning & Community Services  
**Presentation:** Yes

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**Information**

**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.

**REQUEST**

City Variance 1338 – 2716 7th Ave N – Allow Dwelling Unit on 1st floor - A variance from 27-1002.A.2 requiring a residential use in the Downtown Support (DX) zone to be either on the 2nd floor of a structure or at least 30 feet behind the front façade on the first floor of a structure to allow a residential dwelling to occupy the entire first floor of a structure in a Downtown Support (DX) zone, on Lots 13-14, Block 41, Fosters Addition, an 7,000 sf parcel of land. The purpose of the variance is to allow an existing structure to be renovated to its original use as a residential duplex with a dwelling in the basement and a dwelling on the first floor. Tax ID: A07267. Presented by: Karen Husman, Planner I

**APPLICATION DATA**

**OWNER:** Jianyu Zhuo & Ping Wang  
**AGENT:** Nancy Brook  
**PURPOSE:** To allow the existing residential structure renovated back to duplex  
**LEGAL DESCRIPTION:** Fosters Addition Subd. Block 41, Lots 13-14  
**ADDRESS:** 2716 7th Ave. N  
**SIZE OF PARCEL:** 7,000 SF  
**ZONING:** DX  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential Multi Family

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

See attachments.

**SURROUNDING ZONING & LAND USE**

**NORTH:** Zoning: P3  
Land Use: Medical office

SOUTH:      Zoning:    CBD  
                 Land Use: Bank  
EAST:        Zoning:    DX  
                 Land Use: Residential Duplex  
WEST:        Zoning:    DX  
                 Land Use: Auto Equipment garage

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

The purpose of the variance is to allow a residential dwelling to occupy the entire first floor of a structure in a Downtown Support (DX) zone. The existing structure is being renovated to its original use as a residential duplex with a dwelling in the basement and a dwelling on the first floor. The structure was built in 1959, prior to zoning. The original use of the property was a residential duplex, the main floor dwelling unit was converted into a dental office prior to zoning in 1972. The applicant purchased to property to return it to its original use as a two unit structure. In order for the property to be returned to its original use a variance approval is needed, the applicant is requesting approval so that they can continue with the renovations and a rebuild letter can be issued. There are two similar properties across the alley to the northeast. 2712 7th Avenue North is a duplex structure and 624 North 27th Street, is a triplex, that are both nonconforming to the DX zone regulations. Prior to Project ReCode, the property was in the Community Commercial (CC) zone district and allowed both the dental office as well as the residential duplex. The previous code did not restrict the location of the residential portion on the first floor, so the property would have been in conformance as constructed as a duplex.

### **FISCAL EFFECTS**

Approval or disapproval of the proposed variance should not have an impact of the Planning Division budget.

### **SUMMARY**

Proposed DETERMINATIONS for Variance 1338

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 structure was built in 1959, prior to zoning. The original use of the property was a residential duplex, the main floor dwelling unit was converted into a dental office prior to zoning in 1972. The applicant purchased the property to return it to its original use as a two unit structure. In order for the property to be returned to its original use a variance approval is needed, the applicant is requesting approval so that they can continue with the renovations and a rebuild letter can be issued.

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 district where there are other duplex and multi family structures. There are other properties in the surrounding neighborhoods that have dwelling units on the on the first floor or within 30 feet of the front façade and are not conforming to the zoning restrictions. 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 developed properties exist in

the area. Directly adjacent and on the same block are two other multifamily buildings with dwelling units on the first floor or within the first 30 feet of the front façade.

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 renovate the building to its original use as a duplex.

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 a residential dwelling to occupy the entire first floor of a structure in a Downtown Support (DX) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 13-14, Block 41, Fosters Addition, a 7,000 sf parcel of land, generally located at 2716 7th Avenue North.
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.

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

There will be no time limit restrictions as the structure is already constructed.

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 – two-family dwellings are allowed in the DX zone.

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### **Attachments**

Zoning Map & Site Photos

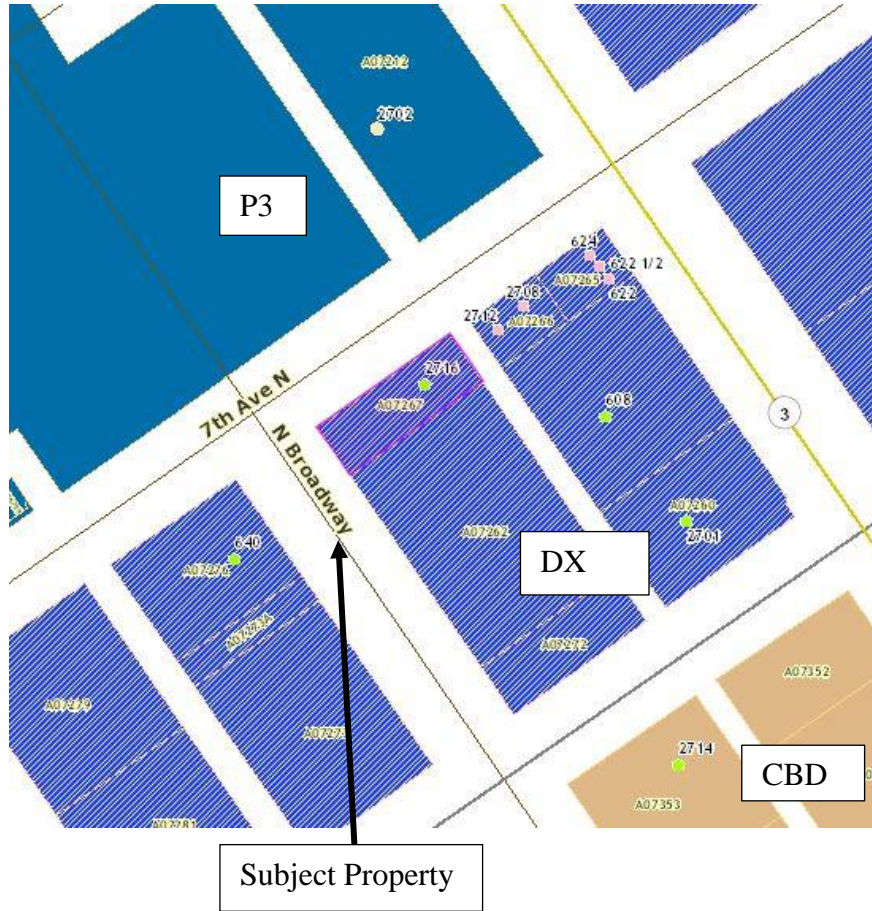
Application & Applicant Letter

Site Plan

Interior photos

Zoning History

Variance 1338





Southwest



Looking Northeast



Looking North



Looking West



Looking Northwest

Application & Applicant Letter

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # PZX-21-00267 - Project # PZX9F-ZON-VAR-CITY-RESIDENTIAL

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 # A07267 CITY: Billings CITY ELECTION WARD # 1

Legal Description of Property: FOSTERS ADD, BLOCK 41, LOT 13-14

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

2716 7th Ave N, Billings, MT 59101-1105

Zoning Classification: DX-Downtown Support

Size of Parcel (Area & Dimensions): 0.16 AC

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

If yes, please attach to application

Variance(s) Requested: Allow the building, which is set up as a duplex, to be used as a duplex

Facts of Hardship: Should be the same

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

Owner(s): JIANYU ZHUO & PING WANG

(Recorded Owner)

(Address) 2716 7TH AVE N, BILLINGS, MT 59101-1105

(Phone Number) 406-717-8950 (email) zhuojianyu@gmail.com

Agent(s): Nancy Brook

(Name)

(Address) 2108 Broadwater Ave, Suite 112

(Phone Number) 406-412-2378 (email) Nancy@BillingsBestRealEstate.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: J. Zhuo Date: 2021-11-6

(Recorded Owner)



To Chairperson of the Board of Adjustment

I would like you to approve to change the service of building of 2716 7<sup>th</sup> Ave N, Billing, MT 59101-1105 from commercial to residential.

I am a newcomer to Billings. I just moved to Billings in September this year. Search the real estate market. This is the only place that can meet my requirements. This is an affordable price, good conditions and sufficient convenience.

This house is built for housing. So, it is easy to restore its original use.

Best

Jianyu Zhuo

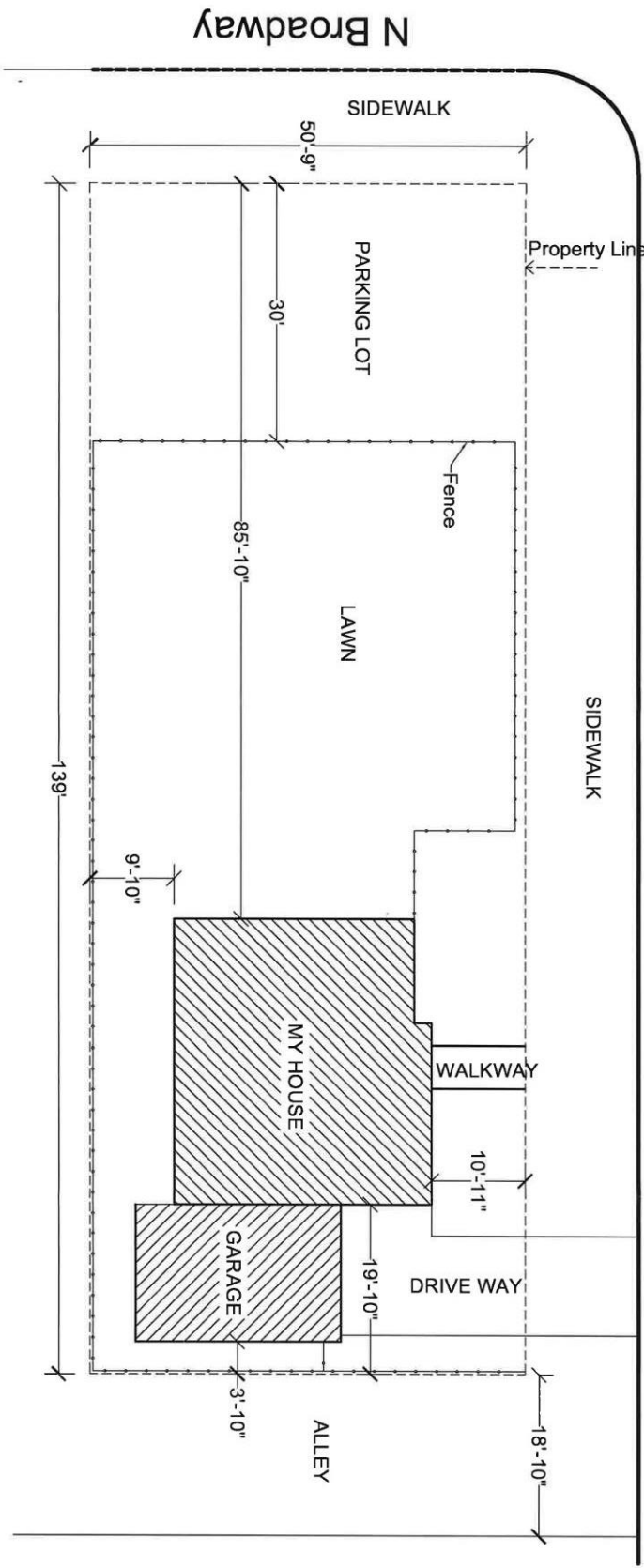
A. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?

I do not run any business.

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

I bought the house because the realtor told me it could be used as a residence. My next door is a multi-family residential building.

7th Ave N



2716 7th Ave, Billings, MT  
SIMPLE SITE PLAN



<b>SUBJECT PROPERTY</b>	<b>VARIANCE #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
2716 7 <sup>th</sup> Ave S.	None				
<b>SURROUNDING PROPERTY</b>	<b>VARIANCE #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
Fosters Addition	239	1/8/80	Front SB 0	Y	
Fosters Addition	129	3/29/77	SB & LC	Y	
Fosters Addition	54	8/26/75	Arterial Sb	Y	
Fosters Addition	266	9/30/80	SB & Height	Y	
Fosters Addition	287	7/28/81	LC	Y	
Fosters Addition	298	11/2/81	Height, SB, Arterial SB	Y	
Fosters Addition	367	7/26/83	SAS, Arterial SB	Y	
Fosters Addition	312	5/25/82	Arterial SB	Y	
Fosters Addition	329	9/28/82	LC	Y	
Fosters Addition	375	10/25/83	Lot Size, all SB, LC	Denied	
Fosters Addition	372	9/27/83	Lot Size, SB	Y	
Fosters Addition	603	11/6/89	Lot Size from 12,000 to 3,500	Denied	
Fosters Addition	72	4/23/84	Alley Access	Y	
Fosters Addition	663	4/7/92	Side Street SB	Y	
Fosters Addition	287	7/28/81	LC	Y	
Fosters Addition	298	11/5/81	Height, SB	Y	
Fosters Addition	312	5/25/82	Arterial SB	Y	
Fosters Addition	986	5/2/06	Home Occupation with employees	Denied	
Fosters Addition	1182	4/2/14	Lot area for duplex on 7,000 sf	Y	
Fosters Addition	1201	10/8/14	Height	Y	

**Board of Adjustment**

**Date:** 01/05/2022  
**Title:** City Variance 1339 - 16 Shiloh Temporary Use Kiosk  
**Presented by:** Erin Keith, Planner 1  
**Department:** Planning & Community Services  
**Presentation:** Yes

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**Information**

**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.

**REQUEST**

A variance from Section 27-1009(A)(3), requiring a Group 3 Temporary Use structure to have a maximum size of 120 square feet in a Corridor Mixed Use 1 (CMU1) zone on Parcel 1A, Certificate of Survey 2727M, a 1.587-acre parcel of land located at 16 Shiloh Rd. The purpose of the variance is to allow an existing 160 sq. ft. Group 3 Temporary Use structure at the described location to be larger than the maximum size allowed of 120 square feet.

**APPLICATION DATA**

**OWNER:** Lorraine W & Leland J Wells (Parcel Owner), CHS, Inc (Gas Station leases the land, and holds the sub-lease with the coffee kiosk)  
**AGENT:** Tanya Weinreis, Mountain Mudd Kiosk Owner  
**PURPOSE:** Increase the maximum allowed Group 3 Temporary Use structure size  
**LEGAL DESCRIPTION:** Parcel 1A, Certificate of Survey 2727M  
**ADDRESS:** 16 Shiloh Rd  
**SIZE OF PARCEL:** 1.587 Acres  
**ZONING:** CMU1-Corridor Mixed Use 1  
**EXISTING LAND USE:** Gas Station  
**PROPOSED LAND USE:** No change

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

There have been no variances for Group 3 Temporary Use Permits issued by the City of Billings.

**SURROUNDING ZONING & LAND USE**

**NORTH:** Zoning: CMU1  
Land Use: Vacant  
**SOUTH:** Zoning: NMU and C3 (Outside City Limits)  
Land Use: Vacant

EAST:           Zoning:     CMU1  
                  Land Use: Shiloh Commons, Commercial and Residential  
WEST:           Zoning: RR1  
                  Land Use: Residential (Outside City Limits)

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

Planning staff recently completed an intensive review of Group 3 Temporary Use Permits. During this work, it was discovered that there are 6 existing temporary use structures (kiosks) that exceed the maximum allowed floor area requirement of 120 square feet. These non-compliant structures vary in size from 130 square feet to 200 square feet. Each of the nonconforming temporary use structures did disclose their sizes either during the initial application process or during the annual renewal process, and were approved by the Planning Division. The overall proposed direction from the Planning Staff to business owners for all over-sized, existing kiosks would be to allow their continued use through the variance process, with annual renewal of their temporary use permits. Otherwise, all newly proposed or replacement kiosks would be required to meet the maximum size of 120 square feet, in addition to all other Zoning Code requirements. This application is for only for 1 of the 6 noncompliant temporary uses throughout the City. It is anticipated the Board of Adjustment will see future applications for the other identified non-conformities within the next 12 months.

Per the Zoning Code, this oversized structures is considered to be in non-compliance and for it to come into compliance without a variance it would mean either (1) replacing the kiosks with smaller structures or (2) obtaining a commercial building permit (voiding the temporary use). The ICC Commercial Building Code adopted by the City of Billings and the State of Montana states that any commercial building that exceeds 120 square feet in floor area requires a building permit from the state or local jurisdiction. This exempts buildings less than 120 square feet from the commercial building review process and allows commercial structures under 120 square feet to be considered a temporary use under BMCC 27.1009(A)(3). For this business owner to replace the kiosks with smaller building after they were already approved for use and currently in operation, would be cost prohibitive. In addition, following discussions with Planning Staff, Building Division and Public Works Engineering, it was determined that it would be very difficult or even impossible to issue building permits after a kiosk has been constructed and in-use.

This applicant currently operates temporary use kiosks in six different Mountain Mudd locations across Billings and one in Yellowstone County. The applicant's other kiosks currently in-use are all under the 120 square foot maximum size. The purpose of the variance is to allow an existing 160 sq. ft. Group 3 Temporary Use structure at the described location to be larger than the maximum allowed floor area of 120 square feet. The current temporary use structure located at 16 Shiloh Rd is 8'x20' or 160 square feet and replaced an 8'x8' or 64 square foot kiosk earlier this year.

**FISCAL EFFECTS**

Approval or disapproval of the proposed variance should not have an impact of the Planning Division budget.

**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 no special conditions that are peculiar to the land or the lot which causes hardship, however, the temporary use structure is one of six other temporary use structures within the City limits that have been erroneously approved by the Planning Division in the past. The kiosk at 16 Shiloh Rd was placed on the property and put into use prior to the annual renewal of the temporary use permit and been in operation since August 2021.

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

There are six kiosks that exceed the 120 square foot maximum structure size requirement currently in operation within the City limits, across various zoning districts. These kiosks are not in compliance with the Zoning Code. Granting this variance allows the applicant the continued, and legal nonconforming status of the kiosk in its current location.

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;

Prior to the current application, there have been no variance applications to allow an increase in size of a temporary use structure. The variance, if granted, would be a one-time allowance for the continued use of an existing temporary structure which was erroneously approved by the Planning Division. The intent is not to allow any new temporary use structures to exceed this maximum size requirement.

4. That the granting of the variance will be in harmony with the general purpose and intent of the Zoning Code 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 continue to use the kiosk as a drive-thru coffee business from this location only. This use operates on a commercial property in a commercial note at the intersection of two principle arterial streets. this use, with 40 additional square feet, is in harmony with the area and other allowable uses within this zone district.

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

This building and use is in existing operation. Each year the temporary use permit is reviewed for annual renewal. The site plan, traffic plan, and parking has been approved and meets all other zoning and site design requirements ensuring safety standards.

Staff is recommending the following conditions for the allowance of an increase in square footage for this Group 3 Temporary Use structure variance request:

1. The approval is for a variance from Zoning Code 27.1009(A)(3)(b)(4)(i), as amended increasing the maximum allowed size of the structure from 120 square feet to 160 square feet (34% increase). No other variance is intended or implied with this approval.
2. The variance is limited the existing 8'x20' kiosk only, currently located on Parcel 1A, Certificate of Survey 2727M, and becomes void if the structure is moved (either within the same parcel or to another parcel within the City Limits) or the footprint is altered in any way.
3. The variance shall be null and void if at any time in the future, the temporary use permit for this kiosk remains expired for more than 30 days or if the structure is not in operation for

more than 180 days.

4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns, so long as the structure is not moved from its current location.
5. The applicant shall meet all other city code requirements, including annual renewal of the temporary use permit, except for this variance.

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 structure is fully constructed, in-use and has been approved for temporary use by the Planning Division through 11/12/2022, therefore the time limit would be for ensuring the temporary use permit remain active, annually. If at any time in the future, the temporary use permit for this kiosk remains expired for more than 30 days or if the structure is not in operation for more than 180 days, this variance shall be void.

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 permitted in the zoning district – drive-thru restaurants are a permitted accessory use in the CMU1 district.

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### **Attachments**

Variance Letter

Zoning Maps & Site Photos

Site Plan



# MOUNTAIN MUDD ESPRESSO VARIANCE REQUEST

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## MISSION FOR MOUNTAIN MUDD ESPRESSO

We create unique experiences that change lives and bring people back. We do this by loving and serving people, by preparing top notch, handcrafted food and beverages, and by creating an environment where real relationships are fostered. We provide heroic hospitality!

## WHY WE ARE REQUESTING A VARIANCE REQUEST

Mountain Mudd Espresso, founded in 1994 built 8x8 kiosks that met a temporary use permit to be used at multiple locations throughout town. The building department has a code requirement that allowed these kiosks with this type of use under 120 square feet. We have since put in a kiosk that exceeds that size requirement by 40 square feet at 16 Shiloh Road.

Earlier this year (2021), we had called the building department to see if we needed to do anything different to meet code if we built our own larger kiosks to replace old smaller kiosks and we were told that as long as we did not build on a foundation, and they were movable kiosks that we didn't need to do any work with the building department for any approval of these larger kiosks.

We have a need to use the kiosks at these locations because one is already in use, and the other two are already built. We have invested so much into improving our locations to better serve our staff and our customers. We believed that we did our due diligence prior to the building and purchasing of these larger kiosks.

There is no demolition, construction, or reconstruction needed as long as we can use the kiosks we have in use and built.

## THANK YOU FOR YOUR CONSIDERATION

Warmest Regards,

Tanya Weinreis  
Mountain Mudd Espresso

## CONTACT

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Billings, MT



Kiosk Looking SOUTH



Kiosk Looking Southeast



EAST

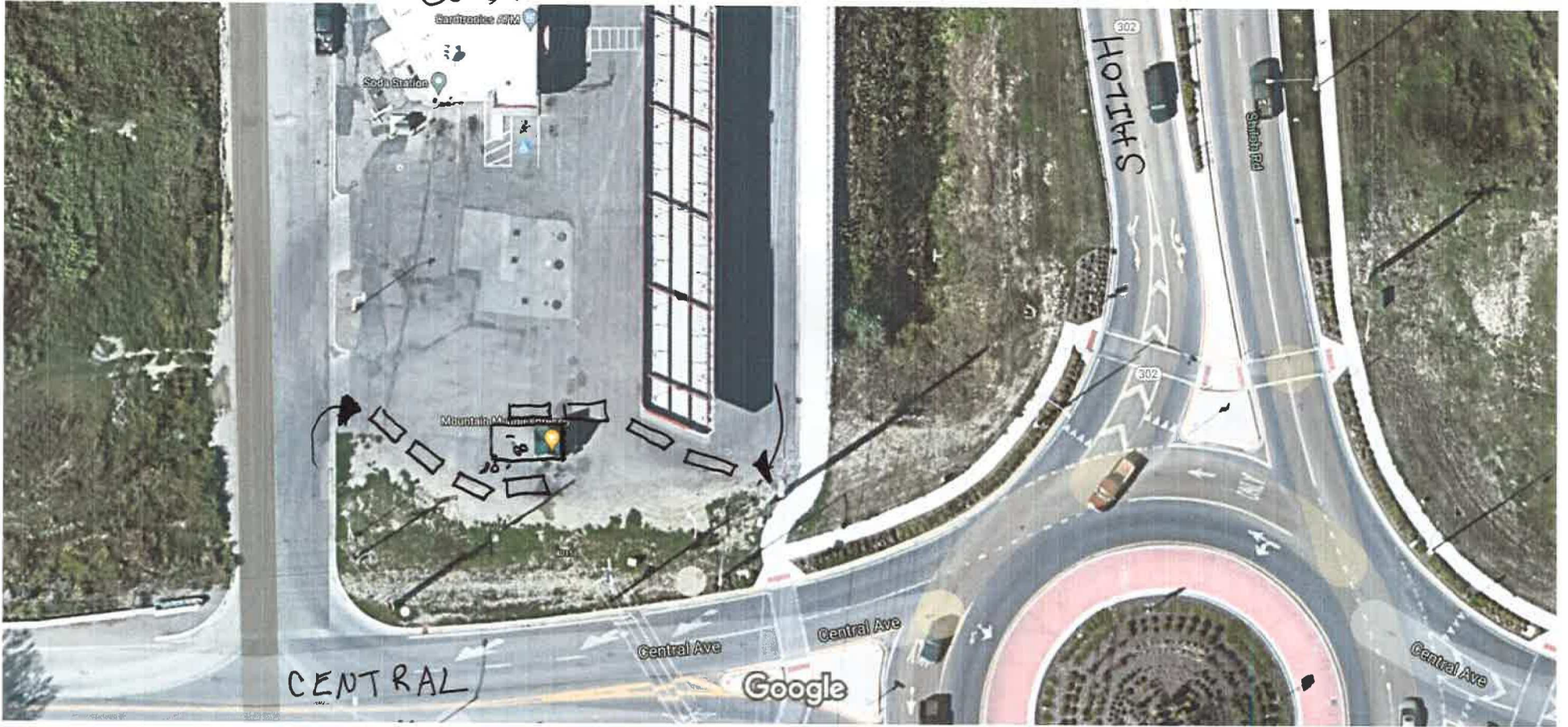


WEST



Google Maps

16 Shiloh Road



Map data ©2021, Map data ©2021 20 ft

