



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, July 6, 2022, 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd 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.

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 May 4, 2022. The minutes of the Board meeting of June 1, 2022 are delayed.

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:

- Return Item - City Variance 1346 -- 1310 30th St. W --Increase building height to 46 feet and reduce required off-street parking penalty for assigned spaces -** A variance from the Cardwell Ranch East 80 Planned Development, Article VI.C.3 requiring a 40-foot maximum height for multi-family structures to allow 46 feet and from Section 27-1302.B.7 requiring provision of 20% more off-street parking spaces when some of the off-street parking spaces are assigned on Lot 15A, Block 2 Cardwell Ranch Subdivision 1st Filing, a 6.88-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 and to allow the proposed 406 off-street parking spaces to be allowed for the proposed 249 dwelling units. The proposed parking ratio (spaces/unit) is 1.63 and the required parking ratio with the 20% penalty is 1.92 or 478 spaces. Tax ID: A34337
- City Variance 1347 -- 4143 Banbury Place -- Build-To Zone -** A variance from Sec. 27-305 (Table 27-300.4) from the required Front and Street Side Build-To zones to allow the front door and living area of a new residence to be more than 50 feet from the front property line in an N2 zone, on Lot 17A of Block 1, Legends West Subdivision, a 7,150 sf parcel of land generally located at 4143 Banbury Place. The purpose of the variance is to allow a new residence to comply with the clear vision area at an uncontrolled permanent T intersection of Banbury Place and Legends Way.

- c. **City Variance 1348 -- 2376 Main Street -- Kiosk for Temporary Use of 160 square feet --** 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 a kiosk of 160 sf on Lot 4, Block 1 of North Pointe Square Subdivision and Lot 5, Block 1 of Bergquist Subdivision, a 9.29 acre parcel of land generally located at 2376 Main Street. The purpose of the variance is to allow an existing 160 sf kiosk to remain on the site. Tax ID: C11832

Other Business/Announcements

Adjournment

The City Board of Adjustment will hold its public hearing in the 1st Floor Conference Room at 2825 3rd Avenue North (Miller Building) starting at 6 pm, Wednesday July 6, 2022. 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 to husmank@billingsmt.gov, keithe@billingsmt.gov or bartleyr@billingsmt.gov before 1:00 PM on Wednesday July 6, 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

City Board of Adjustment
Meeting Date: 07/06/2022

Information

Subject

The minutes of the Board meeting of May 4, 2022. The minutes of the Board meeting of June 1, 2022 are delayed.

Attachments

BBOA_2022_0504

CITY BOARD OF ADJUSTMENT

MINUTES May 4, 2022

Name	Title	01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022
David Mitchell	Member	1	-	1	E	E							
Dave Hagstrom	Member	1	-	1	1	1							
George Warmer	Member	-	-	1	1	1							
Jeff Bollman	Vice Chair	P	-	1	1	E							
Oscar Heinrich	Chair	1	-	1	1	1							
Chris Hayes	Member	-	-	-	1	1							
Josh Sayer	Member	-	-	-	1	1							
TOTAL NUMBER OF APPLICATIONS 2022		01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022
Variance		2	-	3	1	*2							7

- 1 Returning variance

Chair Heinrich 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, Erin Keith, Planner I and Robbin Bartley, Administrative Assistant.

Attending: Josh Neibauer, Bill Starr, Steve Bullock, Andy Daleioen, Jenifer McRae, John Ellingsen, Sean Anderson, Brian Whelen, Travis Dennison, Brandie Robbins, Adela Awner

Public Comment

Chair Heinrich 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 March 2, 2022 and April 6, 2022. Approved.

Board member Hayes indicated Exparte communication regarding Variance # 1343 and recused him self from the voting.

Chair Heinrich and Board member Hayes visited the sites.

Board member Hayes expressed a conflict of interest regarding Variance # 1343.

Public Hearings

Return Item - City Variance 1343 – 3840 Zoo Drive – Parking Siting - A variance from Section 27-409 requiring surface area parking located to the side and rear of the principal structure, to allow parking in the front of the principal structure in a Heavy Commercial (CX) zone, on Lots, 4 – 8 and 9A, Block 2, Shiloh Business Park Subdivision, a 24.91-acre parcel of land. The purpose of the variance is to allow the development of a new Costco facility. Tax ID: C13936, C13937, C13938, C13939, C13940 and C13941

Recommendation:

Planning Staff is recommending conditional approval based on draft findings of the review criteria for variances:

- 1) There is a hardship with the property that is not applicable to other lands in the same district. The Canyon Creek Ditch cross the northwest corner of the property limiting the ability to place structures close to or across the ditch. While the encumbered area of the property is small, its effect on a development of a 166K+ warehouse building, fueling facility and a future MDO addition are large, given the CX zone requirement for parking location.
- 2) Denying the variance would not deprive this owner of similar rights enjoyed by others in the area. This is a variance of first impression under the new code provisions in Billings. Other property in the area was developed under the previous code that allowed surface parking lots in any yard and of any size. This is a right commonly enjoyed by other properties but these rights are now considered legally nonconforming. Changing zoning regulations always creates some legally nonconforming uses or site development standards for prior projects. The applicant analyzed each alternate proposed or suggested by staff and has proven the proposed site plan balances the intent of the parking siting requirement and the safety and efficiency of the Costco development. Mitigation measures are proposed.
- 3) **Granting the parking siting variance will not confer a special privilege** to this applicant. Any variance has the potential to grant a special privilege to an owner. Based on the analysis of several site plans, the site constraints and proposed mitigation, staff believes a special privilege will not be granted in this case. This finding is limited to this case and these particular circumstances and should not be taken as a precedent for reviewing future parking siting requests for variance.

4) Granting the variance will be in harmony with the purposes of zoning and growth policy.

Granting this variance recognizes the value of the current zoning requirement for placing parking to the side or rear of building by providing mitigation measures. The Zoning regulations also recognize the need to provide relief from regulations that may create unnecessary hardship based on site constraints.

5) In granting the variance the BOA may impose appropriate conditions. Planning staff recommends the following conditions:

- 1) Variance is to allow up to 535 surface parking spaces in the front yard based on re-submitted site plans – *Costco suggested edits to this condition are acceptable to staff*
- 2) The variance is limited to Lots ~~4-8~~ and Lot 9A of Block 2 Shiloh Business Park Sub Amended – *Staff prefers this legal description as it encompasses all the lots.*
- 3) Provide ground markings for two safe pedestrian pathways from Zoo Dr to the warehouse building
- 4) Install gazebos and pavilions as shown on the Concept Landscape Plan at the Zoo Dr street frontage
- 5) No evergreen or conifer trees in the street frontage landscaping, lowest branch height at installation is 8 feet. Concept Landscape Plan is starting basis for final design.
- 6) No outdoor announcement system audibles beyond property lines.
- 7) Apply for building permit within 2 years and complete project within 5 years - *Costco suggested edits to this condition are acceptable to staff*
- 8) Any structures not shown on site plan will comply with all zoning requirements and other city regulations – *Costco suggests eliminating this condition as unnecessary*
- 9) All other city zoning regulations and city ordinances except for the granted variance will apply to the project - *Costco suggests eliminating this condition as unnecessary*
- 10) Failure to begin or complete as required will void the variance
- 11) All conditions apply to this owner and any future owners/managers/lessees, assigns - *Costco suggested edits to this condition are acceptable to staff*

6) A time limit for action on the variance shall be prescribed.

See condition No. 7 above

7) No variance may allow a use not otherwise allowed or be inconsistent with other limits on uses in the district. The proposed use – Costco Warehouse, Fueling Facility and future MDO – are all allowed uses in the CX zone district

Costco Proposed Landscape and Mitigation

Nicole Cromwell, Zoning Coordinator
City of Billings
Planning & Community Services Department

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April 26, 2022

IV. Providing a Safe and Attractive Pedestrian Connection from Zoo Drive:

The site plan is updated to include a pedestrian connection from the multi-use path along Zoo Drive, which travels south between the fuel facility and the northern parking pod until it connects with the ADA parking area north of the warehouse entrance. As described above, the area along Zoo Drive will be treated with enhanced landscaping to provide a comfortable setting for pedestrians. As the path travels through the parking areas toward the warehouse entrance, it will be delineated using bold line striping for drive aisle crossings and concrete for areas passing between parking stalls. This creates an easily visible path of travel for both pedestrians and motorists passing through the site.

Previously recommended conditions regarding the ADA parking location, and site lighting have not been included in this set of recommended conditions.

Costco has adequately addressed these issues in the April 26, 2022 supplemental information provided (pages 7 and 8).

V. Review Options to Improve ADA Pedestrian Safety at the Warehouse Entrance, Including Setback of the Driveway:

After consideration of alternate driveway and ADA stall locations, the existing layout along with pedestrian safety enhancements such as bold ground striping and additional signage remains the preferred design. As discussed in the operational description, the drive aisle that travels along the building frontage is separated from the back-feed aisle circulation, ensuring that members using this route are likely to be traveling at slower speeds, searching for parking or dropping someone off at the entrance rather than trying to pass through the site. Additionally, the presence of a busy, clearly delineated pedestrian area is likely to deter any drivers looking to quickly pass through the area.

Relocating the ADA stalls against the building frontage eliminates a circulation drive aisle that is included in the current design, resulting in an increased confluence of parking back-feed aisles directly in front of the warehouse entrance. This would cause increased congestion between pedestrians and vehicles consulting through the retail service parking area on the property. In addition to creating a separate circulation aisle away from the main entrance, the current ADA parking space creates a refuge for the pedestrian connection to Zoo Drive.

The proposed location of the ADA stalls is prohibitive for Costco and was designed by observing and learning feedback on current locations. Additionally, the ADA parking layout and pedestrian areas are designed in compliance with the 2010 ADA Standards for Accessible Design. We find that the proposed design works well in other locations and anticipate that it will also work well at the proposed location in Billings.

VI. Parking Lot Lighting Pole Height:

External lighting for the warehouse and fuel canopy signage will be wall-mounted down-facing flat lens LED fixtures. Costco's standard landscaping lighting has been developed over many years with an eye toward sustainability through the reduction of raw materials and energy usage. As a result, they have developed a standard site lighting pole that is 30 feet 6 inches tall and uses high efficiency LED fixtures. City staff proposed a Condition of Approval, should the variance be granted, limiting the parking lot pole height to 20 feet. Enclosed are two photographic exhibits showing a comparison of light levels between Costco's standard pole height and the proposed condition height. Both options are equally efficient in limiting light spill and glare onto adjacent streets and properties. However, Costco's standard lighting design only requires 44 poles and 67 fixtures, as opposed to 102 poles and 130 fixtures, which would be required based on the City's conditional height limit. Costco's standard design would

Nicole Cromwell, Zoning Coordinator
City of Billings
Planning & Community Services Department

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April 26, 2022

allow for a 50 percent reduction in materials and a 36 percent reduction in energy use for the site.

VII. Provide Explanation for Costco's Relocation:

The current Costco facility in Billings is undersized, has a poor parking area with narrow drive aisles, no back-feed lanes, and grades that make it difficult to maneuver Costco shopping carts. In addition, the current location does not allow for the ability to expand and add a MCO facility, which will be a critical part of Costco's future business operations. Due to the current physical limitations of the existing Costco location, the existing development regularly experiences parking deficiencies, congestion, and internal circulation issues associated with an inefficient, non-standard layout. Specifically, the existing Costco building located on King Avenue includes 500 parking stalls and is located within a shopping center where on-site parking is shared with adjacent retail tenants. The main internal drive aisle between South 24th Street West and King Avenue West also passes directly in front of the warehouse house entrance, where it also intersects with another drive aisle between the commercial areas to the east, and eventually Giant Road. As a result, the area in front of the warehouse entrance regularly experiences large volumes of vehicles interacting with a busy pedestrian area, creating congestion and increasing the risk of potential conflicts. The new project allows Costco to improve the efficiency, safety, and capacity of its operations.

We believe that the above responses, together with the enclosed revised plans, landscape perspectives and alternate layout analysis exhibits address the feedback received from both the Staff Report and our subsequent discussions, and demonstrate the key considerations Costco made in meeting the intent of the Heavy Commercial design standards. This variance request is the minimum necessary deviation from the City parking code in order to allow the project to meet the Costco's operational requirements within the constraints of the site. Based on the additional materials and narrative responses provided in this letter, we believe staff are justified in supporting the variance request. If you have questions or need additional information, please do not hesitate to contact me at (405) 251-6222. Thank you.

Sincerely,
Sean Anderson, ADP
Senior Planner

Questions for staff:

Chair Heinrich asked staff if this was setting precedence for anyone else. Staff replied explaining the "neighborhood manners" listed in the commercial code. ADA parking was also addressed, placing it in a safe zone in front of the building and meeting all ADA specifications.

Public Hearing opened at 6:35PM

Applicant:

John Ellingsen, 999 Lake Drive, Issaquah, Wa. 98027

Also in attendance are Brian Whelan, Steve Bullock, Andy Daleioen, Sean Anderson and Jeff Schumacher via Zoom.

EXISTING SITE

- Facility in place for 30-years; Costco has outgrown the location
- Smaller building (142,000 Sq. Ft.)
- Limited exclusive parking with narrow drives
- Site access and circulation creates confluence of vehicular activity at warehouse entrance
- No room for future Market Delivery Operation



This 30 year old design has taught us many things about how to improve circulation and parking. Parking is paramount. All surrounding neighbors are in support of this plan.

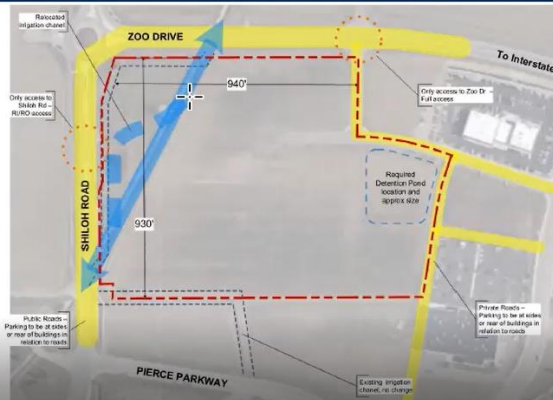
VARIANCE REQUEST

- In order to relocate within Billings
- Develop a parcel that has unique constraints making strict adherence to the Code infeasible
- Allow Costco to develop a new site that improves the safety, efficiency and capacity of its operations
- Implementing this plan is supported by all immediately surrounding neighbors

Barghausen Consulting Engineers, Inc – Sean Anderson, agent
18215 72nd Avenue South Kent, WA 98032

SITE CONSTRAINTS

- Constraints due to the irrigation canal running through the land;
- Fixed access points to surrounding streets that impact internal drive design;
- Known future expansion must be accommodated;
- Existing drainage infrastructure limits design options



The ditch can be relocated and piped to unlock the corner for future needs. There are fixed access points. Staff alternatives would not allow MDO drainage infrastructure. Costco is a 46-year-old business with 572 warehouses in the US and more than 800 warehouses globally. The suggested layout will provide the best way to address all constraints with a minimum variance. The traffic will be kept away from the front of the warehouse. The ideal Costco prototype is to fan parking across the front of the building. The fuel facility must be located in view of the warehouse but separate from the warehouse. We have added features to mitigate parking in the front. A multiuse path and gazebo, also enhanced landscape on Zoo MT route to Riverfront Park. We will use tree species that are acclimated to the area. Landscaping will allow natural observation and enhance pedestrian safety. There will be bold pedestrian striping and an ADA parking pod.

Costco's Proposal

The map shows a proposed Costco site layout with several key features and annotations:

- Shipping/Receiving Truck Route:** A yellow dashed line indicates the route for trucks, starting from the back of the site, turning right onto a side drive, and then left onto a street. A note states: "Shipping/Receiving Truck Route. Costco would like to keep pedestrian and member vehicle conflicts to a minimum with this path. This plan has many concerns related to these conflicts."
- Back-feed Drives:** Red arrows show drives that allow members to access parking and then leave the site without having to drive on the drive aisles adjacent to the building. A note states: "Back-feed drives allow members to access parking and then leave the site without having to drive on the drive aisles adjacent to the building. This makes it safer for pedestrians which are more concentrated at the front of the building."
- Parking Distribution:** Red arrows point to various parking areas around the site. A note states: "Parking is distributed around the front door minimizing hot spots and competition for parking stalls."
- Access Points:** Multiple red arrows indicate access points around the site. A note states: "Multiple access points are available around the site allowing traffic to disburse minimizing bottlenecks."
- Receiving and Delivery Function:** A note states: "Receiving and Delivery function off to the side with access options separate from the main customer access."
- Fuel Facility:** A note states: "Fuel facility located within view of the front door but away from prime parking."
- Future Development:** Several areas are labeled "Future Development/ Building" with dimensions of 22,500 sf.
- Main Warehouse:** The main Costco building is outlined in red and labeled "Main Warehouse" and "Costco".
- Home Delivery Location:** A specific area within the main warehouse is labeled "Home Delivery Location".
- Drive Aisles:** Labeled "DRIVE AISLES" and "DRIVE DRIVE".
- Streets:** "West Elm Drive" and "Pierce Pkwy" are labeled.
- Truck Route:** A blue arrow indicates a "Truck Route" for "Truck Parking and Loading Area".

[illegible]

John Ellingson concluded by thanking the Board and staff for their time.

CONCLUSION

- Staff has reviewed the project site revisions and agreed with the alternate site plan analysis
- Surrounding property owners support the project design and layout
- Staff recommend a conditional approval of the variance request
- Costco accepts the conditions of approval, as amended

Questions for applicant:

Chair Heinrich asked about additional signage on the building. There are additional signs along Zoo Drive. Chair Heinrich also asked if the property to the south of the current site was able to be purchased to alleviate the ditch hardship. Brian Whelan responded by pointing out the additional ditch complications making the circulation and parking even more cumbersome.

In Favor:

Bill Starr, 6868 Whitetail Lane, Billings

He is the president of Canyon Creek ditch company. They have talked extensively with Costco and are in agreeance of the proposed changes.

Josh Neibauer, 4404 Neibauer

He is good with the ditch relocation.

Opposed:

Adela Awner, 1109 Delphinium

A Costco member for many years. She is concerned for the large empty warehouse being left at the current location. What business will occupy this vacancy? Brian Whelan stated there is a high interest in the current location and a lot of ability to rehabilitate and redo.

Chair Heinrich asked about the Shopko space. Did Costco try to occupy it when it was available. Mr. Whelan explained because of the way Shopko was financed, Costco ability to buy, was not possible. Chair Heinrich asked about the King Ave fuel facility. The facility will be properly decommissioned.

Public Hearing closed at 7:08PM

Discussion

Motion

Board Member Warmer made a motion and Board Member Sayer seconded the motion to approve the **City Variance 1343 with staff recommendations, conditions and findings of fact.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell				X
Dave Hagstrom	X			
George Warmer	X			
Jeff Bollman				X
Oscar Heinrich	X			
Chris Hayes			RECUSED	
Josh Sayer	X			

The motion to approve City Variance 1343 passed with a 4-0-1 vote.

City Variance 1344 – Classy & Sassy Kiosks – A variance to allow Group 3 temporary use structures larger than 120 sf at 1508 Main St, 1221 6th Ave. N & 1313 Broadwater. 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 200 square foot structure in a Corridor Mixed Use 1(CMU1) zone on Block 2, Lot 1, Arrowhead Sub. a 14,724 square foot parcel of land located at 1508 Main St.; 2) a 150 square foot structure in a East Billings Central Works (EBURD-CW) zone, on Block 4, Lot 23, North Park Sub., a 37,500 sf parcel of land located at 1221 6th Ave. N; and 3) a 200 square foot structure in a Corridor Mixed Use 2 (CMU2) zone, on COS 568, Parcel C, a 5.057 acre parcel of land located at 1313 Broadwater 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. Group 3 temporary uses may be located on property indefinitely but require a yearly renewal of the temporary use permit by the City. Tax IDs: D02554, A12100, D01319.

Recommendation:

Planning staff has reviewed this application & is recommending conditional approval of Variance 1344 based on the proposed findings of the review criteria.

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: two at 200 square feet (66% increase) and one at 150 square feet (30% increase). No other variance is intended or implied with this approval.
2. The variance is limited the existing kiosks only, currently located on the parcels described in this application, 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 permits for any of these kiosks remain 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 structures are not moved from their current location.

5. The applicant shall meet all other city code requirements, including annual renewal of the temporary use permits, except for this variance.

Staff indicated they had received an email in opposition. It was distributed by email and hardcopy to the Boardmembers.

Questions for staff:

Public Hearing opened at 7:35PM

Applicant: Greg Reid, Agent, WWC Engineering

The owners did apply for their yearly temporary use permits and were previously approved. A commercial building permit is now in process for the Henesta address. It is now time for yearly renewal for the existing Kiosks thru Planning review. The larger size kiosks help deal with more business.

Questions for applicant:

In Favor:

Travis Dennison, 6947 Brave Lookout, Shepherd, MT

He is the owner and has 45 employees. We were unaware of the size constraints because it is legal to build a 200 square foot shed without a building permit in the City.

Opposed:

Jenifer McCrae, 208 Prickett Lane, Billings, MT

She purchased Sunshine Espresso and cannot take in more employees or increase the building size. It is a huge disadvantage to her business and it is unfair to allow others in the same business to do it.

Rebuttal: Greg Reid, WWC Engineering

A larger building is allowed with a commercial building permit. This variance process is not the only way to build bigger.

Cassandra Dennison, 6947 Brave Lookout, Shepherd, MT

She is also an owner and has been in business 10 years. This situation was not done with ill intent. We were approved, with this building size, at yearly renewal. Months later the error was discovered and this variance is the remedy. She understands Ms. McCrae's concerns with fairness.

Public Hearing closed at 7:44PM

Discussion

Motion

Board Member Hayes made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1344 with staff recommendations.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell				X
Dave Hagstrom	X			
George Warmer	X			
Jeff Bollman				X
Oscar Heinrich		X		
Chris Hayes	X			
Josh Sayer	X			

The motion to approve City Variance 1344 passed with a 4-1 vote.

Other Business: 1 item for June 1, 2022 meeting.

ADJOURNMENT: The meeting adjourned at 7:47PM.

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

Board of Adjustment

Date: 07/06/2022
Title: Return Item - City Variance 1346 - Cardwell Ranch - Building Height and Off Street Parking
Presented by: Karen Husman
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation of **conditional approval** for the variance for **height** based on the determinations for review provided within this report. The Board of Adjustment opened the public hearing on this request on June 1, 2022, and delayed action on the request to the July 6, 2022 hearing date at the request of the applicant. The updated request is to allow the applicant to withdraw the request for parking variance. Staff is recommending the BOA approve the request to withdraw the parking variance portion of the request and consider the variance for height per the staff recommendation.

REQUEST

A variance from the Cardwell Ranch East 80 Planned Development, Article VI.C.3 requiring a 40-foot maximum height for multi-family structures to allow 46 feet and from Section 27-1302.B.7 requiring provision of 20% more off-street parking spaces when some off-street parking spaces are assigned on Lot 15A, Block 2, Cardwell Ranch Subdivision 1st Filing, a 6.88-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 and to waive the 20% penalty when some spaces are assigned for off-street parking for the proposed 249 dwelling units.

After the June hearing and communications with Engineering staff and the applicant, they have resolved the parking requirements and are asking the BOA approve a request to withdraw the parking variance portion of their request.

APPLICATION DATA

OWNER: Yegen Grand Ave Farm, Inc.
AGENT: Steward Land Holding, LLC
PURPOSE: Increase maximum allowed building height, and decrease in required parking
LEGAL DESCRIPTION: 15A, Block 2, Cardwell Ranch Subdivision 1st Filing
ADDRESS: 1310 30th Street West
SIZE OF PARCEL: 6.88 acres
ZONING: Planned Development (PD)
EXISTING LAND USE: Vacant
PROPOSED LAND USE: Residential Multi Family

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

See attached chart

SURROUNDING ZONING & LAND USE

NORTH: Zoning: PD
Land Use: Vacant
SOUTH: Zoning: P2
Land Use: Will James Middle School
EAST: Zoning: P2
Land Use: Church
WEST: Zoning: PD
Land Use: Medical Offices, SCL Health Oncology

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

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. In 2008, the property was

zoned to Planned Development. Adjacent properties to the north and west are also parcels within the Planned Development. The maximum allowed height in the East 80 Cardwell Ranch PD Design Guidelines for all buildings is 40 feet. The reason for the request is to provide a roof design that complies with the aesthetic intent of the Cardwell Ranch Design Guidelines. A lower height requirement would create roof-lines that are not in proportion with the overall architectural design that is intended under the Cardwell Ranch PD design standard.

The purpose of the second part of the variance request was to waive the number of parking spaces required with a 20% increase when assigned spaces are included. The off-street parking code (Section 27-1300) requires a multi-family development parking lot to increase the number of surface parking spaces by 20% whenever some of those surface parking spaces are assigned to specific tenants or owners. The initial site plan submitted with the public hearing staff report on June 1, 2022, shows surface parking spaces in front of enclosed garages and those spaces are considered "assigned". The applicants original request was a variance from this increase. As requested by the BOA, at its June meeting, Planning and Engineering staff have been working with the applicant to resolve the parking shortage without requiring a variance approval, details of the results of those communications are listed in the "Stakeholders" section of this report.

The request for increase in maximum height is consistent with the intent of the PD and will allow flexibility in architectural design. After communication with the applicant, their agent, and Engineering staff, the applicant has a solution to their parking requirements and is requesting the BOA allow them to withdraw the parking variance portion of their application.

STAKEHOLDERS

On June 1, 2022, the Board of Adjustment held a public hearing and voted unanimously to continue the hearing to the July 6, 2022 meeting at the request of the applicant. No members of the public spoke at the hearing and the Board heard from the applicant. The BOA asked the applicant to prepare additional options for parking and asked staff to clarify the actual number of spaces needed for the development, as well as clearly describe the terms of the PD agreement in place and what was required of the applicant for the development. After discussion with the applicant and City Engineering staff, Planning staff worked with the applicant to provide an updated site plan (in attachments), depicting the parking plan that would be in conformance with the parking requirements under the Zoning Code as well as the PD agreement for the development. The following is what has been determined by staff as adequate parking and is depicted on the site plan. Though the off-street spaces are shown, it should be noted 10 additional spaces will be accounted for through additional transit passes and on-street parking along 30th street west.

Required:

Parking is required at 1.5 spaces per Dwelling Unit.

Guest parking is required at 1 space per 10 dwelling units.

The transit offset is 1 space per 1 pass not to exceed 20% (27-1303 D.1 (1 space reduction per pass))(27-1303D.2(a) transit offset shall not exceed 20% of the living units)

Garage spaces are not considered assigned, therefore no 20% assessment is required (27-1302 B.7 specific use of the word surface, also confirmed with Chris via Re:Code working group this was the intent. Garages are not assigned.)

Staff calculations:

Cardwell Ranch Living Units -- 249

Required Parking $1.5 \times 249 = 373.5$

Required Guest Parking -- $249 / 10 = 24.9$

20% Max Transit Offset -- $249 \times 0.2 = 49$ spaces, proposed 21

Office Parking 4 spaces

Applicant proposed:

$373.5 - 21 (\text{transit offset spaces}) = 352.5$ or 353

Guest parking addition $353 + 25 = 378$

Office space addition $378 + 4$

TOTAL REQUIRED PARKING 382

Proposed parking not including on-street 372

As stated earlier, this calculation shows they are short 10 spaces. There are a few ways they can make up these 10 spaces. Additional transit passes or the use of 30th Street West for 10 spaces, or a combination of both. It is staff's interpretation the PD agreement does not allow any "on street" parking within the Planned Development (section is attached), however, the 10 on street parking spaces could be allowed on 30th Street West. Engineering Division staff have clarified the on street parking could be accommodated on 30th Street West meeting the 20 feet per parking space and the clear vision area restrictions at the intersection of Meadowview Drive and the Will James Middle School driveway. The applicant is proposing a combination of additional transit passes and on street parking on 30th Street West to resolve the space shortage required. They are requesting the BOA allow them to withdraw the parking Variance portion of their application.

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;

Applicant: Height - Our intention is to build a high-end apartment project within the Cardwell Ranch Project as shown in the attached site plan. It is our opinion that this particular location is ideal for a higher-end, 'legacy' project. The reason for the request for the variance is to allow for a 4-story building while still providing adequate room for architectural roof elements consistent with the existing and future development of Cardwell Ranch. A 4-story product will provide a different, but complimentary, housing option within Cardwell Ranch. This land is peculiar in that it is governed by a Planned Development Agreement, and we are required, per the Development Agreement, to adhere to the "Cardwell Ranch Commercial Design Guidelines," which specify a maximum height of 40'. The Master Developer has agreed to this variance, as is evidenced by the signing of the variance request by Charles Yegen.

Staff: Height - Staff agrees with the applicants' statement, although there are not any special circumstances that exist in this situation other than the Planned Development Design Guidelines restricting building height to 40 feet. The PD agreement in this case makes allowances for building height and design with a variance approval. Staff agrees that the additional 6 feet would not significantly affect the development or surrounding properties.

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;

Applicant: Height - The current plan has been reviewed by the Cardwell Ranch Design Review Committee, and they are in support of our plan and agree that it goes well with the overall development. This project also aligns strongly with the goals of the City of Billings. It will contribute a new and needed element to a developing community in Cardwell Ranch that will provide an interconnected neighborhood, complete with gathering places, parks, and a diversity of housing options. This is a provision of Current Design Guidelines and not necessarily a provision of the Current PUD requirements or similar zones. Since the Design Guidelines are referenced in the PUD, I am told that, technically, a variance is required. Another multifamily development within Cardwell Ranch has also been granted a similar height variance.

Staff: Height - Staff agrees with the applicant in that the Design Review Committee has given preliminary approval to the concept. There have not been any multifamily constructed within the PD, but a variance was approved on Lots 2, 3A, 4A, 5, 6A, & 7A, Block 2 in the Cardwell Ranch Subdivision under Variance 1337 in December 2021 to allow multifamily structures able to exceed the maximum height requirements up to 50 feet. Granting this variance allows the applicant to develop at an increased height not commonly enjoyed by others within the PD aside from the above variance. There have been other property outside the Planned Development the Board of Adjustment has granted height variances for in other commercial or multifamily districts where multifamily uses are present (listed in history attachment).

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;

Applicant: Height - This is not technically a variance of the Zoning Code, but the PUD, which references the Master Development Design Guidelines. Also, as stated above, a similar variance has been granted to an adjacent development.

Staff: Height - Staff agrees with the applicants reason. The variance will not allow the applicant any special privileges, a variance has been approved on Lots 2, 3A, 4A, 5, 6A, & 7A, Block 2 in the Cardwell Ranch Subdivision under Variance 1337 in December 2021, to allow multifamily structures to exceed the maximum height requirements up to 50 feet. The development is compatible with surrounding land uses which include a school to the south, a church to the east adjacent to single family residential, a medical office to the west and a commercial shopping center to the north. This area of Grand Avenue and 30th is a diverse area and promotes a walkable community, desirable under the Growth Policy. The property is located within an already approved PD which contemplates a variety of housing choices including multifamily as well as commercial development. Parcels to the east are currently developed as a medical office and commercial retail within the PD. The Cardwell Ranch Architectural Design Committee has reviewed the preliminary design for compliance with the PD design standards. Granting this variance will not confer on the applicant a special privilege because the Board of Adjustment has granted variances to the maximum building height to other land in the same or similar district.

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;

Applicant: Height - This variance will allow for the construction of 4-Story product that will provide for a "choice of housing options" that will be complimentary to the adjacent multifamily development. It will also allow for a more efficient use of the investment that the city has made on infrastructure and community services for that area.

Staff: Height - The variance is in harmony with the general purpose and intent of the zoning regulations under the PD and the growth policy. Approval of this variance would allow the applicant to complete the design of this portion of the planned development. The proposed multifamily development itself is allowed under the PD, the additional height of 6 feet will not

have a significant impact on the surrounding properties.

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.

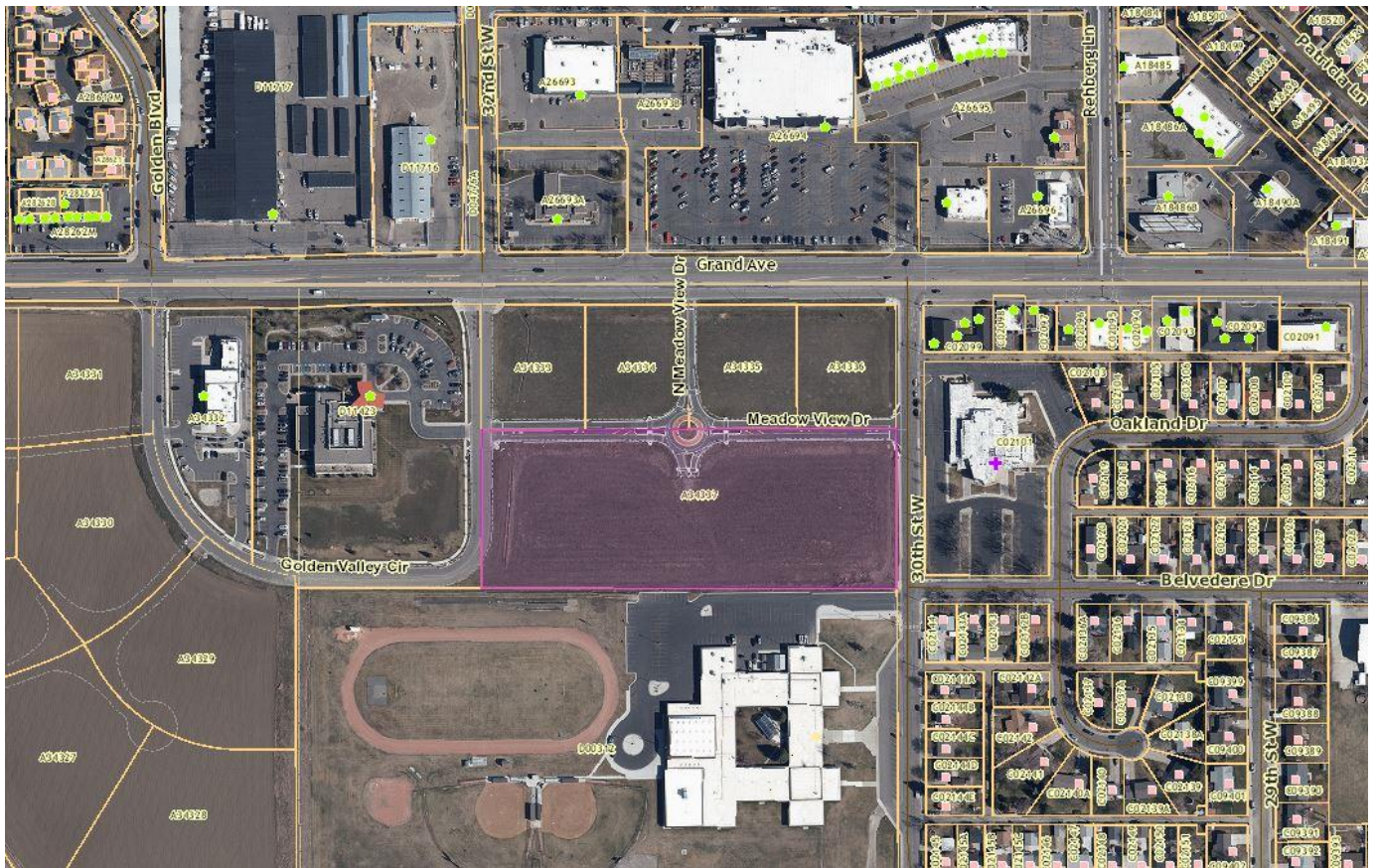
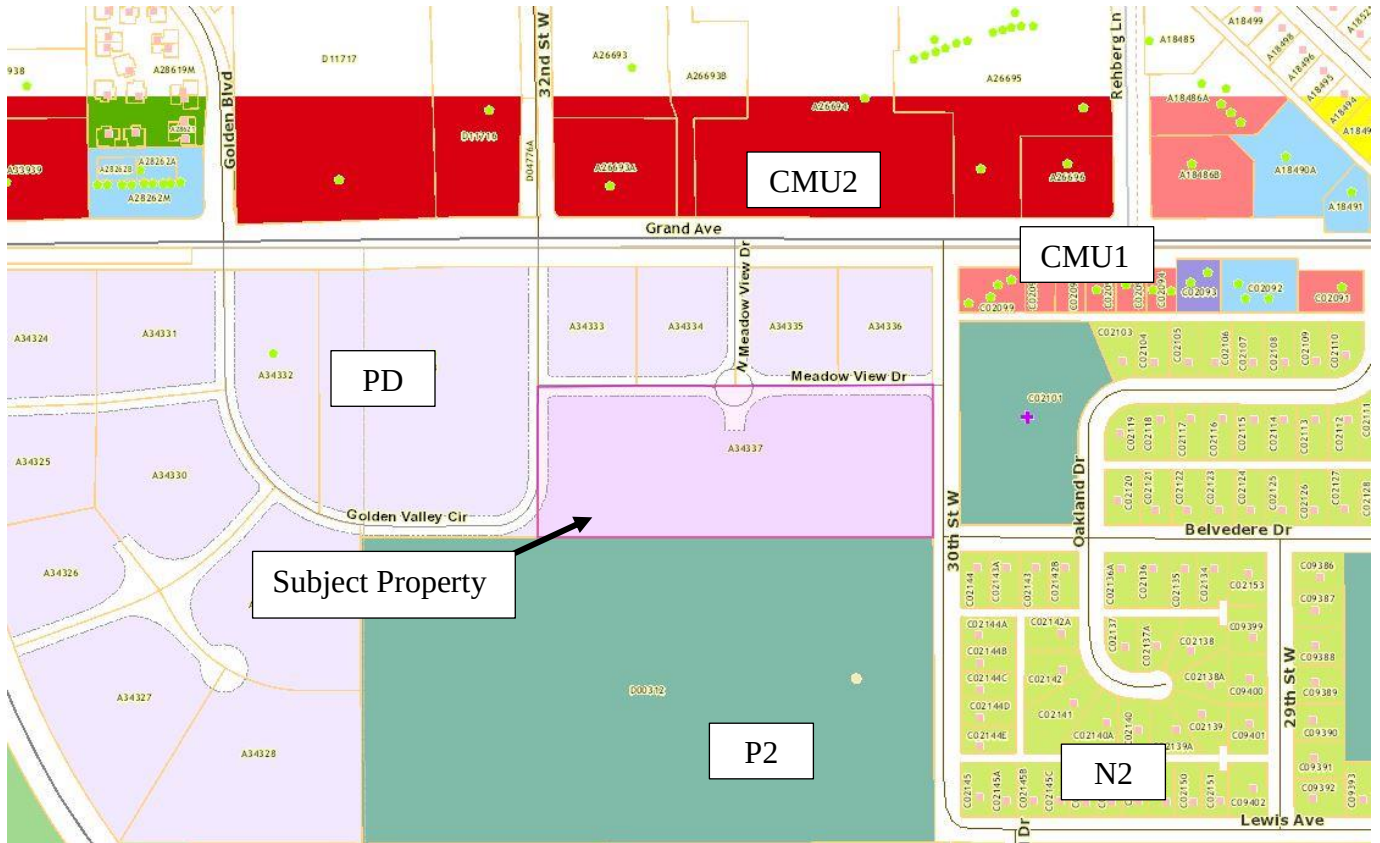
Staff is recommending the following conditions for the *Height* variance request:

1. The approval is for a height variance from Cardwell Ranch PD (Design Guidelines) under Article VI.C.3 requiring a 40-foot maximum height for multifamily structures to allow 46 feet, on Lot 15A, Block 2 Cardwell Ranch Subdivision 1st Filing, a 6.88-acre parcel of land. The purpose of the variance is to allow an increase in maximum height of 46 feet to develop a roof design that complies with the aesthetic intent of the Cardwell Ranch Design. No other variance is intended or implied with this approval.
 2. The height variance is limited to Lot 15A, Block 2, Cardwell Ranch Subdivision, 1st Filing, located at 1310 30th St. W.
 3. A landscaping buffer will be provided on the south property line adjacent to the school property to the south, but pedestrian connectivity is encouraged for residents to access the school and school grounds.
 4. The applicant shall meet all other city code requirements as well as Cardwell Ranch Planned Development requirements with the exception of this height variance.
 5. 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. Failure to meet these deadlines will void the variance.
 6. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns.
6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance. Staff has proposed a 3-year time limit for submitting a building permit and completion of the entire project within 5 years of the first building permit approval.
7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district. The granting of this height variance would not allow a use that is not allowed in the zoning district -- multifamily dwellings are allowed in the PD.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
New Site Plan
Code Section 27-1302.B
Chart of zoning History
Public Works Comments
Property Owner letter
Design Committee Letter
Parking survey of surrounding property

Variance 1346





Looking West from 30th St



South



Looking North on 30th St.



Looking West across the south of the property



Looking North from the North side of the parcel



Looking East from the North side of the parcel



Looking South Across the parcel toward the School

Application & Applicant Letter

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1346 - Project # PZX-22-00114

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 # A34337 CITY ELECTION WARD # 5

Legal Description of Property: CARDWELL RANCH SUB 1ST FILING (10), S01, T01 S,
R25 E, BLOCK 2, Lot 15A, AMD (18)

Address or General Location (If unknown, contact City Engineering): 1310 30th St West, Billings
MT, 59102

Zoning Classification: PD-Planned Development

Size of Parcel (Area & Dimensions): 6.88 AC

Covenants or Deed Restrictions on Property: Yes X No

If yes, please attach to application

Variance(s) Requested: Maximum Height of Buildings to be 45 feet and to allow
garages to count as parking with stacked spaces in front and to waive
the 20% increase for dedicated stalls.

Facts of Hardship: (attach letter)

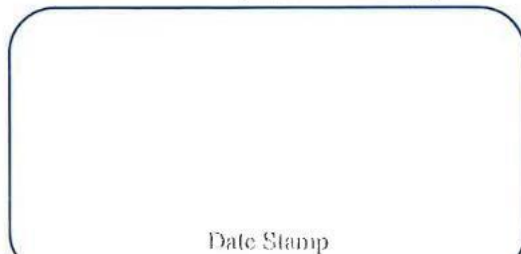
*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): YEGEN GRAND AVE FARM INC
(Recorded Owner) PO BOX 959 BILLINGS, MT 59103
(Address)

Agent(s): Steward Land Holdings LLC
(Name) 1708 E 5550 S Ste 18 Ogden, UT 84403
(Address) (801) 309-0399 brad@stewardland.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:  - Resident Date: 5-2-22
(Recorded Owner)



Date Stamp



Dear Chairperson,

Our intention is to build a high-end apartment project within the Cardwell Ranch Project as shown in the attached site plan. It is our opinion that this particular location is ideal for a higher-end, 'legacy' project.

We are requesting a variance on the allowable maximum building height and for an adjustment in the interpretation of the parking code.

Height Variance

The current PUD ordinance has a height limit of forty-five (45) feet from ground level. The current Design Guidelines, which are referenced as a requirement in the ordinance, have a maximum height for multifamily residential buildings of forty (40) feet. We are requesting an adjustment to the Design Guidelines to allow up to forty-five (45) feet.

The reason for the request for the variance is to allow for a 4-story building while still providing adequate room for architectural roof elements consistent with the existing and future development of Cardwell Ranch. A 4-story product will provide a different, but complimentary, housing option within Cardwell Ranch. This project will be complete with interior corridor, elevator service, upgraded amenities and finishes, all of which are not justified or are at least limited on a three-story project.

The current plan has been reviewed by the Cardwell Ranch Design Review Committee, and they are in support of our plan and agree that that it goes well with the overall development.

This project also aligns strongly with the goals of the City of Billings. It will contribute a new and needed element to a developing community in Cardwell Ranch that will provide an interconnected neighborhood, complete with gathering places, parks, and a diversity of housing options.



Parking Variance

The interpretation of current parking code or 'Recode' as it has been called, is calling for a 20% increase in parking for having dedicated parking spaces, and is not allowing stacked parking spaces or including the garage stalls in the parking calculations.

When we originally went under contract on this property and started designing, our design professionals used, what we were under the impression was the current design standards, which seemed adequate and inline with current industry standards.

Our current design includes 409 stalls (including 79 garages), which would equate to a parking ratio of 1.64 stalls/unit. If we were to have the recommended 482 stalls, that would be a parking ratio of 1.93 stalls/unit without counting the garages. If we also had 79 garages, that would be a total of 2.25 stalls/unit, which is well above the industry standard and would lead to a "sea of parking" that cities typically try to avoid.

We had a Market Study done by Western States Multifamily in which they analyzed the Billings market and they stated that our "proposed parking ratio of 1.7 stalls per unit... is deemed to be adequate of the market." The market study was done early on in our design process and we discussed parking ratio at length with them as we revised our plan, getting their approval along the way. They further did a comparison of other similar projects throughout the city and found most of them to have parking ratios between 1.52 and 1.68 stalls per unit.

The Cardwell Ranch project is unique in that it within walking distance of a host of services including grocery, entertainment, schools, restaurants, and an MET bus stop.



Suggested Optimal Parking

PARKING PROVIDED AT COMPETING APARTMENT PROJECTS						
Project	Units	Total Parking Stalls	Parking Ratio (Stalls / Unit)	Garages	Carports	Uncovered
Avenue C	126	192	1.52	65 (0.52)	-	137 (1.09)
InterPointe Apartments	160	269	1.68	120 (0.75)	-	149 (0.93)
InterUrban Apartments	216	339	1.57	168 (0.78)	-	171 (0.79)
Hunter's Pointe	204	328	1.60	50 (0.25)	152 (0.75)	126 (0.62)
Affinity at Billings (55+)	154	269	1.75	85 (0.55)	54 (0.35)	130 (0.84)

The competing projects above offer between 1.52 and 1.75 parking stalls per unit. Excluding Affinity at Billings, the parking ratios are consistent, ranging from 1.52 to 1.68 stalls per unit.

Garage parking is offered by each of the projects listed above. The most modern projects above (excluding Hunter's Pointe) typically offer garage stalls for 52% to 78% of each project's total unit count. Only two projects offer carport stalls.

A parking ratio of 1.50 stalls per unit is required as per zoning and appears to be adequate considering parking ratios at other comparable apartment projects. It is suggested that the project include detached garage stalls for one-third of units and a carport stall for each unit.

As proposed, the subject will provide parking as follows

The reason for the request for a variance in the interpretation of the parking requirement is that it is contrary to previously accepted calculations and typical industry standards. By not allowing the inclusion of the garage space and the stacked parking space in front of the garage as well as assessing a 20% penalty, the costs for this type of structure and desperately needed housing type becomes prohibitive in the market thus rendering a normally amenitized apartment product potentially unviable. We respectfully request that you review the interpretation of the regulation and, if necessary, grant a variance.

EXHIBIT A
PRELIMINARY SITE PLAN 2

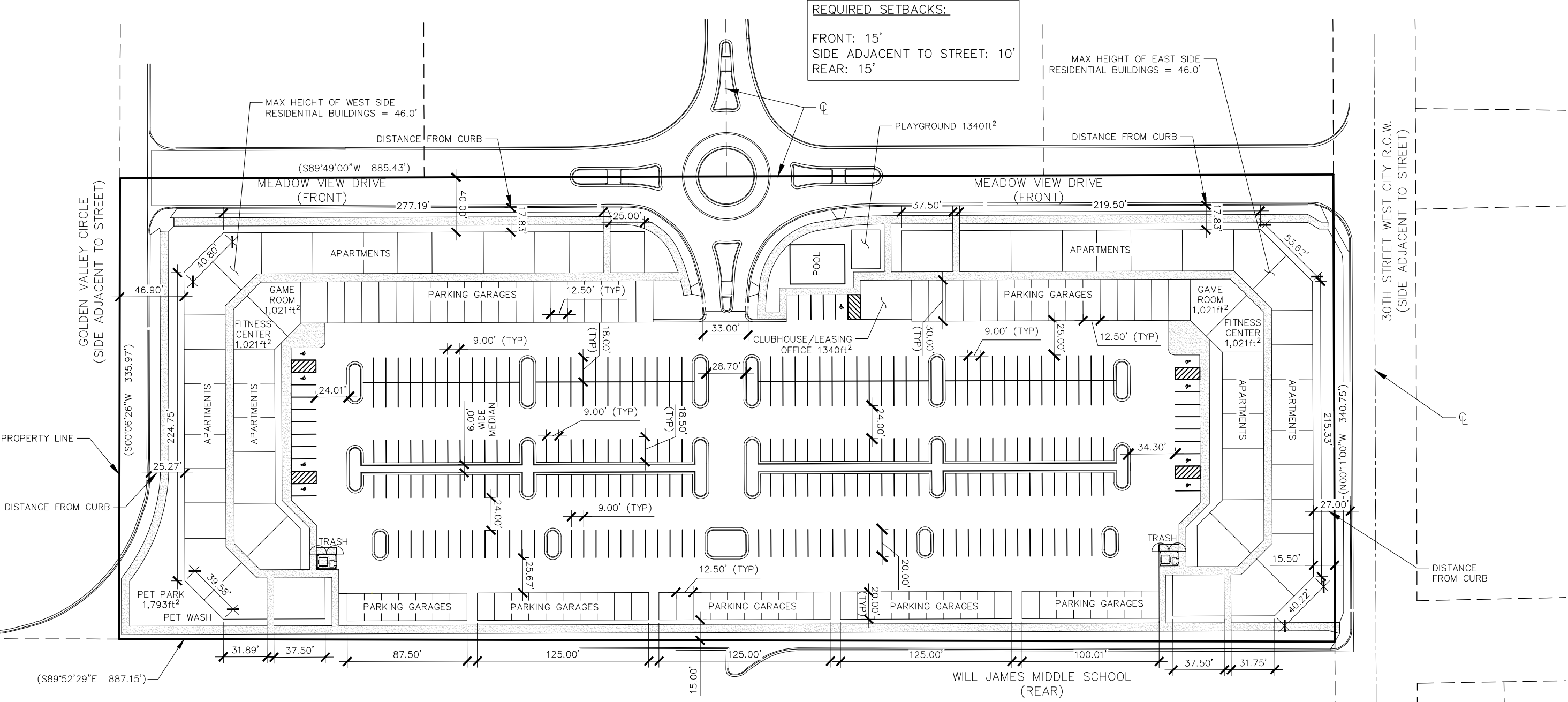
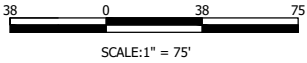
WITHIN
LOT 15A, BLOCK 2, CARDWELL RANCH SUBDIVISION

PREPARED FOR : BILLINGS, MT

PREPARED BY : SANDERSON STEWART

JUNE, 2022

BILLINGS, MONTANA



BREAKDOWN OF RESIDENTIAL UNIT SQUARE FOOTAGE

1 BEDROOM APARTMENT (750 ft ²)	110 UNITS	82,500 ft ²
2 BEDROOM APARTMENT (1,180 ft ²)	125 UNITS	147,500 ft ²
3 BEDROOM APARTMENT (1,298 ft ²)	14 UNITS	18,172 ft ²
TOTAL	249 UNITS	248,172 ft ²
21 MET TRANSIT PASSES	-21 UNITS	
FINAL TOTAL FOR PARKING CALCS	228 UNITS FOR PARKING CALCS	

PARKING SPACE REQUIREMENTS

	SPACES REQ'D
PARKING BASED ON CITY OF BILLINGS PARKING ORDINANCE AT 1.5 SPACE PER DWELLING UNIT (228)	342 SPACES
1 SPACE PER 10 UNITS (249)	25 SPACES
CLUB HOUSE (OFFICE)	4 SPACES
TOTAL PARKING REQUIRED	371 SPACES

BREAKDOWN OF SPACES PROVIDED

GARAGE SPACES	79 SPACES
SURFACE PARKING (NOT ASSIGNED)	293 SPACES
TOTAL PARKING PROVIDED	372 SPACES

B. Expansion, enlargement, and nonconformities.

1. Whenever any building is enlarged in height or in ground coverage, off-street parking shall be provided for the expansion or enlargement in accordance with the requirements of article 27-1100, Proportionate compliance.
2. Changes to the size or location of existing off-street parking areas in NX, NO, NMU, and CMU districts shall be done in a manner that brings the parking area into greater compliance with the zone district site standards. See article 27-1500, Nonconformities.
3. Nothing in this section shall be deemed to prevent the voluntary establishment of off-street parking or loading facilities to serve any existing use of land or buildings even though those uses or buildings are nonconforming, provided that the new parking can be provided in compliance with this section and the requirements of the zone district.

C. Zone district groupings. When reference is made to a group of zone districts, the following individual districts shall be included:

District Groupings Used in this Section	
Residential	All N districts, RMH
Mixed-Use	All NX districts, NO, NMU, All CMU districts
Commercial	C3, CX
Industrial	I1, I2
Public	All P districts
EBURD	All EBURD districts

(Ord. No. 21-5748, § 3(Exh. A), 1-25-21)

Sec. 27-1302. Calculation of required parking.*A. Required parking.*

1. Required off-street parking spaces shall be provided in conformance with Table 27-1300.1, Off-Street Parking Standards, unless modified by article 27-1100, Proportionate compliance.
2. In the case of mixed uses, the total requirements for the various uses shall be computed separately unless the joint use provisions of section 27-1304 apply.

B. Calculation of required parking.

1. When determination of the number of parking or loading spaces results in a requirement of a fractional space, any fraction shall be rounded up and counted as one parking space.

2. When there are multiple structures on a lot or multiple uses in a structure, parking shall be calculated separately for each different use area in a building or on a site, including all accessory uses.
3. Parking spaces required on a per-employee basis shall be based on the maximum number of employees on duty and/or residing on the premises at any one time.
4. Parking spaces required based on the number of beds in a facility shall be calculated based on the number of beds accommodated in the design capacity of the facility.
5. When the standards use seating as a unit of measurement, all calculations shall be based on the number of fixed seats. If fixed seats are not provided, then parking shall be determined at a rate of one space per four (4) occupants unless otherwise specified in Table 27-1300.1, Off-Street Parking Standards.
6. When the standards use the number of occupants as a unit of measurement, all calculations shall be based on the maximum occupant load, as determined by the adopted building code.
7. Surface parking spaces provided for multiple-unit structures shall not be assigned and shall be available to all residents unless approved through article 27-1600, Master site plan. Where surface parking is assigned, the minimum number of spaces provided shall be increased by twenty (20) percent.

Table 27-1300.1. Off-Street Parking Standards.

<i>Use</i>	<i>Required Parking</i>
RESIDENTIAL	
Households Living (dwelling unit/structure)	
Dwelling, single unit, detached and attached	2 per du
Dwelling, multiple unit structure	1.5 per du + 1 guest space per 10 units; subsection 27-1302.B.7 also applies
Dwelling unit in a mixed-use structure	2 per du
Accessory dwelling unit	Section 27-1009 (ADU standards)
Manufactured Home (Class A, B, C)	2 per du
Group Household Living	
Comm. Res. Facility, Large	2 + 1 per 5 beds
Comm. Res. Facility, Small	Dwelling, single unit
Fraternity/Sorority House	1 per 2 sleeping rooms or 1 per 3 beds, whichever is greater
Group Living Facility	2 + 1 per 5 beds
Retirement Home or Village	1 to 6 units: 0.5 space/du 7 to 18 units: 0.33 space/du Over 18 units: 0.25 spaces/du Minimum of 5 spaces
Travel Trailer Park/ Campground	1 space per campsite/RV site

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Cardwell Ranch, Lots 2-7A, Block 2	1337	12/1/21	Height 50'	Y	Cardwell Ranch East 80
2225 Overland Ave	1306	3/4/2020	Height 55'	Y	Marriott Hotel height from 45' to 55'
Lenhardt Square COS 2063	1282	5/2/2018	Height 46'	Y	Apartment height from 34' to 46'
3933 Central Ave	1254	3/1/2017	Height 50'	Y	Shiloh Commons (apts/+commercial) building height from 45' to 50'
5650 Canyonwood Dr	1180	4/2/2014	Height 48'	Y	Residential Home from 34' to 48' in R9600
5720 South Frontage Rd	1148	5/1/2013	Height 49'	Y	LaQuinta Inn, from 45' to 49'
1101 Shiloh Crossing Blvd-Scheels	1112	12/7/2011	Height 87' and Wall Sign Size 544 sq ft	Y	Building height from 70' to 87' and wall sign size from 250 sq ft to 544 sq ft
C/S 3030, Ironwood Subdivision	891	2/4/2003	Height 48'	Y	Residential homes from 30' to 48' in R9600
342 Morningside N	821	8/1/2000	Height 35'	Y	Condo unit height from 30' to 35'
COS 2505, south of Hi- Line Ditch, north of Big Ditch, between 43 rd & 46 th St	781	10/7/1998	Height 36'	N	Structure height from 30' to 36'



City of Billings

PUBLIC WORKS DEPARTMENT

Engineering Division

2224 Montana Avenue
Billings, Montana 59101
Office (406) 657-8231
Fax (406) 237-6291

Memorandum

To: Monica Plecker, Planning Division Manager
From: Chris Hertz, Staff Engineer III
Date: May 19, 2022
Re: City Variance #1310

Our office has reviewed the parking variance request for the proposed multi-family complex located at Meadow View Drive and 30th Street West. Our office recommends denial of the parking variance for the following reasons:

- The applicant is showing 409 parking stalls (which includes 79 garage stalls). The garage stalls themselves do not create issues, however the site plan shows stacked parking in front of the garage. These stacked spaces are considered assigned, as they would not be open to all residents. Section 27-1302.B.7 states parking spaces provided for multiple unit structures shall not be assigned and shall be available to all residents. The parking space fronting the garage is not available to all the residents.
- The stacked, assigned parking spaces in front of the garage require the applicant add 20% to the parking requirements. This equates to 482 stalls being required. With the garage stalls, they are showing 409 stalls with stacked parking and assigned parking. The reason the 20% was put in place is since the right of way cannot bear the overflow parking. If the stalls in front of the garages were not counted, thereby not triggering the 20% requirement, this site would have 330 stalls with 399 parking stalls required. This still leaves a shortfall of approximately 69 stalls.
- The area surrounding this proposed development contains a developed neighborhood, a church, and Will James Middle School. The traffic in this neighborhood has consistently been a challenge for Public Works. Adding overflow on-street parking will exacerbate an already challenging traffic pattern.
- If the site is approved as is, our office feels there would be an abundance of overflow parking on the streets in the nearby neighborhood near Will James Middle School. There would be no way to mitigate the overflow parking in the neighborhood.

Husman, Karen

From: Brenna Weaver <Brenna@pyegen.com>
Sent: Monday, May 2, 2022 4:36 PM
To: Brad Brown
Cc: Charles Yegen
Subject: Cardwell ranch
Attachments: 20220502164659406.pdf

Brad,
Attached please find the signed variance application.
As we discussed, the 40 foot limitation is important and we are willing to move forward with this application signature, but will not grant design review committee approval until we've had the chance to review your renderings and architectural plans. 45 will be the absolute maximum allowed and it must be handled with great care and consideration. We do agree with you that reflecting the prior parking code and not requiring the additional stalls is appropriate.
Thanks,
Brenna

Sent from my iPhone

Begin forwarded message:

From: Charles Yegen <Chas@pyegen.com>
Date: May 2, 2022 at 4:31:29 PM MDT
To: Brenna Weaver <Brenna@pyegen.com>
Subject: FW: Message from "RNP58387914EAA9"

Hi Brenna,

This is a leap of faith and although I have signed this the folks need to understand that the cart is ahead of the horse in that there have been no final approvals by the DRC. Should that not happen we will have to revisit this situation and at that time this application approval will need to be withdrawn.

Husman, Karen

From: Brenna Weaver <Brenna@pyegen.com>
Sent: Wednesday, April 20, 2022 12:32 PM
To: Brad Brown; Sky Hazlehurst
Cc: 'Brian McDonald'; Targee Tomisin; Chris Haak; Charles Yegen; Patterson Yegen
Subject: Re: Cardwell Ranch
Attachments: Cardwell Ranch Light Pole.pdf

Hello all,

Thank you for taking the time to meet with us yesterday. Zoom isn't always ideal, but it was certainly a great opportunity to chat with your team and put "faces" to the names.

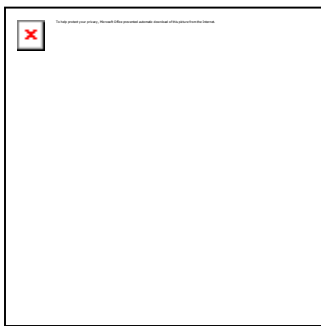
Please consider this as preliminary approval for the information submitted thus far for your pending purchase of Lot 15A at Cardwell Ranch. We think your project will be a wonderful part of the Development of Cardwell Ranch and we appreciate your diligent and conscientious approach to the Billings Community as a whole and our development in particular.

We have chosen Southern Ledgestone, Chardonnay as the preferred type of cultured stone for our monument signage. I hope this gives you the opportunity to see what our ideas are for the aesthetic direction of our vision. <https://www.culturedstone.com/products/southern-ledgestone#chardonnay>

I'll get the lighting specs forwarded to you as well.

Please feel free to reach out if we can be of further assistance.

Best,
Brenna



Southern Ledgestone - Cultured Stone

Cultured Stone Southern Ledgestone brings visual interest to structures with stone of various shapes in blends of natural colors. They can be tight-fitted or mortared to achieve a number of unique treatments. Great for outdoor accents and indoor touches.

www.culturedstone.com

*Brenna Yegen Weaver
Broker Associate
Peter Yegen, Jr. Inc.*

211 N. 30th Billings, MT 59101
406-252-0163 Extension 111

From: Brad Brown <Brad@stewardland.com>
Sent: Wednesday, April 13, 2022 4:18 PM
To: Sky Hazlehurst <Sky@stewardland.com>; Brenna Weaver <Brenna@pyegen.com>
Cc: 'Brian McDonald' <bmcDonald@naibusinessproperties.com>; Targee Tomisin <targee@stewardland.com>; Chris Haak <chaak@sandersonstewart.com>
Subject: RE: Cardwell Ranch

Brenna,

Attached are the architectural and civil site plans for your review. We have worked with local real estate agents, we have taken advice from the city staff, and we have done a market study for the area and this property specific. We feel like we have a product that is appropriate for the area and the market demands, and we also designed it to complement and not compete directly with the other project that is being done nearby. It is our understanding that we will need to get a height variance. We have hired Sanderson Stewart as the civil but also to be the boots on the ground and cover local meetings.

We are available between 11 and 2:30 on Monday or after 12 on Tuesday. Let me know which would work for everyone.

Also, I have never done one of these, could you give me an idea what to expect?

Thanks



Brad Brown Managing Partner
1708 E. 5550 S. STE 18 Ogden, UT 84403
O: 801.590.0980 **M:** 801.309.0399
StewardLand.com

From: Sky Hazlehurst <Sky@stewardland.com>
Sent: Wednesday, April 13, 2022 3:17 PM
To: Brenna@pyegen.com
Cc: Brad Brown <Brad@stewardland.com>; 'Brian McDonald' <bmcDonald@naibusinessproperties.com>; Targee Tomisin <targee@stewardland.com>
Subject: Cardwell Ranch

Brenna, hope all is well. We have been pressing our civil engineer (Sanderson Stewart) to schedule a DRC meeting for the last 2 or 3 weeks. I'm not sure if they have reached out to the appropriate person yet? We really need to get this meeting set before our DD deadline. That meeting will determine if we can let our DD deposit go non-refundable. Can you please get me in touch with the appropriate contact to make this DRC happen? Feel free to call or email my partner Brad, he will be presenting at the DRC. Thank you for the help! Brad is CCd here and his cell is 801.837.2020.



Sky Hazlehurst Managing Partner
1708 E. 5550 S. STE 18 Ogden, UT 84403
O: 801.590.0980 **M:** 801.837.2020
StewardLand.com

Off street Parking facts – Cardwell Ranch PD

Name	Location	Year constructed	Square ft of building GFA or number of DU	Number of off-street spaces	Number required – previous code	Number required – new code
Frontier Cancer Center	1315 Golden Valley Circle	2009	36,664 sf	160	1/200gfa = 182	1/350 gfa = 105
Icon Apt	Sweetgrass Dr	TBD	326 du	658 (96 garage spaces) 2.02/du	426 (1 /1bd unit; 1.5/=>2 bd unit) approximate	503 = 1.5/unit + 1 guest per 10 units
City Vineyard City Brew BodyRok	1335 Golden Valley Circle	2016	8,000 sf 1,290 sf 900 sf	78	80 Total = 106 17 9	54 Total = 70 13 3

Cardwell Ranch PD does not allow on-street spaces to “count” towards required off-street parking.

Off-street parking facts for surrounding established multi-family developments

Name	Location	Year constructed	Square ft of building GFA or number of DU	Number of off-street spaces	Number required – previous code	Number required – new code
Country Meadows Apt	1660 & 1550 Country Manor Blvd	1998/1999	132 du	228	175	212
Wheatbaker Apt	1550 41 st St W	2016	86 du	200	129	138
Rock Creek Apts	2323 32 nd St W	1977 & 1984	80 du	156	Unk	128
Boulder Apts	3031 Boulder Ave	1978	19 du	48	Unk	31
Mountain View Apts	3011 Boulder	2000	16 du	44	Unk	26

Board of Adjustment

Date: 07/06/2022
Title: Variance 1347 - 4143 Banbury Place - Build-to Zone
Presented by: Karen Husman
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

Planning staff is recommending conditional approval based on the findings of the variance criteria to increase the front build-to area to allow the front door and living area of a new residence to be more than 50 feet from the front property line in an N2 zone.

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

This is a variance request to allow the front door and living area of a new residence to be more than 50 feet from the front property line in an N2 zone, or in other words, allow the front facade or portions of the front facade of the structure to be constructed outside of the required build-to zone per BMCC 27-300.4.A.3, on Lot 17A of Block 1, Legends West Subdivision, a 7,150 sf parcel of land generally located at 4143 Banbury Place. The purpose of the variance is to allow a new residence to comply with the clear vision area at an uncontrolled permanent T intersection of Banbury Place and Legends Way. While the front door and living area may be more than 50 feet from the property line, the code technically addresses the front facade and not specifically the front door. The N2 zone district site and structure standards require the entire front facade of a new structure be within the required build-to zone from the front property line. The build-to zone is a range for the N2 zone district between 10 feet and 20 feet behind the front property line. This requirement also allows an in-fill lot to match the block face average of existing dwelling front setbacks so that new structures can fit into an existing neighborhood. The subject property is on a corner lot adjacent to other structures developed that would not allow the proposed structure to meet the block face averaging allowance within the code. The request is to allow the front facade, not including the garage, to be setback from the property line no more than 52 feet.

The new zoning regulations 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 an 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. There are other properties within the district that have been developed to the previous setback requirements.

Planning staff is recommending conditional approval based on the proposed findings of the variance criteria.

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.

SUMMARY

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.

Applicant: There are no special circumstance with this parcel that does not apply to other parcels in the area. The parcel is

a corner lot and the Build to zoning will force us to have a larger less desirable Side yard facing a busier street. This is the last parcel to be developed in the Legends West Subd. and the Homebuilder's Association owns it for the benefit of the Student Built program, a partnership between the Association and School District 2. This is our 47th Career Center home. Our goal is to maintain the continuity of the neighborhood and to build Student friendly homes that have an attainable price point.

Staff: Staff agrees with the applicant. This is the last parcel within this subdivision to be developed. The subdivision consists of dwellings built prior to the new zoning code. Some dwellings meet the new site and structure requirements and some do not. The previous zoning code had a minimum front setback of 20 feet but no maximum. Many of the parcels have homes that are built to the previous setback requirements. This is a corner lot and the building design plans that were purchased for the parcel were chosen to accommodate an incorrect clear vision area assumed for the uncontrolled intersection. The intersection is a permanent "T" uncontrolled intersection and is less restrictive than what was considered when the owners chose the building design.

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.

Applicant: Many (over 50%) of homes in this area have the Front door set back farther as N3 zoning would allow us to have a larger Front yard facing a less traveled Dead end street (Banbury) as opposed to a side yard that would face a busier through street. (Legends Way) 4171& 4154 Banbury 135, 155, 185, and 191 Legends Way to name a few in very close proximity.

Staff: This is the first variance requested from the new build-to requirement for the N2 zone district. The previous zoning required minimum setbacks. There is no applicable or similar zoning variance history for this application. The majority of the homes built in this subdivision are not in compliance with the current regulation for "build to" zone, primarily because the garage door portion of the front facade is much closer to the street than the living portion of the dwelling. These homes were constructed under the previous code for minimum setback of 20 feet from the front property line and 10 on the side adjacent to street for corner lots. Denial of the variance would deny this applicant rights commonly enjoyed by other parcels in the same area. An analysis of the Build-to zone averaging that is allowed in the new N2 zone district would require a build-to zone placement of 32 feet as the maximum from the front property line. The build-to zone averaging takes the existing setbacks of the two dwellings on either side of the subject lot and averages those setbacks together to determine the required build-to zone. Since the subject property is a corner lot, only two lots (west) are available for averaging the front build-to zone. The dwelling at 4157 Banbury is setback a maximum of 34 feet (to the front door) and 4171 Banbury Place is setback a maximum of 38 feet, the build-to zone average for this lot would be 36 feet. While the garage doors are setback at 20 feet, the living space and front door are setback more than 50 feet from the front property line.

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.

Applicant: Many (over 50%) of homes in this area have the Front door set back farther as N3 zoning would allow this and would also allow us to have a larger Front yard facing a less traveled Dead end street (Banbury) as opposed to a side yard that would face a busier through street. (Legends Way) 4171& 4154 Banbury 135, 155, 185, and 191 Legends Way to name a few in very close proximity. Granting this Variance will not give any special Privilege to the property.

Staff: This is the last parcel within this subdivision to be developed, the subdivision consists of dwellings built prior to Recode and many of the parcels have homes that are built to the previous setback requirements. The majority of the homes built in this subdivision are not in compliance with the current regulation for "build to" zone. These dwellings were constructed under the previous code for minimum setback of 20 feet from the front property line and 10 on the side adjacent to street for corner lots. 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.

Applicant: Many (over 50%) of homes in this area have the Front door set back farther as N3 zoning would allow this would also allow us to have a larger Front yard facing a less traveled Dead end street (Banbury) as opposed to a side yard that would face a busier through street. (Legends Way) 4171& 4154 Banbury 135, 155, 185, and 191 Legends Way to name a few in very close proximity. Granting this Variance will not give any special Privilege to the property, this Home will match others within the Neighborhood.

Staff: The proposed site plan is similar to many of the developed parcels within this subdivision. This is the first variance requested from the new build-to requirement for the N2 zone district. The previous zoning required minimum setbacks. The proposed variance is in harmony with the growth policy.

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 build-to zone variance is limited to Lot 17A, Block 1, Legends West Subdivision, generally located at 4143 Banbury Place.
2. The variance is from Section 27-305 (Table 27-300.4) requiring a build-to zone range of 10 feet to 20 feet from the front property line to allow the door of the living area of the new residence to be more than 50 feet from the front property line in an N2 district. No other variance is intended or implied.
3. The structure will be built in substantial conformance to the drawings submitted with this variance request.
4. Construction activity will not occur prior to 7 am or after 8 pm daily.
5. The applicant/developer shall apply for a building permit within 6 months of Board approval and complete the development within 1 year of Board approval.
6. Failure to begin or complete the project according to the time periods within this approval will void the variance.
7. The applicant shall meet all other city code requirements for the proposed single family home, with the exception of 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.

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 6-month period to apply for a building permit and 1 year 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 N2 zone district.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan

Zoning Map & Site Photos

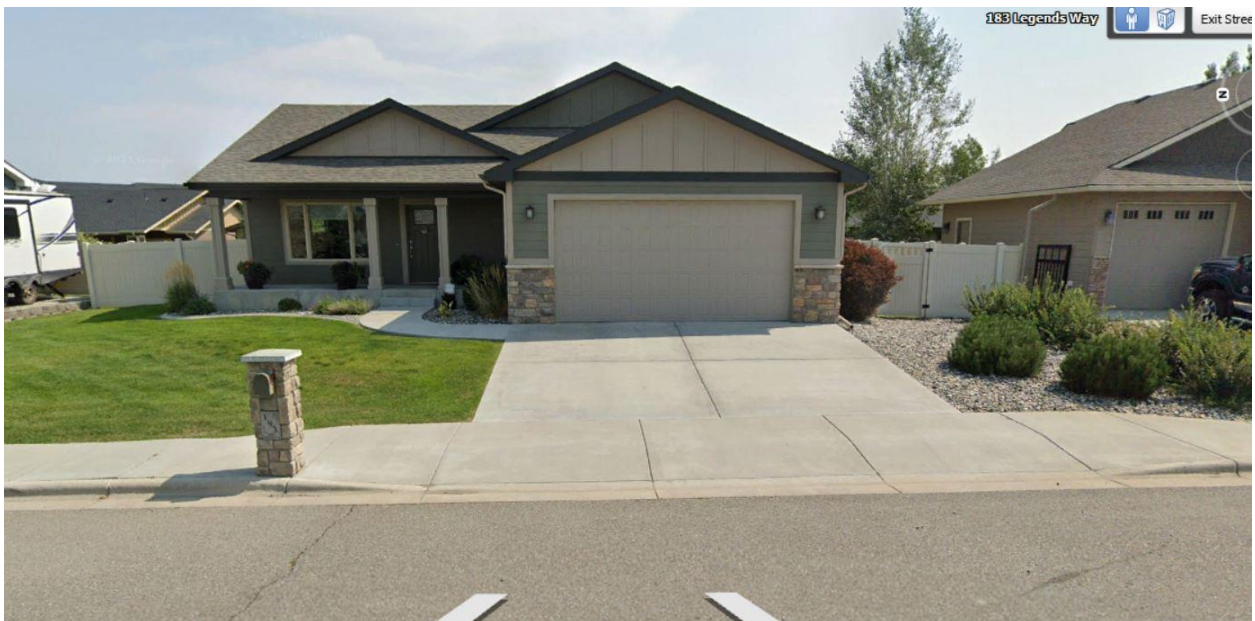




South across Banbury



Looking west of the property



East



North

CITY VARIANCE

APPLICATION FORM

ID: Billings Variance # 1347 - Project # PZX-22-00137

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 # A30450 CITY ELECTION WARD # 5Legal Description of Property: LEGENDS WEST SUB. LOT 17A
BLOCK 1

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

4143 BANBURY PLACEZoning Classification: N2- MID CENTURY NEIGHBORHOODSize of Parcel (Area & Dimensions): 7,150 S.F. (PLAT INCLUDEDCovenants or Deed Restrictions on Property: Yes X No _____

If yes, please attach to application

Variance(s) Requested: N3- SUBURBAN NEIGHBORHOOD
"BUILD-TO VARIANCE" RESIDENTIALFacts of Hardship: (attach letter) ATTACHED

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

Owner(s): HOMEBUILDERS ASSOCIATION OF BILLINGS(Recorded Owner) 1645 AVENUE D #F BILLINGS, MT.(Address) (406) 252-7533 59102

(Phone Number) (email)

Agent(s): MYLES M. EGAN(Name) 1550 POLY DR. BILLINGS, MT. 59102(Address) (406) 855-0008 myles@floborg.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: 6-1-2022

(Recorded Owner)

Date Stamp



BERKSHIRE HATHAWAY
HomeServices
Floberg Real Estate

City Of Billings
Board of Adjustments

Ladies & Gentlemen

The Billings Homebuilder's Association and School District 2 respectfully request of you to allow this Variance request to permit the 2022/2023 Career Center home 4733 Banbury Place to be constructed on Lot 17A Block 1 Legends West Subdivision. The plans are included in these documents for your review.

This lot is the last lot in Legends West that the Homebuilder's Association owns for the benefit of the Student Built program, a partnership between the Association and School District 2, which has been very successful for 46 years. This is our 47th Career Center home. Our goal is to maintain the continuity of the neighborhood and to build Student friendly homes that have an attainable price point.

Keeping in mind the safety of the students, we are limited to 1-level Ranchers with basements and can never consider 2-story plans which would put the kids at risk.

In closing, we again respectfully ask that you folks approve this variance which will allow the program to build another wonderful Student build Career Center home.

Best Regard

Myles M. Egan

Real Estate Broker

Berkshire Hathaway Floberg

Life Director of the Billings HBA

Husman, Karen

From: joebonini@charter.net
Sent: Thursday, June 23, 2022 5:07 AM
To: myles@floberg.com
Cc: Husman, Karen
Subject: [EXTERNAL] RE: 4143 Banbury

- 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;
Yes being a corner lot the Build to zoning will force us to have a larger less desirable Side yard facing a busier street.
- 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;
Yes Many (over 50%) of homes in this area have the Front door set back farther as N3 zoning would allow this would also allow us to have a larger Front yard facing a less traveled Dead end street (Banbury) as opposed to a side yard that would face a busier through street. (Legends Way) 4171& 4154 Banbury 135, 155, 185, and 191 legends way to name a few in very close proximity.
- 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;
NO granting this Variance will not give 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;
Yes this Home will match others within the Neighborhood

Board of Adjustment

Date: 07/06/2022
Title: City Variance 1348 - Steady Grinding Coffee Temporary Use Structure
Presented by: Erin Keith, Planner 1
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

Planning staff has reviewed this application and recommends the Board of Adjustment hold a public hearing and conditionally approve the variance based on the determinations for review provided within this report.

REQUEST

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 160 square feet on Lot 4, Block 1 of North Pointe Subdivision and Lot 5, Block 1 of Bergquist Subdivision, a 9.29 acre parcel of land generally located at 2376 Main Street. The purpose of the variance is to allow an existing 160 square foot kiosk to remain on the site.

APPLICATION DATA

OWNER: Golini Real Estate LLC,
AGENT: KC Johnson, Steady Grinding Coffee. Kiosk owner, leases the parking lot space from the parcel owner.
PURPOSE: Increase the maximum allowed Group 3 Temporary Use structure size on this lot.
LEGAL DESCRIPTION: Lot 4, Block 1 of North Pointe Subdivision and Lot 5, Block 1 of Bergquist Subdivision
ADDRESS: 2376 Main St, Billings, MT 59105
SIZE OF PARCEL: 9.29 acres
ZONING: Heavy Commercial (CX)
EXISTING LAND USE: All American Pharmaceutical, a strip mall and the coffee kiosk
PROPOSED LAND USE: No change

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

- A variance was conditionally approved in March 2022 for a 160 sq ft kiosk for a Mountain Mudd Coffee located at 16 Shiloh Rd.
- A variance was conditionally approved in May 2022 for a 150 sq ft kiosk, and two 200 sq ft kiosks for Classy N' Sassy Coffee at 1221 6th Ave N, 1508 Main St and 1313 Broadwater Ave.

SURROUNDING ZONING & LAND USE

NORTH: Zoning: CX
Land Use: Vacant
SOUTH: Zoning: CMU1
Land Use: Vacant
EAST: Zoning: CMU1
Land Use: Vacant
WEST: Zoning: CMU1
Land Use: Gas Station

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 were 5 existing temporary use structures (kiosks) that exceed the maximum allowed floor area requirement of 120 square feet within the City Limits. 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. Four of those oversized kiosks were granted conditional approval variances; one in March 2022 and three in May 2022. The current application is for the last one of the 5 noncompliant temporary uses throughout the City.

Per the Zoning Code, this oversized structure is considered to be in non-compliance and for it to come into compliance without a variance it would mean either (1) replacing the kiosk with a smaller structure 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 kiosk with smaller building after they were already approved for use and currently in operation, would be cost prohibitive for the applicant. In addition, following discussions with Planning Staff, Building Division and Public Works Engineering, it was determined that it would be very difficult or most likely even impossible to issue building permits after a kiosk has been constructed and in-use.

The purpose of this variance is to allow the existing kiosk, which is 160 square feet in size, a Group 3 temporary use structure, at the described location to be larger than the maximum allowed floor area of 120 square feet.

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, this temporary use structure is only one of five temporary use structures within the City limits that have been erroneously approved by the Planning Division in the past.

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 five 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;

There has been two prior applications for a variance from the maximum allowed size for a Group 3 Temporary Use structure, which were both conditionally approved earlier in 2022. This variance, if granted, would be a one-time allowance for the continued use of the 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 drive-thru coffee business from this location only.

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 are 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 structures from 120 square feet to 160 square feet (33% increase). No other variance is intended or implied with this approval.
2. The variance is limited the existing kiosk only, currently located on the parcels described above, 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 for each site, 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 structures are fully constructed, in-use and have been approved for temporary use by the Planning Division, 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 CX (Heavy Commercial) Zoning District.

Attachments

Variance Application Signed
Variance Letter
Site Plan
Zoning Maps & Site Photos

CITY VARIANCE**APPLICATION FORM**ID: Billings Variance # 1348- Project # P2x 22 - 00136

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 # C11832 CITY ELECTION WARD # 2Legal Description of Property: North-Pointe Square B1 / Lot 4
Berquist B1, Lot 5

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

8376 Main StreetZoning Classification: CMU CXSize of Parcel (Area & Dimensions): 9.29 acresCovenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: Size of Temporary Kiosk for steady
grinding coffee house 160 SF

Facts of Hardship: (attach letter) _____

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

Owner(s): Jeff Golin

(Recorded Owner)

8376 Main Street(Address) 406-671-8332

(Phone Number) _____ (email) _____

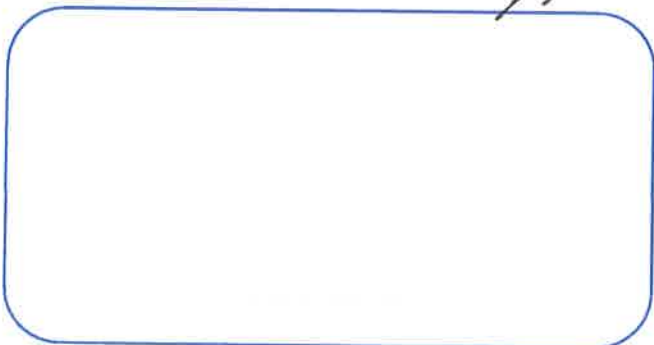
Agent(s): KC Johnson(Name) 8376 Main Street(Address) 406-839-4895 KCJ906@gmail.com

(Phone Number) _____ (email) _____

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

Signature: KC Johnson Date: 06/01/22

(Recorded Owner)



Steady Grinding Coffee House Request For Variance

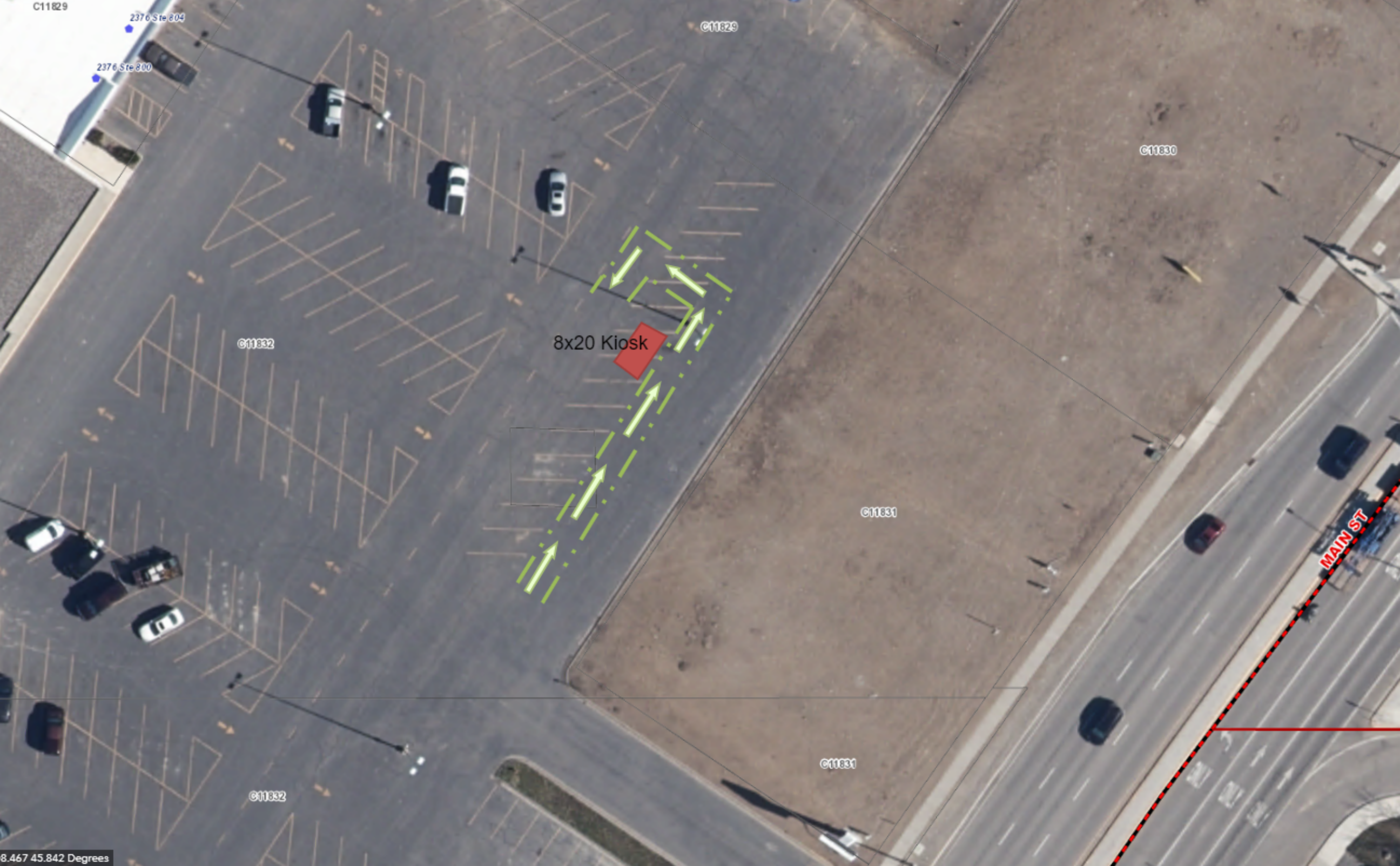
Hello, my name is KC Johnson. I am the owner of steady grinding coffee house. I am just a small time first time business owner. I am not fancy whatsoever and have no idea how to write a proper letter, but I'm going to give it my best shot. I'm writing you this letter asking for a variance request of our heights location. When we originally bought this kiosk it was already approved, since then we have had to get another temporary use permit which was also approved. The parking lot of which we are located will not be expecting any construction in the future, and without our kiosk being there it will be an empty area. Our customer base drives from everywhere to have our coffee and to experience our customer service. We also hold and help out with a lot of events, benefits, and fundraisers in the shared lot behind us. We do everything we can to give back to the people of our community. We've even found sponsors to help provide a free coffee day all day long for 9/11.

Thank you for your consideration.

KC Johnson

406-839-4895

Steadygrindingcoffee@outlook.com



Kiosk looking WEST



Looking Southeast across Main St



Looking Northeast



Looking South in the Drive-Up Area

