

CITY BOARD OF ADJUSTMENT
MINUTES March 1, 2023

Name	Title	2023												
		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	
David Mitchell	Member	1	E	-	-	-	-	-	-	-	-	-	-	
Dave Hagstrom	Member	1	1	1										
George Warmer	Member	E	1	1										
Jeff Bollman	Vice Chair	1	1	E										
Oscar Heinrich	Chair	Z	1	1										
Chris Hayes	Member	1	E	1										
Josh Sayer	Member	1	1	1										
TOTAL NUMBER OF APPLICATIONS 2023														
		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	TOTAL
Variance		1	4	3										8

* Returning variance

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

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

Attending: Bryan Gentry, Jeff Wollschlager, Taylor Kasperick

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.

Approval of Meeting Minutes

Meeting minutes for February 1, 2023 are delayed.

Disclosure of Exparte Communications: None

Disclosure of Site Visits: Hayes - 1360 & 1361. Warmer – 1360 & 1361. Heinrich – all. Hagstrom – 1362. Sayer – None.

Disclosure of Conflict of Interest: Warmer recusing himself from Variance 1361.

Public Hearings

City Variance 1360 – 4825 Midland Rd - Maximum Build-to Range, Minimum Front Lot Line Coverage, Location of Surface Parking, Window and Door Coverage on the Ground Story Front Façade – A variance request from Section 27-406, Table 27-400-3. A3 (Minimum Front Lot Line Coverage), A4 (Maximum Front Build-to Zone), B8 (Surface Parking Yard Location) and D16 (Window and Door Coverage on Ground Story Façade), in a CMU2 zone, on Lot 2A, Block 1, Billings Operations Center Subdivision, a .78 acre parcel of land. The variance would allow a greater building setback and reduce building façade requirements to accommodate a new commercial structure and the Suburban Ditch easement that crosses the street frontage of the parcel. Karen Husman, Planner I, presenting.

Recommendation:

Planning staff recommends conditional approval of the variance request from Section 27-406, Table 27-400-3. A3 (Minimum Front Lot Line Coverage), A4 (Maximum Front Build-to Zone), B8 (Surface Parking Yard Location) and denial of a variance from D16 (Window and Door Coverage on Ground Story Façade) and adoption of the recommended findings of the review criteria for Variance 1360.

1) That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district.

The property is subject to physical constraints including a 30-foot ditch easement that runs through the south of the property, and a utility easement and a gas line easement on the south 11 feet of the parcel. In addition to the easements on the parcel the shape of the lot limits the ability to have adequate vehicular access and parking to the rear of the property as well as restrict the location of the building from the front lot line coverage to at least 90 feet from the front property line. The width to the south along Midland is approximately 178 feet of frontage along the ROW and narrows to about 59 feet wide on the north side (rear of the parcel). The property is adjacent to the interstate off ramp to the north, and has access to Midland Road to the south, however, the proposal is to provide access from the parcel to the east with an access easement/agreement with the adjacent property in an effort to provide the required parking. These are conditions that are peculiar to this location. There are no circumstances that would prevent the building from being designed with the required 65% of window and door coverage on the front facade of the building.

2) That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district. There are several buildings in the area that have conformed to the zoning standards for the placement of parking, but these uses and tracts were not subject to the same physical constraints as this parcel and, except for the vacant parcel the west, were developed under the old code and so were not required to develop like new projects. The developed properties in proximity to the subject parcel have also been developed with parking in the front and side yards, and structures not close to the front property line as required under the CMU2 district. There are properties on the S Frontage Road corridor that have large front yard parking lots including Hogan Crane and Transport (3716 S Frontage Rd), Intermountain Distributing at (1010 Intermountain St), and the I-State Truck Center at (4600 S Frontage Road-also CMU2). Two previous variances in the CMU zone districts for new development restricted by easements or other restrictions have been approved that allowed buildings behind the maximum build-to range. In addition, the

variance approved for the Costco Warehouse in 2022 is an example of similar variance request to allow front yard parking, but on a much larger scale of development. Specific to the Doors/Windows requirement, there are other developed properties in the area that have less than the required front facade of window and door coverage, these properties were developed under the old code and if they were redeveloped or modified, there are rules in place under the code that allow specific relief from adherence to the current code depending on the extent of the redevelopment. Other than the other developed parcels in the area with less than the current code requirements for front facade design the literal interpretation of this chapter would not deprive the applicant of rights enjoyed by other tracts, there are no circumstances that would prevent the building from being designed with the required window and door coverage on the front facade of the building. This is an undeveloped parcel and the provisions of the code were developed to promote an aesthetically pleasing facade and promote design features to beautify the commercial developments.

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. Similar to the finding for criteria 2 above, the granting of this variance may not confer a special privilege on the applicant due to the existing developments in the area. In addition, there have been variances approved for parcels in CMU zones with similar hardships. There is existing developments in the area built under the previous code. Although this parcel is a CMU2 zoned parcel, the restrictions are similar, but on a much smaller scale than the previous approved variances in the CX zone districts. Another example of similar development approved with a variance occurred in March of 2022. The City Council approved a special review for an auto repair center on Shiloh Crossing Blvd in the CMU2 zone that included a variance approval for relief from the front lot line building coverage. The Board granted variances for new development on Blue Creek Road and King Ave West to accommodate restrictions to property in the CMU zone district. Specific to the doors/windows requirement, there are other developed properties in the area that have less than the required front facade of building and door coverage, these properties were developed under the old code and if they were redeveloped or modified, there are rules in place under the code to address these cases depending on the extent of the redevelopment. Approval of a variance for less than the required window and door coverage on the front facade would confer on the applicant a special privilege under the new code. This is an undeveloped parcel and the provisions of the code were developed to promote and aesthetically pleasing facade and promote design features to beautify the commercial developments.

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 Policy. The 2016 Growth Policy and the 2021 Zoning Code adopted to further the Growth Policy goals, are intended to curtail the out-of-date development style of placing all new commercial development behind a sea of parking stalls. Approval of this variance with the provision of parking stalls along the front of the property, with a reciprocal access easement and agreement with the property owners to the east, will be in harmony with the general purposes and intent of the Growth Policy and zoning code. The appearance of the structure itself will be the most prominent feature from the right of way and a variance from the required window and door covering would not be harmony with the general purpose of the zoning code and the Growth Policy. As addressed in items 2 and 3 above, the zoning code was designed to address the Growth Policy intentions to promote aesthetically pleasing building facades in the commercial districts. Beautification of entryways and commercial districts is preferred under the Growth Policy. Section 27-1627.E

Recommended Conditions:

In granting any variance, the Board 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;

Staff is recommending conditions for the approval of this variance request.

1. The variance is to allow variance request from Section 27-406, Table 27-400-3. A3 (Minimum Front Lot Line Coverage), A4 (Maximum Front Build-to Zone), B8 (Surface Parking Yard Location), in a CMU2 zone, as depicted on the submitted site plan for the new building. No other variance is intended or implied.

2. The variance from D16 (Window and Door Coverage on Ground Story Façade) is not approved with this variance and the design of the submitted elevation must be modified to meet the 65% window and door coverage requirements under the CMU2 zone district.
3. The variance is limited to Lot 2A, Block 1, Billings Operations Center Subdivision, generally located at 4825 Midland Road.
4. The structure will be built in substantial conformance to the drawings submitted with this variance request, except for condition 2 above concerning window and door coverage on the front facade. Minor modifications to the location of the proposed structures and other site improvement as shown on the submitted site plans is allowed.
5. The applicant will complete the building permit process within 1 year of Board approval and complete the project within 3 years of Board approval.
6. The applicant will install two street trees in the area between the row of parking stalls at the south edge of the property and the city sidewalk on Midland Road. Trees will be chosen that are listed as recommended for boulevards on the City of Billings tree list.
7. All other zoning regulations, except for these specific variances, and any other applicable city regulations apply to the development of the site.
8. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
9. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease-holders, heirs and assigns.

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

Staff is recommending conditions of approval that include time limits to begin and complete the project. Specifically, the recommendation is that the applicant will complete the building permit process within 1 year of Board approval and complete the project within 3 years of Board approval.

4) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this zoning code in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other properties in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district. Offices are allowed uses in the CMU2 zone.

Questions for staff:

Board member Sayer about the 65% front elevation

Board member Hayes asked how this is different from the CMU to the east

Board member Warmer asked about the windows

Public Hearing opened at 6:18PM

Applicant: Bryan Gentry, non given

Questions for Applicant:

In Favor: None

Opposed: None

Public Hearing closed at 6:27 PM

Discussion: None

Motion

Board Member Sayer made a motion and Board Member Hagstrom seconded the motion to approve the **City Variance 1360 with staff conditions and recommendations.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
	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 1360 passed with a 5-0 vote.

Public Hearings

City Variance 1361 – Angel Oak Lane, The Timbers Sub – Attached Garage Location Entry – A variance from Section 27-307, Table 27-300.6, A11 (Attached Garage Location and Entrance) to allow attached garage space in the front half of structures and allow the garage entrance to face the street frontage, in a Mixed Residential 1 (NX1) zone, on Lots 1 through 27 of Block 1, The Timbers Subdivision (final plat pending). The total area affected is 4.9 acres of land. Karen Husman, Planner I, presenting.

Recommendation:

Planning staff recommends denial of Variance 1361 and adoption of the findings of the review criteria.

Section 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. The subject property does not have unique topographic features or circumstances that are relevant in the review of this variance request, however, there may be some design features of the subdivision that creates limitations for rear access. The subdivision in which these lots are located, is being developed in whole without an alley system. Being a new subdivision there are options for rear or side entry garages, but whether it is a private drive or alley, the size and layout of the lots, coupled with the layout of the proposed buildings would make it difficult to provide rear loading garages. There are other layout options and building designs that would work for these lots. Redesign of the proposed buildings and layout on the lots is a preferred option in this

situation given the applicant designed the lots after the adoption of the zoning code and has created a self-imposed hardship.

2) That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district. The subdivision in which these lots are located is a new development and the lots are currently pending final subdivision approval as designed under the Timbers Subdivision. Denying this variance request would not prevent the lots from being developed under the current zoning regulations, there are other building designs and layout options to use. The building designs can be modified at this point in development in order to conform to the code requirements. The subdivision has not been developed at this point and would not deprive rights enjoyed by other tracts in the same district in this subdivision. The BOA has approved one other variance recently for garage entry location. However, that was for one parcel and was in an already developed subdivision that was not only developed under the old code, but the entire subdivision was developed with front loading garages.

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. Similar to criteria two, the lots within the subdivision are now subject to the new zoning requirements, front load garages are not allowed in the NX1 zone district. Any development would need to be in conformance with the district requirements set forth within the PND. The granting of this variance will confer a special privilege since there are no other developed parcels in the subdivision. The applicants building and layout design can be modified to comply with the zone district requirements.

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 Policy. Granting of this variance application is most compatible with the following goals of the 2016 Growth Policy:

Strong Neighborhoods:

Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels

Neighborhoods that are safe and attractive and provide essential services are much desired

Home Base:

A mix of housing types that meet the needs of a diverse population is important

The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development

Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe. Allowing continued investment in residential property supports a use that is compatible with the neighborhood.

Granting this variance for the location of a garage is not in harmony with the general purpose and intent of the Zoning Regulations. The primary reason they chose the NX1 zone is because the Planned Neighborhood Development regulations

1) do not allow N zones to have frontage on arterial streets and 2) for a PND over 40 acres at least 1 acre of NX zone is

required. (Section 27-802.B.2(d), and Section 27-802.E.3(b)).

The PND requires a mix of zoning in new subdivisions that are to enhance development of properties that are annexed into the City of Billings. These development standards are in place to bring a mix of housing types that meet the needs of the city's growing population and give Billings more diverse housing options that are aesthetically pleasing and encourage more walkable communities. Granting this variance would not be desirable as it goes against the purpose of the PND and the NX1 design standards and against the Growth Policy that encourages development without garage dominated homes in new developments.

Section 27-1627.E

Recommended Conditions: If the Board has findings to approve.

In granting any variance, the Board 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; Although staff is recommending denial of the variance, if the BOA chooses to approve the variance, Staff recommends the following conditions;

1. This approval is to allow the garage entrance to face the street frontage on lots 1-27, in The Timbers Subdivision (final plat pending). No other variance is intended or implied.
2. The variance is limited to lots 1-27, in The Timbers Subdivision (final plat pending).
3. The applicant will apply for and receive approval for the first building permit within 1 year and complete construction on the first dwelling within 3 years of BOA approval. Failure to meet the time limits of this condition will

void the variance. All remaining lots will have completed construction within 7 years of BOA approval. Failure to construct within this time frame will require a new application and action from the BOA.

4. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
5. Development of the parcels shall be in substantial conformance to the submitted site plans, minor modifications are allowed.
6. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns.

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.

If the Board chooses to approve the variance, staff is recommending the applicant receive approval for a first building permit within one year and complete construction on the first dwelling within three years of BOA approval. Staff is also recommending all dwellings on all lots be completed within 7 years of BOA approval. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this zoning code in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other properties in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district. Residential dwellings are allowed uses in this zone district.

Questions for staff:

Chair Heinrich asked if this plat has been approved yet. NO

Staff explained there may be future text amendments to the code for front loading garages. Nobody plats alleys now. The code may change.

Public Hearing opened at 6:38 PM

Applicant: Jeff Wollschlager

Stated the lots are not wide enough for rear entry.

Questions for Applicant:

These are single family residences in a PND zoning. Rear entry must be platted for, this was not done.

In Favor: None

Opposed: None

Public Hearing closed at 6:55 PM

Discussion:

The applicant was asked if he wished to delay.

Motion

Board Member Hagstrom made a motion and Board Member Sayer seconded the motion to delay for 30 days City Variance 1361.

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

The motion to delay City Variance 1361 passed with a 4-0 vote.

City Variance 1362 – 807 Bench Blvd – Maximum Build-to Range, Minimum Front Lot Line Coverage – A variance request from Section 27-406, Table 27-400-3, A3 (Minimum Front Lot Line Coverage), and A4 (Maximum Front Build-to Zone), in a CMU2 zone, for proposed Lot 3A1 of Brittain Acres, a 1.869 acre parcel of land. The variance would allow a greater setback than the maximum allowed and less than the minimum front lot line coverage to accommodate a new commercial structure and a sewer line easement that crosses the street frontage of the parcel.

Recommendation:

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

1) That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district.

The property is subject to physical constraints of a 10 foot wide sewer service easement located about 27 feet from the property line adjacent to Yellowstone River Road that will be the front property line for this parcel. The location of this easement makes developing on this parcel difficult under the constraints of the CMU2 site development restrictions.

2) That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district. The subdivision in which this lot is located was developed prior to the adoption of the new zoning districts that require a specific build to zone and 50% front lot line coverage. In other words, the existing structures in the area, specifically the adjacent lots to the east and west, developed under

old zoning ordinances and were not subject to the location requirements of the currently adopted code. If existing lots were to be re-developed they would need to conform to the same location and building siting requirement of the currently adopted code and the same requirement in which this application seeks to vary from. In order to meet the build to and 50% lot line coverage, they would have to build over the existing sewer easement which is not recommended due to access needed to the easement. Denying this variance request would prevent this lot from enjoying the same benefit and would create an unusual development pattern not commonly seen in the area, the area surrounding was developed prior to the new code restrictions. This parcel is considered an infill parcel and development is encouraged under the code and the Growth policy.

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.

Similar to criteria two, the lots in this area are now subject to the new zoning district requirements, but because they were developed prior to adoption of the new zoning code, there are parcels developed similar to the proposed plan for this parcel.

Any redevelopment would need to be in conformance with the new district requirements. The granting of this variance will not confer a special privilege since there are other similar developed parcels in the vicinity of this property. The lot is an infill parcel not developed before the adoption of Project Re:Code. The applicants design conforms to the existing development pattern specifically the adjacent commercial parcel to the east and the residential parcels west along Bench Blvd., but also others in this area of the Billings Heights. The granting of this variance does not create a compatibility issue with the existing development pattern in this area.

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 Policy. The 2016 Growth Policy and the 2021 Zoning Code adopted to further the Growth Policy goals, are intended to curtail the out-of-date development style of placing all new commercial development behind a sea of parking stalls. The application is supported by the City Growth Policy guidelines and the Infill Policy (2011). The Growth Policy guidelines support new developments that support existing investments in infrastructure, stabilize and grow the city's tax base. The zoning regulations were also adopted to recognize that not all regulations can apply everywhere in all circumstances especially when geography and topography and other lot specific restrictions create hardships. The intent of the zoning regulations is also to recognize when these site hardships occur and to grant variances from strict adherence to the code requirements.

Recommended Conditions:

Planning staff recommends the following conditions:

1. This approval is to allow a variance request from Section 27-406, Table 27-400-3, A3 (Minimum Front Lot Line Coverage) to allow less than 50% front lot line coverage, and A4 (Maximum Front Build-to Zone) to allow a maximum setback of 40 feet from the front property line on Yellowstone River Road, in a CMU2 zone. No other variance is intended or implied.
2. The variance is limited to the proposed Lot 3A1 of Brittain Acres.
3. The applicant will apply for and receive approval for a building permit within 1 year and complete construction within 3 years of BOA approval. Failure to meet the time limits of this condition will void the variance.
4. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
5. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
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.

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

Staff is recommending the applicant receive approval for a building permit within one year and complete construction within three years of BOA approval.

Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this zoning code in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other properties in the district. The granting of this variance would not allow a use that is not allowed in the zoning district. Specific uses as stated under the CMU2 zone district per BMCC 27-1000 are permitted, uses not listed within the district parameters will be allowed.

Questions for staff:

Public Hearing opened at 7:05 PM

Applicant: Taylor Kasperick, agent, PEC

The intention is for a coffee shop and evening brewery.

Questions for Applicant:

In Favor: None

Opposed: None

Public Hearing closed at 7:10 PM

Discussion - None

Motion

Board Member Hayes made a motion and Board Member Warmer seconded the motion to approve the **City Variance 1358 with staff conditions and recommendations.**

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

The motion to approve City Variance 1362 passed with a 5-0 vote.

Other Business: The board needs a new member. Next month is 3 variances and an appeal.

ADJOURNMENT: The meeting adjourned at 7:13 PM.

ATTEST: APPROVED by a motion April 5, 2023.

Robbin Bartley, Administrative Assistant.