CITY OF Billings

CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, April 5, 2023, 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

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://tinyurl.com/yckr478k

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 February 1 and March 1, 2023.

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:

A. Opening of public hearings.

B. Reading of rules for the procedure by which the public hearings will be conducted.

C. Reading of notices of the public hearings on the following items:

Public Hearings:

a. **Return Item - 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.

b. **Appeal 23-01 -- 918 Howard Avenue -- Appeal the Determination that corrugated steel is not a commonly used fence material and the structure in question is not a fence --** The Zoning Coordinator, in cooperation with the Code Enforcement Division made the determination that corrugated steel is not a commonly used fence material in a residential zone is relation to the fence re-constructed at 918 Howard Avenue (BMCC Section 27-1209.E.1). The property owner now appeals such determination. The property is legally described as Lots 37 & 38, Block 18 of Broadwater Subdivision and is zoned N1-First Neighborhood. Tax ID: A03641

c. **City Variance 1363 -- 636 Key City Drive -- Residential use on the ground floor in the front 30 feet in a re-built --** A variance request from Section 27-1002, and Table 27-1000.1 requiring any residential use in a CMU1 zone district be located at least 30 feet behind the front facade, on the East ½ of Lot 10, Block 1 Key City Subdivision, a 9,618 sf parcel of land. The variance would allow the owner to re-build a severely damaged residential structure without building a mixed use structure.

d. **City Variance 1364 -- 315 Cody Circle -- Rear Yard Location, Rear Setback, Building Height, and Minimum Separation from Principal Structure --** A variance from Section 27-305, Table 27-300.4 -- A.7 (Rear Yard Location for Accessory Building), A.8 (Minimum Rear Setback of 3 feet), B.13 (Height of Accessory Structure), and Section 27-1803 (Detached accessory structure Requires 6-foot minimum separation) in an N2 zone district on Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land. If approved, the variance will allow an existing detached accessory to remain in place.

e. **City Variance 1365 -- 6410/6412 Southern Bluffs Lane -- Location of Garage and Garage Entry** -- A variance from Section 27-308, Table 27-300.7 -- A.11 (Attached garage location and garage entry location) in an NX2 zone district to allow an attached garage in the front half of the proposed structure and a street front garage entry, on Lot 6, Block 1, Falcon Ridge Estates, 2nd Filing on an 11,402 sf parcel of land.

Other Business/Announcements

Adjournment

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 or bartleyr@billingsmt.gov before 1:00 PM on April 5, 2023.** All emails received prior to this time will become part of the record for the public hearing.

Additional information on this application is available on-line at

https://www.billingsmt.gov/2361/Current-Zoning-Applications or in the Planning Offices at 2825 3rd Ave N -- 4th Floor.

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: 04/05/2023

Information

Subject
The minutes of the Board meeting of February 1 and March 1, 2023.

Attachments

BBOA_2023_0201
BBOA_2023_0301

Name	Title	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										
George Warmer	Member	E	1										
Jeff Bollman	Vice Chair	1	1										
Oscar Heinrich	Chair	Z	1										
Chris Hayes	Member	1	E										
Josh Sayer	Member	1	1										

TOTAL NUMBER OF APPLICATIONS 2022	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**											**5**

* 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: Wyeth Friday, Chris Kukulski, Dennis Randall, Kari Kraske, Jason Fitzgerald, Lilly Corning, Maria Purcell, Tyson Bunch, Taylor Kasperick, Sara Nelson,

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.

City Administrator, Chris Kukulski, addressed the Board regarding the need for a text amendment in the new sign code restrictions. One of the variance requests to be heard is a first of its kind and sparking the investigation into some long-term solutions.

Approval of Meeting Minutes

Meeting minutes for December 7, 2022, Board member Warmer motioned for approval and seconded by Board member Sayer, unanimously approved.
Meeting minutes for January 4, 2023, Board member Warmer motioned for approval and seconded by Board member Hagstrom, unanimously approved.

Disclosure of Exparte Communications: Board member Warmer disclosed he knows Lilly Corning.
Disclosure of Site Visits: Chair Heinrich visited all sites, Board member Hagstrom 1358 and 1359 and Board member Warmer all sites.
Disclosure of Conflict of Interest: None

Public Hearings

City Variance 1356 – **1025 Shiloh Crossing Blvd – Sign size and location -** A variance from BMCC 27-1407.C(3) requiring a maximum allowable area of wall signs (a type of attached sign) to 250 square feet maximum for all tenants in a multi-tenant structure, to allow an 80 square foot wall sign in a Corridor Mixed Use 2 (CMU2) zone, on a building façade with existing wall sign area of at least 327 square feet. The property is legally described as Block 1, Lot 3A1 of Shiloh Crossing Sub., a 6.354 acre parcel of land. The purpose of the variance is to allow relocation of an existing 80 square foot sign for Candy Town from 820 Shiloh Crossing Blvd to their new location. Karen Husman, Planner I, presenting.

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.
There are special circumstances that exist which are peculiar to the lot that are not applicable to other lots in the same district. The property is a very large shopping center and is not oriented in a way to address traffic on Shiloh Road, the
signs on these buildings address traffic through the parking lots that are dispersed throughout the center. Shiloh Crossing Blvd is a private road running between parking lots in the shopping center.

2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area.
The Board of Adjustment has granted at least four sign area variances in the past decade. Under the previous sign code, the attached sign budget was generous at 3 sf for each linear foot of street facing building facade.

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.
Granting this variance will not confer on the applicant a special privilege. Developments in the area also have oversized wall signs, although some have installed awning signs and canopy signs in addition to wall signs.

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 this variance may meet the general purposes and intent of the zoning regulations and the 2016 Growth Policy. The Growth Policy guidelines state that local economic prosperity should be supported and sustained. Allowing this wall
sign enables Candy Town to continue adapting to the changing retail marketplace by moving to a new larger location.

Recommended Conditions:

1. The variance is for 80 square feet wall sign (attached sign type). No other variance is intended or implied by this approval.
2. The variance applies to Block 1, Lot 3A1 of Shiloh Crossing Sub., 1025 Shiloh Crossing Blvd.
3. The proposed location of the wall sign will be in substantial conformance with the submitted site plan
4. All future tenant replacement signs on the facade of this building including all tenants will be reduced in size to 50 sf as signs are replaced, until all tenants have equal or substantial equal signage up to the max allowed sign square footage.
5. The applicant will apply for a sign permit for the wall sign within 6 months of the Board of Adjustment and installed within 1 year of BOA approval.
6. This Variance approval is for the specified suite #2 location for the Candy Town sign only. If the sign is removed it will be replaced with a conforming sign
7. Failure to begin or complete actions required shall void this variance.
8. These conditions of variance approval shall run with this building only and the sign for "Candy Town", it shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns of this building.

Vice Chair Bollman joins via phone at 6:22 pm.

Questions for staff:

Chair Heinrich asked for explanation for old code vs. new code. Staff explained the differences.

Board member Warmer asked if there are others in the same position. Staff replied this is the first of its kind.

Chair Heinrich asked for explanation of the Variance request. Staff explained the current sign is bigger than allowed in the new code.

Board member Sayer asked if there is a provision for the distance from the street.

Board member Hagstrom asked if granting this request would set a precedence.

Public Hearing opened at 6:22PM

Applicant: Maria Purcell, 8720 Sail Fish Drive, 59106

She is the owner of Candy Town. She has been in business for 14 years, a small business and expanding to a larger location at Shiloh Crossing. She wishes to use her existing sign which is too large, according to the code for the new location.

Questions for Applicant:

Board member Warmer asked when they are moving. The applicant answered February 10, 2023.

He then asked if the expense of a new sign is taken under consideration.

Board member Hagstrom asked when the problem was discovered. The applicant explained she was denied a sign permit for the new sign.

In Favor: Jason Fitzgerald, 519, Wyoming, Collaborative Design

He is the designer of the sign. The new code allows only 50 feet of frontage whereas the old code allowed 150 square feet. 80 square feet is appropriate.

Lilly Corning, 3222 Redwood Lane, 59102, Owner of Shiloh Crossing

The other buildings are using all available square footage according to the new code. She requests condition #4 and 6 be removed. These buildings are not designed for canopies.

Opposed: None

Public Hearing closed at 6:43 PM

Vice Chair Bollman arrived in person at 6:47 PM.

Discussion

Board member Bollman asked for clarification of unheard information and asked how this will work with the existing sign. Staff is seeking a solution to existing signs and replacements to avoid future variances.

#4- Proportionate to Linear frontage

#6-according to code in place at the time.

Motion

Board Member Hagstrom made a motion and Board Member Sayer seconded the motion to approve the **City Variance 1356 with staff conditions, recommendations and changes.**

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 1356 passed with a 5-0 vote.

Public Hearings

City Variance 1357 – **1423 38th St. West, Ste. 2 – Maximum sign size -** A variance from BMCC 27-1407.B(3) requiring a maximum allowable area of wall signs (a type of attached sign) to 100 square feet maximum for all tenants in a multi-tenant structure, and an individual tenant sign to a maximum of 32 square feet, in a Neighborhood Mixed Use (NMU) zone, to allow Suite 2 (three suites total) to have sign area of 43.25 square feet. The property is legally described as Block 1, Lot 1A1, Hancock Grand Subdivision, a 1-acre parcel of land. The purpose of the variance is to allow a sign area greater than 32 square feet for IV Nutrition, a new business in a multi-tenant building. Karen Husman, Planner I, presenting.

Recommendation:

Planning Staff is recommending denial 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.
There are no special circumstances that exist which are peculiar to the lot that are not applicable to other lots in the same district. The property is a one acre parcel with three new tenant spaces, and is not oriented in a way to address traffic on
38th St. W. adhere to the code requirements. Sign was installed without a permit. Had the sign company applied for the permit prior to installation, it would have known the dimensions were too large for allowable signage.
2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area.
The applicant could have a different type of sign (canopy or projecting would allow the size they are requesting). The applicant would prefer to utilize their existing sign as installed.
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.
Granting this variance may confer on the applicant a special privilege because the Because this is a new developed parcel and the parcel to the south is a new development, approving the variance may be granting a 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 Policy.
Granting this variance will meet the general purposes and intent of the 2016 Growth Policy. However, it does not meet the zoning regulation specification for granting a variance application, and is not in harmony with the intent of the Zoning Code for new signage in this district.

Recommended Conditions:

Questions for staff:

Board member Warmer asked for clarification of a wall and canopy installation

Board member Sayer asked for the definition of a canopy

Public Hearing opened at 7:21 PM

Applicant: Sara Nosten, 4627 Corral Drive

This is a first time business newly opened. Code Enforcement Officer Todd Morgan issued her notice of No Sign Permit. She ordered the sign thru Sign Pro, no sign permit application was received by the City. When the application was made, it was denied due to being too large.

Questions for Applicant:

Board member Bollman asked if Sign Pro had been invited to this meeting. NO

In Favor: **None**

Opposed: None

Public Hearing closed at 7:33 PM

Discussion

Motion

Board Member Hagstrom made a motion and Board Member Warmerseconded the motion to deny the **City Variance 1357 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 deny City Variance 1357 passed with a 4-1 vote.

City Variance 1358 – 6047, 6105 & 6153 Elysian Rd., 1588 & 1589 Walter Creek, 1586 & 1587 Springhedge St., 1585 George Blvd. – Minimum two dwelling units per principal structure - A variance from 27-1002.C – Table 27-1000.1 requiring at least two dwelling units per principal structure in a Mixed Residential 2 (NX2) zone, to allow one dwelling unit in a principal structure on Lots 8, 9, 11 and 12 in Block 1, and Lots 1, 9, 10 and 16 in Block 2 of Annafeld North Sub. 1st Filing. The subject parcels range in area from 2,000 square feet to 6,000 square feet. The purpose of the variance is to allow construction of a single family dwelling in a principal structure on the parcels above**.** Nicole Cromwell, presenting

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 lots are located at corners of intersections where additional safety consideration for vehicle and pedestrian safety is required. This limitation does not apply to other lots in the area.

2) **Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**
This is a variance of first impression. Previous variances were typically oriented to the opposite request – more units than allowed by lot area. Lot area no longer a consideration. The minimum was included in NX2 and NX3

zones to provide more predictable land development – e.g. this is where multifamily units will be constructed. Existing single unit structures in NX2/NX3 (prior to Feb 2021) are considered non-conforming but could be re-built under the savings clause in Section 27-1504.C.3 (a.2). Denying this variance may deprive this owner of similar rights enjoyed by other owners.

3) **Granting the building location 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 the surrounding development pattern, staff does not find the variance to be a special privilege. The owner could construct taller buildings to accommodate the 2nd unit but these buildings would then look out of place in the neighborhood.

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

Granting this variance is in conformance with the Growth Policy. The buildings fit in with the area and due not appear to be single-unit structures from the property exterior.

5) **In granting the variance the BOA may impose appropriate conditions.**

Recommended Conditions:

Planning staff recommends the following conditions:

1. The variance is to allow single unit principal structures
2. The variance is limited to the legally described lots.
3. Apply for building permits within 2 years and complete all the structures within 4 years. Failure to meet time lines, voids the variance.
4. No construction before 7 am or after 8 pm.
5. Applicant will meet all other city codes required for construction.
6. These conditions of variance approval shall run with the land

Questions for staff:

Public Hearing opened at 8:12 PM

Applicant: Dennis Randall, McCall Homes agent, 1536 Mullowney

Questions for Applicant:

In Favor:

Opposed:

Public Hearing closed at 8:13PM

Discussion

Motion

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

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 1358 passed with a 5-0 vote.

City Variance 1359 – **3218 South Frontage Rd. – Location of Surface Parking -** A variance from Section 27-409 – Table 27-400.6 (B.6) requiring surface parking to be in the side or rear yard to allow parking in the front yard of property in a Heavy Commercial (CX) zone, on Certificate of Survey 1591 Tract 1, a 10.19 acre parcel of land. The purpose of the variance is to allow the required parking to be located in the front of the proposed new building for Mobile-Stor. Nicole Cromwell, presenting

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 property has two petroleum pipelines that cross the frontage and one that parallels the east property line. A flood plain affects the south end of the property.

2) **Denying the variance might deprive this owner of similar rights** enjoyed by others in the area.
The Board has granted one previous variance to allow parking in front of a building in the CX zone. This was for a new Costco Warehouse on Zoo Drive. Several older developments in the area do have at least some parking in front of buildings on S Frontage Road. Denying this variance request might deprive this owner of rights enjoyed by others in the same area.

3) **Granting the building location 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 the surrounding zoning history, the prior variance granted by this board and the existing development pattern in the area, staff does not find the variance to be a special privilege.

4) **Granting the variance will be in harmony with the purposes of zoning and growth policy**.
Granting this variance is in conformance with the Growth Policy. The policy and regulations adopted to implement the policy are intended to reduce and eliminate to out-of-date development pattern of large buildings setback behind a sea of parking in the front of those buildings. The provision of 8 parking stalls along the front of the building will be in harmony with the purpose and intent of the growth policy and zoning.

5) **In granting the variance the BOA may impose appropriate conditions.**

6) **A time limit for action on the variance shall be prescribed**.
See condition 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 – a building and storage yard for a mobile storage business is allowed.

Recommended Conditions:

Planning staff recommends the following conditions:

1. The variance is to allow 8 surface parking spaces in front of the building. No other variance is intended or implied.
2. The variance is limited to this legally described lot.
3. The owner will install all landscaping as shown.
4. Minor modification of the site plan allowed.
5. No evergreen in the street frontage, street trees trimmed up to 8-ft above grade. Trees shown on LS plan are sufficient.
6. No outdoor announcement audible beyond property lines.
7. Complete the building permit process within 2 years and complete the project within 5 years. Failure to meet time lines, voids the variance.
8. Any structures not shown on the site plan must conform to all zoning and city regulations.
9. All regulations except for this variance apply to the development of the site
10. Failure to begin or complete the project will void the variance
11. These conditions of variance approval shall run with the land

Questions for staff: None

Public Hearing opened at 8:28 PM

Applicant: Taylor Kasperick, PEC

There may be possible sale of property pieces in the future.

Questions for Applicant:

In Favor: None

Opposed: None

Public Hearing closed at 8:34 PM

Discussion

Motion
Board Member Bollman made a motion and Board Member Hagstrom seconded the motion to approve the **City Variance 1359 with staff conditions and 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 1359 passed with a 5-0 vote.

Other Business: Board member Bollman will be unavailable in March.

ADJOURNMENT: The meeting adjourned at 8:35 PM.

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

CITY BOARD OF ADJUSTMENT
MINUTES March 1, 2023

Name	Title	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 2022	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 futyre 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 todelay 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 4-0vote.

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

Board of Adjustment

Date:	04/05/2023
Title:	Return Item -City Variance 1361- Angel Oak Lane, The Timbers Subd. -Attached garage entry location
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes

Information

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

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
This is 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. The purpose of the request is to allow attached garage space in the front half of structures and allow the garage entrance to face the street frontage on lots 1-27, in The Timbers Subdivision (final plat pending). The total area affected is 4.9 acres of land.

Denying this request may not deprive this applicant of rights commonly enjoyed by other property in the area and within this subdivision, however there are unique circumstances with this request. The Timbers Subdivision in the annexation process was required to development under the Planned Neighborhood Development (PND) regulations. The PND requires a mix of districts, which includes the NX districts for lots greater than 40 acres per Section 27-800E.3(b). The Timbers Subdivision in total is approximately 56.5 gross acres but is part of a phased annexation that will include additional acreage over time and additional subdivision filings. In order to be annexed and in conformance with the Neighborhood PND the development had to include some NX zoned land. The PND regulations also restrict N zones (N1,N2 or N3) from arterial street frontage. The primary reason the development chose the NX1 zone is that the PND 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 NX1 allows 1-4 units, and the applicants believe this zone is the most appropriate for their desired development style. They have the ability to change the building design to fit the lots under the NX requirements but would prefer to apply for a variance to use the design plans they created for this development. It was required by the code, so they placed the NX1 zone at one of the entries to the subdivision along the arterial street. One option for the developer is to change the layout of the buildings to fit the lots they designed and created for this subdivision. The redesign would likely require shared driveways along property lines between two or more lots. This shared driveway design could accommodate side load or rear load garages. Reducing the footprint of these designs could also be done to accommodate some other design features and include the side or rear load garages.

The applicant provided an amended variance request on March 24, 2023, that could be considered by the board as it reduces the request as follows: "We are requesting a variance to allow side facing garages to be on the front of the home structure. With the size of the lots and the minimal width of the lots in this portion of the development it makes it very difficult to position the garage on the rear half of the home structure. This also drastically restricts the area of the lot that the livable space can be built and creates a longer driveway. It is impossible to have rear or side load garages on these lots. This application is to request relief from the requirements of a zone designation that is included in their Planned Neighborhood development required development pattern for annexation." Exhibit provided with this letter are in the attachments.

Staff has reviewed the new exhibit showing a side load garage that is located on the front facade. Although the visual impacts by having the garage door relocated are more in line with the code, the bulk of the garage is still the structures dominating feature, therefore staff is presenting the original findings for the Board's consideration with the applicants amended request.

APPLICATION DATA
OWNERS: Alkali Timbers, LLC
AGENT: Jeff Wollschlager, A-Line Drafting
PURPOSE: Garage located on the street frontage
LEGAL DESCRIPTION: lots 1-27, The Timbers Subdivision
ADDRESS: Addresses pending
EXISTING LAND USE: Vacant
PROPOSED LAND USE: Residential

EXISTING ZONING: NX1

CONCURRENT APPLICATIONS
The Timbers Subdivision final plat pending. PND (PZX-21-00273) and Annexation (PZX-21-00272) approved.

SURROUNDING ZONING & LAND USE
NORTH: Zoning: Ag
Land Use: Vacant Ag
SOUTH: Zoning: N3 & Ag
Land Use: Proposed Residential and Ag
EAST: Zoning: Ag
Land Use: Vacant Ag
WEST: Zoning: P1
Land Use:Parkland (in the flood plain)

STAKEHOLDERS
The BOA held a public hearing on March 1, 2023, Staff gave a brief presentation and reasons for the recommendation of denial. The applicants' agent, Jeff Wollschlager, A-line Drafting, stated the applicants were looking at developing the lots with single family dwellings and understood that a variance was their best option to allow front loading garages. Commissioner David Hagstrom asked if there was relief from this requirement for cul-de-sac lots. Nicole Cromwell said there is not an allowed relief for newly created lots, the code allows for lots created prior to the new restrictions to allow some relief from certain restrictions including facade designs. Nicole also explained that there were other design features and options that could accommodate the rear or side load garages that could work with this subdivision. It was also reiterated that the applicant designed these lots under this zone designation and is subsequently asking for a variance. The BOA discussed other options for this subdivision, including redesign of the subdivision lots, or applying to change the zoning on the property. However, changing the zoning would go against the PND requirements. The Board asked the applicants' agent why they designed the lots in a way that would not accommodate the zoning criteria restrictions for the NX1 zone, knowing the zone was in place when they were working through the PND, and would they consider requesting fewer lots for approval of the variance rather than the entire section of NX1 parcels? Jeff said that if the variance is denied it would force the applicants to do a complete redesign of the project. Jeff asked for a delay on the vote in order to discuss with the applicant about other options, Dave Hagstrom made a motion to accept the request, it was seconded by Commissioner Josh Sayer and approved by a 4-0 voice vote to accept the applicants request to delay action on this application until the April 5, 2023, meeting.

The BOA requested information be provided from the applicant at the return of the hearing as follows:
Why did they design the lots in a way that would not accommodate the zoning criteria restrictions for the NX1 zone. Knowing the zone was in place when they were working through the PND?
Applicant: As you know, the city requires at least two different zoning types in new subdivisions. We did not want high-density multi-family in our first phase, and the NX1 zoning was our best option aside from single-family. At that time, we decided on the layout the HBA and city were working on, allowing front-load garages. We were hopeful that would have been allowed before we started construction this spring. We placed the NX1 where it could feel like its own community. As you look at the land constraints between Alkali Creek Road and Alkali Creek, forcing the garage in the back becomes challenging and costly for the developer, builder, and, ultimately, the home buyers.

Would they consider requesting fewer lots to approve the variance rather than the entire section of NX1 parcels?
Applicant: Yes, we would like to amend our application only to include lots 6,7, & 8, please.

The applicant provided an amended variance request on March 24, 2023, that could be considered by the board. More information on this is located in the background section of this staff report.

Planning staff has not received any comment from the surrounding property owners as of the date of this report.

ALTERNATIVES
The Board of Adjustment may:

- Conditionally approve the requested variance and adopt the recommended findings of the review criteria; or
- Deny the variance and adopt different findings of the review criteria; or
- Delay action on the variance to the next scheduled Board meeting; or
- Allow the applicant to withdraw.

Four votes in favor are required to approve any variance. If a variance is denied, the applicant must wait one year to reapply for the same variance.

FISCAL EFFECTS
The Planning Division budget will not be effected by the Board's decision on this variance.

SUMMARY
Prior to approval, the Board of Adjustment shall ensure that the determinations for variances (**Sec. 27-1627.D and E**.), as outlined below, have been satisfied:

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, garages in the front of the building and 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

2) 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 on the front of the building adjacent to street frontage on lots 7. 8 & 9 only in The Timbers Subdivision (final plat pending). No other variance is intended or implied.
2. 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.
3. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
4. Development of the parcels shall be in substantial conformance to the submitted site plans, minor modifications are allowed.
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.

3) 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.

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. Residential dwellings are allowed uses in this zone district.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
New Applicant letter 3/24/23
Site Plan
New site plan 3/24/23
Front Facade examples
New sample elevation 3/24/23
History

D05250C
ALKALI CREEK
D05250
Alkali Creek Rd
D05250A
A27675
A27418
A16813
A16813A
A16813B
D05658
Foothill Dr
D05250B

D05250C
D05250
Alkali Creek Rd
A16813
A16813A
A16813B
D05658
ALKALI CREEK

South

South West

South East

West

North

APPLICATION FORM PZX - 23 - 00021

CITY VARIANCE **ID: Billings Variance #** 1361 **- Project #**_____

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

PROPERTY TAX ID # D05250 (part) CITY ELECTION WARD # 1

Legal Description of Property: THE TIMBERS SUBDIVISION Lots 1-27 Block 1

Address or General Location (If unknown, contact City Engineering): Angel Oak Lane lots 1-27

Zoning Classification: NX-1

Size of Parcel (Area & Dimensions): _____

Covenants or Deed Restrictions on Property: Yes X No_____

If yes, please attach to application

Variance(s) Requested: To allow front facing garages to be on the front 1/2 of home structure.

Facts of Hardship: (attach letter) Small lots and narrow lot widths make if very difficult to get a design layout to work on the lot.

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

Owner(s): Alkali Timbers, llc
(Recorded Owner)
(Address) 406-690-2075 ali@theblackarc.com (Ali Mitchell)
(Phone Number) (email)

Agent(s): A-Line Drafting and Design
(Name)
(Address) 406-321-2280 alinedrafting@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: _____ Date: 1-31-23
(Recorded Owner)

RECEIVED
JAN 31 2023
PLANNING & COMMUNITY SERVICES DEPARTMENT

1-31-23

The Timbers Lot 1-27 Angel Oak Lane. Variance request

Subject: The Timbers Subdivision

Chairperson of the Board of Adjustment:

We are requesting a variance to allow front façade facing garages to be on the front half of the home structure., not to extend beyond front façade of home and setback 20' min. from the front property line. With the size of the lots and the minimal width of the lots in this portion of the development it makes it very difficult to position the garage on the rear half of the home structure. This also drastically restricts the area of the lot that the livable space can be built and creates a longer driveway. It is impossible to have rear or side load garages on these lots.

Sincerely,

Owners Representative of The Timbers Subdivision

3-24-23

The Timbers Lots 7-9 Angel Oak Lane. Variance request

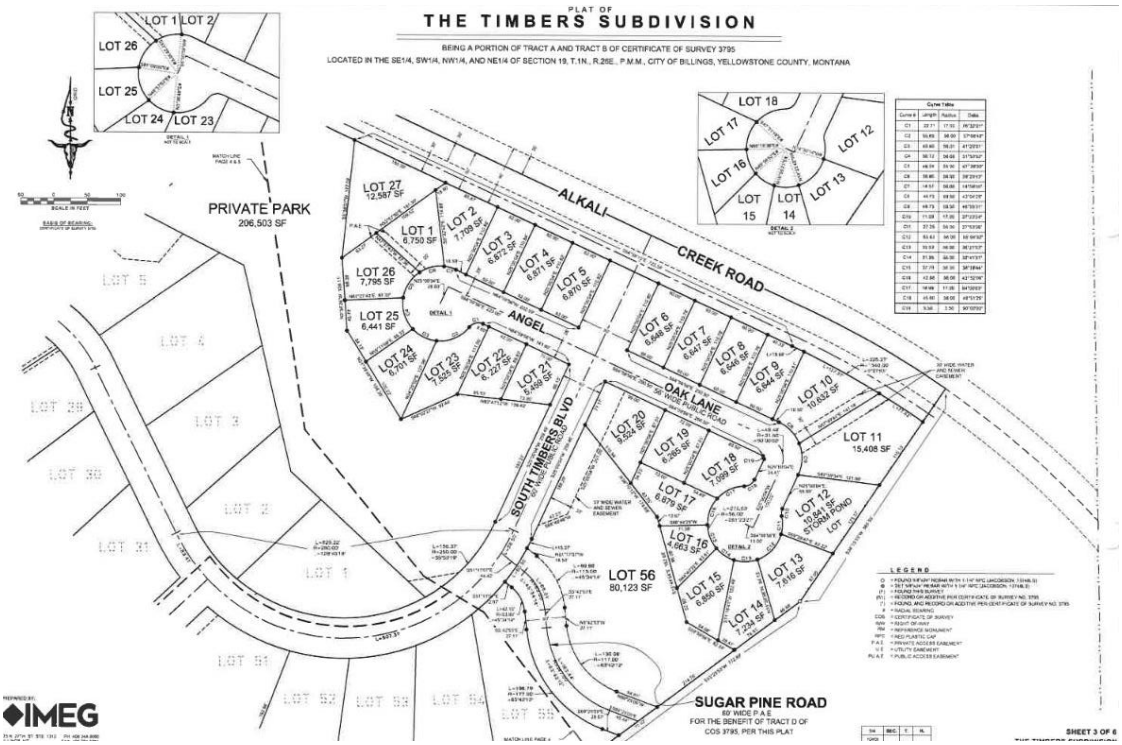
Subject: The Timbers Subdivision

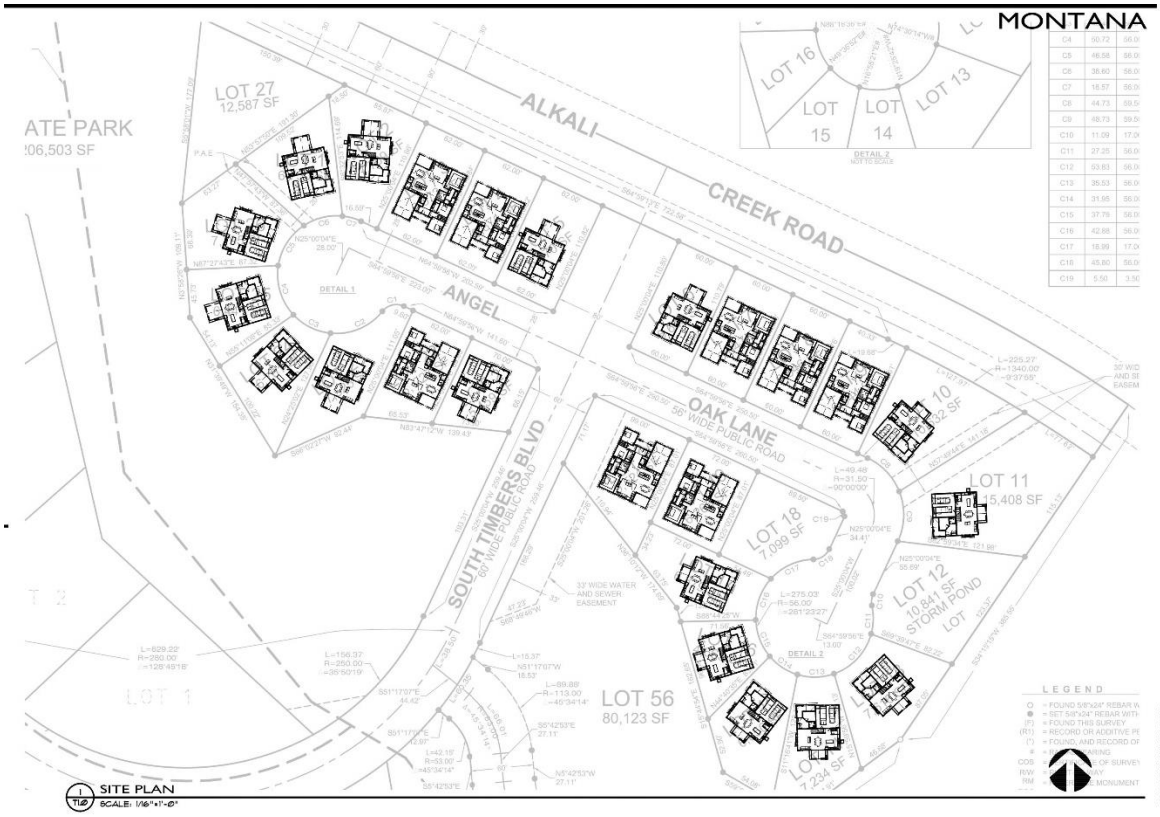
Chairperson of the Board of Adjustment:

We are requesting a variance to allow side facing garages to be on the front of the home structure. With the size of the lots and the minimal width of the lots in this portion of the development it makes it very difficult to position the garage on the rear half of the home structure. This also drastically restricts the area of the lot that the livable space can be built and creates a longer driveway. It is impossible to have rear or side load garages on these lots.

Sincerely,

Owners Representative of The Timbers Subdivision


PLAT OF
THE TIMBERS SUBDIVISION
BEING A PORTION OF TRACT A AND TRACT B OF CERTIFICATE OF SURVEY 3795
LOCATED IN THE SE1/4, SW1/4, NW1/4, AND NE1/4 OF SECTION 19, T.1N., R.25E., P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
PRIVATE PARK
206,503 SF
ALKALI CREEK ROAD
ANGEL
OAK LANE
SOUTH TIMBERS BLVD
SUGAR PINE ROAD
60' WIDE P.A.E.
FOR THE BENEFIT OF TRACT D OF
COS 3795, PER THIS PLAT
LOT 1 6,750 SF
LOT 2 7,709 SF
LOT 3 6,672 SF
LOT 4 6,671 SF
LOT 5 6,810 SF
LOT 6 6,648 SF
LOT 7 6,647 SF
LOT 8 6,646 SF
LOT 9 6,644 SF
LOT 10 10,632 SF
LOT 11 15,408 SF
LOT 12 10,841 SF STORM POND LOT
LOT 13 7,416 SF
LOT 14 7,224 SF
LOT 15 6,650 SF
LOT 16 4,663 SF
LOT 17 6,679 SF
LOT 18 7,099 SF
LOT 19 6,985 SF
LOT 20 6,624 SF
LOT 21 6,499 SF
LOT 22 6,227 SF
LOT 23 6,525 SF
LOT 24 6,701 SF
LOT 25 6,441 SF
LOT 26 7,795 SF
LOT 27 12,587 SF
LOT 56 80,123 SF
LEGEND
SHEET 3 OF 6


MONTANA
ATE PARK
206,503 SF
LOT 27
12,587 SF
ALKALI
CREEK ROAD
ANGEL
OAK LANE
SOUTH TIMBERS BLVD
LOT 11
15,408 SF
LOT 12
10,841 SF
STORM POND
LOT 18
7,099 SF
LOT 56
80,123 SF
LEGEND
SITE PLAN
SCALE: 1/16"=1'-0"
PRELIMINARY

THE TIMBERS SUBDIVISION

ANGEL OAKS SUB-ASSOCIATION OF THE TIMBERS SUBDIVISION

BILLINGS MONTANA

NOT TO SCALE

OWNER

Ali Mitchell
406.690.2075
ali@theblackarc.com

CONTRACTOR

CONTRACTOR

SCOPE OF WORK

NEW SINGLE FAMILY RESIDENCE

ADOPTED CODES

INTERNATIONAL RESIDENTIAL CODE, 2021 EDITION

GENERAL NOTES

-CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS PRIOR TO CONSTRUCTION

-ALL EXISTING AND FINISHED GRADES AND ELEVATIONS TO BE VERIFIED PRIOR TO CONSTRUCTION

SITE INFO

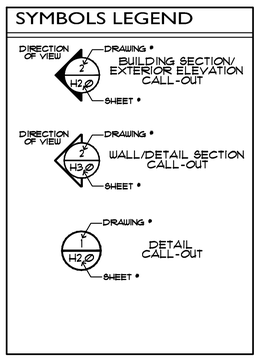
SITE

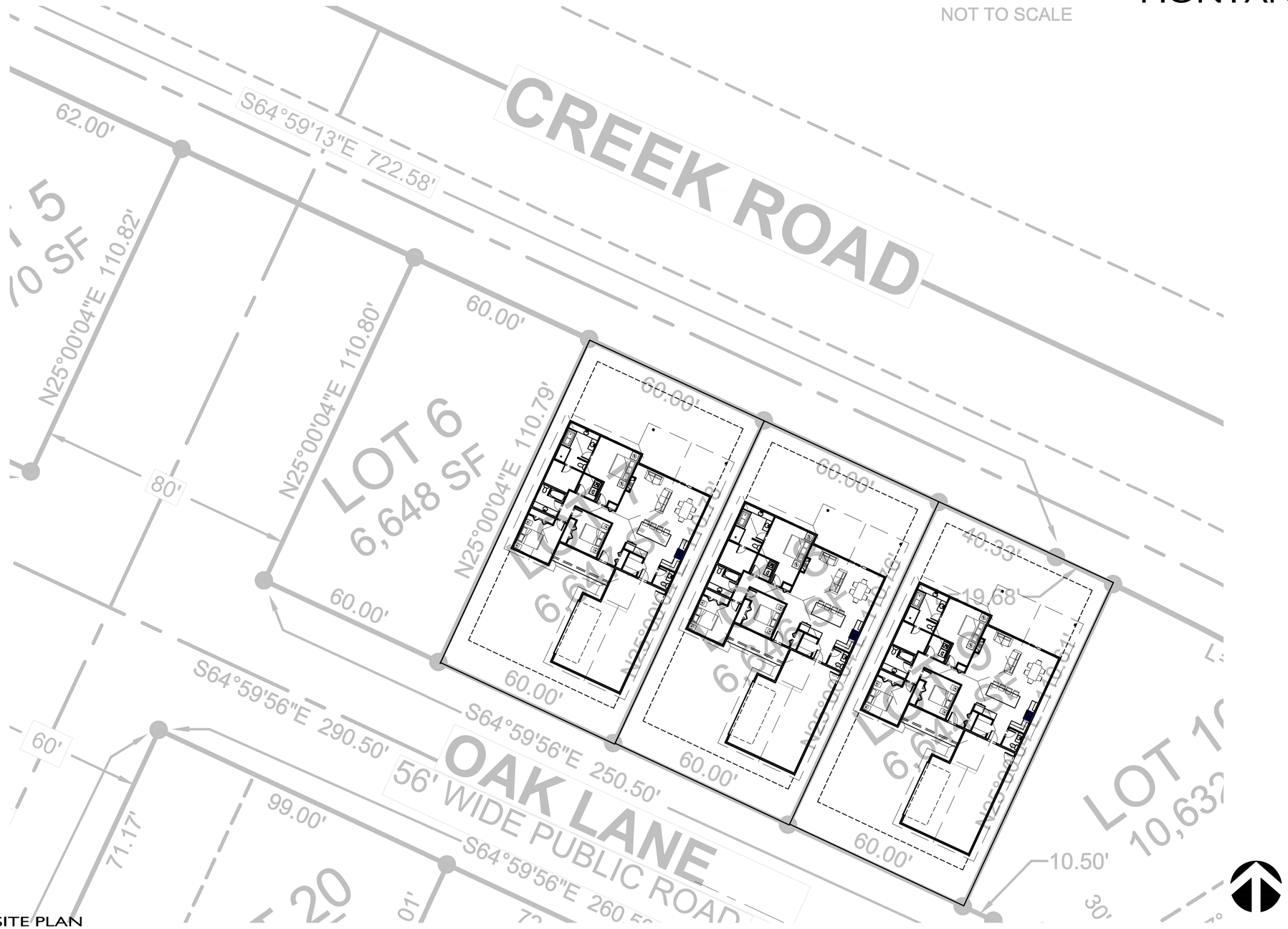
Zoning: NX-1
Lot Size: 7099 Sq. Ft.

INDEX OF DRAWINGS

T1.0 TITLE/SITE PLAN

SYMBOLS LEGEND





1 / T1.0 SITE PLAN
SCALE: 1/16"= 1'-0"

PRELIMINARY

A-LINE DRAFTING AND DESIGN
JEFF WOLLSCHLAGER
(406)321-2280
725 GRAND AVE.
BILLINGS MT, 59101

PAGE: 1

THE TIMBERS HOMES

TITLE/ SITE

DATES
REV 3-20-23
REV
REV

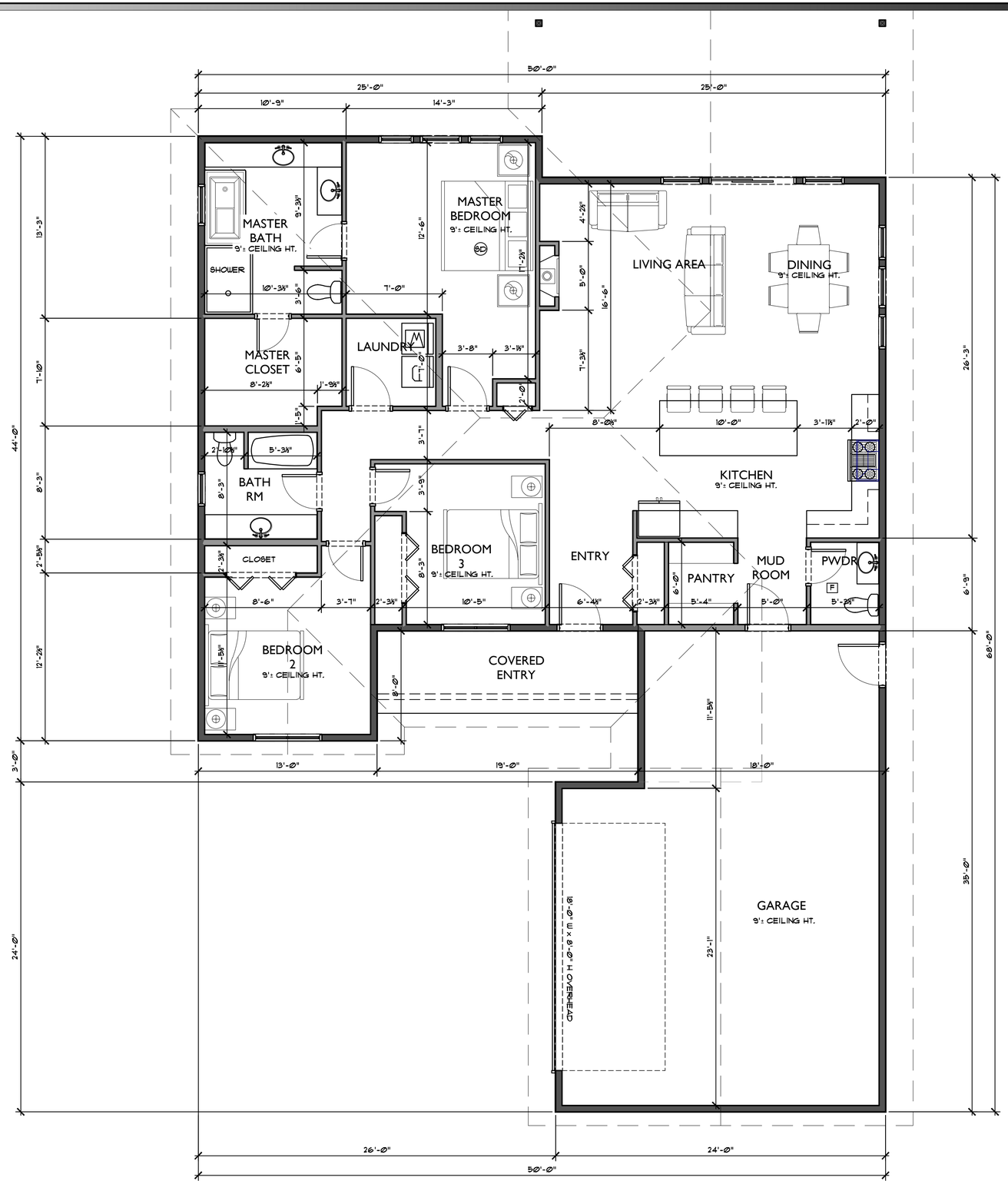
SET:
PROJECT NO. 02123
DRAWN BY: JWW
CHECKED BY: JWW

TITLE/ SITE

SHEET T1.0

AREA

AREA:
1829 SQ. FT. MAIN LEVEL LIVING
782 SQ. FT. GARAGE
114 SQ. FT. COVERED ENTRY



1 / A1.1 MAIN LEVEL PLAN
SCALE: 1/4"=1'-0"

A-LINE DRAFTING AND DESIGN

JEFF WOLLSCHLAGER
(406)321-2280
725 GRAND AVE.
BILLINGS MT, 59101

PAGE: 2

THE TIMBERS HOMES

MAIN LEVEL PLAN

DATES
REV 3-20-23
REV
REV

SET:
PROJECT NO. 02123
DRAWN BY: JWW
CHECKED BY: JWW

MAIN LEVEL PLAN

SHEET A1.1

PRELIMINARY

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
PND	ZC 1003	1/24/22	PND & Annex	Y	
SURROUNDING PROPERTY	**VARIANCE**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
Falcon Ridge, Bl5, L2	1355	1/24/23	Garage location in NX2	Y	***
***There were no similar variances approved, however, the entire subdivision of Falcon Ridge was developed with the previous zoning code regulations and the lots in the subdivision have been developed with front loading garages.					

Board of Adjustment

Date:	04/05/2023
Title:	Appeal of Administrative Decision - 918/920 Howard Ave - Fence Material
Presented by:	Nicole Cromwell
Department:	Planning & Community Services
Presentation:	Yes

Information

RECOMMENDATION

Planning staff requests the Board of Adjustment affirm the determination of the Zoning Coordinator that metal panels are not materials commonly used for fencing within residential zone districts in Billings. Planning staff also requests the Board affirm the determination the structure as shown and constructed meets the definition of a "fence" requiring the submittal of a fence permit from the Planning Division. Any submitted fence permit can only approved if found to be in compliance with the zoning code.

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

APPEAL

Mr. Jason Norman owner of property at 918 and 920 Howard Avenue has appealed the notice of violation sent by Code Enforcement Officer Tanya Punt and affirmed by Zoning Coordinator Nicole Cromwell that the metal panel fencing put in place at the rear of the property required a fence permit and the material used - metal panels - was not allowed material in a residential zone. After a complaint was filed with the Code Enforcement Division, Mr. Norman was notified twice in 2022 of the lack of a fence permit and notified verbally by Code Enforcement that metal panels are not considered to be commonly used fence materials in residential areas. Code Enforcement Officer Tanya Punt confirmed the findings with the Zoning Coordinator. Mr. Norman filed the appeal on February 15, 2023. Filing an appeal stays all proceedings for enforcement of the code. The property is within a First Neighborhood (N1) zone district and is legally described as Lots 37 & 38, Block 18 of the Broadwater Subdivision. Mr. Norman has owned the property since at least 1996 and currently resides at 633 Howard Avenue.

Mr. Norman's first contention is the structure does not meet the definition of a "fence" as described in the zoning code. Here is the current code definition of a fence (Sec. 27-1803 "F" terms): *Fence: A barrier composed of posts connected by boards, rails, panels or wire for the purpose of enclosing space to separate parcels of land. This term also includes a masonry wall.* In order to determine whether a structure is or is not a fence, you must analyze the definition. First, is the fence composed of posts connected by boards, rails, panels or wire? The structure is composed of posts and panels as well as a gate on the east side. Secondly, is the purpose clearly to enclose space? Again, the structure encloses a space to the south of the second dwelling on the property. Third, does the structure serve to separate a parcel of land from any other parcel of land? It appears the structure serves to separate this parcel of land from the alley parcel of land. Here is the definition of "parcel" (Sec. 27-1803 "P" terms): *Parcel: A single tract or parcel of land, no matter how legally described whether by metes and bounds, certificate of survey, and/or by lot or lots and block designation as in a recorded plat, which at the time of applying for a land use is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the land use approval is being secured and having frontage on or legal access to a public street.*

There are additional fences extending from the northeast and northwest corners of the dwelling at 920 Howard to the side property lines to the east and west. The same metal panel material has been used to enclose a space to the north of the dwelling at 920 Howard. This interior fence separates the interior yard space between the two dwelling units (918 and 920 Howard) and is not a fence for permitting purposes since it does not separate this parcel from another parcel. It does serve to provide separate outdoor space for this dwelling at 920 Howard. The metal panel fence that is south of 920 Howard does separate this parcel from the alley and totally encloses an area adjacent to the dwelling. This meets the definition of a fence. A prior ruling by the Board of Adjustment in 2013 for an "interior" electric fence for a wholesale auto auction (Variance 1136) found that a fence inside an exterior or boundary fence, was not a fence subject to permitting or materials limitations in the code. If the fence installed south of the dwelling at 920 Howard were an interior fence - e.g. enclosed by another fence - it would not be subject to permitting or materials limitations. Mr. Norman claims the fence was included in the building plans to remodel the garage into a dwelling unit which the city approved through a permit in 2017 (Permit BP-17-01233 - attached). The site plans were not archived by the city so the only document available is the application form filled out by the contractor. Mr. Norman states the Building Inspector stated the metal panel fence did not need a separate permit because the fence was under 6 feet in height. The building inspector was likely only referring to the Building Code - not any other city code such as Zoning. Aerial photographs of the property between 2015 and 2019 are not available but by the summer of 2019, the fence south of 920 Howard along the alley was in place.

The appellant argues that metal panels are commonly used fence materials in residential areas of Billings. Mr. Norman has provided 300 photos gathered from the internet of metal panel fencing. Mr. Norman did not provide locations for all these photos and Planning staff cannot determine if any of these are located in Billings. In 2004, the city considered and adopted a change to the fencing material regulations in zoning. (Ord. 04-5292 pages attached) The code change allowed "finished or coated steel or aluminum building panels" **only** within industrial zoning districts. An appeal filed in 2002 by Bruce Simon, on behalf of a some industrial property owners, challenged the 2002 Zoning Coordinator determination that metal building panels were not commonly used fence materials in any district. The Zoning Coordinator's determination was affirmed by the Board of Adjustment. Since code change in 2004, many salvage yards, storage yards and similar businesses in Billings have used these types of panels as fencing material. The code change in 2004 specifically excluded this material from use in any commercial or residential zone district. This exclusion has continued throughout the zoning code until the present. Any material not included in the listed materials could be requested for approval by the City Council through the special review process. No special reviews have been submitted to consider other materials for use in residential zones. The code lists materials allowed in residential and commercial zones as well as a separate list for materials allowed in industrial zones. Here are the two lists: Section 27-1209.E - Fence Materials

*1. **Residential and commercial zones.***
(a) Generally. All fences in residential, and commercial zoning districts shall be constructed from materials which are commonly used for fencing.
*(1) Commonly used fence materials include **wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work**.*
(2) Prohibited materials: Railroad ties, intact wood pallets, tires, or rubble.
(3) Salvaged material that do not meet one of the commonly used fence materials identified above are generally prohibited except as provided in this section. Salvaged material may be used for fencing where:
(i) The appearance of the completed fence is substantially similar to and consistent with the design of a fence constructed of commonly-used materials,
(ii) The salvaged material fence is constructed according to generally applicable fence construction standards, and
(iii) The salvaged material is in good repair and capable of long-term maintenance by the property owner.
(4) Materials not listed are subject to special review.

*2. **Industrial zones.** All fences in industrial zoning districts shall be constructed from materials commonly used for fencing and shall not be constructed from railroad ties, intact wood pallets, rubble, or salvaged material.*
*(a) Commonly used fence materials include **wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work, finished or coated steel or aluminum building panels**.*
(b) Barbed wire is only permitted where an eight-foot tall fence is permitted. The barbed wire must be placed on top of the fence and must be located a minimum of eight (8) feet from the ground. Electric fencing is not permitted.
(c) Materials not listed are subject to special review.

The City could have included the metal panels in the residential and commercial zones list of commonly used materials but it did not. Metal panel fencing is a common material used in industrial settings, but is now considered an uncommon material used in residential settings.

Fence contractors have been advocating with the City Council to allow metal panels to be used for residential areas. Wood-framed metal panel fencing can be constructed that does not look out of place in a residential setting. However, the code does not yet allow the use of this material and local fencing contractors are aware of this limitation. Mr. Norman has provided letters from metal fabricators - Protech Steel (2), and Bridger Steel - supporting the use of these panels. In addition, Mr. Norman has provided internet information from Fence Contractors (15) that market corrugated metal panel fencing. None of these fence contractors work in the Billings market. There is one of these contractors from Sheridan, Wyoming - Bockman Group, Fence Station.

The Code Enforcement Division receives several hundred complaints each year about residential fencing. The most common complaint is the installation of fencing or repair of fencing without a permit. The second and third most common complaints are the height of the fence and the fence may be in the clear vision area of a street, alley or driveway intersection. The Code Enforcement Division officers check each complaint for validity, whether the fence is made of proper materials, and whether a fence permit was obtained for the construction or repair of the fence. The most common "un-permitted" material used in residential fencing are salvaged wooden pallets. Complaints about use of metal panels in residential areas is rare. Metal panel fencing typically requires a knowledgeable contractor to install due to the weight of the panels and attachment requirements. Since most local fence contractors are aware that metal panels may not be used in residential areas, this is not a common occurrence. In 2018, the Board heard an appeal related to the use of salvaged wood from pallets to construct a fence in a downtown neighborhood location. The Board found the use of recycled material from wooden pallets to construct a new fence is acceptable under the zoning code. The Board also found that the use of whole wooden pallets would not be allowed. I have attached the approval letter and photos from the 2018 appeal.

Planning staff respectfully request the determination that 1) a fence permit was required for the enclosure south of 920 Howard Avenue and 2) metal panels for fencing may not be used in a residential zone.

STAKEHOLDERS

Mr. Norman contacted neighbors in person and has provided a document that several residents and owners signed that shows no opposition to the constructed fence. Not all of the names on this document are owners of property but may be residents of the neighborhood. The Planning Division notified all property owners within 150 feet, published a legal ad and posted the property as required by the code. No letters or correspondence has been received by the Planning Division on this appeal other than from Mr. Norman. The public is able to comment during the Board of Adjustment meeting.

ALTERNATIVES

The Board of Adjustment may take one of the following actions:

- Affirm in whole the Administrative Decision that the structure is a fence, requires a permit, and may not be constructed from metal panels
- Affirm in part and reverse in part the Administrative Decision
- Reverse in whole the Administrative Decision
- Delay Action on the Appeal until the next Board meeting
- Allow the appellant to withdraw the Appeal

Any appeal requires the affirmative vote of four or more members of the Board to reverse, in whole or in part, the Administrative Decision. Any decision of the Board may be appealed to district court by any party. Once a decision is made, no new appeal or variance for this property concerning this fence may be submitted to the Board of Adjustment for one year.

FISCAL EFFECTS

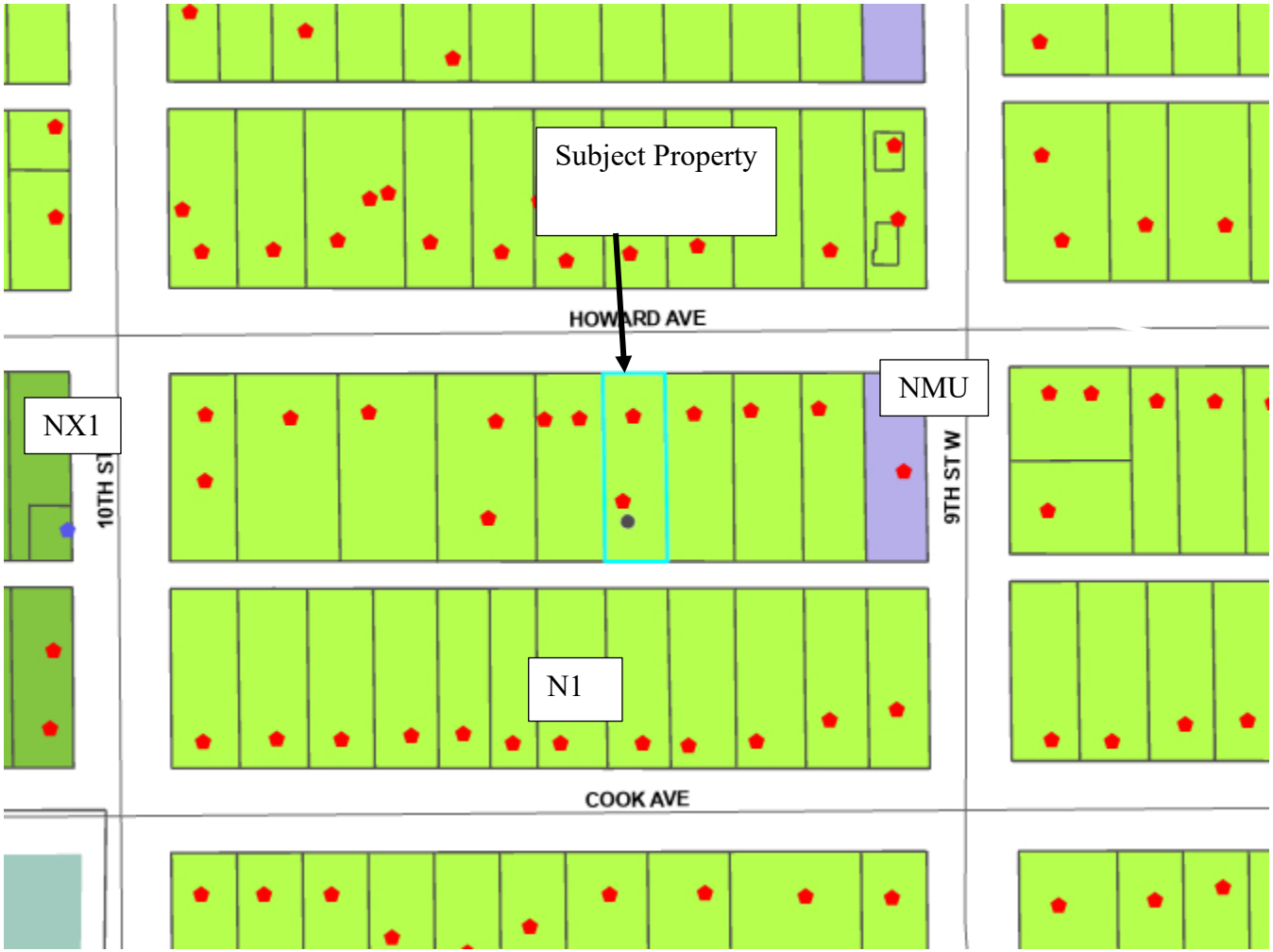
Affirming or denying the appeal in whole or in part will not affect the Planning Division budget.

Attachments

Zoning Map 2023 Appeal
Appeal and Exhibits B thru E
Signatures from Neighbors
Appellants Pictures 1
Appellants Pictures 2
Appellants Pictures 3
Appellants Pictures 4
Appellants Pictures 5
Appellants Pictures 6
2017 Building Permit
2004 Code Amendment
2018 Fence appeal letter of result
2018 Zoning Map

Appeal of Administrative Decision – 918/920 Howard Ave – Fence and Fence materials

Zoning Map and Site Photos



HOWARD AVE
A03565
931
A03564
927
A03563
921
A03562
919
A03561
915
A03560
A03559
905
A03558
A03557A
A03557M
936
928
924
922
918
916
912
908
A03638
A03639
A03640
A03641
A03642
A03643
A03644
A03645
214
920
928
A03637
Fence subject of Appeal
A03633
A03632
A03631
A03630
A03629
A03628
A03627
A03626
A03625
A03624
202

Fence at alley behind 920 Howard

Subject property from Howard Avenue

View west along Howard Avenue

View east of subject property

View north across Howard Avenue

Fenced enclosure from alley

Fence under construction – applicant photos

Dear Ms. Cromwell,
Please accept this letter as notice that I would like to please request a hearing with the Billings City Zoning & Planning Department - Board of Adjustments.

My intention is to present to the BOA a basis for the following:

Primarily,
1 - Corrugated metal is in fact a commonly used material for fences in residential areas.

Secondarily,
2 - The definition and purpose of a Fence as defined by Ordinance 17-5697- and it's application to the subject property.

Due to the amount of information being presented,
I have opted to use separate *exhibits* for the Board of Adjustment's examination.

Thank you,
Jason Norman

1 - Corrugated metal is a commonly used material for residential fencing.

Please see EXHIBIT A - Residential Photos
Exhibit A contains approximately 300 photos of residential homes with corrugated fences to show that this is a commonly used fence material in residential applications.
I've divided these exhibits into 6 attachments of 50 each.
(Exhibit A1, A2, A3, A4, A5 & A6). I can provide several more if needed.

Please see EXHIBIT B - National Suppliers
Exhibit B contains screenshots of the 2 largest Home Improvement stores in the world, marketing the sales of corrugated steel fence panels specifically for residential applications nationwide.
Lowes: 2,200 Stores in US & Canada.
Home Depot: 2,300 Stores in US, Canada & Mexico

Please see EXHIBIT C - Testimonial Letters

Exhibit C contains testimonial letters from major suppliers here in Billings, Great Falls, and a Nationwide distributor that provide corrugated metal fencing to several other demographics specifically for residential applications.

Exhibit C-1 Bridger Steel - Nationwide Distributor
Exhibit C-2 Protech Steel - Great Falls, MT
Exhibit C-3 Protech Steel - Billings, MT

Please see EXHIBIT D - Fence Contractors

Exhibit D contains home pages (with URL) of 15 fence contractors that specifically market corrugated metal fencing for residential homes. I can provide many more if needed.

Please see EXHIBIT E - Promotional Organizations

Exhibit E contains marketing from nationally recognized home improvement organizations promoting the use of corrugated steel fencing and its benefits in residential applications.

Please see EXHIBIT F - Neighbors Objections
Exhibit F is 1 document of signatures and opinions of all neighbors on the same block as my home.

2 - Definition and purpose of a Fence as defined by Ordinance 17-5697

What the Zoning Department is referring to as a *fence* is actually a patio enclosure (see photos below).

ORDINANCE 17-5697 defines a “Fence” as:

“A barrier composed of posts connected by boards, rails, panels or wire *for the purpose of enclosing space to separate parcels of land.” Sec 27-201 Definitions [pg 5]*

Unlike the purpose of a fence *to separate parcels of land*, the corrugated metal panels that were used to enclose the patio serve the same purpose as the walls of the home

a. do not run along any boundary of the property.

b. do not come in contact with *any* point of the perimeter of the property for the purpose of dividing the property into separate parcels (i.e. back yard, front yard - etc). The walls of this enclosure are:
   - 10’ from the South boundary of the Lot [alley]
   - 7’ from the West boundary of the Lot
   - 15’ from the East boundary of the Lot
   - The North wall of the patio, is the south wall of the home (please see photos below - during 2017 construction)

The enclosure is an *addition to the home/dwelling* as Ms. Punt verbalized to me when I came to the Zoning Department in person to pay the permit fees and any associated costs - saying:

“I think it’s a beautiful *addition to the home*, but it’s made of a material that we don’t allow.”

This was constructed as an extension of the dwelling immediately after the construction of the home was completed. This was done under a building permit that the Building Department advised me that I did not need an additional *building permit for* (nor did I need to submit revised plans), since the walls of the patio enclosure were under 6’ in height.

https://www.lowes.com/pd/Outdoor-Essentials-Actual-2-ft-x-6-ft-2-Pack-Silver-Galvanized-Steel-Decorative-Me

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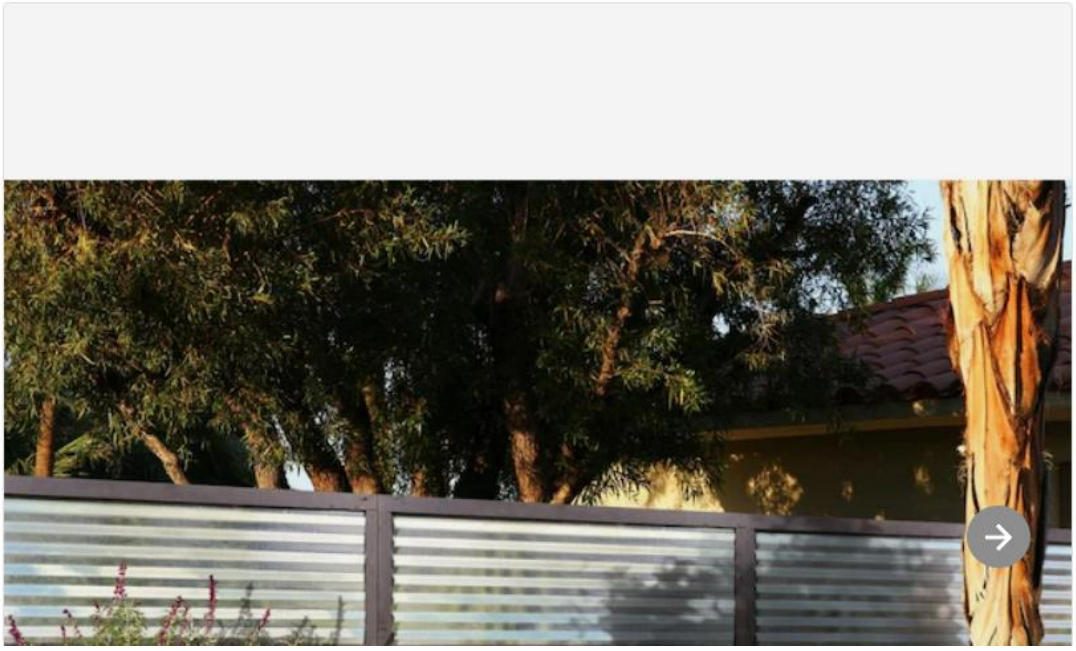

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Modern Privacy Fence

If your home has a modern flair, you may want a fence to match. But a modern privacy fence could also be paired with a more classic home or a standard midcentury ranch that you'd like to add some modern details too.

https://www.homedepot.com/c/ai/privacy-fence-ideas/9ba683603be9fa5395fab90e359da4c

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Corrugated Metal Fencing

Metal privacy fences, made with panels or sheets of metal, can offer a unique, modern look. Corrugated metal tends to be lighter and more affordable than wood. A metal privacy fence also doesn't need as much care as a wood fence.

BRIDGERSTEEL
CREATE LASTING BEAUTY

February 6, 2023
RE: Corrugated Fencing

Bridger Steel is one of the leading manufacturers of roll formed steel panels. Our corrugated panels are commonly used in residential applications for fencing panels as a durable long term solution that looks great.

I can attest to the fact that we are a nationwide supplier to markets all over the U.S. where our corrugated steel fence panels are very commonly used for residential applications.

I have included screenshots below from our website with some examples.

Mike DuFresne
Chief Sales and Marketing Officer

METAL FENCE PANELS

Fence Panels: Weathering Steel 7/8" Corrugated Fencing

From privacy fencing for residential needs to livestock fencing for ranches, steel fence panels provide a combination of durability and style. You'll love the low maintenance and aesthetic style of a metal fence! With a variety of colors and finishes available, plus a different metal fence panel profiles to choose from, you can design the fence you want without sacrificing the durability you need. Bridger Steel also offers metal decking options for commercial builds.

Corrugated Fencing

Residential, Commercial, & Agricultural Steel Fence Panels

Corrugated metal is a very popular fence metal panel because it offers durability with very little maintenance. Galvanized steel is a top choice for a metal fence panel since it performs well in all climates — working to resist weathering and rusting. With multiple options for sizes, thicknesses, and colors, Corrugated metal is a great fence panel option for various environments in need of high-performance fencing.

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Metal Privacy Fencing

Residential & Commercial Steel Fence Panels

From commercial to residential markets, privacy fence metal is becoming a popular choice for homeowners, architects, and builders. With numerous panels manufactured in a variety of lengths, metal privacy fence panels offer durability and longevity that other fencing materials such as wood and vinyl simply can't offer. Privacy fence metal is able to withstand the tests of time and harsh weather environments. You'll be amazed at how low maintenance and aesthetically pleasing your privacy fence metal will be!

PROTECH STEEL
COMMITTED TO EXCELLENCE
STEEL PANELS - TRIM - AND ACCESSORIES

Dear City of Billings,

I am writing on behalf of Protech Steel, a leading supplier of building materials, to express our support for the approval of corrugated metal as a material for residential fencing within the city.

As you may be aware, corrugated metal is a very commonly used material for residential fencing in other demographics that we supply materials to. Its popularity is due to its numerous positive benefits, making it an excellent choice for homeowners.

The durability of corrugated metal is unparalleled, and it is capable of withstanding even the harshest weather conditions. This ensures that it will maintain its appearance and functionality for years to come, providing a long-lasting and low-maintenance fencing solution for homeowners.

In addition to its durability, corrugated metal is also highly affordable, making it an excellent choice for homeowners who are looking to get the most value for their investment. This affordability, combined with its low maintenance requirements, make it an ideal choice for cost-conscious homeowners who are looking for a practical and economical fencing solution.

We also believe that corrugated metal is highly recyclable, making it an eco-friendly choice that helps reduce waste and preserve the planet's resources. This eco-friendliness aligns with the city's commitment to sustainability, and we are confident that residents will appreciate this aspect of this material.

Finally, corrugated metal provides excellent security and privacy, ensuring that homes and families are safe and protected. With its strong and durable construction, it is difficult to penetrate, providing a reliable and secure fencing solution for homeowners.

In conclusion, we strongly believe that the approval of corrugated metal as a material for residential fencing within the city would be a positive step for both homeowners and the city as a whole. With its durability, affordability, eco-friendliness, and security, it offers numerous benefits that make it an excellent choice for this application.

PROTECH STEEL
COMMITTED TO EXCELLENCE
STEEL PANELS - TRIM - AND ACCESSORIES

Thank you for your time and consideration. We look forward to the opportunity to provide corrugated metal to the residents of Billings.

Sincerely,

Chris Ciccotelli

Protech Steel

Protech Steel LLC
2712 Dakota Lane
Great Falls, MT 59404
(406)-403-7234
protechsteelllc@gmail.com
www.protechsteel.com

PRO-TECH STEEL, LLC
METAL ROOFING • SIDING • TRIM

To Whom it may concern,

I am writing on behalf of ProTech Steel, a leading supplier of building materials, to express our support for the approval of the use of corrugated metal panels in residential fencing within the city. Corrugated metal is a common choice our customers use for residential fencing.

We believe that corrugated steel is an excellent choice for residential fencing for the following reasons.

As a company committed to providing high-quality and innovative building solutions, we believe that corrugated metal panels offer numerous positive benefits that make them an excellent choice for residential fencing applications.

The durability of corrugated metal panels is unparalleled, and they are capable of withstanding even the harshest weather conditions. This ensures that they will maintain their appearance and functionality for years to come, providing a long-lasting and low-maintenance fencing solution for homeowners.

In addition to their durability, corrugated metal panels are also highly affordable, making them an excellent choice for homeowners who are looking to get the most value for their investment. This affordability, combined with the panels' low maintenance requirements, make them an ideal choice for cost-conscious homeowners who are looking for a practical and economical fencing solution.

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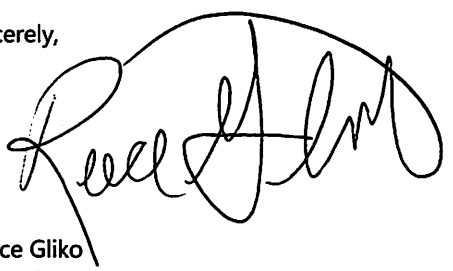
Thank you for your time and consideration. We look forward to the opportunity to provide corrugated metal panels to the residents of Billings.

Sincerely,



Reece Gliko
General Manager
ProTech Steel
Great Falls, MT

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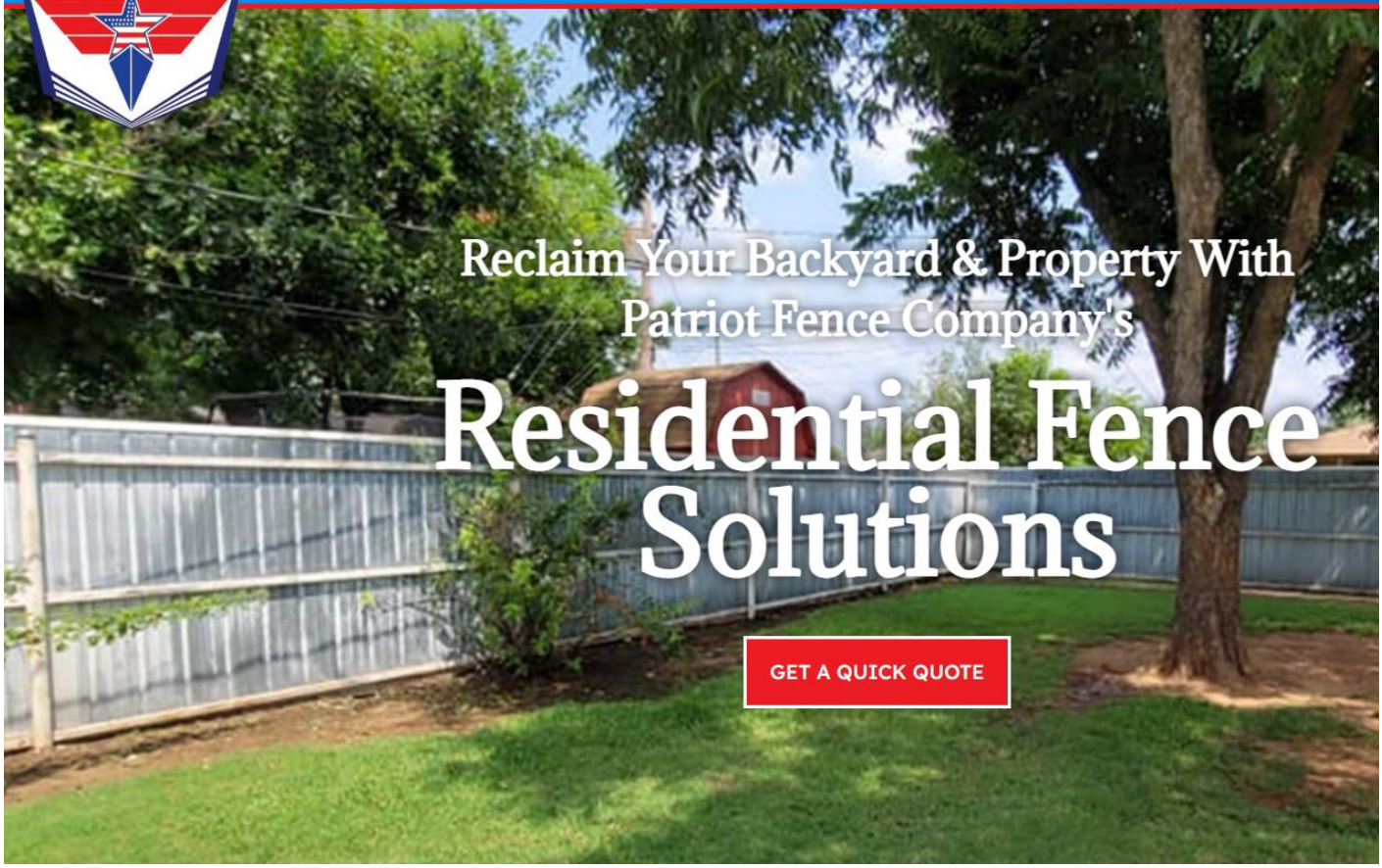

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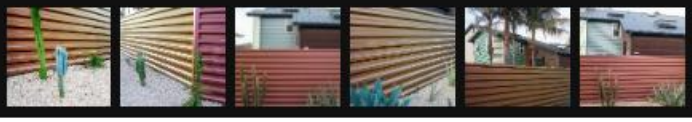

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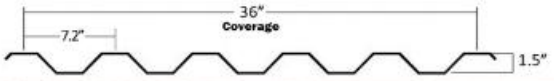
Product Data

Material Type: Western Rib Metal Roofing and Sliding Panels

Rib Distance (Pitch): 7.2"



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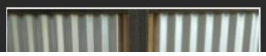

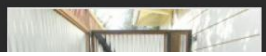

Corrugated metal is strong and rustproof. It can be used in many ways and add a unique touch to homes and landscapes. It is made from Zinc, or a mix of Zinc and other materials to offset weathering and rust, and is mostly known for its recyclability and high recycled content compared to other materials. This type of metal is seen by consumers as lightweight and affordable.

Corrugated metal fence

by Chris Marquand | Sep 11, 2014 | Metal fences

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Horizontal corrugated with cedar fence

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by admin | posted in: Cedar fencing, corrugated metal fence | 0

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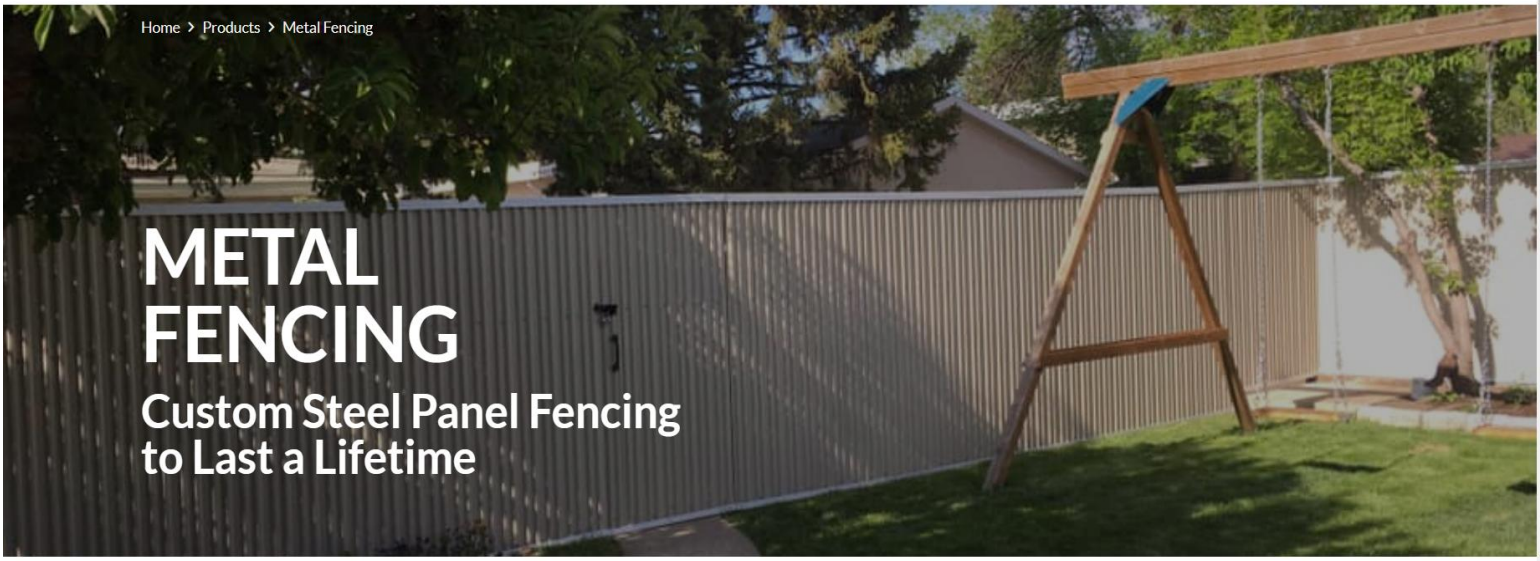

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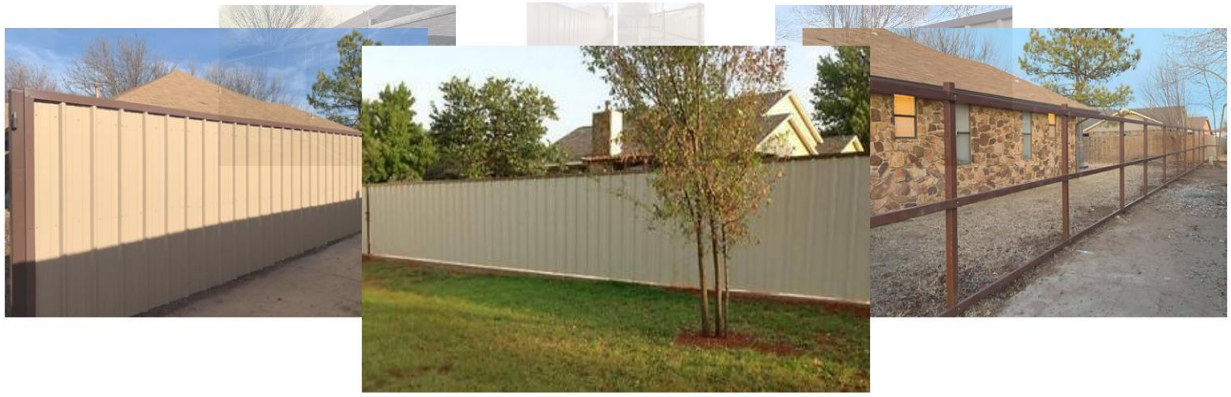

Have you been considering a privacy fence? Some of the most durable and beautiful privacy fence options are provided by red iron and Metal Center's R-Panel or Desert-Rib panels. These fences are easy to install and maintain and will make your home stand out from the rest!

Corrugated iron fence inspiration

A global building boom and pandemic-related shipping delays and congestion have caused industry-wide timber supply issues. If you are struggling to find traditional wooden fence palings, you might want to consider a corrugated steel/timber post combination fence.

New Zealand has had a long and illustrious history of using galvanised corrugated steel for roofing, beginning with industrial and farm roofs, and quickly extending to residential buildings. A more recent development in the application of this material includes usage as a wall cladding. Done well, profiled metal cladding creates an attractive aesthetic.

In the same way, profiled metal is a material well-suited to use for fencing. Timber-framed panels of corrugated iron sheets create a striking visual effect (highly visually interesting compared to the same old timber palings that we do to death in NZ!). Our iron bay has you covered for every thing you might need for your designer fence!

Blog

TIPS AND TRICKS HOW TO IMPROVE YOUR HOME

Aluminum/Steel

Aluminum or steel fence make available a durable option that takes the appearance of wrought iron deprived of all that troublesome metal hammering on an anvil. Made from metal, Aluminum or steel fencing is are so durable, long-lasting, and sturdy. The painting method applied here is powder coating, which involves covering the metal for a clean, even, and a more delicate feel.

Aluminum or steel fence is created by rolling long tubes of metal over a preset die which decides the shape on every piece. For each section, the metal thickness determines the strength. So, the thicker the metal, the more resistant it is to bending or damaging. Like the vinyl fence, the aluminum fence is also mainly modular, so making customization and upgrades are easy. The aluminum fence also features several additions like ornamental choices, post caps, and rail styles for improving the appeal as a modest or outlandish fence.

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COLOR SELECTION BROCHURE

FRAMED PRIVACY WALL

ABT-32 panel profile framed with 5/4" Trex deck board.

Name *

First Name Last Name

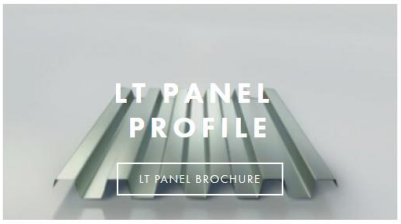
Phone *

(###) ### ####

Email *

Confirm Email *

Please confirm your email address.



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Rusted Steel Fence in Scottsdale

Looking for a Modern Steel Fence?

We can design & build your steel fence with rusted steel, galvanized or painted steel, corrugated panels, or CORTEN® steel panels. Corten steel is a special "weathering steel" alloy that forms a stable rusted appearance over time and doesn't require painting.

Rolling gates or swing gates can be designed and built to provide access for vehicles or people.

This rusted steel fence project in Scottsdale, AZ was designed so that the homeowner can drive vehicles into the yard from the alley. It has

Project team: details & links

Location
South Scottsdale, AZ

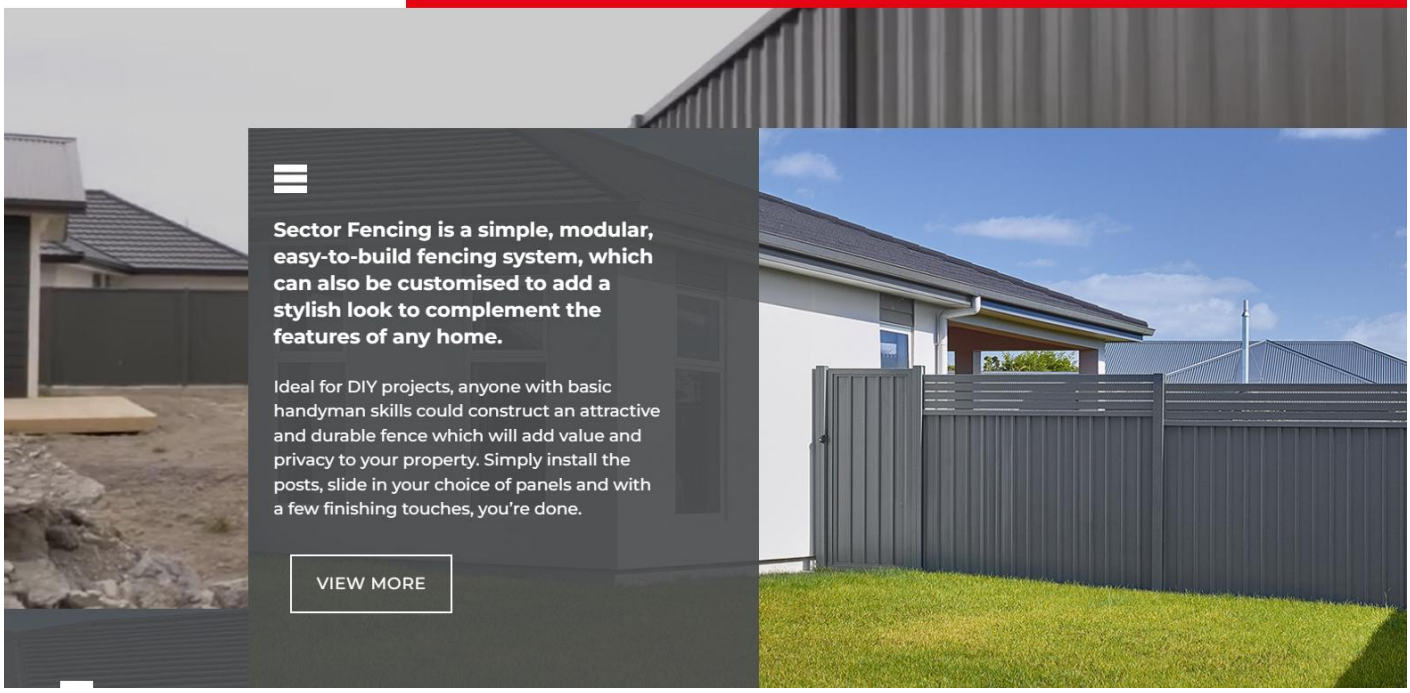
Project Type
custom steel fence with rolling gate & swing gate

Permit Drawings
Project Construction LLC

https://www.sectorfencing.co.nz

SECTOR PANEL FENCING

WHY SECTOR? OUR PRODUCTS GALLERY DIY ABOUT



Sector Fencing is a simple, modular, easy-to-build fencing system, which can also be customised to add a stylish look to complement the features of any home.

Ideal for DIY projects, anyone with basic handyman skills could construct an attractive and durable fence which will add value and privacy to your property. Simply install the posts, slide in your choice of panels and with a few finishing touches, you're done.

VIEW MORE

https://www.titanfenceco.com/corrugatedfencing

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Corrugated Metal Fencing

Corrugated metal fencing brings all the benefits of metal roofing and siding to a new application. Unlike wood, these materials don't need to be stained and treated periodically, meaning you've got a virtually maintenance free fence. Corrugated fencing adds a modern unique look to your home. It comes in many styles and colors, meaning you can customize to your style and preferences.

16. Corrugated Metal

Photo: istockphoto.com

If total privacy is the goal, and your design style of choice is industrial, a corrugated metal fence may be ideal for your needs. Galvanized sheets of corrugated metal are lighter in weight per square foot than many other fence materials, and the material can resist mold and rust. Some DIYers even choose to upcycle old metal.

Cost: $10 and up per linear foot

HGTV

Cheap Fence Ideas That Look Great | HGTV

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9. Go Modern

Corrugated metal is one of the more modern-looking fencing options on the market. Its industrial quality seriously shields your backyard from curious onlookers while contributing yet one more texture to the common palette of stone, gravel, and concrete. Found at home improvement stores and purchased in budget-friendly sheets, these metal fences are also extremely durable, ensuring a long-lasting privacy solution for your space.

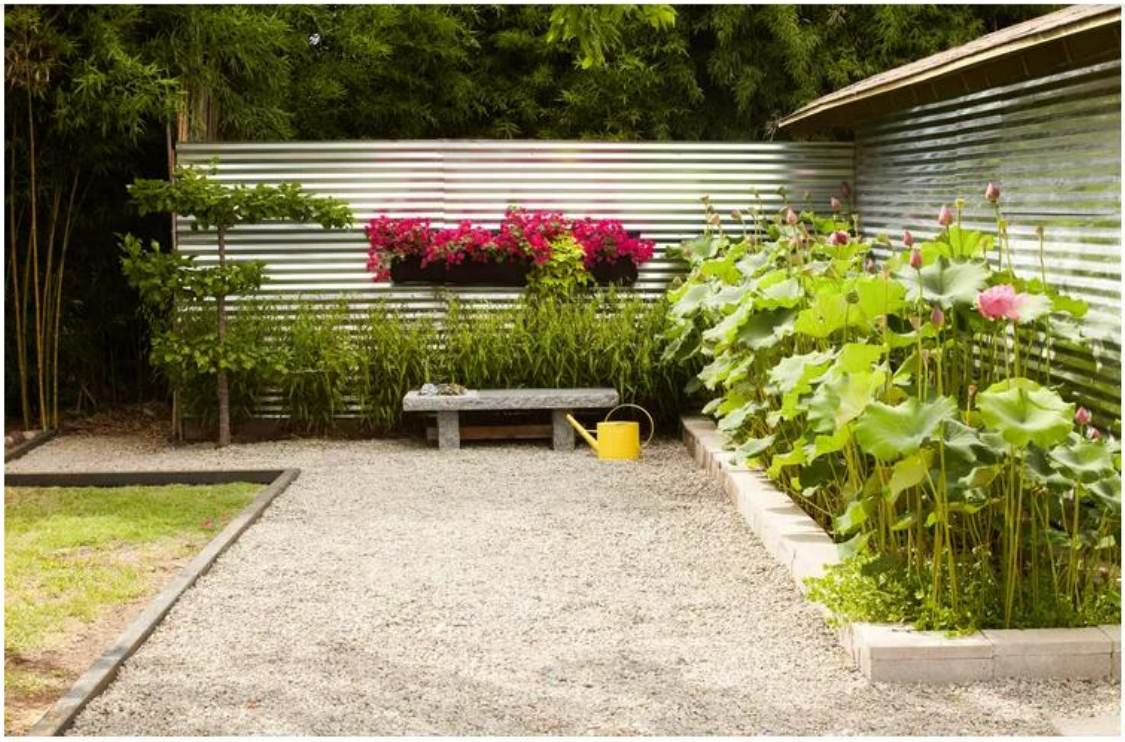


PHOTO: KRITSADA PANICHGUL

1. Metal Privacy Fence

A corrugated metal fence is not only cost-effective, but it's also more durable and easy to care for than wood. The material is rot-, rust-, and mold-resistant, making upkeep minimal. And because it doesn't have slats, sheet metal provides an abundance of privacy. It also works well for hanging planter boxes or outdoor wall accents.

19 of 23

Embrace Heavy Metal

PHOTO: EDWARD GOHLICH

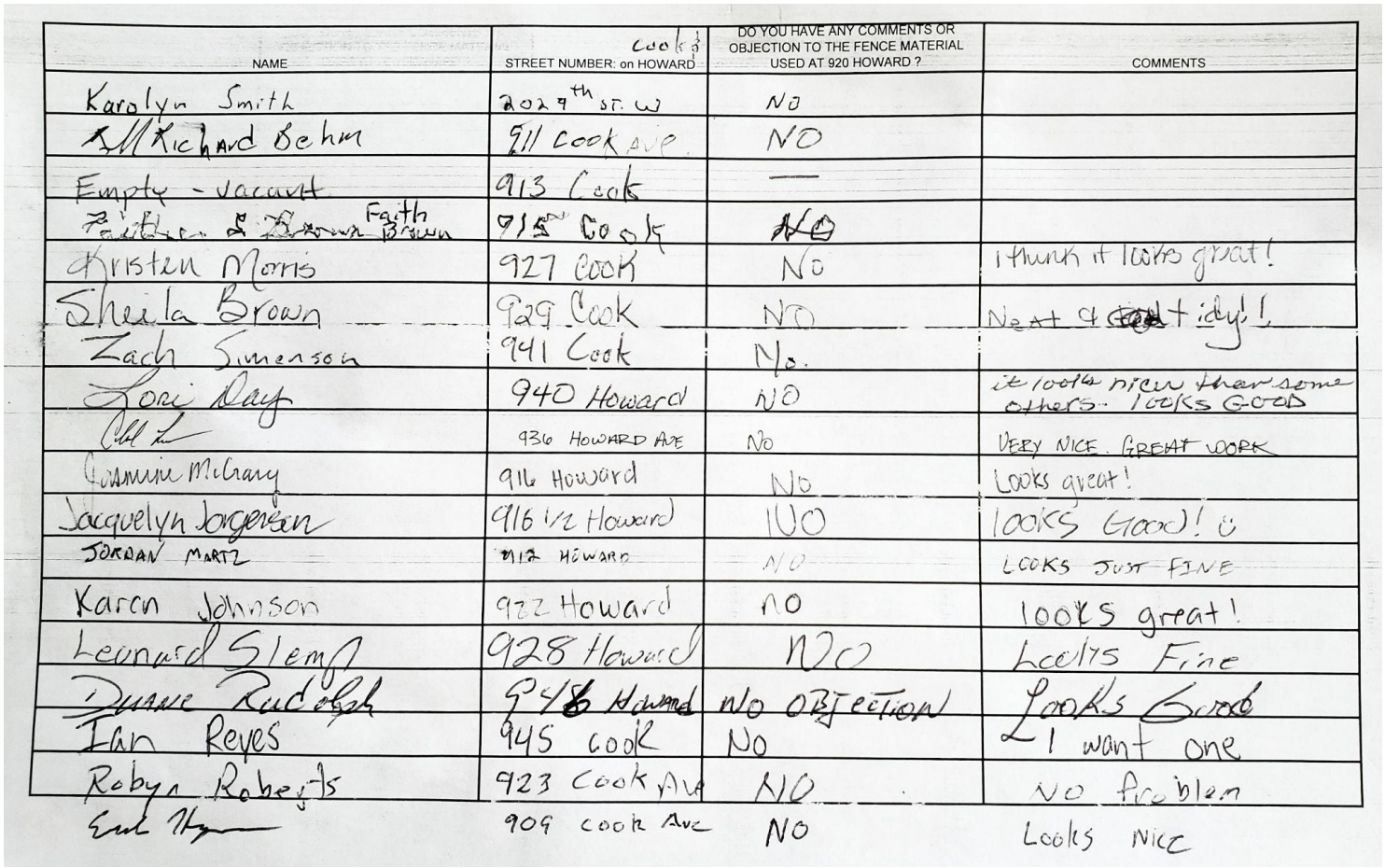
Give your garden a modern feel with a wall of inexpensive galvanized corrugated metal. Wood patio furniture and colorful geraniums soften the space. Horizontal stripes on a cushion mimic the texture of the metal sheeting.

With respect to the aesthetic appeal of this type of fencing;

My 920 Howard home is in the alley between Howard and Cook, between 9th & 10th St. W. When I initially received the complaint notice from the Zoning Dept., I was under the impression that one of my neighbors complained about the patio enclosure even though it had been in place for over 5 years. So, I went to **every neighbor** on all 4 sides of the block (Howard, Cook, 9th St. W & 10th St. W) with the attached document to ask if any of my neighbors had ANY objection to the materials used or to the enclosure itself, and if they'd like they could add any comments that they would like to include for the Zoning Dept.

Even though I went back around the block on 2 separate days during the week and 1 time on Saturday.. there was 1 home at 214 9th St. W was never home so I don't have their signature/comment. (and 1 home at 913 Cook that's vacant)

I can provide the original signed document to the Board of Adjustment.

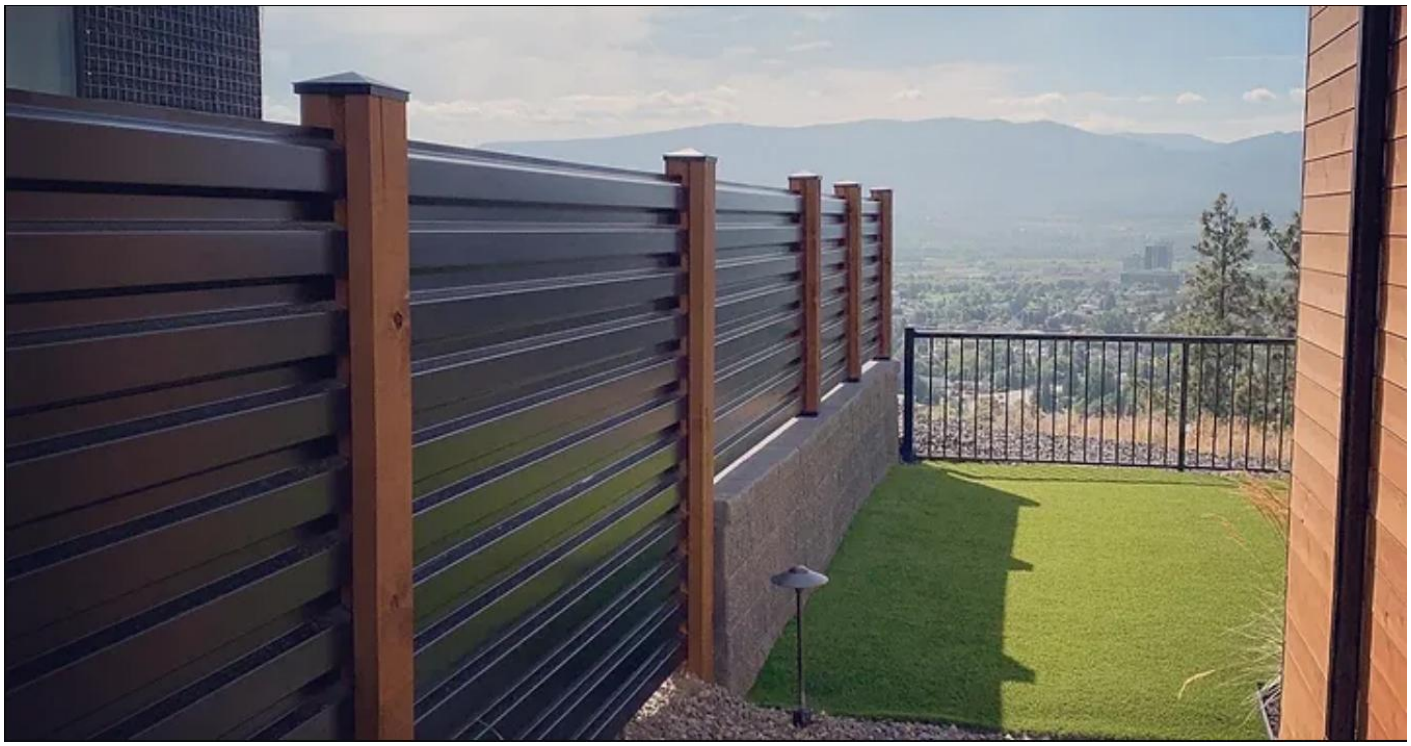


NAME	STREET NUMBER: on HOWARD / Cook	DO YOU HAVE ANY COMMENTS OR OBJECTION TO THE FENCE MATERIAL USED AT 920 HOWARD ?	COMMENTS
Karolyn Smith	2029th ST. W	NO	
Richard Behm	911 Cook AVE.	NO	
Empty - vacant	913 Cook	—	
Faith Brown	915 Cook	NO	
Kristen Morris	927 Cook	NO	I thunk it looks great!
Sheila Brown	929 Cook	NO	Neat & tidy!
Zach Simenson	941 Cook	No.	
Lori Day	940 Howard	NO	it looks nicer than some others. looks GOOD
	936 HOWARD AVE	No	VERY NICE. GREAT WORK
Jasmin McGrary	916 Howard	No	Looks great!
Jacquelyn Jorgensen	916 1/2 Howard	NO	looks Good! ☺
JORDAN MARTZ	912 HOWARD	NO	LOOKS JUST FINE
Karen Johnson	922 Howard	no	looks great!
Leonard Slemp	928 Howard	NO	Looks Fine
Duane Rudolph	948 Howard	no objection	Looks Good
Ian Reyes	945 cook	No	I want one
Robyn Roberts	923 Cook Ave	NO	no problem
	909 cook Ave	NO	Looks Nice

PICTURES 1-50

CONOVER FENCE

Bozeman, MT (406) 600-0950



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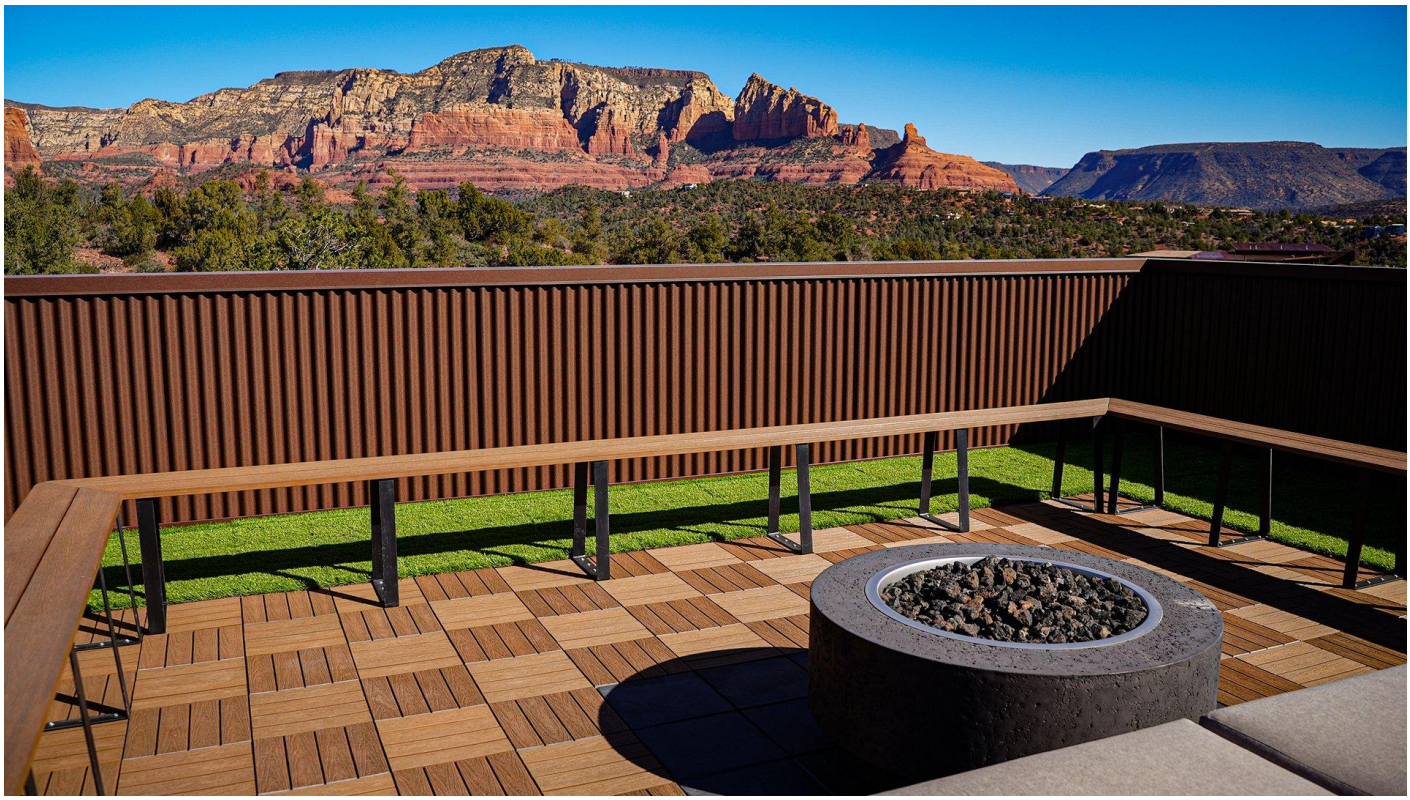

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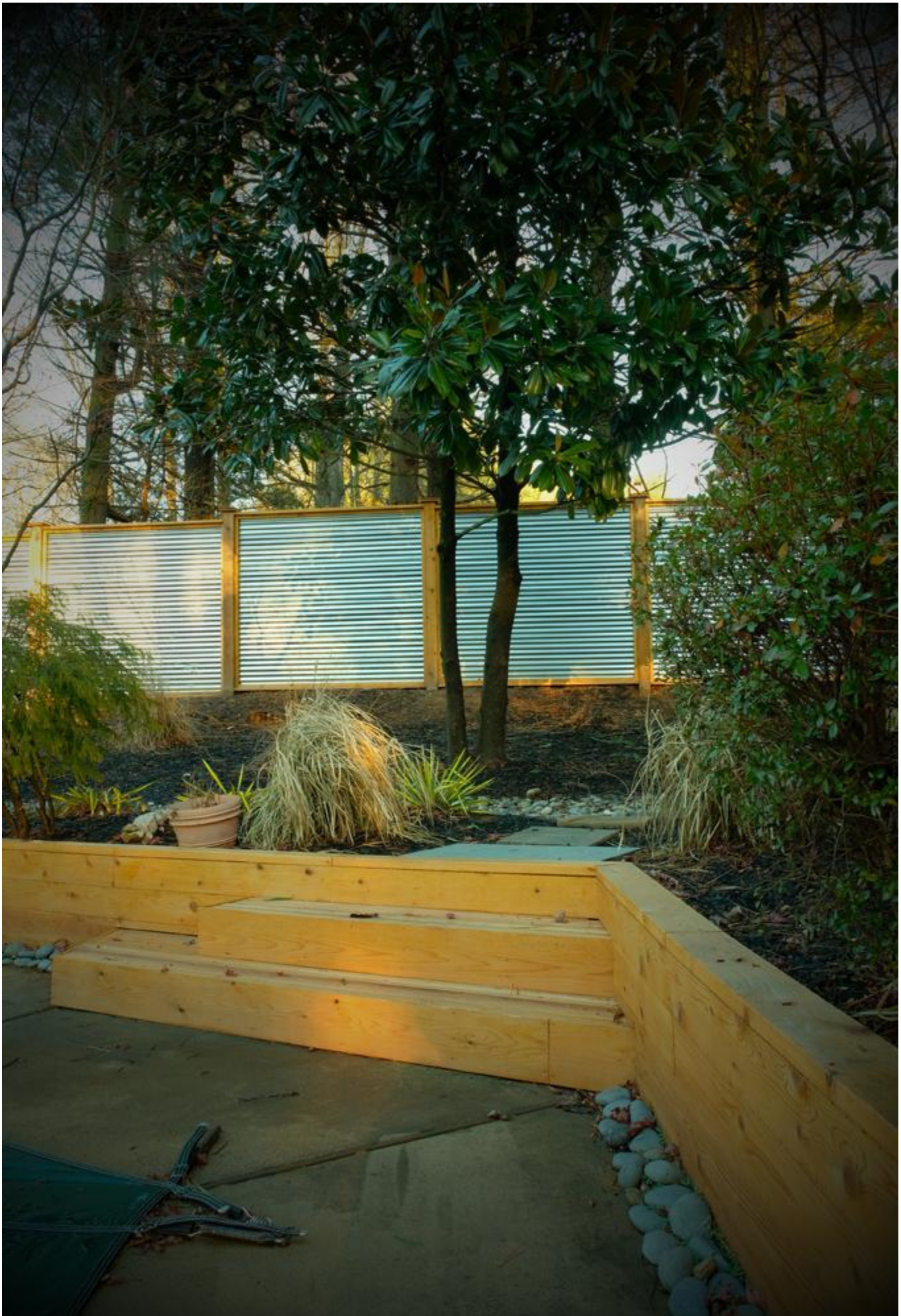

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Portico Real Estate

Buyer represented by:
Dwyer Stephanie with **PureWest Real Estate**

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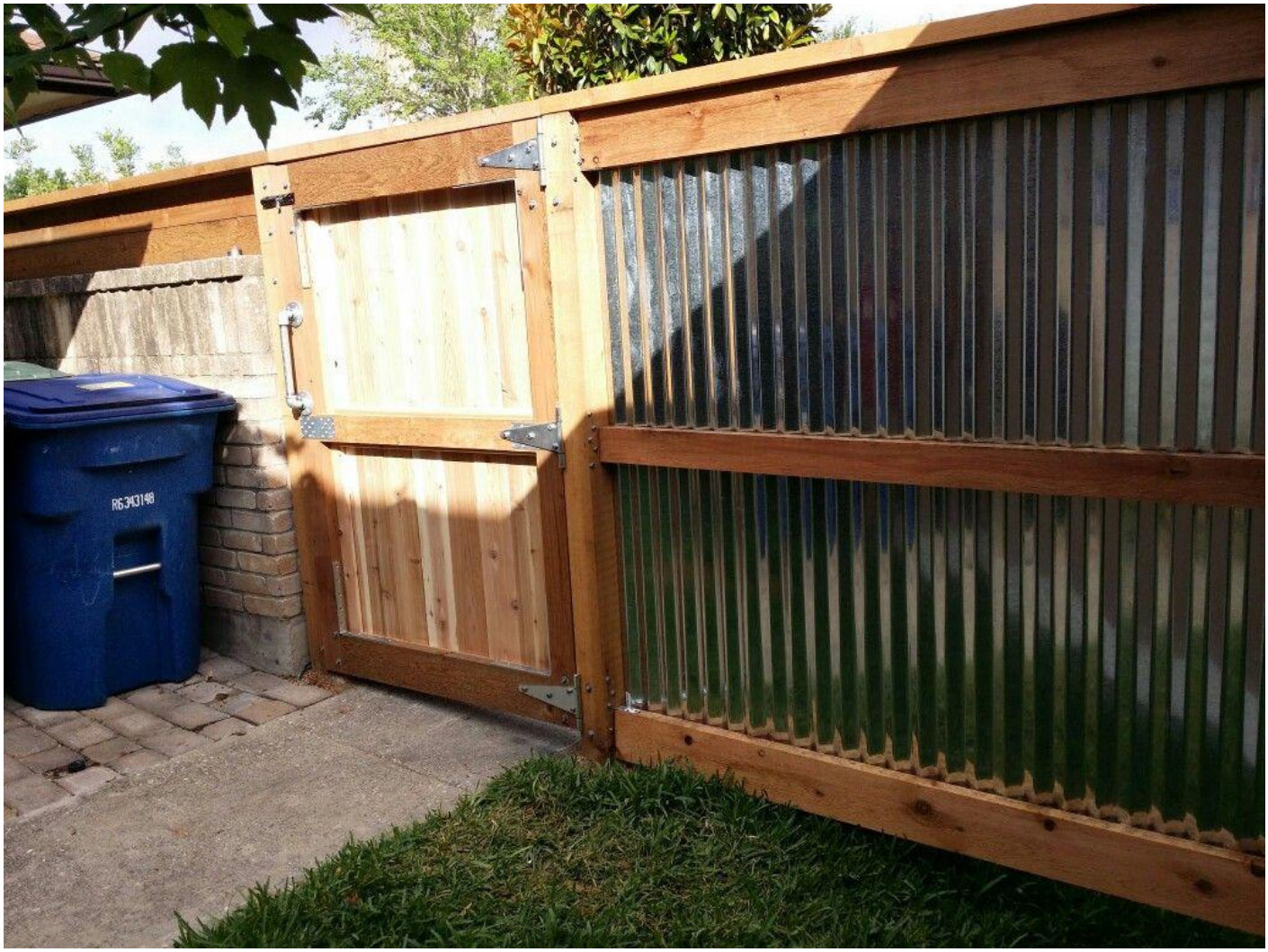
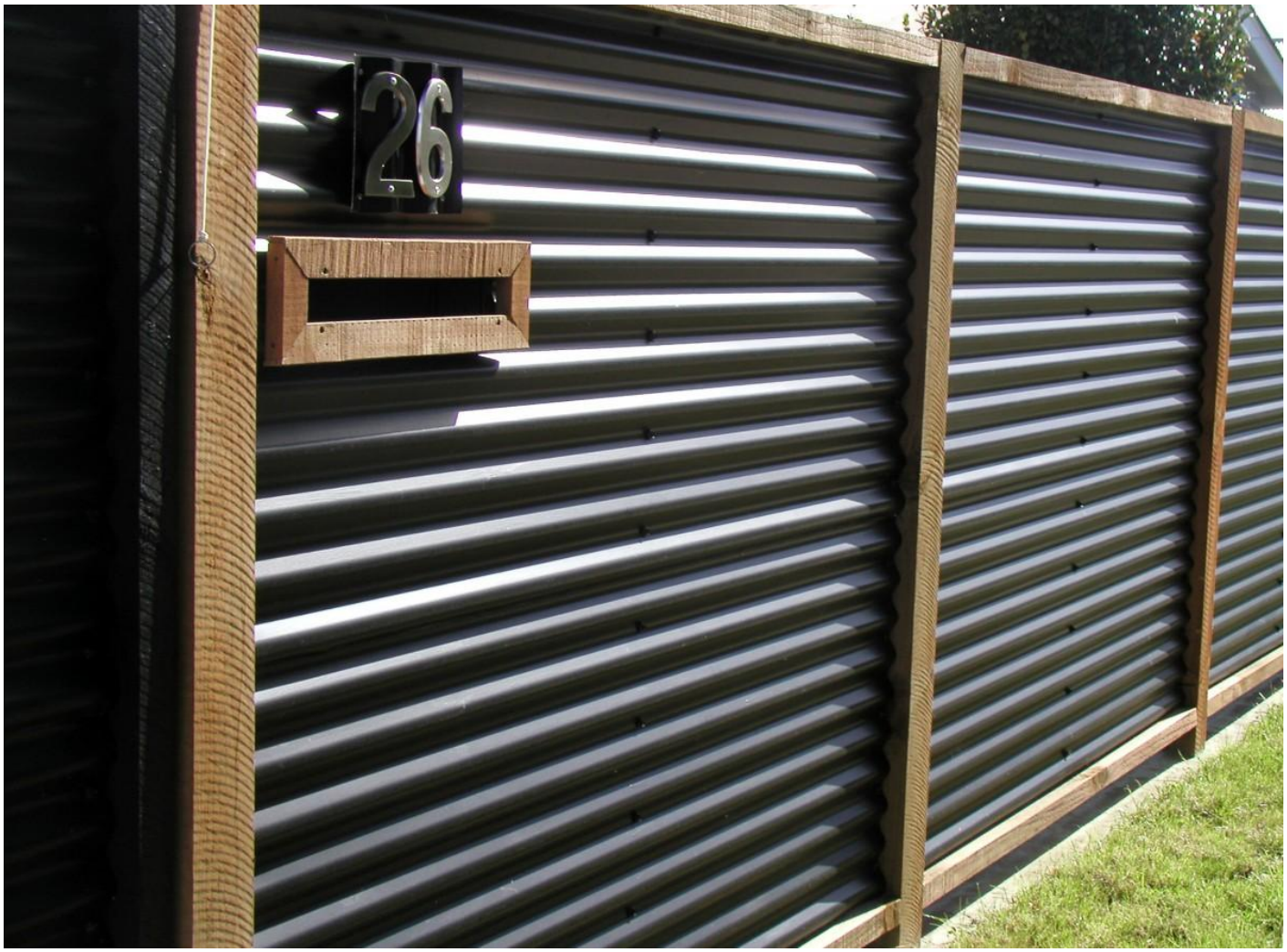
Landscaping

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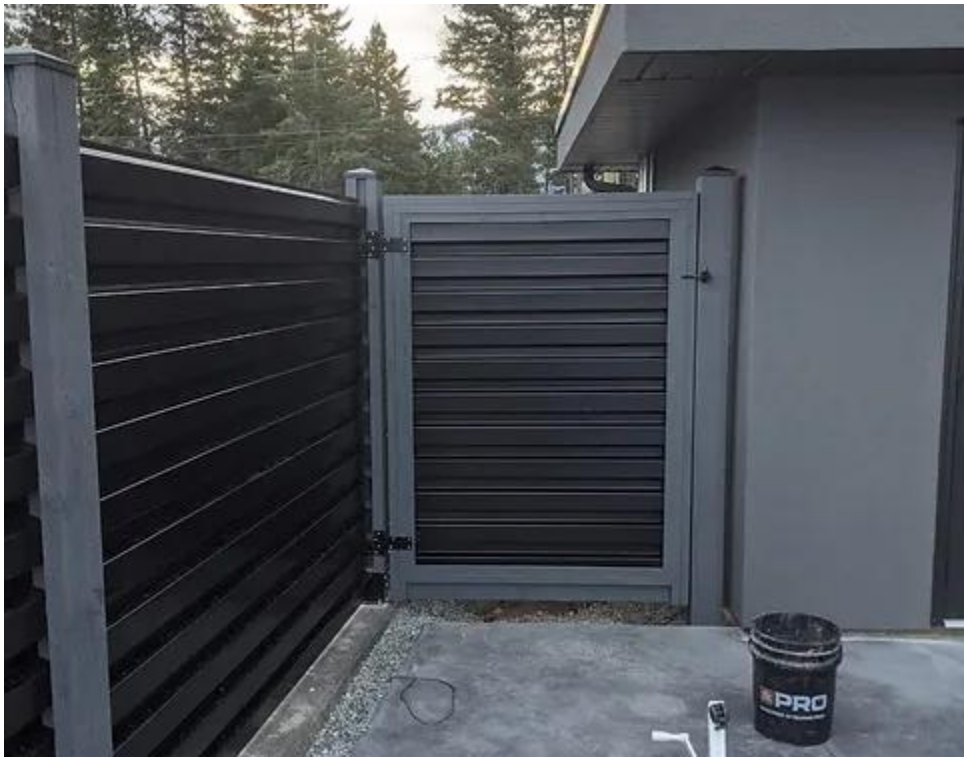
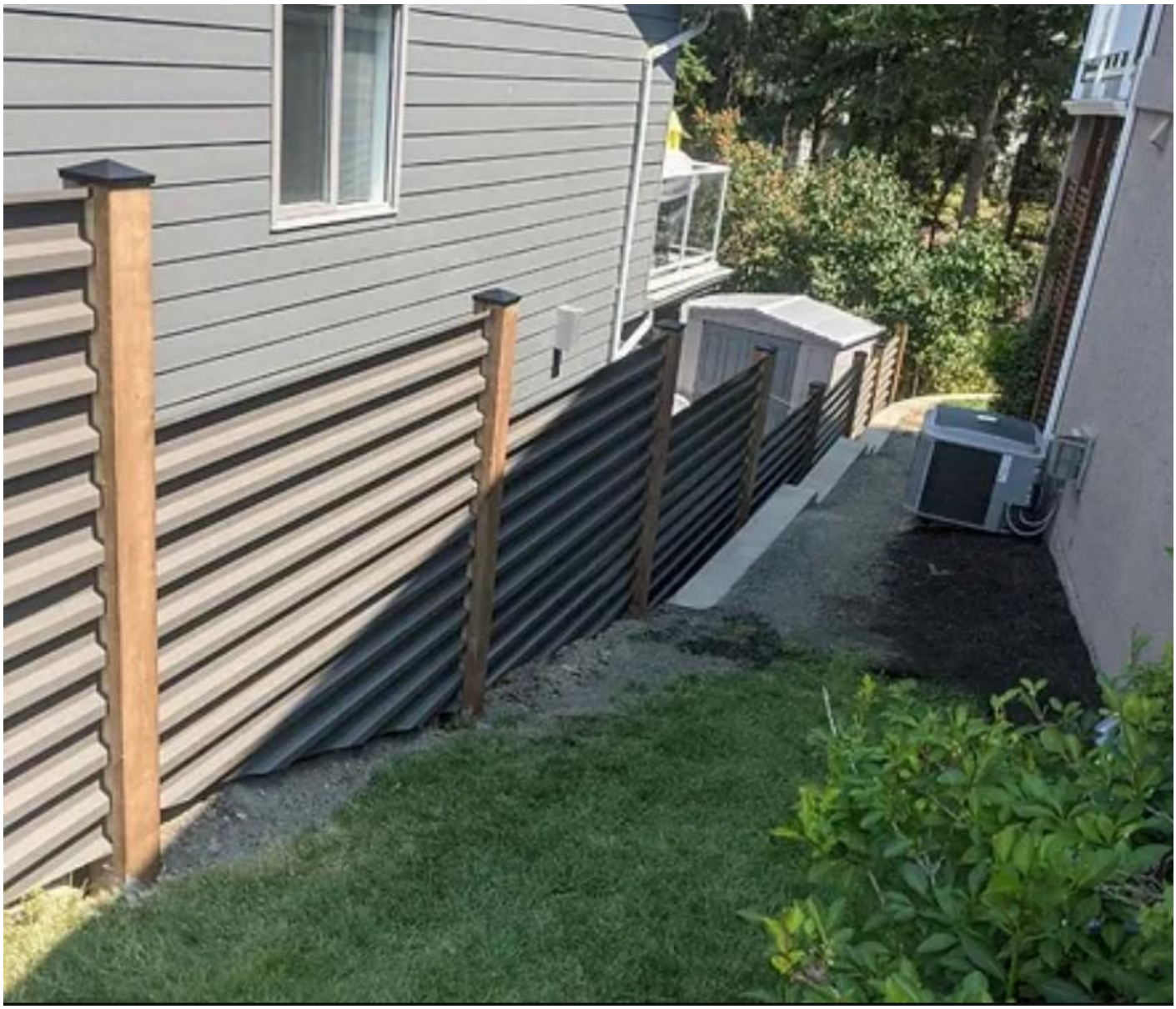
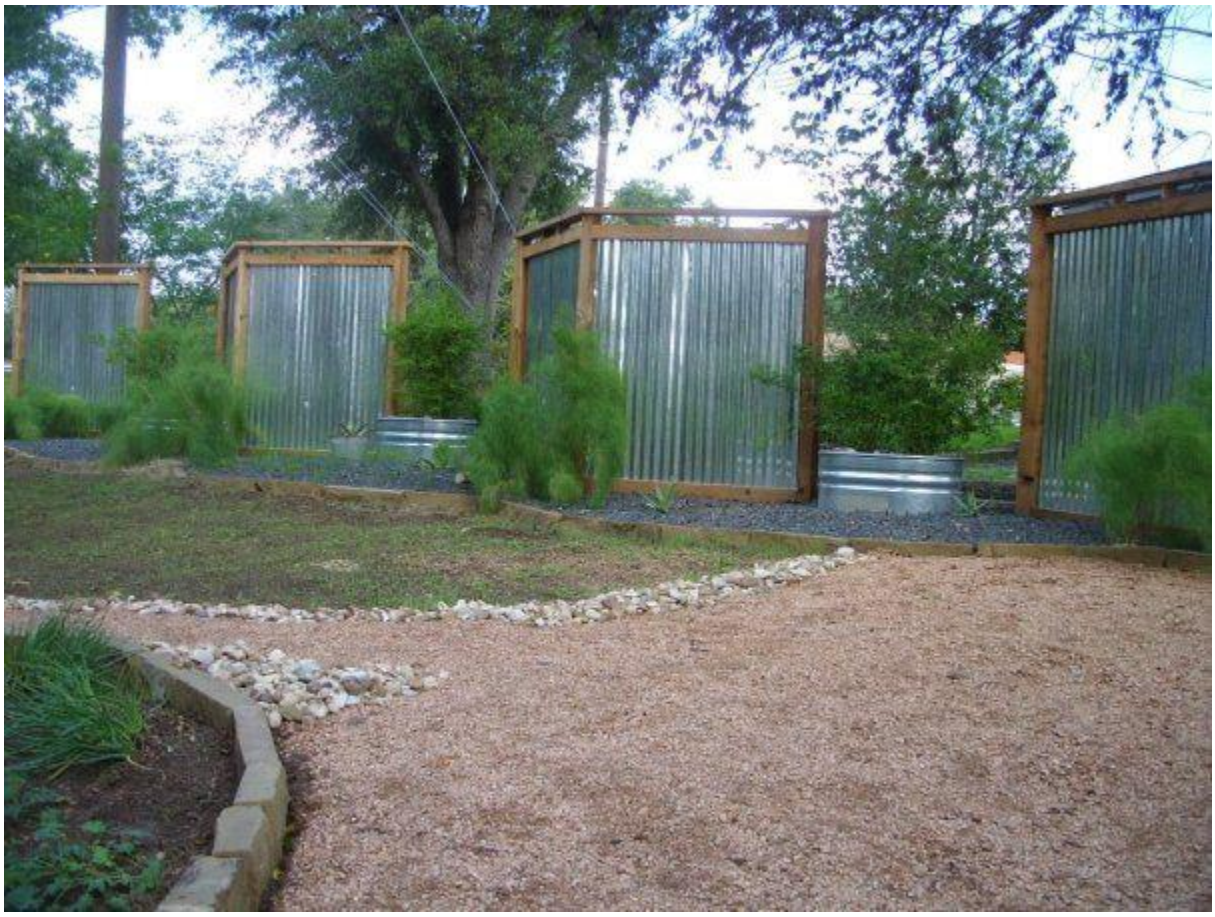
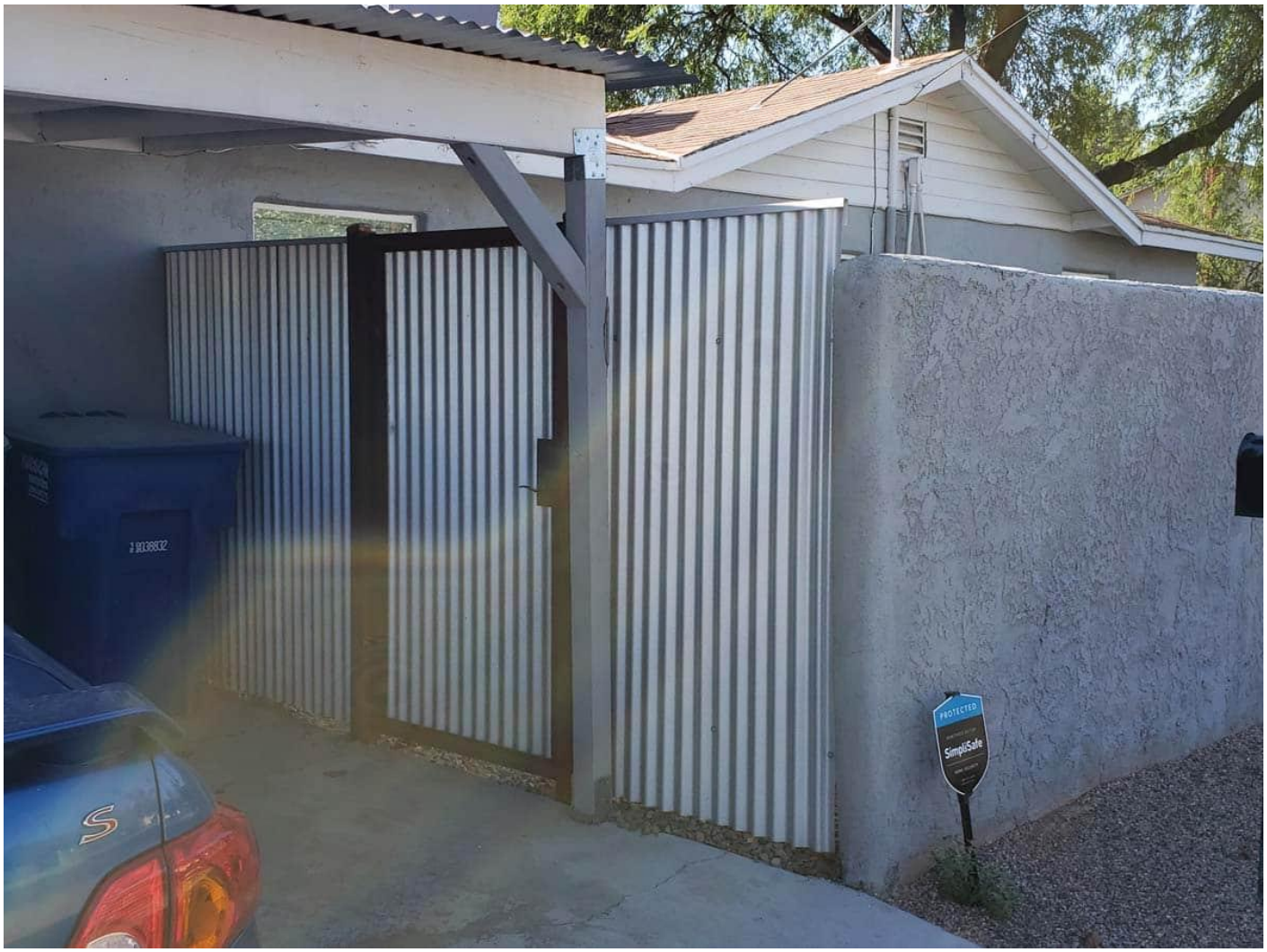
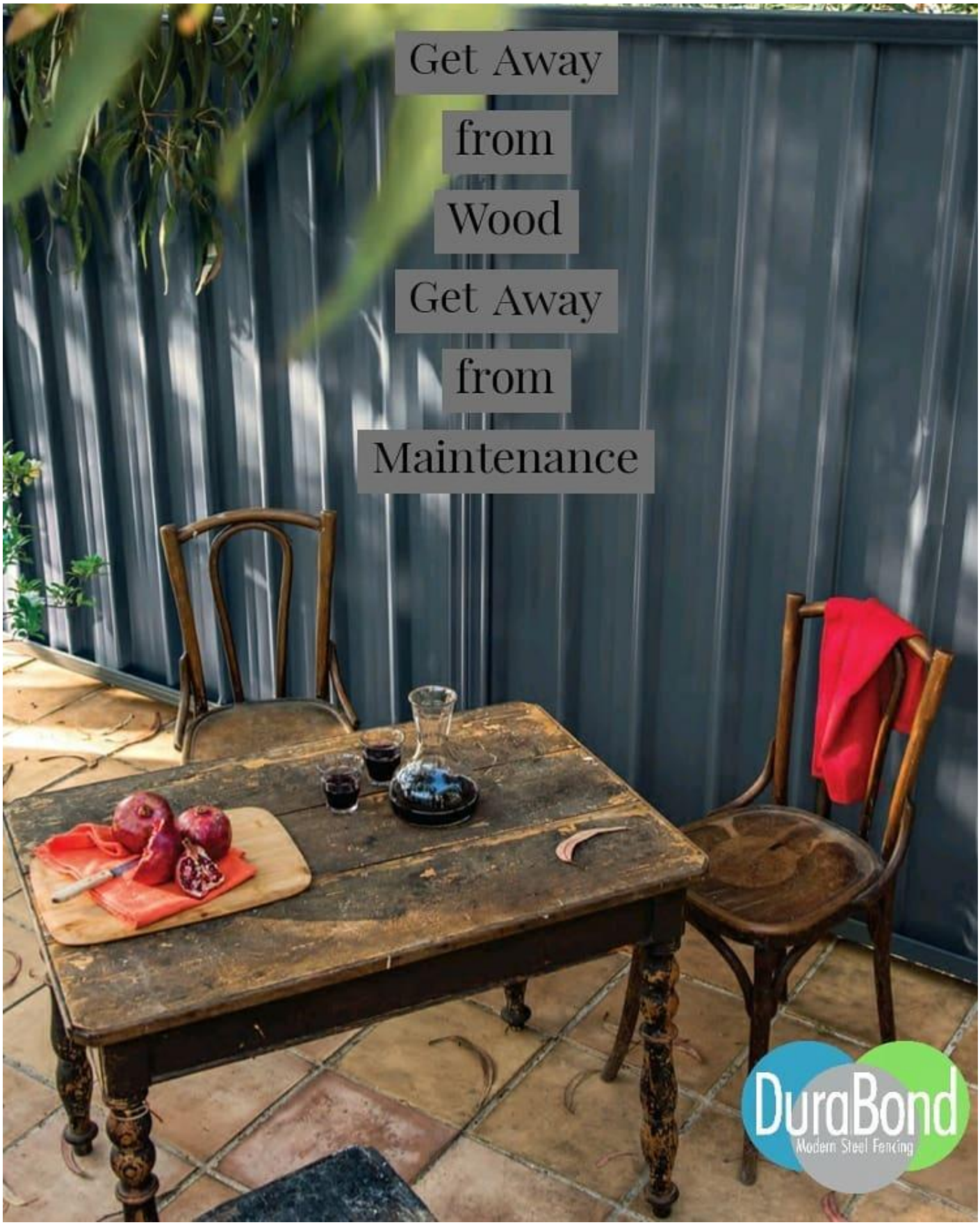
PICTURES 101-150

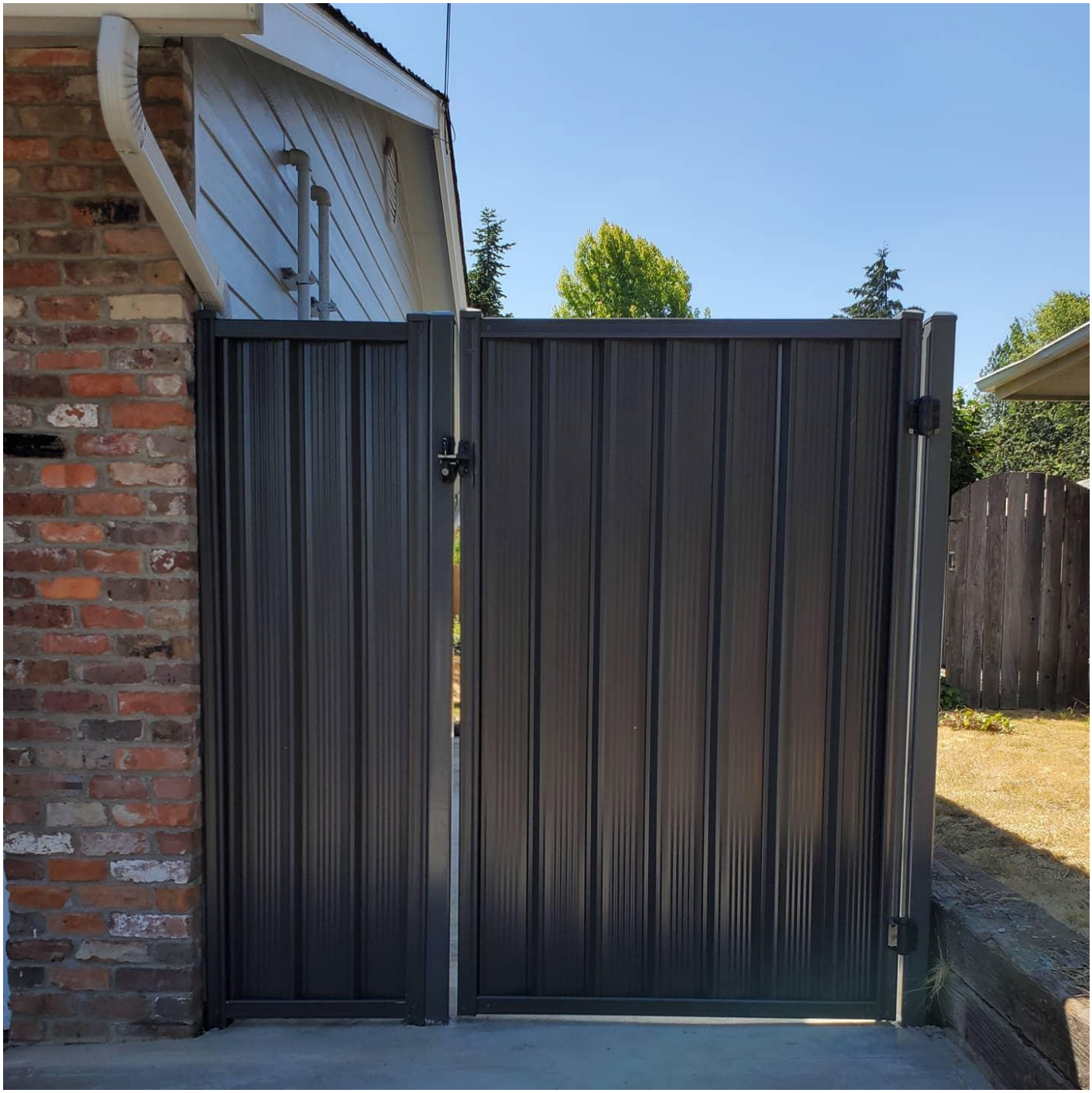


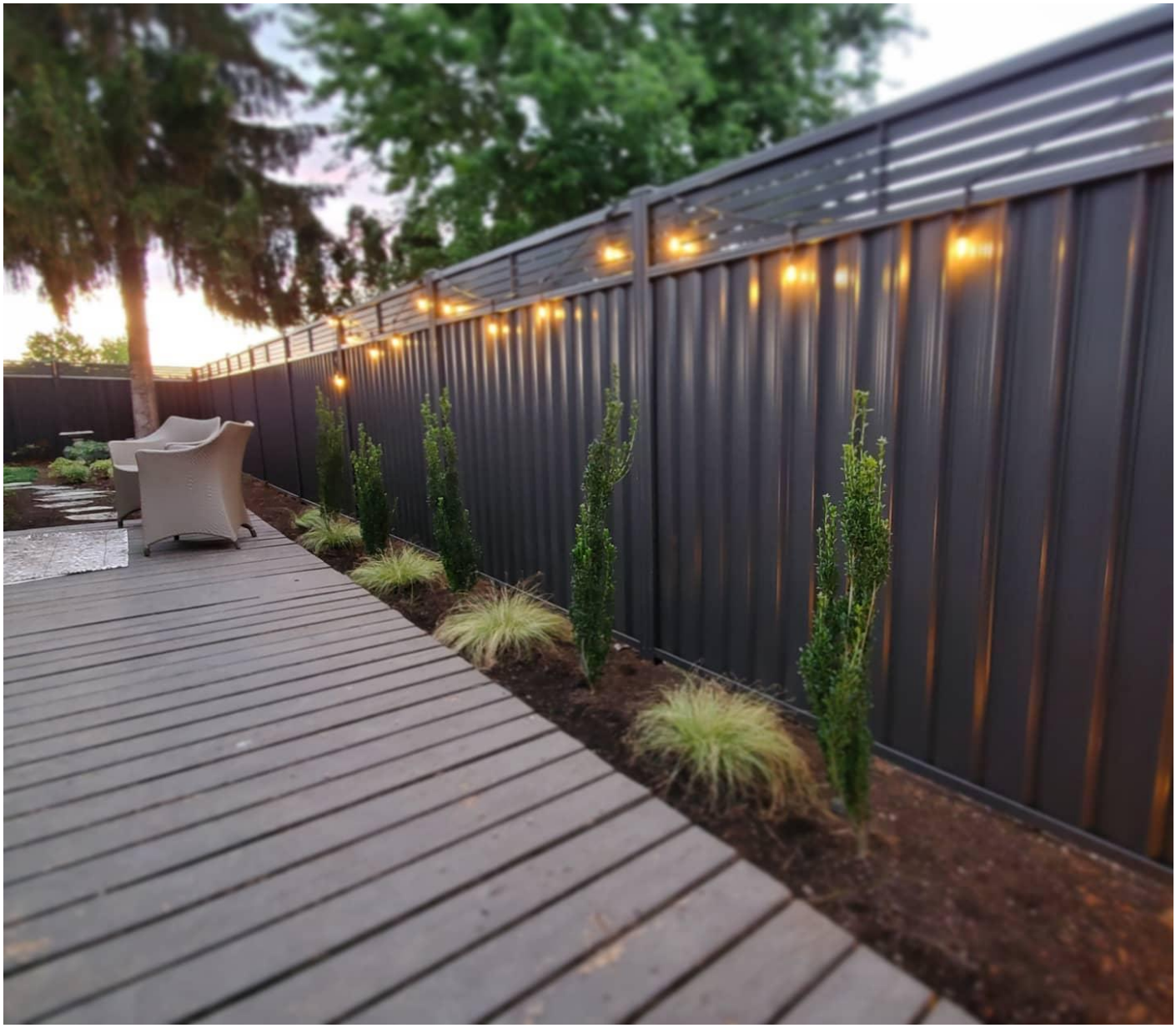


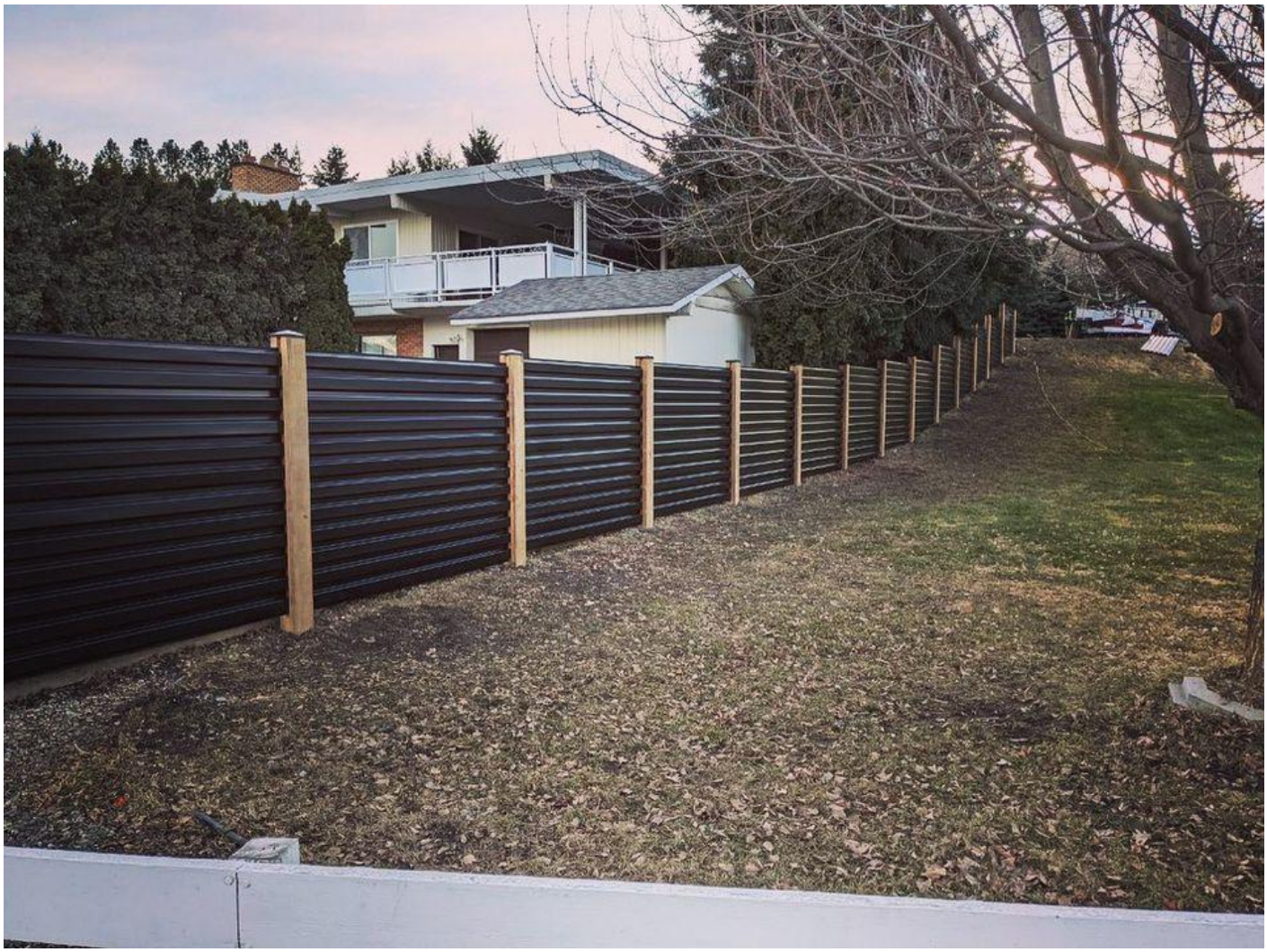



PROTECTED
SimpliSafe


Get Away
from
Wood
Get Away
from
Maintenance
DuraBond
Modern Steel Fencing

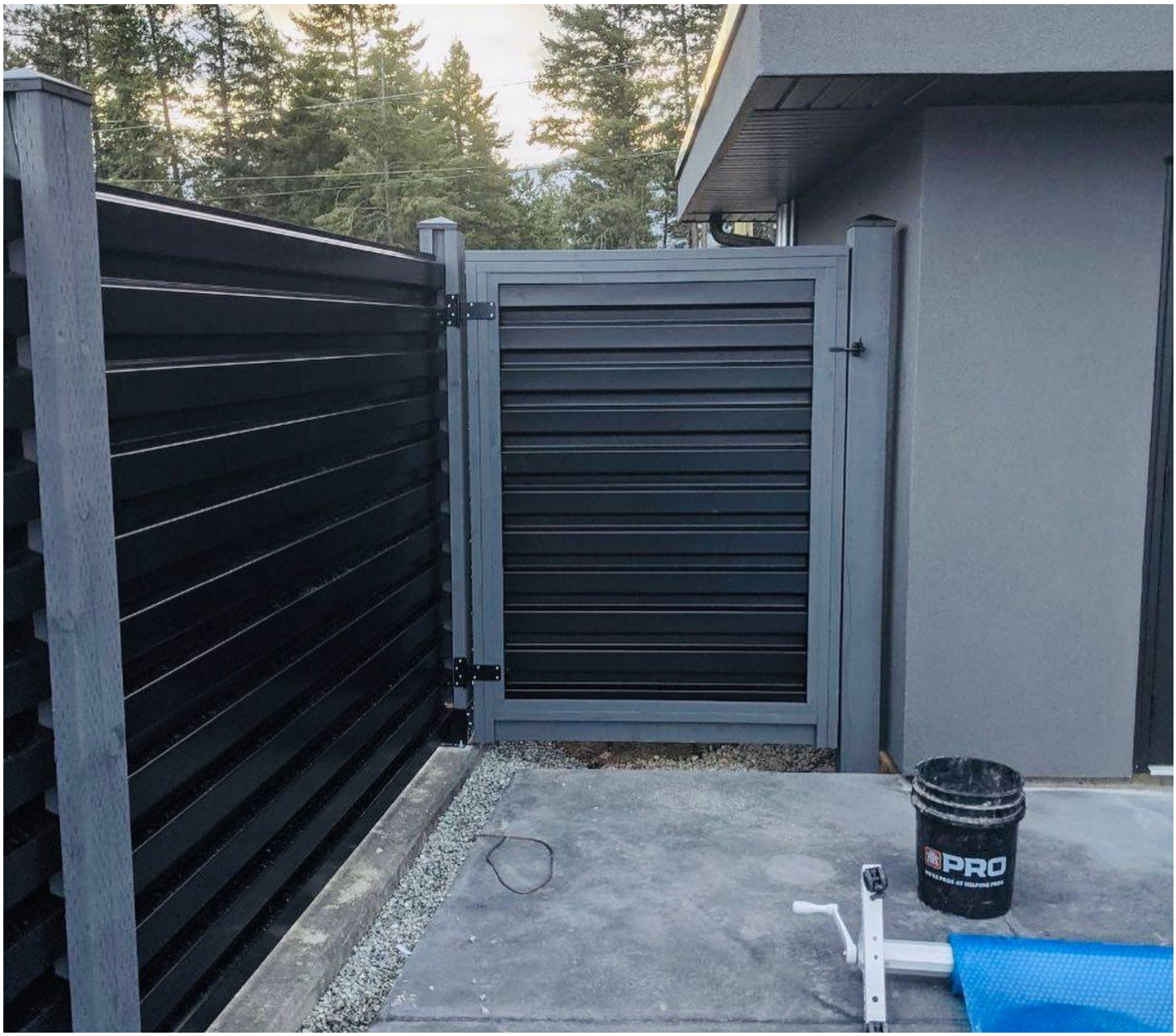


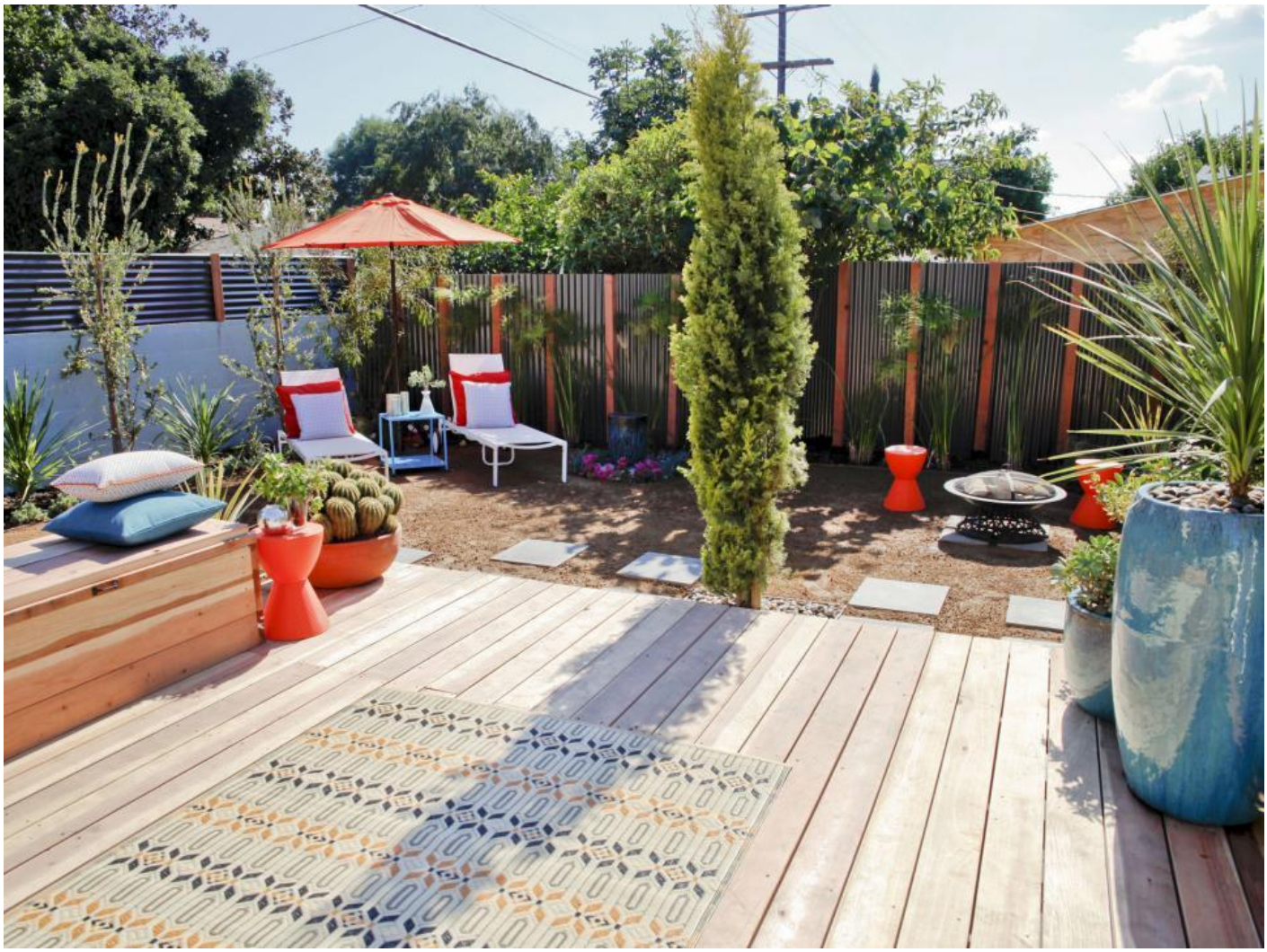




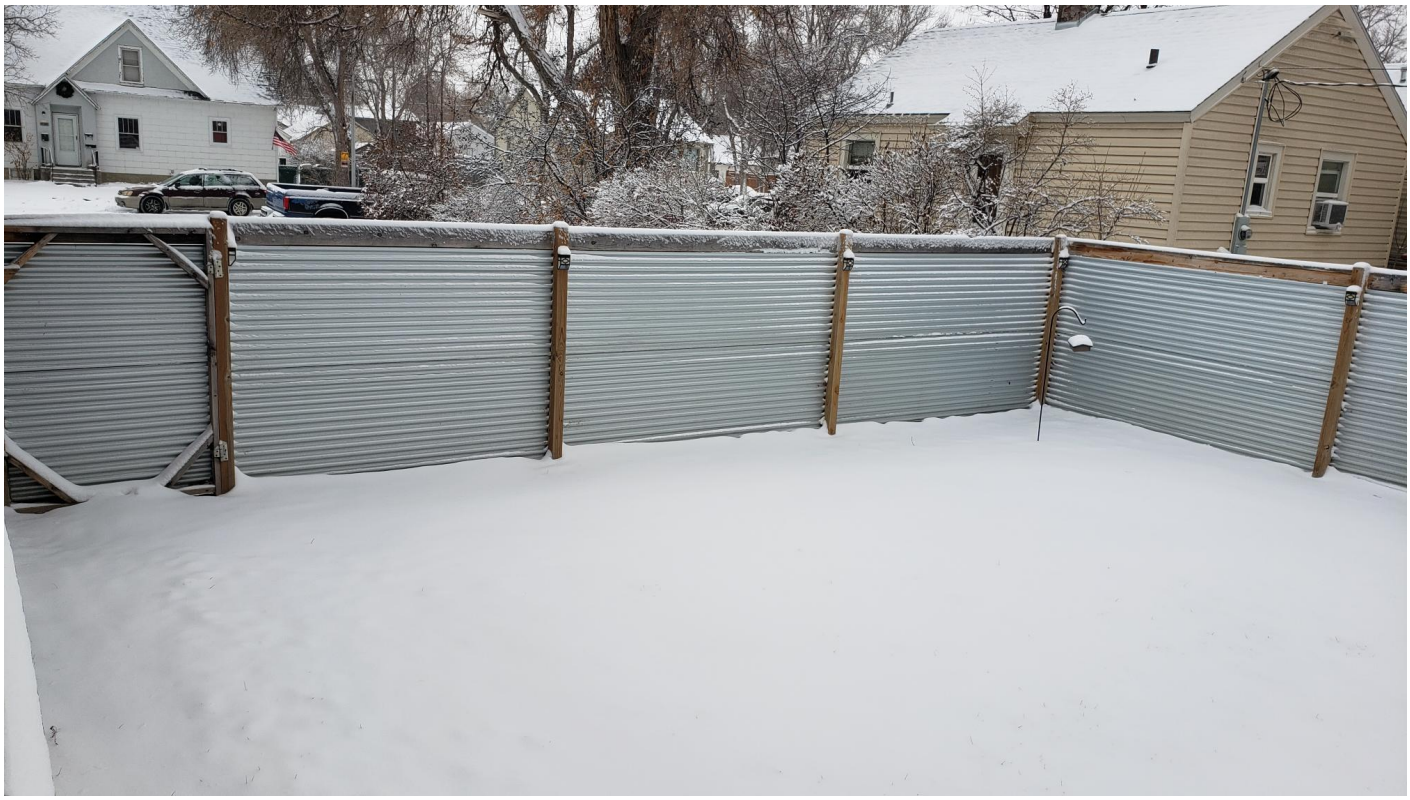
CitadelFence

PICTURES 151-200


PRO

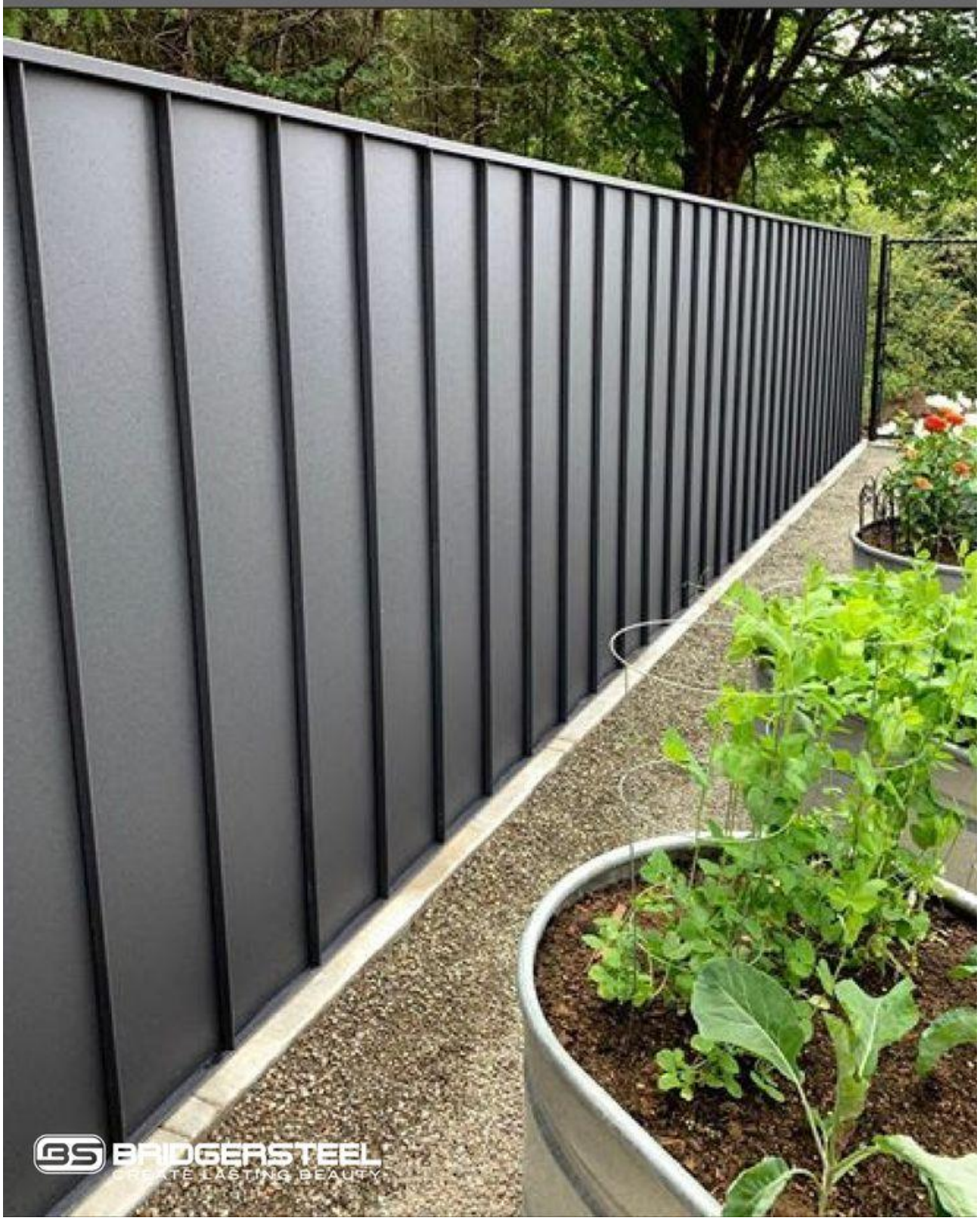


CALLED Creative.com

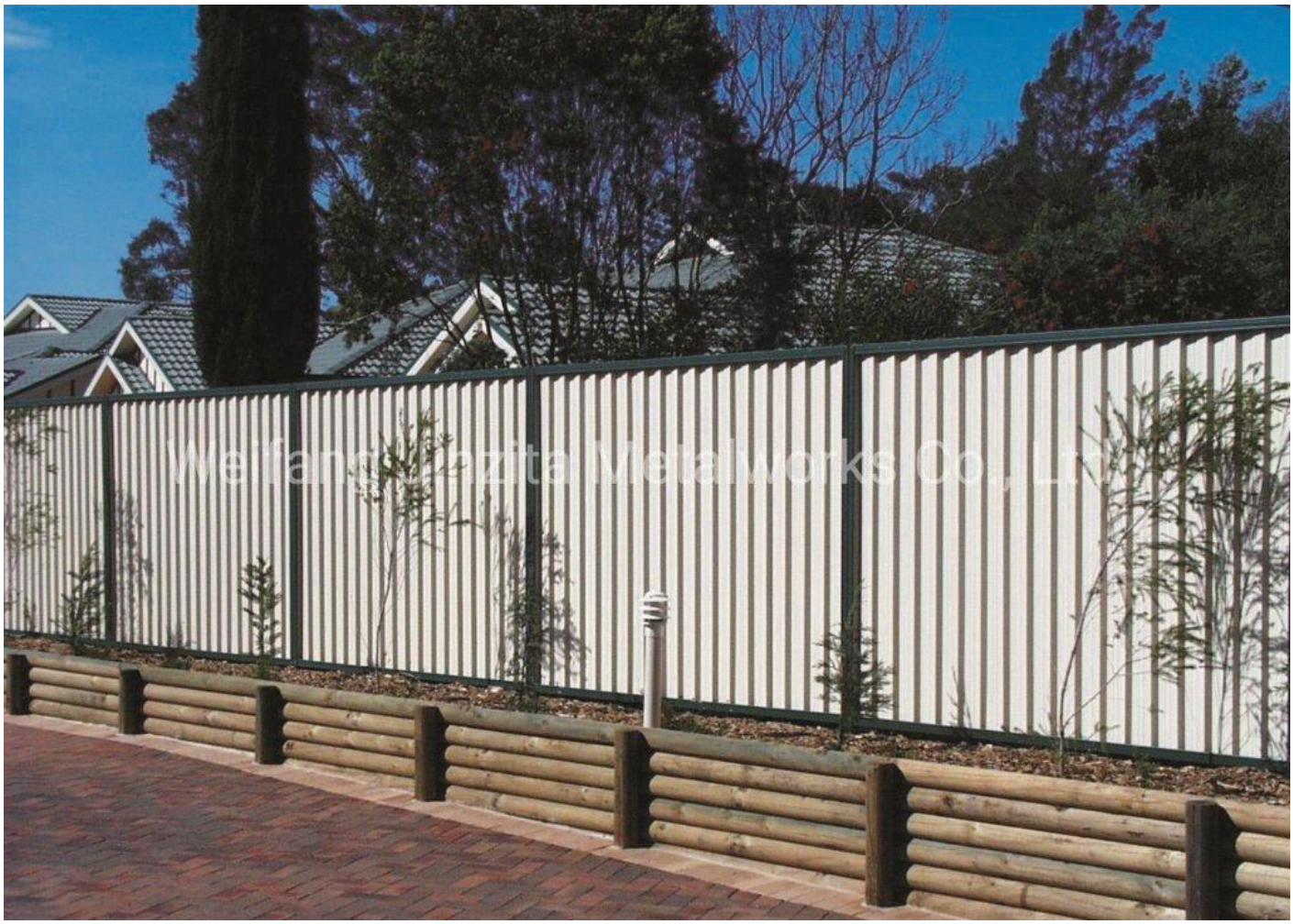


DIY METAL FENCING

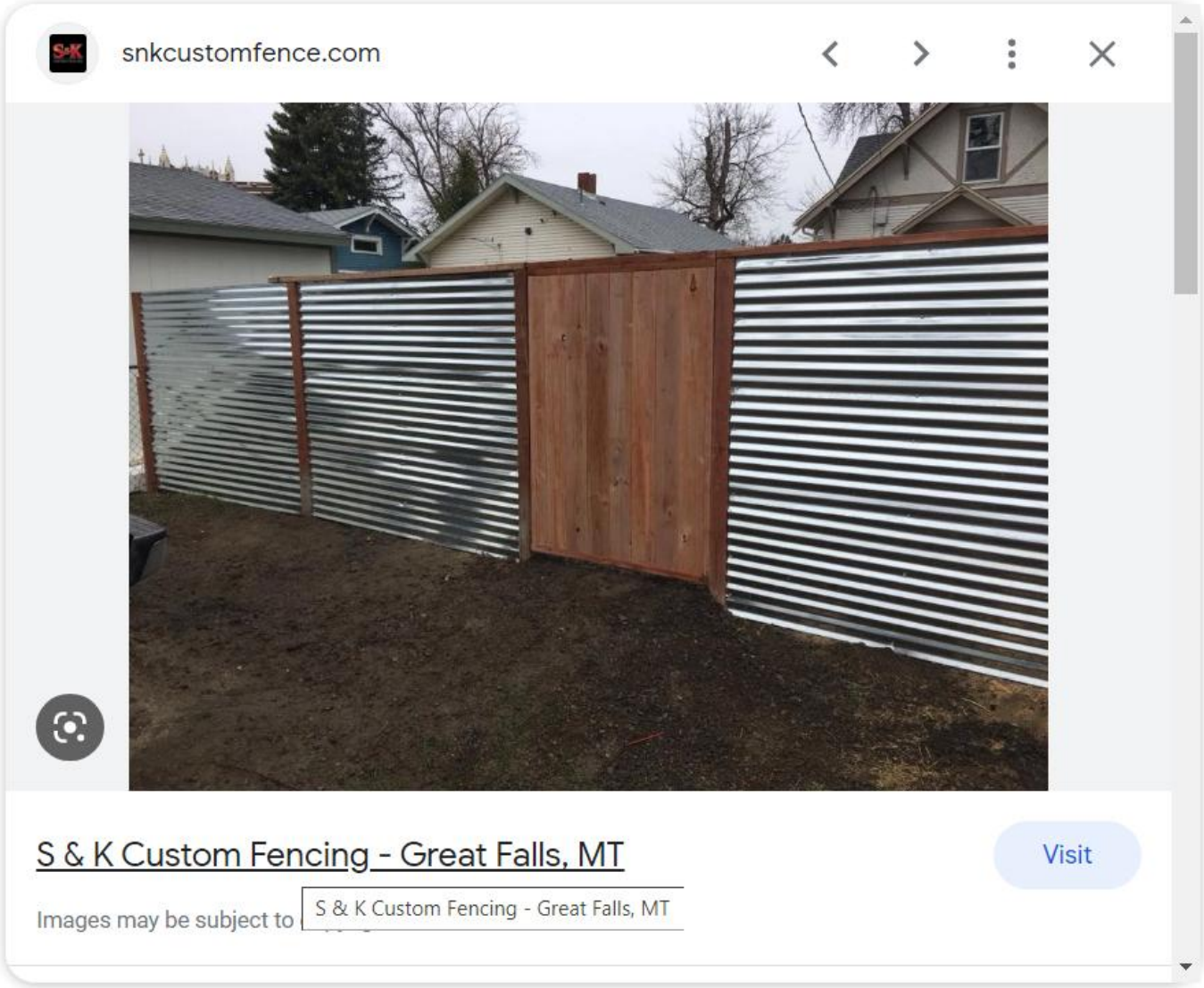
NEW WAY TO USE METAL IN YOUR BACKYARD



Fence Co.


Weifang Hanzita Metal Works Co., Ltd.

PICTURE 201-250



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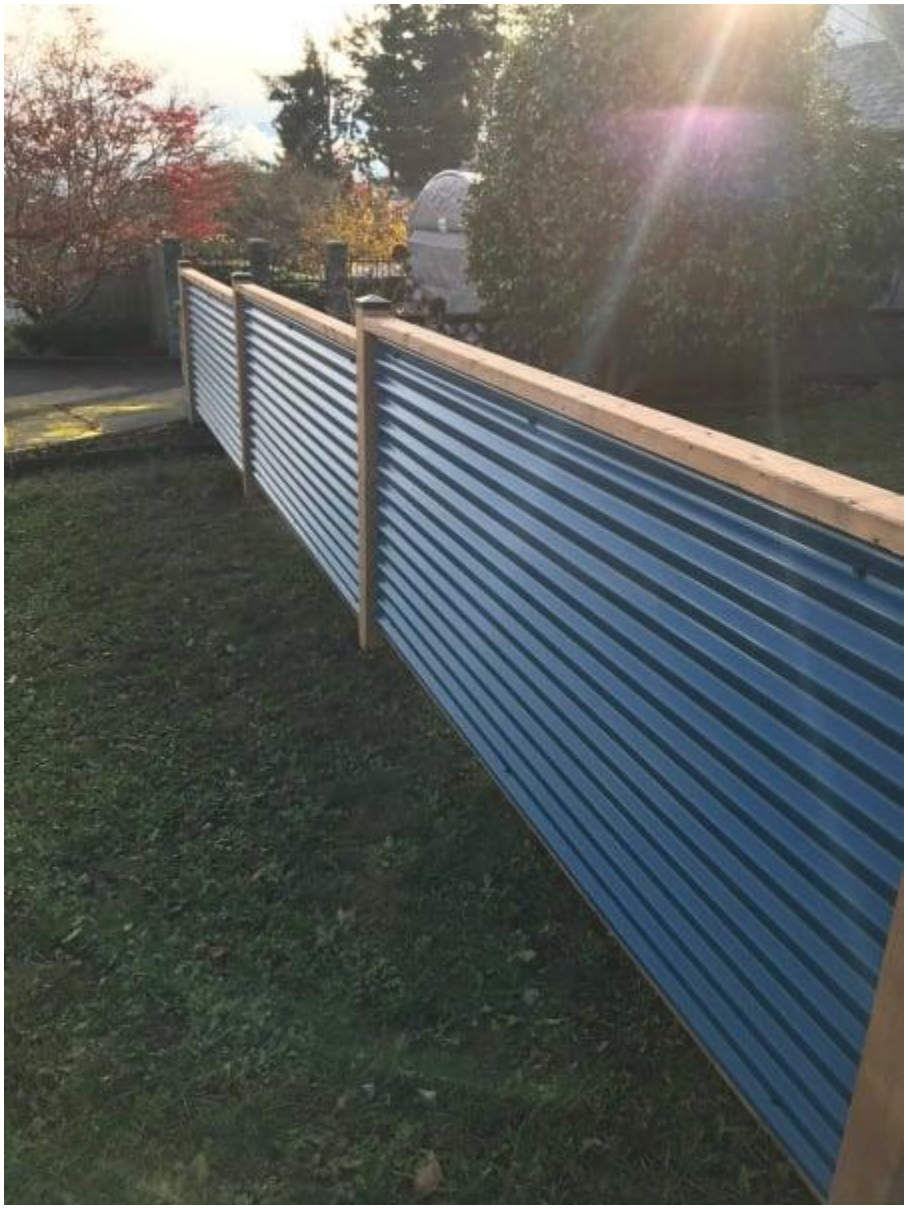
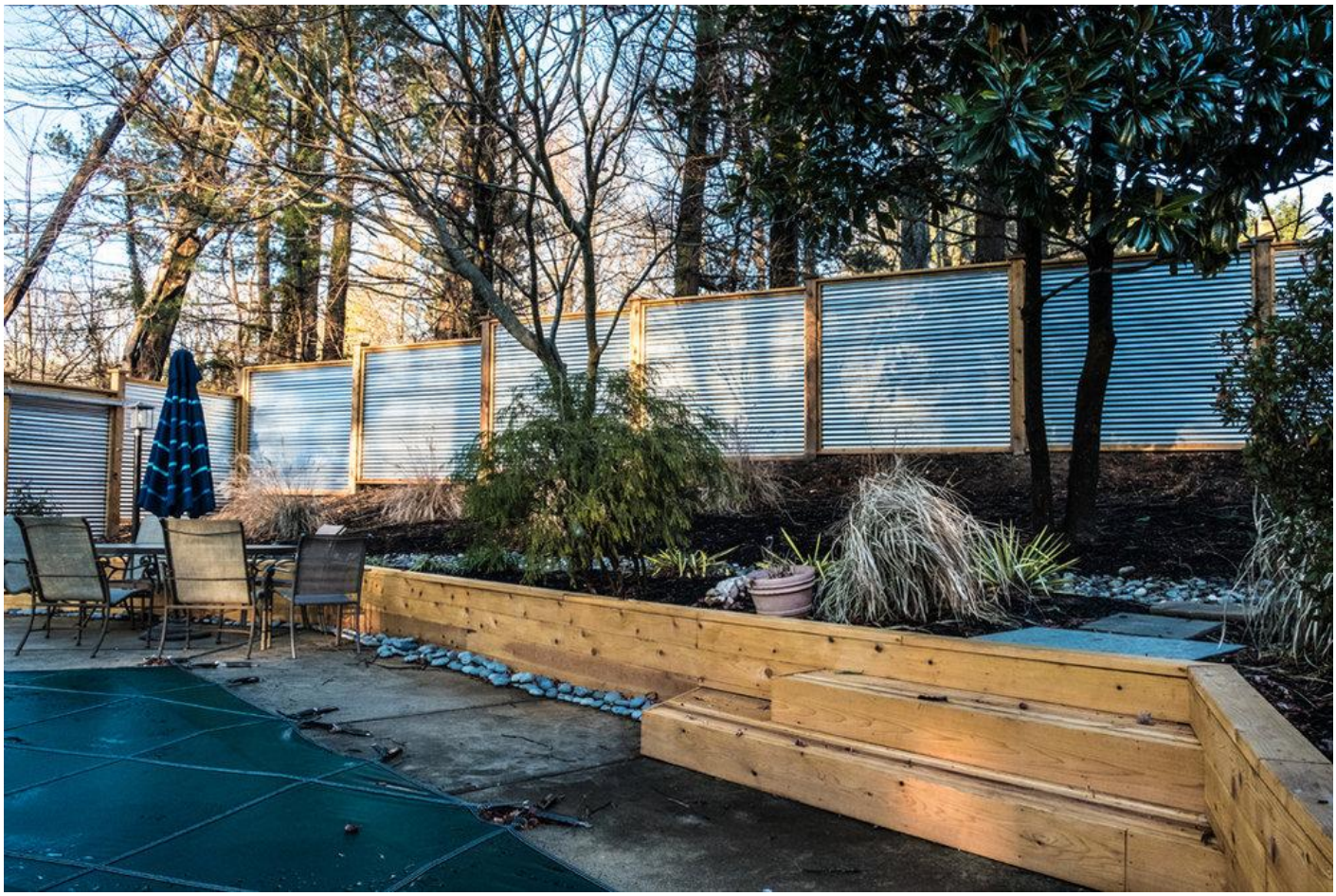
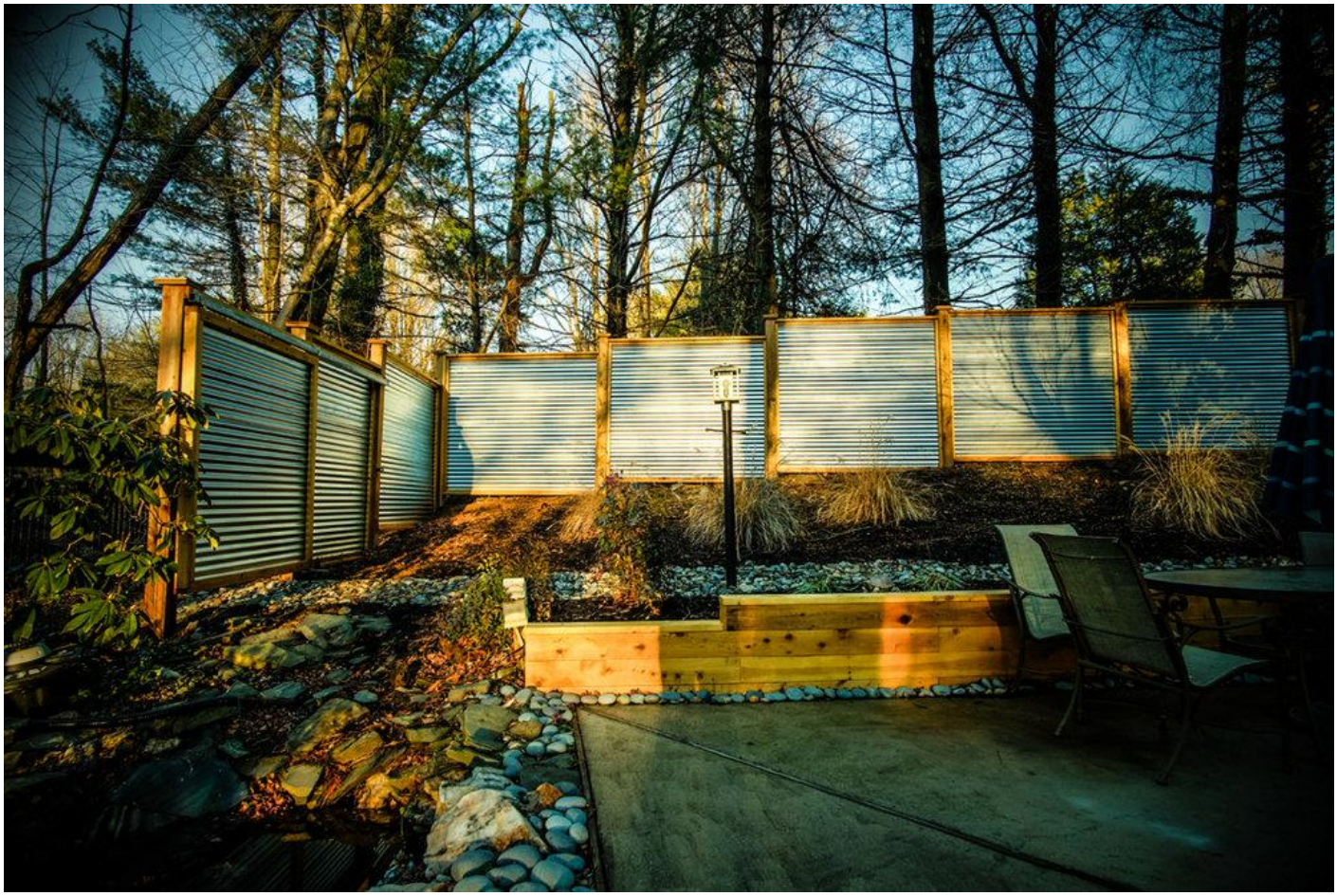






EAVER NATION

FenceGeeks.com

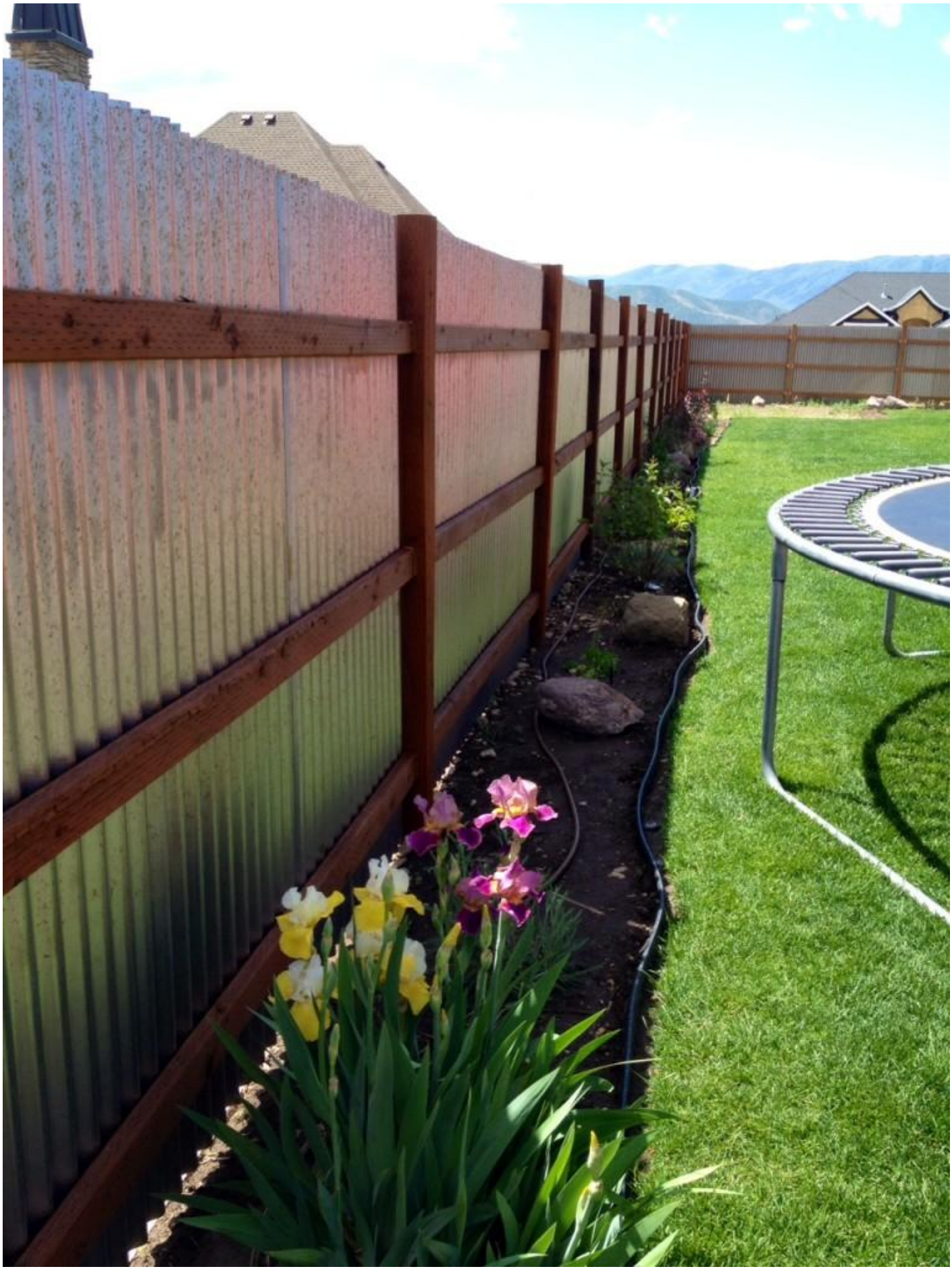
dreamstime.com
ID 217067803 © Botle197046

Presented by:
Laurie Koutnik with **Capital City Realty And Property Management**

PICTURES 251-300

lifeshouldcostless.com

12. Modern Metal



CITY OF BILLINGS/BUILDING DIVISION
PERMIT APPLICATION

657-8270

Complete numbered spaces only

PERMIT NO. 17-1233

1 Job Address	418 ½ Howard			Project Name	Remodel				
2 Legal Description	Lot #	Blk. #	Tract/ Subdivision						
3 Owner	Susan Blair Norman		Mail Address	418½ Howard		Phone	512-576-1280		
4 Contractor	Rentz Builders		Mail Address	2116 Broadwater #24		Phone	406-281-1328		
5 Architect or Designer	Attwood Czech		Mail Address	1301 Division		Phone	406-855-4262		
6 Engineer	N.A.		Mail Address			Phone			
7 Building Set Backs	Front	Side Per Plan	Side	Rear	Building Dimension	Length	Width	Height	
8 Basement: Yes (No) Finished? Yes (No)	Number of Bedrooms 2	No. of Dwelling Units			Mechanical (How Many?) 1 Furnace, 1 Bath Vents, 0 Air Cond, 1 Range Hood (IF DUCTED), 1 Dryer Vent, 0 Fire place				
9 Class of Work: (New) Remodel Addition Repair									
10 Use of Building: Existing Use Living Space				Proposed Use					
11 Describe Work: Remodel of Garage - Per Plan -									
12 ROW Contractor				13 Valuation of Work: $ 46,000 -					

14 A Storm Water Pollution Prevention Plan (SWPPP) is on file for the subdivision/master plan development ___yes X no

New construction activities must comply with the Active SWPPP, Section 28-401, BMCC, the Storm Water Management Manual (SWMM) and MTDEQ regulations, where applicable. For information contact 406-247-8633.

Remarks and Special Conditions:

Easements:

Application Accepted By	Plans Approved By	Plan Check Fee	Permit Fee
	Tom Cech		356.75

Fire Sprinkler Required	Off Street Parking Required	Type of Construction	Occupancy Group	Maximum Occupancy
Yes (No)	(Furnished)	VB	R3	

Accessory Sq. Ft.	Attached / Detached	First Floor Sq. Ft.	No. of Stories	No. of Dwelling Units
N/A		976	1	1

Agreement

I hereby state that the above is correct. I recognize that the approval of plans, issuance of a permit, or subsequent inspection approvals shall not be construed to allow violations of the code or other ordinances or laws enforced by the City of Billings. I consent to provide entry to inspectors as set forth in the building code and to request inspections as required. All materials, drawings or documents submitted for this permit become public record and may be released to the public.

By signature below the signatory certifies and declares that he/she is either the Owner or the Authorized Agent of the owner of the property.

Applicant---Print Name Legibly Tim Rentz

Signature-Applicant _____ Date 4-14-17

Revised January 2015

SEC. 27-604. FENCES, WALLS AND HEDGES

A. Fences, walls and hedges may be erected or maintained in any zoning district provided the height, setback, and material provisions outlined below are followed and a permit is secured. "Fence" for the purposes of this section means any fence wall or hedge. No fence shall be erected or maintained in a public right-of-way.

B. Height. Height for the purposes of this section shall be defined as the vertical distance from the top rail, board or wire to the ground directly below.

C. Setbacks Required. Fences, walls or hedges of up to three (3) feet may be erected or maintained in the required front yard setback as defined in Sections 27-308 or 27-309. Fences, walls or hedges between a height of three (3) and six (6) feet may be erected or maintained anywhere outside of the front yard setback, except as described in subsection D. below. (See Figure 6, Section 27-618). Any fence, wall or hedge in excess of six (6) feet shall meet all of the yard setback requirements for structures as defined in Sections 27-308 or 27-309. None of the above setback requirements shall apply to lands located in the Agricultural-Open Space (A-1), Central Business District (CBD), Controlled Industrial (CI), or Heavy Industrial (HI) zones.

D. Setbacks for Clear Vision Zones. No fence, wall or hedge greater than three (3) feet in height may be erected or maintained in any zoning district within a clear vision zone pursuant to Section 27-615 and as illustrated in Figures 1, 2, and 3 of Section 27-618.

E. Material Permitted—Residential and Commercial Zones. All fences in residential, agricultural and commercial zoning districts shall be constructed from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to Special Review.

F. Material Permitted –Industrial Zones. All fences in industrial zoning districts shall be constructed from materials commonly used for fencing and shall not be constructed from railroad ties, wood pallets, rubble, or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work, finished or coated steel or aluminum building panels. Materials not listed are subject to Special Review.

G. Material Exception – Barbed Wire or Electric Fence. In the Billings City Limits, no barbed wire or electrical fencing shall be permitted in any residential zoning district. Barbed wire and electrically charged fencing is allowed in the A-1 and A-S districts within Yellowstone County. When electrically charged fences are used in an A-1 or A-S district, such fences shall be posted with warning signs or fluorescent markings at intervals not to exceed one hundred and fifty (150) feet, where such fences are adjacent to public rights-of-way.

In the Billings City Limits, no electrical fencing shall be permitted in any commercial or industrial zoning district. Electrically charged fencing is allowed in commercial or industrial districts within Yellowstone County provided that such fences shall be posted with warning signs or fluorescent markings at intervals not to exceed one hundred and fifty (150) feet, where such fences are adjacent to public rights-of-way. Barbed wire fencing is allowed in commercial or industrial zoning districts both within the Billings City Limits and Yellowstone County when such material is located not less than eight (8) feet above grade.

H. Permit Required. Any fence between a height of three (3) feet and six (6) feet shall require a permit from the Planning Department. Any retaining wall exceeding a height of four (4) feet or any fence exceeding a height of six (6) feet shall require a permit from the Building Department.

PLANNING DIVISION

"SERVING BILLINGS, BROADVIEW AND YELLOWSTONE COUNTY"

PLANNING & COMMUNITY SERVICES DEPARTMENT

2825 3RD AVENUE NORTH, 4TH FLOOR

BILLINGS, MONTANA 59101

PHONE: (406)247-8676 FAX: (406) 657-8327

June 7, 2018

Appeal – Var. 1283
Project Number: PZ-18-00068

Diana Bachmann
2213 2nd Ave N
Billings, MT, 59101

Dear Ms. Bachmann,

This is to inform you the BOA conducted its public hearing on your appeal of our administrative decision regarding fence material:
Appeal – Variance 1283 – 2213 2nd Ave N – Fence Materials – An appeal from an administrative decision to not allow the use of salvaged wood from the deconstruction of pallets used to transport appliances and glass. Section 27-604.e of the Zoning Regulations prohibits the use of salvaged materials for use in the construction of fences. The subject property is legally described as the East 44.5 feet of Lots 23 & 24, Block 63, Billings Original Town, a 2,250 square foot parcel of land. Tax ID: A00435

The Board of Adjustment of the City of Billings, Montana found the fence materials were not salvaged materials and were acceptable for use as fencing. The BOA applied 1 condition to its reversal of the administrative determination.

1. The owner will complete the painting of the fence.

Please let me know if you have any further questions regarding this matter.

Sincerely yours,

Nicole Cromwell, AICP
Zoning Coordinator

Appeal - Variance 1283 – 2213 2nd Ave N – Fence material
Zoning Map and Site Photos

A00426
A00421
A00420
A00441
A00429
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A00418
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A00435
A00434
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2ND AVE N
N 22ND ST
A00579
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2208
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2212
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121
119
Unit 2
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1-2
Unit 1
112
2205
117
115
111
Unit 6
Unit 5

Subject Property Photos

Subject property – 2213 2nd Ave N

View north east across subject property

View west from alley along 2nd Ave N

View north and west from alley

Regular

Board of Adjustment

Date:	04/05/2023
Title:	City Variance 1363- 636 Key City Drive- Residential use on the first floor in CMU1
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 based on the determinations for review provided within this report.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
City Variance 1363 -- A variance request from Section 27-1002, and Table 27-1000.1 requiring any residential use in a CMU1 zone district be located at least 30 feet behind the front facade, on the East ½ of Lot 10, Block 1 Key City Subdivision, a 9,618 sf parcel of land. The variance would allow the owner to re-build a severely damaged residential structure without building a mixed use structure. Tax ID: C00709

The purpose of the variance is to allow a residential dwelling to occupy the entire first floor of a structure in a Corridor Mixed Use (CMU1) zone. The existing structure had substantial flood damage and they would like to demolish the remains and rebuild a new single family dwelling in its place. The original use of the property was a residential single family dwelling built in 1959, prior to zoning. In order for the property to be returned to its original use, a variance approval is needed. The applicant is requesting approval so that they can continue with the plans to reconstruct and a rebuild letter can be issued. The previous code did not restrict the location of the residential portion, so the property would have been in conformance as constructed when zoning was originally implemented in 1972.

APPLICATION DATA
OWNER: Moonrise Properties
AGENT: Jeff Wollschlager, A-Line
PURPOSE: Rebuild a single family dwelling
LEGAL DESCRIPTION: East ½ of Lot 10, Block 1 Key City Subdivision
ADDRESS: 636 Key City Dr.
SIZE OF PARCEL: 9,618 sf
ZONING: CMU1
EXISTING LAND USE: Residential single family
PROPOSED LAND USE: Residential Single family

CONCURRENT APPLICATIONS
None

APPLICABLE ZONING HISTORY
See attachments.

SURROUNDING ZONING & LAND USE
NORTH: Zoning: CMU1
Land Use: Single Family Residential
SOUTH: Zoning: CX
Land Use: Multi purpose retail
EAST: Zoning: CMU1
Land Use: Single Family Residential
WEST: Zoning: CX & CMU1
Land Use: Single Family residential (North), Auto Repair equip sales (South)

STAKEHOLDERS
Planning staff has not received any comment from the surrounding property owners as of the date of this report. The Board of Adjustment will hold a public hearing prior to taking action on the item.

ALTERNATIVES

The Board of Adjustment may:

- Conditionally approve the requested variance and adopt the recommended findings of the review criteria; or
- Deny the variance and adopt different findings of the review criteria; or
- Delay action on the variance to the next scheduled Board meeting; or
- Allow the applicant to withdraw.

Four votes in favor are required to approve any variance. If a variance is denied, the applicant must wait one year to reapply for the same variance.

FISCAL EFFECTS

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

SUMMARY

Proposed DETERMINATIONS for Variance 1363

The Board of Adjustment shall make the following determinations prior to granting a variance:
BMCC-27-1627.D:
1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;
There are not any special circumstances that exist in this situation other than the structure was built in 1959, prior to zoning. The original use of the property was a residential single family dwelling. The applicant is requesting approval so that they can acquire a building permit to continue with reconstructing the single family dwelling that was severely damaged by flooding and will be demolished and a rebuild letter can be issued.

2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;
The subject property is in a district where there are other single family structures. The adoption of the new code envisions this area as a place where people live and work. The property has never had a commercial component in the past so to build to the code would require commercial space in the front of the building. For property that has been used only as residential this could be challenging to overcome. There are other properties in the surrounding neighborhoods that have dwelling units on the first floor or within 30 feet of the front façade and are not conforming to the zoning restrictions. Denying the variance would deprive the applicant of rights commonly enjoyed by other tracts in the same district.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;
The variance will not allow the applicant any special privileges. Similar developed properties exist in the area. Directly adjacent and on the same block are several other single family buildings with dwelling units on the first floor or within the first 30 feet of the front façade.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;
The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy. Approval of this variance would allow the applicant to reconstruct a flooded and damaged structure to its original single family dwelling status.

BMCC 27-1627.E:
1) Whenever the City Board of Adjustment grants an application for a variance, the minutes shall specifically state the criteria upon which the variance is granted.
Minutes will be recorded in the permanent file when completed.

2) In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;
Staff is recommending the following conditions for the variance request:
1. The variance is to allow a residential dwelling to occupy the entire first floor of a structure in a CMU1 zone. No other variance is intended or implied with this approval.
2. The variance is limited to the East ½ of Lot 10, Block 1 Key City Sub, a 9,618 sf parcel of land, generally located at 636 Key City Drive.
3. The approval is to allow the reconstruction of the existing structure in its current location within the existing footprint of the original building.
4. A building permit shall be obtained within 6 months and all construction and renovations shall be completed within 1 year of BOA approval.

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

3. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and
A building permit shall be obtained within 6 months and all construction and renovations shall be completed within 1 year of BOA approval.

4. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.
The granting of this variance would not allow a use that is not allowed in the zoning district, single-family dwellings are allowed in the CMU1 zone.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan

635
637
639
C00725
707
Key City Dr
634
636
638
702
704
706
710
632
C00712
C00711
C00709
C00708
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A20459

East

North East

North

West

North West

APPLICATION FORM

CITY VARIANCE **ID: Billings Variance #_____ - Project #_____**

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

PROPERTY TAX ID # C00709 CITY ELECTION WARD # 2

Legal Description of Property: KEY CITY SUBD, S15, T01 N, R26 E, BLOCK 1, Lot 10, E2

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

Zoning Classification: CMU1

Size of Parcel (Area & Dimensions): 9618 SF

Covenants or Deed Restrictions on Property: Yes_____ No X

If yes, please attach to application

Variance(s) Requested: To allow residential living unit on front facade.

Facts of Hardship: (attach letter) Lot width and CMU1 zoning requirements make this lot unbuildable.

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

Owner(s): Moonrise Properties LLC (Pat Weber)
(Recorded Owner)
(Address) 406-861-0485 sunset406@gmail.com
(Phone Number) (email)

Agent(s): A-Line, Jeff Wollschlager
(Name) 725 Grand Ave
(Address) 406-321-2280 alinedrafting@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: [signature] Date: 2-8-2023
(Recorded Owner)

Date Stamp

2-8-23

636 Key City Drive. Variance request

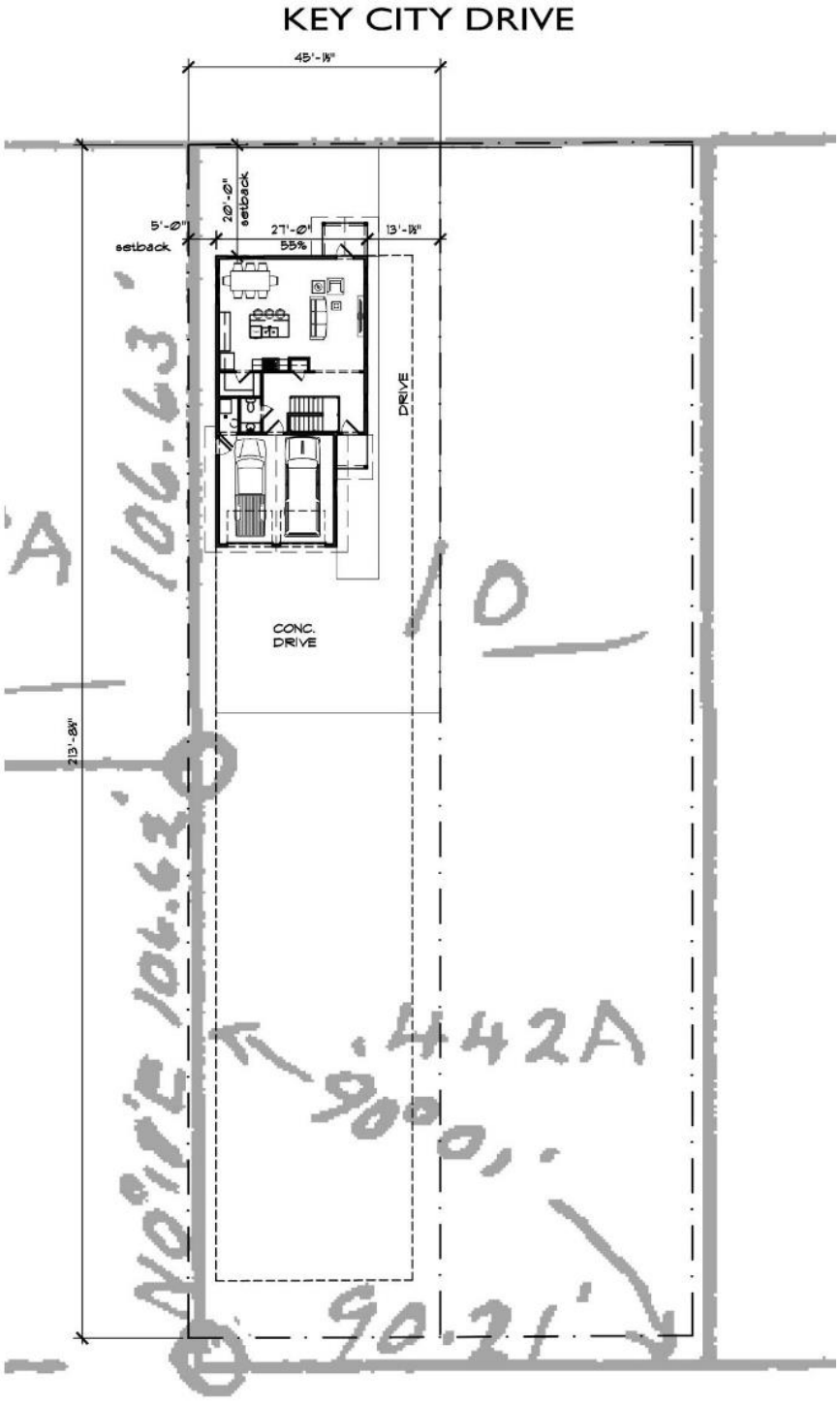
Subject: 636 Key City Drive

Chairperson of the Board of Adjustment:

We are requesting a variance to allow a residential unit to be rebuilt on the front of the lot. Current CMU1 zoning requires the front 30' of the property to be commercial space. The lot width of approx. 45' restricts the ability for vehicle access and accessible routes required in a commercial project while trying to design a commercial structure on this lot. We are also unable to meet the requirements of the front façade requiring 60% of building coverage and still having enough room for a drive around the structure to accomplish side or rear parking per CMU1 zoning and a commercial structure. There is a current residence on the lot will be demolished due to a flood. There are residential homes neighboring this property. Homes have existing on these lots for over a 100 years with the newest build in 1990. We are proposing rebuilding a new residence on this property positioned towards the front of this narrow and deep lot.

Sincerely,

Owners Representative



1 T1.0 SITE PLAN

SCALE: 1/16"=1'-0"

Board of Adjustment

Date:	04/05/2023
Title:	City Variance 1364- 315 Cody Circle- Detached garage location, height, setbacks
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes

Information

RECOMMENDATION
Planning staff recommends denial of Variance 1364 and adoption of the findings of the review criteria.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
This is a variance request from Section 27-305, Table 27-300.4 -- A.7 (Rear Yard Location for Accessory Building), A.8 (Minimum Rear Setback of 3 feet), B.13 (Height of Accessory Structure), and Section 27-1803 (Detached accessory structure Requires 6-foot minimum separation) in an N2 zone district on Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land. If approved, the variance will allow an existing detached accessory structure to remain in place.

The detached garage was constructed without an approved building permit. The N2 zone district requires a detached structure located in the rear yard, and a minimum of 3 feet from the rear property line and six foot minimum separation between structures. The building is three feet six inches from the residential structure and two feet ten inches from the rear property line in the side yard of the property. The building height is over 20 feet, and taller than the existing primary structure. Table 27-300.4. B. 13- Accessory building height shall be no larger than the principal building.

APPLICATION DATA
OWNERS: Scott & Jennifer Ireton
AGENT: Rose Burrows
PURPOSE: Allow a detached structure taller than the existing residential structure and less than required setbacks
LEGAL DESCRIPTION: Lot 27, Block 11, Meadowlark Subdivision
ADDRESS: 315 Cody Cir.
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: N2

CONCURRENT APPLICATIONS
None

SURROUNDING ZONING & LAND USE
NORTH: Zoning: N2
Land Use: Residential
SOUTH: Zoning: N2
Land Use: Residential
EAST: Zoning: N2
Land Use: Residential
WEST: Zoning: N2
Land Use: Residential

STAKEHOLDERS
Planning staff has received three phone calls in opposition to the request from the surrounding property owners as of the date of this report. The Board of Adjustment will hold a public hearing prior to taking action on the item.

ALTERNATIVES
The Board of Adjustment may:

- Conditionally approve the requested variance and adopt the recommended findings of the review criteria; or
- Deny the variance and adopt different findings of the review criteria; or
- Delay action on the variance to the next scheduled Board meeting; or
- Allow the applicant to withdraw.

Four votes in favor are required to approve any variance. If a variance is denied, the applicant must wait one year to reapply for the same variance.

FISCAL EFFECTS

The Planning Division budget will not be effected by the Board's decision on this variance.

SUMMARY

Prior to approval, the Board of Adjustment shall ensure that the determinations for variances (**Sec. 27-1627.D and E**.), as outlined below, have been satisfied:

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.

In this situation there are no peculiarities to the land that would cause a hardship, the applicant simply would like a taller detached structure than allowed in the district. The building was constructed without the benefit of an approved building permit and does not meet the restrictions under the zoning district for detached structures. The structure is in the side yard and required to be in the rear yard, it is too close to the rear property line and to the principle structure, and it was constructed taller than the principle 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.

The applicant constructed this garage without benefit of an approved building permit and therefore is already out of compliance. There are not any other garages or detached structures in the area of similar, height and setbacks. The granting of this variance will confer a special privilege since there are no other similar garages in the subdivision. The N2 zone district requires a detached structure located in the rear yard, and a minimum of 3 feet from the rear property line and six foot minimum separation between structures. The building is three feet six inches from the residential structure and two feet ten inches from the rear property line in the side yard of the property. The building height is over 20 feet, and taller than the existing primary structure. Table 27-300.4. B. 13- Accessory building height shall be no larger than the principal building.

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, granting of this variance will confer a special privilege since there are no other similar garages of this height in the subdivision. The applicant constructed a garage located in the side yard, exceeding the height maximum allowance and located less than the minimum setback from the rear property line and between structures.

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 this variance will not meet the general purposes and intent of the N2 zoning regulations for detached structures given the height and setback as well as side yard location. The structure, as built, is out of character for the neighborhood. It is hard to measure a single structure for growth policy compliance. The Growth Policy desires to see strong neighborhoods that are safe. A building that is not in compliance with the zoning code and is constructed too close to other structures could create undesirable conditions as it relates to safety.

Section 27-1627.E

1) Whenever the City Board of Adjustment grants an application for a variance, the minutes shall specifically state the criteria upon which the variance is granted.

Minutes will be recorded in the permanent file when completed.

2) 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***, if the Board makes findings for approval, the following conditions are recommended;

1. This approval is to allow a variance request from Section 27-305, Table 27-300.4 -- A.7 (Rear Yard Location for Accessory Building), A.8 (Minimum Rear Setback of 3 feet), B.13 (Height of Accessory Structure), and Section 27-1803 (Detached accessory structure Requires 6-foot minimum separation) in an N2 zone district on Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land. If approved, the variance will allow an existing detached accessory structure to remain in place. No other variance is intended or implied.
2. The variance is limited to 315 Cody Circle, Lot 27, Block 11, Meadowlark Subdivision, a 12,840 sf parcel of land.
3. The applicant will apply for and receive approval for a building permit within 6 months. Failure to meet the time limits of this condition will void the variance.

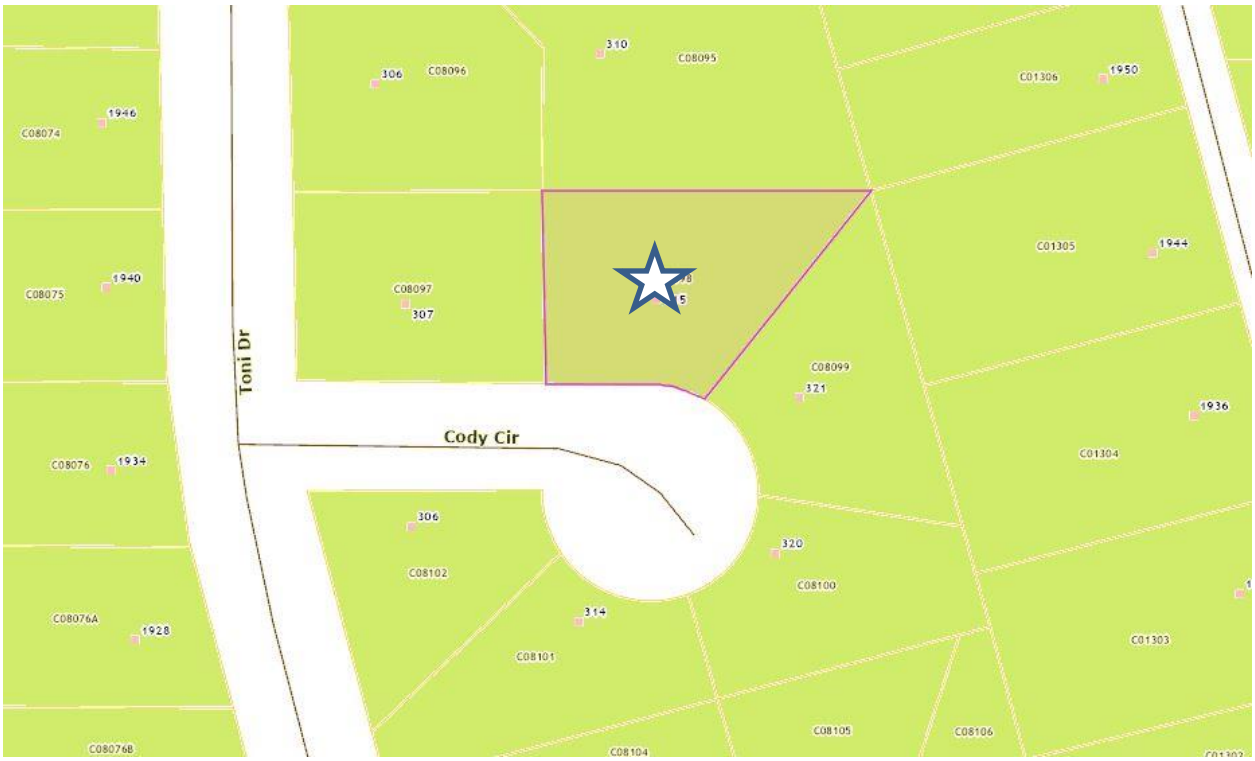
4. There will be no construction activities before 7 a.m. or after 8 p.m. daily.
5. The applicant shall meet all other city code requirements in place at the time of construction except for the variance granted herein.
6. These conditions of variance approval shall run with the land described in this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

3) 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 approved Staff is recommending the applicant receive approval for a building permit within six months of BOA 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. Specific uses as stated under the N2 zone district per BMCC 27-1000 are permitted, uses not listed within the district parameters will be allowed.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan
History


310
C08095
306
C08096
C01306
1950
1946
C08074
C01305
1944
1940
C08075
C08097
307
Toni Dr
C08099
321
1936
Cody Cir
C01304
C08076
1934
306
320
C08102
C08100
C08076A
1928
314
C01303
C08101
C08105
C08106
C08076B
C08104

315 Cody Cir
Toni Dr

CE Photo

Subject property

North

Subject detached structure

South

West

APPLICATION FORM

CITY VARIANCE **ID: Billings Variance #** 1364 **- Project #** PZX-23-00040

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 # 608098 CITY ELECTION WARD # 2

Legal Description of Property: Meadowlark Subd, S15, T01 N, R26 E, BLOCK 11, Lot 27, BLKS 8 TO 13, 15 & 16 AMD

Address or General Location (If unknown, contact City Engineering): 315 Cody Circle Billings, MT. 59105

Zoning Classification: N2 - Mid century residential construction

Size of Parcel (Area & Dimensions): 12,840 SQFT property. Rough dimensions - 164 x 138 x 85 x 100

Covenants or Deed Restrictions on Property: Yes_____ No X

If yes, please attach to application

Variance(s) Requested: Requesting a variance to allow new structures height to exceed that of existing house and a variance to allow structure to be nearer to the rear set back than permitted.

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): Ireton, Scott & Jennifer

(Recorded Owner) 315 Cody Cir. Billing, MT.

(Address) 406-647-9367 sandeesdriveinn@gmail.com

(Phone Number) (email)

Agent(s): Rose Burrows

(Name) 1501 14th St. W. Suite 202 Billings, MT

(Address) 406-919-7578 rburrows@dynamic-mt.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: Scott Ireton Date: 2/6/22

(Recorded Owner)

Recd. 2/23/23
Planning & Community
Services Department.

Date Stamp

1A. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?

Due to the dimensional constraints on the East side of the property, constructing upwards is a more feasible and practical use of space than having a structure with a wide footprint. Therefore, despite the new accessory structure being taller than the existing home it could not have been constructed for the same purposes on a single story without encroaching on the property setbacks. If the new structure had been constructed further East, the front of the garage would have been close to the property line and would have cut off access to the Northeast corner of the lot. Moving the structure further South would create similar issues with proximity to setbacks and would limit the space for the property owners to get a vehicle into the garage, rendering the use of the structure irrelevant.

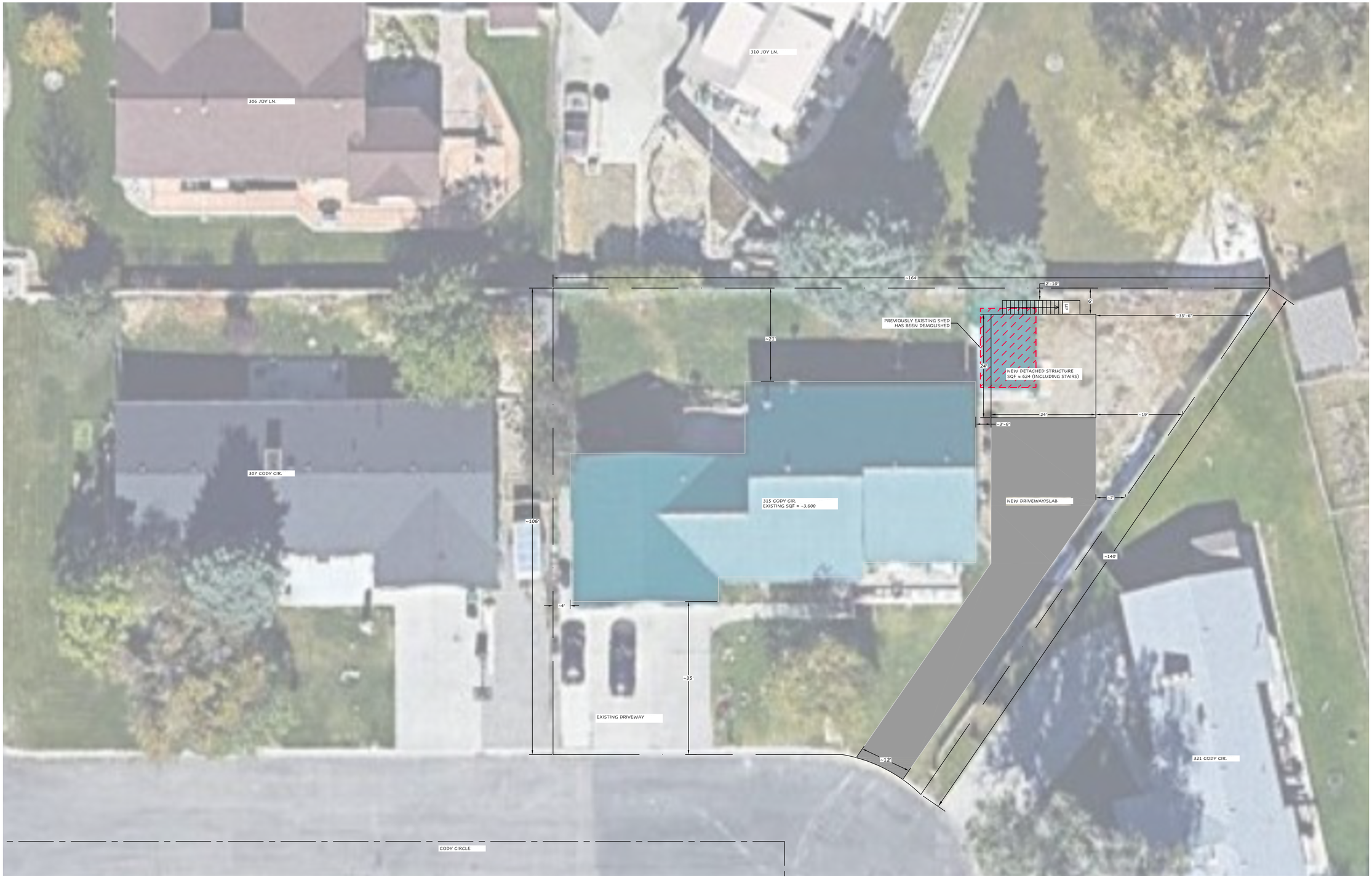
On the North side of the garage the stairs are closer to the property line than the setback requirement, however there were no other reasonable locations to add the stairs. Constructing internal stairs would severely impact the space of the garage, defeating one of its purposes – a workspace.

1B. Why is there a need for the intended use of the property at this location?

The lot owners, Scott and Jennifer Ireton, wish to improve the value of their lot by constructing a new detached accessory structure. This new structure will serve as a combined garage and shop space on the bottom floor with a habitable loft on the second story. This would be an improvement to their property seeing as it would provide more storage for vehicles, keeping them off the limited street parking as well as out of the elements. Having a detached structure to serve as a shop is beneficial to the lot owners since it will limit the noise levels in the primary structure if there is work being done. This structure also provided habitable loft space for the lot owners family, who reside on site. The benefits of having a habitable loft space range from an art studio to a guest bedroom to additional storage space.

1C. Explain any demolition, construction, or reconstruction intended for all structures.

Prior to construction a previously existing shed had to be removed, the garage was then constructed in approximately the same location. However, the new garage was constructed further away from both the property line and the existing structure than the previously existing shed had been. There are no planned changes to the existing structure. Remaining construction on this new structure includes adding insulation and interior wall sheathing to the upper story as. This construction will be completed after this variance is approved.



NORTH

1 / C1.1 315 CODY SITE PLAN

SCALE: 1/8" = 1'-0"

NOTES:

DYNAMIC ANALYSIS
ENGINEERING CONSULTING
DYNAMIC-MT.COM
1501 14TH ST W SUITE 202
BILLINGS, MT 59102

This drawing and all related documents (including electronic media) were prepared by Dynamic Analysis Engineering Consulting, Inc except as noted otherwise herein. The information herein shall only be used by the client to whom the services are rendered and for the purpose of constructing and/or installing the work as shown on certified documents. Any alteration or unauthorized use is strictly prohibited, and the user shall hold harmless and indemnify Dynamic Analysis Engineering Consulting, Inc from all liabilities which may arise from any unauthorized use. Such use shall constitute the waiver of expressed or implied warrantees and shall cover any liabilities which may arise from the construction, use or result of any such unauthorized use or changes.

22" X 34" ORIGINAL

IF THIS BAR DOES NOT EQUAL ONE INCH, ADJUST SCALES ACCORDINGLY

DRAWING REVISION TYPES: A-Z PRE -IFC / 0-99 POST-IFC

NO.:	DATE:	ISSUE / REVISION DESC.:

DRAWN: SCOTT IRETON

315 CODY CIR.
BILLINGS, MT

PROJECT NO.:	11X-0315
DRAWN BY:	RHB
REVIEWED BY:	STH
SAVE DATE:	1/27/2022

GARAGE VARIANCE

SITE PLAN

C1.1

c:\users\rnitt\onedrive\dynamic analysis\work products\service lines\1-structural design\1-residential\x - individuals\315 cody

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	**VARIANCE**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
Meadowlark Sub Lt 8-11, Bk 1	927	3/2/04	33% lot cov	Y	
Superior Homes Lt 12 Bk 6	876	8/23/02	Side Adj to Str. Setback to zero	Y	

Regular

Board of Adjustment

Date:	04/05/2023
Title:	City Variance 1365- 6410/6412 Southern Bluffs Lane
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes

Information

RECOMMENDATION
Planning staff recommends conditional approval of Variance 1365 and adoption of the findings of the review criteria.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
This is a variance from Section 27-308, Table 27-300.7 -- A.11 (Attached garage location and garage entry location) in an NX2 zone district to allow an attached garage in the front half of the proposed structure and a street front garage entry, on Lot 6, Block 1, Falcon Ridge Estates, 2nd Filing on an 11,402 sf parcel of land.

The purpose of the request is to allow an attached garage in the front half of the proposed structure and a street front garage entry. Planning staff is recommending approval based on the findings of the review criteria for granting a variance which are provided in the summary section of this report. The applicant is proposing development of a duplex on the property with garages on the same side as the front entrance. The attached site plan shows that each unit in the duplex would have a 2 car garage at the front of the structure facing the street. This layout is compatible with the entire subdivision. The parcel at 6433 Southern Bluffs was also granted a variance from the same requirement (less than one block away from the subject parcel). It would be difficult to accomplish a plan supporting a duplex and a functional rear loading garage on the lot.

Most properties, if not all homes in the subdivision that were constructed under the previous zoning code were constructed with a front loading garage. This is not specifically a reason to support the variance. The currently adopted code intends to change the development pattern in neighborhoods by bringing front doors and eyes on the street as apposed to being garage dominated. However, the proposed layout of the duplex is in character with the already developed subdivision. This parcel is one of the few remaining vacant lots in the subdivision. Denying this request would deprive this applicant of rights commonly enjoyed by other property in the area and within this subdivision.

APPLICATION DATA
OWNERS: Kunstruskie, Inc.
AGENT: Meagan Boschert
PURPOSE: Garage located on the street frontage
LEGAL DESCRIPTION: Lot 6, Block1 of Falcon Ridge Estates, 2nd
ADDRESS: 6410/6412 Southern Bluffs Dr.
EXISTING LAND USE: Vacant
PROPOSED LAND USE: Residential
EXISTING ZONING: NX2

CONCURRENT APPLICATIONS
None

SURROUNDING ZONING & LAND USE
NORTH: Zoning: Nx2
Land Use: Single Family Residential
SOUTH: Zoning: N2
Land Use: Residential Multi Family
EAST: Zoning: N2
Land Use: Residential Multi Family
WEST: Zoning: NX2
Land Use: Residential Multi Family

STAKEHOLDERS
Planning staff has not received any comment from the surrounding property owners as of the date of this report. The Board of Adjustment will hold a public hearing prior to taking action on the item.

ALTERNATIVES

The Board of Adjustment may:

- Conditionally approve the requested variance and adopt the recommended findings of the review criteria; or
- Deny the variance and adopt different findings of the review criteria; or
- Delay action on the variance to the next scheduled Board meeting; or
- Allow the applicant to withdraw.

Four votes in favor are required to approve any variance. If a variance is denied, the applicant must wait one year to reapply for the same variance.

FISCAL EFFECTS

The Planning Division budget will not be effected by the Board's decision on this variance.

SUMMARY

Prior to approval, the Board of Adjustment shall ensure that the determinations for variances (**Sec. 27-1627.D and** E.), as outlined below, have been satisfied:

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 this lot is located, was developed in whole without an alley system. The size and layout of the lot, coupled with the layout of the proposed building would make it difficult to provide rear loading garages on the property ultimately reducing the infill opportunity of the lot. This lot is one of the last undeveloped lots in the subdivision. The majority of the parcels within the subdivision have been developed and constructed with front loading garages. The granting of this variance would not create a design outcome that is not already prevalent within the subdivision.

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 rear-entry garages. In other words the houses that are existing with front entry garages were developed under old zoning ordinances and were not subject to the location requirement of the currently adopted code. If existing lots were to be re-developed they would need to conform to the same garage location requirement of the currently adopted code and the same requirement in which this applications seeks to vary from. However, lot owners within the subdivision enjoy front-loaded garages. Denying this variance request would prevent this lot from enjoying the same benefit and would create an unusual development pattern not commonly seen, if at all, within the existing development.

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 same zoning district requirements, but because they were developed prior to adoption of the new zoning code, front load garages were allowable. 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 front load garages are the predominant development pattern within the vicinity of this property. The lot is one of the last few undeveloped lots in the subdivision that were not developed before the adoption of Project Re:Code. The applicants design conforms to the existing development pattern and has lessened the impact of front loading the garages by placing no more than 2 garage doors on the street facade. The granting of this variance does not create a compatibility issue with the existing development pattern within the subdivision.

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 should also be in harmony with the general purpose and intent of the Zoning Regulations. The development is compatible with surrounding land uses which include the majority of residential multifamily structures in a subdivision that was developed under the requirements of the previous zoning code.

Section 27-1627.E

2) 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 several conditions for the variance request:

1. This approval is to allow a variance from Section 27-308, Table 27-300.7 -- A.11 (Attached garage location and garage entry location) in an NX2 zone district to allow an attached garage in the front half of the proposed structure and one street front garage entry for each unit in the duplex. No other variance is intended or implied.
2. The variance is limited to Lot 6, Block 1 of Falcon Ridge Estates, 2nd Filing, at 6410-6412 Southern Bluffs Lane.
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.

3) 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.

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. Residential multifamily dwellings are allowed uses in this zone district.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
History
Site Plan

Golden Acres Dr
Southern Bluffs Ln
NX2
N2
COVE DITCH
A35153
Beckville Ln

Golden Acres Dr
Southern Bluffs Ln
A35153
Beckville Ln

North

South

Southwest

West

APPLICATION FORM

CITY VARIANCE **ID: Billings Variance #** 1365 **- Project #** PZ X23-00042

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 # A35151 CITY ELECTION WARD # 4

Legal Description of Property: Falcon Ridge Estates 2nd(14), S25, T01N, R24E, Block 1, Lot 6

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

6410/6412 Southern Bluffs Lane

Zoning Classification: NK2

Size of Parcel (Area & Dimensions): 11,402 sf

Covenants or Deed Restrictions on Property: Yes ✓ No

If yes, please attach to application

Variance(s) Requested: Front Entry Garage - double/side-by-side for new duplex

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): Konstruksie Inc.
(Recorded Owner)
PO Box 21163 Billings MT 59104
(Address)
406-598-1128 dbcarpentrymt@outlook.com
(Phone Number) (email)

Agent(s): Meagan Boschert
(Name)
PO BOX 21163 Billings MT 59104
(Address)
406-598-1128 dbcarpentrymt@outlook.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: MA Boschert Date: 2/27/2023
(Recorded Owner)

RECEIVED
FEB 28 2023
PLANNING & COMMUNITY SERVICES DEPARTMENT
Date Stamp

Konstruksie INC
DBA DB Carpentry
PO Box 21163
Billings, MT 59102
406.208.4760

FACTS OF HARDSHIP
6412 Southern Bluffs Lane, Billings MT 59106

To whom it may concern:

We are requesting a zoning variance for the vacant land 6412 Southern Bluffs Lane to allow for residential construction of a townhome with front facing garage.

The current zoning dictates the garage cannot face the street. Given the slop of the lot and adjacent properties we are unable to construct with the garage in that placement. Given that all the comparable townhomes in the vicinity have front facing garages we are requesting a zoning variance allowing us to construct a townhome with a front facing garage that will complement the current homes that are in the neighborhood.

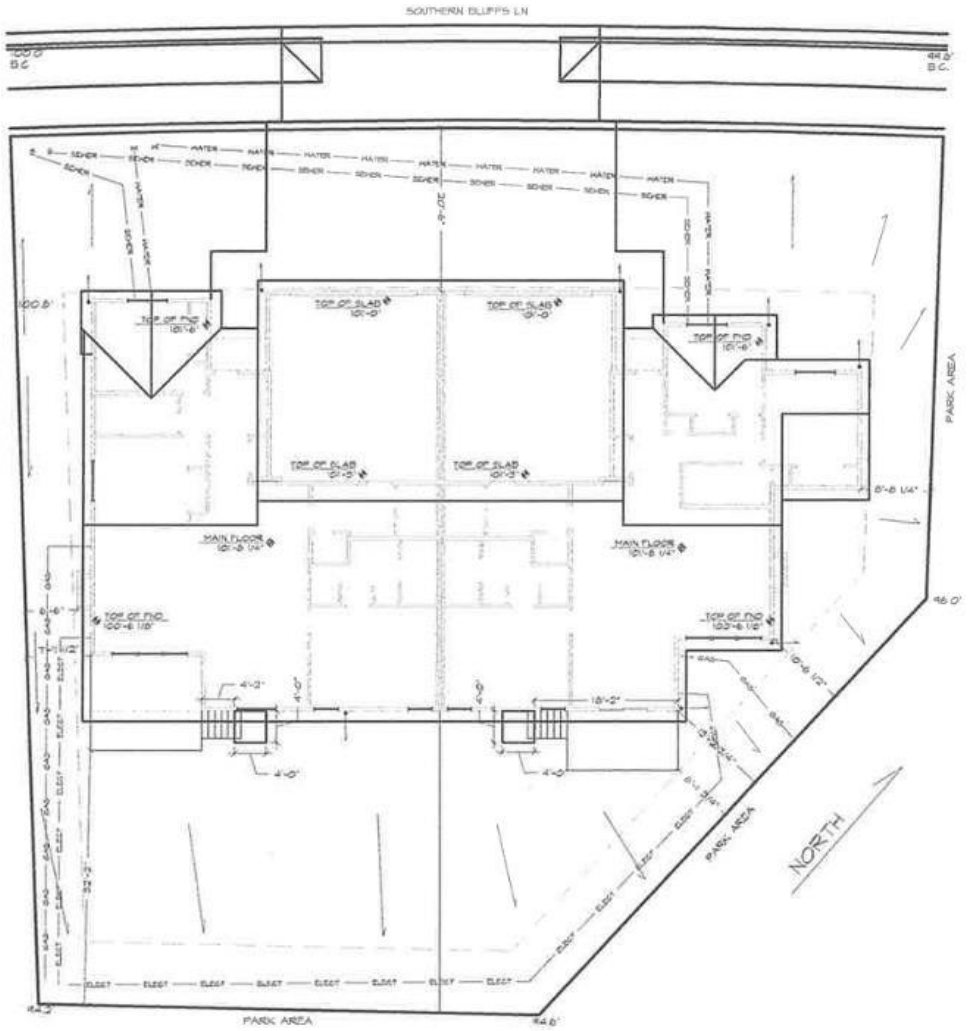
Thank you for your time concerning this matter.

Sincerely,

Meagan Boschert
Vice President, Treasurer, Secretary
Konstruksie INC dba DB Carpentry
406-598-1128
dbcarpentrymt@outlook.com

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	VARIANCE	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	**VARIANCE**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
6737 Cove Creek	1044	2018	LC from 30% to 32%	Y	
6433 Southern Bluffs	1355	2023	Garage location	Y	



SITE PLAN

SCALE: 1"=10'