



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, February 5, 2025, 6:00 p.m.
City Hall - 3rd Floor Conference Room
316 N 26th St, Billings MT

NOTICE TO THE PUBLIC

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

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 12:00 pm on the meeting date. All emails received prior to this time will be entered into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, PO Box 1178, Billings MT 59103
 - Email: bernsb@billingsmt.gov
- NOTICE: All meetings and official activities of the MPO are held in buildings and locations that comply with accessibility standards according to the Americans with Disabilities Act (ADA). A TTY number for the hearing impaired, 406-657-3079, is available upon request. 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 the Planning Division Office, at 406-247-8610.

Call the meeting to order.

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

Public Comment

Meeting Minutes of January 8, 2025

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. City Variance 1378 - 1445 Granite Ave - Zero side setback for pool deck - A variance from Section 27-306, Table 27-300.5(A)5, requiring a minimum 5-foot side setback to allow a zero-side setback for the extension of a pool deck with a garage space below in a Suburban Neighborhood Residential (N3) zone, on Lot 2, Block 5 of Lee Heights Subdivision 2nd filing, a 9,600 square foot parcel of land. The purpose of the variance is to allow the re-construction and extension of an existing pool deck that will be 30 inches or more above grade and to allow an enclosed garage space below the deck.
Tax ID: A10156. Karen Husman, Planner

Other Business/Announcements

Adjournment

Additional information on this application is available on-line at <https://www.billingsmt.gov/2361/Current-Zoning-Applications>

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 Brenda Berns, Planning Clerk at bernsb@billingsmt.gov or 406-247-8610

Date: 02/05/2025
Title:
Presented by:
Department: Planning & Community Services
Presentation:

Information

RECOMMENDATION

The minutes of the Board meeting of January 8, 2025

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

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

Attachments

No file(s) attached.

Date: 02/05/2025
Title:
Presented by:
Department: Planning & Community Services
Presentation:

Information

RECOMMENDATION

Approval of Minutes: January 8, 2025

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

ALTERNATIVES

City Council may:

- Approve; or,
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FISCAL EFFECTS

Attachments

Minutes of January 8, 2025

CITY BOARD OF ADJUSTMENT
MINUTES OF January 8, 2025

Name	Title	01/08/2025	02/05/2025	03/05/2025	04/02/2025	05/07/2025	06/04/2025	07/02/2025	08/06/2025	09/03/2025	10/01/2025	11/05/2025	12/03/2025	
		Josh Sayer	Chairman	1										
Oscar Heinrich	Vice Chair	1												
George Warmer	Member	1												
Michael Bruschwein	Member	1												
Chris Hayes	Member	1												
Dave Hagstrom	Member	1												
Brian Roush	Member	1												
TOTAL NUMBER OF APPLICATIONS 2024		01/08/2025	02/05/2025	03/05/2025	04/02/2025	05/07/2025	06/04/2025	07/02/2025	08/06/2025	09/03/2025	10/01/2025	11/05/2025	12/03/2025	TOTAL
Variance		1												1
Appeal		-	-	-	-									

Chairman Josh Sayer called the meeting to order at 6:00 PM.

Attending:

Nicole Cromwell, Zoning Coordinator; Anna Vickers, Planning Division Manager; Tate Johnson, Planner; Brenda Berns, Planning Clerk

Public Comment

Chairman Sayer 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 December 4, 2024 – Approved by unanimous vote.

Disclosure of ExParte Communications - None

Disclosure of Site Visits – Board members Heinrich, Hagstrom

Disclosure of Conflict of Interest - None

Public Hearing

City Variance 1377– 2151 Lake Hills Dr – Section 27-1002.C, Table 27-1000.1 and Section 27-1803 Definition of an Accessory Use – A Variance from Section 27-1002.C and Section 1803 requiring an accessory use (private garage area) to be subordinate to a principal use (a dwelling) in terms of gross floor area to allow a new building with 2,697sq GFA

Tate Johnson, Planner, provided an overview of the variance request and the existing zoning. She explained the variance was requested to permit a private garage to exceed the size of the primary residence within the same structure in an N3 district. The neighboring properties are mostly zoned N3 and feature RV garages, are consistent with the appearance of the subject property. The garage is larger than the square footage of the primary residence, does not meet the 50/50 allowance.

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 is not applicable to other lands in the same district.**
 - No hardship with the land per se.
 - Plan review error for zoning compliance (8/21/2024).
 - Builder proceeded with permit approved in error (9/16/2024).
 - Planning staff was notified of potential approval error (11/21/2024).
 - Builder was advised of plan review error and advised to stop construction until a resolution of the zoning compliance (11/27/24).
 - Changes to the building plan and delays in construction may create financial hardship for the builder and homeowner.
- 2) **Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**
 - Applicant trusted the builder’s incorrect permission submission.
 - Builder proceeded with construction assuming compliance without verifying requirements.
 - Other properties, including in Lake Hills Subdivision, have garages larger than the 1st floor living spaces.
- 3) **Granting the variance will not confer a special privilege to this applicant.**
 - At least 10 other properties in the city have garages larger than the 1st floor living space.
 - Such configurations are not uncommon in the district.
 - Still do not meet current regulations.

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- Staff recommends approval with conditions to improve the homes visual impact.
 - Adding at least three (3) windows along the 70' east elevation.
- 4) **Granting variance will be in harmony with the purposes of zoning and growth policy.**
 - N3 district is intended for residential neighborhoods.
 - Single family homes wide lots, and often large front-facing garages.
 - The Growth Policy aims to maintain strong, intact neighborhoods.
 - Aligns with neighborhood.
 - Matches homes with larger garages than 1st floor living spaces.

Staff recommends the eight (8) conditions from Section 27-1627.E as stated in the staff report.

Board Questions

Board member Heinrich inquired if the variance before the board was related to the garage being larger than the house. Ms. Johnson confirmed this was the case but added the other properties shown had more interior square footage while maintaining the same visual impact.

Mr. Heinrich then asked if approving the variance would set a precedent. Ms. Johnson responded no precedent would be set unless another similar mistake occurred and explained the error could be corrected by adding additional living space within the home.

Board member Warner clarified while zoning permits certain aesthetics, the city has provided a workaround that allows for more interior square footage while keeping the exterior dimensions unchanged.

Ms. Cromwell clarified to the board they were considering the use of the property, not the aesthetics.

The board then discussed the error made by Planning staff and the notification to the builder. Ms. Vickers explained the city cannot require the builder to stop construction but can only advise them to halt work, noting this situation involves an ordinance rather than a building code violation.

Board member Hagstrom concluded, given the staff's email notification to cease construction, it can be assumed construction continued. Ms. Johnson affirmed this.

Applicant's Agent:

Levi Wanner 2463 Bonita Loop; Mr. Wanner stated he designed the house specifically for the client. The square footage was on the plans, and we believed we were acting in good faith.

Board member Heinrich asked if he was aware of building codes. Mr. Wanner stated yes and thought they were adhering to the codes correctly.

Questions

Chairman Sayer asked where the 50/50 rule can be found. Ms. Cromwell responded there isn't a specific ratio listed in the code, it's our practice when both primary and accessory uses are within the same building. Accessory Use has always been considered subordinate to residential living areas.

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In multifamily developments, garages and carports are separate from residential space. In residential settings, we apply the 50/50 rule, meaning a similar setup could have a garage on the lower level and residential space on the second level.

In Opposition:

Deanna Redfern 2143 Gleneagles – Mrs. Redfern stated she and her husband live on the opposite side street from the subject property. We strongly oppose this variance as it does not conform to the building codes, even though plans were approved in error. We observed the construction and knew it was not compliance. We built our home with a smaller garage than we wanted as we were told we could not exceed the living space of our home. We believe the 892 sq ft overage is not acceptable. When the contractor was advised to cease construction, he did not stop and in fact, contractors were working on Christmas Day. Mrs. Redfern believes the homeowners are receiving special privileges.

Pam Boner 2133 Lakehills Dr – Mrs. Boner stated she is not opposed to an RV garage but has concerns homes with larger garages will continue to be build, changing the makeup of the neighborhood.

Jerrell Boner; 2133 Lakehills Dr – Mr. Boner stated the house was almost completed before the variance was filed for and progressed at an alarming rate. Ms. Cromwell stated the builder acknowledged he was taking a risk to move forward with construction after being notified of the error.

Mr. Boner asked what the definition of ‘living space’ is. Ms. Cromwell stated it is determined how the structure is built, specifically spaces are separated by firewalls.

Board member Heinrich suggested a continuation for the applicant to come up with an additional 892 sq ft of living space. Ms. Cromwell stated the public hearing is not closed and if the board continues it for another 30 days, additional testimony could be taken until February, however the home may be closer to completion.

Board member Warmer inquired about any letters received in opposition by neighbors. Ms. Johnson clarified the board was sent the ExParte communication and provided access to the binder containing these letters for review.

Chairman Sayer closed the Public Hearing.

Ms. Cromwell stated according to the rules and state law, approving a variance requires a majority of 4 board members.

Motion

Board member Warmer made a motion to approve Variance 1377 as submitted by staff, seconded by Board member Heinrich. The vote resulted in 4 in favor and 3 against. A voice vote was conducted with the following outcomes: In favor – Board members Warmer, Sayer, and Heinrich. Opposed – Board members Roush, Bruschwein, Hayes, and Hagstrom. The motion failed 4-3, Variance 1377 was denied.

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Other Business:

Board member Heinrich called for nominations for the position of Vice Chair and nominated Michael Bruschwein. Chairman Sayer requested further nominations from the board, and hearing none, proceeded with a vote on the nomination of Michael Bruschwein for Vice Chair. The nomination was unanimously approved.

ADJOURNMENT: The meeting adjourned at 7:01 PM.

ATTEST: Draft to be approved by a motion at the next regularly scheduled meeting.

Brenda J Berns, Planning Clerk

Board of Adjustment

Date: 02/05/2025
Title: City Variance 1378- 1445 Granite Ave- for zero side setback for attached deck.
Presented by: Karen Husman
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation of denial based on the determinations for granting a variance.

REQUEST

A variance from Section 27-306, Table 27-300.5(A)5. requiring a minimum 5-foot side setback to allow a zero-side setback for the extension of a pool deck with a garage space below in a Suburban Neighborhood Residential (N3) zone, on Lot 2, Block 5 of Lee Heights Subdivision 2nd Filing, a 9,600 square foot parcel of land. The purpose of the variance is to allow the re-construction and extension of an existing pool deck that will be 30 inches or more above grade and to allow an enclosed garage space below the deck.

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

The applicant is requesting a variance to permit a zero side setback for an addition to the existing home. The proposed addition involves constructing a deck with a garage space underneath. This area of Billings is situated at the base of the rims, with the front of the lot being less steep than the back. Many surrounding homes were built in the late 1950s and early 1960s, prior to the establishment of current zoning regulations. Several homes along Granite Ave. do not appear to be set back 20 feet from the front property line. The applicant is seeking a variance to extend the deck on the east side of the home, with the storage area beneath extending up to the eastern property line. Granting the variance would conflict with the purpose and intent of the zoning regulations and the Growth Policy. The 2021 Zoning Code designates the N3 District primarily for residential neighborhoods with single-family homes, while the 2016 Growth Policy prioritizes preserving neighborhood integrity and the intended use of land. Required setback distances promote healthy and safe environments, as encouraged by the Growth Policy. This project is not aligned with the neighborhood's character, as the home is already built, and further modifications would create a nonconforming structure without any land-specific hardship. In this case, the topography does not prevent the structural addition from complying with the 5-foot side setback requirement.

APPLICATION DATA

OWNERS: Tracy Miranda
AGENT: Jeff Wollshlager, A-Line
PURPOSE: the re-construction and extension of an existing pool deck that will be 30 inches or more above grade and to allow an enclosed garage space below the deck
LEGAL DESCRIPTION: Lot 2, Block 5 of Lee Heights Subdivision 2nd Filing
ADDRESS: 1445 Granite
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: First Neighborhood (N3)
CONCURRENT APPLICATIONS: None
APPLICABLE ZONING HISTORY: See Attachments

SURROUNDING ZONING & LAND USE

NORTH:
Zoning: P1
Land Use: City of Billings Owned Parkland
SOUTH:
Zoning: N3
Land Use: Residential single family
EAST:
Zoning: N3
Land Use: Residential single family
WEST:

Zoning: N3

Land Use: Residential single family (vacant)

STAKEHOLDERS

Planning staff notified the surrounding property owners by mail, placed a legal advertisement in the Yellowstone County News, and posted the property with the required sign. The application was also posted on the Planning Division's web page for current zoning applications. No comments from any surrounding owners were received by staff at the time of writing this report.

ALTERNATIVES

The Board of Adjustment may:

- Deny the requested variance and adopt the proposed findings of fact for the review criteria, as recommended by staff;
- Approve the requested variance and adopt different findings of fact for the review criteria with added conditions, or no conditions;
- Allow the applicant to withdraw the variance request; or
- Delay action on the variance to a future BOA meeting.

FISCAL EFFECTS

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

SUMMARY

Prior to granting a variance the Board of Adjustment shall evaluate the decision criteria and make the determination for the variance (Section 27-1627.D. and E.), as outlined below.

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 lot is located at the base of the Billings Rims, where steep slopes make parts of the lot challenging to build on. The applicant intends to construct a deck on the east side of their house with a storage area beneath it. The 12-foot-wide deck, with a storage garage underneath, would be located on the edge of the east wall of the house directly adjacent to the property line. There are no unique circumstances that would prevent the applicant from adhering to the 5-foot side setback requirement. No hardship exists to justify the requested variance, as there is ample space within the required setbacks to position the structure. Additionally, approving this variance would grant the property owner a special privilege not afforded to other property owners in the area.

Although a variance was approved in 2001 for a side yard setback to accommodate an existing structure within this subdivision, both staff and the Development Review Committee (DRC) had recommended denial, this variance was granted for a house already constructed prior to zoning restrictions. Several past variances have been granted in this subdivision and the surrounding area for front and/or side setbacks; however, these variances were granted in cases where the land itself presented a 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 homes surrounding the subject property in this area comply with the standard 5-foot side setback. Similar to Criteria 1, there is no hardship to justify the requested variance, as there is adequate space within the required setbacks to position the structure. Denying the variance would not violate the applicant's rights, which are in line with those of other properties in the district. There have been other variance requests in this area concerning setbacks, primarily along the rimrock. Seven of these requests were for reductions in the front setback, one for a rear setback reduction, one for a projection into the side setback, and five for side setback reductions. All requests were approved, except for one front setback reduction. In 2001, Variance 850 was granted to allow an existing structure to remain at its zero side setback location. This was the only variance approved for a zero side setback and was a unique case, as the structure had already been built and positioned next to the property line before zoning restrictions were implemented. (Please refer to the 'History' attachment regarding approved variances.)

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;

This subdivision is older, and several properties are located closer to the front property line than typically permitted. Front yard setback variances have been justified in the past due to the steep rear yard slopes that reduce the buildable space on those lots. Similarly, side setback variances have been granted for properties facing topographical challenges. However, the subject property already has an existing house and deck, demonstrating that meeting the required setbacks is not a hardship.

Approving this variance would grant the property owner a special privilege not afforded to others in the area.

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;

Granting the variance would conflict with the purpose and intent of the zoning regulations and the Growth Policy. The 2021 Zoning Code designates the N3 District primarily for residential neighborhoods with single-family homes, while the 2016 Growth Policy prioritizes preserving neighborhood integrity and the intended use of land. Required setback distances promote healthy and safe environments, as encouraged by the Growth Policy. This project is not aligned with the neighborhood's character, as the home is already built, and further modifications would create a nonconforming structure without any land-specific hardship. In this case, the topography does not prevent the structural addition from complying with the 5-foot side setback requirement.

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 DENIAL, but is providing the following recommended conditions for the variance request, if the BOA makes findings to approve the variance;

1. This variance approval is to allow zero side setback for a proposed addition to an existing dwelling and storage in a First neighborhood (N3) zone, an 9,600 square foot parcel of land generally located at 1445 Granite Ave. No other variance is intended or implied with this approval.
2. The variance is limited to the Lot 2, Block 5 of Lee Heights Subdivision 2nd Filing, Tax ID: A10156
3. The applicant will submit and obtain a building permit for the addition within 12 months of variance approval and have the addition completed within 24 months.
4. The applicant will construct the addition in substantial conformance to the drawings submitted with this variance request.
5. The applicant will create and file with the office of the clerk and recorder a temporary construction easement between themselves and the adjacent property owner of Lot 3, Block 5, Lee Heights Subdivision 2nd Filing. This easement shall also be provided to the Planning Division.
6. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
7. The applicant shall meet all other city code requirements for the proposed addition with the exception of this variance.
8. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
9. 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

If the variance is approved; the property owner shall apply for a building permit to construct the addition within 12 months and complete construction within 24 months.

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 already allowed in the zoning district -- N3 zoning districts allow residential remodeling and additions to existing structures.

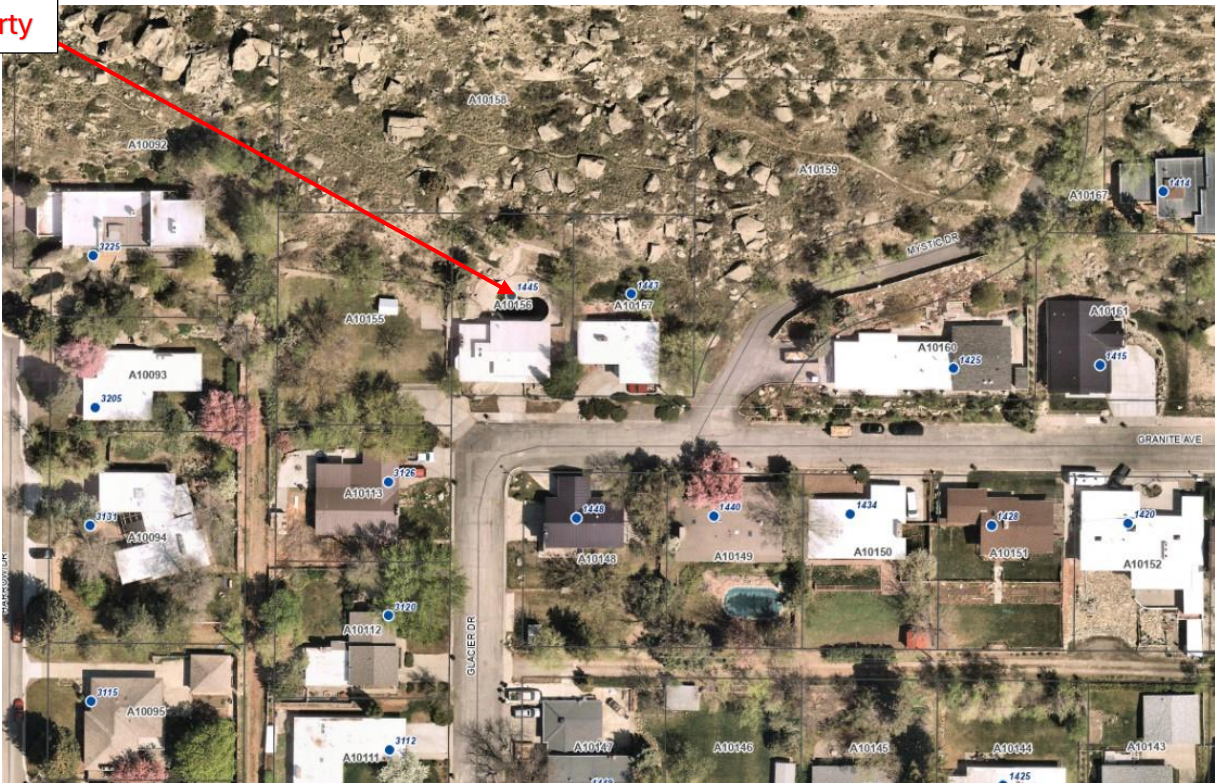
Attachments

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

Subject Property



Subject Property







Looking South on Granite



East



Looking East



Looking Northwest

CITY VARIANCE APPLICATION FORM

CITY VARIANCE : 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.

PARCEL TAX ID # A10156 CITY ELECTION WARD # 4

Legal Description of Property: LEE HEIGHTS SUBD 2ND FILING, S25, T01 N, R25 E, BLOCK 5, Lot 2

Address or General Location (If unknown, contact City Engineering): _____
1445 Granite Ave

Zoning Classification: N3-Suburban Neighborhood

Size of Parcel (Area & Dimensions): _____

Variance(s) Requested: Zero setback for extension of pool deck with garage space below on East side of property.


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): MIRANDA, TRACY J
(Recorded Owner)
1445 GRANITE AVE BILLINGS 59102
(Address)
406.591.2255 tracy@tanderealty.com
(Phone Number) (email)

Agent(s): A-Line, Jeff Wollschlaget
(Name)
725 Grand Ave. Billings 59101
(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: 11/07/24
(Recorded Owner – digital signature allowed)

11-7-24

Facts of Hardship

PROJECT#: 1445 Granite Ave

**Primary
Owner:** MIRANDA, TRACY J

Tax Code: A10156

**Property
Address:** 1445 GRANITE
AVE BILLINGS 59102

**Legal
Description:** LEE HEIGHTS SUBD
2ND FILING, S25, T01
N, R25 E, BLOCK 5,
Lot 2

To whom it may concern,

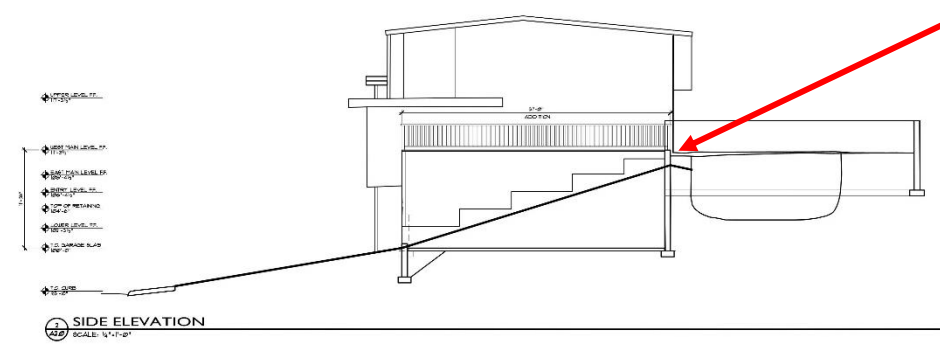
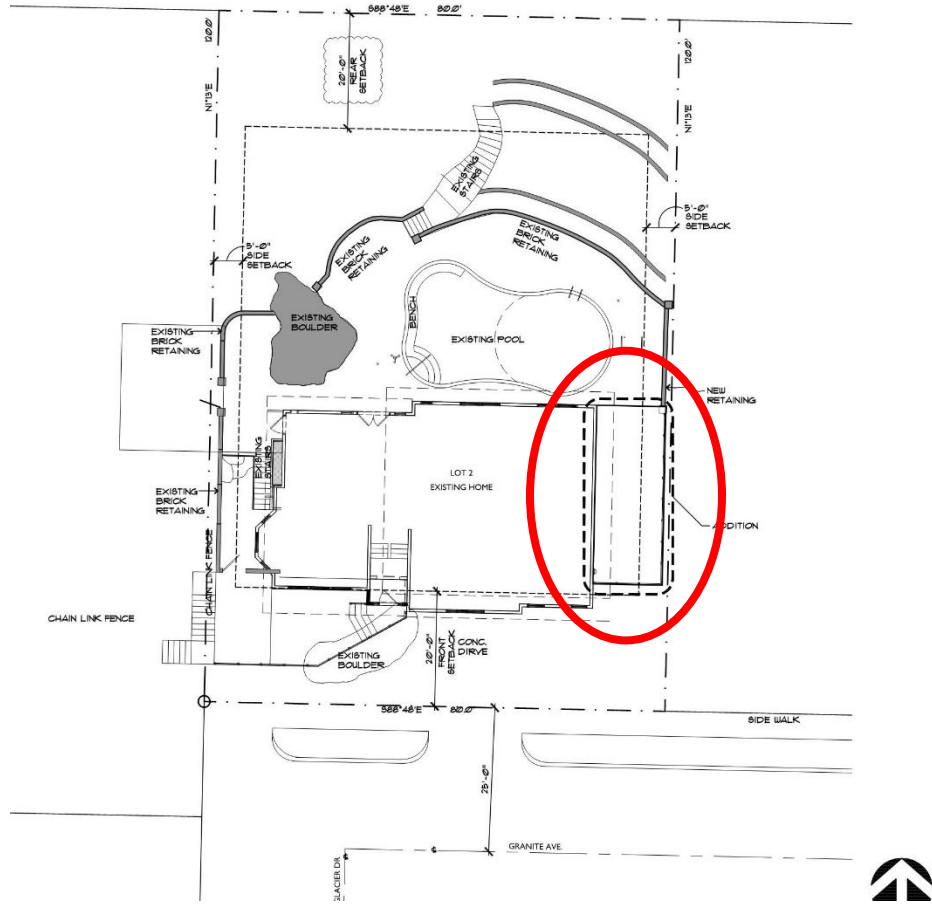
We are proposing a zero-side setback for the addition to the existing pool deck. Due to the existing grade the pool deck structure will be greater than 30" above grade as it is constructed around the side and towards the front of the property. This grade change allows a garage/ storage space below the deck, accessed from the front of the property.

Sincerely,



Jeff Wollschlager

Agent/ Representative



Proposed Deck with storage below.

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1445 Granite Ave.	1378	2/5/2025	Side SB		
SIMILAR PROPERTY					
3114 12 th Ave. N	1082	12/1/2010	LC & SB	Y	Side & Rear SB
1014 N 32 nd St.	1170	12/4/2013	LC & SB	Y	Side SB
209 Ave. D	1198	9/3/2014	SB	Y	Side SB
906 N 32 nd St	1252	3/1/2017	Side SB	Y	
1401 Granite Ave	1173	1/2/2014	Front SB	Y	Front SB 8'
1415 Granite Ave	1263	7/6/2017	Front SB	Y	Front SB 10'
1420 Granite Ave	850	9/4/2001	Side SB	Y	Side to zero-existing structure