

BOARD OF ADJUSTMENT

February 11, 2016

Case Number

BOA2016-02

Applicant/Owner

Robert Edwards

Property Location

Immediately north of Smelter Avenue Northwest and east of the intersection with 6th Street Northwest

Property Information

Zoning of property: R-2
Single-family medium density district

Requested Action

Three variances: Section 17.20.4.010, minimum lot size: 17.20.3, Exhibit 20-2, Accessory use; and 17.20.4.010, minimum front yard setback.

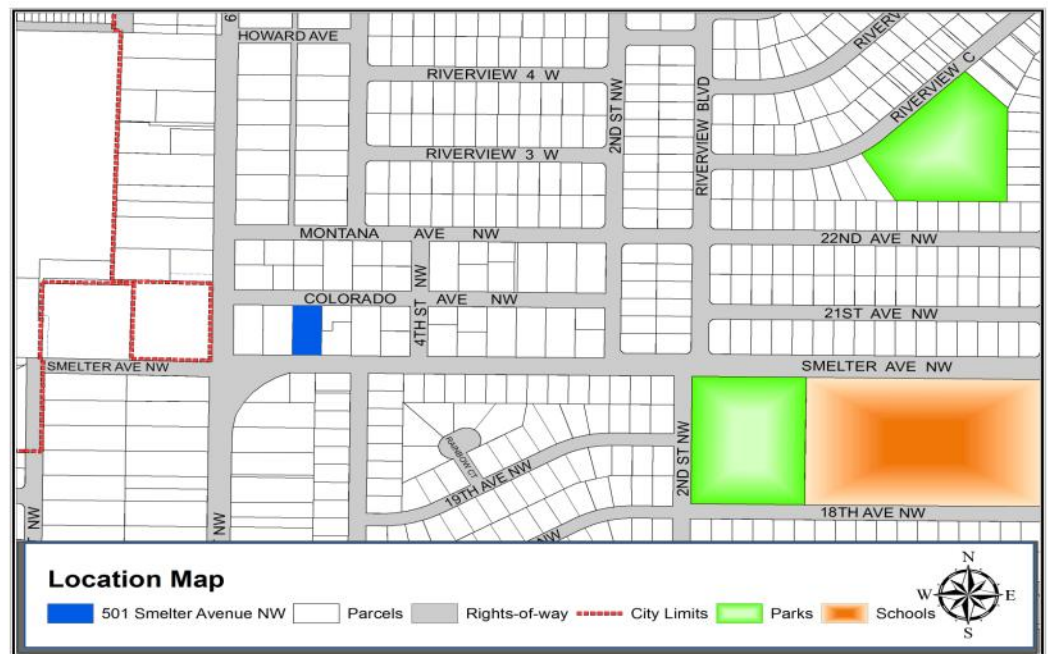
Recommendation

Approve with conditions

Project Planner

Charles Sheets, CFM

501 SMELTER AVENUE NW



Synopsis

The applicant is requesting three variances of City Code, with two requests being contingent on the first request being approved. The applicant wishes to subdivide the existing property into two lots. The existing 20,000 square foot lot has an existing single-family dwelling on the south half of the lot and a detached private garage on the north half of the lot. The property is currently conforming with City Code. If approved, the second requested variance is to allow the detached garage to remain on the new northern lot without a dwelling unit as a primary land-use. The third variance is to allow the detached garage to encroach on the newly created northern parcel front yard setback.

17.16.32.040 Basis of decision for a dimensional variance

A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exist:

- The variance is not contrary to the public interest.
- A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.
- The spirit of the Title would be observed and substantial justice done by granting the variance.

BACKGROUND INFORMATION:

The subject property is located at 501 Smelter Avenue Northwest and is legally described as Lot 3, Block 1, Viles & Robinson Acre Tracts. The subdivision was created in 1931. The property is zoned R-2 Single-family medium density and has been used for residential purposes. The property owner is proposing to do a single lot subdivision to create two lots that are 10,000 square feet each. That leaves the existing single family residence on the southern lot and an existing detached garage on the second northern lot. The existing garage currently is built 18 feet from the north property line. The applicant would rather not demolish the private garage and plans to build a single family dwelling on the lot in the future.

The Notice of Public Hearing was mailed to the neighboring property owners and was published in the *Great Falls Tribune* on January 28, 2016. As of the writing of this report, Staff has received several calls on the property and in all cases the callers were asking if the property was for sale and had no comments on the subdivision, the land use of the northern portion of the lot, and no comment on the front yard encroachment.

Variance Issues:

City Code requires a minimum lot size of 11,000 square feet in the R-2 zoning district, requires the primary land use of a residence be established before an accessory structure can be built, and that the structure on the lot meet the minimum front yard setback of 20 feet. The dimensional and land use requirements established in City Code are provided to promote sound development patterns, to regulate the construction of structures and maintain the existing characteristics in various neighborhoods. The original subdivision was created as a county subdivision where larger tracts were desirable for more rural characteristics. After the subdivision was annexed into the City the development became more urban in character and 12 of the original 18 lots have been subdivided. In 2005 when the City adopted the New Land Development Code and established new dimensional standards for lots, it left this property as conforming but not characteristic of other residential lots in the subdivision. This represents a hardship on the owner and he is now requesting relief from the dimensional standards to follow the characteristics of the neighborhood that developed prior to the establishing of the new standards.

Staff generally supports two of the three requests however OCCGF 17.16.32.070(5) prevents the Board from

Granting a variance which would create a non-conforming use.

Limitations on Issuing a Variance

The following actions shall not be allowed by a variance:

1. *Expansion of a nonconforming use.*
2. *Modification to lot or other requirements so as to increase the permitted density or intensity of use.*
3. *Any project within a floodway that increases flood velocities or elevations.*
4. *Continuation of an amortized sign.*
5. *Establishment of a use not permitted based upon the zoning classification assigned to subject property.*

The presence of the garage on a newly created lot without the required primary use (residence) constitutes a non-conforming use.

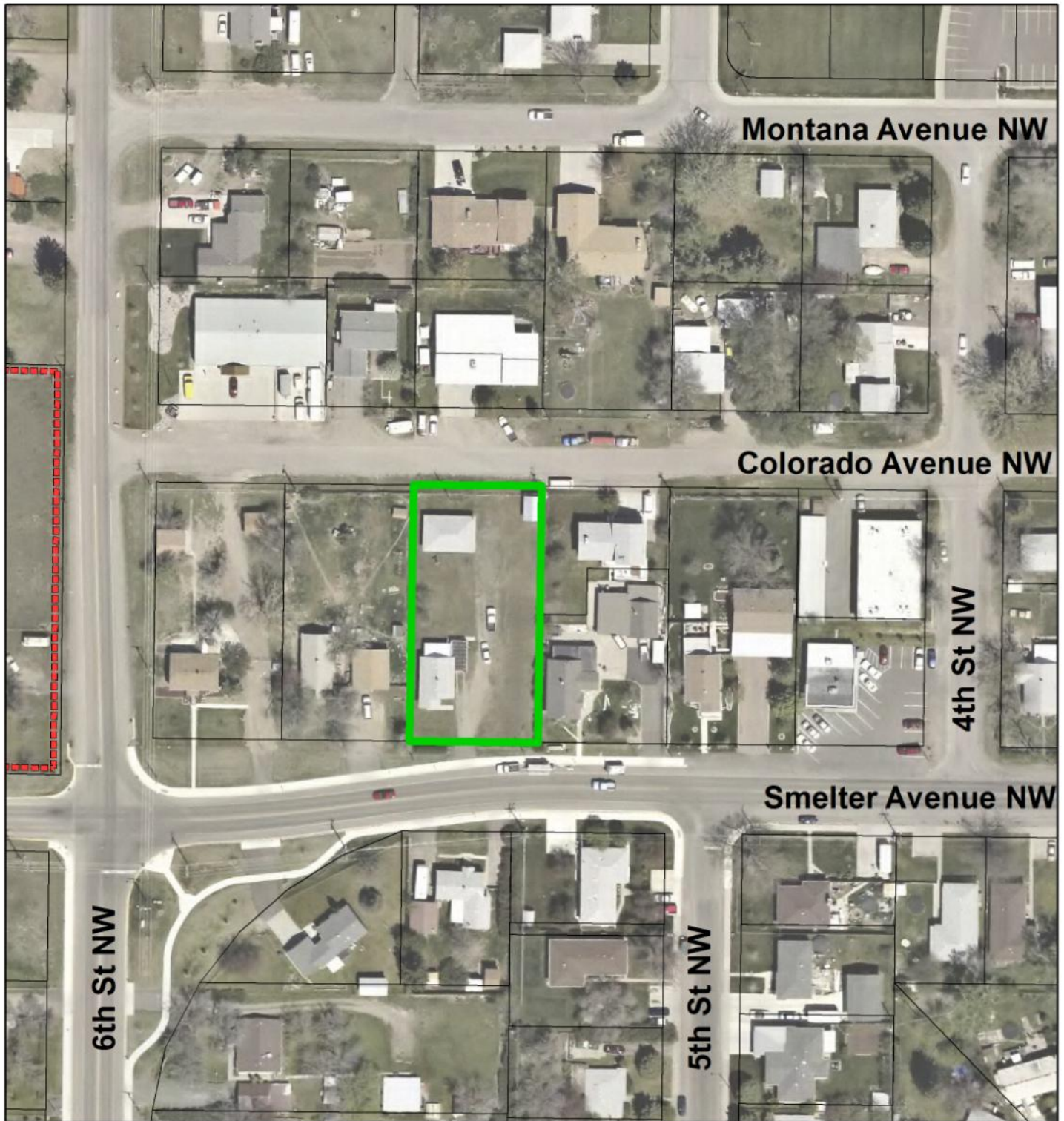
Essentially there are two options for the Board of Adjustment to consider:

- 1) Deny the three requested variances and encourage the applicant to reapply for the variances when prepared to construct the new dwelling on the north lot which will alleviate the non-conforming use issue.
- 2) Approve the requested variances conditioned on delaying the recording of the division of land until such time that building permits on the northern parcel are applied for. The variance would be valid for one year which will provide the applicant or subsequent owners time to plan the construction of a single family dwelling on the northern parcel. If no construction takes place and/or no division of land is filed, the approval of the variances will expire.



View looking at the detached garage from Colorado Avenue Northwest.

Aerial Photo



501 Smelter Avenue NW



Tracts of Land

130 65 0 130 Feet



N



I, THE UNDERSIGNED PROPERTY OWNER, DO HEREBY
PLATTED INTO LOTS AND EASEMENTS, THE FOLLOWING

LOT 3, BLOCK 1, VILES AND ROBINSON ACRE TRACT:
COUNTY, MONTANA, situated in the Southwest Quart
35, Township 21 North, Range 3 East, of the Princip
follows:

COMMENCING at the Southwest Corner of said Lot 3 of land herein described;
THENCE along the westerly line of said Lot 3, N00° (200.0 feet recorded) to the Northwest Corner of s1
THENCE along the northerly line of said Lot 3, N89° (100.0 feet recorded) to the Northeast Corner of Lc
THENCE along the easterly line of said Lot 3, S00° (200.0 feet recorded) to the Southeast Corner of s1
THENCE along the southerly line of Lot 3, S89°47'32 (feet recorded) to the POINT OF BEGINNING of the

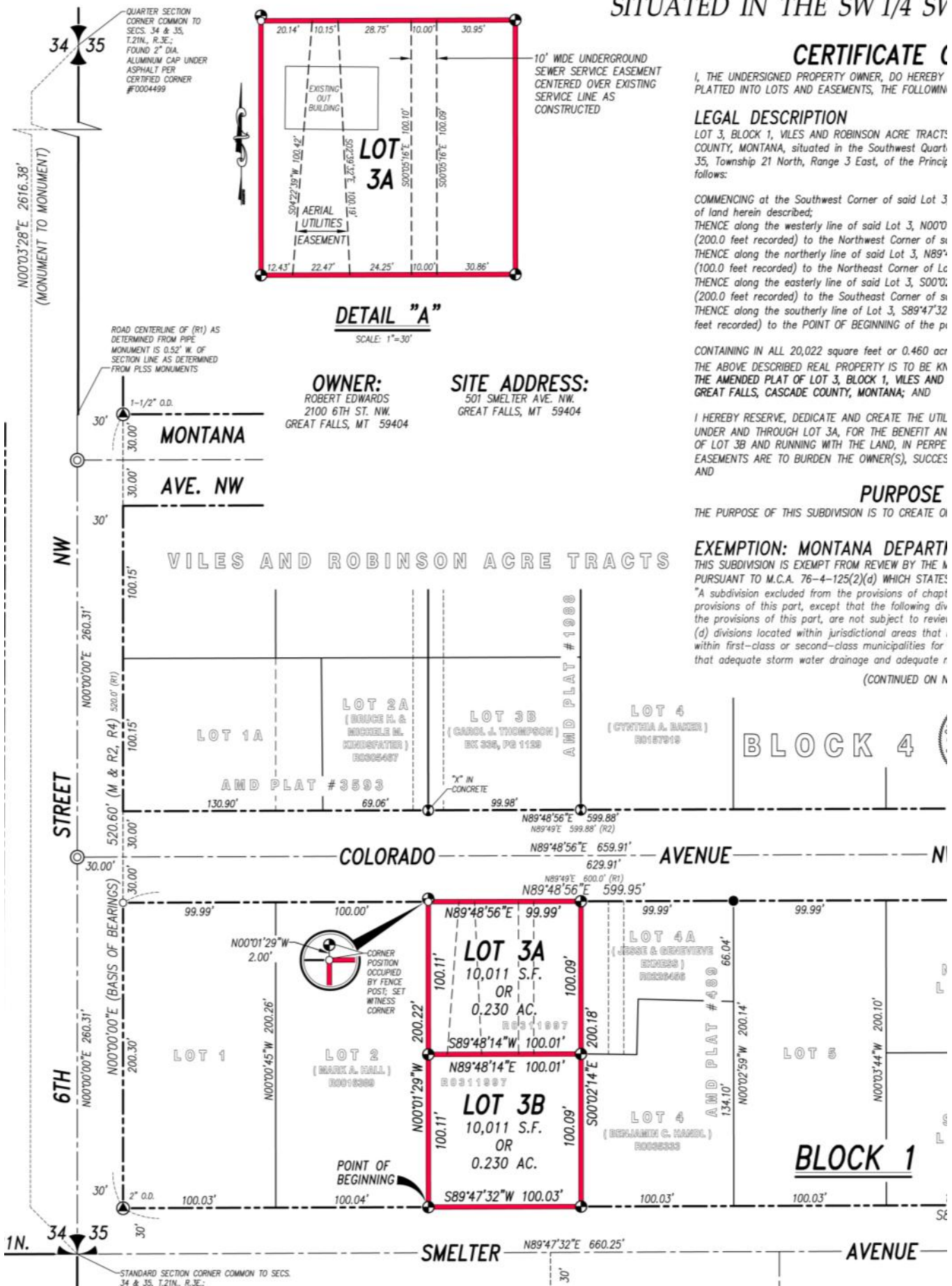
CONTAINING IN ALL 20,022 square feet or 0.460 ac
THE ABOVE DESCRIBED REAL PROPERTY IS TO BE KN
THE AMENDED PLAT OF LOT 3, BLOCK 1, VILES AND
GREAT FALLS, CASCADE COUNTY, MONTANA; AND

I HEREBY RESERVE, DEDICATE AND CREATE THE UTIL
UNDER AND THROUGH LOT 3A, FOR THE BENEFIT AN
OF LOT 3B AND RUNNING WITH THE LAND, IN PERPE
EASEMENTS ARE TO BURDEN THE OWNER(S), SUCCE
AND

THE PURPOSE OF THIS SUBDIVISION IS TO CREATE ONE

THIS SUBDIVISION IS EXEMPT FROM REVIEW BY THE M
PURSUANT TO M.C.A. 76-4-125(2)(d) WHICH STATES:
"A subdivision excluded from the provisions of chap
provisions of this part, except that the following div
the provisions of this part, are not subject to review
(d) divisions located within jurisdictional areas that
within first-class or second-class municipalities for
that adequate storm water drainage and adequate r

(Continued on next page)



Findings for the Basis of Decision:

Staff cannot support the non-conforming use variance. Staff does support the lot size and dimensional front yard setback on the northern parcel provided conditions are met. Staff provides the following Basis of Decision for the proposed dimensional variances:

1. The variance is not contrary to the public interest.

If stipulated conditions are met, the requested variance is not contrary to the public interest because the proposed lot size is consistent with the character of the neighborhood as there are other properties that have been developed in similar fashion. Additionally, the neighbors that surround the property have received adequate notice for the hearing concerning this request and have not provided any objections.

2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.

A literal enforcement would create restrictions uncharacteristic to the use of the subject property, and that of the neighboring R-2 single family medium density district. The maximum lot coverage of each parcel will remain 35% and be characteristic of the neighborhood. Additionally, 12 of the neighboring properties in the subdivision have been similarly divided. The conditional approval of the variances and subsequent development of the property appears to be consistent with the character of the surrounding neighborhood.

3. The spirit of this Title would be observed and substantial justice done by granting the variance.

The proposed single lot subdivision and existing detached garage provides adequate room for construction and maintenance of an additional residential structure, and matches the adjacent R-2 uses in the neighborhood. The owner has stated he intends to build the single family dwelling for a family member and they will live within walking distance to each other.

Staff finds adequate basis and hardship for the conditional approval of the lot size and front yard setback variances on the northern parcel and supports conditional approval of those requests. Staff does not find adequate hardship or unique conditions of the property to support a variance for a non-conforming use.



View looking north across the subject property, from Smelter Avenue Northwest.



View looking south across the subject property, from Colorado Avenue Northwest.

Recommended Motion(s):

Board Member moves:

“I move the Board of Adjustment, based on the Findings for the Basis of Decision, deny the requested variances on the property located at 501 Smelter Avenue Northwest, legally described as Lot 3, Block 1, Viles & Robinson Acre Tracts.

-OR-

“I move the Board of Adjustment, based on the Findings for the Basis of Decision, conditionally approve variances for the property located at 501 Smelter Avenue Northwest, legally described as Lot 3, Block 1, Viles & Robinson Acre Tracts, for the following:

Variance from City Code Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, Lot Area and Dimensional Standards to allow the creation of two (2) 10,000 square foot lots.

Variance of City Code Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, development standards for a residential use zoning district, R-2, Minimum front yard setback. The existing private garage is currently 18 feet from the north property line that would become the front and can remain upon approval of the variance. This variance does not provide for a setback variance for future structures which may be constructed on the property in the future.

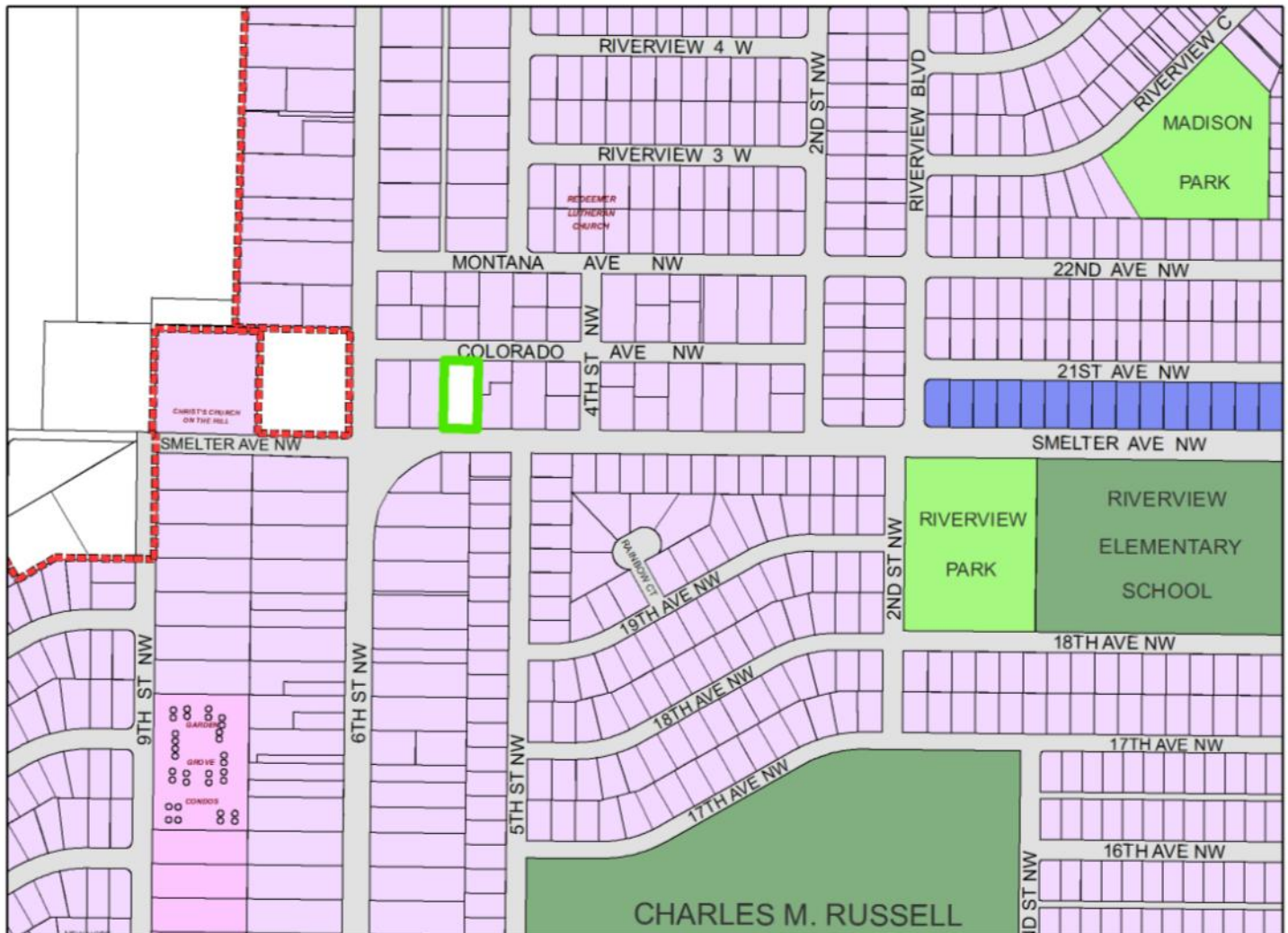
Conditions of Approval

1. The processing, approval and filing with the Cascade County Clerk and Records office of the land division as proposed shall not take place until such time that a valid building permit is filed for the construction of a compliant single family dwelling on the future northern parcel created by said land division.
2. The proposed project shall be developed consistent with the conditions in this agenda report, all other codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
3. If after the approval of the conceptual development plan by this Board, the owner proposes to expand or modify said plans, the Director of the Planning and Community Development Department shall determine in writing if such proposed change would alter the findings for one or more review criteria. If such proposed change would alter said plan, the proposal shall be resubmitted for review as a new application.”

Chairman calls for a second, discussion, public comment, and calls the vote.

Cc: Patty Cadwell, Neighborhood & Youth Council Coordinator

Zoning Map



360 180 0 360 Feet

N

 501 Smelter Avenue NW

City Limits

Tracts of Land

ZONING

AI Airport Industrial

C-1 Neighborhood commercial

C-2 General commercial

C-3 Highway commercial

C-4 Central business core

C-5 Central business periphery

I-1 Light industrial

I-2 Heavy industrial

M-1 Mixed-use district

M-2 Mixed-use transitional

PLI Public lands institutional

POS Park Open Space

PUD Planned unit development

R-1 Single-family suburban

R-2 Single-family medium density

R-3 Single-family high density

R-5 Multi-family medium density

R-6 Multi-family high density

R-9 Mixed residential

R-10 Mobile home park

Unincorporated

Right of Way