

ORDINANCE NO. 07-5399

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 23-1101; PROVIDING UPDATES TO REGULATIONS ON REQUESTING A VARIANCE FROM THE SUBDIVISION REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Section 23-1101 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-1101. Variances.

The City Council may grant reasonable variances from the design and improvement standards of these Regulations when strict compliance would result in undue hardship and the result would not negatively affect public health and safety. The granting of a variance shall not have the effect of nullifying the intent and purpose of these Regulations or justifying submission of an incomplete application. The City Council may not approve a variance that would permit structures within the 100-year floodplain, as defined in 76-5-101, MCA.

A. **Requesting a Variance.** The subdivider shall include with the submission of the ~~preliminary plat~~ variance request, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee of \$325 shall be required, ~~to be processed concurrently with the preliminary plat~~. Information addressing each of the following findings shall accompany the application, ~~to be approved by the City Council~~. The Planning Board shall review the submitted findings and make a recommendation to the City Council. The City Council shall not approve variances unless the subdivider has demonstrated that the request satisfies the following findings:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
3. The variance will not result in an increase in taxpayer burden;
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.
- B. In granting variances, the City Council may require conditions of approval that will, in their judgment, secure the objectives of these Regulations.
- C. When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.
- D. An application for a variance is not necessary where Planned Neighborhood Developments are proposed, as modifications to the standards and requirements of these Regulations may be approved by the City Council.

(Ord. No. 06-5359, § 2, 2-13-06)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 22nd day of January, 2007.

PASSED, ADOPTED and APPROVED on second reading this 12th day of February, 2007.

CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Marita Herold, MMC City Clerk