

**CITY BOARD OF ADJUSTMENT**  
**MINUTES: September 2, 2009**

*Approved by motion with corrections on October 7, 2009*

On September 2, 2009, at 6:00 p.m., the City Board of Adjustment convened in the City Council Chambers. As there was not a quorum of Boardmembers; the hearing was rescheduled (an adjourned meeting is allowed by Roberts Rules of Order Newly Revised, to another date and time prior to the next meeting).for Thursday, September 3, 2009, 6:00 p.m. and will be held in the Billings Parmly Library Large Conference Room, 510 North Broadway, Billings, Montana.

Name	Title	01/07/09	02/04/09	03/04/09	04/01/09	05/06/09	06/03/09	07/01/09	08/05/09	09/02/09	09/03/09	10/07/09	11/04/09	12/02/09
Jeff Bollman	Boardmember	1	1	1	1	E	1	1	1	E				
Barbara Walborn	Boardmember	1	1	1	1	1	1	1	E	A				
Lyn McKinney	Vice-Chair	1	1	1	1	1	1	E	1	E				
Troy Boucher	Chairman	1	1	1	1	1	E	1	E	1				
Daniel Eggen	Boardmember	1	1	1	1	1	1	1	E	1				
Brent Nelson	Boardmember	A	A	A	1	E	1	E	1	E				
Paul Cox	Boardmember	1	1	1	1	1	1	E	1	1				

**CITY BOARD OF ADJUSTMENT**  
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Name	Title	01/07/09	02/04/09	03/04/09	04/01/09	05/06/09	06/03/09	07/01/09	08/05/09	09/02/09	09/03/09	10/07/09	11/04/09	12/02/09
Jeff Bollman	Boardmember	1	1	1	1	E	1	1	1	E	E			
Barbara Walborn	Boardmember	1	1	1	1	1	1	1	E	A	1			
Lyn McKinney	Vice-Chair	1	1	1	1	1	1	E	1	E	E			
Troy Boucher	Chairman	1	1	1	1	1	E	1	E	A	1			
Daniel Eggen	Boardmember	1	1	1	1	1	1	1	E	1	1			
Brent Nelson	Boardmember	A	A	A	1	E	1	E	1	E	E			
Paul Cox	Boardmember	1	1	1	1	1	1	E	1	1	1			

Chairman Troy Boucher called the meeting to order at 6:10 p.m. The City Board of Adjustment met in the Large Conference Room on the fourth floor of the Parmly Billings Library, 510 North Broadway, Billings, Montana.

<b>TOTAL NUMBER OF APPLICATIONS 2009</b>	<b>01/07/09</b>	<b>02/04/09</b>	<b>03/04/09</b>	<b>04/01/09</b>	<b>05/06/09</b>	<b>06/03/09</b>	<b>07/01/09</b>	<b>08/05/09</b>	<b>09/03/09</b>	<b>10/07/09</b>	<b>11/04/09</b>	<b>12/02/09</b>	<b>TOTAL</b>
<b>Variance</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>				

Chairman Troy Boucher asked Nicole Cromwell to introduce the City Board of Adjustment Members and Planning Department Staff. Staff members that are present are Nicole Cromwell, Zoning Coordinator; and Tamara Deines, Planning Clerk.

**Public Comment:**

Chairman Boucher opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There was none. Chairman Boucher closed the public comment period.

**Approval of minutes: August 5, 2009**

Chairman Boucher called for approval of the August 5, 2009 minutes.

**Motion:**

*On a motion by Boardmember Eggen and seconded by Boardmember Walborn the minutes of August 5, 2009 were approved as submitted with a 4-0 voice vote.*

**PUBLIC HEARINGS:**

Chairman Boucher asked Ms. Cromwell to read the determinations for granting a variance as well as review the rules for the procedure by which the public hearings will be conducted. Ms. Cromwell reviewed the procedures by which the meeting is conducted and the determinations for granting a variance. She noted that under State Law, four Board members are required to approve a variance. She stated that a unanimous vote in favor of the variance will be needed for this application to pass. She said that the applicant has the opportunity to withdraw or delay the request for thirty days. The applicants agreed to go forward with their applications.

**Public Hearings:**

**Item #1: City Variance #1054 – 3831 Heritage Drive** – A variance from 27-310(i)1.f requiring the side wall height of a proposed detached accessory structure to not exceed the side wall height of the principal residential structure to allow a maximum side wall height of 10 feet for a new 1,140 square foot detached garage on Lot 7, Block 3, Heritage Acres Subdivision in a Residential 9,600 (R-96) zone. Tax ID: C05836B. Todd Nelson, owner.

Ms. Cromwell read the legal description.

## **REQUEST**

Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell gave an overview of the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property.

She reviewed the staff recommended conditions of approval:

Staff is recommending the following conditions for the variance request:

1. The variance is to increase the side wall height of the proposed new garage to 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 7, Block 3 of Heritage Acres Subdivision. The detached garage will be constructed in the general location as shown on the submitted site plan.
3. A building permit application must be submitted within 60 days of Board of Adjustment approval.
4. The detached garage must be completed within 1 year of Board of Adjustment approval. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the variance.
5. 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.

### **Discussion:**

Chairman Boucher asked the members of the Board for questions or discussion. In response to a question by Boardmember Eggen, the applicant stated that the garage will have horizontal siding to match the house. Boardmember Cox asked regarding the minimum separation distance and Nicole Cromwell stated that this will be met.

Chairman Boucher opened the public hearing at and called for proponents of City Variance #1054, 3831 Heritage Drive, Billings, Montana.

### **Todd Nelson, 3831 Heritage Drive, Billings, Montana**

Mr. Nelson stated that he has no objections from the neighbors and that he has spoken with each one of them personally. He said that he will meet the sixty day limitation for completion of the project.

Chairman Boucher called for proponents or opponents of City Variance #1054, 3831 Heritage Drive, Billings, Montana. There were none. Chairman Boucher closed the public hearing at 6:18 p.m.

**Motion:**

***On a motion by Boardmember Cox and seconded by Boardmember Walborn and approved with a 4-0 roll call vote Variance #1054 was conditionally approved with the following conditions:***

1. The variance is to increase the side wall height of the proposed new garage to 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 7, Block 3 of Heritage Acres Subdivision. The detached garage will be constructed in the general location as shown on the submitted site plan.
3. A building permit application must be submitted within 60 days of Board of Adjustment approval.
4. The detached garage must be completed within 1 year of Board of Adjustment approval. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the variance.
5. 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.

**Discussion:**

Chairman Boucher called for discussion on the motion. There was none.

Chairman Boucher called for the roll call vote:

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				X
Barbara Walborn	1			
Lyn McKinney				X
Troy Boucher	1			
Daniel Eggen	1			
Brent Nelson				X
Paul Cox	1			

**Item #2**

**REQUEST**

**The applicant is requesting a variance from BMCC 27-308 requiring a 20 foot minimum rear setback to allow a 10 foot minimum rear setback for a new residential dwelling on Lot 22, Block 5, Wilshire Heights Subdivision in a Residential 9,600 (R-96) zone. The property is 8,116 square feet and is addressed as 3250 Durland Drive. The owners are Steve and Maureen Kienitz.**

Ms. Cromwell read the legal description.

Staff is recommending conditional approval of the proposed variance.

Ms. Cromwell gave an overview of the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property.

She reviewed the staff recommended conditions of approval:

Staff is recommending the following conditions for the variance request:

1. The variance is to decrease the required rear setback from 20 feet to 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 22, Block 5 of Wilshire Heights Subdivision, 8<sup>th</sup> Filing. The dwelling will be constructed in the general location as shown on the submitted site plan.
3. The applicant will be solely responsible for management of any existing or future stormwater runoff from the site.
4. A building permit application must be submitted within 60 days of Board of Adjustment approval.
5. The dwelling must be completed within 1 year of Board of Adjustment approval. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the 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.

### **Discussion:**

Chairman Boucher asked the members of the Board for questions or discussion. Chairman Boucher asked for clarification on the responsibility of the property owner to manage the stormwater runoff. Nicole Cromwell responded that the stormwater runoff from the house and driveway might be managed either through swales or some type of landscaping. She said that this would be monitored through the building permit review. Boardmember Walborn asked about the height limitation, and Nicole Cromwell noted that Covenants and Restrictions for the property and stated that they will meet this restriction. Chairman Boucher asked if we have the authority to impose a commercial code on a residential site. Boardmember Cox asked if there is liability to the City should boulders fall from the rimrocks. Nicole Cromwell responded that there is always this risk but there is no liability.

Chairman Boucher opened the public hearing at and called for proponents of City Variance #1055, 3250 Durland Drive, Billings, Montana.

### **Steve Kienitz, 3250 Durland Drive, Billings, Montana**

Mr. Kienitz stated that there are three house-sized boulders on the lot. He said that they have owned the lot for three years and have had to make several considerations in order to place the house on the lot. He stated that the footprint of the house is approximately 1,300 square feet. He commented that since they have owned the property, he has found that the stormwater flows from a field above the lot on top of the rims. He said that all of the water diverts through the lot and that the concrete drain was placed to avoid eroding the neighbor's property. He stated that he would like to see something done with the culvert located on top of the lot and suggested installation of a stand pipe as this would alleviate the problem. Troy Boucher asked the applicant if they are in agreement with condition of approval #3. Mr. Kienitz stated that this may be a problem as the stormwater does not come from just his lot. He said that he will be installing rain gutters and the driveway would run straight to the street. He noted that prior to the installation of the stormwater wall; the hydraulic pressure would go underneath the curbing and raise the pavement. He said that the water is coming from on top of the rims. Boardmember Eggen noted that condition of approval to obtain a building permit within sixty

days and asked if this is feasible. Mr. Kienitz stated that he plans to start the project this fall. He said that they are dealing with several “rock issues” but would begin excavation for the home when this is addressed. Boardmember Walborn commented that she used to live in the area and remembers the large amount of water that flowed down the rims during a large storm. Mr. Kienitz stated that they are taking precautions by increasing the size of the wall and placing a trench behind the house with gravel for drainage.

Chairman Boucher called for proponents or opponents of City Variance #1055, 3250 Durland Drive, Billings, Montana. There were none. Chairman Boucher closed the public hearing at 6:41 p.m.

**Motion:**

***A motion was made by Boardmember Eggen and seconded by Boardmember Walborn to conditionally approve Variance #1055 with the following conditions:***

1. The variance is to decrease the required rear setback from 20 feet to 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 22, Block 5 of Wilshire Heights Subdivision, 8<sup>th</sup> Filing. The dwelling will be constructed in the general location as shown on the submitted site plan.
3. ~~The applicant will be solely responsible for management of any existing or future stormwater runoff from the site.~~
4. A building permit application must be submitted within 60 days of Board of Adjustment approval.
5. The dwelling must be completed within **± 18 months** of Board of Adjustment approval. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the 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.

**Discussion:**

Chairman Boucher called for discussion on the motion. Boardmember Cox suggested amending Condition of Approval #3 to state “from the particular property”. Nicole stated that the language would be as in the staff report.

**Motion:**

***A motion was made by Boardmember Eggen and seconded by Boardmember Cox to conditionally approve Variance #1055 with the following conditions:***

1. The variance is to decrease the required rear setback from 20 feet to 10 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 22, Block 5 of Wilshire Heights Subdivision, 8<sup>th</sup> Filing. The dwelling will be constructed in the general location as shown on the submitted site plan.
3. The applicant will be solely responsible for management of any existing or future stormwater runoff from ~~the site~~ **the particular property**.
4. A building permit application must be submitted within 60 days of Board of Adjustment approval.
5. The dwelling must be completed within **± 18 months** of Board of Adjustment approval. Failure to submit a building permit application or complete the construction within the time limits prescribed herein shall void the 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.

**Discussion**

Chairman Boucher called for discussion on the motion. Boardmember Walborn asked what will determine whether the water comes from the site and not the rims. And who would enforce this. She said that she would rather eliminate the condition. Nicole Cromwell stated that she agrees that the large rock wall can become a source of upstream water that will always be there, and that it would be difficult to determine between the upstream runoff and the new runoff with the home and the driveway. She said that this condition was requested by the City Engineering Department. Boardmember Boucher said that they were looking for mitigation and not total containment of the runoff. Discussion followed on how to determine the flows during a significant event. Chairman Boucher said that the condition language is too open-ended.

There was none.

Chairman Boucher called for the roll call vote on the amendment to the original motion:

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				X
Barbara Walborn		x		
Lyn McKinney				X
Troy Boucher		x		
Daniel Eggen		x		
Brent Nelson				X
Paul Cox	1			

**On a 3-1 voice vote, the amendment to the original motion failed.**

Chairman Boucher called for the roll call vote on the original motion:

Boardmember	Yes	No	Abstain	Not Present
Jeff Bollman				X
Barbara Walborn	1			
Lyn McKinney				X
Troy Boucher	1			
Daniel Eggen	1			
Brent Nelson				X
Paul Cox	1			

**On a 4-0 voice unanimous vote, the original motion to conditionally approve City Variance #1055 passes.**

**Other Business/Announcements:**

There were no other business items or announcements. Zoning Coordinator Nicole Cromwell stated that there will be a full agenda next month. Boardmember Walborn asked that she be excused for the next meeting on October 7, 2009.

**Adjournment: 6:55 pm**

*Approved by motion with corrections on October 7, 2009.*

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**Chairman Troy Boucher**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**