

CITY BOARD OF ADJUSTMENT

MINUTES: October 7, 2009

Corrected and approved by a motion on November 4, 2009

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	1		
Barbara Walborn	Boardmember	1	1	1	1	1	1	1	E	A	1	E		
Lyn McKinney	Vice-Chair	1	1	1	1	1	1	E	1	E	E	1		
Troy Boucher	Chairman	1	1	1	1	1	E	1	E	E	1	E		
Daniel Eggen	Boardmember	1	1	1	1	1	1	1	E	1	1	1		
Brent Nelson	Boardmember	A	A	A	1	E	1	E	1	E	E	1		
Paul Cox	Boardmember	1	1	1	1	1	1	E	1	1	1	1		

Vice Chairman Lyn McKinney called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the City Council Chambers.

TOTAL NUMBER OF APPLICATIONS 2009	01/07/09	02/04/09	03/04/09	04/01/09	05/06/09	06/03/09	07/01/09	08/05/09	09/03/09	10/07/09	11/04/09	12/02/09	TOTAL
Variance	2	1	1	2	4	2	1	1	2	8			

Vice Chairman Lyn McKinney 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; Juliet Spalding, Planner II; and Tamara Deines, Planning Clerk.

Public Comment:

Vice Chairman McKinney 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. Vice Chairman McKinney closed the public comment period at 6:01 p.m.

Approval of minutes: September 2-3, 2009

Vice Chairman McKinney called for approval of the September 2-3, 2009 minutes.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember Bollman the minutes of September 2-3, 2009 were approved with corrections submitted by Boardmember Eggen, with a 5-0 voice vote.

PUBLIC HEARINGS:

Vice Chairman McKinney 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 four of the five votes 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. She asked that Board members acknowledge whether or not they received communication from applicants. Board members Jeff Bollman, Brent Nelson, Paul Cox, and Daniel Eggen stated that they had received a copy of a letter dated October 1 regarding Variance #1059. Nicole Cromwell made copies of this communication available to members of the public.

Public Hearings:

Item #1: City Variance #1056 – 2712 Howard Avenue – A variance from 27-308 requiring a minimum 5 foot side setback to allow a minimum 2 foot side setback for a 418 square foot attached garage addition on Lot 12, Block 22, Descro Subdivision 9th Filing, a 7,260 square foot parcel of land in a Residential 7,000 (R-70) zone. Tax ID: A20455. Patricia Willits, owner.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum 5-foot side setback to allow a minimum 2-foot side setback for a proposed attached garage addition in the Residential 7,000 (R-70) zone. The property is legally described as Lot 12, Block 22, Descro Subdivision, 9th Filing and is located at 2712 Howard Ave.

Staff is recommending conditional approval of the proposed variance.

Ms. Spalding 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 reduce the required side yard setback of 5 feet for a single story attached garage addition to a 2-foot side yard setback, and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 12, Block 22 of Descro Subdivision, 9th Filing.
3. The front of the proposed garage shall not extend beyond the front of the house.
4. The proposed garage addition shall be done in compliance with the all other applicable building codes and zoning codes adopted by the City.
5. A building permit shall be submitted to the City for review within six months of variance approval.

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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Eggen asked for clarification on the size of the garage, and Juliet Spalding stated that it is proposed to be 22' deep X 19 feet wide. She said that the site plan is showing the garage protruding forward but this would have to be amended should the variance be approved. Boardmember Bollman asked a question regarding the building code requirements from the property line. Juliet Spalding stated that it may require an additional fire rating along the property line as it is not the required five foot distance. Nicole Cromwell referred to comments received from the City Fire Department which stated that it would require a fire rated construction on the side wall and that probably no openings would be allowed. Boardmember Bollman noted the possibility of placing the structure within the 20'ft setback. Nicole Cromwell pointed out that there may not be enough room on the lot to accomplish this. Juliet Spalding stated that these issues would be addressed at the time of the building permit application.

Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1056, 2712 Howard Avenue, Billings, Montana.

There were none. The applicant is in attendance, but does not wish to speak at this time.

Vice Chairman McKinney called for proponents or opponents of City Variance #1056, 2712 Howard Avenue, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 6:22 p.m.

Motion:

A motion was made by Boardmember Cox and seconded by Boardmember Eggen to conditionally approved #1056 with the following conditions:

1. The variance is to reduce the required side yard setback of 5 feet for a single story attached garage addition to a 2-foot side yard setback, and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 12, Block 22 of Descro Subdivision, 9th Filing.
3. The front of the proposed garage shall not extend beyond the front of the house.
4. The proposed garage addition shall be done in compliance with the all other applicable building codes and zoning codes adopted by the City.
5. A building permit shall be submitted to the City for review within six months of variance approval.
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:

Vice Chairman McKinney called for discussion on the motion. Boardmember Eggen asked if there is enough room to move the garage back in order to keep the front line straight. Nicole Cromwell stated that this may be possible and referred to the site plan. Juliet Spalding said that there would be approximately 4.5 feet between the garage and the shed should the garage be parallel to the house.

A point of clarification was asked of the applicant, Patricia Willits, owner. Ms. Willits stated that should be garage be pushed back it would cover the kitchen window on the west side of the house. She said that it also mean that the existing shed would have to be taken out and that it is about six feet from the side property line to the garden shed. Ms. Willits said that the neighbors are comfortable with this proposal. She said that there is eight feet or more to the neighbor’s property and there should not be any water runoff from the proposed garage. Boardmember Bollman said that he will not vote in favor of this variance as he feels that it would be granting a special privilege to this property owner.

Vice Chairman McKinney called for the roll call vote:

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

City Variance #1056 to reduce the required side yard setback of 5 feet for a single story attached garage addition to a 2-foot side yard setback has been denied with a voice roll call vote of 3-2.

Item #2: City Variance #1057 – 1304 Miles Avenue – A variance from 27-308 requiring a minimum 20 foot front setback to allow an 11 foot setback for a proposed addition on Lot 4, Block 13 of Normandy Addition, 2nd Filing, a 7,800 square foot parcel of land in a Residential 7,000 (R-70) zone. Tax ID: A11478. Wayne & Rayette Bell, owners.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum 20-foot front setback to allow a minimum 11-foot front setback for a proposed home addition in the Residential 7,000 (R-70) zone. The property is legally described as Lot 4, Block 13, Normandy Addition, 2nd Filing and is located at 1304 Miles Ave.

Staff is recommending conditional approval of the proposed variance.

Ms. Spalding 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:

1. The variance is to reduce the required front setback from 20 feet to 11 feet as shown on the submitted site plan and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 13 of Normandy Addition, 2nd Filing.
3. The proposed addition shall be done in compliance with the all other applicable building codes, zoning codes and other applicable regulations adopted by the City. A building permit shall be submitted to the City for review within six months of variance approval.
4. 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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Bollman asked if there was discussion with the owner about including other nonconforming properties with this variance. Nicole Cromwell explained the current interpretation of the City code for corner lots.

At 6:40 p.m. Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1057, 1304 Miles Ave, Billings, Montana.

Mr. Wayne Bell, 1304 Miles Ave, Billings, Montana

Mr. Bell stated that he is aware of the setback issue and that they do not conform to the current code. He said that they are eliminating the breezeway and that they have had the property surveyed. He stated that as far as clear vision on 13th Street, there will be no obstructions. He noted that this is the only property that faces the “crook” on Miles Avenue.

Doug McGrail, 2545 Miles, Avenue, Billings, Montana

Mr. McGrail stated that has no problem with this request.

Vice Chairman McKinney called for proponents or opponents of City Variance #1057, 1304 Miles Avenue, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 6:43 p.m.

Motion:

A motion was made by Boardmember Eggen and seconded by Boardmember Bollman to conditionally approve Variance #1057 with the following conditions:

1. The variance is to reduce the required front setback from 20 feet to 11 feet as shown on the submitted site plan and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 4, Block 13 of Normandy Addition, 2nd Filing.
3. The proposed addition shall be done in compliance with the all other applicable building codes, zoning codes and other applicable regulations adopted by the City. A building permit shall be submitted to the City for review within six months of variance approval.

4. 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:

Vice Chairman McKinney called for discussion on the motion. There was none.

Vice Chairman McKinney called for the roll call vote:

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

City Variance #1057 to allow an 11 foot setback for a proposed addition on Lot 4, Block 13 of Normandy Addition, 2nd Filing is conditionally approved with a 5-0 voice roll call vote.

Item #3:

At 6:47 p.m. Planner Juliet Spalding noted a citizen letter received dated September 28, 2009.

City Variance #1058 – 624 S 31st Street – A variance from 27-308 requiring a minimum lot area of 13,000 square feet for a 6-unit multi-family dwelling to allow a minimum lot area of 7,000 square feet for an existing structure on Lots 1 & 2, Block 216, Billings Original Town in a Residential 6,000 (R-60) zone. Tax ID: A01578. Jerome Kautzman, owner and Tom Roe, agent.

Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 13,000 square feet for a 6-unit multi-family dwelling, to allow a minimum lot area of 7,000 square feet for an existing structure in the Residential 6,000 (R-60) zone. The property is legally described as Lots 1 & 2, Block 216, Billings Original Town and is located at 624 S. 31st Street. No work is planned on the building, but the variance would allow the owner to re-build the dwelling units if necessary in the future.

Staff is recommending denial of the proposed variance based on the review criteria.

Ms. Spalding 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 Determinations for a variance and the reasons for a recommendation of denial. She stated that Staff feels that this would convey a special privilege and that it would be difficult to meet the current site development ordinances.

Discussion:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Juliet Spalding responded to a question by Boardmember Nelson and stated that this property is taxed based on six units. She said that Staff considers this a legal non-conforming six-plex. Boardmember Bollman pointed out that there is no knowledge that this property is “legally” non-conforming. Juliet Spalding concurred. Brent Nelson asked for reiteration of the request and it was given by Juliet Spalding. She stated that the applicant wishes to make the property conforming through a variance and allow it to be rebuilt should it be destroyed. She said that two units would be allowed under this zoning classification.

At 6:59 p.m. Vice Chairman McKinney opened the public hearing and called for proponents of City Variance #1058, 621 S 31st Street, Billings, Montana.

Tom Roe, 929 Ave. C, Billings, Montana

Mr. Roe stated that this property was built in 1888 as a six-plex and it provides housing on the south side of Billings. He said that the hardship exists as far as the financing of the property which makes the property difficult to sell. He said that he cannot get financing or be insured without a burn letter. Boardmember Nelson commented that anything over a four-unit building would be considered a hardship in this market. In response to a question by Boardmember Bollman, Mr. Roe stated that there are three units on the upstairs, three units on the main level and no basement. Mr. Roe said that the downstairs units have their own entrances. He said that there is one meter and the owner pays all of the utilities. He pointed out that this property is being taxed as six units.

Vice Chairman McKinney called for proponents or opponents of City Variance #1058, 621 S. 31st Street, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 7:03 p.m.

Motion:

A motion was made by Boardmember Bollman and seconded by Boardmember Eggen to deny Variance #1058 on the basis of the determinations for a variance.

Discussion:

Vice Chairman McKinney called for discussion on the motion. Boardmember Nelson commented that “time has slipped away on this property” and having six units on this property is not possible. Boardmember Cox noted that the letter disputes what the owner has said regarding the financing and insurability. Boardmember Nelson said that this would be difficult in the best of conditions unless this is privately financed. Boardmember Cox pointed out that the request is only for a burn letter. He said that he would like to have a record stating that it was originally built as a six plex.

Vice Chairman McKinney called for the roll call vote:

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		X		

City Variance #1058 to allow a minimum lot area of 7,000 square feet for an existing structure in the Residential 6,000 (R-60) zone is denied with a 4-1 roll call vote.

Item #4: City Variance #1059 – 519 Avenue E – A variance from 27-308 requiring a minimum lot area of 10,000 square feet for a 4-unit multi-family dwelling to allow a minimum lot area of 5,880 square feet for an existing structure on Lot 11 and the West 17 feet of Lot 10, Block 8 Clanton Heights Subdivision in a Residential 6,000 (R-60) zone. Tax ID: A05051. Sky Properties, LLC, owner and Kimberly Barnett, agent.

At 7:08 p.m. Ms. Cromwell read the legal description.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 10,000 square feet for a 4-unit multi-family dwelling, to allow a minimum lot area of 5,880 square feet for an existing structure in the Residential 6,000 (R-60) zone. The property is legally described as Lot 11, and the West 17 feet of Lot 10, Block 8, Clanton Heights Subdivision and is located at 519 Avenue E. No work is planned on either building, but the variance would allow the owner to re-build the dwelling units if necessary in the future.

Staff is recommending conditional approval of the proposed variance to allow one duplex unit.

Ms. Spalding 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:

1. The variance is to reduce the required lot area from 10,000 square feet to 5,880 square feet for duplex dwelling and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 11, and the West 17 feet of Lot 10, Block 8 of Clanton Heights Subdivision.
3. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City’s adopted building code and zoning code, which includes the approved zoning variance from the required lot area in this application, and other City regulations in place at that time of rebuild.

4. 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.

**Copies of letters were submitted to the members of the Board from Citizens Brian & Molly Harrington, 501 Chancery Lane, Billings, Montana 59102 request for denial; and Citizen Gene Marie Robson, 525 Avenue E, Billings, Montana 59101.

Discussion:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Clarification was given to Boardmember Nelson regarding the parking requirements. In response to a question by Boardmember Eggen, Juliet Spalding stated that stormwater management is required on new constructions including residential properties. Boardmember Cox stated that he owns a duplex on Avenue E and 6th Street West. Nicole Cromwell said that he is not in the notification letter and would not be considered to have an interest in this property. In response to a question by one of the Boardmembers, she stated that Staff uses a computer generated surrounding property owner radius map.

At 7:21 Vice Chairman McKinney opened the public hearing and called for proponents of City Variance #1059, 519 Avenue E, Billings, Montana.

Ms. Kimberly Barnett, 1137 Henry; Pam Hoffman, Trewan Circle, Billings, Montana

Ms. Barnett pointed out the locations of the parking spaces on the property. She said that it is hard to find private financing and that this affects the value of the property. Ms. Pam Hoffman stated that they are requesting approval of this variance so that this property can be sold on the secondary market. Boardmember Nelson asked about the plot design of the property. Ms. Barnett said that she said that they wish to have the letter to add value to the property and that they purchased the property when “burn down letters” were distributed without cause. Boardmember Nelson said that the appraiser for the bank would have picked up the nonconformance. Ms. Barnett said that the property was purchased before the downturn in the economy.

Vice Chairman McKinney called for proponents or opponents of City Variance #1059, 519 Avenue E, Billings, Montana.

Jean Marie Robson, 525 Ave. E, Billings, Montana

Ms. Robson stated that she agrees with the staff recommendation for a duplex. She said that a lot of creative maneuvering would have to be done to have a 4-plex on the lot. She pointed out that there are parking issues.

Rebuttal

Vice Chairman McKinney called for rebuttal. Ms. Barnett said that their purpose for requesting this variance is only from a financial stand point.

There were none. Vice Chairman McKinney closed the public hearing at 7:30 p.m.

Motion:

A motion was made by Boardmember Cox and seconded by Boardmember Bollman to conditionally approved Variance #1059 with the following conditions:

1. The variance is to reduce the required lot area from 10,000 square feet to 5,880 square feet for duplex dwelling and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lot 11, and the West 17 feet of Lot 10, Block 8 of Clanton Heights Subdivision.
3. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City’s adopted building code and zoning code, which includes the approved zoning variance from the required lot area in this application, and other City regulations in place at that time of rebuild.
4. 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:

Vice Chairman McKinney called for discussion on the motion. Boardmember Nelson stated that a plot layout would be needed to achieve what they want to achieve for the parking layout.

Vice Chairman McKinney called for the roll call vote:

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	x			

City Variance #1059 to reduce the required lot area from 10,000 square feet to 5,880 square feet for a duplex dwelling is denied with a voice roll call vote of 3-2.

Item #5: City Variance #1060 – 1723 & 1727 8th Avenue North – A variance from 27-308 requiring a minimum lot area of 14,500 square feet for a 3-unit multi-family dwelling and single family dwelling to allow a lot area of 10,500 square feet for two existing structures on Lots 22- 24, Block 294, Billings 1st Addition in a Residential 6,000 (R-60) zone. Sky Properties, LLC, owner and Kimberly Barnett, agent.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 14,500 square feet for a 3-unit multi-family dwelling and a single family dwelling to allow a lot area of 10,500 square feet in a Residential 6,000 (R-60) zone. The property is legally described as Lots 22- 24, Block 294, Billings 1st Addition and is addressed at 1723 & 1727 8th Avenue North. No work is

planned on either structure but this variance will allow the existing dwelling units to be re-built if destroyed or damaged.

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:

1. The variance is to reduce the required lot area from 14,500 square feet for one single family home and one 3-plex multi-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 22-24, Block 294, Billings 1st Addition generally located at 1723 & 1727 8th Avenue North.
3. If the dwelling units are re-constructed in the future, they must meet all other requirements of the zoning regulations with the exception of the variances noted above. The reconstruction must also comply with all other City of Billings regulations including but not limited to building code and site development codes in place at the time of reconstruction.
4. 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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Eggen asked about the construction footprint. Boardmember Bollman asked what could be built if this variance were denied and the property destroyed. Nicole Cromwell said that a three-plex could be built and that the applicant would have to apply for a special review for a four-plex.

At 7:43 p.m., Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1060 1723 & 1727 8th Avenue North, Billings, Montana.

Ms. Kimberly Barnett, 1137 Henry, Billings, Montana

In response to a request for clarification by Ms. Barnett, Nicole Cromwell said that the code for R-6000 has changed since this has been built. She clarified and stated that a special review would be needed for a four-plex.

Vice Chairman McKinney called for proponents or opponents of City Variance #1060 1723 & 1727 8th Avenue North, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 7:44 p.m.

Motion:

Boardmember Nelson made a motion and it was seconded by Boardmember Eggen to conditionally approve Variance #1060 with the following conditions:

1. The variance is to reduce the required lot area from 14,500 square feet for one single family home and one 3-plex multi-family dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 22-24, Block 294, Billings 1st Addition generally located at 1723 & 1727 8th Avenue North.
3. If the dwelling units are re-constructed in the future, they must meet all other requirements of the zoning regulations with the exception of the variances noted above. The reconstruction must also comply with all other City of Billings regulations including but not limited to building code and site development codes in place at the time of reconstruction.
4. 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:

Vice Chairman McKinney called for discussion on the motion. There was none.
Vice Chairman McKinney called for the roll call vote:

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	x			

City Variance #1060 to reduce the required lot area from 14,500 square feet for one single family home and one 3-plex multi-family dwelling is conditionally approved with a 5-0 roll call vote.

Item #6: City Variance #1061 – 937, 939 & 939 ½ N 24th Street – A variance from 27-308 requiring a minimum lot area of 23,600 square feet for a duplex dwelling and 2 single family dwellings to allow a minimum lot area of 12,250 square feet for 3 existing structures on the South 87.5 feet of the North half of Lot 2, Block 9, Sunnyside Subdivision, 2nd Filing in a Residential 7,000 (R-70) zone. David Klarich, owner.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 23,600 square feet for a 2-family dwelling and 2 single family dwellings to allow a lot area of 12,250 square feet in a Residential 7,000 (R-70) zone. The property is legally described as the South 87.5 feet of the North half of Lot 2, Block 9, Sunnyside Subdivision, 2nd Filing and is addressed as 937 North

24th Street. No work is planned on any of the structures but this variance will allow the existing dwelling units to be re-built if destroyed or damaged.

Staff is recommending conditional approval of the proposed variance.

At 7:49 p.m., 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:

1. The variance is to reduce the required lot area from 23,600 square feet for 2 single family homes and one duplex dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to the South 87.5 feet of the North ½ of Lot 2, Block 9, Sunnyside Subdivision, 2nd Filing generally located at 937 N 24th Street.
3. If the dwelling units are re-constructed in the future they must meet all other requirements of the zoning regulations with the exception of the variances noted above. The reconstruction must also comply with all other City of Billings regulations including but not limited to building code and site development codes in place at the time of reconstruction.
4. 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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. In response to a question by Boardmember Cox, Nicole Cromwell explained the staff recommendation for lot area coverage and noted that it is 4, 000 square feet less than requested by the applicant. She gave clarification to Boardmember Bollman and stated that they would have to rebuild the structures as two single family dwellings and one single family dwelling unless Condition of Approval #1 is modified to state that it can be built as two duplexes. Boardmember Eggen asked about the tax roll description of this property and Nicole Cromwell said that it is described as two single-family homes and one two-family home. She pointed out that these are small units.

At 8:00 p.m. Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1061, 937, 939 & 939 1/2 North 24th Street, Billings, Montana.

Betty Wolf Duncan for Delores Wolf McMullen, (no address given)

Ms. Duncan stated that she has power of attorney to represent her sister, Delores Wolf McMullen and the other joint owners of this property. She stated that they live directly across from this property. She pointed out the parking situation with the new ballpark. She said that the obvious potential area for expansion is the 900 block of 25th Street. She said that it is interest in the City of Billings to keep the property as cheap as possible as this property has the most potential for expansion. She said that they have owned this property since the 1940's and at that time there was a need for rentals. She said that currently there are five units and she pointed out that there are a lot of rental and multi-family residents in this area. She said that there has been no vacancy factor with this rental property as it is highly desirable. She would like to know that the City of Billings will not institute eminent domain or plans to buy it "on the cheap" piece by piece. Vice Chairman McKinney

said that this Board does not deal with this type of issue. Ms. Wolf said that this property is an attractive neighborhood because of properties similar to Mr. Klarich's.

David Klarich, 2512 Hancock Drive, Billings, Montana

Mr. Klarich said that he is the owner of this property and has owned it since 1977. He said that he concurs with Ms. Wolf that it is highly desirable rental property. He pointed out that the units are not very large and he gave the square footage of the units and the addition. He said that building permits were granted for the addition. He commented that this property does not feel congested and said that his neighbor does not have an issue with this request. He stated that his request for a variance was precipitated by a neighbor who has a similar issue with his property. He said that he wishes to protect his investment should one of his units burn down. He pointed out that he has just re-roofed the garage and efficiency house and continues to strive to keep the property updated.

Jason Beso, 944 North 23rd Street, Billings, Montana

Mr. Beso said that this is one of the nicest places in the neighborhood and he commended Mr. Klarich for his foresight with this request. He said that there are no parking issues.

Vice Chairman McKinney called for proponents or opponents of City Variance #1061, 937, 939 & 939 1/2 North 24th Street, Billings, Montana.

There were none. Vice Chairman McKinney closed the public hearing at 8:14 p.m.

Motion:

A motion was made by Boardmember Bollman and seconded by Boardmember Cox to conditionally approve Variance #1061 with the following conditions:

1. The variance is to reduce the required lot area from 23,600 square feet for 2 single family homes and one duplex dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to the South 87.5 feet of the North ½ of Lot 2, Block 9, Sunnyside Subdivision, 2nd Filing generally located at 937 N 24th Street.
3. If the dwelling units are re-constructed in the future they must meet all other requirements of the zoning regulations with the exception of the variances noted above. The reconstruction must also comply with all other City of Billings regulations including but not limited to building code and site development codes in place at the time of reconstruction.
4. 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:

Vice Chairman McKinney called for discussion on the motion. There was none.

Vice Chairman McKinney called for the roll call vote:

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	x			

City Variance #1061 to reduce the required lot area from 23,600 square feet for 2 single family homes and one duplex dwelling is conditionally approved with a 5-0 roll call vote.

Item #7: City Variance #1062 – 2420 17th St West – A variance from 27-310(i) 1. requiring a minimum side setback of 8 feet to allow a minimum side setback of 3 feet for a 2nd story addition to an existing detached garage on the East/West 250.02 feet and the North 30 feet of Lot 9, Block 3 Eaton, L T Subdivision, a 26,139 square foot parcel of land in a Residential 9,600 (R-96) zone. Scott & Diane Morledge-Hampton, owners, One Source Construction, agent.

REQUEST

The applicant is requesting a variance from BMCC 27-310(i) 1. requiring an 8-foot minimum side setback to allow a 3-foot side setback for a 2nd story addition to an existing garage on the East/West 250.02 feet and the North 30 feet of Lot 9, Block 3 L T Eaton Subdivision in a Residential 9,600 (R-96) zone. The property is 26,139 square feet and is addressed as 2420 17th Street West. The owners are Scott & Diane Morledge-Hampton and One Source Construction is the agent.

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:

1. The variance is to decrease the required side setback for a 2-story accessory building from 8 feet to 3 feet. No other variance is intended or implied with this approval.
2. The variance is limited to East/West 250.02 feet and the North 30 feet of Lot 9, Block 3 L T Eaton Subdivision generally located at 2420 17th St West. The 2nd story addition to the garage will be constructed in the general location as shown on the submitted site plan.
3. The applicant will be required to provide fire-rated construction on the entire north wall of the existing and proposed 2nd story addition. The applicant will provide an engineer’s report with the building permit application detailing the existing slab foundation to ensure it will support a 2nd story addition.
4. A building permit application must be submitted within 120 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:

Vice Chairman McKinney asked the members of the Board for questions or discussion. Boardmember Nelson asked about the purpose of this request. Nicole Cromwell stated that the applicant's purpose is to add storage space and to block the view and the noise from the adjacent commercial property. She said that addition along with the existing detached structures will not exceed the living space of the home. Boardmember Cox asked if there should be any special considerations with the adjacent commercial property. Nicole Cromwell stated that only the fire-rated wall would be required.

Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1062, 2420 17th St West

Matt Mosier, 348 Burlington, Billings, Montana

Mr. Mosier stated that he is the contractor and agent for the Morledges. Mr. Mosier said that they will not be obstructing the adjacent lot with the construction. He said that the entire side wall of the structure would be fire rated and that is would be feasible to build on the slab with some slight modifications.

Jason Beso, 944 North 23rd Street, Billings, Montana

Mr. Beso gave further clarification on the intended purpose of this variance and stated that it is for additional storage and additional space for Dr. Morledge to use in his practice.

Vice Chairman McKinney called for proponents or opponents of City Variance #1062 2420 17th St. West, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 8:31 p.m.

Motion:

A motion was made by Boardmember Eggen and seconded by Boardmember Cox to conditionally approve Variance #1062 with the following conditions:

1. The variance is to decrease the required side setback for a 2-story accessory building from 8 feet to 3 feet. No other variance is intended or implied with this approval.
2. The variance is limited to East/West 250.02 feet and the North 30 feet of Lot 9, Block 3 L T Eaton Subdivision generally located at 2420 17th St West. The 2nd story addition to the garage will be constructed in the general location as shown on the submitted site plan.
3. The applicant will be required to provide fire-rated construction on the entire north wall of the existing and proposed 2nd story addition. The applicant will provide an engineer's report with the building permit application detailing the existing slab foundation to ensure it will support a 2nd story addition.
4. A building permit application must be submitted within 120 days of Board of Adjustment approval.
5. The *structure* 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:

Vice Chairman McKinney called for discussion on the motion. There was none. Vice Chairman McKinney called for the roll call vote:

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	x			

City Variance #1062 to decrease the required side setback for a 2-story accessory building from 8 feet to 3 feet is approved with a 5-0 roll call vote.

Item #8: City Variance #1063 – 722 North 17th St – A variance from 27-308 requiring a minimum lot area of 13,000 square feet for a duplex and a single family dwelling to allow a lot area of 7,000 square feet for 2 existing structures on Lots 9 & 10, Block 282, Billings 1st Addition in a Residential 6,000 (R-60) zone. Contract Buying Services, owner and Tom Roe, agent.

Nicole Cromwell prefaced and stated that the applicant pointed out that the information in the staff report is exactly backwards as the unit in the front is a single-family residence; and the residence in the rear was built in 1916 as a duplex. She said that this fact did figure in her recommendation, and she would try to work through this in her presentation.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring a minimum lot area of 13,000 square feet for a duplex and a single family dwelling to allow a lot area of 7,000 square feet in a Residential 6,000 (R-60) zone. The property is legally described as Lots 9 & 10, Block 282, 1st Addition and is addressed at 722 N 17th Street. No work is planned on either structure but this variance will allow the existing dwelling units to be re-built if destroyed or damaged.

Staff is recommending denial 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 determinations for a variance and gave an explanation of her recommendation.

Discussion:

Vice Chairman McKinney asked the members of the Board for questions or discussion. She asked if the 1916 structure is being used as a duplex.

At 8:46 p.m., Vice Chairman McKinney opened the public hearing at and called for proponents of City Variance #1063, 722 North 17th Street, Billings, Montana.

Tom Roe, 929 Ave. C., Billings, Montana

Mr. Roe stated that Ms. Cromwell gave a correct synopsis of the history of this property. He said that their reasoning for this variance is to obtain financing. He said that he would like to see a resolution to this issue as it is a problem for someone who owns a property and wishes to be “cashed out”.

Vice Chairman McKinney called for proponents or opponents of City Variance #1063, 722 North 17th Street, Billings, Montana. There were none. Vice Chairman McKinney closed the public hearing at 8:48 p.m.

Motion:

A motion was made by Boardmember Bollman and seconded by Boardmember Eggen to deny Variance #1063 based on the determinations for a variance.

Discussion:

Vice Chairman McKinney called for discussion on the motion. Boardmember Cox stated that this is an on-going issue that needs to be addressed either through zoning or at the City Council level. Nicole Cromwell stated that this issue has reached the residential market in the last eight years due to instances where insurance companies were paying large amounts of monies to people that were unable to rebuild their property. She pointed out that there are several properties within the City of Billings that were built under the old zoning code. She stated that approximately 50% of the variances submitted this year are for lot area requests. Boardmember Cox stated that there does not seem to be any continuity and that he will vote for approval of the staff recommendation for denial. Boardmember Bollman said that the 1916 structure that became a duplex makes the case worse. He said that this is a difficult decision.

Vice Chairman McKinney called for the roll call vote:

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		x		

City Variance #1063 to allow a lot area of 7,000 square feet for 2 existing structures on Lots 9 & 10, Block 282, Billings 1st Addition in a Residential 6,000 (R-60) zone is denied with a 3-2 roll call vote.

Other Business/Announcements:

- A. Nicole Cromwell announced that this Board will meet on Wednesday, November 4, 2009 and that two applications have been submitted for review.

- B. Ms. Cromwell reminded the members of the Board whose terms will expire in December 2009 to either submit an application for 2010 or a letter of resignation to the City Administration Department.

Adjournment: 9:00 pm

Corrected and approved by motion on November 4, 2009.

Vice Chairman Lyn McKinney

ATTEST:

Tamara L. Deines, Planning Clerk