

CITY BOARD OF ADJUSTMENT

MINUTES: March 3, 2010

Corrected and approved by a motion on April 7, 2010

Name	Title	01/06/10	02/03/10	03/03/10											
Verne Bass	Boardmember	-	1	1											
Jeff Bollman	Chairman	-	1	1											
Paul Cox	Boardmember	-	1	1											
Daniel Eggen	Vice Chairman	-	1	1											
Neil Kiner	Boardmember	-	1	1											
Barbara Walborn	Boardmember	-	1	1											
Terry Matson	Boardmember	-	-	E											

TOTAL NUMBER OF APPLICATIONS 2010	01/06/10	02/03/10	03/03/10												TOTAL
Variance	0	2	5												7

Ms. Cromwell called for a motion for election of officers.

Motion

On a motion by Boardmember Cox and seconded by Boardmember Kiner, Boardmember Jeff Bollman was selected to serve as Chairman and Daniel Eggen as Vice Chairman with a 6-0 voice vote.

Chairman Jeff Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met in the City Council Chambers.

Chairman Bollman 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 Bollman 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 Bollman closed the public comment period at 6:07 p.m.

Approval of minutes: February 3, 2010

Chairman Bollman called for approval of the February 3, 2010 minutes.

Motion:

On a motion by Boardmember Cox and seconded by Boardmember Bass the minutes of February 3, 2010 were approved as submitted with a 6-0 voice vote.

Disclosure of Conflict of Interest

Zoning Coordinator Nicole Cromwell explained that this agenda item was discussed at the last meeting and was added in response to a public comment received. She pointed out that the City Council has an agenda section for disclosures and maintains a disclosure notebook. No conflicts of interest were disclosed by the members of the Board.

Disclosure of Outside Communication

Nicole Cromwell explained there are times that applicants communicate directly with Board members and this should be communicated to the Commission. She stated that written ex-parte communication to the Board is available to the public in the Ex-Parte Notebook. Boardmember Cox stated that he lives within a distance of 905 Avenue D and will recuse himself for the hearing of City Variance #1071.

PUBLIC HEARINGS:

Chairman Bollman 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 members in favor of the variance will be needed for any application to be approved this evening.

Public Hearings:

Item #1: (Return Item) City Variance #1067 – 2409 Rosewyn Lane – A variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a lot area of 7,000 square feet for 1 existing structure and one proposed structure and the subdivision of one (1) 14,000 square foot lot in to two (2) lots of 7,000 square feet each on Lot 3, Srite Acres Subdivision in a Residential 9,600 (R-96) zone. Tax ID A14554. Kincaid Land, LLC, owner and Sanderson Stewart, agent. The public hearing on this item was continued from the December 2, 2009 meeting to February 3, 2010 and subsequently to March 3, 2010.

Ms. Cromwell read the legal description and noted the letter of protest from Mr. Bill Agnew and a map of properties in either conformity or nonconformity from the agent that were submitted to staff. The items are available to the audience in the Ex-Parte notebook. Ms. Cromwell opened with a PowerPoint presentation which reviewed the request and recommendation below.

REQUEST

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet to allow a lot area of 7,000 square feet for 1 existing structure and one proposed structure and the subdivision of one (1) 14,000 square foot lot in to two (2) lots of 7,000 square feet each on Lot 3, Srite Acres Subdivision, in a Residential 9,600 (R-96) zone. The property is addressed at 2409 Rosewyn Lane. If the variance is approved, an additional address will be assigned to any new lot or structure. The applicant intends to subdivide the 14,000 square foot lot to create two 7,000 square

foot lots. This application was submitted in April 2008, and staff recommended denial of the request. The Board considered the matter on June 4, 2008, and voted 3-2 to conditionally approve the variance. However, the variance was not approved since 4 affirmative votes are required by state law to approve any variance. The applicant was then required to wait 1 year before submitting another variance for the property. On November 2, 2009, the application was resubmitted and a public hearing was opened on December 2, 2009. On December 2, 2009, the Board had only 4 members in attendance and would have to vote unanimously to approve the requested variance. The applicant requested a continuation of the public hearing until February 3, 2010. The Board granted the continuance.

Staff is recommending denial of the proposed variance, citing the reasons below:

1. There are not any special circumstances that exist in this situation.
2. This property is not similar to other properties in the area.
3. If granted, this variance will confer a special privilege on this owner.
4. There are only two lot area variances in the immediate neighborhood.

Ms. Cromwell reviewed the criteria for review and the staff findings for this application.

Discussion:

Chairman Bollman asked the members of the Board for questions or discussion. Boardmember Kiner asked the significance of the two varying plans with a 300-foot boundary and a 400-ft boundary. Nicole Cromwell replied that they were submitted by the applicant to capture more particular properties to show a comparison. Boardmember Bollman asked why Nicole Cromwell used a six hundred foot area for her analysis. Nicole Cromwell stated that she wished to capture enough of the properties within the general district area. She said that she has found the 300 foot area too limited at times. In response to a question by Boardmember Walborn, Ms. Cromwell stated that should the variance be granted, the applicant would have to meet all setbacks. As requested by Boardmember Bass, Ms. Cromwell clarified the percentages for conformity and nonconformity in the neighborhood. Boardmember Eggen asked if there are similar lots in the area that have single family homes and are 12,000-14,000 square feet. Nicole Cromwell referenced an area map and pointed out similar properties. Boardmember Cox asked if this is the same application as submitted in 2008, and Nicole Cromwell stated that it is the same. She pointed out that failed to be approved on a motion with a vote of 3-2 in favor of the variance.

At 6:29 p.m., Chairman Bollman opened the public hearing and called for the applicant's presentation or for proponents of City Variance # 1067 – 2409 Rosewyn Lane.

Applicant

Rick Leuthold, President, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana

Mr. Leuthold stated he is the representative for this applicant, Gene Culver. He pointed out some additional documents that he had provided to the members of the Board prior to the opening of this meeting. Mr. Leuthold stated that there are several properties similar in nature to this property and pointed them out on a posted aerial map. He said that this is an older developed neighborhood. He stated that there is not a predominance of properties with a home set to one side that would allow development of the other parcel. Mr. Leuthold said that the 1974 approved variance is the exact same request as this proposal and he pointed out the location of this parcel. He commented that

several of the lots in this area were split prior to zoning being put in place. Regarding the setbacks, Mr. Leuthold said that the required setbacks for lots within R-9600 zoning or R-7,000 zoning are identical. He suggested that this Board consider conditionally approving this variance subject to the site plan he is presenting this evening. He said that by approving this variance with this additional condition, the side yard setback would move to ten feet. Mr. Leuthold referred to a 400-ft radius map and said that there are 3.8 units per acre in this neighborhood, and he compared it to today's target standard of 4 units per acre for development. He commented that it is common to have some non-conforming areas primarily around a commercial enterprise. He said that the west end of Billings is typically difficult for development as the majority of properties are zoned R-9600 for single family housing. Mr. Leuthold stated that half of the properties are nonconforming near the "Poly Food Basket". He stressed the importance of looking at the overall character of this neighborhood, which has a predominance of nonconforming lots. Mr. Leuthold noted the five letters of opposition and referred to a map depicting the location of oppositional properties in relation to this property. He stated that three of the five letters of protest were adjacent property owners who may be elderly and opposed to change. He said that where the hardship comes into play is the need for homes and infill projects. Mr. Leuthold stated the reason that this applicant has resubmitted this request is due to the fact that a full board was not in attendance at the last hearing and it failed with a 3-2 vote in favor of the variance. He thanked the six members of the Board for their service to their community and asked for their support of this variance.

In response to a question by Boardmember Walborn, Mr. Leuthold said that this home was built in 1939 and both structures on the property will be conforming to lot coverage. Boardmember Bollman asked if the owner would be willing to accept a 10-foot setback on the south side of the property. Mr. Leuthold stated that the owner has a plan that will work, and will address the concerns of the neighbors for a potential of crowding. Boardmember Bass asked about the coverage percentage would be with the new layout. Mr. Leuthold stated that the new home would be 1,237 square feet, which would be under the maximum 30% lot coverage. Boardmember Eggen asked if the plan will have similar characteristics of the other properties in this neighborhood, and Mr. Leuthold stated that it will be very similar.

Chairman Bollman opened the public hearing and called for proponents of City Variance #1067 – 2409 Rosewyn Lane.

Ed Gulick, High Plains Architects, 3015 10th Ave North, Billings, Montana

Mr. Gulick stated that he is in favor of this variance as a citizen and an employee of High Plains Architects. He said that this type of development has been advocated by several growth policies to promote affordability and improvement of the tax base. He stated that this is infrastructure already in place. He commented that nation wide; there is more recognition for "elegant density". He said that he lives on a smaller lot in the North Elevation neighborhood and regards this as a nice walk able neighborhood. Mr. Gulick stated that he supports this application, as it is good policy for the City of Billings.

Connie Wardell, 1302 24th Street West, Billings, Montana

Ms. Wardell speaks in favor of this variance. She stated that she owns property at 2616 Poly Drive. Ms. Wardell said that she rents this one level easy access home primarily to elderly renters who are drawn to the proximity of the "Poly Food Basket" and their services. She said that this is an older subdivision that was built over a period of time with homes of various sizes and shapes. Ms. Wardell

stated that she is involved with the Workforce Housing Task Force, and this application fits this need. Ms. Wardell urged approval of this variance in order to move in this direction.

Brenda Craig, 1043 West I Road, Billings, Montana

Ms. Craig stated that she is a realtor, and that she feels that this is a wonderful opportunity for in field development. She stated that in her professional opinion, the only thing that a new home will do to the neighborhood will increase the property values. She said that she feels that this is the “highest and best use” of this property and a positive option for the community.

Gene Jorgenson, 3027 Avenue F, Billings, Montana

Mr. Jorgenson stated that he is a realtor for Century 21. He stated that this proposal will increase property values for everybody in the area and pointed out that current trends lean towards smaller lot sizes.

Opponents

Chairman Bollman called for anyone else wishing to speak in favor of City Variance #1067. There was none. Chairman Bollman called for opponents of City Variance #1067. There was none. The public hearing was closed at 6:58 p.m.

Motion:

Boardmember Cox made a motion and it was seconded by Boardmember Bass to conditionally approve City Variance #1067 with the following conditions:

- 1. The 10 foot side yard setbacks to the south and to the north of this property will be as submitted in the applicant’s site plan*
- 2. The applicant will obtain a building permit within one year*
- 3. This property will meet the full zoning requirements of the R-7,000 zoning classification.*

Discussion:

Chairman Jeff Bollman called for discussion on the motion. There was none. Chairman Bollman called for the roll call vote on the motion.

Boardmember	Yes	No	Abstain	Not Present
Verne Bass	1			
Jeff Bollman	1			
Paul Cox	1			
Daniel Eggen	1			
Neil Kiner	1			
Barbara Walborn		1		

City Variance#1067 is conditionally approved 5-1.

Item #2: (Return Item) City Variance #1068 – 502 South 33rd Street – A variance from 27-310(i) requiring a minimum front setback for a garage entrance of 20 feet to allow a front setback of 18 feet for an existing garage entrance on a 7,560 square foot parcel on the north 4 feet of Lot 10 and Lots 11 & 12, Block 206, Billings Original Town in a Residential 6,000 (R-60) zone. Tax ID A01469. Irma House Inc., owner, and Jake Romero, agent.

Ms. Cromwell read the legal description and followed with a PowerPoint presentation with that included the request and staff recommendation below.

REQUEST

The applicant is requesting a variance from BMCC 27-310(i) requiring a minimum front setback of 20 feet for a garage to allow a minimum of 16 feet for an existing garage entrance and from 27-308 requiring a maximum lot coverage of 40% to allow a maximum lot coverage of 41% for existing structures on a 7,560 square foot parcel in a Residential 6,000 (R-60) zone. The subject property is described as the North 4 feet of Lot 10 and Lots 11 and 12, Block 206, Billings Original Town and is addressed as 502 South 33rd Street. The Board of Adjustment opened the public hearing on this application on February 3, 2010. It was discovered just prior to the hearing the site plan and requested setback variance may have been inaccurate. The Board directed the staff to visit the site to determine property lines, setbacks, and recalculate the lot coverage of the existing structures and re-notice the public hearing with the actual setbacks and lot coverage. The setback variance requested has increased from 18 feet (2 foot variation) to 16 feet (4 foot variation) and the lot coverage based on actual building perimeter measurements is calculated at 41% or 3,111 square feet.

Staff is recommending conditional approval of the proposed variance with the following conditions:

1. The variance is to reduce the required garage entrance setback from the street from 20 feet to 16 feet and to allow 41% lot coverage for the existing structures. No other variance is intended or implied with this approval.
2. The variance is limited to North 4 feet of Lot 10 and Lots 11 and 12, Block 206, Billings Original Town generally located at 502 S 33rd Street.
3. The submitted building permit 09-2285 must be approved within 90 days of board approval and the construction authorized by this permit completed within 18 months of building permit 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.

Ms. Cromwell pointed out the surrounding properties and explained the existing zoning of the subject property. Ms. Cromwell stated that the Planning staff visited the site on February 10, 2010 to determine the location of the property line on 5th Avenue South and to determine the actual lot coverage including the new breezeway/deck that connects the modular home on the east and the garage/dwelling on the west. She said that the property line on 5th Avenue South is located approximately 2 feet inside the edge of the sidewalk and therefore the actual setback of the garage entrance from this property line is 16 feet. She explained that the total square footage for each structure totals 3,111 square feet for a total lot coverage of 41% or 87 square feet over the allowable lot coverage of 40%. In response to a question by Chairman Bollman, Ms. Cromwell stated that the surrounding property owners were re-notified. She noted that there were three previous variances granted in this area for setbacks. She referred to two letters of opposition that were received which were forwarded to the Board and included in the Ex-parte Notebook. She stated that approval of this variance does not exempt the owner from other zoning and building requirements.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Boardmember Bass, Nicole Cromwell stated that the original house was burned and knocked down. Chairman Bollman noted that the side yard setback is 8-ft as it is a two story structure. Boardmember Walborn asked if this structure is being taxed as a duplex. Ms. Cromwell stated that taxes are based on building permits, and approval of this permit is pending on this variance. Boardmember Walborn pointed out that the applicant only came in when he was notified of noncompliance. Boardmember Kiner asked about size of the breezeway connection. Ms. Cromwell explained that the original breezeway construction was half this size. She stated that the reason for the connection is primarily because the City had adopted an ordinance on detached garages; and this steel building with this siding could only be built if it were attached to the primary residence. Boardmember Eggen referred to page 5 of the staff report, Condition #3. Nicole Cromwell stated that it should state, "...approved within 90 days and completed within 18 months of the permit approval. In response to a question by Boardmember Kiner, Ms. Cromwell explained that the first inspection must be called for within six months and is valid as long as inspections are requested. Boardmember Kiner commented that each of the old plans site different square footage allotments for the house. Nicole Cromwell noted page 10-14 of the staff report and said and that the square footage listed is the actual square footage of the house as measured by staff. Several options were discussed by the members of the Board to address this variance request. Boardmember Kiner commented that having a garage door on the north side would have been more beneficial. Nicole Cromwell noted that Ms. Marion Dozier's letter and her overview of the property's permitting history. Boardmember Walborn asked if they are planning to wall off another part of the garage for another apartment. She voiced concern that the applicant has been asking for permission without a permit by coming to this Board with a variance request after the work has been initiated. Boardmember Bass suggested that it may be best to require that a curb cut driveway be placed straight into the garage door.

Chairman Bollman called for presentation by the applicant at 7:28 p.m.

Applicant

Ed Gulick, High Plains Architects, 2720 Minnesota Ave., Billings, Montana

Mr. Gulick stated that they have been working with the owner Mr. Jake Romero to bring it into compliance with the current building code. He said that this will provide affordable housing in this area. He stated that it would not be a small matter to reorient the garage and said that it would be a significant cost to the owner. Mr. Gulick said that this is an innocent mistake by the applicant rather than an attempt to deceive the City. He urged the Board's support of the variance. Boardmember Walborn asked about the use for the lower level of the garage and Mr. Gulick stated that is not in any plans to create an apartment on the lower level. Boardmember Bollman asked if High Plains Architects was involved with the initial variance. Mr. Gulick responded that he is unable to speak to that question, and he deferred it to the owner.

Les Jordan, 241 Naylor, Billings, Montana

Mr. Jordan thanked staff for the site visit. He referred to the site plan and gave clarification on the plans drawn by High Plains Architects. He said that everything that has been built is to code. Mr. Jordan pointed out the location of the structural columns in the building. He said that they have met with City of Billings Plans Examiner Harry Hoving to review the building plans prior to their

submittal. He stressed that the costs would astronomical if the door were to be moved. He said that Mr. Jenson signed off on the permit for steel and wiring in the foundation and since the building was built there has not been another inspection. Boardmember Kiner asked when the size of the breezeway changed. Mr. Jordon explained their thought process and stated that they did not realize that the larger size would be 1% over the 41% allowable lot size.

Jake Romero, 502 South 33rd Street, Billings, Montana

Mr. Romero is the applicant. He stated that he is the Director of Irma House, which provides housing for recovering alcoholics. Mr. Romero said that he is able to help several persons through this program. Mr. Romero said that the plans are for an office for the Irma House to be located in the lower portion of the garage. Mr. Romero asked that the Board approve this variance request. In response to a question by Chairman Bollman, Mr. Romero said that the building was ordered with the door in the alley, and that they were unable to send the building back after starting construction. Boardmember Bollman asked Mr. Romero if there was a reason he did not contact the city, and Mr. Romero replied there was not. Boardmember Eggen asked if the upstairs will have complete living quarters and Mr. Romero said that they are planning for complete living arrangement with three bedrooms on the second floor. In response to a question by Boardmember Walborn, Mr. Romero said that the lower level will have an office, storage space, and a garage. He said that he lives in the modular house. Boardmember Bass suggested placing bathroom facility in the lower level as a matter of convenience.

At 7:49 p.m., Chairman Bollman asked if there was anyone else wishing to speak in favor of City Variance #1068. There was none. Chairman Bollman called for opponents of City Variance #1068.

Marian Dozier, 3923 3rd Ave. S., Billings, Montana

Ms. Dozier stated that she is opposed to this variance, and that a hardship does not run with this property. She said that this project started as an oversized garage with an attached breezeway, which was not built until January of this year. Ms. Dozier explained that she contacted the building department when they noticed that the applicant was building an apartment without a permit. She said that the kit should have been returned. Ms. Dozier said that she feels that the oversized garage is not an asset to the neighborhood and that precedence is being set if this variance is approved. She stated that the only hardship in this case is that the applicant got caught. She said that this is not a personal issue, but instead an issue of what our neighborhood should look like. Boardmember Bass asked Ms. Dozier her opinion of what should happen now. Ms. Dozier said that she thinks that the door should be moved to the alley side. She said that if this variance is allowed this situation will happen again. Boardmember Bass asked if it is possible that the applicant made a mistake. Ms. Dozier said that the first permit did not say anything about living space in the garage. She asked why it took two years to build the breezeway. Boardmember Kiner reminded her that this Board is discussing a request for consideration of lot coverage and setback issues and that there is no recourse to discussing aesthetics.

Rebuttal

Chairman Bollman called for rebuttal.

Les Jordan, (no address given)

Mr. Jordan said that the breezeway was not built due to that this is a nonprofit organization and incoming funding for this project has been slow. He said that there were not enough funds to pour the concrete and construction on the apartment was started before the building was built. He said that he does not feel that this affects Ms. Dozier in any way. Mr. Jordan said that he took notes at the last meeting and the minutes included a statement by Ms. Dozier “that there are some types of neighbors you want and some types of neighbors you do not want”; and he stated that he found this statement almost discriminatory. **(The BOA checked the minutes of Feb. 3, 2010, and no such statement by Ms. Dozier was made or recorded as alleged by this testimony.)** Mr. Jordan said that this property will be an asset to the neighborhood as the Irma House has done a lot of good things for people, including him.

Chairman Bollman closed the public hearing at 8:03 p.m. and called for a motion.

Motion:

Boardmember Cox made a motion and it was seconded by Boardmember Bass to conditionally approve City Variance #1068 with the following Staff recommended conditions:

1. The variance is to reduce the required garage entrance setback from the street from 20 feet to 16 feet and to allow 41% lot coverage for the existing structures. No other variance is intended or implied with this approval.
2. The variance is limited to North 4 feet of Lot 10 and Lots 11 and 12, Block 206, Billings Original Town generally located at 502 S 33rd Street.
3. The submitted building permit 09-2285 must be approved within 90 days of board approval and the construction authorized by this permit completed within 18 months of building permit 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:

Chairman Bollman called for discussion on the motion. Boardmember Walborn asked Ed Gulick if they calculate lot coverage when considering a plan layout. Mr. Gulick responded that he is unfamiliar with this layout as he is filling in for Mr. Randy Hafer, who is unable to attend this meeting due to a schedule conflict. Boardmember Eggen stated that this issue was discussed at the last Board of Adjustment meeting and it was admitted that they had made an error in their calculations.

Motion:

Boardmember Bass made a motion to amend the original motion to conditionally approve City Variance#1068 to include a condition of approval #5 stated that a driveway and curb cut will be installed on 5th Avenue South within six months of approval of the permit.

Chairman Bollman called for a roll call vote on the motion to amend the original motion.

Boardmember	Yes	No	Abstain	Recused	Not Present
Verne Bass	1				
Jeff Bollman		1			
Paul Cox		1			
Daniel Eggen	1				
Neil Kiner	1				
Barbara Walborn	1				

The amendment to the original motion is approved with a vote of 4-2.

Motion:

Boardmember Walborn made a motion and it was seconded by Boardmember Eggen to amend the original motion to conditionally approve City Variance #1068 to include a condition of approval #6 stating the breezeway coverage will not be extended in order to bring the property into the required lot coverage allowance of 40%.

Chairman Bollman called for a roll call vote on the motion to amend the original motion.

Boardmember	Yes	No	Abstain	Recused	Not Present
Boardmember Bass		1			
Jeff Bollman		1			
Paul Cox		1			
Daniel Eggen	1				
Boardmember Kiner		1			
Barbara Walborn	1				

The amendment to the original motion fails with a vote of 2-4.

Discussion:

Chairman Bollman called for discussion and reviewed the conditions of approval as listed on page four of the staff report. He asked Ms. Cromwell if the office on the lower level is a permitted use, and what would be required for parking. Nicole Cromwell stated that community residential facilities are allowed uses and no formal off street parking will be required in addition to what is required. In response to a question by Board member Bass, Ms. Cromwell stated that any interior remodels would have to be permitted and approved by the Building Department.

Chairman Bollman called for a roll call vote on the original motion

Boardmember	Yes	No	Abstain	Recused	Not Present
Boardmember Bass	1				
Jeff Bollman		1			
Paul Cox	1				
Daniel Eggen	1				
Boardmember Kiner	1				
Barbara Walborn		1			

The original motion as amended to conditionally approve the City Variance #1068 is approved with a vote of 4-2.

**At 8:16 p.m., Chairman Bollman called for a 5-minute break. The meeting resumed at 8:22 p.m.

Item #3: City Variance #1069 – 719 Mattson Lane – A variance from 27-305 requiring a principal use be established or permitted with an accessory use to allow the creation of a new lot for an existing carport and shed on a proposed 10,481 square foot parcel (to be known as Lot 14B) on Lot 14, Mattson Acres Subdivision in a Residential 6,000 (R-60) zone. Tax ID C01234. Richard & Mary Chapman, owners and Eggart Engineering, agent.

Ms. Cromwell read the legal description and followed with a PowerPoint present which gave an overview of the request and the staff recommendation below.

REQUEST

The applicant is requesting a variance from BMCC 27-305 requiring a principal use be established or permitted with an accessory use to allow the creation of a new lot for an existing carport and shed on a proposed 10,481 square foot parcel (to be known as Lot 14B) on Lot 14, Mattson Acres Subdivision in a Residential 6,000 (R-60) zone. The property currently has an address of 719 Mattson Lane and is owned by Richard & Mary Chapman. The agent is Eggart Engineering.

Staff is recommending the following conditions for the variance request:

1. The variance is to allow the existing accessory structures to remain on proposed Lot 14B. No other variance is intended or implied with this approval.
2. The variance is limited to proposed Lot 14B of Amended Lot 14 of Mattson Acres Subdivision.
3. In the event the subdivision is not submitted for final plat approval within 3 years of preliminary plat approval, the variance will be void.
4. A restriction will be recorded on the deed for Lot 14B that requires either the removal of the shed & carport within 6 months of transferring ownership or approval of a building permit for a new residential structure within 6 months of transferring ownership.
5. Use of the shed & carport will be for the storage of personal property. No commercial use is allowed or intended by this variance.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.

7. 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 Bollman asked the members of the Board for questions and discussion. Boardmember Eggen commented that he had visited this property when it belonged to the former estate. He asked for clarification of condition of approval #3 and it was given by Nicole Cromwell. Ms. Cromwell said that the letter is not an effective enforcement tool; and that the recommendation is for a Deed Restriction rather than a letter in the staff file.

At 8:33 p.m., Chairman Bollman called for presentation by the applicant.

Applicant

Quentin Eggart, Eggart Engineering, 6809 King Ave. West, Billings, Montana

Mr. Eggart stated that it was decided to divide this parcel into four single family lots as they felt that this would be the best use of this property. He explained that the lots are not exactly the same size as they wished to allow more room around the existing structures and meet the required setbacks. He asked that the garbage building be allowed to be left standing so that the improvements will not be lost. He stated that the applicant is not in opposition to the conditions recommended by Staff.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1069. There was none. Chairman Bollman closed the public hearing at 8:36 p.m. and called for a motion.

Motion:

Boardmember Walborn made a motion and it was seconded by Boardmember Kiner to conditionally approve City Variance #1069 with the following Staff recommended conditions:

1. The variance is to allow the existing accessory structures to remain on proposed Lot 14B. No other variance is intended or implied with this approval.
2. The variance is limited to proposed Lot 14B of Amended Lot 14 of Mattson Acres Subdivision.
3. In the event the subdivision is not submitted for final plat approval within 3 years of preliminary plat approval, the variance will be void.
4. A restriction will be recorded on the deed for Lot 14B that requires either the removal of the shed & carport within 6 months of transferring ownership or approval of a building permit for a new residential structure within 6 months of transferring ownership.
5. Use of the shed & carport will be for the storage of personal property. No commercial use is allowed or intended by this variance.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. 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.

Motion:

Boardmember Bollman made a motion and it was seconded by Boardmember Walborn to amend the original motion to amend the language in condition #4 to state that a restriction will be recorded on the deed for Lot 14B that requires either the removal of the shed and carport within 6 months of transferring ownership or approval of a building permit for a new residential structure within 6 months of transferring ownership and completion of the new residential structure within eighteen months from building permit approval.

Discussion

Chairman Bollman asked the members of the Board for questions and discussion. Clarification was given by Nicole Cromwell on the time limits.

Chairman Bollman called for a roll call vote on the amended motion.

Boardmember	Yes	No	Abstain	Not Present
Boardmember Bass	1			
Jeff Bollman	1			
Paul Cox	1			
Daniel Eggen	1			
Boardmember Kiner	1			
Barbara Walborn	1			

The motion to amend the original motion carries unanimously, 6-0.

Chairman Bollman called for a roll call vote on the original motion as amended.

Boardmember	Yes	No	Abstain	Recused	Not Present
Boardmember Bass	1				
Jeff Bollman	1				
Paul Cox	1				
Daniel Eggen	1				
Boardmember Kiner	1				
Barbara Walborn	1				

The original amended motion carried unanimously with a 6-0 vote. City Variance #1069 is conditionally approved with the conditions recommended by Staff and the amended language for condition of approval #4.

Item #4: City Variance #1070 –902 South 32nd Street – A variance from 27-602 requiring a minimum minor arterial street setback to the centerline of 70 feet to allow a minimum minor arterial setback to the centerline of 50 feet (State Avenue) for a proposed residential structure on a 10,700 square foot parcel Lots 7-12, Block 238, Billings Original Town in a Residential 6,000 (R-60) zone. Tax ID A01808. Larry & Marlene Thiel, owners and Dave Hagstrom, agent.

Nicole Cromwell noted a letter of support submitted by the Southside Task Force and a petition against the variance which specially stating that the petitioners do not want a four-plex built at this address. Nicole Cromwell stated that this variance does not address types of structure than can be

built on this property. She explained that by code, anything over a duplex structure in an R-6,000 zone would require special review by the City Council. Ms. Cromwell opened with a PowerPoint presentation which included the request and staff recommendation below. She noted a pending State safety project that will reduce the number of lanes on State Avenue and said that the traffic on State Avenue does not support a five lane arterial.

REQUEST

The applicant is requesting a variance from BMCC 27-602 requiring a minimum 70-foot setback to the centerline of a minor arterial street (State Avenue) to allow a minimum 50-foot arterial centerline setback in a Residential 6,000 (R-60) zone on a 10,700 square foot parcel of vacant land. The property is legally described as Lots 7-12 of Block 238, Billings Original Town and is located at 902 S 32nd Street. The owner is Larry and Marlene Thiel and the agent is Dave Hagstrom.

Staff is recommending conditional approval of the proposed variance.

1. The variance is to reduce the required minor arterial setback from 70 feet to 50 feet from the centerline of State Avenue and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lots 7-12 of Block 238, Billings Original Town.
3. Any new construction for the subject property will apply for a building permit within 2 years of Board approval.
4. Failure to apply for a building permit within 2 years of Board approval 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 Bollman asked the members of the Board for questions and discussion. Boardmember Eggen asked about the requirements for parking and the allowable home size that can be put on this footprint. Nicole Cromwell said that conceivable if a single family home was built, it could have a drive approach off of South 32nd Street and an approach off of 9th Ave South. She said that off street parking may need to be addressed with a variance. Ms. Cromwell said that the applicant has discussed the possibility of bringing in an existing home and remodeling it into a four plex. Chairman Bollman called for presentation by the applicant.

Applicant

Dave Hagstrom, 324 South 31st Street, Billings, Montana

Mr. Hagstrom is the agent for applicants and owners, Larry and Marlene Thiel. In response to a question by Boardmember Cox, Mr. Hagstrom said that Wayne Ostermiller has an old house located in the hospital corridor that may be moved onto this property and converted into an up-down duplex. In response to a question by Barabara Walborn, he said that this variance is simply a setback variance and a special review would have to be obtained to convert it to a four-plex. Regarding the property's history, Mr. Hagstrom said that in 1943, there was a house on this property with a sewer line connection.

Chairman Bollman asked if there was anyone else wishing to speak in favor of City Variance #1070. There was none. Chairman Bollman asked if there was any one wishing to speak in opposition to City Variance #1070.

Jacqui Ziegler, 812 S 32nd, Billings, Montana

Ms. Ziegler said that she is very familiar with this neighborhood. She said that she is concerned with the potential for putting anything on this lot other than a single family residence. She pointed out that this is a high traffic area due to the proximity of State Avenue and the sugar beet factory. She said that she would like a very thorough review of all aspects of this request.

Rick Duran, 915 S 32nd Billings, Montana

Mr. Duran stated that he is a long term resident in this neighborhood. He said that at one point there used to be two houses on this property. He stated that he submitted the petition asking for a structure that will be no larger than a duplex. He said that there are issues with parking. He stated that he was under the impression that Mr. Hagstrom would like to build a four-plex due to comments he made at the Task Force meeting. Mr. Duran said that there is a lot of traffic in this area, and that he felt that building a single family dwelling or maybe a two-family home would be fine. He pointed out that the proximity of State Avenue may pose a hazard to children and voice concern that a four-plex may reduce the property values. Chairman Bollman said that the neighbors would be notified of anything beyond a duplex, as it would require a special review. Mr. Duran said that his main concern is not the setbacks but instead looking out the window at a large house on this parcel.

Renee Hetenbaugh, 812 South 32nd Street, Billings, Montana

Mr. Hetenbaugh asked if a larger building will be permitted if the variance is approved. She said that the practicality of geometry forces it into something smaller than what it appears. She voiced concerns with the potential increase the density and the affects on the traffic, which is her major concern.

Rebuttal

Chairman Bollman called for rebuttal.

Dave Hagstrom, Billings, Montana

Mr. Hagstrom stated that he did not wish to rebut.

Chairman Bollman closed the public hearing at 9:07 p.m. and called for a motion.

Motion:

Boardmember Eggen made a motion and it was seconded by Boardmember Bass to conditionally approve City Variance #1070 with the Staff recommended conditions:

1. The variance is to reduce the required minor arterial setback from 70 feet to 50 feet from the centerline of State Avenue and no other zoning variance is intended or implied with this approval.
2. The variance is limited to Lots 7-12 of Block 238, Billings Original Town.
3. Any new construction for the subject property will apply for a building permit within 2 years of Board approval.
4. Failure to apply for a building permit within 2 years of Board approval 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

In response to a question by Boardmember Walborn, Nicole Cromwell gave clarification on the allowable setbacks in commercial zones. Boardmember Cox stated that local residents do not have another venue to express concerns and Boardmember Bass said that they can object at City Council if there is a special review.

Chairman Bollman called for a voice vote.

Boardmember	Yes	No	Abstain	Recused	Not Present
Verne Bass	1				
Jeff Bollman	1				
Paul Cox	1				
Daniel Eggen	1				
Neil Kiner	1				
Barbara Walborn	1				

Motion carried unanimously with a 6-0 vote. City Variance #1070 is conditionally approved with the conditions recommended by Staff.

Chairman Bollman called for presentation of Item #5, City Variance #1071. Boardmember Cox stated that he is recusing himself from this hearing and left the meeting at this time.

Item #5: City Variance #1071 –905 Avenue D – A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 39% for a proposed addition to the residence and a new detached garage on a 8,400 square foot parcel on the Lots 22 & 23, Block 6, Algeo Subdivision Amended in a Residential 7,000 (R-70) zone. Tax ID A02237. Gregory & Brenda Ratzlaff, owners.

Nicole Cromwell opened with a PowerPoint presentation which included the request and staff recommendation below. She submitted some photographs to the members of the Board which were submitted by the applicant. She noted variances that were approved in this area and commented that there has been some history of granting variances in this neighborhood.

REQUEST

The applicant is requesting a variance from BMCC 27-308 requiring maximum lot coverage of 30% to allow lot coverage of 39% to construct an addition to a single family home and a new detached garage with alley access. The parcel is 8,400 square feet and is zoned Residential 7,000 (R-70). The legal description is Lots 22 & 23, Block 6, Algeo Subdivision Amended and the street address is 905 Avenue D. The owners are Gregory & Brenda Ratzlaff.

Staff is recommending conditional approval of the proposed variance.

1. The variance is to allow lot coverage of up to 37% for the purposes of an addition and a new detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 22 & 23, Block 6 of Algeo Subdivision Amended.
3. The proposed detached garage alley access pavement shall be limited to a maximum width of 16 feet from east to west (22 feet is shown on the site plan).
4. The applicant shall replace the 5-6 foot wood fence on the alley property line with a fence that does not restrict clear vision of vehicles exiting or entering the garage from the alley.
5. As an alternative to conditions 3 & 4 above, the applicant can redesign the detached garage so that access is from the front of the property off Avenue D and have no vehicle access to the garage from the alley.
6. The applicant shall apply for a building permit within 6 months of Board approval. Construction of the detached garage and addition shall be completed within 18 months of Board approval.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
8. 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 Bollman asked the members of the Board for questions and discussion. In response to a question by Boardmember Kiner, Nicole Cromwell gave clarification on the calculation used to determine lot coverage. She pointed out the existing shed will be replaced with the new proposed garage. Nicole Cromwell noted a letter of objection from some residents who were concerned with pedestrian safety in the alley. She noted the proposed condition to allow lot coverage up to 37%. In response to a question by Boardmember Bass regarding condition of approval #3, Nicole Cromwell said that this was an attempt to address the pedestrian safety concern. Boardmember Kiner said that he personally does not have a concern with pedestrian safety in the alley as they are designed to handle traffic. Boardmember Eggen asked about the replacement fence, and Nicole Cromwell stated that this will allow for better vision when backing into the alley. Boardmember Bass stated that he does not see any problem with the current fence. Nicole Cromwell noted a typographical error in the numbering of the conditions on page 4 of the staff report.

At 9:20 p.m., Chairman Bollman called for presentation by the applicant.

Applicant

Gregory Ratzlaff, 905 Avenue D, Billings, Montana

Mr. Ratzlaff thanked Nicole Cromwell for her help with this application. Mr. Ratzlaff said that they were misled by the realtor when they purchased the home as to how large a garage can be built. He said that they wished to keep the garage off the alley. He said that he is in agreement with removing the fence as they are concerned with children's safety. As far as the 16-foot setback on the alley, he said that he would like to keep the 22 feet. He said that he plans to install a chain link fence to promote visibility.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1071. There was none.

Chairman Bollman closed the public hearing at 9:33 p.m. and called for a motion.

Motion:

Boardmember Kiner made a motion and it was seconded by Boardmember Bass to conditionally approve City Variance #1071 with the following Staff recommended conditions and striking conditions #3, and #5 as below:

1. The variance is to allow lot coverage of up to 37% for the purposes of an addition and a new detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 22 & 23, Block 6 of Algeo Subdivision Amended.
3. ~~The proposed detached garage alley access pavement shall be limited to a maximum width of 16 feet from east to west (22 feet is shown on the site plan).~~
4. The applicant shall replace the 5-6 foot wood fence on the alley property line with a fence that does not restrict clear vision of vehicles exiting or entering the garage from the alley.
5. ~~As an alternative to conditions 3 & 4 above, the applicant can redesign the detached garage so that access is from the front of the property off Avenue D and have no vehicle access to the garage from the alley.~~
6. The applicant shall apply for a building permit within 6 months of Board approval. Construction of the detached garage and addition shall be completed within 18 months of Board approval.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
8. 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.

A motion was made by Boardmember Bass and seconded by Boardmember Eggen to amend the original motion and to strike condition of approval #4.

Boardmember	Yes	No	Abstain	Recused	Not Present
Boardmember Bass	1				
Jeff Bollman	1				
Paul Cox				1	
Daniel Eggen	1				
Boardmember Kiner	1				
Barbara Walborn	1				

The motion to amend the original motion carries 5-0.

Chairman Bollman called for a roll call vote on the original motion:

Boardmember	Yes	No	Abstain	Recused	Not Present
Boardmember Bass	1				
Jeff Bollman	1				
Paul Cox				1	
Daniel Eggen	1				
Boardmember Kiner	1				
Barbara Walborn	1				

The original amended motion to approve City Variance #1071 with the following conditions passes 5-0:

1. The variance is to allow lot coverage of up to 37% for the purposes of an addition and a new detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 22 & 23, Block 6 of Algeo Subdivision Amended.
- 3... The applicant shall apply for a building permit within 6 months of Board approval. Construction of the detached garage and addition shall be completed within 18 months of Board approval.
4. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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.

Other Business/Announcements: 9:20 p.m.

- A. City Board of Adjustment ByLaws: this item will be deferred to the April 7, 2010 City Board of Adjustment meeting which will be held in the Parmly Billings Library 4th Floor Large conference room which is located at 510 North Broadway.
- B. Boardmember Neil Kiner will be absent for the June meeting.

Adjournment: 9:39p.m.

On a motion by Boardmember Bass and seconded by Boardmember Bollman the meeting was adjourned with a 5-0 voice vote.

Corrected and approved by a motion on April 7, 2010.

Chairman Jeff Bollman

ATTEST:

Tamara L. Deines, Planning Clerk