

**CITY BOARD OF ADJUSTMENT**

MINUTES: June 6, 2014

Approved by a motion on July 2, 2014

Name	Title	01/03/14	02/05/14	03/05/14	04/02/14	05/07/14	06/04/14	07/02/14	08/06/14	09/03/14	10/01/14	11/06/14	12/03/14
Jeff Bollman	Chairman	E	E	1	1	1	1						
James Olson	Vice Chairman	1	E	1	E	1	1						
Paul Hagen	Board member	1	E	1	1	1	1						
Frank Chesarek	Board member	1	1	1	1	1	1						
Matthew McDonnell	Board member	1	1	E	1	1	E						
Martin Connell	Board member	1	1	1	1	1	E						
Mark Noennig	Board member	1	1	1	1	1	1						

TOTAL NUMBER OF APPLICATIONS 2014	01/03/14	02/05/14	03/05/14	04/02/14	05/07/14	06/04/14	07/02/14	08/06/14	09/03/14	10/01/14	11/06/14	12/03/14	TOTAL
Variance	3	4	3	4	3	7							21

Chairman Bollman called the meeting to order at 6:05 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3<sup>rd</sup> Avenue North.

Chairman Bollman asked Zoning Coordinator Nicole Cromwell to introduce the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Lora Mattox, Transportation Planner, and Tammy Deines, Planning Clerk.

**Others in Attendance:** Lindsey Molster; Frank Perusich; Gloria J. Perusich; Jeff Plant, K-Designers; Matt Blestrom, Morrison Maierle; Britt Romain, Tom Roe; Councilwoman Angela Cimmono Joe Uzelac; John Mannetta; Jim McLeod; Gregory Propp, Chad Shreiner; Don Vanica, MDT

**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.

**Approval of the May 7, 2014 Meeting Minutes**

Chairman Bollman called for approval of the May 7, 2014 minutes. Corrections were noted.

**Jim Olson made a motion and Mark Noennig seconded to approve the May 7, 2014 meeting minutes with minor corrections.**

**The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest**

Chairman Bollman asked for disclosures of conflict of interest. Regarding Variance #1193, Mark Noennig stated his firm represented an opponent to the applicant and the case has been resolved.

Frank Chesarek announced he visited all of the properties and Jeff Bollman visited the West Park property.

**Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members and this should be communicated to the Board members in a public forum.

**Public Hearings**

Chairman Bollman stated the Board will open a public hearing and allow public comment this evening. Ms. Cromwell reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. She stated four votes of the Board of Adjustment are required to pass a variance. This evening there are 6 Board members attending. A simple majority will approve requests.

Nicole Cromwell reviewed the variance request for 2935 Ronan Drive, and Lora Mattox presented the board with the staff report.

**Item #1: Variance #1187 – 2935 Ronan Drive – Setbacks** – A variance from 27-308 requiring a minimum rear setback of 20 feet to allow a setback of 6 feet and a minimum side setback of 5 feet to allow a setback of 3 feet for the purpose of constructing an addition to an existing deck and detached garage to create an attached garage and deck in a Residential 9,600 (R-96) zone, on Lot 5, Block 3, Heath Subdivision, a 10,400 square foot parcel of land. Tax ID: A08594.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum rear setback of 20 feet to allow a setback of 6 feet and a minimum side setback of 5 feet to allow a setback of 3 feet for the purpose of constructing an addition to an existing deck and detached garage to create an attached garage and deck in a Residential 9,600 (R-96) zone, on Lot 5, Block 3, Heath Subdivision, a 10,400 square foot parcel of land. Tax ID: A08594. Bryan and Polly Kovash, owners and A & E Architects, Chad Schreiner, agent.

**RECOMMENDATION**

Staff recommends conditional approval of the variance.

Staff is recommending the following conditions for the variance request:

1. The variance from 27-308 requiring a minimum 20 foot rear and 5 foot side yard setback to allow a 6 foot rear and 3 foot side yard setback to allow for the construction of a new attached 3-car garage. No other variance is intended or implied with this approval.

2. The variance is limited to Lot 5, Block 3 of Heath Subdivision generally located at 2935 Ronan Drive.
3. Where the garage is less than 5-feet from the property, the applicant would be required to construct a one-hour fire wall and meet City Building Code requirements.
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 asked the members of the Board for questions and discussion. Board member Noennig referred to the structure schematic and asked for clarification. Ms. Mattox explained this request is under consideration for setbacks for the proposed garage as a detached structure. She pointed out the breezeway connects to the primary structure to the proposed garage. Board member Hagen said the applicant poured the concrete on the property. Ms. Mattox explained an applicant can obtain a concrete permit prior to getting a building permit, and should be variance be denied the setbacks for a detached structure would have to be met.

Chairman Bollman called for presentation by the Applicant.

### **Chad Schreiner, A & E Architects, Billings, Montana**

Mr. Schreiner represents property owners Bryan and Polly Kovash. He presented copies of the design and said the plan can be achieved as detached, (Item #1); and (Item #2)-what could be built with approval of the variance proposal was distributed.

Jeff Bollman asked about the packet illustration and the 11-foot actual setback which appears to be on the alley. Mr. Schreiner stated the proposal is for 6-feet. Nicole Cromwell explained the setback possibilities for the structure placement from the alleyway. Mr. Schreiner said the setback will be 11-feet. In response to a question by Board member Noennig, the variance allows connection of the deck to the garage.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1187.

### **Proponents**

There was none.

### **Opponents**

There was none.

Chairman Bollman asked if there was anyone else wishing to speak in favor or against City Variance #1187. There was none. Chairman Bollman closed the public hearing and called for a motion.

### **Motion**

**Board member Chesarek moved and Hagen seconded the motion to conditionally approve City Variance – 2935 Ronan Drive with the conditions recommended by staff.**

**Discussion**

Chairman Bollman called for discussion on the motion.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed, 5-0. City Variance #1187 is conditionally approved.**

Ms. Mattox reviewed the application for Variance request #1187 and presented the board with the staff report for this request.

**Item #2. Variance #1188 – 922 Royal Ave – Lot Coverage** – A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 33% for a proposed new single family dwelling in a Residential 7,000 (R-70) zone, on Lot 12, Block 6 of Kingston Place Subdivision a 9,917 square foot parcel of land. Tax ID: A33729.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 33% for a proposed new single family dwelling in a Residential 7,000 (R-70) zone, on Lot 12, Block 6 of Kingston Place Subdivision a 9,917 square foot parcel of land. Tax ID: A33729. King Heights LLC, owner and Frank & Gloria Perusich, agents.

**RECOMMENDATION**

Staff recommends denial of the variance.

**Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Board member Chesarek, Ms. Mattox stated clear vision would not be a consideration as the lot was platted at a larger size. Board member Noennig commented the house size would have to be reduced by 300 square feet to comply with the zoning requirements.

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1188.

**Proponents**

**Frank & Gloria Perusich, 328 Box Elder Creek Road, Billings, Montana**

Ms. Perusich is the property owner. He said they are looking at this lot as he needs a one level home due to his health. He stated the proposed house meets all of the requirements except the lot coverage allowance. He said a smaller house will not serve their purposes and a downsized garage would not

work as he has several vehicles. He said this would be an ideal location as it has City services and a paved road.

Board member Olson asked Mr. Perusich what his plans are if this request is denied. Mr. Perusich explained he worked with his architect and they were unable to reduce the plan to something acceptable, as redesigning the structure would require loss of a bedroom or the garage. He stated the additional lot coverage will only affect the lawn area.

Board member Olson asked if Mr. Perusich should consider meeting the architect prior to the vote of the Board. In response to a question by Board member Noennig, Mr. Perusich said the surrounding property owners gave no feedback following the notification. Nicole Cromwell provided the Board with the residential building plans for review.

**Angela Cimmino, 1745 Sylan Lane, Billings, Montana**

Councilperson Cimmino reported Mr. Perusich contacted her regarding this application and she followed up with a request to the Planning Department for the staff report. She pointed out a typographical error, which was acknowledged by Planner Lora Mattox.

Ms. Cimmino encouraged the Board of Adjustment to conditionally approve this application. She said the location site provides a different perspective as it is a larger lot. This plan is for a one story single dwelling unit and meets the front and side setback requirements. The proposed plan needs a 33% lot coverage allowance and the applicant must obtain approval for the variance in order for to obtain a building permit.

Ms. Cimmino said Mr. Perusich needs a single story home as it is time to downsize. She commented this construction will provide additional monies to the City of Billings tax base and there is no opposition from the neighbors. She commented that although granting the variance would allow a special privilege, this is a new subdivision with the majority of the homes having two stories.

**Brian Gurney, 1993 Morocco Drive, Billings, Montana**

Mr. Gurney is Mr. Perusich's son-in-law. He said Mr. Perusich needs accommodations with the property due to his medical needs, and wants to have a home in proximity to the bike path to maintain his health. Mr. Gurney stated he feels the additional 3% is not an unruly lot coverage allowance and asked the Board for their consideration of this request.

**Opponents:** There was none.

**Motion**

**Board member Chesarek made a motion and Board member Noennig seconded the motion, for conditional approval of City Variance #1188 with the conditions below:**

1. The variance is to allow for 33% lot coverage, no other variance is intended or implied.
2. The variance is limited to Lot 12, Block 6, Kingston Place Subdivision generally located at 922 Royal Avenue.
3. A building permit will be applied for within 6-months of board approval with construction completed within 18-months.

4. These conditions of variance approval shall run with the land described and apply to all current or subsequent owners, operators, managers, lease holders, heirs and assigns.

**Discussion**

Chairman Bollman called for discussion on the motion. Board member Cheserek said he feels this is a good use of the property. Board member Noennig noted there has been no discussion during the public hearing other than Ms. Cimmino’s comments. Board member Bollman said he feels that the 3% lot coverage is not excessive. He stated his concern is that another variance for this lot might come forward in the future but he will support the motion.

**Motion**

**Board member Chesarek made a motion and Board member Noennig seconded the motion to conditional approval of City Variance #1188 with the conditions recommended by staff.**

**Discussion**

Chairman Bollman called for any other discussion on the motion. There was none. Chairman Bollman called for a roll call vote for City Variance #1188.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed, 5-0. Variance #1188 is conditionally approved.**

Ms. Mattox reviewed the application for Variance request #1187 and presented the board with the staff report for this request.

**Item #3: Variance #1189 – 120 & 120 ½ Jefferson Avenue – Lot Area** - A variance from 27-308 requiring a minimum lot area of 7,000 square feet for 2 existing dwelling units on an undivided parcel to allow a lot area of 6,250 square feet for the purpose of future re-construction if necessary in a Residential 6,000 (R-60) zone, on Lots 15 & 16, Block 6, State Realty Addition, a 6,250 square foot parcel of land. Tax ID: A14708.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet for 2 existing dwelling units on an undivided parcel to allow a lot area of 6,250 square feet for the purpose of future re-construction, if necessary, in a Residential 6,000 (R-60) zone, on Lots 15 & 16, Block 6, State Realty Addition, a 6,250 square foot parcel of land. Vera Roybal Revocable Trust, owner and Michael Molster and Kimberly Killham-Molster, agents. Planning staff is recommending conditional approval of the proposed reduction of the minimum lot size.

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

1. The variance is to decrease the minimum lot size from 7,000 square feet to 6,250 square feet for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 and 16, Block 6 State Realty Addition Subdivision generally located at 120-120 ½ Jefferson Street.
3. Any future re-construction of one or both structures will require compliance with other all other zoning regulations and city ordinances that apply at the time of re-construction.
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 asked the members of the Board for questions and discussion. In response to a question by Board member Noennig, Ms. Mattox explained the requirement to rebuild a structure in compliance with the setbacks should the building be destroyed more than 50%. She explained that the applicant wished to request the minimum reduction in lot size for financing purposes.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1189.

### **Proponents**

#### **Lindsey Killham-Molster, (no address given)**

Ms. Molster is the agent for applicant/owner, Vera Roybal Revocable Trust. They are interested in purchasing this property as an investment with the intent of using it for rental purposes.

### **Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1189. There was none. Chairman Bollman closed the public hearing, and called for a motion.

**Item #3: Variance #1189 – 120 & 120 ½ Jefferson Avenue – Lot Area** - A variance from 27-308 requiring a minimum lot area of 7,000 square feet for 2 existing dwelling units on an undivided parcel to allow a lot area of 6,250 square feet for the purpose of future re-construction if necessary in a Residential 6,000 (R-60) zone, on Lots 15 & 16, Block 6, State Realty Addition, a 6,250 square foot parcel of land. Tax ID: A14708.

### **REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 7,000 square feet for 2 existing dwelling units on an undivided parcel to allow a lot area of 6,250 square feet for the purpose of future re-construction, if necessary, in a Residential 6,000 (R-60) zone, on Lots 15 & 16, Block 6, State Realty Addition, a 6,250 square foot parcel of land. Vera Roybal Revocable Trust, owner and Michael Molster and Kimberly Killham-Molster, agents. Planning staff is recommending conditional approval of the proposed reduction of the minimum lot size.

Staff is recommending the following conditions for the reduction in minimum lot size variance request:

1. The variance is to decrease the minimum lot size from 7,000 square feet to 6,250 square feet for 2 existing dwellings. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 15 and 16, Block 6 State Realty Addition Subdivision generally located at 120-120 ½ Jefferson Street.
3. Any future re-construction of one or both structures will require compliance with other all other zoning regulations and city ordinances that apply at the time of re-construction.
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.

**Motion**

**Board member Hagen made a motion and it was seconded by Board member Chesarek to approve City Variance #1189 with the conditions and findings of fact recommended by staff.**

**Discussion**

Chairman Bollman called for discussion on the motion.

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

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	<b>1</b>			
James Olson	<b>1</b>			
Paul Hagen	<b>1</b>			
Frank Chesarek	<b>1</b>			
Matthew McDonnell				<b>1</b>
Martin Connell				<b>1</b>
Mark Noennig	<b>1</b>			

**The motion passed 5-0. City Variance #1189 is conditionally approved.**

Ms. Cromwell reviewed the application for Variance request #1190 and presented the board with the staff report for this request.

**Item #4 Variance #1190 – 2222 Bench Blvd and 2226 Bench Blvd – Setbacks** - A variance from 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to allow a minimum front setback of 0 feet, a minimum arterial setback of 38 from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park in a Highway Commercial (HC) zone, on Tract 1, C/S 220, a 43,500 square foot parcel of land. Tax ID: D05186.

**REQUEST**

The applicant is requesting a variance from 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to

allow a minimum front setback of 0 feet, a minimum arterial setback of 38 feet from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park in a Highway Commercial (HC) zone, on Tract 1, C/S 220, a 43,500 square foot parcel of land. Red Gate #1, LLC is the owner and Britt Romain is the agent. The Bench Boulevard re-construction project will require the sale of property from this lot for additional right of way.

### **RECOMMENDATION**

Staff recommends conditional approval of Variance #1190 and adoption of the findings as stated below.

1. A variance from Section 27-403(c) requiring a replacement manufactured home to meet required setbacks of 15 feet from the front property line, 60 feet from the centerline of a principal arterial street, 5 feet from the side property line, and 15 feet from the rear property line to allow a minimum front setback of 0 feet, a minimum arterial setback of 38 from the centerline of Bench Boulevard, a minimum 2 feet from the side property line and 10 feet from the rear property line for an existing 12-unit manufactured home park. No other variance is intended or implied with this approval.
2. The variance is limited to Tract 1 of C/S 220 generally located at 2222 and 2226 Bench Boulevard.
3. The applicant will maintain a minimum side-by-side distance between manufactured home units of at least 15 feet as required by Section 14-308 BMCC.
4. The applicant will obtain any required permits when replacing manufactured home units within the park including but not limited to electrical, gas, plumbing or for accessory structures such as decks, stairs and storage sheds as required by the Building Code in place at the time the activity occurs.
5. The number of units in the manufactured home park shall not exceed 12 units at any time.
6. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

### **Discussion**

Chairman Bollman asked the members of the Board for questions and discussion. In response to a question by Board member Chesarek, Nicole Cromwell stated the acquiring agency for the right-of-way is MDT. He asked why they are not required to make the application whole. Nicole Cromwell explained everything in the right-of-way has to be moved and relocated out of the public right-of-way. Nicole Cromwell clarified the replacement clause for Board member Noennig. She said the situation for replacement exists regardless of the right-of-way projects since this is a nonconforming lot. Board member Bollman asked if the new property line will be up against the structure with the bay window. Nicole Cromwell said firewall walls would not be required for this structure as it has an unbuildable yard in the public right-of-way. Board member Bollman asked about the intent to build a fence. Nicole Cromwell commented it will depend on the repositioning of the mobile homes following construction. Board member Hagen asked what would happen if the Board denies this variance request. Nicole Cromwell said it would be possible to move the structure. In response to question by Board member Noennig, Nicole Cromwell stated the effect on the future limitation on replacement increases with the acquisition of the 7.5 foot right-of-way, and there would be fewer units.

## **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1190.

## **Proponents**

### **Britt A. Romain, 4640 Rimrock Road, Billings, Montana**

Mr. Romain is the agent for applicant/owner Red Gate Mobile #1. Mr. Romain explained a request to the State of Montana from Public Works Director David Mumford. He said there have been three property owners who have lost their homes due to the acquisition as they were unable to obtain a variance. Mr. Romain said it will cost \$11,000 overall to move the front trailer and the issue is the 7.5 feet will allow very little space between the trailers.

In response to question by Board member Bollman, Mr. Romain replied they have discussed the temporary placement for the trailer in relation to the code. Board member Chesarek asked about the right to condemn the land and Mr. Romain replied the City will not condemn the land. In response to question by Board member Noennig, Mr. Romain stated the unit has to be moved during the construction period. It was noted that under the current situation the setbacks would have to be met which would mean a re-design of the mobile home park. Two rental spaces would be lost as they would be lack parking space. Mr. Romain said there would be very little change to the current configuration if the variance is approved.

### **Don Vanica, MDT Right-of Way Specialist, Billings, Montana**

Mr. Vanica is attending as a MDT representative. He explained the acquisition process. He said the overall setback for the structure is 2 feet. MDT purchased the two affected houses in the first phase of the Bench Boulevard project as an easement and the financing issues were not due to the repositioning of the property line as there was no change. This property qualifies for relocation as Mr. Romain could suffer economically as moving a trailer to another location is a hardship. He said the proposal is to obtain the variance; allow the house to remain in place; and MDT will redesign the fill-slope along the back of the sidewalk from a 6:1 slope to a 3:1 slope. Mr. Vanica submitted a letter dated May 21, 2014 from MDT to Mr. Romain stating they do not object to the variance. He clarified the setback requirements if the mobile home were to be moved and then replaced. Nicole Cromwell said the mobile home could be retained on site and moved back to the same location as long as it does not encroach in the public right-of-way. Mr. Vanica explained the project construction plans. Nicole Cromwell said Mr. Romain thought it would be prudent to request the variance to allow for 12 manufactured homes in the future. Mr. Vanica said there was discussion of compensation for loss of rent but the home was upgraded and could be rented for a good period of time.

## **Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1190. There was none. Chairman Bollman closed the public hearing, and called for a motion.

**Motion**

**Board member Cheserek made a motion, and it was seconded by Board member Bollman delay approval of City Variance #1190 for thirty days until the July 2, 2014 meeting.**

**Discussion**

Chairman Bollman called for discussion on the motion. Board member Cheserek said a delay would allow the applicant to consider financing options with MDT. Board member Bollman pointed out approval of the variance requires four votes. Board member Noennig asked Mr. Romaine if he is comfortable with the request for delay and Mr. Romaine replied that the discussions have already been held.

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

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed 5-0. Consideration of City Variance #1190 is delayed for thirty days until the July 2, 2014 meeting.**

Ms. Cromwell reviewed the application for Variance request #1191 and presented the board with the staff report for this request.

**Item #5: Variance #1191 – 502 Miles Avenue – Setback** - A variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 2.5 feet to add a patio cover addition between an existing garage and an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 45 & 46, Block 15, Yellowstone Addition, a 9,000 square foot parcel of land. Tax ID: A19137.

**REQUEST**

The applicant is requesting a variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 2.5 feet to add a patio cover addition between an existing garage and an existing dwelling in a Residential 6,000 (R-60) zone, on Lots 45 & 46, Block 15, Yellowstone Addition, a 7,000 square foot parcel of land. James K. Aldrich is the owner and K-Designers, Craig Anderson is the agent.

**RECOMMENDATION**

Staff recommends conditional approval of Variance #1191 and adoption of the findings.

Staff is recommending the following conditions for the variance request:

1. This is a variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 2.5 feet to add a patio cover addition between an existing garage and

an existing dwelling. The variance shall apply only to the existing garage structure. No other variance is intended or implied with this approval.

2. The variance is limited to Yellowstone Addition, Block 15, Lots 45 & 46 generally located at 502 Miles Avenue.

3. The applicant will obtain an approved building permit within 3 months of Board approval and complete the construction within 6 months of permit issuance.

4. The applicant shall not enclose the patio cover.

5. The patio cover will be installed as shown on the submitted site plan and in no case shall the patio cover encroach into the required 5 foot side setback.

6. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the 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**

In response to question by Board member Chesarek, Nicole Cromwell stated the patio would be enclosed.

### **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1191.

### **Proponents**

#### **Jeff Plant, K –Designers, 2501 Overland Avenue, Billings, Montana 59102**

Mr. Plant is the agent for property owner James Aldrich. He stated the request for the patio cover placement is due to the handicapped ramp located off of the back door. He said that the owners are blind and self-sufficient. They like to sit on the patio but the cover has to be angled to deflect the summer sun. Mr. Plant stated they failed to take into consideration that the back of the garage is an extra 2.5 feet. The area is fenced to contain their seeing-eye dog. He stated this setup would comply with approval of the variance.

### **Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1191. There was none. Chairman Bollman closed the public hearing, and called for a motion.

### **Motion**

**Board member Olson made a motion, and it was seconded by Board member Hagen to approve City Variance #1191 with the conditions and findings of fact recommended by staff.**

### **Discussion**

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

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed 5-0. City Variance #1191 is conditionally approved.**

Ms. Cromwell reviewed the application for Variance request #1192 and presented the Board with the staff report for this request.

**Item #6: Variance #1192 – 1112 Fredrick Lane – Lot coverage and Setback** - A variance from 27-308 requiring a minimum side setback of 5 feet to allow a minimum side setback of 2 feet and from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 31% to add a patio cover and an addition to an existing garage in a Residential 7,000 (R-70) zone, on Lots 8 & 9, Block 4, Marilyn Subdivision, a 7,546 square foot parcel of land. Tax ID: A10893.

### **REQUEST**

The applicant is requesting a variance from 27-310 requiring a minimum side setback of 3 feet to allow a minimum side setback of 2 feet and from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 31% to add a patio cover and an addition to an existing detached garage. Joseph Uzelac is the owner.

### **RECOMMENDATION**

Staff recommends conditional approval of Variance #1192 and adoption of the findings.

Staff is recommending the following conditions for the variance request:

1. This is a variance from 27-310 requiring a minimum side setback of 3 feet to allow a minimum side setback of 2 feet and from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 31% to add a patio cover and an addition to an existing detached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 8 & 9, Block 4, Marilyn Subdivision generally located at 1112 Fredrick Lane.
3. The applicant will obtain an approved building permit within 12 months of Board approval and complete the construction within 18 months of permit issuance.
4. The applicant shall not enclose the patio cover.
5. The patio cover and garage addition will be installed as shown on the submitted site plan. A 1-hour rated fire wall will be required along garage wall less than 5 feet from the north property line and no openings will be allowed on this wall including doors, windows or vents.
6. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
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. Nicole Cromwell clarified and stated the request is for alliance of a minimum side setback of 2-feet instead of what was printed.

**Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1192.

**Proponents**

**Joseph William Uzeloc, 112 Frederick, Billings, Montana**

Mr. Uzeloc is the applicant/owner. He said he has spoke with the neighbor to the north and they are in agreement with the request. He would like to keep the patio as is.

**Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1192. There was none. Chairman Bollman closed the public hearing, and called for a motion.

**Motion**

**Board member Olson made a motion, and it was seconded by Board member Noennig to approve City Variance #1192 with the conditions and findings of fact recommended by staff.**

**Discussion**

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

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed 5-0. City Variance #1192 is conditionally approved.**

**Item #7: Variance #1193 – West Park Plaza –Lot Area and Density** - A variance from 27-310(e) limiting the maximum number of dwelling units to 108 in a single structure to allow a maximum number of 150 dwelling units in a single structure to construct a new multi-family apartment in a Community Commercial (CC) zone, on Lot 2A-3 of Partington Park Subdivision, 5<sup>th</sup> Filing, a 166,719 square foot parcel of land. Tax ID: A12623.

## **REQUEST**

The applicant is requesting a variance from 27-310(e) limiting the maximum number of dwelling units to 108 in a single structure to allow a maximum number of 150 dwelling units in a single structure to construct a new multi-family apartment in a Community Commercial (CC) zone, on Lot 2A-3 of Partington Park Subdivision, 5<sup>th</sup> Filing, a 166,719 square foot parcel of land. West Parking Shopping Center, LLC Robert MacDonald is the owner and Farran Realty Partners, LP is the agent.

## **RECOMMENDATION**

Staff recommends conditional approval of Variance #1193 and adoption of the findings of fact.

Staff is recommending the following conditions for the variance request:

1. This is a variance from 27-310(e) limiting the maximum number of dwelling units to 108 in a single structure to allow a maximum number of 150 dwelling units in a single structure to construct a new multi-family apartment in a Community Commercial (CC) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 2A-3 of Partington Park Subdivision, 5<sup>th</sup> Filing, a 166,719 square foot parcel of land generally located at the south east corner of the intersection of 17<sup>th</sup> Street West and Avenue D.
3. The applicant will obtain an approved building permit within 18 months of Board approval and complete the construction within 3 years of permit issuance.
4. There shall be no construction or demolition work on the site after 8 pm and or before 7 am daily.
5. With the exception of the new drive approach off 17<sup>th</sup> Street West near 1650 Avenue D, the existing trees parallel to 17<sup>th</sup> Street West on the subject property will remain in place and not be removed during construction. These trees will be preserved and maintained in place. New trees and landscaping will be required in the closed drive approach on 17<sup>th</sup> Street West.
6. Failure to begin or complete conditions or actions required by this approval within the time limits provided will void the variance approval.
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. Board member Noennig asked for clarification on the zoning distinction noted in the staff report. Nicole Cromwell stated the RMF-R standards apply for applications when putting residential uses in a Community Commercial zone. Board member Bollman noted this project will have age restricted units.

## **Public Hearing**

Chairman Bollman opened the public hearing and asked if there was anyone wishing to speak in favor or against City Variance #1193.

## **Proponents**

**John Malvetta, Farran Realty Partners, LP, 430 N Reimann, Missoula, Montana**

Mr. Malvetta is the agent for owner Robert MacDonald. He opened with a PowerPoint presentation for this project. He stated they are proposing a 150 unit age restricted, (55 and older), apartment building which will be compatible with the surrounding uses and zoning. He pointed out the location has access to transit; parks; retail and commercial shops; restaurants, and health care. They hope to complete construction within three years.

**Jim McCloud, 430 Ryan Street, Missoula, Montana**

Mr. McCloud stated this project needs a higher density of occupants to compensate the onsite property management staff. They plan to purchase the land from the McDonalds and build this project as an investment.

**Opponents**

There was none.

Chairman Bollman asked if there was anyone else wanting to speak in favor or against City Variance #1193. There was none. Chairman Bollman closed the public hearing, and called for a motion.

**Motion**

**Board member Noennig made a motion, and it was seconded by Board member Olson to approve City Variance #1193 with the conditions and findings of fact recommended by staff.**

**Discussion**

Chairman Bollman called for discussion on the motion. He commented this project will be an improvement over the existing surface parking lot.

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

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	1			
James Olson	1			
Paul Hagen	1			
Frank Chesarek	1			
Matthew McDonnell				1
Martin Connell				1
Mark Noennig	1			

**The motion passed 5-0. City Variance #1193 is conditionally approved.**

**Other Business/Announcements:**

The next City Board of Adjustment meeting is scheduled for July 2, 2014. Board members Bollman, Hagen, and Noennig plan to attend. Board member Olson will be absent.

**Adjournment: 8:37 p.m.**

**ATTEST: Approved by a motion on July 2, 2014.**

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**Chairman Jeff Bollman**

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**Tamara L Deines, Planning Clerk**