



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, October 5, 2016, 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> Avenue North, Billings, Montana**

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of City Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of September 7, 2016

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**  
**a.The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. **Item #1: Variance #1243 – 429/431 Nelson Drive** – Lot Area - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling to allow a lot area of 7,500 square feet for an existing two-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 7, Rosedale Subdivision, 2nd Filing. The request is the result of a plan review error that occurred in 2008 approving the addition of a dwelling unit. Tax ID: A13616. Presented by Karen Husman, Planner I.

## **Other Business/Announcements**

## **Adjournment**

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@ci.billings.mt.us](mailto:bartleyr@ci.billings.mt.us)

**City Board of Adjustment**

**Meeting Date:** 10/05/2016

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**Information**

**Subject**

The minutes of the Board meeting of September 7, 2016

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**Attachments**

CityBOA\_2016\_09\_07\_draft

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**CITY BOARD OF ADJUSTMENT**

MINUTES September 7, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Board member	-	-	1	E	1	1	1	A	1			
James Olson	Board member	-	-	1	1	E	1	E	R	R			
Paul Hagen	Board member	-	-	1	1	1	1	1	1	E			
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1	A	A			
Oscar Heinrich	Board member	-	-	1	1	1	1	1	1	1			
Martin Connell	Board member	-	-	1	1	1	E	1	1	1			
Mark Noennig	Chairman	-	-	1	1	1	1	1	1	1			

TOTAL NUMBER OF APPLICATIONS 2016	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/03/16	09/07/16	10/05/16	11/02/16	12/07/16	TOTAL
Variance	0	0	2	1	3	3	6	3	3				21

Chairman Noennig called the meeting to order at 6:00 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.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator and Robbin Bartley, Administrative Support.

**Attending**

Frank Corkish, Levi Newman, Tom Price, Sharon Price, Danny Hofer

**Public Comment**

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

**Approval Meeting Minutes**

Board member Connell made a motion for the approval of August 3, 2016, minutes. Board member Bollman seconded the motion. Minutes were approved by unanimous voice vote 4-0.

**Disclosure of Conflict of Interest**

Chairman Noennig asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman		x	
██████████			
Paul Hagen			x
Frank Chesarek			x
Oscar Heinrich		x	
Martin Connell		x	
Mark Noennig		x	

**Disclosure of Outside Communication**

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

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman		x	none	
██████████				
Paul Hagen				x
Frank Chesarek				x
Oscar Heinrich		x	two	
Martin Connell		x	one	
Mark Noennig		x	none	

**Public Hearings**

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting and acting on each variance. She stated four votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 4 Board members attending. A unanimous vote is necessary to approve requested variances.

Nicole Cromwell read the legal description for **Variance #1240**:

Nicole Cromwell presenting:

**Variance 1240 – 3741 Grecian Way – Projection in Front Setback** - A variance from 27-310(g) requiring a maximum projection in a front yard setback of 4 feet for a proposed covered unenclosed porch to allow a maximum projection of 8.5 feet in a Planned Development – Residential 9,600 (PD-R96) zone on Lot 35, Block 7 of Olympic Park Subdivision, a 7,000 square foot parcel of land. Tax ID: C10021.

## **RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval, to allow the front porch encroachment into the setback not to exceed 8 feet based on the determinations for granting a variance.

### **Discussion**

Chairman Noennig asked the members of the Board for questions and discussion. He then asked for clarification of the measurements and numbers used to determine setbacks. 4 additional feet is the maximum projection into the 20 foot setback. The applicant is requesting 8.5 feet into the setback. The porch would be 11.5 feet from the front property line. The difference between the allowable and the desired projections is 4.5 feet. The roof is allowed to overhang 1.5 feet. Board member Heinrich asked if the applicant had been informed of the allowable 6 feet without a variance. Staff was not sure if it had been discussed.

### **Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1240**.

### **Frank Corkish**

Mr. Corkish asked for clarification of the property line. Staff explained how the measurements are taken. He has lived there for 20 years and is trying to make it easier for his aged mother regarding snow and ice and protecting the front entry from heat and adverse weather.

### **Opposed** – none

### **Discussion**

Board member Heinrich stated he doesn't see a need and the proposed porch doesn't fit in the neighborhood.

Chairman Noennig wondered why staff was recommending approval. Board member Heinrich stated that the recommendation was only for 8 feet and not the requested 10 feet.

Staff explained that an extensive look into neighborhood variances was done. Several variances had been approved for setbacks of different footages and the information is included in the staff reports. There are also projections in the neighborhood over the allowances that did not have an approved variance or application on file. There is no property hardship. There is at least one other property with a projection with no variance on file. Chairman Noennig struggled with the variance because it is not needed and no others have this. However, no neighbors are present to object.

Board member Connell suggests that if you could get away with 6 feet it would be better than 8.

Board member Bollman believes allowing this variance sets a precedence.

Chairman Noennig called for a motion.

Board member Heinrich made a motion and Board member Connell seconded the motion to deny **City Variance #1240** with the following amendments to the Findings of Fact presented by Staff: There is no hardship and it would be a special privilege to allow it.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	x			
Paul Hagen				x
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion to deny Variance #1240 passed 4-0.**

**Nicole Cromwell read the legal description into the record for Variance #1241.**

Nicole Cromwell presented:

**Variance 1241 – 2222 ½ Main Street – Accessory Building Area & Siding** - A variance from 27-310(i)(3) requiring a maximum floor area of 1,500 square feet per detached accessory structure and not more than 2,000 square feet total detached accessory structure floor area to allow a proposed 2,240 square foot detached garage and from Section 27-310(i)(6) requiring all detached accessory structures over 200 square feet to have horizontal siding or siding that matches the primary residence to allow vertical siding in a Residential Manufactured Home (RMH) zone on Lot 6 of Holling Ranch Subdivision (aka C/S 151 Lot 6), a 1.95 acre parcel of land. Tax ID: D05189.

**RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the 7 criteria for **Variance #1241**.

**Discussion**

Board member Bollman asked if this were zoned HC, like the neighbors, would this building be allowed as described without a variance. Staff does not believe so. The residential zoning would not. The applicant could apply for a commercial building permit which subjects them to a huge amount of requirements regarding paving and storm water control, etc. No matter, they would still have to comply with residential building restrictions for detached accessory structures even in a commercial zone.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1241**.

**Sharon Price, 2222 ½ Main Street**

Mrs. Price explained why they want to build this structure and they have many vehicles they want to shelter. It is a long way to the present garage. She still works and it is difficult in the winter. Mr. Price is in his 80's.

Chairman Noennig asked why they want vertical siding. The Prices were told it was all that could be used and she is not opposed to vertical siding.

**Danny Hofer, contractor**

Mr. Hofer asked for zoning clarification. Staff again explained the difference in compliance with residential structures and commercial structures.

**Opposed**

None


**Discussion**

Board member Heinrich inquired as to comments from Surrounding Property Owners. Staff received none. Board member Connell explained that vertical siding is more efficient than horizontal and there should be no issue.

Chairman Noennig called for a motion.

**Motion**

Board member Bollman made a motion and Board member Connell seconded the motion to conditionally approve **City Variance #1241** with the conditions and Findings of Fact presented by Staff. Either of the siding choices are acceptable.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	x			
				
Paul Hagen				x
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion passed 4-0. City Variance #1241 is conditionally approved.**

**Nicole Cromwell read the legal description into the record for Variance #1242.**

Nicole Cromwell presented:

**Variance 1242 – 2023 La Brea Street – Lot Coverage** - A variance from 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 39% for a proposed detached garage of 784 square feet in a Residential 9,600 (R-96) zone on Lot 9, Block 13 of Evergreen Subdivision, 2<sup>nd</sup> Filing a 7,500 square foot parcel of land. Tax ID: A06872.

**RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for a variance from the required 30% maximum lot coverage to allow 34% for this property based on the criteria for granting a variance.

**Discussion**

Board member Connell asked if this is a great size reduction from what is requested. Staff indicated a 51 percent reduction in size of what was requested. 400 square feet may fit one car. Board member Heinrich inquired as to Surrounding Property Owner comments. There were none. He also asked if any alley improvements would be required since he is accessing this proposed building from the alley. Staff said nothing regarding the alley was required.

**Public Hearing**

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1242**.

**Levi Newman,**

Mr. Newman is the builder and is representing the owner. He explained the size of vehicles and need for a 2 car garage. A smaller garage would not allow for 2 cars to be parked.

Board member Connell confirmed a 2 car garage is requested and a 1 car garage is the staff recommendation.

Staff pointed out according to the letter submitted by the owner, Mr. Schieno, the recent vandalism of his vehicles sitting out. Also, recent hail damage is a problem.

Board member Heinrich asked why a remodel on the standing garage and breezeway are not being considered. Mr. Newman’s reply regarding this is it had not been considered and he felt it would be more expensive and less useful. Board member Heinrich suggested that making this revision and building the staff recommended garage in the rear would meet the coverage of 34 percent and give the owner the needed space.

Chairman Noennig asked if the owner is aware of the 34 percent recommendation and what his thoughts were. Mr. Schieno indicated the owner did not believe a smaller building would work.

Board member Heinrich suggested the decision be tabled for 30 days. Mr. Newman said he would like to get started.

Board member Connell is in favor of the application being approved as submitted, 784 square feet.

Board member Bollman stated that if the lot was the minimum lot size of 9600 square feet, the proposed garage and lot coverage would not exceed the zoning by much. They are not asking for a huge garage. Staff calculated that the lot coverage total would be 30.00625 on a 9600 square foot lot.

Chairman Noennig called for a motion.

**Motion**

Board member Connell made a motion and Board member Bollman seconded the motion to approve **City Variance #1242**, amending the square footage to 784 as submitted by the applicant and not follow staff recommendations.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman	x			
Paul Hagen				x
Frank Chesarek				x
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig	x			

**The motion to approve Variance request #1242 passed with a 4-0 vote.**

**Other Business/Announcements:**

The next meeting will be on October 5, 2016.

Jeff Bollman will not attend.

Adjournment: 7:14 p.m.

**ATTEST: DRAFT. To be approved by a motion on October 5, 2016**

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**Robbin Bartley, Administrative Support I**

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**Mark Noennig, Chairman**



## City Board of Adjustment

**Meeting Date:** 10/05/2016

**SUBJECT:** City Variance #1243- 429 Nelson Drive

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Item #1: Variance #1243 – 429/431 Nelson Drive** – Lot Area - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling to allow a lot area of 7,500 square feet for an existing two-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 7, Rosedale Subdivision, 2nd Filing. The request is the result of a plan review error that occurred in 2008 approving the addition of a dwelling unit. Tax ID: A13616. Presented by Karen Husman, Planner I.

#### RECOMMENDATION

Planning Staff is recommending conditional approval.

#### APPLICATION DATA

**OWNERS:** Dean C. Bargaen  
**PURPOSE:** To allow a lot area of 7,500 square feet for an existing two-family dwelling in a Residential 7,000  
**LEGAL DESCRIPTION:** Lot 10, Block 7, Rosedale Subdivision, 2nd Filing  
**ADDRESS:** 429 Nelson Drive  
**EXISTING LAND USE:** Residential  
**PROPOSED LAND USE:** Residential Multi-Family  
**EXISTING ZONING:** R-70

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

**Subject Property** – The applicant applied for a building permit in 2008. The permit was mistakenly approved with one correction; the side setback must be 8 feet in order to accommodate the 2nd story setback requirement. The permit was approved as a garage with living space above. Staff did not recognize at the time there was no internal access between the two units, making it two separate dwelling units on a lot too small for two units under the code.

**Surrounding Property** – Records show there have been 3 variance requests in this subdivision. All three variances were for setbacks; one was approved and two were denied. There are several lots in adjacent neighborhoods that are nonconforming for lot area with either duplexes or multiple units on a property. According to Planning Division staff research, the Board has reviewed 21 similar variance requests in the area of this application and has approved 14 and denied 7.

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-70  
Land Use: Residential Single Family  
SOUTH: Zoning: R-70  
Land Use: Residential Single Family  
EAST: Zoning: R-70  
Land Use: Residential Single Family  
WEST: Zoning: R-70  
Land Use: Residential Single Family

## **BACKGROUND**

The applicant is requesting a variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling to allow a lot area of 7,500 square feet for an existing two-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 7, Rosedale Subdivision, 2nd Filing. The request is the result of a plan review error that occurred in 2008, approving the addition of a second dwelling unit.

The applicant applied for a building permit in 2008. The permit was mistakenly approved as a garage with living space above. Staff did not recognize at the time there was no internal access between the two units, making two separate dwelling units on a lot too small under the zoning regulations. The building permit application indicated living space above the garage, but not an additional dwelling unit. The plans submitted clearly show a kitchen, bath and bedrooms. However, staff misunderstood the information provided in the plans and thought a stairway shown in the living space area connected the living space above the garage to the rest of the home.

There are no special conditions or circumstances with the land that create a hardship. In this situation, the structure was built with the benefit of an approved permit. Staff mistakenly approved the garage with living space assuming it had an internal connection to the existing house and did not classify as a duplex under the zoning code definition. The permit was approved with one correction for the side setback amendment to 8 feet in order to accommodate the 2nd story setback requirement.

The Code Enforcement Division received a complaint about the property in 2010. The Code Enforcement Supervisor/Zoning Coordinator sent the owner a letter informing him of the nonconformity and how it could be addressed through a variance process. The owner did not take any action at that time. In 2016, the owner began working on financing of the property and the issue of the non-conforming lot size was brought up again. The owner insisted on getting resolution to the matter over the counter in the Planning Division Office. Staff had to again inform him that he would need to apply for the variance, at no charge (as stated in the letter he received in 2010), and would still have to have the matter heard by the Board of Adjustment in order to have an approval or denial based on the determinations for granting a variance.

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance, based on the determinations for granting a variance.

## **RECOMMENDATION**

Planning Staff is recommending conditional approval of City Variance #1243 based on the criteria for variances.

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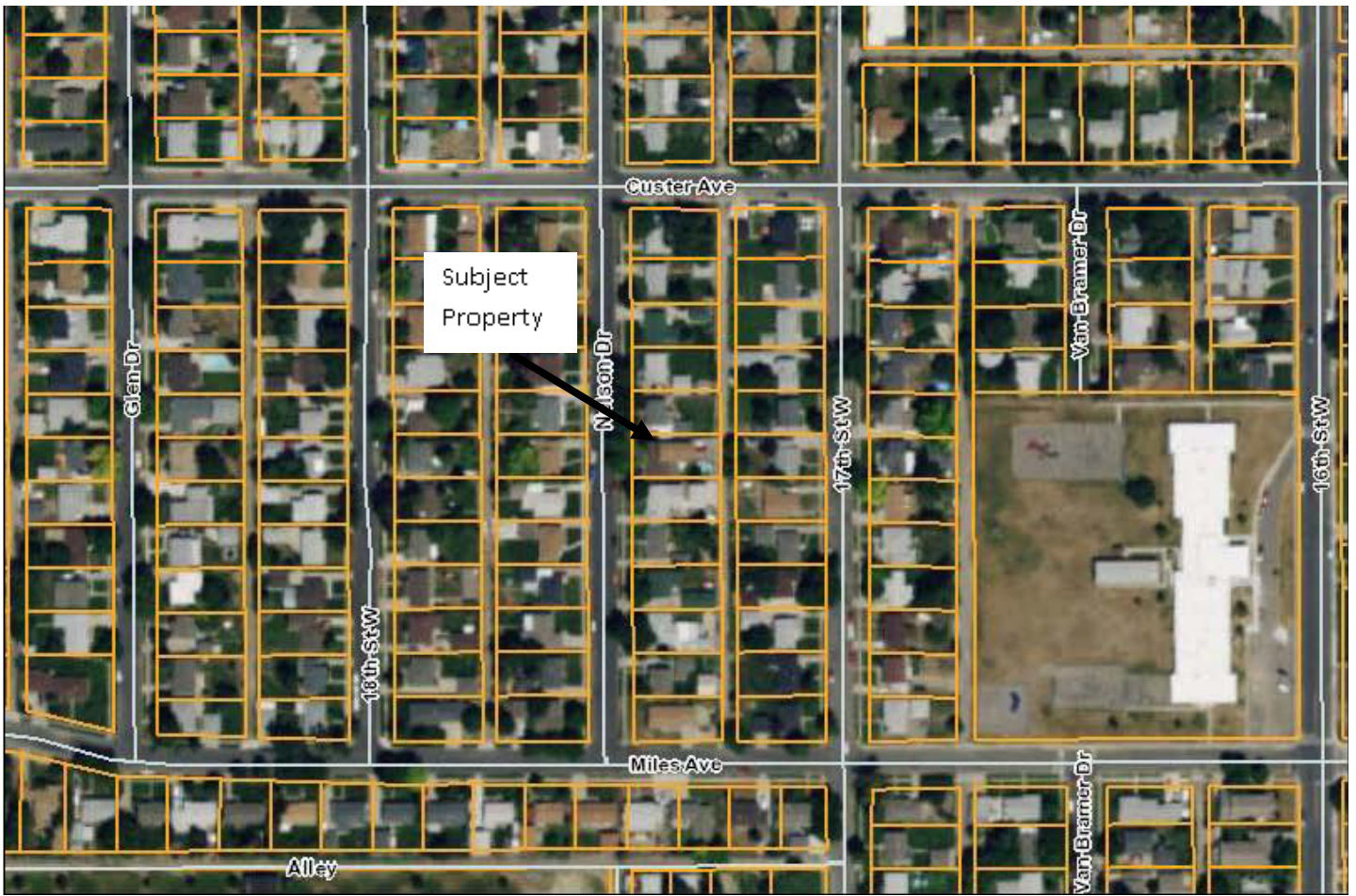
### **Attachments**

Zoning Map & Site Photos  
Site Plan & Letter  
Determinations

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**ATTACHMENT A**  
Surrounding Zoning & Site Location





**ATTACHMENT A**  
Site Photographs



Subject Property



ATTACHMENT A  
Site Photographs, Continued

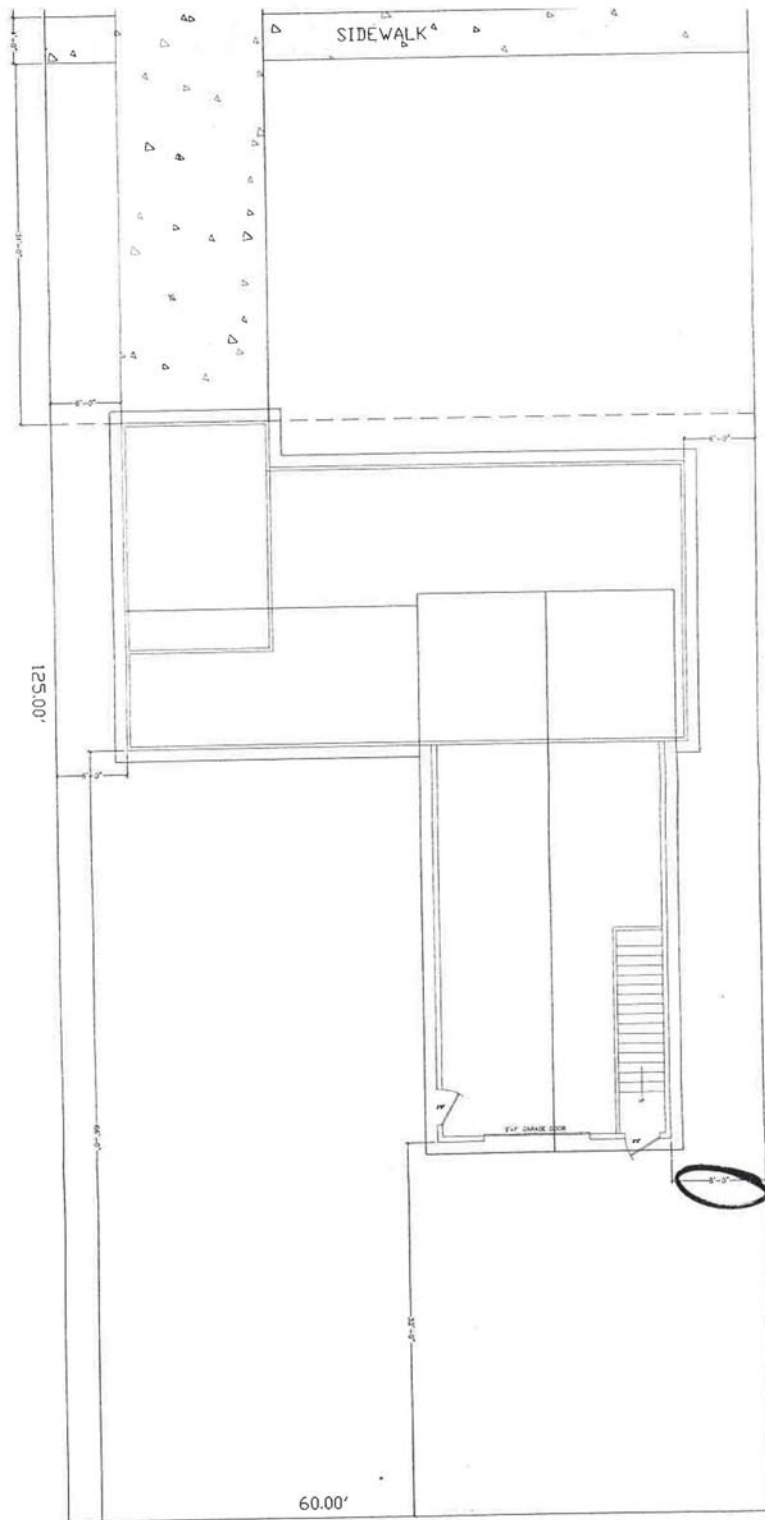


subject property Alley view



Alley

**Attachment  
Site Plan**



Attachment  
**Application and Applicant Letter**



**APPLICATION FORM**

ID: Billings Variance # 1243 - Project # PZ-16-00173

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings Zoning Regulations.

TAX ID # A13616 CITY ELECTION WARD # 3

Legal Description of Property: Lot 10, Block 7, Rosedale Subdivision, 2nd Filing

Address or General Location (If unknown, contact City Engineering): 429 Nelson Drive  
431 Nelson Drive

Zoning Classification: Residential-7000

Size of Parcel (Area & Dimensions): 7,500 square feet

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance(s) Requested: Lot size variance to allow two dwelling units on a 7,500 square foot lot instead of on a lot of the minimum size of 9,600 square feet for two dwelling units in the R-7000 zoning district.

Facts of Hardship: During a building permit review in 2008, a staff review error resulted in the property owner being issued a building permit for a second dwelling unit above a new detached garage although the property is not large enough under zoning to allow two dwelling units. See attached letter dated May 12, 2010.

\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Dean C. Barga  
(Recorded Owner)  
429 Nelson Drive Billings, MT 59102  
(Address)  
406-598-6599 dcbarga@gmail.com  
(Phone Number) (email)

Agent(s): None  
(Name)  
(Address)  
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: Dean C. Barga Date: 9-7-16  
(Recorded Owner)

\* Fee is Waived As per Planning Division Manager City Variance Application 2016-2017

**Attachment**  
Letter to Applicant

**Planning & Community Services Department**

"Serving Billings, Broadview and Yellowstone County"



510 North Broadway  
Parmly Library, 4<sup>th</sup> Floor  
Billings, Montana 59101  
Phone: (406) 657-8246  
Fax: (406) 657-8327



COPY

May 12, 2010

Dean & Connie Bargaen  
429 Nelson Drive  
Billings, MT 59102-4849

RE: Building Permit 08-2213 – to construct an attached garage with a 2<sup>nd</sup> dwelling unit

Dear Mr. & Mrs. Bargaen,


This letter is written to confirm and expand on my conversation with Dean on Friday May 7, 2010. In April, 2010, I received a zoning complaint regarding your property at 429 Nelson Drive. The complainant stated the property had received a building permit to add a 2<sup>nd</sup> dwelling unit above a new attached garage in violation of the zoning requirements for this district. This property is within the Residential 7,000 (R-70) district and single family homes are allowed on lots of at least 7,000 square feet and 2-family (duplex) dwellings are allowed on lots of at least 9,600 square feet. I have attached the relevant section of the Zoning Code for your information.

I reviewed the Building Permit #08-2213 issued to you in December 2008. The building permit application stated the purpose of the permit was to "build add on garage on rear of house & building living quarters above". The plan reviewer for the Planning Division examined the application and noted the correction to the side setback (increased to 8 ft). However, the plan reviewer inadvertently missed the lot area requirements for a 2-family dwelling in this zoning district. This property is only 7,500 square feet in area – less than the 9,600 square feet required by the zoning regulations. The permit was issued in error.

The addition has been completed and received all the required building inspections. The addition of the living unit above the garage is now considered a nonconforming use of the property due to the lot area. The non-conforming status may become an issue in the event a lender requests a letter of conformance or the Planning Division is asked to certify zoning compliance. The nonconforming status may also become an issue if you choose to sell the property and the buyer or the buyer's lender requests a zoning compliance letter (i.e. re-build letter).

In the case of a plan review error, the Planning Division offers the property owner the option of applying for a zoning variance at no charge. The division however, cannot guarantee the Board of Adjustment would approve your request. The board has approved variance requests from plan review errors in the past. I have enclosed the application packet for your information. You did state in our May 7, 2010 phone conversation that you would not submit a variance at this time. Please note this option is available to you at any time as long as you own this property. If you choose to apply now or in the future for a lot area variance, please contact me at the address above, by phone at 247-8662 or by email at [cromwelln@ci.billings.mt.us](mailto:cromwelln@ci.billings.mt.us).

As I stated in our phone conversation, I apologize for the review error during the building permit process. Please let me know if you need additional information regarding this matter.

Sincerely yours,  
  
Nicole Cromwell, AICP  
Zoning Coordinator, Planner II

Attachment

**BUILDING PERMIT APPLICATION  
CITY OF BILLINGS  
657-8270**

**Applicant to complete numbered spaces only**

**PERMIT NO. 08-2213**

1 Job Address		429 NELSON DR.	
2 Legal Desc	Lot #	Blk #	Tract/ Subdivision
	10	7	ROSEDALE
3 Owner		Mail Address	Phone
DEAN & CONNIE BARGEN		429 NELSON DR.	655-4871
4 Contractor		Mail Address	Phone
DEAN BARGEN		429 NELSON DR.	698-0599
5 Architect or Designer		Mail Address	Phone
BRIAN KINNY		3422 WINDMILL CIR.	698-3484
6 Engineer		Mail Address	Phone

7 Building Set Backs	Front	Side	Side	Rear	Building Dimension	Length	Width	Height
	31'	6'	6'	66'		34	20	22

8 Basement: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Number of Bedrooms	Mechanical (How Many?)		
	2	1/1 Furnace	1 Bath Vents	1 Air Cond

9 Class of Work: <input type="checkbox"/> New <input checked="" type="checkbox"/> Addition	Range Hood	1 Dryer Vent	Fire place
<input type="checkbox"/> Alteration <input type="checkbox"/> Repair	(IF DUCTED)		

10 Use of Building: Existing Use	Proposed Use
DWELLING	GARAGE W/ LIVING ABOVE

11 Describe Work:  
 BUILD ADD ON GARAGE ON REAR OF HOUSE & BUILD LIVING QUARTER ABOVE.

12 Valuation of Work: \$	41,200-
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Remarks and Special Conditions:  
 Engineering Permit #

Basements:

Application Accepted By	Plans Approved By	Plan Check Fee	Permit Fee
CE			
Fire Sprinkler Required	Off Street Parking	Type of Construction	Occupancy Group
Yes <input type="checkbox"/> No <input type="checkbox"/>	Required <input type="checkbox"/> Furnished <input type="checkbox"/>		
Garage Sq Ft.	Attached <input type="checkbox"/> #	Size of Bldg Sq. Ft.	No. of Stories
	Detached <input type="checkbox"/>		No. of Dwelling Units

**Agreement**

I understand and agree to the following:  
 Separate permits are required for electrical, plumbing, heating, ventilating or air conditioning.  
 This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced.  
 The undersigned hereby agrees that the proposed work shall be done in accordance with the plans and specifications and statement herewith submitted and in conformity with the provisions of the City ordinance pertaining to the erection of buildings in the City of Billings. Curb, gutter and sidewalk will be installed. Demolition work to be completed in 30 days unless otherwise noted under remarks.

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, a violation of any of the provisions of this code or any other ordinance of responsibility for compliance with the applicable Codes and Ordinances. Permits presuming to give authority to violate or cancel provisions of this code or other ordinances of the jurisdiction shall not be valid.

Signature-Applicant Dean Bargaen Date 12-1-08

Plan Check:	CK	Cash	Credit Card	Permit No.:	CK	Cash	Credit Card
fo. _____				_____			

Attachment

**CITY-COUNTY PLANNING DEPARTMENT**

Address 429 Nelson Dr.

Building permit # 08-2213

A. **Use of the property:**  
 **OK**  **Problems**

R-70

Comments: \_\_\_\_\_ 7500 ft SFD

B. **All yard setback requirements: (front, rear, side, arterial)**  
 **OK**  **Problems**

Comments Setback changed plan Ex. 12/3/08

C. **Off street parking:**  
 **OK**  **Problems**

1837  
1249  
New 680

D. **Height of proposed structures:**  
 **OK**  **Problems**

Comments: \_\_\_\_\_

2517  
1929  
3670  
2670

E. **Screening requirements:**  
 **OK**  **Problems**

Comments: \_\_\_\_\_

Reviewed by: [Signature]

Date: \_\_\_\_\_

Approved: 12/3/08

Denied: \_\_\_\_\_

## Attachment



**CITY-COUNTY PLANNING DEPARTMENT**  
510 North Broadway - 4<sup>th</sup> Floor  
Billings, Montana 59101  
PHONE (406)657-8246 – FAX (406)657-8327



### **PLANNING DEPARTMENT (406) 657-8246 PLAN REVIEW CORRECTION LIST**

THE FOLLOWING CORRECTIONS AND/OR ADDITIONAL INFORMATION MUST BE  
ADDRESSED BEFORE A BUILDING PERMIT CAN BE ISSUED:

ADDRESS: 429 Nelson Drive  
CONTRACTOR: Dean Bargaen  
OWNER: same  
ENG/ARC: Brian Kinny

PLAN REVIEW NUMBER: 08-2213  
DATE: December 2, 2008  
REVIEWED BY: Karen Miller

#### **CORRECTIONS AND COMMENTS ARE THAT OF THE PLANNING DEPARTMENT ONLY**

**The processing of plans may be delayed if all the required items are not properly resubmitted.**

#### **Corrections:**

1. Site plan submitted indicates the addition will not meet the minimum setback from the side property line for a 2-story structure. The minimum distance for the 2<sup>nd</sup> story is 8 feet. Per BMCC section 27-308(h);

*Required side yards shall be increased to eight (8) feet in distance from the nearest second story portion of the building, plus one (1) foot for each story in excess of two (2).*

2. In order to build the proposed structure it must meet the size, setback and lot coverage restrictions of the Unified Zoning Code, or the property owner must apply for and receive approval of a setback variance from the City Board of Adjustment. PLEASE NOTE: if approval of the variance is not received you will need to resubmit your amended plans including an amended site plan.

## **DETERMINATIONS**

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances with the land that create a hardship. In this situation, the structure was built with the benefit of an approved permit. Staff mistakenly approved the garage with living space assuming it had an internal connection to the existing house and did not classify as a duplex under the zoning code definition. Staff made an error in approving the permit, however the applicant did obtain a permit. Although there is an approved permit the building is still considered a non-conforming structure, and could not be reconstructed if it were destroyed by any means.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

There are other properties in the surrounding neighborhoods that have multiple dwelling units on smaller lots. Therefore, allowing the applicant a variance for a duplex on a 7,500 square foot lot would deprive the applicant of rights commonly enjoyed by other properties in the same district.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting this variance for the duplex on a 7,500 square foot lot would not confer a privilege to this applicant that others in the area do not have.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

The variance for the duplex is in harmony with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the variance request :

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling on a 7,500 square foot lot. No other variance is intended or implied with this approval.
2. The variance is limited to the proposed Lot 10, Block 7, Rosedale Subdivision, 2nd Filing.
3. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or 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.

- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

The requested variance is to ensure the future opportunity to rebuild an existing duplex on a 7,500 square foot lot. There is no proposal to rebuild at this time; therefore it is not appropriate to place a time limit on this variance approval.

- 7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**

The granting of this variance would not allow a use that is not already allowed in the zoning district – R-70 zoning allows duplexes.

#### **ATTACHMENTS**

- A: Zoning Map and Site Photos
- B. Applicant Letter and Site Plan
- C: Determinations