



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, September 6,2017 @ 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd 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 August 2, 2017

a.

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. **City Variance 1267 –2409 Rosewyn Lane** - A variance from Section 27-308 requiring a minimum 3 foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554. 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, 4th Floor of the Miller Building, 2825 3rd 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

City Board of Adjustment

Meeting Date: 09/06/2017

Information

Subject

Attachments

BBOA_2017_08_02_draft

CITY BOARD OF ADJUSTMENT

MINUTES August 2, 2017

Name	Title	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017		06/07/2017	07/06/2017	08/02/2017	09/06/2017	10/04/2017	11/01/2017	12/06/2017
Jeff Bollman	Board member	1	1	E	1	E		1	1	1				
Dave Hagstrom	Board member	1	1	1	1	1		1	1	1				
Paul Hagen	Board member	1	1	1	1	1		1	1	1				
Frank Chesarek	Vice Chairman	1	1	E	1	1		1	1	1				
Oscar Heinrich	Board member	1	1	E	1	1		1	1	1				
Martin Connell	Board member	1	1	1	1	E		1	1	1				
Mark Noennig	Chairman	1	1	1	E	1		E	1	1				

TOTAL NUMBER OF APPLICATIONS 2017	01/04/2017	02/01/2017	03/01/2017	04/05/2017	05/03/2017	06/07/2017	07/06/2017	08/02/2017	09/06/2017	10/04/2017	11/01/2017	12/06/2017	TOTAL
Variance	1	1	7	2	1	3	1	3					19

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 3rd Avenue North.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, Tammy Deines, Planning Clerk

Attending: Lonne Chatwood; Carolyn Chatwood; Nathan Matelich; Jon Philips; Merry Lee Olson; Sherril Burke; Michael Burke; Craig Froehlich

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 July 6, 2017 minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 7-0.

Disclosure of any Conflict of Interest, Ex Parte Communications and Site Visits

There were no Conflicts of Interest or Ex Parte Communions denoted by members of the Board.

Public Hearings

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.

Zoning Coordinator Nicole Cromwell read the legal description for **Variance #1264**. Planner Karen Husman presenting.

City Variance – 1264 – 909 Wyoming Ave – Lot Area – A variance from 27-308 requiring a minimum lot area of 40,000 square feet for 24 attached dwelling units to allow a minimum lot area of 34,110 square feet to allow the construction of a new supported residential apartments in a Community Commercial (CC) zone Lots 1-10, YWCA Subdivision (proposed Lot 8A), and vacated 10th St West. Tax ID: A18723.

RECOMMENDATION

Planning Staff is recommending conditional approval and adoption of the findings for granting a variance.

The conditions are as follows:

1. The variance is from Section 27-308 requiring a minimum lot area of 40,000 square feet for 24 attached dwelling units to allow a minimum lot area of 34,110 square feet to allow the construction of a new supported residential apartment complex in a Community Commercial (CC) zone.
2. The variance is limited to Lots 1-10, YWCA Subdivision (proposed Lot 8A), and vacated 10th St West. Tax ID: A18723. 909 Wyoming Ave.
3. The applicant will submit and obtain a building permit within 6 months, and construction shall be completed within 2 years of Board of Adjustment approval.
4. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
5. The applicant shall meet all other city code requirements for the proposed apartment complex with the exception of this variance.
6. The structure shall be built in substantial conformance to the site plan submitted with this application.
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

Board member Bollman asked if a variance was granted west of this parcel. Ms. Cromwell stated there was a development for Joe Bonini for a lot area variance for 12 units total. In response to question by Board member Heinrich, Ms. Husman explained the need for a rebuild/zoning compliance letter for financing purposes. She said the proposed Lot 8A will be created to obtain State funding. The applicant is approved for a building permit. In response to a question by Board member Hagen, staff stated the YWCA owns the lot north of Lot 8A and there are no plans for this parcel at this time.

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1264**.

Mary Lee Olson, CEO, YWCA Association

Ms. Olson began with some the technical aspects of this projects. She said Billings suffers from a lack of affordable housing. They decided they would build affordable housing for women in their shelters. They have diligently worked with architects Sherril and Michael Burke and are using low income tax credits. The proposed lot does not comply with zoning. The State requires having a separate lot to utilize the tax increment financing funds. If the variance is not approved, the play area connected to the child center will be lost. They are working with the City to develop a community asset and address the need for affordable housing. The rent will be subsidized and will range from \$400-\$600 monthly. They have applied for grant funding for services and the rent subsidies.

Michael Burke, 2101 Locust, Billings, MT

Mr. Burke is the architect for this project and he asked for support for this variance request. He stated 24 units are needed to be financially feasible. Project construction costs are estimated at \$4.6 million. Board member Heinrich asked why the northern parcel was not considered for this project. Michael Burke said the lot is shallower; 10th avenue has been abandoned; and Lot 8A provides better access. The intent is to leave the park in tact as a piece of property. There is another play area will be constructed as a part of Lot 8A. Nicole Cromwell said creation of a lot crosses an alley does not meet the subdivision criterion. The playground serves the child center and is an asset to the children who are nurtured in the center. Board member Hagestrom commented the tax credit project will be part of the overall program.

John Phillips, 3227 Lynn Ave, Billings, MT

Mr. Phillips stated the low income house credits have specific requirements and there are tiers of individuals required to be a part of the project. The project calculates construction costs. A proforma is needed to determine how much rent needs to be paid and how much will go toward retirement of the debt. If they fall short of the 20th percentile, they will lose the tax credit and the project will not be viable.

OPPOSED: There was none.

Chairman Noennig closed the public hearing and called for a motion.

Motion

Board member Connell made a motion and Board member Hagen seconded the motion to conditionally approve City Variance #1264 with the Findings of Fact presented by Staff.

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

The motion to approve City Variance #1264 passed 7-0.

Zoning Coordinator Nicole Cromwell read the legal description for **Variance #1265**. Planner Karen Husman presenting.

City Variance – 1265 – 518 Broadwater Ave – Lot Area – A variance from 27-308 requiring a minimum lot area of 8,500 square feet for an existing three-unit multi-family dwelling to allow a minimum lot area of 5,250 square feet in a Residential 6,000 (R-60) zone on Lot 37 and the West ½ Lot 38, Block 2, Yellowstone Addition Subdivision. Tax ID: A18872.

RECOMMENDATION

Planning Staff is recommending conditional approval and adoption of the findings for granting a variance.

The conditions are as follows:

1. The variance is from Section 27-308 27-308 requiring a minimum lot area of 8,500 square feet for an existing three-unit multi-family dwelling to allow a minimum lot area of 5,250 square feet in a Residential 6,000 (R-60) zone. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 37 and the West ½ Lot 38, Block 2, Yellowstone Addition Subdivision. Tax ID: A18872. 518 Broadwater Avenue.
3. If the dwelling units are re-constructed in the future, they must meet all other city code requirements with the exception of this variance.
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: There were no questions or discussion from members of the Board for this variance.

Public Hearing

At 6:36 Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1265**.

Nathan Matelich, 518 Broadwater Ave., Billings, MT

Mr. Matelich is the property owner and he is currently living at 41 Avenue B. He said he initially financed this property with a commercial loan and is refinancing to a traditional 15 or 30-year mortgage. No improvements or additions have been made to this property. Mr. Matelich is making this variance request as the structure on the property is identified as a 3-unit building but it does not meet the lot coverage requirements.

OPPOSED: There was none.

Motion

Board member Hagstrom made a motion and Board member Chesarek seconded the motion to conditionally approve City Variance #1265 with the Findings of Fact presented by Staff.

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

The motion to approve City Variance #1265 passed 7-0.

Zoning Coordinator Nicole Cromwell read the legal description for **Variance #1266**. Planner Karen Husman presenting.

City Variance – 1266 – 2518 Sunnyview Lane – Front Setbacks – A variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet for an existing dwelling and 12 feet for a proposed addition to the dwelling in a Residential 9,600 (R-96) zone on Lot 3, Morse Subdivision and Lot 3, Kolstad Subdivision, a 15,004 square foot parcel of land. Tax ID: A11189.

RECOMMENDATION

Planning Staff is recommending conditional approval and adoption of the findings for granting a variance.

The conditions are as follows:

1. The variance from 27-308 requiring a minimum front setback of 20 feet to allow a minimum front setback of 10 feet for an existing dwelling, and a minimum front setback of 12 feet for a new addition in a Residential 9,600 (R-96) zone. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 3, Morse Subdivision and Lot 3, Kolstad Subdivision, 2518 Sunnyview Lane.
3. The applicant will submit and obtain a building permit within 6 months and have the addition completed within 1 year.
4. The addition shall be built in substantial conformance to the site plan submitted with this application.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed addition with the exception of this variance.
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:

Public Hearing

Chairman Noennig opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1266**.

Per Board member Heinrich’s request, Ms. Husman and Ms. Cromwell clarified the site plan. Board member Bollman asked regarding the setbacks.

Lonne Chattwood, 2518 Sunnyview Lane, Billings, MT

Mr. Chattwood stated they wish to build an addition to the garage. Currently the garage is flush with the ground and there are stormwater issues due to melting snow in the winter. The new garage will be raised to alleviate draining from the snow lying against the building. Board member Bollman asked if the existing garage will remain. Mr. Chattwood said the addition will create a 6-car garage. Carolyn Chattwood said a wall could be built on the outside of the garage but it will not create the needed extra parking space. They have used submersible pumps but are unable to keep up with the incoming water from melting snow. The additional garage space is needed to store their vehicles. Ms. Chattwood said the design is aesthetically consistent with the neighborhood.

Board member Heinrich asked if there are any issues with the side setbacks. Ms. Husman said the variance is for the non-conforming 10 or 12-foot front setback. Staff received a letter of support from the neighbors who are located south of this property.

OPPOSED: There was none.

Chairman Noennig closed the public hearing at 6:53 p.m., and called for a motion.

Motion

Board member Chesarek made a motion and Board member Connell seconded the motion to conditionally approve City Variance #1266 with the Findings of Fact presented by Staff.

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

Discussion

Board member Bollman stated he understands the compliance issue but does not feel he can support the variance as there is a potential for a vehicle to "hang" out into the street. In response to question by Board member Heinrich, the Chatwoods pointed out the alley stops at their property and said they are unable to access the property from the rear due to the angle needed for a turn and neighbor's existing wall. Nicole Cromwell said there are many existing alleyways citizens have informal agreements for use.

The motion to approve City Variance #1266 passed 5-2.

Other business:

- City Board of Adjustment meals: Members of the Board voiced their appreciation for staff's effort and consideration to provide meals prior to City Board of Adjustment meetings but it is the consensus of the Board to discontinue this effort.
- The next meeting will be on September 6, 2017, 6:00 p.m. in the Miller Building 1st Floor conference room.

Adjournment: 7:15 p.m.

ATTEST: DRAFT. To be approved by a motion September 6, 2017.



City Board of Adjustment

Meeting Date: 09/06/2017

SUBJECT: City Variance # 1267- 2409 Rosewyn Lane

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

City Variance 1267 –2409 Rosewyn Lane - A variance from Section 27-308 requiring a minimum 3 foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone, on Lot 3A of Srite Acres Subdivision, a 7,309 square foot parcel of land. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location. Tax ID: A14554. Presented by Karen Husman, Planner I

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of denial for Variance #1267, based on the determinations for granting a variance.

APPLICATION DATA

OWNERS: Cheryl Morgan
PURPOSE: To decrease the minimum structure side setback from 3' to 0'
LEGAL DESCRIPTION: Srite Acres Subdivision, Lot 3A
ADDRESS: 2409 Rosewyn Lane
EXISTING LAND USE: Residential
PROPOSED LAND USE: Residential
EXISTING ZONING: R-9600

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property – Variance #1028, lot size variance to allow 14,000 sf for 2 sfd. (denied in 2001); Variance #1067, lot size variance to allow a 7,309 square foot lot in a R-9600 zoning district (approved in 2010).

Surrounding Property – There have been 5 variance requests in this area. Three were for lot size (two approved one denied), two were for setbacks (one approved and one denied).

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96
Land Use: Commercial
SOUTH: Zoning: R-96
Land Use: Residential
EAST: Zoning: R-96
Land Use: Residential

WEST: Zoning: R-96
Land Use: Residential

BACKGROUND

The applicant is requesting a variance from 27-308 requiring a minimum 3-foot side setback for a detached accessory structure to allow a 0-foot side setback in a Residential 9,600 (R-96) zone. The purpose of the variance is to allow a detached accessory building under construction to remain in its current location.

In this particular area of Billings, many of the homes and accessory buildings were built in the late 1930's. There are several examples of accessory structures in the area that are closer to the property line than what is required under the current zoning regulations. Staff review of the surrounding neighborhoods found a number of storage sheds that may not meet the current setback requirements, none appeared to be anything other than storage and would not require a building permit. In addition, Staff research found there is an existing ten-foot alley dedicated with the original subdivision that has never been improved by the City. Many of the property owners have assumed the property was their own and used it as such. In this situation, because the property owner did not get a permit for the structure and it was not reviewed for compliance prior to construction, it appears they have started to build on property that is not owned by them. According to the site plan submitted, the measurements indicate the new structure encroaches into the dedicated alley as shown on the recorded plat. Variance requests can be considered for property within the Zoning Jurisdictional area owned by the applicant. If the structure is not encroaching into the platted alley, the rear setback would also be in question as the structure may be at a 0 setback from the rear property line as well.

The building division provided the following comments with regard to this application: 1. The pool equipment shed is required to have a building permit. Only accessory residential STORAGE sheds under 200 sf are exempt from permitting. If the structure is used for anything other than storage, i.e. pool equipment, then a building permit is required regardless of the building size. Plumbing and electrical permits are also required and must be obtained by the state licensed professionals doing the installation. 2. The wall facing the property line and the side walls within 5' of the property line are required to be 1-hr rated. No openings or projections (eaves or overhangs) are permitted within 2' of the property line. 3. Even if the variance is approved, the pool shed may not meet building code requirements and may still need to be re-built or significantly remodeled to meet all code requirements.

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of denial for the variance based on the determinations for review provided within this report.

Attachments

Zoning Map & Site Photos
Applicant Letter & Site Plan
Determinations

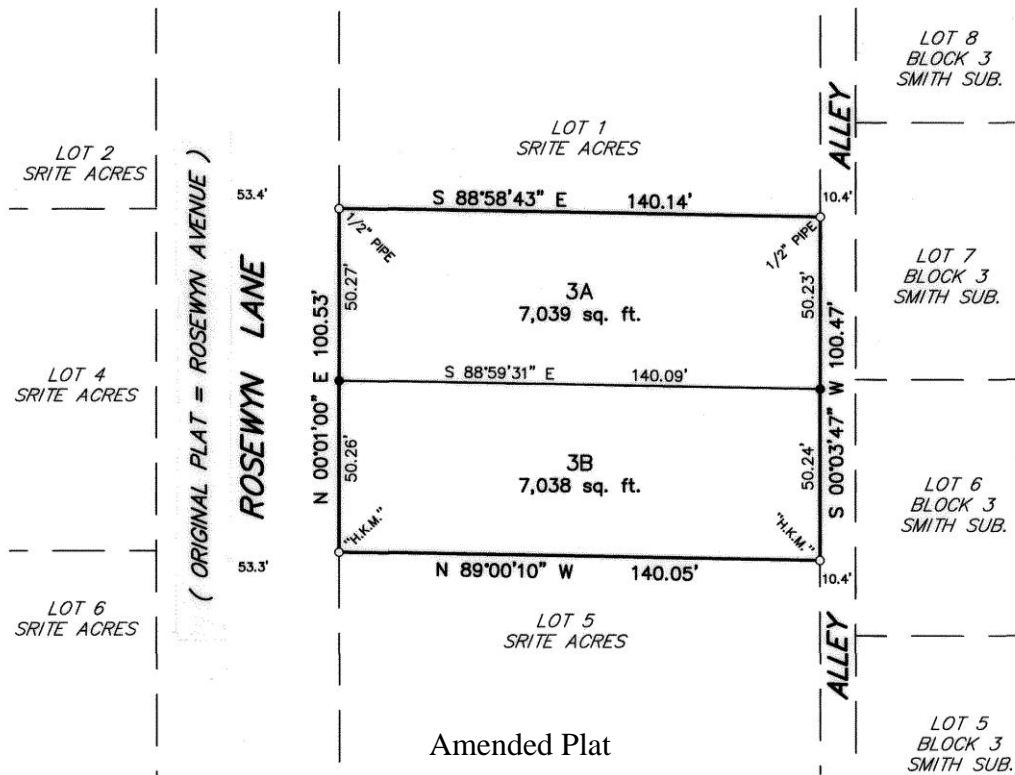
ATTACHMENT
Surrounding Zoning & Site Location



ATTACHMENT
Site Photographs



Aerial Photograph



ATTACHMENT
Site Photographs



Looking West subject property

ATTACHMENT
Site Photographs, Continued



North side of the subject property



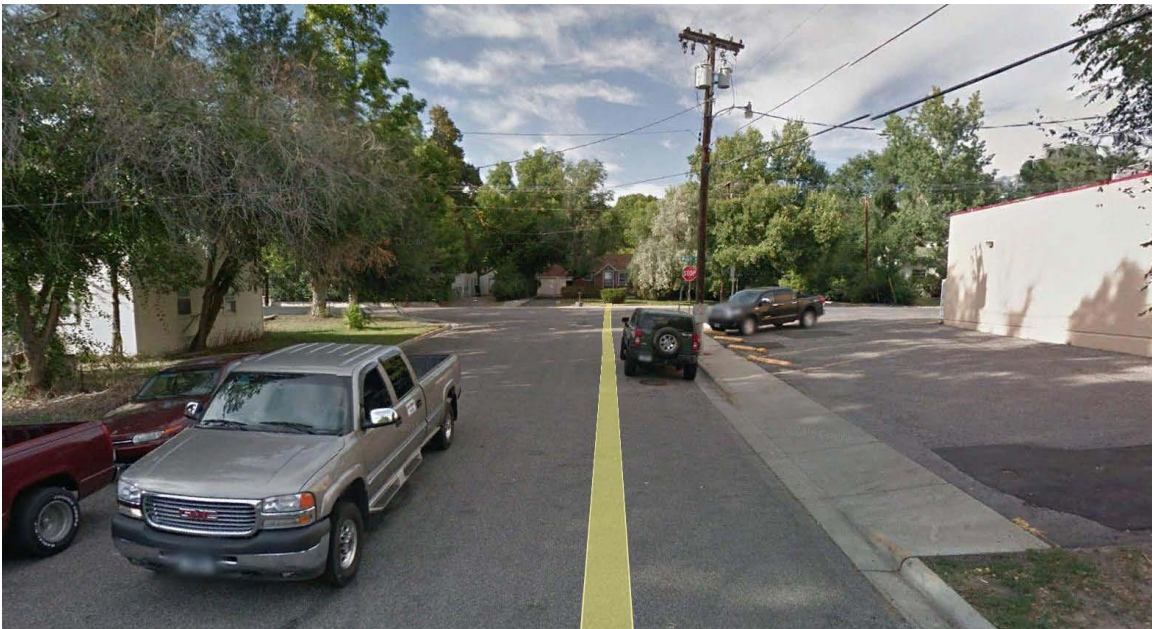
Subject property accessory structure

ATTACHMENT

Site Photographs, Continued



Looking east



Looking North

ATTACHMENT
Site Photographs, Continued



Looking south

ATTACHMENT

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1267 - **Project #** PZ-17-00136

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 # A14554 CITY ELECTION WARD # 4

Legal Description of Property: Write Acres
Lot 3A

Address or General Location (If unknown, contact City Engineering):

2409 Rosewyn Ln.

Zoning Classification: R-96

Size of Parcel (Area & Dimensions): See print out 7,309 SF

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance(s) Requested: allow small storage shed - 1/2 mechanical
3 Ft required 1/2 storage
4" provided

Facts of Hardship: Storage shed should be no problem as it cannot be seen by neighbors. Approved swimming pool needs utility room to put the swimming pool equipment. Pictures included

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

Owner(s): Cheryl Morgan

(Recorded Owner)

2409 Rosewyn Ln.

(Address)

Billings, MT 59102 697-3153

(Phone Number)

(email) mom.gram.morgan@billsn.net

Agent(s):

(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: Cheryl Morgan Date: 8-7-17

(Recorded Owner)

utility room

where several neighbors have same type of sheds up next to fences

ATTACHMENT
Applicant Letter

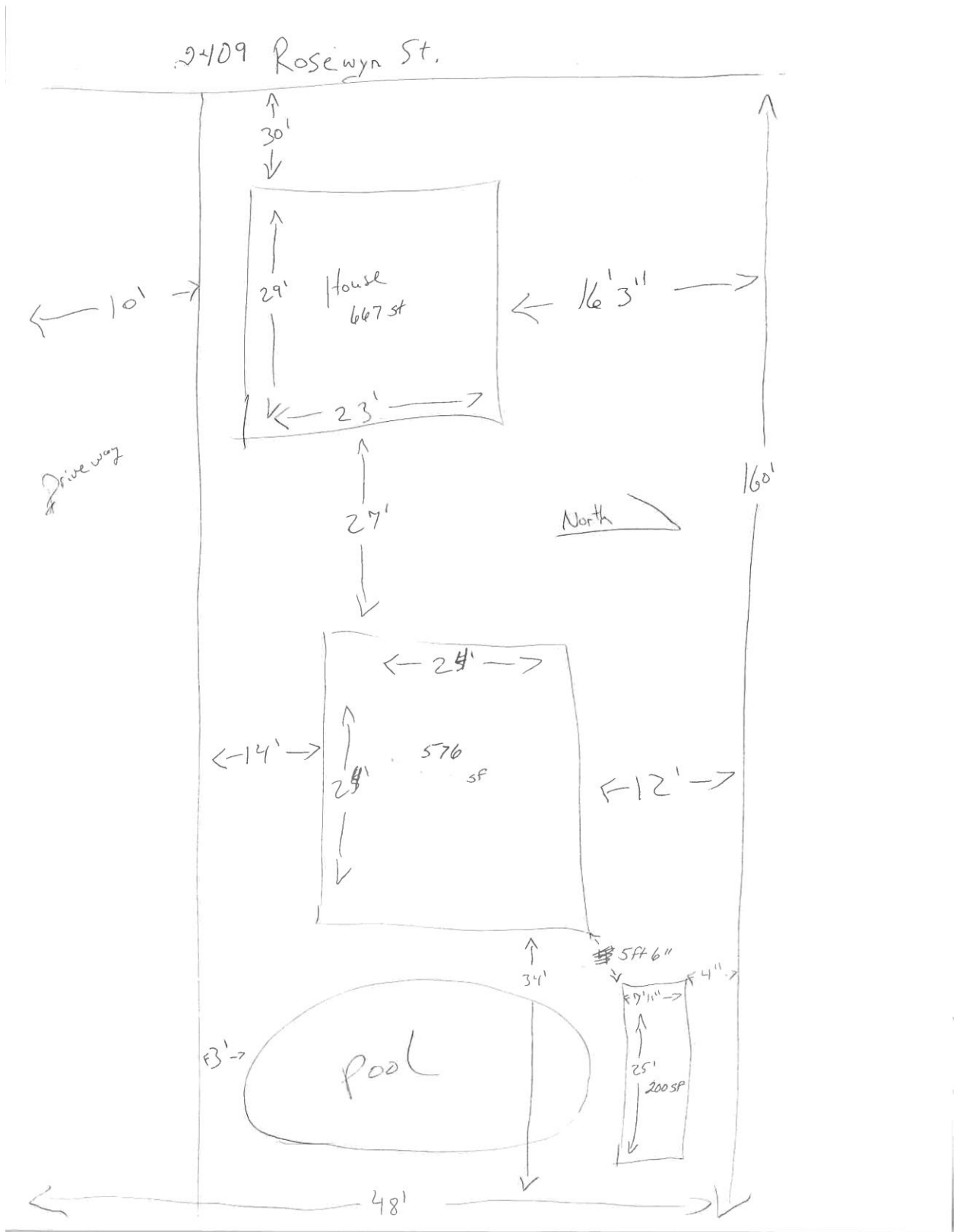
- (1) (a) Due to space constraint
& need for swimming pool
utility room & storage,
it blocks nobody's view,
vs the dog wash @ Poly
Food Basket next door which
is much higher than the fence.
- (1) (b) See above.

(2) See above for reasons. Construction
will match garage & house.
House is about 70 years old
& 1/2 of the properties on this
street is out of compliance.
(Pictures attached)

(3) Site plan on separate sheet.

Cheryl Morgan
8-7-17
2409 Rosewyn Ln.
Billings, MT 59102

ATTACHMENT
Site Plan



DETERMINATIONS

Variance #1267

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 circumstances that exist which are peculiar to the land. The applicant wishes to complete a non-conforming structure partially completed without benefit of a building permit. The placement of the structure appears to be partially in a dedicated alley owned by the City of Billings.

- 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;**

The subject property is in a subdivision that began developing many years ago. There have been variances that have been granted in the area for existing properties that do not meet the current required setback distance from property lines and lot size. There have not been any variances approved, nor did staff find any non-conforming properties for an equipment shed that contained electrical and/or plumbing. The literal interpretation of the provisions of this Chapter would not deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, denying the applicant a variance setback for less than allowed (zero feet at side) would not deprive the applicant rights commonly enjoyed by other properties in the 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 would confer a privilege to this applicant that others in the subdivision do not have. There are no variance requests granted in this subdivision for setbacks on an equipment shed.

- 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 approval is not in harmony with the general purpose and intent of the zoning regulations and the growth policy. Approval of this variance would not promote the health, safety and general welfare of the neighborhood residents.

- 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 has no conditions for a variance that cannot be granted for building partially on property that is not owned by the applicant.

- 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;**

Time limit can be set for removal of the structure to make it compliant on the subject property and not in the platted alley.

- 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 – Residential -9600 zoning allows detached accessory structures, so long as they are constructed on property owned by the applicant.