

## Variance Request and Staff Evaluation



October 10, 2013

Juliette Spalding  
Planning and Community Services Department  
2825 3rd Avenue North, Fourth Floor  
Billings, MT 59101

Re: Variance Request for Shadow Lawn Estates Subdivision  
Project No. 02125.01

Dear Juliette:

Aaron Sparboe, the owner/subdivider of Shadow Lawn Estates Subdivision requests a variance from the provisions of Section 23-406(B)(6) of the City of Billings Subdivision Regulations requiring the dedication of a 50-foot half right-of-way for Poly Drive, a minor arterial street. The City of Billings Public Works Department has approved a 40-foot half right-of-way dedication in order to meet the future right-of-way needs along this portion of Poly Drive. The following are responses to the five criteria outlined in Section 23-1101.A.:

1. **The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;**

Public Works plans a widening project on Poly Drive to add a bike lane and new five-foot-wide sidewalk. Because of other physical constraints along the south side of Poly Drive, it was determined that the desired widening could be done with ten feet of additional right-of-way, rather than twenty. The additional ten feet of right-of-way will be dedicated across the frontage of Shadow Lawn Estates Subdivision and also along the frontage of Certificate of Survey No. 3538 to Virginia Lane.

2. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;**

As stated in 1. Above, the physical constraints all along the south side of Poly Drive west of Shadow Lawn Estates Subdivision preclude the use of more than ten feet of additional right-of-way for the proposed widening project. Discussions with Public Works came to the conclusion that ten feet along Shadow Lawn Estates Subdivision would be adequate for the bike lane and new five-foot-wide sidewalk.



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3. **The variance will not result in an increase in taxpayer burden;**

The Poly Drive widening project had been planned for previously by the Public Works Department. The work will be done at the cost of the City and will not be assessed to the lot owners of Shadow Lawn Estates Subdivision or Certificate of Survey No. 3538. With less right-of-way to be dedicated; however, more taxable property will be left in the adjacent lots.

4. **The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and**

The ten foot right-of-way dedication does not change the density of the single family subdivision which are large lots exceeding 25,000 square feet in size. Also, the arterial setback remains the same and the building envelopes have been adjusted accordingly.

5. **The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.**

The original intent of the Poly Drive widening, as described by the Public Works Department, was to add a bike lane along the south side and to replace the existing four-foot-wide sidewalk. This widening and the original intent of the design can be accomplished with ten feet of additional right-of-way and the twenty feet as required in the Minor Arterial regulations is not necessary to meet the need.

Sincerely,



Robert L. Sanderson, PE, LS  
Director

RLS/hg  
P:02125\_01\_Shadow\_Lawn\_Variance\_Ltr\_101013\_SC

**City Staff Evaluation:**

The applicant has requested a variance from Section 23-406(B)(6), BMCC that would require the provision of 50 feet of right of way for Poly Drive (a Minor Arterial street) as it fronts the north side of the subject property.

Currently at this location along Poly Drive there has not been a right-of-way (ROW) dedication. This subdivision will be dedicating ROW to the city. The existing road dedication to the west of this parcel of land is 60 feet (30 feet half-width). The current City Subdivision Regulations (Section 23-406(B)(6)) require the dedication of 100 feet (50 feet half-width) at the time of subdivision on minor arterial streets such as Poly Drive. City Public Works anticipates a street widening project on Poly Drive to be completed sometime in the future. The anticipated project is for a 5 foot wide sidewalk and a bike lane. City Public Works felt that the addition of a bike lane and a 5 foot wide sidewalk could be done with the 10 foot addition rather than with 20 feet as required by subdivision regulations.

In reviewing the criteria for granting subdivision variances, granting this variance will not be detrimental to public health and safety or injurious to adjoining properties. The variance will not result in an increase in taxpayer burden, as the design for the future street upgrade only requires 10 feet of additional right-of-way. Lastly, granting the variance will not place the subdivision in violation of any adopted zoning regulations or the 2008 Growth Policy.

Therefore, City staff recommends that City Council approve the requested variance from Section 23-406(B)(6) of the City Subdivision Regulations to allow for the dedication of 10 additional feet of right-of-way for Poly Drive, in lieu of the required 20 feet.