



County of Yellowstone Board of Adjustment
AGENDA-Tuesday, February 12, 2015, 4:00 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 the County Board of Adjustment Members and Planning Department Staff.

Public Comment

4. Approval of Minutes: December 11, 2014

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 Exparte 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. **County Variance #271:** This is a request for a variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. This is also a request for a variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence. The proposed detached garage on Tract 1B will be owned by the property owner directly west at 2821 Saratoga Trail. Tax ID: D05023 & D05023A (pending), Larry and Kathy Vaira owners Tract 1A, Jeff Isom and Cindy Taul owners Tract 1B.
- b. **County Variance #272:** This is a variance from 27-620(g) 11, requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower in a Heavy Industrial (HI) zone on a 2,252 square foot leased portion on the north end of an unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane. Tax ID: D05451, Marte M Nelson Trust owner, Kevin T Howell, Digital Skylines, Inc. agent representing Verizon Wireless.

Other Business/Announcements

Adjournment

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed variance. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. 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 Tammy Deines, Planning Clerk, at 247-8610 or e-mail at deinest@ci.billings.mt.us.

County Board of Adjustment

Meeting Date: 02/12/2015

Information

Subject

Approval of Minutes: December 11, 2014

Attachments

[YBOA Minutes 2014 12 11](#)



Yellowstone County Board of Adjustment

Minutes

December 11, 2014

The County Board of Adjustment met on Thursday, December 11, 2014 in the 1st Floor Conference Room, of the Miller Building located at 2925 3rd Avenue North. Chairperson Hecker called the meeting to order at 4:00 p.m.

Name	Title	01/10/13	02/14/13	03/14/13	04/11/13	05/09/13	06/13/13	07/11/13	08/08/13	03/13/2014	04/10/2014	05/08/2014	07/10/2014	12/11/2014
Bruce Reiersen	Board member	-							-	-	-	-	-	1
Brenda Robison	Board member	1							1	E	-	R	-	-
Carlotta Hecker	Chairperson	1							1	1	-	1	1	1
Delores Terpstra	Vice Chairperson	1							1	1	-	1	1	1
Robert Bailey	Board member	-							-	-	-	1	1	E

Chairperson Hecker introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Dave Green, Planner; Tammy Deines, Planning Clerk.

Attending: Randy L. Lowe, Troy Boucher

Public Comments

Chairperson Hecker opened the public comment portion of the meeting and asked if anyone wished to speak on an item not on today's agenda. There was none. Chairperson Hecker closed the public comment portion of the meeting.

Approval of Minutes: July 10, 2014

Motion

Delores Terpstra made a motion and it was seconded by Bruce Reiersen to approve the July 10, 2014 minutes as submitted. The minutes of July 10, 2014 were approved as presented with a unanimous voice vote.

PUBLIC HEARINGS:

Chairperson Hecker asked Dave Green to give the determinations for granting a variance and review the rules for the procedure by for conducting public hearings. Mr. Green read the legal description and reviewed the staff report with a PowerPoint presentation for the audience. Staff received a letter dated December 8, 2014 from "A concerned neighbor".

Item #1 County Variance #270 – 1336 Cimarron Pass – Detached Shop > 1,500 square feet – A variance from 27-310(j) requiring a maximum 1,500 square feet for a detached accessory structure to allow a maximum of 2,100 square feet for an existing detached shop in a Residential 15,000 (R-150) zone on Tract 1B1 of C/S 1764, a 1.47 acre parcel of land. Tax ID: D05020A.

REQUEST

This is a variance from 27-310(j) requiring a maximum accessory building size of 1,500 square feet to allow a maximum accessory building size of 2,100 square feet in a Residential 15,000 (R-150) zone. This variance request resulted from a County Code Enforcement complaint after the building was mostly constructed on the property. Tract 1B1 of C/S 1764, a 1.47 acre parcel of land, Tax ID: D05020A, Randy Lowe and Shawne Medeiros owners. The Planning Division is forwarding a recommendation of conditional approval.

Staff is recommending conditions of approval as follows:

1. The variance is to increase the allowed square footage for a detached accessory building from 1,500 square feet to 2,100 square feet. No other variance is intended or implied by this approval.
2. The variance is limited to Tract 1B1 of C/S 1764, generally located at 1336 Cimarron Pass.
3. The use of the existing accessory building will be limited to the personal use of the residents of the property.
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

Chairperson Hecker asked the Board for questions and discussion. Board member Hecker said she visited the site and voiced concern that the building is larger than any other detached building in the area. She asked if the building could be altered to meet the code if the variance is not approved and Dave Green explained the owners would have to remove 600 feet of the building at their expense. Board member Hecker said the applicant claims to have contacted the Building Division and was told they did not need a building permit. Planner Dave Green said he is unable to verify this one way or the other. He clarified and stated the City would not have required a building permit but a zoning compliance permit is required within zoned parcels in the County. He commented the State is responsible for electrical and plumbing inspections but may not have required a permit in this instance.

Applicant Randy Lowe said she purchased the property in 1998, and they were told there were no covenants or zoning on the property. She said they lost their building to a microburst. She contacted the City to inquire about permit requirements. The staff told her to obtain an electrical permit from the state but a building permit was not needed. Ms. Lowe said Code Enforcement officer notified them of the infraction after the building was constructed. She said they had to do something as they needed storage space for their hay and equipment.

Board member Reiersen asked if there is a past history of these type of variances. Dave Green said it is not an unusual occurrence to have someone construct a building and find out later a permit is

needed. Board member Reiersen asked how many times applicants in this situation have had to remove the building. Nicole Cromwell replied she is not aware of any instances during her tenure at the City. Board member Reiersen commented it seems the landowner is caught in a difficult situation. He said from the photos presented it looks as if they have constructed a nice looking building.

Board member Hecker said there was a similar occurrence a year ago wherein the applicant was misinformed. Nicole Cromwell said the Building Division gave them accurate information as far as their regulations but failed to refer the applicant to the Planning Division for zoning information and a zoning compliance permit. She said staff may have reinforce this information with the clerks. Chairperson Hecker concurred and stated this issue should be brought to the Building Division's attention in order to avoid these types of situations in the future.

Public Hearing

Chairperson Hecker opened the Public Hearing and asked if anyone would like to speak in favor or against Yellowstone County Variance #270.

Randy Lowe, 1336 Cimmaron, Billings, Montana

Ms. Lowe said the damage from the microburst was the determining factor in their need for a new structure and they contracted with Cleary Building Corporation as they have built seven buildings in this area. She said she thought they were safe as there no Covenants and Restrictions on this property. Ms. Lowe stated they wanted to clean up the property, accommodate the neighbors, and protect the aesthetics of the neighborhood.

Troy Boucher, 3149 Conestoga Way, Billings, Montana

Mr. Boucher is a neighboring property owner. He stated he is sympathetic with this situation as there is some confusion with the zoning requirements in this surrounding "donut area". He suggested staff revisit some of the regulations for lot coverage as the square footage calculations can be confusing. Mr. Boucher asked the Board to approve this variance request.

Chairperson Hecker asked if anyone else would like to speak in favor or against Yellowstone County Variance #270. There was none. Chairperson Hecker called for a motion.

Motion

Robert Bailey made a motion and Delores Terpstra seconded the motion to approve Yellowstone County Variance #270 with the conditions recommended by staff.

The motion carried with a unanimous voice vote.

Other Business

Elections for the 2015 officers will be held at the next scheduled meeting. There is one opening for a board member on this County Board of Adjustment to be filled.

Adjournment:

The meeting was adjourned at 4:20 p.m.

ATTEST:

Carlotta Hecker, Chairperson, Yellowstone County Board of Adjustment

Tammy Deines, Planning Clerk



County Board of Adjustment

Meeting Date: 02/12/2015

SUBJECT: County Variance # 272, 1011 Brandywine Lane-Accessory Structures

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

County Variance #271: This is a request for a variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. This is also a request for a variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence. The proposed detached garage on Tract 1B will be owned by the property owner directly west at 2821 Saratoga Trail. Tax ID: D05023 & D05023A (pending), Larry and Kathy Vaira owners Tract 1A, Jeff Isom and Cindy Taul owners Tract 1B.

RECOMMENDATION

The Planning Division is forwarding a recommendation of denial.

APPLICATION DATA

OWNER: Larry and Kathy Vaira: Jeff Isom and Cindy Taul

AGENT: none

LEGAL DESCRIPTION: Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240

ADDRESS: 1011 Brandywine Lane

CURRENT ZONING: Residential 9600

EXISTING LAND USE: Vacant

PROPOSED USE: Accessory building for storage

SIZE OF PARCEL: Tract 1A 3.631 acres, Tract 1B 2.502 acres

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

There have not been any variances within this subdivision, the nearest similar variance was #270 in December of 2014, that property had a home on it with a large detached building.

County Variance #270 – 1336 Cimmaron Pass – Conditionally approved December, 2014 – A variance from 27-310(j) requiring a maximum accessory building size of 1,500 square feet to allow a maximum accessory building size of 2,100 square feet.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Residential 9600 (R-96)
 Land Use: Residential

SOUTH: Zoning: Community Commercial (CC)
 Land Use: Commercial / Vacant Lane

EAST: Zoning: CC and R-96
 Land Use: Commercial / Residential

WEST: Zoning: R-96
 Land Use: Residential

BACKGROUND

This is a request for a variance from Section 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96) on Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane. A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residence.

The two property owners have requested this variance to be able to construct a 3,200 square foot storage building on each lot. In the zoning code definitions they define a ‘Principal Use’ and ‘Accessory’. The different uses are based on the zoning. This property is zoned Residential 9600.

In the Unified Zoning Regulations:

Sec. 27-201. - Definitions.

- *Accessory*: A use, building or structure, part of a building or other structure, which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot, including a private garage.

(1) *Attached accessory structure*: Any structure or building which has any roof or wall in common with the principal structure. For purposes of zoning, an attached accessory structure is considered part of the principal structure.

(2) *Detached accessory structure*: Any structure or building which does not have any roof or wall in common with any principal structure or building. For purposes of zoning, a detached accessory structure must maintain a minimum distance of six (6) feet from any other building or structure.

Principal use: The primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory. The uses listed in BMCC sections 27-305 and 27-306, District Regulations, are principal uses.

The definitions outline what is a principal use of the land. In this case Residential 9,600 requires the principal use is a residential dwelling. Accessory uses in residential zoning districts are incidental to that

of the main building (the residence). The definition specifically includes a private garage.

The "accessory" use that is allowed on a parcel of land must have the "principal" use in place before the accessory structure is allowed. In residential zoning the main use - a residence- must be in place or under concurrent construction before a detached accessory structure can be established. This is not the case for agricultural zoning districts such as Agriculture Suburban (A-S) or Agriculture-Open Space (A-1). The principal uses in these zoning districts is for agriculture so detached accessory buildings - to house livestock, agricultural equipment or products - are allowed without a residence. (See attachments Section 27-305 District Regulations: Residential Uses)

All zoning districts where residential dwellings are the principal uses allow accessory uses only after or concurrently with the establishment of a residence. Districts where principal uses are not residential but agricultural (A-1 or A-S) accessory building including shops, garages, barns, greenhouses, kennels and similar uses can be established in absence of a residence. The first use listed in the use table at 27-305 is "Accessory Uses and Structures Associated with a Permitted Principal Structure". A detached garage is considered an accessory use as defined in Section 27-310. If there were a principal use on the property then the applicant would be allowed to put a maximum detached structure of 1,500 square feet on the property. In addition, Section 27-310 (4) allows up to 3,000 square feet of detached structures as long as they don't go over maximum lot coverage. All of this is contingent on the detached structures not exceeding the principal use square footage of the residence in residentially zoned areas.

Sec. 27-310. - Supplemental area, yard and height restrictions.

(j)(2) Garages, carports and other accessory buildings attached to a dwelling shall be considered to be part of the dwelling and setbacks shall be the same as those required for such dwelling. In addition, garages and carports attached to the dwelling that have their approach from a street shall be setback from that street property line a minimum of twenty (20) feet or meet the front setback in the zoning district in which it is located, whichever is greater.

(3) The maximum size allowed for detached accessory structures shall be based on the following criteria, based on the size of the lot:

— Lots containing less than one-quarter (.25) acres = one thousand (1,000) square feet maximum size.

— Lots containing one-quarter (.25) acres up to one (1) acre shall use the following formula: $(667 \times \text{lot acreage}) + 833 = \text{maximum detached structure size}$

— Lots containing more than one (1) acre = one thousand five hundred (1,500) square foot maximum size.

This provision shall not apply in the Agricultural-Open Space or Agricultural-Suburban zoning districts.

(4) The maximum total square footage in detached accessory structures on any lot shall not exceed three thousand (3,000) square feet or that amount which, when added to the square footage of the principal structure(s), will achieve the maximum lot coverage allowable in that district, whichever is less. This three thousand (3,000) square foot limit shall not apply in the Agricultural-Open Space zoning district.

According to the letter submitted by the property owners, they bought the property within the past year. They would like to build detached structures for more inside storage space.

The site plan that was submitted with the application shows a future house on the northern lot, Tract 1A, on the eastern side. They also show that there is a current septic drain field and an existing gas line and electrical available from the east side of the lot.

The second proposed building on the southern lot, Tract 1B, does not show a future house or

any utilities to the lot. However this lot is owned by Jeff Isom and Cindy Taul who own Lot 1A, Block 5, 2821 Saratoga Trail, the parcel that is on the south east corner of Saratoga Trail and Brandywine Lane. These two parcels share a common lot line.

The applicant for Tract 1A shows a future principal use - a residence. The shop building could be built first if the home were built within a defined time frame. They are allowed to have 3,000 square feet of detached structures. In this case they are asking for one building instead of splitting the square footage into 2 structures. The proposed 3,200 square foot shop is still exceeds the maximum for accessory building area by 200 square feet. The total floor area square footage of the principal structure would have to be at least 3,200 square feet to maintain the principal use at least equal or greater than the accessory use. With 3.631 acres they would not be over the maximum of 30% lot coverage with the buildings.

Tract 1B could be viewed the same way with the need to build a principal structure within a defined time frame. They could also aggregate Tract 1B with Lot 1A, Block 5, within a defined time frame, which would give them the principal use structure on the 'new' lot to make it conform to zoning requirements. The only issue would be that they currently have a detached structure on Lot 1A, Block 5 that is 1,800 square feet so to comply with this variance request the new building could only be 1,400 square feet to give them the 3,200 square feet they are asking for in the variance.

One other option that could be considered would be to attempt to rezone both tracts to the same zoning as property to the south, Community Commercial, or to Agriculture Suburban, that allows shops, barns and similar structures without establishing a residence first. The A-S zoning would allow a single shop building of 3,000 square feet for each lot. They could then build detached structures the size they would like and in this zoning it is also an allowed use to build a residence.

While doing research for this variance staff found 12 surrounding properties with detached structures on them. Some had multiple structures while others had one. The total sizes ranged from 649 square feet to 2,735 square feet. The storage units south and east of the subject properties in CC zone have multiple buildings on their site. The 4 buildings in the middle of the mini-storage development are 3,840 square feet each.

Staff has not received any comments from surrounding neighbors.

RECOMMENDATION

The Planning Division is recommending denial. There is no hardship with the land that prevents the owners from using it in accordance with the zoning regulations to construct a residence and accessory structures at the same time and at the required size for detached accessory buildings.

Attachments

Section 27-305 District Regulations: Residential Uses

Determinations

Attachments

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

Sec. 27-305. District Regulations: Residential Uses.

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
ACCESSORY USES AND STRUCTURES ASSOCIATED WITH A PERMITTED PRINCIPAL STRUCTURE	A	A	A	A	A	A	A	A	A	A	A	A	A
AGRICULTURAL USES	A	A											
AMATEUR RADIO ANTENNA SUPPORT STRUCTURES: - 100 FEET OR LESS IN HEIGHT (SEE SECTION 27-619 FOR ADDITIONAL REQUIREMENTS) - GREATER THAN 100 FEET IN HEIGHT	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR	A SR
AUCTION HOUSES (EXCLUDING LIVESTOCK)	SR												
AUCTION YARDS (INCLUDING LIVESTOCK)	SR												
BLACKSMITHS	A												
BOARDING, LODGING, AND BED AND BREAKFAST HOUSES	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
BROADCASTING (RADIO AND TELEVISION) STATIONS AND STUDIOS AND ANTENNA SUPPORT STRUCTURES (SEE SECTION 27-621 FOR ADDITIONAL REQUIREMENTS). - ALTERNATIVE ANTENNA SUPPORT STRUCTURES LOCATED ON SCHOOL, GOVERNMENT-OWNED UTILITY AND OTHER GOVERNMENT SITES.	A	A	A	A	A	A	A	A	A	A	A	A	A

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
<ul style="list-style-type: none"> - ROOF-MOUNTED ANTENNAE LOCATED ON SCHOOL, GOVERNMENT-OWNED UTILITY AND OTHER GOVERNMENT SITES. - ANTENNAE CO-LOCATED ON EXISTING OR APPROVED ALTERNATIVE ANTENNA SUPPORT STRUCTURES OR ANTENNA SUPPORT STRUCTURES. - ANTENNA SUPPORT STRUCTURES 50 FEET OR LESS IN HEIGHT (SEE ADDITIONAL REQUIREMENTS IN SECTION 27-621). - ANTENNA SUPPORT STRUCTURES GREATER THAN 50 FEET IN HEIGHT - BROADCAST ANTENNA OR TOWER FARM 	A	A	A	A	A	A	A	A	A	A	A	A	A
	A	A	A	A	A	A	A	A	A	A	A	A	A
	A												
	SR												
	SR												
CAMPGROUNDS, PUBLIC OR PRIVATE	SR	SR											
CEMETERIES	A	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
CHILD CARE FACILITIES:													
<ul style="list-style-type: none"> - Family day care home - Group day care home - Day care center 	A	A	A	A	A	A	A	A	A	A	A	A	A
	A	A	A	A	A	A	A	A	A	A	A	A	A
	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
CHURCHES AND OTHER PLACES OF WORSHIP, INCLUDING SUNDAY SCHOOL BUILDINGS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
COMMUNITY RESIDENTIAL FACILITIES SERVING EIGHT (8) OR FEWER PERSONS, PROVIDING CARE ON A 24-HOUR-A-DAY BASIS	A	A	A	A	A	A	A	A	A	A	A	A	A

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
COMMUNITY RESIDENTIAL FACILITIES SERVING NINE (9) OR MORE PERSONS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
COMMUNITY RESIDENTIAL FACILITIES NOT PROVIDING CARE ON A 24-HOUR-A-DAY BASIS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
COMMERCIAL ANTENNA SUPPORT STRUCTURES: – ALTERNATIVE ANTENNA SUPPORT STRUCTURES LOCATED ON SCHOOL, GOVERNMENT-OWNED UTILITY AND OTHER GOVERNMENT SITES. – ROOF-MOUNTED ANTENNAE LOCATED ON SCHOOL, GOVERNMENT-OWNED UTILITY AND OTHER GOVERNMENT SITES. – ANTENNAE CO-LOCATED ON EXISTING OR APPROVED ALTERNATIVE ANTENNA SUPPORT STRUCTURES OR ANTENNA SUPPORT STRUCTURES. – ANTENNA SUPPORT STRUCTURES 50 FEET OR LESS IN HEIGHT (SEE ADDITIONAL REQUIREMENTS IN SECTION 27-620). – ANTENNA SUPPORT STRUCTURES GREATER THAN 50 FEET IN HEIGHT. – TOWER FARMS.	A A A A SR SR	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A	A A A A A A
CONVALESCENT NURSING HOMES, RETIREMENT HOMES, ORPHANAGES, AND CHARITABLE INSTITUTIONS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
CONVENTS	SR	SR	SR	SR	SR		SR		SR	SR	A	A	SR
DWELLINGS: - Single-family - Two-family - Multiple-family - Manufactured Homes - Class A - Class B - Class C - Modular Homes - Farm Tenant Houses	A A A SR A A	A A SR SR A	A A SR SR A	A A SR SR A	A A A A A	A A A A A	A A A A A	A A A A A	A A A SR A A	A A A A A	A A A A A	A A A A A	A A A A A
EMERGENCY SERVICES, INCLUDING FIRE STATIONS AND AMBULANCE SERVICES	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
EXTRACTIVE INDUSTRIES: - Excavation of sand and gravel (county) - Excavation of sand and gravel (city)	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
FRATERNITY/SORORITY HOUSE									SR		A	A	
FUR FARMS	SR												
GRAIN ELEVATORS: - Commercial - Private	SR A												
GREENHOUSES: - Commercial - Domestic	A A	SR A	SR A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A
GUN AND ARCHERY RANGE: INDOOR AND/OR OUTDOOR	SR												
HOME OCCUPATIONS	A	A	A	A	A	A	A	A	A	A	A	A	A

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
KENNELS: - Commercial - Noncommercial	A A	SR A	A	A	A	A	A	A	A	A	A	A	A
LANDFILLS: RECLAMATION, SANITARY DUMP SITES AND SANITARY INCINERATORS	SR												
LIBRARIES, MUSEUMS AND ART GALLERIES	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
LIVESTOCK: COMMERCIAL FEEDING YARDS AND AUCTION HOUSES	SR												
LIVESTOCK AND FOWL * (County Only) * See BMCC Section 27-607 for Minimum Area Requirements	A*	A*	A*	A*			A*						A*
LUMBER, PLYWOOD AND SHINGLE MILLS	SR												
MANUFACTURED HOME PARKS	SR	SR	SR										A
NEIGHBORHOOD CONVENIENCE STORE (County Only)		SR	SR	SR	SR	SR	SR	SR	SR	SR	A	A	SR
PARKING, PUBLIC	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
PIPELINES AND DISTRIBUTION LINES (OIL AND GAS) AND ACCESSORY STRUCTURES	SR												
PUBLICLY-OWNED OR GOVERNMENT OPERATED BUILDINGS AND USES	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
RECREATION: - Commercial - Noncommercial	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A

ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
RODEOS AND INDOOR AND/OR OUTDOOR ROPING ARENAS	SR												
SCHOOLS (PUBLIC OR PRIVATE): - Preschool, elementary, junior or senior high - Colleges and universities - Trade or vocational-technical	SR SR SR	SR SR SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
STABLES: - Commercial - Private * * See BMCC Section 27-607 for minimum Area Requirements	A A*	SR A*	A*	A*				A*					A*
TRANSMISSION AND DISTRIBUTION LINES (ELECTRIC) AND ACCESSORY STRUCTURES	SR												
TRAVEL TRAILER PARKS	SR	SR											
UTILITIES (PUBLIC SERVICE INSTALLATIONS): - Station only - Storage yard	A SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
VETERINARY CLINICS: - Boarding - Outpatient only	A A	SR SR											

DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 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 that are peculiar to the land that create a hardship that is applicable to the subject property. The applicants would like to build accessory structures that are larger than allowed by code and also without having a principal structure already constructed on site.

- 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;**

Staff is aware of at least 1 similar variance in the surrounding area. That variance was for a smaller building, 2,100 square feet, and there was a principal use structure on the lot. Denial of the requested variance would not deprive these owners of rights commonly enjoyed by other tracts 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 the variance would confer on the applicants a special privilege that is denied other land in the district. Accessory structures are allowed in the district although other accessory structures in the area are generally smaller and have a principal structure, granting a privilege to the applicants not afforded others in the same zoning district.

- 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 granting of this variance would not conflict with the Yellowstone County and City of Billings 2008 Growth Policy. It would conflict with zoning requirements for Residential 9600 zoned land, ie principal structure with or before accessory structure.

- 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 denial of the variance, however should the County Board of Adjustment approve the variance staff would recommend the following conditions of approval:

Staff is recommending conditions of approval as follows:

1. A variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96). A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residences. No other variance is intended or implied by this approval.

2. The variance is limited to Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane.
3. A principal building, residence, must be constructed within 5 years of this variance approval on both Tracts 1A and 1B, C/S 3240.
4. The owners of Lot 1A, Block 5, generally located at 2821 Saratoga Trail, Jeff Isom and Cindy Taul owners, could as an alternative to Condition 3 aggregate the lot they currently have a house on with the tract of land to make one lot which would give them a principal use on the 'new' lot. Then construct an additional detached structure of 1,400 square feet to give them a maximum of 3,200 square feet as requested in the variance. The aggregation would need to be done within 2 years of approval of the variance.
5. The use of the new accessory building will be limited to the personal use of the property owners.
6. No construction will take place before 7 am or after 8 pm.
7. Failure to begin or complete actions by the time specified will void the variance granted.
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.

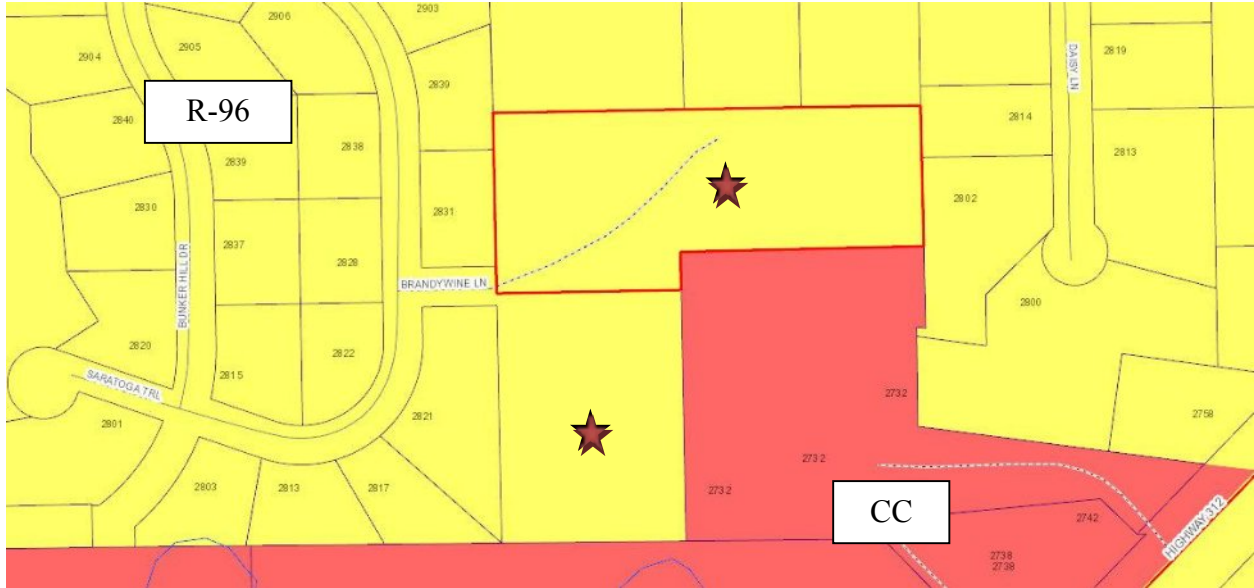
6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and
 Staff has recommended denial of the requested variance however, should the County Board of Adjustment conditionally grant this variance the applicants have 5 years to build a principal use structure, a residence, on their respective tracts. If Jeff Isom and Cindy Taul should choose to follow Condition 4 they have 2 years to aggregate their 2 adjoining parcels.

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.
 Accessory structures on residential property are allowed uses. Granting of this variance would not allow a use that is prohibited.

ATTACHMENTS:

- A: Subject Property and Surrounding Zoning
- B: Photos of the Subject Property and Surrounding Area
- C: Site Plan
- D: Applicant Letter and Application

ATTACHMENT A
Subject Property and Surrounding Zoning



Subject Properties ★

ATTACHMENT B
Photos of the Subject Property and Surrounding Area



Subject property



Looking at northern subject property



Looking at southern subject property



View west of subject property



View of neighborhood west of subject property

ATTACHMENT D
Applicant's Letter

CHAIRPERSON of the BOARD of ADJUSTMENT

We purchased 1011 Brandywine Lane within the past year. It needed a lot of cleaning up. We started by brush mowing and controlling the weeds. We filled in large ditches and holes and brought in lots of dirt to do this. Zoning Regulations limit the size of a detached building to 1500 sq. ft. We need more inside storage space and would like a variance to build a 3200 sq.ft. monitor style building. Sometime in the future we would like to build a house on the east end of the property. There is power, gas, and a well on the property.

Thank you for your consideration.

Larry Vaira Kathy Vaira

Larry and Kathy Vaira
2822 Saratoga Trail
Billings, MT 59105
406-489-1096



APPLICATION

APPLICATION FORM

COUNTY VARIANCE County Variance # 272 - Project # PEH-15-00062 ^{P2}

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

TAX ID # D05023 + D05023A COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property: Tracts 1A and 1B of C/S 3240, R26E
Block 3, Lot 6 Tract 1A + 1B

Address or General Location (If unknown, contact County Public Works): _____

1011 Brandywine Lane, Billings, MT 59105

Zoning Classification: R9600

Size of Parcel (Area & Dimensions): 3.631 acres / 2.502 acres

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: 3200 sq ft Building on each Tract

Facts of Hardship: Need more inside storage

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



Owner(s): Larry Vaira
(Recorded Owner)
2822 Saratoga Trail, Billings, MT 59105
(Address)
406-489-1096 lvaira@midrivers.com
(Phone Number) (email)

Agent(s): Jeff Isom + Cindy Taul
(Name)
2821 SARATOGA TRAIL
(Address)
406.670.6419 Billings MT rockyr@comcast.com
(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: Larry Vaira [Signature] Date: 1-2-2015
(Recorded Owner)



County Board of Adjustment

Meeting Date: 02/12/2015

SUBJECT: County Variance 271 527 Klenck Lane-Wireless Tower

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: David Green

Information

REQUEST

County Variance #272: This is a variance from 27-620(g) 11, requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower in a Heavy Industrial (HI) zone on a 2,252 square foot leased portion on the north end of an unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane. Tax ID: D05451, Marte M Nelson Trust owner, Kevin T Howell, Digital Skylines, Inc. agent representing Verizon Wireless.

RECOMMENDATION

The Planning Division is forwarding a recommendation of conditional approval.

APPLICATION DATA

OWNER: Marte M Nelson Trust (Attn: Steve Nelson)

AGENT: Kevin T Howell, Digital Skylines, Inc. agent representing Verizon Wireless

LEGAL DESCRIPTION: Unplatted 11.37-acre parcel in Section 26, T1N, R26E

ADDRESS: 527 Klenck Lane

CURRENT ZONING: Heavy Industrial

EXISTING LAND USE: Agriculture

PROPOSED USE: Open field with cell tower in the north corner

SIZE OF PARCEL: 11.37 acres of which the tower will use 2,252 square feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

No County variances were found in this neighborhood although there have been several special reviews for industrial businesses and some zone changes.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Heavy Industrial (HI)
Land Use: Undeveloped Treed ground

SOUTH: Zoning: No Zoning
Land Use: Railroad Right-of-Way

EAST: Zoning: HI
Land Use: Commercial

WEST: Zoning: Controlled Industrial
Land Use: Commercial

BACKGROUND

This is a request for a variance from Section 27-620(g) 11, requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower.

According to the letter submitted by the representative for Verizon Wireless this tower will better serve some residents in the Heights without having to place another tower in the Heights. This site will also serve the eastern portion of the Metra and visitors to the Metra. If they were to collocate on another tower they most likely would not be able to provide service into the Heights and Metra area.

The subject property is in an industrial area of Lockwood and would not be next to any housing. Staff mailed out surrounding property owner notices and we have not received any comments from any surrounding property owner.

Staff is forwarding a recommendation for conditional approval of the variance request. The additional wireless communication tower will provide better serves to people in the surrounding area.

RECOMMENDATION

The Planning Division is recommending conditional approval.

Attachments

Determinations

Attachments

DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 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 that are peculiar to the land that create a hardship on the subject property. The applicant is required by zoning code to get a variance for a cell tower over 50 feet tall and within 1 radius mile of another wireless communication tower.

- 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 several other cell towers in the area but they are not over 50 feet tall. Denial of the requested variance would make the applicant unable to provide the service they are trying to achieve in the Billings area.

- 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 the variance will not confer on the applicant a special privilege that is denied other land in the district. Wireless towers are an allowed use in this district but if they are over 50 feet tall and within 1 radius mile of another wireless tower they have to go through a variance process.

- 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 granting of this variance will not conflict with the Yellowstone County and City of Billings 2008 Growth Policy, granting this variance would provide better wireless services in the area.

- 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 conditions of approval as follows:

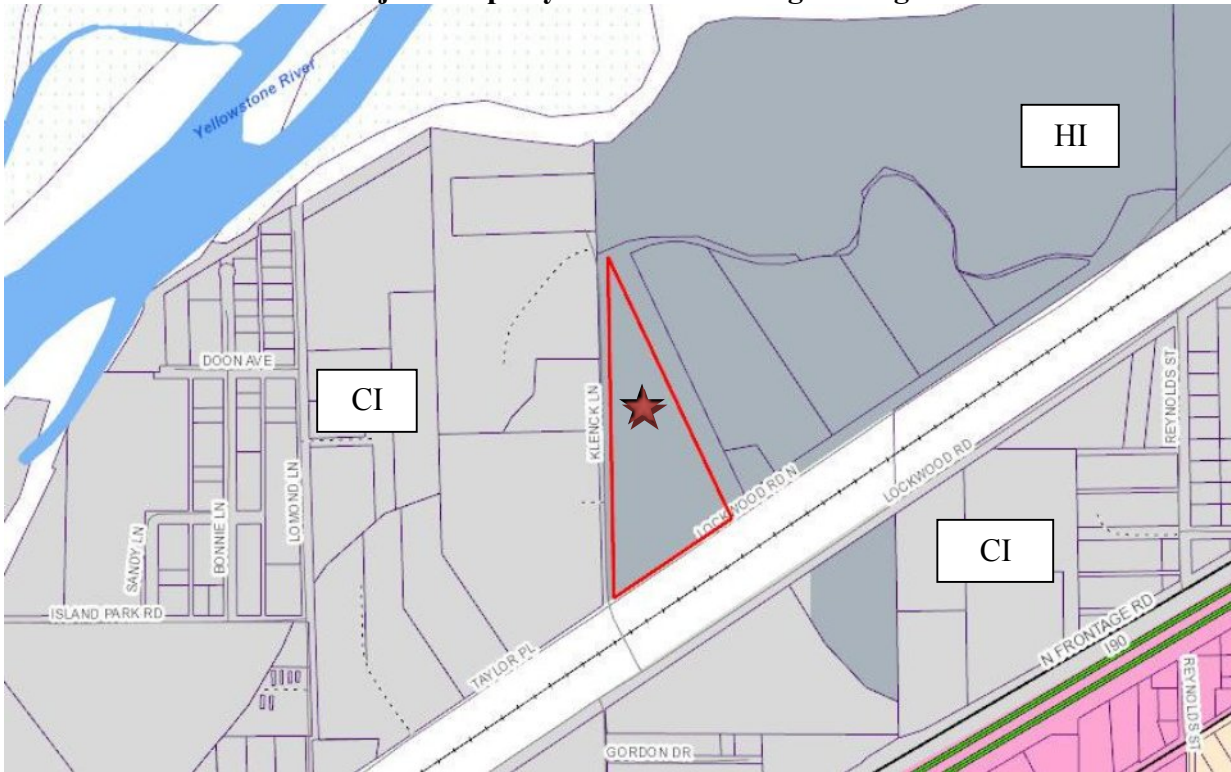
1. The variance requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower. No other variance is intended or implied by this approval.
2. The variance is limited to Unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane.
3. The wireless tower shall be constructed in substantial conformance to the drawings submitted to the planning department with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.

5. The owner will submit a building permit application within 3 years of Board of Adjustment approval and complete the construction within 4 years of Board of Adjustment approval.
 6. Failure to begin or complete the approved actions on the variance will void the approved variance.
 7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
- 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**
Staff recommends the applicant be required to submit a building permit application within 3 years and complete the project within 4 years of the 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.**
Wireless towers are an allowed uses within this district. Granting of variance will not allow a use that is prohibited.

ATTACHMENTS:

- A: Subject Property and Surrounding Zoning
- B: Photos of the Subject Property and Surrounding Area
- C: Site Plan
- D: Applicant Letter and Application

Attachment A
Subject Property and Surrounding Zoning



Subject Property ★

Attachment B
Photos of the Subject Property and Surrounding Area



Subject property looking north



Looking east across subject property



View west from subject property



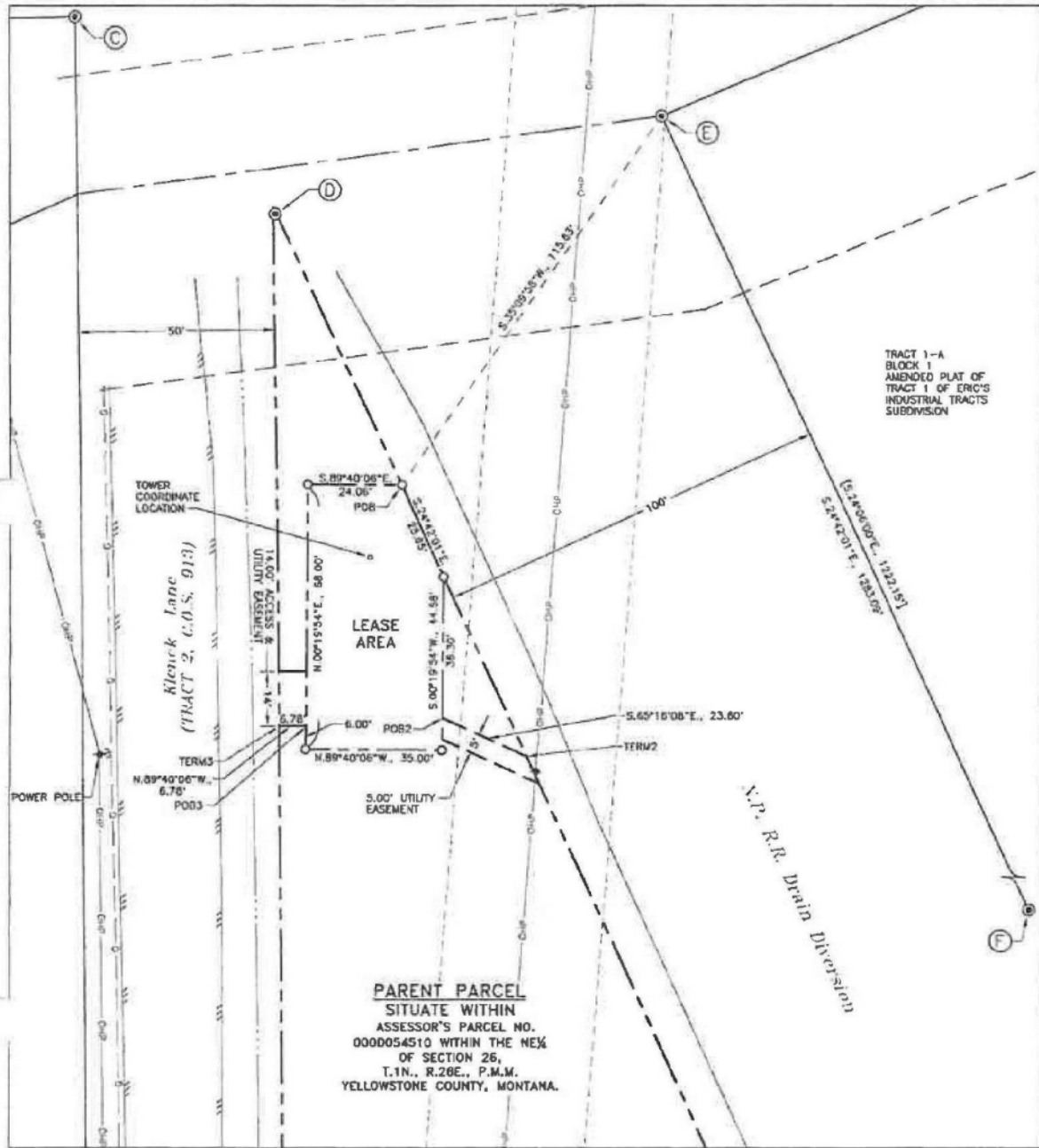
North corner of subject property



View of wireless tower 3500 feet from proposed wireless tower, at the intersection of Steffes Road (to the left) and Lockwood Road.



Attachment C
Site Plan



EASEMENT AND LEASE AREA OVERVIEW

SCALE: 1" = 30'

Attachment D
Applicant's Letter



December 30, 2014

Chairperson
Yellowstone County Board of Adjustment

Dear Chairperson,

Verizon Wireless is proposing a 100 foot tower and 12' x 26' equipment shelter at 527 Klenck Lane, Billings, MT 59101. This is a vacant lot and is zoned heavy industrial.

There are trees to the east, and a trucking company to the west. The Yellowstone River is to the north. The property is triangular in shape and Verizon Wireless is proposing to use the point of the triangle. This is typically a mostly unusable area for commercial or industrial development.

Verizon Wireless is requesting this variance because there is another wireless tower within 1 mile. That tower serves the freeway well, but it is not centered to serve the population in this area of Billings. The proposed Verizon Wireless site is further north and will serve some population in the Heights as well as the freeway and areas south of the Yellowstone River.

Because there are many factors that go into determining an exact build date for a new wireless communications facility, Verizon Wireless would like to request that the variance, if approved, be in effect for three years.

Thank you very much for hearing this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Howell".

Kevin Howell
President, Digital Skylines, Inc.
Representing Verizon Wireless



Yellowstone County
Variance Application
Klenck Lane / Verizon Wireless site BIL Lockwood

Supplemental Information Enclosed:

1. Answer the following questions:
 - A. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?
The zoning regulations call for a one mile radius between wireless towers, even in Heavy Industrial. Verizon Wireless would like to place a tower further to the north than the existing tower. If the tower is further north it will allow Verizon Wireless to be better centered in the population and not just serve the freeway and minimal population south of the freeway. The tower will serve some population in the Heights without having to place another tower in the Heights. The site is also designed to serve the eastern portion of the Metra and visitors that attend events there. The closer we place towers to the population that is utilizing them, the more effective the tower is. The major obstacle to collocating on the existing tower is that the desired population may not be served well, which would trigger the need for another site farther north.
 - B. Why is there a need for the intended use of the property at this location?
People are using wireless technology at a huge rate. Nationally, 41% of homes have no landline at all and rely on wireless technology exclusively for all of their calls. That means that over 2 of every 5 homes have no way to call 911 except over wireless. Verizon Wireless is trying to keep up with the demand. Verizon Wireless is working on more than a dozen new wireless sites in the metro Billings area. This proposed site would support both voice calls and wireless data.
2. Prepare a written statement addressed to the Chairperson of the Board of Adjustment. State what is intended to be done with the property, including new construction or change in the use of the property, and why the variance is being sought.
A written statement addressed to the Chairperson of the Board of Adjustment is attached.

COUNTY VARIANCE

APPLICATION FORM
ID: County Variance # 271 - Project # PZ-15-00001

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

TAX ID # D05451 COUNTY COMMISSIONER DISTRICT # 1

Legal Description of Property: S26, T01 N, R26 E, FRAC W PART SENE & NESE W OF RY DRAIN DITCH & 50' STRIP ON W SIDE OF SENE NESE

Address or General Location (If unknown, contact County Public Works): 527 Klenck Lane, Billings, MT 59101

Zoning Classification: Heavy Industrial

Size of Parcel (Area & Dimensions): 2252 Sq. Ft.

Covenants or Deed Restrictions on Property: Yes _____ No x

If yes, please attach to application

Variance Requested: Approval to build a 95' self-support cell tower at lat/lon 45 48 27.86 / -108 26 59.77

Facts of Hardship: There is an existing wireless tower within 1 mile of Verizon Wireless' proposed location. While that tower serves the freeway well, it cannot cover the area to the north including the population in the Heights as well as the freeway and areas south of the Yellowstone River. The proposed new site will allow continuous coverage and capacity throughout this area of Billings.

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

Owner(s): Marte M Nelson Trust (Attn: Steve Nelson)
(Recorded Owner)
3007 Radcliffe Drive, Billings, MT 59102
(Address)
(406) 259-9168 steve@stevensontrucking.com
(Phone Number) (email)

Agent(s): Kevin T. Howell, President, Digital Skylines, Inc. Representing Verizon Wireless
(Name)
11340 N 105th Place, Scottsdale, AZ 85259
(Address)
(480) 425-9353 khowell@digitalskylines.com
(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:  Date: 12-24-14
(Recorded Owner)