



**ATTACHMENT B**  
**Photos of the Subject Property and Surrounding Area**



Subject property



Looking north across west end of subject property



Looking east across subject property toward homes to the south



View west from subject property



**ATTACHMENT D**  
Application and Applicant letters  
**APPLICATION FORM**  
COUNTY VARIANCE 274

The undersigned as owner(s), contract purchaser(s) or agent(s) of the following described property hereby request a Variance from the terms of the City of Billings-Yellowstone County Unified Zoning Regulations. Comm Dist: 1

Legal Description of Property: Tracts 1, 2, 3, and 4 of COS 3191 D00758; D00759; D00760; D00761

Address or General Location (If unknown, contact County Public Works): 1839 S. 56<sup>th</sup> Street West

Zoning Classification: Agricultural Suburban

Size of Parcel (Area & Dimensions): 37.1986 Acres

Covenants or Deed Restrictions on Property: Yes x No       
If yes, please attach to application.

Variance Requested: To allow lot size smaller than allowed by zoning for "cluster development" in accordance with requirements of the subdivision regulations. Overall dwelling density of the parcel(s) is not to exceed the minimum lot size allowed by zone.

Facts of Hardship: A large portion of the parcel(s) is located within the 100-year floodplain of Canyon Creek, which limits development opportunity and precludes the use of drainfields and wells within the floodplain.

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

Owner(s): P3Colman, LLC  
(Recorded Owner)

P.O. Box 1555, Billings, MT 59103-1555  
(Address)

(406) 252-0576  
(Phone Number)

Agent(s): Bryan Alexander – Sanderson Stewart  
(Name)

1300 North Transtech Way, Billings, MT 59102  
(Address)

(406) 656-5255  
(Phone Number)

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:   
(Recorded Owner)

Date: 8/2/15

March 2, 2015

Ms. Nicole Cromwell  
Zoning Coordinator  
City-County Planning Division  
2825 3rd Avenue North, 4th Floor  
Billings, MT 59101

Reference: South Greensleeves Estates Subdivision 02067.27  
Zoning Variance Questions

Dear Ms. Cromwell:

As required by the instructions in the variance application information packet, this letter is being provided in order to address questions A and B in item number 1 of the instructions within the variance application information packet for Yellowstone County. The questions are listed and addressed below:

**A. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?**

The property in which the zoning variance is requested is located along Canyon Creek and a large portion of the property is located within the 100-year floodplain of Canyon Creek. The 100-year floodplain limits the area available for use of drainfields and wells and requires floodplain permits for development within the floodplain area. The cluster development section of the subdivision regulations allows the developer to create smaller lots than allowed by zoning as long as the overall property maximum density is not exceeded, though a zoning variance is still required. The smaller residential lots preserve the floodplain areas and other riparian and wildlife areas along Canyon Creek (over 15 acres), while allowing creation of enough lots for a viable subdivision project.

**B. Why is there a need for the intended use of the property at this location?**

There is a need in the housing market for homes on larger-acreage lots located outside the City of Billings Limits. The developer is out of available lots at the neighboring Greensleeves Estates located adjacent to the property north of Canyon Creek and demand for additional lots is high.



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Ms. Nicole Cromwell  
March 2, 2015  
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The proposed subdivision provides a unique residential development with its proximity to Canyon Creek and accessibility to walking trails along the creek and associated riparian areas, which are being preserved by development of the subdivision utilizing the cluster development approach and associated smaller lot size.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Alexander', is written over the typed name.

Bryan S. Alexander, PE  
Senior Engineer

BSA/hg

Enc.

P:02067.27\_Variance\_Questions\_AB\_030215\_SC

March 2, 2015

Ms. Carolotta Hecker  
Chairperson  
Board of Adjustment  
2825 3rd Avenue North, 4th Floor  
Billings, MT 59101

Reference: South Greensleeves Estates Subdivision, Zoning Variance Request  
Project Number 02067.27

Dear Ms. Hecker:

A zoning variance is being sought to allow lot sizes smaller than allowed in the zoning ordinance and as required by the “cluster development” process. The proposed subdivision has been reviewed and received preliminary plat approval as a “cluster development” as described in Chapter 7 of the 2013 Amended Yellowstone County Subdivision Regulations. The regulations for cluster developments state that the maximum number of dwelling units shall be calculated by dividing the gross area of the subject property, including the open space, by the required lot area of the underlying zoning district. The underlying zoning is Agricultural Suburban, which has a minimum lot area requirement of 1 acre. Given the gross area of 37.1986 acres in the subdivision, a maximum of 37 lots would be allowed based on the calculation in the regulations. The subdivision contains a proposed 25 residential lots and 3 common/open space lots or approximately 1.5 gross acres per residential lot. Approximately 17.5 acres is to be preserved as open space, 15 acres of which will be located adjacent to Canyon Creek.

The subject property, prior to construction of the subdivision improvements, contained a single-family residence, agricultural land, and riparian areas near Canyon Creek. Subsequent to the preliminary plat approval of the subdivision, new public roads, dry hydrant, community drainfields, and stormwater infrastructure have been installed on the subject property in accordance with the subdivision improvements agreement. 25 single-family residential lots are proposed within the development, which range in size from 27,116 square feet to 54,325 square feet.

The cluster development and associated lot density proposed is intended to preserve the wildlife habitat, stream corridor, riparian areas, and floodplain/floodway of Canyon Creek. The proposed subdivision appears to meet the purpose stated in the subdivision regulations for cluster developments. The project has been reviewed by Planning Staff, Planning Board, gone through the



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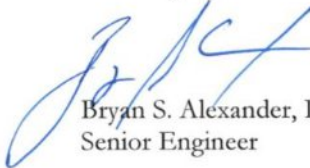
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Ms. Carolotta Hecker  
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public hearing process, and has received preliminary plat approval from the Board of County Commissioners based on the cluster development and major subdivision plat criteria.

Please review the requested zoning variance. Attached is a copy of the draft final plat, preliminary plat approval letter, exhibit, and Chapter 7 of the Yellowstone County Subdivision Regulations.

Sincerely,



Bryan S. Alexander, PE  
Senior Engineer

BSA/hg

Enc.

P:02067.27\_Zoning\_Variance\_Ltr\_030215\_SC

# Yellowstone County



**JEFF MARTIN**  
Clerk & Recorder  
P.O. Box 35001  
Billings, MT 59107-5001

Phone (406) 256-2785  
Fax (406) 256-2736  
Email: [jmartin@co.yellowstone.mt.gov](mailto:jmartin@co.yellowstone.mt.gov)

July 10, 2014

**RECEIVED**  
JUL 11 2014

JSK Properties, LLC  
PO Box 1555  
Billings, MT 59103

Sanderson Stewart

To Whom It May Concern:

Please be advised the Board of County Commissioners of Yellowstone County, Montana, at their regularly scheduled Board meeting on Tuesday July 8, 2014, voted to conditionally approve Major Preliminary Plat South Greensleeves Estates Subdivision, with the following conditions:

1. To minimize effects on local services, the Homeowners' Association shall be established concurrent with the final plat recording. Articles of Incorporation, Covenants, Conditions & Restrictions, and any other appropriate documents for its creation shall be provided with the final plat documents.
2. To minimize effects on local services, prior to final plat approval or vertical construction on the property, the 30,000 gallon dry hydrant system shall be installed as approved by the Billings Fire Department and a Rural Special Improvement District – Maintenance (RSID-M) shall be created for its maintenance.
3. To ensure the requirements of Cluster Developments are maintained for open space, before final plat the applicant must provide an irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels.
4. To minimize the effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be approved by the County Weed Department.
5. To minimize the effects on local services, prior to final plat approval the subdivider shall provide written verification that the US Postal Service has approved the mail facilities for this subdivision.
6. To ensure compliance with zoning, a note shall be added to Section II of the final SIA indicating that Zoning Compliance Permits shall be submitted for review and approved by the City-County Planning Division prior to construction on the lots.
7. To minimize the effects on local services, prior to final plat approval a Rural Special Improvement District (RSID) will be created to provide maintenance of the interior roads of this subdivision.
8. To ensure the proposed lots are ready for construction and to meet the DEQ requirements, installation of the common drain field systems shall occur prior to final plat approval or financially guaranteed to be

installed before home construction begins and a Rural Special Improvement District – Maintenance (RSID-M) shall be created for its maintenance.

9. To minimize the effects on agricultural water user facilities, irrigation easements shall be shown on the final plat and an easement document shall be recorded with the final plat as specified in Section 4.12 of the Yellowstone County Subdivision Regulations.
10. To ensure clarity of responsibility of future lot owners of what is their required contribution to the Open Space maintenance, the subdivider will clarify the Open Space Management Plan on page 2, under the heading 'Association Expenses' the first sentence: The applicant will clarify how the "members' ownership interest" is determined either by lot size, or all members owning an equal portion of the "common elements."
11. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
12. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, and the laws and Administrative Rules of the State of Montana.

The applicant may appeal to District Court a decision of the County Commissioners approving or rejecting a proposed subdivision plat upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the County Commission. If you have any questions, please contact Dave Green at (406) 657-8684, or stop by the City/County Planning Office located at 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Billings, MT 59101.

Sincerely,



Teri Reitz

Clerk to the Board of County Commissioners  
Yellowstone County, Montana

## **Chapter 7.0 CLUSTER DEVELOPMENTS AND PLANNED NEIGHBORHOOD DEVELOPMENTS. (MCA 76-3-509)**

### **Section 7.1 Purpose.**

The purpose of this Chapter is to promote maximum flexibility in the design of new developments within Yellowstone County and to encourage innovation within a framework of timely, efficient and flexible design review. Developments that utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks, and building heights are encouraged. Cluster developments are encouraged where community resources are present and desirable for protection or preservation. Those areas include but are not limited to wildlife habitat, river and stream corridors, wetlands, historical or archeological sites or prime agricultural lands. Planned Neighborhood Developments are encouraged where the proposed development is in excess of twenty acres and diversity in land use is desirable.

### **Section 7.2 Definitions.**

For the purposes of this Chapter the following definitions shall apply:

**Cluster Development:** A cluster development is a subdivision creating five (5) or more lots clustered in a group that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped. A minimum of 30% of the area within the subdivision shall be reserved for open space owned by common ownership (76-3-103(2), MCA).

**Maximum Density Calculation:** The maximum number of residential dwelling units is calculated by dividing the gross square footage of the cluster development area (including any open space area) by the required lot area in the underlying zoning district. In cases where lots are not zoned, the maximum density shall be calculated by dividing the gross area of the property by the minimum lot area to meet the Montana Department of Environmental Quality (MDEQ) standards.

**Master Plan:** A master plan is a site plan for a Planned Neighborhood Development that shows lots, blocks, streets, alleys and areas for various land uses including open space within the development. The master plan shall be part of the subdivision approval and any significant change to such master plan shall be considered an amended subdivision.

**Planned Neighborhood Development (PND):** A Planned Neighborhood Development (PND) is a subdivision consisting of a planned mixture of land uses such as residential clusters, industrial parks, shopping centers, and/or office building parks built in a prearranged relationship to each other and having open space and community facilities in common ownership or use (76-3-103(10), MCA).

### **Section 7.3 Cluster Development General Requirements.**

- A. Cluster development may be applied to any residential subdivision of five (5) or more lots. The subdivision shall generally conform to the Growth Policy and the underlying zoning district(s) although the lots may be smaller in area than required in the underlying zoning district.
- B. The maximum size of any developed parcel or lot within a cluster development is 175,000 square feet.
- C. A minimum of 30% of the total area within the subdivision shall remain undeveloped in a cluster development. The undeveloped parcel(s) must be protected in perpetuity to prohibit further division of the parcel. (See Section 7.8)
- D. Cluster developments are exempt from the review criteria in Section 3.2.H. of these Regulations (76-3-509(e)(ii), MCA).
- E. Cluster developments are exempt from the parkland dedication requirements in Chapter 10 in so far as the cluster development meets or exceeds the parkland dedication requirements of Section 10.2 of these Regulations.
- F. Cluster developments shall comply with all other requirements of these Regulations.

### **Section 7.4 Design Standards and Applications for Cluster Developments.**

- A. The Cluster Development subdivision shall follow all applicable review procedures, as outlined in Chapter 3 of these Regulations.
- B. **Site Analysis Map.** If an environmental assessment is required as part of the preliminary plat application it should include the following information on a site analysis map:
  - 1. Property boundaries;
  - 2. All streams, rivers, lakes, wetlands and other hydrologic features;
  - 3. Topographic contours with a minimum of 5-foot intervals; where lots are proposed on slopes 10% or less, contours must be shown at 2-foot intervals.
  - 4. All proposed open space areas;
  - 5. General vegetation characteristics;
  - 6. General soil types;
  - 7. The planned location of protected open space;
  - 8. Existing roads and structures;
  - 9. Potential connections with existing open space, parks and trails.
- C. **Open Space Management Plan.** An open space management plan, as described in Section 7.7 of this Chapter, shall be prepared and submitted with the preliminary plat application. The management plan will be reviewed as a supporting document of the

preliminary plat. Review and recommendations to the governing body on the proposed open space management plan will be prepared by the Planning Board.

- D. **Instrument of Permanent Protection Required.** An irrevocable covenant prohibiting further subdivision, division or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, shall be provided for the open space concurrent with the application for final plat approval (76-3-509(2)(c), MCA).
- E. **Maximum Density.** The maximum number of dwelling units shall be calculated by dividing the gross area of the subject property, including the open space, by the required lot area of the underlying zoning district. In the case where the subject property is not zoned, the maximum density shall be calculated by dividing the gross area of the property by the minimum lot area to meet MDEQ standards. Unless prohibited by MDEQ standards, the applicant need not demonstrate the development capability of the land to calculate the maximum dwelling unit density.
- F. **Other Requirements.** The applicant shall adhere to all other applicable requirements of the underlying zoning district(s) with the exception of minimum lot area per dwelling unit (See maximum density above). The proposed number of dwelling units shall not exceed the maximum density but each dwelling unit may be placed on a lot of less than the minimum lot area required by the underlying zoning district(s). Subsequent to a preliminary plat approval, the applicant shall apply for and receive a zoning variance (under Section 27-1500, BMCC) from the minimum lot area required within the zoning district(s).

#### Section 7.5 Open Space.

- A. At least thirty percent (30%) of the gross area of a cluster development shall be reserved as open space.
- B. **Resource Protection Areas.** The following are considered resource protection areas and are required to be included within the open space when present. These resource areas must be mapped and shown on the preliminary plat.
  - 1. The 100-year floodplain.
  - 2. Riparian zones of at least 75 feet in width along all perennial and intermittent streams.
  - 3. Areas of at least 5,000 square feet with percent grade of 25% or greater.
  - 4. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act.
  - 5. Populations of endangered or threatened species, or habitat for such species.
  - 6. Archaeological sites, cemeteries and burial grounds or historic sites listed as such with any state or federal agency.

- C. **Other Resource Areas.** The following are considered important resource areas and may or may not be included within the open space at the discretion of the subdivider.
1. Historic sites or structures not listed as such with state or federal agencies.
  2. Existing native forests or prairie of at least one (1) acre contiguous area.
  3. Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcrops, particularly those that can be seen from public roads.
  4. Prime agricultural lands of at least two (2) contiguous acres.
  5. Existing trails that connect the tract to neighboring areas.
  6. Areas at the base of any ridge line or rimrock of at least one (1) contiguous acre.
- D. Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected open space. Such areas shall make up not more than 5% of the required open space area.
- E. At least 75% of the open space shall be in a contiguous tract of a minimum size of one acre. The open space should adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected open space.
- F. The open space should be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the open space.

**Section 7.6 Permitted Uses of Open Space.**

- A. Uses of Open Space may include the following:
1. Conservation of natural, archeological or historical resources;
  2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
  3. Walking, bicycle trails or other multi-use trails as defined in the Heritage Trail Plan;
  4. Passive recreation areas, such as open fields;
  5. Active recreation areas;
  6. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are adhered to;
  7. Landscaped storm water management facilities approved by the County, community wastewater disposal systems and individual wastewater disposal systems located on soils particularly suited to such uses;
  8. Easements for drainage, access, and underground utility lines; and
  9. Other conservation-oriented uses compatible with the purposes of this Chapter.

**B. Prohibited uses of Open Space.**

1. Golf courses;

2. Roads, parking lots and impervious surfaces, except as specifically authorized in the previous Sections;
3. Agricultural and forestry activities not conducted according to accepted Best Management Practices;
4. Impoundments; or
5. Other activities as determined by the subdivider and recorded on the legal instrument providing for permanent protection.

**Section 7.7 Ownership and Management of Open Space.**

**A. Ownership of Open Space.** Open space shall be owned by one of the following entities:

1. The open space may be dedicated to the public as public parkland. Acceptance of the open space shall be at the discretion of the governing body, as recommended by the Yellowstone County Park Board; or
2. A Homeowners' Association representing residents of the subdivision may own the open space. Membership in the association shall be mandatory and automatic for all homeowners within the subdivision and their successors. The Homeowners' Association shall have lien authority to ensure the collection of dues from all members.

**B. Management Plan.** The subdivider shall submit a plan for management of open space and common facilities (Management Plan) that:

1. Allocates responsibility and guidelines for the maintenance and operation of the open space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
2. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the open space and outlines the means by which such funding will be obtained or provided;
3. Provides that any changes to the Management Plan be approved by the Planning Department, or in the case of publicly owned open space, approved by the Yellowstone County Park Board; and
4. Provides for enforcement of the Management Plan.

**C. Maintenance.**

1. Open space dedicated to the public shall be maintained according to the Management Plan by a Park Maintenance District (PMD) to be established prior to final plat approval.
2. Open space owned by a Homeowners' Association shall be maintained according to the management plan by the Homeowners' Association.

**Section 7.8 Legal Instrument for Permanent Protection of Open Space.**

- A. **Legal Instrument.** Privately owned open space shall be protected in perpetuity by an irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Chapter, as well as any further restrictions the applicant chooses to place on the use of the open space.
  
- B. **Tax Assessment of Open Space.** Once a legal instrument for permanent protection has been placed upon the open space, the Yellowstone County Board of Assessment shall be directed to reassess the open space at a lower value to reflect its more limited use. If the open space is used purely for passive recreational purposes and the terms of the instrument for permanent protection effectively prohibit any type of significant economic activity, then the assessment shall be at a value of zero.