



County of Yellowstone Board of Adjustment
AGENDA-Thursday, October 29, 2015, 4:00 p.m.
(RESCHEDULED FROM 10/01/15)
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

Approval of Minutes:

The minutes of the Board meeting of September 10, 2015, October 1, 2015. (These meetings were not conducted and were rescheduled due to a lack of a quorum of Board members)

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:

1. **Item #1 -Motion/Recommendation. County Variance #277– 321 Calypso, Nicole Cromwell, Zoning Coordinator**– A variance from Section 27-310(j) requiring a minimum side and rear setback of 8 feet for a detached garage over 18 feet in height to allow a 3.5 foot side and rear setback, and from Section 27-310(j) requiring a maximum foot print of 1,500 for any detached garage to allow a 2,100 square foot detached garage in a Residential 15,000 (R-150) zone, on Lot 1, Block 7 of Wells Garden Estates, 4th Filing. The property is a 26,441 square foot parcel of land.

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 (Rescheduled from 10/01)

Meeting Date: 10/29/2015

Information

Subject

The minutes of the Board meeting of September 10, 2015, October 1, 2015. (These meetings were not conducted and were rescheduled due to a lack of a quorum of Board members)

Attachments

YBOA_minutes_2015_09_10

YBOA minutes_2015_10_01



Yellowstone County Board of Adjustment

Minutes

September 10, 2015

The County Board of Adjustment met on Thursday, September 10, 2015 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	02/12/2015	04/09/2015	07/16/2015	09/10/2015								
Bruce Reiersen	Board member	E	1	1	1								
Carlotta Hecker	Chairperson	1	E	E	1								
Delores Terpstra	Board member	1	1	1	E								
Robert Bailey	Vice Chairperson	1	1	1	E								
Blaine Poppler	Board member	-	-	E	1								

Chairperson Hecker introduced the County BOA Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tamara Deines, Planning Clerk

Attending: Jason Frank, Todd Carlson, Tom Stusek, Attorney

Public Comments

Vice Chairperson Bailey 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. Vice Chairperson Bailey closed the public comment portion of the meeting.

Approval of Minutes: July 16, 2015 (The August 13, 2015 meeting was cancelled).

Motion

Boardmember Poppler made a motion and Boardmember Reiersen seconded the motion to approve the minutes of July 16, 2015 as submitted.

The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest: Boardmember Reiersen stated he lives about 3 blocks away from Calypso Drive and has known Todd Carlson for about 15 years. He said he has been around neighbors’ conversations regarding this application and wishes to recuse himself from participating in the hearing for Yellowstone County Variance #277. Mr. Reiersen does not live within 300-feet of the subject property but because of his acquaintance and residence he may not be able to act as an impartial participant in this meeting.

The hearing for Yellowstone County Variance #277 will be scheduled, tentatively for Thursday, October 1, 2015, 4:00 p.m. pending on the confirmation of attendance of the Yellowstone County Board of Adjustment members.

Adjournment:

The meeting adjourned at 5:35 p.m.

ATTEST:

Chairperson Carlotta Hecker, Yellowstone County Board of Adjustment

Tamara L. Deines, Planning Clerk



Yellowstone County Board of Adjustment

Minutes

October 1, 2015

The County Board of Adjustment met on Thursday, October 1, 2015 in the 1st Floor Conference Room, of the Miller Building located at 2925 3rd Avenue North.

Name	Title	02/12/2015	04/09/2015	07/16/2015	09/10/2015	10/01/15	10/29/15							
Bruce Reiersen	Board member	E	1	1	1	E								
Carlotta Hecker	Chairperson	1	E	E	1	1								
Delores Terpstra	Board member	1	1	1	E	E								
Robert Bailey	Vice Chairperson	1	1	1	E	E								
Blaine Poppler	Board member	-	-	E	1	1								

Staff in attendance: Nicole Cromwell, Zoning Coordinator; Tamara Deines, Planning Clerk

Attending: Mark VanderVoort, Todd Carlson, Tom Stusek, Ron Kaurin, Tom & Judy Nickel

Chairperson Hecker announced this meeting will not be conducted due to a lack of a quorum of members.

The hearing for Yellowstone County Variance #277 will be scheduled for Thursday, October 29, 2015, 4:00 p.m.

Adjournment:

The meeting adjourned at 4:15 p.m.

ATTEST:

Chairperson Carlotta Hecker, Yellowstone County Board of Adjustment

Tamara L. Deines, Planning Clerk



County Board of Adjustment (Rescheduled from 10/01)

Meeting Date: 10/29/2015

SUBJECT: Variance 277 - 321 Calypso Street - Detached Garage

PRESENTED BY: Tammy Deines

Information

REQUEST

Item #1 -Motion/Recommendation. County Variance #277– 321 Calypso, Nicole Cromwell, Zoning Coordinator– A variance from Section 27-310(j) requiring a minimum side and rear setback of 8 feet for a detached garage over 18 feet in height to allow a 3.5 foot side and rear setback, and from Section 27-310(j) requiring a maximum foot print of 1,500 for any detached garage to allow a 2,100 square foot detached garage in a Residential 15,000 (R-150) zone, on Lot 1, Block 7 of Wells Garden Estates, 4th Filing. The property is a 26,441 square foot parcel of land.

RECOMMENDATION

The Planning Division is recommending denial of the requested variances based on the findings of the 7 criteria for Variance 277.

APPLICATION DATA

OWNER: Todd Carlson

AGENT: None

LEGAL DESCRIPTION: Lot 1, Block 7

ADDRESS: 321 Calypso Street

CURRENT ZONING: R-150

EXISTING LAND USE: Single family dwelling

PROPOSED USE: Same with 2,140 square foot detached garage (under construction)

SIZE OF PARCEL: 26,441 square feet (.607 acres)

CONCURRENT APPLICATIONS

A Zoning Compliance Permit (PLN-15-02231) - corrections sent to owner/builder on May 11, 2015.

APPLICABLE ZONING HISTORY

The subject property is part of the Wells Garden Estates Subdivision, 4th Filing and has been zoned R-150 since the platting of the subdivision. Staff found 1 variance application on file within the subdivision. This variance was for a side adjacent to street setback for a small detached shed to reduce the setback to 5.5 feet. The shed was under construction and the property owner became aware of the incorrect setback. The variance was denied on June 8, 1990, and the detached shed was moved to meet the 10 foot setback requirement. Two similar variances in surrounding subdivisions have been approved. One was approved for 606 48th Street West to increase the size of a detached garage to 1,500 square feet on a 3 acre parcel of land in a R-150 zone. The garage met the minimum setbacks. The variance was approved in 1999, prior to the change in the zoning regulations that now allows detached garages up to 1,500 square feet on lots of at least 1 acre. Another variance was approved for property in

Shiloh Estates to allow a detached garage on a 1-acre property at 4131 Wells Place. The variance approved a 1,300 square foot garage and the garage met the required setbacks.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-150 Land Use: Single family homes
SOUTH:	Zoning: R-150 Land Use: Single family homes
EAST:	Zoning: R-150 Land Use: Single family homes
WEST:	Zoning: R-150 Land Use: Single family homes

BACKGROUND

Mr. Carlson started construction in the spring of 2015 on a 2,140 square foot detached garage in the north east corner of his property at 321 Calypso Street. Mr. Carlson was not aware of the requirement to apply for a Zoning Compliance Permit or of the required setbacks and maximum building area at the time construction started. A complaint was filed with the County Code Enforcement office and Mr. Carlson subsequently submitted a permit for approval with the Planning Division on April 22, 2015. The permit was reviewed and the noncompliance with size and setbacks was sent by letter to Mr. Carlson on May 11, 2015. He was informed of his option to apply for a variance and he submitted the application on August 3, 2015.

The garage under construction is intended to store Mr. Carlson's collectible and antique cars. The structure has been framed and mostly enclosed but siding, roofing, and interior finishing is not yet complete. The structure is over 18 feet in height and according to the zoning regulations must be setback at least 8 feet from the side and rear property lines. The structure is about 3.5 feet from the rear and side property lines. The structure site plan shows a 2,140 square foot building with a drive approach from Hazelnut Street. The maximum square footage allowed in the R-150 zone is based on the lot size. Lots of less than 1 acre must calculate the maximum foot print based on its acreage increment. This size lot, 26,441 square feet, would allow a 1,238 square foot detached garage. The maximum foot print calculation does not apply in the AS or A-1 zoning districts but does apply in all other residential zones in the County up to a maximum of 1,500 per detached structure.

Mr. Carlson has not stated a hardship with the land that prevents him from constructing the garage at the correct setback or within the maximum size allowed for this size property. An example of a hardship with the land would be the location of poor soils, slopes, septic drainfields, domestic water wells and similar physical constraints for construction. Similarly, the need for the size of the garage, 2,140 square feet, is explained as a need to house a car collection. The existing attached garage area is 876 square feet. Similar variances in nearby subdivisions were for smaller detached garages (1,300 and 1,500 square feet) that met the required rear and side setbacks. Staff reviewed photographs submitted by Mr. Carlson and aerial surveys of the Wells Garden subdivision. There are no similar sized detached garages in the subdivision. There have been no similar variances submitted in the subdivision. One variance in 1990 to reduce the side adjacent to street setback from 10 feet to 5.5 feet was denied for the construction of a small detached shed at 5017 Sweet William.

Planing staff has reviewed the request and the findings of the 7 criteria for this zoning variance. Staff is recommending denial of the proposed variances based on these findings.

RECOMMENDATION

The Planning Division recommends denial based on the findings of the 7 criteria for Variance 277.

Attachments

Zoning Map
Findings of the 7 Criteria
Applicant letter, site plan and photos

Site photos
Letter of Opposition

Variance 277 – 321 Calypso St
Zoning Map



Subject Property

DETERMINATIONS

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

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

There are no special circumstances that exist which are peculiar to the land. The lot is slightly over ½ acre, is flat, and soils in the area appear to be suitable for construction. The applicant has not stated a hardship with the property other than the need for additional storage for collectible and antique automobiles. The detached garage could be built to meet the minimum setbacks and at the size (1,238 square feet) allowed by the zoning regulations.

- 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 literal interpretation of the provisions of this chapter will not deprive the applicant the ability to construct a detached garage in conformance with the zoning regulations. Similar variances in nearby subdivisions have been granted for garages of 1,300 to 1,500 square feet. Detached garages of 2,140 square feet do not exist within this subdivision or in nearby subdivisions with or without zoning variances. Detached structures over 18 feet in height need to meet the minimum side setback of 8 feet and staff found no other detached structures of this height in the subdivision that were setback less than 8 feet from the property line.

- 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 special privilege to this applicant as all other detached accessory buildings within this subdivision appear to have been constructed according to the zoning regulations with the proper size and setbacks.

- 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 is not in harmony with the general purpose and intent of the zoning regulations and the growth policy. The height and bulk of the detached garage is out of character with the surrounding residential properties and has a larger foot print than the existing home on the site.

- 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, therefore, no conditions are listed within the staff report.

- 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 is recommending denial and therefore no time limits are proposed.

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.

If the board decides to grant this variant, the granting would not allow a use that is not already allowed in the zoning district.

Variance 277 – 321 Calypso St
Applicant Letter, Site Plan and Photos

Untitled
Aug 3, 2015

To whom it may concern:

A. I need a sizable garage space for my collection of cars and to keep from my neighbors view so

as not to create an eyesore.

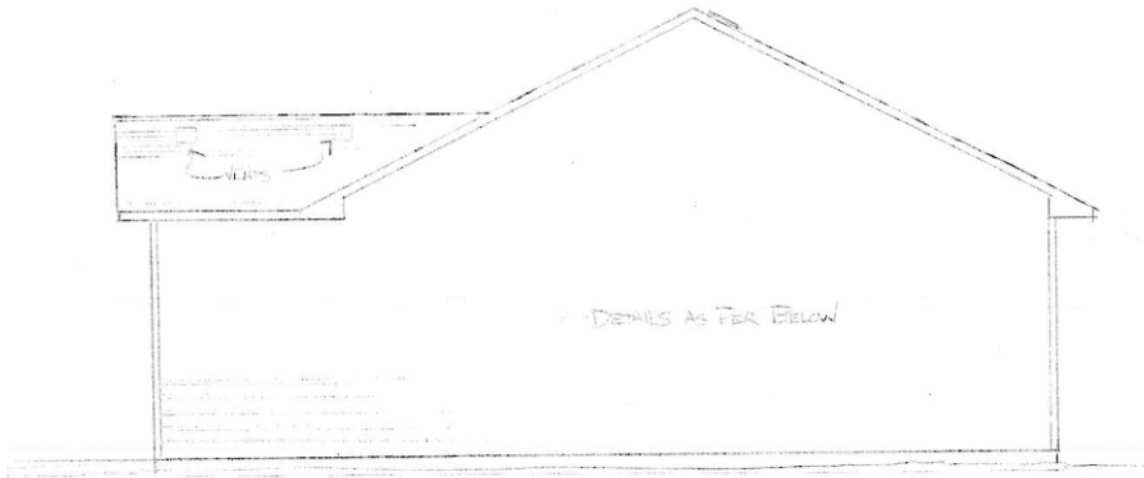
B. My personal collection of cars are very collectable and valueable and I need to keep them safe.

Todd P Carlson

406-591-3303

EAST ELEVATION

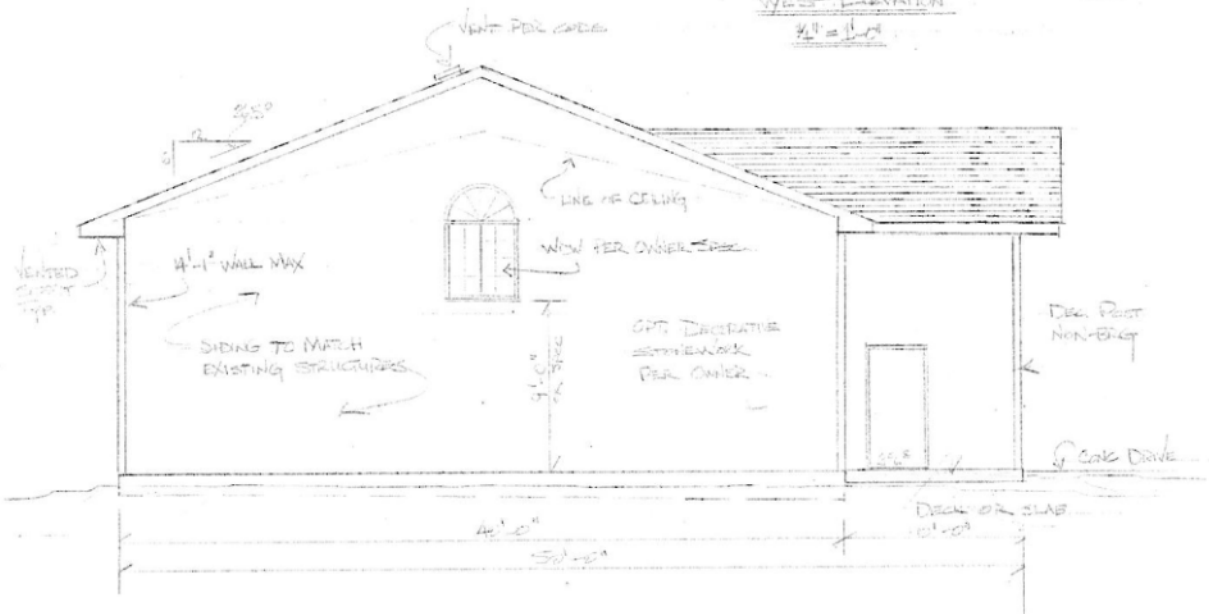
4'-0" x 1'-0"



TOED CARBON 'MAN CAVE'

WEST ELEVATION

4'-0" x 1'-0"





← East Property line

321 Calypso



↓ South west
Corner of structure

321 Calypso



↓ East Property line

321 Calypso



321 Calypso
North Property line



321 Calypso
North Property line



321 Calypso

North
property line



321 Calypso



East
property line

321 Calypso

Variance 277 – 321 Calypso St
Site Photos



Subject Property – view east from Calypso Street



Subject Property – view north and east from intersection of Calypso & Hazelnut



Subject Property – view from Hazelnut St



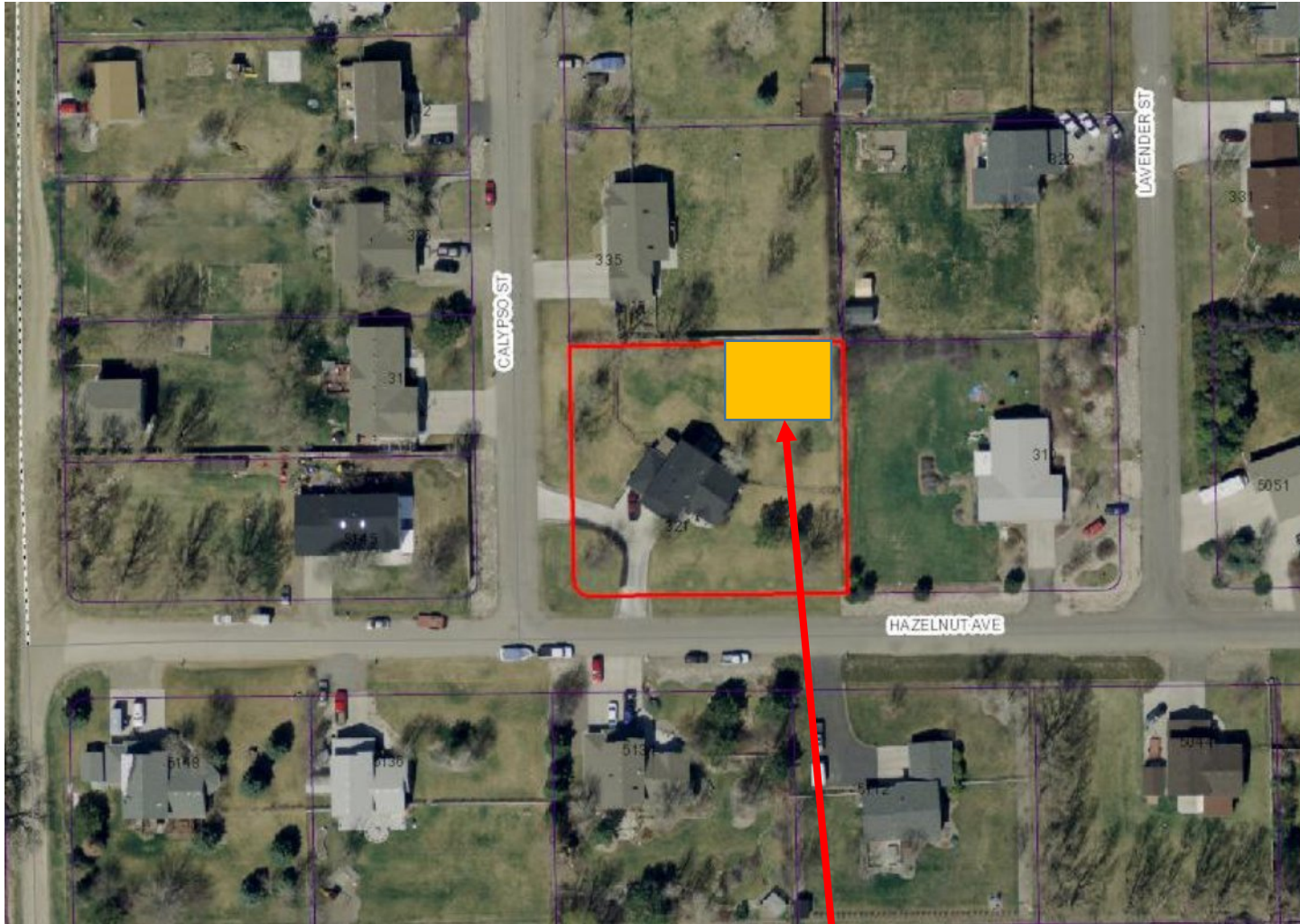
Subject Property – view north along new driveway to detached garage



View west along Hazelnut St



View north west across property to Calypso St



Subject Property – Detach Garage

Gaylord & Michele LaFond

415 Calypso St
Billings, MT 59106
Phone: 406-591-1939

► **Tammy Deines**

Planning Division
2825 3rd Ave N
Billings, MT 59101
Phone: 406-247-8610

County Variance #277
Project Number: 15-143

August 25, 2015

We are writing in response to the letter we received from The Planning Department in regards to County Variance #277 – 321 Calypso St Billings, MT 59106. We **strongly oppose** request for the change in zoning for the property for the following reasons:

1. Said property owner did not adhere to the Covenants and Declaration of Restrictions. The building that is under construction is too close to neighboring property. The height of the building is also far exceeds what is allowed. The size of the garage exceeds the square foot limits.
 2. From what has been said the property owner's contractor had asked about the covenants and was told the correct allowances yet continued to build to what the property owner requested. In our opinion the property owner chooses to do he wants without regard to any restrictions for the property. As property owners we are all under the same restrictions and covenants and why should it be allowed for one person to do whatever they want and disregard the restrictions and covenants. This zone change would only open it up for others to build whatever they want.
 3. Detached garage could also create a safety hazard in regards to roof height & slope. In heavy snow years the slope and height of the roof could cause a snow slide into neighboring yard causing harm to children, adults and pets. The building is too close to neighboring yards.
 4. The reason there are covenants for our properties is to prevent home owners from building structures that are not consistent with our existing homes. The covenants and restrictions keep our neighborhood consistent and attractive.
 5. Since we have received this notice the property owner now playing music in the mid afternoon so loud you can hear it many blocks away which is very disruptive to sitting outside and enjoying the afternoon.
 6. Since we have received this notice property owner has brought in an old rusted bus and parked it right next to his property line and also removed a hedge line between his property and the next. This bus is a commercial vehicle and according to the **Declaration of Restrictions #12**: No commercial vehicles or trucks shall be parked or stored on the streets adjacent to any lot or lots except for the purposes of performing a service for a resident and in that event said vehicle shall not remain parked for a period
-



greater than ten hours. This junky rusted old bus and been parked for at least 7 days without moving it. This has created an eyesore and junky look to the property and is breaking the rule #12.

In order for our neighborhood to remain pleasing and safety issues we oppose the zone change request for this property.

Gaylord & Michele LaFond