



County of Yellowstone Board of Adjustment
AGENDA-Thursday, December 10, 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

Motion. Approval of October 29, 2015 meeting minutes

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.

C. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. Variance #278. This is a variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 7.62 acres in an Agriculture-Open Space zoning district on the West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East, a 10.13 acre parcel of land. The proposed variance is to adjust the boundary line between 2 parcels of land to allow access to Plateau Road. Tax ID: D04935. Productions Consulting, LLC, owner, Scott Aspenlieder, Agent. Presented By: Karen Husman, Planner I.

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 item 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 247-8676. 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: 12/10/2015

Information

Subject

Motion. Approval of October 29, 2015 meeting minutes

Attachments

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YBOAminutes_201_10_01_



Yellowstone County Board of Adjustment

Minutes

October 29, 2015

The County Board of Adjustment met on Thursday, October 29, 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	10/01/2015	10/29/2015	12/10/2015						
Bruce Reiersen	Board member	E	1	1	1	E	E							
Carlotta Hecker	Chairperson	1	E	E	1	1	1							
Delores Terpstra	Board member	1	1	1	E	E	1							
Robert Bailey	Vice Chairperson	1	1	1	E	E	1							
Blaine Poppler	Board member	-	-	E	1	1	1							

Chairperson Hecker introduced the County BOA Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk Board member Reiersen is not in attendance as he has recused himself as he is acquainted with the applicant for County Variance #277.

Attending: John Miner, Glenn McGaha, Todd Carlson, Travis Williams, Tom Stusek, Jason Frank, Tom Nickel, Judy Nickel, Ron Kaurin

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: September 10, 2015

Motion

Board member Terpstra made a motion and it was seconded by Board member Poppler to approve the September 10, 2015 meeting minutes. The motion carried with a unanimous voice vote.

PUBLIC HEARINGS:

Chairperson Hecker read the determinations for granting a variance and Zoning Coordinator Nicole Cromwell reviewed the rules for the procedure for conducting public hearings

Nicole Cromwell read the legal description and reviewed the staff report with a PowerPoint presentation for the audience.

REQUEST

Item #1 -Motion. 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.

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 drain fields, 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 1,500square 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.

RECOMMENDATION

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

Discussion

Chairperson Hecker asked the Board for questions and discussion.

Board member Poppler asked if Mr. Stusek is the agent and Ms. Cromwell confirmed this and stated any person may appear on behalf of the owner. Per the Board's request for clarification on how this happened, Ms. Cromwell explained the circumstances and said Mr. Carlson contacted Yellowstone County Code Enforcement Officer Mike Schieno due to a complaint.

Tom Stusek, (no address provided)

Mr. Stusek represents Todd Carlson and Travis Williams. He stated he has exhaustively reviewed Supreme Court case law and has detailed this information in his memo. He submitted photographs of buildings of this nature located in the general area labeled with the addresses.

Mr. Stusek explained that his client, Mr. Carlson, discussed this project with the neighbors and they indicated they had no issue with this project. Mr. Stusek recounted the submittal process and said the concrete was set before Mr. Carlson realized a permit was needed. He said there was some confusion with the concrete contractor who didn't make the need for a permit clear to his client.

Mr. Stusek said this building will be used strictly to store some valuable cars that had to be out of the weather. He referred to the *Lowe v. City of Missoula*, 165 Mont. 38 (1974). This structure will mirror the house and will be lower in height than the home.

Mr. Williams is the contractor. He said the proposed building will have a 6/12 pitch shingled roof. He offered to install snow stops on the roof to prevent snow slippage. He said this is not a pole building and commented he is not aware of a building as nice as this in this neighborhood. He was not involved with pouring the concrete slab. He explained to Chairperson Hecker the plans are for 14 foot side walls and no second story. The applicant interjected and said the height is needed to install car lifts.

Mr. Stusek asked Mr. Williams about the general character of the building. Mr. Williams said it will have aluminum soffits and vinyl siding to match the house. Mr. Stusek said the structure will be valued at \$120,000-\$125,000 when it is completed. He stated the applicant does not wish to build something that will detract from his property or the adjacent properties. He said denial of this variance will create a severe hardship for his client. He said it seems this request falls within several Supreme Court cases, and he referenced *Freeman v. Board of Adjustment of City of Great Falls*. 342 (1934).

Board member Bailey asked Mr. Stusek for his definition of a severe hardship. Mr. Stusek replied that tearing down \$40,000-\$50,000 work and effort put into the structure is "economic waste" just for the sake of noncompliance. He asked the Board to remediate this issue with a reasonable solution as this is a "no harm, no foul situation". Nicole Cromwell, who said the building is at least 4 feet into the required setback, gave board member Bailey asked for clarification on the setbacks and lot coverage and it.

Public Hearing

Chairperson Hecker opened the Public Hearing and asked if anyone would like to speak in favor or against Yellowstone County Variance #277.

Jason Frank, 335 Calypso Street, Billings, Montana

Mr. Frank lives directly north of Mr. Carlson. He said he contacted Mike Schieno to report this case due to the structure's proximity to his property line. This structure is 3.6 feet from his fence and runs 50-feet along his property line. He stated it is his responsibility to make his yard safe for children, and pets and this will not be safe due to potential drop off of the roof of snow load accumulation. Mr. Frank feels this structure is creating a hazard to his property, and said snow guards are not 100 percent reliable. Mr. Frank said he spoke with the contractor during construction and found the building to be too close to the property line. He presented the setback requirements to the applicant in writing, but he was not deterred and construction continued. Construction debris has dropped off the roof into his yard. The applicant has concrete over the 8-ft utility right-of-way. He said the petition in favor of the new garage was unclear and has no bearing on this application. He voiced concern with the floor drain flows.

Board member Terpstra asked how much of the building had been constructed and Mr. Frank said the sides are up along with the first trusses. Mr. Frank reiterated the need to keep his property safe.

Tom Nickel, 647 Calypso, Billings, Montana

Mr. Nickel said this subdivision was built during a time when the City had jurisdiction and houses had to meet inspections. His understanding is the right-of-way was platted for a sewer line along property lines. The gas line goes down the property line but it would not affect the applicant. Mr. Nickel voiced concern with the installation of a future sewer line. He said the applicant is setting a precedent and creating a potential fire hazard with buildings constructed next to the property line. He said taller buildings should be constructed further back from the property line.

Rebuttal

Tom Stusek, (no address provided)

Mr. Stusek noted his memo and said Mr. Franks home is not near this structure. He stated a decision cannot be made on speculations, and this does not constitute an abuse of discretion. He noted photos of structures located 6 inches from property lines in this neighborhood but no one complained.

Travis Williams said Mr. Frank was aware of the size of the building. He said he was setting trusses and he was not going to stop his crew on hearsay that something isn't right. He stated he will clean up any construction debris.

Mr. Stusek said there are speculative concerns but they do not constitute evidence. He said he appreciates Mr. Frank's subjective concerns but does not feel they are reasonable in terms of remediation. This building will be nicer than others in the neighborhood.

Todd Carlson said it will have a small drain to alleviate drainage/drip off that goes to the side of the concrete into the dirt. The applicant is not going to be washing cars that will create runoff, and he has valuable cars that need a good home. He said there doesn't seem to be much concern except for this one individual.

Board member Bailey said the property owner should have done his due diligence and he will not support this variance request today.

Judy Nickel, 647 Calypso Street, Billings, Montana

Ms. Nickel said they purchased their property from Leland Wells. All of the houses have septic lines going to the back of the property to connect to services. She said the issue is not just applicant's financial concern but everyone that goes up and down the street if the sewer cannot be placed where it is supposed to go.

Board member Poppler said he found the memo from Mr. Stusek includes case law intermingled with factoids and matters of opinion, and it is difficult to separate case law and what is specific to this case. He said a variance must not be contrary to public interest, and he contends this is contrary to public interest and is a dangerous precedent for those that live in the neighborhood. He said this is an unnecessary hardship which could have been addressed when the applicant instructed the contractor to obtain the permit. The spirit of the ordinance must be observed. He clarified the language in the Lowe case and said the quote used in the memo is speculation. He said there is ample evidence, including photos, neighbors' testimonies, and the contractor's testimony. He voiced concern that the neighbors who signed did not have all of the information. Mr. Stusek apologized if his facts are not technically clear. Board member Poppler stressed the importance that written testimony is factual. Mr. Stusek explained he tried to lay down general precepts of law. Applying his understanding of the facts, Mr. Stusek believes the application is not unreasonable, and denial of this request will create economic waste.

Glen McGaha, 306 Rhubarb Lane, Billings, Montana

Mr. McGaha said he feels the utility lines will be placed in the middle of the street. Board member Poppler pointed out this is a recorded plat.

Chairperson Hecker asked if there was anyone else wanting to speak in favor or against County Variance #277. There was none. Chairperson Hecker closed the public hearing at 5:27 p.m.

Motion

Board member Terpstra made a motion and it was seconded by Board member Bailey to deny this request and adopt the Findings of the 7 criteria in the staff report.

Discussion

Chairperson Hecker called for discussion on the motion. Board member Poppler said he doesn't want to see a \$40,000 garage torn down, and it is a shame that warnings were not followed. He said he has a hard time granting a variance with a precedence that could be long reaching. The zoning laws were carelessly disregarded in this situation. Board member Bailey said that the applicant should have

done due diligence. Board member Hecker said the applicants property was purchased with Covenants and they realtor should have given the applicant a copy. She noted the concerns voiced with a building constructed within 3-feet of the property line and within the utility easement.

Chairperson Hecker called for a vote.

The motion carried 4-0. Variance #277 has failed. The County Board of Adjustment voted 4-0 to adopt the findings as proposed by the Planning Staff and to deny the variance as requested. The findings of the Board are as follows:

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;

The BOA finds 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 BOA finds 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 2,100 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. The BOA was not presented any credible evidence of 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;

The BOA finds that granting this variance would confer a 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 BOA finds 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;

The BOA finds there is insufficient cause to approve the requested variance and has no recommended conditions of approval.

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

The BOA finds there is insufficient cause to approve the variance so 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 had made findings to approve the variance, the granting of such variance would not allow a use that is prohibited in the zoning district. Detached accessory structures are allowed within the Residential 15,000 zoning district.

Adjournment:

The meeting adjourned at 5:35 p.m.

ATTEST: DRAFT. To be approved on December 10, 2015



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

Meeting Date: 12/10/2015

SUBJECT: County Variance #278

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Karen Husman

Information

REQUEST

Variance #278. This is a variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 7.62 acres in an Agriculture-Open Space zoning district on the West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East, a 10.13 acre parcel of land. The proposed variance is to adjust the boundary line between 2 parcels of land to allow access to Plateau Road. Tax ID: D04935. Productions Consulting, LLC, owner, Scott Aspenlieder, Agent. Presented By: Karen Husman, Planner I.

RECOMMENDATION

The Planning Division is forwarding a recommendation of Conditional Approval.

APPLICATION DATA

OWNER: Production Consulting, LLC

AGENT: Scott Aspenlieder, Performance Engineering and Consulting

LEGAL DESCRIPTION: West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East

ADDRESS: 1412 Sagebrush Road

CURRENT ZONING: A-1

EXISTING LAND USE: Residential

PROPOSED USE: Residential

SIZE OF PARCEL: 10.13 acre

CONCURRENT APPLICATIONS

County Zone Change #668 –requesting a zone change from Agriculture-Open Space (A-1) and Residential 15,000 (R-150) to Residential 9,600 (R-96) on Tracts 1A, 2A, 3A, 4A, 5A1, 6A, 7A, 8A, 9, 10A, 10B, 11 and 12B, and unplatted portions of land described as the SW1/4NW1/4 and the NW1/4SW1/4 of Section 2, Township 1 North, Range 26 East, a 222.83 acre parcel of land generally located east of Highway 87 North and west of Plateau Road.

Morrell Subdivision- a proposed major subdivision consisting of 165 lots on Tracts 1A, 2A, 3A, 4A, 5A1, 6A, 7A, 8A, 9, 10A, 10B, 11 and 12B, and unplatted portions of land described as the SW1/4NW1/4 and the NW1/4SW1/4 of Section 2, Township 1 North, Range 26 East, a 222.83 acre parcel of land generally located east of Highway 87 North and west of Plateau Road.

APPLICABLE ZONING HISTORY

None

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: Unzoned Land Use: Residential/Agricultural
SOUTH:	Zoning: A-1/ R-150 Land Use: Residential
EAST:	Zoning: A-1 Land Use: Agricultural
WEST:	Zoning: A-1 Land Use: Agricultural

BACKGROUND

This is a request for a variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 7.62 acres in an Agriculture-Open Space zoning district on the West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East, a 10.13 acre parcel of land. The proposed variance is to adjust the boundary line between 2 parcels of land to allow access to Plateau Road.

The property located to the west of the subject property currently has no legal and physical access from a public right of way it. In order for the applicant to proceed with the concurrent application to subdivide the west property, the property must have legal access. The variance request will enable the applicant to complete a lot line relocation via an exempt plat between the subject property and the property to the west to provide the access and move forward with the subdivision. A variance from BMCC 27-308 is required prior to the exempt plat being filed with Yellowstone County Clerk and Records Office. In the event the subdivision is not completed for any reason, the property would still need to have access to the road for any future development of those properties.

Staff, at the time of the writing of this report, has not received any comments from surrounding neighbors. The Planning Division has reviewed this variance and is recommending conditional approval based on the review criteria for granting variances.

RECOMMENDATION

The Planning Division is forwarding a recommendation of Conditional Approval for Variance #278.

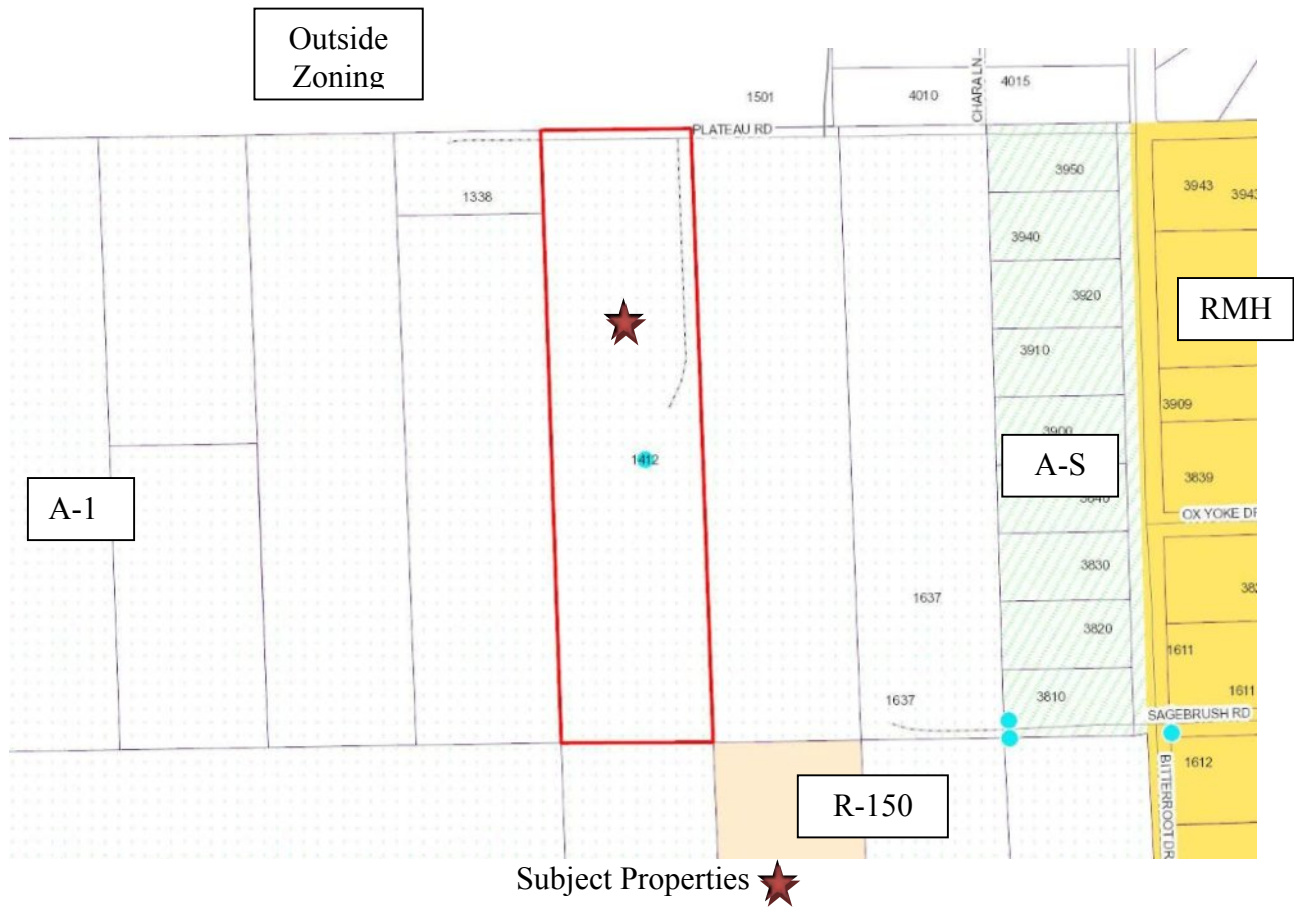
Attachments

Attachments
Determinations

ATTACHMENTS:

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

ATTACHMENT A
Subject Property and Surrounding Zoning



ATTACHMENT B
Photos of the Subject Property and Surrounding Area



Subject property



Looking north of subject property



Looking west



View East from subject property

ATTACHMENT D
Application and Applicant letters

APPLICATION FORM

COUNTY VARIANCE County Variance # 278 - Project # P2-15-00199

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 # D049350 COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property: The West 1/2 of the West 1/2 of Lot 1, Section 02, Township 01N, Range 26E

Address or General Location (If unknown, contact County Public Works): 1412 Sagebrush Road

Zoning Classification: Agricultural Open

Size of Parcel (Area & Dimensions): 7.623 Acres (1007.94' x 329.54' x 1007.94' x 329.45')

Covenants or Deed Restriction on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: Requesting a variance that will allow the parcel to deviate from the 10-acre minimum requirement in Agricultural Open Zoning by modifying the lot size to 7.62 acres.

Facts of Hardship: The owner would like to relocate the boundary for Tract 12-B of Certificate of Survey 1420. The boundary relocation will change the size of the parcel of interest from 10.13 acres to 7.62 acres.

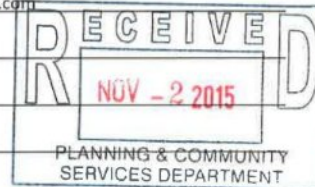
*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Production Consulting LLC
(Recorded Owner)
3201 Hesper Rd., Suite 5, Billings, MT 59102
(Address)

406-371-7177 jmorrell@productionconsultllc.com
(Phone Number) (Email)

Agent(s): Scott Aspenlieder
(Recorded Owner)
2101 Overland Ave., Billings, MT 59102
(Address)

406-461-8392 scott@performance-ec.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 Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature:  Date: 10/28/15
(Recorded Owner)



2101 Overland Ave • Billings, MT 59102 • 406-461-8392

November 2, 2015

Ms. Carlotta Hecker, Chairperson
Yellowstone County Board of Adjustment
2825 3rd Avenue, Billings, MT 59101

Dear Ms. Hecker,

On behalf of Production Consulting, LLC (Owner), Performance Engineering & Consulting, PLLC (PEC), is requesting a variance from Section 27-308 from the Yellowstone County Unified Zone Regulations for the property located at 1412 Sagebrush Road. The requested variance will allow the property to be resized to 7.62 acres but stay within the Agricultural Open zoning. The property located at 1412 Sagebrush Road is not intended to see a change in use, currently consisting of one single-family residence with pasture.

The Owner is requesting a variance from the current Zoning Regulations in coordination with submittal of a major subdivision which includes adjacent Tract 12-B, Certificate of Survey 1420. To facilitate legal access to the subdivision a lot line relocation will result in the tract of interest being 7.62 acres, which falls under the 10-acre minimum size for Agricultural Open zoning. Without approval of the variance the 220-acre subdivision will not have legal access to Plateau Road. The proposed use of the Tract of interest will not change.

Feel free to contact PEC Project Manager Scott Aspenlieder with any questions or concerns at 406-461-8392 or scott@performance-ec.com. Thank you for your consideration and coordination in our project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott Aspenlieder', is written over a light blue horizontal line.

Scott Aspenlieder, PE

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

The property is currently in conformance with the Zoning Regulation requirement for Agricultural Open. The property owner would like to relocate the boundary of Tract 12-B, Certificate of Survey 1420. The boundary relocation would increase Tract 12-B from 8.99 acres to 11.71 acres and decrease the interested parcel from 10.13 acres to 7.62 acres. The 7.62 acre parcel would not be in conformance with the Zoning Regulation requirements for Agricultural Open as it would be under 10 acres.

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

The intended use of the property at this location is not expected to change. There is currently one residence on the property and that residence will remain with the property. The lot variance would allow the relocation of the boundary for Tract 12-B, C.O.S. 1420. The property owner is trying to relocate the boundary to create an easier access to a high end subdivision that is proposed west of the parcel of interest. The subdivision will give property owners the opportunity to live outside of Billings with a great view of the town along with a large sized lot to own.

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 special conditions and circumstances that are peculiar to the land that create a hardship. The property to the west of the subject property is currently land locked and has no access to a public right of way. The reduction in lot size for the subject property will allow ample space to provide an access to the adjacent properties to the west as well as maintain access for this property.

- 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;**

Approving this variance would not give the applicant any privilege that is denied others in the area. There have been 7 variance requests in the Agricultural-Open Space zoning district since 2004, with 5 being approved and 2 denied. Staff is aware of at least 3 similar variance requests approved in the Agricultural-Open Space zoning since 2004: One for property at 4733 Georgina Dr. that was a request for a variance from 10 acres to one 1 acre (approved); one at 2046 Mary Street from 10 acres to 1 acre (approved); and one at 1900 43rd St. W., from 10 acres to 1 acre (approved). Denial of the requested variance would deprive these owners of rights commonly enjoyed by others in the same zoning 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 not confer on the applicants a special privilege that is denied other land in the district. Land-locked parcels are rare but create special circumstances that need to be addressed to provide access as applicable and possible.

- 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;**

Granting this variance will be in harmony with the general purposes and intent of the zoning regulations. Section 27-102 of the zoning code indicates that the purposes of the regulations are “to conserve the value of buildings, stabilize property values, ... to promote the interest of health, safety and general welfare, ... and to provide adequate open space for light and air ... by governing the height and size of buildings, the percentage of lots that may be occupied, the size of yards and open spaces, ... and the locations and use of buildings...”. This variance is requested to provide access to property currently unusable due to inadequate legal and physical access.

- 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 is to reduce the required lot area from 10 acres to allow a minimum lot area of 7.62 acres in an Agriculture-Open Space zoning district on the West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East, a 10.13 acre parcel of land and no other variance is intended or implied by this approval.
 2. The applicant will submit a certificate of survey amendment/lot line relocation within 60 days of Board of Adjustment approval.
 3. 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 is recommending conditions to require a certificate of survey amendment submittal within 60 days.
- 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.**
Granting of variance will not allow a use that is prohibited.