



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, November 2, 2016, 6:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> 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 City Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of October 5, 2016.

**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 1244 –3165 King Avenue East– Land Use Contrary to Zoning** - A request to conduct a public forum for the proposed expansion of the Yellowstone County Detention Facility. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment whenever a public agency proposes to use public land contrary to the adopted zoning regulations. The zoning regulations require a submittal for special review for any correctional institution (Section 27-306). The County will not be submitting a special review. The City Board of Adjustment has no power to approve, deny or attached conditions to the proposed use. The property is in a Public (P) zone described as Parcel 1A of C/S 1340, a 20.27-acre parcel of land. Tax ID: D01739 Presented by Karen Husman, Planner I.

## **Other Business/Announcements**

### **Adjournment**

Information on the preceding item(s) may be obtained at the City-County Planning Division, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.

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 Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@ci.billings.mt.us](mailto:bartleyr@ci.billings.mt.us)

**City Board of Adjustment**

**Meeting Date:** 11/02/2016

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**Information**

**Subject**

The minutes of the Board meeting of October 5, 2016.

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**Attachments**

CityBOA\_2016\_10\_05

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**CITY BOARD OF ADJUSTMENT**

MINUTES October 5, 2016

Name	Title	01/06/2016	02/03/2016	03/02/2016	04/06/2016	05/04/2016	06/01/2016	07/06/2016	08/03/2016	09/07/2016	10/05/2016	11/02/2016	12/07/2016
Jeff Bollman	Board member	-	-	1	E	1	1	1	A	1	E		
James Olson	Board member	-	-	1	1	E	1	E	R	R	R		
Paul Hagen	Board member	-	-	1	1	1	1	1	1	E	1		
Frank Chesarek	Vice Chairman	-	-	1	1	1	1	1	A	A	1		
Oscar Heinrich	Board member	-	-	1	1	1	1	1	1	1	1		
Martin Connell	Board member	-	-	1	1	1	E	1	1	1	1		
Mark Noennig	Chairman	-	-	1	1	1	1	1	1	1	E		

TOTAL NUMBER OF APPLICATIONS 2016	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/03/16	09/07/16	10/05/16	11/02/16	12/07/16	TOTAL
Variance	0	0	2	1	3	3	6	3	3	1			22

Chairman Noennig called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3<sup>rd</sup> Avenue North.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I and Robbin Bartley, Administrative Support.

**Attending**

Dean Bargaen

**Public Comment**

Vice Chairman Chesarek opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none. Vice Chairman Chesarek closed the public comment period.

**Approval Meeting Minutes**

Board member Connell made a motion for the approval of September 7, 2016, minutes. Board member Hagen seconded the motion. Minutes were approved by unanimous voice vote 4-0.

**Disclosure of Conflict of Interest**

Vice Chairman Chesarek asked for disclosures of conflict of interest.

Board member	Yes	No	Not Present
Jeff Bollman			x
██████████			
Paul Hagen		x	
Frank Chesarek		x	
Oscar Heinrich		x	
Martin Connell		x	
Mark Noennig			x

**Disclosure of Outside Communication**

Nicole Cromwell explained there are times applicants communicate directly with Board members or visit the site and this should be communicated to the Board members in a public forum.

Board member	Yes	No	Site visit?	Not Present
Jeff Bollman				x
██████████				
Paul Hagen		x	y	
Frank Chesarek		x	n	
Oscar Heinrich		x	n	
Martin Connell		x	y	
Mark Noennig				x

**Public Hearings**

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting and acting on each variance. She stated four votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 4 Board members attending. A unanimous vote is necessary to approve requested variances.

Nicole Cromwell read the legal description for **Variance #1243**:

Karen Husman presenting:

**Variance 1243 – 429/431 Nelson Drive – Lot Area** - A variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling to allow a lot area of 7,500 square feet for an existing two-family dwelling in a Residential 7,000 (R-70) zone on Lot 10, Block 7, Rosedale Subdivision, 2<sup>nd</sup> Filing. The request is the result of a plan review error that occurred in 2008 approving the addition of a dwelling unit. Tax ID: A13616.

Staff indicated during the presentation there is an additional shed attached to the side of the garage addition that does not meet set back requirements and was not included in the building permit issued in 2008. This shed structure is not included in this Variance.

**RECOMMENDATION**

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval.

**Discussion**

Vice Chairman Chesarek asked the members of the Board for questions and discussion. Board member Heinrich asked if the intent is to receive a rebuild letter. Staff replied yes.

**Public Hearing**

Vice Chairman Chesarek opened the public hearing and asked if there was anyone wishing to speak in favor or against **City Variance #1243**.

**Dean Bargaen, owner, 429 Nelson, Billings, Mt**

Mr. Bargaen explained his position on this old issue. He stated he was never told that he would not be able to sell or refinance his home without a variance.


**Opposed** – none

**Discussion**

Board member Connell was impressed with the letter of support written by Scott Lake and a copy was given to Mr. Bargaen.

Vice Chairman Chesarek called for a motion.

Board member Heinrich made a motion and Board member Connell seconded the motion to approve **City Variance #1243** with the Findings of Fact presented by Staff.

Board member	Yes	No	Abstain	Not Present
Jeff Bollman				x
				
Paul Hagen	x			
Frank Chesarek	x			
Oscar Heinrich	x			
Martin Connell	x			
Mark Noennig				x

**The motion to approve City Variance #1243 passed 4-0.**

**Other Business/Announcements:**

The next meeting will be on November 2, 2016.

Adjournment: 6:16 p.m.

**ATTEST: DRAFT. To be approved by a motion on November 2, 2016**

\_\_\_\_\_  
**Robbin Bartley, Administrative Support I**



## City Board of Adjustment

**Meeting Date:** 11/02/2016

**SUBJECT:** City Variance #1244- 3165 King Ave East

**THROUGH:** Wyeth Friday

**PRESENTED BY:** Karen Husman

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### Information

#### REQUEST

**Variance 1244 –3165 King Avenue East– Land Use Contrary to Zoning** - A request to conduct a public forum for the proposed expansion of the Yellowstone County Detention Facility. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment whenever a public agency proposes to use public land contrary to the adopted zoning regulations. The zoning regulations require a submittal for special review for any correctional institution (Section 27-306). The County will not be submitting a special review. The City Board of Adjustment has no power to approve, deny or attached conditions to the proposed use. The property is in a Public (P) zone described as Parcel 1A of C/S 1340, a 20.27-acre parcel of land. Tax ID: D01739 Presented by Karen Husman, Planner I.

#### RECOMMENDATION

State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

#### APPLICATION DATA

**OWNERS:** Yellowstone County  
**AGENTS:** Greg Erpenbach, Facilities Superintendent and Shutz Foss Architects  
**PURPOSE:** Conduct a public forum for the proposed expansion of the Yellowstone County Detention Facility  
**LEGAL DESCRIPTION:** Parcel 1-A of C/S 1340  
**ADDRESS:** 3165 King Avenue East  
**EXISTING LAND USE:** Yellowstone County Detention Facility  
**PROPOSED LAND USE:** Detention Facility Expansion  
**EXISTING ZONING:** Public

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

There have been 14 similar applications by public agencies to use land contrary to zoning since 2002. The applications include improvements to schools, fire stations, water facilities, the City of Billings Landfill, Dehler Park and the Billings Logan International Airport. The state law provision that exempts local agencies from local zoning compliance provides an opportunity for the public to provide comment and eliminates the need for one government authority to approve, deny or place conditions on the necessary public improvements of another public agency. Many public agency projects are subject to other permitting and development permissions ranging from financial authority and building code compliance to state and federal environmental policy conformance. These

processes also offer the opportunity to provide public comment.

## **SURROUNDING LAND USE & ZONING**

NORTH: Zoning: R-60  
Land Use: Residential Single Family  
SOUTH: Zoning: R-150  
Land Use: Residential Single Family  
EAST: Zoning: R-150 & CI  
Land Use: Residential Single Family & Commercial  
WEST: Zoning: R-150  
Land Use: Residential Single Family

## **BACKGROUND**

### **Reasons**

This is a request to conduct a public forum for the proposed expansion of the Yellowstone County Detention Facility. The zoning regulations require a submittal for special review for any correctional institution (Section 27-306). The County will not be submitting a special review. Use of land contrary to zoning is allowed by state statute MCA 76-2-402 after a Public Forum is held before the local Board of Adjustment. State law does not give the authority to the Board of Adjustment to approve or deny the request but does allow the Board to receive public comment on the use.

### **State Statute**

**76-2-401. Definitions.** As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

**76-2-402. Local zoning regulations – application to agencies.** Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

History: En. Sec. 2, Ch. 397, L. 1981.

## **RECOMMENDATION**

State statute allows public agencies to use land contrary to zoning after a Public Forum is held by the local Board of Adjustment. The Board shall have no power to approve or deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

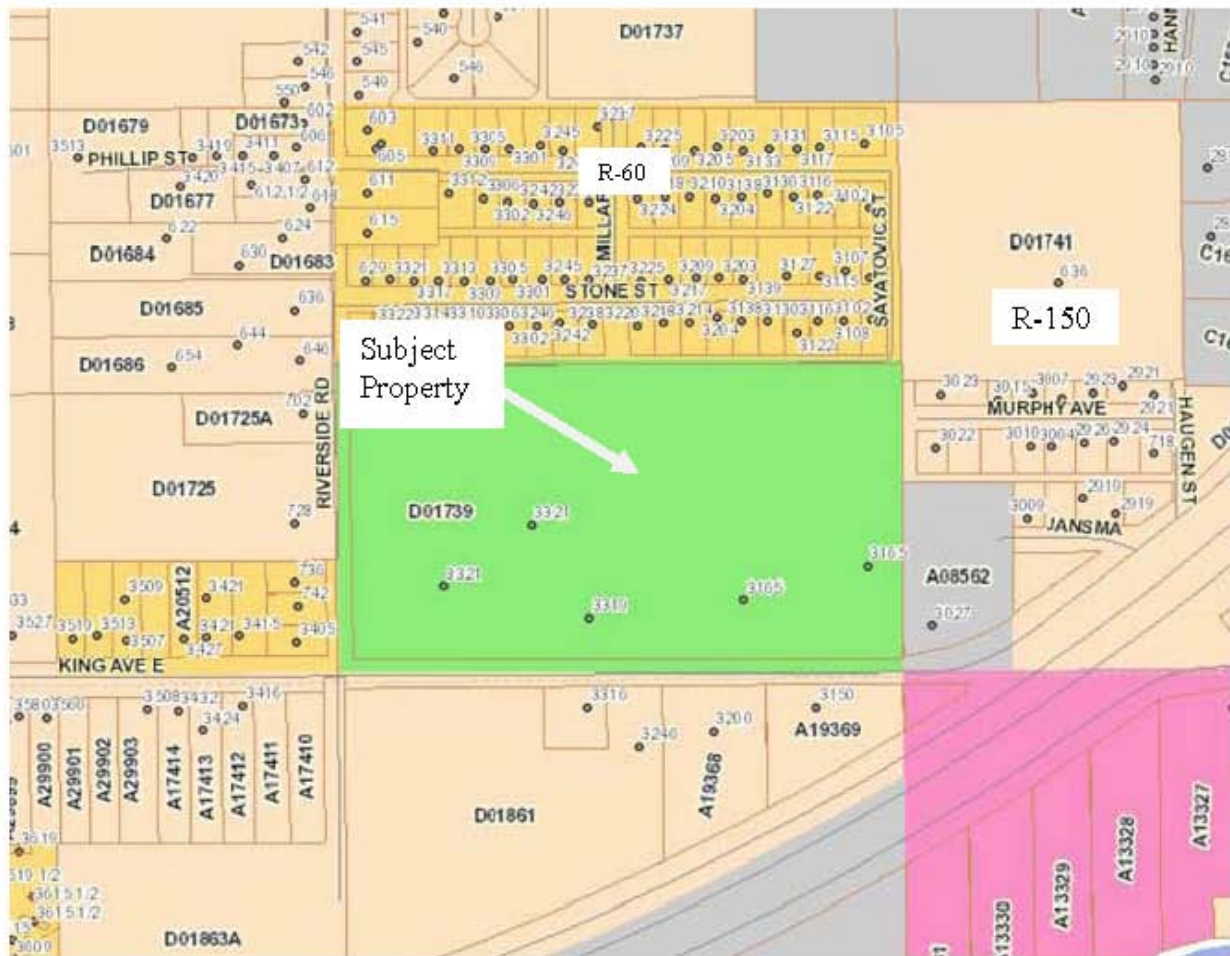
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### **Attachments**

Zoning Map  
Aerial Photo  
Site Plan  
Applicant Letter  
Site Photos

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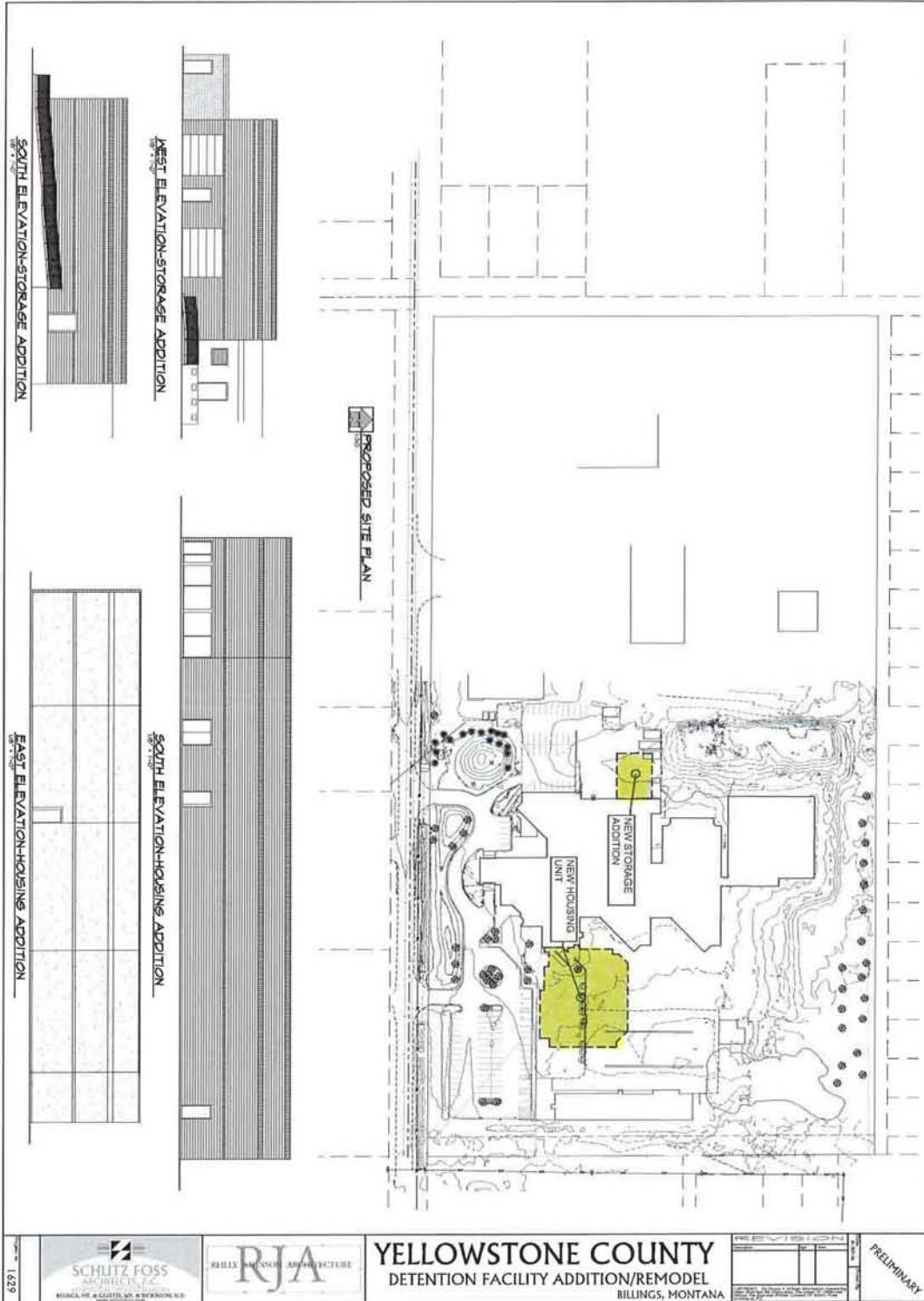
**ATTACHMENT A**  
Surrounding Zoning & Site Location



Aerial Photo



# Site Plan



1629  
  
**SCHUTZ FOSS**  
 ARCHITECTS  
 BILLING, MT • BOZEMAN, MT • SPOKANE, ID

  
**RJA**  
 RILEY JAMESON ARCHITECTURE

**YELLOWSTONE COUNTY**  
 DETENTION FACILITY ADDITION/REMODEL  
 BILLINGS, MONTANA

PROJECT NO.	1629
DATE	10/15/14
SCALE	AS SHOWN
DRAWN BY	JK
CHECKED BY	JK
DATE	10/15/14

PRELIMINARY

**Attachment**  
Letter to Board



September 27, 2016

Mark Noennig, Chair  
City of Billings, Board of Adjustment  
2825 3<sup>rd</sup> Ave. N., 4<sup>th</sup> Floor  
Billings, MT 59101

Re: City of Billings Land Use Contrary to Zoning Application  
Yellowstone County Detention Facility Addition/Remodel #1629  
Parcel ID #: D01739

Dear Mark,

The Yellowstone County Detention Facility built in 1987 with an addition built in 1997, has a 286 bed capacity. The facility has been operating with 400-500 inmates over the last several years. This year, the Yellowstone County voters approved a vote to allow Yellowstone County to borrow funds to expand the facility.

The proposed 27,324 s.f. female housing unit on the east side of the existing facility would provide 148 beds for female inmates with the ability to separate and classify the female inmates. The ability to classify is currently not available in the current female housing unit. The current female housing unit would be used to help alleviate the current overcrowding in the male population.

The proposed 4,474 SF addition on the west side of the building will mainly be used for much needed storage space. Existing storage space is being absorbed into a remodeled larger kitchen and laundry facility to handle additional inmates now and into the future.

The current zoning for the county owned property is Public (P). Our understanding is a jail facility is not an approved use for the zoned property and therefore, we are filing an application for "City Land Use Contrary to Zoning" for a public hearing and comment.

Thank you for your consideration.

Sincerely,

By 

Allen Rapacz, President

**Attachment**  
Site Photos



Subject Property (looking NE)



Attachment



Looking NW



**Attachment**



Looking NE