



County of Yellowstone Board of Adjustment
AGENDA-Thursday, June 9, 2016, 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

Approval of Minutes:

Motion. The minutes of the Board meeting of May 12, 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. **Return Item. Variance 281 – 2999 Old Hardin Road – Entryway Landscaping for Bretz RV** – (This application was first scheduled to be heard in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting. At the May 12 meeting, the applicant and their agent were not able to attend the meeting, but the Board of Adjustment opened the hearing and took public testimony and had discussion. The Board ultimately voted 2-1 to continue the hearing until the Board's June 9 meeting). A variance from Section 27-1006 requiring a bermed and landscaped bufferyard along the interstate frontage (1,780 linear feet of frontage) and along the Old Hardin Road frontage (360 lineal feet) requiring a minimum of 5 canopy trees and 10 shrubs per 100 lineal feet and no more than 10% of the area as non-living material; from Section 27-1006 requiring a minimum of 20 square feet of landscaping per parking space, 2 evergreen or canopy trees and five shrubs for each 9 parking spaces, and requiring landscaping islands dispersed throughout the parking lot with raised curb protection; and Section 27-1007 requiring buildings with facades facing the interstate or local street to provide a façade relief every 100 feet to allow a total of 60 trees (131 required), 60 shrubs (267 required); allow up to 50% of the landscaped areas to be non-living material; eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement for the building facades facing the interstate and the local street. Tax ID: D06438A; C04279; C04713; C04714; C04715; C04716. Presented by Wyeth Friday, Planning Division Manager
- b. **County Variance 282 – 1905 Sunrise – Side Setback** – A variance from Section 27-310(j) requiring a minimum side setback of 3 feet for a detached accessory structure to allow a 0 side setback for an existing 1,008 square foot detached garage in a Residential 15,000 (R-150) zone on Lot 22 of Sunrise Subdivision, 1st Filing, a 22,216 square foot parcel of land. Tax ID: C05159. Presented by Nicole Cromwell, Zoning Coordinator

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: 06/09/2016

Information

Subject

Motion. The minutes of the Board meeting of May 12, 2016.

Attachments

YBOAminutes_2016_05_12_DRAFT



Yellowstone County Board of Adjustment

Minutes

May 12, 2016

The County Board of Adjustment met on Thursday, May 12, 2016 in the 1st Floor Conference Room, of the Miller Building located at 2925 3rd Avenue North. Vice Chairman Bailey called the meeting to order at 4:00 p.m.

Name	Title	01/14/2016	02/11/2016	05/12/2016	06/09/2016									
Bruce Reiersen	Board member	E	-	1										
Blaine Poppler	Board member	1	-	E *										
Carlotta Hecker	Chairperson	1	-	E *										
Delores Terpstra Miner	Vice Chairperson	1	-	1										
Robert Bailey	Board member	E	-	1										

Vice Chairman Bailey introduced the County Zoning Commission members and staff in attendance: Wyeth Friday, Planning Division Manager; Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk.

Attending: John R. Miner, Richard Sauter

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

Approval of Minutes: January 15, 2016

Motion

Board member Miner moved and Board member Reiersen seconded to approve the January 15, 2016 meeting minutes as submitted. The motion carried with a unanimous voice vote.

*

Disclosure of Conflict of Interest: *Board members Poppler and Hecker are not in attendance today due to conflicts of interest with Yellowstone County Variance #281. 3

Disclosure of Exparte Communication: Planning Division Manager Wyeth Friday noted staff received a letter dated May 11, 2016 from Citizen James E. Logan regarding Yellowstone County Variance #281 and a letter from Citizen Carol Kraft dated February 29, 2016 which was included in the packets. Staff also received an e-mail from Bretz RV Council Brad Farnsworth requesting delay of the hearing for County Variance #281 as he is unable to attend today’s meeting. Zoning Coordinator Nicole Cromwell explained that this Board can decide to approve or deny the request for delay if it finds the applicant has presented “good and sufficient reason.”

Motion

Board member Miner made a motion and Board member Bailey seconded the motion to deny the request for delay and continue will the hearing for Yellowstone County Variance #281.

Discussion

Board member Miner stated the applicant in their request presented no sufficient reason. Board member Bailey concurred, noted the Bylaws, and said that he does not find sufficient reasoning behind the Council's request as to why he cannot appear at this time. Board member Reiersen stated Bretz RV is a major employer and it would be unfortunate to deny the request for delay if the applicant does have a legitimate reason. He said he would like to look for a reason for all parties to be present.

The motion carried, 2-1, with Board member Reiersen voting against the motion. The request to postpone the hearing for Yellowstone County Variance #281 is denied.

PUBLIC HEARINGS: Nicole Cromwell read the procedures for holding a public hearing. Vice Chairman Bailey called for the staff presentation by Wyeth Friday. Wyeth Friday explained this hearing was originally scheduled for the March 2016 BOA meeting but it was delayed due to a lack of a quorum of Board members. The Board was unable to convene in April, and the applicant's representative is unable to attend this meeting. He submitted to the Board the Mr. Farnsworth is able to participate via conference call and the Board may decide to continue the public hearing until the June 9, 2016 meeting to obtain further information. Wyeth Friday continued and gave the presentation below for Yellowstone County Variance #281.

Item #1 Variance #281 – 2999 Old Hardin Road – Entryway Landscaping for Bretz RV – A variance from Section 27-1006 requiring a bermed and landscaped buffer yard along the interstate frontage (1,780 linear feet of frontage) and along the Old Hardin Road frontage (360 lineal feet) requiring a minimum of 5 canopy trees and 10 shrubs per 100 lineal feet and no more than 10% of the area as non-living material; from Section 27-1006 requiring a minimum of 20 square feet of landscaping per parking space, 2 evergreen or canopy trees and five shrubs for each 9 parking spaces, and requiring landscaping islands dispersed throughout the parking lot with raised curb protection; and Section 27-1007 requiring buildings with facades facing the interstate or local street to provide a façade relief every 100 feet to allow a total of 60 trees (131 required), 60 shrubs (267 required); allow up to 50% of the landscaped areas to be non-living material; eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement for the building facades facing the interstate and the local street. Tax ID: D06438A; C04279; C04713; C04714; C04715; C04716

RECOMMENDATION

The Planning Division is recommending denial of Yellowstone County Variance #281.

REASONS

Bretz RV in this variance submittal is asking to significantly reduce the required numbers of trees and shrubs for the property because it states that the requirements "are inappropriate when considering the intended use of the property as a recreational vehicle and boat dealership." However, many commercial businesses have been built in the Entryway Zoning District in the County and City, and have followed the regulations. In addition, the same use has been developed in the Entryway Zoning District and met the landscaping requirements for Pierce RV Supercenter at 3800 Pierce Parkway at the Zoo Drive interchange. The Pierce RV Supercenter is located in an Entryway Light Industrial Zoning District, is adjacent to the I-90 corridor, and was subject to the same requirements as Bretz RV.

Discussion

Vice Chairman Bailey called for questions and discussion from the members of the Board. Board member Miner asked if the applicant knew the landscaping requirements during the approval of the first review. Wyeth Friday said Staff worked with the applicant extensively through a Zoning Compliance Permit, a Building Review, and with the State to achieve a compliant plan. Staff discussed the requirements with the applicant at that time.

Board member Reiersen said he wanted to query the applicant as to why they agreed to the landscape requirements, as it appears they only did so in order to get the project moving forward. He asked if there is merit to their alternate proposal? Wyeth Friday clarified and said some of the plantings can be clustered instead of creating a barrier. This request is more than a 50% reduction in landscaping for the entire site to the point it does not meet the intent of the code. Board member Reiersen commented on his site visit to Pierce RV and said they planted the trees but have not replaced those that died. He stated he finds it bothersome nothing that can be done with this situation as there seems to be a discrepancy in the code for plant maintenance. Discussion followed on potential development of the adjacent parcel to Bretz RV. The Board concurred that they would like to get an understanding of the applicant's thinking. Vice President Bailey asked Wyeth Friday to attempt to contact Mr. Farnsworth by phone.

Brad Farnsworth, 4800 Grant Creek Rd, Missoula, MT, 59808-1454, Office (406) 541-4800

Vice Chairman Bailey introduced himself and stated the e-mail received from Mr. Farnsworth related his inability to attend today's hearing but did not present sufficient reasoning. Mr. Farnsworth stated he is unable to attend today's meeting due to personal matters. He said it doesn't seem fair to move forward without the applicant's full presentation. He voiced concern with the County's response to follow the lead of Pierce RV on the west end of Billings. He stated he feels it is misleading to say Pierce RV is in compliance as they have less than 60 trees on their parcel. Mr. Farnsworth said he had hoped to present photos of Pierce RV along with their proposed site plan to take into consideration.

Public Hearing

Vice President Bailey opened the public hearing at 4:46 pm. and continued with Mr. Farnsworth's testimony. Board member Reiersen stated the applicant why they decided to submit this request when they had agreed to the previous proposal.

Mr. Farnsworth stated due to the time of the year, they were under strict timelines for construction. They did not want to address this question at that time as they planned to appeal in the spring for the landscaping requirements. Mr. Reiersen asked about long term plant maintenance. Mr. Farnsworth explained they would install sod work, trees, and shrubs as per their proposal; and if this is insufficient, they would add the required trees and shrubs.

Board member Bailey commented the comparison to Pierce RV is difficult for him to understand. He asked who assures the gateway businesses are in compliance. Wyeth Friday said the review for the project at the time of development is conducted through a Zoning Compliance Permit. The Yellowstone County Code Enforcement Division considers complaints of violations following construction. Board member Bailey commented he doesn't feel the compliance of Pierce RV should be part of a valid determination of today's request; and it should be determined whether or not Bretz RV will comply with the language in the code as presently stated. He stated there was more than enough time for the applicant to submit the photos to the staff for today's meeting.

Mr. Farnsworth stated the visual presentation would alleviate misconceptions of the proposed plan. He said he doesn't feel the Board can make an accurate determination without the visual presentation.

Board member Reiersen asked regarding the importance of comparing other properties.

Mr. Farnsworth voiced concern with the need for consistent application of the zoning regulations. He stated he wishes to show how aesthetically pleasing this plan will be to the area as they plan to be the "shining star" in the area with their landscape plan.

Richard Sauter, 3011 Old Hardin Road, Billings, Montana

Mr. Sauter's property is adjacent to Bretz RV on the east side of the fence line. He pointed out a gravel roadway along his property line and said it was his understanding the access would not be located there. Mr. Sauter stated his home has been affected by dust and dirt from the traversing construction and delivery vehicles to Bretz RV. He has made requests but they have refused to water the road down to alleviate the dust. He stated Bretz RV removed the existing trees and there is no barrier to the visual from his home. He asked if he has to spend his life looking at the back side of RVs'?

Nicole Cromwell said since Mr. Sauter's property is an adjacent residential use, the code requires a 10 foot buffer yard along Mr. Sauter's property line with 10 trees and shrubs for every one hundred feet. She explained this road is to be gated and used as an emergency access only. Mr. Sauter said the gates remain open and the road is used for construction and delivery trucks. Nicole Cromwell said the Code requires a buffer yard with shrubs and trees and she advised the Board of their ability to alter or amend package with conditions. Wyeth Friday stated this issue can be addressed aside of the request for a variance.

Motion

Vice Chairman Bailey made a motion and it was seconded by Board member Reiersen to continue the public hearing for Yellowstone County Variance #281 until the June 9, 2016 meeting to obtain more information from the applicant.

Discussion

Board member Miner said this the 2nd time this applicant is requesting a variance. She said this is setting a precedent and it is time to move on. She said she is unable to attend the June 9, 2016 meeting. Mr. Farnsworth offered to provide staff and the Board with photographs via e-mail prior to the meeting. He stressed that there was no other representative for Bretz RV as he is the only representative that has reviewed the request and prepared a presentation. Board member Reiersen voiced concern with timeliness and the potential for no quorum of members at the June 9, 2016 meeting. Vice Chairman Bailey pointed out the code provides a procedure for these types of requests and in this case, there was no valid reasoning included in the e-mail other than his desire to reschedule the hearing.

The motion carried 2-1, with Board member Miner voting against the motion. The public hearing for Variance #281 will be continued at the June 9, 2016 Yellowstone County Board of Adjustment meeting.

The motion carried with a unanimous voice vote, 3-0.

Other Business

A. Elections for the 2015 officers will be held at the next scheduled meeting.

Adjournment:

The meeting was adjourned at 5:20 p.m.

ATTEST: DRAFT TO BE APPROVED BY A MOTION ON JUNE 9, 2016



County Board of Adjustment

Meeting Date: 06/09/2016

SUBJECT: Variance 281 (Return Item) - 2999 Old Hardin Road - Entryway Landscaping for Bretz RV and Marine

THROUGH: Candi Millar, Planning & Community Services Department Director

PRESENTED BY: Wyeth Friday

Information

REQUEST

Return Item. Variance 281 – 2999 Old Hardin Road – Entryway Landscaping for Bretz RV – (This application was first scheduled to be heard in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting. At the May 12 meeting, the applicant and their agent were not able to attend the meeting, but the Board of Adjustment opened the hearing and took public testimony and had discussion. The Board ultimately voted 2-1 to continue the hearing until the Board's June 9 meeting). A variance from Section 27-1006 requiring a bermed and landscaped bufferyard along the interstate frontage (1,780 linear feet of frontage) and along the Old Hardin Road frontage (360 lineal feet) requiring a minimum of 5 canopy trees and 10 shrubs per 100 lineal feet and no more than 10% of the area as non-living material; from Section 27-1006 requiring a minimum of 20 square feet of landscaping per parking space, 2 evergreen or canopy trees and five shrubs for each 9 parking spaces, and requiring landscaping islands dispersed throughout the parking lot with raised curb protection; and Section 27-1007 requiring buildings with facades facing the interstate or local street to provide a façade relief every 100 feet to allow a total of 60 trees (131 required), 60 shrubs (267 required); allow up to 50% of the landscaped areas to be non-living material; eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement for the building facades facing the interstate and the local street. Tax ID: D06438A; C04279; C04713; C04714; C04715; C04716. Presented by Wyeth Friday, Planning Division Manager

RECOMMENDATION

The Planning Division is recommending denial of the Variance 281.

APPLICATION DATA

OWNER: Mark Bretz, Bretz RV and Marine

AGENT: Brad Farnsworth, In House Counsel, Bretz RV and Marine

LEGAL DESCRIPTION: N1/2SE of Section 19, Township 1 North, Range 27 East (2999 Old Hardin Road), Lots 5 & 6, Cole Acreage Tracts (2937 Old Hardin Road) and Lots 5 through 8, Johnston Subdivision 1st Filing

ADDRESS: 2999 Old Hardin Road

CURRENT ZONING: Entryway General Commercial

EXISTING LAND USE: Bretz RV and Marine Sales and Service facility under construction

PROPOSED USE: Same

SIZE OF PARCEL: 35 acres

CONCURRENT APPLICATIONS

A Zoning Compliance Permit was approved for these properties in August 2015 (PLN-15-5294) for the site, building and landscaping as per the Entryway Zoning Regulations.

APPLICABLE ZONING HISTORY

This property and many of the surrounding properties were part of the Johnson Lane Master Plan zone change approved in September 1995. The Board of County Commissioners approved the master plan by resolution in July 1994. The Johnson Lane Master Plan and the adopted zoning was intended to attract businesses that serve tourists and travelers and make this entry to Lockwood more appealing through enhanced building design with attractive and abundant landscaping. Similar interchange entryway plans and zoning were implemented at the South Billings Boulevard/I-90 Interchange and the Zoo Drive/I-90 Interchange.

No amendments to the approved Johnson Lane Master Plan have been made since its adoption. Several zone changes were adopted prior to the master plan including re-zoning from R-96 to CC, Neighborhood Commercial (NC) and Highway Commercial (HC). Properties northwest of the Johnson Lane interchange were specifically excluded from the Master Plan and remain in the Controlled Industrial (CI) zone or the Heavy Industrial (HI) zone.

There have been no variances previously applied for regarding the landscaping requirements of the Entryway/Interchange zoning districts in Yellowstone County.

Bretz RV and Marine did receive approval of an administrative appeal in July 2015 to allow the building the business is constructing to have exposed seam metal siding as a finish building material. Planning Division staff had found that the Entryway Zoning Regulations did not allow exposed seam metal siding as an acceptable building material and the County Board of Adjustment did not agree with that interpretation.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: Heavy Industrial (HI) and Entryway Light Commercial (ELC) Land Use: Agricultural Uses, industrial uses and residential uses
SOUTH:	Zoning: ELC, Residential-9600 (R-96) and Residential-15000 (R-15) Land Use: Single family residential and commercial (west)
EAST:	Zoning: R-96 and ELC Land Use: Single family residential and vacant land
WEST:	Zoning: Entryway General Commercial (EGC) and ELC Land Use: Hotel and residential uses

BACKGROUND

This application was first scheduled to be heard in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting.

May 12 County Board of Adjustment Meeting

At the May 12 meeting, the applicant and their agent were not able to attend the meeting, but the Board of Adjustment opened the hearing and took public testimony and had discussion. The applicant's agent, Brad Farnsworth, was contacted via phone during the meeting and did participate briefly during the public hearing and discussion. Mr. Farnsworth asked the Board to consider delaying action on the variance request until its June 9 meeting so that he could present information and visual materials that he could not provide via telephone. The Board did ask Mr. Farnsworth to clarify why he and the applicant was not able to attend the May 12 meeting and also discussed the history of the Zoning Compliance Permit and review process for the property in 2015. A Board member noted that other properties in the Entryway Zoning Districts appeared to be out of compliance with landscaping requirements. The Board also asked staff for clarification on how zoning violations are addressed in the County. Staff explained that zoning violations are complaint driven and there is one County Code Enforcement Officer who investigates complaints. Staff explained that it is possible that properties that have been developed in Entryway Zoning Districts over the years could be out of compliance for site requirements but since County Code Enforcement is not proactive in its enforcement, a complaint would be needed to address violations. The Board ultimately voted 2-1 to continue the hearing until the Board's June 9 meeting.

Property Development History

Representatives of Bretz RV & Marine began meeting with Planning Division staff in late 2014 and early 2015 to discuss the proposed new Bretz RV and Marine project at the subject property. Two initial meetings included County staff from Public Works, Lockwood Water and Sewer, County Engineering and Lockwood Fire. The intent of the meetings was to review draft site plans and proposals for the new Bretz RV & Marine (Bretz RV) sales and service location. The Planning Division provided copies of the County Zoning regulations pertaining to the Entryway/Interchange zoning districts. Planning Staff provided comments on the draft site plans including information on building materials, setbacks, parking, landscaping and signage. The Entryway Zoning Regulations were specifically developed to provide higher standards for site development to enhance the entryways into the County and City from the interstate (See **Attachment A**).

In June 2015, Bretz RV appealed to the County Board of Adjustment the Planning Division's interpretation of the Entryway Zoning Regulations regarding acceptable building siding materials. Planning Division staff found that the Entryway Zoning Regulations did not allow exposed seam metal siding as an acceptable building material and Bretz RV had proposed to use exposed seam siding. This requirement in the code had been in place since the Entryway Zoning Regulations were first adopted by the County in 1995. The County Board of Adjustment supported Bretz appeal and exposed seam siding is allowed on the new building.

In July 2015, Bretz RV continued to move forward with submitting site plans and building plans for the property. The initial site plan submittals that included the landscaping plans were not in compliance with the Entryway Zoning Regulations. Planning staff and Bretz RV representatives met, emailed, and discussed on the phone the requirements and what would be needed to bring the site plan into compliance with the landscape regulations. Planning staff explained in detail the requirements and worked at length with Bretz RV to ensure that while the landscape regulations were met, the need for visibility from the Interstate 90 corridor and parking lot circulation were addressed for a large RV and boat business. Accommodations staff provided that still met the regulations included clustering of trees along the I-90 and Old Hardin Road frontages, counting existing trees on the property toward the required number of trees, options for mulch to include wood chips. Bretz RV made modifications to the site plan to bring it into compliance with the landscape regulations and a Zoning Compliance Permit for the project was eventually approved and issued in August 2015 (See **Approved Site Plan in Attachment B**). Bretz RV states in its variance application that it made the changes to its site plan to avoid delaying the start of construction. Bretz RV contacted the Planning Division staff in September 2015 to begin researching how it might seek relief from the landscaping regulations of the Entryway Zoning District.

Bretz RV in this variance submittal is asking to significantly reduce the required numbers of trees and shrubs for the property because it states that the requirements "are inappropriate when considering the intended use of the property as a recreational vehicle and boat dealership." However, many commercial business have been built in the Entryway Zoning District in the County and City, and have followed the regulations. In addition, the same use has been developed in the Entryway Zoning District and met the landscaping requirements for Pierce RV Supercenter at 3800 Pierce Parkway at the Zoo Drive interchange. The Pierce RV Supercenter is located in an Entryway Light Industrial Zoning District, is adjacent to the I-90 corridor, and was subject to the same requirements as Bretz RV.

RECOMMENDATION

Staff recommends denial of Variance 281.

Attachments

Variance Application
Entryway Zoning Regulations
Applicant Variance Request Letter
Applicant Variance Landscape Plan
Variance Determinations
Letter of Opposition

APPLICATION FORM

COUNTY VARIANCE County Variance # _____ - Project # PLN-15-05394

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 # 000D06438A COUNTY COMMISSIONER DISTRICT # _____

Legal Description of Property: T1N/R27E/SEC 19

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

2999 Old Hardin Road

Zoning Classification: Interchange / Entryway General Commercial

Size of Parcel (Area & Dimensions): 34.995 acres

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: See attached Petition for Variance.

Facts of Hardship: See attached Petition for Variance.

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

Owner(s): Mark A. Bretz

(Recorded Owner)

4800 Grant Creek Road, Missoula, MT 59808

(Address)

406-541-4800, ext. 11121

(Phone Number)

mbretz@bretzrv.com

(email)

Agent(s): Brad Farnsworth

(Name)

4800 Grant Creek Road, Missoula, MT 59808

(Address)

406-541-4800, ext. 11132

(Phone Number)

b.farnsworth@bretzrv.com

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: Mark A. Bretz

(Recorded Owner)

Date: 12/23/2015

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

SEC. 27-1001. INTENT.

The intent of the Interchange/Entryway Zoning Districts is to promote attractive, high quality development, to provide an appealing image of the City of Billings, to the traveling public and also the community. Further, it is the intent of this district to maintain a sensitivity toward existing development while preserving scenic vistas and protecting environmentally sensitive areas, including the Yellowstone River Corridor.

OBJECTIVES

- (a) Promote a unique, attractive physical landscape through topographic variations, water areas, native vegetation and scenic vistas;
- (b) Create and preserve open space;
- (c) Preserve and enhance unique qualities of the total environment;
- (d) Encourage creativity in design;
- (e) Provide for harmonious land design and quality site planning, which will produce a more desirable and attractive environment;
- (f) Reduce the level of adverse impacts from the transportation system on adjoining lands;
- (g) Promote development patterns in harmony with the goals and objectives of the 1990 Yellowstone County Comprehensive Plan; and
- (h) Promote compatible land use transitions with a sensitivity toward existing residential uses.

SEC. 27-1002. APPLICATION AND APPROVAL PROCESS.

All plans and applications for development and signs shall be submitted to the City-County Planning Department. All applications must be submitted in person and signed by the property owner, lessee, the contract purchaser or the authorized agent of the property owner.

Planning Department approval is to ensure compliance with the Zoning Regulations. This does not in anyway construe approval by any other city or county department. A building permit and Planning Department approval are required prior to construction.

Each application shall include, but not be limited to the following information:

- (1) The name and address of the property owner;
- (2) The name and address of the applicant;
- (3) The legal description of the parcel;
- (4) A map drawn to scale showing the dimensions, acreage, location of the parcel, north arrow, streets and adjacent land uses;

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

- (5) A complete site plan drawn to a scale of no less than 1" = 40' showing the dimensions and locations of all structures, streets, paving, parking, landscaping, signage, waterways or other significant features of the development;
- (6) Complete elevation drawings drawn to scale including the dimensions and height of the structure; and
- (7) Signage Plan specifications and location. (This applies to applications for signs only.)

Within fifteen (15) working days following the submittal of a complete application, the Planning Director or his/her designee shall issue Planning Department approval for development or a denial of the application, unless the applicant consents in writing to an extension of the review period. Should the application be denied, the applicant shall be notified in writing specifying all areas of noncompliance with this chapter.

SEC. 27-1003. DEFINITIONS.

Terms not specifically defined in this chapter shall use the same meanings as they are defined in BMCC Section 27-201. The standard dictionary meaning shall be applied to terms not otherwise defined.

SEC. 27-1004. ZONING DISTRICTS.

(a) **Entryway Light Commercial Zone (ELC):** The purpose of the Entryway Light Commercial zone is to provide limited entryway commercial convenience facilities, serving the nearby community.

- (1) *Permitted Uses:* The following uses shall be less than three thousand (3,000) square feet gross floor area (GFA)

Accessory uses and structures associated with a permitted principal structure

Apparel and accessory stores

Bakeries, retail

Banking and financial institutions

Barber and beauty shops

Book and stationery stores

Coin-operated laundry and dry cleaning pick up station

Convenience stores, with or without gas sales

Food stores

General merchandise stores

Hardware stores

Home furniture and furnishing stores

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

Mailing, photocopying, blueprinting and duplicating services

Newsstands

Offices

Paint stores

Pharmacies

Photo-finishing labs

Restaurants without the sale of alcoholic beverages

Shoe repair shops

Watch, clock and jewelry repair

- (2) *Special Review Uses:* Any of the above-permitted uses greater than three thousand (3,000) square feet GFA

Car washes

Commercial recreation uses only as listed below:

Arcades

Batting cages

Boat Rentals

Bowling alleys

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

Handball courts

Ice skating rinks

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Roller skating rinks

Schools and camps for sports instruction

Swimming pools

Tennis courts

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

Waterslides

Gravel and/or sand extraction

Mixed use developments which include residential uses

Other retail uses similar in nature to those listed above

Restaurants with the sale of alcoholic beverages for on-premise consumption

(b) **Entryway General Commercial Zone (EGC):** The purpose of the Entryway General Commercial Zone is to provide a specialized classification for hotels, restaurants and other tourist-related facilities near major highway interchanges.

(1) *Permitted Uses:* Accessory uses and structures associated with a permitted principal structure

Apparel and accessory stores

Automobile and truck sales (New and Used)

Automobile rental agencies

Automotive service stations

Bakeries, retail

Banking and financial institutions

Barber and beauty shops

Book and stationery stores

Broadcasting studios, radio and television

Car washes

Coin-operated laundry and dry-cleaning pick up station

Commercial recreation uses only as listed below:

Arcades

Batting cages

Boat rentals

Bowling alleys

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

Handball courts

Ice skating rinks

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Roller skating rinks

Schools and camps for sports instruction

Swimming pools

Tennis courts

Waterslides

Convenience stores, with or without gas sales

Food stores

General merchandise stores

Hardware stores

Home furniture and furnishing stores

Hotels/Motels

Laundry and dry cleaning establishments

Mailing, photocopying, blueprinting and duplicating services

Newsstands

Offices

Paint stores

Pharmacies

Photo-finishing labs

Recreational vehicle sales and service

Restaurants without the sale of alcoholic beverages

Retail nurseries, lawn and garden supply stores

Shoe repair shops

Signs, computer controlled variable message

Theaters (Indoor)

Tire sales

Watch, clock and jewelry repair

Wholesale uses not to exceed three thousand (3,000) square feet gross floor area (GFA)

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(2) *Special Review Uses*

Campgrounds

Commercial Recreation uses only listed as below:

Go-cart tracks

Rodeos

Roping arenas

Gravel and/or sand extraction

Mixed use developments which include residential uses

Other retail uses similar in nature to those listed above

Restaurants with the sale of alcoholic beverages for on-premise consumption

Truck stops

Veterinary clinics

a. Boarding

b. Outpatient Only

Wholesale uses not to exceed ten thousand (10,000) square feet gross floor area (GFA)

Zoos

(c) **Entryway Mixed Use Zone (EMU):** The purpose of the Entryway Mixed Use Zone is to provide for commercial recreation development and a mixture of low intensity residential and low intensity commercial/office use. This zone allows for low impact commercial and residential development that will have minimal adverse effect on adjacent natural resources and existing uses.

(1) *Permitted Uses:*

Accessory uses and structures associated with a permitted principal structure

Campgrounds

Commercial recreation uses only listed as below:

Batting cages

Boat rentals

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

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Handball courts

Ice skating rinks

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Schools and camps for sports instruction

Swimming pools

Tennis courts

Mixed use developments (incorporating Office/Commercial uses permitted in the EGC zone and residential uses)

Residential, Single-family

Residential, Multi-family

Restaurants without the sale of alcoholic beverages for on-premise consumption

(2) *Special Review Uses:*

Commercial Recreation uses only listed as below:

Go-cart tracks

Rodeos

Roping arenas

Gravel and/or extraction

Restaurants with the sale of alcoholic beverages for on-premise consumption

(d) **Entryway Light Industrial (ELI):** The purpose of the Entryway Light Industrial zone is to provide large lots located directly accessible to arterial and other transportation systems for warehousing and light manufacturing and allow for limited commercial facilities for the adjacent community and interstate travelers.

(1) *Permitted Uses:*

Accessory uses and structures associated with a permitted principal structure

Automotive service stations

Auto repair

Auto supply stores

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Bakery, wholesale

Broadcast studios, radio and television

Bus terminal operations with or without maintenance facilities

Car washes

Coin operated laundry and dry cleaning with pick up station

Convenience stores, with or without gas sales

Cabinet and furniture manufacturing

Engineering, physical and biological research laboratories

Funeral homes, mortuaries, and crematories

General warehousing and compartmentalized storage under 250,000 square feet GFA

Heavy equipment sales and service

Hotels/Motels

Laundry and dry-cleaning establishments

Light manufacturing:

Computer and Office Equipment (SIC-357)

Household Audio & Video Equipment and Audio Recording (SIC-365)

Communication Equipment (SIC-366)

Electronic Components & Accessories (SIC-367)

Measuring, analyzing & controlling instruments; photographic, medical and optical goods, watches, clocks (SIC-38)

Mailing, photocopying, blueprinting and duplicating services

Mobile Home Sales

Offices; professional, private, government

Photo-finishing labs

Recreational vehicle sales and service

Restaurants without the sale of alcoholic beverages

Retail uses allowed in the Entryway General Commercial

Retail nurseries, lawn and garden supply stores

Tire sales

Truck stops

Trucking terminal with or without maintenance facilities

US Postal Services with or without terminal facilities

Vet Clinics

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Wholesale Trade (Except SIC-5093)

(2) *Special Review Uses*

Gravel and/or sand extraction

Mixed use developments

Passenger and freight terminals

Restaurants with the sale of alcohol beverages for on-premise consumption

Wood container manufacturing

Wood building and mobile home manufacturing

Misc. Wood Products manufacturing

Retail over 250,000 GFA

Warehousing over 250,000 GFA

SEC. 27-1005. DEVELOPMENT STANDARDS.

Minimum lot area for all non-residential development shall be twenty-thousand (20,000) square feet in the ELC, EGC , EMU, and ELI zoning districts.

Residential developments shall meet the minimum lot area, setbacks, lot coverage and height limits of the Residential 9,600 (R-9,600) zoning district for single family projects or for the Residential Multi-Family - Restricted (RMF-R) zoning district for multiple-family developments, as listed in BMCC Section 27-308.

Minimum building setback from property line:

	EMU	EGC	ELC	ELI
*Adjacent to Interstate right-of-way	25 feet	25 feet	25 feet	25 feet
*Adjacent to any other right-of-way	25 feet	25 feet	25 feet	25 feet
Adjacent to a residential zone	25 feet	25 feet	25 feet	25 feet
Adjacent to a non-residential zone	10 feet	10 feet	10 feet	10 feet
Structure Height	30 feet	40 feet	30 feet	40 feet
Maximum Lot Coverage	50%	50%	50%	50%

*All arterial setbacks as outlined in BMCC Section 27-602 must be maintained.

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Setback areas not occupied by required bufferyards may be used for, but not limited to the following: display area, driveways and non-required parking.

All current City and County codes shall apply, including but not be limited to the following: building, zoning, site development, parking and drainage regulations that are not directly addressed in this chapter. Where requirements are addressed in one or more regulations, the most stringent shall apply.

Traffic Accessibility Studies: Current traffic accessibility study requirements in the subdivision and site development regulations shall apply, in addition to those requirements outlined below.

The following uses shall be required to submit traffic accessibility studies:

Drive-through services

Truck stops

SEC. 27-1006. LANDSCAPING STANDARDS.

(a) *Definitions:*

- (1) Canopy tree: A species of tree which normally bears crown foliage no lower than six (6) feet above ground level upon maturity. Minimum size of canopy trees shall be two and one-half (2½) inches in caliper.
- (2) Evergreen tree or shrub: A tree or shrub of a species which normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be five (5) feet in height.

(b) *Street Frontage Landscaping.* All commercial zones are required to place a bufferyard (landscaping strip) adjacent to and along the length of all rights-of-way, excluding driveways. Rights-of-way include the following: ditches adjacent to streets, principal arterial streets, minor arterial streets, collector streets, local streets and US Interstate 90.

The developer shall have the option of bufferyard widths (see options below). Placement and landscaping design shall be at the discretion of the developer. It is recommended that a design professional or local nursery be contacted for assistance with the development of the landscape design.

Bufferyard Requirements: The developer shall have the option of one (1) of the following three (3) bufferyards. Bufferyard depth is measured from the property line inward. Any buffer area which overlaps another buffer area shall be subtracted from the total to avoid double counting.

Number of trees and shrubs required per one hundred (100) feet of frontage:

- (1) Twenty-five (25) foot wide bufferyard

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Five (5) Canopy or evergreen trees
Ten (10) Shrubs

- (2) Twenty (20) foot wide bufferyard
Ten (10) Canopy or evergreen trees
Fifteen (15) Shrubs
- (3) Fifteen (15) foot wide bufferyard
Fifteen (15) Canopy or evergreen trees
Twenty (20) Shrubs

The following criteria shall also apply to the bufferyards.

- (1) The landscape strip shall be contoured. Berming shall be one (1) foot of rise to four (4) feet of run with a minimum of three (3) feet in height. Depressions shall be no lower than the existing grade of the site.
 - (2) All landscaped areas shall contain ground cover such as sod, shrubs, flower beds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones or similar material.
 - (3) All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter.
- (c) *Off-Street Parking Lot Landscaping.* Landscaping shall be provided within all parking areas. The following requirements shall apply:
- (1) A minimum of twenty (20) square feet of landscaped area shall be provided for each parking space.
 - (2) Two (2) canopy and/or evergreen trees and five (5) shrubs shall be required for every nine (9) parking spaces.
 - (3) All landscaped areas shall contain ground cover such as sod, shrubs, flower beds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones or similar material.
 - (4) The minimum width and/or length of any parking lot landscaped area shall be five (5) feet.
 - (5) Internal parking lot landscaping provided shall be proportionately dispersed, at the developers discretion, in order to define aisles and limit unbroken rows of parking. The maximum horizontal or vertical unbroken length shall be limited to one hundred (100) feet. Landscaped areas provided shall be in a scale proportionate to parking lot.

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- (6) Any development that has parking abutting a required bufferyard, may extend the width of that bufferyard a minimum of five (5) feet and include the additional required parking landscaping plant material. The minimum bufferyard width and landscaping material is required in addition to the parking landscaping.
- (7) All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter.
- (d) *Protection of Landscaped Areas.* Landscaped areas within parking lots or the along perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt or other approved permanent barriers.
- (e) *Commercial Uses Abutting Residential Uses.* All commercial uses abutting residential uses shall install a bufferyard. The bufferyard shall be ten (10) feet wide and shall contain ten (10) evergreen and/or canopy trees and ten (10) shrubs per one hundred (100) lineal feet. A solid fence or wall that is architecturally compatible in color and design with the building, shall be required on the property line. The fence height shall be a minimum of six (6) feet. Chain link or other wire fencing material is prohibited.
- (f) *Recommended Tree Types.* It is recommended that the developer work with the City Parks Department, a local greenhouse operator, landscape architect or other design professional to determine the species of trees that are most suitable for each situation. The use of native, drought-tolerant plant material is strongly encouraged. Evergreen trees are encouraged for bufferyards and canopy trees are encouraged for parking areas, however, the planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

A list of recommended native plant material shall be available at the Planning Department.

- (g) *Fractions in the Calculation of Number of Trees and Shrubs.* In the calculation of trees and shrubs for bufferyards or parking landscaping, all fractions shall be rounded to the nearest whole number.

SEC. 27-1007. BUILDING DESIGN STANDARDS.

- (a) All buildings shall be completed on all sides with an acceptable finishing material. The following materials are acceptable: brick, fluted block, colored textured block, glass, stucco, architectural concealed fastener metal panels, exterior insulation and finishing systems (i.e. Dryvit, etc.), stone or wood. Exposed seam metal buildings shall be prohibited unless covered with an acceptable finishing material.
- (b) Roofs shall be finished with a material that is architecturally compatible in color and design with the construction of the building. Metal roofs, fascia and mansards shall be limited to the following: standing seam, metal shakes or shingles and architectural metal treatments. All mechanical equipment placed on top of any roof shall be screened by a parapet or other similar architectural apparatus being at least the height of the mechanical equipment. Pitched roofs are encouraged whenever possible.

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(c) Long, flat facades, having local street or interstate highway frontage, having more than one hundred (100) lineal feet are prohibited. Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features such as bell towers, clock towers, to provide a visually interesting shape. The break in the facade shall be minimum of eight (8) feet in length. A single uninterrupted length of a facade shall not exceed one hundred (100) lineal feet. It is encouraged that each offset area contain landscaping or other similar amenities which will complement the offset area.

SEC. 27-1008. ADDITIONAL PROVISIONS FOR COMMERCIAL USES.

(a) *Storage of Merchandise.* Any permitted storage of merchandise outside an approved building shall be within an area enclosed with a sight obscuring fence at least six (6) feet in height that is architecturally compatible in color and design with the building. However, promotional displays, vehicle sales lots and plant materials may be displayed outside of an approved building or enclosed area so long as they are placed appurtenant to a building wherein the business displays the bulk of its goods for sale. In addition, retail nurseries shall be exempt from the enclosure of plant materials. Bufferyards or required landscaping shall not be used for the displaying of merchandise. Chain link or other type of wire fencing is prohibited.

(b) *Site Lighting:*

(1) All outdoor lighting shall be designed, located and mounted at heights no greater than:

- a. Eighteen (18) feet above grade for non-cutoff lights; and
- b. Thirty-five (35) feet above grade for cutoff lights.

(2) *Maximum Illumination.* All outdoor lighting shall be designed and located such that the maximum illumination measured in footcandles at the property line shall not exceed three-tenths (0.3) footcandle for non-cutoff lights and one and five-tenths (1.5) footcandles for cutoff lights.

(c) *Storage of Junk.* No person shall store junk, partially or completely dismantled vehicles, or salvaged materials in any commercial zone outside a building. In the case of automobile repair shops, such materials must be enclosed within a building or an area having a sight obscuring fence at least six (6) feet in height. Chain link or other type of wire fencing is prohibited.

(d) *Solid Waste Area.* All solid waste storage facilities shall be located within an area enclosed with a sight obscuring fence or wall that is architecturally compatible in color and design with the building. Chain link or other type of wire fencing is prohibited.

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SEC. 27-1009. SIGNS.

(a) *Intent.* This section shall not regulate official traffic or government signs; the copy and message of signs; signs not intended to be viewed from a public right-of-way; window displays; product dispensers and point of purchase displays; scoreboards on athletic fields; flags of any nation, government or fraternal organization; gravestones; barber poles; religious symbols; or any display or construction not defined herein as a sign.

(b) *Definitions.* Words and phrases used in this section are defined in this section. Principles for computing sign area are outlined in subsection E of this section.

- (1) *Animated Sign:* Any sign that uses movement or change or lighting to depict action or create a special effect or scene.
- (2) *Area of Sign:* The entire area of a sign including the area within a perimeter which forms the outside shape including the frame, forming an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. The frame of a sign may be excluded from the area where such frame conveys no message and is constructed or affixed for aesthetic reasons beyond the necessary supports.

For computing the areas of any wall or canopy sign which consists of letters mounted or painted on a wall or canopy, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters. (See below subsection E for calculation of sign area.)

- (3) *Banner Sign:* Any sign (other than an official flag) made of cloth, paper or fabric of any kind, which is used to attract attention, whether or not imprinted with words or characters.
- (4) *Beacon:* Any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same lot as the light source; also, any light with one (1) or more beams that rotate or move.
- (5) *Building Marker:* Any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.
- (6) *Canopy Sign:* Any sign that is a part of or attached to any awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area, and which does not extend horizontally beyond the limits of the canopy.
- (7) *Changeable Copy Sign:* A sign whose informational content can be changed or altered by manual or electric, electro-mechanical or electronic means. Changeable signs include the following types:

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1. Manually Activated: Signs whose alphabetic, pictographic or symbolic information content can be changed or altered by manual means.
 2. Electrically Activated: Signs whose alphabetic, pictographic or symbolic informational content can be changed or altered on a fixed display surface composed of electrically illuminated or mechanically driven changeable segments. Electrically activated signs include the following two (2) types:
 - a. Fixed Message Electronic Signs: Signs whose basic informational content has been pre-programmed to include only certain types of information projections, such as time, temperature, predictable traffic conditions or other events subject to prior programming.
 - b. Computer Controlled Variable Message Electronic Signs: Signs whose informational content can be changed or altered by means of computer-driven electronic impulses.
- (8) *Copy*: The graphic content of a sign surface in either permanent or removable letter, pictographic, symbolic or alphabetic form.
- (9) *Directional/Informational Sign*: An on-premise sign giving directions, instructions or facility information and which may contain the name or logo of an establishment but no advertising copy, e.g., parking or exit and entrance signs. The sign may contain a logo provided that the logo may not comprise more than twenty (20) percent of the total sign area.
- (10) *Director*: The Planning Director of the County or his/her designee.
- (11) *Flag*: Any fabric, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision or other entity.
- (12) *Freestanding Sign*: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure, including monument signs.
- (13) *Government Sign*: Any temporary or permanent sign erected and maintained by the city, county, state or federal government for traffic direction or for designation of or direction to any school, hospital, historical site or public service, property or facility.
- (14) *Height of Sign*: The vertical distance measured from the highest point of the sign to the crown of the adjacent street, not including the interstate highway.
- (15) *Lot*: Any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record, which is recognized and intended as a unit for the purpose of transfer or ownership.

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- (16) *Maintenance:* For the purposes of this chapter, the cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the structure of the sign.
- (17) *Monument Sign:* A sign mounted directly to the ground with maximum height not to exceed six (6) feet.
- (18) *Nonconforming Sign:* A sign which was erected legally, but which does not comply with subsequently enacted sign restrictions and regulations.
- (19) *Portable Sign:* Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.
- (20) *Principal Building:* A structure accommodating the principal use to which the property is devoted. Lots with multiple principal uses may have multiple principal buildings, but storage buildings, garages and other clearly accessory uses shall not be considered principal buildings.
- (21) *Projecting Sign:* A sign, other than a flat wall sign, which is attached to and projects from a building, wall or other structure not specifically designed to support the sign. Supports shall be covered in a neat and orderly fashion. Guy wire support is prohibited.
- (22) *Roof Sign, Above-peak:* Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.
- (23) *Roof Sign, Integral:* Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six (6) inches.
- (24) *Setback:* The distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line.
- (25) *Sign:* Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

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- (26) *Street:* A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place or however otherwise designated which has been dedicated to or acquired for public use and which extends the full width between right-of-way lines.
- (27) *Street Frontage:* The length of the property line of any one (1) premises along each public right-of-way it borders excluding alleys, serviceways and the interstate highway.
- (28) *Suspended Sign:* A sign that is suspended from the underside of a horizontal place surface and is supported by such surface.
- (29) *Temporary Sign:* A non-permanent sign erected and maintained for a specific limited period of time.
- (30) *Wall Sign:* Any sign attached parallel to, painted on the wall surface or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one (1) sign surface. Wall signs shall not exceed twenty-two (22) inches in depth measured from the face on the wall on which the sign is mounted.
- (31) *Wind-Driven Sign:* Any sign consisting of one (1) or a series of two (2) or more banners, flags, pennants, ribbons, spinners, streamers or other objects or material fastened in such a manner as to move upon being subjected to pressure by wind or breeze.
- (32) *Window Sign:* Any sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.
- (c) *Signs Prohibited.* All signs not expressly permitted under this section or exempt from regulation hereunder in accordance with the following section are prohibited. Such signs include, but are not limited to:
- (1) Beacons;
 - (2) Wind-driven sign, except flags as defined in this section;
 - (3) Strings of lights not permanently mounted to a rigid background, except those exempt under the following section;
 - (4) Inflatable signs and tethered balloons;
 - (5) Portable signs;
 - (6) Animated signs;
 - (7) Above-peak roof signs;
 - (8) Banner signs;

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- (9) Abandoned signs;
 - (10) Snipe signs or signs attached to trees, telephone poles, public benches, streetlights or placed on any public property or public right-of-way; and
 - (11) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said signs (this does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business).
- (d) *Signs Not Requiring Permits.* The following types of signs are exempted from permit requirements but must be in conformance with all other requirements of this section:
- (1) Construction signs of sixteen (16) square feet or less;
 - (2) Special event or holiday lights or decorations;
 - (3) Nameplates of two (2) square feet or less;
 - (4) Public signs or notices, or any sign relating to an emergency;
 - (5) Real estate signs; (see below subsection I, 2)
 - (6) Political signs; (see below subsection I, 4)
 - (7) Interior signs not visible from the exterior of the building; and
 - (8) Directional signs not to exceed twelve (12) square feet in area or six (6) feet in height.
- (e) *Calculation of Sign Area.* The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two (2) identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure, the sign area shall be computed by the measurement of one of the faces.
- (f) *Maintenance.* All signs shall be properly maintained. Exposed surfaces shall be clean and painted if paint is required. Defective parts shall be replaced.
- (g) *Lighting.* Unless otherwise prohibited by this section, all signs may be illuminated.
- (h) *Changeable Copy.* Unless otherwise specified by this section, any sign herein allowed may use manual, or fixed message electronic sign.
- Computer controlled variable message electronic signs shall be permitted provided that the bottom of the reader board is ten (10) feet above the crown of the adjacent road. Computer controlled variable message electronic signs shall not be permitted in the Entryway Light Commercial (ELC) and the Entryway Mixed Use (EMU) zones.
- (i) *Signs Permitted in Residential Districts:*

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- (1) One (1) non-illuminated sign for each street frontage of a construction project, not to exceed forty-eight (48) square feet in sign area. Such signs may be erected thirty (30) days prior to beginning of construction and shall be removed thirty (30) days following completion of construction.
- (2) One (1) non-illuminated real estate sign per lot or premises not to exceed sixteen (16) square feet in sign area for residential properties and thirty-two (32) square feet for commercial properties. Such signs must be removed fifteen (15) days following sale, rental or lease of the real estate involved.
- (3) One (1) non-illuminated attached building nameplate per occupancy, not to exceed two (2) square feet in sign area.
- (4) One (1) non-illuminated political sign not to exceed sixteen (16) square feet in sign area. Such signs shall not be erected more than forty-five (45) days prior to the election or referendum concerned and shall be removed ten (10) days following such election or referendum. Political signs may be placed only on private property and only with the permission of the property owner.
- (5) One (1) subdivision sign per street frontage not to exceed forty-eight (48) square feet in sign area in each location.
- (6) One (1) identification sign per entrance to apartment or condominium complex, not to exceed thirty-six (36) square feet in sign area.

(j) *Signs Permitted in Commercial Districts:*

- (1) All signs permitted in residential districts as listed in above subsection I.
- (2) The total square footage of all signs located on the property, including, but not limited to freestanding, wall, projecting, integrated roof, canopy, under-canopy and directional signs, shall not exceed three (3) square feet in sign area for each lineal foot of property frontage. This frontage shall be calculated using local streets, not the interstate highway.
- (3) One (1) freestanding sign within the Interchange/Entryway Zoning District may be installed to a height of forty (40) feet and may be a maximum of three hundred-fifty (350) square feet if the principal purpose of such signs is to address interstate traffic. The sign must be oriented perpendicularly to the interstate so the sign is visible to the interstate traveler. In addition, the property must be adjacent to the Interstate right-of-way.
- (4) Freestanding signs which do not address interstate traffic may be installed to a maximum height of twenty-four (24) feet and may have a maximum size of one hundred-fifty (150) square feet.

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- (5) The setback for the leading edge of freestanding signs shall be a minimum of ten (10) feet.
 - (6) No sign may be placed or designed so as to simulate or interfere with traffic control devices or official highway directional/informational signs.
 - (7) One (1) freestanding sign per frontage, including the interstate highway, shall be allowed. Where a street frontage exceeds five hundred (500) feet, one (1) additional freestanding sign may be allowed per five hundred (500) foot increment. Freestanding signs shall have a minimum distance of one hundred-fifty (150) feet between signs. The total square footage of all freestanding signs shall not exceed the total allowable square footage for freestanding signs.
 - (8) Wall signs shall not exceed twenty (20) percent of the square footage of the wall area upon which they are installed. Electric awning and canopy signs shall not exceed twenty (20) percent of the square footage of the wall area upon which they are installed. The combination of wall signs, electric awning, canopy signs and projecting signs shall not exceed twenty (20) percent of the allowed wall sign area.
 - (9) Integrated roof signs may be used instead of wall signs. The integrated roof sign size shall not exceed the allowable size for a wall sign. Integrated roof signs shall be constructed so as to conceal all structures and fastenings. The height of the sign shall not exceed the roof to which it is attached.
 - (10) Projecting signs may be used instead of any wall or freestanding signs provided they do not project beyond the property line and maintain a clearance of ten (10) feet over sidewalk and fourteen (14) feet over any parking lot, driveway or crown of the street, whichever is higher. Projecting sign size shall not exceed the allowable size for a wall sign.
 - (11) One (1) under-canopy sign for each separate occupancy or separate entrance not to exceed eight (8) square feet in sign area. Under-canopy signs must have a minimum clearance of nine (9) feet from the sidewalk.
 - (12) Window signs shall not cover more than thirty (30) percent of the window area.
 - (13) On-site directional signs as required.
- (k) *Shopping Center Signs:*
- (1) Shopping centers shall be allowed one (1) freestanding sign directory sign per frontage. The sign shall not exceed one hundred-fifty (150) square feet

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plus five (5) percent of the one hundred-fifty (150) square feet per tenant. Maximum sign size shall not exceed three hundred-fifty (350) square feet.

- (2) Shopping centers signs shall not exceed the maximum allowable freestanding signage.
 - (3) Shopping center signs cannot be used if the Common Signage Plan is used.
- (1) *Common Signage Plan:*
- (1) Common Signage Plan. If the owners of two (2) or more contiguous or adjacent (disregarding intervening streets and alleys) lots or the owner of a single lot with more than one building (excluding accessory buildings) or multiple use buildings file with the Planning Director for such lot(s) a Common Signage Plan conforming with the provisions of this section, a twenty-five (25) percent increase in the maximum total sign area shall be allowed for each included lot. This bonus shall be allocated within each lot as the owner(s) elects.
 - (2) Provisions of Common Signage Plan. The Common Signage Plan shall contain all of the following information:
 - a. An accurate plot plan of the lot, at such scale as the Planning Director may reasonably require;
 - b. Location of buildings, parking lots, driveways, clear vision triangles and landscaped areas on such lot;
 - c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the lot(s) included in the plan under this chapter; and
 - d. An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not.
 - e. Window signs may simply indicate the areas of the windows to be covered by window signs and the general type of the window signs (e.g., paper affixed to window, painted, etched on glass, or some other material hung inside the window) and need not specify the exact dimension or nature of every window sign.

The Common Signage Plan shall also specify standards of consistency among all signs on the lots affected by the Plan with regard to:

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

- a. Color scheme;
 - b. Letter or graphic style;
 - c. Lighting;
 - d. Location of each sign on the building(s);
 - e. Material; and
 - f. Sign proportions.
- (3) *Limit on Number of Freestanding Signs Under Common Signage Plan.* The Common Signage Plan, for all lots with multiple uses or multiple users, shall limit the number of freestanding signs to a total of one (1) for each street on which the lots included in the plan have frontage and shall provide for shared or common usage of such signs. Where street frontage exceeds five hundred (500) feet, one additional freestanding sign may be allowed per five hundred (500) foot increment.
- (4) *Other Provisions of the Common Signage Plan.* The Common Signage Plan may contain other restrictions as the owners of the lots may reasonably determine.
- (5) *Consent.* Common Signage Plan shall be signed by all owners or their authorized agents in such form as the Planning Director shall require.
- (6) *Procedures.* Common Signage Plan shall be included in any development plan, site plan, planned development or other official plan required by the City or County for the proposed development and shall be processed simultaneously with such other plan.
- (7) *Amendment.* Common Signage Plan may be amended by filing a new Common Signage Plan that conforms with all requirements of the chapter then in effect.
- (8) *Existing Signs Not Conforming to Common Signage Plan.* If any new or amended Common Signage Plan is filed for a property on which existing signs are located, it shall include a schedule for bringing into conformance, within five (5) years, all signs not conforming to the proposed amended plan or to the requirements of this section effective on the date of submission.
- (9) *Binding Effect.* After approval of a Common Signage Plan, no sign shall be erected, placed, painted or maintained, except in conformance with such plan, and such may be enforced in the same way as any provision of this

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

chapter. In case of any conflict between the provisions of this section and Common Signage Plan, the section shall control.

- (10) *Dissolution of Common Signage Plan.* If the signatories of a Common Signage Plan wish to dissolve the Common Signage Plan, written notice must be submitted to the Planning Director. All signs on the property for which the Common Signage Plan was dissolved must bring all signs into conformance with this section within thirty (30) days of the date written notice was submitted to the Planning Director.

(m) *Nonconforming Signs.* Existing signs which do not conform to the specific provisions of this section may be eligible for the designation "legal nonconforming" provided that:

- (1) The Planning Director determines such signs are properly maintained and do not in any way endanger the public;
- (2) The sign was installed in conformance with a valid permit or variance or complied with all applicable laws on the date of adoption of this section; and
- (3) The sign owner registers the sign with the Planning Director within six (6) months of the adoption of this section. If the owner fails to register the nonconforming sign with the Planning Director, the sign then must be brought into compliance with this section within thirty (30) days.

A legal nonconforming sign may lose this designation if:

1. The sign is relocated or replaced; or
2. The structure or size of this sign is altered in any way except toward compliance with this section. This does not refer to change of copy or normal maintenance.

The legal nonconforming sign is subject to all requirements of this section regarding, safety, maintenance, and repair. However, if the sign suffers more than fifty (50) percent damage or deterioration, as based on appraisal, it must be brought into conformance with this section or removed.

(n) *Construction Specifications:*

1. All signs shall be installed in compliance with the Uniform Building Code (UBC) and the National Electric Code (NEC).
2. All signs shall be inspected by the City of Billings Building Division for compliance with all applicable codes. (Including, but not limited to structure, wind load, and electrical hook-up.)

ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

3. All electrical freestanding signs must have underground electrical service to such signs.

SEC. 27-1010. SPECIAL REVIEW PROCESS.

Special reviews shall follow the procedure as outlined in BMCC Sections 27-1503 (City) and 27-1509 (County).

SEC. 27-1011. VARIANCES.

Variations from this chapter shall follow the process outlined in BMCC Sections 27-1506 (City) and 27-1511 (County).

(Ord. No. 97-5048, § 8, 12-22-97; Ord. No. 99-5101, § 1, 9-13-99)

PETITION FOR VARIANCE

Bretz RV & Marine respectfully requests Administrative Relief from the application of the landscaping regulations that govern the construction of its new dealership in the Lockwood area.

Background Information

Bretz RV & Marine (Bretz) is a family-owned business that was started in Missoula in 1967. Over the years, the business has continued to grow and in January, 2008, Bretz expanded and purchased a dealership in Billings. Business has been good in Billings and as a result the company outgrew the capacity of its original facility. As a result, in March of 2015, Bretz purchased new property, of which approximately 34 acres of vacant land is being developed at 2999 Old Hardin Road in Lockwood, Montana. This parcel is zoned as Entryway General Commercial.

This parcel was selected as the site of Bretz' new dealership due to the fact that it has approximately 1780 feet of frontage on Interstate 90 and it also has easy access via the Johnson Lane interchange and Old Hardin Road. It is important to note that other suitable property was available at a much lower price, but these other parcels did not have frontage on the Interstate that would allow for effective public display of motorhomes, recreational vehicles, and boats.

Applications and drawings were submitted by Bretz to the Planning and Community Services Department. During this process, Bretz was notified by the Planning Division that several elements of its proposed landscape plan did not satisfy the requirements of Article 27-1006 of the Landscape Zoning Requirements. Therefore, in order to avoid delaying the start of construction, Bretz amended its proposal to address these concerns and as a result, on August 14, 2015, Building Permit # PLN-15-5394 was issued for the construction of the new dealership.

Landscaping Standards

A total of four landscaping regulations and one building design zoning regulation are at issue:

BERM - Zoning Regulation Section 27-1006 provides that "All commercial zones are required to place a bufferyard (landscaping strip) adjacent to and along all rights-of-way, excluding driveways. Rights-of-way include...Interstate 90." The regulations further provide that this bufferyard must include a berm, and as a result Bretz has installed a 25 **foot** wide berm that is 3 feet in height along its Interstate 90 frontage at a cost of \$75,390.00. This berm will be covered with sod.

TREES & SHRUBS - The regulations state that the owner must plant five canopy or evergreen trees and 10 shrubs on every 100 feet of frontage. In other words, one tree every 20 feet and one shrub every 10 feet. Since we have 1780 feet of frontage, we would need to plant 89 trees and 178 shrubs along

Interstate 90. Similarly, Bretz has 180 feet of frontage along Old Hardin Road, and therefore would need to plant an additional **18 trees** and **36 shrubs** here.

GROUND COVER – “All landscaped areas shall contain ground cover such as sod, shrubs, flowerbeds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones, or similar material.”

PARKING LOTS – Two trees and five shrubs are required for every nine parking spaces. The maximum unbroken length of the rows of parking is 100 feet. Landscaped areas within parking lots must be protected from vehicular traffic through the use of continuous concrete curbs or other permanent barriers. Based on the size of Bretz’ parking lots, **21 trees** and **53 shrubs** are required around the parking area.

FACADES – Section 27-1007 provides that “Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features...to provide a visually interesting shape. The break in the façade shall be minimum of eight (8) feet in length. A single uninterrupted length of a façade shall not exceed one hundred (100) lineal feet.” Bretz’ new building is 300 feet long by 110 feet wide. It is designed with garage doors that are recessed 8 inches and with siding that transitions from one color to another color at the top of the doors. In addition to this, Bretz is being required to install a landscape planter and install 3 trees between three of the doors.

Request for Relief

Bretz believes that the regulations noted above are inappropriate when considering the intended use of its property as a recreational vehicle and boat dealership. While a vast majority of businesses display their merchandise indoors, RV and boat dealers are largely prevented from doing so due to the extremely large size of their vehicles and boats. Indeed, the need to display and maneuver a large number of these units is the very reason that Bretz needed to purchase 34 acres of land for its new dealership location and display lots.

Equally as important is the fact that these large units essentially block the public’s view of the dealership building itself. While the view of most large retail buildings is unobstructed, RV dealerships are unique in that the motor homes and recreational vehicles on display shield the building from view and tend to preoccupy the viewer’s attention and focus. In fact, Bretz has learned through the years that customers are drawn to the dealership when they can easily view our units. It is for these reasons that Bretz made the business decision to purchase property with Interstate 90 frontage, even though this property came at a much higher price than non-frontage property.

Despite the hefty price tag of **\$75,390.00**, Bretz has already installed the 3 foot high berm described above all along Interstate 90, even though none of the other businesses in the area have been required to do so. This berm obviously reduces the visibility of our display lot. Now, if Bretz is also required to

plant 89 trees and 178 shrubs along this frontage, our Interstate 90 frontage will lose much of its value because our customers and potential customers will simply not be able to clearly see our merchandise. The same is true for the required 18 trees and 36 shrubs along Old Hardin Road.

In regards to ground cover, the regulations cited above allow no more than 10 percent of the landscaped areas to be covered with rock. However, it has been Bretz' experience at its dealership in Missoula that river rock placed on a weed barrier makes a very attractive ground cover that is easy to maintain. Perhaps more importantly, the river rock is much more environmentally responsible than sod or other organic materials because it does not require constant watering and irrigation. Simply put, it conserves water resources. It should also be noted that the berm that extends all along our Interstate 90 frontage will be covered with sod, as will one side of our entire entrance drive.

As to parking lots, the size of motor homes and recreational vehicles is again a significant concern. Most of Bretz' customers drive their motorhome or recreational vehicle to the dealership when they visit. The turning radius on some motorhomes is 45 feet, and if we add a boat or tow vehicle behind, which many of our customers do, this radius increases even more. Clearly the regulation noted above that mandates a maximum of 100 feet of unbroken rows of parking is unworkable in an RV dealership environment.

Finally, in addressing the façade requirements, the recessed doors and the transition in the color of the siding on the building fully provides for the desired relief from the appearance of a long, flat uninterrupted wall. And again, large motorhomes and RVs will be displayed between the building and Interstate 90 and Old Hardin Road, thereby breaking up the view of the side of the building. Further, the required addition of islands and trees next to the building is problematic because as the trees mature they will interfere with ingress and egress through the doors of the building, and because the necessary soil and irrigation for these trees will provide an avenue for water to seep down beneath the foundation and pavement and cause freeze damage.

It should also be noted that other businesses in this Entryway General Commercial zoning area appear to not be abiding by the zoning regulations noted above.

In view of this information, Bretz is respectfully requesting that the County Board of Adjustment provide relief from these regulations by approving the following Variance:

1. Reduce the number of trees required from 131 to 60. The trees to be planted would be 32 Quaking Aspen, 7 Corkbar Fir, 15 Canada Red Chokecherry, and 6 Springsnow Crabapple-sterile. These varieties were selected because they will provide a variety of color year round.
2. Reduce the number of shrubs required from 267 to 60. The shrubs to be planted would be 15 evergreen shrubs (Min Mair Birds Nest Spruce), and 45 deciduous shrubs (potentilla in yellow, white and pink); Spirea (Snowmound in white and Anthony Waterer in pink); and Redleaf Barberry.
3. Allow river rock to be used for ground cover on 50% of the area that is required to be landscaped.
4. Eliminate the requirement for concrete islands in the parking lots.
5. Eliminate the islands and trees required next to the building façade.

A sketch of how the property would look with the proposed landscaping is attached. A landscape plan showing the proposed locations of the trees and shrubs is also attached.

In sum, the granting of this Variance will allow the business owner to effectively display his merchandise to the public, it will conserve water, and it will allow for the necessary maneuverability of large motor homes, recreational vehicles and boats. At the same time, it will provide an attractive entryway commercial appearance for this growing area of Lockwood.

Respectfully submitted,



Mark A. Bretz, President
Bretz RV & Marine



SURFACING PHASING		
AREA	PHASE I SURFACE	PHASE II SURFACE
I-A	ASPHALT	ASPHALT
I-B	---	---
I-C	GRAVEL	GRAVEL
I-D	ASPHALT	ASPHALT
I-F	ASPHALT	ASPHALT

QUANTITIES AFTER FUTURE PARKING LOT		
AREA	GRAVEL/ASPHALT	UNITS
I-A	28,015 SQ YDS	210
I-B	---	---
I-C	24,640 SQ YDS	160
I-D	12,378 SQ YDS	94
I-F	7,318 SQ YDS	34

QUANTITIES		
AREA	GRAVEL/ASPHALT	UNITS
I-A	32,849 SQ YDS	245
I-B	---	---
I-C	24,640 SQ YDS	160
I-D	14,014 SQ YDS	94
I-F	7,318 SQ YDS	34

DETERMINATIONS

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

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

There are no special conditions and circumstances that are peculiar to the land that create a hardship. The property is relatively flat, was almost completely cleared for the construction of the Bretz RV facility, and is similar to other properties in the same district. The property directly to the west of the subject property is in the same Entryway General Commercial (EGC) zone and a Holiday Inn Express is located on the site. The Holiday Inn Express was subject to the same regulations. The Pierce RV Supercenter located at 3800 Pierce Parkway at the far west edge of Billings is in the Entryway Light Industrial (ELI) zone and also was subject to the same site development requirements.

Bretz RV in its variance application references the cost of the land it purchased for the new facility and the cost of the landscape berm it has already installed. It appears to indicate these costs should be considered a hardship. However, monetary costs are not identified as criteria in variance determinations.

- 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 give the applicant a privilege that is denied others in the same zoning district. There have been no variance requests from the landscaping requirements of the Entryway Zoning Districts since the regulations were first adopted by the City and County. Businesses of varying sizes and uses have developed in compliance with the regulations. Some businesses have begun construction and were found to be out of compliance with the regulations and were brought into compliance. There are likely a few businesses in the Entryway Zoning District in the County that may not be in compliance since building permits are not required in the County. County Code Enforcement requires a complaint to be filed before investigating a potential violation. No variances for landscaping have been submitted for this district and many existing businesses in the district have complied with the regulations. A literal interpretation of the regulations does not deprive these owners of rights commonly enjoyed by others in the same zoning district.

Planning staff also worked extensively with the applicant to develop a landscape plan that met the Entryway Zoning requirements while also enabling the applicant to have multiple open areas for motorists on I-90 and Old Hardin Road to see the property and displayed merchandise. The applicant could have even done more with clustering of landscaped areas along the I-90 frontage to consolidate trees to further improve views of the property. Only two landscape bump outs from the I-90 frontage were placed on the site plan where trees could have been clustered, while additional bump outs could have further concentrated the trees in specific areas to further open the spaces between them for views of the property.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;

Granting the variance would confer on the applicants a special privilege that is denied other land in the district. The applicants are asking for more than a 55% reduction in the number of trees required (131 to 60), a 78% reduction in the number of shrubs required (267 to 60), to be allowed to have 50% of the ground cover to be non-living (rock) instead of 10%, complete elimination of the required bump outs in the parking lots for landscape areas, and complete elimination of the six (three per building frontage on Old Hardin Road and I-90) small landscape areas with one tree per location to be installed along the building façade between the garage bays to break up the long façade.

While the landscape requirements are significant in this district, the subject property is almost 1.5 million square feet in area, with nearly 2,000 feet of combined street frontage on Old Hardin Road and the I-90 corridor. To meet the intent and requirements of the Entryway Zoning District, a property of this size and scale will have a significant amount of landscaping.

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 not be in harmony with the general purposes and intent of the zoning regulations. Section 27-1001 of the zoning code indicates that the purposes of the Entryway Zoning Regulations is *“to promote attractive, high quality development, to provide an appealing image of the City of Billings (and Yellowstone County), to the traveling public and also the community. Further, it is the intent of this district to maintain sensitivity toward existing development while preserving scenic vistas and protecting environmentally sensitive areas, including the Yellowstone River Corridor.”*

This property and many of the surrounding properties were part of the Johnson Lane Master Plan zone change approved in September 1995. The Board of County Commissioners approved the master plan by resolution in July 1994. The Johnson Lane Master Plan and the adopted zoning was intended to attract businesses that serve tourists and travelers, and make this entry to Lockwood more appealing through enhanced building design with attractive and abundant landscaping. Similar interchange entryway plans and zoning were implemented for the same purpose at the South Billings Boulevard/I-90 Interchange and the Zoo Drive/I-90 Interchange. Reducing the landscape requirements does not promote attractive, high-quality development in this area, and will not be sensitive to the surrounding existing residential and some commercial development.

Granting this variance will not be in harmony with the 2008 City of Billings and Yellowstone County Growth Policy. The variance conflicts with the following Growth Policy goals:

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

This project is in the Entryway Zoning District near the Johnson Lane Interchange in Lockwood. The development in this area is intended to promote attractive, high-quality

development and be sensitive to the surrounding existing development. Significantly varying from the landscaping requirements will make this development inconsistent with the character of the area.

- Goal: New developments that are sensitive and compatible with the character of adjacent County townsites. (p. 6)

The Entryway Zoning District requirements are intended to make development in the area appealing to the traveling public and also sensitive and compatible with the character of the Lockwood area. A lack of landscaping and site improvements will diminish the compatibility of this property with others in the same area and zoning district.

- Goal: An inviting and attractive urban interstate corridor through the County. (p. 9)

The Entryway Zoning District requirements are intended to make development in the area appealing to the traveling public. Limited landscaping will not make the interstate corridor more inviting or attractive in this area of the County.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending denial of this variance and so conditions of approval are not applicable.

- 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 not recommending approval of this variance and so a time limit is not applicable.

- 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 this variance will not allow a use that is prohibited in the Entryway Zoning District, but would grant a special privilege to the property owner inconsistent with the limitations placed upon other property in the District.

Carol Kraft
PO Box 533
Billings, MT 59103

City-County Planning Division
2825 3rd Ave North
Billings, MT 59101

February 29, 2016

Re# County Variance #281 Entryway Landscaping for Bretz RV

To Whom it May Concern:

As a neighboring property owner of Bretz RV, I am writing to express my opposition to the proposed variance.

First note, per Background Information, it appears Bretz knew the requirements of the code before starting construction. "Bretz was notified by the Planning Division that several elements of its proposed landscape plan did not satisfy the requirements of Article 27-1006 in order to avoid the delay of construction Bretz amended its proposal" Point being, they knew the requirements going into their project, yet chose to proceed anyhow.

It is not necessary to quote the entire proposal, in a nutshell Bretz is wanting to place less than half of the required trees, a fifth of the required bushes, half of the required living material and eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement facing the interstate and Old Hardin Rd.

I am reminded, daily, of the more than 34 acres of natural vegetation, wildlife habitat and wildlife, grassland covering, trees and bushes that have been removed. Several very large, old trees, in fairly good condition were destroyed.

Trees placed along roadsides will certainly not block the view of a sea of RV's, or a customer's awareness that an RV dealership is in place. Window-shopping from any roadway doesn't seem to be in the best interest of public safety.

Conservation of water has been addressed, yet the Lockwood Irrigation Ditch borders the property. The land should have been water righted and the owner is paying an irrigation fee if they use the water or do not use the water.

I searched the county website but was unable to locate the results of Bretz last variance request in regard to the steel sided building, that they have erected. The building does not incorporate "recesses, off-sets, angular forms, landscaping features or other architectural features to provide a visually interesting shape."

Bretz is a welcome neighbor, but complying with the code should be required. The property will be a visual welcome of what to expect from the City of Billings, my understanding of why a code has been implemented and exists. Bretz indicated in their request that many businesses are not abiding by the regulations. I disagree. Many are and have built visually pleasing buildings and landscaped accordingly. Any that are not in compliance are probably old businesses, in place for many years, who may be willing to bring their property up to standard with a reasonable allotment of time. However, granting elimination, or reduction, of the code for Bretz, certainly sets precedence for future developments.

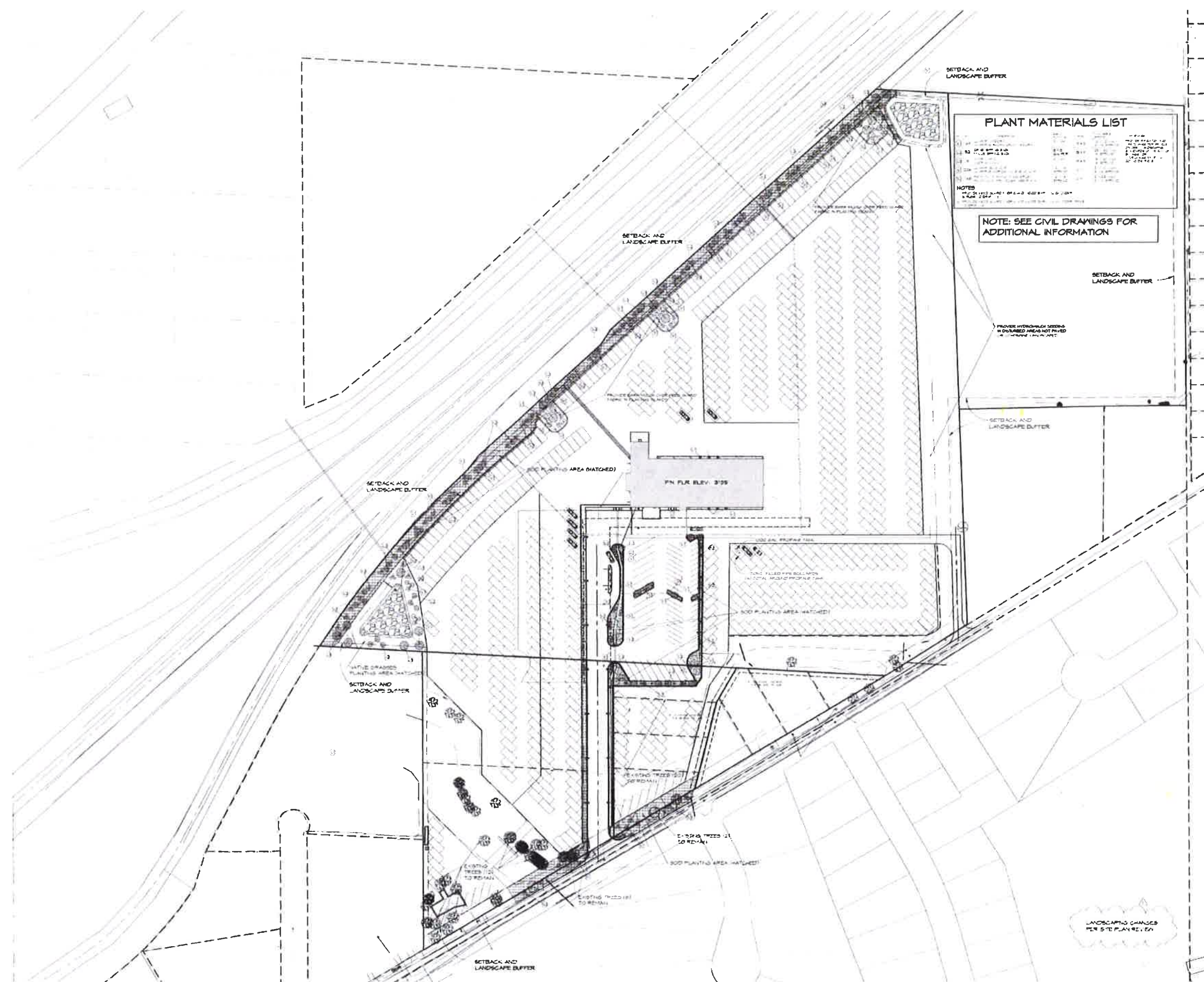
Bretz is not simply asking to redistribute the environmentally friendly requirements of landscaping to a position that maybe more suitable for the traffic they will host. They are asking to eliminate requirements clearly stated in the code, requirements that they knew were in place prior to beginning the project.

As a property owner, I respectfully request that the request for a Variance of Entryway Landscaping for Bretz RV be denied.

Thank you to all of the Planning Division for your commitment and enforcement of our city and county code.

Sincerely,
Carol Kraft
406-672-2372

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PLANT MATERIALS LIST

NO.	DESCRIPTION	QTY	UNIT	NOTES
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NOTE: SEE CIVIL DRAWINGS FOR ADDITIONAL INFORMATION

PROVIDE HYDROLOGIC STORMWATER DETENTION AND TREATMENT

SITE PLAN
1:1000

ADDENDUM 1
C:\HARDWARE\... 8/12/2015 12:43 PM

HOFFMANN MORGAN & ASSOCIATES ARCHITECTURE & PLANNING
285 West Front Street
Missoula, Montana
59802
(406) 728-8847
FAX (406) 728-7212



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HOFFMANN MORGAN
& ASSOCIATES

8/14/15

LANDSCAPE PLAN

FINAL

APPROVED

A NEW PROJECT FOR:
BRETZ RV & MARINE
BILLINGS, MONTANA

drawn by: C. TRIGA
checked by: M. MORGAN
project no. 1A040
date: 08-30-15
revision: 1 08-11-15
sht. no.:

L1.1

Site Photos of the Subject and Surrounding Property



Bretz RV –Main Entrance to the property off of Old Hardin Road looking north.



Bretz RV entrance on Old Hardin Road is just to the right outside the photo. This is looking west along Old Hardin Road at residential use adjacent to the subject property to the west.



Bretz RV entrance on Old Hardin Road is in the foreground – view is looking southeast across Old Hardin Road at residential uses on the south side of the street.



Looking north across Old Hardin Road at Bretz RV property. Building is visible in the background and RVs are shown parked in the right of the photo on a portion of the site's parking area.



Looking at the Bretz RV property from across Old Hardin Road at the Southeast corner of the property. An emergency access/future access is shown in the foreground that accesses the east side of the property and a portion of the property that is being left vacant for future development at this time.



Existing residential development just east of the Bretz RV property along Old Hardin Road.



Holiday Inn Express property just east of Bretz RV property. Photo was taken looking south from I-90 ROW.



Bretz RV property from the I-90 ROW looking east. Building is in the background and RVs and boars are parked on a portion of the paved storage and sales area.



Bretz RV property from the I-90 ROW looking west along the property frontage. The chain link fencing in the foreground does not meet Entryway Zoning Districts standards but was erected by MDT along its interstate ROW. Bretz is using this existing fencing as its perimeter fencing in this area.



Bretz RV building from I-90 ROW looking south at the property. Part of the variance request is to not provide small landscaped bump outs in 3 locations between some of the garage bays on this building frontage that faces I-90.



County Board of Adjustment

Meeting Date: 06/09/2016

SUBJECT: Variance 282 - 1905 Sunrise Avenue - Side Setback

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

County Variance 282 – 1905 Sunrise – Side Setback – A variance from Section 27-310(j) requiring a minimum side setback of 3 feet for a detached accessory structure to allow a 0 side setback for an existing 1,008 square foot detached garage in a Residential 15,000 (R-150) zone on Lot 22 of Sunrise Subdivision, 1st Filing, a 22,216 square foot parcel of land. Tax ID: C05159. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

The Planning Division recommends denial and adoption of the findings of the 7 criteria for Variance 282.

APPLICATION DATA

OWNER: Sandra and James Ross

AGENT: None

LEGAL DESCRIPTION: Lot 22, Sunrise Subdivision, 1st Filing

ADDRESS: 1905 Sunrise Avenue

CURRENT ZONING: R-150

EXISTING LAND USE: Single family home with 2 detached shops

PROPOSED USE: Same

SIZE OF PARCEL: 22,216 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property: None

Surrounding Property: There are 6 zoning variances of record in this area of Lockwood between Old Hardin Road and Highway 87 East. Two of the applications were denied, both for the same lot in Eagle Rock Subdivision. The denied variances were found to not have physical hardship with the land and the owner began the construction without checking with the Planning Division. The 4 remaining variances of record were for side yard setbacks for either detached or attached garages. These variances were to reduce the required side setback from 10 feet or 8 feet to less than 5 feet. No variances have been requested to reduce the side setback for a new detached garage to 0 feet.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-150 and Community Commercial
Land Use: Lockwood Irrigation Canal; Single family residence; Lockwood Mini-storage

SOUTH: Zoning: R-150
Land Use: Single family dwellings

EAST: Zoning: R-150
Land Use: Single family dwellings

WEST: Zoning: R-150
Land Use: Single family dwellings

BACKGROUND

The applicant is requesting a variance from the required side setback for a new detached garage from a minimum of 3 feet from the side property to a minimum of 0 feet. The property owner demolished an old shed on the property line and re-constructed a new detached garage of 1,008 square feet in the same location. The property owner was notified of the requirement to obtain a Zoning Compliance Permit (ZCP) for the new structure, and that a variance may be required since the building appeared to sit on the side property line.

The property owner to the east, Bob Ryder, has submitted documentation to the Planning Division indicating the building is in fact over the common property line approximately 1.5 inches on the northeast corner of the building. The building was constructed with the eave on the property line - or over the property line and all the roof drainage on the east side of the roof ends up on the neighbor's yard. The shed that was demolished was much smaller; approximately 252 square feet. This older shed had a gabled roof running east to west so all the roof drainage was on the subject property.

The applicant has stated the need for the variance was due to an error; not being aware of the un-acceptable 0 lot line setback. The applicant stated the new building is to accommodate storage of trailers, a Bobcat and a lawn mower. The applicant stated there will be no commercial use of the new garage and it would be exceedingly difficult to move the building. The building is a standard "pole barn" type construction with 2 overhead doors. The applicant submitted receipts for purchase of some building materials in July 2015, when construction was started on the new garage. The variance application was the result of a complaint to County Code Enforcement in late February of this year, after the building was complete.

The Planning staff found 6 variances of record in this area of Lockwood for setbacks. None of these variances were requested for 0 side setback. Four of the 6 applications were conditionally approved to reduce side or front setbacks down to as low as 4.5 feet. Two variances were for garage additions to homes on Memory Lane. There are no recent variances since 1996 in this area. A windshield survey of the area did not note any recent construction at or along property lines in violation of the zoning requirements. There are several older sheds and accessory buildings constructed on or near property lines in the general area. In fact, the adjacent property has a small shed within 1 foot of the property line. It appears the shed has been there for many years and may pre-date the zoning on this property.

The Planning staff is recommending denial based on the proposed findings of the 7 criteria. The first 3 criteria; hardship with the land, denial of a right commonly enjoyed by others, and not conferring a special privilege on this owner, are the primary review criteria and findings the Board of Adjustment must make before considering an approval of a requested variance. The first criteria, a hardship with the land peculiar to this property, is not met. The property is large and although an irregular triangle shape, there is abundant area on this north end of the property for the owner to have met the required 3-foot minimum side setback. The 2nd criteria, whether denial of the variance would deprive this owner of a right commonly enjoyed by others, is also not met in this cases. The variances of record do not support a 0-foot side setback and although some detached buildings have been constructed on property lines in this area in the past, there is no evidence of newer construction of 1,000+ square foot buildings on property lines. There are many smaller detached sheds in the area that were placed on or near the property line. The previous shed at this location on the subject property was about 252 square feet. The new detached garage is 1,008 square feet. The 3rd criteria, whether granting the variance would confer a special privilege on this owner, also does not support the variance. Granting a 100% variance to this owner, after the fact of the construction, would be conferring a special privilege that would be denied to others in the same district. Also, there is a property line in dispute in this matter. The owner of 1919 Sunrise to the east has provided a survey showing the northeast corner of the new building is over the property line. The Board of Adjustment cannot grant a

variance to one owner to occupy land not possessed by the applicant.

RECOMMENDATION

Staff recommends denial and adoption of the findings of the 7 criteria for Variance 282.

Attachments

Zoning Map and Site Photos

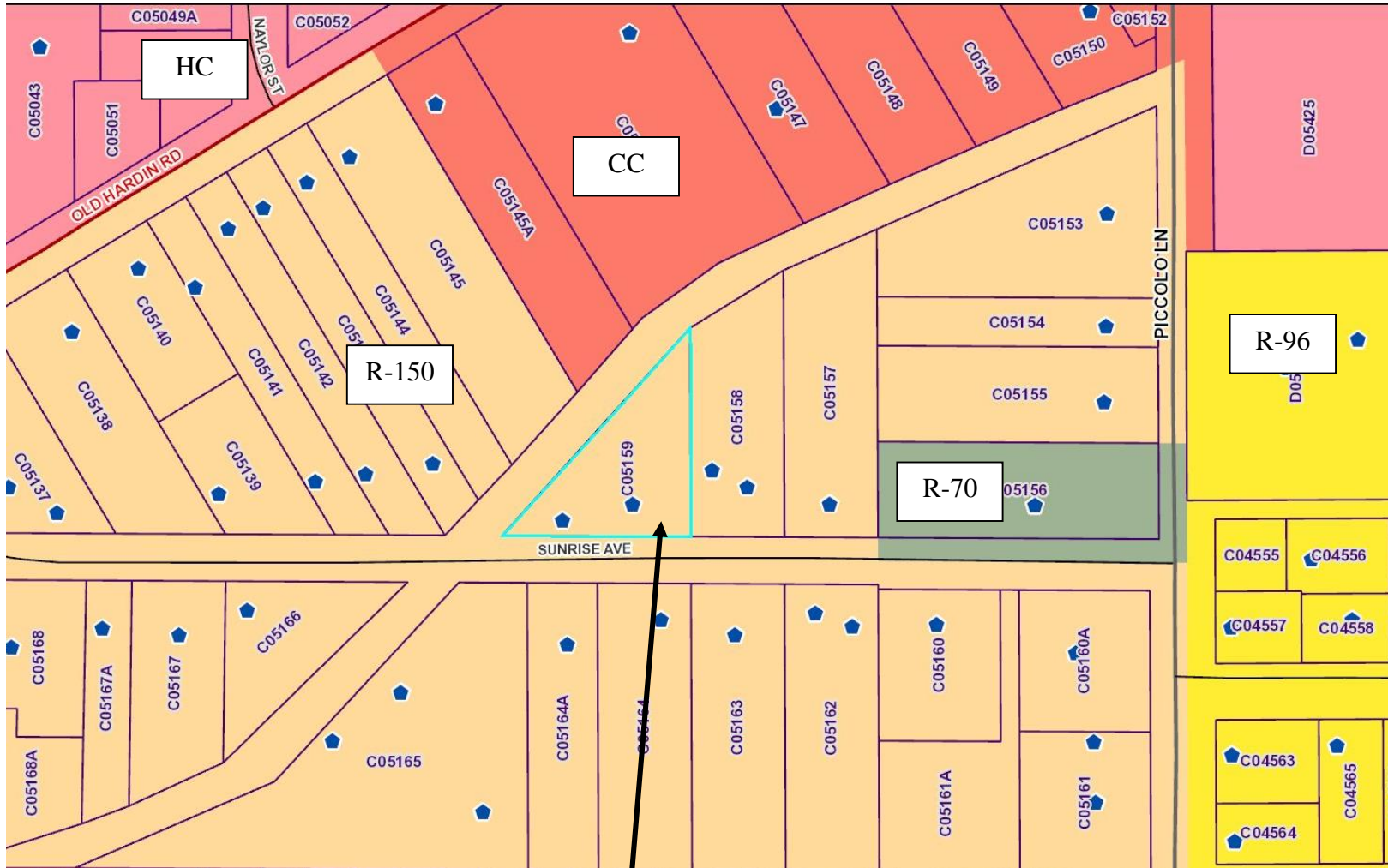
Proposed Findings of the 7 criteria

Applicant Letter Site Plan and Photos

Bob Ryder Survey - 1919 Sunrise Ave

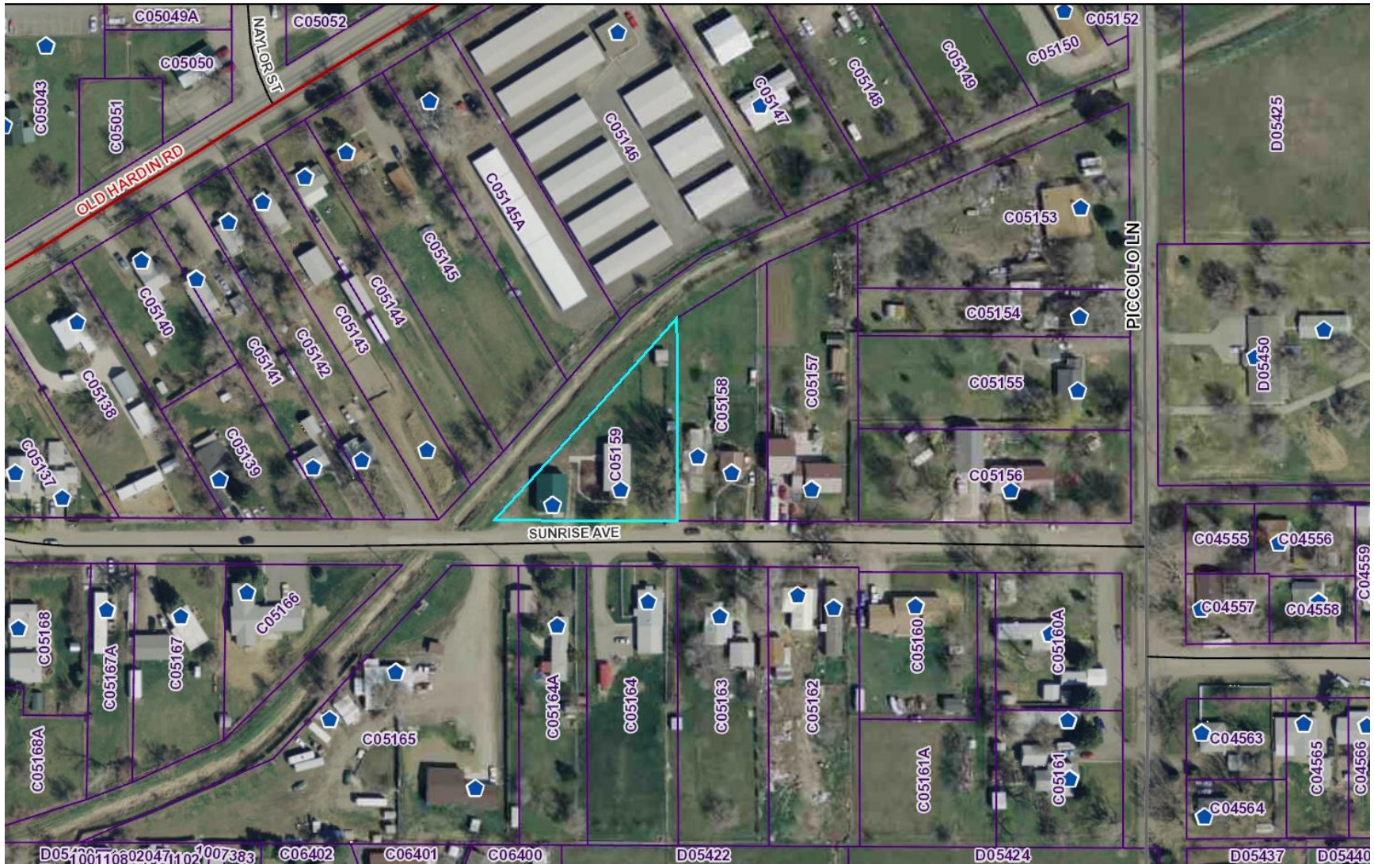
Variance 282 – 1905 Sunrise Avenue
Zoning Map

1905 Sunrise Ave - Variance 282



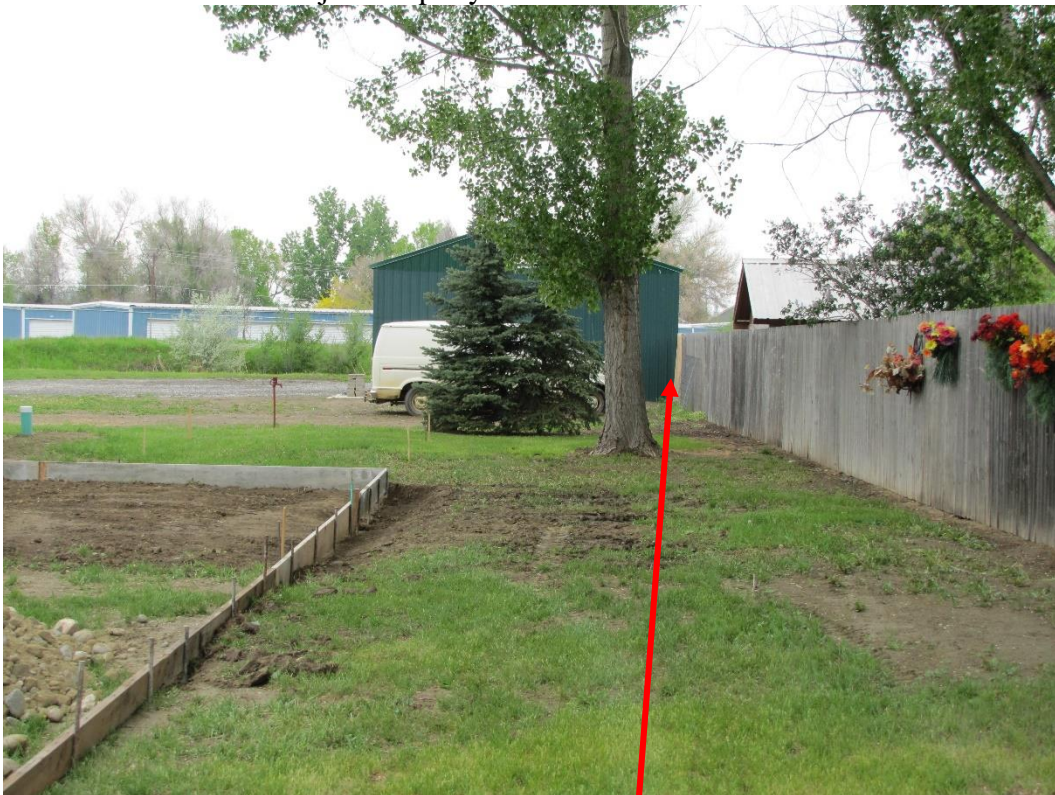
Subject Property

1905 Sunrise Ave - Variance 282





Subject Property – 1905 Sunrise Avenue



New detached garage on side property line



Enlarged view of side property line setback of 0 feet



View west on Sunrise Avenue



View east on Sunrise Avenue



View south across Sunrise Avenue

County Variance 282 – Proposed Findings of the 7 criteria

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 existing on this property that would create a hardship. The subject property is relatively flat and there are no physical obstacles that would prevent the owner from setting the building 3 feet or more from the side property line. The only unusual characteristic of the property is its triangular shape due to the location of the Lockwood Irrigation Canal.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

There have been 6 variances of record in this area of Lockwood, and 4 of the 6 have been granted to reduce one or more setbacks. The smallest side setback granted was to 4.5 feet. Two requests have been denied, both in the Eagle Rock Subdivision. The latest variance of record is 1996, when a variance was granted to reduce a side yard from 10 feet to 7 feet at 101 Nightingale Lane for an attached garage. There are several smaller existing detached sheds and accessory buildings in the area that are placed on or near side property lines. There is no apparent new construction of accessory buildings of this size on or near property lines. A literal interpretation of the required side setback for a detached garage does not deprive the applicant of rights commonly enjoyed by other tracts in the same district.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

The variance will confer on the applicant a special privilege that other properties in this area of Lockwood do not enjoy. No similar variances have been submitted or approved and no similar sized accessory buildings have been recently constructed on or near property lines in this area of Lockwood. In addition, the Board of Adjustment has received credible information from the adjacent owner that at least a portion of the building is over the property line.

- 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. Building setbacks provide for public safety by ensuring separation of buildings on adjoining land, preserve the enjoyment of property by adjoining owners and diminish the overcrowding of land.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending denial of variance and complete compliance with the accessory building setback requirements of at least 3 feet.

- 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 not recommending approval of the variance, so there is no time limit for meeting variance conditions. The existing building should be brought into compliance with all requirements. The owner has 2 options in this regard: 1) move or otherwise re-construct the accessory building at the proper setback or 2) purchase land from the adjoining neighbor and move the property line at least 3 feet from the existing building.

- 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.**

The granting of this variance would not allow a use that is not allowed in the zoning district. Accessory buildings are an allowed use in all residentially zoned districts in the county.

Variance application

1 A. The main reason the building was placed where it is, is because there was an existing building there that needed to be replaced and the east wall was on the fence line, which is the property line. We did not realize there would be a problem with the placement.

B. We needed the building for storage of a flat bed trailer, cargo trailer, Bob-Cat and lawn mower. The items need to be enclosed for protection and appearance.

2. The property is to be used for residential purposes. The only future plans are an attached garage and living room added to existing house.

APPLICATION FORM

COUNTY VARIANCE County Variance # 282 - Project # PZ-16-00072

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

TAX ID # C 05159 COUNTY COMMISSIONER DISTRICT # 1

Legal Description of Property: Section 25, town 01, N. Range 26 E Lot 22
Seniase Subd 1st filing - Seniase Subd 1st filing, S25, T01N. R26E Lot 22

Address or General Location (If unknown, contact County Public Works): 1905 Seniase St
Billings MT 59101

Zoning Classification: Residential 15000

Size of Parcel (Area & Dimensions): acres .51 22,216 SF

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance Requested: Building on property lease minimum is 3ft

Facts of Hardship: It would be very hard to move without
destroying the integrity of the structure. The main
pipes are buried & encased in concrete and would be very costly to unsafe

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

Owner(s): Sandra L. & James B. Ross
(Recorded Owner)
PO Box 611 Terry MT 59349
(Address)
406-939-1944 (Phone Number) Jross45@gmail.com (email)

Agent(s): _____
(Name)

(Address)

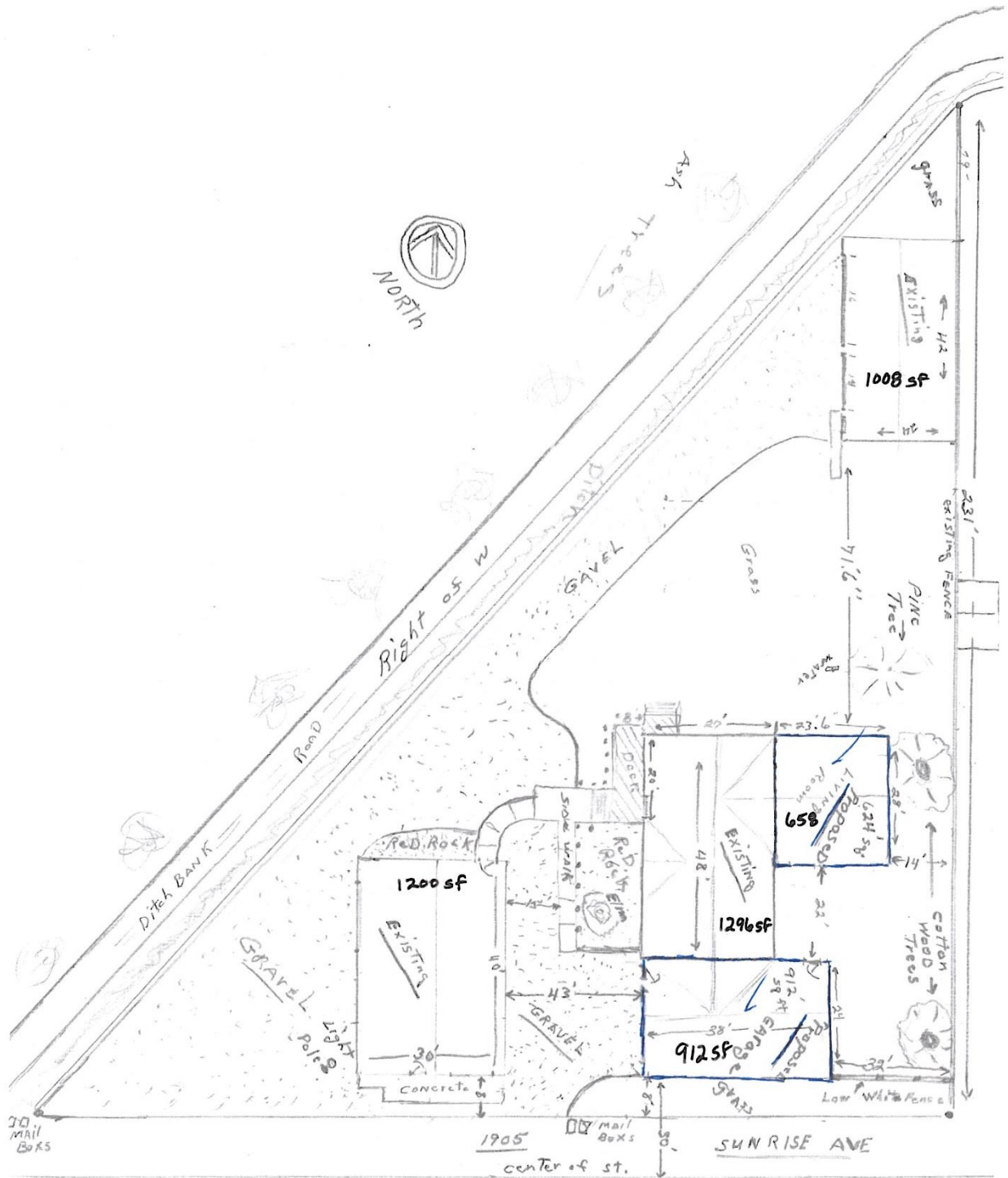
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: [Signature] Date: 4-26-16
(Recorded Owner)



County Variance 2015-2016 updated 10/27/15





Original shed





Shed taken down
replacement garage





Lot 22

Found SSYCR 8377LS

.12 Encroachment
Over Property Line

Building

.51
Building
to
Property
Line

LOT 21

Property Line

Found SSYCR 8377LS



Bob Ryder
1919 Sunrise Ave
Billings, Mt.
Lot 21 Sunrise Sub.1st Filing
Meridian Surveying

Date: 5/3/2016