



County of Yellowstone Board of Adjustment
AGENDA-Thursday, October 13, 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: June 9, 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. **Item #1-County Variance #283 – S 44th St West** – Lot Area – A variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 5 acres to accommodate the court ordered division of property between 2 parties in an Agriculture Open-Space (A-1) zone on Tract 2A2 of C/S 2007. Tax ID: D00350A. Presented By: Karen Husman, Planner I

Other Business/Announcements

Adjournment

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed Variance. Testimony regarding the above mentioned item may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 247-8676. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at deinest@ci.billings.mt.us

County Board of Adjustment

Meeting Date: 10/13/2016

Information

Subject

Approval of Minutes: June 9, 2016

Attachments

YBOAminutes_16_06_09



Yellowstone County Board of Adjustment

Minutes

June 9, 2016

The County Board of Adjustment met on Thursday, June 9, 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 | 1 | | | | | | | | |
| Board member Poppler | Board member | 1 | - | E* | 1 | | | | | | | | |
| Carlotta Hecker | Chairperson | 1 | - | E* | E | | | | | | | | |
| Delores Terpstra Miner | Vice Chairperson | 1 | - | 1 | * CC | | | | | | | | |
| Robert Bailey | Board member | E | - | 1 | 1 | | | | | | | | |

*Planning Division Manager attempted to establish a connection with Board member Terpstra Miner via teleconference call with Board member Terpstra Miner. It is the consensus of the Board to move forward with the agenda with an amendment to hear County Variance #282-1905 Sunrise.

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: Dick Sauter; Sandra Ross; James Ross; Bob Ryder

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: May 12, 2016

Motion

The Board took a moment to review the minutes. Vice Chair Bailey moved and Board member Reiersen seconded to approve the May12, 2016 meeting minutes as submitted. The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest: Board member Poppler had recused himself from participating in the public hearing for Yellowstone County Variance #281 at the previous meeting

Disclosure of Exparte Communication: Zoning Coordinator Nicole Cromwell stated staff has not received any communications following the preparation of the staff report. She stated this Board can

decide to approve or deny the request for delay if it finds the applicant has presented “good and sufficient reason.”

PUBLIC HEARINGS: Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting for reviewing and acting on each variance. She stated three votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 3 Board members attending. A unanimous vote will approve requests.

Vice Chairman Bailey called for the staff presentation by Ms. Cromwell

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 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.

RECOMMENDATION

The Planning Division is recommending denial of Yellowstone County Variance #282.

REASONS

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.

Discussion

Vice Chairman Bailey called for questions and discussion from the members of the Board. Board member Poppler asked if there is general confusion among Yellowstone County residents of as to whether compliance with zoning regulations is needed. Nicole Cromwell said there is confusion in a wide spectrum of audiences in the County. Board member Poppler asked for a comparison of requirements in the City and the County. Nicole Cromwell said a Zoning Compliance permit is needed within the County and RiverStone Health works with permitting for wells and septic tanks. City building permits are reviewed for compliance with codes. The State of Montana does not require a building permit within the County.

Public Hearing

Vice Chairman Bailey opened the public hearing at 4:23 p.m. and asked if there is anyone present wanting to speak in favor or against County Variance #282.

James Ross, Applicant, 1905 Sunrise, Billings, Montana

Mr. Ross explained they are in the process of moving to this parcel from Terry, Montana. They decided to replace the old building as it was deteriorated. He discussed the new building with the neighbors prior to construction. A survey was conducted. They put up the building not knowing about the setback requirements. There is not a large overhang and there are no gutters. A zoning compliance permit was obtained for the primary structure. Mr. Ross stated he received a violation notice six-eight months after the building was constructed. He said he did not deliberately ignore the codes. He said he had contacted the adjacent neighbor to express interest on purchasing the adjacent property, and no concerns were voiced at that time.

In response to question by Board member Poppler, Mr. Ross said he completed the construction and the materials for the building was purchased from Lowes and Bridger Steel. Mr. Ross said had he known he would have complied. Board member Reiersen, noted the property line discrepancy. Ms. Sandra Ross interjected said a company surveyed the property and it is clearly marked.

Bob Ryder, 2821 Belvedere Drive, Billings, Montana

Mr. Ryder is the owner and lessor of the adjacent property. His tenants questioned why the building was constructed on the property line. He voiced concern with the storm water runoff flowing towards his property and making a mess. He questioned why he was not contacted about this building. In response to question by Vice Chairman Bailey, he stated the property is not for sale and he wants the building to be torn down and put up property.

Brad Farnsworth, 4800 Grant Creek Rd, Missoula, MT, 59808-1454, Office [\(406\) 541-4800](tel:4065414800)

Mr. Farnsworth asked if consideration has been given for a boundary line adjustment.

Rebuttal

Vice Chair Bailey called for rebuttal.

James Ross, Applicant, 1905 Sunrise, Billings, Montana

Mr. Ross said he would consider a boundary line adjustment and will install rain gutters to redirect the storm water towards his property. He asked for a solution and said he wants to have the property look nice. He feels that this structure has improved the value of both pieces of property.

Mr. Ryder said the gutters cannot be installed from his side of the property and Mr. Ross does not have permission to access his property. Mr. Ross retorted the work was done without accessing Mr. Reiter's property.

Board member Poppler commented the applicant will suffer financial loss if the application is denied but there are ordinances in place and the new building has the incorrect setbacks. Ms. Cromwell explained the property owners will have to settle the property line dispute despite the granting of the variance. Vice Chairman Bailey referred to the Criterion #6.

Motion

Vice Chairman Bailey made a motion to deny Variance #282 with the reasons given by staff and the criterion and Board member Reierson seconded the motion.

Discussion

Board member Reierson stated this is a straightforward issue with 2 disputed surveys; and there is no choice but to vote for denial. Board member Poppler commented the pole barn construction may be moved without destroying it and he finds it improper to grant the variance. He pointed out the County Board of Adjustment has voted against similar variance requests at previous hearings.

| Board member | Yes | No | Recused | Absent |
|----------------------------------|-----|----------|---------|----------|
| Blaine Poppler | | x | | |
| Carlotta Hecker (Chairman) | | | | x |
| Delores Terpstra Miner | | | | x |
| Robert Bailey (Vice Chairman) | | x | | |
| Bruce Reierson | | x | | |

The motion carried, 3-0. Yellowstone County Variance #282 is denied. Ms. Cromwell said staff will send a letter will be sent to Mr. Ross stating he must move the building 3 feet. He has the option to purchase the property and submit a boundary line relocation as a legal record, file an appeal with the district court that this board has made an error; wait a year and submit a new request for a variance.

** Planning Division Manager Wyeth Friday attempted to establish a connection with Board member Terpstra Miner via teleconference call with Board member Terpstra Miner, and she was reached. The connection was poor and eventually lost during the hearing.

Item #2 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. During the last meeting, Board member Poppler had previously recused himself from participating in this hearing. He asked the Board to reconsider this decision and allow him to participate in today's hearing. He stated the property in question was purchased from Popelka Enterprises and he received a commission at that time. He has no financial interest in this property and did not represent Bretz RV as a realtor. Staff and the members of the Board consulted the Board of Adjustment's Bylaws, (Item #10). Based on this language, it was determined Board member Poppler could participate in the hearing. Bretz RV Agent/Representative Farnsworth, representative for Bretz RV, stated they have no objection to Board member Poppler participating in this hearing.

This public hearing is continued due to the applicants' request for delay to allow Council Brad Farnsworth to attend. Division Manager Wyeth Friday gave a brief overview of this application. Nicole Cromwell noted for the record the scaled site plans submitted by Bretz RV for the Board's use today. 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.

Discussion

Board member Poppler pointed out the Holiday Inn Express was required to meet the zoning requirements at that time. He asked about the zoning for the truck stop located north of this parcel. Wyeth Friday clarified and stated "Town Pump" is in a Controlled Industrial zoning district, which has different zoning requirements. Board member Poppler asked for clarification on the conditions and the phrase in the staff presentation, "Granting the variance confers a special privilege denied to others within the area", meaning the privilege would be having scaled back landscaping. Nicole Cromwell stated the intent is to compare properties with the same district and the determinations in the staff report are phrased in this manner.

Board member Reiersen pointed out the property owned by Mr. Sauder. Wyeth Friday stated during the May 12 meeting, Mr. Sauder gave testimony stating the gravel access is open and Bretz RV's activity on the road is creating issues for his property.

Wyeth Friday said the initial understanding was this would be a temporary access, and the surfacing has to be improved to a full surface if it is to be a full access to Old Hardin Road. There is a requirement for buffering for residential uses adjacent to this property and it is shown on the site plan. The buffering is required if the access is to become a full access point. Staff has discussed this with Yellowstone County Public Works and provided information to the applicant.

Vice Chairman Bailey asked what prompted Staff to use Pierce RV and Holiday Inn Express in the comparisons. Wyeth Friday explained these properties are subject to the same zoning classification and requirements. Vice Chairman Bailey noted the applicant's statement which says "the regulations are inappropriate when considering the intended use". Wyeth Friday stated the use is in compliance with the terms of the zoning. He said the applicant's language is referring to the landscaping requirements as they feel it is conflicting and does not apply well to the sale of RVs.

Board member Reiersen asked if there are any properties subject to these zoning requirements south of the South Frontage Road, such as "Slumberland", as there is very little landscaping on that property. Nicole Cromwell pointed out the properties located west of Goodman Road with Entryway zoning and said not all of the buildings obtained Zoning Compliance permits prior to construction.

**The phone connection was lost with Board member Terpstra.

Brad Farnsworth, 4800 Grant Creek Rd, Missoula, MT, 59808-

Mr. Farnsworth thanked the Board for the opportunity to represent Bretz RV and for their service in this capacity. He gave clarification on the site plan map provided for the Board and pointed out the grass and shrubbery on each side of the entryway to the dealership. Mr. Farnsworth said there are 2 keys to the gate for the road, one for the Fire Marshall and the other for the Manager. The intent is to use this as an emergency access even though the temporary access road extensively over the last several months during construction and landscaping. Construction has been completed and the dust has abated; their intention is to use this as an emergency access. The character of the road will change if the adjacent parcel is developed.

Board member Poppler asked if Bretz RV intends to develop the buffer yard. Mr. Farnsworth said the future development is not imminent but they will comply with the requirements at that point. Board member Poppler asked if they are actively using Lot 11-B. Mr. Farnsworth said it is currently used by their customers for RV storage. Access to Lot 11B will be done through the entryway to a gated access adjacent to the primary building.

Vice Chairman Bailey asked Mr. Sauder about the activity on the temporary access road.

Mr. Sauder's responded they moved a lot of inventory on this road. Mr. Farnsworth apologized to Mr. Sauder and said this was not handled in a better manner but this use is ending now. He said the road will remain as it is currently. Nicole Cromwell asked if the gate will be signed as "Emergency Access Only". Mr. Farnsworth is agreeable to this suggestion.

Mr. Farnsworth referred to the variance request. He stated Bretz RV believes the berm is no longer an issue. The reason they purchased frontage along I-90 is to display their merchandise and if they comply with the stated regulations the trees will block the frontage view shed.

Berm/Trees/Shrubbery: Along the property frontage, they clustered trees on 4 locations and built a 25 ft. wide by 3 ft. high berm with sprinklers. Sod has been planted up to the curb and up to the fence. A maintenance person cleans the area daily. The cost of planting was \$75,000 and the ongoing maintenance costs are significant. The berm is in compliance. He stressed they are not being a “bad neighbor” and not comply with the regulations but there are operational needs to not to have trees along both frontages. Sixty trees and sixty shrubs were planted and existing mature trees were left where they could that would be in addition to the new plantings. He noted a site map and stated trees located on Old Hardin Road at the entrance of this property may cause line of sight related safety issues for large vehicles. He presented several large format photos and said they would like to install gravel around the shrubbery to limit watering. Bretz RV is asking to use 50% nonliving materials and all green along I-90.

Parking Island: He pointed out a required island in the parking lot near the entryway they would like to remove as it is not functional or workable in an RV environment.

Facade: Mr. Farnsworth pointed out façade relief along the building, breaking up the solid wall. There is a fenced yard and bump-out to provide in-house daycare for employees. Currently they have 70 employees and projected to have up to 100 employees in the next 18 months.

Mr. Farnsworth stated Pierce RV has comparable site plan and he is proposing more than Pierce RV currently has in landscaping. He stated they are not asking to be relieved of the duties of the landscaping but are asking for "a fair shake" as they have already put a large sum of money into this landscaping proposal. He requested the Board not rule on this petition today and take the time to visit the site and character of the neighborhood prior to making a decision. He said Bretz RV is an oasis in the neighborhood. He asked why Bretz RV is being singled out as there are several businesses along I-90 that are out of zoning compliance and said this is a case of spot enforcement of the zoning regulations. The properties on the north side are Controlled Industrial uses. He agrees with the requirements for entryway zoning and said Bretz RV is an oasis surrounded by unkempt properties.

He continued with addressing the standards of review. He said they agree with the intent of the entryway zoning but not the strict application. Their special circumstance is their merchandise has to be displayed outside and it must be in view of the Interstate. He stated no one else in the area is compliant other than “Holiday Inn Express”, and special privileges are enjoyed by other businesses that are not landscaped at all. Bretz RV feels they are meeting the general intent of the Growth Policy by providing an attractive entrance while balancing the landscaping requirements and the need to display their merchandise. Bretz RV is an approved use in this zoning district. Mr. Farnsworth stated they are advocating for the ability to balance the regulations with the particular needs of their business. Bretz RV wishes to be treated fairly like the other businesses in Billings.

Vice Chairman Board member Reiersen asked about the requirement for landscape planters with trees near the doors. Mr. Farnsworth explained the difficulty of entering the property with trees encroaching by the doorway. They chose not to put in the trees as they do not have a flat facade. Board member Reiersen asked about the percentage of non-living material with installation of the grass. Mr. Farnsworth referred to the site plan. He said parking islands are problematic with large

wheel based rigs. Board member Reiersen summarized and said this request is for a slight variance on the nonliving materials; a sizeable difference on the number of trees and shrubs; no planters; and removal of the islands. Mr. Farnsworth concurred with this summary.

Board member Poppler commented he drives by Bretz RV once a week and he complemented them on the facility.

Mr. Sauder, 3011 Old Hardin Road, asked what can be done to address the temporary access road. He said trees were removed along the fence line. His issues are related to the dust from the road and blowing construction debris along his fence line. He said Bretz RV has not kept the road watered and his boat is covered with ¼” of dirt created from the trucks. He stressed the road was designed for a fire access. He suggested improving the buffer yard, planting replacement trees, and paving the road would mitigate these negative effects. Mr. Farnsworth offered to detail his camper, truck, and boat. Mr. Sauder commented on the zoning requirement of a 10-foot buffer between the road and the fence line. Nicole Cromwell said she was part of the planning discussions for the development of the site plan and since there were no plans for development of the adjacent parcel, this requirement was left off as there was no reason for a buffer yard at that time. Staff was not privy to the fact the trees would be removed and it would be used as a construction access and merchandise access road. She read aloud the requirements for a buffer yard as stated in Section 27-10-06(e).

Vice Chairman Bailey noted Mr. Farnsworth’s request to delay action on this request. Nicole Cromwell stated the Bylaws allow for a period of 10 days between the closing of the public hearing and when the decision is made. Typically the decision is made at the time of the hearing. It was the consensus of the Board to move forward with a decision. Nicole Cromwell stated it is possible for this Board to grant less of a variance requested. She noted Board member’s summary to allow 50% nonliving materials; a variance from than the total number of trees required; removal of one of the two parking islands in area 1D; and not require the facade relief, being the combination of the garage bay and 3 trees and landscape planters near the doors. Wyeth Friday clarified the façade requirements. Nicole Cromwell reiterated the Board may grant the variance as requested based on the public hearings and Board findings; grant not as requested some other lesser variance based on Board findings; or agree with the staff recommendation and adopt the staff’s finding and deny the variance.

Board member Bailey stated he wished to go on record with his position in support of the staff recommendation for denial of the variance.

Vice Chairman Bailey closed the public hearing at 6:17 pm. The phone connection with Board member Terpstra will not be reestablished as she missed the testimony and Board member Poppler is participating.

Discussion

Board member Reiersen stated he can understand some of the variations from the variance, such as the planters and islands. He agrees with the aspect of the parking island being a nuisance but he does not want to reduce requirement for the number of trees and shrubbery.

Board member Poppler stated he is familiar with this corridor as he drives it weekly. He feels Bretz RV far exceeds any other business up and down the street, and is a “wow” as you drive westward through the corridor. He understands the intent of Entryway Zoning to make an attractive entrance to the city. The lawn on the berm is impressive with 60 trees 60 shrubs. The requirement is 267 shrubs and 131 streets, however the properties across the street with Controlled Industrial zoning should be considered. Nicole Cromwell said 1 tree is required for every 10 parking spaces and this calculation was used for the truck stop, with the truck stop spaces counted as “1”. Board member Poppler said he does not want to deny this request as it seems an undue burden. The snow removal will be challenging. He said he feels it is unfair to subject Bretz RV to a standard that is basically four times as demanding as other properties in the interstate corridor. He is inclined to vote in favor of the variance request with a condition the buffer yard along Mr. Sauder's property is addressed. He does not feel this proposal negatively affects Billings but is a way to wrap up the construction and have the business move forward. He feels the number of trees along the front is appropriate considering the need to display the merchandise and this is not a reasonable expectation. The matter of unbroken facade on the building doesn't apply to this building. He asked if they will be asked to redesign their building.

For clarification purposes, Vice Chairman Bailey said Bretz RV came before this Board prior to construction for an appeal of administrative decision regarding what constitutes exposed seam siding. Vice Chairman Bailey said at that time he delineated from the “black and white” and the staff’s hard work and voted in favor of the variance request. He said in this instance, there was an excellent presentation and the business is outstanding with the exposed seams. He noted “Holiday Inn Express” is in compliance and the other gateway businesses in the area that are out of compliance. He said as a Board member he is not going to delineate from the “black and white” and the policy this time. He whole heartily supports the staff and their hard work despite it looking unfair to the business. He finds it hard to find a compromise away from it. Mr. Farnsworth reminded Vice Chairman Bailey of the option of finding a middle ground with the variance.

Motion

Board member Poppler moved and Board member Reiersen seconded the motion to grant the variance with a condition to address the buffer yard for the emergency entrance.

Discussion

Vice Chairman Bailey called for discussion on the motion. Board member Poppler said it is his opinion the intent of entryway zoning is to present a beautiful appearance to enter into Billings and Bretz RV has achieved this. He doesn’t feel it is fair that this property the previous owners did not ask to be zoned with entryway zoning and it was imposed on them. In recent months there have been similar properties annexed into the city of Billings near the interchange that Entryway zoning was not considered and was zoned Highway Commercial, i.e. the Zeiler property which is 200 feet of the interchange. He feels the entryway zoning was imposed to prevent poor looking properties locating at the entry way of Billings. He said there is no way Bretz RV can be found unattractive.

Board member Reierson noted his previous summary of the request. He said the planters and landscaping islands not practical. He said Pierce’s island is not an issue where Bretz RV’s layout makes the island an inconvenience to their customers. Mr. Farnsworth concurred with this comment. Wyeth Friday cautioned Mr. Farnsworth as generally the applicant is not allowed dialogue in Board discussion at this point.

Vice Chairman Bailey called for a vote on the motion.

| Board member | Yes | No | Recused | Absent |
|----------------------------------|----------|----------|----------|----------|
| Blaine Poppler | x | | | |
| Carlotta Hecker (Chairman) | | | x | x |
| Delores Terpstra Miner | | | | x |
| Robert Bailey (Vice Chairman) | | x | | |
| Bruce Reierson | x | | | |

The vote is 2-1. Variance #281 is denied as due the number of Board members in attendance and participating in the hearing, a unanimous vote from the Board members is required to pass a variance. is denied. Zoning Coordinator Nicole Cromwell explained that a majority vote is needed, and the Vice Chairman’s vote against the motion resulted in the failure to pass. Under the Roberts Rules of Order, those on the prevailing side, (Vice Chairman Bailey), could allow a vote of reconsideration. The prevailing side may request this vote of reconsideration. Vice Chairman Bailey stated, “No”, he will not make this request. **Variance #281 is denied.**

Motion

Board member Reierson made a motion and it was seconded by Vice Chairman Reierson to compose a letter from the Yellowstone County Board of Adjustment to the Board of County Commissioners forwarding a code enforcement complaint that the properties developed under the current entryway zoning standards in this area be inspected by the County Code Enforcement officer to ensure the current entryway zoning standards are met. Property owners out of compliance will receive an enforcement letter.

| Board member | Yes | No | Recused | Absent |
|----------------------------------|----------|----------|----------|----------|
| Blaine Poppler | | x | | |
| Carlotta Hecker (Chairman) | | | x | x |
| Delores Terpstra Miner | | | | x |
| Robert Bailey (Vice Chairman) | x | | | |
| Bruce Reierson | x | | | |

The motion carried, 2-1.

Discussion

Board member Reierson explained he forwarded this motion as he feels this Board is put in a “funny” position and it could happen again with an entirely different decision. Vice Chairman Bailey commented it is the same type of position the Board was in with Bretz RV’s previous variance request. He noted a comment he made at the time in relation to the need for the procedures should be considered to bring them up to par in comparison with the issues the Board is dealing with today. Board member Reierson agreed.

Other Business

Due to a lack of agenda items, the County Board of Adjustment will not meet in July 2016.

Adjournment:

Board member Reierson made a motion and Board member Poppler seconded the motion to adjourn.

| Board member | Yes | No | Recused | Absent |
|----------------------------------|-----|----|---------|--------|
| Blaine Poppler | x | | | |
| Carlotta Hecker (Chairman) | | | x | x |
| Delores Terpstra Miner | | | | x |
| Robert Bailey (Vice Chairman) | x | | | |
| Bruce Reierson | x | | | |

The motion carried, 3-0.

The meeting was adjourned at 6:37 p.m.

ATTEST: DRAFT TO BE APPROVED BY A MOTION AT THE NEXT SCHEDULED MEETING.



County Board of Adjustment

Meeting Date: 10/13/2016

SUBJECT: County Variance #283- Lot size Variance

THROUGH: Wyeth Friday

PRESENTED BY: Karen Husman

Information

REQUEST

Item #1-County Variance #283 – S 44th St West – Lot Area – A variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 5 acres to accommodate the court ordered division of property between 2 parties in an Agriculture Open-Space (A-1) zone on Tract 2A2 of C/S 2007. Tax ID: D00350A. Presented By: Karen Husman, Planner I

RECOMMENDATION

The Planning Division is forwarding a recommendation of Conditional Approval.

APPLICATION DATA

OWNER: John L. & Katheryn M. Thiel Revocable Trust
AGENT: Kenneth Peterson
PURPOSE: To accommodate the court ordered division of property
LEGAL DESCRIPTION: Tract 2A2 of C/S 2007
ADDRESS: Central Avenue
SIZE OF PARCEL: 15 Acres, divided into 10 acres and 5 acres
EXISTING LAND USE: Ag
PROPOSED LAND USE: Ag
EXISTING ZONING: Agricultural Open space (A-O)

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Surrounding Property: Variance 213, a lot size variance for a mortgage exemption to allow a 1-acre parcel, was approved by the Board of County Commissioners in October 2000 creating Certificate of Survey #3053.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Ag-Suburban
Land Use: Residential
SOUTH: Zoning: Ag-Open
Land Use: Residential
EAST: Zoning: PD & Residential-15,000
Land Use: Residential
WEST: Zoning: Ag-Open
Land Use: Residential and Agriculture

BACKGROUND

This is a request for a variance from Section 27-308 requiring a minimum lot area of 10 acres to allow a minimum lot area of 5 acres to accommodate the court ordered division of property between 2 parties in an Agriculture Open-Space (A-1) zone.

Planning staff reviewed the zoning history in the area and found there are at least seven lots in the area that are less than the required 10-acre minimum for A-1 zoning. There are five that are one acre or less, one is slightly over an acre, and one is five acres. There has only been one lot size variance approved for a reduction in the required lot size, this was for a mortgage exemption for a one-acre parcel. The five acre parcel to the south of the subject property is Amended Certificate of Survey 2007, Tract 2-A, Amended, recorded in 1984, without an approved lot size variance.

The Planning staff has reviewed the application and is recommending conditional approval based on the findings for granting a variance.

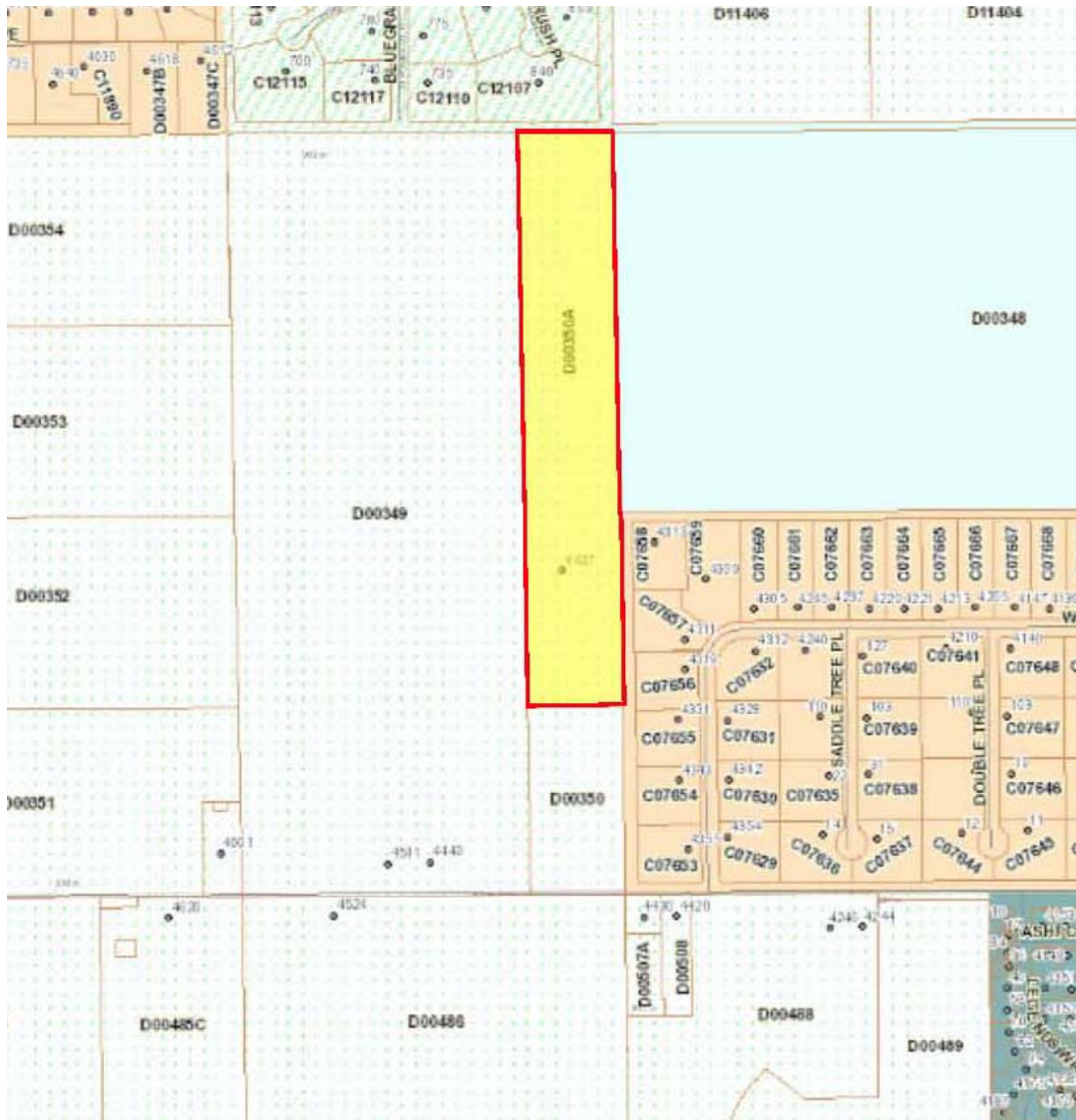
RECOMMENDATION

The Planning Division is forwarding a recommendation of Conditional Approval for Variance #283.

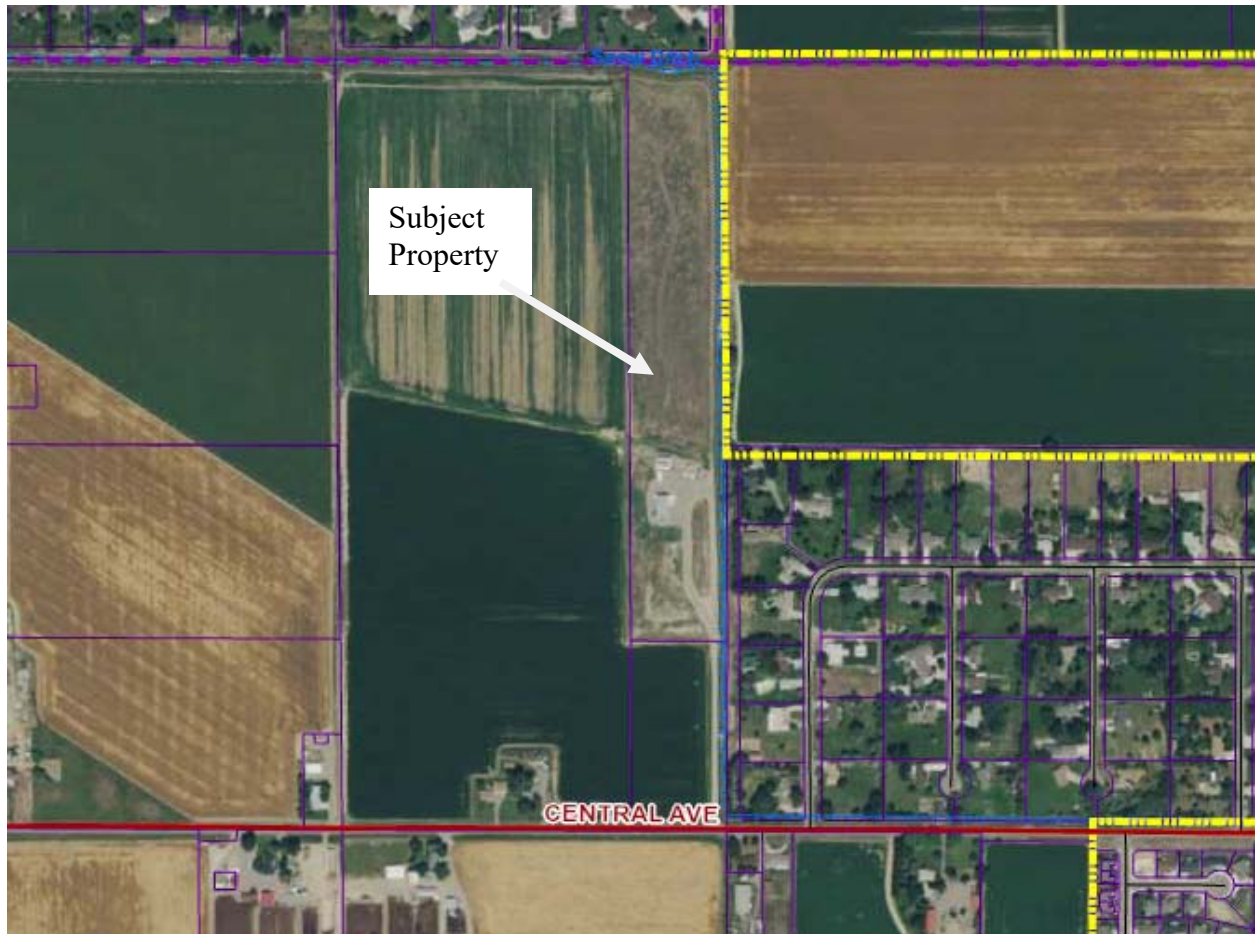
Attachments

Zoning Map & Site Photos
Application & Letter to the Board
Determinations
Court Order Documents

Zoning Map



Photos



Subject property

Site Photos



Looking West on Central



Subject Property

Site Photos



Subject Property Front gate



Subject Property Existing Structures

Application and letter

APPLICATION FORM
COUNTY VARIANCE County Variance # 283 - Project # PZ-16-0170

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 # D00350A COUNTY COMMISSIONER DISTRICT # 3

Legal Description of Property: Unnamed c/s being all of T2A-2 Amd c/s 2007 in The E/2 SW/4 S3 T15 R25 E

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

North of Central Avenue at about 44th St.

Zoning Classification: A-1

Size of Parcel (Area & Dimensions): 10 + + 5 +

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: Allow The existing zoning to remain on the 2 parcels remaining after c/s is filed dividing the existing 15 acre parcel into a 10 + a 5

Facts of Hardship: 15 Acres was originally granted to The owners jointly. They could not sell and the judge entered a new order dividing the parcel so the wife receives 10+ and husband 5+ with

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

Owner(s): John Thiel, Trust and Kathryn M. Thiel - Trust
(Recorded Owner)
3019 Golden Acres Drive, Billings, MT 59106
(Address)
406-698-0611 thiel47@gmail.com
(Phone Number) (email)

Agent(s): Kenneth A. Peterson
(Name)
424 48th Street West, Billings, MT 59106
(Address)
406-591-2608 kenneth59@brennan.net
(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: John Thiel Trustee Date: 8-30-16
(Recorded Owner)

Kathryn M. Thiel Trustee 8-30-16



KENNETH D. PETERSON

ATTORNEY AT LAW

424 48th Street West • BILLINGS, MONTANA 59106 • PHONE: (406) 534-2376 • (406) 591-2608 (Cell) • Email kenneth59@bresnan.net

2 September 2016

Planning & Community Services Department
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

In re: Variance Application

Dear Department,

We answer the following questions as required:

1. What reasons prevent you from using this property in conformance with the Zoning Regulation requirements:

The parties have been divorced and the Judge originally ordered that the 15 Acre parcel be distributed to them jointly. They were unable to deal with the property together. John Thiel built buildings and houses his equipment on approximately the southern 5 acres. They attempted jointly to sell the 15 acres but were unable to sell it for the price they wanted. They then agreed to divide the real property with John retaining the southern 5 acres and Katheryn to have the northern approximately 10 acres that is vacant. The Court Ordered that the real property be divided as agreed and that a Certificate of Survey be prepared dividing the same. That COS has been prepared. The Court Ordered that the COS be recorded. Once the real property is divided pursuant to the Court Order the real property would not conform to A 1 zoning because the parcels are too small. There has been no change in use and it is unknown what use will be made. To require a change in zoning at this time would be purposeless. There needs to be a variance to allow the parties to comply with the Courts Order.[a copy of the stipulation and Order are attached]

2. There is no change in the intended use of the real property at this time.

There is nothing intended to be changed in the use of the real property at this time. Katheryn will keep the 10 plus acres to the north and John will keep the 5 plus acres to the south with the buildings. There is no new construction planned or any change in the use.

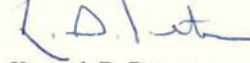
3. A full size of the proposed COS and an 8½ X 11 copy is included herewith.
4. Labels of Certified list of names of owners within 300' are included.

Please set a hearing and advise us of the time and place.

Any questions please contact me.

Thank you.

KENNETH D. PETERSON
Attorney for Thiels



Kenneth D. Peterson

KDP/nc
enclosures-
c: Thiels

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 or circumstances that are peculiar to the land and create a hardship that is applicable to the subject property. The only potential hardship is the underlying zoning of Agriculture Open-Space (A-1). This is a court ordered division of land. In order to abide by the court order, they must have a variance approval to adhere to the zoning requirements for that division of land.

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;**

Staff is aware of 1 approved lot size variance in the neighborhood. However, 5 surrounding properties have been divided into lots that are 1 ½ acres or less, and 1 that has 5 acres. Denial of the requested variance would deprive this owner of rights commonly enjoyed by others in the same district and area.

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 will not confer on the applicant a special privilege that is denied other land in the district.

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 granting of this variance will not conflict with the Yellowstone County and City of Billings Growth Policy.

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

Staff is recommending conditions of approval as follows:

1. The variance to decrease the required lot area from ten acres to five acres to accommodate a court ordered division of land; Montana Twenty-Second Judicial District Court, Bighorn County, MT No. DR-10-42. No other variance is intended or implied by this approval.
2. The variance is limited to Tract 2A2 of C/S 2007.
3. The applicant must submit the plat for review within 60 days of Board of Adjustment approval.

4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

6. **The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**
Staff is recommending a condition to require the final plat be submitted for approval within 60 days of Yellowstone County Board of adjustment approval.

7. **Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.** Granting of variance will not allow a use that is prohibited. Residential and Agricultural uses are allowed in the Agricultural Open Space zoning district.

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That part of the East half Southwest quarter of Section 3, Township 1, Range 25 East, of the Principal Montana Meridian, in Yellowstone County Montana, described as Tract 2A-2 Amended Certificate of Survey No. 22007, Tract 2-A amended, on file in the office of the Clerk and Recorder of said County, under Document No. 1308699

all as provided in the Stipulation and Agreement to Modify and shall perform all other the provisions and conditions of the Stipulation and Agreement to Modify as set forth therein, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that upon competition of the Certificate of Survey dividing the real property that the same shall be recorded with the Clerk and Recorder of Yellowstone County.

ORDER ADOPTING AND APPROVING STIPULATION OF THE PARTIES ON REAL PROPERTY DIVISION dated 20th May 2016

BLAIR JONES

Judge

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail, fax, or email upon the parties or their attorneys of record at their last known address.

Done this 20th day of May, 2016
By: Kathryn B. Gray
COURT ADMINISTRATOR to the HON. BLAIR JONES

1 Survey No. 22007, Tract 2-A amended, on file in the office of the
2 Clerk and Recorder of said County, under Document No. 1308699

3 The parties have been unable to sell the real property as described in the Settlement agreement
4 paragraph 8 e) and now agree to modify the Settlement Agreement as follows:

5 1. The parties will jointly engage the services of a surveyor to prepare a Certificate of Survey
6 dividing the real property into two parcels. Said Certificate of Survey will be recorded in
7 Yellowstone County and will describe the following:

8 a. North 10 acres which is vacant ground will be divided and deeded by appropriate
9 documents to **Katheryn M. Thiel** together with a 50 foot wide right of way
10 extending from the South boundary of the 15 acres North to the South boundary of
11 the North 10 acres. This right of way is an extension to the North of the currently
12 existing right of way from Central Avenue to the 15 acres. In addition the North 10
13 acres will receive 4.5 shares of the Big Ditch Company irrigation water.


14 b. South 5 acres with shops and buildings will be divided and deeded by appropriate
15 documents to **John L. Thiel** together with all improvements trailers and personal
16 property situated and stored thereon currently existing on said 5 acres. Provided that
17 Katheryn has some personal property stored thereon currently and the parties agree
18 that it may remain there until Katheryn determines to move it or dispose of it, but not
19 to exceed the time John sells it.

20 2. The parties will jointly cooperate on expeditiously securing the services of a surveyor for the
21 purpose of preparing a Certificate of Survey to divide the real property and show the right
22 of way. The parties will execute all documents necessary to secure the Certificate of Survey
23 and to place the respective properties in each individual name.

24 3. After the Certificate of Survey has been prepared and completed, it will be recorded and the
25 appropriate deeds and documents will be executed to divide the real property as stated herein
26 above. Each party to have and use the real property transferred to them respectively as their
own individual real property free from any input from the other.

- 1 4. The parties shall jointly bear the costs of preparation of the Certificate of Survey and any and
 2 all costs of recording or otherwise.
 3 5. Each party will be responsible for payment of current taxes and assessment on the respective
 4 parcel of real property deed to them.
 5 6. The parties jointly request the Court to enter its Order approving the modification of the
 6 Settlement agreement as provided herein above.

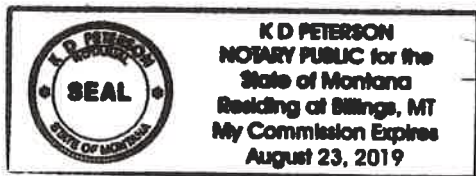
7 **STIPULATION AND AGREEMENT TO MODIFY SETTLEMENT**
 8 **AGREEMENT AND THAT COURT MAY ENTER ORDER ADOPTING AND**
 9 **APPROVING MODIFICATION** dated 17 May 2016

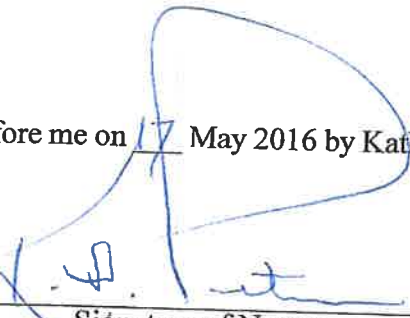
10
 11 
 12 _____
 Katheryn M. Thiel

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 14 
 15 _____
 John L. Thiel

15 State of MONTANA)
 16 County of Yellowstone) :ss

17 Signed and sworn to before me on 17 May 2016 by Katheryn M. Thiel and John L.
 18 Thiel.



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 Signature of Notary