



**County of Yellowstone Board of Adjustment**  
**AGENDA-Thursday, November 8, 2018, 4:00 p.m.**  
Miller Building, 1<sup>st</sup> Floor Conference Room  
2825 3<sup>rd</sup> Avenue North, Billings, Montana

**NOTICE TO THE PUBLIC**

**Public Comment:**

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of the County Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Motion. Approval of Minutes: May 10, 2018**

**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. County Variance 289 – 3536 Comus Ave – Lot Coverage, Front & Side Setbacks - A variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33%; from 27-308 requiring a minimum 20-foot front setback to allow an 11-foot setback; and from 27-308 requiring a minimum 5-foot side setback for site built structures to allow a 3-foot setback for a proposed 720 square foot garage addition to an existing single family residence in a Residential Manufactured Home (RMH) zone on Lot 1, Block 7, Lockwood Subdivision, a 7,372 square foot parcel of land. Presented by Karen Husman, Planner I.
  
- b. County Variance 290 – 2795 Weymiller Lane – Detached Garage Size - A variance from Section 27-310.i requiring a maximum detached accessory building footprint no greater than 1,500 square feet to allow a maximum footprint of 2,925 square feet for a proposed new garage on an existing concrete slab in a Residential 15,000 (R-150) zone on Lot 1A, Block 1, Weymiller Subdivision, a 3.617 acre parcel of land. 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 items may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@ci.billings.mt.us](mailto:deinest@ci.billings.mt.us).

**County Board of Adjustment**

**Meeting Date:** 11/08/2018

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**Information**

**Subject**

**Motion. Approval of Minutes: May 10, 2018**

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**Attachments**

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**Yellowstone County Board of Adjustment  
Meeting Minutes, May 10, 2018  
To Be approved by a Motion-at the next scheduled meeting**



The County Board of Adjustment met on Thursday, May10, 2018 in the 1<sup>st</sup> Floor Conference Room, of the Miller Building located at 2925 3<sup>rd</sup> Avenue North. Chairperson Boucher called the meeting to order at 4:00 p.m.

Name	Title	03/08/2018	05/10/2018								
<b>Blaine Poppler</b>	Vice Chair	1	1								
<b>Carlotta Hecker</b>	Board member	1	1								
<b>Troy Boucher</b>	Chairman	1	1								
<b>Vacant</b>		-	-								
<b>Vacant</b>		-	-								

**Chairman Hecker** introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk

**Others in Attendance:** Stacy Ott

**Public Comments:** There were no public comments.

**Approval of Minutes March 8, 2018**

**Motion**

**Board member Hecker made a motion and Board member Poppler seconded the motion to approve the March 8, 2018 meeting minutes as submitted. The motion passed with a unanimous voice vote.**

**Disclosure of Conflict of Interest:** There were no disclosures of conflict of interest.

**Disclosure of Exparte Communication**

There were no disclosures of exparte communication from the Board.

**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.

**Yellowstone County Board of Adjustment**  
**Meeting Minutes, May 10, 2018**  
To Be approved by a Motion-at the next scheduled meeting



**Item #1: County Variance County Variance 288-6500 Cold Stone-Detached Structure Size, Nicole Cromwell, Zoning Coordinator, presenting.**

**REQUEST**

County Variance 288 – 6500 Cold Stone – Detached Structure Size – A variance from 27-310(i) requiring a maximum detached accessory structure footprint not exceed 1,500 square feet to allow a maximum footprint of 5,000 square feet in a Residential 15,000 (R-150) zone on Lot 3, Block 1 of Cold Stone Estates Subdivision, a 5.659-acre parcel of land. A previous variance (Var #245) to allow 5,000 square foot detached structures was previously granted for all lots in Cold Stone Estates Subdivision but expired in 2012. Tax ID: C15294 Presented by Nicole Cromwell, Zoning Coordinator

**RECOMMENDATION**

**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 the following conditions:

1. The variance is to increase in the allowable footprint area for 1 (one) detached garage from 1,500 sf to 5,000 sf and no other variance is intended or implied.
2. The variance is limited to Lot 3, Block 1 of Cold Stone Estates Subdivision at 6500 Cold Stone Lane.
3. The new detached garage will be built in substantial conformance with the submitted site plans. Minor deviations that do not create a violation of another zoning or building requirement are acceptable.
4. There will be no construction prior to 7 am or after 8 pm daily.
5. The applicant will obtain a Zoning Compliance Permit in accordance with the approved variance within 6 months of Board approval.
6. Construction on the approved detached garage will be completed within 3 years of Board approval.
7. 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.

Staff is recommending the applicant obtain an approved Zoning Compliance Permit within 6 months and the structure be completed within 3 years of Board approval.

**BACKGROUND**

This is a variance request from Section 27-310(i) to increase the maximum allowed size of a detached accessory structure from 1,500 square feet to a maximum of 5,000 square feet in a Residential 15,000 zone for property generally located at 6500 Cold Stone Lane. In 2005, the County Board of Adjustment approved this variance for all the lots in the proposed Cold Stone Subdivision. One condition of approval was to "sunset" the variance in February 2012 for any of the lots without an oversized barn as of that date. The subject property is one of these lots.

# **Yellowstone County Board of Adjustment**

## **Meeting Minutes, May 10, 2018**

**To Be approved by a Motion-at the next scheduled meeting**



The primary purpose of the original variance application was to allow lot owners the opportunity to have over-sized accessory buildings for the keeping of livestock animals such as horses and for storing personal and recreational vehicles. The subdivision has covenants and restrictions for each of the lots that provide restrictions on the types of animals that may be kept in the barn, an architectural control committee that will oversee the design of the barns and restrictions to prevent use of the structures for businesses. The zoning code dictates that lots of this size may only have a detached accessory structure of 1,500 square feet or less and only if a principal structure (single family home) exists or will exist on the property. There are several surrounding properties that have over-sized detached accessory structures including property at 6405 Colton Blvd (2,160 sf), 2205 & 2403 66th Street West (2,000 sf each), 2505 66th St West (2,400 sf), 6500 Colton Blvd (2,050 sf), 6303 Grand Avenue (2,276 sf & 1,050 sf), 1812 66 th Street West (1,665 sf) (2,050 sf), 6303 Grand Avenue (2,276 sf & 1,050 sf), 1812 66 th Street West (1,665 sf) and 1724 66th Street West (1,280 sf & 1,200 sf). These surrounding properties did not receive zoning variances and are located in the same zoning district.

The Planning Division has reviewed this variance and is recommending conditional approval as described in the proposed findings of the 7 criteria (attached). Staff believes the applicant has not demonstrated a hardship that is peculiar to this lot or that special circumstances or conditions exist on this lot. The covenants and restrictions for the subdivision require all outdoor or recreational equipment be stored within a structure. This is a condition not enforceable by the County but does apply to all of the lots in the subdivision. The owner states the number and sizes of the recreational equipment makes the maximum area allowed -3,000 sf in 2 structures of 1,500 sf each - too small to comply with the covenant. However, granting of this variance would not be granting the applicant a special privilege that is not enjoyed by other homes in this subdivision or surrounding subdivisions. Several properties have existing agricultural buildings that are larger in square footage than 1,500 square feet and most are zoned R-150. Previous variances (since 1999) have been granted for over-sized barns or garages on property zoned R-150. The Board of Adjustment has allowed larger detached structures where the applicant demonstrated an agricultural or similar storage need.

### **Discussion**

Chairperson Boucher called for questions and discussion from the members of the Board. Board member Hecker requested clarification on the garage location and Ms. Cromwell stated the garage will be located behind the house. Board member Poppler asked if staff received any public response to the mailing or property posting. Ms. Cromwell said there has been no public input on this variance request. Board member Hecker noted the plan for an additional lean-to which is not mentioned in the covenants. Ms. Cromwell stated Planning does not enforce Covenants and Restrictions but will enforce the lot area requirements per the zoning.

# Yellowstone County Board of Adjustment Meeting Minutes, May 10, 2018



To Be approved by a Motion-at the next scheduled meeting  
**Public Hearing**

Chairperson Boucher opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #288.

**Stacy Ott, 6500 Coldstone Lane, Billings, Montana**

Board member Poppler asked Mr. Ott if the other two barns in this subdivision have lean-to coverage. Mr. Ott replied and said one of the structures in the subdivision has a lean-to and for the most part, the structure will be buffered by trees. He said the neighbors are aware of this application and in favor of this request.

Chairperson Boucher asked if there is anyone else wishing to speak in favor or against County Variance #288. There was none. Chairperson Boucher closed the public hearing at and called for a motion.

**Motion**

**Board member Hecker made a motion and it was seconded by Board member Poppler to conditionally approve County Variance #288 based on the proposed findings of the 7 criteria as presented by staff.**

Name	FAVOR	AGAINST	ABSTAIN
Board member Poppler	1	-	-
Board member Hecker	1	-	-
Board member Boucher	1		

**The motion carries 3-0. County Variance #288 is approved.**

**Other Business/Announcements**

- **Announcement: The June 14, 2018 Yellowstone County Board of Adjustment meeting is cancelled due to a lack of applications. The next meeting will be held as legally announced and advertised.**

**Adjournment:** Adjourned 4:15 pm.

TO BE APPROVED BY A MOTION AT THE NEXT SCHEDULED MEETING  
*Tamara L Deines, Planning Clerk*



**County Board of Adjustment**

**Meeting Date:** 11/08/2018

**SUBJECT:** County Variance 289- 3536 Comus Ave.

**THROUGH:** Monica Plecker

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

County Variance 289 – 3536 Comus Ave – Lot Coverage, Front & Side Setbacks - A variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33%; from 27-308 requiring a minimum 20-foot front setback to allow an 11-foot setback; and from 27-308 requiring a minimum 5-foot side setback for site built structures to allow a 3-foot setback for a proposed 720 square foot garage addition to an existing single family residence in a Residential Manufactured Home (RMH) zone on Lot 1, Block 7, Lockwood Subdivision, a 7,372 square foot parcel of land. Presented by Karen Husman, Planner I.

**RECOMMENDATION**

Staff has reviewed the application and is recommending conditional approval for the front and side setback requests and denial on the lot coverage increase based on the review criteria for variances.

**APPLICATION DATA**

OWNERS: Ellen M. Holmes  
 PURPOSE: lot coverage of 33%, front 11-foot setback; and side 3-foot setback  
 LEGAL DESCRIPTION: Lot 1, Block 7, Lockwood Subdivision  
 ADDRESS: 3536 Comus Ave  
 EXISTING LAND USE: Residential  
 PROPOSED LAND USE: Residential  
 EXISTING ZONING: RMH

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
3536 Comus Ave	None			NA	
SURROUNDING PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
3410 Wasco Ave	252	3/9/2007	0' front SB	Y	Existing Carport
1155 Wren St.	258	2008	0' rear SB & 33% LC	Y	New Attached Garage
950 Saddle Lane	104	11/1985	Arterial SB 65'	Y	New Det. Garage
15 Memory Lane	108	8/1986	Building separation of 4.5'	Y	New Detached garage.

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: RMH  
Land Use: Residential  
SOUTH: Zoning: R-96  
Land Use: Residential  
EAST: Zoning: R-96  
Land Use: Residential  
WEST: Zoning: R-96  
Land Use: Residential

## **BACKGROUND**

This is a request for a variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33%; from 27-308 requiring a minimum 20-foot front setback to allow an 11-foot setback; and from 27-308 requiring a minimum 5-foot side setback for site built structures to allow a 3-foot setback for a proposed 720 square foot garage addition to an existing single family residence in a Residential Manufactured Home (RMH) zone. The applicant wishes to build a garage on the property. The existing carport is not sufficient for sheltering two vehicles, and the applicant intends to remove the structure and construct a new garage.

The Planning Staff reviewed the zoning history in the area and found four similar applications conditionally approved in the district. The lot is an irregular shape and with the placement of the existing dwelling it is difficult to replace the carport with a useful garage. One of the previous variances approved for setbacks included a variance for lot coverage maximum of 33%. Variance 258 was granted due to misinformation given to the applicants. The applicant for this previous variance did make inquiries with County Public Works to determine whether any permits would be required for setbacks from property lines. At the time, the applicants were told by County Public Works that no permits or setbacks would apply to this property. This information was in error and the applicant proceeded with the garage. In early November, 2008, the Planning Division received a complaint that a garage foundation was being poured directly on the property line. The applicant was informed of the zoning regulations and setback requirements. The applicant chose to submit a variance application to seek relief from the zoning requirements. The Board of County Commissioners agreed to waive the variance application fee due to the erroneous information given to the applicants. The previous variance was due to special circumstances

This application, although similar, is not a special circumstance for the lot coverage requested. The applicant can construct a smaller 2-car garage and not exceed the lot coverage maximum of 30%. Due to the physical configuration of this lot, it is difficult to locate a 2-car garage within the required setbacks for the front and side property lines. Other variances for setbacks have been granted in this subdivision and within the Lockwood area. Staff is recommending denial of the 33% lot coverage and approval of the variance for setback reductions.

## **RECOMMENDATION**

The Planning Division is recommending conditional approval to allow a variance from 27-308 requiring a minimum 20-foot front setback to allow an 11-foot setback; and from 27-308 requiring a minimum 5-foot side setback for site built structures to allow a 3-foot setback for a proposed new garage. Staff is recommending denial of the variance for 33% lot coverage based on the review criteria for variances.

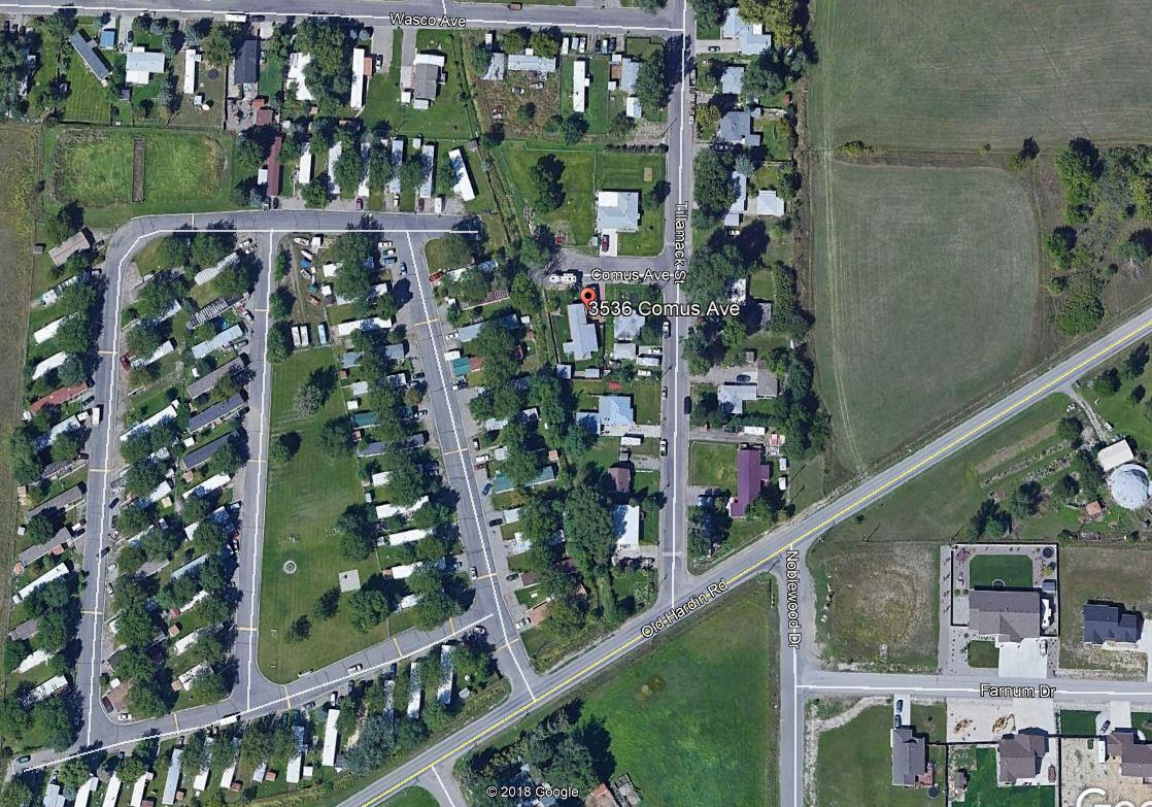
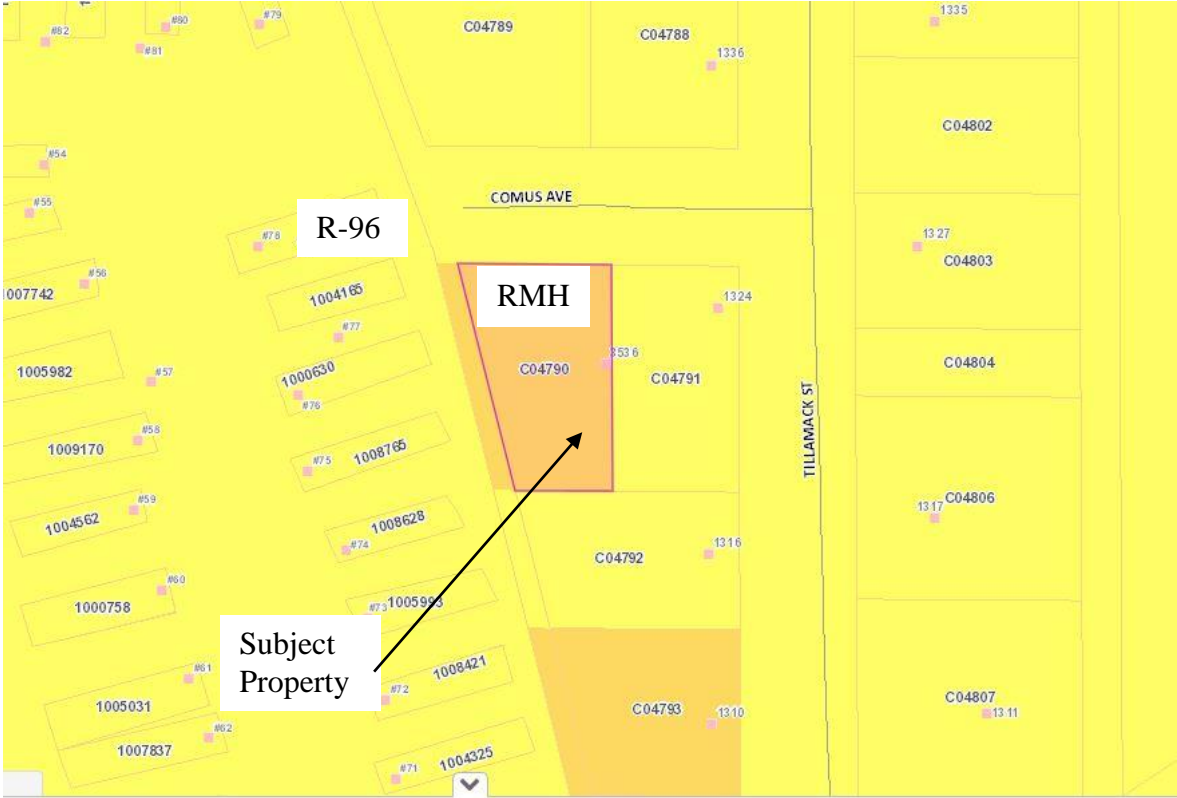
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## **Attachments**

Zoning Map & Site Photos  
Applicant Letter & Site Plan  
Determinations

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**ATTACHMENT A**  
Surrounding Zoning & Site Location



**ATTACHMENT B**  
**Site Photographs**



Subject Property



West



North



South

Application

APPLICATION FORM

COUNTY VARIANCE County Variance # 289 - Project # P2-18-6062

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 # C04790 COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property: S20, T01N, R27E, Lockwood Sub  
RMH Block 7 Lot 1

Address or General Location (If unknown, contact County Public Works):  
3536 Comus AVE Billings MT 59101

Zoning Classification: RESIDENTIAL

Size of Parcel (Area & Dimensions): 7372 sq ft

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance Requested: SET BACK OF 22' + 16' FROM CURB FOR DRIVEWAY.  
SIDE LOT LINE OF 3' NOT 5' BORDERS DITCH.  
BUILD GARAGE 24 X 30 + INCREASE THE 30% ALLOWABLE COVERED COVERAGE  
TO 33%

Facts of Hardship: NEED A GARAGE. THE PRESENT LOCATION OF THE GARAGE DOES  
NOT ALLOW US ENOUGH ROOM ON THE LOT TO BUILD ON THAT SIDE. IT WILL  
TEAR DOWN THE CARPORT + PUT IN A DECORATIVE FRONT YARD.

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

Owner(s): ELLEN M HOLMES  
(Recorded Owner)  
3536 Comus AVE Billings MT 59101  
(Address)  
406-670-0882 ellenholmes52@gmail.com  
(Phone Number) (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: Ellen M Holmes Date: 9-28-2018  
(Recorded Owner)



County Variance 2017-2018 updated 11/6/17

9-28-2018

Chairperson of the Board of Adjustment,

I would like to build a 2 car garage attached to the house.

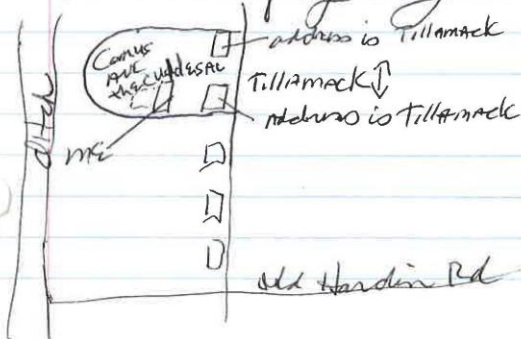
Reasons: security by entering my house from my garage. Prevent vandalism to vehicles.

Presently, I have a carport, which will be taken down if you grant us the variances being requested.

Build: 24' x 30' garage  
22' x 16' cement driveway

- Set backs: ① 16' on part of driveway (not 22')
- ② 2' on ditch side (supposed to be 5' - we <sup>would</sup> have 3' so need it to be 2' less)
- ③ 30% allowable covered bldg - need it increased to accommodate the new garage.

This garage would border the ditch.  
Would not obstruct anyone's view.  
Not a safety hazard.



So you can see no one would be affected.  
I hope you will grant the variances.  
Thank you - look forward to hearing from you.  
Ellen McIntosh



Variance 289  
**DETERMINATIONS**

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

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

There are no special circumstances that exist which are peculiar to the land, except for the shape of the lot. The detached garage could be built to meet the lot coverage allowed by the zoning regulations, however the placement of the existing home and the irregular shape of the lot limit the placement for setbacks of the garage.

- 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;**

A literal interpretation of this zoning code provision may or may not deprive the applicant of the rights commonly enjoyed by others in this zoning district. There are other properties that have garages located at less than the required setbacks. There is an existing carport on the property that is less than the required front setback. Construction of the requested garage will bring the property over the maximum allowed lot coverage.

- 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 for setbacks would not confer a special privilege to this applicant as similar garages exist within the area and in similar neighborhoods. There have been similar variances granted in the area for setbacks. However, there is only 1 variance granted for 33% lot coverage under special circumstances (detailed in staff report).

- 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 the variance for lot coverage would conflict with the Growth Policy and the Zoning Regulations. The zoning regulations, including the lot coverage limits, are designed to provide adequate light, air and space around one and two-family homes and to promote neighborhoods that are aesthetically pleasing. The granting of this variance for setbacks will not conflict with the Growth Policy in terms of the predominant use of land in this area of the County and with 4 other variances being granted for setbacks.

- 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 the following conditions:

1. The variance is to allow an 11-foot front setback; and to allow a 3-foot side setback for a proposed garage addition to the existing single family residence. No other variance is intended or implied.
2. The size of the new garage must be reduced to meet the maximum allowed lot coverage of 30%.

3. The variance is limited to Lot 1, Block 7, Lockwood Subdivision at 3536 Comus Ave.
4. The new garage will be built in substantial conformance with the submitted site plans with the exception of its size. Minor deviations that do not create a violation of another zoning or building requirement are acceptable.
5. There will be no construction prior to 7 am or after 8 pm daily.
6. The carport must be removed prior to approval of the Zoning Compliance Permit.
7. The applicant will obtain a Zoning Compliance Permit in accordance with the approved variance within 6 months of Board approval, and construction on the approved garage will be completed within 1 year of Board approval.
8. 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 the applicant obtain an approved Zoning Compliance Permit within 6 months and the structure be completed within 1 year of Board 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 this variance will not approve a use that is not otherwise allowed in the RMH zoning district. Garages and accessory buildings are allowed in the county residential zoning districts.



**County Board of Adjustment**

**Meeting Date:** 11/08/2018

**SUBJECT:** County Variance 290 - 2795 Weymiller

**THROUGH:** Monica Plecker

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

County Variance 290 – 2795 Weymiller Lane – Detached Garage Size - A variance from Section 27-310.i requiring a maximum detached accessory building footprint no greater than 1,500 square feet to allow a maximum footprint of 2,925 square feet for a proposed new garage on an existing concrete slab in a Residential 15,000 (R-150) zone on Lot 1A, Block 1, Weymiller Subdivision, a 3.617 acre parcel of land. Presented by Karen Husman, Planner I.

**RECOMMENDATION**

Staff is recommending denial of the application.

**APPLICATION DATA**

OWNERS: Patrick Schmaing  
 PURPOSE: Construct a garage exceeding 1,500 sq.ft.  
 LEGAL DESCRIPTION: Lot 1A, Block 1, Weymiller Subdivision  
 ADDRESS: 2795 Weymiller Lane  
 EXISTING LAND USE: Residential  
 PROPOSED LAND USE: Residential  
 EXISTING ZONING: R-150

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2795 Weymiller	None				
SURROUNDING PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2920 Alexander	165	2002	Det. Structure at 1,800 sf	Y	SFD habitable on site
2944 Alexander	265	2013	Det Structure at 3,584 sf.	Y	10 acre parcel with SFD

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: A-1  
Land Use: Residential  
SOUTH: Zoning: R-150  
Land Use: Residential  
EAST: Zoning: A-S  
Land Use: Residential  
WEST: Zoning: R-150  
Land Use: Residential

## BACKGROUND

The applicant is requesting a variance from Section 27-310.i requiring a maximum detached accessory building footprint no greater than 1,500 square feet to allow a maximum footprint of 2,925 square feet for a proposed new garage on an existing concrete slab. The Yellowstone County tax record indicates a residential structure on the property, however, it also indicates it is an "unsound" structure. The applicant states the intent of the new structure is to accommodate a large RV as well as other autos and storage.

Planning staff has reviewed the application and has corresponded with one neighbor to the south of the property (email attached), and a letter from another adjacent property owner (copy attached). The applicant has not stated a hardship with the property other than they have already poured the concrete. The applicant did not apply for a zoning compliance permit to construct the building. The subject property does not meet the definitions below:

*Sec. 27-201. - Definitions.*

**Principal use:** *The primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory. The uses listed in BMCC sections 27-305 and 27-306, District Regulations, are principal uses.*

**Accessory:** *A use, building or structure, part of a building or other structure, which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot, including a private garage.*

The definitions outline what a principal use of the land is for any zoning district may be as well as what an accessory use might be for any zoning district. The existing zoning, Residential 15,000 (R-150) has a principal use for residences. Any other use is an accessory use of the property and "is incidental to that of the main building." It specifically states a private garage is an accessory use. The principal use, residential living, is not occurring at this time on the subject property.

The "accessory" use is allowed only when a "principal" use has been established before the accessory structure is allowed. It should be noted that some uses listed are allowed in residential zoning only with the main building in place. If the existing residential building is in fact uninhabitable, this would mean the primary use of the site is not residential at this time. Using an RV as the residence is also not allowed in the residential zoning districts. Although there are similar variances in the district, the circumstances are not similar. The applicant does not live on the property, nor does any tenant occupy the residence on the property.

## RECOMMENDATION

Staff is recommending denial of the application.

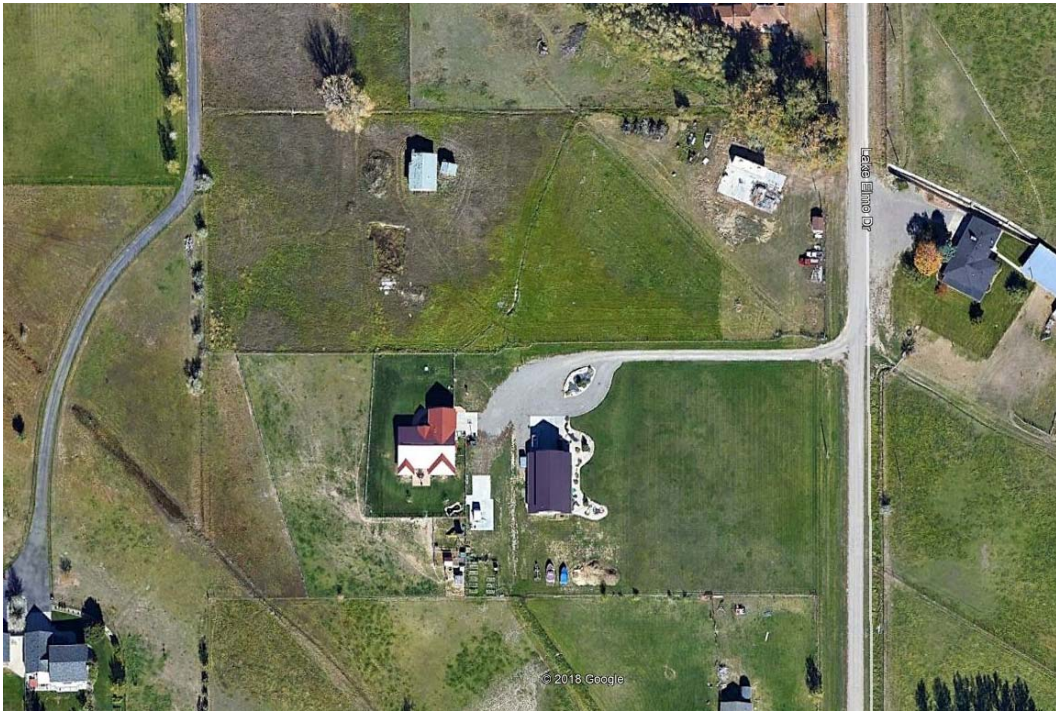
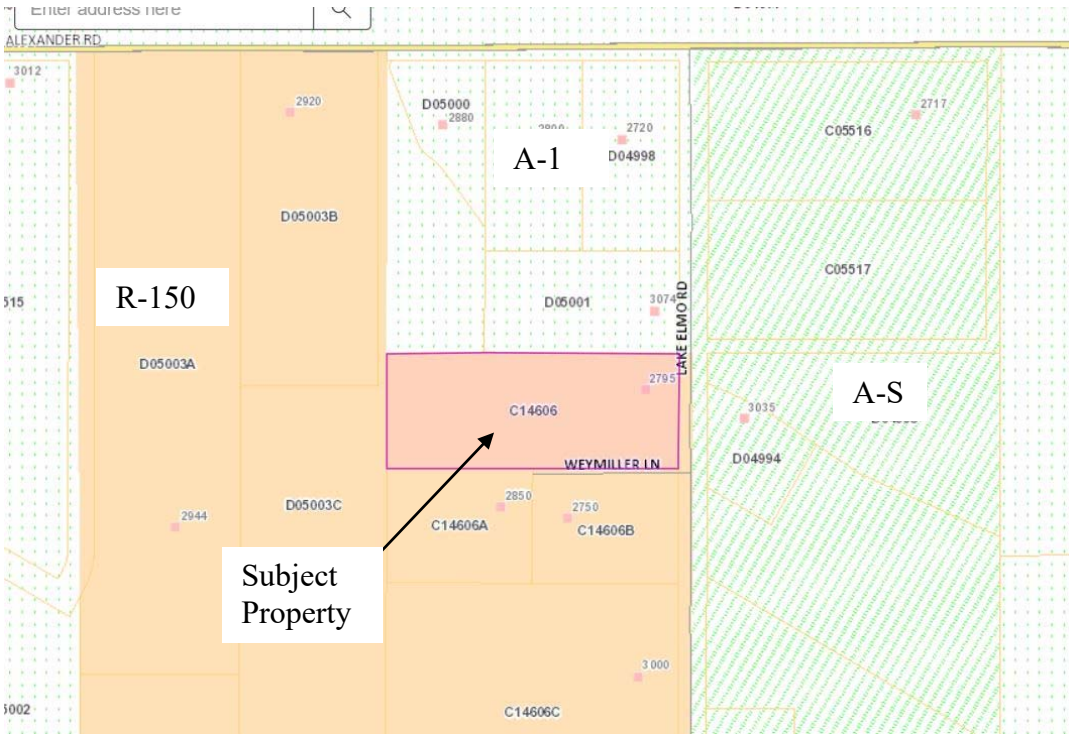
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## Attachments

Zoning Map & Site Photos  
Applicant Letter & Site Plan  
Determinations  
Letters From SPO

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**ATTACHMENT A**  
Surrounding Zoning & Site Location



**ATTACHMENT**  
Site Photographs



Subject property



Subject Property (Applicant submitted photos)



Subject Property



**ATTACHMENT**  
Application

**APPLICATION FORM**

**COUNTY VARIANCE** County Variance # 290 - Project # P2-18-00163

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 # C14626 COUNTY COMMISSIONER DISTRICT # 2  
Legal Description of Property: Block 1 Being Lot 1A Weymiller Subdivision, located in the Northwest 1/4 of Section 10, Township 1 North, Range 26 East, PMM Yellowstone County, Montana  
Address or General Location (If unknown, contact County Public Works): 2795 Weymiller Ln.  
Zoning Classification: R-15000  
Size of Parcel (Area & Dimensions): 3.617 ACRES 248.88' X 633.21'  
Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X  
If yes, please attach to application  
Variance Requested: 45'x65' = 2925 SF Pale barn 94x66 To go over concrete monolithic slab poured + leveled ground 2007 (Building over 1,500 square feet detached) Building requested over allowed coverage > residence of 864 SF  
Facts of Hardship: Concrete slab w/ footings already on land for pale barn - ground was filled & leveled for slab in 2007

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

Owner(s): Patrick J. Schmaing Schmaing  
(Recorded Owner)  
1646 Ginger Ave  
(Address)  
406 794-1419 (Phone Number) (email)  
Agent(s): SAM  
(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: Patrick J. Schmaing (Recorded Owner) Date: 9/6/2018



County Variance 2017-2018 updated 11/6/17

## 2795 WEYMILLER VARIANCE APPLICATION

Planning & Community Service Department  
2825 3<sup>rd</sup> Ave. North, 4 Floor

Questions submitted to be accepted.

1.A What reasons prevents me from using this property in conformance with the Zoning Regulation requirements?

The reason I am prevented from conforming to R15000 zoning is that the Pole-barn sizes 44x64 2,816 square feet I plan to build and cover existing concrete is larger than R15000 zoning square footage. The size is need to cover the existing concrete, RV and storage.

I poured concrete for a pole-barn on 3.617 acres after I purchased the land. I believe it was around 2007 when the property was placed in R15000 Zoning Regulations.

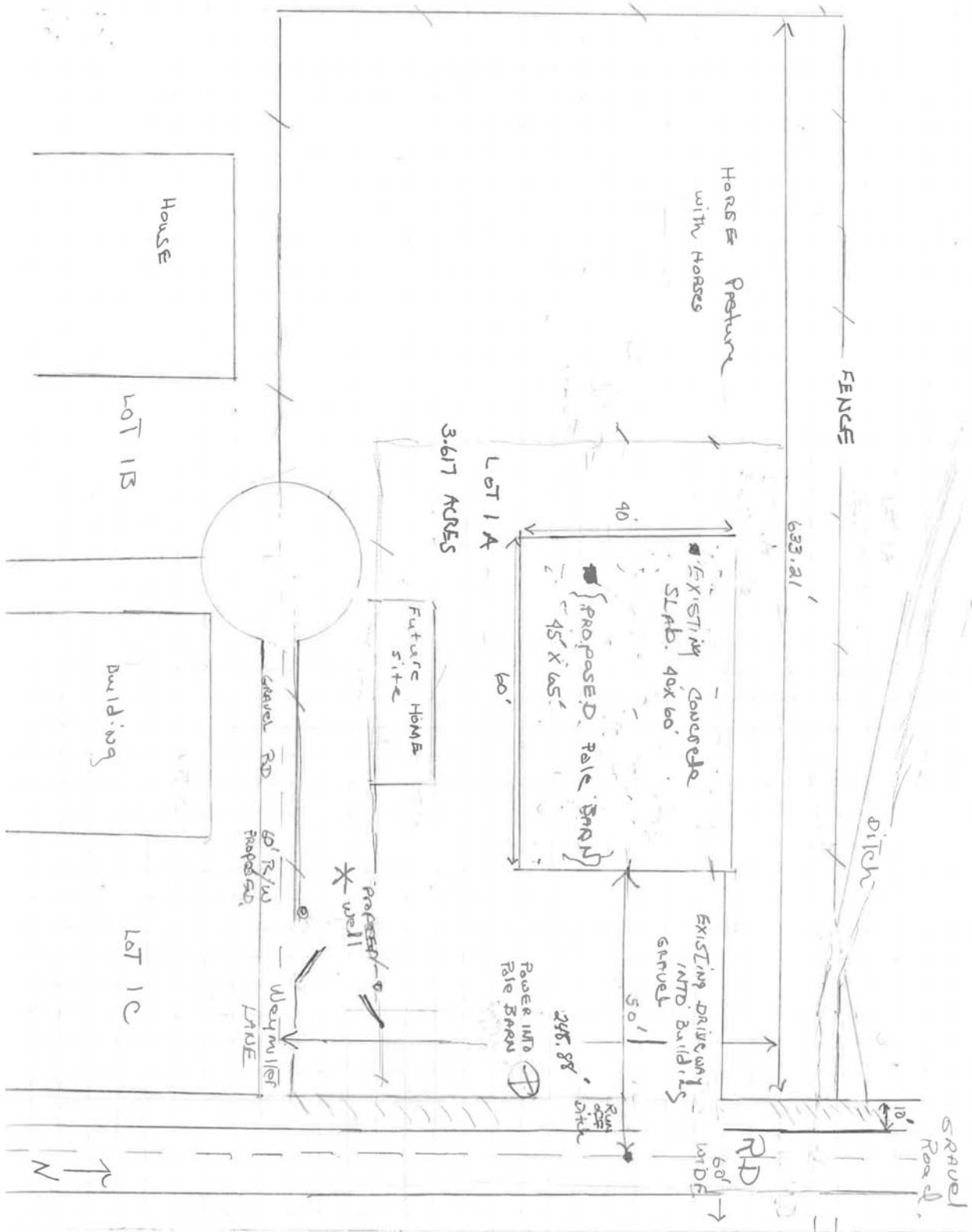
I purchased the land in the county before that time and I leveled the ground and dug footing, installed re-bar and plumbing in the concrete. I poured this concrete for a future pole-barn to be constructed, as I saved up money for the building.

There was not a problem and I met all regulation requirements for the county at that time. There was not a time limit to construct this pole-barn or I would of completed it at that time.

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

I have always planned to use the land I purchased in the county to build a pole barn covering the concrete, my RV and for storage. The building size is 44X64 and the square footage is 2,816. I poured concrete for the purpose of having a building to meet these goals. The existing concrete is would cost to much money to remove and is an eye sore not to be used as it was intended.

I keep horses on the land to eat weeds down and always have done so. If I want to build a house in the county on my land I would like to do this also.



Variance 290  
**DETERMINATIONS**

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

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

There are no special circumstances that exist which are peculiar to the land. The applicant has not stated a hardship with the property. The code allows two 1,500 square foot detached accessory buildings on the lot. The detached garages could be built to meet the size allowed by the zoning regulations. The existing single family dwelling is questionable as a primary structure.

- 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;**

Allowing the variance would give the applicant rights not commonly enjoyed by other tracts in the same district. Similar variances in nearby subdivisions have been granted for garages larger than allowed by zoning, however they were granted for half the square footage being requested. The variance would allow the applicant special privileges. Other lots in this subdivision have developed as defined by the zoning code. Granting the variance requested will confer on the applicant a special privilege that is denied by this Chapter to other land 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;**

Granting this variance would confer a special privilege to this applicant as similar sized detached barns and garages are not apparent in this subdivision and in similar neighborhoods.

- 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.

- 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 has no conditions for a recommendation of denial.

- 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**

There would be no time limit with a recommendation of denial.

- 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 this variance will not approve a use that is not otherwise allowed in the R-150 zoning district. Detached garages and accessory buildings are allowed in the county residential zoning districts.



## Husman, Karen

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**From:** Angela Penninger <angela@parker-law.com>  
**Sent:** Wednesday, October 17, 2018 11:12 AM  
**To:** Husman, Karen  
**Subject:** RE: County Variance #290/Project No. 18-00163

Karen,

I appreciate all of your time! Yes, we were told he was planning on having a large bonfire with the two structures that are on blocks. (Ugh!) Hopefully not, as it appears that they are possibly asbestos sided. I am going to try and make it to the meeting in November as long as I am able to get off of work.

Thanks again,

Angela

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**From:** Husman, Karen [mailto:husmank@ci.billings.mt.us]  
**Sent:** Wednesday, October 17, 2018 11:03 AM  
**To:** Angela Penninger  
**Subject:** RE: County Variance #290/Project No. 18-00163

Angela,

I can include all of your concerns in my report to the Board. Once I have finished my research of the property I will have more information. Generally, in residential zones, there must be a residential structure (single family dwelling) on the property in order to have an "accessory" building. I understand the existing house is in disrepair and can include this in my report to the board to help justify my recommendation.

Thank you for contacting us. Every bit of information we obtain helps us to make the determinations we are required to find when making our recommendation. Let me know if you have any other questions or concerns.

**Karen Husman**  
**Planner I**  
**City of Billings & Yellowstone County**  
**Planning Division**  
**2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor**  
**Billings, MT 59101**  
**(406) 247-8684**  
**[husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us)**

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**From:** Angela Penninger [mailto:angela@parker-law.com]  
**Sent:** Wednesday, October 17, 2018 10:30 AM  
**To:** Husman, Karen <husmank@ci.billings.mt.us>  
**Subject:** RE: County Variance #290/Project No. 18-00163

Thank you, Karen. Are you able to tell me if there is a stipulation as to whether the structure is allowed to be used as a residence? I apologize for all of the questions but the building to the east of us is a barn that they owner is living in. We were unaware that it was being used as a residence when we purchased our home at 2850 Weymiller.

I will follow up with DEQ and Code Enforcement to inquire for further information.

Thank you,

Angela

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**From:** Husman, Karen [<mailto:husmank@ci.billings.mt.us>]  
**Sent:** Wednesday, October 17, 2018 10:24 AM  
**To:** Angela Penninger  
**Subject:** RE: County Variance #290/Project No. 18-00163

Angela,

I will forward your concerns to the Board of Adjustment (they will hold the public hearing). The applicant is requesting a variance from the restricted maximum size of an accessory structure from the 1500 sf maximum allowed to allow a structure that is 2,925 sf. Unfortunately, the variance application process does not include sanitary review or easement restrictions. The Department of Environmental Quality (DEQ) should be aware of any septic drainfield and water concerns, these items are assessed when a permit for well or septic are reviewed for issuance. I suggest you contact our Code Enforcement Department at 237-6146, for more information on the concerns you have. County Code Enforcement may have more specific contact information for you to get answers to these questions/concerns.

I hope this helps.

Enjoy the day,

**Karen Husman**  
**Planner I**  
**City of Billings & Yellowstone County**  
**Planning Division**  
**2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor**  
**Billings, MT 59101**  
**(406) 247-8684**  
**[husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us)**

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**From:** Angela Penninger [<mailto:angela@parker-law.com>]  
**Sent:** Wednesday, October 17, 2018 8:58 AM  
**To:** Husman, Karen <[husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us)>  
**Subject:** RE: County Variance #290/Project No. 18-00163

Thank you! This is our neighbor to the north. They are currently living in a fifth wheel trailer on the existing concrete pad that is set for a house. I understand that they want to build a pole barn in this spot. There is currently not a well or septic on this lot. The drawing (although out of scale) shows that they have a proposed location of their well. However, there is not a proposed location for a septic or drain field. My concern is that they will be living in the pole barn, as they have told us they will be, however, the concrete pad is at a higher elevation that we are. We are concerned because if they put in a septic system it will flow downhill to where our well and our neighbor's well are located. Do you have any more information than what was provided in the letter? They originally told us they wanted to put a mobile home on the concrete pad but were denied due to the septic issue. I don't see how them living in a pole barn will yield a different result.

My other issue is that the current easement of Weymiller Lane is not the 60' that is required. Their fence currently runs down the middle of this easement. If there will be construction occurring then I am assuming there will be heavy equipment on this one lane road. The road will not support this as we even have the garbage truck pick up our garbage on Lake Elmo because of the ruts it was causing due to the weight of the truck on Weymiller. Can we guarantee that they will be moving the fence and constructing the road from a 1 lane to a 2 lane road?

My first instinct is to oppose the zoning change until these matters have been resolved.  
Thank you so much for any additional information you are able to provide.

Angela Penninger

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**From:** Husman, Karen [<mailto:husmank@ci.billings.mt.us>]  
**Sent:** Wednesday, October 17, 2018 8:47 AM  
**To:** Angela Penninger  
**Cc:** Deines, Tammy  
**Subject:** RE: County Variance #290/Project No. 18-00163

Angela,

I would be happy to answer your questions about Variance #290.

**Karen Husman**  
**Planner I**  
**City of Billings & Yellowstone County**  
**Planning Division**  
**2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor**  
**Billings, MT 59101**  
**(406) 247-8684**  
**[husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us)**

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**From:** Deines, Tammy  
**Sent:** Monday, October 15, 2018 4:50 PM  
**To:** Husman, Karen <[husmank@ci.billings.mt.us](mailto:husmank@ci.billings.mt.us)>  
**Subject:** FW: County Variance #290/Project No. 18-00163

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**From:** Angela Penninger [<mailto:angela@parker-law.com>]  
**Sent:** Monday, October 15, 2018 2:00 PM  
**To:** Deines, Tammy <[DeinesT@ci.billings.mt.us](mailto:DeinesT@ci.billings.mt.us)>  
**Subject:** County Variance #290/Project No. 18-00163

Tammy,

I have some questions regarding the above request for a zoning change. Can you please advise me who to contact and possibly their e-mail address?

Thank you,  
Angela

*Angela Penninger*



Planning Division

RE County Variance 290-2795 Weymiller Lane

October 13, 2018

In regards to the above mentioned variance, I have no issue with the application. I do however have concerns on the abandoned house already on this property which was moved there several years ago. It is something that does nothing but decrease the value of the adjacent properties and is a complete eyesore. Is this something that could be addressed at the same time as the variance application? Maybe the landowner already has plans to have this removed? If a city official has visited the site, I'm sure they totally agree with my position.

A handwritten signature in black ink, appearing to read "Kevin Perreault".

Kevin Perreault

2920 Alexander Rd

Billings MT 59105

406-698-3090

kevinchrisp@gmail.com