

**Yellowstone County Board of Adjustment
Meeting Minutes, November 8, 2018
Approved by a Motion-January 10, 2019**



The County Board of Adjustment met on Thursday, November 8, 2018 in the 1st Floor Conference Room of the Miller Building located at 2925 3rd Avenue North. Chairperson Boucher called the meeting to order at 4:00 p.m.

Name	Title	03/08/2018	05/10/2018	11/08/2018						
Blaine Poppler	Vice Chair	1	1	1						
Carlotta Hecker	Board member	1	1	1						
Troy Boucher	Chairman	1	1	1						
Tyler Bush	Board member	-	-	-						
Vacant		-	-	-						

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

Others in Attendance: Angela Penniger; Ellen M Holmes; Steve Murdock; Mike Schmaing; Patrick Schmaing

Public Comments: There were no public comments.

Approval of Minutes May 10, 2018

Motion

Board member Hecker made a motion and Board member Poppler seconded the motion to approve the May 10, 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.

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Item #1: County Variance 289-3536 Comus Ave. Karen Husman, Planner I, presenting.

Nicole Cromwell read the rules and procedures for a public hearing and the legal ad for county Variance #289.

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. Tax ID C04790. Presented by Karen Husman, Planner I.

REASONS

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. 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 variances approved for setbacks included a variance for lot coverage maximum of 30%. Variance #258 was granted due to misinformation given to the applicants. The applicant of Variance #258 did make inquiries with County Public Works to determine whether any permits would be required or setbacks from property lines. At that 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

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given to the applicants. With this information, Staff is recommending denial of the 33% lot coverage and approval of the setback reduction.

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, and denial of the variance for 33% lot coverage based on the review criteria for variances.

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.

Discussion

Chairperson Boucher called for questions and discussion from the members of the Board. Board member Hecker asked where the septic tank is located on the lot and Board member Poppler asked for clarification on the location of the ditch and the proposed 3-foot setback. Staff clarified the posted site layout. Applicant Steve Murdock stated the septic tank is located off of the back. Board member Hecker asked regarding the allowable garage size, and Nicole Cromwell replied it can be about 500 square feet as opposed to 700 square foot deep. (20 X 25). She pointed out that Comas Avenue is paved and has curb and gutter.

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Public Hearing



Chairperson Boucher opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #289.

Ellen M. Holmes, Steve Murdock, 3536 Comus Avenue, Billings, MT

Ms. Holmes and Mr. Steve Murdock are the applicants. Mr. Murdock stated they plan to remove the carport and construct a garage on the back side of the home. The proposed garage size could shrink a little in width but not in length due to the size of their vehicles. He suggested they could go with a 20-ft width if needed. Ms. Holmes said the septic tank is located more towards where the proposed garage will end and she pointed out the location on an aerial map. She said doesn't think the view will be blocked. She said they will comply with Condition #6 and ensure the carport is removed. Nicole Cromwell noted the County Code Enforcement officer's suggestion to change the wording to state there will be a penalty if the carport is not removed. Mr. Murdock said they could reduce to 20' X 30' garage which would eliminate a work bench area.

Board member Poppler voiced concern with maintenance of the nearby ditch and Mr. Murdock said the Ditch Company requires very little maintenance for clean out. Board member Hecker asked if the floor of the carport is cement or gravel. Staff explained the site plan depicts the garage dimensions as 24' X 30'. They are asking for a total of 724 square feet but must reduce by 220 square feet to meet the 30% lot coverage. Mr. Murdock said they are asking for a 22' X 30' garage and they could remove a shed if it would make a difference. Ms. Holmes pointed out this is an angle shaped lot. She said she doesn't want to remove the shed.

Chairperson Boucher asked if there is anyone else wishing to speak in favor or against YC Variance #289. There were none. Chairperson closed the public hearing at 4:34 p.m. and called for Board discussion and a motion.

Discussion

Board member Poppler stated he is not concerned with the lot coverage, and understands the desire for the larger garage size. He noted there is little precedent for granting additional lot coverage in this area. He sees the point of usability of the structure. Board member Hecker voiced concern with the proposed lot coverage as it may be an issue due to sewer issues in the Lockwood area. Board member Boucher commented on the lot coverage and noted there are two existing sheds on the rear of the property. Nicole Cromwell suggested removal of the larger of the two sheds.

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Board member Boucher said he has no problem with either the requests for reduced setbacks or the increase in lot coverage.

Motion

**Board member Hecker made a motion to approve YC Variance #289 with the additional condition of removal of the largest out building.
The motion failed due to a lack of a second.**

Motion

Board member Poppler made a motion and it was seconded by Board member Boucher to conditionally approve the variance as requested including setbacks and lot coverage ratio subject to the keep conditions proposed by staff.

The conditions of approval are as follows:

1. The variance is to allow an 11-foot front setback; and to allow a 3-foot side setback, and to allow a maximum of 33% lot coverage for a proposed garage addition to the existing single family residence. No other variance is intended or implied.
2. The variance is limited to Lot 1, Block 7, Lockwood Subdivision at 3536 Comus Ave.
3. The new 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 carport must be removed prior to use of the new garage.
6. 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.
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.

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

The motion carries 3-0. County Variance #289 is conditionally approved.

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Item #2: County Variance #290-2795 Weymiller Lane, Karen Husman, Planner I, presenting.

Nicole Cromwell read the rules and procedures for a public hearing and the legal ad for County Variance #290.

REQUEST

County Variance 290 – 2795 Weymiller Lane – Detach 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. Tax ID C14606. Presented by Karen Husman, Planner I.

RECOMMENDATION

Staff is recommending denial of the application based on the determinations. 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.

Ms. Husman clarified and stated the house is structurally sound but it is on blocks. The applicant's intention is to move the existing house out towards the front of the property.

Discussion

Chairperson Boucher called for questions and discussion from the members of the Board. Board member Poppler asked if there are Covenants and Restrictions on this subdivision. Mr. Mike Schmaing stated there are no CCR's and there are currently three houses on Alexander Road.

Public Hearing

Chairperson Boucher opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #290.

Patrick Schmaing, 1046 Ginger Ave, Billings, Montana

Mr. Patrick Schmaing is the applicant. He explained that he poured slab in 2006 for the proposed shop size and checked with the County at the time. He said he was unable to complete the project at the time due to health problems. Mr. Schmaing hired an engineer to look at the house. He is trying to build the shop first and utilize the existing concrete slab if at all possible. He is getting bids for installation of the septic system. Mr. Schmaing pointed out the location of the house on the posted area map and noted the water flows on the property. There is no well at this time but he plans to install a cistern with the septic system. The property is currently served by Billings Heights Water. Board member Poppler asked regarding the perk and groundwater

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tests, and Mr. Schmaing said the engineer will be involved when doing the septic system. In response to question by Board member Boucher, Mr. Schmaing stated the house is structurally fine. His goal is to move the house near the proposed garage and set it on a foundation. He has no plans to subdivide the parcel. Mr. Schmaing said there is nothing in the rules stating he has to reside in the house.

Mike Schmaing, 3000 Lake Elmo Drive, Billings, Montana

Mr. Schmaing lives near this property. He said he is a former contractor in Billings. He vouched for Patrick Schmaing and his quality of work. Mr. Schmaing said there is no threat for contamination with the asbestos siding. Mr. Schmaing stated that as a property owner, he would like to see this property utilized and feels it is a shame Patrick's health failed prior to completion of the project. Mr. Schmaing stated he was unaware of the zoning of this property when it was purchased.

Angela Penniger, 2850 Weymiller Drive, Billings, Montana

Ms. Penniger is a neighbor. She asked if the applicant plans to place a building on the existing pad and voiced concern with the fifth-wheel camper on the parking pad, and the septic not set up. She asked if there will be residents in the pole barn? She said they recently re-graveled the road and she does not want construction vehicles affecting the condition of the road. In response to question by Board member Poppler, Ms. Penniger stated she purchased the property in 2018. She is aware there are no Covenants and Restrictions as she has potbellied pigs. Ms. Penniger said she would find this application to be satisfactory if a pole barn is constructed on the pad, and the house moved and completed. She said the improvements would benefit the neighborhood. Mr. Patrick Schmaing said the house relocation will be controlled by the engineering company and the septic system will be under approval by RiverStone Health. The septic system will be set up for the house and the shop. Although there will be a bathroom and water in the shop, there are no plans for residents there.

Chairperson Boucher closed the public hearing at 5:13 p.m. and called for Board Discussion and a motion.

Discussion

Board member Poppler sees the options for this application as: the applicant requesting a zone change; the Board granting the variance; or let the property sit "as is". He noted there was a variance granted on Alexander Road in 2013. Board member Hecker asked if there is any way of guaranteeing completion of the house and that the shop cannot be lived in. Nicole Cromwell stated the Board can place limitations on the time frames for permits for the house and the shop. Board member Poppler commented if both projects were accomplished it would improve the neighborhood and the tax base. Board member Hecker would like to have timelines for each one. Mr. Patrick Schmaing stated the perk test was completed in 2006. He estimates the project costs as the Building \$30,000-\$40,000; \$10,000 concrete slab, and \$4,000 to set the house on the foundation. He stated he is prepared to complete the projects. He would like to build the shop first so he can get the tools and materials covered. He said either he or his son will finish this

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project. Board member Poppler stated he is inclined to see this project move forward with time restrictions. He suggested a 12-18-month requirement to get the house moved and the shop completed. DEQ approval of the sanitary restrictions will take the project to the spring—possibly a timeframe of 18 months to have the house moved and obtain DEQ approval for the septic system.

Motion

Board member Hecker made a motion and Board member Poppler seconded the motion conditionally approve County Variance #290. The conditions of approval are as follows:

1. The variance to increase the allowed square footage for a detached accessory building from 1,500 square feet to 2,925 square feet. No other variance is intended or implied by this approval.
2. The variance is limited to Lot 1A, Block 1, Weymiller Subdivision, generally located at 2795 Weymiller Lane.
3. The applicant will develop the new accessory building in substantial compliance with the submit site plan submitted.
4. The applicant will submit a Zoning Compliance Permit for construction of the new accessory building within 6 months, and completed within 1 year of Board of Adjustment approval.
5. Completion of relocation of the existing single family dwelling will be completed within 2 years of approval.
6. If relocation of the single family dwelling is not completed within the time frame stated, the structure must be removed and the property owner must apply for and receive approval of a zone change to allow compliance for the accessory structure.
7. The applicant shall comply with all other codes and ordinances that apply including restrictions and regulations regarding placement and installation of septic, cistern and well.
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.

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

The motion carries 3-0. County Variance #290 is conditionally approved.

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Other Business/Announcements

- **Announcement:** The December 13, 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 5:30 p.m.

APPROVED BY A MOTION JANUARY 10, 2019

