



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, October 5, 2022, 6:00 p.m.**  
Miller Building, 1<sup>st</sup> Floor Conference Room  
2825 3<sup>rd</sup> Avenue North, Billings, Montana

**NOTICE TO THE PUBLIC**

**\*\*ATTENTION\*\***

**In the event a quorum of the Council is present, no City-related decisions will be made during this meeting or event.**

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
  - Email: [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)
- Call in during the Public Comment periods as indicated on the agenda:
  - Citizens may call in during specific Public Comment periods at **406.237.6165**. All callers will be placed in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be limited to 3 minutes of testimony as is customary. Future delivery methods may be explored as best practice is learned.

Please direct questions to Administrative Secretary Robbin Bartley at [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov) or 406-247-8676

**Call the meeting to order.**

**Introduction of City Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of July 6, 2022 and August 3, 2022.

**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 Exparte 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. **City Variance 1350 -- 3032 King Ave West -- Reduce Front Lot Line Coverage** - A variance from 27-406 - Table of Site and Structure Regulations A.3 -- requiring a minimum of 50% of the front lot line to be covered by a building façade to allow 30% front lot line coverage in a Corridor Mixed Use 2 (CMU2) zone, on Studer Acreage Tracts Sub 822, Lot 3B, Amended, a 63,461 sf parcel of land. The purpose of the variance is to allow the construction of a new Panda Express with a drive through. Tax ID: C03640

## **Other Business/Announcements**

### **Adjournment**

The City Board of Adjustment will hold its public hearing in the 1<sup>st</sup> Floor Conference Room at 2825 3<sup>rd</sup> Avenue North (Miller Building) starting at 6 pm, October 5, 2022. All interested persons are invited to attend in person or view the meeting on-line on the Billings-Planning & Community Services Facebook Page here; <https://tinyurl.com/yckr478k>

A public comment phone line is available for on-line viewers to provide testimony during the specific Public Comment periods announced by the Chairman during the hearings. The call in phone number is (406) 237-6165. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary. Written comments may also be sent to Board via email to [cromwelln@billingsmt.gov](mailto:cromwelln@billingsmt.gov) or [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov) before 1:00 PM on October 5, 2022. All emails received prior to this time will become part of the record for the public hearing.

Additional information on this application is available on-line at <https://www.billingsmt.gov/2361/Current-Zoning-Applications> or in the Planning Offices at 2825 3<sup>rd</sup> Ave N -- 4<sup>th</sup> Floor.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)

**City Board of Adjustment**  
**Meeting Date:** 10/05/2022

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**Information**

**Subject**

The minutes of the Board meeting of July 6, 2022 and August 3, 2022.

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**Attachments**

July 6, 2022 minutes draft  
August 3, 2022 draft minutes

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**CITY BOARD OF ADJUSTMENT**

MINUTES July 6, 2022

Name	Title	01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022	
		David Mitchell	Member	1	-	1	E	E	E	1				
Dave Hagstrom	Member	1	-	1	1	1	1	1						
George Warmer	Member	-	-	1	1	1	E	1						
Jeff Bollman	Vice Chair	P	-	1	1	E	1	1						
Oscar Heinrich	Chair	1	-	1	1	1	1	1						
Chris Hayes	Member	-	-	-	1	1	1	E						
Josh Sayer	Member	-	-	-	1	1	1	1						
<b>TOTAL NUMBER OF APPLICATIONS 2022</b>		<b>01/05/2022</b>	<b>02/02/2022</b>	<b>03/02/2022</b>	<b>04/06/2022</b>	<b>05/04/2022</b>	<b>06/01/2022</b>	<b>07/06/2022</b>	<b>08/03/2022</b>	<b>09/07/2022</b>	<b>10/05/2022</b>	<b>11/02/2022</b>	<b>12/07/2022</b>	<b>TOTAL</b>
<b>Variance</b>		<b>2</b>	<b>-</b>	<b>3</b>	<b>1</b>	<b>*2</b>	<b>1</b>	<b>*3</b>						<b>9</b>

- 1 Returning variance

Chair Heinrich called the meeting to order at 6:00 p.m.

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

**Attending:** Barbara Rasmussen, Joe Bonini, Mark Rosebush, KC Johnson, Dr. Jeff Golini

**Public Comment**

Chair Heinrich opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none.

## Approval of Meeting Minutes

Meeting minutes for May 4, 2022. Approved.

## Public Hearings

**Return Item - City Variance 1346 – 1310 30<sup>th</sup> St. W –Increase building height to 46 feet and reduce required off-street parking penalty for assigned spaces** - A variance from the Cardwell Ranch East 80 Planned Development, Article VI.C.3 requiring a 40-foot maximum height for multi-family structures to allow 46 feet and from Section 27-1302.B.7 requiring provision of 20% more off-street parking spaces when some of the off-street parking spaces are assigned on Lot 15A, Block 2 Cardwell Ranch Subdivision 1<sup>st</sup> Filing, a 6.88-acre parcel of land. The purpose of the variance is to allow an increase in maximum height for Cardwell Ranch Apartment Homes to develop a roof design that complies with the aesthetic intent of the Cardwell Ranch Design Standards and to allow the proposed 406 off-street parking spaces to be allowed for the proposed 249 dwelling units. The proposed parking ratio (spaces/unit) is 1.63 and the required parking ratio with the 20% penalty is 1.92 or 478 spaces.

## Recommendation:

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance for height based on the determinations for review provided within this report. The Board of Adjustment opened the public hearing on this request on June 1, 2022, and delayed action on the request to the July 6, 2022 hearing date at the request of the applicant. The updated request is to allow the applicant to withdraw the request for parking variance. Staff is recommending the BOA approve the request to withdraw the parking variance portion of the request and consider the variance for height per the staff recommendation.

## Recommended Conditions;

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Code. 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 the Zoning Code. Staff is recommending the following conditions for the *Height* variance request:

1. The approval is for a height variance from Cardwell Ranch PD (Design Guidelines) under Article VI.C.3 requiring a 40-foot maximum height for multifamily structures to allow 46 feet, on Lot 15A, Block 2.
2. Cardwell Ranch Subdivision 1st Filing, a 6.88-acre parcel of land. The purpose of the variance is to allow an increase in maximum height of 46 feet to develop a roof design that complies with the aesthetic intent of the Cardwell Ranch Design. No other variance is intended or implied with this approval.
2. The height variance is limited to Lot 15A, Block 2, Cardwell Ranch Subdivision, 1st Filing, located at 1310 30th St. W.
3. A landscaping buffer will be provided on the south property line adjacent to the school property to the south, but pedestrian connectivity is encouraged for residents to access the school and school grounds.
4. The applicant shall meet all other city code requirements as well as Cardwell Ranch Planned Development requirements with the exception of this height variance.
5. The applicant will submit a building permit within 3 years of Board approval and complete construction within 5 years of the first building permit approval. Failure to meet these deadlines will void the variance.

6. 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, leaseholders, heirs and assigns.

The request to withdraw the Parking variance was approved 4-0. George Warmer and David Mitchell abstaining due to conflict of interest.

No applicants were present. Brad Brown called on the customer inquiry line. He stated the applicant now wished to ask for a height variance of 49 feet. Mr. Brown was informed the Board could not consider this request without the proper protocol of public notice and staff investigation and reporting.

**Discussion**

Board member Bollman requested elevations as they have not seen any yet.

**Motion**

Board Member Hagstrom made a motion and Board Member Sayer seconded the motion to delay the **City Variance 1346 to next meeting.**

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell			<b>x</b>	
Dave Hagstrom	<b>x</b>			
George Warmer			<b>x</b>	
Jeff Bollman	<b>x</b>			
Oscar Heinrich	<b>x</b>			
Chris Hayes				<b>x</b>
Josh Sayer	<b>x</b>			

**The motion to delay City Variance 1346 passed with a 4-0 vote.**

**Public Hearings**

**City Variance 1347 – 4143 Banbury Place – Build-To Zone** - A variance from Sec. 27-305 (Table 27-300.4) from the required Front and Street Side Build-To zones to allow the front door and living area of a new residence to be more than 50 feet from the front property line in an N2 zone, on Lot 17A of Block 1, Legends West Subdivision, a 7,150 sf parcel of land generally located at 4143 Banbury Place. The purpose of the variance is to allow a new residence to comply with the clear vision area at an uncontrolled permanent T intersection of Banbury Place and Legends Way.

**Recommendation:**

Planning staff is recommending conditional approval based on the findings of the variance criteria to increase the front build-to area to allow the front door and living area of a new residence to be more than 50 feet from the front property line in an N2 zone.

Recommended Conditions;

1. The build-to zone variance is limited to Lot 17A, Block 1, Legends West Subdivision, generally located at 4143 Banbury Place.
2. The variance is from Section 27-305 (Table 27-300.4) requiring a build-to zone range of 10 feet to 20 feet from the front property line to allow the door of the living area of the new residence to be more than 50 feet from the front property line in an N2 district. No other variance is intended or implied.
3. The structure will be built in substantial conformance to the drawings submitted with this variance request.
4. Construction activity will not occur prior to 7 am or after 8 pm daily.
5. The applicant/developer shall apply for a building permit within 6 months of Board approval and complete the development within 1 year of Board approval.
6. Failure to begin or complete the project according to the time periods within this approval will void the variance.
7. The applicant shall meet all other city code requirements for the proposed single family home, with the exception of this variance.
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.

**Public Hearing opened at 6:27PM**

**Applicant: Miles Egan, 2690 Southridge Drive, 59102**

Joe Bonini is the superintendant on Career Center projects. The builder is actually School District 2. The HBA sponsors the build. It is a safe work project. This will be a single level ranch-style home facing Banbury.

**Joe Bonini, 8047 Longmeadow Drive**

The variance, if approved will allow for a greater side and back yard.

**Public Hearing closed at 6:30PM**

**Discussion**

Chair Heinrich asked if School District 2 owns the property could they juse LUCZ? Staff replied yes, however School District 2 does not own it.

**Motion**

Board Member Mitchell made a motion and Board Member Warmer seconded the motion to approve the **City Variance 1347 with staff recommendations, conditions and findings of fact.**

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell	<b>x</b>			
Dave Hagstrom	<b>x</b>			
George Warmer	<b>x</b>			
Jeff Bollman	<b>x</b>			
Oscar Heinrich	<b>x</b>			
Chris Hayes				<b>x</b>
Josh Sayer	<b>x</b>			

**The motion to approve City Variance 1347 passed with a 6-0 vote.**

**City Variance 1348 – 2376 Main Street – Kiosk for Temporary Use of 160 square feet** – A variance from Section 27-1009(A)(3)(b)(4)(i) requiring a Group 3 temporary use structure to be a maximum floor area of 120 square feet to allow a kiosk of 160 sf on Lot 4, Block 1 of North Pointe Square Subdivision and Lot 5, Block 1 of Bergquist Subdivision, a 9.29 acre parcel of land generally located at 2376 Main Street. The purpose of the variance is to allow an existing 160 sf kiosk to remain on the site.

**Recommendation:**

Planning staff has reviewed this application & is recommending **conditional approval** of Variance 1348 based on the proposed findings of the review criteria.

Recommended Conditions;

1. The approval is for a variance from Zoning Code 27.1009(A)(3)(b)(4)(i), as amended increasing the maximum allowed size of the structure from 120 square feet to 160 square feet (**33% increase**). No other variance is intended or implied with this approval.
2. The variance is limited the existing kiosk only, currently located on the parcels described in this application, and becomes void if the structure is moved (either within the same parcel or to another parcel within the City Limits) or the footprint is altered in any way.
3. The variance shall be null and void if at any time in the future, the temporary use permits for any of these kiosks remain expired for more than 30 days or if the structure is not in operation for more than 180 days.
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, leaseholders, heirs and assigns, so long as the structures are not moved from their current location.
5. The applicant shall meet all other city code requirements, including annual renewal of the temporary use permits, except for this variance.

**Public Hearing opened at 6:44PM**

**Applicant:**

KC Johnson, 2376 Main St, owner of Steady Grinding

He stated they need space for winter wear donation to the community. He has no interest in moving the kiosk.

**Questions for applicant:**

Board member Bollman has concerns regarding the conditions.

**In Favor:**

Jeff Golini states he allowed the kiosk and is owner of American Pharmaceutical.

**Opposed:**

**Mark Rosebush, 2376 Main Street**

He has no problem with the size of the kiosk. He has a neighboring parcel, not developed and is concerned with the kiosks permanance. Because the variance allows it to stay where it is which may be a problem for his parcel in the future.

**Public Hearing closed at 6:59PM**

**Discussion**

**Motion**

Board Member Mitchell made a motion and Board Member Bollman seconded the motion to approve the **City Variance 1348 with staff recommendations, conditions and findings of fact.**

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell	x			
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman	x			
Oscar Heinrich	x			
Chris Hayes				x
Josh Sayer	x			

**The motion to approve City Variance 1348 passed with a 6-0 vote.**

**Other Business:**

**ADJOURNMENT: The meeting adjourned at 7:02 PM.**

**ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.  
Robbin Bartley, Administrative Assistant.**

**CITY BOARD OF ADJUSTMENT**

MINUTES August 3, 2022

Name	Title	01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022	
David Mitchell	Member	1	-	1	E	E	E	1	E					
Dave Hagstrom	Member	1	-	1	1	1	1	1	1					
George Warmer	Member	-	-	1	1	1	E	1	1					
Jeff Bollman	Vice Chair	P	-	1	1	E	1	1	1					
Oscar Heinrich	Chair	1	-	1	1	1	1	1	1					
Chris Hayes	Member	-	-	-	1	1	1	E	1					
Josh Sayer	Member	-	-	-	1	1	1	1	1					
<b>TOTAL NUMBER OF APPLICATIONS 2022</b>		<b>01/05/2022</b>	<b>02/02/2022</b>	<b>03/02/2022</b>	<b>04/06/2022</b>	<b>05/04/2022</b>	<b>06/01/2022</b>	<b>07/06/2022</b>	<b>08/03/2022</b>	<b>09/07/2022</b>	<b>10/05/2022</b>	<b>11/02/2022</b>	<b>12/07/2022</b>	<b>TOTAL</b>
<b>Variance</b>		<b>2</b>	<b>-</b>	<b>3</b>	<b>1</b>	<b>*2</b>	<b>1</b>	<b>*3</b>	<b>*2</b>					<b>10</b>

\*1 Returning variance

Chair Heinrich called the meeting to order at 6:00 p.m.

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

**Attending:** Jim Thomson, Rick Leuthold, Bruce Fong, Lynn Moore

**Public Comment**

Chair Heinrich opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none.

### **Approval of Meeting Minutes**

Meeting minutes for June 1, 2022. Approved. July 6, 2022 – delayed.

Disclosure of Exparte Communications: None for 1346 or 1349

Disclosure of Site Visits: 1346, Board members Hayes, Warmer, Heinrich and Hagstrom visited  
1349 Board members Warmer, and Heinrich visited

Disclosure of Conflict of Interest: Board member Warmer has a conflict with 1346 and will be recusing himself. No other conflicts.

### **Public Hearings**

Chair Heinrich referred to a late email that was received it is attached to these minutes.

Brad Brown, applicant is attending by ZOOM.

**Return Item - City Variance 1346 – 1310 30<sup>th</sup> St. W – Increase building height to 49 feet - A** variance from the Cardwell Ranch East 80 Planned Development, Article VI.C.3 requiring a 40-foot maximum height for multi-family structures to allow 49 feet on Lot 15A, Block 2 Cardwell Ranch Subdivision 1<sup>st</sup> Filing, a 6.88-acre parcel of land. The purpose of the variance is to allow an increase in maximum height for Cardwell Ranch Apartment Homes to develop a roof design that complies with the aesthetic intent of the Cardwell Ranch Design Standards.

### **Recommendation:**

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the height variance to allow 49 feet based on the determinations for review provided within this report. The Board of Adjustment opened the public hearing on this request on June 1, 2022, and delayed action on the request to the July 6, 2022 hearing date at the request of the applicant in order to clarify the off-street parking requirement variance request. The Board of Adjustment opened the public hearing on July 6, 2022, and at the request of the applicant allowed the withdrawal of the variance from the off-street parking code. The Board then opened the public hearing on the 46-foot building height variance. The applicant requested additional height at the hearing. Since a larger variance cannot be considered at the public hearing, the hearing was postponed again to allow staff to re-notice the new height variance request of 49 feet. This hearing will consider the request to allow a 49-foot building height limit. The property was re-posted and new notices were sent to surrounding owners with the new request.

Recommended Conditions;

1. The approval is for a variance from Cardwell Ranch PD (Design Guidelines) under Article VI.C.3 to allow 49 feet, No other variance is intended or implied with this approval.
2. Lot 15A, Block 2, Cardwell Ranch Subdivision, 1st Filing, located at 1310 30th St. W.
3. A landscaping buffer will be provided on the south property line adjacent to the school property to the south, but pedestrian connectivity is encouraged.
4. Shall meet all other city code requirements as well as Cardwell Ranch Planned Development requirements with the exception of this variance.
5. Submit a building permit within 3 years of Board approval & complete construction within 5 years of the first building permit approval.



aware of the height variance request and is here to offer any assistance or answer any questions.

Board member Hagstrom referred to the rendering staff showed, is that close to the true pitch of the roof? It does not appear to be a steep pitch.

Mr. Leuthold replied the old zoning and the new zoning overlap in this situation and the peaks are adjusted for aesthetic purposes.

Brad Brown referred to these renderings not giving a true dimensional effect.

**Opposed: None**

**Public Hearing closed at 6:17PM**

**Discussion**

Chair Heinrich asked staff if they are comfortable with what has been received from the applicant. Staff replied in the affirmative.

**Motion**

Board Member Bollman made a motion and Board Member Sayer seconded the motion to approve the **City Variance 1346 with staff conditions and recommendations.**

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell				<b>x</b>
Dave Hagstrom	<b>x</b>			
George Warmer			<b>x</b>	
Jeff Bollman	<b>x</b>			
Oscar Heinrich	<b>x</b>			
Chris Hayes	<b>x</b>			
Josh Sayer	<b>x</b>			

**The motion to approve City Variance 1346 passed with a 5-0-1 vote.**

**City Variance 1349 – 1144 N 27<sup>th</sup> St. – Height within setback to adjacent zone** - A variance from 27-504 requiring a maximum building height of 50 feet within 150 feet of a CMU1 zone district to allow a maximum building height up to 155 feet for a 70 foot wide section of the proposed building’s east elevation 115 feet west of a CMU1 zone district; and a building height up to 145 feet for a diagonal portion of the north west building elevation 100 feet south and east of a CMU1 zone district. The property is within a Public Campus – Medical (P3 – Medical) zone, legally described as Northside Add 3<sup>rd</sup> filing, Block 9, Lots 1 through 48 (LESS 1000 SQ FT STREET 1996) (Less ROW 2019); and Normal Subdivision Block 1, Lots 1 through 21, Block 2 Lots 1 through 9, 10A, 10B, 12, 13, 14, & 15, and the adjacent vacated alley; Normal Subdivision 2<sup>nd</sup> filing, Block 1, Lots 22 through 40, unplatted land between the vacated alley and lots adjacent to the vacated alley; Normal Subdivision 3<sup>rd</sup> filing, Block 1, Lots 2 (Less ROW); C.O.S. 934 Tracts 1 and 2, for total lot area of 9.29 acres. The purpose of the variance is to allow a minor encroachment of a taller building into a setback from CMU1 in two locations to accommodate the height of a new hospital building.

**Recommendation:**

Planning Staff is recommending conditional approval based on draft findings of the review criteria for variances:

Recommended Conditions;

1. The approval is for the variance requested and no other variance from the zoning is intended or implied. Specifically, from Section 27-504 requiring a maximum building height of 50 feet within 150 feet of a CMU1 zone district to allow a maximum building height up to 155 feet for a 70-foot wide section of the proposed building's east elevation 115 feet west of a CMU1 zone district; and a building height up to 145 feet for a diagonal portion of the northwest building elevation 100 feet south and east of a CMU1 zone district.
- 2) Substantial conformance with the submitted site plan with minor adjustments allowed.
- 3) Submit the first building permit within 3 years of BOA approval
- 4) Complete the project within 9 years of BOA approval
- 5) All other zoning except for this variance or other city codes apply to the development
- 6) Failure to begin or complete the project will void the variance
- 7) This approval runs with the land and applies to any and all existing or future owners
- 6) A time limit for action on the variance shall be prescribed.  
See conditions 3 and 4 above
- 7) No variance may allow a use not otherwise allowed or be inconsistent with other limits on uses in the district.  
The proposed use – a hospital is an allowed use within the P3-Medical Campus zone

**Question for staff:**

Board member Bollman asked if staff knew how tall the new Billings Clinic addition is. Staff replied the addition was built before the zone change, the addition may be 6 stories and therefore 75 feet.

Chair Heinrich asked how close the Billings Clinic will be to the new SCL hospital. Staff replied Billings Clinic is at 9<sup>th</sup> Ave North. The elevation drops substantially on N 27<sup>th</sup>.

Chair Heinrich asked if the City has approved vacating 12<sup>th</sup> Ave N. Staff replied the decision is to be heard August 22<sup>nd</sup>. All pieces need to align for the project to move forward.

Chair Heinrich asked if staff has received any public comment. Staff replied the applicants have held at least 2 public meetings. He also asked if landscaping would be required along N 27<sup>th</sup>. Staff replied there will be an abundance of landscaping.

**Public Hearing opened at 6:35PM**

**Applicant: Bruce Fong, 546 Trenton St, Denver Colorado**



BOA Hearing  
Presentation Final 2

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**Jim Thomson, HDR, 600 Henepi, Minneapolis, MN**

A key component with St. Vincents is patient experience. The guiding principles are to give the best patient experience and the best caregiver experience. This will be an expansion and increase from the current hospital. We will increase from 253 patient beds to 294 beds. There will be an increase in numbers of operating rooms as well as size of operating rooms. The site was selected because of the desire to stay downtown. Going up in elevation is the best solution for this new build. The entrances and egresses have been revamped for ease and traffic flow. It is anticipated the hospital will be 9 stories tall. It is necessary to keep the existing hospital operating during this construction. It has been determined it is much more efficient to provide care for patients vertically rather than a horizontal sprawl.

**Lynn Moore, 2901 Blake, Denver Colorado**



1349  
presentation.pdf

This will be an efficient hospital and patient care towers. We are optimizing the land and minimizing sprawl. We will keep the current hospital functioning during construction. The variance applied for is for 2 very minor areas. The conditions as presented by staff are acceptable.

**Questions for applicant:**

Board member Bollman asked if they need “breathing room”. Ms. Moore stated that would be appreciated.

**Rick Leuthold, Sanderson Stewart**

The site is at the extreme edge of the easterly boundary due to a utility set back.

**In favor: None**

**Opposed: None**

Chair Heinrich considered the hardship and asked the applicant why the West End was not considered. Again, the applicants stated the study was done determined this location is the most convenient for patients. The old building cannot continue to meet the needs of the community and codes. He then asked what will happen to the old building. The applicants stated there will be a visioning masterplan meeting next year to decide. It is likely it will be leveled for parking and provide surface parking right at the front door. Chair Heinrich expressed the communities current dislike for the distant parking. The applicant explained the probable plan but also explained there is plenty of parking now, it is just in he wrong place.

**Public Hearing closed at 7:01PM**

**Discussion**

**Motion**

Board Member Bollman made a motion and Board Member Hayes seconded the motion to approve the **City Variance 1349 with staff recommendations, conditions and findings of fact modifying condition #1 as follows:**

The variance requested is approved: Billings City Code Section 27-504 requiring a maximum building height of 50 feet within 150 feet of a CMU1 zone district to allow a maximum building height up to 155 feet for a 70-foot wide section of the proposed building's east elevation 105 feet west of a CMU1 zone district; and a building height up to 145 feet for a diagonal portion of the northwest building elevation 90 feet south and east of a CMU1 zone district. No other variance is intended or approved by this application.

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell				<b>x</b>
Dave Hagstrom	<b>x</b>			
George Warmer	<b>x</b>			
Jeff Bollman	<b>x</b>			
Oscar Heinrich	<b>x</b>			
Chris Hayes	<b>x</b>			
Josh Sayer	<b>x</b>			

**The motion to approve City Variance 1349 passed with a 6-0 vote.**

**Other Business:**

**ADJOURNMENT: The meeting adjourned at 7:05PM.**

**ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.  
Robbin Bartley, Administrative Assistant.**

## Bartle,I, Robbin

---

**From:** Teri's Email <tecurtiss@gmail.com>  
**Sent:** Tuesday, August 2, 2022 4:32 PM  
**To:** Bartley, Robbin  
**Cc:** Teri Curtiss  
**Subject:** [EXTERNAL] City Variance 1346. Project Number: PZX-22-00114 Cardwell Ranch East Planned Development

We are voicing our deep concern for the Cardwell Ranch East 80 Development and the detrimental effects on our neighborhood. We live at 2849 Belvedere Dr.

1. We are concerned about the way that the public is notified of this proposed project. We saw a notice staked to a post at 30th St W and Meadow View Dr. (An empty field). I don't know if most of the residents in this area are aware of this project.

2. We are concerned that people are not aware that a 249 apartment complex with 479 off street parking place is being proposed for the 2 block area between 30th St W (east) and Meadow View Dr (north) and Golden Valley Cir (west) and Will James (south). There would probably be more than 500 people moving into that small area.

3. We are concerned about the traffic on 30th St W. Right now it is very difficult at different times of the day to cross Grand or turn west on Grand. When school is in session, traffic is backed up to Grand during drop off and pickup times for Will James.

Adding over 500 more vehicles to this situation is unfathomable. People will be leaving for work during this peak time.

4. We are also concerned about the traffic on Belvedere where we live. Right now we have a lot of traffic because of the 2 schools (Will James and Trinity Lutheran School). The cars drive too fast and are constantly making u-turns in front of our house. If this project is approved the traffic on Belvedere, Lewis, Manhattan and Vermilion will be unmanageable. This is a residential area with small children.

5. We urge you not to approve the variance change to 49 feet. Projects should be within the variance requirements that are in place. I see that Cardwell Ranch advertises the wonderful view from this property. This change will take away the wonderful view that we currently have. Also, we hope that they are still being required to have the number of off street parking spaces that the current variance requires. Changing the parking space requirements will cause additional problems for the surrounding areas.

We are requesting that you do not approve this project at all, adding an additional 500 or more people in that small space is too much for our neighborhood.

Ronald and Theresa Curtiss  
2849 Belvedere Dr.  
Billings, MT 59102  
406-656-5727

Sent from my iPad

**Board of Adjustment**

**Date:** 10/05/2022  
**Title:** Variance 1350 - 3032 King Ave West  
**Presented by:** Nicole Cromwell  
**Department:** Planning & Community Services  
**Presentation:** Yes

**Information****RECOMMENDATION**

The Planning staff is recommending conditional approval and adoption of the findings of the variance criteria for this application.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

This is a variance from Section 27-406 requiring front lot line coverage of at least 50% to allow 30% front lot line coverage on a vacant lot generally located at 3032 King Ave W in a Corridor Mixed Use 2 (CMU2) zone district. The lot is approximately 63,461 square feet in area and legally described as Lot 3B of Studer Acreage Tracts amended. The variance is intended to allow the development of a new Panda Express with dine-in, carry-out and drive-thru services with associated parking and landscaping.

The Corridor Mixed Use 2 (CMU2) zone district is a new zoning for the city that requires buildings to be closer to the street with less parking on the front and more street frontage landscaping. The City Council adopted the new zoning districts and regulations in January 2021. The zone districts now require a minimum percentage of the front build-to area to be covered by a building facade. This is the required front lot-line coverage. The purpose of the build-to area and the front lot-line coverage is to ensure the street frontage is used for maximum potential for commercial businesses. Parking is restricted to side yards, rear yards or internal parking areas behind buildings that frame the street. Most of the buildings on the King Ave West corridor are not built in this way. Most older commercial structures along this corridor have at least 75% of the parking in front of building and the "front" of the businesses are setback 60 to 120 feet or more from the street. This creates the right elements for a high-speed traffic corridor with few if any opportunities for other modes of travel to these businesses. Traffic conflicts and crashes are high along this commercial corridor.

The new regulations also allow variances from any numerical limitation or requirement in the code and this includes the front lot line coverage requirement. There are some small variations allowed through and administrative process, however larger deviations such as the proposed reduction, still require a review and approval by the Board of Adjustment. The same basic criteria for variances have carried through from the previous zoning regulations since these criteria are outlined in state law. These criteria include a finding of physical hardship with the lot that prevents compliance with the zoning and that other properties in the district have received similar variance or have developed without the granting of a variance to the code requirement.

Planning staff has reviewed this application and find the proposed variance is intended to accommodate a hardship with this property that does not apply to other lots within the district. The lot is burdened by an irrevocable 30-foot wide access easement for the benefit of all the tracts in the amended subdivision. The access easement allows traffic from King Ave West to access the hotel to the south (3040 King Ave W), and the restaurant to the west (3042 King Ave W). The proposed site design and layout is not substantially different from adjoining developments and will fit in with the nearby developments. In order to enhance the site and mitigate some potential impacts from project, staff is proposing several conditions of approval.

**ALTERNATIVES**

The Board of Adjustment may

- Approve the findings of the review criteria as proposed by Planning staff and conditionally approve the variance application; or,
- Change the findings of the review criteria as proposed by Planning staff and deny the variance application; or
- Allow the application to be withdrawn at the request of the applicant; or
- Delay action on the variance application to a future Board meeting.

**FISCAL EFFECTS**

Approval or denial of the proposed variance will have no effect on the Planning Division budget.

## SUMMARY

Before granting the requested variance, the Board of Adjustment shall consider the findings of the review criteria (Sec 27-1627.D)

**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 is a special circumstance with this parcel that does not apply to other parcels in the area. The lot has an irrevocable access easement that applies to the western 30 feet of the 164-foot wide lot. In addition, the lot is exceptionally narrow compared to its depth - 164 feet wide and 387 feet deep or a ratio of 2.35. A width to depth ratio of more than 1.6 makes site design more difficult even for smaller building footprints such a fast-casual or drive-thru restaurant. A typical drive-thru designs requires customers to "circle" the building. The proposed site design illustrates the path of travel for drive-thru customer. Traffic enters through the existing 30-foot wide access at King Ave W, traveling down this access road for about 270 feet, then turning east into the order queuing lane. Customers then travel north to the order board and delivery window. The drive-thru exits across the front of the building and back to the access point for King Ave West. The access to King Ave W is restricted to a right-in/right-out configuration. There is a raised median separating the east-bound and west-bound lanes of King Ave W.

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

This is the first variance requested from the new front lot line coverage requirement for the mixed use zone district. The previous zoning required minimum setbacks but did not impose maximum setbacks or require a certain percentage of the front line to be covered by a structure or structures. There is no applicable or similar zoning variance history to the application. Planning staff did find there were several zoning variances granted in the area to accommodate larger signs or more signs on commercial buildings. One zoning variance was granted to reduce the required arterial setback on S 32nd Street from 70 feet to 63.5 feet to allow an addition to a home. The current arterial setback is 50 feet for all zones. The previous 80-foot and 70-foot arterial setbacks were not included in the zoning update in 2021.

The development of the King Ave W corridor in the late 1980s and through the 1990s included large setbacks for buildings most placed at the back of massive parking lots. The CMU zone districts intends to make this style of commercial development obsolete in Billings. Even the new Heavy Commercial (CX) zone requires placement of parking to the side or rear of a building. The BOA did consider and granted a zoning variance from this requirement for the new Costco warehouse on Zoo Drive. This variance, Variance 1343, was granted in part to accommodate an immovable irrigation canal, and to allow the Costco store design to fit across seven lots with multiple street frontages. Another variance in 2021 was granted from the maximum build-to setback for a property on Blue Creek Road. This location had challenges with the floodplain of Blue Creek across the entire street front of the property.

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

The zoning history in the area shows several granted variances from sign code and one from an arterial setback, Two previous commercial zone variance have been granted after the adoption of the 2021 zoning code. Granting this variance will not confer on this applicant any special privilege.

**4. That the granting of the variance will be in harmony with the general purpose and intent of this Zoning Code and with the growth policies.**

The proposed site plan will be similar to several others along the King Ave W corridor but will meet the build-to requirements for the CMU2 zone.

**5. In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. 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 Zoning Code.**

Planning Staff is recommending the following conditions of approval:

1. The variance is limited to Lot 3B of Studer Acreage Tracts amended generally located at 3032 King Ave W.
2. The variance is from Section 27-406 requiring a minimum front lot line coverage of 50% to allow a minimum front lot line coverage of 30%. The front lot coverage is defined as the length of the street front building facade placed within the required build-to range along King Ave West. The building facade includes area intended to be occupied for seating that may not be totally enclosed - such as a covered patio.
3. The applicant or developer will comply with all other requirements for buildings and siting in the CMU2 zone district. The site will be developed in substantial conformance with the submitted site plan.
4. All outdoor lighting, with the exception of signs, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. Light pole standards must be 15 feet in height or less. Height includes the fixture, the base and the supporting pole.
5. No fascia on the building or canopy may be internally illuminated.

6. There shall be no construction activity prior to 7 am or after 8 pm daily.
7. The applicant/developer shall apply for a building permit within 12 months of Board approval and complete the development within 3 years of Board approval. Completion includes all buildings, landscaping, parking and other site structures and amenities.
8. Failure to begin or complete the project according to the time periods within this approval will void the variance.
9. 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 BOA 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.

Staff is recommending a 1-year time period to apply for a building permit and 3 years to complete the development.

**7. Under no circumstances shall the BOA grant a variance to allow a use not permissible under the terms of this chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**

The proposed use of the building is an allowed use in the CMU2 zone district.

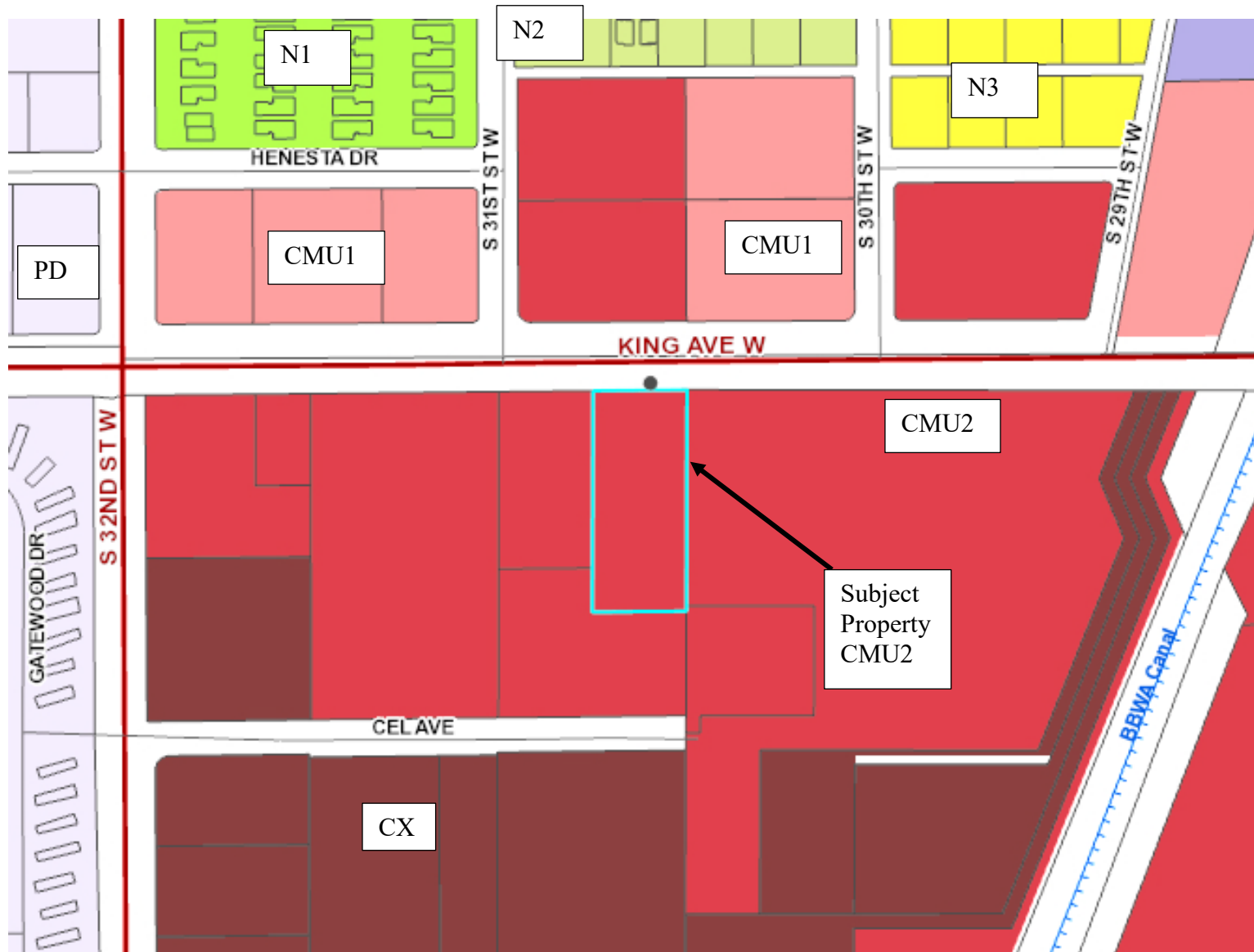
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**Attachments**

Zoning Map and Site Photos  
Application and Letter  
Site Plan  
Chart of Zoning History  
Subdivision and Easements

Zoning Map and Site Photos

Variance 1350



Subject Property





Subject Property – 3032 King Ave W



View east on King Ave W



View north and east across King Ave W



View north and east across King Ave W



Mercedes  
Benz

View north across King Ave W



View south and west across subject property



View north and west across King Ave W

**APPLICATION FORM**

**CITY VARIANCE**

**ID: Billings Variance #** 1350 **- Project #** PZX-22-00223

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

PROPERTY TAX ID # C03640 CITY ELECTION WARD # 5 (Billings)

Legal Description of Property: Lot 3B, of Amended Plat of Lot 3, Studer Acreage Tracts Subdivision, the City of Billings, Yellowstone County, Montana, Under Doc. No. 324395

Address or General Location (If unknown, contact City Engineering): 3032 King Ave West  
Billings, MT 59102

Zoning Classification: corridor mixed use 2 (CMU2)

Size of Parcel (Area & Dimensions): 50,795 SF (1.16 ACRES)

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance(s) Requested: A decrease in building frontage allowance to 32% from 50%

Facts of Hardship: (attach letter) See attached variance letter

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

Owner(s): Billings Property, LLC  
(Recorded Owner)  
3000 King Ave W Billings, MT 5902-6436  
(Address)

\_\_\_\_\_  
(Phone Number) (email)

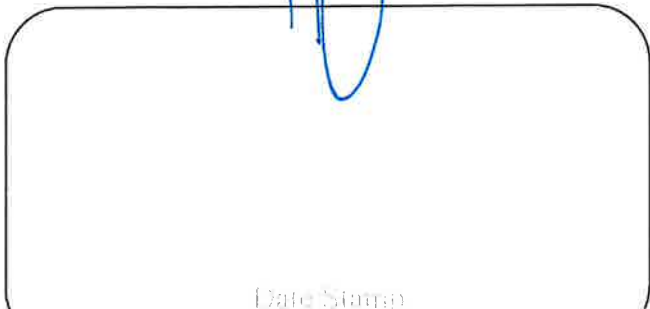
Agent(s): HC Klover Architect  
(Name)  
8813 Penrose Lane, Suite 400 Lenexa, KS 66219  
(Address)

\_\_\_\_\_  
913-649-8181 hcpermitting@klover.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: \_\_\_\_\_ Date: 9.02.22

~~(Recorded Owner)~~ Authorized Agent



Date Stamp

September 1, 2022

VIA ONLINE

City Of Billings  
Planning & Community Services Department  
2825 3rd Ave North, 4<sup>th</sup> Floor  
Billings, MT 59101

**PROJECT NARRATIVE**

To Whom it may Concern,

H.C. Klover Architect is proud to submit for your Planned Development Review the proposed development of a freestanding Panda Express restaurant with drive-thru and separate trash enclosure located at the 1.458-acre parcel (63,505sqft.), 3032 King Ave West. The site is currently occupied by a vacant gravel lot and is appropriately zoned for proposed use as Corridor Mixed – Use & Commercial Centers (CMU2). The proposed development is bordered to the south by a SureStay Plus Hotel by Best Western (zoned CMU2); to the north by Mercedes Benz Dealership zoned Corridor Mixed-Use (CMU1); to the east by a Chevrolet Dealership zoned (CMU2); and to the west an auto repair shop also zoned CMU2. The proposed project would consist of a 2,600 sqft. free standing Panda Express restaurant with drive-thru. The project will provide 44 stalls with the current site being 7,745 sqft. of landscaping upon completion. The construction will require groundwork along with the new construction of a Panda Express. We are also proposing to reduce the lot size to 1.17-acres (50,825sqft.) and selling back the existing parking to the hotel to the south.

Per Chapter 27 Article 400 Section 4 Table 27-400-3 Site and Structure Regulations of the City of Billings Code of Ordinance, the buildable area requires a minimum front-line width of 50%. The proposed building has a width of 41'-9" which is a difference of 24'3" from the 66' required width. This proposed width is 32% of the frontage. Although this is 18% less than what is currently required, the proposed layout is the Panda Express proto build type used for its efficient drive-through and kitchen operation layouts. If this proto design were to rotate to meet the frontage requirement, the glazing requirement of 55% would not be met. This would also mean the drive-through pickup window side of the building would be along the street rather than the hidden location it is currently at. There is a shared drive access to the west that is included in our property that we must maintain for the other tenants. Due to this restraint, it also limits the orientation and potential location of the building. Lastly, this rotation would require the storm line in the middle of the usable are of our property to be moved, which would require extra expense and groundwork.

The proposed building lies to the right of the storm lines that stretch down the northern part of the site. Given that the building is currently placed as far right of the site as possible to keep the drive through lane, extending the frontage would move the groundwork closer to the storm line, risking damage. We request a variance to avoid this risk, mitigating potential damage to the storm line.

Thank you for your time in this process. With your approval, we will be able to meet your requirements as well as meeting the needs of our project. We hope that with your approval this will be a successfully performing project for our client and your city.

Sincerely,



Henry C. Klover  
Proprietor

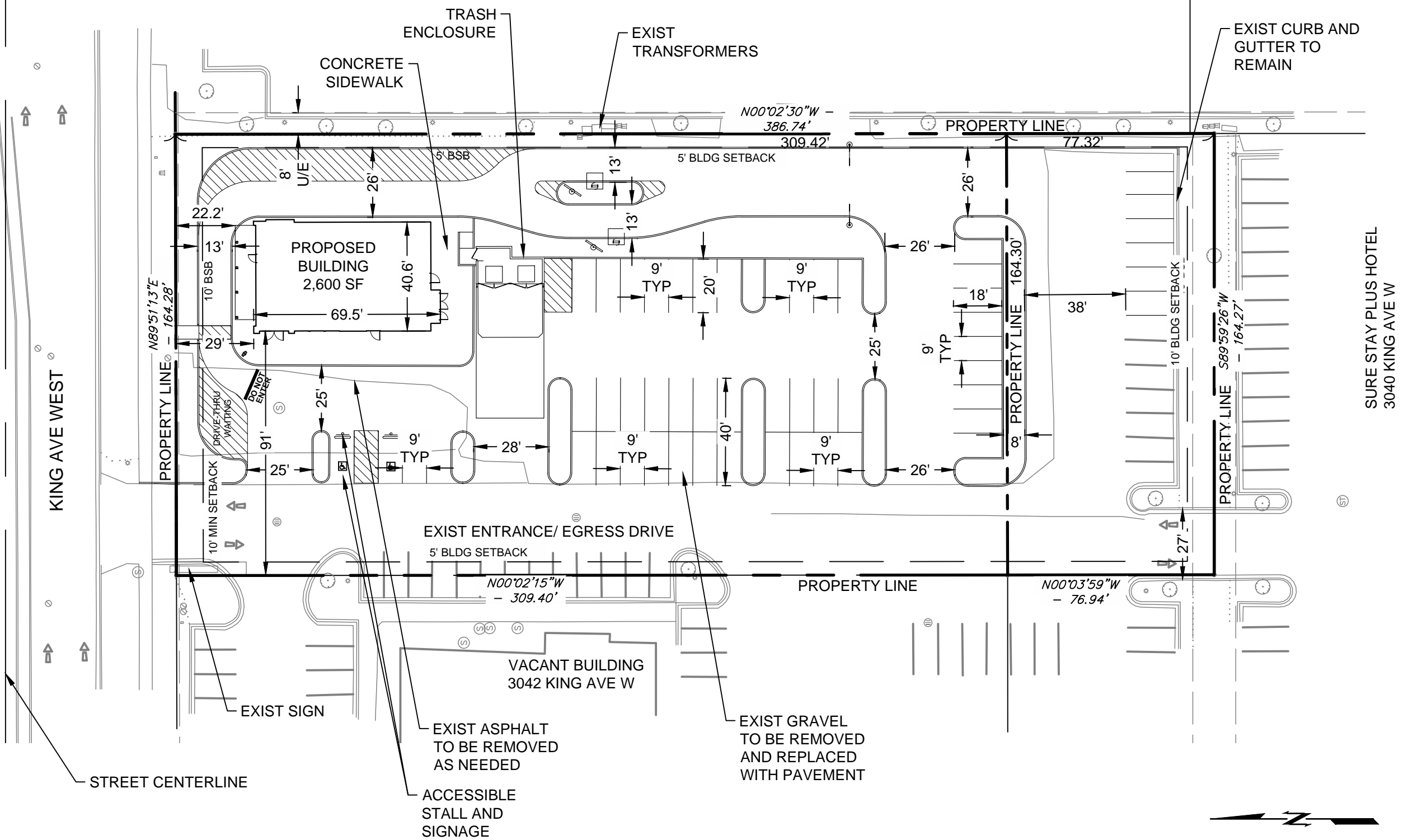
CC: Todd Murhuer and Brian Slusarek via Fedex, Brian Kan via Tango upload  
*PX #: S8-23-D23346*  
*Klover #:22044.025*

MENHOLT LUXURY MOTORS  
3000 KING AVE W



wallace  
design  
collective

wallace design collective, pc  
structural-civil-landscape-survey  
1703 wyandotte street, suite 200  
kansas city, missouri 64108  
816.421.8282  
MONTANA COA #253 EXP 10/01/22



# PANDA EXPRESS

LOT 3B OF STUDER  
ACREAGE TRACTS  
BILLINGS, MONTANA

DATE 08.31.2022

PROJECT NO. 2250053

SHEET NAME

# VARIANCE PLAN

SHEET NO.

# C1.0

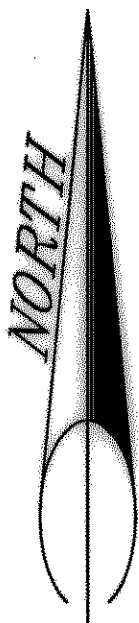
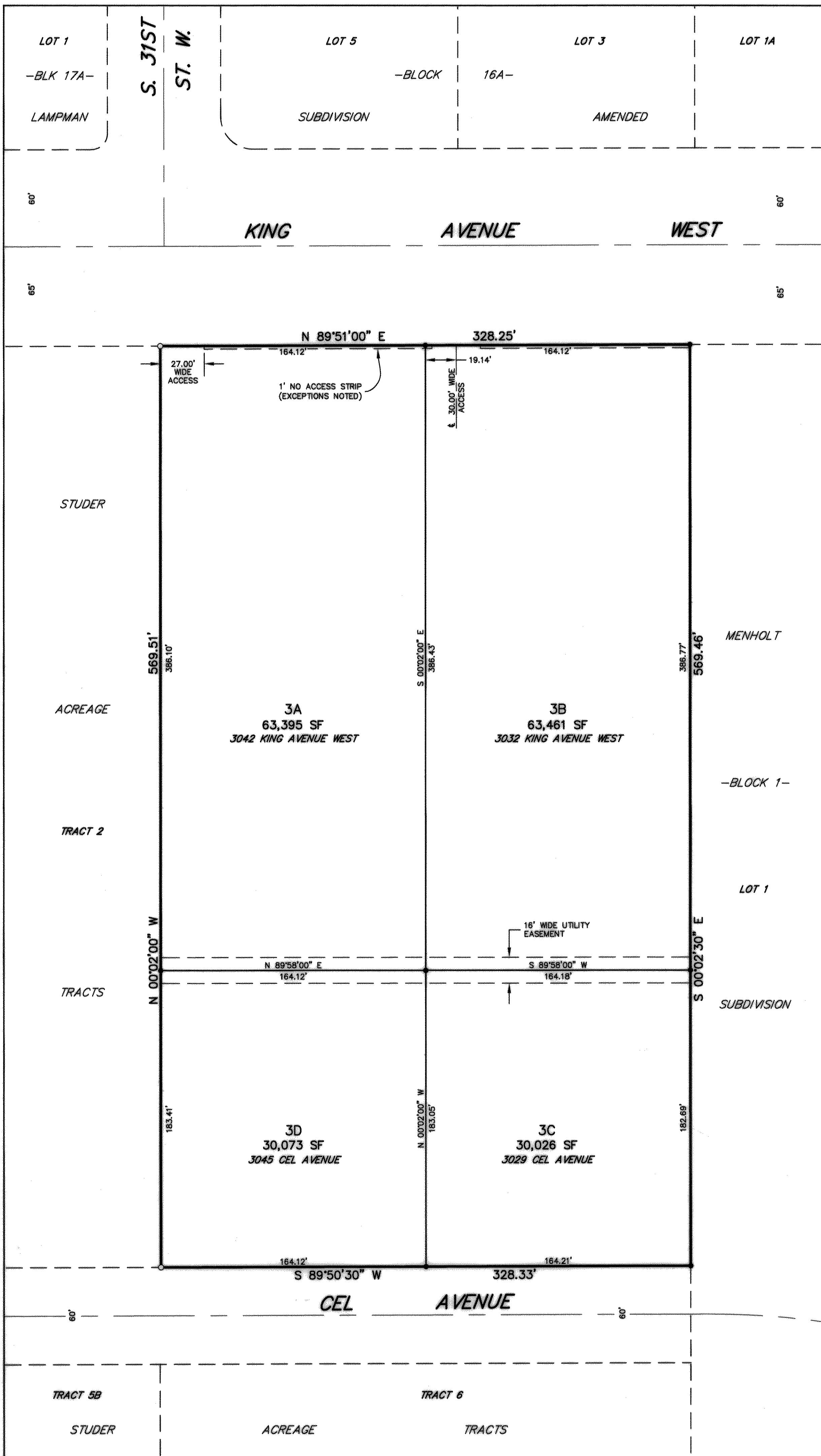
<b>SUBJECT PROPERTY</b>	<b>VARIANCE #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
None					
<b>SURROUNDING PROPERTY</b>	<b>VARIANCE #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
3189 King Ave W	555	4/26/1988	2 wall signs per occupancy	Yes	Multi-tenant building
3029 Lampman Dr	802 (Appeal)	9/7/1999	Legal non-conforming use expansion	Admin Decision upheld	Mike's Lawn Service
2717 King Ave W	706	10/4/1994	Allow 3 wall signs	No	Lowes
2501 Overland Ave	563	7/26/1988	Allow 4' high letters on wall sign	Yes	Former Bruco warehouse
625 Chokecherry Place	738	7/16/1996	Arterial setback reduction 70' to 63.5' – home addition	Yes	West of S 32 <sup>nd</sup> St W
Blue Creek Road	1331	5/5/2021	Increase build-to area to allow 80-foot setback	Yes	Floodplain of Blue Creek
3840 Zoo Drive	1343	5/4/2022	Allow parking in front of a new warehouse in a CX zone	Yes	Canyon Creek Ditch New Costco location

# AMENDED PLAT OF LOT 3, STUDER ACREAGE TRACTS SUBDIVISION

SITUATED IN THE NW 1/4 OF SECTION 13, T. 1 S., R. 25 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : TED P. GODWIN TRUST  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1"=40'

MAY, 2004  
BILLINGS, MONTANA



**BASIS OF BEARING:** PLAT OF STUDER ACREAGE TRACTS SUBDIVISION

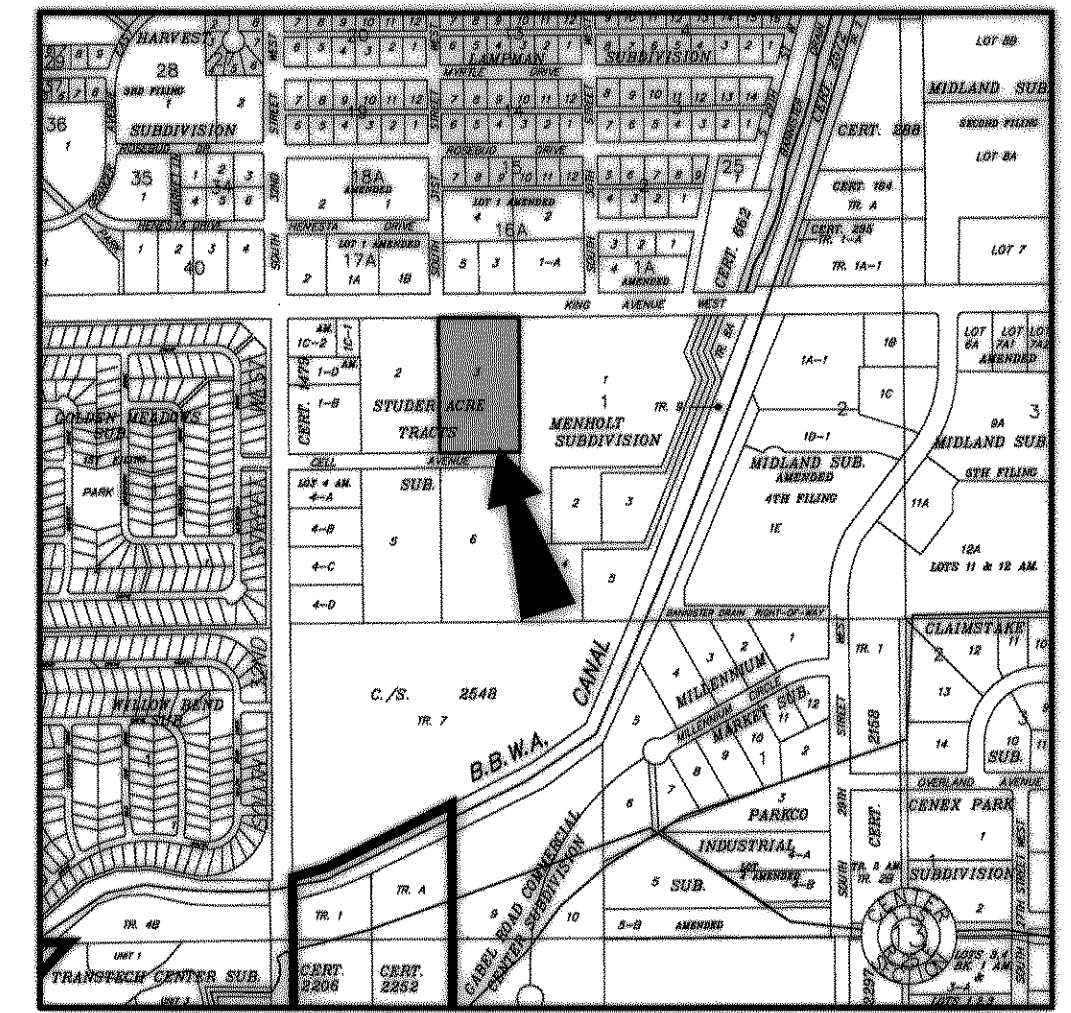
- = FOUND SURVEY MONUMENT MARKED "ENGINEERING INC"
- = SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT"

**NOTICE OF APPROVAL**

STATE OF MONTANA )  
County of Yellowstone ) SS

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

Date: June 4, 2004  
President: [Signature]  
Executive Secretary: [Signature]



**CERTIFICATE OF CITY ENGINEER'S OFFICE**

I hereby certify that annexed and foregoing plat conforms with Section 76-4-125(2)(c), M.C.A., for the removal of sanitary restrictions since the plat is inside a master planning area and said lots will be provided with municipal facilities for the supply of water and the disposal of sewage and solid waste.

IN WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL this 28 day of JUNE, 2004.

[Signature]  
City Engineer's Office

**CERTIFICATE OF CITY COUNCIL APPROVAL**

STATE OF MONTANA )  
County of Yellowstone ) SS

We hereby certify that we have examined the annexed and foregoing AMENDED PLAT OF LOT 3, STUDER ACREAGE TRACTS SUBDIVISION, and find that said plat conforms with the requirements of the laws of the State of Montana, and the requirements of The Yellowstone County Board of Planning. It is therefore approved and the dedication to public use of any and all lands shown on this plat as being dedicated to such use are accepted.

IN WITNESS WHEREOF, we have set our hands and the seal of the CITY OF BILLINGS, MONTANA, this 3rd day of JUNE, 2004.

CITY OF BILLINGS, MONTANA  
By: [Signature]  
Mayor  
Attest: [Signature]  
City Clerk



**ERRORS AND OMISSIONS REVIEW**

I hereby certify that I have examined the annexed and foregoing plat for errors and omissions in computations and drafting and find that said plat conforms with the requirements of the laws of the State of Montana, and that said plat conforms to the adjoining additions and plats of the City of Billings already platted as nearly as circumstances will permit.

**CERTIFICATE OF CITY ATTORNEY**

This document has been reviewed by the City Attorney's office and is acceptable as to form.

DATED: 6-10-04  
Reviewed by: [Signature]

**CERTIFICATE OF COUNTY TREASURER**

I hereby certify that all real property taxes and special assessments have been paid per 76-3-611(1)(b)/ 76-3-207(3), M.C.A.

Date: 6/29/04  
Yellowstone County Treasurer:  
By: [Signature]  
Deputy

**SUBDIVISION IMPROVEMENT AGREEMENT**

Document No. 3294396

**DECLARATION OF RECIPROCAL EASEMENTS**

Document No. 3294397

**CERTIFICATE OF DEDICATION**

STATE OF MONTANA )  
County of Yellowstone ) SS

KNOW ALL MEN BY THESE PRESENTS: That TED P. GODWIN TRUST, the owner of the following described tract of land, does hereby certify that it has caused to be surveyed, subdivided and platted into lots, blocks and streets as shown on the annexed plat, said tract being situated in the NW1/4 of Section 13, T. 1 S., R. 25 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Lot 3 of Studer Acreage Tracts Subdivision, City of Billings, Yellowstone County, Montana according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 715485, containing a gross and net area of 4.2919 acres.

Pursuant to Section 76-3-621(3)(c), M.C.A. there is no park requirement for this non-residential subdivision.

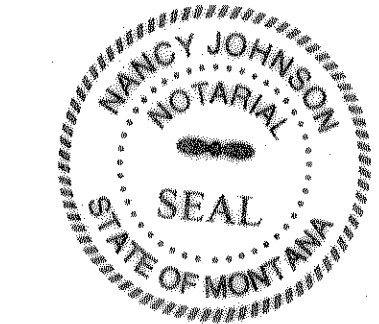
The undersigned hereby grants unto all utility companies, as such are defined and established by Montana Law, and cable television companies, an easement for the location, maintenance, repair and removal of their lines over, under and across the areas designated on the plat as "UTILITY EASEMENT" to have and hold forever. Said tract to be known and designated as AMENDED PLAT OF LOT 3, STUDER ACREAGE TRACTS SUBDIVISION. There is no public land dedication with this plat.

TED P. GODWIN TRUST  
By: [Signature]  
Title: TRUSTEE

STATE OF MONTANA )  
County of Yellowstone ) SS

On this 3rd day of June, 2004, before me the undersigned Notary Public for the State of Montana personally appeared Ted P. Godwin, known to me to be the persons who signed the foregoing instrument as Trustee of TED P. GODWIN TRUST, and acknowledged to me that said trust executed the same. Witness my hand and seal the day and year herein above written.

[Signature]  
Notary Public in and for the State of Montana  
Printed Name: Nancy Johnson  
Residing at: Billings MT  
My commission expires: 5 Sep 2008



**CERTIFICATE OF SURVEYOR**

STATE OF MONTANA )  
County of Yellowstone ) SS

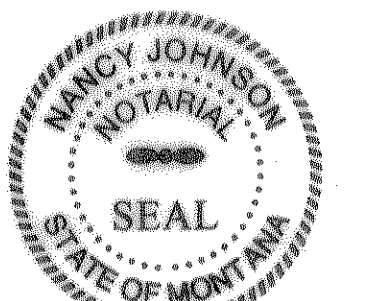
The undersigned, a Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of May, 2004, a survey was performed under his supervision of a tract of land to be known as AMENDED PLAT OF LOT 3, STUDER ACREAGE TRACTS SUBDIVISION, in accordance with the request of the owner thereof and in conformance with the Montana Subdivision and Platting Act; said subdivision, description of boundaries and dimensions being in accordance with the Certificate of Dedication and as shown on the annexed plat; that the monuments found and set are of the character and occupy the positions shown thereon and that the gross and the net area is 4.2919 acres (186,955 SF).

ENGINEERING, INC.  
By: [Signature]  
Montana Registration No. 83773



Subscribed and sworn to before me, a Notary Public in and for the State of Montana, this 3rd day of June, 2004.

[Signature]  
Notary Public in and for the State of Montana  
Printed Name: Nancy Johnson  
Residing at: Billings, Montana  
My commission expires: 5 Sep 2008



3294395  
Page: 1 of 1  
Yellowstone County SP 7.00 05/30/2004 11:04

STATE OF MONTANA )  
County of Yellowstone ) SS

On this 3 day of June, 2004, before me, a Notary Public in and for the State of Montana, personally appeared Ted P. Godwin, known to me to be the person who signed the foregoing instrument as Trustee of Rocky Mountain Bank, and who acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.

[Signature]  
Notary Public in and for the State of Montana  
Printed Name: Alan C. Calavera  
Residing at: Billings  
My commission expires: 4/7/2008



Ted P. Godwin  
2706 County Lane  
Big Ma 59106



3294397  
Page: 1 of 2  
06/30/2004 11:04A

## DECLARATION OF RECIPROCAL EASEMENTS

On this 3<sup>rd</sup> day of June, 2004, the undersigned, **TED P. GODWIN TRUST**, hereinafter called "Declarant", does hereby convey as written below reciprocal easements across, under and through the following described tracts of real property in Yellowstone County, Montana:

Lots 3A, 3B, 3C, and 3D, Amended Plat of Lot 3, Studer Acreage Tracts Subdivision, on file in the office of the Clerk and Recorder of said County under Document Number 3294395.

These easements are for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing improvements over, across, under, and through the said real property, together with the right of free ingress and egress at all times for the purposes herein written.

**Section 1, Ingress, Egress and Parking.** The Declarant does hereby create, for the benefit of itself, and its respective successors, assigns, tenants, employees, agents, customers, and invitees, and for the customers, employees, and invitees of such tenants, and for the benefit of each lot, reciprocal and mutual non-exclusive easements for ingress and egress by vehicular and pedestrian traffic and for loading and unloading commercial and other vehicles upon, over, and across the said real property.

**Section 2, Utility Lines.** The Declarant does hereby create, for the benefit of itself, and for the future owners of the lots, and for the benefit of each lot and tract, mutual and non-exclusive easements under, through, and across the said real property for water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities, and service easements. All systems, structures, mains, sewers, conduits, lines, and other public utilities shall be installed and maintained below ground level of the said real property. If it is necessary for a party to cause the installation of a storm drain, utility line, or sewer across the said real property of another lot after initial paving and improvements have been completed, the party owning that lot shall not unreasonably withhold the granting of additional easements; provided, however, that (i) any construction and the use of these easements shall not unreasonably interfere with the normal operation of any business in the development; (ii) the party requesting use of the easement shall bear all construction and other costs; and (iii) the requesting party shall repair to original specifications any damage to the said real property resulting from such use. At any time and from time to time an owner shall have the right to relocate, on the lot it owns, any utility line or facility installed under these easements which is then located on that lot, provided that any such relocation (i) shall be performed only after giving fifteen (15) days' written notice to each owner owning a lot served by or subject to the utility line or facility of that party's intention to undertake the relocation; (ii) shall not unreasonably interfere with or diminish utility service to the lots served by the lines or facility; (iii) shall not reduce or unreasonably impair the usefulness or function of



the line or facility; (iv) shall be performed without cost or expense to any other owner or any occupant of any lot served by the line or facility; and (v) the original and relocated area shall be restored to the original specifications.

“DECLARANT”

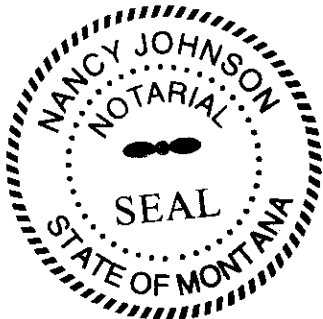
TED P. GODWIN TRUST

By:

*Ted P. Godwin*

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

On this 3rd day of June 2004, before me, a Notary Public in and for the State of Montana, personally appeared Ted P. Godwin of the TED P. GODWIN TRUST, known to me to be the person who signed the foregoing instrument and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.



*Nancy Johnson*  
Notary Public in and for the State of Montana  
Printed name: NANCY JOHNSON  
Residing in Billings, Montana  
My commission expires: 5 Sep 2004