

APPLICATION FORM

COUNTY VARIANCE County Variance # 6ZD12- Var 1 - Project # PZX-22-00176

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

PROPERTY TAX ID # See attachment, page 1. COUNTY COMMISSIONER DISTRICT #

Legal Description of Property: See attachment, page 1.

Address or General Location (If unknown, contact County Public Works): NW corner of Zoning District 12. See Exhibit 1.
Molt Road borders the east side. The north entrance is directly across from Shorey Road. See Exhibit 3.

Zoning Classification: Single family residential, accessory buildings, agricultural uses, home occupations, public parks

Size of Parcel (Area & Dimensions): See page 1 & Exhibit 3. 1 tract of 8.1 acres - 12 tracts of 10+ acres. Irregular shapes.

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance Requested: .First Variance - see attachment, page 1. Second Variance - see attachment, page 8.

Facts of Hardshi .First Variance - see attachment, page 1. Second Variance - see attachment, page 8.

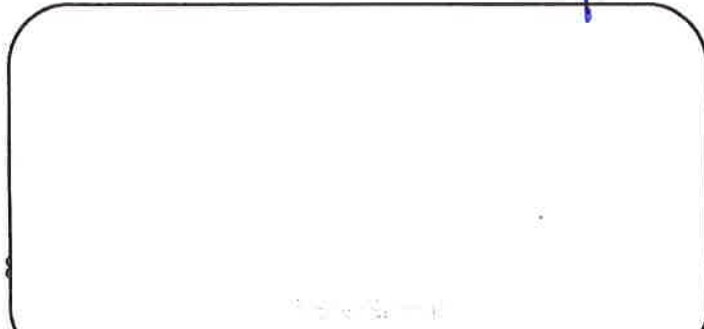
*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Yellowstone Farms, LLC by Jack S Ramirez, Manager (50%) . 360 East Loch Lloyd Pky, Loch Lloyd, MO 64012 Tel: 847-612-8416 email: jackramirez@kc.rr.com	James Hertz, Individually and as Trustee of the Constance R. Hertz Bypass Trust (50%) 3680 Vickery Drive, Billings, MT 59102 Tel: 406-698-1714 email: eagle5cj@aol.com
(Phone Number)	(email)

Agent(s): Kellie Saville - Meridian Real Estate 2116 Broadwater Avenue – Unit 205 Billings, MT 59102 406-671-6955	kellie.saville@gmail.com
(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: Yellowstone Farms, LLC
By Jack Ramirez, manager James Hertz Date: 7-18-22
(Recorded Owner)



July 19, 2022

Yellowstone County Board of Adjustment
C/O Planning & Community Services Department
2825 3rd Avenue North, 4th Floor
Billings, Montana 59101

We are submitting the enclosed Application and attached explanation, maps, photos, and other information in support of our request for two variances for 13 adjoining tracts located in Far And Away Estates Subdivision in Yellowstone County Special Zoning District 12. I am writing this letter on behalf of Yellowstone Farms, LLC, and James Hertz, Individually and as Trustee of the Constance R. Hertz Bypass Trust, who are the owners of the property in question.

Here are summaries of the two variance requests:

The first variance pertains to the height of the dwellings. Paragraph 7 of the GENERAL PROVISIONS (page 5 of the zoning restrictions) reads as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

We request a variance that would read as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed two (2) stories or thirty-five feet in height.

The second variance pertains to the height and to the uses of the accessory buildings. The current zoning restrictions limit the use of barns, stables and garages to that single use, and permit "customarily incidental uses" for other accessory buildings.

We request a variance that permits accessory buildings to be 2 stories or thirty-five feet in height (just as with dwellings), and would also expressly add permitted uses of athletic and recreational facilities, as well as a one-bedroom guest suite (with a prohibition on renting out such a suite). Also, because our restrictions permit only 3 accessory buildings, whereas the zoning restrictions permit more than that, the variance would permit an accessory building to be designed and built for multiple permitted uses.

Our suggested language for the second variance is:

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Estates Subdivision's Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

In the attachment to the Application we explain in detail why these two variances are reasonable and appropriate under the circumstances. And we respectfully request that the variances be granted.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Jack Ramirez". The signature is written in a cursive, flowing style.

Jack Ramirez, Manager

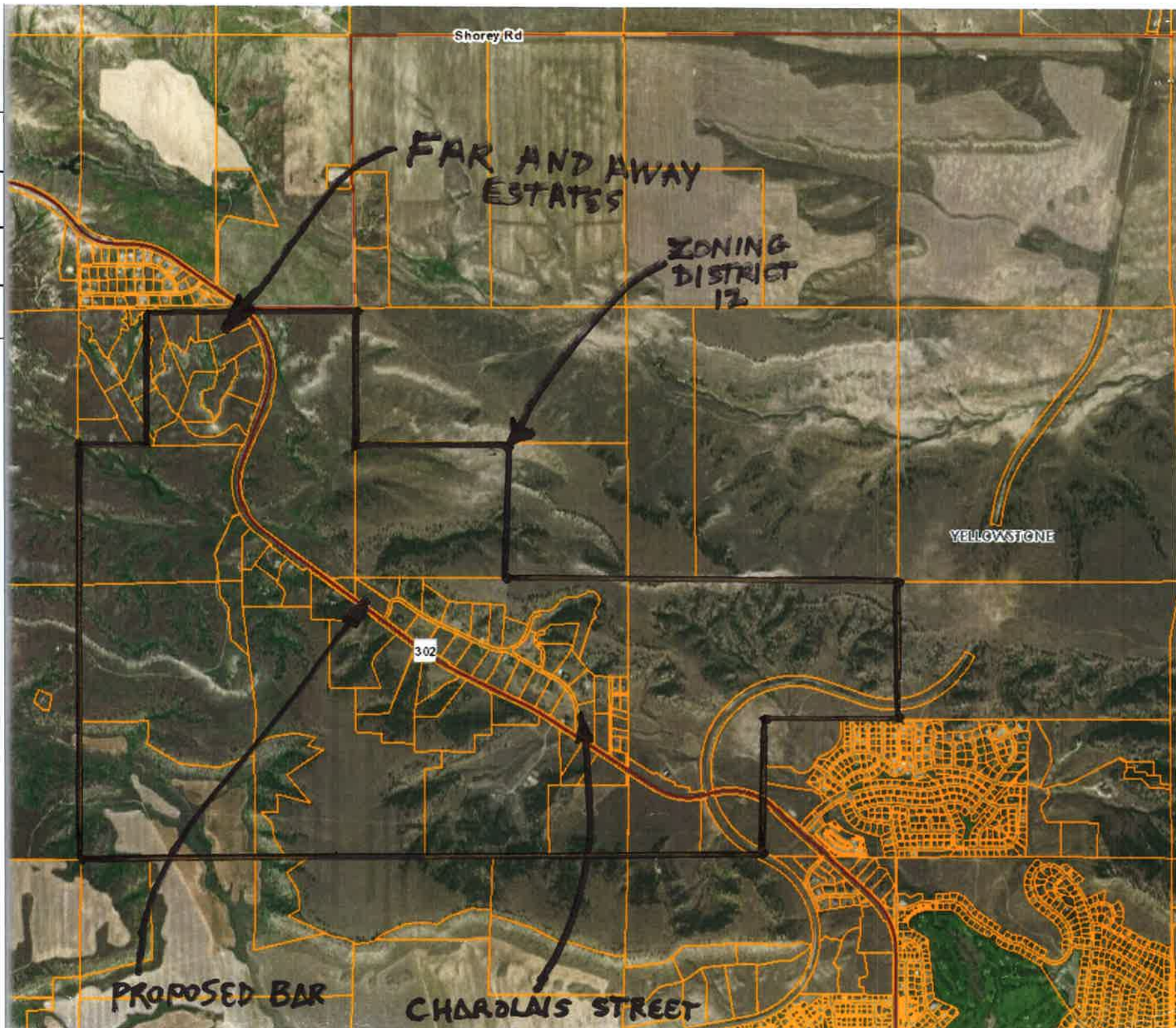
Yellowstone Farms, LLC

360 East Loch Lloyd Parkway

Loch Lloyd, MO 64012

Cell: 847-612-8416

jackramirez@kc.rr.com



Shorey Rd

FAR AND AWAY
ESTATES

ZONING
DISTRICT
12

YELLOWSTONE

302

PROPOSED BAR

CHAROLAIS STREET

Try Cadastral Beta

Print Button
workarounds

EXHIBIT
1

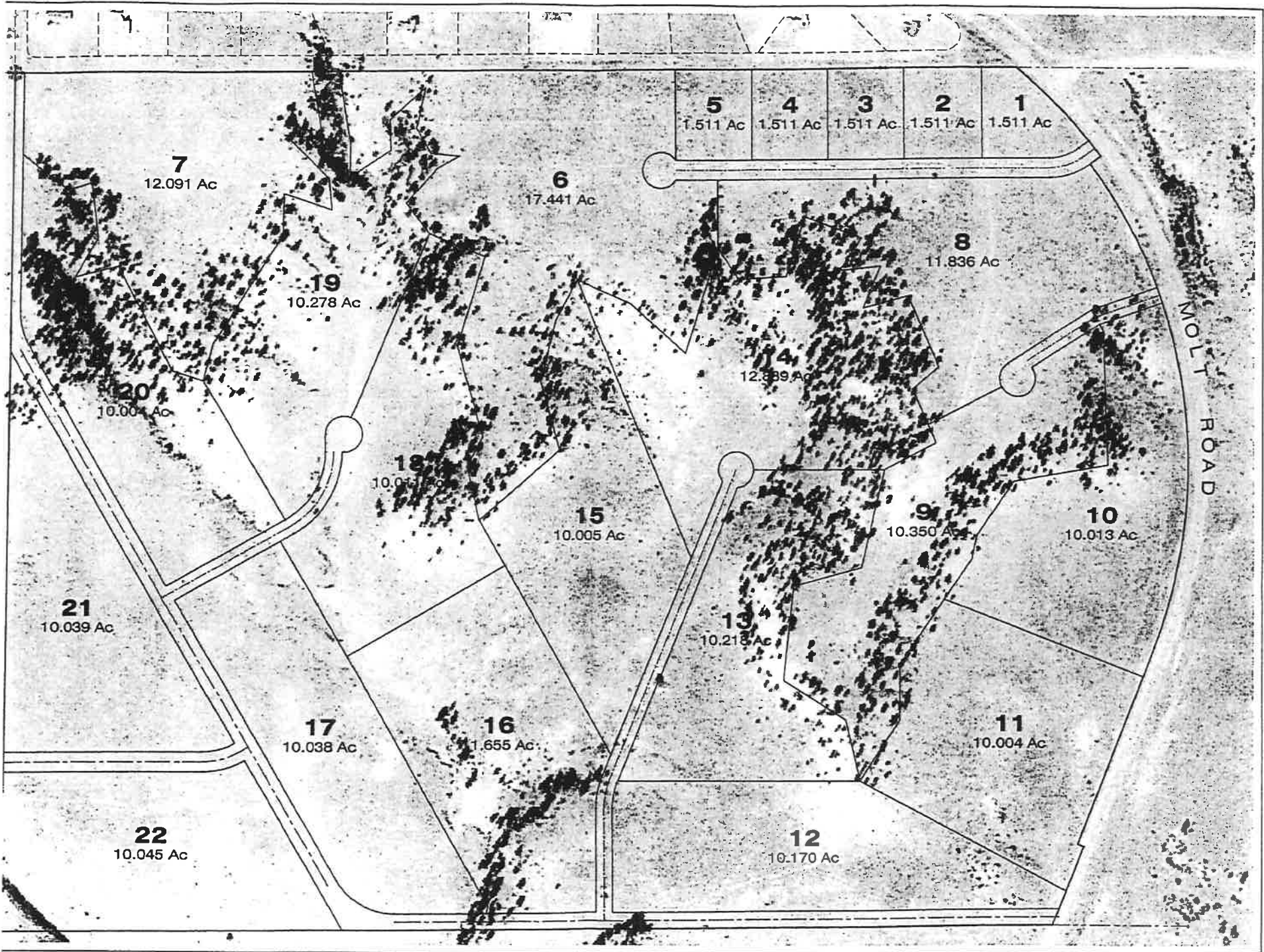


EXHIBIT 2

**CERTIFICATE OF SURVEY 781
2ND, 3RD, 4TH, & 5TH AMENDED**

BEING ALL OF CERTIFICATE OF SURVEY 781
AND BEING A PORTION OF THE N1/2 OF SECTION 15, T01N, R24E
YELLOWSTONE COUNTY, MONTANA

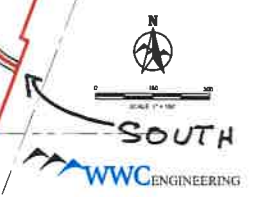
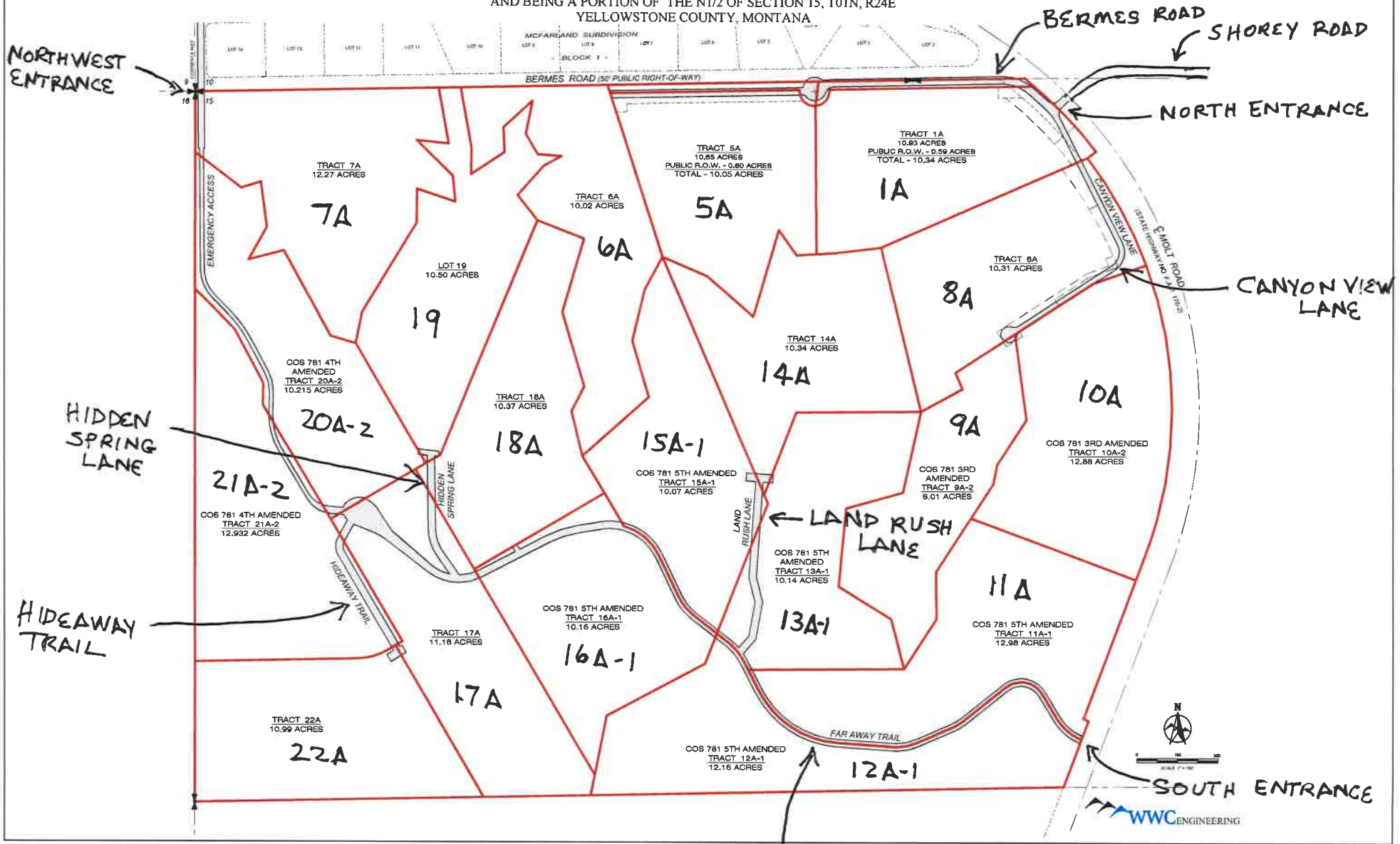


EXHIBIT 3

FAR AWAY TRAIL

CERTIFICATE OF SURVEY 781 2ND, 3RD, 4TH, & 5TH AMENDED

BEING ALL OF CERTIFICATE OF SURVEY 781
AND BEING A PORTION OF THE N1/2 OF SECTION 15, T01N, R24E
YELLOWSTONE COUNTY, MONTANA

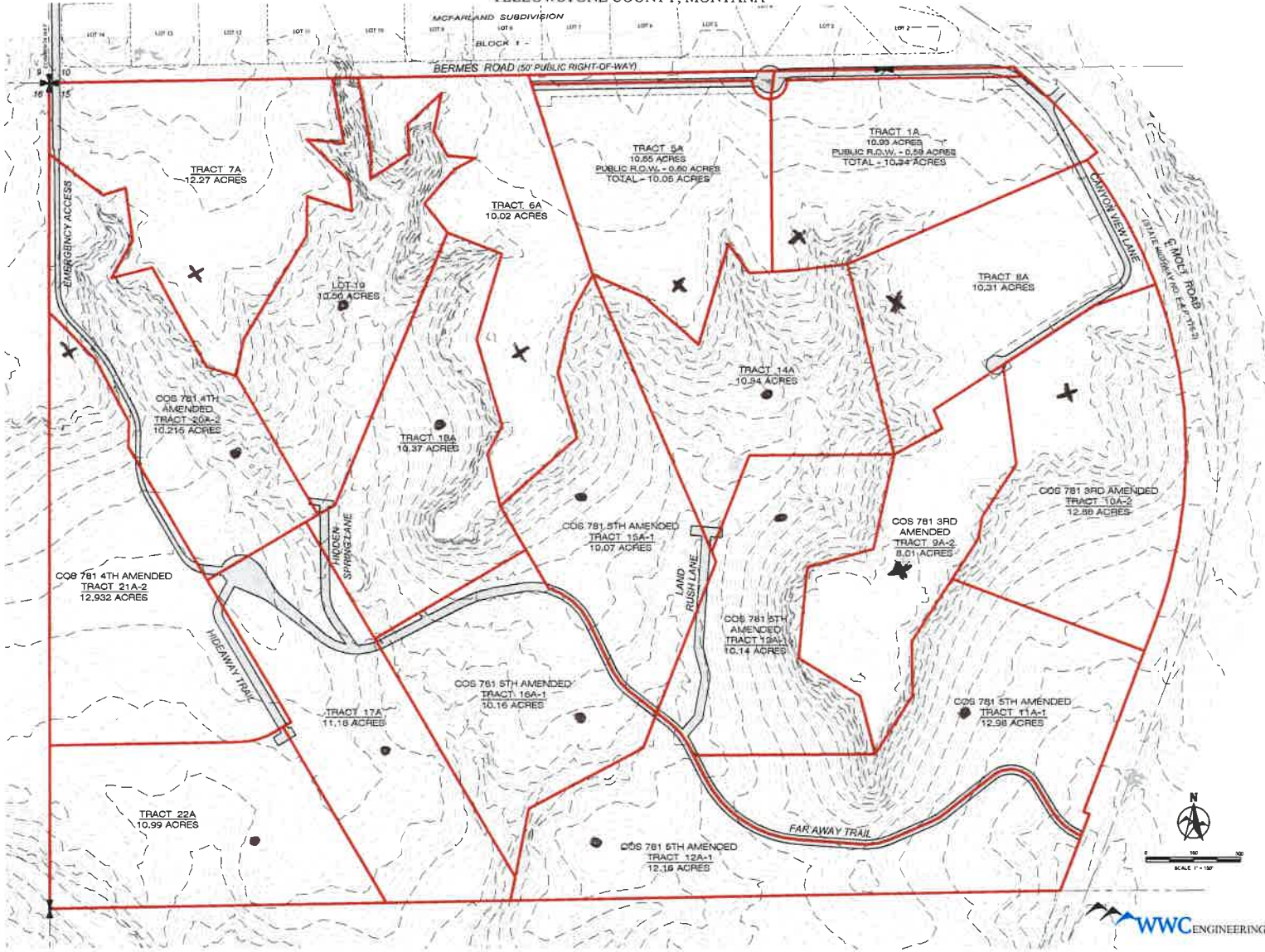


EXHIBIT 3A

CERTIFICATE OF SURVEY 781
2ND, 3RD, 4TH & 5TH AMENDED

BEING ALL OF CERTIFICATE OF SURVEY 781
AND BEING A PORTION OF THE N1/2 OF SECTION 15, T01N, R24E
YELLOWSTONE COUNTY, MONTANA

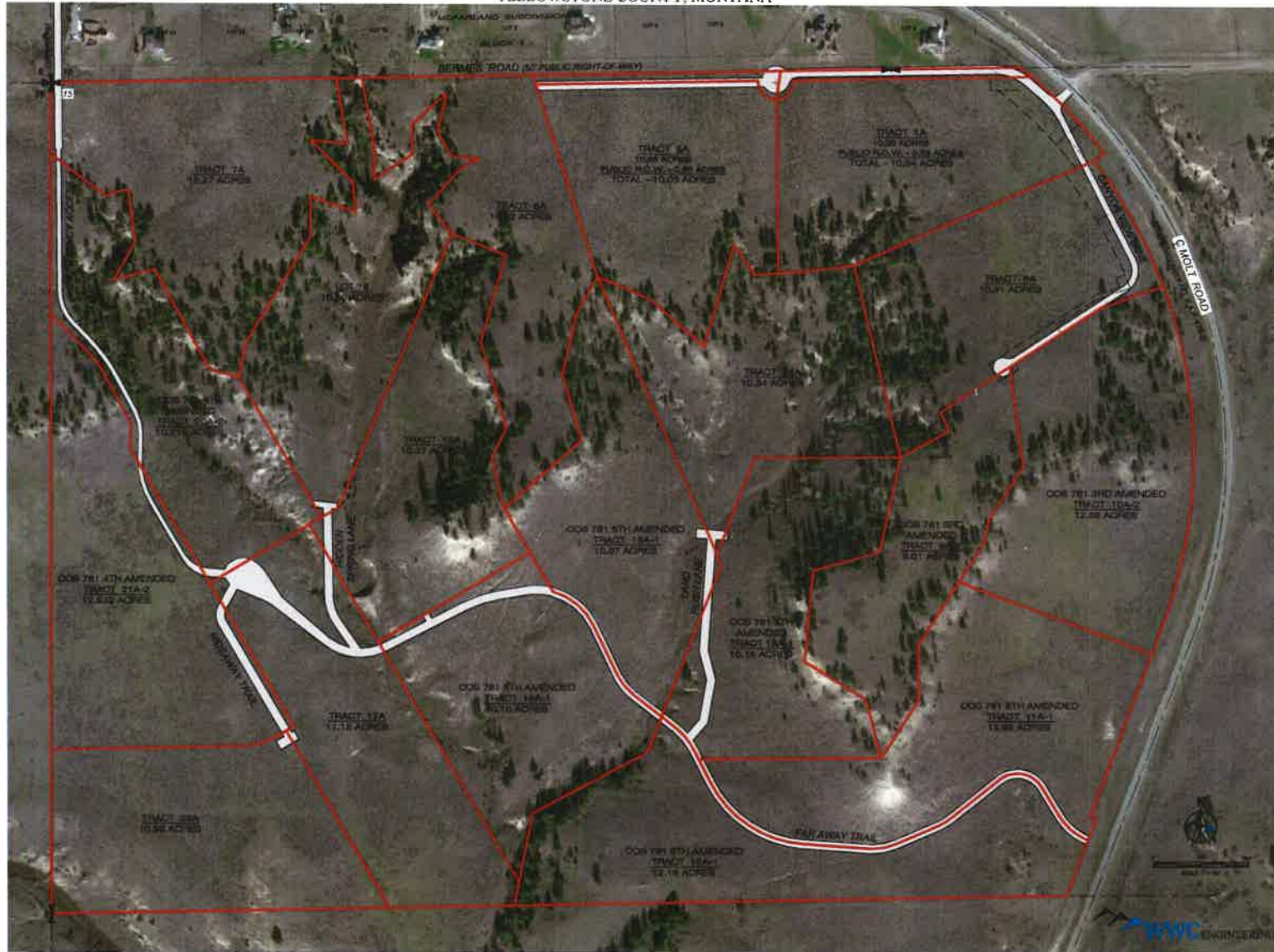


EXHIBIT 3B

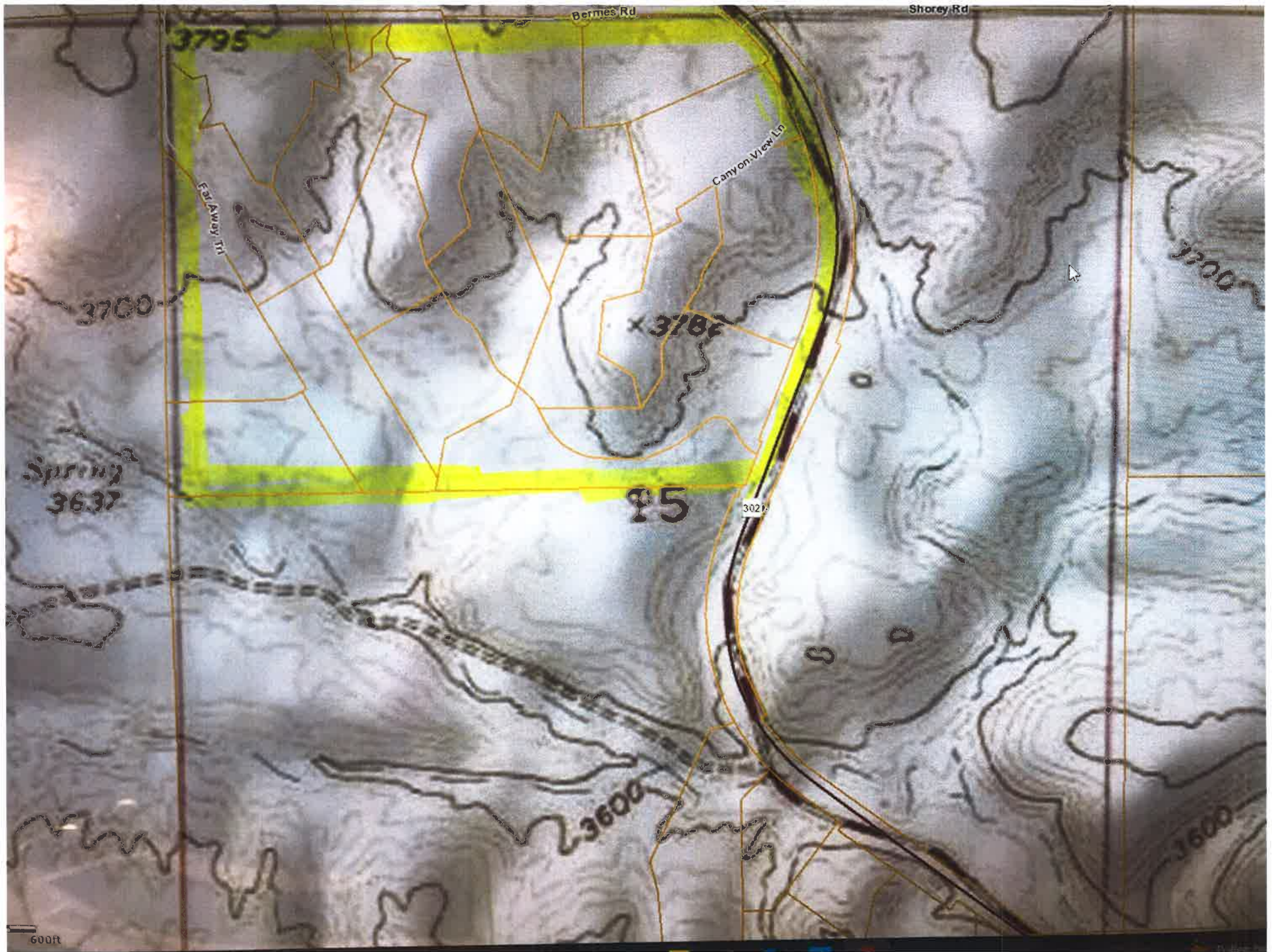


EXHIBIT 4



Exhibit 5

This photo shows the substantial difference in height between the tracts on the top of the rimrocks and those in the valley. The high ground in the left foreground is 6A – a very long tract that extends to the point in the distance overlooking Far Away Trail. A portion of Tract 19A is on the right. Tract 18A lies below 6A on the left. The dividing line between the two is located along the low ground between the two tracts.



Exhibit 6

This photo shows the high ground along the north side of Far And Away. Tract 1A is in the left foreground and extends just past the lone tree. Past the tree is Tract 8A and beyond that is 10A2. Tract 5A is to the far right. Tract 1A overlooks Tracts 13A1, 14A, and 15A1.



Exhibit 7

Tract 8A is shown in the center foreground and extends from Tract 1, on the right, to the road on the left. Tract 8A overlooks Tracts 13A1, 14A, and 15A1.



Exhibit 8

This is a drone view from the northeast corner of Tract 10-A2. This is on the highest level of the property. The building site for this tract is in the foreground but the tract slopes down to Molt Road. At the cul de sac, Tract 9-A2 begins and its building site is about halfway down the length of the tract. Obviously, the views from these two tracts are magnificent. Tract 11 is to the left of Tract 9A2 on the slope to Molt Road.



Exhibit 9

This is a view from above Tract 9A2. On the far left, the curved road rounding the wooded hill, is Molt Road. Molt Road is lower than the hill and trees to the west, so the large valley to the west is not visible from the road. The other road on the left is Far Away Trail. To the right, Land Rush Lane comes down the hill and meets Far Away Trail. Just below that junction, in the glen surrounded by trees, is the building site for Tract 12A1.



Exhibit 10

This is a view from Tract 8A looking over the tracts served by Land Rush Lane. Tract 8 is on the high ground. Tract 14A is immediately below and has a similar view directly into the valley. Tract 13A1 is further down the hill on the left slope below, and Tract 15A1 is on the right slope, both at elevations that are higher than the lower tracts on the south side of Far Away Trail.



Exhibit 11

This view is taken from the north side of Far And Away on the high ground overlooking Land Rush Lane. Trach 5A is not marked but it is approximately the middle third of the foreground of the photo. Tract 1A is on the left. Tract 6A is on the right and extends much further south. Tract 5A has beautiful views of the valley.



Exhibit 12

Tract 7A is in the left foreground. The north portion of Tract 20A2 is in the lower right corner. The house under construction is on the uppermost point of Tract 21A. It likewise has great views of the valley. To the right of 21A is a section of Montana State Land.



Exhibit 13

This photo shows Tract 7A in the left foreground. The south portion of Tract 20A2 is shown in the center foreground and extends from the rimrocks of 7A on the left to the upper portion of Far Away Trail on the right. Tract 20A2 continues to the north up a beautiful canyon.

VARIANCE FOR FAR AND AWAY ESTATES

We are requesting two variances for the tracts described below:

Tax IDs:	Legal Descriptions	Acres
D04277	S15, T01 N, R24 E, C.O.S. 781, PARCEL 5A, 2ND AMD (20)	10.05
D13556	S15, T01 N, R24 E, C.O.S. 781, PARCEL 8A, 2ND AMD (20)	10.31
D13558	S15, T01 N, R24 E, C.O.S. 781, PARCEL 10A2, 3RD AMD (20)	12.88
D13559	S15, T01 N, R24 E, C.O.S. 781, PARCEL 11A1, 5TH AMD (22)	12.98
D13560	S15, T01 N, R24 E, C.O.S. 781, PARCEL 12A1, 5TH AMD (22)	12.16
D13563	S15, T01 N, R24 E, C.O.S. 781, PARCEL 15A1, 5TH AMD (22)	10.07
D13564	S15, T01 N, R24 E, C.O.S. 781, PARCEL 16A, 5TH AMD (22)	10.16
D13557	S15, T01 N, R24 E, C.O.S. 781, PARCEL 9A2, 3RD AMD (20)	8.01
D13565	S15, T01 N, R24 E, C.O.S. 781, PARCEL 17A, 2ND AMD (20)	11.18
D04273	S15, T01 N, R24 E, C.O.S. 781, PARCEL 1A, 2ND AMD (20)	10.93
D13562	S15, T01 N, R24 E, C.O.S. 781, PARCEL 14A, 2ND AMD (20)	10.34
D04278	S15, T01 N, R24 E, C.O.S. 781, PARCEL 6A, 2ND AMD (20)	10.02
D13561	S15, T01 N, R24 E, C.O.S. 781, PARCEL 13A1, 5THAMD (22)	10.14

First Variance:

Paragraph 7 of the GENERAL PROVISIONS (page 5 of the zoning restrictions) reads as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

We request a variance that would read as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed two (2) stories or thirty-five feet in height.

HARDSHIP

In order to explain the hardship created by the foregoing restriction, we need to provide some historical context. We are seeking a variance for all the Tracts listed with respect to above provision in the District 12 Zoning Regulations that was adopted in 1970 to preserve the area for residential use and to stop the proposed establishment of a bar/nightclub in Echo Canyon.

My sister, Constance R. Hertz, (now deceased) and my brother-in-law, James Hertz, (hereafter referred to as Jim) lived in a home on the South side of Molt Road a short distance to the east of the proposed bar/nightclub. According to Jim, there were only about six residences in Echo Canyon at that time, but the owners were universally opposed to a bar/nightclub. Most of the owners had children, and they were worried about drunk drivers, noise, and other possible trouble. And they wanted to preserve the residential nature of the area.

When the local residents and landowners in the area learned of the possibility that a tract along Charolais Street was the likely site of the bar/nightclub, they decided to take action. They petitioned to create a residential zoning district.

On Exhibit 1, attached, you will see on the Montana Cadastral Map the area of Echo Canyon near Charolais Street. That area is adjacent to the State Highway 302 label on the map. In that area, there are a number of tracts along the north side of Molt Road. Charolais Street branches off of Molt Road and then runs parallel to Molt Road before turning back to the highway further to the west. There are 12 or 13 tracts on each side of Charolais Street. The tracts appear to be 5 to 7 acres or so in size and are located in the narrow area between Molt Road and the north side of Echo Canyon.

With this layout, terrain and projected density, there were apparently concerns about views from those homes being blocked by larger homes. And so the residents in that area proposed a restriction that no building or structure should be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

Unfortunately, and probably unintentionally, that restriction applies to any house built on any tract, however large, anywhere in Zoning District 12, regardless of the density of homes, the size of the tracts, or the terrain.

In researching height restrictions, I found that height limits are typically justified for the following reasons:

1. Protection from fire hazards.
2. Protection against aviation accidents.
3. Protection of view.
4. Protection of the character of the neighborhood.
5. Protection of light and air

See <https://www.planetizen.com/definition/height-limits>

My brother-on-law believes the only reason at that time for the height limitation of 1½ one and a half stories and 27 feet in height was to protect the views of the owners along Charolais Street. And this protection may have appeared necessary taking into account the density, layout and terrain along that street, in the narrowest part of the canyon.

But this concern appears to have been unique to that particular area of Echo Canyon. The remainder of the properties in Zoning District 12 west of Echo Canyon are almost universally larger in size, are not laid out in tracts that are on both sides of a street that is next to a highway, and are not located within the confines of Echo Canyon. The west portion of Zoning District 12 does not have the same density nor the same likelihood of a larger house blocking the views from other homes.

This is definitely the case with respect to the property for which we are now seeking a variance. Of course, we acknowledge that at the time this restriction was adopted, people did not know, and the Zoning Board did not know, what future subdivisions might look like – what the density, the layout, and the terrain might be. But when it becomes apparent that a particular development or area is not going to have the same problem as Charolais Street, then we believe a

variance is warranted so that residents are not precluded from building a larger home if they wish to do so.

At the time that Zoning District 12 was created, my parents, Hiram M. and Velma S. Ramirez were the owners of COS 781 (Document #590412), which was a single tract of 206 acres they had purchased from Charles Zimmerman in 1957. The easterly two thirds or so of that single tract were included within the boundaries of Zoning District 12. I have no idea why part of it was included and part excluded.

In 1974, after Zoning District 12 was created, my parents platted COS 781 into tracts – see COS 781, Amended (Document #966310). A copy of that plat is attached as Exhibit 2. You will see that there were 22 tracts, including tracts 1 through 5 which were 1.511 acres each and were situated along the north boundary immediately adjacent to McFarland Subdivision. My parents had 5 grandchildren, and they gave one of those tracts to each of them.

My parents are deceased but the property remains in the family. We call it Far And Away Estates, and we have reduced the number of tracts and made some changes in the roads, the layout, boundaries, etc. One major change was to eliminate the five 1.511 acre tracts. We did that for a number of reasons, including deference to those in McFarland Subdivision who would have been most affected by homes built on those five tracts. The grandchildren received ownership interests in the current Tracts 1A and 5A in return for giving up the small individual tracts.

The property currently has 19 tracts averaging more than 10 acres per tract. [On Exhibit 1 you will see the location of Far And Away Estates at the northwest corner of Zoning District 12.] Tract 9A2 is 8.01 acres, but all other tracts are more than 10 acres in size. Any home is going to be at least 500 feet or more from a neighbor's residence.

There are two distinct elevations in the property. Eight tracts are on the high land above the small rimrocks that run through the property from east to west. The views from these tracts are down into a wide valley, looking through the trees along the top of the rimrocks. The other eleven tracts are spread below the rimrocks looking downhill to the valley below.

I have also attached four exhibits to provide some other information on the building sites for the homes.

Exhibit 3 shows the lot numbers and street names. The north entrance is across from Shorey Road. The road to the right of the north of the entrance is Bermes Road while Canyon View Lane is to the left of entrance.

Exhibit 3A is a topographical view of the tracts. You will see that the building sites marked with an X are on the high ground, on top of the rimrocks. On the lower tracts, you will see the contours of the area, which slopes downward to the south boundary of the property. The valley continues to slope downward for some distance to the south.

The dots are the building sites for the tracts below the rimrocks. The scale in the lower right hand corner of the exhibit shows a black line that represents 300' of distance. The building sites are roughly at least 500 feet, and in many cases much more, from each other and are at ever lower elevations. The four building sites on the four tracts south of Far Away Trail are lower than the building sites for the seven tracts that are on the slopes closer to the base of the rimrocks. All the homes will have beautiful views of the surrounding area.

Exhibit 3B is a satellite view that is less helpful in showing the elevations, but it does show where the trees are located.

Exhibit 4 is a copy of the Montana Cadastral Map showing the actual elevations of the property. You will see at the northwest corner of the property, the elevation is 3795 feet. On tract 9A2, the elevation is slightly lower at 3782. But all the tracts above the rimrocks are high ground. You will also see that just below the rimrocks, the elevation drops to 3700 feet. That is the approximate elevation of the building sites on Tracts 13A1, 14A, 15A1, 18A, 19 and 20A-2. The elevation drops another 63 feet to 3637 feet at the southwest corner of the property, and then drops to 3600 feet on the property to the south of us. The valley bottoms out at that elevation about a half a mile south of our property line, and then begins to climb upwards for the next half mile or so to the back of the rimrocks that overlook Yellowstone Valley.

In short, the Tracts in Far And Away Estates will have views of this secluded valley for one mile or more to the south of the property. This valley is somewhat hidden – it is not visible from Molt Road.

To give you an idea of the size of the valley, the height of the rimrocks, and the beauty of the area shown in Exhibit 4, please look at the photos attached as Exhibits 5 through 13. [Note: In the photos, the roads in the lower areas are paved but the ground adjacent to the roads is dirt. These roads were paved in April of this year and the drone photos were taken shortly thereafter. These areas have been seeded and mulched since that time. They will soon look as nice as the paved roads on the upper lots.]

Because of the distances between homesites and the elevation differences as well, there are no issues with the views from the various building sites on the 19 tracts. Some homes will be able to see another home in the distance – but the other home will not be blocking the view of the valley. Moreover, while there will be views from the houses to the valley below, there are also 360 degrees of views – views looking east, north and west toward the rimrocks and other formations and trees in the area.

If there is no justification or need for “protecting the view” with respect to a particular property such as Far And Away Estates, there should be no need to show a hardship since there is no basis for the height restriction in that situation. However, there are hardships for those owners to have an arbitrary limit to the size, type and height of the home they can build when there is no significant interference with a neighbor’s view.

First, this requirement dramatically limits the design of the tract-owner’s home. One and a half story homes are all very similar in nature and appearance because of the fact that the “half” floor, which is essentially the attic of the home, generally must have a peaked roof and dormer windows in the roof so that the attic can be finished as living space. The only other alternative is a one story house with a huge footprint, which is substantially more expensive and disturbs more of the land.

Second, it costs more for the owner to get the same square footage in a 1½ story home than the owner could have in two story home. Building a story and a half

home with a particular square footage is more expensive than building a two story home with the same square footage. Let me explain.

When preparing for this presentation, I found a book on the internet from Home Planners Inc., entitled 1½ Story Homes. It has some valuable information.

The restrictions we have on Far And Away Estates require a home with 1600 square feet of area on the main floor but permit a two story home. This means a 3200 foot home can be built on the 1600 foot foundation and can be under the same roof. This is the most efficient, least costly way to get more space.

But with a 1½ story home, the usable attic space is less than the first floor space. For example, there are 13 floor plans in the book of 1½ story homes with 1600 to 1690 square feet on the main floor. (Copies of these floor plans are shown in Appendix 1, attached.) The average area of the ½ floor in these 13 plans, however, is only 1,001.6 square feet – an average of 617 square feet less than the main floor. Using this average of 617 feet as a benchmark, in order to get 3200 feet of space (as would be possible with a two story house), the first floor of the 1½ story would have to be increased by 617 feet. That extra 617 square feet is more expensive than it would be in a 2 story home because it would require some additional wall construction, more foundation and more roof over the first floor.

Third, if the owner wants to install solar panels or solar shingles, a 1½ story roof is not likely to be as efficient because the dormer windows will interfere with the roof's surface and cast shadows as well.

I have discussed these three points with an architect, and he has confirmed that these concerns are valid.

The focus at the time Zoning District 12 was created was clearly Charolais Street. But since the district was created, some two story houses have been built along Charolais Street and in a few other areas to the west. All are very attractive homes and they do not appear to have any substantial impact on the views from other homes. We are simply asking for a variance to enable us to permit the same to be done on the above described tracts.

And we believe that this fact shows that the current restrictions in question are too restrictive for large acreage tracts where no neighboring property is likely to be adversely affected by the variances that we are requesting.

The 1½ story/25 feet in height restriction to which we seek a variance creates a hardship for both the sellers and the buyers. The buyers are not getting to build the home they want, and the sellers are going to be receiving less value than these tracts have if buyers aren't getting what they want. Moreover, this will have a negative impact on Yellowstone County as well because it will substantially reduce taxable valuation.

We are definitely not seeking a special privilege - we are seeking reasonable treatment under the circumstances. We are seeking a result that anyone building a home on a tracts of larger acreages, where there is no problem with protecting a view, should not be required to build a 1½ story home. In fairness, the one and a half story height limitation should only apply where there is a situation where house are on smaller lots that are close together and where taller houses would, in fact, materially block the views of a neighbor.

ACCESSORY BUILDINGS.

Second Variance:

The second variance pertains to the height, the number of accessory buildings permitted, and the uses of the accessory buildings. I will explain below the reasons for the variance, but here is suggested language

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Subdivision's Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

First, as to height, the zoning restrictions, on page 5, under General Provisions, paragraph 8, provide that "No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one-half (1½) stories or twenty-five (25) feet in height." In other words, accessory buildings are treated the same as homes with respect to height.

Our restrictions permit accessory buildings to be 2 stories in height. We have the same concerns here as we do with respect to the First Variance. The height of accessory buildings is apparently limited for the same reason as the height of homes – blocking views. But as we have discussed previously, our tracts are large,

and the terrain is such that views of neighboring owners are not going to be blocked or materially affected. Moreover, to get the most square-footage and the lowest cost comes from building a two story structure rather than a 1½ story structure. We are, therefore, asking for a variance that would include permitting two-story accessory buildings for the same reasons we are requesting the First Variance pertaining to dwellings.

In addition, there are some ambiguities in the language of Zoning District 12 as to how many accessory buildings are permitted and what they can be used for. Here are the pertinent provisions that relate either directly or indirectly to the number of accessory buildings.

Paragraph 8, page 6, PERMITTED USES, paragraph 3, reads in pertinent part as follows:

1. Single –family dwelling with not less than 1000 square feet of ground floor area exclusive of porches and attached garages, but not including mobile homes, or structures wherein the primary living area is located below ground level.
2. Agricultural uses as defined in Section 4, and in connection therewith stables, barns, and corrals may be maintained, altered or erected; provided, however, that such buildings and structures be designed for such uses, and not used for any other purpose.
3. Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars.
4. Home occupations.
5. Parks dedicated to the public.

With respect to Agricultural Uses in paragraph 4. DEFINITIONS, there are 5 categories: Crops, Raising of horses, Raising of cattle, Raising of chickens (“provided that adequate coop facilities are provided”), and Raising of sheep.

In paragraph 4, DEFINITIONS, on page 2, “Building, Accessory” is defined as “A building subordinate or supplemental to the main building on a lot and used for

the purposes customarily incidental to that of a main or principal building and located on the same lot.”

And paragraph 7, GENERAL PROVISIONS, subparagraph 3, states that “The distance between the accessory building and a dwelling shall not be less than eight (8) feet and between two accessory buildings not less than six (6) feet. “

Consequently, taking all of these provisions together, it appears that in Zoning District 12 there could be five or more accessory buildings – for example, a storage building incidental to the single family dwelling; stable and barn, for horses and/or cattle or sheep; a chicken coop for chickens; and a detached garage for not more than 4 cars.

Our restrictions, on the other hand, limit the number of accessory buildings to three. We believe that three accessory buildings are a sufficient number and are more cost-effective for the owners if the buildings can be two stories, rather than just 1½ stories. As explained above regarding the First Variance, the same square-footage can be obtained for a lower price with a 2 story building than a 1½ story building.

And fewer buildings, at less cost, can provide more uses if an accessory building is not limited to a single use, as is the case with agricultural uses and the detached garage under the current zoning restrictions. Under the zoning restrictions, for example, a portion of a horse barn or stable could not be used for extra storage for the home or the storage of a boat, camper, or recreational motor home – a separate accessory building would have to be built for these purposes.

We believe that these height and use limitations impose a hardship on purchasers of our tracts.

Apart from the additional costs that the height limitation would cause, we believe that the language of the zoning restrictions could lead to disputes and litigation over what uses are permitted. “Building, Accessory” is defined in Section 4, DEFINITIONS of the zoning restrictions as a “building subordinate or supplemental to the main building on a lot and used for the purposes customarily incidental and subordinate to the principal use or building. . . .” And an “Accessory Use” is likewise defined in section 4, DEFINITIONS, as a “use customarily incidental and subordinate to the principal use or building” With respect to a dwelling’s

accessory building, these definitions are somewhat uncertain and might lead to unintended violations of the zoning regulations.

For example, more recently, many new homes in Billings and elsewhere have provided a one-bedroom guest suite above a detached garage or other accessory building for guests or for a family member such as a widowed mother of one of the owners. But is this trend “customarily incidental” so as to satisfy the zoning restrictions?

Likewise, a basketball hoop attached to the exterior of a home or detached garage is quite common, but if an owner wants to have an accessory garage or building with a space for an indoor basketball hoop to use in the winter, is that “customarily incidental” so as to satisfy the zoning restrictions? That likewise is not clear.

For these reasons, we have tried to put language in our restrictions for Far And Away Estates to make more clear and certain what uses are permissible so that people do not run the risk of violating our restrictions. And we are asking for a variance to make these uses clear and certain as well. The uncertainty and the cost of contesting these matters is a hardship on all involved.

Here is the pertinent language from our Amended Restrictions, Covenants and Conditions:

In addition to one single-family residence, a maximum of three (3) accessory buildings – two (2) accessory buildings and one (1) garage -- are permitted on each tract or lot. An accessory building may be designed and used for horses, storage, an additional garage for not more than four vehicles, and/or a one-bedroom guest suite. An accessory building may also be designed and used for athletic and recreational facilities approved by the Plan Review Committee. Only one of the accessory buildings may have a one-bedroom guest suite. No other types of accessory buildings are permitted. However, the Plan Review Committee can, in its discretion, allow an accessory building to be designed and used for more than one of the permitted uses. An accessory building must not exceed 2000 square feet of ground floor area and two (2) stories in height.

And Paragraph 12 of our Restrictions includes language that states “a guest, other than a member of the immediate family of the owner, may not occupy a one bedroom suite in an accessory building for more than 15 days per year, and in no case can rent be charged for the use of the guest suite.”

Our restrictions permit only two horses and no other livestock or chickens. We permit a stable or barn, plus a corral, for those residents with horses, a detached garage for more not more than 4 cars, and an accessory building for some other recreational or athletic uses – for example an indoor basketball hoop or racquetball court. One of the accessory buildings can also have a one bedroom guest suite, and we permit an accessory building to have multiple uses.

For example, on our Tract 22A, which is not within the boundaries of Zoning District 12, the purchasers are putting in a swimming pool and want an accessory building that would be a “pool house” with restrooms, areas to change clothes, etc., and with a one-bedroom guest suite upstairs. They also want the garage for 4 vehicles but want one large garage that can also serve as an indoor area with a basketball hoop – not a full size or half size gym, but a place for the kids to shoot baskets in the winter.

It appears that the uses we permit in our restrictions may be permitted under Zoning District 12’s language in paragraph 4 as “customarily incidental to that of the main or principal building,” which in this case would be the home. But to be certain that these uses are acceptable, we are asking for a variance based on the provisions of Paragraphs 5 and 12 of our restrictions. As mentioned previously, we are suggesting the following language:

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Subdivision’s Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

These are all reasonable uses for a residential subdivision of this nature.

If our experience in our Lone Eagle Subdivision is correct, we are not likely to have a situation where every owner of a tract wants three accessory buildings. For example, in Lone Eagle Subdivision in Section 9, T1N, R25E, PMM, north of the

airport and just east of Highway 3, there are 20 residences. It appears that four homes have three accessory buildings, five homes have two, four homes have one, and seven have no accessory buildings.

Again, with the large tracts in Far And Away Estates, accessory buildings will not be a problem for adjacent owners – their views will not be significantly affected because of the distance between building sites and the difference in elevations among the tracts. Moreover, we have a plan review committee that reviews all requests to build accessory buildings, and that committee is going to take into account the location, the appearance, and the interests of neighboring tracts.

We believe a variance based on and referencing the provisions of our restrictions will reduce the potential for disputes and litigation over permitted uses, give the owners more certainty and peace of mind about what they can do with their property, allow them to make the most efficient and cost-saving investments in accessory buildings, and allow them to enjoy the best and most appropriate use of their property.

We respectfully request a variance that confirms the accessory building height and uses as described above.

Conclusion

Property should be developed and sold for its highest and best use. In our instance – the development of Far And Away Estates – we are trying to create a high-quality subdivision – similar to our Lone Eagle Subdivision, which has large tracts with paved roads.

Billings is growing, especially as a regional medical center. Many people considering a move to Billings want to be close to the conveniences of the City but have the feeling of living in the country. We think our property and the surrounding properties in Zoning District 12 are important in helping attract these people to Billings. But the restrictions from which we are seeking a variance are unnecessarily too limiting – these people will not be able to build the size or designs of the homes they want, or the kind of accessory buildings they want or need on these larger acreages.

And these variances will be good for Yellowstone County – larger homes and nice accessory buildings will be a substantial addition to the tax base. This harms no one and benefits everyone.

Therefore, we respectfully request that the Board grant the two variances described above.

Thank you for your consideration.


Jack Ramirez, Manager
Yellowstone Farms, LLC.