



County of Yellowstone Board of Adjustment

AGENDA-Thursday, October 13, 2022, 4:00 p.m.

Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

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://tinyurl.com/yckr478k>

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: deinest@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 Planning Clerk Tammy Deines at deinest@billingsmt.gov or 406-247-8610. Thank you!

Call the meeting to order.

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

Public Comment

Motion. Approval of Minutes: July 9, 2020

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:

- Opening of public hearings.
- Reading of rules for the procedure by which the public hearings will be conducted.
- Reading of notices of the public hearings on the following items:

Public Hearings:

- A variance from Section 27-1010.A.3(b.4) requiring a maximum footprint for a temporary use structure of 120 square feet to allow an existing temporary use kiosk of 140 square feet in a Corridor Mixed Use 1 (CMU1) zone, on Lot 1A1 of Cole Acreage Tracts Amended, a 2.703 acre parcel of land generally located at 2816 Old Hardin Road. The purpose of the variance is to allow the existing over-sized kiosk to remain on the property and to allow the continued annual renewal of the Temporary Use Permit issued by the Planning Division.

Other Business/Announcements

Adjournment

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed project. Testimony regarding the above-mentioned item may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 247-8676.

Additional information on any of these items is available online at <https://www.billingsmt.gov/2361/Current-Zoning-Applications> or in the Planning Offices at 2825 3rd Ave N -- 4th 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 Tammy Deines, Planning Clerk, at 247-8610 or e-mail at deinest@billingsmt.gov.

County Board of Adjustment
Meeting Date: 10/13/2022

Information

Subject

Motion. Approval of Minutes: July 9, 2020

Attachments

2020_07_09_YC BOA_DRAFTMIN.pdf



Yellowstone County Board of Adjustment

Meeting Minutes, July 9, 2020 – Virtual Video Conference

DRAFT-To be approved at the next scheduled meeting

Due to the COVID-19 health concerns, the format of the County Board of Adjustment meeting will be held in a virtual videoconferencing environment. The normal hearing room on the 1st Floor at 2825 3rd Ave North (Miller Building) will be closed during the meeting and no one will be attending this hearing in person. Public comment will be taken only during the Public Comment periods as indicated on the agenda, and during the Public Hearings under the Regular agenda. Comments may be sent to the Board via email before 1:00 PM on Wednesday, July 8, 2020. All emails received prior to this time will be read into the record for the public hearing. The Public may call in during specific Public Comment periods at **(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. Live coverage can be viewed here; <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>

For the purpose of reviewing the following item:

Name	Title	03/08/2018	05/10/2018	11/08/2018	01/10/2019	06/13/2019	09/12/2019	07/09/20			
Blaine Poppler	Vice Chair	1	1	1	1	1	1	1			
Carlotta Hecker	Board member	1	1	1	1	E	1	1			
Troy Bush	V Chairman	1	1	1	1	1	1	1			
Tyler Bush	Chairman	-	-	-	E	1	1	1			
Vacant		-	-	-	-	-	-	-			

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

Other Participants: Tim Filz, Christensen, Fulton & Filz, PLLC, representing Timothy and Rebecca Anderson.

Public Comments: Chairman Bush announced the public comment period. Planning Clerk Tammy Deines announced that no calls have been received from the public. Three e-mails were received by Staff regarding County Variance #294, In Favor: Kelly Compton, 4905 Verde Lane, Billings MT; and Brandon Wooley, brandon@mtwooley.com Opposition: Karla Niemann, gakaiyaa@gmail.com, Hazelnut Avenue, Billings, MT

Approval of Minutes September 12, 2019

(The June 11, 2020 YC BOA meeting was postponed due to a lack of a quorum of Board members).



Yellowstone County Board of Adjustment Meeting Minutes, July 9, 2020 – Virtual Video Conference DRAFT-To be approved at the next scheduled meeting

Motion

Board member Hecker made a motion and Board member Poppler seconded the motion to approve the September 12, 2019 meeting minutes as submitted. The motion passed with a unanimous voice vote.

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

Disclosure of Exparte Communication

There were no disclosures of exparte communication from the Board. An email was received from Kelly Compton stating the applicant had asked her to send a not to Staff regarding her opinion on his request. Ms. Compton is not opposed to this request.

PUBLIC HEARINGS:

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting for reviewing and acting on each variance.

Item #1: County Variance #294-120 Sunlight Circle. Karen Husman, Planner I, presenting.

Nicole Cromwell read the rules and procedures for a public hearing and the legal ad for County Variance #294. Planner Karen Husman presented the staff report.

REQUEST (Postponed from June 11, 2020, due to a lack of a quorum of Board members).

County Variance 294 - 4902 Verde Lane - A variance from section 27-310 requiring a maximum detached structure size of 1,500 square feet, to allow a maximum of 3,000 square feet in a Residential-15,000 (R-150) zone, on Block 1, Lot 12, Verde Meadows Sub., a 1.12-acre parcel of land. The purpose of the variance is to allow a detached accessory structure of 3,000 square feet. Presented by: Karen Husman, Planner I

Ms. Husman stated there is no record of a zoning compliance permit for this property. The house was completed before the garage. She stated that the application does not meet criteria for granting this variance:

- No significant hardship with the land
- County Board of Adjustment has not granted similar variances in the neighborhood or in the district
- This will not fit in with the area and the neighborhood

RECOMMENDATION:

Staff is recommending denial of the application based on the determinations detailed within the Summary section of this staff report

Discussion

Chairperson Bush called for questions and discussion from the members of the Board. He asked regarding a similar structure down the street from this parcel. Ms. Husman clarified and stated



Yellowstone County Board of Adjustment Meeting Minutes, July 9, 2020 – Virtual Video Conference DRAFT-To be approved at the next scheduled meeting

that the property owner he referred to built the structure with a permit but this property owner did not.

Public Hearing

Chairperson Bush opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #294.

Tim Filz, Christensen, Fulton & Filz, Billings, MT

Mr. Filz represents Timothy and Rebecca Anderson. Mr. Filz asked for clarification of the current zoning code related to building in the County. Ms. Cromwell stated building permits are not required for properties located in Yellowstone County. Building codes for electric and plumbing are enforced through the Montana State Building Codes Division. The Yellowstone County Public Works Department addresses access to the property. The property owner is responsible for obtaining a zoning compliance permit from the Planning Division. Mr. Filz read aloud a prepared statement. He stated the property owners' intention is to have the structure design consistent with the house. They are proposing to construct fencing to minimize the visual impact of the shop. The applicants are requesting a 2400 square foot building and the variance request be granted. He pointed out that the opposition letter spoke about the adjacent house and not this property.

Chairman Bush closed the public hearing and called for a motion.

Motion

Board member Hecker made a motion and Board member Bush seconded the motion to forward a recommendation to the Board of County Commissioners of conditional approval of County Variance #294 with the Findings and Criterion presented by Staff.

The conditions of approval are as follows:

1. The variance is to increase the allowed square footage for a detached accessory building from 1,500 square feet to allow a maximum of 3,000 square feet. No other variance is intended or implied by this approval.
2. The variance is limited to Block 1, Lot 12, Verde Meadows Sub., generally located at 4902 Verde Lane.
3. The applicant will develop the new accessory building in substantial conformance with the site plan submitted.
4. Construction of the single-family dwelling must be completed prior to completion of the detached structure.
5. The applicant will submit for a Zoning Compliance Permit for construction of the new accessory building within one year (12 months), and will be completed within two years (24 months) of Board of Adjustment approval.
6. The applicant shall comply with all other codes and ordinances that apply including restrictions and regulations regarding placement and installation of septic system, cistern and well.
7. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.



Yellowstone County Board of Adjustment Meeting Minutes, July 9, 2020 – Virtual Video Conference DRAFT-To be approved at the next scheduled meeting

Discussion: Discussion points:

(Poppler) There are eight other buildings in this area with out zoning compliance permits. In the past a property owner was required to tear down his unpermitted garage.

(Bush) regarding Criterion 2/3: the existin home was the first home visible from the road

(Poppler) The developer 's failure to rely on zoning presents hazards to other property owners. Buyers rely on the developer who doesn't wish to diminish sale of the lots.

(Hecker) Board member Hecker made a site visit. She voiced concern with what the neighborhood will look like as it seems like a large building for a shop.

The motion carried with a unanimous voice vote. 3-0. Variance #294 is conditionally approved.

Other Business/Announcements

- **Announcement:** The August 13, 2020 Yellowstone County Board of Adjustment meeting is cancelled due to a lack of applications. The next meeting will be held as legally announced and advertised. Nicole Cromwell announced the first public meetings with the City Zoning Commission for Project Re:Code which will be held at the Billings Senior Center and posted on Facebook.

Adjournment: Adjourned 4:45 p.m.

Tamara L. Deines, Planning Clerk

DRAFT- T0 BE APPROVED BY A MOTION AT THE NEXT SCHEDULED MEETING

County Board of Adjustment

Meeting Date: 10/13/2022

SUBJECT: County Variance 295 - Classy N Sassy Temporary Use Structure

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

A variance from Section 27-1010.A.3(b.4) requiring a maximum footprint for a temporary use structure of 120 square feet to allow an existing temporary use kiosk of 140 square feet in a Corridor Mixed Use 1 (CMU1) zone, on Lot 1A1 of Cole Acreage Tracts Amended, a 2.703 acre parcel of land generally located at 2816 Old Hardin Road. The purpose of the variance is to allow the existing over-sized kiosk to remain on the property and to allow the continued annual renewal of the Temporary Use Permit issued by the Planning Division.

RECOMMENDATION

Planning Staff has reviewed this application and is forwarding a recommendation of conditional approval based on the determinations for review within this report.

APPLICATION DATA

OWNER: Central Holdings, LLC (property owner)

Cassandra Dennison, Classy N' Sassy Coffee (Leases the land for kiosk)

AGENT: Donna Madson

PURPOSE: Increase the maximum allowed Group 3 Temporary Use structure size of the kiosk

LEGAL DESCRIPTION: Lot 1A1 of Cole Acreage Tracts Amended

ADDRESS: 2816 Old Hardin Road

SIZE OF PARCEL: 2.703 acre

ZONING: CMU1

EXISTING LAND USE: Gas Station/convenience store - Coffee kiosk drive through only

PROPOSED LAND USE: No change

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

See Attachments

SURROUNDING LAND USE & ZONING

NORTH: Zoning: CMU1

Land Use: Burger King restaurant

SOUTH: Zoning: CMU1

Land Use: Fly Inn Truck wash

EAST: Zoning: CMU1

Land Use: Bank

WEST: Zoning: CMU2

Land Use: Yellowstone Valley Coop sub station

BACKGROUND

Planning staff recently completed an intensive review of Group 3 Temporary Use Permits. During this work, it was discovered that there were 6 existing temporary use structures (kiosks) that exceed the maximum allowed floor area requirement of 120 square feet, 5 within the City Limits of Billings and 1 outside the City but within the zoning jurisdictional area. These non-compliant structures vary in size from 130 square feet to 200 square feet. Each of the nonconforming temporary use structures did disclose their sizes either during the initial application process or during the annual renewal process, and were approved by the Planning Division. The overall proposed direction from the Planning Staff to business owners for all over-sized, existing kiosks would be to allow their continued use through the variance process, with annual renewal of their temporary use permits. Otherwise, all newly proposed or replacement kiosks would be required to meet the maximum size of 120 square feet, in addition to all other Zoning Code requirements. Variances have been conditionally approved for five of the nonconforming kiosks in 2022. The current application is for the last of the 6 noncompliant temporary uses throughout Yellowstone County.

Per the Zoning Code, these oversized structures are considered to be in non-compliance and for it to come into compliance without a variance it would mean replacing the kiosks with smaller structures. The ICC Commercial Building Code adopted by the State of Montana states that any commercial building that exceeds 120 square feet in floor area requires a building permit from the state or local jurisdiction. This exempts buildings less than 120 square feet from the commercial building review process and allows commercial structures under 120 square feet to be considered a temporary use under Zoning Code Section 27-1010.A.3(b)(4). For this business owner to replace the kiosk with a smaller building after being approved for use and currently in operation, would be cost prohibitive for the applicant.

This applicant currently operates temporary use kiosks in this location as well as three different locations across Billings. They also have a proposed 200 square foot kiosk that the Planning Division denied a temporary use permit, as construction is not yet complete, and they will be obtaining a commercial building permit in order to operate from this location, or will need to resize the structure to less than 120 sq ft to be considered for a temporary use permit.

The purpose of this variance is to allow this existing kiosk at 2816 Old Hardin Road as a Group 3 Temporary Use structure at the described location to be larger than the maximum allowed floor area of 120 square feet.

SUMMARY

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

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

There are no special conditions that are peculiar to the land or the lot which causes hardship, however, this temporary use structure is only one of six temporary use structures within Yellowstone County that have been erroneously approved by the Planning Division in the past. Variances have been conditionally approved for five of the nonconforming kiosks in 2022.

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

There are five kiosks within the City limits of Billings and one outside the City within the zoning jurisdictional area that exceed the 120 square foot maximum structure size requirement currently in operation within Yellowstone County across various zoning districts. These kiosks are not in compliance with the Zoning Code. Granting this variance allows the applicant the continued, and legal nonconforming status of the kiosk in the current location.

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

There have been prior applications for a variance from the maximum allowed size for a Group 3 Temporary Use structure, which were conditionally approved in 2022 to allow five different kiosks exceeding the maximum allowed 120 square feet. This variance, if granted, would be a one-time allowance for the continued use of the existing temporary structure which was erroneously approved by the Planning Division. The intent is not to allow any new temporary use structures to exceed this maximum size requirement.

4. That the granting of the variance will be in harmony with the general purpose and intent of the Zoning Code and with the Growth Policy;

The variance is in harmony with the general purpose and intent of the zoning regulations and the growth policy. Approval of this variance would allow the applicant to continue to use the kiosk as a drive-thru coffee business at this location only. The building and use is established and an existing operation. Each year the temporary use permit is reviewed for annual renewal. The site plan, traffic plan, and parking has been approved and meets all other zoning and site design requirements ensuring safety standards.

5. 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 allowance of an increase in square footage for this Group 3 Temporary Use structure variance request:

1. The approval is for a variance from Zoning Code Section 27-1010.A.3(b)(4) as amended increasing the maximum allowed size of the structures from 120 square feet to 140 square feet. No other variance is intended or implied with this approval. The variance is limited the existing kiosk only, currently located on the parcel described as Lot 1A1 of Cole Acreage Tracts Amended, and becomes void if the structure is moved (either within the same parcel or to another parcel within Yellowstone County) or the footprint is altered in any way.
 2. The variance shall be null and void if at any time in the future, the temporary use permit for this kiosk remains expired for more than 30 days or if the structure is not in operation for more than 180 days.
 3. 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 structure is not moved from its current location.
 4. The applicant shall meet all other code requirements, including annual renewal of the temporary use permit, except for this variance.
- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance.**
- The structure is fully constructed, in-use and has been approved for temporary use by the Planning Division, therefore the time limit would be for ensuring the temporary use permit remain active, annually. If at any time in the future, the temporary use permit for this kiosk remains expired for more than 30 days or if the structure is not in operation for more than 180 days, this variance shall be void.
- 7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**
- The granting of this variance would not allow a use that is not permitted in the zoning district -- drive-thru restaurants are a permitted use in the CMUI district.

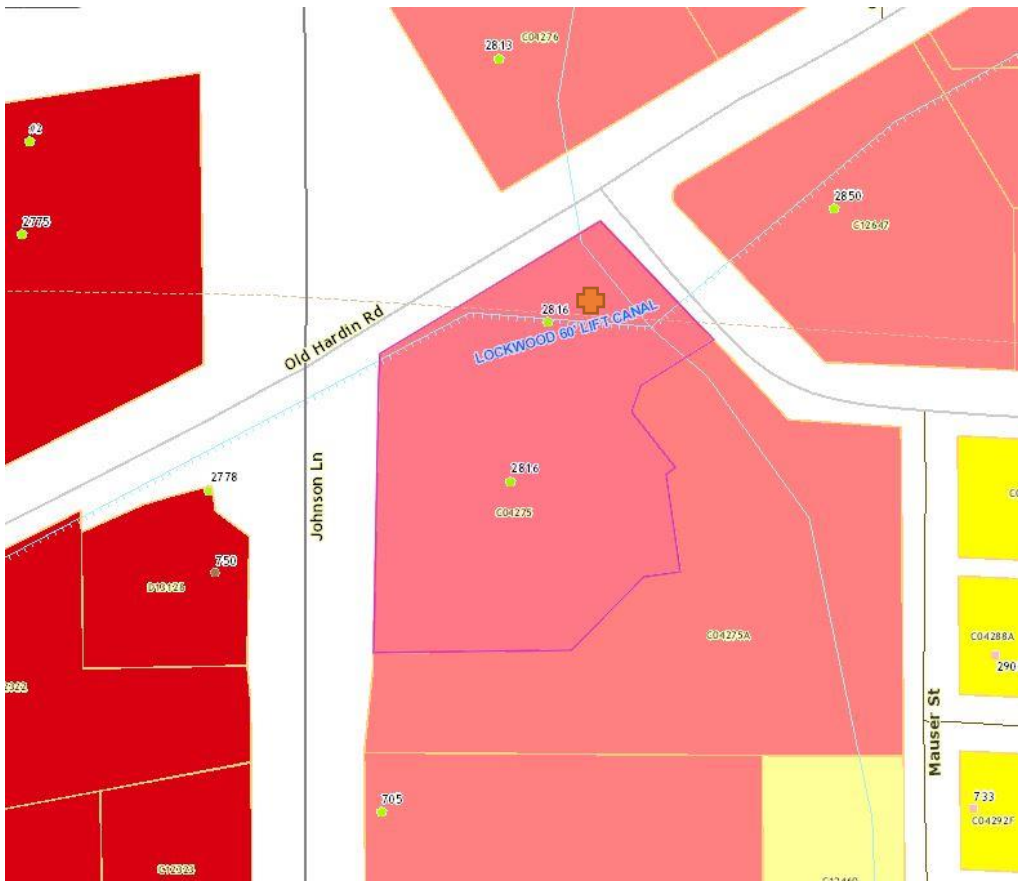
RECOMMENDATION

Planning Staff has reviewed this application and is forwarding a recommendation of conditional approval based on the determinations for review within this report.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Chart of oversized Kiosk
Site Plan

Zoning Map & Site Photos





North



South



West



South



Northwest

Application & Applicant Letter

APPLICATION FORM

COUNTY VARIANCE County Variance # 295 - Project # P2X-22-00208

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 # C04275 COUNTY COMMISSIONER DISTRICT # 28-1 Lockwood

Legal Description of Property: Cole Acreage Tracts, S19, T01 N, R27 E, Lot 1A1, Cole Acreage Tracts AMD (10)

Address or General Location (If unknown, contact County Public Works): 2816 Old Hardin Rd Billings MT 59101

Zoning Classification: CMU1 - Corridor Mixed Use 1

Size of Parcel (Area & Dimensions): 2.703 Acres

Covenants or Deed Restrictions on Property: Yes _____ No x

If yes, please attach to application

Variance Requested: Increase the size of allowable kiosk to match the size of existing kiosk. (140^{sq})

Facts of Hardship: Letter Attached

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

Owner(s): Central Holdings LLC
(Recorded Owner)
PO Box 1847 Minot ND 58702
(Address)
406-855-1749
(Phone Number) (email)

Agent(s): Donna Madson
(Name)
PO Box 1847 Minot ND 58702
(Address)
406-855-1749
(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: _____

(Recorded Owner)



Date Stamp

September 1st, 2022

Chairperson
County Board of Adjustment
City of Billings
2825 3rd Ave. North
Billings, MT 59101

Re: Variance Request for Increase in Size of Kiosk

Dear Board:

We have prepared the following letter of facts and hardships to accompany an application form for a variance request. The information in this letter describes why the Owner is requesting a variance to obtain a temporary use permit.

Questions in Item 3 of the variance request application are answered below:

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

a. Classy N' Sassy contracted a building to be constructed for the proposed site previously. This was done based on prior knowledge three kiosks that are currently operational that had been accepted as temporary use structures. Those other buildings are also larger than the maximum size of 10' x 12' or 120 squared feet.

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

a. Allowing a temporary use permit for this location allows an empty lot to be used with a temporary structure while still allowing the development the lot in the future.

Item 4 requires a statement that is answered with the following. It is intended to place a temporary structure and operate a Classy N Sassy Coffee kiosk. There is not any proposed construction planned to the property, as the kiosk already exists. The current use of property is a gas station and convenience store known as Casey's Corner #8 along with the kiosk. The proposed use of the property is continued use of a temporary structure to be operated as a drive through coffee shop.

Section 27-1009(A) requires the temporary structure to be a maximum size of 10'x12' or 120 ft². This variance is being sought to increase the allowed size of a temporary structure from 10'x12' to 10'x14' at this location.

Sincerely,

Cassandra Dennison

Owner	Business	Kiosk Location	Size	Sq Ft	In use since	Temp use exp	Notes/Status
Cassandra Dennison	Classy N' Sassy Coffee	1508 Main St	10x14	140	2014	9/29/2023	Variance 1344 Approved May 4, 2022
Tanya Weinreis	Mountain Mudd Espresso	16 Shiloh Rd	8x20	160	2021	11/12/2022	Variance 1339-approved March, 2022
KC Johnson	Steady Grinding Coffee	2376 Main St	8x20	160	2020	2/1/2023	Variance 1348 approved 7/6/22
Cassandra Dennison	Classy N' Sassy Coffee	1221 6th Ave N	10x20	200	2020	9/21/2023	Variance 1344 Approved May 4, 2022
Cassandra Dennison	Classy N' Sassy Coffee	1313 Broadwater Ave	10x20	200	2020	7/1/2023	Variance 1344 Approved May 4, 2022
Cassandra Dennison	Classy N' Sassy Coffee	2021 Henesta Dr	10x20	PROP OSED 200	N/A	N/A	Denied/Withdrawn, Building Permit Required
Tanya Weinreis	Mountain Mudd Espresso	2975 Grand Ave	10x25	PROP OSED 250	N/A	N/A	Approved as temporary use 8/2021, however, recently denied/withdrawn, building permit required
Tanya Weinreis	Mountain Mudd Espresso	4001 Montana Ave	12x30	PROP OSED 360	N/A	N/A	Replacing an 8x8. Denied/Withdrawn, building permit required



Cole Acreage Tracts, S19, T01 N, R27 E, Lot 1A1, Cole Acreage Tracts