

Attachment B

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff and Laurel Fire Department have reviewed the request for a variance from Yellowstone County Subdivision Regulations Section 4.6.B.5 of the Yellowstone County Subdivision Regulations, which requires a variance request for an Emergency Access Road rather than a full access road.

The applicant is proposing to develop a subdivision that does not provide a second full access into or out of the subdivision. They are proposing to instead build an Emergency Access Road (EAR) for emergency use only. When an applicant proposes an EAR they are required by Yellowstone County Subdivision Regulations to apply for a variance. The applicant is also asking for a variance from the requirement of a second way in and out of the subdivision. It is the opinion of County Planning, Public Works and Legal that there is an option for a second full access in and out of the subdivision making this requested EAR unnecessary. They could build a second way in and out using an existing dedicated right of way Rosebud Drive that would make a connection to South 80th Street West. MDT has also determined there is a possibility of a full access to King Avenue West. This connection would require more work to get a road from the subdivision down to King Avenue West.

Staff has reviewed the proposed subdivision and the variance request for an EAR, and is forwarding a recommendation of denial.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance would be detrimental to public health, safety, and general welfare or injurious to other adjoining properties. Granting this variance would create a subdivision with only one way in and out. Although there are subdivisions in the county that currently have this configuration it is a trend not worth continuing. An Emergency Access Road would only provide an access for the fire department having jurisdiction. It does not provide emergency access for those that may be inside the subdivision and need to get out in an emergency situation, they would still have only one way in and out. This scenario is detrimental to public health, safety and general welfare of those having storage units inside the subdivision.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no surrounding physical conditions that would result in an undue hardship to the developer to build Rosebud Drive. There is a 60-foot dedicated access on the east of the proposed subdivision going out to South 80th Street West. An access road to King Avenue West does have some topographic challenges but could be built.

3. The variance will not result in an increase in taxpayer burden.

The variance will not increase taxpayer burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

Approval of this variance will not place this subdivision in nonconformance of adopted zoning regulations or the growth policy. This subdivision is outside of county zoning.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

This is the alternative to having a full 2nd access for the subdivision. It will only provide access for the fire department having jurisdiction, it does not provide an emergency access for storage unit owners within the subdivision.

Therefore, staff and the Planning Board is recommending denial of the proposed variance to the Board of County Commissioners.

Variance Request #2– Secondary Access

4.6 Streets and Roads

4.6.B Streets and Roads, General

(5) Second Access: To facilitate traffic movement, the provision of emergency services, and the placement of utility easements, all major subdivisions and subsequent minor subdivisions shall provide at least two means of vehicular access built to the standards of this Chapter and designed to ensure public health and safety.

Exceptions to the requirement to provide at least two means of vehicular access may be made for major and subsequent minor subdivisions may only be granted through a variance to these regulations.

Provision of a second means of vehicular access may be required for any subdivision when deemed necessary for public health, safety and welfare.

When not otherwise exempt, if a second means of vehicular access built to County road standards cannot be provided for reasons of topography or other physical conditions, the subdivider shall provide an emergency secondary access road, built to the standards detailed in Section 4.14 of these Regulations.

Per MCA 76-3-506: Strict compliance with these regulations will cause undue hardship for the applicant:

A variance is being pursued to relieve the applicant from the requirement to have at least two means of vehicular access for the proposed major subdivision. In lieu of a second access the subdivision will provide a gated emergency access off of King Ave. W. This gated emergency access will have nox box for the fire department’s use. The gated emergency access will also be built to full subdivision road standards. However, this access point will remain gated due to Montana Department of Transportation (MDT) rules regarding access separation of 400’. This separation requirement along with the topography constraints of other access points is the basis of hardship for secondary access. The sole public access proposed off Stillwater Drive will provide safe, adequate access to the proposed commercial buildings for future users. Shop World Condos is anticipated to produce 43 trips per day. During correspondence with MDT the request for a different access and denial of access off of King was made. MDTs requested access point is not feasible due to slope, drainage, and a wetland being in this spot. Therefore, the applicant requests a variance from Yellowstone County Subdivision Regulations requiring two accesses for major subdivisions.

1. The granting of this variance does not result in a threat to public safety, health, or welfare, and is not injurious to persons or property.

There does not appear to be any concern regarding public safety, health, or welfare by granting this variance, nor would it be injurious to persons or property. This is not known to cause a threat to public safety, health, or welfare, nor is it injurious to persons or property. Safe, adequate, access to the proposed commercial units is best provided via the access off Stillwater Drive. The anticipated 43 trips per day also indicates no threat to public safety, health or welfare.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

The conditions upon which this variance is based are unique in that the proposed subdivision is served by two roads, Stillwater Drive to the north and King Ave. W to the south. The particular shape of the site and existing roads to the north and south dictate that only one approach be used as the Montana Department of Transportation (MDT) requires 400' separation between approaches. MDT has authorized the location of the second approach off King Ave. W. pending the access remain locked and be used for emergency access only. The unique site topography also mandates that Stillwater Drive be used as the sole, primary, access for the proposed subdivision as grading and drainage due to slopes and wetlands are located in the only other point that MDT would allow access onto King Ave. W.

3. The variance will not result in an increase in taxpayer burden.

This variance request will not result in an increase in taxpayer burden. There will not be an increase to public costs whatsoever by granting this variance.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations.

The property is unzoned so the granting of this variance will not place the subdivision in nonconformance with any adopted zoning regulations.

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

The sole access off of Stillwater Drive is equally effective at providing ingress and egress options to future users of the subdivision as two access would be. This sole access is the preferred access due to the unique topographic conditions of the site. The estimated 43 daily trips align with the single access being proposed and do not contradict the intent of the subdivision regulations of Yellowstone County.

Anna M. Vickers

From: Kolten L. Knatterud
Sent: Wednesday, August 24, 2022 9:44 AM
To: Kirkemo, Zach; Tim Miller; Shawn M. Thorson; Plecker, Monica; Green, Dave
Cc: Anna M. Vickers
Subject: RE: Shop World Condos Second Access Discussion

Zach,

Thank you for the response and the information. I appreciate you reviewing the situation.

I do want to clarify however, even though our lot has the width to move the approach west in reality this is not possible as the western side of our lot has significant slope, a drainage, and a wetland so we are not able to locate our approach there. As such, our current proposed approach location is that only viable option to access King Avenue.

We will discuss internally and submit our final access proposal.



Thanks,

Kolten L Knatterud, PE
Project Executive



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This email may contain confidential and/or private information. If you received this email in error please delete and notify sender.

From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Wednesday, August 24, 2022 7:57 AM
To: Tim Miller <tmiller@yellowstonecountymt.gov>; Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>; Plecker, Monica <pleckerm@billingsmt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <Anna.M.Vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: Shop World Condos Second Access Discussion

External Email: Treat links and attachments with caution.

All,

I have spoken with MDT Billings District supervisory personnel as requested. Because there is no residential development planned with this subdivision and the Laurel Fire Department has agreed to the emergency gated access, MDT has chosen to maintain its original position of requiring an approach at this location be emergency-only access in an attempt to maintain some semblance of access control along the King Ave corridor. MDT has already made concessions to its requirements in allowing this location at all. If approved, this would like have been the access used by most customers which is not MDT's desire. MDT's desire is for developments with access to existing County roads to use County roads.

I wish to reiterate the County and landowner that MDT is not opposed to a full access approach on King Ave for this subdivision. The issue is the location of the current approach. A full access approach would only be allowed if the new approach were relocated to the west satisfying the 400' spacing requirement between all approaches for rural highways. This would locate the approach roughly at the midpoint between the driveways for 8043 King Ave W and 8243 King Ave W. If this realignment is ultimately done, MDT would require removal of the newly-built approach and restoring the disturbed area to its original state.

MDT doesn't believe the State should have to concede access management requirements and sacrifice the safety of the travelling public in order to reduce the developer's cost. MDT would support the County if the County denied the variance request and imposed the approach relocation requirements stated above.

Respectfully,

Zach Kirkemo
MDT Billings District Traffic Engineer
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From: Tim Miller <tmiller@yellowstonecountymt.gov>
Sent: Tuesday, August 23, 2022 9:16 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>; Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>; Plecker, Monica <pleckerm@billingsmt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] RE: Shop World Condos Second Access Discussion

Zach

If the development were able to access both Stillwater and 80th that would be acceptable for two accesses being that traffic can exit on 80th by going either north or south. If 80th were a dead end then it would not be acceptable for a second access.

Hope this helps

*Tim Miller
Yellowstone County Public Works Director / Floodplain Administrator
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My e-mail has changed to tmiller@yellowstonecountymt.gov

From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Tuesday, August 23, 2022 7:50 AM
To: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>; Plecker, Monica <pleckerm@billingsmt.gov>; Tim Miller <tmiller@yellowstonecountymt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: Shop World Condos Second Access Discussion

All,

I have a hypothetical question for City/County Planning to help ensure my understanding of the two access requirement. I wish I had thought to ask this yesterday.

Say this particular development was adjacent to 80th St W and Stillwater Dr. Would having one access to 80th St W and one access to Stillwater Dr satisfy Planning's requirements, or would the development still need one additional access point off King Ave W in this hypothetical?

Thanks,

Zach Kirkemo
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From: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Sent: Monday, August 22, 2022 11:55 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>; Plecker, Monica <pleckerm@billingsmt.gov>; Tim Miller <tmiller@yellowstonecountymt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] Shop World Condos Second Access Discussion

All,

Thank you for your time today for a discussion regarding the second access to King for this project. Please use this email when providing correspondence to keep everyone in the loop.

Just a few notes regarding the discussion:

- MDT requested emergency access only due to the proximity of the approach to the east.
- The estimated trips per day are less than 50 due to the development being storage units.
- If this gets approved as a full access, the access will still be controlled by a coded gate.
- IMEG's response timeline is being granted some leniency due to this decision.

If you have any questions or comments, please let me know.

Thank you,

Shawn Thorson, P.E.
Civil Project Engineer

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