



CITY BOARD OF ADJUSTMENT
AGENDA-Wednesday, November 1, 2023, 6:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

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://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: 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 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 October 4, 2023.

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. **The Applicant has requested a withdrawal of City Variance 1369 -- City Variance -- 1369 --502 Wicks Ln. -- Parking Siting** - A variance from Table 27-400.5-B.8 requiring surface or accessory parking location to be either in the rear yard or limited in the front or side yard in a Neighborhood Office (NO) to allow unlimited parking in the side yard on the west 25 feet of lot 9 and the east 50 feet of lot 10 of Block 1 (less 750 sf street) of Arrowhead Subd., an 0.863 acre parcel of land. The purpose of the variance is to allow an existing commercial structure to remain in place while a replacement structure is built on the site.

- b. **City Variance -- 1372 -- 3508 S Frontage Road -- Parking siting** - A variance from the siting and building standards for the Heavy Commercial (CX) zone district that requires surface parking to be in a side or rear yard (Section 27-409- Table 27-400.6 (B.6)). The property is on South Frontage Road near where the road changes speed and direction and becomes Riverside Drive and then Garden Avenue. These are local streets that continue north and east to the S 27th St interchange with Interstate 90. The subject property is legally described as an unplatted parcel in Section 15, Township 1 South, Range 26 East, a remainder of the south part of Government Lots 2 and Lot 3 (less C/S 1596), and is approximately 20 acres in area. The lot will be split in the near future and the requested variance will apply only to the lot on the west half of the parcel where the proposed use will be located. The proposed use is for a consolidate location for Torgerson's Equipment, an agricultural dealership offering sales, parts, & service to customers across Montana.

Other Business/Announcements

Adjournment

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 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 Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to bartleyr@billingsmt.gov

City Board of Adjustment
Meeting Date: 11/01/2023

Information

Subject

The minutes of the Board meeting of October 4, 2023.

Attachments

BBOA_2023_1004

CITY BOARD OF ADJUSTMENT
MINUTES October 4, 2023

Name	Title	01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/06/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	
		David Mitchell	Member	1	E	-	R	E	S	I	G	N	E	D
Dave Hagstrom	Member	1	1	1	1	-	1	E	E	1	1			
George Warmer	Member	E	1	1	1	-	E	E	E	1	A			
Jeff Bollman	Vice Chair	1	1	E	E	-	1	1	1	1	-	-	-	
Oscar Heinrich	Chair	Z	1	1	Z	-	1	1	1	1	1			
Chris Hayes	Member	1	E	1	1	-	1	1	1	1	P			
Josh Sayer	Vice Chair beginning 10/4/2023	1	1	1	1	-	1	1	1	1	1			
Brian Roush	Member	-	-	-	-	-	-	-	-	1	1			
TOTAL NUMBER OF APPLICATIONS 2023		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/06/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	TOTAL
Variance		1	4	3	4*	-	2	-	1	*1	3			17
Appeal					1	-								1

Returning variance

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

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 Support..

Attending: Taylor Kasperic, Bryce Terpstra, Anna Vickers

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.

Approval of Meeting Minutes

Meeting minutes for September 6, 2023. - Approved

Disclosure of Exparte Communications: None

Disclosure of Site Visits: Chair Heinrich all

Disclosure of Conflict of Interest: None

Chair Heinrich nominated Josh Sayer for Vice Chair. No other nomination. Josh Sayer unanimously voted for Vice Chair.

Public Hearings

City Variance 1369 –502 Wicks Ln. – Parking Siting - A variance from Table 27-400.5-B.8 requiring surface or accessory parking location to be either in the rear yard or limited in the front or side yard in a Neighborhood Office (NO) to allow unlimited parking in the front yard on the west 25 feet of lot 9 and the east 50 feet of lot 10 of Block 1 (less 750 sf street) of Arrowhead Subd., an 0.863 acre parcel of land. The purpose of the variance is to allow an existing commercial structure to remain in place while a replacement structure is built on the site.

Recommendation:

Planning staff is recommending denial and adoption of the findings of the criteria for Variance 1369.

Staff is not recommending conditions for the variance request. Staff is ready to provide 6 conditions if the Board disagrees with staff findings.

Questions for staff:

Chair Heinrich asked the applicant if they were aware of the denial recommendation. - Yes

Public Hearing opened at 6:47 PM

Applicant: Taylor Kasperick, PEC, 608 N. 29th

Described a lengthy description of the site, the dental office and tenants. The current dental office cannot shut down during the construction time. The design proposed provides allowance to continue while the new building is constructed.

Questions for Applicant:

Board member Hagstrom asked if the original plan could be modified to adjust floor area requiring no variance.

Applicant said not really, equipment size does not permit this.

Board member Sayer asked what the narrow portion will be – rental units.

In Favor: Bryce Terpstra is the general contractor on the project. This is about timing and sequence. The original layout has a 2nd floor requiring a stairwell on the westside.

Opposed: None

Public Hearing closed at 6:49 PM

Discussion:

The applicant was advised of the protocol in the case of withdrawal, delay or denial.

Motion

Board member Sayer made a motion and Board member Hagstrom seconded the motion to **postpone City Variance 1369 until November 1, 2023 meeting.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Brian Roush	x			
Dave Hagstrom	x			
George Warmer				x
Jeff Bollman				x
Oscar Heinrich	x			
Chris Hayes				x
Josh Sayer	x			

The motion to **postpone City Variance 1369** passed with a 4-0 vote.

City Variance 1370 –3042 King Ave W. (AKA 3036 King Ave W) – Front Build to Zone - A variance from Table 27-400-3. A-4 Front build to zone of 10 to 20 feet; 27-400-3. B-14 Ground story maximum height of 18 feet; 27-400-3. B-16 and 17 Window and Door Coverage of 65% on the ground floor and 15% on upper floors, 27-400-3. B-18 Number of front façade entrances – one required, 27-400-3. B-19 Permitted roof types – limited to parapet, pitched or flat, and Section 27-1005.Q.1 Vehicle Service Station, service bays may not be located on a front facade in a Corridor Mixed Use 2 (CMU2) zone to allow a front build-to zone of 44.2 feet from the back of easements on the King Ave W frontage, allow a 19.33 foot ground floor height, allow 50.5% window coverage on the ground floor, allow the front door to face east instead of north, allow a barrel roof type, and allow one service bay overhead door to face the front property line on Lot 3A1, Studer Acreage Tracts Subd., a 1.165 acre parcel of land. The purpose of the variance is to allow the development of a Smitty’s Carwash.

Recommendation:

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

Planning Staff is recommending the following conditions of approval:

1. The variance is limited to Lot 3A1 of Studer Acreage Tracts amended generally located at 3036/3042 King Ave West.
2. The variance is from the following portions of Section 27-406 and from Section 27-1005.Q:
 - a. Table 27-400-3. A-4 Front build to zone of 10 to 20 feet to allow a maximum setback of 74.2 feet from the front property line and 44.2 feet from the back of the easements across the front of the property;
 - b. Table 27-400-3. B-14 Ground story maximum height of 18 feet to allow a maximum first floor height of 19 feet 4 inches;
 - c. Table 27-400-3. B-16 and 17 Window and Door Coverage of 65% on the ground floor and 15% on upper floors to allow 50.5% on the ground floor and 0% on the front facade upper floor, including exceeding the maximum 15-foot width of a blank wall on the ground floor;
 - d. Table 27-400-3. B-18 Number of front façade entrances -- one required to allow no entrance on the front facade;

- e. Table 27-400-3. B-19 Permitted roof types -- limited to parapet, pitched or flat to allow a barrel roof/flat roof combination; and
- f. Section 27-1005.Q.1 Vehicle Service Station, service bays may not be located on a front facade to allow one overhead bay door to face the front street.

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 above or below the cutoff shield. This includes lighting for security on the building or in the parking lot.

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 24 months of Board approval and complete the development within 4 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.

Board member Hayes arrived by Phone @ 7:19 PM, stating he had been listening via Facebook for the entire meeting but was unable to connect via Zoom.

Questions for staff:

Board member Hagstrom stated this will be a great improvement to King Ave and asked if the barrel roof is in violation of the code

Public Hearing opened at 7:21 PM

Applicant: Anna Vickers, IMEG, 175 N. 27th

Thanked the staff for all their work on this and other projects. This project is a tight site front build to zone. The ground floor height window and door is not noticeable by pedestrian traffic. All landscaping requirements will be met. The roof type is a design brand for this company, Smitty's Car Wash.

Questions for Applicant:

Chair Heinrich asked if the applicant is amenable to changing the roof design. Anna replied she would ask but it is not cost effective and it is a standard design, a branding of this company.

In Favor: None

Opposed: None

Public Hearing closed at 7:26 PM

Discussion:

Motion

Board member Hagstrom made a motion and Board Member Hayes seconded the motion to **approve** **City Variance 1370 with staff recommendations and conditions.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Brian Roush	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 1370 passed with a 4-1 vote.

City Variance – 1371 – 3100 S Frontage Rd. – Parking siting - A variance from Table 27-400-6.B.6 requiring surface or accessory parking location to the side or rear of the property to allow the parking in the front yard in a Heavy Commercial (CX) zone, on Lots 5-7 of Riverside Acreage Tracts Subd., a 5.432 acre parcel of land. The purpose of the variance is to allow the location of parking to be in the front of a new building. The property has submitted a concurrent annexation petition.

Recommendation:

Planning staff is recommending conditional approval and adoption of the findings of the criteria for Variance 1371.

Staff is recommending conditions for the approval of this variance request.

1. The variance is to allow up to seven surface parking spaces to be in the front yard of the proposed office/warehouse building at 3100 S Frontage Road. The front yard is a yard extending along the full length of the front lot line which is situated between the office/warehouse building and the front lot line on S Frontage Road. No other variance is intended or implied
2. The variance is limited to Lots 5-7 of Riverside Acreage Tracts Subd., generally located at 3100 S Frontage Road.
3. The property must be annexed into the City of Billings in order for this variance approval to be valid. Annexation will be completed within 3 months of approval of this variance.
4. Minor modifications to the location of the proposed structures and other site improvement as shown on the submitted site plans are acceptable.
5. The street frontage landscaping on S Frontage Road will not include any evergreen trees or shrubs that are intended to obscure the subject property either at the time of installation or at maturity. All street trees installed shall be trimmed up so the lowest branch height at installation is at least 8 feet above grade.
6. No outdoor announcement system shall be audible beyond the exterior property lines.
7. The applicant will complete the building permit process (after annexation) within 2 years of Board approval and complete the project within 5 years of Board approval.
8. Any structures not shown on this approved site plan, will comply with all zoning regulations and other city regulations in place at the time of development.

9. All other zoning regulations, except for this specific variance, and any other applicable city regulations apply to the development of the site.
10. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
11. 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.

Questions for staff:

Public Hearing opened at 7:35 PM

Applicant: Taylor Kasperick, PEC, agent

The corridor is developing. Magnum Trucking is the owner. This is tailored to large truck distribution warehouse. The parking is minimized as much as possible. Lots of dead space with non-orthogonal lot design.

Questions for Applicant:

In Favor: None

Opposed: None

Public Hearing closed at 7:40 PM

Discussion:

Motion

Board member Hagstrom made a motion and Board Member Rousch seconded the motion to **approve** **City Variance 1371 with staff recommendations and conditions.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Brian Roush	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 1371 passed with a 5-0 vote.

Other Business: 2 new variances for November. Chair Heinrich will likely not attend.

ADJOURNMENT: The meeting adjourned at 7:44 PM.

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

Board of Adjustment

Date: 11/01/2023
Title: Return Item -Variance 1369- 502 Wicks Lane - Parking siting
Presented by: Karen Husman
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

Planning staff is recommending denial and adoption of the findings of the criteria for Variance 1369.

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

This is a variance request from Table 27-400.5-B.8 requiring surface or accessory parking location to be either in the rear yard or limited in the front or side yard in a Neighborhood Office (NO) to allow unlimited parking in the front yard on the west 25 feet of lot 9 and the east 50 feet of lot 10 of Block 1 (less 750 sf street) of Arrowhead Subd., an 0.863 acre parcel of land. The purpose of the variance is to allow an existing commercial structure to remain in place while a replacement structure is built on the site.

The new zoning code adopted by the city in January 2021 is intended to help achieve the goals of the 2016 Growth Policy. Those goals include making sure investments in new infrastructure increase the stability and sustainability of existing property values, create quality entryways to the city, and provide safe transportation systems that support all modes of travel. A key feature of the new code is the requirement to enhance all city streets by bringing buildings to the street frontage of lots and/or placing parking areas to the side or rear of buildings. The NO zone is not a zone where the building must be placed along the street front, but parking is required to be in the side yard or rear yard of the new structure. Both the building location and the parking location contribute to making the most of the city's investment in the street and increases the safety of all modes of travel. Streets that are lined with buildings tend to slow the speed of traffic while streets lined with parking lots and fewer structures tend to increase traffic speeds. The driver's perception of a safe travel speed is tied directly to objects and structures within the driver's field of vision. Driver's will tend to ignore posted speed limits if the design of the road and the lack of roadside structures indicates a higher speed is just as safe as the posted limit. There are several arterial, collector and even local streets in Billings that encourage higher speeds through design and the lack of roadside structures and other improvements.

This request will be a precedent case before the Board of Adjustment. The Board has granted four other variances in the past two years related specifically to the new code requirements for commercial or industrial zones. The first variance related to the required build-to zone for a new building was on Blue Creek Road in a mixed use zone. The parcel had a physical hardship - a mapped flood plain - across the entire frontage of the parcel. This flood plain would not allow the placement of the new building at the required build-to zone. The board conditionally granted this request. A second variance was conditionally approved in 2022 for a larger building sign for the new Coca-Cola bottling plant on South Frontage Road. The board found there was a hardship with this location that was not applicable to other land in the area, and the board had granted similar sign variances in the past. The third variance was conditionally approved for the new Costco location for parking siting to be located primarily in the front of the building, and along the side as well, the determination was that the land hardship with the location of the Canyon Creek ditch was hindering placement of the building to allow rear yard parking. The most recent was a variance on 3160 South Frontage Rd. to allow Parking to be located in the front of the building due to circulation restrictions and an adjacent natural gas pipeline.

The applicant states the hardship with this parcel is the existing location of the current office building. The clinic (Wicks Dental clinic) would like to remain open during construction, so the building would remain in place until the construction of the new building is complete. Staff's interpretation of the code does not consider this a hardship, specifically, there is no hardship with the land and with the Planning Division approval of building permit 23-00771, with a building design that is in compliance to the code and Table 27-400.5-B.8, not requiring a variance. The site layout and design of this approved building permit also shows the site could be developed in conformance with the parking siting requirements, and maintain the existing building during construction. There appear to be several ways to construct the building on the site per the zoning code requirements and still have the existing building remain for all or most of the construction of the new building.

Planning staff has reviewed Wicks Dental preferred site plan and is recommending denial to the Board of Adjustment. The applicant has not proven a hardship with the land. The applicant has not demonstrated the requested variance would be the minimum variance from the code requirement to accommodate the development and not cause unnecessary hardship. The building can be constructed in compliance as demonstrated by the Planning Division approved building permit design. This

project had a site layout that provided the parking to the east side portion of the site and oriented the building and its entrance to face the parking area and address traffic circulation.

The Permit 23-00771 fit the parking siting per Section 27-802.B.8 Surface or Accessory Parking Yard Locations Surface parking lots and accessory parking structures or buildings are allowed in different yards per the site and structure regulations for each district. Limited parking for different yards is defined as follows:

- (a) Limited Side Yard Parking. Where allowed, limited side yard parking is one double-loaded drive aisle of surface parking, perpendicular to the front lot line, with a maximum paving width of 65 feet, located in the side yard of the lot.
- (b) Limited Front Yard Parking. Where allowed, limited front yard parking is one single-loaded drive aisle of surface parking, parallel to the front lot line, with a maximum paving depth of 40 feet, located in the front yard of the lot. The parking must be located on the building side of the drive aisle and curbed sidewalk is required between the parking and the building

Since the first site proposal, Wicks Dental has abandoned the approved plans and provided the proposed site plan included with this variance application. Staff does not agree that a variance is needed or necessary as it conflicts with the intent of the Zoning Code and the Growth Policy.

APPLICATION DATA

OWNER: Loughton Jones, Dental Properties, LLC
AGENT: Taylor Kasperick, Performance Eng.
PURPOSE: To allow unlimited front parking
LEGAL DESCRIPTION: Lot 9 & 10, Block 1, Arrowhead Subd.
ADDRESS: 502 Wicks Lane
SIZE OF PARCEL: 0.863 acres
ZONING: NO
EXISTING LAND USE: Dental Office-Clinic
PROPOSED LAND USE: Same

SURROUNDING ZONING & LAND USE

NORTH: Zoning: NO, N2
Land Use: Crane Rental service, Residential
SOUTH: Zoning: N2, NX1
Land Use: Residential single family, residential duplex
EAST: Zoning: NMU
Land Use: Commercial shopping center
WEST: N2
Land Use: Residential single family

Planning staff is recommending denial based on staff recommended findings of the variance review criteria.

STAKEHOLDERS

Planning staff notified owners by mail, posted the property and published the legal ad as required. As of the date of this staff report, no comments or concerns have been registered with the Planning Division.

The Board of Adjustment at its meeting on October 4, 2023, granted the applicant an extension to have their application heard at the November 1, 2023, meeting date. The delay was granted to allow staff to determine if the site was eligible for Administrative Relief for a reduction in parking, that would eliminate the need for a variance approval. It was determined that this proposal was eligible for an application for Administrative Relief, and after their application was submitted relief was granted through a letter of approval for the reduction in the off-street parking required from 1/222 sf to 1/330 square feet -- 53 spaces to 44 spaces. Even with this reduction in the required parking, the variance is being brought back to the Board per the applicant's request and the action at the last meeting. At the time this staff report was submitted there were no other comments received.

ALTERNATIVES

The Board of Adjustment may:

- Deny the requested variance and adopt the proposed findings of fact for the review criteria as recommended by the Planning staff;
- Approve the requested variance with conditions and amended findings of fact for the criteria;
- Approve the requested variance with no conditions and amended findings of fact for the criteria;
- Allow the applicant to withdraw the variance request; or
- Delay action on the variance to a future BOA meeting.

FISCAL EFFECTS

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

SUMMARY

Prior to approval, the Board of Adjustment shall ensure that the determinations for variances (Sec. 27-1627.D and E.), as outlined below, have been satisfied:

Section 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.

The applicant states a hardship with the subject property is the existing location of the current office building. The clinic (Wicks Dental clinic) would like to remain open during construction, so the building would remain in place until the construction of the new building is complete. The applicant states that the building could not be constructed in conformance with the required parking location with the existing building still standing. Staff's interpretation of the code does not consider their reason a hardship. There is no hardship with the land, and there is a building permit (BP-23-00771) approved by the Planning Division, with a building design and parking layout that is in compliance with Table 27-400.5-B.2, not requiring a variance. The site layout and design of this approved building permit shows the site could be developed in conformance with the parking siting requirements, and maintain the existing building during construction. The applicant has not proven a hardship with the land. The building can be constructed in compliance as demonstrated by the Planning Division approved building permit design. This project had a site layout that provided the parking to the east side portion of the site and oriented the building and its entrance to face the parking area and address traffic circulation. Since the first site proposal, Wicks Dental has abandoned the approved plans and provided the proposed site plan included with this variance application. Staff does not agree that a variance is needed or necessary as it conflicts with the intent of the Zoning Code and the Growth Policy.

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

There are no similar or precedent cases for the board to weigh for this application. Under the previous zoning code for the city, parking lots were allowed in any location on a lot in relation to the building and street frontage. Most of the nearby commercial developments have the buildings to the rear or somewhat centered on the lots with parking lots toward the front property line and some with parking front side and rear. Large front yard parking lots are an outdated pattern of suburban commercial development. It is inefficient and a costly development pattern to sustain over time. The right to place parking in the front of a building is commonly enjoyed by some previous developments in the area. The rights commonly enjoyed by others in the district are now considered non-conforming site characteristics. The applicant has not demonstrated the requested variance would be the minimum variance from the code requirement to accommodate the development and not cause unnecessary hardship. It would not be consistent with current regulations to grant a variance based on prior development standards. New developments are required to meet current regulations - not prior regulations. It also appears that design preferences for the site conflict with an approved building permit and site plan for development.

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.

Granting this variance as requested may confer on the applicant a special privilege because this request is a precedent request before the board. While surrounding properties may have developed in a similar way under the previous zoning regulations, the new zoning code is intended to move away from this style of development. Variance requests should tend to be the minimum required to accommodate the proposed construction. The building could be constructed in compliance with the parking standards as evidenced by the approved building permit site plan (in attachments).

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 Policy.

Granting this variance as requested will not meet the general purposes and intent of the zoning regulations and the 2016 Growth Policy. The Growth Policy guidelines encourage new developments that support existing investments in infrastructure, stabilize and grow the city's tax base and enhance entryways to the city. The proposed development is not in conformance with these stated goals and guidelines. The zoning regulations were adopted to specifically require the placement of surface parking lots to the side or rear of buildings to minimize the inefficient use of land on the street frontage, create street frontages that benefit the community at large, minimize the need for over-sized signs, and allow for the sustainable and adaptable use of commercial land.

Section 27-1627.E

2) In granting any variance, the Board 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;

Staff is not recommending conditions for the variance request. Below are *draft conditions if the Board adopts different findings for the above criteria that what staff has presented.*

1. This is a variance request from Table 27-400.5-B.8 requiring surface or accessory parking location to be either in the rear yard or limited in the front or side yard in a Neighborhood Office (NO) to allow unlimited parking in the front yard.
2. *The variance is limited to the west 25 feet of lot 9 and the east 50 feet of lot 10 of Block 1 (less 750 sf street) of Arrowhead Subd., an 0.863 acre parcel of land generally located on 502 Wicks Lane.*
3. *All parking lot lighting shall be installed at a maximum height of 15 feet, including the base and fixture. All parking lot and building wall lighting - except for signage - shall have full cutoff shields so no part of the lens or fixture is visible.*
4. *The applicant will apply for a building permit within 1 year of Board approval and complete the project within 3 years of Board approval.*
5. *Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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, lease-holders, heirs and assigns.*

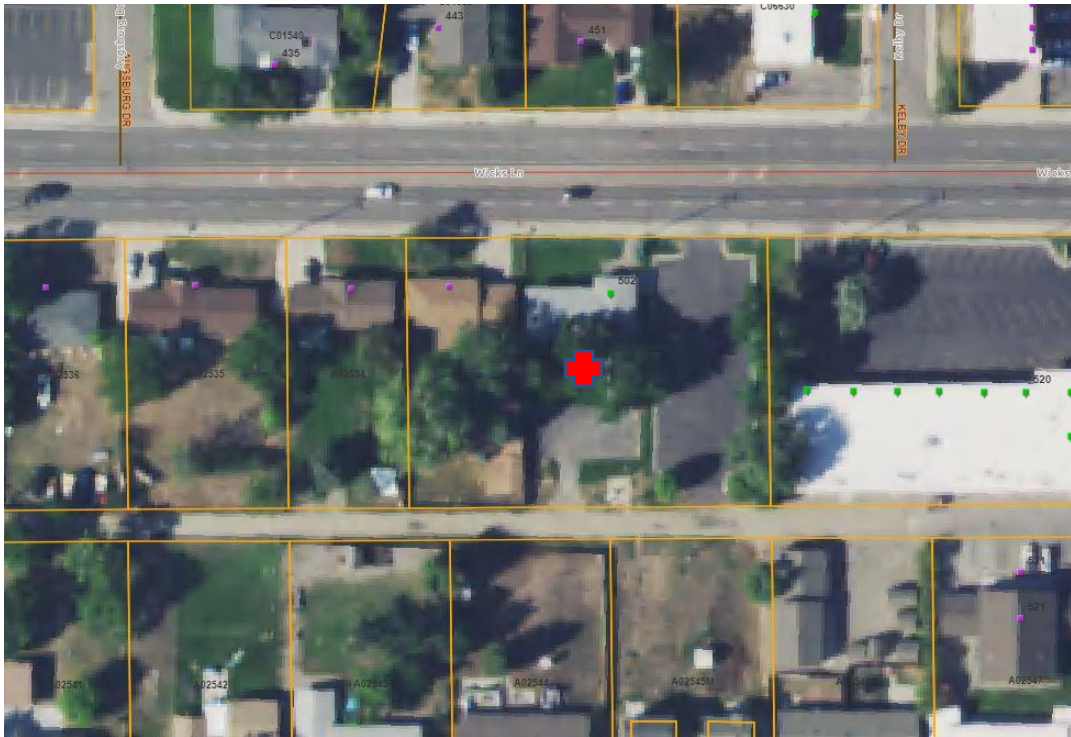
3) The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance. Staff is not recommending any conditions of approval. If the Board chooses to adopt different findings of the primary criteria, there are time limits prescribed in the draft conditions.

4) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this zoning code in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other properties in the district. The granting of this variance would not allow a use that is not allowed in the zoning district. Dental office and clinic are allowed in the NO district.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Proposed Site Plan
Site Plan approved under BP2300771

Zoning Map & Site Photos





Subject property



West



East



East



North



Northeast

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # _____ - Project # _____

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 #A02533 CITY ELECTION WARD # 2

Legal Description of Property: Block 1, Lot 9, W25 ft Lot 9 & E50 ft Lot 10 (Less 750 Sq. ft Street), Arrowhead Subd., S22, T01N, R26E

Address or General Location (If unknown, contact City Engineering): 502 Wicks Ln.

Zoning Classification: NO

Size of Parcel (Area & Dimensions): 0.863 Acres (224.7' x 167.4')

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: Siting of the parking lot. City of Billings Zoning Code Table 27-400-5 B.8.

Facts of Hardship: Please see attached letter.

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

Owner(s): Laighton D. Jones Dental Properties, LLC.

(Recorded Owner) 502 Wicks Ln., Billings, MT 59105

(Address) (406) 248-7868

(Phone Number)

(email)

Agent(s): Performance Engineering

(Name) 608 N. 29th St., Billings, MT 59101

(Address) (406) 384-0080

taylor@performace-ec.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: *Laighton D. Jones*
(Recorded Owner)

Date: 9/1/23

Date Stamp



608 North 29th Street • Billings, MT 59101 • 406-384-0080

September 1, 2023

Chair of the Board of Adjustments
City of Billings Planning Department

RE: Block 1 Lots 9 of Arrowhead Subdivision Zoning Variance Request

To the Chair of Board of Adjustments,

Thank you for the time and consideration in reviewing the submitted City Zoning Variance Application for the Wicks Dental facility proposed on Lot 9 of the Arrowhead Subdivision (502 Wicks Lane, Billings, MT 59105). This property is located on the south side of Wicks Lane between Kelby Drive and Augsburg Drive. The project is proposed to provide a new dental facility for Wicks Dental Clinic. Wicks Dental Clinic currently operates out of an existing building on the property and the owner feels that it is a great location for an updated building.

The submitted variance applies to Table 27-400-5, B, 8, of the City of Billings Zoning Code Section 27-409 for Neighborhood Office (NO) District, which requires surface or accessory parking to be located in the rear with limited front and side yard parking. The owner of the property plans to construct their new building while maintaining their existing office space during construction.

Facts of hardship to meet this requirement for the planned development relate to the current location of the proposed building in relation to the existing office space. The facts of hardship experienced with this site include the following:

- The proposed layout allows the new building to be constructed without demolishing the current office space. Construction of the proposed building could take a year or longer to complete and demolishing the existing Wicks Dental Clinic to construct the proposed building would cause undue financial burden on the

owner and their employees. Additionally, current customers would be required to find a new dental clinic to serve them while the proposed building is being constructed. It may be hard for the owner to regain customers after the new building is built and it would cause long-lasting financial strain. It is likely that if the variance is not granted the owner would not be able to construct the new building as they cannot afford to shut down the business for a year or more.

- The proposed layout maximizes both distance from the existing dental clinic and the amount of square footage available to the owner upon completion of the proposed building. Were an alternate layout proposed while maintaining the existing office space there would be approximately 7-feet between the proposed building's foundation and the outside wall of the existing building. The proximity of the construction activities to the existing building concerns the owner. The safety of their clients, employees and the on-site construction crews is of the utmost importance to the owner. Utilizing an alternate layout that conforms to the parking requirements would create unsafe conditions for construction crews, employees, and clients.
- A majority of the proposed parking will be located south of the northern most roof line of the new office building (closest to Wicks Ln., which is the frontage road). Only a portion of one ADA van accessible space and one existing parking spot will be in front of this roof line. The remainder of the parking spots will be located to the side or rear of the northern most roof line. A previous layout with the widest portion of the building rotated to run north-south was approved by the City of Billings. The previously approved layout had all its parking on the side or rear yard, with the northern most roof line treated as the front. The proposed layout matches the previously approved layout as close as possible while allowing the owner to maintain business activities while ensuring a safe setback from construction activities.
- It is also important to note that approving the proposed building layout with front and side parking adheres better to Crime Prevention Through Environmental Design (CPTED) principles. A major design principle encouraged in CPTED is having an open line of sight to parking areas. The proposed layout allows for a better line of sight from Wicks Lane and discourages crime. Rear

parking would reduce line of sight from Wicks and could encourage crime. The property is bordered to the south (across the alley) by First Neighborhood (N1) and Mixed Residential (NX1) districts. CPTED design principles and open sight lines help to protect customers, employees and adjacent residents from crime.

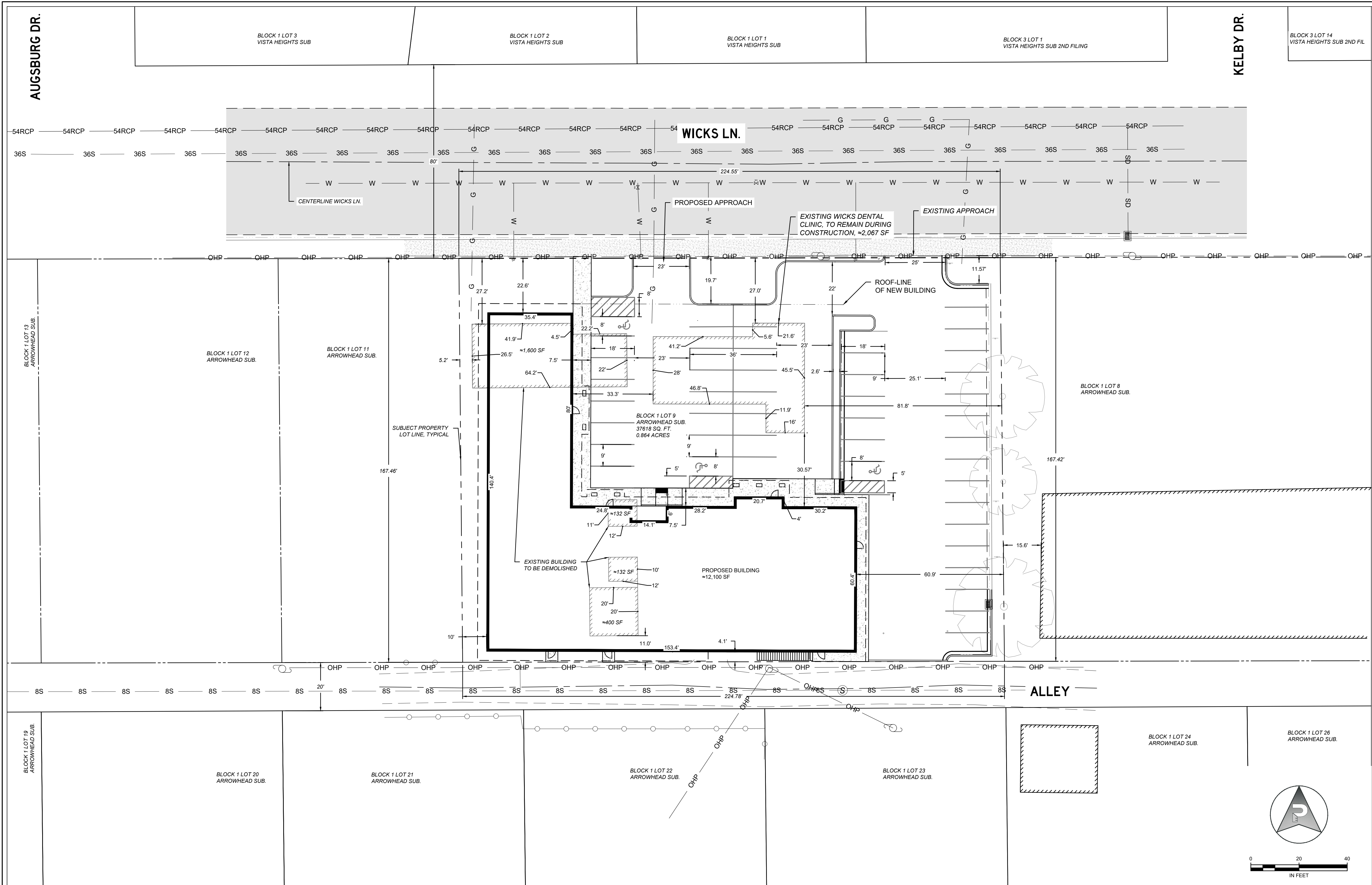
Due to these reasons, it was considered difficult and ultimately unsafe to propose a layout which places all parking to the rear with limited side and front yard parking. While a majority of the parking spaces are located in front of the proposed building all but the aforementioned spaces are located to the side or rear of the northernmost roof line along the frontage road.

We appreciate your consideration of this variance request given the construction concerns and financial burdens associated with shutting down Wicks Dental Clinic during construction. Should you have any further questions please do not hesitate to call at 406-384-0080 or email myself at taylor@performance-ec.com. We look forward to presenting this request to you at the scheduled meeting for consideration.

Best Regards,


Taylor Kasperick, PE
Project Manager

PE STANDARD CTB
 9/1/2023 12:22:11 PM
 C:\Users\Brandon\OneDrive\Documents\Projects\2023\09\01\Jones Dental\CAD\DWG\REF121-078_JDental Grading Relayou.dwg



REVISIONS				
NO.	DESCRIPTION	DATE	BY	CHECKED BY
1				
2				
3				
4				
5				
6				

COORDINATION SET



PERFORMANCE ENGINEERING
 608 NORTH 29TH STREET (406) 384-0080
 BILLINGS, MT 59101 performance-ec.com

TJK
 DESIGNED BY

TJK
 DRAWN BY

8/23/23
 DATE

QUALITY ASSURANCE

TJK
 CHECKED BY

8/23/23
 DATE

WICKS DENTAL CLINIC

502 WICKS LANE
 BILLINGS, MT 59105

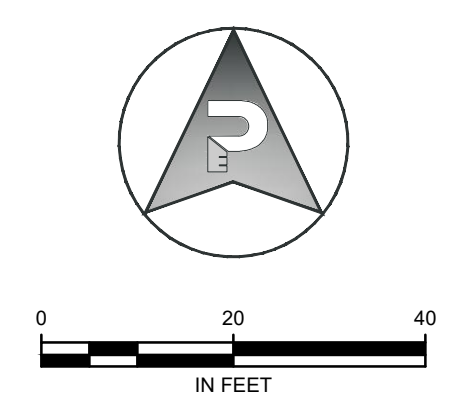
VARIANCE EXHIBIT

PROJECT NUMBER
 21-078

SHEET NUMBER
 1 OF 1

DRAWING NUMBER
C1.00

COPYRIGHT 2023 ©



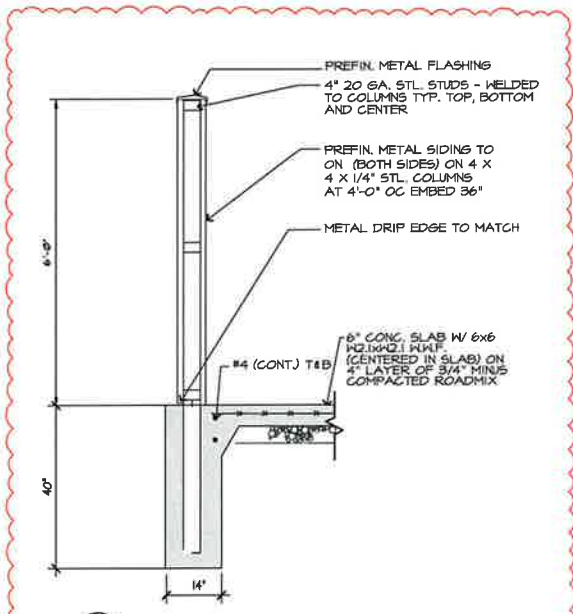
APPROVED BY THE BILLINGS FIRE DEPARTMENT
2012 IFC AS ADOPTED BY THE CITY OF BILLINGS
8/29/2023 2:28:37 PM
BP-23-00771
Jaime Fender

LANDSCAPING

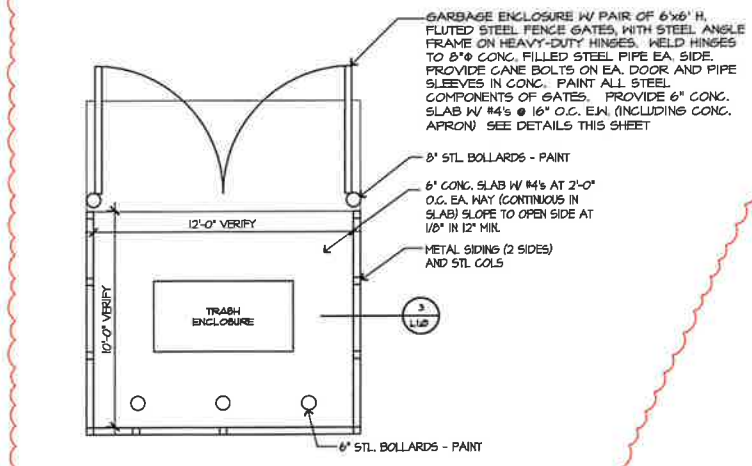
Lot: .264 acres
Zoning: NO
Lot Coverage: 32%
Landscaping:
-Street Trees: 6'
-225' = 6 Trees
Bufferyards:
West Property Line: B2
-1675' = 83.75 points required (50.6 tree, 8.4 shrubs)
+ (5) 15" Caliper trees (65 points) + 1321st perennial beds + organic mulch (45 points)
East Property Line: B
-1 Tree per 10'; 167' = 3 Trees (existing)

TREES & SHRUBS USED TO BE FROM THE APPROVED BILLINGS PLANT LIST

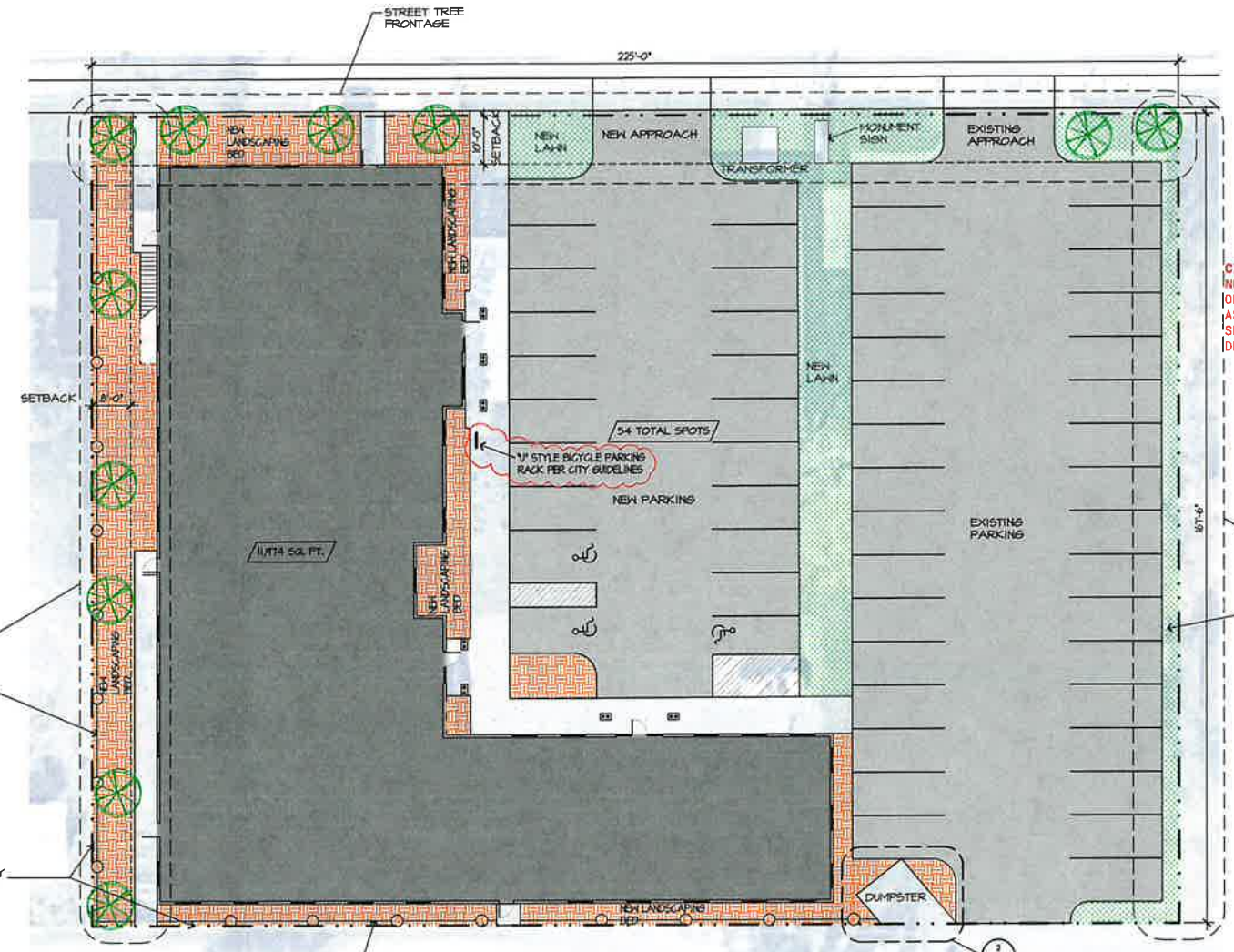
- LEGEND:**
-  15"-25" CALIPER TREE PER CITY OF BILLINGS PLANT LIST
 -  PERENNIAL PLANTING BED W/ ORGANIC MULCH & SHRUBS (MIN. 75% COVERAGE)
 -  LAWN GRASS (EXISTING OR NEW)



ENCLOSURE DETAIL
Scale: No Scale



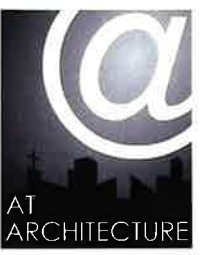
DUMPSTER ENCLOSURE
Scale: No Scale



LANDSCAPE PLAN
Scale: 1/8" = 1'-0"

Install landscaping as shown. Choose street trees from the approved list on line here:
<https://www.billingsmt.gov/2138/Project-Re-Code> (Pages 6 & 7).
Incomplete landscaping at the time of CO will require posting a bond or letter of credit in the amount of 150% of the outstanding work.

CITY STAMPED PLANS ARE TO BE ON THE JOBSITE
NOTE: ALL FEDERAL, STATE AND LOCAL CODES, ORDINANCES, REGULATIONS, ETC. SHALL BE CONSIDERED AS PART OF SPECIFICATION FOR THIS BUILDING AND SHALL TAKE PRECEDENCE OVER ANYTHING SHOWN, DESCRIBED, OR IMPLIED WHERE VARIANCES OCCUR.
REVIEWED FOR CODE COMPLIANCE
8/29/23 10:58:57 AM
BP-23-00771
Kurt Larson



WICKS DENTAL CLINIC

COPYRIGHT STATEMENT:
THESE DESIGNS ARE THE PROPERTY OF AT ARCHITECTURE. NEITHER THESE DESIGNS OR ANY PORTION THEREOF SHALL BE COPIED, REPRODUCED, MODIFIED, OR RECONSTRUCTED WITHOUT THE WRITTEN CONSENT OF AT ARCHITECTURE. VIOLATION IS AN INFRINGEMENT OF COPYRIGHT LAW.
PROJECT: 12210

DATE:	8/8/2023
DRAWN BY:	MM
CHECKED BY:	JA
REVISIONS:	4/1/2023
CITY REVISIONS:	8/23/2023
CITY REVISIONS:	7/18/2023
CITY REVISIONS:	7/24/2023

LANDSCAPE PLAN

L1.0

Board of Adjustment

Date: 11/01/2023
Title: Variance 1372 - 3508 S Frontage Rd - Allow Surface Parking in Front Yard
Presented by: Nicole Cromwell
Department: Planning & Community Services
Presentation: Yes

Information**RECOMMENDATION**

Planning staff recommends conditional approval and adoption of the recommended findings of the review criteria for Variance 1372.

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

The applicant is requesting a variance from the siting and building standards for the Heavy Commercial (CX) zone district that requires surface parking to be in a side or rear yard (Section 27-409- Table 27-400.6 (B.6)). The property is on South Frontage Road near where the road changes speed and direction and becomes Riverside Drive and then Garden Avenue. These are local streets that continue north and east to the S 27th St interchange with Interstate 90. The subject property is legally described as an unplatted parcel in Section 15, Township 1 South, Range 26 East, a remainder of the south part of Government Lots 2 and Lot 3 (less C/S 1596), and is approximately 20 acres in area. The lot will be split in the near future and the requested variance will apply only to the lot on the west half of the parcel where the proposed use will be located. The proposed use is for a consolidate location for Torgerson's Equipment, an agricultural dealership offering sales, parts, & service to customers across Montana. The business currently has two locations in the area including Old Hardin Road in Lockwood and on Laurel Frontage Rd in Billings. This location is larger and can accommodate the equipment sales, parts and service functions in one place.

Torgerson's Equipment needs to accommodate both customer traffic and delivery and maintenance traffic for large machinery. The access to the land is controlled by the Montana Department of Transportation (MDT) as a frontage road to I-90. MDT will not allow two access points in light of speed and volume of traffic on this section of the road. Only one access will need to accommodate both customer traffic and semi-truck traffic in the same drive aisle and maneuvering area. There is frequent traffic to Torgerson's both for deliveries of equipment (semi-trucks and trailers), as well as passenger vehicles that will use the same driveway off S Frontage Road. One access point constrains the site plan. The property also has other physical constraints such as the Yellowstone River flood plain, the South Billings drain on the west, the Grey Eagle ditch that cuts through the lower half of the parcel (see aerial photograph), and the petroleum pipelines that cross the front property line. The city recently extended water and sewer service to the location to support the development of two large distribution warehouses to the east at 3218 and 3226 South Frontage Road. Those warehouses are under construction. The proposed Torgerson's warehouse, equipment display and secure storage yard on this parcel to the west of those parcels will not be quite as large in building area but does require a safe and efficient use of the frontage. Torgerson's has more individual customer traffic than the new warehouses under construction to the east.

The warehouses to the east are situated on larger parcels and meet the zoning code requirement for location of surface parking (side yard). The need for a "through train" for the uses in these larger warehouses does not exist, so the surface parking is located along the sides of the buildings (see attached Master Site Plan exhibit). The subject property and intended use needs a turn around area on the east side of the proposed structure, access for semi-truck traffic on both sides of the building in addition to overhead door access on the west side of the building. This access for heavy equipment, machinery and semi-truck traffic has to be as separated as possible from the regular customer and employee traffic to be a safe environment. There are proposed gated accesses to the rear yard from each side yard where much of storage and staging of equipment will happen. To minimize the conflict between these two types of traffic, the site plan shows some of the parking in front of the building with some on each side of the building.

There are 78 parking stalls shown on the site plan. Typically, a warehouse would require one parking stall for each 1,000 square feet of floor area. This building will have a mixture of uses including office space, sales area and other uses that may require more parking per square foot. Planning staff has not calculated whether the proposed parking will require a waiver of the maximum parking. Administrative waivers from the maximum number of off-street parking spaces may be requested but do require additional landscaping if approved. Fifteen of the proposed 78 parking space are against the front of the building. Twenty-one spaces are facing S Frontage Road opposite the 15 in front of the building. Five more spaces are in the front yard to the west of the proposed building. A total of 41 of the 78 parking stalls are in the front yard of the property (the space between the proposed building and the street frontage). An accessible parking space must be provided and for this size of a parking lot, two would be required. The site plan does not indicate where the primary public entrance will be,

but the accessible spaces would likely be two of the 15 that face the front of the building.

The applicant could place more of the stalls on the east side of the building, but this would constrict the maneuvering area needed for equipment and semi-trucks. The applicant could request relief from providing all the required off-street parking stalls and eliminate some of the front yard parking stalls. The existing locations on Old Hardin Road and Laurel Road have much fewer parking spaces. The Laurel Road location has six marked customer spaces (12,400 sf building), and the Old Hardin Road location has about 38 customer/employee parking spaces. The Board of Adjustment previously granted a variance to this code requirement for the new developments at 3160 S Frontage Road for a new Mobile Stor, and for a new trucking logistics center at 3100 S Frontage Road. The location along a state-controlled access frontage road makes site development constrained where two types of traffic must be accommodated safely. The petroleum pipelines, irrigation ditches and drains also challenge these lots.

Planning staff is recommending conditional approval based on the proposed findings for the review criteria.

STAKEHOLDERS

Planning staff notified the surrounding property owners by mail, placed a legal advertisement in the Yellowstone County News, placed a synopsis of the application on the Current Zoning Applications webpage, and posted the property with the required sign. No comments from any surrounding owners were received by Planning staff.

ALTERNATIVES

The Board of Adjustment may:

- Conditionally approve the requested variance and adopt the proposed findings of fact for the review criteria as recommended by the Planning staff;
- Approve the requested variance with different or added conditions, or no conditions;
- Deny the requested variance and amend the findings of fact for the criteria;
- Allow the applicant to withdraw the variance request; or
- Delay action on the variance to a future BOA meeting.

Under local regulations and state law, four votes in favor of a variance request are needed for approval, regardless of the number of BOA members in attendance. A quorum of the Board is four members. If only four Board members attend the hearing, a unanimous vote in favor is required to approve a variance. The applicant has not requested a delay of the hearing or a withdrawal of the application.

FISCAL EFFECTS

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

SUMMARY

Prior to approval, the Board of Adjustment shall ensure that the determinations for variances (Sec. 27-1627.D and E.), as outlined below, have been satisfied:

Section 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.

The property is subject to several physical constraints including two petroleum pipelines that run across the front of the property, two drainage ditches, a floodplain along the rear property line and the state-controlled access to the high speed arterial street frontage. The posted speed limit is 45 mph, however traffic generally travels at much higher speed due to the proximity of the interstate and openness of the right of way. The applicant's specific internal traffic and storage needs requires a large area for maneuvering equipment and semi-trucks with trailers and customer and employee access from the front of the building. These are circumstances that are peculiar to this location.

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

There are two locations in the vicinity that have been approved for the same variance due to the same property constraints and the owner's need for large spaces for moving vehicles and equipment. These are similarly situated property owners. Property further west on the S Frontage Road corridor have large front yard parking lots including Hogan Crane and Transport (3716 S Frontage Rd), Intermountain Distributing at 1010 Intermountain St, and the I-State Truck Center at 4600 S Frontage Road. However, the existing business on the South Frontage Road were developed under the old code and so were not required to develop like new projects.

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.

Similar to the finding for criteria 2 above, the granting of this variance may not confer a special privilege on the applicant

due to the existing developments in the area and the previous variances approved for parcels in a CX zone district with similar hardships.

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 Policy.

The 2016 Growth Policy and the 2021 Zoning Code adopted to further the Growth Policy goals, are intended to curtail the out-of-date development style of placing all new commercial development behind a sea of parking stalls. The provision of 15 parking stalls along the front of a building, with another 21 spaces facing the street along a high speed arterial, will be in harmony with the general purposes and intent of the Growth Policy and zoning code. The appearance of the structure and the equipment display area itself will be the most prominent feature from the right of way. The design of the site will be similar to the Old Hardin Road facility.

Section 27-1627.E

2) In granting any variance, the Board 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;

Staff is recommending conditions for the approval of this variance request.

1. The variance is to allow up to 41 surface parking spaces to be in the front yard of the proposed new Torgerson's facility at 3508 S Frontage Road. The front yard is a yard extending along the full length of the front lot line which is situated between the new building and the front lot line on S Frontage Road. No other variance is intended or implied.
2. The variance is limited to S15, T01 S, R26 E, RMDR S PART OF GOV LT 2 & RMDR S PART GOV LT 3 (LESS COS 1596 AMD), the west half as shown on the submitted site plan.
3. The applicant will install all the required landscaping on the street frontage, in the proposed parking lot and any other bufferyards that are required.
4. Minor modifications to the location of the proposed structures and other site improvement as shown on the submitted site plans is allowed.
5. The street frontage landscaping on S Frontage Road will not include any evergreen trees or shrubs that are intended to obscure the subject property either at the time of installation or at maturity. All street trees installed shall be trimmed up so the lowest branch height at installation is at least 8 feet above grade. The species and location of street frontage landscaping shall follow Section 27-1203 and species selected from the City of Billings recommended boulevard tree list.
6. No outdoor announcement system shall be audible beyond the exterior property lines.
7. The applicant will complete the building permit process within 2 years of Board approval and complete the project within 5 years of Board approval.
8. Any structures not shown on this approved site plan, will comply with all zoning regulations and other city regulations in place at the time of development.
9. All other zoning regulations, except for this specific variance, and any other applicable city regulations apply to the development of the site.
10. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
11. 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.

3) 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.

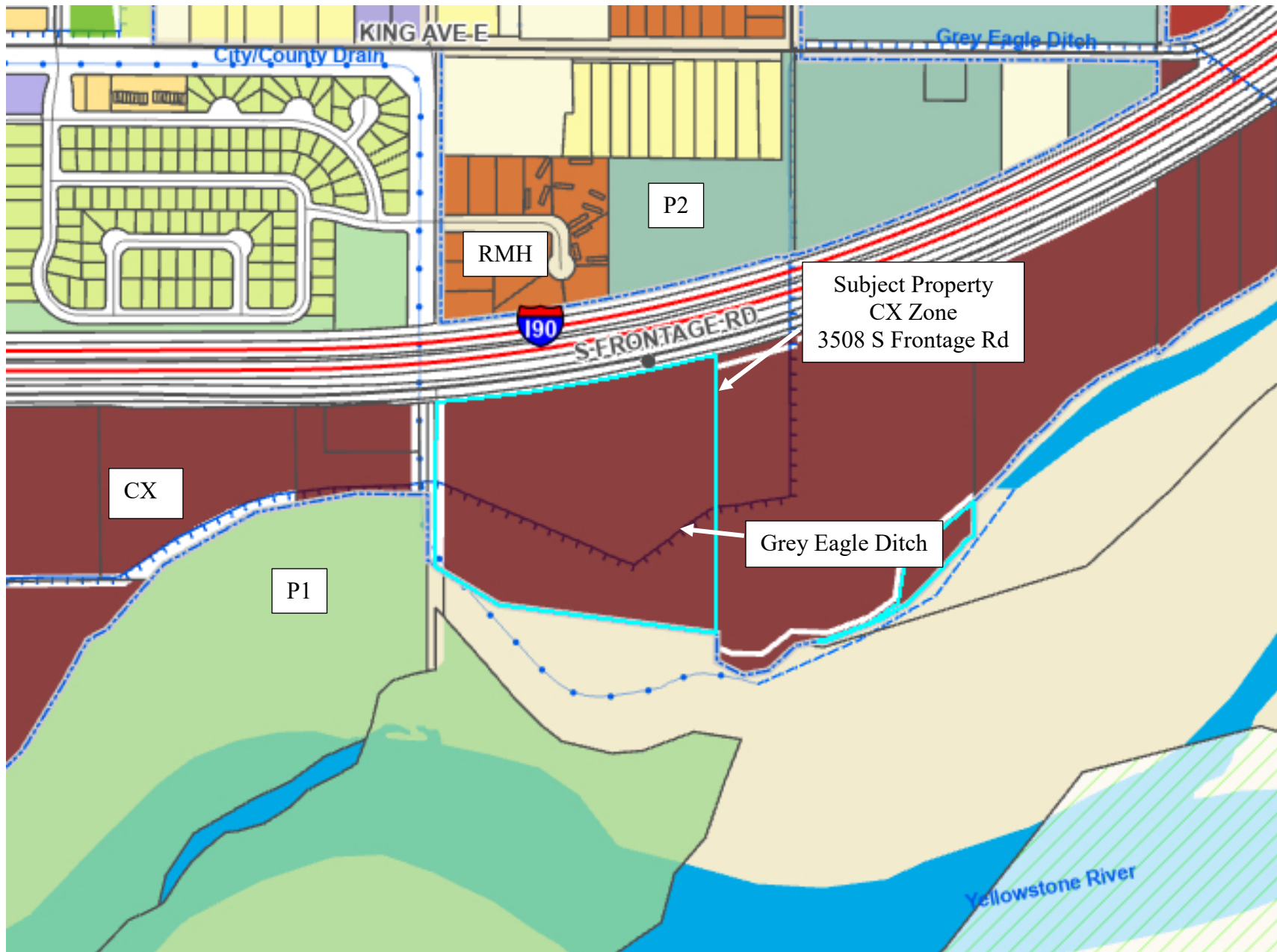
Staff is recommending conditions of approval that include time limits to begin and complete the project.

4) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this zoning code in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other properties in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district. Equipment dealerships, parts, sales and service are allowed uses in the CX zone.

Zoning Map and Site Photos Var 1372
Chart of Zoning History Var 1372
Application and Letter Var 1372
Site Plan Var 1372

City Variance 1372 – 3508 S Frontage Road – proposed Torgerson’s Equipment
Zoning Map and Site Photos







Subject Property – 3508 S Frontage Rd



View west on S Frontage Rd



3226 S Frontage Rd

View east on S Frontage Rd



View north east across I-90



View north west across I-90



1728 Old Hardin Road

Chart of Zoning History for Variance 1372 – 3508 S Frontage Road

SUBJECT PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					Annexed and Zoning changed from A to CX in 2021
SURROUNDING PROPERTY	VARIANCE #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
3100 S Frontage Road	1371	10/4/2023	Parking Location	Y	Magnum Trucking
3160 S Frontage Road	1359	2/1/2023	Parking Location	Y	Mobile Stor new construction
4825 Midland Rd	1360	3/1/2023	Building Location Parking Location Front Façade	Y	Midland Shops
807 Bench Blvd	1362	3/1/2023	Building Location	Y	New drive-thru service
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

APPLICATION FORM

CITY VARIANCE

ID: Billings Variance # 1372 **- Project #** PZX-23-00220

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 # D01863 CITY ELECTION WARD # 1

Legal Description of Property: Remainder of the South part of Government Lots 2 and 3 of Section 15, Township 1 South, Range 26 East, less COS 1596.

Address or General Location (If unknown, contact City Engineering): 3508 South Frontage Road

Zoning Classification: Heavy Commercial (CX)

Size of Parcel (Area & Dimensions): Approximately 20 acres total, lot will be split approx. evenly.

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance(s) Requested: Variance from Section 27-409, Table 27-400-6 (6) to allow for some parking in front of the building.

Facts of Hardship: (attach letter) Attached letter.

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

Owner(s): Torgerson's Real Estate Holdings LLC

(Recorded Owner) 4701 N River Dr, Great Falls, MT 59405

(Address) 406-453-1453 brion.torgerson@torgerson.biz

(Phone Number) (email)

Agent(s): Taylor Kasperick, Performance Engineering

(Name) 608 N 29th St Billings, MT 59101

(Address) 406-384-0080 taylor@performance-ec.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: *Brion Torgerson* Date: 9.29.2023
(Recorded Owner)





608 North 29th Street • Billings, MT 59101 • 406-384-0080

October 2, 2023

Chair of the Board of Adjustments
City of Billings Planning Department

*RE: Zoning Variance Request for 3508 South Frontage Road –
Remainder of the South Part of Government Lots 2 and 3 of Section
15, Township 1 South, Range 26 East, less COS 1596.*

To the Chair of Board of Adjustments,

Thank you for the time and consideration in reviewing the submitted City Zoning Variance Application for the Torgerson's Equipment facility proposed at 3508 South Frontage Road in the City of Billings, being the remainder of the South Part of Government Lots 2 and 3 of Section 15, Township 1 South, Range 26 East less COS 1596. This property is located on the south side of South Frontage Road immediately east of Washington Street and the South Billings Drain, north of the Yellowstone River, and south of South Frontage Road and Interstate 90. The project is proposed to provide a new operations facility for Torgerson's, which will combine their existing operations currently being used at 1728 Old Hardin Road (Torgerson's Construction Equipment) and at 5022 Laurel Road (Torgerson's Implement). The Owner feels this is a great location for such use provided its proximity and ease of access to Interstate 90 for surrounding contractors and farmers, with the interstate frontage being surrounded by heavy commercial/light industrial zoned districts along the road.

The submitted variance applies to Table 27-400-6, B, 6, of the City of Billings Zoning Code Section 27-409 for Heavy Commercial (CX) District, which requires surface or accessory parking to be located on the side or rear of a building. The owner of the property plans to construct a building which will include office, sales, and equipment service space.

Per the City Variance application package, this letter and statement of hardship is being provided to answer the following questions, with reasoning for each questions provided below.

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

Reasons for being prevented from using the property in conformance with the Zoning Regulations requirements are two-fold, including both site constraints as well as planned use and function of the facility. In relation to site constraints, this property has numerous encumbrances that limit the ability of the site to meet the zoning code requirements for front parking.

- a. The first includes limited access to the site based on the adjacent public right-of-way being South Frontage Road and access controlled by MDT. This is important to note as if multiple approaches were allowable, as would be the case based on lot frontage if it was City right-of-way, dedicated approaches for both passenger vehicles and large trucks and machinery could be provided to keep different traffic types separate from one another. However, since access will be limited to one approach, the ability to do so is diminished.
- b. Secondly, there are numerous existing physical limitations to the site, including the Yellowstone River to the south, the South Billings Drain to the west, Grey Eagle Ditch that will need to be re-routed to the north, and existing gas and petroleum lines running along the frontage. These physical limitations preclude the Owner fully utilizing the full area of the property to push the building to the front of the lot and provide additional space for parking on the side and rear of the building, while still providing a safe environment for passenger vehicles and heavy machinery to operate together.
- c. Lastly, the physical dimensions of the site lead to a certain amount of “dead space” if not utilized for drive lanes and/or parking. As the lot is adjacent to South Frontage Road with runs at a diagonal in comparison to side lot lines, a considerable amount of unusable ground would be incurred on the front of the lot if the building was pushed all the way to front. Similarly, if the building was rotated to be perpendicular to the front lot line, this “dead space” would then shift to the side lot line.

In terms of use limitations necessitating this request for variance, I have provided the photos below to demonstrate the types of machinery and equipment that Torgerson's operates on a daily basis and has coming and going from their properties.



Photo 1: Common Farm Equipment on Tractor-Trailer

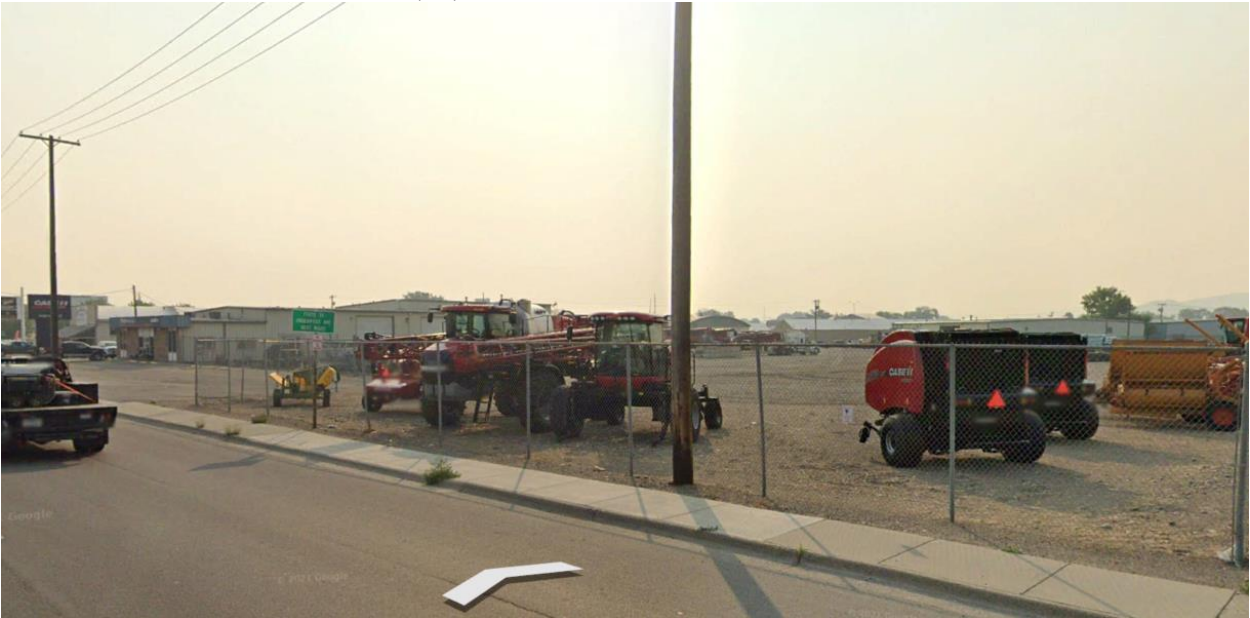


Photo 2: Farm Equipment as seen at current Torgerson's Implement Location



Photo 3: Size Reference of Equipment to Person



Photo 4: Construction Equipment at current Torgerson's C&E

As the photos are intended to demonstrate, the sheer size of equipment that Torgerson's operates and maintains on a daily basis necessitates a separate working area for this equipment from employees and patrons. Given all access to the site will be via a single approach, parking in front of the building rather than solely on the sides or rear of the building will enable Torgerson's to service and greet customers and employees alike without having potential conflicts with large and heavy machinery which would be an immense safety hazard to all involved. Keeping the employee and customer parking separate from yard, service, and loading/unloading is accomplished by putting some of the requisite parking in front of the building.

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

The need for the intended use of the property at this location is due to the property's close proximity and access to Interstate 90, which allows customers who come from all over the region to quickly access Torgerson's via a direct route and eliminate the need for large and heavy equipment to be traveling on smaller and heavily trafficked City streets. As construction and agricultural users are often coming to Torgerson's from largely rural areas, being in close proximity to the Interstate enables both parties to effectively work together with limited disturbances.

3. Explain any demolition, construction, or reconstruction intended for all structures.

There are no existing structures on the subject property, so all structures will be new based on this development. With that being said, as referenced previously, Grey Eagle Ditch currently traverses the property about mid-lot and will necessitate re-routing as part of development. In discussions with the ditch company, it is planned to re-route the ditch along the west property line and north property line to tie into the newly re-aligned portion of the ditch in the NE corner of the property. Re-routing the ditch to the north property line also presents an additional physical hardship to pushing the building to the front lot line and placing parking behind or on the side of the building.

Facts of hardship to meet this requirement for the planned development relate to the current layout and planned use of the site in as well as existing physical constraints. The facts of hardship experienced with this site include the following:

- Based on the nature of operations for Torgerson's, there is a need to keep traffic of employees and customers in passenger vehicles separate from the traffic generated to bring and send heavy machinery and construction equipment from the site. As the majority of the site is necessitated for equipment display, machinery service area, and unloading/loading, this leaves a limited amount of area that can be utilized to keep the traffic separate. This limited area is best suited in front of the building.
- The submitted site plans (approach location is still being coordinated with MDT so two layouts have been provided) intend to NOT place all of the parking for the site in front of the building. To keep with the intent and nature of the code, it is proposed to allow for a double-parked aisle in front of the building with remaining parking to be provided on the sides of the building. These areas, with the exception of one row of single-parked stalls adjacent to the building, will largely be curbed off from other site traffic including heavy machinery and trucks to prevent unsafe mixing of those vehicles.
- Physical hardships with the lot include the re-routing of Grey Eagle ditch to the north property line, existing gas and petroleum pipelines running along the norther property line, the Yellowstone River on the south side and South Billings Drain on the west side of the property which precludes secondary access, and MDT control on number of accesses.

Due to these reasons, it is requested to allow a portion of the requisite parking for the facility to occur in front of the building which does not comply with the current City of Billings Zoning Code. It should be noted parking on the side of the building is still planned with the proposed layout(s) which complies with the Zoning Code, but a portion of the parking is proposed in front of the building.

We appreciate your consideration of this variance request given the property's unique characteristics and the area's existing nature. Should you have any further questions please do not hesitate to call at 406-384-0080 or email myself at taylor@performance-ec.com. We look forward to presenting this request to you at the schedule meeting for consideration.

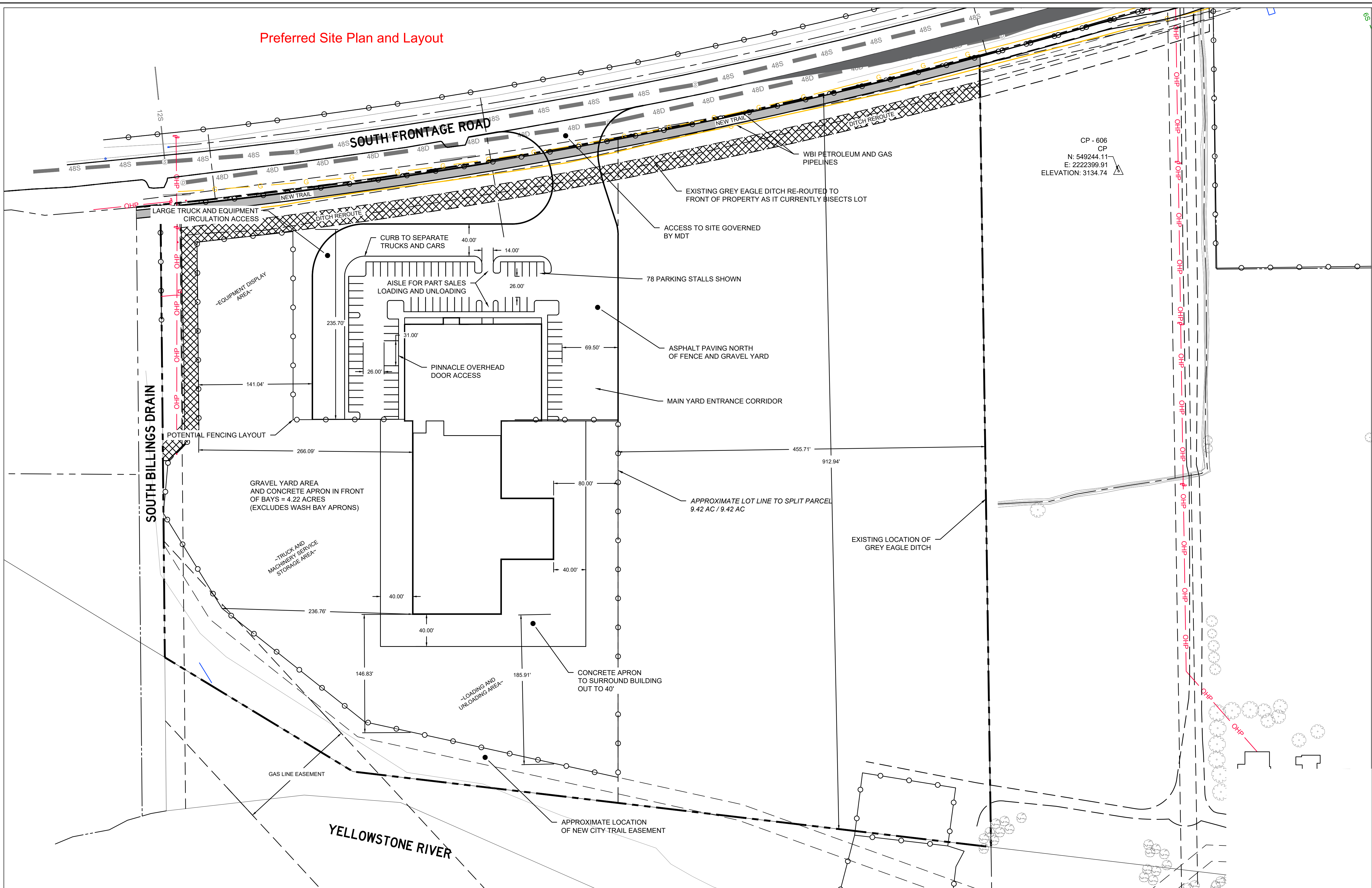
Best Regards,

Taylor Kasperick, PE
Project Manager



9/29/2023 3:14:41 PM
 C:\Users\Taylor\OneDrive\Documents\Torgersons, LLC\2023-005 Torgerson Billings Facility\CAD\DWG\Exhibits\2023-005 Torgerson Bill Facility Exhibit.dwg

Preferred Site Plan and Layout



LEGEND

[Pattern]	PROPOSED CONCRETE DRIVABLE PAVEMENT
[Pattern]	PROPOSED CONCRETE SIDEWALK

CP - 606
 CP
 N: 549244.11
 E: 2222399.91
 ELEVATION: 3134.74

REVISIONS				
NO.	DESCRIPTION	DATE	BY	CHECKED BY
1	#	#	#	#
2	#	#	#	#
3	#	#	#	#
4	#	#	#	#
5	#	#	#	#
6	#	#	#	#

SCHEMATIC LAYOUT

PERFORMANCE ENGINEERING
 608 NORTH 29TH STREET (406) 384-0080
 BILLINGS, MT 59101 performance-ec.com

TJK DESIGNED BY	
TJK DRAWN BY	
9-22-23 DATE	
QUALITY ASSURANCE	
TJK CHECKED BY	
9-22-23 DATE	

TORGERSON'S SOUTH FRONTAGE

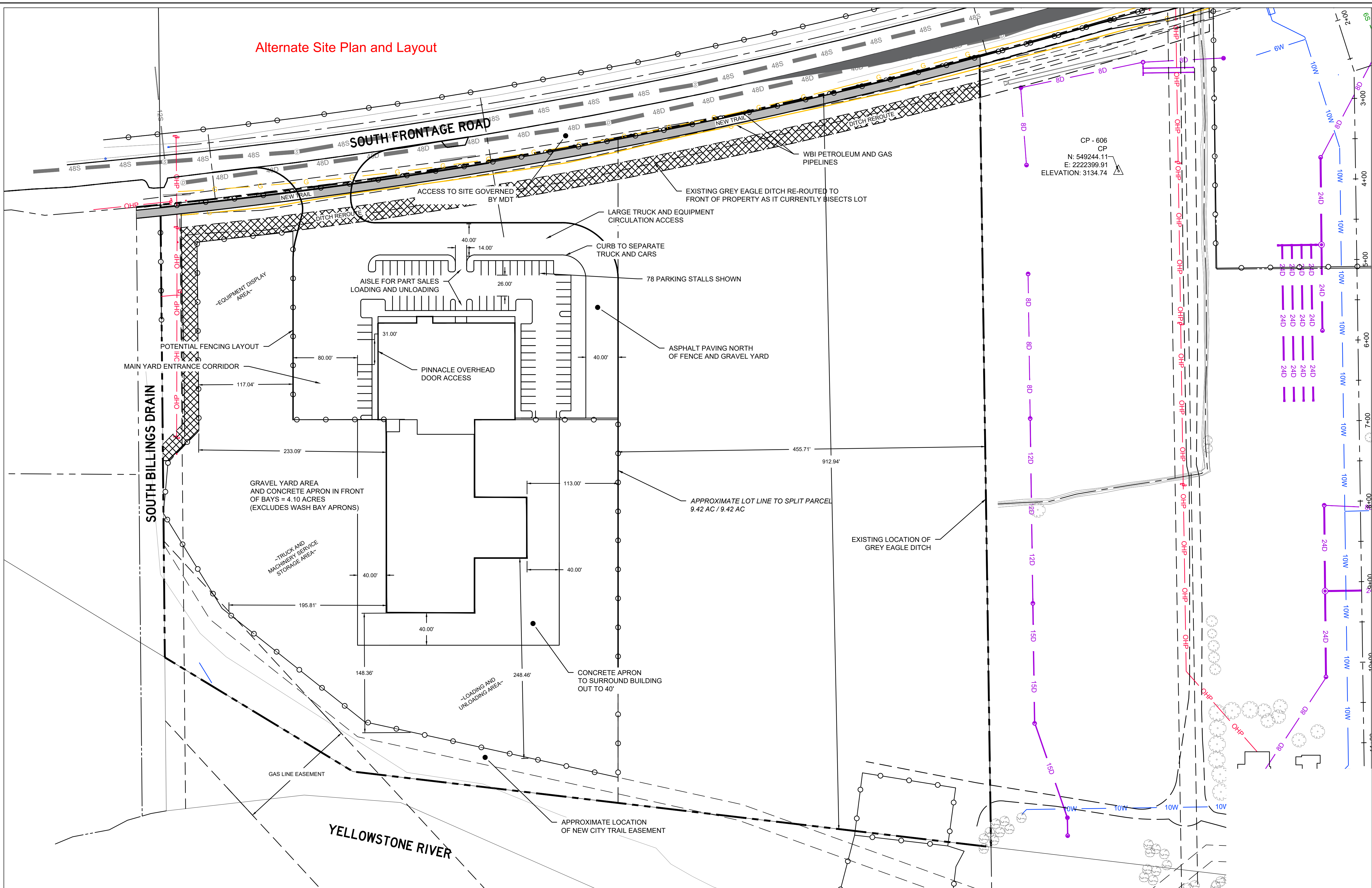
SOUTH FRONTAGE ROAD BILLINGS, MT

SCHEMATIC LAYOUT
SINGLE EAST APPROACH

PROJECT NUMBER 2023-005
SHEET NUMBER 1 OF 1
DRAWING NUMBER EX-1

PE STANDARD CTB
 9/29/2023 3:14:41 PM
 C:\Users\Taylor\OneDrive\Documents\Torgersons, LLC\2023-005 Torgerson Billings Facility\CAD\DWG\Exhibits\2023-005 Torgerson Bill Facility Exhibit.dwg

Alternate Site Plan and Layout



LEGEND

	PROPOSED CONCRETE DRIVABLE PAVEMENT
	PROPOSED CONCRETE SIDEWALK

REVISIONS				
NO.	DESCRIPTION	DATE	BY	CHECKED BY
1	#	#	#	#
2	#	#	#	#
3	#	#	#	#
4	#	#	#	#
5	#	#	#	#
6	#	#	#	#

SCHEMATIC LAYOUT

PERFORMANCE
ENGINEERING
 608 NORTH 29TH STREET (406) 384-0080
 BILLINGS, MT 59101 performance-ec.com

TJK DESIGNED BY	
TJK DRAWN BY	
9-22-23 DATE	
QUALITY ASSURANCE	
TJK CHECKED BY	
9-22-23 DATE	

TORGERSON'S SOUTH FRONTAGE
 SOUTH FRONTAGE ROAD BILLINGS, MT
SCHEMATIC LAYOUT
SINGLE WEST APPROACH

PROJECT NUMBER	2023-005
SHEET NUMBER	1 OF 1
DRAWING NUMBER	EX-1

COPYRIGHT 2023 ©