



County of Yellowstone Board of Adjustment

AGENDA-Thursday, January 12, 2023, 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: October 13, 2022

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparte Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- 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:

- County Variance 296 -- 3720 Basin Creek Rd -- Second Principal Structure in RR3 - A variance from Section 27-305, Table 27-300-4 allowing only one principal structure in a Rural Residential 3 (RR3) zone, to allow a second principal structure (dwelling) on Lot 24, Block 1 of Blue Creek Views Major Subdivision, a 4.124 acre parcel of land. The purpose of the variance is to allow a second dwelling to remain on the property. Tax ID: C12844. Presented by Karen Husman, Planner I.**

Other Business/Announcements**Adjournment**

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed variance. Testimony regarding the above mentioned items 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 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. 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: 01/12/2023

Information

Subject

Motion. Approval of Minutes: October 13, 2022

Attachments

2022_10_13_YC BOA_DRAFTMIN.pdf



Yellowstone County Board of Adjustment Meeting Minutes, October 13, 2022

DRAFT-To be approved at the next scheduled meeting

The County Board of Adjustment meeting will be held in the 1st Floor Conference Room, 2825 3rd Ave North (Miller Building).

Citizens are invited to:

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Name	Title	03/08/2018	05/10/2018	11/08/2018	01/10/2019	06/13/2019	09/12/2019	07/09/2020	10/13/2022		
Blaine Poppler	Vice Chair	1	1	1	1	1	1	1	1		
Carlotta Hecker	Board member	1	1	1	1	E	1	1	1		
Tyler Bush	Chairman	-	-	-	E	1	1	1	1		
Troy Boucher	Board member	-	-	-	-	-	-	-	1		

Chairman Bush introduced the County Board of Adjustment members and staff in attendance: Karen Husman, Planner I, Robbin Bartley, Administrative Assistant

Other Participants:

Public Comments: Chairman Bush announced the public comment period.

Approval of Minutes July 9, 2020



Yellowstone County Board of Adjustment Meeting Minutes, October 13, 2022

DRAFT-To be approved at the next scheduled meeting

Motion

Board member Hecker made a motion and Board member Boucher seconded the motion to approve the July 20, 2021 meeting minutes with corrections. 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.

PUBLIC HEARINGS:

Planner Karen Husman 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.

REQUEST County Variance 295 – 2816 Old Hardin Road – Temp Use Kiosk >120 sf - 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 kiosks to remaining on the property and to allow the continued annual renewal of the Temporary Use Permit issued by the Planning Division. Tax ID: C04275

RECOMMENDATION:

Planning staff has reviewed this application & is recommending conditional approval of Variance 295 based on the proposed findings of the review criteria.

Discussion

Chairperson Bush called for questions and discussion from the members of the Board. Board member Bush asked why this happened. Staff indicated it was an error by staff at approval time.

Public Hearing

Chairperson Bush opened the public hearing and asked if there is anyone wishing to speak in favor or against County Variance #295.

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

Motion

Board member Boucher 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 #295 with the Findings and Criterion presented by Staff.



Yellowstone County Board of Adjustment Meeting Minutes, October 13, 2022

DRAFT-To be approved at the next scheduled meeting

The conditions of approval are as follows:

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 SF to 140 sf. 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
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns, so long as the structure is not moved from its current location.
5. The applicant shall meet all other code requirements, including annual renewal of the **temporary** use permit, except for this variance.

Discussion:

The motion carried with a unanimous voice vote. 4-0. Variance #295 is conditionally approved.

Other Business/Announcements

- **Announcement:** The November 17, 2022 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.
- **October 25, 2022 is the City Volunteer Dinner.**

Adjournment: Adjourned 4:35 p.m.

Robbin Bartley, Administrative Assistant

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

County Board of Adjustment

Meeting Date: 01/12/2023

SUBJECT: County Variance 296- to allow a second dwelling on an RR3 lot.

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

County Variance 296 -- 3720 Basin Creek Rd -- Second Principal Structure in RR3 - A variance from Section 27-305, Table 27-300-4 allowing only one principal structure in a Rural Residential 3 (RR3) zone, to allow a second principal structure (dwelling) on Lot 24, Block 1 of Blue Creek Views Major Subdivision, a 4.124 acre parcel of land. The purpose of the variance is to allow a second dwelling to remain on the property. Tax ID: C12844. Presented by Karen Husman, Planner I.

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: Caleb Bruski

AGENT: Anna Vickers, IMEG Corp.

PURPOSE: Allow a second dwelling on an RR3 zoned parcel

LEGAL DESCRIPTION: Lot 24, Block 1 of Blue Creek Views Major Subdivision

ADDRESS: 3720 Basin Creek Rd

SIZE OF PARCEL: 4.124 acres

ZONING: RR3

EXISTING LAND USE: Residential

PROPOSED LAND USE: No change

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

See Attachments

SURROUNDING LAND USE & ZONING

NORTH: Zoning: RR3

Land Use: Residential

SOUTH: Zoning: Agriculture

Land Use: Residential

EAST: Zoning: RR3

Land Use: Residential

WEST: Zoning: P1

Land Use: Park

BACKGROUND

The applicant is requesting a variance from Section 27-305, Table 27-300-4 allowing only one principal structure in a Rural Residential 3 (RR3) zone, to allow a second principal structure (dwelling) on Lot 24, Block 1 of Blue Creek Views Major Subdivision, a 4.124 acre parcel of land. The purpose of the variance is to allow a second dwelling to remain on the property.

The original house was approved with Zoning Compliance Permit 08-174 and completed in 2009. The previous zoning of the property was Agricultural Suburban and R-15,000, this was noted on the permit application approval comments; "the easterly portion of this parcel is zoned Residential 15,000 and must meet the restrictions of that zoning for any proposed buildings in that area of the parcel".

After the zoning code update in 2021, the property was changed entirely to RR3 with the entire subdivision, this restricted the addition of a second dwelling unit on the property. Although there is no specific hardship of the land, there are other developed property in the vicinity that have two single family dwellings, one in the RR3 district and one in the RR1, both districts now restricted to one single family (principle) structure per parcel, regardless of the size.

The other options for the property would be to subdivide into two parcels, this would require a County Subsequent Minor Subdivision that involves substantial development requirements that would have been cost prohibitive for the applicant. They could also optionally apply for a Special Review to allow an ADU (Accessory Dwelling Unit), but the size restriction for an ADU would not fit the home they have already purchased to place on the site.

Staff did not receive any comments from other departments or any of the property owners notified within the 150 foot notification area surrounding the property. There are comments on record from the Blue Creek Volunteer Fire department during the preapplication meeting for the proposed Subsequent Minor Subdivision, a concern that there may not be sufficient water for fire suppression.

SUMMARY

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

The Per Section 27-1626(D); 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 not any special circumstances that exist in this situation other than the applicant began the process to add a second dwelling unit to a property under the previous zoning restrictions for Agricultural Suburban zone district. There are no records of an application for a Zoning Compliance permit and they began excavation for the basement prior to knowledge that zoning would prohibit another dwelling to the property.

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 other parcels within this subdivision that have more than one single family dwelling. Staff found one property near the subject property at 3437 Blue Creek Road with two single family dwellings in an RR3 district, and one property at 3784 Jene Helene Avenue with two single family dwellings. Denying the variance could deprive the applicant of rights enjoyed by a few other tracts in the same district. However, it should be noted, these dwelling were constructed prior to the zoning ordinances that apply to this property currently. Therefore, this alone should not be a sole reason for support of the variance.

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;

The variance will not allow the applicant any special privileges. There are similar developed properties in the area with two single family dwellings that were constructed under the previously adopted zoning code.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter 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 construct a second dwelling unit on the property that would be in compliance with the current zoning code and acquire a rebuild letter if needed.

Per Section 27-1626 (E): The following also apply:

1. Whenever the County Board of Adjustment grants an application for a variance, the minutes shall specifically state the criteria upon which the variance is granted.

2. In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Zoning Code.

Staff is recommending the following conditions for the variance request:

1. The variance from Section 27-305, Table 27-300-4, to allow a second principal structure (dwelling). No other variance is intended or implied with this approval.
 2. The variance is limited to on Lot 24, Block 1 of Blue Creek Views Major Subdivision, generally located at 3720 Basin Creek Road.
 3. The applicants will submit an application for a Zoning Compliance Permit within six months and complete construction within one year of BOA approval.
 4. The applicant shall meet all other state and county code requirements with the exception of this variance.
 5. 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 BOA shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance.

The applicants will apply for a Zoning Compliance Permit within six months and complete construction within one year of BOA approval.

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

Approval of this variance will not allow a use that is restricted under the terms of this chapter. The "use" itself of a single family residential home is allowed in the district, the number of principle structures allowed on each parcel in the RR3 district can be approved with a variance.

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
Site Plan



Subject Property Looking South



Looking South East



Looking South East along Basin Creek Rd.



Looking South



Looking North towards the existing Home



Looking North West on Basin Creek Rd.

APPLICATION FORM

COUNTY VARIANCE County Variance # 296 - Project # PZX-22-00276

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 # C128440 **COUNTY COMMISSIONER DISTRICT #** 1

Legal Description of Property: Lot 24 of Block 1 of Blue Creek Views Major Subdivision located in Section 33, Township 01 South, Range 26 East, Principal Meridian Montana, Yellowstone County Montana

Address or General Location (If unknown, contact County Public Works): 3720 Basin Creek Rd. N. Billings, MT 59101

Zoning Classification: RR3

Size of Parcel (Area & Dimensions): 4.124 Acres

Covenants or Deed Restrictions on Property: Yes X No

If yes, please attach to application

Variance Requested: 27-1001.C.2.(b) Residential Use Types (1) Household Living: This use type is characterized by residential occupancy of a dwelling unit by one or more persons.

Facts of Hardship: The applicant cannot subdivide due to the covenants of the property. The applicant also purchased the manufactured home kit prior to realizing they would need approval for a second principal dwelling unit.

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

Owner(s): Caleb Bruski and Megan Bruski now known as Sora Breanne Bruski
(Recorded Owner)
3720 Basin Creek Rd. Billings, MT 59101
(Address)
406-861-5293 vedikit74@gmail.com
(Phone Number) (email)

Agent(s): Anna Vickers/ IMEG Corp.
(Name)
175 N 27th St. Ste 1312, Billings, MT 59101
(Address)
225-603-1371 anna.m.vickers@imegcorp.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. I hereby certify that all the information presented herein is factual and correct.

Signature: Caleb BRUSKI Date: 11/14/2022
E2B9669A9B0A4B1
(Recorded Owner)



STATEMENT OF HARDSHIP

Below are questions listed in **bold** within Yellowstone County Variance Application to address the Board of Adjustment.

6. Prepare a written statement to the Board of Adjustment and include the following information:

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

The applicant was not aware of all land restrictions regarding the property when he began the process of adding an additional home on his property. He was aware that certain types of dwellings - manufactured homes, modular homes, etc had restrictions for the property. He chose a dwelling type that was allowed on his property. Prior to Recode the property was zoned Agriculture Suburban zoning. This prior zoning code allowed for one principal structure of each one acre of a lot area. Currently the property is zoned Rural Residential 3 (RR3). This new zoning requires principal structures to have its own legally separate lot. The new code allows for use of an accessory dwelling unit (ADU) on the same lot through a special review process and only if the dwelling unit complies with the restrictions for ADUs within the code.

Due to the subdivision's completion prior to current Yellowstone County Subdivision Regulations regarding further subdivision of lots within a major subdivision to be reviewed as a subsequent minor subdivision, following requirements for major subdivisions the burden for the entire subdivision's improvements would be shouldered by one landowner. The landowner had begun construction and purchased the principle structure prior to being aware of restrictions on the property that had changed over the years. The request for a variance to the zoning code in order for the structure to comply with standards is the applicant's best course of action. The applicant's attempt to try and comply with the code after being unaware at the beginning of this process is best done through the Board of Adjustments review process for a variance.

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

Caleb and Megan are the current owners of the property. The couple has two daughters ages 6 and 3. Caleb and Megan are undergoing a divorce. As housing and property has become increasingly expensive due to inflation, housing shortages, and Montana's influx of new residents the applicant decided to build a second principal structure on their property. The goal of the structure was to be near the children and maintain a coparenting structure. The process of the home construction began with laying foundation and obtaining addressing. As the applicant became aware of issues with compliance from regulations the applicant paused the construction process and began navigating bringing the property into compliance.

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

There is no demolition intended for the property. The addition of a second principal structure began, and the foundation was poured. The applicant would like to finish construction of the structure once receiving approval of the variance from the board of adjustments and the weather allows. The applicant also intends to follow all compliance regulations regarding water and sewer for the associated second principal structure.

