



County of Yellowstone Board of Adjustment

AGENDA-Thursday, July 13, 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: January 12, 2023, June 18, 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. **County Variance 297 -- 495 El Paso St** -- Location of detached garage -- A variance request from Section 27-304, Table 27-300.3 Site and Structure Regulations requiring any detached accessory structure be placed in the rear yard, to allow the placement of the detached structure in the side yard in a Large Lot Suburban Neighborhood Residential (N4) zone, on Lot 7, Block 1 of Sierra Estates Subdivision, 3rd Filing. Tax ID: C15505. Presented by Karen Husman, Planner I.
- b. Administrative Appeal 23-02 -- 5005 Highway 3 -- Approval of Zoning Compliance permit to allow a 15-foot property line setback -- This is an appeal of the Administrative decision to approve a Zoning Compliance Permit (PLNX-23-00886) to allow a 15-foot property line setback for a new 4,800 square foot detached accessory building on Parcel 2, C/S 3668, in an Agriculture (A) zone district. The appeal was brought on behalf of the owners of Parcel 1, C/S 3668 at 5001 US Highway 3. Tax ID: D04549 (5005 Highway 3) and D04550 (5001 Highway 3)

Other Business/Announcements

- a. **Announcement:** Welcome! to Brenda Berns, Planning Clerk. Tammy Deines, retirement July 28, 2023.
- b. **Announcement:** The August 10, 2023 Yellowstone Board of Adjustment is canceled due to a lack of agenda items.

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: 07/13/2023

Information

Subject

Motion. Approval of Minutes: January 12, 2023, June 18, 2023

Attachments

2023_01_12_YC BOA_DRAFTMIN.pdf
2023_06_08_YC BOA_DRAFTMIN.pdf



**Yellowstone County Board of Adjustment
Meeting Minutes, January 12, 2023
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	01/12/2023									
Blaine Poppler	Vice Chair	1									
Carlotta Hecker	Board member	1									
Tyler Bush	Chairman	A									
Troy Boucher	Board member	1									

Commissioner Poppler introduced the County Board of Adjustment members and staff in attendance: Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, Tammy Deines, Planning Clerk

Other Participants: Caleb Bruski, Lee Eastburn, Tyler Weyand, John Rigney, Anna Vickers, IMEG; Amber Lang, IMEG

Email: Nikki Downer Opposition Variance 296; Lisa Slovak, Opposition Variance 296; Mary Magness, Opposition Variance 296

Public Comments Commissioner Poppler announced the public comment period. There were no Public Comments.



Yellowstone County Board of Adjustment Meeting Minutes, January 12, 2023

DRAFT-To be approved at the next scheduled meeting

Approval of Minutes October 13, 2022

Motion

Board member Hecker made a motion and Board member Boucher seconded the motion to approve the October 13, 2022 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 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.

RECOMMENDATION:

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

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.



Yellowstone County Board of Adjustment Meeting Minutes, January 12, 2023

DRAFT-To be approved at the next scheduled meeting

Discussion

Ms. Husman explained that the applicant has constructed the foundation. DEQ has not addressed the sanitation and the applicant is waiting for approval. Chairman Boucher asked when the construction started. Clarification was given by Zoning Coordinator Nicole Cromwell on the RR (Rural Residential) zoning and this variance request. Board member Hecker asked if the present owners owned the property when it was under the previous zoning code.

Nicole Cromwell said under the previous Code, the southern portion of the parcel was R-15,000 and the AG suburban parcel was on the north part of the lot. The new zoning has maximum lot area for a Rural Residential zone.

Public Hearing

The public hearing was opened and to anyone wishing to speak in favor or against County Variance #296.

Anna Vickers, IMEG, 175 North 27th Street, Billings, Montana

Ms. Vickers is the agent for applicant Caleb Bruski. She said initially the property was vetted for an accessory dwelling unit but the house is too large. The best way forward was to go forward with the variance request. Ms. Vickers asked for amendment to allow for DEQ review timelines which could take as long as nine months. She said she did not understand that ongoing compliance didn't allow for interdepartmental review and there isn't a way to enforce a right-of-way for safety. Board member Hecker asked why the applicant would build there is no approval from DEQ. Ms. Vickers said IMEG advised the applicant to stop construction until approval is received and the zoning requirements were vetted.

Caleb Bruski, 3720 Basin Creed Road, Billings, MT

Mr. Bruski is the applicant and property owner. He said he relied on the contractor who assured him that everything would be fine. He said he did not understand there was a process and later reached out to IMEG. Mr. Bruski explained that he considered the process in 2019 as to whether building could take place. In 2021 the property values increased and he had available funds for the project. The process started mid to late summer of last year. Mr. Bruski reported that Tim Miller, Yellowstone County Public Works, visited the lot, conferred with the contractor, and spoke with him regarding the septic requirements. He stated he wished to correct this situation and get everything right. In response to question by Board member Hecker, he said the existing house was there. He would like to utilize the property and the two elevations. Mr. Bruski stated he was not aware that the property would not allow for additional houses and the covenants and restrictions do not clearly state only one residence is allowed.

Rick Cortez, 3790 Vista View Road, Billings, MT

Mr. Cortez is the Fire Chief for the Blue Creek Fire Department. He is opposed to this request as the grade of the road and range of where the foundation is located does not provide enough safety pull-off requirement for a fire event. The dirt moved into an existing coulee will impact Basin Creek Road as it is a water shed and will create issues for adjacent property owners entering their properties. He



Yellowstone County Board of Adjustment Meeting Minutes, January 12, 2023 DRAFT-To be approved at the next scheduled meeting

feels the zoning request should have been addressed earlier. This parcel does not have a dry hydrant installed which would be required under subdivision review. In response to question by Board member Poppler, Mr. Cortez said it is satisfactory as it stands with the one home. Board member Hecker asked regarding the foundation and Mr. Cortez said it is a full 8-foot foundation.

John Rigney, 3745 Basin Creek North, Billings, MT

Mr. Rigney's concern is allowing a second structure will set a precedent for future property owners and it will add additional traffic. He doesn't want a potential rental property in the subdivision. He said there would be a potential increase in the homes from 34 to 68 and this should be avoided. Mr. Rigney said Caleb is great but what about future owners?

Tyler Weyand, 3845 Vista View Road, Billings, MT

Mr. Weyand is opposed to this request due to safety factors, and the Covenants and Restrictions which restrict the lots to one home. Mr. Weyand doesn't agree with Caleb's reading. He is opposed 100% and feels approval will open the door to more problems. He doesn't agree with making exceptions for this project.

Lee Eastburn, 3715 Vista Blue Circle, Billings, MT

Mr. Eastburn is marginally opposed to this request. He asked why there is a 60-ft driveway which will create a blind corner. He said they had to dig the ditch near his property to avoid water runoff. Mr. Eastburn is in agreement with having a mother-in law home and not splitting the lot. He does not want rental property or use as an "Air BnB".

Rebuttal

Anna Vickers, IMEG, 175 North 27th Street, Billings, Montana

Ms. Vickers said the storm water will be mitigated and the zoning allows a second structure. She said they will continue to work with Rick Cortez, Blue Creek Volunteer Fire Department and with County Public Works for approval of the drive approach.

Caleb Bruski, 3720 Basin Creed Road, Billings, MT

Mr. Bruski according to the CCRs, single-family only is the structure type. He said there is no flooding. The lot has 1+ acres of flat area on the lower lot.

The public hearing was closed.

Discussion:

Board member Hecker pointed out that DEQ has not approved the site. Board member Poppler said the people and the contractors started this project with incomplete information. The zoning is clear. There were no other lots in this subdivision with two structures. He stated this variance request is not justified and there is no hardship.



Yellowstone County Board of Adjustment Meeting Minutes, January 12, 2023

DRAFT-To be approved at the next scheduled meeting

Motion

Board member Boucher made a motion to approve County Variance #296 with the conditions recommended by staff.

Discussion

Board member Boucher stated he agrees with the staff findings. A lot the zoning code was changed and there was a lot of miscommunication.

The motion died for lack of a second.

Motion

Board member Hecker made a motion and it was seconded by Board member Poppler to deny County Variance #296.

Discussion

Board member Hecker stated it is unfortunate that the applicant hired someone who did not know what was required. She stated approval of the variance in this case would grant a special privilege.

The motion carried 2-1, with Board member Boucher voting against the motion.

Yellowstone County Variance #296 is denied.

Other Business/Announcements

- **Announcement:** The February 9, 2023 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.
-

Adjournment: Adjourned 4:35 p.m.

Tamara L. Deines, Planning Clerk

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



City-County Planning Division
Thursday, January 12, 2023
Yellowstone County Board of Adjustment



Printed Name		Address
Caleb Bruski:		3720 Basin Creed rd
Lee Eastburn		3715 Vista Bloc Cir
TYLER WEYAND		3845 VISTA VIEW ROAD
John Rigney		3745 BasinCreekRd N.
Anna Vickers		175 N. 27 th St Ste 1312 Billings
Amber Long		"
Rick Cortez		3790 VISTA VIEW RD.



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023 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	01/12/2023	06/08/2023								
Blaine Poppler	Vice Chair	1	1								
Carlotta Hecker	Board member	1	1								
Tyler Bush	Chairman	A	1								
Troy Boucher	Board member	1	E								
Morgan Tuss	Board member	-	-								

Commissioner Bush introduced the County Board of Adjustment members and staff in attendance: Nicole Cromwell, Zoning Coordinator, Tammy Deines, and Planning Clerk

Virtual: Morgan Tuss, future appointee for the YC Board of Adjustment, Maxon R. Davis, Davis, Hatley, Haffeman & Tighe P.C.

Attendees: Allie Carley, Lamar Companies, Kelly Strobel, Lamar Companies; Marion Teyler,

Public Comments Commissioner Bush announced the public comment period. There were no Public Comments.

Approval of Minutes January 12, 2023

Delayed. The meeting minutes will be considered during the July 13, 2023 YC Board of



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023

DRAFT-To be approved at the next scheduled meeting

Adjustment meeting.

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:

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

REQUEST

Administrative Appeal 23-01 – 330 Charlene St – Appeal of an administrative decision regarding a Billboard sign permit PLN-23-00301 - An Administrative Appeal regarding the denial of a County sign permit to upgrade an existing billboard (off-premise) sign from a permanent graphic display to an Electronic Message Display (EMD) on property general located at 330 Charlene Street, C/S 1406, Parcel 13, in a Heavy Commercial (CX) zone. Tax ID: D01225. The Board may affirm, modify or reverse the determination of the Zoning Coordinator in this matter. Yellowstone County Zoning Regulations Section 27-1615. Regulations are on line here: <https://www.billingsmt.gov/755/Zoning-Information>

RECOMMENDATION

Planning staff recommends the Board affirm in whole the decision to not grant the sign permit to upgrade the existing billboard sign from a permanent graphic display to an Electronic Message Display (EMD).

BACKGROUND

This sign code did not explicitly state that a "computer controlled variable message electronic sign" was allowed to be used on a billboard sign. Reading the code as a whole, it can be inferred that a billboard sign with an EMD sign display could be allowed. (Archived County sign Code attached) This code expired on December 15, 2020, when the County adopted an entire new zoning code including an update of the sign code section. (new Code Sections 27-1405.C (EMD) and 27-1409 (Billboards)). Prior to the new code adoption, no billboard sign company had applied for or was interested in updating any existing billboard sign to an EMD technology if the sign was located outside the city limits. Until 2016, the state Outdoor Advertising Bureau, part of the MT Department of Transportation, and the MT Highway Commission did not allow billboard signs advertising on the Interstate system to have an electronic message display. It was considered to be too distracting to motorists and the Federal Highway Administration (FHA) had not issued guidance on the allowance of the technology. In 2016, the state updated its regulations to allow Electronic Billboards (EBB) on the interstate system subject to their limitations in the Administrative Rules of Montana 18.6.237. Planning staff does not believe the intent, or more



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023

DRAFT-To be approved at the next scheduled meeting

significantly, the wording of the new County sign code would allow an EMD sign to be used on a billboard. Section 27-1405.C clearly intends for an EMD display to be used for on premise signs. A billboard is not an on premise sign. An EMD sign face is required to be used only in conjunction with a permanent graphic display on the same sign structure and cannot be more than 40% of the total sign area. The billboard sign code section at 27-1409 does not mention using an EMD display and only includes the language carried forward from the previous code regarding lighting "*be designed to minimize glare and interference with any residential uses or traffic.*" Planning staff recommends the Board uphold the administrative decision. The applicant can pursue a request to amend the County sign code to allow an EMD display on billboard signs, but the current code does not allow this technology.

Board of Adjustment determination:

Did staff properly interpret the code?

Did staff properly and accurately apply the code to the appellant's permit request?

County Sec 27-1409 – Billboard Signs –

Staff has not denied the placement. Staff has denied a request to remove a static billboard sign face and replace it with an electronic message display.

Discussion

Chairman Tyler Bush asked if this provision was carried forward into the 2020 adopted County Sign Code with intent or omission. Nicole Cromwell said she does not recall a firm intent but she believes the County was cognizant as there was discussion about electronic message displays as the City had amended their sign code to address electronic message displays. The County Sign Code does not allow or provide for an allowance of an EMD sign face on a billboard sign. Board member Poppler asked if the electronic message language specifically prohibited or just not addressed. Zoning Coordinator Nicole Cromwell said it never came up as an issue during the public hearing the Summer of 2020 and there was nothing specifically said during a public hearing to prohibit it. She said the sign would be allowed if it was located in the City. In response to question by Chairman Bush, Nicole Cromwell explained and said the intent of Operation ReCode was to address conflicts and streamline the process. It wasn't just conflicts but there are different needs in zoning in the County than the City. The County wanted to keep their code separate. Chairman Bush asked how far is this sign is located from City limits. Nicole Cromwell referred to a posted zoning map and pointed out the City limits and said this parcel is immediately adjacent to the City. She said in 2016, the State of Montana adopted new rules allowing electronic billboards on the interstate system. In response to question by Board member Hecker, Nicole Cromwell explained the regulations for changing the display on an electronic sign located within the City.

Public Hearing

Chairman Bush opened the public hearing and called for anyone wishing to speak in favor or against the request for Administrative Appeal 23-01.



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023

DRAFT-To be approved at the next scheduled meeting

Kelly Strobel, Lamar of Billings, Kelly Strobel, leasing agent, 7505 Entryway Drive, Billings, MT.

Mr. Strobel said the sign face will become digital but it will not change in size. He said there is no case study stating this is a distraction. This parcel is currently zoned Heavy Commercial within the County. The main difference in definition is this is a “bulletin” and in the City it is considered a “poster”. The MDOT permitting process requires a distance separation from another billboard and this will meet the MDOT regulations. Positive comments have been received from the Highway Department. There are digital billboards throughout the County that are animated. Mr. Strobel feels that as the rezone came into play it was a way of eliminating billboards within the City as well as the County. He is asking that this request be approved by this Board.

Discussion

Chairman Bush said the location of the sign is permanently permitted and this variance merely changes it to an electronic sign. The current sign is illuminated with LED lighting during the night. Board member Hecker asked if this is a digitized picture that stays in place and could be streaming if approved. Kelly Strobel explained they are not designed to do streaming and it doesn't fade or burst. He continued and said all of the artwork is done by computer and this is the way of the technology. Board member Poppler asked if they were aware this would be an issue when applying for the variance. Kelly Strobel said this is the first time they applied for a digital billboard in the County, and his primary responsibility is permitting of the signs. He said he attended several Project ReCode public hearings, and some of the allowable zoning for billboards was changed during Project ReCode rezoning. He stated this is another example of trying to eliminate billboards. He said the closest EMD sign is located on the Montana interstate and this one would be the first one in the Billings area. It is allowable by the state but it is in conflict with the County Zoning Code. Mr. Strobel said he feels this EMD will fit in with the MDOT regulations. He said not a lot of time was spent during the ReCode public hearings on billboards and he feels it was preventative and the County code isn't clean one way or another.

Maxon R. Davis, Agent and Counsel, Davis, Hatley, Haffeman & Tighe P.C.

Mr. Davis represents Appellants Lamar of Billings, Kelly Strobel, leasing agent, 7505 Entryway Drive, Billings, MT. Mr. Davis resides in Great Falls and drives by a similar sign on a daily basis. He feels the answer to the question is that wasn't a deliberate intent but inadvertent. He referenced Section 27-4105 c-3-b. Their position is that they chose not to regulate electronic messages on billboards and he feels that they weren't prohibited. Instead, it just wasn't addressed. Mr. Davis said it wouldn't be an issue if it were located on the either side of Charlene Street. He suggested consideration of an amendment to the County Sign Code to allow electronic message displays and feels a variance would be in order for this particular sign.

Allie Carley, 2525 Aspen Creek Trail, Billings, MT

Ms. Carley said digital billboards are the wave of the future. She said they partner with the National Amber Alert System and the National Weather service and this would be no different here in Billings.



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023

DRAFT-To be approved at the next scheduled meeting

Wayne Teyler, 2319 Belknap Ave, Billings, MT

Mr. Teyler said he is the primary caretaker of the parcel. He purchased this parcel and used it for his landscape business. He commented he is “gun shy” around Zoning Coordinator Nicole Cromwell, as the previous denial was costly. Mr. Teyler said this project is income for him and he hopes this is not personal.

Chairman Bush asked if there is anyone else wishing to speak. There was none. Chairman Bush closed the testimony for public hearing and moved to deliberation and discussion.

Chairman Bush asked Ms. Cromwell to refer to the sections of code provided in the staff presentation

County Sec. 27-1409 – Billboard Signs

SECTION 27-1409 BILLBOARD SIGNS

A. APPLICABILITY WITHIN THE INTERSTATE CORRIDOR

Billboards shall be permitted in the Interstate Corridor (660 feet either side of the right-of-way of the Interstate Highway) on properties zoned C3, CX, I1, or I2 as follows:

1. Billboards located within the Interstate Corridor shall have a maximum size of 600 square feet in size and shall be no more than 40 feet in height.
2. Billboards shall be separated by a minimum distance of 500 feet.
3. Lighting shall be designed to minimize glare and interference with any adjacent residential uses or traffic.

Sec. 27-1405.C – EMD signs

C. ELECTRONIC MESSAGE DISPLAY (EMD) SIGNS

3. Incorporation in Wall or Freestanding Sign
 - (a) An EMD may only be used in conjunction with an adjacent wall sign or as part of a freestanding sign and shall not be displayed on its own.

Chairman Bush said the existing billboard meets the restrictions, and the conflict is for the request for the sign to be electronic. He said Section 27-1409 has to do with billboards and Section 27-1405 deals specifically with billboard. Nicole Cromwell concurred and provided clarification between the City and the County codes. She pointed out that neither Section 1405 or Section 1409 specifically say whether message displays are allowed on billboard signs. Section 1405 stated and EMD sign cannot be displayed on its own but has to be with a permanent graphic display. This is in direct conflict with a digital sign as it has multiple sign displays with well time and then changes. She said Mr. Davis believes this is inadvertent and the County never intended to prohibit electronic signs. Chairman Bush said his argument is that since it is not specifically excluded in billboards and it is addressed in another section of code, they chose not to regulate it. Mr. Davis agreed with this assessment. Ms. Cromwell said the Board of County



Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023

DRAFT-To be approved at the next scheduled meeting

Commissioners could reconsider this as a text amendment. Board member Hecker commented that this would be a better way of dealing with it. Chairman Bush suggested approving the appeal and simultaneously including a recommendation that the Code be cleaned to avoid similar instances happening in the future. He said he feels that somehow this was omitted and not clarified during Project ReCode. Board member Hecker said if the variance approved and the Commissioners do not make the recommendation, it would return to this Board. She commented that there is no pressure to address this issue. Chairman Bush could site this incident as a precedent. Board member Hecker stated she would like to see it addressed. Nicole Cromwell said the Yellowstone County Zoning Commission and Planning Board can on their own initiative propose text amendments. Board member Poppler stated he understands the need for zoning. He concurs with Chairman Bush and said this wasn't addressed by the State or Commissioners and they haven't taken the opportunity to deal with this. He knows there will be more than one electronic billboard that will be built on a County parcel. He doesn't see any downside to upgrading this sign as there are several pluses to having an electronic sign. He feels this Board needs to respectfully ask the Board of County Commissioners to look at this and give a decision. He doesn't see reasoning to deny this variance request due to an unintended undealt with item of the Zoning Code.

Motion

Board member Boucher made a motion and Board member Hecker seconded the motion to reverse in whole the staff decision and approve the permit with a notation of the modification and proposed change to correct the change in the code to avoid future Board of Adjustment requests for variances.

Discussion

Board member Boucher stated he agrees with the staff findings.

The motion carried 2-1, with Board member Boucher voting against the motion. The Administrative Zoning decision is affirmed.

Other Business/Announcements

- **Motion by Chairman Bush and seconded by Board member Hecker to approve the Morgan Tuss to serve on the YC Board of Adjustment. The motion carried with a unanimous voice vote.**
- **Announcement:** The July 6, 2023 Yellowstone County Board of Adjustment meeting will be held as legally announced and advertised.

Adjournment: Adjourned 5:05 p.m.

Tamara L. Deines, Planning Clerk

DRAFT- TO BE APPROVED BY A MOTION JULY 13, 2023

County Board of Adjustment

Meeting Date: 07/13/2023

SUBJECT: County Variance 297- 495 El Paso- Location of Detached Garage

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

County Variance 297 -- 495 El Paso St -- Location of detached garage -- A variance request from Section 27-304, Table 27-300.3 Site and Structure Regulations requiring any detached accessory structure be placed in the rear yard, to allow the placement of the detached structure in the side yard in a Large Lot Suburban Neighborhood Residential (N4) zone, on Lot 7, Block 1 of Sierra Estates Subdivision, 3rd Filing. Tax ID: C15505. 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: Cody Brantz

PURPOSE: Allow a detached garage in side yard in an N4 zone

LEGAL DESCRIPTION: Lot 7, Block 1 of Sierra Estates Subdivision, 3rd Filing

ADDRESS: 495 El Paso St.

SIZE OF PARCEL: 20,000 sf

ZONING: N4

EXISTING LAND USE: Residential

PROPOSED LAND USE: No change

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

None.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: N4

Land Use: Residential

SOUTH: Zoning: N4

Land Use: Residential

EAST: Zoning: N4

Land Use: Residential

WEST: Zoning: N4

Land Use: Residential

BACKGROUND

The applicant is requesting a variance request from Section 27-304, Table 27-300.3 Site and Structure Regulations requiring any detached accessory structure be placed in the rear yard, to allow the placement of the detached structure in the side yard in a Large Lot Suburban Neighborhood Residential (N4) zone. The request is due to the location of the septic system and drain field in the rear yard. The attached site plan depicts the drain field covering nearly the entire rear yard area that the code would require a detached structure located in this district. The majority of detached structures in this and surrounding neighborhoods are located in the side yards, so locating the proposed structure in the side yard of this parcel would not be out of character in this area of Yellowstone County.

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.

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;

The location of the septic system and drain field in the rear yard of this property creates challenges to conform to the code. For sanitary purposes, structures cannot be placed over top of these facilities.

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 other parcels within this subdivision that have a detached structure in the side yard. Staff found five other parcels in the surrounding area, and in this subdivision that had detached structures located in the side yard area. Denying the variance could deprive the applicant of rights enjoyed by other tracts in the same district.

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 detached accessory structures in the side yard that were constructed under the previously adopted zoning code. Further the constraints of the septic system and drain field location create a unique

challenge to overcome. Given the circumstances and property constraints, if a variance were to be approved, it would not be considered a special privilege.

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. The zoning regulations contemplate accessory structures. They are an allowed use. Deviation from the site location is not in conflict with the spirit of the regulations. Approval of this variance would allow the applicant to construct a detached garage in the side yard 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 27-304, Table 27-300.3 Site and Structure Regulations requiring any detached accessory structure be placed in the rear yard, to allow the placement of the detached structure in the side yard in a Large Lot Suburban Neighborhood Residential (N4) zone. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 7, Block 1 of Sierra Estates Subdivision, 3rd Filing, generally located at 495 El Paso St.
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, leaseholders, 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 detached residential garage is allowed in the district.

RECOMMENDATION

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

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan



Subject property



East



North west



South



South on El Paso



North on El Paso

APPLICATION FORM
COUNTY VARIANCE County Variance # 297 - Project # 23-0098 ^{P2X-}

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 # C15505 COUNTY COMMISSIONER DISTRICT # 1

Legal Description of Property: Sierra Estates Sub 3rd Fl, S29, T01N, R27E, Block 1, Lot 7
20000 sq ft (07)

Address or General Location (If unknown, contact County Public Works):
495 El Paso St, Billings, MT 59101

Zoning Classification: UH - Large Lot Suburban Neighborhood

Size of Parcel (Area & Dimensions): 20000 sq ft

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

Variance Requested: I'm looking to get a variance on the building code to be able to build a garage on the north side of my house as opposed to the rear of the house.

- Facts of Hardship: My septic drain field is in the rear of the house and would make building the garage very difficult and expensive if drain field needed moved.

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

Owner(s): Cody Brantz
(Recorded Owner)
495 El Paso St Billings, MT 59101
(Address)
307-752-6478 cbrantz@bobcatofbigsky.com
(Phone Number) (email)

Agent(s):
(Name)
(Address)
(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: [Signature] Date: 5/19/23
(Recorded Owner)



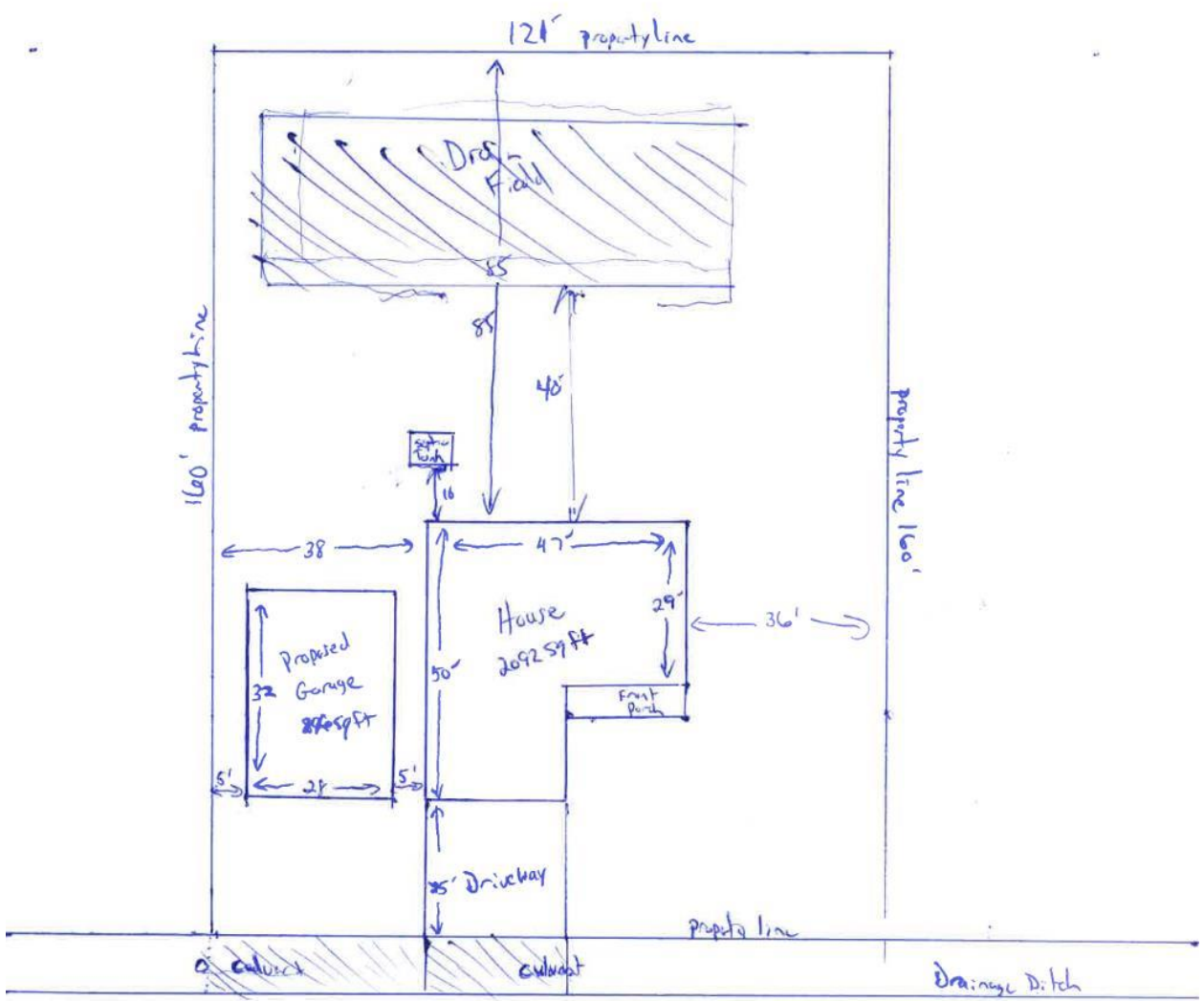
VARIANCE APPLICATION

WRITTEN STATEMENT

1. **What reasons prevent you from using this property in conformance with the Zoning Regulations?**
 - a. The septic drain field and septic tank are in the rear of the house where current zoning requires the new structure to be built.
2. **Why is there a need for the intended use of the property at this location?**
 - a. There are currently 5 neighbors with similar structures in similar location in the neighborhood making this project conform to the rest of the neighborhood.
 - i. 550 El Paso St
 - ii. 525 El Paso St
 - iii. 480 El Molino St
 - iv. 360 Toledo St
 - v. 3170 Nogales St
 - b. There is already a culvert installed in the drainage ditch to give access to the property from the road using this location.
3. **Explain any demolition, construction, or reconstruction intended for all structures.**
 - a. 28'wX32'L (896 Sq Ft) Garage, monoslab, 12' wall, with a single garage door in front and a small roll up door in the rear, hardy board siding, concrete driveway to street.



20,000 sq ft Lot



El Paso street

County Board of Adjustment

Meeting Date: 07/13/2023

SUBJECT: County Administrative Appeal 23-02 - 5005 Highway 3 Appeal of approval of Zoning Compliance permit to allow a 15-foot setback

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

Administrative Appeal 23-02 -- 5005 Highway 3 -- Approval of Zoning Compliance permit to allow a 15-foot property line setback -- This is an appeal of the Administrative decision to approve a Zoning Compliance Permit (PLNX-23-00886) to allow a 15-foot property line setback for a new 4,800 square foot detached accessory building on Parcel 2, C/S 3668, in an Agriculture (A) zone district. The appeal was brought on behalf of the owners of Parcel 1, C/S 3668 at 5001 US Highway 3. Tax ID: D04549 (5005 Highway 3) and D04550 (5001 Highway 3)

RECOMMENDATION

Planning staff recommends the Board affirm in whole the decision to approve the Zoning Compliance permit to allow a 15-foot property line setback for a new 4,800 square foot detached accessory building.

APPLICATION DATA

OWNER: Bryan White (property owner of 5005 US Hwy 3)
APPELLANT: Bradley, Thomas & Monica Witten (Property owner 5001 US HWY 3)
AGENT: Justin Harkins, Crowley Fleck Attorney
LEGAL DESCRIPTION: Parcel 2, C/S 3668
ADDRESS: 5005 US HWY 3
CURRENT ZONING: Agriculture (A)
EXISTING LAND USE: Residential and agriculture (Equine facility)
PROPOSED USE: same with an additional detached accessory structure 15 feet from the property line.
SIZE OF PARCEL: 20 Acres

CONCURRENT APPLICATIONS

PLNX-23-00886- Zoning Compliance Permit approved.

APPLICABLE ZONING HISTORY

See Attached.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Agricultural (A)
Land Use: Residential
SOUTH: Zoning: Agricultural (A)
Land Use: Residential
EAST: Zoning: Agricultural (A)
Land Use: Residential
WEST: Zoning: Agricultural (A)
Land Use: Vacant

BACKGROUND

This is an appeal of the Planners administrative decision to approve a Zoning Compliance Permit (PLNX-23-00886) to allow a 15-foot property line setback for a new 4,800 square foot detached accessory building on Parcel 2, C/S 3668, in an Agriculture (A) zone district. The property in question is located at 5005 US HWY 3 owned by Bryan White. The appellants are the Witten's, the neighboring property owners that dispute the Planning Divisions application of the zoning code, more specifically section 27-903 which outlines the site and structure regulations. It was determined by staff that the parcel was accessed with a private access easement, and the property had no actual "front property line" or "rear property line" as described in the Zoning Code (included in attachments and labeled Zoning Code Sections). Therefore, staff determined that the appropriate property setback would be the "side setback" of 15 feet from the west property line and not the "front lot line" setback of 20 feet. Background information focuses on the zoning code, staff's interpretation and appellant information.

The zoning code sections staff consulted in making its determination are as follows:

SECTION 27-1802 MEASUREMENTS AND ASSOCIATED TERMS; A. LOT AND STREET MEASUREMENTS AND TERMS

- 3. Lot line: A line of record bounding a lot which divides one lot from another lot or from a public or private street, alley or other public space.
(a) Front Lot Line: The lot line abutting a public or private front street.
(b) Rear Lot Line: The lot line not intersecting a front lot line that is most distant from and most clearly parallel to the front lot line.
(c) Side Lot Line: Any lot line that is not a front, street-side, or a rear lot line abutting an interior lot.
(d) Street-Side Lot Line: The lot line abutting a public or private side or non-front street.

SECTION 27-1803 MEASUREMENTS AND DEFINITIONS;

R- R TERMS

Right-of-way: A strip of land dedicated or acquired for use as a public way, or that is acquired through an easement.

S- S TERMS;

Streets:

Street: A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place, or however otherwise designated which has been dedicated to or acquired for public use and which extends the full width between right-of-way lines, which includes

areas acquired or prescribed through an easement.

Additionally, sections 27-902.C.3, 27-903-Table 27-900.1, were consulted for Agriculture (A) district regulations.

The subject property is accessed by a private access easement declaration, recorded under document 3824820 in the Yellowstone County Clerk & Recorders office (in attachments). A private access easement does not constitute a public way or street.

Staff's determination that the description of a "front Lot line" as noted in the above definition sections for a "right of way" (ROW) does not exist for this property. The property has no property line adjacent to or along a public or private ROW.

The property line in question does not abut a public street or right of way, nor does a right of way run the full length of the property line. The western property line can only be a side property line - as are all the other property lines for this parcel of land. The existing access easement is a private easement for access to the subject property only, it is not for "public" use and is a driveway access. The westerly property line of this property does not fit the description of a "front" property (lot) line. It is **not** a lot line abutting a public or private front street. It does, however meet the description of a "side" property line; **any** Lot line that is not a front, street-side, or rear lot line abutting an interior lot. The adjacent property owned by the appellants, is different than the property in question. The Witten's property at 5001 US Highway 3 does have a front property line, a rear property line and two side property lines. Planning staff would not apply a "front property line" setback to a building close to the private access easement on the Witten's property. Planning staff would only apply this setback to the property line that has frontage on US Highway 3. Staff would not apply a side adjacent to a street setback, side setback or rear setback to the private access easement through the Witten's property. Any structure proposed for the Witten property could be at any location next to the easement so long as it did not encroach on the easement itself. The only enforcement of the easement rights and burdens are the parties to the easement. The County is not a party to the easement.

Chronology of events provided by appellant, and staff's response the statements.

Appellant: March 16, 2023 -- Wittens speak to County Planning (Hunter Kelly) regarding Mr. White beginning construction too close to the property line, demonstrating that County Planning knew prior to White's ZCP application that the Wittens were concerned about this issue.

STAFF: General correspondence occur across multiple staff in the Planning Division. There is no shared log book of inquiries between planners only a record of applications which may be assigned to various planners. There is no mechanism to share conversations between planners. In other words, the planner assigned to this permit would have no prior knowledge of any inquiries or conversations with Planner Hunter Kelly.

Appellant: March 16, 2023 -- That same day, Wittens speak to Mike Schieno, who agrees to look into the issue.

STAFF: Yellowstone County Code Enforcement was contacted by the adjacent property owners "The Wittens" to place a complaint about a building being constructed on the adjacent parcel (5005 US HWY 3), and were concerned it was being constructed too close to the property line. Code Enforcement Officer, Mike Schieno reviewed the complaint and contacted the Zoning Coordinator, Nicole Cromwell and asked what the front lot line setback requirement was for a detached accessory structure in the Agriculture (A) zone district. Nicole Cromwell responded that the front setback requirement was 20 feet, unless it was a barn, house, hay barn or horse barn that must be 35 feet from the property line. There was no specific discussion or review of the subject property at that time the discussion was general to district requirements.

Appellant: March 20, 2023 -- Letter to Bryan White informing him of his need to obtain a Zoning Compliance Permit (ZCP). The "concerned caller" discussed in this letter almost certainly is the Wittens. The letter specifically identifies the proper setback at 20', memorializing the County's position of the setback in writing. - The letter is forwarded to the Wittens, demonstrating that the County knows how to get in touch with the Wittens when it wants to.

STAFF: Officer Schieno sent a notice to the "Whites" (attached) stating that the structure should be 20 feet from the property line, and included a zoning compliance permit application. Officer Schieno does not complete zoning compliance permit reviews nor does he administer the zoning code. Mr Schieno assists planning in enforcing the zoning code and often times he shares general information related to zoning. This letter (Exhibit A in attachment titled Application and Applicants Letter) is not a determination of compliance and Mr Schieno nor planning staff completed any sort of site specific analysis on the property to determine compliance at this time because no permit had been received, therefore general requirements were discussed. Short of a full property evaluation with planning staff Mr. Schieno would not have been able to relay the unique circumstances with this property, i.e. the absence of a front property line and the presence of the private access easement. Further, zoning regulations are administered by the Planning Division not County Code Enforcement. In the absence of a zoning compliance permit a full evaluation was not completed.

Appellant: March 21, 2023 -- Bryan White submitted ZCP

STAFF: Planning Division received an application for a Zoning Compliance permit for the structure and the permit was assigned to Karen Husman. During the permit review process, Staff checked the Zoning Code and definitions to review the permit to make sure of the appropriate setback was a side setback of 15 feet and checked with other staff members to acquire a second and third opinion on the structure placement. It was determined that the absence of a "front property line" would then default the setback requirement to a "side" setback requirement of 15 feet (difference of 5 feet). March 22, 2023, PLNX-23-00886 was approved and issued (attached).

Appellant: March 22, 2023 -- Planning Staff approved ZCP contrary to the previous written opinion provided in Schieno's letter.

STAFF: The letter being referred to is identified as exhibit A in the applicants' submittal which is attached to this report. Officer Schieno sent a notice to the "Whites" (attached) stating that the structure should be 20 feet from the property line, and included a zoning compliance permit application. Officer Schieno does not complete zoning compliance permit reviews nor does he administer the zoning code. Mr Schieno assists planning in enforcing the zoning code and often times he shares general information related to zoning. This letter (Exhibit A in attachment titled Application and Applicants Letter) is not a determination of compliance and Mr Schieno nor planning staff completed any sort of site specific analysis on the property to determine compliance at this time because no permit had been received, therefore general requirements were discussed. Short of a full property evaluation with planning staff Mr. Schieno would not have been able to relay the unique circumstances with this property, i.e. the absence of a front property line and the presence of the private access easement. Further, zoning regulations are administered by the Planning Division not County Code Enforcement. In the absence of a zoning compliance permit a full evaluation was not completed.

March 22 through May 17, 2023 -- County never reaches out to the Wittens to inform them that it had granted White's ZCP application in a manner contrary to the opinion provided in Schieno's letter and advising them of their right to appeal that decision.

STAFF: Staff acknowledges it would have been courteous to reach out to the property owner, but the administrative procedures in the code did not require follow up.

Appellant: May 18, 2023 -- Phone call received from Monica Witten, staff consulted on the situation with the reviewing planner but do not inform the Wittens of the permit date or of the fact that their appeal deadline is set to run in a few days.

STAFF: Staff informed the Planning Division Manager and Zoning Coordinator of the matter. Karen Husman was advised to contact the Witten's to explain how the determination was made.

Appellant: May 19, 2023 -- The reviewing planner contact Monica Witten via phone to explain staff's interpretation. Staff was informed the Witten's would be contacting an attorney and they or their attorney would be in contact the Planning Manager. Staff refuse to provide the Wittens with a copy of the permit, even though it is available publicly on the County's website.

STAFF: During staff's conversation with the Wittens Staff answered the questions asked (how was the 15' setback determined). Staff explained the code section description and why the westerly lot line was not considered a "frontage" as described in the code. The reasoning provided by staff were not satisfactory for the

appellants and the reviewing Planner provided contact information for the Planning Division Manager and Zoning Coordinator.

Appellant: May 22, 2023 -- Justin Harkins calls to speak to County Planning (Karen Husman) who again demands public records request to receive copy of permit. Husman does not disclose permit date to Harkins.

STAFF: Staff did request a formal public records request be submitted to obtain the documents.

Appellant: May 22, 2023 -- The Planning Division received a public records request for the property located at 5005 Highway 3.

STAFF: The request was received by Monica Plecker, Planning Division Manager. The request was forwarded to the clerk for processing.

Appellant: May 23, 2023 -- Monica Plecker emailed Jill Smith and Justin Harkins informing them the request had been received and was provided to the Planning Clerk

Appellant: May 23, 2023 -- Approximately 4 P.M. Monica and Justin spoke via phone to discuss options for appeal.

May 25, 2023, Planning Division Received formal appeal.

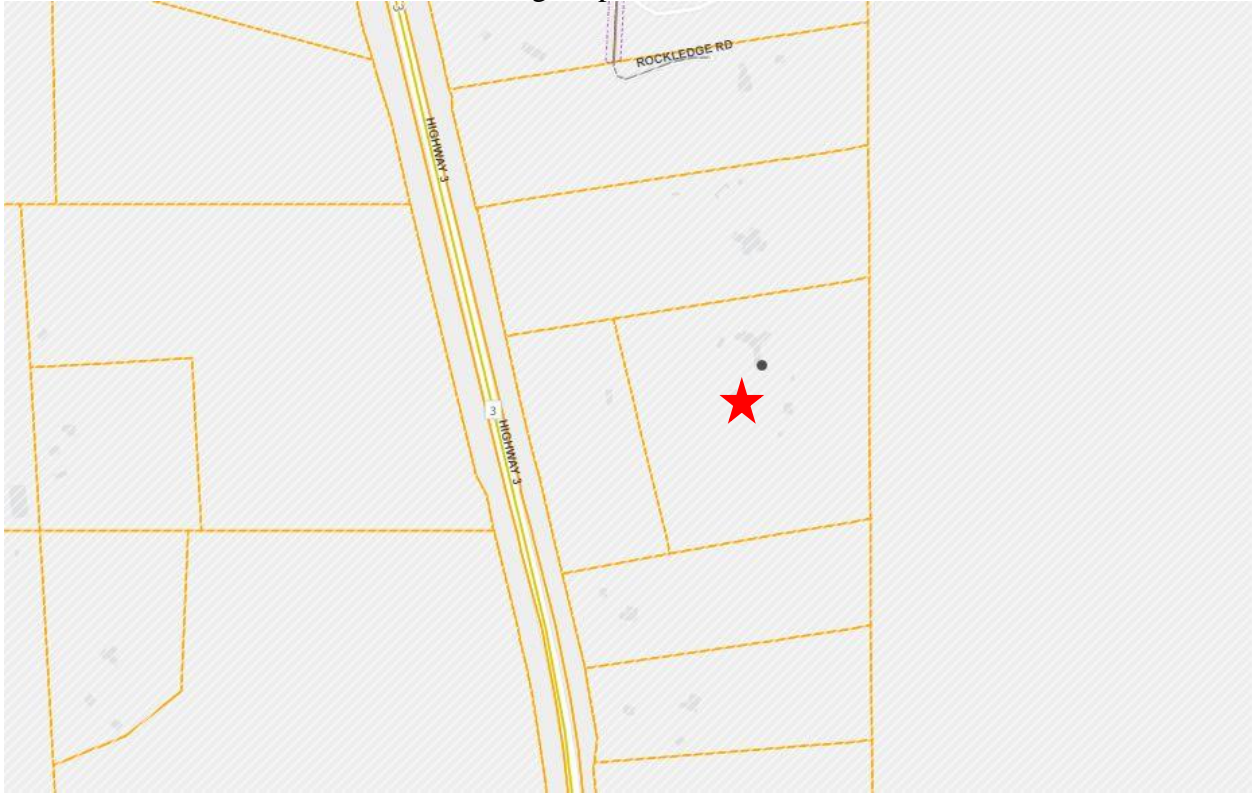
RECOMMENDATION

Planning staff recommends the Board affirm in whole the decision to approve the Zoning Compliance permit to allow a 15-foot property line setback for a new 4,800 square foot detached accessory building.

Attachments

Zoning Map & Site Photos
Application and Applicant Letter
Zoning Compliance permit
Private access Easement
Zoning Code Sections

Zoning Map & Site Photos







Looking North



West



South



Looking East

Received Notice of Appeal

Re: Zoning Compliance Permit
for 5005 Highway 3

PLNX-23-00886 (attached)

Shelley
PLNX-23-00111 5/31/23



Monica will contact you re: is appeal in time.

Michelle Cronwell

May 25, 2023

Yellowstone County Board of Adjustment
Miller Building 1st Floor Conference Room
2825 3rd Avenue North

RE: *Notice of Appeal of Permit PLNX-23-0886*

To whom it may concern:

This office represents Bradley, Thomas, and Monica Witten (collectively, the “Wittens”), property owners at 5001 U.S. Highway 3, Billings, MT 59106 (the “Witten Property”). Please consider this letter be notice of appeal of residential project permit PLNX-23-00886, issued to Bryan M. White at 5005 U.S. Highway 3, Billings, MT 59106 (the “White Property”).

This permit was granted in error. The permit provides for approval to build a steel storage building 15 feet from the Witten Property. Pursuant to Yellowstone County Zoning Code (the “Zoning Code”) Table 27-900.1, the required setback for the front property line, where this building is situated, is either 35 feet or 20 feet, depending on the type of building. The 15-foot setback pertains to side property lines, which the germane property line is not.

Evidently, County Planning determined that the White Property has no front property line at all because it is separated from Highway 3 by the Witten Property. That is an incorrect interpretation of the Zoning Code. Pursuant to Zoning Code §§ 27-1802(A)(3)(a), (A)(4)(b), and (A)(6)(a), the germane lot line is a front lot line because it is the lot line where the public or private right-of-way intended for general public use to provide access to the White Property is located. Furthermore, Zoning Code § 27-1802(A)(4) lists the potential “lot types,” including a corner lot, an interior lot, and a through lot or double frontage lot. There are no other options, which means a given lot must be one of these three types. All of these types describe at least one frontage, meaning there is no such thing in Yellowstone County as a lot that has no front.

Because there can be no lot without frontage and because the boundary line here at issue indisputably is the front line of the White Property, County Planning effectively has granted Mr. White a variance to build within the proper setback boundary without going through any of the procedures required of a variance request, including particularly proper notice to impacted property owners such as the Wittens. Pursuant to Zoning Code § 27-1626, the variance process

requires published, mailed, and posted notice of the variance request and a determination by the Board of Adjustment, none of which the County has done in this case.

We request that the Board of Adjustment correct permit PLNX-23-00886 and adjust the setback requirement to 35 feet or 20 feet, depending on the contemplated building, or otherwise go through the proper procedure to consider what essentially is a variance request.

Regarding the timing of this appeal, permit PLNX-23-00886 was issued March 22, 2023, meaning the 60-day appeal period prescribed in Zoning Code § 27-1615(C)(2)(a) presupposed an appeal deadline of May 22, 2023 (May 21 being a Sunday). The Wittens did not learn of the date the permit was granted until May 24, 2023, following a call from the undersigned counsel to County Planning for that particular information. The Board of Adjustment should not refuse to hear this appeal based on any argument that it is tardy by three days.

First of all, Yellowstone County has known for many weeks that the Wittens disapprove of Mr. White building within the setback as they spoke to several County employees about this very issue in March 2023, ultimately culminating in the letter attached hereto as **Exhibit A**, in which County code enforcement officer Mike Schieno informed Mr. White of the correct setback requirements. County Planning apparently approved permit PLNX-23-00886 with a 15-foot setback – contrary to Mr. Schieno’s stated interpretation – two days after Mr. Schieno’s letter, though nobody informed the Wittens of this permit approval or of the fact that the County had deviated from the interpretation it provided to the Wittens.

Then, after noticing that Mr. White had begun construction closer than 20 feet from the property line, the Wittens called County Planning on May 19, 2023, to discuss this permit and to request a copy of it. County Planning did not inform the Wittens at that time that the appeal deadline was set to run the following Monday and told the Wittens they would need to deliver a public records request in order to receive a copy of the permit. The undersigned counsel then called County Planning on May 22, 2023, to discuss this permit and also was not informed that the appeal deadline was about to run. The undersigned delivered on that date a public records request seeking information relating to the permit. **Exhibit B**.

Any attempt to enforce the 60-day appeal deadline under these circumstances will constitute a violation of the Wittens’ right to due process of law due to the County’s failure to notify the Wittens that it had granted permit PLNX-23-00886 in contravention of the interpretation of Zoning Code Table 27-900.1 that it had already provided to them. *See Mont. Media, Inc. v. Flathead County*, 2003 MT 23, ¶ 65, 314 Mont. 121, 63 P.3d 1129 (“Due process requires both notice of a proposed action and the opportunity to be heard.”). The Wittens had the right to rely on the County’s assurance that it would enforce the 20-foot or 35-foot setback requirements, and the County was obligated to inform the Wittens if and when it determined otherwise.¹ The

¹ The variance issue looms large here because the Wittens – as property owners within 150 feet of the exterior boundaries of the White Property – are entitled to mailed notice of any requested variance.

Wittens acted with diligence as soon as they discovered that a permit had been issued contrary to the interpretation of the Zoning Code the County previously provided them. The Board of Adjustment should hear this appeal.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink, appearing to read 'John W. Harkins IV', is written over the printed name below.

JOHN W. (JUSTIN) HARKINS IV
JADE T. SOLVASON

CITY-COUNTY PLANNING DIVISION

2825 3RD AVENUE NORTH, 4TH FLOOR
BILLINGS, MT 59101

Office: (406) 657-8246

Fax: (406) 657-8327

www.co.yellowstone.mt.gov/planning

www.ci.billings.mt.us/planning

Job Address: HIGHWAY 3

Subdivision/Block/Lot: 3668/000/002

Owner: bryan M white

Contractor: OWNER

Project Information: 5005 US Highway 3

Description of Work: Steel storage building

Specific Information Requested

SPECIAL CONDITIONS/COMMENTS:

Approved building at 15 feet from adjacent neighbor property line. Per Section 27-900, for property adjacent.

FEES:

PLN-ZONING COMPLIANCE - RES:

\$77.00

TOTAL FEES:

\$77.00

**PLNX-COUNTY ZONING COMPLIANCE PERMIT -
RESIDENTIAL
PROJECT # PLNX-23-00886**

Issue Date: 03/22/2023

Expiration Date: 09/22/2023

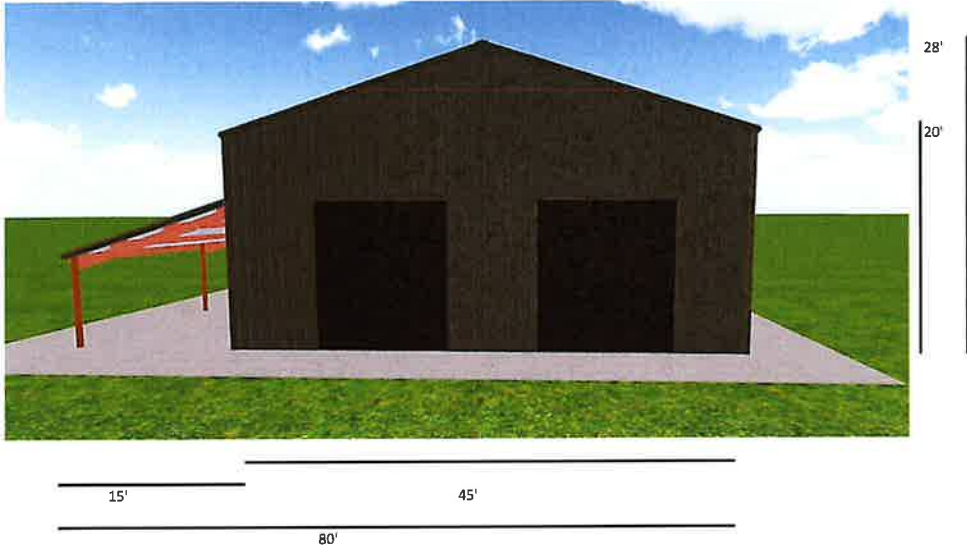
Issued By:



Disclaimer: The applicant hereby agrees that the proposed work shall be done in accordance with the plans and specifications and statement herewith submitted and in conformity with the provisions of the Unified Zoning Regulations pertaining to such project. This permit becomes null and void if permitted activity is not commenced within 180 days from the date such permit is issued. If activity authorized by such permit is suspended or abandoned for 180 days any time after activity is commenced, a NEW permit must be obtained before activity can be recommenced. Separate permits are required for electrical installations and hookups. By accepting this permit, I agree to observe all existing easements whether apparent or not and understand that it is my responsibility to determine the location and extent of any and all easements. Incomplete, erroneous, or misrepresented information (whether intentional or not) may result in permit revocation and enforcement actions.

By accepting this permit, the applicant hereby acknowledges the following statements:

- 1) That he/she is authorized to make this application;
 - 2) That all information provided by the applicant is true and correct, including all information on any attachments hereto;
 - 3) That he/she will comply with all regulations of the City of Billings and Yellowstone County which are applicable hereto;
 - 4) That he/she will perform no work on the above property not specifically described in this application;
 - 5) That he/she grants City and County officials the right to enter onto the property for the purpose of inspecting the work permitted and posting notices.
- Many subdivisions in the City of Billings and Yellowstone County have private deed restrictions or covenants regulating land uses. City-County Planning Division staff will not determine whether or not the work covered by a permit satisfies these covenants. Obtaining a permit does not relieve the homeowner or agent of their responsibility for determining the nature of applicable covenants and private deed restrictions and complying with covenants



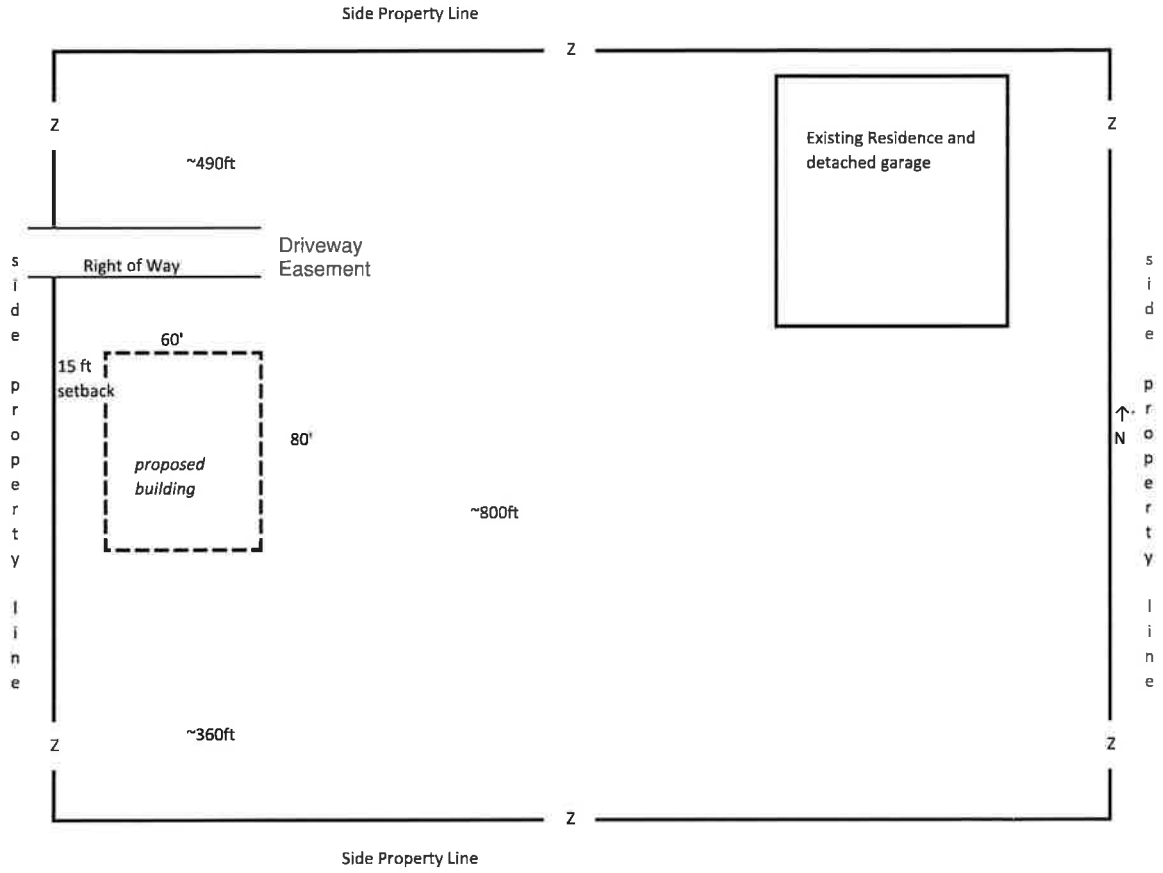
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WITTEN,
THOMAS
W



WHITE,
BRYAN &
MARIAH







PHONE: (406) 652-2050
CELL: (406) 208-0549

YELLOWSTONE COUNTY CODE ENFORCEMENT

"PROTECTING QUALITY OF LIFE IN YELLOWSTONE COUNTY"



1200 SHILOH RD
BILLINGS, MONTANA 59106

EMAIL: mschieno@yellowstonecountymt.gov

March 20, 2023

Bryan White
5005 Highway 3
Billings, MT 59106

Dear Bryan,

I have received information that you are in the process of building a structure near the property line of the concerned caller.

The zoning for this area is A-Agriculture. Accessory structures such as, pole barns, garage and carports may be built 20 ft from the property line.

Barns, houses, hay barns and horse barns must be 35 ft from the property line. I have enclosed a zoning compliance permit for you to complete and send to City County Planning for review.

If you have any questions, please call me at (406) 208-0549. Thank you for your immediate attention in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike Schieno".

Mike Schieno
Yellowstone County Code Enforcement Department



CROWLEY | FLECK
ATTORNEYS

Justin Harkins
490 N. 31st Street, Suite 500
P.O. Box 2529
Billings, MT 59103-2529
Telephone: (406) 252-3441
Facsimile: (406) 256-0277
jharkins@crowleyfleck.com

May 22, 2023

Monica Plecker
Planning Division Manager
Yellowstone County Planning Division Via US Mail and Email: pleckerm@billingsmt.gov
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

RE: *Public record request regarding building permit granted to Bryan and/or
Mariah White at 5005 U.S. Hwy 3, Billings, MT 59106*

Dear Ms. Plecker:

I hope this letter finds you well. I represent Bradley, Monica, and Thomas Witten (collectively, the "Wittens") who own real property at 5001 U.S. Hwy 3, Billings, MT 59106. As you may be aware, Yellowstone County recently granted a permit (the "Permit") for the construction of an outbuilding at 5005 U.S. Hwy 3, Billings, MT 59106, which property borders the Wittens' property to the northeast. I hereby request under the Montana Public Records Act, Mont. Code Ann. § 2-6-1001, et seq., that you produce to this office at your earliest convenience copies of the following records and all records of any kind containing the following information:

1. The Permit;
2. Any draft copies of the Permit;
3. The Permit application;
4. Any previous ungranted applications for construction of the same or similar outbuilding;
5. Any decisions, letters, memoranda, etc., denying any previous applications for construction of the same or similar outbuilding;
6. All correspondence between the Yellowstone County Planning Division ("County Planning") and Bryan White, Mariah White, and/or any of their representatives relating in any way to the Permit;

Ms. Monica Plecker
Re: *Witten FOIA Request*
May 22, 2023
Page 2 of 2

7. All correspondence between County Planning and anyone else relating in any way to the Permit;
8. All correspondence between or among County Planning personnel relating in any way to the Permit; and
9. All other documents of whatever kind related to the Permit.

I'm able to receive these records electronically or in hard copy, whichever is easier for you. If you would prefer to send hard copies, please direct them to address provided above. If there are any fees charged for locating, reviewing, or copying the records, please supply the records without informing me of the cost if the fees do not exceed one hundred dollars (\$100.00), up to which amount we agree to pay without further conversation. If the fees do exceed that amount, please let me know prior to fulfilling this request so that I can discuss the fee with the Wittens.

I appreciate your time and consideration. If you have any questions regarding this request, please do not hesitate to contact me at the phone number and/or email addresses provided above. I look forward to working with you.

Sincerely,

CROWLEY FLECK PLLP



JOHN W. (JUSTIN) HARKINS IV

structures and facilities. The term includes, but is not limited to, photovoltaic power systems, solar thermal systems, and solar hot water systems.

Solar Thermal System – also known as solar hot water systems; an SEF that absorbs solar energy as heat which is then used to heat structures and water.

Solid waste facility: A facility principally or solely used for the processing or disposal of solid waste and subject to compliance with all applicable federal, state, and local regulations including:

Transfer Stations: Facilities at which solid waste collected from any source is temporarily deposited to await transportation to another solid waste facility. All activities associated with a Transfer Station shall be done within an enclosed structure including but not limited to sorting, reducing, compressing, shredding, compacting, composting, and storage of waste materials, equipment or vehicles.

Solid Waste Processing Facilities: Facilities at which solid waste is sorted, reduced, compressed, shredded, compacted or composted for purposes of volume reduction or preparation for burning or land-filling.

Waste Burning Facilities: Any incinerator, boiler, percolator or other solid waste facility at which solid waste, including previously processed solid waste is burned for the purposes of volume and weight reduction or steam heat, power or energy generation.

Sanitary Landfills: Facilities employing a method of disposing of solid wastes on or into land by various forms of excavation, placement, burial, compaction, or covering.

Recycling Processing Facilities: Facilities at which the primary function is to extract useful materials from the solid waste, and all processing activities are conducted within a completely enclosed building.

Spectrum Act (Wireless Communication Facilities): The “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).

Stable, private: A detached accessory building in which horses or other beasts of burden owned by the occupant of the premises are kept, and in which no such animals are kept for hire, remuneration or sale, and are kept for the owner's private use only.

Stable, commercial: A stable other than a private stable.

Stay: The act of temporarily stopping or suspending an action, such as the processing of a permit application.

Stealth Communication Facility (Wireless Communication Facilities): Any WCF that is integrated as an architectural feature of a structure or the landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.

Streets:

Street: A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place, or however otherwise designated which has been dedicated to or acquired for public use and which extends the full width between right-of-way lines, which includes areas acquired or prescribed through an easement.

Alley: A minor way which is used primarily for vehicular service access or for utility lines to the back or the side of properties otherwise abutting on a street.

EASE

3824820

08/23/2017 01:38 PM Pages: 1 of 2 Fees: 14.00
Jeff Martin Clerk & Recorder, Yellowstone MT



Return to:
Zachary Taylor
5005 US Highway 3
Billings, MT 59106

DECLARATION OF EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned owner, ZACHARY J. TAYLOR, does, on this 19th day of July, 2017, hereby grant an easement through and across certain real property located in the SE1/4 of Section 17, T. 1 N., R. 25 E., P.M.M., Yellowstone County, Montana, described as Tract 1 of Certificate of Survey No. 3668, on file in the office of the clerk and recorder of said County, under Document No. 3824817; said easement center line being as shown on the attached Exhibit "A".

The Owner does hereby create this PRIVATE ACCESS EASEMENT for the purposes of maintaining, repairing, improving, replacing, and using an existing asphalt driveway and any necessary fixtures and appurtenances through and across said real property, together with the right of free ingress and egress for said purposes.

This easement is created for the benefit of the owner of Tract 2 of said Certificate of Survey, their heirs, executors, successors, administrators, and assignees and shall run with the real property and is binding on all parties having any right, title, or interest in said Tract 1 or any part thereof, their heirs, executors, successors, administrators, and assignees, and shall bind each owner thereof.

The existing asphalt driveway currently provides access to said Tract 2. This easement is created to also provide access to one additional tract should said Tract 2 is subdivided in the future.

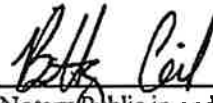

ZACHARY J. TAYLOR

STATE OF MONTANA)

:ss

County of Yellowstone)

On this 19th day of July, 2017, before me, the undersigned Notary Public for the State of Montana, personally appeared ZACHARY J. TAYLOR, known to me to be the persons who signed the forgoing instrument and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.


Notary Public in and for the State of Montana

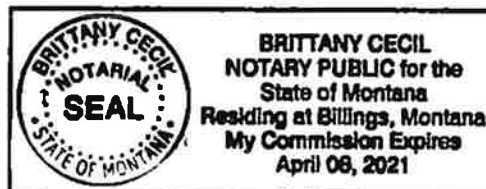




EXHIBIT A

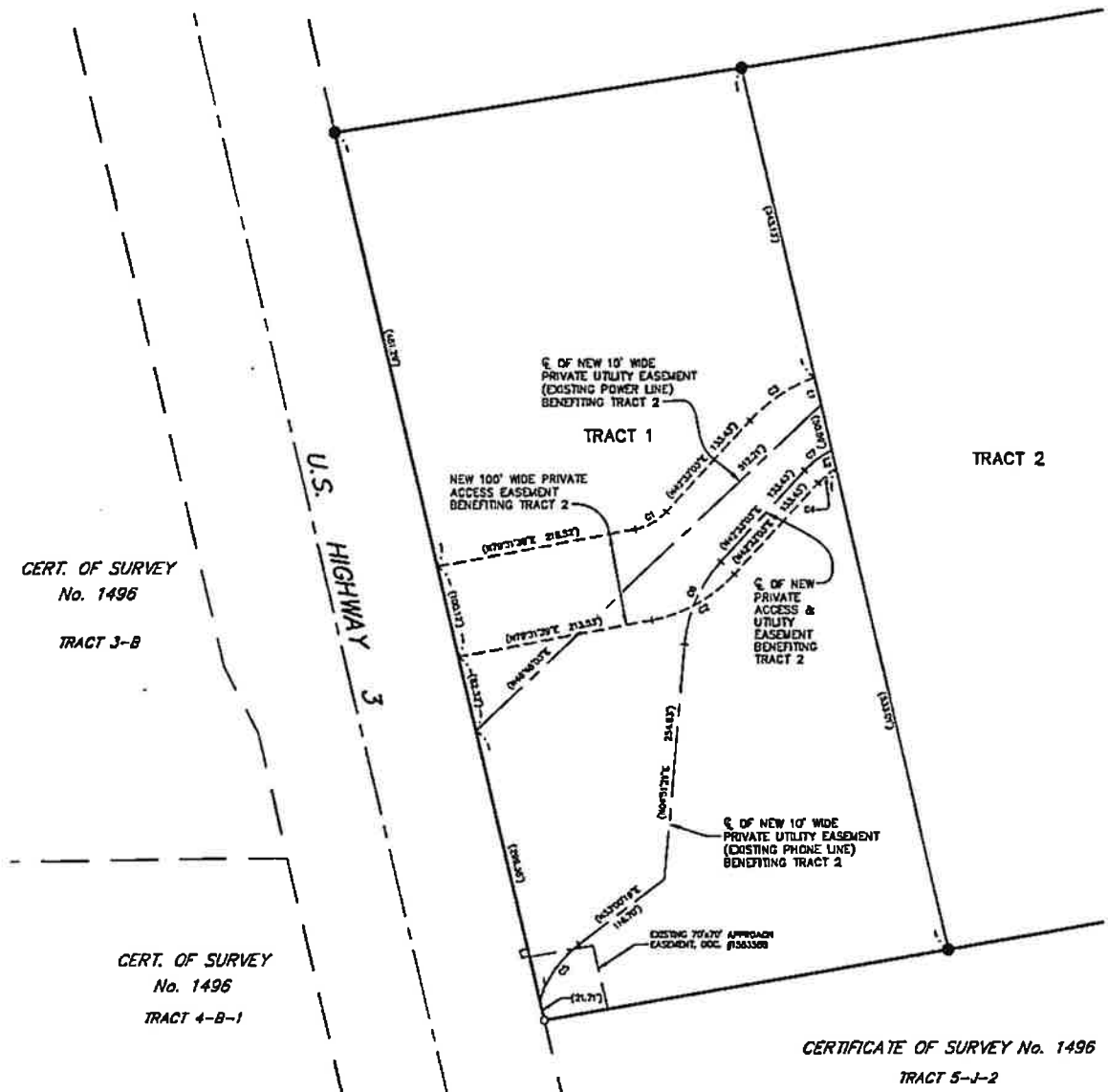
EASEMENTS WITHIN TRACT 1 OF CERTIFICATE OF SURVEY No. _____

PREPARED FOR : ZACHARY TAYLOR

JULY, 2017

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA



Line #	Bearing	Distance
L1	N 13°19'28" W	30.39'
L2	N 13°10'29" W	20.52'

Curve #	Delta	Radius	Length
C1	36°59'36"	60.00'	38.74'
C2	36°59'36"	180.00'	103.30'
C3	27°43'34"	175.00'	84.68'
C4	19°01'48"	75.00'	24.91'
C5	35°43'31"	120.00'	74.89'
C6	37°40'42"	180.00'	88.64'
C7	22°15'50"	85.00'	38.91'

Justin Harkins
Jade Solvason
490 N. 31st Street, Suite 500
P.O. Box 2529
Billings, MT 59103-2529
Telephone: (406) 252-3441
Facsimile: (406) 256-0277
jharkins@crowleyfleck.com
jsolvason@crowleyfleck.com

May 25, 2023

Yellowstone County Board of Adjustment
Miller Building 1st Floor Conference Room
2825 3rd Avenue North

RE: *Notice of Appeal of Permit PLNX-23-0886*

To whom it may concern:

This office represents Bradley, Thomas, and Monica Witten (collectively, the “Wittens”), property owners at 5001 U.S. Highway 3, Billings, MT 59106 (the “Witten Property”). Please consider this letter be notice of appeal of residential project permit PLNX-23-00886, issued to Bryan M. White at 5005 U.S. Highway 3, Billings, MT 59106 (the “White Property”).

This permit was granted in error. The permit provides for approval to build a steel storage building 15 feet from the Witten Property. Pursuant to Yellowstone County Zoning Code (the “Zoning Code”) Table 27-900.1, the required setback for the front property line, where this building is situated, is either 35 feet or 20 feet, depending on the type of building. The 15-foot setback pertains to side property lines, which the germane property line is not.

Evidently, County Planning determined that the White Property has no front property line at all because it is separated from Highway 3 by the Witten Property. That is an incorrect interpretation of the Zoning Code. Pursuant to Zoning Code §§ 27-1802(A)(3)(a), (A)(4)(b), and (A)(6)(a), the germane lot line is a front lot line because it is the lot line where the public or private right-of-way intended for general public use to provide access to the White Property is located. Furthermore, Zoning Code § 27-1802(A)(4) lists the potential “lot types,” including a corner lot, an interior lot, and a through lot or double frontage lot. There are no other options, which means a given lot must be one of these three types. All of these types describe at least one frontage, meaning there is no such thing in Yellowstone County as a lot that has no front.

Because there can be no lot without frontage and because the boundary line here at issue indisputably is the front line of the White Property, County Planning effectively has granted Mr. White a variance to build within the proper setback boundary without going through any of the procedures required of a variance request, including particularly proper notice to impacted property owners such as the Wittens. Pursuant to Zoning Code § 27-1626, the variance process

requires published, mailed, and posted notice of the variance request and a determination by the Board of Adjustment, none of which the County has done in this case.

We request that the Board of Adjustment correct permit PLNX-23-00886 and adjust the setback requirement to 35 feet or 20 feet, depending on the contemplated building, or otherwise go through the proper procedure to consider what essentially is a variance request.

Regarding the timing of this appeal, permit PLNX-23-00886 was issued March 22, 2023, meaning the 60-day appeal period prescribed in Zoning Code § 27-1615(C)(2)(a) presupposed an appeal deadline of May 22, 2023 (May 21 being a Sunday). The Wittens did not learn of the date the permit was granted until May 24, 2023, following a call from the undersigned counsel to County Planning for that particular information. The Board of Adjustment should not refuse to hear this appeal based on any argument that it is tardy by three days.

First of all, Yellowstone County has known for many weeks that the Wittens disapprove of Mr. White building within the setback as they spoke to several County employees about this very issue in March 2023, ultimately culminating in the letter attached hereto as **Exhibit A**, in which County code enforcement officer Mike Schieno informed Mr. White of the correct setback requirements. County Planning apparently approved permit PLNX-23-00886 with a 15-foot setback – contrary to Mr. Schieno’s stated interpretation – two days after Mr. Schieno’s letter, though nobody informed the Wittens of this permit approval or of the fact that the County had deviated from the interpretation it provided to the Wittens.

Then, after noticing that Mr. White had begun construction closer than 20 feet from the property line, the Wittens called County Planning on May 19, 2023, to discuss this permit and to request a copy of it. County Planning did not inform the Wittens at that time that the appeal deadline was set to run the following Monday and told the Wittens they would need to deliver a public records request in order to receive a copy of the permit. The undersigned counsel then called County Planning on May 22, 2023, to discuss this permit and also was not informed that the appeal deadline was about to run. The undersigned delivered on that date a public records request seeking information relating to the permit. **Exhibit B**.

Any attempt to enforce the 60-day appeal deadline under these circumstances will constitute a violation of the Wittens’ right to due process of law due to the County’s failure to notify the Wittens that it had granted permit PLNX-23-00886 in contravention of the interpretation of Zoning Code Table 27-900.1 that it had already provided to them. *See Mont. Media, Inc. v. Flathead County*, 2003 MT 23, ¶ 65, 314 Mont. 121, 63 P.3d 1129 (“Due process requires both notice of a proposed action and the opportunity to be heard.”). The Wittens had the right to rely on the County’s assurance that it would enforce the 20-foot or 35-foot setback requirements, and the County was obligated to inform the Wittens if and when it determined otherwise.¹ The

¹ The variance issue looms large here because the Wittens – as property owners within 150 feet of the exterior boundaries of the White Property – are entitled to mailed notice of any requested variance.

Wittens acted with diligence as soon as they discovered that a permit had been issued contrary to the interpretation of the Zoning Code the County previously provided them. The Board of Adjustment should hear this appeal.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink, appearing to be 'John W. Harkins IV', written over a horizontal line.

JOHN W. (JUSTIN) HARKINS IV
JADE T. SOLVASON



YELLOWSTONE COUNTY CODE ENFORCEMENT

"PROTECTING QUALITY OF LIFE IN YELLOWSTONE COUNTY"

1200 SHILOH RD
BILLINGS, MONTANA 59106

EMAIL: mschieno@yellowstonecountymt.gov

PHONE: (406) 652-2050
CELL: (406) 208-0549

March 20, 2023

Bryan White
5005 Highway 3
Billings, MT 59106

Dear Bryan,

I have received information that you are in the process of building a structure near the property line of the concerned caller.

The zoning for this area is A-Agriculture. Accessory structures such as, pole barns, garage and carports may be built 20 ft from the property line.

Barns, houses, hay barns and horse barns must be 35 ft from the property line. I have enclosed a zoning compliance permit for you to complete and send to City County Planning for review.

If you have any questions, please call me at (406) 208-0549. Thank you for your immediate attention in this matter.

Sincerely,

Mike Schieno
Yellowstone County Code Enforcement Department



CROWLEY | FLECK
ATTORNEYS

Justin Harkins
490 N. 31st Street, Suite 500
P.O. Box 2529
Billings, MT 59103-2529
Telephone: (406) 252-3441
Facsimile: (406) 256-0277
jharkins@crowleyfleck.com

May 22, 2023

Monica Plecker
Planning Division Manager
Yellowstone County Planning Division Via US Mail and Email: pleckerm@billingsmt.gov
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

RE: *Public record request regarding building permit granted to Bryan and/or
Mariah White at 5005 U.S. Hwy 3, Billings, MT 59106*

Dear Ms. Plecker:

I hope this letter finds you well. I represent Bradley, Monica, and Thomas Witten (collectively, the "Wittens") who own real property at 5001 U.S. Hwy 3, Billings, MT 59106. As you may be aware, Yellowstone County recently granted a permit (the "Permit") for the construction of an outbuilding at 5005 U.S. Hwy 3, Billings, MT 59106, which property borders the Wittens' property to the northeast. I hereby request under the Montana Public Records Act, Mont. Code Ann. § 2-6-1001, et seq., that you produce to this office at your earliest convenience copies of the following records and all records of any kind containing the following information:

1. The Permit;
2. Any draft copies of the Permit;
3. The Permit application;
4. Any previous ungranted applications for construction of the same or similar outbuilding;
5. Any decisions, letters, memoranda, etc., denying any previous applications for construction of the same or similar outbuilding;
6. All correspondence between the Yellowstone County Planning Division ("County Planning") and Bryan White, Mariah White, and/or any of their representatives relating in any way to the Permit;

Ms. Monica Plecker
Re: Witten FOIA Request
May 22, 2023
Page 2 of 2

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8. All correspondence between or among County Planning personnel relating in any way to the Permit; and
9. All other documents of whatever kind related to the Permit.

I'm able to receive these records electronically or in hard copy, whichever is easier for you. If you would prefer to send hard copies, please direct them to address provided above. If there are any fees charged for locating, reviewing, or copying the records, please supply the records without informing me of the cost if the fees do not exceed one hundred dollars (\$100.00), up to which amount we agree to pay without further conversation. If the fees do exceed that amount, please let me know prior to fulfilling this request so that I can discuss the fee with the Wittens.

I appreciate your time and consideration. If you have any questions regarding this request, please do not hesitate to contact me at the phone number and/or email addresses provided above. I look forward to working with you.

Sincerely,

CROWLEY FLECK PLLP



JOHN W. (JUSTIN) HARKINS IV

CITY-COUNTY PLANNING DIVISION

2825 3RD AVENUE NORTH, 4TH FLOOR
BILLINGS, MT 59101

Office: (406) 657-8246

Fax: (406) 657-8327

www.co.yellowstone.mt.gov/planning

www.ci.billings.mt.us/planning

Job Address: HIGHWAY 3

Subdivision/Block/Lot: 3668/000/002

Owner: bryan M white

Contractor: OWNER

Project Information: 5005 US Highway 3

Description of Work: Steel storage building

**PLNX-COUNTY ZONING COMPLIANCE PERMIT -
RESIDENTIAL
PROJECT # PLNX-23-00886**

Issue Date: 03/22/2023

Expiration Date: 09/22/2023

Issued By:



Specific Information Requested

SPECIAL CONDITIONS/COMMENTS:

Approved building at 15 feet from adjacent neighbor property line. Per Section 27-900, for property adjacent.

FEES:

PLN-ZONING COMPLIANCE - RES:

\$77.00

TOTAL FEES:

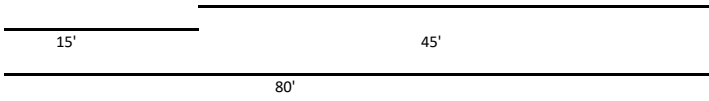
\$77.00

Disclaimer: The applicant hereby agrees that the proposed work shall be done in accordance with the plans and specifications and statement herewith submitted and in conformity with the provisions of the Unified Zoning Regulations pertaining to such project. This permit becomes null and void if permitted activity is not commenced within 180 days from the date such permit is issued. If activity authorized by such permit is suspended or abandoned for 180 days any time after activity is commenced, a NEW permit must be obtained before activity can be recommenced. Separate permits are required for electrical installations and hookups. By accepting this permit, I agree to observe all existing easements whether apparent or not and understand that it is my responsibility to determine the location and extent of any and all easements. Incomplete, erroneous, or misrepresented information (whether intentional or not) may result in permit revocation and enforcement actions.

By accepting this permit, the applicant hereby acknowledges the following statements:

- 1) That he/she is authorized to make this application;
- 2) That all information provided by the applicant is true and correct, including all information on any attachments hereto;
- 3) That he/she will comply with all regulations of the City of Billings and Yellowstone County which are applicable hereto;
- 4) That he/she will perform no work on the above property not specifically described in this application;
- 5) That he/she grants City and County officials the right to enter onto the property for the purpose of inspecting the work permitted and posting notices.

Many subdivisions in the City of Billings and Yellowstone County have private deed restrictions or covenants regulating land uses. City-County Planning Division staff will not determine whether or not the work covered by a permit satisfies these covenants. Obtaining a permit does not relieve the homeowner or agent of their responsibility for determining the nature of applicable covenants and private deed restrictions and complying with covenants



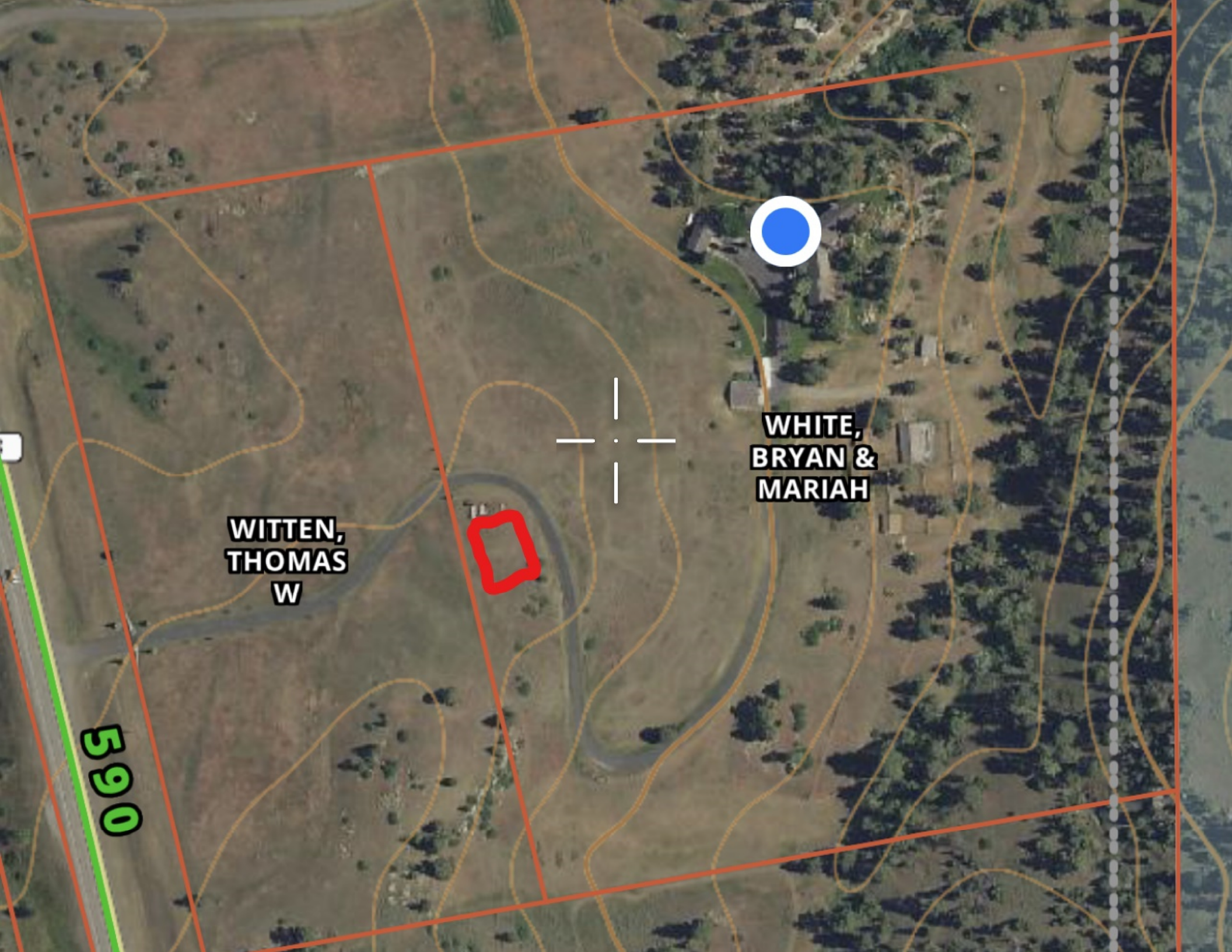
Back



Right side



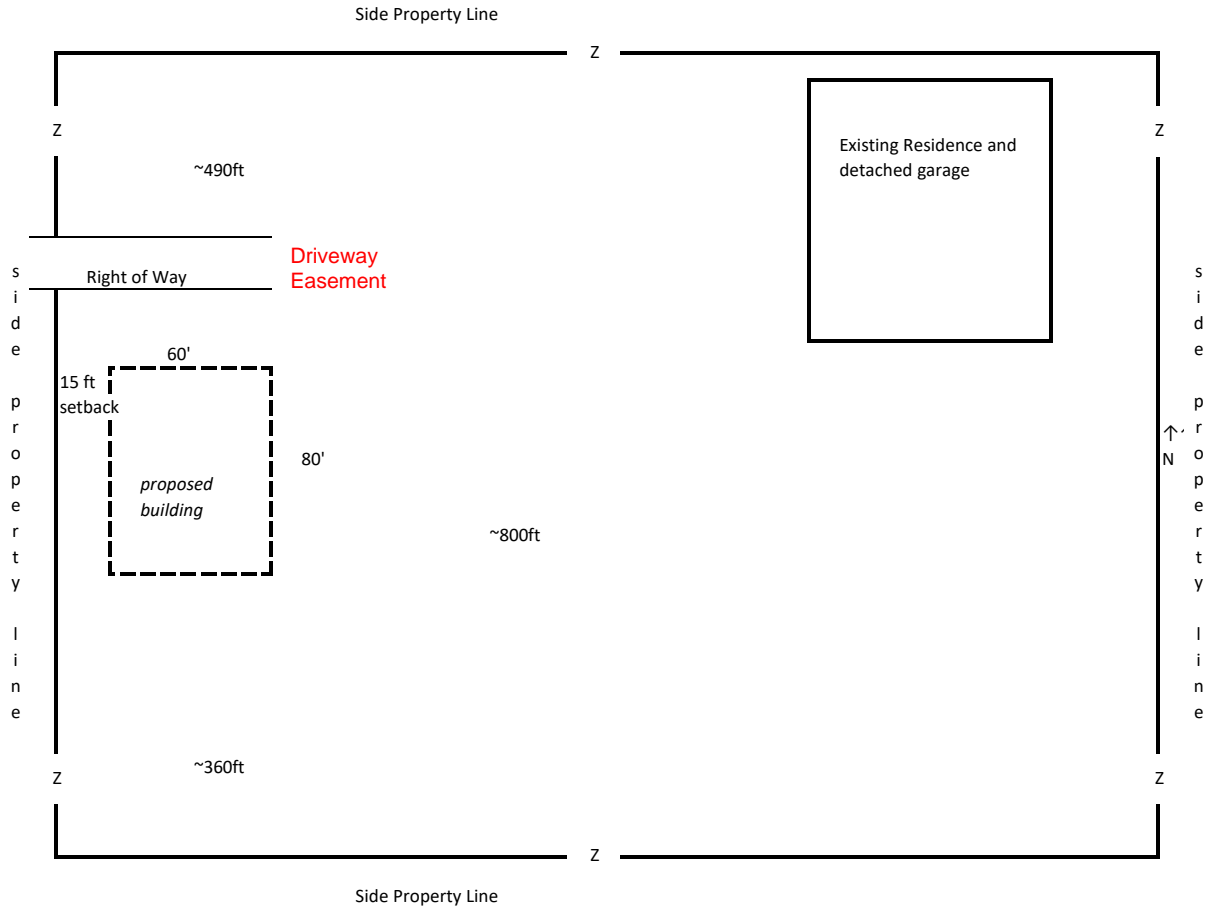
Left Side



**WITTEN,
THOMAS
W**

**WHITE,
BRYAN &
MARIAH**

590





Return to:
Zachary Taylor
5005 US Highway 3
Billings, MT 59106

DECLARATION OF EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned owner, ZACHARY J. TAYLOR, does, on this 19th day of July, 2017, hereby grant an easement through and across certain real property located in the SE1/4 of Section 17, T. 1 N., R. 25 E., P.M.M., Yellowstone County, Montana, described as Tract 1 of Certificate of Survey No. 3668, on file in the office of the clerk and recorder of said County, under Document No. 3824817; said easement center line being as shown on the attached Exhibit "A".

The Owner does hereby create this PRIVATE ACCESS EASEMENT for the purposes of maintaining, repairing, improving, replacing, and using an existing asphalt driveway and any necessary fixtures and appurtenances through and across said real property, together with the right of free ingress and egress for said purposes.

This easement is created for the benefit of the owner of Tract 2 of said Certificate of Survey, their heirs, executors, successors, administrators, and assignees and shall run with the real property and is binding on all parties having any right, title, or interest in said Tract 1 or any part thereof, their heirs, executors, successors, administrators, and assignees, and shall bind each owner thereof.

The existing asphalt driveway currently provides access to said Tract 2. This easement is created to also provide access to one additional tract should said Tract 2 is subdivided in the future.

ZACHARY J. TAYLOR

STATE OF MONTANA)

County of Yellowstone)

On this 19th day of July, 2017, before me, the undersigned Notary Public for the State of Montana, personally appeared ZACHARY J. TAYLOR, known to me to be the persons who signed the forgoing instrument and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.

Notary Public in and for the State of Montana

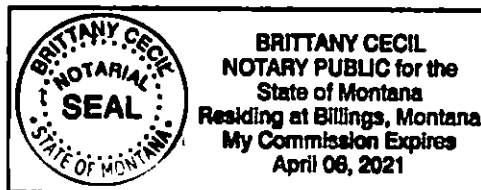




EXHIBIT A

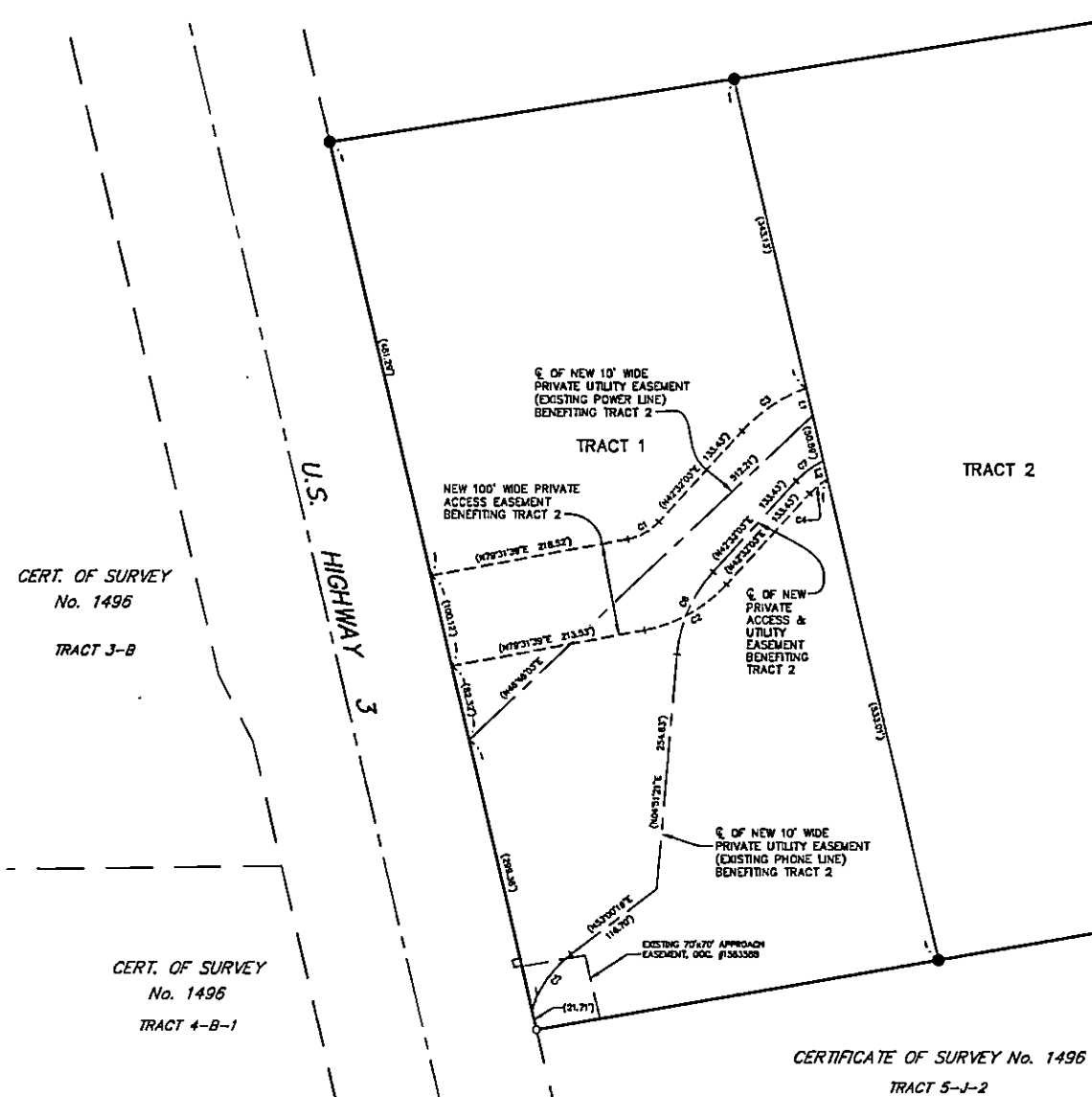
EASEMENTS WITHIN TRACT 1 OF CERTIFICATE OF SURVEY No. _____

PREPARED FOR : ZACHARY TAYLOR

JULY, 2017

PREPARED BY : SANDERSON STEWART 

BILLINGS, MONTANA



CERT. OF SURVEY
No. 1496
TRACT 3-B

CERT. OF SURVEY
No. 1496
TRACT 4-B-1

CERTIFICATE OF SURVEY No. 1496
TRACT 5-J-2



SCALE: 1"=200'

Line #	Bearing	Distance
L1	N 13°19'29" W	30.39'
L2	N 13°19'29" W	20.52'

Curve #	Delta	Radius	Length
C1	36°59'36"	60.00'	38.74'
C2	36°59'36"	160.00'	103.30'
C3	27°43'34"	175.00'	84.66'
C4	19°01'46"	75.00'	24.91'
C5	35°45'31"	120.00'	74.89'
C6	37°40'42"	150.00'	98.64'
C7	22°15'50"	95.00'	38.91'

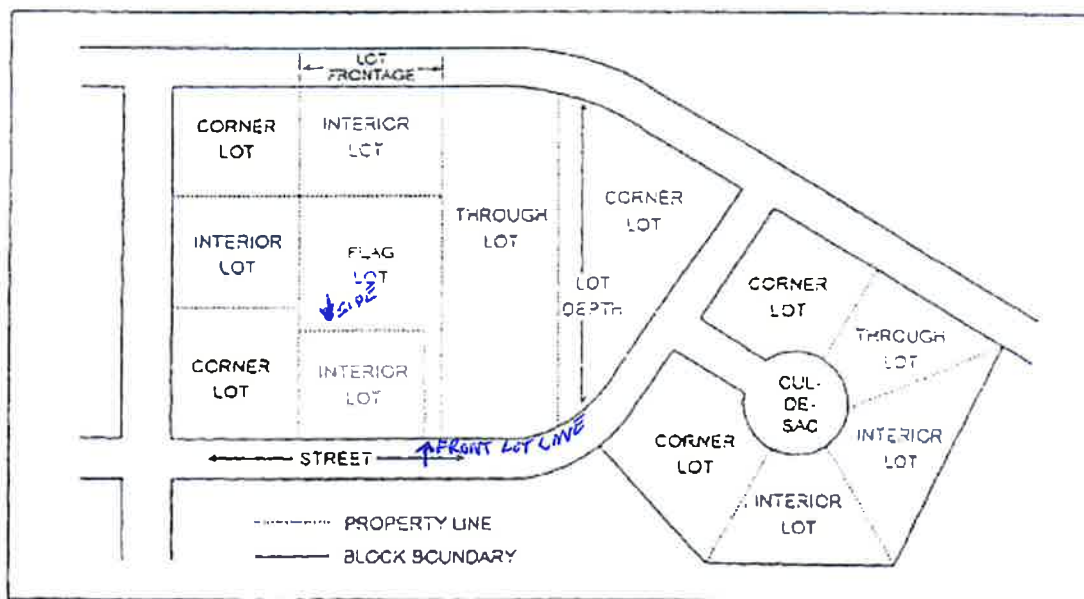
Aerial photo view of approximate edge of access easement (measurements).
(not part of easement document)



SECTION 27-1802 MEASUREMENTS AND ASSOCIATED TERMS

A. LOT AND STREET MEASUREMENTS AND TERMS

1. Lot: A tract of land, no matter how legally described whether by metes and bounds, Certificate of Survey and/or by lots and block designation as in a recorded plat.
2. Lot area: The total area circumscribed by the boundaries of a lot, except that when the legal instrument creating a lot extends into a public street right-of-way and/or easement, then the lot boundary for purposes of computing the lot area shall be the street right-of-way.
3. Lot line: A line of record bounding a lot which divides one lot from another lot or from a public or private street, alley or other public space.
 - (a) Front Lot Line: The lot line abutting a public or private front street.
 - (b) Rear Lot Line: The lot line not intersecting a front lot line that is most distant from and most clearly parallel to the front lot line.
 - (c) Side Lot Line: Any lot line that is not a front, street-side, or a rear lot line abutting an interior lot.
 - (d) Street-Side Lot Line: The lot line abutting a public or private side or non-front street.
4. Lot types:
 - (a) Corner Lot: A lot located at the intersection of two or more streets.
 - (b) Interior Lot: A lot other than a corner lot with only one frontage on a street other than an alley.
 - (c) Through Lot or Double Frontage Lot: A lot other than a corner lot with frontage on more than one street other than an alley.



5. Lot Width: Lot widths are measured along the minimum setback or minimum build-to line.

YELLOWSTONE COUNTY

ARTICLE 27-1800 MEASUREMENTS & DEFINITIONS

Right-of-way: A strip of land dedicated or acquired for use as a public way, or that is acquired through an easement.

Rider (sign): A subordinate sign panel that is attached to a swing sign, either above the horizontal member or below the principal sign face. To illustrate, but without limiting the range of messages that a rider may convey, if the swing sign is used to advertise a property as "for sale," a rider is often used to convey a related message such as "contract pending."

Roof sign: A sign erected, constructed and maintained upon, or connected to any roof of any building with the principal support on the roof structure. This definition excludes architectural blade signs.

1. Roof sign, above-peak: Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.
2. Roof sign, integral: Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

Runoff: Water or liquid that is not absorbed by the soil or landscape to which it is applied and flows from the area.

S. TERMS

Salvage yard: A lot or portion of a lot where junk, waste, discarded or salvaged materials are bought, sold, exchanged, baled, stored, packed, disassembled or handled, including auto wrecking activities, building wrecking activities, used lumber places and places for storage of salvaged building materials and equipment; but not including such places where such uses are conducted entirely within a completely enclosed building. This definition includes junkyard.

Satellite dish antenna: A device incorporating a reflective surface that is solid, open mesh or bar configured and is in the shape of a shallow dish, cone, horn or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition shall include but not be limited to what are commonly referred to as satellite earth stations, TVROs (television reception only satellite dish antennas), direct satellite systems (D.S.S.) and satellite microwave antennas.

Satellite signal, usable: That level of signal received via the satellite dish antenna which will run the television and/or radio with a minimum level of distortion, a distortion level that is barely discernible to the naked eye and a picture quality consistent with other reception in the area.

School, college or university: A public or private institution for higher learning (beyond grade 12) providing instruction as approved by the Montana Department of Education or a national collegiate or university accreditation agency. This definition also includes higher learning facilities for religious institutions.

School: An institution of learning which offers instruction in the several branches of learning and study required to be taught in the schools by the Montana State Board of Education; includes public, private and parochial schools.

School, trade, business, technology, or vocational: A vocational / technical school, trade school, language school, business school, training center, beauty school, culinary school, and comparable advanced or continuing education facilities. The phrase does not include music schools, fitness centers, sports instruction, swimming instruction, or martial arts instruction

YELLOWSTONE COUNTY

ARTICLE 27-1800 MEASUREMENTS & DEFINITIONS

structures and facilities. The term includes, but is not limited to, photovoltaic power systems, solar thermal systems, and solar hot water systems.

Solar Thermal System – also known as solar hot water systems; an SEF that absorbs solar energy as heat which is then used to heat structures and water.

Solid waste facility: A facility principally or solely used for the processing or disposal of solid waste and subject to compliance with all applicable federal, state, and local regulations including:

Transfer Stations: Facilities at which solid waste collected from any source is temporarily deposited to await transportation to another solid waste facility. All activities associated with a Transfer Station shall be done within an enclosed structure including but not limited to sorting, reducing, compressing, shredding, compacting, composting, and storage of waste materials, equipment or vehicles.

Solid Waste Processing Facilities: Facilities at which solid waste is sorted, reduced, compressed, shredded, compacted or composted for purposes of volume reduction or preparation for burning or land-filling.

Waste Burning Facilities: Any incinerator, boiler, percolator or other solid waste facility at which solid waste, including previously processed solid waste is burned for the purposes of volume and weight reduction or steam heat, power or energy generation.

Sanitary Landfills: Facilities employing a method of disposing of solid wastes on or into land by various forms of excavation, placement, burial, compaction, or covering.

Recycling Processing Facilities: Facilities at which the primary function is to extract useful materials from the solid waste, and all processing activities are conducted within a completely enclosed building.

Spectrum Act (Wireless Communication Facilities): The "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).

Stable, private: A detached accessory building in which horses or other beasts of burden owned by the occupant of the premises are kept, and in which no such animals are kept for hire, remuneration or sale, and are kept for the owner's private use only.

Stable, commercial: A stable other than a private stable.

Stay: The act of temporarily stopping or suspending an action, such as the processing of a permit application.

Stealth Communication Facility (Wireless Communication Facilities): Any WCF that is integrated as an architectural feature of a structure or the landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.

Streets:

Street: A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place, or however otherwise designated which has been dedicated to or acquired for public use and which extends the full width between right-of-way lines, which includes areas acquired or prescribed through an easement.

Alley: A minor way which is used primarily for vehicular service access or for utility lines to the back or the side of properties otherwise abutting on a street.

Aerial photo view of approximate edge of access easement (measurements).
(not part of easement document) (Not part of zoning code)

