



# Yellowstone County Board of Adjustment Meeting Minutes, July 13, 2023 To Be Approved by Motion

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

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 to: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101 Email: [bernsb@billingsmt.gov](mailto:bernsb@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.

Name	Title	01/12/2023	06/08/2023	07/13/2023							
<b>Blaine Poppler</b>	Vice Chair	1	1	E							
<b>Carlotta Hecker</b>	Board member	1	1	1							
<b>Tyler Bush</b>	Chairman	A	1	1-V							
<b>Troy Boucher</b>	Board member	1	E	1							
<b>Morgan Tuss</b>	Board member	-	-	E							

**Board member Hecker** introduced the County Board of Adjustment members and staff in attendance: Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, Tammy Deines, Planning Clerk; Brenda Berns, Planning Clerk, Steve Williams, YC Attorney’s office.

**Virtual:** Board member Tyler Bush

**Attendees:** Brad Witten, Monica Witten, Jade Solvason, Justin Harkins, Bryan White, Steve Wilke



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**Public Comments** Board member Hecker announced the public comment period. There were no Public Comments.

## **Approval of Minutes January 12, 2023, June 8, 2023**

The minutes are approved by acclamation.

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

## **Disclosure of Ex-parte Communication**

There were no disclosures of Ex-parte Communication from the Board.

## **Public Hearing:**

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**

**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.

## **Recommended**

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 27-304, 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 apply 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.



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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.

## **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.

## **Discussion**

Board member Hecker called for discussion from the members of the Board. Board member Boucher noted that this would have been allowable prior to Project ReCode.

## **Public Hearing**

Board member Hecker opened the public hearing and called for anyone wishing to speak in favor or against the request for County Variance #297. There was none.

## **Discussion**

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.

## **Motion**

**Board member Boucher made a motion and Board member Board member Bush seconded the motion to forward a recommendation of conditional approval based on the determinations for review. 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.



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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 apply 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.

**Discussion:** There was no discussion on the motion. **The motion carried with a unanimous voice vote. County Variance #297 is conditionally approved.**



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**b. Item 2: Administrative Appeal 23-02-5005 Highway 3, Appeal of Permit Decision, Approval of Zoning Compliance permit to allow a 15-foot property line setback. Karen Husman, Planner I, presenting.**

## **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.

## **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 owner of 5005 US HWY 3, Bryan White, contacted our office in 2022 and inquired about constructing a detached accessory structure on the property. Because of the topography of the property, they wanted to locate the new structure near the driveway close to the private access easement (document attached) located on the westerly portion of the property to house their trailers, so that it would not be difficult to get them out of the property during the winter months. Staff researched the property and scanned the Yellowstone County Zoning Code to determine the appropriate setback for this proposal. 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). 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.

Staff determination that the description of a "front lot line" per Section 27-1803, a right of way is a strip of land dedicated or acquired for use as a public way, or that is acquired through an easement and a street for vehicular traffic, whether designate 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



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right-of-way lines, which includes areas acquired or prescribed through an easement. 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 existing access easement is a private easement for access to the subject property only, it is not for public use. The westerly property line of this property does not fit the description of a front property (lot) line and 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 a rear lot line abutting an interior lot.

BOA determination: Staff interpretation of the code

Section 27-1802

Section 27-1803

Staff has approved a zoning compliance permit based on the descriptions in the Zoning Code along with the easement documentation, determining it is a Private access easement.

## **Discussion**

Board member Hecker asked for clarification on the posted site plan and clarification was given by Planner Husman. Nicole Cromwell pointed out the width of the 100' wide private access easement. Planner Husman said this easement is not part of the right-of-way. Nicole Cromwell pointed out the property line between the Witten's and White's properties.

## **Appellants**

### **Justin Harkins, 490 N 31<sup>st</sup> Street, Suite 500, Billings, MT**

Mr. Harkins, Crowley Fleck, represents appellants Brad, Tom, and Monica Witten 5001 Highway 3, Billings MT. They appealed PLN-23-00086 issued to Brian White 5005 US Highway 3, Billings MT. This situation arose with a complaint by the Witten family, submitted to County Code Enforcement regarding construction of a building too close to the property line. Mr. Harkins recounted 27-900.1 Zoning Code setbacks and distributed hard copies to the Board members and staff. He respectfully feels staff incorrectly interpreted the code and approved the permit. He continued and noted the driveway running through both properties. The owners referred to this property as a shared road. Mr. Harkins referred to easement agreements referring to the driveway as a "shared road". The primary question is whether the western property line is considered a front or side property line. Rules of Construction and Rules of Interpretation.

Meanings and Intent 27-1800 -B1. Mr. Harkins read aloud this section and then 27-1800- B3. Rules of Interpretation C2-B-regarding Interpretation of Conjunctions. Governing provisions demonstrate the western lot line is a front lot line.



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Mr. Harkins read aloud the definitions of the front line which abuts a front street: 27-1802 Sub Part 6 Page 300. The specific definition says the street can be a public or private right-of-way. A front street is a street abutting a lot, public or private and may be a right-of-way. Right-of-way is defined as a strip of land dedication acquired through easement.

A driveway-right-of-way acquired by an easement and constitutes a street. The code allows for public or private right-of-way. This makes the western property line on a front street.

Mr. Harkin's distributed the Staff memo to demonstrate where it is believed the Planning Department made an error. Submitted hard copies of the staff memo to the members of the Board.

Background – Determined parcel is access with private access easement. The private access easement is a street. Planning does not present specific definitions of street, but rather general definition of a street.

Mr. Harkin pointed out there is no language when a list is non-exhaustive. Listed corner lot, Interior lot, through/double frontage lot. The primary characteristic is frontage. All lots have frontage on one side. County Planning invented a 4<sup>th</sup> choice with a lot with all sides. No front and no rear. Planning's role is to apply and interpret but does not have authority to revise Code. The procedure for adopting new zoning regulations is not something it can do on its own. Mr. Harkin submitted the White's property is an interior lot. Western lot line is the front lot line. Planning ignored the specific definitions of a street and front street. The setback is 20-feet from the Witten's property line and the code should be applied as written to enforce the front setback boundary.

Board member Hecker requested Mr. Harkin to point out sides and front lot lines on posted map. Front lot line abuts front street, 20-foot setback for building. Board member Boucher asked to review page 300 Section 6 to clarify if a Street, public or private, has a right-of-way intended for public or private use. Easement not intended for public use and your argument does not apply. Difference between public and private road. This is a private road, intended for public use as this is the only access to the property.

Planner Husman made the point of order and asked Mr. Harkin to stay on task of the appeal itself.

Bryan White, 5005 US Highway 3. This is agriculture zoned property. Mr. White pointed out on the poste map, the property lines and gated entrance to the property. He was issued a



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permit for a 15'ft side yard setback by Planning. He has neighbors on all 4 sides of his property. Mr. White spoke with Planner Husman a year prior to building, regarding setbacks and the type of building that may be built at this location. He made sure the building would fit and discussed the 15-foot setback. Lone Eagle is a private street, he doesn't have a front street, and his understanding this is a privately maintained road through a HOA. A dedicated public or private right-of-way with intended use for public or private use.

According to Mr. Harkin, Attorney, the Planning department left out the 'Private' section of the definition.

Steve Williams, County Attorney's office, reviewed Planning office decision and supports the staff's decision. The driveway does not constitute a frontage road.

The co-owner of adjoining property, Brad Witten commented this is part of a HOA. The CCRS state every lot will have a front yard.

## **Board member Hecker closed the public hearing at 5:06 pm**

### **Discussion**

Karen Husman, Planner advised CCRS are not enforced.

Nicole Cromwell, Zoning Coordinator referenced page 299 regarding illustration of a flag lot which is not written in an "a,b,c" format. Flag lots have a narrow strip of land running through a public right-of-way.

Mr. Harkin, Attorney rebuttal, there is one frontage on one side. A flag lot is an interior lot with a different shape.

Karen Husman, Planner expressed examples of lots that could exist.

Board member Boucher asked staff regarding page 300 section 6 Street definition, 'if intention was for public use'. Nicole Cromwell explained the public can cross through and over the road or street unencumbered. There are public easements to provide access that are not public rights-of-way. Karen Husman noted the mailbox is located on Highway 3. Board member Boucher visited the site and a mechanical gate is installed with limited access. Any private easement can be a right-of-way acquired by an easement, which the people operating the right-of-way may choose to close.



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Board member Tyler Bush said he understands the duress, 15-feet versus 20-ft setback. Difference is 5-ft.

Chairman Boucher referenced page 300 Section 6 and noted the language of “intended for general public use”. Mr. Boucher stated the driveway is clearly not intended for public use and benefits only the property owners.

## **Motion**

Motion by Chairman Boucher and seconded by Board member Hecker to 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.

Board member Hecker, Board member Tyler, and Chairman Troy Boucher voted to approve the motion. The decision is affirmed in whole.

## **Other Business/Announcements**

No other business or announcements

**Adjournment: Adjourned 5:05 p.m.**

**Brenda Berns, Planning Clerk**

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