



County of Yellowstone Board of Adjustment

AGENDA-Thursday, October 12, 2023, 4:00 p.m.

Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://tinyurl.com/yckr478k>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
 - Email: plnonline@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.

NOTICE: All meetings and official activities of the MPO are held in buildings and locations that comply with accessibility standards according to the Americans with Disabilities Act (ADA). A TTY number for the hearing impaired, 406-657-3079, is available upon request. 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 the Planning Division Office, at 406-247-8676.

Call the meeting to order.

Introduction of the County Board of Adjustment Members and Planning Department Staff.

Public Comment

Approval of Minutes: July 13, 2023

5. MOTION. APPROVAL OF MINUTES OF JULY 13, 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 298 -- 2133 East Echo Drive -- Section 27-1009.D(1) Max footprint of Detached Accessory Structure - A variance from 27-1009.D(1) requiring a maximum footprint of a detached accessory structure of 3,000 square feet to allow a footprint of 3,600 square feet in a Rural Residential 1 (RR1) zone, on C/S 1175, Parcel 6B, a 1.05-acre parcel of land. The purpose of the variance is to allow a completed 3,600 square foot shop building to remain in place. Tax ID: D05120. Presented by Karen Husman, Planner I.

Other Business/Announcements

Adjournment

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed variance. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. NOTICE: All meetings and official activities of the MPO are held in buildings and locations that comply with accessibility standards according to the Americans with Disabilities Act (ADA). A TTY number for the hearing impaired, 406-657-3079, is available upon request. 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 the Planning Division Office, at 406-247-8676.

County Board of Adjustment

Meeting Date: 10/12/2023

Information

Subject

MOTION. APPROVAL OF MINUTES OF JULY 13, 2023

Attachments

YCBOA 07 13 2023 Draft Mon



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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: • Review the Agenda Packet on the City’s website at:

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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							
Blaine Poppler	Vice Chair	1	1	E							
Carlotta Hecker	Board member	1	1	1							
Tyler Bush	Chairman	A	1	1-V							
Troy Boucher	Board member	1	E	1							
Morgan Tuss	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 31st 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 4th 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 posted 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.

□

County Board of Adjustment

Meeting Date: 10/12/2023

SUBJECT: County Variance 298-2133 E. Echo Dr. Detached Garage Size - Return Item After September Meeting
Had No Quorum

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

County Variance 298 -- 2133 East Echo Drive -- Section 27-1009.D(1) Max footprint of Detached Accessory Structure - A variance from 27-1009.D(1) requiring a maximum footprint of a detached accessory structure of 3,000 square feet to allow a footprint of 3,600 square feet in a Rural Residential 1 (RR1) zone, on C/S 1175, Parcel 6B, a 1.05-acre parcel of land. The purpose of the variance is to allow a completed 3,600 square foot shop building to remain in place. Tax ID: D05120.

Presented by Karen Husman, Planner I.

RECOMMENDATION

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

APPLICATION DATA

OWNER: Jared & Kareasa Busch

PURPOSE: Detached structure 3600 sf (600 sf over max allowed)

LEGAL DESCRIPTION: C/S 1175, Parcel 6B

ADDRESS: 2133 East Echo Drive

SIZE OF PARCEL: 1.05 acre

ZONING: RR1

EXISTING LAND USE: Residential

PROPOSED LAND USE: No change

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

See attachments.

SURROUNDING LAND USE & ZONING

NORTH:Zoning: RR1

Land Use:Residential

SOUTH:Zoning:RR1

Land Use:Residential

EAST:Zoning:N3 (City)

Land Use:Residential

WEST: Zoning:RR1

Land Use:Residential

BACKGROUND

This is a request for a variance from 27-1009.D(1) requiring a maximum footprint of a detached accessory structure of 3,000 square feet to allow a footprint of 3,600 square feet. The property owners have requested this variance to allow an existing building they have constructed stay in place. The variance request is the result of a County Code Enforcement complaint filed after the building was mostly complete. A Zoning Compliance Permit should have been submitted and approved through the City-County Planning Division for the building plans, which would have directed the owner to the size limitations for detached accessory structures in the RR1 zoning district. The applicant submitted a Zoning Compliance Permit application on May 10, 2023, and on May 12, 2023, the applicant was notified through the permit portal there were corrections requiring the building size to be reduced to 3,000 square feet in order to approve the permit. On May 31, 2023, the applicant contacted our office inquiring about the status of the permit, and was informed that they needed to reduce the size of the building to 3,000 square feet, or they may apply for a variance to allow the additional 600 square feet of structure. The application for a variance was received on July 24, 2023.

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. Staff has had one concerned neighbor just outside the 150 foot notification area that was concerned about the size and height of the structure as well as the access coming off of Hawthorne Lane, a City right of way (comments in attachments). The applicant has obtained a permit to access Hawthorn lane from the City of Billings Public Works Department. No other comments were received.

The Board of Adjustment was scheduled to meet on September 14, 2023, but did not have a quorum, so the meeting was not able to convene. The application was postponed until the meeting on October 12, 2023.

SUMMARY

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

The Per Section 27-1626(D); Board of Adjustment shall make the following determinations prior to granting a variance:

1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;

There are no special circumstances that exist which are peculiar to the land. The applicant has not stated a hardship with the property other than they did not know there was a restriction on the size of a detached structure and did not know they needed a Zoning Compliance Permit until after construction had started. They stated they also needed additional storage for vehicles and campers, etc. The applicant did not apply for a Zoning Compliance permit until they had received notice from the Code Enforcement department regarding the violations (the size of the shop and the lack of an approved permit). The detached garage could have been built to meet the size allowed by the zoning regulations. Although there have been several variances approved in Yellowstone County for detached accessory structures larger than the maximum allowed, the circumstances of those variances are not similar to the variance requested. There have also been several variances denied in the county for larger garages with similar circumstances. Through staff research, there are not any other detached structures that are larger than allowed under the code in this subdivision.

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;

The literal interpretation of the provisions of this chapter will not deprive the applicant the ability to construct a detached garage in conformance with the zoning regulations. Detached garages of 3,600 square feet do not exist within this subdivision or in nearby subdivisions with or without zoning variances. This variance would allow the applicant special privileges that are not allowed under the provisions of this Chapter. Other lots in this subdivision have developed as defined by the zoning code. As stated in 1 above, the detached garage could have been built to meet the size allowed by the zoning regulations. Although there have been several variances approved in Yellowstone County, the circumstances of those variances are not similar to the variance requested. There have also been several variances denied in the county for larger garages. The applicant did not apply for a Zoning Compliance permit until he had received notice from the Code Enforcement department regarding the violations (the size of the shop and the lack of an approved permit). There are not any other detached structures that are larger than allowed under the code in this subdivision.

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;

Granting this variance would confer a special privilege to this applicant as there are no similar sized detached garages in this subdivision. Similar to 1 and 2 above, although there have been several variances approved in Yellowstone County, the circumstances of those variances are not similar to the variance requested. There have also been several variances denied in the county for larger garages with similar circumstances. The applicant did not apply for a Zoning Compliance permit until he had received notice from the Code Enforcement department regarding the violations. There are not any other detached structures that are larger than allowed under the code in this subdivision and surrounding area.

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;

Granting the variance is not in harmony with the general purpose and intent of the zoning regulations and the Growth Policy. Oversized detached garages that do not meet the maximum size restrictions in place do not reflect the purpose and intent of this Chapter and with the Growth Policy. The height and bulk of the detached structure is out of character with the surrounding residential properties and has a larger footprint than the existing home on the site.

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 has no conditions with a recommendation of denial, however if the variance is approved, staff has the following draft conditions prepared.

1. The variance from Section from 27-1009.D(1) requiring a maximum footprint of a detached accessory structure of 3,000 square feet to allow a footprint of 3,600 square feet in a Rural Residential 1 (RR1) zone. The purpose of the variance is to allow a completed 3,600 square foot shop building to remain in place. No other variance is intended or implied with this approval.
2. The variance is limited to n C/S 1175, Parcel 6B, a 1.05-acre parcel of land, generally located at 2133 East Echo Drive.
3. The applicants will 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.

No time frame is required with a recommendation of denial. If the Board chooses to approve the variance request, the recommended time limit is identified above in criteria number 2 as item number 3 which requires one year to complete construction.

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.

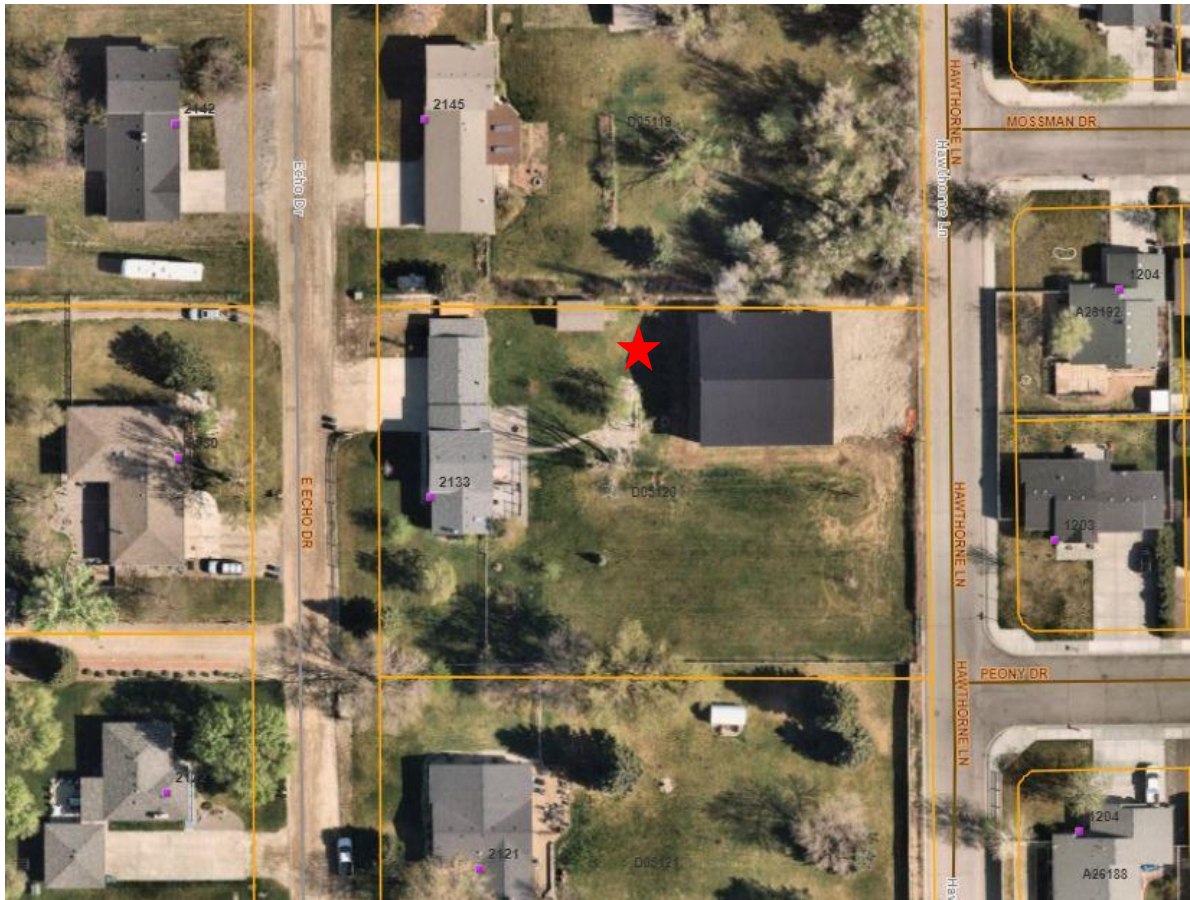
RECOMMENDATION

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

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan
History
Opposition Letter
Application for Zoning Compliance permit

Zoning Map & Site Photos





Subject property



North



South



South



North west



Property to the south and west



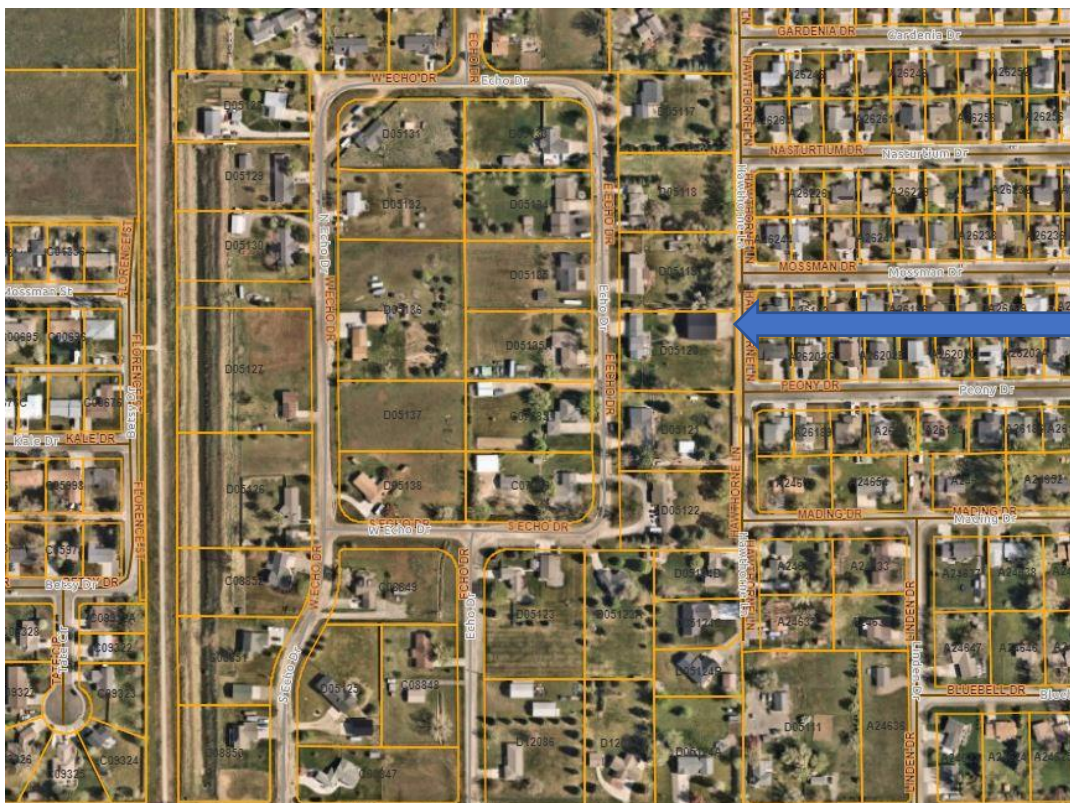
From Echo looking toward the rear of the property garage location.



Looking from Hawthorn to the rear of the property.



The 60x60 structure on Hawthorn



Broader view of the neighborhood

APPLICATION FORM
COUNTY VARIANCE County Variance # 298 - Project # PZX-23-00138

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 # 005120 COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property: Certificate of survey 175 Parcel C B

Address or General Location (If unknown, contact County Public Works): 2133 E. Echo Dr.
Billings, MT 59105

Zoning Classification: RR1

Size of Parcel (Area & Dimensions): 1.05 acres

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: County zoning variance

Facts of Hardship: Current structure stands 10ft larger than zoning regulations.
Structure has already been built.

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

Owner(s): Jared and Kareasa Busch

(Recorded Owner)

2133 E. Echo Dr. Billings, MT 59105

(Address)

(406) 208-1238

(Phone Number)

kareasabies12@gmail.com

(email)

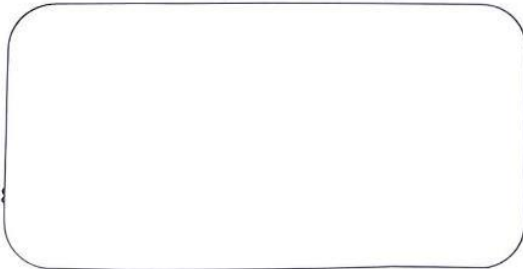
Agent(s): _____
(Name)

(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: Jared Busch Date: 7/24/23
(Recorded Owner)



July 13, 2023

Yellowstone County Board of Adjustment
Planning & Community Services Department
2825 3rd Ave. North, 4th Floor
Billings, MT 59101

Dear Board Members,

We are writing this letter to address the boards questions regarding our shop at 2133 E. Echo Drive in Billings, MT 59105. My husband is a Foreman Electrician with CEI Electrical Contractors and I am a Registered Nurse at Billings Clinic. We built the shop because when we are not working, we are exploring Montana with our small and growing family. My husband maintains all our recreational vehicles

on his own and we needed a safe space for him to work and a safe place to store our camper, side-by-side and trailer. We do not intend to use the shop for any business purposes, it is solely for personal storage and working space. Our two young sons are also very active and love helping dad, so the shop also provides our family with a space to ride bikes, work on projects with their dad, or just be boys (especially in the winter months). Before addressing the boards specific questions, I also would like to note that we tried to do our due diligence in researching permitting specifications for Yellowstone County and visited with our contractor, but it wasn't until the shop was built, we were informed our structure was ten feet longer than the zoning restrictions allowed.

After applying for a permit and being contacted by Hunter Kelly of the Planning Division with the City of Billings we were given the option to reduce the size of the shop by ten feet or request a variance and address the following questions per the Variance Packet.

6A. "What reasons prevent you from using this property in conformance with the Zoning Regulation requirements?" Until recently we believed we were using our property in conformance with zoning regulations requirements. We researched if we needed a permit and were under the impression it was not necessary because we lived in Yellowstone County. See attached document from Tim Miller Public Works Director- found on the www.yellowstonecountymt.gov/publicworks FAQ's page regarding the questions "Do I need a Building Permit or Certificate of Occupancy outside the city limits?". We also relied on the expertise and knowledge of our contractor and asked other contractors who have experience building in Yellowstone County and surrounding areas if we needed a permit or if there were other restrictions and we were told "no". We also do not pay any property tax to the City of Billings and therefore only looked into Yellowstone County permit information since that is where we pay taxes.

6B. "Why is there a need for the intended use of the property at this location?"

With the current real estate prices in Montana there is no way our family could afford to purchase land elsewhere. We are both hardworking individuals and invested in the property we had and were under the impression we could build a storage and shop building here. The crime and theft rate has also increased in Yellowstone County, so this was another way for us to store and secure the assets we have worked so hard to purchase.

6C. "Explain any demolition, construction, or reconstruction intended for all structures."

The structure is built. Aside from my husband wiring the electrical and pouring concrete there is not any more work that would need to be done unless the board rules that we would need to demolish a portion of the structure to take off ten feet. This would put an undue financial hardship on our family and disrupt and disturb our neighbors with additional demolition and reconstruction equipment and months of additional work.

We value our neighbors and our freedoms as hardworking native Montanans and tried to research the code and zoning requirements beforehand. If we were aware, or could go back in time, we would have made the structure ten feet smaller to adhere to the zoning requirements. Please consider our request to approve the variance as if it were your own situation and let us know if you have any other questions for our family. Thank you for your time and consideration and rest assured we have learned from this experience.

Your Neighbors,
Jared and Kareasa Busch
406-208-1238

Yellowstone County



PUBLIC WORKS DEPARTMENT
P.O. Box 35024
Billings, MT 59107-5024

Phone (406) 256-2735
Fax (406) 254-7946

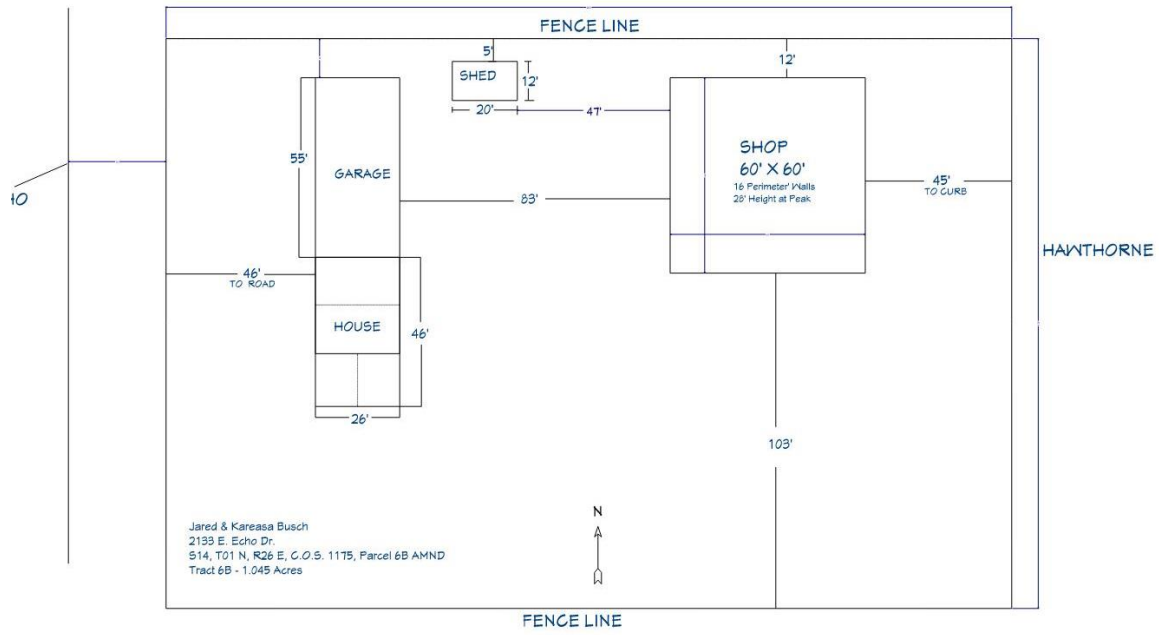
To whom it may concern:

Yellowstone County does not issue Building Permits or Certificates of Occupancy for structures outside of the city limits of Billings. These structures are not subject to the same restrictions and permits as those located within the city limits.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Miller".

Tim Miller Public Works Director



SUBJECT PROPERTY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2133 E. Echo Dr	None				
APPLICABLE HISTORY	Variance	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2920 Alexander	165	5/8/1996	1800 sf det	Y	
2944 Alexander	217	4/11/2001	2040 sf det	Y	10 acre parcel
2944 Alexander	265	1/10/2013	3584 sf det	Y	10 acres adjacent parcels are AG need storage for hay and ag equip.
Cold Stone Sub	245	1/20/2005	5000 sf Det	Y	All lots in the subdivision
2944 Alexander	265	1/15/2013	3584 sf det	Y	10 acre parcel
1336 Cimмерon	270	12/11/2014	2100 sf det	Y	Other oversized in this subd.
1011 Brandywine	272	4/13/2015	3200 sf det	Y	Staff recommended denial- no primary structure
321 Calypso	277	10/29/2015	2100 sf det	N	District court upheld Denial
321 Calypso	287	3/19/18	1500 sf det	Y	
6500 Cold Stone	288	5/23/2018	5000 sf det	Y	Var 245 expired in 2012
2795 Weymiller ln	290	11/8/2018	2925 sf det	Y	Staff recommended denial- no primary structure
120 Sunlight Circle	292	6/13/2019	2800 sf det	N	No other similar in this subdivision
4902 Verde Ln	294	7/9/2020	3000 sf det	Y	Staff recommended denial

Husman, Karen

From: Husman, Karen
Sent: Thursday, August 17, 2023 5:04 PM
To: clawofthegriz
Cc: Cromwell, Nicole; Plecker, Monica; Kelly, Hunter; Johnson, Tate
Subject: RE: [EXTERNAL] Jarred Busch Building/Access

Dan,

I can send you the staff report and recommendation when it is approved and ready. Regardless of what the recommendation is to the Board of Adjustment, they have the ability to decide whether it is approved or denied with their own determinations.

I will add you to the email list for the Staff report when completed.

Enjoy the day,

	<p>Karen Husman Planner I husmank@billingsmt.gov</p>
<p>billingsmt.gov</p>	<p>2825 3rd Ave N, 4th Floor Billings, MT 59101 P 406.247.8684</p>

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From: clawofthegriz <clawofthegriz@protonmail.com>
Sent: Thursday, August 17, 2023 4:49 PM
To: Husman, Karen <husmank@billingsmt.gov>
Subject: RE: [EXTERNAL] Jarred Busch Building/Access

Karen: Disregard including my information in the county variance request 298. I can ascertain from emails with you, Schieno, Kelly, Plecker and city right of way people that this was an exercise in futility. As the saying goes too much water is over the dam and nothing has been done implicates approval will be granted just as the approach permit was issued.

Maybe you have read some of my emails I sent to Monica and her responses they are:

Monica: From what you stated (my interpretation), observing the front of the building the person doesn't need to do anything just run his wheeled units up and over the rolled curb to access building. The curb is about 3-5" high. What does approach work is not completed mean, like paperwork? Is this a yearly application thing or if the approach work is completed it becomes a permanent approach? Is there something I am missing or is this fella going to be allowed to tear out the rolled berm and pour cement approach (like homeowner have for garage access approach

their houses? If Busch was going to do this, the city would have to make sure its high enough so not to disturb the water runoff that flows down the street gutter. My opinion (whether right/wrong) I don't think the landowners that already have legal designated right of way to their property on E Echo Drive should be allowed to be granted a new access from the rear of their properties to use Hawthorn Lane. This road was developed for the Daniels Subdivision when it was built 2000 after the folks on Echo Drive were in existence for years. Dan Neuman

Dan,

The City has site development regulations which guide how approaches need to be constructed. In other words the city has specs that need to be adhered to. Driving over curb is not an option. An improved approach is what is required of the city with the permit. The approach permit is a one time permit that allows an approach to be constructed according to city specs. The only reason an individual would need to obtain another one is if they didn't complete the work within the valid 1 year timeframe, then the permit would be expired, thus requiring a new one before being able to construct the approach. The city has inspectors which review to ensure compliance with the design and specs.

As for your concern about a lot being able to access a different public right of what rather than the one provided by the subdivision is not something I will continue to comment on. I have already provided information regarding this on August 7th. Please refer to that email.

Thanks,

Monica

Karen: So, like I stated above the fix is in and since Mr. Busch has done more work on the shed landscaping and improved the floor inside the building seems quite obvious, he will get approval. even though he never had a scintilla proof of approval to even build the building is mindboggling. As far as I am concerned other trees block my view of his building, but it's the people on the other side of the street that will have to look at this big building from their windows seems unfair that someone can pull this off, but that is life. It was nice for years to view these nice 1 arce home/garage tracts for folks on the Daniels subdivision side, but that soon will be forever ruined. It's just a matter of time that some of the other landowners may follow suit. I rest my case and thank you for your patience. Advise if my remarks are stricken from the record. Dan Neuman
Sent with Proton Mail secure email.

----- Original Message -----

On Monday, August 7th, 2023 at 2:41 PM, Husman, Karen <husmank@billingsmt.gov> wrote:

Dan,

I have received your information and will include this in the file for County Variance request 298. Your concerns are now part of the permanent record for this variance and will be included in the staff report attachments to the County board of Adjustment.

Regards,



billingsmt.gov

Karen Husman

Planner I

husmank@billingsmt.gov

2825 3rd Ave N, 4th Floor

Billings, MT 59101

P 406.247.8684

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From: clawofthegriz <clawofthegriz@protonmail.com>
Sent: Monday, August 7, 2023 1:54 PM
To: Husman, Karen <husmank@billingsmt.gov>
Cc: Kelly, Hunter <KellyH@billingsmt.gov>; Mike Schieno <mschieno@yellowstonecountymt.gov>
Subject: [EXTERNAL] Jarred Busch Building/Access

Ms. Hussman, Hi FYI I sent an email to Mr. Kelly, AICP Candidate, Planner 1 on 8/5/23 (see below) and copied Mike Schieno, Code Enforcement Supervisor and Monica Plecker, AICP Planning Division Manager. Since your name was mentioned, I thought you need to be advised.

Email I sent to Mr. Kelly 08/05/2023:

Mr. Kelly: Greeting, if I am correct on the Busch project PLNX 01809 the plans were submitted to the City County Planning Department on 5/10/23 and was reviewed 5/12/23 and sent out for correction. The correction I believe was due to the new building being 3600 sq ft instead the required 3000 sq ft requirements. This action was to expire on 8/10/23 which will be in several days. However: in viewing the County website today, I observed everything was still in the status quo (nothing has changed).

Just as an update and FYI the three piles of gravel/dirt that have been stored in front of the new building for quite some time (on Hawthorn Lane), were processed today. I estimate the three loads to be roughly 27 cubic yards each. As stated above, when I looked at the County website it stated that Mr. Busch has until August 10 to comply with your actions on the building size. However, I didn't see anything on the website that officially showed his plan was authorized/approved. Nor is there any visible evidence to prove that the building size has been reduced to 3000 sq ft. Now that the dirt/gravel has been placed in the building and leveled out am I to assume you folks have given him authorization/approval to move forward on this project, even though he is not in compliance? In my opinion Mr. Busch should have had a cease/desist order in place until final approval. If his plan has not been approved, why is Mr. Busch allowed to continue on with the building project? Advise Dan Neuman

In conclusion: I think this big structure (under the auspices of toy/vehicle storage) should not be allowed in their subdivision with access out the back side of his property to Hawthorn Lane. Furthermore, I believe the landowners on Hawthorn Lane should have a say in whether those owners on the county jurisdictional land can exit their properties to Hawthorn Lane even though their subdivision access roads are permanent dedicated easements off of E Echo Drive. Whether the City will do their job and see through all this activity in the interest of the contiguous Daniels subdivision owners to not allow these accesses is the \$64,000 question. Even though it looks like the rules are on his side I contend it is wrong and the County should not go along with these types of activities. If one gets through the net than the other property owners may want to build large buildings and get access to Hawthorn Lane rather than use their designated legal access right-of-way on E Echo Drive

Email I sent to Mike Schieno 08/07/2023:

Mike: Below is the latest email I rec'd from Mr. Hunter, today, since your name was mentioned. If you haven't been out here since the building, went up I also advised Mr. Hunter that Mr. Busch has also done landscaping on the south side of the building by installing edging/rocks knowing he doesn't have approval on anything. Very bold unless he thinks it's a slam dunk thing. That can do anything against county/city rules. Dan

Email I rec'd from Mr. Kelly today 08/07/2023

Greeting Dan. The City/County planning Department received an application for a variance on garage size of the parcel in question on August 1, 2023. The County Board of Adjustment will hold its public hearing on September 14, 2023 beginning at 4:00 p.m. in the 1st Floor Conference Room at 2825 3rd Avenue North (Miller Building). You will receive a notice in the mail at least 15 days before the hearing, provided you are a property owner within 150 feet of the exterior boundary of the property. A posting in the Yellowstone County News and a physical sign will be posted on the property as well announcing the public hearing. The Planner handling this application is Karen Husman (husmank@billingsmt.gov, 406-247-8684). If you wish to formally protest this application, please send a written statement to Karen, either via e-mail or send a letter to our office.

Regarding the permit: Any expiration date you see would not apply here yet, as the permit has not been approved and/or issued. The permit is technically still in review awaiting revision or a determination from the Board of Adjustment. Any continued action on part of the property owner, in excess of what has been permitted, would be a matter of concern for Mike Schieno (mshieno@yellowstonecountymt.gov, 406-652-2050), Code Enforcement Supervisor for Yellowstone County. Please reach out to Mike if you have any additional concerns of that type.

Sent with [Proton Mail](#) secure email.

Husman, Karen

From: clawofthegriz <clawofthegriz@protonmail.com>
Sent: Monday, August 21, 2023 8:31 AM
To: Husman, Karen
Subject: RE: [EXTERNAL] Re: PLNX 01809

Karen: Thank you understand.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Monday, August 21st, 2023 at 8:23 AM, Husman, Karen <husmank@billingsmt.gov> wrote:

Dan,

The property is not in a subdivision, it is a Certificate of Survey, and I did not find any restrictions on the survey. The Planning Division has no authority to enforce plat restrictions as they are an agreement the property owner would sign into when they purchase the property, enforceable by a HOA. Staff may consider them when researching a property that has applied for a variance, but we do not enforce covenants and restrictions.

Regards,

	<p>Karen Husman Planner I husmank@billingsmt.gov</p>
<p>billingsmt.gov</p>	<p>2825 3rd Ave N, 4th Floor Billings, MT 59101 P 406.247.8684</p>

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From: clawofthegriz <clawofthegriz@protonmail.com>
Sent: Friday, August 18, 2023 9:19 AM
To: Husman, Karen <husmank@billingsmt.gov>
Subject: [EXTERNAL] Re: PLNX 01809

Karen: Hi, TGIF, I wanted to mention for what it is worth. Has anybody in your office checked the Hall of Records to see what kind of CCRs are (by law) a part of these lots in this subdivision that Mr. Busch is a residence? I believe all subdivisions (just like our Daniels) has CCRs attached. Usually, the buyer is made aware of any CCRs by a realtor, lender and/or title company when the property is purchase. I would be willing to bet if someone did a thorough search there might be requirements in the CCRs that would prohibit the building of these kind of buildings in the back portion of these lots regarding height, setbacks, building type etc., etc. Which means they have to comply with their own CCRs before attempting changes. if a landowner would want to change any part of the CCRs for their benefit it usually requires normally 3/4 of the other landowner's permission to change their CCRs. A good example if the CCRs states residence can only have 1 dog/1cat (2 animals) than the landowners can change their CCRs to allow 2 dogs/1 cat, but it takes the other residence of that subdivision approval to change the CCRs which are than recorded in the Hall of Records. You might know all this stuff, but I thought I would mention it anyway. If you ever tripped on Echo Drive you will observe a few buildings of this nature (maybe not as big) on these landowners' lots; however, they all access their buildings off of their dedicated street right of ways on Echo Drive. I have yet to find any residence in the Echo development that are using the back of their property to gain access to Hawthorne Lane. Even those Echo residence that border Caroline Street, nada, zilch. Dan Neuman

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Thursday, August 17th, 2023 at 6:27 PM, clawofthegriz <clawofthegriz@protonmail.com> wrote:

Karen: Sure, add me to the email list for the report. Thank you Dan

Sent with [Proton Mail](#) secure email.



**Planning and Community Services
Department**

2825 3rd Ave. North, 4th Floor
Billings, MT 59101

Phone: (406) 657-8246

Fax: (406) 657-8327

Required

Verification of septic permit, Site Plan to scale, Landscaping Plan, Building Elevation Plan, Floodplain information if applicable

Applicant Name: Jared Busch Phone 406 671 0404
Applicant Address: 2133 E Echo Dr Billings MT 59105 Email: buschjared@live.com
(Mailing address: please include City, State, Zip)
Property Owner Name: Jared Busch Phone 406 671 0401
Property Owner Address: 2133 E. Echo Dr Billings MT 59105
(Mailing address: please include City, State, Zip)

Property Information

Property Address: 2133 E Echo Dr Billings MT 59105
Section, Township, Range: 01 N Zoning District: _____
Lot size: 45,502.2 sq.ft. Lot area covered by structure(s): 3600 sq.ft.
12.63 %
Subdivision/COS: _____ Block: 26 E Lot: 14

Building Information

Type and use of proposed structure(s): Shop for toys + vehicles
Building separation in feet (for multiple buildings on one lot): 20' from shed, 60' from house

Is structure manufactured off-site? Yes No If yes, was it built to Federal Department of Housing and Urban and Development (HUD) or International Building Code (IBC) standards? Yes/No

If the structure was manufactured off-site and built to IBC standards, please provide the Factory Built Building (FBB) number # _____

Number of dwelling units: _____

Total Square feet (including garages and unfinished spaces): _____

Building Height (calculated according to zoning regulation definition): _____

(Commercial Only) Landscaping Coverage: _____ sq.ft.

(Commercial Only) Number of Off-Street Parking Spaces: _____

Description of other existing structures on the property: _____

AGREEMENT

The undersigned hereby certifies that the information submitted in this application is true and correct; and that the proposed work shall be done in accordance with the plans and specifications submitted in this application, and in compliance with the requirements of the applicable zoning regulations.

Applicant's signature  Date 5/12/23

SCALE 1/32" = 1'
(11x17)

