



**CITY BOARD OF ADJUSTMENT**  
**AGENDA-Wednesday, December 4, 2024, 6:00 p.m.**  
3rd Floor Stillwater Building, Room 3108  
316 N 26th St., Billings MT

**NOTICE TO THE PUBLIC**

**In the event a quorum of the Council is present, no City-related decisions will be made during this meeting or event.**

Citizens are invited to:

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

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 the Board via email before 12:00 PM on the meeting date. All emails received prior to this time will be entered into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, PO Box 1178, Billings MT 59103
  - Email: [bernsb@billingsmt.gov](mailto:bernsb@billingsmt.gov)
- 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 406-247-8610.

Please direct questions to Brenda Berns, Planning Clerk at [bernsb@billingsmt.gov](mailto:bernsb@billingsmt.gov) or 406-247-8610

**Call the meeting to order.**

**Introduction of City Board of Adjustment Members and Planning Department Staff.**

**Public Comment:**

**Approval of Minutes:**

The minutes of the Board meeting of July 3, 2024

**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. **City Variance 1376 -- 4221 Kari Lane -- CMU2 Building and Siting - Zoning variances from request from Section 27-406, Table 27-400.3.A.1 -- Build-to Corner, A.3 -- Minimum Front Lot Line Coverage, A.5 -- Street-side Build-to Zone, and D.16 and 17 -- Minimum Front Façade Door & Window coverage, in a Corridor Mixed Use 2 (CMU2) zone district on Lot 14A, Block 1 of Montana Sapphire Subdivision, having a general address of 4221 Kari Lane, a 2.083 acre parcel of vacant land. The proposed use is for a carwash, and the parcel has three street frontages. Tax ID: C13967**

## **Other Business/Announcements**

### **Adjournment**

Additional information on this application is available on-line at <https://www.billingsmt.gov/2361/Current-Zoning-Applications>

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 Brenda Berns, Planning Clerk at 406-247-8610 or [bernsb@billingsmt.gov](mailto:bernsb@billingsmt.gov)

**City Board of Adjustment**  
**Meeting Date:** 12/04/2024

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**Information**

**Subject**

The minutes of the Board meeting of July 3, 2024

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**Attachments**

Minutes of July 3, 2024

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**CITY BOARD OF ADJUSTMENT**  
MINUTES JULY 3, 2024

Name	Title	01/03/2024	02/07/2024	03/06/2024	04/03/2024	05/01/2024	06/05/2024	07/03/2024	08/07/2024	09/04/2024	10/02/2024	11/06/2024	12/04/2024	
Josh Sayer	Chair	C	C	C	1	1	C	1						
Oscar Heinrich	Vice Chair	C	C	C	1	1	C	A						
George Warmer	Member	C	C	C	1	A	C	A						
Michael Bruschwein	Member	C	C	C	1	1	C	A						
Chris Hayes	Member	C	C	C	1	1	C	1						
Dave Hagstrom	Member	C	C	C	1	1	C	1						
Brian Roush	Member	C	C	C	E	1	C	1						
<b>TOTAL NUMBER OF APPLICATIONS 2024</b>		<b>01/03/2024</b>	<b>02/07/2024</b>	<b>03/06/2024</b>	<b>04/04/2024</b>	<b>05/01/2024</b>	<b>06/07/2023</b>	<b>07/06/2023</b>	<b>08/02/2023</b>	<b>09/06/2023</b>	<b>10/04/2023</b>	<b>11/01/2023</b>	<b>12/06/2023</b>	<b>TOTAL</b>
<b>Variance</b>		-	-	-	1	1	-	1						3
<b>Appeal</b>		-	-	-	-									

Chairman Josh Sayer called the meeting to order at 5:59 PM.

**Attending:**

Nicole Cromwell, Zoning Coordinator; Anna Vickers, Planning Division Manager; Karen Husman, Planner; Tate Johnson, Planner

**Public Comment**

Chairman Sayer opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none.

### **Approval of Meeting Minutes**

Meeting minutes for May 1, 2024 – Approved by motion. Board member Hagstrom made a motion, seconded by Board member Hayes, to approve the minutes.

Disclosure of ExParte Communications - None

Disclosure of Site Visits – Board members Hayes and Sayer visited the site of Variance 1375

Disclosure of Conflict of Interest - None

### **Public Hearings**

**City Variance 1375 – 412 3<sup>rd</sup> St West** – A variance from Section 27-1802.H.3(b1) and Section 27-1209.D, requiring any fence or obstruction over 30 inches in height above the curb to be outside of clear vision area for an uncontrolled intersection. The clear vision area for un-controlled 4-way intersections is measured from the point of the intersecting street centerlines, 110 feet in both directions and connecting those end points (Figure 3a of Section 27-1802.3(b.1)). The purpose of the variance is to allow a 6-foot-tall chain link fence at the intersection of 3<sup>rd</sup> St West and Miles Avenue. Tax ID: A15922

Nicole Cromwell, Zoning Coordinator advised there are 4 Board members in attendance, requires a unanimous decision from all 4 Board members. Should the Applicant want a continuance of this hearing, they may request for a future date.

Tate Johnson, Planner gave a brief overview of the applicants request for Variance 1375. Tate stated the subject property is surrounded by primarily NX1 zoned properties, consists of mixed residential 1-4 dwelling-units per structure. To the southeast corner there is some CX Heavy Commercial zoning, and further to the north there is N1 zoning. The applicant provided a diagram describing the 110 x 110 triangle along the intersection roads. Within this zone, no fencing can be higher than 30”.

### **Recommendation**

Planning staff is recommending denial based on draft findings of the review criteria for variances:

- 1. There is a hardship with the property which is not applicable to other lands in the same district.**  
This property is unique, due to its adjacency to an alley on the northern side and an uncontrolled intersection to the south. This results in three clear vision areas affecting the property, the uncontrolled intersection, driveway, and alley. The property fronts onto 3<sup>rd</sup> St West and sits on the northwest side of the lot, faces a challenge in yard fencing due to the necessary clear vision areas dictated by regulations.
- 2. Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**  
Numerous residences situated on comparable corners have erected fences to comply with the mandated clear vision zones without variances.
- 3. Granting the building location variance will not confer a special privilege to this applicant.**  
Any variance has the potential to grant a special privilege to an owner. Based on the analysis of the surrounding zoning history, the prior variances granted by this board and the existing development pattern in the area, staff finds granting this variance could confer a special privilege, as clear vision standards have been imposed on various residential properties within the City.
- 4. Granting the variance will be in harmony with the purposes of zoning and growth policy.**  
Granting this variance is not in conformance with the policies and regulations set forth in the Growth Policy and Zoning Code. Clear vision areas are the main tool in the Zoning Regulations to ensure the safety and visibility for both motorists and non-motorists in critical areas. Clear vision area standards are

enforced to prioritize and maximize the safety for all users of multimodal transportation at intersections. Encroachments into clear vision areas can create significant safety issues as it may cause unsafe traffic and pedestrian passage at the intersection of 3<sup>rd</sup> St W and Miles Ave.

### **Questions**

Board member Hayes asked whether the original fence was permitted. Tate confirmed it was not, leading to a visit from Code Enforcement in April. The owner was instructed to apply for a fence permit, was conditionally approved with the stipulation that the fencing in the clear-vision area must not exceed 30 inches in height.

Planner Karen Husman clarified the fence permit had not been issued, and the owner was given the option to apply for a variance. Code Enforcement also directed the owner to halt construction of the fence until the variance was obtained. The owner submitted the application at the time. Karen noted barbed wire is prohibited in residential zones and is only allowed atop an 8-foot fence in commercial zones.

Board member Hagstrom asked about a study on whether chain link fences can obstruct visibility. Tate explained there is a point where visibility can become opaque and hinder sightlines. Hagstrom further inquired if this was addressed in the code. Nicole clarified the code does not specify criteria for determining a fence's impact on visibility. She also mentioned adding foliage or fabric could further impair visibility.

Board member Roush questioned the traffic levels at the intersection. Tate responded that both roads are residential and uncontrolled, lacking yield or caution signs.

### **Applicant**

Lorin Peterson 1014 W Maryland Ln, Laurel – Mr. Peterson mentioned he owns the home where his parents reside. He expressed concern about people entering the yard to pick apples and take items without permission. He stated he was not informed of any regulations and was unaware he needed to apply for a fence permit. Mr. Peterson noted he complied with Code Enforcement, but this occurred the day after the chain-link fence was installed.

### **Questions**

Board member Hagstrom inquired about the reason for installing barbed wire. Mr. Peterson explained they wanted to protect the property from theft and vandalism, stating a 30-inch fence would not provide adequate security.

Board member Hagstrom noted a 6-foot fence could be built on the property as long as it does not intrude on the clear vision area. Mr. Peterson confirmed he learned this later. He also mentioned he had been informed about the possibility of the intersection becoming controlled, but he had not received any further details.

Chairman Sayer asked if there was anyone who wished to speak in favor or opposition to the variance.

### **In Favor**

Lisa Sundeen 336 E. Alkali Creek Road, Billings – Ms. Sundeen stated this is her parents' home and wish to protect the yard from people walking through the property and taking items off the property. Ms. Sundeen stated she believes the fence does not limit visibility, is much more obscured with the neighbor's parked vehicles. She has not received any negative feedback from neighbors.

Mr. Peterson requested additional clarification of the regulations with clear vision rules with residential versus commercial areas.

Nicole explained clear vision requirements apply to all four corners of intersections and are established through permitting. Historically, before zoning codes were implemented, the process was subjective and mainly considered controlled intersections, uncontrolled intersections, and driveways and alleys. In 2009, the city made the clear vision areas more specific based on certain criteria. Ms. Cromwell noted she is not aware of any control devices being installed at this intersection.

Karen Husman, Planner, added they had reached out to Engineering for clarification but had not received a response.

Further discussion ensued about the option of creating a controlled intersection and its effects on other neighborhoods. Board member Hayes asked why trees on boulevards are not included in the clear vision requirements. Nicole clarified this is because they fall within the right-of-way, and exceptions for fencing have never been made.

Board member Hagstrom remarked the City might risk setting a precedent by allowing a variance in cases where a clear vision safety issue has been identified.

Chairman Sayer asked if there was anyone else who wished to speak in favor or opposition to the variance. There was none and the Public Hearing was closed.

### **Motion**

**Motion made by Board member Hagstrom, seconded by Board Member Hayes to Deny City Variance 1375 and adopt the staff recommended findings. Motion was carried with a unanimous voice vote.**

Nicole advised the applicants they have 30 days to modify the fence or to file an appeal. Ms. Cromwell recommended they speak to the City Engineer, Mac Fogelsong, for additional information.

**Other Business:** There was no other business.

**ADJOURNMENT:** The meeting adjourned at 6:49PM.

**ATTEST:** Draft to be approved by a motion at the next regularly scheduled meeting.

***Brenda J Berns, Planning Clerk***

**Board of Adjustment**

**Date:** 12/04/2024  
**Title:** Variance 1376 - 4221 Kari Lane - CMU2 Building and Siting  
**Presented by:** Karen Husman  
**Department:** Planning & Community Services  
**Presentation:** Yes

**Information****RECOMMENDATION**

Planning staff recommends conditional approval of the variance request from Section 27-406, Table 27-400.3.A.1 -- Build-to Corner, A.3 -- Minimum Front Lot Line Coverage, A.5 -- Street-side Build-to Zone, and D.16 and 17 -- Minimum Front Façade Door & Window coverage, in a Corridor Mixed Use 2 (CMU2) zone district.

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

This is a variance request from Section 27-406, Table 27-400.3.A.1 -- Build-to Corner, A.3 -- Minimum Front Lot Line Coverage, A.5 -- Street-side Build-to Zone, and D.16 and 17 -- Minimum Front Façade Door & Window coverage, in a Corridor Mixed Use 2 (CMU2) zone district on Lot 14A, Block 1 of Montana Sapphire Subdivision, having a general address of 4221 Kari Lane, a 2.083 acre parcel of vacant land. The proposed use is a carwash. The parcel has three street frontages, Kari Lane, King Avenue West, and Dannell Street.

The Corridor Mixed Use 2 (CMU2) zone district is a zoning for the city that requires buildings to be closer to the street and promotes development that is comfortably accessible via all modes of transportation. Parking is in the rear, side, or internal to the site with more street frontage landscaping. The zone districts require a minimum and maximum front build-to area along the street for mixed use zoning districts. The purpose of the build-to area is to ensure the street frontage is used for maximum potential for commercial businesses that frames the street. The front facade door and window coverage apply to the build to zone area.

The Board of Adjustment previously granted a variance to the limitation of front yard parking at 3840 Zoo Drive for a new Costco (CX zone) and at 3160 S Frontage Rd for a new warehouse and office for Mobile Stor (CX zone). In addition, the Board granted a variance for property on Blue Creek Road (CMU1 zone) in 2021 to accommodate a 100-year flood plain that crossed the front of the property. Two adjacent properties on King Ave West were granted a front lot line coverage reduction for a Smitty's Car Wash (CMU2 zone) for a variance that included front build to zone, window and door coverage, and the new Panda Express both due to the narrowness of the lots and the shared access easement for property to the south. All of these variances are similar requests although separated by degrees of intensity and use. The Costco parcel on Zoo Drive had physical constraints (an irrigation ditch) and functional needs for access. The Mobile Stor parcel on S Frontage Rd. also had site restrictions with three petroleum pipelines running through the parcel and a floodplain along the rear. The King Ave West parcels were burdened by topography and a shared access easement, while the Blue Creek Road parcel had onsite flood plain. The Board conditionally approved the Costco variance request in May 2022, and the S Frontage Road variance in February 2023. The Blue Creek Road variance was approved in May 2021 and the King Ave West variances were approved in October 2022 and October 2023. Additionally, in March 2022, the City Council approved a Special Review for an auto repair center on Shiloh Crossing Blvd in a CMU2 zone that included a variance approval for relief from the front lot line building coverage.

These variances are being requested with Dannell Street frontage considered the "front lot line," as it is the only one of the three frontages that allows compliance with the "build-to" zone requirements. The subject property has street frontage on three sides, making it impossible to meet all the "build-to" requirements on all three street frontages. While the proposed car wash is a permitted use in the CMU2 zone district, designing the project on a lot with three street frontages is challenging under the current build-to zone requirements. Any single-use building on this property would struggle to comply without extending the structure along the entire length of Dannell Street. Additionally, a 20-foot-wide utility easement along the north property line prevents any building placement on the King Avenue "build-to" frontage. Access limitations further complicate development, as the subdivision plat imposes no-access restrictions along both King Avenue and Dannell Street rights-of-way. The only available access to the property is from Kari Lane, which limits site access and circulation. Additionally, the southern property line along Kari Lane is situated at the centerline of the road, furthering the issue of Kari Lane frontage from meeting the requirements for either the side or front street "build-to" zone and "front lot line building coverage."

The applicant is proposing a layout that designates Dannell Street as the "front property line" to meet the "front build-to" zone requirements (as shown in the attached site plan). The unique characteristics of the lot present challenges for any

business, but these are particularly pronounced for a proposed car wash. The north and south property lines are classified as side street frontages, yet the building's actual front faces King Avenue, resulting in the wash bay garage doors being oriented toward the "side" street. Meeting the restriction of garage entrances on the side or rear of the property.

#### **APPLICATION DATA**

OWNERS: JDKJ PARTNERSHIP LLP, Mike Irwin, contract buyer.

AGENT: Taylor Kasperick, Performance Engineering

PURPOSE: Build-to Corner, A.3 -- Minimum Front Lot Line Coverage, A.5 -- Street-side Build-to Zone, and D.16 and 17 -- Minimum Front Façade Door & Window coverage,

LEGAL DESCRIPTION: Lot 14A, Block 1 of Montana Sapphire Subdivision

ADDRESS: 4221 Kari Lane

EXISTING LAND USE: Vacant land

PROPOSED LAND USE: Car Wash

EXISTING ZONING: CMU2

#### **CONCURRENT APPLICATIONS**

None

#### **SURROUNDING ZONING & LAND USE**

NORTH: Zoning: St. Vincent Healthcare PD

Land Use: Medical campus Dialysis clinic

SOUTH: Zoning: CMU2

Land Use: Automotive service-Caliber Collision

EAST: Zoning: CMU2

Land Use: Financial institution- Beartooth Bank

WEST: Zoning: CMU2

Land Use: Manny's Sports Bar

#### **STAKEHOLDERS**

Planning staff notified surrounding property owners via mail, published a legal advertisement in the Yellowstone County News, and posted the required sign on the property. At the time this report was submitted, no comments had been received from nearby property owners.

#### **ALTERNATIVES**

The Board of Adjustment may:

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

Under local regulations and state law, four votes in favor of a variance request are needed for approval. The applicant has not requested a delay of the hearing or a withdrawal of the application.

#### **FISCAL EFFECTS**

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

#### **SUMMARY**

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

##### **Section 27-1627.D**

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

The property is subject to physical constraints with street frontage on three sides, making it impossible to meet all the "build-to" requirements. While the proposed car wash is a permitted use in the CMU2 zone district, designing the project on a lot with three street frontages is challenging under the current "build-to" zone requirements. The applicant is proposing a layout that designates Dannell Street as the "front property line" to meet the "front build-to" zone requirements (as shown in the attached site plan). The unique characteristics of the lot present challenges for any business, but these are particularly pronounced for a proposed car wash. The north and south property lines will be classified as side street frontages, yet the building's actual front faces King Avenue, resulting in the wash bay garage doors being oriented toward the "side" street.

Meeting the restriction of garage entrances on the side or rear of the property. Any single-use building on this property would struggle to comply without extending the structure along the entire length of Dannell Street. Additionally, a 20-foot-wide utility easement along the north property line prevents any building placement on the King Avenue "build-to" frontage. Access limitations further complicate development, as the subdivision plat imposes no-access restrictions along both King Avenue and Dannell Street rights-of-way. The only available access to the property is from Kari Lane, which limits site access and traffic circulation. Additionally, the southern property line along Kari Lane is situated at the centerline of the road, further exempting Kari Lane from meeting the requirements for either the side or front street "build-to" zone and "front lot line building coverage." Smitty's Car Wash (CMU2 zone) was granted a variance that included front build to zone, window and door coverage on King Avenue W. Enforcing window and door coverage requirements on the front façade is challenging for a car wash, as its design typically lacks prominent windows or doors.

**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.**

Specific to the Doors/Windows requirement, there are other developed properties in the area that have less than the required front facade of window and door coverage. These properties were developed under the old code and if they were redeveloped or modified, there are rules in place under the code that allow specific relief from adherence to the current code depending on the extent of the redevelopment. Other than the other developed parcels in the area with less than the current code requirements for front facade design, the literal interpretation of this chapter would not deprive the applicant of rights enjoyed by other tracts. There are no circumstances that would prevent the building from being designed with the required window and door coverage on the front facade facing Dannell Street however, the unique characteristics of the lot present challenges for a proposed car wash. The north and south property lines are classified as side street frontages, yet the building's actual front faces King Avenue, resulting in the wash bay garage doors being oriented toward the "side" street, meeting the restriction of garage entrances on the side or rear of the property. The unique characteristics of the lot present challenges for any business, but these are particularly pronounced for a proposed car wash, as its design typically lacks prominent windows or doors. Smitty's Car Wash (CMU2 zone) was granted a variance that included front build to zone, window and door coverage on King Avenue West. The applicant is proposing a layout that designates Dannell Street as the "front property line" to meet the "front build-to" zone requirements (as shown in the attached site plan).

**3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this zoning code to other land in the same district.**

Similar to the finding for criteria 2 above, the granting of this variance may not confer a special privilege on the applicant due to the existing developments in the area. In addition, there have been variances approved for parcels in CMU zones with similar hardships. There are existing developments in the area built under the previous code. Although this parcel is a CMU2 zoned parcel, the restrictions are similar, but on a much smaller scale than the previous approved variances in the CX zone districts. The City Council approved a special review for an auto repair center on Shiloh Crossing Blvd in the CMU2 zone that included a variance approval for relief from the front lot line building coverage. The Board granted variances for new development on Blue Creek Road and King Ave West to accommodate restrictions to property in the CMU zone district. Specific to the doors/windows requirement, there are other developed properties in the area that have less than the required front facade window and door coverage. These properties were developed under the old code and if they were redeveloped or modified, there are rules in place under the code to address these cases depending on the extent of the redevelopment. Approval of a variance for less than the required window and door coverage on the front facade would not confer on the applicant a special privilege under the new code because of other developed properties in this area, as well as the BOA approved a variance for window and door coverage for a car wash on King Ave.W. This is an undeveloped parcel and the provisions of the code were developed to promote an aesthetically pleasing facade and promote design features to beautify the commercial developments. The east facade would be the front, enforcing window and door coverage requirements on the front façade is challenging for a car wash, as its design typically lacks prominent windows or doors.

**4. That the granting of the variance will be in harmony with the general purpose and intent of this zoning code and with the Growth Policy.**

The 2016 Growth Policy and the 2021 Zoning Code adopted to further the Growth Policy goals, are intended to curtail the out-of-date development style of placing all new commercial development behind a sea of parking stalls. Approval of this variance with Dannell Drive as the "front property line", will be in harmony with the general purposes and intent of the Growth Policy and zoning code. The appearance of the structure itself will be the most prominent feature from King Avenue and a variance from the required window and door covering considering Dannell Drive as the front property line would not be in harmony with the general purpose of the zoning code and the Growth Policy. As addressed in items 2 and 3 above, the zoning code was designed to address the Growth Policy's intentions to promote aesthetically pleasing building facades in commercial districts. Beautification of entryways and commercial districts is preferred under the Growth Policy. There has been one other variance approved that included window and door coverage on the front facade, for a car wash on 3042 King Avenue W. Any single-use building on this property would struggle to comply without extending the structure along the entire length of Dannell Street. Additionally, a 20-foot-wide utility easement along the north property line prevents any building placement on the King Avenue "build-to" frontage. Access limitations further complicate development, as the subdivision plat imposes no-access restrictions along both King Avenue and Dannell Street rights-of-way. The only

available access to the property is from Kari Lane, which limits site access and traffic circulation. Additionally, the southern property line along Kari Lane is situated at the centerline of the road, furthering the issue of Kari Lane frontage meeting the requirements for either the side or front street "build-to" zone and "front lot line building coverage."

**Section 27-1627.E.**

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

The above-referenced criteria from Section 27-1627.D. has been addressed above in the staff report for the board to state.

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

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

1. The variance is to allow variance request from Section 27-406, Table 27-400.3.A.1 -- Build-to Corner, A.3 -- Minimum Front Lot Line Coverage, A.5 -- Street-side Build-to Zone, and D.16 and 17 -- Minimum Front Façade Door & Window coverage, in a Corridor Mixed Use 2 (CMU2) zone district., as depicted on the submitted site plan for the new building. No other variance is intended or implied.
2. This variance request is applicable to only Lot 14A, Block 1 of Montana Sapphire Subdivision, having a general address of 4221 Kari Lane.
3. The structure will be built in substantial conformance to the drawings submitted with this variance request. Minor modifications to the location of the proposed structures and other site improvements as shown on the submitted site plans are allowed.
4. The applicant/developer shall apply for a building permit within 12 months of Board of Adjustments approval and complete the development within 3 years of Board of Adjustments approval. Completion includes all buildings, landscaping, parking and other site structures and amenities.
5. There shall be no construction activity prior to 7 am or after 8 pm daily.
6. All other zoning regulations, except for these specific variances, and any other applicable city regulations apply to the development of the site.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease-holders, heirs and assigns.

**3. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance.**

Staff is recommending conditions of approval that include time limits to begin and complete the project. Specifically, the recommendation is that the applicant will complete the building permit process within 1 year of Board approval and complete the project within 3 years of Board approval.

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

The granting of this variance would not allow a use that is not allowed in the zoning district. Car washes are allowed uses in the CMU2 zone.

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**Attachments**

Zoning Map & Site Photos  
Application & Applicant Letter  
Site Plan  
History

# Zoning Map and Site Photos



Subject Property





North West



North East



South from Dannell

**CITY VARIANCE APPLICATION FORM**

**CITY VARIANCE : Billings Variance #\_1376\_\_\_ - Project #\_PZX-24-00269**

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings Zoning Regulations.

PARCEL TAX ID # C13967 CITY ELECTION WARD # 5

Legal Description of Property: Lot 14A, Block 1, Montana Sapphire Subdivision, NE 1/4 of Section 15, T. 1 S., R. 25 E., P.M.M., City of Billings, Yellowstone County, Montana.

Address or General Location (If unknown, contact City Engineering): 4221 Kari Lane, Billings, MT 59106

Zoning Classification: Corridor Mixed Use 2 (CMU2)

Size of Parcel (Area & Dimensions): 2.0283, 272' x 325'

Variance(s) Requested: Build-To, Lot Line Coverage, Windows & Door Facade, Principal Entrance, and Vacuums. City of Billings

Zoning Code Table 27-400-3, A; 27-1500;Q

Facts of Hardship: (attach letter)

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

Owner(s): Mr. Mike Irwin (Owner under Contract)  
(Recorded Owner)  
PO Box 659, Belgrade, MT 59714  
(Address)  
mirwin@wyoming.com  
(Phone Number) (email)

Agent(s): Performance Engineering  
(Name)  
3412 Colton Blvd. Suite 201, Billings, Montana 59102  
(Address)  
406-384-0080 taylor@performance-ec.com  
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature:  Date: 11.1.2024  
**(Recorded Owner – digital signature allowed)**



3412 Colton Boulevard, Suite 202 • Billings, MT 59102 • 406-384-0080

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November 1, 2024

Chair of the Board of Adjustments  
City of Billings Planning Department

*RE: Zoning Variance Request for 421 Kari Lane – Lot 14A of the Plat of Amended Lots 14 and 15, Block 1, Montana Sapphire Subdivision*

To the Chair of Board of Adjustments,

Thank you for the time and consideration in reviewing the submitted City Zoning Variance Application for the Rocky Mountain Car Wash proposed at 421 Kari Lane in the City of Billings, being located on Lot 14A of the Plat of the Amended Lots 14 and 15, Block 1, of Montana Sapphire Subdivision. This property is located on the south side of King Avenue, immediately west of Dannell Street and north of Kari Lane. The latter two roads, Dannell Street and Kari Lane, are private roads serving Montana Sapphire Subdivision while King Avenue west of Shiloh is a MDT controlled and maintained urban route.

The project is proposed to provide a new car wash facility owned and operated by Rocky Mountain Car Wash. Rocky Mountain Car Wash is a company who has successfully operated car washes in both Montana and Wyoming for the last 20-plus years while providing a top-shelf car wash amenity to the communities they have locations in. Locations in Montana include Belgrade (2 locations), Butte, and Helena, with 11 additional locations across Wyoming. Additional information and examples of Rocky Mountain Car Wash's style of wash can be seen on their website located at the link below.

[Rocky Mountain Car Wash - Self Service Car Wash in WY and MT](#)

This memo is being provided to supplement the variance application and discuss both the physical hardship necessitating the submitted variances as well as providing information on why certain use restrictions for car washes within CMU zone districts present hardships themselves for allowed uses.

In particular, the following variances are being requested for the planned project:

1. Relaxation of CMU-2 Build-To requirements for side streets listed in Table 27-400-3.
2. Relaxation of front minimum lot line coverage requirements listed in Table 27-400-3.
3. Removal of build-to corner requirement in Table 27-400-3.
4. Permitting no front façade entrance and eliminating door and window coverage on the front façade in Table 27-400-3.

The above referenced variances are being submitted based on the use and consideration of Dannell Street as the "front lot line". As the subject property is fronted on three of four sides by roadways, depending on which street is considered the front street versus a side street would change the extent of and number of variances requested as part of this application. As such, the additional variances listed below are being referenced in relation to the project should either King Avenue or Kari Lane be classified as the property's front street.

1. Relaxation of CMU-2 Build-To requirements for side **and front streets** listed in Table 27-400-3.
2. Allow garage doors and car wash bays to be located on the front façade contrary to 27-1005, Q, 1.

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

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

Reasons and hardships for being prevented from using the property in conformance with the Zoning Regulations requirements are multi-faceted, related to both the physical characteristics of the subject property as well as the "Permitted" by right use of a car wash, or other vehicle service station, in a CMU-2 zone district that directly conflicts with the siting standards of the district. Each hardship is detailed further in the bullets below.

**Site Specific Hardships:**

- The subject property is a rare instance where there are three separate roadways that are adjacent to the property, leaving only

one lot line that is not occupied by a street frontage. Given the front street, side street, and build-to corner requirements of the CMU-2 district listed in Table 27-400-3, any single building use would not be able to meet these requirements without constructing a building running the entire length of the Dannell Street frontage, or being forced to construct multiple buildings.

- A 20'-wide utility easement exists along the property's north line, precluding any proposed building from being built within the front build-to zone along the King Avenue frontage. While the building and siting standards for setbacks and build-to requirements are typically measured from the back of the most restrictive easement, the 20' utility easement on this lot precludes the strict conformance with the intent of a build-to requirement of promoting a walkable and pedestrian facility by having the front façade near the public right-of-way. Further this point, the subject property is located on the southwest corner of the Dannell Street/King Avenue roundabout, which further pushes the public pedestrian facilities away from any structure.
- Access to the subject property is also limited, being restricted from both King Avenue (MDT controlled) and Dannell Street based on platted no-access easements. Therefore, the sole frontage the subject property can be accessed from is Kari Lane, further limiting the ability, if Kari Lane were considered the front street, to place both the building and site accesses along this frontage while still accommodating access and circular on the site. Additionally, the southern property line of the subject property is approximately 28' south of the northern curb line of Kari Lane (the southern property line is essentially the centerline of Kari Lane), which means any structure would not be built within the 20' build-to requirement.

#### Car Wash (Use) Specific Hardships

- While the use "Car Wash" is permitted by right in the CMU-2 zone district, it is evident that the building and site standards, as well as the use specific standards in 27-1005, Q, do not lend to the use actually being permitted in the zone district without the application of variances, in particular on this site where three roads front the subject property.
  - To this point, it would be very difficult to make a car wash of any type (self service, automatic, conveyor style, etc) be

able to meet a “build to corner” requirement while still providing sufficient space for an access aisle either into or out of a wash bay. With any car wash or vehicle service related operation, vehicles are generally coming in one side of a building and out the other without the ability to turn within the structure to navigate a corner.

- o The preclusion of garage doors or car wash bays facing the front façade. This requirement is manageable on corner lots and those with a single frontage, but is practically impossible on a lot such as the subject property where three of four sides of the property face a roadway.
- o Requirement to place vacuums either on the side or rear yard of a property forces vacuums to be located next to existing or future neighbors, moving one of the louder portions of a car wash operation nearest the adjacent property and uses rather than near the roadway. While this requirement is able to be met on this site, it is included within this memorandum for consideration to be revised in the future. It is my belief there are numerous examples within Billings of appropriate use of vacuums on a car wash site along the property frontage without having deleterious results (Buggy Bath Car Wash on Shiloh/Central and Town Pump Car Wash on Shiloh/King).
- o The requirement of a primary entrance into a car wash is not always applicable to a use of this nature. While the proposed car wash will have an office and restroom, not all car washes are staffed or have public-facing areas. As such, the requirement to have a primary entrance doorway on the front façade of a car wash is requested to be varied from on the submitted project.

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

Car wash facilities, much like coffee shops, are generally “capture” or “pass-by” facilities meaning they are need to be located in areas of high traffic in order to be successful as they are not “destination” uses. As such, this location offers a great visibility to the planned use as a car wash and is located on a heavily travelled corridor in King Avenue where continuous development will generate the traffic necessary to provide a successful car wash. While a car wash is permitted within the Heavy Commercial zone district and the building and siting standards of that district would require fewer variances than currently being requested, available lots with a Heavy Commercial zoning are not located in areas as high of visibility, ease of access, or as high of traffic volumes that are

paramount to the operation of such facility. Additionally, a zone change to Heavy Commercial is not being pursued as the adjacent lots and zoning in the surrounding area would not be as compatible with a Heavy Commercial zoning designation.

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

There are not existing buildings on the subject property that will require demolition. Historically, the property has been utilized for shed and small structure sales, which were modular and will/are currently removed from the site.

The construction of the proposed car wash would be conducted in conformance with the submitted site plan layout included with this application. As can be seen in the layouts and as detailed in this memorandum, it is believed that consideration of Dannell Street as the property "front street" allows for the development to meet the intent of the CMU-2 zone district most closely, necessitating the fewest variances and the least amount of numeric variance granted. The reasons for this and efforts to meet the intent of the CMU-2 zone district standards are detailed below:

- In considering Dannell Street and the property frontage, the proposed car wash is able to be shifted east to be constructed within 20' of the eastern property line, meeting the requirement of the front build-to requirement. While this requirement is met, the east face of the building (the narrower axis of the building) will be considered the front façade of the building, therefore not meeting the required front lot line coverage or door/window treatment requirements. As the interior of the eastern wall is an automatic car wash bay, there is limited to no opportunity to incorporate windows/primary entrance doorways onto this façade to meet the building standards listed in 27-400-3. However, both the north and south faces of the building will have glazed garage doors providing the architectural relief desired with this requirement to both side streets, one of which being King Avenue which will be the more visible side of the structure.
- As noted in the bullet above, garage doors and car wash bays are not oriented to the front street when considering Dannell Street as such, with the garage doors facing both King Avenue and Kari Lane facilitating a north-south movement of traffic which is also beneficial for a car wash operation especially

during winter months when wet vehicles and overspray commonly lead to icy conditions on the west and east sides of a building.

- Vacuum stalls are planned on the west side of the project layout to comply with 27-1005, Q, 3, b. The applicant would be willing to move these stalls to the northern side of the site (between the building and the King Avenue frontage) to avoid potential noise issues with the adjacent Manny's Bar to the west, but please note in doing so this would require the building to shift further south slightly increasing the variance needed from the side-street build-to requirement.

Due to these hardships, reasons, and explanation provided above, it is requested the Board of Adjustments consider and grant the requested and necessary variances to allow for the construction of a car wash as depicted in the provided layouts. Given the nature of this proposed development, and nuances in determination of the front street, I would welcome the opportunity to discuss with both the Planning Department and the Board to determine best application of the zoning code requirements, proposed site, and potential revisions to meet both the intent of the car wash use and the zoning code.

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

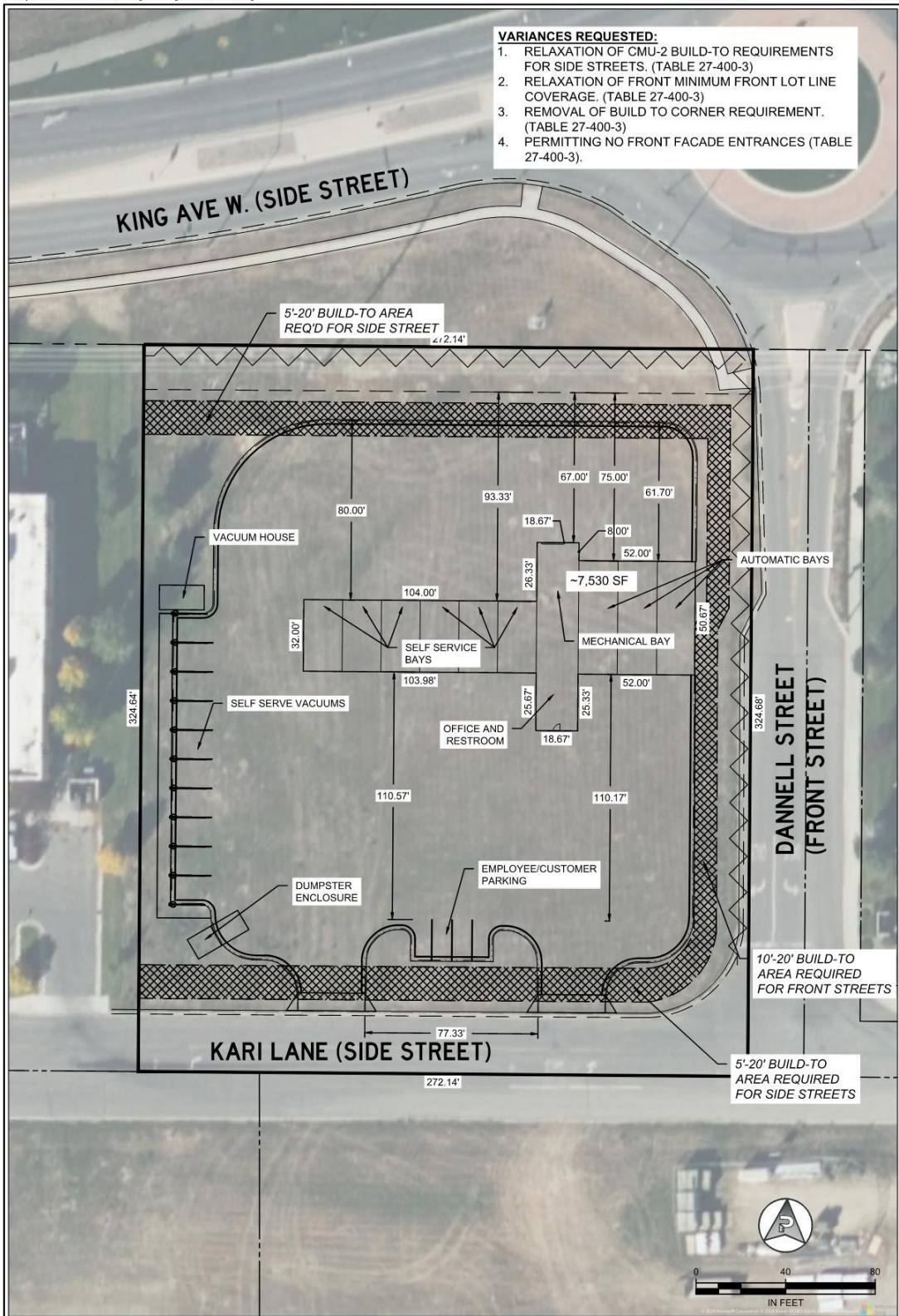
Best Regards,



Taylor Kasperick, PE  
Project Manager

**VARIANCES REQUESTED:**

1. RELAXATION OF CMU-2 BUILD-TO REQUIREMENTS FOR SIDE STREETS. (TABLE 27-400-3)
2. RELAXATION OF FRONT MINIMUM FRONT LOT LINE COVERAGE. (TABLE 27-400-3)
3. REMOVAL OF BUILD TO CORNER REQUIREMENT. (TABLE 27-400-3)
4. PERMITTING NO FRONT FACADE ENTRANCES (TABLE 27-400-3).



PROJECT NUMBER  
2024-113

SHEET NUMBER  
2 OF 2

DRAWING NUMBER  
C1.1

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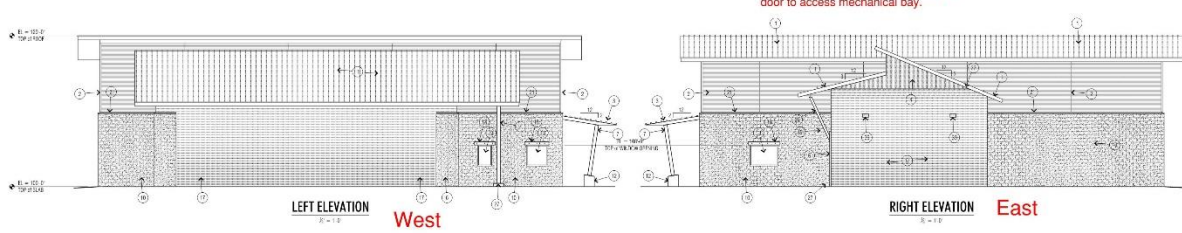
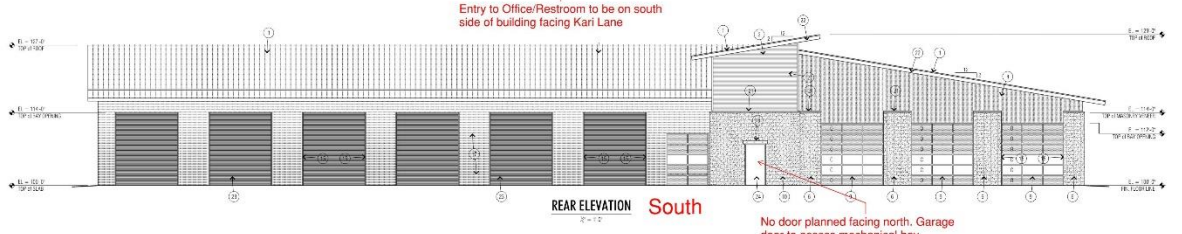
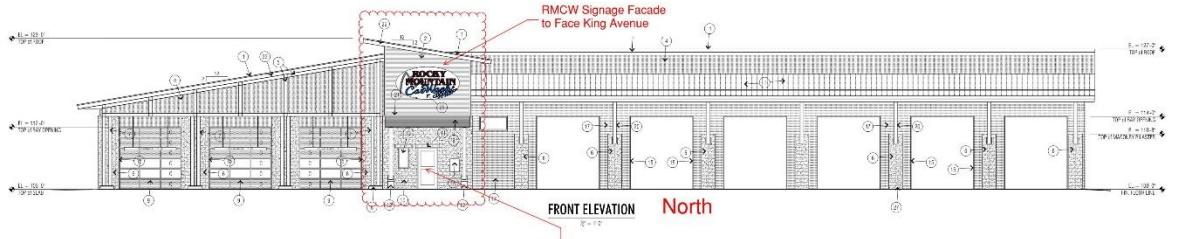
SHEET TITLE  
**PROPOSED VARIANCE  
SITE LAYOUT**

DESIGNED BY		QUALITY ASSURANCE	
DATE	DATE	DATE	DATE
10/22/2024	10/22/2024	10/22/2024	10/22/2024

**RMCW BILLINGS**

421 KARI LANE  
BILLINGS, MT 59102





**APPLICABLE ZONING HISTORY**

<b>SUBJECT PROPERTY</b>	<b>VARIANCE</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
None					
<b>SIMILAR REQUESTS</b>	<b>VARIANCE</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
3036 King Ave. W	1370	10/4/23	Maximum Build-to Range, Minimum Front Lot Line Coverage, front window, door cov, front façade entrances, roof type	Yes	
807 Bench Blvd.	1362	3/1/23	Maximum Build-to Range, Minimum Front Lot Line Coverage	Yes	
4825 Midland Rd.	1360	3/1/23	Maximum Build-to Range, Minimum Front Lot Line Coverage, Location of Surface Parking. Window and Door Coverage on the Ground Story Front Façade	Yes <b>NO</b>	
3032 King Ave. W	1350	10/5/22	Minimum Front Lot Line Coverage	Yes	
2910 3rd Ave S	1334	7/7/21	Build to zone 0	yes	
Shiloh Crossing Blvd	SR 993 With Variance	3/28/22	Front lot line cov.	Yes	