



County of Yellowstone Board of Adjustment

AGENDA-Thursday, September 12, 2024, 4:00 p.m.

Stillwater Building, 3rd Floor Room 3108

316 N 26th St, 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>

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 12:00pm 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, PO Box 1178 Billings, MT 59103
- Email: plnonline@billingsmt.gov

Call the meeting to order.

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

Public Comment

Approval of Minutes:

The minutes of the Board meeting of October 12, 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 299 -- 335 S 48th St W -- Lot Area - A variance from Yellowstone County Zoning Regulations Section 27-903.A -- Table 27-900.1 requiring a minimum lot area of 10 acres in an Agriculture (A) zone, to allow a lot area of 2.37 acres. The variance of lot size is requested for property currently legally described as Tract 1 of C/S 2142 in Section 10, Township 1 south, Range 25 east, a 10 acre parcel of land. The variance is requested to allow a boundary relocation between two parcels in the same ownership, both zoned Agriculture. Tax ID: D00485A

Commissioner District 1, Planners: Karen Husman and Tate Johnson

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, PO Box 1178, Billings MT 59103. 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: 09/12/2024

Information

Subject

The minutes of the Board meeting of October 12, 2023

Attachments

Minutes of October 12, 2023



**Yellowstone County Board of Adjustment
Thursday, October 12, 2023
To be Approved By Motion**

The County Board of Adjustment met at 4:00 p.m. in the Miller Building 1st Floor Conference Room, 2825 3rd Ave. North.

| | Position | 01/12/2023 | 02/09/2023 | 03/09/2023 | 04/13/2023 | 05/11/2023 | 06/08/2023 | 07/13/2023 | 08/10/2023 | 09/14/2023 | 10/12/2023 | 11/09/2023 | 12/14/2023 |
|------------------------|---------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Tyler Bush | Chairman | A | C | C | C | C | 1 | V | C | C | 1 | | |
| Carlotta Hecker | Board Member | 1 | C | C | C | C | 1 | 1 | C | C | 1 | | |
| Troy Boucher | Board Member | 1 | C | C | C | C | E | 1 | C | C | A | | |
| Blaine Poppler | Vice Chairman | 1 | C | C | C | C | 1 | E | C | C | 1 | | |
| Morgan Tuss | Board Member | - | C | C | C | C | - | E | C | C | A | | |

Chairman Bush opened the meeting and introduced the YCBOA Board members and Planning Division staff.

Staff Present: Zoning Coordinator Nicole Cromwell; Karen Husman, Planner I; Brenda Berns, Planning Clerk

Public Comment

Chairman Bush asked if there was anyone wishing to speak during the public comment portion of the meeting. The Public may call in during specific Public Comment periods at (406) 237-6165. All callers will be 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 restricted to three minutes of testimony as is customary. There were no public comments.

Approval of Minutes: July 13, 2023 (The August 10, 2023 & September 14, 2023 meetings were cancelled due to a lack of applications).



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Motion

A Motion was made by Commissioner Hecker, seconded by Commissioner Poppler to approve the July 13, 2023 meeting minutes as submitted. The motion was carried with a unanimous voice vote.

Disclosure of Conflict of Interest

There were no disclosures of conflict of interest.

Disclosure of Exparte Communication

There were no disclosures of exparte communication from the Board.

No one wished to comment regarding items not on the agenda.

Public Hearing

Chairman Bush opened the public hearing and asked if there is anyone wishing to speak regarding Variance 298.

Zoning Coordinator Nicole Cromwell read aloud the procedures for a public hearing.

Item 1:

A .County Variance 298 -- 2133 East Echo Drive -- Section 27-1009.D(1) Max footprint of Detached Accessory Structure. Submitted by Karen Husman, Planner I.

Request

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.



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Recommendation

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

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

1) There is a hardship with the property that is not applicable to other lands in the same district.

There are no special circumstances that exist which are peculiar to the land.

2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area.

Staff found no other parcels in the surrounding area, and in this subdivision that had detached structures of this size. Denying the variance would not deprive the applicant of rights enjoyed by other tracts in the same district.

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 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



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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 Hawthorne Lane from the City of Billings Public Works Department.

Discussion

Chairman Bush sought clarification on the chronological order of events related to the applicant's process. Karen Husman explained that they initially inquired with the Billings Public Works department about permits and were informed that a building permit was unnecessary. However, they were later advised in May that a zoning/compliance permit was required, although construction had already commenced. Subsequently, upon application for the zoning/compliance permit, there ensued a series of communications with City staff regarding necessary corrections. The application for Variance was submitted in July.

Commissioner Poppler inquired whether the violation came to light because of a complaint. Karen indicated that she believed it was prompted by a complaint from County Code Enforcement.

Commissioner Poppler noted the submission of around six letters from a single neighbor to the Board, suggesting they might have initiated the complaint. Additionally, he mentioned that upon being approached by County Code Enforcement, the Applicants took steps to rectify the situation. Karen affirmed this and reiterated that construction of the garage was underway.

Commissioner Poppler queried the current status of construction. Karen clarified that only the garage doors were yet to be installed to complete construction. She mentioned not having taken additional photographs beyond those from the original application.

Commissioner Poppler asked if the request met any of the four necessary criteria. Karen responded that, in her interpretation, it did not satisfy any of the criteria.



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Chairman Bush inquired about accessing zoning regulations for a specific property on a zoning map. He suggested that if an architect prepared plans for a garage, they would likely check the necessary requirements. Karen explained that information and contact details for additional permits, zoning requirements, certificate of occupancy, etc., for Yellowstone County and areas beyond the City limits, could be found on the County Zoning website.

Chairman Bush asked if anyone would like to speak on behalf of the variance 298.

In Favor

Kareasa Busch 2133 E. Echo Dr.

Mrs. Busch expressed that at the outset of this process, they believed they had diligently conducted their research. Opting for a local builder boasting three decades of experience, they were assured that no permit was necessary since their property fell within the County jurisdiction. She mentioned attaching a letter sourced through a Google search, which did not indicate a permit requirement. Mrs. Busch admitted her surprise when a Code Enforcement officer visited their residence. Subsequently, upon learning of the permit necessity, they undertook all necessary steps to address the issue. She emphasized that this situation posed a significant hardship for their family.

Discussion

There was discussion regarding the preliminary groundwork conducted by the contractor and engineers, as well as the current state of the garage today. The applicant's advised they have made no additional improvements to the garage since being notified there was an issue and needed a variance.

Kim Connolly 2121 E Echo Dr.

Ms. Connolly stated she is a neighbor, and their house sits adjacent to the applicants. We are on a similar sized lot, approximately 1 acre with a shop. The applicants moved in approximately 3 years ago and have been good neighbors. They have a beautiful shop, and it appears to be well built. We see their property from our deck, including the garage, and we have no issue with it.

Chairman Bush asked if anyone else would like to speak on the Variance. There were none.



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Discussion

There was discussion regarding the potential for an approved variance to set a standard for other homeowners. The Board addressed the importance of residents to fully research the zoning regulations for their property before beginning a construction project which alters their existing structure or adds structures. The Board discussed the fact that the builder should have had knowledge of the zoning regulations, and thereby shoulders some level of responsibility.

Motion

Chairman Bush called for a motion.

Commissioner Hecker made a Motion, seconded by Commissioner Poppler to deny approval of Variance 298. The Motion was carried with a unanimous voice vote.

Other Business

There was none.

Adjourned: 4:49PM

County Board of Adjustment

Meeting Date: 09/12/2024

SUBJECT: County Variance 299 Staff Report

THROUGH: Tate Johnson, Planner 1

PRESENTED BY: Tate Johnson, Planner 1

Information

REQUEST

County Variance 299 -- 335 S 48th St W -- Lot Area - A variance from Yellowstone County Zoning Regulations Section 27-903.A -- Table 27-900.1 requiring a minimum lot area of 10 acres in an Agriculture (A) zone, to allow a lot area of 2.37 acres. The variance of lot size is requested for property currently legally described as Tract 1 of C/S 2142 in Section 10, Township 1 south, Range 25 east, a 10 acre parcel of land. The variance is requested to allow a boundary relocation between two parcels in the same ownership, both zoned Agriculture. Tax ID: D00485A

Commissioner District 1, Planners: Karen Husman and Tate Johnson

RECOMMENDATION

Planning staff has reviewed this application and is forwarding a recommendation of denial based on the determinations for review within this report and the criteria outlined in Yellowstone County Zoning Regulations Section 27-1626.D.

APPLICATION DATA

OWNER: Staley Family Trust

AGENT: Performance Engineering

LEGAL DESCRIPTION: S10, T01 S, R25 E, C.O.S. 2142, PARCEL 1, AMD

ADDRESS: 335 S 48th St W

CURRENT ZONING: A - Agriculture 10 Acres and Over

EXISTING LAND USE: Residential and Agriculture

PROPOSED USE: Residential

SIZE OF PARCEL: 10.00 Acres

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

The original Certificate of Survey 2142 was recorded in August 1982, platting the lot as 10.003 acres. An amendment Certificate of Survey was recorded in February 1995, which platted the lot size as 10 acres. Since then, no further amendments to this certificate of survey have been recorded.

In June 2017, the Yellowstone County Board of Planning and Staff began work on Project ReCode, which directed a comprehensive update of the zoning codes. As part of this process, both the City and County revised their zoning maps to reflect the new zoning districts, which were based on land use and lot size. Given the lot's agricultural use and its size of 10 acres, the parcel was designated as Agriculture -- 10 acres or more. This designation aligned with the property's zoning designation as Agriculture Open in the former zoning code.

In December 2023, a Perpetual Right of Way Easement encompassing 0.785 acres was recorded. The easement does not detract from the parcel's size, nor is it considered right of way as there was no warranty deed associated with the easement area. The parcel remains 10 acres.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: A- Agriculture
Land Use: Agriculture

SOUTH: Zoning: RR1
Land Use: Residential

EAST: Zoning: A- Agriculture
Land Use: Agriculture

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 would not align with the general purpose and intent of the zoning regulations and the Growth Policy. The Agricultural (A) district is defined as: 'The Agricultural (A) district is intended to protect and preserve agricultural lands for the performance of a wide range of agricultural functions. The intent is to limit the scattered intrusion of uses not compatible with an agricultural environment, encourage agricultural pursuits, and protect environmental concerns.'

The requested variance would compromise these objectives by increasing the non-conforming lot size within an area designated for agricultural use. The intent of the Agricultural district excludes suburban residential uses to maintain its focus on agricultural preservation. This reduction could potentially disrupt the agricultural integrity of the zone and conflict with the overarching goals of the Growth Policy and Zoning Regulations.

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 is from YC 27-903.A -- Table 27-900.1 requiring a minimum lot area of 10 acres in an Agriculture (A) zone, to allow a lot area of 2.37 acres, for Tract 1, C/S 2142 in Section 10, T1S, R25E, a 9.54-acre parcel of land. The variance is to allow a boundary relocation between two parcels in the same ownership, both zoned Agriculture. No other variance is intended or implied with this approval.
 2. The variance is limited to S10, T01 S, R25 E, C.O.S. 2142, PARCEL 1, AMD.
 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 the relocation.

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 residential is allowed in the district.

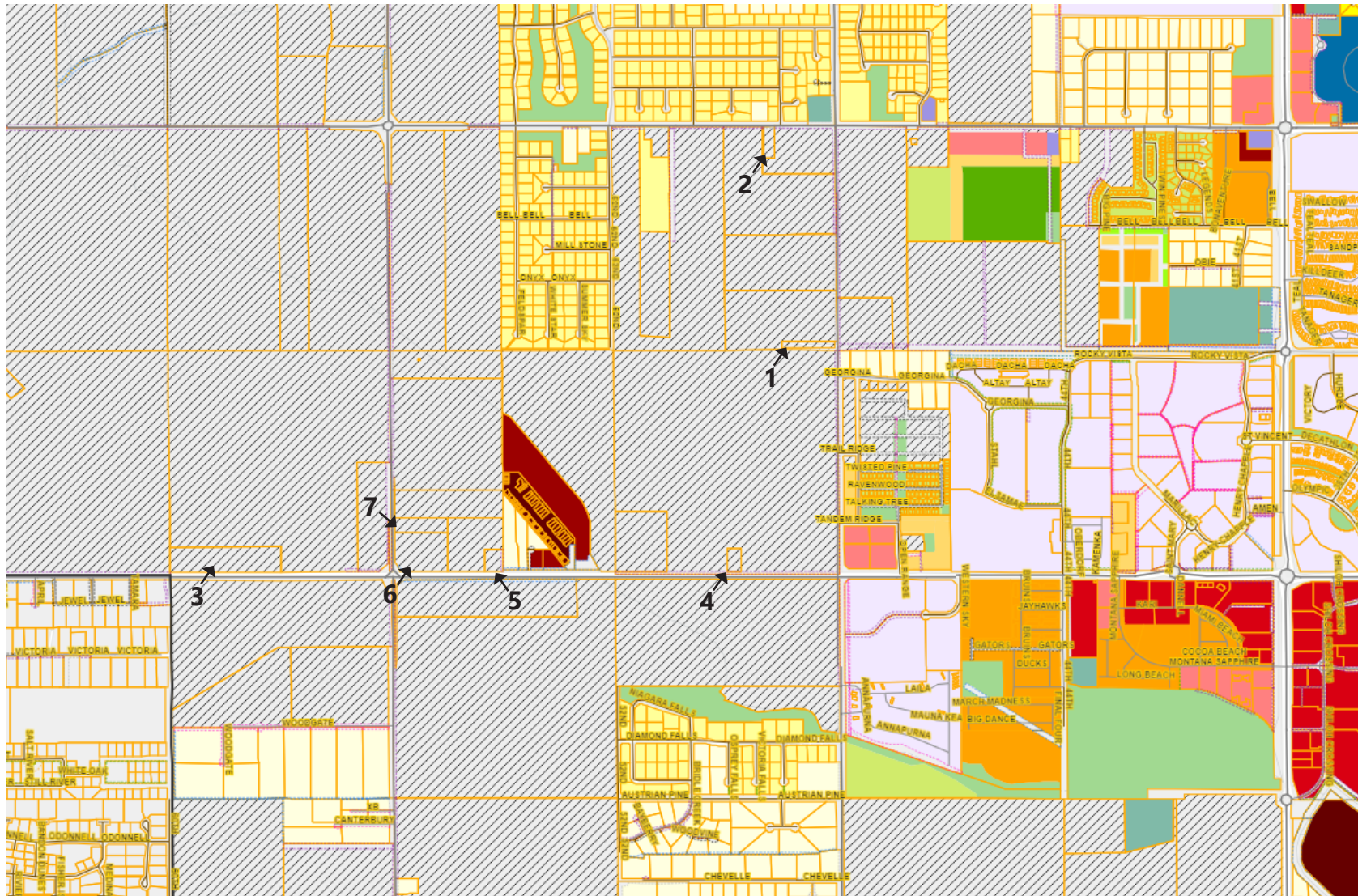
RECOMMENDATION

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

Attachments

Surrounding Parcels Zoned Agriculture Under the 10 Acre Minimum
Variance History
Site Plan
Zoning Map and Site Photos
Application and Applicant Letter

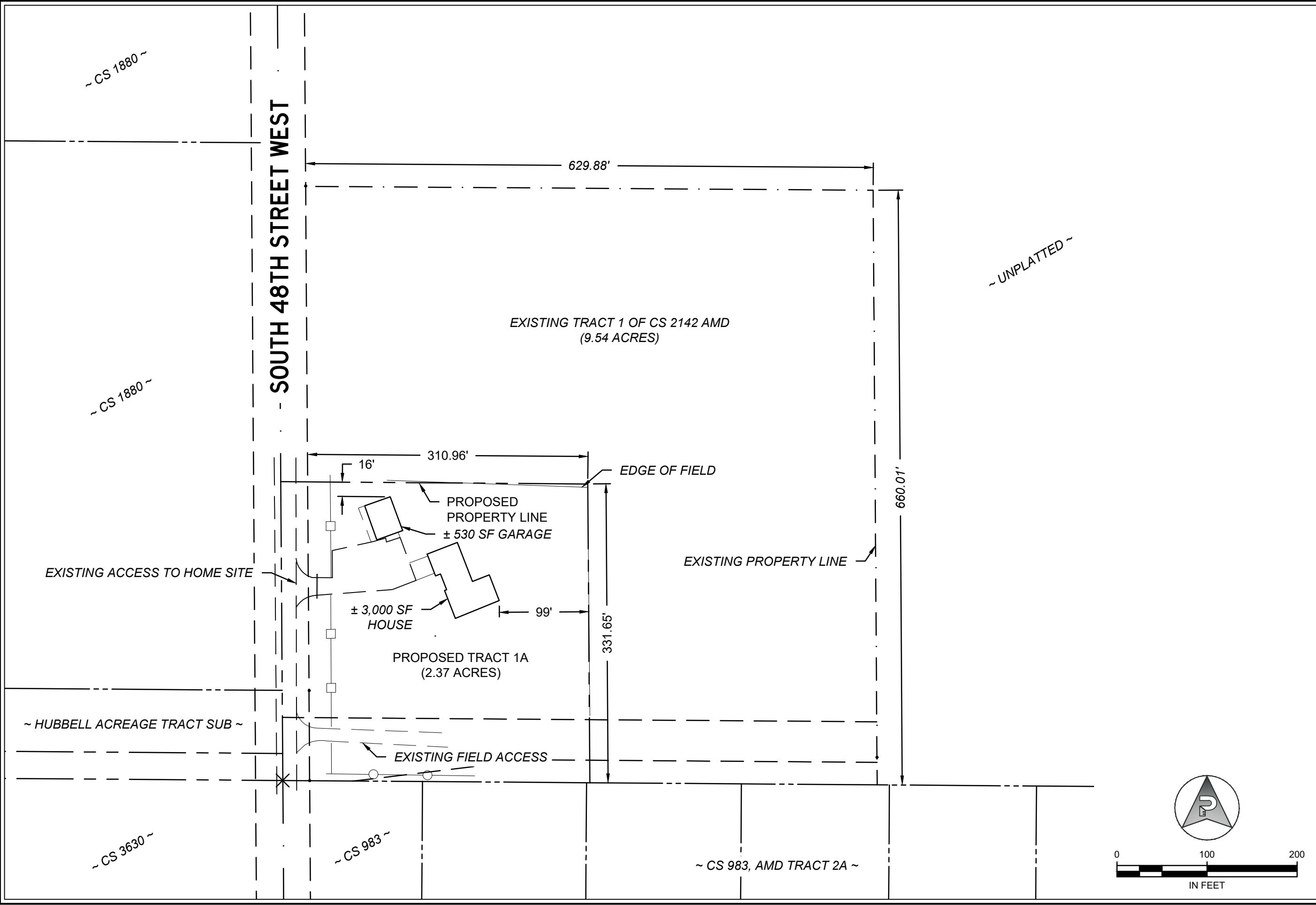
Surrounding Parcels Zoned Agriculture Under the 10 Acre Minimum



| | Parcel | Lot Size | Year Platted |
|---|---------------------------------|-------------|--------------|
| 1 | Hubbell Agerage Tract Sub Lot 1 | 1.001 Acres | 1959 |
| 2 | CS 1880 AM TR 1A | 1.151 Acres | 1993 |
| 3 | 5815 King Ave W | 9.13 Acres | Unplatted |
| 4 | 4945 King Ave W (CS 880) | 1 Acre | 1979 |
| 5 | 5403 King Ave W (CS 880) | 1.355 Acres | 1985 |
| 6 | 745 S 56th St W (CS 880) | 6.58 Acres | 1985 |
| 7 | 705 S 56th St W | 2.401 Acres | 1985 |

Lot Size Variances Approvals in Agriculture Zone

| SUBJECT PROPERTY | Variance | DATE | FOR | APPROVED (Y/N) | ADDITIONAL DATA |
|---|-----------------|-------------|--|-----------------------|--|
| 335 S 48 th St W | None | | | | |
| APPLICABLE HISTORY | Variance | DATE | FOR | APPROVED (Y/N) | ADDITIONAL DATA |
| Broadwater Ave (West of Zimmerman Tr) | 256 | 2/14/2008 | Smaller than 10 acre parcel created in A zone | Y | Was land purchased by the city for a right of way for the Arnold Drain. |
| Long Subdivision Lot 5 Block 1 | 261 | 3/15/2011 | Smaller than 10 acre parcel created in A zone | Y | Allowed to split existing county junk vehicle yard from 65 acres being sold to the City |
| 3605 Grand Ave | 264 | 8/9/2012 | Smaller than 10 acre parcel created in A zone | Y | Divided 20 acre parcel into 7 acres used for ag and 13 acres which was an existing cemetery |
| 1810 and 1824 Lendhardt Ln | 273 | 4/2/2015 | Smaller than 10 acre parcel created in A zone | Y | Split lot into two parcels one being 8.365 acres and the other 3.290 acres. Lots previously had odd layouts and shapes. |
| 1412 Sagebrush Rd | 278 | 12/3/2015 | Smaller than 10 acre parcel created in A zone | Y | Approved in order to allow easier access to subdivision to the west |
| North of Central Ave at about 44 th | 283 | 10/6/2016 | Smaller than 10 acre parcel created in A zone | Y | Court ordered. |



STALEY BOUNDARY ADJ.

BILLINGS, MT 59106

335 S 48TH STREET W

| | | |
|-----------------|------|-------------------|
| KOT DESIGNED BY | | QUALITY ASSURANCE |
| KOT DRAWN BY | | SA CHECKED BY |
| AUG. 2024 DATE | | AUG. 2024 DATE |
| REV BY | DATE | CHKD BY |
| | | |
| | | |

SITE PLAN

SHEET TITLE

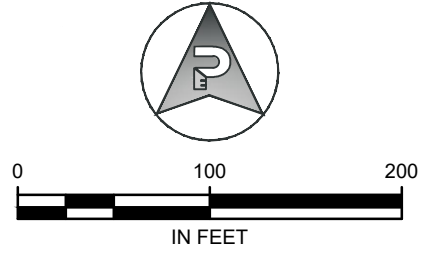
PROJECT NUMBER
2024-080

SHEET NUMBER
1 OF 1

DRAWING NUMBER

EX A

COPYRIGHT 2023 ©





Subject Property



Looking West



Looking South



Looking North



Looking Northeast



608 North 29th Street • Billings, MT 59101 • 406-384-0080

August 1, 2024

Chair of the Board of Adjustments
Yellowstone County Planning Department

RE: 335 South 48th Street West – Zoning Variance

To the Chair of Board of Adjustments,

Thank you for the time and consideration in reviewing the submitted County Zoning Variance Application for the property located at 335 South 48th Street West in Billings. This property is located on the north side of King Avenue West, the south side of Central Avenue, and lies directly east of South 48th Street West. The project is a proposed boundary relocation that would bring the lot lines from the middle of the surrounding fields, down closer to the edge of the developed property around the home situated on the current tract.

The property is currently zoned for Agriculture 10 acres and over (A) and the submitted variance applies to the minimum acreage required by zoning. The facts of hardship experienced with this tract include the following:

- As it currently exists, the property has an area of 9.54 acres, meaning that it already does not meet the minimum acreage for the existing zoning and is non-compliant.
- It is the intention that in the next few years, development will occur on the field surrounding the existing home site which will require the area to be re-zoned to meet subdivision requirements. Granting a variance to allow the boundary relocation to create a tract with an area of approximately 2.37 acres allows for the development path to be more clear with neighboring properties.
- The requirement to go through a full County Zone Change process would cost in excess of \$10,000 and take months to complete. That cost for a 1 (one) single-family home that currently exists is financially burdensome and unnecessary.

- The proposed boundary line adjustment will not cause the current sanitation permit to be in non-compliance nor would it impact any surrounding properties.

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 scott@performance-ec.com. We look forward to presenting this request to you at the scheduled meeting for consideration.

Best Regards,

A handwritten signature in black ink, appearing to read 'Scott Aspenlieder', written over a horizontal line.

Scott Aspenlieder, PE
Principal

COUNTY VARIANCE COUNTY APPLICATION FORM
County Variance # _____ - Project # _____

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

PARCEL TAX ID # D00485A COUNTY COMMISSIONER DISTRICT # 1

Legal Description of Property: Tract 1 of Certificate of Survey No. 2142 Amended, located in Sec. 10, Township 01 South, Range 25 East, P.M.M., Yellowstone County, Montana

Address or General Location (If unknown, contact County Public Works):
335 S 48th St W; Billings, MT 59106

Zoning Classification: A - Agriculture 10 acres and over

Size of Parcel (Area & Dimensions): 9.54 acres (exclusive of roadways); 630' x 660'

Variance(s) Requested (detail what you are asking for; ie; setbacks, building size/height, etc.):
Requesting variance from zoning requirements to perform a boundary relocation to make the parcel size approx. 2.37 acres (exclusive of roadways).

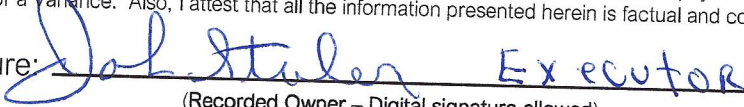
Facts of Hardship: (attach letter)

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

Owner(s): Staley Family Trust
(Recorded Owner)
Owner : 335 S 48th St W; Agent : 608 N 29th St
(Address)
406-384-0080; scott@performance-ec.com
(Phone Number) (email)

Agent(s): Performance Engineering
(Name)
Owner : 335 S 48th St W; Agent : 608 N 29th St
(Address)
406-384-0080; scott@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:  Executor Date: 8-1-24
(Recorded Owner - Digital signature allowed)