



**Planning and Zoning Commission  
Minutes for the Meeting of September 6, 2022**

**The Planning and Zoning Commission met on September 6, 2022, at 1:30 PM in Room 3101, 3<sup>rd</sup> Floor of the Stillwater Building at 316 N 26<sup>th</sup> Street in Billings, Montana**

		01/03/2022	09/06/2022		
Denis Pitman, BOCC	Commissioner	1	1		
Donald W. Jones, BOCC	Commissioner	1			
John Ostlund, BOCC	Commissioner	1	1		
Jeff Martin, Clerk & Recorder	Commissioner	1	1		
Tim Miller, Yellowstone County PW	Commissioner	1	1		
Doug Clark	Commissioner	-	1		
Robert Adler	Commissioner		1		
Nicole Cromwell	Planner II/Zoning Coordinator		1		
Wyeth Friday	Director, Planning and Community Services	-	-		
Monica Plecker	Planning Division Manager	1	-		
Tammy Deines	Planning Clerk	1	1		

**In Attendance:** Terri Reitz, YC Commissioners Office; Kelly Seville, Mike Haskel, Debbie and Alex Chai, Jack Rameriz, (Phone)

**Call the Meeting to Order and Introduction of Planning and Zoning Commission Members and Staff.**

Commissioner Ostlund convened the Planning and Zoning Commission meeting at 1:30 pm. and called for introduction of the Planning and Zoning Commission of the Commission members.

**Public Comment on Non-Agenda Items** There was no public comment.

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

## **Public Hearings**

Commissioner Ostlund asked Ms. Cromwell to review the procedures for the public hearing. She stated the Board will open a public hearing and allow public comment, reviewed the hearing and staff presentation process for the meeting for reviewing and acting on each variance.

Zoning Coordinator Cromwell reviewed the application for Variance request SZD #12 Variance #1 and presented the Board with the staff report for this request. She explained the purpose of this variance request is to bring the property into a legally non-conforming status to help with lender and refinancing requirements.

### **Item #1. SZD #12– Variance #1 – 11604 E. W. Tenney Road – Lot Size and Minimum**

**Dwelling Size** – Special Zoning District 12 - Variance 1 - Molt Road near Shorey Rd - Far and Away Estates. This is a variance from the General Provisions (No. 7 subsection No. 8) of Special Zoning District 12 that currently reads "No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1.5) stories or twenty-five (25) feet in height" to allow all buildings on the subject parcels to be up to two (2) stories or thirty-five (35) feet in height; and a clarification and variance from Permitted Uses (No.8 subsection No. 3) that currently reads: "Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars." to allow the location of up to three (3) accessory buildings on each lot, that may be designed and used for horses, storage, an additional garage for not more than four vehicles, and one (1) such accessory building may have a one-bedroom guest suite. An accessory building may also be designed and used for athletic and recreational facilities. No other types of accessory buildings are permitted. An accessory building must not exceed 2,000 square feet of ground-floor area and two (2) stories in height. This variance would apply to all of the following lots: C.O.S. 781, PARCEL 5A, 2ND AMD, PARCEL 8A, 2ND AMD, PARCEL 10A2, 3RD AMD, PARCEL 11A1, 5TH AMD, PARCEL 12A1, 5TH AMD, PARCEL 15A1, 5TH AMD, PARCEL 16A, 5TH AMD, PARCEL 9A2, 3RD AMD, PARCEL 17A, 2ND AMD, PARCEL 1A, 2ND AMD, PARCEL 14A, 2ND AMD, PARCEL 6A, 2ND AMD, , PARCEL 13A1, 5TH AMD. The total area of these 13 parcels is 139.23 acres.

## **BACKGROUND**

This is a variance request to allow 2.5-story dwellings up to 35 feet in overall height on several parcels of land to be developed along the northern boundary of Special Zoning District (SZD) 12 in Echo Canyon. In addition, the applicant is asking for clarification of the accessory building requirements and to allow one of the accessory buildings to have guest quarters. None of the lots have started construction but several have been sold to builders and construction may start soon. The owners have filed covenants and restrictions for the parcels within this certificate of survey (781) that will further control land uses on the property. The subdivision to the north (McFarland Subdivision) is outside the zoning district and has no limitations on building heights. The proposed land development will include new homes on sites from 8 acres up to 13 acres. Thirteen parcels in this development project of 19 home sites are affected by the zoning restrictions in SZD 12. The applicant's historical perspective for the height and story limitation for new construction is based

on family history in Echo Canyon and their involvement with the creation of SZD 12. The canyon roughly follows the watershed of Cove Creek and Little Cove Creek and has rimrocks and plateaus that create vistas and viewsheds throughout the canyon. It was likely the original intent of the height limitation to protect these aesthetic qualities of the canyon and to limit the public safety concerns for structure fire response. This area is in the Molt Volunteer Fire Department district. This volunteer company is a wildland fire response crew. Any structure fire would call in mutual aid from the Billings Fire Department. The insurance rating for homes in the canyon reflects the long response times for structure fires. New construction within the zone district is not commonplace. Most residential homes were built in the 3 decades between 1960 and 1990. There are only 84 separate parcels within this zoning district that covers over 2,480 acres of land. There are three public park parcels within the district - two owned by Yellowstone County and one owned by the City of Billings (part of Phipps Park). The County parks are within the two subdivisions in the zoning district - Echo Canyon Subdivision and Cove Creek Subdivision. The majority of larger parcels are in certificates of survey or un-platted land. Most developed parcels in the district are owner occupied. Special Zoning Districts or Part 1 zoning districts are a land use tool available for county residents and officials to protect property values and control land uses in rural areas. Yellowstone County has seven individual special zoning districts. Several districts have been subsumed into the County's "part 2" jurisdictional zoning boundary (4.5 miles outside the Billings city limits) or have been annexed to the city limits and have city zoning. Parts of SZD 12 have been annexed and zoned

within the city limits. A chart of the County's special zoning districts is included as an attachment. Each district has created areas for rural residential development and for the preservation of agricultural uses. Each district generally reflects the predominate style of residential construction available during the time the district was created. This district was created in 1970, has a height limit of 1.5 stories or 25 feet, reflecting the ranch style home popular at the time. SZD 14 has no building height for the Agriculture zone (all land in the district) but included height limits for other zone districts that were then not applied to any land in the district. The height limit is 25 feet. SZD 15 and 16 have no building height limitations. SZD 17 has a height limitation only for residential structures of 35 feet. SZD 18 has a building height limit of 30 to 35 feet. SZD 20 has a building height limit of 37 feet. The number and types of uses allowed within an accessory structure also reflects the time period and the issues of concern for each special zoning district when it was created. Most districts encourage agricultural uses for property owners such as a few horses or cows. SZD 12 is the most specific on accessory structures and uses, however the wording of the code can be confusing and vague. The definition in the special zoning district regulations is straight forward but the section on uses is more vague: Subsection 8.2 and 8.3:

2) Agricultural uses as defined in Section 4, and in connection therewith stables, barns and corrals may be maintained, altered or erected; provided, however, that such buildings and structures be designed for such uses, and not be used for any other purpose.

3) Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage, limited to 4 cars. The plural is not used in subsection 8.3 and it could be interpreted to mean that only one accessory building used for residential purposes, but many structures may be

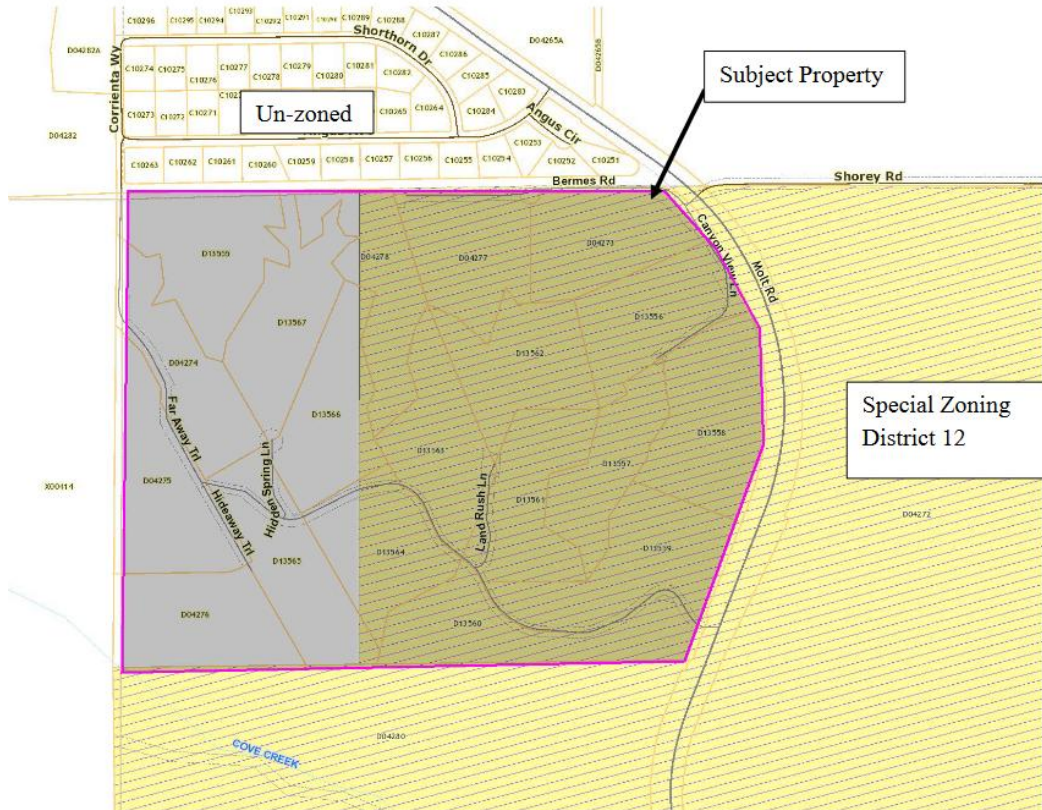
~~The~~ constructed that are only used for agricultural uses. The applicant has requested a clarification and variance for accessory buildings on these lots. Variances from the special zoning district regulations are allowed provided the County Planning and Zoning Commission finds the criteria for variances have been met:

- 1) The proposed variance will not be contrary to the public interest; and
- 2) The requested variance is based on special conditions; and
- 3) That a literal enforcement of the zoning regulation(s) will result in unnecessary hardship.

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- 1) The proposed variance will not be contrary to the public interest; and
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- 3) That a literal enforcement of the zoning regulation(s) will result in unnecessary hardship.

Variance 1 – SZD 12



**RECOMMENDATION**

Planning staff recommends the variance be approved with the following conditions:

- 1) The variance is limited to the increase in building height from 1.5 stories or 25 feet to 2.5 stories and 35 feet; and 2 stories for accessory structures. Up to three accessory structures will be allowed per developed parcel and for any use incidental to rural residential living including the uses enumerated in the code as well as indoor recreational uses, for storage of personal property including recreational vehicles and equipment. One of the accessory structures may have a 1-bedroom guest quarters. No accessory structure would exceed 2,000 square feet on the ground-floor or 2 stories in height. No other variance from the zoning district regulations is intended or implied.
- 2) The variance is limited to the lots within Special Zoning District 12 specifically Parcels 5A, 8A, 10A2, 11A1, 12A1, 15A1, 16A, 9A2, 17A, 1A, 14A, 6A and 13A1 all in Certificate of Survey 781.
- 3) All lots shall begin development within 10 years of the date of the variance approval. Any lot where development has not yet begun at the lapsing date shall be required to conform to the Special Zoning District regulations in place at the time or seek a separate variance. An owner or owners may request a modification of this time limit if an application is submitted within 60 days of the lapsing date of this approval.
- 4) All other zoning regulations, except for this specific variance, and any other applicable county regulations apply to the development of structures on each lot.
- 5) Development of structures on each lot will require the submittal and approval of a Zoning Compliance Permit through City/County Planning. The Zoning Compliance Permit is to ensure the compliance with the zoning regulations and the specific allowances in this variance.

6) Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.

7) This variance is approved, subject to the conditions set forth herein, shall become effective immediately upon the Commission's approval, shall run with the land described in this authorization, and shall apply to all current and subsequent owners, operators, managers, leaseholders and their heirs and assignees.

### **Discussion**

Commissioner Ostlund called for questions and discussion from the Commission. Bob Adler asked if the size of the homes are limited. Nicole responded there is no limitation on the total area of the home.

Commissioner Ostlund opened the public hearing and asked if there is anyone wishing to speak in favor or against this variance request.

### **Public Hearing:**

**Kellie Savilee, Meridian Real Estate, 21116 Broadwater Ave-Unit 205 Billings, MT**

**Jack Ramirez, Yellowstone Farms, LLC, 360 East Lock Lloyd Pky, Lock Lloyd MO**

He agrees with the staff presentation. He pointed out there the large lots with several elevation changes. He doesn't feel there are issues with having additional accessory structures on the lots. He commented on a similar development with multiple accessory buildings. He noted "Exhibit 3A" provided in the staff report. Kellie Saville provided further explanation and pointed out the location for septic services. Jack Ramirez provided background history on this property. It was originally purchased by his parents as one tract and in 1974 completed a plat survey to distribute acreage to the children. The family still owns the property and wishes to develop the property. They decided to eliminate the five small tracts to maintain good relations with the McFarland Subdivision property owners. The sanitary and drainage requirements have been met for the upper lots. The accessory buildings will be required to be located within 100 ft. of the primary dwelling.

Jeff Martin asked regarding notice requirements. Standard 150-ft from outside boundary. 44 property owners were notified of this application. Design and use for athletic and recreational facilities is not defined within the Special Zoning District. Nicole Cromwell explained that staff will rely on the standard dictionary definition as it is not defined within the Special Zoning Regulations for this district. Jeff Martin asked if the language states residential recreational only. Jack Ramirez stated recreational activities are approved by the plan review committee. Jeff asked if this variance would accommodate further subdivisions. Nicole Cromwell said additional lots will need their own variance.

Doug Clark inquired as to an increase in 1.5 to 2.5 stories on the primary structure and 2-story on the accessory structures. Nicole 2 stories 35 ft in height. The condition may be amended to 2 stories and 35 height maximum feet. Jack Ramirez said several of the structures may be built on slopes and the height is determined by the average height of the grade. Nicole

Cromwell explained further that the average height of the grades determines the maximum height for sloped sites. Tim Miller asked if any of the parcels within the development are developed. One contract is subject to this proposal.

Debbie Chai, 8204 Angus Circle, Billings, MT

Ms. Chai owns two lots in the McFarland Subdivision. She said the five lots adjacent to their lots are not sloped and 35' height structures would impact the lot views and privacy. She spoke to wildlife and said she understands others wanting to live there. She feels the 35' structure height would monumentally obstruct the residents' views. An email was sent to staff by Alex Chai.

Mike Haskell

Mr. Haskell owns land south of Far Away Estates. Asked for clarification of the variance. Home 35'ft Height restriction. Change to Accessory buildings ability to have 3 accessory buildings. Kellie Saville said the current regulations allow up to six and this variance allows for three accessory buildings. Mr. Haskell said overall is in support of this request as currently there are plan limitations.

Mr. Rameriz

Referred to the topographical map and pointed out the height drops of 5-ft of gradual slope. The nearest home will be approximately 500-feet from the property line to Tract one building site. He recognizes the value of the viewshed, but this is not a property right to keep someone else from using their property reasonably.

Closed public hearing 2:21

**James Herz, Trustee of Contance R Hertz Bypass Trust, 3680 Vickery Drive, Billings, MT**

There were no further public comments. The public comment period was closed.

### **Motion**

**A motion was made by Commissioner Robert Adler and seconded by YC Public Works to approve the regulations for Special Zoning District 12 – Variance #1 with the Conditions of Approval recommended by staff.**

### **Discussion**

Commissioner Clark clarify by elimination of 2.5 and change it to 2 stories no higher than 35-ft with the 7 conditions listed.

**The motion carried as amended, 5-0.**

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

**Approval of Minutes: January 3, 2022**

**Motion**

**On a motion by, Tim Miller, Yellowstone County Public Works seconded by Robert Adler, and approved with 5-0 voice vote, the minutes of January 3, 2022 were approved as submitted.**

**Announcements** There were no announcements.

Adjournment The meeting was adjourned at 2:23 p.m.

**DRAFT. To be approved during the next Planning and Zoning Commission meeting.**