



Board of Adjustment / Appeals Agenda
Civic Center 2 Park Drive South, Great Falls, MT
Commission Chambers, Civic Center
July 07, 2022
3:00 PM

In order to honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), the City of Great Falls and Board of Adjustments/Appeals are making every effort to meet the requirements of open meeting laws:

- The agenda packet material is available on the City’s website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.
- Public participation is welcome in the following ways:
 - Attend in person. Please refrain from attending in person if you are not feeling well.
 - Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, June 2, 2022, to: jnygard@greatfallsmt.net. Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.

OPEN MEETING

1. Call to Order - 3:00 P.M.
2. Role Call - Board Introductions
Joe McMillen - Chair
Krista Smith - Vice Chair
Antoinette Collins
Aspen Northerner
Christian Stone
3. Recognition of Staff
4. Approval of Meeting Minutes - June 2, 2022

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS

BOARD ACTIONS REQUIRING PUBLIC HEARING

5. 521 3rd Street Northwest - Variance to Section 17.44.3.030 of the Official Code of the City of Great Falls (OCCGF) Landscaping requirements
6. 416 4th Avenue South - Variance to Section 17.20.7.040 of the Official Code of the City of Great Falls (OCCGF) to allow additional height for a fence in a residential zoning district
7. 1701 10th Avenue South - Variance to Section 17.20.6.140 of the Official Code of the City of Great Falls (OCCGF) to allow reduced distance of a casino in proximity to a City park

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

COMMUNICATIONS

PUBLIC COMMENT

Public Comment on any matter and that is within the jurisdiction of the Board of Adjustment/Appeals. Please keep your remarks to a maximum of five (5) minutes. Speak into the microphone, and state your name and address for the record.

ADJOURNMENT

(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)

Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.

Board of Adjustment/Appeals meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. Meetings are re-aired on cable channel 190 the following Friday morning at 10 a.m.

MINUTES OF THE MEETING
OF THE
GREAT FALLS BOARD OF ADJUSTMENT/APPEALS
June 2, 2022

CALL TO ORDER

The meeting of the Great Falls Board of Adjustment/Appeals was called to order by Chair Joe McMillen at 3:00 p.m.

ROLL CALL & ATTENDANCE

Great Falls Board of Adjustment/Appeals members present:

Mr. Joe McMillen, Chair
Ms. Krista Smith, Vice Chair
Ms. Antoinette Collins
Ms. Aspen Northerner
Ms. Christian Stone

Great Falls Board of Adjustment/Appeals members absent:

None

Planning Staff members present:

Mr. Thomas Micuda, Deputy Director Planning & Community Development
Ms. Alaina Mattimiro, Planner II
Ms. Jamie Nygard, Sr. Admin Assistant
Ms. Cindy Sikes, Permit Technician

Others present:

Mr. Jeff Hindoien, City Attorney

Mr. Micuda affirmed a quorum of the Board was present.

MINUTES

Chair McMillen asked if there was a motion to approve the meeting minutes as stated for April 21, 2022. Ms. Smith moved to approve the minutes, seconded by Ms. Stone. All in favor, the minutes were approved.

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS

None.

BOARD ACTIONS REQUIRING PUBLIC HEARING

1301 20th Street South – Variance to Section 4.2.060 of the Official Code of the City of Great Falls (OCCGF) to allow for additional height allowance for a telecommunication facility

Ms. Mattimiro presented to the Board. She stated that the Applicant, AT&T Mobility, is requesting the variance to allow a telecommunications tower an additional 50 feet of height, at 1301 20th Street South. The property is owned by the University of Providence and is 42.41 acres and zoned PLI Public Lands and Institutional.

Ms. Mattimiro presented an Aerial Map, Zoning Map, Site Photo and Preliminary Site Plan.

Ms. Mattimiro stated that the proposal is for the construction of a new “Monopine” which is a telecommunications tower disguised as a pine tree. Telecommunications towers are permitted in the PLI District, but have a height restriction of 45 feet. The applicant is requesting relief from the maximum height allowance within the PLI zoning district and is requesting an additional 50 feet allowance.

Ms. Mattimiro stated that telecommunications height restrictions are in place to ensure that towers blend in with their surrounding environment and that they are designed as an “architecturally compatible accessory element”.

Ms. Mattimiro presented the Findings for the Basis of Decision: The basis for decision for a variance request is listed in §17.16.32.040 of the Land Development Code.

The decision of the Board of Adjustment shall consider the three Basis of Decision criteria.

1. The variance is not contrary to the public interest.
 - The telecommunications tower, as proposed, will blend into the surrounding area and provide a service that is needed within the area.
2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.
 - Because of the allowance for a primary building to be 100 feet in the zoning district, the literal enforcement would be restrictive in the instance.
3. The spirit of the Title would be observed and substantial justice done by granting the variance.
 - If granted, the additional height allowance would create an opportunity for additional wireless coverage and capabilities for the area and other than the height allowance, the project would be consistent with the zoning district requirements.

Ms. Mattimiro presented a photo of the current view and the proposed view with the telecommunications tower added.

PETITIONER’S PRESENTATION

Janelle Humphrey, Smartlink Group with A T & T, was available via Skype to answer any questions.

BOARD QUESTIONS

Ms. Northerner asked what the average height of the existing trees on the site were. Ms. Humphrey responded that she did not have the exact measurements, but believes they are around 100 feet. Mr. Micuda responded that he believed the average height was around 75 feet.

PUBLIC QUESTIONS

None.

PROPONENTS

None.

OPPONENTS

None.

BOARD DISCUSSION AND ACTION

MOTION: That the Board of Adjustment, based on the Findings for the Basis of Decision approve the variance request from OCCGF Title 4, Chapter 2, 060 B(5), *telecommunications facilities* – location, subject to the conditions of approval

MADE BY: Ms. Smith
SECOND BY: Ms. Collins

VOTE: All in favor, the motion passed 5-0

COMMUNICATIONS

Mr. Micuda stated that there will be a July 7, 2022 meeting, for a fence height variance request as well as one or two variances that may be submitted.

PUBLIC COMMENT

None.

ADJOURNMENT

There being no further business, Chair McMillen adjourned the meeting at 3:11 p.m.



Date: July 7th, 2022
CITY OF GREAT FALLS
BOARD OF ADJUSTMENT AGENDA REPORT

Item: 521 3rd Street Northwest - Variance to Section 17.44.3.030 of the Official Code of the City of Great Falls (OCCGF) Landscaping requirements

Applicant: CFT Development LLC

Representative: Klover Architects

Presented By: Alaina Mattimiro, Planner II, Planning and Community Development

Action Requested: Request for an exemption from the vehicular use landscaping requirements in regards to landscaped islands in Title 17, Chapter 44, Article 3 of the Official Code of the City of Great Falls (OCCGF), *Landscaping Requirements, vehicular use area requirements*

Public Hearing:

1. Chairperson conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 6.
2. Chairperson closes public hearing and asks the will of the Board.

Suggested Motion:

1. Board Member moves:
 - I. "I move that the Board of Adjustment, based on the Findings for the Basis of Decision (approve/deny) the variance request from OCCGF Title 17, Chapter 44, Article 3, *Landscaping requirements, vehicular use area requirements.*"
2. Chairperson calls for a second, discussion, and calls for the vote.

Synopsis:

The applicant, CFT Development LLC, is proposing to develop the site located at 521 3rd Street Northwest in West Bank Landing, north of the Jersey Mikes and SpringHill Suites, and south of the Verizon Wireless. Currently the site is vacant, but the proposed project is a Panda Express fast casual restaurant with a drive thru. The project proposal includes a 2,600 square foot building footprint with a double drive thru lane and thirty-eight (38) off-street parking spaces located on a 35,495 square foot lot.

The subject lot is part of a larger development, West Bank Landing, which was master planned beginning in 2016. West Bank Landing extends north from the Cowboy's Bar and West Bank One development to Verizon Wireless, and is bordered on the east and west by West Bank Park and the Montana ExpoPark, respectively. At the time of its original proposal, the developers identified goals that included cleaning up "a long-time eyesore" (referring to the area's industrial history), ensuring that "landscaping [was] coordinated and complementary", and designing "the most environmentally responsible project", among many other development objectives. Also included in the original proposal was a desire to pursue the

LEED (Leadership in Energy and Environmental Design) Neighborhood Development certification program which would incorporate aspects of design that promotes sustainable neighborhoods. A narrative was submitted that highlighted strategies for meeting this goal that integrated policies such as reduced parking footprints, pedestrian and bike friendly connections, reduction in heat island effects, and showcasing the work of local landscape artists.

Since project conception, completed developments in West Bank One consist of the Springhill Suites Hotel, renovation of an existing barrel vault building for the Peak West Bank Landing fitness center, the 5 on Black and Jersey Mike's restaurants, Citizen's Alliance Bank, and the Mixed Use 2 multitenant building.

Background Information:

Requested Variance: Chapter 44– Landscaping 17.44.3.030, Vehicular use area requirements

The OCCGF outlines standards for new development and as part of those standards, developers are required to meet certain landscape requirements. For commercial properties in any zoning district, fifteen (15) percent of the gross property area must be landscaped, with ten (10) percent of the vehicular use area being included in the calculation. Within the vehicular use area, each row of parking spaces must be terminated by a landscaped island that measures six (6) feet wide and is the length of the parking space. The applicant is requesting a variance to forego the landscaped islands terminating the parking spaces, based on the argument that delivery trucks for the future business will not be able to make the sharp turn into the site.

Notice of the Board of Adjustment hearing was published in the Great Falls Tribune on Sunday June 19th, 2022. Additionally, notices were sent to adjoining property owners per code requirements. Staff has not received inquiries or comment from the public at the time of writing this report.

Findings for the Basis of Decision:

The basis for decision for a variance request is listed in § 17.16.32.040 of the OCCGF Land Development Code. The decision of the Board of Adjustment shall consider the three Basis of Decision criteria. Staff provides the following Basis of Decision for consideration by the Board:

1. The variance is not contrary to the public interest.

The purpose of the City's Landscaping code provisions is to enhance ambient environmental conditions by providing shade, air purification, oxygen regeneration, groundwater recharge, stormwater runoff mitigation, and heat abatement. Another purpose of the City's Landscaping code is to improve the aesthetics of the built environment. Exemptions from the landscape requirements reduce the aesthetic quality of the city's built environment as well as perpetuate environmental concerns such as surface heat island effects within the community, which further affects the general public health and welfare of city residents. The City of Great Falls regulates storm water quality and quantity – meeting or exceeding landscape requirements also furthers mitigation of storm water runoff issues that the City regularly sees in developed areas. Granting the variance would be contrary to the public interest associated with the requirements outlined in the City's Landscaping code.

2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.

Because this is currently an empty, neutrally shaped lot, there are no limiting factors to the site beyond those that are self-imposed by the applicant's development proposal. There are no identified exceptional or extraordinary circumstances applicable to this property or the intended use that do not apply to other

properties in the same vicinity or zoning district. Similar fast casual restaurants in commercial districts who also receive delivery trucks, have similar seating demands, and drive thru services have been able to meet landscape requirements on properties of even smaller size. For a recent project example, the new Starbucks being constructed at 1626 10th Avenue South features roughly a 2,400 square foot building, twenty two (22) parking spaces, a double drive through layout on a 19,500 square foot rectangular parcel. This project will contain terminated landscape islands. Additionally, the existing Panda Express located on the east side at 1020 57th Street South was approved with thirty-five (35) parking spaces and a 2,587 square foot building footprint, and met all landscaping requirements, including the terminated islands, on a commercial lot that is similar in size to the project being proposed with this variance request.

Per the submitted preliminary site plan, there are only 27 parking spaces required for the development, yet the applicant is proposing to provide 38 spaces. Not only would the approval of this variance not meet the original goals of the wider West Bank Landing development, it would not take advantage of the approved shared parking agreement between all uses in the development. Capitalizing on the shared parking agreement would eliminate the need for maxing out the possible parking on each individual lot, provide the space needed for the required landscaped islands, and give the applicant's site designer plenty of room to increase the turning radius of the islands to accommodate larger vehicles. A literal enforcement of the City's Landscaping Code requirement for terminated landscaped islands would not result in unnecessary hardship, and the project would still be able to move forward while meeting all city code provisions.

3. The spirit of this Title would be observed and substantial justice done by granting the variance.

The spirit of this title, and specifically Chapter 44, would not be observed if this variance was granted. As part of a larger development that has already made accommodations for shared parking between existing and future uses, as well as a commitment to higher design standards, an approval of this variance would be a disservice to the intent of the City Code. The landscaping requirements were identified as a needed policy to improve aesthetic appearances, promote economic development by providing a high quality of life, and promote and improve public health and safety. The City Commission has found that landscaping provides long term social, economic, environmental, and aesthetic benefits to the community, all of which would be ignored through the allowance of the proposed variance.

Recommendation:

City staff has concluded that the landscape exemption variance is not appropriate, and staff recommends denial. In evaluating this request, it is extremely important for the Board of Adjustment to distinguish between variance applications that are based on unique property conditions and true hardship versus a variance from an applicant who simply objects to a particular code requirement. Whether or not a code requirement is appropriate should only be determined by the City Commission.

Alternative:

The Board of Adjustment could choose to approve the variance request if sufficient Findings of Fact are developed to support approval.

Attachments:


Aerial Map
Zoning Map
Application
Site Plan

521 3rd St NW

Aerial View May 9, 2022

Legend

Agenda #5.

 521 3rd St NW



Google Earth

600 ft



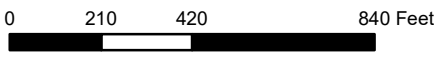
10

ZONING MAP

Agenda #5.



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



Date: 6/21/2022
Author: LH, Planning

CITY OF GREAT FALLS
PLANNING & COMMUNITY DEVELOPMENT DEPT.
P.O. BOX 5021, GREAT FALLS, MT, 59403-5021
406.455.8431 • WWW.GREATFALLSMT.NET

VARIANCE APPLICATION

Date:

Application Number:

\$1,250 Application Fee

Public Hearing Notice

Paid (Official Use ONLY):

CONDITION FOR VARIANCE

Montana Statutes require an *unnecessary hardship* as a condition for a variance. "Variance" means a grant of relief from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited.

CFT Development LLC

Owner / Representative Name:

1120 N Town Center Dr., Suite 150, Las Vegas, NV 89144

Mailing Address:

626-372-8288

Michael.Cadell@Pandarg.com

Phone:

Email:

Requested Action: A variance from Title:

Chapter:

Article:

Variation from the requirement that each interior parking row shall be terminated with a landscape island.

Basis for Request:

Basis for request is our delivery vehicles will not be able to make the sharp turn into our site if there is a landscape island. We have striped the area that would have been a 6' wide landscaping area to maneuver within the site and minimize damage to other site elements.

PROPERTY DESCRIPTION LOCATION:

6

S1/2 of section 2

20 North

3 East

Mark/Lot/Block:

Addition:

Section:

Township:

Range:

521 3rd Street NW Great Falls, MT

Street Address:

ZONING:

M-2

Current:

LAND USE:

920 - Vacant Commercial Lot

Current:

I (We) the undersigned understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application. I (We) further understand that public hearing notice requirements and associated costs for land development projects are my (our) responsibility. I (We) further understand that other fees may be applicable per City Ordinances. I (We) also attest that the above information is true and correct to the best of my (our) knowledge. NOTE: If the applicant is not the owner of record, the signature of the owner of record must also be obtained.

Brian Talcott

Property Owner's Signature:

MAY 19, 2022

Date:

[Signature]

Representative's Signature:

MAY 20, 2022

Date:



PANDA EXPRESS, INC.
1683 Walnut Grove Ave.
Rosemead, California
91770
Telephone: 626.799.9898
Facsimile: 626.372.8288

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REVISIONS:

NO.	DATE	DESCRIPTION

ISSUE DATE:

NO.	DATE	DESCRIPTION

DRAWN BY: KMY

PANDA PROJECT #: S8-23-D20980

PANDA STORE #:

ARCH PROJECT #: 21044.028

ARCHITECT:

hckloverarchitect
8813 PENROSE LANE, SUITE 400
LENEXA, KS 66219
ph: 913.649.8181 • fx: 913.649.1275

PANDA EXPRESS

TRUE WARM & WELCOME
521 3RD ST NW
GREAT FALLS, MT 59404

EXISTING CONDITIONS

FLOOD STATEMENT

The subject property lies within Flood Zone "X" (unshaded) (Areas determined to be outside the 0.2% annual chance floodplain), as shown on the Cascade County, Montana and Incorporated Areas Flood Insurance Rate Map (F.I.R.M.).

Map Number: 30013C0340E
Panel No: 0340E
Map Revised Date: March 19, 2013

NOTE: This statement is provided for informational purposes only and shall in no way constitute a basis for a flood certificate. No field work was performed to establish the boundaries of this zone. The information was derived by scaling the subject property on the above referenced map.

LEGAL DESCRIPTION

DESCRIBED ON TITLE COMMITMENT 1007375-GF AS FOLLOWS:

LOT 6 OF CERTIFICATE OF SURVEY NO. S-0005113, TRACTS OF LAND LOCATED IN THE S1/2 OF SECTION 2, TOWNSHIP 20 NORTH, RANGE 3 EAST, PMMT, CASCADE COUNTY, MONTANA, FILED SEPTEMBER 5, 2017, RECORDS OF CASCADE COUNTY, MONTANA. ACCORDING TO CERTIFICATE OF SURVEY NO. S-0005113 CONTAINING 1.094 ACRES.

DEVELOPER

PANDA RESTAURANT GROUP
1683 WALNUT GROVE AVE
ROSEMEAD, CA 91770
P: (626) 799-9898

CIVIL ENGINEER

BHC
7101 COLLEGE BOULEVARD, SUITE 400
OVERLAND PARK, KANSAS 66210
P: (913) 663-1900
CONTACT: KURT YODER
EMAIL: KURT.YODER@IBHC.COM

ARCHITECT

HC KLOVER ARCHITECT
8813 PENROSE LANE, SUITE 400
LENEXA, KS 66219
P: (913) 649-8181
CONTACT: VU LE
EMAIL: VU.LE@KLOVER.NET

SURVEYOR

BSC&E
1324 13TH AVE. SW
GREAT FALLS, MT 59403
P: (406) 727-2185
CONTACT: MARK LEO

OWNER

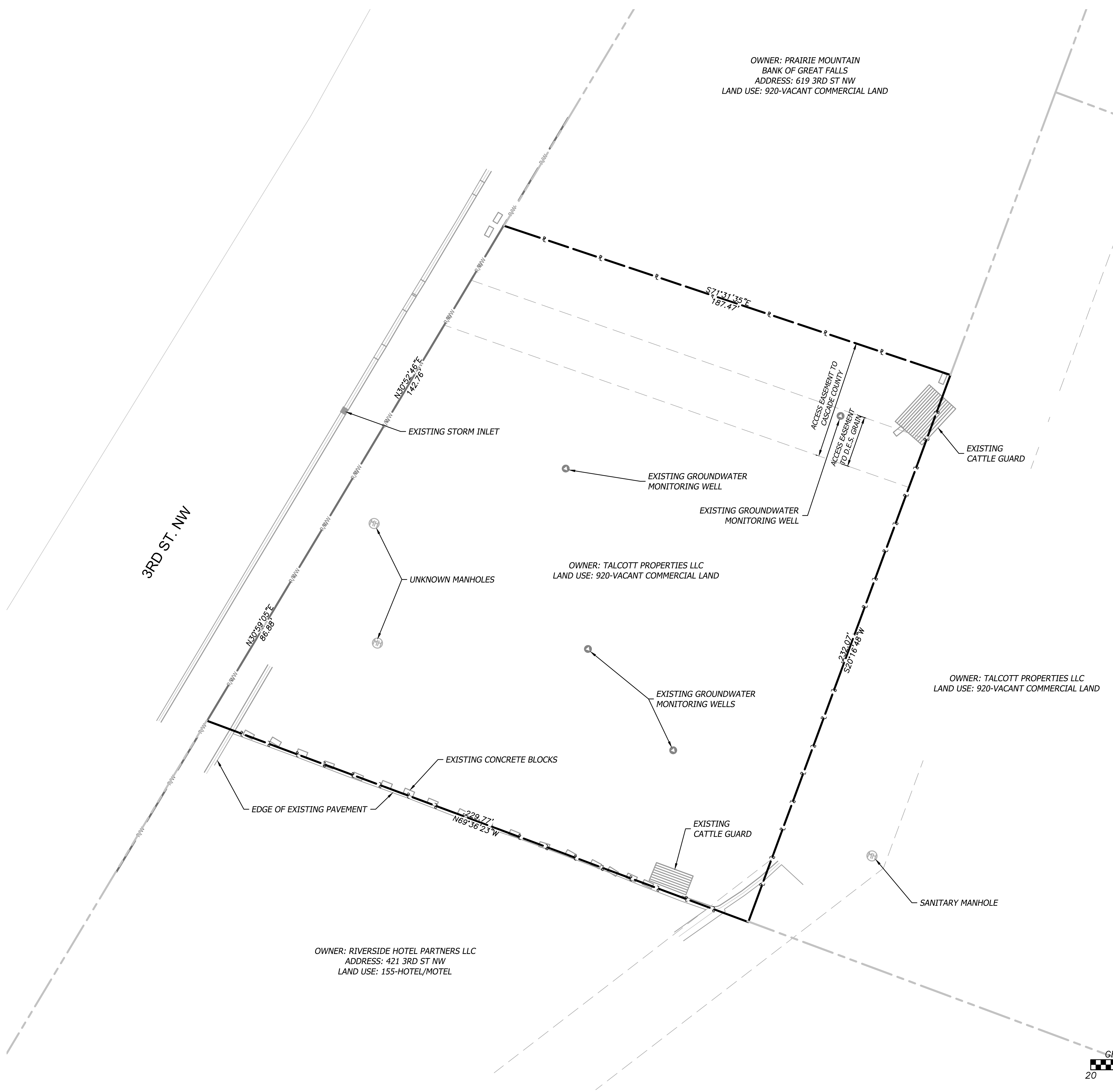
TALCOTT PROPERTIES LLC

OWNER: PRAIRIE MOUNTAIN
BANK OF GREAT FALLS
ADDRESS: 619 3RD ST NW
LAND USE: 920-VACANT COMMERCIAL LAND

OWNER: TALCOTT PROPERTIES LLC
LAND USE: 920-VACANT COMMERCIAL LAND

OWNER: TALCOTT PROPERTIES LLC
LAND USE: 920-VACANT COMMERCIAL LAND

OWNER: RIVERSIDE HOTEL PARTNERS LLC
ADDRESS: 421 3RD ST NW
LAND USE: 155-HOTEL/MOTEL



LEGEND

- R/W — RIGHT - OF - WAY LINE
- P — SUBJECT PROPERTY LINE
- - - - - ADJACENT PROPERTY LINE

May 18, 2022 - 3:07pm - Plotted By: kurt.yoder V:\01420-Panda Express Master 2021\01420-06-Great Falls, MT\04-DWG\Ena\Sheet\Planning_Submittal\01420-06-SH75-FXC2.dwg Layout: Esti_Cond



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REVISIONS:

NO.	DATE	DESCRIPTION

ISSUE DATE:

NO.	DATE	DESCRIPTION

DRAWN BY: KMY

PANDA PROJECT #: S8-23-D20980
PANDA STORE #:
ARCH PROJECT #: 21044.028

ARCHITECT:

hckloverarchitect
8813 PENROSE LANE, SUITE 400
LENEXA, KS 66219
ph: 913.649.8181 • fx: 913.649.1275

PANDA EXPRESS

TRUE WARM & WELCOME
521 3RD ST NW
GREAT FALLS, MT 59404

SITE PLAN

SITE DATA

SITE	
SITE AREA:	0.81 AC 35,495 SF
LANDSCAPE AREA:	5,800 SF (16.3%)
BUILDING	
BUILDING AREA:	2,600 SF (7.3%)
PARKING	
PARKING PROVIDED:	36 STANDARD 2 HANDICAP (1 VAN)
PARKING REQUIRED: (ONE STALL PER 2.5 SEATS AND PER EMPLOYEE PER SHIFT) (48 SEATS AND 8 EMPLOYEES PER SHIFT)	27
ADA STALLS:	2

ZONING

M-2 (MIXED-USE TRANSITIONAL)

OWNER: PRAIRIE MOUNTAIN
BANK OF GREAT FALLS
ADDRESS: 619 3RD ST NW
LANDUSE: 920-VACANT COMMERCIAL LAND

OWNER: TALCOTT PROPERTIES LLC
LANDUSE: 920-VACANT COMMERCIAL LAND

OWNER: RIVERSIDE HOTEL PARTNERS LLC
ADDRESS: 421 3RD ST NW
LANDUSE: 155-HOTEL/MOTEL

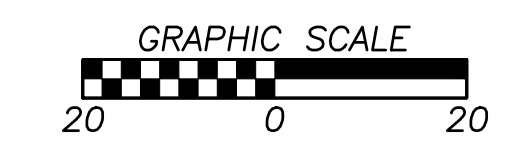
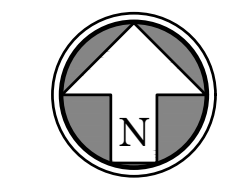
PROPOSED
PANDA EXPRESS
2,600 SF

PROPOSED
PROPERTY LINE

10' REAR BUILDING SETBACK

DO NOT
ENTER

3RD ST. NW



May 18, 2022 10:08am Plotted By: kurt.yoder V:\01420-Panda Express-Market 2021\01420-06-Great Falls, MT\04-DWG\Ena\Sheet\Planning_Submittal\031420-06-SITE-SITE.dwg Layout: Site Plan



Date: July 7th, 2022
CITY OF GREAT FALLS

BOARD OF ADJUSTMENT AGENDA REPORT

- Item:** 416 4th Avenue South - Variance to Section 17.20.7.040 of the Official Code of the City of Great Falls (OCCGF) to allow additional height for a fence in a residential zoning district
- Applicant:** Mitch Hubbard
- Representative:** Mitch Hubbard
- Presented By:** Alaina Mattimiro, Planner II, Planning and Community Development
- Action Requested:** Consideration of additional fence height from the standard of six (6) feet contained in Title 17, Chapter 20, Article 7, Exhibit 20-8 of the Official Code of the City of Great Falls (OCCGF), *Standards for fences, From the front of the principal building to the rear lot line*

Public Hearing:

1. Chairperson conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 6.
2. Chairperson closes public hearing and asks the will of the Board.

Suggested Motion:

1. Board Member moves:
 - I. "I move that the Board of Adjustment, based on the Findings for the Basis of Decision (approve/deny) the variance request from OCCGF Title 17, Chapter 20, Article 7, Exhibit 20-8, *Standards for fences.*"
2. Chairperson calls for a second, discussion, and calls for the vote.

Synopsis:

The applicant, Mitch Hubbard, is proposing to build an eight (8) foot fence around the rear yard of his property. The subject property is located within the R-9 Mixed Residential zoning district. The lot is only twenty-five (25) feet wide, which is half the size of a typical lot found in this zoning district. The lots on either side are also narrow, and both adjacent homes are located much closer to side property lines than current regulations allow. This creates higher amounts of disruptions and noise pollution, and a lack of privacy and security in comparison to the normal back yard areas for fifty (50) foot wide lots in the same zoning district. These narrow lots are sometimes found around the City due to historical platting and subdivision allowances, but would not be permitted or allowed under current code. The houses and lots are currently deemed "legal non-conforming", and create unique circumstances when compared to conforming lots within the same and similar zoning districts. Due to this lack of privacy associated with

the very narrow lot, the applicant has requested a variance to allow an additional two feet of height for a back yard fence.

Background Information:

Requested Variance: Chapter 20 – Land Use §17.20.7.040 Standards for fences, Exhibit 20-8

The maximum allowable height from the front of a principal building to the rear lot line, within a residential zoning district, is six (6) feet. The applicant is requesting an allowance for an eight (8) foot fence around his rear yard.

Notice of the Board of Adjustment hearing was published in the Great Falls Tribune on Sunday, June 19, 2022. Additionally, notices were sent to adjoining property owners per code requirements. Staff has not received an inquiries or comment from the public at the time of writing this report.

Findings for the Basis of Decision:

The basis for decision for a variance request is listed in § 17.16.32.040 of the OCCGF Land Development Code. The decision of the Board of Adjustment shall consider the three Basis of Decision criteria. Staff provides the following Basis of Decision for consideration by the Board:

1. The variance is not contrary to the public interest.

The purpose of the restricted heights for fences is for protection of light and airspace between properties, in a similar way that setbacks are required for buildings and structures. However, in this neighborhood, there are some lots that are only twenty-five (25) feet wide, and several of the houses are built with non-conforming setbacks. Because of these conditions, the additional two (2) feet of fence height would not be harmful to the public, and would provide for added privacy between neighbors. Additionally, because the additional height is only proposed for the rear yard, there will be no concerns of site visibility and safety from the avenue. Granting the extra height would not be detrimental to the public welfare or injurious to the surrounding neighborhood.

2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.

Due to the nature of the lot being half the width of a standard R-9 zoned property, enforcing the maximum fence height of six (6) feet would deny the owner the full use and privacy of his property. Without the opportunity to have additional height in the backyard, the noise pollution and lack of security and privacy from surrounding neighbors would be an unnecessary hardship. In addition to the substandard lot width, the position of the adjoining homes against the applicant's side property lines coupled with these homes having partial second stories, creates unique circumstances warranting a taller fence height.

3. The spirit of this Title would be observed and substantial justice done by granting the variance.

Allowing the fence to have additional height would meet the needs of the property owner, while meeting the intent of the code. A variance in this instance is needed for the preservation and enjoyment of the subject property that other properties have within the R-9 zoning district. The needed buffer between yards would be created, but would not overwhelm or overpower the neighboring lots.

Recommendation:

City staff has concluded that the proposed fence height variance is appropriate, and staff recommends approval.

Alternative:

The Board of Adjustment could choose to deny the variance request and strictly enforce the six (6) foot maximum height restriction. For such action, the Board of Adjustment must provide separate Basis of Decision findings to support the denial.

Attachments:

- Location Map
- Zoning Map
- Exhibit 20-8
- Project Narrative
- Public Comments

416 4th Ave S

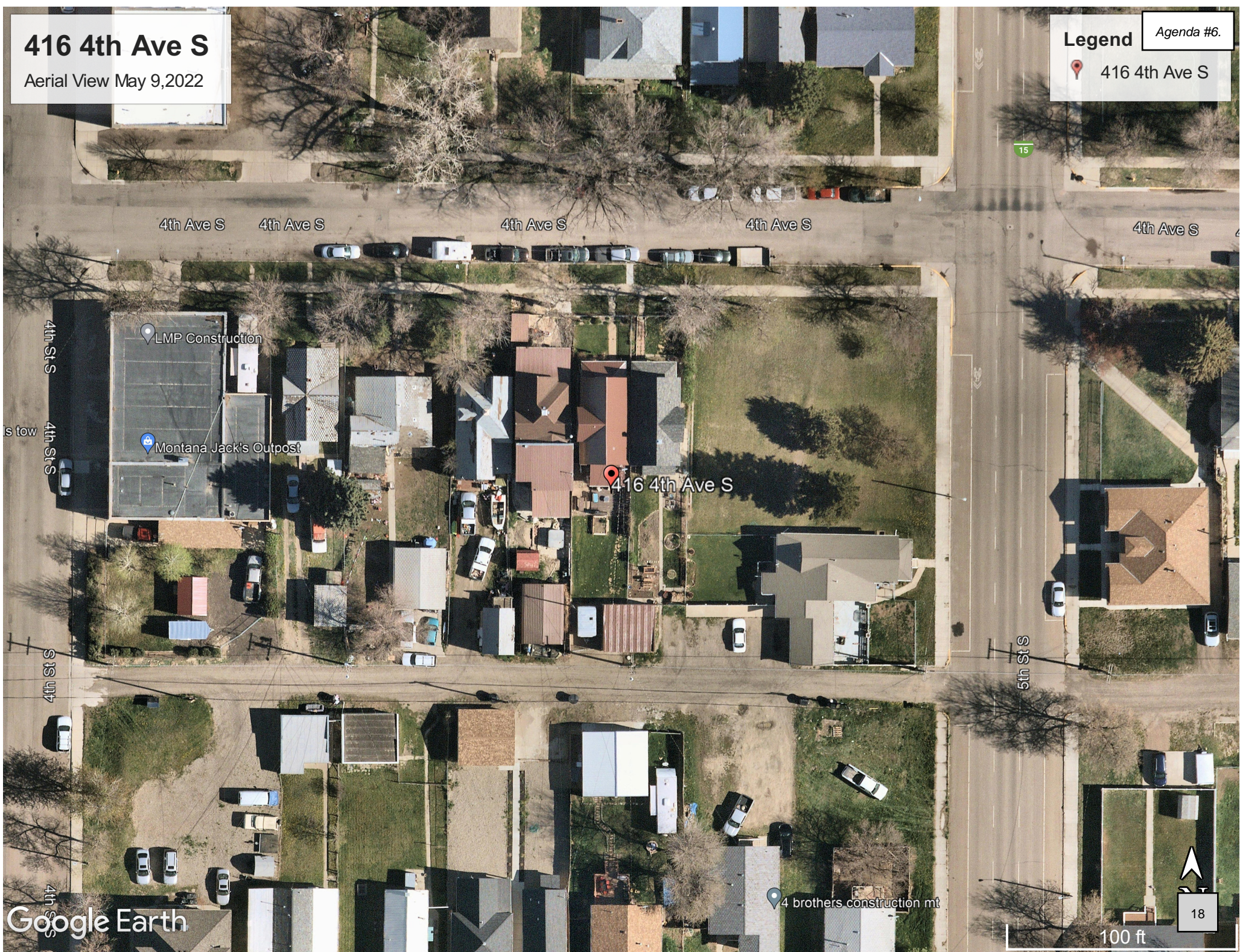
Aerial View May 9, 2022

Legend

Agenda #6.



416 4th Ave S



4th Ave S

4th Ave S

4th Ave S

4th Ave S

4th Ave S

4th St S

4th St S

5th St S

4th St S

LMP Construction

Montana Jack's Outpost

416 4th Ave S

5th St S

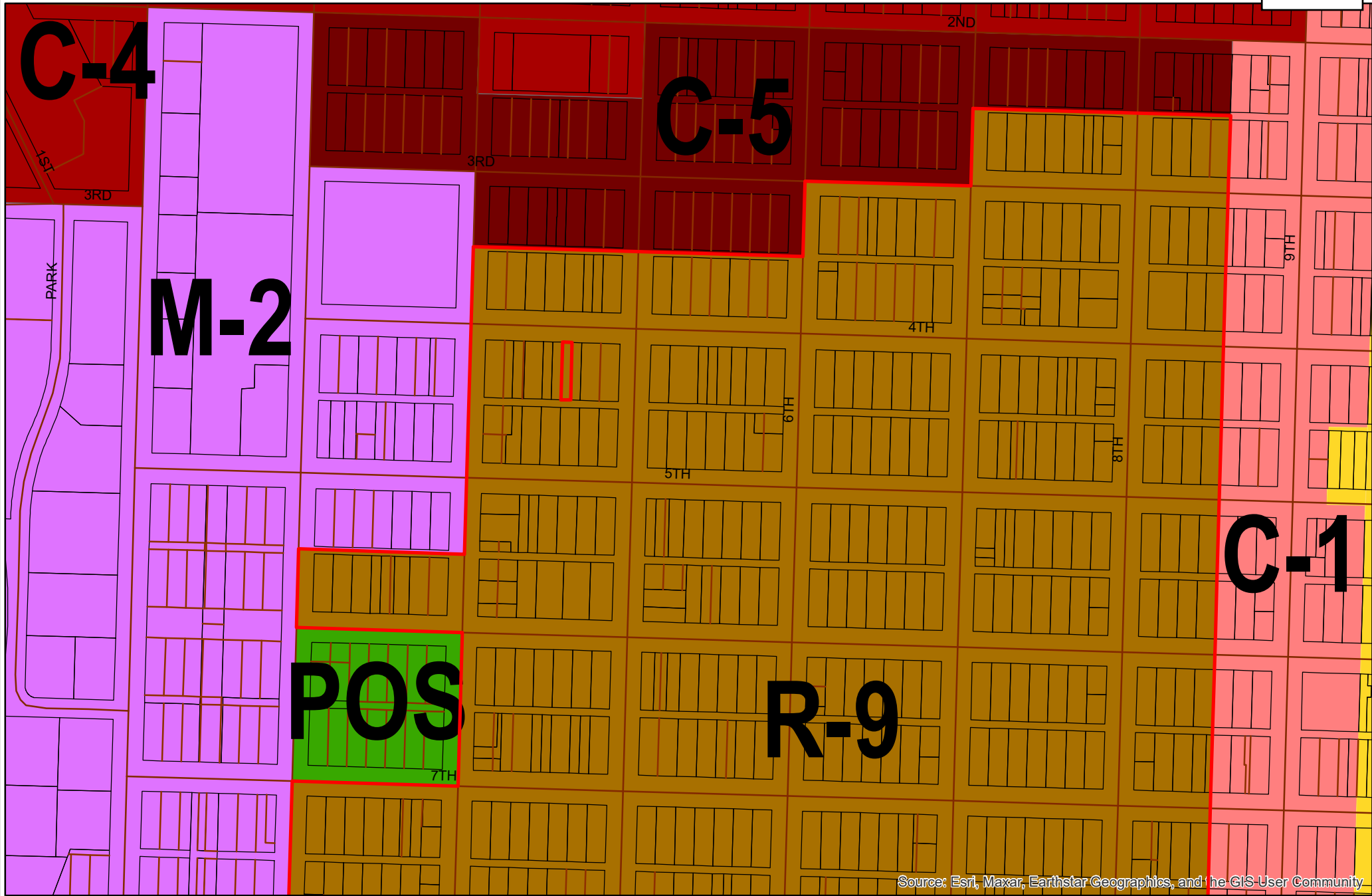
4 brothers construction mt

Google Earth

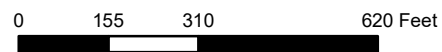
100 ft

18

ZONING MAP



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



Date: 6/21/2022
Author: LH, Planning

17.20.7.040 - Fences.

- A. **Orientation.** All non-decorative posts, horizontal supports, cross-members, and the like shall be oriented inward to the lot on which the fence is located.
- B. **Materials and maximum coverage.** Fences shall be constructed of typical building materials commonly used for fence construction. Single strand wire or barbed wire may not be used in residential zoning districts, except in the R-1 district for agricultural purposes. In residential zoning districts, fences located between the front lot line and the front of the principal building shall have a maximum opacity of fifty (50) percent.
- C. **Maximum height.** Fences shall not exceed the heights listed in Exhibit 20-8. Fences shall comply with landscape screening requirements and standards of this Title.

Exhibit 20-8. Standards for fences

	Residential Zoning Districts	Commercial Zoning Districts	Industrial Zoning Districts
Between front lot line and front of principal building	4	6	12
From the front of principal building to the rear lot line	6	6	12

(Ord. 2950, 2007)

Alaina Mattimiro

From: Mitch Hubbard <mitchel_h1984@yahoo.com>
Sent: Wednesday, May 11, 2022 2:47 PM
To: Alaina Mattimiro
Subject: RE: Variance Request (Narrative)

I am requesting a Variance due to lack of privacy on the smaller townsight at 416 4th Ave S. Great Falls MT 59405. I am requesting a Variance due to privacy and security. Both of these I believe we should have a right to a certain amount of on our own private residential dwellings. Due to the lot size of only being 25 feet wide a normal 6 foot tall fence is inefficient at securing both the feeling of and privacy and security. Due to the lots crammed so close together everything from noise, to all unwanted interruptions and degradation of surrounding neighborhood from those unwilling to fix up their properties refrains from my ability to be more at peace at my home dwelling.

I have a 2nd request for the variance which is more on a personal level as I have been harrassed for years by a neighbor in which I feel should be in a medical facility. I am not a doctor and cannot make a recommendation on this matter, however I feel that my right to my privacy is infringed everytime she loses her cool and yells profanities at all hours of the day and night. In 2018 she cut down the fence line the borders our property line. She cut down the entire length of the property a fence that was 6 ft down to less than 4. She has a German Shepard that she keeps chained and at times it gets off the chain and has tried to attack my dog in the back yard. I have to constantly check the surroundings to make sure her dog isn't out so the two dogs can't get at each other through the existing fence. I have also included a survey that shows the survey line as well as were the existing fence is. I only want to replace the existing fence with a new one. I do not wish to make a correction with the new fence of the property line. This neighbor is refusing to let me tear down the old fence as it is falling apart. I am willing to pay the fee in an adjustment to be being granted the variance to replace the existing fence with a new fence in the height of 8 feet.

Thank you for the opportunity to listen to my grievance.

Sincerely,

Mitchel Aaron Hubbard

[Sent from Yahoo Mail on Android](#)

On Wed, May 11, 2022 at 1:55 PM, Alaina Mattimiro <amattimiro@greatfallsmt.net> wrote:

Yes, absolutely. Myself and the permit techs will be here until 4:30 to process the application!

From: Mitch Hubbard <mitchel_h1984@yahoo.com>
Sent: Wednesday, May 11, 2022 1:52 PM
To: Alaina Mattimiro <amattimiro@greatfallsmt.net>
Subject: RE: Variance Request

7-1-20

To whom this may concern:

I am owner @ 414 - next to Mitch Hubbard @ 416. My remarks on fence line. I always kept 6 ft fence till activity concerning drugs and all that follow was so bad that I shortened my fence. That same drug, human trafficking, thefts considerably dropped. I have been maintaining my line and do not wish to combat the drug ~~scene~~ activity and what follows with it and want my fence line left alone. I have camera's and this activity has taken all from me and there needs to be accountability to these criminals.

Marykathleen C. Guffee
 414 - Dave So
 406 - 770 - 9558
 text

Alaina Mattimiro

From: Jamie Nygard
Sent: Thursday, June 23, 2022 8:45 AM
To: Alaina Mattimiro
Subject: FW: 416 4th Avenue South

Good Morning Alaina,
Here is an email that received regarding your case for Board of Adjustments.
Thank you,
Jamie

From: Tami Riphenburg <triphenburg@gmail.com>
Sent: Wednesday, June 22, 2022 11:29 AM
To: Jamie Nygard <jnygard@greatfallsmt.net>
Subject: 416 4th Avenue South

Bryan Riphenburg and I have no objections to Mitch Hubbard building a fence over 6 feet.

Tami Riphenburg



Date: July 7th, 2022
CITY OF GREAT FALLS

BOARD OF ADJUSTMENT AGENDA REPORT

- Item:** 1701 10th Avenue South - Variance to Section 17.20.6.140 of the Official Code of the City of Great Falls (OCCGF) to allow reduced distance of a casino in proximity to a City park
- Applicant:** John Enott, Emerald City Casino
- Representative:** Nelson Architects
- Presented By:** Alaina Mattimiro, Planner II, Planning and Community Development
- Action Requested:** Consideration of reduced distance in proximity to City parks from the standard of 600 feet contained in Title 17, Chapter 20, Article 6 of the Official Code of the City of Great Falls (OCCGF), *Casino, Type I; Proximity to other specified uses*
-

Public Hearing:

1. Chairperson conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 6.
2. Chairperson closes public hearing and asks the will of the Board.

Suggested Motion:

1. Board Member moves:
 - I. "I move that the Board of Adjustment, based on the Findings for the Basis of Decision (approve/deny) the variance request from OCCGF Title 17, Chapter 20, Article 6, *Casino, type I; Proximity to other specified uses*, subject to the conditions of approval."
 2. Chairperson calls for a second, discussion, and calls for the vote.
-

Synopsis:

The applicant, John Enott of Emerald City Casino, is proposing to redevelop the site located at 1701 10th Avenue South. Currently the site has two vacant buildings on it – the former Carriage Trade Cleaners and the Taco Treat/Emerald City Casino, and is located in a C-2 General Commercial zoning district. The proposed project would include tearing down both buildings, completing phases of brownfield remediation, and then redevelopment of the site for a new Emerald City Casino building and parking area.

The casino was established at the subject property in 2010 and was in operation up until December of 2019, when a triple homicide occurred on the property. Over the past two years, the casino license was put in a nonuse status while the owners worked through legal issues. The license was recently put back in use in May 2022. Additionally, the site has been identified as an active Brownfield site, and is receiving financial assistance from the Great Falls Development Authority (GFDA) for remediation. The

properties have been affected by petroleum contamination from the former Holiday convenience store (south of the subject property) and dry cleaning solvents from the former Carriage Trade Cleaners building. The applicant has retained Big Sky Civil to work with GFDA, Hygienix, and the state's Department of Environmental Quality to work through the multiple phases of remediation required for the cleanup of the site.

Background Information:

Requested Variance: Chapter 20 – Land Use 17.20.6.140, Article 6 – Special Standards for Principal Uses, Proximity to other uses

City code requires Type I Casinos to be located at least 600 feet from any schools, worship facilities, parks and playgrounds. The applicant is requesting that the redevelopment of the current casino be within 450 feet of Chowen Springs Park.

Notice of the Board of Adjustment hearing was published in the Great Falls Tribune on Sunday June 19th, 2022. Additionally, notices were sent to adjoining property owners per code requirements. Staff has not received inquiries or comment from the public at the time of writing this report.

Findings for the Basis of Decision:

The basis for decision for a variance request is listed in § 17.16.32.040 of the OCCGF Land Development Code. The decision of the Board of Adjustment shall consider the three Basis of Decision criteria. Staff provides the following Basis of Decision for consideration by the Board:

1. The variance is not contrary to the public interest.

The purpose of the distance requirements between casinos and parks is to promote public health, safety, and welfare by reducing public exposure to casino gambling, thereby promoting moral, social, and cultural values within the City. For Type I Casinos, the special standards are intended to allow for casinos in certain zoning districts provided they meet more stringent development and appearance standards. The Emerald City Casino has been operating on its current lot as a casino for several years, up until December 2019. Granting the variance in this instance, because the casino has already operated within the 600 foot distance requirement of Chowen Springs Park, would not be contrary to the public interest. Also, with the redevelopment of the lot and construction of a new building, the project would be required to meet all other special standards relating to casinos, such as landscaping. Furthermore, the ability to fully clean up the site would be a benefit to the general health of the community – both its residents and environment.

2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.

A literal enforcement of the 600 foot distance requirement would make it impossible for the applicant to make use of his gaming license and redevelop the property with a new Type I Casino. Technically, the applicant has other land use options that would be permitted in the C-2 zoning district without the distance restriction to Chowen Springs Park. However, staff believes that the enforcement of the distance rule creates hardship for the applicant because the property has historically been used as a Type I Casino. In addition, it was determined by the Department of Environmental Quality that the removal of both the existing Taco Treat/Emerald City and the Carriage Trade Cleaners buildings would be necessary for the complete remediation of the site, which is why the owner is unable to remodel the building in its current location on the site. Because of these reasons, it has been determined that there are exceptional or extraordinary circumstances applicable to the subject property that do not apply to other properties in the area or zoning district.

3. The spirit of this Title would be observed and substantial justice done by granting the variance. The spirit of this Title would be observed and substantial justice done by granting the variance. If granted, it would create a pathway forward for redevelopment of the property and allow for the casino to come into conformance with other aspects of the OCCGF. Furthering public and environmental safety would be met through the remediation of the Brownfield site.

Recommendation:

City staff has concluded that the variance for a reduced distance is appropriate, and staff recommends approval with the following conditions:

Conditions of Approval:

1. **Building Permits.** The applicant shall submit the required building permit application to the City of Great Falls for review and approval.
2. **Code Compliance.** The applicant shall comply with all applicable building and fire codes pursuant to the project.

Alternative:

The Board of Adjustment could choose to deny the variance request and strictly enforce the 600 foot distance requirement from parks. For such action, the Board of Adjustment must provide separate Basis of Decision findings to support the denial.

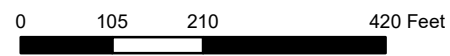
Attachments:

Aerial Map
Zoning Map
Narrative A
Narrative B
Narrative C
Application
Site Plan

ZONING MAP



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community




Date: 6/21/2022
Author: LH, Planning

9th Ave S
1701 10th Ave S

Aerial View May 9, 2022

Legend Agenda #7.

 1701 10th Ave S

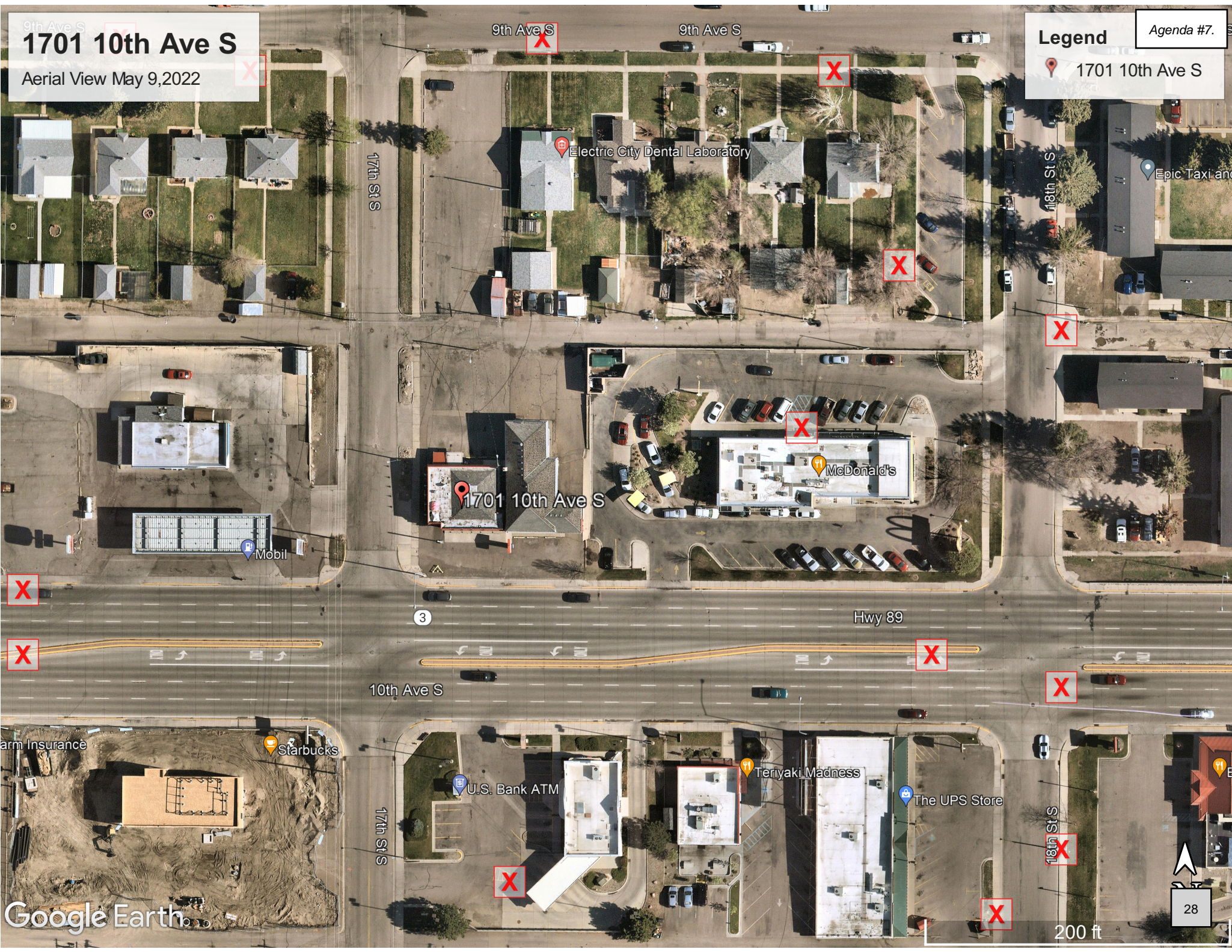


Exhibit A

Emerald City Casino Variance Application

June 2, 2022

Title 17 – Land Development Code

Chapter 6– Special Standards for Principal Uses

17.20.6.140 - Casino, type I.

A. Purpose. This section is intended to allow the location of new casinos or the relocation of existing casinos in certain zoning districts provided they meet more stringent development and appearance standards than type II casinos.

D. Proximity to other specified uses.

1. Casinos shall not locate within six hundred (600) feet of an education facility (K through post-secondary), worship facility, park or playground. The distance shall be measured by direct line, without regard to intervening structures or streets, between closest property boundaries;

Basis of Request:

The Taco Treat Franchise was established in 1958. The Taco Treat was located on this site since early 1970's. In the early 1980's the beer & wine and gaming were added. This location has had gaming for approximately 35 years and will continue to have gaming as long as the current owner is involved. Under current zoning a new casino could not be built on this lot, because of proximity to the city park, being approximately 450 feet, property line to property line. The municipal code requires 600 feet of separation between a casino and an existing city park.

The basis of this request is that for occupancy safety from environmental contamination, we need to be able to remove the existing buildings and build a new slab on grade, contamination isolated and protected, building. (See the attached Big Sky Civil report for more information) This existing casino will be located in a new code conforming building that meets all site parking, landscaping, and building code requirements, while mitigating the environmental issues. This approach will also allow for the public / worker sentiment (due to homicides) of the existing Taco Treat building to be mitigated.

The Carriage Trade Dry Cleaners building next door has been purchased to allow for adequate parking / landscaping for the new building. Removing two old, dilapidated buildings, mitigating environmental issues, mitigating public perception of building that suffered unfortunate homicides, and providing a new code compliant, safe building would be a win for the city, the staff, and the public.

End of Narrative



May 24, 2022

City of Great Falls Planning Dept.
P.O. Box 5021
Great Falls, MT 59403-5021
Attn: Tom Micuda

RE: 1701 & 1703 10th Ave So, Great Falls, MT
Variance Request, Environmental Narrative

Dear Mr. Micuda,

This letter addresses our recent discussion concerning the subject properties. On behalf of the property owners, we seek City of GF support of a variance request to reconstruct a casino at the properties.

1. These properties are an active Brownfields site, which is being administered by the Great Falls Development Authority (GFDA).
2. The goal of GFDA and the Brownfields program is to redevelop properties that have been plagued by environmental contaminants. These properties have been impacted by petroleum contamination from the former Holiday convenience store (currently US Bank) and dry-cleaning solvents from the former Carriage Trade Cleaners.
3. Our firm has been working to implement environmental remedial activities at the subject properties since fall 2021. We are working closely with the property owners, GFDA (Lillian Sunwall), Hygienix (Keith Cron), DEQ Petroleum Tank Cleanup Section (Donnie McCurry), DEQ's state superfund personnel (Laura Alvey), and DEQ's Brownfields program (Jason Seyler).
4. During discussions with GFDA and MDEQ representatives, one of the major considerations in trying to redevelop the property is the protection of public health and the environment, and the reduction and/or elimination of environmental risks. It has been determined that removal of existing structures is necessary in order to gain access to subsurface contamination and properly clean up the site. Further, by eliminating existing basement slabs and constructing a new slab-on-grade structure, the development can install subsurface membranes and/or remediation systems to prevent regulated and hazardous chemicals from migrating into the building. Additionally, by removing and replacing the water services, sewer services, gas lines, and other subsurface utilities, we can take steps to further reduce risks, such as the potential of contaminant migration through old trench lines; subsurface utility trenches are a common exposure pathway for harmful vapors to travel into buildings and impact the airspace.
5. DEQ has expressed that they strongly support the removal of existing onsite buildings and the installation of a modern structure (with vapor barriers and other environmental mitigation techniques). Please refer to attached documentation from DEQ's McCurry, Alvey, and Seyler.

Mr. Tom Micuda
May 24, 2022
Pg 2

6. In removing existing buildings and replacing them with a modern structure, it is recognized we will successfully reduce environmental risks, protect future customers, employees, contractors, and utility company personnel against harmful chemicals, and improve the overall environmental condition of the subject properties.

Your assistance and support of this project and variance request are greatly appreciated.

Thanks, Tom!

Sincerely,



Joseph Murphy, P.E.
Big Sky Civil & Environmental, Inc.

cc: Lillian Sunwall, GFDA
John Enott, Trohn LLC
Keith Cron, Hygienix
Dale Nelson, Nelson Architects

encl. Donnie McCurry - MDEQ, 5/18/22 email
Laura Alvey - MDEQ, 5/19/22 letter
Jason Seyler - MDEQ, 5/19/22 letter



Wed 5/18/2022 11:41 AM

Agenda #7.

McCurry, Donnie <DMcCurry@mt.gov>

Holiday Station #267, Release 2597

To 'jmurphy@bigskyce.com'; Paxton Ellis; Keith Cron

Cc Alvey, Laura

You replied to this message on 5/18/2022 1:12 PM.

In regards to petroleum release 2597 at the Holiday Station Store 267 at 1700 10th Avenue South in Great Falls. Release 2597 remains open due to exceedances of petroleum constituents. Petroleum impacts extended from the former Holiday Station site across 10th Avenue South onto the Taco Treat Property at 1701 10th Avenue S. The 2021 Generic Applications Report submitted by Tetra Tech identified contamination, 13 parts per billion (ppb) of 1,2 dichloroethane (DCA) in well HGF-9, permissible concentration is 4 ppb. Monitor well HGF-9s is located immediately upgradient of the southwest corner of the Taco Treat building. In 2006 there was a soil vapor extraction (SVE) system with piping trenches beneath the Taco Treat building installed. That SVE system recently stopped functioning due to a mechanical issue. There is also contamination north of the Taco Treat building near the alleyway and utility corridor. The Release closure Plan (RCP), included as part of the Report, identified vapor intrusion into the Taco Treat building as a data gap. Currently the site is hindered by the uncertainty of the level of contamination underneath the Taco Treat building. With the DCA contamination, identified in well HGF-9s, in such close proximity of the building, and the fact that the building has a basement raises the potential for higher receptor risk due to vapor intrusion. The level of contamination, if any, is unknown. Removal of existing structures would allow access to the subsurface so that the level of contamination can be assessed, and remediated, if necessary. A new structure that is slab-on-grade, that can easily have a vapor mitigation barrier installed would further reduce any environmental and/or receptor risk. Additionally, contamination often follows the path of least resistance such as utility corridors. If new utility connections are required, the old utility corridors could also be assessed for contamination. DEQ believes that the demolition of the building would provide an excellent opportunity, rarely provided, in accessing, assessing and remediating potential petroleum contamination that lies underneath the building and possibly in utility corridors. If you have any questions, please feel free to contact me.

Donnie McCurry
Project Manager
PTCS/Remediation Division
Montana Department of Environmental Quality
(406) 444-6584 Direct
dmccurry@mt.gov



May 19, 2022

Mr. Joe Murphy
Big Sky Engineering
Great Falls, MT 59405

Sent via email: jmurphy@bigskyce.com

Subject: Possible building removal at former Carriage Trade Cleaners, 1703 10th Avenue South in Great Falls, Montana: DEQ input

Dear Mr. Murphy:

Thank you for reaching out to me on May 13, 2022, regarding the former Carriage Trade Cleaners site (CTC or the Site). As you know, the Site is listed on the Montana Department of Environmental Quality's (DEQ's) Groundwater Remediation Program site list due to the presence of chlorinated solvents in the groundwater at concentrations greater than applicable water quality standards. Investigation and cleanup of the Site has been slow and sporadic. DEQ used one-time funding to monitor groundwater at the Site in 2016/2017. Another round of sampling was conducted in May 2021. DEQ considers the chlorinated solvents in groundwater at the Site to be in "monitored natural attenuation" status.

DEQ understands that property transactions have occurred or are occurring at the Taco Treat building immediately to the west of (almost abutting) Carriage Trade Cleaners, and Carriage Trade Cleaners. DEQ understands the Taco Treat building and the Carriage Trade Cleaners building may be torn down and foundations removed, and a new building constructed. While it is not necessary to remove buildings to clean up the Site and DEQ is not requiring such, removal of the buildings would provide an opportunity to improve human health and the environment at the Site for several reasons:

- Building removal would allow access for investigation and, if necessary, cleanup, of contaminated soil under the buildings.
- Removal of contaminated soil at the Site would reduce the amount of contamination acting as a source of groundwater contamination. Removal of contaminated soil would be expected to accelerate groundwater cleanup.
- Building removal, followed by new construction, would provide an opportunity to replace old plumbing, other utilities, and utility trenches. Many times, chlorinated solvent contamination follows utilities.

Carriage Trade Cleaners
May 19, 2022
Page 2 of 2

- DEQ would recommend that new construction at the Site have a vapor barrier and a sub-slab depressurization system (SSDS, which is similar to a radon mitigation system) to proactively prevent potential vapor intrusion of chlorinated solvents that might be under the building. These preventative engineered technologies would protect building occupants from possible subsurface vapors, and are more cost effective when installed as part of new construction versus retrofitting existing construction. The system would also protect indoor air from radon, should that be a concern.
- Petroleum release sites near CTC may also pose a risk for vapor intrusion. As such, indoor air quality and human health would benefit from a vapor barrier and SSDS in new construction, even if chlorinated solvents from CTC are not present under the building.

Should you have questions or concerns, please feel free to contact me via email at lalvey@mt.gov or phone at (406) 444-0212.

Sincerely,



Laura Alvey
Groundwater Remediation Program
Waste Management & Remediation Division

cc: Sarah Christopherson, DEQ Legal (via email only)
Donnie McCurry, DEQ Petroleum Tank Cleanup Section (via email only)
Jason Seyler, DEQ Brownfields Program (via email only)
Crystal Morgan, NCI Engineering (via email only: crystalm@nciengineering.com)
Mr. Albert Grobe, Cascade County Environmental Health Division Manager (via email only: agrobe@casadecountymt.gov)



May 20, 2022

Mr. Joe Murphy
Big Sky Engineering
Great Falls, MT 59405

Sent via email: jmurphy@bigskyce.com

Subject: DEQ Brownfields Program's Possible building removal at former Carriage Trade Cleaners, 1703 10th Avenue South in Great Falls, Montana

Dear Mr. Murphy:

Thank you for reaching out to me on May 17, 2022, regarding the former Carriage Trade Cleaners site. As you know, this site is being investigated through funding made available by Great Falls Development Authority's Brownfields assessment grant. This property is impacted by both chlorinated solvent and petroleum impacted groundwater. The Site is listed on the Montana Department of Environmental Quality's (DEQ's) Groundwater Remediation Program site list due to the presence of chlorinated solvents in the groundwater at concentrations greater than applicable water quality standards. The site is also impacted by contamination originating from the off-site Holiday Station Store (**Facility ID 07-08065 (TID 18686), Release 2597**).

DEQ's Brownfields program supports the cleanup and redevelopment of contaminated and underutilized properties. DEQ understands the new owner and developer of the Taco Treat building and the Carriage Trade Cleaners building is requesting to remove both buildings. The removal of these buildings would provide an opportunity to improve human health and the environment at the Site for several reasons:

- Building removal would allow access for investigation and, if necessary, cleanup, of contaminated soil under the buildings.
- Removal of contaminated soil at the Site would reduce the amount of contamination acting as a source of groundwater contamination. Removal of contaminated soil would be expected to accelerate groundwater cleanup.
- Building removal, followed by new construction, would provide an opportunity to replace old plumbing, other utilities, and utility trenches. Many times, chlorinated solvent contamination follows utilities.


Carriage Trade Cleaners
May 20, 2022
Page 2 of 2

- DEQ would recommend that new construction at the Site have a vapor barrier and a sub-slab depressurization system (SSDS, which is similar to a radon mitigation system) to proactively prevent potential vapor intrusion of chlorinated solvents that might be under the building. These preventative engineered technologies would protect building occupants from possible subsurface vapors, and are more cost effective when installed as part of new construction versus retrofitting existing construction. The system would also protect indoor air from radon, should that be a concern.
- The adjacent Petroleum release sites may also pose a risk for vapor intrusion. As such, indoor air quality and human health would benefit from a vapor barrier and SSDS in new construction, even if chlorinated solvents from CTC are not present under the building.

As stated previously, DEQ's Brownfields Program supports the cleanup and redevelopment of underutilized properties throughout Montana. Redevelopment of these properties improves human health and the environment, in addition to increasing property values and creating jobs.

Should you have questions or concerns, please feel free to contact me via email at jseyler@mt.gov or phone at (406) 444-6447.

Sincerely,



Jason Seyler
Brownfields Coordinator
Waste Management & Remediation Division

cc: Keith Cron, Hygenics (via email only)
Donnie McCurry, DEQ Petroleum Tank Cleanup Section (via email only)
Laura Alvey, DEQ Groundwater Remediation Program (via email only)
Crystal Morgan, NCI Engineering (via email only: crystalm@nciengineering.com)
Mr. Albert Grobe, Cascade County Environmental Health Division Manager (via email only: agrobe@casadecountymt.gov)



May 24, 2022

City of Great Falls Planning Dept.
 PO Box 5021
 Great Falls, MT 59403-5021
 Attn: Tom Micuda

Re: 1701 & 1703 10th Ave So, Great Falls, MT
 Variance Request, Environmental Narrative

Dear Mr. Micuda,

The Taco Treats were established in 1958. In the early 80's the previous owners added beer and wine licenses to 3 of the 4 locations, so the locations have had gaming and served beer and wine for 35 plus years. I acquired the Taco Treat Franchise in June of 2010. It never made sense to me that there were locations on 17th and 21st 10th Ave S, 4 blocks apart. So, it was decided to remodel the 17th location and make it a Taco Treat Emerald City Casino with a gambler's menu. It proved to be a successful move as my food location went up 50% at the 21st location and the casino did above average drops. Everything was going fine until the night of December 17th 2019 when, I'm sure you all know there was a horrific incident where a triple homicide occurred. The incident has changed the lives of the victim's families, my family, my business partner, his family, all of our staff, our entire community as a whole, and myself

Immediately following the incident, the building became a crime scene, and nothing could be done to disrupt it. This in turn required us to put the license in a nonuse status. In April of 2020 we were then served with our first civil lawsuit which was finally settled in March of 2021. The Department of Revenue allows a one year of nonuse status. At the end of this one year, they can revoke your license. Because we could not disrupt the site due to the criminal investigation and the civil lawsuit we were in violation with the Department of Revenue and were informed by the Department we would lose the license. We had our attorneys write letters requesting another year of nonuse status because our hands were tied. This request was ultimately granted with an imposed deadline that the license would be put in use by February 28, 2022 or have an executed buy-sell agreement in place by December 31, 2021 with the required license transfer application submitted to the Department of Revenue by February 28, 2022. Once the first lawsuit was settled we started to proceed forward with a plan to have Trohn LLC. purchase the land, building and license from Taco Treat of Great Falls Inc. However, we could not imagine going back into the same building, so we decided to buy the adjoining Carriage Trade Dry Cleaner building, tear down the eye soar where the murders occurred and remodel the Dry Cleaners.

Unfortunately, we were then hit with a second wave of civil claims with a second lawsuit being filed June of 2021. Once again we were precluded from altering the site. We moved ahead with our plan in parallel with our defense of the new lawsuit. We put together the Buy/Sell on both properties and the license, all being purchased by Trohn LLC. The acquisitions required Phase I and II testing from the DEQ because both sites were part of a petroleum leak from a gas station across 10th Ave South years ago and the Dry Cleaners also had chemical contamination which I'll let Joe Murphy from Big Sky Civic & Environmental explain in detail. Joe has already conducted Phase I and is in the process of the Phase II testing. One of the check marks on the Department of Revenue License Transfer Application is that the license not be within 600 feet from door to door of a school, church or place of worship which the site meets. However the City codes are more stringent and also include parks and playgrounds, from property line to property line. There is a park approximately 450 feet from our property line and that is why we are in need of this variance. The second lawsuit was just recently settled in April of 2022. The license just transferred on May 23rd of 2022. So now after 2 ½ years of stress and sleeplessness we are trying to move forward but have hit another road block. As I said earlier we would like to tear down the 1701 Property and remove the location where the horrific incident occurred on December 17, 2019. After talking to Joe Murphy and DEQ Members over the last 2 years we decided to tear down both buildings and construct a beautiful new building with a new parking lot and landscaping that would be a great addition to 10th Ave So. (along with all the other new buildings that have recently been added) and in parallel clean up an environmentally impacted site. So, I ask for your consideration in granting this variance which will remove 2 eye sores and clean up our environment!

Thank you for your time and consideration

Sincerely,



John Enott

CITY OF GREAT FALLS
PLANNING & COMMUNITY DEVELOPMENT DEPT.
P.O. BOX 5021, GREAT FALLS, MT, 59403-5021
406.455.8431 • WWW.GREATFALLSMT.NET

VARIANCE APPLICATION

Date: _____
Application Number: _____
\$1,250 Application Fee
Public Hearing Notice
Paid (Official Use ONLY):

CONDITION FOR VARIANCE

Montana Statutes require an *unnecessary hardship* as a condition for a variance. "Variance" means a grant of relief from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited.

Emerald City Casino - John Enott
Owner / Representative Name:

175 Big Bend Lane, Great Falls, MT 59404
Mailing Address:

406-899-3432 **Phone:** john.enott@tacotreat.net **Email:**

Requested Action: A varlance from Title: 17 **Chapter:** 20 **Article:** 6.140

We request a variance to allow the existing owner to improve upon a previously established casino site with a new structure. See attachment A

Basis for Request:
See exhibits A, B, and C for full explanation. Main reasons for variance include the cleanup of existing site contamination, alleviating company and family hardships from homicide event, and constructing a new site/building that complies with all current code requirements.

PROPERTY DESCRIPTION LOCATION:

Block 777, lot 13 & 14 Great Falls 16th Addition 07 T 20 N R04 E
Mark/Lot/Block: Addition: Section: Township: Range:

1701 10th Ave. South, Great Falls, MT 59405
Street Address:

ZONING:

C-2 **Current:** Casino & Food Service **Current:**

LAND USE:

I (We) the undersigned understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application. I (We) further understand that public hearing notice requirements and associated costs for land development projects are my (our) responsibility. I (We) further understand that other fees may be applicable per City Ordinances. I (We) also attest that the above information is true and correct to the best of my (our) knowledge. NOTE: If the applicant is not the owner of record, the signature of the owner of record must also be obtained.

John Enott
Property Owner's Signature: **Date:** 5-24-2022

[Signature]
Representative's Signature: **Date:** 5-31-2022

Form updated: May 2014

Variance Application Checklist

A complete Variance Application shall include but is not limited to the requirements listed in Table 1 below. Additional information may be required prior to a Variance Application being deemed complete.

Table 1: Application Requirements		Staff	App.
Variance Application	Complete basic applicant and project information included on page 1.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Application Fee	Non-refundable Variance Application Fee - \$1,250	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Variance Description	Condition for variance: Montana statutes mention "unnecessary hardship" as a condition for a variance. Please attach a description that includes: Requested action: state Title and Section specifically related to the request Basis for the request: specifically state the reason for the request	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Complete Site Plan	2 Copies	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Variance Site Plan Requirements

Table 2, below, contains the requirements for a complete Variance application site plan. The requirement must be submitted unless waived by a planner at a pre-submittal meeting. City Staff will place an X in the box for all required submittal items. Applicant will complete the checklist by placing an X in the App. box of each item to indicate that it has been submitted.

Table 2: Site Plan Requirements		Staff	App.
Project Information	(a) Project name (b) Developer and landowner name (c) Preparation date (d) Name of preparer	<input type="checkbox"/>	<input type="checkbox"/>
Survey Information	(a) North arrow <input checked="" type="checkbox"/> (b) Graphic scale <input checked="" type="checkbox"/> (c) Legal description <input checked="" type="checkbox"/> (d) Property boundaries (bearings, lengths, curve data) <input checked="" type="checkbox"/> (e) Acreage of subject property <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Project Development Information	(a) Easements/rights-of-ways (location, width, purpose, ownership) (b) No build/alteration zones, if any (c) No ingress/egress zones, if any	<input type="checkbox"/>	<input type="checkbox"/>
Setting	(a) Property boundaries within 150' of subject parcel (b) Names of property owners within 150' of subject parcel (c) Adjacent land uses within 150' of subject parcel (d) Municipal boundaries, if applicable	<input type="checkbox"/>	<input type="checkbox"/>
Site Features (Existing and Proposed)	(a) Wetlands (b) Woodlands (c) Wildlife habitat, including critical wildlife habitat (d) Environmentally sensitive features (e) Water resources (rivers, ponds, etc.) (f) Floodplains (g) Irrigation canals including diversion point(s), etc. (h) Other hazards including brownfields, contaminated sites, unstable soils, high groundwater, bedrock, high-pressure natural gas lines, and others as appropriate.	<input type="checkbox"/>	<input type="checkbox"/>

Site Plan Requirements Cont.

GENERAL INFORMATION		Staff	App.
Transportation Facilities (existing and proposed)	(a) Roads (names, ownership, etc)	<input type="checkbox"/>	<input type="checkbox"/>
	(b) Driveways and road access onto public and private roads		
Buildings/ structures (footprint, use, etc.)	(a) Existing and proposed within project	<input type="checkbox"/>	<input type="checkbox"/>

Citizen's Guide to Zoning Variances

Introduction

A city does not stand still; it is constantly changing and thus requires guidance for orderly growth to take place. The City of Great Falls Land Development Code and several detailed community plans provide guidance, and the zoning ordinance is the principal tool used to actually control growth and protect property values through regulating land uses. However, it is occasionally necessary to allow situations contrary to the strictest interpretation of the zoning ordinance. A variance is such a degree of leniency without which, an unnecessary hardship would be suffered by the property owner. Such variance cases are decided by the Board of Adjustment.

The Board of Adjustment and its Authority

Montana State Law grants the Board its authority. The Board consists of five voting members appointed by the City Commission for three year terms. These Board members are lay citizens not City Staff, selected from various walks of life.

Examples of Variance Requests that may be Justifiable

An extra wide utility easement which interferes with the buildable area of a lot may justify encroachment into a required area. Unusual size, shape or topography of a lot may justify some variance from what would normally be required under the ordinance.

Application Procedures

Fill out the application, in preparing your application, be as detailed and specific as possible. Incomplete information may result in your case being delayed to another hearing date or denied. You are required to define your hardship and list your justification for the variance request.

You must submit a plot plan (two copies) drawn to scale (1"=20' minimum). It should include the following information: Actual lot dimensions; size and location of all existing and proposed structures including proposed additions; locations of all hard surfacing, including driveways and parking areas; distances to nearest dwelling on adjoin properties.

A certified survey is required if there is a property line dispute.

Building elevations, floor plans and any other pertinent information should be submitted if applicable.

There is a \$1,250.00 filing fee to help defray the costs of administrative research and paperwork involved in processing the application. This fee is non-refundable whether the request is approved or not. No processing will be performed until this fee has been paid.

Requests that are Not Considered Justifiable

A hardship is not a problem that you create yourself. For instance, if you build your house in such a manner that you cannot expand the living room without encroaching into a required yard, you have created that situation and the ordinance does not recognize that as a legitimate hardship. Likewise, the fact that it might cost you less money to add an extension in a required front yard rather than adding to the house where the addition would be permitted outright, is not a hardship. If you purchased a sloping hillside lot, and wish to excavate or fill to create a flat lot and reduce building costs, you do not have a justifiable hardship. Similarly, if you purchased a home with an attached garage and the side yard is too narrow to be able to drive through to the rear yard, you may not justifiably request a variance to convert the garage into living area. By doing so you would be eliminating your required off-street parking with no way to legally provide for it.

The important point is whether you would be deprived of property rights, not desires. Financial hardship is not considered a legitimate reasons for seeking a variance.

Citizen's Guide to Zoning Variances Cont.

Processing the Application

The Board of Adjustment meets on an as needed basis. Hearings are typically conducted at 3:00 p.m. in the City Commission Chambers, however the time may be changed to accommodate scheduling. All concerned are notified of applicable times and dates.

All property owners within 150' of the subject variance are notified by letter of the request and the date and time of the hearing. They may address any comments, questions or concerns at the hearing or send written material to the Planning & Community Development Department.

All information and supporting documents become the property of the City and cannot be returned to you. They will be filed with your property file.

Appealing a Board of Adjustment Decision

Under Montana Stat Law, you have the option of appealing any ruling made by the Board of Adjustment. The applicant an/or aggrieved person may appeal a final decision, made by the Board of Adjustment, by filing an appeal with a court of competent jurisdiction within 30 days of the final decision. (See: 76-2-327(1), MCA)

The Board of Adjustment

The powers of the Board of Adjustment: City ordinance provides that the Board of Adjustment has the power to interpret ambiguous zoning codes and to hear request for variances that are dimensional in nature.

Variances: The purpose of a variance, the sole legitimate purpose, is to so modify the application of a zoning ordinance as it applies to the property in question to bring the privileges of that property to a parity with other properties similarly located and classified. A variance can be tested for validity by various known criteria including:

1. There are exceptional or extraordinary circumstances applicable to the property or to the intended use that do not apply generally to other property in the same vicinity and zoning district.
2. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question.
3. The strict application of the ordinance would constitute unnecessary hardship.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity or zoning in which the property is located.
5. The board is bound to accept the zoning ordinance and map as correct, and should abide by its purpose and spirit.

Additional Criteria

1. The board is bound to accept the zoning ordinance and map as correct, and should abide by its purpose and spirit.
2. The financial situation of a particular individual or pecuniary hardship upon a single owner is NOT adequate grounds for the granting of a variance, if the granting of the variance will impair the intent and purpose of the zoning regulations. Both the private hardship and lack of injury to the public interest must occur.
3. Inability of the owner to rent or use the property if the zoning regulations are strictly applied may be considered, but is not in itself sufficient. The fact that the variance will depart but slightly from the intent and purpose of the law is, however, by itself a substantial argument in its favor.
4. The plight of the owner must be unique; if many lots in the same neighborhood are in need of the same variance, the remedy would be a change in the boundary of the zoning district, not a wholesale grant of variances.
5. The public need of the use of property in accordance with the variance sought is a ground for favorable consideration in granting a variance, and conversely, the fact that there is no such public need is a reason why a petition for a variance should be denied.
6. The good faith of the applicant, his ignorance of the zoning restrictions, or his expectations of a grant of a variance when he acquired the property are NOT GROUNDS for granting a variance.
7. The hardship which justifies a variance must be a hardship which arises out of the application of a particular provision of the ordinance to a particular lot or parcel of land. A variance in the use of one lot cannot be granted to alleviate hardship upon another.

PROJECT & SURVEY INFORMATION

PROJECT NAME EMERALD CITY CASINO
 OWNER NAME JOHN ENOTT (TACO TREAT, EMERALD CITY CASINO)
 LEGAL DESCRIPTION GREAT FALLS SIXTEENTH ADDITION, S07, T20 N, R04 E, BLOCK 777, LOT 014
 AREA OF PROPERTY 15,000 SQFT

SITE REQUIREMENTS

EXIST. CONDITIONS	REQUIRED	ACTUAL
SITE AREA		15,000
PARKING STALLS		0 STRIPED
LANDSCAPING		0
PLANTINGS		0 TREES, 3 SHRUBS

BUILDING SIZE

PARKING STALLS	REQUIRED	ACTUAL
1 STALLS PER 3 MACHINES + 1 PER EMPLOYEE		
ASSUMED 20 MACHINES + 3 EMPLOYEES	10 STALLS	20 STALLS
ADA PARKING STALLS	1 STALL	1 STALL
ADA VAN PARKING STALLS	1 STALL	1 STALL

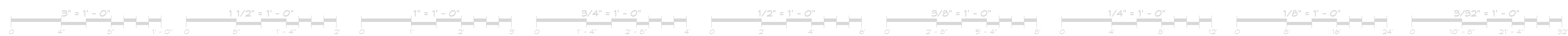
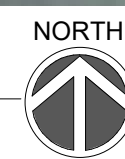
SITE AREA	REQUIRED	ACTUAL
LANDSCAPING AREA REQUIREMENTS	3,000	3,587
50% LANDSCAPE IN FRONT OF BUILDING	1,500	1,733
SEE MUNICOD FOR DEFINITIONS		
PLANTING REQUIREMENTS		
SEE MUNICOD FOR DEFINITIONS		
TREES	7	7
SHRUBS	30	32



2 EXISTING SITE PLAN
 1" = 30'-0"



1 OVERALL SITE PLAN - VARIANCE
 1" = 10'-0"



REVISION SCHEDULE

#	DESCRIPTION	DATE

OVERALL SITE PLAN VARIANCE
 ISSUED FOR: CONSTRUCTION
 NOT FOR CONST.

Project 21-005
 Date 3-21-22
 Drawn by TCK
 Checked by TCK