



Michael Alvarez, Planner II
Community Development Department
316 North Park Avenue, Rm. 445
Helena, MT 59623

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helenamt.gov

DATE: September 13, 2022

STAFF REPORT

TO: Helena Board of Adjustment

FROM: Michael Alvarez, City Planner II

SUBJECT: Consideration of:

- 1. A variance from Section 11-4-2 to decrease the allowable minimum front setback from 10' to 4', and to decrease the garage entrance setback from 20' to 5', for a property with a legal description of the west one-half of the south one-half of Lot 10, and the west one-half of Lots 11 and 12 in Block 21 of the Hauser Addition to the City of Helena, Lewis and Clark County, Montana.**

This property is located at 730 Flowerree St.

The reason for the variance is to build a new garage that faces the current driveway.

OVERVIEW

GENERAL INFORMATION

DATE OF APPLICATION: Application received July 21, 2022

PUBLIC HEARING DATE: Board of Adjustment - 5:30 p.m., Tuesday, September 20, 2022

APPLICANT/ PROPERTY OWNER: Roger Dail

MAILING ADDRESS: 730 Flowerree St, Helena, MT 59601

CONTACT NUMBER: 303-908-9577

EMAIL ADDRESS: roger.dail@gmail.com

PROPERTY ADDRESS: 730 Flowerree St., Helena, MT 59601

LEGAL DESCRIPTION: the west one-half of the south one-half of Lot 10, and the west one-half of Lots 11 and 12 in Block 21 of the Hauser Addition to the City of Helena, Lewis and Clark County, Montana.

GENERAL LOCATION: The property generally occupies the northeast corner of Flowerree St and Hayes Ave.

PRESENT LAND USE: Single Dwelling-Unit

ADJACENT LAND USE:

North: Residential uses (largely single dwelling units)

South: Residential uses (largely single dwelling units)

East: Residential uses (largely single dwelling units)

West: Residential uses (a duplex immediately across the street, largely single dwelling units)

PRESENT ZONING: R-2

VARIANCE PROPOSALS:

Consideration of

A variance from Section 11-4-2 to decrease the allowable minimum front setback from 10’ to 4’, and to decrease the garage entrance setback from 20’ to 5’, for a property with a legal description of the west one-half of the south one-half of Lot 10, and the west one-half of Lots 11 and 12 in Block 21 of the Hauser Addition to the City of Helena, Lewis and Clark County, Montana.

History of applicable permitting action:

- Variance received to exceed 30% lot coverage.
 - received but project was not built

ZONING EVALUATION for the property legally addressed as 730 Flowerree St, Helena, MT, located in an R-2 zoning district.

ZONING REQUIREMENT	Applicable ZONING REGULATION	PRESENT CONDITION	PROPOSAL	VARIANCE REQUIRED
City Code: 11-4-2 Front Lot Line Setback	10’	N/A	4’	Yes
City Code: 11-4-2 Vehicular entrance of a garage	20’	N/A	5’	Yes

BOARD OF ADJUSTMENT VARIANCE CRITERIA

Section 11-5-5 of the Helena Zoning Ordinance includes certain criteria that must be reviewed as part of the variance procedure.

To approve a requested variance for a new building or portion thereof, the board of adjustment shall consider the following standards and find as follows:

1. *The variance will not create a significant risk to the public health, safety, or general welfare;*
2. *The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and*
3. *Strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.*

In evaluating the standards above, the board of adjustment may consider the following factors:

1. *Special conditions and circumstances that are unique to the applicant’s site, including the size of the property, unusual or extreme topography, or unusual shape of the property.*
2. *The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.*
3. *Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.*
4. *The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant’s control.*
5. *Whether a literal interpretation of the provisions of this Title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this Title.*
6. *The extent to which the hardship or difficulty results from the actions of the applicant.*
7. *Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.*

PUBLIC COMMENT:

As of Tuesday, September 13, 2022, no public comment has been received for the variance.

City Attorney's Office:

It is the recommendation of the City Attorney's Office, that staff does not make a recommendation to approve or deny a variance.

CONCLUSION

Montana law states the Board of Adjustment has authority to consider "...upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." (76-2-323 MCA)

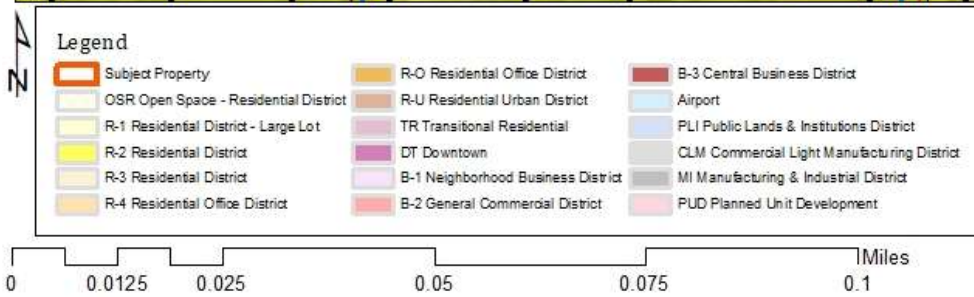
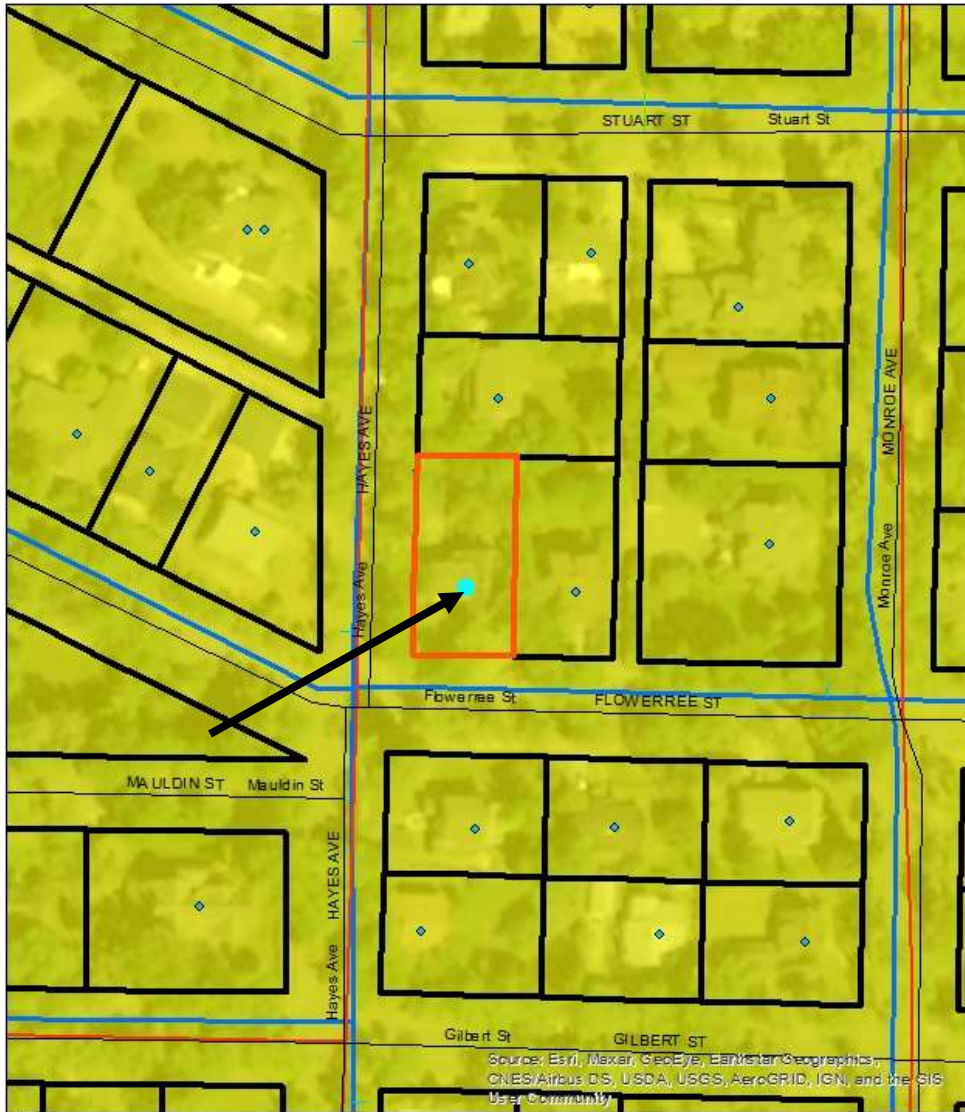
Motion:

Move to Approve or Deny

A variance from Section 11-4-2 to decrease the allowable minimum front setback from 10' to 4', and to decrease the garage entrance setback from 20' to 5', for a property with a legal description of the west one-half of the south one-half of Lot 10, and the west one-half of Lots 11 and 12 in Block 21 of the Hauser Addition to the City of Helena, Lewis and Clark County, Montana.

If the Board of Adjustment approves the requested variance, the following condition is recommended:

Building Permit: A building permit must be obtained within one (1) year.





BOARD OF ADJUSTMENT VARIANCE APPLICATION

Community Development Department, Planning Division
316 North Park Avenue, Room 445, Helena, MT 59623
406-447-8490; citycommunitydevelopment@helenamt.gov

Date received:

RECEIVED
By April Sparks at 11:23 am, Jul 21, 2022

APPLICATION FEE: \$125.00
(PAYABLE TO THE CITY OF HELENA)
ALL FEES ARE NON-REFUNDABLE

PROPERTY OWNER: Primary Contact?

Name: Roger Dail Primary Number: 303 908-9577
Address: 230 Floweree Helena MT Other Phone: _____
Email: roger.dail@gmail.com

APPLICANT (If different from property owner): Primary Contact?

Name: James Briggs Primary Number: 406-581-0391
Address: 1712 Peosta Ave. Helena, 59601 Other Phone: _____
Email: blueribbonshuttle@gmail.com Company: _____

AUTHORIZED REPRESENTATIVE: Primary Contact?

Name: _____ Primary Number: _____
Address: _____ Other Phone: _____
Email: _____ Company: _____

Section A: PLEASE PROVIDE THE INFORMATION REQUESTED BELOW.

Address of Property 730 Floweree St. Helena MT 59601
Address City State Zip Code

Legal Description (Block & Lots, Subdivision, COS#) Hauser, Ming addition. Southwest corner of block 12.

Geocode T 10N R 4W SEC25

The most recent deed for impacted property

Lot or Parcel Size (square feet) 7798

Current and proposed use of structure or property: Residential. Garage addition

Current Zoning District R-2

Are there other related Land Use Applications being submitted: Yes No

Submit proof of current paid taxes

1 copy of a scaled site plan and supporting data/documents. The site plan must clearly show the existing standard and the proposed variance to the standard.

Section B: INDICATE WHICH VARIANCE(S) IS (ARE) BEING REQUESTED AND THE EXTENT OF THE VARIANCE.

EXAMPLE: [X] Reduce Front Lot Line Setback: *From the required 10 feet to 3 feet.*

Please provide all the information requested in the Application. An incomplete application may delay the review of your request. Please note: "N/A" is not an acceptable answer alone and requires an explanation if used.

Dimensional Criteria:

- Reduce front lot line setback: _____
- Front lot line setback #2 (corner lot): _____
- Reduce garage entrance setback: _____
- Reduce side lot line setback: _____
- Reduce rear lot line setback: _____
- Exceed building height limitation: _____

Lot Coverage/Area Criteria:

- Lot coverage percentage: _____
- Front porch lot coverage percentage: _____
- Lot area per dwelling unit: _____

Landscaping Criteria:

- Reduce or eliminate landscaping area: _____
- Reduce or eliminate screening: _____

Parking Criteria:

- Exceed the maximum parking spaces allowed: _____
- Reduce the amount of required on-site parking spaces: _____
- Reduce or eliminate loading berths: _____
- Reduce or eliminate required bicycle spaces: _____
- Reduce size of parking space: _____

Sign Criteria:

- Sign area (square footage): _____
- Sign height: _____
- Sign location: _____
- Number of signs: _____

Other:

Section C: BOARD OF ADJUSTMENTS VARIANCE REVIEW CRITERIA.

To approve a requested variance for a new building or portion thereof, the Board of Adjustment shall consider the following standards in section 11-5-5 of the Helena City Code and find as follows:

1. The variance will not create a significant risk to the public health, safety, or general welfare;
2. The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and
3. Excluding monetary hardship, strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.

These are the standards your application for variance will be judged on. Your answers in section D should speak to the review criteria.

It is the applicant's burden of proof to show that a variance should be granted. As part of your application, you are required to provide information for each of the following factors including all alternatives considered. Failure to provide adequate responses or requested documentation may result in a returned application.

Section D: EVALUATION FACTORS

- 1. **Special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property.**

If the above condition applies, state the specific factors and provide supporting documentation. For example, if the variance request is due to an abnormal lot configuration, provide a survey of the lot that specifically demonstrates the issue.

small size of lot (62' x 125') common city lots on the westside are (75' x 125')

- 2. **The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.**

Ex: How is the proposed variance compatible with the other structures located on the site or in the vicinity of the site? On the site plan you provide, please represent accurately and to scale the height, location, and dimensions of existing structures.

Height of existing home is 24' above the foundation (basement) Proposed garage would be one story + will not block or impair views or access by neighbors

- 3. **Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.**

If so, what are those nonconformities and provide supporting documentation.

Given the upper west side neighborhood built well before zoning regulations. There are considerable deviations from requirements in the district.

- 4. **The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.**

Is the need for a variance request a result of government action? For example, the front yard setbacks were increased after construction of the structure, thereby creating the non-conformity. Explain.

none

- 5. **Whether a literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.**

For example, would the denial of the variance deny the property owner the right to safe placement of a garage where garages are typical? If so, explain.

Yes other properties have or have the ability to add an accessory garage addition

6. The extent to which the hardship or difficulty results from the actions of the applicant.

Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City Code and list alternatives and options considered by the applicant. Provide supporting documentation.

The difficulty results from current garage under home not being large enough to park cars. Additional car would have to be removed from street parking + protection of cars, recreational equipment from theft.

7. Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.

No, two neighbors have been granted the same request (see photos) our request is less noticeable

8. Do you think a rebuttable presumption, as identified in City Code Section 11-5-5(E), should apply to your property, yes or no? For example, do you have an existing non-conforming structure that you wish to rebuild in the same location? If yes, show the original footprint of the building. Provide documentation that proves the existence of the prior nonconformity. Document that the nonconformity can be in compliance with building and fire codes.

no

9. Provide any additional information you would like the Board to consider.

IT IS THE POLICY OF THE CITY OF HELENA'S BOARD OF ADJUSTMENT TO NOT ACT ON A PROPOSAL IF THE APPLICANT/PROPERTY OWNER OR REPRESENTATIVE IS NOT PRESENT AT THE BOARD OF ADJUSTMENTS HEARING. CITY STAFF REPRESENT THE CITY AND CANNOT ANSWER QUESTIONS ON BEHALF OF THE APPLICANT AT THE BOARD OF ADJUSTMENT HEARINGS.

I HEREBY CERTIFY AND ACKNOWLEDGE THE STATEMENTS IN THIS APPLICATION AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signed: Raymond Date: 7/13/2022
Property Owner

Applicant: _____ Date: _____
(If different from Owner)

(Property owner must sign application)

It is recommended that the applicant contact neighbors to inform them of proposal and identify any concerns that the applicant may be able to address.

City Planning Staff represents the City; staff cannot answer questions for the applicant.

7/13/22, 12:39 PM

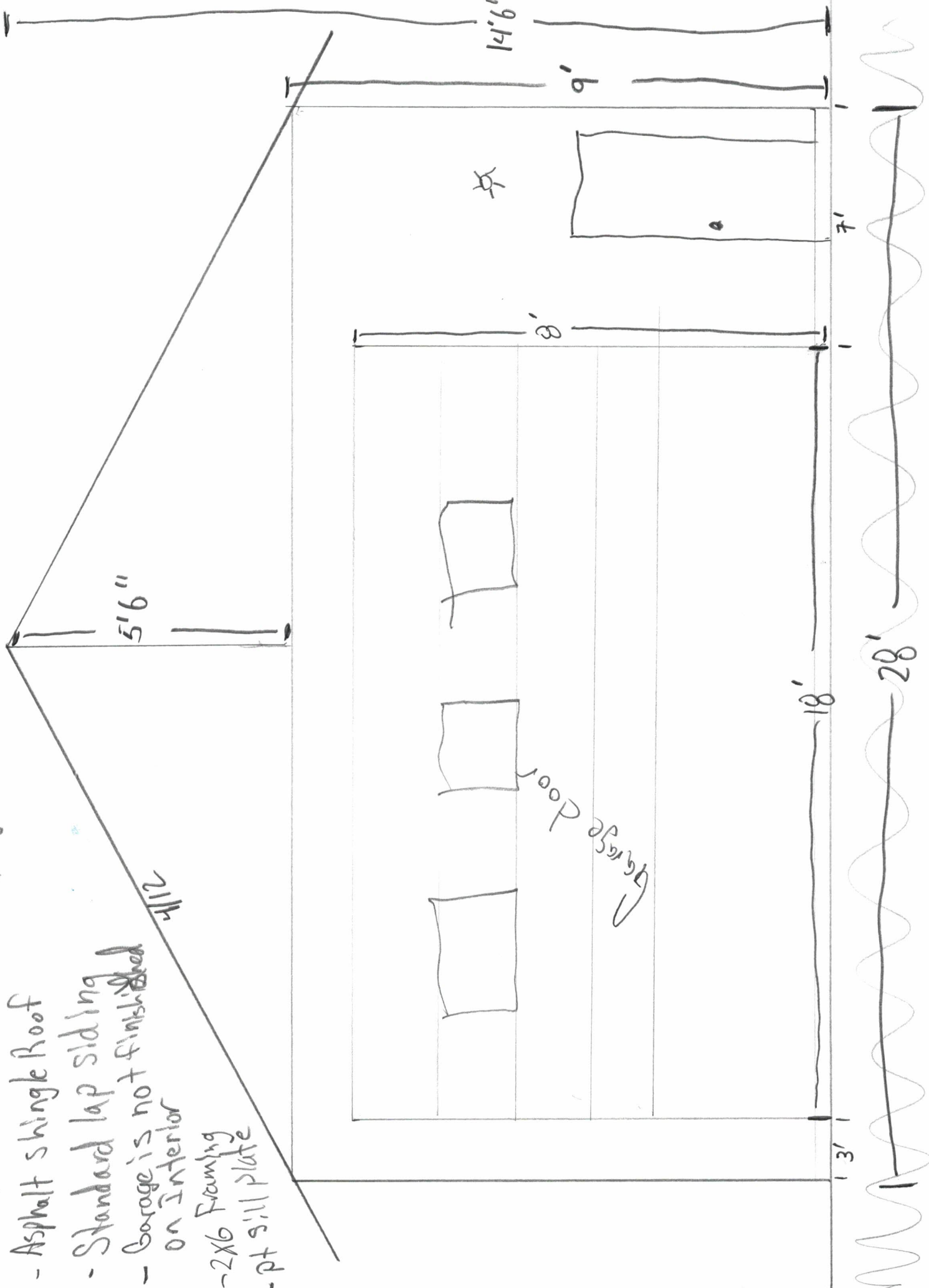
IMG_2525.JPG





- 2 exterior motion sensor light

- Slab on Grade w/ 18" thickened edges
- Asphalt shingle Roof
- Standard lap siding
- Garage is not finished on interior
- 2x6 Framing
- pt sill plate



13'
18'
28'

Garage Door

5'6"

14'6"

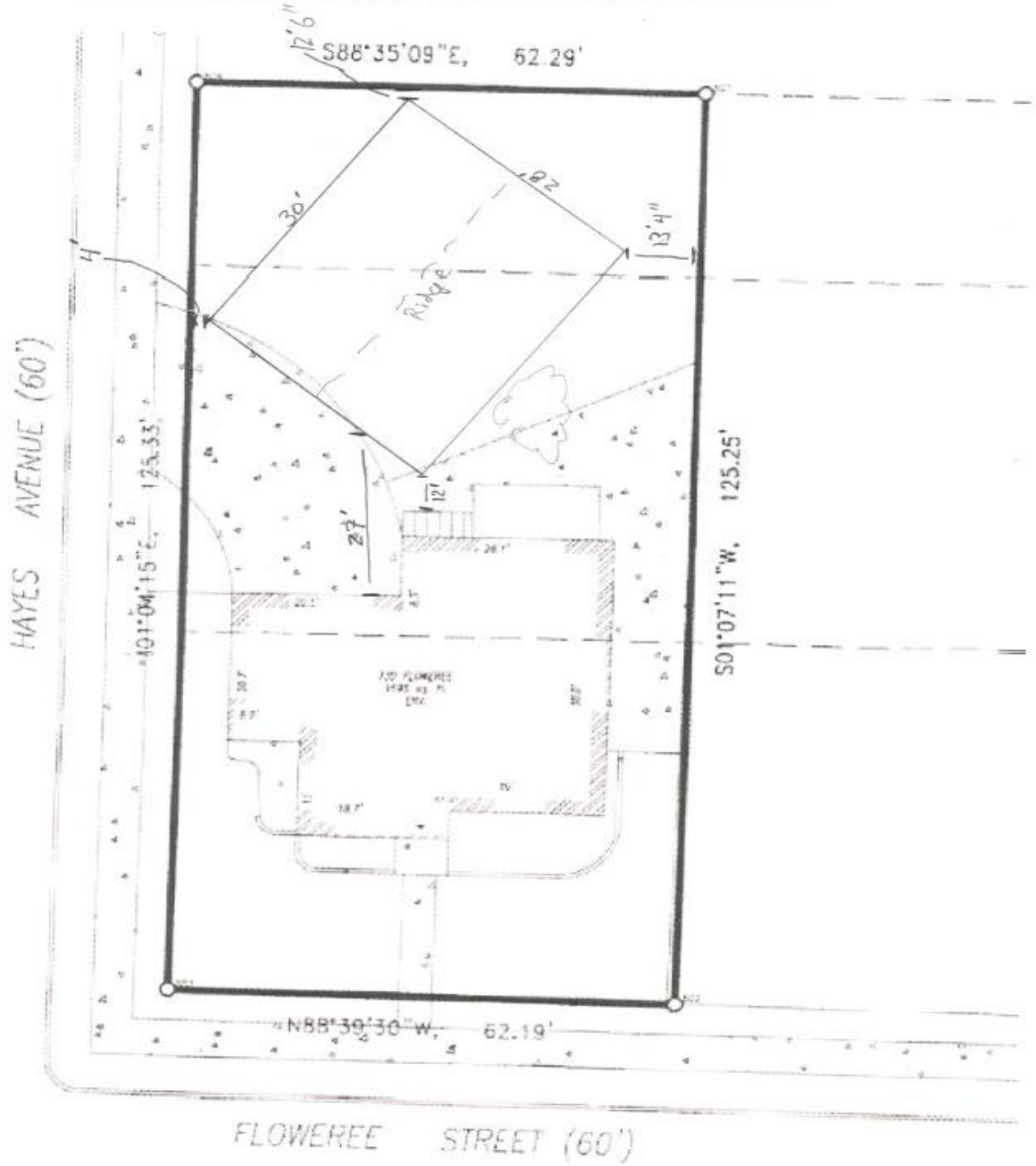
9'

9'

7'

PROPERTY INSPECTION

ADDRESS: 730 FLOWEEREE STREET, HELENA, MT 59602

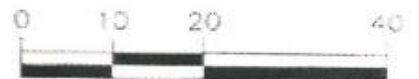


Jared A. Lay, PLS
Registration No. 17305LS

Date 2/15/16



Scale:



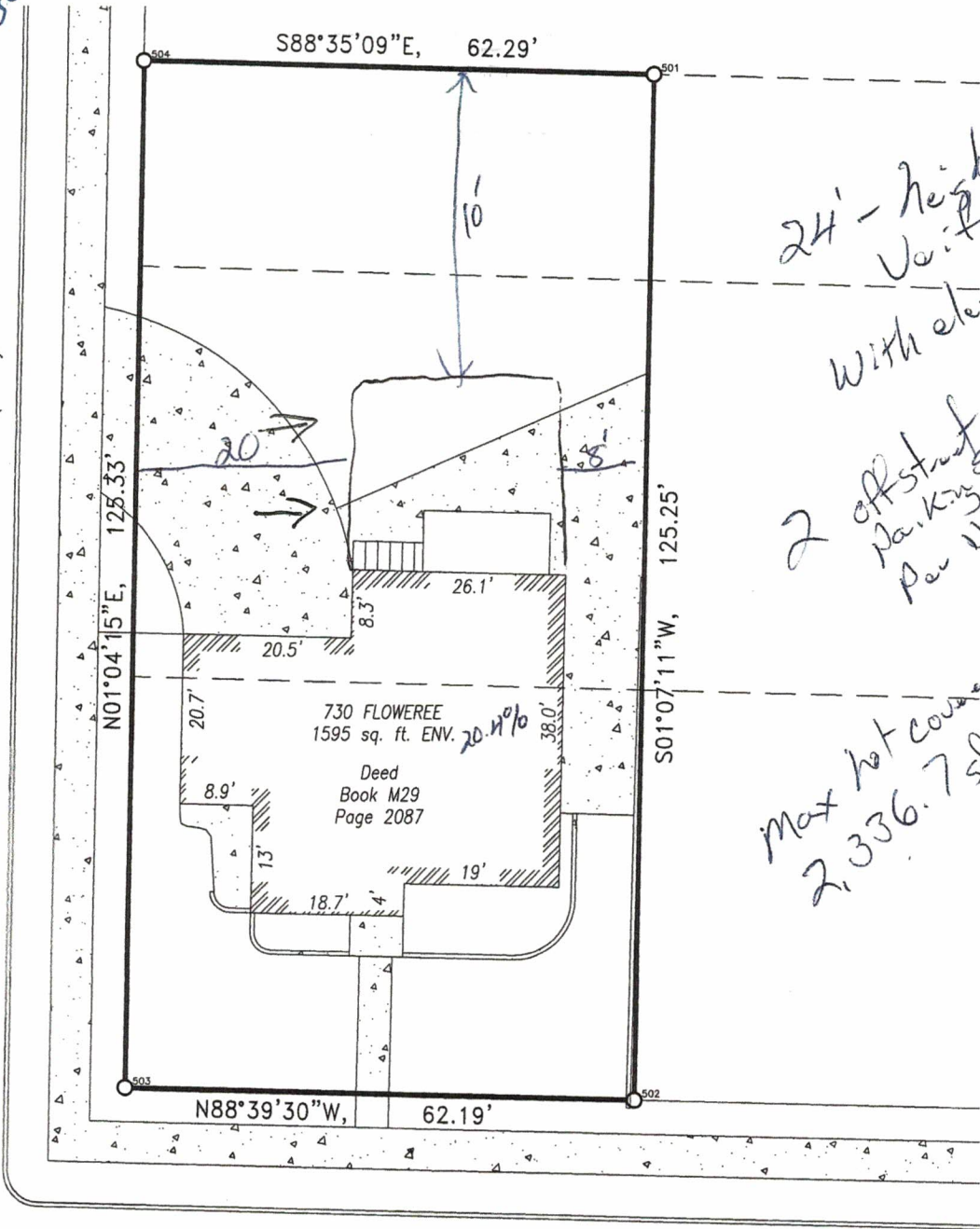
1807 Eleventh Avenue
Helena, MT 59601
Bus. (406)449-1306
Fax (406)449-2308

PROPERTY INSPECTION

ADDRESS: 730 FLOWEER STREET, HELENA, MT 59602

*Official Square Footage
7798
from Jared*

HAYES AVENUE (60')



*24' - height
Vault
with elevations*

*2 off street
parking spaces
Per U.C.*

*Max lot coverage
2,336.7 sf*

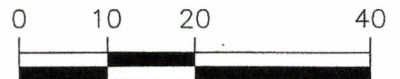
FLOWEER STREET (60')



Jared
Jared A. Lay, PLS
Registration No. 17305LS
Date 3/2/16



Scale:



1807 Eleventh Avenue
Helena, MT 59601
Bus.: (406) 449-1306
Fax: (406) 449-2308

Non-PLSS CORNER RECORD

See instructions

T 10N R 4W P.M.M. SEC 25 COUNTY LEWIS & CLARK, MONTANA

Previously filed or recorded document, check (✓) one and fill in appropriate information:

- (✓) Subdivision; Lot ___ Block ___ of HAUSER, MING ADDITION (name of subdivision)
- () Certificate of Survey No. _____; Parcel/Tract No. _____
- (✓) Deed Exhibit; Book M29 Page 2087 or Doc. No. 3048702
- () Other filed or recorded document (describe) _____

Single corner described on this corner record: SOUTHWEST CORNER OF BLOCK 12
(describe such as southeast corner of Lot 3, etc.)

I. ORIGINAL AND/OR SUBSEQUENT RECORD:

Hauser, Ming Addition Plat, Doc. No. 1000778, filed for record in 1889. Shows no monument at this position.

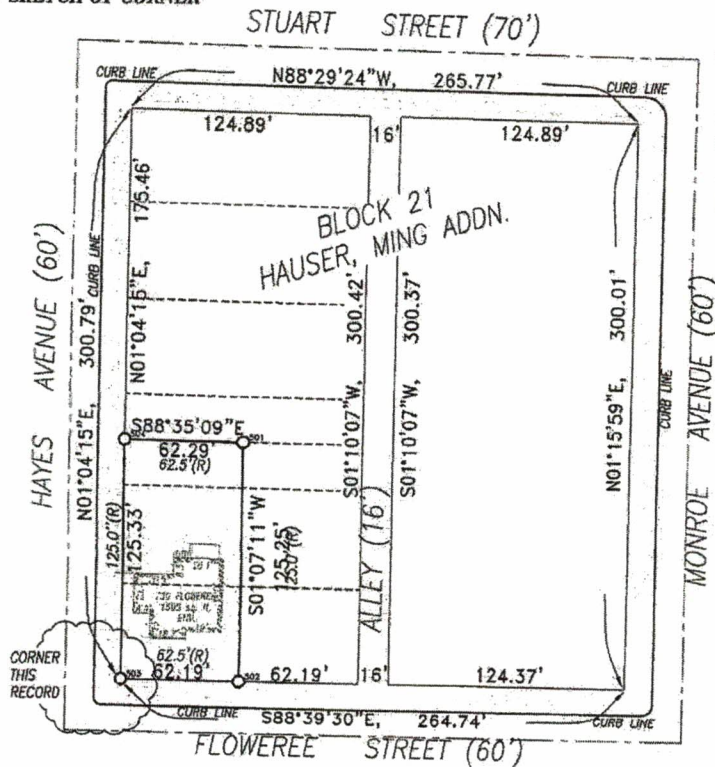
II. DESCRIPTION OF EVIDENCE FOUND OR METHOD OF LOCATING CORNER POSITION:

No monuments found. Tied back of curbs and sidewalk/Occupation to determine Block and Lot lines.

III. DESCRIPTION OF MONUMENT OF ACCESSORY:

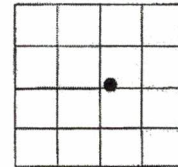
Set 5/8"x24" rebar with 1-1/2" orange plastic cap marked "J. Lay 17305LS"

IV. SKETCH OF CORNER



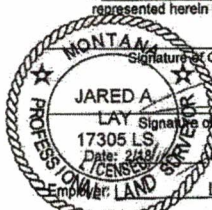
SURVEY NOTES:

1. Bearings are grid, based upon the Montana State Plane NAD 83 system.
2. Distances are ground, international feet.



SKETCH: show enough information to clearly identify the corner (use book if needed).

Location in Sec. 25

<p>Office of Clerk and Recorder, County of _____</p> <p>This "Corner Record" was filed for record on _____, was noted on the Cross Index Plat or listed in the Non-PLSS Corner Record Index and is assigned:</p> <p>Page No. _____</p> <p>in Book No. _____</p> <p>and/or Doc. No. _____</p> <p>_____ County Official</p>	<p align="center">Certifications</p> <p>I, <u>JARED A. LAY</u> certify that the work represented herein was faithfully performed.</p> <p align="center">  </p> <p>_____ Signature of Ground Party Chief</p> <p>_____ Signature of Surveyor & Seal</p> <p>Date: <u>2/18/17</u> Lic. No. <u>17305LS</u></p> <p align="center">LAY OF THE LAND</p>
---	--

Non-PLSS CORNER RECORD

See instructions

T 10N R 4W P.M.M. SEC 25 COUNTY LEWIS & CLARK, MONTANA

Previously filed or recorded document, check (✓) one and fill in appropriate information:

(✓) Subdivision; Lot ___ Block ___ of HAUSER, MING ADDITION (name of subdivision)

() Certificate of Survey No. _____; Parcel/Tract No. _____

(✓) Deed Exhibit; Book M29 Page 2087 or Doc. No. 3048702

() Other filed or recorded document (describe) _____

Single corner described on this corner record: SOUTHWEST CORNER OF BLOCK 12
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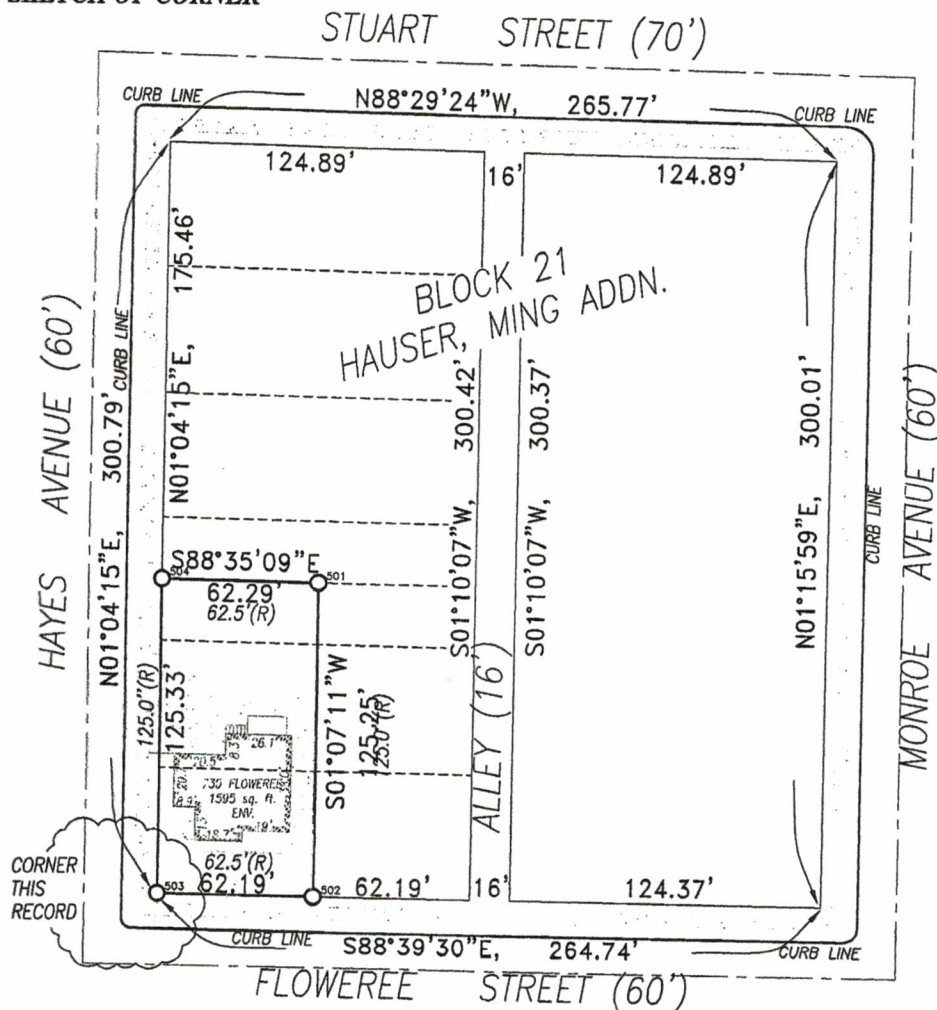
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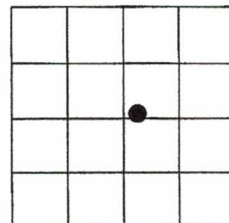
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IV. SKETCH OF CORNER



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Location in Sec. 25

Office of Clerk and Recorder, County of _____,

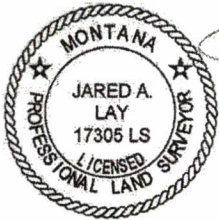
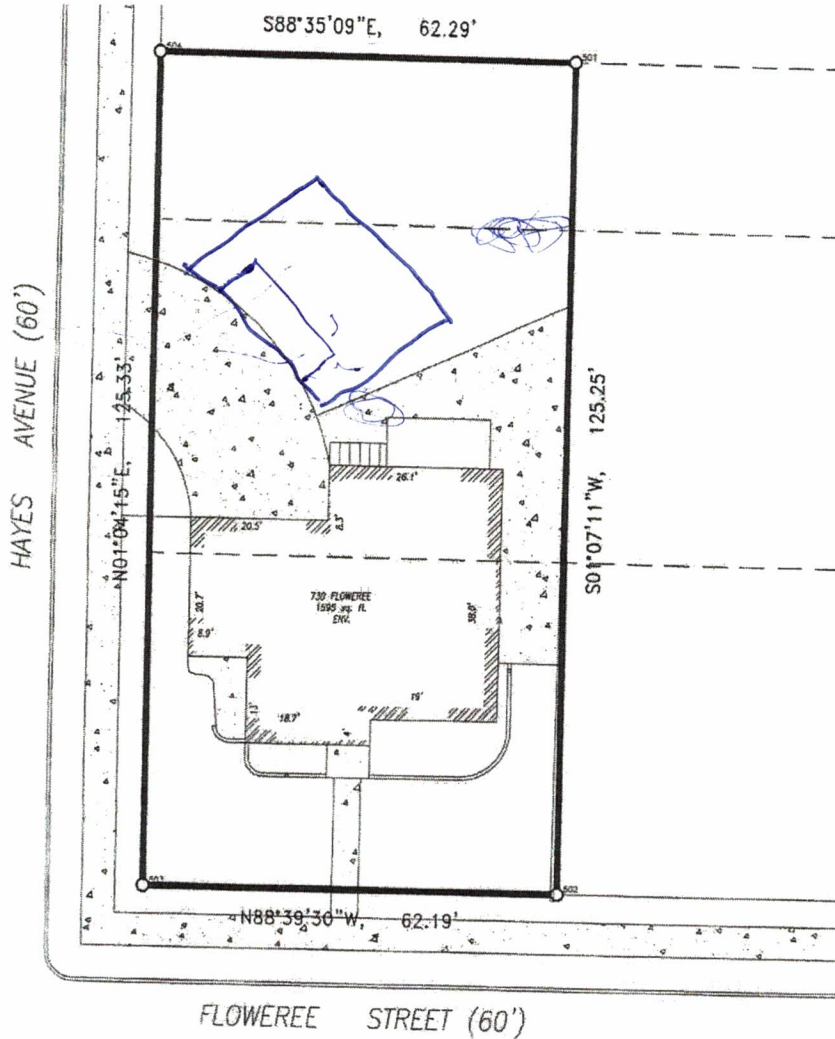
This "Corner Record" was filed for record

Certifications

I, JARED A. LAY certify that the work represented herein was faithfully performed.

PROPERTY INSPECTION

ADDRESS: 730 FLOWEREE STREET, HELENA, MT 59602

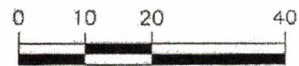


Jared A. Lay, PLS
Registration No. 17305LS

Date 2/18/16



Scale:



1807 Eleventh Avenue
Helena, MT 59601
Bus.: (406) 449-1306
Fax: (406) 449-2308

11-4-2-B-3

The vehicular entrance of a garage must be set back at least 20'...

11-4-2-E

Front lot line setback in an R-2 zoning district = 10'