



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

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**[helenamt.gov](http://helenamt.gov)**

DATE: September 13, 2022

## STAFF REPORT

TO: Helena Board of Adjustment

FROM: Michael Alvarez, City Planner II

SUBJECT: Consideration of:

**A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8' to 3' for a property with a legal description of Lot 2 in Block 19 of the Northern Pacific Addition to the City of Helena, Lewis and Clark County, Montana.**

This property is located at 1307 Boulder Ave.

The reason for the variance is to build a new garage accessed by the alley.

## OVERVIEW

### GENERAL INFORMATION

DATE OF APPLICATION: Application received July 28, 2022

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

APPLICANT / PROPERTY OWNER: Debra Dirkson

MAILING ADDRESS: 1307 Boulder Ave, Helena, MT 59601

CONTACT NUMBER: 619-417-6399

EMAIL ADDRESS: [bsolutions.dirkson@gmail.com](mailto:bsolutions.dirkson@gmail.com)

PROPERTY ADDRESS: 1307 Boulder Ave., Helena, MT 59601

LEGAL DESCRIPTION: Lot 2 in Block 19 of the Northern Pacific Addition to the City of Helena, Lewis and Clark County, Montana.

GENERAL LOCATION: This property is generally located on the south side of Boulder Ave; one property in towards the east from the corner of N Cooke St.

PRESENT LAND USE: Single Dwelling-Unit

### ADJACENT LAND USE:

North: Commercial uses (vacant property, general professional services)

South: Public Institution (Helena High School)

East: Residential uses (largely single dwelling units)

West: Residential uses (single dwelling unit to immediate west, school district buildings beyond)

PRESENT ZONING: R-2

**VARIANCE PROPOSALS:**

**Consideration of**

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8’ to 3’ for a property with a legal description of Lot 2 in Block 19 of the Northern Pacific Addition to the City of Helena, Lewis and Clark County, Montana.

**History of applicable permitting action:**

- A variance was granted to allow the minimum lot width to be reduced from 70’ to 50’ to allow the construction of the foundation for the current modular home on the property.
  - The variance was granted.
  - The property would not need to seek that variance under the current zoning regulations.

**ZONING EVALUATION for the property legally addressed as 729 9<sup>th</sup> Ave, Helena, MT, located in an R-3 zoning district.**

ZONING REQUIREMENT	Applicable ZONING REGULATION	PRESENT CONDITION	PROPOSAL	VARIANCE REQUIRED
City Code: 11-4-2 Side Lot Line Setback (west)	8’	N/A	3’	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)

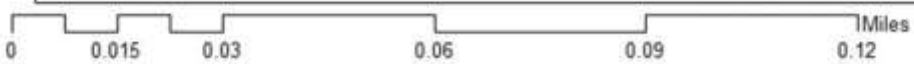
**Motion:**

**Move to Approve or Deny**

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8' to 3' for a property with a legal description of Lot 2 in Block 19 of the Northern Pacific 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.





City of Helena  
LAND USE  
Application Form

Please provide all of the information requested in the Application Instructions.  
AN INCOMPLETE APPLICATION MAY DELAY REVIEW OF YOUR REQUEST.

- 1. **APPLICANT:**  
Name: Debra Dirkson  
Address: 1307 Boulder Ave  
  
Primary Phone: 619-417-6399  
Secondary Phone \_\_\_\_\_  
Email address: bsolutions.dirkson@gmail.com  
Authorized Representative N/A  
(The representative is authorized to represent the property owner and to receive all correspondence)
- 2. **PROPERTY OWNER (if different from applicant):**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
Primary Phone: \_\_\_\_\_  
Secondary Phone: \_\_\_\_\_  
Email address: \_\_\_\_\_
- 3. **LEGAL DESCRIPTION (submit a deed and recent copy of the plat to verify description):**  
Subdivision/Blocks/Lots and COS number: Lot 2 in Block 19 of the Northern Pacific Addition to the City of Helena, Lewis and Clark County, Montana  
Section, Township, and Range: Sect 29, T. 10 N.R. SW
- 4. **ADDRESS OF PROPERTY:** 1307 Boulder Ave., Helena MT 59601
- 5. **CURRENT ZONING:** R-2
- 6. **GEOCODE:** 05-1888-29-2-08-20-0000

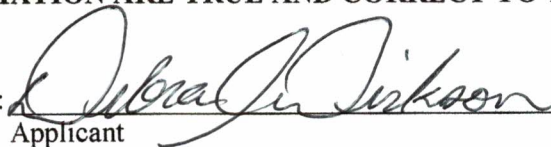
Please indicate the type of land use/land use change you are requesting and submit this form with your application:

- Pre-Zone     Annexation
- Conditional Use Permit     Variance from Zoning Regulations     Zone Change
- Major Subdivision Preliminary Plat     Minor Subdivision Preliminary Plat     Final Plat     Amended Plat

**IT IS THE POLICY OF THE CITY COMMISSION NOT TO ACT ON A PROPOSAL IF THE APPLICANT/APPLICANT'S REPRESENTATIVE IS NOT PRESENT AT THE COMMISSION MEETING. City Planning Staff represents the City; staff cannot answer questions for the applicant.**

The taxes and assessments on the applicant's property, which is the subject of the proposed action, must be paid or payment of said taxes and assessments must be made a condition of final approval of said action by the city commission, with the taxes and assessments to be paid within fourteen (14) days after final passage. In the event the taxes and assessments are not paid, the proposal will be brought back before the city commission at the next regularly scheduled meeting for reconsideration.

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

SIGNED:  Date: 7-27-22  
Applicant

Property Owner: \_\_\_\_\_ Date: \_\_\_\_\_  
(If different from applicant)



City of Helena  
**BOARD OF ADJUSTMENT**  
**APPLICATION FOR VARIANCE**  
 Community Development Department  
 Phone (406) 447-8490 Fax (406) 447-8460  
[citycommunitydevelopment@helenamt.gov](mailto:citycommunitydevelopment@helenamt.gov)

- 1) APPLICATION FOR VARIANCE MUST USE THIS FORM.
- 2) AN APPLICATION FEE OF \$125.00 MUST BE PAID TO THE COMMUNITY DEVELOPMENT DEPARTMENT BEFORE THE CITY WILL PROCESS THE APPLICATION.
- 3) THE MOST RECENT DEED FOR IMPACTED PROPERTY MUST BE INCLUDED.

CITY STAFF RESERVE THE RIGHT TO RETURN MATERIALS THAT ARE DEEMED INCOMPLETE OR LACK SUFFICIENT SUPPORTING DOCUMENTATION. THIS MAY ALSO DELAY THE SCHEDULING TO PRESENT A VARIANCE REQUEST.

(Part A) PLEASE PROVIDE THE INFORMATION REQUESTED BELOW.

1. 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.

2. APPLICANT/REPRESENTATIVE:

Name: Debra Dirkson Cell Phone Number: 619-417-6399  
 Address: 1307 Boulder Ave Other Phone Number: \_\_\_\_\_  
 Email: bsolutions.dirkson@gmail.com

3. PROPERTY OWNER (If different from applicant):

Name: \_\_\_\_\_ Cell Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Other Phone Number: \_\_\_\_\_  
 Email: \_\_\_\_\_

4. ADDRESS OF PROPERTY:

1307 Boulder Ave Helena MT 59601

5. LEGAL DESCRIPTION OF PROPERTY (Block & Lots, Subdivision/Addition):

Block 19, Lot 2, Northern Pacific Division to the City of Helena  
Historical: (Between 2nd + 3rd on Clark)

6. LOT OR PARCEL SIZE (Square feet):

150 x 50 = 7500 sqft

7. CURRENT AND PROPOSED USE OF STRUCTURE OR PROPERTY:

Residence Parking + Storage detached from residence

8. ZONING DISTRICT: (Select District)

R-2



City of Helena  
**BOARD OF ADJUSTMENT**  
**APPLICATION FOR VARIANCE**

1307 Boulder Ave

**(Part 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.*

**Dimensional Criteria:**

- Reduce front lot line setback: \_\_\_\_\_
- Front lot line setback #2 (corner lot): \_\_\_\_\_
- Reduce garage entrance setback: \_\_\_\_\_
- Reduce side lot line setback: *from 8 feet to 3 feet*
- 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 area: \_\_\_\_\_

**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: \_\_\_\_\_

**Sign Criteria:**

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





City of Helena  
 BOARD OF ADJUSTMENT  
 APPLICATION FOR VARIANCE

1307 Boulder Ave  
 pg 1 of

(Part 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.

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.

*Planning 35'W x 24' deep alley access parking structure.*

1. Are there 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 so, 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.

*Variance of 3ft will allow for access between existing 8'x16' structure & proposed 35'x24' structure. AS well as access between proposed structure & fence of west side of property.*

2. How is the proposed variance compatible with the other structures located on the site or in the vicinity of the site? Provide a site plan that accurately and to scale represents the height, location, and dimensions of existing structures.

*Currently @ the S.E. alley corner of property exists an 8'x16' deep structure approximately 2 feet from property line between 1311 and 1307 Boulder Ave*

3. Describe whether there is a prevalence of nonconformities in the vicinity of the applicant's site that are similar to the variance requested. If so, what are those nonconformities and provide supporting documentation.

*My home is in an older neighborhood with prevalence of nonconformities. See Page 1 of 4 "PHOTOS" for a few examples of predominate setbacks.*

4. 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, there fore creating the non-conformity. Explain.

*N/A*

5. Would a literal interpretation of the provisions in this title deprive the property owner of rights commonly enjoyed by other similar properties in the same zoning district? 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 - Majority of neighbors who have parking structures enjoy similar variences*



City of Helena  
 BOARD OF ADJUSTMENT  
 APPLICATION FOR VARIANCE

1307 Boulder Ave  
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(Part C Continued...)

6. 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.

No dedicated parking on street in front of my home. Parking on street is public parking. Elderly patients cannot walk distances > 1/2 block. Frequently parking is NOT available in front of home. There is more neighborhood parking than street will accommodate.

7. Describe whether or not granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other similar properties located in the same zoning district and provide supporting documentation.

Granting variance will confer same privilege my neighbors enjoy.

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.

Attached is a variance approval for my neighbor to my west 1301 Boulder Ave. Attached is a small sample of common non-conformity in my immediate neighborhood. Attached is NWE estimate to bury powerline to home.

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 THE ABOVE STATEMENTS AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT.

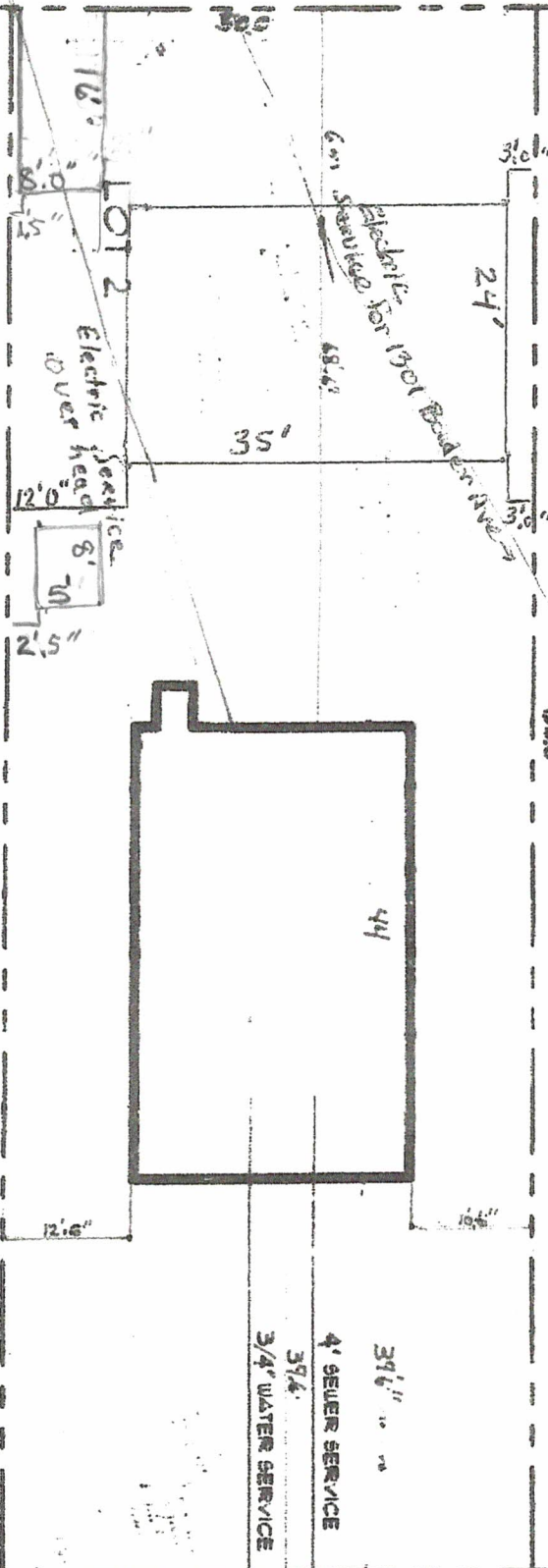
APPLICANT'S SIGNATURE: *Debra J. Silson* DATE: \_\_\_\_\_

PROPERTY OWNER'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (Property owner must sign application if different than the applicant)

N Cook St

Alley

1307 Boulder Ave



1311 BOULDER

1301 BOULDER

**APPROVED**  
 CITY OF BOULDER  
 BUILDING DEPARTMENT

IT IS UNLAWFUL TO OCCUPY THIS BUILDING Prior To Final Inspection

**OFFICE COPY**

NOTE: Plans & Specifications are subject to change without notice. The City of Boulder Building Department is not responsible for any errors or omissions on these plans. The Building Department is not responsible for any errors or omissions on these plans. The Building Department is not responsible for any errors or omissions on these plans.

**SITE PLAN**  
 SCALE 1/8" = 1'-0"

**RECEIVED**  
 JAN 02 2007

**BOULDER AVENUE**

GARDNER  
 1307 BOULDER  
 NEW MODULAR FDN  
 1.7.15

JACK SANGRAY

SITE PLAN

63-2426

1307 BOULDER AVE.

AS SHOWN

D.S.

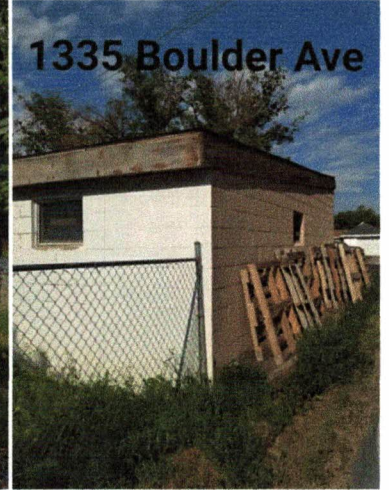
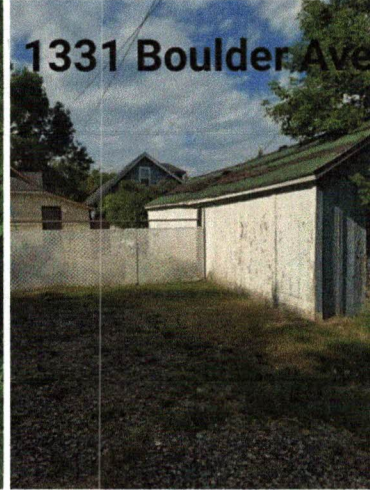
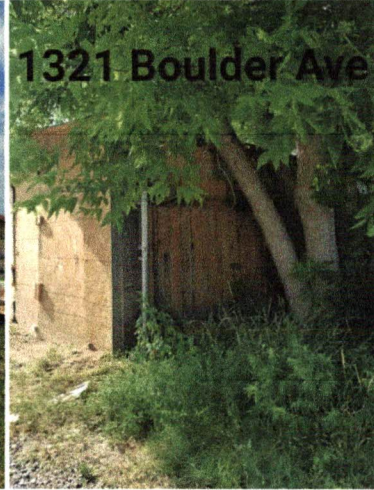
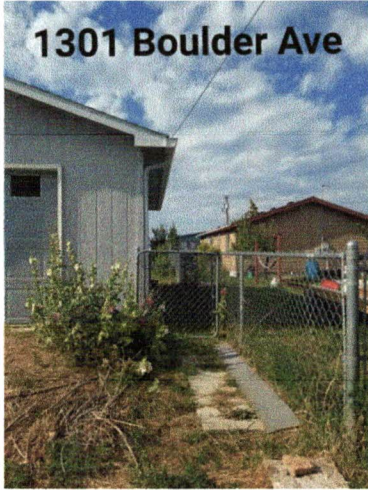


3ft setback

Zero setback

Zero setback

Zero setback



Prevalance in neighborhood of non-conformities.

1301 Boulder Approved Variance

1307 Boulder Ave  
Page 4 of 4

OFFICE COPY

Power Phone Cable } overhead From pole

Setback of 3' limits truss overhang to 12" if 24" desired, set foundation at 4' off side lot line

ALLEY

OFFICE COPY

APPROVED

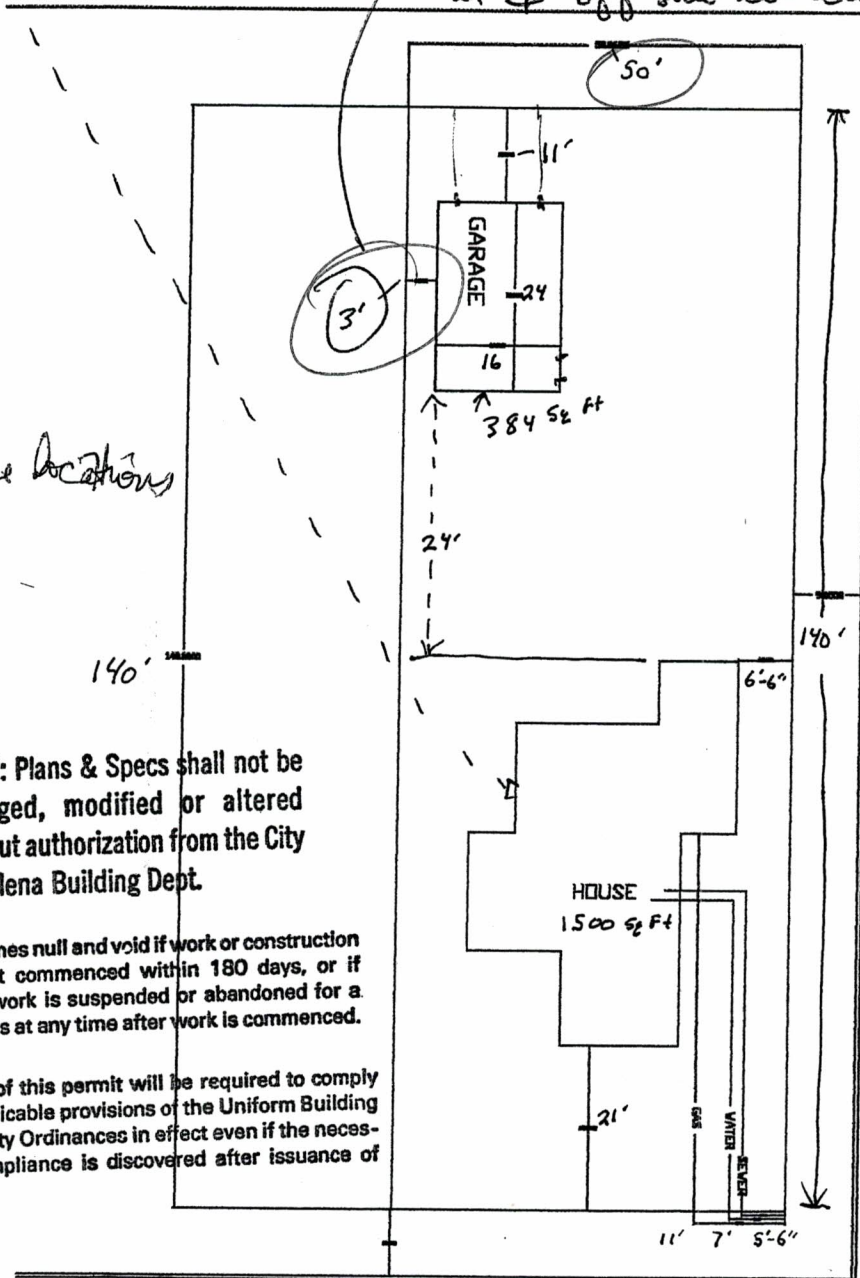
CITY OF HELENA  
BUILDING DEPARTMENT

Approval of this document does not authorize the violation of any state, county, or city law or regulation.

Permit No. 06-402  
By: BOS/Kim  
Date: 7/7/00  
Remarks: \_\_\_\_\_

IT IS UNLAWFUL TO  
OCCUPY THIS BUILDING  
Prior To Final Inspection

Karen Gardiner  
1301 Boulder



See gas line locations

NOTE: Plans & Specs shall not be changed, modified or altered without authorization from the City of Helena Building Dept.

This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced.

The holder of this permit will be required to comply with all applicable provisions of the Uniform Building Code and City Ordinances in effect even if the necessity for compliance is discovered after issuance of the permit.

50 x 140 = 7000 sf

1301 BOULDER  
2100 allowed R2  
2000 R3

actual

1884 < 50% coverage

NORTHERN PACIFIC #1 BLK 19, LOT#1

OK structure setbacks w/ note on side setbacks vs overhang  
OK bldg ht < 14'

AFTER RECORDING RETURN TO:  
Attorney Title  
P. O. Box 202  
Helena, MT 59624

### WARRANTY DEED

FOR VALUE RECEIVED, Kyla N. Gardiner, the "Grantor", does hereby grant, bargain, sell and convey to Debra Dirkson, whose address is 1307 Boulder Avenue the "Grantee" and Grantee's heirs, successors and assigns, as joint tenants (and not as tenants in common) with right of survivorship, the following described property situated in Lewis and Clark County, Montana:


Lot 2 in Block 19 of the NORTHERN PACIFIC ADDITION to the City of Helena, Lewis and Clark County, Montana.

SUBJECT TO covenants, conditions, restrictions, provisions, easements, and encumbrances apparent or of record.

TOGETHER WITH all tenements, hereditaments, appurtenances, reversions, remainders, rents, issues and profits thereof, and all rights of homestead, possession, claims and demand of the Grantors.

Grantors do hereby covenant that the Grantors are the owners in fee simple of the property; that the property is free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the property; and that Grantors will warrant and defend the same from all lawful claims whatsoever.

Date: April 7, 2022.

  
Kyla N. Gardiner

STATE OF MONTANA

County of Gallatin

This instrument was acknowledged before me on this 7 day of April 2022, by Kyla N. Gardiner.

  
\_\_\_\_\_  
Notary Public for State of Montana

