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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:

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8' to 6', and to reduce the rear lot line setback from 10' to 4' for a property with a legal description of the east 9' of Lot 9 in Block 549 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 3350208, records of Lewis & Clark County, Montana.

This property is located at 717 3rd St.

The reason for the variance is to build a new garage with additional living space between an existing pool, and in approximately the same location as the previous garage, without affecting the neighbor's drive easement.

OVERVIEW

GENERAL INFORMATION

DATE OF APPLICATION: Application received August 10, 2022

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

PROPERTY OWNER: Ken Morrison

MAILING ADDRESS: 717 3rd St, Helena, MT 59601

CONTACT NUMBER: (406) 442-0244

EMAIL ADDRESS: SKMorr@msn.com

APPLICANT: Bill Fields

MAILING ADDRESS: 6966 Green Meadow Dr, Helena, MT 59602

CONTACT NUMBER: (406) 461-3564

EMAIL ADDRESS: FieldsConstruction406@gmail.com

PROPERTY ADDRESS: 717 3rd St., Helena, MT 59601

LEGAL DESCRIPTION: The east 9' of Lot 9 in Block 549 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 3350208, records of Lewis & Clark County, Montana.

GENERAL LOCATION: This property is generally located on the south side of 3rd St; one property in towards the east from the corner of S Beattie St.

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 (largely single dwelling units)

PRESENT ZONING: R-1

VARIANCE PROPOSALS:

Consideration of

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8' to 6', and to reduce the rear lot line setback from 10' to 4' for a property with a legal description of the east 9' of Lot 9 in Block 549 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 3350208, records of Lewis & Clark County, Montana

History of applicable permitting action:

- The existing garage was widened from 16' to 22' in 1971

ZONING EVALUATION for the property legally addressed as 729 9th 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'	>9'	6'	Yes
City Code: 11-4-2 Rear Lot Line Setback	10'	4' 3"	4' 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, 3 public comments have 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)

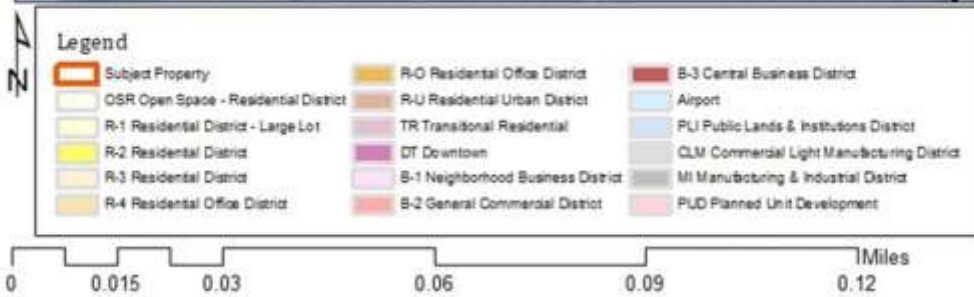
Motion:

Move to Approve or Deny

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 8' to 6', and to reduce the rear lot line setback from 10' to 4' for a property with a legal description of the east 9' of Lot 9 in Block 549 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 3350208, records of Lewis & 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:

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

PROPERTY OWNER: Primary Contact?

Name: KEN MORRISON
Address: 717 3RD ST
Email: SKMORR@MSN.COM

Primary Number: (406) 442-0244
Other Phone: (406) 431-7428

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

Name: BILL FIELDS
Address: 6966 GREEN MEADOW DR
Email: FIELDSCONSTRUCTION406@GMAIL.COM

Primary Number: (406) 461-3564
Other Phone:
Company: FIELDS CONSTRUCTION

AUTHORIZED REPRESENTATIVE: Primary Contact?

Name: _____
Address: _____
Email: _____

Primary Number: _____
Other Phone: _____
Company: _____

Section A: PLEASE PROVIDE THE INFORMATION REQUESTED BELOW.

- Address of Property 717 3RD ST HELENA MT 59601
Address City State Zip Code
- Legal Description (Block & Lots, Subdivision, COS#) EASTERLY ADDN, S31, T10 N, R03 W, BLOCK 549, LOT 6-8 + E 9' LTR
- Geocode 05-1888-31-1-09-17-0000
- The most recent deed for impacted property 11/13/1972
- Lot or Parcel Size (square feet) 13,504
- Current and proposed use of structure or property: RESIDENTIAL
- Current Zoning District R-1
- 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: 6' TO STRUCTURE ~~6' TO~~ ON WEST PROPERTY LINE
- Reduce rear lot line setback: 4' 3" ON BACK (SOUTH) PROPERTY LINE
- Exceed building height limitation: _____

Lot Coverage/Area Criteria:

- Lot coverage percentage: 17%
- Front porch lot coverage percentage: _____
- Lot area per dwelling unit: 909 sq' HOUSE 1400 GARAGE (PROPOSED)

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.

GROUND SLOPE IS FROM SOUTHEAST TO NORTH WEST. CURRENT GARAGE IS ON PROPOSED SITE. DRIVEWAY AND CURB CUT OUTS ARE IN PLACE - MOVING THE LOCATION WILL CAUSE PROBLEMS WITH NEIGHBORS ACCESS.

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.

THE RESIDENCE ON THE PROPERTY IS APPROXIMATELY 40 FT TALL.
THIS PROPOSED STRUCTURE WILL BE APPROXIMATELY 23'4" TALL.
THE STRUCTURE IS DESIGNED TO FIT BETWEEN THE POOL AND PROPERTY LINE WITHOUT CAUSING CHANGES TO THE NEIGHBORS ACCESS ON THE DRIVEWAY

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.

AN AERIAL MAP OF THE BLOCK IS INCLUDED WITH THIS APPLICATION.
ALTHOUGH BOUNDARIES ARE NOT EXACT ON THIS MAP, IT CAN BE SEEN THAT SEVERAL STRUCTURES ARE BUILT CLOSE TO (OR ON) PROPERTY LINES.

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.

NO

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.

PROPERTIES IN THIS AREA ARE OFTEN NON CONFORMING.
THIS IS AN ATTEMPT TO KEEP THE GARAGE IN ITS CURRENT LOCATION, TO MAINTAIN THE CURRENT DRIVEWAY, AND LANDSCAPING.

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.

HARDSHIPS WOULD INCLUDE DRAWING NEW PLANS, EXTRA EXCAVATING COSTS, FENCE AND LANDSCAPING INCREASE, AND MOST IMPORTANTLY LEAVING AN ACCESS FOR THE NEIGHBOR. RECENT CURBING AND SIDEWALKS FOR THE DRIVEWAY RECENTLY COST THE HOMEOWNER OVER \$5,000.00

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.**

THE AERIAL MAP WILL SHOW THAT SEVERAL HOUSES AND OUTBUILDINGS ARE BUILT CLOSE TO BOUNDARIES.

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.**

THE STRUCTURE WE ARE BUILDING IS LARGER THAN THE GARAGE WE ARE TAKING DOWN, SO REBUTTABLE PRESUMPTION DOES NOT APPLY.

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

ALL OF THE BEDROOMS IN THE CURRENT HOUSE ARE LOCATED ON THE SECOND FLOOR. HAVING A ROOM AT GROUND LEVEL COULD GIVE THE HOMEOWNERS A PLACE TO RECOVER IF NEEDED. THEY HAVE LIVED AT THIS ADDRESS SINCE 1972 AND WOULD LIKE TO STAY AS LONG AS POSSIBLE.

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: Sam Mousa Date: 8/9/22
Property Owner

Applicant: Bill [Signature] Date: 8/9/22
(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.



738

714

708

409

733

725

717

405

401

239-1L

239-1

3RD ST

233-3

24N7

642A
24N8

24N6

728

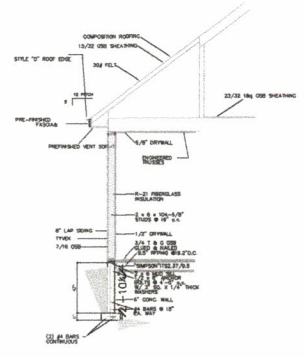
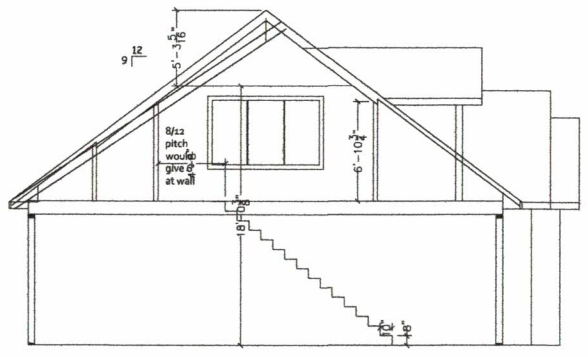
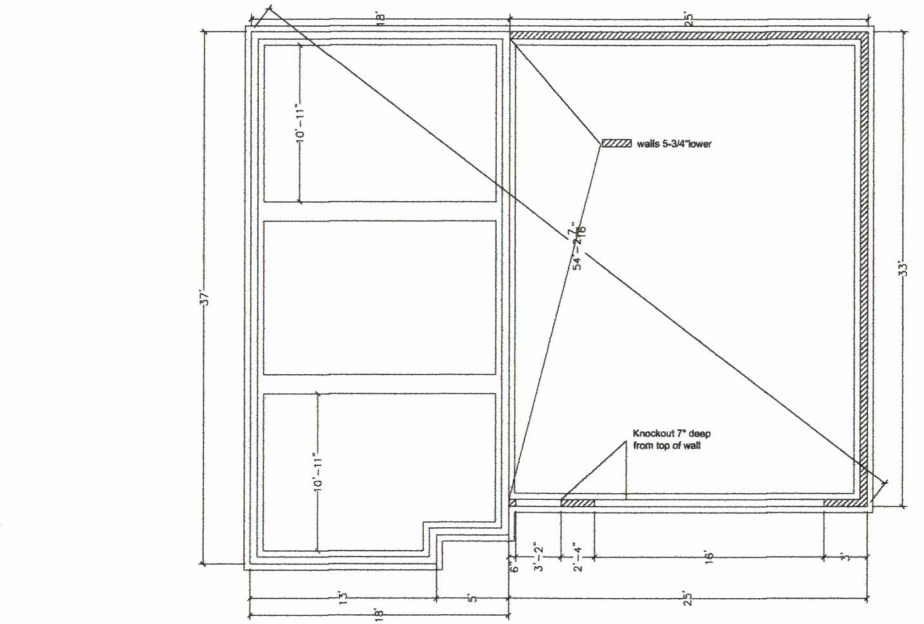
720

712

704

319

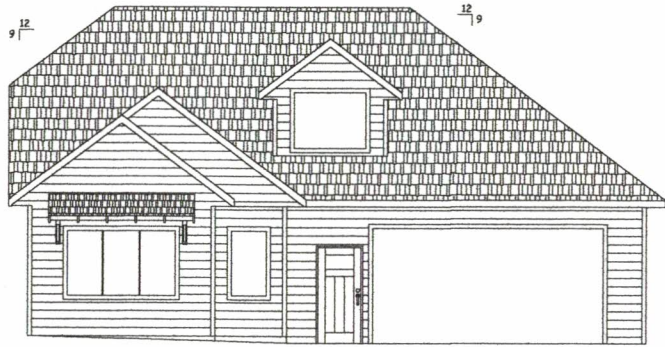
24N10



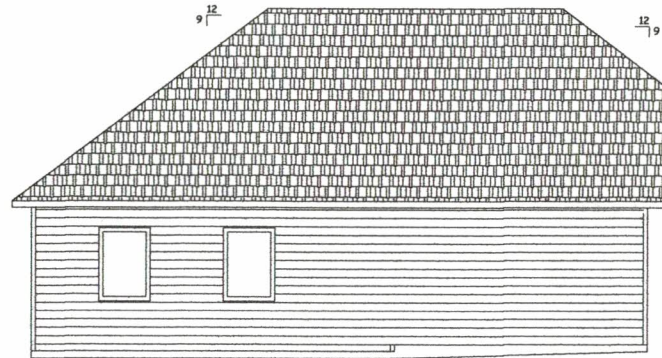
CRAWL SPACE
9' WALL, JOIST HNG

Scale: 1/4"=1'
Date: 7/27/22

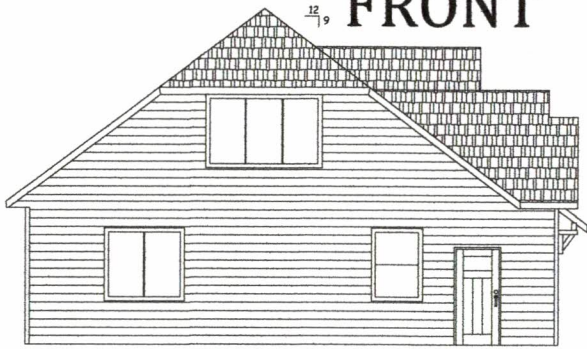
Sherry & Ken



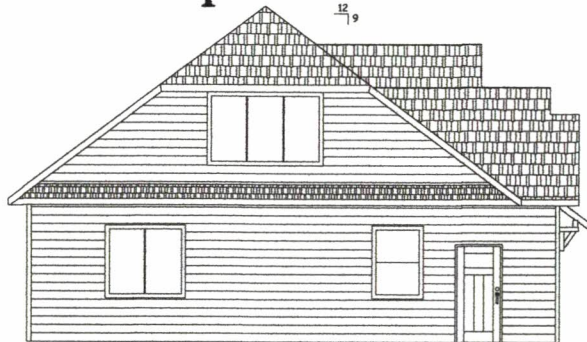
FRONT



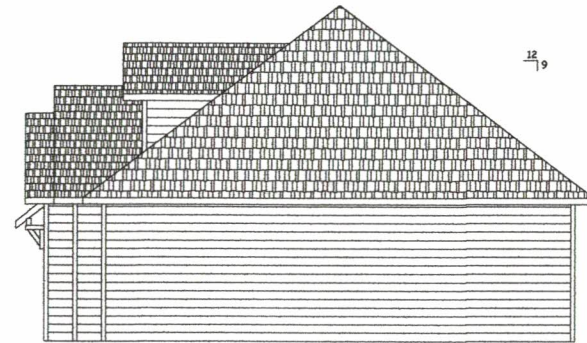
BACK



LEFT option1



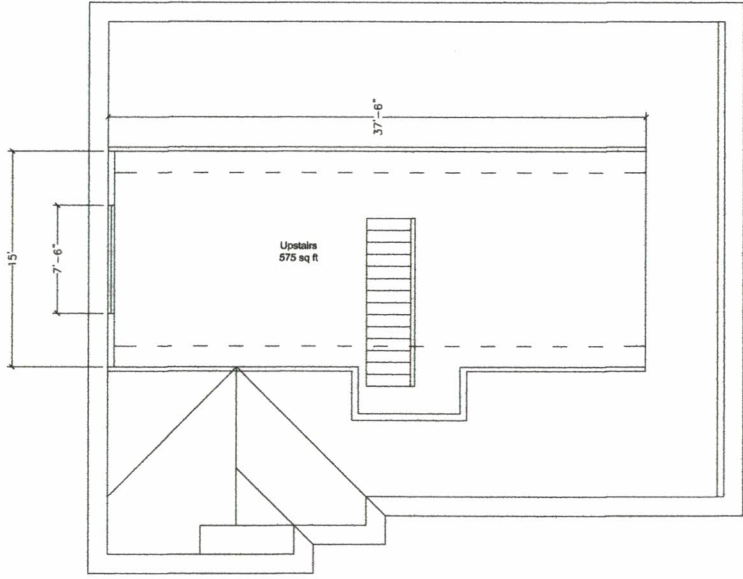
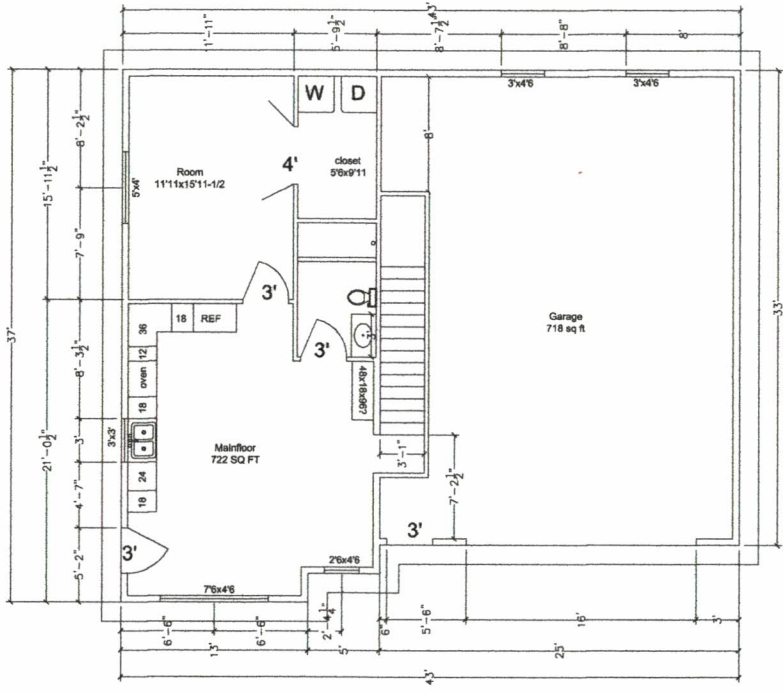
LEFT option2



RIGHT

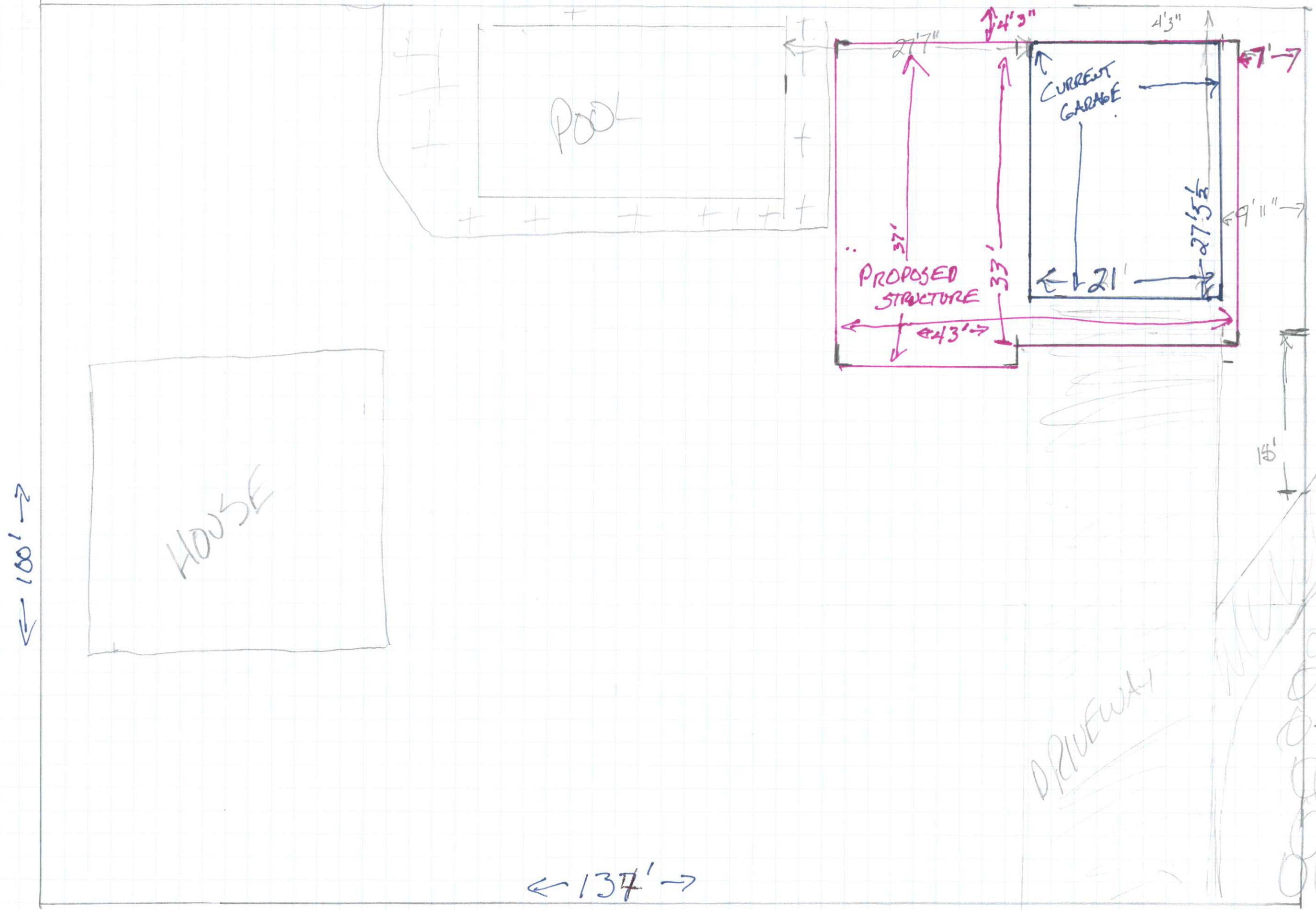
Scale : 1/4"=1'
Date : 7/27/22

Sherry & Ken



Scale : 1/4" = 1'
Date : 7/27/22

Sherry & Ken



$137'$

$1cm = 4'$

Property Record Card

Summary

Primary Information

Property Category: RP **Subcategory:** Residential Property
Geocode: 05-1888-31-1-09-17-0000 **Assessment Code:** 0000004936
Primary Owner: **PropertyAddress:** 717 3RD ST
MORRISON KENNETH K & SHERRY L HELENA, MT 59601
717 3RD ST **COS Parcel:**
HELENA, MT 59601-5341

NOTE: See the Owner tab for all owner information

Certificate of Survey:

Subdivision: EASTERLY ADDN

Legal Description:

EASTERLY ADDN, S31, T10 N, R03 W, BLOCK 549, Lot 6 - 8 & E 9' LT 9

Last Modified: 7/19/2022 7:31:25 PM

General Property Information

Neighborhood: 205.215 **Property Type:** IMP_U - Improved Property - Urban
Living Units: 1 **Levy District:** 05-048701-0101
Zoning: **Ownership %:** 100
Linked Property:

No linked properties exist for this property

Exemptions:

No exemptions exist for this property

Condo Ownership:

General: 0 **Limited:** 0

Property Factors

Topography: **Fronting:**
Utilities: **Parking Type:**
Access: **Parking Quantity:**
Location: **Parking Proximity:**

Land Summary

<u>Land Type</u>	<u>Acres</u>	<u>Value</u>
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00
ROW	0.000	00.00
NonQual Land	0.000	00.00
Total Ag Land	0.000	00.00
Total Forest Land	0.000	00.00
Total Market Land	0.310	115,829.00

Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type
11/13/1972	270	337	11/13/1972		Warranty Deed

Owners

Party #1

Default Information: MORRISON KENNETH K & SHERRY L
 717 3RD ST
Ownership %: 100
Primary Owner: "Yes"
Interest Type: Conversion
Last Modified: 11/15/2007 12:06:31 AM

Other Names

Other Addresses

Name **Type**

Appraisals

Appraisal History

Tax Year	Land Value	Building Value	Total Value	Method
2022	115829	217271	333100	MKT
2021	115829	217271	333100	MKT
2020	111030	189970	301000	MKT

Market Land

Market Land Item #1

Method: Sqft **Type:** Primary Site
Width: **Depth:**
Square Feet: 13,504 **Acres:**
 Valuation
Class Code: 2201 **Value:** 115829

Dwellings

Existing Dwellings

Dwelling Type	Style	Year Built
SFR	05 - Traditional or Victorian	1895

Dwelling Information

Residential Type: SFR **Style:** 05 - Traditional or Victorian
Year Built: 1895 **Roof Material:** 10 - Asphalt Shingle
Effective Year: 1990 **Roof Type:** 3 - Gable
Story Height: 2.0 **Attic Type:** 2
Grade: 5 **Exterior Walls:** 1 - Frame
Class Code: 3501 **Exterior Wall Finish:** 6 - Wood Siding or Sheathing
Year Remodeled: 0 **Degree Remodeled:**

Mobile Home Details

Manufacturer: **Serial #:** **Width:** 0
Model: **Length:** 0

Basement Information

Foundation: 6 - Stone **Finished Area:** 0 **Daylight:** N
Basement Type: 3 - Full **Quality:**

Heating/Cooling Information

Type: Central **System Type:** 5 - Forced Air
Fuel Type: 3 - Gas **Heated Area:** 0

Living Accomodations

Bedrooms: 3 **Full Baths:** 2 **Addl Fixtures:** 3

Family Rooms: 0

Half Baths: 0

Additional Information

Fireplaces:

Stacks: 1

Stories: 2.0

Openings: 1

Prefab/Stove: 0

Garage Capacity: 0

Cost & Design: 0

Flat Add: 0

% Complete: 0

Description:

Description:

Dwelling Amenities

View:

Access:

Area Used In Cost

Basement: 850

Additional Floors: 0

Attic: 172

First Floor: 909

Half Story: 0

Unfinished Area: 0

Second Floor: 668

SFLA: 1749

Depreciation Information

CDU:

Physical Condition: Good (8)

Utility: Good (8)

Desirability:

Property: Good (8)

Location: Good (8)

Depreciation Calculation

Age: 30

Pct Good: 0.78

RCNLD: 174320

Additions / Other Features

Additions

Lower	First	Second	Third	Area	Year	Cost
	11 - Porch, Frame, Open			95	0	2567
	34 - Deck, Concrete			84	0	413

There are no other features for this dwelling

Other Buildings/Improvements

Outbuilding/Yard Improvement #1

Type: Residential

Description: RRP3 - Pool, concrete, residential

Quantity: 1

Year Built: 1955

Grade: L

Condition:

Functional:

Class Code: 3501

Dimensions

Width/Diameter: 15

Length: 30

Size/Area: 450

Height:

Bushels:

Circumference:

Outbuilding/Yard Improvement #2

Type: Residential

Description: RRG3 - Garage, frame, detached, unfinished

Quantity: 1

Year Built: 1967

Grade: 4

Condition:

Functional:

Class Code: 3501

Dimensions

Width/Diameter:

Length:

Size/Area: 672

Height:

Bushels:

Circumference:

Outbuilding/Yard Improvement #3

Type: Residential

Description: RPA1 - Asphalt

Quantity: 1

Year Built: 1989

Grade: A

Condition:

Functional:

Class Code: 3501

Dimensions

Width/Diameter:

Length:

Size/Area: 1575

Height:

Bushels:

Circumference:

Commercial

Existing Commercial Buildings

No commercial buildings exist for this parcel

Ag/Forest Land

Ag/Forest Land

No ag/forest land exists for this parcel

Date: 08/10/2022
 Time: 11:06:03

LEWIS AND CLARK COUNTY
 *** REPRINTED ***
 CASH RECEIPT
 2021 REAL ESTATE TAXES

Receipt#	Trans Date	Clerk ID	Batch#	Tax Year	Tax Code	Receipt Total
2205218	11/12/2021	SO	20211112-000203	2021	4936	\$5,084.00

Legal Owner Name	Legal Description
MORRISON KENNETH K & SHERRY L 717 3RD ST HELENA MT 59601-5341	LOC: 1 GEO: 05-1888-31-1-09-17-0000 TWN: 10 N SCT: 31 RNG: 03 W ETY SubDiv ETY LOT: 6 BLK: 549 EASTERLY ADDN, S31, T10 N, R03 W, BLOCK 549, Lot 6 - 8 & E 9' LT 9

Stmnt#	MC	Description	1st Half	Status	2nd Half	Status
28132	0000	Tax District 01	1,778.43	PAID	1,778.43	PAID
28132	0001	STREET MAINT #1	103.08	PAID	103.08	PAID
28132	0003	SOLID WASTE	88.05	PAID	88.05	PAID
28132	0008	STORM WATER UTL	42.81	PAID	42.80	PAID
28132	0016	LANDFILL MONITORING	3.62	PAID	3.61	PAID
28132	0053	SID SIDEWALK 2018	392.93	PAID	392.92	PAID
28132	0061	URBAN FOREST MGMT	19.50	PAID	19.50	PAID
28132	0070	OPEN SPACE MAINT	14.93	PAID	14.93	PAID
28132	0306	LIGHT DISTRICT #306	77.94	PAID	77.94	PAID
28132	2121	FORESTVALE CEM	7.00	PAID	6.99	PAID
28132	2518	OPEN-SPACE LANDS	9.33	PAID	9.33	PAID
28132	8000	WATER QUALITY INSIDE CITY	4.40	PAID	4.40	PAID
		PAYMENT DATE:	11/12/2021		11/12/2021	
		TAX AMOUNT:	\$2,542.02		\$2,541.98	
		PENALTY:				
		INTEREST:				
		TOTAL:	\$2,542.02		\$2,541.98	
		RECEIPT TOTAL:			\$5,084.00	

Payment Type	Doc#	Description	Amount
Check	7896	MORRISON KENNETH K & SHERRY L	5,084.00
		TOTAL:	5,084.00