

Kyle Holland, Planner II Community Development Department 316 North Park Avenue, Room 445

Helena, MT 59623

Phone: 406-447-8492 Fax: 406-447-8460

Email: kholland@helenamt.gov

helenamt.gov

Date: September 25, 2023

STAFF REPORT

To: Helena Board of Adjustment

From: Kyle Holland, City Planner II

Subject: Consideration of:

1. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 3', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana

AND

2. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 4', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana

The reason for this variance is to place a shed on the property.

This property is located at 921 E 6th Ave.

OVERVIEW

GENERAL INFORMATION

DATE OF APPLICATION: Application received August 28, 2023

PUBLIC HEARING DATE: Board of Adjustment - 5:30 p.m., Tuesday, October 3, 2023

PROPERTY OWNER: Christ's Church

MAILING ADDRESS: 921 E 6th Ave, Helena, MT 59601

CONTACT NUMBER: (406) 465-2368

APPLICANT: Larry Goll

MAILING ADDRESS: 71 Hill Brothers Road, Clancy, MT 59634

CONTACT NUMBER: (406) 465-6997

EMAIL ADDRESS: lbgoll@gmail.com

PROPERTY ADDRESSES: 703 Breckenridge St, Helena, MT 59601

LEGAL DESCRIPTION:

East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana

PRESENT LAND USE: Church

ADJACENT LAND USE:

North: R-3 – Residential - Single Dwelling Unit South: R-3 – Residential - Single Dwelling Unit R-3 - Residential – Two Dwelling Unit East: R-3 – Residential - Single Dwelling Unit West: R-3 – Residential – Multi Dwelling Unit

PRESENT ZONING: R-3

VARIANCE PROPOSALS:

1. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 3', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana

AND

2. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 4', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana

HISTORY OF APPLICABLE PERMITTING ACTION:

- August 2022 A permit for a new furnace
- August 1996 A Permit for new water service
- November 1977- A permit for new rear stairs
- August 1949 Original permit for construction of a church

There was a variance granted in April of 1981 to permit a front yard fence to exceed the height maximum

ZONING EVALUATION for the property legally addressed as 921 6^{th} Ave, Helena, MT, located in a R-3 zoning district.

ZONING REQUIREMENT	Applicable ZONING REGULATION	PRESENT CONDITION	PROPOSAL	VARIANCE REQUIRED	
City Code:	Side Lot Line				
§11-4-2	Setback - R-3		3'	Yes	
LOT REQUIREMENTS	Zoning	New Construction	3	165	
FOR ZONING DISTRICTS	District				
City Code:	Side Lot Line				
§11-4-2	Setback – R-3	New Construction	4'	Voc	
LOT REQUIREMENTS	Zoning	New Construction	4	Yes	
FOR ZONING DISTRICTS	District				

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 Monday, September 25, 2023, one comment against the requested variance has been received.

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

- 1. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 3', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana AND
- 2. A variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 4', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen 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:

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

Regards,

Kyle Holland, Planner II

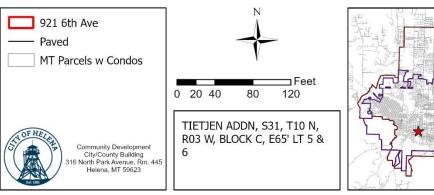
La Wellow

Community Development Department City-County Building 316 N. Park Ave, Rm 403 Helena, MT 59623

921 6TH Ave

Zoning Map





TOF HELEN

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:	Christ's Church	Primary Number:	406 465-2368					
Address:	921 E Sixth Ave	Other Phone:						
Email:								
APPLICAN	T (If different from property ov	vner): Primary Contact? ☑						
Name:	Larry Goll	Primary Number:	406 465-6997					
Address:	71 Hill Brothers Road	Other Phone:	406 465-7438					
Email:	lbgoll@gmail.com	Company:						
AUTHORIZ	ED REPRESENTATIVE: Primary	y Contact? □						
Name:	Steve Nichols	Primary Number:	406 465-9213					
Address:	3355 Hutton Road	Other Phone:						
Email:	Hisdelight23@gmail.com	Company:						
☑ Address	of Property 921 E Sixth Helen	na MT 59601 City	State Zip Code					
		•	•					
		ion, COS#) Tietjen Addition, S31, T1	o 14, Ros 44, Block o,					
	t 65 feet of lots 5 & 6	***************************************						
☑ Geocode	05-1888-31-1-44-11-0000							
☑ The mos	et recent deed for impacted prope	erty						
☑ Lot or Pa	Lot or Parcel Size (square feet) 6760 sq. ft.							
	Current and proposed use of structure or property: storage shed							
	Zoning District R-3							
		ions being submitted: Yes \(\square\) No [Ø					
	proof of current paid taxes							
	•	ng data/documents. The site plan me e standard.	nust clearly show the existin	ıg				

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.

Dim	ensional 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:	From the required 6 feet to 3 feet From the required 6 feet to 4 feet
Lot	Coverage/Area Criteria:	
	Lot coverage percentage: Front porch lot coverage percentage: Lot area per dwelling unit:	
Lan	dscaping Criteria:	
	Reduce or eliminate landscaping area. Reduce or eliminate screening:	
<u>Par</u>	king Criteria:	
	Exceed the maximum parking spaces Reduce the amount of required on-site Reduce or eliminate loading berths: Reduce or eliminate required bicycle s Reduce size of parking space:	e parking spaces:
Sig	n 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

ec	MOIL D. EVALUATION LACTORS						
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. This lot is a rectangular corner residential lot. The lot slopes down from west to east.						
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. There is a 20ft x 24ft cement slab basketball court in the back yard. The proposed variance for the shed						
	allows it to be 3 feet farther away from the court, giving more room for play.						
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. There are many garages and sheds in this neighborhood built on or very close to their property lines.						
	See attached pictures.						
	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 nonconformity. Explain. NA The zoning requirements were in place when the shed was installed.						
_							
-							
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. Most of the properties in this area have sheds or garages built right on the property lines.						
	We should have the same right to position our shed close to our property lines.						

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.
	Our lot is sloping from west to east. Moving the shed 3 feet to the east would require excavation of the
	spot to make it level. It would also put the shed 3 feet closer to the basketball court, leaving less room
	for play.
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.
	This variance would not grant us any special privilege that the surrounding properties don't already
	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. We are not reconstructing a non-conforming building.
9.	
	The present placement of our shed on our property does not affect our neighbors in any way.

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:	Evangelist - Christs	'ChurchDate:	8/28/23
	Property Owner		/ /
Applicant:		Date:	
Applicant.	(If different from Owner)	Date.	
	(ii different from Owner)		
(Property owner	must sign application)		
` ' '	9 11 /		

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.



The neighbor to our south has a garage built very close to the property line. The neighbor to our tast side west side has a

shed set very close to the property line.

(as seen behind our shed.)

Google Maps

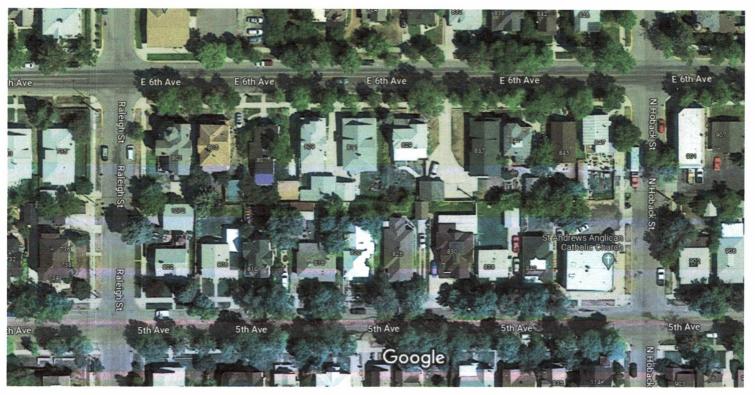
Christ's Church



Imagery ©2023 CNES / Airbus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 20 f

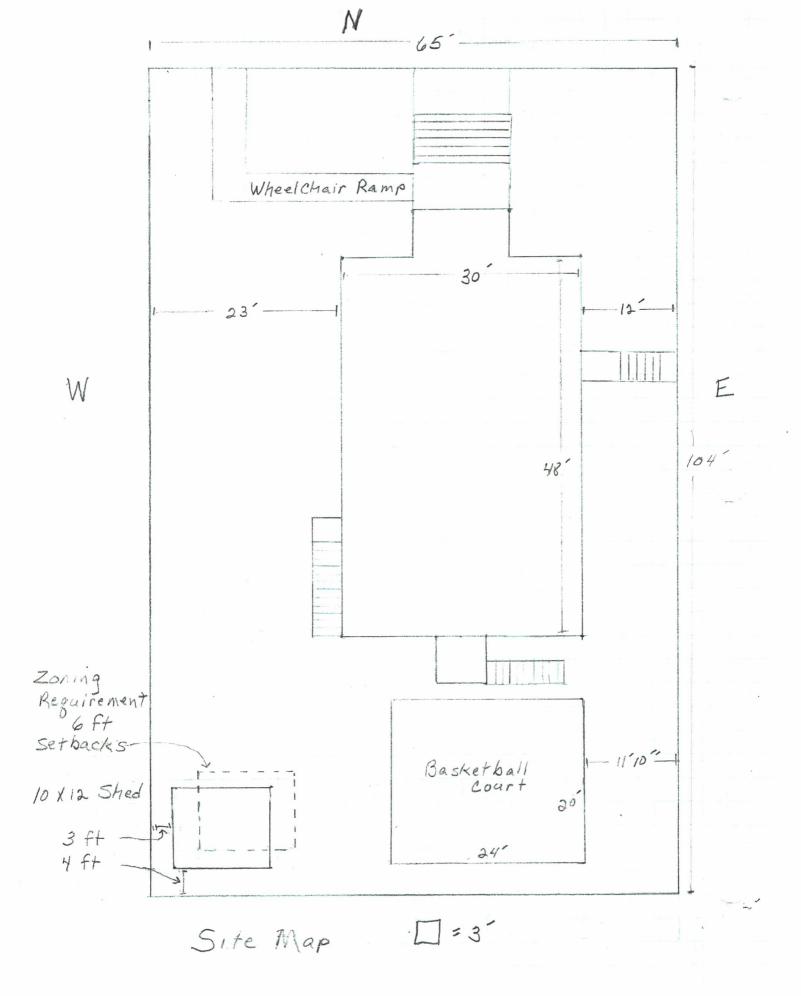
900 block of 5th + Sifth. This picture from google maps shows many structures built close to the property line. Google Maps

800 Block of 5th + 6th



Imagery ©2023 CNES / Airbus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 50 f

This picture from Google maps shows many structures built on the property line or close to it.



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ATTEST:

a California sorporation

YICE President.



Levy Description

Amy Reeves Lewis & Clark County Treasurer 316 N. Park Ave Rm 113 Helena, MT 59623

Phone: (406) 447-8329

6906*25**G50**0.8015**1/2******AUTO5-DIGIT 59601 CHRIST'S CHURCH 921 E 6TH AVE HELENA MT 59601-4467 -ինչ-ի-սկչ-Ունսուն-իլիլին-ն-չ-իլիիիիյիկ-ն-Ուիիիիիիիի

YEAR 2022 REAL ESTATE STATEMENT OF TAXES PAYABLE

PROPERTY ID NO.: 23074 01-02: Tax District 01 1-10 N-03 W

BLOCK C

Valuation Type Market Value Taxable Value 83.536.00 Real Estate 0.00 105,990.00 0.00 Improvements 0.00 Personal Property 0.00 189,526.00 0.00

165,110 County Mill Value

Levy Description (Continued)

Total Mill Levy: Total General Taxes

GENERAL TAX DETAIL

DELINQUENT TAXES Total Prior Year(s)

For internet payments

please log onto

You will be asked for a jurisdiction Number. This

number is 3602. You will then be prompted for

payment information.

Delinquent Tax Including Penalty and Interest:

If Paid By*

Amount

0.00

327.18

327.18

* Additional Penalty and Interest shall be added if not paid by above date

Call 406-447-8329

are delinquent at anytime if they pay the full amount of the delinquency. If taxpayer wants to pay only part of their delinquent taxes then the current year has to be paid in full before they can pay a

Please review the back of the tax bill for Dist. Breakdown and further information.

	SPECIAL ASSES	SMENIS		urmer miormation.
Descr	iption	Code	1st Half	2nd Half
0T 0T 0T 0T 0T 0T 0T	OPEN SPACE MAINT STREET MAINT #1 STORM WATER UTL LANDFILL MONITORING WATER QUAL/COMM/CITY URBAN FOREST MGMT LIGHT DISTRICT #306	0070 0001 0008 0016 8042A 0061 0306	10.52 195.00 38.44 9.04 17.58 19.50 37.10	10.51 195.00 38.43 9.04 17.58 19.50 37.09

Total Taxes Due Current Year

*-Voted In

**-Voted to increase

***-Voted to exceed Statutory Authority

022 2ND HALF PAYMENT STUB

Property ID Number: 23074

DUE ON OR BEFORE: 05/31/2023

Property Tax Assistance eligibility reflected in amount due for current tax year

Department of Revenue at 406-444-4000 for further information.

CHRIST'S CHURCH 921 E 6TH AVE HELENA MT 59601-4467 Second Half A mount Due: \$327.15

327.15

327.15

NO SECOND HALF NOTICE WILL BE SENT. YOUR CHECK IS YOUR RECEIPT, STUBS MUST ACCOMPANY PAYMENT, FOR A COPY OF YOUR RECEIPT INCLUDE A SELF ADDRESSED STAMPED ENVELOPE



LCC-K48GNQ3C

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

LEWIS & CLARK COUNTY TREASURER 316 N. PARK AVE RM 113 HELENA MT 59623-0001 նուլնոլիուկիոիթյենկներկերինյինկնենկներինյինյին

Project Reviews City of Helena

Project Number: ZBOA2308-005 Description: 921 E 6th Ave

Applied: 8/28/2023 Approved: Site Address: 921 E 6TH AVE

Closed: Expired: City, State Zip Code: **HELENA, MT 59601**

Status: **RECEIVED** Applicant: **Larry Coll**

Parent Project: Owner: CHRIST'S CHURCH

Contractor: <NONE>

Details:

	LIST OF REVIEWS									
SENT DATE RETURNED DATE		DUE DATE	ТҮРЕ	CONTACT	STATUS	REMARKS				
Review Group: ALL	Review Group: ALL									
9/15/2023	9/25/2023	9/25/2023	BUILDING	Kim Mack	SEE COMMENTS					

Notes:

2021 International Residential Code (IRC) requires one-hour fire resistive construction where structure is less than 5 feet from property line. Although the shed of 120 square feet would not need a permit, language in the IRC commentary states, "even work that does not require a permit, must be done in a manner that will comply with the code requirements.

If shed is move to 3 feet and 4 feet from property line, the west and south walls will require modifications to comply with one-hour construction. Building Division can assist is provide information for construction compliance.

Bananig Bivision ea	ii assist is provide ii		raction compliance.					
9/15/2023		9/25/2023	CITY ATTORNEY	Attorney Bucket				
Notes:								
9/15/2023		9/25/2023	ENGINEERING	Tyson Lesmeister				
Notes:								
9/15/2023	9/25/2023	9/25/2023	FIRE	Lou Antonick	SEE COMMENTS			
Notes:								
This must meet all	International Buildir	ng Code and Internat	tional Fire Code requireme	nts.				
9/15/2023		9/25/2023	POLICE	Police Bucket				
Notes:								
9/15/2023	9/19/2023	9/25/2023	PUBLIC WORKS	JAMIE CLARK	NO COMMENT			
Notes:								



Project Reviews City of Helena

9/15/2023	9/26/2023	9/25/2023	TRANSPORTATION SYSTEMS	Mark Young	NO COMMENT					
Notes:										
Review Group: AUT	Review Group: AUTO									
8/28/2023		8/31/2023	DIRECTOR REVIEW	Christopher Brink						
Notes:										





05 #8651515978 :8051005P0:1

\$1,535.25

12/27/2022

CHRISTS CHURCH

Page 3 of 3

Account Number: 8462121238

CHECKS								
Number 6012	Date 12/02/22	Amount \$820.30	Number 6015 *	⊅ate 12/02/22	Amount \$654.33	Number 6017 *	Date 12/16/22	Amoun \$30.00
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Kyle Holland, Planner II Community Development Department 316 North Park Avenue, Room 445

Helena, MT 59623

Phone: 406-447-8492 Fax: 406-447-8460

Email: kholland@helenamt.gov

helenamt.gov

Date: September 25, 2023

Subject: Multiple conversations with George McCauley, 926 5th Ave., regarding the zoning violation and

variance request at 921 E 6th.

Conversation: Starting with a conversation about setback requirements and zoning violations I have had several in-person and phone conversations with Mr. McCauley regarding the setback

requirements, zoning violation policies, and variance procedures regarding the location of the shed at 921 E 6th. Throughout these conversations Mr. McCauley has maintained his disapproval of construction that does not follow the City guidelines and procedures. He has commented that just because other similar structures have been constructed with similar setbacks without variances or City approval does not mean that the rules should not be

followed.

Mr. McCauley also has concerns about the runoff from the shed and its potential impacts to his studio. He states that he has worked to improve his property to manage his runoff and does not believe that he should be potentially impacted by other properties.

Sincerely,

Kyle Holland, Planner II

Community Development Department City-County Building 316 N. Park Ave, Rm 403 Helena, MT 59601

Lallocal