



YELLOWSTONE COUNTY BOARD OF ADJUSTMENT

YELLOWSTONE COUNTY, MONTANA

THURSDAY, AUGUST 9, 2012

SUBJECT: Variance #264 – 3605 Grand Avenue – Michelotti Sawyers
THROUGH: Candi Beaudry, AICP, Planning Director
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

REQUEST

This is a variance from 27-308 requiring a minimum lot area of 10 acres in an Agriculture Open-Space (A-1) zone to allow the creation of one 7-acre parcel of land to divide an existing cemetery from an agricultural parcel. The subject property is located at 3605 Grand Avenue. The Board of Adjustment determinations for variances are included at the end of the staff report. The Planning Division is forwarding a recommendation of conditional approval.

APPLICATION DATA

OWNER: Michelotti-Sawyers Mortuary, Inc.
AGENT: John Michelotti
PURPOSE: To allow the division of an agricultural parcel from an existing cemetery
LEGAL DESCRIPTION: C/S 2974, Tract 2
ADDRESS: 3605 Grand Avenue
SIZE OF PARCEL: 20.2 acres
EXISTING LAND USE: Cemetery and Agricultural land
PROPOSED LAND USE: same with separate parcels for each use
EXISTING ZONING: A-1

APPLICABLE ZONING HISTORY

Subject Property

None

Surrounding Property

Variance #256 – Broadwater Avenue – west of Zimmerman Trail – A variance from the 27-308 requiring a minimum lot area of 10 acres in an A-1 to allow the creation of a 1.5-acre parcel along Broadwater Avenue on the Yemen Golf Course was conditionally approved on February 14, 2008.

CONCURRENT APPLICATIONS

None

SURROUNDING ZONING & LAND USE

NORTH: Zoning: A-1

SOUTH: Land Use: Agricultural Land
Zoning: A-1
Land Use: Agricultural Land
EAST: Zoning: A-1
Land Use: Agricultural Land
WEST: Zoning: R-70, Neighborhood Commercial (NC) & Residential Professional (RP)
Land Use: Single family homes, assisted living, professional offices, retail spaces

REASONS

This is a request for a variance from Section 27-308 requiring a minimum lot area of 10 acres to allow the land owner to place each primary land use on a separate legal lot. Yellowstone Valley Memorial Park is operated by Michelotti-Sawyers Mortuary and was established in 1998. The remaining 7 acres of the 20-acre parcel continues to be used for cropland production through leases. The owner would like to divide the two uses, creating one 7-acre parcel for the agricultural use and one 13-acre parcel for the existing cemetery. No change in land use is contemplated at this time.

One other variance from the minimum lot area for the A-1 zone has been approved in recent history. This variance was for the creation of a 1.5 acre parcel parallel to Broadwater Avenue on the south side of the Yegen Golf Course. The parcel was to be created so it could be purchased in the future by the City of Billings for right of way for Broadwater Avenue and for the Arnold Drain. The proposed variance is similar in nature although the requested reduction is smaller than the precedent variance. The Planning Division has reviewed this variance and is recommending approval based on the criteria for granting variances. There are similarly situated properties in the area and at least one variance has been granted by the County Board of Adjustment in the immediate area. The owner can use the property in compliance with the required lot area of 10 acres per lot; however the existing uses would not be completely separated by two equal 10-acre parcels of land.

RECOMMENDATION

The Planning Division is recommending conditional approval.

DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances that are peculiar to the land and create a hardship that is applicable to the subject property. The only potential hardship is the cemetery currently occupies 13 acres and the agricultural use is 7 acres making two 10-acre lots to separate the uses ineffective.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

Staff is aware of at least 1 similar variance request approved in the past few years for

property on Broadwater Avenue and Zimmerman Trail. The variance was approved. There have been similar lot area variances for land further south and west of the subject property for the creation of smaller lots for dwellings in the A-1 zone. Denial of the requested variance would not deprive this owner of rights commonly enjoyed by others in the same district.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;

Granting the variance will not confer on the applicant a special privilege that is denied other land in the district.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Comprehensive Plan;

The granting of this variance will not conflict with the Yellowstone County and City of Billings 2008 Growth Policy. The preservation of agricultural land in West Billings is a goal of the policy. Creation of a separate lot for the agricultural use will help preserve this use.

5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;

Staff is recommending conditions of approval as follows:

1. The variance to reduce the required lot area from 10 acres to 7 acres is limited to Tract 2 of C/S 2974 and no other variance is intended or implied by this approval.
2. The applicant will submit a certificate of survey amendment within 60 days of Board of Adjustment approval.
3. The certificate of approval will covenant and limit the use of the proposed 7-acre parcel for agricultural purposes.
4. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

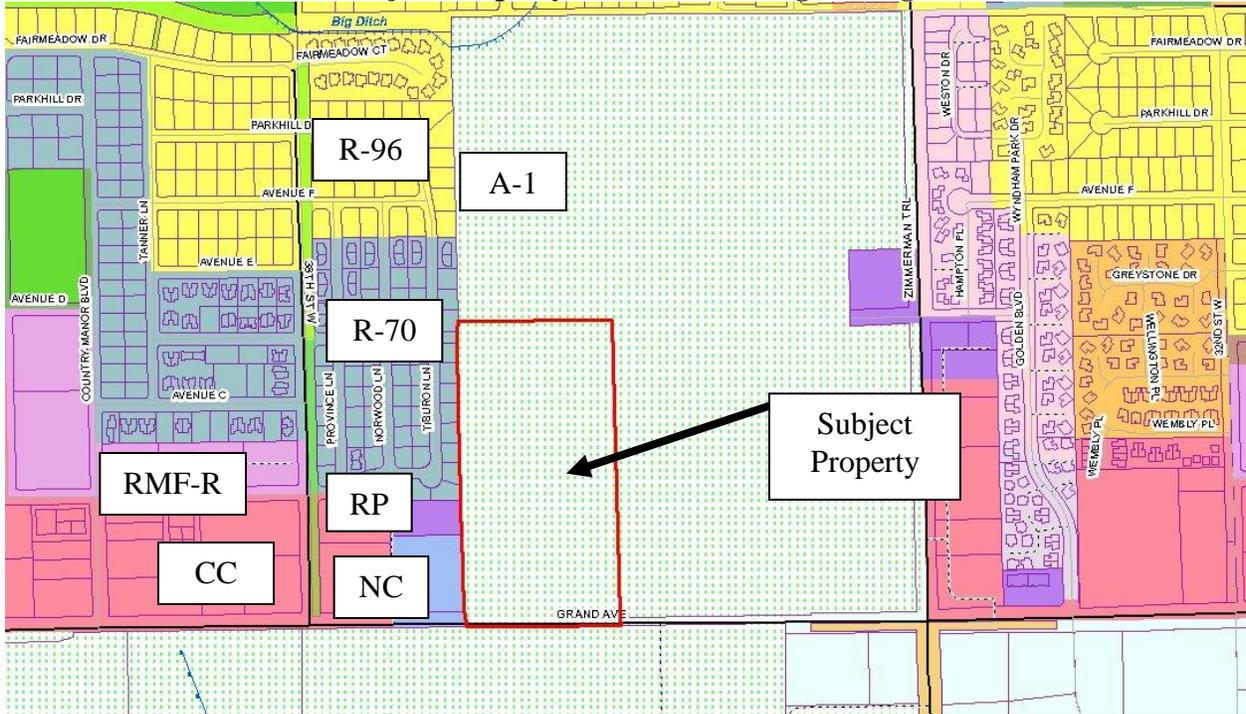
6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff is recommending conditions to require a certificate of survey amendment submittal within 60 days.

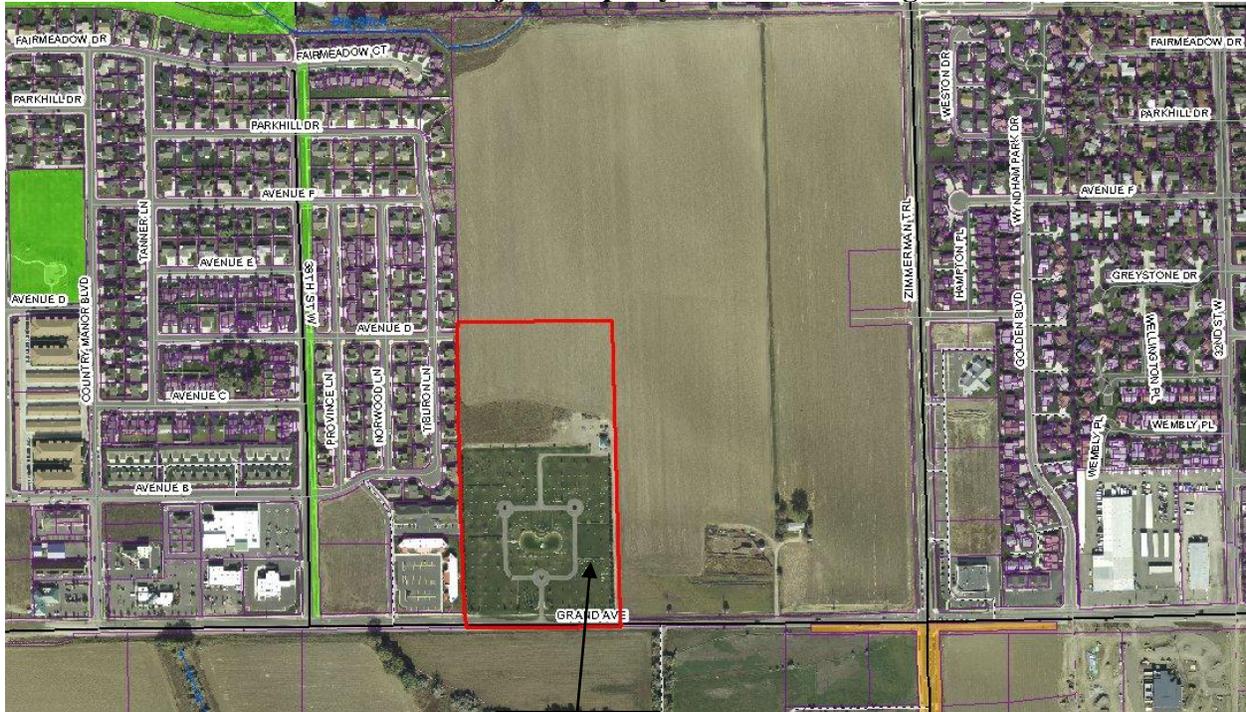
7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

Agricultural uses and cemeteries are allowed uses within this district. Granting of variance will not allow a use that is prohibited.

Subject Property and Surrounding Zoning



Photos of the Subject Property and Surrounding Area



Subject
Property



North end of property from the current dead end of Avenue D



View south along west property line towards Grand Avenue



View north and east to adjacent agricultural land



View south and east to adjacent agricultural land



View of Yellowstone Valley Memorial Park on south end of property

Site Plan

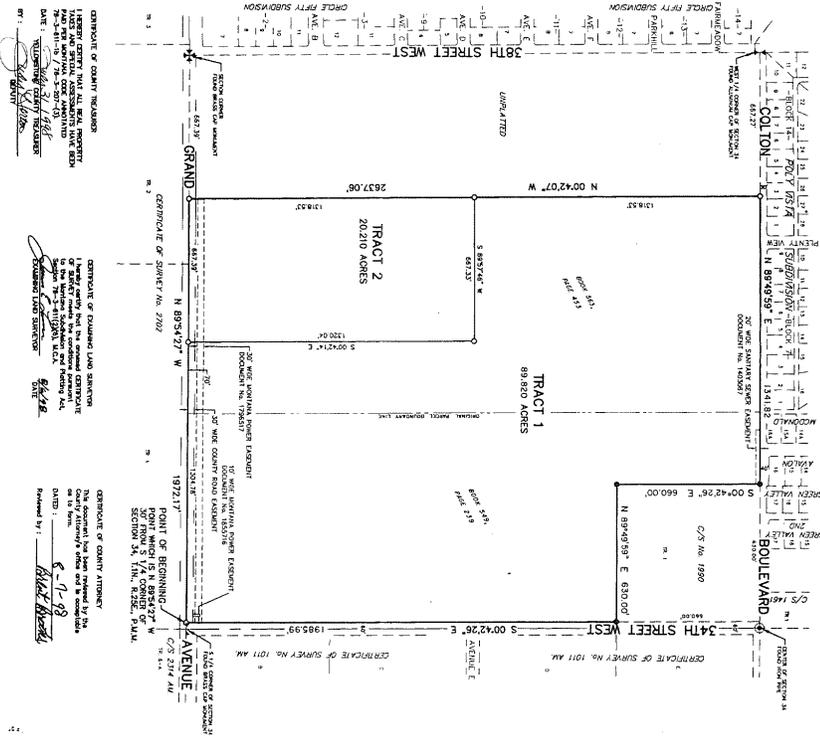
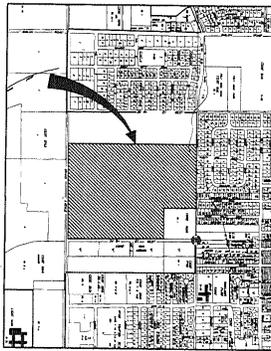
PREPARED FOR : K-2 BAR LIMITED PARTNERSHIP
 PREPARED BY : ENGINEERING, INC.
 SCALE : 1" = 200'

CERTIFICATE OF SURVEY No. 2974

SITUATED IN THE SW 1/4 OF SECTION 34, T. 1 N., R. 25 E., P.M.M.
 YELLOWSTONE COUNTY, MONTANA

JULY, 1998
 BILLINGS, MONTANA

BASE OF BEARINGS = WEST LINE OF SECTION 34 AS SHOWN
 ON PLAT 100 OF THE COLTON SUBDIVISION.
 O = SET 5/8" X 1/8" MARKER WITH CAP MARKED "SIC INC BLS 91"



CERTIFICATE OF COUNTY RECORDERS
 I HEREBY CERTIFY THAT ALL NECESSARY RECORDS HAVE BEEN FILED IN THE PUBLIC RECORDS OF THIS COUNTY AND THAT THIS CERTIFICATE IS A TRUE AND CORRECT STATEMENT OF THE RECORDS ON FILED HEREIN.
 DATE: 7/14/98
 COUNTY RECORDERS

CERTIFICATE OF COUNTY ATTORNEY
 I HEREBY CERTIFY THAT THE FOREGOING CERTIFICATE IS A TRUE AND CORRECT STATEMENT OF THE RECORDS ON FILED HEREIN.
 DATE: 7/14/98
 COUNTY ATTORNEY

CERTIFICATE OF COUNTY ATTORNEY
 I HEREBY CERTIFY THAT THE FOREGOING CERTIFICATE IS A TRUE AND CORRECT STATEMENT OF THE RECORDS ON FILED HEREIN.
 DATE: 7-17-98
 COUNTY ATTORNEY

CERTIFICATE OF COUNTY ATTORNEY
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 DATE: 7-17-98
 COUNTY ATTORNEY

CERTIFICATE OF SURVEYOR
 STATE OF MONTANA
 COUNTY OF YELLOWSTONE
 I, John H. Hester, a duly Licensed Surveyor in the State of Montana, do hereby certify that I am the author of the foregoing Survey and that the same is a true and correct statement of the facts as shown by the records on file in the Public Records of this County and State.
 My Commission Expires 7-1-00
 My Commission No. 1000

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Existing C/S 2974

Applicant's Letter



MEMORANDUM

To: Chairperson of the Yellowstone County Board of Adjustment
From: Rick Selensky, PE, LEED GA – DOWL HKM
Date: June 28, 2012
Subject: C/S 2974 Amended Tract 2 Variance

Certificate of Survey 2974 is a 20 acre parcel north of Grand Avenue and west of Zimmerman Trail. Currently, Yellowstone Valley Memorial Park Cemetery occupies 13 acres of the tract. The proposed amended tract would separate the cemetery from the remaining 7 acres of agriculture land. The 7 acres is not planned to be re-zoned or developed on and will continue to be farmed.

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