

CARBON COUNTY
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VARIANCE REQUEST – STAFF REPORT

Date: April 25, 2019

To: Carbon County Planning Board Members

From: Forrest J. Mandeville – Contract Planner

RE: Clearview Subsequent Minor Subdivision Preliminary Plat – Variance Request from Fire Protection Requirements

Recommendation: Approval

Recommended Motion: *Having reviewed and considered the variance request, staff report, public comment, and all of the information presented, I hereby move to recommend conditional approval of the variance request from fire protection requirement for the Clearview Subsequent Minor Subdivision.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Charles and Lynn Truxillo, submitted a preliminary plat application for a three-lot subsequent minor subdivision on a 41.12-acre tract. The original tract was created with the platting of Clearview Subdivision, being Lot 1 of that subdivision. Therefore, this subdivision is a subsequent minor subdivision, and was reviewed as a major subdivision. This subdivision was conditionally approved by the Carbon County Commission at their meeting on December 13, 2018.

The subject property is located on Red Lodge Creek Road, approximately 1/2 mile north of the intersection with Highway 78. The property is legally described as Lot 1 3rd Amended Plat No. 337 #3, located in Section 16, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

The variance request is to allow a lien agreement with the County requiring a fee of \$2,500/lot to be paid in lieu of fire protection. This would repeal and replace condition #8 of the preliminary plat approval, which requires the developer to “Provide a water supply for fire suppression purposes

acceptable to the Red Lodge Fire District prior to final plat approval. This may include an agreement with a local municipality and/or landowner.”

The Carbon County Subdivision Regulations allow the Commission to grant reasonable variances from the design and improvement standards of the Regulations where it is found that strict compliance with the specific design and improvement standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare. For major subdivisions and subsequent minor subdivisions, the Planning Board is required to consider each variance at a public hearing. In granting variances, conditions may be required in order to secure the purposes of the Regulations

Required Planning Board Action:

Under the Subdivision Regulations, the Planning Board is tasked with holding a public hearing, evaluating the staff report, considering the requirements necessary to grant a variance, and recommending approval, approval with conditions, or denial of the variance request to the County Commissioners. The Planning Board may recommend conditions related to the variance request. Any recommendation to approve a variance must be based on facts and conditions upon which the issuance of the variance is based.

Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

Pursuant to Section VIII-B.c., a variance shall be based upon specific variance criteria, and may not have the effect of nullifying the purpose of these Regulations. Variances may not be approved without findings based upon the evidence presented in each specific case that:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. *The requirement of a water supply for fire suppression is directly related to findings that the increased number of lots creates public safety concerns. To alleviate this concern, the applicants requests a lien agreement with the County requiring a fee of \$2,500/lot for the two additional lots (total of \$5,000) to be paid in lieu of fire protection. The amount would be paid upon the sale of lot or upon application for a septic permit.*

A conversation with Red Lodge Fire Chief Tom Kuntz indicated that a dry hydrant can reasonably serve 20 lots with a cost of approximately \$50,000. Likewise, a tender truck costs approximately \$250,000 and can serve about 100 lots. Therefore a cost of \$2,500/lot is reasonable to provide this kind of service, though it may be at the low end of what can be determined to be reasonable.

Criterion met.

2. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed. *The property is located relatively closely to City of Red Lodge hydrants and condition #8 anticipated possible agreement with a local municipality and/or landowner to provide the requisite water source. The variance request indicates that the City of Red Lodge has denied a request for agreement to utilize a nearby fire hydrant due to volume and pressure concerns, that the Red Lodge Fire District denied an agreement to use a neighboring well, and that an existing pond in a nearby subdivision would not likely meet necessary standards.*

The surroundings (proximity to Red Lodge) are not a self-imposed hardship, nor is the inability to provide adequate volume and pressure from a neighboring well or ensure a pond in a neighboring subdivision meets necessary standards.

The hardship is not personal or financial. It should be noted, however, that installing a dry hydrant within the Clearview Subsequent Minor Subdivision may be an option.

Criterion met.

3. The variance will not cause a substantial increase in public costs. *See discussion in item 1 above. If this variance is granted it should not substantially increase any public costs. The lien agreement would be in line with per lot costs to provide other forms of fire protection.*

Criterion met.

4. The variance will not place the subdivision in nonconformance with any adopted zoning regulations. *Carbon County has no zoning regulations with which this variance would not conform if granted. The Development Regulations would still be in force and a Group 1 (residential) Development Permit would still need to be obtained prior to residential construction. It should also be noted that the original subdivision was approved with a similar lien agreement.*

Criterion met.

Planning Staff Recommendation:

Planning Staff recommends approval of the Clearview Subsequent Minor Subdivision Variance Request, pursuant to the following conditions:

1. Condition #8 of the preliminary plat approval for the Clearview Subsequent Minor Subdivision shall be changed to “Prior to filing final plat, a lien agreement shall be in place requiring that upon sale or septic permit application of Lots 5 and 6, a \$2,500/lot fee shall be paid to Carbon County.”