

**STAFF REPORT
ZONING BOARD OF ADJUSTMENT**

**Thursday, October 29, 2020
9:00 a.m.**

VR #2020-001

General Information

Name of Applicant/Owner:	Garrett & Katie Baney 81 Gibson Flats Rd Great Falls, MT 59405-8102
Requested Action:	Variance from the Cascade County Zoning Regulations § 8.6, Letter of Map Change requirement for residences in a floodplain
Geo Code:	02-3016-20-1-01-02-0000
Parcel Number:	0002011000
Legal Description:	Eaton Suburban Addition, Block 4, Lot 9A, Section 20, Township 20 N, Range 4 E
Existing Zoning:	Suburban Residential 1 (SR1)
Surrounding Zoning:	North: SR1 South: A East: SR1 West: SR1
Current Land Use:	Residential
Applicable Regulations:	Section 8.6 (Letter of Map Change Requirement for Residential Construction in the Floodplain) & Section 9.5 (Variances) Cascade County Zoning Regulations

Special Information

1. Section 8.6 "Floodplain Regulations" of the Cascade County Zoning Regulations provides the following:

"The Board of County Commissioners adopted the 'Cascade County Floodplain Regulations' which are incorporated as fully as if set out at length herein, the provisions thereof controlling within Cascade County and outside the City Limits of the City of Great Falls. The Cascade County Floodplain Regulations for the above-described area, copies of which are available at the Office of the Cascade County Planning Division and Zoning Administrator, shall be administered and enforced by the Zoning Administrator.

A location / conformance permit shall not be issued for any non-residential use or structure within a designated floodplain area until all applicable floodplain permits have been issues. A location / conformance permit shall not be issued for any residential structure within a designated floodplain area until a Letter of

Map Change (LOMC) has been obtained from the Federal Emergency Management Agency. (See Letter of Map Change Definition).”

2. The Cascade County Floodplain Regulations require that “[s]tructures or fill must not be prohibited by any other statute, regulations, ordinances, or resolution; and must be compatible with subdivision, zoning and any other land use regulations, if any; (ARM 36.15.701(3)(a) & (b)).

3. The following definitions are taken from the Cascade County Zoning Regulations:

LETTER OF MAP CHANGE

An official revision to a FEMA flood map issued only by FEMA. There are two letters of official flood map revision; a Letter of Map Amendment (LOMA) and a Letter of Map Revision (LOMR).

VARIANCE

A variance is a relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the Applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. As used in these regulations, a variance is authorized only for height, area, and size of structure, size of yards and open spaces, signage, landscaping, or as otherwise specifically provided for in these regulations. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts.

4. The following definitions are taken from the Cascade County Floodplain Regulations:

Base flood elevation means the elevation above sea level of the base flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified.

Substantial Damage means damage sustained by a structure where the cost of restoring the structure to its before-damage condition would exceed fifty percent (50%) of the market value of the structure before the damage occurred.”

5. The FEMA National Flood Insurance Program (“NFIP”) defines a Letter of Map Change as “...a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F).
6. Section 9.5.4 of the Cascade County Zoning Regulations requires the concurring vote of three members of the Zoning Board of Adjustment in order to approve a variance request.
7. Legal Notice of this public hearing was completed with a mailing to surrounding property owners sent on October 15, 2020 and legal ads in the *Great Falls Tribune* on Sunday, October 18, 2020 and Sunday, October 25, 2020.

8. This property is located within the Special Flood Hazard Area of Gibson Flats, Zone AE Flood Fringe, also known as the Area of 1% Annual Chance of Flood Hazard, or the 100-year Floodplain, Panel 0626E, with an established Base Flood Elevation of 3355' NAVD88.
9. If this Variance is approved, the Applicant will be required to obtain a Floodplain Permit for the reconstruction of the residence at this property and be in compliance with all applicable regulations.
10. The Montana Department of Natural Resources and Conservation, Floodplain Management Section (Traci Sears, NFIP/CAP Coordinator, Sterling Sundheim, Lewistown Regional Office) was sent a copy of the Application on October 15, 2020. Other Interested Agencies were provided notice of this application on October 15, 2020. The Montana Department of Transportation declined to offer comment. No other interdepartmental or agency comments have been received at the time of writing this report.
11. The residence at 81 Gibson Flats was damaged to the point of inhabitability by a flooding event in the spring of 2019. The Applicants' desire to remove the existing structure and replace it with a new structure in compliance with all current federal, state, and local regulations.
12. The Applicants are required to obtain a Letter of Map Revision based on Fill (LOMR-F) to be in compliance with the Cascade County Zoning Regulations. This requires that fill is brought in to raise the building pad a half foot above the Base Flood Elevation and extend the pad at least 15 feet beyond the structure in all directions to be in compliance with the Cascade County Floodplain Regulations. Following the successful establishment of the fill with an approved Floodplain Permit, the Applicant would then be required to submit an MT-1 Application to FEMA and receive a determination letter that removes the elevated portion of the property from the Special Flood Hazard Area.

Analysis & Findings of Fact

Section 9.5.2 of the Cascade County Zoning Regulations states, "A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exists:"

- (1) **The variance is not contrary to the public interest.**

Applicant: The request for this variance will allow the home owner to replace the [existing] damaged home by elevating the ground foundation to prevent future flooding damage to the home next time the rain water from the retention pond located north of the property is released.

Staff: This proposal will be required to meet all other applicable regulations, notably the provisions of the Cascade County Floodplain Regulations (CCFR) § 1.4(2), which are intended to:

- 1. Protect human life and health;*
- 2. Minimize expenditure of public money for costly flood control projects;*
- 3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;*
- 4. Minimize prolonged business and public service interruptions;*

5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood disruptions; and to
7. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Programs for the benefit of the residents.

The CCFR §§ 9 and 9.3 provide standards for Residential development in floodzones that allow development of structures that “Elevate on suitable fill or be raised on a permanent foundation” and that “Have a foundation consisting of reinforced concrete, reinforced-mortared block, reinforced piers, or other foundation elements of equal strength.” (CCFR §§ 9.3(4) (3)&(4)) Removing the existing, damaged structure and replacing it with a structure built with reduced flood risk is expected to have a positive impact for the landowner. The Letter of Map Change requirement and the requirement to elevate residential structures on fill provide a significant reduction in flood risk by effectively removing a structure and surrounding ground from the Regulatory Floodplain. The Applicant’s alternative proposal does not suggest that the new residence would be constructed in a way that would put the lowest floor less than two feet above the Base Flood Elevation. The structure will be required to be in compliance with the other provisions of the CCFR for residential development, manufactured homes, and flood proofing. Designs such as those to equalize hydrostatic forces by allowing the automatic entry and exit of floodwaters for the portion of the structure below the Base Flood Elevation, securing the chassis by anchoring to the foundation system so that it will resist flotation, collapse or lateral movement, and elevating so that all electrical, heating, duct work, ventilation, plumbing, and air conditioning equipment and other services are two (2) feet above the Base Flood Elevation will aid in mitigating future flood risk. While this proposal will reduce flood risk compared to the risk of the original residence, it will not do so to the same extent as physically removing a structure and a portion of property from the floodplain through the use of fill and the Letter of Map Change process. With regards to impacts on neighboring properties, the amount of fill required to meet the Letter of Map Change requirements would be greater than that proposed by the Applicant and would create a greater displacement of Floodwaters during a 1%-chance event. The CCFR § 9.2(11)(7) addresses this and provides that, “Mitigation may be required for lost natural flood storage due to added fill.” No public services, facilities, or utilities are expected to be impacted by this proposal. This condition is mitigated, but not fully satisfied.

(2) A literal enforcement would result in an unnecessary hardship, owing to conditions unique to the property.

Applicant: The rain water retention pond was constructed after the applicant property was built, the family had to rent for the past 18 month since the house was damaged by the water, the family had to change schools for the 3 kids and want to come back to the same neighborhood, the applicant was not at fault for the flooding of the area.

Staff: The Applicant asserts in the response to the previous question that the reason for the 2019 flood was the release of rain water from the retention pond operated by the City of Great Falls north of the property, and does not identify conditions unique to the property that would result in unnecessary hardship due to literal enforcement of the regulations. The lot for the retention pond was created by Certificate of Survey 3790 in 2000 and appears to have been constructed after 1995 based on historic aerial imagery available from the US Geological Survey. County Flood Insurance Rate Maps show the Gibson Flats area as a Special Flood Hazard Area on Panel 0426B, Revised December 8, 1981. Historic imagery from the 1969 flood shows the Gibson Flats

area, including the Applicant's residence, being impacted by a flooding event. According to Montana Department of Revenue records, the Applicant's residence was constructed in 1961. The Applicant has not established where there are conditions unique to this property that do not exist in the same general area that precludes them from bringing in the necessary material to obtain a Letter of Map Revision based on Fill. This condition has not been satisfied.

(3) The spirit of this Section would be observed and substantial justice done by granting the variance.

Applicant: Absolutely

Staff: While the proposal appears to mitigate concerns of public interest to support the variance, the Applicant has not identified where the literal enforcement of the Zoning Regulations and the Letter of Map Change requirement for residential construction would result in an unnecessary hardship owing to conditions unique to the property. Any properties similarly situated in Zone AE would be required to obtain a LOMC. This condition has not been satisfied.

Section 9.5.3 of the Cascade County Zoning Regulations states, "In addition to the general findings required above, the following findings shall apply to variances from floodplain requirements:"

(1) The proposed use will be adequately flood-proofed.

Applicant: To make the proposed location flood-proofed, the existing dwelling, will be removed, the same location which current elevation is 3348 feet, will be properly filled and compacted with required proper filling material, 5 feet, to an elevation of 3353.0 to create the top of the pad for the location. In addition, the new structure (a prefabricated home) will be elevated another 4ft using cinder block columns, creating the new crawling space, and placing the top of the bottom floor 3357 feet.

The new enclosure of the crawling space will be fitted with a total of 16 permanent Engineered flood opening gates installed 1.0 foot above adjacent grade. (Refer to section A-A of the attached Elevated fill plan).

Staff: The Applicant has not proposed a variance from any of the provisions of the Cascade County Floodplain Regulations and will be required to meet all applicable regulations. A Cascade County Floodplain Permit Application has not been submitted to the Planning Department for consideration at this time. However, the Applicant's proposed building diagram shows a structure elevated on fill with a properly vented foundation. This criterion will be satisfied so long as floodproofing is performed in accordance with the Cascade County Floodplain Regulation floodproofing requirements.

(2) A reasonable alternate location outside the floodplain is not available.

Applicant: The proposed location is the highest point in the 2-acre property, making this location the most adequate to retain for the location of the new home. (Refer to right top drawing of the attached Elevated fill plan).

Staff: The property is located entirely within the Special Flood Hazard Area, and the Applicant has chosen a site that has the highest natural elevation based on the submitted topographical data. This condition has been satisfied.

(3) The granting of the variance will not cause increased flood hazards, present additional threats to public safety, create an extraordinary public expense, create a nuisance, or otherwise conflict with federal, State, or other local laws.

Applicant: Based on the very low density of the population in the area the open land around the location and the fact that the same location of the existing dwelling will be used, there is no reason to believe that granting this variance will cause any of the situations described above, to the contrary, we believe, that restoring the property as proposed, will increase property values in the area. We cannot find any situation [that] will conflict with any federal, States, or other local laws.

Staff: Compliance with the Cascade County Floodplain Regulations supports that the project will not cause increased flood hazards, present additional threats to public safety, create an extraordinary public expense, or create a nuisance. The Administrative Rules of Montana (ARM) § 36.15.702(1)(a) provides:

“Residential structures shall be constructed on suitable fill with a permanent foundation such that the lowest floor (including basement) level is 2 or more feet above the base flood elevation. The suitable fill shall be at a level no lower than the base flood elevation extending 15 feet at that elevation beyond the structure in all directions. Where existing streets, utilities, lot dimensions, or additions onto existing structures, make strict compliance with this provision impossible, the permit issuing authority may authorize a lesser amount of fill or alternative flood proofing measures. Alternative flood proofing measure must, at a minimum, meet the conditions of ARM 36.15.702 and ARM 36.15.901 through 36.15.903”

The Applicant has proposed a lesser amount of fill, but has not demonstrated where strict compliance with this provision is impossible to allow a lesser amount of fill than would be required by the State of Montana. Compliance with ARM 36.15.702 would satisfy the requirements of a Letter of Map Revision based on Fill, which requires that the lowest adjacent grade of the structure be at or above the Base Flood Elevation. However, since the Applicant has not proposed to meet this standard, this Variance Request conflicts with the State of Montana rules. This condition has not been satisfied.

Motions:

The following motions are provided for the Board's consideration:

1. "I move that the Board adopt the Staff Report and Findings of Fact and **deny** the Applicant's requested Variance from the residential construction requirements of Cascade County Zoning Regulations § 8.6 on the property at 81 Gibson Flats Road, Eaton Suburban Addition Block 4 Lot 9A, Section 20, Township 20 N, Range 4 E, Cascade County, MT."

or

2. "I move that the Board reject the Staff Report and Findings of Fact and adopt the Board's Findings of Fact and **approve** the Applicant's requested Variance from the residential construction requirements of Cascade County Zoning Regulations § 8.6 on the property at 81 Gibson Flats Road, Eaton Suburban Addition Block 4 Lot 9A, Section 20, Township 20 N, Range 4 E, Cascade County, MT subject to the following conditions:
 - a. The Applicant will obtain all other necessary federal, state, and local permits and abide by all applicable regulations; and
 - b. The Applicant will obtain a Floodplain Permit from the Cascade County Planning Department and adhere to all applicable requirements of the Cascade County Floodplain Regulations; and
 - c. This Variance request will become null and void if work is done beyond the scope authorized by the Cascade County Floodplain Regulations."

Attachments:

- 1) Variance Application
- 2) FIRMette of 81 Gibson Flats
- 3) Historical Image of 1969 Flood
- 4) Flood Insurance Rate Map Panels 300008-0426B & 30013C0626E