

**STAFF REPORT  
ZONING BOARD OF ADJUSTMENT**

**Thursday, April 21, 2022  
9:00 a.m.**

**Variance Request #2022-001**

SUBJECT PROPERTY INFORMATION	
Name of Applicants & Owners:	Greg Mackenstadt 76 Eaton Avenue Great Falls, MT 59405
Requested Action	Variance from the Cascade County Zoning Regulations ("CCZR") § 8.6 requiring a Letter of Map Change from FEMA for a residence
Legal Description:	Lot 06D, Block 001, Eaton Suburban Addition Amended, S 20, T20 N, R 04 E, P.M.M., Cascade County, MT
Geo- Code:	02-3016-20-4-01-06-0000
Parcel Number:	2005900
Existing Zoning:	Suburban Residential 1 District ("SR-1")
Surrounding Land Uses/Zoning:	North: Residential/ SR-1 South: Residential/MU-20 East: Residential/SR-1 West: Commercial/MU-20
Current Land Use:	Residential
Applicable Regulations:	CCZR §§ 8.6 & 9.5
FEMA FIRM Panel	30013C0626E (eff. March 19, 2013)
FEMA Insurance Zone	Zone AE
Military Overlay District	MOD-E "Outer Horizontal Surface": structures shall not be greater than 50 feet in height <sup>1</sup>

**General Information**

1. Section 8.6 of the CCZR provides the following requirement for residential structures in the Floodplain:

"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."

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

**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.*

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<sup>1</sup> CCZR § 16.1: "height limits are based on the elevation of the helicopter runway at Malmstrom (3,526 ft.) which is based on the North American Vertical Datum of 1988 (NAVD 88)."

*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.”*

Letter of Map Change

*“An official revision to a FEMA flood map issued only by FEMA. There are two (2) letters of official flood map revision; a Letter of Map Amendment (LOMA) and a Letter of Map Revision (LOMR).”*

3. CCZR § 9.5.4 states: “The concurring vote of 3 members shall be necessary to approve a variance. MCA § 76-2-224.”
4. Currently, there is no structure on the property. An existing septic and drain field are located south of the proposed structure.
5. The Applicant has applied for a Location/ Conformance Permit for a single-family dwelling (“proposed structure”) to be built on the subject property.
6. Legal Notice of the Application and the public hearing was published in the Great Falls Tribune on April 13, 2022, and April 20, 2022.
7. Mailing to surrounding property owners and interested agencies, including the Montana Department of Natural Resources (DNRC), were sent on April 14, 2022.
8. Based on the Applicants Site Plan, the proposed home will be placed on pilings to raise the structure above the Base Flood Elevation.

**Analysis & Findings of Fact**

- (1) **Explain how this variance request from the Cascade County Zoning Regulations will not be contrary to the public interest.**

**Applicant: This variance request would not have negative effects to my neighbors or the public.**

*Staff: In order for the applicant to receive the required Letter of Map Change, that the applicant is requesting a variance from, fill would need to be brought onto the property to elevate the structure to 2 feet above the Base Flood Elevation. The property currently sits five (5) feet below the Base Flood elevation of 3355.0. If the structure is brought up seven (7) feet on fill, there would be potentially an issue with displacing stormwater run-off from the structure onto the adjacent properties that sit seven (7) feet lower and reducing floodwater storage capacity of the floodplain resulting in displacing flood waters and raising flood heights during a 100-year flooding event.*

- (2) **Describe 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 an unnecessary and undue hardship.**

**Applicant: If we are required to backfill 15' of slope in all directions around the house it would hinder access to my neighbors which are to the Northwest, because their access is within 15' of my house and property. Also, by adding 15' of slope to the south would add approximately 5' of backfill on top of my septic tank and we would not be able to access it for service.**

*Staff: The amount of fill needed to be brought in onto this property has been determined to be unrealistic, due to the approximate amount of 1,575 cubic feet of fill that would be required to be brought in. Per FEMA guidance, there are other alternative flood mitigation measure available to minimize the effects of hydrostatic and hydrodynamic pressures on the structure that the applicant can explore and still be compliant with the floodplain permit requirements.*

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

**Applicant: By granting this variance we would be able to rebuild our house to its exact footprint to where the home has been located for more than 75 years.**

*Staff: The spirit of Section 8.6 is to mitigate or eliminate flood risk during a 100-year flood event for residential structures to ensure that people and property remain safe and the cost of repair is reduced. If the applicant is granted this variance and is allowed to build on pilings, rather than fill, the water would remain free flowing beneath the structure. This would result in little to no displacement of floodwaters, unlike fill. Other FEMA communities have adopted limits on the use of fill in the flood fringe to protect storage capacity for floodwaters or require compensatory storage<sup>2</sup>. It was also noted by the applicant's engineer that debris build up against the structure could be a significant player in the hydrostatic pressure. Therefore, the alternative proposed would observe the spirit of Section 8.6 and substantial justice done by granting the variance.*

**(4) The proposed use will be flood-proofed.**

*Staff: The applicant is still proposing to elevate the residence in accordance with the requirement of the CCFR. Therefore, the proposed residence will remain floodproofed the same as it would if were allowed to be built on structural fill.*

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

*Staff: An alternative location on the subject property is not available. The entire property is located in Zone AE and is well below the Base Flood Elevation.*

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<sup>2</sup> FEMA Glossary—"Compensatory Storage": The NFIP floodway standard in 44CFR 60.3 (d) restricts new development from obstructing the flow of water and increasing flood heights. However, this provision does not address the need to maintain flood storage. Especially in flat areas, the floodplain provides a valuable function by storing floodwaters. When fill or buildings are placed in the flood fringe, the flood storage areas are lost and flood heights will go up because there is less room for the floodwaters. This is particularly important in smaller watersheds which respond sooner to changes in the topography. One approach that may be used to address this issue is to require compensatory storage to offset any loss of flood storage capacity. Some communities adopt more restrictive standards that regulate the amount of fill or buildings that can displace floodwater in the flood fringe. Community Rating System credits are available for communities that adopt compensatory storage requirements. <https://www.fema.gov/glossary/compensatory-storage> (accessed April 14, 2022).

- (6) **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.**

*Staff: The Planning Department recommends imposing a condition that an approved Cascade County Floodplain Permit be obtained prior to construction of the proposed residence. As part of the CCFR requirements of Sections 8.2, 9.2, and 9.3, a professional engineer will be required to provide the necessary support and/or certifications where required that this project will not cause increase flood hazards, create increased risk to public safety, and cannot be prohibited by other regulation, law, and ordinances.*

### **Summary of Comments Received**

No comments were received at the time of writing this report.

### **Motions:**

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

1. "I move that the Board **deny** the Applicant's requested Variance from Cascade County Zoning Regulations § 8.6 stating "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" on the property at, 76 Eaton Ave. described as Lot 06D, Block 001, Eaton Suburban Addition Amended, Section 20, Township 20 N, Range 4 E, P.M.M., Cascade County, MT due to not meeting one or more the variance criteria (ZBOA should specify findings supporting which criteria have not been satisfied)."  
or
2. "I move that the Board adopt the Staff Report and Findings of Fact and **approve** the Applicant's requested Variance from Cascade County Zoning Regulations § 8.6 stating "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" on the property at, 76 Eaton Ave. described as Lot 06D, Block 001, Eaton Suburban Addition Amended, Section 20, Township 20 N, Range 4 E, P.M.M., Cascade County, MT. subject to the following conditions:
  - a. The Applicant will obtain and comply with all other necessary federal, state, and local permits and approvals.
  - b. The Applicant shall obtain an approved Cascade County Floodplain Permit.

### **Attachments:**

1. Variance Application
2. Location/ Conformance Application
3. Site Plan
4. Vicinity Map
5. Zoning Map
6. CCZR §§ 8.6 & 9.5