



CITY OF MILES CITY AGENDA

*Special Council Meeting
City Council Chambers*

*April 29, 2019
6:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS
5. PROCLAMATIONS
6. STAFF REPORTS
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
10. BID OPENINGS
11. BID AWARDS
12. PUBLIC HEARINGS
 - A. **Floodplain Variance Application on Eckart Trucking, located at 1415 North 6th St**
13. UNFINISHED BUSINESS
14. NEW BUSINESS
 - A. **Floodplain Variance Application on Eckart Trucking, located at 1415 North 6th St**
15. ADJOURNMENT

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

City of Miles City
STAFF REPORT-Variance
Eckart Trucking-1415 N. 6th
Hearing date: April 29, 2019

VARIANCE DESCRIPTION:

Applicant is seeking relief from Article 6, Section 12-26 Floodway: The following artificial obstructions and nonconforming uses are prohibited in the Floodway of the Regulated Flood Hazard Area, except for those established before land use regulations have been adopted: (MCA 76-5-404(3))

A building for residential or non-residential purposes; (MCA 76-5-403(1), (ARM 36.15.605)(1a)), (ARM 36.15.605(2b), (ARM 36.15.605(2)(a)).

1. A structure, fill, or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. Notwithstanding these requirements, excavation or fill may be allowed when it is a component to a permitted use allowed in these regulations; (MCA 76-5-403(2)).

BACKGROUND:

A. Owner/Applicant:

Current: Bill Eckart
Eckart Trucking Inc.
1415 N. 6th St.
Miles City, MT 59301

B. Location:

The property is located at 1415 N. 6th St., Miles City, Montana and is legally described as in the Milwaukee Park Addition, Block 3, Lots 1-7, closed street, Block 8, Lots 1-11.

C. Existing Land Use:

The current property is being used as a commercial property and is zoned as Heavy Commercial/ Light Industrial on 1.685 acres.

D. Adjacent Land Uses:

Properties in the neighborhood vary with the Yellowstone River being to the north, Heavy Commercial/Light Industrial to the south, Residential A to the east and Highway 22 to the west.

REVIEW AND FINDINGS OF FACT

Applicant is requesting the right to place a 40x70 addition onto a current commercial building. Building is currently located in the floodway approximately 250 feet from the current Yellowstone levee

Base Flood Elevation:	2355.2 feet
Lowest Elevation of surrounding area	approx. 2354.0 feet
Lowest Floor of the proposed structure	2354.2 feet approx. 1 foot below BFE

CONFORMANCE TO REQUIREMENTS

1. The hardship is the result of lot size shape, topography or other circumstance over which the applicant has no control.

Lot size is approx. 1.685 acres, which gives adequate room for the construction of the building which is the subject of this application. Topography is not an issue for the applicant. The primary issue is that the property is located within the floodway which does not allow any new construction, even by variance.

2. The hardship is peculiar to the property.

There are multiple properties within the floodway which have conformed to the regulations, and which are also prohibited from erecting new buildings pursuant to Section 12-26 of the Code of Ordinances of the City of Miles City, as well as Montana Code Annotated 76-5-403(1).

3. The applicant did not create the hardship.

The property was last developed in 1974 before the initial FIRM map was adopted, and has remained conforming since that time. The applicant did not create the hardship.

4. The hardship is not economic.

Applicant has stated that this addition is need to help grow his business, since he is currently running out of room. The primary hardship is economic in part, in that the applicant wishes to construct a new building on property already owned by him, rather than purchasing new property not located within the floodway for development.

5. Granting the variance will not adversely affect the neighboring properties or the public.

Current regulations, Section 12-35 through 12-36 state that the applicant must assure that the carrying capacity of the Floodway is not reduced and shall meet all the requirements with these sections.

6. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

No project has been approved within the floodway to date, as new building development is prohibited, as set forth herein. Granting this variance for commercial gain would confer a special privilege to the applicant.

REVIEW CRITERIA

1. There is a good and sufficient cause. Financial hardship is not a good and sufficient cause.

Applicant only states that addition is needed for trucking business, no other hardship is mentioned. At least a portion of the hardship is financial/economic.

2. Failure to grant the variance would result in exceptional hardship to the applicant.

The nature of the hardship in this instance is that the applicant would not have additional room to expand business, and would have to acquire property outside of the floodway for development.

- 3. Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing building. Residential dwellings including basement and attached garages do not have the lowest floor elevation below the Base Flood Elevation.**

Property is located completely within the floodway, and as such, a variance cannot be granted.

- 4. Any enclosure including a crawl space must meet the requirements of Section 12-51.14, Wet-flood Proofing if the enclosure interior grade is at or below the Base Flood Elevation.**

Applicant states the building will be steel, no other floodproofing measures are mentioned, does not meet requirements of wet-floodproofing.

- 5. Granting of a variance will not result in increased flood heights to existing buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.**

Applicant has not demonstrated that the project does not increase the BFE, no encroachment analysis has been certified by an engineer, as per Section 12-36.2. Allowing a new structure to be placed in the floodway is cause for concern with the communities standing in the NFIP and CRS program.

- 6. The proposed use is adequately flood proofed.**

Applicant does not state how building will be floodproofed.

- 7. The variance is the minimum necessary, considering the flood hazard, to afford relief.**

Variance does not meet minimum factors as listed in Section 12-36.3

- 8. Reasonable alternative locations are not available.**

Business has existed at this location for many years and is well established in the area, all other areas within Miles City with this zoning are being utilized.

- 9. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations.**

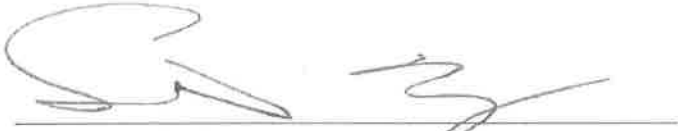
Applicant has not demonstrated that the project does not increase the BFE, no encroachment analysis has been certified by an engineer, as per Section 12-36.2.

- 10. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.**

There are multiple requirements, as stated above, that the applicant has not met.

STAFF RECOMMENDATION:

Deny the variance based on the fact that evaluation of the variance application does not meet all the variance criteria as per Section 12-59.1; **specifically, no new building may be constructed within the floodway.**



Samantha Malenovsky, Floodplain Administrator
City of Miles City
17 S. 8th
PO Box 910
Miles City, MT 59301

4-23-19
Date

cc: Traci Sears
DNRC Water Operations Bureau
Floodplain Management Section
1539 Eleventh Ave.
Helena, MT 59601



CITY OF MILES CITY

FLOODPLAIN VARIANCE APPLICATION

A variance is a grant of relief given by City Council from the terms of the specific standards required in the City's *Floodplain Hazard Management Regulations*. The issuance of the variance is for floodplain management purposes only. In the event of a variance within the floodway this variance is also a grant of relief given by the City Council from the terms listed above and the *ICC Model code Section 104.10.1 Flood Hazard Zone*. Insurance premium rates are determined by the Federal government according to actuarial risk and are not modified by the granting of a variance. **ANY VARIANCE GRANTED BY THE CITY COUNCIL MUST BE CONSISTENT WITH THE CITY'S FLOODPLAIN HAZARD MANAGEMENT REGULATIONS.**

Per Resolution 4086, a non-refundable fee of \$300.00 must accompany this application.

Date of Application: 4-10-19 Receipt #: 71551

Section A: Owner Information

Applicant Name Eckart Trucking Inc.
 Address 1415 N. 6th Phone 406 232-1710
 City Miles City State Mont. Zip 59301
 Owner Name (if different from above) _____
 Address _____ Phone _____
 City _____ State _____ Zip _____

Section B: Property Information

Legal Description and/or address of property 1415 N. 6th
 Addition Milwaukee Block 8th Lot(s) T-11
 Geocode (if available) _____ 3 1-7 closed street Miles. 810151-11
 Name of Stream/water body at location of activity YELLOWSTONE RIVER
 The proposed development is in the Floodway ___ Flood Fringe ___ Floodplain with no elevation
 The Base Flood Elevation (BFE) at the project site is 2355.2'
 The lowest adjacent grade of the property is 2354.0'
 The lowest floor of the proposed structure is 2354.2'

Section C: Basis of Variance Request

Cite the minimum development standard of the *Floodplain Hazard Management Regulations* from which a variance is sought CONSTRUCT 50' X 70' Building

Explain how proposed development would vary from the provision of the Floodplain Hazard Management Regulations Should not vary from Building

already on property

Section D: Application for Variance

Complete a Joint Permit Application and the attached worksheet to address the submittal requirements of the City's Floodplain Hazard Management Regulations

Worksheet completed and attached

AN APPLICANT RECEIVING A VARIANCE TO BUILD A STRUCTURE NOT MEETING THE MINIMUM STANDARDS OF THE REGULATIONS, ESPECIALLY IF THE LOWEST FLOOR IS CONSTRUCTED BELOW THE BASE FLOOD LEVEL, MAY RESULT IN INCREASED PREMIUM RATES FOR FLOOD INSURANCE. CONSTRUCTION BELOW THE BASE FLOOD LEVEL INCREASES RISK TO LIFE AND PROPERTY (44 CFR 60.6(a) (5))

William D. Eckert
Applicant's Name

3-29-19
Date

ANY PERSON OR PERSONS AGGRIEVED BY THE DECISION MAY APPEAL SUCH DECISION IN THE COURTS OF COMPETENT JURISDICTION (MCA 76-5-209(1))

Section E: Affected Landowners

List the names and address of all property owners within and contiguous to and directly across the street from the parcel or parcels of property referenced by this application:

Bob Wilson, see attached.

RECORD OF VARIANCE ACTIONS: TO BE COMPLETED BY FLOODPLAIN ADMINISTRATOR

Variance Request submitted on April 9, 2019

Fee Paid \$ 300.00

Public Notice Given April 10, 2019

Variance Hearing held on April 29th, 2019

The Council has made a determination that the variance is or is not the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and meets or does not meet the criteria in the regulations for approval.



In accordance with the criteria and guidelines of the City of Miles City, *Floodplain Hazard Management Regulations*, City Council hereby approves, denies the request for variance. Please refer to attached minutes from meeting.

CITY OF MILES CITY

APPLICATION WORKSHEET FOR VARIANCES TO THE FLOODPLAIN HAZARD MANAGEMENT REGULAITONS

PLEASE NOTE: Your statements and supporting data and information, including a completed Montana joint application or floodplain permit application, will be used to evaluate your variance request. If these questions are not answered, the variance may be denied due to insufficient information to support it. The following will be used as a guide to evaluate your petition. Additional information may be requested.

The City of Miles City's Floodplain Hazard Management Regulations provides the criteria that must be considered and met before a variance may be granted. The City Council must consider the following items when determining a variance request. State in detail the manner in which you believe each of these standards are met in this case:

1. Will the structure or proposed activity/use reside on 0.5 acre or less? YES NO
 If NO, what is the size of the lot or parcel? _____

(If the new construction or substantial improvements on a lot of one-half acres or less is contiguous to and surrounded by lots of existing structures constructed below the base flood level, a variance may be approved. However, as lot sizes increase beyond one-half acre, additional technical justification may be required.)

2. Are the surrounding properties pre-FIRM (built before 1983)? YES NO

3. Are the lowest floor of the pre-FIRM structures on the adjoining and contiguous lots below the base flood elevation? YES NO

4. Is the proposed work on a recognized historic structure? YES NO

If yes, will the improvements maintain the historic integrity of the structure and not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

5. Is the proposed work the minimum necessary, considering the flood hazard, to afford relief?
YES

6. Does the project show good and sufficient cause for the variance? Financial hardship is not a good and sufficient cause. Describe the exceptional hardship. Building Needed for Trucking Business

7. Are basements and/or the lowest floor elevation of a residential structure below the Base Flood Elevation? N/A

8. If crawlspaces or enclosures are proposed, they must meet the requirements of Article 10 of the Floodplain Hazard Management Ordinance. Explain why the minimum building standard cannot be met.
N/A

9. Describe your analysis or supporting information that the granting of this variance does not result in increased flood height to the existing insurable building, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances. This Building will NOT Harm any other Buildings

10. Describe how the structure is/or will be adequately flood proofed. Building is built with STEEL NOT WOOD

11. Describe why reasonable alternative locations outside the Floodplain are not available or possible. TRUCKING BUSINESS ESTABLISHED AT THIS LOCATION

12. Describe the data or information that there is no danger to life and property by erosion damage or water that may be backed up or diverted by the obstruction or use. Grounds ARE solid & Stable

13. Describe your supporting information that there will not be a danger of materials being swept onto other lands or the injury of others. Building is a SECURE STRUCTURE

14. Describe how the construction or alteration of the obstruction or use in such a manner is designed as to lessen the danger. Building is steel and will be attached to present Building

15. Describe the permanence of the obstruction or use. To increase present Shop

16. Describe the impacts of the obstruction or use affect the anticipated development in the foreseeable future of the surrounding area. NONE

17. Describe if the failure to comply with the Floodplain regulations results in an exceptional hardship to the applicant. BUSINESS IS EXPANDING AND EXTRA BUILDING IS NEEDED

18. Describe how the granting of a variance does not adversely affect existing properties or structures. BUILDING WILL BECOME PART OF EXISTING STRUCTURES

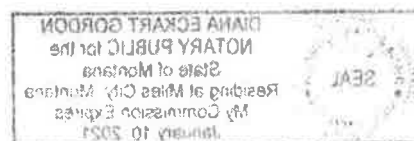
19. Describe the estimated cost and damage of the proposed facility and its contents to flood damage and the effect of such damage on the owner. NO EFFECT

20. Describe the importance of the services to be provided by the facility to the community. BUILDING IS NEEDED BY BUSINESS

21. Describe the public services, including fire and rescue that may or may not be provided during various flood events. NONE NEEDED

22. If this facility is located on the waterfront, describe the necessity for that location. BUSINESS PRIORITY THERE

23. Describe the safety and access of emergency vehicles to the property during times of various flood events. ACCESS FROM CITY STREETS



I hereby certify that the facts, statements, and information presented within this application form are true and correct to the best of my knowledge and belief. I hereby understand and certify that any misrepresentation or omissions of any information required in this application form may result in my application being delayed or not approved by the City of Miles City.

William D. Eckart
Signature of Applicant

3-29-19
Date

William D. Eckart
Signature(s) of Owner(s)
(Must be notarized)

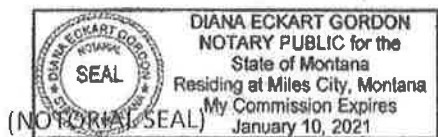
Signature(s) of Owner(s)
(Must be notarized)

*Agent must provide documentation that they are legally representing the property owner.

STATE OF MONTANA
COUNTY OF CLUSTER) ss

On this 29 day of MARCH, 2019, before me, the undersigned, a Notary Public for the State of MONTANA, personally appeared WILLIAM D ECKART, known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set me hand and affixed my notarial Seal the day and year first above written.



Diana Eckart Gordon
Notary's Printed Name: DIANA ECKART GORDON
Notary Public for the State of MONTANA
Residing in MILES CITY
My Commission Expires: 1-10-2021

SURVEY REPORT

I, Quinn Wright PLS, a duly licensed land surveyor, hereby certify that I have personally examined the survey, by personnel under my supervision, which determined the elevations of the parcel of land in Miles City, Custer County, State of Montana,

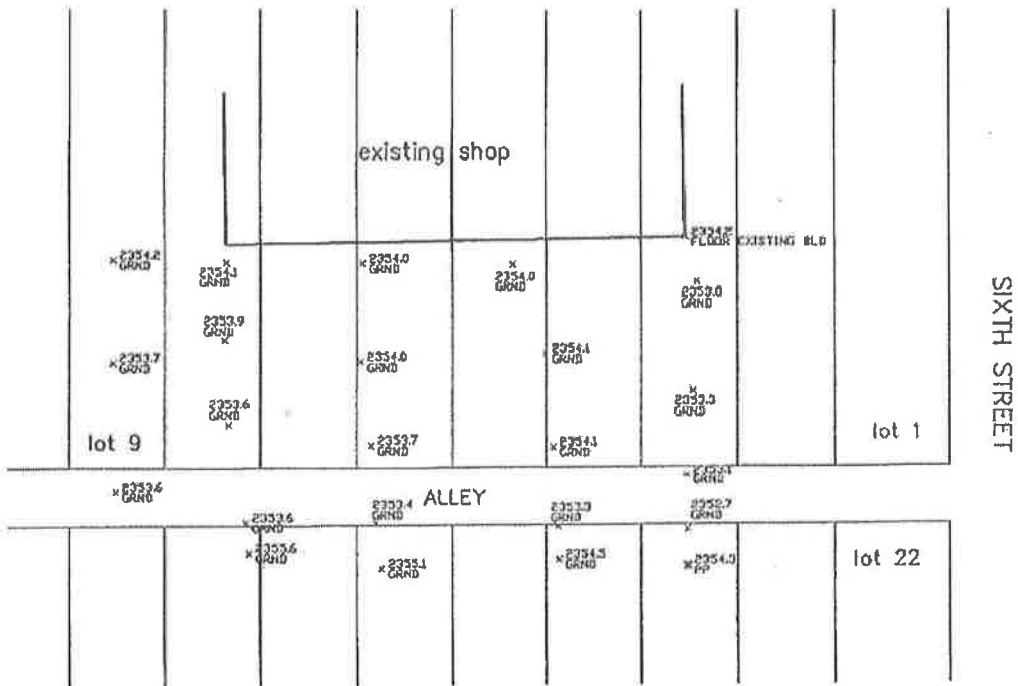
Described as follows: Lots 1-11, BK 8, Milwaukee Addition

1415 N. 6th ST

For: Eckart Trucking

Purpose: To determine the elevation above mean sea level (NAVD 1988)

Sketch of elevations determined:



NOTE: THIS IS NOT A BOUNDARY SURVEY

FLOOD PROFILE
TONGUE RIVER SPLIT 1
BFE = 2355.2'



No Scale



DOWL HKM
713 PLEASANT
P.O. BOX 1518
MILES CITY, MT 59301
406-234-6666
406-234-7065 (FAX)
DOWLHKM.COM



Quinn Wright
QUINN W. WRIGHT PLS
Montana Reg. No 9334LS

2/22/2012