

## **RESOLUTION NO. R15-106**

### **RESOLUTION OF THE CITY COUNCIL GRANTING A VARIANCE FROM THE CITY'S ZONING REGULATIONS WHICH PROHIBIT AN ALLEY ACTING AS PRIMARY ACCESS TO A PROPERTY TO ALLOW THE OWNERS TO BUILD UPON THE PROPERTY WITHOUT COMPLETING STREET IMPROVEMENTS.**

WHEREAS, LMC 17.08.080 defines an alley as a public way which affords only secondary access to abutting property; and

WHEREAS, the owners of the property at issue currently seeks a variance of the zoning restriction allowing to build on their property without street improvements, which will cause the alley to act as primary access to the property; and

WHEREAS, the owners submitted their request for a variance to the Laurel-Yellowstone City-County Planning Board. The Planning Board held a public hearing on the matter and one protest was made to the request and the owners testified in support of their requested variance; and

WHEREAS, the Laurel-Yellowstone City-County Planning Board considered all of the documentary evidence in the applicant's file and the testimony of the owners and recommends the approval of the variance, subject to the following conditions:

1. The variance shall be good for 3 years from approval on unimproved property;
2. The applicants shall apply for a building permit;
3. Property shall be kept free of noxious weeds;
4. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services;
5. All storm water must be kept on site;
6. The house will face north toward E. 11<sup>th</sup> Street in a normal fashion;
7. The variance only be approved with the 30' easement adjacent to Colorado Avenue;
8. Make it known during the permitting process that the City intends to complete E. 11<sup>th</sup> Street in the future by creation of an SID which this lot will participate in; and
9. The variance shall apply to the property as currently legally described and not for any future or subsequent lots.

WHEREAS, the City Council held a public hearing concerning this matter on October 20, 2015. No objections were noted or received into the record.

WHEREAS, the City Council of the City of Laurel hereby finds it is in the best interests of the residents of the City of Laurel to allow the variance since:

1. the denial would constitute an unnecessary and unjust invasion of the right of property;
2. granting the variance in this case relates only to a special condition that is specific to the applicant;
3. the basis is something more than mere financial loss to the owner;
4. the current hardship was not created by the applicant;
5. the variance requested appears to be within the spirit, intent and purpose of the zoning regulations;
6. granting the variance will not injure or result in an injustice to others; and

7. the applicant did not own the property prior to the enactment of this title or amendment.

NOW THEREFORE, BE IT RESOLVED that the owner's request for a variance is hereby approved for the property located at East 11<sup>th</sup> Street and Montana Avenue, allowing owner to build on his lot without street improvements and to use the alley as primary access for the property.

BE IT FURTHER RESOLVED, that the variance is site specific to this address, and the variance granted herein is subject to the nine conditions listed herein.

Introduced at a regular meeting of the City Council on October 20, 2015, by Council Member Poehls.

PASSED and APPROVED by the City Council of the City of Laurel, Montana this 20<sup>th</sup> day of October, 2015.

APPROVED BY THE MAYOR this 20<sup>th</sup> day of October, 2015.

CITY OF LAUREL

  
\_\_\_\_\_  
Mark A. Mace, Mayor

ATTEST:

  
\_\_\_\_\_  
Shirley Ewan, Clerk/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sam S. Painter, Civil City Attorney



## LAUREL CITY-COUNTY PLANNING DEPARTMENT

### STAFF REPORT

TO: Laurel City Council  
FROM: Monica Plecker, Contract Planner  
RE: 208 East 11<sup>th</sup> Street  
HEARING  
DATE: October 20, 2015

#### DESCRIPTION/LOCATION:

Chris and Faith Olson have submitted an application for a variance requesting their property located at 208 East 11<sup>th</sup> street be built upon without completing street improvements on 150' of East 11<sup>th</sup> Street which abuts the north edge of the property. This will require the alley to act as the primary access to the property. LMC 17.08.080 states that alleys are secondary access.

The property is currently zoned R7500.

#### STAFF FINDINGS:

1. The property owners have submitted a variance asking for the lot to be built upon without completing the 150' of East 11th Street on the north edge of the property, therefore, the alley will act as the primary access for the property.
2. Typical improvements to an undeveloped street include water and sewer lines, curb, gutter and road improvements needed to serve the newly constructed building.
3. LMC 17.08.080 states an "alley means a public way which affords only secondary access to abutting property."
4. The alley located to the west of the Olson's property is 20', East 11th to the north is a 100' right of way and Colorado to the east is a 30' right of way.
5. If the alley were to serve as primary access, all international fire codes are met therefore, adequate fire and safety services can be provided.
6. Staff research concludes that the City owns an easement where East 11th is platted.

7. The property was annexed into the City in 2005. The adjacent public right-of-ways were not included in the annexation but should have been as the original resolution refers to MCA 7-2-42. This regulation requires the municipality to include the full width of any public streets or roads, including right-of-ways that are adjacent to the property being annexed. To correct the oversight, an amended resolution went before City Council April 17, 2012 to specify the right-of-ways that are to be annexed with the property.
8. The previous property owner signed a waiver of protest for the City to form a special improvement district. The waiver relates to the property even in the event of a sale.
9. The 2003 Bicycle-Pedestrian Plan identifies a proposed off-street trail which follows the portion of the Nutting Drain adjacent to the Olson's property.
10. The attached exhibits are copies of the variance application request, a letter from the Olson's which addresses the criteria by which a variance can be granted, an aerial of the property, and minutes from the 2012 City Council Recommendation.
11. As per the requirements of LMC 17.72.070, a public hearing on the matter shall be held before the zoning commission before being heard by the Laurel City Council. As per B. of the section, public notice was published in the Laurel Outlook and adjacent property owners were notified by certified mail more than 15 days prior to the public hearing.

### **Variance History**

1. The Planning Board reviewed an application submitted by Sam Robertus in April of 2012. In May the Planning Board made a recommendation to the Council to approve the variance. The conditions included:
  - a. The house will face north towards E. 11<sup>th</sup> Street in a normal fashion;
  - b. The Variance only be approved with the 30' easement adjacent to Colorado Ave.;
  - c. Make it known during the permitting process that they City intends to complete E. 11<sup>th</sup> in the future by creation of an SID which this lot will participate in.
  - d. The variance shall be good for 3 years from approval on unimproved property.
  - e. The applicant shall apply for a building permit.
  - f. Property shall be kept free of noxious weeds.
  - g. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services.
  - h. All stormwater must be kept on site.
2. The Olson's have been required to reapply for the variance since the property was not improved upon within three years.
3. The Olson's letter attached to the variance application states they are mostly in favor of the conditions of approval previous identified by the City Council, however, they

would like reconsideration of the condition which requires the house to face north towards East 11<sup>th</sup> Street in a normal fashion. The letter which accompanies the application states:

“A variance was granted to the previous owners and the terms of this variance should be relatively the same. The only significant change requested is the positioning of the direction the residence faces. We propose that we have the option of with facing the residence in a northwesterly position as seen on the attached drawing or to face the residence in the northerly direction as was required in the previous variance.

At this time, as best we understand, the City of Laurel has no immediate intentions of development that section of East 11<sup>th</sup> Street which runs adjacent to the this property. By forcing a residence to face that section of undeveloped footage would be facing what is currently being used as a dumping ground for someone’s grass as well as a sizeable amount of tall grass/weeds.”

### **ZONING COMMISSION CONSIDERATIONS AND RECOMMENDATION:**

The Zoning Commission shall review and make determinations on the following chapters and sections of the Laurel Municipal Code (LMC):

1. According to Chapter 17.60.020 of the LMC the Zoning Commission may not recommend granting a land use variance:
  1. Unless the denial would constitute an unnecessary and unjust invasion of the right of property;
  2. Unless the grant relates to a condition or situation special and peculiar to the applicant;
  3. Unless the basis is something more than mere financial loss to the owner;
  4. Unless the hardship was created by someone other than the owner;
  5. Unless the variance would be within the spirit, intent, purpose, and general plan of this title;
  6. Unless the variance would not affect adversely or injure or result in injustice to others; and
  7. Ordinarily unless the applicant owned the property prior to the enactment of this title or amendment.
  
2. As per LMC 17.72.060 the Zoning Commission shall make a recommendation to the City Council to:
  1. Deny the application for amendment to the official map;
  2. Grant action on the application for a period not to exceed thirty days;
  3. Delay action on the application for a period not to exceed thirty days;
  4. Give reasons for the recommendation.

## **PROCEDURAL HISTORY:**

1. The Planning Board held a public hearing on September 3<sup>rd</sup>.
  - a. There were several comments from neighboring property owners and residents regarding the request. Many of the comments had to do with the zoning of the property and potential allowable uses.
    - i. The property is zoned R-7500. No manufactured home may be placed on the property under the current zoning.
    - ii. R-7500 also requires a dwelling be the primary use. A shop or commercial business cannot be the primary use of the property. A shop of any kind cannot be constructed without a dwelling being constructed prior to the shop construction, or at the same time.
  - b. There were some comments about added traffic to the alley.
    - i. The Planning Board discussed that the addition of 1 house, which could access the property even in the event East 11<sup>th</sup> street was constructed would not cause undue burden to the surrounding property owners.
  - c. There were comments regarding the orientation of the house.
    - i. The staff and planning board have recommended a condition of approval to require the house to face towards East 11<sup>th</sup> street in a northern fashion.
  - d. There were concerns raised by an opponent about whether the variance would be applicable to future subdivided lots.
    - i. The Planning Board has placed a condition on the variance that it only be good for this lots as currently legally described and not to any subsequent lots.
2. The Planning Board weighed all 7 criteria and felt that the Olson's had provided an adequate response to the criteria.
3. The Planning Board voted 5-0 to approve the variance with the staff suggested conditions of approval and the addition of a 9<sup>th</sup> condition stating "the variance shall only apply to the lot as legally described and not to any subsequent lots."

## **STAFF SUGGESTED CONDITIONS:**

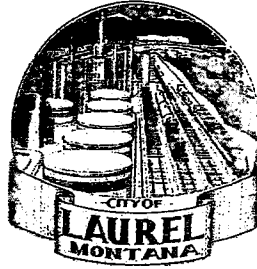
If the City Council recommends approval of the land use variance, the following conditions are suggested:

1. The variance shall be good for 3 years from approval on unimproved property.
2. The applicant shall apply for a building permit.
3. Property shall be kept free of noxious weeds.
4. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services.
5. All stormwater must be kept on site.
6. The house will face north towards E. 11<sup>th</sup> Street in a normal fashion;
7. The Variance only be approved with the 30' easement adjacent to Colorado Ave.;

8. Make it known during the permitting process that they City intends to complete E. 11<sup>th</sup> in the future by creation of an SID which this lot will participate in.

**PLANNING BOARD SUGGESTED CONDITION:**

1. The variance shall apply to the property as currently legally described and not for any future or subsequent lots.



## Laurel Variance Request Application

This application covers appeals from decisions of the Planning Department (and sometimes other officials) and for requests for variances concerning setbacks, structures, heights, lot coverage, etc.

The undersigned owner or agent of the owner of the following described property requests a variance to the Zoning Ordinances of the City of Laurel as outlined by the laws of the State of Montana.

1. Name of property owner: CHRIS M. & FAITH M. OLSON
2. Name of Applicant if different from above: N/A
3. Phone number of Applicant: 406-669-3379
4. Street address and general location: 208 E. 11<sup>th</sup> St., LAUREL MT 59044
5. Legal description of the property: S09, T02S, R24E, C05A039,  
PARCEL A1, CORR & AMNDTR
6. Current Zoning: RESIDENTIAL T500  
A+B (96) RES # R05-102  
(06)
7. Provide a copy of covenants or deed restrictions on property.

I understand that the filing fee accompanying this application is not refundable, that it pays part of the cost of process, and that the fee does not constitute a payment for a variance. I also understand I or my agent must appear at the hearing of this request before the Planning Board and all of the information presented by me is true and correct to the best of my knowledge.

Signature of Applicant: Chris M. Olson Faith M. Olson

Date of Submittal: 7/29/15

Pd 7.29.15 ✓ #4142



**DATE:** JULY 28, 2015

**TO:** CITY-COUNTY PLANNING BOARD  
CITY OF LAUREL  
LAUREL MT 59044

**FROM:** CHRIS M & FAITH M OLSON  
12705 MEDICINE MAN TRAIL  
MOLT MT 59057

**SUBJECT:** REQUEST FOR VARIANCE  
PROPERTY LOCATION: 208 E 11<sup>TH</sup> STREET  
LAUREL MT 59044

We, Chris M. and Faith M. Olson, current owners of property located at 208 E. 11<sup>th</sup> Street, Laurel MT, also known as Mountain View hereby submit a request for a variance on said property.

A variance was granted to the previous owners and terms of this variance should be relatively the same. The only significant change requested is the positioning of the direction the residence faces. We propose that we have the option of either facing the residence in a northwesterly position as seen on the attached drawing or to face the residence in the northerly direction as was required in the previous variance.

At this time, as best we understand, the City of Laurel has no immediate intentions of developing that section of East 11<sup>th</sup> Street which runs adjacent to this property. By forcing a residence to face that section of undeveloped footage would be facing what is currently being used as a dumping ground for someone's grass as well as a sizeable amount of tall grass/weeds.

At the time of requesting this variance, we have researched Yellowstone County records extensively and have found no recorded easements on file. Having said this, we as owners of this property, have no objections to the terms of the previous variance with the exception of the positioning of the residence.

We understand that all 7 items are required to be addressed concerning Chapter 17.60.020 of the zoning requirements for the City of Laurel which is defined as: Land use variances issuance and denial---Determination procedure. We will address each one separately:

1. Since development of this property is dependent on access to the property and currently the only access to the property is via the alley, the alley will be the primary access until such a time when the 150' of East 11<sup>th</sup> Street, which abuts the northern edge of this property, is developed. Without this

- alley access, we would be unable to make this property our residence complete with housing and other developments to this property to make it appealing to the City of Laurel.
2. Due to the undeveloped section of East 11<sup>th</sup> Street on the northern edge of the property identified as 208 E 11<sup>th</sup> Street, alley access is the only means of access to the property. The previous variance recognized this as a special situation to this property.
  3. We wish to have this property become our residence and establish our living quarters, attached garage and detached garage/shop at this location. We are planning on beautifying this lot by establishing residence and making various improvements to give all surrounding residences a positive appearance of this location. The City of Laurel will benefit by having a permanent residence as the lot has been primarily grass and weeds for many years.
  4. Due to the undeveloped section of East 11<sup>th</sup> Street on the northern edge of the property, identified as 208 E 11<sup>th</sup> Street, alley access is the only means of access to the property. We understand that this may be completed in the future but at the time of this request, the only access remains the alley access.
  5. It is our intent to make this property pleasing not only to the City of Laurel but to the surrounding residences. By positively developing this property, it will increase surrounding property values and effectively make this a win-win situation for all parties involved.
  6. This variance request will not adversely affect anyone involved. Currently the alley access is being used for all residences west of the alley as those garages require alley access to get to them. This will not increase traffic or have any effect on safety/emergency devices such as fire or ambulance vehicles. We will assist in clearing snow as it is important to us to have clear access for emergency vehicles.
  7. We did not own the property prior to the enactment of this title or amendment. (Prior code 17.08.015)

Thanks in advance for your consideration in granting this variance. We look forward to becoming residents of Laurel and in serving the community of Laurel in a very positive manner.

Sincerely,

*Chris M Olson*  
*Faith M Olson*

Chris M. & Faith M. Olson



Longitude: -108.770 Latitude: 45.682  
 State Plane X, Y: 656876.476, 159413.689

Legend

Results

Number of features: 44

Parcels	Roads	Structures	PLSS	FIRE	RSIDs	ZONE	School	Elections	Levy	Traffic Counts	Census	Parks	Water Sources
<a href="#">Export to CSV</a>	<b>TAX ID</b>	<b>Geocode</b>	<b>Owner</b>	<b>Tax Detail</b>	<b>Address</b>	<b>Legal</b>							
	B01797	03082109117010000	OLSEN, CONNIE H	<a href="#">Tax Detail</a>	115 E MARYLAND LN	WHITFIELD SUBD, S09, T02 S, R24 E, BLO 9A, AMND LT 9-10 11,870 SQ FT							
	B01798	03082109117020000	ERB, CHRISTOPHER V	<a href="#">Tax Detail</a>	1006 MONTANA AVE	WHITFIELD SUBD, S09, T02 S, R24 E, BLO 10A, & LT 11 12770 SQ FT (07)							
	B01800M	03082109117047000	WHEATGRASS TOWNHOMES	<a href="#">Tax Detail</a>	MONTANA AVE	WHEATGRASS TOWNHOMES, S09, T02 S, R24 E, BLO 10A, & LT 11 12770 SQ FT (07)							

Copyright 2009-2014 Yellowstone County, Montana GIS Billings. MT 59101 DISCLAIMER - This is a product of the Yellowstone County, Montana GIS Department. This document is intended for informational purposes only. Yellowstone County expressly disclaims responsibility for damages or liability that may arise from the use of this map. PROPRIETARY INFORMATION: Any reuse of this information is prohibited.

Faith Olson  
 406-861-0253



1100

Montana Ave

Montana Ave

Montana Ave

1000

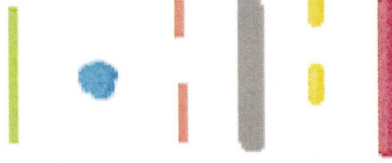
E Maryland Ln

E Maryland Ln

E Maryland Ln

E Maryland Ln

Pennsylvania Ave



**RESOLUTION NO. R12-36**

**RESOLUTION OF THE CITY COUNCIL GRANTING A VARIANCE FROM THE CITY'S ZONING REGULATIONS WHICH PROHIBIT AN ALLEY ACTING AS PRIMARY ACCESS TO A PROPERTY TO ALLOW THE OWNER TO BUILD UPON HIS PROPERTY WITHOUT COMPLETING STREET IMPROVEMENTS.**

WHEREAS, LMC 17.08.080 defines an alley as a public way which affords only secondary access to abutting property; and

WHEREAS, the owner of the property at issue currently seeks a variance of the zoning restriction allowing to build on his property without street improvements, which will cause the alley to act as primary access to the property; and

WHEREAS, the owners submitted their request for a variance to the Laurel-Yellowstone City-County Planning Board. The Planning Board held a public hearing on the matter and no protests were made to the request and the owners testified in support of their requested variance; and

WHEREAS, the Laurel-Yellowstone City-County Planning Board considered all of the documentary evidence in the applicant's file and the testimony of the owners and recommends the approval of the variance, subject to the following conditions:

1. The house will face north toward East 11<sup>th</sup> Street in a normal fashion;
2. The variance only be approved with the 30' easement adjacent to Colorado Avenue;
3. Make it known during the permitting process that the City intends to complete East 11<sup>th</sup> Street in the future by creating an SID which this lot will participate in;
4. The variance shall be good for three years from approval on unimproved property;
5. The applicant shall apply for a building permit;
6. The property shall be kept free of noxious weeds;
7. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services;
8. All storm water must be kept on site; and

WHEREAS, the City Council held a public hearing concerning this matter on June 5, 2012. The Council considered no letter(s) of opposition to the request for a variance. No objections were noted or received into the record.

WHEREAS, the City Council of the City of Laurel hereby finds it is in the best interests of the residents of the City of Laurel to allow the variance since:

1. Granting the variance in this case relates only to a special condition that is specific to the applicant;
2. The current hardship was not created by the applicant;
3. The variance requested appears to be within the spirit, intent and purpose of the zoning regulations; and

4. Granting the variance will not injure or result in an injustice to others.

NOW THEREFORE, BE IT RESOLVED that the owner's request for a variance is hereby approved for the property located at East 11<sup>th</sup> Street and Montana Avenue, allowing owner to build on his lot without street improvements and to use the alley as primary access for the property.

BE IT FURTHER RESOLVED, that the variance is site specific to this address, and the variance granted herein is subject to the eight conditions listed herein.

Introduced at a regular meeting of the City Council on June 19, 2012, by Council Member Mountsier.

PASSED and APPROVED by the City Council of the City of Laurel, Montana this 19<sup>th</sup> day of June, 2012.

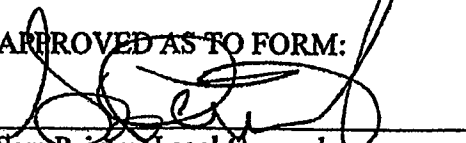
APPROVED BY THE MAYOR this 19<sup>th</sup> day of June, 2012.

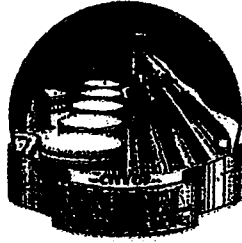
  
\_\_\_\_\_  
Kenneth E. Olson, Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Shirley Ewan, Clerk-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sam Painter, Legal Counsel  
Elk River Law Office, P.L.L.P.



## LAUREL CITY-COUNTY PLANNING DEPARTMENT

### STAFF REPORT

TO: Laurel City Council  
FROM: Monica Plecker, City Planner  
RE: Variance for E 11<sup>th</sup> & Montana Ave.  
HEARING  
DATE: April 5, 2012  
June 5, 2012

#### DESCRIPTION/LOCATION:

Sam Robertus submitted an application for a variance requesting his property off of East 11<sup>th</sup> Street and Montana Avenue known as Mountain View to be built upon without completing street improvements on 150' of East 11<sup>th</sup> Street which abuts the north edge of the property. This will require the alley to act as the primary access to the property.

The property is currently zoned R7500.

#### STAFF FINDINGS:

1. The property owner has submitted a variance asking for the lot to be "built upon without completing the 150' of East 11th Street on the north edge" of the property, therefore, the alley will act as the primary access for the property.
2. Typical improvements to an undeveloped street include water and sewer lines, curb, gutter and road improvements needed to serve the newly constructed building. See attached memorandum from Public Works.
3. LMC 17.08.080 states an "alley means a public way which affords only secondary access to abutting property."
4. The property was annexed into the City in 2005. The adjacent public right-of-ways were not included in the annexation but should have been as the original resolution refers to MCA 7-2-42. This regulation requires the municipality to include the full width of any public streets or roads, including rights-of-way that are adjacent to the property being

annexed. To correct the oversight, an amended resolution will go before council on April 17, 2012 to specify the rights-of-way that are to be annexed with the property.

5. The previous property owner signed a waiver of protest for the City to form a special improvement district, therefore, Mr. Robertus does not need to offer a waiver of protest.
6. The 2003 Bicycle-Pedestrian Plan identifies a proposed off-street trail which follows the portion of the Nutting Drain adjacent to Mr. Robertus' property.
7. The attached exhibits are copies of the variance application request, dimension drawing, and a letter from Mr. Robertus explaining the need for the variance. Also included is a memorandum on behalf of the Public Works Department.
8. As per the requirements of LMC 17.72.070, a public hearing on the matter shall be held before the zoning commission before being heard by the Laurel City Council. As per B. of the section, public notice was published in the Laurel Outlook and adjacent property owners were notified by certified mail more than 15 days prior to the public hearing.

#### **STAFF REPORT UPDATE:**

On April 5, the Planning Board voted to delay action for 30 days.

#### **Further Staff Findings:**

1. The alley located to the west of Mr. Robertus' property is 20', East 11<sup>th</sup> to the north is a 100' right of way and Colorado to the east is a 30' right of way.
2. If the alley were to serve as primary access, all international fire codes are met therefore, adequate fire and safety services can be provided. See attached memo.
3. Staff research concludes that the City owns an easement where East 11<sup>th</sup> is platted.
4. An off street bike and pedestrian path is planned to run adjacent to the north edge of Mr. Robertus' property. There are no fire access issues related to using the alley.
5. The attached exhibits are copies of the variance application request, dimension drawing, and a letter from Mr. Robertus explaining the need for the variance. Also included is a memorandum on behalf of the Public Works Department, Laurel Fire Department and an aerial map of the property.



## **ZONING COMMISSION CONSIDERATIONS AND RECOMMENDATION:**

The Zoning Commission shall review and make determinations on the following chapters and sections of the Laurel Municipal Code (LMC):

1. According to Chapter 17.60.020 of the LMC the Zoning Commission may not recommend granting a land use variance:
  1. Unless the denial would constitute an unnecessary and unjust invasion of the right of property;
  2. Unless the grant relates to a condition or situation special and peculiar to the applicant;
  3. Unless the basis is something more than mere financial loss to the owner;
  4. Unless the hardship was created by someone other than the owner;
  5. Unless the variance would be within the spirit, intent, purpose, and general plan of this title;
  6. Unless the variance would not affect adversely or injure or result in injustice to others; and
  7. Ordinarily unless the applicant owned the property prior to the enactment of this title or amendment.
  
2. As per LMC 17.72.060 the Zoning Commission shall make a recommendation to the City Council to:
  1. Deny the application for amendment to the official map;
  2. Grant action on the application for a period not to exceed thirty days;
  3. Delay action on the application for a period not to exceed thirty days;
  4. Give reasons for the recommendation.

## **PLANNING BOARD RECOMMENDATIONS:**

The Laurel City-County Planning Board met at their regularly scheduled meeting on May 3, 2012. The board voted unanimously to recommend approval with the following conditions:

1. The house will face north towards E. 11<sup>th</sup> Street in a normal fashion;
2. The Variance only be approved with the 30' easement adjacent to Colorado Ave.;
3. Make it known during the permitting process that they City intends to complete E. 11<sup>th</sup> in the future by creation of an SID which this lot will participate in.

The Planning Board also recommended the below staff conditions.

## **STAFF SUGGESTED CONDITIONS:**

If the Planning Board recommends approval of the land use variance, the following conditions are suggested:

1. The variance shall be good for 3 years from approval on unimproved property.
2. The applicant shall apply for a building permit.
3. Property shall be kept free of noxious weeds.
4. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services.
5. All stormwater must be kept on site.

**MINUTES**  
**LAUREL CITY-COUNTY PLANNING BOARD**  
**MAY 3, 2012 6:00 PM**  
**COUNCIL CHAMBERS**

**PRESENT:** Dan Koch, City Rep.  
Dick Fritzler, County Rep.  
Judy Goldsby, County Rep.  
Don Brown, City Rep.  
John VanAken, County Rep.  
Greg Nelson, City Rep.  
Kathy Siegrist, Chairman

**OTHERS PRESENT:** Monica Plecker, City Planner

**CALL TO ORDER:** The meeting was called to order by Chairman Siegrist at 6:00 pm.

**ROLL CALL:** Koch, Fritzler, Goldsby, Brown, VanAken, Nelson and Siegrist were present

**NON AGENDA TOPICS:** None.

**MINUTES:** A motion was made by Judy Goldsby, seconded by Dick Fritzler to accept the minutes of the April 5, 2012 meeting as written.

**NEW BUSINESS:** None.

**OLD BUSINESS:** Continuation of board discussion on the variance request from Sam Robertus for property located at E. 11<sup>th</sup> Street between Montana and Colorado.

Monica sent out an updated staff report and an aerial map of the property illustrating the locations of the right-of-way, ditch, Nutting Drain, sewer line and water valve.

Also included in the packet was a letter from the Fire Department addressing the access issue and International Fire Code specifications required for the fire department to provide fire protection. The property does meet the specifications required by the Fire Department to provide emergency services.

Monica passed around a letter she just recently received from Sam Robertus and gave the board a few minutes to review the letter.

Monica asked the board to turn to her Updated staff report regarding further findings for the variance application.

**STAFF REPORT UPDATE:**

On April 5, 2012 the Planning Board voted to delay action on the Robertus variance for 30 days which gave Monica some time to address questions that came up during that meeting.

**Further Staff Findings:**

1. The alley located to the west of Mr. Robertus' property is 20' wide; East 11th to the north is a 100' right of way and Colorado to the east is a 30' right of way.
2. If the alley were to serve as primary access, all international fire codes are met, therefore adequate fire and safety services can be provided. (See attached memo from Fire Marshall Gary Colley).
3. Staff research concludes that the City purchased and owns an easement where East 11th is platted and the Nutting Drain is located.
4. An off street bike and pedestrian path is planned to run adjacent to the north edge of Mr. Robertus' property (within the 100' easement). There are no fire access issues related to using the alley.
5. The attached exhibits are copies of the variance application request, dimension drawing, and a letter from Mr. Robertus explaining the need for the variance. Also included is a memorandum on behalf of the Public Works Department, Laurel Fire Department and an aerial map of the property.

Monica reminded the board that this variance is strictly an access issue. It's not dealing with the street or an SID. It is strictly about "can an alley serve as a primary access". She asked the board to keep that in mind as they ask questions.

**Board Discussion:**

Dan Koch asked how the Woodland Avenue property was granted access through the alley and how the addresses of that property were given without giving each dwelling a ½ address.

Monica stated that was done before her time but the access was proposed on the site plan and there was no variance applied for. She stated that Sam Robertus' property will be given an address by Gary Colley and it also will not require a ½ address. The address will be an E. 11<sup>th</sup> Street address even though the street is not completed. The street is platted as a through street. She stated that addressing the property is not an issue.

Brad Woods was in the audience as a representative for Sam Robertus. Sam is out of town for his job. Brad is the interested buyer of the property.

John VanAken said that supposedly the house is going to face E. 11<sup>th</sup> Street. He questioned if the owner will have to get an easement to place his driveway in the alley.

Monica stated that in her conversations with City Public Works there are no concerns with a driveway to the garage off of the alley. But it cannot be considered the primary access.

There was some confusion on the easement on the front of the property.

The easement on the front is where the City street (and possible city services) is to be located. The easement makes up part of the street. The easement out front is 100' and the street, sidewalk, curb and gutter is included in that 100'.

Judy Goldsby made a motion to recommend approval of Sam Robertus' variance to the Laurel City Council subject to the following conditions in the staff report:

1. The variance shall be good for 3 years from approval on unimproved property;
2. The applicant shall apply for a building permit;
3. Property shall be kept free of noxious weeds;
4. The owner shall comply with Public Works Standards for connection and improvements to the city water and sewer services; and
5. All storm water must be kept on site.

The motion was seconded by John VanAken.

Chairman Siegrist recommended that the board give reasons for support of this variance keeping in mind Laurel Municipal Code (LMC) 17.60.020 as follows:

1. According to Chapter 17.60.020 of the LMC the Zoning Commission may not recommend granting a land use variance:
  1. Unless the denial would constitute an unnecessary and unjust invasion of the right of property;
  2. Unless the grant relates to a condition or situation special and peculiar to the applicant;
  3. Unless the basis is something more than mere financial loss to the owner;
  4. Unless the hardship was created by someone other than the owner;
  5. Unless the variance would be within the spirit, intent, purpose, and general plan of this title;
  6. Unless the variance would not affect adversely or injure or result in injustice to others; and
  7. Ordinarily unless the applicant owned the property prior to the enactment of this title or amendment.

Dick Fritzler stated that it is concerning to him that the complex on S. 5<sup>th</sup> and Woodland was not required to put in curb, gutter and sidewalk because when the permit was issued by the City Building Department things were not made perfectly clear to the property owners.

Dick Fritzler made an amendment to the motion to recommend approval of Sam Robertus' variance to the Laurel City Council with the addition of the following requirements:

1. That the house will face north towards E. 11<sup>th</sup> Street in a normal fashion ;
2. This variance is only approved with the 30' easement that Sam Robertus' offered in his letter dated April 26, 2012; and,
3. That it be made perfectly clear during the permitting process, to whomever purchases the lot, that the City intends to build E. 11<sup>th</sup> Street in the future and the owner of the lot/house will participate in an SID.

The amended motion was seconded by John VanAken.

At this time the board went through LMC 17.60.020 conditions:

1. Unless the denial would constitute an unnecessary and unjust invasion of the right of property. *(The board determined this does not apply)*
2. Unless the grant relates to a condition or situation special and peculiar to the applicant. *(The board feels that the 30' easement that Sam Robertus suggested makes this a special situation)*
3. Unless the basis is something more than mere financial loss to the owner. *(The board agrees this is a mere financial loss to the owner)*
4. Unless the hardship was created by someone other than the owner. *(The board agrees there was a hardship created by a previous owner but Sam Robertus' knew there was a risk involved in purchasing this property)*
5. Unless the variance would be within the spirit, intent, purpose, and general plan of this title. *(The Board agrees this is true)*
6. Unless the variance would not affect adversely or injure or result in injustice to others. *(The Board does not feel this to be true)*
7. Ordinarily unless the applicant owned the property prior to the enactment of this title or amendment. *(The Board does not feel this to be true)*

Chairman Siegrist asked if approval of this variance will set a precedent for future developers. She asked if there were other people waiting to ask for the same thing.

Monica stated that the 2 lots directly to the north of Sam Robertus' property could be facing the same issue in the future because both properties currently do not have accesses other than through an alley.

Dick Fritzler questioned whether this would set a precedent for others.

After a discussion it was decided that because of Sam Robertus' offer of a 30' easement which applies to 17.60.020 (1)(2) "unless the grant relates to a condition or situation special and peculiar to the applicant" that recommending approval of the variance will not set a precedent. Any other builder or owner of a property is required to go through their own variance review and it will be reviewed under the same 7 requirements of LMC 17.60.020. Each variance is reviewed under their own particular circumstances.

The vote was called for on the amendment to the motion and was approved by a vote of 6-0.

The vote was called for on the 1<sup>st</sup> motion and was approved by a vote of 6-0.

#### **Miscellaneous: Growth Management Plan Update**

Monica stated that the GMP committee is continuing to meet regularly. They had a healthy discussion on the Natural Resources Chapter which is basically what natural barriers there are to developments. The next chapter they will be working on is demographics. They will not meet until June. They are slowly but surely working on updating the GMP and she will continue to keep the board updated on their progress.

**Miscellaneous: Potential Next Meeting: June 7, 2012.**

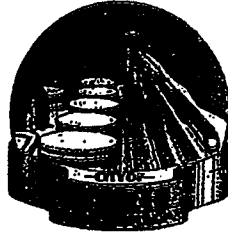
At this time it is unknown if there is a need to have a June 7, 2012. Information will be forthcoming.

Monica reminded John VanAken, Judy Goldsby and Lee Richardson that their terms on the board are up on June 30, 2012 and invited them to re-apply prior to the May 10, 2012 deadline.

A motion was made by Dan Koch, seconded by Judy Goldsby to adjourn the meeting. The meeting was adjourned at 6:40 pm.

Respectfully submitted,

*Cheryll Lund*  
Cheryll Lund, Secretary



## LAUREL CITY-COUNTY PLANNING DEPARTMENT

STAFF REPORT – May 3, 2012

TO: Laurel City-County Planning Board  
FROM: Monica Plecker, City Planner  
RE: Variance for E 11<sup>th</sup> & Montana Ave.  
HEARING  
DATE: April 5, 2012  
May 15, 2012

### DESCRIPTION/LOCATION:

Sam Robertus submitted an application for a variance requesting his property off of East 11<sup>th</sup> Street and Montana Avenue known as Mountain View to be built upon without completing street improvements on 150' of East 11<sup>th</sup> Street which abuts the north edge of the property. This will require the alley to act as the primary access to the property.

The property is currently zoned R7500.

### STAFF FINDINGS:

1. The property owner has submitted a variance asking for the lot to be "built upon without completing the 150' of East 11th Street on the north edge" of the property, therefore, the alley will act as the primary access for the property.
2. Typical improvements to an undeveloped street include water and sewer lines, curb, gutter and road improvements needed to serve the newly constructed building. See attached memorandum from Public Works.
3. LMC 17.08.080 states an "alley means a public way which affords only secondary access to abutting property."
4. The property was annexed into the City in 2005. The adjacent public right-of-ways were not included in the annexation but should have been as the original resolution refers to MCA 7-2-42. This regulation requires the municipality to include the full width of any public streets or roads, including rights-of-way that are adjacent to the property being



annexed. To correct the oversight, an amended resolution will go before council on April 17, 2012 to specify the rights-of-way that are to be annexed with the property.

5. The previous property owner signed a waiver of protest for the City to form a special improvement district, therefore, Mr. Robertus does not need to offer a waiver of protest.
6. The 2003 Bicycle-Pedestrian Plan identifies a proposed off-street trail which follows the portion of the Nutting Drain adjacent to Mr. Robertus' property.
7. The attached exhibits are copies of the variance application request, dimension drawing, and a letter from Mr. Robertus explaining the need for the variance. Also included is a memorandum on behalf of the Public Works Department.
8. As per the requirements of LMC 17.72.070, a public hearing on the matter shall be held before the zoning commission before being heard by the Laurel City Council. As per B. of the section, public notice was published in the Laurel Outlook and adjacent property owners were notified by certified mail more than 15 days prior to the public hearing.

#### **ZONING COMMISSION CONSIDERATIONS AND RECOMMENDATION:**

The Zoning Commission shall review and make determinations on the following chapters and sections of the Laurel Municipal Code (LMC):

1. According to Chapter 17.60.020 of the LMC the Zoning Commission may not recommend granting a land use variance:
  1. Unless the denial would constitute an unnecessary and unjust invasion of the right of property;
  2. Unless the grant relates to a condition or situation special and peculiar to the applicant;
  3. Unless the basis is something more than mere financial loss to the owner;
  4. Unless the hardship was created by someone other than the owner;
  5. Unless the variance would be within the spirit, intent, purpose, and general plan of this title;
  6. Unless the variance would not affect adversely or injure or result in injustice to others; and
  7. Ordinarily unless the applicant owned the property prior to the enactment of this title or amendment.
2. As per LMC 17.72.060 the Zoning Commission shall make a recommendation to the City Council to:
  1. Deny the application for amendment to the official map;
  2. Grant action on the application for a period not to exceed thirty days;

3. Delay action on the application for a period not to exceed thirty days;
4. Give reasons for the recommendation.

#### **STAFF SUGGESTED CONDITIONS:**

If the Planning Board recommends approval of the land use variance, the following conditions are suggested:

1. The variance shall be good for 3 years from approval on unimproved property.
2. The applicant shall apply for a building permit.
3. Property shall be kept free of noxious weeds.
4. The owner shall comply with Public Works Standards for connection and improvements to city water and sewer services.
5. All stormwater must be kept on site.

#### **STAFF REPORT UPDATE:**

On April 5, the Planning Board voted to delay action for 30 days.

Further Staff Findings:

1. The alley located to the west of Mr. Robertus' property is 20', East 11<sup>th</sup> to the north is a 100' right of way and Colorado to the east is a 30' right of way.
2. If the alley were to serve as primary access, all international fire codes are met therefore, adequate fire and safety services can be provided. See attached memo.
3. Staff research concludes that the City owns an easement where East 11<sup>th</sup> is platted.
4. An off street bike and pedestrian path is planned to run adjacent to the north edge of Mr. Robertus' property. There are no fire access issues related to using the alley.
5. The attached exhibits are copies of the variance application request, dimension drawing, and a letter from Mr. Robertus explaining the need for the variance. Also included is a memorandum on behalf of the Public Works Department, Laurel Fire Department and an aerial map of the property.

Robertus Properties LLC  
Sam Robertus  
1318 Pennsylvania Ave.  
Laurel, MT 59044  
February 26, 2012

April 26, 2012

Monica Plecker  
City Planner  
City of Laurel  
115 West 1<sup>st</sup> Street  
Laurel, MT 59044

Dear Ms. Plecker,

In light of the comments that were expressed at the April 5th public hearing on the access variance request for our property on Mountain View and east 11<sup>th</sup>, the following idea may be something for us all to consider.

In an effort to try and eliminate the land lock and street issues that were expressed, specifically by Mr. Metzger, I feel there may be value in an easement granted by us to the City of Laurel. If we were to grant 30' of our east property line, where the property is widest, in an easement to the City of Laurel it could perhaps make it possible to move the now platted Colorado Avenue 30' east and run it through with less obstruction of buildings, namely Metzger's.

I feel this could be a terrific asset to the City for future growth and allow a quicker alternative, or remedy, for access to our lot if granted the variance for the time being.

Also to inform you, I will be unable to attend the May 3<sup>rd</sup> City / County planning meeting as I will be out of town. Brad Wood will be attending in my place to try to answer any questions.

I appreciate your consideration and if you have any questions feel free to contact me @855-2875.

Sincerely,



Sam Robertus  
Robertus Properties LLC

# LAUREL FIRE DEPARTMENT

Brent Peters – Fire Chief  
Gary Colley – Fire Marshal



215 West 1<sup>st</sup> Street  
Laurel, Montana 59044  
(406) 628-4911

April 9, 2012

To: Monica Plecker, City Planner

From: Gary Colley, Fire Marshal

RE: Access road to Robertus Properties at 208 East 11<sup>th</sup> Street

The access road to Robertus Properties at 208 East 11<sup>th</sup> Street (COS 2039, Parcel A1) shall be as follows per International Fire Code:

1. Not less than twenty (20) feet in width (IFC 503.2.1)
2. Extend to within 150 feet of all portions of the building (IFC 503.1.1)
3. Of all weather surface (IFC 503.2.3)
4. Dead ends in excess of 150 feet in length shall be provided with an approved area for turning around (IFC 503.2.5)

If the property meets the above specifications the fire department shall provide fire protection to the structure(s).

A handwritten signature in black ink, which reads "Gary Colley". The signature is written in a cursive style with a large, sweeping initial "G" that loops around the first part of the name.

