

TO: Three Forks Board of Adjustment

FR: Kelly Smith
Floodplain Administrator

RE: Flood control variance

Name of applicant: Richard Williams

Date of hearing: April 20, 2026

Location: Lot 4, Block 49 of the Milwaukee Land Company #1 Addition (commonly known as 516 1st Ave West)

Zoning: Residential

Application Request: Richard Williams requests a variance of 5 feet from the City of Three Forks Flood Control regulations, which require suitable fill to extend for at least 15-feet at the Base Flood Elevation (BFE) beyond the proposed residential structure in all directions.

The applicant desires to fill the BFE for only 10 feet beyond both sides of the dwelling, resulting in a request for a total variance of 5 feet for rear and both side yards.

Background: Section 12-1-9.C2.e of the Three Forks Flood Control Ordinance requires fill to be installed 15' beyond a dwelling to at least the BFE if a dwelling is within the 100-year base flood elevation, as follows:

e. Residential: The new construction, alterations, and substantial improvements of residential dwellings including manufactured homes must be constructed on suitable fill with a permanent foundation such that the lowest floor elevation (including basement) is two feet (2') or more above the BFE (base flood elevation). The suitable fill shall be at an elevation no lower than the elevation of the 100-year flood and shall extend for at least fifteen feet (15'), at that elevation, beyond the dwelling(s) in all directions. Replacement manufactured and mobile homes in an existing mobile home park or subdivision may, instead of using suitable fill, be elevated on a concrete or mortared block foundation, or other suitable permanent foundation, and anchored to prevent flotation or downstream movement.

(1) Crawl space must be designed to allow internal flooding and must be limited to storage of equipment or materials not appreciably affected by floodwaters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two feet (2') above the BFE. Walls shall be designed to equalize hydrostatic forces by allowing for entry and

exit of floodwaters. Openings may be equipped with screens, louvers, valves, and other coverings or devices which permit the automatic entry and exit of floodwaters.

(2) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (A) A minimum of two (2) openings;
- (B) Openings shall have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- (C) The bottom of all openings shall be no higher than one foot (1') above grade;
- (D) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

Staff Report:

Montana Code 76-2-323 requires, for the granting of a variance to be valid, the following criteria must be met:

1. *The granting of the variance will not be contrary to the public interest.*
2. *A literal enforcement of the zoning ordinance will result in unnecessary hardship due to conditions unique to the property.*
3. *The spirit of the ordinance will be observed, and substantial justice done, by granting the variance.*

Montana statutes do not require that municipal zoning ordinances take into account the highest and best use of each parcel of real estate within the community.

Furthermore, section 12-1-8 of the Three Forks Zoning Ordinance states that:

- A. 4. In passing upon such applications, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with the existing and anticipated development;

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
5. Upon consideration of the factors of subsection A4 of this section and the purposes of this chapter, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

B. Conditions For Variances:

- 1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections A4a through A4k of this section have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justifications required for issuing the variance increases.
- 2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the national register of historic places or the state inventory of historic places without regard to the procedures set forth in the remainder of this section.
- 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 4. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create nuisances, cause fraud on or victimization of the public as identified in subsection A4 of this section, or conflict with existing local laws or ordinances.

Board Discussion:

It is the responsibility of the Board to discuss and determine the appropriate responses to the following questions:

1. Is the hardship self-imposed?

Board Comment:

2. Did the condition creating the hardship or zoning regulation(s) identified as having created the hardship exist prior to the property owner's purchase of the land?

Board Comment:

3. Will the granting of this variance be in the public interest?

Board Comment:

4. Will a literal enforcement of the zoning ordinance result in unnecessary hardship due to condition unique to the property?

Board Comment:

5. Will the spirit of the zoning ordinance be observed and substantial justice done by granting the variance?

Board Comment:

6. Will the failure to grant this variance render the property unsuitable for the permitted and conditional uses for which the property is zoned?

Board Comment:

Board Conclusion:

The Board of Adjustment has considered all public comment and Board discussion. A vote has been taken and the Board has voted as follows:

Board members voting to approve the request for a variance to Three Forks Flood Control Ordinance Section 12-1-9.C2.e at 607 East Elm St.: _____

Board members voting to deny the request for a variance to Three Forks Zoning Ordinance Section 12-1-9.C2.e at 607 East Elm St.: _____

Conditions imposed by the Board:

Note:

MCA 76-2-324 requires that a **concurring vote of four members of the board** shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.