Date of Public Hearing: July 16, 2025

Staff Report and Findings of Fact
Prepared for the
Board of Adjustment
(Custer County Commission)

ITEM	**Public Hearing** Floodplain Variance #25-FPV-01
INITIATED BY	Nicole Friend
ACTION REQUESTED	Approval of Floodplain Variance #25-FPV-01 from the Custer County Floodplain Regulations § 10.3(1) to deviate from the requirement that the lowest floor of the building must be two (2) feet above the Base Flood Elevation (ARM 36.15.701(3)) required for a Substantial Improvement of an existing pre-FIRM structure.
PRESENTED BY	Courtney Long, CFM, Planner

Background

The subject property is currently owned by Meade Construction LLC. This request has been submitted by the new potential owner, Nicole Friend. The existing commercial structure previously operated as a single-story motel. According to the Department of Revenue's Montana Cadastral, the structure was built in 1949 and is 2,976 square feet. It's physical condition is listed as 'poor'.

The applicant is proposing renovations to the existing structure, such as a new roof and electrical system. These improvements would exceed 50% of the structure's current market value, triggering Substantial Improvement requirements by the Code of Federal Regulations (CFR) and the Custer County Floodplain Regulations. No improvements proposed will increase the square footage of the existing structure. The proposed use will be single-story, multi-family units.

The submitted Floodplain Permit Application proposes several improvements to meet the requirements for development in a Regulated Flood Hazard Area. However, the applicant requests a variance from Montana's higher standard of residential structures being placed 2 feet above the Base Flood Elevation (BFE). The applicant is proposing to raise the lowest floor by 8" to be at the BFE, which meets the minimum federal standards.

It should be noted that Custer County's pre-FIRM date is 1979. This is a correction to the

Variance Application, which lists it as 1997.

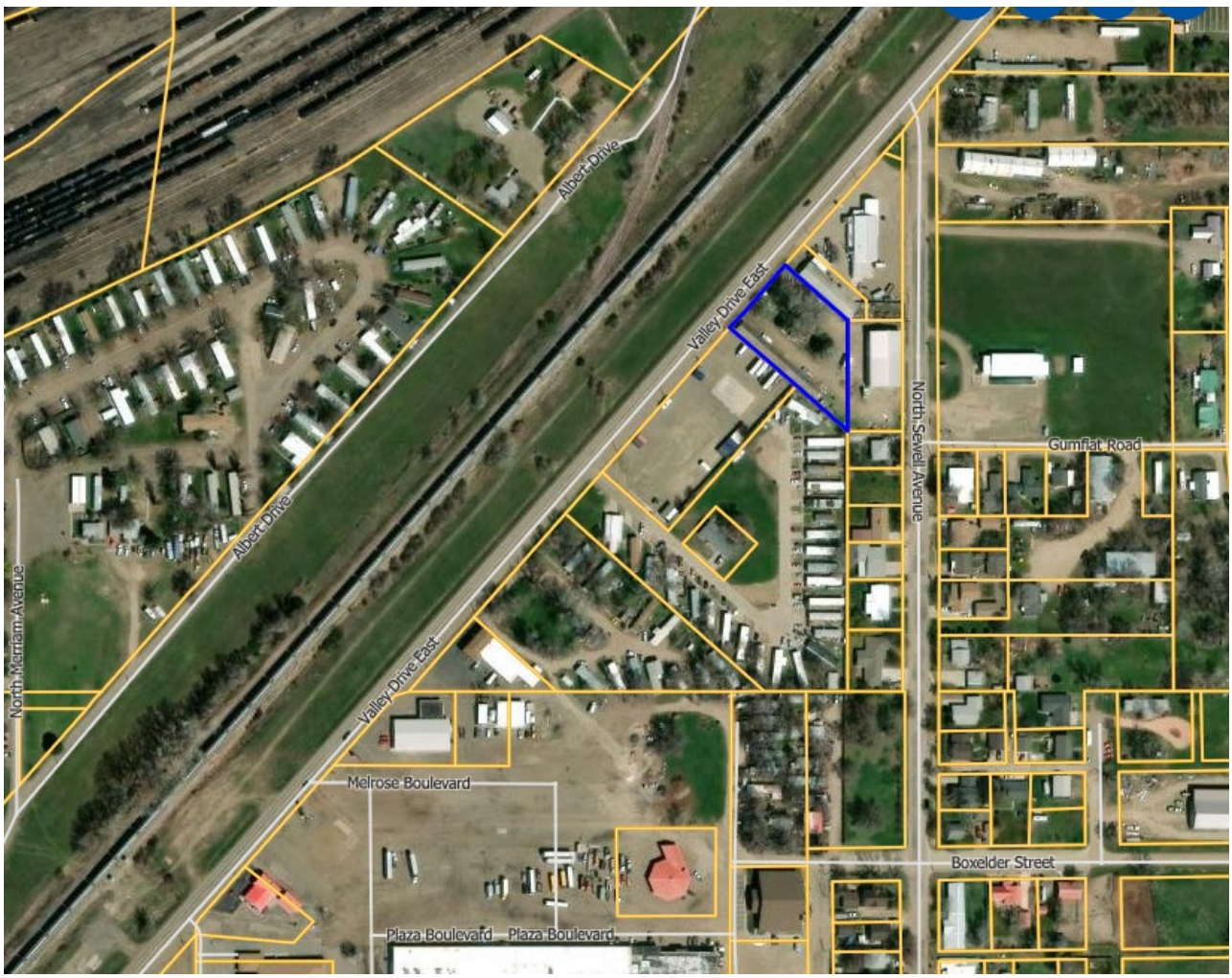

Figure 1. Location of subject property

Special Information

1. The subject property is legally described as Lot 4A, Block B of Tract B, in Alta tracts, Section 27, Township 08 North, Range 47 East, P.M.M., Custer County Montana and located in the Flood Fringe of insurance Zone AE of FEMA's designated Regulated Flood Hazard Area (RFHA) based on Flood Insurance Rate Map (FIRM) Panel #30017C0662DE (eff. July 22, 2010).

2. Floodplain Permit Application #25-FP-01 was submitted with this Floodplain Variance Application in accordance with CCFR § 11.2(1).

3. Notice of this public hearing was completed with a mailing to surrounding property owners sent on June 26, 2025, and a legal ad in the *Miles City Star* was published per the Custer County Floodplain Regulations on Saturday, June 28th and an additional legal ad on Wednesday, July 2nd, 2025.

4. The following definitions are taken from the CCFR § 2:

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.

Encroachment means activities or construction with the Floodplain, including fill, new construction, substantial improvements, and other development.

Encroachment Analysis means an analysis performed by a professional engineer to address the impacts of the proposed artificial obstruction or nonconforming use to the 100-year Floodplain, base flood elevation and velocity.

Flood Proofing means any combination of structural or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, HVAC systems, structures and their contents.

Lowest floor means any floor used for living purposes, storage or recreation. This includes any floor that could be converted to such a use.

Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. A structure is also, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

Substantial Improvement Any repair, reconstruction or improvement of a structure where the cost equals or exceeds fifty percent (50) of the market value of the structure either before the improvement or repair is started or if the structure has been damaged, and is being restored, before the damage occurred;

Analysis & Findings of Fact

Section 12.4 of the Custer County Floodplain Regulations states that "A Floodplain

permit and Variance shall only be issued upon a determination that the variance is the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and provided all of the following criteria are met:

(1) There is good and sufficient cause; (44 CFR 60.6(a)(3)).

Applicants:
Miles City's leaders are actively working to reduce flood risk across the city; the Growth Policy's goals include "reduce the size of the mapped floodplain that affects Miles City" (Goal L-5) and pursuing levee improvements and certification with federal agencies. The County participates in efforts to certify Miles City's levees to FEMA standards, which aims to reduce the Special Flood Hazard Area (SFHA) affecting our community. Allowing this project to proceed with appropriate mitigation aligns with those efforts – it enables reasonable use of the property now, while long-term flood protection solutions (such as certifying the levee) are underway. The exceptional hardship is caused by the location of the structure behind the levee that provides actual protection but is not FEM-certified. As a result, the property is mapped into the floodplain, and substantial improvements are subject to BFE+2 ft elevation. Meeting this more stringent requirement makes the rehabilitation project economically infeasible. Without variance, a viable structure in a high-need housing community would most likely be lost, or left to deteriorate, only exacerbating community hardship. The Custer County Growth Policy (2023) explicitly directs the county to work with the Corps of Engineers (COE) and FEMA to obtain certification for the flood levee, underscoring the known regulatory burden the uncertified levee places on development. Exceptional hardship would result if this variance were denied. Nearly the entire City of Miles City lies within FEMA's designated 100-year floodplain. This means the applicant cannot readily relocate the project to a "safer" location on another lot; viable buildable land outside the flood zone is extremely scarce. This study goes on to say that Custer County has the highest population in flood-prone areas in eastern Montana, so the applicant's predicament is not simply inconvenience but a common plight in the community. Unlike properties in other towns that might avoid flood hazards by shifting construction, here virtually any development site carries the same risk. Denying the owner the use of this property has broader implications. It would perpetuate the lack of housing and devalue a lot that absent flood concerns, is suitable for development. The hardship is not self-inflicted; it arose form the regulatory floodplain mapping and natural conditions. The applicant did not cause the rivers to flood or the levee to remain uncertified. Granting relief in this case is the only way to allow reasonable use of the property, as intended by variance provisions, and it will still require the project to mitigate flood risk to acceptable levels.

Staff:
The proposed project is subject to the Code of Federal Regulations Substantial Improvement guidelines. The proposed improvements would exceed 50% of the building's market value, thus requiring the building to come into compliance with the Custer County Floodplain Regulations, including elevating the structure two (2)

feet above the BFE. The applicant has obtained an Elevation Certificate from a licensed surveyor that shows that the current structure is eight (8) inches below the BFE.

Finding:

The applicant has proposed elevating the building to the BFE, which would meet the Federal elevation requirement, but not the State of Montana or Custer County's two feet of freeboard requirement. This proposal by the applicant to elevate to the BFE would effectively reduce the flood risk to the structure by raising the lowest floor. The existing conditions of the building have a much higher flood risk due to its current elevation.

By proposing flood mitigation efforts, the applicant has shown good and sufficient cause for consideration of a variance approval by showing that they are willing to take flood risk reduction measures.

(2) Failure to grant the variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)) & ARM 36.15.218(b)).

Applicant: Denial of this variance would impose an unfair and unnecessary burden that goes against the purpose of the variance process: to allow reasonable relief from regulations in cases that can prove exceptional hardship. Strict compliance with the local floodplain regulation-specifically the requirement to elevate the structure to Base Flood Elevation (BFE) plus two feet (which is not federally mandated), is not feasible for this property and imposes exceptional hardship to the applicant. Making it overburdensome to rehabilitate the existing structure. This would force the applicant to abandon the project, resulting in the permanent loss of five potential long-term housing units in a city that is already experiencing a well-documented housing shortage. Denial will also hinder the infill and revitalization

Staff:
The applicant has declared exceptional hardship due to the existing uncertified levee. Custer County's Flood Insurance Study ran analyses with and without the levees, delineating three overflow areas that run northeasterly from the bank of the Tongue River to its confluence with the Yellowstone River (FIS page 4). The subject property is included in one of the split flows illustrated on the FIRM panel, which suggests that the BFE established is based on a levee breach or overflow.

Finding:
The BFE for the subject property was established based on a conservative analysis of the flood risk from the Tongue and Yellowstone Rivers. This conservative approach may create hardship on property owners within the split flow to meet the full requirements.

(3) Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing buildings, Residential

dwellings including basements and attached garages do not have the lowest floor elevation below the Base Flood Elevation;

Applicant:
The lowest floor elevation is eight (8) inches below BFE, however, if the variance is granted the flood will be elevated to BFE.

Staff:
The subject property is not located within the Floodway.

The existing building does not have a basement. The structure is built on a crawl space that is 3.8 feet below the lowest adjacent grade, and has an inside dimension from the interior ground of less than 2 feet.

Finding:
If constructed as proposed in the application, the project will meet this criteria.

(4) Any enclosure including a crawl space must meet the requirements of Section 10.2.13, Wet Flood Proofing if the enclosure interior grade is at or below the Base Flood Elevation;

Applicant:
The crawl spaces would have the appropriate crawl space vents as outlined in FEMA Technical Bulletin 1-93, meeting those standards to alleviate hydrostatic concerns.

Staff:

Section 10.2.13 of the Floodplain Regulations state:

13. Wet Flood Proofing Building designs with an enclosure below the lowest floor must be certified to meet the following:

1. Materials used for walls and floors are resistant to flooding to an elevation two (2) feet or more above the Base Flood Elevation; (ARM 36.15.702(2)(a))
2. The enclosure must be designed to equalize hydrostatic forces on walls by allowing for entry and exit of floodwaters. Opening designs must either be certified by an engineer or architect or meet or exceed the following:

1. Automatically allow entry and exit of floodwaters through screens, louvers, valves, and other coverings or devices;

2. Have two (2) or more openings with a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area below the Lowest Floor, except if the enclosure is partially subgrade, a minimum of 2 openings may be provided on a single wall; and

3. Have the bottom of all openings no higher than one (1) foot above the higher of the exterior or interior adjacent grade or floor immediately below the openings.

Additionally, Section 10.2.18 of the regulations for crawl spaces require:

18. Crawl Spaces Crawl space foundation enclosures including sub grade crawlspace enclosures below the lowest floor must meet the wet flood proofing requirements and be designed so that the crawl space floor is at or above the Base Flood Elevation. Crawl space foundations must have an inside dimension of not more than five (5) feet from the ground to the top of the living floor level and a sub grade crawlspace must also have the interior ground surface no more than two (2) feet below the exterior lowest adjacent ground surface on all sides. A sub grade foundation exceeding either dimension is a basement;

The structure's existing crawl space is 3.8 feet below the lowest adjacent grade, and has an inside dimension of 2 feet in the front half of the building and slightly deeper than 2 feet in the back half, but well below the 5 feet maximum. The applicant has proposed that after the replacement of sewer lines the crawl space would be 4' feet from the floor to the ceiling, and would be 2' feet from the lowest adjacent grade.
The applicant has provided renderings of the approximate locations and size of the openings to reduce the hydrostatic forces.

Finding:

If constructed to meet the specifications provided in the application, this criterion will be met.

(5) Granting of a variance will not result in increased flood heights to existing insurable 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; (44 CFR 60.6 (a)(3) & (ARM 36.15.21S(a)).

Applicant:
(1) This project will not increase flood heights to any existing buildings because it will utilize an already existing building without changing the footprint. (2) This project will not increase threats to public safety, it will actually improve public safety by revitalizing a dilapidated building into housing which will follow commercial codes; in addition, all placement of mechanical and electrical systems will be elevated to BFE + 2 feet. (3) This project will not create extraordinary public expense, as flooding is unlikely and floodproofing measures will be taken. (4) This project will not create nuisances, the property is already situated in an area of high traffic. (5) To the best of our knowledge, this project will be in the interest of the community by supporting the Custer County Growth Policy. It will not cause fraud or victimization of the public. (6) To the best of our knowledge this project will not conflict with other existing laws and/or ordinances.

Staff:
The structure was built pre-FIRM and was therefore included in analyses for flood risk. The proposed project does not add any new structures or expand the existing. The proposed use is to create 5 rental units in an area surrounded by residential and commercial uses. Impacts form multi-family units would be consistent to impacts of adjacent uses.

The property is within the C-1 Zoning District and is subject to the Custer County Zoning Regulations.

Finding:
The proposed use and renovations should meet this criterion.

(6) The proposed use is adequately flood proofed; (ARM 6.15.21S(c)).

Applicant:
The structure is not currently adequately floodproofed. The proposed redevelopment at 2500 Valley Drive East incorporates FEMA-compliant floodproofing measures to reduce risk, including elevating the lowest floor to Base Flood Elevation (BFE) and raising all utilities to BFE + 2 feet. Crawl space vents will be installed to relieve hydrostatic pressure in accordance with FEMA (Technical Bulletin 1-93). Together, these steps create a safer, more resilient structure.

Staff:
The applicant has indicated that they are proposing to wet flood proof the existing structure. By flood proofing the structure, the danger associated with hydrostatic pressures will be greatly reduced, and will be an upgrade to the existing structure. Additional improvements include raising the utility systems to be 2 feet above BFE.

Finding:
If constructed under the specifications indicated in the application, this variance criterion has been met.

(7) The variance is the minimum necessary, considering the flood hazard, to afford relief; (44 CFR 60.6(a)(4)).

Staff:
The applicant has indicated that all other requirements for a Substantial Improvement shall be met, except for raising the elevation to 2 feet above BFE.

(8) Reasonable alternative locations are not available; (MCA 76-5-406(3) & ARM 36.15.21B(d)).

Applicant:

According to the Custer County Growth Policy (2023), “approximately 80% of residences and businesses in Miles City are located within the natural floodplain or floodway.” Leaving very little developable land outside of FEMA’s Special Flood Hazard Area (SFHA). The overwhelming extent of the SFHA is caused primarily by the presence of the Yellowstone and Tongue Rivers and the uncertified levee-means that nearly all feasible construction in the city occurs within flood-mapped areas. The Growth Policy identifies levee certification as a priority to “reduce the size of the mapped floodplain that affects Miles City” (L-5), and rehabilitating this site supports that vision. The applicant’s proposed rehabilitation of 2500 Valley Drive East uses an existing structure, making it significantly more practical and sustainable to redevelop in place rather than attempt to acquire scared land elsewhere. Due to both regulatory constraints and practical limitations, there are no reasonable alternative locations for this development that would avoid the floodplain. The proposed variance is the only visible path forward to restore this particular structure to a livable much needed housing unit in Miles City.

Staff:
The subject property does not have any alternative locations outside of the floodplain. The existing building was built in 1949 and the project seeks to redevelop the existing structure to maintain affordability of residential units near Miles City.

The Tongue River floodplain extends approximately 3.63 miles as the crow flies, starting from the south side of the railroad tracks to Herzog Road and Valley Drive before the floodwaters flow into the Yellowstone. The FEMA FIRMette below shows the extent of the floodplain, with the red square indicating the project location.

Finding:
This criterion may be considered by the BOA to be met.

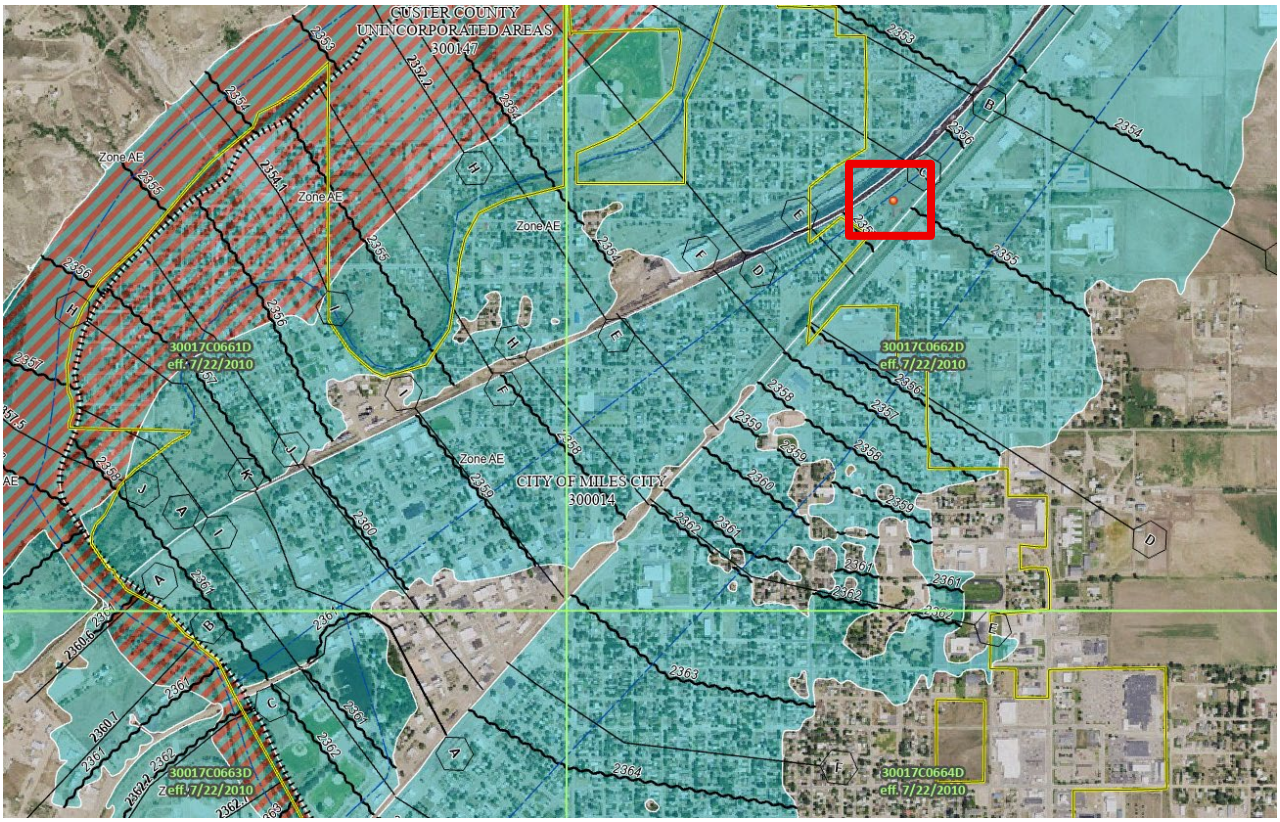

Figure 2 FEMA FIRMette Excerpt with subject property

(9) An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations; and (44 CFR 60.6(a)(1))

Applicant:

This project proposes the use of an existing structure without changing the footprint therefore not creating any new obstruction or use.

Staff:
With the addition of flood venting, the danger to life and property from backed-up and diverted water will be reduced. The current structure does not have flood venting and likely would divert water onto adjacent properties in a flood event. Coupled with the elevation to the base flood elevation and flood venting, the structure may contribute to reducing the BFE.

Finding:
With the addition of crawl space venting, this criterion has been met.

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

A floodplain permit application has been received by the Floodplain Administrator. The application addresses the development criteria found required by the Custer County Floodplain Regulations.

Finding:
Following the decision by the Board of Adjustment, the Floodplain Administrator will render a decision on the floodplain permit application.

Additional State and Federal codes may be considered by the Board of Adjustment that were included in the Variance Application:

(11) There is no danger that the obstruction or use will be swept downstream to the injury of others; **(MCA** 76-5-406(2)).

Applicant:
The applicants design allows for water passage by installing crawl space vents according to FEMA regulations. No hazardous materials-such as fuels, pesticides, or industrial chemicals-will be stored onsite. In accordance with FEMA Technical Bulletin 2 (Flood Damage-Resistant Materials Requirements), the design ensures that any materials located below BFE will be flood-resistant and not subject to deterioration or dispersal during flooding events.

Staff:
The applicant and a Building Inspector have indicated that the current structure is properly anchored by perimeter concrete walls and footings. There is also a mid-span footing that runs the length of the building. It is unlikely that the building will be swept downstream, and the risk will be further reduced by allowing the passage of water through flood vents, which would equalize hydrostatic and hydrodynamic pressures.

(12) Incorporates measures in the construction or alteration of the obstruction or use that lessen the danger; (MCA 76-5-406(4)).

Applicant:
The proposed redevelopment will lessen flood-related danger by incorporating multiple FEMA-recommended mitigation measures. The building's finished floor will be elevated to Base Flood Elevation (BFE), and all electrical and mechanical components will be raised to BFE +2 feet, ensuring critical systems remain protected during flood events. Additionally, FEMA-compliant crawl space vents will be installed to equalize hydrostatic pressure and prevent structural damage. The property lies on Valley Drive East, a primary corridor, enhancing its accessibility. Rehabilitation of this property and removal of excess foliage and debris, as well as developing proper ingress and egress to the property will enhance safety in the event of the need for EMS in any situation. The applicant is aware of the need for emergency access to this type of property for public safety.

Staff:
The alterations proposed are considered methods to reduce danger in the chance of a flood.

(13) The permanence of the obstruction or use; (MCA 76-5-406(5)).

Applicant:
The proposed use is permanent: the redevelopment of an existing, structurally sound, former motel into five long-term residential rental units. These units are intended to provide stable, year-round housing for local residents, including families, individuals with accessibility needs, and workforce tenants. The project will not involve temporary or mobile structures; it is a fixed, anchored building on a permanent foundation. The permanence of this use is supported by the property's commercial zoning, its long-standing presence in the community, and the design upgrades that will make it suitable for residential occupancy. This project represents a long-term investment in the community. This project is not experimental or short-term; it is designed to serve the community's housing needs for decades.

Staff:
The existing structure has been a permanent fixture to the property since it was constructed in 1949. The structure and use will remain permanent until the structure is demolished, or the use is changed.

(14) There is no adverse effect to anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; (44 CFR 60.6(a)(3), MCA 76-5-406(6) & ARM 36.15.218)).

Applicant:
The project involves the redevelopment of an existing structure. It will not obstruct or limit future development in the surrounding area and will have no adverse impact on nearby properties. The reuse of this vacant, blighted structure improves property values and will hopefully encourage reinvestment in nearby properties. This redevelopment not only addresses a pressing housing sh01tage but also contributes to the vibrancy and sustainability of the area. The project complements the long-term development goals of Miles City and Custer County, with no anticipated adverse impacts on the surrounding neighborhood.

Staff:
Since the project proposes only renovations to the existing structure, which was constructed in 1949, it is not anticipated to affect development in the foreseeable future.

(15) There is no adverse effect to existing properties or structures.

Applicant:
Granting the requested variance to allow development at Base Flood Elevation (BFE) rather than BFE +2 feet will not adversely affect existing properties or structures in the

vicinity. This project includes no large-scale fill and will incorporate flood mitigation as described already. These design choices prevent the structure from becoming a source of debris or a threat to neighboring properties during a flood event. This project meets best practices in floodplain construction without altering flood dynamics or the footprint of the existing structure.

Staff:
The project does not expand or add new obstructions to the property and should not adversely affect existing properties or structures.

(16) Any increase to the Base Flood Elevation in a Floodway has been approved by FEMA for flood insurance purposes and any increase to the Base Flood Elevation in the Floodway or Floodplain of more than 0.5 feet is an alteration of the Regulated Flood Hazard Area has been duly amended pursuant to Section 4. (44 CFR 60.6(a)(1)).

Applicant:
The proposed variance will not result in any increase to the Base Flood Elevation (BFE) in the Floodplain. No fill will be added that would raise the elevation. Instead, the redevelopment will implement FEMA-compliant crawl space flood vents, allowing floodwaters to flow freely beneath the structure.

Staff:
The building located on the property was originally built in 1949, according to the Montana Department of Revenue Cadastral. The structure was not floodproofed at the time of construction and was built on a crawl space. The applicant has proposed to install wet flood proofing with flood vents in the crawl space to allow for the passage of water through the building during a flood event. It is not anticipated that there will be an increase in the BFE, as the majority of the work will be to rehabilitate the building's interior, and no excessive fill will be brought into the floodplain for the project, and with the floodproofing, the rise already being created by the structure will be reduced.

Special Considerations for variance approval:

(1) 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 elevation, a variance may be approved. However, as lot sizes increase beyond one-half acre, additional technical justification may be required; and (44 CFR 60.6(a))

Applicant:
No.

Staff:
The subject property is 0.767 acres. The adjacent properties are all used for residential

purposes.

(2) Historic Structures - variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. (44 CFR 60.6(a))

Applicant:
No.

Staff:
The existing structure is not registered as a historic structure.

CONCLUSIONS:

If the Board of Adjustments finds that these variance criteria can all be met through additional testimony and/or material provided during the public hearing, and/or conditioning, then the Board of Adjustments may recommend conditional approval of the variance. Otherwise, the Floodplain Administrator suggests tabling the matter to request that the Applicant provide any additional information, or alternatively, deny the variance due to one or more of the variance criteria not being met as discussed in the Staff Report.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

1. After reviewing and considering the variance application, I move that the Board adopt the Staff Report and Findings of Fact, testimony, and public comments, and **approve** the Applicant's requested Variance from Custer County Floodplain Regulation Section 10.3(1) to allow for Substantial Improvement to the structure located at 2500 Valley Drive East in Miles City, MT without meeting the 2 feet above Base Flood Elevation criterion, under the following conditions:
    1. An Elevation Certificate shall be provided to the Floodplain Administrator upon completion of the project, showing that the finished first floor is at the Base Flood Elevation.
    2. This variance is approved for Substantial Improvements to the existing structure. Any new development or changes to the property will need a Floodplain Development Permit and meeting the development requirements under the Custer County Floodplain Regulations.

NOTE: This variance approval is not an approval of pending Floodplain Permit Application #25-FP-01.

OR

2. I move that the Board **deny** the Applicant's requested Variance from Custer County Floodplain Regulations Section 10.3(1) be denied upon a finding that one or more of the variance criteria listed in CCFR Section 12.4 have not been met. **(SPECIFY WHICH CRITERIA)**

For any approved or conditionally approved floodplain variance, the Applicant must be informed that the construction of any structure below the base flood elevation may result in increased premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of a variance. See 44 CFR § 60.6(a).

Attachments:

- Variance Application
- Floodplain Application
- FEMA FIRMette