

MISSOULA COUNTY ZONING BOARD OF ADJUSTMENT MINUTES
November 15th, 2023 – 6:00 p.m. MST

Hybrid Meeting held in the Sophie Moiese Rm of the Missoula County Courthouse
and virtually over Microsoft Teams

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	APPLICANTS PRESENT
Andy Mefford Babak Rastgoufard Swarna Reddy Jonathan Haber Benjamin Yawakie, 1 st alt Jennifer Schultz, 2 nd alt	Ryan Schumacher	Zach Jones Tim Worley Heather Powers Rachel Manning	Travis Irvine, Architect, Irvine Design Studio, LLC

Application materials, staff reports, written comment, and meeting video are available for review at Missoula County Planning, Development & Sustainability (PDS). An administrative fee is required for photocopies. Digital agendas and corresponding documents may be found on the main board page: [Zoning Board of Adjustment](#)

I. CALL TO ORDER

Mr. Rastgoufard, Chair, called the meeting to order at 6:01 p.m. Mr. Rastgoufard welcomed the two newly appointed board members; granting them the opportunity to introduce themselves. Ben Yakawie and Jennifer Shultz gave brief introductions.

II. ROLL CALL

Ms. Manning called the roll. Four regular and two alternate members were present. First alternate, Ben Yawakie, was promoted to voting member for the evening.

III. APPROVAL OF MINUTES

Mr. Mefford moved and Mr. Rastgoufard seconded approval of the October 18, 2023, minutes, as written. Mr. Haber abstained. The motion passed unanimously.

IV. PUBLIC COMMENT ON NON-AGENDA ITEMS

There was no public comment.

V. STAFF ANNOUNCEMENTS

There were no staff announcements.

VI. PUBLIC HEARINGS

Mornhinweg Special Exception Request

6521 Lower Miller Creek Road Special Exception Request

Applicant: Marty Mornhinweg, represented by Travis Irvine, Architect, Irvine Design Studio LLC.

Case Planner: Zach Jones, Planner I, Department of Planning, Development and Sustainability

Missoula County Department of Planning, Development & Sustainability (PDS) received a special exception request from Marty Mornhinweg for property located at 6521 Lower Miller Creek Road

legally described as MALONEY RANCH, S11, T12 N, R20 W, Lot 46, PHASE VIII, and recorded in a deed at Book 931 Micro, Page 1389.

The applicant proposes to place another dwelling on the subject property. Section 2.3.E.3. of the Missoula County Zoning Regulations allows for more than one principal use or structure if approved as a special exception. The applicant requests placing another dwelling between the existing dwelling and the south property line on this 3.93-acre tract.

This Special Exception Request was originally intended to be brought before the Board of Adjustment at the August 16, 2023, hearing but was withdrawn by the applicant due to concerns from a neighboring property owner. The applicant has resubmitted the request to be considered at this Board of Adjustment hearing.

Please see attached staff slides.

BOARD DISCUSSION ON SPECIAL EXCEPTION

Ms. Reddy asked if there was an existing septic for the principal dwelling unit. She asked if the current existing septic would accommodate both dwelling units.

Mr. Jones stated there was an existing septic for the current house. He stated a new septic system would need to be installed to accommodate the second dwelling.

Mr. Haber asked if more explanation could be provided on wildlife hazard.

Mr. Jones noted in his staff report that the community wildfire protection plan designates the property as high hazard. He stated Missoula Rural Fire did not recommend additional standards. They made a recommendation for a sprinkler system.

Mr. Haber stated he was correcting the word to “wildfire” not “wildlife”.

Mr. Yawakie asked what the water usage would be on the second dwelling. He asked if the applicant would need to file for new water rights.

Mr. Jones stated the criteria reviewed was for a zoning variance, not water rights. He stated the application showed the existing water system and accommodations for water usage.

Mr. Rastgoufard stated the applicant’s representative should answer this question.

Mr. Irvine stated the intent of the second dwelling unit was for seasonal guests, not a permanent dwelling unit. He stated the neighbors had resolved their issues and come to an agreement. Ms. Reddy asked if there were zoning regulations, guidelines, density percentages, and size of the lot in comparison to the buildings. She stated she had zoning concerns about having two large buildings on the same lot.

Mr. Jones stated the information was in the zoning regulations located under the maximum coverage. He stated he did not have the detailed blueprints in front of him for the exact square footage and footprint. He asked if Mr. Irvine had that information readily available.

Mr. Irvine stated he was unable to find it.

Mr. Jones stated the proposed home is 3,530 square feet on 3.93 acres. He stated the maximum lot coverage and footprint for the RS1 District is 50%. He said the combined footprint of the existing house and proposed dwelling unit would not go over 50%. He said if needed he was willing to do rudimentary measurements or find the permit.

Mr. Rastgoufard stated the area of the existing home was 3,124. This information was in the staff report, application, and aerial site plan. He said it looked to be well under 50% coverage.

Mr. Mefford asked for the definition of temporary accommodation under the updated variance zoning rules.

Mr. Jones stated the rules wouldn't apply since it is considered a second principal use, not an accessory dwelling unit.

Mr. Haber asked for the relevance and definition of temporary living spaces.

Mr. Jones defined and explained the current zoning regulations. He explained why a special exception was needed and the differences of square foot requirements with ADUs and secondary principal use.

Ms. Reddy asked if there was control over how and to what extent the structure was used.

Mr. Jones stated due to the nature of the additional second dwelling, how it was used was not applicable.

Mr. Rastgoufard stated he agreed with that assessment.

Ms. Reddy asked if the secondary dwelling unit could be classified as a second home.

Mr. Jones stated it was another principal use, not a home.

Mr. Yawakie asked if there were assurances from both the applicant and neighbor to work amicably by not obstructing the view or building closer to the river.

Mr. Jones stated the special exception was approving the site plan and location. He said if the applicant built closer to the river it would be a violation.

Mr. Rastgoufard defined what a special exception and variance were.

Mr. Jones clarified the location from the original proposal was the same location. He said initially there had been a miscommunication between the applicant and the neighbor. He said once the neighbor saw the location in person there was better understanding, knowledge, and assent. He explained in the future the structure would be reviewed for standard zoning items such as building, land use, and a zoning compliance permit. He said there were also Health Department considerations and requirements.

Mr. Haber asked if there was a copy of the site plan in the Board packet.

Mr. Jones stated no.

Mr. Haber stated it had not been obvious the level of detail that was to be approved.

Ms. Reddy remembered in the past when a special exception was brought to the Board the details had not been reviewed.

Board Motion:

That the Board of Adjustment approve the Special Exception Request to place a second home on a 3.93-acre property zoned RRS 1, addressed as 6521 Lower Miller Creek Road and legally described as MALONEY RANCH, S11, T12 N, R20 W, Lot 46, PHASE VIII. This approval is based on the findings of facts and conclusions of law found in the staff report and public testimony and is subject to one condition.

Conditions

1. All other necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative. These permits may include, but are not limited to building, zoning compliance, electrical, mechanical, approach, and sanitation permits.

MOTION: Mr. Mefford moved, and Mr. Haber seconded the Special Exception.

The motion passed unanimously by voice vote.

VII. COMMUNICATIONS & SPECIAL PRESENTATIONS

There were no communications or special presentations.

VIII. COMMITTEE REPORTS

There were no committee reports.

IX. OLD BUSINESS

There was no old business.

X. NEW BUSINESS

There was no new business.

XI. COMMENTS FROM BOARD MEMBERS

Mr. Rastgoufard confirmed there was no December 20, 2023, meeting. He said the next meeting would be January 17, 2024.

XII. ADJOURNMENT

The meeting adjourned at 6:49 p.m.

*Respectfully submitted,
Rachel Manning, Administrative Assistant, PDS
Please send any document requests to pds@missoulacounty.us*

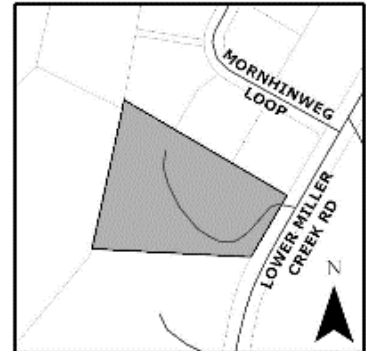
Executive Summary
Missoula County Board of Adjustment

CASE PLANNER Zach Jones, Planner I

APPROVED BY: Tim Worley, Senior Planner

**PUBLIC HEARING
DATE** November 15, 2023

AGENDA ITEM 6521 Lower Miller Creek Road
Special Exception Request



**APPLICANT /
REPRESENTATIVE** Marty Mornhinweg/Travis Irvine, Irvine Design Studio LLC

**LOCATION OF
REQUEST** 6521 Lower Miller Creek Road

**LEGAL
NOTIFICATION** The legal ad for the public hearing was published in the Missoulian on November 4 and 11, 2023. Adjacent property owners within 300 feet of the subject property were notified by mail on October 27, 2023.

ZONING: Rural Residential, Small Agriculture – 1 du/1 ac. (RRS 1)

SURROUNDING USES:

North: Vacant

South: Residential

East: Vacant

West: Vacant, Open Space

SURROUNDING ZONING:

Rural Residential, Small Agriculture (RRS 1)
and City of Missoula Residential (R40)

Agricultural, Rural Residential (AGRR-5)

City of Missoula Residential (RT10)

Resource and Open Lands (RO)

PROPOSAL	STAFF RECOMMENDATION
The applicant has requested Special Exception approval to allow placement of a second dwelling unit on this 3.93-acre tract, in the general location shown on the site plan in the application packet.	Approval, subject to 1 condition

MISSOULA COUNTY BOARD OF ADJUSTMENT

I. STAFF'S RECOMMENDED MOTION

THAT the Board of Adjustment **approve** the Special Exception Request to place a second home on a 3.93-acre property zoned RRS 1, addressed as [6521 Lower Miller Creek Road](#) and legally described as MALONEY RANCH, S11, T12 N, R20 W, Lot 46, PHASE VIII. This approval is based on the findings of facts and conclusions of law found in the staff report and public testimony and is subject to one condition.

II. STAFF'S RECOMMENDED CONDITION

All other necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative. These permits may include, but are not limited to, building, zoning compliance, electrical, mechanical, approach, and sanitation permits.

III. INTRODUCTION

Missoula County Department of Planning, Development & Sustainability (PDS) has received a special exception request from Marty Mornhinweg for property located at [6521 Lower Miller Creek Road](#) legally described as MALONEY RANCH, S11, T12 N, R20 W, Lot 46, PHASE VIII, and recorded in a deed at Book 931 Micro, Page 1389.

The applicant proposes to place another dwelling on the subject property. Section 2.3.E.3. of the Missoula County Zoning Regulations allows more than one principal use or structure if approved as a special exception. The applicant requests placing another dwelling between the existing dwelling and the south property line on this 3.93-acre tract.

The property is zoned [RRS 1](#) (Rural Residential, Small Agriculture) which allows a residential density of one dwelling per acre. This proposal will meet all other zoning requirements of this district, including building placement standards. Missoula County Agencies were contacted on July 10 to provide comment on the project.

The Board of Adjustment is authorized to grant Special Exception permits authorizing a use established as eligible in this district, but which requires a special degree of consideration and control to ensure such uses are consistent and compatible with the overall community character.

This Special Exception Request was originally intended to be brought before the Board of Adjustment at the August 16th hearing but was withdrawn by the applicant due to concerns from a neighboring property owner. The applicant has resubmitted the request to be considered at the November 15th Board of Adjustment hearing.

IV. CRITERIA FOR SPECIAL EXCEPTIONS AND FINDING OF FACTS

The Board of Adjustment, in reviewing any application for a Special Exception, shall give due consideration to the following:

1. The proposed use or development will be compatible with and will not substantially injure the value of adjoining property;
 - The subject property is 3.93 acres and contains a single dwelling (6521 Lower Miller Creek Road) served by a private well and [individual septic system](#).
 - Surrounding uses include low density residential, and open space.
 - This property is zoned Rural Residential, Small Agriculture (RRS 1) which allows residential development at a maximum density of one dwelling per acre.
 - Section 2.3.E.3. states, "...multiple principal uses per lot may be permitted if approved as a special exception." Placement of a second home constitutes multiple principal uses on this tract.
 - The impacts from construction/installation of the proposed second dwelling are anticipated to include ground disturbance and some vegetation removal to allow construction of a second home and garage on the property.
 - Ongoing impacts resulting from the construction/installation of the proposed second dwelling are anticipated to include traffic associated with one additional dwelling and minimal visual impacts of the dwelling as viewed from Lower Miller Creek Road and neighboring properties.
2. The proposed use preserves the character of the district, and the property is suitable for the use proposed (e.g., can meet the bulk and dimensional standards without requiring a variance).
 - The RRS districts are primarily intended to allow for low density residential development and agricultural production, remaining rural in character.
 - The property is zoned RRS 1 and the properties to the south are zoned AGRR-5. The properties to the north are zoned by the City of Missoula as Residential R40 and a part of the Linda Vista Twenty Fourth Supplement Subdivision, allowing for residential development on approximately 1 acre lots. The approximately 90-acre property to the east is zoned by the City of Missoula as Residential R10, allowing for residential development.
 - The proposed site for the second home, as well as the driveway to serve the home, is proposed for slopes less than 5%.
 - The proposed second home will meet all required building setbacks, height, and lot coverage requirements of the RRS 1 zoning district.
 - The existing structures (home and detached garage) are compliant with the RRS 1 district requirements.
3. The proposed use promotes the purpose and intent of the TIF Special District, where applicable.
 - Not applicable. The subject property is not located in a TIF Special District.
4. Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.
 - Building Elements required by [Section 3.4](#) do not apply to this proposal because agricultural districts are exempt from these requirements.
 - Off-street parking will be provided for the second dwelling, in compliance with [Section 6.3](#).
 - Section 6.4.B.1.a. of the Missoula County Zoning Regulations exempts the proposal from Chapter 6 landscaping requirements.

- [Section 7.1](#) of the Missoula County Zoning Regulations requires protection from impacts of hillside development, the area proposed for the second dwelling is relatively flat, with observed slopes under 5%. Compliance with Section 7.1 Hillside and Ridgeline Development will be further evaluated at time of building and land use permit application.
 - There is no [floodplain](#) mapped on the property, and the northwest portion of the property is adjacent to the edge of an erosion hazard area. The proposed location for the new dwelling is over 200 feet from the nearest mapped erosion hazard area.
5. Review Criteria Listed in Section 11.6.D.1.a-m of the Missoula County Zoning Regulations.
- a. **Access, traffic, and parking demand created by or impacted by the use, and pedestrian, bicycle, and onsite vehicular circulation.**
There are minimal anticipated increases in access, traffic, or parking demand associated with the second home. Single-dwelling trip generation estimates hover around ten trips per day per home; however, this dwelling unit will be used as a guest house and can be expected to generate far fewer trips than a permanent residence. The fire district will review and approve a new driveway with the building and land use permit application.
 - b. **Dedication and development of streets, right-of-way, and public areas such as sidewalks adjoining the property and the capacity to handle the use.**
There is no intended dedication or development of new streets, right-of-way, and public areas with the proposed home placement on this tract. Lower Miller Creek Road is classified as a Local Road by Montana Department of Transportation and is capable to provide access to the property via the existing driveway.
 - c. **Impacts on or of public and private utilities or services.**
The proposed home will either connect to the existing individual septic system or a new system, as will be determined by the City-County Health Department. The property is served by an on-site private well, no new public infrastructure will be needed to meet the demand of the proposed project; therefore, no impacts on public utilities or services are anticipated.
 - d. **Proposed siting of any new structures necessary to accommodate the use and their relationship to adjoining and surrounding properties.**
The new structure will meet space and bulk requirements of the RRS 1 district. The residences in the area are developed at a low-density; the proposal for two dwellings on 3.93 acres is generally consistent with surrounding land uses as well as the allowed maximum density of the RRS 1 zoning district. The RRS 1 zoning district requires 25' front and rear yard setbacks, and 10' setbacks alongside property boundaries. Approval of this special exception would allow home placement in the general location shown on the proposed site plan; some shifting of the home location is permissible, as long as all other state and local requirements are met, such as zoning

regulations related to setbacks, construction on hillsides, and road/driveway grading.

e. **Recreation opportunities and open lands available to serve the use.**

The subject property is on private land and is used solely for residential purposes. No recreation opportunities currently exist on-site or in the vicinity of this property.

f. **Natural resource protections.**

The proposed development project is outside of FEMA designated floodplain and has an Integrated Wildlife Hazard Level of High. The Missoula Rural Fire District did not recommend any additional standards for fire protection to address this rating.

The building location does not contain areas of riparian resource.

The site is on mostly flat ground which will comply with the Hillside Development Standards in Section 7.1

g. **Landscaping and screening requirements.**

Section 6.4.B.2.c of the Missoula County Zoning Regulations exempts the proposed project from Chapter 6 landscaping requirements.

h. **Signage and sign lighting, as applicable.**

There is no signage or sign lighting associated with the proposed development project.

i. **Noise, vibration, outdoor lighting, and other on and off-site impacts resulting from the use.**

There is no noise, vibration, outdoor lighting impacts anticipated with the proposed use.

j. **Frequency of use and hours of operation.**

The proposed development project is a residence and will not be open to the public.

k. **Area of land necessary and adequacy of the site to accommodate the use and meet the intent of the district and character of the neighborhood.**

The proposed development project meets the intent of the Rural Residential, Small Agriculture zoning district by providing opportunities for a balance of rural residential development with the preservation of natural landscapes. The RRS 1 zoning allows for one dwelling unit per acre, and the property that is the subject of this special exception is 3.93 acres, which provides the necessary land area for another dwelling unit.

l. **Where applicable, how the proposed use addresses the purpose of the TIF Special District intended to attract, retain, grow and develop secondary value-adding industries.**

Not applicable. The subject property is not within a TIF Special District.

m. **Any other unique or relevant circumstances related to the property.**

The applicant owns three lots to the north of the property which provide some additional buffering to adjacent properties.

V. CONCLUSION OF LAW – SPECIAL EXCEPTION

1. The proposed use/development will be compatible with and will not substantially injure the value of adjoining property.
2. The proposed use preserves the character of the district, and the property is suitable for the use proposed.
3. Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.
4. The review criteria listed in section 11.6.D.1.a-m of the Missoula County Zoning Regulations have been given due consideration.

VI. COMMENTS FROM ADJACENT PROPERTY OWNERS

FOR: 0

AGAINST: 0

NEUTRAL: 0

RETURNED TO SENDER: 0

NO RESPONSE FROM MAILING: 6

TOTAL: 0

VII. COMMENTS FROM PUBLIC AGENCIES

Clerk & Recorder's Office	No comments received
County Floodplain Administrator	The proposal is compliant with the floodplain regulations, and the existing and proposed structures are not within mapped channel migration zone areas. The owner should be advised that the northwest portion of the property is adjacent to the edge of an Erosion Hazard Area as mapped with the 2021 Channel Migration Zone report for the Bitterroot River. More information is available here . (Matt Heimel 7/10)
County Weed District	No comments received
Missoula Rural Fire District	It appears this property falls within the Missoula Rural Fire District jurisdiction and we will require residential sprinkler system installed per NFPA 13D standards. (Pete Giardino, 7/10)
Fish Wildlife and Parks	No comments received
Missoula City-County Health Department	No comments received
Missoula County Air Program	No comments received

Missoula County Parks, Trails and Open Lands	No comments received
Missoula County Public Works	No comments received
Surveyor's Office	No comments received

VIII. Attachments

a) Special Exception Application

Mornhinweg Special Exception Request

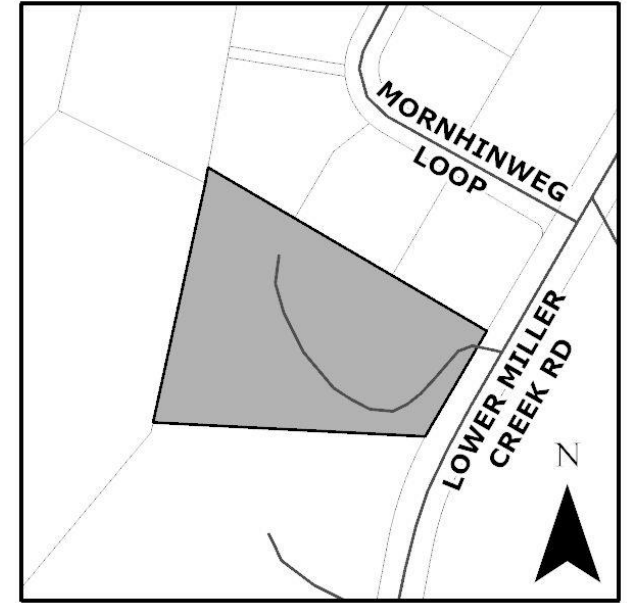
BOA DATE: NOVEMBER 15, 2023

LOCATION: 6521 LOWER MILLER CREEK ROAD

CASE PLANNER: ZACH JONES, PLANNER I

APPLICANT: MARTY MORNHINWEG

REPRESENTATIVE: TRAVIS IRVINE, IRVINE DESIGN STUDIO LLC

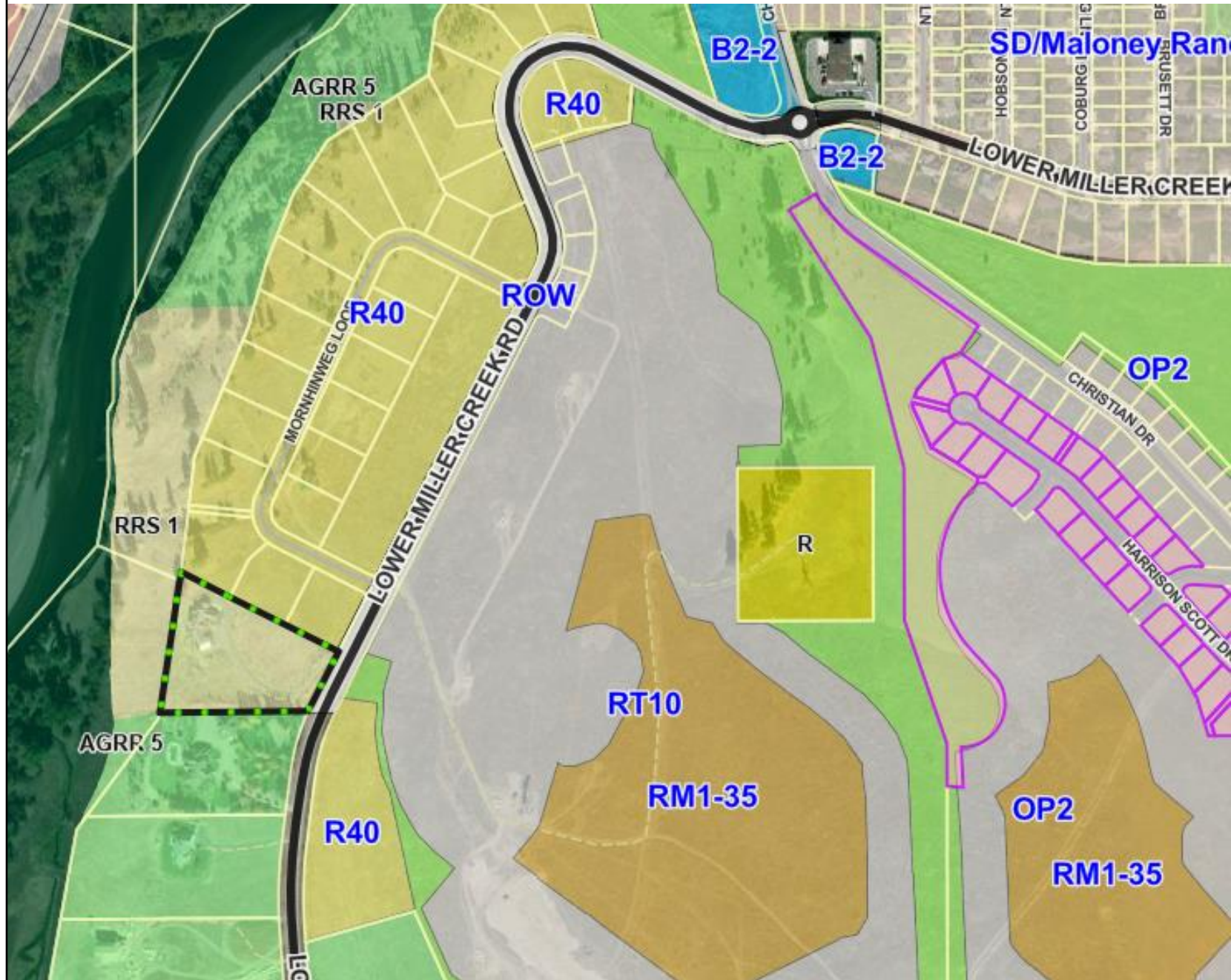


Zoning:

- Rural Residential, Small Agriculture (RRS 1)
- 3.93 Acres
- Existing home on site

Surrounding Zoning:

- North: City of Missoula Residential (R40)
- East: City of Missoula Residential (RT10)
- South: Agricultural, Rural Residential (AGRR 5)
- West: Resource and Open Lands (RO)



Special Exception

- The property is zoned Rural Residential and Small Agriculture (RRS 1) which prohibits a second dwelling or additional principle use unless permitted by special exception. (Section 2.3.E.3)

Rural Residential and Small Agriculture (RRS 1)

“The purpose of this district is to balance rural residential development with the preservation of natural landscapes in areas of the county where infrastructure may exist, and services are proximal (...) Development character remains rural in nature even as low-density residential development mixes with larger tracts of land used for active agricultural production and limited commercial services in locations with adequate infrastructure. Development intensity is governed by site-specific conditions including the availability of adequate infrastructure and water resources, proximity to services, and the presence of environmental constraints. Buildings may be situated closer to lot lines, in proximity to access points, and away from riparian areas, wetlands, and natural waterways.”



1 ARCHITECTURAL SITE PLAN
SCALE: 1" = 30'



Special Exception Review Criteria

- The proposed use or development will be compatible with and will not substantially injure the value of adjoining property
- The proposed use preserves the character of the district, and the property is suitable for the use proposed (e.g., can meet the bulk and dimensional standards without requiring a variance).
- The proposed use promotes the purpose and intent of the TIF Special District, where applicable.
- Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.
- Review Criteria Listed in Section 11.6.D.1.a-m of the Missoula County Zoning Regulations.

Agency Comment

Missoula County Floodplain Administrator - The proposal is compliant with the floodplain regulations, and the existing and proposed structures are not within mapped channel migration zone areas. The owner should be advised that the northwest portion of the property is adjacent to the edge of an Erosion Hazard Area as mapped with the 2021 Channel Migration Zone report for the Bitterroot River.

Missoula Rural Fire District - It appears this property falls within the Missoula Rural Fire District jurisdiction and we will require residential sprinkler system installed per NFPA 13D standards.

Agency Comment

Missoula Public Health - Reviewing this request, the applicant is proposing to construct a new "barn" to include a garage and dwelling unit. The property appears to have gone through state sanitation review in 2008 (MALONEY RANCH, PHASE VIII Lot 46, attached) and limits the property to a single living unit. County records indicate the property has an existing living unit served by a septic system permitted under 2014-065 and approved for a 6 bedroom living unit. This new barn would then be the second living unit.

Thus, the proposed project would require a COSA re-write and local septic permit to install facilities to accommodate the additional barn/living unit. The COSA rewrite process would re-review the property for the new intended use and create a new COSA outlining the required facilities (water supply, wastewater treatment, stormwater and solid waste).

Public Comment

“I wanted to follow-up on your VM with a quick e-mail to confirm that I am OK with Marty building the second residence on his property. We’ve had quite a few discussions and he’s going to move the building as close to the main road as possible in order to reduce the impact to our views. Our goal is to be as neighborly as possible so as long as that is done we have no problem with him building it.”

- Rob Berg, 6573 Lower Miller Creek Road

Staff Recommended Motion:

I move to **approve** the Special Exception Request to allow the construction of an additional dwelling unit at 6521 Lower Miller Creek Road.

Conditions

1. All other necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative. These permits may include, but are not limited to, building, zoning compliance, electrical, mechanical, approach, and sanitation permits.