

# 2016

## **BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT**

**Thursday, April 21, 2016, at 5:30 P.M.**

**Council Chambers – Third Floor – Room 312**

- I. Call to Order.
- II. Approval of the Minutes of the meeting of March 10, 2016.
- III. Hearing of Cases, Appeals and Reports:

**Variance Application #15023** – An application for a variance by Walter C & Karen M Garner, owners, and Ryan Garner, agent, to have more than one (1) vehicle associated with the Home Occupation Permit, varying from Section 17.44.040(K), Criteria for Review and to locate vehicles and trailers associated with the business on a vacant parcel of record in a residential zone, varying from the requirements of Section 17.44.040 (E), Criteria for Review, of the BSBMC. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lots 22-24, Block 9, of the South Park Addition, located directly west of 2400 S Dakota Street, Butte, Montana.

**Variance Application #15033** - An application for a variance by Anita Zabel, owner, and Erik Ingman, agent, to construct a detached garage that would have a fifteen foot (15') parking apron, varying from the required twenty foot (20') parking apron of Section 17.16.020, Permitted Uses, of the BSBMC. The property is located in an “R-1” (One Family Residence) zone, legally described as the N10' of Lot 14, all of Lots 15-16, Block 52 of the Daly Addition, commonly known as 2001 Banks Avenue, Butte, Montana.

**Variance Application #15042** - An application for a variance by Patrick Walsh, owner, to construct a detached garage (24'Wx24'D) on a parcel of record that does not contain a primary structure, varying from Section 17.14.020 (D), Permitted Uses, of the BSBMC. The property is located in

***Applicant or Representative must be present at the meeting***

# A G E N D A

(Page 2)

an "R-3" (Multi-Family Residence) zone, legally described as a portion of Lots 15-17, Block 11 of the Kings Second Addition, located immediately east of 222 E Mercury Street, Butte, Montana.

**Use Variance Application #15052** - An application for a use variance by Gene Spolar & Cathy Huffer, owners, and WJ Properties, LLC, agent, to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 2-10 & 18-21, Block 21 of the Northern Pacific Addition, commonly located in the 3000 Block of Fairmont and Gregson Streets, Butte, Montana.

**Variance Application #15054** - An application for a variance by Daniel J Newgard & Kareen E Baker, owners, to construct a second detached garage (30'W X 40'D) on a parcel of record that already contains one detached garage, varying from the requirements of Section 17.10.020 (D), Permitted Uses, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1-5, Block 9 of the Daly Addition, commonly known as 1800 Monroe Avenue, Butte, Montana.

**Conditional Use Permit Application #15055** - An application for a conditional use permit by Kelly Reilly, owner, to locate a Class B (single-wide) manufactured home on a parcel of record in an "R-2" (Two Family Residence) zone, per Section 17.12.030 Conditional Uses, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lot 2, Block 7 of the Smith & Kessler Addition, located directly north of 729 N Main Street, Butte, Montana.

**Use Variance Application #15057** - An application for a use variance by Butte-Silver Bow, owner, and Norman DeNeal, agent, to locate a headframe on Butte-Silver Bow property in a residential zone, varying from the

# A G E N D A

(Page 3)

requirements of Section 17.12.020, Permitted Uses, and to construct the headframe to sixty-five feet (65') in height, varying from the requirements of Section 17.12.040, Building Height Limits, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Clear Grit Mine #499, Section 12, T03N, R08W, commonly located on the east side of Main Street between the BA&P Walking Trail and Clear Grit Terrace, Butte, Montana.

IV. Other Business.

V. Adjournment.

By: Lori Casey  
Lori Casey, Assistant Planning Director

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

**ITEM:** Variance Application #15023 - An application for a variance from the agent's Home Occupation permit to allow for more than one vehicle associated with the Home Occupation, and to locate the aforementioned vehicles and their associated trailers on a vacant parcel of record in a residential zone, varying from Section 17.44.040(E)(K), Criteria for Review, of the BSBMC.

**APPLICANT:** Walter C. and Karen M. Garner, owners, 2400 South Dakota Street, Butte, Montana, and Ryan Garner, agent.

**TIME/DATE:** Thursday, April 21, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

**REPORT BY:** Rebecca R. Farren, Land Use Planner.

**VICINITY  
MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-2" (Two Family Residence) zone, legally described as the South Park Addition, Section 25, T3N, R8W, Block 9, E Portion of Lots 22-24 of the City and County of Butte-Silver Bow, State of Montana, commonly known as the 2400 block of South Dakota Street, Butte, Montana.

**PROPOSAL:** The applicant is proposing to utilize a vacant property within the "R-2" zone for the outdoor storage of his trucks and trailers associated with his home occupation. While the Home Occupation permit does allow for a business vehicle, it stipulates that there shall be no more than one (1) vehicle associated with each home occupation permit. It also stipulates that there shall be no outside storage of materials, products, machinery, equipment or vehicles associated with said home occupation.

**STAFF**

**FINDINGS:** The applicant and agent have a business together (Garner Contracting, LLC). The agent had applied for and received Home Occupation Permit #14105 on February 25, 2013. When the permit was approved, the agent had listed one dump truck for the business. Since that time the business has grown to include two semi-trucks, the dump truck, two enclosed trailers and a goose neck trailer. The Planning Department received a complaint from a neighbor that the applicant was parking commercial equipment on his vacant lot and subsequently, sent the applicant a zoning violation letter. The applicant promptly removed the business vehicles and trailers from the property in order to be in compliance with the violation letter. However, the applicant and agent would like to utilize the vacant property within the "R-2" zone for the outdoor storage of his trucks (on occasion) and trailers associated with the

home occupation. The Butte-Silver Bow Municipal Code, Section 17.44.040(E), Criteria for Review, states, "There shall be no outside storage of materials, products, machinery, equipment, or vehicles associated with the Home Occupation" and Section 11.44.040(K), Criteria for Review, states, "There shall be only one vehicle used for commercial purposes related to the home occupation for each dwelling unit." As stated above, the applicant has two semi-trucks and one dump truck currently associated with his home occupation. These trucks are generally stored at the south Industrial Park but on occasion they are at this property overnight.

The applicant's request to allow for multiple vehicles associated with his Home Occupation permit and to allow those vehicles and trailers to be parked outside on a vacant lot, requires approval from the Zoning Board of Adjustment.

*Planning Department staff will review the three criteria established by the Montana Supreme Court for the granting of variances.*

**1. A variance must not be contrary to the public interest.**

The public's interest in segregating land uses, such as commercial and residential, is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to unite uses that are compatible.

In this particular case, the property is located in an "R-2" zone that does not permit outside storage of materials, products, machinery, equipment or vehicles associated with the home occupation, and does not permit each dwelling with an associated

Home Occupation permit to have more than one vehicle associated with the business.

The topic of public concern that must be addressed by this use variance is the impact of the proposed use on the adjacent residential property owners.

The owners own both the triangular parcel in question and the parcel directly east of the parcel in question. The eastern parcel is the owners' legal primary residence. Therefore, it could be inferred that parking vehicles and trailers on the triangular parcel would have the greatest direct impact on the owners' residence and marginally less on the other, less proximal parcels to the proposed storage area. The western/southwestern boundary of the triangular parcel in question is Rowe Road, a main arterial route that connects South Montana Street with Holmes Avenue. Beyond Rowe Road is a vacant lot that is zoned "R-2" (Two Family Residence) but it remains undeveloped. Beyond the vacant lot is a "C-1" (Local Commercial) zone. To the north and east of the subject parcel are single family residences. As such, the fact that the commercial use would be located in a residential zone requires special attention.

In regard to having more than one vehicle associated with the business, the agent has stated to staff that the vehicles are parked at the south Butte Industrial Park. The Industrial Park is an appropriate zone to store these types of vehicles. The additional vehicles, if parked in the appropriate zone, do not appear to infringe on the residential zone and may not be contrary to public interest.

However, the parking of semis or the dump truck, even on an occasional basis would have a greater impact on the neighboring properties. Typically, the start-up of a semi-tractor on a cold morning can create a substantial amount of diesel exhaust within the first five to ten minutes. In addition, until the engine warms up, it is considerably louder than gas-powered motor vehicles. Although staff can understand that it may be easier to bring the semi home when arriving late at night or leaving early in the morning, the Industrial Park is approximately five miles from this property. As such, staff is not fully convinced that the semis or dump truck need to be parked on the lot, even on a temporary basis.

In regards to parking the enclosed trailers and goose neck trailers on the subject property, as long as the trailers are neatly parked and located out of the vision clearance triangle of the intersections of Rowe Road and Greenwood Avenue, South Dakota Street and Rowe Road and South Dakota Street and Greenwood Avenue, then the storing of vehicles may be appropriate for this site.

It should be noted that the applicant does store his personal camp trailer on the property. Storing of a personal licensed trailer is permitted within the "R-2" zone.

Based on the above discussion, if the applicant and agent are agreeable to not parking the semis and dump truck on the property, the request to have more than one vehicle associated with a Home Occupation Permit and the request to store the two enclosed trailers and goose neck trailer that are associated with the business may not be contrary to public interest.

2. **A literal enforcement of the Zoning Ordinance must result in unnecessary hardship owing to conditions unique to the property.**

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape, topographical feature or geological trait. This quality must preclude the applicants' ability to place a structure on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicants.

The hardship associated with this property is its shape. Although the applicants' property is larger (6,885 square feet) than the required minimum lot size of 6,000 square feet, the property is triangular in shape. In addition, the property is bounded on all three sides by streets. As such, the shape of the property and the setback requirements and the requirement to keep the vision clearance triangles from streets clear, makes it very difficult to locate a residential structure on the property.

3. **The spirit of the Zoning Ordinance must be observed and substantial justice done.**

It is the intent of the Zoning Ordinance to permit the reasonable use of private property while restricting practices that may infringe on the rights of adjacent landowners and the public in general.

Public health, safety and general welfare must be protected and weighed against the rights of the applicants to develop a property in a way that may be suitable. If public interest can be protected

pertaining to these issues, a variance may be appropriate.

As noted above, one of the criteria for approving a home occupation is that outside storage of materials, vehicles, equipment, etc. associated with the home occupation is not permitted. It would appear that the purposes for Criteria E are that the property on which a home occupation is being operated does not become a visual detriment to adjacent residences by taking on the appearance of a commercial property. In addition, many commercial vehicles and/or commercial equipment are generally louder and create more exhaust than a typical residential vehicle. As such, if the applicant and agent are willing to keep the semis and the dump truck at the south Butte Industrial Park, then the keeping of the enclosed trailers and gooseneck trailer may be tolerable to the neighboring properties.

The applicant and agent must be clear that if this variance is approved, it is being approved for the purpose of providing them the the opportunity to get their business started as affordably as possible. In that regard, it is very important that the applicants operate their home occupation within the boundaries of the other criteria and when any of the other criteria are exceeded, i.e. more than one employee living outside of the home, it is fully expected the applicant and agent move the business to the appropriate zoning district.

The Board and the applicant and agent need to be aware that this variance is not a use variance. As such, any approval of the requested variance does not provide approval for any commercial use similar

in nature to the existing home occupation to be operated at this site. The requested variance only allows the applicant and agent the opportunity to store the trailers associated with this Home Occupation business at this site. When the home occupation is closed or moved to another site, neither the applicant nor anyone else can start up a new outside storage business at this site. In addition, the applicants cannot sell the property to someone else with the new owner having the expectation that they will be able to operate a storage yard business at this site.

If the applicant and agent agree to the conditions stated below, storage of two (2) enclosed trailers and (1) gooseneck trailer and the request to have more than one vehicle associated with the business may be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSION:** Based on the above analysis, staff believes that this Variance Application #15023 mat not disrupt the character of the neighborhood or be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

Therefore, staff would recommend approval of Variance Application #15023, provided the following conditions are met:

1. The applicant and agent will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.
2. The applicant and agent will be limited to the business as stated and approved, including the

outside storage of two (2) enclosed trailers and one (1) gooseneck trailer. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

3. The applicant and agent shall store the two semis and the dump truck at the south Butte Industrial Park or in the appropriate zoning district.

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

**ITEM:**                    Variance Application #15033 - An application for a variance to construct a detached garage (720 square feet in area) within fifteen feet (15') of the Cobban Street property line, varying from the twenty foot (20') parking apron requirement for a garage exiting to a street, as per the requirements of Section 17.10.020 (D), Permitted Uses, of the BSBMC.

**APPLICANTS:**        Anita Zabel, 8544 NW Ryan Street, Portland, Oregon, owner, and Erik Ingman, PO Box 3911, Butte, Montana, agent.

**DATE/TIME:**           Thursday, April 21, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

**REPORT BY:**           Rebecca Farren, Land Use Planner

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-1" (One Family Residential) zone, legally described as the N10' of Lot 14, all of Lots 15-16, Block 52 of the Daly Addition, commonly known as 2001 Banks Avenue, Butte, Montana.

**PROPOSAL:** The applicant is proposing to construct a rectangular shaped detached garage with a total width of twenty-four feet (24') and a total depth of thirty feet (30') comprising an area of 720 square feet (see attached site plan) that would be located fifteen feet (15') from the Cobban Street property line, varying from the twenty foot (20') parking apron requirement for a garage exiting to a street. The garage would be located on the west side and rear of the house.

**STAFF**

**FINDINGS:** The Butte-Silver Bow Municipal Code, Section 17.16.020, Permitted Uses, requires a garage exiting directly to a street to have a twenty foot (20') parking apron from the street property line.

The applicant's request to place the garage within fifteen feet (15') of the street property line requires approval from the Zoning Board of Adjustment.

*The staff will review the three criteria established by the Montana Supreme Court for the granting of variances.*

- 1. The variance must not be contrary to the public interest.**

Parking apron requirements have been established to protect public health and safety by providing adequate space for vehicles to enter and exit a garage without obstructing traffic or creating a safety

hazard within the public right-of-way for pedestrians and drivers.

The neighborhood is a mixture of newer and older homes, varying somewhat in design. Many homes have garages with doors exiting to the alley, however, the location of the dwelling in relationship to the parcel in question would only allow for a detached garage exiting to Cobban Street.

While staff believes it is necessary for new structures or additions to be in conformance with zoning regulations, staff is also aware there are situations that prevent new structures from being able to meet zoning regulations and can provide justification for a variance from the pertinent zoning regulation. In this particular case, the applicant's property is seventy feet (70') in width and one hundred feet (100') deep, which exceeds the required minimum lot width of sixty feet (60') and the minimum required lot area of 6,000 square feet. As such, the applicant's property is considered a legal parcel of record. That being said, there may be other circumstances which may support the approval of this variance request.

In this particular case, the applicant is requesting the fifteen foot (15') setback due to the location of a natural gas line preventing compliance with the standard twenty foot (20') setback. In order for the proposed garage to have enough depth twenty-four feet (24') to allow for the parking of full sized vehicles, the applicant is proposing to locate the garage closer than the required twenty feet (20') from the Cobban Street property line.

The applicant's property is located in a block that does not have any curb/gutter or sidewalk. Consequently, there is approximately seven feet (7') of grass boulevard and then the parking lane of Cobban Street.

The primary purpose for the twenty foot (20') parking apron is to provide a driver exiting a garage with adequate visibility regarding oncoming traffic and pedestrians. In this case, the applicant should be able to exit the garage far enough to identify pedestrian or oncoming traffic prior to encroaching into the boulevard area through the vehicles' side windows.

One of the important considerations when considering reduced parking aprons is to ensure that the garage will not affect the vision clearance triangle of the intersection of Cobban St. with the alley. In this case, the proposed garage will be located outside the vision clearance triangle area.

Another consideration is whether a vehicle can park in the parking apron and not extend out into the public right-of-way. While a fifteen foot (15') parking apron will allow smaller vehicles to safely park on the property in front of the garage, larger vehicles will extend out into the boulevard area of Cobban Street. That being said, Cobban Street does have an eight foot (8') parking lane, and it appears that pedestrian traffic utilizes the parking lane as the walking path for this block.

Based on the above discussion, it would appear that the requested variance would not be contrary to the public interest.

**2. The literal enforcement of the Zoning Ordinance must result in an unnecessary hardship owing to conditions unique to the property.**

To qualify for a variance the property must exhibit conditions that preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unique conditions usually associated with the property are shape, topography or some geological feature.

The applicant's parcel has a natural gas line running just south of the proposed garage location and overhead electrical lines running south of the gas lines. These property characteristics prevent the applicant from meeting the twenty foot (20') setback requirement off of Cobban Street with a full size garage.

**3. The spirit of the Zoning Ordinance must be observed and substantial justice done.**

The spirit of the Zoning Ordinance is to permit reasonable use of private property while requiring residents to develop their properties in ways that do not compromise public interest.

Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop his property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

The Board must determine if the spirit of the Zoning Ordinance would be met by approving this

application, as submitted. While the proposed detached garage could be located with a twenty foot (20') parking apron, the reduced garage size may only allow for compact vehicles.

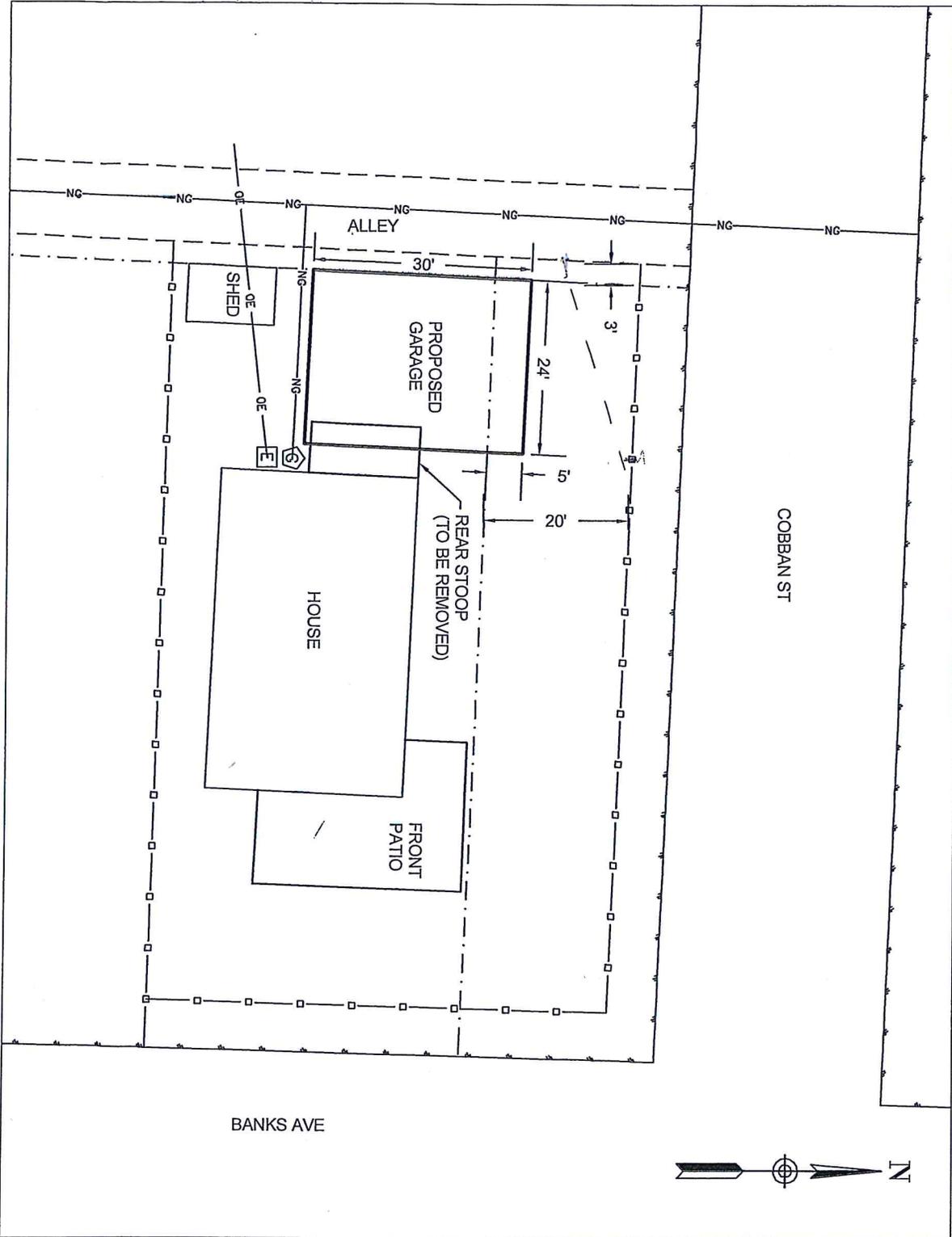
The applicant's request to construct a garage on the property appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property and the requested fifteen foot (15') apron appears to uphold the spirit of the Zoning Ordinance.

**CONCLUSION:** Based on the above analysis, staff believes that the construction of the detached garage as shown on the site plan with a fifteen foot (15') parking apron would not compromise the spirit of the Zoning Ordinance, therefore, staff recommends conditional approval of Variance Application #15033 with the following conditions:

1. Any vehicles parked in the fifteen foot (15') parking apron must not extend into the paved area of Cobban Street, including the parking lane.
2. The detached garage shall meet the height requirements of Section 17.10.040 for accessory structures which are:
  - a. Hip or gable roof: 16'
  - b. Gambrel roof: 14'
  - c. Flat roof: 13'

**2001 BANKS AVE**

**REQUESTED SETBACK VARIANCE**



**LEGEND**

- Edge of Asphalt
- - - Edge of Alley
- - - - Property Line
- . - . - . Setbacks
- ▭ Existing Buildings
- NG — Approximate Gas Line
- ⬡ Gas Meter
- OE — Approximate Overhead Electric
- ⊞ Electric Service Pole
- ▭ Proposed Garage

NOTE: ALL LINES AND LOCATIONS ARE APPROXIMATE.

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

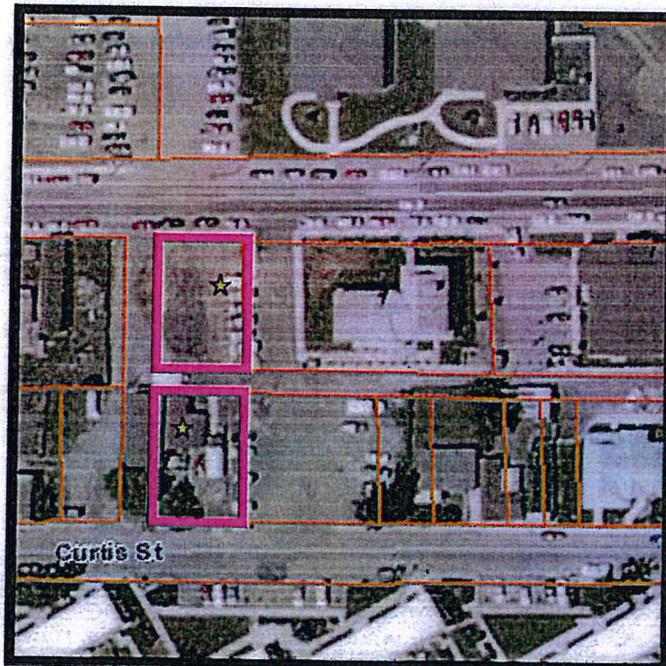
**ITEM:** Variance Application #15042 - An application for a variance to locate a detached garage (24'W x 24'D) on a parcel of record that does not contain a primary structure (house), varying from the requirements of Section 17.12.020, Permitted Uses, of the BSBMC.

**APPLICANT:** Patrick Walsh, 213 Curtis Street, Butte, Montana, owner.

**DATE/TIME:** Thursday, April 21, 2016, at 5:30 P.M., in the Council Chambers, Room 312, Third Floor, Butte-Silver Bow Courthouse, Butte, Montana.

**REPORT BY:** Rebecca Farren, Land Use Planner

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-3" (Multi-Family Residence) zone, legally described as a portion of Lots 15-17, Block 11 of the Kings Second Addition, generally located immediately east of 222 E Mercury Street, Butte, Montana.

**PROPOSAL:** The owner is proposing to construct a detached garage (24' x 24') on a parcel of record that does not contain a primary structure (house). The owner lives immediately to the south of the property in question. The two parcels cannot be combined due to the presence of an alley between them. The requested garage would exceed the minimum required setbacks on the northernmost parcel.

**STAFF**

**FINDINGS:** The Butte-Silver Bow Municipal Code (BSBMC), Section 17.12.020, Permitted Uses, states that no accessory structure shall be located on a parcel without a primary structure. Therefore, in order to place a garage on the property in question, a variance is required from the Zoning Board of Adjustment (Board).

**The staff will review the three criteria established by the Montana Supreme Court for the review of variances.**

- 1. The variance must not be contrary to the public interest.**

It is the intent of the Zoning Ordinance to protect the public interest by preventing uses of land that may have a negative impact on the surrounding property owners. Consequently, the Ordinance prevents the placement of accessory structures on lots that do not contain a primary residence, as a garage on a

property without a primary structure raises several concerns and potential problems.

A primary concern is that compared to a garage on an owner-occupied property, a garage without a primary structure has more potential to suffer from little or no maintenance, as the owner does not view the garage every day. Ultimately, they become a visual nuisance to the neighborhood.

Another concern is in regards to an increased potential for the property around the garage to become an outside storage yard or a "contractor storage yard". Garages without primary structures are also more likely to be used for commercial operations, i.e. auto repair shops. This is even more of a concern when a proposed garage exceeds the size of a typical residential garage (24' X 24').

In this particular case, the owner's primary residence is located immediately to the south of this property, and the garage proposed, while on a separate parcel, is to be located within forty feet (40') of his residence. In addition, the applicant had initially stated to staff that he was willing to combine the properties, so that the applicant's primary residence and the proposed detached garage would be located on one parcel of record. However, the parcels are unable to be combined due to an alley running between them. The owner was under the impression that the alley had been vacated, however, there is no record of alley vacation for that location. Based on the location of the owner's primary residence and his willingness to combine the properties, it would appear that this would reduce the likelihood that the property and garage would not be adequately maintained. Staff would recommend that a condition

of approval be that the applicant place a deed restriction on the parcel containing his primary residence to include the northernmost lot. The amended deed language shall restrict the sale of the existing detached garage to a party other than the party purchasing his primary residence parcel.

Additionally, the proposed garage is only (24' X 24'), and will be constructed within the required maximum height of sixteen feet (16'), maintaining a typical residential garage appearance.

If the applicant places his garage within forty feet (40') of his residence and its proposed size is that of a standard two-vehicle residential garage, then the requested variance may not be contrary to public interest.

**2. A literal enforcement of the Zoning Ordinance must result in an unnecessary hardship owing to conditions unique to the property.**

Unnecessary hardship, as defined by the Montana Supreme Court, must result in a condition unique to the property, such as a unique lot shape or a topographic condition. The hardship must not be the result of a condition created by the applicant.

While combining the two parcels would allow for the detached garage to be constructed without a variance, the location of the alley between the parcels eliminates this option, therefore, preventing the owner from fully utilizing his properties without building a second residence.

In addition, the applicant's property is 5,914 square feet, only slightly smaller than the minimum required

6,000 square feet. As such, the smaller size of the applicant's parcel does constitute a hardship.

**3. The spirit of the Zoning Ordinance must be observed and substantial justice done.**

The spirit of the Ordinance is to permit reasonable use of private property while requiring residential property owners to develop their property in ways that do not compromise public interest.

Public health, safety and general welfare must be protected and weighed against the rights of the applicant to reasonably develop his property. If public interest can be protected pertaining to these issues, a variance may be appropriate.

In this case, the applicant is proposing to construct a residential garage on property located immediately north of his primary residence. Generally, staff does not typically encourage or recommend approval of garages on properties without a primary structure because the potential for such garages to have a negative impact on the neighborhood is high.

However, if the applicant is agreeable to a condition to place a deed restriction on his properties, then the issues discussed above should be resolved. That being said, the location and character of the garage is also important to any approval of this variance. The location, as depicted on the site plan, helps to reduce any negative impact the garage will have on the neighboring properties. As stated above, the garage will be located approximately 40 feet (40') from the applicant's residence. In addition, the proposed size of the garage is that of a typical two-vehicle residential garage.

For the above noted reasons, staff believes that the construction of the garage would not be contrary to the spirit of the Zoning Ordinance.

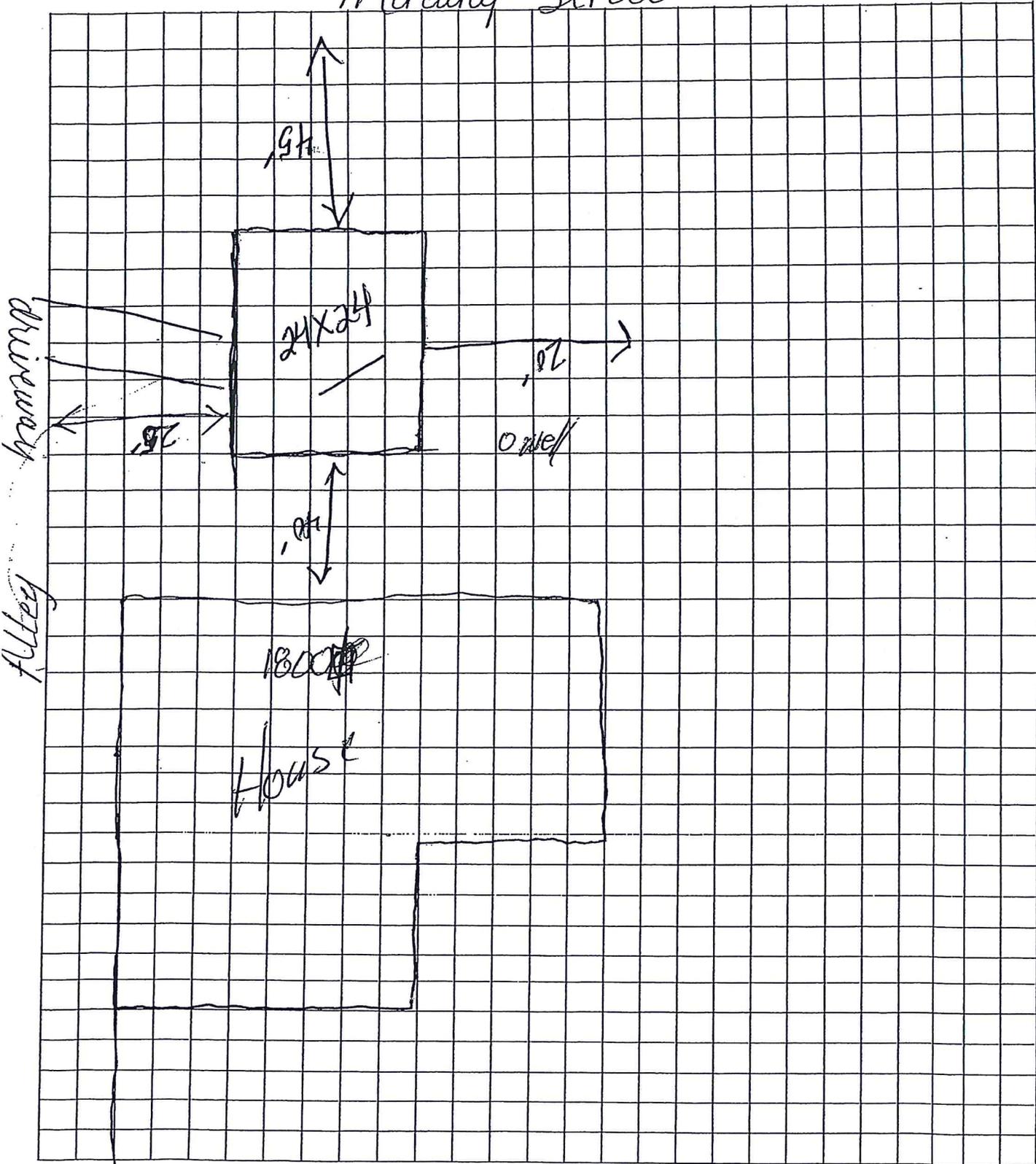
The applicant's request to construct a (24' x 24') detached garage appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property.

**CONCLUSION:** Therefore, based on the above discussion, staff would recommend approval of Variance Application #15042, contingent on the following conditions being met:

1. Prior to receiving a building permit, the applicant shall file, at the Butte-Silver Bow Clerk and Recorder's Office, a revised deed containing a deed restriction that requires both parcels and their respective structures to be sold together.
2. There shall, at no time, and for any reason be outside storage of vehicles and/or campers not owned by the applicant or vehicle parts, machinery, equipment, construction material or any other debris, owned or not owned by the applicant, on the property surrounding the garage, and at no time and for any reason will the garage be used for commercial purposes.
3. The garage must be located on the property as shown on the submitted site plan. Any alteration to the location of the garage must be approved by the Zoning Board of Adjustment.
4. The garage cannot exceed sixteen feet (16') in height at the peak of the garage for a gable roof.

Site Plan

Mercury Street N



Curtis Street

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

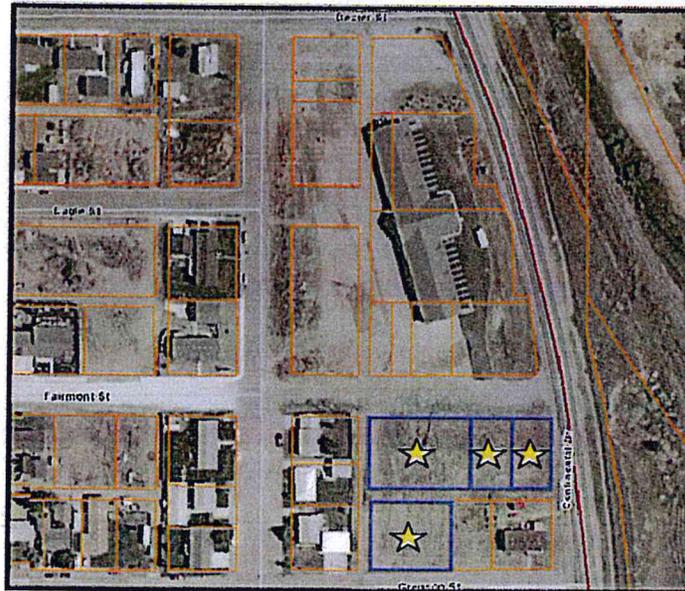
**ITEM:**            **Use Variance Application #15052** - An application for a use variance by Gene Spolar & Cathy Huffer, owners, and WJ Properties, LLC, agent, to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC.

**APPLICANT:**    Gene Spolar, 3010 Argyle St., Butte, Montana, & Cathy Huffer, 1807 Massachusetts Ave., Butte, Montana, owners, and WJ Properties, LLC, 1107 Howard Ave, Butte, Montana, agent.

**TIME/DATE:**    Thursday, April 21, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

**REPORT BY:**    Rebecca Farren, Land Use Planner

**VICINITY MAP:**



**LOCATION/  
DESCRIPTION:**

The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 2-10 & 18-21, Block 21 of the Northern Pacific Addition, commonly located in the 3000 Block of Fairmont and Gregson Streets, Butte, Montana.

**PROPOSAL:**

The applicant is proposing to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC. The storage facility would consist of four (4) storage buildings similar in appearance to the commercial building located in the "R-2" (Two Family Residence) zone due north of the proposed parcels. This

application will be reviewed on the impact of the facility at full build out, having all four (4) structures in place. See the attached site plan for the various sizes of the proposed buildings.

**STAFF  
FINDINGS:**

The applicant is proposing to construct a commercial mini-storage facility within an "R-1" (One Family Residence) zone. The Butte-Silver Bow Municipal Code, Section 17.10.020, does not list storage units as a permitted use within the "R-1" zone. In addition the applicant is proposing to construct a fence around the property to provide security to the storage facility with wrought iron view-fencing around the Continental Drive frontage and a mixture of six foot (6') vinyl fencing and building sides utilized as fencing for the remainder of the property. Also, the applicant is proposing to install curb/gutter and landscaping along the Fairmont Street frontage, which is the proposed entrance/exit of the facility.

Section 17.36.042, Fence Height - Residential Zones allows a maximum height of six feet (6') in the rear yard and allows a maximum height of four feet (4') chain-link or three feet (3') solid fence within the front yard.

Although this property is located in the "R-1" (One Family Residence) zone, and the Growth Policy designation is Residential, the parcels just two (2) blocks north of the property in question are designated as Commercial in the Growth Policy. The Planning Board and Council of Commissioners changed the Growth Policy designation for this area of Continental Drive from residential to commercial in 1995. This change resulted from the recognition by the public and staff that the location of the property along Continental Drive and between Dexter and Texas Avenue would be most suitable for commercial purposes.

With this change, several commercial businesses have come into existence within the adjoining corridor of Continental Drive, including Hardesty Taxidermy, East Side Athletic Club, McQueen Athletic Club, S&T Fitness, and the L&D Chinese Buffet.

Typically, in use variance applications, the requirements of the corresponding "zone" where the proposed use is permitted are applied as conditions of approval. Mini-storage facilities are a permitted use in the "C-2" (Community Commercial) zone.

Use variances have two subcriteria under the main criteria of hardship. In order to receive a use variance, the applicant must prove, under the first subcriteria, that the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone.

The second subcriteria used in evaluating use variance cases requires that the applicant prove that the proposed use will not alter the essential character of the neighborhood in which it is located. The applicant must show that the proposed use will not "practically destroy or greatly decrease the value of a parcel", nor will the use involve elements which make it unwelcome in the neighborhood.

*Planning Department staff will review the three point criteria established by the Montana Supreme Court for the granting of variances.*

- 1. A variance must not be contrary to the public interest.**

The public's interest in segregating land uses, such as commercial and residential is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to unite uses that are compatible.

The property in question is located on the border between the "R-1" (One Family Residence) zone and the "R-2" (Two Family Residence) zone and is just southwest of the active mining area on the east side of Continental Drive. As such, the subject property is located at a transitional point between the beginning of the residential neighborhood to the south and west and the commercial activities to the north and the active mining area to the northeast. The topic of public concern that must be addressed by this use variance is the impact of the proposed commercial use on the adjacent residential property owners.

Due to the impact of the mine and traffic on Continental Drive, the opportunity for residential development on the property appears to be limited. In fact, the properties along Continental Drive have primarily been developed for commercial uses in recent years. A portion of the subject land had originally been purchased many years ago by one of the owners to build a residence, but installation of even basic utilities (water and sewer) was cost-prohibitive. Consequently, the subject property has sat vacant for many years now and prospects for residential development are not great.

Nonetheless, the subject property is zoned residential and there is one single family residence on the southeast corner of the block. These residents must be assured that they will not be

negatively impacted by the proposed development. While the mini-storage facility is a fairly low-impact commercial use, it does generate additional traffic and noise. Depending on the hours of operation, e.g., evenings, weekends, etc., the increased traffic and noise could be adverse. Depending on the applicants' plans to mitigate those impacts – to the satisfaction of the surrounding residential property owners – then a mini-storage unit development may be compatible at this location.

Based on the above information, the development of a storage unit facility on this particular property may not be contrary to public interest.

**2. A literal enforcement of the Zoning Ordinance must result in unnecessary hardship owing to conditions unique to the property.**

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape, topographical feature or geological trait. This quality must preclude the applicant's ability to place a structure on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

The main hardship associated with this property relates to its location along Continental Drive and across the street from the active mine operations, which limits the potential for residential redevelopment. As previously stated, the Planning Board and Council of Commissioners have established in the adopted Growth Policy that the highest and best use of the Continental Drive

corridor – at least starting two blocks north of the property – is for commercial development.

Another aspect of the property that relates to hardship is that basic utility installation is so costly for these parcels. The high utility connection costs make residential development unfeasible for most income levels in Silver Bow County.

Sub-criteria Number One (for a use variance) is to evaluate whether the land cannot secure a “reasonable return”, if the land is restricted to only those uses permitted outright in that zone. Again, the property is zoned residential but located in an area that is a transitional point between a residential neighborhood and the active mining area. Hence, the possibility of the property securing a reasonable return by means of residential development is minimal. Locating a storage unit facility at the proposed location – subject to certain conditions of approval – would not appear to create a negative impact on the adjacent neighborhood.

Sub-criteria Number Two is to evaluate whether the proposed use will not alter the character of the neighborhood in which it is located. The use variances granted for the properties along Continental Drive have begun to change the character of the northern border of this neighborhood to commercial use. Thus far, the commercial uses do not appear to be causing adverse impacts to the residential users to the south and west. In addition, the Continental Drive arterial creates a relatively heavy flow of traffic along the eastern border of the property area. In one (positive) sense, the proposed facility may provide a buffer between the residences located west of the applicant’s property and the

Continental Drive arterial, as well as the southern lobe of Montana Resources' mine property.

**3. The spirit of the Zoning Ordinance must be observed and substantial justice done.**

It is the intent of the Zoning Ordinance to permit the reasonable use of private property while restricting practices that may infringe on the rights of adjacent landowners and the public in general.

Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop a property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

One potential impact would be from any outside storage of vehicles, ATV's, boats and recreational vehicles. The applicant has not proposed using any of the property for outside storage, therefore, any approval of this use variance should be conditioned that there be no outside storage of any kind.

The applicant, by designing the entrance to the facility on the northern boundary of the parcels along Fairmont Street has proposed an operations plan that will help mitigate the impact on public safety and the overall impact of the facility on the surrounding property owners. Additionally, the applicant's site plan provides for new sidewalks and curb/gutter to enable safe pedestrian circulation past the property. The site plan also provides for landscaping along Fairmont Street, which should help mitigate the impact of the storage facility.

Although storage facilities are a commercial use, they do provide a local service to surrounding residential zones, as the individual units allow residents to store their items in a fenced and safe location in close proximity to their homes. Storage units also have the potential to reduce the number of items being stored outside in residential yards, which can contribute to community enhancement objectives.

For the reasons noted above, it is reasonable to conclude that creating a commercial storage unit facility on this particular property would not appear to create any public health or safety concerns. Allowing the construction of a four-building storage unit facility with six foot (6') high, vinyl & wrought iron fences – given appropriate conditions of approval – should be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSION:** Based on the above analysis, staff believes that this use variance meets the three criteria established by the Montana Supreme Court for granting variances. Therefore, staff would recommend conditional approval of Use Variance Application #15052, provided the following conditions are met:

1. At a minimum, the mini-storage buildings shall match the design presented in the submittal documents for this variance.
2. Prior to receiving a building permit, the agent will be required to submit an engineered storm water control plan to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-

Silver Bow Municipal Code, including the Butte-Silver Bow Municipal Storm Water Engineering Standards in order to receive a Storm Water Management Permit.

3. The agent shall install new sidewalk/curb and gutter adjacent to Fairmont Street and Gregson Street, adjacent to property boundaries, per the requirements of Section 17.38.050.

Prior to the issuance of a building permit, the agent shall submit a detailed sidewalk plan to the Butte-Silver Bow Planning Department for review and secure written approval. At a minimum, the design shall meet the Americans with Disabilities Act.

The agent shall submit a cost estimate for materials and installation of the approved sidewalk/curb and gutter from a licensed contractor. The agent shall submit a bond for the installation of sidewalk/curb and gutter to the Butte-Silver Bow Planning Department. This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

4. Prior to receiving a building permit, the applicant must receive approval from the Butte-Silver Bow Public Works Department for an ingress/egress approach to be located on the north portion of the property, accessing Fairmont Street.
5. Prior to the issuance of a building permit, the applicant shall submit a bond for the installation of appropriate paving on Fairmont Street to the Butte-Silver Bow Planning Department.

This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

6. Prior to receiving a building permit, the applicant must submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC. At a minimum, the landscaping shall be installed to provide a solid buffer on all sides of the property to mitigate the view of the commercial structures. Additional trees (beyond minimum requirement) should be included and all vegetation shall be irrigated and maintained effectively. Fencing materials/locations, e.g., vinyl or wrought-iron, and the use of the back sides of the storage buildings, as appropriate, shall be installed as per the site plan and submitted as part of the landscaping plan.

Once the plan is approved, the applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

The applicant shall submit the appropriate landscaping bond to the Planning Department prior to receiving a building permit. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

7. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.

8. In order to reduce the potential negative impact of on-site lighting on the surrounding residentially zoned properties, all lighting must be designed as low glare, no more than sixteen feet (16') high and have directional features to contain light on the property.
  
9. No outside storage shall be allowed. Hours of operations shall be limited to 8am to 8pm daily. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

FAIRMONT ST.

REAR OF BUILDING USED AS FENCE

EXIT

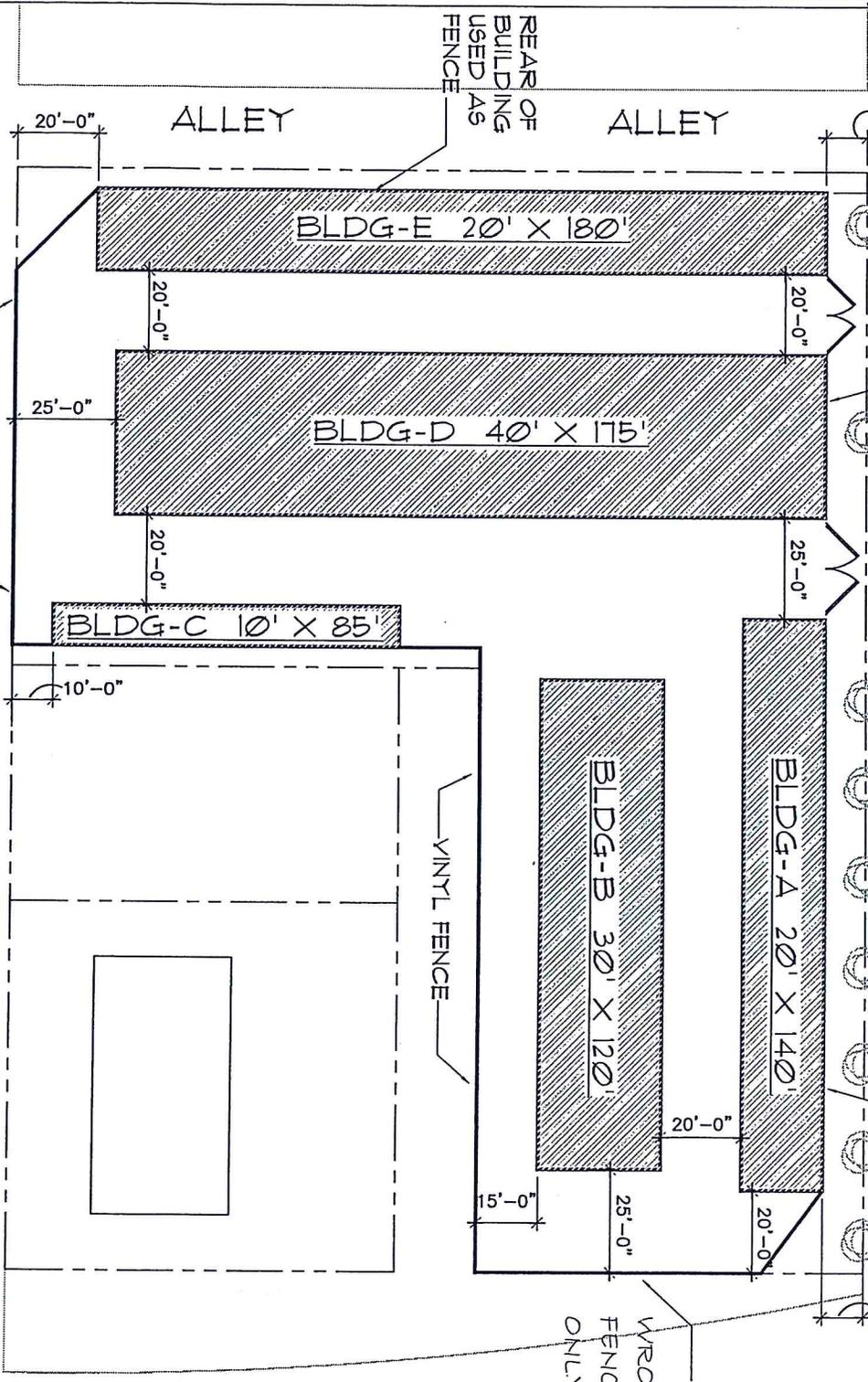
ENTRANCE

FAIRMONT ST.

REAR OF BUILDING USED AS FENCE

SIDEWALK CURB/GUTTER

WROUGHT IRON FENCE-FRONT ONLY



ALLEY

ALLEY

BLDG-E 20' X 180'

BLDG-D 40' X 175'

BLDG-C 10' X 85'

BLDG-B 30' X 120'

BLDG-A 20' X 140'

SIDEWALK CURB/GUTTER

VINYL FENCE

VINYL FENCE

GREGGSON

OPERATING HOURS:  
8AM - 8PM  
1 DAYS A WEEK

NEW SITE

CONTINENTAL



RODNEY NICHOLS  
2949 FAIRMONT ST. • BUTTE, MT 59701  
RODNEYNICHOLS@MSN.COM  
406-565-1690

# Proposal Storage Units Butte, Mt.

Date: 04-06-16

Drawn By: RN

Attached Figures:



Figure 1: Wrought Iron fence example that would be similar to fencing proposed for use on Continental Drive



**Figure 2:** Example of rear of building being used as fencing, with gravel landscaping and trees and bushes. Our facility would also have curb and gutter and four foot sidewalk on the border with Fairmont and Gregson St.



Figure 4: Neighboring property



**Figure 5:** Neighboring property

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

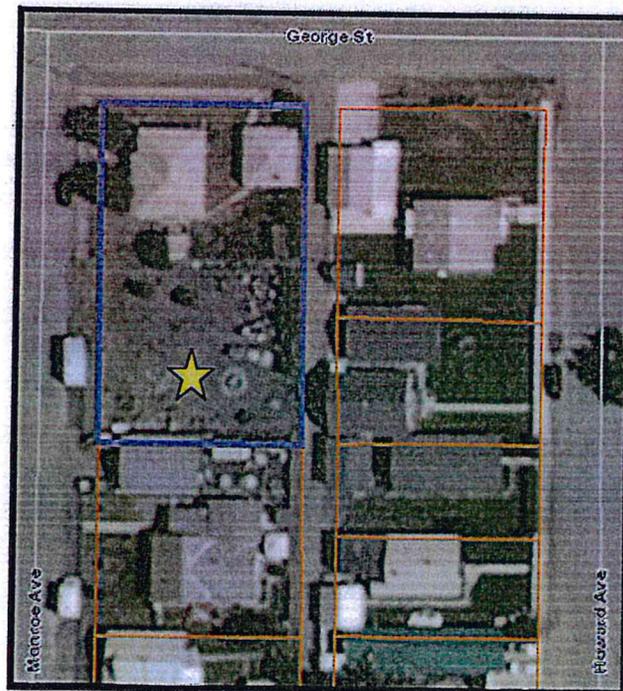
**ITEM:** Variance Application #15054 - An application for a variance to construct a second detached garage (30'W x 40'D) on a parcel of record that already contains one detached garage, varying from the requirements of Section 17.10.020(D), Permitted Uses, of the BSBMC.

**APPLICANTS:** Daniel J. Newgard & Karen E. Baker, 1800 Monroe Avenue, Butte, MT, owners.

**TIME/DATE:** Thursday, April 21, 2016, at 5:30 p.m., in the Council Chambers, Room 312, Third Floor, Butte-Silver Bow Courthouse, Butte, Montana.

**REPORT BY:** Rebecca Farren, Land Use Planner

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1-5, Block 9 of the Daly Addition, commonly known as 1800 Monroe Avenue, Butte, Montana.

**PROPOSAL:** The applicants are proposing to construct a second detached garage (30'W x 40'D) on a single parcel of record, varying from the requirements of Section 17.10.020(D), Permitted Uses, of the BSBMC. The applicant has proposed this as a means of remaining in compliance with his Home Occupation permit, by having enough garage space to store all of his Home Occupation materials inside.

**STAFF**

**FINDINGS:** The Butte-Silver Bow Municipal Code Section 17.10.020, Permitted Uses, in an "R-1" (One Family Residence) zone, allows for one detached private garage for each dwelling unit.

The applicant's request to place a second garage on one property requires approval from the Zoning Board of Adjustment.

*Planning Department staff will review the three point criteria established by the Montana Supreme Court for the granting of variances.*

- 1. The variance must not be contrary to the public interest.**

It is the intent of the Zoning Ordinance to protect the public interest by preventing building congestion on properties in an effort to prohibit the spread of fire

(promote safety), to create uniformity within the different zoning districts, and to prevent uses of land that may have a negative impact on surrounding property owners. Consequently, the Ordinance does not allow more than one detached garage per dwelling unit.

The Ordinance defines a standard parcel size as 60'x 100', 6,000 square feet in area, with sixty feet (60') of frontage for single family residences in the "R-1" (One Family Residence) zone. The applicant's property contains 15,812 square feet in area and has 153 feet of street frontage. The parcel is approximately two and one-half times larger than the required 6,000 square feet. The proposed placement of the garage meets all setback requirements for the "R-1" zone. Additionally, the lot coverage including the proposed garage would be considerably less than the permitted 35%.

The proposed size of the garage (30' X 40') is larger than a typical sized detached garage, but still meets all height requirements, therefore, the garage should be relatively compatible with other garages in the area and should not create a negative impact on the view of adjacent property owners.

It is important to note that the Community Enrichment Department has received complaints from neighboring property owners about the outside storage of material and equipment on the property in question. The applicant has worked with Butte-Silver Bow staff to eliminate the violation. His proposal is for another detached garage in which to store the items associated with the Home Occupation Permit. The storage of the items inside will alleviate the appearance of a storage yard in a residential zone.

That being said, it is important that the applicant understand that if this application is approved, it is not approval for the applicant to increase the size of his business beyond what is permitted under the rules of the Home Occupation Permit. For example, the rules of the permit allow one outside employee. When the applicant's business grows beyond what is allowed under the rules, he must move the business to the appropriate zone.

If the applicant is agreeable to store material and equipment associated with the business inside the garage and to abide by all rules of the Home Occupation Permit, then the placing of a second detached garage on this large parcel in the location shown on the site plan does not appear to be contrary to the public interest.

**2. A literal enforcement of the Zoning Ordinance must result in unnecessary hardship owing to conditions unique to the property.**

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape, topographical feature or geological trait. This quality must preclude the applicant's ability to place a structure on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

The applicant's parcel size at 15,812 square feet in area is in excess of the minimum standards of the Zoning Ordinance. Consequently, there does not appear to be a hardship associated with the applicant's property.

**3. The spirit of the Zoning Ordinance must be observed and substantial justice done.**

It is the intent of the Zoning Ordinance to permit the reasonable use of private property while restricting practices that may infringe on the rights of adjacent landowners and the public in general.

Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop a property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

The proposed location of the garage complies with the setback requirements of the Zoning Ordinance. As previously stated, the lot coverage (density) of this parcel with the proposed garage will be considerably less than the permitted 35%. In addition, the height of the proposed garage is no taller than permitted in the "R-1" (One Family Residence) zone. As stated above, a second detached garage will allow for enough indoor space for the applicant to be in compliance with his Home Occupation permit, storing materials/equipment associated with his Home Occupation indoors, and thus reducing any ill effects such materials might have on the neighbors' view.

Based on the above discussion, staff believes that the construction of the proposed second detached garage on this parcel would not be contrary to the spirit of the Zoning Ordinance.

The applicant's request to construct a 30'W x 40'D second detached garage appears to be consistent

with the intent of the Zoning Ordinance to allow for the reasonable development of private property.

**CONCLUSION:** Based on the above analysis, staff believes that the construction of a second detached garage located on the property per the submitted site plan, would not compromise the spirit of the Zoning Ordinance to allow for the reasonable use of private property nor would it be contrary to the public interest.

Therefore, staff recommends conditional approval of Variance Application #15054, provided the following conditions are met:

1. The garage must be constructed not to exceed the height requirements for detached garages as defined in the zoning regulations. As per Section 17.10.040, Building Height Limits, "Building height limits shall be two and one-half stories, but not exceeding thirty-five feet (35') in height, and **no accessory structure shall exceed one story or the following height limits:**
  - a. Hip or gable roof: 16 feet maximum
  - b. Gambrel roof: 14 feet maximum
  - c. Flat roof: 13 feet maximum
2. All materials and equipment associated with the applicant's Home Occupation permit must remain stored inside of the proposed garage, as per Section 17.44.040(E), Criteria for Review, which states, "There shall be no outside storage of materials, products, machinery, equipment or vehicles associated with said home occupation.

3. The applicant will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.



**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

**ITEM:** Mobile Home Conditional Use Permit Application #15055 - An application for a conditional use permit to locate a specific Class B Manufactured Home, built in 2009, in an "R-2" (Two Family Residence) zone per Section 17.30.080, Conditional Use Review, of the Butte-Silver Bow Municipal Code (BSBMC).

**APPLICANT:** Kelly Reilly, 949 Waukesha St, Butte, MT, owner.

**DATE/TIME:** Thursday, April 21, 2016, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse Building, 155 W. Granite Street, Butte, Montana.

**REPORT BY:** Rebecca Farren, Land Use Planner

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-2" (Two Family Residence) zone, legally described as Lot 2, Block 7 of the Smith & Kessler Addition, located directly north of 729 N Main Street, Butte, Montana.

**PROPOSAL:** The applicant is proposing to locate a specific Class B manufactured home (12'W X 40D'), built in 2009, in the "R-2" (Two Family Residence) zone.

**STAFF**

**FINDINGS:** Class B manufactured homes are defined as conditional uses within the "R-2" zone. The Zoning Board of Adjustment may issue a conditional use permit, after a public hearing and a finding that the proposed use will not negatively impact the surrounding properties or disrupt the character of the neighborhood.

The conditional use review is intended to provide flexibility for the placement of manufactured homes within each residential zone where appropriate while providing specific safeguards to protect permitted uses from adverse effects.

*To provide the Board with information so that it may determine the appropriateness of this conditional use, the Planning Department staff will review the three criteria, listed below, pertinent to the granting of conditional use permits.*

- 1. Compatibility of the proposed structure with existing adjacent buildings, structures, neighborhood, topography or other considerations.**

As is prevalent in many neighborhoods in Butte, there is a mixture of housing types within this particular neighborhood. The area is predominantly

stick built homes, however, traveling north along Main St., a few mobile homes are also present.

The property in question is a substandard sized lot, and is not large enough to accommodate a Class A manufactured home while abiding by setback requirements of the "R-2" (Two Family Residence) zone.

That being said, this particular block of Main Street contains only stick built homes and three vacant lots. Staff believes that while the dominant housing type in the neighborhood is not represented by the proposed Class B manufactured home, this specific Class B manufactured home would not greatly affect the housing character of this particular block of Main Street and would be an upgrade for this vacant property.

Based on the above discussion, staff has concluded that the applicant's proposal to place this specific Class B manufactured home on this property is reasonably consistent with the character of the neighborhood.

**2. Potential of the proposed structure to enhance and promote the comprehensive development of the immediate neighborhood and community by facilitating the use of nonconforming lots.**

This property (30'W X 100'D), 3,000 square feet, is by definition, a substandard lot, and does not meet today's minimum parcel requirements to be considered a buildable parcel, therefore, the granting of this Conditional Use Permit Application would facilitate the use of a nonconforming lot.

With that in mind, the applicant's proposal to place this specific Class B manufactured home on the property may be a reasonable request.

**3. Conformance of the proposed structure generally to the objectives of the adopted comprehensive plan and the purpose of Chapter 17.37 Manufactured Home Parks and Individual Manufactured Homes.**

The Butte-Silver Bow Growth Policy designates this area as residential. This proposal would comply with the intent of the Growth Policy to promote infill development on existing residential parcels.

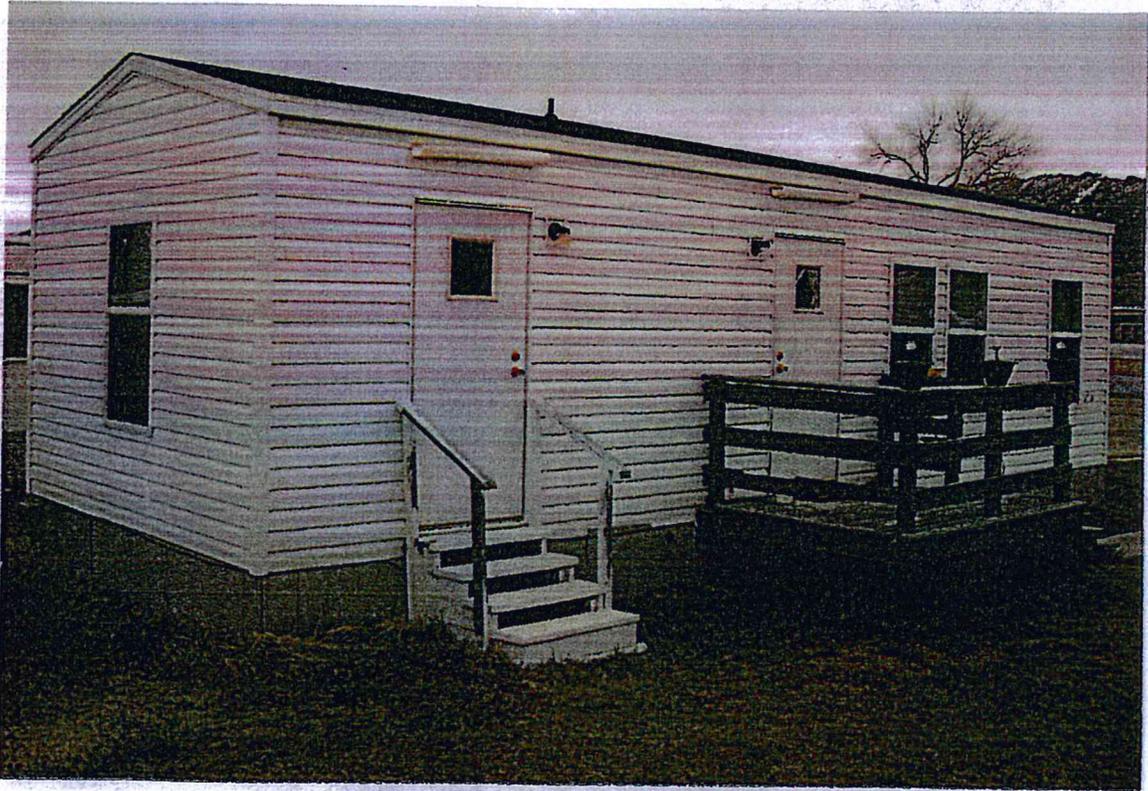
Ultimately, the applicant's request to place the proposed Class B manufactured home on this parcel is consistent with adjacent uses. Therefore, placing this specific manufactured home at the proposed location would not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

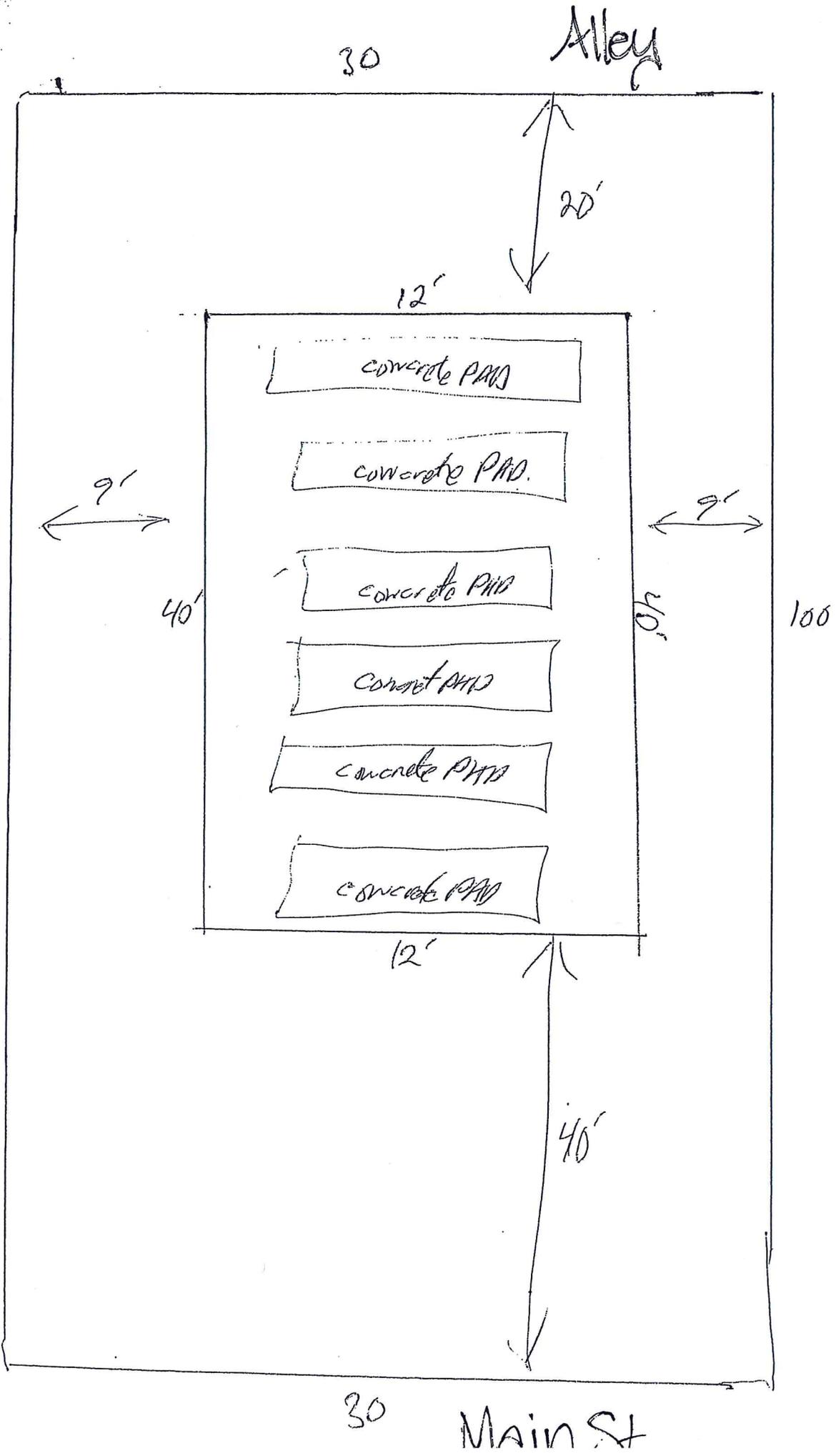
**CONCLUSION:** Based on the above discussion, it appears that locating this specific Class B manufactured home, built in 2009, on the proposed property would not have a negative impact on the character of the surrounding neighborhood.

Therefore, staff recommends that the Zoning Board of Adjustment approve Mobile Home Conditional Use Permit Application #15055, provided the following conditions are met:

1. The specific Class B manufactured home, built in 2009, that was submitted for consideration shall be the exact home placed on the proposed property.

2. The manufactured home proposed to be placed on the property in question shall meet all development standards (i.e. setbacks, foundation) described within the Zoning Ordinance and required by Building Codes.
3. The proposed foundation must be inspected and approved by the Building Official prior to a moving permit being issued. If the existing foundation does not meet requirements of the Building Codes, a new foundation must be permitted, constructed, and inspected and found to be in accordance with Building Codes prior to the issuance of a moving permit.
4. Prior to allowing the specific Class B manufactured home to be set on the foundation, an approved electrical service is required and must be permitted and inspected by the Butte-Silver Bow Building Department. If the property is not the applicant's primary residence, the electrical service must be installed by a licensed electrician, and also inspected by the Butte-Silver Bow Electrical Inspector.
5. The applicant shall install landscaping (i.e. trees, shrubs and lawn) and shall maintain the property in a manner consistent with the character of a residential zone.





30

Alley

20'

12'

concrete PADS

concrete PAD.

concrete PAD

concrete PAD

concrete PAD

concrete PAD

12'

40'

9'

9'

40'

40'

100

100

30

Main St

**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

**ITEM:** Use Variance Application #15057 - An application for a use variance to locate a headframe in a residential zone, varying from Section 17.28.020, Permitted Uses, and to construct the headframe to sixty-five feet (65'), varying from Section 17.12.040, Building of the BSBMC.

**APPLICANT:** Butte-Silver Bow, 155 W. Granite, Butte, Montana, owner, and Landscapes of Montana, c/o Norman DeNeal, 2001 Porter Avenue, Butte, Montana, agent.

**TIME/DATE:** Thursday, April 21, 2016, at 5:30 p.m., Council Chambers, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

**REPORT BY:** Lori Casey, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-2" (Two-Family Residence) zone, legally described as a portion of the Clear Grit Quartz Lode mining claim, Mineral Survey #499, Section 12, T3N, R8W, PMM, commonly located on the east side of Main Street between the BA&P Walking Trail and Clear Grit Terrace, Butte, Montana

**PROPOSAL:** The agent is proposing to erect the Alta Headframe and install an interpretive sign on a portion of the Clear Grit mining claim. The Clear Grit area is being proposed as this is the area in which silver mining took place. The applicant believes that this site should be utilized to tell the story of Butte's silver mining history.

**HISTORY:** The headframe was originally located at the Alta Mine, which was located approximately one mile north of Wickes, Montana, near Jefferson City. Approximately eight years ago, the headframe was delivered to Butte and has been stored as part of a Memorandum of Understanding at the Stewart Mine with the Bureau of Land Management (BLM). The effort to re-erect the headframe has been idle since the headframe was delivered.

In February of 2016, two proposals regarding the Alta headframe were presented to the Historic Preservation Commission (HPC). One of the proposals was to locate the headframe on the proposed site of this application and the other was to locate the headframe at the World Museum of Mining, which is now a publicly-owned facility leased to the non-profit World Museum of Mining. The Butte-Silver Bow Preservation Officer's recommendation was to place the headframe at the World Museum of Mining. There were several reasons for her recommendation, one of which was that this particular headframe is actually from the Alta Mine, and although it is a near-replica, it is not the actual headframe that once

stood at this site. However, on a vote of three (3) for and (2) against, the Historic Preservation Commission approved a motion to consider the placement of the headframe at the site proposed in this application with the following conditions:

- 1) *“That the HPC would withdraw its support to the Clear Grit site, if the project including actual groundwork, was not initiated within 18 months of this date (February 2, 2016); and*
- 2) *That if the Zoning Board did not grant a variance for erecting the Alta Headframe at the Clear Grit, which is Butte-Silver Bow property, the HPC would support the alternative site at the World Museum of Mining.”*

The agent subsequently sought and received approval from the Butte-Silver Bow Council of Commissioners to apply for a variance from the Zoning Board of Adjustment.

**STAFF  
FINDINGS:**

The Butte-Silver Bow Municipal Code, Section 17.12.020, Permitted Uses, does not list headframes as a permitted use within the “R-2” zone. Headframes, as a cultural resource, would be a permitted use in the “OS-C” (Open Space Conservation) and “OS-D” (Open Space Developable) zones. In order for the applicant to locate a headframe at this location, a use variance from the Zoning Board of Adjustment (Board) is required. The applicant has indicated that the height of the headframe when erected is sixty-five feet (65’). The maximum height permitted in the “R-2” zone is thirty-five feet (35’); as such, a variance from the Building Height limits is also required by the Board.

Use variances have two subcriteria under the main criteria of hardship. In order to receive a use variance, the applicants must prove, under the first subcriteria, that

the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone.

The second subcriteria used in evaluating use variance cases requires that the applicant proves that the proposed use will not alter the essential character of the neighborhood in which it is located. The applicant must show that the proposed use will not "practically destroy or greatly decrease the value of a parcel", nor will the use involve elements which make it unwelcome in the neighborhood.

*Planning Department staff will review the three point criteria established by the Montana Supreme Court for the granting of variances.*

**1. A variance must not be contrary to the public interest.**

The public's interest in segregating land uses, such as residential from open space, is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to combine uses that are compatible. The purpose of the open space zoning designations are to set aside portions of the rural, agricultural, cultural, recreational, natural and restored lands characteristic of B-SB for passive, active, structured and unstructured recreation, community benefits. Although there are parks located within various areas that are zoned residential, these parks are primarily intended for the use of the neighborhood and not the community as a whole.

In 2010, the Planning Department went through an extensive process to rezone certain areas within the urban corridor to an open space zoning designation. This process included eight public outreach sessions designed to gather community comment on the lands that were proposed for an open space designation, two formal public hearings to change the Growth Policy land use designations to open space, and two formal public hearings regarding the zone change to open space. Prior to presenting the proposed areas to be designated as open space, staff did an extensive review of the lands. Part of the review criteria evaluated was did the lands have any requirements to be maintained as open space per the Superfund cleanup activities and/or does the property have any covenants precluding development and what is the current use of the property. For example, small neighborhood parks were not designated as open space; these parks' primary intended use was for the residences of the neighborhood, while parks such as Stodden Park and Clark Park not only serve their respective neighborhoods but also the community at large and as such, were zoned open space. In regards to the mine yards, their current use or intended future use were the determining factor as to which open space designation (OS-C or OS-D) the mine yard should be zoned. The Stewart Mine and the area just south of the walking trail, for example, is zoned Open Space-Conservation, meaning that the use would remain passive without much development to the area.

During the open space forums and public meetings, one comment that was reiterated to staff was to find a balance between property that was going to be designated and maintained as open space and

property that had the potential to be developed into residential, commercial or industrial uses. Regarding the subject property that the applicant is proposing to construct the headframe on, it was felt by staff and the community that this area has the potential to be developed into residential uses.

As stated above, the applicant is proposing to erect the Alta headframe and an interpretive sign on this site. The intent of erecting the headframe and signage at this site is to tell the story of Butte's silver mining history and provide "high visibility to the greatest number of people... both local and visitors."

The parking to allow visitation to the site is proposed to utilize the on-street parking along Main Street, the parking lot for the walking trail east of the location and a parking lot on the west side of Main Street that was once used for the Stewart Mine. While Main Street does offer a couple of on-street parking spaces near the proposed site, it is very limited. Clear Grit Terrace is a narrow street that does not provide for a parking lane. As for the adjacent parking to the Stewart Mine, Butte-Silver Bow does not have any plans or resources to develop a parking lot.

In addition, the applicant's proposal does not indicate any type of plan to accommodate people to visit the headframe or the signage. The proposed site is a mine waste source area that has been reclaimed and vegetated. Butte-Silver Bow has an obligation to maintain the reclamation and vegetation. Allowing tourists to traverse over the site without providing designated walking paths will lead to the erosion of the vegetative cap and eventually expose the mine waste.

Based on the above discussion, the requested use variance appears to be contrary to public interest.

**2. A literal enforcement of the Zoning Ordinance must result in unnecessary hardship owing to conditions unique to the property.**

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape, topographical feature or geological trait. This quality must preclude the applicant's ability to place a structure on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

It would appear that there is no hardship, i.e. unique property shape, topographical feature or geological trait, associated with the property in question.

Although this site is a reclaimed mine waste site, there are protocols and development standards in place which would allow for development on the site while maintaining reclamation standards.

Subcriteria Number One states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in that zone. It does not appear that the property could not secure a "reasonable return", if the land were restricted to only residential uses.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. Neither the headframe, nor the height of the headframe would be out-of-character for the site, as the Stewart Mine is south of the

proposed site. The Stewart Mine has a steel headframe on the property.

**3. The spirit of the Zoning Ordinance must be observed and substantial justice done.**

It is the intent of the Zoning Ordinance to permit the reasonable use of private property while restricting practices that may infringe on the rights of adjacent landowners and the public in general.

Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop a property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

The public health and safety and general welfare that must be addressed in this application is the access to the headframe and the interpretive signage.

With regard to the headframe, the applicant has not indicated what type of access to the headframe the public would have. Measures (e.g., fencing) to prevent the public from climbing the headframe were not included with this application. In contrast, Butte-Silver Bow has had to install safety measures to prevent the public from accessing and climbing the headframes that are under public ownership.

As stated above, the proposal does not address how the public will view the headframe and read the interpretive sign without contributing to the erosion of the reclaimed vegetative cap. Erosion of the cap will expose the public to contaminated soils. Butte-Silver

Bow has an obligation to maintain this vegetative cap and prevent the public from being exposed to contaminants in the soil. In addition, the application did not include any provisions for long-term maintenance of the reconstructed headframe or the surrounding property.

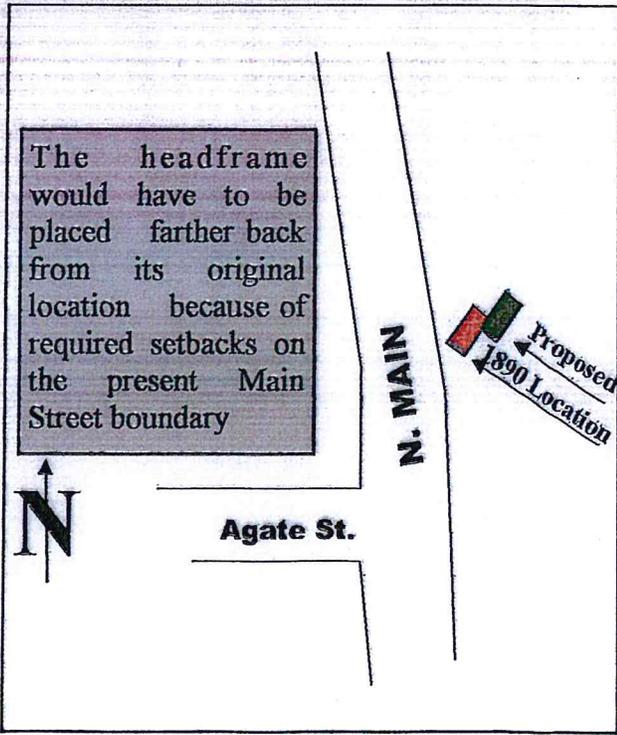
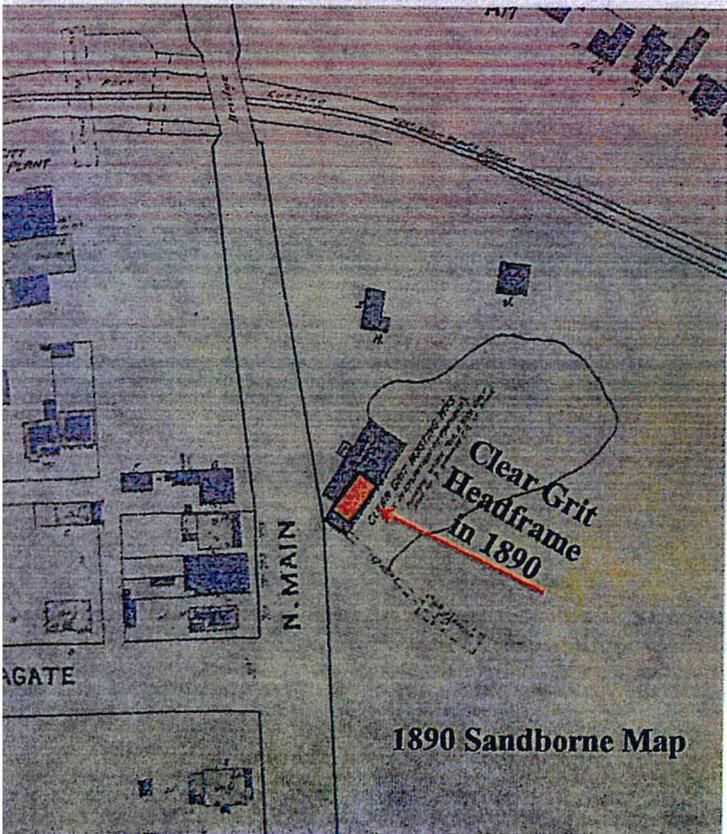
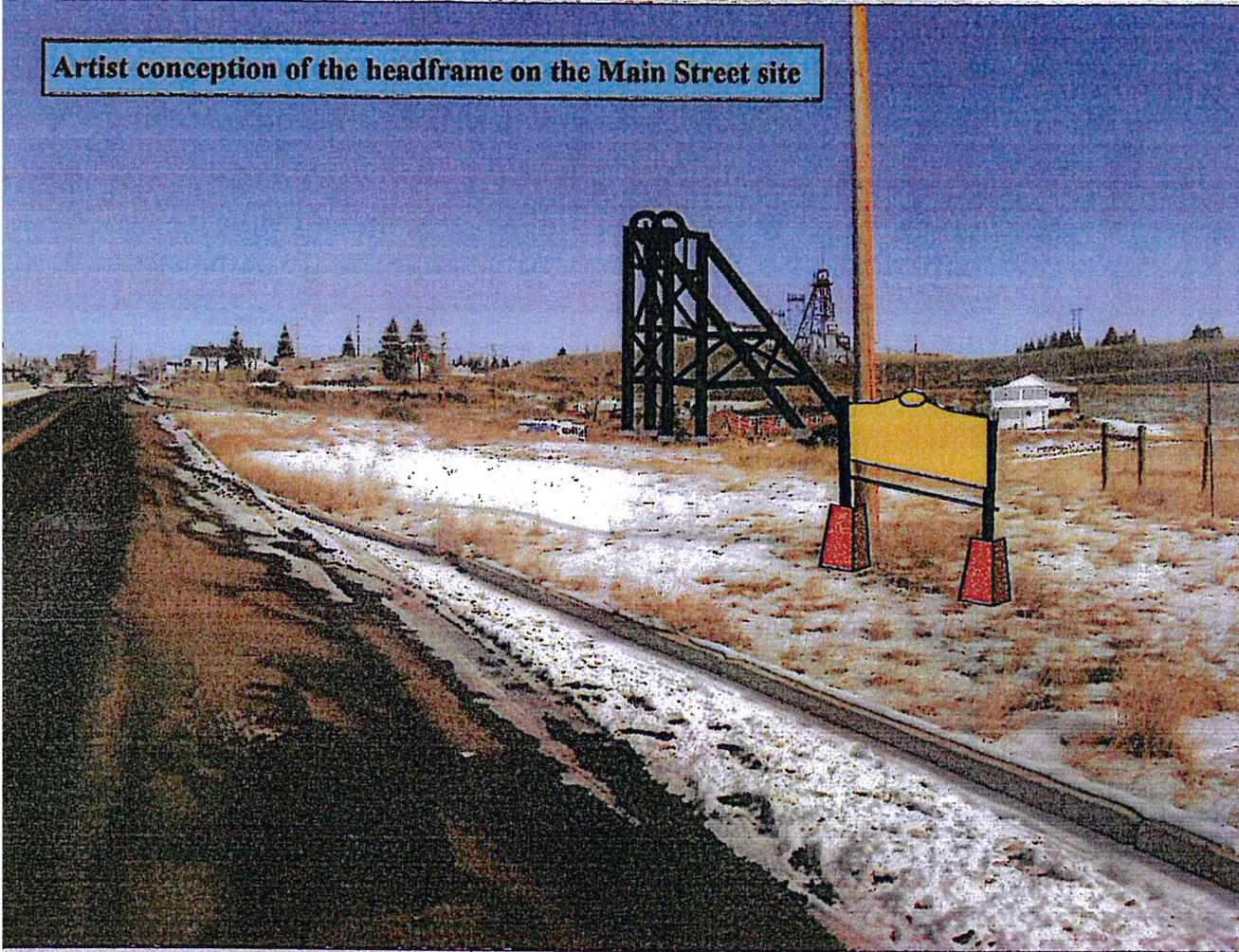
Based on the above discussion, it would appear that the proposed construction of the Alta headframe and the variance to the maximum height of thirty-five feet (35') at this site is contrary to the spirit of the Zoning Ordinance.

**CONCLUSION:** Based on the above analysis, staff would recommend denial of Use Variance Application #15057.

APPENDIX I

Alta Headframe on Main Street

Artist conception of the headframe on the Main Street site



The headframe would have to be placed farther back from its original location because of required setbacks on the present Main Street boundary

APPENDIX II

