

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

Thursday, May 19, 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 April 21, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15079 – An application for a variance by Justin & Ashley Fisher, owners, to construct a detached garage (18'W x 24'D) with a zero foot (0') rear yard setback, a zero foot (0') side yard setback, and a nine foot (9') parking apron, varying from Section 17.12.020(C), Permitted Uses, and to increase the maximum lot coverage to 51%, varying from Section 17.12.100, Maximum Lot Coverage, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as the North 33' of Lots 1 and 2, Block 8, of Butte Townsite, commonly known as 321 N. Idaho Street, Butte, Montana.

Use Variance Application #15080 - An application for a use variance by Joseph Garcia, owner, to locate a taxi company in an existing commercial building within an "R-3" (Multi-Family Residential) zone, varying from Section 17.14.020, Permitted Uses, and a variance from the required off-street parking, varying from Section 17.40.010, Off-street Parking and Loading – Space Required, of the BSBMC. The property is located in an "R-3" (Multi-Family Residence) zone, legally described as the West 35' of the South 3' of Lot 16, and the West 35' of the North 14' of Lot 17, Block 5 of Ella Lode East, commonly known as 606 S Montana Street, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

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Variance Application #15082 - An application for a variance by David Mongar, owner, and Scott White, Agent/Contract Buyer, to locate a Connex storage/shipping container (8'W x 40'D) behind their existing building, within twenty-five feet (25') of the rear property line, varying from Section 17.24.120, Minimum Rear Yard Depth, of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as Tract B of Certificate of Survey 408A, commonly known as 1010 S Main Street, Butte, Montana.

Special Use Permit Application #15083 - An application for a special use permit by Mountain View Music, LLC, c/o David Goodwin, owner, to create an event center which would accommodate live musical performances, conduct recording projects, and serve food and beverages during events, in an existing structure in an "R-2" (Two Family Residential) zone, per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as the East 30' of Lot 8, All of Lots 9-10, and the South 66 2/3' of Lots 11 & 12, Block 9 of Butte Townsite, commonly known as 301 N Montana Street, Butte, Montana.

IV. Other Business.

V. Adjournment.

By:



Lori Casey, Assistant Planning Director

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

ITEM: **Variance Application #15079** - An application for variances to construct a detached garage within zero feet (0') of the south side property boundary, within zero feet (0') of the rear property boundary, and with a reduced nine foot (9') parking apron, varying from Section 17.12.020, Permitted Uses, and to increase the overall lot coverage to 51%, varying from Section 17.12.100, Maximum Lot Coverage, of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: Justin & Ashley Fisher, owners, 321 N Idaho Street, Butte, Montana.

DATE/TIME: Thursday, May 19, 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 in question is located in an "R-2" (Two Family Residence) zone, legally described as the North 33' of Lots 1 and 2, Block 8, of the Butte Townsite, commonly known as 321 N. Idaho Street, Butte, Montana.

PROPOSAL: The applicants are proposing to construct a detached garage (18'W X 24'D) to replace their current detached garage which does not allow parking for their two vehicles. The proposed garage would be located within zero feet (0') of the south side property boundary, within zero feet (0') of the rear property boundary and would have a reduced nine foot (9') parking apron off of Copper Street. The 432 square foot garage would increase lot coverage to 51%. The applicants' demolition request to remove the current detached garage has been approved by the Historic Preservation Commission.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.12.020, Permitted Uses, requires detached garages to have a five foot (5') setback from interior property boundaries and a ten foot (10') setback from property boundaries adjacent to a street. Section 17.12.020, Permitted Uses, also requires a twenty foot (20') parking apron directly in front of all garage door entrances when accessing a street either to the front or side of a residence. Section 17.12.100, Maximum Lot Coverage, allows for a maximum lot coverage of 35%.

The applicants' request to construct a detached garage that would be located within zero feet (0') of both the south side and rear property boundaries, would have a reduced nine foot (9') parking apron off of Copper Street and would increase lot coverage to 51% requires the approval of variances from the Zoning Board of Adjustment (Board).

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.

Lot coverage and setback requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space around structures for emergency vehicle access while assuring that sufficient light and air are provided to the structure. In addition, setbacks provide consistency in neighborhood development and enhance the aesthetic value of our community.

One issue associated with a side yard setback of less than five feet (5') is the potential for storm water from the garage to impact the adjacent property. This is especially true when a garage will be located on what was originally a pervious surface, e.g. gravel or lawn. In this case, the proposed garage would be replacing the old garage in the same location, which is already an impervious surface. Although the proposed garage is slightly larger than the old garage, the northern property boundary is adjacent to Copper Street, allowing for any additional storm water created to flow towards the public storm drains without substantially affecting neighboring properties. That being said, staff would recommend that a condition of approval require the applicants to install rain gutters on the garage.

Another potential negative impact is the visual impact of a large garage being located less than five feet (5') from an adjacent property. In this case, the applicants' property is bordered by two vacant lots to the west, one vacant lot to the south and public streets to the north and east. These buffers should

reduce any potential negative effects by providing buffers between the proposed garage and existing neighboring residences.

These surrounding vacant lots and public streets will also provide for adequate light and air and ensure that emergency responders would be able to access all proximal buildings in the event of an emergency.

In regards to the proposed lot coverage of 51%, the applicants' property is located in an Uptown area of Butte, where the majority of houses were developed on parcels less than 6,000 square feet in area. The developed parcels on the applicants' block have lot coverages ranging from 22% - 89%.

As such, the proposed lot coverage is, in fact, average for the applicants' block and would be consistent with the character of the neighborhood.

Based on the above discussion, the request to construct a detached garage that would be located within zero feet (0') of both the south side and rear property boundaries, would have a reduced nine foot (9') parking apron off of Copper Street and would increase lot coverage to 51% may 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 which preclude a property from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Conditions usually associated with the uniqueness of the property are shape, topography or

some geological feature.

The applicants' property is 33'W x 80'D and contains 2,640 square feet of land area. This constitutes a substandard lot, and is less than half of the minimum lot size now required by Section 17.12.050, Minimum Lot Area, of the Butte-Silver Bow Zoning Ordinance. Substandard lot sizes make it extremely difficult to abide by setback and lot coverage regulations while allowing for reasonable development of personal property.

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 businesses and residents to develop their property in ways which do not compromise the public interest.

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

Staff does not believe the construction of the proposed 18'W X 24'D detached garage in the proposed location would negatively impact public safety for the following reasons.

The applicants' home was built in 1910, prior to the implementation of the Butte-Silver Bow Zoning Ordinance. The garage that the applicants wish to replace already sits within zero feet (0') of the west side property boundary. Additionally, it sits within zero feet (0') of the north (Copper Street) property

boundary, offering no parking apron at all. The proposed garage will actually offer an increased safety factor, as it provides a parking apron that is nine feet (9') longer than the garage that is currently in place.

Additionally, Copper Street between N. Idaho Street and N. Washington Street is a very quiet location with minimal traffic. Provided the applicants exercise some degree of care when entering and exiting their garage, its construction should not negatively impact public safety.

In regards to potential negative impacts on the adjacent property owner, as noted above, all adjacent property lines are either vacant parcels or public streets. These vacant parcels and public streets create a buffer which provides the necessary space for light, air and emergency access.

As noted above, the proposed garage would result in only minimal loss of lawn due to the replacement of the old garage with the slightly larger proposed garage.

As for the requested lot coverage of 51%, this proposed lot coverage is average for the applicants' block and, therefore, should not visually impact the neighborhood.

Finally, with respect to the demolition of the existing garage, the applicants have presented their plans to the Historic Preservation Commission, which has approved the request.

Based on the above discussion, the applicants' request to construct a detached garage that would be located within zero feet (0') of both the south side

and rear property boundaries, would have a reduced nine foot (9') parking apron off of Copper Street and would increase lot coverage to 51%, appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property and would satisfy the spirit of the Zoning Ordinance.

CONCLUSION: Based on the above analysis, staff recommends that Variance Application #15079, a request to construct a detached garage that would be located within zero feet (0') of both the south side and rear property boundaries, would have a reduced nine foot (9') parking apron off of Copper Street and would increase lot coverage to 51%, be approved with the following conditions:

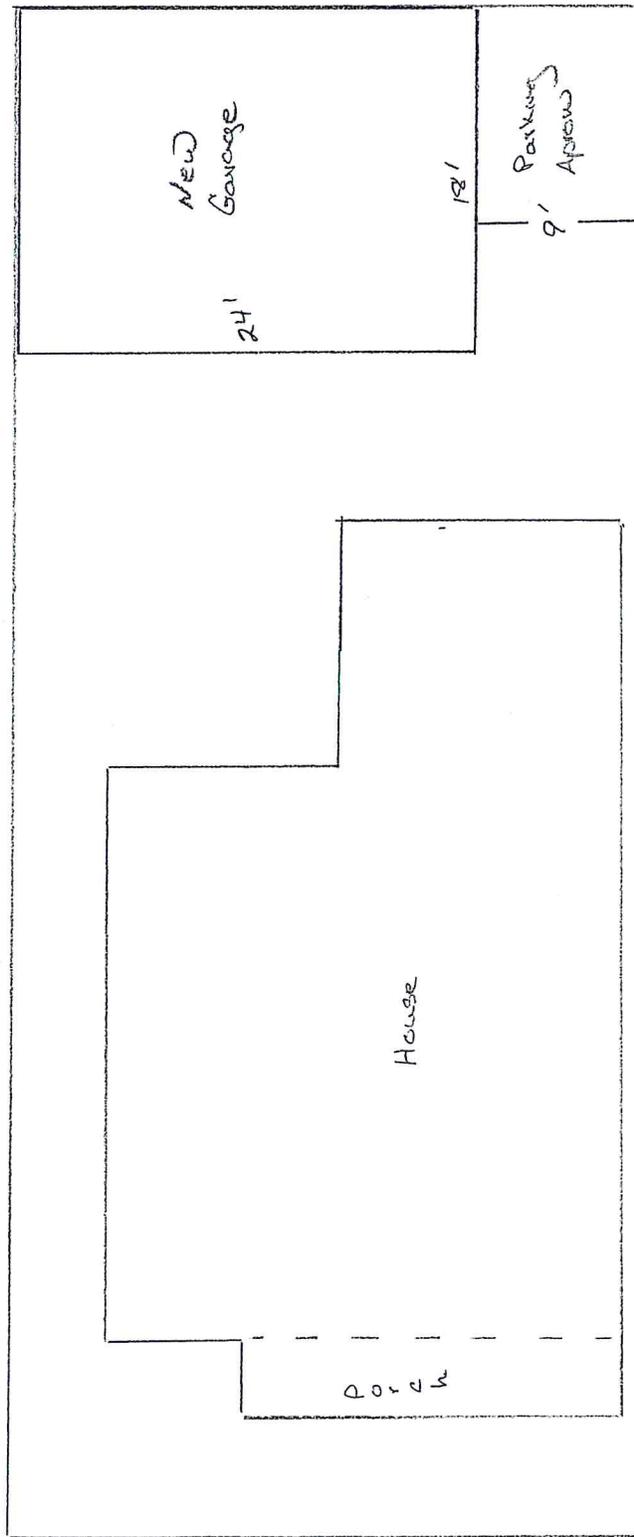
1. The applicants shall use building materials, e.g., horizontal siding, asphalt shingles, etc., that are consistent with the residential character of the neighborhood.
2. The applicants shall install rain gutters on the garage to ensure that all storm water is directed onto the applicants' property or to the municipal storm drain inlet on Copper Street.
3. The garage must be constructed in accordance with the following height limits, per Section 17.12.040, Building Height Limits.

Hip or gable roof: Sixteen feet (16') maximum

Gambrel roof: Fourteen feet (14') maximum

Flat roof: Thirteen feet (13') maximum

4. The applicants shall secure written permission from the adjoining property owners to the west and south to access their property for maintenance purposes.



80'

33'
321 N Idaho

Copper St

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

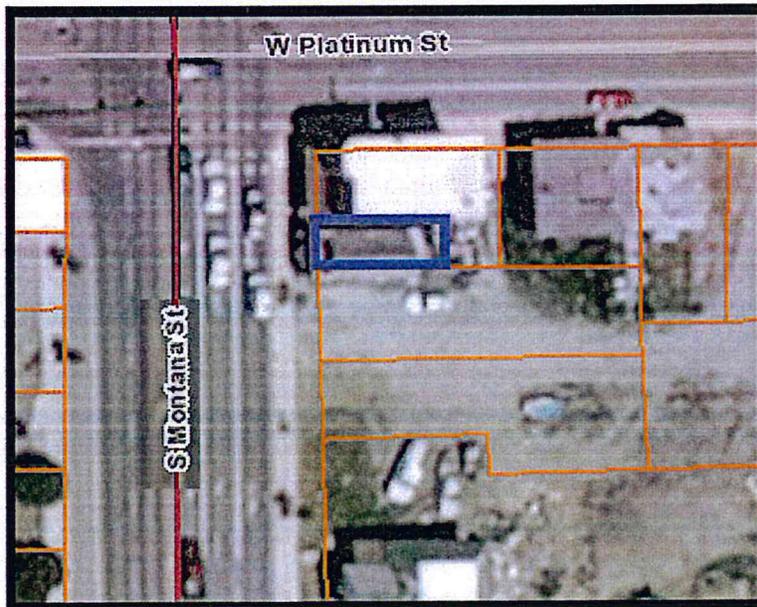
ITEM: Use Variance Application #15080 - An application for a use variance by Joseph Garcia, owner, to locate a taxi company in an existing commercial building within an "R-3" (Multi-Family Residential) zone, varying from Section 17.14.020, Permitted Uses, and a variance from the required off-street parking, varying from Section 17.40.010, Off-street Parking and Loading - Space Required, of the BSBMC.

APPLICANT: Joseph Garcia, 620 S Montana Street, Butte, Montana, owner.

DATE/TIME: Thursday, May 19, 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 the West 35' of the South 3' of Lot 16, and the West 35' of the North 14' of Lot 17, Block 5 of Ella Lode East, commonly known as 606 S Montana Street, Butte, Montana.

PROPOSAL: The applicant is proposing to locate a taxi service in an existing building that was most recently utilized as a professional counseling office. Additionally, the applicant is requesting a variance from the off-street parking requirement, as no off-street parking is necessary to operate his business. The applicant would not be enlarging the footprint of the building.

HISTORY: According to Department of Revenue and Butte-Silver Bow Archive records, the building at 606 S. Montana Street was constructed pre-1900 and was first utilized as a barber shop. The predominant use between 1928 and 1942 was a grocery store, with interspersed periods of vacancy totaling four years. From 1952 to 1995, 606 S. Montana Street was utilized as a barber shop with interspersed vacancy periods totaling eight years. From 1996 to 1998, the building was used as a Gold Pawn shop and from 1998 to 2000, it housed an antique shop. Since 2000, 606 S. Montana has primarily remained vacant. The last business in the building was a Professional Counseling office, which obtained Conditional Use Permit #13454 in 2011.

STAFF

FINDINGS: Butte-Silver Bow Municipal Code, Section 17.14.020, Permitted Uses, lists the allowed uses within the "R-3" zone. The applicant's request to operate a taxi dispatch service out of the property and building in question is not a permitted use within this zoning classification. In addition,

the applicant is requesting a variance from the required off-street parking, varying from Section 17.40.010, Off-street Parking and Loading – Space Required, of the BSBMC, on the premise that no parking will be necessary for his business. Therefore, a use variance and a variance from the off-street parking requirement are required from the Zoning Board of Adjustment.

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.

The 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 commercial and residential land uses is to prevent the intensity of the former from adversely affecting the latter. Generally speaking, commercial uses need to be segregated from residential areas due to negative effects from increased traffic, noise, light, odors and general nonresidential characteristics. The areas of public

concern that must be addressed by this use variance are whether the proposed taxi service would create additional negative impacts with respect to noise, traffic, and parking on the adjacent residences. Considering the past uses of 606 S Montana Street, potential negative impacts will be compared to both the former professional counseling office and the permitted uses of the "R-3" (Multi-Family Residential) zone.

South Montana Street is a mixed-use area with three designated zoning districts. Both sides of the 600 block of S. Montana are zoned "R-3" (Multi-Family Residential). However, both sides of the 500 block (north) are zoned "C-2" (Community Commercial). The west side of the 700 block (south) is zoned "R-2" while the east side is zoned "C-2". Consequently, the residents living around the 600 block are presently accustomed to commercial uses located to the north and south.

The primary concerns regarding the Use Variance request to locate a taxi company (Butte Car Company) in the existing building at 606 S Montana Street are an increase in noise and traffic and a loss of on-street parking.

Should this use variance be approved, noise increase would be minimal, if any. Although the Butte Car Company proposes to operate 24 hours each day as an on-call service, 606 S. Montana is proposed to be a dispatch center only, with no customers coming to or leaving from the business. Dispatch and business activities would take place indoors with approximately one or two employees on the premises at a time.

Residents in this area are already significantly impacted by noise generated by the traffic on Montana Street. As such, any incremental increase in noise generated by the proposed Butte Car Company would be insignificant in comparison to the traffic noise on S. Montana Street.

With respect to concerns over the proposed use variance creating additional traffic, as mentioned above, services at 606 S. Montana Street are proposed to include dispatch only. No customer traffic will be created and the cars associated with the Butte Car Company would not be parked on site. Therefore, it can be inferred that the proposed use variance will not increase traffic at 606 S. Montana Street.

It is important to note that this property exhibits a unique situation in that the property in question abuts Montana Street, however, because the structure takes up the entire property, it does not have an approach from Montana Street. In addition, due to the structure being located within thirty feet (30') of the intersection of Montana and Platinum Streets, there is no on-street parking available directly in front of the structure. In addition, the north half of the 600 block of S. Montana Street has been designated as no parking to accommodate a northbound left turn lane onto Platinum Street.

Additionally, the parcel does not have legal access to the alley. Consequently, the structure does not have any off-street parking or on-street parking directly in front of the building available. In that regard, the applicant has represented to staff that the vehicles associated with the taxi company will remain with their designated employees and will not

be parked at the location in question. Additionally, as there is no customer traffic at the location in question, there should be no significant decrease in on-street parking caused by the operation of Butte Car Company.

Based on the above discussion, staff believes that the impacts of the proposed taxi service, Butte Car Company, would be similar in nature to the impacts of the former counseling office. As such, it appears that approval of the requested use variance would not 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, an addition or utilize the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

As noted above, the original construction of the building in question was for a commercial purpose. In addition, the building and property have primarily been utilized for commercial uses. According to Butte-Silver Bow Archive records, only one year (1930) was recorded as residential use.

Subcriteria Number One states the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in that zone.

Based on the above discussion, it appears that due to parcel size, building size (475 square feet) and the lack of on-street or off-street parking available, it would be very difficult to utilize the building for permitted residential uses.

Subcriteria Number Two states that the proposed use “will not alter the character of the neighborhood in which it is located.”

As mentioned above, South Montana Street is a mixed-use area with three designated zoning districts - “R-2” (Two Family Residential), “R-3” (Multi-Family Residential), and “C-2” (Community Commercial). Consequently, the neighborhood was established with a mixture of characteristics that flow reasonably well between the zones.

Additionally, this building was established as a commercial use in the neighborhood prior to 1900 and has been primarily utilized for commercial uses since it was constructed. The applicant would not be making any significant changes to the outside of building. Therefore, it would appear that the proposed use of the building for the Butte Car Company would not alter the character of the neighborhood.

3. The spirit of 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 the 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, the building in question was constructed pre-1900 for use as a barber shop and has been utilized since that time for a variety of commercial uses. Consequently, the adjacent residences are accustomed to having a nonresidential use on this block. As noted above, the noise created by Montana Street traffic exceeds any noise that might be created by the proposed Butte Car Company dispatch center.

The building just north of the property in question was originally built as a single family home and is currently occupied as such. This building borders 606 S. Montana Street on both the north and the east sides. It is important that the rights and interests of these neighbors are preserved should this use variance be approved. In that regard, staff believes that a condition should be imposed stating that all business shall be conducted indoors with special care taken between the hours of 10 pm and 8am to not contribute to any increase in noise level.

The two lots just south of the property in question are vacant land. These lots in fact, help to create a buffer between the proposed commercial use and any additional residential uses to the south/southeast. Therefore, the rights and interests of the neighborhood would be preserved while permitting reasonable development of the personal property at 606 S. Montana Street.

CONCLUSION: Based on the above analysis, staff believes that this use variance and the variance not to supply off-street parking would 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 Use Variance Application #15080, with the following conditions:

1. Prior to obtaining a business license, the Butte Car Company shall meet all applicable State of Montana and local code requirements.

The applicant will be required to consult with the Building Inspector, Mike Nasheim, to determine all necessary Building Code requirements and purchase any necessary permits.

2. Prior to receiving a sign permit for wall signs on the building in question, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings for one (1) sign no larger than nine square feet (9ft²). The sign shall not be illuminated.
3. Any future change in business type from the permitted use shall be subject to additional Zoning Board approval.
4. All business shall be conducted indoors with special care taken between the hours of 10pm and 8am to not contribute to any increase in noise level.



606 S Montana St

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

ITEM: **Variance Application #15082** - An application for a variance to locate a conex storage container (8'W x 40'D) behind an existing building that would be located within five feet (5') of the rear property boundary, varying from the required twenty-five foot (25') setback of Section 17.24.110, Minimum Rear Yard Depth, of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: David R. & Juanita C. Mongar, 3604 Utah Avenue, Butte, Montana, owners, and Scott White, agent, 1000 S. Main Street, Butte, Montana.

DATE/TIME: Thursday, May 19, 2016, at 5:30 p.m., in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone, legally described as Tract B of Certificate of Survey 408A, commonly known as 1010 S Main Street, Butte, Montana.

PROPOSAL: The agent is a contract buyer of the property in question and is in the process of moving Cooney's Locksmith & Security into the building located at 1010 S Main Street. The applicant proposes to locate a conex storage container (8'W x 40'D) behind the new Cooney's Locksmith & Security location that would be located within five feet (5') of the rear property boundary, which is adjacent to an alley. The conex will be used to store business materials, as well as to park and store the business' forklift in a secure, out of sight location.

STAFF

FINDINGS: The BSBMC, Section 17.24.110, Minimum Rear Yard Depth, requires a minimum rear yard setback of twenty-five feet (25'). For each foot that the *front* yard is increased over twenty-five feet (25'), the rear yard may be decreased proportionately, except, where a rear property line adjoins the property line of a lot in an "R" zone, there must be a minimum rear yard of five feet (5') required.

While the property does have a parking lot in front of the building, which is approximately fifty feet (50') from the front property line, the building's northwest corner has an approximate twenty foot (20') setback. As such, the required rear yard setback is twenty-five feet (25'). The applicant's request to decrease the rear yard setback from twenty-five feet (25') to five feet (5') requires a variance from the Zoning Board of Adjustment.

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.

Setback requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space around structures for adequate access to open space for emergency vehicles, while assuring that sufficient light and air are provided to the structure. In addition, setbacks provide consistency in neighborhood development and enhance the aesthetic value of our community.

The agent's current operation (Cooney's Locksmith & Security) has outgrown his current building and is in the process of moving to the building in question.

In anticipation of the move, the applicant has improved and striped the parking lot at this new location in order to provide better parking and a safer ingress/egress than his original parking lot had. In 2013, the applicant received a variance to construct an attached garage on the south end of this property. The garage has not been constructed and as a result, the applicant is proposing an alternative storage area by utilizing a conex container. The container would be located behind the building so he has indoor parking and storage for the company forklift, as well as some additional storage for business materials.

In regards to the requested variance, the setbacks required by the Zoning Ordinance are not compatible with the typical established setbacks found in the Historic Landmark District. As the Board is aware, the majority of commercial developments in the

Historic Landmark District were developed with a minimum, if any, front, side or rear yard setbacks. As such, it is difficult to enforce setback requirements for properties that were originally platted and developed with a greater density than what is now allowed by the Zoning Ordinance.

The proposed conex would be located next to the building and shielded to the north by the existing Cooney's building. Due to the odd shape lot the Cooney's building resides on, the building is constructed, so that a portion of the building is very close to the property line adjacent to the alley on the north end and then is set back from the property line approximately fifteen feet (15') on the south end. To the east of the proposed location, there are several existing garages constructed that were constructed on the property line. While the most northeasterly garage is no longer being utilized for garage purposes, the other garages do have the capability to be utilized.

In regards to the industrial appearance of the structure and the close proximity to the residential zone, there is some concern that the appearance of the storage container may push a commercial character closer to the adjacent residential zone than desired by surrounding residences. In order to allow for reasonable use of property in question that is zoned "C-2" (Community Commercial), yet still maintain consideration for the residential character of the adjacent neighborhood, staff suggests imposing a condition that, should the variance request be approved, the conex container shall be thoroughly cleaned and painted to match the building that it sits behind.

Based on the above discussion, it appears that locating the proposed conex storage container within five feet (5') of the rear (east) property boundary, provided that it meets the aforementioned cleaning and painting conditions, would not be out of character for the neighborhood, nor would it compromise 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 which 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 property in question has an odd shape, in that the western property boundary follows the alignment of the intersection of Missouri Avenue and Main Street. As a result, the property runs northwesterly adjacent to Missouri Avenue than jogs north on Main Street. Consequently, the depth of the property significantly diminishes from south to north. These dimensions result in very little rear yard space.

Also as noted above, the parking lot area provides a front yard setback of approximately fifty feet (50'). If the lot was of regular shape with the building placed where it sits currently, then both the south and north ends of the front setback would be approximately fifty feet (50'), allowing for the applicant to decrease their rear yard setback to the requested five feet (5') without needing a variance. Therefore, the irregular

property dimensions could arguably constitute a hardship with respect to rear setbacks.

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 businesses and residents to develop their properties in ways which do not compromise public interest.

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

Staff believes that the relocation of Cooney's Locksmith & Security to the property in question has already demonstrated positive impacts on public health, safety and general welfare by utilizing a larger space appropriate for the current size of the business and providing customers with a safer parking option with the parking lot improvements completed at the new location.

Whereas the applicant has room to place the container in front of the existing building, doing so would diminish utilization of the newly improved parking lot that is designed to provide safer ingress/egress to the property and business.

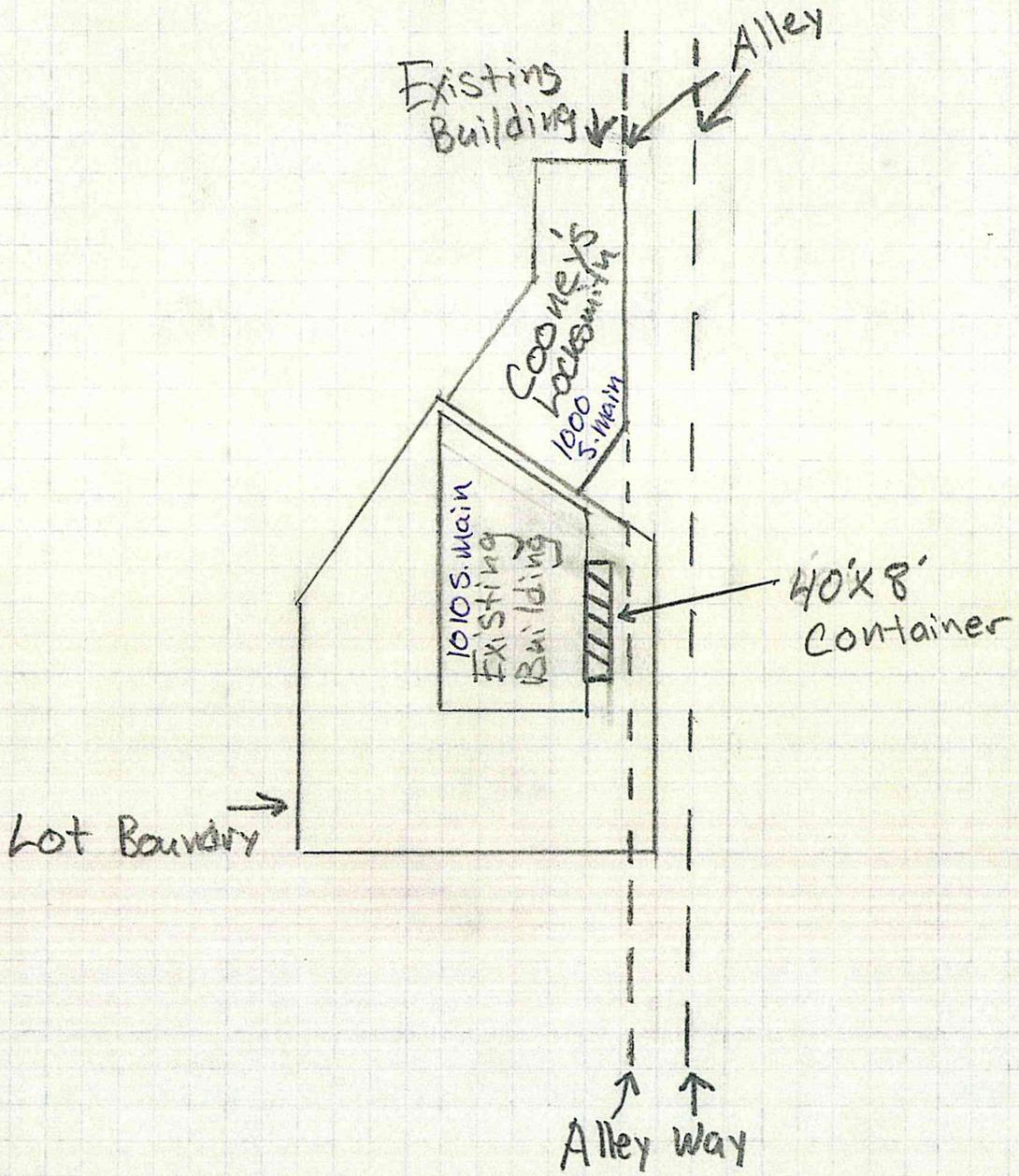
Based on the above discussion, the requested variance to permit the location of a conex storage container (8'W x 40'D) behind an existing building

that would be located within five feet (5') of the rear (east) property boundary adjacent to an alley may not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property, provided that the applicant be especially considerate of the adjacent residential neighborhood to the east.

CONCLUSIONS:

Therefore, based on the above discussion, staff would recommend approval of Variance Application #15082 with the following conditions:

1. The conex storage container shall be kept clean, painted to match the building behind which it sits, in good repair and the ground on which it is placed shall remain free of rubbish and weeds.
2. The applicant shall take special care to keep traffic in the alley to a minimum and shall not block the alley while loading and unloading materials into and out of the conex storage container.
3. At no time nor for any reason shall materials or equipment be stored outside.



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

ITEM: **Special Use Permit Application #15083** - An application for a special use permit by Mountain View Music, LLC, c/o David Goodwin, owner, to create an event center which would accommodate live musical performances, conduct recording projects and serve food and beverages during events, in an existing structure in an “R-2” (Two Family Residential) zone, per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC.

APPLICANT: Mountain View Music, LLC, c/o David Goodwin, 301 N. Montana Street, Butte, Montana, owner.

DATE/TIME: Thursday, May 19, 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-2" (Two Family Residence) zone, legally described as the East 30' of Lot 8, All of Lots 9-10, and the South 66 2/3' of Lots 11 & 12, Block 9 of the Butte Townsite, commonly known as 301 N Montana Street, Butte, Montana.

PROPOSAL: The applicant is proposing to convert an existing structure (church) into an event center. The primary use will be for live musical performances. The applicant will be providing food and beverages for the performances. The food and beverages may be catered or the applicant may use the existing kitchen that is located in the church. In addition, the church will be utilized for recording projects by use of the applicant's mobile recording audio equipment. The applicant also anticipates the venue will be available for community performances. The applicant estimates there will be 70 events annually and the performances are planned to occur no later than 11 p.m.

STAFF

FINDINGS: The applicant's proposal to have an event center for musical performances and recordings is similar to the uses that are recognized as special uses allowed in any residential zoning district, provided that the prescribed use is in harmony with the other uses permitted in the zone and not found to be contrary to the public interest. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding area and the compatibility of the proposed use with the adjoining neighborhood.

The Zoning Board of Adjustment will review the physical conditions, which exist at the location, the conduct and operation of the proposed use and whether the combination of these factors will be compatible with the proposed site and surrounding area.

To provide the Board with information about the proposed special use, the applicant has responded to the

established twenty question review criteria. The applicant's responses are shown after each question. The Planning staff will, in turn, respond to the 20 review questions.

1. The location, character and natural features of the property.

Applicant's Response: "Existing structure location is the corner of Montana and Quartz, with two adjoining lots for parking to the West, property has hillside features in the Uptown."

Staff Comments: The property is located in an "R-2" (Two Family Residence) zone, which allows both single and two family residences. The existing building was constructed as a church and served as the Mountain View United Methodist Church until recently. There is also an existing parking lot immediately west of the structure. The building itself is characteristically an early church-style brick structure with an historic cobblestone base level.

2. The location, character and design of adjacent buildings.

Applicant's Response: "There is a residence immediately to the West and North of my property. South of me is commercial with the Christian Science Building and to the East is the Butte/Silverbow jail."

Staff Comments: The immediate neighborhood on the west side of Montana Street, contains many residences with typical residential characteristics. However, the majority of the buildings actually *adjacent* to Montana Street in that neighborhood are commercial in character. There are residences to the immediate west and north of the property in

question. The neighborhood on the east side of Montana Street is predominantly commercial in character, including the Butte-Silver Bow jail and a portion of the Butte-Silver Bow Courthouse. Quartz Street is the dividing line between the "C-3" (Central Commercial) and the "R-2" zone that the property is located in.

3. Substantial changes that have occurred in the surrounding land uses since the original adoption of this Ordinance.

Applicant's Response: "N/A"

Staff Comments: The land uses have not changed since the adoption of the Ordinance.

4. Proposed fencing, screening and landscaping.

Applicant's Response: "N/A"

Staff Comments: The property contains very little landscaping. The church takes up the majority of the lot that it is located on. There is a small area of landscaping that is west of the parking lot, however, the land to the north of the parking lot is devoid of landscaping. In that regard, staff would recommend, that the area north of the parking lot, at a minimum, be seeded with native grasses.

5. Proposed vegetation, topography and natural drainage.

Applicant's Response: "N/A"

Staff Comments: As the applicant will not be adding to the footprint of the existing house or garage, the natural drainage should not be impacted. As stated above, staff is recommending that the area north of

the parking lot be seeded with native grasses. The area is currently devoid of vegetation and the native grasses will help manage storm water and prevent the soils from leaving the property. The B-SB Reclamation Specialist is available to advise the applicant on the proper seed mix.

6. Proposed vehicle access, circulation and parking, including that relating to bicycles and other unpowered vehicles and provisions for handicapped persons.

Applicant's Response: "There is parking in the lots on my property, the street on Quartz by the property, up and down Montana and the public parking lots to the East of the jail and beyond after 6pm and weekends. I will have marked spaces for handicapped in my parking to the west of the MVMH. And a bike rack."

Staff Comments: Although the property was utilized as a church, it was constructed at a time when the primary mode of travel was not automotive, as such there is limited off-street parking available at the site. There is a parking lot to the west of the church that may be utilized for a small number of vehicles. The parking lot is currently not striped. The applicant shall supply the Planning Department with a plan for striping the parking lot, including the designated ADA spaces and signage advising patrons that there is ADA parking located in the west parking lot for review and approval. There is also a limited amount of on-street parking in front of the church along Quartz Street and Montana Street before the on-street infringes upon the residences. In addition, there are several Butte-Silver Bow parking lots east of Montana Street, along Quartz that will be available after business hours for parking.

Although the applicant anticipates 70 events annually, these events will have a larger attendance than the church has had for the last several years. Therefore, it is important that the applicant make every effort in his advertising and ticket sales to inform patrons where the available parking is located.

The applicant has stated that the ADA parking will be located in the west parking lot, nearest to the building. The applicant will also need to ensure that the access into the building from the west parking lot meets ADA standards.

7. Proposed pedestrian circulation, including provisions for handicapped persons.

Applicant's Response: "I will have thoughtful flow for attendees throughout the facility. I am adding a lift for handicap access on the lower level and making improvements to the handicap access in the music hall. I am also installing a handicapped bathroom on the hall level and making handicapped improvements in the lower level bathrooms. There are sidewalks adjacent to the property on both public streets."

Staff Comments: Staff would concur with the applicant that it is important to have safe, passible sidewalks. That being said, staff does not believe that the sidewalks are in such despair that it would warrant the applicant submitting a performance bond for the installation of a new sidewalk.

The applicant shall be advised that the property and sidewalks shall meet all applicable ADA standards.

8. Proposed signs and lighting.

Applicant's Response: "Illuminated Signage will be tasteful and thoughtful with consideration to the appearance of the building and to the public. I will direct my signage with consideration to the south and eastern direction of the building in that there is commercial in both directions."

Staff Comments: Any signs will be subject to review and approval by the Planning Department. The signage should be designed so that it fits in with historical character of the district. Any signage should face the commercial zoning district. Illumination shall be such that it does not disrupt the residences of the neighborhood.

9. All potential nuisances.

Applicant's Response: "None are known at this time."

Staff Comments: In this particular case, there are two potential nuisances associated with this proposal. The first is an increase in noise. It is difficult for staff to gauge the amount of noise that will resonate from the church, however, the applicant has indicated that all performances are scheduled to end at 11 p.m. In addition, there will be approximately 70 events annually or one to two events weekly. The limited number of events and the 11 p.m. end time for performances should help to reduce any impact on the surrounding residences.

The other potential nuisance is the increase in traffic and parking in the surrounding residential neighborhood. As stated above, there is a limited amount of parking to the west and some on-street parking on Montana Street and Quartz Street. The applicant should encourage patrons to utilize the public parking lots to the east of the church.

Utilization of these lots should help to reduce the amount of traffic and parking in the residential neighborhood to the west.

10. Public safety and health.

Applicant's Response: "All exits will be clearly marked, unencumbered, and accessible to all. I will place new EXIT signage and any needed directive signage as well. I will add any and all required fire extinguishers in accessible locations, also clearly marked."

Staff Comments: The applicant will be required to meet all building, fire and health codes associated with the operation of an event center that serves food and beverages.

To the extent that the applicant or his caterers will be utilizing the kitchen facility to prepare food and beverages, the facility will need to be inspected and approved by the B-SB Health Department prior to its use.

11. The availability of public utilities and services.

Applicant's Response: "N/A"

Staff Comments: The property is an existing structure that has all public utilities and services available to the site.

12. Situations that prevent the utilization of the property for the full range of uses in that district.

Applicant's Response: "N/A"

Staff Comments: The existing structure was constructed as a church and has been utilized for

that purpose until its recent sale. The existing character of the immediate area, being a mixture of residential, commercial and institutional would support the utilization of this property and building for an event center for musical performances.

13. **The use or zone classification sought would enhance and promote the comprehensive development of the immediate neighborhood and community.**

Applicant's Response: "MVMH would bring a level of usage with regards to the arts that heretofore does not exist in Butte and enhance the community with thoughtfulness at every turn and decision to create a space that is about listening and performance adjacent to the commercial zone."

Staff Comments: Normally, the establishment of a commercial operation in an existing residential neighborhood would not appear to enhance the development of the immediate neighborhood. However, this property located immediately adjacent to Montana Street and on the border between the commercial and residential zone is proximal to both residential and commercial uses and is only a short travel distance away from Montana Tech. Repurposing this currently vacant building into a center that could bring the community together for the purpose of music appreciation may, in fact, nourish an art culture in not only this neighborhood, but also the community at large. Any additional traffic generated by the proposed use should not be completely out of character for Montana Street, which is already a main arterial.

14. **That the use or classification conforms generally to the objectives of the adopted comprehensive plan and to the purpose of this Ordinance.**

Applicant's Response: "The sought conditional use conforms with the purpose of this ordinance."

Staff Comments: The Growth Policy for this area is residential. However, as noted above, Quartz Street is the dividing line between the commercially designated land to the south and east and the residentially designated land to the north and west. In addition, an event for music is a permitted in any residential zone after a public review of the proposed event center and a determination by the Zoning Board as to the compatibility with the surrounding neighborhood. As such, staff contends that the proposed event center is consistent with the intent of the Growth Policy and the Zoning Ordinance.

15. **That the use will promote or not substantially impede the conservation of resources and energy and the conservation policy of Butte-Silver Bow, State of Montana.**

Applicant's Response: "N/A"

Staff Comments: Staff would concur with the applicant.

16. **That the use meets the overall density, yard, height and other requirements of the zone in which it is located.**

Applicant's Response: "N/A"

Staff Comments: The existing structure does not conform to all development standards for the "R-2" zone. However, the existing building was constructed prior to the implementation of the Butte-Silver Bow Zoning Ordinance and the applicant will not be building any additions onto the existing

structure. As such, the nonconformity of the existing structure would not be increased with this application.

- 17. That the use or classification will not adversely affect nearby properties or their occupants.**

Applicant's Response: "No adverse effect seen with regards to sound or traffic with the available parking and entrance/ticketing on the southeast corner of MVMH."

Staff Comments: Any time a commercial business encroaches into a residential neighborhood, there is a potential for the use to negatively impact the surrounding residential property owners. In this case, the building in question is already located adjacent to Montana Street, which is more commercial in character. In addition, one of the most proximal residential neighbors has indicated her support of the proposed facility. (Please see attached letter.) The applicant has tried to be considerate of the residential properties with his submitted plan for Mountain View Music Hall. As stated above, the applicant has indicated that all performances will be scheduled to end at 11 p.m. In addition, the number of performances is estimated to be 70 annually.

- 18. Conformity of the proposed use with the Neighborhood Plan, if one has been adopted.**

Applicant's Response: "N/A"

Staff Comments: There is no known Neighborhood Plan for this area of Butte-Silver Bow.

- 19. Compatibility of proposed project with the existing adjacent buildings, structures,**

neighborhood, topography or other considerations.

Applicant's Response: "Compatible and reuse of an existing building that was used as a church."

Staff Comments: The exterior of the building will remain unchanged. Consequently, the building will remain visually compatible with the surrounding residential neighborhood.

20. Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.

Applicant's Response: "Public opinion has been favorable to date and see attached letter (see attached letter)."

Staff Comments: The Planning staff will make available to the Zoning Board any public comments received.

CONCLUSION: Therefore, based on the above discussion, staff finds that Special Use Permit Application #15083 is an appropriate use for this area of Butte-Silver Bow. Therefore, staff recommends that the Zoning Board approve Special Use Permit Application #15083, provided the following conditions are met:

1. The applicant will be limited to the business as proposed. Any change in business proposed or any building expansion will require further review and approval by the Zoning Board of Adjustment.
2. Prior to receiving a business license, the applicant shall submit a parking lot striping plan for review and approval. The applicant shall be required to bond for the striping of the parking lot.

The applicant shall submit a cost estimate from a licensed contractor for the striping of the parking lot. This cost estimate will be used as the bond amount plus ten percent (10%).

3. Prior to receiving a business license, the applicant shall meet all applicable building, electrical, plumbing, mechanical, fire and health codes, including but not limited to meeting ADA standards.
4. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, fit the current building character, and be directed away from all adjacent residences.
5. Prior to receiving a sign permit, the applicant shall submit to the Planning Office and the Historic Preservation Officer for review and approval, a detailed sign plan and drawings.
6. All performances shall be scheduled to end no later than 11 p.m.

MOUNTAIN VIEW MUSIC HALL



Project Proposal

Prepared by: David Goodwin



BUTTE-SILVER BOW

Office of Council of Commissioners

Courthouse

Butte, Montana 59701

May 10, 2016

To: Zoning Board of Adjustments

RE: Special Use Permit Application #15083

David Goodwin, Mountainview Music hall

Dear Chairman Wing and Zoning Board Members,

I respectfully submit this letter as a proponent of the above mentioned Special Use Permit Application #15083. Specifically I am in support of allowing the building on the corner of Quartz and Montana Sts., previously known as the Mountainview Methodist Church, be developed and used as a music venue.

I am submitting my letter of support wearing two hats. First, as the Commissioner of the district this building is in, I feel that the re-purposing of this magnificent, historical building into a music/performing arts theatre is a perfect fit. It sits on the edge of the Original Butte Townsite and our Uptown District is only a short walk away from many restaurants and other social gathering places. At the same time it is uniquely nestled amongst many of the residential treasures that have helped put Butte on the National Historic Register.

Secondly, since my home at 211 West Quartz St. is the nearest neighbor to the west, I am personally happy to see this great building being utilized and not mothballed, like so many other buildings in my district – which often creates a negative impact both visually and economically to the surrounding homeowners.

Therefore I would encourage the Board to seriously consider Mr. Goodwin's proposal and approve Special Use Permit Application #15083.

Sincerely,

Cindi Shaw

Commissioner, District 11

