

# 2016

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

**Thursday, June 23, 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 June 9, 2016.
- III. Hearing of Cases, Appeals and Reports:

**Variance Application #15123** - An application for a variance by Gary & Christine O'Hern to increase the height of a proposed detached quonset structure (42'W X 42'L) from the maximum permitted height of fourteen feet (14') for a detached garage with a gambrel roof, and the maximum permitted height of sixteen feet (16') for a detached garage with a gable roof in a residential zone, to seventeen feet (17'), varying from the requirements of Section 17.10.040, Building Height Limits, of the BSBMC. The property is located in an "R-1" (Single Family Residence) zone, legally described as Lots 1-2, Block 65 and Lots 22-23, Block 64, of the Atherton Place Addition, and the vacated Rutland Street, commonly known as 3719 East Lake Avenue, Butte, Montana.

**Variance Application #15125** - An application for a variance by Bill Biggers, owner, and Cory Biggers, agent, to not install concrete sidewalk along the driveway approaches adjacent to Wynne Avenue, varying from the curb/gutter and sidewalk requirements of Section 17.38.050, Landscaping Requirements - Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC. The property is located in an "M-1" (Light Industrial) zone, legally described as Parcel 1AA, S31, T03N, R07W, more commonly known as 3873 Wynne Avenue, Butte, Montana.

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

# A G E N D A

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IV. Other Business.

V. Adjournment.

By: Lori Casey  
Lori Casey, Assistant Planning Director

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

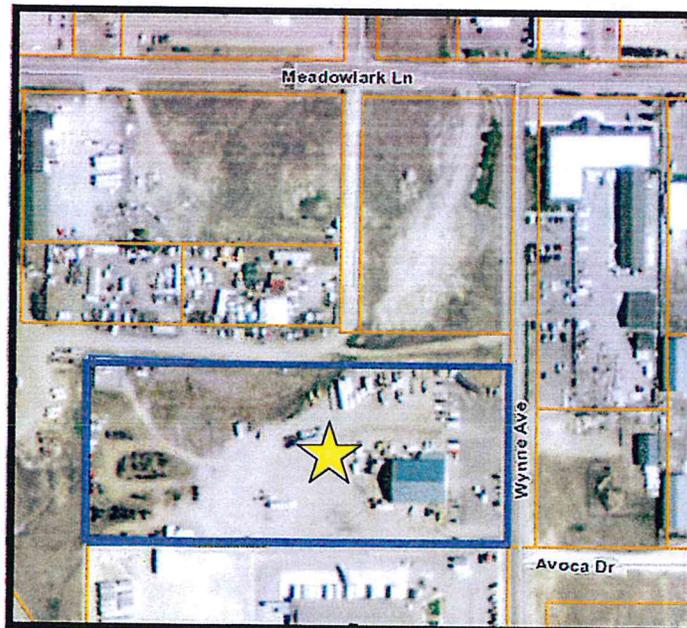
**ITEM:**            **Variance Application #15125** - An application for a variance to not install concrete sidewalks in the driveway approaches adjacent to Wynne Avenue, varying from the curb/gutter and sidewalk requirements of Section 17.38.050, Landscaping Requirements - Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC.

**APPLICANT:**    Bill & Carol Biggers, 121 Oro Fino Gulch Road, Butte, Montana, owners, and Cory Biggers, 65 Oro Fino Gulch Road, Butte, Montana, agent.

**DATE/TIME:**    Thursday, June 23, 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 “M-1” (Light Industrial) zone, legally described as Parcel 1AA, S31, T03N, R07W, more commonly known as 3873 Wynne Ave, Butte, Montana.

**PROPOSAL:** The applicants re-paved their parking lot at Biggers Transport in October 2012. This paving job included asphalt paving of the two driveway approaches adjacent to Wynne Avenue. Curb and gutter is already installed at the applicants’ location. The applicants are now expanding their building and proposing to install the required concrete sidewalks adjacent to Wynne Avenue *with the exception of* the two recently paved driveway approaches, varying from Section 17.38.050, Landscaping requirements – Sidewalk and curb/gutter; front and corner yards, of the BSBMC.

**STAFF  
FINDINGS:**

Butte-Silver Bow Municipal Code, Section 17.38.050, Landscaping Requirements-Sidewalk and Curb/Gutter - Front and Corner Yards, of the BSBMC, requires all new commercial and industrial uses or expansions equal to twenty-five percent (25%) or more of the existing floor area, to install sidewalk and curb/gutter along all property lines adjacent to a dedicated street. Therefore, the applicants’ request to construct only a portion of the required concrete sidewalk necessitates a variance 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.**

Sidewalk requirements have been established by the Council of Commissioners to protect the public interest by providing a safe space for pedestrians to

walk in front of a commercial or industrial property without having to walk within the street.

Section 17.38.050 requires an industrial operation that expands greater than twenty-five percent (25%) of their existing floor area to install sidewalk, curb and gutter adjacent to all public street frontages. Biggers Transport's planned expansion is greater than twenty-five percent (25%) and, therefore, requires the installation of sidewalk, curb and gutter along the entire property line adjacent to Wynne Avenue.

Although applying for a variance to not install a sidewalk is unusual, the Zoning Ordinance does allow for reasonable consideration when special circumstances exist.

It should be noted, curb and gutter are already present on the property, and the applicants intend to install the majority of the concrete sidewalks required by Section 17.38.050. The only areas that they wish not to install the required concrete sidewalks are within the two driveway approaches adjacent to Wynne Avenue. The applicants are requesting these two exclusions because the two approaches were recently reconstructed in October of 2012 with asphalt material. Asphalt is more durable than concrete with respect to repetitive heavy truck traffic, and, as Biggers Transport has a continuous flow of heavy truck traffic, the applicants feel as though the installation of concrete sidewalks will not hold up under the continuous truck traffic that utilizes the facility. The concrete would break down under the weight of the trucks and be in need of constant repair to provide a safe walkable passage way.

The primary concern with respect to not installing concrete sidewalks along the applicants' driveway approaches would be compromising safe pedestrian passage in front of the industrial property, and neglecting to ensure ADA compliance along routes of pedestrian travel. In that regard, the applicants could provide striping to indicate to both vehicular traffic and pedestrians that a portion of the driveway approach is also utilized as the walking path to connect to the concrete sidewalks. In addition, the asphalt walkway will need to be ADA compliant. In that regard, the applicants will need to verify that the walkway area does not exceed a 2% cross slope. If the applicants are agreeable to ensuring ADA compliance and striping the asphalt to indicate it is a walkway across the two approaches, then the requested variance 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 that preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property.

Whereas the property does not exhibit any unique physical conditions that would result in unnecessary hardship, it must be noted that the concrete approaches at the adjacent property along Wynne Avenue show significant cracking and degradation due to consistent heavy truck traffic. (Please see

attached photos submitted by the applicants.) This is technically a condition caused by the nature of the applicants' business and does not necessarily constitute a hardship, however, requiring constant repairing of the applicants' approaches based on a material specifications may cause undue hassle and incur unnecessary cost.

**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 property in ways that do not compromise the public interest.

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 reasonable. If the public interest can be protected pertaining to these issues, a variance may be appropriate.

In this particular case, the degree of degradation to concrete approaches may, in fact, pose more of a health and safety concern than allowing a variance to utilize the existing asphalt approach. Cracked and damaged concrete creates uneven surfaces which may be detrimental to the safe passage of pedestrians across the approaches in question. In fact, provided that the applicants are able to demonstrate that the transition from the installed sidewalks to the existing asphalt approach will be ADA compliant and relatively seamless, this variance may be in the best interest of public health, safety, and general welfare.

Based on the above discussion, the applicants' request to install the required concrete sidewalks adjacent to Wynne Avenue *with the exception of the two recently paved driveway approaches* would appear to be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSION:**

Based on the above discussion, staff would recommend approval of Variance Application # 15125, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicants must submit a detailed site plan to the Planning Department staff for review and approval. The site plan shall include a sidewalk, curb and gutter and paving details that illustrate compatibility between the new sidewalk installation and the existing asphalt approaches.

At a minimum, the plan shall include striping of the asphalt walkway traversing the approach and provide enough detail to determine that the new sidewalk, transition between the sidewalk and asphalt, and the asphalt walkway will be in compliance with all ADA requirements.

Once the plan is approved, the applicants shall submit a cost estimate from a licensed contractor for the materials and installation of the sidewalks, and any necessary curb and gutter or paving required to ensure compatibility between the existing and newly installed pedestrian path. This cost estimate will be used as the sidewalks, curb/gutter/paving bond amount plus ten percent (10%).

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

2. The driveway approaches shall be kept in good repair at all times, and any future changes or improvements shall be approved by the Zoning Board of Adjustment.
3. Prior to the issuance of a building permit, the applicants must submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall demonstrate how the existing landscaping will be altered to accommodate the associated installation of sidewalks, curb and gutter, yet still remain in compliance with Section 17.38, Special Provisions, of the BSBMC.

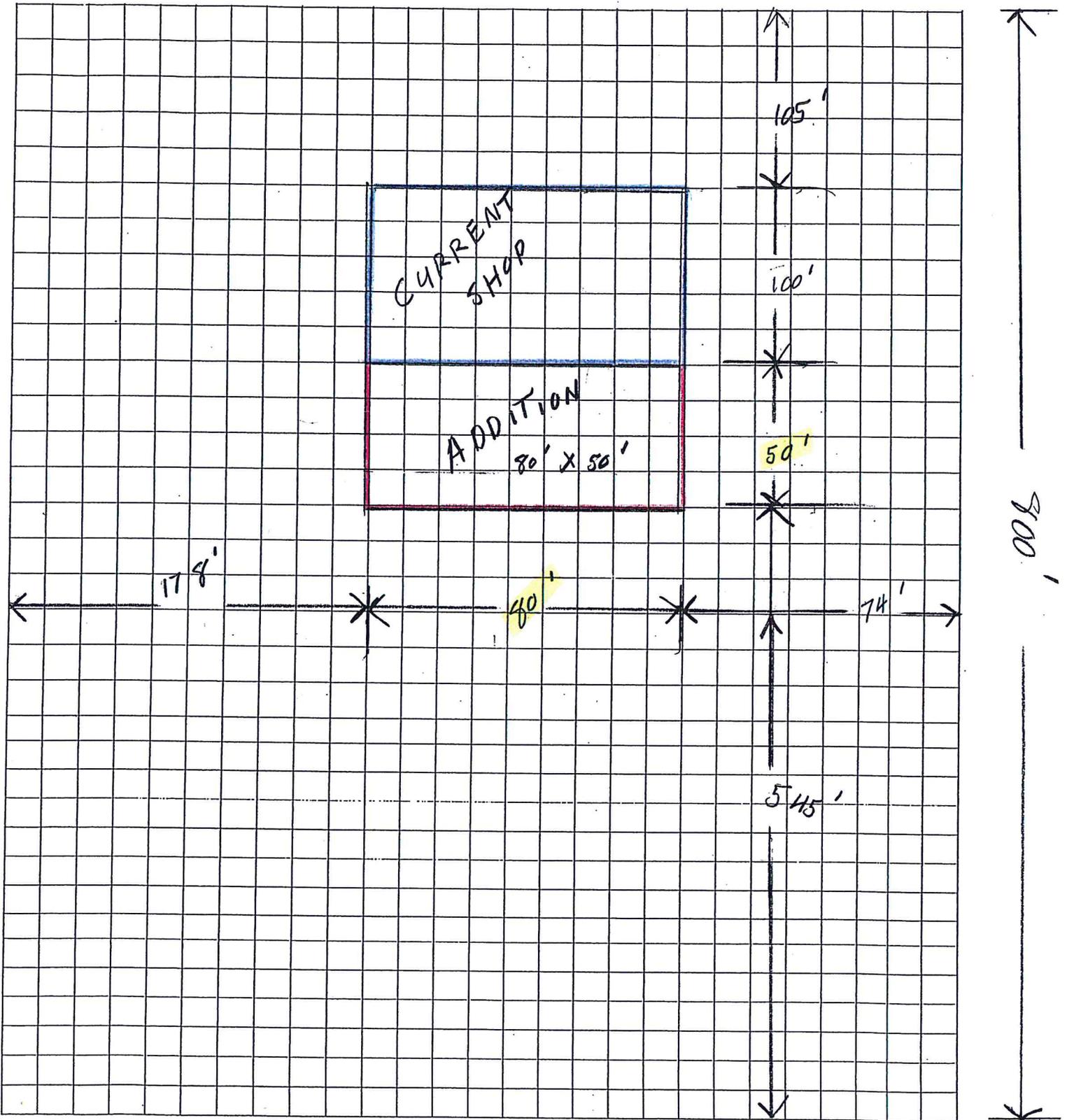
Once the plan is approved, the applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

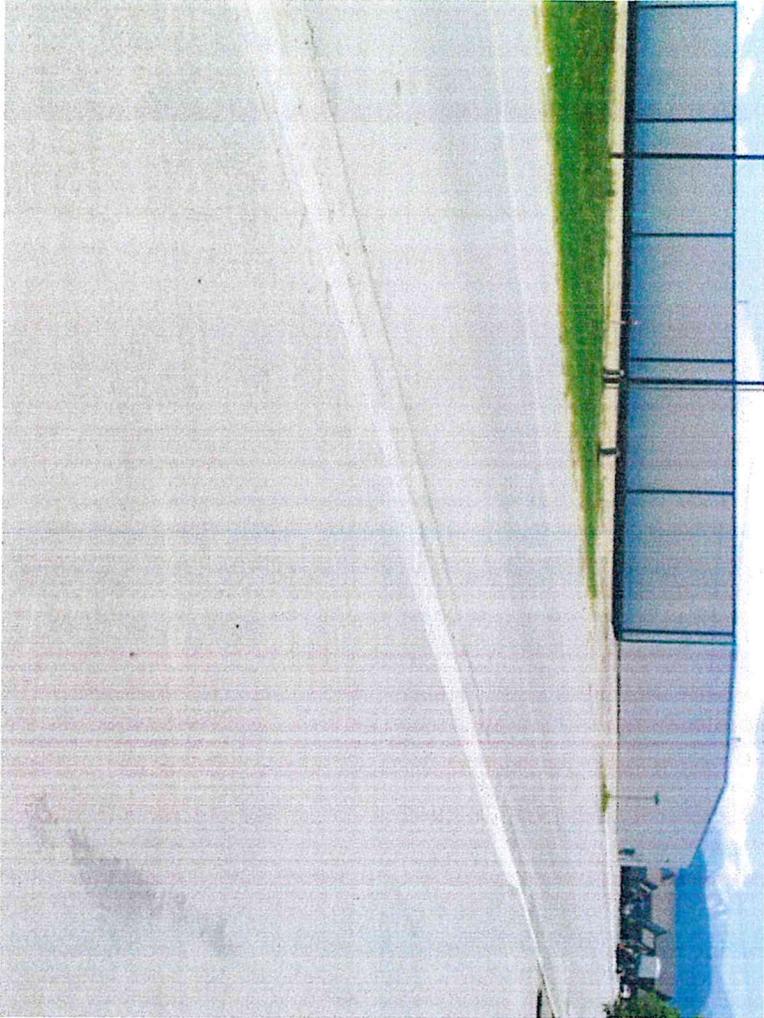
Prior to receiving a building permit, the applicant shall submit the appropriate bond amount to the Planning Department. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

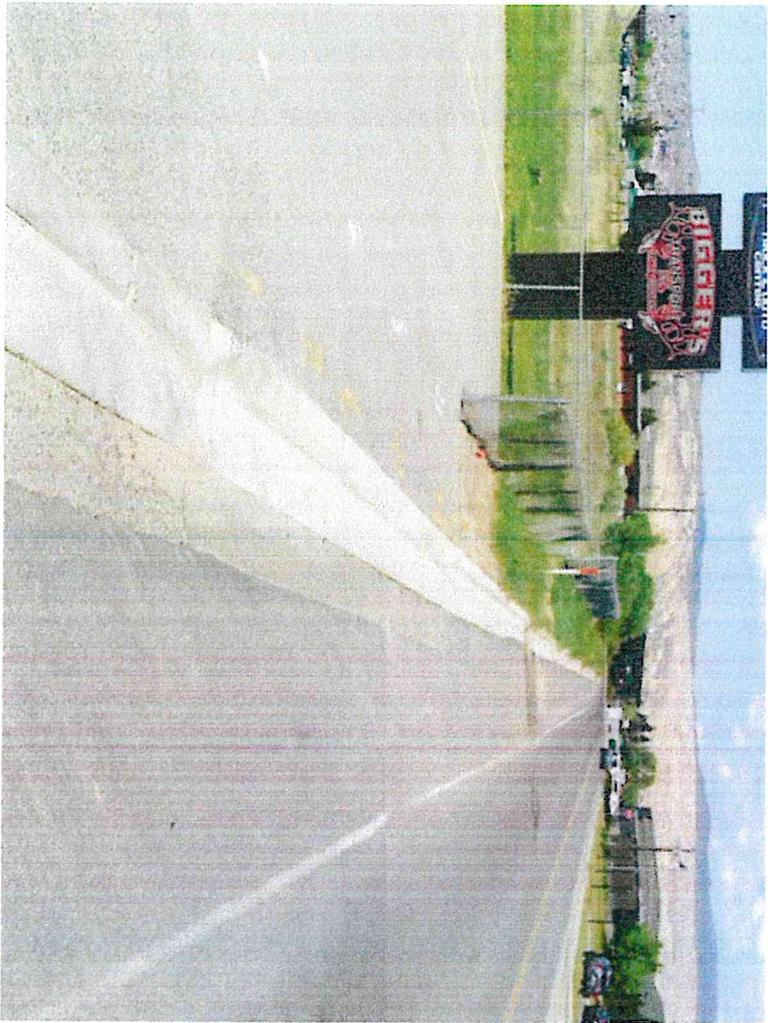
332'

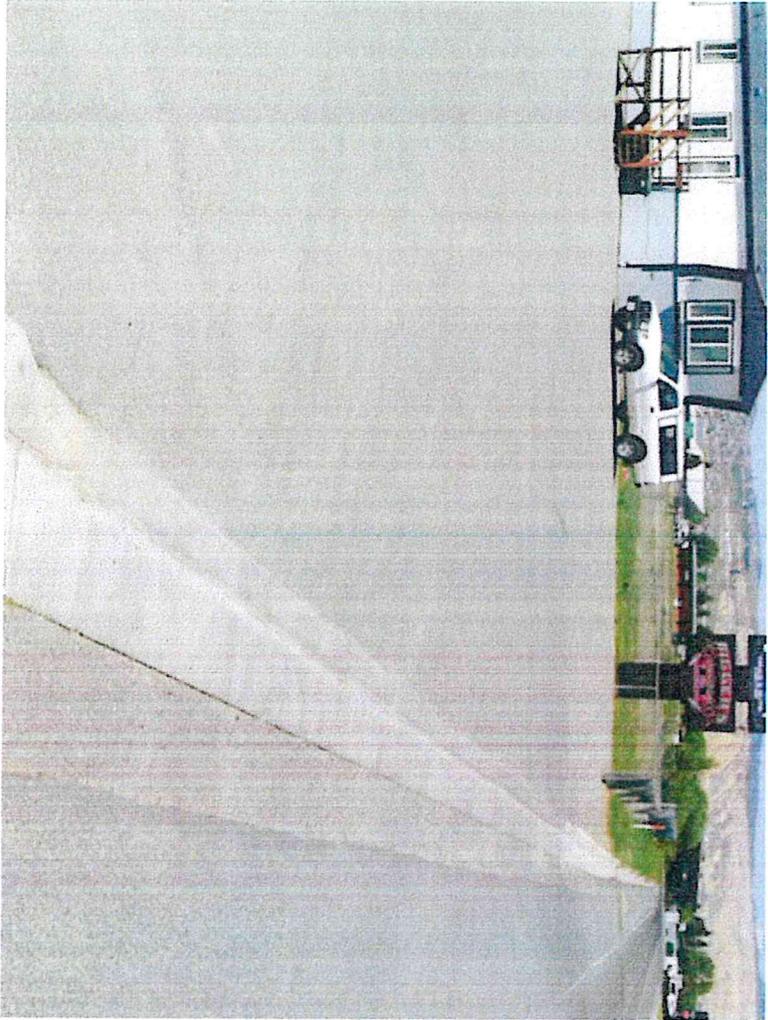
Site Plan

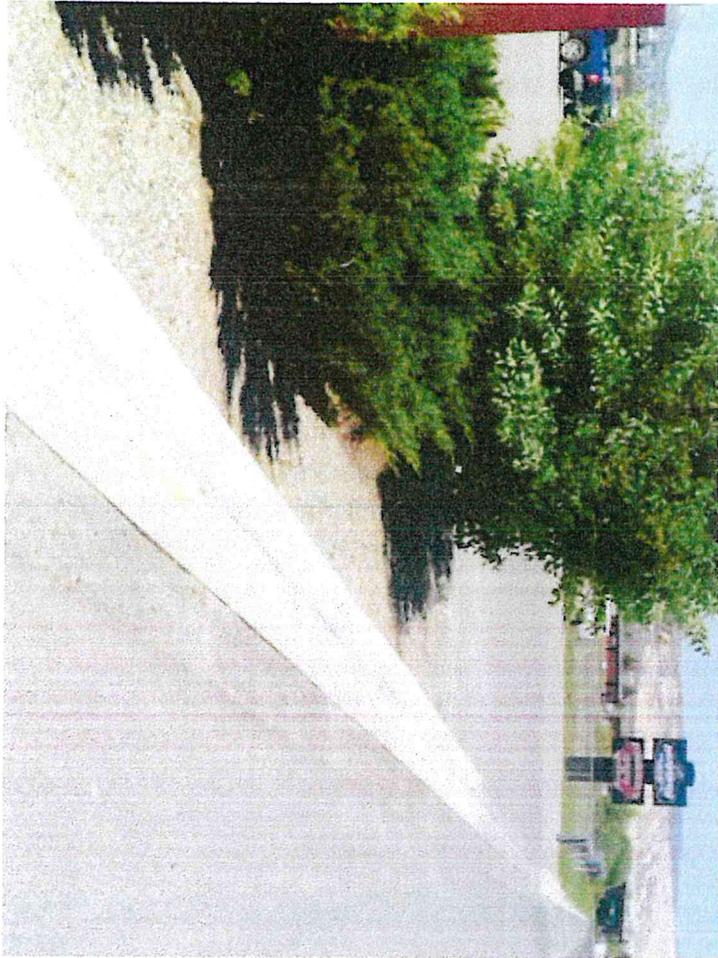
WYNNE AV



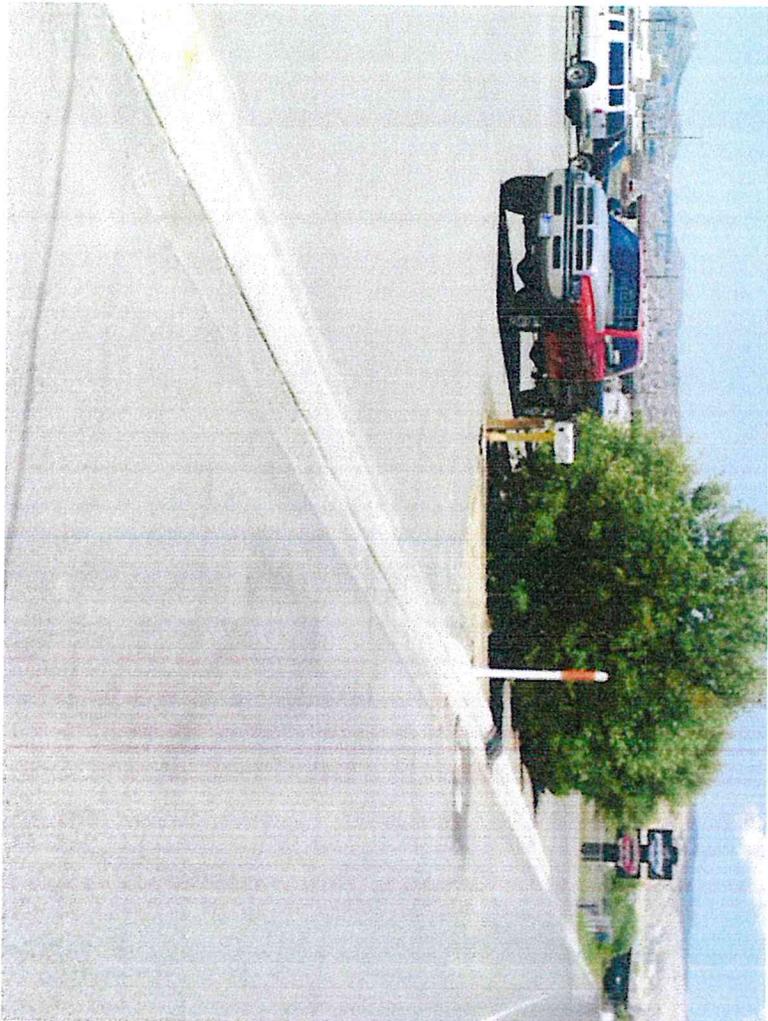




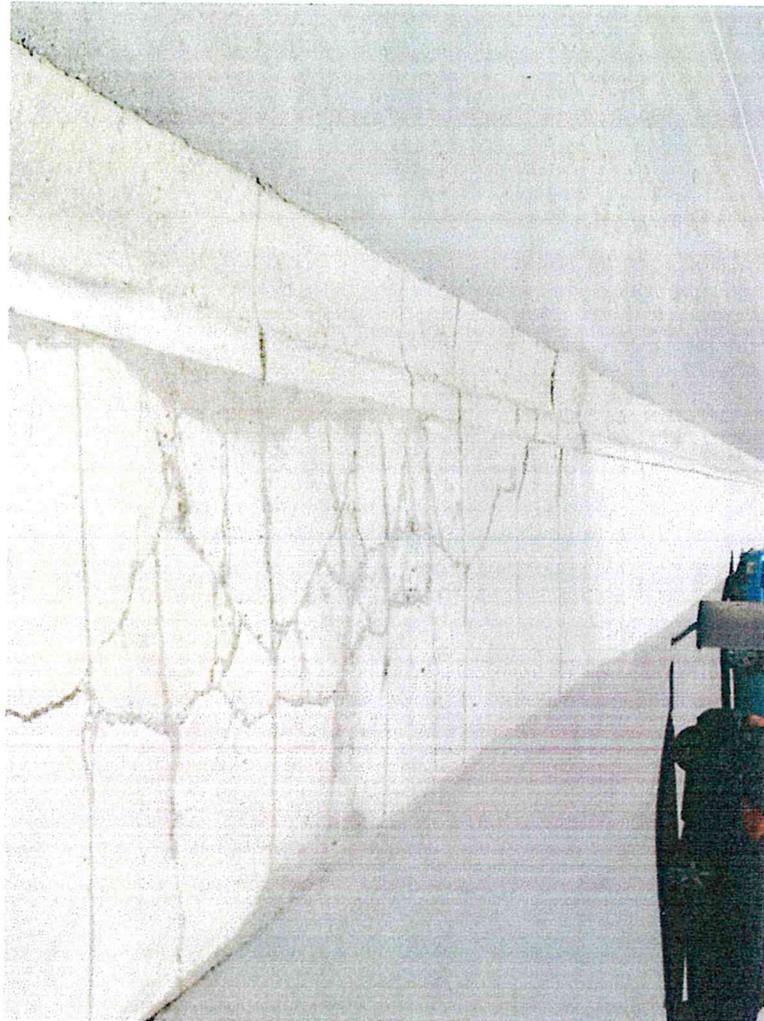












**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

**ITEM:**                    **Variance Application #15123** - An application for a variance to increase the height of a proposed detached Quonset structure (42'W X 42'D) from the maximum permitted height of fourteen feet (14') for a detached garage with a gambrel roof, and the maximum permitted height of sixteen feet (16') for a detached garage with a gable roof, in a residential zone to seventeen feet (17'), varying from the requirements of Section 17.10.040, Building Height Limits, of the BSBMC.

**APPLICANTS:** Gary & Christine O'Hern, 3719 East Lake Drive, Butte, Montana, owners.

**DATE/TIME:** Thursday, June 23, 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" (Single Family Residence) zone, legally described as Lots 1-2, Block 65 and Lots 22-23, Block 64, of the Atherton Place Addition, and the vacated Rutland Street, commonly known as 3719 East Lake Drive, Butte, Montana.

**PROPOSAL:** The applicants are proposing to construct a detached Quonset structure – effectively serving as a detached garage - (42'W X 42'D) that would be seventeen feet (17') in height at the crown of the arc, exceeding the maximum permitted height of fourteen feet (14') for a gambrel roof and sixteen feet (16') for a gable roof, in a residential zone. Based on the square footage of the applicants' property, a 42'W X 42'D detached garage would not exceed the permitted lot coverage of 35% permitted by the Zoning Ordinance.

**STAFF**

**FINDINGS:** The proposed structure, while permitted as an appurtenant use to the applicants' primary residence, does not correspond exactly to conventional detached garage structures most often seen in Butte-Silver Bow. The Butte-Silver Bow Municipal Code, Section 17.10.040 allows for a maximum height limit of fourteen feet (14') for an accessory building with a gambrel roof and sixteen feet (16') for an accessory building with a gable roof. The structure of the proposed Quonset has an arc shaped roof. (See pictures). Because this type of building is usually found on industrial or agricultural properties, Section 17.10.040 does not list a maximum height for this type of roof. As such, a variance approved by the Zoning Board of

Adjustment is required to construct a Quonset that is seventeen feet (17') in height.

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.**

Maximum height limits, including garages, were established to reduce visual cluttering and to secure the aesthetic beauty of our neighborhoods. Building height standards provide for uniformity and structure within residential neighborhoods. In addition, limiting the height of garages to a maximum of sixteen feet (16') also ensures that the accessory structures will not be taller than the typical one-story residences found throughout Butte.

As previously stated, the applicants are requesting to build a (42'W X 42D') detached Quonset structure that would be seventeen feet (17') in height at the crown of the arc. While the size of the proposed structure is considerably larger than the typical residential garage, larger parcels of record do provide enough square footage that large detached structures can be constructed without exceeding the maximum permitted lot coverage of 35 percent.

In this particular case, the applicants own two parcels of record that total 23,827 square feet in area. The applicants have filed a request to combine the two parcels into one legal parcel of record and their request is currently being

processed with the Montana Department of Revenue. The applicants' property contains one single family residence and a carport structure, which will be moved to the southern part of the property in order to allow room for the proposed Quonset to meet or exceed all required setbacks.

In regards to the visual impact of the proposed garage, the height of the garage would be at least as tall as all of the neighboring properties, except the Waterford complex that is to the south of the applicants' property. Given that, the applicants' property is bordered on the east by Continental Drive and the proposed building site is set approximately six feet (6') below the elevation of the road and that of the residential properties on the east side of Continental Drive. Therefore, the majority of the visual impact from the proposed Quonset structure would be within the applicants' immediate block, bounded by East Lake Drive, Continental Drive and Willoughby Avenue. In that regard, the closest neighbor to the south of the proposed Quonset structure is the applicants' mother. The neighbors to the west across the alley are buffered by mature trees which should help mitigate any negative visual effects from the height of the Quonset. The property directly north of the applicants' property is vacant land.

Factors of concern are that the proposed Quonset structure is significantly larger in size than the typical residential detached garage and that Quonset structures are generally associated with industrial or agricultural uses, which may detract from the residential

character of the neighborhood.

However, if the neighborhood supports the requested variance and the applicants agree to the conditions of approval, then the requested seventeen foot (17') tall Quonset structure 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 structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape or a topographic feature.

There does not appear to be a condition unique to the property that would 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 businesses and residents to develop their properties 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 applicants to develop their property in a way that is reasonable. If the public interest can be protected pertaining to these issues, a variance may be appropriate.

The proposed location of the garage fully complies with the setback requirements of the Zoning Ordinance. Also, even with the proposed Quonset structure in place, the applicants' lot coverage will be well under the thirty-five percent (35%) maximum allowance. As such, the applicants' request to increase the height of the Quonset structure to seventeen feet (17') would not appear to create a public health or safety concern in the neighborhood.

Nevertheless, the height and the size of the proposed Quonset would be considerably greater than the typical two vehicle residential garage and due to the design of the structure, it may appear to be a structure typically found in the more suburban and rural areas of Butte-Silver Bow. Regardless, the proposed size of the Quonset is permitted. The main issue concerning this case is the visual impact of the Quonset structure on the surrounding residences. Staff is aware that the visual impacts of garages of this size and height are not adequately comprehended until after construction. Although the proposed increase in height of the garage would impact relatively few neighbors, it is still very important to consider the impact of the proposed Quonset on these surrounding landowners.

As stated previously, the applicants' two

parcels are presently being combined into one legal parcel of record. If the application is approved, one of the conditions of approval would be that the legal combination is successfully finalized. If for any reason there are any factors that prohibit the legal combination of the two parcels, a variance for an accessory structure on a parcel of record that does not contain a primary structure would be required.

As with all detached structures that exceed the maximum height limit, staff is concerned about the impacts of the proposed Quonset structure on adjacent residences. As such, it would befit the applicants to provide letters of support from any adjacent landowners that may be affected.

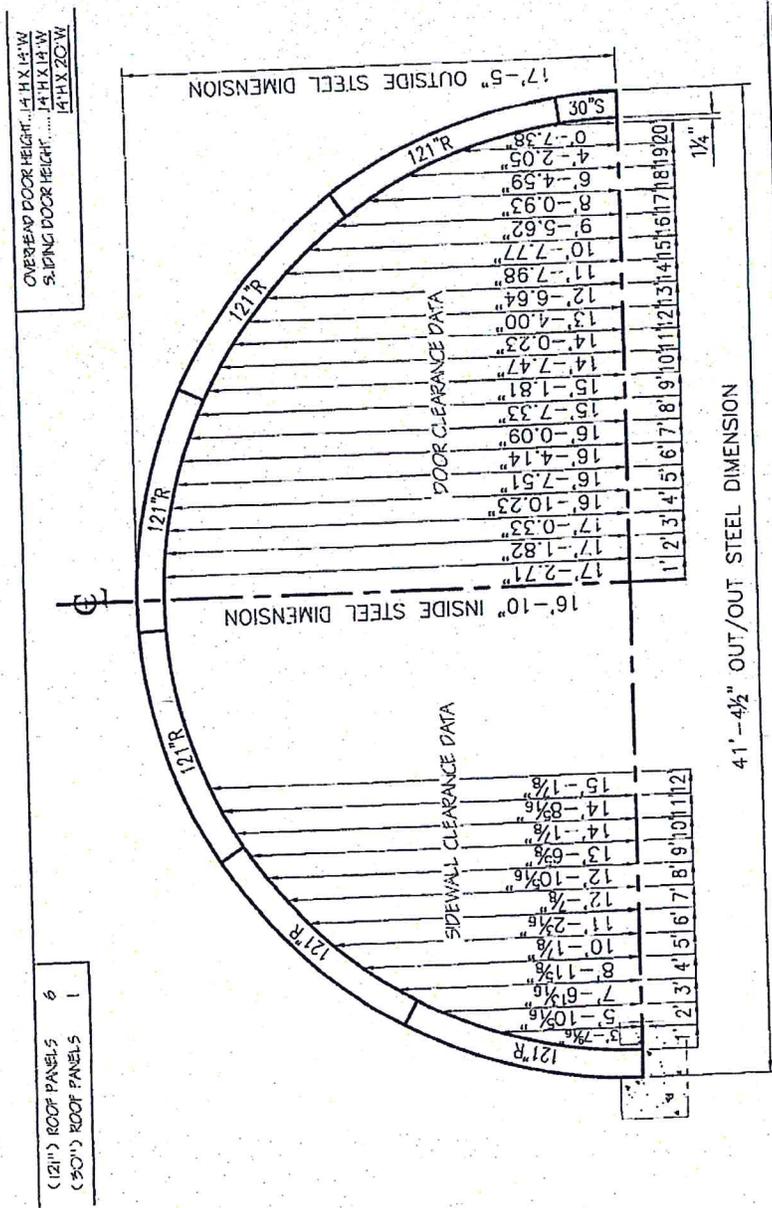
If there is not significant neighborhood opposition and the applicants agree to all of the conditions, the requested seventeen foot (17') tall detached Quonset structure may be within the spirit of the Zoning Ordinance.

**CONCLUSION:** Based on the above discussion, staff recommends approval of Variance Application #15123 with the following conditions:

1. Prior to receiving a building permit, the applicants will be required to provide documentation from the Montana Department of Revenue's Office stating the applicants' two properties have been combined into one legal parcel of record.
2. The Quonset structure shall abide by all other regulations of the BSBMC for "R-1" (Single

Family Residential) zones and shall at no time nor for any reason be utilized for any commercial uses.





NOTE: THE INSIDE BUILDING HEIGHT DIMENSIONS WILL DECREASE BY 4" WHEN USING A CONCRETE TROUGH.

Open with

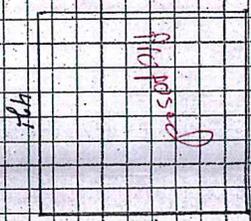
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ALLEY

60'  
Lot 22 Lot 23

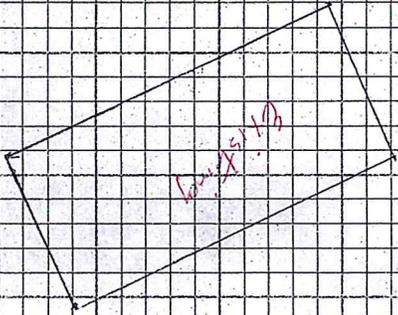
Block 64

1st Addition PLACE  
Lake Addition



170'

20'  
20'  
Block 65



Lot 1

PROPERTY 7248'  
CASE LAKE

Lot 2

Continental  
424'

N/A

Not actual building  
for reference only

