

# 2016

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

**Thursday, August 4, 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 July 21, 2016.
- III. Hearing of Cases, Appeals and Reports:

**Variance Application #15181** - An application for a variance by the Estate of Eileen A. Nixon, owner, and John Yelenich, agent, to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,611.14 square feet that has an existing garage on the property and the other proposed vacant lot is to be 2,222.79, varying from the requirements of Section 17.12.050, Minimum Lot Area, and the proposed lot of 2, 611.14 square feet is also varying from the definition of "Lot" which requires each lot to have frontage on a public street varying from Section 17.04.245 Lot of the BSBMC. The property is located in an "R-2" (Two Family Residential) zone, legally described as the west portion of Lot 11 and the east 5.3' of the south 88.5' of Lot 11, the south 88.5' of Lot 12, and the west 0.7' of the south 88.5' of Lot 13, Block D of the Warren and Kingsbury Addition, commonly known as 11 East Gagnon Street, Butte, Montana.

**Variance Application #15194** – An application for a variance by Dennis Reed, owner, to locate the front porch of an existing residence within zero feet (0') of the front property line, varying from the minimum fifteen foot (15') front yard depth of Section 17.24.100, Minimum Front Yard Depth, of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 3-4, Block 31 of the Clarks Addition, more commonly known as 313 East Front Street, Butte, Montana.

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

# A G E N D A

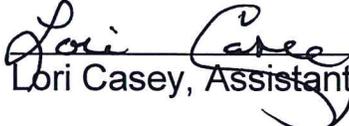
(Page 2)

**Variance Application #15195** – An application for a variance by Anthony Dezago and Loretta Burkey, owners, to locate a carport within one foot (1') of the side yard property line, varying from the minimum three foot (3') side yard setback of Section 17.10.020(D), Permitted Uses, of the BSBMC. The property is located in an "R-1" (Single Family Residential) zone, legally described as Lots 11-14, Block 53 of the Atherton Place Addition, more commonly known as 3130 Quincy Street, Butte, Montana.

IV. Other Business.

V. Adjournment.

By:

  
\_\_\_\_\_  
Lori Casey, Assistant Planning Director

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

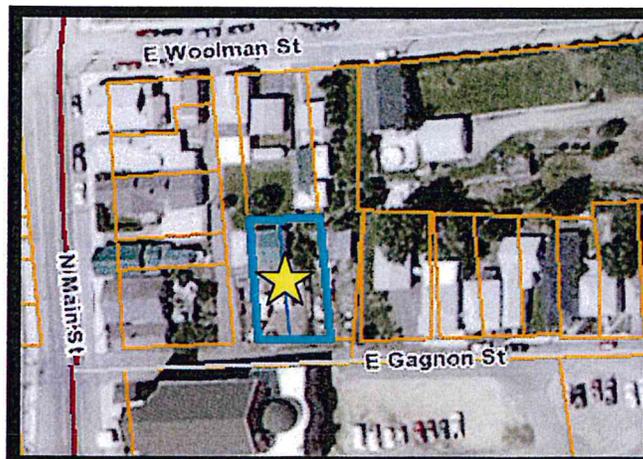
**ITEM:** Variance Application #15181 - An application for a variance to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,621.14 square feet that has an existing garage on the property and the other proposed vacant lot is to be 2,222.79, varying from the requirements of Section 17.12.050, Minimum Lot Area, and the proposed lot of 2,621.14 square feet is also varying from the definition of "Lot" which requires each lot to have frontage on a public street varying from Section 17.04.245, Lot, of the BSBMC.

**APPLICANT:** Estate of Eileen A. Nixon, c/o Maureen Yelenich (24 E. Woolman Street) and Dawn Blackwood (502 N. Main Street), Butte, MT, owner, John Yelenich, 10 E. Woolman Street, Dan Brown, Brown & Associates, 2000 Garrison Avenue, Butte, MT, agents.

**DATE/TIME:** Thursday, August 4, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana.

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

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in an "R-2" (Two Family Residential) zone, legally described as the west portion of Lot 11 and the east 5.3' of the south 88.5' of Lot 11, the south 88.5' of Lot 12, and the west 0.7' of the south 88.5' of Lot 13, Block D of the Warren and Kingsbury Addition, commonly known as 11 East Gagnon Street, Butte, Montana.

**PROPOSAL:** The applicant is proposing to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,621.14 square feet, and has an existing garage on the property. The other lot contains no structures, and is proposed to be 2,222.79 square feet. Both lots, being less than 6,000 square feet in area, vary from the requirements of Section 17.12.050, Minimum Lot Area, of the BSBMC. The lot proposed to be 2621.14 square feet (the northernmost lot), if created, would also vary from the definition of "Lot", per Section 17.04.245, which requires each lot to have frontage on a public street.

As stated above, the current lots are both nonconforming, as they each contain less than 6,000 square feet in area. They were originally purchased jointly by two parties, with the intention of sharing the space. There is a detached garage built on the northernmost portion of the shared lots. The applicants have proposed a relocation of the lot boundary lines in order to allow them to sell the property at 508 N. Main Street along with its designated garage, located on the northernmost portion of the shared properties.

**STAFF**

**FINDINGS:** The Butte-Silver Bow Municipal Code, Sections 17.12.050, Minimum Lot Area, and 17.04.245, Lot (definition), of the BSBMC, require a minimum lot area of six thousand

square feet (6,000 sq. ft.) and require that each lot have frontage on a public street. The applicants' request to create two parcels of record with one lot containing 2,222.79 square feet (54.81'W x 39.2'D), and the other lot containing 2,621.14 square feet (54.70'W x 88.50'D) and possessing no public street frontage, requires a variance from the Zoning Board of Adjustment.

Approval of the variance application would be the first step in dividing the existing lot into two lots. According to the Butte-Silver Bow Subdivision Regulations and Montana Subdivision and Platting Act, the applicant would also be required to complete a Certificate of Survey on the property and complete the review process for surveys.

Historically, although the properties in question are technically two parcels with north-south orientation, the parcels together have been utilized as one shared space between the residences at 500 and 508 North Main Street. Stanley Blackwood is the owner of 500 North Main Street. Eileen Nixon was the owner of 508 North Main Street until her recent passing, at which time ownership was transferred to The Estate of Eileen A. Nixon.

Eileen Nixon and Stanley Blackwood purchased the lots in question together in order to add additional space to their properties located along North Main Street. Eileen Nixon built the existing garage on the northern portion of the shared property, directly across the alley from her residence. Stanley Blackwood never built any structures on the southern portion of the shared property, which is directly across the alley from his residence, however, he utilizes the additional space as an extension of his yard.

Whereas this shared arrangement historically worked well for both neighbors, Eileen Nixon recently passed away. The Estate of Eileen A. Nixon intends to sell her former

residence at 508 N. Main Street. They would like to sell the garage located on the northernmost portion of the shared parcels along with the residence at 508 N. Main Street.

Stanley Blackwood would like to retain ownership of the southernmost portion of the shared lots to continue to utilize them as an extension of his property.

The applicants had originally wished to relocate the property boundaries and legally combine each newly created parcel with its associated parcel along North Main Street, however, they are prevented from doing so because the alley separating the North Main Street properties from the Gagnon Street properties has never been vacated.

*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 dimension requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space, light, and air between adjacent buildings to prevent the spread of fire. In addition, a 6,000 square foot parcel with 60 feet of frontage provides for sufficient open space typical of an "R-2" residential neighborhood.

"Lots" as defined in Section 17.04.245 of the Butte-Silver Bow Municipal Code are required to have frontage along a public street to ensure each lot of record has legal and physical access. An alleyway is not considered to be the legal access to a lot.

There are a number of residences in the area that are on 30' x 100' lots. Although residences on single lots are common within this neighborhood, the applicants' proposed lot sizes of 2,621.14 square feet and 2,222.79 square feet are significantly smaller lots than the typical lot size. Additionally, the dimensions of the lots proposed will make development of the southernmost proposed lot exceedingly difficult, if not dimensionally prohibitive. The "R-2" (Two Family Residential) zone requires a twenty foot (20') setback from the front property line and a ten foot (10') setback from the rear property line. With the southernmost proposed lot only possessing 39.2' in depth, at a maximum, a structure could be no more than nine feet (9') deep while still abiding by the setbacks outlined in the Zoning Ordinance. As single-wide manufactured homes are not an outright permitted use in the "R-2" zone, it would be most difficult to accommodate any residential structures on this proposed lot.

Simply creating the two proposed substandard lots from the two nonconforming lots in question would not only increase the density of the neighborhood, it would create a lot with no public street frontage, which could pose a threat to public health and safety. Understandably, this is an action that Staff could not reasonably support.

**However**, as discussed above, there is currently an existing detached garage located on the northernmost portion of the shared lots in question. The applicants' intentions are to relocate the boundary lines in order to sell the property at 508 North Main Street with its designated garage and to allow Stanley Blackwood to obtain sole ownership of the southernmost portion of the shared lots, so that

he might continue utilizing the space as an extension of his property on North Main Street.

Staff concludes that simply creating the two proposed substandard lots would be contrary to public interest. That being said, ***if and only if*** the applicants are agreeable to a condition which requires the applicants to amend their deeds for the properties located on North Main Street to include their respective lots across the alley, then this variance may not be contrary to public interest. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on North Main Street.

**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.

Although the two properties were historically utilized as one, they were two separate legal lots of record. As stated above, the applicants are proposing to do a relocation of common boundary adjustment from two legal nonconforming lots of record. As such, each lot as currently platted does have a hardship in regard to minimum lot width (60') and minimum lot area (6,000 square feet).

Also, it should be clarified that the cause of the current predicament was historically a handshake agreement between two courteous neighbors, entered into with respectable intentions. Since the unfortunate passing of one of these neighbors, the circumstances of the situation have since changed, necessitating some sort of resolution.

**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 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 his property in a way he views as reasonable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

The applicants' request to create two substandard parcels from two nonconforming parcels would be akin to a boundary line readjustment, and in fact, not significantly changing the square footage of the lots, simply changing their orientation. The main concern with respect to public health, safety and general welfare lies in the creation of a parcel that would have no public street access. Generally, a request of this nature void of additional circumstance or information would not be supported by staff.

It is important to reiterate, however, the intent behind this request, as well as the applicants' plan going forward. The request originates from a need to

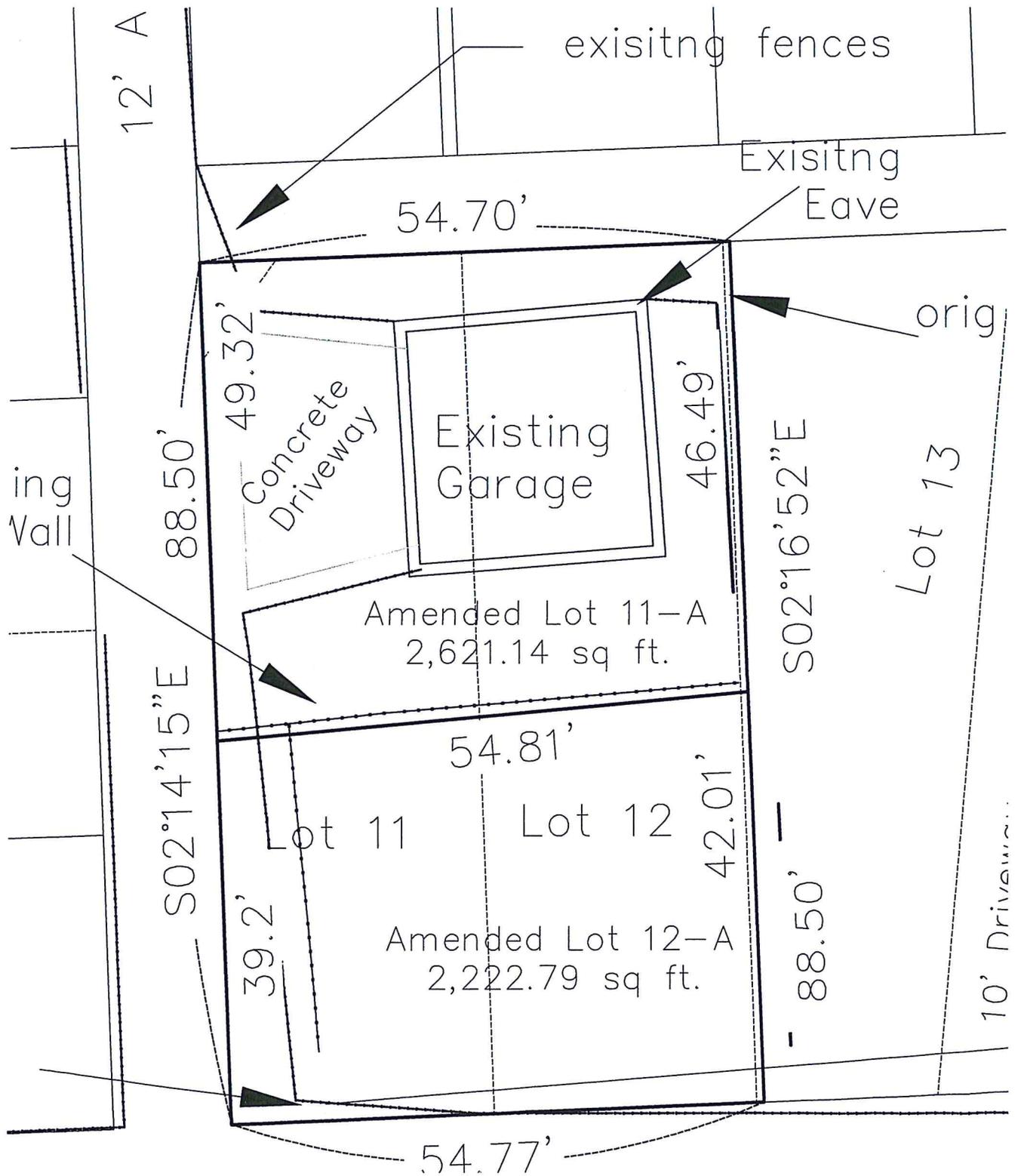
reestablish a handshake agreement between neighbors following the passing of one party. All parties involved seemingly agree on the fact that, if established, the new parcels are designed to exist as accessory parcels to the associated residences along North Main Street and are not intended to be sold as separate lots from the primary residences. Accordingly, ***if and only if*** the applicants are agreeable to a condition which requires the applicants to amend their deeds for the properties located on Main Street to include their respective lots across the alley, then the granting of the requested variance ***will not pose*** any detriment to public health, safety, and general welfare, but will only make it easier for the applicants to sell the property. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on Main Street. Therefore, staff would conclude that this variance request complies with the intent of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSIONS:**

Based on the above discussion, staff would recommend conditional approval of Variance Application #15181.

1. Receiving approval to create two (2) substandard parcels of record is only the first step in creating two (2) new legal parcels. In order for the applicants to divide the property, the applicants shall complete a relocation of common boundary survey for review and approval. Upon approval from the Examining Land Surveyor, the applicants shall file the Certificate of Survey and appropriate deeds with the B-SB Clerk and Recorder.

2. The applicants shall amend each deed for the properties located on Main Street to include their respective lot across the alley. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on Main Street.
3. The deeds shall be filed in conjunction with the Certificate of Survey with the B-SB Clerk & Recorder.
4. Any further development on the newly created substandard lots shall abide by the regulations of the Butte-Silver Bow Zoning Ordinance.
5. Any deviation or change from the terms and conditions of Variance Application #15181 must be brought before the Zoning Board of Adjustment.



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

**ITEM:**                    **Variance Application #15194** - An application for a variance to locate the front porch of an existing residence zero feet (0') from the front property line, varying from Section 17.24.100, Front Yard Depth, of the BSBMC.

**APPLICANT:**        Dennis Reed, 313 East Front Street, Butte, Montana, owner.

**DATE/TIME:**        Thursday, August 4, 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 a "C-2" (Community Commercial) zone, legally described as Lots 3-4, Block 31, of the Clarks Addition, commonly known as 313 East Front Street, Butte, Montana.

**PROPOSAL:** An application for a variance to locate the front porch of an existing residence zero feet (0') from the front property line.

**STAFF**

**FINDINGS:** Section 17.24.100, Front Yard Depth, of the Butte-Silver Bow Municipal Code states that a building within the "C-2" zone shall have a minimum front yard setback of fifteen feet (15'). The applicant's existing residence, built in 1900, is located approximately five feet (5') from the front property line. It currently has a front porch in need of repair. The applicant's designs for repair include a five foot (5') wide front porch with stairs set into the actual porch, so as not to extend out onto the public right-of-way. Although the original construction was "grandfathered" for its current location with respect to setbacks, the remodel constitutes a new construction project, fully subject to the provisions of the Zoning Ordinance. In order to remodel the "grandfathered" porch as detailed on the site plan, a variance from the Zoning Board of Adjustment is required.

*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.

As the residence has adequate frontage along East Front Street, along with alley access in the rear of the applicant's property, a minor extension of the front porch would not appear to negatively impact the availability of sufficient space, access, air and light.

The site plan submitted for this variance details front porch access stairs that are in fact, set into the porch, and not encroaching on the public sidewalk or right-of-way.

The designs of both the current and proposed porches were submitted to Mary McCormick, Butte-Silver Bow's Historic Preservation Officer. After careful consideration, it was determined that the proposed porch remodel would not require review by the Historic Preservation Commission in order to review and approve a Demolition Permit Certificate Of Appropriateness prior to its removal. (Please see attached letter).

In fact, the proposed porch design more closely resembles the original porch than the porch that is planned to be replaced. Therefore, the new proposed design is supportive of the neighborhood character.

A final area of concern regarding a zero foot (0') setback along East Front Street would be with regard to storm water. As the roof over the porch would slope southeast towards East Front Street and

there is no permeable area to detain any storm water that may run off of the roof of the residence and porch, special measures would need to be taken to ensure that storm water is detained on his property and does not create safety concerns on the public sidewalk.

As such, provided that the applicant is agreeable to a condition requiring rain gutters to be installed along the roof of the porch directing storm water to the impervious areas of his property, it would appear that the applicant's request to have a zero foot (0') setback from his front property line along East Front Street is not contrary to 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. A hardship cannot be the result of a condition created by the applicant.

As noted above, the applicant's residence was constructed prior to the implementation of the Zoning Ordinance. Subsequently, the location of the residence is "grandfathered". Being as only five feet (5') of space exists between the front of the residence and the front property line, the structure is already within the required front yard setback. Consequently, the applicant could not possibly construct a front porch on his property that meets

setback requirements without changing the location of the entire residence.

This would indeed demonstrate a hardship caused by the implementation of the Zoning Ordinance after the development of the property in question and must be taken into consideration.

**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 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.

As discussed above, requirements for adequate space, air, light, and emergency access will not be impeded by the construction of the proposed porch, should the variance be approved.

As the front property line is adjacent to the public sidewalk and right-of-way, the decreased setback should not encroach on any one individual neighboring property. Any potential encroachment would seemingly only directly affect the public right-of-way. However, as noted above, the design of the porch incorporates inlaid stair access, which would prevent porch access paths from encroaching on the public-right-of-way any more than a standard walkway not regulated by the Zoning Ordinance.

Ultimately, locating the proposed porch zero feet (0') from the front property boundary adjacent to East Front Street would not appear to compromise the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSIONS:**

Based on the above discussion, staff would recommend approval of Variance Application #15194, subject to the following conditions:

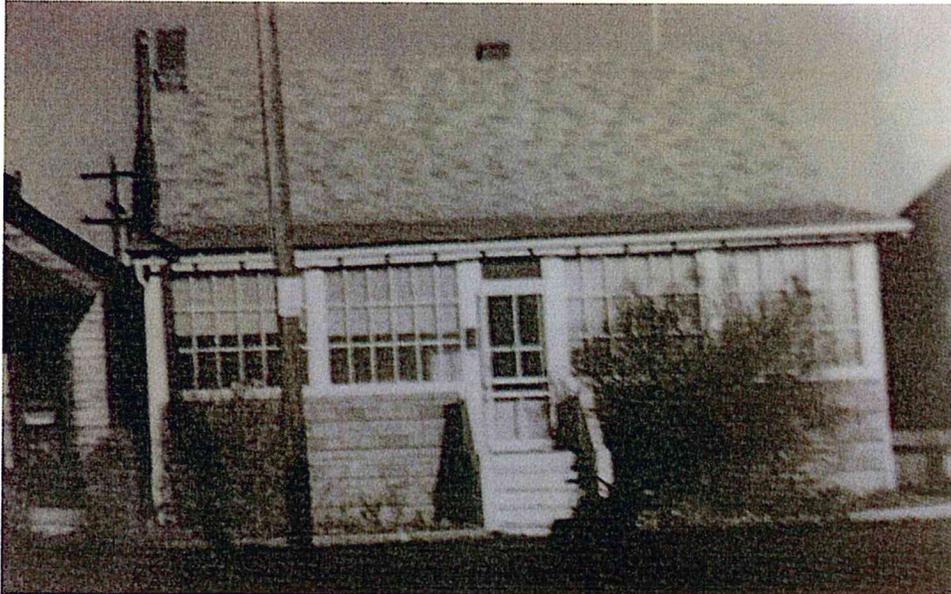
1. The applicant shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.
2. The applicant shall work closely with the Butte-Silver Bow Planning Department and the Butte-Silver Bow Historic Preservation Officer to ensure that the demolition of the porch in question at no time expands beyond the criteria which would initiate necessity of HPC review.
3. The applicant must agree not to utilize any portion of the public right-of-way of Front Street for the construction of the proposed porch, including but not limited to removal of any portion of the sidewalk. If encroachment upon public right-of-way is unavoidable, a Construction Right-of-Way Permit must be applied for prior to the commencement of construction.
4. The applicant shall install rain gutters on the roof of the porch to ensure that all storm water is directed, so that it will remain on his property.

**313 E. Front**  
Historic Preservation Officer Assessment of Stope Removal  
July 27, 2016

*Maynard*

The owner is proposing to remove the wooden stope at the front entry and construct a full-length open porch on the front façade—which is the historic front porch, now enclosed. He would like to extend the new porch to the sidewalk.

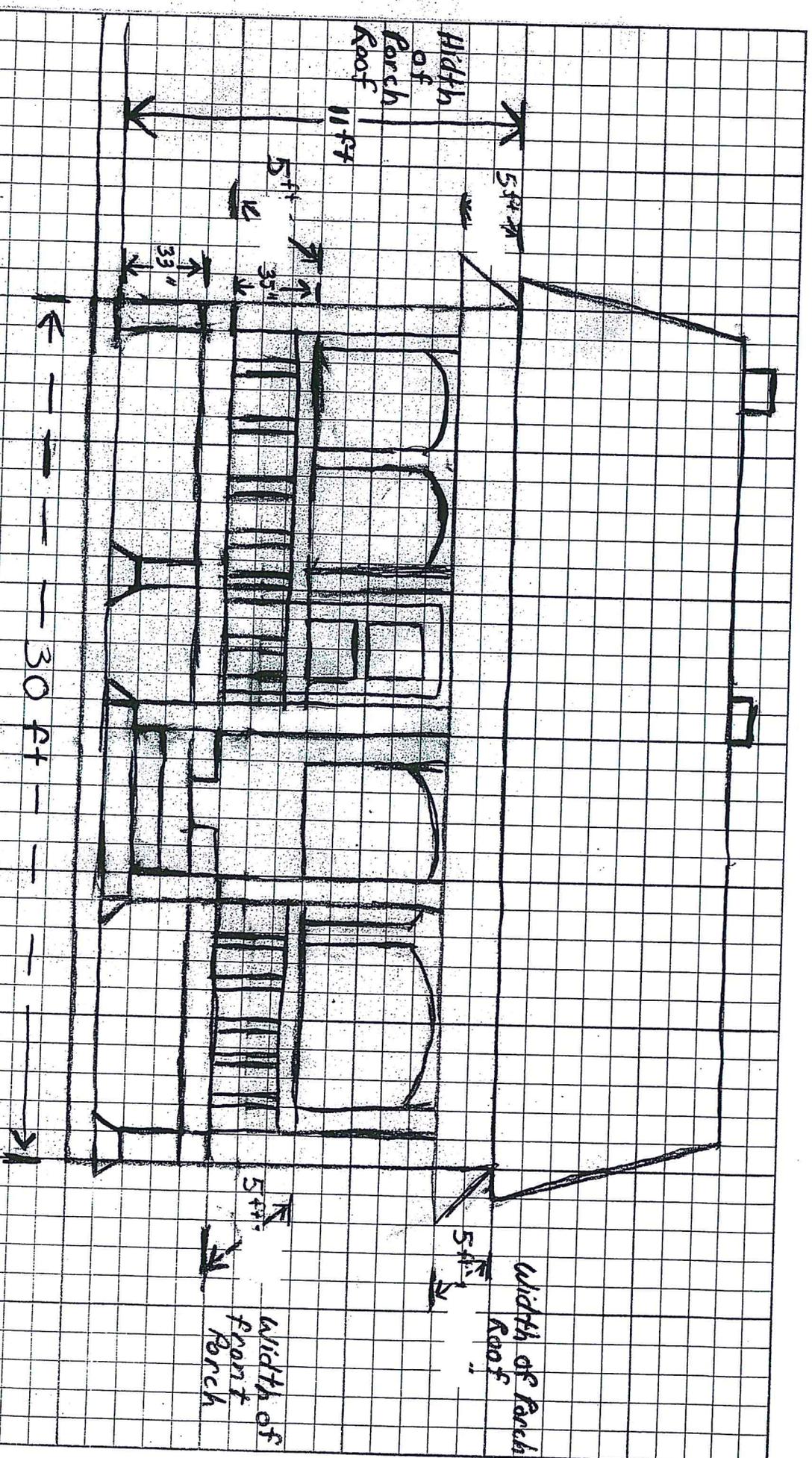
The existing wooden stope is a small, non-historic element built sometime after 1959. There is no requirement for the Historic Preservation Commission to review and approve a Demolition Permit COA prior its removal.



1959 photograph, Silver Bow County Tax Assessment card.



Google Maps, July 2012



Width of Roof 11 ft  
 Width of Porch 30 ft  
 Length of Porch 33"  
 From the Ground to Floor of Porch 35"  
 From Porch to Railing 5 ft  
 Porch Roof Width 5 ft  
 Width of Front Porch 5 ft

Changed Footing 18 7.20.11

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

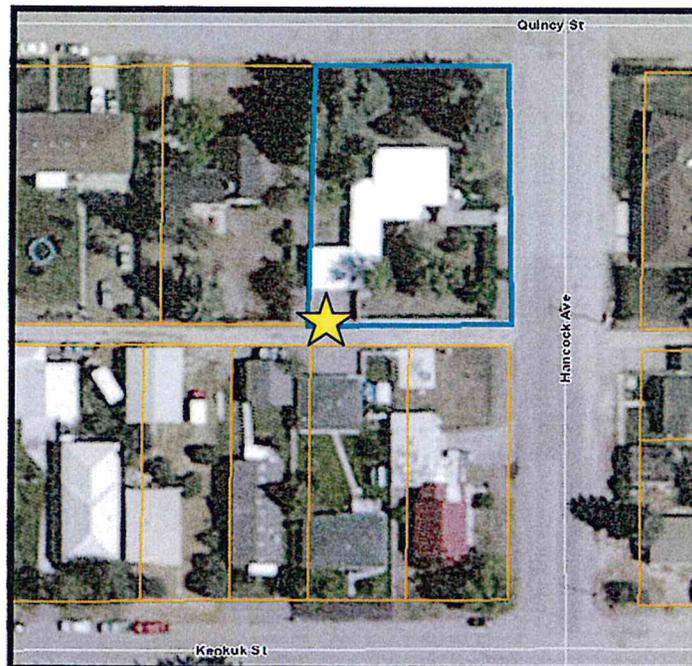
**ITEM:** Variance Application #15195 - An application for a variance to locate a carport within one foot (1') of the west, side yard property line, varying from the required three feet (3'), per Section 17.10.020(D), Permitted Uses, of the BSBMC.

**APPLICANTS:** Anthony DeZago and Loretta Burkey, 3130 Quincy Street, Butte, Montana, owners.

**DATE/TIME:** Thursday, August 4, 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 Residential) zone, legally described as Lots 11-14, Block 53 of the Atherton Place Addition, commonly known as 3130 Quincy Street, Butte, Montana.

**PROPOSAL:** The applicants are retroactively applying for a variance to allow for a lean-to carport structure (10’ X 24’) to be attached to the west side of their existing garage. The lean-to carport structure is located within one foot (1’) of the west property line. Because the carport has a permanent roof and is effectively an addition to the existing garage, it must meet the setback requirements for accessory buildings, which is three feet (3’) from a side property line adjacent to an alley. The carport is open on three sides with the exception of the east side, which shares a wall with the applicants’ detached garage. The applicants’ existing detached garage and the lean-to carport both meet the requirements of ten feet (10’) for parking aprons adjacent to an alley.

**STAFF**

**FINDINGS:** The Butte-Silver Bow Municipal Code, Section 17.10.020(D), Permitted Uses, requires that all roofed structures be located a minimum of three feet (3’) from side property lines when the structures are adjacent to and accessed from an alley. Therefore, the applicants’ request to locate the lean-to carport within one foot (1’) of their west 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.**

Setback requirements have been established to protect public health and safety by providing adequate space for light and air and to provide space for emergency vehicles to access all sides of a structure. The larger setback of ten feet (10') for structures abutting a side street helps to ensure that structures are not located within the vision clearance triangle of street intersections and alley/street intersections. Maximum lot coverage requirements have been established to ensure that adequate space for light and air are provided to all properties. In this particular case, the applicants have already constructed the lean-to carport structure, in violation of B-SB Ordinances that require zoning certification and a building permit prior to construction. (Note: the project has been issued a red-tag violation notice by the B-SB Building Department and a Zoning Violation notice by the B-SB Planning Department). As part of their response to resolve these violations, the applicants have requested a variance to allow the structure to remain within one foot (1') of their west property boundary.

The lean-to carport structure is 10'W x 24'D and has been constructed by extending the garage roof line west approximately ten feet (10'). The roof is supported by the use of 4" x 4" posts. As such, the west wall of the garage would act as the east side of the carport with the remaining north, west and south sides left open. In this particular case the design of the carport is important in that the west alignment, which is the lowest side of the roofline, is immediately adjacent, i.e., within one foot (1') to the

west property line and appears to encroach over the neighbor's fence on the west side.

A complicating factor in this case is that the exact location of the side property line between the adjacent properties is not surveyed, i.e., no property pins present, thus the precise location of the property line is not verifiable. As part of a site visit to research the Variance, staff measured the distance between the supporting posts of the lean-to structure and the horizontal slats of the neighbor's fence and it is approximately eleven inches (11"), which is consistent with the distance represented in the applicants' submitted site plan. At the same time, the supporting posts of the lean-to carport are only six inches (6") away from the neighbors' fence posts.

The main issue in considering this variance is storm water management: the roof of the lean-to structure has a westward-dipping slope and overhangs its supporting posts by approximately three inches (3"). Without proper controls, storm water from the lean-to carport could be detrimental to the neighbor's fence and property along the shared boundary. As such, should the Board vote to approve the variance, a condition of approval should require the applicants to install rain gutters along the west edge of the roofline to prevent storm water runoff from reaching the neighbors' property.

Based on the above discussion and with proper measures to mitigate any potential impacts from storm water, the proposed variance may not be contrary to the public interest. Staff recommends that the Zoning Board of Adjustment take into account any public comments received with respect to the proposed variance.

**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 property in question does not exhibit any unique topography or geological conditions that justifies a hardship.

**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 applicants to develop their property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

In this particular case, the applicants are requesting a side yard setback variance within one foot (1') of the property line (vs. three feet (3') off an alley in the rear area of the property), which has potential to negatively impact their neighbor to the west. Storm water concerns, in particular, and adverse impacts to the neighbors' fence must be addressed. In fact, it

was the neighbor's complaint that brought the case to the Planning Department's attention.

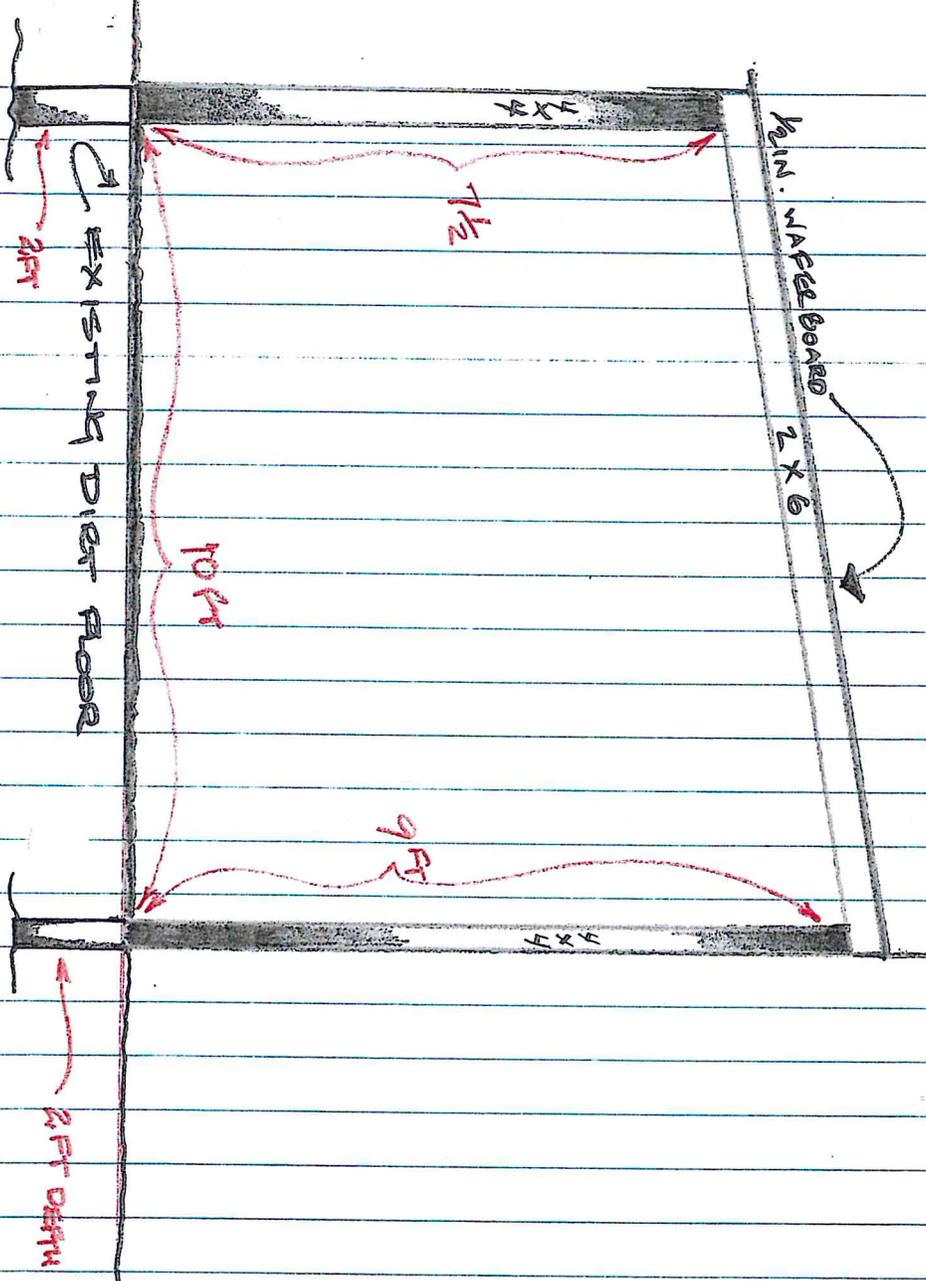
It does appear, however, that the applicants can (and are willing to) take sufficient steps to mitigate any adverse impacts on the adjoining property owner, particularly regarding concerns with storm water. For example, the applicants can install a gutter along the west edge of the carport roof with appropriate downspouts to direct storm water away from the neighbor's property and make repairs to the neighbor's fence that may be required due to the proximity of the supporting posts of the carport. Given that such measures are installed, and subject to the input of the neighbor on the adequacy of the mitigation measures, the variance request may be considered reasonable and consistent with the spirit of the Zoning Ordinance to allow for the reasonable development of private property.

**CONCLUSION:** Based on the above analysis, staff recommends that the Board consider approval of Variance Application #15195 to allow a lean-to carport structure within one foot (1') of a side property line, subject to public input received at the hearing and the following conditions:

1. Within five working days of the public hearing for Variance Application #15195, the applicants shall submit the construction plans for the carport to the Butte-Silver Bow Building Official for verification that construction was completed in compliance with all applicable building, electrical, mechanical, fire and health codes.
2. Within five working days of the public hearing for Variance Application #15195, the applicants shall submit a plan for staff review and approval to ensure

that the storm water generated from the carport does not drain onto or adversely affect his neighbor's property or into the public alley. At a minimum, the plan shall specify gutters along the west edge of the roof and appropriate well-directed downspouts to ensure all storm water generated from the garage and lean-to carport is retained on the applicants' property and away from the neighbor's and public property. The storm water control measures outlined in the plan shall be installed within 15 working days of staff approval of the plan.

3. As per Section 17.56.040, Permit Fees, of the BSBMC, the applicants shall pay double for the building permit required for this construction project; the double payment is due to the fact that the lean-to carport was constructed and installed without the appropriate zoning certification and building permits in place. These fees shall be paid in full no later than 5:00 p.m. on Thursday, August 11, 2016.



EXISTING DIET FLOOR

MAIN WAFER BOARD  
2x6

7 1/2

10 FT

9 FT

2x4

2x4

2 FT

2 FT DEPTH





