

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

**Thursday, October 20, 2016, at *5:30 P.M.*
Council Chambers – Third Floor – Room 312**

- I. Call to Order.
- II. Approval of the Minutes of the meetings of September 15 and 20, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15267 – An application for a variance by JulieAnne Held, owner, and Benjamin John Dutra, agent to locate a manufactured home within thirteen feet (13') of the Ram Street property boundary, varying from the required twenty foot (20') front yard depth of Section 17.16.070, Minimum Front Yard Depth, of the BSBMC. The property is located in an "R-4" (Manufactured Home) zone and is legally described as Lot 3, Block 5, of the Golden West Estates No. 2, commonly located at 105 Ram Street, Butte, Montana.

Use Variance Application #15271 - An application for a use variance by Tobiness Properties LLC, c/o Joe Tobiness, owner, to locate a contractor's storage yard in a commercial zone, varying from the requirements of Section 17.24.020, Permitted Uses, and to not install off-street parking varying from Section 17.40.900, Off Street Parking and to not install sidewalk and curb/gutter adjacent to Wynne Avenue, varying from Section 17.38.050, Landscaping Requirements – Sidewalk and Curb/gutter; Front and Corner Yards of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as a portion of the Northeast Quarter, Lot 51, Section 31, Township Three North, Range Seven West, commonly located at 3610 Wynne Avenue, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

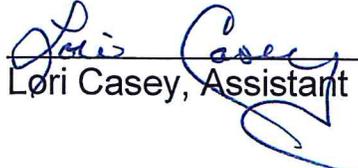
(Page 2)

Variance Application #15273 - An application for a variance by Seven-Up Bottling Company, owner, to increase the height of a chain-link fence in the rear yard of Mile High Beverages, Inc. to eight feet (8') and to place three strands of barbed wire around the top of the chain-link fence in a residential zone, varying from the requirements of Section 17.36.042, Fence Height - Residential Zone and Section 17.36.047, Barbed Wire Fences – Residential Zone of the BSMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1 through 20, inclusive, Block 17, of the Gallatin Addition, and the vacated alley between Cobban and Majors Street and the east half of vacated Delaware Street between Cobban and Majors Street, commonly known as 520 Cobban Street, Butte, Montana.

Variance Application #15274 - Amendment to the Condition of Use Variance Permit #14925 - An application by Harry A Bruner, owner, to not install privacy slats for screening along the west property boundary of the storage yard, amending the provisions of Condition No. 1 that requires a six foot tall privacy fence along the north, south and west property boundaries to buffer the outside storage use from adjoining properties. The property is located in a "C-2" (Community Commercial) zone, legally described as a portion of the west 141' of Lot 24, all of Lot 54, Section 31, Township Three North, Range Seven West, commonly located at 1720 Longfellow, 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 #15267** - An application for a variance to construct and locate a manufactured home (16' x 76') on a residential lot within thirteen feet (13') of the front property line, varying from the requirements of Section 17.10.070, Minimum (20') Front Yard Depth, of the BSBMC.

APPLICANTS: Naomi Nichols, c/o of JulieAnne Held by Jeff Held, POA, 105 Ram Street, Butte, Montana, owners; and Benjamin John Dutra, 431 Herman Gulch, Butte, MT 59701.

DATE/TIME: Thursday, October 20, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Jon C. Sesso, Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-4" (Mobile Home Residential) zone, legally described as Lot 3, Block 5, Golden West Estates No. 2 Addition, Section 6, T2N, R7W, of the P.M.M. of the City and County of Butte-Silver Bow, State of Montana, commonly known as 105 Ram Street, Butte, Montana.

PROPOSAL: The applicants are proposing to locate a manufactured home (16' x 76') on a residential lot, thirteen feet (13') from the front property line adjacent to Ram Street.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.12.070, Minimum Front Yard Depth, requires a primary structure to be twenty feet (20') from the front property line in the "R-4" zone. The applicants' request to locate a mobile home thirteen feet (13') from the front property boundary requires 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.**

Setback 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, setback standards provide for uniformity and structure within residential neighborhoods.

The applicants are requesting to vary from the front yard setback requirement on a parcel of record that is 100' long and 70' wide. There is a large garage

structure on the lot which is set back approximately twenty feet (20') from Ram Street, and the incoming mobile home will be set on the lot about where there was a mobile home structure in the past.

Typically, a 100' lot would accommodate a fairly standard mobile home length of 70', allowing for the 20' front setback and the required 10' rear setback. However, the incoming structure is 76' long, leaving only 24' for front and rear setbacks. The applicant, after consultation with staff, has elected to propose placing the home closer to the front property line, and fulfill the full 10' rear setback. Due to the fact that there is no alley in the rear serving this property, staff would concur that keeping the 10' rear setback clear would provide greater benefit in terms of overall uniformity and separation from any other structures in the neighborhood.

As such, the applicants have submitted a site plan that would result in the mobile home at 13' from Ram Street. As is typical with other requests for front yard setback variances, there is an area of undeveloped right-of-way between the front property boundary and the paved street. In this particular case, this portion of Ram Street does not have curb/gutter or sidewalk. The result is there will be approximately ten feet (10') of undeveloped right-of-way and thirteen feet (13') of open yard space – total 23' – between the mobile home and the pavement.

Given these dimensions and proposed site plan, a 13' front yard setback would appear to be reasonable and 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 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.

The applicants' property is 7,000 square feet in area, which exceeds the minimum 6,000 square feet of the Zoning Ordinance. The lot length meets the minimum requirement by the Zoning Ordinance, and as such, the property does not exhibit conditions that would prohibit the development of the property in a manner that meets the development standards for this residential zone.

However, the particular home that is proposed for the lot is 76' long, which presents a hardship owing to the property, in that there is insufficient length to meet a 20' front and 10' rear setback.

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

It does not appear that the location of the proposed mobile home on the lot would create any public

health and safety hazards. The home would not be located within any vision clearance triangle, particularly with the extra 10 feet of undeveloped land between the property line and the paved surface of Ram Street.

That being said, setback requirements specified by the Zoning Ordinance were also established to create uniformity within residential zones. The existing front yard setbacks in the immediate neighborhood are fairly consistently between 20' to 25', including the setback for the applicants' garage on the property. On the other hand, given the extra width of the lots (70'), the spacing between the houses on this block of Ram Street is greater than found in the urbanized area of Butte and it would appear that the requested projection of seven feet (7') into the front setback may not have as great of a visual impact as it would on a more densely developed block.

Therefore, in this case, a thirteen foot (13') front yard setback would not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above analysis, staff believes that this variance 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 conditional approval of Variance Application #15267 with the following condition:

1. Prior to the issuance of a required moving permit to place the mobile home on the lot, the applicants shall present plans and secure permits to install a code-approved foundation and code-approved electrical/power hook-up.



71'-0"

10'-6"

15'-4"

Utilities

15'-0"

76'-0"

107'-0"

MASTER
BEDROOM
13'-6" x 11'-11"

BATH #1

UTILITY

BEDROOM #2
9'-2" x 7'-8"

KITCHEN

DINING

LIVING
ROOM
14'-0" x 14'-6"

BEDROOM #3
9'-0" x 8'-11"

BEDROOM #4
10'-10" x 9'-8"

BATH #2

20'-6"

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

ITEM: **Use Variance Application #15271** - An application for a use variance to establish a contractor's storage facility in an existing residential structure in a commercial zone, varying from the requirements of Section 17.24.020, Permitted Uses, and to not install off-street parking varying from the requirements of Section 17.40.900, Off-Street Parking, and to not install sidewalk and curb/gutter adjacent to Wynne Avenue, varying from Section 17.38.050, Landscaping Requirements – Sidewalk and Curb/Gutter, Front and Corner Yards of the BSBMC.

APPLICANTS: Tobiness Properties LLC, c/o Joe Tobiness, 3610 Wynne Avenue, Butte, Montana,

TIME/DATE: Thursday, October 20, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Jon C. Sesso, Planning Director

**VICINITY
MAP:**



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone, legally described as a portion of the Northeast ¼, Lots 45 & 51 of Section 31, T3N, R8W of the P.M.M. of the City and County of Butte-Silver Bow, State of Montana, commonly located at 3610 Wynne Avenue, Butte, Montana.

PROPOSAL: The applicant is proposing to establish a contractor's storage facility on a property that has an existing residence on it. The applicant has utilized the residence to operate his construction company for the past eight years. The applicant is proposing to construct a new 40' x 80' storage building (phase 1), a 40' x 60' shop building (phase 2) and have a construction lay down yard. The addition of the buildings will require the applicant to meet the development standards of the "C-2" zone. As such, the applicant is requesting not to install sidewalk and curb/gutter adjacent to his property along Wynne Avenue. In addition, the applicant is also requesting not to install the required off-street paved parking spaces. Instead, the applicant is proposing to pave the approach into his property. There is approximately 30' of right-a-way before the applicant's property line that is undeveloped.

HISTORY: As stated above, the applicant has run his construction business out of the residence for the past eight years. Staff recently visited the site due to the applicant doing work within a designated floodplain without first securing a floodplain permit. The site visit also revealed that the applicant had a construction yard. The applicant was notified of the violation and began working with staff to bring his property into compliance. The applicant presented options to store some of his materials/equipment inside a storage building. Although

he is proposing to have inside storage, there still may be materials and equipment that may be needed to be stored outside. As such, the applicant has proposed to locate the storage yard on the north side of the property near the area that is designated as Shop-phase 2.

**STAFF
FINDINGS:**

The Butte-Silver Bow Municipal Code Section 17.24.020, Permitted Uses, does not list a contractor's storage facility as a permitted use in the "C-2" Zoning District. In order for the applicant to establish a contractor's storage facility within the commercial zone, a use variance approved by the Zoning Board of Adjustment is required.

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

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

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

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

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

In this particular case, the applicant is requesting to utilize a parcel of record in a commercial zone for a use permitted in the "M-1" zone.

Typically, in use variance applications, the requirements of the corresponding "zone" that the proposed use is permitted in are applied as conditions of approval. A contractor's storage yard is a permitted use within the "M-1" (Light Industrial) zone. In an "M-1" zone, a storage yard is required to be screened from view when adjacent to a commercial or residential zone.

The applicant's property is located in an area that contains residentially zoned properties to the west and commercially zoned properties to the north, east and south. In addition the property is located approximately one-half block northeast of the "M-1" zone. This zone is comprised of the Montana Department of Transportation's operations and the newly constructed Emergency Operations Center.

In addition, the intersection of Wynne Avenue and Longfellow Street contains two industrial type uses. That being said, there are a number of residences that are both legal and nonconforming uses that are located in the vicinity of the applicant's property. This particular block of Wynne Avenue also contains undeveloped commercially zoned property. As such, some level of mitigation should be required to protect these property owners from any potential negative

impacts of the proposed uses, e.g. perimeter fencing with slats to effectively screen the outside storage area.

Other impacts of a contractor yard must be considered, such as additional traffic and noise. In that regard, the applicant has informed staff that he has operated his construction business out of this location for the past eight years. It is important to note that Planning staff has not received any complaints concerning the applicant's construction business. As noted above, the contractor's yard was brought to staff's attention because the applicant was completing work in the floodplain without a floodplain permit. Therefore, it would appear that this contractor's yard has had minimal additional impacts on the surrounding properties beyond what they are currently accustomed to.

In addition, the applicant is proposing to construct a 40'x80' storage building to provide for some inside storage. Under a Phase 2 concept, he is proposing to construct another shop that will be 40'x60'. The construction of these facilities triggers the development standards for commercial and light industrial zones. One of those standards is the requirement to install sidewalk and curb/gutter along the property line adjacent to Wynne Avenue. The other requirement is to provide four (4) paved off-street parking spaces for the new buildings. The applicant has requested variances from both standards.

First, staff will address the request not to install sidewalk and curb/gutter. 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.

Although this particular area of Wynne Avenue does not have any sidewalks and curb/gutter, it is zoned "C-2" and as the vacant commercial land gets developed, sidewalk and curb/gutter will get installed as a requirement of their development. As each property is developed, a continuous sidewalk will emerge to provide safe pedestrian access without walking in the street. For example, as the southerly end of Wynne Avenue has been developed, one parcel at a time and each owner has installed their portion of sidewalk, we now have sidewalk along Wynne Avenue from Sportsman to the Forest Service Property. As such, staff believes it is important for the applicant to install sidewalk and curb/gutter on his property.

Therefore, the request to not install sidewalk and curb/gutter appears to be contrary to the public interest.

In regards to the request to pave the approach into the property in lieu of not installing the four paved parking spaces, staff would recommend approval of the applicant's request. Currently, the approach into the property and the yard area is dirt. A paved approach will help to prevent the applicant's vehicles and equipment from dragging dirt and mud onto Wynne Avenue. It will be important for the applicant to work with the Butte-Silver Bow Public Works Department on the location and design of the approach.

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

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

The property does not exhibit any unique condition that would provide a hardship.

Subcriteria Number One states that the land cannot secure a "reasonable return" if the land is restricted to only those uses permitted outright in that zone. As previously stated, a contractor's storage yard is a permitted use within the "M-1" zone. The applicant has indicated that the property has been utilized for his construction business for the past eight years.

This area contains a mixture of uses from residential to heavy industrial. The two junk yard/salvage operations have been eyesores for years. While this may be a deterrent to attracting commercial business, the "C-2" zone allows approximately 70 different uses.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. As noted above, the property has been operating a contractor's business for a number of years. The applicant is proposing to construct a new storage building.

Warehouses/storage buildings are a permitted use within the "C-2" zone. Likewise, given the mixed use nature of the neighborhood, it would not appear that the proposed use would alter its character. However, the adjacent owners must be assured that the facility will be operated in an orderly manner and particularly, that the construction yard area will be screened from view.

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

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

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

One of staff's concerns is that the property is traversed by the Sand Creek Floodway. It is imperative that the applicant's operation is not located in or near the floodway, including but not limited to the outside storage area. Prior to the construction of any new buildings or the creation of the outside storage area, the applicant shall supply the Planning Department with evidence that the operation will not encroach into the designated floodplain.

The other concern is that the yard will not negatively impact the adjacent property owners. If the yard is

maintained and the outside storage is screened from view, this should help to minimize any negative impacts.

If the applicant agrees to the conditions stated below, a contractor yard may be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above analysis, staff believes that this use variance would not disrupt the character of the neighborhood or be contrary to the spirit of the Zoning Ordinance. In regards to the two requested variances, staff would recommend denial of the request to not install sidewalk and curb/gutter adjacent to Wynne Avenue and approval of the request to install a paved approach in lieu of installing off-street parking spaces.

Therefore, staff would recommend approval of Use Variance Application #15271, provided the following conditions are met:

1. The applicant shall install a six foot (6') screened (privacy) fence around any and all area within the applicant's property to be used for outside storage or propose an equivalent means to buffer the outside storage use from adjoining properties. Any unscreened outside storage of construction yard equipment and/or materials is prohibited.
2. Prior to receiving an excavation permit, the applicant shall submit an engineering plan and analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte Silver Bow Municipal

Storm Water Engineering Standards and receive a Storm Water Management Permit.

3. Prior to the issuance of a building permit, the applicant shall submit to the Butte-Silver Bow Public Works Road Division for review and approval a detailed engineering plan (including asphalt paving) of the improvements to the driveway approach. The applicant shall submit a cost estimate for the installation of the approved approach.

This cost estimate will be used as the paving bond plus ten percent (10%) to secure the installation of the above approach.

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

4. Prior to receiving a building permit, the applicant shall install new curb/gutter and sidewalk adjacent to Wynne Avenue, per the requirements of Section 17.38.050. Prior to receiving an excavation permit, the applicant shall submit a detailed sidewalk plan to the Butte-Silver Bow Public Works Department for review and secure written approval. At a minimum, the design shall meet the Americans with Disabilities Act. The applicant shall submit a cost estimate for materials and installation of the approved curb/gutter and sidewalks from a licensed contractor.

This cost estimate will be used as the sidewalk bond plus ten percent (10%) to secure the installation of the above stated curb/gutter and sidewalks.

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

5. Prior to the issuance of a building permit, the applicant shall submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC.

The applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the approved landscaping plan. 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 landscaping bond 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.

6. Prior to receiving a sign permit, the agent shall submit to the Planning Office for review and approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for the "C-2" zone.
7. The applicant shall maintain the unimproved portion of the property and keep it devoid of weeds.
8. The applicant shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to:

storm water discharge construction permit from Montana Department of Environmental Quality (MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.

9. Any future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.

Longfellow St

Wythe Ave

6' Privacy Fence

40' x 60' Shop
Phase 2

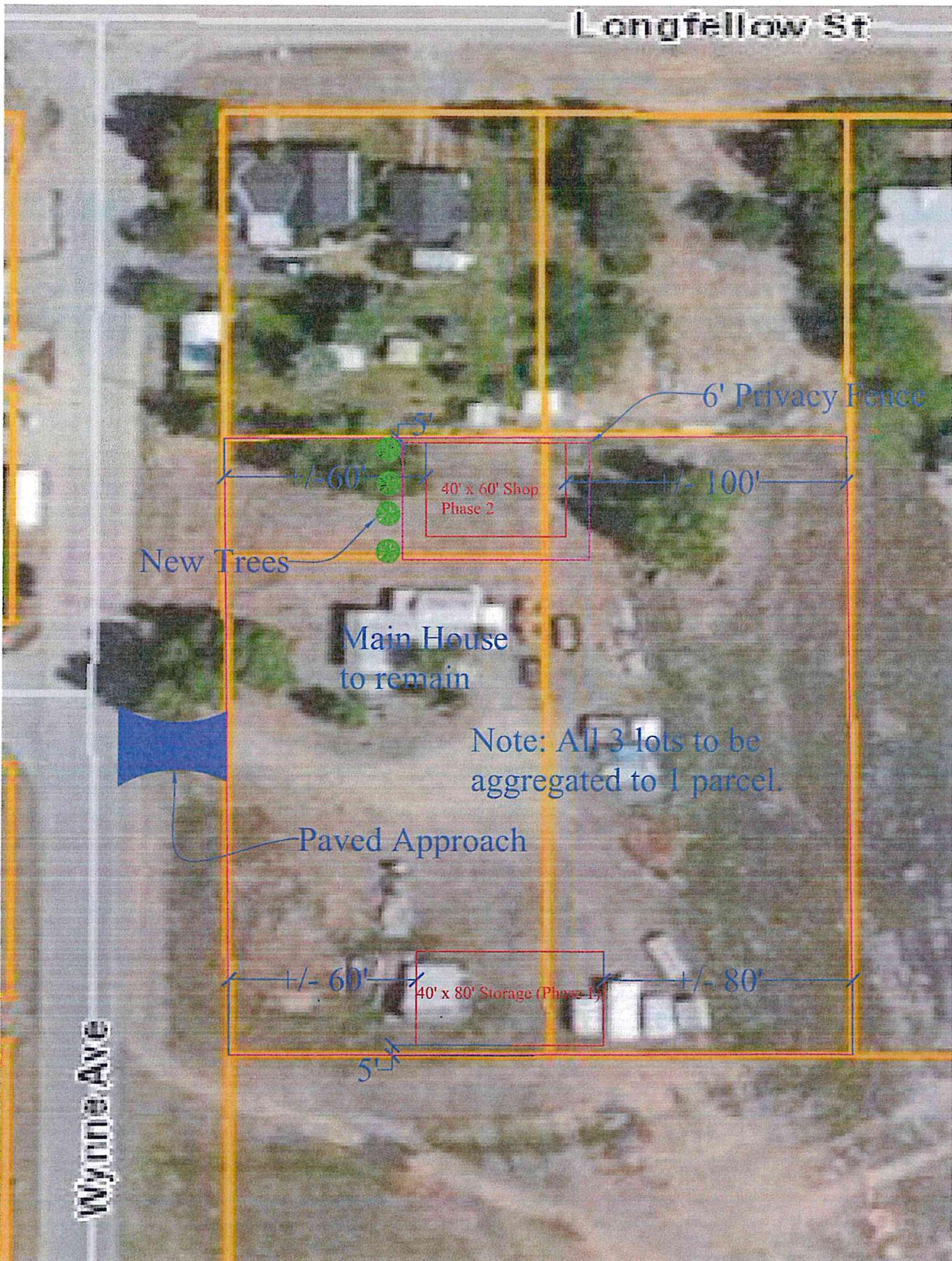
New Trees

Main House
to remain

Note: All 3 lots to be
aggregated to 1 parcel.

Paved Approach

40' x 80' Storage (Phase 1)



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

ITEM: Variance Application #15273 - An application for a variance to increase the height of a chain-link fence in the rear yard to eight feet (8') and to place three strands of barbed wire around the top of the chain-link fence in a residential zone, varying from the requirements of Section 17.36.042, Fence Height-Residential Zone and Section 17.36.047, Barbed Wire Fences-Residential Zone, of the BSBMC.

APPLICANT: Seven-Up Bottling Company of Butte, c/o Chad Godbout 520 Cobban Street, Butte, Montana, owner.

TIME/DATE: Thursday, October 20, 2016 at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

**VICINITY
MAP:**



LOCATION/

DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1 through 20, inclusive, Block 17 of the Gallatin Addition, and the vacated alley between Cobban and Majors Street and the east half of vacated Delaware Street between Cobban and Majors, Butte, MT.

PROPOSAL: The applicant is proposing to erect an eight foot (8') tall chain-link fence along the perimeter of their rear yard. The fence would extend southerly from the southwest corner of their building to the rear (south) property boundary, then easterly along the south property line and then north to the southeast corner of the building along Maryland Avenue. The applicant is requesting to construct the fence for security purposes. Their business vehicles are stored in the rear yard and they have had vandalism and property theft.

**STAFF
FINDINGS:**

The Butte-Silver Bow Municipal Code Section 17.36.042, Fence Height-Residential Zone prohibits chain-link fences from being over six feet (6') tall in the designated rear yard and Section 17.36.047, Barbed Wire Fences-Residential Zone 17.3648.040, Buildings and Structures, prohibits barbed wire fences in residential zones.

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

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

Staff will deal with the two issues separately. First, the overall height of fences in residential zones must satisfy

three purposes – (1) Allow residents to control access to their property, (2) provide for the site vision needs of neighboring residents, and (3) contribute to the aesthetics of the neighborhood and the community.

The main objective for limiting the maximum height of residential fences in the rear yard is to provide privacy while still maintaining a sense of communal living. Fences that are taller in height can have the opposite effect. Higher fences are generally found around commercial or industrial type uses.

The applicant is proposing to construct an eight foot (8') tall fence in what is designated as the rear yard to provide security to their property and vehicles. The property was built for and is utilized for commercial purposes (Mile High Beverages). The facility is considered a legal non-conforming use in a residential zone.

Fence heights within a commercial zone may be increased to a height of eight feet (8') upon the decision of the Zoning Officer, provided the vision clearance triangle is maintained.

In that regard, the west side of the property is adjacent to Marchie's Nursery, a legal nonconforming commercial property. Along the south property boundary is the extension of Majors Street. Majors Street, in this particular block, is unimproved and is used by a private owner to access his garage and occasionally by Butte-Silver Bow staff to maintain the walking trail. This fence is proposed to be located within the vision clearance triangle of Majors and Maryland Avenue. Along the east property line there will be a gate between the building and the south property line fence. The gate will be located within the vision clearance triangle of the driveway approach and Maryland Avenue. Although there will be two locations in which the

fence will be located within the vision clearance triangle, the applicant is not proposing to screen the chain-link fence. As such, there should still be adequate vision through the chain-link to see oncoming traffic or pedestrians.

Based on the above discussion, staff does not believe that the eight foot (8') tall fence in the rear yard is contrary to the public interest.

As for barbed wire fences or barbed wire located on top of a fence not being permitted in residential zones, there appears to be two main objectives. First, barbed wire gives a property the appearance that it is being used for a commercial or industrial purpose. Second, barbed wire is dangerous, especially to children living in residential zones. As stated above, the property is a legal nonconforming commercial use. In addition the Growth Policy has designated this area as commercial. Fences with barbed wire are allowed within commercial zones.

As for the danger to children living in the area, the barbed wire in this case will be located above where most children can reach. Subsequently, staff believes that the three strands of barbed wire located on top of the fence may 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.

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.

The property does not provide for any hardship associated with a condition unique to the property. The property exceeds the minimum lot area standards for residential use.

However, the property was developed for the operation of a commercial facility. Commercial facilities are allowed to have outside storage that is associated with the operation of the business. It is reasonable for a commercial operation to need to provide fencing that provides security of the yard.

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

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

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

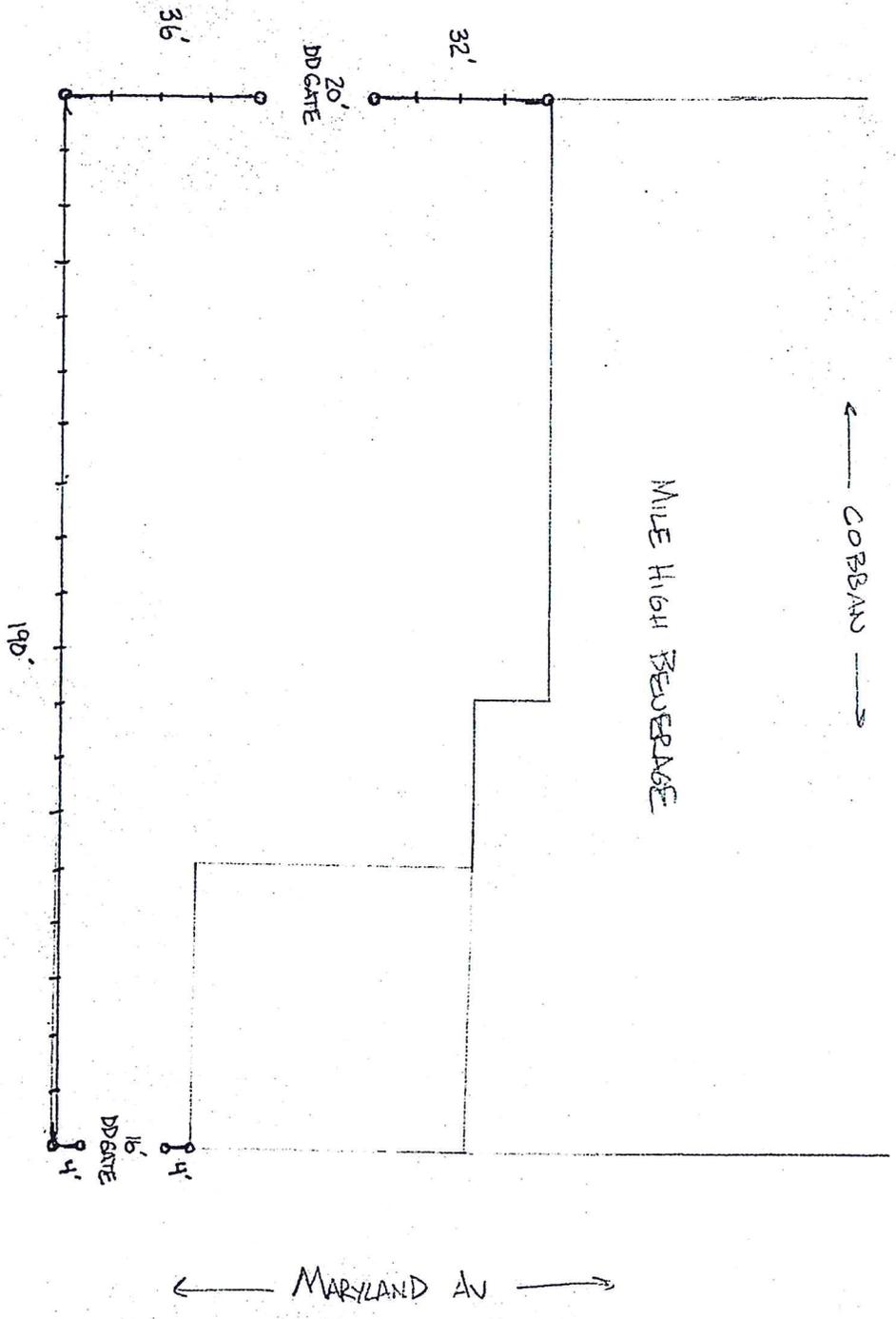
In 1995 the Planning Board and the Council of Commissioners recognized that the highest and best use of this area in the future was not residential anymore. As such, the Growth Policy designation for the area west of Maryland Avenue and north of Cobban Street was changed to Commercial in 1995. Therefore, the proposed fence does comply with the provisions of the Growth Policy.

As previously stated, the primary safety concern of the construction of the fence is the vision clearance triangles. As stated previously, the applicant is not proposing to screen the fences. As such, the vision clearance triangles should not be significantly impeded by an open chain-link fence.

Therefore, the applicant's request to install an eight foot (8') fence with three strands of barbed wire does not appear to be contrary to the spirit of the Zoning Ordinance.

CONCLUSION: Based on the above analysis, staff believes that the Zoning Board of Adjustment should approve the eight foot (8') tall chain-link fence with three strands of barbed wire, provided the following condition is met:

1. The applicant will be required to purchase a building permit for an eight foot (8') tall fence.



- 8' 9GA CHAINLINK w/ BARB WIRE
- 4" x 13' x SSHD GATE POSTS
- 2 7/8" x 13' x SSHD END / CORNER POSTS
- 2 3/8" x 13' x SSHD LINE POSTS
- 1 5/8" x SSHD TOP RAIL

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

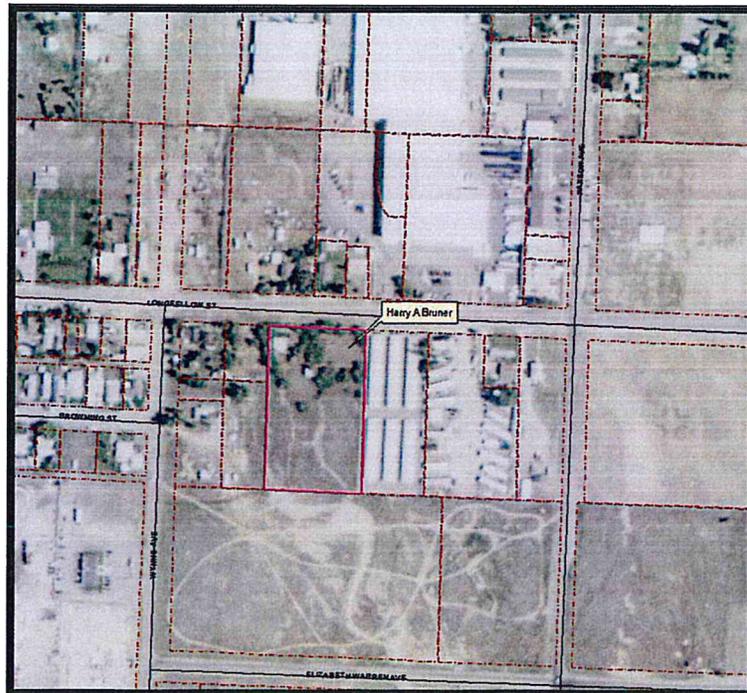
ITEM: Variance Application #15274 - Amendment to Condition of Use Variance Permit #14925 - An application to not install privacy slats for screening along the west property boundary of the storage yard, amending the provisions of Condition No. 1 that requires a six foot (6') tall privacy fence along the north, south and west property boundaries to buffer the outside storage use from adjoining properties.

APPLICANT: Harry A. Bruner, 1373 Sesame Street, Butte, Montana, owner.

DATE/TIME: Thursday, October 20, 2016, at 5:30 P.M. in the Council Chambers, Third Floor, Room 312 of the Butte-Silver Bow Courthouse.

REPORTED BY: Jon C. Sesso, Planning Director

**VICINITY
MAP:**



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone, legally described as a portion of the West 141' of Lot 24 and all of Lot 54, Section 31, T3N, R7W of the City and County of Butte-Silver Bow, State of Montana, commonly known as 1720 Longfellow Street, Butte, Montana.

PROPOSAL/

HISTORY:

Mr. Bruner applied for a use variance in November of 2015. Use Variance Application #14925 was reviewed by the Zoning Board of Adjustment (Board) on November 19, 2015. After hearing public testimony for and against the proposed use of the property, the Board approved Use Variance Application #14925 with eleven conditions of approval. Those conditions are:

1. Prior to the issuance of a business license, the applicant shall install a six foot (6') tall privacy fence along the north (entrance), south and west property boundaries or propose an equivalent means to buffer the outside storage use from adjoining properties.
2. Prior to the issuance of a business license, the applicant will remove all junk motor vehicles, automotive components and any other debris from the interior of the property. The property will be inspected and approved by the Butte-Silver Bow Community Enrichment Department prior to the issuance of a business license.
3. Prior to receiving a business license, the applicant must receive approval from the Butte-Silver Bow Public Works Department for an ingress/egress approach accessing Longfellow Street.
4. Prior to receiving a business license, the applicant shall apply a gravel surface to the storage area and an asphalt driveway abutting Longfellow Street at

the entrance to the facility to ensure that mud is not tracked onto any public right-of-ways.

5. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.
6. In order to reduce the potential negative impact of on-site lighting on any nearby residences, all lighting must be designed as low glare, no more than sixteen feet (16') high and have directional features to contain light on the property.
7. There shall be absolutely NO outside storage of junk vehicles, as defined by the State of Montana, or automotive components allowed on the property.
8. All vehicles must be lawfully and validly licensed.
9. The applicant shall prepare and submit an operations plan for the facility. At a minimum, the plan shall stipulate the hours of operation, the number of vehicles to be stored, the requirements for registration and license of all vehicles stored and related enforcement rules. Any future business expansions beyond the stated operations plan or changes in business will require further review by the Zoning Board of Adjustment.
10. Prior to receiving a business license, the applicant shall submit an engineering plan and analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit.

11. Prior to receiving a business license, the applicant shall submit a weed management plan to the B-SB Weed Board for review and approval.

At this time, the applicant is requesting that Condition No. 1 be amended to not require screening (privacy slats) on the west side of his storage yard.

STAFF FINDINGS: The applicant is asserting that due to the elevation change between the western portion of his property and his neighbor's property, a fence with the privacy slats will not provide an effective screen between the properties. Essentially, the top of the six foot (6') high fence is about the same elevation and grade as the neighbor's property to the west. The grade change is even more pronounced due to the gully between the two properties, known as the Sand Creek Floodway.

The issue before the Zoning Board of Adjustment is whether allowing the applicant to not install screening on the west side of the storage yard will result in greater and unreasonable impacts on the adjoining property owner than if it was effectively screened.

In evaluating the applicant's amendment request, it is important to note that the adjoining property owner to the west is Tobiness Properties, who also has a pending application before the Zoning Board of Adjustment (October 20, 2016 meeting) – for a use variance to permit a contractor's storage yard on his property. To the extent that Tobiness' application is approved, particularly with a condition to screen outside storage of any equipment and materials, it would be reasonable to surmise that the privacy slats in the fence on the west border of the applicant's (Bruner) property, given the elevation change between the properties, would serve no purpose and should not be required.

It is also important to note that the applicant has been diligently working on fulfilling the remaining ten conditions

of his use variance. The applicant has completed a storm water permit, removed the majority of the debris from the property, installed the boundary fences and purchased the privacy slats, ordered the additional landscaping for the north property boundary, and scheduled the paving for the driveway approach off Longfellow to the storage facility.

CONCLUSION: Based on the above discussion, staff believes that the requested amendment to not install screening on the west side (only) of the storage yard is consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property and does not present an undue burden on the adjoining owner to the west.

Therefore, staff would recommend approval of the proposed amendment to Condition No. 1.

LONGFELLOW ST

West Side Storage

Victory Storage

Ref Ref Dump

Contractor Storage Area
+ Tractor Storage

Storage of
Auto Cars
Trucks & Trailers

BROWNING ST

WYNNIE AVE

