

2017

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

**Thursday, February 16, 2017, at 5:30 P.M.
Council Chambers – Third Floor – Room 312**

- I. Call to Order.
- II. Approval of the Minutes of the meeting of January 12, 2017.
- III. Hearing of Cases, Appeals and Reports:

Use Variance Application #15345 - An application for a use variance by Katie C & Ray Nichols and Frank Butori, owners, and Kirsten & Brian Martin, agents, to construct a luxury pet boarding facility for daycare, overnight boarding and grooming in a commercial zone, varying from the requirements of Section 17.24.020, Permitted Uses, of the BSBMC. Both properties are located in a "C-2" (Community Commercial) zone. The Nichols' property is legally described as Lots 2 and 4 of the Nichols Minor Subdivision, Section 31, Township 03 North, Range 07 West, commonly known as 40 Sportsman's Way, Butte, Montana. The Butori property is legally described as a portion of the Southeast ¼ of Section 31, Township 03 North, Range 07 West, P.M.M. known as Lots 39 and 55, commonly located on the southwest corner of Paxson Avenue and Sportsman's Way, Butte, Montana.

Use Variance Application #15351 - An application for a use variance by James Jozovich, owner, to construct a single family house on a parcel located in a commercial zone that does not allow single family dwellings as a permitted use, varying from the requirements of Section 17.24.020, accessory uses, of the BSBMC. The property is located in the "C-2" (Community Commercial) zone, legally described as the East 70' of the North 70' of Tract 9, Subdivision 2, Section 6, Township 02 North, Range 07 West, P.M.M. commonly known as 4043 Paxson Avenue, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

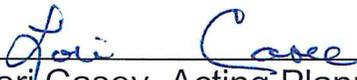
(Page 2)

Variance Application #15358 - An application for a variance by James E. Ayers, owner, to construct a second detached garage (28'W X 36'D) on a parcel of record that already contains one detached garage, varying from the requirements of Section 17.35.100 (B-2), accessory uses, of the BSBMC. The property is located in the Ramsay "RR-1" (One Family Residence) zone, legally described as Lot 18, Block 2 of the Ramsay Townsite, commonly known as 13 Laird Street, Ramsay, Montana.

IV. Other Business.

V. Adjournment.

By:



Lori Casey, Acting Planning Director

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

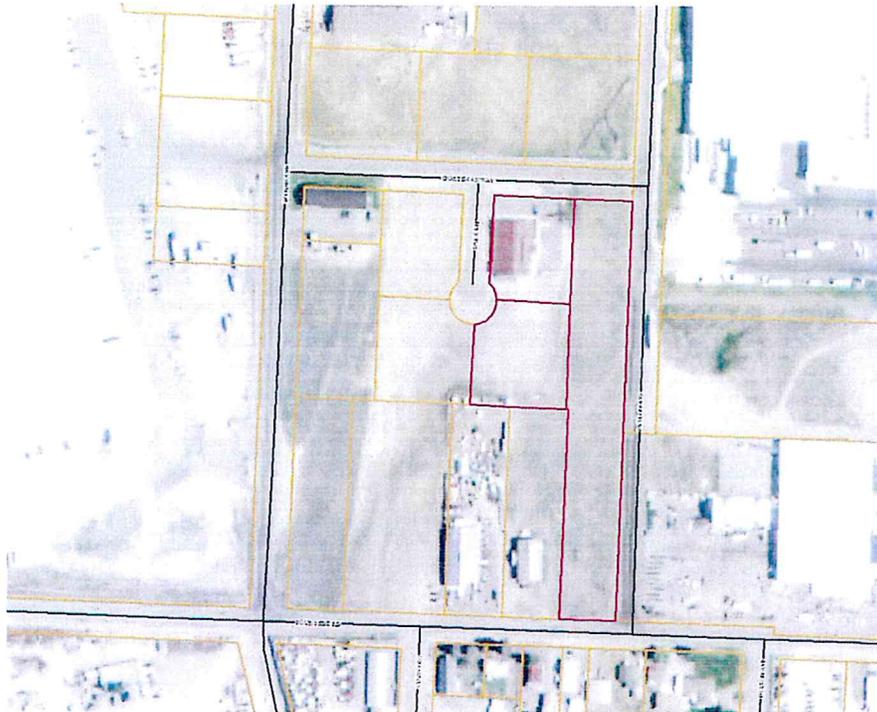
ITEM: Use Variance Application #15345 - An application for a use variance to construct a luxury pet boarding facility in the "C-2" zone, varying from the requirements of Section 17.24.020, Permitted Uses, of the BSBMC.

APPLICANT: Frank Butori, 1811 Four Mile View Road, Butte, Montana, and Ray and Katie Nichols, 221 Hickory Drive, Butte, Montana, owners, and Kirsten & Brian Martin, PO Box 2894 Pocatello, Idaho, agents.

TIME/DATE: Thursday, February 16, 2017, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana.

REPORT BY: Ernie Saracki, Land Use Planner

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone. The Nichols' property is legally described as Lots 2 and 4 of the Nichols Minor Subdivision, Section 31, Township 03 North, Range 07 West, commonly known as 40 Sportsman's Way, Butte, Montana. The Butori property is legally described as a portion of the Southeast ¼ of Section 31, Township 03 North, Range 07 West, P.M.M. known as Lot 39, commonly located on the southwest corner of Paxson Avenue and Sportsman Way, Butte, Montana.

PROPOSAL: The applicants are proposing to construct a luxury pet boarding facility for daycare, overnight boarding and grooming. The proposal is to have 48 animal kennels of various sizes (depending on size of animal and service level selected – i.e. – "V.I.P." service would be a 55 sq. ft. kennel for one animal). At full capacity, the facility could accommodate approximately 175 domestic animals (i.e. – dogs and cats). The hours for pickup and drop off would be 7:00 a.m. to 7:00 p.m. seven days a week. All overnight boarding would be done in the inside of a structure that currently houses a sporting goods store and an archery range. The operation is not proposing outdoor dog runs at this time, instead there would be supervised playtime outside in a 72' X 40' fenced yard. In addition to the daycare and boarding, the facility will offer both professional and self-grooming services.

Neither the applicants, nor any employees of the business, will be residing on the premises. The applicants have indicated to staff that there will not be supervision of the animals overnight. They anticipate that the last evening let out time would be at approximately 9:00 p.m.

STAFF

FINDINGS:

The Butte-Silver Bow Municipal Code, Section 17.24.020, and Section 17.24.040, Permitted Uses and Conditional Uses, do not list Class One and Class Three kennels as a permitted or conditional use in the "C-2" zone. Therefore, since a luxury pet boarding facility is not permitted within this zoning classification, this request for a use variance from the Zoning Board of Adjustment is required.

Typically, in use variance applications, the requirements of the corresponding "zone" that the proposed use is permitted in are applied as conditions of approval. Pet boarding facilities are permitted uses within the "M-1" (Light Industrial) and the "M-2" (Heavy Industrial) zones.

In addition, the pet boarding facility would be required to obtain a kennel license. Kennel licenses require the applicants to address all Butte-Silver Bow Community Enrichment/Animal Service Department requirements relating to the operation of a kennel including meeting the requirements of Section 6.08.030 of the Butte-Silver Bow Municipal Code.

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 sub-criteria 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 sub-criteria used in evaluating use variance cases requires that the applicants prove that the proposed use will not alter the essential character of the neighborhood in which it is located. The applicants must show that the proposed use will not "practically destroy or greatly decrease the value of a parcel", nor will the use

involve elements which make it unwelcome in the neighborhood.

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

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

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

In this particular case, the property in question is located in a "C-2" zone. As stated above, Class One kennels are not a permitted use within the "C-2" zone.

If the applicants' use variance application is approved, they would be purchasing approximately 2.4 acres on two lots from Ray and Katie Nichols (owners of Lots 2 and 4) and from Frank Butori (owner of Lot 39). This property would be approximately 260' in width on the north property line along Sportsman Way and 300' in width on the south property line and approximately 400' in length. The properties in the immediate area are a mixture of warehouses, automotive repair businesses, residential and undeveloped land. To the east of the parcel across Paxson Avenue is the parking lot for Wal-Mart and an undeveloped parcel, to the west across Spike Lane is an undeveloped parcel, directly

north across Sportsman Way is one parcel in the process of being developed as a shop/warehouse/office facility (site plans have been submitted to B-SB Planning and Zoning) and two multi-family residential four-plexes (a permitted use in a "C-2" zoning designation) and, directly to the south, is an automobile body shop and one single family residence. All of the surrounding properties are zoned as "C-2" and the Growth Policy (future land use) classification for this general area is commercial.

Section 6.08.030 requires the parcel size to be a minimum of two (2) acres and all facilities associated with the kennel to be a minimum of one hundred feet (100') from any property line. The applicants' proposed parcel of 2.4 acres exceeds the minimum requirement. The existing building does not appear to meet this required one hundred foot (100') setback distance from the west property line nor from the north property line. However, the applicants are actively working with the Butte-Silver Bow Community Enrichment/Animal Service Department to obtain a solution to this deficiency.

Meeting setback requirements helps mitigate potential impacts on neighboring properties but other measures may be necessary to address negative impacts associated with any pet boarding facility. For example, an increase in noise from barking dogs. In this case, the applicants have stated that the boarding of the animals would be wholly inside the existing building and that the existing building does have noise insulation already installed. The boarded animals would have supervised playtime outside. The applicants did indicate in their application that the play yard hours would be from 7:00 AM to 7:00 PM. That being said, the supervision of the animals when

they are outside should allow for immediate response to reduce and mitigate any noise from the dogs barking. Someone would be available to bring the barking animals back inside or separate the animals, as needed. According to plans submitted by the applicants, the play yard will be fenced with a six foot (6') privacy fence to help reduce noise.

Another potential negative impact is animal waste, especially if not removed in a timely manner. Due to the number of dogs/cats that may be on the property, there is the potential for large accumulations of waste material on the property. Unfortunately, the removal of animal waste can be especially difficult in the winter as frozen, snow-covered ground makes it difficult to remove waste. If dog waste is left to accumulate until spring, it can result in an odor problem. Planning staff feels that cleanup of dog waste should be undertaken on a daily basis. It is important for the Board to know that if this use variance is approved and the applicants are issued a kennel license, the Community Enrichment/Animal Service Department will inspect the property, at a minimum, on a yearly basis and also respond to any complaints from neighbors.

Based on the above discussion, it would appear that the establishment of the proposed doggie daycare and overnight kennel 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.

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique

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

There does not appear to be any unique topographical features or geological traits associated with the applicants' property that would prevent the utilization of the land for uses permitted outright in the "C-2" zone.

"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 stated previously, the property is located within the "C-2" zoning district, therefore, there are a number of permitted uses that may be considered appropriate for the property, including the properties' existing use. As such, it is difficult for staff to make a determination that the property cannot secure a reasonable return from being utilized for a permitted use.

"Subcriteria Number Two" states that the proposed use will not alter the character of the neighborhood in which it is located. The applicants' proposed use will take place primarily in an existing building and Planning staff feels that this proposed use would appear to have a commercial character to it. In addition, staff feels that the level of impact that this proposed use would create is not much different than existing businesses that surround the property (such as automotive and "big-box" retail). Staff feels that it is reasonable to conclude that the character of the neighborhood would not be negatively altered by

permitting an existing structure for use as a pet boarding facility.

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

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

Public health, safety and general welfare must be protected and weighed against the rights of the 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.

While the outdoor facilities of the proposed use appear to be placed in such a location that any potential negative impacts would affect the applicants to a greater extent than neighboring properties, as stated above the applicants' building currently does not meet the one hundred foot (100') setback from all property lines that is required in Section 6.08.030. Again, the applicants are working with the Butte-Silver Bow Community Enrichment/Animal Service Department to arrange a solution to be found for this situation. That being said, it is important to note that the setback to the north has a sixty foot (60') public roadway (Sportsman Way) between the applicants' property and the neighboring properties. In regard to the west setback, there is also a public street (Spike Lane) between the applicant's property and the property to the west. In addition, the owner of the subject property also owns the property to the west. If and when a solution is reached where Community

Enrichment/Animal Service Department feels the arrangement will mitigate the potential negative impacts that a boarding facility may have on neighboring property owners, then Planning staff feels that if the property is developed to the standards of the Zoning Ordinance, then public health and safety should not be a concern.

As noted above, the Community Enrichment/Animal Services Department will review the site plan and operating procedures to ensure that the facility would be operated to their requirements, e.g., daily cleanup of animal wastes. Kennels are licensed on a yearly basis and inspected at least one time per year. In addition, that department will respond to any and all complaints.

If the applicants agree to all of the conditions of approval, staff would conclude that approval of the requested use variance would be in the spirit of the Zoning Ordinance and ensure substantial justice is observed.

CONCLUSION: Based on the above analysis, this use variance may not be contrary to public interest and may not be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

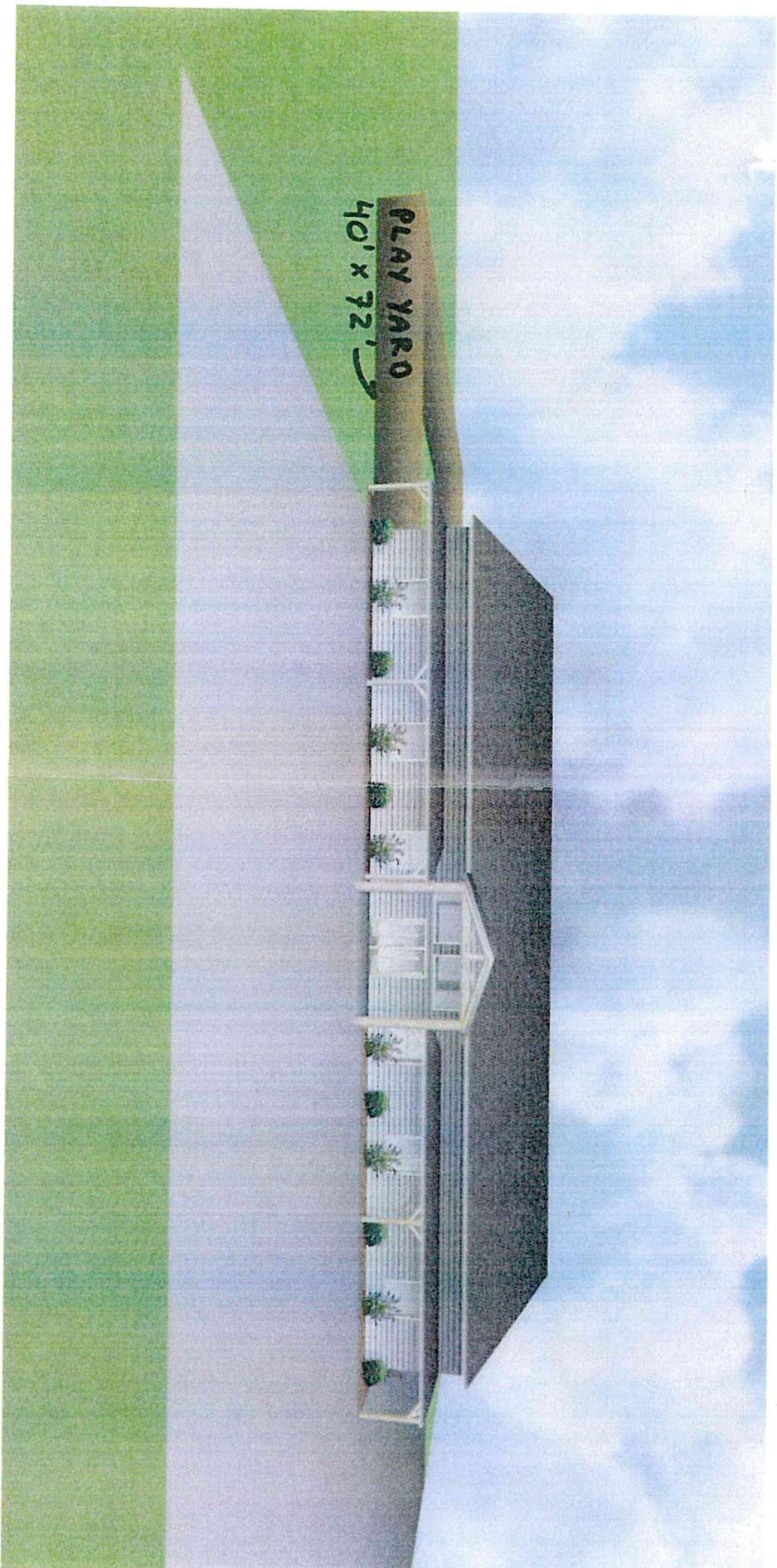
Therefore, staff would recommend approval of Use Variance Application #15345 with the following conditions:

1. The applicants will be limited to the business as stated and approved. Pickup and drop off shall be limited to the hours of 7:00 a.m. to 7:00 p.m. All overnight boarding must be inside the building. Any future business expansions or changes in business

will require further review and approval by the Zoning Board of Adjustment.

2. A building permit from the Butte-Silver Bow Building Official must be obtained for any interior alterations to the existing structure. Any electrical work must be permitted and inspected by the Butte-Silver Bow Electrical Inspector. The electrical permit must be purchased and the electrical service be installed by a licensed electrician.
3. Prior to receiving a business license, the owners/applicants shall file a Certificate of Survey with the B-SB Clerk and Recorder that creates one legal 2.4 acre parcel for this development.
4. Prior to receiving a business license, the applicants shall obtain a Butte-Silver Bow kennel license, fulfilling all requirements of this use variance and Section 6.08.030 of the Butte Silver Bow Municipal Code. The applicants will abide by all rules and regulations of Title 6, Chapter 6.08 and any violation of these rules and regulations will result in the immediate revocation of this use variance. The kennel license must be kept current for the duration of the business.
5. Prior to receiving a business license, the applicants shall make arrangements to screen the garbage area, including receptacles, according to the Butte-Silver Bow Municipal Code, Section 17.38.054 (Screening Waste Material). Special attention shall also be made to ensure animal waste is disposed of on a regular basis.
6. Prior to receiving any sign permits, the applicants shall submit to the Planning Office for review and

approval, a detailed sign plan and drawings.



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

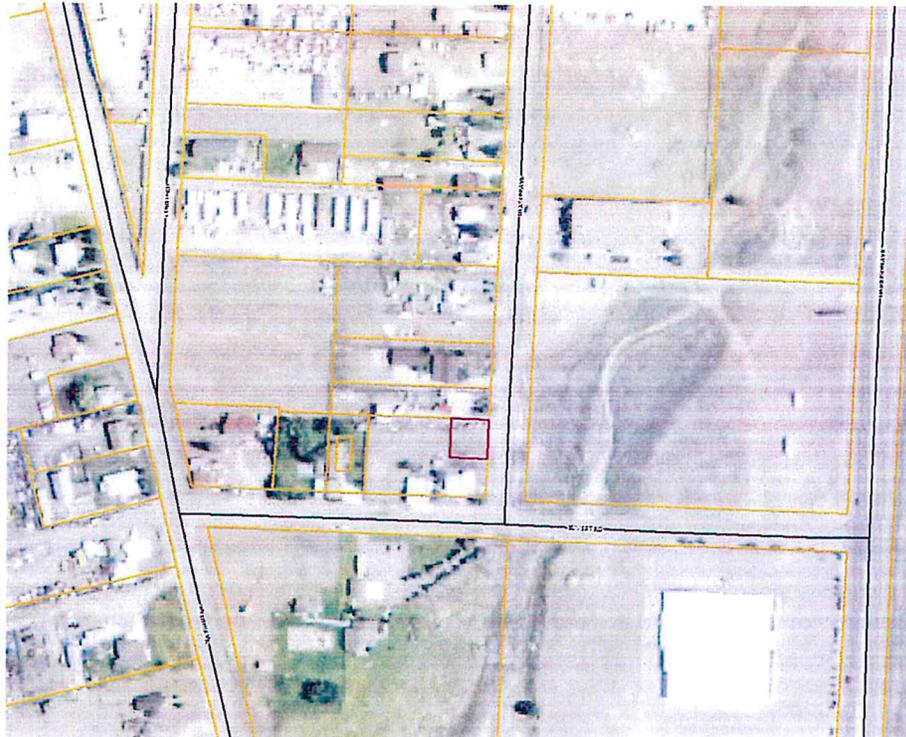
ITEM: Use Variance Application #15351 - An application for a use variance to locate a single family house in a commercial zone, varying from the requirements of Section 17.24.020, Permitted Uses, of the BSBMC.

APPLICANT: James Jozovich, 4029 Wynne Avenue, Butte, Montana, owner.

DATE/TIME: Thursday, February 16, 2017, at 5:30 p.m., in the Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Ernie Saracki, Land Use Planner

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone, legally described as the East 70' of the North 70' of Tract 9, Subdivision 2, Section 6, Township 02 North, Range 07 West, P.M.M. commonly known as 4043 Paxson Avenue, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a single family dwelling on a vacant property (70' W x 70' D) parcel in a "C-2" (Community Commercial) zone.

STAFF

FINDINGS: The applicant is requesting a use variance to construct a single family house on this site. Butte-Silver Bow Municipal Code, Section 17.24.020, lists the permitted uses within the "C-2" zone. The applicant's request to establish a single family residence is not a permitted use within this zoning classification, therefore, a use variance from 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 applicant must prove, under the first subcriteria, that the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone.

The second subcriteria used in evaluating use variance cases requires that the applicant 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.

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

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

The public's interest in segregating land uses such as residential and commercial is to prevent the intensity and development patterns of one type of zoning from adversely affecting the surrounding land uses of another type. Therefore, zoning districts are established to separate uses that conflict with each other and to integrate and group uses that are compatible. While most people only consider the impacts that commercial uses will have on residential zones, residences located in commercial zones can also have negative impacts on surrounding commercial operations.

In this particular instance, the requested variance would permit the establishment of a legal nonconforming use in a commercial zone and the Board must determine whether the establishment of another residence in this area would be detrimental to the development of this block for permitted commercial uses. Allowing an additional residence to go into this area would increase the nonconformity of this block.

In this case, the existing nonconforming residential land uses located on this block are inconsistent with the commercial zoning designation. It should be noted, however, that the west side of the 4000 block of Paxson Avenue between Four Mile View Road and Sunset Road consists entirely of nonconforming residences. In addition, this block of Paxson Avenue has not witnessed new commercial growth and staff

believes that permitting one additional nonconforming residence would most likely not impact any future growth of commercial uses in this block.

While staff realizes that the Zoning Ordinance is designed to phase out nonconforming uses, not to perpetuate them, staff also realizes that the proposed use is, on the surface, inconsistent with the intent of the Zoning Ordinance to separate residential and commercial uses and the fact remains that the closest parcel that engages in a permitted use in the "C-2" zone is well over 160 feet away from the edge of the subject parcel.

Planning staff believes that if commercial activity (i.e. – permitted uses under Section 17.24.020) has not yet "caught on" in a specific area that has a zoning designation for it, that it is not the duty of the Planning and Zoning Departments to create commercial activity in that area. Staff has determined that placing a single family dwelling on the subject parcel would not be contrary to the public interest.

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

Unnecessary hardship, as defined by the Montana Supreme Court, must result 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 use the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

Literally, as defined by the Montana Supreme Court, it appears there are no specific conditions associated with the land that would constitute a hardship. That being said, the parcel itself (70' W X 70' D) may be considered undersized for many commercial developments.

Staff will now address Hardship Subcriteria Number One, which states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone. At the present time, the west side of the 4000 Block of Paxson Avenue, as mentioned above, consists entirely of nonconforming residences. Also, as noted above, there has been no significant commercial development on the block in the last several years. It would appear that the interest in the applicant's property for commercial use would be decreasing and not increasing, therefore, staff feels that it is possible that a "reasonable return" may not be possible, if the land is restricted to only "C-2" zoning designation permitted uses.

Subcriteria Number Two, states that the proposed use will not alter the character of the neighborhood in which it is located. As stated above, the surrounding parcels on the west side of the 4000 block of Paxson are all nonconforming residential structures. This site is at least 180 feet away from the edge of the nearest parcel that has a permitted use for the "C-2" zone operating on it. Therefore, the applicant's request to place a single family dwelling on the property in question would not appear to alter the character of the neighborhood.

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 which may infringe on the rights of adjacent landowners and the public in general.

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

The applicant's property is surrounded on three sides by existing nonconforming residences and a large vacant parcel directly across Paxson Avenue. Again, there has not been considerable commercial investment and construction in this area in recent years. By recommending approval of this use variance, staff sees very little possibility for negative impact on the growth of commercial development on this block, as there is no existing commercial development at all on the west side of the 4000 block of Paxson Avenue. In addition, the size of the parcel (4,900 square feet) limits its potential for commercial development.

Based on the above discussion, staff feels that approval of this application would demonstrate that the spirit of the Zoning Ordinance is observed.

CONCLUSIONS: Based on the above discussion, staff recommends approval of Use Variance Application #15351, subject to the following conditions of approval:

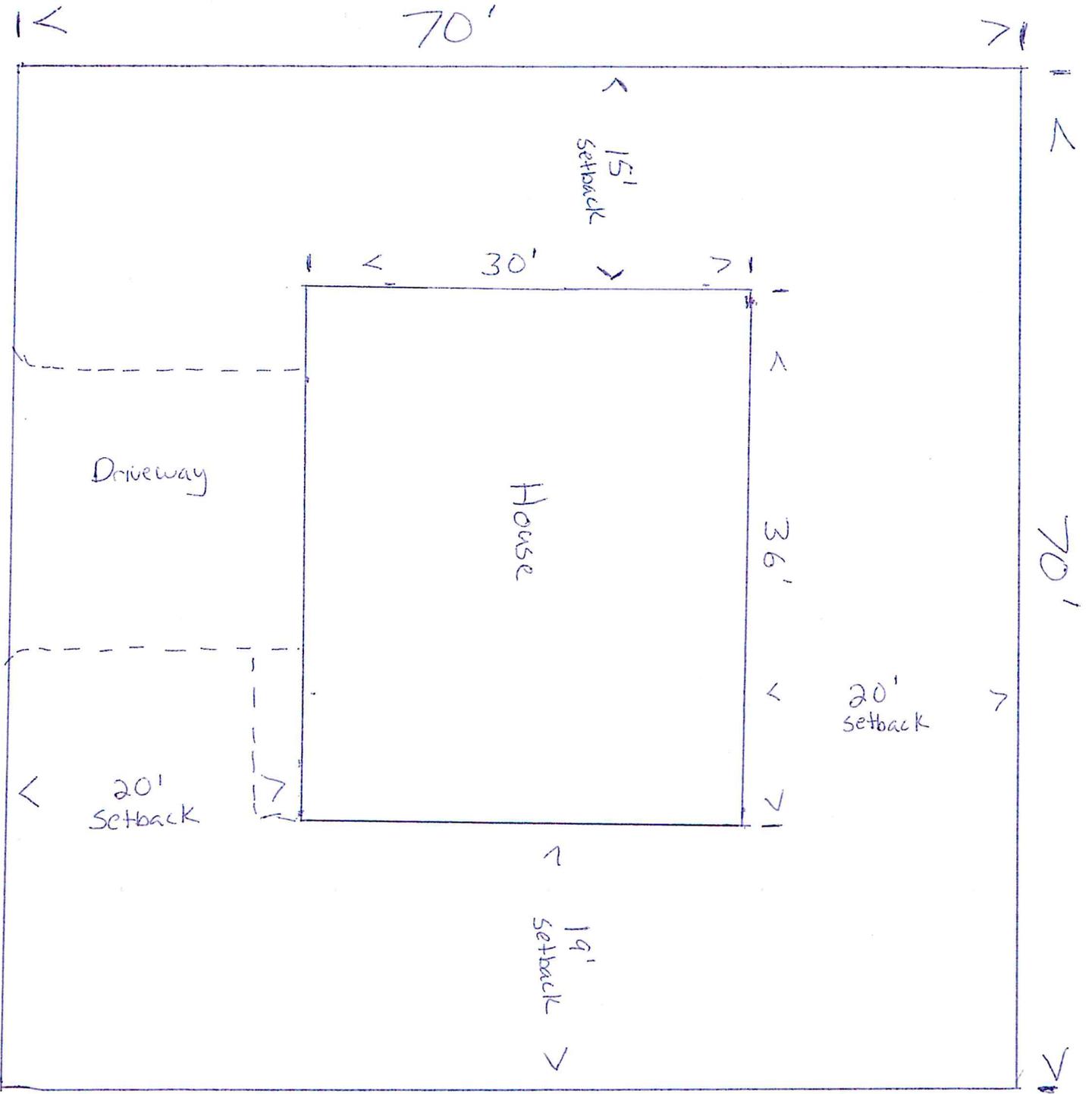
1. The applicant shall be advised that this parcel

and the surrounding parcels are zoned as commercial and, as such, should commercial properties locate nearby, they may, in the future, create noise, bright light, increased traffic flows, commercial customers and other potential nuisances that are generally incompatible with residential living.

2. An approved electrical service/wiring of the structure is required and must be permitted and inspected by the Butte-Silver Bow Building Department. If the property is not the applicant's primary residence, the electrical permit must be purchased and the electrical work be installed by a licensed electrician and also be inspected by the Butte-Silver Bow Electrical Inspector.
3. An approved plumbing service and interior plumbing is required and must be permitted and inspected by the Butte-Silver Bow Building Department. If the property is not the applicant's primary residence, the plumbing permit must be purchased and the plumbing work be installed by a licensed plumber and also be inspected by the Butte-Silver Bow Building Inspector.
4. Any future expansion of the residence must meet all setback and density requirements described for the "C-2" zone and will require further review and approval from the Zoning Board of Adjustment.
5. The applicant shall install landscaping (i.e. trees, shrubs and lawn) and shall maintain the property in a manner consistent with the

character of a residential zone.

4045 PAXSON



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

ITEM: **Variance Application #15358** - An application for a variance to construct a second detached garage (28'W x 36'D) on a parcel of record that already contains one detached garage.

APPLICANTS: James E. Ayers, 13 Laird, PO Box 196, Ramsay MT, owner.

TIME/DATE: Thursday, February 16, 2017, at 5:30 p.m., in the Council Chambers, Room 312, Third Floor, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Ernie Saracki, Land Use Planner

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in the Ramsay "RR-1" (Single Family Residence) zone, legally described as Lot 18, Block 2 of the Ramsay Townsite, commonly known as 13 Laird Street, Ramsay, Montana.

PROPOSAL: The applicant is proposing to construct a second detached garage (28'W x 36'D) on a single parcel of record, varying from the requirements of Section 17.35.100(B-2), Permitted Uses, of the BSBMC.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code Section 17.35.100(B-2), Permitted Uses, in a Ramsay "RR-1" (Single Family Residence) zone, allows for one detached private garage for each dwelling unit.

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

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

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

It is the intent of the Zoning Ordinance to protect the public interest by preventing building congestion on properties in an effort to prohibit the spread of fire (promote safety), to create uniformity within the different zoning districts and to prevent uses of land that may have a negative impact on surrounding property owners. Consequently, the Ordinance does not allow more than one detached garage per dwelling unit.

The Ordinance requires sixty feet (60') of frontage for single family residences in the Ramsay "RR-1" (Single Family Residence) zone. The applicant's property contains 15,000 square feet in area and has one hundred feet (100') of street frontage. The proposed placement of the garage meets all setback requirements for the Ramsay "RR-1" zone.

The proposed size of the garage (28' X 36') is somewhat larger than a typical sized detached garage, however, as long as the proposed garage does not exceed the maximum height restrictions listed in Table 2 in Section 17.35, then the garage should be relatively compatible with other garages in the area and should not create a negative impact on the view of adjacent property owners.

Staff feels the placing of a second detached garage on this large parcel in the location shown on the site plan does not appear to be contrary to the public interest.

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

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

The applicant's parcel size at 15,000 square feet in area is in excess of the minimum standards of the Zoning Ordinance. However, the applicant states that expanding the size of the existing garage is not possible because in addition to the existing garage sitting below the grade level of the alleyway, any expansion to the existing garage would have to cover an area of the yard that currently contains a catch basin for runoff water.

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

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

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

The proposed location of the garage complies with the setback requirements of the Zoning Ordinance. In addition, the height of the proposed garage can be no taller than permitted in the Ramsay "RR-1" (Single Family Residence) zone. Provided that setbacks and height restrictions are followed, staff sees no negative impact upon surrounding properties.

Based on the above discussion, staff believes that the construction of the proposed second detached

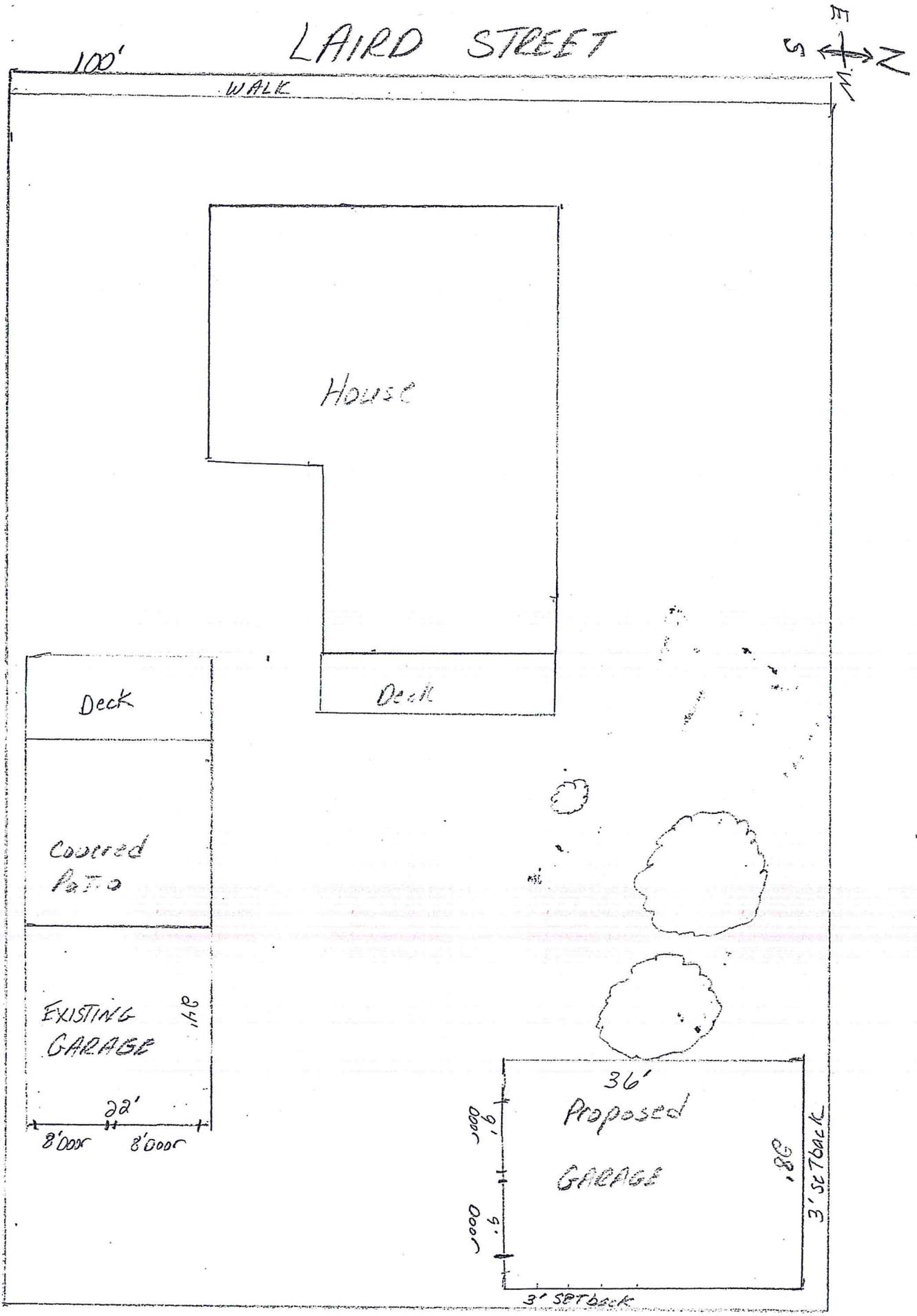
garage on this parcel would not be contrary to the spirit of the Zoning Ordinance.

The applicant's request to construct a 28'W x 36'D second detached garage appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property and does not appear to infringe upon the rights of adjoining property owners nor the public in general.

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

Therefore, staff recommends conditional approval of Variance Application #15358, provided the following conditions are met:

1. The garage must be constructed not to exceed the height requirements for detached garages as defined in the zoning regulations. As per Section 17.35, Table 2 – Accessory Structure Height Limit, Accessory structures in the “RR-1” zoning designation shall not exceed eighteen (18’) feet in height.
2. A building permit shall be obtained from the Butte-Silver Bow Building Official prior to construction of the proposed garage.



ALLEY