



Zoning Board of Adjustment

The City-County of Butte-Silver Bow Virtual Meeting October 15, 2020

5:30 P.M. Thursday

Members

- David Wing - Chair
Loren Burmeister
Todd Collins
Garrett Craig
Sylvia Cunningham
Julie Jaksha
Tyler Shaffer

AGENDA

APPLICANT OR REPRESENTATIVE MUST BE PRESENT FOR THE VIRTUAL MEETING

- I. Call to Order.
II. Approval of the Minutes of the meeting of September 10, 2020.
III. Hearing of Cases, Appeals and Reports:

The meeting may be attended virtually at https://co.silverbow.mt.us/2149/MEDIA (streaming live tab). Public comment will be heard via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website. Written comments will be accepted until 4:00 p.m. on Thursday, October 15, 2020, and maybe submitted by email to planning@bsb.mt.gov or mailed to:

BSB Planning Department
155 W. Granite Rm 108
Butte, MT 59701

Conditional Use Permit Application #16778 - An application by James Ayres, owner, and Trevor Foster, agent, for a Conditional Use Permit to locate a bar and casino in an existing building in a commercial zone, as per the requirements of Section 17.24.040 - Conditional Uses of the Butte-Silver Bow Municipal Code (BSBMC). The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 14-15 in Block 11 of the Gilman Addition, commonly located at 3150 Busch Street, Butte, Montana.

- IV. Other Business.
V. Adjournment.

BY: [Signature]
Lori Casey, Planning Director

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

**ITEM:**            Conditional Use Permit Application #16778 - An application for a conditional use permit to locate a bar and casino in an existing building in a commercial zone, as per the requirements of Section 17.24.040, Conditional Uses of the BSBMC.

**APPLICANT:**    James Ayres, 13 Laird Street, Ramsay MT, owner, and Trevor Foster, 3018 40<sup>th</sup> Street, Billings, MT, agent.

**DATE/TIME:**    Virtual Meeting, Thursday, October 15, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on September 10, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA> (streaming live tab). Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

**REPORT BY:**    Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 1-15, Block 11 of the Gilman Addition, commonly known as 3150 Busch Street, Butte, Montana.

**PROPOSAL:** The applicant is proposing to locate a restaurant with a bar and a casino in an existing building located in the "C-2" zone. The building is currently vacant but has been historically utilized as a restaurant. The applicant isn't proposing any exterior additions at this time but is proposing to remodel the interior of the building to accommodate the bar and casino, as well as a redesign of the parking lot.

**STAFF**

**FINDINGS:** The Zoning Ordinance states that a bar and casino may be allowed in a "C-2" zone by a conditional use permit granted by the Butte-Silver Bow Zoning Board of Adjustment (Board), after a public hearing and a finding that the site and proposed development does not adversely impact the surrounding area. Therefore, consideration from the Board is required.

To provide the Board with information about the proposed conditional use, the applicant has responded to the established 20 question review criteria. The applicant's responses are shown after each question. The Planning staff will, in turn, responded to the 20 review questions.

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

Applicant's Response: "The current location "Paul Bunyan's" is located a block west of Harrison Avenue. Its location is currently closed but operated as a sandwich shop providing quality food to the people of Butte and travelers through Butte."

Staff Comments: An existing building currently resides on the parcel in question. The majority of the parcel is covered by asphalt for parking. There is some landscaping on the south side of the building adjacent to McKinley Avenue. The structure itself has the characteristics of a commercial structure.

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

Applicant's Response: "Some properties surrounding the location in review are as follows:

- a. East, Arby's Restaurant, located at 3131 Harrison Avenue, Butte, MT, separated with an alley way.
- b. North, Lucky You Casino, located at 3136 Busch Street, Butte MT, separated with a cement wall.
- c. West, a residential area with two homes in close proximity, our plan would be to install a fence area consisting of either greenery or vinyl fence to assist in blocking of vehicle headlights and noise (if any) reduction.
- d. South, a multi business complex consisting of a Sally Beauty Salon, Game Stop, separated by McKinley Avenue."

Staff Comments: The character of the block the subject parcel is located on is commercial. The area to the west of the subject parcel is zoned "R-2" (Two Family Residence) and consists mainly of single family homes. The subject parcel is on the western edge of the commercial neighborhood adjacent to a residential area. There is an existing casino located directly north of the subject parcel.

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

Applicant's Response: "The seller has no actual notice of any adverse environmental condition which may affect this location."

Staff Comments: There hasn't been any substantial changes since the adoption of the Ordinance. All of the recent development in the neighborhood has been commercial in nature.

**4. Proposed fencing, screening and landscaping.**

Applicant's Response: "Proposed fencing and/or landscaping on the west side of parking lot facing Busch Street to help deter vehicle headlights protruding to the residential area."

Staff Comments: The applicant will not be increasing the size of the building, therefore, the applicant is not required by the Zoning Ordinance to install additional landscaping for new or existing site development. However, the Board has the authority under a Conditional Use application to require additional landscaping, if they believe it would be appropriate for the property in question and for the immediate area.

Staff would like to note that improved parking lot construction, with or without additional building construction, is required to meet the landscaping requirements for parking lot construction. To the extent that the parking lot is redesigned, a landscaping plan including twenty-five (25) square feet of landscaping per parking space and one (1) tree per five (5) parking spaces, appropriate buffers, as well as a three (3) foot tall fence to screen vehicle headlights will be required. Since there is existing landscaping that could meet some of these requirements, staff would be available to work with the applicant to determine how much additional landscaping and trees will be required.

**5. Proposed vegetation, topography and natural drainage.**

Applicant's Response: "Current vegetation facing south to McKinley Avenue will remain intact (trees & bushes)."

Staff Comments: The applicants shall include within the landscape plan a description (size and type) of all vegetation to be planted. It should be noted that in order for trees or shrubs to be counted towards the required landscaping, they need to meet the size requirements of Section 17.38.047 of the Butte-Silver Bow Municipal Code.

The topography of the site will not change with this development.

The applicant has not proposed to add additional impervious area to the subject parcel, storm drainage should not be affected. Depending on the extent of the parking lot redesign, the applicant may be required to submit a storm water management plan or apply for a variance, prior to any permits being issued for parking lot development or building remodel.

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

Applicant's Response: "Vehicular access will remain the same with access from both Busch Street & McKinley Street. The parking lot currently has a drive-thru access that will be removed for more spacious parking. Parking lot lines are needed to give patrons the visual on where to park. See attached."

Staff Comments: The applicant has submitted several options for a parking lot redesign and to remove the existing drive through window, which would greatly increase the safety of traffic flow on the site. Staff

recommends that the applicant stripe the parking lot in accordance with Section 17.40 – Off-street Loading and Parking, of the BSBMC. It should be noted that the restaurant/bar and casino require twelve (12) parking spaces with one (1) being handicap accessible to satisfy the Butte-Silver Bow parking requirements.

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

Applicant's Response: "As the location sits today, ground level, access for pedestrian and/or handicap accessible to the parking lot and building, the location at its current meets the requirements needed. One aspect is the interior restroom areas which will be upgraded to code. Please see the attached interior for layout of new restrooms."

Staff Comments: As stated above, the applicant will be required to stripe one (1) handicap accessible parking space. In addition, all handicapped regulations must be met according to ADA standards. The applicant will be required to meet these standards and all other applicable codes as part of the building permit process.

**8. Proposed signs and lighting.**

Applicant's Response: "We have a planned re-skinning the existing sign. Also planned to add a sign on the East facing (towards Harrison Ave.) part of the Building. The sign will be back lit, giving a soft not too bright look. The current lighting on the exterior will remain with the change in lamp shade. New interior lighting will be installed to become a more modern look."

Staff Comments: Commercial signs are permitted within the "C-2" zone. Prior to receiving a sign permit, the applicant must submit a sign plan for review and approval. All signs must meet the requirements of the Zoning Ordinance. It should be noted that signs on frontages

without a main entrance are limited to thirty (30) square feet in size.

In addition, all outside lighting must be directed away from the residential property owners on the west side of Busch Street and be low glare lighting.

**9. All potential nuisances.**

Applicant's Response: "Paint for interior and exterior is planned to give a new modern and inviting look."

Staff Comments: The "C-2" zone allows for 64+ "permitted uses". With that in mind, there is a reasonable expectation of commercial related impacts such as traffic, noise and lighting. The closest residences within a residential zone are located directly to the west.

As stated above, there is currently a casino located directly north of the subject parcel. It is reasonable to assume that the residences located west of the subject parcel are accustomed to the noise and traffic a casino produces. As such, the impact of the proposed restaurant/bar and casino should be minimal, if at all.

The proposed bar and casino will be located in a commercial area. As such, the impacts on surrounding property owners resulting from any increase in traffic generated by the proposed bar and casino should be minimal.

While there are potential nuisances associated with bars and casinos, it has been determined that the "C-2" zone is the most appropriate zone for a casino. However, the Board must determine that the impacts from the proposed restaurant/bar and casino will not negatively impact the residential property owners to the west, or at least have impacts beyond those already associated with the surrounding uses. If the Board believes that the potential

negative impacts on those residents can be mitigated, then the proposal may be appropriate.

**10. Public safety and health.**

Applicant's Response: "Inspections are planned to ensure the location is up to code and confirms to all laws."

Staff Comments: Based on the existence of two approaches from the parking lot to McKinley Avenue and Busch Street and existing sidewalks adjacent to the street, public safety and health should not be negatively affected by the proposed bar and casino. Also, the redesign of the parking lot should increase traffic flow safety on the parcel.

**11. The availability of public utilities and services.**

Applicant's Response: "The location at its current is compliant and has all aspects for public utilities and services."

Staff Comments: Public utilities are available on-site.

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

Applicant's Response: "Once renovations are complete with the parking lot and building code upgrades. I do not for see any situations that prevent the business to function at its capacity."

Staff Comments: Bars and casinos are permitted in the "C-2" zone by a conditional use permit because they may not be compatible with every location within the "C-2" zone. The Zoning Board must determine, after reviewing public input and the facts of each case, whether a bar and casino is appropriate for a particular location.

There are no apparent reasons why the property could not support a casino with additional landscaping, a parking lot with new striping and designated on-site traffic flow.

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

Applicant's Response: "The new location will provide a great neighbor scene where patrons can feel safe and secure, eat great food, entertain and relax with friends and family."

Staff Comments: The immediate area is developed for commercial purposes. Therefore, adding a bar and casino in the area should have a negligible impact on the comprehensive development of the area. Staff would concur with the applicant's response.

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

Applicant's Response: "This location will be used for commercial use conforming to the ordinances of the Butte-Silverbow County."

Staff Comments: The Comprehensive Plan designates this area as commercial. Therefore, this commercial project would comply with the objectives of the Butte-Silver Bow Growth Policy.

As previously stated, the Zoning Ordinance requires that all bars and casinos receive a conditional use permit from the Zoning Board of Adjustment prior to locating in the "C-2" zone. The Zoning Board will review the physical conditions that exist at the location, the conduct and operation of the proposed use, all public input, and whether the combination of factors will be compatible with the proposed site and surrounding area. If the Board is convinced that

neighboring property owners are protected from potential negative impacts, then this proposal conforms to the objectives of the adopted Comprehensive Plan and to the purpose of this Ordinance.

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

Applicant's Response: "Considering both entities we are placing into this location have already existing history in Butte-Silver Bow County there should not be any impedances of conservation of resources and energy for this location."

Staff Comments: This use will not substantially impede the conservation of resources and energy within Butte-Silver Bow County.

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

Applicant's Response: "Both entities we are planning on placing into this location have already existing history in Butte-Silver Bow County there should not be any impedances of conservation of resources and energy for this location."

Staff Comments: This is an existing building and it will not be increased in size. The applicant has proposed the number of parking spaces required for a bar and casino of this size. Landscaping additions may be necessary as described above.

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

Applicant's Response: "Everything we are proposing is and will be located on the property and land in question. Local properties or businesses will not be effected."

Staff Comments: Staff anticipates that the residences located on the west side of Busch Street may be affected by this project. However, the applicant may minimize those effects by installing the required landscaping buffer along the west property line.

The development of the property for commercial purposes is in compliance with the commercial zoning and the existing building has been operated for many years as a commercial enterprise. Staff believes that this project, if properly conditioned, should have a minimal impact on the adjacent residential neighborhood.

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

Applicant's Response: "The location desired is located in a Commercial Zone."

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

**19. Compatibility of proposed project with the existing adjacent buildings, structures, neighborhood, topography or other considerations.**

Applicant's Response: "As stated in 2 a, b, c, & d. Local businesses surrounding the desired location are of very similar business types."

Staff Comments: The commercial character of the proposed project is compatible with the existing commercial buildings in the "C-2" zone.

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

Applicant's Response: Not Answered

Staff Comments: Any public comments received will be presented to the Zoning Board at the time of the public hearing.

**CONCLUSION:** Therefore, based on the above discussion, staff finds that the proposed bar and casino is an appropriate use for this area of Butte-Silver Bow. Therefore, staff recommends that the Zoning Board approve Conditional Use Permit Application #16778, provided the following conditions are met:

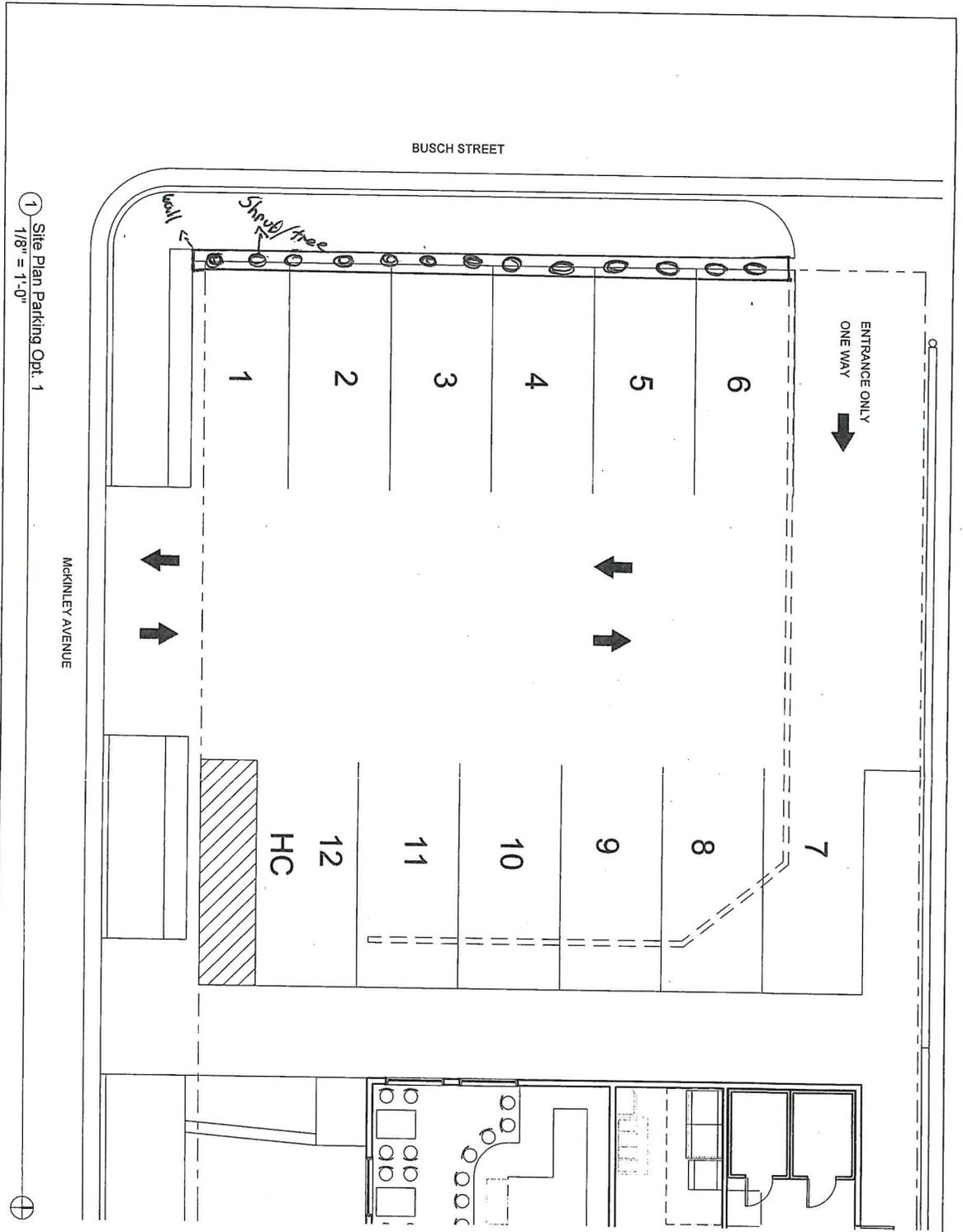
1. Prior to installing any new sign(s), the applicant shall submit a sign plan to the Planning Department staff for review and approval. All signs must be in accordance with the Butte-Silver Bow Sign Ordinance and the applicant must pay the appropriate sign permit fees for all signs.
2. Prior to the issuance of a business license, the applicant will be required to meet all Building Code, ADA Standards and Health Code requirements where applicable.
3. Prior to the issuance of a business license, the applicant shall receive all required State approvals.
4. Prior to receiving a building permit, the applicant shall submit an updated site plan for review and approval by the Planning Department that provides at a minimum the following items:
  - a. Parking and traffic flow plan with specific parking spaces indicated, including handicapped parking. A minimum of twelve

(12) spaces with one (1) space being handicap accessible.

- b. Showing the location of all proposed landscaping. At a minimum, the landscaping plan shall meet the requirements of Section 17.38 – Special Provisions of the BSBMC for parking lot development.

In order to secure the installation of the landscaping and parking lot striping, the applicant shall submit a bond to cover the cost of installing the landscaping. The bond shall be 110% of the cost of completing the work. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

- 5. All outdoor lighting must be directed away from the residential neighborhood on the west side of Busch Street and be low glare lighting.



① Site Plan Parking Opt. 1  
1/8" = 1'-0"

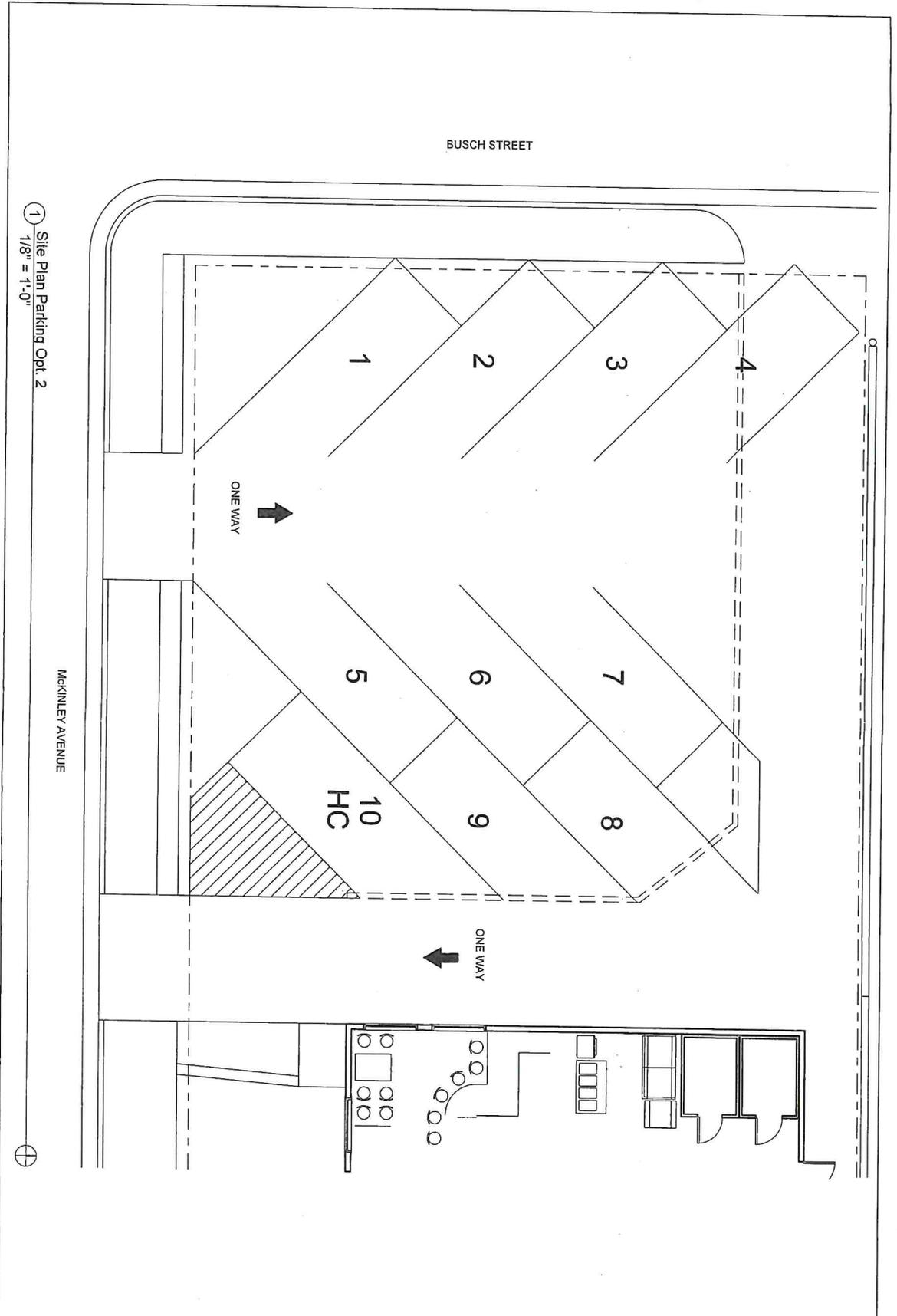
MCKINLEY AVENUE

BUSCH STREET

ENTRANCE ONLY  
ONE WAY



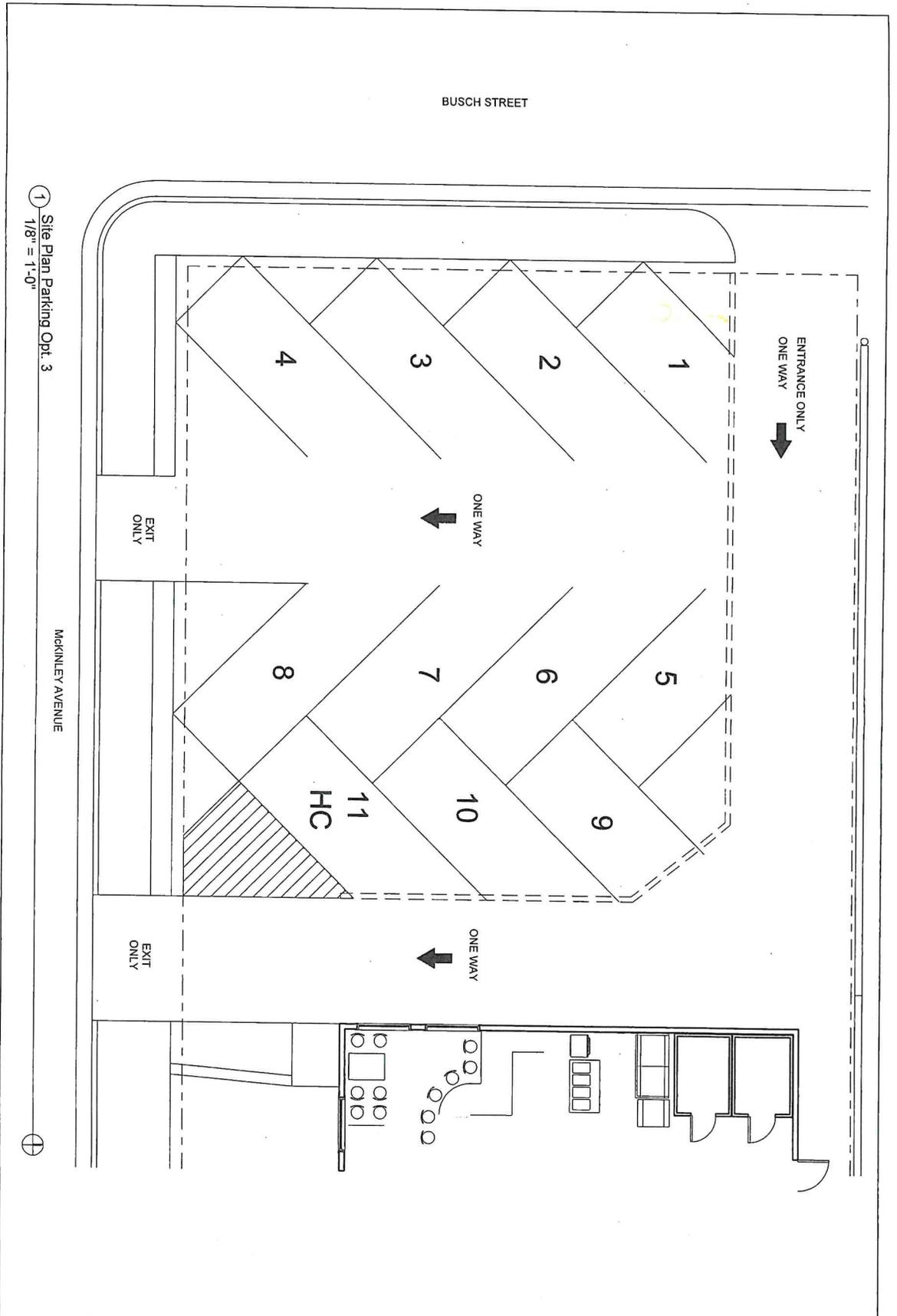
A3	<b>PARKING OPT. #1</b>	<b>Kimmi's Casino Renovation</b> 3150 Busch St Butte MT	<b>Architecture &amp; Design</b> 2101 Meagher Road Helena, MT 59602 (406) 431-1340
	Date: 9/28/2020 Rev: -		



① Site Plan Parking Opt. 2  
 1/8" = 1'-0"

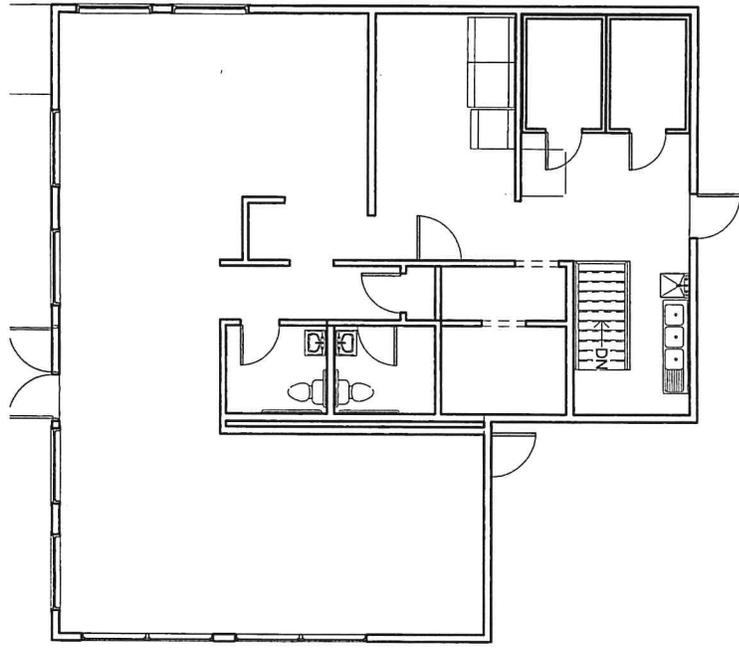
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<p>A4</p>	<p><b>PARKING OPT. #2</b></p>	<p>Date: 9/28/20        Rev. -</p>	<p><b>Kimmi's Casino        Renovation</b>        3150 Busch St Butte MT</p>	<p><b>Architecture &amp; Design</b>        2101 Meagher Road        Helena, MT 59602        (406) 431-1340</p>
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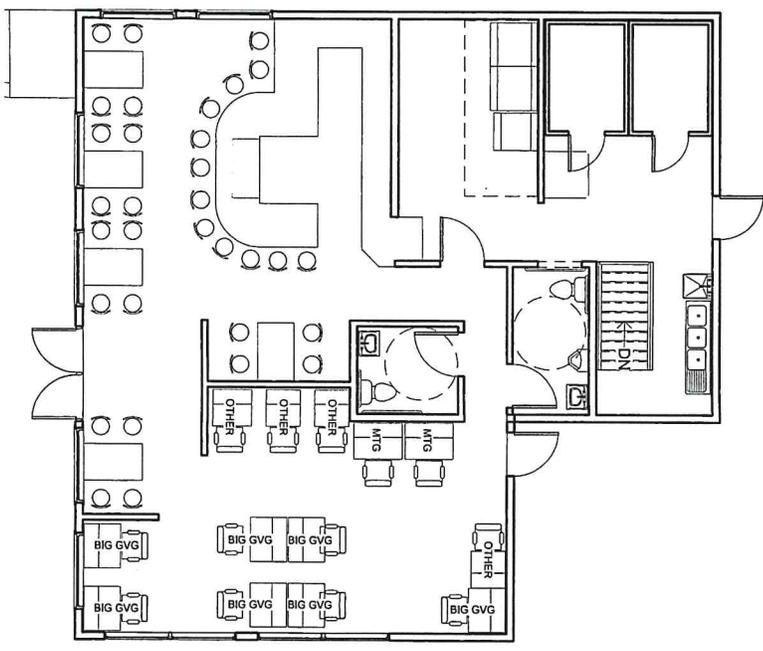


① Site Plan Parking Opt. 3  
1/8" = 1'-0"

A5	PARKING OPT. #3	Date: 8/28/20 Rev.:	Kimmi's Casino Renovation 3150 Busch St Butte MT	Architecture & Design 2101 Meagher Road Helena, MT 59602 (406) 431-1340



① Existing Main Level  
1/8" = 1'-0"



② Main Level Opt. 4  
1/8" = 1'-0"