

January 21, 2016

**Butte-Silver Bow
Zoning Board of Adjustment
Council Chambers**

MEMBERS PRESENT: David Wing, John Habeger, Tyler Shaffer, Dolores Cooney, Rocko Mulcahy and Julie Jaksha

ABSENT: Les Taylor

STAFF: Jon Sesso, Planning Director
Lori Casey, Assistant Planning Director
Carol Laird, Secretary

M I N U T E S

- I. The meeting was called to order at 5:30 P.M.
- II. The Minutes of the meeting of December 3, 2015, were approved and passed.
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on January 14, 2016.

Mr. Wing stated the procedures that pertained to the meeting and said the following cases listed on the attached Agenda would be heard that evening.

Use Variance Application #14983 – Janelle Johnson was present at this meeting.

Lori Casey summarized the staff analysis that is attached and made a part of these Minutes during the viewing of the presentation pictures.

Mrs. Casey added that the staff did receive two comments. She said one was by Larry Winstel of 2425 Pine and she showed the location of his property in the presentation pictures. She said if they recalled, he did speak against the off-premise sign at that hearing. She said he was in favor of the business but believed there should only be a sign for the business that was there at the location and would request that the Board have them remove the off-premise sign.

Mrs. Casey said the other comment was by Mr. Banderob at 2601 Grand Avenue and he said he thought this approval should be contingent upon the owners putting up an appropriate size sign and that was the consensus of the community neighborhood of Greeley.

Mr. Wing asked if the Board had any questions of the staff. There were none.

Mr. Wing said to Ms. Johnson that she now had an opportunity to speak in support of her application or she could have a designated representative do it, if she wanted. Janelle Johnson said she and Penny Munyon, who is her business partner, had been in the dog grooming business for several years and were skilled and knew the demand was out there. She said they were ready to move forward with this.

Mr. Wing said to Ms. Johnson that she had heard the staff report and the conditions and asked if the conditions were acceptable to her and they both said yes.

Mr. Wing then asked if there was anyone present who cared to speak in support of this application. John Weitzel said he resided at 815 7th and he was there to support Janelle and Penny with this business endeavor. He said he thought it was a good opportunity for these two fine young ladies to get started in the business world and see what it's like. He said with that

he was 100% in support of this proposal. He thanked the Board and Mr. Wing thanked him for his comments.

Mr. Wing then asked if there was anyone present who cared to speak against the application. There was no response.

Mr. Wing then closed the public hearing and opened it for Board discussion.

Mrs. Cooney said the comments from the public regarding the sign – she asked if she was correct in that it was a sign variance they gave a while ago and it was not part of this hearing. Mr. Wing said that was correct.

Mrs. Cooney said given that, it was a good use of the property and she recommended they vote in favor of the variance as described.

Mr. Habeger said he concurred with Mrs. Cooney. He said the property has been sitting vacant and it looked like they were planning to clean it up a little bit and he would like to see a business at that location and he would be in support of the variance also.

Mr. Mulcahy moved to approve Use Variance Application #14983 with Mr. Shaffer seconding the motion with the following conditions:

1. The property described by this use variance application is approved for use as a dog grooming operation. Any expansion of the existing structure or change in business use will require review and approval by the Zoning Board of Adjustment.
2. Prior to the issuance of a business license, the applicant shall submit a landscape plan for review and approval by the Planning Department and post a bond for the cost of the installation of the landscaping plus ten percent. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.

3. All animal waste must be cleaned up daily.
4. The applicant will be limited to the following hours of operation, 8:00 a.m. to 8:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday.

At this point the Board voted on the motion.

Use Variance Application #14983 – Conditionally Approved

John Habeger	For	Tyler Shaffer	For
Rocko Mulcahy	For	Dolores Cooney	For
Julie Jaksha	For	David Wing	For

John Habeger, Tyler Shaffer, Rocko Mulcahy, Dolores Cooney, Julie Jaksha and David Wing voted “For” the motion to approve the application.

Mr. Wing said all six votes were for the motion, which meant that the application had been approved and they would be receiving a letter from the Planning Staff to that effect. He then told them good luck with their new business in their new location. They thanked the Board.

Use Variance Application #14990 – Terry Holzwarth of Digger-Digs, LLC, owner, and Joshua Vincent of WET, agent, were present at this meeting.

Jon Sesso summarized the staff analysis that is attached and made a part of these Minutes during the viewing of the presentation pictures.

Mr. Wing asked if the Board had any questions of the staff. There was no response.

Mr. Wing then asked if the applicant cared to provide additional testimony or information concerning the application.

Terry Holzwarth said good evening and thanked them for their time that night. He said he was the owner/applicant of Digger-Digs, LLC and he lived in Billings, Montana. He said he wanted to give a brief history of himself and then introduce a couple guys who were with him that night.

Mr. Holzwarth said he grew up in Townsend and came to Butte in 1979 and graduated from Montana Tech in 1983 with a Petroleum Engineering Degree and he was married to a Butte girl, who was in attendance that night. He said they lived out of state for ten years and made it back to Montana in '93 and their current residence was Billings. He said they had three kids and two of them had attended Montana Tech and one of them was in attendance there that night.

Mr. Holzwarth further said he reviewed the application and the analysis performed by the staff. He said he did not know a lot about project development or construction but he believed they had a team in place that made up for his lack of knowledge. He said they were committed to providing a good construction project for the City of Butte. He said members of his team that were in attendance that night were Mike Dowling, Project Architect with Dowling Studio Architects and Marcus Esponda, Project Development with Dick Anderson Construction and lastly, he thought most of them knew Josh Vincent, one of the principals of Water and Environmental Technologies and he would be presenting the project that night.

Josh Vincent said he was a principal with Water and Environmental Technologies at 480 East Park Street.

Mr. Vincent said Mr. Sesso had covered most of the stuff pretty thoroughly and he wasn't going to beat it up too much but there were a few things that he just wanted to add about the project. Again, a few site conditions that maybe didn't get mentioned. He said there was a drainage there that he pointed out in the presentation pictures and said it was probably the reason why May Street came sideways and that was something they were going to take care of. He said there was also some exposed mine waste that they were going to have to take care of. He

said just generally, the property sloped very very significantly from northeast to southwest to the tune of about sixty feet that he pointed out in the pictures. He pointed out where it was pretty flat and said it died out where he pointed it out and said it sloped very very steep into there.

Mr. Vincent said some of the site challenges that Mr. Sesso mentioned – a large drop across the site. He said there were utilities and there was a sewer line in Ophir Street but there really wasn't any sewer line west, there was a small stub but it didn't go very far. There was no water north of Granite Street. May Street and Ophir Street were in very poor condition and Ophir Street was very steep and narrow and May Street was just kind of more like a goat trail and wasn't even there. It cut across the applicant's property.

Mr. Vincent then pointed out the gas line that ran across this property as well and said it kind of went up and cut across where he pointed out to the regulating station.

Mr. Vincent said so really at the end of the day, as Mr. Sesso had mentioned, there was a hardship there because there was some significant investment that needed to get made to develop this property and it made it cost prohibitive to do a single family development there, so multi-family would allow reasonable return and would improve a big chunk of vacant land and would fill a strong need for student housing for the school.

Mr. Vincent then said they looked at this pretty extensively and maybe just a few things – he referred to the proposed site plan and said it was important to note that they looked at this and said there was an alley there and it would have been easier to come in and out off of Ophir. It was very steep and was not a great place to be sending a bunch of kids and vehicles, so they designed this so there would be no access, no vehicle access there and they put two separate entrances there and pointed out where it was about seventeen percent grade, where it was twelve percent and four percent and they were able to work the

ground and get them pretty flat and have looped parking, so there was good access from both sides.

Mr. Vincent said they were going to move May Street, so they were going to have to scoot it over and they will, per requirement, put sidewalk along that portion which he pointed out and said they would gravel and make sure that the house maintained access.

Mr. Vincent then showed the aerial to get the flavor for what everything was going to look like.

Mr. Vincent said a few comments on the design. He said if they had any detailed questions, he would defer them to Mike Dowling. He said he was an Environmental Engineer and was not an architect but they worked very closely with Mary McCormick (Historic Preservation Officer) to get a design that she and the Board (Historic Preservation Commission) liked. He said they could see the resemblance there – the hip roofs really blended in very well. He pointed out the Chancellor's house and pointed out looking up from Park Street there. He said this fit in very well and they did all the different suggested changes that the Preservation Officer had made.

Mr. Vincent further said design materials, he wasn't going to spend much time there but it was going to be brick and siding and it would look nice and there were all the things the Preservation Commission requested. He said they had approved the preliminary design and they were going to go ahead and run everything by them before they asked for a building permit to make sure they were okay with it.

Mr. Vincent then said public interest concerns – this was a big project that they tried to do their best to address all of the public interest concerns. He said Mr. Sesso went through them pretty thoroughly. It will be adjacent to Tech and there was existing multi-family nearby, so they felt it was compatible with the area.

Mr. Vincent said they had already talked about historic preservation. He said they incorporated all of the design

suggestions. They offered those two eligible homes up for sale at a nominal price, so if someone could come in and move them, they would preserve them per the conditions.

Mr. Vincent said site access – he had talked about that and even though they weren't using May or Ophir Street, they would be making significant improvements to both of those streets, so it should improve the area. He said they were adding a ton of sidewalk, as Mr. Sesso said, all ADA compliant and so it really was going to improve – they were also widening Granite Street to the north, so exclusive private access was off Granite Street, which they had seen.

Mr. Vincent then said traffic and parking were issues. He said there was no arguing that. He said they felt that by having students in these apartments that they would have less trips to and from class. He said when he went to Tech and you had three classes, you went up and you went home, you went up and you went home and you went up and you went home. He said those kids were going to be on-site and were going to be walking to class, so they didn't think there was going to be as much daily traffic to this.

Mr. Vincent said another thing that he didn't even think made the staff report and Mr. Sesso alluded to it but they came up with it the other day and it was a way to minimize traffic because it was tight up there on West Granite Street. He said what they planned to do – referred to the layout plan in the presentation pictures and he pointed out the two accesses and said they were two-way accesses but when those students came in and parked and went out either way that he pointed out, they were going to have right-turn only signs posted there, so they would send the kids out to the west because there were no homes that way and it was almost shorter for them to go out that way than it was for them to go back down Granite Street and avoid that kind of hill there and come out via Park Street or go down and around, if they wanted. He said they thought that would further mitigate the traffic concerns.

Mr. Vincent continued by saying that as staff had mentioned, they did meet the parking requirements. He said they had 135 spaces plus ADA spaces and it was going to be a permanent lot and they would make sure the residents got a pass there, so the kids were available to park in that space instead of parking in front of the neighbors' houses.

Mr. Vincent said noise – they felt with less back and forth trips, you were going to have less traffic, so less noise. He said there was also going to be on-site management at those facilities, so if there were parties or anything like that, there would be somebody on-site that was going to address that and make sure there weren't problems.

Mr. Vincent then said again, as stated, they were going to preserve the views. He said it was kind of hard to see from the layout. He said they were using that steep topography to their advantage and were setting these buildings back in and so when you looked at these, it said four stories but really on the back side of the building, two stories showing and so four stories would only be showing down in the front. He said the buildings were situated to run parallel and with the topography to have the least impact. He said they had checked the elevations and they wouldn't impact the views of the houses up above.

Mr. Vincent then referred to the next presentation picture and said he wanted to talk about this Ophir Street sidewalk. He said what they had proposed there was to put 250' of sidewalk in from Granite all the way north. At the point where they get past the last building, the topography dived off significantly and you could kind of see a little profile there of the existing ground and then he pointed out the property line and said to extend that out would require on the order of about 400 - 450 cubic yards of fill, which was significant, to really run the sidewalk up to even a steeper vertical bank there that he pointed out and he said the Power Company owned that piece and then up above, you just had the two residences, so it was kind of like a sidewalk to nowhere, so to speak, once you got north of that. He said the other potential safety issue was you had a power

pole that sat right there that he pointed out in the picture and said NorthWestern had it in the right-of-way, so if they approved it all the way up to where he pointed out, somebody was going to have to move that pole and there could be an issue there.

Mr. Vincent further said that up there in the snow, people did come out of the Hilltop but he pointed out the side they generally came down the street and what they had proposed was paving an access and kind of feathering it back into the existing asphalt there and so folks coming out of there could go down right on the path and get on the sidewalk and go down. He said it would also maintain a little more separation from the residences up there, as you wouldn't be running the sidewalk right up to their driveway basically. They would be leaving a little bit of separation there, so that was their proposal on that. He thought they could maybe address this under one of the conditions that was already there.

Mr. Vincent said he just wanted to reiterate that Mr. Holzwarth and their team had reviewed the staff report and it was very thorough. He said they were very committed to meeting all of the conditions that were in there and they had a lot of work to do to make this work. He said they would like some consideration on that sidewalk. He said they would like to have their proposal approved and maybe, at the very least, make their sidewalk contingent on what they talked about in the staff report about getting NorthWestern to put sidewalk up there as well and at least made it contingent on their commitment to do sidewalk, as well, and to move that power pole. He said condition number seven actually said they must submit a sidewalk plan for approval by the Public Works Department. He couldn't get a hold of Dave Schultz from the Public Works Department that day, so he wasn't able to kick this around but he thought if they read that condition, it said they had to approve it anyway, so they could propose it and if they shot it down, they would put it in – if they could talk to them a little bit more and if something fell through with NorthWestern, then they could maybe get approval for what they had to post.

Mr. Vincent continued by saying this was a high end development that was very nice and was going to make significant improvements to the area infrastructure. He said it was going to support Tech's continued growth and they were limited by housing. He said what's good for Tech, they felt was good for Butte. He said they had been in and talked to these folks for quite a while and had made just about every improvement and request. He said they were looking forward to a good project and wanted to be good neighbors and were respectfully requesting their approval of the project.

Mr. Vincent said he would take any questions they may have.

Mr. Wing then asked if any of the Board members had any questions for Mr. Vincent at this time.

Julie Jaksha wanted to ask about the parking. She said she knew they got it approved what was said of 135 spaces – she wanted to know how many bedrooms would they actually be building in the complexes. Mr. Vincent said it was going to be a combination of two bedrooms and three bedrooms and he may not be the best guy to answer that but he thought there were twelve, two bedrooms and six, three bedrooms or was it the other way around. He said he was going to turn this over to Mr. Dowling because he knew the layout better. Mike Dowling of Dowling Studio Architects said each building in Phase 1 had twenty apartments that consisted of six, two bedroom units and fourteen, three bedroom units. He said three of the planned four buildings were similar. He said Phase 2, the topography would actually get steeper, so the numbers might vary slightly up there and they hadn't looked exactly at what those were but the building on the upper left would probably be an eighteen unit building having six, two bedrooms and twelve, three bedrooms and then the longer building they were looking at a maximum thirty units and the number of bedrooms was still yet to be determined on that building but he believed the zoning was based on number of apartments and not number of bedrooms. Mrs. Jaksha said yeah, right, and she was just wondering about the parking spaces for like a three bedroom and asked if all three college students each had their own car,

where were they going to park or where were visitors going to park, if all of the spaces were taken. She asked if they had thought about that. Mr. Dowling said he could tell them that they did these identical buildings at Carroll College in Helena with the exact same parking requirements of one and a half spaces per unit and they had not filled all of the parking spaces, just because a lot of students come to campus and don't have a car. He said some were foreign students and some were from Canada or they did sharing of vehicles, so there was kind of no way to truly predict what that was going to be.

Mrs. Jaksha said her second question would be, so these were being proposed as student housing and maybe he wasn't the right person she was asking this to but to her they would only be renting the apartments to students, was that correct, or what if the students didn't fill the housing, then would they go outside to rent those apartments. She said she thought they would fill up with students but she just wanted to know what the plan was, if they didn't. Mr. Vincent said the intent was to rent to the students but they would consider others, if they weren't filled. Mrs. Jaksha thanked him.

Mr. Wing asked if there were any other questions by any Board members.

John Habeger said he had a question. He asked if should both phases come to pass, how many total units would there be. Mr. Vincent said he believed the maximum was in the request of ninety but it may not end up being quite that.

Mr. Wing asked Mr. Vincent if he had concluded his presentation or if there was anything additional he wanted to add and Mr. Vincent said yes.

Mr. Wing then asked if there was anyone present who cared to speak in support of this application.

Mike McLeod said he was the owner of McLeod Realtors here in Butte and he was in support of the application for a number of reasons but primarily because he knew firsthand that there

was a tremendous lack of quality housing for students within close proximity to Tech. He said every year they fielded a number of calls from not just students but student parents and as years go on, more than the students themselves, who have a real concern for good safe housing that was close. He thought this would really add to that. He also thought it would be a great driver to grow Montana, as Montana Tech grew, to fill that need. He said anything that was good for Tech was good for Butte and he encouraged them to support the project. He thanked them and Mr. Wing thanked him.

Don Blackketter said he lived at 1315 West Park and said his house was in the picture. He said he was the Chancellor of Montana Tech and just wanted to be really straightforward with them in terms of the relationship between Montana Tech. He said neither himself nor anyone, to his knowledge that was employed at Tech, nor Montana Tech itself, had any financial interest in this project. He said this was strictly a private endeavor by Terry Holzwarth and his group.

Mr. Blackketter then said he was there to speak in favor of the project. He said it had been clear to him since he arrived about five years ago that student housing was a factor in students coming and recruiting to the campus. He said the close proximity to campus was an important point for them with proper parking, which he thought they addressed, and was really needed for them to continue to grow and to improve student learning and satisfaction.

Mr. Blackketter said Tech had done a number of surveys over the years on a regular basis and there were about three things that always showed up on the satisfactory list and they were parking, food and adequate and quality housing that were in close proximity to the campus and they were always on that list. He thought this project addressed two concerns. He said several times he has had parents that would send their child to Tech except for the type of housing that was being presented there. He believed that students who were not there now and would not be coming would be coming to help fill these homes.

Mr. Blackketter further said they currently had 283 beds on campus, so that was their number and they had 3,000 – 2,980 for their headcount this year for the campus. He said they currently had about ten percent. He said when you looked around most residential campuses, which they would like to consider themselves as, the average was closer to twenty percent or higher. He said while this was not a Tech housing project and he stressed that, it was similar to what would provide that kind of atmosphere for their students. He said if you looked at Montana State or U of M, they were at or above that twenty percent level, depending upon their enrollment.

Mr. Blackketter said they currently required freshmen to live on campus, so those 283 beds were filled with all freshmen students and in fact they consistently had a waiting list for their freshmen. He said there were exceptions made for those students, those freshmen that were living in town with parents or other conditions, but they consistently had a waiting list for their freshmen and in fact he has turned down international students that required on-campus living or close proximity living to campus because they did not have the proper housing for it.

Mr. Blackketter further said a little bit of information about the growth of Montana Tech -- since 2005 their head count had increased from 1,971 FTE (full time equivalency), so the number of full time equivalency students had increased from 1,971 to just under – 2599, so just under 2,600 students, so that was 600 more students that were there that weren't there in 2005.

Mr. Blackketter said John Kasperick did a recent financial impact study of Montana Tech and their impact was just under a hundred million dollars a year annually to this community.

Mr. Blackketter continued by saying that they very recently conducted a housing needs and attitude assessment and the study showed that the market had an elasticity for another 600 or 1,000 units. He said it was surprising to him that more developments like this hadn't been developed close to campus. He said the study of those 600 students identified where they

lived (couldn't hear). He said that seemed amazing to him but that was directly from the students.

Mr. Blackketter said the students lived close and they lived far away and they clearly indicated a willingness for housing within a short, a very short walking distance to campus. Primarily, the reasons for that included the adequate parking and accessibility to university activities and facilities and especially after normal school hours, the HPER, the library, etc.

Mr. Blackketter then said that parking would always be a challenge but he would tell them and it was almost like he wanted it on the record, they actually had more parking spaces than they sold permits for and he knew people wouldn't believe him but it was an actual fact that they had more parking space on their campus than they sold permits for, so they were addressing the parking issue, the issues that students experienced. He said they maybe didn't like where the parking was but he agreed with the previous presentations that having housing close to campus with parking would actually help relieve their parking problem to some extent -- by having them drive to campus, park and then walk back and forth to classes that were coming and going. He said there was more work to do in that area and he understood that.

Mr. Blackketter further said that in respect to the project in terms of the goals he set out, he really believed that it would increase student engagement, it would increase learning opportunities and provide safe/affordable housing. He said he was expecting that it would attract additional students that as of now weren't coming to Tech because of the housing arrangements that didn't exist. He strongly urged this Council to support this facility. He thanked them and Mr. Wing thanked him.

Tom Downey thanked them for allowing him to speak that night. He said he was a Butte resident, business owner and was a partner with Payne West Insurance. He said he was past President of the Butte Local Development Corporation. He said his role at Butte Local Development and he was actually

appointed by Chief Executive Paul Babb, when he was Butte-Silver Bow's Chief Executive and was reappointed by Chief Executive Matt Vincent -- in his time on the Butte Local Development, it was obvious to him the need for additional growth at Montana Tech and the financial impact that it would have on our community. He said the market itself, the additional students, the hundred million dollar multiple effect that Montana Tech contributed to the Butte economy was very very significant. He said if they were able to increase their enrollment based upon attracting more students because of available housing, that it would simply grow in multiple of that for jobs, for economic prosperity in Butte. He said all of those things were very good things for our community, so he wanted to be on the record saying he fully supported this project and he thought they had done their due diligence and he would hope that it was approved.

Mr. Wing asked if there was anybody else who wanted to speak in support of this application.

Doug Abbott said he was the Provost and Vice-Chancellor for Academic Affairs at Montana Tech. He said he was there to speak in favor of this proposal. He said often times people asked him what the Provost and the Vice-Chancellor for Academic Affairs did and he told them he did all the things that Don Blacketter didn't want to do but really what he did was run the day-to-day operations at the campus. He said Montana Tech and Montana State University Bozeman were the only two campuses in the state that had seen sustained growth over the last eight to ten years. He said that sustained growth put stress on campus resources. Montana Tech has been very fortunate in the six, seven, eight years due to efforts by their legislative contingent, as well as very generous donations from individuals and they had been able to grow the campus. Those who had been up to the campus recently had noticed the Natural Resource Building, the University Relations Center, the Frank and Ann Gilmore University Relations Center and if they hadn't been there, they needed to go up and take a look at the Natural Resource Research Center, which was currently in the process of going up right now.

Mr. Abbott further said they had some programs coming down the pike that they firmly believed were going to increase enrollment. He said to stay tuned and they would see information that would be presented at the March Board of Regents meeting and he didn't want to divulge what some of those items would be for fear of casting bad luck on their request but recent approvals by the Board of Regents such as the PHD program, the new Bachelor of Science degree in nursing – they were the second State supported institution to have a four year nursing program. He said they had those things coming down the pike that they felt would increase enrollment.

Mr. Abbott then said that Chancellor Blackketter mentioned the freshmen live on campus requirement, so they required freshmen who came from more than sixty miles away to live on campus. He said those students lived on campus and liked to live on campus but then when they became sophomores they needed to move off of campus because the next crop of freshmen were displacing them in the dorms. He said this proposed project would give an alternative to these displaced upper-class students.

Mr. Abbott said the last thing he wanted to share with them was this proposal fit in very nicely with the Montana Tech strategic plan, as well as their master plan. They want to become more of a traditional college campus and less of a commuter campus. He said Mr. Vincent mentioned back when he went to school, he took three classes and would drive up Park and drive home, drive up Park and drive home and drive up Park and drive home. He said with opportunities such as this, it was going to create more of a residential campus, as compared to a commuter campus and studies had shown that if students were more involved with the campus, they were more likely to be retained and graduate.

Mr. Abbott wanted to go on record as being in favor of this request. He thanked them and Mr. Wing thanked him.

Mary North Abbott thanked them for the opportunity to support this. She said she wanted to speak to them as the mother of a Montana Tech student right now and also as a Professor in the Petroleum Engineering Department. She said she had a son who went to Montana Tech and he was not a nontraditional student and not a freshman, so he couldn't live on campus and didn't want to live with them and he had a heck of a time finding a place, as did several other kids he lived with from town – to find a decent place to live. She said from his point of view, she would like to be able to go and walk into a decent housing unit and there were a lot of them that could use a lot of help around here, so she thought that having a newer affordable housing unit close to campus was definitely good from a mother's point of view.

Mrs. Abbott then said that also in the Petroleum Engineering Department, they had anywhere from 350 to 400 students depending on what semester it was, just in their department. She said they attracted a very large group of students who weren't traditional freshmen, so they didn't come in and live in the dorms. She said they got a lot of transfer students and a lot of nontraditional students with families and stuff and so they were looking for a good decent place to live and something affordable. She said she met with all of the students who came in during the summer, so maybe a hundred or so students who were coming in and looking at Montana Tech to join their program and they all had a tough time and were always asking her about different places and areas to live and most of them, especially if they had families and stuff, they would like to live near campus, so they could participate a little bit easier with their families and their young kids and whatever, so she thought it was a huge need and didn't think this was the answer to everything because she thought they were going to need more and more as their campus grew but they definitely had a need. She thanked them and Mr. Wing thanked her.

Mr. Wing then asked if there was anybody else who cared to speak in support of this application. There was no further response.

Mr. Wing then asked if there was anybody present who cared to speak against the application.

Trevor Garrels said he was one of the residents at 1421 West Copper Street and introduced his wife Kristie. He said he didn't even know where to start, as he had not really been to one of these before. He said two days ago this was put in front of him and he hadn't had much time to really think about it. He said listening to the hour and a half presentation there, a lot of things sounded very good but he did have some very valid concerns he would hope they would consider.

Mr. Garrels said four things in his mind. He said he too was able to come back to Butte and he married a Butte girl as well and was able to raise his family in the current house he was in right now and it had become too big for them and they were looking to downsize but unfortunately, due to the market, they couldn't downsize. He felt this was going to yet be even more of a problem for them to be able to sell their home due to the fact that now they were going to have construction for two, three, four years as well and it would deter the aesthetics they had currently.

Mr. Garrels then said he was kind of confused because two years ago they were asked to join the Big Butte and give part of their land where it wasn't zoned for future building and whatnot and now this year, they were being asked on the other side of their property to let a multi-family housing unit in and it was on the same hillside. He said one of his concerns was that he had a piece of property directly below and he didn't know if they could look at a large site map of that but his property was adjacent to that, he had six lots that came directly off Miss Jordan's house. He pointed it out and said those six lots he kind of subbed out from their current household, so they could have an opportunity at some point to possibly sell those or create some kind of monetary. He then pointed out his residence and said they owned the properties up above as well and then pointed out the properties he was very concerned with that nobody would want to build in that section and have a four story structure sitting there.

Mr. Garrels further said that also in there they were asking for a variance that he pointed out on the corner, to be ten feet from there, correct – Mr. Sesso said no. Mr. Garrels said seventeen feet or something like that – that would be real close to that property boundary as well.

Mr. Garrels said the piece of it that they should give some serious consideration to that everybody alluded to was the parking. He said he would hope that with something this large that people would go up and look prior to making a decision. He said there was a serious issue from Western Street, where they stopped the improvements, Granite clean through. He pointed out on Ophir and said back down to Western was so narrow, it had become a one-way street. There was no way two cars could pass through there because they had parking on the other side of that that was residential as well. He said that day alone he almost hit somebody on the top of that curve and it was a huge issue and to think that this was going to improve the traffic flow was preposterous. He said those students, yes, they would be on campus and yes, they wouldn't be going back and forth there but they would be taking breaks and going down and getting groceries, they were going to go out to dinner and go out to the bars and come back, so this was going to put ninety units with he didn't know how many beds were in it but that would put one hundred plus cars on that street, more than what they already couldn't support. He said he was also very concerned about with ninety units there and it being multi-family, you had a lot of opportunity for people who were going to want to recreate and his property is right above that. He said they were going to have Big Butte that everybody was going to access above and he would have trespassing issues clean through that and they were going to be able to go down that hill and they spent a lot of time and money with all the trees they put in there and they put in a drip system that they grew all of those trees and he thought that would be a huge deterrent to their property values as well.

Mr. Garrels said he wished he could have been a little bit more better prepared for this but like he said having listened to this,

he had questions going all the through it and given two days to see this, he didn't think it sufficed for him to sit there and say hey he thought all of this was great for all of us – at this point he would recommend there be a lot more thought process put behind this and to him, this seemed somewhat backwards because there seemed to be a lot of money that was put into this project already and it seemed like it was being pushed through. He said he would really caution people to really take a look, especially the traffic be considered there. He thanked them and Mr. Wing thanked him.

Mr. Wing asked if there was anybody else who cared to speak against this application.

Susan DeWolf said she wasn't very good at this. She said she had the house at the top of May Street. She said she was there in response to the building proposal of multi-family apartment buildings. She said she had lived there comfortably for ten years and strongly opposed this plan. She said her house was zoned residential. When she bought it, there were several homes in the area and the fact that it was zoned residential encouraged her to invest in this home. She was excited about buying this property. At the present time, she can look out her kitchen window and enjoy the views and the occasional deer and other animals that wander into the area. Now they were proposing four multi-family apartment buildings and when they were finished, she would look out her window and see four multi-family apartments right there. She said she had never been approached by anyone on this project and this would greatly affect her and her property values. She said this was a great injustice to her and her assumption that her house was a good investment. She can't help but question a person who could come to Butte and have zoning changed to suit his needs, build whatever and wherever he wanted with no regard to the existing property owners, who also paid property taxes, only to take his earnings home to Billings. She said not only that, he was calling them multi-family apartments. She said seriously, they were going to be college dorms. She said she could only assume that property taxes would probably be

higher for college dorms than they would be for multi-family apartments and zoning would be more difficult to justify.

Ms. DeWolf said as a property owner, you couldn't convince her that this would be an improvement to the area. She said she also wondered how it was going to affect local property owners who rented to college kids. She asked what she did to deserve so much disrespect. She said her lifestyle would change drastically and her property values would obviously take a nosedive. She said from her perspective it appeared that the minority was going to lose at their expense and asked where the justice was in that. She said she just wanted a peaceful area to live and had it and now she felt it was going to be compromised and she was not at all happy about it.

Mr. Wing asked what her address was. Ms. DeWolf said it was 1501 West Quartz but she lived at the top of May Street. Mr. Wing asked her to use the pointer to point out where her house was located. Mr. Sesso pointed it out. Mrs. Jaksha said she was the one home at the top of May Street and Mr. Sesso said yes. Mr. Wing said at the top of May Street.

Mr. Wing asked if there was anybody else who cared to speak against this application.

Mike Riley said he lived in Butte, Montana, and was a Geological Engineer from Montana Tech. He said he was also a property owner with twenty rentals and six of his rentals had Tech students but this many unit project (couldn't hear) -- said it was closer.

Mr. Riley said a concern was parking and it had always been a problem with parking at Tech and as indicated before, there was not going to be enough room. He said he also thought there had to be a need in order to change zoning from single family to multi-family and he didn't feel there was a need for apartments because he had four vacancies and he knew these ninety units would take the rest of his Tech students.

Mr. Riley further said that secondly, he didn't think the buildings would be built to historic needs. He said most historic buildings were brick from the bottom to the roof and the windows were not vinyl. He didn't know if these would be vinyl but he knew he was forced to put wood clad windows in his historic buildings by the rules of Historic Preservation of Butte-Silver Bow who sat that rule down for him and for everyone involved with historic buildings uptown.

Mr. Riley said he knew they were tearing down three of the buildings that were considered historic and he thought they had lost enough historic buildings in Uptown Butte. He said he knew that a lot of property owners would lose their Tech renters, who he would say that ninety percent of those buildings around Tech were Tech students staying in them and most of them would move into this place and most places would become vacant and sit there and rot or even worse they would be burned down for insurance purposes. He said that was about it. He thanked them and Mr. Wing thanked him.

Mr. Wing asked if there was anyone else who wanted to speak.

Gary Dryden of Dryden Properties here in Butte, Montana, said one of the photos they showed was the Hilltop Apartments, which he owned. He said personally, for what they were doing, property values at his Hilltop Apartments would rise. He said overall, the people in this town who had a lot of rental units, get ready for a mess. He said they kept hearing from the college that there wasn't enough nice housing. He had over 240 and when people called him he told them he was boardwalk. He said the vacancy factor when he came to this town ten years ago, people thought he was nuts (couldn't hear). He said his vacancy factor was zero and today his vacancy factor was thirteen percent and rising.

Mr. Dryden said the Hilltop Apartments were beautiful units up there. He said he had a one bedroom apartment that has now been available for six weeks for \$575 and he questioned the need for more housing. He said we had so many people in this town that had invested so much money and he believed overall

that the vacancy factor was getting out of hand. He said he knew of two bankers in this town who asked him how it was going and what was the rental market. He said he could tell them of two banks in this town that now wanted to be in a forty percent down to go into investment property because of the vacancy factor alone.

Mr. Dryden said in his case he'll make money on that particular building but as the last gentleman said, you would have multi-people who were going to be in trouble and weren't going to be able to keep properties because they wouldn't have tenants. He said he would be glad to show the Board members his properties and go through some that were vacant right then and have them tell him that what they were building was nicer than what he had. He said it was not and yet his vacancy factor was rising and so were his taxes and so were his expenses. He thought it was going to be, in his own opinion -- overall they were going to lose a lot of good properties that people wouldn't be able to keep because they wouldn't be able to make their payments and you had to have tenants. He said that was ninety more units plus you had to look at all the other rental units that had gone up in this town recently, spread across the town, it was rising -- the vacancy factors were rising.

Mr. Dryden further said if this was such a great project, he was quite certain that building those, you were not going to be able to put a two bedroom apartment on the market for \$675 and that was what he rented nice ones for. He said it used to be immediate rentals and now his average was thirty to forty-five days. He said just another consideration. Mr. Wing thanked him.

Mr. Wing then asked if there was anyone else who would care to speak against this application.

Dan Riley said he owned a couple of properties in the area down below. He said he would say one thing, that others were right. He said one thing highest and best use. He respectively disagreed with Mr. Sesso and Mr. McLeod -- highest and best use of this property was single family residential and not multi-

family. He said the people who did have properties in that area, by changing the zoning and by putting this in, it would devalue their properties in his opinion. He said he hadn't done an appraisal or hired an appraiser to do an appraisal on it because he felt strongly that it would be devalued for several reasons. He said first of all the parking, which was brought up of 1.5 for a three bedroom unit, wouldn't work. He said you had a three bedroom unit and asked how many people were going to be in these units – he asked if they could answer that and said probably a three bedroom would mean six. He said he had them and everyone who had rentals in there knew and Mr. Dryden knew what went on with college kids and everyone who had gone to college, that parking was going to be a major problem.

Mr. Riley asked if they could give them any idea of what they would have to charge for these units and asked if it was all private funds allegedly, private money, and it wasn't subsidized. He said he didn't want to be competing against subsidized apartments when he had to pay full price for everything, taxes and everything. He said Mr. Dryden was right, they had vacancies. He said this town had a lot of buildings, like the YMCA that should be remodeled and put students in it and he thought that was where it should be going. He said other apartments -- his son had several and he had one and it should be remodeled but there was no incentive because of the low rents. He thanked them.

Mr. Wing asked if there was anyone else who would care to speak against this application.

Robert Edwards said he resided at 514 West Granite Street. He said he was there both because he was a landowner and because he was one of the managing partners of Silver Bow Property Management. He said they managed a portfolio for dozens of owners with just over 400 units.

Mr. Edwards said his last two days had been totally unproductive for him because he had just been fielding calls from investors who were freaked out by the news of this. He

said the problem with this project was it was just too darn large, both for the immediate area and when you heard the concerns of the people who bought single family homes years ago and all of a sudden there was this five story building in front of their house and the community as a whole. He said the repercussions of allowing it would stall the existing rental market, which in his opinion, was already overbuilt based on a lot of rehabs that had happened in the last number of years.

Mr. Edwards said approving this variance would retard further investment in existing housing stock, effectively leaving the rest of Uptown Butte to rot and further insulating Montana Tech and students from the community. He said additionally, approving such a project only set the precedent in the future for if they said yes to this project that day, would they also say yes to the next project where somebody wanted to do the same thing and mow over a bunch of single family houses and want to put another big project in. He asked if they could say yes to him and no to the next guy. He asked where did that become fair and said they had all been playing – these houses had been there for a hundred years and were the rules that everybody was playing by but this was a single family zone. They weren't trying to get a duplex or a few four-plexes in there – they were talking about ninety units and said that was a lot.

Mr. Edwards said the Board was asked to look to see if there was an adverse impact and there was a direct adverse impact, not just to the immediate area but to the community as a whole. He said it would divert investment in this town. He said everybody said we needed more investment but this was the wrong direction to go and they would pay for it for decades. He said he hadn't ever seen this much redevelopment of properties and many of them in their lifetimes – it was impressive as you drove around and that would be gone, if they put ninety units on the market.

Mr. Edwards further said he forgot what year that Nick Kujawa did the Hirbour but he did the Hennessy Market and they put thirty-four units on the market and it took them six months to fill that last unit. He said the effects were felt all across and that

was a great project and he thought they all agreed that they were happy to have that here but it took six months. He said throw ninety units on there, could they afford eighteen to twenty-four months of people having vacancies at this level – he said they would kill investment. He thanked them and Mr. Wing thanked him.

Charlie O'Leary of 3060 Beef Trail Road said he didn't want to stand there and say he was in opposition to this project but he was, as the previous speaker said, opposed to the sheer size of it. He was a landlord and he didn't want to make them tired of hearing from landlords there but he wanted to give a little bit different slant to some of this. He said he had been in the landlord business for forty-two years. He started off with one little mobile home and kind of worked his way up so that now he could say he was self-under-employed and a social security check helped to pay the bills.

Mr. O'Leary said he rented to a lot of Tech students and he liked Tech students. He thought they were different from other colleges because they were serious students who wanted to get a good education and they really hadn't caused him any problems other than occasionally locking themselves out of the apartment. He said they were good kids and not trouble. He said they didn't get the same rents in Butte and you would think with the supposed demand for all these Tech students, you would think they would get the same kind of rents that they got in Bozeman and Missoula but not even close. He said they had to make due. He said he didn't do that because he was a Tech student himself and his kid rented for five years in Bozeman and he knew what these kids were up against and he liked these kids and he was willing to get by on \$400 rent a month for an apartment.

Mr. O'Leary continued by saying that they supported Tech and his family had a scholarship up there in his Brother Paul's name and they always supported Tech. He said he sat in Julie Jaksha's seat for nineteen years looking at ways of doing economic development and helping this town. He said he served on the BLDC Board with Mr. Abbott and knew what they

were trying to do in Butte, as far as helping the whole town and a lot of that had to do with infill in the central part of Butte and rehabbing all of those properties. He thought there had been a lot of landlords in Butte who because, ever since ASMI came to town, the market had been a little better. He said they hadn't had the serious vacancies that they used to have, so they had been able to plow a lot of that money back into their properties – insulations, windows, doors, painting, carpeting, trying to make them better for whoever, whether it was a Tech student or a working person Uptown. There had been that incentive.

Mr. O'Leary said as somebody else had said, this was kind of a hit to the pie – Evan Barrett used to always talk about the pie was only so big and the more people you had taking a chunk out of the pie, the less they all would get. He said this was going to take a pretty big bite out of the pie. He said his fear was they were trying to rehab Central Butte and Uptown Butte, all of these properties, and there were a number of them around Tech, if you started putting those people into more vacancies, then their remaining money was going to pay the tax increases, the sewer increases, the garbage increases and their insurance and there was less money to spend downtown at UBC and Ace Hardware fixing the places up. He said that was a reality. He said they weren't just a bunch of crybaby landlords up there complaining – that was a reality – you had to have some profit in this business to be able to plow money back in.

Mr. O'Leary said the other thing that hadn't been talked about that night and he didn't know if it was a rumor or a reality and that was whether Montana Tech was going to build another dorm. He said he had heard that but maybe this would take away that need and that would help but if Tech built a dorm and you added ninety units there, sure that was going to have its advantages and he wasn't at all against the construction industry and the guys who were going to make a good buck building these buildings and he wasn't against that at all but if you add that many new places, it would hurt another segment of the community and they had to be aware. He said they talked that night about hardship and they heard about

reasonable returns and they heard about adverse effects and they considered water and sewer and so forth -- there was an economic effect, a true economic effect, and he didn't think the Board had to consider that but he hoped they did for the sake of the rest of the Butte people.

Mr. O'Leary said they have had this rehabilitative spirit going on for some time in Butte and he didn't want to see that end. He wanted to see the current landlords, the people who owned a four-plex or a couple of duplexes, he wanted to see them still have the ability to plow money into their buildings, as he had. He had tried to put a lot of money each year into his buildings.

Mr. O'Leary said he wanted to kind of change the subject and it was a little bit of speculation because he didn't know any of the individuals there. He said when he went to the U of M he took Montana History and if you took that class, you heard about something called absentee ownership and that had to do with the profits from beaver skins or from gold or from copper going out of state -- absentee ownership. He said okay, so on a smaller scale, perhaps that was what they had there with a Billings group coming in -- nothing against Billings and he didn't want to sound parochial there but the reality at the end of the day was that the profit from ninety-some units was going down the interstate to Billings, it wasn't being turned over in this town. He said all of the little guys, they went to UBC and they went to SJ Perry and bought their insurance and he bought his insurance from Tom Daniel and Shawn Ori and he was spending his dollars here. He said he bought his carpeting down on Montana Street and those were dollars that were spent over here and they turned around. He said at the end of the month, he was living in Butte and if there was a little money left in the pot, he was going to go down to the Derby and have dinner and spend his money in Butte and give a nice tip to the waitress who was a Tech student at the program up at Tech. He said you always heard Mr. Ackerman talk about turn around - don't leave town, shop local. He said he was a firm believer in that and he hated to go out of town to buy a toilet or anything else and he would buy local. He said he was only speculating but if the profits from all of that was going down to Billings, it

wasn't going to get spent in Butte and they were hurting this community by putting that many units on the market.

Mr. O'Leary asked them to please keep the little guys in mind and the impact that this kind of a project would have on the rest of their own town. He thanked them and Mr. Wing thanked him.

Mr. Wing asked anybody else.

Rich Penhaligen (address in City Directory of 828 W. Quartz) said to bear with him because his computer froze when he was printing it, so he wrote it up fast so he could remember. Mr. Wing said to just give them the highlights then. Mr. Penhaligen said he would try to. He said he was currently working on a six unit building and a two unit building for rental here in Butte. He said these were not going to be slip-shot units that people weren't going to want to live in. He said every single utility is brand new.

Mr. Penhaligen said he was concerned about this unit. He said he had one question and somebody already brought it up before -- was the three bedroom unit going to be allowed to have six renters in it, he didn't know and they said no.

Mr. Penhaligen said his problem was he traveled up to the Montana Tech campus every week and took that exact same road. First thing he wanted to say was he was against this project as it was planned. He apologized because he wasn't used to coming and speaking at these things. He believed that it was a dangerous road and said there was a hill right in that area that made it impossible to see oncoming traffic until you were right on top of the hill, right on the pinnacle. He said there were many instances where he had been surprised by oncoming traffic, partly in the other lane and he has had to steer abruptly to avoid accidents. He said it was a narrow road with parking on both sides and cars had a tendency to drive too fast in that area. He said the increased traffic from a potential -- just estimating and trying to understand because they didn't say how many units were going to be in the last unit but it was probably going to be at least 230 students living up there as a

random, as just a median number. He said those students would just make it that much more dangerous. He said right-turn only, if they put up a sign like that, students wouldn't do right-turn only and he said if it was right-turn only, where would they go. They would go down straight through the middle of campus. He asked how that would be more safe – all the students going back and forth – how was that more safe for the students on campus.

Mr. Penhaligen said secondly, cramming these ninety units with 230 plus students into an area that had maybe ten people before he believed was wrong. It was zoned single family and now it would essentially be ninety families. He said that just seemed crazy to him. He said if it were a few four-plexes, he could see that working but not ninety units and it should be scaled back to a number that was more equitable to what it should be. He felt the Board should just look at the footprint of this. He said every single inch was utilized for buildings and parking – every single inch. He said they were talking about one and a half – talking about parking up at Tech and on the streets there – everything was parked up there during class and they were saying that one and a half spaces per unit was going to do it and it wasn't going to do it.

Mr. Penhaligen said third, this was going to stifle renovation and rehab for all small business landlords in the area. He said they were giving this developer an unfair advantage over a bunch of landlords, who actually lived and spent their money in Butte. There would be at least \$800,000 maybe \$1,000,000 a year leaving Butte. It would be taken straight out of Butte. This development was a net loss of money to Butte. He said essentially they would be gambling with the livelihoods of people who had rehabilitated the older buildings in our town of Butte just to be undercut by changing the rules to give this developer the best location possible.

Mr. Penhaligen then said if Tech enrollment went down or was not up to the numbers they said, it wouldn't be this new Digger Digs development that would suffer, it would be all the other landlords that lived here in Butte. This place will be full and it

would be the other ones that would not be. He said this didn't even include the new dorm that Tech was planning to build at the old baseball field on campus.

Mr. Penhaligen said he was asking the Board to reject this development or at least scale it back to a reasonable number of units for safety and continued rehabilitation of Historic Uptown Butte.

Mr. Penhaligen said he loved Tech and Tech was integral to Butte and the students up there were fantastic, they were great but he asked to please have some common sense on this. He thanked them and Mr. Wing thanked him.

Mr. Wing asked if there was anyone else who wanted to speak against this application.

Kelly Riley said he was a Tech grad too. He said he personally hoped it went through because he planned on profiting from it by buying all the properties from the landowners that owned houses in the neighborhood that weren't going to pay the taxes. He said he would go to one of the tax sales and buy properties for pennies on the dollar here.

Mr. Riley said his friends from Bozeman, Billings, Missoula and Great Falls all laughed and joked about Butte, about how the system worked here and how backwards it was.

Mr. Riley said the other thing was that according to the map, he saw fifteen buildings. He didn't know if that was wrong or not – he asked someone in the audience if the green were buildings, each one. Mr. Wing said they weren't having a dialog back and forth. Mr. Riley said it was going to be like forty-five and forty-five he figured and it was said ninety apartments, cut in half two bedrooms and three bedrooms, so there would be about 225 cars and 225 people who would be there, right – that would be staying in the apartments.

Mr. Riley said first of all, he thought they needed to have a traffic study done on the impact on Granite Street. He said he

had properties on Quartz, on the 1100 block of Quartz Street he had two houses. He thought the traffic would be affected on Granite and Park for his tenants. He personally lived on Waukesha and used Park Street and Excelsior and he thought it would be adversely affected for the traffic and thought there should be a study done on the traffic. He didn't believe all the students would be transferred or routed through Tech, they wouldn't go through Montana Tech's main campus but would go right down Granite Street. He said that was false and nobody was going to drive around and go right through the middle of Tech's campus going 5 mph with students crossing back and forth.

Mr. Riley continued by saying that was all he guessed but he didn't think it would be very healthy for Butte and thought it was too large and he thought if they allowed this, they would have to allow anybody else to put in multi-family apartment buildings anywhere.

Mr. Riley further said that if anybody was financially affected by it, he thought they should get a hold of their attorneys and see what they could do about that. He thanked them and Mr. Wing thanked him.

Mr. Wing asked if there was anybody else who cared to speak against the application. There was no further response.

Mr. Wing said the applicant now had the chance to provide rebuttal testimony with regard to the information that was provided in opposition.

Mr. Vincent said that was a lot. He said he didn't know if he could get them all but wanted to address the general comments. He said there was a lot of speculation on what would happen outside of this. He said it wasn't in his understanding to be part of the evaluation. He said they could clarify that a three bedroom unit would have three people in it and it wouldn't have additional people in it and it wouldn't be allowed.

Mr. Vincent said discussions on traffic – the kids were up there already anyway and this was not going to exacerbate the traffic situation. Granite Street had already been reduced to 15 mph just west of this site and their plan to route people out was not really any different or any longer to go out through Tech than it was the other way.

Mr. Vincent said there was going to be a lot of investment – this was a major investment in Butte and this was what Butte needed. A point he wanted to make was this wasn't about taking a pie and cutting it into smaller pieces, it was about making the pie bigger. He said more students were going to come to Tech, so there would be more students around and they weren't all going to live in this and you had heard the term that a rising tide floats all boats, they felt that this was a need in the community that had been documented in studies and they felt that this was a good project and that was all he had. He thanked them and Mr. Wing thanked him.

Mr. Wing closed the public hearing and opened it for Board discussion.

Mr. Habeger said he had a question for the developer and Josh Vincent.

Mr. Wing asked Mr. Habeger if he wanted to reopen it and Mr. Habeger said yes, if he didn't mind.

Mr. Wing then reopened the hearing.

Mr. Habeger said the question was just the density. He asked Mr. Vincent if there was a make or break on the amount of units that were decided or was there any lee-way on that. If there were sixty units, could they make it or was ninety the optimum number that maximized that property. Mr. Vincent deferred to someone else. Mark Esponda with Dick Anderson Construction said he could address that. He said ninety was the maximum on the site. He said obviously, if they did the first phase and filled half of it and didn't fill it up, they wouldn't build the other

half, so it was all going to be based on economic stuff and what got full.

Rocko Mulcahy said he wanted to make a couple of comments. He said he had the privilege of serving on the Council with Charlie O'Leary and he appreciated his comments and everyone's comments there that night. He said he walked into these chambers in 2000 and became a brand new Commissioner for the Council of Commissioners. He said this community was in a state of panic and he wouldn't go through all of those issues that happened in that time but it was just horrible. He said he could remember sitting there thinking and he thought they had numerous discussions about how it would be to have the opposite -- to be debating too big, too large and too much growth. He said he could tell them that it was an honest pleasure to be there that day and have that problem -- to be sitting up there in the decision-making process and have this problem of such a large scale project coming to Butte. He said this was a forward-thinking project, there was no doubt about it, a forward-thinking project and the scope merited a measureable difference in the outcome of benefit and the negative impacts on the public good. He said when you talked about public good with something this large, this Board was used to dealing with very small scale issues -- variances -- this merited extreme thought.

Mr. Mulcahy said when he was on the Council during all of those times, there wasn't anything he did up there when he made a decision of this scale that he had pushed through or rushed or given no due diligence for such an impact on the community. He said very straightforward in talking about public good, that meant did this benefit everyone more than it did the people it didn't benefit and so from his standpoint he was going to support this project because he thought it was a public good in this community. He thought if Tech increased its student enrollments and offered more choices for housing, it was going to be a greater good for this community moving forward. He said if the project didn't move forward, he thought it would have more of a negative impact on the public good of this community.

Mrs. Cooney said to Mr. Mulcahy, very well said and she was not going to reiterate it all but she supported 100% what Mr. Mulcahy had said.

Mrs. Jaksha said she spoke in favor of the project as well. She said she was in economic development in the community and she realized the impact that it would have on the rental properties in the area. She said her feeling was that she also had a college student going to Montana Tech who luckily, maybe luckily, he got to live at home but her daughter was going to leave Montana Tech unfortunately, and go out of here and for her, when she went on college visits with her, the housing was really crucial to her to make a decision to where she was going to go. She felt that the project was a very good project and she thought they were going to see a lot of good impact across the community from it. She didn't feel that because the project was being initiated out of Billings that it would hurt the impact to our community. She said at any time landowners or people who owned properties in the community could move for any reason – you might have to relocate because of a job or a health issue and you would still own your properties here and she hoped that you would still be a good community member, so she was excited to see it move forward and she wanted to see Montana Tech grow and prosper because she thought in the long run they were going to see that trickle down to our community.

Mr. Mulcahy moved to approve Use Variance Application #14990.

Mr. Wing said there was a housekeeping issue. He said they had the use variance and then they had the site development things with regard to sidewalks and setbacks and so approval of the project in one sense needed to be done or not done as may be but they also had to consider the north Ophir sidewalk and paving.

Mrs. Jaksha said she would like to see the sidewalks put in. She said she knew that sometimes on the Board they

disagreed about that but she for one, would like to see the sidewalks put in on that side. She said she was fine with the other side where the property line ends but she would like Ophir Street to have a sidewalk.

Mr. Mulcahy said he had a question for Mr. Sesso. He asked if they could treat the sidewalk issue separately. Mr. Sesso said yes. Mr. Mulcahy said move the project forward and then take a second vote on the sidewalk project after they discussed different options. Mr. Sesso said the way in which he would suggest, if there was a -- one suggestion -- it would be difficult to have two votes, one for the project -- the use variance, the front yard setback, the rear yard setback and the sidewalk on the left and then say the second vote.

Mr. Sesso said he would suggest that the combination of their introduction to the conditions on page twelve where they said staff would recommend approval of the variances requested -- if the motion were to be, the staff would recommend approval of all variances requested in this application subject to the conditions as stated and then change number seven, which was a requirement to install new sidewalks adjacent to Granite, May and Ophir along the property boundaries. He said prior to receiving the permit, the applicant had to deliver a sidewalk plan and then it said at the top of page fifteen, at a minimum the design shall meet the Americans with Disabilities Act (ADA) and he would suggest the two options and provide at a minimum, the design shall provide safe pedestrian access along Ophir street to the northeast corner of the applicant's property, as an alternative to sidewalk. He said then like all the other variances, the Board would be giving the applicant an opportunity to present the alternative but if and to the extent that it was rejected by the Public Works Department as inadequate, they would then be required to build the sidewalk all the way up to the edge of the property line. He said that was an option and the other option was to simply condition it to the way the applicant suggested because it appeared that approving the variance as is wasn't going to fly and so require that the Granite Street Apartments sidewalk to its property

corner was contingent upon NorthWestern Energy's approval to finish the sidewalk.

Mr. Sesso then referred to the site plan in the presentation picture and said the corner that he pointed out was the 88' that the variance was requested for and if the applicant built the sidewalk to there on this same line with curb, gutter and sidewalk and then improved this twelve feet of nonpaved access, it was almost to the top of where the walkers come through the Hilltop Apartments complex. He said if the Power Company were to build a sidewalk, the walker would have to go – they just wouldn't do it but he thought the practical impact was where walkers would come through the Hilltop there that he pointed out and said this was the outlet and some of them could maybe come through the open space area but most of the walkers from the upper West Side came through where he pointed out and between the garages and the Hilltop. He said that was the point they were talking about and he pointed out where the Power Company was.

Mr. Sesso said what he was saying was if they left it to the staff to review and determine whether the alternative proposal was satisfactory for safe access and they didn't think so, then the end result would be they would have to build it to their point that he pointed out in the picture. If they wanted to leave it that way or if they approved the application as written, then they had to absolutely build the 88' section and there would be no discussion of an alternative. He said they had a couple of options but as far as voting – he guessed they could vote on the use variance, the front yard setback, the rear yard setback and the sidewalk on May – take a vote and then they could discuss and make another motion up or down on the 88' sidewalk variance on Ophir. He said they had two options.

Mr. Wing said either way would seem to move it forward. He said there was no reason that they as a Board couldn't decide what they wanted to do with regard to the project as a whole and the other site development variances, May Street, etc. and then take care of that problem and then move back onto the second consideration of the North Ophir sidewalk - paving trail,

whatever it may be. He would propose that they did that, if someone wished to frame a motion.

Mr. Habeger said maybe they could do a poll amongst themselves because he was not a big fan of sidewalks to nowhere. He said they have had those where there is not a trend to do that and it looked like they addressed the tapering and widening of Ophir Street and he would be -- as to how the variance was written, it seemed very comprehensive. He said they had done a lot of planning and they were adding parking in an area where it was desperately needed and it would be creating a walking campus effect. He did appreciate and he was a landowner himself or a rental and he did appreciate that but if you raised the bar and you built it, they would come.

Mr. Wing said he concurred with Mr. Habeger and said he liked the idea to pave the trail as an option and that could be worked into a motion.

Mr. Wing then asked if they wanted to have a poll, they could do that.

Mrs. Cooney asked if that didn't fall into the idea of approving or disapproving -- putting the motion forward for the project as a whole and modifying a condition to address that, so that there wasn't the complication of two votes. Mr. Wing said they could do that and that was what he would recommend himself. Mrs. Cooney thought that would be the most practical.

Mr. Wing asked if somebody had a motion in mind.

Mr. Mulcahy said he thought they did have one on the floor. It was asked if it was seconded and Mr. Wing said no. Mrs. Cooney said she seconded it.

Mrs. Cooney said they would have to change one of the conditions.

Mr. Mulcahy said then there would have to be an amendment to his motion, if anybody cared to make one. Mr. Wing said that was true. Mrs. Cooney said she seconded it, so she couldn't.

Mr. Mulcahy said this was a little bit confusing, so he would just walk himself through it. He said he had no problem with amending his motion and he would. He asked if they wanted to go with option one or two and he wasn't going to try to go through both of those options. He said he was okay with either one of those amendments. He said if anyone just wanted to comment on what they preferred, he would make that and they could vote that up or down and then they could go back to his original motion, if that failed. He said he thought he understood what was going on with option two. He asked if everybody was comfortable with that. Mr. Wing said he thought so and Mrs. Cooney said yes.

Mr. Mulcahy said he wanted to amend his original motion to approve the variance as is, to include Planning staff's option two. He asked Mr. Sesso to briefly go through that again. Mr. Sesso asked if this was the separate votes or was it one. Mr. Mulcahy said it would be one vote.

Mr. Sesso said the motion should state that the Board would move the approval of all variances requested in Application #14990, subject to the conditions as stated in the staff report, with an amendment to number seven on the top of page fifteen where it would say that at a minimum the design that would have to be submitted by the applicant for review and approval by the Public Works Department, which by the way was against the variance, to say at a minimum the design shall meet the American with Disabilities Act and provide safe pedestrian access along Ophir Street to the northeast corner of the applicant's property, as an alternative to sidewalk. If the design submitted that provided that alternative wasn't deemed acceptable by the Public Works Department, then the default was building the sidewalk all the way to the corner.

Mr. Mulcahy so moved and Mrs. Cooney seconded the motion.

The conditions are as follows:

1. At a minimum, the buildings shall match the design presented in the submittal documents for this variance, and in particular, the placement and height of the buildings shall minimize any adverse impacts on the views of surrounding property owners to the north and east.
2. Prior to the issuance of a building permit, the applicant shall fulfill all conditions of approval for the demolition of the two houses on the property that are eligible for consideration on the Historic Register, as specified by the recommendations of the Historic Preservation Commission at its January 5, 2016, meeting.
3. 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. At a minimum, the plan shall include the number and size of trees and shrubs and where they will be located. The 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%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

4. Prior to receiving a building permit, 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).
5. Prior to the issuance of a building permit, the applicant shall submit a detailed off-street parking and paving plan to the Planning Department staff for review and approval. At

a minimum, the plan shall include the required number of standard and handicapped spaces and complementary landscaping in compliance with the provisions as described in Chapter 17.40, Off-Street Loading and Parking of the BSBMC.

The applicant shall submit a cost estimate from a licensed paving/landscaping contractor for the materials and installation of the approved parking and paving plan. This cost estimate will be used as the off-street parking and paving bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

6. The applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the proposed design to install curb and gutter and widen May and Ophir Streets, and to install the two access approaches to the apartment complex off of Granite Street, in compliance with all sections of Chapter 12.04, Construction within Public Right-of-Way, of the BSBMC.

The applicant/agent shall submit a cost estimate for materials and installation of the road improvements stated above from a licensed contractor. Improvements must be approved by the Butte-Silver Bow Public Works Department prior to the bond amount being approved.

This cost estimate will be used as the road improvement bond plus ten percent (10%) to secure the installation of the above stated road improvements. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.

7. The applicant shall install new sidewalks adjacent to Granite Street, May Street and Ophir Street along the property boundaries, per the requirements of Section 17.38.050. Prior to receiving a building permit, the agent 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 and provide safe pedestrian access along Ophir Street to the northeast corner of the applicant's property using standard sidewalk or an alternative acceptable to the Department of Public Works.

The agent 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.

8. Prior to receiving a building permit, the applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:
 - a) Compliance with all sections of Chapter 13.04, Wastewater Treatment System, of the Butte-Silver Bow Municipal Code.
 - b) Compliance with all sections of Chapter 13.20, Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24, Main Extensions and Material Specifications.

In addition, all water and sewer main extension plans must be approved by the Montana Department of Environmental Quality prior to installation.

The applicant shall submit a cost estimate for materials and installation of the water and sewer main extensions from a licensed contractor. Improvements must be approved by

the Butte-Silver Bow Public Works Department prior to the bond amount being approved.

This cost estimate will be used as the water and sewer main extension bond plus ten percent (10%) to secure the installation of the above stated water and sewer mains. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.

9. Prior to receiving a building 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.
10. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, be directed away from all residences and not exceed sixteen feet (16') in height.
11. Prior to receiving any sign permits, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.
12. Prior to receiving a building permit, the applicant shall submit a weed management plan to the B-SB Weed Board for review and approval.

Mr. Wing asked if they were prepared to vote then.

At this point the Board voted on the application.

Use Variance Application #14990 – Conditionally Approved

John Habeger	For	Tyler Shaffer	For
Rocko Mulcahy	For	Dolores Cooney	For
Julie Jaksha	For	Dave Wing	For

John Habeger, Tyler Shaffer, Rocko Mulcahy, Dolores Cooney and David Wing voted “For” the motion to approve the application.

Julie Jaksha voted “For” the motion to approve the application – “would prefer sidewalk to asphalt trail.”

Mr. Wing said all six votes were for the motion, which meant that the application had been approved and they would be receiving a letter from the Planning staff to that effect, which would contain the additional language with respect to what he called the North Ophir sidewalk/paving trail option.

The applicant thanked them for their time.

IV. Other Business:

A. Election of Officers

Mr. Sesso said their other business was election of officers. He said they would need to nominate the Chair and vote and then do the same for Vice-Chair.

Mr. Wing then called for nominations to serve as Chair for the forthcoming year. Mrs. Cooney nominated Mr. Wing and Mr. Shaffer seconded the motion. Mr. Habeger said he would second that nomination.

Mr. Habeger then said unless someone else was willing to serve as Vice-Chair, he didn’t mind serving as Vice. He didn’t know if he could nominate himself or not.

Mr. Habeger said it would be good to give some of the newer Board members some experience too. Mrs. Cooney said they were still learning.

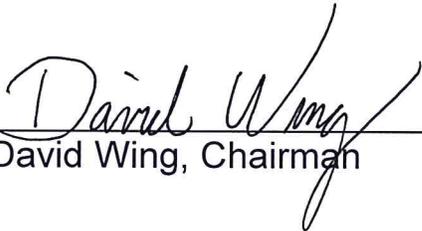
Mr. Mulcahy said they could just vote to retain the current ones. Mrs. Jaksha said if they both accepted. Mr. Wing said he would accept. Mr. Habeger said he would accept but he was letting them know that this would be his last term. He said he was in the end of his three and twelve years was enough. He said he would plead the Steve Hess.

Mr. Wing called for a voice vote in favor and all six votes were in favor.

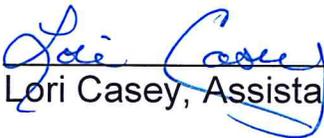
Mr. Wing would remain as Chairman and Mr. Habeger would remain as Vice-Chairman.

- V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 8:10 p.m.

BY:



David Wing, Chairman



Lori Casey, Assistant Planning Director

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

**Thursday, January 21, 2016, at 5:30 P.M.
Council Chambers – Room 312 -- Courthouse**

- I. Call to Order.
- II. Approval of the Minutes of the meeting of December 3, 2015.
- III. Hearing of Cases, Appeals and Reports:

Use Variance Application #14983 – An application for a use variance by Chad Silk, owner, and Janelle Johnson, agent, to locate a commercial operation (dog grooming business) in an existing building in a residential zone, varying from the requirements of Section 17.16.020, Permitted Uses, of the BSBMC. The property is located in an “R-4” (Manufactured Home) zone, legally described as Lots 12 & 13, Block 19 of the Whites Addition, commonly located at 2404 Farrell Avenue, Butte, Montana.

Use Variance Application #14990 – An application for a use variance and variances from Digger-Digs, LLC, c/o Terry Holzwarth, owner, and Josh Vincent, Water & Environmental Technologies, Inc., agent, to locate four (4) multi-family apartment buildings having a total of 90 apartments in a one family residence zone, varying from Section 17.10.020, Permitted Uses, and to locate two (2) of the buildings within thirteen feet (13') of the front yard property boundary, varying from the minimum required twenty-five (25') of Section 17.14.070, Minimum Front Yard Depth, and to locate a seventeen-foot section of one (1) building within ten feet (10') of the rear yard property boundary, varying from the minimum required fifteen feet (15') of Section 17.14.090, Minimum Rear Yard Depth, and to not construct sidewalk for approximately eighty-eight feet (88') along the east property boundary adjacent to Ophir Street and to not construct sidewalk for approximately one hundred thirty-eight feet (138') along the west property boundary adjacent to

Applicant or Representative must be present at the meeting

A G E N D A

(Page 2)

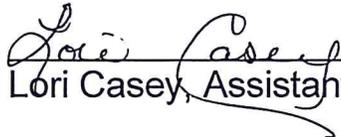
May Street, varying from Section 17.38.050, Landscaping Requirements – Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 6-14, Block 3, Fairview Addition and Lots 13-16, Block 10, Big Butte, and south ½ vacated alley adjacent and north ½ of vacated Quartz Street adjacent, and Lot 18A of Certificate of Survey 950B-RB, and Lots 7-14, south ½ of vacated Quartz Street, Block 6, Fairview Addition, and Lots 1-6, and the south ½ of vacated Quartz Street, Block 6, Fairview Addition, and Lot 15, Block 6, Fairview Addition, and Lots 16-19, Block 6, Fairview Addition, generally located in the 1400 Block of Granite Street bounded on the east by Ophir Street and on the west by May Street, Butte, Montana.

IV. Other Business:

A. Election of Officers

V. Adjournment.

By:



Lori Casey, Assistant Planning Director

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

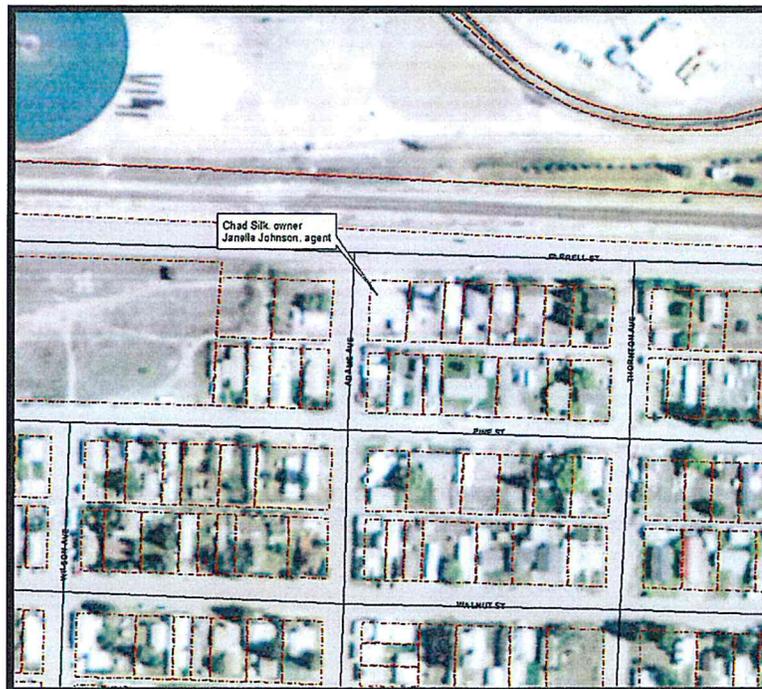
ITEM: Use Variance Application #14983 - An application for a use variance to locate a dog grooming operation in an existing building in a residential zone, per Section 17.16.020, Permitted Uses, of the BSBMC.

APPLICANT: Chad Silk, 3564 Hartford Ave, Butte, Montana, owner, and Janelle Johnson, 39 E. Center Street, Butte, Montana, agent.

TIME/DATE: Thursday, January 21, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-4" (Manufactured Home) zone, legally described as Lots 12-13, Block 19 of the Whites Addition, commonly known as 2404 Farrell Street, Butte, Montana.

PROPOSAL: The applicant is proposing to locate a dog grooming operation on a property that contains a structure that appears to have been constructed as the office and store for the former Town Pump gas station.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.16.020, Permitted Uses, does not list a dog grooming business as a permitted use within the "R-4" zone. In order to conduct the proposed business in this 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 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 prove 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 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.

The property in question is located on the border between the "R-4" zone and the "No-Zone" mining area to the north of Farrell Street. Consequently, the property is located in an area that provides a transition from the residential community to the south and the active mining area, including the Concentrator, to the north. Although this property is located in the "R-4" (Manufactured Home) zone, the Growth Policy designation is Commercial. The Planning Board and Council of Commissioners changed the Growth Policy designation for this area of Continental Drive from residential to commercial in 1995. This change resulted from the recognition by the public and staff that the location of properties adjacent to Continental Drive and Farrell Street and between Dexter and Texas Avenue would be more suitable for commercial purposes.

Nonetheless, as the area is still zoned residential, potential negative impacts from the proposed commercial activity on the adjacent residences must

be considered and mitigation measures must be included, if the application is approved.

There appears to be several potential negative impacts associated with a dog grooming business being located within a residential neighborhood. One potential negative impact is an increase in noise from dogs barking when entering/exiting the property or if they are allowed to roam in the yard. In that regard, the agent has indicated to staff that the dog grooming will be conducted by appointment only during normal business hours. While a dog may need to use the yard for bathroom purposes, a relief area will be established along the north side of the property (farthest from the residences). In addition, they will only be outside long enough to go to the bathroom.

Another potential negative impact on the neighbors is a potential for a build-up of animal waste. In that regard, the agent has indicated that if a dog does go outside, the waste will be cleaned up that day. The agent has also stated that any dogs waiting to be picked up will be kenneled inside. As such, no dog will be permitted to run loose in the yard.

In regards to a potential loss of on-street parking for neighbors, the agent's property includes an off-street parking area that can accommodate several vehicles.

Because of the varying land uses in the surrounding area and the amount of traffic that utilizes Farrell Street and Continental Drive on a daily basis, it would appear that the establishment of a low impact commercial use, such as a dog grooming operation, would not appear to be out of character in the

neighborhood. In fact, the proposed commercial use would appear to be approximately the same intensity as the AWARE bus facility and less than the Rocky Mountain Traffic Control facility to the west. Both of these uses were approved by the Zoning Board of Adjustment. Nonetheless, this application may need to be conditioned to ensure that the negative impacts on the surrounding neighborhood are minimal.

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 or an addition on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

The hardship associated with this property relates to the property being located adjacent to the active mining landscape of Montana Resources. Due to the property in question being located across Farrell Street from an active mining operation that produces excessive noise, dust and odor, it would appear that the potential use of this property for residential purposes is limited. In addition, the property and existing structure were utilized by Town Pump, Inc. as a gas station until the late 1990's and the existing structure appears to have been constructed for commercial use and not for residential use. As such, the existing structure would have to be demolished

and replaced with a new residential structure and the return on the investment would appear to be questionable based on the location of the property.

Subcriteria Number One states the land cannot secure a "reasonable return" if the land is restricted to only those uses permitted outright in that zone. Again, the property is located in an area that is a transitional point between the residential neighborhood to the south and the "no-zone/mining area" to the north. As noted above, the property in question has a long history of being utilized for commercial purposes, including a gas station, pet store, beauty salon and most recently a used car sales lot. As such, the property and structure have commercial characteristics and the renovation of the property and structure to residential use may not secure a "reasonable return" for the owner.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. The general character of the neighborhood is mining on the north side of Farrell Street and a mix of residential and commercial on the south side of Farrell Street. Since no new construction is proposed on the existing structure and the applicant has informed the Planning Department that the dog grooming will be done by appointment, it would appear the proposed use would not compromise the character of the neighborhood.

Based on the above discussion, staff believes that the proposed project does meet the criteria to justify a hardship.

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 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.

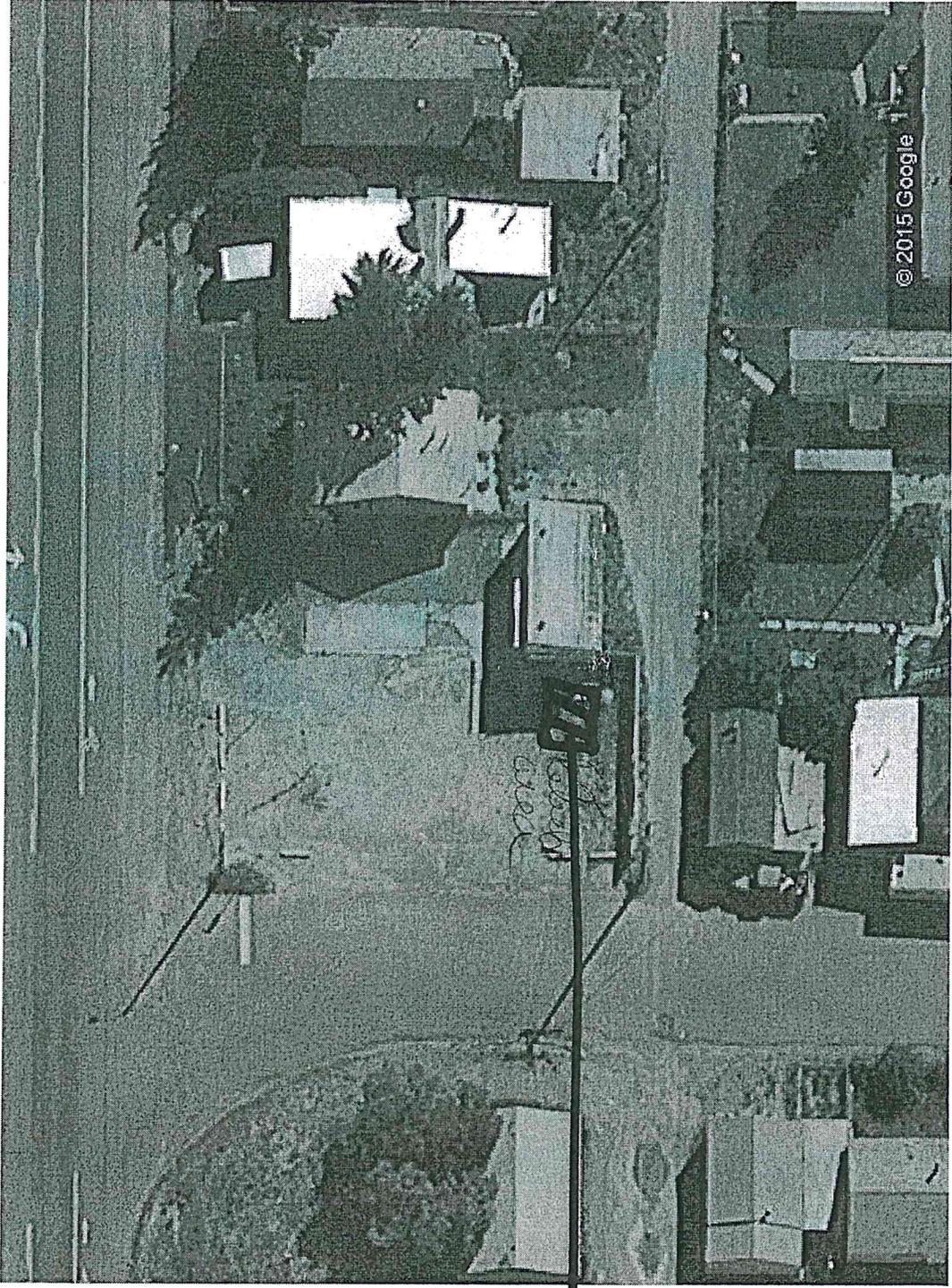
There could be a safety hazard for children (and adults) in the neighborhood, if they were confronted by a dog that is allowed to run off of a leash (or breaks free from an owner) while entering or exiting the property. However, the property does have a parking lot that patrons will be using for drop off and pick up of their animals. In addition, the south boundary adjacent to the alley contains a six foot (6') tall privacy fence to shield the neighbor to the south. The property to the east has a fenced yard. It should be noted that the owner of this property, who has agreed to lease the property to the agent for her business, is also the owner of the property on the east. The property to the west across Adams Street is vacant.

The applicant is not proposing any additional lighting that could negatively impact adjacent residents or new fencing that would result in a more commercial appearance to the 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 to allow for the reasonable use of private property.

Therefore, staff would recommend approval of Use Variance Application #14983, provided the following conditions are met:

1. The property described by this use variance application is approved for use as a dog grooming operation. Any expansion of the existing structure or change in business use will require review and approval by the Zoning Board of Adjustment.
2. Prior to the issuance of a business license, the applicant shall submit a landscape plan for review and approval by the Planning Department and post a bond for the cost of the installation of the landscaping plus ten percent. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.
3. All animal waste must be cleaned up daily.
4. The applicant will be limited to the following hours of operation, 8:00 a.m. to 8:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday.



Relief
Area



<p>33</p>	<p>SITE PLAN WITH AERIAL BACKGROUND</p>	<p>Water & Environmental TECHNOLOGIES 480 E. Park Street Butte, MT 59701 (406) 782-5220 WATERENVTECH.COM</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">No.</th> <th style="width: 85%;">Description</th> <th style="width: 10%;">Date Drawn By</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Description	Date Drawn By																														
No.	Description	Date Drawn By																																		
<p>PROJECT NAME: GRANITE STREET APARTMENTS LOCATION: BUTTE, MT FILE NO. SC-6M01-HotWarm\02.dwg</p>		<p>COPYRIGHT 2016 Water & Environmental Technologies, PC hereby reserves our common law copyright in the document and the ideas and designs incorporated herein as an instrument of professional service which shall not be used in whole or part for any other projects or other use without our express written authorization.</p>																																		

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

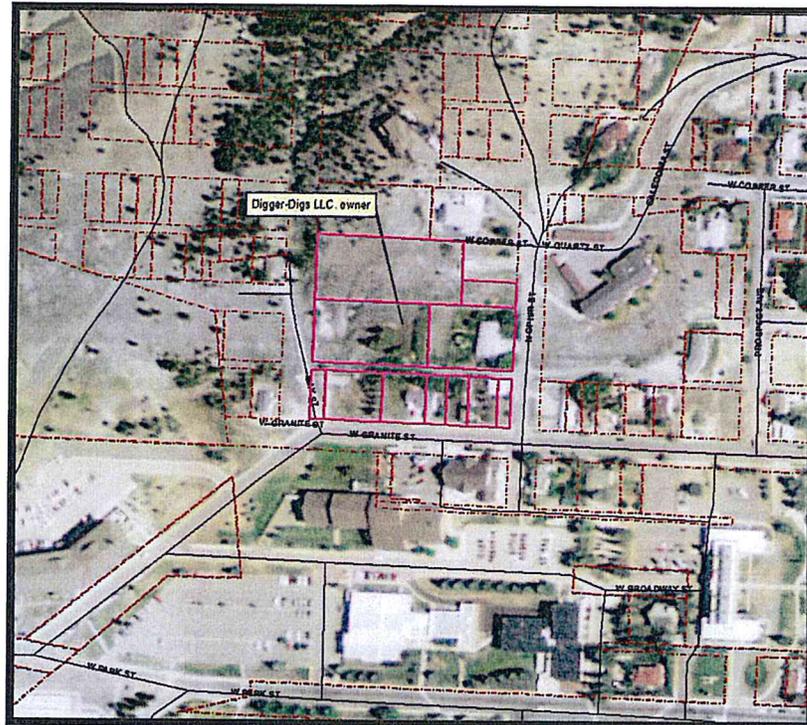
ITEM: **Use Variance Application #14990** - An application for a use variance to construct four multi-family apartment buildings having a total of 90 apartments in a One Family Residence zone, varying from Section 17.10.020, Permitted Uses. In addition, the application requests three site variances: a) to locate two of the buildings within thirteen feet (13') of the front yard property boundary, varying from the minimum required twenty-five (25') of Section 17.14.070, Minimum Front Yard Depth; b) to locate a seventeen-foot (17') section of one building within ten feet (10') of the rear yard property boundary, varying from the minimum required fifteen feet (15') of Section 17.14.090, Minimum Rear Yard Depth; and c) to not construct sidewalk for approximately 88 feet along the east property boundary adjacent to Ophir Street and approximately 138 feet along the west property boundary adjacent to May Street, varying from Section 17.38.050, Landscaping Requirements – Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC.

APPLICANTS: Digger-Digs LLC, c/o Terry Holzwarth, 3137 Avenue D, Billings, Montana, owner, and Josh Vincent, Water & Environmental Technologies, 480 E Park Street, Butte, Montana, agent.

DATE/TIME: Thursday, January 21, 2016, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Jon C. Sesso, Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an “R-1” (One Family Residence) zone, legally described as Lots 6-14, Block 3, Fairview Addition and Lots 13-16, Block 10, Big Butte, and south ½ vacated alley adjacent and north ½ of vacated Quartz Street adjacent, and Lot 18A of Certificate of Survey 950B-RB, and Lots 7-14, south ½ of vacated Quartz Street, Block 6, Fairview Addition, and Lots 1-6, and the south ½ of vacated Quartz Street, Block 6, Fairview Addition, and Lot 15, Block 6, Fairview Addition, and Lots 16-19, Block 6, Fairview Addition, generally located in the 1400 Block of Granite Street bounded on the east by Ophir Street and on the west by May Street, Butte, Montana.

PROPOSAL:

The applicant is proposing to construct three 4-story buildings and one 3-story building in an “R-1” (One Family

Residence) zone. Each building will have 20-30 units with a mix of two- and three-bedroom apartments. Off-street parking will be provided in compliance with the prevailing development standard of 1.5 spaces per apartment and the required number of handicapped-accessible spaces.

A two-phase construction is proposed with construction starting in 2016 on the first two buildings facing Granite Street with the other two buildings on the northern section of the property to be built after completion of the first two buildings. The property currently has four single-family residences and two garages/sheds that will be either demolished or moved to appropriate sites elsewhere.

The building site currently has public access from Granite Street on the south, May Street on the west and Ophir Street on the east; to the north is open space, i.e., the Big Butte Open Space Area. The applicant has proposed upgrades to both May and Ophir Streets although does not intend to use the two streets for ingress/egress to the development.

**STAFF
FINDINGS:**

Butte-Silver Bow Municipal Code, Section 17.10.020, Permitted Uses, lists the permitted uses within the "R-1" zone. The agent's request to construct four multi-unit apartment buildings on the subject property is not permitted within this zoning classification, hence the request for a use variance in the "R-1" zone. In addition, the applicant is requesting three site variances as part of this proposal, as follows: a) a thirteen-foot front yard setback (vs. 25') on Granite Street; b) a ten-foot rear yard setback (vs. 15') for a short, seventeen-foot section for the building in the NE section of the lot; and c) to not construct sidewalk for approximately 88 feet along the east property boundary adjacent to Ophir Street and approximately 138 feet along the west property boundary

adjacent to May Street (vs. the full length of the side properly boundaries).

Use variances have two subcriteria under the main criteria of hardship: 1) the applicant must prove that the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the (R-1) zone; and 2) the applicant must prove 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 single-family residential, two-family residential and multi-family residential is to prevent the intensity and development patterns from adversely affecting land uses that are not similar. Therefore, zoning districts are established to separate uses that conflict with each other and to integrate and group compatible uses.

One public interest issue to consider is whether the proposed apartment complex is compatible with the existing neighborhood. The proposed site is located in an "R-1" (One Family Residence) zone. Nearby, there are several single-family homes located on the 1300 block of West Granite Street to the east and the multi-unit Hilltop Apartments building to the north and east. The property to the west of the site

is owned by Montana Tech or the applicant and is currently vacant or has university buildings.

Directly south of the proposed property is the Montana Tech campus, which is zoned as "E-1" (Public College). Montana Tech currently has two Residence Halls located on campus (Prospector Hall and Centennial Hall) that house multiple students per unit and each have multiple stories. Prospector Hall is a two-story brick building and Centennial Hall is a three-story partial brick building with a hip roof style. Centennial Hall utilizes a step foundation approach to allow the Hall to integrate into the existing land topography. The proposed complex will also utilize a stepped foundation for each building which will allow it to also blend in with the existing topography. Likewise, the proposed apartment complex would look very similar to the Centennial Hall and other campus structures.

As described, the area surrounding the proposed development is already a mix of single-family residences with a fair amount of multi-family apartment residences to allow for the housing needs of a college campus. Therefore, the proposed complex, as presented in the submitted site plans, would appear to be reasonably compatible with existing residential uses.

A second issue to consider is access – both vehicle traffic and pedestrian users. The applicant has proposed two approaches off Granite Street to the off-street parking areas built as part of the project, and no access points off May or Ophir Streets, which have a steep grade and would be much less vehicle-friendly. Granite Street, which is mainly used by students and faculty to access MT Tech facilities and the on-campus parking lot to the

southwest of the property, is a better option for access to the proposed complex.

The applicant has suggested that the proposed housing complex immediately adjacent to campus may ultimately result in a slight decrease in traffic on Park and Granite Streets, based on less tenant/student trips per day to and from campus.

Further, the site plan submitted by the applicant includes new, ADA-compliant sidewalks and corners, curb and gutter, and widening both Granite and Ophir Streets to upgrade these public right-of-ways to BSB standards – improvements that should mitigate any adverse impacts of additional traffic.

A third concern is the possibility of increased noise from the new development. The area already experiences a higher level of noise due to the proximity of a college campus. Generally, it is difficult to quantify the difference in noise between several single-family residences vs. four apartment buildings. Also, the location of the apartment complex at the end of the block should be beneficial with mostly vacant land to the west.

A fourth public interest issue is less **on-street** parking, which would have an adverse impact for neighboring residences. The site plan for the proposed complex provides for off-street parking at a ratio of 1.5 stalls to each apartment unit, in compliance with the development standards in the Zoning Ordinance, and the required number of handicapped-accessible spaces. The applicant has also proposed a permit system that would only allow residents to park in the designated parking lot for the Granite Street Apartments. These measures should help keep tenants from using on-street

parking, although the development will displace an unimproved area currently used for parking.

A related, public interest concern is the demolition of the existing single-family residences on the property, two of which are eligible for inclusion on the National Register of Historic Places but are not currently registered. The applicant and his consultant team have worked closely with the Butte-Silver Bow Historic Preservation Officer and Commission to fulfill all requirements in terms of mitigation measures for demolition. In addition to going through design review of the new buildings, the two homes slated for demolition are being advertised and offered for sale/relocation, and if no interested parties are found, the applicant has agreed to allow salvaging of any important historical elements of the homes before demolition. The remaining residences and the two garages on the project site are not eligible for inclusion in the National Register of Historical Places.

A final public interest issue would be the elimination of views posed by the new apartment buildings. There are currently two property owners north of the proposed site that could have views affected by the project although most properties already have limited views due to existing buildings on the Montana Tech Campus. Regardless, the applicant has proposed a site plan that incorporates the steep topographic drop in the property, from north to south, to locate the buildings in a way that minimizes obstructions for north property owners and preserves views to the extent possible.

Besides the potential impacts of the proposed project related to the use variance, as discussed above, the applicant has also requested three

variances to the development standards of the property. Regarding the request to locate the two buildings facing Granite Street within 13 feet of the front yard property boundary instead of the required 25 feet, the proposal serves the public interest. In fact, locating the buildings closer to the street is more compatible with the surrounding structures and was the preference of the Historic Preservation Commission.

The second request – to locate a 17 foot section of the northeast building in the complex within 10' of the rear yard property boundary (vs. 15') is minor and certainly not contrary to the public interest. The remaining extent of the north wall of that building – about 130 feet long – is set back comfortably in excess of the 15 foot standard.

The third variance request is to not construct sidewalk for approximately 88 feet along the northernmost section of the east property boundary adjacent to Ophir Street and approximately 138 feet along the north section of the west property boundary adjacent to May Street. The request does not appear to be contrary to the public interest regarding May Street, however, on Ophir Street there does appear to be a public benefit to extend the sidewalk to the end of the property line.

In reviewing the site plan, the applicant has proposed terminating the sidewalks at convenient points for tenants to enter the apartment complex. Extending beyond the proposed endpoint on May Street to the north property boundary on May Street would result in a dead-end on a steep slope. Thus, that variance is recommended for approval.

As for the sidewalk on Ophir Street, the applicant has proposed a pedestrian trail that would tie into the street near the Hilltop Apartments, effectively creating a pedestrian connection from Granite Street. However, Ophir Street is a main route for students to access the campus, and it would be a safer, more complete pedestrian facility to extend the sidewalk the full length of the street. Butte-Silver Bow has initiated conversations with NorthWestern Energy to finish the sidewalk in front of their Ophir Street property, directly adjacent to the north boundary of the applicant's property. When completed, there would be sidewalk along the west curb of Ophir Street from Granite Street to the driveway of the Hilltop Apartments. Given the public benefits, staff recommends denial of this variance.

2. **A literal enforcement of the Zoning Ordinance**

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.

The proposed property does have a unique trait – a significant grade change from Granite Street to the north - which has made it almost impossible to develop a large portion of the property as single-family dwellings. Several lots above the existing houses that front Granite Street have remained vacant due to the complexity of the site. To address the slope, each of the apartment buildings

will have to utilize stepped foundations to conform to the existing topography; the applicant also contends it may be necessary to build retaining walls as well. Given the significant investment needed to utilize the property, the use variance for multi-family units has been proposed.

As for the two subcriteria for a use variance: first, the reasonable return from the land in question. Any development of the north portion of the property will require the extension of the water and sanitary sewer mains. This will also require a significant investment in addition to managing the steep grade of the site. The total investment required to develop this set of lots would make it very difficult for any future owner to secure a reasonable amount of return, if only single-family homes were allowed.

The second subcriteria, i.e., will the proposed complex have an adverse effect on the existing use of the neighborhood, is also addressed. As stated previously, the area surrounding the proposed development is already a mix of single-family residences with a fair amount of multi-family apartment residences to allow for the housing needs of a college campus. With careful consideration of the historical look and fit of the proposed buildings, the proposed apartment complex should not have an adverse effect on the existing use of neighborhood. On the contrary, the proposed housing has the potential to enhance the aesthetics of the Granite Street corridor and complement the surrounding community.

- 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.

As discussed above, the applicant has collaborated with the local Historic Preservation Commission to develop a project plan and design the buildings to ensure a cohesive look with the overall neighborhood. By integrating the buildings into the land as much as possible, the single-family residences surrounding the proposed development will be able to preserve their wonderful views.

The design also complies with the provision of off-street parking spaces to minimize impacts on the existing parking difficulties surrounding the Montana Tech campus. Also, given the mass and scale of the adjacent buildings on the Montana Tech campus, the proposed apartment buildings are compatible with the neighborhood and will not diminish the existing surrounding structures.

In conclusion, the addition of the Granite Street Apartment complex would allow for more safe, affordable, and energy efficient housing for Montana Tech students. Allowing Montana Tech to grow and thrive by providing better housing for students can only benefit the entire Butte

Community. Consequently, the proposed use variance and the three development standard variances appear to be consistent with the spirit of the Ordinance.

CONCLUSION: After careful consideration and the analysis done for this report, staff would recommend approval of all variances requested in this Application #14990, with the exception of the request to not build the north section of the sidewalk on Ophir Street, subject to the conditions as stated below:

1. At a minimum, the buildings shall match the design presented in the submittal documents for this variance, and in particular, the placement and height of the buildings shall minimize any adverse impacts on the views of surrounding property owners to the north and east.
2. Prior to the issuance of a building permit, the applicant shall fulfill all conditions of approval for the demolition of the two houses on the property that are eligible for consideration on the Historic Register, as specified by the recommendations of the Historic Preservation Commission at its January 5, 2016, meeting.
3. 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. At a minimum, the plan shall include the number and size of trees and shrubs and where they will be located. The 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%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

4. Prior to receiving a building permit, 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).
5. Prior to the issuance of a building permit, the applicant shall submit a detailed off-street parking and paving plan to the Planning Department staff for review and approval. At a minimum, the plan shall include the required number of standard and handicapped spaces and complementary landscaping in compliance with the provisions as described in Chapter 17.40, Off-Street Loading and Parking of the BSBMC.

The applicant shall submit a cost estimate from a licensed paving/landscaping contractor for the materials and installation of the approved parking and paving plan. This cost estimate will be used as the off-street parking and paving bond amount plus ten percent (10%). This bond can be in the form of cash,

letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

6. The applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the proposed design to install curb and gutter and widen May and Ophir Streets, and to install the two access approaches to the apartment complex off of Granite Street, in compliance with all sections of Chapter 12.04, Construction within Public Right-of-Way, of the BSBMC.

The applicant/agent shall submit a cost estimate for materials and installation of the road improvements stated above from a licensed contractor. Improvements must be approved by the Butte-Silver Bow Public Works Department prior to the bond amount being approved.

This cost estimate will be used as the road improvement bond plus ten percent (10%) to secure the installation of the above stated road improvements. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.

7. The applicant shall install new sidewalks adjacent to Granite Street, May Street and Ophir Street along the property boundaries, per the requirements of Section 17.38.050. Prior to receiving a building permit, the agent 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 agent 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.

8. Prior to receiving a building permit, the applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:
 - a) Compliance with all sections of Chapter 13.04, Wastewater Treatment System, of the Butte-Silver Bow Municipal Code.
 - b) Compliance with all sections of Chapter 13.20, Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24, Main Extensions and Material Specifications.

In addition, all water and sewer main extension plans must be approved by the Montana Department of Environmental Quality prior to installation.

The applicant shall submit a cost estimate for materials and installation of the water and sewer main extensions from a licensed contractor. Improvements must be approved by the Butte-Silver Bow Public Works Department prior to the bond amount being approved.

This cost estimate will be used as the water and sewer main extension bond plus ten percent (10%) to secure the installation of the above stated water and sewer mains. This bond may be in the form of cash, letter of credit, surety bond, or other guaranteed negotiable instrument.

9. Prior to receiving a building 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.
10. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, be directed away from all residences and not exceed sixteen feet (16') in height.
11. Prior to receiving any sign permits, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.

12. Prior to receiving a building permit, the applicant shall submit a weed management plan to the B-SB Weed Board for review and approval.



SITE PLAN WITH AERIAL BACKGROUND

PROJECT NAME: GRANITE STREET APARTMENTS
 LOCATION: BUTTE, MT
 FILE NO. 3C-BMD1-HoltwarthM02.dwg

DATE: 1/7/16
 DRAWN BY: [Redacted]
 CHECKED BY: [Redacted]
 DESIGNED BY: [Redacted]

VISION CLEARANCE TRIANGLE
 PRELIMINARY
 NOT FOR CONSTRUCTION

C3

Water & Environmental
 TECHNOLOGY

480 E. Park Street
 Butte, MT 59701
 (406) 782-5220
 WATER@WET.COM

No.	Description	Date	Drawn By

Copyright 2016
 Water & Environmental Technology, Inc. hereby reserves the common law copyright in this drawing and design. No part of this drawing or design may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Water & Environmental Technology, Inc.