

March 10, 2016

**Butte-Silver Bow
Zoning Board of Adjustment
First Floor Conference Room**

MEMBERS PRESENT: David Wing, John Habeger, Les Taylor
and Rocko Mulcahy

ABSENT: Dolores Cooney, Tyler Shaffer and Julie
Jaksha

STAFF: Lori Casey, Assistant Planning Director
Rebecca Farren, Planner
Carol Laird, Secretary

M I N U T E S

- I. The meeting was called to order at 12:10 P.M.
- II. The Minutes of the meeting of February 18, 2016, were approved and passed.
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on March 3, 2016.

Mr. Wing stated the procedures that pertained to the meeting and said only four members were present and all four would have to vote in favor in order for the application to pass. The applicant was also told she could wait for a five or more member Board and she chose to go with the four members.

The following case listed on the attached Agenda would be heard that day.

Variance Application #15010 – Danelle Hooker 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.

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

Mr. Wing said to Mrs. Hooker that now was the chance to address the Board and talk about her project. He then asked her if the conditions were acceptable to her. She said yes, she already had a stone walkway from her back concrete on the property that was almost all the way to her sidewalk that she could easily finish. She said she would just ask her clients to use that and it would actually be better for her to have them parking in the front. She said it had sounded like it would be better in the back but this would actually work better for her and she would just let her clients know to park in the front and use the walkway to the back. Otherwise, she had no problems with that whatsoever.

Mrs. Hooker further said it was by appointment only. She would have one client there and maybe an overlap with finishing one and having another one coming. She said the other one would be leaving, so there should only be one to two cars there max at all times, so it would be low impact. She said she didn't have any problems with any of the conditions.

Mr. Wing asked if there was anyone present who cared to speak in support of the application. There was no response.

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

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

Mr. Taylor said he was good with it.

Mr. Taylor moved to approve Variance Application #15010 subject to the conditions as stated in the staff report. Mr. Habeger seconded the motion.

The conditions are as follows:

1. The applicant shall operate the approved home occupation per all guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.
2. The Home Occupation business shall be limited to Danelle Hooker.
3. The applicant shall be limited to the following hours of operation, 9:00 a.m. to 8:00 p.m., Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday.
4. The entrance to the beauty salon shall be provided from Sanders Street.

At this point the Board voted on the motion.

Variance Application #15010 – Conditionally Approved

John Habeger	For	Les Taylor	For
Rocko Mulcahy	For	David Wing	For

John Habeger, Les Taylor, Rocko Mulcahy and David Wing voted "For" the motion to approve the application.

Mr. Wing said there were four votes in support of the motion, which meant her application had been approved and she would be able to proceed with her business. He further said she would be receiving a letter from the Planning staff to that effect.

IV. Other Business:

Mrs. Casey introduced the new Planner, Rebecca Farren, and said she wanted to personally welcome her. She said Mrs. Farren rose to the top in the interview process and they were excited to have her.

V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 12:25 P.M.

BY: David Wing
David Wing, Chairman

Lori Casey
Lori Casey, Assistant Planning Director

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

Thursday, March 10, 2016, at 12:00 NOON
First Floor Conference Room – Room 103

- I. Call to Order.
- II. Approval of the Minutes of the meeting of February 18, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15010 – An application for a variance by Christopher Alan Hooker, owner, and Danelle Hooker, agent, to vary from the criteria for home occupations to operate a one booth salon business, per Section 17.44.040, Criteria for Review, of the BSBMC. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lots 4-6, Block 22 of the Gilman Addition, commonly known as 3311 Sanders Street, Butte, Montana.

- IV. Adjournment.

By: Lori Casey
Lori Casey, Assistant Planning Director

Applicant or Representative must be present at the meeting

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

ITEM: Variance Application #15010 - An application for a variance to operate a one person beauty salon business as a home occupation, per Section 17.44.040, Criteria for Review, of the BSBMC.

APPLICANT: Christopher & Danelle Hooker, 3311 Sanders Street, Butte, Montana, owners.

TIME/DATE: Thursday, March 10, 2016, at Noon, in the First Floor Conference, Room 103, Butte-Silver Bow Courthouse, 155 W. Granite Street, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-2" (Two-Family Residence) zone, legally described as Lots 4-6, Block 22 of the Gilman Addition, commonly known as 3311 Sanders Street, Butte, Montana.

PROPOSAL: The applicant is requesting approval to operate a one booth beauty salon business as a home occupation. As beauty salon businesses are not specifically included as examples of home occupations that would normally satisfy the criteria for review, the Planning Department has determined that this application should be reviewed and approved by the Zoning Board of Adjustment prior to the Home Occupation Application being signed by the Planning Department.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, 17.44.040, Criteria for Review, Uses Allowed as Home Occupations, requires Home Occupations be operated within criteria that limits the impact of a home occupation on surrounding residents. The criteria were developed to limit the amount of traffic and noise generated by any home occupation to a level similar to that of a typical residence. Section 17.44.040 (H) requires the sale of products produced or directly resulting from an approved home occupation to be approved by the Zoning Board of Adjustment when it is demonstrated that such activities will not be detrimental to the residential character of the property or the surrounding neighborhood. Prior to the applicant obtaining a home occupation permit, a variance approved by the Zoning Board of Adjustment is required.

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. However, there are commercial uses that can be operated out of a home but they are secondary to the main use of the structure as a residence. This level of commercial use is considered compatible within residential neighborhoods. In that regard, the Home Occupation section of the Zoning Ordinance was adopted with criteria to ensure that a proposed home occupation would remain secondary to the primary use of the structure as a residence. Typically, the greatest potential negative impact generated by a commercial use operated from within a home would be from additional traffic created by customers, employees and/or product deliveries and noise. As such, any home occupation that requires customers coming to the home must be approved by the Zoning Board of Adjustment.

In this particular case, the applicant is requesting to have a one booth salon in the home. The booth would be operated solely by the applicant. The applicant is also proposing to have a nail table, again, this would only be operated by the applicant. The applicant has informed staff that hair and nails

would be done by appointment only. As such, there would be no walk-in traffic.

Based on the information provided by the applicant, there would be additional traffic to the residence and in the neighborhood. However, because the business is appointment based, there should generally only be one, possibly two extra vehicles at any given time.

That being said, staff does have a concern with the applicant's proposal to utilize the alley as the main entrance to the business. Although the applicant does have a large driveway that provides an off-street parking place for clients and a sidewalk entrance into the salon, the alley is unimproved. Because the alley is unimproved, dirt and mud are tracked onto the paved streets and an increase in use of the alley increases the amount of dirt that is tracked onto the pavement. Additional traffic also increases the amount of dust during the dry months. Typically, alleys are only utilized by the residents of the block and for garbage pickup. It is expected that an alley will have limited use in a residential area.

Another concern is the hours of operation, as the applicant did not provide any hours of operation in the application. As stated above, the criteria for a Home Occupation allows for businesses that are compatible with the residential nature of the district to operate out of the home. Generally, a Home Occupation business is not going to have a greater impact on the residents living in the home as it would the neighbors. However, having a salon in the home may also encourage the applicant to provide services during times such as later in the evening or on Sunday than would typically be provided, if the

salon was located in a commercial area. Therefore, staff believes that it is important to condition the hours of operation.

If the applicant is agreeable to utilizing Sanders Street and their front yard to provide access to the Home Occupation business and to having regulated hours of operation, then the request to operate a one booth salon out of the residence may not be contrary to public interest.

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

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

There does not appear to be a hardship associated with the applicant's property that would prevent the utilization of the land for uses permitted outright in the "R-2" zone. However, home occupations are considered permitted uses within certain criteria.

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

It is the intent of the Zoning Ordinance to permit the reasonable use of private property while restricting

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

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

As noted above, one of the criteria for approving a home occupation is that the Zoning Board of Adjustment review the sale of products. While the applicant may not be directly selling products, she is providing a service that clients are coming to the home to purchase. It would appear that the purpose of Criteria H is to ensure that the traffic coming to the home to purchase goods or services does not have a detrimental effect on the adjacent residences.

The applicant must be clear that if this variance is approved, it is being approved for the purpose of providing her the opportunity to get her business started as affordably as possible. In that regard, it is very important that the applicant operate her home occupation within the boundaries of the criteria and when any of the criteria are exceeded, it is fully expected that the applicant will move the business to the appropriate zoning district.

The Board and the applicant need to be aware that this variance is not a use variance. As such, any approval of the requested variance does not provide approval for any commercial use similar in nature to the existing home occupation to be operated at this site. The requested variance only allows the applicant to operate a home occupation at this site

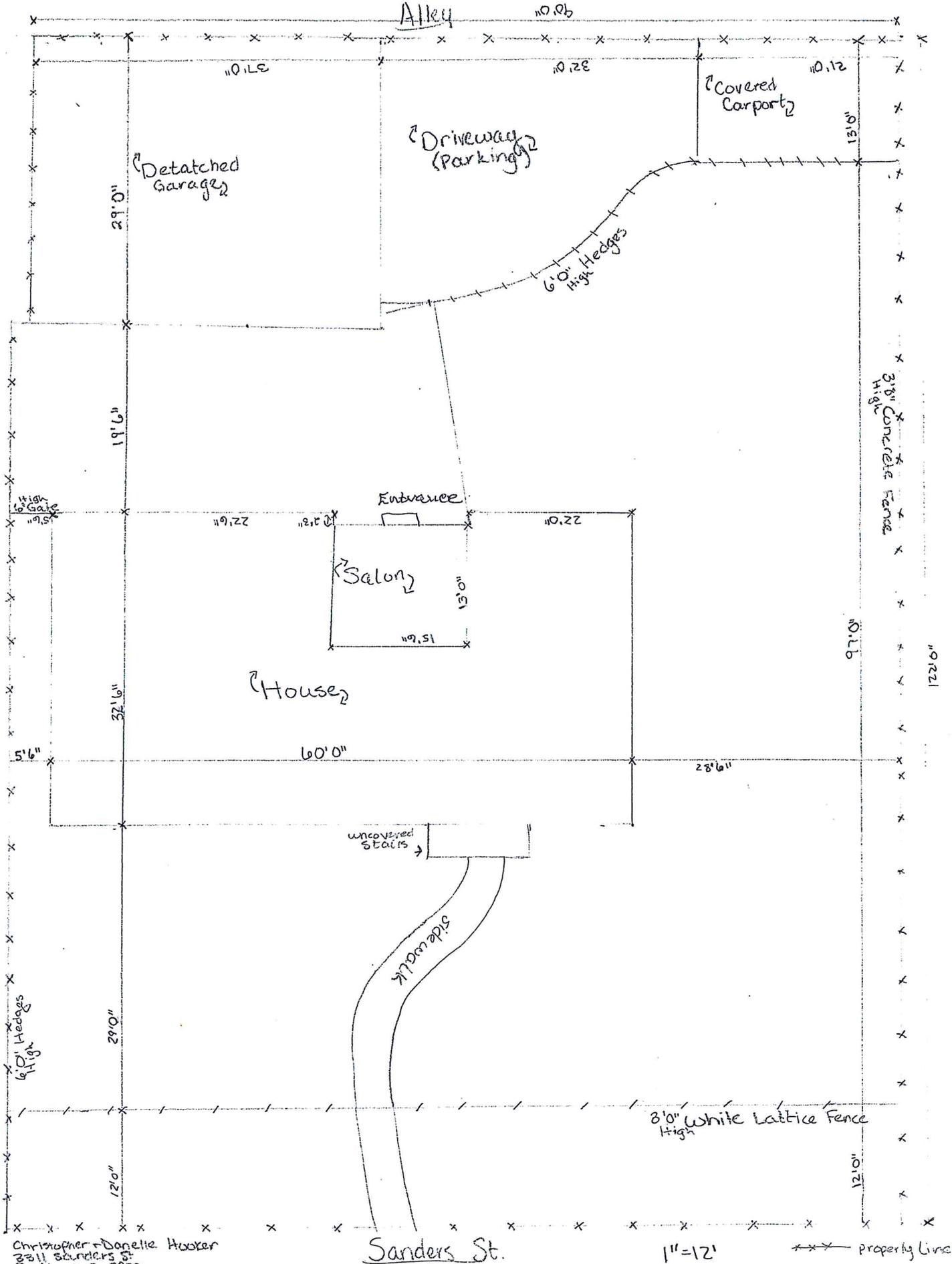
within the parameters of the home occupation regulations and conditions as set forth by the Zoning Board of Adjustment. When the home occupation is closed or moved to another site, neither the applicant nor anyone else can start up a new business at this site without completion of a new home occupation permit application.

Subsequently, if the applicant can operate within the review criteria of Section 17.44.040 and the conditions of approval, then a one booth beauty salon business under the provision of a home occupation may be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSIONS:

Based on the above analysis, staff would recommend approval of Variance Application #15010, provided the following conditions are met:

1. The applicant shall operate the approved home occupation per all guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.
2. The Home Occupation business shall be limited to Danelle Hooker.
3. The applicant shall be limited to the following hours of operation, 9:00 a.m. to 8:00 p.m., Monday through Friday and 9:00 a.m. – 5:00 p.m. on Saturday.
4. The entrance to the beauty salon shall be provided from Sanders Street.



Christopher & Danielle Hooker
3211 Sanders St.