April 21, 2016

Butte-Silver Bow
Zoning Board of Adjustment
Council Chambers

MEMBERS PRESENT:	David Wing, John Habeger, Tyler Shaffer, Les Taylor, Dolores Cooney and Julie Jaksha
ABSENT:	Rocko Mulcahy
STAFF:	Jon Sesso, Planning Director Lori Casey, Assistant Planning Director Rebecca Farren, Land Use Planner Carol Laird, Secretary

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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 March 10, 2016, were approved and passed.

III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on April 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.

Variance Application #15023 – Walter Garner 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.

Dolores Cooney asked if there were any comments from the neighbors in the vicinity (written comments). Mrs. Casey said the staff did not receive any comments or calls on this variance since they advertised it.

Les Taylor said if the applicant didn't have a home based business and simply had two enclosed trailers and one gooseneck trailer for personal use and they were legally licensed, could they park those trailers on that lot. Mrs. Casey said yes, that was correct.

Mr. Wing then asked if Mr. Garner cared to provide any additional information with regard to the application. Walter Garner said he had letters from his neighbors (Colleen Baker at 2412 S. Dakota and Robert and Vicky Rowling at 101 Greenwood Avenue) that are attached and made a part of these Minutes. He said he had talked to his neighbors and also had talked to them two years ago. He said there were two houses other than his that were directly affected by the view of that lot, Mrs. Baker and the Rowlings and they both gave him permission. They both said they were happy he came in and cleaned it up because the place was a mess. There were dirt piles and he didn't know how many dump truck loads of junk they hauled out of there. He said they hauled gravel all the way from Pipestone because he thought the gray rock would look nicer.

Mr. Garner said he had been to the Zoning Board (Office) and talked to the gals and was told it was almost impossible to build anything on that lot because of the view restrictions. He just wanted to park his stuff there. He said as for the thing out in the Industrial Park, one, they had to pay for that, which stressed on their limitations at the moment and two, it hadn't been upgraded any and was just an old pasture field and every time

it rained, the semis got stuck out there, which in the middle of the night was not much fun and they were getting stuck in mud because it was just topsoil out there.

Mr. Garner then said yeah, as they expanded, they wanted to find some property to buy that they could park everything on. He said he was just looking for a place where they could put their stuff for now and not be a hindrance to them money wise, as they could only afford so much.

Mr. Garner said as for parking where that semi was parked across by the church, the pastor of the church gave him permission to park there any time he wanted to and he knew that wasn't zoned residential. He parked his truck that he drove in front of the house all of the time because he has bad lungs and his health wasn't that great and he didn't want to be running back and forth out there in the middle of the night.

Mr. Wing asked if Mr. Garner understood that his request was for more than the Planning staff was willing to grant him and there were conditions limiting the use of the property to two enclosed trailers and the one gooseneck trailer and Mr. Garner said yeah. Mr. Wing asked Mr. Garner if those conditions were acceptable to him and Mr. Garner said yeah and asked if he could park his camper there still and Mr. Wing said yes. Mr. Garner asked about his son parking his camper there. Mr. Wing said typically it was limited to the people who lived there. Mr. Garner said there were a lot of places in Butte that didn't have a place to park a camper and you couldn't park it on the street. Mr. Wing said they weren't really there to address that particular question though. He then asked Mr. Garner if those conditions were acceptable to him and Mr. Garner said yes and Mr. Wing said limiting the use of the property to the three trailers and Mr. Garner said yes.

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

DJ Newgard said he was in support of this and said he was there for another variance. He said he was a business owner

and the business took off. He said he was a masonry contractor here in Butte and he needed machines and equipment to do the job. He said you worked to achieve those machines but at the same time, just like this gentleman, you weren't sitting on a hundred thousand dollars to go buy one acre. He was talking with a gentleman about buying some property and he wanted $125,000 for an acre by the round house.

Mr. Newgard said what he was trying to say was he supported Mr. Garner. He said he worked hard and was clean living and that type of thing and he believed people who went out and started their own businesses tried as hard as they possibly could in order to achieve what say Gilman had, Lisac had or Fortune, Swank, the bigger guys had and it all took time in order to do it. Mr. Newgard said he approved of it and supported it just because he was kind of in the same situation himself.

Mr. Newgard said he kept cleaning up the property and talked about garbage all over it and making it look nicer. He said there were way more people than just business owners that had garbage all over the place. He said growing up, he used to be a pizza delivery driver and he saw all kinds of mayhem and disarray in people's yards and things like that and Butte is trying to clean itself up. He said he lived his teenage years at the end of Platinum kind of right behind the Mac Center football field and they hadn't applied for a variance but Community Enrichment had been down there, so the bottom line he believed was Mr. Garner was trying and he supported him.

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

Mrs. Casey said she wanted to clarify Mrs. Cooney's question. She said since they posted the property, they hadn't heard from anybody for or against it. She said it was prior that they did receive a complaint from a neighbor in the area. She said Mr. Garner was issued a zoning violation for having the stuff there and he immediately worked with them to get rid of it. She just

wanted to clarify that that was what initially started this but since they had publicly posted the property, they had not received any comments. Mr. Wing thanked her for that additional information.

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

Mr. Habeger said it looked like the applicant had taken measures to improve the area. As Mrs. Casey had indicated, if it was just a private location, those vehicles would be allowed there. He said he believed Mr. Garner was acting in good favor in this application and he would be supportive.

Mr. Taylor said he would be inclined to support it, if the semis and dump truck couldn't park there but the two enclosed trailers and the gooseneck trailer were semi-residential in character and if there wasn't a home based business across the street, they could be there.

Mrs. Jaksha agreed with Mr. Taylor in that she wouldn't be in support of the application with the semis there because there was a place for that but if it was limited to the two trailers and the gooseneck and his own personal trailer, she would support the application, otherwise she would not support it.

Mrs. Cooney asked if condition number three covered that because it said the semis and dump truck had to be out in Industrial Park. Mr. Wing said yes. Mrs. Cooney said it was covered and she would support the application.

Mrs. Casey said the Chairman may want to check with the applicant to make sure he understood all conditions. She said in his testimony he did present that he would like to have the semis there, so maybe they should double check. Mr. Wing said he asked Mr. Garner that specific question and he indicated that he understood that it would only be his trailers. He said Mr. Garner was nodding his head and Mr. Garner said yeah, he understood.

Mr. Shaffer moved to approve Variance application #15023 with Mrs. Cooney seconding the motion with the following conditions:

1. The applicant and agent will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.

2. The applicant and agent will be limited to the business as stated and approved, including the outside storage of two (2) enclosed trailers and one (1) gooseneck trailer. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

3. The applicant and agent shall store the two semis and the dump truck at the south Butte Industrial Park or in the appropriate zoning district.

At this point the Board voted on the motion.

Variance Application #15023 – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

John Habeger, Les Taylor, Dolores Cooney, Tyler Shaffer, Julie Jaksha and David Wing voted "For" the motion to approve the application.

Mr. Wing said all six votes were in support of the motion, which meant that the application had been approved subject to the conditions imposed by staff regarding the three trailers. Mr. Wing thanked him for his attendance that night.

Variance Application #15033 – Erik Ingman was present at this meeting, as the agent for Anita Zabel.

Rebecca Farren 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.

Mr. Habeger asked about the access from the alley. It was mentioned that it was not desirable and he asked why it was not desirable. Mrs. Farren replied that the length requirement for the garage – the house was set back to the point where if they were trying to enter off the alley, fitting a full size vehicle length would be difficult and they might have to reduce the size of the garage to smaller than the 720 square feet. She said if there were full size vehicles, like a long bed truck, it could not be parked in there comfortably. Mr. Habeger asked what the setback in the alley was and Mrs. Farren said that would be a ten foot parking apron off of the alley.

Mr. Wing then asked if Mr. Ingman cared to address the Board in support of his application. Mr. Ingman said they were looking to buy this property, so it was kind of desirable for them to have a garage. He said as to the size of the garage, they had a crew cab pick-up that the primary use was for recreation and he wanted to keep that in the garage. He said as Mrs. Farren had said, access from the alley was pretty much impossible. He said he wanted to add that from where the front of their garage to the actual edge of that payment would actually be and it was like twenty feet. They took it from where they believed the property line to be with the fence line running down that way and that was where they took their measurements from. He thought there was even more room there than what they would be led to believe.

Mr. Wing asked if the applicant understood the conditions and he said yeah, he did. Mr. Wing asked if they were acceptable to him and he said yes, sir.

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

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 up for Board discussion.

Mr. Shaffer thought it was pretty cut and dry with no neighborhood opposition and with the conditions he didn't see any problem with this.

Mrs. Cooney moved to approve Variance Application #15033 and Mr. Shaffer seconded the motion with the following conditions:

1. Any vehicles parked in the fifteen foot (15') parking apron must not extend into the paved area of Cobban Street, including the parking lane.

2. The detached garage shall meet the height requirements of Section 17.10.040 for accessory structures which are:

    a. Hip or gable roof: 16'
    b. Gambrel roof: 14'
    c. Flat roof: 13'

At this point the Board voted on the motion.

<u>Variance Application #15033</u> – Conditionally Approved

John Habeger	Against	Les Taylor	For
Dolores Cooney	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

John Habeger voted "Against" the motion to approve the application – "Garage could be smaller".

Les Taylor, Dolores Cooney, Tyler Shaffer, Julie Jaksha and David Wing voted "For" the motion to approve the application.

Mr. Wing said there were five votes "For" the motion and one vote "Against" the motion, which meant that the application had been approved, rather the motion had been approved and the application had also been approved. He said Mr. Ingman would be receiving a letter from the Planning staff to that effect.

Variance Application #15042 – Patrick Walsh was present at this meeting.

Mrs. Farren 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.

Mr. Habeger said it didn't look like the alley continued to the west there. He asked if there was any reason why it couldn't be vacated, if the owner owned both sides of the alley. Mrs. Casey said the applicant could, as long as there were no lines like water or sewer lines. She said they didn't check. Mrs. Casey said Mr. Habeger was right and she pointed out on the aerial picture and said there was a north/south alley that she pointed out and that looked to not be utilized either but it may be access to a property that she pointed out to get back into the rear yard but adjacent to the applicant's, it may be a possibility, as long as there were no water or sewer lines within that property.

Mr. Wing then asked if Mr. Walsh cared to speak in support of his application. Mr. Walsh said the family had owned the home for about sixty-five years and he lived there for about fifty-eight and he didn't even know there was an alley there. He said Baileys owned it first and the the Facincanis and he bought the property off the Facincanis. She didn't even know there was an alley there but he said there was no water or sewer. He said the Power came in and looked at it and they were surprised it was an alley. Mr. Walsh said they didn't even have a clue. He said he would like to join the two properties. Mr. Wing said that might serve his best interest.

Mr. Wing further said with regard to the matter before them, had he reviewed the conditions and were they acceptable to him. Mr. Walsh said yes.

Mr. Wing then asked Mr. Walsh, if he had anything further to tell the Board about his application. Mr. Walsh said he had the property reclaimed and they came in and did all the ground work. The Colorado Mine is across the street. He said they then planted some trees and grass and were trying to take care of the lot. He said he just wanted to park two vehicles in it and just retired and he wasn't going to wrench or anything like that or turn it into a commercial or anything like that. He said his other garage was too small.

Mr. Wing said Mr. Walsh did a nice job on the reclamation. Mr. Walsh said yes, it was coming.

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

DJ Newgard said he partially grew up as a teen-ager on the west end of Platinum just above the Silver Bow Homes, just east of Bruce and Bob's Good Guy Pawn. He said as far as a person not watching a property in that area, he didn't see that as being feasible. He said you would pay attention to what you had in that general area. He said that was all he really had to say and then said his grandfather owned three buildings that way across from the old Cashell Engineering. He said unfortunately, because of the location (couldn't hear).

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 up for Board discussion.

Mr. Shaffer said it seemed to be a pretty logical application to approve. He said as the applicant had stated, no one really knew there was an alley there. He said it would be nice to see

it vacated in the future but that was not in front of them that night. He said he saw no reason not to approve this.

Mrs. Jaksha moved to approve Variance Application #15042 with the conditions in the application. Mrs. Cooney seconded the motion with the following conditions:

1. Prior to receiving a building permit, the applicant shall file, at the Butte-Silver Bow Clerk and Recorder's Office, a revised deed containing a deed restriction that requires both parcels and their respective structures to be sold together.

2. There shall, at no time, and for any reason be outside storage of vehicles and/or campers not owned by the applicant or vehicle parts, machinery, equipment, construction material or any other debris, owned or not owned by the applicant, on the property surrounding the garage, and at no time and for any reason will the garage be used for commercial purposes.

3. The garage must be located on the property as shown on the submitted site plan. Any alteration to the location of the garage must be approved by the Zoning Board of Adjustment.

4. The garage cannot exceed sixteen feet (16') in height at the peak of the garage for a gable roof.

At this point the Board voted on the motion.

<u>Variance Application #15042</u> – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

John Habeger, Les Taylor, Dolores Cooney, Tyler Shaffer, 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 he would be receiving a letter from the Planning staff to that effect. Mr. Wing then said thank you and good luck with his garage.

Use Variance Application #15052 – Shane Worley and Keith Johnson of WJ Properties were present at this meeting, as the agents for Gene Spolar and Cathy Huffer.

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

Mrs. Casey then said that since it has been published, the staff has heard from several neighbors to speak against and she thought they were present.

Mr. Wing asked if the Board had any questions of the staff.

Mrs. Cooney asked if there was water and sewer to the property at this time. Mrs. Casey said no and she pointed out on the aerial photo where water and sewer had been brought to the alleyway when the Hardesty complex went in. It is located in the alleyway behind the Hardesty building, so from there going east does not have water and sewer.

Mr. Wing then asked if Mr. Worley cared to present further information with regard to this matter. Shane Worley said he and Keith Johnson were partners and they owned WJ Properties. He said they had a similar storage facility, not quite as large, just down the street on the corner of Continental and Howard. He said it was a shop complex and traffic control, as his partner owned a traffic control business. He said they had eighty units at that location and had been looking for another location for quite a while in that neighborhood. He said they had been running it pretty close to capacity for right around two or three years.

Mr. Worley further said that this parcel of land had sat vacant for the better part of half a century and they thought they could

make it work and were trying to design this with the least amount of impact to the neighborhood. He said originally, they were looking at access off of Gregson and they changed that to have an entrance and exit only off of Fairmont Street. He said they also understood the conditions and were prepared to pave their portion of Fairmont Street and install their sidewalk, curb and gutter, which was a very significant expense.

Mr. Worley said one of the things he wanted to point out about their units that they had noticed now was that once the units became full, there was not a lot of traffic in and out of these units. He said it did take a little while to get the clientele to fill them but the amount of traffic in there on a daily basis was pretty minimal. Mr. Johnson said they were lucky if they got a car a day there. Mr. Worley added in the ones they had now.

Mr. Johnson said he drove by this site for sixteen years now and there had been nothing there and during that time they watched the Hardesty building get built and two other mini-storages on Continental Drive and they put in the gym and fitness center there across from the McQueen Club. He said Town Pump built a nice building there and gas station and Conoco with their gas station and the site just seemed to fit for a little bit more commercial use. He said they didn't want to put anything – they were trying to minimize the impact to the neighbors. He said he could tell them before they started this, that they went and knocked on doors and the ones that weren't home, they handed out flyers and said if they had any opposition, to please let them know because they didn't want to waste their time with developing it. He said at that time, they had no opposition and for people who weren't home, they left flyers at their house with their names and numbers to please call to discuss and at that time they had no opposition, so they continued to move forward. He said he knew there was some opposition now and thought maybe they could get rid of some of that, if they had any questions, or maybe they could put their mind at ease. He said they did try to go before them just to make sure they weren't trying to ramrod this thing through without letting anybody know.

Mr. Worley said he would also like to just say that Continental Drive to that point was basically a commercial corridor especially now since they had the East Side Athletic Club, the McQueen Club, the Hardesty building and across Continental there is the reclaimed Continental Mine Dump and if these things were done correctly, he thought it could be a good addition to that neighborhood down there.

Mr. Wing asked if they had reviewed the conditions and were they all acceptable to them and Mr. Worley said yes sir.

Mr. Taylor said he was assuming that inside their storage facility they were going to put some type of all-weather hard-surface. Mr. Worley said yeah, what they did on their other ones was they put millings and then rolled and oiled them. He said also, if they noticed, it was all enclosed within a fence and there was no outside access available from the street.

Mrs. Jaksha said she had two questions. She said she saw the building size and asked how many units they proposed. Mr. Worley said there would be a total of ninety-six units.

Mrs. Jaksha then said her second question was if the setbacks weren't approved, did he think this project would still be viable that he could still put storage units there and just downsize what they were proposing. Mr. Worley said it would certainly be something they could look at. He said the reason they put the rear setbacks, especially, was they wanted to put a vinyl fence on the Gregson Street side and they thought with the fence on the property line, there really wasn't any reason to scoot it all the way back thirty feet inside their fence. He said they were just trying to maximize the best use of the land.

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

Dan Fouts said he was with Markovich Real Estate and was the realtor for Mrs. Huffer for the two lots that sat on the west end of the parcel. He said he just wanted to make the comment that those parcels, there were two separate 6,000 square foot

parcels that theoretically should be buildable. He said they had been aggressively marketed for the last five years – first with Craig Dessing of Homestead Real Estate for two years. It started at $37,000 for both parcels. He said he had the listing for almost two years. He said they started at $29,000 and had multiple calls and multiple prospects and had talked to several developers, including the developer of the homes at Vigilante Estates, Matt Nistler, and had numerous calls on residential but when people checked into the cost of infrastructure for water, sewer and sidewalks and so forth, it just wasn't viable. He said they finally dropped the price to $5,000 for those two lots.

Mr. Fouts then said during that same period of time that those lots were being marketed, there had been sixty-nine parcels sold in that price area of $37,000 or under, residential parcels sold on the multiple listing service, as well as numerous parcels sold off the multiple listing service with an average price of $28,000 per sale compared to what was on the multiple listing service for residential parcels. Mr. Fouts said they had just come to find that it just wasn't viable to try and market those parcels to residential because of the cost of the infrastructure.

Gene Spolar said he lived in the area there and he also owned seventeen lots besides the ones there in the immediate area and he also owned two rentals in the area. He didn't feel it was going to devalue his property but felt it would upgrade it once the street was paved and they eliminated the dust problem from people using the street. He said nobody seemed to be aware of the bottom of that street -- there was a twenty-four inch storm drain down there and how he knew this was they checked when they put the water and sewer up Eagle Street and the street over that Marty Salusso lived on, they put in the water together. He said they dug the first tap and the second tap, they took the twenty-four inch pipe out because they had to replace it. He said the sewer people they had checked with, because they had some drain, some manholes in there with some drains on them. They could never find anything on the twenty-four inch storm drain that was in there and they told them it was a French drain and not to worry about it. That was how he knew at the

bottom of the street there was a storm drain two more blocks down.

Mr. Spolar said like he had said, he didn't feel that it would devalue any other property that he owned in there.

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

John Giovenco lived in the neighborhood at the corner of Hancock and Fairmont, the first house. Mrs. Casey pointed it out. He said they were talking about an alley behind those three homes. He said there was not an alley and it was basically grass and dirt and it wasn't even a road.

Mr. Giovenco said his biggest concern was for the people up at the next block who had children and there were a lot of kids in the area who played. He said he wasn't concerned about the hours of the place being open but was more concerned about the value of their homes. He said right on his corner to the west, there had been homes there for the past six years and they still didn't have a street there. If they talked about putting drains at the corner of Fairmont and Hancock, that was great and putting the pavement on there but what were they going to do with the street all the way down to Fairmont and all the way down to Farragut that were still not paved.

Mr. Giovenco said the high velocity of traffic – he lived on that corner and saw a lot of traffic coming from the two bars. If they were going to be having traffic behind those three homes, they would see that they would be using Hancock no matter what.

Mr. Giovenco said his main concerns were the home values, the protection of the children and the value of all of the homes in the area.

Mr. Giovenco said the gentleman had said he had homes there and he didn't think his homes would be affected with the value. He said they were all different and their homes were different. He said it would be great for him to put storage rooms in the

area for people to use but the thing was that they were the ones who would be living there and they had been living there for a lot of time and would be hearing lots of vehicles pulling in and out when it was being used.

Mr. Giovenco said he had neighbors who had signed who were not in favor for those storage areas to be there. Mr. Wing asked if he meant they were opposed to it. Mr. Giovenco said they didn't want it there.

Mr. Giovenco asked if they would consider the fact that they lived there and the value of their homes and the safety of their children. He thought that was what was really important and not just a piece of land and storage and someone making a profit.

Mr. Giovenco said he understood that in the future, if there were people who wanted to build homes and there was no sewer or water there, maybe they could build something else but not that. He said that was a real sore eye to them even though they had a fence. He said that was all he had to say.

Kathy Walter said they lived at 1830 Hancock, which would be where the back end of the storage unit would be, and where there was not going to be a fence. She said they had lived there for a long time and it had always been a family neighborhood. She said they raised their kids there and all the neighbors always watched out for each other.

Ms. Walter said their homes right now had been devalued already. She said their property taxes went down on their homes because of the low income and because of the Hardesty building. Their taxes had already gone down and everybody else was complaining about their taxes going up but theirs had gone down this year. She said they already had devaluation.

Ms. Walter said the other thing too was they were close to retirement and it was a great family area. She said they were in the Whittier District with the East Middle School right over there and there were a lot of children in the area and having a

commercial building, no matter what it was, rezoning that whole area or that area would allow them – people who they didn't know in the neighborhood. She said when they went on vacation they were protecting each other and there was going to be other people in the neighborhood that they didn't know.

Ms. Walter said she did think they did a good idea or design and definitely tried their hardest but when you butt up storage areas against their property with just an alleyway there, she saw his other property on Continental – yes, there was a road and a road and a storage unit between a street and a street but this would not be between a street and street, this was between Continental and Hancock with residential and alleyways. Ms. Walter said she just thought the way it was designed and where it was at, she understood it was hard to put property there because there was no sewer but a commercial property there would devalue their homes even more and to her, it was not feasible – wow, street street alley residential residential commercial, right in the middle of the block and in reality that is what it was and it would be rezoned for commercial.

Mike Walsh said he lived on Hancock and this proposal would build within a half a block of his home and that would decrease the value of his home. He said when he purchased that, he was told it was a residential area and that was the way it was going to be. He said over the years the variances have been allowing some commercial, which was really out of place and he was against this proposal.

Kurt Krueger said he was appearing as an individual who had an interest. He said his mother owned the home at 1800 Hancock, which was right directly where the light was on the picture. He said it was a pleasure to be there that evening. He said he had the pleasure or the responsibility of serving on this Board in 1985 and served on this Board for approximately five years. He said his replacement was Dave Wing and he has served now approximately twenty-five years. He said he wanted to thank all of them for all of their hard work and dedication they put into this because this was a job with a lot of responsibility and their decisions affected a lot of

neighborhoods and they affected a lot of individuals and people and he wanted to thank them for their service and commitment.

Mr. Krueger said his brothers and sister and he have an interest in his mother's house and the backyard would be directly facing this storage unit. He said he was there as an individual and normally wouldn't be able to be there because of judicial canons but because he did have an interest in this piece of property, he was able to speak and oppose this variance.

Mr. Krueger said John Giovenco did an excellent presentation in presenting them with this petition of how adamant the neighbors were opposed to the storage units and placing these storage units in a residential area. He said as they would notice, Mr. Giovenco had approximately seventeen individuals, all the affected neighbors in that area, except for one that was not home or something, that were in opposition to this. As stated in the initial presentation, this was a residential area. He said storages units, warehouses and those types of units under their growth point belong in an industrial area. He said this wasn't a compatible use with a residential area. He said it clearly didn't meet the legal requirements in terms of the variance. He said as they looked through their petition, this variance was contrary to the public interest and it did infringe upon the rights of the adjacent landowners and neighbors. He said this variance was very unwelcome by the residents of this single family neighborhood and it would have a negative impact on the property and its value. He said a storage unit was by no means going to increase any of the values of this neighborhood and it essentially changed the character of this neighborhood. He said the proposed variance application was not compatible and even under their proposal, it couldn't be integrated into this area without severe harm to the residents and their proctors.

Mr. Krueger continued by saying that this a neighborhood that he and his siblings grew up in and it was a family area neighborhood and there would be increased traffic and usage that would adversely affect this neighborhood and would put at risk and safety, the well-being of children, as well as the general residents of this area. He said this was not a

compatible use for this neighborhood. He said that while there were some commercial units in this neighborhood, specifically, the Athletic Club and the McQueen Club and even the Hardesty building, their impact on this neighborhood was less than those storage units. He said there was not a positive integration of these storage units into this neighborhood. He said storage units, as with a warehouse, had their own set of issues in relation to they had recently seen a rash of thefts in relation to storage units. He said he was dealing with those in terms of his jurisdiction. He said the security and safety of the neighborhood, as well as the traffic, this was clearly outside of the growth of the Butte-Silver Bow Growth Plan and this variance should not be allowed.

Mr. Krueger said he appreciated their consideration that evening and if they had any questions, he would be glad to answer the same.

Lynn Piazzola said she lived where Mrs. Casey pointed out in the picture (1701 Hancock) and she ran a daycare out of her home and was licensed with the State of Montana and her concern would be it was a family neighborhood and that was why they chose this location when they built their home approximately nine years ago, knowing that it was going to be a daycare. She said she was done raising her children and was raising other peoples' children or helping them raise their children and her concern would be additional traffic and additional people in the neighborhood that they didn't know. She didn't know if it would be in the best interest of the children to be exposing them to that.

Robert Lienemann said he lived at 3227 State Street that was on the corner of Continental and State. He wanted to state that he was against approving this application. His understanding was that in order to accommodate a project like this, the first thing that must be done was that the zoning in the area must be changed and that was a decision that was made by the Council of Commissioners and the hearings that took place for a zoning change were handled by the Planning Board upon their recommendation to the Council of Commissioners and then the

Council made that change. He said in his opinion, this Board wasn't authorized to make this type of a decision and it was left to the Council.

Mr. Lienemann said as far as the actual project went, the first thing it was an "R-1" residential area and that was what it showed in the Butte Growth Policy and that was what it showed on the Butte zoning map. He said it was in fact an "R-1" area and the character of the area had been changed through the years by zoning decisions that had allowed commercial businesses to build in residential areas. He said this was why Continental Drive and many other areas in Butte-Silver Bow were fragmented and showing a lot of blight and looked like they were not organized and it was through these decisions that the Board had made through the years that this had taken place on Continental Drive.

Mr. Lienemann said the other thing that he wanted to point out was he had a copy of the application that everybody used when they were applying for a permit, a variance for a use permit was the copy that was used. He wanted to point out a couple of things in this application. He said in Butte-Silver Bow Ordinance, an "R-1" definition in our Ordinance, his and theirs, an "R-1" area was a one family residential zone. He said under 17.10.020, what you could do in this neighborhood was you could build single family residences and you could also accommodate as a use, a home occupation under certain conditions. He said you could have single family homes, manufactured homes, Class "A", which he believed was a mobile home or a modular. He said the other things that could be accommodated in an "R-1" residential area were such things as schools, churches, hospitals, retirement homes and that type of thing but you could not, according to Butte-Silver Ordinance, which it clearly stated on the second to last page, the pages were not numbered, so he was referring to it as the second to last page, the first item on that page said Butte-Silver Bow Zoning Ordinance did not permit commercial or business operations within residential zones unless they were a permitted home occupation.

Mr. Lienemann said he wanted to read a couple of other excerpts out of this that would just take a minute. He said the three point criteria established by the Montana Supreme Court for the review of a use variance application were 1) a variance must not be contrary to the public interest; 2) a literal enforcement of the Zoning Ordinance must result in an unnecessary hardship owing to the conditions unique to the property. He said answers to the hardship question must not only satisfy the above criteria but also must satisfy the two additional criteria required by use variance. He said the two criteria were a) the land and the structure in question cannot reasonably be utilized for the uses permitted in the district. The use proposal will not adversely affect existing and potential permit uses once it is in operation. He said item three was the spirit of the Zoning Ordinance must be observed and substantial justice. He said it was the intent of the Zoning Ordinance to permit reasonable use of private property while restricting practices which may infringe on the rights of adjacent landowners. He said use variances are unique in that adjacent landowners within the permitted use areas have more than a basic right to enjoy their property, they also have the right to demand that the proposed nonconforming use be appropriate and unobjectionable.

Mr. Lienemann further said that the other point he would like to make was that under law, our own Ordinance, they could not deny to one land or they could not approve to one landowner uses that everybody else in the zone did not have. In other words, he wasn't allowed to have a storage area in his "R-1" area, therefore, how come Mr. Spolar and this group was allowed to and he said that was legal discrimination.

Mr. Lienemann said at any rate, he wanted to again make the point that he was very much against this Board making this type of a decision.

Mr. Lienemann said he would like to ask at this point for somebody to explain to him where in writing in our Ordinance or State statute that it allowed for this type of a decision to be made. Mr. Wing said they weren't there to have a dialog. He

said Mr. Lienemann's comments had been registered in opposition to this matter and they thanked him for them. Mr. Lienemann said yes, but he was asking a question. He said this was a public hearing and questions and answers were allowed at public hearings. Mr. Wing said questions and answers were not permitted there. Mr. Lienemann asked if he was saying he couldn't ask a question and Mr. Wing said yes, he was telling him that. Mr. Lienemann said he believed that Mr. Wing was wrong and he would like to have an answer. Mr. Wing said there were other people – Mr. Lienemann said somewhere in Butte-Silver Bow's Ordinance there was obviously something that he was missing. Mr. Wing said they weren't having a dialog regarding this matter and they did thank him for his comments but there were other people there with other matters and other comments. He said the room was full and asked that he appreciated their time also. Mr. Lienemann said he would appreciate an answer.

Mr. Lienemann said they had Mr. Sesso there, who was a Planning Department Director, and they had staff members there that should be able to answer his question and he thought his question was legitimate -- where was he missing the point there. He asked if somebody would please care to answer that. Mr. Lienemann asked how about Mr. Sesso.

Mr. Krueger said this was a hearing in relation to – they indicated their opposition and hearings were legislative bodies and they got to make a decision. What the recourse and where his answer would be and what the audience on either side had the opportunity, depending on how the Board ruled, either side could take this to District Court and District Court would litigate this matter and they would answer his questions in relation to what this was and so the issues raised there were legal issues and he made issues in regards to legal and either side had the opportunity to come to District Court and that was where the answers would be made. He said obviously, there were a lot of concerns raised there that night in relation to that and that was what the Board would have to consider. Mr. Krueger said he wanted to make it clear that it wouldn't come to his court.

Mr. Lienemann said one way or another, he would find out how this Board – if they approved this project that night, they would essentially be making a zoning change, which this Board wasn't authorized to make and there was a term for this type of zoning change, called spot zoning that could be construed as illegal because they would be accommodating a special interest group. Mr. Wing said once again thank you for your comments.

Mr. Wing said the applicant now had an opportunity to present information and evidence in rebuttal to the opposition comments that had been made, if the applicant cared to do so.

Keith Johnson said when they first started this, they went and knocked on all the doors and left the flyers. He said the people he talked to, not one of them had a bad thing to say about it. He said they left the flyers and never got a comment. He said they felt if there was this much opposition, they wished they had called them in the first place -- they had spent all of this money to do this. They didn't think there would be a traffic problem with this. They thought the McQueen Club and the East Side Athletic Club and these other buildings would have lots more traffic than they would ever come up with for their storage unit project. He didn't see as big of an issue with it he guessed, as the neighbors did, but they wished they would have heard something before because like he said they did go and knock on doors and did hand out flyers and spent a bunch of money and then they got the opposition after the fact. He said they would have just liked the respect of just a phone call because they wouldn't have gone on with this. He said that was all they had to say.

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

Mr. Taylor said he had a question for the applicant. Mr. Wing said it was out of Order but he would allow it. Mr. Taylor said in the applicant's testimony, one of them offered up a traffic number and he believed he said that once the facilities were full, there was very minimal traffic. Mr. Johnson said they had eighty units at their facility and they didn't average one car a

day at that storage unit. He said it would be definitely busier for sure, as they were filling up, but once they got full, people paid for these things and they didn't see them for four years – they had their stuff in there for four years and never had been back and still just stored their stuff in them. He said it was busier initially when they filling up but once they were full, they didn't really – they didn't even open on the weekends and they got maybe two calls a year from someone who would call them to ask them to open up the gates for them and they went down and opened it but there was not that much traffic once they were full.

Mr. Wing then closed the public hearing.

Mr. Taylor said if the Chairman would permit, he had a question of the staff. He said in this application and it may be in there but he couldn't pick it out but if this property was developed into residential home sites, did they have an estimate of how many residential homes could be built on this property.

Mr. Sesso said looking at the aerial photo, you would basically divide the total square footage by 6,000. He said 6,000 was the minimum size of a residential lot in the "R-1" zone and he didn't have the total square footage but roughly you could, if you just used the guide of the houses that were on Hancock there, the three houses, those were a little bigger but if they just assumed that a residential development would stay compatible in terms of the size of those lots, it looked like you could probably put four on Fairmont there, maybe more, if you wanted to go to the minimum and then three, so he would say a minimum of seven and probably a maximum of nine.

Mr. Taylor then said in Mr. Sesso's capacity as a Land Use Planner, when he looked at residential subdivisions and residential lot improvements, he must have some kind of a notion as to daily traffic that was attributable to a single family lot in a development – the number of vehicle trips per day per residence. Mr. Sesso said the standard was eight trips per day per single family home. Mr. Taylor then said you would essentially be looking at fifty-six trips per day, if that was to

develop into a residential – maybe on the high side – Mr. Sesso said according to that standard. Mr. Sesso said families were different and sizes of families were different and ages of the occupants in family houses but the industry standard was eight trips per day for a residential dwelling, so if it was the seven minimum, it would be in the fifty-six range and if it was the nine, it would be in the sixty-three range. He said fifty to eighty trips per day would be generated by a full build out of seven to nine lots. Mr. Taylor said if those lots were constructed as they were configured that day, if single family residences were placed on those lots as they existed that day, would that builder or owner of that lot be required to contribute to the paving of any of those streets, as a residential development. Mr. Sesso said actually no, the development that was being suggested was consistent with the zone. He said for example in this case, if residential property development was proposed, no, they did not compel, unless there was a subdivision – for example, in this case there were four parcels there now and so the applicant, if and to the extent the owners consolidated and then maybe bought the extra ground from the current property owner, they would have to reconfigure the land, as it was currently parceled out, into the number of parcels and that was called an amended plat of an existing addition and in that process, through the subdivision process, the governing body had the authority to compel certain improvements that made sure the development or the subdivision was consistent and was made compatible with the surrounding property. Mr. Taylor said if the configuration of the lots were altered, but as they sat there that day – Mr. Sesso said if four houses were built one at a time on those lots, they would be responsible for making sure they were served by water and sewer but no – Mr. Taylor said they would not be obligated to do any public improvements such as street, paving, curbs and gutters. Mr. Sesso said no, not beyond water, sewer and storm water.

Mr. Wing said the public portion of the meeting had been closed and they would now proceed with Board discussion.

Mr. Taylor said he did have some comments. He said they had looked at a lot of those zoning variances in this neighborhood

and it was in a transitional boundary of the transitional area where people had not been beating the doors down to develop these lots into residential home sites and one of the big problems was the lack of public utilities of water and sewer and the cost to get that water and sewer into those lots. He said when you looked at a commercial development on that property, what the applicant was proposing in his opinion was a somewhat complimentary commercial use with a very low impact to a residential neighborhood in that they had offered up the security fencing, they offered up they were going to hard-surface their interior lot to cut down on the dust that would be flowing around the neighborhood and they offered to contribute to the paving of Fairmont Street, which would reduce the dust in the neighborhood. He said in all his years on this Board and having lived in that neighborhood, this was the first time he had seen anyone come forward with some type of a highest and best use for that property, to put that property to a beneficial use that would satisfy the highest and best use concept. He said he thought the Planning staff with the nine conditions they placed on it, coupled with the efforts of the applicants and the developers to minimize and mitigate any adverse effects on the neighborhood, he wasn't so opposed to this application, given those facts.

Mr. Wing said his concern was that a use variance was not supposed to alter the essential character of the neighborhood and he believed that the neighbors were in the best position to make that determination. He said they believed it would alter the essential character of the neighborhood and he wasn't prepared to substitute his judgement for theirs in this matter.

Mr. Habeger said the only thing he would have to add was he thought complimentary to Mr. Wing's and Mr. Taylor's comments, if they said it was residential, the proposed growth policy kind of showed Farrell and Continental as a commercial corridor and that had led a lot of their decisions in the past few years to approve the Hardesty, to approve the T & S, to approve the Rocky Mountain Traffic Control along Continental and as many of the opponents had said, it was residential and they wanted their children to be safe, would they really want a

residential house right next to Continental and that was why he agreed that it was probably the best use for this area but he was with Mr. Wing, he wouldn't want to make that decision for the neighbors and would probably have to vote against it.

Mr. Wing thanked Mr. Habeger for his excellent comments.

Mr. Habeger then said for ease and for speed of the night on that beautiful spring evening, he asked if they were ready for a motion.

Mr. Taylor said he had one more comment – he thought they talked about changing the essential character of the neighborhood but he thought that ship had already passed and it had already happened on Continental Drive. He said the two bars and the fitness club that was open 24/7, which had traffic in and out of it 24/7 on the corner, so he thought the character of that neighborhood had already changed was his opinion.

Mr. Sesso wanted to make sure they were clear in their presentation that the – in respect to Mr. Habeger's comment – from the property north of Dexter, the Growth Policy as depicted there was commercial and when they changed the Growth Policy from Dexter north, they heard loud and clear from the residents in the neighborhood to the south that that was the line that they drew and so most of the other variances they had approved and had stuck north of Dexter were consistent with the commercial Growth Policy albeit not entirely consistent with the prevailing zoning at the time and he just wanted to make sure they understood that this had a Growth Policy of residential and a zoning designation of "R-1".

Mr. Shaffer moved to approve Use Variance Application #15052 with all conditions as written in the report. Mr. Taylor seconded the motion.

The conditions would be as follows:

1. At a minimum, the mini-storage buildings shall match the design presented in the submittal documents for this variance.

2. Prior to receiving a building permit, the agent will be required to submit an engineered storm water control plan 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 in order to receive a Storm Water Management Permit.

3. The agent shall install new sidewalk/curb and gutter adjacent to Fairmont Street and Gregson Street, adjacent to property boundaries, per the requirements of Section 17.38.050.

   Prior to the issuance of a building permit, the agent shall submit a detailed sidewalk plan to the Butte-Silver Bow Planning 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 sidewalk/curb and gutter from a licensed contractor. The agent shall submit a bond for the installation of sidewalk/curb and gutter to the Butte-Silver Bow Planning Department. This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

4. Prior to receiving a building permit, the applicant must receive approval from the Butte-Silver Bow Public Works Department for an ingress/egress approach to be located on the north portion of the property, accessing Fairmont Street.

5. Prior to the issuance of a building permit, the applicant shall submit a bond for the installation of appropriate

paving on Fairmont Street to the Butte-Silver Bow Planning Department.

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

6. Prior to receiving a building permit, the applicant must submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC. At a minimum, the landscaping shall be installed to provide a solid buffer on all sides of the property to mitigate the view of the commercial structures. Additional trees (beyond minimum requirement) should be included and all vegetation shall be irrigated and maintained effectively. Fencing materials/locations, e.g., vinyl or wrought-iron, and the use of the back sides of the storage buildings, as appropriate, shall be installed as per the site plan and submitted as part of the landscaping plan.

   Once the plan is approved, the applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

   The applicant shall submit the appropriate landscaping bond to the Planning Department prior to receiving a building permit. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

7. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.

8. In order to reduce the potential negative impact of on-site lighting on the surrounding residentially zoned properties,

all lighting must be designed as low glare, no more than sixteen feet (16') high and have directional features to contain light on the property.

9. No outside storage shall be allowed. Hours of operations shall be limited to 8am to 8pm daily. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

At this point the Board voted on the motion.

Use Variance Application #15052 – Denied

John Habeger	Against	Les Taylor	For
Dolores Cooney	Against	Tyler Shaffer	Against
Julie Jaksha	Against	David Wing	Against

John Habeger voted "Against" the motion to approve the application – "Too much neighborhood opposition."

Les Taylor voted "For" the motion to approve the application.

Dolores Cooney and Tyler Shaffer voted "Against" the motion to approve the application.

Julie Jaksha voted "Against" the motion to approve the application.

David Wing voted "Against" the motion to approve the application – "A use variance is not supposed to alter the essential character of the neighborhood. The neighbors here overwhelmingly opposed the application and they appear to be in the best position to make this determination."

Mr. Wing then said there was one vote "For" the motion and five votes "Against" the motion, which meant that the application had been denied. He said the applicants, if they chose to do so, as had been indicated there earlier that night, may file a matter challenging their decision with the District Court. He believed that had to be filed within thirty days with day one

being the following day. He told them those were their options with the denial of their application.

A recess was then taken.

Variance Application #15054 – DJ Newgard was present at this meeting.

Mrs. 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.

Mr. Taylor asked if the original home occupation had been altered with regards to the number of vehicles. Mrs. Casey said no. Mr. Taylor asked how many were allowed and Mrs. Casey said one.

Mr. Taylor said if this variance was granted, was there a time frame he was required to construct that garage and have everything stored inside. Mrs. Casey said the staff didn't have one but if the Board felt that was necessary, they could add that condition.

Mr. Wing then asked if Mr. Newgard cared to present additional testimony in support of this application. Mr. Newgard said the 5th wheel trailer with truck (couldn't hear) -- he had just bought a month ago from Mike Eckerson due to his son's passing. He was notified in December by Community Enrichment and had talked to Mr. Sesso. He said he had six to seven boxes of leftover stone and the ground froze and he had moved it since.

Mr. Newgard said the machines and equipment – he normally had two trailers, a business truck and a personal truck that he owned. He also talked about a playhouse and fire pit that he built and said those would be moved. He said the Sky track and 5th wheel would not be in the building. He didn't want to turn it into a commercial location type tying.

Mr. Newgard said he had a machine to move the stone into the building or a different building. He said the steel building would be erected in one day and he was constantly working on the yard.

Mr. Newgard then said in the future he hoped to purchase more property. He said he grew up on the west end of Platinum in his teenage years. He would like to be there by the round house. He had talked to numerous people and there was a lot he was looking at and he had spoken Mike Eckerson about buying his property but he already found an owner (couldn't hear).

Mr. Newgard said it could be cleaned up within about two weekends by himself with the stone materials to a different location that he had. He said it would be up, the steel building with all of his stuff in there – his mixers and stuff was what he intended to have in there and possibly a small skidster or something like that.

Mr. Wing asked if he reviewed the conditions and if he understood what they were and Mr. Newgard said he did.

Mr. Wing said they were going to probably propose another condition that he got the garage built with all due speed and asked what kind of timing he would need.

Mr. Newgard said he was waiting to order it and had the money to buy it. He said he was going to order it and then the company that did that already had three different orders, so he would need to talk with Margie Reap about when they would actually order it. He said it would probably take a week to two weeks to have it shipped because she did have three other orders shipped and she needed a minimum of three orders to do so. They would be able to set it up in a day and so he would say within a month, not knowing for sure.

Mr. Wing said two months would certainly be adequate and Mr. Newgard said oh yeah.

Mr. Taylor asked Mr. Newgard to describe this steel building. Mr. Newgard asked if he could show them a picture. Mr. Taylor asked him to describe it to him and said one of his concerns was the home occupancy permit, one of the reasons why there were so many conditions on there with regard to the number of vehicles and equipment and inventory and those things outside was so it did not degrade the residential character of the neighborhood. He said when Mr. Newgard said he was having a steel building constructed in a residential neighborhood, that was somewhat out of character for the construction styles and aesthetics in the neighborhood, so he was concerned about a steel building. Mr. Newgard said it would have a rounded gable roof, it would have two bay doors to it with one man door, both facing to the north, facing his house and not facing the street. He said it would have colored tin very similar to a steel storage shed for the most part. He said it would have two steel walls to it on the inside and would be anchored down to the ground through the use of a sono-tube and he was a mason and could pour a foundation in it, so it could be attached to the ground. He said he asked if they wanted to see a picture because he did have a brochure.

Mr. Taylor asked if it was similar to those steel buildings that you saw in strategic locations around town with for sale signs on them, the ones that Margie Reap sold. Mr. Newgard said it would be similar to the ones south of Silver Bow Pizza. They were similar to the ones that were now in the parking lot of the old Harrison Avenue Motors. He said it was just a steel building versus wooden.

Mr. Taylor said currently, that lot was a dirt lot. He asked Mr. Newgard when he got the building constructed, did he have any plans to put in some kind of a hard-surface driveway to eliminate when it rains, the mud and dirt being tracked out onto the public street. Mr. Newgard said he had gravel dumped all over the dirt and the gravel went up to the sod and his grandfather had a set of old railroad ties that he was going to have as a separation in between the sod and where the gravel was at. He said there was a kennel that came up towards the fence.

Mr. Newgard further said long story short, his answer to the direct question was it would be road mix. He said he did have issues with that and there was a garage that the house across the alley owned that burned down or something happened was what the neighbors told him and it was lower. He had one neighbor who was kind of running a ditch out into George Street that flooded his yard in the summer, so he raised it up with road mix, so there wasn't a mud issue.

Mr. Taylor asked if Mr. Newgard was confident that the size of this building was adequate to store every piece of equipment that was associated with his business inside and out of sight. Mr. Newgard said it would not fit the 5th wheel trailer or the Sky track but everything else, yes. Mr. Taylor asked what he intended to do with those, as they were currently down there and a violation letter was sent out. Mr. Newgard said yes, it was bought after but it was a price he couldn't pass up. He said if you had to send him to jail or pay a fine, then that is what they had to do but he got a steal on the price for it. He said his parents and grandfather owned property on the east end of Platinum and they had a six foot tall privacy fence and their neighbors were Burlington Northern, Cashell Engineering and others and if that would not fly, then he was associated and acquainted with Bob Bentley of Bentley Construction who might let him put it in their yard or the Rosin Brothers at the end of Montana or Ed Leipheimer, he knew them pretty good and would see if they had any property that was vacant that he could store it on.

Mr. Taylor said one of his concerns with the equipment that was parked out on the street was not only the impact to the aesthetics in the neighborhood but when he drove by there that day, there were a couple of small children who darted out from behind what he believed was the trailer into the public street. Mr. Newgard said yeah and it was probably his kids. He said he knew what they were talking about. He said it was there because this decision had not been made. He said he could get on the horn over the weekend and get a hold of the Rosin Brothers, Bentleys, Jay Fortune or local contractors that he had

worked side by side with and he knew them pretty good. He said it was just that the trailer had literally been there a month. He said if they looked at the pictures, Cindy Winston had taken them before all of this came about and they weren't there.

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

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 up for Board discussion.

Mr. Habeger said his comments were similar to Mr. Taylor's on the steel building and the character of the neighborhood. He would like to see a condition added in there that the structure be approved by the Planning Department, so that it did fit into the character of the neighborhood since they didn't see the flyer. He asked if the Board would be supportive of that condition on it. He said it put the burden on the Planning Department but he thought it was appropriate for the protection of the neighborhood. He said his ears peaked up too when he heard steel building.

Mr. Taylor said his original thought when he looked at this application was he was elated, absolutely elated, to see that the lot would get cleaned up. He said he couldn't imagine living next door to it and he couldn't imagine living across the street from it with the number of vehicles and equipment that were parked on the street and on the public right-of-way and the machinery and equipment that was parked on the lot. He thought that having been cited already was a gross violation of the home occupancy permit and was probably one of the worst violations he had ever seen in his years on this Board. He said the citation was issued and nothing was done and more equipment was brought in and parked on the street. He said he didn't have a lot of confidence that the applicant would follow through in a prudent manner with the conditions. Like he had said, he was elated when he saw there was a garage going in

and potentially all of his equipment would be stored inside but then when he heard it was a steel building, he did have some reservations about a steel building going in in that residential neighborhood because there were no other commercial enterprises around there and typically, when they approved a home occupancy as a commercial use in a single family residence, they put restrictions on there that the character and aesthetics of the structure would remain (couldn't hear).

Mr. Habeger said he was comfortable, after seeing the design of the structure, (brochure was passed among the Board members) and asked if they should amend the request to say any equipment that can't be stored in there needed to be stored off site. It was stated that it was already covered under condition two. Mr. Habeger said as long as it said nothing outside -- Mr. Wing added no outside storage of materials.

Mr. Shaffer asked about the time line. Mr. Wing suggested two months and said he asked the applicant, if that would be an acceptable time frame and the applicant said okay. Mr. Wing said two months was a number he pulled out of the air.

Mr. Taylor said if he didn't build the garage within the two months, would the variance go away, if that was one of the conditions and who would enforce that. Mrs. Casey said it would be incumbent upon the staff to make sure that he followed that request or else he would be in violation of the Board's Order and conditions of approval and being in violation he would be brought back before this Board to see if they wanted to give him another chance or they could revoke their approval of the second garage.

Mrs. Jaksha said she didn't know if sixty days was adequate. Mr. Wing said he asked Mr. Newgard that. Mr. Taylor said he would be hesitant to extend it beyond sixty days and thought sixty days was ample time to build a stick frame building.

Mr. Shaffer moved that they approve Variance Application #15054 with an additional condition that the steel garage type building was to be up and operational and containing

equipment within sixty days. Mr. Habeger seconded the motion.

The conditions are as follows:

1. The garage must be constructed not to exceed the height requirements for detached garages as defined in the zoning regulations. As per Section 17.10.040, Building Height Limits, "Building height limits shall be two and one-half stories, but not exceeding thirty-five feet (35') in height, and **no accessory structure shall exceed one story or the following height limits**:

   a. Hip or gable roof: 16 feet maximum
   b. Gambrel roof: 14 feet maximum
   c. Flat roof: 13 feet maximum

2. All materials and equipment associated with the applicant's Home Occupation permit must remain stored inside of the proposed garage, as per Section 17.44.040(E), Criteria for Review, which states, "There shall be no outside storage of materials, products, machinery, equipment or vehicles associated with said home occupation.

3. The applicant will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.

4. The garage shall be constructed and all equipment stored inside within sixty (60) days of the April 22, 2016, ZBA approval.

At this point the Board voted on the motion.

Variance Application #15054 – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

John Habeger voted "For" the motion to approve the application – "With added 4th condition of 60 time frame."

Les Taylor, Julie Jaksha, Tyler Shaffer and David Wing voted "For" the motion to approve the application.

Dolores Cooney voted "For" the motion to approve the application – "Garage structure must be compatible with neighborhood -- home occupation not intended to house construction materials."

Mr. Wing said all six votes were "For" the motion, which meant that the application had been approved and he would be receiving a letter from the Planning staff to that effect. He then thanked Mr. Newgard for his attendance that night.

Conditional Use Permit Application #15055 – Kelly Reilly was present at this meeting.

Mrs. Farren 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 Mr. Reilly cared to add anything to his presentation. Mr. Reilly said he just wanted to clean up the lot and do some landscaping and he planned to put sod in. Also, he had been approved by the metals – the lot was contaminated with metals right now and Eric Hassler, who worked with the metals program, they were approved to come in and clean up the lot also and take out the contaminated soil

and put in sod and if they didn't do it completely, he would. He said he planned to make it look nice.

Mr. Reilly said it was in a Butte trailer park right now and he planned to move the home up here.

Mr. Wing asked if the conditions were acceptable to him. Mr. Reilly said yes, sir.

Mr. Shaffer asked if this was intended to be a primary residence or a rental. Mr. Reilly said he wasn't sure yet. He said possibly a rental but it might be a primary residence eventually.

Mr. Habeger said it kind of looked like a job trailer. He asked if the HVAC unit would be faced away from Main Street. Mr. Reilly said yes, away from Main Street. Mr. Reilly said it was designed for the American Disability Act and it was rented right now (couldn't hear) but it was designed for the American Disability Act and the doors were a certain width for wheelchairs and it had a tub/shower that you rolled in with a wheelchair.

Mr. Habeger asked if there was any proposal for off-street parking at all. Mr. Reilly said no, but there was a lot next door and he had permission from Mr. Jordan from Atlantic Richfield - on the uphill side he planned to take out some dirt for parking there and put gravel on it or concrete for parking. He had been trying to get them – they would not sell it to him but said he could use it. Mr. Reilly told Mr. Jordan the improvements he wanted to do. Mr. Jordan said they were going to give it to Silver Bow and then he could purchase it from Silver Bow because he was the only landowner adjacent. He said there was an alleyway behind the property line and Atlantic Richfield and then Ruby Street right there and then Main Street.

Mr. Reilly said there was street parking a while back but the State came in and made the sidewalk wider and put the lamppost there and they reduced the street parking to about two feet there, so he would have parking coming in off Ruby Street.

Mr. Taylor asked if Mr. Reilly had said he owned the property adjacent to this and asked if that was the property to the south. Mr. Reilly said it was thirty feet from the house – Mr. Taylor asked if he owned the residence that showed up as the white building there and Mr. Reilly said no, he did not own that.

Mr. Reilly said there was a mobile home on this lot before and they probably remembered it. He said it was a blue trailer parked on it years ago. He purchased it from the previous owner and there was already a foundation set up for a trailer and sewer/water/power was already there – they just changed the zoning laws, as it used to be zoneable for a trailer until it changed about four years ago.

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

Dan Reilly said first of all, it wasn't a trailer house. He said it was a regular house. He said it was a modular and didn't need a frame underneath it and was just like the rest of our homes and was like a modular that you would buy from Spolar House or whatever and was not a trailer house. It had 2 x 6 walls and was overbuilt and extremely well built with quality windows and it was pretty nice.

Eric Hassler said he was not a proponent or an opponent. He said he just wanted to add some specifics to the comments Mr. Reilly made about the Residential Metals Program. He said they would not be addressing his entire lot. He said the only area that had contamination was the eastern half of the lot adjacent to Main Street, so the remaining half to the west would not be touched by the Residential Metals Program but would be the responsibility of Mr. Reilly. He again said he wasn't a proponent or opponent.

Mr. Reilly said he had the equipment to do the work – an excavator, backhoe, front-end loader, skidster, dump trailer.

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

Mary Woolman said she was from Centerville and was representing her Centerville residents. She said a few of them had to leave the meeting because of time constraints. She said she knew they had good taste but unfortunately, the residents of Centerville were against having a trailer moved in there. She said they had fought very hard to get Centerville looking well. She said they had new homes going in there and have had one trailer that was there before, as Mr. Reilly said, a blue trailer but it was a total disgrace and they never did anything to it. They had it removed. They had changed the Ordinance, so you would only be able to have anything after what she thought was '76 that would be allowed to come in. The trailer Mr. Reilly was talking about up from them was grandfathered in, so that was the only reason that trailer was there. She said if they ever moved that trailer or something happened to it, they couldn't replace it with that same year.

Ms. Woolman said they were concerned about parking. She said Main Street was a very busy street that had buses on it, kids on it and riding skateboards and they did everything on it. She said there were people all over up there for the Folk Festival, so she didn't know where he planned the parking.

Ms. Woolman said they were opposed to the trailer because it looked like a job trailer. She said she didn't know what kind of siding it had on it and they were concerned with the looks of the trailer and were trying to beautify Centerville and they had worked very hard to keep trailers out. She said they all agreed that people had the right to live where they wanted to and how they wanted to but they also had to respect their neighborhood. She said the couple of trailers they had had up there had not done so.

Ms. Woolman said the question she would have for the Board was if they approved this and they hoped they didn't, was the landscaping. Everybody said they were going to landscape but most of the time it did not happen. She asked if for any reason

this was approved and they didn't abide by it, then what happened. She again said they were at the point that this would be another place that they weren't doing what they were supposed to do.

Ms. Woolman said the trailers, most of these families were worried about what it was going to do to their land – make them less expensive because you were putting up new homes and you had the Affordable Housing houses going in and families going in and people preferred not to have this trailer – renters had become a terrible thing up in Centerville. She said they have had some very bad experiences with renters up in Centerville. She said they were addressing it the best they could. She said the County had repossessed and she gave credit to the County for that but hoped they wouldn't give Mr. Reilly the variance to put the trailer there. She said it wouldn't fit in with their homes up there and it would be the only trailer up there except for the one that was grandfathered in. She said they liked their homes and this would be something that wouldn't fit in. She wished him lots of luck and appreciated the time but she did hope they took into consideration that Centerville was not a place to have this trailer. She said they didn't know what kind of material it had and there were people who had said it looked like a job trailer. She couldn't say that it was and she couldn't say that it wasn't but with all the work he had to do, she was sure it was not going to get done.

Ms. Woolman told the Board she appreciated their time and thanked them for all they did.

Melissa Garrett said she lived in Centerville and she was right, everybody thought that was a job trailer when they looked at the pictures at the Centerville meeting. Regardless, it was a nice place and they were wanting to move it up to Centerville. She said all the houses were being built around there and there was a trailer they had gotten in trouble for that was cleaned up and they had cleaned up a lot of places, but especially with rentals. She said Butte-Silver Bow had to go around and post at least fifteen doors and they were trying to get it cleaned up and like Ms. Woolman had said, they were trying to get houses

and they were trying to build more affordable houses for people and not trailers. She said this didn't look like a trailer and knew it was a 2009 but it didn't look like a 2009 and they didn't want any more trailers up there and she was opposed and against it.

Michael Tumulty (sp?) said he was opposed to this trailer. He said they owned an 1890's stick miner's house from the Anaconda Mining Company just north of it on Pacific, north of the proposed site and Main. He said he had driven all over and knew of the one north of them that was also a modular home, a trailer home, and he didn't believe that it represented any historical value or provided any improvement and believed it could be a detriment. He said he didn't know how long the property owner had owned this lot but he appreciated the intentions to make it look better but it appeared there had been no demonstrable efforts to improve it. He said it would definitely be a detriment to his property and a detriment to his family's properties and to the rest of the people in Centerville as well and they had some very nice homes up there and this was a (couldn't hear).

John Castle of 904 North Main up in Centerville said he was raised in the house and he bought the house after his parents lost it. He said his grandmother's house was down the street and they were all miners' houses and were stick houses. He said he put a lot of money into the house to fix it up and make it look nice and he had done the landscaping.

Mr. Castle said he bought the lot that was next door and he and his brother spent the last sixteen years landscaping that property. He said there was a lot of gentrification that had started in Centerville and the houses they had built were models of the houses that used to be in Centerville. He said a lot of the miners' houses that were up there were being fixed up by people and remodeled and he felt that adding this to Centerville would detract from where they lived.

Mr. Castle then said he was only two blocks above from where this proposed trailer would go in or the modular home. He still felt like it didn't fit in on the hill and they were trying to keep the

hill an historic community and the people who lived up there had been up there for generations and generations. He said he could probably speak for most of the people in Centerville who liked where they lived and wanted to keep it the way it was and only improved the quality of life for the houses that were there and he thought adding a trailer to the hill would be a big mistake and asked that they not approve this application.

Mr. Wing then said to Mr. Reilly that he did get the opportunity to do a rebuttal with regard to the concerns that were raised by the opponents and provide additional testimony to address those concerns, if he wanted to do that. Mr. Reilly said if they liked the lot the way it was, it would stay the way it was. He said it could stay contaminated too, as it was up to him because he was the one that went forward to have the metals program people clean it up and if he wanted to, he could have them do it but he didn't have to have them to do it. He said if they wanted to have the kids sucking up that led and asbestos and whatever else was in there, that was fine.

Mr. Reilly said he was just trying to use the lot for a better thing than just storage. He said by law he could store whatever he wanted to up there. He could put equipment or whatever he wanted to because it was his property and he could do something with it or he could sue for whatever he could use it for.

Mr. Reilly asked if they were saying his property was useless. He said he could do something with it but the only thing was it was 30' x 100' wide and was only big enough for that small trailer and it wasn't a trailer, it was a modular home and it had 2 x 6 walls and had eighteen inches of blown insulation and had a peaked roof and was built to the Federal Government, okay. He said the Federal Government had that built.

Mr. Reilly said he didn't know. He said the State took away the parking on the street and that was why ARCO gave him the parking on their lot but they weren't going to do anything with the property there. He said he guessed they could pound the sand because they weren't going to do anything. He said he

tried to get them to sell it to him and do improvements to it but the only incentive to do improvements to an empty lot would be to put something on it.

Mr. Taylor said he had a couple of questions. He said if this manufactured home was not a mobile home, how did he intend to use the mobile home foundation that was there rather than put in a perimeter concrete permanent foundation. Mr. Reilly said he could put in a permanent concrete foundation and that was fine. Mr. Taylor asked if this modular home was titled and asked if he had a title to it and Mr. Reilly said yes, it was.

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

(Dan Reilly in the audience said something about it having something other than a title but I couldn't hear what he was saying very well).

Mrs. Jaksha said she had concerns with the parking, no on-street parking. She knew Mr. Reilly said he could use the property adjacent to it and sometimes that worked out and sometimes it didn't. She thought the testimony she had heard from the neighbors, she would probably be in opposition of the project.

Mr. Shaffer moved to approve Conditional Use Permit Application #15055 with the conditions as outlined in the report. Mrs. Cooney seconded the motion.

The conditions would be as follows:

1. The specific Class B manufactured home, built in 2009, that was submitted for consideration shall be the exact home placed on the proposed property.

2. The manufactured home proposed to be placed on the property in question shall meet all development standards (i.e. setbacks, foundation) described within the Zoning Ordinance and required by Building Codes.

3. The proposed foundation must be inspected and approved by the Building Official prior to a moving permit being issued. If the existing foundation does not meet requirements of the Building Codes, a new foundation must be permitted, constructed, and inspected and found to be in accordance with Building Codes prior to the issuance of a moving permit.

4. Prior to allowing the specific Class B manufactured home to be set on the foundation, an approved electrical service is required and must be permitted and inspected by the Butte-Silver Bow Building Department. If the property is not the applicant's primary residence, the electrical service must be installed by a licensed electrician, and also inspected by the Butte-Silver Bow Electrical Inspector.

5. The applicant shall install landscaping (i.e. trees, shrubs and lawn) and shall maintain the property in a manner consistent with the character of a residential zone.

At this point the Board voted on the motion.

Conditional Use Permit Application #15055 – Denied

John Habeger	Against	Les Taylor	Against
Dolores Cooney	Against	Tyler Shaffer	Against
Julie Jaksha	Against	David Wing	For

John Habeger voted "Against" the motion to approve the application – "Not a good fit for this historic neighborhood."

Les Taylor, Tyler Shaffer and Dolores Cooney voted "Against" the motion to approve the application.

Julie Jaksha voted "Against" the motion to approve the application – "Parking concern/no on-street parking. Not a good fit in the area per neighbors."

David Wing voted "For" the motion to approve the application.

Mr. Wing stated there were five votes "Against" the motion and one vote "For" it, which meant that the application had been denied. He said Mr. Reilly had an opportunity, if he cared to pursue it, to file a matter with District Court challenging the Board's decision. He said that it had to be done within thirty days and the first day would be tomorrow.

Use Variance Application #15057 – Norm DeNeal from Landscapes of Montana was present at this meeting, as the agent for Butte-Silver Bow.

Mrs. 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.

Mr. Taylor asked who owned the headframe. He said he was confused and thought the agent owned the headframe and was going to do this but that was not true. Mrs. Casey said the headframe was on loan to Butte-Silver Bow from the BLM. She said there was a Memorandum of Understanding. Mr. Taylor said technically, the Bureau of Land Management still had possession of the headframe. Mrs. Casey said the possession was in Butte-Silver Bow's hands at the Steward Mine Yard – those timbers and that but the ownership technically was the BLM and it was on loan to Butte-Silver Bow.

Mr. Wing then said to Mr. DeNeal that he had the opportunity to address the Board and present his case in support of his application, if he cared to do so. Mr. DeNeal said the reason he was there was to provide what he thought was due diligence to a promise he made to the BLM when the BLM loaned the Alta Headframe to Butte. He said over the years he had worked closely with the archeologist at the BLM, Carrie Kealy (sp?). She approached him asking if he could use this particular headframe that had this history. He said having known the history of the Clear Grit Mine at the time, which was located on

the proposed site, he told her yes, he would like to use the Alta Headframe to interpret the history of the Clear Grit Mine but more to talk in general about Butte's silver mining history, which was one of the three epic periods of Butte history, the second of three, with the first being the gold history where Butte had a near death experience with having placer gold mining take place along Silver Bow Creek, where at its height there were three thousand miners panning for gold along Silver Bow Creek and after two and one-half to three years, there wasn't enough gold left in Silver Bow Creek to keep miners within what we now call Butte. He said people moved farther up the hill thinking the gold from Silver Bow Creek had to come from somewhere and it turned out they were right.

Mr. DeNeal said the second period of history was silver mining. He said silver mining was developed in Butte and the most important ones were the Travona, the Lexington and the Clear Grit. He said the Clear Grit was the second highest producing silver mine here in Butte. He said when he saw this headframe, he thought they could tell their story of history with that.

Mr. DeNeal said his main concern was he thought Butte would have over time an opportunity to develop its story to be well told to not only its citizenry but also the people visiting Butte. He thought if they told their story well and it was a story of not only mining but was a story of industrial history, labor history and ethnic history, if they told that story well, he thought it would add significantly to Butte's economic development. He said having that vision in mind and having seen it happen before in other cities, particularly, in the eastern half of the country, he tended to believe that Butte had one of the best, if not the best story, west of the Mississippi excluding New Orleans. He said if they told that story well, it would be an asset to our community.

Mr. DeNeal said it was with that in mind that he hoped they took possession of the Alta Headframe, which they did as a loan. He said he saw Main Street as to eventually be our main historic corridor going up and down the hill, particularly, between Mercury and Daly Streets up in Walkerville. He thought that this headframe in that location would be an asset

to both the citizenry of Butte and particularly, its visitors who passed through.

Mr. DeNeal said he recognized and appreciated and understood why this particular piece of property was zoned "R-2". He said it had a beautiful view of the Highlands and particularly, with some revegetation around the Steward Mine, he thought it would also enhance the property for residential development on this particular property. As such, his intention was to erect the headframe, as a temporary structure, because he thought this property would be residential property sometime in the future, maybe not for twenty to thirty years, but sometime in the future. He saw this as a temporary structure to at least move forward with the development of telling their story.

Mr. DeNeal said as far as – he was very much concerned with preserving the plantings on this particular site to hold the soils in place and he was deeply concerned that they didn't have erosion of those soils by adding people and traffic on the grasses. He said those grasses were actually kind of hard to kill. He said he was growing some aspen immediately south of this particular landscaping.

Mr. DeNeal said he noticed and happened to respect and agreed with the work that the Planning Department had given the Board. He said if they wanted a pathway to the sign or the headframe, he never anticipated that this would be something that he would have to deal with but he would be happy to put in a standard trail with compressed clay that would keep the soil down for the grasses that were there, so they would continue to keep erosion from happening on that reclaimed cap.

Mr. DeNeal further said he noticed in the information they were given on this -- he didn't know at the time that the headframe could be placed on Open Space or OSC or Conservation Open Space, where you didn't really want a lot of development but about six hundred feet away from that was the aspen grove that he had been developing, which was immediately north of the Steward Headframe and there was a possibility of putting it in place there. He said right now the four acres that were there

had been landscaped in such a way with native vegetation. It had been landscaped in such a way to be a park-like setting because eventually the protective fence protected mostly against the deer from eating young plants. He said they wouldn't be eating as much when they were mature and it came down to the water system coming out – this was a native landscape that had maintained itself without any human intervention.

Mr. DeNeal said albeit it with the property requiring an additional appearance before this Board, he would be willing to entertain having that headframe with its interpretive elements to also be possibly placed at the Cellar Dirt Dump where the aspen grove and park-like setting now was.

Mr. Wing asked if he was withdrawing this application then. Mr. DeNeal said the answer was yes and no. He said that wasn't his decision to make, it was the Board's.

Mr. Taylor said he grew up in Butte and when he was a kid that would have been the best headframe around the corner. He asked Mr. DeNeal if he had any plans to mitigate the attractive nuisance to keep the kids from climbing on it and someone getting potentially hurt and the taxpayers being liable. Mr. DeNeal said he asked a good question and it had to be addressed for the safety of anyone who visited this. Mr. DeNeal said this headframe was going to be sixty-five feet tall and you would hate for someone to climb the sixty-five feet and miss a step and then fall and break their neck. He said that just had to be addressed, there was no question about it.

Mr. DeNeal further said that typically, what was done in a situation like this by other headframes that had been erected on the forty degree timbers, was a barrier between the bottom and the top, so they couldn't get up the headframe very well. This was what usually had been done.

Mr. DeNeal said he was there trying to follow a promise that he made to the BLM that he would pursue the use of this headframe at the Clear Grit site. He said to that effect, the BLM

wrote a letter dated the day before he guessed, saying they couldn't take a preference position in terms of the siting of this headframe, whether it would be at the World Museum of Mining or the "R-2" location that he proposed. He said the letter said in part that, "it was their opinion that erecting the Alta in place of the Clear Grit would be an accurate representation of the technology used at that time and that it would be a simple matter to make it clear to the public that a headframe is being used for that purpose. The location is also easily accessible by the public, which was our primary concern. While the Alta was never in Butte, we are well aware that headframes can be moved from one location to another and that the quote unquote integrity can be questionable in any cultural landscape that features historic mining."

Mr. Taylor said he commended Mr. DeNeal's efforts to tell Butte's story and asked if there was some reason why that story couldn't be told as effectively at the alternative site at the Mining Museum. Mr. DeNeal said the answer was yes but it was not a strong yes. He said the reason he said that was he wanted this headframe to be accessible to as many people as possible without having to pay a fee or go through a fence or something like that. He wanted it to be in the most visible part of Butte where people might see the headframe, whereas at the World Museum of Mining most people had to pay an admission fee to see these historic artifacts inside the Mining Museum.

Mr. Shaffer asked who would be responsible for the upkeep of this area into the future. Mr. DeNeal said he wanted to try and answer the question this way -- there wasn't a lot of upkeep for a headframe of this nature. They also got from the Bureau of Land Management eighteen years ago, part of the old Lexington Stamp Mill, which right now was at the old Lexington Gardens at the corner of Arizona and Granite Streets. He said the only upkeep they had with that particular element was re-staining it every fifteen years. He said they stained it when it was first erected and then re-stained it sixteen years later, so there wasn't a lot of maintenance to it. He asked if that answered Mr. Shaffer's question and Mr. Shaffer said that was debatable.

Mr. Shaffer then asked if that was where the flower garden was right now and Mr. DeNeal said yes. Mr. Shaffer said that seemed like a lot of upkeep. Mr. DeNeal said it was a lot of upkeep to maintain the garden but not the Stamp Mill.

Mr. Shaffer said if they were going to have an interpretive sign, he thought they needed to have some sort of maintenance of the area. Mr. DeNeal asked what kind of maintenance. Mr. Shaffer said there would be parking and there would have to be some sort of trail or something to get to this. Mr. DeNeal said as he had said, he thought the standard trail systems that we used here in Butte, for the most part, were about ten feet wide and compacted clay and they didn't require a lot of maintenance other than spraying for invasive plants that would come into the trail. Mr. Shaffer asked if Butte-Silver Bow would be responsible for installing that or – Mr. DeNeal said he owned a landscape company and they could do it.

Mr. DeNeal then said by the way, there was the issue of parking too. He said the parking that he was referring to wasn't in the Steward Mine Yard but was across the street on the west side of the Steward where there was a forty car parking lot that was used for the Steward Mine when it was in operation. He kind of noticed because he was a miner at the Steward Mine when he was a kid. He said furthermore, there was about a ten to twelve car parking lot on the east side of Wyoming Street adjacent to the walking trail that was about a block and a half away from the Alta Headframe. Mrs. Casey had pointed out there was about a two car parking area just immediately next to and south of the proposed signage to interpret the Alter or Clear Grit Headframe area. He said also along the Clear Grit Terrace, there was an area that had been graveled there that could easily accommodate four to six cars that was about three quarters of a block.

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

John Castle said his dad was a miner and his grandfather was a miner and his uncle was a miner. He said like he had said, he had a house two blocks up and his grandmother's house was directly across from the proposed site and he had a niece who was eight.

Mr. Castle said it was in his family history and growing up on the hill, he lived right below the Mountain Con and he really liked what the City had done with the reclamation of the hill with the Mountain Con and with the other mines, the Original. He said they were accessible and as a kid, those were not because they were dangerous but now they were open for them to see and he was amazed at how many tourists came up the hill and stopped and asked questions all summer long.

Mr. Castle thought having the mines up on the hill open to the public allowed for economic growth in our City and we needed what we could get and he thought that by adding another headframe to the hill with an interpretive sign would add to that.

Mr. Castle further said they had the Folk Festival and all of the festivals at the Original and people went up and wanted to see the mines and were really interested in the history of Butte. He said the people of Centerville – this would only add to the character of the hill and help tell Butte's story and bring more tourism to our town.

Michael Tumulty said he thought as a community they were truly blessed and really privileged to have someone as knowledgeable and dedicated as Mr. DeNeal who came up with these amazing plans to tell a story that day-by-day was dying and fading away that they didn't always necessarily have the resources to always save. He said there were lots of reasons to say no to this project – was parking a problem. He said they did have parking lots at the Con and did have the parking lot just below that. He said the only thing that he could really consider as an issue would be for handicapped accessibility and for that, they could very easily have small three or four parking spaces along Main Street with blue curb that would provide parking for people who would like to not have to walk.

He thought the story of Butte was the journey and taking the journey down the hill a little bit or up, depending on which way you came from, to get to the site to learn that story was what made the journey special. He said he would appreciate it, if they would reconsider.

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 up for Board discussion.

Mrs. Cooney said her concern was she didn't think a variance was appropriate for this particular project. She said, as staff outlined, there was no plan and they had a ton of projects in Butte that were great projects but there was no systematic plan to completion and beyond. She said many of these projects ended up on the public purse where Butte-Silver Bow was expected to take care of it. If that was the original plan that Butte-Silver Bow was to take care of it, that was great and they could budget and so on but without a plan for financing, a plan for maintenance and beyond, she just didn't think it was appropriate.

Mrs. Cooney further said she was concerned with the historical interpretative sign. She said in the report it said Mary McCormick said the Alta was not original to Butte and so it was not a true historical interpretation but you were going to have to accommodate – it wasn't just an area every year that you were going to be able to walk into and look at the headframe and read about the headframe and about silver mining in Butte. She said you were going to have to deal with parking, going to have to deal with paving, going to have to deal with security and were going to have to deal with the cap and going to have to deal with the lighting – all of those factors and it just came down to there was no plan. She said there was no money and if they got started and it ended up on the backs of Butte-Silver Bow and they had a lot of projects out there pending that also needed to be funded with the expectation that Butte-Silver Bow would do it, it made sense to her and she wasn't speaking for

the World Museum of Mining but it made sense to her that we had a World Museum of Mining site where interpretation could be done. They had parking and plans and that type of thing and it made sense to move it there and not do a zoning variance for this type of project. She said it wasn't appropriate.

Mrs. Cooney said those were her two reasons -- public purse and not appropriate.

Mr. Taylor tended to agree with all of the comments Mrs. Cooney had made. He said his two biggest concerns, as Mrs. Cooney pointed out, was who maintained it into perpetuity and who would be responsible and it was not going to be free and they weren't going to kid themselves that it was going to be free – they did have a lot of festivals and a lot of people going on that site and a lot of people setting up their lawn chairs and a lot of human activity and things were going to have to be cleaned up afterwards and they would have to somehow ensure that they maintained the integrity of the cap in place there, as well as ensure the safety of the visitors. He said it was great to tell our story but he had a huge concern with the attractive nuisance and the ability of that site not being secure and the ability of folks to access that headframe. He thought there was significant liability there.

Mr. Shaffer moved to approve Use Variance Application #15057.

Mrs. Cooney asked for clarification. Approving the application meant – Mr. Wing said if they didn't like the idea you voted against it. Mrs. Cooney asked if it was what the staff recommended was her confusion because the staff had recommend non-approval. Mr. Wing said they would be voting to approve the application – Mrs. Cooney said if she didn't like the application, she would vote against it.

Mr. Taylor then seconded the motion.

At this point the Board voted on the motion.

Use Variance Application #15057 – Denied

John Habeger	Against	Les Taylor	Against
Dolores Cooney	Against	Tyler Shaffer	Against
Julie Jaksha	Against	David Wing	Against

John Habeger, Les Taylor, Dolores Cooney, Tyler Shaffer, Julie Jaksha and David Wing all voted "Against" the motion to approve the application.

Mr. Wing said all six votes were "Against" the motion, which meant that the application had been denied. He said once again, if he cared to challenge the Board's decision, he could file a matter of appeal with the District Court within thirty days with the first day being the following day.

Mr. Wing said he thought it was a very laudable project but he thought it needed more detail than what they had now. There were more concerns with parking and maintenance.

IV. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 9:10 P.M.

BY: David Wing

David Wing, Chairman

Lori Casey

Lori Casey, Assistant Planning Director

To Whom it May Concern!

My name is Collen Baker. I reside at 2412 S. Dakota. I don't have a problem with The Garnie parking their vehicles on their vacant lot. (2400 Block S. Dakota)

Collen Baker

Robert and Vicky Rowling
101 Greenwood Ave.
Butte, Montana 59701
406-533-8135

April 19, 2016

To whom it may concern,

This letter is regarding the Garner family, living on Dakota Street. The Garner family's property resides across the street from our property at 101 Greenwood Ave. The Garners have been outstanding neighbors and seem to be respected in the neighborhood.

Since we have moved in, the Garners have also purchased the empty lots directly across the street from our property at 101 Greenwood Ave. The lots to my knowledge are residential and have been empty for numerous years. The only use for anyone would be to use this piece of land for storage. Before the family purchased the lots they were kind enough to ask our permission and our thoughts. For our family we felt anything in the lot is a plus for us, using the lots as a barrier from the harsh traffic that travels up and down Rowe Road. I'm sure you are well aware of past vehicle accidents and deaths, in this area, along Rowe Road. Although we would never wish harm to anyone's property, the storage put in the empty lot gives our family a bit of peace.

The Garners have done nothing but improve this small piece of land with gravel and destroying the weed build up. The Garners keep the lots clean and well kept. We cannot imagine anyone wanting to purchase that piece of land for anything but storage, and feel the piece of land should be treated as part of Garners residence where the family resides.

Thank you,

Robert and Vicky Rowling

Robert and Vicky Rowling

Petition in Opposition for Variance
Application No. 15052
to operate and construct a mini storage facility in a residential zone
Hearing on April 21, 2016 at 5:30 p.m.

We, the undersigned, reside in the general residential area of Hancock Street, Fairmont and Gregson Street and adamantly oppose the application to place four (4) storage building units in our R-1 (one family residence) zone. **We oppose this Application as follows:**

- That it changes the basic characteristics of this residential single-family neighborhood.
- That the proposed Application is not compatible and cannot be integrated without severe harm to the residents of this area.
- That locating a storage facility at the proposed location would create a negative impact on the entire single-family neighborhood.
- That the Application is unwelcome by the residents of this single-family neighborhood and that it will have a negative impact on their property and its value and will generally change the essential character of the neighborhood.
- That the increased traffic and usage will adversely affect the neighborhood and put at risk the safety and wellbeing of children as well as the residents in the area.
- That the variance is contrary to the general public interest and infringes upon the rights of the adjacent landowners and neighbors as well as the public in general.
- That the proposed plan of operation cannot mitigate the total negative consequences to this single-family residential neighborhood and rather than enhancing the neighborhood it contributes to the overall demise and the total establishment of a commercial zone rather than a single-family neighborhood.

NAME	ADDRESS
Lola Krueger	1800 Hancock Ave.
John Gionenco	1801 Hancock Ave
William A Harney	1701 Hancock Ave

NAME	ADDRESS
Spiragolia	1701 Hancock Ave.
Dave Vickol	3057 Fairmont
[illegible]	3057 Fairmont street
Paul Fries	1850 Hancock
Paul Walter	1830 Hancock
Christine Giovino	1801 Hancock
Marchael Walsh	1831 HANCOCK
Peggy (Margaret) Ann Walsh	1831 Hancock
Lisa Fries	1850 Hancock
Denise D. Fries	1850 Hancock
Gloria Erickson	1900 Hancock Ave
Kathleen Abbatte	1830 Hancock Ave

2. Petition in Opposition to Variance for Application No. 15052

2016

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT

Thursday, April 21, 2016, at *5:30 P.M.*
Council Chambers – Third Floor – Room 312

I. Call to Order.

II. Approval of the Minutes of the meeting of March 10, 2016.

III. Hearing of Cases, Appeals and Reports:

Variance Application #15023 – An application for a variance by Walter C & Karen M Garner, owners, and Ryan Garner, agent, to have more than one (1) vehicle associated with the Home Occupation Permit, varying from Section 17.44.040(K), Criteria for Review and to locate vehicles and trailers associated with the business on a vacant parcel of record in a residential zone, varying from the requirements of Section 17.44.040 (E), Criteria for Review, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lots 22-24, Block 9, of the South Park Addition, located directly west of 2400 S Dakota Street, Butte, Montana.

Variance Application #15033 - An application for a variance by Anita Zabel, owner, and Erik Ingman, agent, to construct a detached garage that would have a fifteen foot (15') parking apron, varying from the required twenty foot (20') parking apron of Section 17.16.020, Permitted Uses, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as the N10' of Lot 14, all of Lots 15-16, Block 52 of the Daly Addition, commonly known as 2001 Banks Avenue, Butte, Montana.

Variance Application #15042 - An application for a variance by Patrick Walsh, owner, to construct a detached garage (24'Wx24'D) on a parcel of record that does not contain a primary structure, varying from Section 17.14.020 (D), Permitted Uses, of the BSBMC. The property is located in

Applicant or Representative must be present at the meeting

an "R-3" (Multi-Family Residence) zone, legally described as a portion of Lots 15-17, Block 11 of the Kings Second Addition, located immediately east of 222 E Mercury Street, Butte, Montana.

Use Variance Application #15052 - An application for a use variance by Gene Spolar & Cathy Huffer, owners, and WJ Properties, LLC, agent, to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 2-10 & 18-21, Block 21 of the Northern Pacific Addition, commonly located in the 3000 Block of Fairmont and Gregson Streets, Butte, Montana.

Variance Application #15054 - An application for a variance by Daniel J Newgard & Kareen E Baker, owners, to construct a second detached garage (30'W X 40'D) on a parcel of record that already contains one detached garage, varying from the requirements of Section 17.10.020 (D), Permitted Uses, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1-5, Block 9 of the Daly Addition, commonly known as 1800 Monroe Avenue, Butte, Montana.

Conditional Use Permit Application #15055 - An application for a conditional use permit by Kelly Reilly, owner, to locate a Class B (single-wide) manufactured home on a parcel of record in an "R-2" (Two Family Residence) zone, per Section 17.12.030 Conditional Uses, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lot 2, Block 7 of the Smith & Kessler Addition, located directly north of 729 N Main Street, Butte, Montana.

Use Variance Application #15057 – An application for a use variance by Butte-Silver Bow, owner, and Norman DeNeal, agent, to locate a headframe on Butte-Silver Bow property in a residential zone, varying from the

A G E N D A

requirements of Section 17.12.020, Permitted Uses, and to construct the headframe to sixty-five feet (65') in height, varying from the requirements of Section 17.12.040, Building Height Limits, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Clear Grit Mine #499, Section 12, T03N, R08W, commonly located on the east side of Main Street between the BA&P Walking Trail and Clear Grit Terrace, Butte, Montana.

IV. Other Business.

V. Adjournment.

By: Lori Casey
Lori Casey, Assistant Planning Director

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Variance Application #15023** - An application for a variance from the agent's Home Occupation permit to allow for more than one vehicle associated with the Home Occupation, and to locate the aforementioned vehicles and their associated trailers on a vacant parcel of record in a residential zone, varying from Section 17.44.040(E)(K), Criteria for Review, of the BSBMC.

APPLICANT: Walter C. and Karen M. Garner, owners, 2400 South Dakota Street, Butte, Montana, and Ryan Garner, agent.

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

REPORT BY: Rebecca R. Farren, Land Use Planner.

VICINITY MAP:

LOCATION/ DESCRIPTION: The property is located in an "R-2" (Two Family Residence) zone, legally described as the South Park Addition, Section 25, T3N, R8W, Block 9, E Portion of Lots 22-24 of the City and County of Butte-Silver Bow, State of Montana, commonly known as the 2400 block of South Dakota Street, Butte, Montana.

PROPOSAL: The applicant is proposing to utilize a vacant property within the "R-2" zone for the outdoor storage of his trucks and trailers associated with his home occupation. While the Home Occupation permit does allow for a business vehicle, it stipulates that there shall be no more than one (1) vehicle associated with each home occupation permit. It also stipulates that there shall be no outside storage of materials, products, machinery, equipment or vehicles associated with said home occupation.

STAFF FINDINGS: The applicant and agent have a business together (Garner Contracting, LLC). The agent had applied for and received Home Occupation Permit #14105 on February 25, 2013. When the permit was approved, the agent had listed one dump truck for the business. Since that time the business has grown to include two semi-trucks, the dump truck, two enclosed trailers and a goose neck trailer. The Planning Department received a complaint from a neighbor that the applicant was parking commercial equipment on his vacant lot and subsequently, sent the applicant a zoning violation letter. The applicant promptly removed the business vehicles and trailers from the property in order to be in compliance with the violation letter. However, the applicant and agent would like to utilize the vacant property within the "R-2" zone for the outdoor storage of his trucks (on occasion) and trailers associated with the

home occupation. The Butte-Silver Bow Municipal Code, Section 17.44.040(E), Criteria for Review, states, "There shall be no outside storage of materials, products, machinery, equipment, or vehicles associated with the Home Occupation" and Section 11.44.040(K), Criteria for Review, states, "There shall be only one vehicle used for commercial purposes related to the home occupation for each dwelling unit." As stated above, the applicant has two semi-trucks and one dump truck currently associated with his home occupation. These trucks are generally stored at the south Industrial Park but on occasion they are at this property overnight.

The applicant's request to allow for multiple vehicles associated with his Home Occupation permit and to allow those vehicles and trailers to be parked outside on a vacant lot, requires approval from the Zoning Board of Adjustment.

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

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

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

   In this particular case, the property is located in an "R-2" zone that does not permit outside storage of materials, products, machinery, equipment or vehicles associated with the home occupation, and does not permit each dwelling with an associated

Home Occupation permit to have more than one vehicle associated with the business.

The topic of public concern that must be addressed by this use variance is the impact of the proposed use on the adjacent residential property owners.

The owners own both the triangular parcel in question and the parcel directly east of the parcel in question. The eastern parcel is the owners' legal primary residence. Therefore, it could be inferred that parking vehicles and trailers on the triangular parcel would have the greatest direct impact on the owners' residence and marginally less on the other, less proximal parcels to the proposed storage area. The western/southwestern boundary of the triangular parcel in question is Rowe Road, a main arterial route that connects South Montana Street with Holmes Avenue. Beyond Rowe Road is a vacant lot that is zoned "R-2" (Two Family Residence) but it remains undeveloped. Beyond the vacant lot is a "C-1" (Local Commercial) zone. To the north and east of the subject parcel are single family residences. As such, the fact that the commercial use would be located in a residential zone requires special attention.

In regard to having more than one vehicle associated with the business, the agent has stated to staff that the vehicles are parked at the south Butte Industrial Park. The Industrial Park is an appropriate zone to store these types of vehicles. The additional vehicles, if parked in the appropriate zone, do not appear to infringe on the residential zone and may not be contrary to public interest.

However, the parking of semis or the dump truck, even on an occasional basis would have a greater impact on the neighboring properties. Typically, the start-up of a semi-tractor on a cold morning can create a substantial amount of diesel exhaust within the first five to ten minutes. In addition, until the engine warms up, it is considerably louder than gas-powered motor vehicles. Although staff can understand that it may be easier to bring the semi home when arriving late at night or leaving early in the morning, the Industrial Park is approximately five miles from this property. As such, staff is not fully convinced that the semis or dump truck need to be parked on the lot, even on a temporary basis.

In regards to parking the enclosed trailers and goose neck trailers on the subject property, as long as the trailers are neatly parked and located out of the vision clearance triangle of the intersections of Rowe Road and Greenwood Avenue, South Dakota Street and Rowe Road and South Dakota Street and Greenwood Avenue, then the storing of vehicles may be appropriate for this site.

It should be noted that the applicant does store his personal camp trailer on the property. Storing of a personal licensed trailer is permitted within the "R-2" zone.

Based on the above discussion, if the applicant and agent are agreeable to not parking the semis and dump truck on the property, the request to have more than one vehicle associated with a Home Occupation Permit and the request to store the two enclosed trailers and goose neck trailer that are associated with the business 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 applicants' ability to place a structure on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicants.

The hardship associated with this property is its shape. Although the applicants' property is larger (6,885 square feet) than the required minimum lot size of 6,000 square feet, the property is triangular in shape. In addition, the property is bounded on all three sides by streets. As such, the shape of the property and the setback requirements and the requirement to keep the vision clearance triangles from streets clear, makes it very difficult to locate a residential structure on the property.

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 applicants 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 noted above, one of the criteria for approving a home occupation is that outside storage of materials, vehicles, equipment, etc. associated with the home occupation is not permitted. It would appear that the purposes for Criteria E are that the property on which a home occupation is being operated does not become a visual detriment to adjacent residences by taking on the appearance of a commercial property. In addition, many commercial vehicles and/or commercial equipment are generally louder and create more exhaust than a typical residential vehicle. As such, if the applicant and agent are willing to keep the semis and the dump truck at the south Butte Industrial Park, then the keeping of the enclosed trailers and gooseneck trailer may be tolerable to the neighboring properties.

The applicant and agent must be clear that if this variance is approved, it is being approved for the purpose of providing them the the opportunity to get their business started as affordably as possible. In that regard, it is very important that the applicants operate their home occupation within the boundaries of the other criteria and when any of the other criteria are exceeded, i.e. more than one employee living outside of the home, it is fully expected the applicant and agent move the business to the appropriate zoning district.

The Board and the applicant and agent 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 and agent the opportunity to store the trailers associated with this Home Occupation business at this site. When the home occupation is closed or moved to another site, neither the applicant nor anyone else can start up a new outside storage business at this site. In addition, the applicants cannot sell the property to someone else with the new owner having the expectation that they will be able to operate a storage yard business at this site.

If the applicant and agent agree to the conditions stated below, storage of two (2) enclosed trailers and (1) gooseneck trailer and the request to have more than one vehicle associated with the business may be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above analysis, staff believes that this Variance Application #15023 mat 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 Variance Application #15023, provided the following conditions are met:

1. The applicant and agent will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.

2. The applicant and agent will be limited to the business as stated and approved, including the

outside storage of two (2) enclosed trailers and one (1) gooseneck trailer. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

3. The applicant and agent shall store the two semis and the dump truck at the south Butte Industrial Park or in the appropriate zoning district.

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Variance Application #15033** - An application for a variance to construct a detached garage (720 square feet in area) within fifteen feet (15') of the Cobban Street property line, varying from the twenty foot (20') parking apron requirement for a garage exiting to a street, as per the requirements of Section 17.10.020 (D), Permitted Uses, of the BSBMC.

APPLICANTS: Anita Zabel, 8544 NW Ryan Street, Portland, Oregon, owner, and Erik Ingman, PO Box 3911, Butte, Montana, agent.

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

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:

LOCATION/ DESCRIPTION: The property is located in an "R-1" (One Family Residential) zone, legally described as the N10' of Lot 14, all of Lots 15-16, Block 52 of the Daly Addition, commonly known as 2001 Banks Avenue, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a rectangular shaped detached garage with a total width of twenty-four feet (24') and a total depth of thirty feet (30') comprising an area of 720 square feet (see attached site plan) that would be located fifteen feet (15') from the Cobban Street property line, varying from the twenty foot (20') parking apron requirement for a garage exiting to a street. The garage would be located on the west side and rear of the house.

STAFF FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.16.020, Permitted Uses, requires a garage exiting directly to a street to have a twenty foot (20') parking apron from the street property line.

The applicant's request to place the garage within fifteen feet (15') of the street property line requires approval from the Zoning Board of Adjustment.

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

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

   Parking apron requirements have been established to protect public health and safety by providing adequate space for vehicles to enter and exit a garage without obstructing traffic or creating a safety

hazard within the public right-of-way for pedestrians and drivers.

The neighborhood is a mixture of newer and older homes, varying somewhat in design. Many homes have garages with doors exiting to the alley, however, the location of the dwelling in relationship to the parcel in question would only allow for a detached garage exiting to Cobban Street.

While staff believes it is necessary for new structures or additions to be in conformance with zoning regulations, staff is also aware there are situations that prevent new structures from being able to meet zoning regulations and can provide justification for a variance from the pertinent zoning regulation. In this particular case, the applicant's property is seventy feet (70') in width and one hundred feet (100') deep, which exceeds the required minimum lot width of sixty feet (60') and the minimum required lot area of 6,000 square feet. As such, the applicant's property is considered a legal parcel of record. That being said, there may be other circumstances which may support the approval of this variance request.

In this particular case, the applicant is requesting the fifteen foot (15') setback due to the location of a natural gas line preventing compliance with the standard twenty foot (20') setback. In order for the proposed garage to have enough depth twenty-four feet (24') to allow for the parking of full sized vehicles, the applicant is proposing to locate the garage closer than the required twenty feet (20') from the Cobban Street property line.

The applicant's property is located in a block that does not have any curb/gutter or sidewalk. Consequently, there is approximately seven feet (7') of grass boulevard and then the parking lane of Cobban Street.

The primary purpose for the twenty foot (20') parking apron is to provide a driver exiting a garage with adequate visibility regarding oncoming traffic and pedestrians. In this case, the applicant should be able to exit the garage far enough to identify pedestrian or oncoming traffic prior to encroaching into the boulevard area through the vehicles' side windows.

One of the important considerations when considering reduced parking aprons is to ensure that the garage will not affect the vision clearance triangle of the intersection of Cobban St. with the alley. In this case, the proposed garage will be located outside the vision clearance triangle area.

Another consideration is whether a vehicle can park in the parking apron and not extend out into the public right-of-way. While a fifteen foot (15') parking apron will allow smaller vehicles to safely park on the property in front of the garage, larger vehicles will extend out into the boulevard area of Cobban Street. That being said, Cobban Street does have an eight foot (8') parking lane, and it appears that pedestrian traffic utilizes the parking lane as the walking path for this block.

Based on the above discussion, it would appear that the requested variance would not be contrary to the public interest.

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

To qualify for a variance the property must exhibit conditions that preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unique conditions usually associated with the property are shape, topography or some geological feature.

The applicant's parcel has a natural gas line running just south of the proposed garage location and overhead electrical lines running south of the gas lines. These property characteristics prevent the applicant from meeting the twenty foot (20') setback requirement off of Cobban Street with a full size garage.

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

The spirit of the Zoning Ordinance is to permit reasonable use of private property while requiring residents to develop their properties in ways that do not compromise public interest.

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

The Board must determine if the spirit of the Zoning Ordinance would be met by approving this

application, as submitted. While the proposed detached garage could be located with a twenty foot (20') parking apron, the reduced garage size may only allow for compact vehicles.

The applicant's request to construct a garage on the property appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property and the requested fifteen foot (15') apron appears to uphold the spirit of the Zoning Ordinance.

CONCLUSION: Based on the above analysis, staff believes that the construction of the detached garage as shown on the site plan with a fifteen foot (15') parking apron would not compromise the spirit of the Zoning Ordinance, therefore, staff recommends conditional approval of Variance Application #15033 with the following conditions:

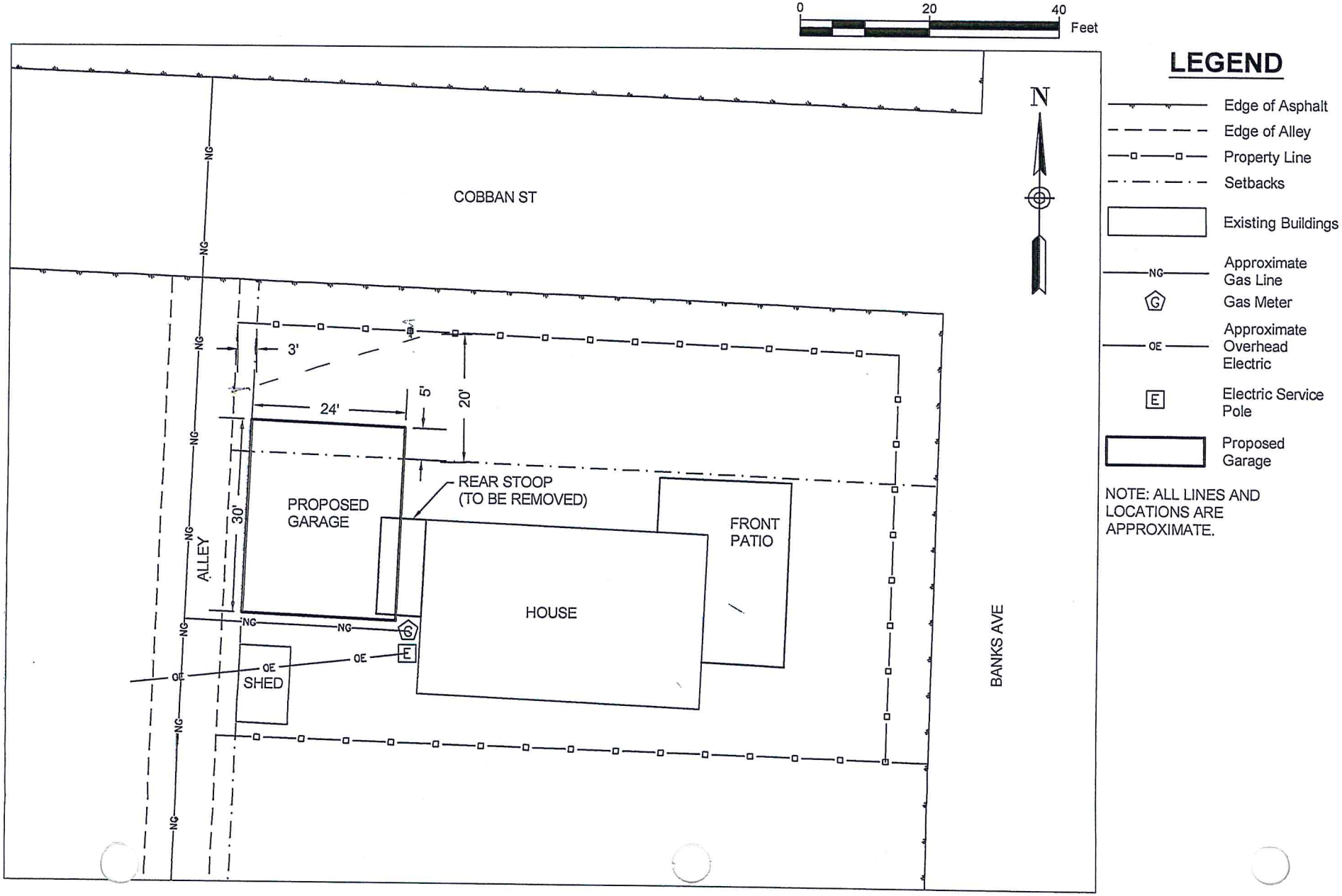
1. Any vehicles parked in the fifteen foot (15') parking apron must not extend into the paved area of Cobban Street, including the parking lane.

2. The detached garage shall meet the height requirements of Section 17.10.040 for accessory structures which are:

   a. Hip or gable roof: 16'
   b. Gambrel roof: 14'
   c. Flat roof: 13'

2001 BANKS AVE

REQUESTED SETBACK VARIANCE



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BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

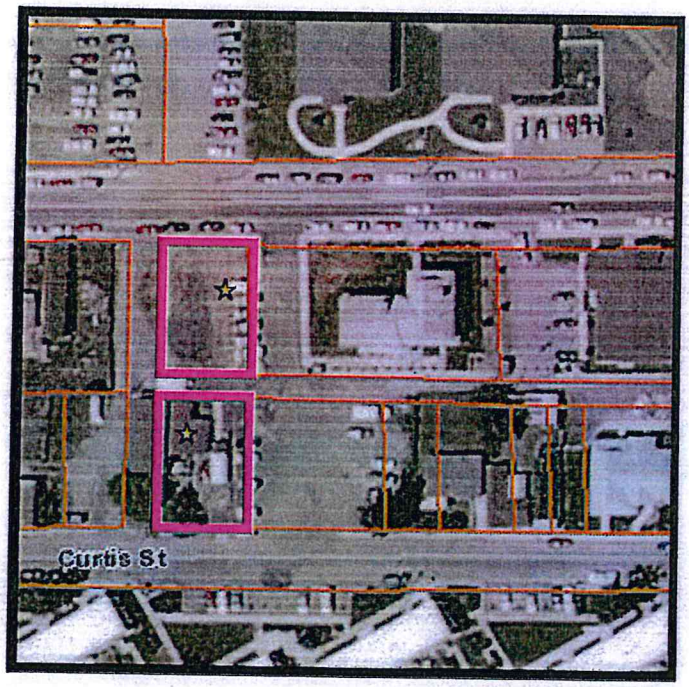
ITEM: **Variance Application #15042** - An application for a variance to locate a detached garage (24'W x 24'D) on a parcel of record that does not contain a primary structure (house), varying from the requirements of Section 17.12.020, Permitted Uses, of the BSBMC.

APPLICANT: Patrick Walsh, 213 Curtis Street, Butte, Montana, owner.

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

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:



LOCATION/ DESCRIPTION: The property is located in an "R-3" (Multi-Family Residence) zone, legally described as a portion of Lots 15-17, Block 11 of the Kings Second Addition, generally located immediately east of 222 E Mercury Street, Butte, Montana.

PROPOSAL: The owner is proposing to construct a detached garage (24' x 24') on a parcel of record that does not contain a primary structure (house). The owner lives immediately to the south of the property in question. The two parcels cannot be combined due to the presence of an alley between them. The requested garage would exceed the minimum required setbacks on the northernmost parcel.

STAFF FINDINGS: The Butte-Silver Bow Municipal Code (BSBMC), Section 17.12.020, Permitted Uses, states that no accessory structure shall be located on a parcel without a primary structure. Therefore, in order to place a garage on the property in question, a variance is required from the Zoning Board of Adjustment (Board).

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.**

   It is the intent of the Zoning Ordinance to protect the public interest by preventing uses of land that may have a negative impact on the surrounding property owners. Consequently, the Ordinance prevents the placement of accessory structures on lots that do not contain a primary residence, as a garage on a

property without a primary structure raises several concerns and potential problems.

A primary concern is that compared to a garage on an owner-occupied property, a garage without a primary structure has more potential to suffer from little or no maintenance, as the owner does not view the garage every day. Ultimately, they become a visual nuisance to the neighborhood.

Another concern is in regards to an increased potential for the property around the garage to become an outside storage yard or a "contractor storage yard". Garages without primary structures are also more likely to be used for commercial operations, i.e. auto repair shops. This is even more of a concern when a proposed garage exceeds the size of a typical residential garage (24' X 24').

In this particular case, the owner's primary residence is located immediately to the south of this property, and the garage proposed, while on a separate parcel, is to be located within forty feet (40') of his residence. In addition, the applicant had initially stated to staff that he was willing to combine the properties, so that the applicant's primary residence and the proposed detached garage would be located on one parcel of record. However, the parcels are unable to be combined due to an alley running between them. The owner was under the impression that the alley had been vacated, however, there is no record of alley vacation for that location. Based on the location of the owner's primary residence and his willingness to combine the properties, it would appear that this would reduce the likelihood that the property and garage would not be adequately maintained. Staff would recommend that a condition

of approval be that the applicant place a deed restriction on the parcel containing his primary residence to include the northernmost lot. The amended deed language shall restrict the sale of the existing detached garage to a party other than the party purchasing his primary residence parcel.

Additionally, the proposed garage is only (24' X 24'), and will be constructed within the required maximum height of sixteen feet (16'), maintaining a typical residential garage appearance.

If the applicant places his garage within forty feet (40') of his residence and its proposed size is that of a standard two-vehicle residential garage, then the requested variance may not be contrary to public interest.

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

Unnecessary hardship, as defined by the Montana Supreme Court, must result in a condition unique to the property, such as a unique lot shape or a topographic condition. The hardship must not be the result of a condition created by the applicant.

While combining the two parcels would allow for the detached garage to be constructed without a variance, the location of the alley between the parcels eliminates this option, therefore, preventing the owner from fully utilizing his properties without building a second residence.

In addition, the applicant's property is 5,914 square feet, only slightly smaller than the minimum required

6,000 square feet. As such, the smaller size of the applicant's parcel does constitute a hardship.

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

The spirit of the Ordinance is to permit reasonable use of private property while requiring residential property owners to develop their property in ways that do not compromise public interest.

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

In this case, the applicant is proposing to construct a residential garage on property located immediately north of his primary residence. Generally, staff does not typically encourage or recommend approval of garages on properties without a primary structure because the potential for such garages to have a negative impact on the neighborhood is high.

However, if the applicant is agreeable to a condition to place a deed restriction on his properties, then the issues discussed above should be resolved. That being said, the location and character of the garage is also important to any approval of this variance. The location, as depicted on the site plan, helps to reduce any negative impact the garage will have on the neighboring properties. As stated above, the garage will be located approximately 40 feet (40') from the applicant's residence. In addition, the proposed size of the garage is that of a typical two-vehicle residential garage.

For the above noted reasons, staff believes that the construction of the garage would not be contrary to the spirit of the Zoning Ordinance.

The applicant's request to construct a (24' x 24') detached garage appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property.

CONCLUSION: Therefore, based on the above discussion, staff would recommend approval of Variance Application #15042, contingent on the following conditions being met:

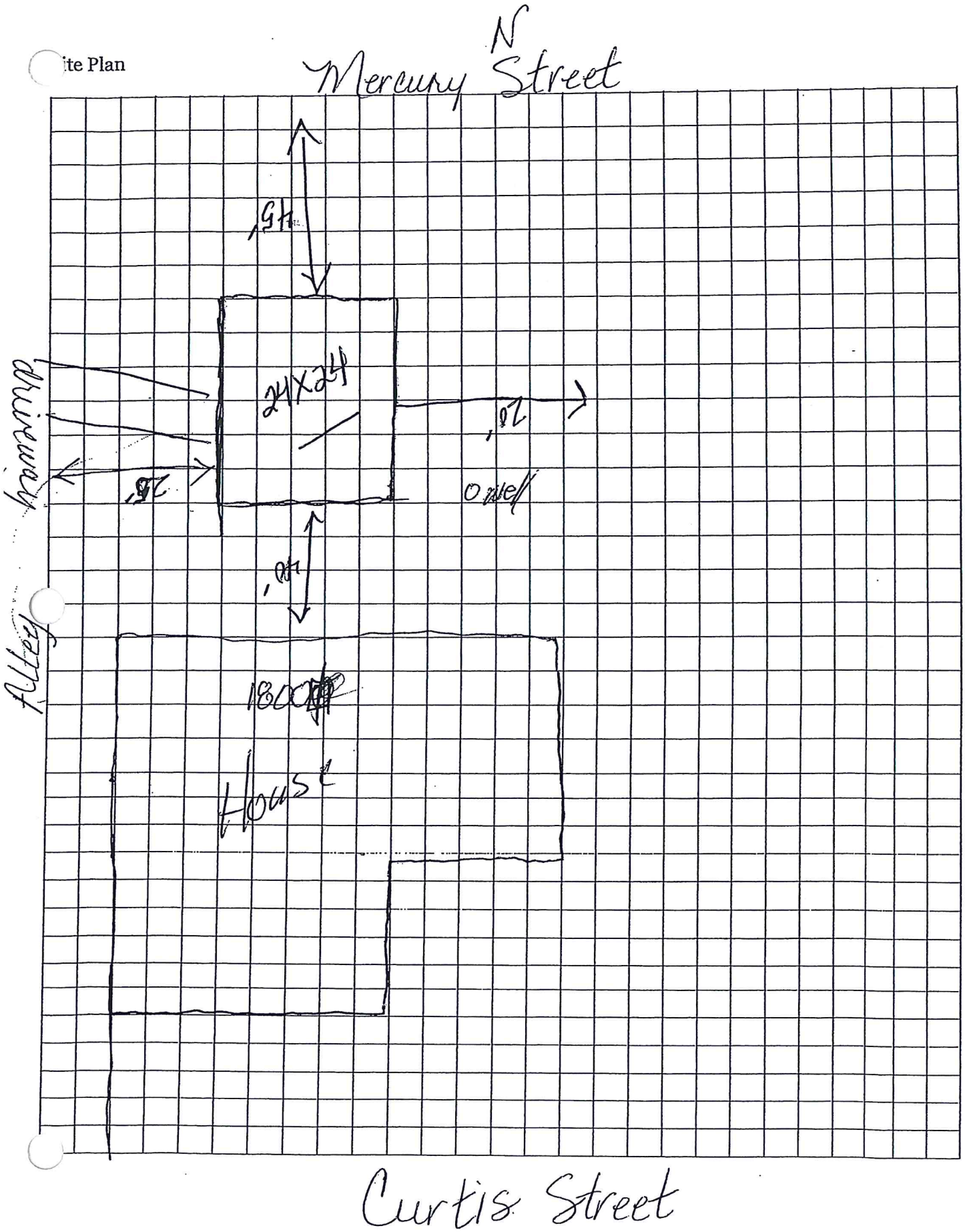
1. Prior to receiving a building permit, the applicant shall file, at the Butte-Silver Bow Clerk and Recorder's Office, a revised deed containing a deed restriction that requires both parcels and their respective structures to be sold together.

2. There shall, at no time, and for any reason be outside storage of vehicles and/or campers not owned by the applicant or vehicle parts, machinery, equipment, construction material or any other debris, owned or not owned by the applicant, on the property surrounding the garage, and at no time and for any reason will the garage be used for commercial purposes.

3. The garage must be located on the property as shown on the submitted site plan. Any alteration to the location of the garage must be approved by the Zoning Board of Adjustment.

4. The garage cannot exceed sixteen feet (16') in height at the peak of the garage for a gable roof.

ite Plan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BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

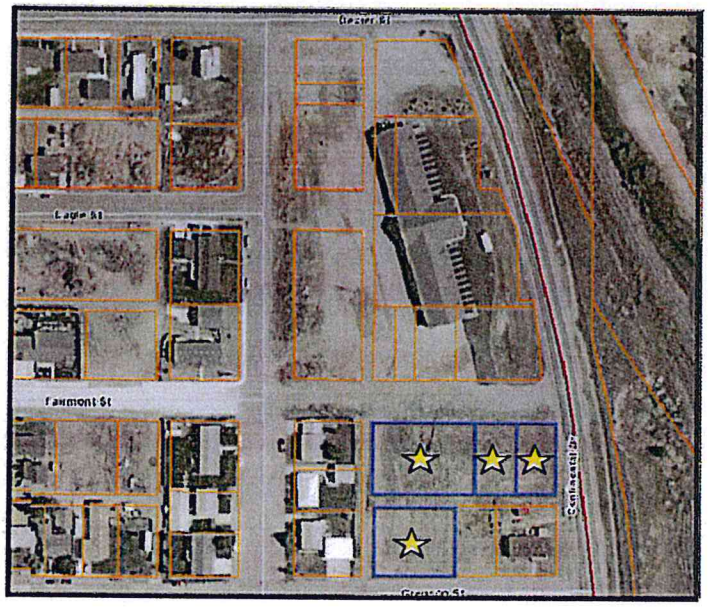
ITEM: **Use Variance Application #15052** - An application for a use variance by Gene Spolar & Cathy Huffer, owners, and WJ Properties, LLC, agent, to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC.

APPLICANT: Gene Spolar, 3010 Argyle St., Butte, Montana, & Cathy Huffer, 1807 Massachusetts Ave., Butte, Montana, owners, and WJ Properties, LLC, 1107 Howard Ave, Butte, Montana, agent.

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

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:



LOCATION/ DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 2-10 & 18-21, Block 21 of the Northern Pacific Addition, commonly located in the 3000 Block of Fairmont and Gregson Streets, Butte, Montana.

PROPOSAL: The applicant is proposing to construct and operate a mini-storage facility in a residential zone, varying from the requirements of Section 17.10.020, Permitted Uses, and to locate the structures within ten feet (10') of the front yard adjacent to Fairmont Street, varying from the required twenty foot (20') front yard setback per Section 17.10.070, and to locate a structure within ten feet (10') of the rear property line adjacent to Gregson Street, varying from the required thirty-five foot (35') rear yard setback per Section 17.10.090 of the BSBMC. The storage facility would consist of four (4) storage buildings similar in appearance to the commercial building located in the "R-2" (Two Family Residence) zone due north of the proposed parcels. This

application will be reviewed on the impact of the facility at full build out, having all four (4) structures in place. See the attached site plan for the various sizes of the proposed buildings.

STAFF FINDINGS:

The applicant is proposing to construct a commercial mini-storage facility within an "R-1" (One Family Residence) zone. The Butte-Silver Bow Municipal Code, Section 17.10.020, does not list storage units as a permitted use within the "R-1" zone. In addition the applicant is proposing to construct a fence around the property to provide security to the storage facility with wrought iron view-fencing around the Continental Drive frontage and a mixture of six foot (6') vinyl fencing and building sides utilized as fencing for the remainder of the property. Also, the applicant is proposing to install curb/gutter and landscaping along the Fairmont Street frontage, which is the proposed entrance/exit of the facility.

Section 17.36.042, Fence Height - Residential Zones allows a maximum height of six feet (6') in the rear yard and allows a maximum height of four feet (4') chain-link or three feet (3') solid fence within the front yard.

Although this property is located in the "R-1" (One Family Residence) zone, and the Growth Policy designation is Residential, the parcels just two (2) blocks north of the property in question are designated as Commercial in the Growth Policy. 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 the property along Continental Drive and between Dexter and Texas Avenue would be most suitable for commercial purposes.

With this change, several commercial businesses have come into existence within the adjoining corridor of Continental Drive, including Hardesty Taxidermy, East Side Athletic Club, McQueen Athletic Club, S&T Fitness, and the L&D Chinese Buffet.

Typically, in use variance applications, the requirements of the corresponding "zone" where the proposed use is permitted are applied as conditions of approval. Mini-storage facilities are a permitted use in the "C-2" (Community Commercial) zone.

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.

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

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

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

The property in question is located on the border between the "R-1" (One Family Residence) zone and the "R-2" (Two Family Residence) zone and is just southwest of the active mining area on the east side of Continental Drive. As such, the subject property is located at a transitional point between the beginning of the residential neighborhood to the south and west and the commercial activities to the north and the active mining area to the northeast. The topic of public concern that must be addressed by this use variance is the impact of the proposed commercial use on the adjacent residential property owners.

Due to the impact of the mine and traffic on Continental Drive, the opportunity for residential development on the property appears to be limited. In fact, the properties along Continental Drive have primarily been developed for commercial uses in recent years. A portion of the subject land had originally been purchased many years ago by one of the owners to build a residence, but installation of even basic utilities (water and sewer) was cost-prohibitive. Consequently, the subject property has sat vacant for many years now and prospects for residential development are not great.

Nonetheless, the subject property is zoned residential and there is one single family residence on the southeast corner of the block. These residents must be assured that they will not be

negatively impacted by the proposed development. While the mini-storage facility is a fairly low-impact commercial use, it does generate additional traffic and noise. Depending on the hours of operation, e.g., evenings, weekends, etc., the increased traffic and noise could be adverse. Depending on the applicants' plans to mitigate those impacts – to the satisfaction of the surrounding residential property owners – then a mini-storage unit development may be compatible at this location.

Based on the above information, the development of a storage unit facility on this particular property 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 on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

The main hardship associated with this property relates to its location along Continental Drive and across the street from the active mine operations, which limits the potential for residential redevelopment. As previously stated, the Planning Board and Council of Commissioners have established in the adopted Growth Policy that the highest and best use of the Continental Drive

corridor – at least starting two blocks north of the property – is for commercial development.

Another aspect of the property that relates to hardship is that basic utility installation is so costly for these parcels. The high utility connection costs make residential development unfeasible for most income levels in Silver Bow County.

Sub-criteria Number One (for a use variance) is to evaluate whether 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 zoned residential but located in an area that is a transitional point between a residential neighborhood and the active mining area. Hence, the possibility of the property securing a reasonable return by means of residential development is minimal. Locating a storage unit facility at the proposed location – subject to certain conditions of approval – would not appear to create a negative impact on the adjacent neighborhood.

Sub-criteria Number Two is to evaluate whether the proposed use will not alter the character of the neighborhood in which it is located. The use variances granted for the properties along Continental Drive have begun to change the character of the northern border of this neighborhood to commercial use. Thus far, the commercial uses do not appear to be causing adverse impacts to the residential users to the south and west. In addition, the Continental Drive arterial creates a relatively heavy flow of traffic along the eastern border of the property area. In one (positive) sense, the proposed facility may provide a buffer between the residences located west of the applicant's property and the

Continental Drive arterial, as well as the southern lobe of Montana Resources' mine property.

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

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

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

One potential impact would be from any outside storage of vehicles, ATV's, boats and recreational vehicles. The applicant has not proposed using any of the property for outside storage, therefore, any approval of this use variance should be conditioned that there be no outside storage of any kind.

The applicant, by designing the entrance to the facility on the northern boundary of the parcels along Fairmont Street has proposed an operations plan that will help mitigate the impact on public safety and the overall impact of the facility on the surrounding property owners. Additionally, the applicant's site plan provides for new sidewalks and curb/gutter to enable safe pedestrian circulation past the property. The site plan also provides for landscaping along Fairmont Street, which should help mitigate the impact of the storage facility.

Although storage facilities are a commercial use, they do provide a local service to surrounding residential zones, as the individual units allow residents to store their items in a fenced and safe location in close proximity to their homes. Storage units also have the potential to reduce the number of items being stored outside in residential yards, which can contribute to community enhancement objectives.

For the reasons noted above, it is reasonable to conclude that creating a commercial storage unit facility on this particular property would not appear to create any public health or safety concerns. Allowing the construction of a four-building storage unit facility with six foot (6') high, vinyl & wrought iron fences – given appropriate conditions of approval – should be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above analysis, staff believes that this use variance meets the three criteria established by the Montana Supreme Court for granting variances. Therefore, staff would recommend conditional approval of Use Variance Application #15052, provided the following conditions are met:

1. At a minimum, the mini-storage buildings shall match the design presented in the submittal documents for this variance.

2. Prior to receiving a building permit, the agent will be required to submit an engineered storm water control plan 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 in order to receive a Storm Water Management Permit.

3. The agent shall install new sidewalk/curb and gutter adjacent to Fairmont Street and Gregson Street, adjacent to property boundaries, per the requirements of Section 17.38.050.

   Prior to the issuance of a building permit, the agent shall submit a detailed sidewalk plan to the Butte-Silver Bow Planning 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 sidewalk/curb and gutter from a licensed contractor. The agent shall submit a bond for the installation of sidewalk/curb and gutter to the Butte-Silver Bow Planning Department. This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

4. Prior to receiving a building permit, the applicant must receive approval from the Butte-Silver Bow Public Works Department for an ingress/egress approach to be located on the north portion of the property, accessing Fairmont Street.

5. Prior to the issuance of a building permit, the applicant shall submit a bond for the installation of appropriate paving on Fairmont Street to the Butte-Silver Bow Planning Department.

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

6. Prior to receiving a building permit, the applicant must submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC. At a minimum, the landscaping shall be installed to provide a solid buffer on all sides of the property to mitigate the view of the commercial structures. Additional trees (beyond minimum requirement) should be included and all vegetation shall be irrigated and maintained effectively. Fencing materials/locations, e.g., vinyl or wrought-iron, and the use of the back sides of the storage buildings, as appropriate, shall be installed as per the site plan and submitted as part of the landscaping plan.

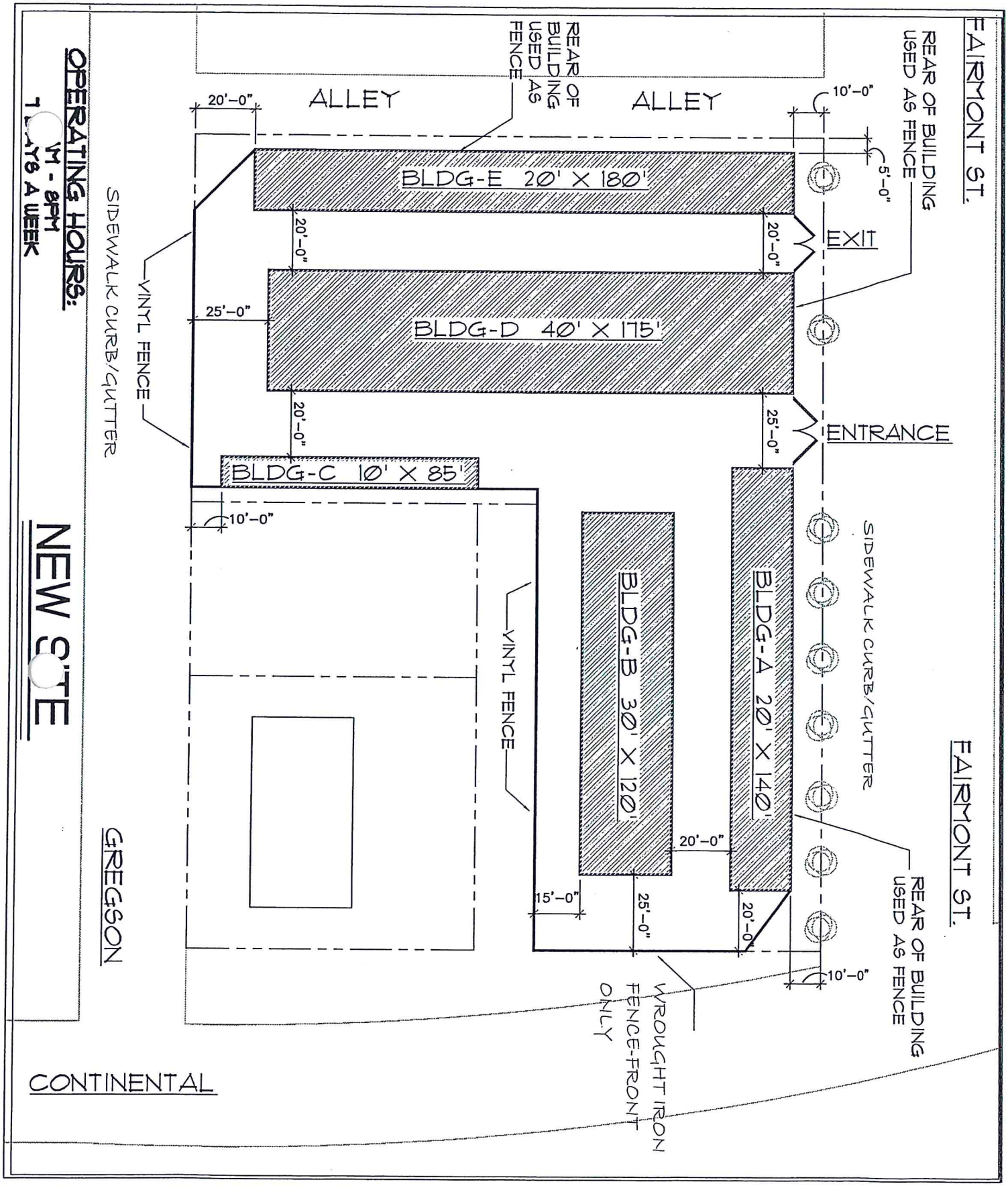
   Once the plan is approved, the applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

   The applicant shall submit the appropriate landscaping bond to the Planning Department prior to receiving a building permit. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

7. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings.

8. In order to reduce the potential negative impact of on-site lighting on the surrounding residentially zoned properties, all lighting must be designed as low glare, no more than sixteen feet (16') high and have directional features to contain light on the property.

9. No outside storage shall be allowed. Hours of operations shall be limited to 8am to 8pm daily. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.



NICHOLS DESIGN & BUILD
RODNEY NICHOLS
2949 FAIRMONT ST. • BUTTE, MT 59701
RODNEYNICHOLS@MSN.COM
406-565-1690

Proposal
Storage Units
Butte, Mt.

Date: 04-06-16

Drawn By: RN

Attached Figures:

Figure 1: Wrought Iron fence example that would be similar to fencing proposed for use on Continental Drive

Figure 2: Example of rear of building being used as fencing, with gravel landscaping and trees and bushes. Our facility would also have curb and gutter and four foot sidewalk on the border with Fairmont and Gregson St.

Figure 4: Neighboring property

Figure 5: Neighboring property

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Variance Application #15054** - An application for a variance to construct a second detached garage (30'W x 40'D) on a parcel of record that already contains one detached garage, varying from the requirements of Section 17.10.020(D), Permitted Uses, of the BSBMC.

APPLICANTS: Daniel J. Newgard & Kareen E. Baker, 1800 Monroe Avenue, Butte, MT, owners.

TIME/DATE: Thursday, April 21, 2016, at 5:30 p.m., in the Council Chambers, Room 312, Third Floor, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:

LOCATION/ DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1-5, Block 9 of the Daly Addition, commonly known as 1800 Monroe Avenue, Butte, Montana.

PROPOSAL: The applicants are proposing to construct a second detached garage (30'W x 40'D) on a single parcel of record, varying from the requirements of Section 17.10.020(D), Permitted Uses, of the BSBMC. The applicant has proposed this as a means of remaining in compliance with his Home Occupation permit, by having enough garage space to store all of his Home Occupation materials inside.

STAFF FINDINGS: The Butte-Silver Bow Municipal Code Section 17.10.020, Permitted Uses, in an "R-1" (One Family Residence) zone, allows for one detached private garage for each dwelling unit.

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

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

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

   It is the intent of the Zoning Ordinance to protect the public interest by preventing building congestion on properties in an effort to prohibit the spread of fire

(promote safety), to create uniformity within the different zoning districts, and to prevent uses of land that may have a negative impact on surrounding property owners. Consequently, the Ordinance does not allow more than one detached garage per dwelling unit.

The Ordinance defines a standard parcel size as 60'x 100', 6,000 square feet in area, with sixty feet (60') of frontage for single family residences in the "R-1" (One Family Residence) zone. The applicant's property contains 15,812 square feet in area and has 153 feet of street frontage. The parcel is approximately two and one-half times larger than the required 6,000 square feet. The proposed placement of the garage meets all setback requirements for the "R-1" zone. Additionally, the lot coverage including the proposed garage would be considerably less than the permitted 35%.

The proposed size of the garage (30' X 40') is larger than a typical sized detached garage, but still meets all height requirements, therefore, the garage should be relatively compatible with other garages in the area and should not create a negative impact on the view of adjacent property owners.

It is important to note that the Community Enrichment Department has received complaints from neighboring property owners about the outside storage of material and equipment on the property in question. The applicant has worked with Butte-Silver Bow staff to eliminate the violation. His proposal is for another detached garage in which to store the items associated with the Home Occupation Permit. The storage of the items inside will alleviate the appearance of a storage yard in a residential zone.

That being said, it is important that the applicant understand that if this application is approved, it is not approval for the applicant to increase the size of his business beyond what is permitted under the rules of the Home Occupation Permit. For example, the rules of the permit allow one outside employee. When the applicant's business grows beyond what is allowed under the rules, he must move the business to the appropriate zone.

If the applicant is agreeable to store material and equipment associated with the business inside the garage and to abide by all rules of the Home Occupation Permit, then the placing of a second detached garage on this large parcel in the location shown on the site plan does not appear to be contrary to the public interest.

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

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

The applicant's parcel size at 15,812 square feet in area is in excess of the minimum standards of the Zoning Ordinance. Consequently, there does not appear to be a hardship associated with the applicant's property.

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

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

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

The proposed location of the garage complies with the setback requirements of the Zoning Ordinance. As previously stated, the lot coverage (density) of this parcel with the proposed garage will be considerably less than the permitted 35%. In addition, the height of the proposed garage is no taller than permitted in the "R-1" (One Family Residence) zone. As stated above, a second detached garage will allow for enough indoor space for the applicant to be in compliance with his Home Occupation permit, storing materials/equipment associated with his Home Occupation indoors, and thus reducing any ill effects such materials might have on the neighbors' view.

Based on the above discussion, staff believes that the construction of the proposed second detached garage on this parcel would not be contrary to the spirit of the Zoning Ordinance.

The applicant's request to construct a 30'W x 40'D second detached garage appears to be consistent

with the intent of the Zoning Ordinance to allow for the reasonable development of private property.

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

Therefore, staff recommends conditional approval of Variance Application #15054, provided the following conditions are met:

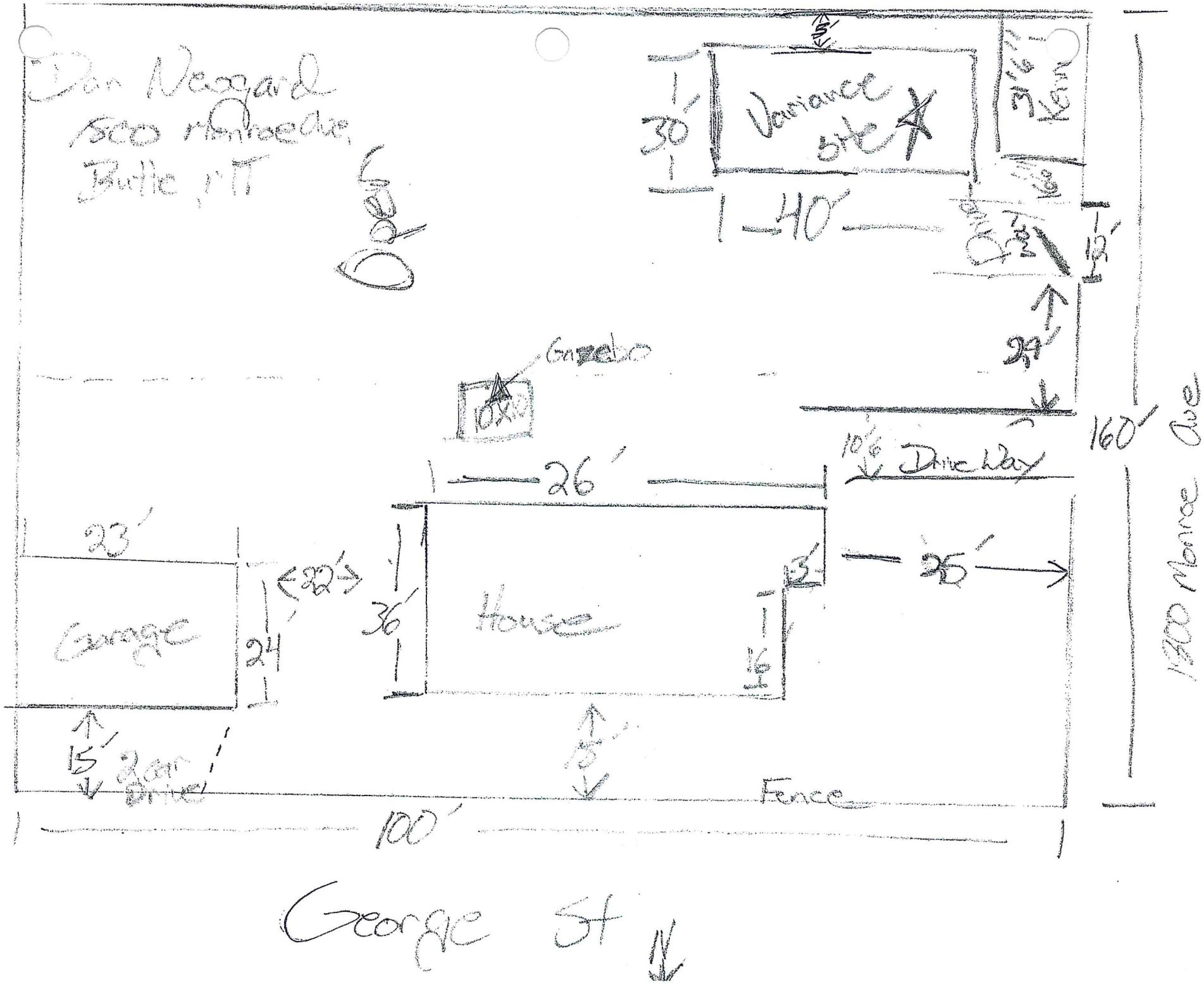
1. The garage must be constructed not to exceed the height requirements for detached garages as defined in the zoning regulations. As per Section 17.10.040, Building Height Limits, "Building height limits shall be two and one-half stories, but not exceeding thirty-five feet (35') in height, and **no accessory structure shall exceed one story or the following height limits**:

   a. Hip or gable roof: 16 feet maximum
   b. Gambrel roof: 14 feet maximum
   c. Flat roof: 13 feet maximum

2. All materials and equipment associated with the applicant's Home Occupation permit must remain stored inside of the proposed garage, as per Section 17.44.040(E), Criteria for Review, which states, "There shall be no outside storage of materials, products, machinery, equipment or vehicles associated with said home occupation.

3. The applicant will operate the approved home occupation per all other guidelines of Section 17.44 of the Butte-Silver Bow Zoning Ordinance.

Dan Neggard
500 Monroe Ave
Butte, MT



BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Mobile Home Conditional Use Permit Application #15055** - An application for a conditional use permit to locate a specific Class B Manufactured Home, built in 2009, in an "R-2" (Two Family Residence) zone per Section 17.30.080, Conditional Use Review, of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: Kelly Reilly, 949 Waukesha St, Butte, MT, owner.

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

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:

LOCATION/ DESCRIPTION: The property is located in an "R-2" (Two Family Residence) zone, legally described as Lot 2, Block 7 of the Smith & Kessler Addition, located directly north of 729 N Main Street, Butte, Montana.

PROPOSAL: The applicant is proposing to locate a specific Class B manufactured home (12'W X 40D'), built in 2009, in the "R-2" (Two Family Residence) zone.

STAFF FINDINGS: Class B manufactured homes are defined as conditional uses within the "R-2" zone. The Zoning Board of Adjustment may issue a conditional use permit, after a public hearing and a finding that the proposed use will not negatively impact the surrounding properties or disrupt the character of the neighborhood.

The conditional use review is intended to provide flexibility for the placement of manufactured homes within each residential zone where appropriate while providing specific safeguards to protect permitted uses from adverse effects.

To provide the Board with information so that it may determine the appropriateness of this conditional use, the Planning Department staff will review the three criteria, listed below, pertinent to the granting of conditional use permits.

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

   As is prevalent in many neighborhoods in Butte, there is a mixture of housing types within this particular neighborhood. The area is predominantly

stick built homes, however, traveling north along Main St., a few mobile homes are also present.

The property in question is a substandard sized lot, and is not large enough to accommodate a Class A manufactured home while abiding by setback requirements of the "R-2" (Two Family Residence) zone.

That being said, this particular block of Main Street contains only stick built homes and three vacant lots. Staff believes that while the dominant housing type in the neighborhood is not represented by the proposed Class B manufactured home, this specific Class B manufactured home would not greatly affect the housing character of this particular block of Main Street and would be an upgrade for this vacant property.

Based on the above discussion, staff has concluded that the applicant's proposal to place this specific Class B manufactured home on this property is reasonably consistent with the character of the neighborhood.

2. **Potential of the proposed structure to enhance and promote the comprehensive development of the immediate neighborhood and community by facilitating the use of nonconforming lots.**

This property (30'W X 100'D), 3,000 square feet, is by definition, a substandard lot, and does not meet today's minimum parcel requirements to be considered a buildable parcel, therefore, the granting of this Conditional Use Permit Application would facilitate the use of a nonconforming lot.

With that in mind, the applicant's proposal to place this specific Class B manufactured home on the property may be a reasonable request.

3. **Conformance of the proposed structure generally to the objectives of the adopted comprehensive plan and the purpose of Chapter 17.37 <u>Manufactured Home Parks and Individual Manufactured Homes.</u>**

The Butte-Silver Bow Growth Policy designates this area as residential. This proposal would comply with the intent of the Growth Policy to promote infill development on existing residential parcels.

Ultimately, the applicant's request to place the proposed Class B manufactured home on this parcel is consistent with adjacent uses. Therefore, placing this specific manufactured home at the proposed location would not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above discussion, it appears that locating this specific Class B manufactured home, built in 2009, on the proposed property would not have a negative impact on the character of the surrounding neighborhood.

Therefore, staff recommends that the Zoning Board of Adjustment approve Mobile Home Conditional Use Permit Application #15055, provided the following conditions are met:

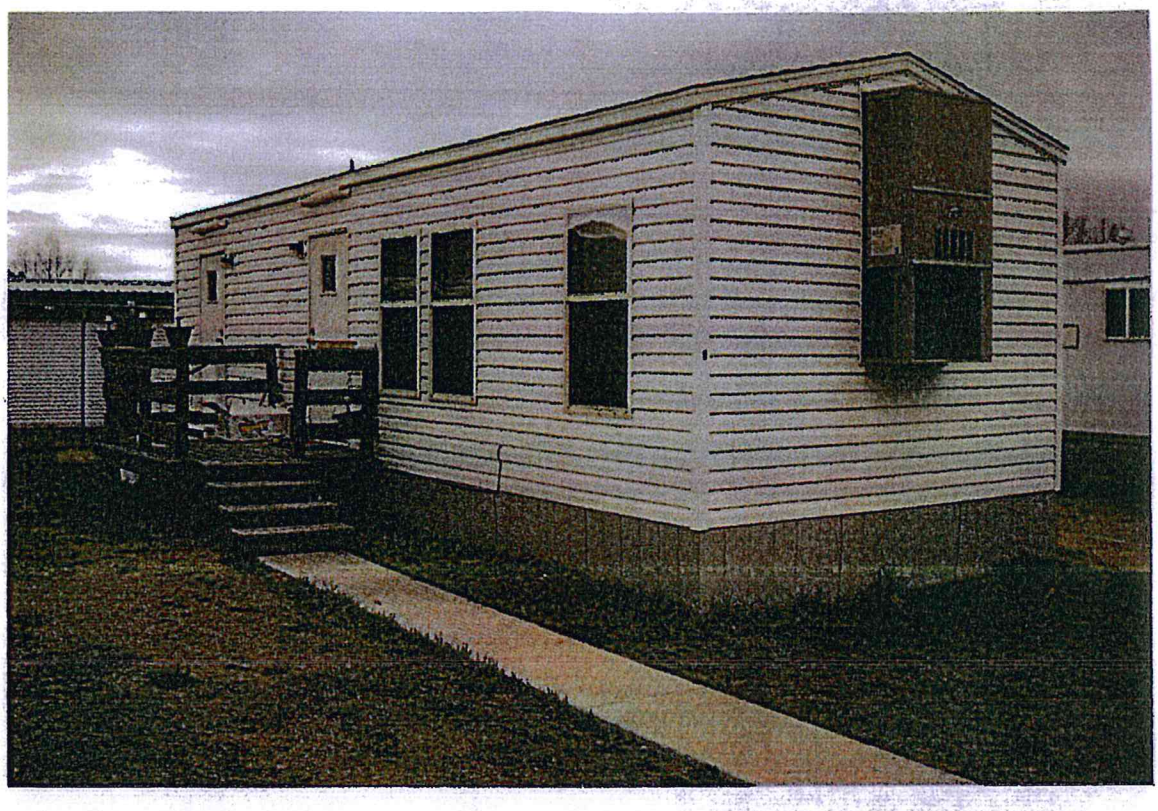
1. The specific Class B manufactured home, built in 2009, that was submitted for consideration shall be the exact home placed on the proposed property.

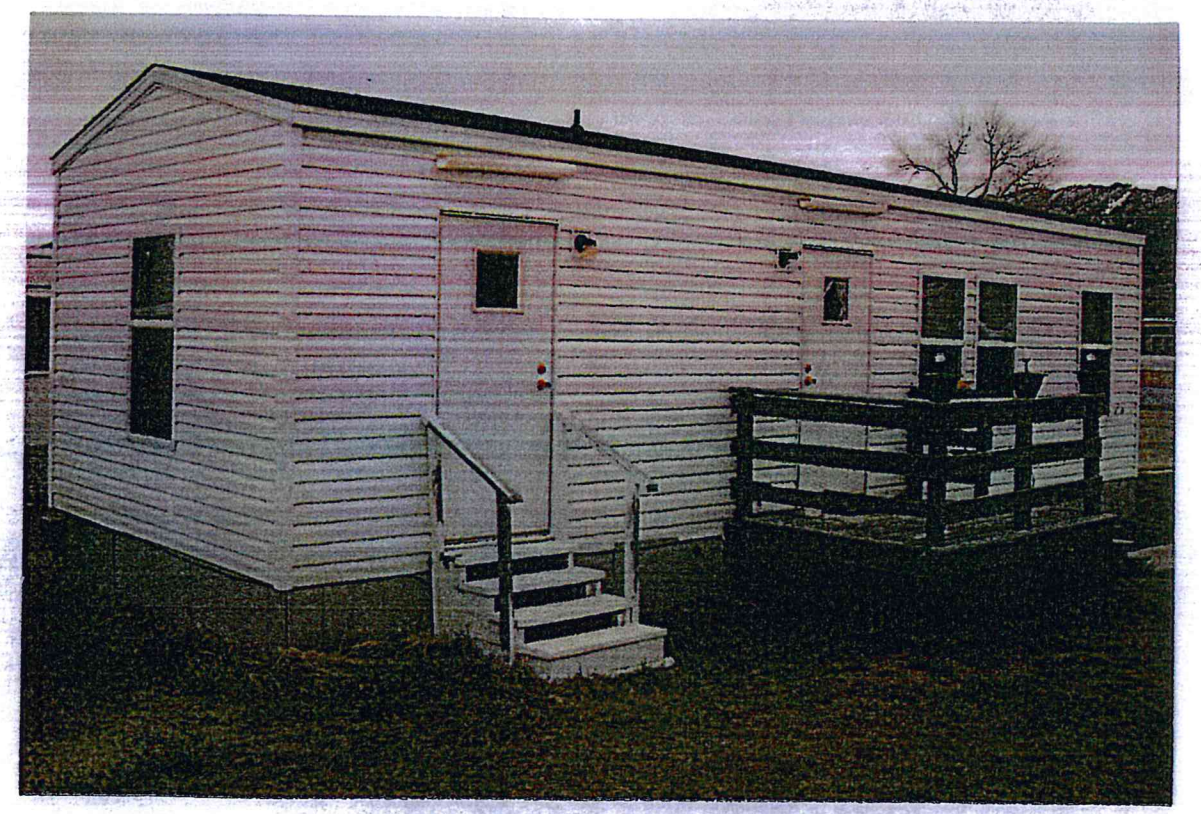
2. The manufactured home proposed to be placed on the property in question shall meet all development standards (i.e. setbacks, foundation) described within the Zoning Ordinance and required by Building Codes.

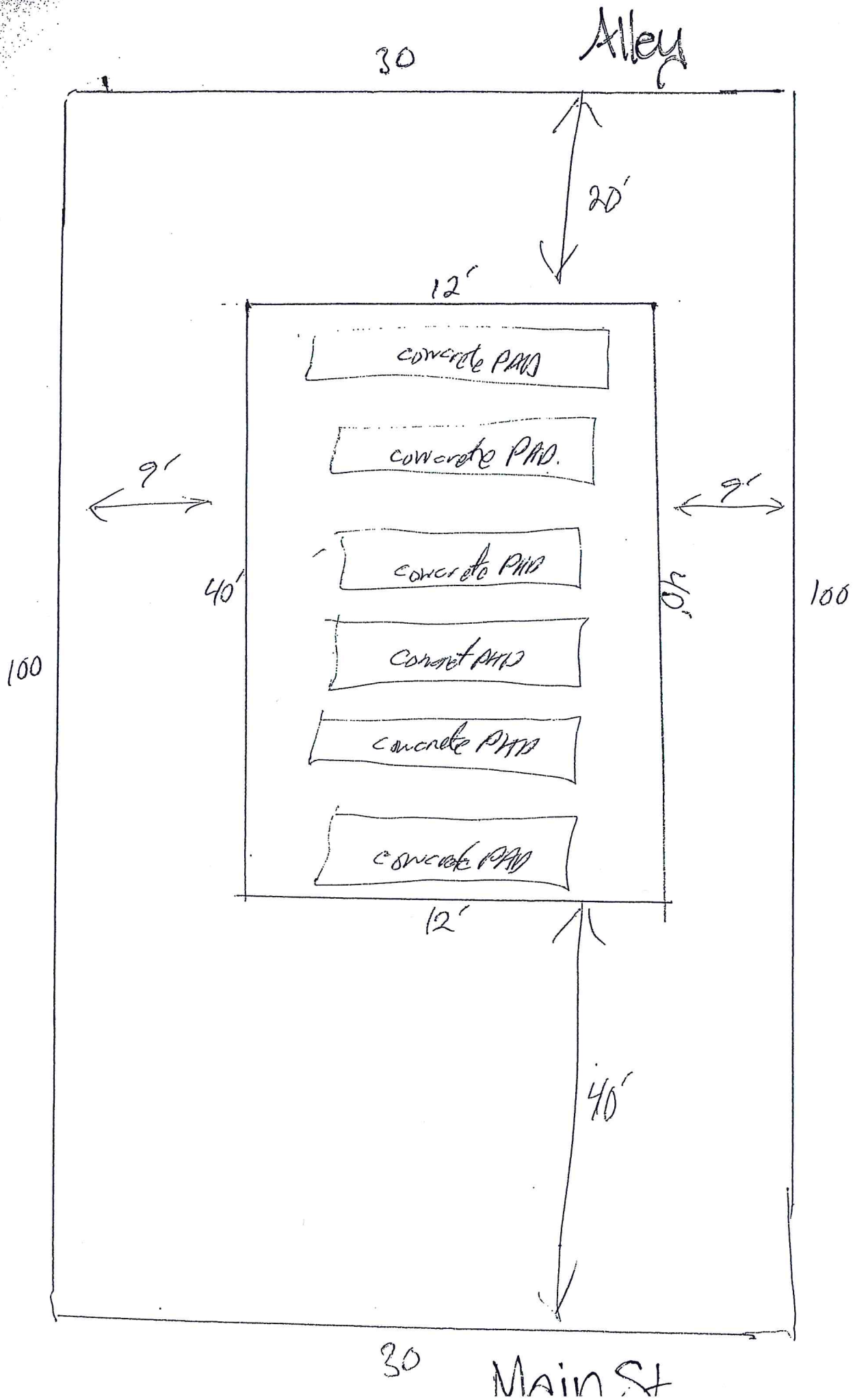
3. The proposed foundation must be inspected and approved by the Building Official prior to a moving permit being issued. If the existing foundation does not meet requirements of the Building Codes, a new foundation must be permitted, constructed, and inspected and found to be in accordance with Building Codes prior to the issuance of a moving permit.

4. Prior to allowing the specific Class B manufactured home to be set on the foundation, an approved electrical service is required and must be permitted and inspected by the Butte-Silver Bow Building Department. If the property is not the applicant's primary residence, the electrical service must be installed by a licensed electrician, and also inspected by the Butte-Silver Bow Electrical Inspector.

5. The applicant shall install landscaping (i.e. trees, shrubs and lawn) and shall maintain the property in a manner consistent with the character of a residential zone.



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BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Use Variance Application #15057** - An application for a use variance to locate a headframe in a residential zone, varying from Section 17.28.020, Permitted Uses, and to construct the headframe to sixty-five feet (65'), varying from Section 17.12.040, Building of the BSBMC.

APPLICANT: Butte-Silver Bow, 155 W. Granite, Butte, Montana, owner, and Landscapes of Montana, c/o Norman DeNeal, 2001 Porter Avenue, Butte, Montana, agent.

TIME/DATE: Thursday, April 21, 2016, at 5:30 p.m., Council Chambers, Room 312, Courthouse Building, 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 a portion of the Clear Grit Quartz Lode mining claim, Mineral Survey #499, Section 12, T3N, R8W, PMM, commonly located on the east side of Main Street between the BA&P Walking Trail and Clear Grit Terrace, Butte, Montana

PROPOSAL: The agent is proposing to erect the Alta Headframe and install an interpretive sign on a portion of the Clear Grit mining claim. The Clear Grit area is being proposed as this is the area in which silver mining took place. The applicant believes that this site should be utilized to tell the story of Butte's silver mining history.

HISTORY: The headframe was originally located at the Alta Mine, which was located approximately one mile north of Wickes, Montana, near Jefferson City. Approximately eight years ago, the headframe was delivered to Butte and has been stored as part of a Memorandum of Understanding at the Stewart Mine with the Bureau of Land Management (BLM). The effort to re-erect the headframe has been idle since the headframe was delivered.

In February of 2016, two proposals regarding the Alta headframe were presented to the Historic Preservation Commission (HPC). One of the proposals was to locate the headframe on the proposed site of this application and the other was to locate the headframe at the World Museum of Mining, which is now a publicly-owned facility leased to the non-profit World Museum of Mining. The Butte-Silver Bow Preservation Officer's recommendation was to place the headframe at the World Museum of Mining. There were several reasons for her recommendation, one of which was that this particular headframe is actually from the Alta Mine, and although it is a near-replica, it is not the actual headframe that once

stood at this site. However, on a vote of three (3) for and (2) against, the Historic Preservation Commission approved a motion to consider the placement of the headframe at the site proposed in this application with the following conditions:

1) *"That the HPC would withdraw its support to the Clear Grit site, if the project including actual groundwork, was not initiated within 18 months of this date (February 2, 2016); and*

2) *That if the Zoning Board did not grant a variance for erecting the Alta Headframe at the Clear Grit, which is Butte-Silver Bow property, the HPC would support the alternative site at the World Museum of Mining."*

The agent subsequently sought and received approval from the Butte-Silver Bow Council of Commissioners to apply for a variance from the Zoning Board of Adjustment.

STAFF FINDINGS:

The Butte-Silver Bow Municipal Code, Section 17.12.020, Permitted Uses, does not list headframes as a permitted use within the "R-2" zone. Headframes, as a cultural resource, would be a permitted use in the "OS-C" (Open Space Conservation) and "OS-D" (Open Space Developable) zones. In order for the applicant to locate a headframe at this location, a use variance from the Zoning Board of Adjustment (Board) is required. The applicant has indicated that the height of the headframe when erected is sixty-five feet (65'). The maximum height permitted in the "R-2" zone is thirty-five feet (35'); as such, a variance from the Building Height limits is also required by the Board.

Use variances have two subcriteria under the main criteria of hardship. In order to receive a use variance, the applicants must prove, under the first subcriteria, that

the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone.

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

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

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

   The public's interest in segregating land uses, such as residential from open space, is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to combine uses that are compatible. The purpose of the open space zoning designations are to set aside portions of the rural, agricultural, cultural, recreational, natural and restored lands characteristic of B-SB for passive, active, structured and unstructured recreation, community benefits. Although there are parks located within various areas that are zoned residential, these parks are primarily intended for the use of the neighborhood and not the community as a whole.

In 2010, the Planning Department went through an extensive process to rezone certain areas within the urban corridor to an open space zoning designation. This process included eight public outreach sessions designed to gather community comment on the lands that were proposed for an open space designation, two formal public hearings to change the Growth Policy land use designations to open space, and two formal public hearings regarding the zone change to open space. Prior to presenting the proposed areas to be designated as open space, staff did an extensive review of the lands. Part of the review criteria evaluated was did the lands have any requirements to be maintained as open space per the Superfund cleanup activities and/or does the property have any covenants precluding development and what is the current use of the property. For example, small neighborhood parks were not designated as open space; these parks' primary intended use was for the residences of the neighborhood, while parks such as Stodden Park and Clark Park not only serve their respective neighborhoods but also the community at large and as such, were zoned open space. In regards to the mine yards, their current use or intended future use were the determining factor as to which open space designation (OS-C or OS-D) the mine yard should be zoned. The Stewart Mine and the area just south of the walking trail, for example, is zoned Open Space-Conservation, meaning that the use would remain passive without much development to the area.

During the open space forums and public meetings, one comment that was reiterated to staff was to find a balance between property that was going to be designated and maintained as open space and

property that had the potential to be developed into residential, commercial or industrial uses. Regarding the subject property that the applicant is proposing to construct the headframe on, it was felt by staff and the community that this area has the potential to be developed into residential uses.

As stated above, the applicant is proposing to erect the Alta headframe and an interpretive sign on this site. The intent of erecting the headframe and signage at this site is to tell the story of Butte's silver mining history and provide "high visibility to the greatest number of people... both local and visitors." The parking to allow visitation to the site is proposed to utilize the on-street parking along Main Street, the parking lot for the walking trail east of the location and a parking lot on the west side of Main Street that was once used for the Stewart Mine. While Main Street does offer a couple of on-street parking spaces near the proposed site, it is very limited. Clear Grit Terrace is a narrow street that does not provide for a parking lane. As for the adjacent parking to the Stewart Mine, Butte-Silver Bow does not have any plans or resources to develop a parking lot.

In addition, the applicant's proposal does not indicate any type of plan to accommodate people to visit the headframe or the signage. The proposed site is a mine waste source area that has been reclaimed and vegetated. Butte-Silver Bow has an obligation to maintain the reclamation and vegetation. Allowing tourists to traverse over the site without providing designated walking paths will lead to the erosion of the vegetative cap and eventually expose the mine waste.

Based on the above discussion, the requested use variance appears to 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 on the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicant.

It would appear that there is no hardship, i.e. unique property shape, topographical feature or geological trait, associated with the property in question.

Although this site is a reclaimed mine waste site, there are protocols and development standards in place which would allow for development on the site while maintaining reclamation standards.

Subcriteria Number One states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in that zone. It does not appear that the property could not secure a "reasonable return", if the land were restricted to only residential uses.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. Neither the headframe, nor the height of the headframe would be out-of-character for the site, as the Stewart Mine is south of the

proposed site. The Stewart Mine has a steel headframe on the property.

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

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

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

The public health and safety and general welfare that must be addressed in this application is the access to the headframe and the interpretive signage.

With regard to the headframe, the applicant has not indicated what type of access to the headframe the public would have. Measures (e.g., fencing) to prevent the public from climbing the headframe were not included with this application. In contrast, Butte-Silver Bow has had to install safety measures to prevent the public from accessing and climbing the headframes that are under public ownership.

As stated above, the proposal does not address how the public will view the headframe and read the interpretive sign without contributing to the erosion of the reclaimed vegetative cap. Erosion of the cap will expose the public to contaminated soils. Butte-Silver

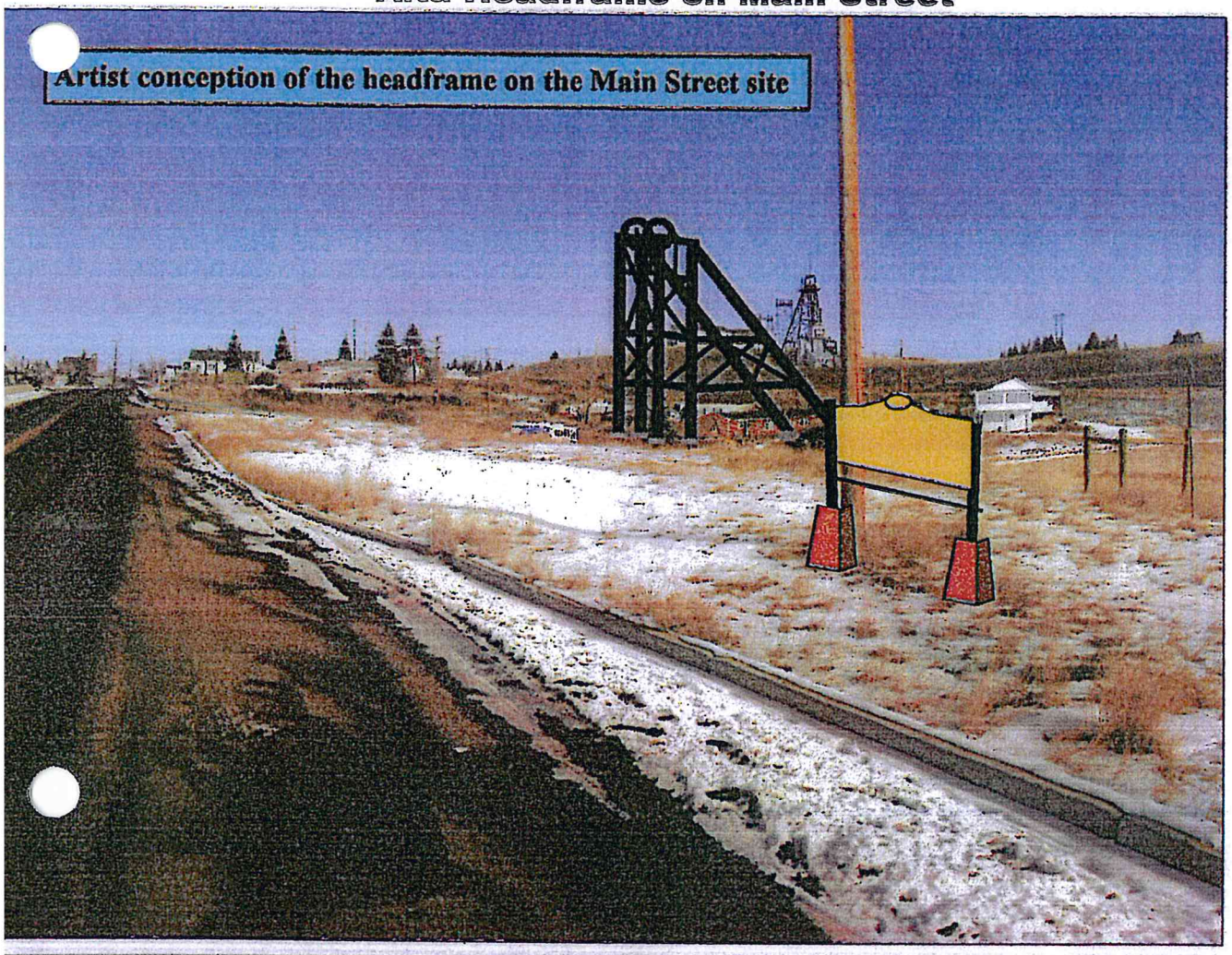
Bow has an obligation to maintain this vegetative cap and prevent the public from being exposed to contaminants in the soil. In addition, the application did not include any provisions for long-term maintenance of the reconstructed headframe or the surrounding property.

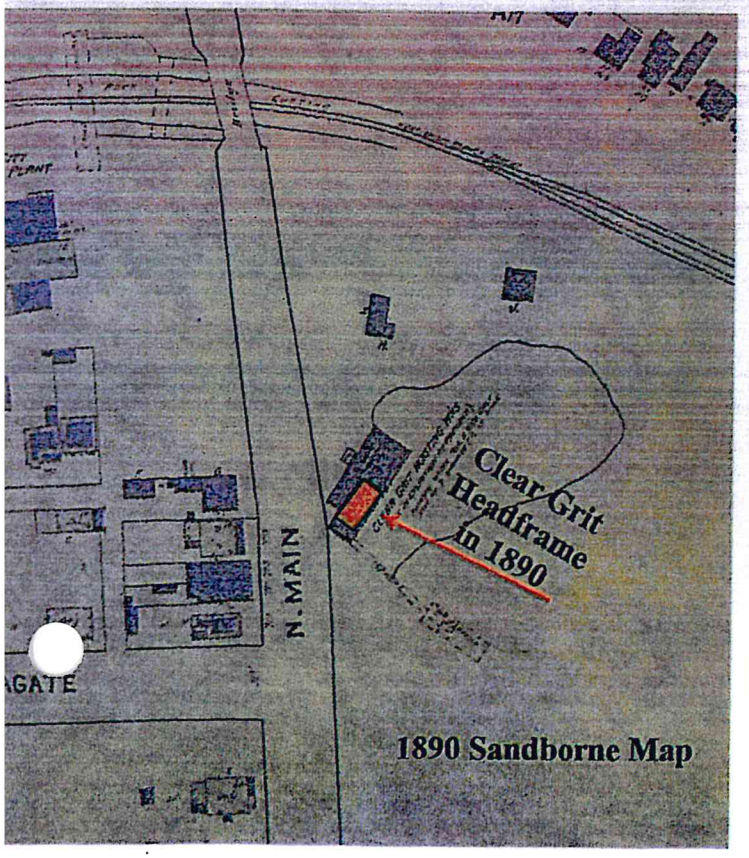
Based on the above discussion, it would appear that the proposed construction of the Alta headframe and the variance to the maximum height of thirty-five feet (35') at this site is contrary to the spirit of the Zoning Ordinance.

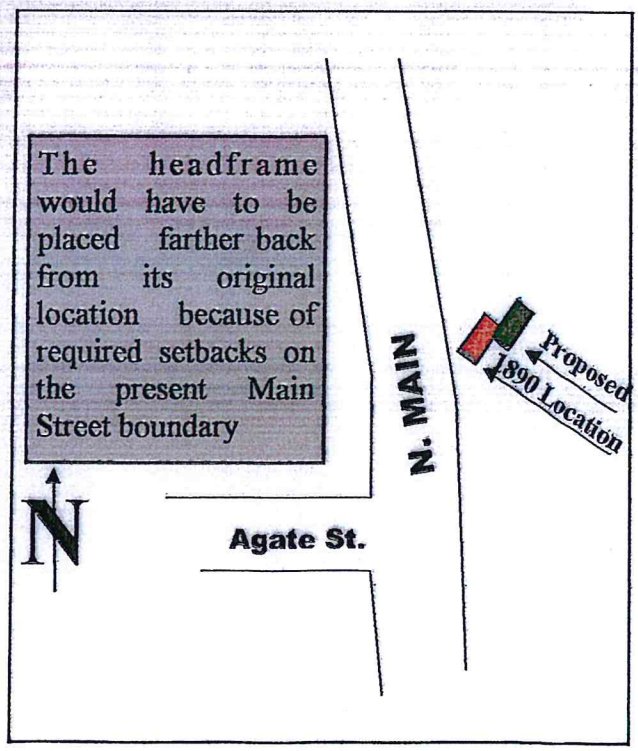
CONCLUSION: Based on the above analysis, staff would recommend denial of Use Variance Application #15057.

APPENDIX I

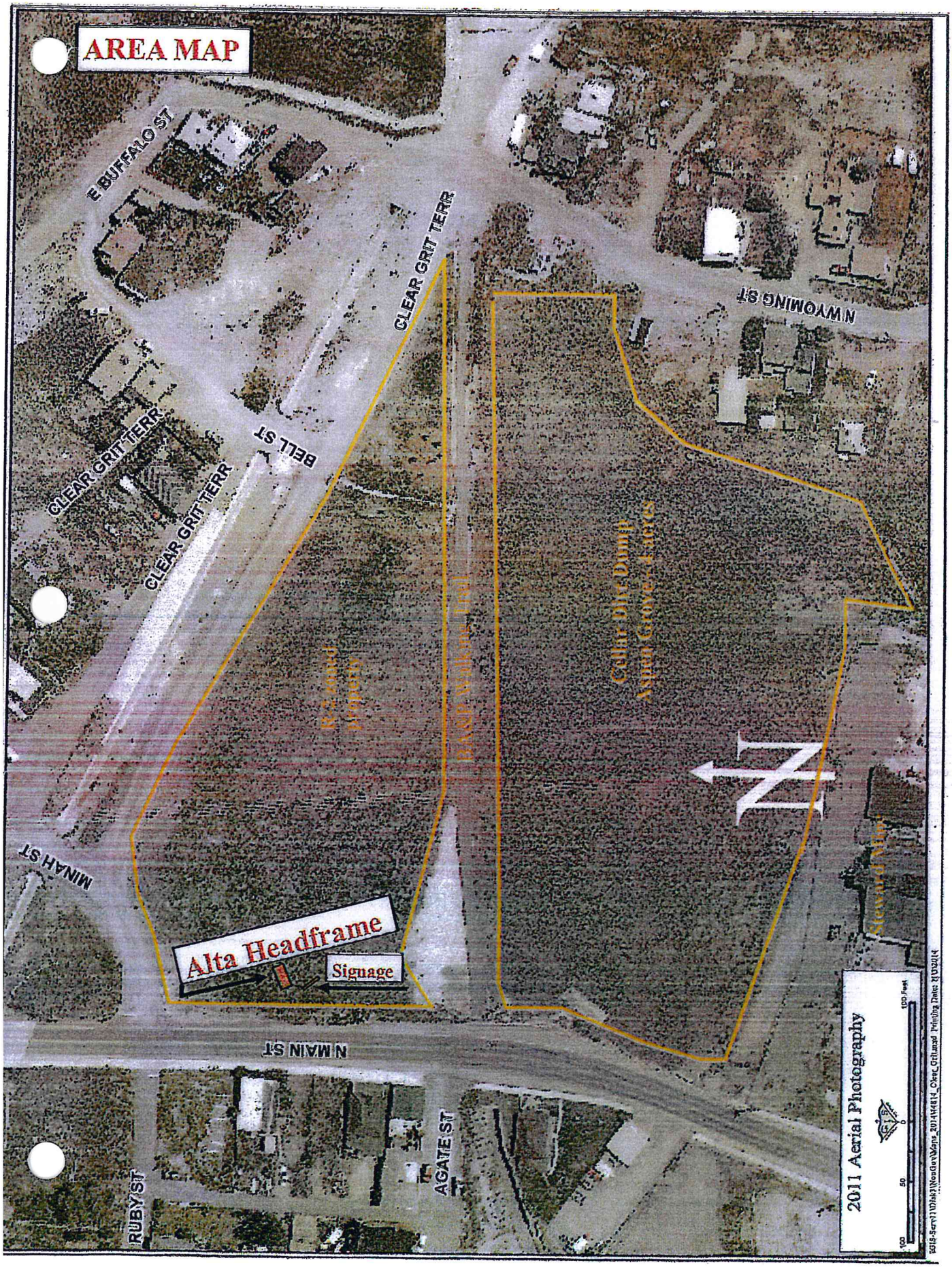
Alta Headframe on Main Street







APPENDIX II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Cellar Dive Dump
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