

July 21, 2016

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

MEMBERS PRESENT: David Wing, John Habeger, Julie Jaksha, Les Taylor, Dolores Cooney and Rocko Mulcahy

ABSENT: Tyler Shaffer

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

M I N U T E S

- I. The meeting was called to order at 5:30 P.M.
- II. The Minutes of the meeting of June 23, 2016, were approved and passed.
- III. Hearing of Cases, Appeals and Reports:

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

Mr. Wing stated that Use Variance Application #15175 by Buffalo Estates, LLC had been withdrawn.

Variance Application #15143 – Terry Hettick was present at this meeting.

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

Mrs. Casey added that the staff had received a lot of calls on this variance application and they all had been in opposition and she believed some of the folks were there that night to testify. She said their primary opposition to this was they didn't want to see a nonconforming use expanded. She said they understood that the trailer court was there but generally, one of the things with zoning was to phase out nonconforming uses and not perpetuate them, so they were in opposition. She thought they would hear from some of those folks that night.

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

Mr. Habeger said he did have a question and asked to see the picture where the sign was – would the two recreational spaces be in that empty space. Mrs. Casey said that was her understanding but they may want to clarify with the applicant. She said part of the report did indicate that he wanted to use two of the spaces to convert and that would appear to be only one space and it looked like it only had one hook-up, so that would be a better question to clarify with the applicant.

Mr. Wing asked if Mr. Hettick cared to provide any additional testimony. Mr. Hettick replied he owned the trailer court and said they were disappearing because of a lot of regulations and a lot of stipulations. He had a trailer court elsewhere with an empty lot like this that sat for three years as an empty space. They advertised it and couldn't rent it. His dad finally got an RV license for it and they have had no problem renting it.

Mr. Hettick said he put this in the paper and advertised it as a mobile lot and he had three calls and it was in there for ten days. He said one was a motor home to stay for two months

and that wasn't what he wanted. He didn't want traffic in and out. The second phone call was for a 1970 14x70 trailer but that was too old, as '76 was what they allowed. He didn't want a beat up trailer. He said all of those trailers were owned by people – there was a need for those trailer courts. Those people were just barely making it and he provided this for them. He said what was going to happen was if something happened to any one of those people who lived in those trailers, he would probably be held accountable for that trailer and would probably have to move it off. He had to literally tear one down as it was terrible and was old, so he didn't want to get into a situation where he had to move a trailer off the property.

Mr. Hettick further said this RV, this recreational vehicle, he had two other calls that were 5th wheels – one was a '94 and was in great shape and the person told him he would stay for a year and would skirt it and he had one vehicle. Mr. Hettick said that would be the way he would want to go.

Mr. Hettick then said the second unit that he wanted was if he had a unit move on there or something happened and he had an old trailer sitting there, he wanted to be able to put another RV in there, if possible, if that happened. He just didn't see people putting trailers – they don't make twelve wides anymore – fourteen wides were expensive and most people bought their own lots to put their trailers on and that was why he was doing it this way. It would sit there vacant and an RV would be his best bet for it.

Mr. Wing asked if Mr. Hettick reviewed the conditions and if they were acceptable. Mr. Hettick said yes, he did and they were acceptable. He said the 5th wheel was thirty foot long and again was a '94 and was in good shape and the person would stay there for a year.

Mr. Wing asked if any of the Board members had any questions of the applicant.

Mr. Habeger asked Mr. Hettick if the green trailer, shown in the picture there, was the one he would remove to create the

second space or would he double them up in the single space. Mr. Hettick said no, that single space was only made for one unit. There was no chance he would put two units in there. He said it was 32 x 100 and you couldn't put two units in there. He said this was in the future – if a person decided to sell the trailer fine or if he walked away from the trailer, he was stuck with it and he wanted the option to put the RV in there for any one of those trailers.

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.

Scott Sampson of 2624 Elm said his residence was pretty much to the southwest of the photos that were shown there. He said his primary concern was any detrimental impacts to property value with an RV Park right across the street filled with recreational vehicles as opposed to permanent trailers.

Mr. Sampson said he was raising a family and his other concern was a nomadic lifestyle with people in and out of the community for a short period of time. His preference would be a long term renter or buyer resident in that neighborhood and he opposed it.

John Sorich, 1820 Wilson, said he was the Commissioner for District 4 and he had received some phone calls from neighbors and e-mails and they were against it also. He said the concern he had as Commissioner was this seemed to be a loophole for the changes in the Ordinance that were made in the last year. He said they were trying to make some changes to upgrade some of these trailer parks and it just didn't seem like it would be the best thing for this neighborhood.

Mr. Sorich then said that Mr. Hettick had said he would make sure he would get nice RVs and nice 5th wheels in there but he thought they would set a dangerous precedent in the event he sold this -- would the variance go with the new owner. He

asked what would guarantee that someone was not going to bring in a '56 that was nonconforming, so he had some real reservations about that as well.

Sandy Garner of 2620 Elm said she was the third house down on the opposite side. She said she felt the same way and didn't think it was in the best interest of their neighborhood for property value reasons and also she has small children and for her to have somebody, like Mr. Sampson mentioned with the nomadic lifestyle, she would worry for the safety of her kids being out in the front yard and dealing with that and so she was opposed.

Debbie Webster of 2612 Elm said she was next door to the last speaker. She said the property that had been shown that was vacated that they wanted to put the RV Park in had a huge fire there two years ago and that was why it was demolished down. She said it was a very small trailer court that they had there and the majority of them were pretty good trailers but she didn't see more RVs coming in because she thought it would devalue their property and the appearance of their neighborhood and she was opposed to it.

Cindy Stark said she lived in the house that was right next to all of the trailers and she owned one of the trailers that was in there. She thought it would lower the value of her house, if there were RVs next to her house.

Betty Banderob of 2601 Grand said her concern was if they made one variance on this new law that went in in the last few years, she thought it would weaken the law and they were going to be making more and more variances and the law wouldn't stand for what it was intended.

Mr. Wing said Mr. Hettick now had the opportunity to provide additional testimony in rebuttal to the comments that had been made in opposition. Mr. Hettick said he just wanted to say that the 5th wheels he was looking at were very nice units. He said if he couldn't put a 5th wheel there, he couldn't just sell the lot, the whole trailer court would have to go and he didn't want to

do that. He said those people had been with him for the last fifteen to twenty years and he didn't want to see something like that happen. He said his concerns were – their concern about a '54, he couldn't put anything older than a '76 in it. He didn't think a 5th wheel was made in '76. He wouldn't just put an old camper in there. He said he had a bad experience that took him a long time to get an old trailer off the lot because of the law and the legalities but he finally did get it off.

Mr. Hettick said he couldn't leave it – he wasn't in the situation where he could afford to leave it sit vacant. He said he would put in a '76 trailer, if he had to, because that was what he did and that was his job but he didn't want to do that because he didn't want to put in something that he might have to end up taking off that property one day himself. He thought this would be the best way to do it and if there was a problem with the person who had the 5th wheel, you could take a truck and back it up and hook it up and move it off, as it wasn't permanent. He said if he put a fourteen wide in there, a 14 x 70, it was there and would stay there. He said it took a lot to get people to move their unit off of his property.

Mr. Hettick said he didn't know what else to say. It wouldn't be old and he would monitor it and if there was a problem, he would make sure they would move and they would maintain the yard, which was supposed to be up to them but he would make sure that they did that. He said he understood their concerns but he wasn't going to convert another – those places had been there for twenty years. He said in his time that he owned the place, this would probably be the last RV that he put in and he wouldn't look for another RV to go in there unless something happened, he didn't know, it just looked like it would be the one.

Mr. Hettick said the person had said he would skirt it and would take very good care of it and he had one automobile. Some people he knew had two or three but that was before and that had been there a long time. He didn't think it was going to hurt anyone.

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

Mr. Mulcahy moved to deny Variance Application #15143 with Mrs. Jaksha seconding the motion.

Mr. Wing then said if you voted "For" the motion, you were against the trailer park.

Mr. Hettick wanted to speak and Mr. Wing told him that portion of the meeting was closed.

At this point the Board voted on the application.

Variance Application #15143 – Denied

John Habeger	For Denial	Les Taylor	For Denial
Dolores Cooney	For Denial	Rocko Mulcahy	For Denial
Julie Jaksha	For Denial	David Wing	For Denial

John Habeger, Dolores Cooney, Rocko Mulcahy and Julie Jaksha voted "For" the motion to deny the application.

Les Taylor voted "For" the motion to deny the application – "Significant neighborhood opposition was expressed. The owner stated that in lieu of this variance he would put in a conforming mobile home."

David Wing voted "For" the motion to deny the application – "neighborhood opposition."

Mr. Wing said all six votes were "For" the motion to deny, which meant that the application had been denied. He told Mr. Hettick that he did get an opportunity to have their decision reviewed by filing an action with the District Court. Mr. Hettick said he didn't (couldn't hear). Mr. Wing said they just had a decision and Mr. Hettick could challenge their decision by filing. Mr. Hettick said okay. He then said he would move in a trailer that was a '76, if that was what they wanted. Mr. Sesso asked Mr. Hettick to come in the next day to make sure all of the

provisions of moving in a trailer to meet the Code would be met and they could fill him in on all of the additional regulations.

Variance Application #15161 – Father Brian Miller was present at this meeting, as the representative for the Christ Church Anglican - Butte.

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

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

Mr. Wing asked if Father Miller cared to provide additional testimony in support of the application. Father Miller said he was the priest for Christ Church Anglican and he thanked them for hearing him that night. He said one of the things he would like to adjust was the sign location was incorrect. He showed where the sign would go instead in the presentation pictures, so it would have a better view from the street as you came up. He said it would be set back five feet, so that it wouldn't disrupt the view turning onto Texas. He said other than that, he appreciated the work that went into presenting it and he couldn't say it better himself.

Mr. Sesso said he would just note for the record that in addition to the sign being five feet off of the sidewalk, the property line, it also had to be outside the vision clearance triangle because it was on the corner. He said there was an imaginary line twenty-five feet back on the two sides that he pointed out and said you would make a triangle and the sign couldn't be in the triangle. Someone in the audience said they knew that and it wouldn't be.

Mr. Wing asked if the conditions were acceptable and Father Miller said yeah.

Mr. Wing then asked if there was anybody 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.

Mrs. Cooney said it was pretty straightforward and she would recommend that they approve Variance Application #15161 with Mrs. Jaksha seconding the motion with the following conditions:

1. The 4'H x 8'W freestanding sign with an overall height of 6' shall be permitted *only* as per the plan submitted for this variance with respect to visual appearance, as well as the proposed location on the submitted site plan.
2. The applicants will be responsible for obtaining the proper permits through the B-SB Building Department.
3. Illumination, if installed at a later date, must be restricted to adjustable landscaping foot lights and shall be aimed directly at the proposed sign to minimize any chance of contributing to light pollution in the residential zone.
4. The sign may only be illuminated from one hour prior to church activities until one hour after the conclusion of church activities.

At this point the Board voted on the application.

Variance Application #15161 – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Rocko Mulcahy	For
Julie Jaksha	For	David Wing	For

John Habeger, Les Taylor, Dolores Cooney, Rocko Mulcahy, 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 Zoning (Planning) staff to that effect that would include information with regard to the vision clearance triangle, he was sure, that had been discussed with the location of the sign.

Variance Application #15165 – James Richards Jr. 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 any of the Board members had questions of the staff. There was no response.

Mr. Wing asked if Mr. Richards cared to provide additional testimony in support of his application. He replied that he was the owner of the property. He said he had two of the letters that the Board requested and said the house that was the most greatly impacted, he guessed the people were on vacation, because he hadn't seen them around there all week, so he wasn't able to obtain one from them but he had two of them with him. Mr. Wing thanked him and told them they would be made part of the record from Randy Armstrong at 3346 Sanders and Dora Guldborg of 3345 Busch (attached and made a part of these Minutes).

Mr. Richards said the reason he chose a gambrel roof, being a two story building, he had no basement under his house and was limited on the amount of storage he had. He said with a gambrel roof, it made the building not look as tall as it would if the building was built straight up two stories and he thought it would make it more attractive. He said having the shorter parking apron was because he needed access to the upstairs which moved the building closer to the street, which made for a shorter parking apron but also made the property more aesthetically pleasing because the house was twenty feet off

the property line and it made it look like it wasn't all lined up like a block rural housing type of situation and gave a little dimension to the property.

Mr. Richards further said the two people he got letters from didn't have a problem. He said everything he had done on this property since he owned it had done nothing but improve it. He said it had an older metal sided trailer on it prior to him buying it that was moved off and he had since put a double-wide on it.

Mr. Wing asked if he planned to secure the additional letter. Mr. Richards said yes, as soon as he found them at home. He said they weren't hard to find because the gal drove a noisier diesel pick-up and he heard her pull in all the time but like he had said, they were there all last week but this week he hadn't seen them coming or going but as soon as he could, he would get it.

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

Mr. Richards said as far as the other condition being living space, no, it would be a little shop space because he did a little woodwork as a hobby and there would be no plumbing but it would have gas forced air heat but no water or sewer.

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 it seemed to be an adequate use of the property. He said Mr. Richards was two-thirds of the way there with the neighbor approval. He said unless the Board had any other comments, he would make a motion that they approve

Variance Application #15165. Mr. Mulcahy seconded the motion with the following conditions:

1. Prior to receiving a building permit, the applicants will be required to secure a letter of approval for the proposed garage from the property owners at 3345 Busch Street, 3346 Sanders Street and 3434 Sanders Street.
2. At no time, nor for any reason, shall the loft area above the garage be utilized as a secondary living space nor shall plumbing be allowed within the structure.

At this point the Board voted on the application.

Variance Application #15165 – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Rocko Mulcahy	For
Julie Jaksha	For	David Wing	For

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

Mr. Wing said all six votes were in favor of 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. Richards asked if he needed to get that letter before he got a building permit. It was stated yes. He said the reason he asked was he worked out of town and was gone next week and possibly the week after that. Mrs. Laird said the plans could be submitted to the office and the Building Official could be reviewing them while they were waiting for the letter.

Use Variance Application #15170 – Shane Hollingsworth was present at this meeting.

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

Mrs. Casey added that Mrs. Laird had handed out letters. There was one letter that was not signed that was in opposition to it and they should also have an e-mail to Rebecca Farren concerning comments from a Mr. Jack Neary in opposition (attached and made a part of these Minutes).

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

Mr. Taylor asked Mrs. Casey if she knew who the unsigned letter was from and she said no.

Mr. Wing asked if Mr. Hollingsworth cared to provide additional testimony in support of his application. Mr. Hollingsworth replied that three months ago his son paid rent for a house in Walkerville that was a rundown dump. The lighting and plug-ins, the house was ready to burn down. He felt it was unsafe and so he advised his son to look for a trailer and move it up there and live out of it while he built his house. They said about four to five years as a long term -- the longest it would be there. He said they were hoping to have a house built for him within a year or two but five years at the most.

Mr. Hollingsworth then said it was a 1977 but like Mrs. Casey had said it had new shingles, new roof, new siding and they would go through and rewire everything and bring it up to -- it would be nicer than a 1995 trailer.

Mr. Hollingsworth said the two options he gave his son were to try and find a trailer and at the time he started looking, there was no Ordinance in Walkerville and he didn't know there had become Ordinances in Walkerville.

Mr. Hollingsworth said in talking with Dave Palmer (Commissioner for this District), he seemed to think when they were talking before that the Ordinance didn't go above Alice

Street, which was below him. He said he got the trailer the same day he found out the zoning had changed. He said the trailer was already there and he had called Mrs. Casey to straighten it out but the trailer was already up there.

Mr. Hollingsworth said he could remove the trailer and build something he could live out of temporarily but it wouldn't be as aesthetically nice as the trailer.

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.

Kathy Jangula said she was Ward House Person 1 in the Town of Walkerville. She said they started working on this last Fall and it was in the paper and was posted on the Town Hall and on sandwich boards at Pizzers Palace. She said they had very little input but the residents thought zoning would be a good thing.

Mrs. Jangula further said the zoning was to cover the entire town of Walkerville, which did include the property north of Alice up to Storm View. She said she was sorry if there was a misunderstanding for Commissioner Palmer.

Mrs. Jangula then said she was made aware of this situation yesterday and had received calls from four constituents who were down in the main portion of Walkerville that were against having this trailer put up there.

Mr. Wing then said Mr. Hollingsworth now had the opportunity to rebut the comments that were made against his application.

Shane Hollingsworth said mostly – he didn't know what – he had pictures of the trailer that were better than the one they saw. He said it looked nice sitting pretty much where it was at. He said they looked for something that would be appealing to

people and found this one for what his son could spend and still build a house.

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

Mr. Habeger said in this instance, because the zoning had been kind of on the forefront in the Walkerville area, he thought it was well known and they saw quite a bit of opposition to it. He appreciated Mr. Hollingsworth and his son trying to make a viable property up there. He said he guessed they were a volunteer Board who had to make decisions based on the rules and regulations that they saw before them and even though it might look like a silk purse, it was still a sow's ear.

Mrs. Cooney said she would recommend that they deny Variance Application #15170 with Mr. Habeger seconding the motion.

At this point the Board voted on the application.

Use Variance Application #15170 – Denied

John Habeger	For Denial	Les Taylor	For Denial
Dolores Cooney	For Denial	Rocko Mulcahy	For Denial
Julie Jaksha	Against Denial	David Wing	For Denial

John Habeger, Les Taylor, Dolores Cooney and Rocko Mulcahy voted "For Denial" of the motion to approve the application.

David Wing voted "For Denial" of the motion to approve the application – "opposition."

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

Mr. Wing said there were five votes "For" the motion to deny and one vote "Against" the motion to deny, which meant that the application had been denied. He said Mr. Hollingsworth

could appeal their decision by filing an action with the District Court within the next thirty days with the first day of the thirty days being the following day and if they needed any further information with regard to appealing their decision, it could be provided to them by the Planning staff.

Renew and Amend Conditions of Use Variance #14722: Application #15171 – John Jeffery was present at this meeting.

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

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

Mr. Wing asked if Mr. Jeffrey cared to add any testimony in support of his application. Mr. Jeffrey said he and his wife owned Jeffrey Contracting and they were a small paving/excavation company. He said he originally bought this property from the Dickinsons simply for the office space and shop space for their maintenance. He said there was roughly three acres of property that was fenced and that was why they would like to park their trucks there. He said they had their safety meetings in the morning and then everybody went to the job site. He said the trucks were one thing they generally brought back to the shop on a daily basis. He further said they did most of their work in Silver Bow County and so typically, those ones always came back.

Mr. Jeffrey said as far as the construction equipment they saw, they moved in a timely manner, as they had to be out of their other place by June and so everything was kind of brought there. He said that stuff had since – the paver was gone but the trucks would continue there.

Mr. Jeffrey said as far as a construction yard, that was not the intent. He said he owned property behind Mount Moriah Cemetery and that was where the equipment, material and

miscellaneous things would be stored. Mr. Jeffery said basically, it would just be the trucks where they were.

Mr. Jeffery then said the landscaping, they would do whatever to keep people happy. He said they already mowed from their fence to Continental, which was State Highway and they didn't need to maintain it but they did. He said alongside the building it was all sprinkled. As far as the aesthetics of it, it was nice looking and was a nice buffer between Continental and the interstate.

Mr. Wing asked Mr. Jeffery if he reviewed the conditions and he said he did. Mr. Wing asked him if he had any concerns with respect to any of them. Mr. Jeffery said he didn't. He said he had been in contact with the Road Department and they thought it would just be best if Gilman got Continental finished and they would just tie in with their asphalt and pave their approach. He said he would like to pave right to the gate because it would make it a lot nicer transition in and out. Mr. Wing said he would be well suited to do that.

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

Cindy Perdue-Dolan, Commissioner for District 1, said she spoke with Mr. Jeffrey that day and had been by the property. She said it was neat as a pin and was very excited to see this small business get off the ground in their District 1 and was glad he was comfortable with all of the conditions. She said she was excited that this area would be paved and with landscaping as a buffer for the neighbors across the street for the additional trucks that were going to be parked there. She said she was in support of this new business and the increase in business for Butte and for District 1. She thanked them.

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 there didn't appear to be any neighborhood opposition. Mr. Wing said he lived in the neighborhood and was in favor of it and thought it was appropriate.

Mrs. Cooney said they had discussion on it before and at this point she would recommend they approve Variance Application #15171 with Mr. Mulcahy seconding the motion with the following conditions:

1. The applicant shall submit a new cost estimate and bond to the Butte-Silver Bow Planning Department for all of the work remaining under the original conditions. At a minimum, the cost estimate and bond shall include:
 - a) The installation of paving from any incomplete approaches to the property off of Continental Drive.

The bond shall be the cost estimate for the above items plus ten percent (10%).

2. The Zoning Board of Adjustment shall review Use Variance #14722 at the July 2017 meeting to ensure that the three (3) conditions from the approval of the original application, as well as the conditions of this amendment, have been satisfied, and to ensure that the Use Variance with amendments remains in the best interest of all parties involved.
3. The applicant shall submit to the Butte-Silver Bow Planning Department for approval a detailed plan to provide additional landscaping along the chain-link fence surrounding the yard on the northern portion of the property. This additional landscaping is designed to screen the yard and provide a more residential aesthetic, similar to many of the homes on the west side of Continental Drive.

Once approved, the applicant shall submit a cost estimate and bond to the Butte-Silver Bow Planning Department for the installation of the landscaping aesthetic buffer.

The bond shall be the cost estimate for the above items plus ten percent (10%).

4. Semi-trucks present at 5000 Continental Drive shall not be started and/or idling prior to 7:00 a.m. on Monday-Friday nor prior to 9:00 a.m. on Saturday-Sunday.
5. There shall be no outdoor storage of equipment or materials (including but not limited to excavators, heavy trucks, cones, spare parts, etc.) not explicitly stated in the terms of Use Variance #14722 or in the conditions of this amendment.

At this point the Board voted on the application.

Renew and Amend Conditions of Use Variance #14722:
Application #15171 – Conditionally Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Rocko Mulcahy	For
Julie Jaksha	For	David Wing	For

John Habeger, Les Taylor, Dolores Cooney, Rocko Mulcahy, 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 told him good luck with his project.

Special Use Permit Application #15178 – Paul Slotemaker of Gold Creek Cellular of Montana Limited Partnership, D/B/A Verizon Wireless, AICP, Agent, was present at this meeting as

the representative for the Butte Country Club and Verizon Wireless.

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

Mrs. Casey added that Mrs. Laird had given them a copy of a letter from the Bert Mooney Airport stating it was critical that they stayed at the seventy foot level and not increase it – that was about the height mark they could be at before they would start to interfere with any of the airport pathways and the FAA requirements (attached and made a part of these Minutes). She said she thought the applicant also had some information that he had submitted to them within his packet with some FAA approvals. She said they just wanted to verify with their local folks at the airport because they have had instances where sometimes things have crossed and they had it in their packet that it was a big concern regarding the public safety and they addressed that question to make sure. She said quite frankly, if it interfered with the planes, it would be coming down. She said just to clarify, they did have the Ordinance but the airport zone showed that this was within that airport zone and that would take priority.

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

Mr. Wing asked if Mr. Slotemaker cared to provide some additional testimony. Mr. Slotemaker said he was representing Verizon Wireless. He thanked the staff for putting together a good staff report and thought they did a good job summarizing the project and he didn't want to keep them there any longer than they needed to be.

Mr. Slotemaker said a couple of things, regarding the height, the height they showed in the drawings was sixty-five feet and was actually sixty feet to the top of the tower portion, the trunk of the mono-pine. He said they called them mono-pines because it was like a mono-pole designed as a pine tree and

then there would be a couple of branches and a lightning rod on top to help taper the top of the tree and that would be an additional five feet, which would be at sixty-five feet. He said they ran the FAA at seventy feet just to be safe, so that might be where the seventy feet came from but the drawings showed it as sixty-five foot to the top of the lightning rod.

Mr. Slotemaker further said that regarding the conditions, he thought they looked good.

Mr. Slotemaker then said regarding the FAA, they did run it through the FAA with their notification process and they issued a notice of determination of no hazard to air navigation. He said that was their official approval of the wireless facility. He said they didn't need to do anything special to it, it didn't need to be lit and they didn't need to do any special markings on it, so they had given their stamp of approval in regard to that process.

Mr. Slotemaker further said regarding the floodplain, they were of course conscious of the floodplain and making sure they didn't locate the facility in the flood plain and he talked to their architect and the surveyor and they would work on getting an elevation certificate for the building permit.

Mr. Slotemaker said he didn't have a problem with any of the other conditions of approval.

Mr. Wing then asked if any of the Board members had any questions.

Mr. Habeger said he had two questions. He asked if there would be a navigation light on top of it, a red light. Mr. Slotemaker said no. Mr. Habeger said so no lighting at all and Mr. Slotemaker said no lighting. He then referred to his notes for their determination that said based on this evaluation, marking and lighting weren't necessary for aviation safety. So they weren't supposed to put a light on there and they didn't want a light.

Mr. Habeger said his follow-up question would be that the access to this site would be off of Burning Tree Lane and Mr. Slotemaker said yes.

Mr. Habeger said during construction there would be more traffic but after that just maintenance. Mr. Slotemaker said yeah, traffic impacts, there would be like a monthly maintenance visit with a truck or SUV.

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

Cindy Perdue-Dolan, the Commissioner for District 1, said she received several calls from various constituents about this mono-pine, including folks who lived on Burning Tree Lane – more so questions not really in support or against but more just questions about the cell tower. She wanted to say on the record for their information, a couple of the questions that were posed to her were questions about the cell tower and if the cell tower was safe as far as health concerns. She went on-line and wanted to relate to them, as far as the American Cancer Society revisions of May 21, 2016, they said cellular towers were perfectly safe for base stations. RF waves produced at base stations given off into the environment where people could be exposed to them, public exposure to radio waves from cell tower antennas was slight for several reasons. She said the power levels were relatively low and the antennas were mounted high above ground level and the signals were transmitted intermittently rather than constantly, so she just wanted to let them be aware of that because that question was posed to her earlier that day from several folks wanting that general question answered and she wanted to relay that to them.

Mrs. Perdue-Dolan further said the General Manager of the golf course was also concerned about children getting onto the tower and he wanted to mitigate that circumstance, as he had been concerned about that and they would mitigate that as well, so any kids being able to get to the tower wouldn't be a

concern, as that would be another concern for the Country Club's liability.

Mrs. Perdue-Dolan said those two questions were posed from neighbors and constituents with regard to the cell phone tower but in addition, the constituents were excited because they were hoping they would have better service for their cell phones.

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. Taylor said the concerns had been addressed and he moved to approve Special Use Permit Application #15178 with Mr. Mulcahy seconding the motion subject to the five conditions in the staff report:

1. Prior to receiving a building permit, the applicant shall provide to the Butte-Silver Bow Planning Department official written approval from the FAA for the exact location and specific design of the tower proposed in this Special Use Permit, stating explicitly that no component of the proposed structure (communication frequency, height, structural design, etc.) will pose any hazard or inconvenience to the operations at and around Bert Mooney Airport.
2. Prior to receiving a building permit, the applicant shall submit to the Butte-Silver Bow Planning Department an elevation certificate, stamped by a certified engineer, incorporating all components proposed for the project, including but not limited to, the footprints of the tower and all associated constituents, excavations, and natural or artificial landscaping, as well as any proposed access roads or improvements to existing roads.

3. The applicant shall meet all applicable building, electrical, plumbing, mechanical, fire and health codes and shall purchase all necessary permits from the Butte-Silver Bow Building Code Department.
4. The approval of this special use permit is for the specific wireless communication tower submitted with this application. Should the applicant choose to, at any time in the future, alter the approved design of the structure, further review from the Zoning Board of Adjustment will be required.
5. Prior to the issuance of a building permit, the applicant must submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. Once approved, this cost estimate will be used as the landscaping bond amount plus ten percent (10%).

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

At this point the Board voted on the application.

Special Use Permit Application #15178 – Conditionally
Approved

John Habeger	For	Les Taylor	For
Dolores Cooney	For	Rocko Mulcahy	For
Julie Jaksha	For	David Wing	For

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

Mr. Wing said all six votes were “For” the motion, which meant that the application had been approved, and they would be receiving a letter from the Planning staff to that effect setting forth the conditions that they talked about that night.

Mr. Wing told him good luck with the project.

- IV. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 7:10 P.M.

BY: David Wing
David Wing, Chairman

Lori Casey, CE
Lori Casey, Assistant Planning Director



07/21/2016

JUL 21 2016

The neighborhood North of Walkerville would like the rules and ordinances already in place regarding trailer homes to be enforced as they are written. Exceptions have been made throughout the community in Butte and as a result, there is an abundance of inconsistent zoning affecting certain properties to no fault of the neighboring properties. Covenants are in place for many of the homes North of Walkerville and the area is currently known for predominately custom site built homes on acreage and not HUD homes. Allowing an exception here and there, (even temporarily), gradually changes the makeup of the area and adversely affects the values of homes already constructed and views expected by the neighborhood. After a large drop in values as a country and now the recovery and gradual increase in values, this area cannot afford to be held back from the anticipated growth of consistent site built construction and increasing values it is due for the next 2-5 years. If a temporary use is being considered, the neighborhood would prefer the dwelling be placed out of view, across the road next to the already constructed pole barn type construction previously allowed on this property which will not hinder or affect the neighborhood as is currently exists.

Laird, Carol

From: Farren, Rebecca
Sent: Friday, July 15, 2016 1:15 PM
To: Casey, Lori; Laird, Carol
Cc: Sesso, Jon
Subject: Comments regarding the Hollingsworth Variance

Good afternoon,

Just as an FYI, Mr. Jack Neary came in and spoke with me expressing negative feelings about the Hollingsworth variance. He was, understandably, frustrated that the single wide was already located there, and expressed concern for devaluing the properties of himself and those around him.

He mentioned that he was under the impression that there were covenants in their area. I directed him upstairs to land records to check into the covenants further.

I also encouraged him to attend the meeting, and/or write a letter expressing his concerns to submit to our department. He said that he would at least write and submit a letter, and would include references to the covenants in it.

As I will be gone during the next meeting, I wanted to apprise you of the feedback. Please ensure that his concerns are voiced during the meeting.

Thank you,

Rebecca Farren
Land Use Planner & Floodplain Administrator
BSB Planning Dept.
155 W. Granite St.
Butte, MT 59701
406-497-6253
rfarren@bsb.mt.gov

Messages and attachments sent to or from this email account pertaining to the City-County of Butte-Silver Bow business may be considered public or private records depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).

BERT MOONEY AIRPORT

101 Airport Road
Butte, Montana 59701
Phone (406) 494-3771
Fax (406) 494-2166

Members:

David Holman
Harvey Casebeer
Lisle Wood
Jonathan Bodine
Mark Moodry

Airport Manager:

Pat Shea

July 15, 2016

Jon Sesso
Butte Silver Bow Planning Department
155 W. Granite St.
Butte, MT 59701

Re: Gold Greek Cellular of Montana Limited Partnership

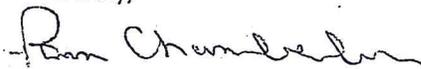
Dear Mr. Sesso:

I am writing in response to the Determination of No Hazard to Air Navigation for the above company.

I had our flight standards representative Brandon Sutton, who oversees flight standards for the Bert Mooney Airport. He too agrees the obstruction will not be an issue.

It is critical that they stay at 70 feet above ground level (AGL), if they exceed that at all it will be a hazard, and effect air service to our airport. If you have any questions, please feel free to contact me.

Sincerely,



Pam Chamberlin
Acting Airport Manager

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

Thursday, July 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 June 23, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15143 - An application for a variance by Terry Hettick, owner, to expand a nonconforming use (licensed mobile home court) by establishing two (2) recreational vehicle spaces varying from the requirements of Section 17.48.030, Uses of Land, of the BSBMC. The property is located in an "R-1" (Single Family Residence) zone, legally described as Lots 9-13 and the E 17.5' of Lot 14, Block 4 of the Crosby Addition, commonly known as 2623 Elm Street, Butte, Montana.

Variance Application #15161 – An application for a variance by Christ Church Anglican - Butte, owner, and Father Brian Miller, Dave and Gail Barney, agents, to locate a freestanding 4'W x 8'H sign in a residential zone, varying from the requirements of Section 17.42.050(B), On-premises Signs Permitted in Residential Zones, of the BSBMC. The property is located in an "R-3" (Multi-Family Residential) zone, legally described as Lots 16-20, Block 26 of the Grand Avenue Addition, more commonly known as 1200 Texas Avenue, Butte, Montana.

Variance Application #15165 – An application for a variance by James Richards Jr., owner, and Shawn & Lorrie Roberts, agents, to increase the height of a detached garage with a gambrel roof from fourteen feet (14') to twenty and one-half feet (20.5') and to decrease the required parking apron from twenty feet (20') to seventeen feet (17'), varying from the requirements of Section 17.12.040, Building Height Limits, and from the requirements of

Applicant or Representative must be present at the meeting

A G E N D A

(Page 2)

Section 17.12.020(C), Permitted Uses, of the BSBMC. The property is located in an "R-2" (Two Family Residential) zone, legally described as Lot 14 and the S½ of Lot 15, Block J of the Gilman Addition, more commonly known as 3350 Sanders Street, Butte, Montana.

Use Variance Application #15170 – An application for a use variance by Shane Hollingsworth, owner, and Joel Hollingsworth, agent, to locate a 1977 single-wide (Class C) manufactured home in an "R1-S" zone, varying from the requirements of Section 17.08.020, Permitted Uses, of the BSBMC. The property is located in an "R1-S" (Single Family Suburban Residential) zone, legally described as POR SILVER LICK #1010, SUNDAY #9967, PARCEL 1520B (COS 873B) AKA ILLINOIS #1520, POR KERRY #2478, POR SNOWDRIFT #287, Section 1, T03N, R08W, more commonly known as 3315 Bull Run Gulch Road, Butte, Montana.

Renew and Amend Conditions of Use Variance #14722: Application #15171 – An application by the Dickinson Family, LLP, owner, and Jeffery Properties, LLC, agent to renew Use Variance Permit #14722 which expired on March 20, 2016, per the Rules of Procedure, Zoning Board of Adjustment, Expiration of Permits and to increase the number of semi-tractors from three (3) to six (6), amending the provisions of Condition No. 3. The property is located in an "R-3" (Multi-Family Residential) zone, legally described as portion of the SE¼ of the Peacock Placer, Section 33, T03N, R07W, more commonly known as 5000 Continental Drive, Butte, Montana.

Use Variance Application #15175 – An application for a use variance by Buffalo Estates, LLC, owner, c/o David Smith and Arthur Dick, members, and Ross Roylance, agent, to construct three (3) two family residential duplexes on three separate lots in a single family suburban residential zone, varying from the requirements of Section 17.08.020, Permitted Uses, of the BSBMC. The properties are located in an "R1-S" (Single Family Suburban Residential) zone, legally described as Lots 10, 12, and 13 of the Buffalo Estates Phase 1 Subdivision, Section 10, T02N, R07W, more commonly located at the southeast corner of the intersection of Holiday Drive and Continental Drive, Butte, Montana.

Withdrawn →

A G E N D A

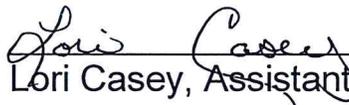
(Page 3)

Special Use Permit Application #15178 – An application for a special use permit by the Butte Country Club, owner, and Gold Creek Cellular of Montana Limited Partnership, d/b/a Verizon Wireless, c/o Technology Associates EC and Paul Slotemaker, AICP, agent, to install a new seventy foot (70') tall wireless communication tower disguised as a tree at the Butte Country Club Golf Course, located in a residential zone, per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC. The property is located in an "R-1" (Single Family Residential) zone, legally described as a portion of Sections 29, 32 & 33, T03N, R07W, more commonly known as the northern portion of the Butte Country Club Golf Course, Butte, Montana.

IV. Other Business.

V. Adjournment.

By:



Lori Casey, Assistant Planning Director

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

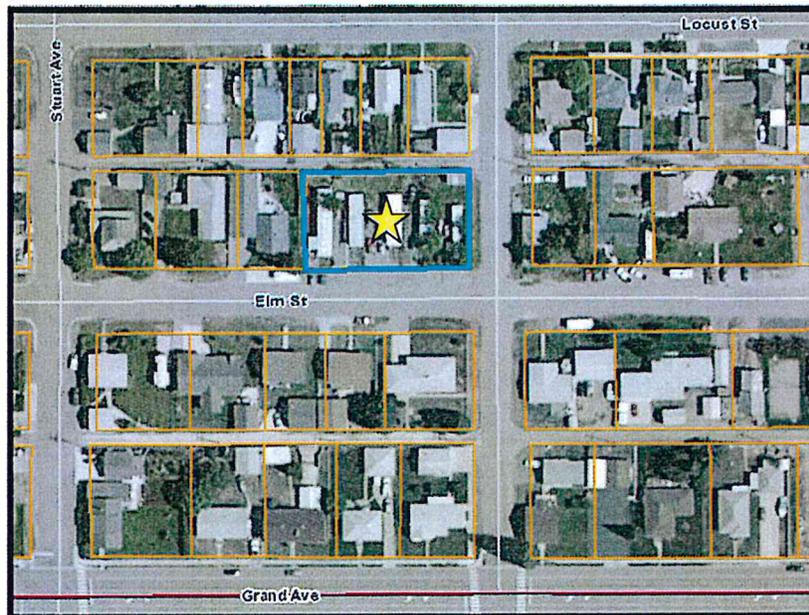
ITEM: **Variance Application #15143** - An application for a variance by Terry Hettick, owner, to expand a nonconforming use (licensed mobile home court) by establishing two (2) recreational vehicles spaces varying from the requirements of Section 17.48.030, Uses of Land, of the BSBMC.

APPLICANTS: Terry Hettick, 16 Bittersweet Dr., Butte, Montana, owner.

DATE/TIME: Thursday, July 21, 2016, 5:30 p.m., in the Council Chambers, Room 312, Butte-Silver Bow Courthouse Building, 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 9-13 and the E 17.5' of Lot 14, Block 4 of the Crosby Addition, commonly known as 2623 Elm Street, Butte, Montana.

PROPOSAL: The applicant is proposing to establish two (2) recreational vehicle (RV) sites in place of two (2) existing mobile home sites in his legal nonconforming licensed trailer court. The applicant's trailer court is licensed for five (5) mobile home spaces and the applicant is requesting that he be allowed to utilize two of the five spaces for recreational vehicles. If this application is approved, the applicant will be required to amend their trailer court license with the B-SB Health Department and the Montana Department of Public Health and Human Services to include two recreational vehicle spaces. It is important to note that approval of this application and any subsequent approval by the Health Department to amend the trailer court license will *not* result in a greater number of overall sites within the trailer court.

STAFF

FINDINGS: Butte-Silver Bow Municipal Code, Section 17.48.030(A), Uses of Land, dictates "no such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the ordinance codified in this title". The applicant's trailer court is a legal nonconforming use within the "R-1" zone. Therefore, the applicant's request to establish two (2) recreational vehicle sites within this court requires a variance from the Zoning Board of Adjustment.

The staff will review the three criteria established by the

Montana Supreme Court for the review of variances.

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

The public's interest in segregating land uses such as trailer courts and single family residential is to prevent the intensity and development patterns from adversely affecting land uses that are not similar. It is particularly important because mobile homes which are already located within Silver Bow County and manufactured homes constructed after June of 1976 and in any condition are permitted in licensed trailer courts. As such, trailer courts may have a detrimental effect on surrounding single family neighborhoods. Therefore, zoning districts were established to separate uses that conflict with each other and to integrate and group compatible uses.

In this particular case, the applicant's trailer court is a legal nonconforming use within the "R-1" (Single Family Residential) zone. Trailer courts are only permitted in the "R-4" (Manufactured Home) and "R-4S" (Manufactured Home Suburban) zones. The applicant's trailer court was established prior to the implementation of the Butte-Silver Bow Zoning Ordinance, and has licenses dating back to 1973.

The applicant is requesting that he be allowed to provide two sites within the trailer court for recreational vehicles. According to the applicant, it is not the intent of the applicant to provide these spaces to "campers", but to people that plan on living in the trailer court for extended periods of time. In that regard, there has been a shift away from recreational vehicles solely being used for "camping" purposes to becoming permanent living quarters, as

many of these RVs cost as much or more than many stick-built homes. Many of the people living in RVs do not want to live in campgrounds but would rather live in established trailer parks. While Butte has only begun to witness this change, it is becoming a common theme in many places.

The applicant's trailer court is located on the north side of Elm Street, just two blocks north of East Junior High. With the exception of the applicant's trailer court, the entire block of Elm Street between Stuart Avenue and Hayes Avenue is comprised of stick-built single family homes. The rights of the owners of these homes must be protected from any potential adverse impacts associated with this application.

In that regard, it is important that the applicant is aware that it is not the intent of staff to support an application that would result in a portion of this legal nonconforming trailer court becoming a campground. Staff believes that the moving of recreational vehicles in and out of this trailer park on a daily, weekly or even monthly basis would have a negative effect on the adjacent homeowners, particularly in regards to the safety of residents using Elm Street.

At the same time, staff is aware there are many RVs that could potentially be located on the requested sites that would be an upgrade in quality from the trailers currently located in this trailer court and other trailer courts within Butte. Nonetheless, the Zoning Ordinance only permits single family homes in this vicinity and adjacent property owners do have a reasonable expectation to be buffered from any uses that are not permitted outright in the "R-1" zone. The Zoning Board of Adjustment will need to carefully

consider all public input, particularly, from the property's immediate neighbors, to determine if this proposal is in the public's best interest.

It appears to staff that a key variable for approving this application is the length of time that the spaces may be used by recreational vehicles. If the applicant is not agreeable to establishing a minimum time frame for occupation by recreational vehicles, then staff would consider this application to be contrary to the public interest.

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

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

The land does not have any unique features that would prevent single family residences from being constructed on the property, however, the applicant has been operating a legal nonconforming trailer court in this location and will continue to operate the trailer court even if this application is not approved.

As such, the two spaces in question sit amidst the other three trailer spaces in the court, thus only containing enough square footage to allow for trailer-sized dwellings. The applicant feels as though available trailers are generally in poor condition and

hopes to establish the two (2) recreational vehicle sites to encourage improved quality in his licensed trailer court.

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 applicant's request to use two (2) trailer spaces within a legal nonconforming trailer park for recreational vehicles may not have a negative impact on the adjacent residences. As noted above, many recreational vehicles look nicer and are in better shape than many of the manufactured homes located within the applicant's trailer court, as well as other trailer courts in Butte. Nonetheless, recreational vehicles do have a different visual appearance than manufactured homes and there are many different types of recreational vehicles. For example, a 24' pull behind trailer will have a different visual impact than a 30' 5th wheel trailer, and a 24' Class C recreational vehicle will have a different visual impact than either a pull behind trailer or a 5th wheel trailer. Staff is concerned that the visual impact of one type of recreational vehicle may result in the adjacent landowners having a

feeling they are living by a campground. Larger recreational vehicles, a minimum of thirty feet (30') in length, would provide consistency with the length of the mobile/manufactured homes in the trailer court.

Additionally, if the occupancy of the two proposed sites is long-term, the proposed use of two sites within the trailer court is not expected to create or cause any substantial noise or traffic problems beyond that of those two sites currently either vacant or being utilized by mobile/manufactured homes. In that regard, it is imperative that approval of the application be conditioned so that the two sites may only be used for long-term (six months or longer) stays.

If the applicant is agreeable to the conditions as discussed above, staff believes the requested use variance would be consistent with the spirit of the Ordinance and would not have an adverse impact on surrounding property owners and the neighborhood in general.

CONCLUSION: Barring significant neighborhood opposition, staff would recommend approval of Variance Application #15143, with conditions, as stated below:

1. To ensure that the recreational vehicles complement the adjacent manufactured and mobile homes in the trailer court, recreational vehicles cannot be less than thirty feet (30') in length and must have skirting installed around their perimeter.
2. The lease agreement for renting the two recreational vehicle spaces shall not be for a

period of less than six months.

3. The applicant must amend their trailer court license with the Butte-Silver Bow Health Department and the Montana Department of Public Health and Human Services to include two recreational vehicle spaces.



Hettick Parcel

→ 30' x 100'
VACANT SPACE

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

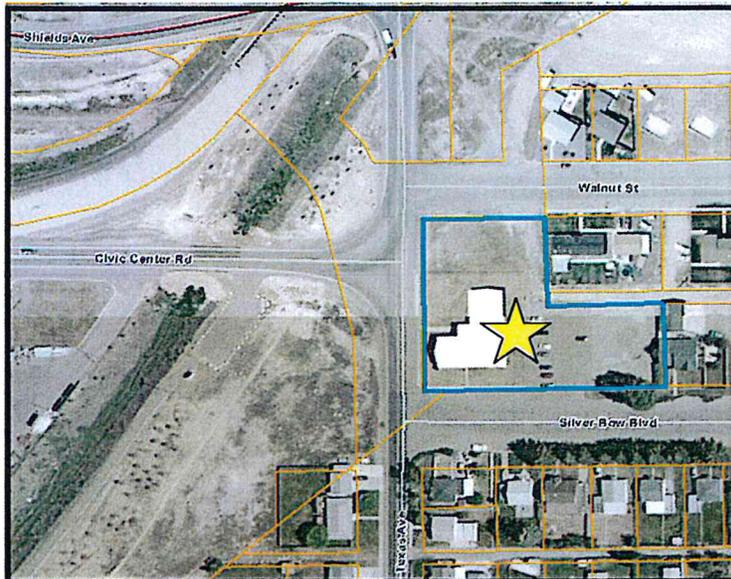
ITEM: **Variance Application #15161** - An application for a variance to erect a freestanding sign in a residential zone, varying from the requirements of Section 17.42.050(B), On-premises Signs Permitted in Residential Zones, of the BSBMC.

APPLICANT: Christ Church Anglican - Butte, 1200 Texas Avenue, Butte, Montana, owner; Father Brian Miller, 2620 Kossuth Street, Butte, Montana, agent; and Dave & Gail Barney, 1406 Gilman Avenue, Butte, Montana, agents.

DATE/TIME: Thursday, July 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-3" (Multi-Family Residential) zone, legally described as Lots 16-20, Block 26 of the Grand Avenue Addition, commonly known as 1200 Texas Avenue, Butte, Montana.

PROPOSAL: The applicants are proposing to erect a freestanding sign in a residential zone. The new sign would be 4'H x 8'W in area and approximately six feet (6') in overall height when mounted on its base. The sign would not be illuminated initially, however, the applicants have expressed some interest in eventually installing landscape lighting at the base of the sign.

STAFF

FINDINGS: The freestanding sign face is proposed to be four feet high by eight feet wide (4'H x 8'W), a total of thirty-two (32) square feet in area. Both sides of the face would contain the same proposed design, resulting in sixty-four (64) square feet of total signage. The overall sign height, once the face is mounted on its base, would be approximately six feet (6') tall. The applicants' building does not currently have a sign, therefore, they are seeking this variance as a way to identify their location. It should be noted, the applicants also plan to install a small informative bulletin board on the outer wall of the building. As per section 17.42.050(A), bulletin boards for churches are allowed without a permit upon review by the Zoning Officer. Therefore, the bulletin board is a permitted use at the applicants' location. With the exception of on-premise signs that do not require permits, the Butte-Silver Bow Municipal Code, Section 17.42.050(B), does not allow for signs larger than one (1) square foot within a residential zone. Consequently, the proposed freestanding sign would require that a variance be obtained 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.

Sign requirements were established by the Council of Commissioners to protect the public interest by providing specific zones in which signs are permitted. Those zoning districts are the "C-1", "C-M", "C-2", "M-1", "M-2", and "RM-2" zones. Locations within the permitted zones are further restricted by the number of signs, height limitations, area limitations and sign locations.

Sign specifications have been established to prevent the proliferation of signs within the Butte community, to eliminate the potential for signs to have a negative impact on residential property owners and to protect the natural environment. Potential negative impacts may include glare from lighting, disruption of the view to the surrounding mountains and increased visibility of the sign from residential areas.

In this situation, the building is within an established residential neighborhood and it would appear that the neighborhood has accepted this location as a church site. That being said, it would appear that the installation of a freestanding sign would be appurtenant to its use. However, the size of the proposed sign advertising the church comes into question.

As stated previously, the bulletin board sign providing information regarding the days and times of the services would be allowed upon review without

a permit. The bulletin board is proposed to be located in the rear of the building, adjacent to the parking lot. It would, understandably, be difficult to see this bulletin board from the west side (front entrance) of the building.

The proposed 4'x 8' sign located in the front yard would identify the church from Texas Avenue, which is one of the most heavily traveled of the roads in this neighborhood. The applicants have stated that a sign is needed to identify the church's location to those that are not already familiar with the building. The building itself is fairly residential in character, therefore, it is possible that people would have trouble finding the church without proper identification from Texas Avenue. Although the sign's larger size may not be suitable for the center of a neighborhood, it must be noted that the building is located on the western edge of the "R-3" zone with vacant land separating the church and Texas Avenue from the adjacent "M-1" (Light Industrial) zone.

Considering this location and restricting illumination to conservative landscaping lights that are only illuminated while activities are occurring at the church would accomplish the applicants' objective while also reducing the negative impacts that signs can have on neighboring residential properties.

As described above, the proposed sign with restricted illumination may not be contrary to 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 which preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. 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 geographical trait.

The building was established as a church prior to zoning going into effect and, therefore, the church is considered a legal nonconforming use. It should also be noted that churches are allowed within any zone upon review and approval of a special use permit.

Although there does not appear to be a unique condition associated with this property that would justify a hardship, erecting the sign as proposed with limited or no lighting may be compatible with the neighborhood

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 businesses and residents to develop their properties in ways that do not contradict public interest.

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

As proposed, it would appear that the applicants' request to place a 4'x 8' conservatively lit sign in a residential zone may not have a negative impact on adjacent residential property owners due to the minimal number of residences proximal to the proposed sign location and the vacant land buffer on the west side of the property.

As a result, this request as presented (4'x 8' sign face, 6' overall sign height, possibly eventual illumination with landscaping foot lights) may be within the Spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSIONS:

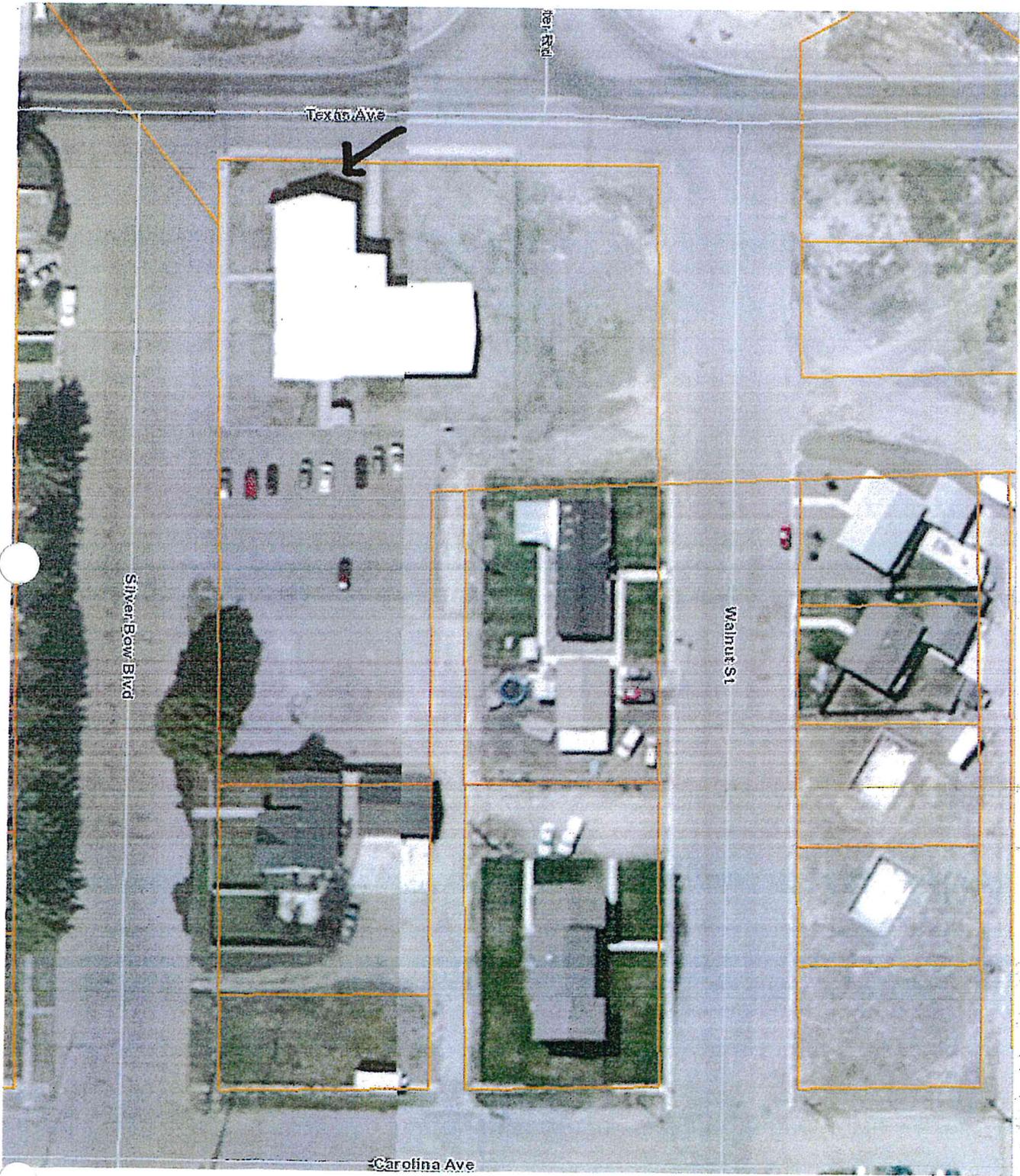
Based on the above discussion, staff would recommend that the Zoning Board approve Variance Application #15161 with the following conditions:

1. The 4'H x 8'W freestanding sign with an overall height of 6' shall be permitted *only* as per the plan submitted for this variance with respect to visual appearance, as well as the proposed location on the submitted site plan.
2. The applicants will be responsible for obtaining the proper permits through the B-SB Building Department.
3. Illumination, if installed at a later date, must be restricted to adjustable landscaping foot lights and shall be aimed directly at the proposed sign to minimize any chance of contributing to light pollution in the residential zone.

4. The sign may only be illuminated from one hour prior to church activities until one hour after the conclusion of church activities.



4' x 8' DOUBLE FACE



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

ITEM: **Variance Application #15165** - An application for a variance by James Richards Jr., owner, and Shawn & Lorrie Roberts, agents, to increase the height of a detached garage with a gambrel roof from fourteen feet (14') to twenty and one-half feet (20½') and to decrease the required parking apron from twenty feet (20') to seventeen feet (17'), varying from the requirements of Section 17.12.040, Building Height Limits, and from the requirements of Section 17.12.020(C), Permitted Uses, of the BSBMC.

APPLICANTS: James Richards, Jr., 3350 Sanders Street, Butte, MT, owner, and Shawn & Lorrie Roberts, 301 Granite Mountain Road, Butte, MT, agents.

DATE/TIME: Thursday, July 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-2" (Two Family Residential) zone, legally described as Lot 14 and the S½ of Lot 15, Block J of the Gilman Addition, more commonly known as 3350 Sanders Street, Butte, Montana.

PROPOSAL: The applicants are proposing to construct a detached garage approximately 25½'W x 27'D (see site plan for further clarification). The southern portion of the garage would be located seventeen feet (17') from the Garland Street property line, varying from the twenty foot (20') parking apron requirement for a garage directly exiting to a public street. The applicants are also proposing to increase the height of the garage to twenty and one-half feet (20½') to accommodate a personal hobby shop, designed to be located in a lofted area of the garage. The requested twenty and one-half feet (20½') exceeds the maximum permitted height of fourteen feet (14') for an accessory building with a gambrel roof by six and one-half feet (6½').

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.10.020, Permitted Uses, requires a garage exiting directly to a public street to have a twenty foot (20') parking apron from the property line. The Butte-Silver Bow Municipal Code, Section 17.10.040, Building Height Limit, restricts the maximum height of an accessory building to sixteen feet (16') in the "R-1" zone.

The applicants' request to place the garage within seventeen feet (17') of a public street property line and to increase the height of the garage to twenty and one-half feet (20½') 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, including alleys.

The applicants are requesting a reduced seventeen foot (17') parking apron from their southern property line along Garland Street to accommodate their proposed 25 ½'W x 27'D (690 square foot) garage. A standard two vehicle garage is 24'W x 24'D (576 square feet). As such, the applicants are requesting to build a garage that is very similar to what is considered necessary to park two cars or two pick-up trucks.

It should be noted that the applicants' property is bordered to the south by an eight foot (8') grass boulevard area. As such, the boulevard would provide an extra factor of safety to buffer the decreased parking apron, allowing for pedestrians to go around a vehicle that may be extended into the public right-of-way without walking in the street.

Additionally, the applicant has submitted photos of garages in the vicinity that have reduced parking aprons, both off of public streets and alleys.

With respect to the requested height variance, height limit requirements have been established by the

Council of Commissioners to protect the public interest by providing specific height limitations in residential zones. The intent of the maximum height limit restriction is to create uniformity within residential neighborhoods, maintain view sheds, reduce visual cluttering and to promote the aesthetic value of our neighborhoods.

As previously stated, the proposed garage is very similar in footprint to the average residential garage. Section 17.12.040, Building Height Limits, of the BSBMC, stipulates that detached appurtenant use structures with gambrel style roofs shall have a maximum height of fourteen feet (14'). The height of the proposed garage is the only factor that sets it apart from average garage standards. The applicants are requesting to increase the height of the gambrel roofed detached garage to twenty and one-half feet (20½') to allow for a lofted personal hobby space within the proposed garage.

The majority of garages around the applicants' property do meet height requirements. Although the applicant has submitted a picture of a recent home constructed above a garage within the same block that exceeds twenty and one-half feet (20½'), it is important to clarify that this project was to create a duplex with one unit being the existing residence and constructing a second story unit with a built-in garage. As such, the structure is a two family dwelling unit. Dwelling height limits are permitted to be two and one-half stories but not exceeding thirty-five feet (35') in height. Therefore, the property that the applicant has submitted is within the permitted height limits. However, accessory buildings have different height limits to abide by.

As stated above, the majority of the garages in the neighborhood do not exceed the permitted height requirements. In addition, the area is primarily composed of one story to one and one-half story single family residences with the exception of the property located on Busch Street. As such, a garage that is twenty and one-half feet (20½') tall may be out of character for the surrounding neighborhood.

The garage height will have the greatest negative impact on the property owners immediately east and south of the applicants' property. A number of mature trees help to buffer views from Sanders Street, as well as along the applicants' northern property line. That being said, property lines adjacent to Garland Street and the alley would have a clear view of the twenty and one-half foot (20½') garage. The neighbor across the alley to the east has a partially shielded view of the proposed garage, as their own garage is adjacent to the alley. The neighbor to the south across Garland Street will have a clear view of the garage from their north elevation windows. Requiring letters of approval from the property owners at 3345 Busch Street, 3346 Sanders Street and 3434 Sanders Street would be a reasonable and appropriate condition of this variance application.

Based on the above discussion, and provided that the adjacent property owners to the north, east and south are agreeable to the proposal, it would appear that the request for a reduced seventeen foot (17') parking apron requirement, as well as the request to increase the garage height to twenty and one-half feet (20½') may 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 applicants' lot is 112'D x 49'W, a total of 5,488 square feet in area. These dimensions are slightly smaller than lots created after the implementation of the Butte-Silver Bow Zoning Ordinance, as per Section 17.12.050, Minimum Lot Area, and Section 17.12.060, Minimum Lot Width, of the BSBMC. These dimensions, when paired with the required setbacks, significantly limit the potential garage's footprint. This could be interpreted as a mild hardship associated with the property's shape.

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 applicants to develop their property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

It should be noted that the applicants would be able to construct an average sized garage (24' x 24') and meet the required twenty foot (20') parking apron requirement. That being said, the eight foot (8') boulevard area between the applicants' property and Garland Street would help to mitigate any safety concerns that may arise from allowing a three foot (3') reduction in parking apron.

Staff understands the applicants' desire to provide space for personal hobbies within the proposed garage, as well as the restrictions to available footprint space. However, it should be explicitly stated that this support does not extend to providing for additional living quarters above the main portion of the garage. This is not something requested by the applicant but simply a clarification of the extent of Planning Staff's support.

In regards to the requested height variance, the main issue concerning this variance is the visual impact of the garage on their neighbors' view sheds. At a minimum, the applicants will be required to secure letters of approval from the property owners at 3345 Busch Street, 3346 Sanders Street and 3434 Sanders Street.

Based on the discussion above, if the applicants were agreeable to obtaining support from their adjacent neighbors, their requested variance may be within the spirit of the Zoning Ordinance.

CONCLUSION: Based on the above analysis, staff recommends that Variance Application #15165 be approved subject to the following conditions:

1. Prior to receiving a building permit, the applicants will be required to secure a letter of approval for the proposed garage from the property owners at 3345 Busch Street, 3346 Sanders Street and 3434 Sanders Street.
2. At no time, nor for any reason, shall the loft area above the garage be utilized as a secondary living space nor shall plumbing be allowed within the structure.

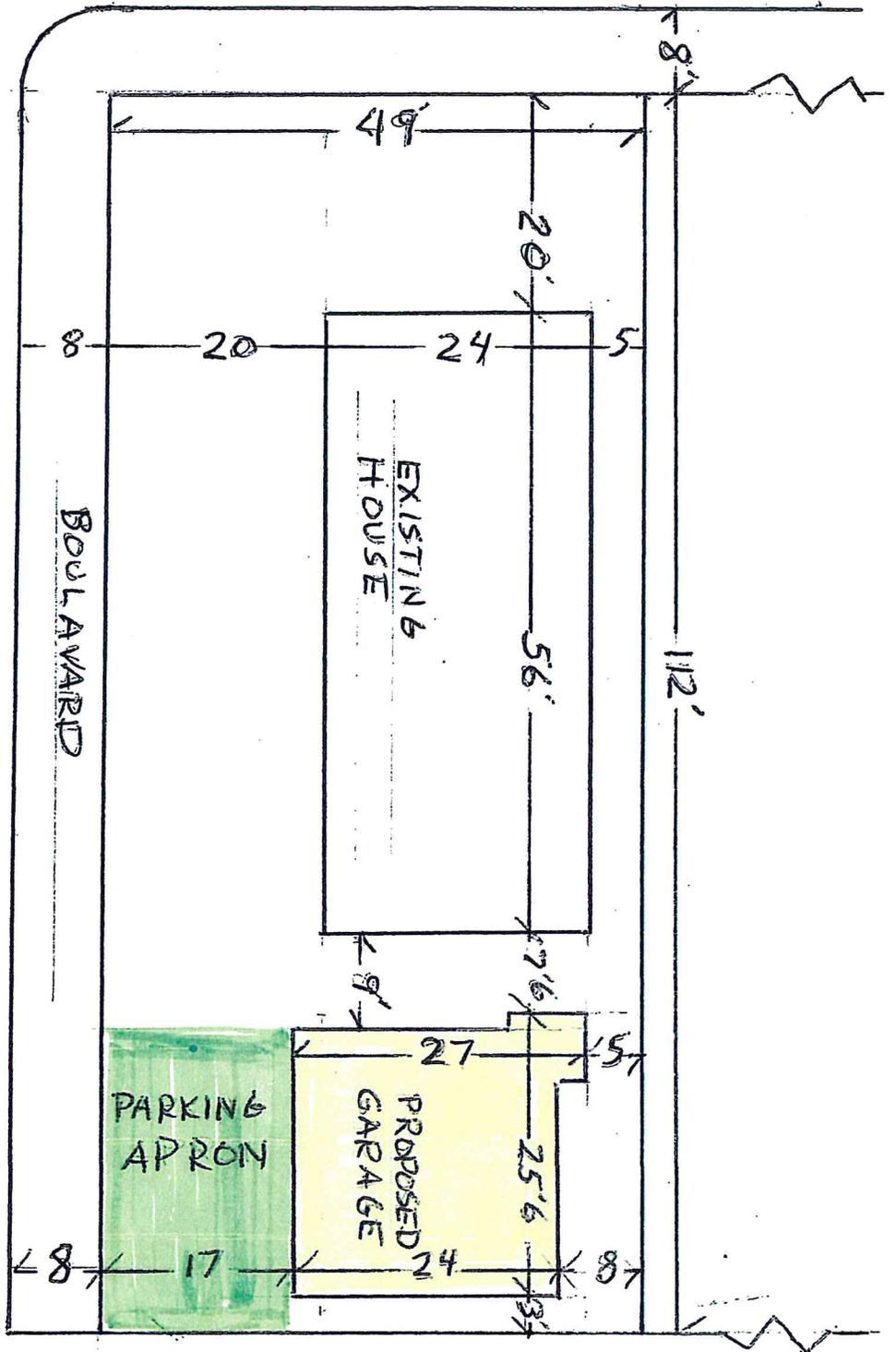
3350
SANDERS



GARLAND

BOULEVARD

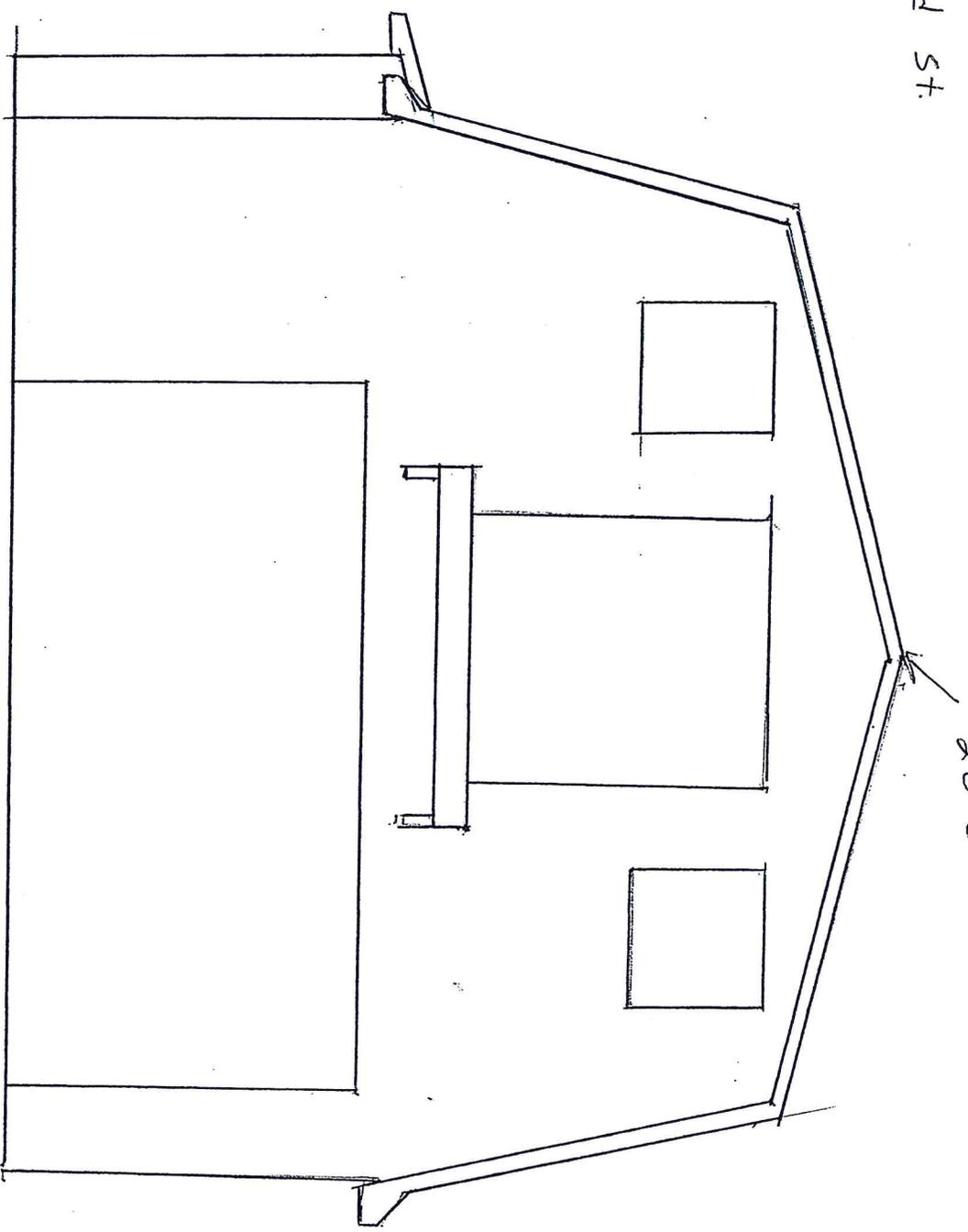
SITE MAP



ALLEY

AS VIEWED FROM GARLAND ST.

HEIGHT FROM GROUND
TO PEAK OF ROOF
20'6"



FRONT ELEVATION

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

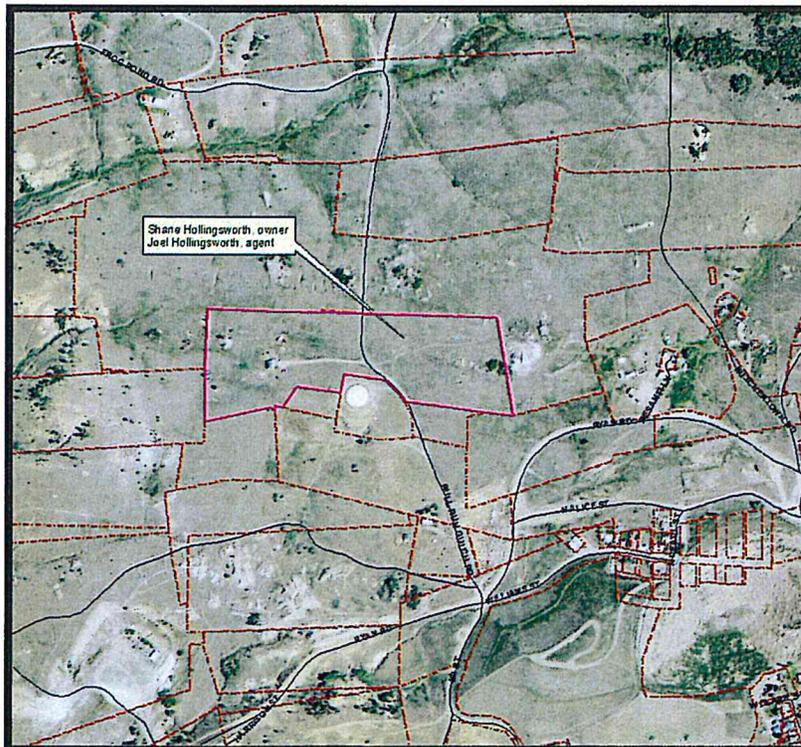
ITEM: Use Variance Application #15170 - An application for a use variance to locate a 1977 single-wide (Class C) manufactured home in a single family suburban zone, varying from the requirements of Section 17.08.020, Permitted Uses of the BSBMC.

APPLICANT: Shane Hollingsworth, 53 W Broadway, Butte, MT, owner, and Joel Hollingsworth, 53 W Broadway, Butte, Montana agent.

TIME/DATE: Thursday, July 21, 2016, at 5:30 p.m., Council Chambers, Third Floor, 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-1S" (Single Family Suburban) zone, legally described as Parcel 1520B, Certificate of Survey 873 B, also known as the Illinois #1520, portion of the Silver Lick #1010, Sunday #9967, portion of the Kerry #2478, and a portion of the Snowdrift #287 commonly known as 3315 Bull Run Gulch, Butte, Montana.

PROPOSAL: The agent has purchased a 1977 manufactured home from out of the county and has had the home moved onto the property. The agent is seeking approval to allow the manufactured home to be set up on the property while he constructs a residence. The manufactured home would be on the property for approximately four to five years until a residence is built.

STAFF

FINDINGS: Although the applicant has indicated in his application that the manufactured home is temporary and will only be on the property until the agent can build his residence, staff's analysis of the use variance is not based on this manufactured home being "temporary". A structure that will be on a property for 4-5 years does not qualify as a "temporary" structure. "Temporary" for the purposes of a structure is considered to be six months or less and in this particular case the applicant/agent did not submit any plans for constructing a single family home.

In 2014, the Butte-Silver Bow Council of Commissioners asked the Planning Board to consider limiting the placement of pre-1976 mobile homes in Silver Bow County and to look at the placement mobile homes/manufactured homes on individual lots in general and determine if some zoning changes were required. In January 2015, staff conducted research and held four (4) public outreach

meetings to discuss possible amendments to the Zoning Ordinance. Ultimately, after careful consideration and public hearings before the Planning Board and Council of Commissioners, the Zoning Ordinance was revised to reflect a number of changes deemed appropriate, specifically to Section 17.37 – MANUFACTURED HOMES, PARKS AND INDIVIDUAL MANUFACTURED HOMES. The amendments to the Ordinance were approved and became effective August 15, 2015.

Prior to the adoption of the amendments, the Planning Board and the Council of Commissioners reviewed the proposed amendments through an analysis of 14 criteria. A few of the criteria that are of particular importance to this amendment are: will the new zoning promote health and general welfare, will the new zoning secure safety from fire, panic and other dangers and will the new zoning conserve the value of buildings. Both the Planning Board and Council of Commissioners found that the amendments met the 14 review criteria.

One of the adopted amendments revised Section 17.37.050 (Manufactured Home, Class B) and specifically the criteria of the Class B designation, as follows:

A manufactured home constructed after October 24, 1994, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development (USC 42 Sect. 5401) that were in effect at the time of construction but does not satisfy the criteria necessary to qualify the home as a Class A manufactured home.

A Class A manufactured home is a manufactured home constructed after October 24, 1994, that meets the construction standards of the U.S. Department of Housing and Urban Development

(USC 42 Sect. 5401) that were in effect at the time of construction and satisfies each of the following additional criteria:

- A. The home must be a double-wide with two or more sections, being basically rectangular when assembled.*
- B. The roof shall have sloping lines with eaves, such as gable, mansard and shed-style roofs, or shall be compatible with conventional built homes in the surrounding area. The roof shall be finished with a type of shingle that is commonly used in standard residential construction.*
- C. The exterior covering material shall be similar, or closely compatible with that found on conventionally built residential structures. Reflection for the exterior siding shall not be greater than from siding coated with white gloss exterior paint.*
- D. A permanent, weather-retardant skirting installed around the perimeter of the home. The skirting shall be compatible with the exterior siding or made of standard foundation materials.*
- E. A permanent code-approved foundation placed under the home for proper support. The home shall be permanently anchored to the foundation.*
- F. The tongue, axles, transportation lights and removable towing apparatus shall be removed after placement on the lot before occupancy.*

G. *The home shall meet all the development standards of the zone which it is located.*

It should also be noted that the applicant's property is considered a part of the city limits of Walkerville. In February of 2016, the Town of Walkerville requested to zone the area within the Walkerville City limits. This area has historically been unzoned. The Walkerville Town Council believes that zoning will provide land use guidance that will help to preserve property values and encourage more development. Zoning will prohibit inappropriate land uses and encourage appropriate uses that are constructed to setback and lot coverage regulations that promote public health and safety. As such, the applicant's property was recently zoned "R-1S".

Consequently, the applicant's request to locate a 1977 manufactured home does not meet the new criteria of a Class B manufactured home. Thus, a use variance to locate a Class C manufactured home on the property requires approval from the Zoning Board of Adjustment.

It should also be noted that the owner inquired about what permits were required to locate the manufactured home on the property. At that time, staff explained the amended regulations to the applicant. It was during this conversation that staff became aware that the agent (the owner's son) had already purchased the manufactured home and it was en route to the property. Staff advised the owner that he would need to request and receive approval from the Zoning Board to keep the manufactured home on the property.

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

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

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

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

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

The amendment to the Class B manufactured home criteria was put into place intentionally to restrict manufactured homes that were built prior to October 24, 1994, from being located on individual lots within any zoned area of Butte-Silver Bow County. In 1976 the U.S. Department of Housing and Urban Development (HUD) began to regulate the construction of mobile/manufactured homes pursuant to the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974. The Act required that manufactured homes constructed after June 15, 1976, be constructed to minimum design and construction standards and the changes have resulted in a more durable unit, therefore, promoting health and general welfare.

Prior to June of 1976, there were no construction standards regarding mobile homes. Consequently, most models were constructed with little or no insulation, did not utilize 2"x4" wall construction, did not meet access/egress requirements for windows, and did not have walls constructed with sheetrock. According to the HUD regulations, mobile homes constructed prior to June 15, 1976, were not considered manufactured housing.

In 1994, HUD amended the Manufactured Housing Construction and Safety Standards to provide for greater protection for manufactured home construction from wind damage.

With regard to **Use Variance Application #15170**, the manufactured home does appear to have a new roof and siding. Although the materials and slope of the roof line and eaves do meet the criteria outlined for a Class A, the year that the home was manufactured is 1977.

In order to ensure that manufactured home manufacturers construct homes that are in compliance with HUD's Manufactured Housing Construction and Safety Standards, they must employ a Design Approval Primary Inspection Agency. At the time of construction this home was inspected and met the standards required for a 1977 model. Although the exterior of the applicant's home looks similar to that of a 1994 or newer manufactured home, the overall construction of the unit was not built or inspected to be approved as meeting the 1994 standards.

B-SB's newly-adopted rules were not intended to displace any homeowners who already owned pre-

1994 manufactured homes in the zoned areas of Butte-Silver Bow, hence a "grandfather" clause was included with the amendments to the Ordinance. That being said, the new rules were clearly intended to phase out the pre-1994 manufactured homes on individual lots and require the homes to, at a minimum, meet the standards set forth in 1994.

During the public outreach meetings for the Mobile Home Ordinance changes, there were many questions, some of which were in regard to the types of modifications to mobile homes that could be made to meet the HUD standards. Staff researched this particular question and was directed to information provided from HUD. HUD's response was, "*HUD does not inspect homes. Homes built prior to the 1994 standards even with modifications do not meet the HUD standards and cannot be accepted as compliant with the HUD code.*"

It is also important to note that two public hearings were held regarding the amendments to the manufactured home ordinances. The Planning Board and Council of Commissioners both received many comments in support of the amendments but they did not receive any comments in opposition to the changes.

Another key public interest issue would be the preservation of the character of the existing development in the immediate area. In that regard, the area is suburban in nature with each developed parcel having only one primary residence that is either a stick built home or a Class A (double-wide) manufactured home. In that regard, the applicant's property is legally two separate parcels. The applicant's residence is located on the west side of

Bull Run Gulch on Parcel 1520 B. The proposed single wide manufactured home would be located on the remainder parcel of this survey. It is important to note that although the surrounding area does not have any single-wide homes, Class B manufactured homes are a permitted use. Class B manufactured homes meet all of the criteria of a Class A manufactured home with the exception of being a single-wide. Although the agent's manufactured home meets many of the criteria required for a Class B, it does not meet the year built requirement. As noted above, the remodeling of an older manufactured home does not allow the manufactured home to be reclassified with a different year built per HUD.

Based on the above discussion and the recently adopted amendments to the Ordinance, it appears that allowing a 1977 single-wide (Class C) manufactured home to locate on this property may 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.

In that regard, the property does not appear to have any unique property conditions that would provide a hardship.

Staff will now address Hardship Subcriteria Number One, which states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone. The surrounding properties have been developed with homes that meet the permitted uses of the "R-1S" zoning district. In this particular case, a Class B (1994 or newer single-wide manufactured home) is a permitted use within the "R-1S" district. As such, it does not appear that the permitted uses restrict a reasonable return on the land.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. As previously stated, the developed part of this neighborhood generally consists of one-story, stick-built single family homes or Class A (double-wide) manufactured homes. That being said, Class B manufactured homes are a permitted use in the zone.

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

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

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

pertaining to these issues, a variance may be appropriate.

As stated above, to address concerns about safety and durability, the U.S. Congress passed legislation to enact the HUD Code in the National Manufactured Housing Construction and Safety Standards Act of 1974 to establish comprehensive codes and standards that govern the construction of manufactured housing. In 1994, HUD amended the Manufactured Housing Construction and Safety Standards to provide for greater protection for manufactured homes from wind damage.

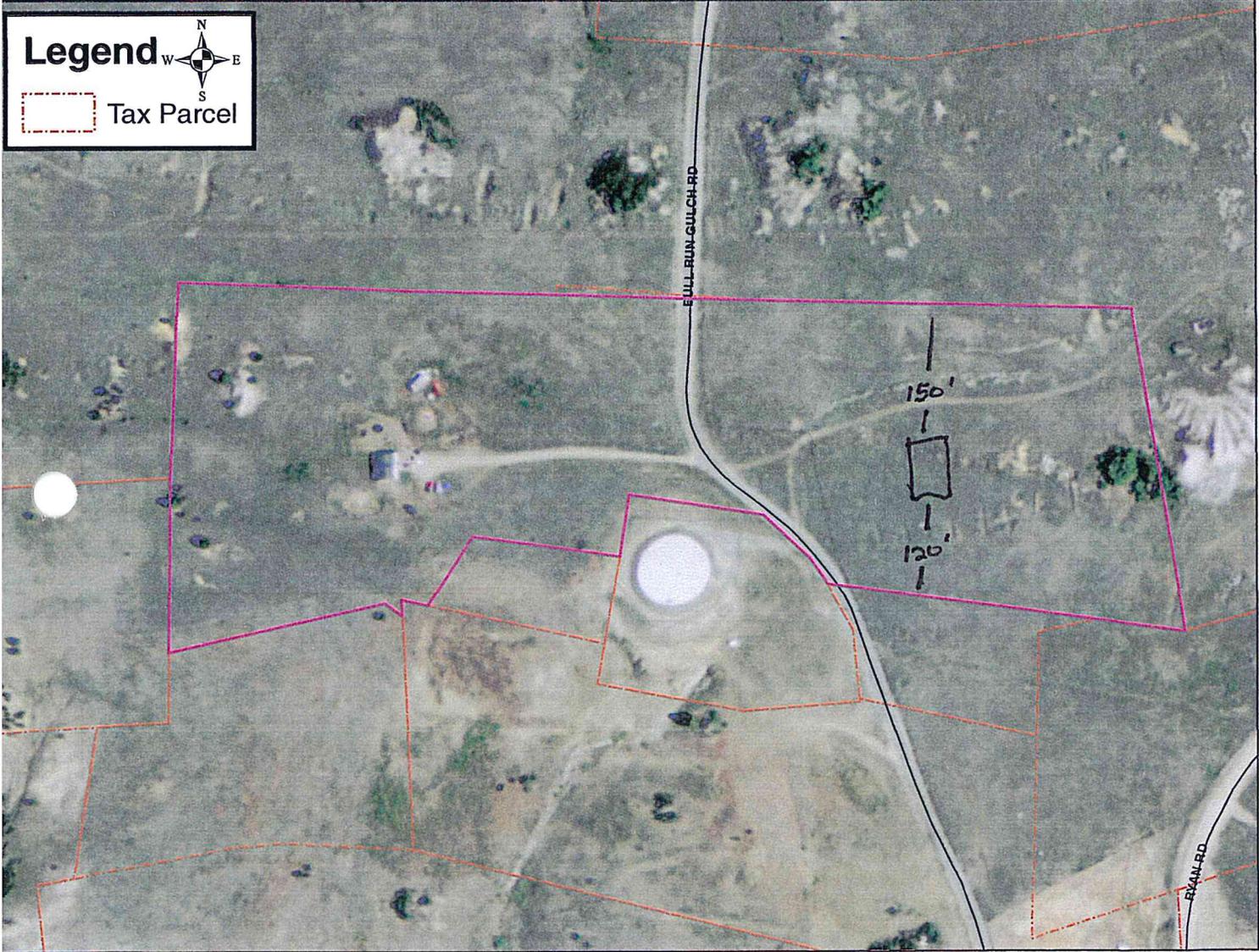
Based on the recent amendments to the Zoning Ordinance, coupled with the purpose for the standards created in 1976 and then amended in 1994 to address concerns about safety and durability, the approval of the variance to locate a 1977 Class C manufactured home on this property would appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above analysis, staff would recommend denial of Use Variance Application #15170.

Legend



 Tax Parcel







OPEN STEELROAD

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

ITEM: Amendment to Condition of Use Variance Permit #14722 – Application #15171 - An application to renew Use Variance #14722 which expired on March 20, 2016, per the Rules of Procedure, Zoning Board of Adjustment, Expiration of Permits, and to amend Condition #3 of Use Variance #14722, increasing the number of allowed semi-tractors from three (3) to six (6).

APPLICANTS: Dickinson Family, LLP, P.O. Box 753, Butte, Montana, owner, and Jeffery Properties, LLC, 468 W. Greenwood Avenue, Butte, Montana, agent.

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

REPORTED BY: Rebecca Farren, Land Use Planner

**VICINITY
MAP:**



LOCATION/

DESCRIPTION: The property is located in an "R-3" (Multi-Family Residential) zone, legally described as a portion of the SE¼ of the Peacock Placer, Section 33, T03N, R07W, more commonly known as 5000 Continental Drive, Butte, Montana.

**PROPOSAL/
HISTORY:**

Dickinson Family, LLP and Andrew Jeremy Dale applied for a use variance in March of 2015. Use Variance Application #14722 was reviewed by the Zoning Board of Adjustment (Board) on March 19, 2015. After hearing public testimony for and against the proposed use of the property, the Board approved Use Variance Application #14722 with three conditions of approval. Those conditions were:

1. Prior to the issuance of a business license for this location, the agent shall submit to Butte-Silver Bow Public Works Road Division for review and approval a detailed engineering plan (including asphalt paving) of the improvements to the driveway approaches.
2. All maintenance of trucks and equipment shall take place within the existing structure.
3. Any increase in the number of semi-tractors beyond three (3) and/or the number of trailers beyond six (6) will require further review and approval from the Zoning Board of Adjustment.

At the time of the approval of Use Variance Application #14722, Andrew Jeremy Dale was a contract buyer of the property in question. Due to extenuating circumstances, he never completed the purchase nor moved his business into 5000 Continental Drive. Since that time, Dickinson Family, LLP has entered into another contract for deed agreement with Jeffery Properties, LLC, c/o John Jeffery.

At this time, the applicants are requesting that Use Variance #14722 be renewed, as it expired on March 20, 2016, prior to being utilized. The applicants are also requesting that Condition No. 3 be amended to increase the number of allowed semi-tractors to three (3). According to the applicants, due to the proximity to both Interstate 90 and Continental Drive, parties interested in this particular property have been those associated with commercial uses.

Based on the lack of utilization of Use Variance #14722, and the larger scope of business associated with Jeffery Properties, LLC, the Planning Department required the applicant to request both a renewal of Use Variance #14722 and an amendment to Condition No. 3.

During the public hearing, several community members and nearby residents spoke in favor of the application. Based on the proposed uses of the building, there was an expectation that any increase in traffic in the surrounding area would be minimal. However, a condition of the approval required the applicant to improve the driveway approaches off of Continental Drive.

It should be noted, the applicant has not made the required improvements to the northern approach off of Continental Drive, because Dale Trucking never actually completed the property purchase. As the agent for the Renew and Amend Conditions of Use Variance #14722, Jeffery Properties, LLC has agreed to correct and complete the deficient paving of the approach, as per his letter, submitted to the Planning Department on July 5, 2016. (See Exhibit).

**STAFF
FINDINGS:**

As there were extenuating circumstances surrounding the lapse in the utilization of Use Variance #14722 because of the contract purchase that wasn't completed, staff would recommend renewal of Use Variance #14722 for an

additional year or until such time as the applicant has fulfilled all of the conditions of approval.

In addition to the renewal, the applicant is proposing an amendment to Condition #3 to increase the scope of the proposed use from three semi-tractors to six (6) semis.,

There are several potential negative impacts/nuisances that may result from increasing the number of semi-tractors as identified below. One potential negative impact that could result from increasing the number of allowed semi-tractors would be a change to the view sheds of the single family residences in the vicinity. With respect to this concern, however, it must be noted that the property is located between existing residences and Interstate 90. Additionally, the current building and property would not change. The only noticeable difference would be three additional semi-trucks parked in the lot on the northern portion of the property. By utilizing some creative landscaping along the existing chain-link fence, the applicant could help to mitigate these potential negative impacts.

Additionally, the applicant has stated that he has access to space outside of residential zoning where he will store equipment and materials that are beyond the scope of this Use Variance. In order for Staff to support the approval of the renewal and amendments to Use Variance #14722, it must be reiterated that there shall be no outdoor storage of equipment and/or materials with the exception of the explicitly stated semi-trucks and trailers.

A second potential negative impact that staff has considered is a possible increase in noise level that may be detrimental to the surrounding residential uses. That being said, the property in question is immediately adjacent to both Interstate 90 and Continental Drive, therefore, the surrounding vicinity is already somewhat accustomed to a higher level of road noise. Still, it is important to respect the proximal property owners and

residents. It would be pertinent to impose a condition requiring activities of the semi-trucks to only occur during reasonable business hours.

Another potential negative impact that could result from increasing the number of allowed semi-tractors at the property in question would be the eventual progression of a construction business within a residentially zoned area. Large construction equipment is historically incompatible with residential neighborhoods and can present concerns not only for aesthetics and noise level but also for public safety. In this regard, it is important to clarify that should the amendments to Use Variance #14722 be granted, the property at 5000 Continental Drive shall at no time expand into a construction yard. The property currently has a fenced yard, which will help to mitigate the safety aspect of Staff's concerns. If the semi-trucks are parked neatly and enclosed within a properly fenced yard, it will ensure that only personnel who have the proper training and experience to work around and operate these vehicles will have access to them.

CONCLUSION: Based on the above discussion, staff believes that, barring significant neighborhood opposition, the requested amendment to increase the number of allowed semi-trucks from three (3) to six (6) may be appropriate for this location, provided that the applicant meet additional conditions as discussed above.

If the Board is inclined to approve the amendment to Condition No. 3, staff would recommend that the Board review the application at the July 2017 meeting to ensure all conditions of approval have been met.

Therefore, staff would recommend approval of the proposed renewal of Use Variance #14722. Staff would also, barring significant neighborhood opposition, recommend approval of the amendment to Condition No. 3, provided the following conditions are met:

1. The applicant shall submit a new cost estimate and bond to the Butte-Silver Bow Planning Department for all of the work remaining under the original conditions. At a minimum, the cost estimate and bond shall include:

a) The installation of paving from any incomplete approaches to the property off of Continental Drive.

The bond shall be the cost estimate for the above items plus ten percent (10%)

2. The Zoning Board of Adjustment shall review Use Variance #14722 at the July 2017 meeting to ensure that the three (3) conditions from the approval of the original application, as well as the conditions of this amendment, have been satisfied, and to ensure that the Use Variance with amendments remains in the best interest of all parties involved.

3. The applicant shall submit to the Butte-Silver Bow Planning Department for approval a detailed plan to provide additional landscaping along the chain-link fence surrounding the yard on the northern portion of the property. This additional landscaping is designed to screen the yard and provide a more residential aesthetic, similar to many of the homes on the west side of Continental Drive.

Once approved, the applicant shall submit a cost estimate and bond to the Butte-Silver Bow Planning Department for the installation of the landscaping aesthetic buffer.

The bond shall be the cost estimate for the above items plus ten percent (10%).

4. Semi-trucks present at 5000 Continental Drive shall not be started and/or idling prior to 7:00 a.m. on Monday-Friday nor prior to 9:00 a.m. on Saturday-Sunday.
5. There shall be no outdoor storage of equipment or materials (including but not limited to excavators, heavy trucks, cones, spare parts, etc.) not explicitly stated in the terms of Use Variance #14722 or in the conditions of this amendment.



CEDAR LAKE CT

SADDLE ROCK RD

INTERSTATE 90 FM

INTERSTATE 90 EWN

CONTINENTAL DR

Truck & Trailer Parking

Equipment

office/shop

Shop Access →

office Access →

200

600



468 W Greenwood Ave
Butte, MT 59701

Phone: 406-494-2867

7/5/16

TO: BSB Zoning Board

* Jeffery Contracting is seeking a use variance at the 5000 Continental location in order to fully utilize the property. Trucks and trailers will be parked neatly on the North/East end of the property, while miscellaneous pickup trucks and small equipment will be parked on the asphalt pad located on the East side of the property near I 90.

*Jeffery Contracting will make improvements to the approach on Continental as previously requested. Asphalt paving approximately 40 feet wide and 60 feet long will tie the existing approach to Continental Dr at the North most access. The South access will continue to be used for office access by automobile traffic only.

* Jeffery Contracting does not intend to store trucks/equipment for a prolonged period of time at this location but rather use the shop when routine maintenance and repairs are required. When completed, the trucks/equipment will be returned to the job site.

*The employees at Jeffery Contracting are well aware of the surrounding neighborhood, the adjacent walking trail, and the daily traffic of Continental Drive. It is a top priority of ours to respect others around us and their property. Jeffery Contracting takes great pride in a clean well organized and presentable work place.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Jeffery", is written over the printed name.

John Jeffery

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

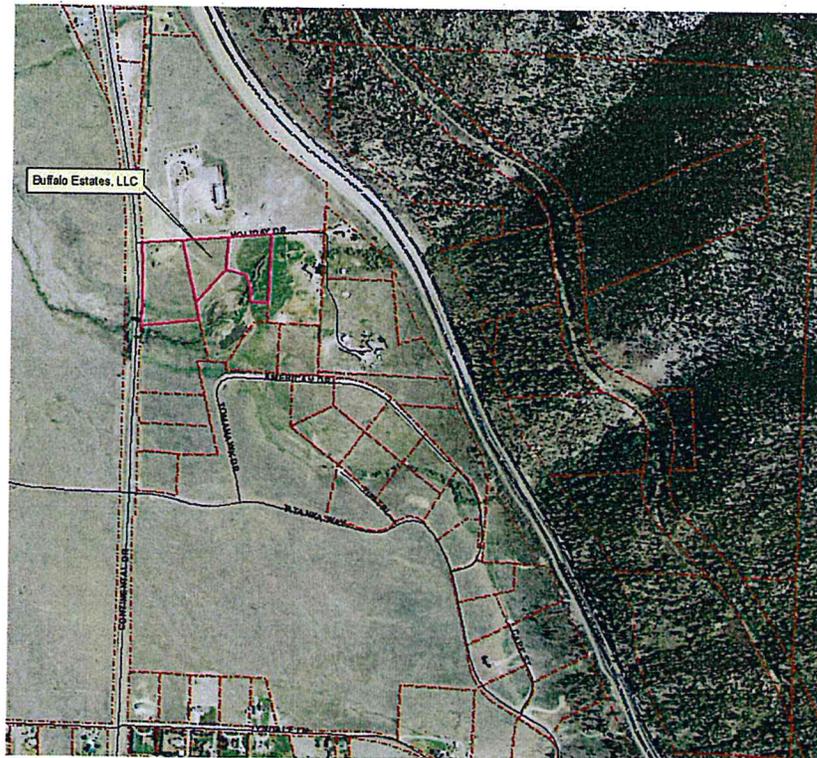
ITEM: Use Variance Application #15175 - An application for a use variance to construct three duplexes on three separate lots in a one family suburban residence zone, varying from Section 17.08.020, Permitted Uses of the BSBMC.

APPLICANTS: Buffalo Estates, LLC, owner c/o David Smith, 101 S Parkmont, Butte, and Arthur Dick, 505 Downhill Lane, Butte, members, and Ross Roylance, 51 Elk Hills, Sheridan, Montana, agent.

DATE/TIME: Thursday, July 21, 2016, at 5:30 p.m., Council Chambers, Third Floor, 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-1S" (One Family Suburban Residence) zone, legally described as Lots 10, 12, and 13 of the Buffalo Estates Phase 1 Subdivision, all generally located south of Holiday Drive and east of Continental Drive, Butte, Montana.

PROPOSAL: The applicants are proposing to construct three, two-story duplexes in a one family suburban residential zone. Each apartment unit would have three bedrooms, 1,511 square feet of living area and a 300 square foot attached garage. Access for the duplexes would be from the currently unimproved Holiday Drive. All three lots are vacant at this time.

**STAFF
FINDINGS:**

Butte-Silver Bow Municipal Code, Section 17.08.020, Permitted Uses, lists the permitted uses within the "R-1S" zone. The applicants' request to construct three duplexes on the properties in question is not a permitted use within this zoning classification. Prior to the applicants' constructing the three duplexes, a use variance from the Zoning Board of Adjustment is required.

Use variances have two subcriteria under the main criteria of hardship. In order to receive a use variance, the applicant must prove, under the first subcriteria, that the land in question cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone.

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

involve elements which make it unwelcome in the neighborhood.

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

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

The public's interest in segregating land uses such as one family residential, two family residential and multi-family residential is to prevent the intensity and development patterns from adversely affecting land uses that are not similar. Therefore, zoning districts are established to separate uses that conflict with each other and to integrate and group compatible uses.

In 2009, the applicants received approval to create Buffalo Estates Phase 1 Subdivision. The subdivision approval was to create 31 lots for suburban residential development. Since the creation of the subdivision, the applicants have sold the lots for one family residential development with the exception of Lot 11. Conditional Use Permit #13180 was reviewed and approved to locate a garden center that would include a greenhouse/retail structure and a greenhouse/event center (Wagner Nursery and Landscaping).

The other developed parcels in this area consist of one family residences that are located on one acre or more. Much of the surrounding vacant land is still utilized for grazing.

Although the applicants did create the subdivision for suburban one family residences, the three duplexes

may provide a buffer and transitional area from the commercial nursery to the north and the one family residences to the south. That being said, it is important to note that the applicants have filed the Final Declaration of Covenants, Conditions and Restrictions for Buffalo Estates Subdivision Phase I. The covenants restrict each lot to one detached single family dwelling unit. In addition, the covenants state that "no lot shall have more than one dwelling house located upon it." It is the responsibility of the Association to regulate the covenants. Butte-Silver Bow does not regulate any covenants. Therefore, to the extent that this use variance is approved, it is important for the applicants to receive approval from the Association.

The main question to be considered with this application is whether three buildings containing two three-bedroom units that would be two stories in height would be compatible with the existing single family houses. The Board should also consider compatibility with any future single family structures.

As noted above, the applicants have sold a number of the lots for one family residential development. However, the lots are located in a zoning district that requires a minimum lot size of one acre. In this particular case the lots range in size from 3.15 acres to 5.51 acres. As such, the lots could be further subdivided to allow for higher density one family homes. At a minimum, the lots could be reconfigured to allow for the six one family homes, this would be the same density of units as is proposed with the three duplexes. In addition, the size of each individual unit (1,511) is that of typical one family homes that are being constructed in the suburban area. The footprint of the building is 29'4"

in width by 60' in length. Because of the large lot sizes and the significant setback distances from the adjoining lots, the footprint should not have a negative impact on single family residences.

In addition to reviewing the compatibility of the duplexes, there are a number of public issues that must be addressed:

The first public interest issue is in regards to the potential for an increase in noise. For instance, an increase in the number of vehicles accessing the property each day compared to single family residences could result in an increase in noise. However, a majority of the vehicles would be parked inside the garages.

Beyond the noise impact of vehicles, it is very difficult to determine whether three duplexes would result in more noise than three single family homes.

A second public interest issue is with respect to an increase in traffic. In that regard, access to the duplexes would be from Holiday Drive. Holiday Drive is currently a dirt road with the exception of the portion that Wagner Nursery was required to pave per their Conditional Use Permit. The proposed duplexes will increase the estimated trips per day (8 trips per dwelling unit) from 24 trips per day to 48 trips per day. With the increase in traffic that will be utilizing Holiday Drive, staff recommends that a condition of approval be to require improvements to Holiday Drive from the end of the pavement to the approach of the most easterly duplex. These improvements must be in accordance with B-SB Public Works' standards. The determination of

whether this portion of Holiday Drive should be paved will be determined by the Public Works Department.

Another public interest issue is the potential negative impact of the duplexes on the availability of on-street parking. In that regard, the Zoning Ordinance requires single family residences and duplexes to provide two off-street parking spaces per living unit. The lot sizes provide for more than ample room to have off-street parking. In addition, the submitted plans call for a 300 square foot garage for each unit.

Lastly, the Zoning Ordinance only permits single family homes on the applicants' properties and area property owners do have a reasonable expectation to be buffered from new, legal nonconforming residential structures.

The Zoning Board will need to carefully consider all public input, particularly from the immediate neighbors, to determine if this proposal is in the public's best interest.

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

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

In that regard, the property does not appear to have any unique property conditions that would provide a hardship.

Staff will now address Hardship Subcriteria Number One, which states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in the zone. The surrounding properties have been developed with homes that meet the permitted uses of the "R-1S". As such, it does not appear that the permitted uses restrict a reasonable return on the land.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. As previously stated, the developed part of this neighborhood generally consists of stick-built single family homes. While the applicants would be constructing two-story duplexes, two-story homes are permitted in the "R-1S" zone. In addition, the structures will be located on larger parcels, which should help mitigate the design of the duplex versus a single family residence.

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 lots are not serviced by public water and sanitary sewer. When the lots were created through the subdivision process, they were approved by the Montana Department of Environmental Quality for wastewater for single family residences. The applicants are now proposing to change the use from single family to multi-family. As a result, the applicants will be required to undergo DEQ review for the installation of multi-user wastewater systems.

In addition, the applicants will be required to make any necessary improvements to Holiday Drive so that the road meets the requirements of the B-SB Public Works' standards.

In conclusion, the proposed use is residential, the proposed height of the three duplexes is less than the permitted 2½ stories for a single family residence and the size and location of the structures should have minimal impact on the surrounding residences.

Therefore, if there is no significant neighborhood opposition, then the proposed use variance would appear to be consistent with the spirit of the Ordinance.

CONCLUSION: Baring significant neighborhood opposition, staff would recommend approval of Use Variance Application #15175 with the conditions as stated below:

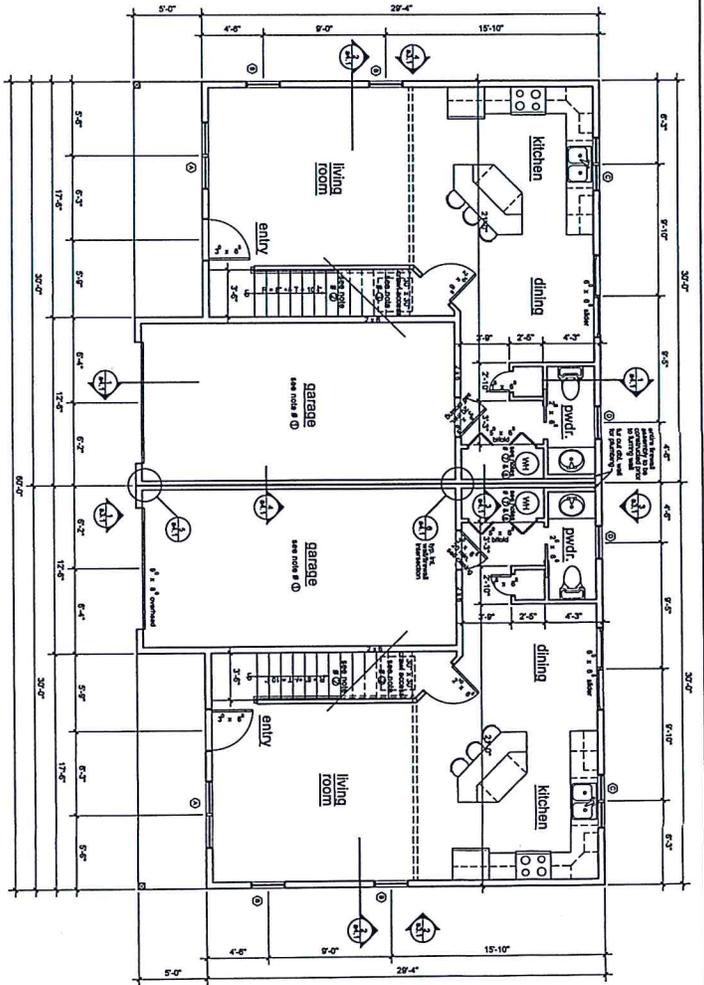
1. At a minimum, the duplexes shall match the design presented in the submittal documents and shall be a maximum height of two (2)

stories.

2. Prior to receiving a building permit, the applicants shall make improvements to Holiday Drive from the end of the pavement to the approach of the most easterly duplex. The applicants shall submit for review and approval an engineering plan for road improvements that meet Butte-Silver Bow Public Works' specifications, based on the approved uses of the property.

The applicants shall install all road improvements or post a bond. The applicants shall submit a cost estimate from a licensed contractor for the costs of the improvements to Holiday Drive. This cost estimate will be used as the road improvement bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

3. Prior to receiving a building permit, the applicants shall receive approval from the Montana Department of Environmental Quality for multi-user wastewater treatment systems and secure a septic permit for each lot from the Butte-Silver Bow Health Department.

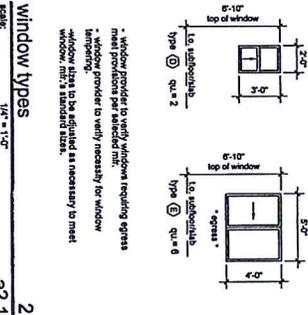
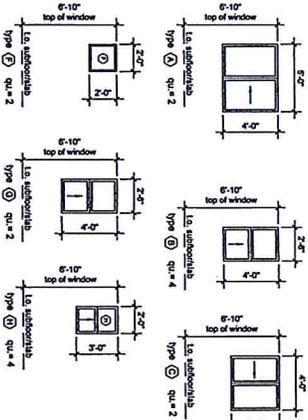


main level plan
SCALE: 1/4" = 1'-0"

1
a2.1

Sq. Ft. SUMMARY

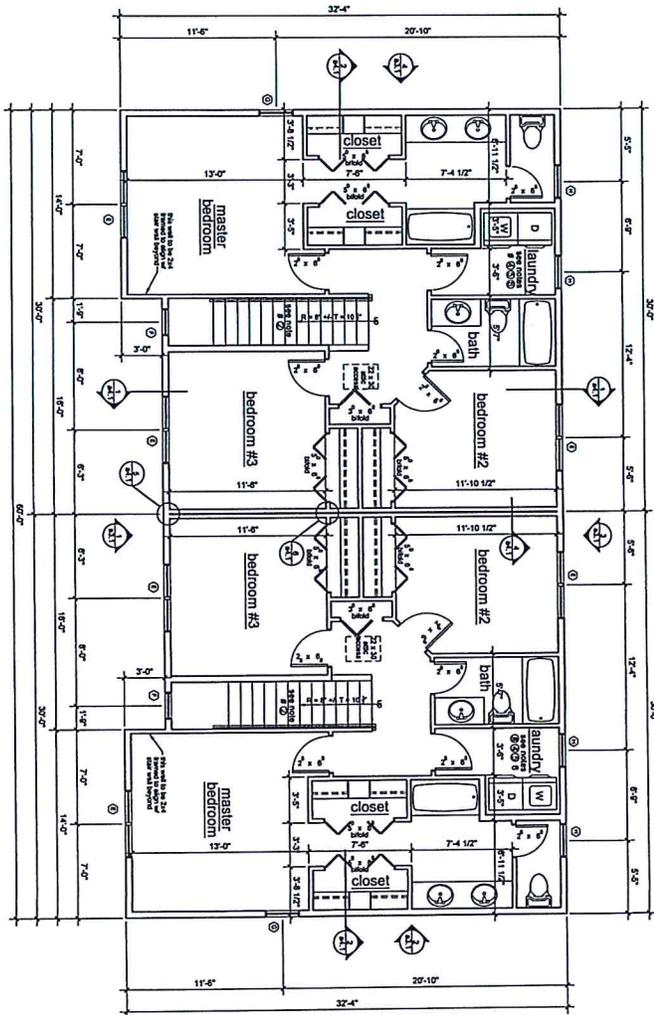
Unit	Lower	Upper
Unit 1	643	688
Unit 2	600	645
Garage	688	600



Window types
SCALE: 1/4" = 1'-0"

2
a2.1

- General Notes:**
1. All window units to be 20" @ 16" or 24" or 30" or 36" or 42" or 48" or 54" or 60" or 66" or 72" or 78" or 84" or 90" or 96" or 102" or 108" or 114" or 120" or 126" or 132" or 138" or 144" or 150" or 156" or 162" or 168" or 174" or 180" or 186" or 192" or 198" or 204" or 210" or 216" or 222" or 228" or 234" or 240" or 246" or 252" or 258" or 264" or 270" or 276" or 282" or 288" or 294" or 300" or 306" or 312" or 318" or 324" or 330" or 336" or 342" or 348" or 354" or 360" or 366" or 372" or 378" or 384" or 390" or 396" or 402" or 408" or 414" or 420" or 426" or 432" or 438" or 444" or 450" or 456" or 462" or 468" or 474" or 480" or 486" or 492" or 498" or 504" or 510" or 516" or 522" or 528" or 534" or 540" or 546" or 552" or 558" or 564" or 570" or 576" or 582" or 588" or 594" or 600" or 606" or 612" or 618" or 624" or 630" or 636" or 642" or 648" or 654" or 660" or 666" or 672" or 678" or 684" or 690" or 696" or 702" or 708" or 714" or 720" or 726" or 732" or 738" or 744" or 750" or 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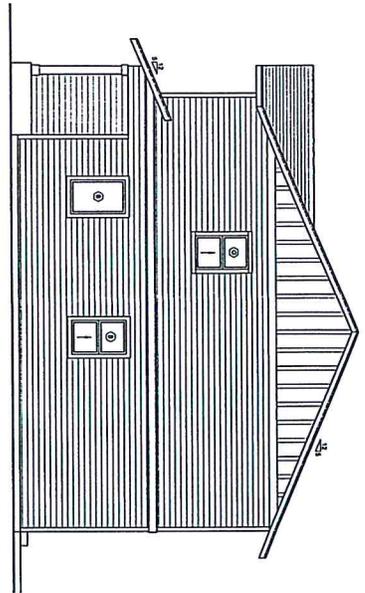


Upper level plan
 scale: 1/4" = 1'-0"

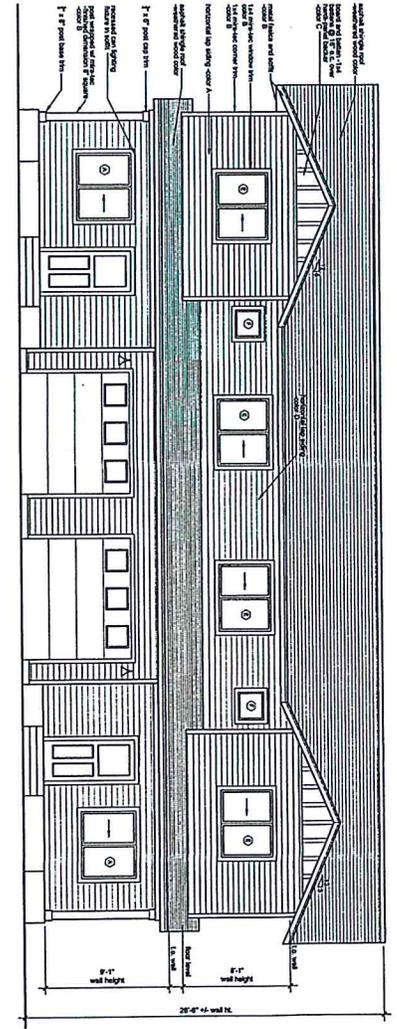
1
 a2.2

- REQUIRED DATA CODES:**
1. all exterior walls to be 2x4 @ 16" o.c. u.s.a.
 2. all exterior walls to have 2" gypsum board on exterior and 5/8" gypsum board on interior.
 3. all interior doors to be solid "2" from the interior wall, unless noted.
 4. provide sound rated insulation at bedrooms and bathroom walls.
 5. provide acoustic partitions in each bedroom, outside of each bedroom wall and 1/2" min. on each side. Acoustic rating shall be 45 db.
 6. provide 6" x 6" joists in bathroom, kitchen, all exterior decks.
 7. provide (1) exhaust fan in each bathroom.
 8. provide high efficiency furnace in each space.
- HEADNOTES:**
1. provide 1" type "X" gypsum board on ceiling and garage walls.
 2. provide 1" rigid polyurethane on each side of stairs.
 3. provide 1" rigid polyurethane on each side of stairs.
 4. provide 1" rigid polyurethane on each side of stairs.
 5. provide 1" rigid polyurethane on each side of stairs.
 6. provide 1" rigid polyurethane on each side of stairs.
 7. provide 1" rigid polyurethane on each side of stairs.
 8. provide 1" rigid polyurethane on each side of stairs.

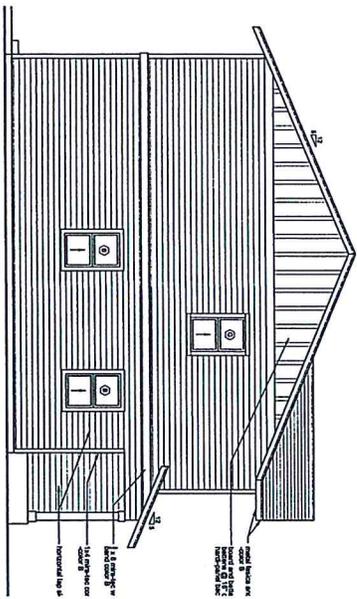
 visser architects	Las Campanas Subdivision Lots 19A & 19B belgrade montana	randy visser, architect (p) 202.9922 randy@visserarchitects.net 163 quiet water way manhattan, mt 59704	drawing a2.2 upper level plan
7 July 2015 Issued for Review	Title: dak. a2.2 upper level plan drawing		



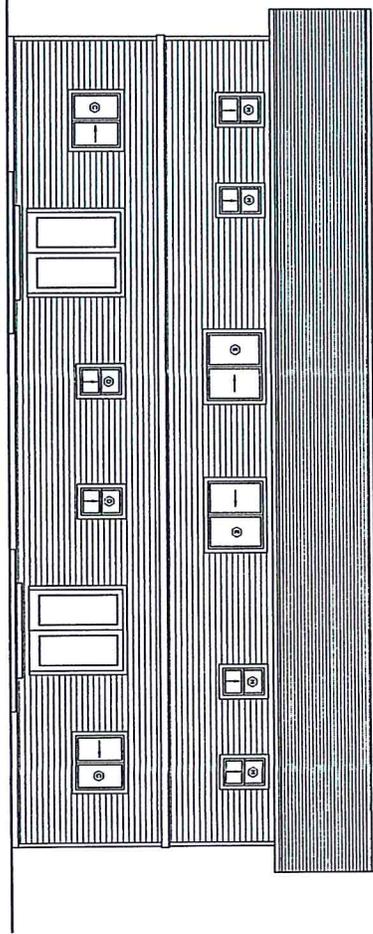
north elevation
 scale: 1/4" = 1'-0"
 2
 a3.1



east elevation
 scale: 1/4" = 1'-0"
 1
 a3.1



south elevation
 scale: 1/4" = 1'-0"
 4
 a3.1



west elevation
 scale: 1/4" = 1'-0"
 3
 a3.1

 VISSLER ARCHITECT	Las Campanas Subdivision Lots 19A & 19B belgrade montana	randy visser, architect (p) 252.9922 randy@visserarchitects.net 163 quiet water way manhattan, mt 59741	drawing a3.1 exterior elevations
issue date: 7 July 2015 issued for Review	2015 issued drawings, s.l.		

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

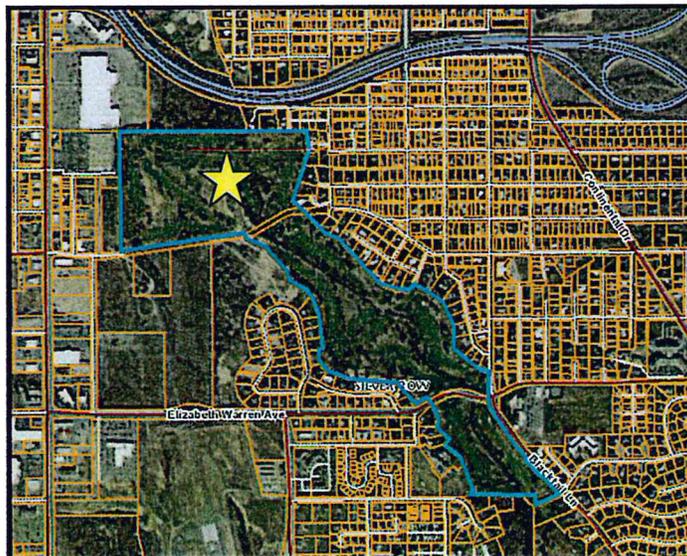
ITEM: Special Use Permit Application #15178 - An application for a special use permit by the Butte Country Club, owner, and Gold Creek Cellular of Montana Limited Partnership, d/b/a Verizon Wireless, c/o Technology Associates EC and Paul Slotemaker, AICP, agent, to install a new seventy foot (70') tall wireless communication tower, disguised as a tree, at the Butte Country Club Golf Course, located in a residential zone, per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC.

APPLICANT: Butte Country Club, 3400 Elizabeth Warren Avenue, owner, and Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless, c/o Paul Slotemaker, AICP - TAEC, 11500 SW Terra Linda Street, Beaverton, Oregon, agents.

DATE/TIME: Thursday, July 21, 2016, at 5:30 p.m., Council Chambers, Room 312, 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-1" (Single Family Residential) zone, legally described as a portion of Sections 29, 32 & 33, T03N, R07W, more commonly known as the northern portion of the Butte Country Club Golf Course, Butte, Montana.

PROPOSAL: The applicant is proposing to install a new seventy foot (70') tall wireless communication tower, disguised as a tree, located in a residential zone at the Butte Country Club Golf Course.

STAFF

FINDINGS: Wireless communication towers are recognized as special uses allowed in any residential zoning district, provided that the prescribed use is in harmony with the other uses permitted in the zone and not found to be contrary to the public interest. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding area and the compatibility of the proposed use with the adjoining neighborhood.

The Zoning Board of Adjustment will review the physical conditions, which exist at the location, the conduct and operation of the proposed use and whether the combination of these factors will be compatible with the proposed site and surrounding area.

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

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

Applicant's Response: "The subject property, located at 3400 Elizabeth Warren Avenue, is developed with a 101 acre golf course and country club. The proposed concealed wireless facility will be located on the northern end of the golf course with large setbacks to the nearest surrounding uses.

Surrounding properties are commercially developed to the west, residentially developed to the east, a wetlands to the north and undeveloped to the south. The large setbacks from the site to the surrounding properties measure over 1200 feet to the west, approximately 700 feet to the east, over 650 feet to the north and approximately 500 feet to the south.

As shown in the attached photo simulations (Exhibit B), the proposed monopine design will blend with the many trees near the site. A combination of concealed monopine design, large setbacks to the surrounding properties and nearby trees will help the facility blend in with the character and natural features of the property."

Staff Comments: The communication tower is proposed to be located near the 10th hole of the Butte Country Club Golf Course.

This area of the golf course is traversed by the Basin Creek and Blacktail Creek floodway and floodplains. As such, the applicant will be required to complete an Elevation Certificate to show that the access road and pole location are located outside the 100 year floodplain.

To the west of the golf course is commercial development, to the south and east is residential development and to the north is Interstate 90.

It should also be noted that the proposed tower location is in the vicinity of the Bert Mooney Airport and the runway, and as such, it is imperative that extra precaution be taken so as not to interrupt flight paths or other airline activities.

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

Applicant's Response: "Adjacent buildings over 1200 feet west of the proposed wireless facility are characterized by big box retail at the Butte Plaza and Kmart, as well as smaller professional and office buildings on Monroe Avenue. Buildings located approximately 700 feet to the east of the proposed wireless facility are characterized as single family homes which back up to the golf course. There are no buildings in the wetlands to the north or the undeveloped property to the south.

A combination of the concealed monopine design, large setbacks and on-site trees will help screen and conceal the facility so it will not negatively affect the character and design of the adjacent buildings."

Staff Comments: The building is located in an "R-1" (Single Family Residential) zone. The proposed location is a well-known golf course in the community, associated with a country club and surrounded by single family residences to the east and southeast. There are a number of commercial uses to the far west.

As discussed above, the Bert Mooney Airport is located due south of the proposed tower location and as such, it is imperative that extra precaution be taken so as not to interrupt flight paths or other airline activities.

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

Applicant's Response: "The applicant is aware of no substantial changes in the surrounding land uses since the original adoption of the ordinance codified in this title."

Staff Comments: There have been no substantial changes in surrounding land uses. The property in question and the surrounding properties have historically held residential uses, bordered by commercial uses to the west.

4. Proposed fencing, screening and landscaping.

Applicant's Response: "As illustrated in the attached site plan drawings (Exhibit A), a slatted, sight-obscuring fence and landscaped hedge will screen the equipment cabinets from offsite views. In addition to the sight-obscuring fenced and landscaped screening, the large setbacks of the proposed facility, approximately 700 feet from the nearest homes to the east, will further reduce the visibility of the proposed facility from offsite views."

Staff Comments: The applicant has properly described the proposed fencing, screening, and landscaping. A detailed landscaping plan has been submitted with this application, in accordance with Section 17.38, Special Provisions, of the BSBMC.

5. Proposed vegetation, topography and natural drainage.

Applicant's Response: "As illustrated in the attached site plan drawings (Exhibit A), only the proposed facility's equipment cabinets and

monopine support structure will be located on the ground. A proposed juniper landscape hedge planted around the perimeter of the facility will help screen and soften views of the facility. No significant vegetation will be removed as a part of this application. The topography and natural drainage of the property will not be affected as a part of the application.”

Staff Comments: Staff would concur with the applicant’s response.

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

Applicant's Response: “The proposed facility is a passive, unoccupied facility that generates approximately one maintenance visit a month. Access will be provided via an extension from the existing access off of Burning Tree Lane. Parking will be provided on the driveway in front of the proposed site area. Access is illustrated in the attached site plan drawing (Exhibit A).

Staff Comments: Staff concurs with the applicant’s response. As noted in other sections of the report, the applicant will be required to submit an elevation certificate for the proposed extension of the existing road.

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

Applicant's Response: “Not applicable. The proposed facility is unoccupied and does not generate pedestrian traffic.”

Staff Comments: Staff concurs with the applicant's response.

8. Proposed signs and lighting.

Applicant's Response: "Proposed lighting will be limited to small work lights to illuminate the ground equipment during evening maintenance visits (typically once a month). Per the FAA's attached Determination of No Hazard to Air Navigation (Exhibit C), marking and lighting are not required for the proposed wireless communication facility. Small identification and required safety signs will be posted at the site. No large advertisement signs are proposed."

Staff Comments: Prior to receiving a building permit, the applicant will be required to receive official certified approval from the FAA for the specific tower specifications and location. This would include the installation of any required lighting on top of the tower.

9. All potential nuisances.

Applicant's Response: "There are very few, if any, nuisances associated with the proposed wireless facility. The proposed facility is a passive, unoccupied use. Its only interaction with other uses in the neighborhood is providing wireless telecommunication services to customers in the area. There are no activities associated with the site that will produce airborne emissions, odor, vibration, heat, glare, radioactive materials, or noxious and toxic material. Because the facility does not have water or sanitary facilities, it will generate no wastewater."

Despite the minimal visual impacts of the proposed facility, there are many public benefits to be gained including additional capacity for more reliable wireless service and increased safety by quickly connecting those in need with emergency services.”

Staff Comments: A sixty-five foot (65') tall monopine telecommunications structure in the midst of the Butte Country Club Golf Course is likely to have light-moderate impact both on the surrounding property owners and on the character of the area. The screening, as proposed, will blend reasonably well with the existing surroundings, however, a small degree of aesthetic change to the building is inevitable with the installation of a commercial structure in a residential area.

At this time, the main anticipated nuisance is with regard to visual impact. This potential for slight visual impact must be weighed against potential benefits that approving this special use permit may provide.

10. Public safety and health.

Applicant's Response: “The wireless facility is being proposed at the subject location in response to increased demand for wireless services by residents, commuters, businesses and their customers in the area. Existing wireless facilities serving the area are currently overloaded with customer calls and need additional capacity to handle the high volume of calls in this area. As a result, an increasing number of customers are being blocked or prevented from initiating or receiving calls. This problem is expected to get worse in the future. The proposed wireless facility would alleviate this problem by creating additional capacity.

The improved service provided by the proposed facility will improve access to Verizon Wireless' network and improved reliability and access to E911 and emergency services such as police and fire who serve the area. This is particularly important when traditional landline phones are inaccessible or not working, which is often the case for stranded motorists, after a severe storm or earthquake, or the result of other types of emergencies. Law enforcement agents, neighborhood watch programs and individuals use wireless phones in emergency situations to improve emergency service with reduced notification times, improved response times, improved knowledge for emergency response teams and an increased number of life-saving outcomes.

The proposed facility is a passive, unoccupied use. Its only interaction with other uses in the neighborhood is providing wireless telecommunication services to customers in the area. There are no activities associated with the site that will produce airborne emissions, odor, vibration, heat, glare, radioactive materials, or noxious and toxic material. Because the facility does not have water or sanitary facilities, it will generate no wastewater.

Therefore, due to the passive nature of the facility and its valuable service of providing reliable high speed wireless service and connecting those in need with emergency service providers, the proposed facility will result in a net positive effect on public safety and health."

Staff Comments: Staff's biggest concern with regard to this application is proximity to the flight paths and any potential negative effects on the activities at and

around Bert Mooney Airport. Although the applicant has submitted a study from the FAA, it is imperative that prior to any groundbreaking activities in this area, they have official certified FAA approval for each and every proposed activity associated with both the construction phase and the maintenance phase of this project.

11. The availability of public utilities and services.

Applicant's Response: "The proposed facility requires electric, telephone, and fiber services. All are available at the proposed location. Because the facility does not have water or sanitary facilities, it will generate no wastewater."

Staff Comments: To staff's knowledge there are known utilities available at the proposed site. It is the applicant's responsibility to provide all required services to the site.

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

Applicant's Response: "The proposed facility is a passive use on a large, 101 acre property, which will not interfere with the full range of allowed uses in the R1 district. The facility's small footprint and location in an unutilized area of the golf course leaves plenty of room for future uses on the property.

As stated earlier, the proposed facility is a passive, unoccupied use. Its only interaction with other uses in the neighborhood is providing wireless telecommunication services to customers in the area. There are no activities associated with the site that will produce airborne emissions, odor, vibration, heat, glare, radioactive materials, or

noxious and toxic material. Because the facility does not have water or sanitary facilities, it will generate no wastewater.”

Staff Comments: The existing building utilizes the property in accordance with BSB Zoning and Growth policies. Although the proposed use is most certainly commercial, communication towers are permitted as special uses within all zones. The proposed wireless transmission facility should have little impact on the actual use of the parcel in question, other than the obvious aesthetic change.

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

Applicant's Response: “The proposed wireless facility will enhance and promote the comprehensive development of the immediate neighborhood and community.

The additional capacity and reliable wireless service provided by the proposed site will stimulate balanced, comprehensive development by providing the surrounding area with improved access to the latest in state of the art wireless communication services. Access to wireless services is essential to the prosperity, safety and balanced development of the community. Customers will have access to the latest in mobile technology providing voice and data services including conventional calling, voice mail, caller ID, text messaging, as well as high speed data for mobile internet service and a seemingly endless array of downloadable application services. The proposed wireless facility services are an essential capability in the information age. Such infrastructure is essential to insure that residents

and businesses in this portion of the City receive the same or better wireless service as their counterparts in other areas of the City.”

Staff Comments: Keeping Butte up-to-date with national wireless technology and business operations may be important in promoting the future stability and development of the community.

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

Applicant's Response: “The proposed wireless facility conforms to the objectives of the comprehensive plan and the purpose of this title.”

Staff Comments: The Growth Policy designation for this area is residential. The proposed communication tower is a commercial use but allowable in any zone by Special Use Permit, therefore, it is consistent with the objectives of the Growth Policy that promote residential development in this area.

In the spirit of the Zoning Ordinance, this proposal appears to be a reasonable use based on the analysis of the specific site location, if and only if all conditions associated with this Special Use Permit are met by the applicant.

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

Applicant's Response: “The proposed wireless facility will not impede the conservation of resources and energy or the conservation policy of

Butte-Silver Bow. The passive nature of the unoccupied facility ensures an efficient use of resources and energy. Because the facility does not have water or sanitary facilities, it will not waste water either.

Note that many wireless customers believe that the use of cellular phones can reduce the number of physical trips they must take in a typical business day, resulting in a net energy savings in fuel consumption which translates to conservation of resources and energy.”

Staff Comments: This proposed tower will not substantially impede the conservation of resources and energy.

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

Applicant's Response: “The proposed facility will meet the requirements of the R1 zone. No lot line adjustments are proposed. As illustrated in the attached site plan drawings (Exhibit A), the setback requirements will be met. According to Chapter 17.50.020, height limitations are not applicable to the proposed facility.”

Staff Comments: Although the applicant's response is correct, Chapter 17.34 Airport Zoning takes precedence over all other height requirements. The proposed location is located within the Airport Zoning and as stated in other questions, the applicant will be required to secure FAA approval.

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

Applicant's Response: "The proposed wireless facility will not adversely affect nearby properties or their occupants.

As stated earlier, the proposed facility is a passive, unstaffed use, whose only interaction with nearby properties is providing reliable, state of the art wireless services to nearby properties and their occupants. There are no activities associated with the site that will produce airborne emissions, odor, vibration, heat, glare, radioactive materials, or noxious and toxic material. Because the facility does not have water or sanitary facilities, it will generate no wastewater.

As illustrated in the attached drawings (Exhibit A), and shown in the attached photo simulations (Exhibit B), the proposed wireless facility will be concealed to look like a pine tree to help blend in with the surrounding area and reduce the perceived visual impacts on the surrounding views. Verizon Wireless has taken great care to reduce the visual impacts by utilizing stealth monopine technology, and locating near existing trees to help conceal and blend in with the surroundings. The ability of the proposed monopine to blend in with the surroundings, and the passive nature of the unstaffed use, make for an ideal residential neighbor, with the added benefit of providing state-of-the-art wireless communication services to the surrounding area.

The proposed wireless facility will consist of a narrow, 65-foot tall monopine, designed to blend in with the nearby trees. The structure will be similar in size and bulk to the nearby tall trees in the area. The monopine will have a slim, stealth design and small footprint. The proposed monopine will consist of a pole painted dark brown, with faux pine

branches and antennas concealed within the faux branches and painted to match the tree foliage.

The additional capacity and reliable wireless service provided by the proposed site will stimulate balanced, comprehensive development by providing the surrounding area with improved access to the latest in state of the art wireless communication services. Access to wireless services is essential to the prosperity, safety and balanced development of the community. Customers will have access to the latest in mobile technology providing voice and data services including conventional calling, voice mail, caller ID, text messaging, as well as high speed data for mobile internet service and a seemingly endless array of downloadable application services. The proposed wireless facility services are an essential capability in the information age. Such infrastructure is essential to insure that residents and businesses in this portion of the City receive the same or better wireless service as their counterparts in other areas of the City.”

Staff Comments: While Staff recognizes the efforts of the applicant to disguise the telecommunications tower in order to minimize the visual impact on surrounding properties, they also support the opinions of neighboring property owners and community members.

Whereas the proposed site will provide beneficial services as mentioned above, it is absolutely necessary to involve community members in the decision to provide support or reasonable opposition to this application.

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

Applicant's Response: "No known neighborhood plan has been adopted for this area."

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

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

Applicant's Response: "The proposed facility will be compatible with the existing adjacent buildings, structures, neighborhood, and topography of the area."

As stated earlier, adjacent buildings located over 1220 feet west of the proposed wireless facility are characterized by big box retail at the Butte Plaza and Kmart, as well as smaller professional and office buildings on Monroe Avenue. Buildings located approximately 700 feet to the east of the proposed wireless facility are characterized of single family homes. There are no buildings in the wetlands to the north or the undeveloped property to the south.

Although visible, the proposed wireless facility will not adversely affect any significant natural or cultural resources. A combination of the concealed monopine design, large setbacks and onsite trees will help screen and conceal the facility so it will not negatively affect the character and design of the adjacent buildings.

By locating approximately 700 feet from the nearest residences, potential views of the monopole will be less significant because the concealed monopine occupies a smaller portion of the view. Where

visible, the significance of the views of the facility will vary inversely with distance from the site. That is, the farther away the viewer, the less significant the monopole, because it occupies a smaller portion of the person's view as that person moves farther from the site.

As illustrated in the attached drawings (Exhibit A), and shown in the attached photo simulations (Exhibit B), the proposed wireless facility will be concealed to look like a pine tree to help blend in with the surrounding area and reduce the perceived visual impacts on the surrounding views. Verizon Wireless has taken great care to reduce the visual impacts by utilizing stealth monopine technology, and locating near existing trees to help conceal and blend in with the surroundings. The ability of the proposed monopine to blend in with the surroundings, and the passive nature of the unstaffed use, make for an ideal residential neighbor, with the added benefit of providing state-of-the-art wireless communication services to the surrounding area.

The proposed wireless facility will consist of a narrow, 65-foot tall monopine, designed to blend in with the nearby trees. The structure will be similar in size and bulk to the nearby tall trees in the area. The monopine will have a slim, stealth design and small footprint. The proposed monopine will consist of a pole painted dark brown, with faux pine branches, and antennas concealed within the faux branches and painted to match the tree foliage.

Because the wireless site is an unstaffed passive use, it will not alter the character of the surrounding area. After an initial construction period of 30 to 45 days, the only traffic generated will be routine maintenance visits, typically once a month. There

are no activities associated with the site that will produce airborne emissions, odor, vibration, heat, glare, radioactive materials, or noxious and toxic materials. All equipment and materials needed to operate the site will be located inside an equipment room in the building. Because the facility does not have water or sanitary facilities, it will generate no wastewater. The proposed passive use of the proposed facility will be compatible with adjacent development and surrounding land uses.”

Staff Comments: This question has been adequately addressed previously in this report.

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

Applicant's Response: “The applicant is not aware of any public opinion regarding this application.”

Staff Comments: Staff will make available all correspondence received regarding this application prior to or at the meeting.

CONCLUSION: Based on the above discussion, it appears that a wireless communication tower disguised with the aforementioned monopine design may have an acceptable level of impact on the character of this residential area and the surrounding airport. However, the level of acceptability is heavily dependent both on community and FAA support. Therefore, staff recommends that barring significant neighborhood opposition, the Zoning Board approve Special Use Permit Application #15178, provided the following conditions are met:

1. Prior to receiving a building permit, the applicant shall provide to the Butte-Silver Bow Planning Department official written approval from the FAA for

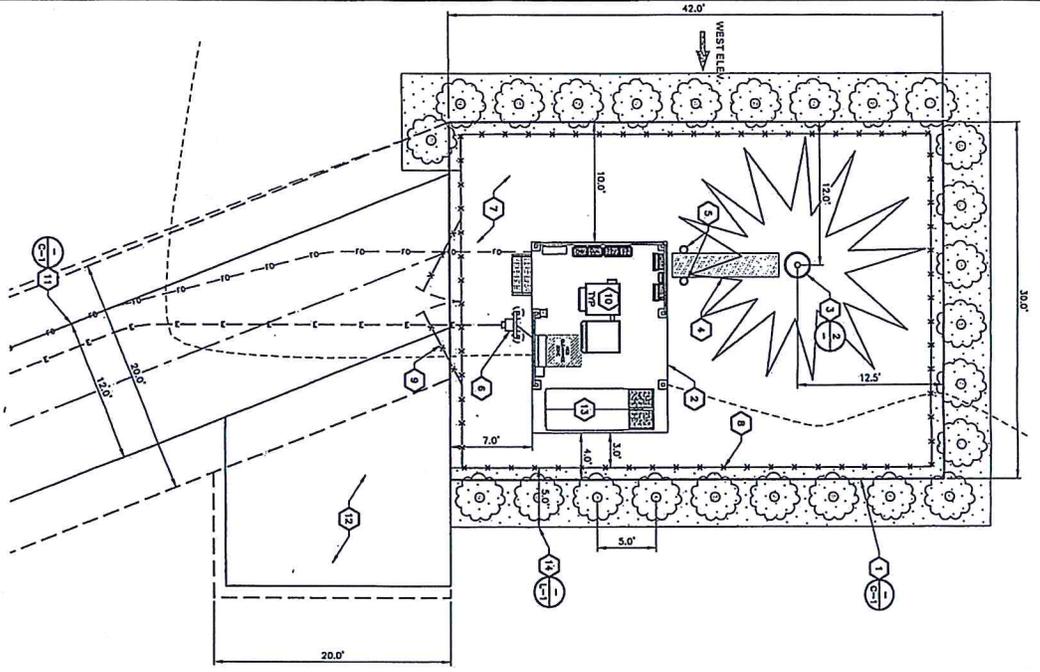
the exact location and specific design of the tower proposed in this Special Use Permit, stating explicitly that no component of the proposed structure (communication frequency, height, structural design, etc.) will pose any hazard or inconvenience to the operations at and around Bert Mooney Airport.

2. Prior to receiving a building permit, the applicant shall submit to the Butte-Silver Bow Planning Department an elevation certificate, stamped by a certified engineer, incorporating all components proposed for the project, including but not limited to, the footprints of the tower and all associated constituents, excavations, and natural or artificial landscaping, as well as any proposed access roads or improvements to existing roads.
3. The applicant shall meet all applicable building, electrical, plumbing, mechanical, fire and health codes and shall purchase all necessary permits from the Butte-Silver Bow Building Code Department.
4. The approval of this special use permit is for the specific wireless communication tower submitted with this application. Should the applicant choose to, at any time in the future, alter the approved design of the structure, further review from the Zoning Board of Adjustment will be required.
5. Prior to the issuance of a building permit, the applicant must submit a cost estimate from a licensed landscape contractor for the materials and installation of the landscaping. Once approved, this cost estimate will be used as the landscaping bond amount plus ten percent (10%).

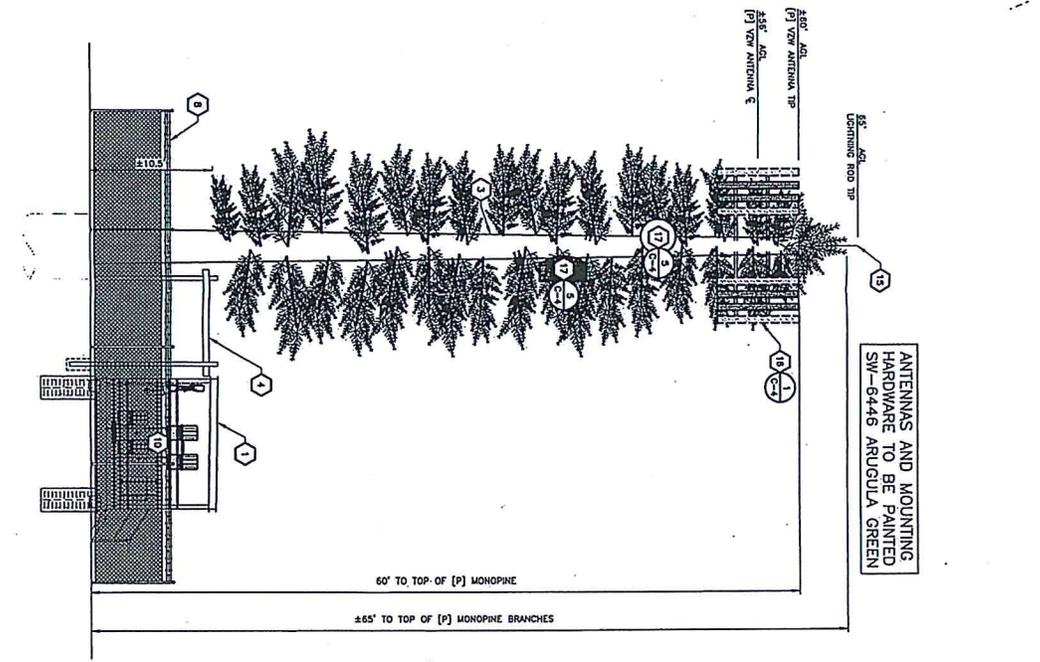
This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

CALL BEFORE YOU DIG 800-424-5555

1 ENLARGED SITE PLAN
SCALE 1" = 10'



2 WEST ELEVATION
SCALE 1" = 10'



PROPOSED CONSTRUCTION KEYED NOTES

- 1 Verizon Wireless Project Area, 42' x 30'
- 2 16'-0" x 11'-6" outdoor equipment platform
- 3 65' monopine with foundation
- 4 2" wide ice bridge, 10' long
- 5 GPS antennas mounted on ice bridge
- 6 Power meter on 4" H-frame
- 7 Gable surface in project area
- 8 6" chain link fence with site surrounding white stanchions, 1" square postcap area, 10' long
- 9 14" swing gate
- 10 View outdoor equipment cabinets
- 11 12' access road in 20' access easement
- 12 Turndown area with gravel surface
- 13 30W emergency diesel generator on platform
- 14 5' landscaping area - see landscaping plan on sheet L-1
- 15 5' lightning rod
- 16 (12) cellular antennas
- 17 (12) view obstructing antennas placed to unobstructed view of building, height and azimuth TBD

SYMBOLS AND ABBREVIATIONS

- POWER LINE
- TELEPHONE LINE
- OVERHEAD UTILITY LINE
- GAS
- UNDERGROUND GAS LINE
- UNDERGROUND WATER LINE
- FENCE LINE
- EXISTING
- PROPOSED
- SPT SELF SUPPORT TOWER
- ← UTILITY POLE
- ← GUY ANCHOR
- ← LANDMARK
- ASPHALT
- CONCRETE
- BUILDING

SITE NOTES

7-2 SITE NUMBER
7-3 SHEET NUMBER



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PRELIMINARY DRAWING

APPROVALS

FINE ENGINEER
ENGINEER
REAL ESTATE
AREA MANAGER
PROPERTY OWNER
ZONING DIRECTOR

REVISIONS

NO.	DATE	DESCRIPTION

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SITE #3
ALT #3
MT6 CONTINENTAL
BUTTE, MT

SHEET TITLE
ENLARGED SITE PLAN AND WEST ELEVATION
C-3