

August 4, 2016

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

MEMBERS PRESENT: David Wing, John Habeger, Tyler Shaffer, Les Taylor, Julie Jaksha and Rocko Mulcahy

ABSENT: Dolores Cooney

STAFF: Jon Sesso, Planning Director
Rebecca Farren, Land Use Planner
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 July 21, 2016, were approved and passed.
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on July 28, 2016.

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

Variance Application #15181 – John Yelenich, agent, was present at this meeting, as the representative for the Estate of Eileen A. Nixon.

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

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

Mr. Wing then asked if Mr. Yelenich cared to step forward and provide some additional testimony or information with regard to the application. Mr. Yelenich asked what they wanted him to tell them. Mr. Wing said anything – he could rely on the staff report or he could tell them something different. Mr. Yelenich said it was exactly as Mrs. Farren had explained it. He said it had always been this way between Ms. Nixon and Ms. Blackwood and her family. They had the lower part and Ms. Nixon had the top part because she wanted a garage built up there and it was a gentleman's agreement basically, that they would share the lot.

Mr. Yelenich said since Ms. Nixon had passed, he didn't know if the new owner would want to be partners with the Blackwoods, so the reason for doing this was to separate it so instead of north and south, it would be east and west, so that the Blackwoods would still retain the bottom part of the lot and Ms. Nixon's Estate would retain the top part where her garage was.

Mr. Wing asked if Mr. Yelenich understood the conditions and were they acceptable. Mr. Yelenich said yes.

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

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

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

Mr. Shaffer said it seemed pretty straightforward for these people to legally sell these parcels. Mr. Wing agreed.

Mr. Shaffer moved to approve Variance Application #15181 with the conditions as outlined in the staff report. Mr. Mulcahy seconded the motion.

The conditions are as follows:

1. Receiving approval to create two (2) substandard parcels of record is only the first step in creating two (2) new legal parcels. In order for the applicants to divide the property, the applicants shall complete a relocation of common boundary survey for review and approval. Upon approval from the Examining Land Surveyor, the applicants shall file the Certificate of Survey and appropriate deeds with the B-SB Clerk and Recorder.
2. The applicants shall amend each deed for the properties located on Main Street to include their respective lot across the alley. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on Main Street.
3. The deeds shall be filed in conjunction with the Certificate of Survey with the B-SB Clerk & Recorder.
4. Any further development on the newly created substandard lots shall abide by the regulations of the Butte-Silver Bow Zoning Ordinance.
5. Any deviation or change from the terms and conditions of Variance Application #15181 must be brought before the Zoning Board of Adjustment.

At this point the Board voted on the motion.

Variance Application #15181 – Conditionally Approved

John Habeger	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

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

Mr. Wing said all six votes were "For" the motion, which meant that the application had been approved, and he would be receiving a letter from the Planning Department to that effect.

Variance Application #15194 – Dennis Reed was present at this meeting.

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

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

Mr. Wing then asked if Mr. Reed cared to add anything additional to the staff report in way of testimony. Mr. Reed said right now they could see it was just deteriorated and falling apart. He said he didn't really use the front of his house because he had a side driveway and used the back. He said he just wanted to clean it up because it didn't look very nice at all and he figured a nice front porch out there with a rain gutter and to have chairs out and whatever and start using the front of the house and kind of clean up Front Street a little. He thought it would be a good idea and he thought it would up the value and give the house a little bit more character instead of just looking like an abandoned house in the front.

Mr. Wing asked if the conditions were acceptable to him and Mr. Reed said yes.

Mr. Wing then said it looked like there was a tree or bush there. Mr. Reed replied that the lilac bush would be removed but the tree would not. He said the porch would span the whole front of the house and would be like an open front facing deck with the stairs to it.

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

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

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

Mr. Shaffer moved and Mr. Taylor seconded the motion to approve Variance Application #15194 with the following conditions:

1. The applicant shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.
2. The applicant shall work closely with the Butte-Silver Bow Planning Department and the Butte-Silver Bow Historic Preservation Officer to ensure that the demolition of the porch in question at no time expands beyond the criteria which would initiate necessity of HPC review.
3. The applicant must agree not to utilize any portion of the public right-of-way of Front Street for the construction of the proposed porch, including but not limited to removal of any portion of the sidewalk. If encroachment upon public right-of-way is unavoidable, a Construction Right-of-Way Permit must be applied for prior to the commencement of construction.
4. The applicant shall install rain gutters on the roof of the porch to ensure that all storm water is directed, so that it will remain on his property.

At this point the Board voted on the motion.

Variance Application #15194 – Conditionally Approved

John Habeger	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
Julie Jaksha	For	David Wing	For

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

Mr. Wing said all six votes were “For” the motion, which meant that the application had been approved, and he would be receiving a letter from the Planning Department to that effect.

Mr. Wing said it looked like a great addition.

Variance Application #15195 – Anthony De Zago was present at this meeting.

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

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

Mrs. Jaksha said she didn’t know if they could answer her question or not but later on, when the property was going to be sold, what happened when the survey was done at that time and the structure was built over the property line – what would happen to either homeowner on either side. Mrs. Farren said she would refer that to Mr. Sesso. Mr. Sesso said that would be an encroachment and an encroachment would have to be resolved, as part of the title insurance policy that would be let for a transaction. Mrs. Jaksha asked if at that time the structure would have to be torn down, if it was over, or would it have to be torn down. Mr. Sesso said that would be a matter for the buyer and the seller to work out. He said if the only way to cure the encroachment to the satisfaction of the buyer was for it to get shaved off to the three foot – the cure would be to stop at three feet from the established property line then, wherever it

might be. He said they didn't really know whether the property line was right where everybody thought it was. It could be on the outside edge of the large posts from the neighbor to the west or it could be where the flat slats were or could very well be where the posts were that were installed by the applicant. He said those encroachment questions would get resolved as part of the title insurance policy and would get cured to the satisfaction of the parties involved.

Mr. Wing then asked if Mr. De Zago cared to provide any additional testimony or evidence in respect to his application. Mr. De Zago said his original intention was to put a fence up all along the fence line all the way down and he thought they said he was allowed a six foot fence and asked if that was correct – a six foot height. He said his brother came out to help him and asked if he needed a lean-to and he said he did but wasn't aware of the fact that it had to be set back three feet because another neighbor had one who was eighteen inches from the neighbor's line and another neighbor down the street was within five inches from the neighbor, so his brother assumed it was okay and he assumed it was okay and so they went ahead and continued to build, not realizing there was a three foot setback. He said it was an honest mistake and he was sure if they knew that from the beginning and they probably should have inquired, they would have certainly done it and at least went back two feet or whatever.

Mr. De Zago then said another point was that he had a classic car collection and his cars were very wide. He said he put the cars back in there at times to work on them when he was working on something else. He said it was very hard to get a car, when that gate was open around, to get into there unless someone removed the gate completely. He said the cars had to be under cover and not out in the street at night while he was working in the garage or something. He said there had been a series of vandalism on Hancock in the last two weeks and two of their cars got vandalized. He said he didn't want an antique car out there to be vandalized all of a sudden because he couldn't have a lean-to structure. He said he thought it was very important that his cars weren't something like basket case

cars but were collectable antique cars worth several thousands of dollars and needed to have the protection and one way to do that was putting it back there in the event that he needed to do something overnight.

Mr. De Zago said it was built he thought beyond – his brother was an old contractor and he thought it was built beyond Code but he didn't know what Code was for a lean-to but he thought you could park a car on the roof because it was so sturdy.

Mr. De Zago said he didn't mean to impose on the neighbor by any means and never intended to do that. He said they had expressed to the neighbor that they would put up a storm drain plus a snow barrier on the roof in case something was to happen and in the event something did happen they would pay for any structural damage that would be caused by them on her fence and they offered to make repairs on her fence that was damaged years ago but it had apparently already been redone by someone else but they had offered to do that as well. He said they were all in full consideration of the neighbor by all means and weren't just thinking about doing something for themselves.

Mr. Wing said he took it that the conditions were acceptable to him and Mr. De Zago said yes, he had a contractor coming tomorrow to put the gutter up. He said the water would originally drain off of the thing to the garage and drain down towards the alley and now they could reroute it to drain it back into their yard, which was not a problem, and they would do that.

Mr. De Zago said his yard did slope into the neighbor's property with the way the land was but the water, even if it went there, it would probably eventually over time, if it made a lot of water, as they haven't had that much water to really worry about but if they did, it would probably be saturated in that area and into the alley.

Mr. Taylor said he had one question. He said at the time of construction, the staff report indicated that his roof was

encroaching over the neighbor's fence. He asked him if at the time of construction, did that never raise a concern with him that he might be encroaching on their property with the roof line. Mr. De Zago said the roof – the original roof he thought they were 10 x 20 or 2 x 20 -- 6 x 20 boards shaved off, so if you looked straight down from the side, there was space as they shaved all of those overhangs off and there was nothing overhanging over into her yard. Mr. Taylor said at this time, the roof didn't encroach over fence – no, it didn't encroach over that fence and Mr. De Zago said no, it did not.

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.

Fran Matkins said she was the neighbor on the other side of this fence. She said that was her fence. She said her first concern was definitely the water runoff. She thought the added water would increase the rotting of the boards and the posts. She said she already had to replace one and the one on the corner was rotting too. She said some of the dirt was pushed away and she could see that it was rotting but that was from the snow being banked up against it and from snow-blowing the alley. She said it was sometimes up to three and one-half feet tall up on that corner. She said this would be added water coming off of two roofs – on the other side of the drain pipe there was a roof and it was going to flow down there and then down the new one, so he had two roofs with water coming off.

Mrs. Matkins said she was concerned about the gutters clogging up. She said they did on her house and she thought it was pretty common in Butte that they clogged up with debris and then they froze. She said they cleaned them out quite a bit but they still seemed to freeze even when they were cleaned out. She said she was concerned about someone coming around and marching through the snow and the bushes and bushwhacking and cleaning them out because it looked to her like it could be a lawsuit waiting to happen, not to mention the

injury from someone climbing up there in the winter time trying to loosen it and get stuff out. She had done it before and it was kind of a wobbly thing that she didn't do anymore – not there but on her own house.

Mrs. Matkins said she didn't think her neighbors would monitor it and it would be from her side and for her to watch because of the snow he had piled up next to her fence before. She said he hadn't been very conscious in how to handle snow and snow melt and she had a lot more rotten fence posts along there than just that one and there was another loose one down there within the carport.

Mrs. Matkins said she was also concerned about the sprinkler heads. She said she had some sprinkler heads there and you would get more water and sometimes they didn't close all the way when they got blown out and they could fill up and break and so she would have another expense. She was not convinced that the applicant would take care of the downspouts and gutter and she wasn't convinced that it would go away from her property. She said she wasn't as concerned about the property as she was the wooden fence and them rotting. She was trying to prevent some future problems.

Mrs. Matkins further said that in recent conversations with Mr. De Zago, in which he was trying to extract compliance concerning the lean-to, he stated to her that he would put several rusty junkers in his backyard and she said she thought he could because he had parked his limousine, his stretch limousine and some other cars back there at times. She said that was okay and that he had plenty of room back there and around the corner.

Mrs. Matkins said another time he said he would park his \$60,000 bargain really huge motor home in the space, not there but around the corner and in order to do that, he would probably take trees out, mature trees and bushes and drive it in from the street.

Mrs. Matkins continued by saying that last week, he said he would build a cinder block fence. She said she didn't know if they could see it in the presentation pictures but if you went down by the support posts to the north, by her chain-link fence, that is where she thought he proposed to put it – actually, she wasn't sure where he proposed to put the cinder block fence. She had a picture showing the stakes that were already planted there and guessed he was getting ready to put in the cinder block fence.

Mrs. Matkins said she thought he was trying to intimidate her and trying to bully her and that he was either uncaring or unaware of winter maintenance issues and, therefore, can't be relied on to maintain this property in winter so that it didn't affect her.

Mrs. Matkins said she thought a three foot setback was a good requirement because it respected the needs of both neighbors. As an aside, she said Mr. De Zago had room to place a lean-to elsewhere on his property and the setback requirement would not be an issue.

Mrs. Matkins said she protested the location on this carport so close to her wooden fence and asked to have it removed. She said it was also her hope that the Committee would take into consideration her remarks (she gave written remarks that are attached and made a part of these Minutes).

Mrs. Matkins then presented her pictures to the Board members.

Mr. Wing asked if she reviewed the conditions. She said yes. Mr. Wing asked if she understood the second condition that said at a minimum the gutters and downspouts -- there had to be approval by the staff for the waste water disposal problem, so her concerns would be addressed by the staff and said that something could be done that would hopefully meet her approval. He said the gutters and downspouts were just a minimum and he just wanted to emphasize that.

Mr. Habeger had a question about the picture of the snow removal and said that the post seemed to be bent. He asked if she repaired that then and she said yes and he said, so she repaired it. Mrs. Matkins said in the picture where the snow was blowing up on the fence in front, that was Mr. De Zago and he snow-blew it. She said he was trying to blow it threw those spaces between the boards but it didn't work.

Mrs. Matkins said there was a picture there of the utility pole and her corner fence and that was where it got three feet high from his snow plowing and blowing – that was a post that was also rotting.

Mr. Habeger said on the picture dated August 2nd at 3:30 P.M., was it a picture of the lean-to and the existing garage and Mrs. Matkins said yes. Mr. Habeger asked if the slope of the existing garage went entirely to the west toward her property. She said yes, it did.

Mr. Mulcahy said he had a question for Mr. De Zago. Mr. Wing said okay but not yet. He asked if anybody else had questions of the opponent. There were none.

Mr. Wing said Mr. De Zago now had the opportunity to rebut the evidence by the opponent. Mr. De Zago said he thought they were there that day more concerned about the lean-to than the existing fence that his neighbor was talking about. He said the fence had been damaged over the years even before he purchased the property, which he had pictures of to show that the posts that they saw were all fairly rotten and he could take his hand and practically push the fence over right then, so it was from previous years. He said that fence had probably been up there for thirty years, if not longer, so the water runoff – matter of fact, if you cut that back even two feet from where it should have been, the water would still come down and would still go under her fence the same way it has done, as it was coming down off of the roof. Mr. De Zago said he was the first one to put up a gutter on that house when they bought the property. He said they had been there about a year and a couple of months now and he saw the water going down that

way and didn't want it to go into the property and was thoughtful enough to do that and went up and put a guard all along the outside of that garage, so the water would come down where that stove was and come this direction. He said when the lean-to went up, that was the same thing he planned on was coming this way but since they said it wasn't appropriate to go into the alley, they said okay and they would backtrack it and let it go into the yard.

Mr. De Zago said as far as the fence went, the snow, someone came through the alley and took their snow machine, not even a blower but a full tractor and they pushed it, thinking it was a safe zone and they didn't realize that was an open spot for him to park his car in. He said he thought the neighbor had mentioned that he did that once. He said he came out in the winter and tried to get it away from there. He said in using snow-blowers sometimes you couldn't just get the thing to aim the right way, the way you wanted it to get the snow off – he cleared that so there wasn't a dime's worth of snow anywhere near that fence after she went out and took pictures of him cleaning it up and trying to get it away from there. He said she didn't take any pictures of him after the fact when it was clean, as they saw in the pictures right then in the dead of winter. He said he didn't want any damage to occur anywhere near her property and that was why he did that.

Mr. De Zago then said as far as the fence went that day, she just replaced one of poles that had been rotten for years and was leaning at about a sixty to seventy degree angle – he even offered to replace the whole fence, if she wanted him too, if there were any problems. He said that was the kind of neighbor he wanted to be. He didn't want a disgruntled neighbor because if he couldn't plant a tree or park his motor home in his backyard without the neighbor making an issue over it -- she had said something about bringing in old cars – he was bringing that to her attention that she had the best neighbors probably in the neighborhood living behind her. He said they lived in front and that way they never came out to the back section of the lot and it was a very big lot as they could see on the original maps. He said furthermore, if he couldn't do

something on his own property without being asked, "did you ask me" and that was what she came up and said whenever he had to do something. He said she would want to know if he asked her. He said he didn't know he needed permission to do something in his own yard. He said you couldn't even see the lean-to from the street – from back where her patio was it was so far in the distance, you couldn't even see it. He said if you drove by right now, you would say where was the lean-to. You wouldn't even know it was there and that was the whole thing. It wasn't anywhere near her home and he would never put anything near somebody's house in the first place but as far as the water runoff, the water had been running off since the house was built back in 1956. The garage had been running off of there for years and there was no way to reroute the water once it came off the garage wall, except to put a gutter up there, which he did but the Olds' family who owned the property before they bought it, never had a gutter so he was kind and courteous enough to put it up to try to keep the water and he would do the same thing with the lean-to. He said even if it was set back at two feet or three feet, where it should have been and he didn't put a gutter up there, that water would still be coming down and going into the property and he would probably not put a gutter on it, if he didn't have to with being back three feet because why put a gutter up because it would be falling down in his yard.

Mr. De Zago said it rained a week or two ago and he went outside to see exactly where the water went when it hit the roof. He said at that pitch, the water came and went straight down on their property and never came near her fence. He watched it for twenty minutes, the rain, just to see what happened with no gutter, so with a gutter that water would be channeled away from there completely plus he was putting a snow barrier up there, sort of a retaining wall for any snow that would possibly go that way would have to melt and go another direction. He said he climbed up there once a year to take the snow off because that existing roof of that garage had a slope to it as well and he shoveled the snow off the roof because he didn't want the weight on the roof. He said he did that and he cleaned all of the gutters that he put up around the house all of

the time, once a year religiously and never failed not to do it. He said Mrs. Matkins didn't know him and his wife Loretta that well. He said they barely knew the woman and had only seen her a couple of times, so for someone to come out and make all of these accusations and things and so forth that she was trying to run across – he didn't want to impose on another property owner. He said that was his rebuttal.

Mr. De Zago said what he meant about the junk cars was he said how would she like to have a neighbor that had nothing but junk cars in the backyard that you had to look at every day. That was what he was trying – they were good neighbors and they kept the yard clean and putting a car back there occasionally – it was not a junker, it was a good quality car and that was all he could say. He thought he had said enough and hoped and pleaded for the variance and hoped that he could get it. He thanked them kindly.

Mr. Wing said that Mr. Mulcahy had a question. Mr. Mulcahy said his question had been answered and he was ready to make his decision.

Mr. Taylor asked him when he built the lean-to. Mr. De Zago said about three or four weeks ago possibly. It might have been a bit longer but he thought it was three or four week ago.

Mr. Habeger said the pictures he saw there, did the garage slope anywhere to the east at all – was there a gable roof that would slope half of the garage to the west and half to the east or did it all flow to the west. Mr. De Zago said from the east to the west.

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

Mr. Habeger then said his comments would be there was an existing condition with the topography where he thought the water would go in that direction. He said he liked the condition of adding the rain gutter but it did collect and would flow to the west and it was still going to do that whether it was on the

property line or two or three feet back from the property line. He still had a concern that so much of it did go that way but he also had to say that wooden fences did get old and sometimes they needed to be replaced too.

Mr. Habeger said he guessed their goal that night would be to try to mitigate that future degradation of the fence but ultimately it would just have to be replaced someday.

Mr. Wing said as he had indicated in the comment he made to the opponent, the minimum was gutters and there had to be a plan submitted to the staff for its review to mitigate all damages and that was the condition that was imposed with gutters and downspouts.

Mr. Taylor said he just had one question with regard to the rain gutter condition, he understood the applicant had to bring a plan to them for the rain gutters but after they were constructed, who inspected that to make sure that they were constructed as per the plan and if the water was actually being channeled away from the neighbors rather than towards the neighbors. He asked if that would be the Building Inspector and would he review this. Mr. Sesso replied yes.

Mr. Shaffer moved to approve Variance Application #15195 with the conditions as outlined. Mr. Habeger seconded the motion.

At this point the Board voted on the motion.

Variance Application #15195 – Denied

John Habeger	Against	Les Taylor	Against
Rocko Mulcahy	Against	Tyler Shaffer	Against
Julie Jaksha	Against	David Wing	For

John Habeger, Les Taylor, Rocko Mulcahy, Tyler Shaffer and Julie Jaksha voted “Against” the motion to approve the application.

David Wing voted "For" the motion to approve the application – "Condition No. 2 regarding a plan submitted to the staff for storm water retentions seems adequate."

Mr. Wing said there were five votes "Against" the motion and one vote "For" the motion, which meant that the application had been denied and with regard to their decision that night, he had the opportunity to file in District Court an appeal to their decision with the matter to be filed within thirty days with day number one being the following day. He said with regard to that, he could obtain further information from the Planning staff.

Mr. Mulcahy asked if he could have a follow-up on the process. He asked what this denial meant and how long would the applicant have before he had to either move it back 3 feet, completely remove it or submit a different plan. He asked how this went. Mr. Wing said that was a good question that he would defer to staff. Mr. Sesso said the applicant had already been noticed relative to building without a permit and that it was too close. He said when they wrote the original letters, they indicated that he had a certain number of days to cure the infraction and their choice was to seek the variance. Typically, they offered the applicant five days to respond to them and then a reasonable amount of time to cure the infraction. He said in this instance, he guessed they would have to reissue a violation tomorrow and then give the applicant a reasonable amount of time to cut it back he guessed, to repost the three posts and saw it off and make it three feet from the alley or the neighbor's property. He thought they should be real clear that there was no Building Code that would require any gutters, so if he was compelled to cut it back, he would cut it back and he would be three feet away and then that was what would happen.

Mr. Wing asked Mr. Mulcahy if that answered his question and he said thank you.

Mr. Wing said to Mr. De Zago as he had indicated, he could receive information from the Planning staff about appealing their decision. He said it was basically as he had outlined to him and his options were as Mr. Sesso had indicated.

Mr. De Zago asked if he could ask a question. He said if the neighbor did not make a complaint, he was informed that nobody would have come down to harass him or question him about what was being built. He said the reason he said that was the neighbor did exactly what he did without a permit with electricity and gas in a lean-to right next door and no one had gone down and said he had to take it down or you had to remove it and you had to rebuild it. He said two doors down, the same thing, the neighbor did the same thing and one was three inches from then neighbor's property and nobody went down and said he couldn't have it there and you had to move it back. He said the neighbor didn't complain. He said from what he understood, because they did get a complaint was the reason why they were saying no, he couldn't have it and he found that very ironic because of the fact because if he built it, no one would have ever known because they wouldn't have driven to the backyard to see what was going on – no one would have ever known and he found that amazing that one person, after being there for a year, made an issue of something that could be rectified.

Mr. De Zago said he went through this with the Battaiolas at the house that he owned next door to the beauty salon. He didn't (couldn't hear) and didn't want to go to court to fight that. He dropped all of his cases over it and everything was said – he said you know what, he would just sell the property and move because he already had this home down there that he bought five or six years ago and got out of it. Otherwise, they might still be doing legal battle with that. He said he didn't want to do a legal battle with the neighbor by any means. He didn't want to file a civil suit against her by the way she had been treating him. She hadn't been treating them like a neighbor. He said if a neighbor would be neighborly, they would have come up and said well you know, it wasn't hurting my property and the fence was old and they understood that. He said he was willing to go along with anything. He said if he had to cut it back to the two feet to make the three feet, he would not put a rain gutter on it because he didn't think he needed to because it would be on his property and what difference would that – the rain was still

going to do the same thing whether it was three feet away or if it was where it was right now, it wouldn't stop.

Mr. De Zago said he asked God one night, he prayed to God and asked God, Lord would you please not make it rain on my lean-to, so that the rain would not fall on his neighbor's fence. He said so far, it had been four or five weeks now and they have had no rain, so maybe it would go the whole year, he didn't know but he was just trying to tell them that he was willing to go along with what would satisfy the Board of course and the neighbor. He said he wanted to keep the neighbor happy and there was no question about it.

Mr. De Zago said he would appreciate it if they could reconsider whatever, he didn't know. He thanked them.

IV. Other Business:

A. Southwest Montana Regional Planning Workshop

Mr. Wing asked about the brochure they were given.

Mr. Sesso said there was going to be a training program on September 14th that they were all invited to. He said the focus of it was that it had become a tradition in Southwest Montana that the Southwest Montana Chapter of the Association of Planners has had a round robin workshop in each of the cities in the six county area. He said it was essentially our turn to have a workshop and they had selected this topic to talk about, the adaptive reuse of historic structures and properties. He said as they could see, they had a lineup of speakers who were familiar to them and were going to showcase several of the properties that had done that and how they had gotten financing and the like.

Mr. Sesso said they were all invited and if they wanted to put that on their calendar for September 14th and do a little RSVP, they would even throw in a lunch for them taking the time and that was what that was all about.

- V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:40 P.M.

BY: David Wing
David Wing, Chairman

Jon Sesso
Jon C. Sesso, Planning Director

Submitted by Fran Matkins 3120 Quincy St – adjoining property

My first concern is the water run-off from two roofs, the existing roof and the new attached lean-to roof. I think this added water will increase rotting of the wooden boards and posts of the fence. In my yard there is an underground sprinkler head near the fence / drip line of the roof. I understand that excess water can seep into the head and freezing can cause breakage.

I did not hear from Mr Dezago nor see in the Staff Analysis how the ice build-up and unclogging of a gutter and drain system will be addressed in the winter and into the future. Mr Dezago is elderly and bush whacking on my property would be the route he or a workman may ask to approach a problem of ice/drainage in winter. Climbing a ladder and stumbling about in ice and snow and bushes on my property is an injury and law suit waiting to happen.

In addition, if there are new owners of Mr Dezago's property, will they monitor and maintain the drainage from this roof? I am also concerned that whenever the 3120 Quincy property is to be sold, prospective buyers may balk at the close proximity of the structure and the associated problems. A realtor has cautioned me that a neighbor's structure built into the setback space near my property line could have

a detrimental effect.

Response to Variance Application #151595

I do not believe that Mr Dezago the applicant for the variance will maintain, monitor and mitigate the water drainage issue for the following reasons: (Photo of snow shoveling) He is shoveling snow near my fence and as you can see he attempted to move the snow with a snow blower magically through the 1" to 2" spaces between the fence boards. Note the white area on the fence in front of the shoveling Mr Dezago. At that time I asked him to stop putting snow on my fence. He replied that his hired snowplow person pushed the snow on the fence. The snow remained embanked against my fence. (I will state that the snow plow person usually did not place snow against the length of the alley- side wooden fence, although a couple of times I could not get the gate into the alley open to take garbage out because plowed snow blocked the gate.) In winter Mr Dezago banks snow 3 to 4 feet high at the corner wooden fence post and utility pole.

In recent conversations with Mr Dezago, in which he was trying to extract compliance concerning his lean-to, he stated to me that he would put several "rusty junkers" in his back yard. And yes he could because he has parked a stretch limousine and other cars in that space. (See photo #4 of backyard/parking)

Another time he said he would park his "\$60K, bargain, really huge motor home" in the space. And that to do this, he would probably have to take trees out mature and bushes to drive it in from the street.

Response to Variance Application #151595

Lastly, he stated that he could put up a cinder block fence along the existing chain link fence. (See the stakes circled in photo #4)

I do feel he is trying to intimidate and bully me. And that he is either uncaring or unaware of winter maintenance issues and therefore cannot be relied on to maintain his property in winter so that it does not affect his neighbor. I also think the three foot setback is a good requirement because it respects the needs of both neighbors. As an aside Mr Dezago has room to place a lean-to elsewhere on his property and the setback requirement would not be an issue.

In summary, I protest the location of the lean-to carport so close to my wooden fence and ask to have it removed. Also, It is my hope the

Committee will take into consideration my remarks on this variance.

Thank you.

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

**Thursday, August 4, 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 July 21, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15181 - An application for a variance by the Estate of Eileen A. Nixon, owner, and John Yelenich, agent, to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,611.14 square feet that has an existing garage on the property and the other proposed vacant lot is to be 2,222.79, varying from the requirements of Section 17.12.050, Minimum Lot Area, and the proposed lot of 2, 611.14 square feet is also varying from the definition of "Lot" which requires each lot to have frontage on a public street varying from Section 17.04.245 Lot of the BSBMC. The property is located in an "R-2" (Two Family Residential) zone, legally described as the west portion of Lot 11 and the east 5.3' of the south 88.5' of Lot 11, the south 88.5' of Lot 12, and the west 0.7' of the south 88.5' of Lot 13, Block D of the Warren and Kingsbury Addition, commonly known as 11 East Gagnon Street, Butte, Montana.

Variance Application #15194 – An application for a variance by Dennis Reed, owner, to locate the front porch of an existing residence within zero feet (0') of the front property line, varying from the minimum fifteen foot (15') front yard depth of Section 17.24.100, Minimum Front Yard Depth, of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 3-4, Block 31 of the Clarks Addition, more commonly known as 313 East Front Street, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

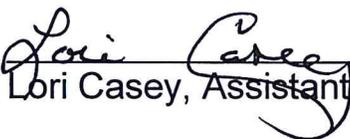
(Page 2)

Variance Application #15195 – An application for a variance by Anthony Dezago and Loretta Burkey, owners, to locate a carport within one foot (1') of the side yard property line, varying from the minimum three foot (3') side yard setback of Section 17.10.020(D), Permitted Uses, of the BSBMC. The property is located in an "R-1" (Single Family Residential) zone, legally described as Lots 11-14, Block 53 of the Atherton Place Addition, more commonly known as 3130 Quincy Street, Butte, Montana.

IV. Other Business.

V. Adjournment.

By:


Lori Casey, Assistant Planning Director

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

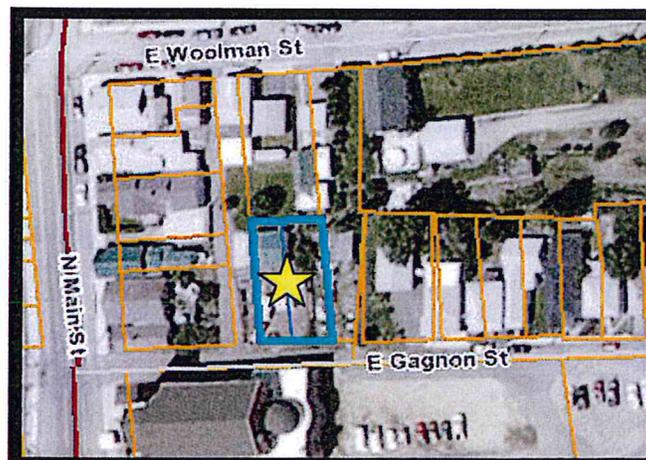
ITEM: Variance Application #15181 - An application for a variance to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,621.14 square feet that has an existing garage on the property and the other proposed vacant lot is to be 2,222.79, varying from the requirements of Section 17.12.050, Minimum Lot Area, and the proposed lot of 2,621.14 square feet is also varying from the definition of "Lot" which requires each lot to have frontage on a public street varying from Section 17.04.245, Lot, of the BSBMC.

APPLICANT: Estate of Eileen A. Nixon, c/o Maureen Yelenich (24 E. Woolman Street) and Dawn Blackwood (502 N. Main Street), Butte, MT, owner, John Yelenich, 10 E. Woolman Street, Dan Brown, Brown & Associates, 2000 Garrison Avenue, Butte, MT, agents.

DATE/TIME: Thursday, August 4, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Silver Bow County 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 the west portion of Lot 11 and the east 5.3' of the south 88.5' of Lot 11, the south 88.5' of Lot 12, and the west 0.7' of the south 88.5' of Lot 13, Block D of the Warren and Kingsbury Addition, commonly known as 11 East Gagnon Street, Butte, Montana.

PROPOSAL: The applicant is proposing to create two parcels of record of substandard size from two legal nonconforming lots of record. One lot is proposed to be 2,621.14 square feet, and has an existing garage on the property. The other lot contains no structures, and is proposed to be 2,222.79 square feet. Both lots, being less than 6,000 square feet in area, vary from the requirements of Section 17.12.050, Minimum Lot Area, of the BSBMC. The lot proposed to be 2621.14 square feet (the northernmost lot), if created, would also vary from the definition of "Lot", per Section 17.04.245, which requires each lot to have frontage on a public street.

As stated above, the current lots are both nonconforming, as they each contain less than 6,000 square feet in area. They were originally purchased jointly by two parties, with the intention of sharing the space. There is a detached garage built on the northernmost portion of the shared lots. The applicants have proposed a relocation of the lot boundary lines in order to allow them to sell the property at 508 N. Main Street along with its designated garage, located on the northernmost portion of the shared properties.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Sections 17.12.050, Minimum Lot Area, and 17.04.245, Lot (definition), of the BSBMC, require a minimum lot area of six thousand

square feet (6,000 sq. ft.) and require that each lot have frontage on a public street. The applicants' request to create two parcels of record with one lot containing 2,222.79 square feet (54.81'W x 39.2'D), and the other lot containing 2,621.14 square feet (54.70'W x 88.50'D) and possessing no public street frontage, requires a variance from the Zoning Board of Adjustment.

Approval of the variance application would be the first step in dividing the existing lot into two lots. According to the Butte-Silver Bow Subdivision Regulations and Montana Subdivision and Platting Act, the applicant would also be required to complete a Certificate of Survey on the property and complete the review process for surveys.

Historically, although the properties in question are technically two parcels with north-south orientation, the parcels together have been utilized as one shared space between the residences at 500 and 508 North Main Street. Stanley Blackwood is the owner of 500 North Main Street. Eileen Nixon was the owner of 508 North Main Street until her recent passing, at which time ownership was transferred to The Estate of Eileen A. Nixon.

Eileen Nixon and Stanley Blackwood purchased the lots in question together in order to add additional space to their properties located along North Main Street. Eileen Nixon built the existing garage on the northern portion of the shared property, directly across the alley from her residence. Stanley Blackwood never built any structures on the southern portion of the shared property, which is directly across the alley from his residence, however, he utilizes the additional space as an extension of his yard.

Whereas this shared arrangement historically worked well for both neighbors, Eileen Nixon recently passed away. The Estate of Eileen A. Nixon intends to sell her former

residence at 508 N. Main Street. They would like to sell the garage located on the northernmost portion of the shared parcels along with the residence at 508 N. Main Street.

Stanley Blackwood would like to retain ownership of the southernmost portion of the shared lots to continue to utilize them as an extension of his property.

The applicants had originally wished to relocate the property boundaries and legally combine each newly created parcel with its associated parcel along North Main Street, however, they are prevented from doing so because the alley separating the North Main Street properties from the Gagnon Street properties has never been vacated.

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.

Lot dimension requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space, light, and air between adjacent buildings to prevent the spread of fire. In addition, a 6,000 square foot parcel with 60 feet of frontage provides for sufficient open space typical of an "R-2" residential neighborhood.

"Lots" as defined in Section 17.04.245 of the Butte-Silver Bow Municipal Code are required to have frontage along a public street to ensure each lot of record has legal and physical access. An alleyway is not considered to be the legal access to a lot.

There are a number of residences in the area that are on 30' x 100' lots. Although residences on single lots are common within this neighborhood, the applicants' proposed lot sizes of 2,621.14 square feet and 2,222.79 square feet are significantly smaller lots than the typical lot size. Additionally, the dimensions of the lots proposed will make development of the southernmost proposed lot exceedingly difficult, if not dimensionally prohibitive. The "R-2" (Two Family Residential) zone requires a twenty foot (20') setback from the front property line and a ten foot (10') setback from the rear property line. With the southernmost proposed lot only possessing 39.2' in depth, at a maximum, a structure could be no more than nine feet (9') deep while still abiding by the setbacks outlined in the Zoning Ordinance. As single-wide manufactured homes are not an outright permitted use in the "R-2" zone, it would be most difficult to accommodate any residential structures on this proposed lot.

Simply creating the two proposed substandard lots from the two nonconforming lots in question would not only increase the density of the neighborhood, it would create a lot with no public street frontage, which could pose a threat to public health and safety. Understandably, this is an action that Staff could not reasonably support.

However, as discussed above, there is currently an existing detached garage located on the northernmost portion of the shared lots in question. The applicants' intentions are to relocate the boundary lines in order to sell the property at 508 North Main Street with its designated garage and to allow Stanley Blackwood to obtain sole ownership of the southernmost portion of the shared lots, so that

he might continue utilizing the space as an extension of his property on North Main Street.

Staff concludes that simply creating the two proposed substandard lots would be contrary to public interest. That being said, ***if and only if*** the applicants are agreeable to a condition which requires the applicants to amend their deeds for the properties located on North Main Street to include their respective lots across the alley, then this variance may not be contrary to public interest. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on North Main Street.

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.

Although the two properties were historically utilized as one, they were two separate legal lots of record. As stated above, the applicants are proposing to do a relocation of common boundary adjustment from two legal nonconforming lots of record. As such, each lot as currently platted does have a hardship in regard to minimum lot width (60') and minimum lot area (6,000 square feet).

Also, it should be clarified that the cause of the current predicament was historically a handshake agreement between two courteous neighbors, entered into with respectable intentions. Since the unfortunate passing of one of these neighbors, the circumstances of the situation have since changed, necessitating some sort of resolution.

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 property in ways that do not compromise the public interest.

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

The applicants' request to create two substandard parcels from two nonconforming parcels would be akin to a boundary line readjustment, and in fact, not significantly changing the square footage of the lots, simply changing their orientation. The main concern with respect to public health, safety and general welfare lies in the creation of a parcel that would have no public street access. Generally, a request of this nature void of additional circumstance or information would not be supported by staff.

It is important to reiterate, however, the intent behind this request, as well as the applicants' plan going forward. The request originates from a need to

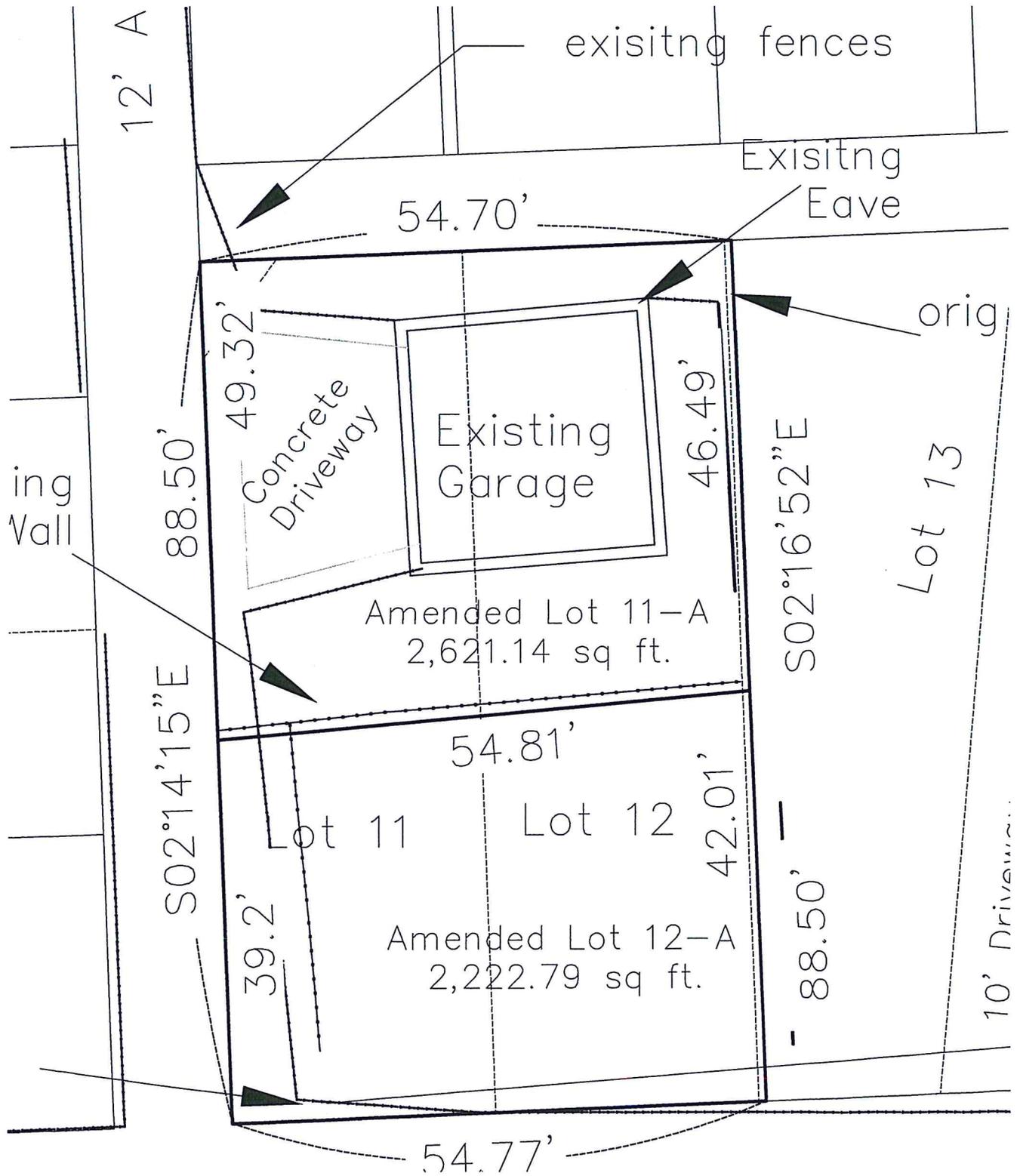
reestablish a handshake agreement between neighbors following the passing of one party. All parties involved seemingly agree on the fact that, if established, the new parcels are designed to exist as accessory parcels to the associated residences along North Main Street and are not intended to be sold as separate lots from the primary residences. Accordingly, ***if and only if*** the applicants are agreeable to a condition which requires the applicants to amend their deeds for the properties located on Main Street to include their respective lots across the alley, then the granting of the requested variance ***will not pose*** any detriment to public health, safety, and general welfare, but will only make it easier for the applicants to sell the property. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on Main Street. Therefore, staff would conclude that this variance request complies with the intent of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSIONS:

Based on the above discussion, staff would recommend conditional approval of Variance Application #15181.

1. Receiving approval to create two (2) substandard parcels of record is only the first step in creating two (2) new legal parcels. In order for the applicants to divide the property, the applicants shall complete a relocation of common boundary survey for review and approval. Upon approval from the Examining Land Surveyor, the applicants shall file the Certificate of Survey and appropriate deeds with the B-SB Clerk and Recorder.

2. The applicants shall amend each deed for the properties located on Main Street to include their respective lot across the alley. The amended deed language shall restrict the sale of the proposed lots separately from the primary residence parcels located on Main Street.
3. The deeds shall be filed in conjunction with the Certificate of Survey with the B-SB Clerk & Recorder.
4. Any further development on the newly created substandard lots shall abide by the regulations of the Butte-Silver Bow Zoning Ordinance.
5. Any deviation or change from the terms and conditions of Variance Application #15181 must be brought before the Zoning Board of Adjustment.



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

ITEM: **Variance Application #15194** - An application for a variance to locate the front porch of an existing residence zero feet (0') from the front property line, varying from Section 17.24.100, Front Yard Depth, of the BSBMC.

APPLICANT: Dennis Reed, 313 East Front Street, Butte, Montana, owner.

DATE/TIME: Thursday, August 4, 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 a "C-2" (Community Commercial) zone, legally described as Lots 3-4, Block 31, of the Clarks Addition, commonly known as 313 East Front Street, Butte, Montana.

PROPOSAL: An application for a variance to locate the front porch of an existing residence zero feet (0') from the front property line.

STAFF

FINDINGS: Section 17.24.100, Front Yard Depth, of the Butte-Silver Bow Municipal Code states that a building within the "C-2" zone shall have a minimum front yard setback of fifteen feet (15'). The applicant's existing residence, built in 1900, is located approximately five feet (5') from the front property line. It currently has a front porch in need of repair. The applicant's designs for repair include a five foot (5') wide front porch with stairs set into the actual porch, so as not to extend out onto the public right-of-way. Although the original construction was "grandfathered" for its current location with respect to setbacks, the remodel constitutes a new construction project, fully subject to the provisions of the Zoning Ordinance. In order to remodel the "grandfathered" porch as detailed on the site plan, a variance from the Zoning Board of Adjustment is required.

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.**

Setback requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space around structures for adequate access to open space for

emergency vehicles, while assuring that sufficient light and air are provided to the structure. In addition, setbacks provide consistency in neighborhood development and enhance the aesthetic value of our community.

As the residence has adequate frontage along East Front Street, along with alley access in the rear of the applicant's property, a minor extension of the front porch would not appear to negatively impact the availability of sufficient space, access, air and light.

The site plan submitted for this variance details front porch access stairs that are in fact, set into the porch, and not encroaching on the public sidewalk or right-of-way.

The designs of both the current and proposed porches were submitted to Mary McCormick, Butte-Silver Bow's Historic Preservation Officer. After careful consideration, it was determined that the proposed porch remodel would not require review by the Historic Preservation Commission in order to review and approve a Demolition Permit Certificate Of Appropriateness prior to its removal. (Please see attached letter).

In fact, the proposed porch design more closely resembles the original porch than the porch that is planned to be replaced. Therefore, the new proposed design is supportive of the neighborhood character.

A final area of concern regarding a zero foot (0') setback along East Front Street would be with regard to storm water. As the roof over the porch would slope southeast towards East Front Street and

there is no permeable area to detain any storm water that may run off of the roof of the residence and porch, special measures would need to be taken to ensure that storm water is detained on his property and does not create safety concerns on the public sidewalk.

As such, provided that the applicant is agreeable to a condition requiring rain gutters to be installed along the roof of the porch directing storm water to the impervious areas of his property, it would appear that the applicant's request to have a zero foot (0') setback from his front property line along East Front Street is not 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. Unique conditions usually associated with the property are shape, topography or some geological feature. A hardship cannot be the result of a condition created by the applicant.

As noted above, the applicant's residence was constructed prior to the implementation of the Zoning Ordinance. Subsequently, the location of the residence is "grandfathered". Being as only five feet (5') of space exists between the front of the residence and the front property line, the structure is already within the required front yard setback. Consequently, the applicant could not possibly construct a front porch on his property that meets

setback requirements without changing the location of the entire residence.

This would indeed demonstrate a hardship caused by the implementation of the Zoning Ordinance after the development of the property in question and must be taken into consideration.

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 which do not compromise public interest. Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop the property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

As discussed above, requirements for adequate space, air, light, and emergency access will not be impeded by the construction of the proposed porch, should the variance be approved.

As the front property line is adjacent to the public sidewalk and right-of-way, the decreased setback should not encroach on any one individual neighboring property. Any potential encroachment would seemingly only directly affect the public right-of-way. However, as noted above, the design of the porch incorporates inlaid stair access, which would prevent porch access paths from encroaching on the public-right-of-way any more than a standard walkway not regulated by the Zoning Ordinance.

Ultimately, locating the proposed porch zero feet (0') from the front property boundary adjacent to East Front Street would not appear to compromise the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSIONS:

Based on the above discussion, staff would recommend approval of Variance Application #15194, subject to the following conditions:

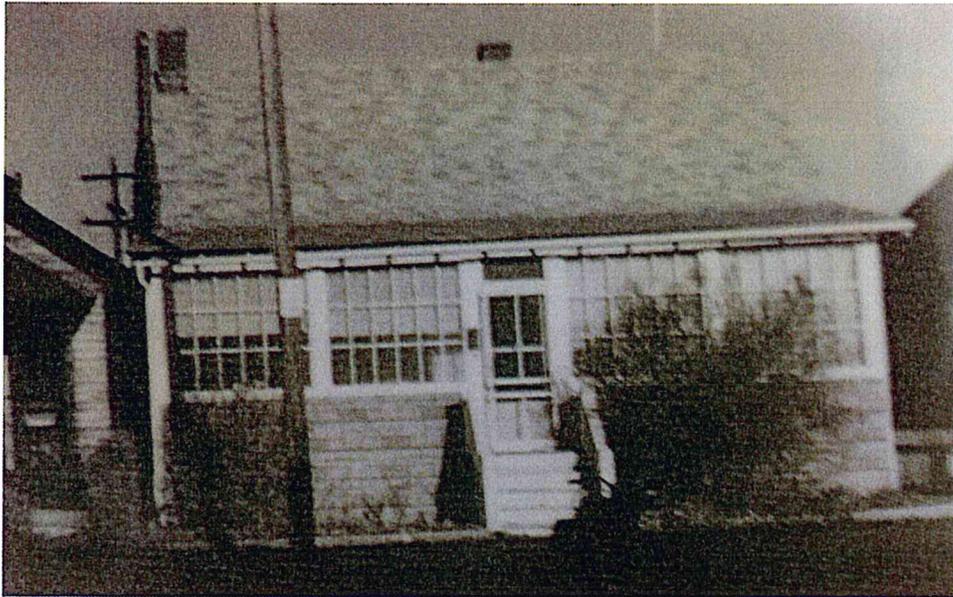
1. The applicant shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.
2. The applicant shall work closely with the Butte-Silver Bow Planning Department and the Butte-Silver Bow Historic Preservation Officer to ensure that the demolition of the porch in question at no time expands beyond the criteria which would initiate necessity of HPC review.
3. The applicant must agree not to utilize any portion of the public right-of-way of Front Street for the construction of the proposed porch, including but not limited to removal of any portion of the sidewalk. If encroachment upon public right-of-way is unavoidable, a Construction Right-of-Way Permit must be applied for prior to the commencement of construction.
4. The applicant shall install rain gutters on the roof of the porch to ensure that all storm water is directed, so that it will remain on his property.

313 E. Front
Historic Preservation Officer Assessment of Stope Removal
July 27, 2016

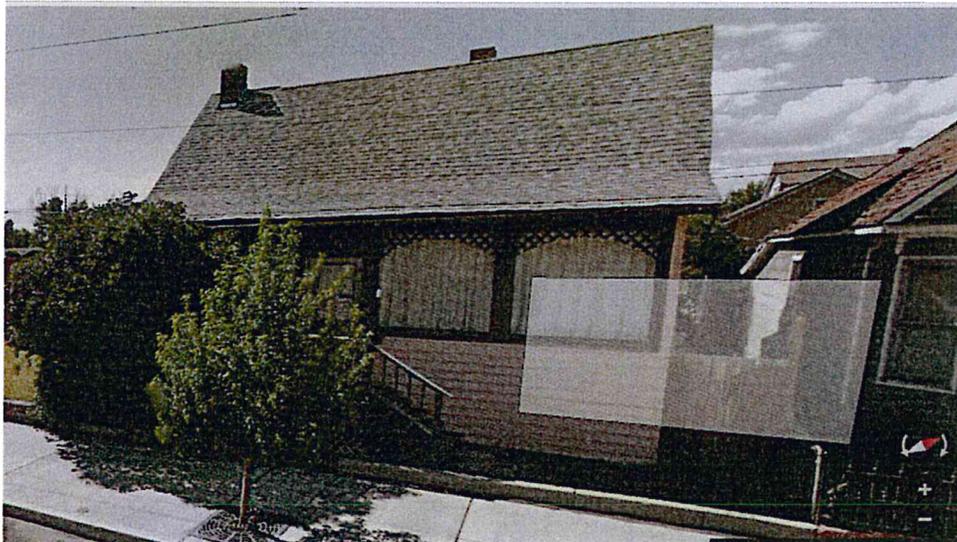
Maynard R

The owner is proposing to remove the wooden stope at the front entry and construct a full-length open porch on the front façade—which is the historic front porch, now enclosed. He would like to extend the new porch to the sidewalk.

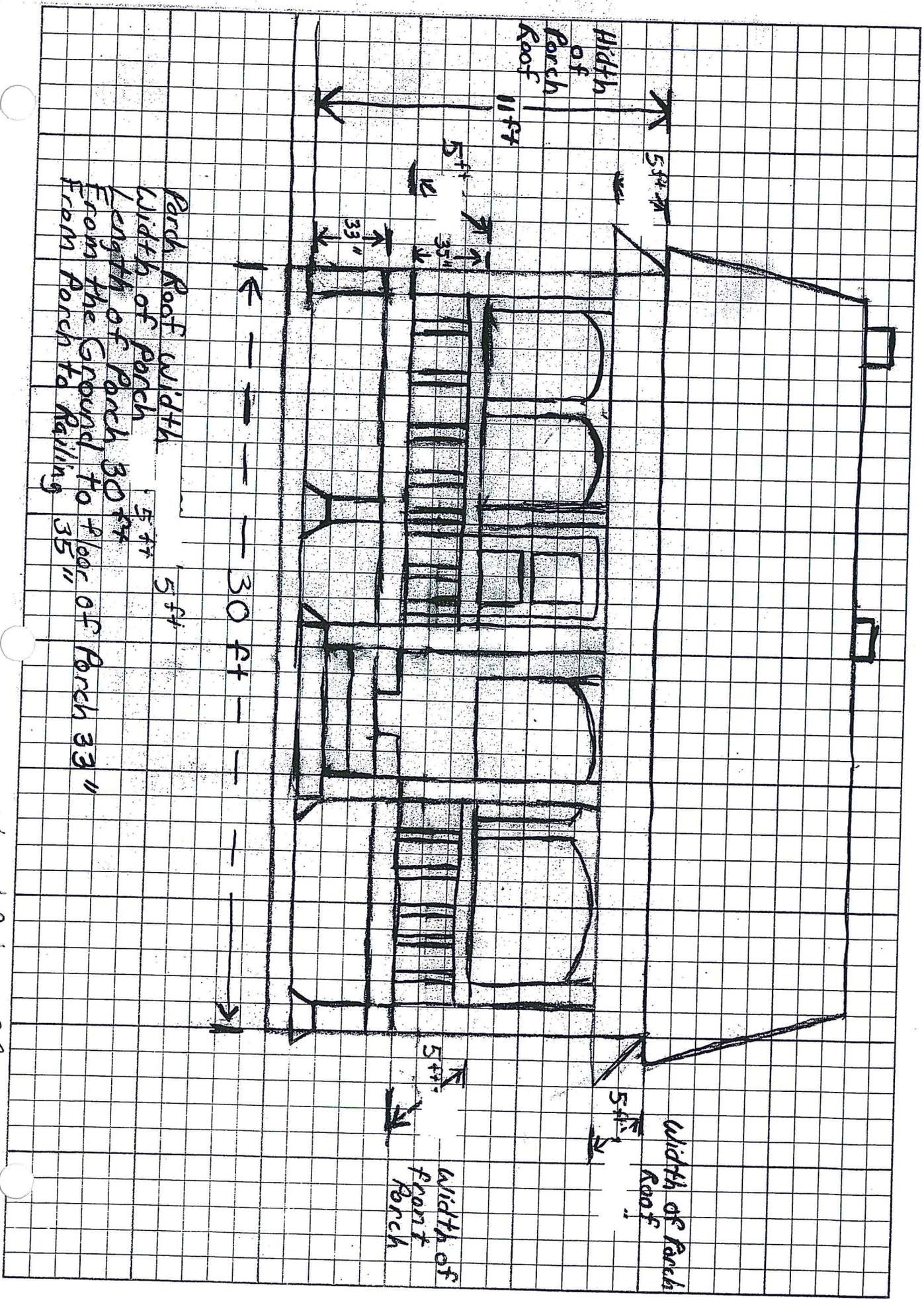
The existing wooden stope is a small, non-historic element built sometime after 1959. There is no requirement for the Historic Preservation Commission to review and approve a Demolition Permit COA prior its removal.



1959 photograph, Silver Bow County Tax Assessment card.



Google Maps, July 2012



Changed Footing NK 7-12-11

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

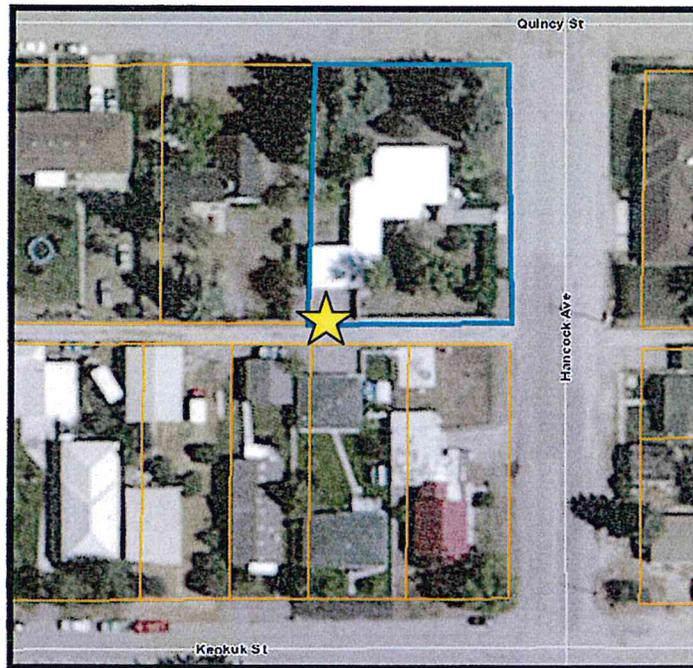
ITEM: Variance Application #15195 - An application for a variance to locate a carport within one foot (1') of the west, side yard property line, varying from the required three feet (3'), per Section 17.10.020(D), Permitted Uses, of the BSBMC.

APPLICANTS: Anthony DeZago and Loretta Burkey, 3130 Quincy Street, Butte, Montana, owners.

DATE/TIME: Thursday, August 4, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Rebecca Farren, Land Use Planner

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-1" (Single Family Residential) zone, legally described as Lots 11-14, Block 53 of the Atherton Place Addition, commonly known as 3130 Quincy Street, Butte, Montana.

PROPOSAL: The applicants are retroactively applying for a variance to allow for a lean-to carport structure (10' X 24') to be attached to the west side of their existing garage. The lean-to carport structure is located within one foot (1') of the west property line. Because the carport has a permanent roof and is effectively an addition to the existing garage, it must meet the setback requirements for accessory buildings, which is three feet (3') from a side property line adjacent to an alley. The carport is open on three sides with the exception of the east side, which shares a wall with the applicants' detached garage. The applicants' existing detached garage and the lean-to carport both meet the requirements of ten feet (10') for parking aprons adjacent to an alley.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.10.020(D), Permitted Uses, requires that all roofed structures be located a minimum of three feet (3') from side property lines when the structures are adjacent to and accessed from an alley. Therefore, the applicants' request to locate the lean-to carport within one foot (1') of their west property line requires approval from the Zoning Board of Adjustment.

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

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

Setback requirements have been established to protect public health and safety by providing adequate space for light and air and to provide space for emergency vehicles to access all sides of a structure. The larger setback of ten feet (10') for structures abutting a side street helps to ensure that structures are not located within the vision clearance triangle of street intersections and alley/street intersections. Maximum lot coverage requirements have been established to ensure that adequate space for light and air are provided to all properties. In this particular case, the applicants have already constructed the lean-to carport structure, in violation of B-SB Ordinances that require zoning certification and a building permit prior to construction. (Note: the project has been issued a red-tag violation notice by the B-SB Building Department and a Zoning Violation notice by the B-SB Planning Department). As part of their response to resolve these violations, the applicants have requested a variance to allow the structure to remain within one foot (1') of their west property boundary.

The lean-to carport structure is 10'W x 24'D and has been constructed by extending the garage roof line west approximately ten feet (10'). The roof is supported by the use of 4" x 4" posts. As such, the west wall of the garage would act as the east side of the carport with the remaining north, west and south sides left open. In this particular case the design of the carport is important in that the west alignment, which is the lowest side of the roofline, is immediately adjacent, i.e., within one foot (1') to the

west property line and appears to encroach over the neighbor's fence on the west side.

A complicating factor in this case is that the exact location of the side property line between the adjacent properties is not surveyed, i.e., no property pins present, thus the precise location of the property line is not verifiable. As part of a site visit to research the Variance, staff measured the distance between the supporting posts of the lean-to structure and the horizontal slats of the neighbor's fence and it is approximately eleven inches (11"), which is consistent with the distance represented in the applicants' submitted site plan. At the same time, the supporting posts of the lean-to carport are only six inches (6") away from the neighbors' fence posts.

The main issue in considering this variance is storm water management: the roof of the lean-to structure has a westward-dipping slope and overhangs its supporting posts by approximately three inches (3"). Without proper controls, storm water from the lean-to carport could be detrimental to the neighbor's fence and property along the shared boundary. As such, should the Board vote to approve the variance, a condition of approval should require the applicants to install rain gutters along the west edge of the roofline to prevent storm water runoff from reaching the neighbors' property.

Based on the above discussion and with proper measures to mitigate any potential impacts from storm water, the proposed variance may not be contrary to the public interest. Staff recommends that the Zoning Board of Adjustment take into account any public comments received with respect to the proposed variance.

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 property in question does not exhibit any unique topography or geological conditions that justifies a hardship.

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.

In this particular case, the applicants are requesting a side yard setback variance within one foot (1') of the property line (vs. three feet (3') off an alley in the rear area of the property), which has potential to negatively impact their neighbor to the west. Storm water concerns, in particular, and adverse impacts to the neighbors' fence must be addressed. In fact, it

was the neighbor's complaint that brought the case to the Planning Department's attention.

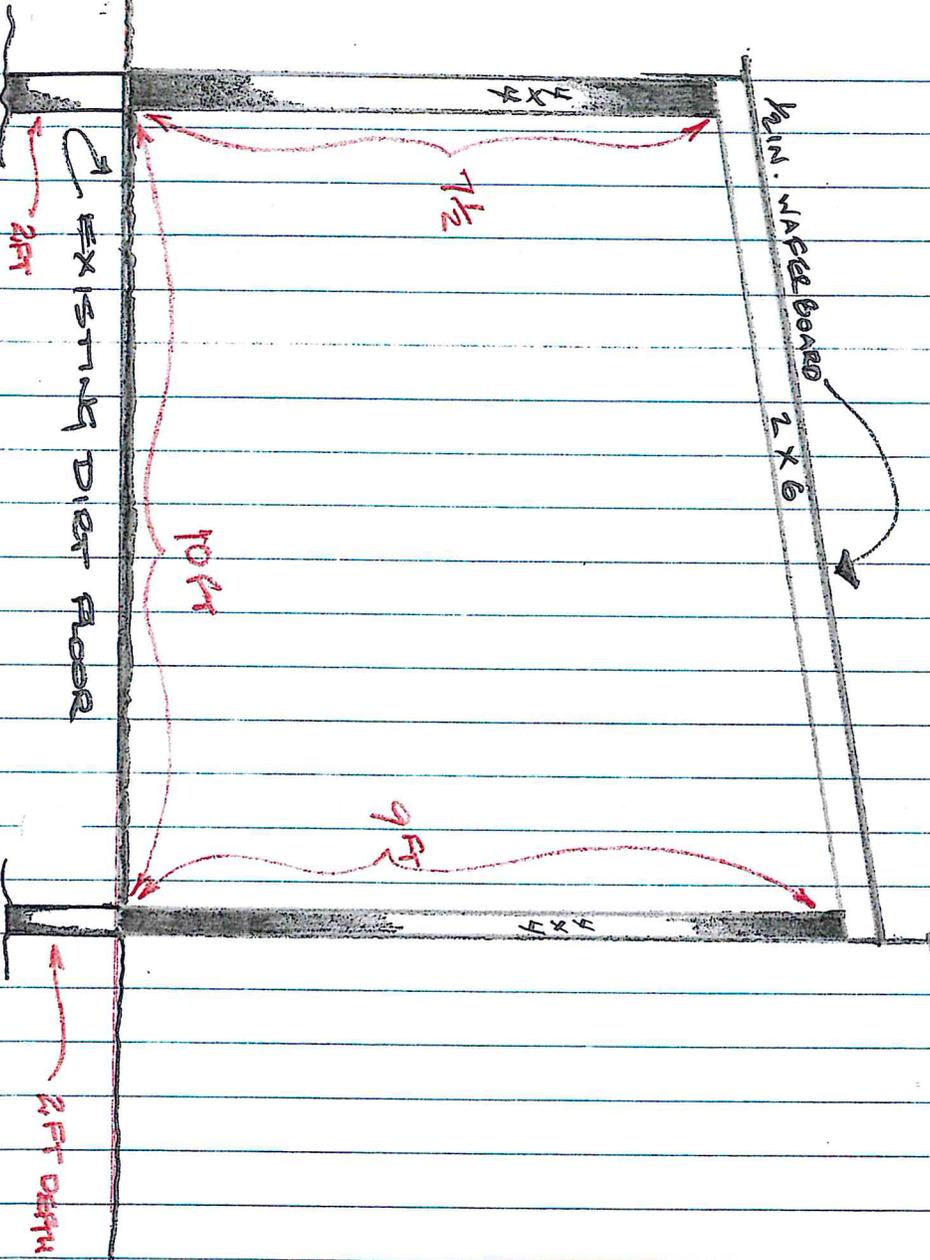
It does appear, however, that the applicants can (and are willing to) take sufficient steps to mitigate any adverse impacts on the adjoining property owner, particularly regarding concerns with storm water. For example, the applicants can install a gutter along the west edge of the carport roof with appropriate downspouts to direct storm water away from the neighbor's property and make repairs to the neighbor's fence that may be required due to the proximity of the supporting posts of the carport. Given that such measures are installed, and subject to the input of the neighbor on the adequacy of the mitigation measures, the variance request may be considered reasonable and consistent with the spirit of the Zoning Ordinance to allow for the reasonable development of private property.

CONCLUSION: Based on the above analysis, staff recommends that the Board consider approval of Variance Application #15195 to allow a lean-to carport structure within one foot (1') of a side property line, subject to public input received at the hearing and the following conditions:

1. Within five working days of the public hearing for Variance Application #15195, the applicants shall submit the construction plans for the carport to the Butte-Silver Bow Building Official for verification that construction was completed in compliance with all applicable building, electrical, mechanical, fire and health codes.
2. Within five working days of the public hearing for Variance Application #15195, the applicants shall submit a plan for staff review and approval to ensure

that the storm water generated from the carport does not drain onto or adversely affect his neighbor's property or into the public alley. At a minimum, the plan shall specify gutters along the west edge of the roof and appropriate well-directed downspouts to ensure all storm water generated from the garage and lean-to carport is retained on the applicants' property and away from the neighbor's and public property. The storm water control measures outlined in the plan shall be installed within 15 working days of staff approval of the plan.

3. As per Section 17.56.040, Permit Fees, of the BSBMC, the applicants shall pay double for the building permit required for this construction project; the double payment is due to the fact that the lean-to carport was constructed and installed without the appropriate zoning certification and building permits in place. These fees shall be paid in full no later than 5:00 p.m. on Thursday, August 11, 2016.



EXISTING DOOR

MAIN WAFER BOARD
2 X 6

7 1/2

10 FT

9 FT

2 FT

2 FT DEPTH

4x4

4x4





