

August 18, 2016

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

MEMBERS PRESENT: David Wing, John Habeger, Tyler Shaffer, Les Taylor and Dolores Cooney

ABSENT: Julie Jaksha and Rocko Mulcahy

STAFF: Lori Casey, Assistant 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 5:33 P.M.
- II. The Minutes of the meeting of August 4, 2016, were approved and passed.
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on August 11, 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 #15198 – Peter Konola 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.

Mr. Shaffer asked if he understood that they applied for the permit, didn't receive it and then started construction. Mrs. Farren said no, the application for the permit appeared during mid-construction and the contractor came into her and presented a site plan. She said they fully complied when they put a stop work on it.

Mr. Wing then asked if Mr. Konola cared to provide any additional testimony or evidence with regard to his application for the variance. Mr. Konola said there was plenty of room to see and nobody would ever be able to build below him.

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 for Board discussion.

Mr. Wing said it seemed pretty straightforward to him.

Mrs. Cooney moved to approve Variance Application #15198 with Mr. Shaffer seconding the motion with the following conditions:

1. The applicant shall ensure that the garage construction is completed in compliance with all applicable building, electrical, mechanical, fire and health codes.
2. The applicant shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.

3. The detached garage shall meet the height requirements of Section 17.10.040 for accessory structures which are:
 - a. Hip or gable roof : 16' maximum
 - b. Gambrel roof: 14' maximum
 - c. Flat roof: 13' maximum

4. Should the applicant choose to pave his driveway approach between his property line and the street, all specifications must meet or exceed those required by the Butte-Silver Bow Road Department.

5. As per Section 17.56.040, Permit Fees, of the BSBMC, the applicant shall pay double for the building permit required for this construction project. The double payment is due to the fact that the garage construction was started 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 25, 2016.

At this point the Board voted on the motion.

Variance Application #15198 – Conditionally Approved

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

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

Mr. Wing stated all five 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. He told him good luck with the project.

Mr. Konola said when he first bought the property, it had a fence all the way around it that was only five feet from the street and he tore it down after about six or seven years. He said just

like all of his neighbors, their fences were real close to the street. Mr. Wing said he had noticed that. Mr. Wing then said good luck and hoped it worked out well for him.

Use Variance Application #15208 – Mary Kay Starin 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 the applicant cared to provide any additional testimony. Mary Kay Starin said she thought the Planning Department had addressed it very well.

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

Jennifer Shea said she was a Broker with Shea Realtors and an owner of property in the area herself. She said as they knew, it was a neighborhood combined with industrial, commercial and residential properties and warehouses as well. She said there was everything from beer dealerships to furniture stores to gift basket shops to restaurants to gas stations to tire shops, railroad stations both passenger and freight train stations, to florist shops, car washes, neighborhood grocery stores, exer-dance studios, kickboxing, residential homes, schools, places of worship, multi-family properties, recreation reception centers and body shops that have all adorned the neighborhood scheme.

Mrs. Shea further said she believed a veterinary clinic would enhance the neighborhood and would fit in with the makeup of the current neighborhood very nicely.

Mrs. Shea said we had people (Dr. Bruce Pedersen and Dr. Dulce Coulson) who wanted to make a large investment into

our community of Butte, which would add to their quality of life and create jobs for our citizens.

Mrs. Shea said she was in favor of this variance and hoped that the County and this Committee would assist them in making this transition a positive experience.

Mrs. Shea further said Terry O'Keefe was a property owner who owned a commercial building at 1134 Utah and 1029 South Arizona that was one block south and she was also very much in favor of this variance.

Mrs. Shea said she owned property at 1011 East Second Street and the Koprivica Family Park located two blocks from 1100 Utah.

Mrs. Shea then said she would appreciate their consideration to approve this variance to allow light industrial zoning to be granted for this building.

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

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

Mr. Taylor moved to approve Variance Application #15209 subject to the six conditions as stipulated by staff with Mrs. Cooney seconding the motion.

The conditions are as follows:

1. Prior to receiving a business license, the veterinary clinic shall meet all applicable State of Montana and local building code requirements for veterinary clinics.
2. Prior to receiving a business license, the applicant shall meet all applicable building, electrical, plumbing, mechanical, fire and health codes, including but not

limited to meeting ADA standards and shall secure all necessary permits.

3. Prior to receiving a sign permit for wall signs on the building in question, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for a "C-M" zone.
4. Any exterior parking lot lighting shall be low glare, a maximum of sixteen feet (16') tall and directed away from the adjacent residences.
5. Animal waste shall be removed from the rear yard once the associated animal has been appropriately secured inside the premises and attended to and all waste shall be disposed of in a sanitary manner on a regular basis.
6. The parking lot located north of First Street shall be signed and striped and shall meet the requirements of Section 17.40, Off-Street Loading and Parking, of the BSBMC.

At this point the Board voted on the motion.

Use Variance Application #15208 – Conditionally Approved

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

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

Mr. Wing said there were five votes in support of the motion, which meant that the application had been approved, and she would be receiving a letter from the Planning staff to that effect. Mr. Wing told them good luck with their project.

Variance Application #15209 – Donna Rowling 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.

Mr. Taylor said if he understood correctly, they could build this carport, if they stayed 3.75 feet from that east boundary – he asked if there were any restrictions with the Planned Unit Development or any covenants in that subdivision that would bar them from building the carport but staying within the 3.75. Mrs. Farren said to her understanding, the 3.75 would be administrative but she would have Mrs. Casey speak more to that. Mrs. Casey said the intent of the Planned Unit Development was to allow some flexibility in regard to setbacks due to the nature of the no build zone and different things in the area and to accommodate the home, so they could go down to 3.75. She said there were covenants on the property but most of that had to do with the digging because it was a reclaimed area and different things like that. She said they would be allowed – the standard would be a five foot setback in just a regular “R-1” and the PUD allowed you to decrease it by 25%.

Mr. Wing then asked if Mrs. Rowling cared to present her case in support of the application.

Mrs. Rowling said she had pictures of the neighborhood which were presented to the Board. She said they were pictures of the neighborhood and the first one was of her driveway and they determined they just wanted to hook a carport onto the garage. She said their concern with the 3.75 foot setback was they would not be able to park their truck where the car was sitting in the picture and be able to get their other vehicle in and out of the garage with putting the wall in there and the supports there, so that was why they were asking for the variance of one foot.

Mrs. Rowling said the lower pictures, it was her understanding that the concern was to have everything consistent because it

was a PUD and she just wanted to show some of the other improvements and things that had been done by the neighbors. She said also the one garage, from what she had been told, was actually built – part of the original PUD was to have a park in that area and that property was sold to that landowner to build a garage and also from what she had been told, there were supposed to be sidewalks that had never been built.

Mrs. Rowling said she felt that there was a precedent set in allowing variances already for the PUD.

Mr. Wing asked if Mrs. Rowling had talked to any of her neighbors and she said one neighbor was there and she knew they had some concerns about drainage off of their roof line because they were the neighbors that the roof line would fall close to and they had said, if approved, they would definitely put rain gutters in to make sure there was not a drainage issue into their yard.

Mr. Taylor said on Mrs. Rowling's schematic, he didn't see a dimension on the existing attached garage and asked how wide it was. She said it was very narrow and she had a smaller SUV that barely fit in there. She said they used to have a little bit larger one that luckily had mirrors that would fold in to be able to squeeze it in there but it also wasn't long enough to pull a full truck into. Mr. Taylor asked if she knew the width and she said she didn't. She said when they measured it for their map, it was just the full length of the house.

Mr. Habeger said Mrs. Rowling had indicated that this would be a carport or would it actually be a garage. She said it would be a carport.

Mrs. Rowling said another thing she wanted to address was as far as hardships, they didn't have access to the rear of their property because of the walking trail that was proposed in there and apparently, they were going to start paving that now, so they didn't have an option to build in the back of their property. She said they had looked where their yard was but they would be limited to the setback.

Mr. Taylor asked if it was going to be a carport, did she intend to enclose the east wall. Mrs. Rowling said they would like to just – yes, because the sprinkler from the neighbor's yard comes onto the vehicles and her husband was worried about the calcium and stuff building up on there, so they would like to just have one wall down the side to protect that.

Mr. Taylor then said on her drawing, it didn't show that structure being attached to the single car garage and it looked like there was a space between the front of the single car garage – Mrs. Rowling said the plan was to butt it up to the roof line. Mr. Taylor asked if it was the roof line of the attached garage and she said of the attached garage. She said the roof line would be a little bit different from the attached garage, obviously, to allow it to go out far enough.

Mr. Taylor asked Mrs. Rowling what her plan was to deal with the storm water runoff of the roof. Mrs. Rowling said rain gutters. Mr. Taylor asked if they would empty out into the street or back onto her lot. She said she thought the plan was to go back into the lot to the north anyhow.

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

Mark Bumgarner of 12 Tullamore and his wife Ellen said they lived just to the east. He said their concerns and Mrs. Rowling had mentioned some of their concerns -- one was if it was going to be a full garage, they were concerned about the wall and that. He said he knew the neighbors were concerned about the sprinkler and he had adjusted the sprinklers down all he could and depending on the water pressures of the night or the day, sometimes it did hit the driveway and cars.

Mr. Bumgarner said he was concerned about the rain water and they informed him they would do a rain gutter system and drain it off.

Mr. Bumgarner then said he was still a little concerned because of the one foot setback and the resale of their property because he didn't know if it would affect it and he didn't really know without doing a market analysis on it -- he wouldn't have any idea how it would affect it.

Mr. Bumgarner said there were other carports in the area and there was an attached extension on a garage just across the street from them almost and a little bit to the east. He said there was another attached garage that was converted into living area in two of the homes and there was a larger four car garage across the street from them. He said the property that Mrs. Rowling mentioned up on the end there was put in by Rocko Mulcahy and was now Salmonsens and they didn't even have a twenty foot driveway on their part of the property, it was about eighteen feet.

Mr. Bumgarner said he really didn't have too much problem with a carport except his concerns were runoff, rainwater coming down on their lawn because it killed the lawn and what the snow would do up against their fence and how much room they were going to have between their new building and the fence to control weeds and that kind of stuff on both sides of the yards.

Mr. Bumgarner said the attached garage -- Mr. Taylor had asked how big they were -- they were 14 x 19 and a full size truck would not fit in there, so they were pretty small and were more like a garden shed. He said they got a lot of use out of theirs but they didn't ever put any cars in it because it was just too small.

Mrs. Bumgarner said the other thing she had concerns about was the eaves of the carport or garage would be directly above their fence line and there would not be a whole lot of space in there for cleanup or taking care of the weeds and stuff that would also be over there. She said some of the snow levels that we get, how would that affect coming onto the fence and into their property.

Mr. Bumgarner said those were their major concerns and he told the neighbors and talked to Doug Rowling about it and he affirmed to him that he was going to do the initial rain gutters and he was going to do the initial work to make sure that nothing encroached onto their property. He also told him he was going to take care of the sloughing of their lawn down into their existing driveway too, so they had a good relationship with their neighbors. He said as far as the neighbor to the east, if they adhered to what they told him and did what they were going to do, he told him he wouldn't have too much of a problem with it.

Mr. Wing thanked them for their comments.

Mr. Wing then asked if there was anybody else that would care to speak concerning this application. He said obviously there wasn't but he had to ask the question.

Mr. Taylor said he had a question and then retracted it because he found the answer.

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

Mr. Wing said it seemed like this was appropriate.

Mr. Wing then reopened the public hearing.

Mr. Taylor said he did have one question. He actually had two but found the answer to one. He said now that the applicant had committed to a carport rather than a full blown garage, would that change the staff's recommendation for approval or denial of the application because he believed that early on, she stated that the analysis was based on looking at it as a garage rather than a carport because they were undecided at that time. Mrs. Farren said they felt it was best to present it as a garage but she didn't think they would be changing their recommendation due to the flexibility provision within the Planned Unit Development.

Mrs. Casey said she would agree with Mrs. Farren. She said they felt it was important because it was designed as a Planned Unit Development and they specifically took into -- when they developed it -- hardships of the property and the mine shafts. She said Mrs. Farren had spoken to them a little bit as she did her staff report. She said it was important to note that some properties were larger but the applicants' was 6,000 square feet. She said in addition with still having an east wall, so to speak on that carport, it really was no different than the analysis of a garage because you would still be looking at that wall and not an open area like some carports where they would just basically be the roof with the post construction.

Mr. Wing then closed the public hearing.

Mr. Habeger said he wanted to remind the members of the Board that were with them at the August 4th meeting of keeping good neighbors as good neighbors and in this particular instance he could see it was very similar. He said when one neighbor wanted to encroach on another neighbor who was willing to do that, then that was a burden upon them with the drainage. He said even if they drained to the north, it appeared to him that the lot sloped to the south and that water would come back to haunt them. He would be agreeable to a carport that was 3.75 feet from the neighbor's property but this distance, he could not support this variance.

Mr. Taylor said he tended to agree with Mr. Habeger and if that existing garage was in fact fourteen feet wide, they were only looking at an additional four feet and they talked about the ability to put two cars in there and he didn't know if that would actually accommodate that ability to get two cars in and out of there.

Mr. Habeger said he felt for the owners of the property because it seemed like they had gone the extra mile to try and get themselves the garage from the rear, which would probably be acceptable in this instance, but the access was just not there. He said perhaps demolishing the existing garage and going further back would lose a good portion of the yard but it might

be an alternate option. He said they were not there to provide options, only to just vote on their request.

Mr. Wing said he would speak in support of the application. He thought with the appropriate conditions, it could be acceptable.

Mr. Habeger asked Mr. Wing, if he would like to put some conditions in. Mr. Wing said the conditions would have to primarily be with respect to storm water. He said this was a concern, as it was last week, and the Planning staff was capable of doing storm water runoff conditions involving gutters and downspouts to keep the water on the applicants' property. He thought the concern voiced by the neighbor with respect to the weeds was well taken to also have a condition put in place with respect to landscaping fabric and mulch or he would prefer the rock you saw in some places to prevent weeds from popping up. He said those appeared to him to be the main concerns.

Mr. Wing said they didn't hear actual opposition to it, just concerns and that being case, he was prepared to try and deal with those concerns with conditions being imposed on the applicant, if the Board in fact granted the application.

Mr. Wing said he understood the need for a wall by the applicant but she was asking for something that wasn't permitted necessarily and putting the wall up to keep the water from splashing on their vehicles -- to him, if the neighbors were willing to adjust the pressure to try and accommodate the neighbor. Mr. Wing said those were his thoughts and they all had different opinions.

Mr. Taylor said as a point of clarification, when he called for comments against the application was when the neighbor stepped forward. Mr. Wing said no. Mr. Taylor said he had called for proponents and Mr. Wing said yes, he said for people in support of the application. He said the neighbor had a mixture of for and against and concerns being voiced.

Mrs. Cooney said one of the things they hadn't talked about was the Planned Unit Development itself and the flexibility that was built into that and adhering to the original. She said she was concerned about that because there was flexibility built in already and they were talking two something feet difference. She said one of her concerns would be starting a precedent of challenging that flexibility and changing those rules. Mr. Wing said he had always taken the position throughout his time on the Board that nothing they did established a precedent or anything else that they did because each case was unique to its facts. He said other people who came before them would have to present a case in support of their application dependent on the factual situation and couldn't cite what happened on this particular date – special concern.

Mr. Taylor said he kind of saw it two different ways. He said he could completely understand Mr. Habeger's point. He said he also harkened back to several years where they had placed a lot of weight on their decision on the neighbors' opposition or acceptance of the variance. He didn't know in his mind that varying from a 3.75 feet PUD, which was already more liberal and flexible than what would typically be in place, he didn't know if it would really violate the intent. He said he would have to place at least a little bit of weight on the neighbors' testimony that they really weren't in opposition to it, if the owner was willing to mitigate some potential impacts to their property.

Mr. Habeger said he would be willing to draft some conditions and then they could vote on it from there. He said there were five of them there that night and there could potentially be four affirmative votes for that but he would be comfortable if they had some conditions in there that would address the drainage, address the maintenance of the weeds on that barrier between there and it was a PUD, so there had been other exceptions that had been taken up there without huge neighborhood opposition, so in the interest of keeping neighbors happy and giving them what they wanted, he would say a condition for addressing rainwater and – Mrs. Casey said the staff had prepared some conditions just because of the nature of this development, some related to the excavation protocols and

different things, so they did have some should the Board choose to want to put them on. Mrs. Farren presented the Board with some suggested conditions.

Mr. Taylor said in regard to the storm water runoff, he thought they had to be fairly careful there in how they addressed that in any way other than the storm water, that the runoff from the roof be retained on their property. He said he knew in that Planned Unit Development, there were some soil restrictions on any kind of excavation because they capped a lot of that soil. He didn't want to get into the situation where they bound someone to a condition that would require them to get into that cap – have the storm water drain onto their property.

Mrs. Rowling said the whole area was paved. She said where they would drain to the north was dug down slightly and in gravel where the water drains from the house but they could certainly drain to the street but it was currently paved.

Mrs. Rowling said the neighbor spoke about the sloughing of their yard because there was a grade there and they planned to put cement in, which would eliminate the weeds, so she didn't know if that needed to be different.

Mr. Wing reopened the public hearing.

Mr. Taylor asked where the existing drainage on that driveway drained. Mrs. Rowling said on the driveway and Mr. Taylor said yes, and asked if it drained to the street or -- Mrs. Rowling said yeah, it would slope down to the street because the driveway had a slight slope to it.

Mr. Taylor then asked to see one of the pictures. He said it looked to him like that existing driveway runoff was essentially 100% coming out onto the street. He said he was assuming there was a storm water inlet somewhere down the street. Mrs. Rowling said yeah, it was actually at the end of the cul-de-sac in the circular area. She said then there was also -- the concrete, what it did was went across the street and had a slight lip and then it drained down to Empire Street.

Mr. Taylor asked if she knew how wide the existing asphalt was. He said it appeared to him that when you looked straight on, that it was a little wider than the existing garage. Mrs. Rowling said yeah, you could see the existing cars there right now.

Mr. Taylor said the asphalt appeared to be, he couldn't tell from the picture, but about a foot from the fence -- somewhere in that area. She said she thought it actually went really close to the fence but the grass kind of came up underneath the fence and that was what she thought the concern was with the weeds. She said up in that far corner there were garbage cans, so you couldn't really see, but there was curb coming down and so that was where they said they would put a small concrete wall. He said his motivation for asking those questions was in looking at the pictures, it appeared to him that by roofing that and putting a carport there, they wouldn't create any additional storm water runoff that wasn't already there that could potentially go to the neighbors. He said it appeared that if the rain gutter came off the front of there, it would be a better scenario for depositing that storm water runoff into that drop inlet that was just east down the street.

Mr. Habeger said as he indicated, if they were to proceed on that, he could read the conditions that were prepared by the Planning staff.

1. Prior to the issuance of a building permit, the applicants shall supply documentation that the garage/carport is in compliance with the Covenants of the Tullamore Planned Unit Development.
2. The applicants shall submit a completed Excavation and Dirt Moving Application for review and approval. The application shall be in compliance with all sections of Chapter 8.28, Excavations and Dirt Moving, including the Butte-Silver Bow Excavation and Dirt Moving Protocols.

3. The applicants shall use building materials, horizontal siding, asphalt shingles, etc. that are consistent with the residential character of the neighborhood.
4. The applicants shall install rain gutters on the garage/carport to ensure that all storm water is directed onto the applicants' property.
5. The garage must be constructed in accordance with the following height limits, per Section 17.12.040, Building Height Limits.
 - a. Hip or gable roof: Sixteen feet (16') maximum
 - b. Gambrel roof: Fourteen feet (14') maximum
 - c. Flat roof: Thirteen feet (13') maximum
6. The applicants shall secure written permission from the adjoining property owners to the east to access their property for maintenance purposes.
7. The need for a condition that eaves meet the required Building Code setback from the property line, so the eave at this point, one foot setback.
8. Plan for weed control measures shall be approved by the Butte-Silver Bow Weed Department.
9. The applicant shall secure all necessary permits to ensure that the garage/carport meets applicable zoning, building and fire requirements.

Mr. Taylor said he had one question in regard to that weed plan. He said it looked to him like it was a hard surface area and that there wasn't even an opportunity for encroachment of any kind of noxious weed in that area. He said he knew the backyard was a different story behind the property but he didn't know if that was a necessity.

Mr. Shaffer said that was a lot more conditions than he would envision but he thought they were probably all applicable. He said the weed one was a little – Mr. Taylor said there probably wasn't going to be a noxious weed encroachment in there. He said the neighbor's lawn went right up to the property line and the rest of it was essentially asphalt and he didn't know if there was weed management required and it would probably be a moot issue. Mr. Shaffer said he would rather leave it in and see and if compliance wasn't a problem, he would rather just see it in there.

Mr. Wing said he had never reopened a hearing so often but he was going to reopen it again. He asked Mrs. Rowling if she heard the conditions. She said she heard them but wasn't really sure that she totally understood what was required with those conditions. She said she could understand the pitch of the roof and stuff but she didn't know what the weed requirement was and didn't understand what that entailed.

Mr. Wing said he would let the staff address that question. Mrs. Casey said from what they heard from the testimony with the concern of the neighbor was the potential of having weeds along that area, so that would be – having a weed plan and having it approved by the Weed Department would help mitigate their concern of weeds. She said she agreed with Mr. Taylor that there was a lot of hard surface but they would be digging posts and that and as they dug and exposed dirt, that tended to create weeds and that would be the weed management.

Mrs. Casey said the excavation condition, in their covenants and Butte-Silver Bow now has an Excavation Ordinance, as Mrs. Rowling knew, she was on a reclaimed site that has had work, so she had to follow the protocols to ensure that it got recapped when they dug or if they had dirty dirt, as they called it, it went to the repository. She said there was an application process and they could give the protocols to her or her builder, if she was having a builder do it.

Mrs. Casey said she thought that she had already spoken to the rain gutters. She said there was a requirement and she wasn't sure what the exact setback on the eaves was but per the Building Code, she thought the eaves couldn't go exactly to the property line. She said when they did setbacks and they looked at setbacks, they assumed and that was how they calculated them was from the walls, so you would have the wall at the one foot and then generally the eaves could be twelve inches, eighteen inches or whatever but there was a requirement under the Building Code that they had to be so far from the property line and so she would have to meet that but she didn't know what that exactly was, she just knew there was a requirement on that.

Mrs. Casey said the building materials would just be similar materials as her house.

Mrs. Rowling asked as far as the excavation application and the weed plan application, were those all large fees. Mrs. Casey said the excavation permit was \$10 and they weren't asking them to bond for the weed control, so she would just do a plan saying they were going to spray once a year or something of that nature and they would just ask their Butte-Silver Bow Weed Department, who was the authority on what would help, they would just ask them to review it, so there would be no fee associated with that.

Mrs. Casey said she would have the building permit fee that would be based on the size and everything.

Mr. Wing said probably, although he couldn't say probably, but it was more than likely that they were going to approve her application subject to those conditions. He said they may not, he couldn't represent whether they would or wouldn't but those would be the conditions. Mrs. Rowling said they would be acceptable and were some they were planning to do anyhow -- the official weed plan.

Mr. Wing then closed the public portion of the meeting.

Mr. Taylor asked to see the conditions. He said it was an additional nine conditions then.

Mr. Bumgarner asked if they were closed. Mr. Wing said they were but to go ahead.

Mr. Bumgarner said the reason he brought up the weeds, he was actually more concerned about the grass growing – there was enough area for the grass to come up along the fence on the Rowling's side and it was going to get tall and they were not going to be able to whack them off. He said if they came to an arrangement where it couldn't get tall and could whack it off – he didn't want that to get into a whole thing on weed control. He said he would have to lift up his fence to get the tall stuff on their side – that was his only concern on that, how they were going to keep grass from growing up too tall between his fence and their asphalt and their carport. Mr. Wing said that was certainly a legitimate concern. Mr. Bumgarner wanted it on record that it wasn't weeds as much as the grass and it was kind of hard to keep down.

Mr. Habeger said he wanted to say something. He said unkempt grass turns into weeds, so he would rather have him protected as a condition.

Mr. Taylor said he had one question. He said he had a question for the Bumgarners -- if and in the event that they approved this application, would he be willing to allow the neighbor to encroach upon his property to get in between the fence and that building with a weed eater to trim that down – would he have any objection to them – that was one of the conditions that he would allow them to come onto his property for the weed control. Mr. Bumgarner said not at all. Mr. Taylor asked if Mr. Bumgarner would give them written permission to do that and Mr. Bumgarner said yes. Mr. Taylor said thank you.

Mr. Habeger said another thing too, since it was a carport and they needed a wall, they could leave a blank space at the bottom that they could weed eat from their side too but once again, he was setting options as opposed to a decision. Mr.

Taylor said the intent of the wall was strictly to stop the neighbor's sprinklers from hitting their vehicles and that wall could be four foot high and still reach over from their side and weed eat or even put a herbicide in there that would just void the ground.

Mr. Habeger said if they were to add those nine conditions to this variance, he would be more comfortable making a positive motion.

Mr. Taylor asked about a tenth condition being it was a carport and not a garage. Mr. Habeger said what he thought they would do was in the first condition, it listed it as prior to the issuance of a building permit, the applicant shall supply documentation that the garage/carport – just scratch garage and leave it as carport. Mr. Wing said it sounded good to him.

Mr. Habeger said with these added nine conditions to Variance Application #15209, he would like to make a motion that they approve the application. Mr. Shaffer seconded the motion.

Conditions are as follows:

1. Prior to the issuance of a building permit, the applicants shall supply documentation that the carport is in compliance with the Covenants of the Tullamore Planned Unit Development.
2. The applicants shall submit a completed Excavation and Dirt Moving Application for review and approval. The application shall be in compliance with all sections of Chapter 8.28, Excavations and Dirt Moving, including the Butte-Silver Bow Excavation and Dirt Moving Protocols.
3. The applicants shall secure all necessary permits from the Butte-Silver Bow Building Department and ensure that the carport meets all applicable zoning, building and fire codes.

4. The applicants shall use building materials that are consistent with the character of the neighborhood.
5. The applicants shall install rain gutters on the carport to ensure that all storm water is directed onto the applicants' property.
6. The carport must be constructed in accordance with the following height limits, per Section 17.12.040, Building Height Limits.
 - a. Hip or gable roof: Sixteen feet (16') maximum
 - b. Gambrel roof: Fourteen feet (14') maximum
 - c. Flat roof: Thirteen feet (13') maximum
7. The applicants shall secure written permission from the adjoining property owners to the east to access their property for maintenance purposes.
8. The carport shall meet the required Building Code requirements due to the approved one foot (1') setback from the property line.
9. Prior to the issuance of a building permit, a weed control plan shall be submitted to and approved by the Butte-Silver Bow Weed Department.

At this point the Board voted on the motion.

Variance Application #15209 – Conditionally Approved

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

Mr. Wing said all five votes were "For" the motion, which meant that the application had been approved subject to the conditions that were talked about that night. He said she would be receiving a letter with a lot of stuff in it regarding their approval of her application.

Several Board members thanked her and said good luck.

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

John Habeger voted "For" the motion to approve the application – "+ 9 conditions as discussed."

Tyler Shaffer voted "For" the motion to approve the application – "with 9 conditions!"

IV. Other Business:

A. Southwest Montana Regional Planning Conference

Mrs. Casey said they would just remind them of the Planning Conference on September 14th. She said they would encourage them to come up and have lunch with them, if they couldn't make it.

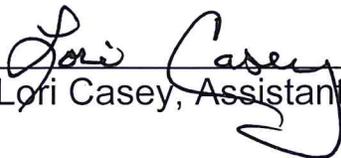
Several of the Board members asked to have the information sent to them again.

V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:55 P.M.

BY:



David Wing, Chairman
% John Habeger - Acting



Lori Casey, Assistant Planning Director

2016

BUTTE-SILVER BOW ZONING BOARD OF ADJUSTMENT

Thursday, August 18, 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 August 4, 2016.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #15198 - An application for a variance by Peter Konola, owner, to reduce the required parking apron from twenty feet (20') to ten feet (10'), varying from Section 17.12.020C, Permitted Uses, of the BSBMC. The property is located in an "R-2" (Two Family Residential) zone, legally described as Lots 9-12, Block 9 of the South Park Addition, commonly known as 2450 Placer Street, Butte, Montana.

Use Variance Application #15208 – An application for a use variance by Dennis & Mary Kay Starin, owners, Dr. Bruce Pedersen, agent, and Dr. Dulce Coulson, agent, to locate a standard and critical care veterinary clinic offering on site small animal services and medical boarding, as well as mobile large animal services, in an existing building with an existing off-street parking lot situated in a commercial and light industrial zone, varying from Section 17.27.030, Permitted Uses, of the BSBMC. The properties are located in a "CM" (Commercial and Light Industrial) zone, legally described as Lot 14, Block 7 of the Noyes and Upton Railroad Addition, commonly known as 1100 Utah Avenue, Butte, Montana, and Lot 20, Block 6 of the Noyes and Upton Railroad Addition (existing parking lot), commonly located on the northeast corner of Utah Avenue and East First Street, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

(Page 2)

Variance Application #15209 - An application for a variance by Douglas and Donna Rowling, owners, to locate an attached garage/carport within one foot (1') of the east side property line, varying from Section 17.10.080, Minimum Side Yard Width, of the BSBMC. The property is located in an "R-1" (Single Family Residential) zone, legally described as Lot 7, Plat 216B of the Tullamore Planned Unit Development, commonly known as 14 Tullamore Street, Butte, Montana.

IV. Other Business.

V. Adjournment.

By: Lori Casey
Lori Casey, Assistant Planning Director

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

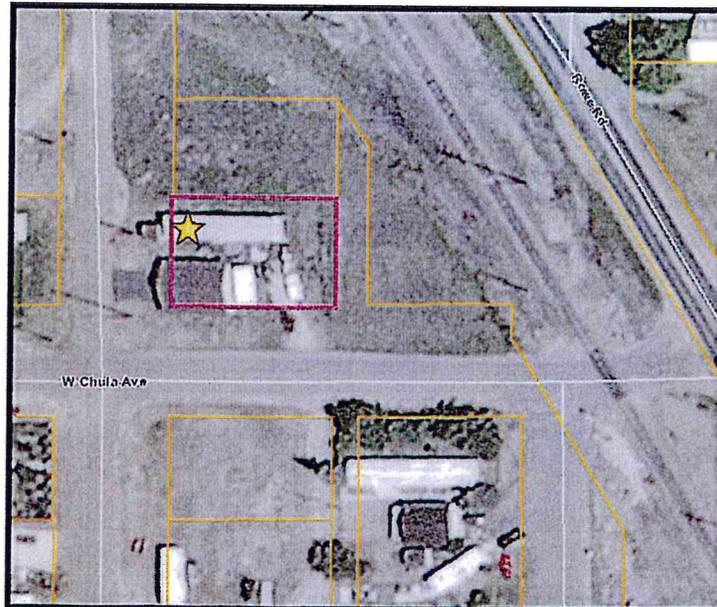
ITEM: **Variance Application #15198** - An application for a variance to construct an attached garage (765 square feet in area) within ten feet (10') of the Placer Street property line, varying from the twenty foot (20') parking apron requirement for a garage exiting to a street, as per the requirements of Section 17.10.020 (D), Permitted Uses, and also varying from the twenty foot (20') required front yard setback, as per Section 17.10.070, Minimum Front Yard Depth, of the BSBMC.

APPLICANTS: Peter Konola, 2450 Placer Street, Butte, Montana, owner.

DATE/TIME: Thursday, August 18, 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 Lots 11-12, Block 9 of the South Park Addition, commonly known as 2450 Placer Street, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a rectangular shaped attached garage with a total of 765 square feet (27.8' W x 28'D) that would be located ten feet (10') from the Placer Street property line, varying from both the twenty foot (20') parking apron requirement for a garage exiting to a street and from the twenty foot (20') required front yard setback. The garage would be located on the west side and end of the existing home.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.10.020, Permitted Uses, requires a garage exiting directly to a street to have a twenty foot (20') parking apron from the street property line. Section 17.10.070, Minimum Front Yard Depth, requires front yard of twenty feet (20').

Therefore, the applicant's request to place the garage within ten feet (10') of the Placer Street property line requires approval from the Zoning Board of Adjustment.

It must be noted that the applicant is retroactively applying for this variance to allow him to finish construction of his attached garage, as depicted on the site plan. The applicant's contractor applied for a building permit after construction had already commenced. At that time, he was notified that neither Butte-Silver Bow Zoning nor Building Departments could proceed with processing his permit for the garage, as drawn on the site plan. He was given the option to either meet setback requirements, as outlined in the Butte-Silver Bow Zoning Ordinance, or to

apply for a variance. The applicant then met with Planning Department Staff to pursue a variance application.

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

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

Parking apron requirements have been established to protect public health and safety by providing adequate space for vehicles to enter and exit a garage without obstructing traffic or creating a safety hazard within the public right-of-way for pedestrians and drivers.

The neighborhood is a mixture of both newer and older homes, varying somewhat in design. A strong percentage, if not the majority of the older homes in the area, have garages with reduced parking aprons. In addition, the applicant's own property has an existing detached garage with a reduced parking apron of approximately eight feet (8').

It is important to note that this area of the South Park Addition does not have sidewalks or curb and gutter installed within the public right-of-way and instead has boulevards buffering private property from the public streets. Consequently, there is approximately seventeen feet (17') of boulevard space between the applicant's property line and Placer Street.

The primary purpose for the twenty foot (20') parking apron is to provide a driver exiting a garage with adequate visibility regarding oncoming traffic and pedestrians. In this case, the proposed ten feet (10')

should provide the applicant with enough space to exit the garage far enough to identify pedestrian or oncoming traffic prior to encroaching into the boulevard area through the vehicles' side windows.

One of the important considerations when considering reduced parking aprons is to ensure that the garage will not affect the vision clearance triangle at the intersection of Placer Street and Chula Avenue. In this case, the proposed garage will be located outside the vision clearance triangle area.

Another consideration is whether a vehicle can park in the parking apron and not extend out into the public right-of-way. While a ten foot (10') parking apron will not allow most types of vehicles to safely park on the property in front of the garage, there is ample space for vehicles to park along the public right-of-way on both Placer Street and Chula Avenue. The applicant is the only resident in the property triangle bound by Placer Street, Rowe Road and Chula Avenue and owns all of Lots 9-12 in Block 9 of the South Park Addition and as such, there is limited pedestrian and vehicle traffic accessing the other properties in the block.

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

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

To qualify for a variance the property must exhibit conditions that preclude a structure from meeting the minimum standards of the Zoning Ordinance,

therefore, making the development of the property not feasible. Unique conditions usually associated with the property are shape, topography or some geological feature.

Although the applicant has an existing detached garage on the property, his disability precludes him from easily accessing the structure, which is located some distance away from his dwelling. The applicant's objective behind building the structure, as located, is to provide himself with a garage containing sufficient square footage in which to maneuver in and out of his vehicle and to access his home easily. This is especially important during the months when Butte sees its characteristic share of snow and ice. These necessities, along with the placement of the existing home and property characteristics, prevent the applicant from meeting the twenty foot (20') setback requirement off of Placer Street with an adequately sized garage.

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

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

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

The Board must determine if the spirit of the Zoning Ordinance would be met by approving this application, as submitted. While the proposed detached garage could be located with a twenty foot (20') parking apron, the reduced garage size would scarcely allow for a full sized vehicle, much less adequate space to maneuver around it.

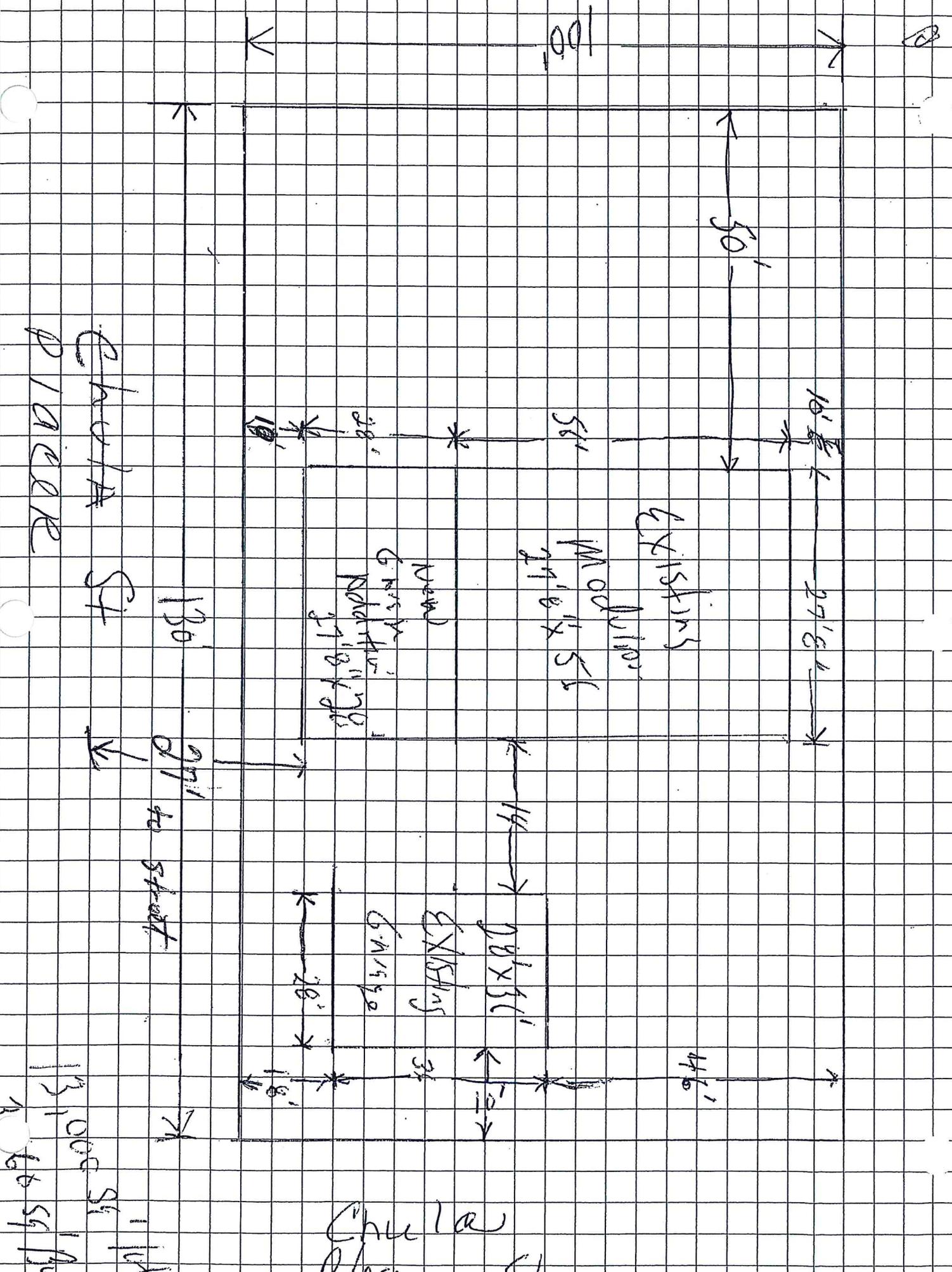
Although the applicant owns a significant amount of land to the north and to the east of his residence, as discussed above, it is very important to locate the garage adjacent to both his house and the public street to allow for reasonable accessibility.

In addition, as discussed previously, there are a number of garages in the area which have a reduced parking apron. As such, it would appear that residences in the area are accustomed to vehicles entering the boulevard area prior to having an unobstructed view of oncoming pedestrian and vehicle traffic.

The applicant's request to construct a garage on the property appears to be consistent with the intent of the Zoning Ordinance to allow for the reasonable development of private property and the requested ten foot (10') parking apron appears to uphold the spirit of the Zoning Ordinance.

CONCLUSION: Based on the above analysis, staff believes that the construction of the attached garage, as shown on the site plan with a ten foot (10') parking apron, would not compromise the spirit of the Zoning Ordinance, therefore, staff recommends approval of Variance Application #15198 with the following conditions:

1. The applicant shall ensure that the garage construction is completed in compliance with all applicable building, electrical, mechanical, fire and health codes.
2. The applicant shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.
3. The detached garage shall meet the height requirements of Section 17.10.040 for accessory structures which are:
 - a. Hip or gable roof 16' maximum
 - b. Gambrel roof 14' maximum
 - c. Flat roof 13' maximum
4. Should the applicant choose to pave his driveway approach between his property line and the street, all specifications must meet or exceed those required by the Butte-Silver Bow Road Department.
5. As per Section 17.56.040, Permit Fees, of the BSBMC, the applicant shall pay double for the building permit required for this construction project. The double payment is due to the fact that the garage construction was started 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 25, 2016.



Chula
Diagram (1)

131'00" St
131'66" St

99' to street

Chula St
PLACE

EXISTING

MODIFIED
29'6" x 56'

EXISTING
29'6" x 28'

EXISTING
28' x 56'

EXISTING
28' x 30'

50'

100'

10'6"

27'8"

14'

28'

3'

10'

44'

10'

130'

131'

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

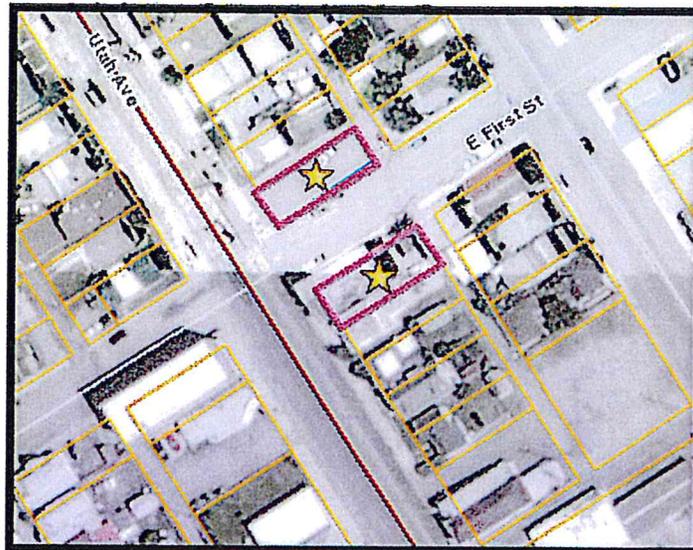
ITEM: **Use Variance Application #15208** - An application for a use variance to locate a standard and critical care veterinary clinic offering on-site small animal services and medical boarding, as well as mobile large animal services, in an existing building situated in a commercial and light industrial zone, varying from Section 17.27.030, Permitted Uses, of the BSBMC.

APPLICANT: Dennis & Mary Kay Starin, 1100 Utah Avenue, Butte, MT, owners; Bruce Pedersen and Dulce Coulson, 849 Coyote Lane, Butte, MT, agents.

TIME/DATE: Thursday, August 18, 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 properties are located in a "C-M" (Commercial and Light Industrial) zone, legally described as Lot 14, Block 7 of the Noyes and Upton Railroad Addition, commonly known as 1100 Utah Avenue, Butte, Montana, and Lot 20, Block 6 of the Noyes and Upton Railroad Addition, (existing parking lot) commonly located on the northeast corner of Utah Avenue and East First Street, Montana.

PROPOSAL: The applicants are proposing to establish a standard and critical care veterinary clinic offering on-site small animal services and medical boarding, as well as mobile large animal services, in an existing building situated in a commercial and light industrial zone. Additionally, the applicants have proposed to utilize the empty paved lot immediately to the north across First Street for parking.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.27.030, Permitted Uses, does not include veterinary clinics. However, veterinary clinics are allowed by conditional use permit within the "C-2" zone, which is in general more stringently regulated than zones that permit industrial uses ("C-M", "M-1", "M-2").

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

The second subcriteria used in evaluating use variance cases requires that the applicant prove that the proposed use will not alter the essential character of the

neighborhood in which it is located. The applicants must show that the proposed use will not "practically destroy or greatly decrease the value of a parcel", nor will the use involve elements which make it unwelcome in the neighborhood.

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

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

The public's interest in segregating commercial and residential land uses is to prevent the intensity of the former from adversely affecting the latter. Generally speaking, veterinary clinics are allowed when it can be demonstrated that they will not have a detrimental effect on surrounding permitted uses. Potential negative impact and public concerns must be reviewed and addressed for the application to be approved. Specifically, would the approval of the requested use variance result in negative impacts to the adjacent business and residences from increased traffic, noise and animal waste odors.

Although there are residences located adjacent to the proposed location, it is important to note that these residents are located within the "C-M" zone. These residences are considered nonconforming uses in the zone. As such, these particular residences do not enjoy the same types of protection as do residents in a residential zone. Also, the applicants' properties are buffered from any residential zones by at least one "C-M" zoned property on all sides.

In regards to an increase in traffic along Utah Avenue and First Street, the proposed location's entrance is located along Utah Avenue, a main arterial that provides access between Front Street and Uptown Butte. As such, staff would anticipate that any additional commercial traffic created by the proposed veterinary clinic would be minimal compared to the number of vehicles already utilizing Utah Avenue. The only increase in traffic along First Street owing to clinic use would be at the proposed parking lot at the northeast corner of the Utah Avenue and First Street intersection. As traffic would travel less than one half of a block from Utah Avenue to the entrance of the parking lot, staff would anticipate negligible impact along First Street as well. In that regard, the applicants should provide signage for the parking lot to indicate it is available for Veterinary Clinic customers.

As noted above, all large animal services are proposed to be mobile. Therefore, there will be no addition of truck and trailer traffic with the proposed use.

In regards to increased noise, there is the possibility that animals, especially dogs, being dropped off and/or picked up would create additional noise. The applicants have explicitly stated that the only boarding proposed for the facility would be necessary medical boarding, which would mitigate a substantial amount of potential noise that may be present with full boarding facilities. In addition, the facility is proposed to have caretaker quarters to allow for the veterinary personnel on shift to stay at the clinic. This would provide an additional noise mitigation factor, as personnel would be present to attend to the situation should noise rise to an

unacceptable level. The applicants have also stated in their application that, although the rear yard is fully fenced and screened, only one animal at a time would be present in the yard and they would be accompanied at all times by veterinary personnel. This provides yet another noise mitigation factor.

With respect to potential noise issues, staff would make the case that the applicants' property is located in a zoning district that permits many uses that can result in significant noise. For example, the following uses are among those permitted in the "C-M" zone: bowling alleys, drive-in eating and drinking establishments, mini-storage, nurseries and commercial greenhouses, private clubs, public parking garages, temporary carnivals and circuses and tire shops. Staff would contend that many of these permitted uses are as likely to create additional noise above that which may be created by the proposed use.

In regards to increased odors from animal waste, the applicants addressed the issue in their variance application. As stated above, there will only be one fully accompanied animal present in the rear yard at one time. As such, this will offer an opportunity for animal waste to be readily removed from the yard prior to any additional contribution from another animal. This action is already considered a best management practice by the veterinary community, as it is a precautionary technique to prevent the spread of disease from one animal to another.

Additionally, the applicants have stated that proper garbage disposal and waste management practices will be adhered to by the applicants. Being that the proposed property is serviced by city services,

proper garbage disposal and waste management should be relatively easy to adhere to. Regardless, staff recommends a condition of approval, should the Board choose to approve this use variance, that all animal waste shall be removed and disposed of properly in a timely manner.

While the applicants would be accepting small animal emergency and critical care patients after hours and on weekends, the number of customers should be limited. The entrance to the clinic is located on the west side of the existing structure, adjacent to Utah Avenue. As Utah Avenue is a main arterial, and utilized by many mixed practices, any weekend and after-hours noise and traffic would be negligible to that already present around the property.

As the applicants are proposing a dedicated parking lot to be located on the northern parcel, the proposed veterinary clinic should, at most, minimally impact on-street parking.

In regards to required off-street parking, the applicants are not proposing to increase the footprint of the existing building, therefore, the Zoning Ordinance does not require off-street parking. That being said, the applicants do have an off-street parking lot located on the northeast corner of Utah Avenue and First Street. It appears the proposed 3,600 square foot property north of First Street has adequate area to accommodate ten (10) or more parking spaces and although unstriped, is paved and presently utilized for parking. Sidewalks were installed along Utah Avenue and First Street in recent years and provide for appropriate ADA accommodation. The existing driveway approach is

paved and enters/exits off of First Street. However, to provide for clarity within the parking lot, staff does recommend the driveway be striped to include at least eight (8) designated parking spaces, including one designated ADA accessible space with a five foot (5') access aisle. That being said, it may provide for better accessible ADA accommodation, if an accessible parking space were to be striped within the on-street parking adjacent to the building. Staff would encourage the applicants to discuss the potential of having an ADA designated parking space near the front entrance on Utah Avenue with the Montana Department of Transportation.

Based on the above discussion, staff believes that if the agent agrees to all conditions of approval, the proposed veterinary clinic should be compatible with other permitted uses in the "C-M" zone and, therefore, would not 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 applicants' ability to place a structure, an addition or to utilize the property in compliance with the Zoning Ordinance. The hardship may not result from a condition created by the applicants.

Whereas the properties do not exhibit any physical conditions that would provide a hardship, it is important to note that this is a recognized mixed-use

area, with "C-M" (Commercial and Light Industrial), "C-2" (Community Commercial), and "R-2" (Two Family Residential) zones in close proximity to one another.

Subcriteria Number One states that the land cannot secure a "reasonable return", if the land is restricted to only those uses permitted outright in that zone. It appears that the property has been utilized for the mixed uses for many years. The building was originally constructed in 1909 as a mixed residential and commercial structure and was utilized as an animal grooming facility prior to its current use as a law office. Although not an outright permitted use, the proposed veterinary clinic appears to align with the property's previous uses. Additionally, the applicants feel that due to their unique need for easy access, visibility and on-site housing, they are very restricted by the Zoning Ordinance, owing to the fact that a veterinary facility and its associated caretaker quarters are not simultaneously a permitted use in any zone.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. The "C-M" zone provides a transition area between the high density commercial zones of the urban area and the generally larger industrial zones of the outlying areas. Although not an outright permitted use within the "C-M" zone, it does appear that the mixed residential and commercial/industrial use of the veterinary clinic with its associated caretaker quarters would be consistent with the presently mixed character of the neighborhood.

No physical changes to the building or parking lot are proposed with the exception of the staff's recommendation to impose a condition requiring the applicants to stripe the existing parking lot and to add signage. While the proposed use as a veterinary clinic may result in a small amount of additional traffic to the property, this small increase would be minimal in comparison to existing traffic on Utah Avenue.

Based on the above discussion, the use of this property for a veterinary clinic would not appear to alter the character of the neighborhood.

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

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

Public health, safety and general welfare must be protected and weighed against the rights of the applicants 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.

The applicants have proposed no additions to the building itself nor are they changing the use of the lot proposed for parking. Therefore, the overall visual impact should not be significantly altered.

Another significant factor is that the proposed veterinary clinic will provide a critical care treatment facility, a service that is not presently available in

Butte-Silver Bow. Based on the number of animals in the surrounding areas, the proposed clinic will most likely provide necessary and relevant veterinary services for residents in the immediate area and be an asset to the community overall.

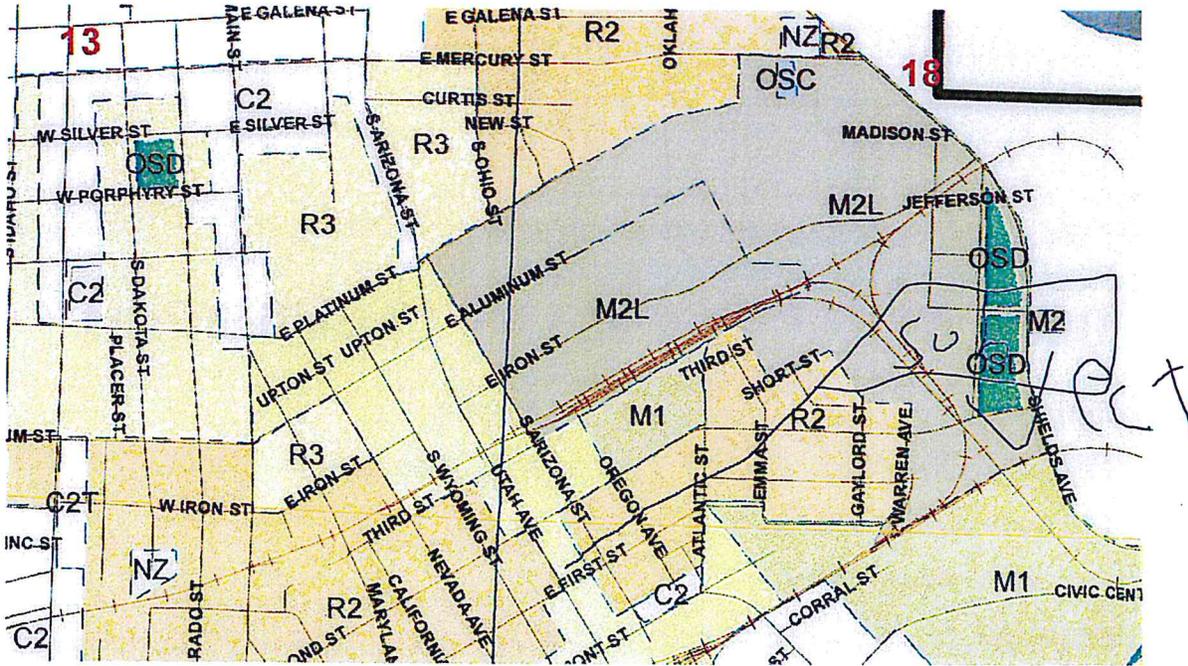
CONCLUSION: Based on the above analysis, staff believes that this use variance would not disrupt the character of the neighborhood or be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

Therefore, staff would recommend approval of Use Variance Application #15208, with the following conditions:

1. Prior to receiving a business license, the veterinary clinic shall meet all applicable State of Montana and local building code requirements for veterinary clinics.
2. Prior to receiving a business license, the applicant shall meet all applicable building, electrical, plumbing, mechanical, fire and health codes, including but not limited to meeting ADA standards and shall secure all necessary permits.
3. Prior to receiving a sign permit for wall signs on the building in question, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for a "C-M" zone.
4. Any exterior parking lot lighting shall be low glare, a maximum of sixteen feet (16') tall and directed away from the adjacent residences.

5. Animal waste shall be removed from the rear yard once the associated animal has been appropriately secured inside the premises and attended to and all waste shall be disposed of in a sanitary manner on a regular basis.
6. The parking lot located north of First Street shall be signed and striped and shall meet the requirements of Section 17.40, Off-Street Loading and Parking, of the BSBMC.





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

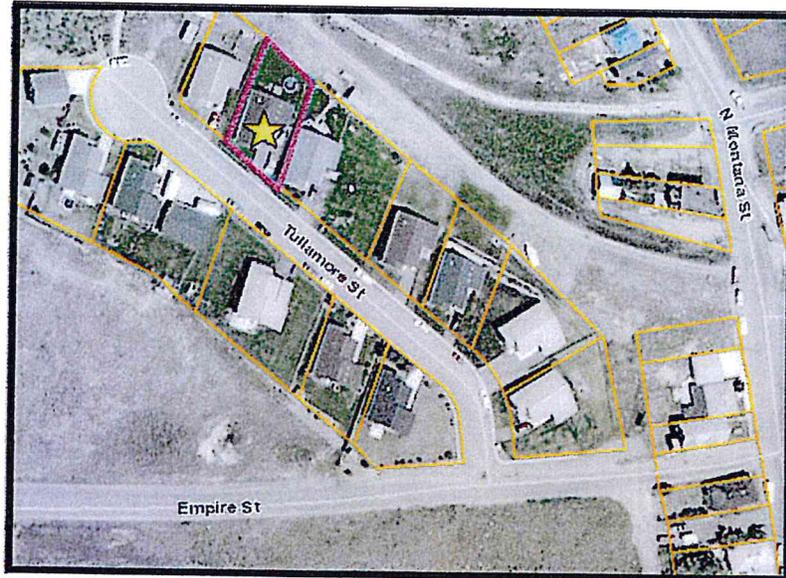
ITEM: **Variance Application #15209** - An application for a variance to locate a garage/carport within one foot (1') of the east side property line, varying from the required five feet (5') of Section 17.10.080, Minimum Side Yard Width, of the BSBMC.

APPLICANTS: Douglas & Donna Rowling, 14 Tullamore Street, Butte, Montana, owners.

DATE/TIME: Thursday, August 18, 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 PUD" (Single Family Residential Planned Unit Development) zone, legally described as Lot 7, Plat 216B of the Tullamore Planned Unit Development, commonly known as 14 Tullamore Street, Butte, Montana.

PROPOSAL: The applicants are proposing to construct an attached garage/carport (18'W X 20'D) in front of their existing single car garage to allow a space large enough to park their pickup truck. At the point of application, the applicants had yet to determine whether the structure was to be a carport or garage. The garage/carport would be located within one foot (1') of the east side property line. Because the garage/carport is proposed to be attached to the existing residence via a continuation of the existing roof, it must meet the setback requirements for primary dwellings and be included in the determination of lot coverage. The addition of the proposed garage/carport would result in total lot coverage of twenty-eight and one-half percent (28.5%), well under the maximum lot coverage requirement of thirty-five percent (35%). The garage/carport is proposed to be set back a minimum of twenty-one feet (21') from the front property line, allowing enough space for both the required twenty foot (20') front yard setback and the required twenty foot (20') parking apron entering off of a public street.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.10.080, Minimum Side Yard Width, requires that all roofed structures over 120 square feet be located a minimum of five feet from the side property line.

The applicants' request to locate the garage/carport within one foot (1') of their east side 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. Planned Unit Developments are designed to promote flexibility and innovation of development design and land utilization through the relaxation of zoning and subdivision regulations, while maintaining the goals and objectives of the Master Plan. They are reviewed in collaboration by the Public Works Department, Utility and Fire Districts, the State Highway Department and any other applicable federal, state, and local agencies and then subsequently reviewed by the Zoning Commission.

In this particular case, final plat approval for the Tullamore Planned Unit Development was granted on August 29, 1996. As per Section 17.46.170, Density Requirements, of the BSBMC, "modifications to the density, building heights, setbacks, parking and other design requirements of the underlying zone may be approved by the Zoning Commission, provided that such modifications shall not exceed twenty-five percent (25%) of the general requirements of the zone in which the development is located. In determining the density, land area dedicated for public streets or public parks shall not be included as part of the development area. However, land permanently set aside for common

open space, recreation, private drives or streets and private parking shall be included in the development area. In granting these modifications, the Zoning Commission shall consider the character, design excellence, relationship to surrounding uses and lands, open space utilization, provisions of recreational facilities, ingress/egress and traffic circulation both vehicular and pedestrian, as well as impacts to public facilities including streets, water, sewer, schools and police and fire protection required and provided by the development." As such, reduced setbacks are already provided for, exclusive of a variance, within the flexible design. Consequently, the applicants' request would be for a provision extending beyond that already incorporated into the design of the Tullamore Planned Unit Development.

One important design element of the Tullamore Planned Unit Development is the presence of significant underground workings located beneath the platted development. By establishing no-build zones above property with reduced bedrock ceilings, the developers mitigated potential safety issues. Therefore, this development contains lots of varying sizes. Regardless of what may mistakenly appear to be inconsistent lot size, the Tullamore Planned Unit Development has remained consistent with the original design development standards and maintains a well-developed, orderly character.

Based on the above discussion, the applicants' request to extend beyond the flexibility provision of the development and locate a garage/carport within one foot (1') of their east side property line would appear to alter the character of the Planned Unit

Development and, therefore, would appear to 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.

Whereas the property in question does exhibit a smaller lot size than many of the lots in the development, as discussed above, this inconsistency is due to the presence of no-build zones within the larger lots. Therefore, there is no justifiable hardship associated with this variance.

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.

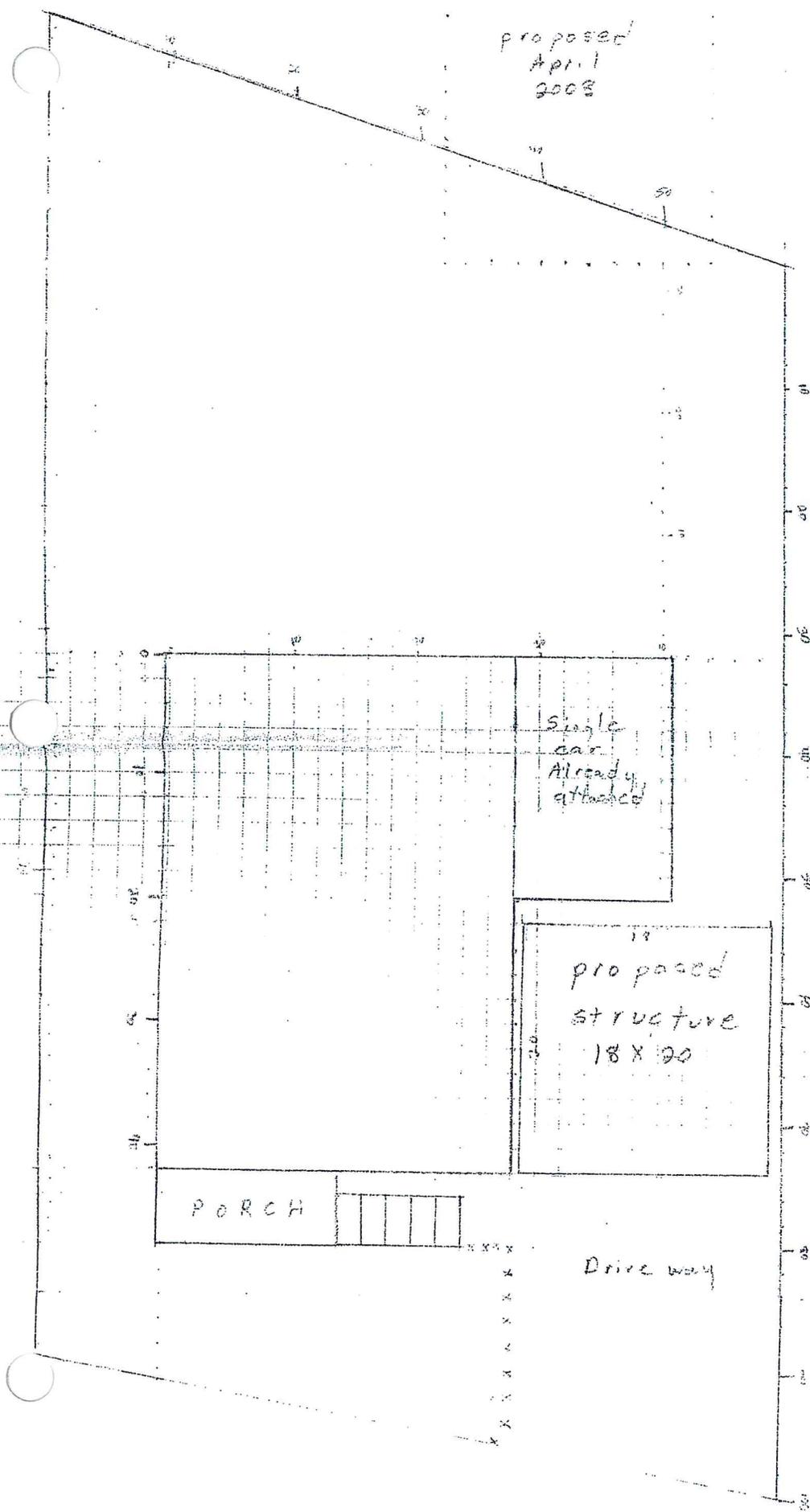
In this particular case, the applicants are requesting a side yard setback variance that would be closer to the neighboring property than allowed by the Zoning Ordinance, and moreover, closer than provided for in the flexible design of the Tullamore Planned Unit Development. Whereas the request does not appear to have detrimental effects to health and safety, it does appear to pose a detriment to the design of a carefully engineered Planned Unit Development.

Based on these factors, the applicants' request to locate the carport within one foot (1') of the east side property boundary does not appear to be consistent with the spirit of the Zoning Ordinance to allow for the reasonable development of private property,

CONCLUSION: Based on the above analysis, staff believes that the applicants' request to locate a garage/carport within one foot (1') of the east side property line would be inconsistent with the character of the neighborhood and subsequently may compromise the spirit of the Zoning Ordinance. Therefore, staff recommends denial of Variance Application #15209.

N

proposed
April
2008



Single
car
Already
attached

proposed
structure
18 X 20

PORCH

Driveway