September 15, 2016

Butte-Silver Bow
Zoning Board of Adjustment
Council Chambers

MEMBERS PRESENT: David Wing, Chairman

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

M I N U T E S

I. Mr. Wing called the meeting to order at 5:32 P.M.

II. Hearing of Cases, Appeals and Reports:

Mr. Wing said he noted from an observation of the room that they did not appear to have a quorum. He asked Mrs. Casey if that was correct. Mrs. Casey replied that was correct.

Mr. Wing asked if the appropriate thing to do would be to recess this particular meeting and open it to a different time frame. Mrs. Casey said yes, they could. She said the applicants had been notified and if he wished, they could recess this until a date certain of Tuesday, September 20th at 5:30 P.M. Mr. Wing said he would now recess this meeting and reset it for Tuesday, September 20th at 5:30 P.M.

III. The meeting adjourned at 5:35 P.M.

BY: David Wing
David Wing, Chairman

Lori Casey
Lori Casey, Assistant Planning Director

September 20, 2016

Butte-Silver Bow
Zoning Board of Adjustment
Council Chambers

MEMBERS PRESENT: John Habeger, Tyler Shaffer, Les Taylor, Dolores Cooney and Rocko Mulcahy

ABSENT: David Wing and Julie Jaksha

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

M I N U T E S

I. The meeting was called to order at 5:32 P.M.

II. The Minutes of the meeting of August 18, 2016, were approved and passed.

III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on September 8, 2016. The meeting was recessed from the September 15, 2016, to this meeting of September 20, 2016.

Mr. Habeger 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 #15227 – Joe Shoemaker was present at this meeting.

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

Mr. Habeger asked if the Board had any questions of the staff. There were none.

Mr. Habeger then asked if Mr. Shoemaker cared to come up and state his case. He said he was the owner of the property and he had agreed to the conditions. He said as noted in the pictures, he thought it was kind of interesting that the paved street was already partially on where the sidewalks would be and they had paved it further down but it didn't run parallel to the property.

Mr. Shoemaker then said if they came in with a sidewalk program, he would be fully – he would like to see it enhanced but as it was right now, it would stand out kind of like a sore thumb because there was nothing else there. He said all of the businesses that were there, people drove right up, as they were paved right up to the front door.

Mr. Habeger asked what type of business it would be. Mr. Shoemaker replied it would be a life insurance agency, his agency's office for New York Life.

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

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

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

Mr. Shaffer said he saw no problems with anything there. He said it seemed like the applicant was going above and beyond for landscaping requirements and like he said, the sidewalk would likely be a sidewalk to nowhere and would probably look worse than nothing.

Mr. Habeger said he thought if Mr. Shoemaker had agreed to participate should there be a program in the future, that was enough for him also. Mr. Tyler said yes.

Mr. Shaffer said with that being said, he moved and Mrs. Cooney seconded the motion to approve Variance Application #15227 with all of the conditions as outlined in the staff report. The conditions are as follows:

1. If the Butte-Silver Bow East Side Urban Renewal Area develops a program for installation of sidewalk and curb/gutter along Garden Avenue and/or Gallatin Street, the applicants shall include this property in said program.

2. The applicants shall install the landscaping as depicted on the site plan (1,792 square feet of sod area with three (3) trees).

3. The unimproved areas to the west and south of the building shall be planted with native seed.

At this point the Board voted on the motion.

Variance Application #15227 – Conditionally Approved

Dolores Cooney	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
	John Habeger	For	

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

Mr. Habeger said all five votes were in support of the application, so he would be receiving a letter from the Planning staff to go ahead and proceed with his project. He told him good luck.

Use Variance Application #15237 – Jennifer Pierce was present at this meeting.

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

Mr. Habeger asked if the Board had any questions of the staff. There were none.

Mr. Habeger then asked if Ms. Pierce cared to come forward and state her case and let them know if the conditions met her conditions or thoughts. She thanked them for taking this under advisement.

Ms. Pierce said she learned about Airbnb a couple of years ago and she didn't know if any of them were aware of it but there were forty-five currently running in Butte, so she would have expected them to know about this. She said her sister ran one in Concord, New Hampshire, so if they were ever going to New England, give her a shout and she would set them up.

Ms. Pierce said she was interested in doing this because she currently owned her own business and was self-employed and she already worked fourteen to sixteen hours a week or a day and had tried other ways to bring in other income and this just seemed like wow, all she had to do was give somebody a key to her house. She said there were problems with that potentially, but it didn't require her to get on the computer and sell things and it didn't require her to open another office and do another business.

Ms. Pierce then said she was also interested in this because of the opportunity to meet people from not just in the United States but across the world since Airbnb was an international company as well and that really appealed to her. She said she was a Rotary member, so they had a lot of international ties.

Ms. Pierce said she just bought her house last October and it was a hundred years old and it needed some updating. She said she wasn't planning to do any remodeling but had already painted the bathroom and the bedroom she was renting out

would be as is. She said she might paint it someday or make it nicer but right now, you got what you got and that was usually the way Airbnb worked. You would go on line and look at the accommodations being offered and pick what worked best for you.

Ms. Pierce further said she was not interested in having a sign and didn't want to advertise any place other than on the Airbnb site and to use their vetting process for having people come stay at her house.

Ms. Pierce said that was all she had to say but she had a couple of questions at some point. Mr. Habeger told her to go ahead. She said her first question was would she need to have a sign because she wasn't interested in that but if she had to have one, she would put one up.

Ms. Pierce said the other one was, the Health Department she had been scheduled with, but she wasn't quite sure about how to go about the Building Code. She asked if she wasn't remodeling, did she need to have Building Code come in and look at the property. She said she would do it and wasn't opposed to doing it but she just wasn't going to remodel anything, so she didn't know if that was still -- Mr. Habeger said that would probably be a better question for Planning staff and Mrs. Casey to answer.

Mr. Habeger said he did actually have a question on the signage because he wasn't familiar and had never used Airbnb but he would assume she would need some designation of her house numbers and he thought as long as that was visible, he thought anybody could find it. He said in the picture, he couldn't see very well but it looked like you could see the numbers from the street. Ms. Pierce said she was just in the process of -- she had just put on the primer coat to her porch and the garage and did have new numbers that would be larger than the ones that were actually up on the garage. She said she was considering a solar lighted house number panel that you could buy and she could maybe put it up in her garden or something below there, so that people could see the number

easily from the street, if they were coming in. She said right now, she figured if she just told everybody it was the turquoise house in the middle of the block, they could find it pretty easily.

Mr. Habeger asked Mrs. Casey to answer the question on the Codes and the requirements. Mrs. Casey said it was only if there was remodeling that the Building Official would come in, so if she wasn't doing any remodeling to accommodate it, then she would not need to. Ms. Pierce said in the future, if she had her roof replaced or her electrical updated, then did she need to have something done because it would affect the bedroom and bathroom. Mrs. Casey said yes, at that time she would have to get building, roofing, electrical permits or whatever she was doing at that time. Ms. Pierce asked if it would have to be specifically for the Airbnb business – would she have to come back and have it relooked at. Mr. Habeger said any remodeling would fall under the Planning Board and Codes and would have to follow current practices that were required in Silver Bow County. Ms. Pierce said okay. Mrs. Casey said just to clarify, if you weren't expanding from the one room, she would not have to come back to the Board to do the remodeling of the home with the roof and electrical, that would just be with the Building Department.

Mr. Habeger said the only thing they were deciding on that night was the five conditions for her special permit. He said if she was okay with those, they could make a judgement on it that night. Ms. Pierce said she was fine with those.

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

Mr. Habeger then asked if there was anyone who would like to speak against the special use permit. There was no response.

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

Mrs. Cooney thought it was pretty clear cut. She said it was not anything that would disrupt the neighborhood or cause any problems.

Mr. Shaffer said if there were forty-five other homes available to rent right now that didn't go through this process, he commended her for that. She said she was a business owner too and understood there were things you had to do.

Mr. Shaffer moved and Mrs. Cooney seconded the motion to approve Special Use Permit Application #15237 with the conditions as outlined by the staff.

The conditions are as follows:

1. The applicant shall be required to secure a State of Montana Public Accommodations License through the Butte-Silver Bow Health Department.

2. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. All signs shall not be illuminated.

3. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, be residential in character and be directed away from all adjacent residences.

4. The remodeling of the existing residence to accommodate the proposed business will be required to meet all applicable Building Code and Health Code requirements, as required by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Health Department, respectively. All necessary approvals must be granted prior to the applicant receiving final business license approval.

5. The applicant will be limited to the business as stated and approved (one (1) bedroom with 1 to 2 persons per night). Any future business expansions, changes in business or

building expansions will require further review by the Zoning Board of Adjustment.

At this point the Board voted on the motion.

Variance Application #15113 – Conditionally Approved

Dolores Cooney	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
	John Habeger	For	

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

Mr. Habeger said there were five votes for the motion, so her application had been approved. He said the Planning staff would send her information on those conditions that were agreed to. He told her good luck with her project.

Use Variance Application #15239 – Tim Russell was present at this meeting.

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

Mr. Habeger asked if the Board had any questions of the staff. There were none.

Mr. Habeger then asked if Mr. Russell cared to come forward and state his case. He said they purchased the property probably six years ago for a Christian school. He said the school closed down two years ago. He said they tried to sell it as is but now there was a building sitting there with not a penny coming out of it, so he thought -- he ran a construction company in Butte for thirty years and it wouldn't take much to do a little bit of remodeling to it, which basically amounted to putting some kitchen cabinets in and some egress windows where the bedrooms would be and that was basically it. He

said they were going to have to do some egress windows in the basement and he would have to find out what the requirements were for egress and the exits. He said that was going to be a little bit trickier but that would all be passed by the Building Department, as it needed to be.

Mr. Russell further said it was really a low impact remodel. He said what he would like to do would be to get the main floor – didn't think it would take much to get it rentable and then over the next year or so, work on whatever he needed to do to create rentable space in the basement. He said the upstairs would have a three bedroom apartment and in the basement it looked like they could get a two bedroom apartment out of it.

Mr. Habeger asked if he was okay with all of the conditions and would meet all of the Building Codes and that and Mr. Russell said yes.

Mr. Habeger then asked if there was anyone who would like to speak in support of this application. There was no response.

Mr. Habeger then asked if there was anybody who would like to speak against this application. There was no response.

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

Mr. Shaffer moved to approve Use Variance Application #15239 with the condition as outlined with Mrs. Cooney seconding the motion.

Mr. Habeger thought it would be a good use of the property.

The condition is as follows:

1. The apartment units shall meet all applicable building, electrical, plumbing and fire codes, including but not limited to meeting ADA standards and shall secure all necessary permits.

At this point the Board voted on the motion.

Use Variance Application #15239 – Conditionally Approved

Dolores Cooney	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
	John Habeger	For	

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

Mr. Habeger said all five votes were in favor of his application and he would receive a letter from the Planning staff in recognition of that and with the one condition. He told him good luck.

Variance Application #15242 – Tom Reopelle was present at this meeting, as the representative for Dan Serich.

Lori Casey summarized the staff analysis that is attached and made a part of these Minutes during the viewing of the presentation pictures. She said within the report, she had an additional two feet, when it should have been five feet, so she would correct that for the Board members and for the record, so he would be moving it back eight feet and then the twelve foot boulevard for the twenty feet.

Mr. Habeger said there was no need to move anything further north off of Hobson, the four foot was okay. Mrs. Casey said yes, that was staff's recommendation because he had such a large boulevard on the Hobson Avenue side also. Mr. Habeger said he could understand the additional eight feet -- it was a large lot and who knew what the future growth would be over on the Kenneally property to the west there.

Mr. Habeger asked if the Board had any questions of the staff. There were none.

Mr. Habeger then asked if Mr. Reopelle cared to come forward and state his case and let them know about the conditions. Mr. Reopelle said he was a general contractor in Butte and Mr. Serich would like him to build this should it be accepted.

Mr. Reopelle said the original proposal would be three foot back on the Kennedy side, again, as Mrs. Casey had said because of the large boulevard. He said Mr. Serich couldn't accept the four feet – they would like to stay with the three foot on the Kennedy side because of the large yard area.

Mr. Reopelle further said that Mr. Serich was a real finicky guy and asked to see the aerial photo again. He said they could see with just looking at this, how neat and well-kept this place was compared to anybody. He said the real purpose of this garage was to keep everything indoors. He said the small garage there now was 16 x 24 and did not have vehicles in it. He said the garage floor was carpeted and sheet rocked, taped and painted. He said he had items that he stored off-site that he paid rent for and would like this building to keep everything inside, including the vehicle he drove day to day.

Mr. Reopelle said the reason for not moving it back, as they could see it had the space -- he had two pets that he took incredible care of that were in the picture also. He said the landscaping, as they could see, he didn't want to disturb any of the trees and as little lawn as he could. He said Mrs. Casey had said there were some sprinklers in the way but that wasn't really the issue – he wanted to keep as much landscaping as he could. He said he may be getting a little ahead of Mr. Serich, but he didn't think he would accept changing the door on the little garage because again, he didn't park in there, it was just lawn equipment that was put in that garage and there were no vehicles stored in there.

Mr. Habeger asked Mr. Reopelle if he thought it would be a no go if they required him to move the garage back eight feet. He said he wasn't so concerned about the storage and would leave that for Board discussion but he guessed he was relatively firm that they needed the twenty foot setback. He said it was a very

low traffic street but he was just concerned with the vacant property in the future that could cause him some issues being so close to that drive, as it became more of a traveled street. He asked if Mr. Serich was pretty adamant about it and Mr. Reopelle said yes, Mr. Serich was pretty adamant about it. Mr. Reopelle said maybe Mrs. Casey could answer his question – obviously, Town Pump would develop their property someday but he didn't see the fence going away and in fact entering off of Kennedy -- if they looked at the picture again, going down Kennedy there was a dead-end sign there. He said just looking down the street as you drove down, the whole area looked vacant and there was actually no traffic. He said Mr. Serich would probably use the thing probably once a day to park his normal vehicle in and other than that, he was kind of a hobby guy and would just be in the garage puttering.

Mr. Habeger then asked if there was anybody who would like to speak in support of the variance. There was no response.

Mr. Habeger then asked if there was anybody against. There was no response.

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

Mr. Taylor said he agreed with Mr. Habeger regarding the setback on that additional five feet moving it back eight feet with the twelve foot boulevard to get the twenty foot setback. He said currently, that boulevard was grass but they didn't know five years down the road, ten years down the road, you could plant trees in that boulevard and potentially create a hazard backing out of that garage with the visibility too. He thought it would be appropriate to keep that condition.

Mr. Reopelle asked if that was a five foot or an eight foot setback. Mr. Habeger said it was an eight foot. He said the drawing showed a three foot – Mr. Reopelle said he asked for three – Mr. Habeger said so the eight with the twelve foot boulevard would give him the twenty.

Mr. Habeger asked what the Board's thoughts were on the condition to the existing garage. Mr. Shaffer said he wasn't totally hung up on that. He thought taking the garage doors and stuff (couldn't hear) - understood where the staff was coming from but didn't know if that was the end of the world there.

Mr. Taylor said if that garage was not being used for vehicles, was there a necessity for the driveway -- rather than take the door off so you could get a riding lawnmower and yard equipment in and out of there -- if the driveway was removed. He said he knew that wasn't one of the conditions.

Mr. Habeger said his thoughts were he would prefer to stand firm on one and maybe eliminate condition two. Mr. Shaffer said he could be on board with that and Mrs. Cooney agreed.

Mr. Taylor said if it was a smaller property with more congestion, then he would be more concerned about that. Mr. Habeger said it was not really a hardship but was a desire. He said as Mr. Taylor had mentioned, who knew what the future would hold in that area and they had to make decisions that were based on the Code and he thought the Planning staff had done some things by allowing the twelve foot boulevard and basically they were only affirming an eight foot apron. Mr. Taylor said correct.

Mrs. Cooney moved to approve Variance Application #15242 with the removal of condition number two. Mr. Taylor seconded the motion.

The conditions are as follows:

1. Prior to receiving a building permit, the applicant shall submit an updated site plan indicating the detached garage will have an eight foot (8') setback from the Kennedy Avenue property boundary.

2. The detached garage shall meet the height requirements of Section 17.12.040 for accessory structures which are:

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

At this point the Board voted on the motion.

Variance Application #15242 – Conditionally Approved

Dolores Cooney	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
	John Habeger	For	

John Habeger and Les Taylor voted "For" the motion to approve the application – "with removal of condition #2."

Dolores Cooney, Rocko Mulcahy and Tyler Shaffer voted "For" the motion to approve the application.

Mr. Habeger said the motion had been passed with the removal of condition two. He said they gave a little bit there and took a little and hoped that Mr. Serich would see to it and move ahead with his project. Mr. Habeger then said Mr. Serich or Mr. Reopelle would get a letter to that effect from the Planning staff as soon as tomorrow.

Mr. Reopelle thanked them for their consideration and said the job started now selling it to Mr. Serich. Mr. Habeger said he could choose not to do it too.

Use Variance Application #15243 – Chad Godbout was present at this meeting, as the representative for Seven-Up Bottling.

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

Mr. Habeger asked if the Board had any questions of the staff. There were none.

Mr. Habeger then asked Mr. Godbout to come forward and state his case and let them know what the structure would be used for. Mr. Godbout said he was the current President and CEO of Coca-Cola and Mile High Beverages in Butte. He thanked them for considering this application.

Mr. Godbout said what they were kind of looking to do was with the current landscape of their business, they were required to carry a lot of different products now than just Coca-Cola and Seven-Up in the past, so it was requiring a lot more warehouse space. He said they put a racking system in approximately four years ago and they were currently running out of space again. He said they kind of looked at their current warehouse that they were heating and storing equipment in. He said they were thinking of freeing up some warehouse space by storing equipment in something and they did have a fenced area back there but they have had numerous vandalisms and theft and it was just not a good situation. He said they were trying to get something secure to store some equipment back there and make it look nice and clean up that whole area back there. He didn't think a fenced area looked as good compared to a secured, closed structure, so that was kind of what their idea was. He said it could possibly give them some relief in the warehouse and they could quit heating equipment that didn't need to be heated and give it a safe place back there that would be armed and secured and basically, to kind of help them move forward with carrying more products and stuff that they planned on doing.

Mr. Habeger asked if Mr. Godbout was okay with the two conditions and he said yes. Mr. Habeger said they were pretty lenient there.

Mr. Habeger had a question – this 40 x 60 addition, would it be sided. Mr. Godbout said yes and metal siding was what they were planning on doing with garage doors and a man door in the front and they would probably arm it. Mr. Habeger asked if that was why he was saying to secure it and Mr. Godbout said yeah, they had rampant theft back there and their alarm was set off at least once a week. Mr. Habeger said there was

access to the trail that seemed to be right there. Mr. Godbout said yeah, it was back behind the area and for some reason he guessed because it was not in the public's eye and given the Butte Police Department was there quite a bit and it didn't seem to deter it at all -- he hoped the addition – they were going to try and get some sort of fencing back there, which he was going to submit another application for to try to deter people from just driving back there and using their tools or whatever on their building.

Mr. Habeger then asked if there was anybody who would like to come forward and speak in support of the application. There was no response.

Mr. Habeger then asked if there was anybody who would like to speak against the application. There was no response.

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

Mr. Habeger said he would comment that he thought it was actually a good addition. He said he had rode his bike on that trail and having things enclosed always just made things less of an attractive menace and he would support the application.

Mr. Shaffer said he agreed 100%.

Mr. Taylor moved and Mr. Shaffer seconded the motion to approve Use Variance Application #15243 subject to the two conditions in the staff report.

The conditions are as follows:

1. Prior to receiving a building permit, the applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:

    a) Compliance with all sections of Chapter 13.30, Storm Water Management, of the Butte-Silver Bow

Municipal Code, including the Butte-Silver Bow Municipal Storm Water Engineering Standards.

2. Any future business expansions or changes in business will require further review and approval by the Zoning Board of Adjustment.

At this point the Board voted on the motion.

Use Variance Application #15243 – Conditionally Approved

Dolores Cooney	For	Les Taylor	For
Rocko Mulcahy	For	Tyler Shaffer	For
	John Habeger	For	

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

Mr. Habeger said they hit this one out of the ballpark that night. All five votes were in support of the motion, so the Planning staff would be giving him a letter with the go ahead for his project and told him good luck.

IV. Other Business:

A. Rebecca Farren

Mrs. Casey said Mrs. Farren had resigned and had taken another position, so they were recruiting for another Planner.

V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:38 P.M.

BY: _____
John Habeger, Acting Chairman

_____
Lori Casey, Assistant Planning Director

2016

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT

Tuesday, September 20, 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 18, 2016.

III. Hearing of Cases, Appeals and Reports:

Variance Application #15227 – An application for a variance by Joe J. and Mary F. Shoemaker, owners, to not install curb/gutter and sidewalks adjacent to Garden Avenue and Gallatin Street, varying from Section 17.38.050, Landscaping Requirements-Sidewalk and Curb/Gutter, of the BSBMC. The property is located in an "M-2L" (Heavy Industrial - Limited) zone, legally described as Lots 1 & 2, Block 13 of the Kemper Addition, commonly known as 501 Garden Avenue, Butte, Montana.

Special Use Permit Application #15237 - An application for a special use permit by Jennifer L. Pierce, owner, to operate an Airbnb (lodging provided by a resident family in its home for compensation) in an existing structure in a residential zone, Section 17.38.180, Special Use Permit - Uses Allowed, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lot 21 and the west 10' of Lot 22, Block 10 of the Montrose Addition, commonly known as 1145 W. Porphyry Street, Butte, Montana.

Use Variance Application #15239 - An application for a use variance by Tim and Anna Russell, owners, to remodel an existing structure into a two-unit apartment building, varying from Section 17.23.020, Permitted Uses of the BSBMC. The property is located in a "C-1" (Local Commercial) zone, legally described as Parcel B of Certificate of Survey 698, commonly known as 1285 Continental Drive, Butte, Montana.

Applicant or Representative must be present at the meeting

A G E N D A

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Variance Application #15242 - An application for a variance by Daniel J. Serich, owner, to locate a detached garage (26'X 30') within three feet (3') of the front boundary, varying from the required twenty foot (20') parking apron of Section 17.12.020 (C) and to locate the garage within four feet (4') of the side property line adjacent to a street varying from the required ten foot (10') side yard abutting a street, Permitted Uses, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lots 34 -36, Block 4 of the Bellevue Addition, commonly known as 1771 Hobson Street, Butte, Montana.

Use Variance Application #15243 - An application for a use variance by Seven-Up Bottling Company, owner, to expand a legal nonconforming use (Mile High Beverages, Inc.) by constructing a 40' X 60' Pole Structure for the storage of equipment in a residential zone, varying from Section 17.48.040, Buildings or Structures of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1 through 20, inclusive, Block 17, of the Gallatin Addition, and the vacated alley between Cobban and Majors Street and the east half of vacated Delaware Street between Cobban and Majors Street, commonly known as 520 Cobban 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

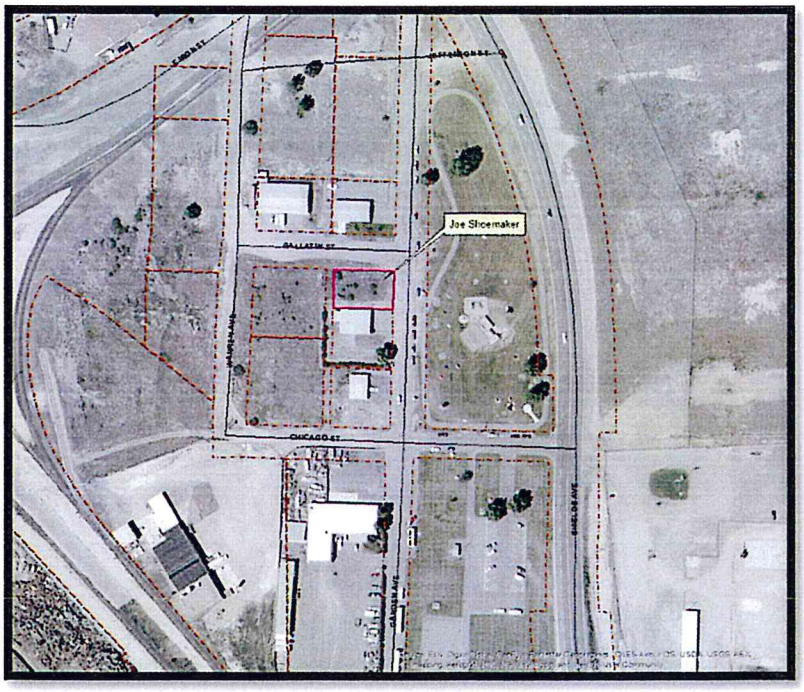
ITEM: **Variance Application #15227** - An application for a variance by Joe J. & Mary F. Shoemaker to vary from the sidewalk and curb/gutter requirements of Section 17.38.050, Landscaping Requirements - Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC.

APPLICANT: Joe J. & Mary F. Shoemaker, 3129 Floral Blvd., Butte, Montana, owners.

DATE/TIME: Thursday, September 15, 2016, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:



LOCATION/ DESCRIPTION: The property is located in a "M-2L" (Heavy Industrial Limited) zone, legally described as Lots 1 & 2, Block 13, of the Kemper Addition, commonly known as 501 Garden Avenue, Butte, Montana.

PROPOSAL: The applicants are proposing to construct a new office building that will be 30'x32' in size. The applicants are proposing to not install a sidewalk and curb/gutter along the property line adjacent to Garden Avenue and Gallatin Street.

STAFF FINDINGS: Butte-Silver Bow Municipal Code, Section 17.38.050, Landscaping Requirements-Sidewalk and Curb/Gutter; Front and Corner Yards, of the BSBMC, requires commercial and industrial uses or expansions which are equal to twenty-five percent or more of the existing floor area to install sidewalk and curb/gutter along all property lines adjacent to a dedicated street. Therefore, the applicants' request to not construct sidewalk and curb/gutter along the Garden Avenue and Gallatin Street property lines requires a variance 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.**

Sidewalk requirements have been established by the Council of Commissioners to protect the public interest by providing a safe space for pedestrians to walk in front of a commercial or industrial property without having to walk within the street.

The applicant recently applied for a Zoning Certificate and Building Permit to construct a 30'x32' building. As part of this process, the applicants are required to submit bonds for any required paving, landscaping and sidewalk and curb/gutter. When informed of the requirement to install sidewalk and curb/gutter along Garden Avenue and Gallatin Street property lines, the applicants chose to apply for a variance from the sidewalk and curb/gutter requirement.

Although applying for a variance to not install a sidewalk and curb/gutter is unusual, the Zoning Ordinance does allow for reasonable consideration when special circumstances exist. The property in question does appear to have mitigating circumstances. While this area has seen the buildup of small light industrial uses in the past years, none of the existing businesses have sidewalks or curb/gutters along their property boundaries. In this case, the applicants have 176' of property frontage, as the property is located on the corner of Gallatin Street and Garden Avenue. The applicants have made the case that there are no other businesses in the area that have been required to install sidewalk, curb and gutter.

It should be noted that the applicants have submitted a site plan that meets all other development requirements of the zone. The applicants will meet or exceed the required landscaping and parking. The

applicants are proposing a sod area of approximately 28'x64' (1,792 square feet) with three trees adjacent to Gallatin Street on the north side of the parking area and building. The sod area with three trees exceeds the required landscaping (433 square feet.) The parking area is proposed on the east side of the building and meets the minimum requirement of four (4) spaces.

This situation is somewhat unusual for an industrial zone as McGruff Park is located east of Garden Avenue and Gallatin Street and the skate park is located to the southeast of the property. The existence of McGruff Park most likely results in a greater number of pedestrians in this area then you would typically find in an industrial zone. However, McGruff Park does have its own walking trail system, consequently, users of this park should not be impacted by the lack of sidewalk along the property boundaries of the applicants' property. The paved parking area in front of the main door should adequately provide access to the building for customers.

Based on these reasons, allowing the applicants to not install a sidewalk with curb/gutter along Garden Avenue and Gallatin Street right-of-ways may not be contrary to public interest.

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

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

not feasible. Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property.

The property does not exhibit any unique conditions that would result in unnecessary hardship. Nonetheless, the applicants do make the point that there are no other properties on Garden Avenue or any of the other streets in the immediate area that have sidewalks and curb/gutter along their property lines.

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

At this time there appears to be limited pedestrian traffic that would benefit from the installation of sidewalks along Garden Avenue and Gallatin Street. Although the Council of Commissioners changed the Growth Policy designation for this area to commercial in 1995 and Butte-Silver Bow created the East Side Urban Revitalization Area, there has been limited development in this area. However, if there is future commercial and/or recreational development in this area that results in more pedestrian traffic along

Garden Avenue and Gallatin Street, the Board should be assured that the applicants would participate in any future program developed by Butte-Silver Bow to install sidewalk and/or sidewalk with curb/gutter program for this area.

As stated previously the applicants are planning to install more than the required landscaping with a 1,792 square foot of sod area and three (3) trees. If the applicants install the additional landscaping and agree to plant native grasses to prevent water erosion, dust and the establishment of weeds on the unimproved areas of the property, then the Board may wish to consider the increased landscaping in exchange for the required sidewalk and curb/gutters.

Based on the above discussion, the applicants' request to not install sidewalk and curb/gutter along the Garden Avenue and Gallatin Street property lines may be consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above discussion, staff believes not allowing a sidewalk and curb/gutter adjacent to Garden Avenue and Gallatin Street would not compromise the spirit of the Zoning Ordinance to allow for the reasonable use of private property nor would it be contrary to public interest.

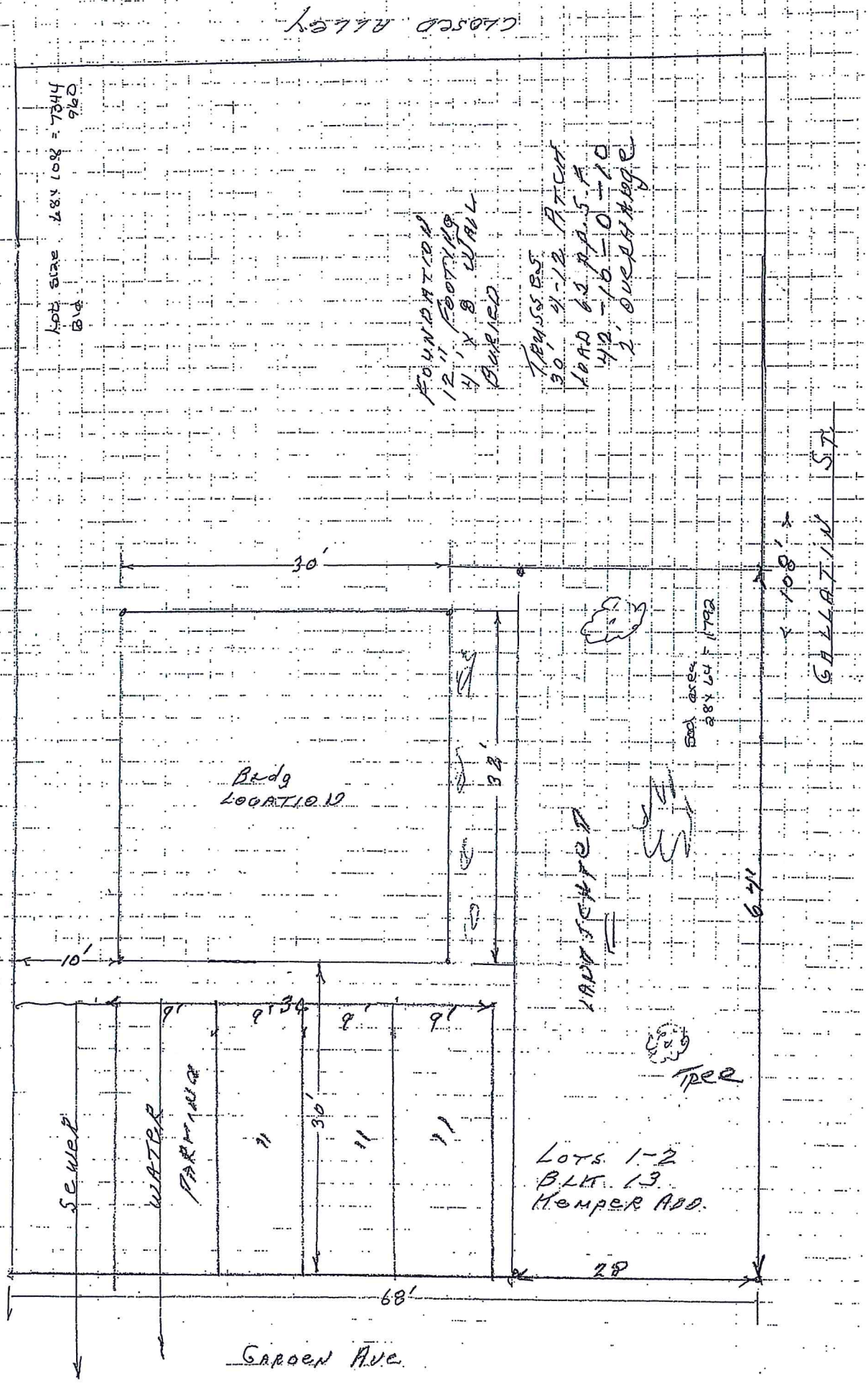
Therefore, staff recommends approval of Variance Application #15227, with the following conditions:

1. If the Butte-Silver Bow East Side Urban Renewal Area develops a program for installation of sidewalk and curb/gutter along Garden Avenue and/or Gallatin

Street the applicants shall include this property in said program.

2. The applicants shall install the landscaping as depicted on the site plan (1,792 square feet of sod area with three (3) trees.)

3. The unimproved areas to the west and south of the building shall be planted with native seed.


CLOSED ALLEY
Lot size 68x108 = 7344
Bld 960
FOUNDATION
12" FOOTING
4' x 8 WALL
BURIED
TRUSSES
30' 4-12 PITCH
LOAD 62 PP.S.F.
42-10-0-10
2' OVERHANGE
30'
108'
GALLATIN ST.
Bldg
LOCATION
32'
Bld area
28x64 = 1792
LANDSCAPED
64'
10'
9'
9'
9'
9'
30'
Tree
SEWER
WATER
PARKING
"
"
"
LOTS 1-2
BLK. 13
KEMPER ADD.
28
68'
GARDEN AVE.

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Special Use Permit Application #15237**- An application for a special use permit to operate an Airbnb (lodging provided by a resident family in its home for compensation) in an existing residence in a residential zone, as per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC.

APPLICANT: Jennifer Pierce, 1145 W. Porphyry, Butte, Montana, owner.

DATE/TIME: Thursday, September 15, 2016, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:

LOCATION/ DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lot 21 and the west

10' of Lot 22, Block 10 of the Montrose Addition, Butte, Montana, commonly located at 1145 W. Porphyry, Butte, Montana.

PROPOSAL: The applicant is proposing to rent out one of the bedrooms on the main floor of her residence through Airbnb's hosting program. She is proposing to have one (1) to two (2) people stay at a time at her discretion. There is a maximum of a seven (7) night stay.

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

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

To provide the Board with information about the proposed special use, planning staff has responded to the established twenty (20) question review criteria.

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

   The property is located in an "R-1" (One Family Residence) zone. The home is a single family craftsman home with one bedroom located on the

main floor and two bedrooms located on the upper floor.

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

   The property in question is located within an area containing primarily single family homes.

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

   There have been no significant land use changes in the immediate area since the original adoption of the Zoning Ordinance in 1978.

   The property in question is located within the residential Growth Policy district.

4. **Proposed fencing, screening and landscaping.**

   The applicant is not proposing any changes concerning fencing or screening. The property is landscaped in a fashion that is typical for residential dwelling units.

5. **Proposed vegetation, topography and natural drainage.**

   With the amount of existing lawn area and associated vegetation, storm water runoff from the site should be minimal.

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

Vehicle access to and from the property is acceptable for the proposed use. The applicant has one off-street parking space in front of the basement garage and the on-street parking that is available in front of the house. With limiting the number of occupants to one (1) to two (2) people per night, the proposed use should not create any parking problems for the neighboring property owners.

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

There are sidewalks adjacent to Porphyry Street. The access into the property is from the existing stairway from the street. There are approximately fifteen (15) steps to climb before accessing the porch and front door. As constructed, the front of the house does not provide any provisions for handicap access. The applicant is proposing to note in her listing on the Airbnb site that there are stairs to climb to access the house.

8. **Proposed signs and lighting.**

The applicant has not proposed any signage in her application. She shall be limited to a one (1) square foot sign flat against the front wall of the building.

Any change in additional signage will be subject to review and approval by the Planning Department.

9. **All potential nuisances.**

A primary concern with a commercial use in a residential area is the potential for increased traffic in the neighborhood. In that regard, the renting out of one (1) bedroom to 1 to 2 people per night should only increase the traffic by one (1) additional vehicle.

The additional traffic should not be any greater than that of a typical family.

In addition, any time a commercial business exists within a residential neighborhood, there is a potential for a parking problem. While the home does offer an off-street parking space in front of the basement garage, the space can only accommodate a small vehicle. Staff would recommend that consideration of this application be made without the inclusion of any off-street parking. Based on the applicant limiting use to 1 to 2 persons at a time, the exclusion of no off-street parking should not negatively impact the neighborhood.

The last potential nuisance is noise. Renters may be less concerned about creating excessive noise within the neighborhood. That being said, the owner will be residing on-site and available to handle any noise issues that may arise.

Staff can foresee no other potential nuisances at this time.

10. Public safety and health.

The applicant will be required to meet all Butte-Silver Bow Health Department regulations relating to providing rooms for rent. Verification of approval from the Health Department will be required prior to the final approval of the business license.

Staff cannot foresee any other potential negative impacts on public health and safety created by this proposal.

11. The availability of public utilities and services.

Public utilities and services currently exist on the property.

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

There appears to be no compelling reasons why the property could not continue to be utilized for residential purposes.

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

The established character of the existing residential neighborhood would not appear to be impacted by the renting out of one (1) of the bedrooms through the Airbnb program.

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

The Growth Policy designation for this property is residential. This proposal is inconsistent with the objectives of the Growth Policy to discourage commercial development in this area.

However, in certain cases, providing lodging in a residence for compensation may be compatible with residential areas based on their compatibility within the neighborhood. In this case, the renting out of one bedroom of an existing residence would not appear to create a negative impact on the character of the area. Staff contends that the proposed use is consistent with the intent of the Zoning Ordinance to allow for the reasonable use of private property.

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

The proposed use would not substantially impede the conservation of resources and energy within Butte-Silver Bow County.

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

The applicant's property does meet the overall density of the "R-1" zone. The setbacks are typical of the other properties in the neighborhood. Since the applicant is not proposing to change the footprint of the property, the applicant is not required to obtain any variance to the requirements of the "R-1" zone.

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

Any time a commercial business encroaches into a residential neighborhood, there is a potential for the use to negatively impact the surrounding property owners. In this case, the low impact commercial nature of the business would appear to have a minimal impact on adjacent properties and property owners.

The impacts created by traffic entering and exiting the site should be minimal.

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

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

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

Although the use of the home is proposed to be changed by this application, the exterior of the building will remain unchanged. Consequently, the house will remain compatible with the surrounding neighborhood.

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

The Planning staff will make available to the Zoning Board any additional public comments received.

CONCLUSION: Based on the above discussion, staff finds that providing lodging to tourists through the renting out of an existing bedroom through the Airbnb program will have a minimal impact on the surrounding residential neighborhood. Therefore, staff recommends that the Zoning Board approve Special Use Permit Application #15237, provided the following conditions are met:

1. The applicant shall be required to secure a State of Montana Public Accommodations License through the Butte-Silver Bow Health Department.

2. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. All signs shall not be illuminated.

3. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, be residential in

character and be directed away from all adjacent residences.

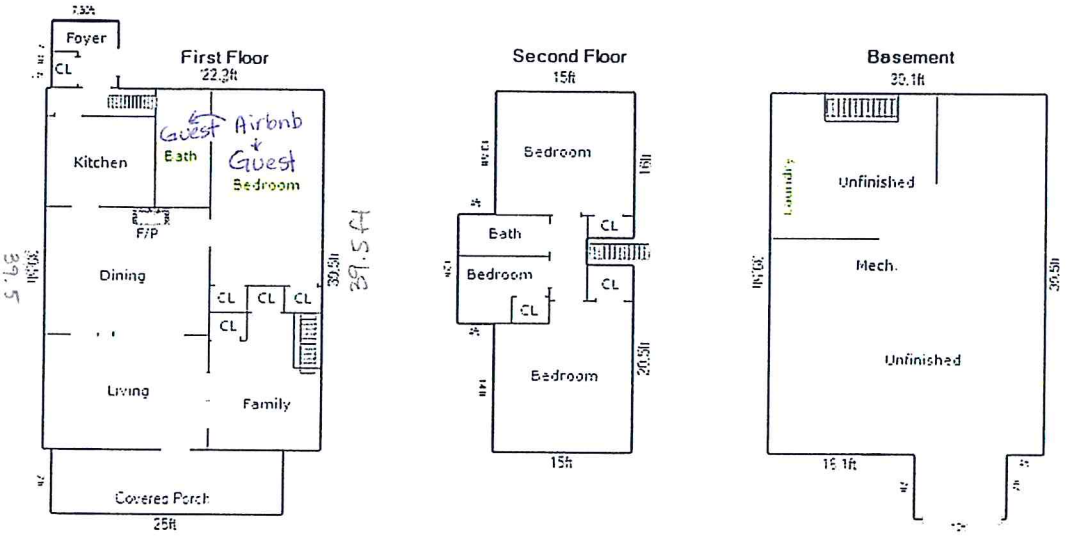
4. The remodeling of the existing residence to accommodate the proposed business will be required to meet all applicable Building Code and Health Code requirements, as required by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Health Department, respectively. All necessary approvals must be granted prior to the applicant receiving final business license approval.

5. The applicant will be limited to the business as stated and approved (one (1) bedroom with 1 to 2 persons per night). Any future business expansions, changes in business or building expansions will require further review by the Zoning Board of Adjustment.

FLOORPLAN SKETCH

Borrower: JENNIFER PIERCE	File No.: B1145WPRPHRY082015
Property Address: 1145 WEST PORPHYRY STREET	Case No.: 01191506008427
City: BUTTE State: MT	Zip: 59701
Lender: GLACIER BANK	

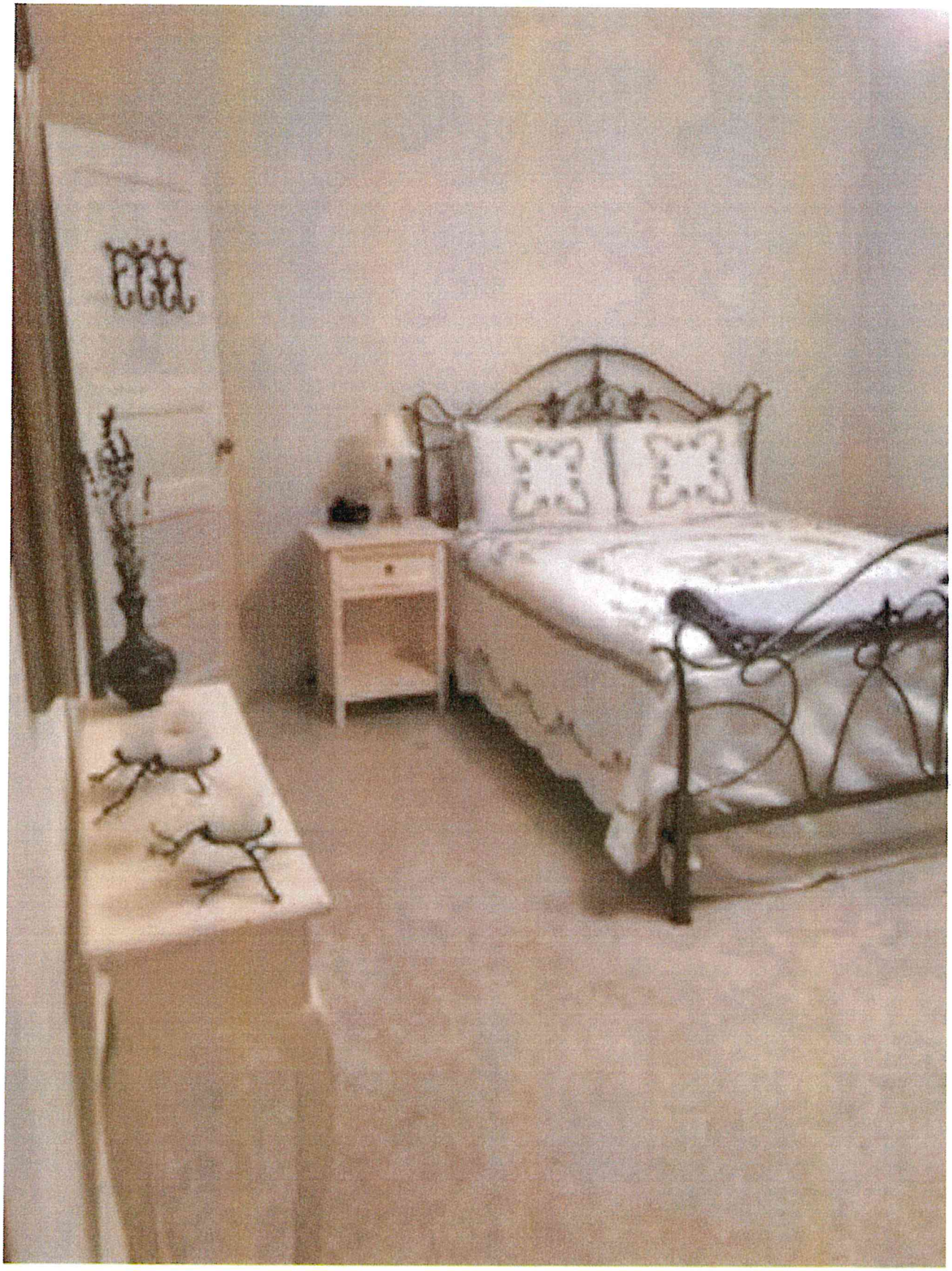
Sketch



Airbnb guests would have access to the first floor and laundry area in the basement.

14 ft

Living Area		Area Calculation			
First Floor	1242.24 ft²	First Floor			x 1.00 = 1242.24 ft²
Second Floor	625.50 ft²	7.3ft x	7.30ft x	1.00 =	53.29 ft²
Nonliving Area		30.1ft x	39.5ft x	1.00 =	1188.95 ft²
Covered Porch	175 ft²	Second Floor			x 1.00 = 625.50 ft²
Basement	1268.95 ft²	4ft x	12ft x	1.00 =	48 ft²
		20.5ft x	15ft x	1.00 =	307.5 ft²
		15ft x	16ft x	1.00 =	240 ft²
Total Living Area (rounded):	1868 ft²	2ft x	15ft x	1.00 =	30 ft²



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BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

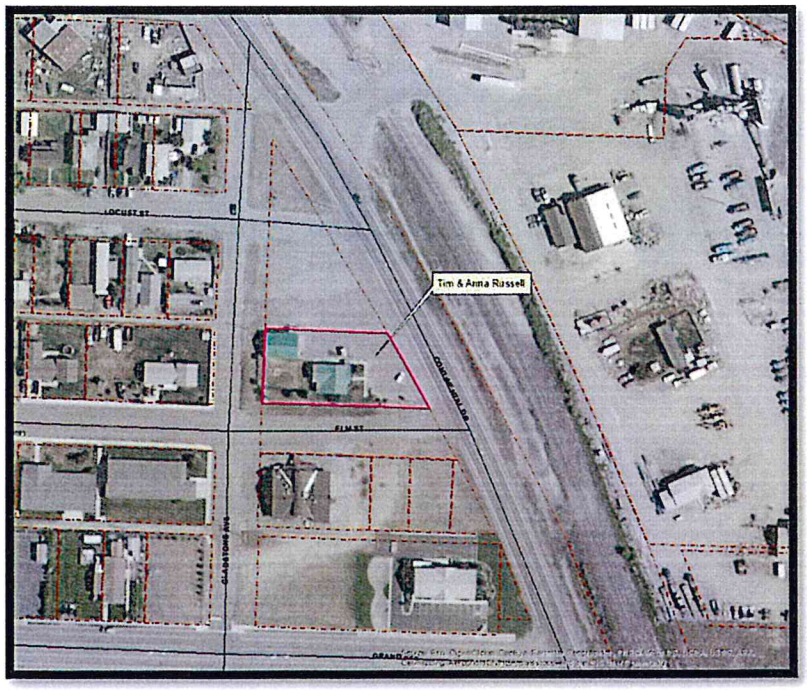
ITEM: **Use Variance Application #15239** - An application for a use variance to remodel an existing structure into a two-unit apartment building, varying from Section 17.23.020, Permitted Uses, of the BSBMC.

APPLICANTS: Tim and Anna Russell, owners, 137 Foxtail Lane, Butte, Montana.

DATE/TIME: Thursday, September 15, 2015, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:



LOCATION/ DESCRIPTION: The property is located in a "C-1" (Local Commercial) zone, legally described as Parcel B of Certificate of Survey 698, commonly known as 1285 Continental Drive, Butte, Montana.

PROPOSAL: The applicants are proposing to convert an existing structure that has been utilized as a school into a two-unit apartment building. The main floor would be remodeled into a three (3) bedroom unit and the basement would be remodeled into a two (2) bedroom unit.

The applicants would not be increasing the footprint of the building to accommodate the apartment units. The garage area would continue to be utilized for marital arts training.

STAFF FINDINGS: Butte-Silver Bow Municipal Code, Section 17.123.020, Permitted Uses, lists the permitted uses within the "C-1" zone. The zone allows residential apartments on the second floor of a commercial business. However, the applicant's request to utilize the entire structure as a duplex is not considered a permitted use within the "C-1" zone. Therefore, a use variance from the Zoning Board of Adjustment is required.

Use variances have two subcriteria under the main criteria of hardship. In order to receive a use variance, the 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 applicants 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 criteria established by the Montana Supreme Court for the review of variances.

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

   The public's interest in segregating land uses, such as residential versus commercial is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to combine uses that are compatible. Although the Local Commercial zone is intended to permit use that accommodate the neighborhood, some of these uses may have attributes that can have a negative impact on residential living. In addition, when less intensive land uses are located adjacent to more intensive land uses, the less intensive land use can make it difficult for the more intensive land use to operate as necessary. As such, zoning districts were developed to prevent these conflicts.

   The property has been utilized for professional offices and most recently was approved to operate as a school under a Special Use Permit. As such, the property has a paved and striped parking lot and

landscaping that both meet the development standards of the zone.

In this particular case, the applicants are requesting that they be permitted to locate a less intensive residential use (duplex) in a zone developed for more intensive commercial uses. In that regard, potential impacts from the residential apartment units on neighboring property owners will most likely be less than what a typical commercial use would have on an adjacent property.

Based on the above discussion, staff believes that the approval of the requested variance would not be contrary to the public interest.

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

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

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

Subcriteria Number One states the land cannot secure a "reasonable return," if the land is restricted to only those uses permitted outright in that zone.

The applicants have stated in their application that the property has been for sale for two years without any interest and the property, as developed, limits the possibilities to have a viable commercial use. That being said, it is difficult for staff to concur that a commercial use is not the highest and best use of the property.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. As noted above, the applicants are not proposing to increase the footprint of the building. The majority of the remodel would be on the interior. Thus, the exterior appearance of the structure will not be changed.

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

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

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

The conversion of the property into two residential units must be reviewed in regards to impacts on the public health, welfare and safety. In this particular case, the primary public health, welfare and safety concern is that the apartment units meet all building, electrical, plumbing and fire code requirements. This

is especially important with regards to proper ingress and egress of the units and all bedrooms meeting the egress window requirements.

Also, the applicants must be cognizant that the permitted uses within this zone are commercial and some of those uses could have a negative impact on the residential units. The granting of a use variance would create a legal nonconforming use on this property. The applicants are advised that the granting of this use variance does not provide legal protection from any impacts that may result from an adjacent commercial uses.

CONCLUSION: Based on the above analysis, staff would recommend conditional approval of Use Variance Application #15239 with the following condition:

1. The apartment units shall meet all applicable building, electrical, plumbing and fire codes, including but not limited to meeting ADA standards and shall secure all necessary permits.

Google earth

feet 100
meters 50

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Variance Application #15242** - An application for variances to construct a detached garage (26'W x 30'D) within three (3') of the front property boundary abutting a public street (Kennedy Avenue), varying from the required twenty foot (20') parking apron requirement for a garage exiting to a public street of Section 17.12.020 (C), Permitted Uses, and within four feet (4') of the south side property boundary, varying from the required ten foot (10') setback for a side yard abutting a public street (Hobson Street) of Section 17.12.020 (C), Permitted Uses, of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: Daniel J. Serich, 1771 Hobson Street, Butte, Montana, owner.

DATE/TIME: Thursday, September 15, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITY MAP:

LOCATION/ DESCRIPTION: The property in question is located in an "R-2" (Two Family Residence) zone, legally described as Lots 34 through 36, Block 4 of the Bellevue Addition, commonly known as 1771 Hobson Street, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a detached garage (26'W x 30'D) that would be located three feet (3') from the front property boundary abutting a public street (Kennedy Avenue) and within four feet (4') of the south side property boundary. The garage would be located in the southeast corner of the applicant's property.

STAFF FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.12.020, Permitted Uses (C), requires that a detached garage exiting directly to a public street have a minimum twenty foot (20') parking apron from the property line. The Butte-Silver Bow Municipal Code, Section 17.10.020 (D), Permitted Uses, also requires that a detached garage meet the side yard requirement of ten feet (10') when located adjacent to an adjoining side street. In order for the applicant to locate the garage within three feet (3') feet of the front property boundary and within four (4') feet of the south side property boundary abutting a street, variances approved by the Zoning Board of Adjustment (Board) are required.

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

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

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

hazard within the public right-of-way, including alleys.

The applicant is requesting a three foot (3') setback to construct a new garage. As the Board is aware, staff is hesitant to support variance requests when the property does not have a hardship that precludes the structure from meeting the setback requirements of the zone. In this particular case the applicant's property is 90' x 100' and there appears to be enough room in the applicant's south side yard to meet the required front and side yard setbacks.

Nonconforming parking aprons may result in safety hazards for pedestrians or vehicles utilizing the adjacent street. That being said, Kennedy Avenue does have a twelve foot (12') grass boulevard before the edge of the pavement. In addition the applicant is located in an area where Kennedy Avenue dead ends into the interstate, therefore, there are only two residents north of the applicant's property; one is located directly north on the corner of Kennedy and Evans Avenue and the other utilizes Kennedy Street to access their property on Evans Avenue. To the east of the applicant's property is vacant land. Therefore, the number of pedestrians and vehicles utilizing this section of Kennedy Avenue is limited.

That being said, staff is reluctant to recommend approval of a three foot (3') parking apron. However, because of the location of the property and the twelve foot (12') boulevard, staff would recommend that the applicant move the garage to the west five feet (5') to allow for an eight foot (8') parking apron. This coupled with the twelve foot (12') boulevard would provide a twenty foot (20') apron for the applicant to exit the garage and see any oncoming

traffic before the vehicle is in the paved public right-of-way of Kennedy.

In regards to the requested four feet (4') side yard setback for an adjoining side street, staff would recommend approval of this requested variance based on the physical characteristics of the property and configuration of the right-of-ways. Hobson Street has an eighteen foot (18') grass boulevard before the edge of the pavement.

Technically speaking, the garage would be located within the vision clearance triangle of Kennedy Avenue and Hobson Street. Typically, staff would not be supportive of locating a structure inside the vision clearance triangle. However, practically speaking, the large widths of the boulevards allow the vision clearance triangle to remain unobscured, allowing pedestrians and vehicles to be seen and not blocked by the garage's location.

It important to note that the applicant's property already contains a detached garage that is 16'W X 20'D. The applicant has been advised that the Zoning Ordinance only permits one detached garage on a parcel of record. The applicant has informed staff that the garage is only utilized as a storage shed and that he does not park a vehicle in the garage. Staff has also advised the applicant that if this application is approved, a condition of approval is that the garage door is removed and the structure is converted to a shed, i.e. doors that do not provide enough width for a vehicle to enter. The new detached garage is proposed to be large enough to allow the applicant to park his vehicles inside.

As the requested variance to the parking apron would

result in a nonconforming parking apron, the consideration of any impacts on public safety is the primary concern. As stated above, staff is hesitant to fully support the requested parking apron variance. However, staff does not believe that the requested side yard variance would 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 which preclude a property from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Conditions usually associated with the uniqueness of the property are shape, topography or some geological feature.

The property is larger than what is required by the Zoning Ordinance at 9,000 square feet versus the minimum required 6,000 square feet. The property contains no topographical or geological features that would preclude the garage from being constructed with the required ten foot (10') side yard setback and twenty foot (20') parking apron.

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 deems correct. If the public interest can be protected pertaining to these issues, a variance may be appropriate.

As noted above, staff is concerned about a driver's reduced ability to see oncoming pedestrians and vehicles when exiting the garage. Therefore, staff cannot support a three foot (3') parking apron. However, because of the twelve foot (12') boulevard and the limited use of this particular area of Kennedy Avenue, staff could support an eight foot (8') parking apron. The eight foot (8') coupled with the twelve foot (12') boulevard would provide enough area for the applicant to safely exit the garage before entering the paved right-of-way.

As stated previously, the requested front and side yard variances do place the garage within the vision clearance triangle of the intersection of Kennedy Avenue and Hobson Street. However, the large boulevards allow for the vision of the intersection to be maintained. As such, staff does not foresee a safety issue with the proposed location of the garage.

Based on the above discussion, it appears the proposed detached garage may not be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property but the garage parking apron variance may be contrary to the spirit of the Zoning Ordinance.

CONCLUSIONS:

Based on the above analysis, staff believes that locating a garage within four feet (4') of the Hobson Street property boundary would not have a negative impact on public safety and would be compatible with

the neighborhood and would recommend approval of that requested variance. However, staff cannot fully support the requested parking apron variance for the reasons noted above.

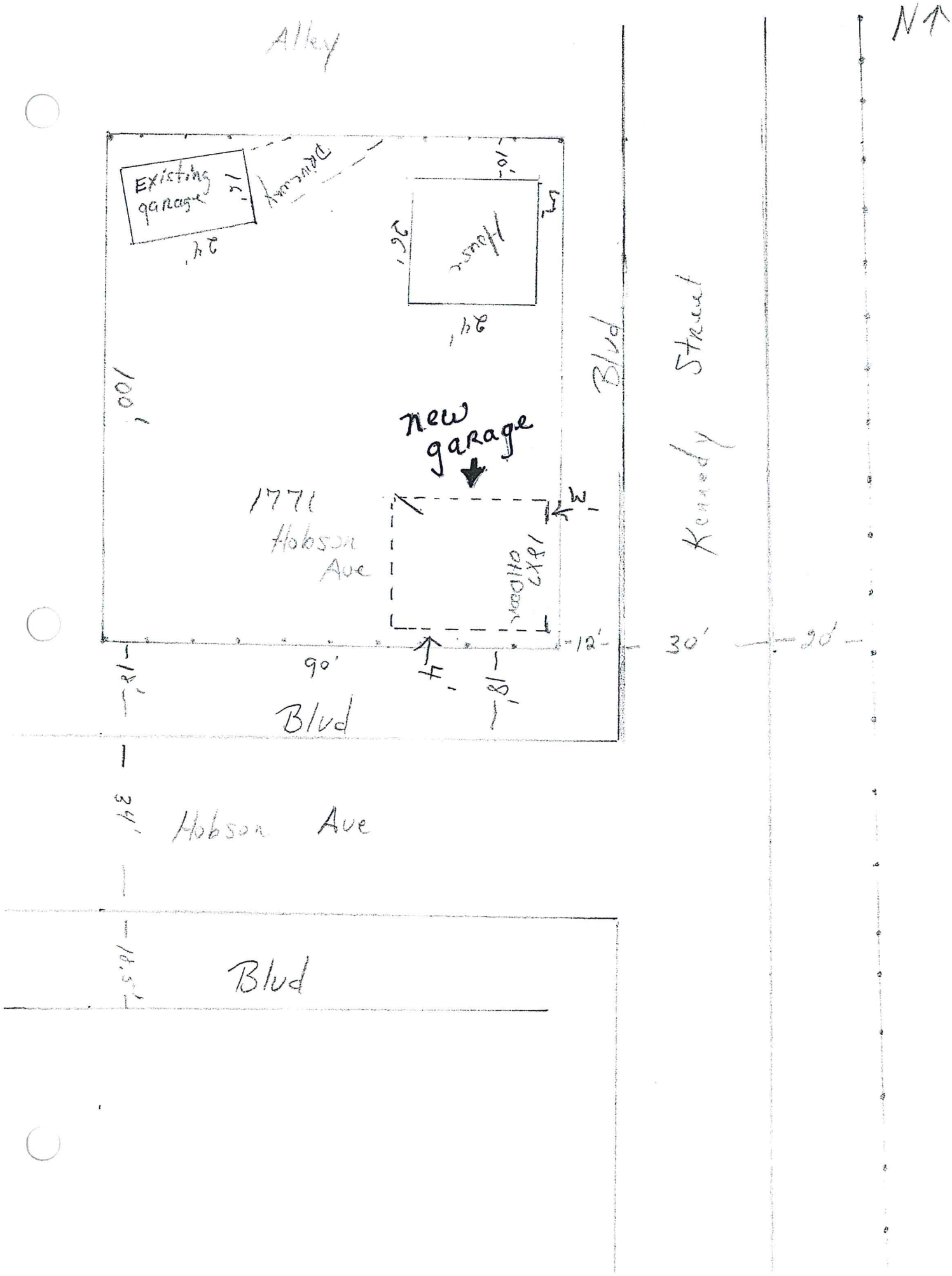
Staff recommends conditional approval of Variance Application #15242 provided the following conditions are met:

1. Prior to receiving a building permit the applicant shall submit an updated site plan indicating the detached garage will have an eight foot (8') setback from the Kennedy Avenue property boundary.

2. Prior to receiving a building permit, the applicant shall remodel the existing garage so that it can no longer be used for vehicles.

3. The detached garage shall meet the height requirements of Section 17.12.040 for accessory structures which are:

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



N
Alley
Existing garage
Driveway
24'
House
24'
100'
new garage
1771
Hobson Ave
Blvd
Kennedy Street
12'
30'
20'
90'
18'
18'
Blvd
34'
Hobson Ave
Blvd

BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: **Use Variance Application #15243** - An application to expand the Mile High Beverage plant by constructing a 40' x 60' pole structure for the storage of equipment, varying from the requirements of Section 17.48.040, Buildings or Structures, of the Butte-Silver Bow Municipal Code.

APPLICANT: Seven-Up Bottling Company of Butte, c/o Chad Godbout 520 Cobban Street, Butte, Montana, owner.

TIME/DATE: Thursday, September 15, 2016, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Lori Casey, Assistant Planning Director

VICINITYMAP:

LOCATION/ DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 1 through 20, inclusive, Block 17 of the Gallatin Addition, and the vacated alley between Cobban and Majors Street and the east half of vacated Delaware Street between Cobban and Majors, Butte, MT.

PROPOSAL: The applicant is proposing to add a 40' x 60' pole structure onto the existing plan for the storage of equipment.

STAFF FINDINGS: The applicant's property is located in an "R-1" (One Family Residence) zone. The business being operated is an existing legal nonconforming use. Section 17.48.040 (A), Buildings or Structures, states that no such structure may be enlarged or altered in a way which increases its nonconformity. In 1991 and again in 1994 the original building on this site was approved for an expansion of a nonconforming use. The present expansion of the Seven-Up Bottling Co. of Butte also constitutes an expansion of a nonconforming use and, therefore, requires Zoning Board of Adjustment approval.

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

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

involve elements which make it unwelcome in the neighborhood.

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

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

   The public's interest in segregating land uses, such as commercial and residential uses, is to prevent the intensity of the former from adversely affecting the latter. Generally speaking, commercial uses need to be segregated from residential areas due to incompatible impacts or injurious effects from traffic, noise, light, odors, and general nonresidential characteristics.

   The proposed expansion adds 2,400 square feet to the existing 28,204 square foot building. This expansion will be for the storage of equipment and will not house any inventory. The new expansion will be located on the southwest corner of the building, an area that was previously utilized as an outside storage yard. Therefore, traffic flows into the residential area will not be increased.

   It is important to note the facility is located in an area that consists largely of commercial businesses. Located on the north side of the site is Baker Auto, on the west is Marchie's Nursery and on the northwest is the KOA Campground. The property located directly to the south is vacant and to the east are residences.

The location of the building should not have a negative visible effect on the residences in the neighborhood. The building will only be visible from Marchie's and the south.

Given the location of the building and the intended use as storage of equipment and not an expansion for additional products, it appears that the new building will not further the impacts of commercial development in the area.

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

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

The property does not provide for any hardship associated with a condition unique to the property. The property exceeds the minimum lot area standards for residential use.

However, with regard to 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 applicant requests approval of the expansion of his facility to construct a building to provide for storage of equipment. While it does appear the facility would continue to provide a "reasonable return", if the application were denied,

providing inside storage versus having an outside storage area does have benefits. Storage yard areas can have a negative impact on a neighborhood as it is difficult to screen the yard entirely. A building allows the equipment to be neatly stored inside. It should also be noted that the original building was in existence prior to zoning going into effect.

The second subcriteria requires that the applicant demonstrate that the proposed use will not alter the essential character of the neighborhood in which it is located and show that the proposed use will not "practically destroy or greatly decrease the value of a parcel" or involve elements which make it unwelcome in the neighborhood. Planning Staff does not believe that the proposed expansion will alter the essential character of the neighborhood. As stated previously, the building will be out of the view shed of the neighboring residences to the east and will only be visible from another commercial operation and to the south.

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

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

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

It does not appear that the proposed expansion will negatively impact public health, safety and the general welfare of adjacent landowners, if the applicant agrees to the conditions of approval being recommended by staff. For instance, the installation of the new building may create additional storm water runoff. In that regard the applicant will be required to obtain a Storm Water Permit from the Butte-Silver Bow Public Works Department or obtain a variance from the required permit.

Given the unique character of the area, and the location of the building, it appears the expanding use would not negatively impact the surrounding neighborhood.

Therefore, it appears that the spirit of the Zoning Ordinance would be observed and substantial justice would be served, if this application were approved.

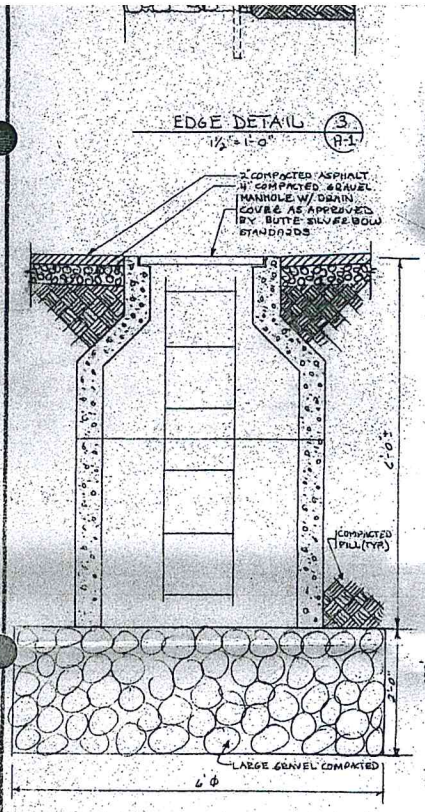
CONCLUSION: Based on the above analysis, staff believes that the request to expand the Mile High Beverage plant by constructing a 40'x60' pole structure for the storage of equipment would not be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

Therefore, staff recommends conditional approval of Use Variance Application #15243 provided the following conditions are met:

1. Prior to receiving a building permit, the applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:

a) Compliance with all sections of Chapter 13.30, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte-Silver Bow Municipal Storm Water Engineering Standards.

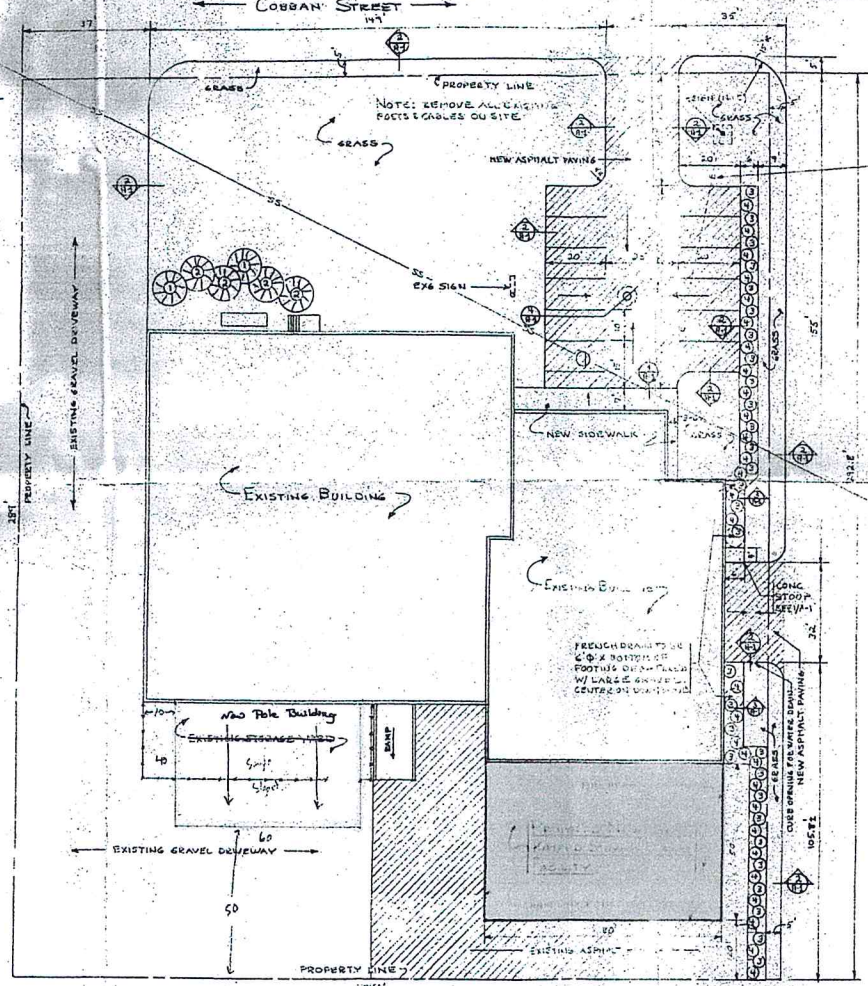
2. Any future business expansions or changes in business will require further review and approval by the Zoning Board of Adjustment.



FRENCH DRAIN DETAIL 4 A-1
1" = 1'-0"

CURB DETAIL 2 A-1
1½" = 1'-0"

SIDEWALK DETAIL 1 A-1
1½" = 1'-0"



SITE PLAN
1" = 20'-0"

NOTE:
CURB: IN TO FOLLOW EXISTING ASPHALT PAVING ON COBBAN AND MARYLAND STREETS. ASPHALT SHALL BE SAW CUT AT THE EDGE OF THE ROAD CURB OR AT THE CONTRACTOR'S OPTION, THE ASPHALT MAY BE SAW CUT 2ND FROM THE CURB AND NEW ASPHALT INSTALLED IN THE 2ND FOOT STRIP NEXT TO THE CURB.

ALUM	ALUMINUM	MO	MASONRY OPENING
ASPH	ASPHALT	MATL	MATERIAL
ACT	ACOUSTICAL	MECH	MECHANICAL
BD	BOARD	MFD	MODULE FIN DIM
BLDG	BUILDING	MISC	MISCELLANEOUS
BOF	BOTTOM OF FTNG	MOD	MODULE
BOT	BOTTOM	NIC	NOT IN CONTRACT
CLG	CEILING	OC	ON CENTER
CMU	CONC MASONRY UNIT	PL	PLATE
CONC	CONCRETE	PLAS LAM	PLASTIC LAMINATE
COL	COLUMN	PLWD	PLYWOOD
CONT	CONTINUOUS	PLMB	PLUMBING
℄	CENTER LINE	REINF	REINFORCE
DF	DRINKING FOUNTAIN	REQ	REQUIRE
DR	DOOR	RM	ROOM
DWG	DRAWING	RO	ROUGH OPENING
ELEV	ELEVATION	SECT	SECTION
EXP JT	EXPANSION JOINT	SPEC	SPECIFICATION
EXG	EXISTING	STD	STANDARD
ELEC	ELECTRICAL	STL	STEEL
EXT	EXTERIOR	STRCT	STRUCTURAL
FIN	FINISH	SIM	SIMILAR
FLR	FLOOR	SATC	SUSPENDED ACT
FDN	FOUNDATION		TILE CEILING
FTNG	FOOTING	TOB	TOP OF BEAM
GA	GAUGE	TOF	TOP OF FOOTING
GALV	GALVANIZE	TYP	TYPICAL
GYP	GYPSUM	UD	UNIT DIMENSION
HORIZ	HORIZONTAL	VERT	VERTICAL
HT	HEIGHT	W	WITH
HVAC	HEAT VENTILATE AIR CONDITION	WC	WATER CLOSET
INSL	INSULATION	WP	WATERPROOF
LAV	LAVATORY	WSCT	WAINSCOT
MH	MANHOLE		

MATERIALS LEGEND

CONCRETE	FINISH LUMBER	METAL IN SECTION
PAVING	LUMBER IN SECTION	GRAVEL
BRICK	INSULATION	EARTH
PLYWOOD	GYPSUM BOARD	WOOD STUD
CMU	INSULATION BOARD	STEEL STUD

SYMBOLS

2 SECTION NUMBER / SHEET NUMBER	3 DOOR MARK
6 WINDOW MARK	12 ROOM MARK

LANDSCAPING SCHEDULE		
NO.	SPECIES	SIZE
1.	SOLAR FIRE SILVER	6' TALL
2.	PICEA PUNGENS	6' TALL
3.	CORNUS SERICEA	3' TALL
4.	JUNIPERUS CHINENSIS PFITZERIANA	3'0
5.	JUNIPERUS HORIZONTALIS	3'0

NOTE:
LANDSCAPING CONTRACTOR IS TO DESIGN AND INSTALL AN AUTOMATIC SPRINKLER SYSTEM FOR ALL LANDSCAPED AREA. CONTRACTOR WILL BE REQUIRED TO SUBMIT SHOP DRAWINGS OF SYSTEM FOR APPROVAL BY ARCHITECT.

PARKING REQUIRED

17.48.900 TABLE 32.
TOTAL BUILDING AREA = 24,204 S.F.
3 SPACES FIRST 1,000 S.F. = 3 SPACES
1 SPACE PER 5,000 S.F. = 5 SPACES
SPACES REQUIRED = 8 SPACES

TOTAL SPACES ON SITE = 19 SPACES

BUILDING AREA

EXISTING BUILDING	13,924 S.F.
ADDITION	10,280 S.F.
	24,204 S.F.

TYPE OF CONSTRUCTION - III N

ALLOWABLE AREA 18,000 S.F.

INCREASES (SEC 506)
SEPARATION ON TWO SIDES - 69'-20'=49'
39' X 1,500 = 73,750
50% IS MAXIMUM ALLOWED
18,000 + 50% 18,000 = 27,000 S.F.

OCCUPANCY SEPARATIONS
OFFICE FROM PLANT
B-4 FROM B-2 = 1 HR SEPARATION

INDEX TO DRAWINGS

A-1	SITE PLAN
A-2	FLOOR PLANS
A-3	LARGE SCALE FLOOR PLANS
A-4	SCHEDULES AND DETAILS
A-5	ELEVATIONS
A-6	ROOF PLAN AND WALL SECTIONS
S-1	FOUNDATION PLAN
S-2	SIDEWALL, WALL AND SLAB PLAN
S-3	ROOF FRAMING PLAN
S-4	STRUCTURAL DETAILS
S-5	STRUCTURAL DETAILS
M-1	MECHANICAL PLANS
M-2	SCHEDULES AND DETAILS
E-1	LIGHTING PLANS
E-2	POWER PLANS
E-3	SCHEDULES AND DETAILS

LEGAL DESCRIPTION

Lots numbered One (1) through Twenty (20), inclusive, in Block numbered Seventeen (17) of the GALLATIN ADDITION to the City of Butte, County of Silver Bow, State of Montana; and the Vacated Alley in said Block 17 running from the South boundary of Cobban Street on the North to the North Boundary of Majors Street on the South (Vacated by City of Butte Council Resolution #4926) and also the East One-half (E. 1/2) of Vacated Delaware Street abutting said Block 17 on the West (Vacated by Butte-Silver Bow Council Resolution #419).