

June 11, 2020

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

Members Present: David Wing, Todd Collins, Julie Jaksha, Franki Weitzel and Loren Burmeister

Absent: Tyler Shaffer and Joel Arnoldi

Staff: Lori Casey, Planning Director
Dylan Pipinich, Assistant Planning Director
Carol Laird, Administrative Assistant

M I N U T E S

- I. The meeting was called to order at 5:30 P.M.
- II. The Minutes of the meeting of May 21, 2020, were approved. (Tyler Shaffer moved and Todd Collins seconded the motion).
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on June 4, 2020.

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

Variance Application #16623 – Paul Thomas of Teton Village, LLC was present at this meeting, as well as Sarah Jones of Deluxe Engineering and Construction and Jay Fortune of Fortune Construction, as representatives for Teton Village, LLC.

Dylan Pipinich summarized the staff analysis and findings of fact that is attached and made a part of these Minutes during the viewing of the presentation pictures. He said since the applicants had received the staff report, they had been coming to talk to staff and they had done modifications to their application in regard to their site plan and were utilizing some compact car spots and were significantly closer to the requirement than when the staff report was written. They were still a little bit shy with the requirements but had twenty-three more spaces and were twenty-three spaces shy of the requirements.

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

Mr. Collins asked Mr. Pipinich on one photo of the east side of the building that kind of paralleled to Howard, could some parking be picked up, if that grass portion was paved. He asked if that was County property, was it right-of-way or did it belong to the applicant.

Mr. Pipinich said when the applicant constructed the building, they actually got a setback variance for this side. He said the problem with installing that parking and they had suggested it, was Public Works required a certain percentage of lay down curb backing out onto the public street and that would not meet that criteria, so there would be too many cars in a row backing out onto the public street for a safety hazard. Mr. Pipinich said the applicant had actually stated several times that they could pick up some parking spots but that wouldn't be in the Public Works' realm.

Mrs. Casey said in addition, the variance they received back in 1998 required that to be a landscape area and so in granting a reduced setback, it was a requirement to have that area landscaped.

Julie Jaksha asked to go back to the picture where they proposed to do the parking. She asked how many – her question was if they knew how many they planned to park back there and would it interfere with delivery trucks. She asked if the building changed uses down the road, would that cause problems for the retail space in the area. Mr. Pipinich said they could see the parking on the site plan and there were four parking spaces located there. He said you could see in the picture a dumpster was there now to pick up garbage. He said that section was

fairly wide and was half the loading berth. Mrs. Jaksha said so it probably wouldn't cause problems down the road with this building and Mr. Pipinich said he didn't believe so.

Mr. Wing said he had a question of parking on Harrison Avenue that he had as he was driving up there that day. He said it seemed as though there were some parking spaces alongside the complex on Harrison Avenue. He asked if that would be permitted. Mr. Pipinich said the shoulder of road – the parking requirements are off-street parking and so you couldn't count the street. Mr. Wing said okay, people could probably park in those spots, if need be and Mr. Pipinich shook his head yes.

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

Mr. Wing then said the applicant now had an opportunity to present further evidence and testimony in support of this application. He said he would ask that anybody that spoke identify themselves with their name and address.

Jay Fortune of Jay Fortune Construction said his address was 116205 Star Lite Road. He said he would like to thank all the Board members for making the time that night to meet with them -- Lori (Casey), Dylan (Pipinich) and Dave (Palmer). He said they had met with them at least three times that week trying to come up with some different ways to look at this parking lot to try to get this parking to go through. He is a general contractor in town and every one of those projects were very important to him. He said this particular project, they signed a nondisclosure agreement. He said he thought a lot of people knew who it was. He said SCL is going into this facility. He said they currently worked for SCL at St. James Hospital right now and had been there for a couple of years, so they had a great relationship with them guys.

Mr. Fortune further said when they started working on this project and they had been working on it a long time, in his wildest dreams he never would have thought they were going to have a parking issue. He said he wasn't involved in the original design of the building but his understanding was since the work was done at the time and there was

a foundation in there and they weren't changing the footprint of the foundation, it would probably be fine but that wasn't the case. He said there were different uses with the parking design – for medical and for retail there were two different criteria. He believed retail called for (1 space per) 400 square feet and medical called for (1 space per) 250 square feet, so that increased their parking.

Mr. Fortune said low and behold, as they were proceeding with this project and were trying to get the design going, the parking lot became an issue. He said they actually hired an engineer to design their parking lot and she did a good job but they were short. He said when they got their letter last Friday that came back saying they were short, they all went to the drawing board. He said it would be a shame to lose this project because this was where they wanted to be. He said he didn't think they wanted to lose any construction sites right now with the way the economy was. He said every job was important. It was also in that TIFID district and he thought that was important because it was going to create some more money for this TIFID district.

Mr. Fortune said with that being said, when they all met, he asked what they had to do to make this thing work. He said Lori (Casey) came up with some ideas – for compact and Dylan (Pipinich) came up with some ideas for employees. He wasn't going to debate the numbers but he thought they were twenty-some spots short. Mr. Fortune said there were 150 spots in that lot right now. He said any time you drove by there, he didn't think it had ever been full. If it was full, they knew that Lisac's, CJ's and numerous other businesses had anywhere from twenty-five to thirty people parking in that lot and they were employees. He said they knew as this project went forward, they were probably going to maybe have to ask them to go to the rear of their building and they have an open lot behind Universal Athletics and they may have the employees park back there, so he thought that would open up a lot of the lot.

Mr. Fortune asked them to take that into consideration when they looked at it. He thought there were 150 or more spaces and asked Lori (Casey) and Mr. Pipinich replied 156 spaces.

Mr. Fortune further said the medical facility that was going in there, Paul (Thomas) was going to address that a little bit more. He said it

was actually an appointment facility. He said it didn't change the criteria for an appointment facility or walk-in facility but it was different. He said it wasn't like St. James on urgent care where everybody was just coming any time they wanted. He said you had to make an appointment to come to this facility, so he thought that would kind of help a little bit on their parking issue. He said he hoped they would take a look at that.

Mr. Fortune said as they all knew, the retail condition – they had the mall out there, the Butte Plaza Mall, retail was down and retail had changed, so obviously, those spaces they were trying to create there were going a different direction and medical was becoming pretty important for some of those spaces. He hoped they would all consider that.

Mr. Fortune said he would also like to have John McDermott, representing SCL – he did some research on on-line stuff and things like that and he would like to give them a little brief on how people shopped on-line and it was not like they did in 1978 when this Ordinance was put into place. He said after John (McDermott) spoke, then Paul (Thomas) would like to make some comments on how his actual business actually worked.

Mr. Fortune then said he appreciated the time they had given them.

John McDermott said that he represented Paul Thomas and wanted to go over real briefly some of the numbers such as 1998 when Staples first moved in there. He said 100% of their business was retail and done right on-site. He said in 2013 they moved to more of an on-line store. He said their business was 24 billion nationwide. He said in 2019, they dropped to 14 billion and 65% of it was on-line. He said they felt that throughout time, the mall was a great example and K-mart was a good example of having the parking but they had nothing in there. He said the stores that were going in there were doing all of this on-line business and they were requiring less than the standards they had set for them and they felt there was adequate parking with the amount that would be done on-line as opposed to on-site.

Paul Thomas handed out a letter from the architect for St. James to the Board members and staff that is attached and made a part of these Minutes.

Mr. Thomas said that Dylan (Pipinich) and Lori (Casey) had really bent over backwards and Dave (Palmer) and everybody had really made an attempt to try and accommodate them and he thanked them.

Mr. Thomas said he was in the clothing business and he always told people they didn't owe him anything but they owed him an opportunity at least. He said if you were from Butte, they had done more than an opportunity.

Mr. Thomas said they had been in business 118 years. He said they had always been a clothing store but in the last ten years, their industry has changed and it had been a blood bath. He said everybody was downsizing and everybody was going out of business. He said he didn't need to tell them about the mall and K-mart and all of the empty spaces that were on Harrison Avenue right now – retail stores. He said they were very thankful to do very well. He said they had an on-line business in about 2012 and it was over 95% of his income. He said he didn't advertise any more. He said they did have walk-in traffic. They didn't discourage it but they didn't encourage it.

Mr. Thomas said he didn't have any more graphic embroidery. He said they used to have one of the largest selections in Montana. He said he had ten percent of what he had ten years ago.

Mr. Thomas then said the on-line business had really been a lifesaver. He used to have 12-15 employees and now he has one and she was part time.

Mr. Thomas said he had talked to Staples and they were really excited about St. James coming in or the opportunity for them to come in.

Mr. Thomas asked if any of them had any parking problems that he wasn't aware of and they all said that they hadn't.

Mr. Thomas further said John McDermott had given them some statistics. He said he was going to give them a couple of examples.

He talked to them and since 2010 Staples', staff was 25% less. The typical Staples store is 12,500 square feet and it was 25,000 here. He said they hadn't been paying rent for the last three months. He said they just missed the deadline to renew their lease and they weren't picking up the phone and he was concerned about the future of Staples.

Mr. Thomas said he talked to petco and they were doing great. He said he talked to the Manager and he said they had no problem with parking and it had never been an issue.

Mr. Thomas said Lisac's Tire, J & C Auto Body and Lafond had over thirty-eight employees between them and a good chunk of them parked in the lot and he tried to be a good neighbor and it had never been an issue. He said they were all good guys and he was happy to help them out. He said he talked to them over the years and also recently and just asked if they had to vacate the lot, would there be hardship and they said not at all, they had plenty of room. It was just more convenient for them. He said right behind them they shared a lot and a roadway that they owned. He said the property went the length from Harrison to Howard, so they never had parking issues and he just wanted to reiterate that.

Mr. Thomas wanted to say one more time that everybody was really – he worked a lot and didn't really like having things that were up in the air and not in his control. He said it was really nice of Dylan (Pipinich) and Lori (Casey) and they had been really phenomenal with their efforts to try and help and Dave (Palmer) had been great – made every effort to see that they could accommodate them.

Mr. Thomas wanted to thank all of the Board – talked about being heroes and Don Peoples was his hero. He said they worked hard and some were paid and some weren't. He thanked them for spending the evening with them.

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

Mr. Wing then asked if there was any comment in support of this application, if there was anyone who wished to speak in support of it.

Dave Palmer, Chief Executive, thanked the Board members and said he was there to support this application. He said their economic development team in Butte-Silver Bow had been working hard to try to attract new businesses along Harrison Avenue and they had created the Harrison Avenue South District – the Urban Revitalization District and this was one of the first steps to getting someone in there.

Mr. Palmer said McKenzie River Pizza on Howard Street had a lot of traffic that went by there.

Mr. Palmer said looking at this building in his mind, this building looked like it was only half done with the wall standing there and the foundation. He thought this could go a long way to improving the looks of the area and maybe eventually creating more development in the area, which would really benefit that Harrison Avenue South District. He thought it was a beginning.

Mr. Palmer said he realized they were short on parking. They were working with the applicants and they had really worked hard to come up with as many spaces as they could.

Mr. Palmer then said as they had heard, a lot of the shopping any more had changed in that area – with Staples, a lot of it was on-line. Paul (Thomas') business was on-line, or a great majority of it, so the need for all of those parking places probably wasn't there. He would love to see the parking lot jammed every day with people and hoped that it would be.

Mr. Palmer said they had done everything they possibly could to make this project work and so he was asking for their support of this project.

Mr. Wing then asked if there was anybody else who would care to speak in support of this application. There was no response.

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

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

Mr. Wing said he was very familiar with the parking lot. He said it was mostly because he was a regular petco shopper and the reason he was a regular petco shopper was because they had inherited cats from their children because the kids couldn't have them at the apartments anymore, so mom and dad had to take them. He said they have had the cats for some time.

Mr. Wing said when petco opened up, he took a look at the place and he liked the selection of pet food that they had and the cat food and he really liked that they had a little facility to take your plastic jugs there and fill them up with cat litter and you didn't have waste in the landfill with the other plastic and other cardboard containers.

Mr. Wing then said also, when you went there and you checked out and made your purchases, you could make additional purchases to buy additional dog and cat food to go to the animal shelter. He liked that and that was probably the reason he had been in the parking lot over the last six years, many of hundreds of times – at least once a week deal. He said he always came down Elizabeth Warren and turned right on Howard and accessed the petco parking lot from the Howard entrance. He said he had never had a problem in those hundreds of times of locating his vehicle nearby the front door of petco, so he could take his two jugs of cat litter from his vehicle and that had never been a problem.

Mr. Wing said he was a less frequent shopper at Staples but he had never had a problem stopping there and getting close to the door and making his purchases.

Mr. Wing said there was a spot in front of where they planned to put the medical facility and he had never seen anything park there, he really hadn't. It seemed to him that there was nobody on that side of the building. He said from that that perspective, he thought there had always been adequate parking at least since petco had been in there when he frequented the place. He said that was his feel with regard to that, there was plenty of parking already.

Mr. Shaffer said he tended to agree with everything Mr. Wing just said. He said he frequented Staples quite often for office supplies and he

had never once had a parking issue there, not even even a potential for a parking issue in that parking lot.

Mr. Shaffer said he had been well aware of Paul's (Thomas) on-line business too and thought they were well aware that retail was rapidly evolving or devolving but as far as he was concerned, he didn't see parking issues in there. He said he did like the fact that Mr. Thomas and his associates came back to the table to find a middle ground that might be acceptable to everybody. He said he commended that and didn't think they had enough of that in our world today.

Mr. Shaffer said he thought a nice new health care facility in that area could go a long way toward spurring some future economic development in that area that they all knew they really desperately needed. He thought sometimes they took a short view on that stuff to try to accommodate to get things like that going and that could cause problems but he didn't think that was the situation there. He thought the parking lot would do fine and the applicants were going out of their way to add some additional spaces where they could to give them spaces. He didn't see the need to force them or force their hand to create even more spaces right now. He thought that was a waste of asphalt and a waste of money. He said he didn't think it was needed.

Mr. Shaffer said with that being said, he was in support of this and he thought it was a good project and he could get behind it.

Mr. Wing asked if there were any other comments from Board members.

Mr. Collins said he echoed what both of them said. He didn't see how they could possibly use all of the spaces. He frequented Mr. Thomas' store, not much lately but when his daughters were in high school he frequented there quite a bit. Also, Staples and petco and he never had a problem finding a spot near the front door at any of the businesses.

Mr. Collins said in his estimation, he thought they were going to be okay and he would seriously consider taking a shot at it.

Mrs. Jaksha said she echoed that too. She had never seen an issue and if there was a problem, she felt they would look at it. She didn't

see trees on the drawings but she was in support of it and said it was a great project. She said she had never seen the parking lot full, so if something new moved in, they were responsible business owners who would look for a solution.

Mrs. Weitzel said she agreed with everything that had been said. She said she had one question – when they were talking about the strip on Howard Street and they mentioned that previously, it was supposed to be landscaped – would the landscaping be moving forward. She said Julie (Jaksha) wanted trees.

Sarah Jones of Deluxe Engineering and Construction, 2505 Five Mile Road, said she was responsible for putting together the application and the maps that they saw. She said the maps that they saw didn't show landscaping but they did intend to add landscaping upon the decision of approval of this project. They would add it between the sidewalk and foundation. She said they would be putting several trees in that landscape area as well.

Mrs. Jones thanked them and Mr. Wing thanked her.

Mrs. Weitzel said she was in agreement with this project.

Tyler Shaffer moved to approve Variance Application #16623 based upon the revised site plan that will provide an additional twenty-three (23) parking spaces and meet the requirements of the Landscaping Ordinance. Todd Collins seconded the motion.

At this point, the Board voted on the application.

Variance Application #16623 – Approved

| | | | |
|---------------|------------|----------------|-----|
| Tyler Shaffer | For | Todd Collins | For |
| Julie Jaksha | For | Franki Weitzel | For |
| | David Wing | For | |

Tyler Shaffer, Franki Weitzel and David Wing voted "For" the motion to approve the application.

Todd Collins voted "For" the motion to approve the application – "Looks like a great project. Good luck!"

Julie Jaksha voted "For" the motion to approve the application – "Good project!!"

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

Mr. Wing said it seemed like an excellent project and wished them all the very best with this.

- IV. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:10 P.M.

By: David Wing
David Wing, Chairman

Lori Casey
Lori Casey, Planning Director

June 9, 2020

Paul Thomas
Thomas' Family Apparel
3636 Harrison Avenue
Butte, Montana



Re: Parking Requirements
SCLH Butte Primary Care Clinic

Davis Partnership Architects would be the Architects for SCL Health's Butte Primary Care Clinic design in Core and Shell space being provided by Paul Thomas on the east end of the Petco/Staples complex on Harrison Avenue, between Elizabeth Warren Avenue and Holmes Avenue, in Butte, Montana.

This facility is intended to be a Primary Care Clinic (often called a Family Practice Clinic), a medical clinic of normally scheduled visits for basic health promotion, prevention, or early diagnosis. There is usually a healthcare provider relationship with a specific patient. It is not an Urgent Care Clinic, which is used to treat unscheduled patient visits for injury, or illness, that requires immediate care, but is not serious enough to warrant a visit to a Hospital Emergency Room.

Davis Partnership, over the past three years, has worked with SCL Health to develop their standards for these Primary Care (Family Practice) Clinics. With SCL Health we have now done over 15 of these in a variety of communities in the SCL Health service areas. As part of the preliminary program/planning of these multiple PCC's, we find that the functional parking needs are about 4.0 parking spaces per 1,000 clinic gross square footage based on staffing levels, number of Healthcare Providers, and duration of normal patient visits.

DENVER OFFICE
2901 Blake Street, Suite 100
Denver, CO 80205-2303
T 303.861.8555
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www.davispartnership.com

Often Planning and Zoning regulations identify the Parking Needs to be 4.5 to 5.0 spaces per 1,000 gsf, but our current experience with the SCL Health Primary Care Clinic models are showing a slightly lower (4.0 per 1,000 gsf) actual Parking Demand need.

Sincerely,

GARY M. ADAMS, AIA
Principal



Davis Partnership Architects
P 303 861 8555 F 303 861 3027
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Cell 303-888-2750
2901 Blake Street, Suite 100
Denver, Colorado 80205-2303
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www.davispartnership.com

cc: Wendi Ekborg



Zoning Board of
Adjustment

The City-County of
Butte-Silver Bow
Council Chambers
Room 312
June 11, 2020

5:30 P.M. Thursday

Members

David Wing - Chair
Joel Arnoldi
Loren Burmeister
Todd Collins
Julie Jaksha
Tyler Shaffer
Franki Weitzel

A G E N D A

APPLICANT OR REPRESENTATIVE MUST BE PRESENT AT THE MEETING

- I. Call to Order.
- II. Approval of the Minutes of the meeting of May 21, 2020.
- III. Hearing of Cases, Appeals and Reports:

Variance Application #16623 – A variance application by Teton Village LLC, owner, and Sarah Jones, agent, to vary from the requirements of Section 17.40.900 – Off-Street Parking – Table of Minimum Standards of the BSBMC by proposing to install an additional 6 parking spaces instead of the required 46 spaces as described in the submitted application, to accommodate the construction of a 16,400 square foot medical facility as an addition to the existing complex. The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 1-3, Block 2, of the Atherton Place Addition, Section 32, T 03N, R 07W, P.M.M., commonly located at 3636 Harrison Ave., Butte, Montana.

- IV. Other Business.
- V. Adjournment.

BY: Lori Casey
Lori Casey, Planning Director

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

ITEM: Variance Application #16623 – An application to vary from the requirements of Section 17.40.900 – Off-Street Parking – Table of Minimum Standards of the BSBMC by proposing to install an additional 6 parking spaces instead of the required 46 spaces as described in the submitted application, to accommodate the construction of a 16,400 square foot medical facility as an addition to the existing complex.

APPLICANT: Teton Village LLC, (c/o Paul Thomas), 3636 Harrison Avenue, Butte, Montana, owner, and Sarah Jones, PO Box 3512, Butte, Montana, agent.

DATE/TIME: Thursday, June 11, 2020, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in a "C-2" (Community Commercial) zone, legally described as Lots 1-3 of Block 2 of the Atherton Place Addition, in Section 32, T3N, R7W, P.M.M., Butte-Silver Bow County, Montana, commonly known as 3636 Harrison Avenue, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a 16,400 square foot addition to the east side of the existing building complex to accommodate a medical facility. The medical facility is proposed to utilize a previously constructed foundation on the east side of the building. The existing parking lot and landscaping were constructed during the original construction of the existing building. The proposed addition of the medical facility creates a parking deficit for the entire complex. The proposed building, existing structure, parking lot, and landscaping utilizes the entire parcel with no remaining area for additional parking. The applicants are proposing redesign the existing lot, which would yield an additional 6 parking stalls.

HISTORY: The existing structure was constructed in 1998 for the Staples store and Thomas' Apparel. In June of 1998, the owner applied for a variance for a setback variance on the Howard Street property line. The variance was approved, allowing a five foot (5') setback. At this time, the parking lot was designed to accommodate the full buildout of the project, including the space in this proposal, for retail purposes.

In 2013, a building permit was purchased for an interior remodel to accommodate a pet store (Petco) where Thomas' Apparel previously existed. At this time, Thomas' Apparel moved to the basement of the building below

Petco. Changing the basement area into a retail store was not covered in the building permit for Petco, which increased the existing retail area by approximately 11,600 square feet. However, if the basement area had been permitted, the parking lot would have been adequate for the additional retail space, as the parking lot was originally designed to accommodate the 16,400 square feet of retail space on the east elevation that was not constructed.

**STAFF
FINDINGS:**

The BSBMC, Section 17.40.900 (25) and (13), Off-Street Parking – Table of Minimum Standards, requires twenty parking spaces plus one space per four hundred square feet above five thousand square feet of retail space and one space per two hundred fifty square feet of floor area for medical offices.

In the submitted application, the applicant states that the existing building area above ground is 37,200 square feet, all consisting of a retail use. The applicant also states that the basement area (currently Thomas' Apparel) is approximately 11,600 square feet, which consists of 1,160 square feet of retail and 10,440 square feet of warehouse. Staff has concerns with this assessment being that the majority of the basement area is storage area due to the fact that there is a large amount of merchandise on racks and shelves, that is accessible to the public and is, therefore, retail space. Staff believes that there is typically a certain amount of warehouse storage space for all retail uses and this is generally accounted for in the calculation for required parking stalls for retail uses.

The submitted application states that the existing facility, including Thomas' Apparel, requires 113 parking spaces and the proposed addition would require 66 parking spaces, for a total requirement of 179 spaces. Staff

partially disagrees with this assessment. Because staff believes the entire basement area of 11,600 square feet is retail space, the requirement for the existing facility would be 130 parking spaces, and with the addition requiring 66 spaces, the total requirement for the entire facility (existing and proposed) would be 199 spaces. There are currently 133 parking spaces in the parking lot.

As stated above, the applicant can redesign the parking lot to accommodate an additional 6 spaces. The proposal of 139 parking spaces is 60 spaces deficient under the minimum requirement per Section 17.40.900 of the BSBMC.

The applicant is requesting that the Zoning Board of Adjustment allow the applicant to construct of the 16,400 square foot medical facility in lieu of the required off-street parking deficit.

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.

Minimum parking standards have been established by the Council of Commissioners to protect the public interest and safety by ensuring that retail businesses provide a minimum number of off-street parking spaces to reduce parking congestion on adjacent streets and provide a safe environment for customers to park.

As stated above, the parking lot was originally constructed to accommodate a retail use for the ground level of the existing structure as well as the proposed area. However, the building now contains 11,600 square feet of additional retail use in the

basement. In addition, medical facilities require more parking than retail uses, as was originally proposed but not constructed.

That being said, staff has concerns that the request to deviate from the minimum parking standards as defined by the BSBMC, especially by such a significant amount, does not ensure that the businesses in the complex are providing adequate spaces to reduce parking congestion on adjacent streets and does not provide an adequate environment for customers to safely park. Therefore, it appears that the requested variance may 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 structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unique conditions usually associated with the property are shape, topography or some geological feature. A hardship cannot be the result of a condition created by the applicant.

As previously stated, the subject parcel does exhibit a hardship as the footing and one wall of the expansion area has been previously constructed and there is no additional space on the parcel to create more parking. However, the parking lot was originally designed and constructed to accommodate the ground floor of the entire complex, including the proposed expansion area, for retail uses. The retail space in the basement and the change in proposed

use from retail to a medical facility is what creates the parking deficit and both of these contributors were the result of a condition created by the applicant.

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

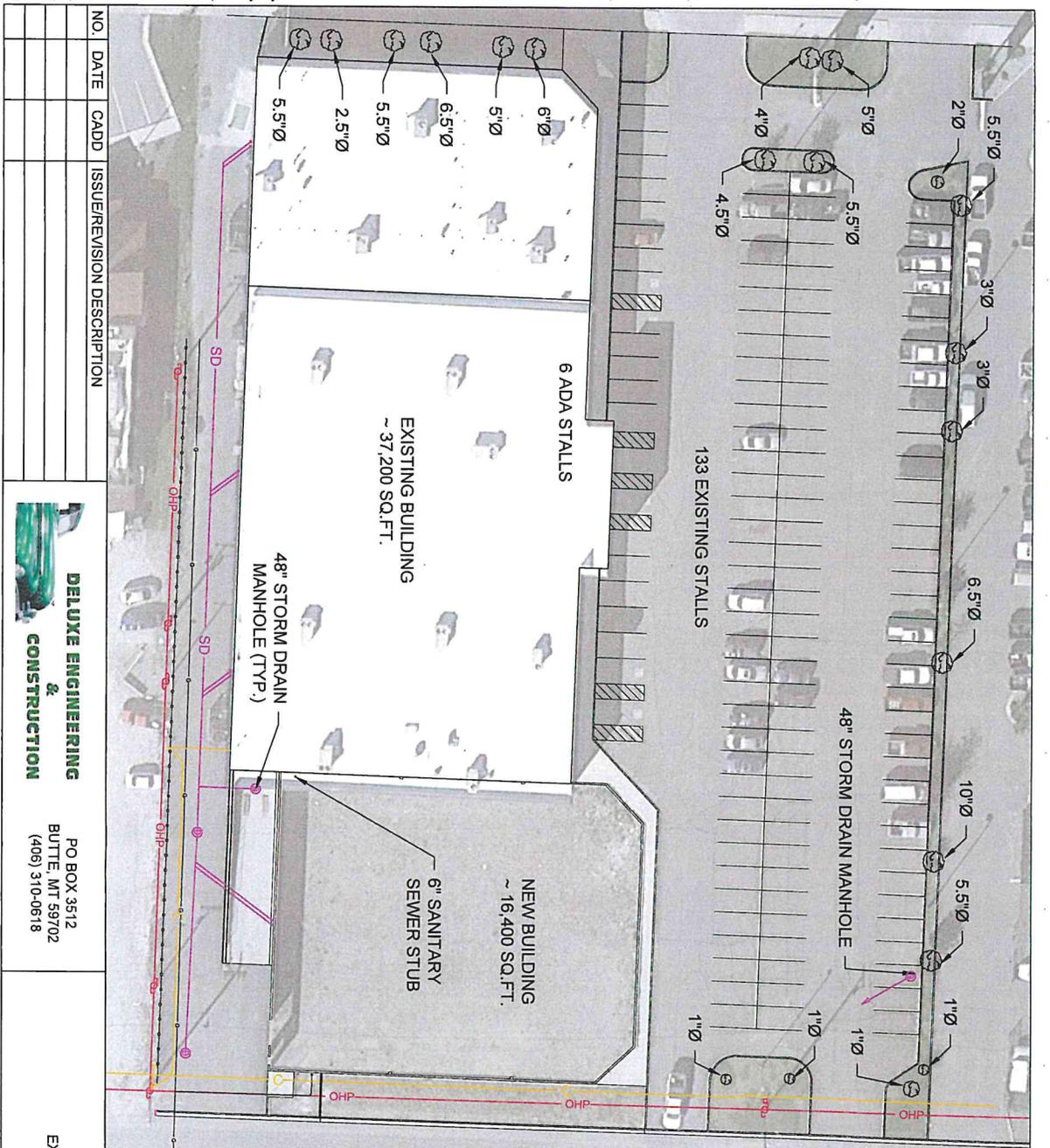
The spirit of the Ordinance is to permit reasonable use of private property while requiring businesses and residents to develop their properties in ways which do not compromise public interest. Public health, safety and general welfare must be protected and weighed against the rights of the applicant to develop the property in a way that may be suitable. If public interest can be protected pertaining to these issues, a variance may be appropriate.

Minimum parking standards are in place to ensure adequate and safe off-street parking for businesses and customers. If the minimum standards are not met, there is a potential to increase congestion not only in the parking lot but also on the adjacent streets.

The subject parcel is located between Harrison Avenue and Howard Avenue, approximately 500 feet north of the intersection of Harrison Avenue and Elizabeth Warren Avenue. Traffic congestion is high at this intersection, which has forced additional traffic along Howard Avenue, creating additional congestion on a street that was not designed or constructed for heavier traffic. Staff is concerned that if inadequate parking exists on the subject parcel, this could add congestion to Harrison Avenue and Howard Avenue, creating a public health and safety issue.

In this particular instance, the proposed facility to be constructed is an urgent care medical facility. The nature of urgent care facilities is to accept walk-in patients instead of the typical scheduled appointments with other doctor's offices. Staff believes with the inability to limit patients, adequate parking facilities are important to ensure public safety not only in the parking lot but on the adjacent streets, especially since as proposed, the parking lot would be deficient by approximately 30% of the minimum required spaces.

CONCLUSION: As discussed within the report, the requested variance to construct a medical facility without the required minimum parking spaces does not meet any of the Montana Supreme Court's criteria for a variance. While the property does exhibit a hardship because the footing and one wall of the expansion has been constructed and there is no additional room on the property for added parking, the hardship was created by the applicant by expanding the adjacent retail facilities and changing the use of the proposed expansion area and, therefore, does not meet the definition of hardship for a variance. Therefore, staff recommends that the Board deny the proposal to vary from the minimum parking standards.



| BSB PARKING/LANDSCAPING REQUIREMENTS | | | APPLICABLE ORDINANCE |
|--------------------------------------|---------|-----------|----------------------|
| EXISTING BUILDING AREA | 37,200 | SQ.FT. | |
| BASEMENT AREA | 11,600 | SQ.FT. | |
| RETAIL AREA | 38,360 | 108'x113' | 17.40.900.25 |
| WAREHOUSE AREA | 10,440 | 5'x113' | 17.40.900.25 |
| TOTAL EXISTING PARKING STALLS | 133 | | |
| REQUIRED PARKING STALLS | 113 | | |
| EXISTING LAWN | 6,477 | SQ.FT. | 17.40.900.25 |
| | 1"Ø | 4 | |
| | 2"Ø | 1 | |
| | 2.5"Ø | 1 | |
| | 3"Ø | 2 | |
| | 4"Ø | 1 | |
| | 4.5"Ø | 1 | |
| | 5"Ø | 2 | |
| | 5.5"Ø | 5 | |
| | 6.0"Ø | 1 | |
| | 6.5"Ø | 2 | |
| | 10"Ø | 1 | |
| EXISTING EQUIVALENT TREE AREA | 5,075 | SQ.FT. | 17.38.048.A |
| TOTAL EXISTING LANDSCAPING | 11,552 | SQ.FT. | |
| TOTAL LOT AREA | 127,827 | SQ.FT. | |
| LOT LANDSCAPING REQUIRED (5%) | 6,391 | SQ.FT. | 17.38.037 |
| PARKING LANDSCAPING REQUIRED | 3,325 | SQ.FT. | 17.38.045 |
| TOTAL LANDSCAPING REQUIRED | 9,716 | SQ.FT. | 17.38.042 |
| TREES REQUIRED | 27 | | 17.38.049 |
| CURRENT TREE SHORTAGE | 6 | | 17.38.042 |

STAPLES ADDITION
 EXISTING SITE - ZONING REVIEW
 SHEET
C.1

| NO. | DATE | CADD | ISSUE/REVISION DESCRIPTION |
|-----|------|------|----------------------------|
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