

July 16, 2020

**Butte-Silver Bow
Zoning Board of Adjustment
Virtual Meeting**

Members Present: David Wing, Todd Collins, Julie Jaksha, Tyler Shaffer, Sylvia Cunningham (arrived late), Garrett Craig and Loren Burmeister

Absent: None

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 June 11, 2020, were approved and passed. (Todd Collins moved and Julie Jaksha seconded the motion).
- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on July 9, 2020.

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

Mr. Wing said the first matter they were going to consider that night because of family situations was the Appeal of the Zoning Officer's

Decision #16645. (Mr. Wing said he was sorry about Mr. Huntington's mother).

Appeal of the Zoning Officer's Decision #16645 – Mark Huntington was present at this virtual meeting.

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

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

Mr. Collins said he did. He asked Mr. Pipinich – this property had been several different things. First one he thought was a landscaping company, if he remembered right. Mr. Jeffery had his outfit there and he thought he probably still owned the property. Tillo had Tillo Graphics there, probably among others. He asked if anybody else actually came for permission or was that – did the zoning ever change there or was it ever suggested that it be changed. He said that was his question. Lori Casey replied the landscaping company had gone in prior to zoning becoming effective at that time. She thought there was another landscaping company that would have been a similar use because they did operate a landscaping company. She said Jeffery Contracting was also in this building. They did come before the Board and he sought approval for his trucking company. Another trucking company had come forward prior to that in which this Board had denied that application, so outside of the landscaping company, all the others had come before this Board.

Mr. Collins asked Mrs. Casey -- Tillo Graphics didn't have permission to do his business there, was that right. Mrs. Casey said she didn't believe that Tillo Graphics did have permission to go in there. Mr. Collins said okay.

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

Mr. Wing then asked if Mr. Huntington was still with them and he said yes, he was there. Mr. Wing then asked him to present his application to the Board, his reasons for the request. Mark Huntington said he

understood that the zoning there at that location was an "R-3" zone and he understood that having a truck rental business at an "R-3" zone was not in compliance with zoning and was not in compliance with his variance. He said outside of that he would give them a little back story, as far as what he went through during this whole process during the whole corona virus thing. His regular business that he had the variance for had been shut down during the non-essential business closures and at the time, U-Haul Corporate actually approached them to ask if they could open a location there on their lot. He said at the time, it was a pretty quick timespan, as far as what he had to make a decision and so, he decided to do it. He knew it was not in compliance but he was hoping to try to get around that by the fact that their variance for the business they had and the fact that it was a commercial property would give them a little bit of lee-way, as far as opening up that business, especially at the time that they were desperate to try and keep their business going.

Mr. Huntington then said also, in addition to that, it was a commercial building, as the words that Mr. Collins had mentioned. He said there had been plenty of commercial businesses there at this location. He said there was a commercial building at this location and he didn't think it would ever be anything other than a commercial business, so his – there was a commercial building there and there was no way it would ever be a multi-family residential area because of this commercial building at the property. It would always have to be at some point a commercial building.

Mr. Huntington further said in addition to that, the acres that they, there were a couple of acres behind the shop where they kept the U-Haul trucks. They were just parked on a piece of land out back there and it was all pretty much completely encompassed by a hundred year floodplain, so his argument would be that because there was the hundred year floodplain, it would be difficult for them to use the property for anything other than – even if they did use it for a multi-family residential sort of building, it would be very difficult to do that due to the fact that it was a hundred year floodplain, so in the event of a flood, the fact that they were using it for a truck rental business, they could always move the trucks and get them out of the way, if there was any huge issue due to that one percent chance of flood.

Mr. Huntington continued by saying outside of that, the U-Haul business that was there, he made specific efforts to make sure the yard looked good. They parked the trucks every evening in a way that looked good. His trucks were not loud diesel trucks, they weren't large vehicles and they didn't make any more noise than the highway right next to them made and so there was not a concern, as far as noise pollution went.

Mr. Huntington said he basically made kind of a split second decision to try to salvage what he could with his business in the event of pretty rough circumstances and this was something that allowed them to continue business, as opening up their revenue streams, and it didn't seem in his mind that it was much of a problem. He knew that the variance it was wrong and he didn't disagree with that but the fact that there was a U-Haul business there, it didn't provide any sort of issues for anyone else, he didn't believe, and so that was ultimately the reason he decided it would be okay to have that business there. They really didn't have a lot of other options and ultimately, it would not affect anyone around them to have trucks there. He asked if there were any questions.

Loren Burmeister had a question. He asked Mr. Huntington if he had any conversations with Planning staff about actually changing the zoning of this property, so that he could be free to run various commercial activities out of there. Mr. Huntington said yes, certainly - when they did their variance last year, it was said that it might be better to change this eventually to commercial property. He said he knew it wasn't possible to change one particular parcel, so he knew they would have to change, he wasn't sure of the number, but he knew they had to change the ones around it. He said it was kind of hinted at because this was always an issue with a new business in there, that it would probably be good to eventually change it to commercial zoning. He said he certainly would like to have it commercially zoned but outside of that, there hadn't been a ton of conversation. He knew that he had spoken with Dylan (Pipinich) to eventually try to get it changed to a commercial zone, just so they didn't have to worry about each type of use going forward. Mr. Burmeister thanked him and said he would strongly encourage that. He said as they saw on the fourth condition of the last variance, any changes to that business, he had to come back to them and not make it a real challenge, especially when he

agreed that this for all intents and purposes was a commercial property but it wasn't zoned as such, so he would strongly encourage him to look further into that. Mr. Huntington said yeah, he certainly would.

Mr. Wing asked if any other Board member had any questions.

Julie Jaksha said she did. Mrs. Jaksha said she was very sorry about the loss of his mother. She said she wanted to ask a couple of questions. Did he have any complaints from some of the neighbors about the yard operating there. He said no one, he hadn't had any one stop in and say anything about it. There had been nothing to his knowledge and no one had come forward, as far as a complaint or anything of that matter, up to that day.

Mrs. Jaksha then said her other question was twofold. She said she would like to look at the hours of operation of the truck rental – what time did the trucks come in and what time did the trucks go out and what was the actual usage that he was seeing with the lot. She asked if it was extremely busy, somewhat busy – did he feel like business was picking up. She wondered what the maximum amount of vehicles he kept in there was at any given time. Mr. Huntington said yeah, Julie (Jaksha), and thank you. He said the hours of operation during weekdays, Monday through Friday, they were open from 8:30 to 6:00 o'clock. He said they saw most of their rentals returned and they certainly didn't send out any rentals outside of those hours. He said most of their rental returns were during those hours. He said there were a couple drop-offs that happened through a virtual check-in system after hours and those were parked in the south parking lot. He said it was not very common and he would say on average not even one a day. He said then, as far as addressing how many trucks were on the lot, it was just a matter of how busy things were. He said he knew they had at one point somewhere around – there was probably like twenty trucks on the lot but that was the most he saw. He said they had been doing this for a couple of months and that was the most he had seen on the lot, as far trucks went.

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

Mr. Wing then asked if the staff had any written comments with regard to this matter that they would like to read into the record.

Mr. Pipinich said they had received no written comments on this application. Mr. Wing said okay.

Mr. Wing said they would now ask people who might be on-line on the telephone, if they would like to speak in support of this application. Mrs. Casey said who would like to call in could call in at 497-5009. Mr. Wing repeated the number of 497-5009. He said anybody in support of this application could phone that number.

Mr. Wing said they did have a call indicated by Josh (Hettick).

Mr. Wing asked the caller to identify themselves with name and address. Mr. Hettick repeated to give their name and address.

Mr. Wing said they weren't hearing anybody and would move on.

Mr. Wing said there was another person who cared to speak in support of this application. He asked them to please identify themselves by giving their name and address. They hung up also.

Mr. Wing asked if there was anybody else. Mr. Wing said not hearing anybody – Mrs. Casey said they did have somebody that was on for the meeting, Mr. Schelin she believed had raised his hand to speak. Mr. Wing asked Mr. Schelin if he was present and he said yes. Mr. Wing asked if he cared to speak in support of this application. Mr. Schelin said yes. Mr. Wing asked him to indicate his reasons for supporting the application. Mr. Schelin said he also owned a t-shirt printing business that had been decimated by Covid and he believed that anybody who could do anything they could to stay in business with should.

Mr. Wing asked if there was anyone else – they wanted to make sure that they had all the people who wanted to speak about this matter had the opportunity to do so. He 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 like to speak against this application. He said he didn't believe they had anybody who cared to speak against it. There was no response.

Mr. Wing then closed the public portion of the meeting and opened it for Board discussion.

Mr. Wing asked if any Board members had any thoughts with regard to this application that they would like to share with the rest of the Board.

Tyler Shaffer said they had all been through various requests for this property. (Couldn't hear Mr. Shaffer because of feedback noise). He said it would be nearly impossible for them to build residences in the floodplain and that he was in full support of being able to do this.

Mr. Wing asked if any other Board members cared to make any comments with regard to this matter.

Mrs. Jaksha said she echoed Tyler's (Shaffer) comments. She said she felt the lower activity and the fact that they were not huge semi-trucks. They had approved the large parking lot when there were semi-trucks going in and out of there, so she felt more comfortable with this.

Mrs. Jaksha said she wasn't sure, if they went ahead and granted the appeal, would that still allow Mr. Huntington to get it rezoned, so he wouldn't have issues further down the line and asked if Mrs. Casey could maybe comment on that. Mrs. Casey said yes, their approval of the appeal would not hinder him going forward to get the property rezoned and to apply through an application.

Mrs. Jaksha said she would be totally in favor of granting this appeal. She said she thought Mr. Huntington ran a great business and said she realized things had been extremely tough and that he diversified. She drove by the property and the trucks were parked and looked good and she thought the hours of operation, for her she didn't have a problem with that.

Mr. Wing said he agreed with Mrs. Jaksha that this use of the property was not as intense as that of Jeffery's.

Mr. Wing asked if there were any other Board members who would care to speak.

Mr. Burmeister said he fully supported this. He said he lived just down the street. He had no issue with it, however, he did think it would be most beneficial to everyone for this to be a truly commercial property, so that commercial businesses could operate more freely there. He said if Mr. Huntington or anybody else chose to run a different business there next month, he would need to come in front of them again and he didn't think that was necessary. He didn't think that was necessarily something they could require but it was something that he would strongly encourage and he said that for Mr. Huntington's benefit and hopefully, consideration.

Mr. Burmeister said he would also like to have a brief discussion, being they approved the variance based on a commercial business that was primarily based inside. It was a little bit different than what Mr. Huntington was doing now with the property. He asked if it would be more appropriate to grant him some time and actually submit a formal variance for the business rather than just -- with this appeal, there was not much detail or anything else. He said he wasn't suggesting, he was just raising it for discussion.

Mr. Wing said to Mrs. Casey, if the Board were to grant Mr. Huntington's appeal, would the Board be in a position to add detail to the request. Mrs. Casey said they did have the authority on an appeal to grant a variance and as such, with that authority they did have the authority to put conditions on his operation, similar to what they would do in a typical request. Mrs. Casey said if they so chose, they could grant the variance and ask him for a complete application, as a condition of this approval to come back before them. Mr. Wing said that was an excellent suggestion. He then asked Mr. Burmeister if this met his expectations. Mr. Burmeister said he thought it would probably be the cleanest and most appropriate route - at least for the temporary - like he said, he would just prefer this to just become a commercial property.

Mr. Burmeister then said just because they had different things they considered, as far as external things that would be the appropriate

thing to consider and discuss on this property and to get some sort of proposal from Mr. Huntington he thought would be beneficial. He said Mrs. Casey's second route is probably what he would prefer, that they grant the variance and to come back with a full submittal.

Mr. Wing said he agreed with him.

Mr. Wing asked if any other Board member had any thoughts with regard to this matter.

Mr. Collins was in agreement with what had been said. He did think Mr. Huntington's actions were more ignorance, if you would, and there was no maliciousness he didn't think. Mr. Collins thought he deserved a chance with conditions to do business there. He would like to see something to hold his feet to the fire, so that possibly he would be the one that would get the zoning in that area changed. He understood he would probably have to get some of the other businesses in that area to possibly get on board and make that all happen. He talked briefly with Mrs. Casey the other day about that kind of change. He guessed maybe he didn't listen close enough or maybe he just didn't get it but maybe she could explain that, maybe not now but to explain it. He said he thought the business fit and thought it was a better fit than anything that had been in there. He would be for what had been said.

Mr. Wing said at this point, it looked as though they were looking at granting Mr. Huntington's appeal but requiring him to come back before the Board with a full application that would give the Planning staff an opportunity to suggest appropriate conditions for the use and then at a further meeting they could detail those conditions a little more than they could at this moment. He said so grant his appeal and require him to submit an application for a variance that would allow him to continue with this business, the U-Haul business, and put everything in order for a further application.

Julie Jaksha asked if she could go ahead and make the motion to approve the appeal.

Mrs. Jaksha made a motion to approve the Appeal of the Zoning Officer's Decision #16645 with the condition that Mr. Huntington complete an application and turn it into the Zoning Department within

six months, would that be okay? Mr. Wing thought it should be a lot sooner than that. He didn't think it was that difficult of a process and thought he would be able to do that a lot sooner than six months. She asked if they wanted to go three months. Mr. Burmeister said he would suggest three months since it was the summer and probably a busy part of the season for him. Mr. Burmeister said he thought three months would be fair. Mrs. Jaksha said in three months they would have a completed application by Mr. Huntington for the property. Loren Burmeister seconded the motion.

Mr. Wing said it had been moved by Julie (Jaksha) and seconded by Loren (Burmeister) that they grant Mr. Huntington's appeal but require him to submit an application within three months. He said since nobody was present and some people didn't appear on screen, he would ask each member individually how they voted on that particular motion.

The condition is as follows:

1. The applicant shall complete a Use Variance Application and turn it into the Planning Department within three (3) months.

At this point, Mr. Wing asked the Board members for their vote on the motion to conditionally approve the appeal.

Appeal of the Zoning Officer's Decision #16645 – Conditionally Approved

Loren Burmeister	For	Tyler Shaffer	For
Todd Collins	For	Julie Jaksha	For
Garrett Craig	For	David Wing	For

Loren Burmeister voted "For" the motion to approve the appeal – "Business consistent w/ property use. I still strongly recommend the applicant work to rezone the property."

Julie Jaksha voted "For" the motion to approve the application – "The proposed Uhaul business seems less intense for the location than the previous trucking/construction company. Applicant has 3 months to work on a zoning change application."

Todd Collins voted “For” the motion – “With 3 month condition to submit application for variance.”

Dave Wing and Tyler Shaffer voted “For’ the motion to approve the application.

Garrett Craig voted “For” the motion to approve the application – “For motion to approve on the condition applicant submits a completed zoning variance within 3 months. Agree property is best zoned as a commercial property, however, applicant needs to follow variance application procedure.”

Mr. Wing said six votes were in favor of the motion, which meant that the motion had been approved, for Mr. Huntington’s appeal subject to the condition specified by Mrs. Jaksha. (He would be getting a letter from the Planning staff to that effect).

Mr. Wing said they did have written ballots they would need to sign and hoped they all had them. They needed to sign the ballots and state their reason for their vote on the ballot and they would be submitted to the Planning staff at a later time.

Mr. Wing asked Mrs. Casey if they had covered everything and she said yes.

Mr. Wing told Mr. Huntington good luck with his project and asked if he had any questions with regard to this. Mr. Huntington said no and that he would get it very shortly. He thanked them all.

Mrs. Casey said the new people joining needed to mute because there was a lot of feedback for the Minutes and the record.

Appeal of the Zoning Officer’s Decision #16519 – Brenda Cortese.

Mr. Wing said he understood a settlement had been reached in regard to that matter. Mrs. Casey said yes, they did have one late this afternoon and it was e-mailed out to Board members. She said there was a withdrawal of the appeal for the property. She read the

Withdrawal of Appeal into the record that is attached and made a part of these Minutes.

Appeal of the Zoning Officer's Decision #16520 – Wayne Sterns.

Mr. Wing asked if Mr. Sterns was present. There was no response.

Mrs. Casey said Wayne Sterns and Dusty Rhoades were notified and she didn't believe they were present but would look at the invite list.

Mr. Wing said he was having a tough time hearing and thought it was because people weren't muting and things were happening on other microphones. Mrs. Casey said yes, they were getting a lot of people on and for those folks who weren't applicants and weren't testifying, they could view the livestream on the media through Butte-Silver Bow's Web Site – that might help. On Butte-Silver Bow's main page they could click the media and view the livestream, that might help. Otherwise, they need to keep their mics muted at this time.

Mrs. Casey said she would repeat that they did send notice to Mr. Sterns, as the agent of this appeal. They also sent notice to Mr. Dusty Rhoads and she didn't believe any of them were on. She said she would take a look at the participant list one more time. She said there were names she didn't recognize on their site and then asked if there was anyone present for the appeal of #16520. There was no response.

Mr. Wing said it didn't appear that anyone was there for Wayne Stern's appeal of decision #16520. He said that being the case, they should deny the appeal. He asked if they should give them any additional time to appear. Mrs. Casey said their rules stated if they were not present, it was denied. She said they had, in this particular case, sent a certified letter that was not picked up. It was sent by regular mail also and sent by e-mail. She said in talking with County Attorney Joyce, they believed they had given them proper notice of the appeal hearing. Mr. Wing said he believed that that was true.

Mr. Wing then asked if anyone would care to make a motion to deny the appeal just to be on record with regard to that.

Julie Jaksha made a motion to deny appeal #16520 by Wayne Sterns for his application to locate at 3547 Harrison Avenue due to the fact that he didn't appear at the meeting.

Sylvia Cunningham arrived at the meeting. Mr. Wing welcomed her to the Board and asked if she had the opportunity to hear the discussion about Wayne Sterns or would her consideration be for matters going forward. Mr. Wing couldn't hear her and said he wasn't sure what she needed to do with regard to her computer and her voice buttons but they weren't hearing her. Mr. Wing said he was going to take it that Sylvia Cunningham did not hear their discussion with regard to Wayne Sterns and would not be participating on the vote in that matter.

Mr. Wing said Julie Jaksha had made a motion to deny the appeal. He asked if there was anybody who would care to second that motion and Todd Collins said he did.

At this point Mr. Wing asked for the Board members' vote on the motion to deny the appeal.

Appeal of the Zoning Officer's Decision #16520 – Denied

Loren Burmeister	For Denial	Tyler Shaffer	For Denial
Todd Collins	For Denial	Julie Jaksha	For Denial
Garrett Craig	For Denial	David Wing	For Denial

Loren Burmeister voted "For" the motion to deny the appeal – "Agree with motion to deny appeal."

Todd Collins voted "For" the motion to deny the appeal – "Not present at meeting "default".

Julie Jaksha voted "For" the motion to deny the appeal – "Mr. Sterns did not attend the meeting or have a representative in his place. Applicant was denied due to no-show."

David Wing and Tyler Shaffer voted "For" the motion to deny the appeal.

Garrett Craig voted "For" the motion to deny the appeal – "Applicant was not present for meeting; for motion to deny variance."

Mr. Wing said six votes were in favor of the motion to deny the appeal, which meant that the appeal had been denied. (He would be getting a letter from the Planning staff to that effect).

Mr. Wing said they had a written ballot to sign and submit to the Planning staff at a later time.

Mr. Wing asked Mrs. Casey if they had covered everything and she said yes.

Mr. Collins said the Cortese case, Appeal of the Zoning Officer's Decision #16519 – he kind of thought that maybe they forgot or maybe the staff didn't want to present the conditions for which they agreed to drop the case with Mrs. Cortese. He said he thought they should be more transparent than that. He said it was a public meeting and he didn't know – maybe the details were too lengthy or maybe they were still being worked out but as a member of this Board, he thought they probably needed to know exactly what was going on and so did the public.

Mr. Wing asked Mrs. Casey if she would like to answer Mr. Collins. Mrs. Casey said she could go through the settlement agreement. She said it was signed by both Brenda Cortese and Chief Executive Palmer on behalf of the Planning Department. This Settlement Agreement is attached and made a part of these Minutes.

Mr. Wing asked if that could be reviewed by any members of the public, if necessary, was that correct. Mrs. Casey said yes, it was a public document, now that it had been signed.

Mr. Wing asked Mr. Collins if that addressed his concerns and he said yes. Mr. Wing thanked him for bringing that up.

Variance Application #16658 – Isaak Jones and Meeka Yager were present at this virtual meeting.

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.

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

Mr. Burmeister asked Mr. Pipinich to put back up the picture of the previous garage. Mr. Pipinich said he would. He believed it was the middle one. Mr. Burmeister said just to clarify, as he was trying to follow along, but it looked like several of the other garages had east/west aprons and several also had garages opening directly onto the alley. He asked if that was correct. Mr. Pipinich said the garage directly to the east enters to the alley and the rest of the garages on the block have an east/west driveway.

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

Mrs. Jaksha said in the picture to get an idea in her mind, if they built the new garage, would it be ten feet back from where they were seeing that grass line, right, it would be ten feet back and that would give them the apron. Mr. Pipinich said no, it would be three feet from the rear property line. He said he believed the existing garage that was in the picture was on the property line, so it would be three feet further to the north, ten feet would be in compliance with the Ordinance. Mrs. Jaksha said okay, that was what she was asking – if it was ten feet back, it would be fine. Mr. Pipinich said correct. Mrs. Jaksha said three foot would put it – Mr. Pipinich said the rear setback was three feet but the parking apron requirement was ten feet, so the setback only had to be ten feet, if it the door entered the alleyway. He said if the door did not enter the alleyway, the garage could be three feet off the rear property line.

Mrs. Jaksha said she wasn't sure Mr. Pipinich could answer this for her or if the applicant had to answer it but on the drawing they were given, it looked like there was space between the home and the garage. It looked like on her drawing that it said seven feet but she didn't know if that was that accurate. She asked Mr. Pipinich if he knew if they measured that or if they could speak to that maybe. She asked if they denied this and they still wanted to build the same garage, what she was asking was could they move it back and be up against their house

or would they have to scale the length of the garage down to fit the garage where they were trying to put it.

Mr. Pipinich said the site plan said there was seven feet of room there. He guessed the applicant could confirm but her statement sounded reasonable.

Ms. Yager asked if they could speak. Mr. Wing said they would be given an opportunity to speak but at this point he needed to ask if any other Board members had any questions they would like to address to the staff but she would be given the opportunity to speak.

Mr. Wing then asked if any other Board members had any questions that they would like to get to the staff. There was no response.

Mr. Wing said to Ms. Yager that she and Mr. Jones now had the opportunity to speak in support of their application. Meeka Yager said in regard to that seven feet that they had, that was against their closet, which was an addition before they purchased the home. She said if they backed it up the ten feet, their electricity and their gas would be too close to the garage and blocked access.

Mr. Wing asked Ms. Yager if she had any further information she would like to give to the Board. She said she would like to introduce her dad, whose name was Daylen (Yager) and he would be representing them that day. Mr. Wing asked him to state his name for the record. He said his name was Daylen Yager. Mr. Wing asked if he resided in Butte and Mr. Yager said yes sir.

Mr. Yager said in regard to the whole garage situation, if the house wasn't constructed right in the middle of the lot, they would have no problem to do this. He said in moving the garage back, they tried to look at how they could attach the garage to the house but like Meeka (Yager) said, there was gas and electrical along that wall – (couldn't hear) what they originally wanted to do. He said in this proposal, opening that area up for the doors on the sixteen foot and eight foot -- garage doors and moving it back, he felt it gave an adequate field of view and with the mirror across the side, it was the same thing they used on school buses, except it was twenty-four inches round, so it

was very big, very visible and that would mitigate the not being able to see down both sides.

Mr. Yager further said with that, owning the ten by thirty foot chunk of property across the alley, that would allow them to pull in there and reverse into their garage, which they did on a regular basis in the pad they had open now. He said that allowed only six feet from their windshield to the front of their vehicle to actually see once they were through the garage door. He said his thought was if they turned the garage, like they were requesting to turn it to the east on the doors, they would still be at three feet of visibility from the corner of your structure and there was a garage directly across, like the next garage to the east that faced the alley. It was only three feet off the alley, so within that area, you wouldn't be able to come out with any more visibility or public safety and health of people in that alley due to the fact that your field of view was the same once you approached the alleyway from being in that area and on that side across from the alley there was a fence and a trailer that was parked on private property, so that did not allow you adequate room to actually get in and out of that area even if you had an apron, to do it safely.

Mr. Yager further said if they looked at the pictures on the above view pictures, if you looked to the garage just west of her with the apron next to their garage that they wanted to build, they had to back out into that alley anyway, so he didn't see for the health and safety aspect of that, that it would do any more or less putting the garage facing the east and their lot was only sixty feet wide, not seventy-five or seventy foot wide. He said most of those garages that were turned sideways had three lots, so they had access and maneuverable room.

Mr. Yager then said there were three garages right now that did face right into the alley. He said there was one at the far west end and he thought it was the second house in, that it faced this current residence that they were on right now that had it and then like they said, to the east and he thought it was the third house from the west end, there was a garage door opening into the alley too. He said they were trying to get everything to be as safe as possible and still allow this to be put in. He said they had done everything that they thought they could. He said they put stakes out and they held up 2 x 4's and you went out there and you stood in there and the visibility was no better from a side

apron approach than coming out of the garage, if they were six feet off of it -- with that bubble mirror included, it would be just an added safety feature.

Mr. Yager then said on the other thing, the only other way they thought they could do this would be to shorten the garage up from the twenty-eight foot wide to twenty-four feet and then they would move be able to move it back six feet and that would still give them three feet in between the house and the garage for access. He said that was the only other way they could figure out how to do that safely but they would still need a variance of six feet for that.

Mr. Wing asked if that concluded his remarks. Mr. Yager said yes. Mr. Wing asked if there were any further comments from Ms. Yager or Mr. Jones and Ms. Yager said no further comments from them.

Mr. Wing asked if any Board members had any questions of the applicants or their representative, Ms. Yager's dad.

Mr. Burmeister said he did have one question for the applicants. He asked if when they applied for their demolition permit, did they understand the requirements that would be posed with rebuilding their garage. Ms. Yager said no, when they had applied for a demolition permit, it was because the current garage was actually a safety hazard and one of the supports had been cut out and it needed to come down or else it could have possibly fallen down and that was why they had to tear the garage down.

Mr. Wing asked if there were any more Board questions for the applicants or their representative.

Mrs. Jaksha said she had a quick question. The seven foot, she understood they couldn't get all seven foot, but rather than shorten their garage length, could they move back three feet, so there would be four feet separating the garage and the house and have a six foot apron. She said she hated to see them have to shorten the garage. She understood a twenty-five by twenty-four wasn't as great as a twenty-four by twenty-eight but she was trying to figure out how they could come to some kind of an agreement, so they could still get what

they were trying to build but they were still trying to be safe. Ms. Yager said okay.

Mrs. Jaksha was talking about the one that was already there and Mr. Wing said there was a lot of cross-talk going on and it probably made it difficult for Carol (Laird) to record what was being said, so he asked them to kind of start over again.

Mrs. Casey said before they started, they had a caller that had called in on the phone that needed to mute their phone. She said all they could see was the 406-490 but they could see that they weren't muted. Mr. Wing asked if that particular caller 406-490 would please mute their phone. He said it looked like it was muted now. Mrs. Casey said yes. Mr. Wing said maybe that was what he heard but he couldn't make out much of what was being said.

Mrs. Jaksha said she would go ahead and restate her question to Ms. Yager and her representative. She said her question was the seven feet between the home and the proposed garage, if they could move it back three or four feet towards the house and still kept their twenty-eight by twenty-four footprint, was there not enough space there to do that, she guessed was her question. Ms. Yager said they could move it back and have the six foot apron and that would give them about three feet between the closet and garage, so they definitely could do that.

Mr. Wing asked if any other Board members had any questions of the applicant or her representative.

Mr. Wing said he did have a question himself. He asked if they used the previous garage. Ms. Yager said yes, they did. Mr. Wing asked if they had any difficulties with exiting onto the alley with this previous garage. Ms. Yager said they never did. She said they did not have much traffic down that alley. Mr. Wing asked how long she had lived there and she replied two years.

Mr. Wing said those were his questions and asked if any other Board members had any questions. There was no response.

Mr. Wing said they would open it for public comment and would ask the Planning staff to read any written comments first.

Mrs. Casey said yes, they did receive some written comments on this one. The first one was Commissioner Jim Fisher that is attached and made a part of these Minutes. He supported it.

Mrs. Casey said the second comment was from Dan and Sharon Malkovich, 1651 Dewey Boulevard that is attached and made a part of these Minutes – wanted to put in a good word for them.

Mrs. Casey said the next comment was from Victoria and Michael Burke, 1650 Dewey Boulevard that is attached and made a part of these Minutes – in favor of the variance.

Mrs. Casey then said the next one that they had received was from Gary & Laurie White, 1632 Dewey Boulevard that is attached and made a part of these Minutes – no problem or concern.

Mrs. Casey then said that would conclude the written comments on this particular case.

Mr. Wing then said he would give people who may be on-line wishing to comment with regard to this matter an opportunity to speak. He asked if there was anybody on-line that would care to speak in support of this application. He said there didn't appear to be anybody on-line that would care to speak in support of this application.

Mr. Wing then asked if there was anybody on-line who would care to speak against this application. There didn't appear to be anybody on-line who would care to speak against this application.

Mr. Wing then closed the public portion of this meeting and opened it for Board discussion. He said he would note that nobody had objected to their application for a variance and they had indicated a willingness to make some adjustments in response to one of Mrs. Jaksha's questions and he said he supported where Julie Jaksha was going with regards to this matter. He asked if she would care to amplify it any further or if anybody else had any comments in that regard.

Mr. Burmeister had he did have one small comment in regard to Julie's (Jaksha), which he thought was a good one but if NorthWestern Energy had electrical or gas lines running underground where it would, where the new garage would apparently run, it would preclude the owner from moving it over the top of it, so that was definitely something that would have to be considered.

Mr. Wing said he would reopen to Mr. Yager, the dad, who seemed to be quite knowledgeable with regard to the matter. He asked him if that was that a concern. Mr. Yager said they could look into that. He wasn't sure exactly where that line ran. He did know, if it was underneath where they would be building the garage, it was under the old garage already but they could look at it and get a locate on that to make sure they were doing the correct thing before they did that. He said before you did any construction, you had to get a locate anyway but they would check into that.

Mr. Wing asked if any other Board members had thoughts or questions about this matter.

Mr. Burmeister said he would like to make a couple of more comments. He said he had been in a similar situation at his previous home and it certainly was a hardship he thought. He said as they looked at the houses that were along Dewey Boulevard, they were intentionally set back off of Dewey Boulevard, which didn't give much space between the house and the alley and that in itself made it difficult for them to fully comply with their garages. He said they had an existing garage that did open directly onto the street. Somehow they were able to acquire this little piece of property across the alley, which allowed them to back out, which he thought was great but speaking, the reason he asked the question he did was often when you went into these, you thought if you got the demolition permit, you would have the opportunity to build something similar and finding out that they weren't able to do that after you tore down a residence, it was difficult for a person. He said while he thought Mrs. Jaksha offered a good compromise and if the Yagers were willing to do that, that would be excellent. He said if they were unable to, he thought it was fair and it was consistent with practices throughout the alley to have a garage that sat with less than a ten foot apron, so he would put that up as a consideration.

Mr. Wing said to Mr. Burmeister that those were excellent thoughts and he agreed with him in view of the fact that there were no objections from the neighbors and in fact the neighbors were in support, as was the Commissioner, Jim Fisher. He said they could just look at the application for a variance, as stated, or they could discuss it further.

Mr. Wing said he had made comments, Mr. Burmeister had made comments, Julie (Jaksha) had made comments. He asked if anybody else had any comments. There was no response.

Mr. Wing said it appeared that they were in a position to make a motion. He said the motion would either be to move it back as Mrs. Jaksha had suggested, or just approving it as it was right now. He would be in support of either one but his main thought would be since there had been no objections from the neighbors and they had the space across the alleyway, putting in a bubble mirror and hadn't had any problems in the few years they had lived there, he would support their application for a variance as it stood right now but he couldn't make any motion.

Tyler Shaffer moved that they approve Variance Application #16658 with Loren Burmeister seconding the motion.

Mr. Wing said it had been moved by Tyler Shaffer and seconded by Loren Burmeister and they could now vote with regard to that matter.

Mr. Wing said since Tyler (Shaffer) made the motion, he assumed he was in support of the motion and Mr. Shaffer said yes.

Mr. Wing then said since Loren (Burmeister) seconded the motion he was also for approval of the motion and Mr. Burmeister said yes.

Mrs. Casey asked Mr. Wing to repeat the motion because there was a lot of static, so they were clear for the Minutes (more feedback).

Mr. Wing said the motion, as he understood it, and Tyler (Shaffer) could direct him was that he had moved that the application for a variance be approved according to the – as it stood right now for the applicant's desire to have the variance and the three foot apron. Mr. Shaffer said yes and that he was getting a lot of feedback. Mr. Wing asked if that

was Loren's (Burmeister) understanding of the motion when he seconded it and he said yes, it was.

At this point the Board voted on the application.

Variance Application #16658 – Approved

Loren Burmeister	For	Tyler Shaffer	For
Sylvia Cunningham	For	Julie Jaksha	For
Garrett Craig	For	Todd Collins	For
	David Wing	For	

Loren Burmeister voted "For" the motion to approve the application – "While not ideal, the constrictions that exist in Butte often do make it difficult to conform. It is important that people are able to make reasonable improvements so long as it doesn't adversely impact neighbors."

Todd Collins voted "For" the motion to approve the application – "New garage poses no more risk than the old one."

Julie Jaksha and Tyler Shaffer voted "For" the motion to approve the application.

David Wing voted "For" the motion to approve the application – "No objections from neighbors and nobody in opposition."

Garrett Craig voted "For" the motion to approve the application – "For motion to approve variance application. Hardship due to house setback off of Dewey, little space to construct garage off back of lot. Applicant owns 10 feet on the other side of alley, creating additional room directly behind proposed garage."

Sylvia Cunningham voted "For" the motion to approve the application – "Reasonable use of property and owners willing to look at alternate locations. If they move their structure, they would lose most of their yard."

Mr. Wing said all seven votes were in support of the motion to grant the application, as stated by the applicants in the application for the

variance, and it had been approved. Mr. Wing said they would be receiving a letter from the Planning staff to that effect. He said he was speaking to the applicants. Good luck with the project and hoped it all went well for them.

Mr. Wing asked Mrs. Casey if they had covered everything because he wasn't sure. Mrs. Casey said she would remind the Board members that they all had to fill out their written ballot and that since the vote was against the staff recommendation, they had to fill in the reason below for the record. Mr. Wing said right and asked if everybody understood that. He said they did have a written ballot and they did need to sign it and date it and indicate their support for the motion and state the reasons for the vote.

Mr. Wing said there would be a five minutes recess.

Mr. Wing said he was ready to resume the meeting, if everybody else was.

Use Variance Application #16669 – Keith Johnston of WJ Properties was present at this virtual meeting.

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.

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

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

Keith Johnston with WJ Properties said they thought it would be a good use of the property. He said the lot was so small, it really couldn't be used for anything else other than the neighboring businesses and they weren't interested in the property.

Mr. Johnston said they would like to get a residential and put some residents in there and clean it up and get the yard mowed and the bushes cut and he thought it would be an improvement to the area.

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

Mr. Wing said they would now open it for public comment.

Mr. Wing said he would give the Planning staff the opportunity to read any written comments into the record before they took any comments on-line.

Mrs. Casey said they did have a couple of comments. She said the first comment was from Commissioner Jim Fisher that is attached and made a part of these Minutes – he supported this being a family dwelling.

Mrs. Casey said the second comment that they received was from Dan Fouts, Caldwell Banker, Markovich Real Estate, Inc., 2827 Lexington Avenue that is attached and made a part of these Minutes. He believed it should be approved.

Mrs. Casey said that would conclude the written comments they had received.

Mr. Wing then asked if there was anybody on-line who would like to speak in support of this application. There was somebody on-line and Mr. Hettick asked for her name and address. Mr. Wing asked to spell her name. Mr. Hettick asked her to spell her name. Mr. Wing said they couldn't hear her very well but they needed her name and address before they could go any further. Still couldn't hear her speak. He then said they seemed to have lost her. He said it was hard for people that weren't computer savvy but they seemed to have lost her.

Dan Fouts called in said they had just read his written comments. He said Jasna Pantic just tried to call in and she had just contacted him and was having trouble getting on-line. He said her comments were the same as his and she was the applicant. (Couldn't hear – feedback).

Mrs. Casey said for those people who were having trouble with their computers, maybe they should remind them that they could just call in with their phone without the computer at 497-5009.

Mr. Wing said they had a call. Mr. Hettick said to state her name and address.

Jasna Pantic said she just cannot deal with the web. (Feedback – couldn't hear). She didn't have anything to add – she just cannot deal the web. Thanked them for the opportunity to change that back to what it was originally for many many years. She said that would be all of her comments and thanked them kindly.

Mr. Wing said there was nobody else either in support or opposition of on-line.

Mr. Wing closed the public portion of the meeting and opened it up for Board discussion.

Julie Jaksha had no further discussion but said she would make the motion to approve Use Variance Application #16669. She thought it was a good use for the property as is and it was nice to see it was going to be utilized. Todd Collins seconded the motion.

The condition is as follows:

1. Any expansion of the residential use or change in use that does not meet the permitted uses of the "C-2" zone will require further review by the Zoning Board of Adjustment.

Mr. Wing said it had been moved and seconded that they approve the motion.

Use Variance Application #16669 – Conditionally Approved

Loren Burmeister	For	Tyler Shaffer	For
Sylvia Cunningham	For	Julie Jaksha	For
Garrett Craig	For	Todd Collins	For
	David Wing	For	

Loren Burmeister, Tyler Shaffer, Sylvia Cunningham and David Wing voted "For" the motion to approve the application.

Todd Collins voted "For" the motion to approve the application – "Looks like a good place for someone to live."

Julie Jaksha voted "For" the motion to approve the application – "Reasonable use of the property."

Garrett Craig voted "For" the motion to approve the application – "For motion to approve variance application."

Mr. Wing said all seven were in support of the motion with nobody in opposition and the motion had been approved and the application had been approved. He said the applicant would be receiving a letter from the Planning staff to that effect. He thanked them.

Variance Application #16670 – Rick Schelin was present at this virtual meeting.

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. During the summary of the report, Mr. Pipinich said he wanted to correct for the record where it said to construct an addition – it was a garage within ten feet of the South Wyoming Street front property boundary.

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

Mr. Wing then said the applicant now had an opportunity to speak in support of this application. He asked them to identify themselves with their name and address.

(Couldn't hear as someone was talking at same time). Rick Schelin said the property shape made it hard for him to have a twenty foot setback. The ten foot setback impeding vision from the roadway and then his area was generally unimproved right now so it was not going to -- the public spirit of his neighborhood and he thought it would

actually make his neighborhood a lot nicer with a garage and his house because currently, his house sat in the middle of the field.

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

Mrs. Jaksha said she had a question for Mr. Schelin. She told him thank you very much and that he did a nice job locating the garage on the property. Her question would be if they were to add a condition that at no time the garage could be utilized for commercial practice, would he be okay with that. Her concern was that they had seen a lot of folks try to open a commercial business, so she would want to put that as a condition. She said if he did decide he wanted to do something, he would have to come back and get a variance she believed.

Mr. Schelin asked her to repeat that – that he would have to come back and get a variance, if he wanted to operate a commercial business out of it – was that what she was saying? Mrs. Jaksha said she would refer to Mrs. Casey on that but she would like to see the Board add a condition that he couldn't operate a commercial business out of that garage.

Mr. Schelin said the first thing he would like to say was that he was building a garage at his primary residence, so he wasn't sure why she was referring to commercial space. He would also like to say that there tonight, the Copper Tee was operating an embroidery shop, the one where Tillo operated a sign shop out of an "R-3" space and used it as a commercial space without permission for the record.

Mr. Wing said with regard to Mrs. Jaksha's suggested condition, he believed she asked Mrs. Casey to comment on that and they could certainly make that a condition whether she commented or not. He thought it was appropriate.

Mr. Schelin asked if he could also make another comment. Mr. Wing said sure. He said there was an "R-1" house directly in front of his that was operating as a commercial business currently – that would be Hunter Brother's Construction. Mr. Wing thanked him for that comment. Mr. Schelin said he wasn't advocating that he was trying to

run a commercial business. He didn't think the restriction should be applied to him when it was not being applied to everyone else.

Mr. Wing asked if there were any other Board members who had questions of the applicant. There was no response.

Mr. Wing said they would now open it for public comment. He asked Mrs. Casey if she had any written comments with regard to this matter.

Mrs. Casey said they did have one comment from Commissioner Fisher that is attached and made a part of these Minutes – he supported the project.

Mr. Wing said they would now see if they had anybody on-line who would like to comment with regard to this application. There was no response.

Mr. Wing said there were no comments with regard to this application – either for it or against it.

Mr. Wing said he would now conclude the public testimony with regard to this matter and open it up for Board discussion.

Mr. Wing asked if there were any comments from the Board.

Mr. Collins said he certainly appreciated Mrs. Jaksha's comment about putting that commercial restriction on the property, however, he just didn't know if that was something that they should they do. He said they didn't do it on the one on Dewey Boulevard. He said this garage was bigger and more in a rural area. If the applicant did some commercial work out of there and it was noticeable, he was sure he would come before them and have to amend what he was doing. He didn't think it was something they should dive into at this point. He thought he had presented his case well. Mr. Collins said he didn't have anything against it. He had the room to do that and he didn't think the way he was building on the lot would harm anyone anyhow, so that was his comment.

Mr. Wing said it was in an "R-3" zone, so if he did want to use it for commercial purposes, he would have to seek a use variance for that

particular purpose, so he didn't know they needed to say it there either but he could be wrong, he often was.

Mr. Wing asked if there were any other comments with regard to this matter.

Mr. Shaffer agreed with what Mr. Collins said and them putting unnecessary conditions for a commercial business there was unnecessary. He said he was in an "R-3" and if he ever wanted to do a commercial business there, he would have to come back and get a variance for that. He said he didn't think it was fair for them to make the assumption that that was what he was going to use it for right now. He said he thought they needed to trust that he would do the right thing because he was in front of them that night doing the right thing to get this garage built. He said they had multiple cases almost every year about people coming in after the fact -- they already built the garage and now they wanted forgiveness for doing it in the wrong way. He said Mr. Schelin was there before them that night, getting approval before he went ahead with that. He just didn't think they should be dealing with anything that night with regard to his commercial business. He said they were aware that he had a commercial business and that was fine. He wasn't there to build a garage for that. He said if he were to start doing that, they could address that then but he thought they needed to trust that he would do the right thing and get a variance for that when the time was right. He had done everything he had been asked to do at this time.

Mr. Wing asked if there were any other comments by Board members. There was no response.

Mr. Wing said hearing no further comments, he would close the public portion of the meeting, rather the Board discussion and request somebody to make a motion.

Loren Burmeister moved to approve Variance Application #16670 with the recommendation presented by staff. Todd Collins seconded the motion.

The condition is as follows:

1. The applicants shall ensure that the construction of all facilities on the parcel are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance.

Variance Application #16670 – Conditionally Approved

Loren Burmeister	For	Tyler Shaffer	For
Sylvia Cunningham	For	Julie Jaksha	For
Garrett Craig	For	Todd Collins	For
	David Wing	For	

During the polling of the voice vote, Mrs. Jaksha said she voted against – she felt that they saw those sizes of garages being built and they saw people move into them and then they saw all kinds of issues. She respected that the Board wanted to move ahead with the vote but she would vote against it – sorry.

Julie Jaksha voted “Against” the motion to approve the application – “Size of the proposed garage being built in a residential zone concerned me. When I asked to add the condition that the new garage not be used for commercial business, the applicant declined and stated he would not be good with that.”

Loren Burmeister, Tyler Shaffer, Sylvia Cunningham 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!”

Garrett Craig voted “For” the motion to approve the application – “For motion to approve variance application.”

Mr. Wing said there were six votes in support of the motion and one vote against it, so the motion carried and the application had been approved and Mr. Schelin would be receiving a letter from the Planning staff to that effect.

Mr. Wing said that once again, he would make sure he had covered everything by asking Mrs. Casey if he had. Mrs. Casey said yes he did.

Mr. Wing said once again, they had a written ballot that they had to mark.

Amendment to Use Variance Application #15736 – Application #16672
– David McKinnon was present at this virtual meeting.

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.

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

Mrs. Jaksha said she had a question. She said if this was approved that night for the twelve months and then at the end of that twelve months, they were to come back and tell them they were unable to find a location that worked for the business – what would happen at that point with the variance and the property and the limitation that was already placed on them to build a permanent structure.

Lori Casey said to the extent that Western States Cat was unable to locate a new property for their facility, they would be at that time required to build a stick built building for their office and the restrictions that they placed, the conditions, the last time they were before this Board would still have to be observed.

Mrs. Jaksha said she had one more question. So, the twelve months started from the time they approved this right, so they would have until July of 2021 to come in and say they found a new location or would they have to be vacated off this location by July of 2021, if this was approved. Mr. Pipinich said the applicant asked for an additional twelve months, so their time frame was originally August 20th of 2020, so that would put their request to be August 20th of 2021.

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

Mr. Wing said hearing no further questions, Mr. McKinnon now had an opportunity to speak in support of his application.

Dave McKinnon of Boise, Idaho said Mr. Pipinich pretty much got everything there. He said after the last meeting, they understood pretty loud and clear that they were in the wrong zone. They needed to get to an industrial zone and he was under some strict guidelines from their CEO and everybody else to get that property under contract. He said they flew out and they met with Lori (Casey) and Dylan (Pipinich) and talked with everybody about that. He said their executive team flew out and they met with them, their construction manager and met with Kristen Rosa as well and right after that meeting, they went out into the field and identified three properties that would work for them. He said they contacted the agents and/or owners of those and were in negotiations with those owners right now and were trying to determine which one made the most sense. He said they were industrial zone pieces of property, so they wouldn't have to worry about the floodplain issue that they currently had to deal with and the flight path issues that dealt with the airport. He said they just needed some time to get it done.

Mr. McKinnon said Commissioner Julie (he didn't know her last name), all he could see was her name on there. He said they did submit a building permit for the permanent structure but they didn't feel there was any need for them to build it at this time because if they built it – their plan was to vacate this property, as soon as they found another location that made sense for them.

Mr. McKinnon said they needed to expand and that was the reason they came to them in the first place was to expand. He said where they were at right now didn't meet all of their needs. He said they had said previously, they needed a place to work indoors and they didn't have that where they were at and they needed to expand to be able to do that, so they had found some locations that would continue to work towards that. His goal was to actually be under construction next Spring for that and have the contract, have the property under contract in a month and close this summer actually, if they could. He said the property wasn't really expensive and they were looking forward to moving forward and just asked for their approval at this time. Mr. McKinnon asked if they had any questions, he would be happy to answer them. He said he didn't want to belabor the issue any longer.

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

Mr. Burmeister said to Mr. McKinnon that he and Julie (Jaksha) had the same kind of frustration with this. They would like to see something more final happen with this property and so if they were to suggest a minor modification that all equipment be off the property within twelve months, would that be something he might be willing to accept? Mr. McKinnon said he didn't know what his last name was because all he could see was Loren. He said these meetings were difficult. Mr. McKinnon then said they were going to accept what they allowed them to do. He said their goal was to be off of there. He said they were going to have this property under contract. He said he guessed he had two properties that he was negotiating with right now on purchase price and they would get one of them there shortly and get going on that. He said if they determined that that was the appropriate course of action that they wanted to take, that was something they would work with it, absolutely.

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

Mr. Wing said he would ask for public comment and would ask the Planning Board (staff) to read any written comments into the record that they may have received.

Mrs. Casey said they did receive one comment from Commissioner Fisher that is attached and made a part of these Minutes. Mr. Wing said he was busy and Mrs. Casey said he was busy because all of the ones they had done that night were in his District and that was why they hadn't really heard from any of the other Commissioners. Mrs. Casey read his comments – he was in support of this request.

Mr. Wing said they would now check to see if anybody was going to phone in with regard to this matter. He said he wasn't hearing any written (phone) comments.

Mr. Wing then closed the public portion of the meeting and opened it for Board discussion.

Mr. Shaffer said in regard to this, Mr. McKinnon and his team had obviously been through the wringer with the Zoning Board of Adjustment. He said they had been in front of them and they had been denied and they had been approved more than anyone else, let's be honest.

Mr. Shaffer said his thought on this was if they were willing to look for industrial properties that fit them that were going to be better suited for their business, he was for that.

Mr. Shaffer was inaudible for a lot his comments because of feedback. He said he had one concern, if they weren't able to close on a property this first round during this construction season, they could possibly be looking at not breaking ground until 2021, it could be hard to develop this property before August of next year, if they weren't able to start it until next Spring. That was his concern but he trusted they were doing the right thing -- would hate to see them come back.

Mr. Wing asked if any other Board members had any comments with regard to this application.

Mr. Burmeister said he shared Tyler's (Shaffer) concern and he was happy to see they were looking to get in the right zone and so he didn't think, although he asked the question, that it was a necessary restriction to put on there but he would generally support the staff's recommendation.

Mr. Wing asked if there were any further comments by Board members. There was no response.

Mr. Wing said he would now ask if somebody would care to make a motion with regard to this matter.

Tyler Shaffer moved to approve Amendment to Use Variance Application #15736 – Application #16672 with Julie Jaksha seconding the motion.

At this point, the Board voted on the application.

Amendment to Use Variance Application #15736 – Application #16672 - Approved

Loren Burmeister	For	Tyler Shaffer	For
Sylvia Cunningham	For	Julie Jaksha	For
Garrett Craig	For	Todd Collins	For
	David Wing	For	

Loren Burmeister, Todd Collins, David Wing, Tyler Shaffer and Sylvia Cunningham voted “For” the motion to approve the application.

Julie Jaksha voted “For” the motion to approve the application – “Happy to see them relocate to an area zoned for their business.”

Garrett Craig voted “For” the motion to approve the application – “For motion to approve.”

Mr. Wing said all seven votes were in favor of the motion, which meant that the application had been approved, and Mr. McKinnon would be receiving a letter from the Planning staff to that effect.

Mr. Wing thanked him for his attendance there that night.

Appeal of the Zoning Officer’s Decision #16675 – Jim Ayres was present at this virtual meeting, as the representative of the Ramsay Citizens Council.

Mr. Wing said the final matter on their Agenda was the Appeal of the Zoning Officer’s Decision #16675. He said it was an application by the Ramsay Citizen’s Council to appeal what it said was a decision. He said with regard to that particular matter, he said that Mr. Ayres was present on behalf of the Ramsay Citizen’s Council, was that correct. Mr. Ayres said he was, yes.

Mr. Wing said their first concern there as he saw it, they had the jurisdiction as the Zoning Board of Adjustment to hear appeals with regards to the decisions, orders, requirements or determinations the Zoning Officer might make with regard to a particular matter. He said they could then either affirm that decision or reverse that decision and

direct the Zoning Officer to do otherwise. He asked Mrs. Casey if that was correct. Mrs. Casey said that was correct.

Mr. Wing said on his side, he did not see that there had been any decision, determination, requirement or order that had been entered by the Zoning Officer. He said he understood that Mr. Ayres did have a different opinion with regard to that.

Mr. Wing said before they proceeded to any public hearing, he thought that they needed to clear up that particular question. He asked if he (Mr. Ayres) could tell them what he believed to be the decision, order or (turned away from microphone couldn't hear) that may have been made by the Zoning Officer in question.

Mr. Ayres said actually he believed there were two decisions that she had made. He said the Zoning Department's response to their application for an appeal actually proved their point in his opinion. He said one of the questions they had and he actually had a power point presentation but they could see behind him that there were two maps. The map on his left, which was actually colored in in crayon, was the map that they apparently had determined was the actual map they were going to use to determine the zoning boundary. He said the map on his right was the one that was actually on file with the Clerk and Recorder and was referenced in the Ordinance. He said it was their assessment that that map was the actual official map. It had a scale and it had a GIS Department seal. He said the other map had no scale, no reference – they didn't even know where it came from. He said they didn't see that map until Saturday when it came in the mail with the appeal.

Mr. Ayres said when he read through the Zoning Department's response, it said the above noted information was utilized to make the determination that the buildings were located in an area that was unzoned – to him, a determination was a decision. He said they had wondered all along in Ramsay how it was that they could keep coming back and saying this building was an unzoned area when they were looking at a map that came directly from the Clerk and Recorder's Office and when they scaled it and when they had a professional surveyor scale it, it showed that the Love's building was entirely within Ramsay's commercial zone. He said that was the biggest thing that

they had and obviously, they had determined that that was the map. He would like to have them demonstrate how they came to the determination that that was the official map and where it came from in the first place.

Mr. Ayres said the second item, the second decision that they found fault with and found that it was a decision, they had said that Love's could build a building in a nonzoned area and then they could develop property, which was currently in a commercial zone, which didn't allow for that type of development - they had a very specific list of items in Ramsay, which were allowed within that zone. He said they were saying, the Planning Department had said Planning staff, well they listed 17.35 - 140, off-street parking - stated in all districts in conjunction with every business, commercial, industrial, recreational, institutional and residential use - space for parking and storage of vehicles shall be provided in accordance with the following schedule. He said the schedule went on to list how many parking spaces were needed for dwellings, churches, commercial stores - well, at the bottom of that it said Planning staff had interpreted this section to allow parking in all zoning districts, including residential. He said an interpretation was a decision. He said to allow them to just - a parking requirement wasn't permission to build a parking lot that would handle 140 or 110 semi-trucks. He said it was not the intention of that section of the zoning. He said there were other restrictions within zoning that limited what the Planning staff could do and they thought the restrictions that they were held to, they weren't doing - you couldn't build 110 parking spots based on the square footage of the building on a zoned area. He said to him, the best example he could come up with was what they were saying was you could put a drive-in movie theater in a residential neighborhood, as long as you put the candy stand in a commercially zoned neighborhood or the same thing, you could put a car lot in a residential neighborhood, as long as you put the sales office across the alley in a nonzoned area. He said so, the Planning staff interpretation was in fact a decision. He said the fact that they hadn't issued a building permit yet had nothing to do with proving that they had already stated this.

Mr. Ayres said Dave Palmer said because of this map and this determination, Butte-Silver Bow didn't have a dog in the fight, that there was no zoning there and there were no and Lori Casey herself said

there were no preclusions, which prevent them from building on that site.

Mr. Ayres further said that parking for a truck stop was incidental to the business. It was a part of the reason people went there. He said you couldn't use a parking requirement, as part of the, an incidental part of – it was not like you were going to the barber shop and you were going to go there because they had semi parking. You were going to the barber stop for an entirely different reason and yeah, they provided parking but you couldn't say well, you know barbers have to get, he didn't know – it, just to him, those two things were clearly decisions that the Planning Department had made. He thought the Planning Department had made their case by putting those two statements in that response. He said that was what he had.

Mr. Wing thanked Mr. Ayres for his comments.

Mr. Wing said he himself thought that this was premature. He did not think that they could review any decision of the Zoning Officer until Love's Truck Stop had actually been given permission to locate their truck stop at some specific location in Butte-Silver Bow County. He said after that, he thought everything that Mr. Ayres had stated could be raised and that would be the appropriate time to do it, which in other words was after a decision had been made with regard to Love's locating its truck stop, a location permit, if you would. He said that was how he understood things and at that particular time, he would ask if any other Board members had any thoughts with regard to this or if they believed that they should proceed with this hearing.

Mr. Shaffer said his question would be what would they then consider a decision – the issuance of a building permit or what were they going to say was an actual decision. Mr. Wing said an actual decision would be permission given in writing to Love's Truck Stop to locate their facility, their truck stop at a specific location in Butte-Silver Bow. He said after that, they could proceed with objections, have hearings. Mr. Shaffer asked that formal matter, what was that document or decision, he just didn't understand that – was it a building permit, was it a location permit. Mr. Wing said it would be a location permit. Mr. Shaffer said a location permit, okay and thank you. Mr. Wing said at least he thought it would be, maybe he should defer to Mrs. Casey. Mr. Shaffer said he

didn't know. Mr. Wing asked if that was Mrs. Casey's understanding, that it would be a location permit. Mrs. Casey said yes, before a project began and a building permit was issued, a location permit was issued on each and every project that they had. Mr. Wing said they didn't have that yet, did they? Mrs. Casey said no, they did not.

Mr. Shaffer said he was sorry and he didn't mean to sound ignorant but as a Board member, he had never been aware of a location permit being issued for any project. Even that night, none of the cases in front of them that night had a location permit or a building permit. He said he was trying to wrap his head around that. Mr. Shaffer said he honestly believed this was a little above their pay grade, which was obviously zero. He said he was trying to wrap his head around this but he was confused and he was sorry if he sounded ignorant or uninformed. He just couldn't really quite understand what was going on.

Mr. Wing said this was very unusual. He said he had been on the Board a long time and had never seen anything quite like this and so he could understand the confusion, so they needed to review what their jurisdiction was as the Zoning Board of Adjustment. He said they could grant variances, they could grant conditional use permits, grant special use permits on different matters or they could review, as they had that night already in certain cases like Mr. Huntington, decisions that had been made. He said he was advised that he had to discontinue his U-Haul business and he appealed that decision and they made a ruling. He said that decision was a written decision and it was sent to Mr. Huntington and they made their determinations based upon it.

Mr. Wing said at this point, he still failed to see that there had been anything out there in the way of a decision, order, requirement or determination that could be reviewed by our Board – whether they had a zoning map that was appropriate or a zoning map that was not was kind of something that could be raised at another time after the permit had been issued. He said he would again defer to Mrs. Casey but that was his understanding of it. He asked Mrs. Casey if that was correct and Mrs. Casey said he was correct and just to clarify for Mr. Shaffer, as Mr. Wing the Chairman had stated, what was before this Board was usually variances and that and so they did get a written determination

of the Board's decision after this hearing and that decision was prepared on behalf of the Board and then sent to the applicant.

Mr. Wing said he knew Mr. Ayres wanted to say something further and he would certainly have that opportunity but he would like to hear any comments from other Board members with regard to this matter before they proceeded much further.

Mr. Burmeister said to follow up on Tyler's (Shaffer) questions, so when there were discrepancies in zoning designation, in the zoning map, was it their authority, their accountability as Board members to make either that interpretation or determination or was that, he guessed was that their responsibility? Mr. Wing said he believed that was absolutely something they could look at. He said that depended on whether Love's Truck Stop was permitted to build their facility or locate their facility or put it in a location in Butte-Silver Bow that was unzoned or was in fact zoned. He said Mr. Ayres had argued that Love's was seeking to put it into something that was in fact zoned. Mr. Wing said if they were to step into that particular discussion or determination at that time, they as a Board would be doing so prior to any actual determination having been met. He said they didn't know where Love's was going to put their facility. He had no idea. He said they had a general idea.

Mr. Burmeister said so, he guessed if the Zoning Board determined that Love's was proposing to do a compliant development in a particular zone, that would not under that scenario come to this Board, however, was there a challenge process that Mr. Ayres could raise at that time that would come to this Board or to another entity. Mr. Wing said yes, he could absolutely do that. Once a determination had been made by the Zoning Officer and a permit had been issued, then there could be an appeal. He said everything that Mr. Ayres had raised that night could be raised at that point. Mr. Burmeister thanked him for that clarification.

Mr. Collins said when he got there that night, he was given a small packet that was prepared by, he thought, by the staff. It had some maps with some exhibits on it and some things, a letter from Everly and Associates, things that were frankly, very valuable but he had no

idea what was in there because he didn't have any time – he hadn't been able to consume that information yet.

Mr. Collins said this thing was very complicated and he felt vulnerable. He said he was not very comfortable with this process because the Zoning Officer made the determination. He said if there was a discrepancy on that, he personally thought this whole thing should be – the zoning issue, if there was one, and he was sure that Mr. Ayres thought there was, should be decided in District Court or somewhere else. He said they didn't have the authority, they didn't have enough information to make a good decision. He said just saying that, he was very confused and he just didn't think they had been able to – he didn't want to go against the Zoning Officer's decision, if it took all the teeth out of having one. Mr. Collins said he understood that and respected it but again, he thought they could all agree there that they didn't have enough information and maybe he was wrong, they could tell him. Mr. Wing said he didn't think Mr. Collins was wrong at all. He said he thought they got a lot of information at the very last minute. He said they didn't receive a comprehensive report, such as they usually did but there had been no determination and no decision made by the Zoning Officer, as to where, if any place, Love's, could possibly locate a truck stop in Butte-Silver Bow County. He said that had not happened. Once that happened, then they did have the authority to review that decision and if nobody was happy, as probably nobody would be, it could be appealed to District Court. He said that was the process but they needed to have something in the way of a decision or determination before insinuating themselves into the whole process. He said that was how he viewed it.

Mrs. Jaksha asked if they made a motion to dismiss the appeal until the point, until this moved along and there was an actual need for the appeal to come before them or did they table it or how did they handle this, so that – she agreed with everyone's comments. She didn't have a lot of time to look through the package that was dropped to her and wasn't even sure she exactly understood what the question was before them and she would need time to look into what Mr. Ayres had brought up, so did they just make a motion to dismiss it, to dismiss this application or did they table it or what was the proper etiquette she guessed to move forward. Mr. Wing said he thought they should dismiss the appeal because there had been no determination or

decision made by the Zoning Officer. He said this was not jeopardizing anybody's rights in this matter because once a decision or determination was made, then the appeal could proceed forward and they could review everything and it appeared there was going to be a lot to review. He thought that was the appropriate way to handle this. He said that was just him, as one member of the Board. He wasn't arguing any way or another, other than he did not see a determination or a decision.

Mr. Ayres said he was sorry but they were not even letting them present their case before they even made this (couldn't hear). Mr. Wing said to Mr. Ayres to not even insinuate himself into this discussion between the Board members. He said they would give him another opportunity to speak and said thank you.

Mr. Wing asked if any other Board members had any questions, comments or thoughts on this matter.

Mr. Burmeister said he would echo what everybody said. They didn't have nearly enough information to do anything with this at this point.

Mr. Shaffer said he didn't want to make a decision that night that would jeopardize anybody's ability to further litigate, whether it be in front of a Board or a Judge or wherever that might be.

Mr. Shaffer had a lot of feedback, couldn't hear well.

Mr. Shaffer said there was a lot of emotion in this and he understood that. He would be hesitant to make any sort of decision to hamper any ability to make this an actual – to get an informed decision in the future or perhaps in the near future.

Mr. Wing thanked Mr. Shaffer.

Mr. Wing asked if any other Board members had any thoughts on his suggestion. There was no response.

Mr. Wing said if not, he would give Mr. Ayres the chance to again speak with regard to this matter.

Mr. Ayres said thank you and that they weren't allowed to present all the information. He said they would probably be able to answer many of the questions they were bringing up saying there were not informed in this situation. They could give them better information.

Mr. Ayres said they had an entire presentation, which they hadn't presented yet because it appeared that the decision about whether a decision had been made or not had been coming up before they could even present their case. He said he didn't know how many times it was said - a decision - the Planning Board's decision, the Planning Board's decision.

Mr. Ayres said Planning Director Casey testified at a Liquor Board hearing that there were no preclusions, that she was familiar with Ram, with the situation. There were no preclusions from building a casino on the nonzoned property but clearly decided where the nonzoned property was and she testified in court.

Mr. Ayres said he was sorry, he was frustrated there. He said you know, the reality was, absolutely made a decision. She had reams of, she had multiple site plans from Love's and they were clearly saying where they were going to put their building. He said it would be much more difficult for them to come back, once a building permit was issued and they had a hole going in the ground, for them to come in and appeal that decision.

Mr. Ayres said they were within their rights as legislated to appeal, to review Lori Casey's decision, which she had clearly made. It said that they made a determination that parking on this zone was okay. He said all they were asking for was for them guys to determine they couldn't have a truck stop parking lot on an area that didn't allow that type of thing without going back to them and getting a zoning variance. He said they were asking them to take and to make a determination about which map was the actual map. He asked why they didn't ask Mrs. Casey where the Crayola map came from.

Mr. Ayres said he didn't have any more for them. He said to him the fact that they were saying - he said they had a couple of representatives on there from Love's, why didn't they ask them because until 2017 when the City was saying there were no

preclusions in building in a nonzoned area, they only had an option on that property. They now owned that property, so he believed they believed Mrs. Casey had made a decision. He asked why they didn't ask them, they were on-line there.

Mr. Ayres said he didn't have much more for them. Mr. Wing thanked Mr. Ayres and said he appreciated his comments very much.

Mr. Wing thought that the Board members should chime in their comments with regard to their belief that a decision had been made or a determination had been made with regard to the location of Love's Truck Stop. He didn't see that there was one and he thought that this appeal should be dismissed. He said all the arguments that were very well made by Mr. Ayres could be made again once a decision had been made with regards to whether Love's could locate or not locate their facility any place within Butte-Silver Bow, that this was premature in his opinion and he thought the appeal should be dismissed.

Mr. Wing said that this was highly unusual and he would ask the Planning staff, if they had any thoughts on where they should proceed from there.

Mrs. Casey said this was very unusual but as the staff report that they received, they had not issued a location permit. As Mr. Ayres stated, there had been several site plans submitted from the Civil Engineer of Love's. She said until they saw a final site plan, that was when a location permit would be issued. She said there was the potential, given that they didn't have their other permitting, there was always the potential or possibility that things could shift or move and that was why they didn't issue a location permit until have all the other permits and made sure that they had the final site plan. Mr. Wing thanked her.

Mr. Wing asked if any Board members wanted to continue the discussion with regard to this matter or make a motion that they proceed with the public hearing or make a motion that they dismiss the appeal until an actual permit had been issued. He said in other words, until an actual decision or determination had been made by the Zoning Officer.

Julie Jaksha made a motion to dismiss the appeal on Zoning Officer's Decision #16675 until the determination of the actual location was made to hear this case. Loren Burmeister seconded the motion.

During the polling of the vote, Mr. Shaffer wanted to just say they did see a comment on their screen asking if the written comments could be read into the record. He said they had done that for all the cases that night. He didn't know if that was something they should do. Mr. Wing said the comments would be part of the record. He said everything said there that night from the beginning of the review of this application would be a part of the record. Mr. Shaffer said he understood that. It said the written comments. Mr. Wing said the written comments would be a part of the record. Mr. Shaffer said they had read them into the record that night for all of the others. Mr. Wing said they hadn't asked for public hearing, public comment, (Mr. Shaffer said oh), so no they wouldn't be but at a future hearing, they certainly could be.

Mr. Wing said so the vote was seven to zero in support of the motion that the appeal be dismissed and they would no doubt hear this again in the future. He would do so with an open mind. He would have at that time a written determination, a written order or written decision from the Zoning Officer and then they could decide from there as to whether it was appropriate or not. He didn't believe at this point that they could do that.

Appeal of the Zoning Officer's Decision #16675 - Dismissal Approved

Loren Burmeister	For	Tyler Shaffer	For
Sylvia Cunningham	For	Julie Jaksha	For
Garrett Craig	For	Todd Collins	For
	David Wing	For	

Loren Burmeister, David Wing and Tyler Shaffer voted "For" the motion to dismiss the appeal of the Zoning Officer's Decision.

Todd Collins voted "For" the motion to dismiss the appeal of the Zoning Officer's Decision – "I vote for the motion to dismiss the appeal of Zoning Officer's Appeal."

Julie Jaksha voted "For" the motion to dismiss the appeal of the Zoning Officer's Decision – "Premature request based on provided info. Application dismissed. Encouraged to reapply when appropriate."

Garrett Craig voted "For" the motion to dismiss the appeal of the Zoning Officer's Decision – "For motion to dismiss appeal."

Sylvia Cunningham voted "For" the motion to dismiss the appeal of the Zoning Officer's Decision – "Dismissal of appeal based upon the fact that no location permit has been granted."

Mr. Wing said so the vote was seven to zero in support of the motion that the appeal be dismissed and they would no doubt hear this again in the future. He would do so with an open mind. He would have at that time a written determination, a written order or written decision from the Zoning Officer and then they could decide from there, as to whether it was appropriate or not. He didn't believe at this point that they could do that.

IV. Other Business:

Mr. Wing asked if there was any further business. Mrs. Casey said there was no other business for that night.

V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 8:35 P.M.

By: David Wing
David Wing, Chairman

Lori Casey
Lori Casey, Planning Director

July 15, 2020

VIA HAND DELIVERY:

WITHDRAWAL OF APPEAL

To: Butte-Silver Bow Planning Board and Staff
Zoning Board of Adjustment
Butte-Silver Bow Courthouse
155 W. Granite
Butte, MT 59701

Re: Withdrawal of Appeal

Location: 3647 Gladstone Avenue, Butte, Montana

Legal Description: Lots 9-10, Block 42, of the Atherton Place Addition S29, T03N, R07W, Assessor Code #1148100.

Dear Butte-Silver Bow Planning Board and Zoning Board of Adjustment,

At this time, the property owner (Brenda Cortese) and the Butte-Silver Bow Planning Department have reached a stipulated settlement and have addressed all of the aggrieved issues concerning the outstanding appeal concerning the parties. Therefore, the property owner, Brenda Cortese, through her legal counsel, hereby withdraws her Appeal of the Zoning Officer's Decision #16519 for the property known as 3647 Gladstone Avenue, Butte, Montana which is currently scheduled for this Thursday, July 16, 2020. Said appeal hearing in front of the Butte-Silver Bow Zoning Board of Adjustment is no longer necessary and it is requested the appeal be removed from the meeting calendar.

Please note this withdrawal is contingent upon completion and execution of all the documents outlined in the parties signed settlement agreement. Any failure to complete and finalize the remaining documents would be a breach of the settlement agreement and the property owner would reserve the right to have this appeal reinstated and re-set for an appeal hearing at a later date upon proper notice to the necessary local departments and boards.

If you have any questions, please feel free to contact me at (406) 782-1111.

Regards,



Amanda Hunter
Attorney at Law

524 E. PARK ST. B • BUTTE, MT 59701 • 406.782.1111

FAX: 406.782.4000 • DAVE@VICEVICHLAW.COM

*LICENSED IN MONTANA & WASHINGTON

** LICENSED IN MONTANA & TEXAS

***LICENSED IN MONTANA & COLORADO

SETTLEMENT AGREEMENT

RELEASOR:	Brenda Cortese
RELEASEE:	City and County of Butte-Silver Bow, Montana on behalf of its Planning Department.
PROPERTY:	3647 Gladstone Ave., Butte, Montana 59701
DATE OF INTIAL AGREEMENT:	July 16, 2020.
DESCRIPTION OF ISSUE:	Non-permitted habitable space within renovated garage (an accessory structure).
SUM OF SETTLEMENT:	\$500.00 or double the final permitting fee, whichever is greater, as a permitting violation fine; \$500.00 zoning fine.
ACTIONS OF SETTLEMENT:	Withdrawal of Appeal of Zoning Officer's Decision #16519 and Denial of Variance; Perfect Deed Restriction on the Property; Regular Inspection of Property; Property shall not be used as a multifamily Residence; Improved garage space will not be used as habitable space; County shall be permitted to conduct a final inspection on any aspect of the structure which has not been previously permitted.

Agreement

The undersigned Releasor concedes and acknowledges that the above-described property includes a garage structure that was recently renovated, and during such renovation the property permitting for habitable space in an accessory structure (as defined by BSBMC Section 17.54.030) was not attained from the County of Butte-Silver Bow.

1. SETTLEMENT AGREEMENT

In consideration of the County of Butte-Silver Bow allowing the current improvements to said garage (including but not limited to a kitchen space) to remain without the proper permitting, Releasor agrees to the following:

1. **Fine:** Releasor shall pay a permitting violation fine in the amount of \$500.00 or double the amount of the final permitting fee, whichever is greater, as well as zoning fine in the amount of \$500.00 to the City- County of Butte-Silver Bow c/o Planning Department within thirty (30) days of the date of this Agreement.
2. **Deed Restriction:** Releasor shall record a deed restriction on the above described real property with the Butte-Silver Bow Clerk and Recorder that contains the following restrictions and requirements: 1.) the property shall never be used as a multifamily residence(s), 2.) if at any time the property is used for multi-family purposes, then the habitable spaces (as defined by the BSBMC Section 17.04.197) within the garage are to be permanently removed immediately, 3.) the County of Butte-Silver Bow shall have the right to enforce these deed restrictions, 4.) the County of Butte-Silver Bow may inspect the garage structure on the property on a monthly basis with 24 hours' notice to the property owner for the purpose of verifying the property is not being used for multi-family purposes; 5.) these deed restrictions shall run with the land.
3. **Final Permit & Inspection:** Releasor's shall submit a new building permit which includes the application and plans which includes everything that was actually constructed within the garage in question to the Planning Department of Butte-Silver Bow. Releasor's shall also be responsible for paying the difference between the cost of the new complete building permit and the cost of the permit originally paid for (\$217.19).

The County of Butte-Silver Bow will be permitted to enter the structure and conduct a final inspection regarding the property for any renovation not previously approved by a permit.

2. SETTLEMENT AGREEMENT

Releasor shall be required to promptly correct any issue not up to code to the County's satisfaction. This final inspection is to take place within thirty (30) days of the date of this Agreement and shall be scheduled with the Releasor prior to the inspection taking place.

4. **Regular Inspection:** The County of Butte-Silver Bow may inspect the garage structure on the property on a monthly basis with 24 hours' notice to the property owner for the purpose of verifying the property is not being used for multi-family purposes and not being used as habitable space.
5. **Withdrawal of Appeal:** The Releasor shall withdraw her appeal of the zoning officer's decision #16519 and denial of her request for a variance. The County of Butte Silver-Bow acknowledges that the terms of this settlement agreement have addressed the issues of the aggrieved party who originally filed a complaint prompting this matter and, therefore, this settlement is proper and a hearing before the Butte-Silver Bow Zoning Board of Adjustment is no longer necessary.
6. **Habitable Space:** The Releasor concedes that the accessory garage structure on the above described property shall not be used as habitable space as defined by the BSBMC Section 17.04.197.
7. **Single Family:** The Releasor acknowledges that the above described property is zoned as "R-1" One Family Residence, and as such shall not be used be used a multifamily residence.

No Additional Claims

The parties, and each of them, covenant and agree on their own behalf that they do not contemplate and will not make any additional claims or demands against the other party arising from the above-described dispute and that any such claim has been released and forever

3. SETTLEMENT AGREEMENT

discharged by this Settlement Agreement. The consideration stated here in is contractual and not a mere recital.

The parties to this Settlement Agreement execute and deliver this Agreement after being fully informed of its terms, contents, and effect. The parties to this Agreement have had the benefit of advice from attorneys of their own choosing and no promise or representation of any kind, except as expressly stated herein, has been made by any of the parties hereto or anyone acting on behalf of any of the parties. The parties to this Agreement understand that it is a full, complete, and final release of the claims of the parties against each other.

Disclaimer

The parties have carefully read the foregoing, discussed its legal effect with their attorneys, understand the contents thereof, and signs the same of their own free will and accord.

This Release shall be binding upon Releasors' heirs, successors, personal representatives and assigns.

Counterparts

This Settlement Agreement may be executed in two or more counterparts, each of which is an original but when combined shall form one document. A photocopy of this Settlement Agreement may be relied upon as an original. Signatures must be original or photocopies of original signatures.

DATED this _____ day of July, 2020.

CAUTION: READ BEFORE SIGNING!

4. SETTLEMENT AGREEMENT

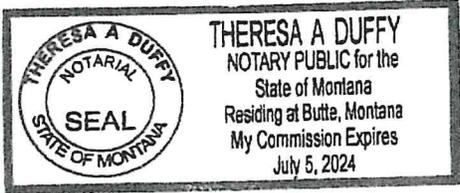
Brenda Cortese

BRENDA CORTESE

STATE OF MONTANA)
 : SS
County of Silver Bow)

On this 16th day of July, 2020, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Brenda Cortese known to me to be the person whose name is subscribed to and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Theresa A. Duffy
Theresa A. Duffy
Notary Public for the State of Montana
Residing at Butte, Montana
My Commission Expires July 5, 2024

5. SETTLEMENT AGREEMENT

Dave Palmer

DAVE PALMER, Chief Executive

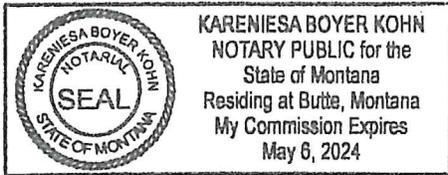
STATE OF MONTANA)
: ss
County of Silver Bow)

On this 16th day of July, 2020, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Dave Palmer, Chief Executive of the City and County of Butte-Silver Bow, Montana known to me to be the person whose name is subscribed to and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Kareniesa Boyer Kohn

Notary Public for the State of Montana
Residing at Butte, Montana
My Commission Expires May 6, 2024



Laird, Carol

From: Fisher, James
Sent: Thursday, July 16, 2020 11:29 AM
To: Laird, Carol
Subject: Zoning variances District # 6 BSB

Carol,

Good day hope all is going well. Thank you for sending me all the info I needed to review the applications for zoning variances in district # 6 of BSB. If you could enter my comments into the record of this evenings meeting it would be greatly appreciated.

Jim Fisher 2902 Hill Ave Butte, Mt. BSB Commissioner District # 6. I have inspected the property and reviewed the request for variance involved in the following cases.

(1) 16520 Request by Wayne Sterns 3547 Harrison Ave. I have received no comments from any neighbors and I have no problem with Mr. Sterns request although I'm not certain that this project will be moving forward due to some franchise agreements. I support his request

(2) 16658 Request by Issak Jones & Meeka yager to build a detached garage @ 1648 Dewey Blvd I have received no comments from neighbors and I have no problem with this project. I support this project.

(3) 16669 Request by Jasna Pantic to have the property @2001 Sampson St. a Modular home to be used as a residence I have received no comments from neighbors and I have no problem with this request. I support this being a family dwelling.

(4) 16670 Request by Karena Wright to build a detached garage @ 3707 So. Wyoming I have received no comments from any neighbors and I have no problem with this project. I support this project.

(5) 15736 Request by Western States Equipment Company to add an additional 12 months to the terms stated in variance application # 15736 to build a brick and mortar structure @ 4005 Harrison Ave. Butte ,Mt. I have received no comments from neighbors or Community members. I find this request to be acceptable due to the current situation. I support this request.

Any questions or concerns please contact me Jim Fisher 406 491 8427. Thank you.

Best wishes,

Jim Fisher

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

Larson, Roxie

From: Dan Malkovich <danmalkovich@bresnan.net>
Sent: Wednesday, July 15, 2020 9:08 AM
To: BSB Planning
Subject: Good Word

This message did not originate from a Butte-Silver Bow email account and therefore cannot be validated. Please ensure you respond accordingly and proceed with caution.

Our names are Dan and Sharon Malkovich, 1651 Dewey Blvd.. We have noticed a variance for Meeka Yeager and Isaak Jones, that live at 1648 Dewey Blvd., concerning a garage. As we are not adjacent neighbors to them, we live across the street. We are still compelled to put in a good word for them. We have lived across from 1648 Dewey Blvd., for over 50 Years. In just a short period of time, these to young people have worked very hard and have done so much work to their property. They are the hardest working and nicest 2 young kids we have ever seen. They have improved their property above and beyond. Something nice to look at for a change. I'm sure with an addition of a garage, they will do what ever it takes to make it work and comply with the neighborhood.

This message did not originate from a Butte-Silver Bow email and therefore cannot be validated. Please ensure you respond accordingly and proceed with caution.

5/28/2019

To Whom It May Concern,

We live at 1650 Dewey Blvd.
right next door to 1648 Dewey Blvd.
They are applying for a variance
to build a new garage. We
do not have a problem where
they are planning to build. We
are in favour of the variance
and hope it is approved.

Thank you

Victoria Burke

Michael R. Burke

Gary + Laurie White
1632 Dewey Blvd.
Butte, MT

To whom it may concern:

We have no problem or concerns with our next door neighbors Meeka + Isaac putting up a garage. They themselves, plus all of the hard work they have already put into their property, are great improvements to our neighborhood.

Laurie White

Laird, Carol

From: Fisher, James
Sent: Thursday, July 16, 2020 11:29 AM
To: Laird, Carol
Subject: Zoning variances District # 6 BSB

Carol,

Good day hope all is going well. Thank you for sending me all the info I needed to review the applications for zoning variances in district # 6 of BSB. If you could enter my comments into the record of this evenings meeting it would be greatly appreciated.

Jim Fisher 2902 Hill Ave Butte, Mt. BSB Commissioner District # 6. I have inspected the property and reviewed the request for variance involved in the following cases.

(1) 16520 Request by Wayne Sterns 3547 Harrison Ave. I have received no comments from any neighbors and I have no problem with Mr. Sterns request although I'm not certain that this project will be moving forward due to some franchise agreements. I support his request

(2) 16658 Request by Issak Jones & Meeka yager to build a detached garage @ 1648 Dewey Blvd I have received no comments from neighbors and I have no problem with this project. I support this project.

(3) 16669 Request by Jasna Pantic to have the property @2001 Sampson St. a Modular home to be used as a residence I have received no comments from neighbors and I have no problem with this request. I support this being a family dwelling.

(4) 16670 Request by Karena Wright to build a detached garage @ 3707 So. Wyoming I have received no comments from any neighbors and I have no problem with this project. I support this project.

(5) 15736 Request by Western States Equipment Company to add an additional 12 months to the terms stated in variance application # 15736 to build a brick and mortar structure @ 4005 Harrison Ave. Butte ,Mt. I have received no comments from neighbors or Community members. I find this request to be acceptable due to the current situation. I support this request.

Any questions or concerns please contact me Jim Fisher 406 491 8427. Thank you.

Best wishes,

Jim Fisher

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

Casey, Lori

From: Dan Fouts <dfouts@markovichinc.com>
Sent: Thursday, July 16, 2020 1:11 PM
To: BSB Planning
Subject: 2001 Sampson use variance

This message did not originate from a Butte-Silver Bow email account and therefore cannot be validated. Please ensure you respond accordingly and proceed with caution.

Regarding the use variance for 2001 Sampson.

I believe that the variance for residential use should be approved as per the Planning Board of Adjustment Staff Analysis recommendation

It would be in the best interest of the community and all parties involved for the following reasons.

The parties are only asking for a use variance, not a zoning change

The parcel size is only 5760 sq ft. It is too small for most commercial applications.

The parking is limited for most commercial uses.

It would not be economically feasible to demolish or remove the existing structures to develop the parcel for most commercial users

There are multiple properties being used for residential purposes within a block of the property both to the South and to the West. The use would fit in and not alter the characteristics of the neighborhood.

The existing structure is designed and is best used as a single family residential property.

The property has historically been used for residential purposes for the past 40 plus years with the exception of the last 6 years when it was used as an office. No changes were made to the structure or the property for use as an office.

In the recent survey that was conducted by Butte Silver Bow, one of the main concerns of respondents was the need for affordable residential rentals in Butte.

--

Thank You,

Dan Fouts
Coldwell Banker
Markovich Real Estate Inc.
2827 Lexington Ave.
Butte, MT 59701
406 491 6334
dfouts@markovichinc.com
www.danfouthomes.com

Laird, Carol

From: Fisher, James
Sent: Thursday, July 16, 2020 11:29 AM
To: Laird, Carol
Subject: Zoning variances District # 6 BSB

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Best wishes,

Jim Fisher

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Best wishes,

Jim Fisher

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Zoning Board of
Adjustment

The City-County of
Butte-Silver Bow
Virtual Meeting
July 16, 2020

5:30 P.M. Thursday

Members

David Wing – Chair
Loren Burmeister
Todd Collins
Garrett Craig
Sylvia Cunningham
Julie Jaksha
Tyler Shaffer

A G E N D A

**APPLICANT OR REPRESENTATIVE MUST BE PRESENT
FOR THE VIRTUAL MEETING**

- I. Call to Order.
- II. Approval of the Minutes of the meeting of June 11, 2020.
- III. Hearing of Cases, Appeals and Reports:

The meeting may be attended virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website. Written comments will be accepted until 4:00 p.m. on Thursday, July 16, 2020, and maybe submitted by email to planning@bsb.mt.gov or mailed to:

BSB Planning Department
155 W. Granite Rm 108
Butte, MT 59701

Appeal of the Zoning Officer's Decision #16519 – An application by Brenda Cortese, owner, and Amanda Hunter, Vicevich Law, agent, to appeal the Zoning Officer's decision per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), that living space in an accessory structure is not a permitted use in the "R-1" (One Family Residence) zone and that the property must come into compliance with all sections of Title 17 – Zoning of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 9-10 of Block 42 of the Atherton Place Addition, commonly located at 3647 Gladstone, Butte, Montana.

Appeal of the Zoning Officer's Decision #16520 – An application by Wayne Sterns, agent, to appeal the Zoning Officer's decision per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), that equipment

A G E N D A

Page 2

sales and rentals are not a permitted use in the "C-2" (Community Commercial) zone and that the equipment must be removed from the property to come into compliance with Section 17.24 of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as the S2 of Lot 8 and adjacent POR & NE ¼, Section 31, T 03N, R 07W, P.M.M., commonly located at 3547 Harrison Ave., Butte, Montana.

Appeal of the Zoning Officer's Decision #16645 – An application by Mark Huntington, owner, to appeal the Zoning Officer's decision per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC) that moving truck rental is not a permitted use in the "R-3" (Multi-Family Residence) zone and that the trucks must be removed to come into compliance with Section 17.14 of the BSBMC. The property is located in an "R-3" (Multi-Family Residence) zone, legally described as a portion of the SE1/4 of the Peacock Placer, Section 33, T03N, R07W, commonly located at 5000 Continental Drive, Butte, Montana.

Variance Application #16658 – A variance application by Isaak Jones and Meeka Yager, owners, to construct a detached garage three feet (3') from the rear property line, varying from the minimum parking apron requirement of ten feet (10') in Section 17.12.020 – C of the BSBMC. The property is located in a "R-2" (Two Family Residence) zone, legally described as Lots 5-6 of Block 33 of the Bellevue Addition, commonly located at 1648 Dewey Boulevard, Butte, Montana.

Use Variance Application #16669 – A use variance application by Jasna Pantic, owner, and WJ Properties, LLC, agent, to utilize an existing manufactured home as a single family residence, varying from Section 17.24.020 – Permitted Uses, of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as Lot 8 and the south 20' of Lot 9 of Block 36 of the Bellevue Addition,

A G E N D A

Page 3

commonly located at 2001 Sampson Street, Butte, Montana.

Variance Application #16670 – A variance application by Karena Wright, owner, and Rick Schelin, agent, to construct a 24' by 28' detached garage ten feet (10') from the front property line, varying from the requirement of twenty feet (20') in Section 17.14.020 – D of the BSBMC. The property is located in a "R-3" (Multi-Family Residence) zone, legally described as Lots 1-2 of Block 9 of the Saint Paul Townsite, commonly located at 3707 South Wyoming Street, Butte, Montana.

Amendment to Use Variance Application #15736 – Application #16672 – An application by Western States Equipment Co., owner, and David McKinnon, agent, to amend a condition of approval to Use Variance Application #15736. Condition of approval #13 states that a brick and mortar structure shall be constructed to be utilized as the office for the rental facility on or before August 20, 2020. The applicant is requesting to add an additional twelve months to this timeframe. The property is located in the "C-2" (Community Commercial) zone, legally described as Lot 1, a portion of Tract 1 and all of Tracts 2 and 3 of Subdivision 1, Section 06, Township 02 North, Range 07 West, commonly located at 4005 Harrison Avenue, Butte, Montana.

Appeal of the Zoning Officer's Decision #16675 – An application by the Ramsay Citizens Council to appeal the Zoning Officer's decision to the Zoning Board of Adjustment per Chapter 17.35.070 of the Butte-Silver Bow Municipal Code. The Ramsay Citizen's Council is appealing that the Ramsay zoning district boundary has been adequately established and that the commercial activity planned for the RC-1 (General Commercial) zone should not be allowed and that the use of the RR-1 zone to support the commercial activity should not be allowed. The property is located in the "RC-1" (General Commercial) zone, the "RR-1" (Single Family Residence) zone, and an unzoned area, legally described as Parcel 1 of COS 1045B-RB, Section 14, T 03N,

A G E N D A

Page 4

R 09W, P.M.M.

- IV. Other Business.
- V. Adjournment.

BY: Lori Casey
Lori Casey, Planning Director

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

ITEM: **Appeal of the Zoning Officer's Decision #16519** – An appeal by Brenda Cortese of the Zoning Officer's determination that living space in an accessory structure is not a permitted use in the "R-1" zone and that the property must come into compliance will all sections of Title-17 – Zoning of the BSBMC, per Section 17.54.030, Appeals, of the Butte-Silver Bow Municipal Code.

APPLICANT: Brenda Cortese, 149 Bantry Way, Butte, Montana, owner, and Amanda Hunter, Vicevich Law, agent.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is legally described as Lots 9-10, Block 42, of the Atherton Place Addition, commonly addressed as 3647 Gladstone Avenue, Butte, Montana. The property is located in the "R-1" (One Family Residence) zone.

APPEAL: Per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), the applicant is appealing the Zoning Officer's decision that habitable space is not permitted in an accessory structure and that the applicant shall remove all habitable space within the accessory structure or otherwise come into compliance with all sections of Title 17 – Zoning of the BSBMC.

**STAFF
FINDINGS:**

Section 17.04.010 of the BSBMC defined an accessory structure as a structure subordinate to the principal use of a building or the principal use of land, which is located on the same lot serving a purpose customarily incidental to the use of the principal building or land use. Section 17.04.197 of the BSBMC defines habitable space or room as space in a structure for living, sleeping, eating or cooking. Storage or utility space and similar areas are not considered habitable space. Section 17.10.020-D of the BSBMC states that accessory structures shall not contain any habitable space or room. See Exhibit A applicable sections of Chapter 17 – Zoning of the BSBMC.

In July of 2019, the applicant's contractor submitted a building permit application to demolish an existing detached garage at the subject parcel and construct a new one. On July 20, 2019, the site plan was reviewed by the Zoning Officer and found to not be in conformance with the Zoning Ordinance for the "R-1" zone. The original permit application showed the garage being above the height limit of 16 feet and an inadequate parking apron. Also, the roof truss plans submitted with the building permit application showed a large loft area above the garage. At this time, the applicant's contractor was asked to revise the submitted site plan to adjust for the height of the building

and the parking apron and to declare the use of the loft area to ensure that no habitable space was planned above the garage. See Exhibit B for email communications regarding the site plan review. At this time, the applicant's contractor withdrew the building permit application pending discussions with the applicant.

The applicant, along with her contractor, later visited the Planning Department to discuss options for constructing the proposed garage. The height restrictions and parking apron requirements were explained and the applicant agreed to abide by the requirements. When asked about the loft area, the applicant stated that it was to be used as a storage area for her husband's hobby as a photographer. During this discussion, the definition of habitable space was read to the applicant and it was explained that the Zoning Ordinance does not allow habitable space in an accessory structure. At which time, the applicant stated that there would not be habitable space constructed in the garage and that her husband plans to utilize a portion of the space for his photography hobby.

On August 20, 2019, the applicant's contractor submitted revised drawings showing the accessory structure in compliance with the Zoning Ordinance. See attached site plan. After zoning and building code review, a permit to construct the accessory structure was issued on September 10, 2019. The zoning certification permitted the construction of a thirty-six-foot (36') by forty-foot (40') garage, sixteen feet (16') high. See Exhibit C for the submitted building permit and zoning certification.

During the subsequent building inspections, the Building Official noticed that framing was installed to separate the garage into three separate areas and that underground plumbing had been installed to service the accessory structure. When questioned, the contractor supplied a new floor plan showing the plumbing and walls, maintaining that the segregated area was still to be used storage for the photography hobby. See Exhibit D for the submitted

revised site plan by the applicant's contractor. This was the last building inspection scheduled by the contractor.

On October 4, 2019, a Butte-Silver Bow County Commissioner requested the construction plans for the accessory structure in question. The Commissioner was made abreast of the updated floor plan and that the submittal met the requirements of the Zoning Ordinance at the current time.

On November 7, 2019, while in the area for other building inspections, the Building Official noticed boxes for appliances located on the subject parcel on-site. Section R104.6 – Right of Entry of the 2012 International Residential Code grants the Building Official, with reasonable cause, to complete an inspection (See Exhibit E attached). Because the property has an open building permit and habitable space was not permitted in the accessory structure, the Building Official stopped at the subject property and knocked on the door to complete an inspection. While no one answered the door, the Building Official was able to see a kitchen area, bedroom, and living space through a window. It was also noted that a separate gas and electric service was installed on the accessory structure See Exhibit F for the photo taken at this time.

Per Section 17.56.020-J of the BSBMC, the Zoning Officer then tried to schedule an inspection of the premises to ensure compliance with the Zoning Ordinance. After many attempts to schedule an inspection with both the applicant and her attorney, an inspection was completed on December 23, 2019. The accessory structure was found to have a full kitchen, full bathroom, utility room, living room, and bedroom (see attached photos). A zoning violation letter was sent by certified mail to the applicant dated January 6, 2020, for an accessory structure containing habitable space. The determination or order was that the accessory structure contained habitable space and that the space must be removed or that the property must otherwise come into compliance with all sections of Title 17

– Zoning of the BSBMC. See Exhibit G for a copy of the violation letter and inspection photos.

The applicant is now appealing this decision. See Exhibit H for the appeal application and subsequent letter.

CONCLUSION: Section 7-1-114(1)(e) Montana Code Annotated (MCA) provides that a local government with self-governing powers, which includes Butte-Silver Bow, must comply with all State laws that require or regulate planning or zoning. Montana Code Annotated as well as Section 17.54 – Board of Adjustment of the BSBMC defines the powers of the Board as follows:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcing officer in the enforcement of this chapter of this title;
- B. To hear and decide special exceptions to the terms of this title upon which such board is required to pass under such ordinance;
- C. To authorize upon appeal in specific cases such variance from the terms of this title as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done;
- D. In exercising the above mentioned powers, such Board may, in conformity with the provisions of this title, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

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

EXHIBIT A

17.04.010 - Accessory or auxiliary use or structure.

"Accessory or auxiliary use or structure" means a use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same lot serving a purpose customarily incidental to the use of the principal building or land use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

(Ord. 53 § 10-6 (part), 1978)

17.04.197 - Habitable space or room.

"Habitable space or room" means space in a structure for living, sleeping, eating or cooking. Storage or utility space and similar areas are not considered habitable space.

(Ord. 122 § 1(2) (part), 1980; Ord. 53 § 10-6 (part), 1978)

17.10.020 - Permitted uses.

Hereinafter in the R-1 zone, no building or structure shall be erected, altered, enlarged or relocated therein which is designed or intended to be used for any other than the following unless otherwise provided in this title:

- A. Dwellings:
 1. Single-family;
 2. Manufactured homes:
 - a. Class A,
 - b. Modular.
- B. Rooms or room and board for not more than two adult persons may be provided by a resident proprietor;
- C. Gardening, fruitgrowing, greenhouses of not more than one hundred and twenty square feet, not more than ten feet in height, and nurseries, excluding: the sale of products raised on the premises, retail stands, signs, and other commercial structures. Domestic pets, excluding livestock and bees, may be kept for noncommercial purposes; provided, that the maintenance of kennels and the keeping of rabbits or other similar small animals in excess of three of the same genus or sort shall be prohibited;
- D. Accessory uses ordinarily appurtenant to permitted uses, including home occupations as defined herein, private swimming pools, and one detached private garage for each dwelling unit. Detached accessory structures, including private garages, shall not be located in the front yard not less than ten feet from any adjoining side street, except detached accessory structures located in the rear yard may extend to within three feet of the rear property line when abutting an alleyway or within five feet of the rear property line when an alley does not exist. Attached garages, carports, covered patios, and similar attached accessory buildings may occupy the rear yard to within ten feet of the rear property line and to within five feet of the inside property lines. In all cases there shall be a minimum off-street parking apron of twenty feet in length directly in front of all garage door entrances when accessing a street either to the front or side of a residence. Where garage doors access an alley, the off-street parking apron shall be at least ten feet; **accessory structures shall not contain any habitable space or room;**
- E. Day care homes, family or group;
- F. Other uses permitted under the supplementary use regulations in Chapter 17.30.

(Ord. 00-9 § 1 (part), 2000; Ord. 437 § 9, 1992; Ord. 358 § 1 (part), 1989; Ord. 296 § 1 (part), 1987; Ord. 295 § 1 (part), 1987; Ord. 201 § 1(b), 1983; Ord. 155 § 1(a), (b), 1982; Ord. 122 § 1(3), 1980; Ord. 99 § 1 (part), 1980; Ord. 53 § 40-2, 1978)

EXHIBIT B

Pipinich, Dylan

From: D. Ingersoll <daingersoll@hotmail.com>
Sent: Tuesday, July 30, 2019 11:08 AM
To: Pipinich, Dylan
Cc: anzikcon@gmail.com; Nasheim, Mike
Subject: Re: 3647 Gladstone Permit Info

Thank you

Sent from my iPhone

On Jul 30, 2019, at 11:05 AM, Pipinich, Dylan <dpipinich@bsb.mt.gov> wrote:

Hello Dawn

I've reviewed the below mentioned building permit for zoning compliance and have found the following:

- Building height limits for detached accessory structures are limited to one story and 16 feet;
- The parking apron for the new garage door is required to be 20 feet. The apron is measured to the property line, so the boulevard does not count toward this requirement;
- Please declare the use to the loft above the garage.

Please don't hesitate to call with any questions.

Thanks,

<image001.png> **Dylan Pipinich, Assistant Planning Director**
The City-County of Butte-Silver Bow
Planning Department
155 W Granite Street, Room 108
Butte, MT 59701
Telephone : 406.497.6256
dpipinich@bsb.mt.gov

From: D. Ingersoll <daingersoll@hotmail.com>
Sent: Monday, July 29, 2019 4:46 PM
To: Saracki, Ernie <esaracki@bsb.mt.gov>
Cc: anzikcon@gmail.com; Nasheim, Mike <mnasheim@bsb.mt.gov>; Pipinich, Dylan <dpipinich@bsb.mt.gov>
Subject: Re: 3647 Gladstone Permit Info

Ok. Great. Thank you

Sent from my iPhone

On Jul 29, 2019, at 9:11 AM, Saracki, Ernie <esaracki@bsb.mt.gov> wrote:

Hey Dawn,

Really sorry to get back to you so late on this (we've been really quite busy here in Community Enrichment) – however, for building permit approval, this goes to Mike Nasheim, so I have included him on this chain. A Zoning Certification will be performed by most likely Dylan Pipinich on your project, as I am no longer in the Planning Department.

Let me know if there is anything I can help you with.

Have a great day,

-Ernie-

<image001.png>

Ernie Saracki

Land Use Planner/Zoning Enforcement Officer
Community Enrichment Department
The City-County of Butte-Silver Bow
25 W Front Street
Butte, MT 59701
406-497-6253
Esaracki@bsb.mt.gov

From: D. Ingersoll <daingersoll@hotmail.com>
Sent: Tuesday, July 23, 2019 3:52 PM
To: Saracki, Ernie <esaracki@bsb.mt.gov>; anzikcon@gmail.com
Subject: 3647 Gladstone Permit Info

Hello to my favorite Planner!!!

I need to get a permit approved ASAP - and I'm sending this info to you for zoning approval.... I don't think this needs to go to a variance board meeting....

Can you please call me or I can meet you at your office or on Gladstone to expedite if needed. Working on the floor plan as we speak and I can get that or whatever else you may need sent.

Can you please help me move this through?

Thank you so much!!

Dawn Ingersoll
406.490.2405

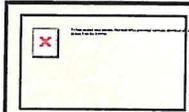
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depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).

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

Pipinich, Dylan

From: D. Ingersoll <daingersoll@hotmail.com>
Sent: Tuesday, August 20, 2019 12:43 PM
To: Mike Anzik; Nasheim, Mike; Pipinich, Dylan
Subject: 3647 Gladstone - Additional Information Per your Request
Attachments: doc04261620190820124250.pdf



This message did not originate from a Butte-Silver Bow email account and therefore cannot be validated. Please ensure you respond accordingly and proceed with caution.

Please find attached revised information per the meeting with homeowner and Dylan for permitting on 3647 Gladstone. Hard copies will be dropped off this afternoon.

Please let us know if there is anything else that you need.

Thank you,
Mike Anzik
565.3610

EXHIBIT C

Revised Per Mtg w/ Bldg Dept

Permit No. 10150
 City License No. _____

BUTTE - SILVER BOW
 Building Code Department

Tract No. ON CAN
 (Record not for Contractor use.)

I. LOCATION OF BUILDING
 Number and Street: 3647 Gladstone, Butte, MT
 Fire Dept. (Preliminary V)
 Health Dept. (Preliminary V)
 Subdivision: Atherton Place Add Lot: 9-10 Block: 42

II. IDENTIFICATION — To be completed by all applicants.

Name	Mailing Address — Number, Street, City, and State	Zip Code	Tel. No.
1. Owner: <u>Brenda Cortese</u>	<u>149 Bantry Way, Butte MT</u>	<u>59701</u>	<u>498-7841</u>
2. Contractor: <u>Anzik Bidrs</u>	<u>1346 Sunset Rd, Butte, MT</u>	<u>59701</u>	<u>565-3610</u>
3. Architect: <u>N/A</u>			

The owner of this building and the undersigned agree to conform to all applicable laws of Butte - Silver Bow

Signature of Applicant: _____ Address: 1346 Sunset Rd Application Date: 7/2/19 - Original - 8/26/19

III. TYPE AND COST OF BUILDING — All applicants complete Parts A-D

A. TYPE OF IMPROVEMENT

1 New building
 2 Addition (If residential, enter number of new housing units added, if any, in Part D, 13)
 3 Alteration (See 2 above)
 4 Repair, replacement
 5 Wrecking (If multifamily residential, enter number of units in building in Part D, 13)
 6 Moving (relocation)
 7 Foundation only

D. PROPOSED USE (For "Wrecking" most recent use.)

Residential
 12 One family
 13 Two or more family — Enter number of units _____
 14 Transient hotel, motel, or dormitory — Enter number of units _____
 15 Garage or Carport
 16 Mobile Home
 17 Other — Specify _____

Nonresidential
 18 Amusement, recreational
 19 Church, other religious
 20 Industrial
 21 Parking garage
 22 Service station, repair garage
 23 Hospital, institutional
 24 Office, bank, professional
 25 Public utility
 26 School, library, other educational
 27 Stores, mercantile
 28 Tanks, towers
 29 Demolish or Wrecking
 29a Other — Specify _____

B. OWNERSHIP

8 Private
 8A Corporation
 9 Public (Federal, State, or Local government)

C. COST

10. Cost of Improvement

	(Omit Cents)	Nonresidential — Describe in detail proposed use of buildings, e. g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for department store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use.
a. Electrical <u>719,339.24</u>	<u>\$ 38,000.⁰⁰</u>	<u>01-1198-29-4-20-10-0000</u> <u>Exc 1554</u> <u>114814</u> <u>Z 16370</u> <u>Z 116370</u>
b. Plumbing	<u>2,500.⁰⁰</u>	
c. Heating, air conditioning	<u>2,000.⁰⁰</u>	
d. Other (elevator, etc.)	<u>1,000.⁰⁰</u>	
11. TOTAL COST OF IMPROVEMENT	<u>43,500.⁰⁰</u> <u>19,229.20</u>	

IV. SELECTED CHARACTERISTICS OF BUILDING — For new buildings and additions, complete Parts E-L; for wrecking, complete only Part J, for all others skip to IV.

E. PRINCIPAL TYPE OF FRAME

30 Masonry (wall bearing)
 31 Wood frame
 32 Structural steel
 33 Reinforced concrete
 34 Other — Specify _____

G. TYPE OF SEWAGE DISPOSAL

40 Public or private company
 41 Individual (septic tank, etc.)

H. TYPE OF WATER SUPPLY

42 Public or private company
 43 Individual (well, cistern)

J. DIMENSIONS

46 Number of stories & height: 1
 49 Total square feet of floor area, all floors, based on exterior dimensions: 1440 sq ft
 50 Basement: 40'
 51 Bldg. Depth: 40'
 52 Bldg. Width: 36'

F. PRINCIPAL TYPE OF HEATING FUEL

35 Gas
 36 Oil
 37 Electricity
 38 Coal
 39 Other — Specify _____

I. TYPE OF MECHANICAL

Will there be central air conditioning?
 44 Yes 45 No

Will there be an elevator?
 46 Yes 47 No

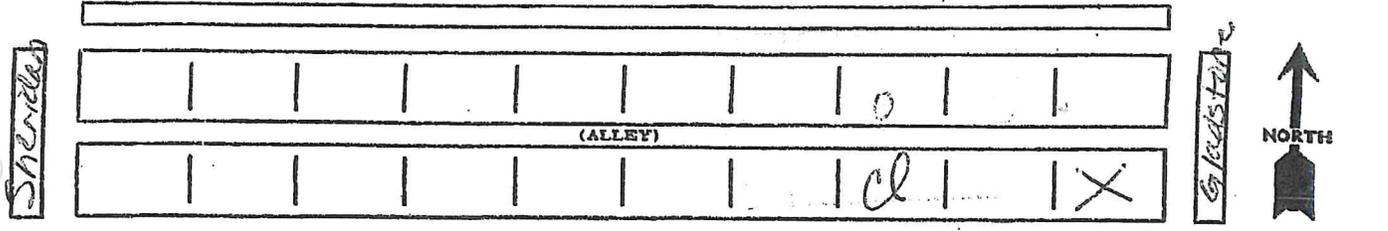
K. NUMBER OF OFF-STREET PARKING SPACES

53 Enclosed: 3
 54 Outdoors: 3

L. RESIDENTIAL BUILDINGS ONLY

55 Single or Multiple: Single
 56 Number of Bedrooms: 0
 57 Number of bathrooms: { Full: Partial

INDICATE: SHOW LOT LOCATION, NEAREST STREET INTERSECTION AND NAME OF STREETS



Approved by: _____ Permit Fee: \$ 217.19 Date Permit Issued: 9-10-19 Permit Number: 10150

BP = \$173.75
 PC = \$43.44

Called 9-5-19
 Exc OK'd

✓
 copied

ORIGINAL
CASH RECEIPT

DATE GRANTED : 09/10/2019
DATE EXPIRES : 09/09/2020
RECEIPT# : 10150
VALUATION : 19,339.20

BLDG CODE CASH RECEIPT

OTHER RECEIPTS - BASED ON CONTRACTOR'S VALUATION

BLDG PERMIT FEE : 173.75
PLAN CHKING FEE: 0.00
TOTAL FEE PAID : 173.75

STATE OF MONTANA, COUNTY OF SILVER BOW

BY AUTHORITY OF BUTTE-SILVER BOW COUNTY
PERMISSION IS HEREBY GRANTED TO CORTESE BRENDA L
3647 GLADSTONE
BUTTE, MT 59701-7645
(406)

ERECT GARAGE

TO ERECT A STRUCTURE AT THE FOLLOWING PROPERTY

LEGAL DESCRIPTION PARCEL# 0001148100
01-1198-29-4-20-10-0000 Subdivision : ATHERTON PLACE ADD
Section : 29 Township : 03 N Range : 07 W Lot : 9 Block : 42
1) ATHERTON PLACE ADD, S29, T03 N, R07 W,
2) BLOCK 42, Lot 9 - 10

THIS PERMIT IS ISSUED ON THE EXPRESS CONDITION THAT THE ERECTION
SHALL CONFORM IN ALL RESPECTS TO THE STATEMENTS CERTIFIED TO IN THE APPLICATION
FOR SUCH PERMIT, AND THAT ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE
ORDINANCES OF BUTTE-SILVER BOW AND THE STATE OF MONTANA PERTAINING TO THE CONSTRUCTION
OF BUILDINGS.

CONTRACTOR : 888888 ANZIK BUILDERS
CHECK AMT: 173.75 CHECK# : 2007
TOTAL : 173.75

DISCLAIMER : COMPLIANCE WITH THE REQUIREMENTS OF THE STATE BUILDING CODE FOR PHYSICAL ACCESSIBILITY TO PERSONS WITH DISABILITIES DOES NOT NECESSARILY GUARANTEE COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, THE REHABILITATION ACT OF 1973, THE FAIR HOUSING AMENDMENTS ACT OF 1988, TITLE 49, CHAPTER 2, COMMONLY KNOWN AS THE MONTANA HUMAN RIGHTS ACT OR OTHER SIMILAR FEDERAL, STATE OR LOCAL LAWS THAT MANDATE ACCESSIBILITY TO COMMERCIAL CONSTRUCTION OR MULTIFAMILY HOUSING.

WITH HIS/HER SIGNATURE, THE BELOW SIGNED APPLICANT/OWNER ACKNOWLEDGES THE CITY/COUNTY OF BUTTE-SILVER BOW DOES NOT CONTROL, DIRECT, GUIDE, OVERSEE OR APPROVE THE CONTRACTOR(S) OR SUBCONTRACTOR(S), THEIR AGENTS, EMPLOYEES OR CREW MEMBERS IN THIS OR ANY CONSTRUCTION PROCESSES. FURTHER, BELOW SIGNED APPLICANT/OWNER ACKNOWLEDGES THE ISSUANCE OR GRANTING OF A PERMIT OR APPROVAL OF PLANS, SPECIFICATIONS, AND COMPUTATIONS SHALL NOT BE CONSTRUED TO BE A PERMIT FOR, OR AN APPROVAL OF, A VIOLATION OF ANY OF THE PROVISIONS OF THE UNIFORM BUILDING, MECHANICAL, OR PLUMBING CODES; THE NATIONAL ELECTRICAL CODE; THE CITY/COUNTY OF BUTTE-SILVER BOW ZONE AND SIGN CODE, BUTTE-SILVER BOW MUNICIPAL CODES, OR ANY OTHER ORDINANCE OF THE CITY/COUNTY OF BUTTE-SILVER BOW. THE APPLICANT/OWNER HAS COMPLETE CONTROL OVER THE CONSTRUCTION PROCESS AND IS WHOLLY RESPONSIBLE FOR THE PROJECT'S ULTIMATE COMPLIANCE WITH THE APPLICABLE CODES AND ORDINANCES


SIGNATURE

Lori Baker-Patrick

BSB TREASURER

Sally J. Hollis

BSB CLERK & RECORDER

bcfront

BSB CLERK

Gladstone

65'

62

34'

18'

Existing House

820 sq'

40'

5'

20'

5'

27'

5'

18'

40'

New Garage

36'

20'

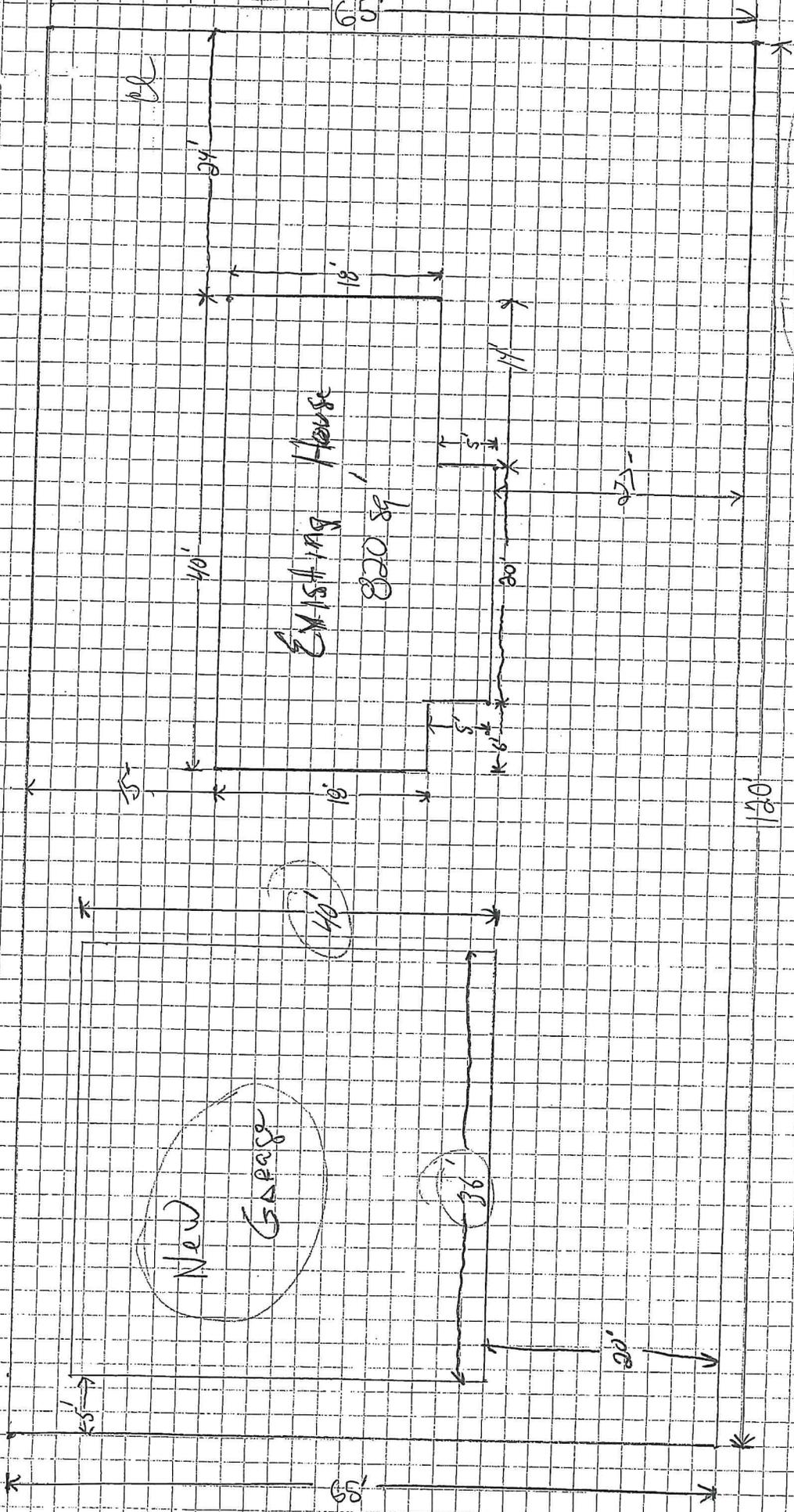
120'

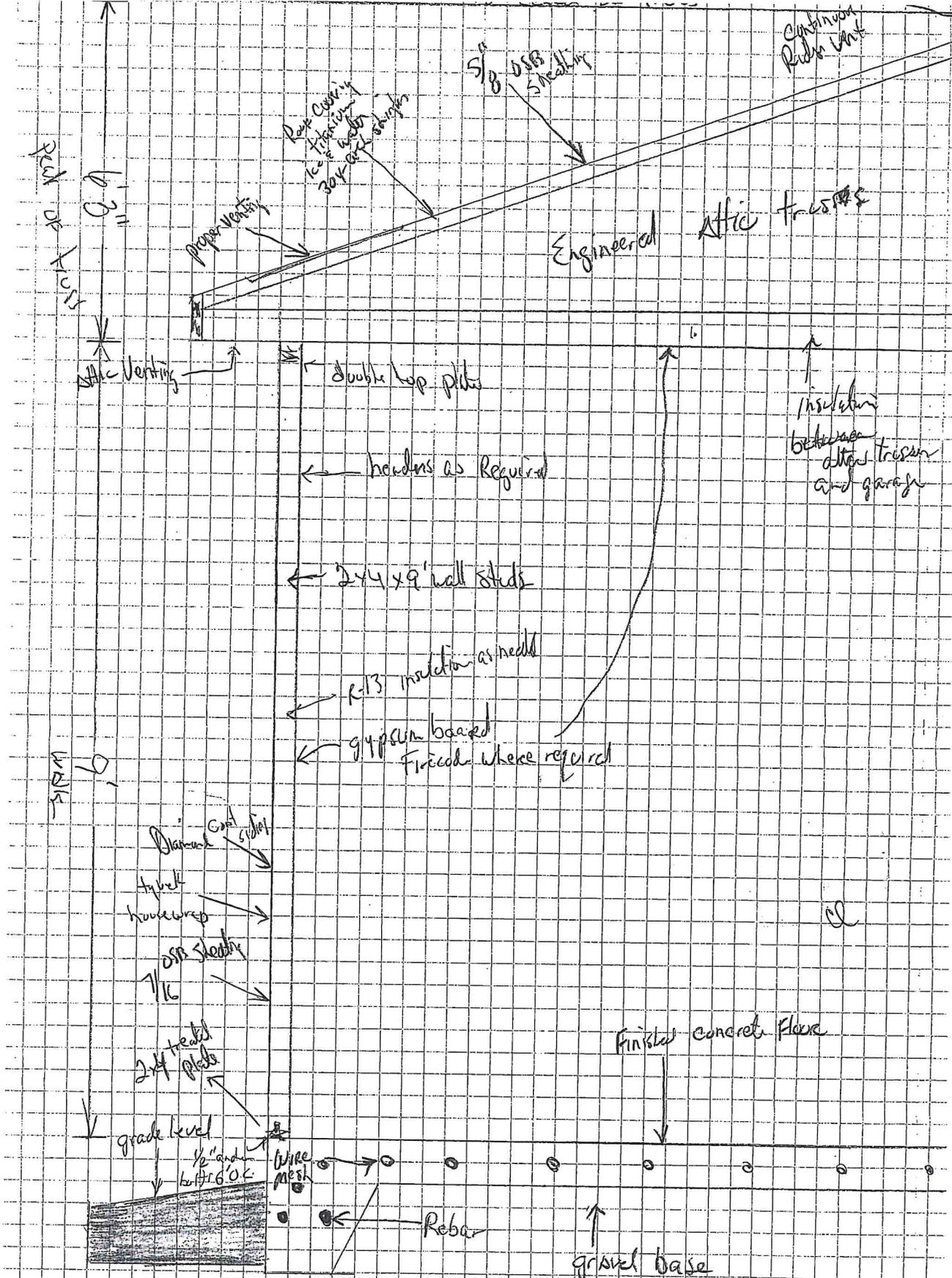
3647 Gladstone

Area 820 sq' New Garage 1440 sq'

Area 50 x 100'

Home-land





36' x 40' detached garage
 mono slab 9' walls
 Engineered Beams & Trusses
3647 Gladstone

Overall Height =
 15' 3"

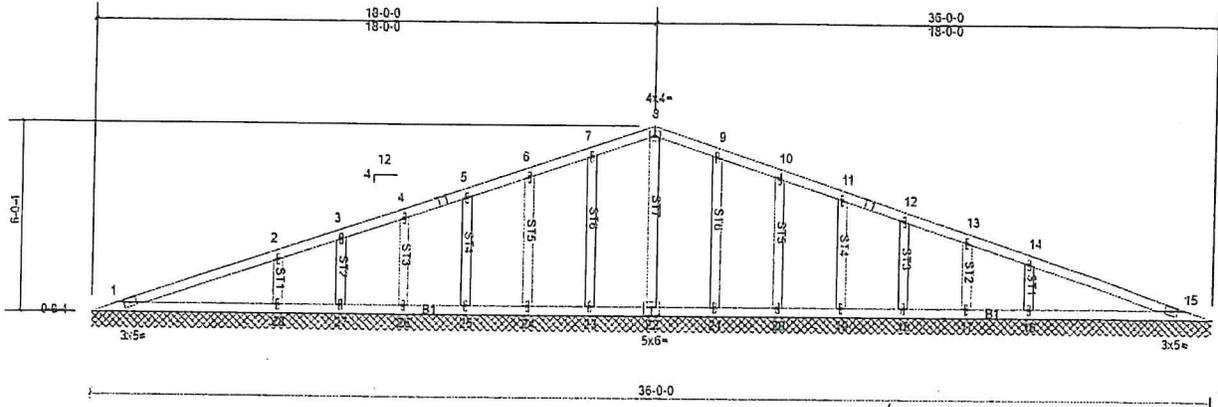
Job 190445	Truss DG01	Truss Type Common Supported Gable	Qty 2	Ply 1	ATTIC SET Job Reference (optional)
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SKILL BUILT TRUSS, BUTTE, MT 59701, Don

Run: 8:23 S May 10 2019 Print: 8:230 S May 10 2019 MITek Industries, Inc. Tue Aug 06 09:32:12

Page: 1

ID: VM8nWxvJWjBhVVI9bA7gWDyqbYJ-H3uDKmlecZKEBeJrQISLaS2TR4n8pDyzo0kOyqbW3



Scale = 1:59.5

Plate Offsets (X, Y): [22:0-3-0,0-3-0]

Loading	(psf)	Spacing	2-0-0	CSI	DEFL	In	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.15	TC	0.26	Ver(LL)	n/a	-	n/a	999	MT20	220/195
(Roof Snow = 40.0)		Lumber DOL	1.15	BC	0.10	Ver(TL)	n/a	-	n/a	999		
TCDL	7.0	Rep Stress Incr	YES	WB	0.14	Horiz(TL)	0.00	15	n/a	n/a		
BCLL	0.0*	Code	IRC2012/TPI2007	Matrix-S								
BCDL	8.0											

Weight: 156 lb FT = 0%

LUMBER

TOP CHORD 2x4 DF 2100F 1.8E
 BOT CHORD 2x4 DF 2100F 1.8E
 OTHERS 2x4 DF Stud

BRACING
 TOP CHORD
 BOT CHORD

Structural wood sheathing directly applied or 6-0-0 oc purlins.
 Rigid ceiling directly applied or 10-0-0 oc bracing.

MITek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS All bearings 36-0-0.

(lb) - Max Horiz 1=75 (LC 10)
 Max Uplift All uplift 100 (lb) or less at joint(s) 1, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28
 Max Grav All reactions 250 (lb) or less at joint(s) 1, 15, 17, 22, 27 except 16=602 (LC 17), 18=308 (LC 17), 19=299 (LC 17), 20=306 (LC 4), 21=323 (LC 17), 23=323 (LC 16), 24=306 (LC 3), 25=299 (LC 16), 26=308 (LC 16), 28=602 (LC 16)

FORCES

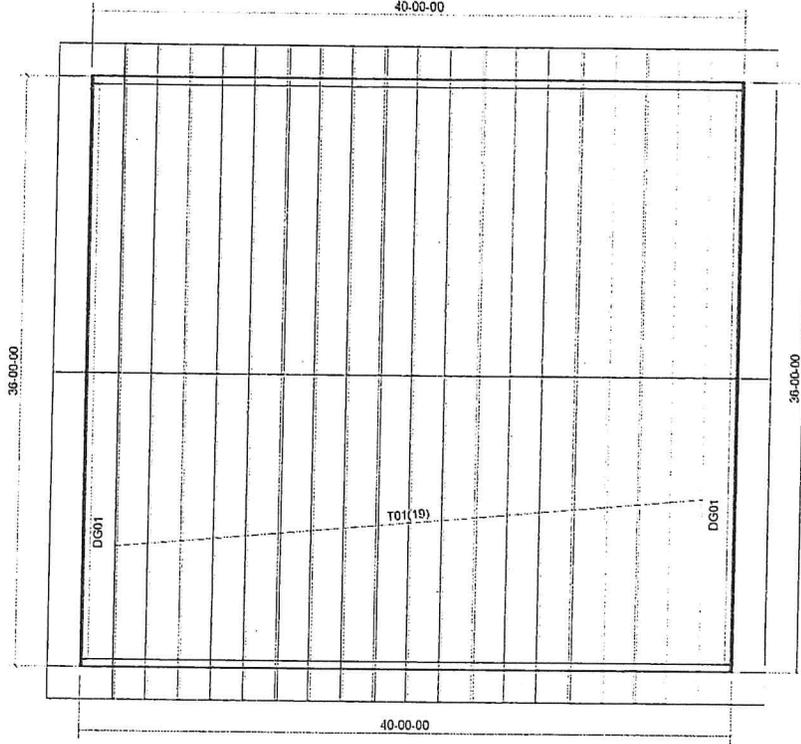
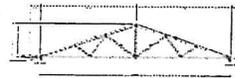
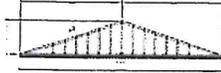
(lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 WEBS 7-23=-291/52, 6-24=-269/51, 5-25=-270/49, 4-26=-264/59, 2-28=-486/126, 9-21=-291/51, 10-20=-269/52, 11-19=-270/48, 12-18=-264/59, 14-16=-486/126

NOTES

- 1) Wind: ASCE 7-10; Vult=115mph (3-second gust) V(IRC2012)=91mph; TCDL=4.2psf; BCDL=4.8psf; h=25ft; Cat. II; Exp B; Enclosed: MWFRS (envelope) exterior zone; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
- 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
- 3) TCLL: ASCE 7-10; Pf=40.0 psf (flat roof snow); Category II; Exp B; Fully Exp.; Cf=1.10
- 4) Unbalanced snow loads have been considered for this design.
- 5) All plates are 1x4 MT20 unless otherwise indicated.
- 6) Gable requires continuous bottom chord bearing.
- 7) Gable studs spaced at 2-0-0 oc.
- 8) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
- 9) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 1-00-00 wide will fit between the bottom chord and any other members, with BCDL = 8.0psf.
- 10) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 100 lb uplift at joint(s) 1, 15, 23, 24, 25, 26, 27, 28, 21, 20, 19, 18, 17, 16.
- 11) This truss is designed in accordance with the 2012 International Residential Code sections R502.11.1 and R802.10.2 and referenced standard ANSI/TPI 1.

LOAD CASE(S) Standard

JOB# 190445



ANZIK CONSTRUCTION
MIKE (406) 565-3610
40.0 lb/ft² SNOW
SCALE: 3/32" = 1'
ROOF SQ.FT. 1855.2

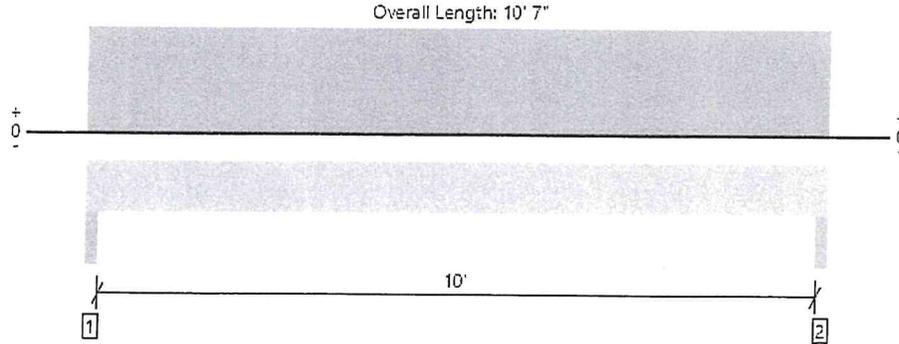
36 X 40
GLADSTONE & HANNIBLÉ
BUTTE, MT

SKILL BUILT TRUSS
DON APIKER
DESIGN-SALES-ENGINEERING
406-490-2282
don.apiker@yahoo.com

CL

Level, Wall: Header

1 piece(s) 3 1/2" x 12" 24F-V4 DF Glulam



All locations are measured from the outside face of left support (or left cantilever end). All dimensions are horizontal.

Design Results	Actual @ Location	Allowed	Result	LDF	Load: Combination (Pattern)
Member Reaction (lbs)	673 @ 2"	7963 (3.50")	Passed (8%)	--	1.0 D + 1.0 S (All Spans)
Shear (lbs)	509 @ 1' 3 1/2"	8533	Passed (6%)	1.15	1.0 D + 1.0 S (All Spans)
Pos Moment (Ft-lbs)	1671 @ 5' 3 1/2"	19320	Passed (9%)	1.15	1.0 D + 1.0 S (All Spans)
Live Load Defl. (in)	0.025 @ 5' 3 1/2"	0.342	Passed (L/999+)	--	1.0 D + 1.0 S (All Spans)
Total Load Defl. (in)	0.035 @ 5' 3 1/2"	0.512	Passed (L/999+)	--	1.0 D + 1.0 S (All Spans)

System : Wall
 Member Type : Header
 Building Use : Residential
 Building Code : IBC 2015
 Design Methodology : ASD

- Deflection criteria: LL (L/360) and TL (L/240).
- Top Edge Bracing (Lu): Top compression edge must be braced at 10' 7" o/c unless detailed otherwise.
- Bottom Edge Bracing (Lb): Bottom compression edge must be braced at 10' 7" o/c unless detailed otherwise.
- Critical positive moment adjusted by a volume factor of 1.00 that was calculated using length L = 10' 3".
- The effects of positive or negative camber have not been accounted for when calculating deflection.
- The specified glulam is assumed to have its strong laminations at the bottom of the beam. Install with proper side up as indicated by the manufacturer.
- Applicable calculations are based on NDS.

Supports	Bearing Length			Loads to Supports (lbs)			Accessories
	Total	Available	Required	Dead	Snow	Total	
1 - Trimmer - SPF	3.50"	3.50"	1.50"	197	476	673	None
2 - Trimmer - SPF	3.50"	3.50"	1.50"	197	476	673	None

Vertical Loads	Location (Side)	Tributary Width	Dead (0.90)	Snow (1.15)	Comments
0 - Self Weight (PLF)	0 to 10' 7"	N/A	10.2	--	
1 - Uniform (PSF)	0 to 10' 7"	2' 3"	12.0	40.0	Default Load

Weyerhaeuser Notes

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The product application, input design loads, dimensions and support information have been provided by ForteWEB Software Operator



ForteWEB Software Operator	Job Notes
DION SOMMER TRIPLE S BUILDING CENTER (406) 496-3900 desommer@triple-s-bld.com	

7/16/2019 4:25:21 PM UTC
 ForteWEB v2.1, Engine: V7.3.2.309, Data: V7.2.0.2
 File Name: ANZIK GARAGE ATTIC TRUSS



CALC PACKAGE REPORT
ANZIK GARAGE ATTIC TRUSS

Level			
Member Name	Results	Current Solution	Comments
Wall: Header	Passed	1 piece(s) 3 1/2" x 12" 24F-V4 DF Glulam	
Wall: Header	Passed	1 piece(s) 3 1/2" x 12" 24F-V4 DF Glulam	

ForteWEB Software Operator	Job Notes
DION SOMMER TRIPLE S BUILDING CENTER (405) 496-3900 desommer@triple-s-bld.com	

Residential Project Value Square Footages		SF Price	Subtotal
0	SF 1st Floor	\$45.62	\$0.00
0	SF 2nd Floor	\$30.43	\$0.00
0	SF Basement	\$12.56	\$0.00
1,440	SF Garage	\$13.43	\$19,339.20
0	SF Porch/Deck	\$5.00	\$0.00
0	SF Crawl Space	\$7.00	\$0.00
0	Home Addition 1st Floor	\$34.21	\$0.00
0	Home Addition 2nd Floor	\$30.43	\$0.00
Residential Project Value:			\$19,339.20

Building Permit Fee:	\$173.75
Plan Check Fee:	\$43.44
Total Estimate:	\$217.19

Residential permits based on value of project	Project Value
	\$0.00

Building Permit Fee:	\$0.00
Plan Check Fee:	\$0.00
Total Estimate:	\$0.00

Commercial permits based on value of project	Project Value
	\$0.00

Building Permit Fee:	\$0.00
Plan Check Fee:	\$0.00
Total Estimate:	\$0.00

PROPERTY OR SITE INFORMATION

PERMIT NUMBER : 16370

OWNERS NAME & ADDRESS

PROPERTY ADDRESS

CORTESE BRENDA L
9 BANTRY WAY

3647 GLADSTONE

BUTTE, MT 59701-7645

LEGAL DESCRIPTION

PARCEL# 0001148100

01-1198-29-4-20-10-0000

Subdivision : ATHERTON PLACE ADD

Section : 29 Township : 03 N Range : 07 W Lot : 9 Block : 42

(1) ATHERTON PLACE ADD, S29, T03 N, R07 W,

(2) BLOCK 42, Lot 9 - 10

ZONING/MASTER PLAN ID

Zoning: R-1

Master Plan: U-R

PROJECT DESCRIPTION

SITE INFORMATION

Depth: 65.0000 Width: 120.0000 Area: 7,800.0000 SQ FT / ACRE
S

DEVELOPMENT STANDARDS

Setbacks

Primary Structure (ft)

Accessory Structure (ft)

Front : 0.0000 80.0000

Rear : 0.0000 5.0000

Side A : 0.0000 5.0000

Side B : 0.0000 20.0000

Lot Coverage : 0.0000 0.0000

Parking Apron : 0.0000 20.0000

WATER AND SEWER

Public Water: no Public Sewer: no Private Water: no Garbage: no

Private Sewer Permit No: 0

Flood Plain Plane No: 0

Food Service Permit No: 0

OTHER COMMENTS

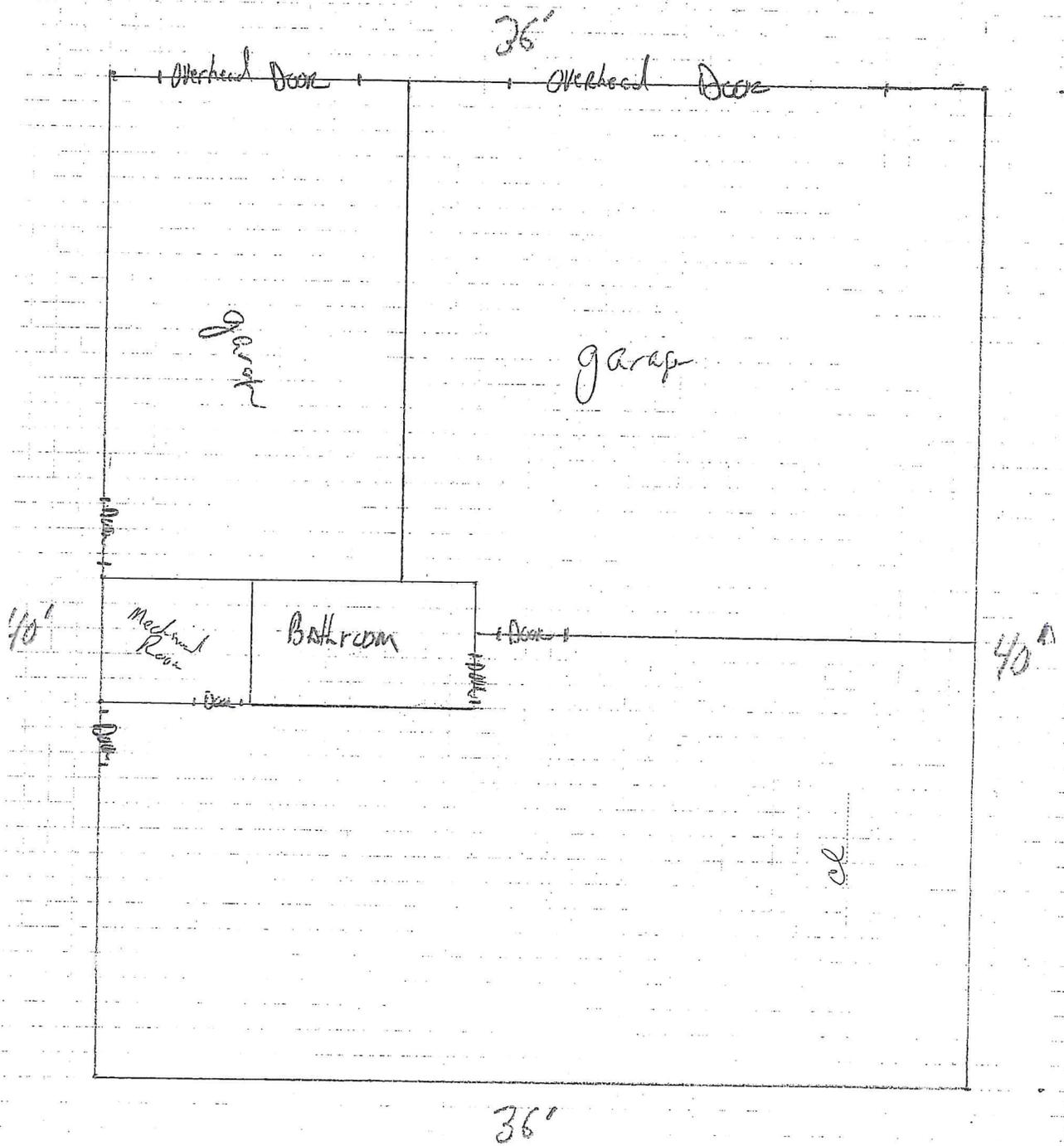
Construction of a 36'x40' garage 16' high. Plans as submitted meet the requirements of the zone.

Approved for : Zoning Growth Policy

Date 8 / 27 / 05

REVIEWED BY

EXHIBIT D



1/4" = 1'

36' x 40'

Detached Garage

EXHIBIT E

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION R103
DEPARTMENT OF BUILDING SAFETY

R103.1 Creation of enforcement agency. The department of building safety is hereby created and the official in charge thereof shall be known as the *building official*.

R103.2 Appointment. The *building official* shall be appointed by the chief appointing authority of the *jurisdiction*.

R103.3 Deputies. In accordance with the prescribed procedures of this *jurisdiction* and with the concurrence of the appointing authority, the *building official* shall have the authority to appoint a deputy *building official*, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the *building official*.

SECTION R104
DUTIES AND POWERS OF THE BUILDING OFFICIAL

R104.1 General. The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in conformance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

R104.2 Applications and permits. The *building official* shall receive applications, review *construction documents* and issue permits for the erection and alteration of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

R104.3 Notices and orders. The *building official* shall issue all necessary notices or orders to ensure compliance with this code.

R104.4 Inspections. The *building official* is authorized to make all of the required inspections, or the *building official* shall have the authority to accept reports of inspection by *approved agencies* or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such *approved agency* or by the responsible individual. The *building official* is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

R104.5 Identification. The *building official* shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

R104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the *building official* has reasonable cause to believe that there exists in a structure or upon a premises a condition which is

contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the *building official* or designee is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the *building official* shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the *building official* shall have recourse to the remedies provided by law to secure entry.

R104.7 Department records. The *building official* shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for the retention of public records.

R104.8 Liability. The *building official*, member of the board of appeals or employee charged with the enforcement of this code, while acting for the *jurisdiction* in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the *jurisdiction* until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

R104.9 Approved materials and equipment. Materials, equipment and devices *approved* by the *building official* shall be constructed and installed in accordance with such approval.

R104.9.1 Used materials and equipment. Used materials, equipment and devices shall not be reused unless *approved* by the *building official*.

R104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the *building official* shall have the authority to grant modifications for individual cases, provided the *building official* shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

R104.10.1 Flood hazard areas. The *building official* shall not grant modifications to any provision related to flood hazard areas as established by Table R301.2(1) without the granting of a variance to such provisions by the board of appeals.

EXHIBIT F



EXHIBIT G



THE CITY-COUNTY OF Butte-Silver Bow

Planning Department
Lori Casey, Director
Ph: 406-497-6250 E-Mail: lcasey@bsb.mt.gov

January 6, 2020

Brenda Cortese
149 Bantry Way
Butte, MT 59701

Re: Butte-Silver Bow Municipal Code Violations – 3647 Gladstone Avenue

Dear Ms. Cortese:

The Butte-Silver Bow (BSB) Planning Department received a complaint that an additional dwelling unit was being constructed on your property. The property is legally described as Lots 9-10, Block 42, of the Atherton Place Addition, S29, T03N, R07W, Assessor Code #1148100, commonly known as 3647 Gladstone Avenue, Butte, Montana.

A building permit application was purchased for the construction of a detached accessory structure (garage) on September 10, 2019. An inspection by the zoning officer on December 23, 2019 that showed habitable space was constructed in the accessory structure.

The property in question is located within the "R-1" (Single Family Residence) zone. Section 17.10.020, Permitted Uses, of the Butte-Silver Bow Municipal Code regulates uses within the "R-1" zone. The following uses are permitted within the "R-1" zone:

- A. Dwellings:
 1. Single-family;
 2. Manufactured homes;
 - a. Class A,
 - b. Modular
- B. Rooms or room and board for not more than two adult persons provided by a resident proprietor;
- C. Gardening, fruitgrowing, greenhouses of not more than one hundred and twenty square feet, not more than ten feet in height, and nurseries, excluding: the sale of products raised on the premises, retail stands, signs, and other commercial structures. Domestic pets, excluding livestock and bees, may be kept for noncommercial purposes; provided, that the maintenance of kennels and the keeping of rabbits or other similar small animals in excess of three of the same genus or sort shall be prohibited;
- D. Accessory uses ordinarily appurtenant to permitted uses, including home occupations as defined herein, private swimming pools, and one detached private garage for each

dwelling unit. Detached accessory structures, including private garages, shall not be located in the front yard not less than ten feet from any adjoining side street, except detached accessory structures located in the rear yard may extend to within three feet of the rear property line when abutting an alleyway or within five feet of the rear property line when an alley does not exist. Attached garages, carports, covered patios, and similar attached accessory buildings may occupy the rear yard to within ten feet of the rear property line and to within five feet of the inside property lines. In all cases there shall be a minimum off-street parking apron of twenty feet in length directly in front of all garage door entrances when accessing a street either to the front or side of a residence. Where garage doors access an alley, the off-street parking apron shall be at least ten feet; **accessory structures shall not contain any habitable space or room;**

Section 17.04.197 – Habitable Space or Room defines habitable space as “space in a structure for living, sleeping, eating or cooking. Storage or utility space and similar areas are not considered habitable space.”

Upon inspection, it is the determination by the Zoning Officer that the above referenced accessory structure is not in compliance with Section 17.10.020 – Permitted Uses, of the BSBMC. As a result, the owner shall remove all habitable space within the accessory structure within thirty (30) days of your receipt of this notice or otherwise come into compliance with all sections of Title 17 – Zoning of the BSBMC.

Please be advised that **failure to remove all habitable space within the accessory structure or otherwise come into compliance with all sections of the Zoning Ordinance within thirty (30) days of your receipt of this notice may result in a \$500.00 fine and/or six months in jail, each day being a separate offense, as per Section 17.56.110, Violation-Penalty of the BSBMC.**

If you have any questions, please contact the Planning Department.

Sincerely,



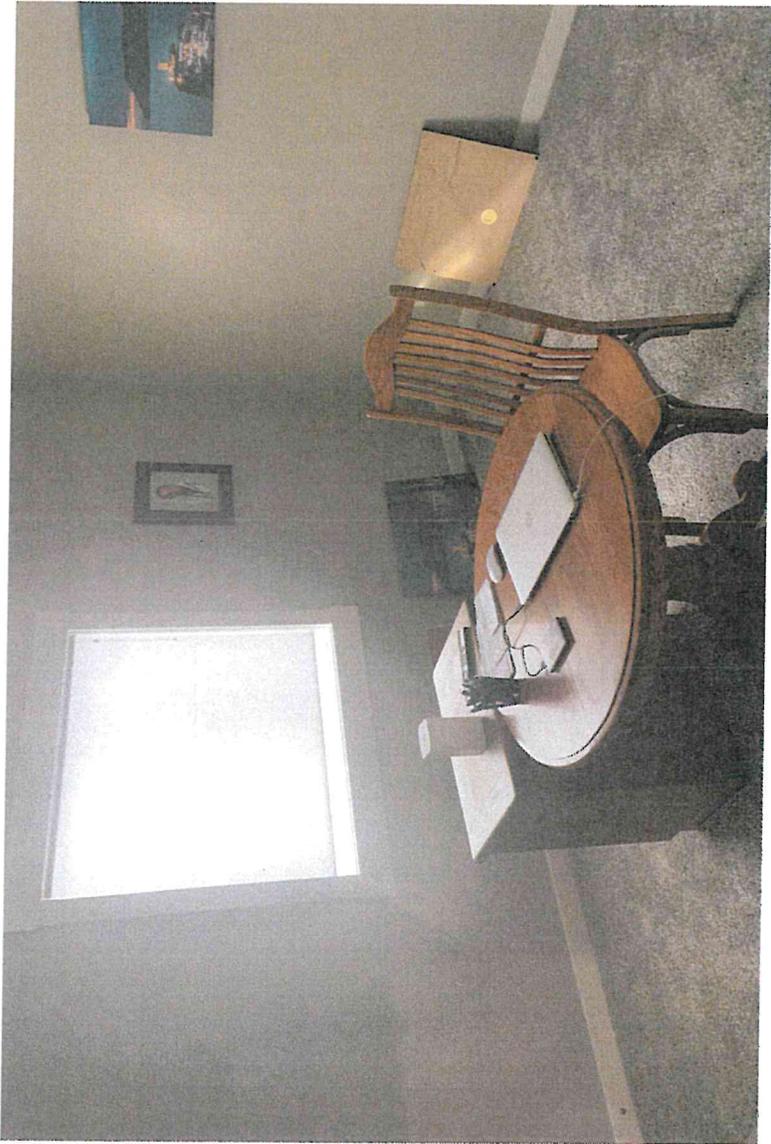
Dylan Pipinich
Assistant Planning Director

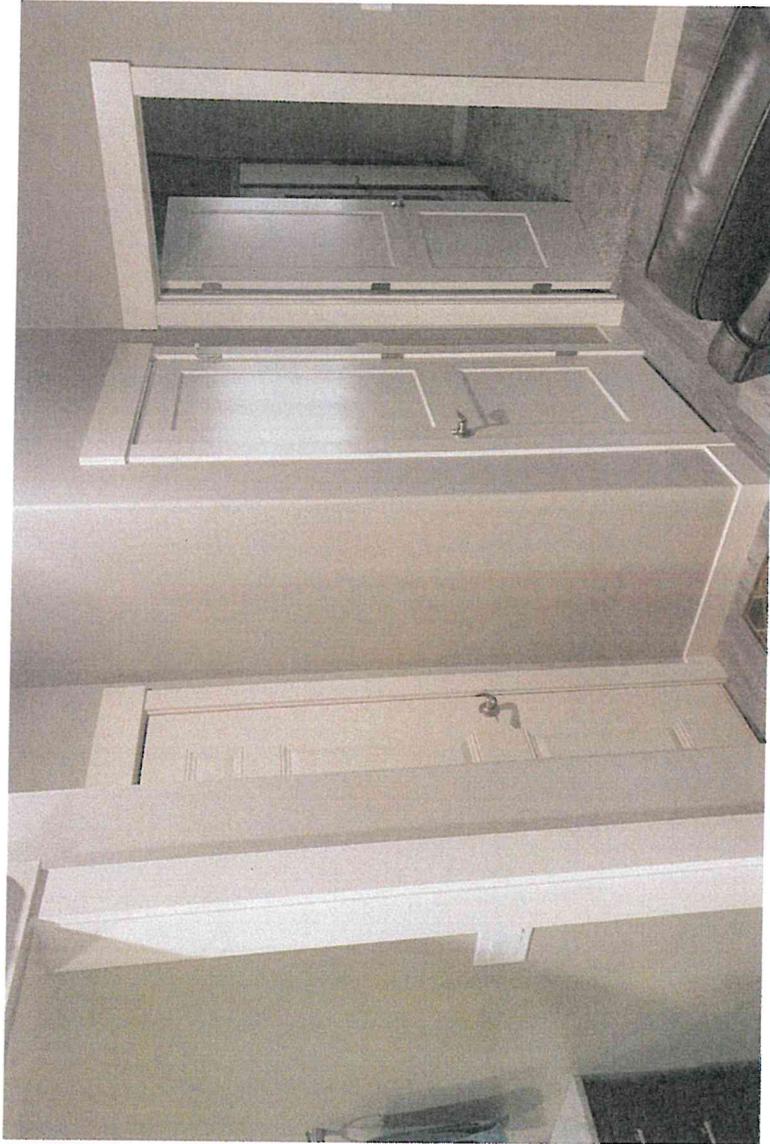
cc: Lori Casey, Planning Director
Mike Nasheim, Building Official
Eileen Joyce, County Attorney

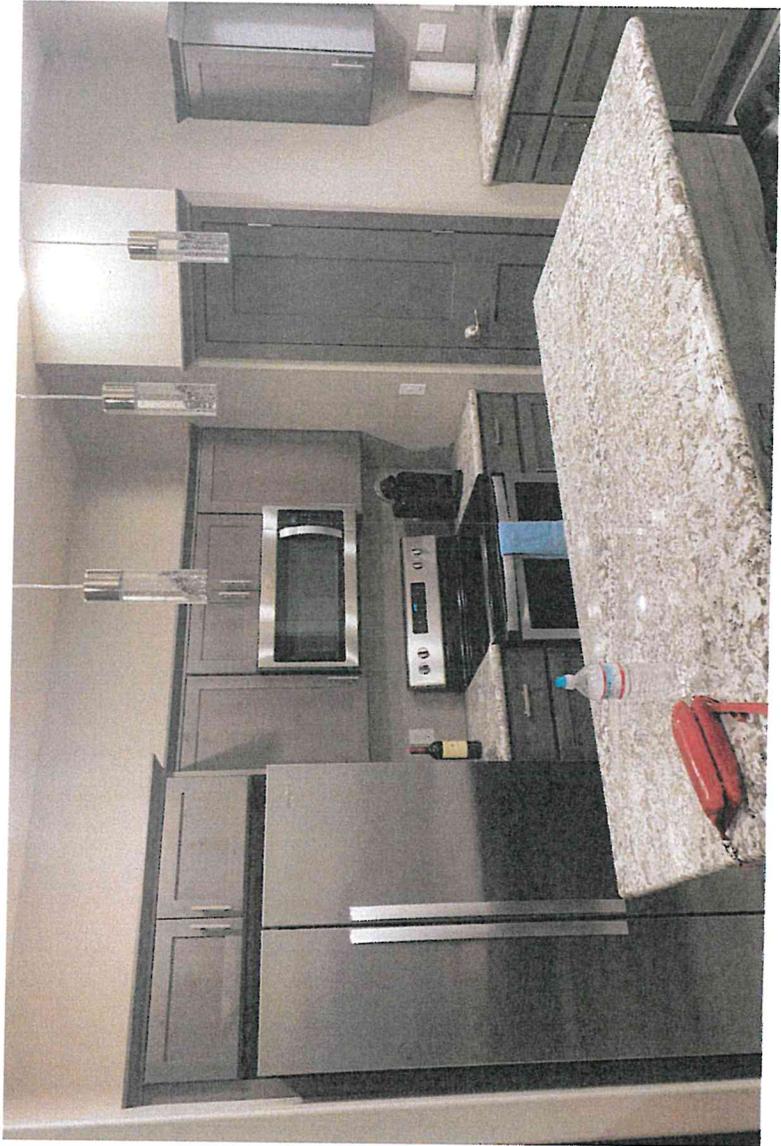












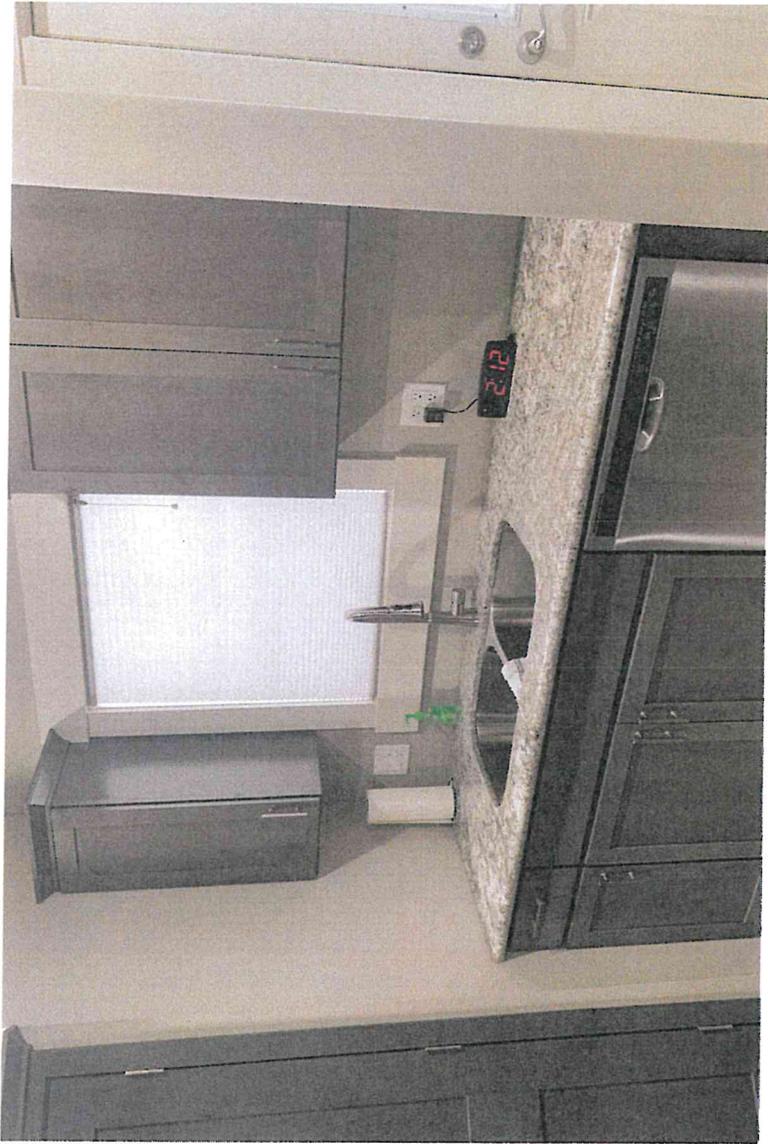


EXHIBIT H



THE CITY-COUNTY OF Butte-Silver Bow

P 1148100
B 01-1198-29-4-20-01-0000

Planning Department
Lori Casey, Director
Ph: 406-497-6250 E-Mail: planning@bsb.mt.gov

RECEIVED
FEB 04 2020
BY: *LC*

Zoning Appeal Form

This form is to be used to appeal a decision of the Enforcement Officer.

The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the Enforcement Officer.

No appeal shall be heard by the Board unless it is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision or determination by the Enforcing Officer.

Contact Information:

Brenda Cortez
Name of Applicant(s)

3647 Gladstone
Mailing Address

Butte
City

MT
State

59701
Zip

406-782-1111
Phone

Explain Appeal:

Decision of the Enforcement Officer in which you are appealing (Include Section of Zoning Ordinance):

See attached letter from Vice Vich Law Firm.

Ordinance from Section 17.10.020

Please explain the reasons you feel the decision is contrary to the meaning of the Zoning Ordinance.

See attached letter -

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the Enforcement Officer erred in an order, requirement, decision, or determination rests with the applicant(s).

Applicant(s) hereby certifies that the information provided in this application is correct and true.

Applicant(s):

on behalf of

Signature

Date

Print Name

Signature

Date

Print Name

Designation of Agent:

I (we) hereby appoint the person named below as my (our) agent to represent me (us) and act on my (our) behalf in this request for an appeal, as he/she deems necessary and proper.

Print Agents Name

Signature of Agent

Date

Signature of Applicant

Date

February 4, 2020

VIA U.S. MAIL:

NOTICE OF APPEAL

To: Butte-Silver Bow Planning Board and Staff
Zoning Board of Adjustment
Butte-Silver Bow Courthouse
155 W. Granite
Butte, MT 59701

Re: Denial of Variance from Section 17.10.020 allowing for accessory structure to contain habitable space at 3647 Gladstone Avenue, Butte, Montana.

Location: 3647 Gladstone Avenue, Butte, Montana

Legal Description: Lots 9-10, Block 42, of the Atherton Place Addition S29, T03N, R07W, Assessor Code #1148100.

Dear Butte-Silver Bow Planning Board and Zoning Board of Adjustment,

Please be advised that Brenda Cortese has retained the Vicevich Law Firm to represent her interests regarding her real property located at 3647 Gladstone, Butte, MT 59701. This letter shall serve as her Notice of Appeal regarding the denial of her request for a variance from Section 17.10.020 allowing for an accessory structure located on her property at 3647 Gladstone Avenue, to contain habitable space. Ms. Cortese and a representative from the Vicevich Law Firm both inquired with the Butte-Silver Bow Planning Board about requesting an initial variance and were informed that a variance has been denied and Ms. Cortese must appeal the decision.

The reason the variance is sought is because the build is almost complete and the cost of requiring Ms. Cortese to remove all habitable space would cause an unjustifiable expense. In turn, causing Ms. Cortese to suffer an extreme financial hardship.

Further, based on the file and letter Ms. Cortese received that from the Butte-Silver Bow Planning Board, an employee and/or agent of Butte-Silver Bow County entered the accessory structure on Ms. Cortese's private property, without her permission and took several photographs of the inside of the structure. Please provide the warrant that was obtained and used to enter Ms. Cortese's accessory structure and photograph it.

524 E. PARK ST. B • BUTTE, MT 59701 • 406.782.1111

FAX: 406.782.4000 • DAVE@VICEVICHLAW.COM

*LICENSED IN MONTANA & WASHINGTON

** LICENSED IN MONTANA & TEXAS

***LICENSED IN MONTANA & COLORADO



Based on the foregoing, Ms. Cortese requests that the Zoning Board of Appeals hear and decide her appeal.

Regards,

A handwritten signature in black ink, appearing to read 'Amanda Hunter', is written over the typed name.

Amanda Hunter
Attorney at Law

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

ITEM: Appeal of the Zoning Officer's Decision #16520 – An appeal by Wayne Sterns of the Zoning Officer's determination that equipment sales and rental is not a permitted use in the "C-2" (Community Commercial) zone and that the equipment shall be removed, per Section 17.54.030, Appeals, of the Butte-Silver Bow Municipal Code.

APPLICANT: Wayne Sterns, 3547 Harrison Ave., Butte, Montana, agent.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is legally described as the S2 of Lot 8 and adjacent POR & NE ¼, Section 31, T 03N, R 07W, P.M.M., commonly located at 3547 Harrison Ave., Butte, Montana. The property is located in the “C-2” (Community Commercial) zone.

APPEAL: Per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), the applicant is appealing the Zoning Officer’s decision that equipment sales and rental is not a permitted use in the “C-2” zone and that the equipment must be removed from the property to come into compliance with Section 17.24 of the Butte-Silver Bow Municipal Code (BSBMC).

**STAFF
FINDINGS:**

Section 17.24.020 – Permitted Uses of the BSBMC lists 66 permitted uses in the “C-2” (Community Commercial) zone. This section does not list equipment sales or rental yards as a permitted use. Equipment sales is a permitted use in the “C-M” (Commercial and Light Industrial) zone and farming equipment and heavy machinery sales establishments and rental service storage and yards are permitted uses within the “M-1” (Light Industrial) zone. For a list of all permitted uses within the “C-2”, “C-M”, and “M-1” zones, refer to Exhibit A.

On December 16, 2019, a representative of the existing equipment sales and rental business located at 3900 Harrison Avenue inquired about moving the business to 3547 Harrison Avenue. The equipment rental and sales business was an existing nonconforming use ancillary to motor vehicle sales that was permitted by Use Variance #16272. It was explained to the representative that 3547 Harrison Avenue is still within the “C-2” (Community Commercial) zone and that equipment rental and sales is not a permitted use. A use variance would need to be obtained to operate an equipment rental business. The representative stated that the business did not intend to sell cars as well and that it would be strictly equipment sales

and rental. Planning staff reviewed the three-point criteria for a use variance with the representative and listed the zones where equipment rental and sales is permitted outright. The three-point criteria, as defined in MCA 76-2-304, states that a variance must not be contrary to the public interest, would result in unnecessary hardship and must be in the spirit of the Zoning Ordinance. The Planning Department did not receive a use variance application regarding the facility at this location.

On December 18, 2019, Planning staff noticed that equipment for rental and sales was moved to 3475 Harrison Avenue. The Code Enforcement Officer was notified and a violation letter was sent certified mail to the property owner. The letter was dated January 2, 2020.

The determination by the Zoning Officer, as stated in the letter, is that equipment rental and sales is not a permitted use in the "C-2" (Community Commercial) zone and that the equipment must be removed to be in compliance with Section 17.24.020 – Permitted Uses of the BSBMC. The applicant is now appealing this decision. See Exhibit B for the appeal application.

CONCLUSION: Section 7-1-114(1)(e) Montana Code Annotated (MCA) provides that a local government with self-governing powers, which includes Butte-Silver Bow, must comply with all State laws that require or regulate planning or zoning. Montana Code Annotated as well as Section 17.54 – Board of Adjustment of the BSBMC defines the powers of the Board as follows:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcing officer in the enforcement of this chapter of this title;
- B. To hear and decide special exceptions to the terms of this title upon which such Board is required to pass under such Ordinance;

- C. To authorize, upon appeal in specific cases, such variance from the terms of this title, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done;
- D. In exercising the above mentioned powers, such Board may, in conformity with the provisions of this title, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

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

EXHIBIT A

Chapter 17.24 - C-2 COMMUNITY COMMERCIAL ZONE

Sections:

17.24.010 - Primary intended use.

The C-2 zone is intended primarily to accommodate community shopping facilities consisting of varied retail, service and office establishments grouped at locations convenient to Butte-Silver Bow's arterial streets where they can serve a trade area encompassing several neighborhoods usually within a distance of approximately three and one-half miles of such community commercial zoning district. The function of the community commercial zone is to provide a wider selection of goods and services than provided in the less intensive C-1 local commercial zone, and to do so within a shorter driving distance from the home than the C-3 central commercial zoning district. It is further intended that the location and quantity of land in a C-2 zone should be commensurate with the purchasing power and needs of the present and potential population within said trade area.

The intent is that generally, no business frontage therein should extend along any street for a distance greater than one thousand four hundred feet. However, the zoning commission may approve zoning boundaries which exceed these limits where, in its judgment, circumstances warrant and the expectation to achieve proper development is consistent with the purpose of this title and the master plan. It is intended that these community shopping facilities be provided wherever possible in a single business island centrally located in the trade area of business corridors rather than in ribbon or strip development along arterials or in several overdeveloped neighborhood shopping centers. In order to protect the public interest and welfare and where necessary to assure compatibility with the surrounding neighborhood, certain C-2 zones may be identified by the suffix L (limited) with the intent that uses within these districts shall be subject to conditions and performance standards which limit or restrict the conduct of the permitted use.

(Ord. 225 § 1(H) (part), 1985; Ord. 135 § 1(r), 1981; Ord. 53 § 110-1, 1978)

17.24.020 - Permitted uses.

1. Any use permitted in the C-1 zone;
2. Any use approved as part of an approved PUD;
3. Adult uses, including but not limited to adult book stores, adult motion picture theaters, adult mini-motion picture theaters and adult entertainment cabarets providing no such adult use shall be located within four hundred feet of any residential zone nor within six hundred feet of any existing school or place of worship;
4. Amusement parks, recreation centers, skill device game rooms, including merry-go-rounds, pony riding rings, miniature golf, skating, dancing, ice rinks, bowling, archery ranges, video electronic skill games, billiard tables, and where an accessory use temporary carnivals and similar activities provided that where any such use is located within three hundred feet of any residential zone, a conditional use permit shall be required from the board of adjustment;
5. Antique stores;
6. Armories;
7. Auditoriums;

8. Automotive repair, including engine repair, custom upholstery and body and fender work provided that such activities are conducted totally within a building and where any such use is located within three hundred feet of a residential zone a conditional use permit shall be required from the zoning board of adjustment;
9. Automotive sale and supply stores;
10. Bakery, candy, ice cream and similar food products manufacturing provided that no more than ten persons shall be employed on the premises;
11. Banks and post offices;
12. Bath houses and commercial pools;
13. Boat sales establishments;
14. Bowling alleys;
15. Billboards subject to the provisions of Chapter 17.42;
16. Building supplies and glass stores when all activity and storage is confined within a building;
17. Bus terminals;
18. Business colleges and similar uses;
19. Catering services;
20. Commercial artists' shops;
21. Dance studios;
22. Department stores;
23. Drive-in eating and drinking establishments;
24. Drive-in window services including banks, film processing and similar uses;
25. Dry cleaning and laundry establishments employing not more than ten persons;
26. Exercise centers;
27. Film processing and photographic studios;
28. Floor covering and carpet stores;
29. Funeral homes;
30. Furniture stores including incidental repair;
31. Health and massage salons including barber and beauty shops;
32. Hotels, motels and motor lodges;
33. Leather goods stores including manufacturing provided that not more than ten persons shall be employed on the premises;
34. Lodges, convention centers in conjunction with motels or hotels;
35. Medical and orthopedic supply stores;
36. Messenger or telegraph service station;
37. Motorcycle and motorscooter sales and repair, provided such repair, testing and operating is conducted within a soundproofed building so as not to be detrimental to surrounding properties;
38. Multifamily residences shall be permitted, except as provided under Section 17.24.040, Conditional uses;
39. Ministorage; self-storage warehouses intended for the storage of nontoxic, noncombustible goods; provided that all storage be contained wholly within a building and that no materials, vehicles or other

- items be stored outside;
40. Museums and art galleries;
 41. Newspaper offices;
 42. Nurseries and commercial greenhouses;
 43. Offices, professional and business;
 44. Office supply stores;
 45. Open sales lots for the sale, rental or display of fruits, vegetables, shrubbery, operable used cars and trucks, luggage trailers, campers, camper trailers not more than twenty-eight feet in length and new mobile homes;
 46. Opticians, including incidental manufacturing;
 47. Pet shops (excluding kennels) including dog grooming;
 48. Printing establishments;
 49. Private clubs;
 50. Public parking garages;
 51. Public service and utility buildings;
 52. Repair and rental shops for furniture, small electrical motors, business machines and household appliances;
 53. Residential apartments on the second floor of commercial businesses shall be permitted, except as provided under Section 17.24.040, Conditional uses;
 54. Restaurants;
 55. Secondhand stores and pawnshops provided no goods shall be displayed outside the building;
 56. Service stations and self-service car wash facilities provided that any such establishment adjoining a lot in an R zone shall be improved in compliance with the regulations in Section 17.22.020. Storage of fuel oil at duly authorized service stations for delivery to the consumer by means of truck may be allowed by a conditional use permit from the zoning board of adjustment upon proof that such storage facility and operation thereof will not be unduly detrimental to surrounding properties and that said storage shall be underground. No truck shall be parked on the premises except during actual refueling operations;
 57. Skating rinks;
 58. Soft water and service establishments;
 59. State liquor stores;
 60. Studios for broadcasting and commercial recording provided that transmitting towers may be allowed by a conditional use permit from the zoning board of adjustment after a finding that such towers will not be unduly detrimental to surrounding uses or properties;
 61. Temporary carnivals and circuses;
 62. Theaters, excluding motion pictures drive-ins;
 63. Tire shops, excluding tire recapping;
 64. Wholesale and mail order offices excluding those establishments whose principle activity is that of a storage warehouse. Limited storage may be conducted on a premises by a conditional use permit from the zoning board of adjustment after a finding that such use will not be unduly detrimental to

surrounding properties and that the site is commensurate in size, shape and location to accommodate traffic volumes and parking;

65. Uses similar to those mentioned above may be permitted subject to the approval of the zoning officer;
66. Other uses permitted under supplementary use regulations in Sections 17.38.170 through 17.38.240, inclusive, of this title; and accessory uses, buildings and structures ordinarily appurtenant to any of the above permitted uses.

(Ord. 552 § 1 (part), 1996; Ord. 456 § 3, 1993; Ord. 323 § 1, 1988; Ord. 225 § 1(H) (part), 1985; Ord. 164 § 1(B), 1982; Ord. 135 § 1(s), (t), (u), 1981; Ord. 117 § 1(B), 1980; Ord. 53 § 110-2, 1978)

17.24.040 - Conditional uses.

Amusement parks and recreation centers, armories, auditoriums, bars, taverns, nightclubs and casinos serving alcoholic beverages subject to other laws, regulations and ordinances of Butte-Silver Bow and the state of Montana; clinics for large and small animals, dogs, cats, birds and the like may be allowed by a conditional use permit from the board of adjustment; provided, that such clinic and any treatment rooms, cages, wards or runs be maintained within a completely enclosed soundproof building constructed substantially in accordance with standards of the American Animal Hospital Association, and such clinics will be operated in such a way as to produce no objectionable odors or noise outside its walls, or other nuisance or health hazard; drive-in theaters and stadiums; public housing and; correctional housing.

(Ord. 552 § 1 (part), 1996; Ord. 456 § 4, 1993; Ord. 135 § 1(v), 1981; Ord. 53 § 110-3, 1978)

17.24.050 - Limited C-2L zones.

Whenever a C-2 zoning district has the suffix "L" added thereto, uses therein shall comply with the regulations set forth in Section 17.38.010 through 17.38.080.

(Ord. 225 § 1(H) (part), 1985; Ord. 53 § 110-4, 1978)

17.24.060 - Conditions.

All storage (including storage of waste materials) shall be located wholly within a building or shall be screened from view from the surrounding properties in any R or C zone. In limited zones, uses shall also comply with the conditions in Sections 17.38.010 through 17.38.080.

(Ord. 225 § 1(H) (part), 1985; Ord. 53 § 110-5, 1978)

17.24.070 - Building height limits.

Building height limits shall be the same as permitted in the R-2 zone; except that multifamily dwelling units within Category II may extend to eighty feet.

(Ord. 53 § 110-6, 1978)

17.24.080 - Minimum lot area.

No requirement, except multifamily residences shall be governed by Section 17.14.050.

(Ord. 128 § 1 (part), 1981; Ord. 53 § 110-7, 1978)

17.24.090 - Minimum lot width.

No requirement, except multifamily residences shall be governed by Section 17.14.060.

(Ord. 128 § 1 (part), 1981; Ord. 53 § 110-8, 1978)

17.24.100 - Minimum front yard depth.

Minimum front yard depth shall be the same as permitted in the C-1 zones.

(Ord. 53 § 110-9, 1978)

17.24.110 - Minimum side yard width.

Minimum side yard width shall be the same as permitted in the C-1 zones.

(Ord. 53 § 110-10, 1978)

17.24.120 - Minimum rear yard depth.

Minimum rear yard depth shall be the same as permitted in the C-1 zones.

(Ord. 53 § 110-11, 1978)

Chapter 17.27 - C-M COMMERCIAL AND LIGHT INDUSTRIAL ZONE

Sections:

17.27.010 - Primary intended use.

The C-M zone is intended primarily to provide a district to accommodate selected commercial retail sales and service facilities and to accommodate a variety of light manufacturing activities including warehousing, storage, distributing, wholesale activities, research laboratories, and similar uses which include development standards so as to be suitable for location within commercial or industrial areas. It is also the intent of this zone to facilitate the reuse and recycling of existing commercial and industrial buildings within the central urban area of Butte-Silver Bow.

(Ord. 214 § 1(B)(125-1), 1984)

17.27.020 - General provisions.

- A. C-M zoning districts may be created in areas shown as either community commercial or light industrial on the official zoning map or the comprehensive plan land use map.
- B. C-M districts shall be in contiguous increments of not less than two acres exclusive of streets, except

where specifically approved by the zoning commission after a finding that special circumstances warrant a smaller district. All commercial and manufacturing activities shall be conducted totally within a building. However, incidental uses such as outside storage may be permitted providing such activities comply with provisions of subsection B of Section 17.27.040.

- C. New residential uses shall be prohibited. Existing residential uses shall be subject to the provisions of Chapter 17.48.

(Ord. 602 § 1 (part), 1998; Ord. 214 § 1(B)(125-2), 1984)

17.27.030 - Permitted uses.

The following uses are permitted in the C-M zone.

A. Retail Uses.

1. Automotive service stations;
2. Automobile and truck sales with incidental repair and service;
3. Boat sales with incidental repair and service;
4. Building supplies, new;
5. Electrical supplies;
6. **Equipment sales;**
7. Farm implements and machinery sales with incidental repair and service;
8. Feed and hay sales;
9. Glass and paint stores including incidental repair and service;
10. Hardware stores;
11. Harness and saddle sales and repair;
12. Mining equipment sales and incidental repair and service;
13. Ice and dry ice sales and manufacture;
14. Mobile home sales;
15. Motorcycle and snowmobile sales with incidental repair and service;
16. Plumbing supplies;
17. Tire sales.

B. Services.

1. Appliance repairs;
2. Automotive:
 - a. Body and fender shops,
 - b. Painting,
 - c. Reconditioning,
 - d. Repairs,
 - e. Tire capping,
 - f. Truck repair,

- g. Upholstering;
 - 3. Auction houses;
 - 4. Blueprint photocopying;
 - 5. Boat repairs;
 - 6. Bus terminal, storage and repair;
 - 7. Carpet and rug cleaning plants;
 - 8. Cleaning and dyeing plants;
 - 9. Employment and union agencies;
 - 10. Farm equipment and irrigation services;
 - 11. Laundry (commercial);
 - 12. Mineral assay offices;
 - 13. Mining equipment repair;
 - 14. Newspaper and book publishing;
 - 15. Offices for any contracting, manufacturing, processing, fabrication, wholesale or distribution facility;
 - 16. Printing shop, lithography, publishing;
 - 17. Radiator shop;
 - 18. Radio and television broadcasting station;
 - 19. Radio and television repair;
 - 20. Refrigeration and air conditioning repair and service;
 - 21. Taxidermist;
 - 22. Truck terminals;
 - 23. Wholesale and warehousing facilities including storage garage.
- C. Manufacturing.
- 1. Assembly or repair of small electrical and electronic equipment;
 - 2. Bottling plants;
 - 3. Cabinet or carpenter shops;
 - 4. Ceramic products manufacture using only previously pulverized clay and fired in kilns using only gas or electricity;
 - 5. Custom furniture manufacture and sales;
 - 6. Furniture upholstery shops;
 - 7. Laboratories (research and engineering);
 - 8. Light assembly of previously prepared components;
 - 9. Light fabrication of metal, i.e. sheetmetal shops, wrought iron products;
 - 10. Jewelry manufacturing;
 - 11. Machine shops (no punch presses over five tons or drop hammers);
 - 12. Manufacturing, compounding, processing, packaging or treatment of products such as:

- a. Bakery goods,
 - b. Candy and other confectionery products,
 - c. Cosmetics,
 - d. Dairy products,
 - e. Fruit and vegetable (packaging only and excluding odorous processes),
 - f. Pharmaceutical drugs and supplies,
 - g. Toiletries;
- 13. Manufacture and maintenance of electrical signs (including neon signs);
 - 14. Mini-warehouses;
 - 15. Retail lumber yards including incidental mill work. (Outdoor storage and use areas shall be subject to the provisions of Sections 17.38.120 through 17.38.160);
 - 16. Welding shops including blacksmith and silversmith facilities, providing all use and storage areas are within a building;
 - 17. Wholesale meat cutting and packaging provided there shall be no slaughtering or fat rendering.
- D. Uses similar to those mentioned above, may be permitted subject to the approval of the zoning enforcement officer.
 - E. All uses permitted under the supplementary use regulations in Chapter 17.38 and structures ordinarily appurtenant to any of the above uses.

(Ord. 214 § 1(B)(125-3), 1984)

17.27.040 - Special conditions.

- A. Every building in a C-M zone shall be so constructed, the machinery and equipment shall be so installed, and the activities shall be so conducted that all noise, vibration, dust, odor, glare and other objectionable factors shall be confined or reduced to the extent that no annoyance or injury will result to persons residing in the vicinity.
- B. Open storage of materials and equipment may be permitted in a C-M zone only when incidental to the use of an office, store or manufacturing building located on the same lot or property, provided that:
 - 1. Storage is located on the rear one-half of the lot and is confined to an area not to exceed forty percent of the total lot area.
 - 2. Storage is completely enclosed by a solid wall or solid fence (including gates) not less than six feet in height.
 - 3. No materials shall be stored to a height greater than that of the wall or fence enclosing that storage area.
- C. Uses which are customarily accessory and/or incidental to permitted uses shall be permitted.

(Ord. 214 § 1(B)(125-4), 1984)

17.27.050 - Minimum lot area.

Existing commercial and light manufacturing lots to which a C-M zone is applied shall have a minimum of four thousand five hundred square feet; provided, however, that commercial and light manufacturing lots created after the effective date of the ordinance codified in this chapter shall have a minimum area of six thousand square feet unless otherwise specifically approved by the zoning commission.

(Ord. 214 § 1(B)(125-5), 1984)

17.27.060 - Building height limits.

No building constructed in a C-M zone shall exceed three stories or sixty-five feet; provided, however, that existing buildings may be structurally altered and/or additions may be extended in height one story or fifteen feet.

(Ord. 214 § 1(B)(125-6), 1984)

17.27.070 - Minimum yard setbacks.

New buildings constructed in the C-M zone shall provide the following buildings setbacks:

- A. Front Yard. Where the front lot line of a C-M district is across the street from a residential zoning district or the C-M district directly adjoins a residential district on one side, the front yard setback requirement of the residential district shall apply. In all other cases, no front yard setback shall be required. Where front yard setback is required in the C-M zone, the yard shall be landscaped and maintained except for approved driveways, walkway or parking.
- B. Side Yard. Where the side lot line of a C-M district adjoins directly to a residential district, the side yard setback for the primary structure of the residential district shall apply. Where the side lot line abuts a public street, a side yard setback of eight feet shall be required. In all other cases, no side yard shall be required.
- C. Rear Yard.
 1. Where the rear lot line is across an alley or street from a residential district, a rear yard setback of fifteen feet shall be required.
 2. Where the C-M district directly adjoins a residential district on one side, the rear yard setback for the primary structure of the residential district shall apply. In all other cases, no rear yard shall be required.
 3. Outside storage may be permitted within a required rear yard setback, providing the storage area meets all other requirements of this chapter.

(Ord. 214 § 1(B)(125-7), 1984)

Chapter 17.28 - M-1 LIGHT INDUSTRIAL ZONE

Sections:

17.28.010 - Primary intended use.

The M-1 zone is intended primarily to accommodate a variety of light industrial uses and to provide a greater flexibility within the zoning regulations for those industries which do not create noise, odors, smoke, and other objectionable nuisances to the extent as do the heavier industries restricted to the M-2 zone. The intent is that certain M-1 zones or portions thereof identified on the zoning map will be limited to the less intensive uses. Also, conditions and performance standards limiting the conduct of permitted uses are provided with the intent that they shall be required in certain M-1 zones or portions thereof (identified by the suffix "L") where necessary to achieve industrial park development compatible with the surrounding neighborhood. To achieve this intent the regulations in this chapter and the supplementary regulations in Chapter 17.38 shall apply in M-1 zones.

(Ord. 53 § 130-1, 1978)

17.28.020 - Permitted uses.

A. Uses permitted in the M-1 zone shall be as follows:

1. Automobile repair and paint shops;
2. Air-conditioning service establishments;
3. Adhesive manufacturing, excluding asphalts and glue manufacturing;
4. Babbit metal manufacturing;
5. Boat repair and manufacturing (small craft);
6. Bolt threading;
7. Bottling and breweries;
8. Broom and brush manufacturing;
9. Bus repair and storage;
10. Butane and similar gas stations;
11. Cabinet shops and custom furniture manufacturing;
12. Candy manufacturing;
13. Canneries;
14. Carbon paper and typewriter ribbon manufacturing;
15. Compartmentalized storage for commercial and residential;
16. Contractors storage yards;
17. Convenience stores in conjunction with a service station;
18. Electrical contractors and neon sign manufacturing;
19. Electroplating;
20. Engraving;
21. Farming equipment and heavy machinery sales establishments;
22. Feed and seed processing and sales;
23. Fertilizer sales—wholesale and retail;
24. Food product manufacturing;
25. Fumigating establishments;

26. Furniture manufacturing;
27. Greenhouses and nurseries;
28. Hatcheries, poultry and fish, and small farms;
29. Heliports;
30. Ice cream manufacturing;
31. Ink product manufacturing;
32. Laboratories-research and testing;
33. Lumberyards, excluding sawmills, salvage yards, handling salvage lumber and building materials, building wrecking yards;
34. Machine shops;
35. Manufacturing, compounding, processing, packaging, or treating of such products as drugs, pharmaceuticals, toiletries, cosmetics, perfumes, etc., excluding the refining or rendering of fats or oils;
36. Manufacturing of small mechanical devices;
37. Monument and stone works, excluding rock crushing and quarrying;
38. Motels;
39. Office equipment supplies and services;
40. Packaging plants;
41. Paper products manufactured from previously prepared materials;
42. Plumbing and heating shops;
43. Printing and publishing;
44. Rental service storage and yards;
45. Sand and gravel storage yards;
46. Sash and door millworks and similar uses;
47. Sheet metal shops;
48. Sign manufacturing;
49. Storage warehouse;
50. Television and radio broadcasting;
51. Textile and canvas manufacturing;
52. Tire recapping;
53. Truck terminals;
54. Truck stops;
55. Welding shops;
56. Wire and wire products manufacturing;
57. Wholesale and warehouse establishments;
58. Uses similar to those mentioned above in this section may be permitted, subject to the approval of the zoning officer;
59. Veterinary clinics—small and large animals;

60. Other uses permitted under the supplementary use regulations in Sections 17.38.170 through 17.38.240 and structures ordinarily appurtenant to any of the uses listed above in this section.

61. Class one and class two kennels as defined in this title, when located not less than one hundred feet from an R zone.

B. Nothing in this section shall be interpreted as permitting any residential use to be located within an M-1 zone. Existing residential uses shall be subject to the provisions of Chapter 17.48, Nonconforming uses.

(Ord. 602 § 1 (part), 1998; Ord. 456 § 6, 1993; Ord. 53 § 130-2, 1978)

(Ord. No. 11-3, § 4, 5-4-2011)

17.28.030 - Limited M-1L zones.

Whenever an M-1 zone identification has the suffix "L" added, uses therein shall also comply with Sections 17.38.010 through 17.38.080.

(Ord. 53 § 130-3, 1978)

17.28.040 - Accessory uses.

Accessory uses shall include any use customarily accessory and incidental to permitted uses.

(Ord. 53 § 130-4, 1978)

17.28.050 - Conditions.

A. In all M-1 zones, all storage (including storage of waste materials) located on a lot which adjoins a lot in an R or C zone, with or without an intervening street or alley, shall be located wholly within a building or shall be screened from view from the surrounding properties in said R or C zone. In limited zones, uses shall also comply with the conditions in Sections 17.38.010 through 17.38.080.

B. Use of drop hammers or similar equipment is prohibited within three hundred feet of any R zone.

(Ord. 53 § 130-5, 1978)

17.28.060 - Building height limits.

Building height limits shall be as follows: three stories not to exceed sixty-five feet.

(Ord. 53 § 130-6, 1978)

17.28.070 - Minimum lot area.

There shall be no minimum lot area requirement.

(Ord. 53 § 130-7, 1978)

17.28.080 - Minimum lot width.

There shall be no minimum lot width requirement.

(Ord. 53 § 130-8, 1978)

17.28.090 - Minimum yards.

Uses in all M-1 zones shall provide yards as follows and uses in limited zones shall comply with yard regulations in Sections 17.38.010 through 17.38.080.

- A. Minimum front yard depth, thirty feet;
- B. Minimum side yard width, eight feet;
- C. Minimum rear yard depth, none required except on a lot whose rear property line adjoins a lot in an R zone without an intervening alley. In such cases there shall be a rear yard not less than fifteen feet in depth.

(Ord. 53 § 130-9, 1978)

Chapter 17.30 - M-2 HEAVY INDUSTRIAL ZONE

Sections:

17.30.010 - Primary intended use.

The M-2 zone is intended primarily to preserve land for heavier industrial uses at locations where their operations will be neither injurious to nor hindered by residences. It is intended that residences should not be permitted except where such use has already been established on adjoining lots.

(Ord. 53 § 140-1, 1978)

17.30.020 - Permitted uses.

- A. Hereafter in the M-2 zone no building or structure shall be erected, altered, enlarged, or relocated therein which is designed or intended to be used for any use other than the following unless otherwise provided in this title:
 1. Any nonresidential use permitted in the M-1 zone;
 2. Apiaries, commercial;
 3. Bleaching powder manufacturing;
 4. Bolt and nail manufacturing;
 5. Brick and tile manufacturing;
 6. Can manufacturing and tank-coating;
 7. Cellulose manufacturing, excluding nitrates;
 8. Cesspool cleaning equipment storage;
 9. Chemical manufacturing, excluding manufacturing of explosives, ammonia, alcohol, and stove polish;
 10. Concrete block and pipe manufacturing;

11. Concrete transit and mix plants;
12. Die casting;
13. Dye manufacturing;
14. Electric power plants;
15. Emery cloth and sandpaper manufacturing;
16. Fertilizer manufacturing and manure processing;
17. Forging industries using drop hammers;
18. Foundries, including iron, steel, brass, bronze, copper;
19. Galvanizing;
20. Gas storage, heating and chlorine;
21. Glass manufacturing;
22. Graphite manufacturing;
23. Junkyards and salvage yards (including house wrecking, used lumber and salvaged building materials and parts, auto wrecking yards, auto shredding and baling, storage of scrap metals, etc.) when located not less than three hundred feet from an R or C zone or state or federal highway, and provided all activity, merchandise display and storage shall be indoors or screened by a fence, properly erected or conventional masonry, new wood and/or new wire materials having a sight-obscuring effect;
24. Class one and class two kennels as defined in this title, when located not less than one hundred feet from an R zone;
25. Large household appliance manufacturing;
26. Lightweight aggregate manufacturing;
27. Linoleum and oilcloth manufacturing;
28. Match manufacturing;
29. Meat canning, smoking, and curing;
30. Oxygen gas manufacturing;
31. Petroleum wholesale storage and distribution;
32. Pipe manufacturing from clays or metals;
33. Planing mills;
34. Plastic manufacturing;
35. Porcelain enameling works;
36. Poultry and rabbit slaughtering; provided, that such establishments shall not be located within three hundred feet of an R zone;
37. Printing ink manufacturing;
38. Railroad repair shops;
39. Refuse and garbage dumps and incinerators;
40. Rendering of edible fats;
41. Sand and gravel pits by a conditional use permit from the board of adjustment after a finding that

such use will not be unduly detrimental to surrounding properties and that the use will not jeopardize the probable industrial use of surrounding properties through the breaking up of large industrial sites, nor of the site itself upon termination of the extraction operation. The permit shall be temporary, conditional and revocable. Conditions shall be required by the board as it may deem necessary to eliminate any hazard and any detriment to the site or surrounding properties and zone, and to restore the land so that development of the highest potential uses as indicated by this title for the site and surrounding properties and zone will not be impaired. The conditions may include a performance bond and an agreement to rehabilitate the excavation by refilling, recontouring, replacement of subsoil and topsoil, and planting of protective ground cover in order to assure the elimination of such hazard and detriment. No permit shall be issued for extraction of sand or gravel on any site within six hundred feet of any R zone, nor less than fifty from any street or adjoining property line;

42. Sandblasting;
 43. Saltworks;
 44. Sausage manufacturing;
 45. Sawmills;
 46. Slaughterhouses;
 47. Soap manufacturing from previously prepared materials;
 48. Sodium manufacturing;
 49. Stables and the keeping of livestock other than swine;
 50. Stockyards;
 51. Stone quarries, extraction of minerals, oil, and similar uses other than sand and gravel pits; provided, that all open excavations with a slope steeper than one foot vertical for every two feet horizontal, or which has water therein, shall be enclosed by an eight-foot fence;
 52. Tanning;
 53. Tobacco treatment, except chewing tobacco;
 54. Uses similar to those mentioned above, may be permitted, subject to the approval of the zoning officer;
 55. Vegetable oil manufacturing;
 56. Vinegar manufacturing;
 57. Wool pulling and scouring;
 58. Yeast manufacturing;
 59. Other uses permitted under supplementary use regulations in Sections 17.38.170 through 17.38.240, and accessory uses, buildings, and structures appurtenant to any other permitted uses listed above in this section. Nothing in this section shall be interpreted as permitting temporary or permanent residences in the M-2 zone, except that caretakers or owners of the business may have a residence on the premises.
- B. Exceptions. The provisions of this title shall not apply to any operation or use which is subject to review by the State Department of Lands with regard to any mining plan, permit or contract or to any operation of use which is subject to review by the State Department of Natural Resources and Conservation with

regard to a certificate of environmental compatibility and public need. However, when a person applies to either the State Department of Lands or the Department of Natural Resources and Conservation for a permit, that person shall notify the council of commissioners by letter of such action at the time of submitting this application.

A mining area is a designated area of land where mining operations have occurred in the past, are presently occurring, or may occur in the future.

- C. Nothing in this section shall be interpreted as permitting any temporary or permanent residences within an M-2 zone. Existing residential uses shall be subject to the provisions of Chapter 17.48, Nonconforming uses.

(Ord. 602 § 1 (part), 1998; Ord. 456 § 7, 1993; Ord. 225 § 1(F), 1985; Ord. 135 § 1(w)—(z), 1981; Ord. 105 § 1, 1980; Ord. 53 § 140-2, 1978)

(Ord. No. 11-3, § 5, 5-4-2011)

17.30.030 - Conditions.

All storage (including storage of waste materials) located on a lot which adjoins a lot in an R or C zone, with or without an intervening street or alley, shall be located wholly within a building or shall be screened from view from the surrounding properties in said R or C zone.

(Ord. 53 § 140-3, 1978)

17.30.035 - Conditional uses.

1. Acetylene gas manufacturing;
2. Acid manufacturing;
3. Aircraft manufacturing, excluding engine testing within three hundred feet of an R zone;
4. Asbestos manufacturing;
5. Asphalt plants;
6. Automobile manufacturing;
7. Bag cleaning;
8. Battery manufacturing;
9. Blast furnaces;
10. Boilerworks;
11. Carpet manufacturing;
12. Cement, gypsum, lime, plaster of paris, and pozzalin manufacturing;
13. Chlorine gas manufacturing;
14. Coke ovens;
15. Creameries;
16. Crematories;
17. Creosote manufacturing or treating;

18. Disinfectants and insecticides manufacturing;
19. Distillation of bones, the rendering of inedible fats, the disposal of dead animals and the manufacture of glue;
20. Fish canning, smoking and curing;
21. Grain elevators and flour mills;
22. Incinerators;
23. Ironworks;
24. Machinery manufacturing, including heavy equipment and large household appliances;
25. Paint, lacquer, varnish and turpentine manufacturing;
26. Paper manufacturing;
27. Petroleum refineries and distillation of tar;
28. Potash manufacturing;
29. Pyroxylin manufacturing;
30. Rolling mills;
31. Rubber manufacturing;
32. Smelters and ore reduction;
33. Sugar refineries;
34. Tallow manufacturing; and
35. Tire manufacturing.

(Ord. 456 § 8, 1993)

17.30.040 - Maximum bulk and height limits.

Maximum bulk and height limits shall be the same as permitted in the M-1 zone.

(Ord. 53 § 140-4, 1978)

17.30.050 - Minimum yards.

Minimum yard requirements shall be the same as permitted in the M-1 zone.

(Ord. 53 § 140-5, 1978)

EXHIBIT B

Ernie Saracki, Code Enforcement Officer/Zoning
25 W Front St., Butte, MT 59701
Phone: 406-497-6253



The City-County
of Butte-Silver
Bow

Community
Enrichment
Department
25 W. Front St.
Butte, MT 59701

January 2nd, 2020

Consultation Management Trust
P.O. Box 1206
Yarnell, Arizona 85362-1206

Re: Zoning Ordinance Violation, 3547 Harrison Avenue, Butte, Montana, Assessor
Code #953300

Dear Consultation Management Trust,

It has been brought to the attention of the Butte-Silver Bow (BSB) Planning Department via a staff member observing that the property listed above, is currently being used as a heavy equipment storage and rental facility. The property is located in the "C-2" (Community Commercial) zoning designation and is legally described as Tract A2-2, as shown on filed Plat Map 298-B, located in the southern half of Section 31, Township 03 North, Range 07 West, commonly referred to as 3547 Harrison Avenue, Butte, Montana.

Butte-Silver Bow staff had performed an inspection on December 19th, 2019, and had discovered several pieces of heavy equipment on the property mentioned above, including excavators and track loaders. Neither storage nor rental/sales of such equipment is a permitted use in the "C-2" zone.

As mentioned above, the property in question is located within the "C-2" (Community Commercial) zone. As a courtesy, I have attached a copy of the Butte-Silver Bow Zoning Ordinance - Section 17.24.020 - Permitted Uses.

As such, facilities that store and/or rent/sell heavy construction equipment and other such vehicles are not considered permitted uses within the "C-2" (Community Commercial) zone. As a result, the use of this parcel as a construction equipment storage/rental facility must be terminated immediately. The Planning Department will provide you ten (10) days from receipt of this notice to remove from the property all heavy equipment and similar vehicles.

Please be advised that failure to remove all of the above-mentioned equipment from the property within ten (10) days of receipt of this letter may result in a \$500.00 fine and/or six months in jail, each day being a separate offense, as per Section 17.56.110, Violation-Penalty of the BSBMC.

Should you have any questions or concerns regarding this violation, please feel free to contact me at anytime to discuss this matter. I can be reached by E-Mail at Esaracki@bsb.mt.gov or by phone at (406) 497-6253

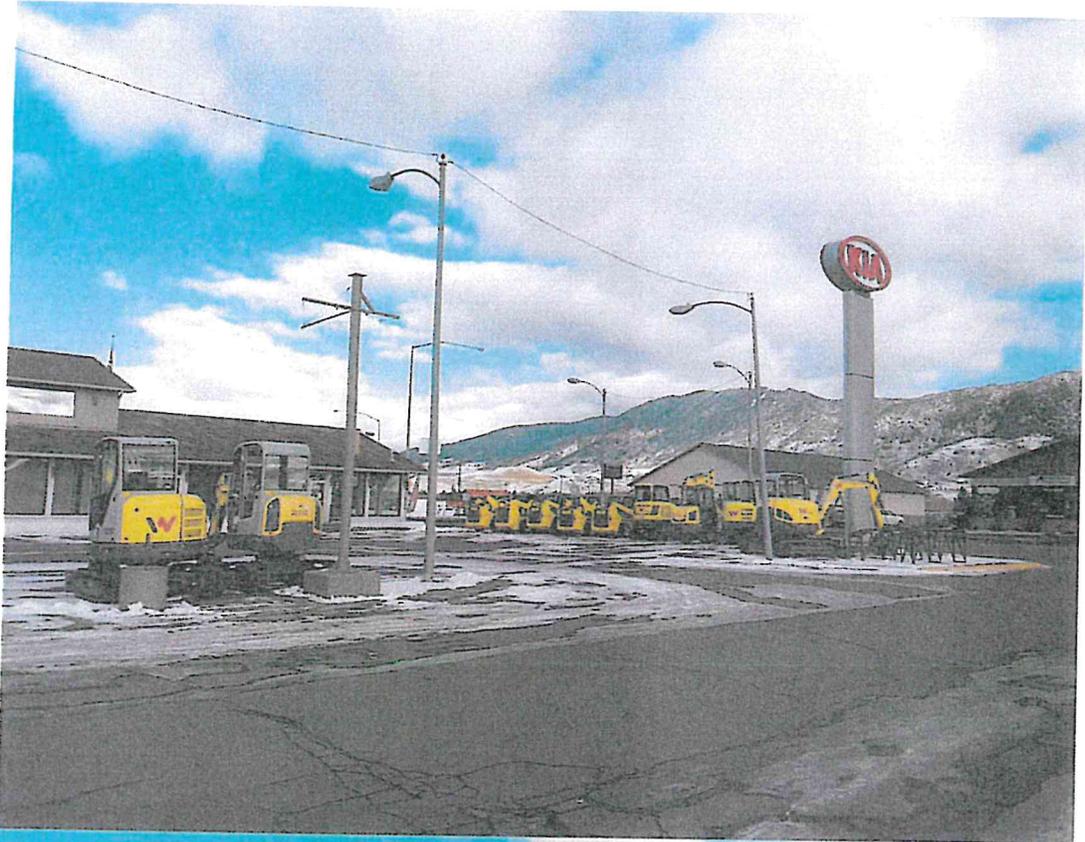
Thank you for your attention to this matter.

Sincerely,



Ernie Saracki
Land Use Planner/Zoning Enforcement Officer

cc: Lori Casey, Planning Director
Dylan Pipinich, Assistant Planning Director
Ed Randall, Community Enrichment Director
John Moodry, Assistant Community Enrichment Director



7.24.020 - Permitted uses.

1. Any use permitted in the C-1 zone;
2. Any use approved as part of an approved PUD;
3. Adult uses, including but not limited to adult book stores, adult motion picture theaters, adult mini-motion picture theaters and adult entertainment cabarets providing no such adult use shall be located within four hundred feet of any residential zone nor within six hundred feet of any existing school or place of worship;
4. Amusement parks, recreation centers, skill device game rooms, including merry-go-rounds, pony riding rings, miniature golf, skating, dancing, ice rinks, bowling, archery ranges, video electronic skill games, billiard tables, and where an accessory use temporary carnivals and similar activities provided that where any such use is located within three hundred feet of any residential zone, a conditional use permit shall be required from the board of adjustment;
5. Antique stores;
6. Armories;
7. Auditoriums;
8. Automotive repair, including engine repair, custom upholstery and body and fender work provided that such activities are conducted totally within a building and where

any such use is located within three hundred feet of any residential zone a conditional use permit shall be required from the zoning board of adjustment;

9. Automotive sale and supply stores;
10. Bakery, candy, ice cream and similar food products manufacturing provided that no more than ten persons shall be employed on the premises;
11. Banks and post offices;
12. Bath houses and commercial pools;
13. Boat sales establishments;
14. Bowling alleys;
15. Billboards subject to the provisions of Chapter 17.42;
16. Building supplies and glass stores when all activity and storage is confined within a building;
17. Bus terminals;
18. Business colleges and similar uses;
19. Catering services;
20. Commercial artists' shops;
21. Dance studios;
22. Department stores;
23. Drive-in eating and drinking establishments;
24. Drive-in window services including banks, film processing and similar uses;
25. Dry cleaning and laundry establishments employing not

- more than ten persons;
26. Exercise centers;
 27. Film processing and photographic studios;
 28. Floor covering and carpet stores;
 29. Funeral homes;
 30. Furniture stores including incidental repair;
 31. Health and massage salons including barber and beauty shops;
 32. Hotels, motels and motor lodges;
 33. Leather goods stores including manufacturing provided that not more than ten persons shall be employed on the premises;
 34. Lodges, convention centers in conjunction with motels or hotels;
 35. Medical and orthopedic supply stores;
 36. Messenger or telegraph service station;
 37. Motorcycle and motorscooter sales and repair, provided such repair, testing and operating is conducted within a soundproofed building so as not to be detrimental to surrounding properties;
 38. Multifamily residences shall be permitted, except as provided under Section 17.24.040, Conditional uses;
 39. Ministorage; self-storage warehouses intended for the storage of nontoxic, noncombustible goods; provided that

all storage be contained wholly within a building and that no materials, vehicles or other items be stored outside;

40. Museums and art galleries;
41. Newspaper offices;
42. Nurseries and commercial greenhouses;
43. Offices, professional and business;
44. Office supply stores;
45. Open sales lots for the sale, rental or display of fruits, vegetables, shrubbery, operable used cars and trucks, luggage trailers, campers, camper trailers not more than twenty-eight feet in length and new mobile homes;
46. Opticians, including incidental manufacturing;
47. Pet shops (excluding kennels) including dog grooming;
48. Printing establishments;
49. Private clubs;
50. Public parking garages;
51. Public service and utility buildings;
52. Repair and rental shops for furniture, small electrical motors, business machines and household appliances;
53. Residential apartments on the second floor of commercial businesses shall be permitted, except as provided under Section 17.24.040, Conditional uses;
54. Restaurants;
55. Secondhand stores and pawnshops provided no goods shall

be displayed outside the building;

56. Service stations and self-service car wash facilities provided that any such establishment adjoining a lot in an R zone shall be improved in compliance with the regulations in Section 17.22.020. Storage of fuel oil at duly authorized service stations for delivery to the consumer by means of truck may be allowed by a conditional use permit from the zoning board of adjustment upon proof that such storage facility and operation thereof will not be unduly detrimental to surrounding properties and that said storage shall be underground. No truck shall be parked on the premises except during actual refueling operations;
57. Skating rinks;
58. Soft water and service establishments;
59. State liquor stores;
60. Studios for broadcasting and commercial recording provided that transmitting towers may be allowed by a conditional use permit from the zoning board of adjustment after a finding that such towers will not be unduly detrimental to surrounding uses or properties;
61. Temporary carnivals and circuses;
62. Theaters, excluding motion pictures drive-ins;
63. Tire shops, excluding tire recapping;
64. Wholesale and mail order offices excluding those establishments whose principle activity is that of a storage

warehouse. Limited storage may be conducted on a premises by a conditional use permit from the zoning board of adjustment after a finding that such use will not be unduly detrimental to surrounding properties and that the site is commensurate in size, shape and location to accommodate traffic volumes and parking;

65. Uses similar to those mentioned above may be permitted subject to the approval of the zoning officer;
66. Other uses permitted under supplementary use regulations in Sections 17.38.170 through 17.38.240, inclusive, of this title; and accessory uses, buildings and structures ordinarily appurtenant to any of the above permitted uses.

(Ord. 552 § 1 (part), 1996; Ord. 456 § 3, 1993; Ord. 323 § 1, 1988; Ord. 225 § 1(H) (part), 1985; Ord. 164 § 1(B), 1982; Ord. 135 § 1(s), (t), (u), 1981; Ord. 117 § 1(B), 1980; Ord. 53 § 110-2, 1978)



Zoning Appeal Form

This form is to be used to appeal a decision of the Enforcement Officer.

The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the Enforcement Officer.

No appeal shall be heard by the Board unless it is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision or determination by the Enforcing Officer.

Contact Information:

WAYNE STERNS
Name of Applicant(s)

3547 HARRISON AVE.
Mailing Address

BUTTE
City

MT.
State

59701
Zip

(406) 533-7380
Phone

Explain Appeal:

Decision of the Enforcement Officer in which you are appealing (Include Section of Zoning Ordinance):

C-2 ZONING : ZONING ORDINANCE VIOLATION FOR
3547 HARRISON AVE

Please explain the reasons you feel the decision is contrary to the meaning of the Zoning Ordinance.

WE DO NOT FEEL THE DECISION IS CONTRARY TO THE MEANING
OF THE ZONING ORDINANCE. WE APOLOGIZE AND REQUEST
AN OPPORTUNITY TO FOLLOW THE PROPER PROCEDURES TO BECOME
COMPLIANT WITH BUTTE-SILVER BOW ZONING ORDINANCE

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the Enforcement Officer erred in an order, requirement, decision, or determination rests with the applicant(s).

Applicant(s) hereby certifies that the information provided in this application is correct and true.

Applicant(s):

Wayne Stems

Signature

2-5-2020

Date

Wayne Stems

Print Name

Signature

Date

Print Name

Designation of Agent:

I (we) hereby appoint the person named below as my (our) agent to represent me (us) and act on my (our) behalf in this request for an appeal, as he/she deems necessary and proper.

Wayne Stems

Print Agents Name

Wayne Stems

Signature of Agent

2-5-2020

Date

Signature of Applicant

Date

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

- ITEM:** **Appeal of the Zoning Officer's Decision #16645** – An appeal by Mark Huntington of the Zoning Officer's determination that a moving rental facility is not a permitted use in the "R-3" (Multi-Family Residence) zone and that the trucks shall be removed, per Section 17.54.030, Appeals, of the Butte-Silver Bow Municipal Code.
- APPLICANT:** Mark Huntington, 5000 Continental Drive, Butte, Montana, agent.
- DATE/TIME:** Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.
- REPORT BY:** Dylan Pipinich, Assistant Planning Director

**VICINITY
MAP:**



**LOCATION/
DESCRIPTION:**

The property is located in an “R-3” (Multi-Family Residence) zone, legally described as a portion of the SE¼ of the Peacock Placer, situated within Section 33, T3N, R7W of the P.M.M. of the City and County of Butte-Silver Bow, State of Montana, commonly known as 5000 Continental Drive, Butte, Montana.

APPEAL:

Per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), the applicant is appealing the Zoning Officer’s decision that a moving truck rental is not a permitted use in the “R-3” zone and that the trucks must be removed from the property to come into compliance with Section 17.14 of the Butte-Silver Bow Municipal Code (BSBMC).

**STAFF
FINDINGS:**

Section 17.14.020 – Permitted Uses of the BSBMC lists the permitted uses in the “R-3” (Multi-Family Residence) zone. This section does not list rental yards as a permitted use. Truck terminals are a permitted use in the “C-M”

(Commercial and Light Industrial) zone and rental service storage and yards are permitted uses within the "M-1" (Light Industrial) zone.

On June 20, 2019, The Copper Tee, LLC, applied for a use variance to locate a screen printing and embroidery business at this location. Having heard all written and oral testimony, the Zoning Board of Adjustment approved the application with the following conditions:

1. The agent shall secure any necessary permits for any alteration to the building or installation of any equipment from Butte-Silver Bow, including but not limited to a building permit and an electrical permit as applicable. Any plumbing or electrical work must be completed by licensed contractors.
2. The agent shall obtain a Business License from the Butte-Silver Bow Treasurer's office for the operations at this location.
3. Prior to erecting any signs on the subject parcel, the applicant shall submit to the Planning Office for review and approval a sign permit application, detailed sign plan, and drawings.
4. Any future business expansions or changes in business will require further review by the Zoning Board of Adjustment.

The property in question has been historically used for a landscaping business and a trucking yard. During the June 20, 2019, meeting, the Zoning Board of Adjustment found that the embroidery business was not contrary to the public interest, that the property did exhibit an unnecessary hardship unique to the property, and the proposal was in the spirit of the Zoning Ordinance. However, the applicant did state that the storage yard would not be utilized for storage.

On May 6, 2020, Butte-Silver Bow Code Enforcement staff performed an inspection of the property and discovered U-Haul trucks and trailers for rent. A violation letter was sent via certified mail on May 8, 2020. The determination by the Zoning Officer, as stated in the letter, is that a moving truck rental is not a permitted use in the "R-3" (Multi-Family Residence) zone and that the trucks must be removed to be in compliance with Section 17.14.020 – Permitted Uses of the BSBMC. See Exhibit A for the violation letter. On June 5, 2020, the applicant submitted an appeal. See Exhibit B for the appeal application.

CONCLUSION: Section 7-1-114(1)(e) Montana Code Annotated (MCA) provides that a local government with self-governing powers, which includes Butte-Silver Bow, must comply with all State laws that require or regulate planning or zoning. Montana Code Annotated as well as Section 17.54 – Board of Adjustment of the BSBMC defines the powers of the Board as follows:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcing officer in the enforcement of this chapter of this title;
- B. To hear and decide special exceptions to the terms of this title upon which such Board is required to pass under such Ordinance;
- C. To authorize, upon appeal in specific cases, such variance from the terms of this title, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done;
- D. In exercising the above mentioned powers, such Board may, in conformity with the provisions of this title, reverse or affirm, wholly or partly, or modify the

order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

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.

Ernie Saracki, Code Enforcement Officer/Zoning
25 W Front St., Butte, MT 59701
Phone: 406-497-6253



The City-County
of Butte-Silver
Bow

Community
Enrichment
Department
25 W. Front St.
Butte, MT 59701

May 8, 2020

Dickenson Family LLP
Jeffery Properties, LLC
The Copper Tee, LLC
5000 Continental Drive
Butte, MT 59701-4368

Re: Zoning Ordinance Violation, 5000 Continental Drive, Butte, Montana, Assessor
Code #117700

Dear Dickenson Family LLC and Mr. Huntington,

It has been brought to the attention of the Butte-Silver Bow (BSB) Planning Department via a staff member's observations, that the property listed above is currently being used as a truck rental facility. The property is located in the "R-3" (Multi-Family Residential) zoning designation and is legally described as the Peacock Placer, a portion of the SE quarter-section of Section 33, Township 03 North, Range 07 West, commonly referred to as 5000 Continental Drive, Butte, Montana.

Butte-Silver Bow staff had performed an inspection on May 6th, 2020, and had discovered several U-Haul trucks and trailers for rent on the property mentioned above. Rental of such equipment is not listed as a permitted use in the "R-3" zone.

The Zoning Enforcement Officer had spoken with you on May 6th, 2020 and had explained the Zoning Ordinance violations to you. You had explained that you had tried numerous times to contact Assistant Planning Director Dylan Pipinich, and that you had left voice messages over the course of the past three weeks. Planning Department personnel state that department phone log records show there had been only one incoming call from yourself received on April 23rd, 2020, which Mr. Pipinich had returned on April 24th, 2020. Additionally, Planning Department staff had stated that this is the second time you had located a business into the location at 5000 Continental Drive *prior to* obtaining Zoning approval.

As mentioned above, the property in question is located within the "R-3" (Community Commercial) zone. As a courtesy, I have attached a copy of the Butte-Silver Bow Zoning Ordinance - Section 17.14.020 – Permitted Uses.

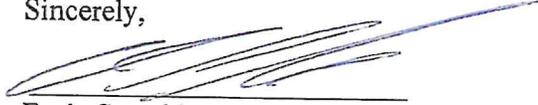
As such, moving truck rental facilities are not considered permitted uses within the "R-3" (Multi-Family Residential). As a result, the use of this parcel as a moving truck rental facility must be terminated immediately. The Planning Department will provide you ten (10) days from receipt of this notice to remove from the property all moving trucks and trailers.

Please be advised that failure to remove all of the above-mentioned equipment from the property within ten (10) days of receipt of this letter may result in a \$500.00 fine and/or six months in jail, each day being a separate offense, as per Section 17.56.110, Violation-Penalty of the BSBMC.

Should you have any questions or concerns regarding this violation, please feel free to contact me at anytime to discuss this matter. I can be reached by E-Mail at Esaracki@bsb.mt.gov or by phone at (406) 497-6253

Thank you for your attention to this matter.

Sincerely,



Ernie Saracki
Land Use Planner/Zoning Enforcement Officer

cc: Lori Casey, Planning Director
Dylan Pipinich, Assistant Planning Director
Ed Randall, Community Enrichment Director
John Moodry, Assistant Community Enrichment Director

The R-3 zone is intended primarily to accommodate multi-family residences. The zone may be used to provide for apartment developments in residential areas, to encourage developments of lots on which single-family residences would be impractical because of terrain, rock, or similar condition, to permit a greater number of persons to reside near secondary focal points of Butte-Silver Bow, state of Montana, such as outlying business or industrial employment centers, or to establish a buffer between the one-family residence areas and the less restrictive nonresidential zones. To achieve this intent, the regulations in this chapter and the supplementary regulations in Chapter 17.38 shall apply in the R-3 zone.

Ord. 53 § 60-1, 1978)

.14.020 - Permitted uses.

Hereafter in the R-3 zone, no building or structure shall be erected, altered, enlarged, or relocated therein which is designed or intended to be used for any use other than the following unless otherwise provided in this title:

A. Dwellings:

1. Single-family;
2. Two family;
3. Multi-family;
4. Manufactured homes.
 - a. Class A,
 - b. Modular.

B. Any nonresidential use permitted in the R-1 and R-2 zones;

C. Room or room and board and boarding homes for not more than eight persons provided by a resident proprietor;

D. Accessory uses ordinarily appurtenant to permitted uses. Accessory structures, including detached private garages, shall not be located within the front yard, nor less than ten feet from any adjoining side street. Accessory structures may extend to within three feet of the rear and inside property lines when an alleyway exists along the rear of the property or to within five feet of the rear and inside property lines when an alley does not exist. Private garages attached to or within the residence shall adhere to the setback requirement of the residence. In all cases, there shall be a minimum off-street parking apron of twenty feet in length directly in front of all garage door entrances when accessing a street either to the front or side of a residence. Where garage doors access an alley, the off-street parking apron shall be at least ten feet, except, that private garages accessory to multifamily residences shall be designed and constructed in harmony with the general appearance of the main building and shall not be operated as a public repair garage except that services may be rendered for tenants when limited to car washing, polishing, lubrication, refueling, tire repairing, and minor adjustments when performed entirely within an enclosed garage building. All garages two or more stories in height shall be enclosed structures;

E. Day care homes, family or group;

F. Other uses permitted under the supplementary use regulations in Sections 17.38.170 through



THE CITY-COUNTY OF
Butte-Silver Bow

Planning Department
Lori Casey, Director
Ph: 406-497-6250 E-Mail: planning@bsb.mt.gov

Zoning Appeal Form

This form is to be used to appeal a decision of the Enforcement Officer.

The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the Enforcement Officer.

No appeal shall be heard by the Board unless it is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision or determination by the Enforcing Officer.

Contact Information:

Mark Huntington
Name of Applicant(s)

5000 Continental Dr.
Mailing Address

Butte
City

MT
State

59701
Zip

406-475-0338
Phone

Explain Appeal:

Decision of the Enforcement Officer in which you are appealing (Include Section of Zoning Ordinance):

The decision by the enforcement officer is that The Copper Tee is in violation as per section 17.56.110 by having a moving truck rental business in an R-3 zone. We have been asked to remove rental trucks from the lot.

Please explain the reasons you feel the decision is contrary to the meaning of the Zoning Ordinance.

(Please see attached word document)

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the Enforcement Officer erred in an order, requirement, decision, or determination rests with the applicant(s).

Applicant(s) hereby certifies that the information provided in this application is correct and true.

Applicant(s):

Mark Huntington
Signature

6-5-20
Date

Mark Huntington
Print Name

Signature

Date

Print Name

Designation of Agent:

I (we) hereby appoint the person named below as my (our) agent to represent me (us) and act on my (our) behalf in this request for an appeal, as he/she deems necessary and proper.

Print Agents Name

Signature of Agent

Date

Signature of Applicant

Date

This appeal is not to argue that we are not in violation of an R-3 zone permitted uses. I completely understand that we are in violation with the zoning and allowed uses of that zone. The appeal I hope to make is to be able to keep the moving truck rental business at this address.

The building on this property was built for commercial use and has housed commercial operations as long as it has been in use. The property is also in the 100 year flood plane and if a commercial operation is to exist here, the ability to move trucks off the lot in the case of a flood makes for a good use of the land.

The lot is kept neat and trucks are parked orderly each evening. They do not make anymore noise than a regular use vehicle. I do not believe the use of this property as a truck rental facility has created an impact on any of the neighbors and I would work to solve any issues with neighbors relating to this business. I hope to keep the business in operation and the trucks on the lot.

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

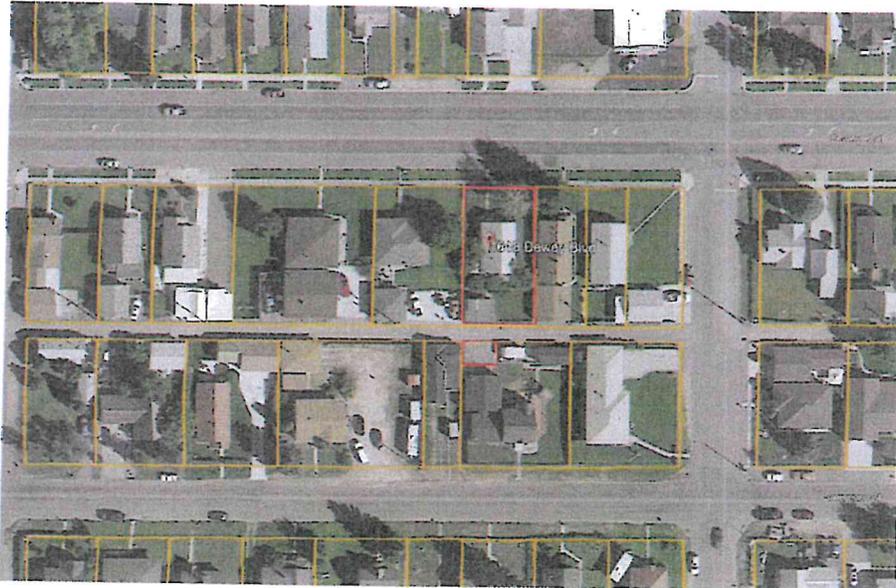
ITEM: Variance Application #16658 - An application for a variance to construct a detached garage three feet (3') from the rear property line, varying from the minimum required ten foot (10') parking apron requirement in Section 17.12.020-C - Permitted Uses of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: Isaak Jones and Meeka Yager, 1648 Dewey Blvd, Butte, Montana, owners.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORT BY: Dylan Pipinich, 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 5-6, Block 33 of the Bellevue Addition, commonly known as 1648 Dewey Blvd, Butte, Montana.

PROPOSAL: The applicants are applying for a variance to locate a (28’W x 24’D) detached garage with a three foot (3’) rear setback. The proposal includes two garage doors entering the alley, varying from the minimum ten foot (10’) parking apron requirement.

STAFF

FINDINGS: The Butte-Silver Bow Municipal Code, Section 17.12.020, Permitted Uses (C), requires that a detached garage exiting directly to an alley have a minimum ten foot (10’) parking apron from the property line. In order for the applicants to locate the garage with doors exiting into the alley within three feet (3’) of the rear property boundary, the Zoning Board of Adjustment must determine that the proposal meets the three criteria for the granting of

variances established by the Montana Supreme Court and approve such variance.

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.

Nonconforming parking aprons may result in safety hazards for pedestrians or vehicles utilizing the adjacent alley. This alleyway, running east-west between Kennedy Avenue and Wynne Avenue is accessed by seven other residences. The garage located directly east of the subject parcel has an existing nonconforming parking apron. The remaining garages on this block have garages that do not enter the alley directly and meet all parking apron standards.

In this particular instance, the applicants own the north ten feet (10') of the lot across the alley and utilized this property to access the previous garage that was located on the rear property line. This garage has since been demolished. The applicants are proposing to install a 180-degree bubble mirror on this property in an attempt to increase visibility for vehicles pulling forward into the alley from one of the doors on the proposed garage.

Staff acknowledges that the addition of a bubble mirror would decrease the potential hazard of driving a vehicle blindly into an alleyway, however, staff does not believe the addition of the mirror fully mitigates the hazard. The mirror would be located across the alley from the garage approximately 20 feet from the garage door. If the mirror was properly maintained and cleared from debris and snow, it may assist to identify vehicles traveling down the alleyway. Staff has concerns that it would not assist in identifying pedestrians in the alleyway, especially small children.

As proposed on the site plan, the garage would have a sixteen foot (16') wide garage door and an eight foot (8') wide garage door; both garage doors require a ten foot (10') parking apron. While the mirror may assist with visibility of the sixteen foot (16') door, the location of the mirror across the alley would not provide any assistance for the eight foot (8') door.

As stated above, the applicants have made an attempt to assist with some of the visibility concerns, however, staff does not believe that the safety hazard of the reduced parking apron would be fully mitigated and, therefore, the proposal 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 6,600 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 three foot (3') side yard setback and ten foot (10') parking apron. There is adequate room available on the subject parcel to locate a garage that fully complies with the development standards in the Zoning Ordinance. If the applicants were to locate the garage doors on the east side of the garage instead of into the alley in a similar fashion to most of the other residences in this block, the parking apron requirement would be satisfied.

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 their property in a way that may be suitable. 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 pedestrian and vehicle traffic in the alley, even with the proposed bubble mirror. Staff is also very hesitant to support this proposal when an alternative exists (constructing

the doors on the east side of the garage) that would be in conformance with the Zoning Ordinance and reflective of how many surrounding residences constructed garages to in compliance.

Based on the above discussion, it appears the proposed garage may be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

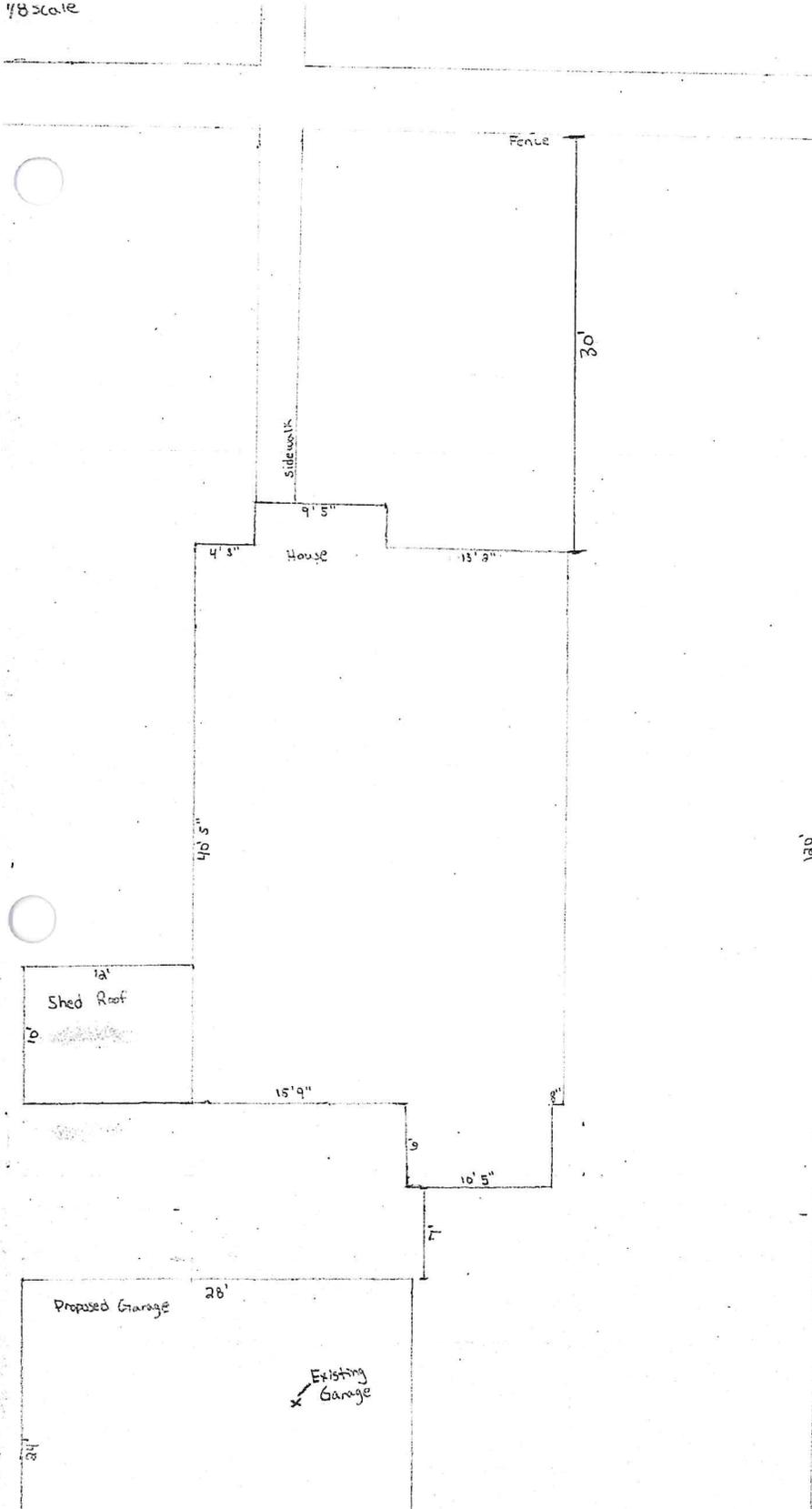
CONCLUSIONS:

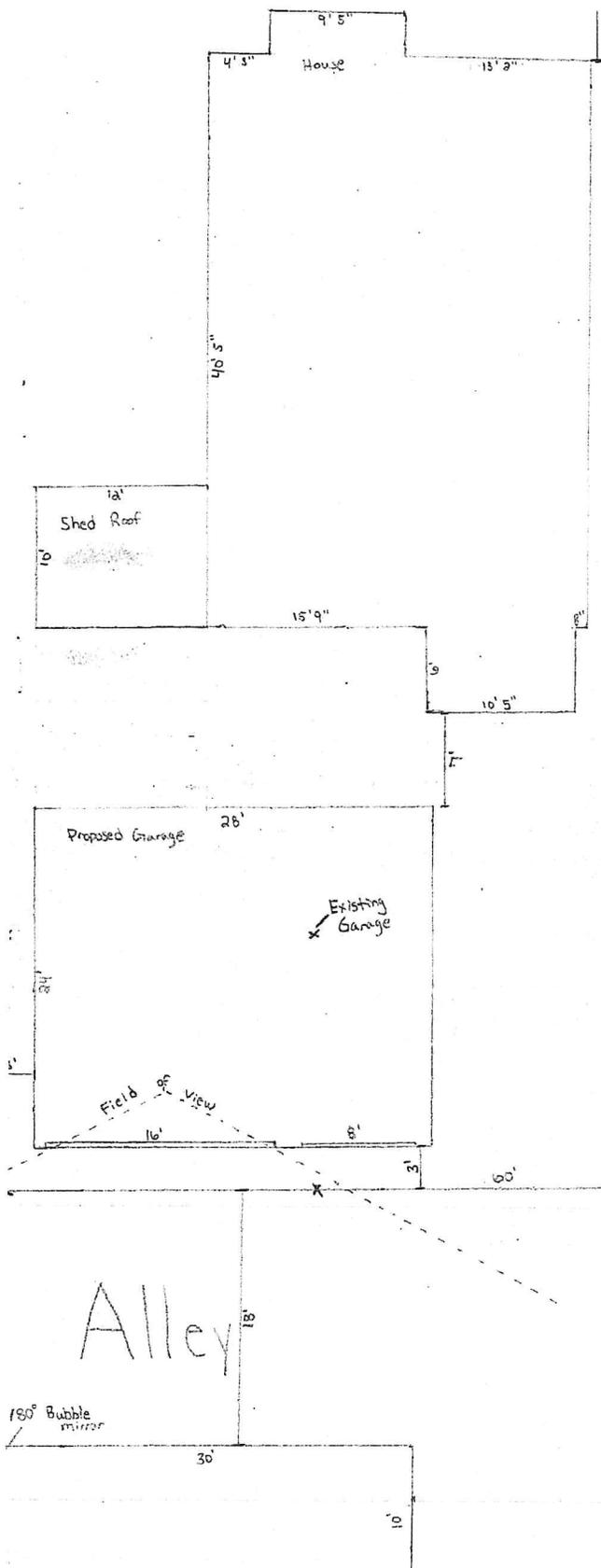
As discussed within the report, the requested variance to construct a detached garage with doors entering the alleyway three feet (3') from the rear property line does not meet any of the Montana Supreme Court's criteria for a variance. While the proposal makes an attempt to mitigate safety concerns, the proposal is still contrary to the public interest, does not exhibit a hardship, and is not in the spirit of the Zoning Ordinance to allow for reasonable use of private property. Therefore, staff recommends that the Board deny Variance Application #16658.

1/8 scale

House - 1182 sq ft
 Lot - 7200 sq ft
 Proposed Coverage - 673 sq ft
 Shed Roof - 120 sq ft
 Lot Coverage - 27.4%

Source: [unclear]
 • 180° bubble mirror
 • increased field of view with wider door
 • offset 3' off alley instead of on alley
 • 3' off neighbors property instead of 2'





- Notes & Improvements:
- 180° Bubble mirror
 - Increased field of view with wider char
 - offset 3' off of alley/ instead of on alley
 - 3' off neighbors property instead of 1'

180

180° Bubble mirror

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

ITEM: Use Variance Application #16669 - An application for a use variance to utilize an existing manufactured home as a single family residence, varying from Section 17.24.020, Permitted Uses, of the BSBMC.

APPLICANTS: Jasna Pantic, 15 Buckhorn Trail, Bozeman, Montana, owner, and WJ Properties, LLC, 1107 Howard Avenue, Butte, Montana, agent.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

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 Lot 8 and the south 20' of Lot 9, Block 36 of the Bellevue Addition, commonly known as 2001 Sampson Street, Butte, Montana.

PROPOSAL: The agents are proposing to utilize the existing 1973 manufactured home and detached garage as a single family dwelling for rental purposes. The manufactured home has previously been utilized as office space and has since been vacant.

STAFF

FINDINGS: Butte-Silver Bow Municipal Code, Section 17.24.020, Permitted Uses, lists the permitted uses within the "C-2" 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 single family residence is not considered a permitted use within the "C-2" zone. Therefore, the Zoning Board of Adjustment must determine if the proposal meets the three criteria for the granting of variances established by the Montana Supreme Court prior to granting a variance for this proposal.

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. The Community Commercial zone is

regarded as a more intensive use and 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 manufactured home was originally utilized for residential purposes but more recently has been utilized for professional office space. However, there were no design changes to the manufactured home to accommodate the office space and the existing structure and detached garage are designed for residential living.

In this particular case, the applicants are requesting that they be permitted to utilize the existing single family dwelling for a residential rental property in a zone developed for more intensive commercial uses. The property in question is located directly across the street from the neighboring residential zone. In that regard, potential impacts from the residential dwelling on neighboring property owners will most likely be less than what a typical commercial use would have on an adjacent property.

As stated above, in general a residential use is considered to be a less intensive use than a commercial use. The applicants should be aware that the residential use of the facility in a commercial zone does not receive the same protections as a residence in a residential zoning district. For example, there are a number of permitted uses within the community commercial zoning district that may

have a significant impact on the applicants' residential living in regard to noise, traffic, smells, lighting, hours of operation, etc.

Based on the above discussion, staff believes that the approval of the requested use 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.

In this particular case, the presence of the existing manufactured home designed for residential living and the size of the parcel itself would appear to constitute a hardship, as defined by the Montana Supreme Court. With exception to the recent office use, the structures on the property have been designed and utilized for residential living prior to the adoption of the Zoning Ordinance. Also, the parcel in question is 5,760 square feet in size, which is substandard for even a residential lot. It would be difficult to fit required parking and storm water retention, etc., for a use permitted in the zone on a parcel of this size.

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. As stated above, the size of the parcel and the existing manufactured home could create a scenario where a reasonable return is difficult.

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 manufactured home has been historically utilized as a residence and it is located across the street from the "R-2" (Two Family Residence) zone. Therefore, the proposal should not alter the character of the neighborhood.

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.

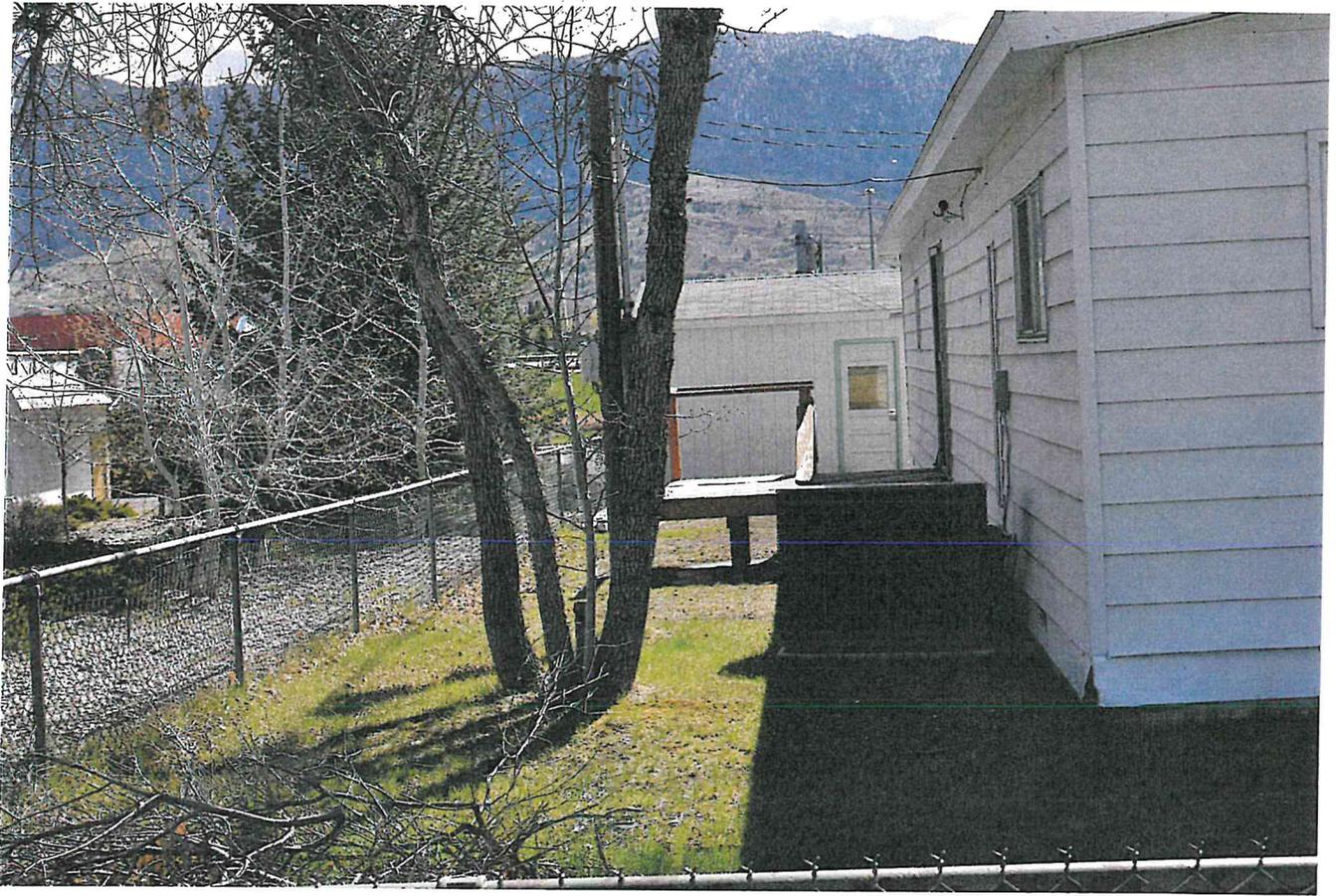
The utilization of the property for residential purposes must be reviewed in regard to impacts on the public health, welfare and safety. In this particular case, the structures located on the property have been in existence prior to the adoption of the Zoning Ordinance and are designed for residential use and, therefore, should not have negative impacts on public

health and safety.

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 any adjacent commercial uses.

CONCLUSION: As discussed within the report, the requested use variance to utilize an existing manufactured home in the "C-2" zone as a single family dwelling for rental purposes meets all of the Montana Supreme Court's criteria for a use variance. Therefore, staff recommends approval of Use Variance Application #16669 with the following condition:

1. Any expansion of the residential use or change in use that does not meet the permitted uses of the "C-2" zone will require further review by the Zoning Board of Adjustment.











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

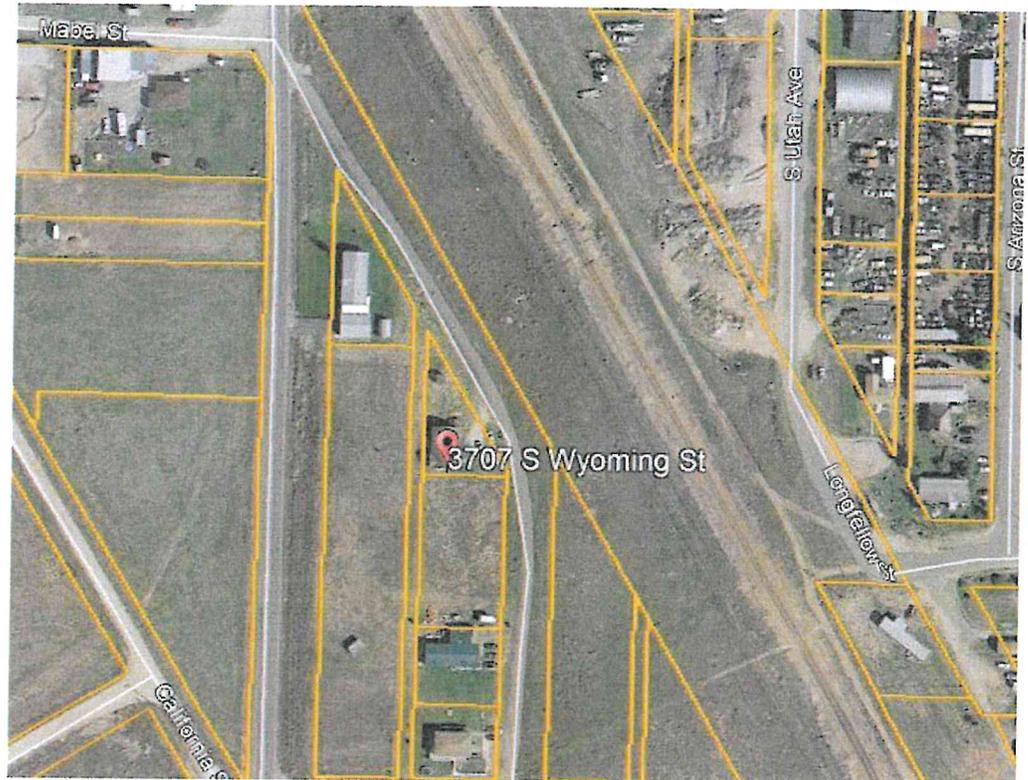
ITEM: **Variance Application #16670** - An application for a variance to construct a detached garage (24'D x 48'W) that would be located within ten feet (10') of the front property boundary, varying from the requirements of Section 17.14.020 - D, of the BSBMC.

APPLICANTS: Karena Wright, 3707 S. Wyoming Street, Butte, Montana, owner, and Rick Schelin, 3707 S. Wyoming Street, Butte, Montana, agent.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-3" (Multi-Family Residence) zone, legally described as Lots 1-2, Block 9 of the Saint Paul Townsite, commonly located at 3707 South Wyoming Street, Butte, Montana.

PROPOSAL:

The applicants are proposing to construct a twenty-four foot (24') wide by forty-eight foot (48') long garage that is sixteen feet (16') in height that would extend to ten feet (10') from the front property line. The parking aprons for the two proposed garage doors, however, meet the requirement of twenty feet (20').

STAFF

FINDINGS:

The Butte-Silver Bow Municipal Code, Section 17.14.020 – D requires detached private garages cannot be located

within the front yard, which is twenty feet (20') from the front property boundary. In order to locate the garage within ten feet (10') of the front property boundary, the Zoning Board of Adjustment must determine that the proposal meets the three criteria for the granting of variances established by the Montana Supreme Court and approve such variance.

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

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

Setback requirements have been established by the Council of Commissioners to protect the public interest by providing sufficient space, light and air between adjacent buildings to prevent the spread of fire. In addition, setback standards provide for uniformity and structure within residential neighborhoods.

This particular block is currently comprised of four home sites with the remainder of the area being vacant. The majority of the other existing homes and accessory structures seem to meet the standards of the Zoning Ordinance. This is primarily because the other parcels are a typical rectangular shape, where the applicant's property is a triangular shape. There is a significant boulevard area between the property boundary and the street, which is mostly unimproved. Therefore, staff does not believe that constructing the garage ten feet (10') from the front property line would negatively affect space, light, and air.

Based on the above discussion the proposed addition to the existing home would not appear to 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.

This particular parcel, while it is over 8,500 square feet in size, is located on the north end of the block and is triangular in shape. In fact, the property is only approximately thirty-seven feet (37') wide at the north end of the proposed garage, making a twenty foot (20') setback impractical. As such, the property shape is a condition that qualifies for a hardship.

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

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

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

While the proposal states the garage would be

located within ten feet (10') of the front property line, the applicant has located the garage doors in a manner that allows for the required twenty foot (20') parking apron to be met. In addition, the proposed garage will not encroach into any vision clearance triangles. Therefore, it does not appear that the location of the proposed garage would create any public health and safety hazards.

However, setback requirements specified by the Zoning Ordinance were also established to create uniformity within residential zones. The existing front yard setbacks of the other three dwellings seem to meet the requirements of the Zoning Ordinance, however, because South Wyoming Street is largely unimproved and there is a significant distance between the road and the property lines, locating the garage within ten feet (10') of the property boundary would not be out of character for the neighborhood.

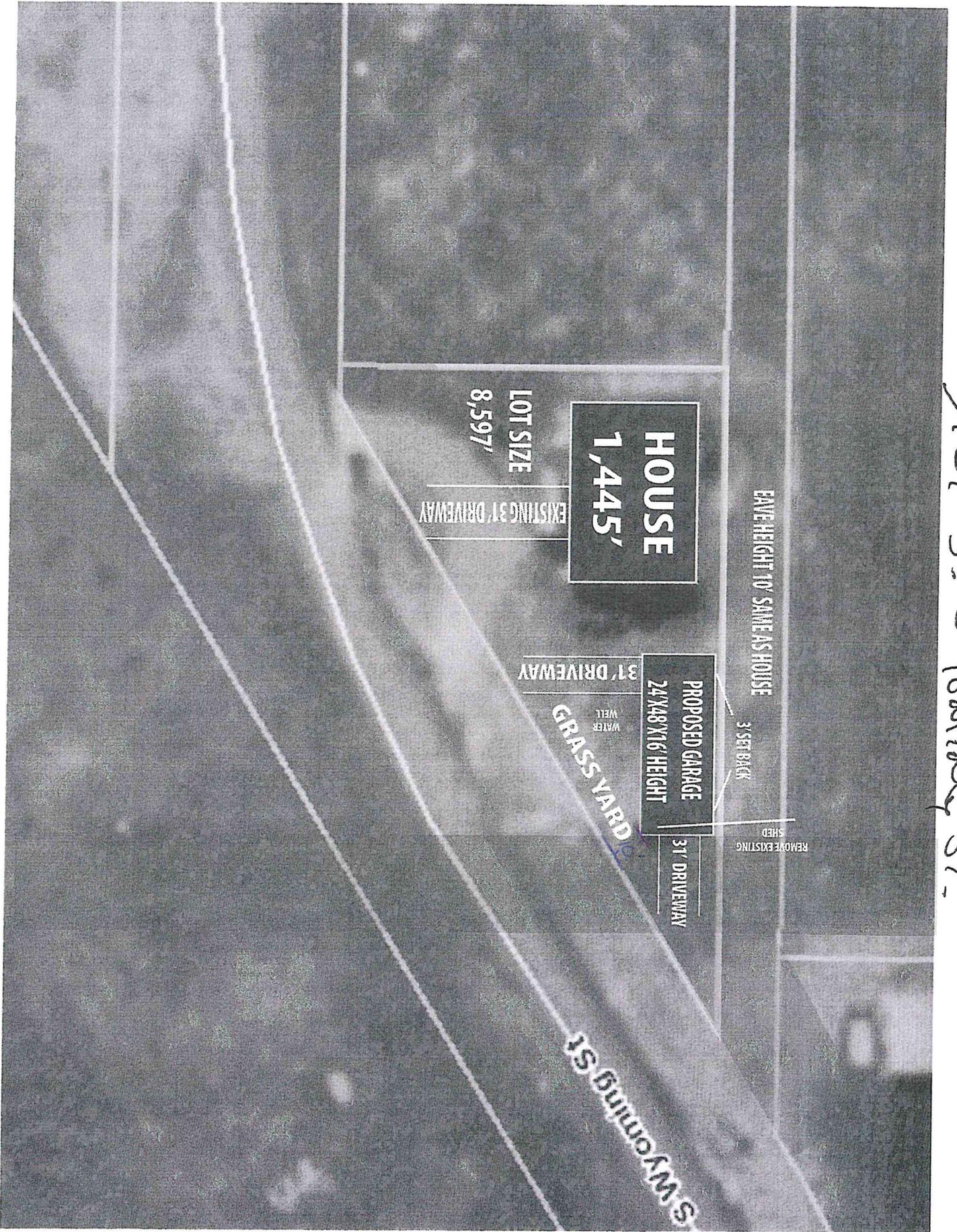
Therefore, in this case, a ten foot (10') front yard setback would not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

CONCLUSION: Based on the above discussion, the requested variance to construct an addition within ten feet (10') of the South Wyoming Street front property boundary meets the Montana Supreme Court's criteria for a variance. Therefore, staff would recommend approval of Variance Application #16670 with the following condition:

1. The applicants shall ensure that the construction of all facilities on the parcel are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the

Zoning Ordinance.

3707 S. Wyoming St.



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

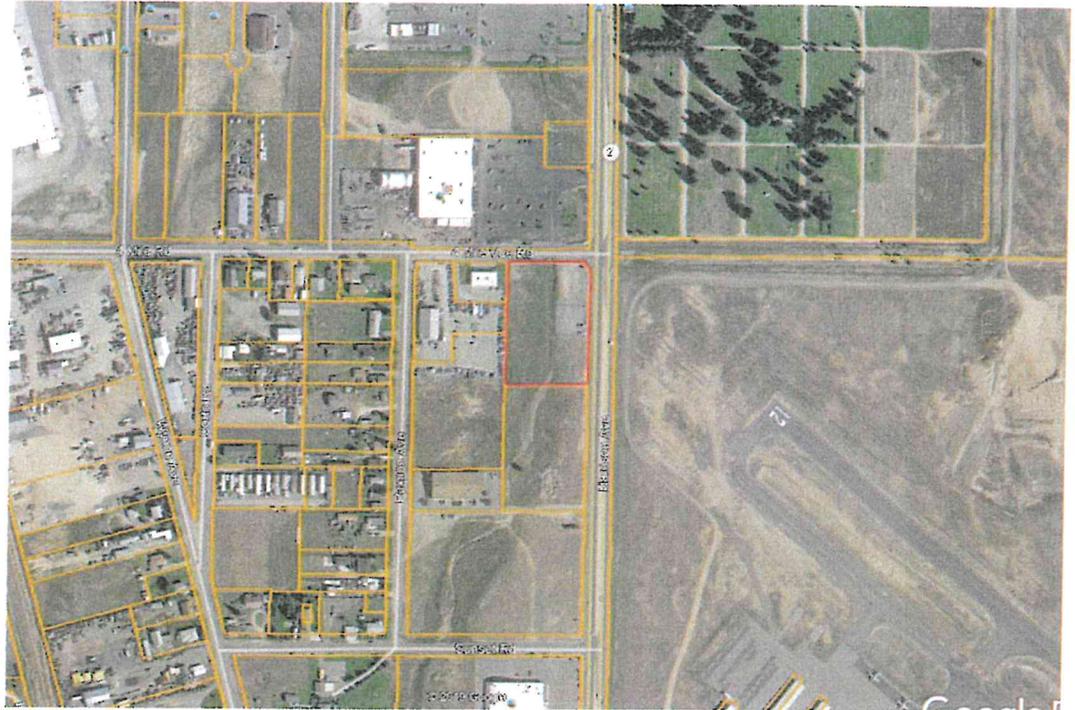
ITEM: Variance Application #16672 - Amendment to Condition of Use Variance Permit #15736 - An application requesting modification of Condition of Approval #13, which required a permanent office structure to be built by August 20, 2020, by requesting an additional twelve (12) months to construct a permanent office.

APPLICANT: Western States Equipment Co., 500 E. Overland Road, Meridian, ID 83642, owner, David McKinnon, 3558 N. Garden Center Way, Boise ID 83705, agent.

DATE/TIME: Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORTED BY: Dylan Pipinich, Assistant Planning Director

**VICINITY
MAP:**



**LOCATION/
DESCRIPTION:**

The property is located in a "C-2" (Community Commercial) zone, legally described as Sub 1, Section 6, T2N, R07W, POR TR1, All TR2 and TR3 of the City and County of Butte-Silver Bow, State of Montana, commonly known as 4005 Harrison Ave., Butte, Montana.

**PROPOSAL/
HISTORY:**

Western States Equipment Co. applied for a use variance in February of 2018. Use Variance Application #15736 was reviewed by the Zoning Board of Adjustment (Board) on February 15, 2018. After hearing public testimony for and against the proposed use of the property, the Board approved Use Variance Application #15736 with twenty (20) conditions of approval. Those conditions are:

1. The applicants shall install an eight foot (8') screened (privacy) fence around the rental equipment storage

yard. No part of this fence shall encroach into the Sand Creek 100-year floodplain.

2. Prior to receiving an excavation permit, the applicants shall obtain an Elevation Certificate (FEMA Form 086-0-33), that shows that the structure and parking lot would be located above the Base Flood Elevation of Sand Creek at this particular location. The Elevation Certificate shall be completed and signed by a licensed surveyor or engineer and then filed with the Butte-Silver Bow Planning Department.
3. Prior to receiving to an excavation permit, a licensed surveyor or engineer shall mark the limits of the floodplain. Best management practices shall be implemented for working around a designated floodplain including but not limited to construction vehicles or construction equipment shall not encroach upon the Sand Creek 100-year floodplain. No construction equipment shall be parked inside the floodplain.
4. Prior to receiving a building permit, the applicants 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 13.04, Wastewater Treatment System, of the Butte-Silver Bow Municipal Code.
 - b) Compliance with all sections of Chapter 13.20, Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24, Main Extensions and Material Specifications.
5. Prior to receiving an excavation permit, the applicants shall submit an engineering plan and

analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte-Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit or variance. This engineering plan shall also show in detail the processing of water from the sump located in the equipment yard.

6. Prior to the issuance of a building permit, the applicants shall submit to the Butte-Silver Bow Public Works Road Division for review and approval a detailed engineering plan (including asphalt paving) of the improvements to the driveway approach off of Four Mile Road. The applicants shall submit a cost estimate for the installation of the approved approach.

This cost estimate will be used as the paving bond plus ten percent (10%) to secure the installation of the above approach.

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

7. Prior to the issuance of an excavation permit, the applicants shall obtain an approach permit from the Montana Department of Transportation for the proposed driveway approach off of Harrison.
8. The surface of the rental equipment yard, including the driveway approach from Harrison, shall be maintained and coated with a magnesium chloride compound on a regular basis to ensure that gravel, mud, dust and other debris are not carried out onto Harrison Avenue.

9. Prior to the issuance of a building permit, the applicants shall present the parking plan for review and approval. At a minimum, the plan shall meet the parking requirements of Chapter 17.40.900 – Off-street parking – Table of minimum standards.

The applicants shall submit a cost estimate from a licensed contractor for the materials and installation of the approved parking plan. This cost estimate will be used as the paving bond amount plus ten percent (10%).

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

10. Prior to receiving a building permit, the applicants shall install or bond for curb/gutter and sidewalk adjacent to Four Mile Road, per the requirements of Section 17.38.050. Prior to receiving an excavation permit, the applicant shall submit a detailed sidewalk plan to the Butte-Silver Bow Public Works Department for review and secure written approval. At a minimum, the design shall meet the Americans with Disabilities Act. The applicants shall submit a cost estimate for materials and installation of the approved curb/gutter and sidewalks from a licensed contractor.

This cost estimate will be used as the sidewalk bond plus ten percent (10%) to secure the installation of the above stated curb/gutter and sidewalks.

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

11. Prior to the issuance of a building permit, the applicants shall submit a detailed landscaping plan to the Planning Department staff for review and

approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC. This landscaping plan shall also incorporate a line of trees to provide screening between the east property line of the subject parcel and the east fence line of the rental equipment yard.

The applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the approved landscaping plan. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

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

12. Prior to receiving a sign permit, the applicants shall submit to the Planning Department for review and approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for the "C-2" zone.
13. The office trailer, as submitted at the hearing by the applicants, shall be utilized for the facility for a maximum of two (2) years (February 20, 2020). On or before February 20, 2020, a brick and mortar structure shall be constructed to be utilized as the office for the rental facility.
14. The applicants shall maintain the unimproved portion of the property and keep it devoid of weeds.
15. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from Montana Department of Environmental Quality

(MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.

16. Any future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.
17. Prior to the issuance of a building permit, the applicants shall complete, submit, and receive approval of FAA form 7460 to ensure that proposed structure heights meet all applicable FAA requirements. The form is available from the FAA website and can be submitted online.
18. Prior to the approval of an excavation permit, the applicants shall submit to the Butte-Silver Bow Fire Marshal a set of fire protection engineered plans for the 1,000 gallon above-ground fuel storage tank. At a minimum, the plans shall include tank design, distances of the fuel storage tank from property lines, roadways and other structures, tank protection from accidental collisions, fire hydrant availability and distance and spill containment. A written approval from the Butte-Silver Bow Fire Marshal stating that all requirements of the Butte-Silver Bow Fire Prevention Bureau for this facility have been met will need to be provided to the Butte-Silver Bow Planning Department.

Any additional fuel storage tanks placed on the subject property will require further review and approval from the Zoning Board of Adjustment and the Butte-Silver Bow Fire Prevention Bureau.

19. The applicants shall ensure that the construction of or placement of all facilities on the subject property, including but not limited to the office structure, the washing and repair pads and the 1000 gallon fuel storage tank are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance. Any electrical and/or plumbing work must be inspected and permitted by the Butte-Silver Bow Electrical Inspector and also by the Building Official. The electrical permit must be purchased and the electrical service be installed by a licensed electrician. All plumbing work must be performed by a licensed plumber.
20. At no time shall the wash water from the sump be discharged to adjacent surface water drainages. A detailed sump disposal plan will need to be reviewed and approved by the Butte-Silver Bow Public Works Department Metro Sewer Division.

In January of 2020, the applicants requested an additional six (6) months to construct the permanent office and the additional time was granted by the Zoning Board of Adjustment. The applicants applied to expand their operation to the south and construct a maintenance shop in May of 2020. The construction of a maintenance shop was granted but the Board denied the request to expand the equipment yard. At this time, the applicant is requesting that Condition No. 13 of their original use variance be amended to allow them to use the office trailer for an additional twelve (12) months to allow them to secure property located in an industrial zone and construct a new facility and yard.

STAFF FINDINGS: The applicants have stated that because of the nearby airport, floodplain and zoning designation of the property, they wish to secure a parcel of land within an industrial

zone that is more conducive to their operations and allows for expansion for their growing business.

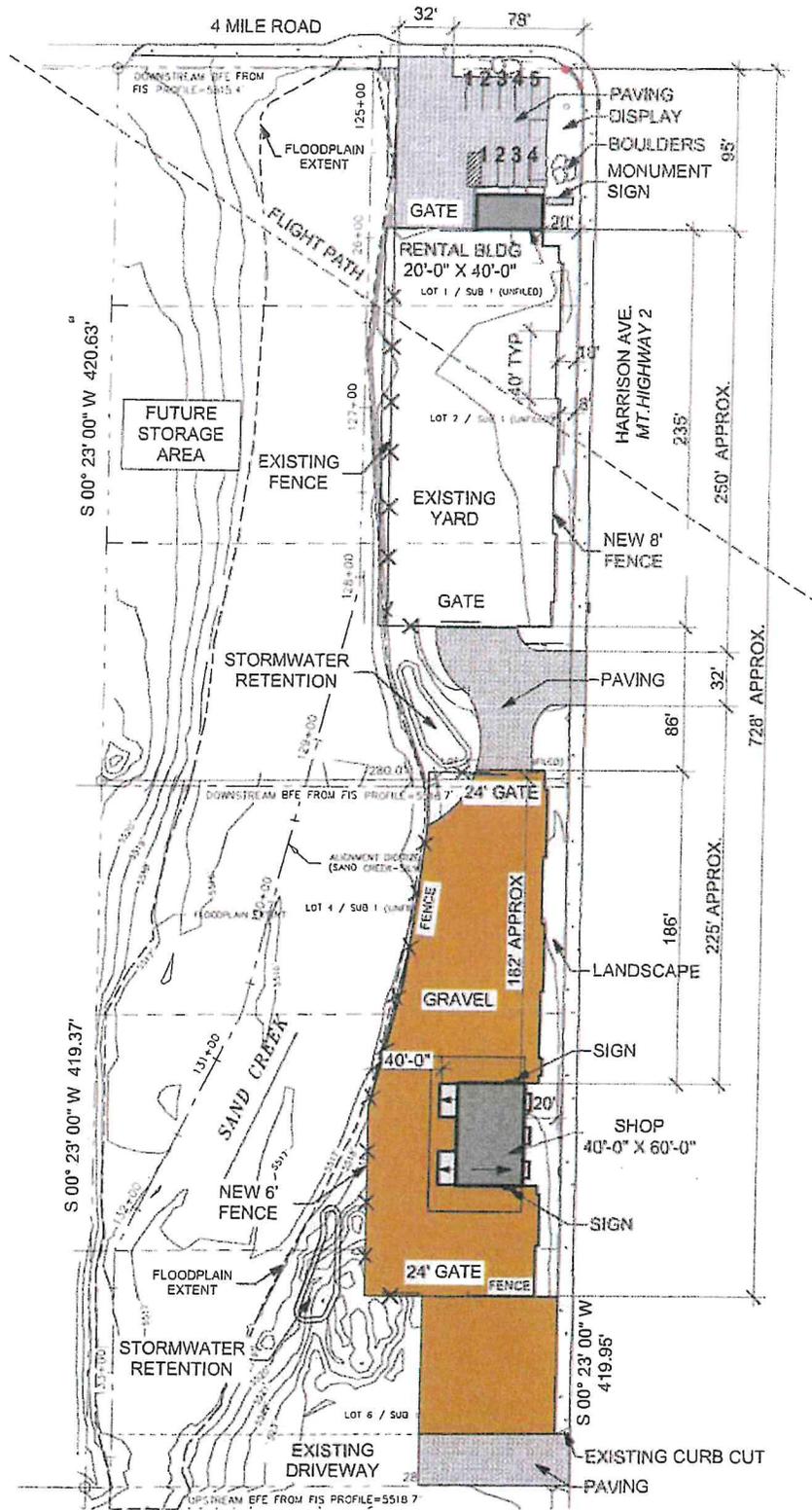
The issue before the Zoning Board of Adjustment is whether allowing the applicants to utilize the trailer for an office for an additional twelve (12) months will result in greater and unreasonable impacts on the adjoining property owners than if the condition were to remain the same.

The intent of Condition of Approval No. 13 was to reduce the visual impacts along Harrison Avenue, which is Butte's major commercial arterial street. The visual impacts amplify the industrial feel of the equipment rental yard at a location along Harrison Avenue that has seen considerable commercial remodeling in the recent years.

In evaluating the applicants' amendment request, it is important to note that the request is to allow additional time to secure a new site with the proper zoning designation to construct a new facility and continue their operations. Once this is complete, the impacts of the industrial use on the property will be mitigated entirely. If the additional time is granted to allow the applicants to continue their current operations while they secure a parcel and construct a facility that is entirely in conformance with the Zoning Ordinance and remove the industrial use from Harrison Avenue completely, staff believes it may be reasonable to grant a twelve (12) month extension.

CONCLUSION: Based on the above discussion, staff believes that the requested amendment for an additional twelve (12) month extension to allow the use of the office trailer until a permanent location in compliance with the Zoning Ordinance is found is consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property and does not present an undue burden on the surrounding neighborhood.

Therefore, staff would recommend approval of the proposed amendment to Condition No. 13.



CAT RENTAL STORE

1/31/2020

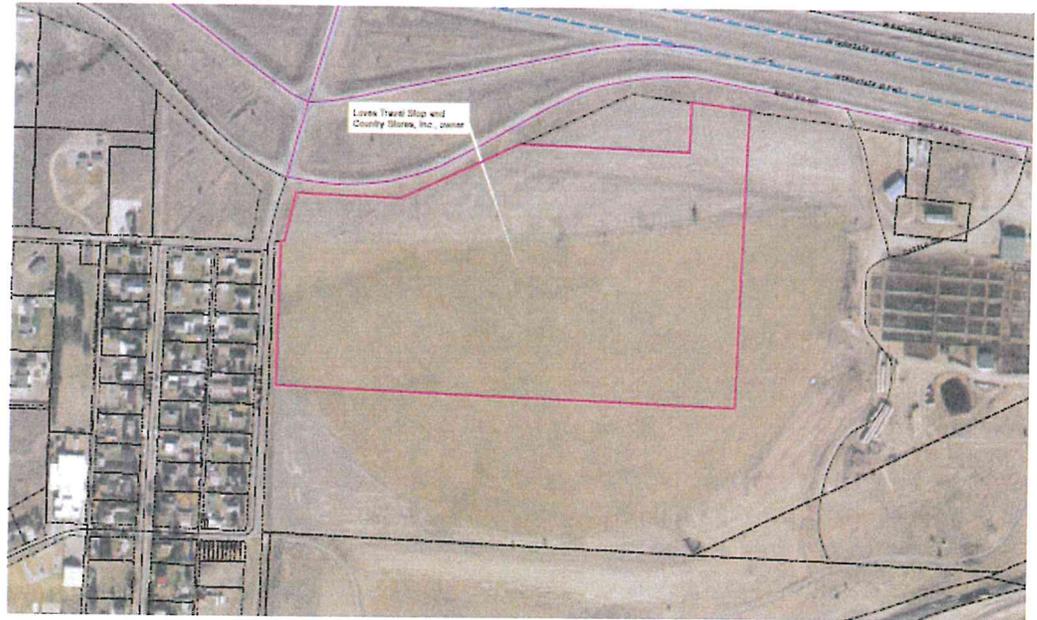
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**BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS**

- ITEM:** Appeal of the Zoning Officer's Decision #16675– An appeal by the Ramsay Citizens Council to the Zoning Board of Adjustment that the Ramsay zoning district boundary has not been adequately established and that the commercial activity planned for the RC-1 (General Commercial) zone should not be allowed and that the use of the RR-1 (Single Family Residence) zone to support the commercial activity should not be allowed per Section 17.35.070, Board of Adjustment, of the Butte-Silver Bow Municipal Code.
- APPLICANT:** Ramsay Citizens Council c/o James Ayres, Box 59, Butte, Montana, applicant.
- DATE/TIME:** Virtual Meeting, Thursday, July 16, 2020, at 5:30 P.M., from the Council Chambers, Third Floor, Room 312, Silver Bow County Courthouse, Butte, Montana. A WebEx invitation will be sent to the applicant on July 16, 2020 via email to join the meeting. All other interested parties may attend the meeting virtually at <https://co.silverbow.mt.us/2149/MEDIA>. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.
- REPORT BY:** Lori Casey, Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is legally described as Parcel 1 of Certificate of Survey 1045-RB, Section 14, T03N, R09W, P.M.M. commonly located west of the Montana Livestock Auction, Butte, Montana. The property is located in the "RC-1" (General Commercial) zone, the "RR-1" (Single Family Residence) zone, and an unzoned area.

APPEAL:

Per Section 17.35.070 (C) – Board of Adjustment of the Butte-Silver Bow Municipal Code (BSBMC), the applicants are appealing that the Ramsay zoning district boundary has not been adequately established and that the commercial activity planned for the RC-1 zone should not be allowed and that the use of the RR-1 zone to support the commercial activity should not be allowed.

**STAFF
FINDINGS**

Section 17.35.070 (C) – Board of Adjustment of the BSBMC states that an appeal to the Board of Adjustment may be taken by any person, officer, department, board or bureau of the municipality affected by any decision of the zoning enforcement officer. Per Montana Code Annotated 76-2-326 an appeal must be taken within a reasonable time, as

provided by the rules of the board, by filing with the officer from who the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal. Subsection (B) of Section IV – appeals and Applications of the Rules of Procedure for the Zoning Board of Adjustment states that no appeal shall be heard by the Board unless it is filed within thirty (30) days of after the interested party or parties receive notice of the order, requirement, decision or determination by the enforcing officer.

The applicants have stated in their appeal (Exhibit A) that the statements made by Director Casey in her testimony at the Department of Revenue's liquor license hearing regarding the Loves Travel Stop make it clear that a decision has in fact been made to allow a Loves Travel Stop to be constructed with no further zoning review. The applicants further state that the thirty (30) day notice does not apply as the Ramsay Citizens Council, nor any resident of Ramsay, received a notice of decision by Director Casey.

Director Casey was subpoenaed to testify before the Department of Revenue in the matter of the protest of ownership and location of Montana All-alcoholic Beverages License No 01-701-7969-001 to be operated at the Love's Casino (Exhibit B). On June 13, 2019, testimony was given as stated in the Applicants appeal. Mr. Ayres, a member of the Ramsay Citizens Council was present at the hearing during the testimony.

On July 9, 2019, Mollie Maffei, Butte-Silver Bow Deputy County Attorney, received a letter (Exhibit C) from Mr. Mark Lancaster, Attorney with Luxan & Murfitt stating he represented the Ramsay Citizen Council and was requesting the following documents:

1. Love's Development Permit application for its development near Ramsay, including any draft preliminary, or proposed versions of the application;

2. Any Location Permit documentation for Love's development near Ramsay;
3. Any site plans regarding Love's development near Ramsay; and
4. Any requests for variances to county zoning or devilment requirements regarding Love's development near Ramsay, as well as any supporting documentation.

Deputy County Attorney Maffei responded to the letter on July 31, 2019, addressing the above noted requests (Exhibit D).

As stated in Ms. Maffei's letter, the City-County does not issue a location permit until it has approvals from the DEQ and MDT.

Section 17.56.060 of the BSBMC, states in part, each application for a location or improvement permit must be accompanied by a plan drawn to scale and in such form as may be prescribed by the enforcing officer, showing the actual size and dimensions of the lot to be built upon, the size of the building to be erected, as such other information as may be necessary to provide for the endorsement of the regulations contain in this title.

A location permit is not issued before approvals for water, sewer, storm water and approaches are permitted as these approvals have the potential to change a site plan.

The Zoning Board of Adjustment (Board) must first decide if the Zoning Officer has rendered a decision and if the applicants have met the thirty (30) day requirement as set forth in the Rules of Procedure to appeal the decision.

To the extent that the Board allows the appeal to proceed, the applicants are appealing that the zoning district boundary has not been adequately established and that

the commercial activity planned for the RC-1 (General Commercial) zone should not be allowed and that the use of the RR-1 (Single Family Residence) zone to support the commercial activity should not be allowed.

The applicants are correct that the Ramsay, MT Urban Zoning Classifications map does have a disclaimer that "inaccuracies are known to exist. Any decision as to land use should be made from the zoning ordinances themselves."

Ordinance 457 incorporated the Ramsay Planning and Zoning District & Map into the Municipal Code under Title 17 – Zoning. Planning and GIS staff reviewed the following information against the digitized line work:

- The map referred to in Ordinance 457 (Exhibit E);
- Certificate of Survey 1054B-RB (Exhibit F) and other plats and surveys in the vicinity; and
- ALTA/ACSM Land Title Survey prepared by WGM Land Group (Exhibit G) and submitted with Loves' plans.

All information was registered utilizing ArcMap and line work was adjusted/corrected based on the registration of the data. The Loves' site plan was registered and overlaid with the property boundaries and zoning boundaries (Exhibit F). In addition, the Map from Ordinance 457 was scaled by hand against the site plan.

The above noted information was utilized to make the determination that the buildings are located in an area that is unzoned. Therefore, the zoning regulations do not apply to the buildings.

The applicants also state that the commercial activities should not be allowed to utilize the area of land that is designated RR-1 (Single Family Residential). The project is proposing to utilize the area designated as RR-1 for parking.

Section 17.35.140 Off-Street Parking of the BSBMC states "in all districts, in conjunction with every business, commercial, industrial, recreational, institutional and residential use, space for parking and storage of vehicles shall be provided in accordance with the following schedule:

- A. Churches – one space for each five seats;
- B. Dwellings – one space for each family or living unit;
- C. Commercial stores – one space for every four hundred square feet of floor area;
- D. Industrial – one space for every two employees."

Planning staff has interpreted this section to allow parking in all zoning districts, including residential.

CONCLUSION: Section 7-1-114(1)(e) Montana Code Annotated (MCA) provides that a local government with self-governing powers, which includes Butte-Silver Bow, must comply with all State laws that require or regulate planning or zoning. Montana Code Annotated as well as Section 17.54 – Board of Adjustment of the BSBMC defines the powers of the Board as follows:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcing officer in the enforcement of this chapter of this title;
- B. To hear and decide special exceptions to the terms of this title upon which such board is required to pass under such ordinance;
- C. To authorize upon appeal in specific cases such variance from the terms of this title as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the

provisions of title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done;

- D. In exercising the above mentioned powers, such Board may, in conformity with the provisions of this title, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

