



Zoning Board of
Adjustment

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

5:30 P.M. Thursday

Members

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

A G E N D A

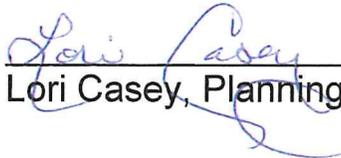
APPLICANT OR REPRESENTATIVE MUST BE PRESENT AT THE MEETING

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

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

- IV. Other Business.
- V. Adjournment.

BY:



Lori Casey, Planning Director

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

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

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

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

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

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

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

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

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

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

**STAFF
FINDINGS:**

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

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

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

partially disagrees with this assessment. Because staff believes the entire basement area of 11,600 square feet is retail space, the requirement for the existing facility would be 130 parking spaces, and with the addition requiring 66 spaces, the total requirement for the entire facility (existing and proposed) would be 199 spaces. There are currently 133 parking spaces in the parking lot. As stated above, the applicant can redesign the parking lot to accommodate an additional 6 spaces. The proposal of 139 parking spaces is 60 spaces deficient under the minimum requirement per Section 17.40.900 of the BSBMC.

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

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

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

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

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

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

That being said, staff has concerns that the request to deviate from the minimum parking standards as defined by the BSBMC, especially by such a significant amount, does not ensure that the businesses in the complex are providing adequate spaces to reduce parking congestion on adjacent streets and does not provide an adequate environment for customers to safely park. Therefore, it appears that the requested variance may be contrary to the public interest.

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

To qualify for a variance the property must exhibit conditions which preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unique conditions usually associated with the property are shape, topography or some geological feature. A hardship cannot be the result of a condition created by the applicant.

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

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

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

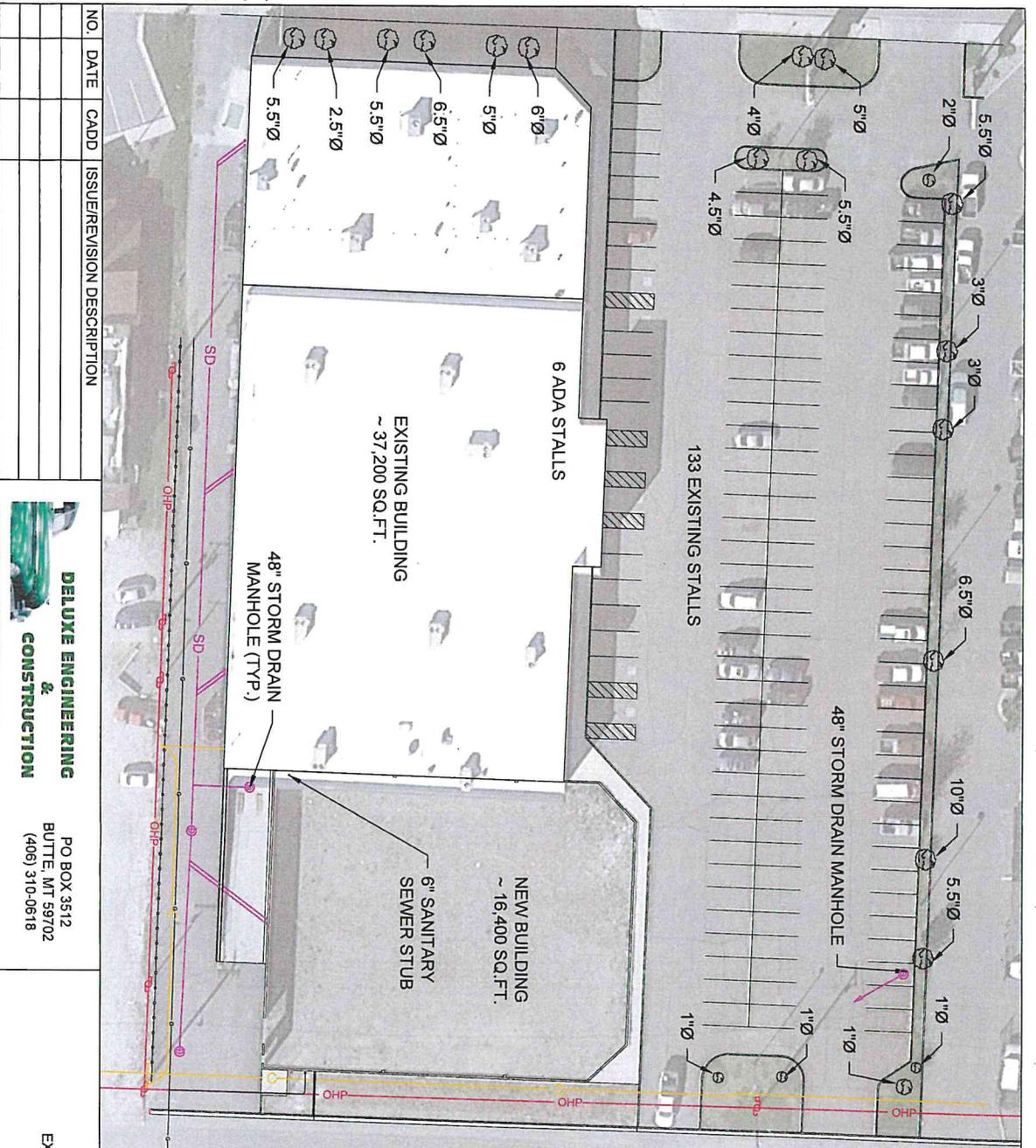
The spirit of the Ordinance is to permit reasonable use of private property while requiring businesses and residents to develop their properties in ways which do not compromise public interest. Public health, safety and general welfare must be protected and weighed against the rights of the applicant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

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

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

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

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



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

STAPLES ADDITION

EXISTING SITE - ZONING REVIEW

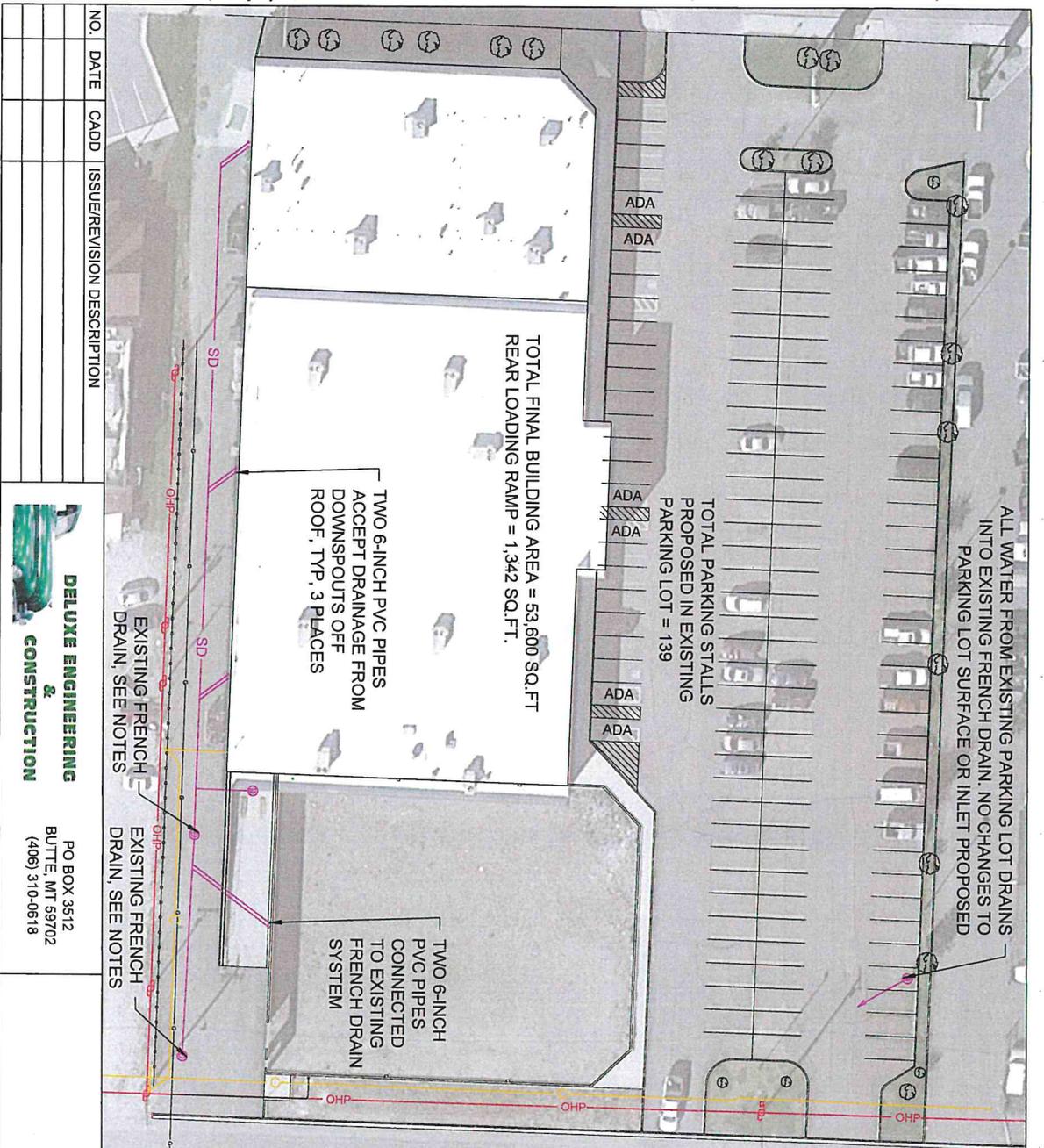
SHEET

C.1

NO.	DATE	CADD	ISSUE/REVISION DESCRIPTION

DELUXE ENGINEERING & CONSTRUCTION

PO BOX 3512
BUTTE, MT 59702
(406) 310-0618



NO.	DATE	CADD	ISSUE/REVISION DESCRIPTION

DELUXE ENGINEERING & CONSTRUCTION

PO BOX 3512
 BUTTE, MT 59702
 (406) 310-0618

STAPLES ADDITION
 PROPOSED SITE

SHEET
C.2

BSB PARKING/LANDSCAPING REQUIREMENTS		APPLICABLE ORDINANCE
DESCRIPTION	AREA (SQ.FT.) / STALLS / UNITS	
NEW BUILDING AREA (MEDICAL FACILITIES)	16,400 / 66	17.40.900.13
TOTAL STALLS REQUIRED	179	
ADD. PARKING STALLS PROVIDED BY RE-STRIPING EXISTING LOT	46	17.40.020.A
PARKING SHORTAGE	40	
ADD. PARKING LANDSCAPING REQUIRED (COVERED UNDER EXISTING LANDSCAPE EXCESS)	950	17.38.045

- NOTES:
- TESTS PERFORMED ON MAY 4, 2020 TO VERIFY DETAILS OF STORMWATER SYSTEM CONNECTIONS. WATER ADDED TO EACH INLET TO VERIFY CONNECTION TO THE SYSTEM.
 - FRENCH DRAINS CONSIST OF 5-FT DIAMETER MANHOLES, APPROXIMATELY 10.5-FT DEEP WITH PERFORATIONS IN THE BOTTOM 4-FT BARREL SECTION. PERFORATIONS ARE 1-FT WIDE BY 3-INCH TALL HOLES IN BARREL SECTION.

