AGENDA

APPLICANT OR REPRESENTATIVE MUST BE PRESENT AT THE MEETING

I. Call to Order.

II. Approval of the Minutes of the meetings of April 15 and May 20, 2021.

III. Hearing of Cases, Appeals and Reports:

SPUSE-21-0000011 – A Special Use Permit application by Beehive Homes, c/o Aaron Hildreth, 148 Kountz Rd., Whitehall, MT, owner, Alt Architecture, c/o Alena Miller, 2440 Dayton-Xenia Rd. Ste B, Beavercreek, OH, agent, and Water & Environmental Technologies, c/o Forrest Jay, 480 E. Park, Butte, MT, agent, to construct three (3) new assisted living facilities in an “R-3” (Multi-Family Residence) zone, per Section 17.38.180 – Special Use Permit – Uses Allowed, of the BSBMC. The property is a vacant parcel legally described as a POR of Lot 4, Midnight #9883, Section 33, T03N, R07W, commonly located east of Continental Drive and south of Aspen Loop, Butte, Montana.

VARIANCE-21-000007 – An application by Beehive Homes, c/o Aaron Hildreth, 148 Kountz Rd., Whitehall, MT, owner, Alt Architecture, c/o Alena Miller, 2440 Dayton-Xenia Rd. Ste B, Beavercreek, OH, agent, and Water & Environmental Technologies, c/o Forrest Jay, 480 E. Park, Butte, MT, agent, to vary from Section 17.38.046 E - Landscaping Buffers, and Section 17.38.050 – Landscaping Requirements – Sidewalk Curb/Gutter, Front and Corner Yards for the above-mentioned Special Use Permit Application. The applicants are proposing to install a landscaping buffer instead of a three foot (3’) wall for a headlight shield and are proposing to install a gravel walking path instead of sidewalk, curb, and gutter along public rights-of-way, varying from the sections of the BSBMC listed above. The property is located in an “R-3” (Multi-Family Residence) zone, legally described as a POR of Lot 4, Midnight #9883, Section 33, T03N, R07W,
commonly located east of Continental Drive and south of Aspen Loop, Butte, Montana.

**VARIANCE-21-000008** – An application for variances by Darrell Yager, owner, and Daylen Yager, agent, to construct a covered porch (8'D X 16'W) to the front of the house that would be located within fifteen feet (15') of the front property boundary, varying from the required twenty foot (20') setback of Section 17.12.070, Minimum Front Yard Depth, of the BSBMC, and to construct a detached garage (28'W X 30'D) within three feet (3') of the east side property line abutting a side street, varying from the required ten feet (10') of Section 17.12.080, Minimum Side Yard Width Depth, of the BSBMC. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lots 1 and 2, Block 18 of the Gilman Addition, commonly known as 1810 McKinley Avenue, Butte, Montana.

IV. Other Business.

V. Adjournment.

BY: ________________________________

Lori Casey, Planning Director
BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: Special Use Permit Application – SPUSE-21-000011 - An application for a special use permit by Beehive Homes, c/o Aaron Hildreth, owner, and Alt Architecture, c/o Alena Miller, and Water and Environmental Technologies, c/o Forest Jay, agents to construct three new assisted living facilities on a vacant lot, per Section 17.38.170 – Special Use Permit – Uses Allowed of the Butte-Silver Bow (B-SB) Municipal Code.


DATE/TIME: Tuesday, June 15, 2021, at 5:30 p.m., Council Chambers, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:
LOCATION/DESCRIPTION: The property is located in a "R-3" (Multi-Family Residence) zone, legally described as a POR of Lot 4, Midnight #9883, Section 33, T03N, R07W, commonly located east of Continental Drive and south of Aspen Loop, Butte, Montana.

PROPOSAL: The applicants are proposing to construct three (3) new assisted living facilities which, in total, would provide 57 living units. The applicants are proposing to install the associated parking lot and landscaping improvements, with
exception to two variance requests that will be addressed herein, as well as evaluated for appropriateness in the following variance request staff report.

STAFF FINDINGS:

The intent of the Special Use permit is to allow other uses than those specifically allowed in each district and to provide more flexibility for the use of land in each zone where appropriate, but specific safeguards are provided to protect other permitted uses from possible adverse effects.

Per Section 17.38.180 – Special use permit – Uses allowed, the following uses may be allowed in any zone by special use permit from the Board of Adjustment after public hearing; provided, that the location thereof is found by the Board to be in harmony with proper development; and, provided, reasonable conditions shall be imposed to protect the surrounding property and zone in which such use is to be located: airports; drive-in theaters; art galleries; museums; universities; stadiums; coliseums; hospitals and medical and dental clinics; nursing homes; retirement homes or boarding homes; orphanages; nonprofit institutions for educational, philanthropic, and eleemosynary uses; railroad rights-of-way, provided that no loading, storage, or switching shall be permitted in any R zone; sewerage treatment plants; electric power plants; municipal crematories and refuse dumps; radio and television broadcasting stations and transmitter towers; cemeteries; recreational developments operated by public and private organizations or individuals after a finding by the Board that the recreational development will be of benefit to the community; and any use rules by the Board to be similar in nature to the uses listed above in this section in that said use possesses peculiar location, design or special problems that need to be reviewed or controlled by a special use permit. As such, this assisted living facility is recognized as a special use.

In reviewing a special use permit application, due consideration shall be given to the following:
A. The location, character and natural features of the property;
B. The location, character and design of adjacent buildings;
C. Substantial changes that have occurred in the surrounding land uses since the original adoption of the Ordinance codified in this title;
D. Proposed fencing, screening and landscaping;
E. Proposed vegetation, topography, and natural drainage;
F. Proposed vehicular access, circulation, and parking, including that relating to bicycles and other unpowered vehicles and provisions for handicapped persons;
G. Proposed pedestrian circulation, including provisions for handicapped persons;
H. Proposed signs and lighting;
I. All potential nuisances;
J. Public safety and health;
K. The availability of public utilities and services;
L. Situations which prevent the utilization of the property for the full range of uses allowed in that district;
M. The use or zone classification sought would enhance and promote the comprehensive development of the immediate neighborhood, and community;
N. That the use or classification conforms generally to the objectives of the adopted comprehensive plan and to the purpose of this title;
O. That the use will promote or not substantially impede the conservation of resources and energy, and the conservation policy of Butte-Silver Bow, state of Montana;
P. That the use meets the overall density, yard, height, and other requirements of the zone in which it is located;
Q. That the use or classification will not adversely affect nearby properties or their occupants;
R. Conformity of the proposed use with the neighborhood plan, if one has been adopted;
S. Compatibility of proposed project with existing adjacent buildings, structures, neighborhood, topography or other consideration; and
T. Expressed public opinion relating to the criteria enumerated above, including the views of neighborhood associations.

The Board's decision to issue a special use permit must be based on findings that the assisted living facility will not be unduly detrimental to other properties and/or contrary to the spirit and intent of the Zoning Ordinance. It is the responsibility of the applicants to present evidence to the satisfaction of the Board that undue detriment will not result from granting the permit.

The applicants have submitted an application that is enclosed and made a part of this staff analysis. The application addresses the above noted review criteria. Staff has evaluated the submitted application in consideration of these criteria herein.

**Staff Evaluation of Application**

1) Criteria A and B – The parcel is currently vacant land but does have several utility pole structures. In regard to the location, character and design of adjacent buildings, staff would note that since the adoption of the Zoning Ordinance, all new development in the surrounding area has been multi-family residential development, containing larger buildings with multi-family residential units.

2) Criteria C - substantial changes that have occurred in the surrounding land uses since the original adoption of this Ordinance. No substantial changes have occurred since the adoption of the Zoning Ordinance, as stated above. Recent development has been consistent with the “R-3” zoning designation and has been mainly multi-family development.

3) Criteria D – proposed fencing, screening and landscaping. Per Section 17.38.044 all commercial and industrial uses allowed by conditional/special use permit
shall meet all landscaping requirements of the Special Provisions Chapter of the BSBMC. The applicants have requested a variance to this section, as they are requesting the following variances to the requirements: 17.38.046 (E) - Landscaping buffers, and 17.38.050 - Sidewalk curb and gutter. These variances will be discussed in a separate report. Variance requests must meet all three of the following criteria: 1) the variance must not be contrary to the public interest, 2) the literal enforcement of the Zoning Ordinance must result in an unnecessary hardship owning to conditions unique to the property, and 3) the spirit of the Zoning Ordinance must be observed and substantial justice done in order to be granted. The approval or denial of a variance request may or may not have an effect on the approval or denial of a Special Use Permit application. In other words, the Board may determine that a variance request does not meet the criteria and deny the request. That does not mean that the Special Use Permit is automatically denied. The Board must take all information into consideration (including variance requests) to determine if the special use fits in harmony with the area.

The proposed facility is located within a residential zoning district and as such, there are requirements to screen the property with trees and shrubs, as well as any other requirements for a parking lot. The submitted site plan lacks the detail required to confirm that the proposal meets all requirements of the landscaping ordinance but does address the required buffers other than the variances requested, which will be addressed in the subsequent report. If the special use permit is approved, it is important to note that a detailed landscaping plan will be required to ensure all applicable aspects of the landscaping requirements are addressed, including requirements for vision clearance triangles adjacent to the two proposed approaches. The applicants have stated that they intend to meet all other landscaping requirements outside of the requested variances. The type of landscaping shown in the submitted example
photos seems to be compatible with residential development.

4) Criteria F – proposed vehicular access, circulation, and parking. The applicants are proposing two approaches to Continental Drive with associated parking to accommodate the facility. The proposal includes drive-up zero-curb entrances at the front of the building, including all required ADA accommodations. The applicants are expecting 8-10 vehicles on site during the daytime and 2-4 vehicles at night, depending on staff.

5) Criteria H – proposed signs and lighting. The applicants are proposing a monument sign at the street, as well as a sign above the porte cochere. The submitted site plan does not address the location of the monument sign and the application does not address sign illumination. To the extent that this application is approved and to be consistent with the neighborhood, staff believes these signs should not be illuminated. It should also be noted that monument signs must not obstruct the vision clearance triangle.

In regard to the proposed lighting, the application states that site lighting will include parking lot poles and building entrances but will be zero footcandles at the property lines, so the lighting would not be a nuisance to surrounding properties or traffic on Continental Drive.

6) Criteria I – All potential nuisances. As stated previously, the subject parcel is zoned “R-3” (Multi-Family Residence). Therefore, just directly to the north, a multi-family apartment complex could be constructed on this parcel as an outright permitted use. The difference between the proposed facility and the multi-family complexes to the north is that the assisted living facility will require some staff for operations and services provided to the residents. Therefore, the potential nuisances for a proposed facility such as this could be increased traffic by employees. However, because of the
nature of assisted living facilities, while there may be visitors for the residents, they typically don't have their own vehicles, so any potential nuisance of increased traffic by staff should be offset by the decrease in traffic driven by the nature of the business itself.

7) In regard to Criteria N – that the use or classification conforms generally to the objectives of the adopted comprehensive plan and to the purpose of the Ordinance – Butte-Silver Bow recently adopted the Growth Policy Update that is now referred to in the Comprehensive Plan. The applicants have adequately addressed the economic measures that the project meets. In addition to the economic aspect, the Comprehensive Plan addresses future land uses. The future land use for this particular area is the Suburban Mix Placetype. The Suburban Mix Placetype areas exhibit a mixed-residential development pattern, with uses such as apartments and condominiums listed as future primary land uses. Institutional facilities are also listed as a potential secondary land use. Staff believes this proposal is consistent with the general goals of the Comprehensive Plan but also the future land use designation in this area.

8) Criteria S addresses the compatibility of the proposed project with the existing adjacent buildings, structures, neighborhood, topography or other considerations. As stated previously, there are several multi-family complexes located directly north of this proposed site and multi-family residences are permitted outright on this property. The difference between this proposal and multi-family residential uses is that the assisted living facility proposed provides some care and services to the residents that requires some staff. Other than that, the use is very similar to that of a multi-family complex and, therefore, is compatible with the surrounding adjacent buildings.

9) Staff concurs with any review criteria provided in the application that has not been addressed herein.
CONCLUSION: Based on the information provided in the application, staff’s analysis of the review criteria, and any public opinion as it relates to the criteria, the Board must determine if the applicants have presented evidence to the satisfaction of the Board that said undue detriment will not result from the granting of a Special Use Permit for an assisted living facility.

Per Section 17.38.160 Special or Conditional Use Permit – Decision of Board, staff has referred the application to the Board within 15 days of the receipt of the application and all requested information. The Board shall within sixty days:

A. Deny the application and give reasons for the denial, in writing to the applicants; or

B. Approve the application and the Zoning Officer shall issue a zoning compliance permit with conditions specified thereon.
BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT

APPLICATION FOR
SPECIAL AND CONDITIONAL USE PERMITS

Title 17 of the Butte-Silver Bow Municipal Code (Zoning) states that "special or conditional use permits for uses other than those specifically allowed in each district, are intended to provide more flexibility for the use of land in each zone where appropriate but specific safeguards are provided to protect other permitted uses from possible adverse effects." Applications may be initiated by the property owner or his designated representative.

All questions must be answered in full and either types or legibly written. The application shall include but not be limited to the following information:

1. Owner(s) Name, Address and Phone Number:
   
   **Aaron Hildreth**
   
   Recorded Owner
   
   148 Kountz Rd, Whitehall, MT 59759
   
   Address
   
   406.599.6014
   
   Phone Number
   
   Representative's Name, Address and Phone Number:
   
   Alena Miller, Alt Architecture
   
   Name
   
   2440 Dayton-Xenia Rd Ste B, Beavercreek, OH 45434
   
   Address
   
   937.427.2770 ext. 103
   
   Phone Number
   
   Representative's Name, Address and Phone Number:
   
   Forrest Jay - Water & Environmental Technologies
   
   Name
   
   480 E. Park St, Butte MT 59701
   
   Address
   
   406.723.1568
   
   Phone Number
2. Address or General Location

S33, T03 N, R07 W, POR OF LOT 4, MIDNIGHT #983

3. A legal and general description of the tract(s) upon which the permit is sought:

S33, T03 N, R07 W, POR OF LOT 4, MIDNIGHT #983

4. Specify details of proposed development/use:

The property will consist of three (3) new assisted living facilities with shared parking that meets the local zoning requirements. Each building will be an R-4, Condition 2, VB construction with a full NFPA13 fire suppression system. The site will also include small fenced recreation space connected to the sunroom of each building. Two trash enclosures will serve all three facilities.

5. Attach an accurately drawn site plan showing major details of the proposed development, including but not limited to the dimensions and location of proposed and existing buildings and structures, off-street parking and loading, service and refuse areas, means of ingress and egress, landscaping, screening and signs.

A proposed site schematic is included as Appendix A.

6. Timetable for development

This is an estimated schedule for Beehive Homes:

May – June 2021 – Finalize Design
July 2021 – AHJ Review
August 2021 – Site Prep, Grading, Utilities and Excavation
September – October 2021 – Paving and Vertical Construction.

7. Covenants or deed restrictions on the property

_____ YES  _____ NO  (If yes, include a copy)

8. All plans, exhibits and other legal documents submitted with the application will be retained as part of the record.

9. The application shall be submitted to the Butte-Silver Bow Planning Department by the deadline date (see attached sheet) for the regularly scheduled meeting.

10. As indicated in Title 17 of the Butte-Silver Bow Municipal Code (Zoning) a nonrefundable filing fee ($100.00) must accompany the application with checks or money orders made payable to Butte-Silver Bow.

If there are any questions with completing the application, please contact the Planning Department for assistance at 497-6250.
PLEASE SECURE ANY OF THE NECESSARY PERMITS NEEDED (BUILDING, PLUMBING, MECHANICAL, ELECTRICAL, ETC.) AFTER THE APPROVAL OF THIS APPLICATION.
Briefly address the twenty review criteria as listed in Section 17.38.150 of Title 17 of the Butte-Silver Bow Municipal Code (Zoning) as follows:

**REVIEW CRITERIA FOR SPECIAL AND CONDITIONAL USES**

Section 17.38.150

Beehive Homes is requesting a Special Use Permit to allow for the construction of a assisted living facility in an R-3 Multi Family residential zone. This memo outlines the Butte-Silver Bow County review criteria for a Special Use Permit.

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

   The subject property is a 4.8-acre parcel on the east side of Continental Drive approximately ¼ mile south of the intersection of Elizabeth Warren Avenue and Continental Drive. Site topography slopes down from the east to the west. No infrastructure exists on the property and vegetation consists of native grasses and a few trees. There is currently no access to the site from Continental Drive.

2. The location, character and design of adjacent buildings

   The subject property is bordered to the north by the Meadowlands Apartments to the north and a U-Haul rental facility to the south. Interstate 90 borders the site to the east. The Meadowlands Apartments are a multi-family facility consisting of 10 buildings with multiple residences in each building. The U-Haul facility consists of a metal building with a large parking area for trailers. Across Continental to the west is the Butte Country Club with multiple single-family residences. Big Sky Senior Living, an assisted living facility is located approximately a ¼ mile north of the subject property at the intersection of Elizabeth Warrant Ave. and Continental Dr. within the same contiguous R3 zone. The neighborhood exhibits a distinctly mixed character. The 2020 BSB Comprehensive Plan identifies the area currently zone as an R3 zone, as Suburban Mix Placetype. The Suburban Mix Placetype suggests supporting multi-family dwellings, Apartments, condominiums, as well as neighborhood scale commercial, office and institutional facilities. This development is in line with current uses within the R-3 zone.

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

   Since the 1978 original adoption of the Zoning Ordinance, no substantial changes is the surrounding land uses have occurred. The area has seen building consistent with R3 zoning over the years with the addition of the Meadowlark Apartments and the Big Sky Senior living Assisted living facility.

4. Proposed fencing, screening and landscaping

   The purpose of this Special Use Permit is to allow for Beehive Homes, an assisted living facility, to be located in a R-3 Multi-Family residential zone. Therefore, landscaping requirements of Butte-Silver Bow Municipal Code (BSBMC) 17.38.046 for a C-2 commercial zone will be utilized to enhance the aesthetic value of the proposed development and to buffer proximal residential properties as described below.

   a. 17.38.046(A) of the BSBMC mandates: "Where the lot adjoins the side property line of a lot in an R zone, there shall be provided trees and shrubs of sufficient height and density to effectively screen the property including a five-foot wide planting strip."
The subject property adjoins a residential (multi-family) property to the north. A landscaped buffer area will be provided along the northern property boundary consistent with the requirements of section 17.38.046(A).

b. 17.38.046(B) of the BSBMC mandates: "All new commercial or industrial buildings or expansions, which are equal to twenty-five percent or more of the existing floor area, and which are across a street from a residential zone, shall provide a landscaped buffer area a minimum of six feet wide along the perimeter of such lot lines. This landscaped area shall include a visual buffer erected along the inside edge of the landscaped area. The visual buffer may be excluded, provided the developer obtains written approval from adjacent residential landowners. Visual buffer or screens shall not be less than four feet high, except when the zoning officer authorizes a reduction to improve or sustain safe sight distance along alleys, streets or highways."

A six-foot wide landscaped buffer area will be provided along the western property boundary in accordance with Section 17.38.046(B). As the western property boundaries are immediately adjacent to streets with moderate traffic, it is proposed that the visual buffer shall be provided by a hedge less than four feet in height, so as to sustain safe line of sight for vehicles entering and exiting the subject property.

c. 17.38.046(C) of the BSBMC mandates: "Where additions or expansion of existing commercial or industrial uses are less than twenty-five percent of the total floor area, and are across a street from a residential zone, a landscaped buffer shall not be required, providing all other requirements of this section have been met."

Not applicable. The proposed development is new construction — not an addition or expansion.

d. 17.38.046(D) of the BSBMC mandates: "All new commercial or industrial buildings or expansions, which are equal to fifty percent or more of the existing floor area, and which are across an alley from a residential zone, shall provide a continuous curb six inches above grade along the property line adjacent to the alley. This curb may have one public access approach not to exceed twenty-four feet. The curb may have openings to provide access to residential garages or driveways which are across the alley from such property. These curb openings shall be approved by the zoning enforcement officer. A landscaped area of one square foot per linear foot of property line adjacent to the alley shall be provided along said property line. This landscaped area may be linear or group planting and shall be approved by the zoning officer. This provision is in addition to the percentage of landscaping required."

Not applicable. The subject property is not located adjacent to an alley.

e. 17.38.046(E) of the BSBMC mandates: "To prevent the headlights of vehicles from having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the linear extent of the adjacent property line."

The proposed development includes a parking lot which lies across Continental Dr. from a residential zone. At this time, a variance from the requirement to provide a three-foot masonry wall or solid wood fence along the linear extent of the property is requested with the included variance request. It is proposed that in lieu of a three-foot fence, conifer shrubbery will be provided to prevent vehicle lights from having a negative effect on neighboring residential property owners.
f. 17.38.050 of the BSBMC mandates: "All new commercial and industrial uses or expansions which are equal to twenty-five percent or more of the existing floor area shall install sidewalks/curb and gutter along all property lines that are adjacent to a dedicated street. Minimum sidewalk specifications shall be as follows: four-inch concrete depth, three-inch compacted gravel base and width to match the existing sidewalks on the same street. In the instance where there are no sidewalks on the same street, the minimum sidewalk width shall be five feet."

The Beehive Homes facility will be located on a 4.8-acre parcel that fronts Continental Drive. There are currently no sidewalk/curb and gutter located on Continental Drive. A sidewalk along Continental Drive would be approximately 950 feet long and not connect to any other sidewalks or pedestrian pathways.

Beehive Homes is requesting a Variance from BSBMC 17.38.050’s requirement to install sidewalk/curb and gutter along the Continental Drive frontage. Beehive Homes proposes to install a four-foot-wide road mix or gravel walking path in lieu of the sidewalk curb and gutter required in the BSBMC. A walking path meets the intent of the ordinance.

5. Proposed vegetation, topography and natural drainage

A landscape architect has been contracted to ensure that appropriate landscaping complementing that of the surrounding properties is provided. The proposed facility will comply with landscaping requirements for C-2 zones, as identified by the BSBMC Sections 17.38.035-17.38.080. Applicable landscaping requirements are highlighted and included as Appendix A. Landscaping will include an appropriate mixture of trees, shrubs and grass. A hedge will be utilized to provide a buffer along Continental Drive. As no boulevards are present along adjacent sidewalks, boulevards are not proposed for the facility. Changes to site topography are proposed, including grading necessary for construction and effective storm water management. Storm drainage will comply with Butte-Silver Bow Municipal Storm Water Engineering Standards.

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

The proposed facility will offer vehicular access from Continental Drive. The approaches are proposed to be standard ingress and egress. Continental Drive is under Montana BSB Roads Department jurisdiction. Appropriate approach permits will be submitted to BSB prior to construction. Both approaches will be paved.

The proposed parking lot will be located west of the proposed buildings and parallel to Continental Dr. Sloped drive-up zero-curb entrances are proposed for the front of the buildings, allowing for persons with limited mobility to be dropped off or picked up. Sidewalk access for unpowered traffic, including ADA-compliant ramp access for handicapped persons are proposed for public building entrances. Vehicle traffic at the facility will be considerably less than typical commercial or multi-family residences due to the following traits of this type of facility.

- Most residents do not have a vehicle,
- 24HR staffed; 12HR shifts – Approx. (5) Daytime Staff; (2) Evening Staff,
- Hours of Visitation – 8a to 8p,
- Hours of Delivery - 10a to 4p (NO semi or box trucks) (Typical residential deliveries ie. FedEx, Amazon, UPS, Grocery),
- Expected (8 to 10) vehicles on property during daytime hours; Approximately (2 to 4) vehicles during evening hours.

A proposed site schematic is included as Appendix A.

7. Proposed pedestrian circulation, including provisions for handicapped persons
Pedestrian circulation will be provided by ADA-compliant sidewalks, located immediately in front of the of the proposed buildings. Each public entrance and exit will offer ADA-compliant access. Sloped drive-up zero-curb entrances are proposed for the public entrances, allowing for persons with limited mobility to be dropped off or picked up.

A proposed site schematic is included as Appendix A.

8. Proposed signs and lighting

Building signage will consist of a sign facing the Continental Drive frontage. An example rendering is included as Appendix B. Signage will be submitted for review to the Butte-Silver Bowe Planning Department and will comply with all zoning requirements. A standard Beehive home includes a low-profile monument sign at the street, as well as a sign above the porte cochere. Site lighting will include parking lot poles; zero footcandles at the property line unless otherwise stated in the zoning code. Lighting on the building includes entry lighting that meets the required footcandles for egress per the electrical and life safety code. Decorative fixtures are located at the porte cochere main entrance and front door. Typical soffit lighting is located along the soffit line of the building. Appropriate sign permits will be obtained from the Butte-Silver Bow Planning Department prior to construction.

A proposed site schematic is included as Appendix A.

9. All potential nuisances

All activities will occur within the confines of the proposed building, eliminating any potential visual or noise impacts to the surrounding neighborhood. The increase in the presence of vehicle headlights on the property will be mitigated by the installation of a hedge along the western property line, as discussed above. The proposed development will slightly increase the amount of traffic in the immediate vicinity.

10. Public safety and health

All aspects of the proposed facility, including the permitting, construction, and operational phases, will comply with applicable portions of the BSBMC Title 8 — Public Safety and Health. It is in the best interest of both Beehive Homes and the Butte-Silver Bow community to ensure diligence with respect to public health and safety.

11. The availability of public utilities and services

Utilities necessary for the proposed facility, including electricity, gas, water, sewer and fiber optic cable, are located within the road rights-of-way of Continental Drive. Beehive Homes proposes a sewer main extension, as the nearest sewer main is located approximately 300 feet away. As noted above, Continental Drive is under BSB’s jurisdiction. Appropriate encroachment permits will be submitted to BSB prior to construction.

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

The proximity to I-90 to the east, the multi-family residences to the north and the U-Haul facility to the South, along with the moderately high amount of traffic that travels along Continental Drive may not prevent utilization of the subject property within the range of uses allowed in R-3 zones, however, these factors certainly make the property an undesirable location for a single-family residence.

Additionally, the nearest municipal sewer connection is located approximately 300 feet from the subject property. As stipulated by ARM 17.36.328, on-site wastewater treatment is not permissible if municipal connections are within 500 feet of any lot boundary. Therefore,
development of the property hinges on the private extension of the sewer main, the cost of which would preclude development as a single-family residence for most financial situations.

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

The proposed new facility would enhance and promote the comprehensive development of the immediate neighborhood and community by providing necessary services to a greater number of community members than are currently available. As assisted living facilities are generally considered to be low impact businesses, the proposed facility could offer this much-needed service without detriment to the surrounding neighborhood.

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

The Butte-Silver Bow Growth Policy (comprehensive plan) incorporates a number of goals and objectives pertaining to economic development and land use which are applicable to the proposed Special Use Permit. Some of these goals include:

- Continue to promote a diversified economy that provides for stable tax and job bases;
- Maintain a high quality, well-trained workforce;
- Manage growth and development in a way that preserves and maintains the historic character of the urban core and encourages efficient uses of resources and infrastructure; and
- Develop and maintain land use policies that can accommodate growth trends and regulatory/statutory requirements while respecting Goals of the Growth Policy.

In addition to providing necessary assisted living services to the community, the proposed facility promotes a diversified economy, provides for stable, high quality jobs, and allows for community growth and development.

Special Use permits are designed to accommodate growth and development that conforms to the objectives of the comprehensive plan by providing more flexibility for the use of land in each zone where appropriate while providing specific safeguards to protect the interests of permitted users within the zone.

Developing the subject property, which has remained vacant for decades, by way of a Special Use Permit allows for a more appropriate utilization of the property while preserving the nature of the surrounding neighborhood, therefore conforming to comprehensive plan and Ordinance objectives.

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

The proposed facility will be constructed in an energy-efficient manner. The building will meet the applicable energy code requirements per City and State regulations. A ComCheck will be prepared to confirm that energy requirements are met. Each facility operates as a home with limited activities within the hours of 8a to 8pm. All vehicles on property are low-emission cars or vans. Beehive Homes prioritizes resident health with the latest energy-efficient mechanical and electrical systems.

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

At full buildout, the proposed facility will have 57 living units in three buildings. BSBMC 17.14.050 requires 1,500 square ft (sqft) of lot for the first 8 units and an additional 400 sqft for each additional living unit. The minimum lot size per BSBMC 17.14.050 is 31,600 sqft. The
proposed building lot is 4.8 acres or 209,088 sqft. The lot is approximately 6.6 times larger than the minimum required for a R-3 zone.

BSBMC 17.14.060 requires a minimum of eighty foot lot width for the multi-family dwelling. The usable lot width of the proposed building site is approximately 572 feet, or roughly 7 times the minimum.

As shown on the site schematic included as Appendix B, the proposed development complies with front, side and rear yard setbacks for C-1 and C-2 zones, which are greater than or equal to those required in R-3 residential zones. Proposed setbacks are:

- **Front yard**: 157 feet (20 feet minimum)
- **Side yard**: 35-75 feet (20 feet minimum)
- **Rear yard**: 56 feet (25 feet minimum)

The peak of the proposed building is 1.5 stories and 28 feet, which is less than the R-3 zone building height limit of 7 stories and 80 feet in height total.

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

As stated above, the neighborhood is one of mixed character. Although the subject property is located within the R-3 Multi-Family Residential Zone, it is bordered to the east by I-90 (a four-lane controlled access interstate) and to the west by Continental Drive (a two-lane, 35 mph public street). The Meadowlands Apartments are a multi-unit facility consisting of 10 buildings with multiple residences in each building. The U-Haul facility consists of a metal building with a large parking area for trailers. Across Continental to the West is the Butte Country Club with multiple single-family residences. Big Sky Senior Living, an assisted living facility is located approximately a ¼ mile north of the subject property at the intersection of Elizabeth Warren Ave. and Continental Dr. within the same contiguous R3 zone. The neighborhood exhibits a distinctly mixed character. The 2020 BSB Comprehensive Plan identifies the area currently as an R3 zone, as Suburban Mix Placetype. The Suburban Mix Placetype suggests supporting multi-family dwellings, Apartments, condominiums, as well as neighborhood scale commercial, office and institutional facilities.

Adjacent properties to the south and east are not considered residential, therefore, the greatest potential impact would be to the properties north and west of the proposed development. The residential properties to the west are separated from the proposed facility by a main thoroughfare. Additionally, the homes west of Continental Drive have backyard fences. Assisted living facilities are generally considered as low impact uses and are allowed by Special Use Permit in any zone, subject to appropriate and reasonable development conditions. With respect to the development plans proposed, approval of this Special Use Permit will not adversely affect nearby properties or their occupants.

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

Not applicable. A Neighborhood Plan has not been adopted for this area, as stated by Ms. Lori Casey, Planning Director, in a May 13, 2021 email.

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

The proposed design is an upscale facility with a clean and attractive architecture. Landscaping is proposed to complement the surrounding neighborhood, and topography will be altered to allow for safe and proper building construction and storm water management. The proposed building height and size is in line with the single-family residential dwellings to the west, but less than the existing multi-family residences to the north. As such, the proposed project is compatible with existing buildings, structures, and the overall neighborhood.
20. Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.

Beehive Homes and its representatives are not aware of any negative public opinion regarding the proposed development at this time.

I UNDERSTAND THAT THE FILING FEE ACCOMPANYING THIS APPLICATION IS NOT REFUNDABLE, THAT IT PAYS FOR THE COST OF PROCESSING AND THAT THE FEE DOES NOT CONSTITUTE A PAYMENT FOR THE SPECIAL/CONDITIONAL USE PERMIT REQUESTED.

ALL OF THE INFORMATION PRESENTED IS TRUE AND CORRECT.

[Signatures]

Property Owner(s) Name (Print)  Property Owner(s) Name (Signature)

Property Owner(s) Name (Print)  Property Owner(s) Name (Signature)

Property Owner(s) Name (Print)  Property Owner(s) Name (Signature)
APPENDIX A

Site Schematics
APPENDIX B

BeeHive Homes Sample Photos
APPENDIX C

Landscaping Requirements
Chapter 17.38 - SPECIAL PROVISIONS

17.38.035 - Landscaping requirements—Intent.

It is the intent of this chapter to enhance the aesthetic value of commercial and industrial development and buffer those uses of land which may have an adverse impact on surrounding land use.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 258 § 1 (part), 1985: Ord. 100 § 1

17.38.036 - Landscaping requirements—Zones.

The landscaping requirements of this chapter shall be met in the following zones:
A. C-1 zone;
B. C-2 zone;
C. C-3 zone — parking lots only;
D. C-M zone;
E. M-1 zone;
F. M-2 zone;
G. OS-C zone;
H. OS-D zone.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 258 § 1 (part), 1985: Ord. 53 § 170-36, 1978)

(Ord. No. 10-12, § 43, 1-19-2011)

17.38.037 - Landscaping requirements—Determination of area.

Landscaping area shall be based on the square footage of the parcel less the square footage of the building or buildings on the site. The landscaping requirement shall be calculated by multiplying the above determined landscaping area by the following percentages:

Parcel less than 22,000 square feet 6%;
Parcel 22,000 square feet to 5 acres 5%;
Parcel over 5 acres 4%.

Of the amount of required landscaping, a minimum of sixty percent shall be live vegetative ground cover of grass or other plant materials. The remaining forty percent maximum may be covered with decorative rock, stone, bark, decorative structural or sculptural elements, etc., and other impermeable features including pedestrian paths, which shall be underlain with approved materials to prevent growth of weeds and this area shall be contained by curbing or other approved methods.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 258 § 1 (part), 1985: Ord. 100 § 1
(part), 1980: Ord. 53 § 170-37, 1978)

17.38.041 - Landscaping requirements—New site development.
Now site development shall provide one hundred percent of the landscaping as defined by this chapter.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-41, 1978)

17.38.042 - Landscaping requirements—Existing site development.

Building additions which are equal to twenty-five percent or greater of the total existing building area shall be required to meet the full compliance of this title. Additions which are less than twenty-five percent of the total existing building area shall meet one-third of the total landscaping requirement for the existing building and the addition combined.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-42, 1978)

17.38.043 - Landscaping requirements—Undeveloped portions of property.

All portions of a property not proposed to be improved by building construction or landscaping for new developments or expansions shall be graded and seeded with native grass in a manner as to prevent water erosion, dust and establishment of noxious weeds. Undeveloped portions of properties are subject to the maintenance requirements of 17.38.047.

(Ord. 00-1 § 1 (part), 2000)

17.38.044 - Landscaping requirements—Commercial or industrial uses in residential zones.

Commercial and industrial uses allowed by conditional/special use permit or by use variance shall meet all landscaping requirements defined by this chapter.

(Ord. 00-1 § 1 (part), 2000)

17.38.045 - Landscaping requirements—Parking lot site development.

New or improved parking lot construction, with or without an existing building or additional building or additional building construction on the same tract, shall be required to provide twenty-five square feet of landscaping per parking space. Landscaping, including appropriate trees, shall be required in all parking strips, and required front and corner side yards. All remaining portions of the lot lying between the building and the front and side property lines shall be landscaped, or screened. Access and buffering requirements shall apply to such improvements. Parking lot site development shall be approved by the zoning officer. This provision is in addition to the percentage of landscaping required.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-43, 1978)

17.38.046 - Landscaping buffers.

Landscaping buffers, properly maintained, shall be provided as follows:

A. Where the lot adjoins the side property line of a lot in an R zone, there shall be provided trees and shrubs of sufficient height and density to effectively screen the property including a five-foot wide planting strip.

B. All new commercial or industrial buildings or expansions, which are equal to twenty-five percent or more of the existing floor area, and which are across a street from a residential zone, shall provide a landscaped buffer area a minimum of six feet wide along the perimeter of such lot
lines. This landscaped area shall include a visual buffer erected along the inside edge of the landscaped area. The visual buffer may be excluded, provided the developer obtains written approval from adjacent residential landowners. Visual buffer or screens shall not be less than four feet high, except when the zoning officer authorizes a reduction to improve or sustain safe sight distance along alleys, streets or highways.

C. Where additions or expansion of existing commercial or industrial uses are less than twenty-five percent of the total floor area, and are across a street from a residential zone, a landscaped buffer shall not be required, providing all other requirements of this section have been met.

D. All new commercial or industrial buildings or expansions, which are equal to fifty percent or more of the existing floor area, and which are across an alley from a residential zone, shall provide a continuous curb six inches above grade along the property line adjacent to the alley. This curb may have one public access approach not to exceed twenty-four feet. The curb may have openings to provide access to residential garages or driveways which are across the alley from such property. These curb openings shall be approved by the zoning enforcement officer. A landscaped area of one square foot per lineal foot of property line adjacent to the alley shall be provided along said property line. This landscaped area may be linear or group planting and shall be approved by the zoning officer. This provision is in addition to the percentage of landscaping required.

E. To prevent the headlights of vehicles from having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the lineal extent of the adjacent property line. **VARIANCE REQUESTED**

(Ord. 00-1 § 1 (part), 2000; Ord. 135 § 1(aa), 1981; Ord. 53 § 170-1(C)(2), 1978)

17.38.047 - Landscaping requirements—Tree and shrub minimum sizes.

A. Deciduous Trees. Trees planted in commercial and industrial zones shall have a minimum of a one-inch caliper.

B. Coniferous Trees. Trees planted in commercial and industrial zones shall have a minimum height of four feet.

C. Shrubs planted in a commercial or industrial zone shall be a minimum of a three-gallon shrub.

(Ord. 00-1 § 1 (part), 2000)

17.38.048 - Landscaping requirements—Area of vegetation.

A. One three gallon or larger shrub shall be equal to twenty-five square feet of live vegetative ground cover. Shrubs greater than three gallons shall be equal to fifty square feet in area. Coniferous trees equal to four feet in height shall be equal to one hundred fifty square feet of live vegetative ground cover. Coniferous trees taller than four feet in height shall be equal to an additional fifty square feet in landscaping area for each foot in height over four feet. Deciduous trees that are of a one-inch caliper shall be equal to one hundred fifty square feet of live vegetative ground cover. Deciduous trees that are larger than a one-inch caliper shall be equal to an additional fifty square feet in landscaping area for each inch in caliper over one inch.

B. Current planting specifications are on file in the planning department.

(Ord. 00-1 § 1 (part), 2000; Ord. 306 § 1 (part), 1987; Ord. 258 § 1 (part), 1985; Ord. 225 § 1(E) (part), 1985; Ord. 100 § 1 (part), 1980; Ord. 53 § 170-38, 1978)
17.38.049 - Landscaping requirements—Trees required.

Trees shall be the major design element in all landscaping improvements and shall include, specifically, one tree per five parking spaces. This provision is in addition to the percentage of landscaping required. See 17.38.036 for minimum tree size requirements.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-44, 1978)

17.38.050 - Landscaping requirements—Sidewalk and curb/gutter; front and corner yards.

A. All new commercial and industrial uses or expansions which are equal to twenty-five percent or more of the existing floor area shall install sidewalks/curb and gutter along all property lines that are adjacent to a dedicated street. Minimum sidewalk specifications shall be as follows: four-inch concrete depth, three-inch compacted gravel base and width to match the existing sidewalks on the same street. In the instances where there are not sidewalks on the same street, the minimum sidewalk width shall be five feet.

B. Prior to installation, the sidewalk/curb and gutter location, grade and all other technical specifications must be reviewed and approved by the Butte-Silver Bow department of public works. In the instance where the paving in the public right-of-way has been removed to allow for the sidewalk/curb and gutter, all paving shall be replaced in a manner that matches the grade of the existing paving with the appropriate edge of the curb.

C. All required sidewalks/curb and gutter are subject to the bonding requirements as per this title.

D. Required landscaping shall be provided in front and corner yards. Whenever a parking lot is bordered by a public sidewalk, or where any sort of exclusive pedestrian path is included in the parking lot design, at least twenty-five percent of the required landscaping shall be adjacent to the sidewalk or pedestrian paths.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-45, 1978)

17.38.051 - Landscaping requirements—Boulevards.

When properties are adjacent to a boulevard, the owner may landscape the boulevard and receive credit for required landscaping. Landscaping of the boulevard shall be approved by the Butte-Silver Bow department of public works and shall be maintained by the owner of such property.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-46, 1978)

17.38.052 - Landscaping requirements—Maintenance.

The developer, his or her successor, and/or the property owner shall be responsible for regular weeding, irrigating, pruning and other maintenance of the landscaping, including the replacement of dead trees, shrubs, grass or other vegetation, and the treatment or replacement of those showing signs of disease or damage. The owner shall be responsible for the maintenance of non-live decorative landscaping in a satisfactory and safe condition.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-47, 1978)
17.38.053 - Landscaping requirements—Site plan required.

A. A site plan showing required landscaping shall be submitted to the zoning officer for review and approval for commercial and industrial properties. A site plan shall meet all requirements and intent of this title. A site plan shall include, but not be limited to, the following:
   1. Location of buildings and proposed landscaping drawn to scale. Scale shall be appropriate to the size of the project and meet the approval of the zoning officer;
   2. Location, size, type and condition of proposed and existing vegetation and natural or non-live decorative materials including benches, walks, plaza, lighting, etc.

B. The approved landscape plan shall not be changed or altered without the approval of the zoning officer. All landscaping shown on the approved plan shall be installed and maintained.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-48, 1978)

17.38.054 - Screening—Waste material and excavated soil material.

A. All processing and storage, including storage of waste materials and excavated soil material, shall be conducted wholly within a building or wholly contained within the property boundaries of the property from which it was removed and shall be screened from view from the surrounding properties in R, C and any limited or M zone.

B. At no time shall soil material be stored or stockpiled within any public right-of-way. This requirement does not apply to street opening related to utility connections.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-51, 1978)

17.38.055 - Sprinkler system installation requirements.

All commercial and industrial uses shall install an automatic sprinkler system that will irrigate all live vegetation. The required sprinkler system is subject to the bonding requirements as per the title. In addition, the following requirements shall be met:

A. When the sprinkler system is directly connected to the public water system, approval of the water main connection for irrigation purposes is subject to the review and approval of the Butte-Silver Bow department of public works—water utility division.

B. All sprinkler systems connected to the public water system shall include the following:
   1. A dual check valve backflow preventer shall be installed on the private line connecting to the public water line (as specified by the Butte-Silver Bow water utility division). This device shall be placed in an appropriate box with lid as specified by the BSB water utility division.
   2. A water meter shall be installed on the private line connecting to the public water line by a method as specified by the Butte-Silver Bow water utility division. The method of installation shall include shut off valves, bypasses, and meter boxes as appropriate to the installation.
   3. An anti-siphon device shall be installed on the private line connecting to the public water line, on all yard hydrants, and at any location where a hose can be connected to the system, as specified by the Butte-Silver Bow water utility division.

(Ord. 00-1 § 1 (part), 2000)

17.38.060 - Landscaping—Completion bond required.
Before a building permit will be issued for the construction of any industrial or commercial building or addition thereto, the developer or his/her authorized representative shall submit a completion bond to the zoning officer to ensure that the landscaping, sprinkler system and sidewalks as required in this title are properly installed.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-60, 1978)

17.38.061 - Landscaping—Completion bond not required.

When a development site is currently landscaped in a manner that complies with the provisions of this chapter, a landscaping bond shall not be required.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-61, 1978)

17.38.062 - Bonding—Cost figure.

The applicant will be required to bond for all landscaping improvements as required by this title, including the sprinkler system and sidewalk/curb and gutter. The applicant will be required to submit a cost estimate for all required landscaping improvements. The cost estimate must be an actual representation of the total landscaping cost certified by a person or business licensed to perform landscaping in Butte-Silver Bow County. The cost estimate will be subject to review and approval by the zoning enforcement officer and shall be based on one hundred ten percent of the approved cost estimate for all landscaping improvements, including materials and installation.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-62, 1978)

17.38.063 - Bonding—Form.

Completion bonds may be in the form of cash, letter of credit, certificate of deposit or surety bond executed by a company authorized to do business in the state of Montana and will be released only after the zoning officer or his representative has inspected the landscape improvements and found that all required landscaping has been properly installed. Real property bonds will not be accepted as form of bonding.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-63, 1978)

17.38.064 - Landscaping—Improvement time.

The installation of landscape improvements shall be completed within twelve months from submittal of the approved bond. Landscaping improvements, for building projects where the length of time of construction will extend beyond the twelve-month period, shall be completed within a length of time as approved by the zoning officer.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-64, 1978)
17.38.065 - Landscaping bond life.

The life of a bond is required to be a minimum of one year from the date the bond is accepted by the planning department. The bond life may be extended for a period of one additional year due to an extended construction period or adverse weather conditions.

(Ord. 00-1 § 1 (part), 2000)

17.38.066 - Landscaping—Failure to complete.

Failure to complete the installation of the landscape improvements within the allotted time shall be deemed a forfeiture of the completion bond. When the completion bond is a letter of credit, cash deposit or surety bond, the local government shall utilize such securities to ensure the installation of the landscape improvements.

(Ord. 00-1 § 1 (part), 2000: Ord. 306 § 1 (part), 1987: Ord. 53 § 170-65, 1978)

17.38.067 - Bonding—Release.

When all requirements of a bond have been met, ninety percent of the bond will be released. The remaining ten percent will be retained as a maintenance security for the remainder of the two-year bond period. However, if the bond release date falls within October, November, December, January, February, March or April, the release of the bond shall be postponed until the vegetation can be determined to be in good health the following month of May.

(Ord. 00-1 § 1 (part), 2000)

17.38.070 - Planned unit developments in limited zones.

In any limited zone, the board of adjustment may accept and prescribe conditions by plans and written agreement governing the use of property in said zone where such conditions are in the best public interest and necessary to assure compatibility of land uses or orderly planned unit development of specified arrangement and type. Plans and agreements for such proposed planned unit development may be proposed and filed by the owners of the property being rezoned and may include provisions for additional street and utility improvements necessitated by the proposed development, under the provisions of Chapter 17.46.

(Ord. 135 § 1(aa), 1981; Ord. 53 § 170-1(C)(5), 1978)

17.38.080 - Other standards as warranted.

In recommending a limited zone classification on any land, the board may add such standards and conditions as it may deem necessary to adequately protect properties in and surrounding the specific plot being zoned, including a time limit for substantial construction of the property as authorized by the rezoning. After the time limit has expired, as provided in Section 17.52.020, without the commencement of the use, the land shall automatically be returned to its previous zoning classification before the L-zone classification was granted unless an extension of said time limit is authorized by the board of adjustment.
ITEM: **VARIANCE-21-000007** - An application to vary from Sections 17.38.046(E) - Landscaping Buffers and 17.38.050 - Landscaping Requirements – Sidewalk and Curb/Gutter, Front and Corner Yards of the BSBMC for Special Use Permit Application SPUSE-21-000011. The applicants are proposing to not install a three (3) foot wall for a headlight shield and are proposing to not install sidewalk, curb, and gutter along public rights-of-way but instead construct a gravel walking trail along Continental Drive.


DATE/TIME: Tuesday, June 15, 2021, at 5:30 p.m., Council Chambers, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:
LOCATION/DESCRIPTION: The property is located in a "R-3" (Multi-Family Residence) zone, legally described as a POR of Lot 4, Midnight #9883, Section 33, T03N, R07W, commonly located east of Continental Drive and south of Aspen Loop, Butte, Montana.
PROPOSAL: The applicants are proposing to construct three (3) new assisted living facilities which, in total, would provide 57 living units, as described in SPUSE-21-000011, which is the primary application for this proposal. In addition to the applicants’ Special Use Permit, if approved, they have requested to vary from the sections of the landscaping requirements listed above. Staff is considering this application, VARIANCE-21-000007, as a secondary application since the requested variances are only applicable, if the Board determines the use itself is appropriate in the primary application.

Specifically, the applicants are requesting to not install the three-foot (3’) wall buffering requirement and to not install sidewalk, curb/gutter, but instead install a gravel walking path.

STAFF FINDINGS: The Special Use Permit process was created to allow other uses than those specifically allowed in each district and to provide more flexibility for the use of land in each zone where appropriate. During evaluation of the special use permit process, certain other zoning regulations for each proposal can come into consideration. For instance, Section 17.38.044 – Commercial or Industrial Uses in residential zones requires that all landscaping requirements as defined by Chapter 17.38 of the BSBMC shall be met for projects permitted by a Special Use Permit.

In response to the landscaping requirements, the applicants, in conjunction with their Special Use Permit application, are requesting reprieve from two landscaping requirements in this section of the Ordinance. It shall be noted that the applicants’ proposal and site plan that was evaluated during the Special Use Permit process reflects the variance requests and the special use permit was evaluated as such. The variance requests are listed below:
1. **Section 17.38.046(E) - Landscaping Buffers** – This section states that all parking lots bordering residential zones shall provide a three foot masonry wall or solid wood fence along the lineal extent of the adjacent property line. The proposal does include a parking lot between the proposed facilities and Continental Drive, directly across the street from a residential zone and the applicants are, therefore, asking reprieve from this requirement.

2. **Section 17.380050 – Sidewalk and curb/gutter; front and corner yards** – This section requires that all new commercial and industrial uses shall install sidewalks/curb and gutter along all property lines that are adjacent to a dedicated street. The applicants' proposal does not include sidewalk/curb and gutter along the adjacent dedicated roads and are, therefore, asking for reprieve from this requirement.

Section 17.54.060 – Powers of the BSBMC describes the powers of the Board in this instance as follows:

"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 this title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done."

As stated above, this variance application was completed in conjunction with a Special Use Permit application to locate the facility itself within a residential zone. An evaluation of the appropriateness of the Special Use proposal in regard to the twenty (20) review criteria was completed previously and this staff analysis evaluates the three criteria established for the granting of variances separate from the review criteria for the Special Use Permit itself, as a secondary application for the proposal.
A review of the three criteria for the granting of variances is included herein.

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

   The landscaping requirements in the Zoning Ordinance were created to enhance the aesthetic value of commercial and industrial developments and buffer those uses of land which may have an adverse impact on the surrounding land use. The intent of Section 17.38.044 is to ensure those uses that may be allowed in residential zones also enhance the aesthetic value of the development and buffer their impacts from the surrounding land uses.

   In regard to the requested reprieve from the 3 foot headlight shield, the public interest in requiring such infrastructure is to block headlights from disturbing the adjacent homeowners. In this instance, the proposed layout for the parking lot would direct headlights to the west toward the single family homes across Continental Drive. In lieu of constructing a solid wall, the applicants are proposing the installation of shrubbery to shield the nuisance of headlights from the adjacent homeowners. The submitted site plan does indicate the location of the shrubbery along the western edge of the parking lot, however, it does not describe the height and density of the proposed shrubbery. If the shrubbery is of enough density and height to shield the headlights from the surrounding residents, the proposal may not be contrary to the public interest.

   In regard to the requested reprieve from the sidewalk/curb and gutter requirement, the public interest in requiring such infrastructure is to create a
hard surfaced, safe and aesthetic pleasing route for pedestrians and multi-modal traffic between developments, as well as control roadside storm water from entering the site. In lieu of installing sidewalk, curb, and gutter, the applicants are proposing to install a five foot (5') wide gravel walking path. In this instance, Continental Drive does not have stormwater infrastructure other than a roadside ditch to convey runoff. Curb would most likely not enhance the stormwater drainage here. The installation of a walking path in lieu of sidewalk may be in the public interest, as it could accomplish the same intent as sidewalk, however, a gravel walking path could create a maintenance issue and may not provide access that meets ADA requirements. It should be noted that there is a paved walking path located across Continental Drive from this location, and a walking path may fit better into the neighborhood than sidewalk and meet the same intent, however, staff believes it should be designed and paved with asphalt paving to meet ADA requirements. If the applicants are agreeable to this condition, then the proposed walking path may meet the intent of the requirement.

Based on the above discussion, the requested variances to the landscaping requirements for this proposal may not be contrary to the public interest.

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

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.

In regard to the requested reprieve from the headlight shield requirement, the Zoning Ordinance states that the headlight shield shall be placed on the adjacent property line. The topography of the site, as it slopes from east to west, would make a headlight shield at this location ineffective. While the size of the parcel does not prohibit the installation of a 3 foot solid wall, the topography of the site may render that wall ineffective. Therefore, staff believes there is a hardship associated with this property in regard to this request.

In regard to the requested reprieve from the sidewalk, curb, and gutter requirement, as stated above, the roadside ditch structure to convey storm water from Continental Drive could create a placement issue for curb and gutter. The curb and gutter would be required to be set back a distance from the roadside to not affect the current drainage system, and, therefore, creates a hardship for the applicant. However, in regard to the installation of a gravel walking path instead of a hard surface, there does not seem to be a hardship associated with the property that would prevent the installation of a hard surface for walking.

Based on the above discussion, it appears that there is a hardship associated with the property for the requested variances with the exception of the proposed gravel trail.

3. The spirit of the Zoning Ordinance must be observed and substantial justice done.
The purpose of the Zoning Ordinance is to establish minimum requirements for the promotion of public health, safety, comfort, convenience, and general welfare by restricting practices that may infringe on the rights of adjacent landowners and the general public, while permitting reasonable use of private property. Zoning guides development in a consistent manner across land use zones and substantial justice must be done to ensure a decision for a variance is appropriate. Substantial justice, in this regard, does not necessarily mean that substantial justice be done for the applicants but that the Board has considered the broader objectives of the law and that the decision reflects fairness and equal treatment for all parties.

In considering if substantial justice has been done in regard to a zoning decision, the Board should take into consideration the following:

1. Would literal interpretation of the provisions of this chapter deprive the applicants of rights commonly enjoyed by other tracts in the same district?

2. Would approving the variance request grant the applicants any special privilege that is denied by this chapter to other land in the same district?

While the Board has the power to grant variances when certain criteria, as defined by the Montana Code Annotated and evaluated herein exists, the Board also has the duty to uphold all relevant zoning regulations. If the Board determines substantial justice has been done considering the broader objectives of the Ordinance and the decision reflects fair treatment of not only the applicants but other
parcels located in the same district, a variance may be applicable.

In regard to the evaluation of the spirit of the Zoning Ordinance, as stated in the evaluation of criteria #1, the intent is to require aesthetically pleasing developments while congruently protecting impacts to surrounding properties. In this instance, the proposal to install shrubbery, if dense enough to block the headlights, instead of the 3 foot solid wall meets the intent of this regulation by protecting the surrounding single family homes located across Continental Drive. In regard to the sidewalk, curb, and gutter requirement, because of the existing roadside storm water infrastructure, the proposal of a walking trail, if paved, may also meet the goals of the Ordinance without meeting the literal interpretation of the requirements of the Ordinance for the above stated purposes. Therefore, staff believes the requested variances, if the walking trail is paved and not gravel, may be in the spirit of the Zoning Ordinance.

In regard to substantial justice being done, staff believes that the proposals made by the applicants in lieu of the literal interpretation of the Ordinance (if the walking trail is paved) do not constitute special privilege denied to others in the zone, but more so meeting the intent of the Ordinance by tailoring requirements for this specific development and the neighborhood comprehensively. A walking trail would compliment the other walking trail in the area (located across Continental Drive from this proposal), the applicants would not be required to install storm water infrastructure (i.e., curb and gutter) that does not compliment the existing system and would allow them to shield headlights from the surrounding homes in a manner that will be more effective.
Therefore, as long as the trail is designed and paved with asphalt paving to meet ADA requirements and not gravel, staff believes substantial justice has been done.

**CONCLUSION:** As discussed within the report, the requested variance to deviate from the requirements listed above in the landscaping section of the Zoning Ordinance may not be contrary to the public interest. There does seem to be a hardship unique to the subject parcel due to its topography and location adjacent to a public right-of-way with roadside ditch stormwater infrastructure. Also, it does seem as if substantial justice has been done and the proposed variance requests fall within the broader objectives of the law and reprieve from the listed sections would be fair and equitable for all parties. Therefore, if the Board feels that the primary proposal is appropriate as a Special Use for the area, staff believes that secondary application VARIANCE-21-000007 for reprieve from the listed landscaping requirements should be approved with the understanding that any applicable requirement of the BSBMC not specifically addressed herein shall be met, with the following condition:

1. The walking trail proposed in lieu of the sidewalk shall be designed and constructed of asphalt paving to meet ADA requirements. A trail detail including the materials, size, and location of the materials shall be submitted to the Butte-Silver Bow Public Works Department for review and approval prior to the issuance of a building permit. Also, the trail shall be subject to the same bonding requirements as sidewalk, curb, and gutter.
ZONING BOARD OF ADJUSTMENT
Butte-Silver Bow
Building Code Department
1st Floor, Room 108, Courthouse
Butte, MT 59701

This is an application for the granting of a Variance from the terms of the County Zoning Ordinance (Title 17 of the Municipal Code – Butte-Silver Bow County), whereas the granting of the Variance will not be contrary to the public interest and where, because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the Ordinance would result in unnecessary hardship. The Board of Adjustment shall hear applications for Variances to the terms of the Zoning Ordinance.

The following instructions are a summary of requirements from the Zoning Ordinance. If you have additional questions, you may find it beneficial to review the complete Zoning Ordinance.

APPLICATION INSTRUCTIONS

1. All questions on the application form must be answered fully. Please type or print. You may attach additional pages if space is needed.

2. A complete application package must be filed in the office of the County Building Code Department on or before the submittal dates identified on the attached page. Failure to submit a complete application will be cause for rejection of the application for review and processing.

3. Attach an accurately drawn site plan showing major details of the site, including but not limited to: the dimensions and location of existing and proposed buildings and structures, setbacks – the distance from the foundation to the property line in front, sides and rear, off-street parking and loading, service and refuse areas, means of ingress and egress, landscaping, screening and signs. **THE SITE PLAN MUST BE DRAWN TO SCALE AND SUBMITTED ON 8½” X 14” OR SMALLER SIZE PAPER.**

4. If new construction or a change in the use of the property is contemplated, building or development plans may be helpful in reviewing this application.
5. All plans, exhibits and other legal documents submitted with the application will be retained as part of the permanent public record.

6. The application form requires the following information:

A. The Variance requested and reasons for seeking the Variance.

B. Facts of hardship upon which a Variance is required. Hardship is determined by those special conditions and circumstances which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district.

C. A legal and general descriptions of the lots or tracts upon which a Variance is sought.

D. The name and address of the owner(s) of the land subject to the Variance and their agents, if any.

E. The size of the parcel (area and dimensions).

F. If there are any covenants or deed restrictions on the property subject to the Variance, submit a copy of them and indicate their expiration date.

7. A dimensioned site plan of the property which includes but is not limited to the following:

A. The locations and dimensions of all vehicular points of ingress and egress, drives, off-street parking spaces, channelizations and traffic circulation.

B. The location and size of all existing and proposed buildings, structures, and improvements, including those which will be removed. Proposed improvements should be distinguished by an alternative method of coding such as using dashed or dotted lines or shading versus solid lines. Label all information.

C. Other pertinent features (trees, landscaped areas, permanent terrain features).

8. Photographs may be submitted and are often helpful. They should be of a size adequate to show the nature of the property.
9. Under Section 17.56.040 of the Butte-Silver Bow Municipal Code, a fee which is set by Council of Commissioners must accompany the application for a Variance. Checks or money orders should be made payable to Butte-Silver Bow.

CURRENT FEES ARE:

Residential - $35.00
Commercial/Industrial - $50.00

10. Staff responsibility: The Zoning Coordinator, upon receiving an application for a Variance, shall do the following:

A. Check each application for completeness and reject those applications which are incomplete.

B. Consult with other departments of the City and County and fully evaluate the impact of the uses contemplated under the Variance requested upon public facilities and service.

C. Study each application with reference to its appropriateness and effect on existing and proposed land uses and its relationship to the Butte-Silver Bow Comprehensive Plan.

D. Place a notice of the time, date and place of the public hearing in the legal newspaper seven (7) days in advance of the date set for the public hearing.

E. Notify the owner of the property or his agent of the time, date and place of the public hearing five (5) days in advance of that date.

F. Place a notice of the time, date and place of the public hearing on the property seven (7) days prior to the hearing date.

G. Report staff findings, in writing, to the reviewing authority and this report shall be a matter of public record.
VARIANCE APPLICATION FORM

1. Address or general location:
   - No Address, S33, T03 N, R07 W, POR OF LOT 4, MIDNIGHT #9883

2. Legal description of property (if unknown, contact the Assessor’s Office, 497-6281, Room 203 in the Courthouse
   - S33, T03 N, R07 W, POR OF LOT 4, MIDNIGHT #9883

3. Zone classification:
   - R-3

4. Variances requested:

Section 17.38.046(E) of the BSBMC states:
To prevent the headlights of vehicles from having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the lineal extent of the adjacent property line.

VARIANCE REQUESTED

A Variance to Butte-Silver Bow Municipal Code 17.38.046(E) is being requested for the requirement “To prevent the headlights of vehicles from having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the lineal extent of the adjacent property line.”

Beehive Homes is proposing to install in lieu of a three-foot masonry wall or solid wood fence, conifer shrubbery of sufficient height will be provided to prevent vehicle lights from having a negative effect on neighboring residential property owners.
Section 17.38.050 of the BSBMC states:

Landscaping requirements—Sidewalk and curb/gutter; front and corner yards.

A. All new commercial and industrial uses or expansions which are equal to twenty-five percent or more of the existing floor area shall install sidewalks/curb and gutter along all property lines that are adjacent to a dedicated street. Minimum sidewalk specifications shall be as follows: four-inch concrete depth, three-inch compacted gravel base and width to match the existing sidewalks on the same street. In the instance where there are not sidewalks on the same street, the minimum sidewalk width shall be five feet.

B. Prior to installation, the sidewalk/curb and gutter location, grade and all other technical specifications must be reviewed and approved by the Butte-Silver Bow department of public works. In the instance where the paving in the public right-of-way has been removed to allow for the sidewalk/curb and gutter, all paving shall be replaced in a manner that matches the grade of the existing paving with the appropriate edge of the curb.

C. All required sidewalks/curb and gutter are subject to the bonding requirements as per this title.

D. Required landscaping shall be provided in front and corner yards. Whenever a parking lot is bordered by a public sidewalk, or where any sort of exclusive pedestrian path is included in the parking lot design, at least twenty-five percent of the required landscaping shall be adjacent to the sidewalk or pedestrian paths.

VARIANCE REQUESTED

The Beehive Homes facility will be located on a 4.8-acre parcel that fronts Continental Drive. There are currently no sidewalk/curb and gutter located on Continental Drive. A sidewalk along Continental Drive would be approximately 950 feet long and not connect to any other sidewalks or pedestrian pathways.

Beehive Homes requests a Variance from BSBMC 17.38.050’s requirement to install sidewalk/curb and gutter along the Continental Drive frontage. Beehive Homes proposes to install a five-foot-wide road mix or gravel walking path in lieu of the sidewalk curb and gutter required in the BSBMC. A walking path meets the intent of the ordinance.

5. Reason Variance is sought:

The Beehive Homes facility is a new site development, subject to this chapter, however Beehive Homes is requesting various variances, The Reason the Variances are sought for each of the sections are listed below.

• 17.38.046(E)
  o Beehive Homes is requesting Variance to Butte-Silver Bow Municipal Code 17.38.046(E) for the requirement “To prevent the headlights of vehicles from
having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the lineal extent of the adjacent property line.”

- The Variance to the Butte-Silver Bow Municipal Code 17.38.046(E) is being requested because the proposed development will be an assisted living facility with the following characteristics associated with vehicles on site.
  - Most residents do not have a vehicle,
  - 24HR staffed; 12HR shifts – Approx. (5) Daytime Staff; (2) Evening Staff,
  - Hours of Visitation – 8 am to 8 pm,
  - Hours of Delivery – 10 am to 4 pm (NO semi or box trucks) (Typical residential deliveries ie. FedEx, Amazon, UPS, Grocery),
  - Expected (8 to 10) vehicles on property during daytime hours; Approximately (2 to 4) vehicles during evening hours.
- The single-family residences are lower grade than the proposed parking lot by approximately 5 feet and approximately 250 away.

- Beehive Homes is proposing to install in lieu of a three-foot masonry wall or solid wood fence, shrubbery of sufficient height will be provided to prevent vehicle lights from having a negative effect on neighboring residential property owners. The intent of the ordinance is to shield residential neighbors from the nuisance of headlights entering and leaving the facility. Installation of shrubbery will meet the intent of the ordinance.

- 17.38.050
  - Beehive Homes is requesting a variance from BSBMC 17.38.050’s requirement to install sidewalk/curb and gutter.
- The Beehive Homes facility will be built on a currently vacant lot east of Continental Drive. There are currently no sidewalk/curb and gutter located on Continental Drive. A sidewalk to and from nowhere in this location could be considered an attractive nuisance, encouraging pedestrians to cross a major thoroughfare in an area without pedestrian crossings. A walking path along this route is a better fit with surrounding parcels.
- The intent of the ordinance is to provide connectivity between areas. Installing sidewalks in front of this facility along Continental Drive would provide connectivity to and from nowhere. Beehive Homes proposes to install a gravel/road mix walking path along the entire frontage of the proposed project site. A walking path meets the intent of the ordinance by providing connectivity.
6. Facts of hardship:
(Hardship is defined as those special conditions or circumstances with respect to the lot shape or topography; a literal enforcement of the provisions of the chapter would result in unnecessary burden).

The Beehive Homes facility is a new site development, subject to this chapter, however Beehive Homes is requesting various variances, the Facts of Hardship for each of the sections are listed below.

- 17.38.046(E)
  - Beehive Homes is requesting Variance to Butte-Silver Bow Municipal Code 17.38.046(E) for the requirement “To prevent the headlights of vehicles from having a negative impact on residential property owners, all parking lots bordering a residential zone or across the alley or street from a residential zone shall provide a three-foot masonry wall or a solid wood fence along the lineal extent of the adjacent property line.”
    - The defining reason for the “three-foot masonry wall or solid wood fence” listed in Butte-Silver Bow Municipal Code 17.38.046(E) is “To prevent the headlights of vehicles from having a negative impact on residential property owners”. The proposed development will be an assisted living facility with the following characteristics associated with vehicles on site.
      - Most residents do not have a vehicle,
      - 24HR staffed; 12HR shifts – Approx. (5) Daytime Staff; (2) Evening Staff,
      - Hours of Visitation – 8 am to 8pm,
      - Hours of Delivery – 10 am to 4 pm (NO semi or box trucks) (Typical residential deliveries ie. FedEx, Amazon, UPS, Grocery),
      - Expected (8 to 10) vehicles on property during daytime hours; Approximately (2 to 4) vehicles during evening hours.
    - The single-family residences are lower grade than the proposed parking lot by approximately 5 feet and approximately 250 away.
    - The subject site sits along Continental Drive, which includes various utility easements and a storm ditch along the entire length of Continental Drive. Additionally, BSBMC requires the site adhere to stormwater regulations. The downward east to west slope of the property leaves very little room for an adequately designed stormwater retention/detention pond while preserving electrical utility pole access and the existing roadside stormwater ditch. The only feasible location for stormwater features is the front of the property between the parking area and Continental
Drive. Installing a masonry or wooden fence would encroach on the stormwater pond reducing its capacity, resulting in an unnecessary burden for the masonry/wood fence requirement.

As previously stated, Beehive Homes is proposing to install in lieu of a three-foot masonry wall or solid wood fence, shrubbery of sufficient height will be provided to prevent vehicle lights from having a negative effect on neighboring residential property owners. Installation of shrubbery can be incorporated into the design of the stormwater system without substantially impacting the pond capabilities and will meet the intent of the ordinance.

- 17.38.050
  - Beehive Homes is requesting a variance from BSBMC 17.38.050’s requirement to install sidewalk/curb and gutter.
    - The intent of the ordinance is to provide connectivity between areas. Installing sidewalks in front of this facility along Continental Drive would provide connectivity to and from nowhere.
    - The Beehive Homes facility will be built on a currently vacant lot east of Continental Drive. There are currently no sidewalk/curb and gutter located on Continental Drive.
    - The frontage along Continental Drive is heavily encroached upon by various utilities most notably Northwestern Energy (NWE) overhead power poles. NWE requires a 10–15-foot radius easement around its power poles. Additionally, the existing storm water drain along the entire length of Continental Drive starts at the edge of pavement.
    - Installing sidewalks along the Continental Drive Frontage is out of character for the area and will increase impervious area impacting an existing municipal storm water drainage system, which is already near capacity during storm events. Installing sidewalks in this location will for the above stated reasons, create a hardship for building on this site.
    - As previously stated, Beehive Homes proposes to install a gravel walking path along the entire frontage of the proposed project site. A walking path meets the intent of the ordinance by providing connectivity. Furthermore, the gravel walking path is a less impervious surface than concrete, resulting in minimal impacts to the existing municipal storm water ditch.

7. Size of Parcel (Approximate): Length 950 Feet Width 450 Feet
   Area 4.8-Acres
8. Owner(s): (Recorded Owner)
   Aaron Hildreth on behalf of Beehive Homes
   (Address)
   148 Kountz Rd, Whitehall, MT 59759
   (Phone Number)
   406.599.6014

9. Agent(s): (Name)
   Alena Miller, Alt Architecture
   (Address)
   2440 Dayton-Xenia Rd Ste B, Beavercreek, OH 45434
   (Phone Number)
   937.427.2770 ext. 103

   Agent(s): (Name)
   Forrest Jay - Water & Environmental Technologies
   (Address)
   480 E. Park St, Butte MT 59701
   (Phone Number)
   406.723.1568

10. Covenants or deed restrictions on the property:
   YES    XX NO (If yes, include a copy).

11. Attachments

   XX Dimensioned site plan
   XX Filing Fee

   Other (list)

I UNDERSTAND THAT THE FILING FEE ACCOMPANYING THIS APPLICATION IS NOT
REFUNDABLE, THAT IT PAYS PART OF THE COST IN PROCESSING AND THE FEE DOES NOT
CONSTITUTE A PAYMENT FOR THE VARIANCE REQUESTED. ALSO, THAT ALL THE
INFORMATION PRESENTED IS TRUE AND CORRECT.

Signature: (Recorded Owner) 

Date: 5/19/21

PLANNING DEPARTMENT - 155 W. GRANITE ST. – BUTTE, MT 59701
PH: 406-497-6250 – E-MAIL: planning@bsb.mt.gov
USE VARIANCE APPLICATION REVIEW CRITERIA

The Butte-Silver Bow Zoning Ordinance does not permit commercial and/or business operations within residential zones unless they are a permitted Home Occupation.

The three point criteria established by the Montana Supreme Court, for the review of Use Variance Applications.

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

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

   Answers to the hardship question must not only satisfy the above criteria but also must satisfy the two additional criteria required by “use” variances. These two criteria are:

   a. The land and/or structure in question cannot reasonably be utilized for the uses permitted in the district.

   b. The use proposed will not adversely affect existing and potential permitted uses once it is in operation.

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 which may infringe on the right of the adjacent landowners.

   Use variances are unique in that adjacent landowners with permitted uses have more than the basic right to enjoy their property. They also have the right to demand that the proposed nonconforming use by appropriate and unobjectionable.
RIGHT OF APPEAL
Butte-Silver Bow Zoning Board of Adjustment

Butte-Silver Bow Municipal Code, Title 17 (Zoning), establishes specific rights of appeal to persons aggrieved by decisions of the Butte-Silver Bow Zoning Board of Adjustment. The procedure for such appeals is detailed in Sections 17.54.080 and 17.54.090, which are outlined below.

Section 17.54.080: Right of Appeal

Any person or person, jointly or severally, aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board or bureau of the local government, may present to the District Court a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the District Court within thirty (30) days after the filing of the decision in the office of the Board.

Section 17.54.090: Court Review of Decision

Upon the presentation of such petition, the Court may allow a writ of certiorari directed to the Board to review such decision of the Board and shall prescribe therein the time within which a return thereto must be made and served upon the individual’s attorney, which shall not be less than ten (10) days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, or notice to the Board or the Council and on due cause shown, grant a restraining order.
Attachment

Site Schematics
BUTTE-SILVER BOW
ZONING BOARD OF ADJUSTMENT
STAFF ANALYSIS

ITEM: Variance Application VARIANCE-21-000008 - An application for variances to construct a covered front porch on an existing residence fifteen feet (15') from the front property line, varying from Section 17.12.070, Front Yard Depth, of the Butte-Silver Bow Municipal Code (BSBMC), and to construct a detached garage (26'W x 30'D) within three feet (3') of the east side property line that is abutting a public street (Carter Street), varying from the required ten foot (10') setback for a side yard abutting a public street of Section 17.12.020 (C), Permitted Uses, of the BSBMC.

APPLICANT: Darrell Yager, owner, 1810 McKinley Avenue, Butte, Montana

DATE/TIME: Tuesday, June 15, 2021, 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 in question is located in an “R-2” (Two Family Residence) zone, legally described as Lots 1 and 2, Block 18, of the Gilman Addition, commonly addressed as 1810 McKinley Avenue, Butte, Montana.

PROPOSAL/HISTORY: The applicant is proposing to construct a covered front porch on an existing residence fifteen feet (15’) from the front property line in addition to constructing a detached garage (26′W x 30′D) that would be located three feet (3’) from the side property boundary abutting a public street (Carter Street). The garage would be located on the east side yard of the applicant’s property.

The applicant applied for the same two variance requests in January of 2017. At that hearing, the Zoning Board of Adjustment approved both variance requests by the applicant. The applicant did not construct the proposed garage or covered porch within one year and per the By-Laws of the Zoning Board of Adjustment, the variance approvals expired. Therefore, he is seeking approval for the same proposal again.

STAFF FINDINGS: Section 17.12.070, Front Yard Depth, of the Butte-Silver Bow Municipal Code states that a building within the “R-2” zone shall have a minimum front yard setback of twenty feet (20’). The Butte-Silver Bow Municipal Code, Section 17.10.020 (D), Permitted Uses, requires that a detached garage meet the side yard requirement of ten feet (10’) when located adjacent to an adjoining side street. As such, the applicant is asking the Zoning Board of Adjustment for a variance to the terms listed above.

Section 17.54.060 – Powers of the BSBMC describes the powers of the Board in this instance as follows:
“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 this title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done.”

A review of the three criteria for the granting of variances is included herein.

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 around structures for emergency vehicle access, assuring that sufficient light and air are provided to the structure and to maintain visual clearance along streets and at intersections.

   In regard to the requested variance for the side yard setback for the accessory structure, the primary structure's front yard faces McKinley Avenue and the garage will be located on the east side of the property. The east elevation of the garage would be within three feet (3') of the public right-of-way of Carter Street. As the Board is aware, setback distances are from the applicant's property boundary. In this particular case there is approximately twelve feet (12') of right-of-way with a grass and dirt surface between the applicant's property and the pavement of Carter Street. While the Zoning Ordinance does not have provisions to take into consideration the width of the boulevard or where the pavement location is, this area does help to provide access for emergency vehicles and adequate
light. In addition, the garage will not impede the vision clearance triangle.

Regarding the proposed front setback adjustment, it should be noted that the residence has an existing front porch that already extends into the front yard setback. Because the front porch will be converted to a covered porch, the roof of the porch requires it to meet the front yard setback. Due to the characteristics of the platted additions in the area, the majority of lots located on McKinley Avenue are corner lots. The residences on these lots generally have a front yard that faces the north/south streets and their side yards are McKinley Avenue. As such, many of the homes are located closer to McKinley Avenue. As a result, it does not appear that the requested variance to encroach into the front yard setback five feet (5') would change the character of the neighborhood. It should also be noted that the same boulevard characteristics exist on McKinley Avenue as Carter Street, and therefore adequate light and air should not be affected.

Because of the observations cited above, staff feels that neither of the setback variances requested to the existing home would 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.**

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.

Within the application, the applicant has stated the following in regard to hardship:

“Because of placement of home from previous owner, on center of property.”

It should be noted that while the applicant may not have placed the home in the center of the lot, the home was in this location when the parcel was purchased. It should have been known at this time that there wasn’t enough room to construct a garage of this size in compliance with the Zoning Ordinance at this location and staff believes the applicant does have some accountability in this regard. The orientation and location of the home is the only reason why the applicant is unable to fit a garage of this size and a front porch in compliance with the zoning regulations. The parcel itself is larger than many corner lots in most residential areas, which are bounded by two streets and an alley and are rectangular in shape.

In this instance, there is nothing unique to the parcel itself to constitute a hardship as defined by the Montana Supreme Court.

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

The purpose of the Zoning Ordinance is to establish minimum requirements for the promotion of public health, safety, comfort, convenience, and general welfare by restricting practices that may infringe on the rights of adjacent landowners and the general public,
while permitting reasonable use of private property. Zoning guides development in a consistent manner across land use zones and substantial justice must be done to ensure that a decision for a variance is appropriate. Substantial justice, in this regard, does not necessarily mean that substantial justice be done for the applicant, but that the Board has considered the broader objectives of the law and that the decision reflects fairness and equal treatment for all parties.

In considering if substantial justice has been done in regard to a zoning decision, the Board should take into consideration the following:

1. Would literal interpretation of the provisions of this chapter deprive the applicant of rights commonly enjoyed by other tracts in the same district?

2. Would approving the variance request grant the applicant any special privilege that is denied by this chapter to other land in the same district?

While the Board has the power to grant variances when certain criteria, as defined by the Montana Code Annotated and evaluated herein exists, the Board also has the duty to uphold all relevant zoning regulations. If the Board determines substantial justice has been done considering the broader objectives of the Ordinance and the decision reflects fair treatment of not only the applicant but other parcels located in the same district, a variance may be applicable.

As stated above, the proposal does not impede into any vision clearance triangles or encroach on any neighboring structures that could constitute an access or adequate light and air concern. However, the
request for these variances does not promote consistent development. In this instance, detached garages are accessory structures typical of residential areas. The literal interpretation would prohibit the construction of a detached garage of this size. However, it would not prohibit the construction of a detached garage altogether. There is adequate space to construct a one car garage. It should also be noted that it is common for the Planning Department to receive questions regarding setback requirements from prospective property buyers that are completing due diligence to ensure the parcel will meet their needs. This request could be interpreted as special privilege that is denied by the Zoning Ordinance to others located in the same zone. Therefore, it does not appear that an approval of this request would result in substantial justice being done.

CONCLUSIONS:

As discussed within the report, the requested variance to locate a 26'x30' detached garage that is three feet (3') from the side street property line and to construct a covered porch fifteen feet (15') from the front property line zone does not meet two of the Montana Supreme Court's criteria for a variance. While the proposal may not be contrary to the public interest, it does not meet the definition of hardship. Also, because approving the request could be considered a special privilege granted to the applicant that is denied to others by the provisions of the Ordinance, substantial justice would not be done in granting the request. Therefore, staff recommends denial of VARIANCE-21-000008.
This is an application for the granting of a Variance from the terms of the County Zoning Ordinance (Title 17 of the Municipal Code -- Butte-Silver Bow County), whereas the granting of the Variance will not be contrary to the public interest and where, because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the Ordinance would result in unnecessary hardship. The Board of Adjustment shall hear applications for Variances to the terms of the Zoning Ordinance.

The following instructions are a summary of requirements from the Zoning Ordinance. If you have additional questions, you may find it beneficial to review the complete Zoning Ordinance.

APPLICATION INSTRUCTIONS

1. All questions on the application form must be answered fully. Please type or print. You may attach additional pages if space is needed.

2. A complete application package must be filed in the office of the County Building Code Department on or before the submittal dates identified on the attached page. Failure to submit a complete application will be cause for rejection of the application for review and processing.

3. Attach an accurately drawn site plan showing major details of the site, including but not limited to: the dimensions and location of existing and proposed buildings and structures, setbacks -- the distances from the foundation to the property line in the front, sides and rear, off-street parking and loading, service and refuse areas, means of ingress and egress, landscaping, screening and signs. **THE SITE PLAN MUST BE DRAWN TO SCALE AND SUBMITTED ON 8½" x 14" OR SMALLER SIZE PAPER. IF THE SITE PLAN IS LARGER THAN 8½" x 14", THEN YOU NEED TO PROVIDE 12 COPIES OF IT.**

4. If new construction or a change in the use of the property is contemplated, building or development plans may be helpful in reviewing this application.

5. All plans, exhibits and other legal documents submitted with
Variance Application - Page 2

the application will be retained as part of the permanent public record.

6. The application form requires the following information:

A. The Variance requested and reasons for seeking the Variance.

B. Facts of hardship upon which a Variance is required. Hardship is determined by those special conditions and circumstances which are peculiar to the land, the lot or something inherent in the land which causes the hardship and which are not applicable to other lands in the same district.

C. A legal and general description of the lots or tracts upon which a Variance is sought.

D. The name and address of the owner(s) of the land subject to the Variance and their agents, if any.

E. The size of the parcel (area and dimensions).

F. If there are any covenants or deed restrictions on the property subject to the Variance, submit a copy of them and indicate their expiration date.

7. A dimensioned site plan of the property which includes but is not limited to the following:

A. The location and dimensions of all vehicular points of ingress and egress, drives, off-street parking spaces, channelizations and traffic circulation.

B. The location and size of all existing and proposed buildings, structures and improvements, including those which will be removed. Proposed improvements should be distinguished by an alternative method of coding such as using dashed or dotted lines or shading versus solid lines. Label all information.

C. Other pertinent features (trees, landscaped areas, permanent terrain features).

8. Photographs may be submitted and are often helpful. They should be of a size adequate to show the nature of the property.

9. Under Section 17.56.040 of the Butte-Silver Bow Municipal Code, a fee which is set by the Council of Commissioners must accompany the application for a Variance. Checks or money
orders should be made payable to Butte-Silver Bow.

CURRENT FEES ARE: Residential $35.00
                      Commercial/Industrial $50.00

10. Staff responsibility: The Zoning Coordinator, upon receiving
    an application for a Variance, shall do the following:

    A. Check each application for completeness and reject those
       applications which are incomplete.

    B. Consult with other departments of the City and County and
       fully evaluate the impact of the uses contemplated under
       the Variance requested upon public facilities and
       service.

    C. Study each application with reference to its
       appropriateness and effect on existing and proposed land
       uses and its relationship to the Butte-Silver Bow
       Comprehensive Plan.

    D. Place a notice of the time, date and place of the public
       hearing in the legal newspaper seven (7) days in advance
       of the date set for the public hearing.

    E. Notify the owner of the property or his agent of the
       time, date and place of the public hearing five (5) days
       in advance of that date.

    F. Place a notice of the time, date and place of the public
       hearing on the property seven (7) days prior to the
       hearing date.

    G. Report staff findings, in writing, to the reviewing
       authority and this report shall be a matter of public
       record.

VARIANCE APPLICATION FORM

1. Address or general location: 1810 N. McKenley

Butte, MT 59701

2. Legal description of property (if unknown, contact the
   Assessor's Office, 723-8262, extension 258 -- Room 203 in the
   Courthouse).

Calhoun Addition, SW, Tract 1, Blocks 1, 2, and 3, Lots 1-26

80' x 176' w. L. 1 & 2. Calhoun Addition, Blocks 15 & Lots 1-2
Variance Application - Page 4

3. Zone classification: R2

4. Variance requested: To construct a covered porch on an existing residence, fifteen ft (15') from front property line, varying from Section 17, T2N, R10W, Front yard depth of the Butte Section. Municipal Code (13.5.3.2) rel. to construct a detached garage (24' x 20') within three feet (3) of the east side property line that is abutting a public street (artescho) varying from the required ten feet (10') setback of a side yard abutting a public street of Section 17, T2N, R10W, in the R2 zone of the BLM.

5. Reason variance is sought: Re applying for approved variance application #15-327. Due to price makes it infeasible, I was unable to complete construction.

6. Facts of hardship: Because of placement of home from previous owner, on corner of property.

   (Hardship is defined as those special conditions or circumstances with respect to the lot shape or topography; a literal enforcement of the provisions of the chapter would result in unnecessary burden).

7. Size of Parcel (Approximate): Length 32 yd Width 35 yd

   Area 720 sq ft

8. Owner(s): Darrell Yoga
   (Recorded Owner)

   1540 McKinley, Butte, MT 59701
   (Address)

   406-490-5488
   (Phone Number)
Variance Application - Page 5

9. Agent(s):  
   Name: Daylen Yago
   Address: 16 11 Florence Ave
   Phone Number: 406 490-2155

10. Covenants or deed restrictions on the property:  
    _____ YES  _____ NO (If yes, include a copy).

11. Attachments:
    _____ Dimensioned site plan
    _____ Filing fee
    _____ Building construction plans
    _____ Other (list)

I understand that the filing fee accompanying this application is not refundable, that it pays part of the cost in processing and the fee does not constitute a payment for the variance requested. Also, that all the information presented is true and correct.

Signature:  
(Recorded Owner)  
Date: 5/14/2021
USE VARIANCE APPLICATION REVIEW CRITERIA

The Butte-Silver Bow Zoning Ordinance does not permit commercial and/or business operations within residential zones unless they are a permitted Home Occupation.

The three point criteria established by the Montana Supreme Court, for the review of Use Variance Applications.

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

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

Answers to the hardship question must not only satisfy the above criteria but also must satisfy the two additional criteria required by "use" variances. These two criteria are:

a. The land and/or structure in question cannot reasonably be utilized for the uses permitted in the district.

b. The use proposed will not adversely affect existing and potential permitted uses once it is in operation.

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 which may infringe on the right of the adjacent landowners.

Use variances are unique in that adjacent landowners with permitted uses have more than the basic right to enjoy their property. They also have the right to demand that the proposed nonconforming use be appropriate and unobjectionable.
Thursday, January 12, 2017, at 5:30 P.M.
Council Chambers – Third Floor – Room 312

I. Call to Order.

II. Approval of the Minutes of the meeting of December 1, 2016.

III. Hearing of Cases, Appeals and Reports:

**Variance Application #15327** - An application for variances by Darrell Yager, owner, to construct a covered porch (8’D X 16’W) to the front of the house that would be located within fifteen feet (15’) of the front property boundary, varying from the required twenty foot (20’) setback of Section 17.12.070, Minimum Front Yard Depth, of the BSBMC, and to construct a detached garage (28’WX30’D) within three feet (3’) of the east side property line abutting a side street, varying from the required ten feet (10’) of Section 17.12.080, Minimum Side Yard Width Depth, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lots 1 and 2, Block 18 of the Gilman Addition, commonly known as 1810 McKinley Avenue, Butte, Montana.

**Manufactured Home Conditional Use Permit Application #15328** - An application for a conditional use permit by Francis Finnegar, owner, and Land Restoration Specialists LLC, c/o Joe Patrick, agent, to locate a Class B (single-wide) manufactured home on a parcel of record in an "R-1" (One Family Residence) zone, per Section 17.10.030 Conditional Uses, of the BSBMC. The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 6 thru 8 and the east 10’ of Lot 9, Block 36 of the Hamilton Addition, commonly known as 2320 Yale Avenue, Butte, Montana.

Applicant or Representative must be present at the meeting
AGENDA

(Page 2)

Variance Application #15329 – An application for a variance by John L Willard, owner, to locate a one booth salon business at his residence, varying from the Home Occupation provisions of Section 17.44.040, Criteria for Review, of the BSBMC including making structural alterations to the residence for an entrance and limited retail sales. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lot 12A, Block 7 of the Noyes and Upton Railroad Addition, commonly known as 1107 S Arizona Avenue, Butte, Montana.

Variance Application #15331 – An application for variances by Joshua A & Kelly A Popovich, owners, to locate a carport (20'W X 21'D) within six and one-half feet (6.5') of a rear property boundary abutting an alley, varying from the minimum required ten foot (10') parking apron of Section 17.12.020(C), Permitted Uses, and within one foot (1') of a side yard property boundary, varying from the minimum required three feet (3') of Section 17.12.020(C), of the BSBMC. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lot 9, Block 30 of the Bellevue Addition, commonly known as 1112 Dewey Boulevard, Butte, Montana.

IV. Other Business:
   A. Election of Officers

V. Adjournment.

By:  

Lori Casey, Acting Planning Director
ITEM: Variance Application #15327 - An application for variances to construct a covered front porch on an existing residence fifteen feet (15') from the front property line, varying from Section 17.12.070, Front Yard Depth, of the Butte-Silver Bow Municipal Code (BSBMC), and to construct a detached garage (26'W x 30'D) within three feet (3') of the east side property line that is abutting a public street (Carter Street), varying from the required ten foot (10') setback for a side yard abutting a public street of Section 17.12.020 (C), Permitted Uses, of the BSBMC.

APPLICANT: Darrell Yager, owner, 1810 McKinley Avenue, Butte, Montana

DATE/TIME: Thursday, January 12, 2017, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Ernie Saracki, Land Use Planner

VICINITY MAP:
LOCATION/DESCRIPTION: The property in question is located in an "R-2" (Two Family Residence) zone, legally described as Lots 1 and 2, Block 18, of the Gilman Addition, commonly addressed as 1810 McKinley Avenue, Butte, Montana.

PROPOSAL: The applicant is proposing to construct a covered front porch on an existing residence fifteen feet (15') from the front property line in addition to constructing a detached garage (26'W x 30'D) that would be located three feet (3') from the side property boundary abutting a public street (Carter Street). The garage would be located on the east side yard of the applicant's property.

STAFF FINDINGS: Section 17.12.070, Front Yard Depth, of the Butte-Silver Bow Municipal Code states that a building within the "R-2" zone shall have a minimum front yard setback of twenty feet (20'). The Butte-Silver Bow Municipal Code, Section 17.10.020 (D), Permitted Uses, requires that a detached garage meet the side yard requirement of ten feet (10') when located adjacent to an adjoining side street. In order for the applicant to locate the garage within three feet (3') of the side property boundary abutting a street and to locate the covered porch within fifteen feet (15') of the front property boundary, variances approved by the Zoning Board of Adjustment (Board) are required.

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

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

   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.

The applicant is requesting a three foot (3') side yard setback for an adjoining side street (Carter Street). Staff would recommend approval of this requested variance based on the physical characteristics of the property (rectangular parcel, with length going east-west and width going north-south). The primary structure's front yard faces McKinley Avenue and the garage will be located on the east side of the property. The east elevation of the garage would be within three feet (3') of the public right-of-way of Carter Street. Between the east side property line and the actual pavement of Carter Street, there is approximately twelve foot (12') of right-of-way with a grass and dirt surface. Staff feels that the width of this right-of-way is more than significant to mitigate any potential negative effects of a reduced side setback.

Regarding the proposed front setback adjustment, it should be noted that the residence has an existing front porch that already extends into the front yard setback. Because the front porch will be converted to a covered porch, the roof of the porch requires it to meet the front yard setback. Due to the characteristic of the platted additions in the area, the majority of lots located on McKinley Avenue are corner lots. The residences on these lots generally have a front yard that faces the north/south streets and their side yards are McKinley Avenue. As such, many of the homes are located closer to McKinley Avenue because of the reduced side yard setback requirement of five feet (5') for a single story house.
As a result, it does not appear that the requested variance to encroach into the front yard setback five feet (5\') would change the character of the neighborhood.

Because of the observations cited above, staff feels that neither of the setback variances requested to the existing home would 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 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 7,168 square feet versus the minimum required 6,000 square feet. The property’s east/west rectangular orientation, as well as the presence of the existing house, precludes the placement of a garage anywhere else on the parcel other than in the proposed location.

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

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

It does not appear that the location of the proposed garage would create any public health and safety hazards within the neighborhood, as it will not encroach into any vision clearance triangle. Staff also feels that the setback requests are not excessive and, therefore, would not be out of character in the neighborhood.

Therefore, neither, the requested fifteen foot (15') front yard setback nor the requested three foot (3') side yard setback of this proposal would appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

**CONCLUSIONS:**

Based on the above analysis, staff believes that locating a garage within three feet (3') of the Carter Street property boundary would not have a negative impact on public safety and would be compatible with the neighborhood and would recommend approval of that requested variance.

Staff also does not see any issues of safety and incompatibility with the neighborhood with granting a front setback adjustment to the fifteen feet (15') needed for the covered front porch.

Staff recommends conditional approval of Variance Application #15327 provided the following conditions are met:
1. The detached garage shall meet the height requirements of Section 17.12.040 for accessory structures which are:
   a. Hip or gable roof: 16' maximum
   b. Gambrel roof: 14’ maximum
   c. Flat roof: 13’ maximum

2. Prior to commencing any excavation or construction work, the applicant shall secure an Excavation Permit and Building Permit from the Butte-Silver Bow Building Department.
January 13, 2017

Darrell Yager
1810 McKinley
Butte, MT 59701

Re: Variance Application #15327

Dear Mr. Yager:

The Butte-Silver Bow Zoning Board of Adjustment did on January 12, 2017, hold a public hearing to gather facts and evidence necessary to rule on the zoning permit sought by Variance Application #15327.

This application sought approval of a variance to construct a covered porch (8'D X 16'W) to the front of the house that would be located within fifteen feet (15') of the front property boundary, varying from the required twenty foot (20') setback of Section 17.12.070, Minimum Front Yard Depth, of the BSBMC, and to construct a detached garage (28'WX30'D) within three feet (3') of the east side property line abutting a side street, varying from the required ten feet (10') of Section 17.12.080, Minimum Side Yard Width Depth, of the BSBMC. The property is located in an "R-2" (Two Family Residence) zone, legally described as Lots 1 and 2, Block 18 of the Gilman Addition, commonly known as 1810 McKinley Avenue, Butte, Montana.

After having heard all written and oral testimony, the Board of Adjustment hereby conditionally approved Variance Application #15327 by a vote of 6 – (For Approval) and 0 – (Against Approval). Any specific conditions imposed by the Board are hereunder listed verbatim, as per the direct instructions of the Chairperson of the Board. These conditions **must be complied with** in order for the applicant to be in conformance with the Order of the Board.

As per the By-Laws of the Zoning Board of Adjustment, **unless otherwise specified, any order or decision of the Board granting an exception or a variance shall expire if an improvement location permit for such use is not obtained by the applicant within twelve (12) months from the date of the decision and the work shall be completed as per the International Building Code Requirements for expiration of permit.**