



Zoning Board of  
Adjustment

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

5:30 P.M. Thursday

Members

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

# A G E N D A

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

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

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

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

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

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

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

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

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

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

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commonly located at 2001 Sampson Street, Butte, Montana.

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

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

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

# A G E N D A

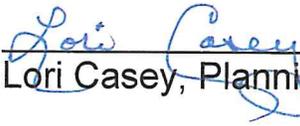
Page 4

R 09W, P.M.M.

IV. Other Business.

V. Adjournment.

BY:

  
\_\_\_\_\_  
Lori Casey, Planning Director

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

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

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

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

**REPORT BY:**    Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

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

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

**STAFF  
FINDINGS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# **EXHIBIT A**

#### 17.04.010 - Accessory or auxiliary use or structure.

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

(Ord. 53 § 10-6 (part), 1978)

#### 17.04.197 - Habitable space or room.

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

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

## 17.10.020 - Permitted uses.

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

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

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

# **EXHIBIT B**

## Pipinich, Dylan

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

Thank you

Sent from my iPhone

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

Hello Dawn

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

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

Please don't hesitate to call with any questions.

Thanks,

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

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

Ok. Great. Thank you

Sent from my iPhone

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

Hey Dawn,

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

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

Have a great day,

-Ernie-

<image001.png>

**Ernie Saracki**

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

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

Hello to my favorite Planner!!!

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

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

Can you please help me move this through?

Thank you so much!!

Dawn Ingersoll  
406.490.2405

Messages and attachments sent to or from this email account pertaining to the City-County of Butte-Silver Bow business may be considered public or private records

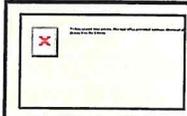
depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).

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

## Pipinich, Dylan

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



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

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

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

Thank you,  
Mike Anzik  
565.3610

# **EXHIBIT C**

revised permit w/ Hwy Dept

on call made hold ready 9-4-19

Permit No. 10150  
City License No.

BUTTE - SILVER BOW  
Building Code Department

Tract No. (Record not for Contractor use.)

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

II. IDENTIFICATION - To be completed by all applicants.

Table with 4 columns: Name, Mailing Address - Number, Street, City, and State, Zip Code, Tel. No.  
1. Owner: Brenda Cortese, 149 Bantry Way, Butte MT, 59701, 498-7841  
2. Contractor: Anzik Bidrs, 1346 Sunset Rd, Butte, MT, 59701, 565-3610  
3. Architect: N/A

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

Signature of Applicant: [Signature] Address: 1346 Sunset Rd Application Date: 7/2/19 - revised 8/20/19

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

A. TYPE OF IMPROVEMENT: 1. New building, 2. Addition (checked), 3. Alteration, 4. Repair, replacement, 5. Wrecking, 6. Moving, 7. Foundation only.  
B. OWNERSHIP: 6. Private (checked), 8A. Corporation, 9. Public.  
C. COST: 10. Cost of Improvement: a. Electrical: 2,500.00, b. Plumbing: 2,000.00, c. Heating, air conditioning: 1,000.00, d. Other: 0. 11. TOTAL COST OF IMPROVEMENT: 43,500.00.  
D. PROPOSED USE: 15. Garage or Carport (checked), 16. Mobile Home, 17. Other.  
Nonresidential - Describe in detail proposed use of buildings, e.g. food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for department store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use.  
01-198-39-4-20-10-000  
Exc 1554  
2 16370

Called 9-5-19  
Exc OK'd

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

E. PRINCIPAL TYPE OF FRAME: 30. Masonry, 31. Wood frame (checked), 32. Structural steel, 33. Reinforced concrete, 34. Other.  
F. PRINCIPAL TYPE OF HEATING FUEL: 35. Gas (checked), 36. Oil, 37. Electricity, 38. Coal, 39. Other.  
G. TYPE OF SEWAGE DISPOSAL: 40. Public or private company (checked), 41. Individual (septic tank, etc.).  
H. TYPE OF WATER SUPPLY: 42. Public or private company (checked), 43. Individual (well, cistern).  
I. TYPE OF MECHANICAL: Will there be central air conditioning? 44. Yes, 45. No (checked). Will there be an elevator? 46. Yes, 47. No (checked).  
J. DIMENSIONS: 48. Number of stories & height: 1. 49. Total square feet of floor area, all floors, based on exterior dimensions: 1440 sq ft. 50. Basement: 40'. 51. Bldg. Depth: 40'. 52. Bldg. Width: 36'.  
K. NUMBER OF OFF-STREET PARKING SPACES: 53. Enclosed: 3. 54. Outdoors: 3.  
L. RESIDENTIAL BUILDINGS ONLY: 55. Single or Multiple: Single. 56. Number of Bedrooms: 0. 57. Number of bathrooms: Full: 1, Partial: 1.

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

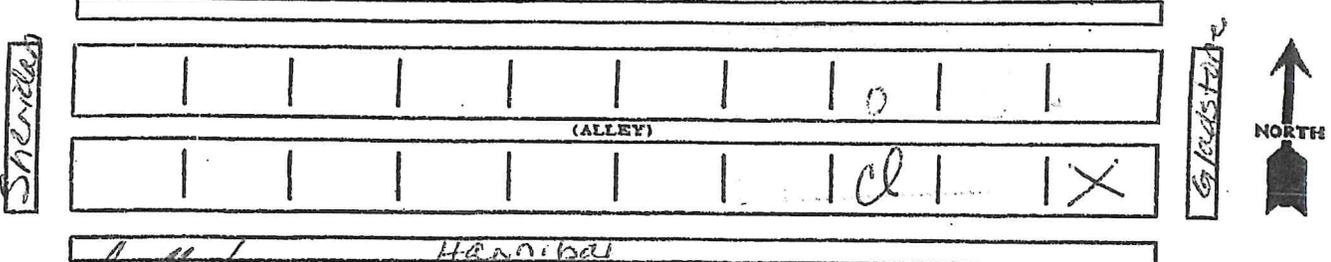


Table with 4 columns: Applicant, Permit Fee, Date Permit Issued, Permit Number.  
Applicant: [Signature] Permit Fee: \$217.19 Date Permit Issued: 9-10-19 Permit Number: 10150

BP = \$173.75  
PC = \$43.44

✓  
Copied

ORIGINAL  
CASH RECEIPT

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

BLDG CODE CASH RECEIPT

OTHER RECEIPTS - BASED ON CONTRACTOR'S VALUATION

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

STATE OF MONTANA, COUNTY OF SILVER BOW

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

ERECT GARAGE

TO ERECT A STRUCTURE AT THE FOLLOWING PROPERTY

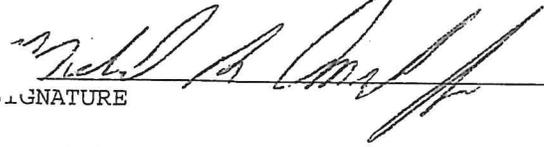
LEGAL DESCRIPTION PARCEL# 0001148100  
01-1198-29-4-20-10-0000 Subdivision : ATHERTON PLACE ADD  
Section : 29 Township : 03 N Range : 07 W Lot : 9 Block : 42  
1 ) ATHERTON PLACE ADD, S29, T03 N, R07 W,  
( 2 ) BLOCK 42, Lot 9 - 10

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

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

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

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

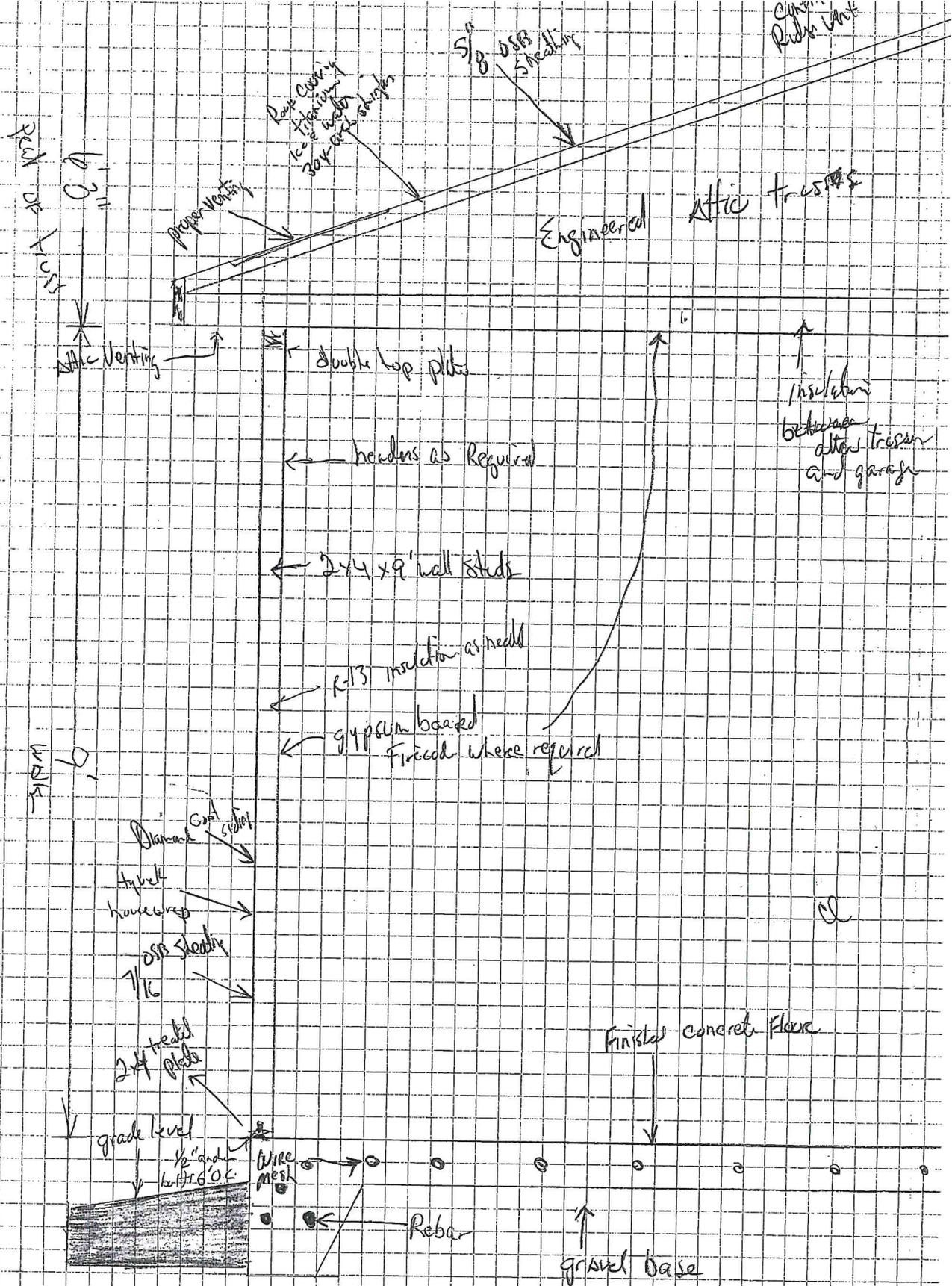
  
SIGNATURE

Lori Baker-Patrick  
BSB TREASURER

Sally J. Hollis  
BSB CLERK & RECORDER

bcfrent  
BSB CLERK





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

Overall height =  
 15' 3"

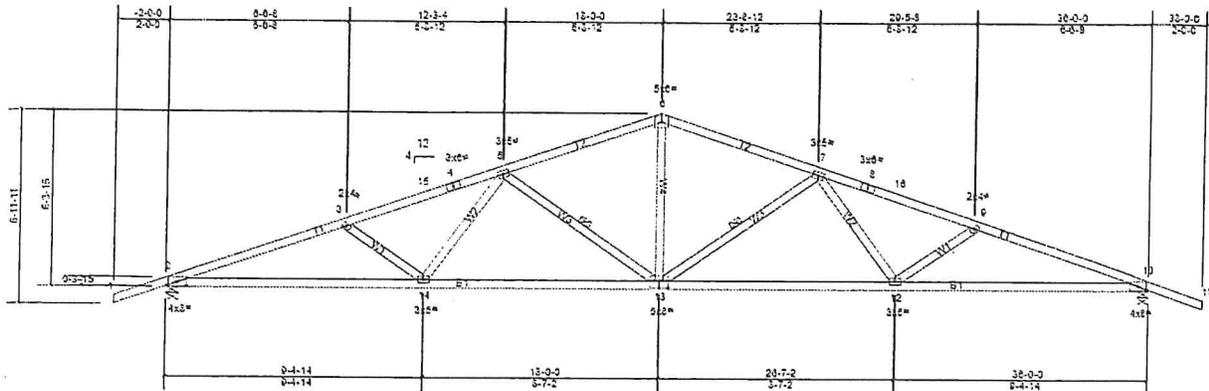
Job	Truss	Truss Type	Qty	Ply	ATTIC SET
190445	T01	Common	19	1	Job Reference (optional)

SKILL BUILT TRUSS, BUTTE, MT 59701. Ddn

Run: 8.23 S May 10 2019 Print: 8.230 S May 10 2019 MITek Industries, Inc. Tue Aug 06 09:32:14

Page: 1

ID:ubEniUwlqXl3vRPhyISBwyqbZb-DS0\_9Shu6aayQxsD8qtrR?XqhEe\_ceOFQ6HrpGyqbW1



Scale = 1:67.8

Plate Offsets (X, Y): [13:0-4-0,0-3-0]

Loading	(psf)	Spacing	2-0-0	CSI	DEFL	in	(loc)	l'defl	L/d	PLATES	GRIP
TCLL	40.0	Plate Grip DOL	1.15	TC	0.60	Vert(LL)	-0.43	13-14	>999	MT20	220/195
(Roof Snow = 40.0)		Lumber DOL	1.15	BC	0.63	Vert(TL)	-0.71	12-13	>600		
TCDL	7.0	Rep Stress Incr	YES	WB	0.48	Horiz(TL)	0.21	10	n/a		
BCLL	0.0*	Code	IRC2012/TPI2007	Matrix-S							
BCDL	8.0										
											Weight: 155 lb FT = 0%

**LUMBER**

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

**BRACING**

TOP CHORD  
 BOT CHORD  
 WEBS

Structural wood sheathing directly applied or 2-9-12 oc purlins.  
 Rigid ceiling directly applied or 10-0-0 oc bracing  
 1 Row at midpl 7-13, 5-13

**REACTIONS**

(lb/size) 2=2164/0-5-8, (min. 0-2-5), 10=2164/0-5-8, (min. 0-2-5)  
 Max Horiz 2=87 (LC 14)  
 Max Uplift 2=-243 (LC 6), 10=-243 (LC 7)

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

**FORCES**

(lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
 TOP CHORD 2-3=-4939/417, 3-15=-4418/333, 4-15=-4327/334, 4-5=-4261/341, 5-6=-3130/261, 6-7=-3130/261, 7-8=-4261/342, 8-16=-4327/334, 9-16=-4418/333, 9-10=-4939/417  
 BOT CHORD 2-14=-397/4572, 13-14=-273/3777, 12-13=-200/3777, 10-12=-325/4572  
 WEBS 6-13=-70/1428, 7-13=-1435/188, 7-12=-5/589, 9-12=-576/166, 5-13=-1435/188, 5-14=-4/589, 3-14=-576/165

**NOTES**

- 1) Wind: ASCE 7-10; Vult=115mph (3-second gust) V(IRC2012)=91mph; TCDL=4.2psf; BCDL=4.8psf; h=25ft; Cat. II; Exp B; Enclosed; MWFRS (envelope) exterior zone; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
- 2) TCLL: ASCE 7-10; Pf=40.0 psf (flat roof snow); Category II; Exp B; Fully Exp.; Ct=1.10
- 3) Unbalanced snow loads have been considered for this design.
- 4) This truss has been designed for greater of min roof live load of 16.0 psf or 2.00 times flat roof load of 40.0 psf on overhangs non-concurrent with other live loads.
- 5) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
- 6) \* This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 1-00-00 wide will fit between the bottom chord and any other members.
- 7) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 243 lb uplift at joint 2 and 243 lb uplift at joint 10.
- 8) This truss is designed in accordance with the 2012 International Residential Code sections R502.11.1 and R802.10.2 and referenced standard ANSI/TPI 1.

LOAD CASE(S) Standard

0  
 cl

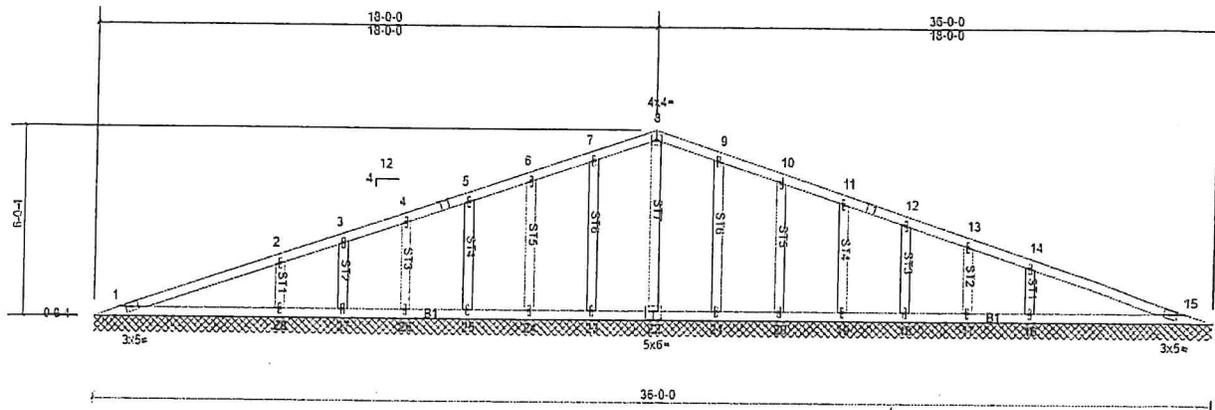
Job 190445	Truss DG01	Truss Type Common Supported Gable	Qty 2	Ply 1	ATTIC SET Job Reference (optional)
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SKILL BUILT TRUSS, BUTTE, MT 59701, Don

Run: 8.23 S May 10 2019 Print: 8.230 S May 10 2019 MITek Industries, Inc. Tue Aug 06 09:32:12

Page: 1

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Scale = 1:50.5

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

Loading	(psf)	Spacing	2-0-0	CSI	DEFL	in	(loc)	l/def	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.15	TC	0.26	Vert(LL)	n/a	-	n/a	999	MT20	220/195
(Roof Snow = 40.0)		Lumber DOL	1.15	BC	0.10	Vert(TL)	n/a	-	n/a	999		
TCDL	7.0	Rep Stress Incr	YES	WB	0.14	Horiz(TL)	0.00	15	n/a	n/a		
BCLL	0.0	Code	IRC2012/TPI2007	Matrix-S								
BCDL	8.0											
											Weight: 156 lb	FT = 0%

**LUMBER**

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

**BRACING**

TOP CHORD  
 BOT CHORD

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

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

**REACTIONS** All bearings 36-0-0.

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

**FORCES**

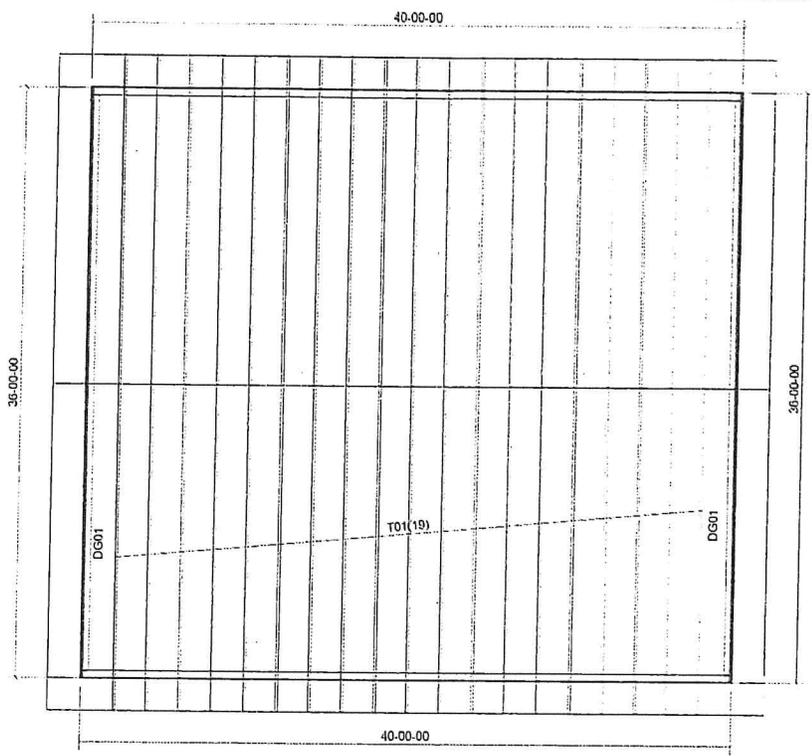
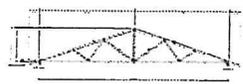
(lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
 WEBS 7-23=-291/52, 6-24=-269/51, 5-25=-270/49, 4-26=-264/59, 2-28=-486/126, 9-21=-291/51, 10-20=-269/52, 11-19=-270/48, 12-18=-264/59, 14-16=-486/126

**NOTES**

- 1) Wind: ASCE 7-10; Vult=115mph (3-second gust) V(IRC2012)=91mph; TCCL=4.2psf; BCDL=4.8psf; h=25ft; Cat. II; Exp B; Enclosed; MWFRS (envelope) exterior zone; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
- 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
- 3) TCLL: ASCE 7-10; Pf=40.0 psf (flat roof snow); Category II; Exp B; Fully Exp.; Cl=1.10
- 4) Unbalanced snow loads have been considered for this design.
- 5) All plates are 1x4 MT20 unless otherwise indicated.
- 6) Gable requires continuous bottom chord bearing.
- 7) Gable studs spaced at 2-0-0 oc.
- 8) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
- 9) \* This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-05-00 tall by 1-00-00 wide will fit between the bottom chord and any other members, with BCDL = 8.0psf.
- 10) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 100 lb uplift at joint(s) 1, 15, 23, 24, 25, 26, 27, 28, 21, 20, 19, 18, 17, 16.
- 11) This truss is designed in accordance with the 2012 International Residential Code sections R502.11.1 and R802.10.2 and referenced standard ANSI/TPI 1.

LOAD CASE(S) Standard

JOB# 190445



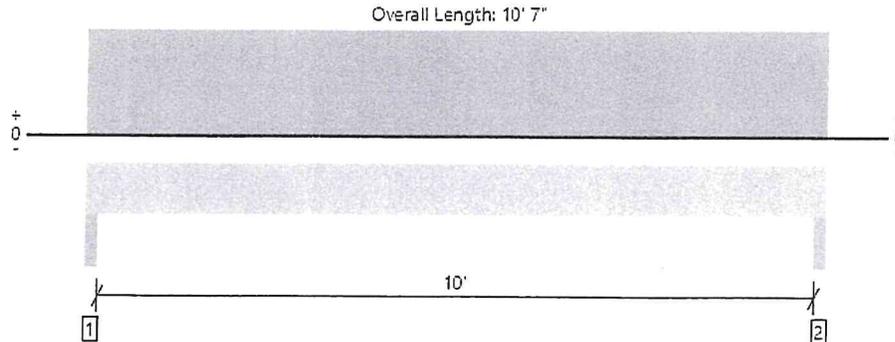
ANZIK CONSTRUCTION  
MIKE (406) 565-3610  
40.0 lb/ft<sup>2</sup> SNOW  
SCALE: 3/32" = 1'  
ROOF SQ.FT. 1855.2

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

36 X 40  
GLADSTONE & HANNIBLÉ  
BUTTE, MT

cl

Level, Wall: Header  
**1 piece(s) 3 1/2" x 12" 24F-V4 DF Glulam**



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

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

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

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

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

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

**Weyerhaeuser Notes**

Weyerhaeuser warrants that the sizing of its products will be in accordance with Weyerhaeuser product design criteria and published design values. Weyerhaeuser expressly disclaims any other warranties related to the software. Use of this software is not intended to circumvent the need for a design professional as determined by the authority having jurisdiction. The designer of record, builder or framer is responsible to assure that this calculation is compatible with the overall project. Accessories (Rim Board, Blocking Panels and Squash Blocks) are not designed by this software. Products manufactured at Weyerhaeuser facilities are third-party certified to sustainable forestry standards. Weyerhaeuser Engineered Lumber Products have been evaluated by ICC-ES under evaluation reports ESR-1153 and ESR-1387 and/or tested in accordance with applicable ASTM standards. For current code evaluation reports, Weyerhaeuser product literature and installation details refer to [www.woyherhaeuser.com/woodproducts/document-library](http://www.woyherhaeuser.com/woodproducts/document-library).

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



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

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

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

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

Building Permit Fee:	\$173.75
Plan Check Fee:	\$43.44
<b>Total Estimate:</b>	<b>\$217.19</b>

<b>Residential permits based on value of project</b>	<b>Project Value</b>
	<b>\$0.00</b>

Building Permit Fee:	\$0.00
Plan Check Fee:	\$0.00
<b>Total Estimate:</b>	<b>\$0.00</b>

<b>Commercial permits based on value of project</b>	<b>Project Value</b>
	<b>\$0.00</b>

Building Permit Fee:	\$0.00
Plan Check Fee:	\$0.00
<b>Total Estimate:</b>	<b>\$0.00</b>

OWNERS NAME & ADDRESS

CORTESE BRENDA L  
149 BANTRY WAY

PROPERTY ADDRESS

3647 GLADSTONE

BUTTE, MT 59701-7645

LEGAL DESCRIPTION

PARCEL# 0001148100

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

Subdivision : ATHERTON PLACE ADD

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

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

( 2 ) BLOCK 42, Lot 9 - 10

ZONING/MASTER PLAN ID

Zoning: R-1

Master Plan: U-R

PROJECT DESCRIPTION

SITE INFORMATION

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

DEVELOPMENT STANDARDS

Setbacks	Primary Structure (ft)	Accessory Structure (ft)
Front :	0.0000	80.0000
Rear :	0.0000	5.0000
Side A :	0.0000	5.0000
Side B :	0.0000	20.0000
Lot Coverage :	0.0000	0.0000
Parking Apron :	0.0000	20.0000

WATER AND SEWER

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

Private Sewer Permit No: 0  
Flood Plain Plane No: 0  
Food Service Permit No: 0

OTHER COMMENTS

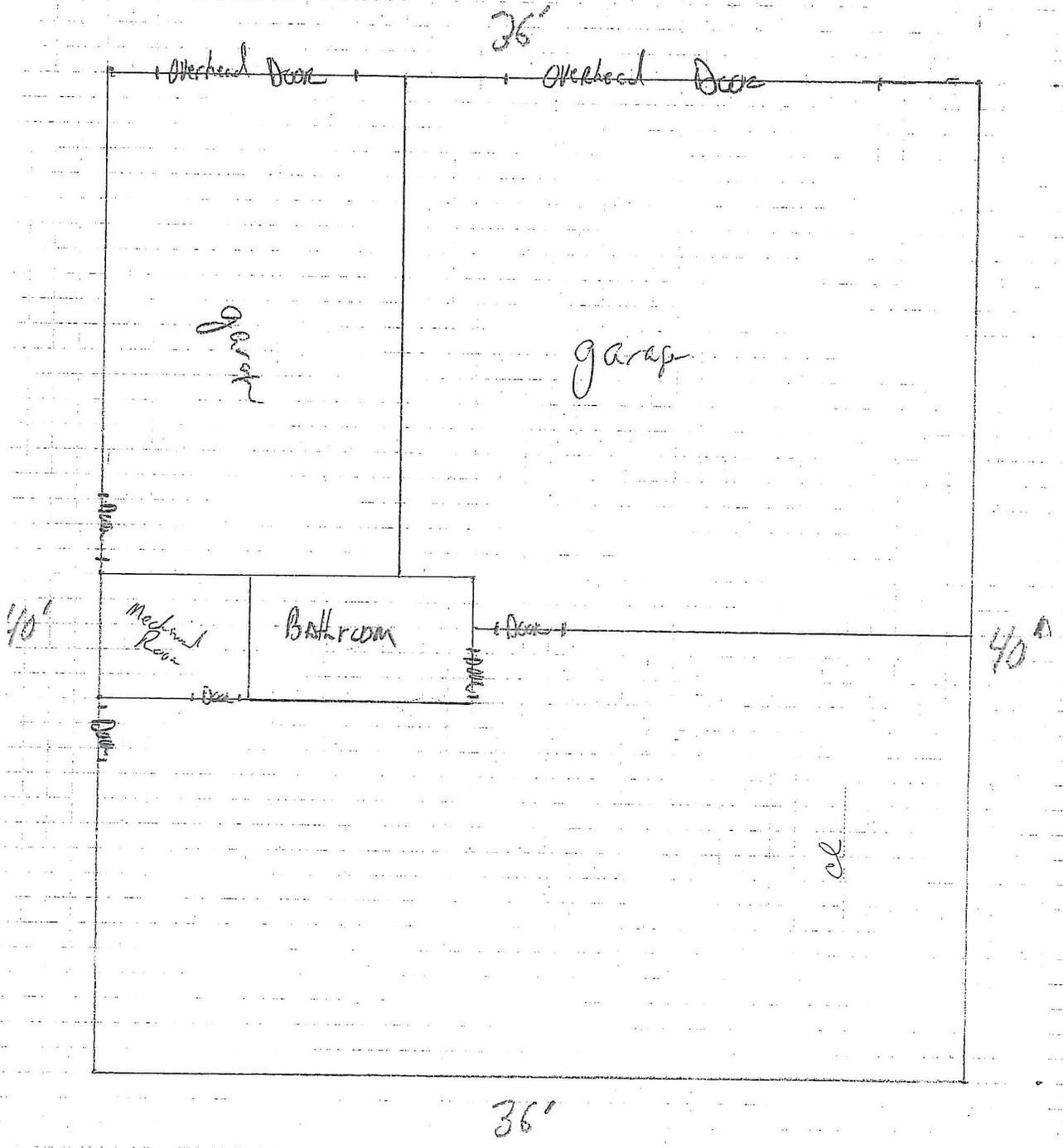
Construction of a 36'x40' garage 16' high. Plans as submitted meet the requirements of the zone.

X Approved for : Y Zoning \_\_\_\_\_ Growth Policy

Date 8 / 27 / 19

REVIEWED BY

# **EXHIBIT D**



$\frac{1}{4}'' = 1'$

36x40'

Detached Garage

# **EXHIBIT E**

**PART 2—ADMINISTRATION AND ENFORCEMENT**

**SECTION R103  
DEPARTMENT OF BUILDING SAFETY**

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

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

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

**SECTION R104  
DUTIES AND POWERS OF THE BUILDING OFFICIAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

# **EXHIBIT F**



# **EXHIBIT G**



THE CITY-COUNTY OF  
Butte-Silver Bow

Planning Department

Lori Casey, Director

Ph: 406-497-6250 E-Mail: [lcasey@bsb.mt.gov](mailto:lcasey@bsb.mt.gov)

January 6, 2020

Brenda Cortese  
149 Bantry Way  
Butte, MT 59701

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

Dear Ms. Cortese:

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

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

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

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

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

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

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

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

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

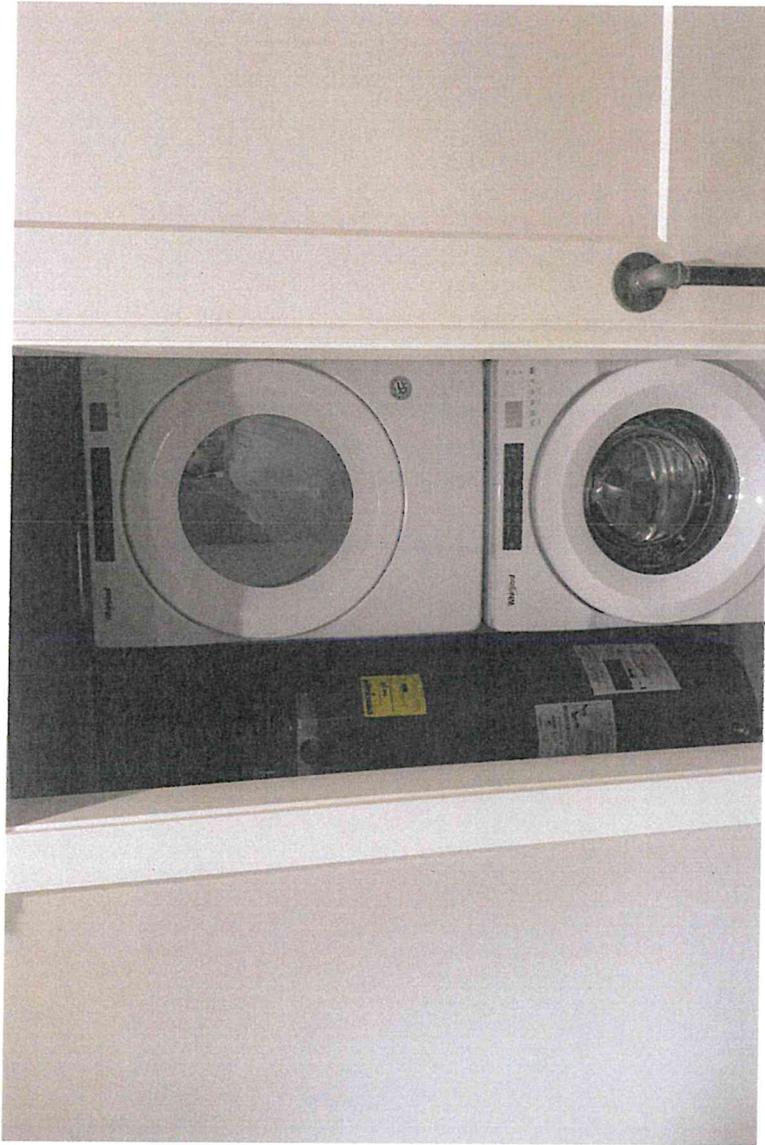
Sincerely,



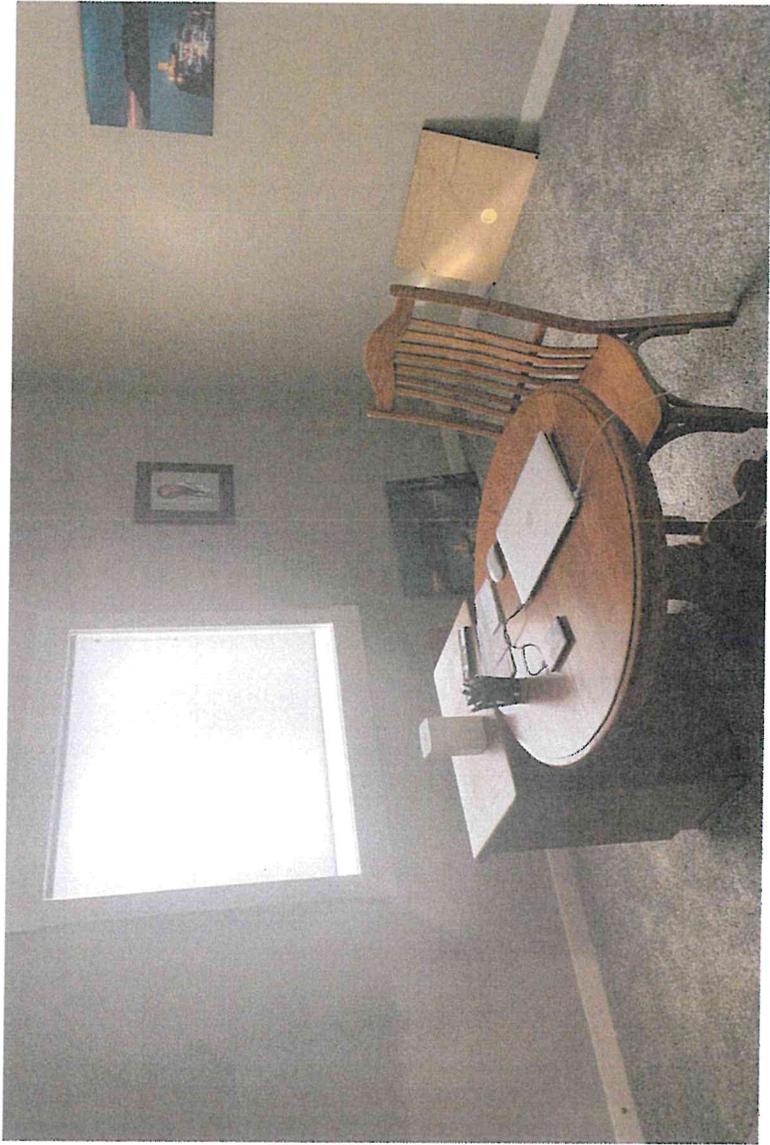
Dylan Pipinich  
Assistant Planning Director

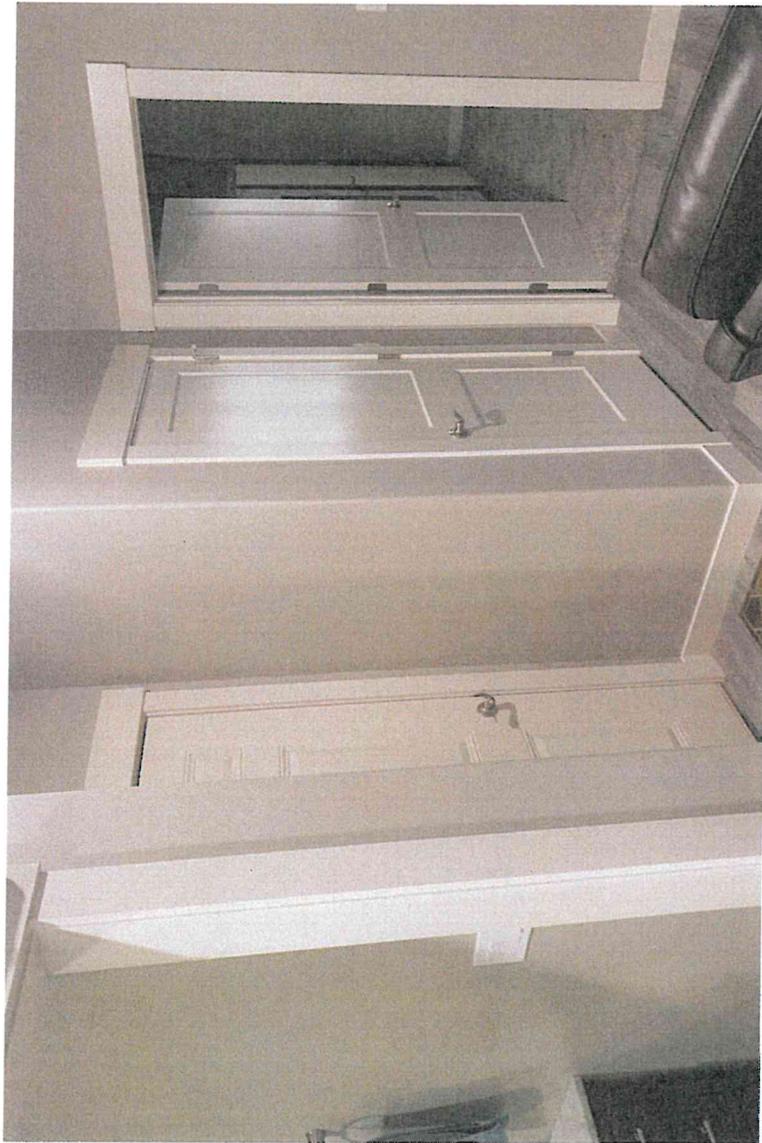
cc: Lori Casey, Planning Director  
Mike Nasheim, Building Official  
Eileen Joyce, County Attorney

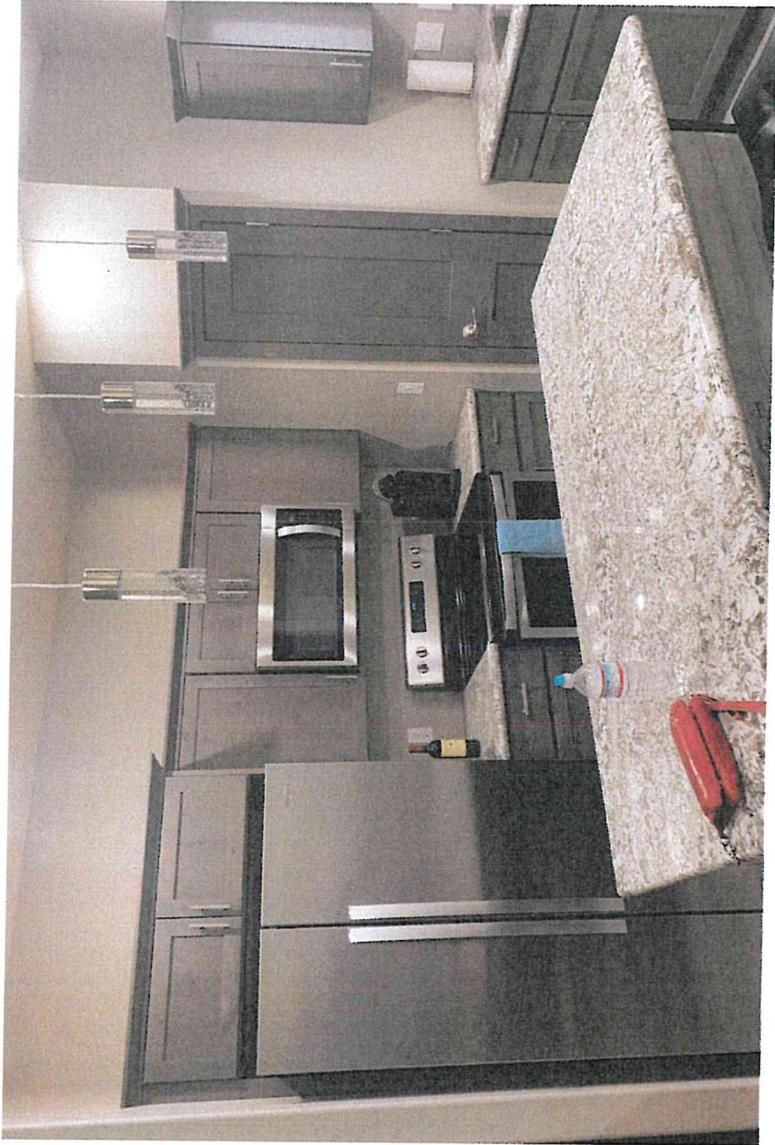


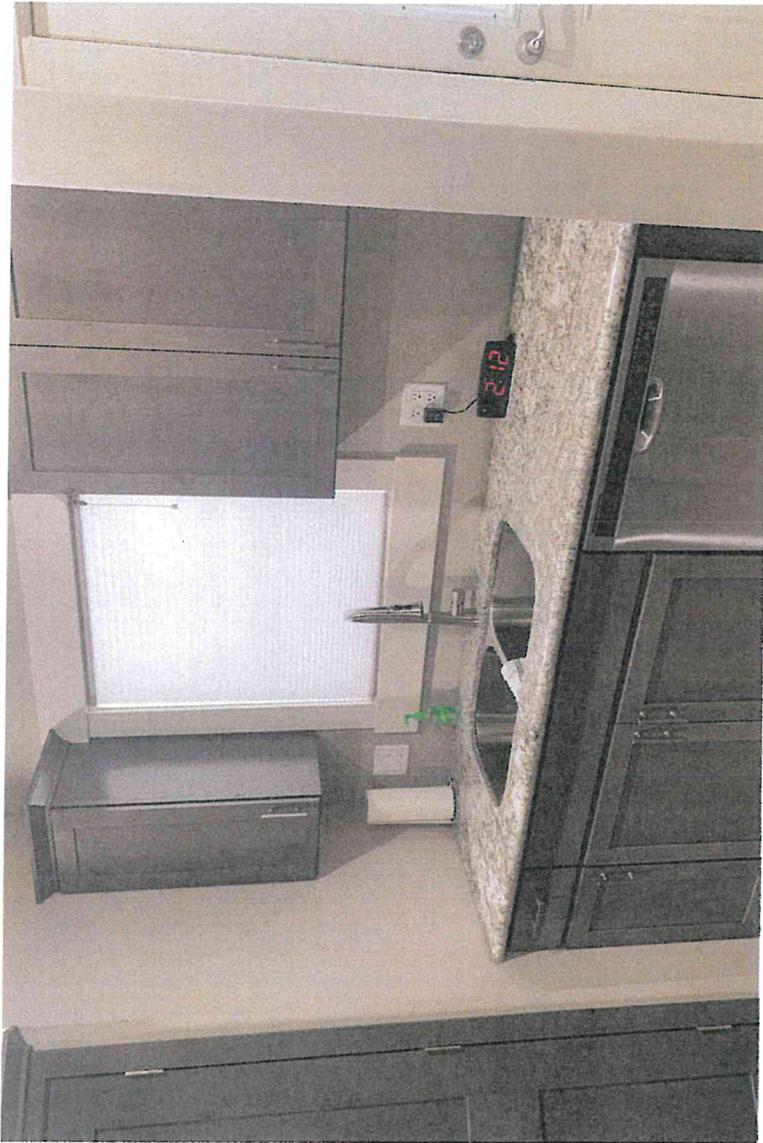












# **EXHIBIT H**



THE CITY-COUNTY OF  
Butte-Silver Bow

1-114 5100  
3 01-1198-29-4-20-01-0000

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

RECEIVED  
FEB 04 2020  
BL *dc*

**Zoning Appeal Form**

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

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

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

**Contact Information:**

Brenda Curless  
Name of Applicant(s)

3647 Coldstone  
Mailing Address

Butte  
City

MT  
State

59701  
Zip

406-782-1111  
Phone

**Explain Appeal:**

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

See attached letter from Vice Vich Law Firm.

Ordinance from Section 17.10.020

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

See attached letter -

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

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

**Applicant(s):**

*on behalf of*

Signature

Brenda Corlese

Print Name

Feb 4, 2020  
Date

Signature

Date

Print Name

**Designation of Agent:**

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

Matthew Enright Applicant Attorney  
Print Agents Name

Signature of Agent

Feb 4, 2020  
Date

Signature of Applicant

Date

February 4, 2020

**VIA U.S. MAIL:**

**NOTICE OF APPEAL**

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

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

**Location: 3647 Gladstone Avenue, Butte, Montana**

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

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

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

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

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

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

FAX: 406.782.4000 • DAVE@VICEVICHLAW.COM

\*LICENSED IN MONTANA & WASHINGTON

\*\* LICENSED IN MONTANA & TEXAS

\*\*\*LICENSED IN MONTANA & COLORADO



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

Regards,

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

Amanda Hunter  
Attorney at Law

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

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

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

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

**REPORT BY:** Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

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

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

**STAFF**

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

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

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

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

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

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

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

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

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

# **EXHIBIT A**

**Sections:**

17.24.010 - Primary intended use.

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

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

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

17.24.020 - **Permitted uses.**

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

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

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

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

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

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

#### 17.24.040 - Conditional uses.

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

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

#### 17.24.050 - Limited C-2L zones.

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

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

#### 17.24.060 - Conditions.

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

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

#### 17.24.070 - Building height limits.

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

(Ord. 53 § 110-6, 1978)

#### 17.24.080 - Minimum lot area.

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

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

17.24.090 - Minimum lot width.

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

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

17.24.100 - Minimum front yard depth.

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

(Ord. 53 § 110-9, 1978)

17.24.110 - Minimum side yard width.

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

(Ord. 53 § 110-10, 1978)

17.24.120 - Minimum rear yard depth.

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

(Ord. 53 § 110-11, 1978)

Chapter 17.27 - C-M COMMERCIAL AND LIGHT INDUSTRIAL ZONE

**Sections:**

17.27.010 - Primary intended use.

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

(Ord. 214 § 1(B)(125-1), 1984)

17.27.020 - General provisions.

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

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

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

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

#### 17.27.030 - Permitted uses.

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

##### A. Retail Uses.

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

##### B. Services.

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

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

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

(Ord. 214 § 1(B)(125-3), 1984)

17.27.040 - Special conditions.

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

(Ord. 214 § 1(B)(125-4), 1984)

17.27.050 - Minimum lot area.

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

(Ord. 214 § 1(B)(125-5), 1984)

#### 17.27.060 - Building height limits.

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

(Ord. 214 § 1(B)(125-6), 1984)

#### 17.27.070 - Minimum yard setbacks.

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

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

(Ord. 214 § 1(B)(125-7), 1984)

### Chapter 17.28 - M-1 LIGHT INDUSTRIAL ZONE

#### Sections:

#### 17.28.010 - Primary intended use.

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

(Ord. 53 § 130-1, 1978)

17.28.020 - Permitted uses.

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

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

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

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

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

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

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

(Ord. No. 11-3, § 4, 5-4-2011)

#### 17.28.030 - Limited M-1L zones.

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

(Ord. 53 § 130-3, 1978)

#### 17.28.040 - Accessory uses.

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

(Ord. 53 § 130-4, 1978)

#### 17.28.050 - Conditions.

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

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

(Ord. 53 § 130-5, 1978)

#### 17.28.060 - Building height limits.

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

(Ord. 53 § 130-6, 1978)

#### 17.28.070 - Minimum lot area.

There shall be no minimum lot area requirement.

(Ord. 53 § 130-7, 1978)

#### 17.28.080 - Minimum lot width.

There shall be no minimum lot width requirement.

(Ord. 53 § 130-8, 1978)

17.28.090 - Minimum yards.

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

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

(Ord. 53 § 130-9, 1978)

Chapter 17.30 - M-2 HEAVY INDUSTRIAL ZONE

**Sections:**

17.30.010 - Primary intended use.

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

(Ord. 53 § 140-1, 1978)

17.30.020 - Permitted uses.

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

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

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

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

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

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

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

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

(Ord. No. 11-3, § 5, 5-4-2011)

#### 17.30.030 - Conditions.

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

(Ord. 53 § 140-3, 1978)

#### 17.30.035 - Conditional uses.

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

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

(Ord. 456 § 8, 1993)

17.30.040 - Maximum bulk and height limits.

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

(Ord. 53 § 140-4, 1978)

17.30.050 - Minimum yards.

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

(Ord. 53 § 140-5, 1978)

# **EXHIBIT B**



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

The City-County  
of Butte-Silver  
Bow

Community  
Enrichment

Department  
25 W. Front St.  
Butte, MT 59701

January 2<sup>nd</sup>, 2020

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

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

Dear Consultation Management Trust,

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

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

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

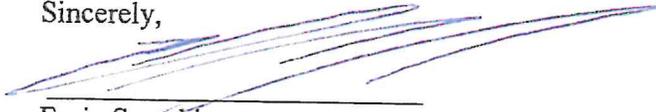
As such, facilities that store and/or rent/sell heavy construction equipment and other such vehicles are not considered permitted uses within the "C-2" (Community Commercial) zone. As a result, the use of this parcel as a construction equipment storage/rental facility must be terminated immediately.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

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

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

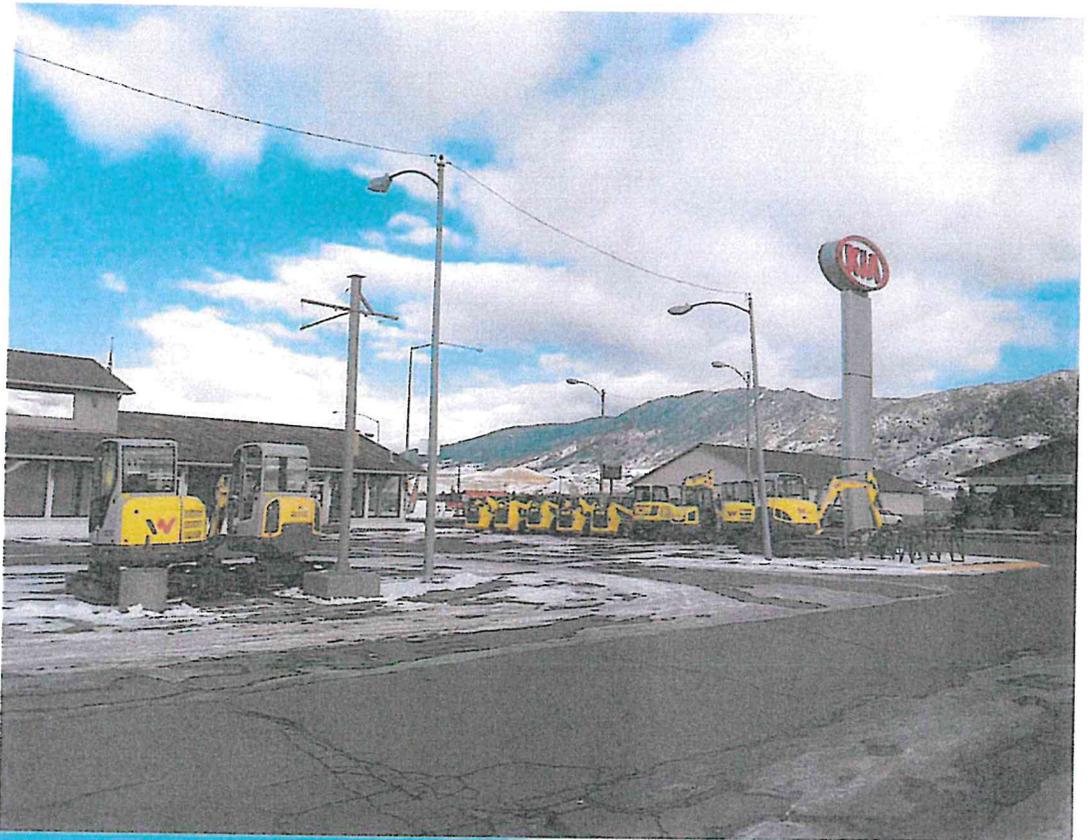
Thank you for your attention to this matter.

Sincerely,



Ernie Saracki  
Land Use Planner/Zoning Enforcement Officer

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



7.24.020 - Permitted uses.

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

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

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

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

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

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

be displayed outside the building;

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

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

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

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



### Zoning Appeal Form

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

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

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

#### Contact Information:

WAYNE STERNS  
Name of Applicant(s)

3547 HARRISON AVE.  
Mailing Address

BUTTE  
City

MT.  
State

59701  
Zip

(406) 533-7380  
Phone

#### Explain Appeal:

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

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

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

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

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

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

**Applicant(s):**

Wayne S  
Signature

2-5-2020  
Date

Wayne STEMS  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**Designation of Agent:**

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

Wayne STEMS  
Print Agents Name

Wayne S  
Signature of Agent

2-5-2020  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

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

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

**VICINITY  
MAP:**



**LOCATION/  
DESCRIPTION:**

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

**APPEAL:**

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

**STAFF  
FINDINGS:**

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

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

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

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

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

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

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

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

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

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



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

The City-County  
of Butte-Silver  
Bow

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

May 8, 2020

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

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

Dear Dickenson Family LLC and Mr. Huntington,

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

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

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

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

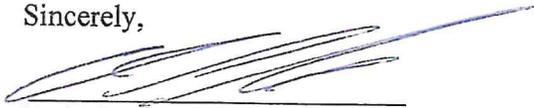
As such, moving truck rental facilities are not considered permitted uses within the "R-3" (Multi-Family Residential). As a result, the use of this parcel as a moving truck rental facility must be terminated immediately. The Planning Department will provide you ten (10) days from receipt of this notice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

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

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

Thank you for your attention to this matter.

Sincerely,



Ernie Saracki  
Land Use Planner/Zoning Enforcement Officer

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

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

Ord. 53 § 60-1, 1978)

14.020 - Permitted uses.

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

- A. Dwellings:
  - 1. Single-family;
  - 2. Two family;
  - 3. Multi-family;
  - 4. Manufactured homes.
    - a. Class A,
    - b. Modular.
- B. Any nonresidential use permitted in the R-1 and R-2 zones;
- C. Room or room and board and boarding homes for not more than eight persons provided by a resident proprietor;
- D. Accessory uses ordinarily appurtenant to permitted uses. Accessory structures, including detached private garages, shall not be located within the front yard, nor less than ten feet from any adjoining side street. Accessory structures may extend to within three feet of the rear and inside property lines when an alleyway exists along the rear of the property or to within five feet of the rear and inside property lines when an alley does not exist. Private garages attached to or within the residence shall adhere to the setback requirement of the residence. In all cases, there shall be a minimum off-street parking apron of twenty feet in length directly in front of all garage door entrances when accessing a street either to the front or side of a residence. Where garage doors access an alley, the off-street parking apron shall be at least ten feet, except, that private garages accessory to multifamily residences shall be designed and constructed in harmony with the general appearance of the main building and shall not be operated as a public repair garage except that services may be rendered for tenants when limited to car washing, polishing, lubrication, refueling, tire repairing, and minor adjustments when performed entirely within an enclosed garage building. All garages two or more stories in height shall be enclosed structures;
- E. Day care homes, family or group;
- F. Other uses permitted under the supplementary use regulations in Sections 17.38.170 through 17.38.240



**Zoning Appeal Form**

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

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

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

**Contact Information:**

Mark Huntington  
Name of Applicant(s)

5000 Continental Dr.  
Mailing Address

Butte  
City

MT  
State

59701  
Zip

406 - 475 - 0338  
Phone

**Explain Appeal:**

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

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

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

(Please see attached word document)

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

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

**Applicant(s):**

*Mark Huntington*  
Signature

6-5-20  
Date

Mark Huntington  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**Designation of Agent:**

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

\_\_\_\_\_  
Print Agents Name

\_\_\_\_\_  
Signature of Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

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

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

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

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

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

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

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

**REPORT BY:**        Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/  
DESCRIPTION:**

The property in question is located in an "R-2" (Two Family Residence) zone, legally described as Lots 5-6, Block 33 of the Bellevue Addition, commonly known as 1648 Dewey Blvd, Butte, Montana.

**PROPOSAL:**

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

**STAFF**

**FINDINGS:**

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

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

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

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

Parking apron requirements have been established to protect public health and safety by providing adequate space for vehicles to enter and exit a garage without obstructing traffic or creating a safety hazard within the public right-of-way, including alleys.

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

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

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

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

As stated above, the applicants have made an attempt to assist with some of the visibility concerns, however, staff does not believe that the safety hazard of the reduced parking apron would be fully mitigated and, therefore, the proposal would be contrary to the public interest.

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

To qualify for a variance, the property must exhibit conditions which preclude a property from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Conditions usually associated with the uniqueness of the property are shape, topography or

some geological feature.

The property is larger than what is required by the Zoning Ordinance at 6,600 square feet versus the minimum required 6,000 square feet. The property contains no topographical or geological features that would preclude the garage from being constructed with the required three foot (3') side yard setback and ten foot (10') parking apron. There is adequate room available on the subject parcel to locate a garage that fully complies with the development standards in the Zoning Ordinance. If the applicants were to locate the garage doors on the east side of the garage instead of into the alley in a similar fashion to most of the other residences in this block, the parking apron requirement would be satisfied.

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

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

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

As noted above, staff is concerned about a driver's reduced ability to see oncoming pedestrian and vehicle traffic in the alley, even with the proposed bubble mirror. Staff is also very hesitant to support this proposal when an alternative exists (constructing

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

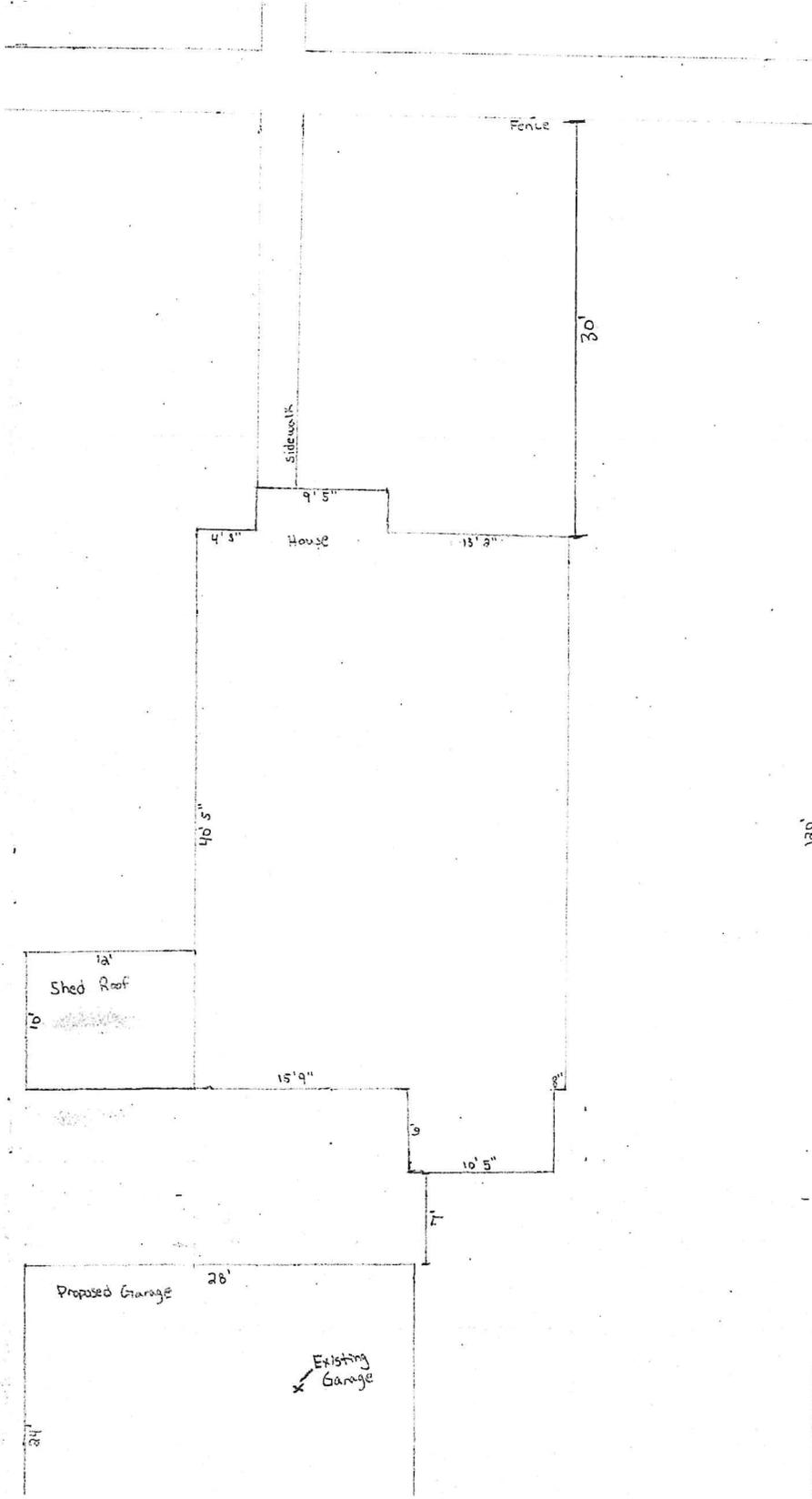
Based on the above discussion, it appears the proposed garage may be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

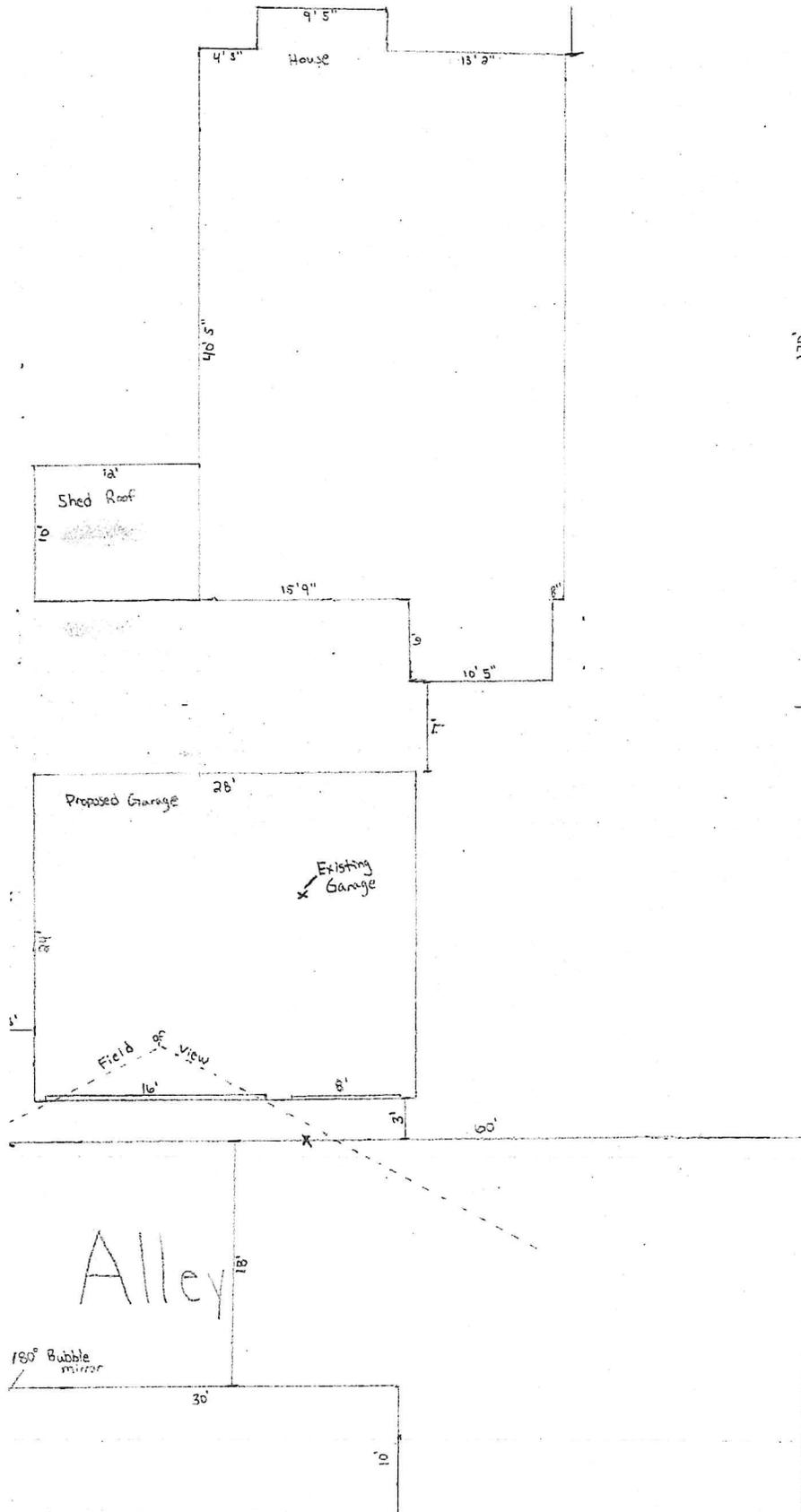
**CONCLUSIONS:**

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

1182ft<sup>2</sup>  
 Lot -  
 7200ft<sup>2</sup>  
 Proposed  
 Storage  
 672ft<sup>2</sup>  
 Shed Roof  
 120ft<sup>2</sup>  
 Lot Coverage  
 27.4%

- Notes:
- 180° bubble mirror
  - Increased field of view with water door
  - Offset 3' off of alley instead of on alley
  - 3' off neighbor's property instead of 11'





- Other measurements:
- 180° Bubble mirror
  - increased field of view with wider door
  - offset 3' off alley instead of on alley
  - 3' off neighbors property instead of 1'

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

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

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

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

**REPORT BY:** Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in a "C-2" (Community Commercial) zone, legally described as Lot 8 and the south 20' of Lot 9, Block 36 of the Bellevue Addition, commonly known as 2001 Sampson Street, Butte, Montana.

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

**STAFF**

**FINDINGS:** Butte-Silver Bow Municipal Code, Section 17.24.020, Permitted Uses, lists the permitted uses within the "C-2" zone. The zone allows residential apartments on the second floor of a commercial business. However, the

applicant's request to utilize the entire structure as a single family residence is not considered a permitted use within the "C-2" zone. Therefore, the Zoning Board of Adjustment must determine if the proposal meets the three criteria for the granting of variances established by the Montana Supreme Court prior to granting a variance for this proposal.

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

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

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

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

The public's interest in segregating land uses, such as residential versus commercial is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to combine uses that are compatible. The Community Commercial zone is

regarded as a more intensive use and some of these uses may have attributes that can have a negative impact on residential living. In addition, when less intensive land uses are located adjacent to more intensive land uses, the less intensive land use can make it difficult for the more intensive land use to operate as necessary. As such, zoning districts were developed to prevent these conflicts.

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

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

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

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

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

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

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

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

Subcriteria Number One states the land cannot

secure a “reasonable return,” if the land is restricted to only those uses permitted outright in that zone. As stated above, the size of the parcel and the existing manufactured home could create a scenario where a reasonable return is difficult.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. As noted above, the manufactured home has been historically utilized as a residence and it is located across the street from the “R-2” (Two Family Residence) zone. Therefore, the proposal should not alter the character of the neighborhood.

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

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

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

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

health and safety.

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

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

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

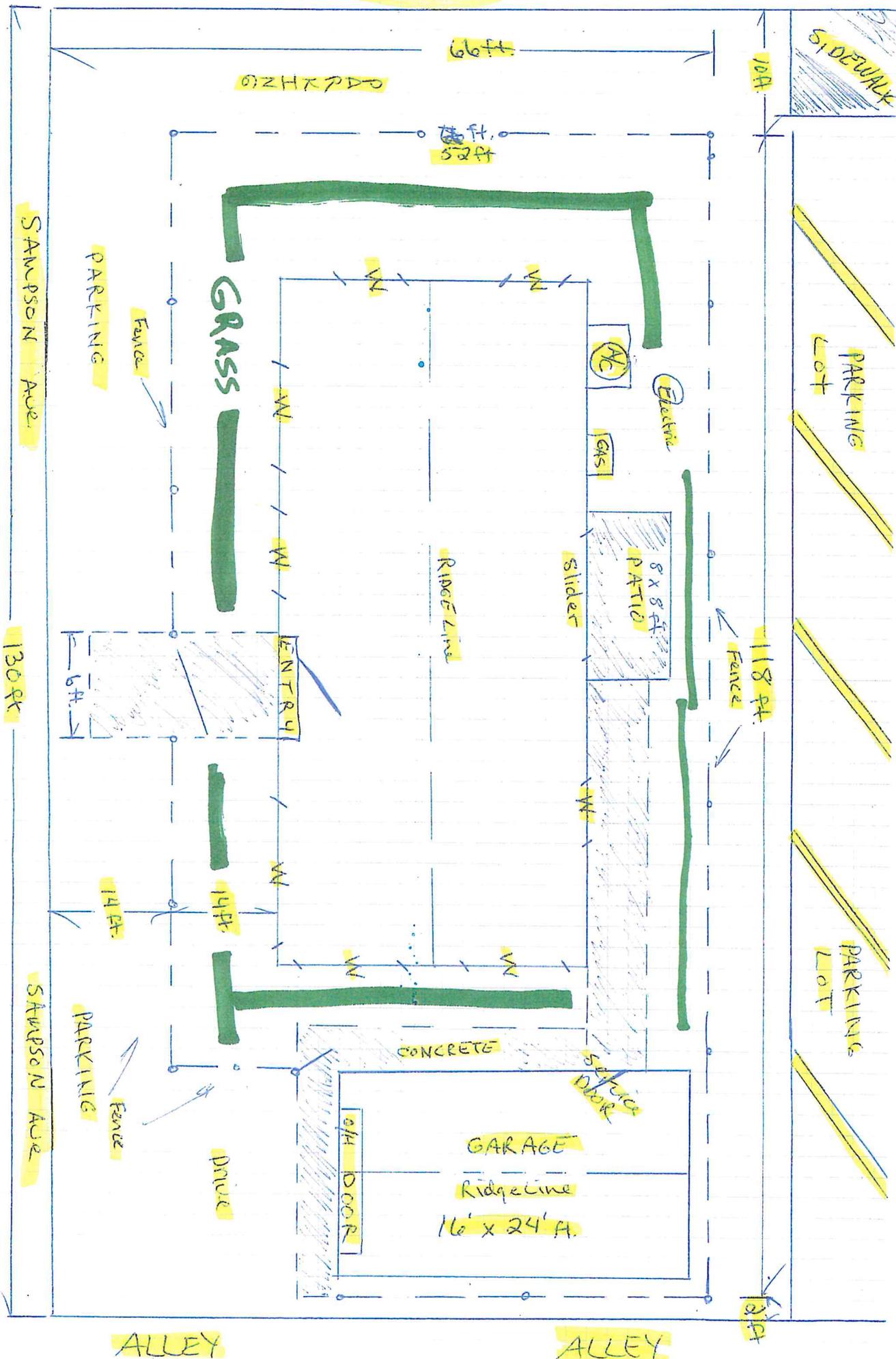












**BUTTE-SILVER BOW  
ZONING BOARD OF ADJUSTMENT  
STAFF ANALYSIS**

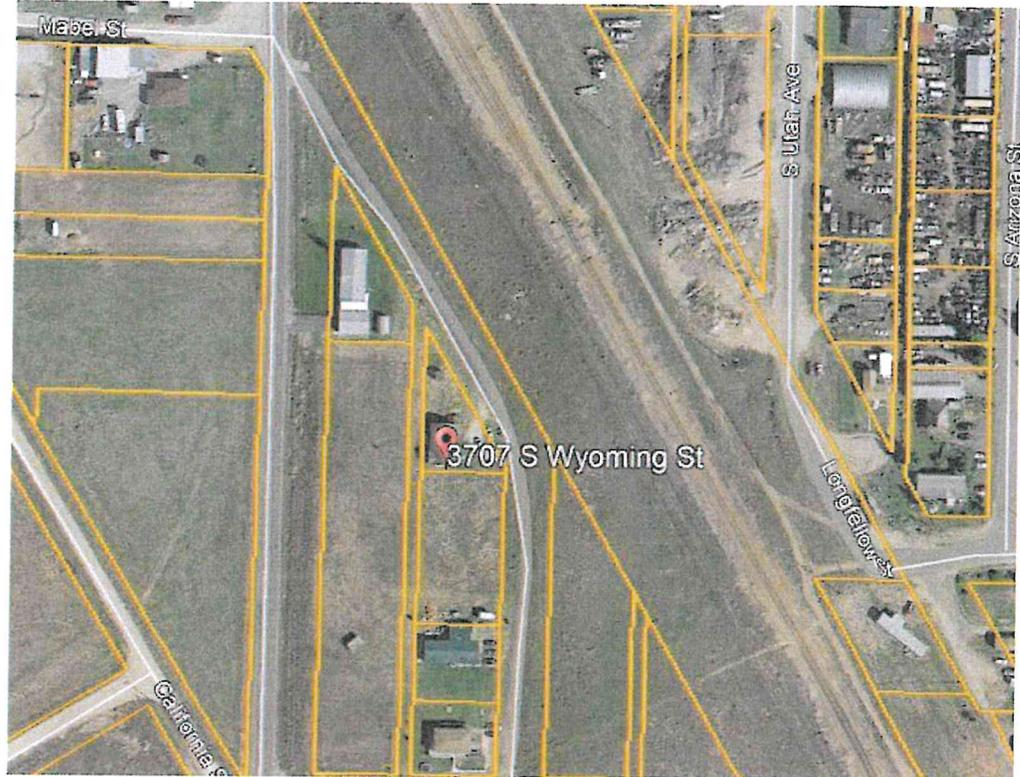
**ITEM:**            Variance Application #16670 - An application for a variance to construct a detached garage (24'D x 48'W) that would be located within ten feet (10') of the front property boundary, varying from the requirements of Section 17.14.020 - D, of the BSBMC.

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

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

**REPORT BY:**     Dylan Pipinich, Assistant Planning Director

**VICINITY MAP:**



**LOCATION/**

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

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

**STAFF**

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

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

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

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

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

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

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

contrary to public interest.

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

To qualify for a variance, the property must exhibit conditions that preclude a structure from meeting the minimum standards of the Zoning Ordinance, therefore, making the development of the property not feasible. Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property.

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

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

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

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

While the proposal states the garage would be

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

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

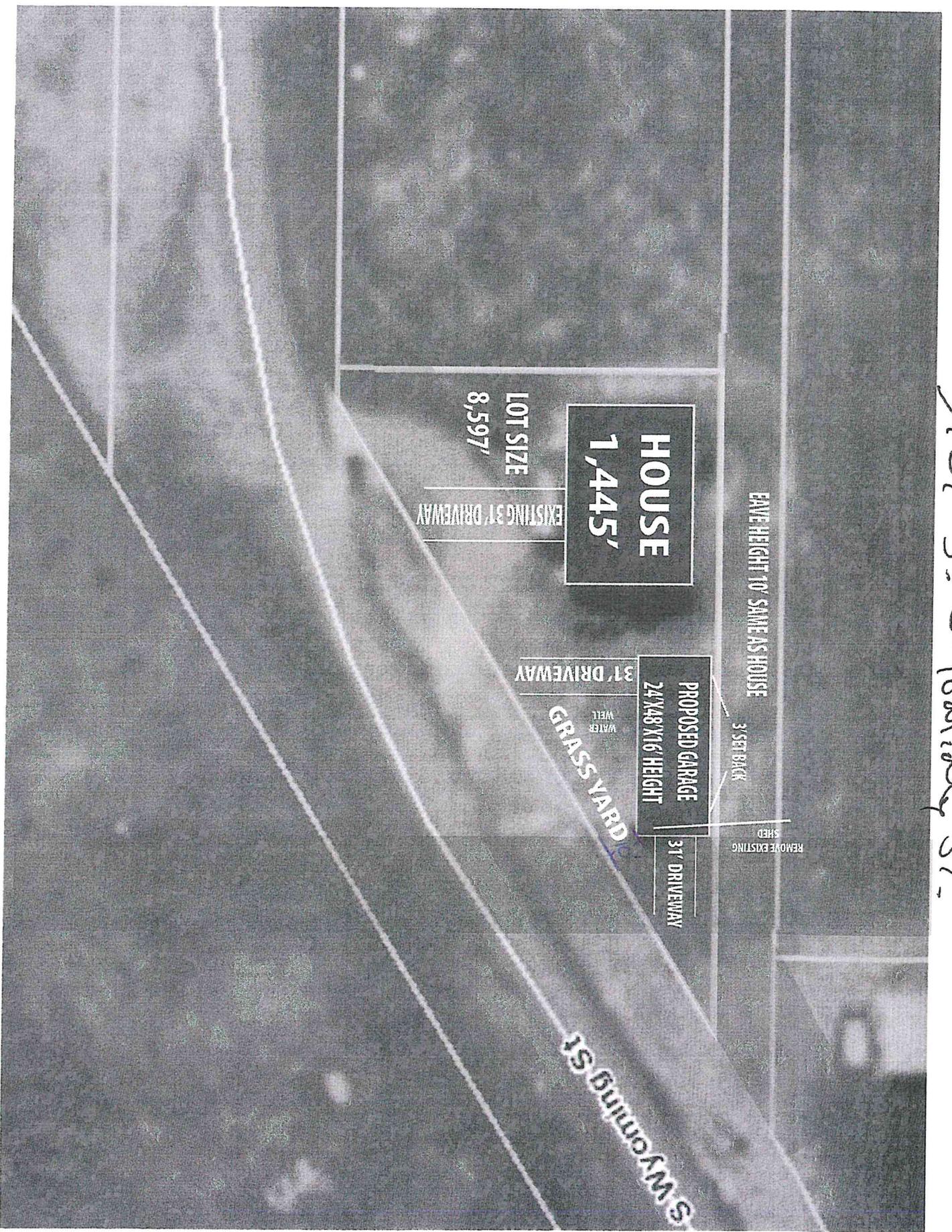
Therefore, in this case, a ten foot (10') front yard setback would not appear to be contrary to the spirit of the Zoning Ordinance to allow for the reasonable use of private property.

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

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

# Zoning Ordinance.

3707 S. Wyoming St.



**HOUSE**  
**1,445'**

LOT SIZE  
8,597'

EXISTING 31' DRIVEWAY

PROPOSED GARAGE  
24'x48'x16' HEIGHT

GRASS YARD

WATER WELL

31' DRIVEWAY

REMOVE EXISTING SHED

31' SET BACK

EAVE HEIGHT TO SAME AS HOUSE

Wyoming St

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

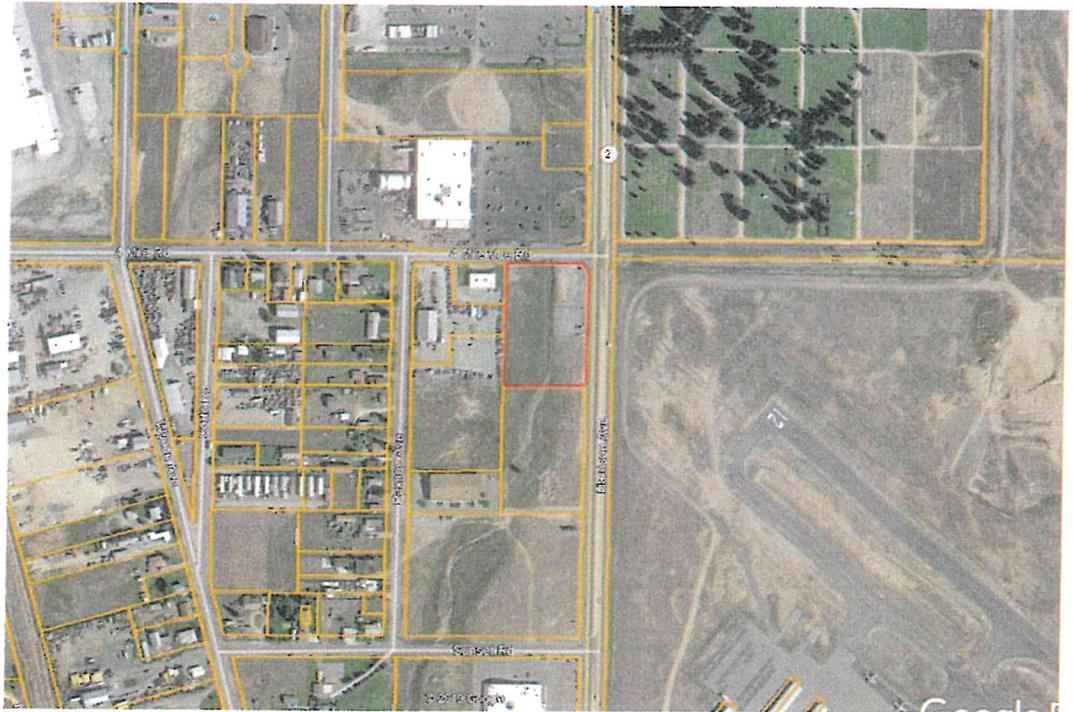
**ITEM:** Variance Application #16672 - Amendment to Condition of Use Variance Permit #15736 - An application requesting modification of Condition of Approval #13, which required a permanent office structure to be built by August 20, 2020, by requesting an additional twelve (12) months to construct a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

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

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

**REPORTED BY:** Dylan Pipinich, Assistant Planning Director

**VICINITY  
MAP:**



**LOCATION/  
DESCRIPTION:**

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

**PROPOSAL/  
HISTORY:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Prior to receiving a sign permit, the applicants shall submit to the Planning Department for review and approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for the "C-2" zone.
13. The office trailer, as submitted at the hearing by the applicants, shall be utilized for the facility for a maximum of two (2) years (February 20, 2020). On or before February 20, 2020, a brick and mortar structure shall be constructed to be utilized as the office for the rental facility.
14. The applicants shall maintain the unimproved portion of the property and keep it devoid of weeds.
15. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from Montana Department of Environmental Quality

(MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.

16. Any future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.
17. Prior to the issuance of a building permit, the applicants shall complete, submit, and receive approval of FAA form 7460 to ensure that proposed structure heights meet all applicable FAA requirements. The form is available from the FAA website and can be submitted online.
18. Prior to the approval of an excavation permit, the applicants shall submit to the Butte-Silver Bow Fire Marshal a set of fire protection engineered plans for the 1,000 gallon above-ground fuel storage tank. At a minimum, the plans shall include tank design, distances of the fuel storage tank from property lines, roadways and other structures, tank protection from accidental collisions, fire hydrant availability and distance and spill containment. A written approval from the Butte-Silver Bow Fire Marshal stating that all requirements of the Butte-Silver Bow Fire Prevention Bureau for this facility have been met will need to be provided to the Butte-Silver Bow Planning Department.

Any additional fuel storage tanks placed on the subject property will require further review and approval from the Zoning Board of Adjustment and the Butte-Silver Bow Fire Prevention Bureau.

19. The applicants shall ensure that the construction of or placement of all facilities on the subject property, including but not limited to the office structure, the washing and repair pads and the 1000 gallon fuel storage tank are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance. Any electrical and/or plumbing work must be inspected and permitted by the Butte-Silver Bow Electrical Inspector and also by the Building Official. The electrical permit must be purchased and the electrical service be installed by a licensed electrician. All plumbing work must be performed by a licensed plumber.
  
20. At no time shall the wash water from the sump be discharged to adjacent surface water drainages. A detailed sump disposal plan will need to be reviewed and approved by the Butte-Silver Bow Public Works Department Metro Sewer Division.

In January of 2020, the applicants requested an additional six (6) months to construct the permanent office and the additional time was granted by the Zoning Board of Adjustment. The applicants applied to expand their operation to the south and construct a maintenance shop in May of 2020. The construction of a maintenance shop was granted but the Board denied the request to expand the equipment yard. At this time, the applicant is requesting that Condition No. 13 of their original use variance be amended to allow them to use the office trailer for an additional twelve (12) months to allow them to secure property located in an industrial zone and construct a new facility and yard.

**STAFF FINDINGS:** The applicants have stated that because of the nearby airport, floodplain and zoning designation of the property, they wish to secure a parcel of land within an industrial

zone that is more conducive to their operations and allows for expansion for their growing business.

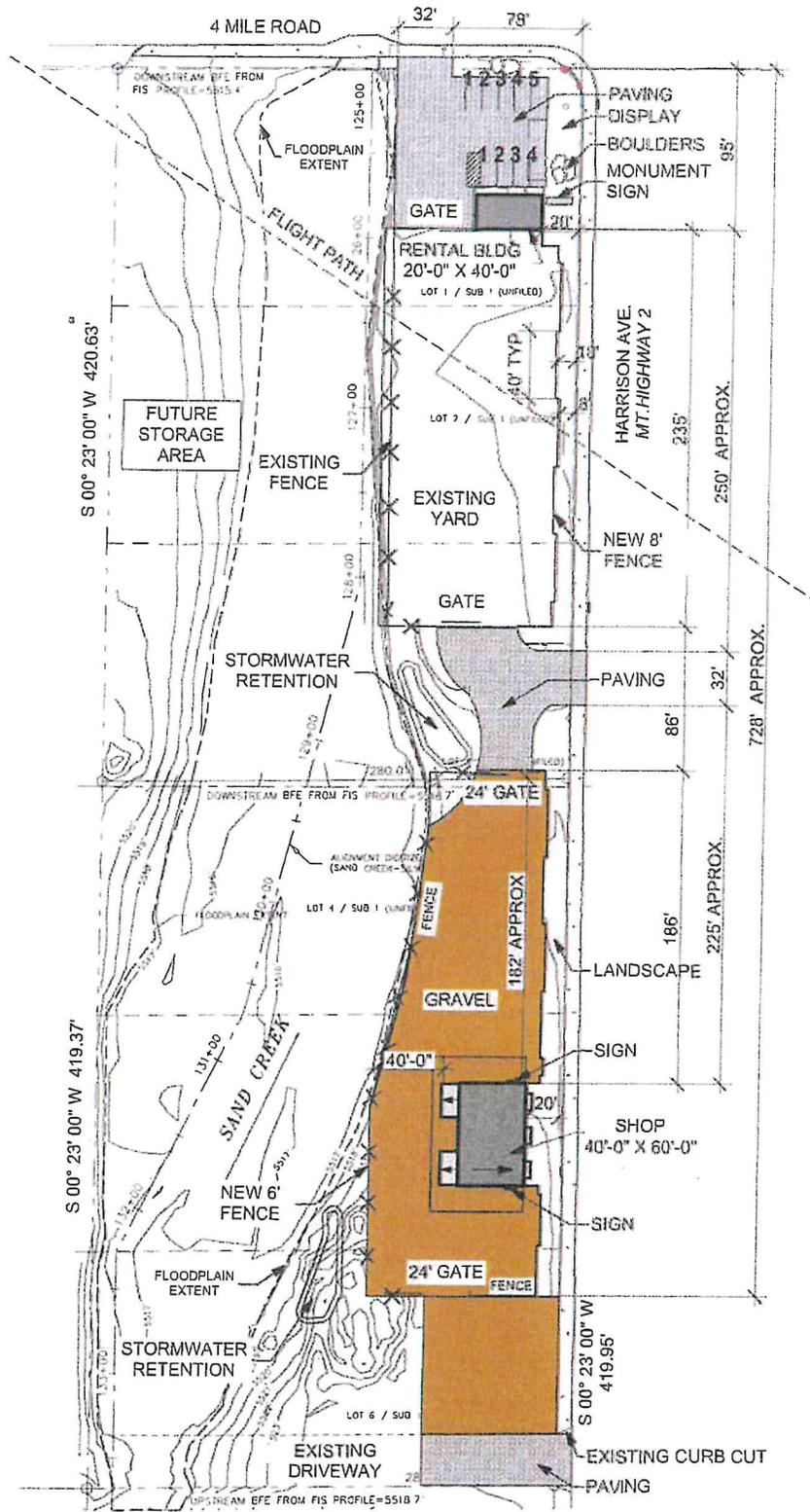
The issue before the Zoning Board of Adjustment is whether allowing the applicants to utilize the trailer for an office for an additional twelve (12) months will result in greater and unreasonable impacts on the adjoining property owners than if the condition were to remain the same.

The intent of Condition of Approval No. 13 was to reduce the visual impacts along Harrison Avenue, which is Butte's major commercial arterial street. The visual impacts amplify the industrial feel of the equipment rental yard at a location along Harrison Avenue that has seen considerable commercial remodeling in the recent years.

In evaluating the applicants' amendment request, it is important to note that the request is to allow additional time to secure a new site with the proper zoning designation to construct a new facility and continue their operations. Once this is complete, the impacts of the industrial use on the property will be mitigated entirely. If the additional time is granted to allow the applicants to continue their current operations while they secure a parcel and construct a facility that is entirely in conformance with the Zoning Ordinance and remove the industrial use from Harrison Avenue completely, staff believes it may be reasonable to grant a twelve (12) month extension.

**CONCLUSION:** Based on the above discussion, staff believes that the requested amendment for an additional twelve (12) month extension to allow the use of the office trailer until a permanent location in compliance with the Zoning Ordinance is found is consistent with the spirit of the Zoning Ordinance to allow for the reasonable use of private property and does not present an undue burden on the surrounding neighborhood.

Therefore, staff would recommend approval of the proposed amendment to Condition No. 13.



# CAT RENTAL STORE

1/31/2020

Scale: 1:80



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

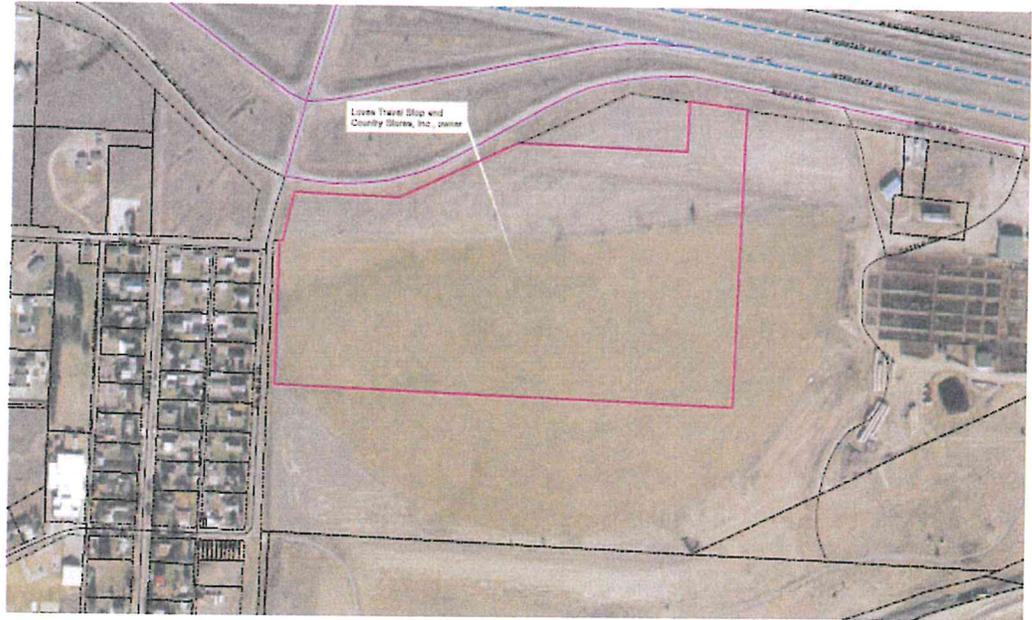
**ITEM:** Appeal of the Zoning Officer's Decision #16675– An appeal by the Ramsay Citizens Council to the Zoning Board of Adjustment that the Ramsay zoning district boundary has not been adequately established and that the commercial activity planned for the RC-1 (General Commercial) zone should not be allowed and that the use of the RR-1 (Single Family Residence) zone to support the commercial activity should not be allowed per Section 17.35.070, Board of Adjustment, of the Butte-Silver Bow Municipal Code.

**APPLICANT:** Ramsay Citizens Council c/o James Ayres, Box 59, Butte, Montana, applicant.

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

**REPORT BY:** Lori Casey, Planning Director

**VICINITY MAP:**



**LOCATION/**

**DESCRIPTION:** The property is legally described as Parcel 1 of Certificate of Survey 1045-RB, Section 14, T03N, R09W, P.M.M. commonly located west of the Montana Livestock Auction, Butte, Montana. The property is located in the “RC-1” (General Commercial) zone, the “RR-1” (Single Family Residence) zone, and an unzoned area.

**APPEAL:**

Per Section 17.35.070 (C) – Board of Adjustment of the Butte-Silver Bow Municipal Code (BSBMC), the applicants are appealing that the Ramsay zoning district boundary has not been adequately established and that the commercial activity planned for the RC-1 zone should not be allowed and that the use of the RR-1 zone to support the commercial activity should not be allowed.

**STAFF  
FINDINGS**

Section 17.35.070 (C) – Board of Adjustment of the BSBMC states that an appeal to the Board of Adjustment may be taken by any person, officer, department, board or bureau of the municipality affected by any decision of the zoning enforcement officer. Per Montana Code Annotated 76-2-326 an appeal must be taken within a reasonable time, as

provided by the rules of the board, by filing with the officer from who the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal. Subsection (B) of Section IV – appeals and Applications of the Rules of Procedure for the Zoning Board of Adjustment states that no appeal shall be heard by the Board unless it is filed within thirty (30) days of after the interested party or parties receive notice of the order, requirement, decision or determination by the enforcing officer.

The applicants have stated in their appeal (Exhibit A) that the statements made by Director Casey in her testimony at the Department of Revenue's liquor license hearing regarding the Loves Travel Stop make it clear that a decision has in fact been made to allow a Loves Travel Stop to be constructed with no further zoning review. The applicants further state that the thirty (30) day notice does not apply as the Ramsay Citizens Council, nor any resident of Ramsay, received a notice of decision by Director Casey.

Director Casey was subpoenaed to testify before the Department of Revenue in the matter of the protest of ownership and location of Montana All-alcoholic Beverages License No 01-701-7969-001 to be operated at the Love's Casino (Exhibit B). On June 13, 2019, testimony was given as stated in the Applicants appeal. Mr. Ayres, a member of the Ramsay Citizens Council was present at the hearing during the testimony.

On July 9, 2019, Mollie Maffei, Butte-Silver Bow Deputy County Attorney, received a letter (Exhibit C) from Mr. Mark Lancaster, Attorney with Luxan & Murfitt stating he represented the Ramsay Citizen Council and was requesting the following documents:

1. Love's Development Permit application for its development near Ramsay, including any draft preliminary, or proposed versions of the application;

2. Any Location Permit documentation for Love's development near Ramsay;
3. Any site plans regarding Love's development near Ramsay; and
4. Any requests for variances to county zoning or devilment requirements regarding Love's development near Ramsay, as well as any supporting documentation.

Deputy County Attorney Maffei responded to the letter on July 31, 2019, addressing the above noted requests (Exhibit D).

As stated in Ms. Maffei's letter, the City-County does not issue a location permit until it has approvals from the DEQ and MDT.

Section 17.56.060 of the BSBMC, states in part, each application for a location or improvement permit must be accompanied by a plan drawn to scale and in such form as may be prescribed by the enforcing officer, showing the actual size and dimensions of the lot to be built upon, the size of the building to be erected, as such other information as may be necessary to provide for the endorsement of the regulations contain in this title.

A location permit is not issued before approvals for water, sewer, storm water and approaches are permitted as these approvals have the potential to change a site plan.

The Zoning Board of Adjustment (Board) must first decide if the Zoning Officer has rendered a decision and if the applicants have met the thirty (30) day requirement as set forth in the Rules of Procedure to appeal the decision.

To the extent that the Board allows the appeal to proceed, the applicants are appealing that the zoning district boundary has not been adequately established and that

the commercial activity planned for the RC-1 (General Commercial) zone should not be allowed and that the use of the RR-1 (Single Family Residence) zone to support the commercial activity should not be allowed.

The applicants are correct that the Ramsay, MT Urban Zoning Classifications map does have a disclaimer that "inaccuracies are known to exist. Any decision as to land use should be made from the zoning ordinances themselves."

Ordinance 457 incorporated the Ramsay Planning and Zoning District & Map into the Municipal Code under Title 17 – Zoning. Planning and GIS staff reviewed the following information against the digitized line work:

- The map referred to in Ordinance 457 (Exhibit E);
- Certificate of Survey 1054B-RB (Exhibit F) and other plats and surveys in the vicinity; and
- ALTA/ACSM Land Title Survey prepared by WGM Land Group (Exhibit G) and submitted with Loves' plans.

All information was registered utilizing ArcMap and line work was adjusted/corrected based on the registration of the data. The Loves' site plan was registered and overlaid with the property boundaries and zoning boundaries (Exhibit F). In addition, the Map from Ordinance 457 was scaled by hand against the site plan.

The above noted information was utilized to make the determination that the buildings are located in an area that is unzoned. Therefore, the zoning regulations do not apply to the buildings.

The applicants also state that the commercial activities should not be allowed to utilize the area of land that is designated RR-1 (Single Family Residential). The project is proposing to utilize the area designated as RR-1 for parking.

Section 17.35.140 Off-Street Parking of the BSBMC states "in all districts, in conjunction with every business, commercial, industrial, recreational, institutional and residential use, space for parking and storage of vehicles shall be provided in accordance with the following schedule:

- A. Churches – one space for each five seats;
- B. Dwellings – one space for each family or living unit;
- C. Commercial stores – one space for every four hundred square feet of floor area;
- D. Industrial – one space for every two employees."

Planning staff has interpreted this section to allow parking in all zoning districts, including residential.

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

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcing officer in the enforcement of this chapter of this title;
- B. To hear and decide special exceptions to the terms of this title upon which such board is required to pass under such ordinance;
- C. To authorize upon appeal in specific cases such variance from the terms of this title as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the

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

- D. In exercising the above mentioned powers, such Board may, in conformity with the provisions of this title, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

