



Zoning Board of Adjustment

The City-County of Butte-Silver Bow
Virtual Meeting
September 10, 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 July 16, 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, September 10, 2020, and may be submitted by email to planning@bsb.mt.gov or mailed to:

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

Appeal of the Zoning Officer’s Decision #16712– An application by McAdam Properties, LLC, c/o Jacqueline McAdam, owner, and Angie Hasquet, agent, to appeal the Zoning Officer’s decision per Section 17.54.030 – Appeals of the Butte-Silver Bow Municipal Code (BSBMC), that a wall sign facing the parking lot of the subject parcel is not permitted by Section 17.42 – Signs of the BSBMC. The property is located in a “C-2” (Community Commercial) zone, legally described as Lots 6-8 and the north half of Lot 9, of Block 1 of the Lennox Addition, commonly located at 1826 Harrison Avenue, Butte, Montana.

- IV. Other Business.
- V. Adjournment.

BY: Lori Casey
Lori Casey, Planning Director

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

ITEM: **Appeal of the Zoning Officer's Decision #16712** – An appeal by Jacqueline McAdam that a wall sign facing the parking lot of the subject parcel is not permitted by Section 17.42 of the Butte-Silver Bow Municipal Code, per Section 17.54.030, Appeals, of BSBMC.

APPLICANT: Jacqueline McAdam, 1826 Harrison Ave., Butte, Montana, owner, and Angie Hasquet, agent.

DATE/TIME: Virtual Meeting, Thursday, September 10, 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 September 10, 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 “C-2” (Community Commercial) zone, legally described as Lots 6-8 and the north half of Lot 9, Block 1 of the Lennox Addition, commonly known as 1826 Harrison Avenue, 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 an unpermitted wall sign on the south elevation of the building is not in compliance with Section 17.42 of the Butte-Silver Bow Municipal Code (BSBMC).

STAFF

FINDINGS: Sign specifications have been established to prevent the proliferation of signs within the Butte community, to eliminate the potential for signs to have a negative impact on the surrounding or adjacent property owners and to protect the natural environment. Section 17.42.050 – On-premises signs lists the zoning requirements for on-premises signs in Butte-Silver Bow. More specifically, subpart C-7 of this section describes permitted wall signs in Commercial and Industrial Zones.

Section 17.42.050-C (7) states that one or more wall signs per building frontage are permitted, if the sign meets the size requirements for the zones listed. Section 17.42.030 – Definitions defines “Frontage, building” as “any side of a building which faces a public right-of-way.” Therefore, signs are only permitted on building elevations facing public rights-of-way.

In January of 2020, the applicant and her contractor received a building permit for the interior remodel of the building to accommodate a physical therapy office. All commercial projects are tracked by various Butte-Silver Bow departments at a bi-weekly progress meeting to help

ensure compliance of the construction with all ordinances enforced by various departments throughout the lifespan of the construction project until the certificate of occupancy is issued. It was noted by a Butte-Silver Bow staff member at this progress meeting that signs have been installed at 1826 Harrison Avenue without a permit. A code enforcement officer was requested to investigate, at which time the officer notified the property owner that a permit is required for signs and that one sign is out of compliance with the municipal code. The applicant is now appealing that decision.

It should be noted that in conversation with the owner and the owner's contractor prior to the appeal being received, Planning staff reiterated several options for the sign that are in compliance with the municipal code. Those options include:

- placing the sign on the roof; or
- utilizing the existing freestanding sign pole located on the property.
- It has also been a policy of the Planning Department to allow "trading" frontages by allowing wall signs to be placed on elevations with no frontage in lieu of placing signs on the street frontage elevation, as this does not add to the proliferation of signs within the community.

All three of these options were offered to the applicant and her contractor prior to the appeal.

It should also be noted that the applicant has identified several signs in the vicinity that are located on building elevations with no frontage. There are several reasons for such signs:

- including signs that were constructed prior to the adoption of the sign ordinance that are "grandfathered";

- sign faces that were replaced on grandfathered signs, signs that were “traded” for frontage signs; or
- unpermitted signs that are out of compliance.

As stated above, bi-weekly construction project progress meetings are conducted by Butte-Silver Bow staff from several departments to help ensure construction within our community is in compliance with all applicable municipal codes. In addition, a position has been recently created in the Community Enrichment Department specifically dedicated to zoning enforcement in an attempt to help ensure not only code compliance, but to protect the public interest and general health and welfare of the community through code compliance. Examples of unpermitted signs, as demonstrated in the appeal, only reinforce the necessity for the efficiencies made toward code enforcement over the last two years by Butte-Silver Bow staff.

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.

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):

Jacqueline McAdam
Signature

08/05/2020
Date

Jacqueline J. McAdam
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.

Amie Hacquet
Print Agents Name

[Signature]
Signature of Agent

7/30/2020
Date

Signature of Applicant

Date

Sign Issue:

Tuesday, July 14, 2020: Verbal notification received by Department of Community Enrichment – Sign on the side of building is “out of code.” They became aware because a “complaint was received.” Representative said contractor would need to contact the Planning/Zoning department.

Owner notified contractor, Dave Svejkovsky re: this issue. He was in the Zoning/Planning office already, and reported he would go see what was going on.

Friday, July 17, 2020: Spoke with Dave Svejkovsky by phone. He reported in 40 years of building/contracting, he had NEVER heard of permitting signs. He had gotten the paperwork, and was working on the sign permits. He was also told the sign on the side of the building would have to come down because it was “out of code.” He suggested Owner speak with Dylan in Planning/Zoning about an appeal.

Owner reviewed the BSB Sign Ordinance posted online.

Monday, July 20, 2020: Owner, Jacquie McAdam, contacted Dylan Pipinich in Planning/Zoning to ask which ordinance was being violated and to request a copy of the complaint. Dylan reported there was no written complaint. He reported the sign was in violation of BSB Sign Ordinance: On Premises Sign – Section 7. Owner reported she had reviewed this and saw no information regarding signs on the sides of buildings. He noted the ordinance focused on the “frontage” meaning facing the street. He mentioned a “local sign guy would have known this.” Owner brought up the point there are multiple signs in the area facing to the side in the exact same fashion, including 2 directly across the street. Dylan mentioned they may have been “grandfathered in.” Owner then requested documents to file an appeal. Dylan stated: “It would be a waste of your time. The Zoning Officer has already made a decision.”

Owner forwarded a copy of the BSB Sign Ordinance, with instruction to focus on Section 7 to Angie Hasquet, attorney, requesting she review the information.

The following was received in return on Thursday, July 23, 2020:

Hi Jacquie,

I have read through the city ordinance. You were told the violation came from Section 7 of “On-premise Signs Permitted in Commercial and Industrial Zones.” Specifically, 7b requires a sign be smaller than 40% of the façade on street frontages, and further that a sign be smaller than 30 sq ft if the building has more than one frontage. In your case, I don’t see any violation. First, the sign in question is not displayed on the street frontage and is not larger than 40% of the façade. Second, there is not more than one frontage on the building. The “frontage” referenced is defined as “any side of the building which faces a public right of way.” Since the sign faces the parking lot (which I am assuming is not a public right of way, but rather a private lot), it is not a frontage. Therefore, the display on the side of the building is not in violation of 7b. There are no other provisions in the code that prohibit or regulate signs located specifically on the sides of buildings.

And of course, all the additional signs you have identified and the points you and Travis raised about improvement of rundown property on Harrison, etc. all bolster your case.

I'm not currently familiar with zoning/planning appeal process, so you let me know what you had in mind for going forward.

Thanks,
Angie

Friday, July 24, 2020: Owner followed up with Dylan in Planning/Zoning to again request appeal documents. On this call, Dylan cited four additional sections of violation including: 4, 14, 42, and 50. Owner questioned this, since it wasn't brought up on the first call, and got the response of: "Well, now that I'm looking at it..." Owner again requested the written complaint that was filed, and was told there wasn't one. Dylan also mentioned at this point he didn't know about the issue/complaint until he was called by the owner. Owner brought up that on her way to work she took photos of 10 signs within one block of her office that faced to the side on Harrison Ave. Dylan responded: "There could be a lot of non-permitted signs out there." Owner asked when the ordinance went into effect. He reported 1986 and 1992. Owner pointed out two of the side facing signs across the street are less than five years old, and three more are less than 1-2 years old. He again stated: "There could be a lot of non-permitted signs out there." Owner asked why this business is being singled out. He said that wasn't the case. Owner again stated that review of the ordinance said nothing regarding signs facing to the side. Dylan said "Ordinances are more about what you can do, not what you can't." Owner brought up the point of using someone from outside of Butte to make the signs, and the fact the ordinance is NOT clear. Anyone should be able to read and understand the rules. That taken with the fact that multiple surrounding buildings have a sign on the front AND on the side, there was no reason to suspect the design that was used was not acceptable. Appeal documents were requested, and Dylan did email them. He also said he would clarify whether or not a warning letter would need to be sent first, and would let owner know by Monday, July 27, 2020.

Email with appeal document was received.

Sunday, July 26, 2020: Email was sent to Dylan requesting all sections in which violations occurred in writing so they are available for appeal.

Monday, July 27, 2020: Spoke with Dylan re: clarification of codes in violation. He apologized for the confusion, and stated there are only two codes to worry about. Section 4 – the definition of "frontage." And Section 17.42.50 – number 7 as previously discussed, on-premises signs. He also said there is the option of exchanging one building frontage for another to keep the sign in place. Owner stated that would mean pulling down another very expensive sign that required additional construction and electrical work to install. This is also not a good option. We will go forward with the appeal. Owner inquired as to whether the "warning letter" will be needed to file. He stated it would not.

Attachment to Zoning Appeal Form

Reasoning why decision is contrary to Zoning Ordinance:

1. Owner is not in violation because its second sign does not meet the frontage, building definition in the ordinance.
 - a. Frontage in section 4 is defined as “any side of the building which faces a public right of way.” There are two signs located at Copper City PT . One sign faces Harrison Ave. (west facing). The second sign faces south, facing the business’s parking lot. It is visible when traveling north on Harrison Ave.
 - b. Owner spoke with Dylan Pipinich on Monday, July 27,2020, who suggested I “exchange frontages” – meaning I keep the sign on the side, and remove the sign from the front of the building. To me, this would also imply the side of the building could also be considered a “frontage.” Under the plain reading of the definition, the sign facing Owner’s parking lot is not frontage building, as defined in Section 19, 17.42.030.

We requested our attorney review the issue, who had the following to say:

I have read through the city ordinance. You were told the violation came from Section 7 of “On-premise Signs Permitted in Commercial and Industrial Zones.” Specifically, 7b requires a sign be smaller than 40% of the façade on street frontages, and further that a sign be smaller than 30 sq ft if the building has more than one frontage. In your case, I don’t see any violation. First, the sign in question is not displayed on the street frontage and is not larger than 40% of the façade. Second, there is not more than one frontage on the building. The “frontage” referenced is defined as “any side of the building which faces a public right of way.” Since the sign faces the parking lot (which I am assuming is not a public right of way, but rather a private lot), it is not a frontage. Therefore, the display on the side of the building is not in violation of 7b. There are no other provisions in the code that prohibit or regulate signs located specifically on the sides of buildings. - Received via email from Angie Hasquet, attorney on Thursday, July 23, 2020.

2. Building Improvements.

It has been implied/stated that a “local guy would have known” the sign was out of code. I take issue with this for multiple reasons.

- a. As a well-educated person, I find the ordinance confusing and unclear. Anyone from Butte, or from outside of Butte, should be able to read this code and understand that signs are not allowed on the side of a building. Though it may be about what can be done, the definition of “frontage” is vague.
- b. This taken with the fact that there are multiple signs within a one block radius of my business oriented in the same manner, would imply that the sign placement used was a non-issue. *See attached photos (Appendix A).
- c. My contractor, who has been in business in Butte for 40 years, had never heard of permitting signs when the building project itself had already been permitted.
- d. The building inspector pointed out that the address numbers were missing from the building and required they be put on before opening. Section 2, 17.42.050 specifies that address numbers are allowed without any permitting. The building inspector mentioned nothing about the sign on the side of the building. I was told by Dylan that building inspectors do not deal with sign ordinances, but address numbers clearly fall under an ordinance - 17.42.050 – Section 2 – On-Premises signs not requiring a permit.

3. No written complaint.

I have requested a copy of the complaint that was filed, and have been told twice there isn't one on file in the office. With no written complaint describing the violation, there should be no issue. As I was told, Dylan didn't know about the sign/ordinance violation until Owner called his office. I find this inappropriate, considering the representative from the Dept. of Community Enrichment told me there had been a complaint. In my world, documentation is required for legal consideration.

4. Additional Reasons.

1. I requested the dates when the ordinances were put in place and was told 1986 and 1992. With this I asked why the other similar signs in my area are still in place, and got the following responses from Dylan:
 - a. "They were probably grandfathered in."
 - b. Owner pointed out the two across the street were less than five years old, and two others were less than two years old to which he replied: "There are likely a lot of non-permitted signs out there." And "You shouldn't feel like you are being singled out."
 - c. Under the circumstances, specifically:
 - (1) no written complaint or actual notice of violation.
 - (2) code enforcement office was unaware of alleged violation.
 - (3) presence of many similar "non-permitted signs" surrounding Owner that are not being subjected to the same scrutiny, Owner concludes it is being unfairly targeted. Owner spoke with five surrounding business owners regarding their signage. They reported requiring permits for replacement or use of a post, but none reported requiring a variance for side-facing signage.
 - (4) Owner has purchased a building that was partially vacant, rundown and in need of repair. Owner invested in the building, utilized local contractor and labor for the project, made improvements, and opened an active business with appropriate signage to assist its patients in locating its new business location. Owner spent significant money on the design and installation of its business signs.



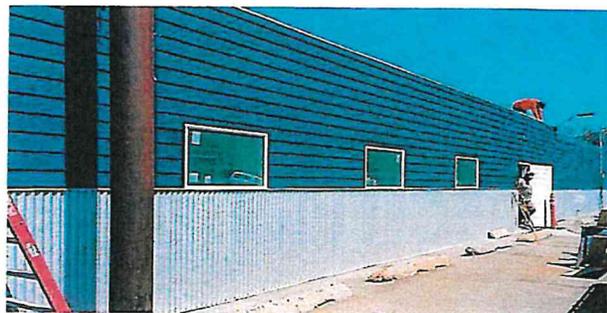
Before



After (West Facing Sign – Harrison Ave.)



Before



After



After (South Facing – Private Parking Lot)

2. Patients, many who are elderly, that come to my business for the first time use the sign in question as a guide to find the building. If they have to depend only on the one on the front of the building, they drive by, and have to turn around. **See attached letters of support (Appendix B).*

Appendix A



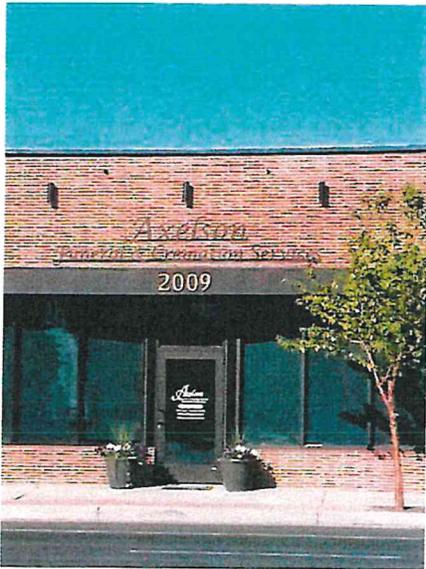
Front Entry/West Entry



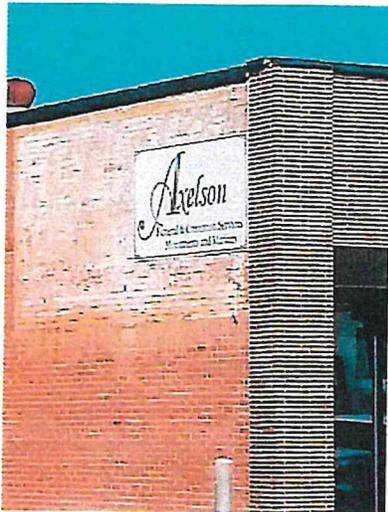
Side/ North Facing



Side/South Facing – All signs have been up less than 1-2 years.



Front/East Facing



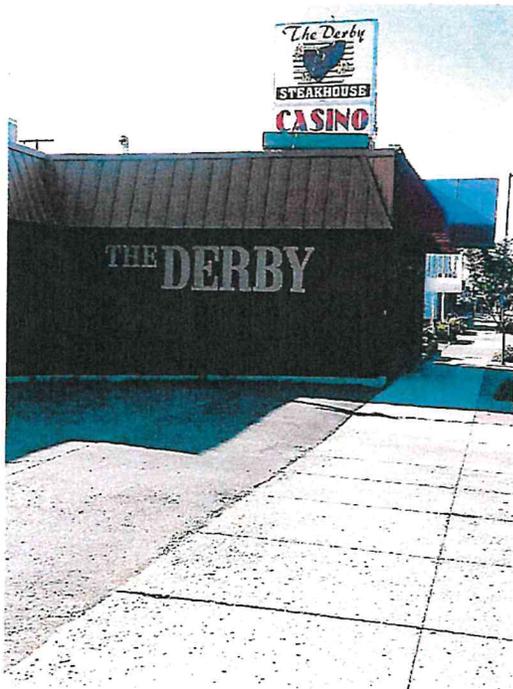
Side/North Facing



Front/West Facing

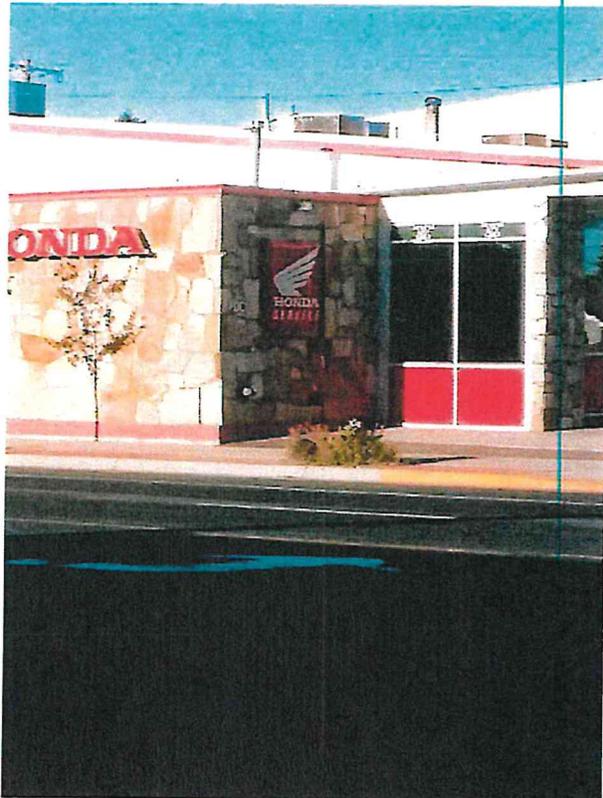


Side/North Facing



Side/ South Facing

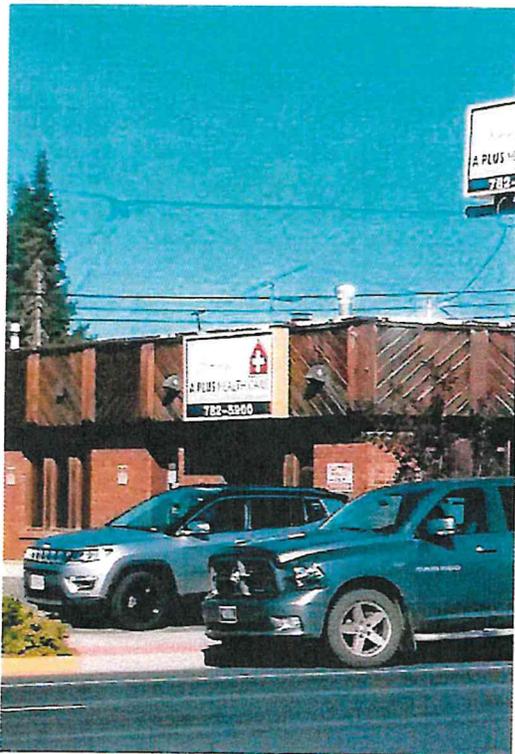
Signs on awnings are also located on the north and west sides of the building.



Two signs seen here east and south facing. There is another on the north side of the building. Across the street from the owner's business. They were installed less than 2 years ago.



Front/East Facing



Side/North Facing – also onto a parking lot.



Both sets of signs: Front/East Facing & Side/North Facing. Directly across the street from the owner's business. These have been up for less than 10 years.

Appendix B

To whom it may concern

8-5-2020

I understand Jacquie McAdam who owns Copper City Physical Therapy is being told by zoning and planning in Butte she cannot have a sign on the side of her building. She bought this older property and has spent many thousands of dollars remodeling it & establishing a thriving medical service business on Harrison Avenue when there are few new businesses. There are numerous buildings one can see from the front of the business that have both hand made and hand painted.

I cannot believe you are giving her grief about advertising her new business. you should be thanking her for spending her hard earned money establishing a business that serves and benefits so many residents of Butte.

I await hearing that you have allowed the signage on the side of her business to be allowed to remain

Paul H. Sims DDS ORAL MAXILLOFACIAL Surgeon

8/5/20

To Whom It May Concern:

I have been going to Copper City Physical Therapy for health reasons for several months.

The new building is beautiful and is wonderful to see. What a great investment in Butte!

To get to the new building, I travel North on Harrison Ave. I often struggle to see where the building is and the sign on the side of the building is very helpful.

Honestly, I feel it is ridiculous to be giving a small business such a hard time about a sign that only helps people. The sign is obviously not having any negative effect.

During these trying times, we as a small community, need to be more supportive to our local business owners, instead of creating even more obstacles.

Please feel free to contact me.

Sincerely,
Becky Smith
496-9177

August 5, 2020

To BSB Zoning Planning Dept. I would like to voice my opinion regarding the sign on Copper City Physical Therapy. I have been a client there for several years and with their new location on a very busy street I feel the sign is necessary in its location. It offers a clear view to the location and makes it easy to view from a safe distance to give adequate signaling for a safe turn in their parking lot. Please allow them to leave the sign in its location.

Thank You.
Tom Schuber

August 5, 2020

Mr. Donald Hampa

3205 Kossuth

Butte, MT 59701

Dear BSB Zoning Commission,

This letter is in support of Copper City Physical Therapy, located at 1826 Harrison Avenue and the business signage at said location. I am a patient there, attending four times a week, and the owner, Jacqueline McAdam, has told me you have asked her to remove her sign. She does not understand why and neither do I.

I have observed a variety of businesses in that area that have signs displayed in every position possible on a building. Some are sticking out from the building, some are on top, some are flat against the structure, you name it. I assume all are in compliance with local guidelines.

If there is a problem with any of this signage, I and Ms. McAdam are unaware any. Her sign is affixed flat against her building. It is an attractive sign, made of metal. So, what is the problem with her sign and not with the others in the area?

BSB has way too many serious problems to solve without creating a minor but costly problem for a small local business, especially during this period of Covid 19. Isn't the slogan 'Believe in Butte' and 'Shop Small'? A suitable resolution must be found and I look forward to your reply to this letter.

Respectfully,

Donald Hampa

406-723-1248

A handwritten signature in cursive script that reads "Donald Hampa". The signature is written in dark ink and is positioned below the typed name and phone number.

August 4, 2020

To Whom It May Concern:

This letter is in regard to the sign on the side of the building of Copper City Physical Therapy at 1826 Harrison Avenue.

- (1) This sign is not obtrusive in any way, shape or form.
- (2) It shows where the business is at when going north on Harrison Avenue, making it easier to find if you have never been there before.
- (3) There are signs on the sides of buildings all over Butte.

Therefore, I believe that Copper City PT should be able to keep their sign where it is and that BSB should thank them for turning an old building into a very nice place of business.

Sincerly Yours,



Debbie Church
801 W. Daly
Butte, Montana
59701

Aug 3, 2020

To Whom It May Concern,

I am writing this to voice my concern over the possible removal of a sign on the side of the newly remodeled Copper City Physical Therapy building at 1826 Harrison Ave. The sign not only improves the aesthetics of the building, but of Harrison Ave. as well. It increases the visibility of the clinic and aides drivers in knowing when to turn into the parking lot. If there was only a sign on the front of the building, one would most likely drive by or stop too quickly to avoid missing their turn, possibly causing an accident.

Please consider allowing the sign to remain on the newly remodeled Copper City Physical Therapy building, as it will improve safety and the city block greatly in our quest to beautify Butte. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Julie Watson". The signature is written in black ink and has a long horizontal flourish extending to the right.

Julie Watson

August 3, 2020

Debbie Best

P. O, Box 3563

Butte, MT. 59702

(406) 490-7407

To whom it may concern,

I've been a patient with Copper City PT for a few years. I was excited when Jacquie McAdam decided to expand her business and relocate to Harrison Ave. It's a prime location in a high traffic area. With the strong potential of acquiring new patients.

The building was in extremely poor condition and an eye sore. It was evident that it had been neglected for quite some time. Jacquie McAdam was determined to bring the building back to life. She was aware it was going to require a deep financial commitment. Jacquie hired a local contractor who contacted carpenters, contractors, painters, etc., to professionally assist and guide her in this massive project. People who were hired were licensed and had good reputations within the community. The once ugly and dull inside and outside building was now attractive and inviting.

This is why I'm writing this letter. I want to know why Jacquie McAdam was notified that she must remove her outdoor business sign on the side of her building. She was informed it was an ordinance issue she needed to abide by. Why was Jacquie McAdam's building singled out specifically? She is surrounded by other businesses that advertise from the side of their building all along Harrison Ave.

If Jacquie is forced to remove the sign on the side of her building, it is only right and fair that 'all' businesses on Harrison Ave. heed the same ordinance as well. As far as I'm concerned, this is bordering on harassment. Afterall, if anything, she made a drastic change to a building that was on the verge of dilapidation, and turned it into a valued piece of property. I thank you for your time.

Sincerely,

Debbie Best

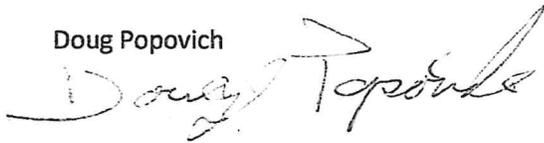
Aug 3, 2020

To whom it may concern,

This is a letter on behalf of Jackie McAdams and her business, Copper City Physical Therapy. The sign that she has placed on the side of the building is a great way for new patients to be able to find her physical therapy building. It is very pleasing to the eye. I cannot see a reason as to why it should be moved from its position.

Sincerely,

Doug Popovich

A handwritten signature in black ink that reads "Doug Popovich". The signature is written in a cursive style with a large, sweeping initial "D".

To Whom it may Concern,

7-31-20

I think the sign on the Copper City Physical Therapy ~~ben~~ building is necessary. I saw the sign on the side and didnt even realize there was a sign in front. I think both signs are necessary and in extreme good taste.

John M. Snow Jr
"MARC"