



Zoning Board of
Adjustment

The City-County of
Butte-Silver Bow
Council Chambers
Room 312
January 16, 2020

5:30 P.M. Thursday

Members

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

A G E N D A

APPLICANT OR REPRESENTATIVE MUST BE PRESENT AT THE MEETING

- I. Call to Order.
- II. Approval of the Minutes of the meeting of December 5, 2019.
- III. Hearing of Cases, Appeals and Reports:

Use Variance Application #16465 – A use variance application by Bryan and Erin Angove, owners, and Sarah Jones, agent, to construct a sixty foot (60') by eighty-five foot (85') commercial building for a construction business, varying from the requirements of Section 17.08.020 – Permitted Uses, of the BSBMC, and to not install sidewalk, curb, and gutter along South Montana Street, varying from the requirements of Section 17.38.050 – Landscaping Requirements, Sidewalk, Curb, and Gutter, of the BSBMC. The property is located in an "R1-S" (One Family Suburban Residence) zone, legally described as the Wathena Placer, Section 25, T03N, R08W, M and B POR, commonly located at 2805 South Montana Street, Butte, Montana.

Amendment to Use Variance Application #15736 – Application #16493 – 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 February 20, 2020. The applicant is requesting to add an additional six 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.

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Special Use Permit Application #16494 – A special use permit application by Carol Huftel, owner, to operate a professional business office (property management company) in an existing structure in a residential zone, per Section 17.38.250 – Professional and Business Offices, of the BSBMC. The property is located in an “R-1” (One Family Residence) zone, legally described as Lots 6-7 of Block 13 of the Hamilton Addition, commonly located at 2398 Massachusetts Avenue, Butte, Montana.

Special Use Permit Application #16496 – A special use permit application by Redeeming Homes, LLC, c/o Matt Kelly, owner, to locate a short-term rental in an existing residence per Section 17.38.180 – Special Use Permit – Uses Allowed, of the BSBMC. The property is located in an “R-1” (One Family Residence) zone, legally described as Lots 4-5 and the east half of Lot 6, of Block 4 of the School of Mines Addition, commonly located at 1216 West Gold Street, Butte, Montana.

Special Use Permit Application #16497 – A special use permit application by Jordan Patterson and Nathan and McKayla Haack, owners, to locate a short-term rental in an existing residence per Section 17.38.180 – Special Use Permit – Uses Allowed, of the BSBMC. The property is located in an “R-2” (Two Family Residence) zone, legally described as Lot 12, of Block 9 of the Volunteer Addition No. 1, commonly located at 1123 Caledonia Street, Butte, Montana.

Public Hearing for Application #16499 – An application by Butte School District No. 1 (East Middle School), owner, to expand an existing school by adding five (5) new classrooms and a gymnasium per Section 17.38.210 – Public and private non-profit schools of the BSBMC, and to vary from Section 17.40.900 – Off-street parking – Table of minimum standards of the BSBMC by installing 94 additional parking spaces instead of the required 235, and to vary from Section 17.38.049 – Landscaping requirements – Trees required of the BSBMC by installing 34 of the required 47 trees for the additional parking. Pursuant to 76-2-402 MCA, a public hearing for comment only shall be held when an Agency intends to develop land contrary to local zoning regulations, but the Board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use. The property is located in the “R-1” (One Family Residence) zone, legally described as all of Blocks 16, 17, 18, 23, 25, and 26 of the Wilson Park

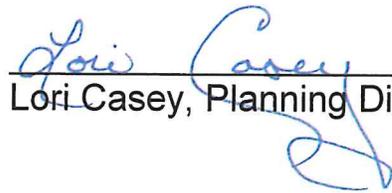
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Addition, and the vacated Sherman and Argyle Streets and Alleys, commonly located at 2600 Grand Avenue, Butte, Montana.

IV. Other Business.

V. Adjournment.

BY:



Lori Casey, Planning Director

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

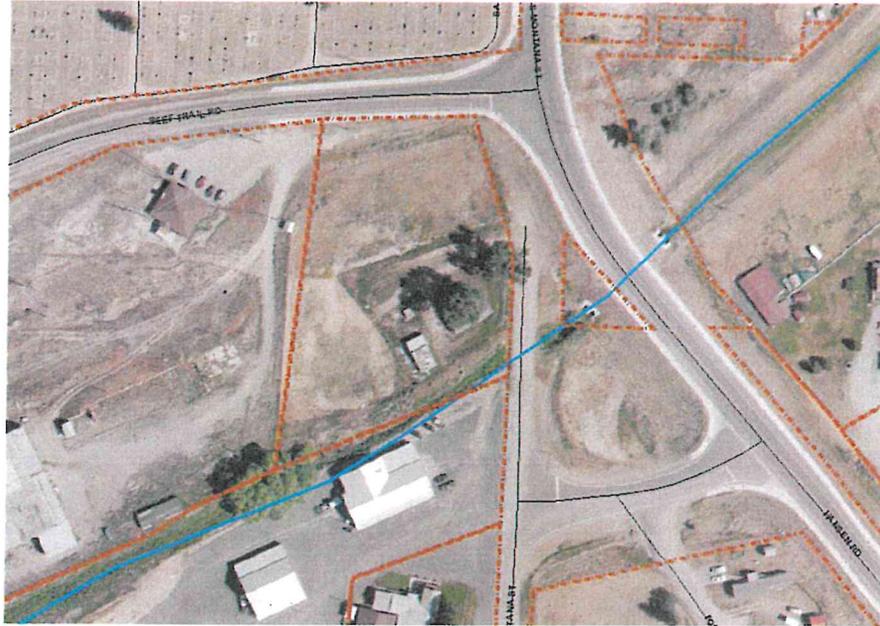
ITEM: **Use Variance Application #16465** - An application for a use variance to construct an equipment shop and office space for an excavating company in a residential zone, varying from the requirements of Section 17.08.020, Permitted Uses, of the BSBMC, and to not install sidewalk, curb, and gutter along South Montana Street, varying from the requirements of Section 17.38.050 – Landscaping Requirements, Sidewalk, Curb, and Gutter, of the BSBMC.

APPLICANT: Bryan and Erin Angove, 3158 S. Montana Street, Butte, Montana, owners; Sarah Jones, Deluxe Engineering and Construction, PO Box 3512, Butte, Montana, agent.

TIME/DATE: Thursday, January 16, 2020, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

**VICINITY
MAP:**



**LOCATION/
DESCRIPTION:**

The proposed site is located in a “R1-S” (One Family Suburban Residence) zone, legally described as the Wathena Placer, Section 25, T03N, R08W, M and B POR, commonly located at 2805 South Montana Street, Butte, Montana.

PROPOSAL:

The applicants are proposing to construct a 60’ x 85’ construction office and maintenance shop in a residential zone. The proposed building would be used for storage and maintenance of construction equipment, as well as office space for the applicants’ construction business. The applicants are also requesting to not install sidewalk, curb and gutter, along an adjacent dedicated public road (South Montana Street).

**STAFF
FINDINGS:**

The property in question is located at the intersection of South Montana Street and Beef Trail Road. The parcel contains two zoning districts, the "R1-S" (One Family Suburban Residence) zone and the "M-2" (Heavy Industrial) zone. The applicants are proposing to construct an equipment shop and construction office within the "R-1S" portion of the property. The Butte-Silver Bow Municipal Code Section 17.08.020, Uses of Land, does not list construction businesses as a permitted use. In order for the applicants to construct the proposed facility within the residential zone, a use variance approved by the Zoning Board of Adjustment (Board) is required.

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.

Typically, in use variance applications, the requirements of the corresponding "zone" that the proposed use is permitted in are applied as conditions of approval. A contractor's equipment shop and office is a permitted use within the "M-1" (Light Industrial) and "M-2" (Heavy

Industrial) zones. The applicants are proposing to not install sidewalk, curb, and gutter along South Montana Street adjacent to the development. In order to not install sidewalk, curb, and gutter along a dedicated street, a variance must be approved by the Board.

Planning Department staff will review the three-point criteria established by the Montana Supreme Court for the granting of variances.

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

The public's interest in segregating land uses, such as industrial and residential, is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to unite uses that are compatible.

The land uses surrounding the subject parcel consist of trucking facilities to the south, a professional office to the west, and a cemetery directly to the north. There are residences located on the east side of South Montana Street. The impact of construction equipment, especially large diesel trucks and loaders, being started and moved around the property could have an impact on the surrounding properties, especially the residences on the east side of South Montana Street. However, the current land use of the properties directly to the south is very similar to that proposed by the applicants and, therefore, these types of impacts are already common in the neighborhood. It should also be noted that if the applicants were able to construct the proposed development on the south end of the subject parcel, the proposal would be considered a permitted use within that zone. Therefore, staff believes the construction of a new 60' X 85' building at this location would most likely have minimal impact on the surrounding properties.

It is important to note that the applicants have not designated an equipment storage yard on the submitted site plan, staff believes that the nature of the proposed business may require outside storage. Section 17.30.030 – Conditions of the BSBMC requires that all storage located on a lot which adjoins a lot in an “R” or “C” zone shall be located wholly within a building or shall be screened from view. If, to the extent that the Board believes the proposed use is acceptable on the subject parcel, staff believes that all outdoor storage of equipment or materials should be screened.

Sidewalk requirements have been established by the Council of Commissioners to protect the public interest by providing a safe space for pedestrians to walk in front of a commercial or industrial property without having to walk in the street, as well as to ensure proper storm water management adjacent to all commercial and industrial developments.

In this particular area, the intersection of South Montana Street and Hansen Road has recently been reconstructed. South Montana Street no longer connects at the intersection of Beef Trail Road and Hansen Road. Sidewalk, curb, and gutter was installed along Hansen Road during the reconstruction and, therefore, satisfies the requirement of sidewalk, curb, and gutter adjacent to a dedicated public street for the north half of the subject parcel. However, the remaining portion of the subject parcel is adjacent to South Montana Street, which is a dedicated public road.

The addition of new sidewalk, curb and gutter along Hansen Road and Beef Trail Road promotes walkability within the area and should accommodate pedestrian traffic in the area. In fact, it may be beneficial to promote

pedestrian traffic on the existing sidewalks as opposed to directly adjacent to an industrial use and a dead-end street.

Based on the above reasons, staff believes that approving the use variance to locate the shop and office on the subject parcel and the requested sidewalk, curb, and gutter variance are not contrary to the public interest.

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

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.

As stated above, the subject parcel is located within both the "R1-S" and "M-2" zoning districts. If the applicants were to locate the proposed structure within the "M-2" district portion of the property, it would be considered a permitted use. However, the "M-2" portion of the property is located mainly within the Grove Gulch Zone AE regulated floodplain. Staff believes that the floodplain constitutes a hardship, as defined by the Montana Supreme Court.

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. Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located.

This location has a very industrial identity, with trucking businesses located directly south of the subject parcel. While there was historically a residence located on the parcel, it was actually located within the industrial zone portion of the parcel, as well as the regulated floodplain. It is unlikely that another residential structure would be constructed at this site. Because of the similar uses directly south, staff does not believe that the proposed use will alter the character of the neighborhood.

In regards to the variance request to not install sidewalk, curb, and gutter, the property does exhibit conditions that would result in unnecessary hardship. To install sidewalk, curb, and gutter along the entire South Montana frontage, the sidewalk would have to encroach onto not only a FEMA regulated floodplain, but also a regulated floodway. The installation of sidewalk within the floodway has the potential to require new culverts to be placed underneath South Montana Street. The permitting of new culverts would place an unnecessary hardship on the applicants.

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.

At this time, the closest residence is separated from the proposed facility by approximately 350 feet. In fact, the

trucking facility directly to the south of the subject parcel is closer to nearby residences than the proposed facility would be. The closest adjacent residentially zoned parcel is the cemetery to the north. Traffic leaving the subject parcel will most likely enter Hansen Road at the same location as the trucking facilities to the south and, therefore, would most likely not increase traffic related safety issues in the neighborhood.

One benefit of sidewalk, curb, and gutter would be to delineate the entrance to the proposed business. Without a delineated approach to South Montana Street, truck traffic, as well as any customer traffic generated by the business itself, could freely enter and exit South Montana Street, possibly creating a traffic hazard. If sidewalk, curb, and gutter are not installed, staff would recommend that a paved approach be constructed to delineate the business entrance to South Montana Street. It would then be clear to motorists where to enter and exit the subject parcel, therefore, alleviating any safety concerns regarding ingress and egress. Additional landscaping in the form of mature trees may also help delineate the approach for construction and customer traffic, as well as enhance the aesthetics of the subject parcel in the absence of sidewalk, curb, and gutter.

Given its proximity to the adjacent trucking yards' distance from residential uses within the neighborhood, if the development meets all other development standards associated with industrial development, the applicants are willing to delineate and pave an approach onto South Montana Street and are amenable to additional landscaping in lieu of sidewalk, curb, and gutter, it appears that constructing a contractor's office and shop on the subject parcel and the requested sidewalk, curb and gutter variance are consistent with the spirit of the Zoning Ordinance for the reasonable use of private property.

CONCLUSION: As discussed within the report, the requested use variance to construct a 60' x 85' contractor's maintenance shop and office space, as well as the requested variance to not install sidewalk, curb, and gutter meet all of the Montana Supreme Court's criteria for a use variance. Therefore, staff recommends approval of Use Variance Application #16465 with the following conditions:

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. All plumbing and electrical work must be completed by a licensed plumber or electrician.
2. 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 with the addition of ten (10) two inch (2") caliper trees along street frontages in lieu of installing sidewalk, curb, and gutter.

The applicants 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%).

Prior to receiving a building permit, the applicants shall submit the appropriate landscaping bond to the Planning Department. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

3. Prior to the issuance of a building permit, the applicants shall submit a detailed parking plan to the Planning Department staff for review and approval. The plan shall comply with the parking provisions described by Chapter 17.40, Off-Street Parking of the BSBMC.

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 bond amount plus ten percent (10%).

Prior to receiving a building permit, the applicants shall submit the appropriate parking bond to the Planning Department. This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

4. Prior to receiving a building 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 receive a variance from the Butte-Silver Bow Public Works Department.
5. Prior to the issuance of a building permit, the

applicants shall secure written confirmation from the Butte-Silver Bow Public Works Department that adequate water and sanitary sewer facilities are available to the site.

6. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare and be directed away from all residences.
7. All outside storage shall be screened from view in accordance with Section 17.30.030 of the BSBMC
8. Prior to receiving any sign permits, the applicants shall submit to the Planning Department for review and approval, a detailed sign plan and drawings.
9. Prior to the issuance of a building permit, the applicants shall pave an entrance into the subject parcel to delineate the approach or bond for the installation of the approach. The applicants shall submit an approach design to be reviewed and approved by the Butte-Silver Bow Public Works Department.
10. The applicant will be required to develop the site in compliance with the Excavation and Dirt Moving Ordinance. Butte-Silver Bow's Superfund Reclamation Specialist is available to work with the applicant to establish a site development plan that addresses the development of the site in regard to all environmental issues, if they should arise. At a minimum, the site development plan will include capping all waste material with building(s), asphalt, concrete, landscaping or other EPA approved method. In addition, any mine waste encountered during excavation shall be hauled to the repository.

Also, it is the applicant's responsibility to ensure all excavation is completed outside of the FEMA regulated floodplain or secure a floodplain permit prior to commencing excavation.

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

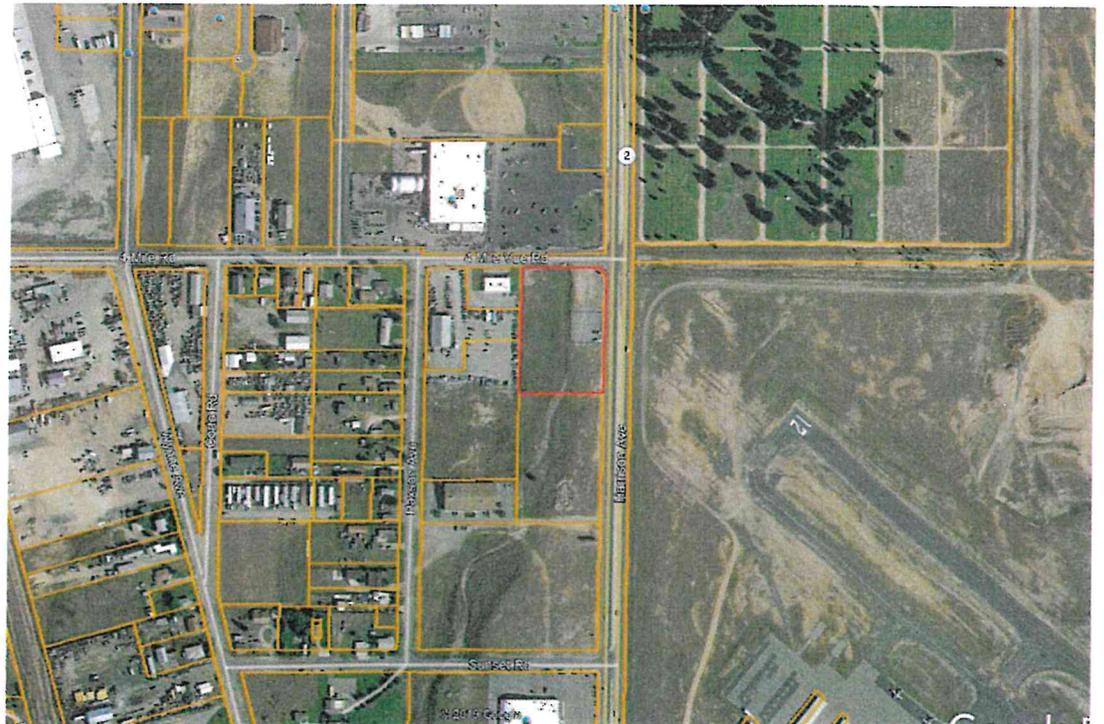
ITEM: Variance Application #16493 - Amendment to Condition of Use Variance Permit #15736 - An application requesting modification of Condition of Approval #13, which required a permanent office structure to be built within 2 years, by requesting an additional 6 months to construct a permanent office.

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: Thursday, January 16, 2020, at 5:30 P.M. in the Council Chambers, Third Floor, Room 312 of the Butte-Silver Bow Courthouse.

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.

At this time, the applicant is requesting that Condition No. 13 be amended to allow for an additional six (6) months to construct a brick and mortar office structure.

STAFF FINDINGS: The applicants have stated that they wish to construct an additional shop building to accommodate their growing business. They have tried to incorporate the construction of a permanent office with a new site layout including this additional building but have had design issues regarding airport overlay zone and flood zone requirements. Because of the delays in design, the applicants are requesting an additional six (6) months to construct a permanent office. In the interim, the applicants have stated that they will complete the design of both a permanent office and an additional shop building and will apply for approval from the Zoning Board of Adjustment to expand the existing nonconforming use at this location.

The issue before the Zoning Board of Adjustment is whether allowing the applicants to utilize the trailer for an office for an additional six (6) 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 #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 complete design of a new site layout as well. Staff believes that changing the site layout, if done properly, could help mitigate not only the industrial feel of the office trailer but the industrial feel of the entire parcel. Staff acknowledges that because of the location of the parcel adjacent to a regulated floodplain and an active airport can add additional consideration to the design, however, staff

does believe that two years was ample time to complete the task. That being said, if the additional time is granted to construct a permanent office and is also utilized to design a site layout that reduces the other visual impacts of the site, staff believes it may be reasonable to grant a single six (6) month extension and the impacts of an expansion can be evaluated prior to the six (6) month date as an expansion of an existing nonconforming use through the Use Variance process.

CONCLUSION: Based on the above discussion, staff believes that the requested amendment for an additional six (6) month extension to construct a permanent office structure 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.

EXISTING CONDITIONS AND PROPOSED SITE PLAN
 WESTERN STATES CATERPILLAR PROPERTY
 PORTION OF TRACT A OF CERTIFICATE OF SURVEY 136-B
 LOCATED IN THE NE 1/4 SECTION 6, T2N, R7W, P.M.M.
 BUTTE-SILVER BOW CITY-COUNTY, STATE OF MONTANA

EXISTING CONCRETE CULVERT.
 INSTALL GRATE SYSTEM ON BRIGLES FOR
 ACCESS AND MAINTENANCE TO CULVERT BOTTOM

FOUR MILE ROAD

PROPOSED 32' WIDE APPROACH
 FROM FOUR MILE ROAD

LOT 1A COS 1050-A

LOT 2A COS 1050-A

LOT 2B COS 947-B

TRACT A-1
 2.70 ACRES

SAND CREEK

AREA WITHIN FLOODPLAIN
 = 0.75 ACRES

LOT 4 / SUB 1 (UNFILED)

MT HIGHWAY 2 (100')

PROPOSED 32' APPROACH FROM
 HWY #2

LEGEND

●	SET DAN BROWN OPC ON 3/8" REBAR	▭	EXISTING 100-YR FLOODPLAIN
●	FOUND HENDRICKS OPC	▭	EXISTING CONCRETE
●	FOUND 3/8" REBAR WITH NO CAP	▭	EXISTING ASPHALT
▭	EXISTING SIGNAGE	▭	PROPOSED CONCRETE
▭	EXISTING LIGHT POLE	▭	PROPOSED BUILDINGS
▭	EXISTING SEWER MANHOLE	▭	PROPOSED ASPHALT
▭	EXISTING STORM DRAIN	▭	PROPOSED GRATE WALKWAY
▭	EXISTING FENCING		
-X-	PROPOSED FENCING		

STRUCTURE TABLE

- ① CONCRETE PAD FOR FUEL TANK (10' x 10')
- ② TOOL / MAINTENANCE BUILDING (20' x 8.5')
- ③ WORK AREA PAD (20' x 20')
- ④ WASH BUILDING (20' x 8.5')
- ⑤ CONCRETE WASH PAD (20' x 20')
- ⑥ HOLDING TANK (20' x 10')



BROWN AND ASSOCIATES, INC.
 PROFESSIONAL LAND SURVEYORS
 2000 Garrison Ave., Butte, MT 59701 (406) 783-8574

WESTERN STATES CATERPILLAR
 EXISTING CONDITIONS AND PROPOSED SITE PLAN
 LOCATED IN THE NE 1/4 OF SEC. 6, T2N, R7W, P.M.M.
 BUTTE-SILVER BOW CITY-COUNTY, STATE OF MONTANA

Drawn by: C.E. Revised on: 2/05/19
 Scale: 1"=60' Dated: 1/16/16

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

ITEM: **Special Use Permit Application #16494** - An application for a special use permit to locate a professional business office (property management company) in an existing structure in a residential zone, as per the requirements of Section 17.38.250, Professional and Business Offices, of the BSBMC.

APPLICANT: Carol L. Huftel, 200 W. Missoula Ave., Butte, Montana, owner.

DATE/TIME: Thursday, January 16, 2020, at 5:30 p.m., in the Council Chambers, Room 312, Third Floor, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-1" (One Family Residence) zone, legally described as Lots 6 & 7, Block 13 of the Hamilton Addition, commonly known as 2398 Massachusetts Ave., Butte, Montana.

PROPOSAL: The applicant is proposing to locate a property management company in an existing building in a residential zone. The proposed building has been historically utilized as a single family residence.

STAFF

FINDINGS: Professional business offices are recognized as special uses allowed in any residential zoning district, provided that the prescribed use is in harmony with the other uses permitted in the zone and not found to be contrary to the public interest. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding area and the compatibility of the proposed use with the adjoining neighborhood.

The Zoning Board of Adjustment will review the physical conditions, which exist at the location, the conduct and operation of the proposed use and whether the combination of these factors will be compatible with the proposed site and surrounding area.

To provide the Board with information about the proposed special use, the applicant has responded to the established 20 question review criteria. The applicant's responses are shown after each question. The Planning staff will, in turn, respond to the 20 review questions.

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

Applicants' Response: "Hamilton Subdivision, residential property, bushes, trees, lawn, and driveway."

Staff Comments: The property is located in an "R-1" (One Family Residence) zone, which allows single family residences. The building was constructed as a single family residence and detached garage and has been historically utilized for residential purposes. There is a retaining wall and large bushes along the Massachusetts street frontage. The garage in the rear of the subject parcel is accessed from Princeton Street.

2. The location, character and design of adjacent buildings.

Applicants' Response: "North, there is a residential unit, which is vacant and possibly uninhabitable. East across the alley is a residence. South and West are commercial properties. Lisac's Tristop, which is a gas station, convenience store, casino and car wash, is across Massachusetts to the west. A dentist office is located across Princeton to the South."

Staff Comments: The subject parcel is located approximately one block east of Harrison Ave., which is very commercial in character. All of the other structures within the same block are residential homes. There is a gas station located across the street directly to the west and an orthodontist office directly to the south.

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

Applicants' Response: "I do not believe there have been any."

Staff Comments: The land uses have not substantially changed since the adoption of the Ordinance.

4. Proposed fencing, screening and landscaping.

Applicants' Response: "We will be trimming bushes and maintaining the yard around the property on a regular basis."

Staff Comments: The current landscaping is typical of residential neighborhoods and should fit in the character of the surrounding homes. The applicant is proposing to maintain the existing landscaping. It should be noted that because the applicant is not proposing to expand the footprint of the building, there is no additional landscaping requirement. That being said, staff believes that the applicant's proposed landscaping is typical for a residential neighborhood. The applicant is proposing to utilize the driveway for employee parking, which is located on the southern property boundary adjacent to Princeton Street. This should create an adequate buffer for the residence to the north. The existing landscaping should also create an adequate buffer to the residence directly east of the subject parcel. Based on the fact that property management offices do not generally result in a substantial number of customers accessing the site and are not noisy operations, the neighboring residences should be adequately buffered.

5. Proposed vegetation, topography and natural drainage.

Applicants' Response: "No changes."

Staff Comments: As the applicants will not be adding to the footprint of the existing house or garage, the natural drainage should not be impacted. However, the applicant has cleared some landscaping next to the driveway. If this area is to be utilized as parking, it could add additional storm water runoff into Princeton Street.

In regards to vegetation, the proposed upkeep of the existing lawn and bushes should be beneficial to the adjacent residences.

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

Applicant's Response: "No changes to this. There is parking for 8 vehicles outside and a double garage for employee parking. We do not have much traffic, as much of our business is online."

Staff Comments: Typically, with this type of professional office there are only one or two clients on site at a time.

As stated above, the applicant has cleared a large bush adjacent to the driveway on Princeton Street. If this area is to be utilized for parking for the business, it should be developed to the Butte-Silver Bow standards for parking lots, including asphalt paving and striping and required landscape buffers. If this area is not to be used as parking, it should be landscaped to be consistent with the remainder of the property. It should be noted that any increase in impervious area to the site will require approval of a storm water management permit or variance from the Butte-Silver Bow Public Works Department.

In regards to provisions for handicapped persons, there are currently no sidewalks adjacent to Princeton Street or Massachusetts Ave. Handicapped access to the structure could be difficult, as the structure itself is significantly higher than street level. The applicant has installed an access ramp on the south side of the building. The applicant must design the site to comply with all ADA standards, as required by the Butte-Silver Bow Building Official.

7. Proposed pedestrian circulation, including provisions for handicapped persons.

Applicants' Response: "Sidewalk and stairs to home from parking lot and street access."

Staff Comments: Prior to final business license approval, it should be noted that an inspection by the Butte-Silver Bow Building Official will be required because the proposed use is a change in occupancy classification, as defined by the adopted Building Code. This inspection will also include provisions for handicapped persons as required by the building code.

8. Proposed signs and lighting.

Applicants' Response: "No additional lighting will be added. We will possible (possibly) hang a sign or 2 from the house on the south side or the west side on the porch these signs would be 4' x 8' or smaller. And not lighted."

Staff Comments: Any signs will be subject to review and approval by the Planning staff and the applicants will be required to apply for a sign permit prior to the installation of any signs. Staff would recommend that any signs be installed on the west

elevation of the structure which faces the adjacent commercial zone.

As for lighting, this area of Massachusetts Avenue is well lit by street lights and any on-site lighting should minimally affect the surrounding residences, as long as it is low glare and directed away from the adjacent properties.

9. All potential nuisances.

Applicants' Response: "I do not believe our business will be of any nuisances due to limited customer traffic at the office. I believe we will fit in very well with the current business in the area, as well as with the residential properties nearby. We will also work to keep the property looking appealing with upkeep on the yard and outside of the house."

Staff Comments: One of the potential nuisances associated with commercial uses locating in residential zones is an increase in traffic on the adjacent streets. In this particular case, the subject parcel is located one half block east of Harrison Avenue, and consequently, this area has a larger amount of traffic than that of a typical residential neighborhood. Given the nature of the proposal, staff does not believe that the increased traffic in the area will create a noticeable impact on the residential properties.

Another potential nuisance is an increase in noise generated by customers and/or the commercial use. In that regard, professional offices are generally not intensive commercial uses for several reasons. First, the number of clients is typically limited. Second, these types of businesses typically only operate during daytime hours and not on weekends.

As such, adjacent residents are not subjected to additional noise during the evening hours or on weekends. Because of this, it would appear the proposed use would have minimal, if any, impact on adjacent residents. At this time, staff cannot foresee any other potential negative impacts.

10. Public safety and health.

Applicants' Response: "I do not believe there would be any public safety or health issues."

Staff Comments: As stated above, the proposed use will be a change in occupancy classification as defined in the adopted building code. If the applicant meets all the requirements of this change as directed by the Butte-Silver Bow Building Official, staff cannot foresee any potential negative impacts on public health and safety created by this proposal.

11. The availability of public utilities and services.

Applicants' Response: "N/A."

Staff Comments: This property is serviced by public utilities and services.

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

Applicants' Response: "I do not believe there will be anything to prevent the utilization of the property."

Staff Comments: As noted above, the prior use of the structure was a single family home. There appears to be no compelling reasons why the property could not continue to be utilized for residential purposes.

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

Applicants' Response: "The property will be enhancing the neighborhood by keeping up with the regular maintenance of the lawn and vegetation on the property, as well as the outside of the property."

Staff Comments: Normally, the establishment of a commercial operation in an existing residential neighborhood would not appear to enhance the development of the immediate neighborhood. However, this property is located one-half block from Harrison Avenue and carries a large amount of traffic per day. As such, any additional traffic generated by the proposed use, one to two vehicles per hour, should not negatively impact the neighboring residences.

In addition, property management offices are generally open only during normal business hours and not on weekends, thus reducing the impact of any clients accessing the office during hours that may be disruptive to the neighboring residences. In that regard, the applicant has stated that the number of clients coming to their current office is usually minimal. The improvements to the outside of the building and yard will also enhance the property.

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

Applicants' Response: "Yes, the proposed use conforms to the purpose of this Ordinance."

Staff Comments: The Zoning Ordinance permits certain commercial uses (professional and business offices) to be located within all residential zones after review of the request by the Zoning Board of Adjustment. The special use application process was created to ensure that these types of businesses will not negatively impact adjacent residents by requiring mitigation where a potential negative impact may result.

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

Applicants' Response: "Yes."

Staff Comments: The structure will only be utilized during daytime hours, consequently, energy usage should be substantially less than if the structure was utilized as a residence.

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

Applicants' Response: "Yes, the use will meet all the requirements."

Staff Comments: The existing residential structure does not conform to all development standards for the "R-1" zone, as the yard setbacks appear to be less than eight feet (8'). However, as the applicants would not be building any additions onto the existing structure, the nonconformity of the existing structure would not be increased with this application.

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

Applicants' Response: "No, the use will not adversely affect properties or occupants. I believe it will improve the area by having the property well maintained."

Staff Comments: Any time a commercial business encroaches into a residential neighborhood, there is a potential for the use to negatively impact the surrounding residential property owners due to the potential for an increase in traffic, loss of on-street parking and/or noise.

In regard to any increase in traffic, the parcel in question is served by dedicated streets designed and built to carry typical residential and commercial traffic. The parcel's proximity to several higher intensity commercial uses suggests that the proposed use will not significantly add to the traffic in the area.

In regard to the potential loss of on-street parking, the subject parcel is located on a corner lot and there is considerable on-street parking located adjacent to the parcel. However, because of the significant elevation difference between the structure and the street, access to the building via on-street parking may be difficult. As stated above, if the applicant will be using the cleared area for client parking, a parking lot should be developed to all Butte-Silver Bow standards for parking lots.

As for any potential increase in noise, the proposed use will most likely not be the largest impact to the immediate neighborhood. There are currently several commercial uses in the neighborhood, including professional offices and gas station. The noise impact should be minimal, as it will be open during daytime hours and not on weekends.

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

Applicants' Response: "There is not a neighborhood plan."

Staff Comments: There is no known Neighborhood Plan for this area of Butte-Silver Bow.

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

Applicants' Response: "Proposed use is compatible with neighborhood."

Staff Comments: As previously stated, professional offices are generally low intensity commercial uses that have limited impacts on adjacent residents. First, the applicant is not proposing to change the exterior of the building. Second, the number of clients per hour and per day is limited. Third, the hours and days of operation are usually limited to those hours and days of the week when most residents are either not at home or are expecting an increase in background noise. That coupled with the surrounding existing commercial uses, the proposed property management operation would be a low intensity commercial use in the area.

20. Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.

Applicants' Response: "At this time we have received feedback from one neighbor at this time. He felt the business would be no problem and

would be the same as the other commercial properties in the neighborhood.”

Staff Comments: The Planning staff will make available to the Zoning Board any public comments received.

CONCLUSION: Therefore, based on the above discussion, staff finds that Special Use Permit Application #16494 is an appropriate use for this area. Therefore, staff recommends that the Zoning Board approve Special Use Permit Application #16494, provided the following conditions are met:

1. Prior to receiving a sign permit, the applicant shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. At a minimum, the applicant shall be limited to one non-illuminated sign on the west elevation. The sign area shall not exceed thirty-two (32) square feet.
2. Prior to receiving a business license, the applicant shall declare the use of the cleared area. If the cleared area is to be utilized as parking, the applicant shall submit a parking plan to the Planning Department for review and approval. The submitted parking plan must meet the parking requirements of Chapter 17.40.900 – Off-street parking – Table of minimum standards. The applicant must bond for the installation of the parking lot prior to final business license approval. The applicant 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.

3. Prior to receiving a business license, the applicant must apply for and receive a storm water management plan or variance for any additional on-site impervious area from the Butte-Silver Bow Public Works Department, as applicable.
4. In order to reduce the potential negative impact of on-site lighting on adjacent residences, all lighting must be designed as low glare, be residential in character and be directed away from all adjacent residences.
5. Any remodeling of the existing structure to accommodate the proposed business will be required to meet all applicable Building Code requirements, as required by the Butte-Silver Bow Building Code Department. All necessary approvals must be granted prior to the applicant receiving a business license.
6. The applicant will be limited specifically to the business as stated and approved. Any future business expansions, changes in business or building expansions will require further review by the Zoning Board of Adjustment.

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

ITEM: **Special Use Permit Application #16496** - An application for a Special Use Permit to locate a short-term rental in an existing residence as per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC.

APPLICANT: Redeeming Homes, LLC c/o Matt Kelly, owner.

DATE/TIME: Thursday, January 16, 2020, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-1" (Single Family Residence) zone, legally described as Lots 4-5 and the East half of Lot 6, Block 4 of the School of Mines Addition, commonly addressed as 1216 West Gold St., Butte, Montana.

PROPOSAL: The applicants are proposing to rent out a three bedroom residence for overnight stays and short-term rentals through online hosting programs. The applicants do not live at the residence and do not reside in Butte-Silver Bow County.

STAFF

FINDINGS: Lodging provided by a homeowner for compensation is recognized as a special use allowed in any residential zoning district, provided that the prescribed use is in harmony with the other uses permitted in the zone and not found to be contrary to the public interest. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding area and the compatibility of the proposed use with the adjoining neighborhood.

The Zoning Board of Adjustment will review the physical conditions, which exist at the location, the conduct and operation of the proposed use and whether the combination of these factors will be compatible with the proposed site and surrounding area.

To provide the Board with information about the proposed special use, the applicants and Planning staff have responded to the established twenty (20) question review criteria.

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

Applicant's Response: "Manufactured home sitting on a full basement with a 3 car garage. The yard is to the west of the house and is hilly. The south side of the property drops down into the alley level. There's a driveway there."

Staff Comments: The property is located in an "R-1" (One Family Residence) zone. The home is a single family home with a footprint of 1,104 square feet. The subject parcel itself is 7,500 square feet in size.

2. The location, character and design of adjacent buildings.

Applicant's Response: "Brick tudors, other various single family homes."

Staff Comments: The property in question is located within an area containing single family homes with most lots being 6,000 square feet or larger.

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

Applicant's Response: "Unsure."

Staff Comments: There have been no significant land use changes in the immediate area since the original adoption of the Zoning Ordinance in 1978.

The property in question is located within the residential Growth Policy district.

4. Proposed fencing, screening and landscaping.

Applicant's Response: "None."

Staff Comments: The applicants are not proposing any changes concerning landscaping. The property is landscaped in a fashion that is typical for residential dwelling units.

5. Proposed vegetation, topography and natural drainage.

Applicant's Response: "None."

Staff Comments: Planning staff does not foresee this proposed use as having any impact on drainage and storm water runoff from the site, as no additional impervious area is being planned.

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

Applicant's Response: "Parking along street in front of property as well as in back driveway in the alley."

Staff Comments: Vehicle access to and from the property is acceptable for the proposed use. The access is provided via Gold St. to the front of the residence. There is enough room for two (2) parking spaces along the street at the front of the residence with additional parking in the rear of the residence with access to the alley. Handicapped access may be a concern, as there are some stairs in the front of the residence to access the house. Staff feels that the applicants should state this in their listing for the rental.

7. Proposed pedestrian circulation, including provisions for handicapped persons.

Applicant's Response: "None – guests are made aware of the accessibility issues."

Staff Comments: There is a sidewalk on Gold St. at the front of the residence. There are some steps to descend before accessing the sidewalk and on-street parking. Because of this, as stated in criteria point 6 above, handicapped access is a concern, as there are no ramps or slopes that lead from the parking spaces and sidewalk to the entrance of the residence.

8. Proposed signs and lighting.

Applicant's Response: "Standard house lighting (interior and exterior). No signage proposed."

Staff Comments: The applicants, under BSBMC Section 17.42.050.A-5 may have one (1) sign as a directional/informational sign no larger than five square feet (5 sq. ft.) in area to inform guests as to where the parking area is located. In addition, applicants shall be permitted a one (1) square foot sign flat against the front wall of the building. Any change in additional signage will be subject to review and approval by the Planning Department. It should be noted that the applicants have stated that they do not intend to install signage.

Regarding lighting, the existing lighting is typical of the residential neighborhood.

9. All potential nuisances.

Applicant's Response: "Small risk of noise violations, being a home in which vacations occur. NO parties allowed however."

Staff Comments: A primary concern with a commercial use in a residential area is the potential for increased traffic in the neighborhood. In that regard, as long as the occupancy level of the residence is in conformance with the residential Building Code, the renting out of one - (3) bedroom house on a short-term basis should not considerably increase traffic. The additional traffic should not be any greater than that of a typical family.

In addition, any time a commercial business exists within a residential neighborhood, there is a potential for a parking problem. In this instance, there is enough room for two (2) on-street parking spaces with additional spaces in the rear of the building. There should be sufficient parking to accommodate the rental dwelling unit.

Another concern is that of guests being unable to locate the specific property and inadvertently driving onto the properties of neighbors of the subject property. Staff believes that the address should be clearly posted on the front of the residence and be visible from the street to mitigate the potential for renters to mistake a neighbor's home for the rental unit.

The last potential nuisance is noise. Renters may be less concerned about creating excessive noise within the neighborhood. That being said, while the owner will not be residing in the residence at the time, the owner does enforce rules through the online hosting program that does not allow for parties. The owners do not live in Silver-Bow County but are available via telephone if something should arise.

Staff can foresee no other potential nuisances at this time.

10. Public safety and health.

Applicant's Response: "None."

Staff Comments: The applicants will be required to meet all Butte-Silver Bow Health Department regulations related to providing rooms for rent. Verification of approval from the Health Department will be required prior to the final approval of the business license.

The applicants will also have to adhere to all regulations regarding the occupancy level of the building, as determined by the Butte-Silver Bow Building Official and the Fire Marshal.

Staff cannot foresee any other potential negative impacts on public health and safety created by this proposal.

11. The availability of public utilities and services.

Applicant's Response: "None - NA"

Staff Comments: Public utilities, including sanitary sewer and potable water are available to the subject property.

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

Applicant's Response: "Possibility of neighboring residents being aggerated (aggravated) by the coming and going to guests, and the occasional nuisance."

Staff Comments: There appears to be no compelling reasons why the property could not continue to be utilized for residential purposes.

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

Applicant's Response: "It is a great neighborhood – quiet, safe, well taken care of. Our guests are screened and we try to host only the best guests – respectful, quiet, enjoyable people. So, on the whole our guests should be a friendly addition to the neighbors. In addition, we must upkeep the property to a high level of maintenance, cleanliness and safety to ensure our guests enjoy their stay and keep coming back. This ensures the property never becomes run down or an eye sore to the community."

Staff Comments: The established character of the existing residential neighborhood would not appear to be impacted by this proposal. It would appear that there would be no change to the aesthetics of the surrounding properties nor to the surrounding landscape should this proposed use be approved.

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

Applicant's Response: "Unsure"

Staff Comments: The Growth Policy designation for this property is residential. Staff believes that the proposed use is consistent with the intent of the Zoning Ordinance to allow for the reasonable use of private property.

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

Applicant's Response: "Intended use has no known effect on conservation."

Staff Comments: The proposed use would not substantially impede the conservation of resources and energy within Butte-Silver Bow County.

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

Applicant's Response: "Existing structures."

Staff Comments: The applicants' property does meet the typical setback requirements of the "R-1" zone. Any expansions of the building footprint shall also be required to meet the development standards of the zone.

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

Applicant's Response: "We have strict rules for our guests. We screen guests and only allow high quality guests. We try to cater to longer term (short stays) to minimize turn over."

Staff Comments: Any time a commercial business encroaches into a residential neighborhood, there is a potential for the use to negatively impact the surrounding property owners. In this case, when considering the low impact commercial nature of the business and the owners limiting the number of

occupants, staff feels that it would appear to have a minimal impact on adjacent properties and property owners.

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

Applicant's Response: "Unknown."

Staff Comments: There is no known Neighborhood Plan for this area of Butte-Silver Bow.

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

Applicant's Response: "It seems to fit ok into the neighborhood which has a mixture of families elderly, and college students."

Staff Comments: Although the use of the home is proposed to be changed by this application, the exterior of the building will remain unchanged. Consequently, the house will remain compatible with the surrounding neighborhood.

20. Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.

Applicant's Response: "There were some complaints from a neighbor about parking arrangements. I've done my best to remediate the situation. That neighbor also told me that the vast majority of guests are great and no problem. But the parking in front of their property from a few guests was the only problem"

Staff Comments: The Planning staff will make available to the Zoning Board any additional public comments received.

CONCLUSION: Based on the above discussion, staff finds that providing lodging by renting a dwelling unit on a short-term basis through online hosting programs will have a minimal impact on the surrounding residential neighborhood. Therefore, staff recommends that the Zoning Board of Adjustment approve Special Use Permit Application #16496 provided the following conditions are met:

1. The applicants shall be required to secure a State of Montana Public Accommodations License through the Butte-Silver Bow Health Department.
2. Any remodeling of the existing residence performed to accommodate the proposed business will be required to meet all applicable Building Code and Health Code requirements, as required by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Health Department, respectively. All necessary approvals must be granted prior to the applicants receiving final business license approval.
3. The applicants shall be limited to the occupancy level as determined by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Fire Marshal. The occupancy level shall be determined prior to final business license approval.
4. The applicants will be limited specifically to the business as stated and approved. Any future business expansions, changes in business or building expansions will require further review by the Zoning Board of Adjustment.

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

ITEM: **Special Use Permit Application #16497** - An application for a Special Use Permit to locate a short-term rental in an existing residence as per the requirements of Section 17.38.180, Special Use Permit – Uses Allowed, of the BSBMC.

APPLICANT: Jordan Patterson and Nate and McKayla Haack, owners.

DATE/TIME: Thursday, January 16, 2020, at 5:30 p.m., Council Chambers, Third Floor, Room 312, Courthouse Building, 155 W. Granite Street, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



LOCATION/

DESCRIPTION: The property is located in an "R-2" (Two Family Residence) zone, legally described as Lot 12, Block 9 of the Volunteer Addition No. 1, commonly addressed as 1123 Caledonia Street, Butte, Montana.

PROPOSAL: The applicants are proposing to rent out a four bedroom residence for overnight stays and short-term rentals through online hosting programs. The applicants do not live at the residence but do reside in Butte-Silver Bow County.

STAFF

FINDINGS: Lodging provided by a homeowner for compensation is recognized as a special use allowed in any residential zoning district, provided that the prescribed use is in harmony with the other uses permitted in the zone and not found to be contrary to the public interest. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding area and the compatibility of the proposed use with the adjoining neighborhood.

The Zoning Board of Adjustment will review the physical conditions, which exist at the location, the conduct and operation of the proposed use and whether the combination of these factors will be compatible with the proposed site and surrounding area.

To provide the Board with information about the proposed special use, the applicants and Planning staff have responded to the established twenty (20) question review criteria.

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

Applicant's Response: "Caledonia St. Brick Victorian House."

Staff Comments: The property is located in an “R-2” (Two Family Residence) zone. The home is a single family home with a footprint of 865 square feet. The subject parcel itself is 3,000 square feet in size.

2. The location, character and design of adjacent buildings.

Applicant's Response: “Caledonia St. Sign Family Houses and Apartment Building.”

Staff Comments: The property in question is located within an area containing mostly single family homes and most have 3,000 square foot lots.

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

Applicant's Response: “Unknown.”

Staff Comments: There have been no significant land use changes in the immediate area since the original adoption of the Zoning Ordinance in 1978.

The property in question is located within the residential Growth Policy district.

4. Proposed fencing, screening and landscaping.

Applicant's Response: “None.”

Staff Comments: The applicants are not proposing any changes concerning landscaping. The property is landscaped in a fashion that is typical for residential dwelling units.

5. Proposed vegetation, topography and natural drainage.

Applicant's Response: "No Changes."

Staff Comments: Planning staff does not foresee this proposed use as having any impact on drainage and storm water runoff from the site, as no additional impervious area is being planned.

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

Applicant's Response: "No changes – Currently parking for two vehicles off-street in back."

Staff Comments: Vehicle access to and from the property is acceptable for the proposed use. The access is provided via Caledonia St. to the front of the residence. There is enough room for two (2) parking spaces along the street at the front of the residence with additional parking in the rear of the residence with access to the alley. Handicapped access may be a concern, as there are approximately ten (10) steps in front of the residence to access the house. Staff feels that the applicants should state this in their listing for the rental.

7. Proposed pedestrian circulation, including provisions for handicapped persons.

Applicant's Response: "No changes."

Staff Comments: There is a sidewalk on Caledonia St. at the front of the residence. There are approximately ten (10) steps to descend before accessing the sidewalk and on-street parking.

Because of this, as stated in criteria point 6 above, handicapped access is a concern, as there are no ramps or slopes that lead from the parking spaces and sidewalk to the entrance of the residence.

8. Proposed signs and lighting.

Applicant's Response: "No changes."

Staff Comments: The applicants, under BSBMC Section 17.42.050.A-5 may have one (1) sign as a directional/informational sign no larger than five square feet (5 sq. ft.) in area to inform guests as to where the parking area is located. In addition, applicants shall be permitted a one (1) square foot sign flat against the front wall of the building. Any change in additional signage will be subject to review and approval by the Planning Department. It should be noted that the applicants have stated that they do not intend to install signage.

Regarding lighting, the existing lighting is typical of the residential neighborhood.

9. All potential nuisances.

Applicant's Response: "None known."

Staff Comments: A primary concern with a commercial use in a residential area is the potential for increased traffic in the neighborhood. In that regard, as long as the occupancy level of the residence is in conformance with the residential Building Code, the renting out of one - (4) bedroom house on a short-term basis should not considerably increase traffic. The additional traffic should not be any greater than that of a typical family.

In addition, any time a commercial business exists within a residential neighborhood, there is a potential for a parking problem. In this instance, there is enough room for two (2) on-street parking spaces with two additional spaces in the rear of the building. There should be sufficient parking to accommodate the rental dwelling unit.

Another concern is that of guests being unable to locate the specific property and inadvertently driving onto the properties of neighbors of the subject property. Staff believes that the address should be clearly posted on the front of the residence and be visible from the street to mitigate the potential for renters to mistake a neighbor's home for the rental unit.

The last potential nuisance is noise. Renters may be less concerned about creating excessive noise within the neighborhood. That being said, while the owner will not be residing in the residence at the time, the owner is located in Silver-Bow County and would most likely be available, if any noise issues arise.

Staff can foresee no other potential nuisances at this time.

10. Public safety and health.

Applicant's Response: "N/A."

Staff Comments: The applicants will be required to meet all Butte-Silver Bow Health Department regulations relating to providing rooms for rent. Verification of approval from the Health Department will be required prior to the final approval of the business license.

The applicants will also have to adhere to all regulations regarding the occupancy level of the building, as determined by the Butte-Silver Bow Building Official and the Fire Marshal.

Staff cannot foresee any other potential negative impacts on public health and safety created by this proposal.

11. The availability of public utilities and services.

Applicant's Response: "N/A"

Staff Comments: Public utilities, including sanitary sewer and potable water are available to the subject property.

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

Applicant's Response: "None."

Staff Comments: There appears to be no compelling reasons why the property could not continue to be utilized for residential purposes.

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

Applicant's Response: "It does – See attached letter"

Staff Comments: The established character of the existing residential neighborhood would not appear to be impacted by this proposal. It would appear that there would be no change to the aesthetics of the surrounding properties nor to the surrounding landscape should this proposed use be approved.

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

Applicant's Response: "It does – See attached letter"

Staff Comments: The Growth Policy designation for this property is residential. Staff believes that the proposed use is consistent with the intent of the Zoning Ordinance to allow for the reasonable use of private property.

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

Applicant's Response: "It will not."

Staff Comments: The proposed use would not substantially impede the conservation of resources and energy within Butte-Silver Bow County.

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

Applicant's Response: "It does – no changes planned."

Staff Comments: The applicants' property does not meet the typical setback requirements of the "R-2" zone. However, the residence was constructed prior to the adoption of the Zoning Ordinance. Since the applicants are not proposing to change the footprint of the property, the applicants are not required to obtain any variance to the requirements of the "R-2" zone.

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

Applicant's Response: "It will not."

Staff Comments: Any time a commercial business encroaches into a residential neighborhood, there is a potential for the use to negatively impact the surrounding property owners. In this case, when considering the low impact commercial nature of the business and the owners limiting the number of occupants, staff feels that it would appear to have a minimal impact on adjacent properties and property owners.

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

Applicant's Response: "See attached letter."

Staff Comments: There is no known Neighborhood Plan for this area of Butte-Silver Bow.

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

Applicant's Response: "It does not affect the adjacent buildings."

Staff Comments: Although the use of the home is proposed to be changed by this application, the exterior of the building will remain unchanged. Consequently, the house will remain compatible with the surrounding neighborhood.

20. Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.

Applicant's Response: No response.

Staff Comments: The Planning staff will make available to the Zoning Board any additional public comments received.

CONCLUSION: Based on the above discussion, staff finds that providing lodging by renting a dwelling unit on a short-term basis through online hosting programs will have a minimal impact on the surrounding residential neighborhood. Therefore, staff recommends that the Zoning Board of Adjustment approve Special Use Permit Application #16497 provided the following conditions are met:

1. The applicants shall be required to secure a State of Montana Public Accommodations License through the Butte-Silver Bow Health Department.
2. Any remodeling of the existing residence performed to accommodate the proposed business will be required to meet all applicable Building Code and Health Code requirements, as required by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Health Department, respectively. All necessary approvals must be granted prior to the applicants receiving final business license approval.
3. The applicants shall be limited to the occupancy level, as determined by the Butte-Silver Bow Building Code Department and the Butte-Silver Bow Fire Marshal. The occupancy level shall be determined prior to final business license approval.
4. The applicants will be limited specifically to the business as stated and approved. Any future

business expansions, changes in business or building expansions will require further review by the Zoning Board of Adjustment.

December 11, 2019

406-274-4464

mckaylaruby@gmail.com

1123 Caledonia St.

Butte, MT 59701

Planning Department
The City-County of Butte Silver Bow
Courthouse, Room 108
155 W Granite St.
Butte, MT 59701

Dear Ms. Casey, Planning Director,

I am writing to request a special use permit to use the house at 1123 Caledonia Street as a tourist house. It is zoned as R2. A key intention of that zone is to support upgrades within its area, and allowing me to follow through with creating a tourist-friendly house will do just that.

My brother, who is partial owner, lives there currently. We're hoping to also rent it to tourists. I think its location near the Immaculate Conception Church will be appealing to bridal parties. I've been working hard to improve the property in a way that, hopefully, combines the elegance of the Victorian Era with the strength of Butte. If I were a visitor to Butte, I'd want to be in a location close to the Original Mine, hiking trails, and Uptown as well as immersed in Butte's history.

Welcoming guests to Butte with this house will help bring more revenue to the uptown area. Cultural and heritage tourists often stay longer and spend significantly more money than other tourists do, according to a study by the Pacific Asia Travel Institute. The study was, admittedly, conducted in a region far from Butte but traveler trends are the same.

Ordinance 17.12.010 states that the R2 zone should be used to further encourage improvements to those areas of Butte Silver-Bow. My work to make this house appealing to cultural and heritage tourists has breathed new life into the 1905 building. We've already made improvements and are looking forward to improving the kitchen next with our earnings from this vacation rental. The house also ties us to that neighborhood. As active investors, it would be in our best interest to make the neighborhood an appealing place to stay as well. We'd help encourage the development and maintenance of new and existing community amenities.

We already have an LLP set up for the location and I'm looking forward to a special use permit so we can move forward with this dream.

Thank you for your time.

Sincerely,



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

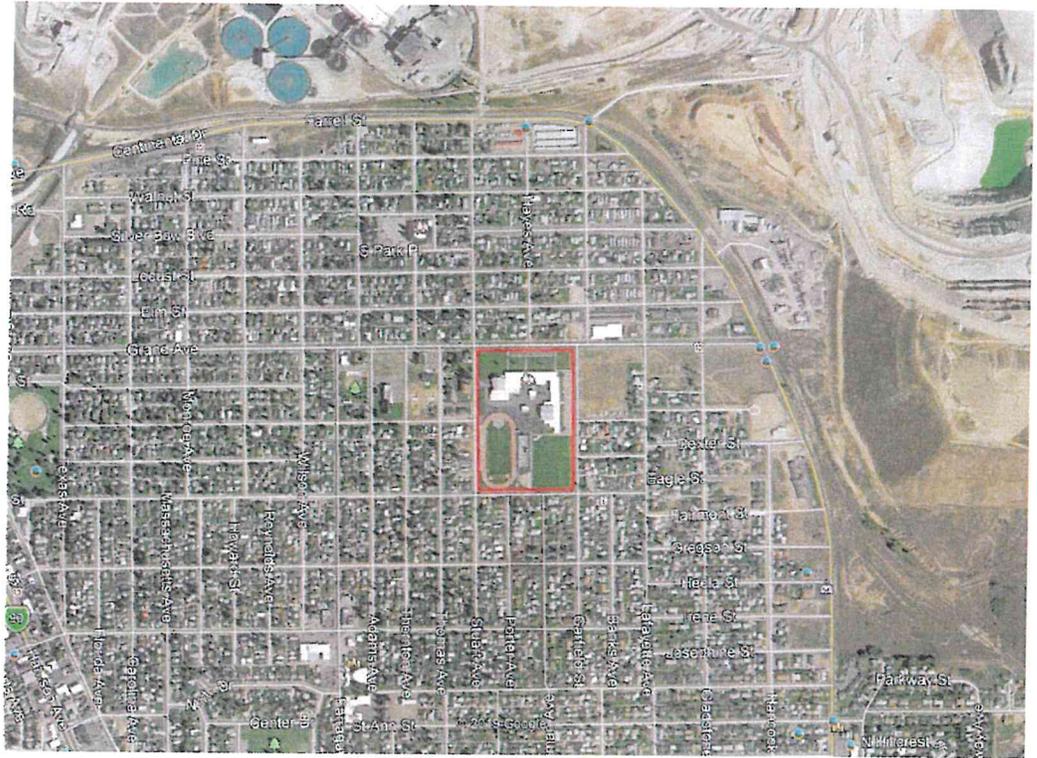
ITEM: **Public Hearing for Application #16499** - An application to expand an existing school by adding five (5) new classrooms and a gymnasium per Section 17.38.210– Public and private non-profit schools of the BSBMC, and to vary from Section 17.40.900 – Off-street parking – Table of minimum standards of the BSBMC by installing 94 additional parking spaces instead of the required 235 and to vary from Section 17.38.049 – Landscaping requirements – Trees required of the BSBMC by installing 34 of the required 47 trees for the additional parking. Pursuant to 76-2-402 MCA, a public hearing for comment only shall be held when an Agency intends to develop land contrary to local zoning regulations, but the Board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

APPLICANT: Butte School District No. 1, owner, and Water and Environmental Technologies, agent.

TIME/DATE: Thursday, January 16, 2020, at 5:30 P.M., Council Chambers, Third Floor, Room 312, Butte-Silver Bow Courthouse, Butte, Montana.

REPORT BY: Dylan Pipinich, Assistant Planning Director

**VICINITY
MAP:**



**LOCATION/
DESCRIPTION:**

The proposed site is located in a "R-1" (One Family Residence) zone, legally described as all of Blocks 16, 17, 18, 23, 25, and 26 of the Wilson Park Addition, and the vacated Sherman and Argyle Streets and Alleys, commonly located at 2600 Grand Avenue, Butte, Montana.

PROPOSAL:

The applicant is proposing to add on to the existing school by constructing five (5) additional classrooms and a gymnasium with associated locker rooms. The applicant is

also proposing to reconstruct the site parking layout to accommodate an additional 94 parking spaces.

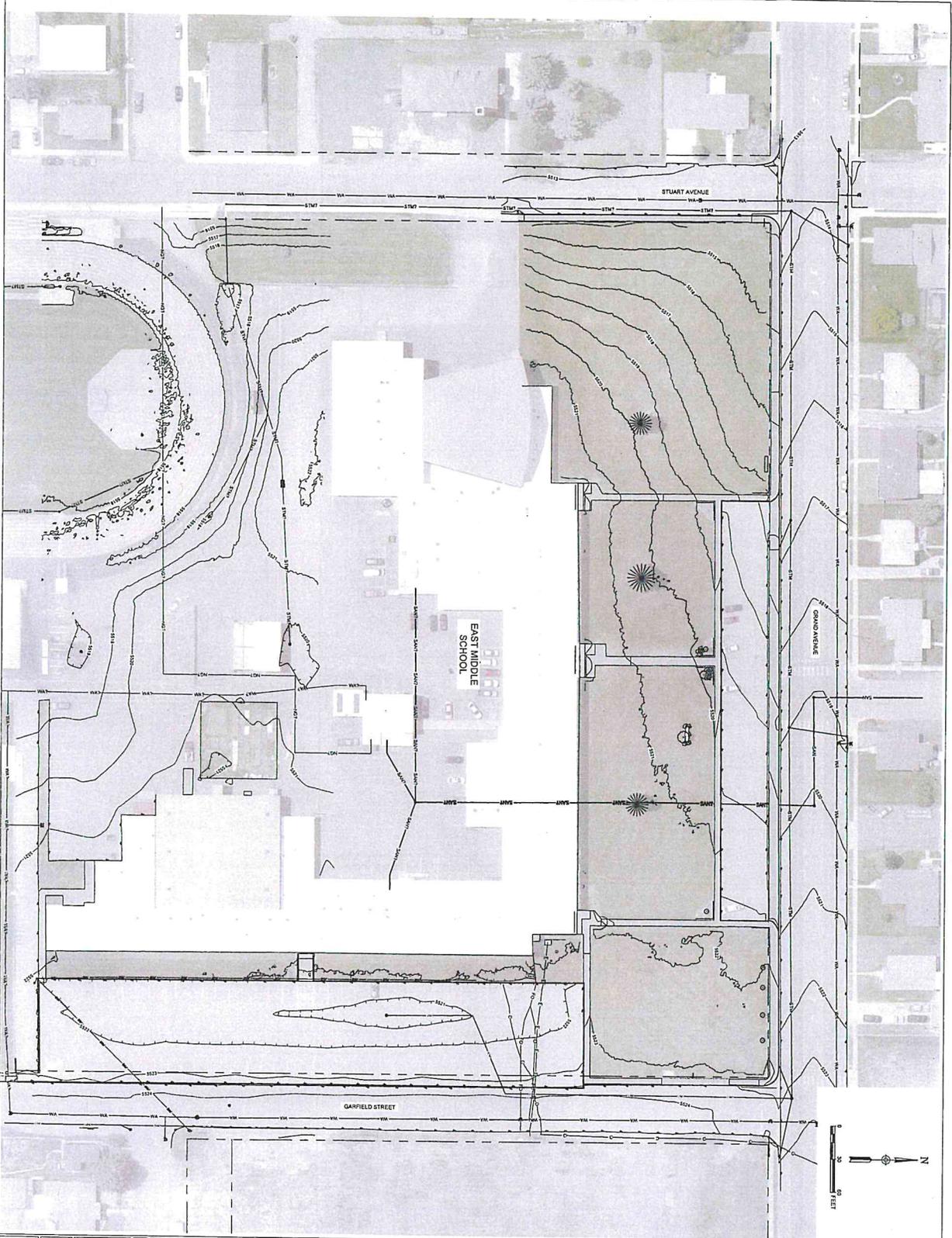
**STAFF
FINDINGS:**

The applicant in question is an "Agency", meaning a board, bureau, commission, department, an authority, or other entity of state or local government, as defined by 76-2-401 MCA. Therefore, when proposing to use public land contrary to local zoning regulations, a public hearing shall be held by the local Board of Adjustment as defined by 72-2-402 MCA. The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

In this instance, the Agency is proposing to expand an existing nonconforming structure and to vary from local zoning regulations regarding landscaping and parking. The Agency would be required by the Zoning Ordinance (Section 17.40.900 – Off-street parking – Table of minimum standards) to construct an additional 235 parking spaces to accommodate the proposed development and the Agency is proposing to install an additional 94 spaces. Also, the Zoning Ordinance would require the installation of 47 trees for the additional spaces per Section 17.38.049 – Landscaping requirements – Trees Required of the BSBMC. The Agency is proposing to install 34 trees.

The proposal meets all other requirements of Title 17 of the BSBMC.

CONCLUSION: As required by 76-2-401 and 76-2-402 of the Montana Code Annotated, the Board is to act only to allow a public forum for comment on the proposed use. Therefore, no recommendation has been made by Planning Staff.

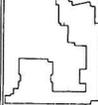


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 Email: info@smaarchitects.com

EAST MIDDLE SCHOOL IMPROVEMENTS

1347

DATE: 02/20/18
 BY: J. B. BROWN
 TITLE: PROJECT ARCHITECT

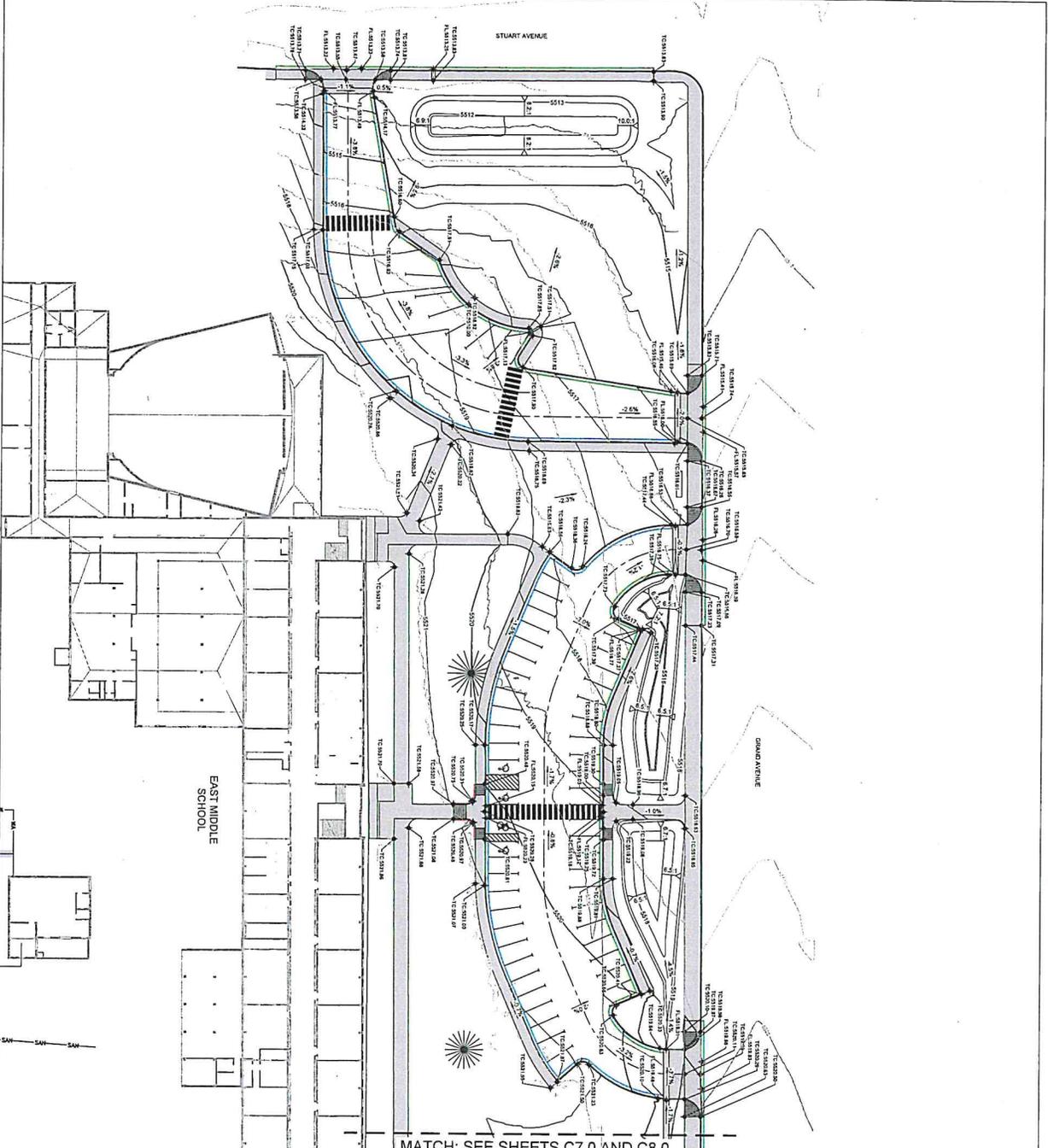


NOT FOR CONSTRUCTION

EXISTING CONDITIONS

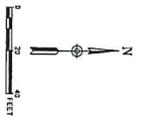
DATE: 02/20/18
 BY: J. B. BROWN
 TITLE: PROJECT ARCHITECT

C3.0



MATCH: SEE SHEETS C7.0 AND C8.0

- LEGEND**
- 1. REMAINS SHOWN TO THE TOP CONCRETE UNLESS NOTED OTHERWISE
 - CLIMB LEGEND
 - VERTICAL CURB CUTTER
 - DITCH CURB AND CUTTER



<p>SMA ARCHITECTS</p>	<p>BUTE ENGINEERING</p>	<p>NOT FOR CONSTRUCTION</p>	<p>NORTH PARKING GRADING PLAN</p>	<p>C6.0</p>	
<p>PROJECT: EAST MIDDLE SCHOOL IMPROVEMENTS SHEET: 1817 DATE: 10/20/18</p>					

