January 21, 2021

Butte-Silver Bow
Zoning Board of Adjustment
Virtual Meeting

Members Present: David Wing, Sylvia Cunningham, Garrett Craig, Todd Collins, Tyler Shaffer and Loren Burmeister

Absent: Julie Jaksha

Staff: Lori Casey, Planning Director
       Dylan Pipinich, Assistant Planning Director
       Carol Laird, Administrative Assistant

MINUTES

I. The meeting was called to order at 5:30 P.M.

II. The Minutes of the meeting of December 3, 2020, were approved and passed 6-0. (Todd Collins moved and Garrett Craig seconded the motion to approve).

III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on January 14, 2021.

David Wing stated the procedures that pertained to the meeting and said the following cases listed on the attached Agenda would be heard that evening.
VARIANCE-21-000001 – Tricia and Jason Handy were the representatives for JD & JD, LLC.

There was no one present yet, so they moved to the next application.

SPUSE-21-000001 – Mike McLeod of McLeod Realtors was resent at this virtual meeting, as the representative for the Sisters of Charity of Leavenworth Health.

Dylan Pipinich summarized the staff analysis that is attached and made a part of these Minutes during the viewing of the presentation pictures.

Mr. Wing asked if any of the Board members had any questions of the staff. There was no response.

Mr. Wing asked the applicant if he wished to provide further information to the Board in support of his application. He now had that opportunity. Mike McLeod said he was the agent for the Sisters of Charity and that Tracy Miller, the Butte Real Estate Group, is going to be the developer and owner of the property and he would defer to her for any questions they all might have. He said he had no questions of them.

Mr. Wing asked if Tracy (Miller) wanted to add anything to the staff presentation. Ms. Miller said she didn’t think they had anything to add. She said he did a great presentation and it was very representative of what they were going to be doing but she just promised them a beautiful building that was going to make the whole entire neighborhood just better in all aspects.

Mr. Wing said that sounded great.

Mr. Wing asked if any of the Board members had any questions of Tracy (Miller). There was no response.

Mr. Wing said now they would proceed to the public portion of this Web Ex virtual meeting. He said the telephone line was now open so anybody could comment with regard to this matter at 497-5009. He said with regard to comments, he would first ask anybody that was in support of this application to please phone and indicate their support
for it. He said they would wait a minute or two and see if anybody phoned in.

Lori Casey said Commissioner Eric Mankins, it would be his time during the public comment, if he did have some comment. She said she did see his hand up, not sure on a proponent or opponent basis but his hand was up. Mr. Wing asked if Commissioner Mankins wished to speak in support. Commissioner Mankins said to Chairman Wing that yes, he would like to speak in support of this and he thanked Planning Director Casey for recognizing him and also thanked members of the Zoning Board. He said first off, he would like to thank Tracy Miller and the Butte Real Estate Group for finding a vacant building Uptown and trying to bring it back to life, so to speak, and he wanted to thank Mike McLeod for helping assist the Sisters of Charity, also, with that process and continuing to make Butte a better place. He thanked them for their time.

Mr. Wing thanked Commissioner Mankins.

Mr. Wing said there was nobody else phoning in with regard to comments, so now the phone line would be open for anybody that might be opposed to this application and they would wait a minute or two to see if they got any calls in that regard. He said there were no calls with regard to public comment in opposition.

Mr. Wing then closed the public portion of the meeting and opened it for Board discussion.

Mr. Wing said it seemed like a great project to him.

Tyler Shaffer said he thought this was just a slam dunk project for this area. He said that building, he drove by it almost every day and it had been empty and not in use and frankly not even really kept up for years. It seemed like now, he thought Ms. Miller, he had the utmost confidence that she would take this and turn it into something much nicer, as he thought a lot of them had witnessed with a lot of her other projects. He said she seemed to have quite the growing business on her hands, which they congratulate her for, and that it benefited all of us here in Butte.
Mr. Shaffer then said with that being said and baring any other Board comments, he would be willing to make the motion for approval on Special Use Permit SPUSE-21-000001.

Mr. Wing said before he asked for a second to that motion, he wanted to make sure that no other Board members had any comments with regard to this matter. He asked if there were any further comments. There was no response.

Mr. Wing then called for a second to the motion. Todd Collins then seconded the motion.

The conditions are as follows:

1. The 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 permits and approvals must be granted prior to the applicant receiving a business license.

2. 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, including ADA requirements and shall delineate twelve (12) parking spaces with one being ADA accessible.

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

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

3. Prior to receiving a sign permit, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. At a minimum no signs shall be located on the south,
east or west elevations of the structure. All other signs shall meet the requirement of Chapter 17.42, Signs of the BSBMC

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 future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.

6. The applicant shall maintain the landscaping, new or existing, in accordance with Section 17.38.052 – Landscaping requirements – Maintenance of the BSBMC including replacing any removed or dead trees.

Mr. Wing said since they were a virtual meeting, he would ask that all those in favor of the motion to indicate by raising their hand and to remember there were ballots to fill out and get to the Planning staff by e-mail or fax or stopping up or having the staff come and get them. He said all five members present had voted in favor of the motion and it was thereby approved 5-0.

Mr. Wing said to the applicant, Ms. Miller, that she would be receiving a letter from the Planning staff to that effect.

Mr. Wing thanked her for her presentation that night and said he hoped all went well with what looked to be a great project.

Mrs. Casey said she thought they had a correction on the vote because they had to remember Garrett Craig because they didn’t have a video of him. Mr. Wing said he was sorry that he forgot about Garrett (Craig). He asked Mr. Craig if he was in favor of this motion and Mr. Craig said he was in favor of this motion. Mr. Wing said he did apologize, that he was only looking at people who were on his screen and he did apologize. He said the vote was now 6-0 in favor of the motion and as he indicated before, they did have the paper ballots that they had to fill out.
SPUSE-21-000001 – Conditionally Approved

Loren Burmeister For Garrett Craig For
Sylvia Cunningham For Todd Collins For
Tyler Shaffer For David Wing For

Loren Burmeister, Sylvia Cunningham, Tyler Shaffer and David Wing voted “For” the motion to approve the application.

Garrett Craig voted “For” the motion to approve the application – “For motion to approve – Great project!”

Todd Collins voted “For” the motion to approve the application – “Great Project!”

Mr. Wing then asked if they were in a position to proceed to the next matter.

Mrs. Casey said the authorized agent was on.

VARIANCE-21-000001 – Tricia and Jason Handy were present at this virtual meeting, as the representatives for JD & JD, LLC.

Mr. Wing asked if they had a presentation with regard to this matter and Mrs. Hand replied that they didn’t have a presentation and that they didn’t know that they were supposed to. Mr. Wing said there would be a presentation from the Planning staff with regard to this matter. He said they could say something further if they wanted, but it was not incumbent upon them to have a presentation.

Dylan Pipinich summarized the staff analysis that is attached and made a part of these Minutes during the viewing of the presentation pictures.

Mr. Wing asked if any of the Board members had any questions of the staff.

Tyler Shaffer said he had a quick question of Dylan (Pipinich). He asked if they had they received any sort of pushback or any comments from any of the neighbors. He said he knew that anyone who had been
on the Board for a few years remembered that every time something popped up, they usually did get some concerned neighbors. He just wondered if any of that had popped up yet. Mr. Pipinich said they had not heard from any of the neighbors, any proponents or opponents to this application. Mr. Shaffer thanked him.

Mr. Wing asked if any other Board members had questions of the staff.

Loren Burmeister said he did have a question. He asked Dylan (Pipinich) on the curb and gutter that he was asking for along Oxford Street, was that primarily just for traffic flow or was that for storm water purposes as well. Mr. Pipinich said it was for all of the above. It was for traffic flow, it was for pedestrian flow, storm water – it was basically to meet the Ordinance for putting construction on there and provide that same safety that would happen otherwise.

Mr. Wing asked if any other Board members had questions of the staff. There was no response.

Mr. Wing said the applicant now had an opportunity to speak in support of the application and in doing so, he would first like to ask if they had any problems with any of the recommendations/conditions that were made by the staff. Jason Handy said no, everything looked good and they had no problems with meeting those requirements. He said even though the sidewalk, curb and gutter would cost a little more, he thought it would make the curb appeal look way better.

Mr. Wing thanked Mr. Handy.

Mr. Wing then asked if any of the Board members had questions of the applicant. There was no response.

Mr. Wing said they would now take public comment and said once again the number, this was being live streamed and the number that could be called was 497-5009. He said they would first like to have any public comments in support of the application.

Mr. Wing asked if Mr. Mankins had anything he wanted to say. Commissioner Mankins said he thanked Chairman Wing and members of the Zoning Board and especially Dylan (Pipinich) for the
presentation and he knew Lori (Casey) did a lot with this as well. He said he would like to be in support of this. He thought it was just another blighted property they had and they were bringing it back to life and so he would just like to thank Jason and Tricia Handy for investing in Butte and trying to make it a better place and a better location. He wanted to also thank Tyler Shaffer for asking about any residents. He said he hadn't heard anything back either. He thanked them for investing in Butte.

Mr. Wing thanked Commissioner Mankins.

Mr. Wing said he didn't believe they were hearing anybody phoning in.

Mr. Wing said he would open it for opponents to phone in and voice objections, if any. He then said he would now ask for anybody in opposition to the application to please call.

Mr. Wing then said no opponents were phoning in and he would close the public portion of the meeting and open it for Board discussion.

Mr. Shaffer said he would like to just go on record in complete support of this. He said that property, echoing his comments from their last case too, it had been nothing but a blight like Mr. Mankins had said. He said anything they get to upgrade that and make it nice was going to be an improvement and it was going to be a good thing for the City. He said he had to commend Jason and Tricia (Handy) for the curb and gutter. He said they always fought those battles because it was very expensive. He said sometimes it did not make a ton of sense to the applicant but in the overall scheme of things, they needed that kind of stuff and they needed more of it. He said he just wanted to thank them for being willing to do that and taking this building and turning it into something very nice. He knew if he kept staring at the menu anymore, he was going to be drooling, so he better stop. He thanked them.

Mr. Shaffer said he was ready to make a motion but wanted to give everyone else a chance to comment as well.

Mr. Wing then called for any further comments.
Todd Collins said he wanted to say that he was proud of these people for taking the next step for this. He knew the other one, they kind of struck out on it but you just had to get up there and keep swinging. He said his daughter was going to be disappointed. She wanted him to buy that property. He said he made a special chicken dish that she wanted to sell out of there but he told her you couldn’t do it with one dish and he didn’t have what it took to run it, so they could go ahead. He thanked them.

Mr. Wing thanked Mr. Collins and asked for any further comments. There was no response.

Mr. Wing then said they were now open for a motion.

Tyler Shaffer moved that they approve VARIANCE-21-000001 with Todd Collins seconding the motion.

The conditions are as follows:

1. The applicants shall ensure that the construction and remodel 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. The garbage receptacle shall also be located on the west side of the building and shall be screened, and no landscaping or fences shall be located within the vision clearance triangle as described in Section 17.36.041 of the BSBMC.

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 receiving any sign permits, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. The sign plan shall follow the requirements of Chapter 17.42, Signs of the BSBMC.

4. Prior to the issuance of a business license, the applicants will be required to meet all Building Code, ADA Standards and Health Code requirements where applicable.

5. Prior to the issuance of a building permit, the applicants shall pave the nonpaved areas of the parking lot and stripe a minimum of four (4) parking spaces or provide a bond for the paving and striping of the four (4) parking spaces and drive-thru lanes.

The bond amount shall be based on a licensed contractor's estimate to complete the installation of the parking lot. This cost estimate will be used as the paving bond amount plus ten percent (10%).

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

6. Prior to the issuance of a building permit, the applicants shall install new sidewalks with curb/gutter along the Oxford Street property line, as per the requirements of Section 17.38.050 or bond for the installation of the sidewalks. The sidewalk shall conform to the Butte-Silver Bow Public Works Standard drawings for sidewalk installation and the applicants shall coordinate with Butte-Silver Bow Public Works and the Montana Department of Transportation for the location of the sidewalk and the connection to the sidewalk located in the Montana Street right-of-way.
The bond amount shall be based on a licensed contractor’s estimate to complete the installation plus 10%. This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

7. 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.

8. Prior to receiving a building permit, the applicants shall also receive approval from the Montana Department of Transportation for any changes or additions to the approaches located on Montana Street and DeSmet Street.

Mr. Wing then asked Garrett (Craig) what his position was on the motion first. Mr. Craig said he was for the motion. Mr. Wing then asked everybody else to indicate by raising their hands. He said it appeared they had 6 votes in favor and none against, so it was approved unanimously.

Mr. Wing said once again there was a paper ballot they had to fill out and somehow get to the Planning staff as before.

VARIANCE-21-000001 – Conditionally Approved

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Loren Burmeister, Sylvia Cunningham, Tyler Shaffer and David Wing voted “For” the motion to approve the application.

Garrett Craig voted “For” the motion to approve the application – “For motion to approve.”
Todd Collins voted “For” the motion to approve the application – “Go for it!”

IV. **Other Business:**

A. **Election of Officers**

Tyler Shaffer nominated Chairman Dave Wing to remain as Chairman with Loren Burmeister seconding the motion.

Dave Wing nominated Tyler Shaffer to remain as Vice-Chairman.

The voice vote in favor of both motions passed 6-0.

Mr. Collins said that Mr. Wing did a great job and Mr. Wing thanked him.

V. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:15 P.M.

By:  
David Wing, Chairman

Lori Casey, Planning Director
AGENDA

APPLICANT OR REPRESENTATIVE MUST BE PRESENT FOR THE VIRTUAL MEETING

I. Call to Order.

II. Approval of the Minutes of the meeting of December 3, 2020.

III. Hearing of Cases, Appeals and Reports:

The meeting may be attended virtually at https://co.silverbow.mt.us/2149/MEDIA (streaming live tab). Public comment will be heard 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, January 21, 2021, 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

VARIA NCE-21-000001 – An application by JD and JD LLC, owner, and Tricia Handy, agent, to locate a drive through restaurant and coffee shop in an existing building, varying from Section 17.28.020 – Permitted Uses of the BSBMC. The property is located in an “M-1” (Light Industrial) zone, legally described as Lots C, CC, and 720 of the Silas F King Placer, Section 24, T03N, R08W, commonly located at 1759 S. Montana Street, Butte, Montana.

SPUSE-21-000001 – An application by the Sisters of Charity of Leavenworth Health, owner, and Mike Mcleod, agent to locate a real estate office in an existing building in a residential zone, as per the requirements of Section 17.38.250 – Professional and business offices of the BSBMC. The property is located in an “R-2” (Two Family,
Residence) zone, legally described as the Ancient Lode, Section 13 T03N, R08W, PORS of the Ancient Lode, Andy Johnson Lode, and Reserve Lode, commonly located at 820 W. Platinum Street, Butte, Montana.

IV. Other Business:

A. Election of Officers.

BY: ________________________________

Lori Casey, Planning Director
ITEM: Use Variance Application VARIANCE-21-000001 - An application for a use variance to locate a drive-thru restaurant and coffee shop in an existing building (formerly Cenex service station) in a light industrial zone, varying from the requirements of Section 17.28.020, Permitted Uses, of the BSBMC.

APPLICANT: JD & JD LLC, 200 Regal St., Billings, MT, owner, Tricia and Jason Handy, P.O. Box 3067, Butte, MT, agent.

TIME/DATE: Virtual Meeting, Thursday, January 21, 2021, 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 January 21, 2021 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
LOCATION/DESCRIPTION: The property is located in an "M-1" (Light Industrial) zone, legally described as Lots 13 thru 18, Block C of the Oxford Addition, and Lots C and CC of the Silas F. King Placer, commonly known as 1759 S. Montana Street, Butte, Montana.

PROPOSAL/HISTORY: The agents are proposing to locate a drive-thru restaurant and coffee shop in an existing structure (Cenex service station) in a light industrial zone. In July of 2019, the applicants applied for a use variance to locate a casino/bar in the structure. The Zoning Board of Adjustment (Board) conditionally approved the application at that time. However, the applicants did not construct the addition or change the use of the building into a casino/bar. The new agents who are proposing to purchase the building are requesting to utilize the
existing space as a drive-thru restaurant and coffee shop with no walk-in customers.

STAFF FINDINGS:

The Butte-Silver Bow Municipal Code Section 17.28.020, Permitted Uses, does not list a restaurant and coffee shop as a permitted use in the "M-1" zone. As a result, the applicants must obtain a use variance from the Board prior to opening the restaurant and coffee shop. It should be noted that the Cenex service station with a convenience store was a permitted use in the "M-1" zone.

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.

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 commercial and industrial, 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.

All of the land to the north, west and east is zoned commercial or light industrial, while the land south of the interstate is residential. However, because of the overpass, the residential zone to the south is buffered from uses north of the interstate. The land uses adjacent to the site in question are a mixture of uses, with the interstate on the south, a transformer station located east of Montana Street, Northwestern Energy facilities to the north and two residences located to the west on Oxford Street.

It is important to note the two residences located to the west are legal nonconforming uses within the “M-1” zone.

While the agents’ proposal has the potential to be a very intensive commercial use, the proposal states that the business will operate as a drive-thru only, and will not have indoor seating. This has the potential to generate substantial traffic and noise. The building has been vacant or utilized as storage for a number of years, however, the original use of this site was for a service station, another very intensive commercial use. There are also a number of permitted uses in the “M-1” zone that would generate similar or more traffic and noise.

It should be noted drive-thru coffee shops tend to be open in the early morning hours. This has the potential to increase the impacts on the adjacent residents in the morning with the increase in traffic, headlights, and noise. However, the agents have proposed to construct an 8’ high fences along the
property line in an effort to reduce any impact to the neighboring residential homes.

Based on the above reasons, staff believes this application may not be contrary to the public interest.

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

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 agents' 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.

This property does not exhibit 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. While the building could conceivably be converted for a light industrial use, the location of this property adjacent to the interstate and Montana Street makes it a more appropriate location for commercial use rather than an industrial use. Therefore, staff believes that limiting the applicants to the use of this property and building for light industrial purposes only may be an unnecessary hardship to the owner. Because all of the infrastructure for the service station has been removed, i.e. underground tanks removed, gas pumps removed and overhead
canopies removed, the likelihood that another service station will go into this location is greatly reduced.

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

The majority of the adjacent uses are either commercial or light industrial, other than the two residences on Oxford Street. The character of the neighborhood is commercial/light industrial, therefore, staff does not believe that permitting this building and property to be utilized as a drive-thru restaurant would alter the character of the neighborhood.

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

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

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

Staff would be remiss if we did not acknowledge that there are many potential commercial uses for this building that would be less intensive than the requested use but may not be as intensive as a light industrial use. However, the agents are requesting a use variance to operate a drive-thru restaurant in this location and the Board must be comfortable and
assured that the business can be operated without substantially affecting surrounding property owners.

The agents have submitted a proposed site plan with their application (attached). The site plan proposes that the agents will install an eight (8) foot fence along the western property boundary, as well as a three (3) foot fence along the southern and eastern property boundaries. Section 17.36.045 of the BSBMC allows fence heights in industrial zones to be extended to eight (8) feet upon the decision of the zoning officer, but the vision clearance requirements must be maintained. To achieve this, the fence height ten (10) feet back from the property line on the north and south sides of the western boundary cannot exceed three (3) feet.

The site plan indicates they are proposing to construct two drive-thru windows (one on the north elevation and one on the south) that can be accessed from Oxford Street with two exits on Oxford Street and one on DeSmet Street. There are existing approaches on DeSmet Street and Montana Street, and there is no curb or sidewalk on Oxford Street. The lack of designated approaches for ingress and egress on Oxford Street can create traffic flow pattern issues and potential safety concerns. If the agents installed sidewalk, curb, and gutter along Oxford Street, as well as designated approaches, traffic flow would significantly improve. Also, to reduce confusion and improve traffic flow, staff would recommend that the agents delineate the drive-thru lanes with striping.

It is important to note that the approach on DeSmet Street (also part of the Interstate 90 on ramp), as well as the existing approaches on Montana Street, are
under the jurisdiction of the Montana Department of Transportation (MDT). Changes to the existing approaches or the addition of an approach in these locations will require approval from MDT.

In regard to parking, the Zoning Ordinance classifies restaurants into several categories. Parking requirements for restaurants with drive-thrus require one parking spot for every two seats, and in this instance, a three-car stacking requirement at the drive-thru. The agents have stated that there will be no on-site seating in the restaurant. The zoning ordinance requires one parking spot per employee for other types of restaurants without drive-thrus, and staff believes that this would also be appropriate in this instance. The agents have stated in their application that they plan to employ three (3) to four (4) people, so staff would recommend that four (4) parking spaces be delineated to accommodate the employees.

Due to the previous use of this property as a service station, the entire property was paved, although sections of the paving were removed when the underground storage tanks were removed and it will be the responsibility of the agents to repave those portions of the parking lot. Nonetheless, designated parking was not needed for the service station and, therefore, the agents will be required to designate parking spaces through striping. The site plan provided by the agents shows three (3) parking spaces. As stated above, staff believes that four (4) parking spaces would be appropriate.

The agents will not be increasing the size of the building, therefore, the agents are not required by the Zoning Ordinance to install additional landscaping.
However, the Board has the authority under a Use Variance application to require additional landscaping, if they believe it would be appropriate for the property in question and for the immediate area. In this particular case, it would appear to staff that new landscaping would be appropriate, as the site contains minimal landscaping. Staff believes that new landscaping would help make this property more presentable and would help buffer the nonconforming residences to the west. As such, the Board may wish to condition approval of the application requiring the agents to meet the requirements of the Zoning Ordinance for new site development. Approximately, 998 square feet of total landscaping (598 square feet of live landscaping) would be required to meet this standard, as well as one (1) tree for every five (5) parking spaces. This would also require the agents to install sidewalk/curb and gutter along Oxford Street.

In the provided site plan, the agents have designated a screened area adjacent to Montana Street for a garbage dumpster. While the Zoning Ordinance requires a screened area for a garbage receptacle, it does not specify a required location. That being said, staff believes that garbage receptacles can be unsightly and should be located in the rear of the building when possible.

If the applicants agree to the conditions listed below, allowing this building to be used as a drive-thru restaurant and coffee shop would appear to be consistent with the spirit of the Zoning Ordinance and to allow for the reasonable use of private property.
CONCLUSION: As discussed within the report, the requested use variance to locate a drive-thru restaurant and coffee shop in a light industrial zone meets two of the Montana Supreme Court’s criteria for a use variance. It does not fully meet the third criteria of hardship. As discussed in that section, the property does not exhibit a hardship. It does, however, meet subcriteria #1 and #2 in that it may not be able to secure a reasonable return, if it were limited to the uses permitted outright in the zone and it will not alter the character of the neighborhood. That being said, it does not appear to compromise the spirit of the Zoning Ordinance to allow for the reasonable use of private property nor does it appear to be contrary to the public interest, if the applicants are agreeable to the conditions placed on the use variance. Therefore, staff recommends approval of Use Variance Application VARIANCE-21-000001 with the following conditions:

1. The applicants shall ensure that the construction and remodel 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. The garbage receptacle shall also be located on the west side of the building and shall be screened, and no landscaping or fences shall be located within the vision clearance triangle as described in Section 17.36.041 of the BSBMC.

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 receiving any sign permits, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. The sign plan shall follow the requirements of Chapter 17.42, Signs of the BSBMC.

4. Prior to the issuance of a business license, the applicants will be required to meet all Building Code, ADA Standards and Health Code requirements where applicable.

5. Prior to the issuance of a building permit, the applicants shall pave the nonpaved areas of the parking lot and stripe a minimum of four (4) parking spaces or provide a bond for the
paving and striping of the four (4) parking spaces and drive-thru lanes.

The bond amount shall be based on a licensed contractor's estimate to complete the installation of the parking lot. This cost estimate will be used as the paving bond amount plus ten percent (10%).

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

6. Prior to the issuance of a building permit, the applicants shall install new sidewalks with curb/gutter along the Oxford Street property line, as per the requirements of Section 17.38.050 or bond for the installation of the sidewalks. The sidewalk shall conform to the Butte-Silver Bow Public Works Standard drawings for sidewalk installation and the applicants shall coordinate with Butte-Silver Bow Public Works and the Montana Department of Transportation for the location of the sidewalk and the connection to the sidewalk located in the Montana Street right-of-way.

The bond amount shall be based on a licensed contractor's estimate to complete the installation plus 10%. This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.

7. 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.

8. Prior to receiving a building permit, the applicants shall also receive approval from the Montana Department of Transportation for any changes or additions to the approaches located on Montana Street and DeSmet Street.
Jan 5, 2021

To Whom It May Concern,

This cover letter is in reference to the application for a variance at 1759 S. Montana St & 300 Oxford St.

I just wanted to introduce myself and give you a better understanding of what I’m proposing.

My name is Tricia Handy, I’ve been in the coffee industry for some time now, lived in Washington state with my four children and my husband of 33 years for my entire life.

I opened the first SheBrews in the summer of 2016. As you may know, coffee is a big deal in Washington and you can find a stand on every corner. I knew that when I opened my stand that I would have to bring something special to the table or I would not be successful. My children are mostly grown but I missed cooking for them. My husband and oldest son suggested that I should make those great burritos you made for all of us when we were in sports. That started me thinking of what was it that I wanted to bring to my community. I wanted to bring home cooked food to my town, to the hard working men and women and not just something that was thrown in a microwave. So that’s how it all started! I made a menu, opened and it took off. I offer mostly breakfast foods, but I also make my soups from scratch. You can order a made to order deli sandwich and pair it with soup. I have panini sandwiches as well. All my baked goods are from scratch. I have two types of banana bread, scones, five different types of cookies that I make on site. The burritos are the staple and the backbone of the company though.

We also make Coffee, hence the name. We have our own line of energy drinks, that are made with real fruit and they are amazing. We have kids lunch boxes as well as tons of other munchie items.

We have drawn up a site plan that I think takes into account the ingress, egress issues. What I saw was that there were too many points of entry and it was going to be a mess. Jason and I are proposing to cut off entry completely from Montana St and putting up a 4’ cyclone fence with those little inserts, either grey or brown.

There would only be one point of entry and that would be from Oxford St. You can see that from the site plan that has been drawn up. I also put the garbage in a spot that would be very easy access for the garbage man and he wouldn’t have to do a bunch of backing up and going back and forth which will help with keeping the asphalt in good shape. Thank you for your time and your consideration, I hope that this works out.

Jason and Tricia Handy / SheBrews Coffee LLC 406 491-4840 shebrewscoffeellc@gmail.com
3' Fence South and East property line

8' Fence Full length of west property line

3' Fence South and East property line

6' Fence Dumpster Area

Ballards

Drive up windows

54'

100'

46'

30'

34'

5'

160'

Sign 20' Tall 5'x5'

6' Fence Dumpster Area

No Park

S. Montana Street

Address 1759 S. Montana Street Butte 300 Oxford St

Hours of operation: M-Sunday 5am to 7pm Scale 1" = 20'

Estimated traffic flow: 350 cars a day
ITEM: Special Use Permit Application SPUSE-21-000001 - An application for a special use permit to locate a professional business office (real estate business) in an existing building in a residential zone, as per the requirements of Section 17.38.250, Professional and Business Offices, of the BSBMC.

APPLICANTS: Sisters of Charity of Leavenworth Health Systems, Inc, 400 Clark St., Butte, Montana, owner, and Mike McLeod, 1905 Holmes Ave., Butte, Montana, agent.

DATE/TIME: Virtual Meeting, Thursday, January 21, 2021, 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 January 21, 2021 via email to join the meeting. All other interested parties may attend the meeting virtually at https://co.silverbow.mt.us/2149/MEDIA. Public comment will be via telephone at (406) 497-5009 during the public comment period of the meeting at the above-mentioned website.

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:
LOCATION/DESCRIPTION: The property is located in an "R-2" (Two Family Residence) zone, legally described as the Ancient Lode, Section 13 T03N, R08W, PORS of the Ancient Lode, Andy Johnson Lode, and Reserve Lode, commonly located at 820 W. Platinum Street, Butte, Montana.

PROPOSAL: The applicants are proposing to remodel an existing commercial building to accommodate office space for a real estate business.

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 applicants have responded to the established 20 question review criteria. The applicants' 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: “The existing building is a deteriorated commercial use building. There is a neglected lawn, trees, and rock side hill.”

Staff Comments: The property is located in an “R-2” (Two Family Residence) zone. There is an existing commercial building and associated parking lot located on-site, as well as unmaintained landscaping. The property slopes east to west with a large side hill on the east side. There is an existing approach onto West Platinum St.

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

Applicants' Response: “The neighboring building to the west is a commercial medical condo. To the North there are 2 commercial buildings and a coffee hut. Beyond that is additional medical facilities and the hospital.”

Staff Comments: Mountain Vista Medical Clinic is located directly east of the subject parcel. The character of this block is mainly commercial in nature, with residences starting one block to the west. A large tract of vacant land exists to the south.

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

Applicants’ Response: “There are no multifamily residential units in this area. 2 blocks to the West, there are single family homes.”

Staff Comments: As stated above, there are many medical and office facilities in the area. The subject parcel is located across the street from a “C-1” (Local Commercial) zone. This area has not seen much
development since the adoption of the Zoning Ordinance.

4. **Proposed fencing, screening and landscaping.**

*Applicants' Response:* "Fencing will remain as is. Existing parking lot will remain the same. Existing trees will be removed and replaced with bushes, and ground cover, and rock landscaping."

*Staff Comments:* While currently in disrepair, there is existing landscaping on the subject parcel. The applicant has indicated that they intend to update the landscaping. Staff does not believe that any additional screening would be required to mitigate any potential negative impacts to the surrounding residentially zoned parcels.

5. **Proposed vegetation, topography and natural drainage.**

*Applicants' Response:* "Existing lawn to be brought back to life and maintained."

*Staff Comments:* As stated above, the applicants propose to maintain and update the existing landscaping.

With regard to drainage, the applicants are not proposing to expand the building or add additional impervious area. If any additional impervious area is added to the subject parcel in the future, the applicants shall meet the requirements of Chapter 13.32, Storm Water Management, of the BSBMC, including the Butte-Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit or variance.

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

*Applicant's Response:* “Vehicle access will remain the same. Handicap access will remain the same.”

*Staff Comments:* There is an existing parking lot located on the north side of the subject parcel with access to Platinum Street. However, the parking spaces in the parking lot are not delineated. To decrease traffic flow hazards, staff would recommend the applicants install parking lot striping. Chapter 17.40 of the BSBMC requires 12 parking spaces for a professional office of this size, with 1 parking space being ADA accessible.

The applicants must 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:* “Existing sidewalks to remain the same. Interior will be fully ADA compliant.”

*Staff Comments:* There is currently sidewalk adjacent to Platinum Street along with an interior sidewalk from the parking lot to the building, which should be adequate for the proposed use.

The applicants shall be advised that the property shall meet all applicable ADA standards.

8. Proposed signs and lighting.

*Applicants’ Response:* “Existing sign to be replaced with wooden sign structure and office logo in the shape of a house.”
Staff Comments: There is an existing monument sign located adjacent to Platinum Street. 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, including replacement of the existing sign face.

As for lighting, this area of Platinum is well lit by streetlights 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: "None."

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 building has historically been used for office space and the surrounding area is also utilized for office space. Given the character of the neighborhood, staff does not believe that the increased traffic in the area will create a noticeable impact in the neighborhood.

Another potential nuisance is an increase in noise generated by customers and/or the commercial use. In that regard, real estate offices are generally not intensive commercial uses. The number of customers to visit typically doesn’t exceed more than 2 to 3 per hour. Staff believes that the proposal is less impactful than the surrounding commercial uses and given that the nearest residence is approximately one block away, the proposed office would have minimal, if any, impact on adjacent residents.


Applicants' Response: "None."
Staff Comments: Staff cannot foresee any potential negative impacts on public health and safety created by this proposal, as the property will be served by public streets and a sidewalk.

In addition, the building will be required to meet all building and fire codes of the Butte-Silver Bow Municipal Code.

11. The availability of public utilities and services.

Applicants' Response: “Property will be restored to 220/110 power, rather than the current 480. Transformers to be removed and new power lines to be buried.

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: “Currently zoned R-2. It has not been utilized as R-2 since at least the 70’s. It is a commercial/medical area use right now. Property will continue to be used as such.”

Staff Comments: Professional business offices are permitted in the “R-2” zone by special use permit. The special use permit process provides for review of public input, a measure of the potential impact of the proposed use on the surrounding neighborhood and the compatibility of the proposed use with the adjoining neighborhood. The Zoning Board will determine on a case by case basis, if a proposed special use is appropriate for a specific area.

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

**Applicants' Response:** “It would be fully renovated inside and out. The building will have a modern office appearance. The building will have updated siding and 10 foot wide decking added to the North and West walls.”

**Staff Comments:** As stated above, the applicant is proposing to utilize a structure than was designed and constructed as commercial space and is currently vacant. This promotes infill development and reduces blight in the area and will promote the comprehensive development of the neighborhood.

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:** “I don’t understand this question or know what your development plans are, but this area is already used for office space. This building has been used for commercial use since it was built and the surrounding area has been as well.”

**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.

It should also be noted that while the subject parcel is located in a residential zone, the Comprehensive Plan placetype designation for this area is Economic
Driver. Economic drivers are areas intended to support large scale employment opportunities, as well as institutional uses such as schools, healthcare facilities, and transportation hubs. Commercial activities are typical of these areas and, therefore, this development would be conforming to the future land use designation.

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:* "It will not impede."

*Staff Comments:* The proposed use will 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.

*Applicants' Response:* "It already has a yard and landscaping and fencing. This will all be upgraded or cared for to enhance the appearance."

*Staff Comments:* The existing structure appears to conform to the requirements of the zone. As stated above, 12 parking spaces with one being ADA compliant are required for an office space of this size.

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

*Applicants' Response:* "It was increase the value of the neighboring properties and make nearby residential residents happy to see a dilapidated building restored."
**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. In this case, the majority of the nearby properties are utilized for commercial purposes. The nearby properties are utilized for similar purposes, and therefore, the proposal should not adversely affect the nearby properties or their occupants.

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

**Applicants' Response:** "I don't know of any neighborhood plan."

**Staff Comments:** The property is located within the Central Butte Area Plan. The applicants' proposal meets an important goal of the Neighborhood plan, which is to reduce blight and decay of buildings and properties.

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

**Applicants' Response:** "Again, it conforms with the neighboring buildings."

**Staff Comments:** Based on the existing commercial structures in the area and Comprehensive Plan placetype designation, staff does not believe the proposed professional business office use would alter the character of the neighborhood.

20. **Expressed public opinion relating to the criteria enumerated above, including the views of Neighborhood Associations.**
Applicants' Response: Not Answered

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 SPUSE-21-000001 is an appropriate use for this area. Therefore, staff recommends that the Zoning Board approve Special Use Permit Application SPUSE-21-000001, provided the following conditions are met:

1. The 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 permits and approvals must be granted prior to the applicant receiving a business license.

2. 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, including ADA requirements and shall delineate twelve (12) parking spaces with one being ADA accessible.

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

This bond may be in the form of cash, letter of credit, surety bond or other guaranteed negotiable instrument.
3. Prior to receiving a sign permit, the applicants shall submit to the Planning Office for review and approval, a detailed sign plan and drawings. At a minimum no signs shall be located on the south, east or west elevations of the structure. All other signs shall meet the requirement of Chapter 17.42, Signs of the BSBMC.

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 future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.

6. The applicant shall maintain the landscaping, new or existing, in accordance with Section 17.38.052 – Landscaping requirements – Maintenance of the BSBMC including replacing any removed or dead trees.