

January 28, 2021

**Butte-Silver Bow Planning Board  
Virtually**

MEMBERS PRESENT: Janet Lindh, Jeremy Salle, Matt Stajcar, Jim Clary, Mike McLeod, Tim Schrapps, Denise Anderson and Josh O'Neill

ABSENT: Bart Riley

STAFF: Lori Casey, Planning Director  
Roxie Larson, Secretary

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**M I N U T E S**

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- I. **Call to Order** - The meeting was called to order at 5:30 P.M.
- II. **Roll Call of Board Members** – Having a majority of the Planning Board members in attendance, a quorum was established.
- III. **Approval of the Minutes** – The minutes of the October 22, 2020 Planning Board meeting were approved by Mr. Salle and seconded by Mrs. Anderson. The voice vote in favor of the motion was unanimous.
- IV. **Public /Board Action**
  - A. **Zone Change #181** – An application for approval of a change to the official zoning district map by changing the zoning classification of an area of land currently zoned “R-1S” (One Family Suburban Residence) to “C-2 (Community Commercial).

Ms. Casey gave a brief presentation regarding Zone Change #181.

Mr. Salle stated I think this is a good zone change especially since it is consistent with our Comprehensive plan in the area out there. I was watching the presentation here and it sounds like the applicant plans to use conex sheds. I have a couple of questions. If they are going to use conex sheds how is this being approved by Planning because there is no building permit. There is no foundation or anything like that. I guess the concern I have is to the residents to the south. Typically, most commercial, I assume there will be

a buffer that will be put across the south side of the property and they will also have to do landscaping. So, I would like to hear what the staff has to say about that.

Ms. Casey stated this development even though they are conex containers they would need a building permit because those containers will need to be tied down and it would have to meet all of the development standards just like any other commercial property. So, it would have to go through stormwater and yes they would have to have landscaping. Also, sidewalk, curb and gutter is within the zoning ordinance along any public street. So, there are all those requirements. Once this zone change is approved then it would go through your typical commercial property development review with all of the standards that you are used to.

Mr. O'Neill stated just to be clear for the people who are listening this is just a zone change. So, Mr. Hall will have to come back again with his plan. So, if this doesn't get approved tonight he is not throwing conex boxes out there tomorrow and using them for storage is that correct?

Ms. Casey stated Mr. O'Neill you are correct. He will not have to come back to the Board. This is the first step of the Zone Change. There will be another public hearing before the Council of Commissioners and your recommendation will go to the Council of Commissioners. If the Zone Change is approved there would be an Ordinance Change that would have to go through the Ordinance process. So, we are at the beginning steps of this. If all of that were to be approved, then we would look at Mr. Hall's development like we do any other commercial property. There are 62 different permitted uses that could be used if it is rezoned to the C-2.

Ms. Lindh asked if there were any other questions. She asked if the applicant would like to add anything.

Mr. Hall stated no I am good. I think it all sounds great. We are moving forward with plans. I do have some surveying work done for water retention. We are looking forward to meeting all the new guidelines. I am ready, I am excited.

Ms. Lindh explained the public hearing process.

Ms. Casey stated I should have said this earlier. There may be a little bit of confusion out there in the public. Tonight, the only thing on our agenda is this Zone Change application. The Blue Range building does not come before this Board. I think there was a little bit of confusion so, if there are any callers out there for the Blue Range Engineering building that goes before the Historic Preservation Commission and not this Board.

Ms. Lindh opened the Public Hearing and made the first call for proponents. Having none she made the second call for proponents and then the third and final call for proponents.

Ms. Lindh then made the 1<sup>st</sup> call for opponents.

Mr. Jed Hoopes stated I live at 2125 Fat Jack Road. It is one block south of this application. One of the things I wanted to ask was they call these containers conex structures, but they are actually just a temporary shipping container that was used on ships and railroads and stuff like that. Are they a temporary structure? I am online and I can't hear anything. It is really low volume. Is there going to be an office with this business with parking? Will there be screening on the south side for headlights and the traffic that is going to going in there? In the winter time it is going to be dark and there is going to be people in there. I don't know what he has planned for an office. One of my other questions is with C zoning is self-storing allowed within a building? Is that considered a building? Down the street they are stick buildings, that is a temporary structure, a shipping container. These aren't buildings. I am just wondering if you are in a C-2 zone I just don't know if it meets the building code stipulation. One of the other things I think is a structured building like the storage business to the east fits with the residential. If you are self-storing wouldn't conex structures be better suited in a light industrial zone that does not blight the residential property next to it? Because that is the whole point of Community Commercial. I don't have a problem with changing from Residential to Community Commercial but I think it should be done right. I think that property in Butte, Montana is hard to find. Hopefully, Butte is going to grow and there is going to be people that come in like the Reopelle's that built ad the storage facility to the east that did it right and they are going to want to build in between them and they are going to say I am not building there what the heck do they have there. I just don't fee that is the right thing. Are you going to make this a benchmark now for all the storage that is being bult around Butte and subject the neighborhoods to this? I don't think that is proper. I don't think there is enough policy on these shipping containers. They are not built all the same. They are not the same color; they are not the same dimensions. I just don't know if you want to make this benchmark now for any future building. I don't know I just have questions. There has already been I don't know how much work done there. There is three acres, and they moved all kinds of dirt. They disrupted three acres of dirt and I don't know if they had a DEQ permit to do that or if there are proper storm water permits. They have the fencing up; they have wire on it. I was employed by the School District, and I know that businesses have to have when it is more than one acre a stormwater permit and I don't know that the DEQ or the County has wrote off on this but he mentions in there that he has already done it. So, I am just looking at this business and I am thinking they have already put the cart before the horse. I don't understand how this could be done and then come back and ask it to be changed to commercial. I

don't have a problem with the zoning change in general, but I feel this application is not good for the community. It does not match commercial structures located east and west of the proposed area and it offers little consideration for the homeowners located to the south. The applicant without any permitting to my knowledge has already installed conex shipping containers along with the other stuff. He disturbed three acres of land without a permit to my knowledge. This application is a terrible idea for the community commercial zone and should not be accepted in my opinion.

Ms. Sharon Richter stated I live at 2115 Fat Jack Road. I am against this application of the shipping structures just due to the unappealing nature of this application. My deck, my patio, everything will be facing 200 shipping structures. I just don't feel that it is good for a residential area. We already have a cement company in between five residential structures on Fat Jack Road we don't care about anything. They race up and down the street at all hours and I have a concern for safety with my grandkids. My main concern, the effect on this. I can't tell you how many times I am calling the Police Department because of this trailer of Copper City being broken into daily. We have a large amount of traffic up and down and people just spying out your area. I am facing south of where these 200 shipping structures are going to be. So, I just feel that planning Community Commercial isn't looking out for the neighbors in this area. Thank you.

Ms. Lindh thanked the caller.

Mr. McLeod stated with all due respect we are not discussing Mr. Hall's project. We are discussing the Zone Change. That being said in fairness to the folks that are calling in perhaps Ms. Casey can give a quick overview if the applicant's project would be allowed in C-2 and if so under what conditions. Then they can make the decision if they are in favor of the zoning or not but the project itself is not what we are discussing tonight.

Ms. Casey stated yes you are correct. The issue before you tonight is the zone change. To answer Mr. McLeod's question mini storage is a permitted use within the C-2 zone. The shipping containers would be allowed provided that they meet all the requirements under the building code which is usually tie-downs. We don't have design standards within our community anywhere. That is where the type of building they are asking whether it would be wood frame, that is where that would fall under. However, Mr. Hall does have to do the required landscaping. There is a landscaping buffer required along the south property line because it is across the street. If this were to be approved as a zone change it would be across the street from a residential zone so there would be landscaping buffering required. They would be going through storm water permitting locally. If he is disturbing more than an acre, he also needs a storm water permit through the State of Montana. Regardless, if it is one acre or less, he does need a local storm water permit

to contain his stormwater on site. Sidewalk, curb and gutter would have to be placed out along his section of the property on Five Mile Road. Even with mini storage units there is a certain amount of parking that is required. We usually instead of doing parking spaces require the entrance to be paved so that dirt is not being tracked onto a public street. So, there is usually an equivalent amount of paving that is done at the approach versus individual parking spaces because usually folks are driving in and going to their unit. Mr. McLeod is correct that the application before you tonight is changing to the Community Commercial zone.

Ms. Lindh thanked Ms. Casey and as we realized because we took a pause here there are quite a number of steps in between before this would come to fruition and there would also be another public hearing before the Council of Commissioners and then all of these other requirements. She then made the 2<sup>nd</sup> all for opponents. There being none, she then made the 3<sup>rd</sup> and final call for opponents.

Ms. Lindh questioned are these going to be temporary shipping containers?

Mr. Hall stated they will be tied down and be up on concrete block on the corners. I do have a lot of plans for landscaping. I did do some civil engineer work with Triple Tree out of Helena. They got me a really nice comprehensive stormwater retention plan. As well as all of the grading conditions that would have to be there. I do plan on paving the whole area. There won't be an office with an employee. It will just be an office with a computer that runs a security system. There will be a tons of video cameras that have a really good connection with me if there is motion after hours. So, it is going to be pretty high security as well as nice landscaping with LED lighting just through the roadway areas. It is actually going to look really nice when I am done. It is not going to be a bunch of different colored container and looking like a junk yard. It will look really nice. I have some proposed drawing of what it will look like finished and that was the big book that I gave to the Zoning Department before I started this project.

Ms. Lindh questioned with regards to the screening will it be as tall as the containers?

Mr. Hall stated yes.

Ms. Lindh questioned so they won't be visible for Ms. Richter looking from her patio? Would you imagine she would be able to see all of those?

Mr. Hall stated the way I plan on doing all the landscaping in the front it will be mostly just trees and the entry way where there is a lift gate, but after that it is just the airport and you just see the mountains about that.

Ms. Lindh stated it sounds like you already stated to move dirt.

Mr. Hall stated I go an excavation permit from the city. When I bought the land, the previous owner had dug a whole for a house he was going to build so all the piles of dirt were spread around the hole and I did get permission from zoning to move that dirt back into the hole. So, we just put that dirt back in there and leveled it off.

Ms. Casey stated I would just like to address the temporary structure. We have a lot of this even with sheds saying they are temporary. Under the building codes any structure that is in place longer than 180 days becomes permanent. Whether it was built to be permanent or not it is considered under building code a permanent structure.

Ms. Lindh stated if there are not other comments I would like to close this public hearing and continue the discussion of the Board.

Mr. Salle stated I could see this become, the conex sheds do kind of make you wonder. I don't have any doubt that the applicant won't do a nice job with it. It is probably a bigger discussion item with Planning or maybe Council. The City/County should consider some type of discussion about conex sheds. There are a lot of them around town. We have all seen them. I don't know if there should be something more formal for the County to consider. It is more or less just a discussion item. Just a thought on my part.

Ms. Lindh stated if there are no additional comments or questions the Chairman would entertain a motion.

Mr. Salle stated I will make a motion to approve Zone Change Application #181.

Mr. O'Neill stated I have a question as far as voting or having Mr. McLeod being recused for the vote. I don't know if he actually can because a zone change doesn't technically, I mean it already went through one side, so I don't know. In order for Mr. McLeod to recuse himself from the vote we would have to vote as a committee to allow him to do that. Just because the zone change has nothing to do with it. The sale is over this is just for the zone change so. I am not trying to call Mike out either on that, but I think he has to vote or we have to vote to let him decide whether he can vote or not.

Mr. McLeod stated Josh I don't disagree I am probably overcooking it. I just didn't want there to be somebody that could come back and say he shouldn't have voted. I agree with a zone change it shouldn't factor in but maybe I should have called Eileen or somebody and asked, but however you

guys want to handle it is fine with me. I thought it best to recuse myself. I don't know the process of doing that.

Ms. Lindh stated maybe as a Board we need to talk about that a little bit. If we would be able to take a vote and excuse Mr. McLeod from voting and that might satisfy Mr. O'Neill's concerns. Ms. Casey do have any thoughts on that?

Ms. Casey stated Mr. O'Neill is correct in that if Mr. McLeod does not have a financial interest and that is what is defined as a conflict. However, we have before on this Board because we have several folks that work for engineering firms also that if they have been involved even though it may not be monetary, we have allowed as long as we have a quorum to vote have allowed them to recuse themselves in the past.

Ms. Lindh stated okay. We do have a quorum tonight. We don't know how it is going to go but we are kind of inside a motion here. If we step back and rescind that motion and make a motion to recuse Mr. McLeod and then came back and make another motion could we proceed that way Ms. Casey?

Ms. Casey stated yes you could do that. Also, just for everyone this Board is a recommendation to the Council of Commissioners. So, this is a recommendation only and not the final.

Mr. Salle stated I will rescind my 1<sup>st</sup> motion and make a motion to allow Mr. McLeod to recuse from voting.

Ms. Lindh stated so the first motion for Zone Change #181 has been withdrawn and a motion has been made to recuse Mr. McLeod from voting.

Ms. Anderson seconded the motion.

The voice vote was 7 yeas in favor and one nay.

Mr. Salle made a motion to approve Zone Change application #181.

Mr. O'Neill seconded the motion.

The voice vote in favor of the motion was unanimous.

Ms. Lindh stated Ms. Casey could you explain to us what is going to happen next, so we are aware of what happens next.

Ms. Casey stated there will be another public hearing in front of the Council of Commissioners and by law we have to advertise 15 days out. The Council of Commissioners meet on Wednesdays of the month so depending

on how that meeting falls it will be a minimum of at least a 15-day advertisement, maybe a little longer depending. That will be the next step in this is the Council of Commissioners will hold a public hearing. After that public hearing staff will put a communication in to the Council of Commissioners with your recommendation to approve this. The Council will act on that communication. To the extent that they approve it then they would submit it to the County Attorney to draft the Ordinance change. That takes 4 readings at the Council of Commissioners. Then there is a 30- day period before it is codified. So, we have at least 3 months of the zone change.

Ms. Lindh stated then all the requirements the applicant would have to satisfy would take place after hearing the result from the Council of Commissioners.

Ms. Casey stated that is correct. Until that zone change is codified up until that time the applicant's application for his storage unit facility isn't a permitted use. So, he has to wait until such time as the zone change does get approved and codified by Ordinance.

V. **Other Business**: Ms. Casey stated there is no other business.

I would like to now since the vote is over for the zone change discuss what Mr. Salle brought up about the shipping containers and whether they are the right thing for our community or not. I will let you know that staff does work for you as the Board members and to the extent you want us to look into it and do some research and see what other communities are doing. We always look to Bozeman and Helena and that. If you want us to look to see what they are doing or come back with a recommendation on these types of facilities. Mr. Salle is correct we are seeing them on the residential properties. You see them at Walmart, Bob Wards and other places use them as extra storage for their retail. We are seeing more of them. They are fairly reasonable. So, if you would like us to look into that, this Board does have the authority to direct staff to do that.

Mr. Clary stated I agree with Mr. Salle. I would like to direct the staff to do some research on that because they are popping up all over town and it is kind of worrisome where are they going to go next.

Ms. Lindh asked Mr. Salle could you explain what the definition is of that type of container. Is that an abbreviation for some type of cargo container?

Mr. Salle stated I have just always heard them called conex sheds. I think that is correct they are usually used for shipments on a ship. They



are pretty typical. I am not an expert on them. As the applicant discussed if they are all the same general dimension and painted the same I think it could be nice but we are seeing some that aren't so nice that maybe look like something we don't want in the community so that is where my comment came from. Just those steel containers with the doors on the end.

Ms. Casey stated I don't believe we have any agenda items for the February meeting but if you want to meet the staff could let you know what we have come up with for the February meeting or if you want to wait until you have action items that is entirely up to you. Just give us some direction and a time frame and we can come back with what we have found.

Ms. Lindh questions do any Board members have thoughts regarding this? Waiting until March perhaps instead of February. Giving you a good two months to gather information.

Mr. McLeod stated I think that is fair.

Ms. Lindh questioned do you suspect that we might have business action items in March?

Ms. Casey stated we may. Either way we could have a working session if not in March. That would be much appreciated that would give us a little extra time to do that. So, with way we could set up the working session or we may have some agenda items. The other thing that staff is going start t work on is the sign ordinance that former Chief Executive Palmer put together a committee for. So, we will hold our first meeting with that Committee in February. Sometime in the future you will be acting on probably some recommendations of a sign ordinance also.

**Adjournment** – The meeting adjourned at 6:00 P.M.

BY:

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Janet Lindh, Chairman  
Butte-Silver Bow Planning Board

ATTEST:

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Lori Casey, Secretary  
Butte-Silver Bow Planning Board