March 18, 2021

Butte-Silver Bow
Zoning Board of Adjustment
Virtual Meeting

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

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 February 18, 2021, were approved and passed. (Garrett Craig moved and Todd Collins seconded the motion to approve 7-0).

III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on March 11, 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.

Aldo Vesco wasn’t present at the virtual meeting, so Mr. Wing moved to the next application.
SPUSE-21-000004 – Elizabeth Lahey was present at this meeting.

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. Julie Jaksha asked Mr. Pipinich if they had to be concerned with any kind of a noise issue with rental properties like this or did he feel that it was not going to be an issue. Mr. Pipinich said he kind of mentioned it in the report and the presentation. He said there was some availability for enforcing the rules within these and he suggested that the applicants do have some rules in regard to noise. He said they did live in town and were available to respond to that. Mr. Pipinich said these short-term rentals did have the ability to create more noise than a long-term rental. He thought people cared less when they were in somebody else’s neighborhood than when they were in their neighborhood or they were out of town: He said the potential was there but they hadn’t had too many issues with these short-term rentals yet and they hadn’t had any complaints and there were some ways for the owners to mitigate that.

Mr. Pipinich further said he also thought they rated the tenants, so when you went to rent on Air RnB or something, not only did the place that provided the rooms have a rating but the tenants also had a rating and you could choose to pick better tenants he guessed too. He said it wasn’t a condition but it was available.

Mr. Wing asked if there were any other questions of the staff.

Todd Collins asked what the occupancy load was for that particular property – just curiosity on his part. Mr. Pipinich said he wasn’t really sure. He said the Building Code Department would have to set it. It was based on the International Residential Code. It was like one per couple of hundred square feet or something like that. He said the intent was just to keep it the same as all residential units because these tended to have people who wanted to roll out beds and stuff like that.
Mr. Wing asked if any Board members had further questions of the staff. He said not hearing any, he would ask the applicant and he understood it would be Liz Lahey, if she would care to provide any additional information to the Board, in support of the application.

Elizabeth Lahey said she thanked them all for their time and for reviewing their application. She said she didn’t have any additional information to add but could address the occupancy they were planning to have. She said they had two queen beds and a crib available, so that would limit the occupancy of this particular property. She said they also planned to enforce rules - no smoking on the property, no pets or animals. She said they lived half a mile away, so they were available to deal with any issues that arose as well.

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

Mr. Wing said he would now ask if anybody would care to speak in support and the number to call with regard to that support was 497-5009. He said he believed that that number was also on their screen, if they were also appearing virtually. He asked if there was anybody out there that would care to speak in support of this application. He said they would now give a minute or two to see if anybody phoned in in support of the application.

Mr. Wing said there had been no calls in support of the application.

Mr. Wing further said that now he would ask if anybody would care to call in with objections to the application. He said again he would give people another minute or two -- to give people an opportunity to call in. He said again the number was 497-5009.

Mr. Wing said nobody was calling with regard to the application, either in support of or opposition to it.

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

He asked if any Board members had any comments with regard to this particular application.
Mrs. Jaksha thought the application was pretty well written out and thought out and that the applicant had taken into consideration any concerns she might have.

Julie Jaksha then moved to approve SPUSE-21-000004 with Loren Burmeister seconding the motion.

The conditions of approval are as follows:

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.

Mr. Wing said to remember they were appearing virtually, so they would have to sign their ballot, their voting ballot, and get it up to the Planning staff one way or the other, as they had before.

Mr. Wing said he would now ask one by one for their vote.

Loren Burmeister – In Favor
Julie Jaksha – It was her motion, so he assumed she was in favor
Garrett Craig – In Favor
Todd Collins – In Favor
Sylvia Cunningham – In Favor
Tyler Shaffer – In Favor
David Wing – In Favor

SUP-21-000004 – Conditionally Approved

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

Garrett Craig voted “For” the motion to approve the application – “For motion to approve.”

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

Todd Collins voted “For” the motion to approve the application – “Nice house! Good luck with your project.”

Julie Jaksha voted “For” the motion to approve the application – “Excellent application/approve with conditions.”

Mr. Wing said the vote was 7 votes in favor of the motion and 0 votes in opposition to it and that meant that the motion had been approved and the applicants would receive a letter from the Planning staff to that effect.

Mr. Wing told her good luck with her project.

Mr. Wing said again, he would remind the Board members that they needed to sign this ballot and get it up to the Planning staff somehow.

Mr. Wing thanked Ms. Lahey for appearing that night and again said good luck with her project. She thanked him.

Mr. Wing said he saw Guy Vesco on the screen and he would have been first that night. He asked if he was present that night and Mr. 

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Vesco said he apologized for not being there earlier – he didn’t have a link.

Mr. Vesco was having trouble with his phone.

Mr. Wing said they would now take Mr. Vesco’s application.

SUP-21-000002 – Aldo Vesco was present at this meeting.

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 said he would now give the applicant the opportunity to provide any additional information that he might have in support of the application. Mr. Wing asked Mr. Vesco if he had anything further to add. He said he was waiting for the echo to stop before he started. It then started echoing again. Mr. Vesco said the only thing he could add was – he was really having trouble getting his words to them. Mr. Pipinich asked if he was streaming this live, that was the problem. Kathy Kenison said he could call in on the call in line – turn off his live stream. Mr. Pipinich gave him the number to call at 497-5009.

Mr. Vesco said he was on the line now. Mr. Vesco said it was really hard for him to understand anything because he had so much of an echo. Mr. Wing asked him if he had anything to add. Mr. Vesco said no, not really. He said when he originally purchased this property from Paul Tash, he was just led to believe that it was already a commercial zone. He said he didn’t know why and then when he started looking into doing this and doing the work on it, he found out there was a lot more to it. He said he apologized for that and he wasn’t really schooled in this in doing zoning or anything like that. This was his first real project. He said other than that, he just wanted to utilize the property to put a business and make some income and that was what he was there for.

Mr. Wing thanked him.
Mr. Vesco said he appreciated them listening to him.

Mr. Wing asked him to stay on the line and said he would see if any Board members might have any questions regarding his application. Mr. Vesco said he would be there. There was no response.

Mr. Wing said there didn’t appear to be any questions from the Board members and he thanked Mr. Vesco for his presentation that night.

Mr. Wing said he would now see if anybody would care to phone in in support of his application. He said anybody that wanted to call in should call 497-5009. He said they would now give a moment or two for proponents of the application.

Mr. Vesco said he was sorry that that call was dropped. Mr. Wing said that was okay. He said to Mr. Vesco that his part was done and they were now seeing if anyone would care to call in in support of this application.

Mr. Wing said there had been no calls in support of the application.

Mr. Wing further said that now he would ask if there were any opponents to the application, if they would phone in to express their opposition to 497-5009.

Mr. Wing said there were no calls in opposition to the motion, in opposition to the application rather.

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

Mr. Wing asked if any Board members had any comments with regard to this application.

Loren Burmeister said he did. It seemed like a reasonable proposal for the location, right across from the golf course and from the railroad. He said it was probably not ideal for a residence right there, so he would be in support of it.
Todd Collins said he would be as well.

Mr. Wing asked if anybody would care to make a motion in support of the application.

Tyler Shaffer moved to approve SPUSE-21-000002 with Todd Collins seconding the motion.

The following are the conditions of approval:

1. Any placement of signs shall be limited to Section 17.42.050 – B, - On-Premises Signs Permitted in Residential Zones.

2. Prior to receiving a business license, 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 striping 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. 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.

4. 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.

5. 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.

Mr. Wing said now they would vote.

Sylvia Cunningham – In Favor of the motion.
Todd Collins – In Favor
Julie Jaksha – In Favor
Garrett Craig – In Favor
Loren Burmeister - In Favor
Tyler Shaffer – In Favor
David Wing - In Favor

Mr. Wing said that would be 7 votes in favor of the motion, which would mean that the application had been approved, subject to the conditions set forth by the staff. He said to Mr. Vesco that he would be receiving a letter from the Planning staff to that effect and told him good luck with his project.

Mr. Wing told the Board members to get the voting ballot signed and get it to the Planning staff somehow.

**SPU-21-000002 – Conditionally Approved**

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<th>Garrett Craig</th>
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<td>Tyler Shaffer</td>
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<td>Loren Burmeister</td>
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<td>David Wing</td>
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Garrett Craig voted “For” the motion to approve the application – “For motion to approve.”

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

Todd Collins voted “For” the motion to approve the application – “Good use of the property.”

**VARIANCE-21-000002** – Maisie Sulser was present at this meeting.
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 for the staff. Mr. Collins said he was kind of looking at their plans and it wasn't clear to him and maybe Mr. Pipinich could just make it quick. He asked if there were any apartments or living space planned for the basement. Mr. Pipinich said he might want to ask the applicant who could probably speak in more detail to that. He said he didn't notice any plans for the basement. He said it seemed like there was an office space on the first floor with a residential unit and then the others.

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

Mr. Wing then said the applicant now had an opportunity to provide further information to the Board in support of the application, if she cared to do so. He said that Maisie Sulser was on his screen and asked if she had any further information for the Board.

Ms. Sulser said sure, she could answer the question about the basement. There was no residential planned in the basement at this time and probably not in the future either. There were three levels, so those three levels would have residential units.

Ms. Sulser thanked them for letting them present their project again. She said it was a few years ago when they first purchased the building because they just wanted to make sure they would be able to use the building, as they wanted to, before they purchased it three years ago. She said they were excited to be back and have the financing and everything that they needed to get started, so between Covid and some EPA testing they had done on the building, they just got pushed back. She said they had relocated from Billings and were excited to bring their architectural and construction business to Butte. They were looking forward to having this project be a hallmark of what they planned to do more of in Butte.

Mr. Wing asked the Board if they had any questions of the applicant.
He said there was a caller online.

Julie Jaksha had a question for the applicant. She asked if they had thought about parking or where they would have the folks who rented those spaces out be able to park. She asked if they would just park on street. Ms. Sulser said yeah, it would primarily be street parking. She said now that they had been in town and actually had security cameras set up on the building, they were able to sort of track activity in the neighborhood a little bit more and it was pretty busy during the day but it was actually pretty quiet in the evenings, so she imagined there would be plenty of on-street parking for residents. She said there were at least five spaces around the building itself that they thought would probably adequately cover what they would need for the tenants and there was plenty of parking up the street. She wasn't really sure about the kind of parking space, not really a parking lot, but the vacant lot that was across the street from where their building – it wasn't really clear where the curb and gutter was there or where the entrance for that parking was but she thought people could park across the street as well and that wasn't used very frequently either. She thought there would be adequate parking. She said it had been their experience that when people lived in an urban environment, they expected to park on the street or just not have a dedicated parking space, per se, so she thought that mentality was a little bit more established by people living in an urban environment but she did think there was plenty of on-street parking in the area.

Mr. Wing then asked if there were any other Board questions to the applicant. There was no response.

Mr. Wing said he would now ask if there was any public comment with regard to this matter. He said he believed they did have a caller online. He would be asking at this point, if they were speaking in support of this application, they may continue but if they were speaking against the application, they would have to wait until the proponents had first spoken. He said if there was a caller online to please identify themselves by giving their name and address and then provide comments to the Board with regard to this matter. (Julie Jaksha said she couldn't hear him – then it was working). He said he was now asking anybody in the public who cared to phone in and speak in support of this application to now do so and when they did, to please
identify themselves by giving their name and address, so anybody that cared to speak in support of the application could do so now. He said they did have a caller on the line but they weren't hearing anything from the caller. He then said if any members of the public could hear him and if they cared to speak in support of this application -- he said it appeared they had somebody on the line but they weren't really tracking with that person – they were gone now.

Mr. Wing further asked if there were any other members of the public who wished to speak and would give them a minute to respond.

Mr. Wing said there had been no one phoning in in support of this application.

Mr. Wing then said that now he would ask if anybody would care to phone in and register any objections they may have to this application and again the number for them to call was 497-5009. They would again give them a minute or two for phone calls to appear.

Mr. Wing said they had received no calls in opposition to the application.

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

Julie Jaksha said she thought it was a great reuse of that building and was excited to see life in the neighborhood down there and thought it was a great project for Butte, so she was all in support of it.

Mr. Wing agreed.

Mr. Burmeister echoed that and guessed the only concern he did have and he wasn't putting it in the motion or anything but was raising it so the applicant would give it some thought but the empty lot was private property, as he was looking at Cadastral. He said it would probably warrant a conversation with that landowner. He said it was likely that her tenants would probably park there at least occasionally, if not regularly, so out of respect probably, she might want to reach out to them.
Mr. Burmeister then said the other thing he would maybe encourage staff to talk to the applicant about and he didn’t know if it was going to be applicable or not, but this may be something they might want the Residential Abatement Program to take a look at before they started the remodel and any impacts associated with that that they could address before any remodel starts and that would be to the benefit of all parties.

Mr. Burmeister said other than that, it was a great opportunity to bring some life back into that part of the neighborhood.

Mr. Collins said he was all for it. He thought it was a great project for the area.

Mr. Wing asked if anyone cared to make a motion in support of the application.

Loren Burmeister moved to support Variance-21-000002. Julie Jaksha seconded 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 installation of any signs, the applicants shall submit a sign permit application to the Planning Department for review and approval.

3. Prior to the operation of any business entity, the applicants shall receive a Certificate of Occupancy from the B-SB Building Department and the business shall purchase a B-SB Business License.
4. Any future expansion of the uses other than residential apartments, office or a permitted use of the “C-M” zone shall be subject to review and approval of the Zoning Board of Adjustment.

Mr. Wing said he would now ask for their vote.

Garrett Craig – In support
Julie Jaksha - In support
Todd Collins – In support
Loren Burmeister – In support
Sylvia Cunningham – In support
Tyler Shaffer – In support
David Wing – In support

Mr. Wing said there were 7 votes in favor of the motion and no votes against it, so the motion had been approved and the application had also been approved. The applicant would be receiving a letter from the Planning staff to that effect.

Mr. Wing said he agreed that it seemed like a wonderful project and he wished them the very best with regard to it.

**VARIANCE-21-000002 – Conditionally Approved**

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

Garrett Craig voted “For” the motion to approve the application – “For motion to approve.”

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

Todd Collins voted “For” the motion to approve the application – “Looks like a good project.”

Mr. Wing said once again, they needed to get the voting ballots to the Planning staff, as soon as possible, one way or the other.
IV. A motion was made to adjourn. Seconded and passed. The meeting adjourned at 6:40 P.M.

By: [Signature: David T. Wing]
David Wing, Chairman

[Signature: Lori Casey]
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 February 18, 2021.

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, March 18, 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

SPUSE-21-000002 – A special use permit application by Aldo Vesco, owner, to operate a professional business office (counseling services) 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-4” (Manufactured Home) zone, legally described as Lots 1-5 of Block 4 of the St. Paul Townsite, commonly located at 914 Holmes Avenue, Butte, Montana.

SPUSE-21-000004 – A special use permit application by Elizabeth & Timothy Lahey, 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-3” (Multi-Family Residence) zone, legally described as the east 90’ of Lot 1, Block 1 of the Columbia Addition, commonly located at 17 North Alabama Street, Butte, Montana.
VARIANCE-21-000002 – An application for a use variance by Mike Handley and Maisie Sulser, owners, to remodel an existing building into residential apartment units and one office, varying from Section 17.27.030 – Permitted Uses of the BSBMC. The property is located in a “C-M” (Commercial and Light Industrial) zone, legally described as Lot 18, Block 5 of the Central Addition, Butte, Montana, commonly known as 701 S Arizona Street, Butte, Montana.

IV. Other Business.

V. Adjournment.

BY:  
Lori Casey, Planning Director
ITEM:  Special Use Permit Application SPUSE-21-000002 - An application for a special use permit to locate a professional business office (single practitioner counseling services) 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:  Aldo Vesco, 304 Hattie Loop, Butte, Montana, owner.

DATE/TIME:  Virtual Meeting, Thursday, March 18, 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 February 18, 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-4” (Manufactured Home) zone, legally described as Lots 1 - 5, Block 4 of the Saint Paul Townsite, commonly known as 914 Holmes Ave., Butte, Montana.

PROPOSAL: The applicant is proposing to locate a counseling services office in an existing building in a residential zone. The proposed building was originally utilized as a detached garage and later utilized for a business office.

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: “Address is 914 Holmes Avenue. This is a large corner property existing of 5
lots. It is located on a busy street that has a mix of residential and commercial property."

**Staff Comments:** The property is located in an “R-4” (Manufactured Home) zone, which allows single family residences and manufactured homes. The building was constructed as a detached garage but has been utilized for a business office in the past. The applicant currently uses the other structure (a two bedroom dwelling) as a residential rental unit. There is a paved parking lot in front of the structure that does not have parking stall striping.

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

**Applicants’ Response:** “This property has 2 structures, one is 2 bedroom one bath rental house. The second structure for which we seek the conditional use is a fully converted garage, consisting of two large rooms and a bathroom. A paved parking lot exists between the units. The adjacent properties are a mix of residential and commercial with an automotive business to the south, a single-family residential property to the west, and this property is located across the street from Stodden Golf course."

**Staff Comments:** The property is located within a mixed-use area containing both commercial and residential uses. The property is located within one block of a “C-2” (Community Commercial) zone.

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

**Applicants’ Response:** “No changes to this surrounding land use.”
Staff Comments: There have been no recent changes to the Zoning Ordinance in this area.

The property in question is located within Suburban Mix placetype in the Comprehensive Plan (Growth Policy. Suburban mix placetype neighborhoods exhibit a mixed-residential development pattern and are typically immediately adjacent to urban areas. In many instances, the mixed neighborhood acts to buffer the more traditional, established neighborhoods from higher intensity commercial uses.

4. Proposed fencing, screening and landscaping.

Applicants' Response: "No proposed changes to fencing, screening or landscaping, only maintenance of the existing bushes and grass."

Staff Comments: Except for the paved parking lot, 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.

5. Proposed vegetation, topography and natural drainage.

Applicants' Response: "No change to vegetation, topography or natural drainage."
**Staff Comments:** As the applicant will not be adding to the footprint of the existing house or garage, the natural drainage should not be impacted.

In regard 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:** "Vehicles will continue to access the structures through the existing driveway on Holmes. The property has a large parking lot that is suitable for off street parking and can accommodate handicapped parking for both buildings."

**Staff Comments:** As stated above, there is an existing paved parking lot located adjacent to the structure. The Zoning Ordinance requires four (4) parking spaces to accommodate the proposed use, one of which is required to meet ADA standards. Staff believes the parking lot should be striped to meet these requirements.

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

**Applicants' Response:** "Pedestrians will continue to have the use of the sidewalk, and there is ramped sidewalk for handicapped use."

**Staff Comments:** There is currently a sidewalk along the Holmes Avenue frontage, but there is not an existing sidewalk along Arizona Street. Because the applicant is not proposing to expand the structure footprint, the applicant is not required by the Zoning...
Ordinance to meet the full requirements of the landscaping ordinance, including sidewalk, curb, and gutter.

8. Proposed signs and lighting.

Applicants' Response: "There is no proposed signage at this time, no change to the lighting. There are existing street lights and a light fixture is present above the entrance of the building.

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, the applicants shall be permitted a one (1) square foot sign flat against the front wall of the building. Any signage is required to be reviewed and receive a sign permit prior to the installation of said sign. It should be noted that the applicant has stated that he does not intend to install signage.

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

9. All potential nuisances.

Applicants' Response: "No potential nuisances, parking is ample, no change to exterior, minimal day time traffic associated with an appointment based business. i.e. counseling services so there should not be nuisances of any measure."

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 adjacent to Holmes 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.

Staff would also mention that the dwelling located on the property is currently utilized for residential purposes and is in close proximity to the garage structure proposed for an office. However, the applicant owns five (5) lots at the proposed location, so the increase in traffic should not substantially affect the surrounding neighbors.

At this time, staff cannot foresee any other potential negative impacts.


Applicants' Response: "Public safety and health unaffected, the structure is already converted and has previously been approved for conditional use. The structure itself is safe with proper construction, has plenty of windows, and the land is already without any concerns for public safety."

Staff Comments: The applicant has stated in the application that some remodeling has been
completed to accommodate the proposed use. It should be noted that a building permit was not purchased from the Butte-Silver Bow Building Code Department for any changes to the interior of the structure. Prior to a business license being issued for the proposed use, the applicant shall receive all necessary permits from the Butte-Silver Bow Building Code Department for the completed changes and any subsequent changes to the structure. The applicant 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.

Applicants' Response: "Public utilities including electric and water services are already part of the structure, and this will not change. The structure is already equipped with separate power services, and the water utility services will not change."

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: "No foreseen situations to prevent the property to be allowed for full range of uses, it was a garage many years ago, and then after the conversion it was permitted to be used for other conditional uses and there was a business in this structure before. Nothing substantial has changed to the property or adjacent structures or neighborhood since the last permit was issued."
**Staff Comments:** As noted above, the prior use of the structure was a detached garage for a single family home. However, the garage door has since been removed and the structure has been utilized for office purposes allowed by a prior Special Use Permit granted by the Zoning Board of Adjustment in 2000.

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

**Applicants' Response:** “The use of this structure for a small business will enhance the neighborhood because the building will be maintained with a professional appearance, with more focus on keeping the outside clean and neat looking and keeping the grass and bushes maintained. It promotes the development of the community by becoming an affordable office space to support the growth of small business.”

**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 along Holmes 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, professional 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.

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:* "The use of this structure for an appointment based business, i.e. counseling office will bring a small handful of cars into the parking lot per day and only during regular business hours, and this building has been approved for similar conditional use in the past, so this should conform to the purpose of this Ordinance, and since no exterior changes are being made, it should fit into the plan."

*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.

As stated above, the Comprehensive Plan (Growth Policy) placetype designation for this parcel is the Suburban Mix placetype. This placetype is sometimes used to buffer more traditional, established neighborhoods from more urban areas. Staff believes that this proposal is consistent with that goal.

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: “This use will not impact conservation resources or energy.”

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

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

Applicants' Response: “The zone for this property is R4. The structures are single level, with concrete foundations, and there will be no changes to the density, yard, or heights.”

Staff Comments: The existing structure does conform to all development standards for the “R-4” zone, if it were used as a detached garage as originally constructed.

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

Applicants' Response: “The nearest occupant will be the tenants located in the rental unit. They will be minimally affected by sharing a parking area during the day with additional cars. It is our plan to designate parking for the tenants, and then they should be unaffected by the business during the day, and not affected by the proposed business after hours and on weekends. Additional traffic will be minimal, and the street is already busy so this should not affect nearby properties. This business type will not be noisy, it will operate during regular business hours, and is unlikely to affect the nearby properties at all.”
**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 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.

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. The noise impact should be minimal, as it will be most likely 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:** "This neighborhood is well developed and Holmes Avenue itself has businesses, homes, apartment complexes, empty lots, a golf course so the use of this structure for business should not change the neighborhood plan, though we have no knowledge that a plan has been previously adopted."

**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: “The exterior of the building and the appearance and topography of this property will not change. It is already compatible with the existing buildings. The siding is light colored, matches the other rental unit, and this fits with the neighborhood which is already a mix of property types and conditions.”

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 professional office 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: “The current tenants of the rental house support the use of the building for professional services of any type. The business owner to the south has expressed his support for the use of the building for business services. No neighborhood associations exist to our knowledge. This permit would cause very few changes to the neighborhood and the most notable change would be a small increase in the number of cars parked in the lot during business hours.”
**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-21-000002 is an appropriate use for this area. Therefore, staff recommends that the Zoning Board approve Special Use Permit Application SPUSE-21-000002, provided the following conditions are met:

1. Any placement of signs shall be limited to Section 17.42.050 – B, - On-Premises Signs Permitted in Residential Zones.

2. Prior to receiving a business license, 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 striping 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. 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.

4. 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.

5. 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.
ITEM: Special Use Permit Application SPUSE-21-000004 - 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: Elizabeth and Timothy Lahey, 1402 W. Porphyry St., Butte, MT, owners.

DATE/TIME: Virtual Meeting, Thursday, March 18, 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 March 18, 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-3” (Multi-Family Residence) zone, legally described as the east 90 feet of Lot 1, Block 1 of the Columbia Addition, commonly addressed as 17 North Alabama St., Butte, Montana.

PROPOSAL: The applicants are proposing to rent out a two bedroom residence for overnight stays and short-term rentals through online hosting programs.

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: “Property is a 3000 sq ft lot in Uptown Butte. The house on the property is a 2 bedroom 1 bath single family Victorian style home built in 1910. The property also has a small yard and garage structure. The house has been renovated to
modern standards while maintaining many historic elements”

**Staff Comments:** The property is located in an “R-3” (Multi-Family Residence) zone. The home is a single family home with a footprint of 1,013 square feet. The subject parcel itself is 2,700 square feet in size.

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

**Applicant’s Response:** “Adjacent properties are a mix of historic single family and multi unit buildings. A private tennis court is located on the lot across the street. Its located within a block of Park St. where there is a mix of residential and commercial properties”

**Staff Comments:** The property in question is located within an area containing single family and multi-family homes. It is located one half block north of West Park Street.

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

**Applicant’s Response:** “None that we are aware of.”

**Staff Comments:** No changes in the Zoning Ordinance have occurred in this area.

The property in question is located within the Uptown Edge placetype in the Comprehensive Plan (Growth Policy). Uptown Edge placetype neighborhoods serve as a transitional area immediately surrounding the Uptown Core and exhibit a mix of commercial-centric development and multi-family residential and connects the Uptown core with the economic drivers.
Mixed residential and light commercial are typical of these areas.

4. Proposed fencing, screening and landscaping.

**Applicant's Response:** “No changes planned to fencing, screening, or landscaping. There is currently fencing in the front & back of property. Landscaping is currently a small lawn in front and back of property.”

**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 planned to vegetation, topography, or natural drainage.”

**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 proposed in these areas. There is currently plentiful street parking on Alabama St, including 2 parking spots directly in front on the house. An alley borders the south side of the property and provides vehicle access to the rear of the property. Bicycles could access the property via street, sidewalk or alley. Access to the house
requires using exterior stairs, the listing will specify it is not handicapped accessible."

**Staff Comments:** Vehicle access to and from the property is acceptable for the proposed use. The access is provided via Alabama Street to the front of the residence and an alley to the south. There is a garage located to the rear of the residence and enough room for one on-street parking space. 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:** "No changes proposed. A well maintained sidewalk exists in front of the property with a curb cut for accessibility."

**Staff Comments:** There is a sidewalk at the front of the residence. The house is located toward the front of the parcel, and there is a sidewalk extending from the street to the front door. As stated in Question #6 above, there are some stairs to access the front of the dwelling.

8. **Proposed signs and lighting.**

**Applicant's Response:** "No changes proposed. There is currently exterior porch lighting and street number signage."

**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:** "While there is the potential for noisy or rude guest behavior, we will make every effort to rent to guests with positive reviews in their rental history and promptly address any issues that arise."

**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 - (2) 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. If the applicants are limited to the occupancy level dictated by the size of the house, there shouldn't be any more of a parking issue than if the house were inhabited long-term.

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 live within a half mile of the property and would be available if issues arise. Staff would suggest that the owner does enforce rules through the online hosting program that does not allow for parties or excessive noise.

Staff can foresee no other potential nuisances at this time.


Applicant’s Response: “No issues related to public safety & health. We have contacted the Butte-Silver Bow Health Department and are in the process of applying for a permit with them.”

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: "The residence is currently served by NW Natural gas and electric service, Butte Silver Bow water utility, Spectrum internet service."

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: "Based on the proximity to Montana Tech, St James Hospital & Uptown Butte, we anticipate hosting guests who are in Butte for both business and personal travel. These guests will contribute to the local economy by attending events & patronizing local businesses. The property is located within a block of the West Park Street Corridor, an area where the county has developed a plan to enhance the character and economic development potential. Our property will provide a quality lodging option to visitors in a desirable and convenient location.

Since purchasing the property, we have made some substantial improvements to it (new roof, replaced the sewage pipe, replaced water service line, added dryer venting). Our commitment to maintaining the
home and its historic character will benefit the neighborhood and 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: "Proposed use conforms to the comprehensive plan and purpose of this Ordinance."

Staff Comments: The Comprehensive Plan (Growth Policy) designation for this parcel is the Uptown Edge placetype. As stated above, this placetype is a transitional area immediately surrounding the Uptown Core and has a mix of light commercial and residential uses. Staff believes that this proposal is consistent with that designation and also 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: "Use of resources and energy will remain consistent with the current use as a single family residence."
**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:* “Property currently meets these requirements, no changes are planned.”

   **Staff Comments:** The applicants’ property appears to not meet the typical setback and lot size requirements of the “R-3” zone. The buildings are considered legal nonconforming structures. Any expansions of the building footprint shall 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:* “Impacts of proposed use will be similar to current use of the property. Our rental terms will specify no smoking, no pets, and no gatherings/parties in order to minimize impacts on neighboring properties. Occupancy will be limited to 5 guests, 2 queen beds, 1 baby crib). We live ½ mile away from the property. We will be available to actively manage the property ourselves and address any issues.”

   **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: "Proposed use meets objectives of Feb 2016 West park Street Corridor Plan."

Staff Comments: There is no known Neighborhood Plan for this area of Butte-Silver Bow adopted as part of the Comprehensive Plan. As the applicants stated, a plan was developed in 2016 addressing the West Park Street corridor and staff would concur with the applicants that the proposal is in line with the recommendations from this plan.

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

Applicant's Response: "Proposed use is compatible with existing adjacent buildings, structures, neighborhood, & topography. We anticipate impacts of proposed use as a rental property will be similar to current use as a single family residence."

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: "Will go through public comment process as specified by Planning Board."
**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 SPUSE-21-000004 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: VARIANCE-21-000002 - An application for a Use Variance to remodel an existing building into seven residential apartment units and one office space, varying from Section 17.27.030 – Permitted Uses of the Butte-Silver Bow Municipal Code (BSBMC).

APPLICANT: Maisie Sulser and Mike Handley, owners, PO Box 266, Butte, MT.

TIME/DATE: Virtual Meeting, Thursday, March 18, 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 March 18, 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: See next page
LOCATION/DESCRIPTION: The property is located in a "C-M" (Commercial and Light-Industrial) zone, legally described as Lots 18, Block 5 of the Central Addition, commonly located at 701 S Arizona Street, Butte, Montana.

PROPOSAL/HISTORY: The applicants are requesting a use variance for their proposal to convert an existing building that was formerly used as an office/warehouse facility into seven residential loft apartments and one office space. These are not permitted uses in the "C-M" zone and require a use variance. The applicants applied for and received a Use Variance from the Zoning Board of Adjustment in July of 2017, but because the project wasn't implemented within one year of receiving approval for the Use Variance, further consideration from the Zoning Board of Approval is required.
The Butte-Silver Bow Municipal Code, Section 17.27.030, does not list either multi-family residential or office space as a permitted use within the “C-M” zone. In order to use the structure as a multi-family residence and as office space in the “C-M” zone, a use variance from the Zoning Board of Adjustment is required.

As stated above, the applicants applied for and received approval for this project from the Board in July of 2017. The applicants have stated that they are now ready to move forward with the project, but because work was not initiated within one year of receiving approval, further consideration from the 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.

*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 residential, is to prevent conflicts between incompatible land uses. Zoning districts are established to separate uses that are not easily integrated and to combine uses that are compatible.

The property in question is located within the “C-M” zone on the southern corner of S Arizona and E Aluminum Streets. This area is sometimes referred to as “The Warehouse District” due to the large concentration of warehouses in the area. Over the past several years, the number of functioning warehouses in the neighborhood has declined while the number of vacant buildings has increased.

Although this area is in a commercial and light industrial zone, it is across the street from a “M-2” Heavy Industrial zone where a mixture of commercial and heavy industrial uses exist. There are several residences existing on this block, but the main use is industrial and many of the buildings are vacant.

It should be noted that there are several types of office space permitted outright in the “C-M” zone, such as contracting, manufacturing, processing, and wholesale. Also, residential uses are permitted above the first floor in “C-2” zoning districts as well. This would indicate that the office and residential uses are compatible with each other in certain scenarios.

While there are several industrial uses in the neighborhood, there are also several vacant properties. Adaptive reuse of older buildings within
this district should be considered. The subject property was constructed in 1900 originally as a warehouse. Over the last few decades, both residential and commercial development has been very limited in this area. As such, the subject property has remained vacant for a significant number of years. The last proposed use for this structure was a microbrewery in December 2006 but was never constructed.

In this particular instance, the exterior of the structure would undergo minimal structural changes (adding some windows and doors only), therefore, maintaining the building’s warehouse character.

That being said, the requested use of the property for an architectural design office and loft apartments should not have a negative impact on future commercial or light industrial development in this neighborhood.

When considering all of the factors mentioned above, Planning staff feels that a variance to permit new loft-style residential development along with office space placed inside an existing structure would not appear to be contrary to 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.

The property in question is a small parcel with complete coverage with a building constructed for warehouse purposes in 1910. The building and lot size is not conducive to house most permitted uses in the “C-M” zoning district. Therefore, staff does believe that a hardship exists.

Subcriteria Number One states the land cannot secure a “reasonable return”, if the land is restricted to only those uses permitted outright in that zone. As stated above, attracting businesses that are allowed under the permitted uses of a “C-M” zone would most likely be difficult and may be an indicator that the property is unable to secure a reasonable return through the permitted uses of the “C-M” zoning designation.

Subcriteria Number Two states that the proposed use will not alter the character of the neighborhood in which it is located. There would be only minimal exterior changes to the structure itself (placing 11 new windows and three new doors into the walls of the structure), so, aesthetically, the addition of new windows and doors may be an improvement. Because this area of commercial/light industrial zoning has been primarily undeveloped and with the mixed uses that currently coexist, the proposed loft residences/office use should not alter the existing 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, which may infringe on the rights of adjacent landowners and the public in general.

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

The applicants must be mindful that, now and/or in the future, several unpleasant aspects of residing in a commercial and light industrial zone (and across the street from a heavy industrial zone) may appear, such as increased noise, unpleasant smells, vehicle traffic, as well as several other elements that are not compatible with residential usage. At this time, however, staff does not foresee any additional negative impacts from this proposal on public health and/or safety. The creation of new loft-style residential units, along with an area for office use, placed inside an existing structure, should not have a negative impact on the surrounding property owners.

As previously stated, the building occupies the entire subject parcel. Therefore, there is no additional room to accommodate off-street parking for the office space or residences. It should be noted that because the applicants are not proposing to expand the footprint of the building, they are not required to meet the off-street parking standards. However, the proposal would increase the need for parking to accommodate the use. Residential units are required to supply one-and-a-half (1½) parking spaces per unit and office spaces require a
minimum of four (4) spaces for newly constructed premises. The requirement for parking for new construction for a proposal such as this would be fifteen (15) spaces, one of which being ADA accessible. An addition of this many vehicles may create additional parking hazards in the area.

While there are some concerns about parking for the proposed use, staff acknowledges that there is no room for off-street parking on the subject parcel and, therefore, any use, including uses permitted in the zone, would add to parking concerns. Therefore, this use variance request appears to be a reasonable use of private property, as long as the applicants understands that they are not owed the same protections zoning provides to residential and commercial uses existing in properly zoned areas.

**CONCLUSION:** As discussed within the report, the requested use variance to locate office space and multi-family residential units in a commercial and light industrial zone meets all three of the Montana Supreme Court's criteria for a use variance. 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, and it does exhibit a hardship as defined by the Montana Supreme Court. If the applicants are agreeable to the conditions placed on the use variance, staff recommends approval of Use Variance Application VARIANCE-21-000002 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 installation of any signs, the applicants shall submit a sign permit application to the Planning Department for review and approval.

3. Prior to the operation of any business entity, the applicants shall receive a Certificate of Occupancy from the B-SB Building Department and the business shall purchase a B-SB Business License.

4. Any future expansion of the uses other than residential apartments, office or a permitted use of the “C-M” zone shall be subject to review and approval of the Zoning Board of Adjustment.