

**May 21, 2020**

**Butte-Silver Bow  
Zoning Board of Adjustment  
Virtual Meeting - Courthouse**

Virtual  
Members Present: David Wing, Joel Arnoldi, Todd Collins, Julie  
Jaksha, Tyler Shaffer and Loren Burmeister

Absent: Franki Weitzel

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

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**M I N U T E S**

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- I. The meeting was called to order at 5:38 P.M.

Mr. Wing said they were having a virtual meeting of the Zoning Board of Adjustment and were on computers in light of the Covid 19 Pandemic they were all dealing with.

Mr. Wing introduced the staff and Board members by WEB-X and said there were Board Room members present from Boise, Idaho.

- II. The Minutes of the meeting of January 16, 2020, were approved and passed.

- III. Hearing of Cases, Appeals and Reports:

The legal ad was published in the Montana Standard on May 14, 2020.

Dave Wing stated they had one case before them this evening, Variance Application #16521 by Western States Equipment Company, represented by David McKinnon.

Mr. Wing asked Mrs. Casey if he had covered everything that needed to be covered before the presentation.

Mrs. Casey said the only thing they hadn't covered was the folks who were live streaming. She said when they get to the comment section portion of the meeting, they would scroll a phone number for them to call in with any comments, otherwise she thought they were ready to proceed.

Variance Application #16521 – David McKinnon, agent, for Western States Equipment Company, 3858 N Garden Center Way, Boise, Idaho, was present virtually for this meeting.

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

During the summary of the report, Mrs. Casey said the first condition of approval was to provide screening and she would make a note that there was an error in their report on condition number one that was adjusted during the meeting and approved by the Board that they would install 8' screened privacy fence around the north, south and west elevations of the property and they were okay to leave the east elevation along Harrison Avenue open by approval. She said the north elevation currently didn't have any screening, so they were deficient with that condition.

Mrs. Casey concluded her report and said she would answer any questions they might have.

Mr. Wing asked if any of the Board members had any questions of the staff with regard to this application.

Tyler Shaffer said he had one quick question or more of a clarification. Mr. Shaffer said they did, in their last approval of the variance, allow them to not screen that fence, correct. Mrs. Casey said it was in the

variance request of 2018, that the Board allowed them not to have to screen the east elevation but the north, the south and the west elevations were to be screened. Mrs. Casey said both the south and west elevations are screened. Mr. Shaffer said, so they were in compliance with that (no, the north elevation is deficient).

Mr. Wing asked if there were any further questions from the Board members for the staff. There was no response.

Mr. Wing then said now the applicant had an opportunity to make a presentation in support of the application. He asked if the applicant was prepared to make that presentation. He said if he did give a presentation, he needed to identify himself for the record by giving his name and address. Dave McKinnon, 3858 North Garden Center Way, Boise, Idaho, said that Lori (Casey) did a great job going through the staff report. It was a pretty long report and the first eight pages of the report, she spent a lot of time going over what the original conditions of approval were for the project and he said there was no need to rehash those.

Mr. McKinnon said he wanted to talk a little bit about back history. He said he was in front of them about three or four months ago asking for a time extension. He said if they remembered that time, he pretty much had to come up with something to make it all up to them because they had some issues and the reason they needed to come in front of them at that time was because they wanted to get everything, to get their ducks in a row. They didn't want to have to come back to them several times to first of all get a time extension and then come back and do another conditional use permit or variance request, as they were going through right now for an expansion, so they kind of combined all those together and the Board was very helpful for them, their staff. He said they pretty much beat him up when he came in originally – Lori (Casey) was doing a really good job of that and she pointed out all of their deficiencies. He said he thought they discussed a lot of those deficiencies at the last meeting that they had. He said obviously, their landscaping that they had there right now wasn't perfect and they definitely needed to increase that.

Mr. McKinnon said he just wanted to touch on the landscaping really quick. He said Lori (Casey) made a couple of points. He said a couple

of things he wanted to bring up with them was the location of the trees and he asked Lori (Casey) to help him out with this and asked her to put the site plan back up. He said they had the trees on the site plan, they had those outside of the airport runway area. He said all of the trees were located south of the airport runway overlay area. He said to see the diagonal line on the northeast corner of the project, that diagonal line that runs through that location, there were no trees in that location because they didn't want their trees to grow up into the flight path. He said that was the flight path area and they didn't have any trees there. He said Lori (Casey) had made a point that they had two-gallon shrubs. He said immediately after receiving the staff report, they did submit a revised landscape plan that showed three-gallon shrubs. He said that shouldn't have been an issue and they revised that and sent that back in. He said they dealt with Dylan (Pipinich) on that and wasn't sure if Lori (Casey) was aware of that revised landscaping plan. They did submit a revised landscape plan that met the requirements and actually exceeded the requirements of the landscape code.

Mr. McKinnon said they spent a great deal of time looking at this site and tried to figure out why they wanted to be in Butte. He said for a long time Western States has serviced Butte out of their Missoula location. The Missoula location worked out fine but they realized they needed to be in Butte and wanted to be in Butte, so they looked at a whole bunch of different locations. He said they looked all over the city, the space in the county, in terms of what they needed and what they needed was frontage. He said this was more of a retail type of use and this wasn't something that you hid back in from the traffic. This was something that you wanted to go see, so they knew you were there and they could come. This wasn't something that was in a larger industrial setting, this was a smaller type setting.

Mr. McKinnon said to give them a great example of how things were changing since 1978 when their Codes were adopted, Murdochs right next door. If you looked out there, they had PTL equipment, they had power rakes and rakes for sale out there, so it was equipment. One of the things that you rented from their site was already sitting on their site and it wasn't screened, so that was changing. He said Home Depots, Lowes, all of those types of retail developments did equipment rental right now, so things have changed since 1978, etc.

Mr. McKinnon further said he was kind of surprised in the staff report because they did have a pre-application meeting where they sat down with Dylan (Pipinich) and Lori (Casey). They mentioned the appropriate way to handle this would have been through a request to change the Code. He said that was never discussed at their pre-application meeting but was something they could discuss in the future. He said the Code adopted in 1978 may need some changes. He said specifically, one of the things in there was 24 hour film processing as a permitted use and so were telegraph offices, so it was kind of interesting that those were still in the Zoning Code.

Mr. McKinnon said he wanted to stop really quick and tell them how weird this experience was for him because he couldn't see anybody. He could see the Chairman and he could see Lori (Casey) but he couldn't see anybody else and it was really hard to figure out how engaged everybody was. He apologized if he was rambling a little bit because he couldn't see any expressions. He said to feel free and jump in any time they had any questions. He said it was a new experience for him, at least acknowledging that he was there.

Mr. McKinnon said to jump straight into the staff findings, he then said to go right into the variance issues that Lori (Casey) brought up. He said the first was that the variance must not be contrary to the public's interest. He said there was lots of discussion in Lori's (Casey) analysis on this. He said he thought the first place they started was with the landscape plan, that there wasn't enough landscaping. He said number one, there had to be some sort of landscaping out there. He said they realized last time that they didn't have any turf out there and the Board had requested turf and said alright, first things first, let's get some grass out there. Then they needed to put some trees out there and they needed to put some shrubbery out there. He said they kept the trees outside of the airport landing strip area -- to put those trees elsewhere and make sure those trees were evergreen trees where they could make sure there was greenery out there year-round. He said the deciduous trees that they had planted out there right now only had foliage on them for about seven or eight months out of the year. The rest of the time, you couldn't see it, so they decided to go with evergreen trees and again, they kept those outside of the runway area. He said they more than exceeded the minimum requirements. He said it was hard for them to hit a living target. He said to put in a new sight

obscuring fence and with the sight obscuring fence, the landscaping figured out to be enough to meet the requirements to make it something that would fit in with the surrounding areas. He said across the street from them, they had a field with a runway with no landscaping or screening, just a chain-link fence. He said to the north of them they had Murdochs, where they had equipment and trailers for sale with no landscaping buffers and then further down, beside Murdochs, they actually had their storage facility, which was chain-link as well. Immediately to their west they had an auto repair facility and then to the south they had a vacant piece of property. He said so as far as whether or not their use worked within that area, they provided landscaping, they provided fencing and they had similar uses in the area. They had one of the most intense industrial uses you could have in an airport immediately across the street from them. He said they were doing what they could to make this have a more retail feel by putting in fencing and more softer landscaping.

Mr. McKinnon said they had talked about what was licensed in 1978 and had that been a discussion, they might have been having a different discussion right now. The fact is they had discussed a variance request for this.

Mr. McKinnon said they went on to page ten and it said there was inadequate landscaping – again, he said they didn't know what the standard was for that. He said if they wanted additional landscaping, they were open to discuss that, if that was what it would take to make them more compatible and make them comply with the Zoning Ordinance.

Mr. McKinnon said again, the Planning staff advised, had been advised by the Airport Manager that they wanted this, that they were having issues with the height of those. He said if they could look six feet to the left of him, there was a guy sitting right there who was the Vice-President of Rentals. He said he was there when that picture was shown and he didn't know if they saw them, but they all kind of looked at each other. He said that was something that should not happen and they would make sure that didn't happen in the future. He said he worked with the Airport Manager quite a bit and he had talked a lot and had just talked with him this week about this. He said one of the things they had been working with them about was moving their building, their

maintenance facility as far to the south as possible. He said they wanted to expand because they already had their presence here and wanted to be in Butte. He said they loved the location and it had worked out extremely well for them but as they talked about at the last meeting, working outside in the winter in Butte, it didn't work. They talked to the Airport and the Airport said if they could move that building as far south as possible, they would appreciate that. He said they acquired the property to the south, put the building as far south as they could in order to keep it out of the flight path. He said the farther south they could go, the better off they were with the Airport, which would make them more compliant with what they were asking for rather than building it on the existing site they were on. He said the Airport would like them to be further south. He said that building was taller and the reason why that building had to be taller than the office was they needed to have a roll-up door to get their equipment in and so they needed a taller building and they would like that taller building to be as far south as possible, so they were trying to do that to comply with the request from the Airport Manager.

Mr. McKinnon further said there was a discussion on the bottom of page ten and that was what Lori (Casey) talked about, the future expansion area. This was the property on the western boundary on the west side of the floodplain and they have had, this was their third public hearing on this project and if they wanted to expand out in the future over into that area, they were more than happy to have another public hearing. He said let's just put that as a future expansion, just so they would know what that was. He said as of right now, they weren't planning on developing that piece of property. They were just planning on leaving it alone right now and if in the future, they said hey if you guys decided to expand to the west on the other side of the floodplain, they would come back to them for another hearing. If that was their desire, they would come back to deal with that.

Mr. McKinnon said what it came down to, the idea was did it comply with – was it contrary or not to the public interest of the Zoning Code, or the public interest. He said they had similar uses around them. They didn't really think it was contrary – the additional landscaping, fencing, pushing the building farther to the south didn't make it contrary to public interest. It actually made it a greater public interest to develop this site in a manner that worked for them. They needed more space

and this was the right location for them and part of the reason they had been successful there was because of the frontage they had and having the ability to have people see them, which was something that was necessary for their type of use.

Mr. McKinnon continued by saying to go onto the second finding, literal enforcement of the Zoning Ordinance must result in unnecessary hardship owing to conditions unique to the property. He said again, this piece of property was about fifty percent floodplain and floodway and as they could see from the site plan, they were staying completely out of the one hundred year floodway or the one hundred year floodplain and the floodway entirely. He said they were planning on staying out, so they couldn't develop their entire piece of property and it made it a very narrow piece of property. He said it worked well with their existing piece of property and you could actually drive through this project from one end to the other and drive a trailer through that and that made it work for them, to take that hardship and make it work. He said the property was narrow and once you added the landscaping on the east side, that made it even more narrow, so they did have a hardship there and again, they were in the airport overlay zone, so they were trying as best they could to get the building as far to the south as possible, so they could make it tall enough to get their equipment in there.

Mr. McKinnon said as far as the justice question, two years ago, they came in with a similar piece of property – immediately adjacent piece of property with similar hardships and they were asking for the same exact use, to be on the immediately adjacent piece of property right next door. He said they weren't asking for something they hadn't already been given. They were asking for something that was there and it seemed that if they were looking at justice as a balancing point, that would be something to allow them this. If they allowed this one property, they should allow it at all properties. Additionally, they had equipment storage and sales immediately adjacent to them at Murdochs right now and that type of use hasn't changed. It was just being applied in a different manner in the "C-2" zone. He said if they were allowed to expand those types of uses, this piece of property should be as well.

Mr. McKinnon then said so they could talk about that a little bit more and he could answer any questions.

Mr. McKinnon said the third item they brought up, the findings, there was the spirit of the Zoning Ordinance must be observed and substantial justice done. He thought this was the right use and the right location. He said there were uses immediately adjacent to them that worked with that type of project. They were staying out of the floodplain. They were trying to do what the Airport was asking them to do. He said the uses had already been established on the hard corner. There was an expansion on the hard corner allowing them to get a little more space. In doing that, they were putting in more landscaping, much more screening fence and taking care of the things that have been in need of being taken care of.

Mr. McKinnon said he just wanted to ask if they had any questions of them. He then said his recommendation was that all three of those findings -- that this did support a variance. He said in the conditions of approval, there was one condition of approval that they needed to change and that was number six on page sixteen -- that would just be to strike the first sentence on number six -- the applicant shall submit a new site plan. He said all of the other conditions of approval matched with that. He said the revised landscape plan that was submitted should be sufficient for the requested use of the requested variance.

Mr. McKinnon said he would ask for their approval at this time and asked if they had any questions.

Mr. Wing thanked Mr. McKinnon and asked if any Board members had questions of the applicant.

Julie Jaksha said she had a question. Mr. Wing said of applicant. Mrs. Jaksha said yes. Mrs. Jaksha said it was kind of twofold. She asked if they could explain to her why the new building was constructed without a permit when she would have to think that they were aware that they needed to get a permit, since he had been so intricately involved -- had come before them a couple of different times. Mr. McKinnon said he could answer that, he would do his best to answer that. He said the first time he was in front of them a few months back this winter was really his first heavy involvement at this site from the

initial finding of this location. He thought the biggest concern that they had was number one, they were not smart saying they would do the equipment repair outside, it just didn't work. He thought the guys up in Butte, he had no input on this at that time. They needed to do something and they couldn't work on the equipment outside, so they built it that way. They built it in a way as a temporary structure. There was no foundation that was there, it was more of a carport that was an enclosed carport. He said they were just trying to get out of the weather and he honestly didn't believe the Manager up there had any idea that he was outside of the conditions of approval when he did that. He said he had Buddy (Brock), the Vice-President of Rentals there and he could address that further. He said hopefully, that would answer her question but if not, he would have to address that further.

Mrs. Jaksha said just a follow-up question, would that be removed then, if they were approved that night to construct the new building, would that building or carport, as he described it, would that -- Mr. McKinnon said if they had the equipment repair facility built, there was no need for that. They could take that out. He said just to give them a quick timeline, they were trying to get this done this summer. He said when he came in front of them last time, they told him he needed to get working on this -- their plans and they submitted this right after the meeting and were ready to go and he was sitting on an airplane when Lori (Casey) called and said hey, they were cancelling the meeting. He said he was supposed to be in front of them two months ago. They were hoping to get under way with construction on their current building and have this hearing behind them two months ago. He said their intention was to build this, this summer.

Mrs. Jaksha said she had one follow-up question. She said in the drawings that she had before her of the site location, it looked to her that they were proposing to take down the chain-link fence at the property and put up all new fencing, slatted fencing was what she saw in her drawing. She asked if that was their actual plan or was that just a mock-up of what they could do. She said the question came from the fact that the very first time in 2018, they thought they had agreed to some conditions that were going to happen at the site and as they all knew, they did not happen and so she thought at the last meeting that they had that they got to meet him in person, she brought those up to him (Julie Jaksha faded out).

Mr. McKinnon said to answer the question. Mrs. Jaksha said the screening that they had in place or was he actually going to build this much nicer looking slatted fencing and actually do the site plan, as it looked on that rendering. Mr. McKinnon said he had the Architect there and he had their Construction Manager there as well. He said they had actually priced this fence already. He said that was exactly what they intended on doing. He said it was a unique fence, it was not vertically slatted, it was horizontally slatted. He said if they liked, he could have Dan Jafek, their Construction Manager, explain how it would be constructed, if that helped. He asked if they wanted him to do that.

Mr. Wing said this was the applicant's presentation and it appeared there were several people present in their Board room. He asked Mr. McKinnon if he would like them to speak. Mr. McKinnon said only if the Board had questions. He said they would have to ask them, if they wanted to know how that fence was constructed because Mr. Jafek could answer that question better than he could because he did not bid out that fence. Mr. Wing said he appreciated that. Mr. Wing said that it appeared -- he did too and Julie Jaksha would like to know more about the fence but if he wanted to hand it off to the person in the Board room who could talk a little bit more about that fence, they would appreciate it. Mr. Wing said again, that person would have to identify himself or herself with name and address.

Mr. McKinnon said thank you to the Chairman and said he would like to turn it over to Dan Jafek, the Construction Manager with Western States Caterpillar. Mr. Jafek said he was the Construction Manager for Western States. Mr. Wing asked for the spelling of his name. Mr. Jafek said he priced the fence but didn't come prepared with the price of the fence but it was something they were able to fit within their budget. It was constructed of metal slats, metal posts and he thought the bottom four feet, if he remembered right, or three feet with slatted materials. They were looking at doing cross-rib (?) siding, if he remembered right, and they were going to put a mow strip around it, so it didn't get damaged during the mowing. He thought the panels, if he remembered right, were every ten feet apart. The posts were every ten feet apart -- basically like a wood fence but built mostly out of metal.

Mr. Wing asked if Julie (Jaksha) had any questions of this gentleman. Mrs. Jaksha said no, that was her question. She just wanted to know if the fence that was there was going to be replaced and from what she heard, it would be changed out and it appeared that it was. Mr. Jafek said it was within the budget.

Mr. Wing then asked if the Board had any other questions of Mr. McKinnon or Mr. Jafek, the gentleman that just spoke. He said it appeared there were no further questions.

Mrs. Casey said she wanted to go through one thing with the Board members and also the applicant. She showed the site plan drawing with the flight path of the Airport and said of course they would want as much of the power buildings to the south as possible, however, when you looked at the pictures of this property, and this was the south side, as they would see, those light poles were still shorter. She said they did not go up to a regular height until you continued further south. She said all of the FAA requirements that they spoke of would need to have an approval from them. So, while the trees may be out of the flight path itself, they still needed to follow with what they saw there, as a general guideline and have approval from the FAA. She said she just wanted to make sure that was clear. Mr. Wing thanked Mrs. Casey and said that would include the height of the proposed maintenance structure, was that correct? Mrs. Casey said that was correct. Mr. Wing said okay.

Mr. Wing said just to make sure, as they were in a different world there with this virtual meeting, he asked if there was anyone else in the Board room of the applicant that would like to address the Board with anything that they thought might be useful to them in their determination.

Mr. McKinnon stated just two things – one, to follow-up on what Lori (Casey) said, he had already submitted a 7460 permit to the FAA for both the buildings at those locations with the heights shown on the FAA permit application – because they were far enough ahead on this, they had already gotten back to them saying they could with the 7460 permit. He said they could definitely take a look at the landscape trees and make sure they would only go a certain height to make sure that

they were outside of all flight path areas. He said the main concern of the flight path was that diagonal area at the edge of the runway.

Mr. McKinnon said as to whether there was anybody else in their room who would like to say something, he did have someone else in the room who would like to say something. He said he was the Vice-President of Cat Rentals for Western State and he would turn it over to him. He said he had a quick statement. Mr. Wing said that would be fine. Buddy Brock of 2900 East Stone Point Drive, Boise, Idaho, said he wanted to add a couple of real quick things about the site. He said as far as the equipment that was being lifted slightly above fourteen feet, that was inexcusable and was something that would be addressed again, immediately for the safety of the community, the flight path, all those things, they shared the same concerns there and would assure them that that wouldn't continue going forward.

Mr. Brock said also just for what it was worth, they had been serving the Butte Community for over twenty years out of Missoula and being a part of the Butte community for the last two years had been great for them. He said they hired local employees. He said he personally grew up about forty miles from Butte and they wanted to be a good community partner with them. He said this site plan, he hoped they could see that they put a lot of time, effort and investment into building a nice facility that would not only function well for the community but they were a provider who helped build out infrastructures of communities and really what it came down to was what they helped do. They wanted to be a good partner and wanted this place to be very cosmetically appealing too. He hoped they saw that and if there were any other questions, he would love to answer them.

Mr. Wing asked if any Board members had questions of this gentleman. There was no response.

Mr. Wing asked if everyone had spoken on behalf of the applicant that wished to make comments. Mr. McKinnon said yes. Mr. Wing thanked him.

Mr. Wing asked if all of the Board members had the opportunity to present any questions that they wanted to present to the applicant. He asked if that was correct. A couple of Board members said yes.

Mrs. Casey said she believed Mr. Collins had a question.

Mr. Collins said he had a couple of questions for either Mr. McKinnon or whoever he designated. Mr. Collins said he noticed in the photos that were shown by the staff that there were vehicles sitting there – a truck, didn't know if it was a dump truck or what. (He was breaking up and echoing so he then went to Lori Casey's computer/microphone). Mr. Collins then said this question was for Mr. McKinnon or someone he designated. He said he noticed in the photos the staff had taken down there, that there was a dump truck sitting there, a large truck that had Idaho plates on it. He said they were doing business in Montana and they had been here long enough to license their vehicles here. He said our residents had to do it. He said it was a small thing and was maybe something that he shouldn't bring up there but it showed that any of their equipment that may need to be licensed should be licensed here because they were doing business here. He said it was just something that he wanted to state that kind of bothered him.

Mr. Collins said he did have another question, if he was permitted. Mr. Wing said yes. Mr. Collins said he wondered if when they put in the maintenance shop, would the mechanics there perform work on other vehicles or equipment that didn't belong to Western States, was that something they normally did or how did that work? Mr. McKinnon thanked him for his questions and comments and said he was going to defer to Buddy Brock, the Vice-President of Rentals to answer those questions. He said he could address the issues of both Idaho license plates on the truck and address the issue about the repairs at that facility.

Mr. Brock said to Mr. Collins that he thought that was a fair question and thanked him for asking. He said hopefully, he could explain why they were seeing that. He said they did have thirteen different locations, so sometimes those types of equipment would come in. He said if a customer needed that dump truck and they didn't have it locally, they might bring it in from a nearby location. He said it might be there for a week or a couple of months. He said typically, if it was there long term, they did change those license plates. He said it was just really hard because they did transfer equipment around between stores very frequently, so when they did that, sometimes it would come

in from Idaho and it was not there long term and it was really hard to change the plates back and forth but he did think that was a very valid question. He said it was something they could pay attention to and when it was there long term, they definitely tried to pay the local registration and make it a Montana plate. He asked if that helped with Mr. Collin's question and Mr. Collins said yes, thank you.

Mr. Brock then said to address the second question, typically, they did not do repairs on other equipment. He said the business model was set up to take care of their fleet. He said they did a lot of those repairs for the public out of their Missoula facility but this facility here, there was just not enough space to really do that right now, so that might be something in the future that they were looking to do but as of right now, it would be just to service the rental place.

Mr. Wing asked if any other Board members had any questions before they moved on with this meeting. There was no response.

Mr. Wing said now was the time where he was going to ask for comments. He said that was going to be a little bit difficult, at least for him, doing it virtually but he did know that he would first ask for public comments in support of this application and there would be a telephone number that would be scrolled, so that people could phone in from outside this virtual meeting with any public comments in favor of this application. He said this would apply also to comments in opposition to the application.

Mr. Wing said he would first give Lori Casey an opportunity – Mr. Shaffer said he was sorry to interrupt but he couldn't – he was breaking up very badly on this end, he was sorry. Mr. Wing asked if this was true of everybody else or was it just on Todd's (Collins) or rather Tyler's (Shaffer). Loren (Burmeister) said he was getting a bit of feedback from somebody but otherwise he was hearing okay.

Mr. Wing said he was speaking loudly with mics in front of him and he didn't know what else he could do.

Mrs. Casey said maybe everybody else could mute their mic. Mr. Wing said if they muted their mic, that would help until they wanted to speak.

Mr. Wing said just to recapitulate what he was saying, now was the time for public comments and a telephone number would be scrolled, so that people could phone in with those comments but with regards to comments both in favor and in opposition of this application, he would first ask Planning Chairman (Director) Lori Casey to read any written comments either in support of the application or in opposition to the application first. He said to continue along those lines. Mr. Wing then asked Mr. Coles if the number was being scrolled and he said yes. Mr. Wing then said the number for public comments was 497-5009 but first he would ask Lori (Casey) to read any written comments in support of the application into the record that she might have received. He then asked if there were any such comments.

Mrs. Casey said yes, there were and just for the record, when they did advertise this public hearing, they did put in there that they could supply written comments to the Planning Department and those comments had to be in by 4:00 that day. It was also advertised they would be able to live stream this meeting and there would be a call-in number.

Mrs. Casey said she would go forth and read the first comment they received. She said the first comment was from William Robinson of Big Sky Rental at 815 East Second Street, Butte, Montana, that is attached and made a part of these Minutes.

Mrs. Casey said she received one other comment and that comment was from Commissioner Jim Fisher that is attached and made a part of these Minutes.

Mrs. Casey then said those were the two (written) comments they had received. Mr. Wing thanked her.

Mr. Wing then asked if they had any phone calls. He said they had no phone calls for the application.

Mr. Wing said he guessed that people who wanted to speak in opposition to the application would also be phoning in at this time and they had no phone calls from them either.

Mrs. Casey said she would ask to just wait one minute because when they live streamed, they were about thirty seconds delayed, so to wait

one minute before they closed the public hearing. Mr. Wing said sure, he was planning to do that. Mrs. Casey said okay, thank you. Mr. Wing said give people a chance to speak.

Mr. Wing said everybody could kind of review their notes.

Mr. Wing then said they had a call.

Bill Robinson wanted to comment for the Zoning Board. Mr. Wing asked him if he had some comments he would like to make. Mr. Robinson said after he watched the video and the plan, he saw they didn't really follow anything they said they were going to do. They didn't – they were going to come with promises to build big buildings and bring jobs to Butte and they hadn't done that. He didn't think they had any local people from Butte that worked there. All their money went out to Idaho and didn't come here - like they said, the vehicles were licensed in Idaho.

Mr. Robinson said they didn't keep their equipment down -- the runway. He said that was ridiculous. He said they couldn't even do that, so they were going to put trees up and hope that they had them at the right height. They hadn't put the screen up around the – to block the equipment. They built a building for maintenance without any permits.

Mr. Robinson then asked where the oil went when they washed the equipment off, where was the grease? He said there was a lot of that stuff that went on in equipment rental.

Mr. Robinson said a 20 x 40 shed was hardly big enough to maintenance everything. There was a ton of equipment but there was no way that that was supposed to be on Harrison Avenue and they had it all displayed. There was crap all over there and it was not well kept.

Mr. Robinson said he just didn't see how this benefited Butte, Montana, whatsoever. He said it was a jumping board for the area, so they could compete in Big Sky, etc. and just tear our market apart and not allow them to compete with them. They just kept bringing in more equipment and we suffered. He said those were his comments.

Mr. Wing thanked him and he thanked Mr. Wing.

Mr. Wing said they were now waiting to see if there were any other calls.

Mr. Wing said there were no further calls.

Mr. Wing further said that the applicant, in view of the comments of Mr. Robinson in particular, now had the opportunity to speak in rebuttal to Mr. Robinson's opposition. He said there were no other comments in opposition. He said the only other comment was Mr. Fisher, the Commissioner, in support of the application. He said with regard to Mr. Robinson's concern, they could address those concerns in rebuttal.

Mr. McKinnon said he was going to defer to Buddy Brock, Vice-President of rentals. Mr. Brock said just a couple of things for clarity, their employees are local Butte residents and he just wanted to make that clear. He said he struggled with this comment to not put money back into Butte because that was the reason they were there that night. He said they spent countless hours trying to put together an opportunity to reinvest in Butte with a very nice facility and to do it right and he hoped they had shown them that that night and hoped they had an opportunity to build this facility and be a part of the Butte community.

Mr. Brock said he had one last comment. If they looked at the history and they could provide it any time, they were very supportive in all of the communities that they served, giving back to the community, anything from the food banks to the local boys and girls club and they tried to be involved with all local communities that they served. He then thanked them. Mr. Wing thanked him.

Mr. Wing asked if there was anything else that anybody in the Board room would like to say in rebuttal. There was no response.

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 or thoughts with regard to this application.

Tyler Shaffer said he did. He said with regard – there was a number of issues there. First of all, no permits for the garage concerned him. He didn't believe the local Manager decided upon himself to build a carport in the middle of that facility without any higher approval. He thought for the corporate folks to pretend they had no idea that was going on without a permit was a little disingenuous.

Mr. Shaffer then said the equipment, as he was sure they had all noticed, had been raised since the day it showed up, above the lights. He said he thought they had off the record discussions about this after their meetings. They had never attempted to make it not above the lights. He said the Planning staff's pictures and photos were recent. He said it sounded to him that the Airport Authority had been complaining about this for a considerable amount of time but as of a few weeks ago or a few months ago, they were still above the height.

Mr. Shaffer said they were told there was going to be a beautiful stick-built building for this facility within two years. He understood that they had since come back and got an extension on that but there had been no effort to build that and it was over promised, he would almost say. It was promised to the extent that they looked away from other things during their original meeting.

Mr. Shaffer said the landscaping had not been adequate to what they asked for.

Mr. Shaffer said the applicant continued back to well this Ordinance had not been updated since 1978. It had 24 hour photo allowed – yeah, he agreed but that really had no bearing on this case but it was a major selling point on their end.

Mr. Shaffer said they kept hearing that Murdochs was selling equipment. He said that was an allowable thing in a "C-2" zone. He said renting equipment was not. He said he was just afraid that they were dealing with their Ordinances there and not necessarily their feelings. He said Murdochs could sell whatever they wanted, they were a commercial establishment but if they did start renting equipment, they would have the same issues coming to their Board, as Western States currently does.

Mr. Shaffer said with that being said, he was in favor of them being able to build more of a hard-shell for their maintenance shop. He said the expansion of this lot and anything associated with that, he couldn't necessarily get on board with. He said he felt like they had been promised a lot, delivered some of that and now they were asking for more and he felt they hadn't lived up to the promises that were made originally. He said that was his comment.

Mr. Wing thanked him and said he would like to follow up on his comments by noting that they had to deal with the situation that day with what was the best for the community. He said it seemed to him that locating the hard-shell maintenance structure further south would be an advantage to Butte and the Airport. Mr. Shaffer said he would agree. Mr. Wing said an expansion for that purpose, he would be in favor.

Mr. Wing said beginning to hold them to a tighter rein with regard to the landscaping – he liked the fence that they proposed and it seemed like a pretty good deal to him and he was in favor of that but they did definitely need more landscaping. Mr. Wing said he was in favor of some expansion, if only for the limited purpose of moving that maintenance structure further south and away from the Airport runway. It would have to be lower with FAA approval in any event, so they would have to be lower. He said they needed to do something with regard to raising their maintenance equipment, their rental equipment, higher than the lights. He said that seemed to be a very easy thing to make sure they didn't do and he couldn't understand himself as to why they continued to do it for the Airport to call about it.

Mr. Shaffer said that was his concern also – they kept going back to the Manager didn't request -- the Manager built this with no one knowing. He didn't seem to know the height of the equipment was too tall but it had been an issue for years now. He didn't like the not taking responsibility for that. He knew that probably wasn't what they were voting for, it wasn't what they were voting on now but he didn't like that. There didn't seem to be anyone willing to take the accountability for what was going on or what was not going on and that concerned him for the future of this. He said they were being promised that they were going to build this nice fence but they had also been promised that they were going to have a different application of the landscaping and they

were also promised that the equipment was not going to be raised higher than the lights. He said as he recalled from that original meeting, they were very willing to work with them. They seemed to be only trying to do the very minimum they could do to placate the Board and Planning Department and placate the citizens of Butte and that concerned him. He said there didn't seem to be a lot of follow through with the promises and that was his concern.

Mr. Wing agreed and said it may be that in the future that they might have to consider revoking their permission. He said as it was right now, they were dealing with a problem going forward and what would be in the best interest of Butte and he frankly thought it would be in the best public interest of the community, if the maintenance shed structure were to be located further south. He said he was in favor of an expansion of the facility. He said if that was to be required, to put the maintenance structure further south.

Loren Burmeister asked if he could make a comment in that regard and in regard to this entire process. He said it concerned him that a lot of the discussion they were having, he didn't feel was within the jurisdiction of this Board. He said he thought they were charged with evaluating the criteria that was brought before them, as to whether or not this application met the criteria of requiring a variance. He said staff, in their report, they put forward an alternative, which was to petition to amend the "C-2" Zoning Ordinance in order to allow for this to be an appropriate use of the property. He said he thought they had a great presentation a couple of months ago from the lawyer of the League of Cities and Towns, who went through the process that should be followed for those exact kinds of situations. He said if they didn't follow proper process, they were put in the exact position they were in then where they were granting variances but were making conditions that may or may not be consistent with other parts of the law. He would caution them all against that.

Mr. Burmeister further said he would encourage them to consider – rather than granting an expansion permit for one building, which would further propagate this whole process, that they deny this application that day and advise the applicant to go through the process of seeking that amendment to the Zoning Ordinance. He said he did have Commissioner support for his area and so if he brought this forward to

the Commission, he believed his Commissioner should support him in that endeavor and that would be an appropriate route of action rather than this Board trying to determine individual actions to allow or not allow this.

Mr. Burmeister said also to Mr. Robinson's comment, it was a fair comment. He said as they began to make exceptions for one business and not another, they backed themselves into a corner, which they needed to be careful of and so, he thought it was Mr. McKinnon himself that said, the property just to the south of them would also be an appropriate place for a rental facility or something similar. He said he didn't disagree with that but if there had to be a legal process followed to allow for that and if the Council approved an amendment to the Ordinance, then everybody would have equal footing and everybody would have the opportunity to pursue the same developments in that area.

Mr. Burmeister said his recommendation to this Board was to deny the application wholly, as it was that day, and to ask the applicant to move forward with the alternative process of seeking an amendment to the current Ordinance.

Mr. Wing asked if there were any other comments with regard to this particular matter.

Mr. Shaffer said he just wanted to say that he agreed with Loren (Burmeister) fully.

Mr. Wing asked for any other comments.

Mrs. Jaksha said she also agreed with Mr. Robinson's comments but he did know that there were other places on Harrison Avenue that were being allowed to have rental equipment and so for her, she didn't feel that was an adequate reason to deny this or to push it back. She said she agreed with the staff's recommendation that they approve the one piece of it and deny the other piece.

Mrs. Jaksha said one question that she had and she didn't know if Mrs. Casey could answer it for them but was there any way they could condition, put a condition in there that the construction of this second

building not be allowed before they built their main building that they had already committed to building, their brand new stick-built building and they still hadn't seen them go good with that – was there a way to make that a condition of this application? Mrs. Casey said yes, as the Board, they did have the authority to place the conditions that they deemed necessary, so a condition, if they were thinking that way was maybe that they purchase – they could do it two ways. One, either the building had to be completely complete and a certificate of occupancy issued on the office building or they could condition that they would have to purchase the building permit, if they wanted to construct them both at the same time. Mrs. Jaksha said thank you and that she could also add the condition that they had to remove that carport, temporary structure before anything else could take place on site – correct – they could make that a condition as well? Mrs. Casey replied yes, that was correct.

Mrs. Jaksha said she had one more question and asked Mrs. Casey if she happened to know if they did deny the entire application, how long of a process it would take them to go the other route and apply for the change in the Zoning Ordinance. How long would it take them and what kind of a process was that. Mrs. Casey said that would be a text amendment to the Zoning Ordinance and that was roughly a six month process because there was a public hearing before the Planning Board, who served as the Zoning Commission, and then a public hearing before the Council of Commissioners. She said prior to the Ordinance being submitted, there was a five week process for the Ordinance to be read upon and then a thirty day hold period before it would be codified.

Mrs. Jaksha said she had one more follow-up question, so that she understood. She said in the staff's recommendation, Mrs. Casey had said it was within their voting limits to approve the maintenance building and to deny the additional storage unit area or storage area, as they called it, that was totally within their voting rights, as the Board, correct. Mrs. Casey said that was correct.

Mrs. Jaksha said so if they wanted to go forward with the six month procedure, after they built their building, they could, right - that wouldn't preclude them or mess that up or change this in any way. Mrs. Casey said yes, that was correct, they could go forward with a zone change.

She wanted to be clear that the text amendment to allow this would allow it anywhere within our "C-2" zone but that was not a guarantee that it would be approved. She said their Commissioner in this particular District, as he wrote, he was in support of this and as Loren (Burmeister) had explained, he would probably be supportive of a zone change but she didn't want to give the impression that that was a guarantee. She said it would be in a more public process with two public hearings, so she didn't want to give the impression that that was all they would need to do. She said that was the proper method and it would determine, as a community, if equipment rental was appropriate for the "C-2" district. Mr. Wing said okay and thanked her.

Loren (Burmeister) said he would like to make a clarifying comment. He said he certainly didn't disagree with Julie (Jaksha) as far as the need for the temporary structure for the maintenance building for the time being, however, he didn't think that necessarily needed to be a permanent structure, as they went through the appropriate routes. He just wanted to clarify, he thought some sort of motion to allow them to keep the temporary building in place while they got a more appropriate process in place, absolutely was appropriate. Mr. Wing and Mrs. Jaksha thanked him.

Mr. Wing said the appropriate process was what they were doing right then. He said this Board was charged with reviewing the applications that came before them and then either denying those applications or approving those applications after the review and after the staff report. He said they had an application before them now not to put a temporary maintenance building in place but to put a permanent maintenance structure in place. He said the Planning staff had recommended that they approve that application and deny the application for expansion and of course, for further expansion, which they never could do anyway. He said that was their charge and he didn't think it was appropriate for them to have a proceeding and then kick it back to the Council of Commissioners to do what they might want to do. He said there were people there that wanted to put up a structure and the Board should either say they could do it or not do it and then they could, if they wanted to, go before the Council, as they always could and seek a zoning change.

Mr. Wing said they did have an application before them and they did have the report from the Planning staff recommending in part the approval of the application and denying in part the other part of that application and that was what they had before them that night and what they should rule on.

Mr. Wing asked if anybody had any comments. Mr. Shaffer said he didn't have any comments but he would entertain a motion from someone and he would be willing to vote on it. He said he wasn't so clear on what kind of motion he wanted to make at this time. Mr. Wing said okay.

Mrs. Casey said she would just interrupt one minute as they prepared to vote. She said the polling of the vote because of them doing it virtually would go out to the Planning staff and the applicant. She said they were not to vote, only the Board members would be voting and submitting their poll. She said for the record, Mr. Collins was going to be voting on her computer, so it would show up under her name when the votes were tallied but it would be Mr. Collins' vote. Mr. Wing said okay and thank you.

Mr. Wing said they were now at the point where somebody needed to make a motion.

Loren (Burmeister) said he would like to propose just a bit more discussion. Mr. Wing said that would be fine. Mr. Burmeister said he did intend to make a motion to essentially use the staff's recommendation to approve the construction of the maintenance structure. He said for discussion, the staff put together eight different conditions. He said they briefly started to hit on those conditions but his question was were there any other conditions the Board would like to add or to amend those at all before he made a motion.

Mr. Wing thanked him and said he did believe that Mrs. Jaksha had proposed more conditions that she could elaborate on that might be useful for them.

Mrs. Jaksha said the two conditions that she would like the Board to think about were:

1 – Once the new construction was done, that they remove that temporary structure and it not be allowed to stay on the property – the carport or whatever they were deeming that as.

She said the second condition would be:

2 – The building of the stick-built office area commences prior to them starting construction on this building.

Mrs. Jaksha would like them to start on their actual office space that was to take place within the two year time period. She would like to see that structure built first or started first and then they could start on their second building after they had undertaken that construction project.

Mr. Wing said that sounded appropriate to him also.

Mr. Wing said that being the case, they had ten conditions – the eight that appeared in the staff report and then the two that were articulated by Mrs. Jaksha.

Mr. Burmeister said he would like to make a motion.

Mrs. Casey said before Loren (Burmeister) did that, could the Board set that maintenance facility, once it was completed it would need a certificate of occupancy, could the Board consider putting a certain amount of time, days after the certificate of occupancy was issued on the maintenance facility, that the temporary maintenance facility needed to be down. She thought that would provide more clarification.

Mr. Wing said he thought that was appropriate and he would be in support of that. He asked if that sounded okay to the other Board members and they said yes.

Mrs. Jaksha asked if twenty days was acceptable. Mr. Wing said yeah, twenty days would be good.

Mr. Burmeister asked if there was any further discussion. Mr. Shaffer said not on his end.

Loren Burmeister moved that on Variance Application #16521 that they deny the applicants' request to expand the rental yard at this time and they approve the condition of a maintenance structure on site subject to the eight conditions that staff recommended with three additional conditions as follows:

9. Upon new construction, the applicant will remove the temporary building.
10. Construction of the stick-built office building would be started prior to initiation of construction of the storage building.
11. The applicant would remove the temporary structure within twenty days of the certificate of occupancy.

Tyler Shaffer seconded the motion.

Mr. Wing then said only the Board members should vote and said Mr. Hettick was setting the computer for voting.

Mr. Collins said he hadn't had a chance to thank Mr. Burmeister for the changes on the lighting on the Polishing Plant – kudos to him. Mr. Burmeister said thank you and said, hopefully, he also noticed there was landscaping slowly under way. Mr. Collins said it was very nice and Mr. Wing said it was very nice.

Mr. Wing said the voting was now up on the computer and they couldn't abstain but had to vote yes or no on Variance Application #16521.

Mrs. Casey said just to clarify, they would be voting "yes", if they were in favor of Loren's (Burmeister) motion.

Mrs. Jaksha said so they were denying the storage expansion yard, approving the construction of the maintenance building – correct – if you voted yes. Mr. Wing said yes.

The conditions are as follows:

1. The applicants shall ensure that the construction and remodel of any facilities on the parcel are completed in compliance with all

applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance. All plumbing and electrical work must be completed by a licensed plumber or electrician.

2. Prior to the issuance of a building permit, the applicants shall submit a detailed landscaping plan to the Planning Department staff for review and approval that meets the requirement of Section 17.38 – Special Provisions and the airport height restrictions.

The applicants shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the approved landscaping plan. This cost estimate will be used as the landscaping bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

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

The applicants shall submit a cost estimate from a licensed contractor for the materials and installation of the approved parking plan. This cost estimate will be used as the bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other negotiable instrument.

4. Prior to receiving a building permit, the applicants shall submit an engineering plan and analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit or receive a variance from the Butte-Silver Bow Public Works Department.

5. Prior to receiving any sign permits, the applicants shall submit to the Planning Department for review and approval, a detailed sign plan and drawings.
6. The applicants shall submit a new site plan depicting the location of a maintenance facility and no additional equipment storage yard area. The site plan shall conform to all other sections of the Zoning Ordinance. Any approaches require approval from the BSB Public Works Department and/or the Montana Department of Transportation.
7. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from the Montana Department of Environmental Quality (MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.
8. Prior to the issuance of a building permit, the applicants shall complete, submit and receive approval of FAA form 7460 to ensure that proposed structure heights meet all applicable FAA requirements. The form is available from the FAA website and can be submitted online.
9. The applicants shall remove the temporary maintenance building upon completion of the new maintenance structure. This removal shall be completed within twenty (20) days of receiving the Certificate of Occupancy.
10. The applicants shall be under construction for the stick-built office structure prior to the issuance of a building permit for the maintenance building.

Variance Application #16521 – Conditionally Approved per the motion

Loren Burmeister	Yes	Todd Collins	Yes
Joel Arnoldi	Yes	Julie Jaksha	Yes
Tyler Shaffer	Yes	David Wing	Yes

Mr. Wing said the poll results – all five (actually six – Mr. Wing didn't push the submit button after voting) votes were "For" the motion and no votes were "Against" the motion, so the application had been approved in part and denied in part.

Mr. Wing then said with regard to the denial part of the application, the applicants had the opportunity, if they disagreed with their decision, to appeal their decision to the District Court within thirty days by filing a petition with the Court. He said the first day of that thirty days would be the following day, so that would be day one.

IV. Other Business:

Mr. Wing asked Mrs. Casey if there was anything further they should consider. Mrs. Casey said no, they had no more Agenda items.

Mrs. Casey said they hoped to be back to normal in June with moving to Phase 2.

Mrs. Casey thanked the applicant and all of the Board members for bearing with them on this first virtual meeting.

Mrs. Jaksha said she was only bringing this up because of the first go-round but they discussed the fencing in this application, should she have made that a condition that they were going to change out that fencing? Mrs. Casey said yes, they should have but it was what they presented, so let's hope.

Several Board members thanked them for their time and cooperation with this virtual meeting. Mr. Shaffer said he knew this wasn't easy and they appreciated everyone's efforts and would see them next time.

V. The meeting adjourned at 7:25 P.M.

By: David Wing  
David Wing, Chairman

Lori Casey  
Lori-Casey, Planning Director

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William Robinson

05/12/2020

Big Sky Rental

Lori Casey

815 East 2nd Street, Butte Mt

BSB Zoning and Planning Department

59701

Room 108 BSB Court House, 155 W Granite, Butte Mt 59701

David Wing

406-490-3373

Joe Arnoldi

skybig@hotmail.com

Loren Burmeister

Todd Collins

Julie Jaksha

Tyler Shaffer

Franki Weitzel

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To the BSB Planning Director, Chair, and Board:

Hello, please let me introduce myself, I am the owner of the Big Sky Rental Center located on 2<sup>nd</sup> Street for the past 30 years. I am writing this due to concerns stemming from the Western States (CAT) Rental Co. that is located on Harrison Ave. This is a multi-million-dollar company that came to Butte to compete with the 2 locally and family owned businesses in equipment rentals who have been here to support the community for decades. I have paid taxes, donated to both Butte High and Butte Central for various needs of equipment and monetary requests, local Special Olympics events, etc. I am in an appropriately zoned location and have been a supporter of the Butte community my entire life. The implication of the future of the CAT Company is to put the small locally owned businesses in a place where they are unable to compete for Butte dollars and inevitably close their doors. Butte has not benefited in any way from this company profiting from its citizens, as all monies made are sent out of state. The employees are not from Butte, their taxes are minimum to our community, and finally, they are not in a correctly zoned area in our community. When the end of the trial period came and they decided they would like to commit to our city, the original plan was that they would put Butte people to work, build a new building and garages to support their rental, as we have seen in communities like Missoula. I believe it shows what they truly think of Butte with their new plans that have been submitted with minimal investment into our community and my belief that that will not change but be the norm for this company. Please consider the future impact of this company who is unwilling to invest in Butte but instead reap the benefits from our community.

Thank you for your Time and Consideration,



William Robinson

Big Sky Rental

## Laird, Carol

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**From:** Fisher, James  
**Sent:** Thursday, May 21, 2020 4:47 PM  
**To:** Laird, Carol  
**Subject:** Re: Western States Equipment Variance

Carol,  
Good day hope all is going well. Thank you for the update. I will not be able to attend this meeting but I have had no negative response to this request and I support there proposal. Once again thank you.  
Best wishes,  
Jim Fisher

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**From:** Laird, Carol <claird@bsb.mt.gov>  
**Sent:** Tuesday, May 12, 2020 3:12 PM  
**To:** Fisher, James  
**Subject:** Western States Equipment Variance

Jim,

We are doing a virtual meeting on Thursday, May 21st at 5:30 P.M. for the Zoning Board of Adjustment. The Agenda is now on BSB's Web Site. This is the only application.

If you want to comment, you'll need to listen to the livestream and comment when the phone number appears on the screen (as you well know from Council meetings).

OR you can submit a written comment to be read into the meeting.

Have a great rest of the day!

[cid:image001.jpg@01D62870.51E10D40]  
Carol Laird, Administrative Assistant  
The City-County of Butte-Silver Bow  
Building Code Department  
155 W. Granite Street – Room 108  
Butte, MT 59701  
Telephone : 406.497.6210  
claird@bsb.mt.gov

Messages and attachments sent to or from this email account pertaining to the City-County of Butte-Silver Bow business may be considered public or private records depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).

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Zoning Board of  
Adjustment

The City-County of  
Butte-Silver Bow  
Council Chambers  
Room 312  
May 21, 2020

5:30 P.M. Thursday

#### Members

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

# A G E N D A

## **APPLICANT OR REPRESENTATIVE MUST BE PRESENT FOR THE VIRTUAL MEETING**

- I. Call to Order.
- II. Approval of the Minutes of the meeting of January 16, 2020.
- III. Hearing of Cases, Appeals and Reports:

**Variance Application #16521** – A variance application by Western States Equipment Co., owner, and David McKinnon, agent, to expand an existing nonconforming use by expanding the existing rental equipment yard and constructing a 40 foot by 60 foot maintenance shop for servicing rental equipment, per Section 17.48.030-A of the BSBMC. The property is located in a "C-2" (Community Commercial) zone, legally described as a portion of Tract 1 and Tracts 2-6 of Block 1, Sub 1, Section 6, T 02N, R 07W, P.M.M., commonly located at 4005 Harrison Ave., Butte, Montana.

- IV. Other Business.
- V. Adjournment.

BY: Lori Casey  
Lori Casey, Planning Director

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

**ITEM:** **Variance Application #16521** - An application to expand an existing nonconforming use by expanding the existing rental equipment yard and constructing a forty foot (40') by sixty foot (60') maintenance shop for servicing rental equipment, per Section 17.48.030-A of the Butte-Silver Bow Municipal Code (BSBMC).

**APPLICANT:** Western States Equipment Co., 500 E. Overland Road, Meridian, ID 83642, owner, David McKinnon, 3858 N. Garden Center Way, Boise ID 83705, agent.

**DATE/TIME:** Virtual Meeting, Thursday, May 21, 2020, at 5:30 P.M. from the Council Chambers, Third Floor, Room 312 of the Butte-Silver Bow Courthouse.

**REPORTED BY:** Dylan Pipinich, Assistant Planning Director

**VICINITY  
MAP:**



**LOCATION/**

**DESCRIPTION:** The property is located in a "C-2" (Community Commercial) zone, legally described as Sub 1, Section 6, T2N, R07W, POR TR1, All TR2, TR3, TR4, TR5, and TR6 of the City and County of Butte-Silver Bow, State of Montana, commonly known as 4005 Harrison Ave., Butte, Montana.

**PROPOSAL/  
HISTORY:**

Western States Equipment Co. applied for a use variance in February of 2018. Use Variance Application #15736 was reviewed by the Zoning Board of Adjustment (Board) on February 15, 2018. After hearing public testimony for and against the proposed use of the property, the Board approved Use Variance Application #15736 with twenty (20) conditions of approval. Those conditions are:

1. The applicants shall install an eight foot (8') screened (privacy) fence around the rental equipment storage yard. No part of this fence shall encroach into the Sand Creek 100-year floodplain.
2. Prior to receiving an excavation permit, the applicants shall obtain an Elevation Certificate (FEMA Form 086-0-33), that shows that the structure and parking lot would be located above the Base Flood Elevation of Sand Creek at this particular location. The Elevation Certificate shall be completed and signed by a licensed surveyor or engineer and then filed with the Butte-Silver Bow Planning Department.
3. Prior to receiving to an excavation permit, a licensed surveyor or engineer shall mark the limits of the floodplain. Best management practices shall be implemented for working around a designated floodplain including but not limited to construction vehicles or construction equipment shall not

encroach upon the Sand Creek 100-year floodplain. No construction equipment shall be parked inside the floodplain.

4. Prior to receiving a building permit, the applicants shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:
  - a) Compliance with all sections of Chapter 13.04, Wastewater Treatment System, of the Butte-Silver Bow Municipal Code.
  - b) Compliance with all sections of Chapter 13.20, Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24, Main Extensions and Material Specifications.
5. Prior to receiving an excavation permit, the applicants shall submit an engineering plan and analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte-Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit or variance. This engineering plan shall also show in detail the processing of water from the sump located in the equipment yard.
6. Prior to the issuance of a building permit, the applicants shall submit to the Butte-Silver Bow Public Works Road Division for review and approval a detailed engineering plan (including asphalt paving) of the improvements to the driveway approach off of Four Mile Road. The applicants shall submit a cost estimate for the installation of the approved approach.

This cost estimate will be used as the paving bond plus ten percent (10%) to secure the installation of the above approach.

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

7. Prior to the issuance of an excavation permit, the applicants shall obtain an approach permit from the Montana Department of Transportation for the proposed driveway approach off of Harrison.
8. The surface of the rental equipment yard, including the driveway approach from Harrison, shall be maintained and coated with a magnesium chloride compound on a regular basis to ensure that gravel, mud, dust and other debris are not carried out onto Harrison Avenue.
9. Prior to the issuance of a building permit, the applicants shall present the parking plan for review and approval. At a minimum, the plan shall meet the parking requirements of Chapter 17.40.900 – Off-street parking – Table of minimum standards.

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

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

10. Prior to receiving a building permit, the applicants shall install or bond for curb/gutter and sidewalk adjacent to Four Mile Road, per the requirements of Section 17.38.050. Prior to receiving an excavation

permit, the applicant shall submit a detailed sidewalk plan to the Butte-Silver Bow Public Works Department for review and secure written approval. At a minimum, the design shall meet the Americans with Disabilities Act. The applicants shall submit a cost estimate for materials and installation of the approved curb/gutter and sidewalks from a licensed contractor.

This cost estimate will be used as the sidewalk bond plus ten percent (10%) to secure the installation of the above stated curb/gutter and sidewalks.

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

11. Prior to the issuance of a building permit, the applicants shall submit a detailed landscaping plan to the Planning Department staff for review and approval. The landscaping plan shall comply with the landscaping provisions described by Chapter 17.38, Special Provisions of the BSBMC. This landscaping plan shall also incorporate a line of trees to provide screening between the east property line of the subject parcel and the east fence line of the rental equipment yard.

The applicant shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the approved landscaping plan. This cost estimate will be used as the landscaping bond amount plus ten percent (10%).

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

12. Prior to receiving a sign permit, the applicants shall submit to the Planning Department for review and

approval, a detailed sign plan and drawings that meet the Butte-Silver Bow sign regulations for the "C-2" zone

13. The office trailer, as submitted at the hearing by the applicants, shall be utilized for the facility for a maximum of two (2) years (February 20, 2020). On or before February 20, 2020, a brick and mortar structure shall be constructed to be utilized as the office for the rental facility.
14. The applicants shall maintain the unimproved portion of the property and keep it devoid of weeds.
15. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from Montana Department of Environmental Quality (MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.
16. Any future business expansions that are not accessory to the approved business will require further review and approval from the Zoning Board of Adjustment.
17. Prior to the issuance of a building permit, the applicants shall complete, submit, and receive approval of FAA form 7460 to ensure that proposed structure heights meet all applicable FAA requirements. The form is available from the FAA website and can be submitted online.

18. Prior to the approval of an excavation permit, the applicants shall submit to the Butte-Silver Bow Fire Marshal a set of fire protection engineered plans for the 1,000 gallon above-ground fuel storage tank. At a minimum, the plans shall include tank design, distances of the fuel storage tank from property lines, roadways and other structures, tank protection from accidental collisions, fire hydrant availability and distance and spill containment. A written approval from the Butte-Silver Bow Fire Marshal stating that all requirements of the Butte-Silver Bow Fire Prevention Bureau for this facility have been met will need to be provided to the Butte-Silver Bow Planning Department.

Any additional fuel storage tanks placed on the subject property will require further review and approval from the Zoning Board of Adjustment and the Butte-Silver Bow Fire Prevention Bureau.

19. The applicants shall ensure that the construction of or placement of all facilities on the subject property, including but not limited to the office structure, the washing and repair pads and the 1000 gallon fuel storage tank are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance. Any electrical and/or plumbing work must be inspected and permitted by the Butte-Silver Bow Electrical Inspector and also by the Building Official. The electrical permit must be purchased and the electrical service be installed by a licensed electrician. All plumbing work must be performed by a licensed plumber.
20. At no time shall the wash water from the sump be discharged to adjacent surface water drainages. A detailed sump disposal plan will need to be reviewed

and approved by the Butte-Silver Bow Public Works Department Metro Sewer Division.

In January of 2020, the applicant applied for a six (6) month extension to Condition #13 above to extend the time frame to construct a permanent office facility on-site. The Board granted the extension and amended the condition of approval to allow an additional six (6) months to construct a permanent office facility.

At this time, the applicant is proposing to expand the equipment yard and construct a maintenance facility on the property directly south of the existing facility. The applicant is also proposing to expand the equipment yard to the west side of the Sand Creek floodplain in the future.

**STAFF FINDINGS:** In this particular case, the applicant's equipment rental facility is a legal nonconforming use within the "C-2" zone, permitted by Use Variance #15736. Increasing the size of the rental yard and constructing an additional building is considered an expansion of a nonconforming use of land. The BSBMC, Section 17.48.030-A – Uses of Land does not allow a nonconforming use to be enlarged or increased. Also, Condition of Approval #16 above requires further review from the Zoning Board of Adjustment (Board) for any expansions. Therefore, a variance from the Board is required.

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

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

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

In this particular case, the applicant's equipment rental business, which is a permitted use within the "C-M" (Commercial and Light Industrial), "M-1" (Light Industrial), and "M-2" (Heavy Industrial) zones, is considered a legal nonconforming use permitted by Use Variance #15736. During the February 2018 Zoning Board of Adjustment hearing, the Board heard testimony both for and against the proposal and granted conditional approval of the variance as stated above.

In zones where equipment rental yards are permitted, the yards are required to be screened from view when adjacent to commercial or residential zones. The applicant has proposed fencing along the Harrison Avenue frontage, as well as landscaping in the form of grass, trees and shrubs to screen the visual impacts of the equipment rental yard. The applicant is proposing fourteen (14) trees along the Harrison Avenue frontage, as well as two (2) gallon shrubs adjacent to the fence as shown in the attached renderings. The frontage is approximately 728 feet in length. On average, the applicant is proposing to install a coniferous tree on every fifty feet (50') of frontage. Staff does not believe this adequately screens the industrial use from the commercial corridor. It should be noted that per Section 17.38.047 Landscaping Requirements – tree and shrub minimum sizes requires shrubs planted in a commercial or industrial zone to be a minimum of a three (3 ) gallon shrub.

In regards to the expansion of the equipment rental yard, it should be noted that since the adoption of the Zoning Ordinance in 1978, there have been no applications to amend the Zoning Ordinance to add equipment sales and rental yards as permitted uses to the "C-2" zone.

Because of this, staff believes that segregating this land use from others permitted in the "C-2" zone is in the public interest. Increasing the size of the yard increases the industrial feel of this Harrison Avenue corridor. Harrison Avenue is Butte's major commercial arterial street. The recent commercial development in the area, the construction of the new terminal at Bert Mooney Airport, as well as any undeveloped commercial property in the area should be protected from land uses that are viewed as incompatible in the Zoning Ordinance. Staff believes that increasing the size of the equipment rental yard, especially with inadequate landscaping, would increase the impact of the incompatible land use and would be contrary to the public interest.

In addition, because of the proximity of this property to the airport height restrictions for structures, equipment and trees are in place. It is imperative that these items do not encroach into this air space. A general guide is that the equipment, structures and trees cannot be taller than the light poles on Harrison Avenue. Planning staff has been advised by the Airport Manager that the extension of the equipment has exceeded the height of the poles on occasion and the manager has had to request that this equipment be lowered. Planning staff has concerns that the inability of the applicant to regulate and abide by the height requirements is a direct public safety issue and is contrary to the public interest.

In regards to the proposal for the future expansion area, as the Board is aware, staff does their analysis and recommendation based on what has been submitted. The applicant has not proposed any landscaping, screening, or fencing for this area but states that they will follow any conditions of approval. Asking for an approval of a future expansion is not only contrary to the public interest but does not give

the public the opportunity to comment on a proposal to expand a nonconforming use.

In regards to the construction of maintenance facility on-site, it should be noted that the applicant's original proposal was to maintain the equipment outdoors. Since then, the applicant has constructed a metal building for the maintenance of equipment. It is important to note that the applicant did not obtain any of the necessary permits to construct this metal building and subsequently, the expansion of use was not considered by the Board. That being said, while the construction of an additional building would be an expansion of the use, having a building to maintain the equipment indoors would increase the conformity of the facility. The "C-2" zone does not allow auto repair activities to be completed outdoors. The maintenance of equipment outdoors would have greater impact on the surrounding properties than the maintenance of automobiles, therefore, conducting maintenance activities within a closed structure instead of outdoors would increase the conformity of the industrial use.

Based on the above discussion, it would appear that the expansion of the equipment yard area and the proposed future expansion area would be contrary to the public interest. However, the construction of a maintenance structure would increase the conformity of the site and, therefore, not be contrary to the public interest.

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

Unnecessary hardship, as defined by the Montana Supreme Court, must result from a condition unique to the property, such as a unique property shape, topographical feature or geological trait. This quality

must preclude the 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 subject property is bisected by the Sand Creek floodway, which does reduce the amount of land on the subject property that is able to be developed. Also, a significant portion of the property is within the flight path at the Bert Mooney Airport. However, while this presents challenges to the development of the property, it does not preclude uses that are permitted outright in the zone to be developed. In fact, height and space restrictions may have more of an impact on industrial uses than commercial uses. Especially, given that equipment has the ability to be expanded above the height restrictions.

The property does not exhibit any topographical conditions or unique property shape or size that would provide a hardship and is currently being utilized in part by uses that are considered commercial, i.e. office and maintenance shop purposes.

**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 applicant 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.

First, as stated above, the proposed development is immediately adjacent to the flight path at the Bert Mooney airport. There have been several instances where the existing rental yard has extended equipment implements above the required height restrictions. These airport height restrictions are in place for the protection and safety of the public.

The applicant has stated that the construction of structures on the site will be underneath the maximum allowable height as dictated by the airport and the Federal Aviation Administration (FAA). However, staff does have concern that the expansion of the yard area will increase the potential safety concerns. With more equipment stored on-site, the potential to encroach above the maximum allowable height increases.

Second, as stated previously, the Sand Creek regulated floodplain and floodway traverses the site. The applicant's site plan has delineated the floodplain, but it is also important that the floodplain be marked in the field to ensure that any development occurring on the site does not encroach into the floodplain. The proposed future expansion area is located on the west side of the floodplain, and due to the lack of detail regarding this proposal, it is unclear how this area will be accessed. Therefore, it is hard to determine if there will be any associated impacts to the floodplain at this location.

It should be noted that any expansion or construction of buildings and approaches related to this development or any other development are subject to Storm Water Management Plan requirements and approach permits by the Butte-Silver Bow Public Works Department and the Montana Department of Transportation, as well as all building, plumbing, mechanical, and fire codes to ensure general public safety of the development.

As stated above, the applicant is proposing the install a fence and landscaping to screen the equipment yard from Harrison Avenue (see attached rendering). It is the intent of the Zoning Ordinance to screen industrial uses from commercial and residential zoned properties. Although the applicant's landscaping plan slightly exceeds the minimum requirements for landscaping, as required by Section 17.38 of the BSBMC, staff has a concern that the plan does not adequately screen or mitigate the impact of the industrial use. The applicant is proposing fourteen (14) trees along with a fence adjacent to Harrison Avenue. This equates to approximately one (1) tree per 50 feet of street frontage. Staff does not believe this adequately screens the industrial use. Although staff is in full agreement that landscaping with trees provides a great visual buffer, it is important to note that trees are also subjected to the airport height restrictions. As such, staff is reluctant to accept trees as a visual buffer without assurance by the applicant that the trees provide a visual buffer without encroaching into the height restrictions.

Bases on the above discussion, it appears that the expansion of the equipment yard and the proposed future expansion may not be consistent with the spirit of the Zoning Ordinance. However, the construction of a maintenance structure may be reasonable use of the private property.

**CONCLUSION:** As discussed within the report, the requested variance to expand the equipment rental yard and the proposal for a future expansion area does not meet any of the Montana Supreme Court's criteria for a variance. The construction of a maintenance facility, while an expansion, increases the conformity of the existing use. Therefore, staff recommends that the Board deny the proposal to expand the rental yard

and proposed area for future expansion for equipment storage but approve the construction of a maintenance structure on-site, subject to the following conditions:

1. The applicants shall ensure that the construction and remodel of any facilities on the parcel are completed in compliance with all applicable building, electrical, mechanical and fire codes. The applicants shall secure all necessary permits from Butte-Silver Bow and shall abide by all other regulations of the Zoning Ordinance. All plumbing and electrical work must be completed by a licensed plumber or electrician.
2. Prior to the issuance of a building permit, the applicants shall submit a detailed landscaping plan to the Planning Department staff for review and approval that meets the requirement of Section 17.38 – Special Provisions and the airport height restrictions.

The applicants shall submit a cost estimate from a licensed landscape contractor for the materials and installation of the approved landscaping plan. This cost estimate will be used as the landscaping bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other guaranteed negotiable instrument.

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

The applicants shall submit a cost estimate from a licensed contractor for the materials and installation of the approved parking plan. This cost estimate will be used as the bond amount plus ten percent (10%). This bond can be in the form of cash, letter of credit, surety bond, certified check or other negotiable instrument.

4. Prior to receiving a building permit, the applicants shall submit an engineering plan and analysis to address on-site storm water drainage in compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte Silver Bow Municipal Storm Water Engineering Standards and receive a Storm Water Management Permit or receive a variance from the Butte-Silver Bow Public Works Department.
5. Prior to receiving any sign permits, the applicants shall submit to the Planning Department for review and approval, a detailed sign plan and drawings.
6. The applicants shall submit a new site plan depicting the location of a maintenance facility and no additional equipment storage yard area. The site plan shall conform to all other sections of the Zoning Ordinance. Any approaches require approval from the BSB Public Works Department and/or the Montana Department of Transportation.
7. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from the Montana

Department of Environmental Quality (MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.

8. Prior to the issuance of a building permit, the applicants shall complete, submit and receive approval of FAA form 7460 to ensure that proposed structure heights meet all applicable FAA requirements. The form is available from the FAA website and can be submitted online.









