

**Anaconda-Deer Lodge County  
Board Of Adjustments  
ALDC 3rd Floor Conference Room  
April 29, 2016 – 3:00 p.m.**

**Present:** Donna Kostelecky, Lorraine Biggs-Gallik, Joyce Gutcheck and Glenn Gutcheck

**Absent:** Bill Johnson

**Others Attending:** Charly Loper, Planner I, Jodi Lechman, Secretary Planning Department

**Guests:** Adam Mari

Vice-Chair Donna Kostelecky called the meeting to order and explained the role of the Board of Adjustments.

Approval of the March 18, 2016 Minutes: Joyce Gutcheck made a motion to accept the minutes. Glenn Gutcheck seconded.

Discussion: None

Motion carried unanimously.

***V16-03: A request by Applicant, Adam Mari, for a variance to allow relief from the 25 foot rear setback standard within the Highway Commercial Development District (HCDD). Applicant is requesting 0-foot setback from the proposed garage to the rear property line where 25-feet is required. The subject property is legally described as Parcel 1 of Proctor Subdivision in Section 02, of township 04N, Range 11W. The property is physically addressed as 1350 E. Commercial, Anaconda, MT.***

**Staff Report presented by Charly Loper:**

- The applicant intends to build a vehicle and equipment storage garage (24'x32') behind the current existing building, Chuck's Super Lube. A variance is being requested to allow the proposed building to be on the rear lot line where a 25 foot setback is required.
- There is no landscaping on site as the existing landscaping on the west side of the property is actually in the right of way of Jackson St.
- The applicant's proposed building includes eaves of no more than 6 inches and a rain gutter that will extend over the Pennsylvania Ave. right-of-way. Staff discussed this with the ADLC Road Foreman, who determined that a minor encroachment of this nature will not interfere with any public use of the Pennsylvania Ave. right of way.

It should also be noted that at this time, ADLC does not have what is commonly known as a “Right-of-Way Use” or a “Right-of-Way Encroachment” permit. This type of permit allows private use of public rights-of-way while requiring the permittee to indemnify the local or state government against damages that may arise from the private use. Even in the absence of such a permit, a condition of the variance requiring the applicant to remove any encroachments upon request from the County, and at the applicant’s expense, is recommended.

### **Variance Criteria**

- The variance is necessitated due to exceptional and/or extraordinary circumstances or conditions that are unique to the subject property, and are not generally characteristic of similarly situated properties.
- A setback of 15 feet instead of the standard 25 feet providing 31 feet between buildings is not considered adequate.
- Failure to approve the variance will result in undue hardship because no reasonable conforming use of the lot is possible without a variance.
- Approval of the variance(s) will preserve a property right or use that is generally enjoyed by owners of similarly situated properties, and conversely, approval of a variance will not bestow a special privilege on the applicant that is not generally enjoyed by the owners of similarly situated properties.
- The alleged hardship has not been created by the applicant.
- Specific relief from the code shall be the minimum necessary to accomplish the applicant’s stated objectives.
- Adverse impacts associated with granting relief from the code are avoided or effectively mitigated.

### **Staff Recommended Conditions**

- To avoid rainwater falling from the roof onto the right of way, rain gutters must be installed on the north side of the proposed building to redirect rainwater to the east or west side of the building and out of the right of way.
- Two fire extinguishers must be kept and easily accessible in the building.
- Exit signs must be installed above all exits.
- Post a sign stating that the public may not be in the building after 5:00 PM.
- The applicant and all future owners must remove any encroachments upon request from the County, and at the applicant’s expense.

### **Findings and Recommendation:**

Staff finds that the criteria for granting relief from the code set forth in ADLC Code §24-137 are substantially met and recommends that the variance be approved.

**Discussion with Board:**

Donna Kostelecky, are we looking at Pennsylvania St. as an alley or street? Because there is a stop sign.

Charly, we are treating this as an alley.

Glenn Gutcheck, we can't really consider this an actual street – there is no sidewalk.

Donna, does the front portion of the lot have adequate parking?

Charly, yes – it does have adequate parking; Northwest side has 4 spaces and the front has 3 spaces.

Donna, does the applicant have any problems with the conditions set in the report?

Glenn, what is the construction of the building

Applicant (Adam Mari), no – there are no issues with meeting the conditions set in the report.

The construction of the building is post/beam with façade.

**Public Comments:**

Adam, the county staff has done a great job with the research and the work of this project. Thank you.

Lorraine Biggs made a motion to approve Variance 16-03 to allow Adam Mari a 0-foot front setback where 25-feet is currently required by code with the staff recommended conditions. Joyce Gutcheck seconded the motion.

Motion carried unanimously with all board members voting in favor.

**Old Business:** None

**Miscellaneous Matters / Public Comments:**

Matters from the board: None

Matters from the staff: None

Public comment: None

Miscellaneous: None

**Adjournment**

A motion was made and seconded to adjourn.

Motion carried unanimously.

Next meeting: May 20, 2016

Respectfully Submitted,

*Jodi L. Lechman*

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Secretary, Planning Department