

## City of Billings Zoning Commission Meeting Minutes- July 7, 2015

**The City of Billings Zoning Commission met on Tuesday, July 7, 2015 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana**

Chairman Leonard Daily called the meeting to order at 4:30 p.m. The City Council has designated **Monday, July 27, 2015**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		01/06/2015	02/03/2015	03/03/2015	04/07/2015	05/05/2015	06/02/2015	07/07/2015	08/04/2015	09/08/2015	10/06/2015	11/10/2015	12/01/2015
Leonard Dailey, Jr.	Chairman	1	1	1		1	1						
Barbara Hawkins	Commissioner	1	1	1		1	1						
Dan Wagner	Vice Chairman	1	1	1		E	1						
Dennis Ulvestad	Commissioner	1	E	1		1	1						
Mike Boyett	Commissioner	1	1	1		1	E						
Candi Millar	Director, Planning & Community Services	-	-	-		--	-	-	-	-	-	-	-
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1		1	1					-	-
Tammy Deines	Planning Clerk	1	1	1		-	1					-	-
Wyeth Friday	Planning Division Manager	-	-	-		-	-	-	-	-	-	-	-
Juliet Spalding	Planner II	-	-	-		-	-	-	-	-	-	-	-
Lora Mattox	Planner II	-	-	-		-	-	-	-	-	-	-	-
Karen Husman	Planning Assistant	-	-	-			-	1					
Jeanette Vieg	Receptionist					1							

Total Number of 2015 Applications	01/06/2015	02/03/2015	03/03/2015	04/07/2015	05/05/2015	06/02/2015	07/07/2015	08/04/2015	09/08/2015	10/06/2015	11/10/2015	12/01/2015	TOTAL
Zone Change	2	2	2	0	0	0							6
Special Review	1	1	3	0	3	2							10

Vice Chair Wagner introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; and Karen Husman, Planning Assistant

**Public Comment**

Vice Chair Wagner called for public comments. There were no public comments. Vice Chair Wagner closed the public comment portion of the meeting.

**Approval of Minutes: June 2, 2015**

Vice Chair Wagner called for approval of the June 2, 2015 meeting minutes.

**Motion**

**Commissioner Ulvestad made a motion and Commissioner Boyett seconded the motion to approve the June 2, 2015 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest**

Vice Chair Wagner called for disclosures of conflict of interest. There was none.

**Disclosure of Outside Communication**

Vice Chair Wagner called for disclosure of ex parte communication. There was none

Ms. Cromwell explained there are 3 items of communication received after the agenda packets were sent.

**Public Hearings:**

Vice Chair Wagner reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to review the first agenda item.

**Item #1: Return Item** - City Special Review #927 – 4020 Montana Sapphire Drive (aka 920 Shiloh Road) – A special review request to locate an all beverage liquor license without gaming in a proposed new 4,125 square foot restaurant, The Divide Restaurant and Bar, an outdoor patio of 1,500 square feet, a parking lot with 56 spaces and landscaping in a Highway Commercial (HC)

zone on Lot 7, Block 1 of Montana Sapphire Subdivision, a 1.69 acre parcel of land. The City Council allowed the applicant to withdraw on May 26, 2015, to re-design the site to meet minimum off-street parking requirements.

### **RECOMMENDATION**

The Planning Division is recommending conditional approval based on the findings of the 3 review criteria for Special Review #927. The Planning Division is recommending the following conditions:

1. The special review approval shall be limited to Lot 7, Block 1, Montana Sapphire Subdivision.
2. The special review approval is for the location of an all beverage license without gaming and no other use is intended or implied.
3. Any expansion of the restaurant and patio area greater than 562 square feet will require an additional special review approval.
4. Any increase in the number of parking spaces over 10% of what is shown (56 spaces) will require an additional special review approval.
5. There shall be no outdoor public address system, outside announcement system, whether permanent or temporary, of any kind. There shall be no outdoor event on the patio or grounds that includes amplified music or an amplified sound system of any kind.
6. The outdoor patio shall have a continuous 3-foot fence around the perimeter with "exit only" gates as required for public safety. There will be no direct entrance from the parking area or landscaped area to the fenced patio area except through the restaurant.
7. The patio is allowed to have background music or un-amplified live music. Background music is defined as amplified music that is not audible beyond the patio perimeter.
8. The solid waste storage area shall have a sight-obscuring enclosure constructed in similar materials and colors of the building. The enclosure will include a sight-obscuring gate.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

### **Discussion**

Vice Chair Wagner called for questions and discussion from the members of the Commission.

Commissioner Wagner asked if the angle of the building provided for more parking.

Scott Atwood, AT Architects, agent, said they did gain enough room to get the required number of parking spaces. He said they did not have to change the grade as much with the new plan and eliminated the retaining wall. He said the new plan will allow for the buffer yard landscaping area in front.

Commissioner Boyett asked about fencing and lighting.

Ms. Cromwell explained the lighting is part of the site development and not enforced under zoning. She said the fence would be a minimum of 3 feet high for the outdoor patio area.

Commissioner Boyett asked when they anticipated breaking ground.

Mr. Atwood said they hope to start in the next few months.

**Public Hearing:** Vice Chair Wagner opened the public hearing and called for proponents or opponents of City Special Review #927.

There was none.

Vice Chair Wagner closed the public hearing for City Special Review #927.

### **Motion**

**Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council of conditional approval of City Special Review #927.**

### **Discussion**

Vice Chair Wagner called for discussion on the motion.

**The motion to approve City Special Review #927 carried with a unanimous voice vote, 3-0.**

**Item #2:** City Zone Change #935 – 741 S 24th St West – A zone change request from Residential Professional (RP) to Neighborhood Commercial (NC) on Lot 9A, Block 2, Justiss Subdivision. A 13,706 square foot parcel of land. The applicant conducted a pre-application neighborhood meeting on May 21, 2015, at the Hilton Garden Inn at 939 S 25th St West. Property Tax ID: C01676.

### **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 10 criteria for Zone Change #935.

### **Discussion**

Vice Chair Wagner called for questions and discussion from the members of the Commission.

Commissioner Boyett asked if the RP zoning surrounding this parcel would make this spot zoning.

Ms. Cromwell explained the surrounding properties zoning and uses and said that the corner change in use would be beneficial and uniform to the existing area.

Commissioner Boyett asked what kind of services would be allowed on that lot. He was concerned about alcoholic beverages.

Ms. Cromwell said a small drug store or convenience store would be the most likely use. They would be allowed off premise sale of alcoholic beverages (no onsite consumption).

There was discussion regarding the parking spaces allowed for each use, and the NC zoning uses allowed versus the RP and the benefits of the zone change for this parcel and future uses allowed in that location.

**Public Hearing:** Vice Chair Wagner opened the public hearing and called for proponents or opponents of City Zone Change #935.

**Proponents**

Jeff Essmen, 3131 McMasters, applicant, said they have had interest from a number of national retail businesses for the location. He said RP zoning permitted offices, banks and daycare, and dry cleaning with a Special Review. He said he felt the change to NC would provide for more uses that would be appropriate for this neighborhood. He felt it would provide more options for the property.

Vice Chair Wagner asked if there was anyone else wishing to speak in favor or against Zone Change #935.

There was none.

Vice Chair Wagner closed the public hearing for City Zone Change #935.

**Motion**

**Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council of approval of City Zone Change #935 with the and Findings of Fact presented by Staff.**

**Discussion**

Vice Chair Wagner called for discussion on the motion. There was none.

**The motion to approve City Zone Change #935 carried with a unanimous voice vote, 3-0.**

**Item #3**-City Zone Change #936 – 1545 Hawthorne Lane – A zone change request from Residential 5,000 (R-50) to Residential Multi-Family-Restricted (RMF-R) on Lot 11, Block 1, of Caleb Park Subdivision, a 2.137 acre parcel of land. The applicant conducted a pre-application neighborhood meeting on April 7, 2015, at Lake Elmo State Park, 2300 Lake Elmo Road. Tax ID: D05362.

## **RECOMMENDATION**

The Planning Division recommends denial based on the findings of the 10 criteria for Zone Change #936.

## **Discussion**

Vice Chair Wagner called for questions and discussion from the members of the Commission.

Ms. Cromwell reviewed the valid protest requirements. She said there is receipt of a valid protest, two letters of opposition and one letter in favor of the proposed zone change.

The property was annexed to the city in 1984 and zoned R-70. The property received a zone change in 2005 from R-70 to R-50 prior to the subdivision of the property. The R-50 zoning allows single or two-family dwellings on lots of either 5,000 square feet or 8,000 square feet respectively. The R-50 zone also allows up to 40% lot coverage when most residential zones only allow 30% lot coverage. Most of the surrounding neighborhood is R-70 and has remained R-70 since zoning was adopted by the County in 1973. The property directly north, the 3Gs Convenience Store as well as the retirement home, received a zone change from R-70 to Neighborhood Commercial (NC) in 1978 and 1979. Further west at the intersection of Bench Boulevard and Wicks Lane, King Place Subdivision received a zone change from R-70 to NC and RMF-R in 2005.

Ms. Cromwell explained staff's recommendation of denial.

**Public Hearing:** Vice Chair Wagner opened the public hearing and called for proponents or opponents of City Zone Change #936.

## **Proponents**

**Wes Prouse, 5464 Pollyanna Drive, Shepherd;** said he is the applicant representing Emanuel Baptist church. He reviewed the information found in the City's Infill Policy and he felt the housing needs in that area would be appropriate for this zone change. He said this would be a big impact on the neighborhood and an acceptable improvement in the heights. He reviewed their proposal and the density of this project versus the surrounding area neighborhoods. He said he felt this would benefit the neighborhood.

Jens Selvig, Agent, said he had been supporting the church in giving them a broader use of the property. He reviewed the number of units (maximum 48) and how he felt that would be more than enough units for the growth in the area. He said they would probably not be all occupied at the same time. He then reviewed the proposed plans for the apartments. He indicated the plans for development would be to make the color and style closely match the area housing in an effort to make it fit what was in the neighborhood.

Commissioner Boyett said he felt there would be an issue with adequate parking for that number of units.

Mr. Selvig said each unit has a 1 car garage and one open spot, with each unit having two bedrooms he felt there would be more than enough on site parking.

There was discussion of the number of units proposed, color of the proposed buildings, parking, access and safety.

Ms. Cromwell clarified the site plan suggestion is not something we could review for a zone change. There specific criteria for review of a zone change application and a proposed development cannot be reviewed at this time.

Russ Palmer, 1545 Hawthorne Lane, said he felt this was an opportunity for the City to grow in this area. He felt this could a benefit for the area and would be better than current use for the duplexes they would be able to use it for now. He indicated he thought this would benefit the Heights area.

Vice Chair Wagner asked if there was anyone in attendance wishing to speak in opposition of City Zone Change #936.

### **Opponents**

**Tom Zurbuchen, 1747 Wicks**, said he felt the R-5000 zoning it had been approved for would be sufficient for this area. He reviewed the density and what the impact would be on the fire and police response for the area. He compared the development of this size to the Cherry Creek Subdivision and was concerned with the possible impact on the area as well as the school capacity. He said he was opposed to this proposed zone change.

Commissioner Ulvestad asked if Mr. Zurbuchen realized the zone change if approved may create a higher density but may also benefit low income housing.

Mr. Zurbuchen said he wasn't opposed to promoting low income, but indicated that he felt this zoning request would bring in a larger number of units than would be appropriate for this area.

**Wendy Irvine, 1543 Caleb Ct.**, reviewed some photos on her tablet with with the Commission, indicating parking on the street isn't currently an issue as they have stated. She talked about the crime and vandalism that has been recent on the lot. She reviewed the rear yard of the adjacent properties and felt that a two or three story development would not be aesthetically pleasing to the neighborhood. She said it would not be compatible with the homes in the area. She concurred with the other opponents.

**Terry Odegard 2101 Lake Hills**, said he is a member of Heights Task Force. He said he was familiar with building and contractors and understands the fact they want to get the maximum benefit and use of the property. He explained the professional that is investing in a property should buy understanding the limits of zoning and should keep that in mind for the development of the property. He reiterated this is not a good fit for the property and does not meet the criteria for development of the neighborhoods in the heights area. He concurred with the other opponents.

**Karen Tait, 1526 Hawthorne Lane**, reviewed the site plan and said she is disregarding the appearance or proposed plan for the property, the density and zoning would not be in the best interest of the neighborhood. She reviewed the proposed plan and the possible effect of the development. She said there is not sufficient lighting and sidewalk for the safety of the residents of the neighborhood currently and the surrounding subdivisions are primarily single family homes. She was also concerned about the road condition and potential impact of increased traffic.

**Virgil Middendorf, 1642 Natalie St.**, said he was concerned with the low end renters with the development proposed and how it would impact the neighborhood.

**Ernie Szillat, 961 Gold Dust Cir.**, said he owned the parcel across the street with the farm house on it. He has done some cleaning up of his property and had proposed building a duplex in the future. He was following what was allowed for the zoning and felt the proposed zoning would allow a development that would devalue his property.

**Pam Ellis, 2000 Outlook Dr.**, said she has been the chair of the Heights Task Force and agreed with opposition comments. She did not feel the school is would be able to sustain the amount of children that may

**Betty Martin, 1023 Victory Ave.**, said they bought their house in an area for single family dwellings. She said she felt the development under the current zoning would be sufficient and the possible rentals with the proposed development and change in zoning would lower her property value. She concurred with the other opponents. She said the laws are in place to protect the land and the land owners to live safely.

**Brad Bouchard, 1539 Caleb Ct.**, concurred with the other opponents. He said he did not feel the applicant would follow through and do the project as they are showing here regardless of the zone change to their favor. He felt the laws in place to protect the land were sufficient and the valid protest received against this zone change should be honored.

Ms. Cromwell clarified the valid protest requirements and that it would require a 2/3 vote of the City Council.

Vice Chair Wagner called for rebuttal.

### **Rebuttal**

Mr. Prouse said the consensus of these people were the same concerns they responded to in the other meetings. He said he would be doing the multi-family if the zone change is approved. However the church may propose something different and would likely develop the property even with the existing zoning. They were looking to do what would be the best benefit financially for a project. He indicated they would like to raise the bar for development of low income housing and this project would allow them to do that.

Vice Chair Wagner asked if there was anyone else wishing to speak in favor or against Zone Change #936. There was none.

Vice Chair Wagner closed the public hearing for City Zone Change #936.

### **Motion**

**Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council for denial of City Zone Change #936 based on the Findings of Fact presented by Staff.**

### **Discussion**

Vice Chair Wagner called for discussion on the motion.

Commissioner Ulvestad said he did visit the site and felt the existing zoning was sufficient for that property. He said it was important to leave the zoning as it is. He agreed it could devalue the property surrounding.

**The motion to approve City Zone Change #936 carried with a unanimous voice vote, 3-0.**

**Item #4** - City Zone Change #937 – 100 Emerald Drive – A City Council initiated zone change from Residential 9,600 (R-96) to Residential Professional (RP) on C/S 604 & Tract 2 of C/S 356 a 35,719 square foot parcel of land. The Council initiated the zone change on June 8, 2015 to correct a misclassification of the commercial property made at the time of annexation in June 1974. Tax ID: D05590.

The property owner was going to build a garage and discovered the property was not zoned appropriately when it was annexed in 1974. They did not receive any public comment with any of the adjacent property owners.

### **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 10 criteria for Zone Change #937.

### **Discussion**

Vice Chair Wagner called for questions and discussion from the members of the Commission.

**Public Hearing:** Vice Chair Wagner opened the public hearing and called for proponents or opponents of City Zone Change #937.

### **Proponents**

**Mike Schroeder, 4619 Bruce Ave.**, concurred with the staff recommendation asked the Commission for approval.

**Ernie Szillat, 961 Gold Dust Cir.**, said he was in favor of the zone change and felt it would be a benefit to the property owner and would not adversely affect the neighborhood.

**Opponents**

There was none.

**Motion**

**Commissioner Ulvestad made a motion and Commissioner Boyett seconded the motion to forward a recommendation to City Council of approval of City Zone Change #937 with the and Findings of Fact presented by Staff.**

**Discussion**

Vice Chair Wagner called for discussion on the motion.

There was none.

**The motion to approve City Zone Change #937 carried with a unanimous voice vote, 4-0.**

**Other Business:**

Nicole Cromwell announced the next meeting is scheduled for August, 2015 with two zone changes pending for this meeting.

**Adjournment: The meeting adjourned at 6:05 p.m.**

**ATTEST: APPROVED BY A MOTION**

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**Dan Wagner, Vice Chairman**

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**Karen Husman, Planning Assistant**