

**City of Billings Zoning Commission
Meeting Minutes April 5, 2016**

The City of Billings Zoning Commission met on Tuesday, April 5, 2016 in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North, Billings, Montana

Vice Chairman Wagner called the meeting to order at 4:30 p.m. The City Council has designated **Monday April 25, 2016 or May 9, 2016** 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		01/05/2016	02/02/2016	03/01/2016	04/05/2016	05/03/2016	06/07/2016	07/05/2016	08/02/2016	09/06/2016	10/04/2016	11/03/2016	12/06/2016
Dan Wagner	Chairman	1	1	-	1								
Dennis Ulvestad	Commissioner	1	1	-	1								
Mike Boyett	Vice Chairman	E	1	-	1								
Michael Larson	Commissioner	1	1	-	1								
James Mariska	Commissioner	1	1	-	1								
Candi Millar	Director, Planning & Community Services	-	-	-	-								
Wyeth Friday	Division Planning Manager	-	-	-	-								
Nicole Cromwell	Planner Zoning Coordinator	1	1	-	1								
Tammy Deines	Planning Clerk	-	-	-	-								
Dave Green	Planner II	1	-	-	-								
Karen Husman	Planner I	1	1	-	-								
Robbin Bartley	Administrative Support	1	1	-	1								

Total Number of 2016 Applications	01/05/2016	02/02/2016	03/01/2016	04/05/2016	05/03/2016	06/07/2016	07/05/2016	08/02/2016	09/06/2016	10/04/2016	11/03/2016	12/06/2016	TOTAL
Zone Change	1	0	-	1									2
Special Review	2	1	-	4									7

Chairman Wagner introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator; Robbin Bartley, Administrative Support.

In Attendance:

James Ouren, Tracy Scott, Glen Korf, Frank Dahl, Bruce Harper, Barb Harper, Tamara Zaccardi, Jerry Voto, David Ryckman, Cheryl Ryckman, Peg Guhn, Karl Guhn, Dave Hawkins, Barbara Hawkins, Sean Johnson, Bill Felton, Duane Hankel, Mary Bonawitz, Monty Bonawitz, Stewart Kirkpatrick, Mike Ferguson, Dick Collum, Ken Peterson, Tony Vega, Kim Olson and Rick Leuthold

Public Comment

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

Approval of Minutes: February 2, 2016

Chairman Wagner called for approval of the February 2, 2016 meeting minutes.

Motion

Commissioner Larson made a motion and Commissioner Boyett seconded the motion to approve the February 2, 2016 meeting minutes as submitted.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner	x			
Mike Boyett	x			
Dennis Ulvestad	x			
Mike Larson	x			
James Mariska	x			

The motion for approval then carried with a unanimous voice vote 5-0.

Chairman Wagner advised the public attendees of the waiting period involved before the hearing of **Special Review #941.**

Disclosure of Conflict of Interest

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner		x		
Mike Boyett		x		
Dennis Ulvestad		x		
Mike Larson		x		
James Mariska		x		

Vice Chairman Wagner called for disclosures of conflict of interest. There were none.

Disclosure of Outside Communication

Chairman Wagner called for disclosure of ex parte communications. Nicole disclosed a letter received after the staff report was completed on the first Agenda item Zone Change #946 and also for Special Review #941. These letters can be reviewed in the ex parte notebook located at the sign in sheet.

Public Hearings:

Chairman Wagner reviewed the rules and the procedures for public hearings, and asked Nicole Cromwell to review the first agenda item. Nicole Cromwell presented:

City Zone Change #946 – 3122 Lynn Avenue – R-96 to R-70 – A zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 11, Block 9, Central Acres Subdivision, 5th Filing, a 10,417 square-foot parcel of land. A pre-application neighborhood meeting was held on February 10, 2016 at the Sunset Bowl, 1625 Central Avenue. Tax ID: C01867A

RECOMMENDATION

The Planning Division has reviewed the proposed zone change and is recommending approval based on the findings of 10 criteria for zone changes. The proposed zoning gives consideration to the surrounding neighborhood character and is compatible with the existing and proposed uses in the area. The neighborhood has a mixture of housing choices and a two-family dwelling will not be out of character for this area. The proposed zoning is supported by the city's Infill Policy by making the most efficient use of land where incremental density is appropriate. The proposed zoning allows either single family or two-family dwellings by right but does not allow multi-family dwellings (3 or more attached units). The value of adjacent property will be enhanced by any new construction. Two off street parking spaces are required for each newly constructed dwelling unit. The proposed zoning allows the construction of 2 dwelling units whether attached or detached. Construction as townhomes will add the most property value and would allow purchasers to use traditional financing. The townhomes and duplexes in the immediate area are well-maintained and fit in well with the adjacent single family dwellings.

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would allow an undeveloped lot to be developed with either a single family dwelling or a two-family dwelling. The zoning code allows the owner to attach or detach the two dwelling units or to construct the dwelling units as townhomes. The zoning district is compatible with the neighborhood character and land use patterns.

- The Infill Policy encourages development of vacant property within the city limits with emphasis on housing choice and efficient use of existing city infrastructure and services. The proposed zoning will allow housing choice, and will make more efficient use of city infrastructure.

2. *Is the new zoning designed to secure from fire and other dangers?*

The new zoning requires minimum setbacks, and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

3. *Whether the new zoning will promote public health, public safety and general welfare?*

Public health and public safety will be promoted by the proposed zoning. Development of the vacant land in the city will promote the public health and safety of the adjacent residential neighborhood by providing full development along the 3100 block of Lynn Avenue. Vacant lots tend to detract from adjacent property value and serve as a cut through for pedestrian traffic.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning and subsequent development will not have an impact on Lynn Avenue. Off street parking must be provided at the time of construction as well as completion of the street improvements such as sidewalks.

Water and Sewer: The City will provide water and sewer to the property. There is an existing sewer stubbed into the property from the alley. A water service connection will need to be constructed from Lynn Avenue to the new dwelling(s). There should be no additional impact to the system from the proposed zoning.

Schools and Parks: There may be a limited impact to schools from the proposed zone change. Residential development is an allowed use in both the current zoning and the proposed zoning.

Fire and Police: The subject property will be served by city public safety services. The Public Safety departments have no concerns with the zone change.

5. *Will the new zoning provide adequate light and air?*
The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The setbacks, lot coverage and building height are the same for the existing and proposed zoning districts.
6. *Will the new zoning effect motorized and non-motorized transportation?*
The new zoning may have a minor effect on vehicle and pedestrian traffic. A single family dwelling in general generates 8 to 10 traffic trips per day. This traffic includes trips by the dwelling occupants as well as service traffic trips such as mail delivery.
7. *Will the new zoning will promote compatible urban growth?*
The new zoning does promote compatibility with urban growth. The proposed zoning will allow residential uses with an efficient density.
8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*
The proposed zoning does consider the character of the district and the suitability of the property for a mix of housing types in the neighborhood.
9. *Will the new zoning conserve the value of buildings?*
The property is currently vacant. The value of existing buildings will increase when the property is developed.
10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*
The proposed zoning will permit residential dwellings of similar type and density as the surrounding neighborhood and is the most appropriate use of land at this location.

There are enough persons in opposition for a Valid Protest to be considered. This only effects the City Councilman voting requirements.

Nicole further advised the Board of the 3 criteria used to allege Illegal Spot Zoning. According to the MT Supreme Court – 3-prong test

1. Requested use is significantly different than prevailing use in the area
Requested use is for 2 dwelling units. Prevailing use in the area is residential single family, two-family, multi-family, and neighborhood retail services. Requested use is not significantly different.
2. Is the area for the requested use small (e.g. number of owners benefited)?
The area requested is small and benefits the owners of the property.
3. Will the requested use benefit only 1 owner and be a detriment to the surrounding owners?
The property owner will benefit but it will not be a detriment to surrounding property owners. New construction improves property values for surrounding homes. Mid-block vacant properties tend to create uncertainty in neighborhoods.

This neighborhood is 75 percent owner occupied. The average Billings neighborhood is 60 percent owner occupied. If these units were both rentals the average in this neighborhood would then be 65 percent and still above average owner occupied in Billings.

Based on these criteria The Planning Division recommends approval and adoption of the findings of the 10 criteria for **Zone Change #946**.

Discussion

Chairman Wagner called for questions and discussion from the members of the Commission. Commissioner Ulvestad asked Nicole where this is in regards to St. Johns Avenue. Staff replied St John's is one block north and one block east.

Commissioner Larson asked about R-96 zoning. Staff indicated only single family dwellings are allowed.

Mr. Gerry Voto interjected why there is a 4 plex at the end of the block. A discussion ensued regarding zoning in the area. Chairman Wagner then requested the conversation stop and allow the applicant to present.

Mr. Voto argues the information presented is incomplete. He states her (Nicole's) office is for "this thing". He states she is not giving the Commission all the information they need and he needs more than 3 minutes to explain all the deficits involved in this. Chairman Wagner assured Mr. Voto he will be given a chance to speak.

Applicant/Agent

Chairman Wagner asked for presentation by the applicant.

James Ouren, 590 Garden Ave, Billings, Mt, 59101

He bought the property 7 years ago. He has had no one interested in building a single family residence because the neighborhood is older. He has had many persons inquire to build townhouses, duplexes or the like. He stated this is a classic infill situation for the City of Billings.

Commissioner Ulvestad stated he has looked at property and is concerned about the traffic and parking.

Mr. Ouren assured him each unit will have 4 off-street parking slots. The access to the property will be blocked off on the alley side.

Public Hearing:

Chairman Wagner opened the public hearing and called for proponents or opponents of **City Zone Change #946**.

There were no proponents.

OPPONENTS

Frank Dahl, 3134 Lynn

Mr. Dahl expressed his concern about rentals and the problems they bring.

Bruce Obanion, 3121 Lynn

Mr. Obanion stated no one is in favor of a multi-family dwelling right in the middle of the block and also stated he believes a single family dwelling would sell there.

Gerry Voto, 3128 Lynn

Mr. Voto is also concerned about multi-family dwellings and wants no more rentals in the neighborhood. Commissioner Larson asked how long Mr. Voto has lived there. Mr. Voto has lived there since 1996. Commissioner Mariska asked if he would have bought it with a duplex next door. Mr. Voto replied he was unsure.

Rebuttal

Mr. Ouren feels he could not make money if he built a single family dwelling. Mr. Voto then challenged Mr. Ouren regarding how much he was asking for the lot and how much money he needed to make. Chairman Wagner took charge of the meeting to defuse the situation.

Motion

Commissioner Boyett made a motion to recommend denial and Commissioner Ulvestad seconded the motion. Staff requested Mr. Boyett to clarify the motion to include findings of the 10 review criteria that supported a motion of denial for **City Zone Change #946**.

Commissioner Boyett stated he believes it is inconsistent and incompatible with the neighborhood and therefore does not meet the illegal spot zoning criteria. Nicole reminded the Commission the 10 criteria are the criteria necessary for making their decision.

Commissioner Larson made a substitute motion to approve **City Zone Change #946**. Chairman Wagner says the motion to deny did not go forward because he had no second. Commissioner Ulvestad then stated he seconded the motion. Commissioner Larson stated his reasoning for making a substitute motion explaining every zone change deserves an affirmative motion and it is less confusing as to what is being voted on. Commissioner Larson’s substitute motion died for lack of a second.

Discussion

Chairman Wagner called for discussion on the motion.

Chairman Wagner called for a roll call vote.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	x			
Mike Boyett	x			
Dennis Ulvestad	x			
Mike Larson		x		
James Mariska	x			

The motion to deny carried with a roll call vote, 4-1 in favor of the motion to recommend denial.

Public Hearings:

Chairman Wagner asked Nicole Cromwell to review the next agenda item. Nicole Cromwell presented:

City Special Review #936 – 401 N 17th St – Verizon Wireless 50-foot monopole – A special review request to allow the location of a 50-foot monopole support structure for new Verizon Wireless communication antennas in an EBURD-Central Works (EBURD-CW) zone, on Lots 18-24, Block 19, Billings Original Town, a 1,335 square foot lease on a 24,500 square foot parcel of land generally located at 401 N 17th Street. Tax ID: A00087.

RECOMMENDATION

The Planning Division recommends conditional approval.

PROPOSED CONDITIONS

1. The special review is limited to Lots 18-24, Block 19, Billings Original Town generally located at 401 North 17th Street.
2. The special review approval is for the location of a wireless communication facility and no other use is intended or implied.
3. The applicant will meet the required zoning code, EBURD-CW, for fences, walls, and all other codes apply at the time of construction.
4. The monopole will be constructed with a non-reflective material to eliminate glare.
5. The proposed ‘New Verizon Outdoor Generator’ shall be a ‘Whisper Quiet Generator’ to eliminate loud generator noises in the area.
6. No construction or demolition activity will occur before 7 am or after 8 pm daily.
7. 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.
8. 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 apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out the use and development of the property must be in accordance with the submitted site plan.

Discussion

Chairman Wagner called for questions and discussion from the members of the Commission. Chairman Wagner asked about the size of the monopole and staff explained it is the leased portion not “least”. Commissioner Boyett asked about the pole on the rims. Staff replied stating this is a private carrier and only provides data transfer. He then asked regarding the anticipation of more towers coming to the area. Nicole stated the agent is here and willing to answer these questions

more effectively. Commissioner Mariska asked how many are there or would be allowed in this particular area. Nicole explained there are no limitations other than any pole over 50 feet is required to have a one mile separation. He is concerned about many similar towers being in this area. Staff explained the construction of more towers less than 50 feet would have to meet zoning requirements and could not be placed just anywhere. They are controlled by the FCC and are licensed. A 50 foot or less tower is not required to provide co-location from other carriers.

Applicant/Agent

Chairman Wagner asked for presentation by the applicant.

Kevin Howell, Verizon agent

Mr. Howell stated there are more poles coming. The data usage is in high demand and therefore more towers are needed. One half of people nationally do not have a landline. People are wanting to drive anywhere with instant and constant access to wireless capabilities. It is a necessary infrastructure for development. The areas of intersections, hospital and schools are mass users of data. Verizon typically makes their poles capable of accepting a second carrier or co-location. Commissioner Ulvestad asked if there are plans to put more towers in this area. Mr. Howell does not know of any more in this area however, as this re-develops, it may be necessary to add additional poles to satisfy the data usage demands.

Public Hearing:

Chairman Wagner opened the public hearing and called for proponents or opponents of **City Special Review #936. There were none.**

Motion

Commissioner Larson made a motion and Commissioner Boyett seconded the motion to recommend conditional approval based on the findings of the 3 review criteria for **City Special Review #936 with staff conditions.**

Discussion

Chairman Wagner called for discussion on the motion. There was none.

The motion carried with a verbal vote, 5-0.

Public Hearings:

Chairman Wagner asked Nicole Cromwell to review the next agenda item. Nicole Cromwell presented:

City Special Review #939 – 4910 Southgate Drive – Add 2 outdoor patios and 4,000 square feet of retail space – A special review request to add 2 outdoor patios and 4,000 square feet of floor area to an existing restaurant and casino in an Entryway General Commercial (EGC) zone, on Lot 1A, Block 1, Geysers Park Subdivision, a 3.125 acre parcel of land. Tax ID: A28409.

RECOMMENDATION

The Planning staff is recommending several conditions of approval to mitigate the likely impacts of the addition and the outdoor patios on this property. Outdoor patios have been used in other locations for staging outdoor concerts and events so it is reasonable to limit these uses in close proximity to the hotels in the area. The liquor store is an allowed use so mitigation of this addition will be limited to the appearance of the building addition and access to the new building.

PROPOSED CONDITIONS:

1. The special review is limited to Lot 1A, Block 1 Geysers Park Subdivision generally located at 4910 Southgate Drive.
2. The special review approval is for the addition of 2 outdoor patios; 1 at 1,300 square feet and 1 at 1,500 square feet; and for the addition of 4,000 square feet to the existing 12,000 building where an all beverage license with gaming is currently located. No other use is intended or implied.
3. Any expansion of the outdoor patios greater than 280 square feet or a building addition greater than 1,600 square feet will require additional special review approval.
- 4.
5. All exterior lighting, including security lighting, shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the outdoor areas shall be 20 feet above grade. Entryway lighting shall be recessed lighting so no part of the lens or fixture projects below the entrance canopy.
6. The outdoor patios are allowed to have background music when the patios are open for use by patrons. Background music may be amplified or non-amplified but should not be audible more than 25 feet from the outside of the patio.
7. Each patio shall have a surrounding fence at 42 inches in height and an exit gate to a sidewalk or adjacent paved area. No entry through the exit gate is allowed and each patio may only be accessed through the building or entry vestibule.
8. There shall be no outdoor announcement system whether permanent or temporary on any part of the property. No outdoor area shall be used for any event where amplified sound systems are in use.
9. The owner will provide bicycle parking for up to 6 bicycles on the west side of the building and for up to 4 bicycles on the north side of the building addition to the east. The racks selected and spacing required shall be as recommended by the City of Billings Bicycle Parking Guidelines.
10. The 4,000 square foot addition to the building shall be complementary in color and design to the existing and remodeled building.
11. Any centralized solid waste storage shall be enclosed by a wall on three sides and a closing gate or gates on the fourth side. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
12. 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.

13. 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.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 review criteria for **Special Review # 939**.

Discussion

Chairman Wagner called for questions and discussion from the members of the Commission. Commissioner Mariska asked where the handicap parking is located. Nicole replied she does not administer the parking code for the City of Billings. She assured the Commission that City Engineering would review this specifically when a building permit is applied for. Staff indicated where bicycle parking would be requested. There are 2 spaces on the addition and 4 spaces on the west side. Commissioner Boyett talked about neighbors and the 25 foot limitation for music. How do we determine the 25 foot limit? Nicole replied these concerns are complaint based, and upon response to such a complaint the owner would be contacted and reminded of the conditional approval. Chairman Wagner asked about adjacent hotels and noise. He specifically questioned what time of day is the music allowed. Nicole explained about the different uses involved such as seasonal or weather differences. Again, she emphasized the complaint based system and how the situations are addressed. Commissioner Ulvestad asks about additions and why the square footages are different.

Applicant/Agent

Chairman Wagner asked for presentation by the applicant.

Barbara Hawkins, 3307 Grand Ave, Billings, Mt

The things requested in November of 2015 did not have a complete site plan and therefore were incomplete. Now they are back and need 4000 sq. feet to add a liquor and convenience store. She explains patio the different sizes based on the location and entrances on the property in question. She is aware of the sound restrictions. No amplified music is allowed.

Commissioner Mariska asked if a study was done regarding the demand for liquor sales and whether this driving the addition of a liquor store. She explains about the Bayou Casino co-ownership and he sells a lot of packaged liquor out of the Casino. They are trying to cater to the hotel occupants. Sean Johnson, owner of the Bayou, talks about the convenience store integrated with alcohol sales and said there are no State liquor stores in the vicinity. Travelers may want a bag of chips for their travels.

Sean Johnson, 4910 Southgate Blvd, Billings, Mt

He spoke about the relationship with the local hotels, there are no good sit down restaurants in the area and he wants the relationship to be very civil. They will definitely be compliant to noise limitations. He may be offering room service. There will be smoking and non-smoking patios with the same services offered. The traditional liquor store will help fund the large building expense. Commissioner Mariska states this will be the closest liquor license to the Crow reservation. Sean replied he thinks it is a 45 minute drive to Crow Reservation. Commissioner Mariska states it is only 8-10 miles to the border. He asks what are the hours to be and Mr. Johnson replied 8am – 2am. Commissioner Ulvestad inquired as to the entrances to the restaurant and liquor store. Mr. Johnson points out the entries with pass-throughs, because the State requires the uses to be all under one roof. Commissioner Ulvestad confirms they did qualify for more parking spaces.

Public Hearing:

Chairman Wagner opened the public hearing and called for proponents or opponents of **City Special Review #939**. There were none.

Motion

Commissioner Ulvestad made a motion to recommend conditional approval and Commissioner Boyett seconded the motion.

Discussion

Chairman Wagner called for discussion on the motion.
Vice Chairman Wagner called for a vote.

Commissioner Mariska asks the parties to recognize the closeness to the Crow Reservation.

The motion carried with a verbal vote, 5-0.

Public Hearings:

Chairman Wagner asked Nicole Cromwell to review the next agenda item. Nicole Cromwell presented:

City Special Review #940 – 116 N Broadway – Add seasonal outdoor patio – A special review request to allow the addition of a 320 square-foot outdoor patio on the public sidewalk adjacent to Doc Harper’s in the Central Business District (CBD), on Lots 7-12 and a fraction of Lot 6, Block 93, Billings Original Town, Unit 2 of the Babcock Building. Tax ID: A00642B

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 review criteria for **Special Review # 940**.

PROPOSED CONDITIONS:

1. The special review approval shall be limited to Unit 2 of the Babcock Building located on Lots 7 through 12 and a fraction of Lot 6, Block 93, Billings Original Town generally located at 116 North Broadway.
2. This special review is to allow the installation of a temporary outdoor patio of 320 square feet on the public right-of-way directly adjacent to the business.
3. The installation of the temporary outdoor patio will not occur before May 1 of each calendar year and shall not remain in place after October 31 of each calendar year.
4. The installation of the temporary outdoor patio shall not occur in any calendar year unless an Encroachment Permit has been issued by the City Engineering Division and a signed Memorandum of Understanding with the Parking Division is in place to off-set the loss of the 3 on-street diagonal parking spaces.
5. The installation of the temporary outdoor patio shall be in substantial conformance with the site plan submitted with the application including materials and the general location of benches, temporary sidewalks, and seating areas.
6. There shall not be any outdoor amplified music, announcement system or music system broadcast on the patio after 8 pm daily. Background music is allowed before 8 pm.
7. No signs, banners, or placards shall be posting on the fencing or benches.
8. Temporary planters or barriers will be placed at the top of the 3 on-street diagonal spaces to prevent vehicle parking against the benches and planters adjacent to the temporary walkway. The temporary planter or barrier design and placement will be determined by the City Engineering Division.
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.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

Discussion

Chairman Wagner called for questions and discussion from the members of the Commission. Chairman Wagner asked about the height of the barriers at each end of the enclosure. The Department of Revenue requires it be at least 42 inches. Commissioner Mariska asked if staff would have recommended approval if the request would have been for year round usage. Nicole talked about all the advance work with the parking department would have needed to be done as a result of lost revenue from 3 parking spaces. Commissioner Mariska asked who set the 6 month criteria? The 6 month criteria was conveyed to Nicole by City Engineering. Mr. Harper had worked through this with them. Chairman Wagner asked about the temporary sidewalk and the hot asphalt below it. Part of the proposed sidewalk will set on the concrete curb and gutter. The sidewalk will be made of composite decking and there will not be a step down therefore complying

with ADA requirements. Commissioner Boyett asked if it all goes away at the end of the season October 31. Staff stated the patio materials would all be removed on or before October 31. Commissioner Boyeet asked what is the average income of parking meters in this area. Planning staff pointed out Tracy Scott, Parking Manager, is here and is best able to answer these questions. Commissioner Ulvestad voiced the same question.

Applicant/Agent

Chairman Wagner asked for presentation by the applicant.

Bruce Harper, owner, 3306 McDonald, Billings, Mt 59101

Mr. Harper is the owner of Doc Harper's and is surrounded by competition on all sides with outside patios. A similar patio is needed to compete with other local establishments. He state they are requesting a 16x20 foot patio area. The walkway will be constructed of 2x8 wood covered with a rosin. He stated the parklet is being utilized as the buffer. The plans for the parklet are considered consistent with the area and have been welcomed with a recommendation for approval. There are two conditions he has not yet secured. Mr. Harper has been working with Tracy Scott regarding the lost parking and lost revenues. They are in negotiations and are confident a solution will be found. The figure is \$1395.00 in projected lost revenue. The music restriction condition is a concern. Montana Brewing to the east does not have the same restrictions. Mr. Harper requests to be able to continue BACKGROUND music until 10pm. All of his permits are under review for this. Chairman Wagner asked about the music late into the night. How loud is background music? MR Harper is aware there is a decibel limit in the city. He state Doc Harper's closes at 12am and is a responsible liquor establishment. Commissioner Ulvestad asked what are the hours. Mr. Harper stated 4pm-12am but Saturday's hours are going to be reconsidered.

Public Hearing:

Chairman Wagner opened the public hearing and called for proponents or opponents of **City Special Review #940.**

Mike Matthews, partner, 115 North Broadway, Billings, Mt 59101

Mr. Matthews stated residents in this area do not live downtown to experience quiet. Residents live there for an active downtown. They are well aware of downtown life ant what to expect. He invites people to explore North Broadway in the evening and see the vast number of things going on.

Tracy Scott, Parking Manager, City of Billings

Ms. Scott, stated she is certainly in support of enhancing the downtown area. "Parklets" are new to Billings and therefore new to the Parking Division. She is concerned about setting a precedent and having a policy in place for the next request. She wants the loss in parking revenue to be fair for the business owner and the City of Billings.

Commissioner Boyett asked if she has seen a parklet anywhere before. She believes she has seen a parklet before and she has heard they exist in Kalispell. She also stated they (parklets) are the up and coming thing. She has viewed them in magazines. In some areas people do YOGA all day in

the parklet. Commissioner Boyett asked about ADA requirements for people with walkers, canes, etc. All ADA requirements would be met. The existing parking meters would be removed. Tracy was concerned about parking for those displaced parkers. Mr. Harper was able to find 10 minute zones being abused and may be able to be transferred to 2 hour meters.

Commissioner Larson asked if the 10 minute zone meters were loading zones. Tracy indicated they are pick up zones but are not being used correctly. Mr. Harper has found 3 of these in the immediate area and they may well serve in place of the 3 being removed for the parklet.

Commissioner Ulvestad asked Mr. Harper about his neighbors to the right and to the south and how they feel about this proposed change. Mr. Harper said they are all in favor. Commissioner Boyett asked Nicole about the 25 foot noise restriction on the previous Special Review. It seems to be inconsistent with this proposal. Ms. Cromwell state the difference is the location. Because it is downtown with up 24 hour a day noise it would be a difficult restriction to craft. Commissioner Mariska asked how you square this with the noise coming from the interstate. Nicole reminds the Commissioners it is just the staff recommendation and they are free to modify the conditions as requested or as needed. Commissioner Ulvestad asked if the Parking commission would be required to meet in a special forum regarding the parking meters and spaces. Ms. Scott stated the requirement is to reach a Memorandum of Understanding with the Parking Division. If the Harpers are unable to do this, the parklet will not happen.

Mr. Harper asked the Commission please consider a 10pm restriction verses 8pm for background music.

Chairman Wagner expresses 8pm is a good hour Commissioner Larson says he lived downtown for a reason. He enjoyed the business and active area. The noise is not a problem.

Motion

Commissioner Larson made a motion to recommend conditional approval with the exception of condition #6, and to change it to 10pm. Commissioner Ulvestad seconded the motion.

Discussion

Chairman Wagner called for discussion on the motion.

There was none.

Chairman Wagner called for a verbal vote.

The motion carried with a verbal vote, 5-0.

Chairman Wagner announced a brief break.

Chairman Wagner asked Nicole Cromwell to review the next agenda item. Nicole Cromwell presented:

City Special Review #941 – 54th St West at Trail Creek Drive – LDS Meetinghouse – A special review request to allow the construction of a new church in a Residential 9,600 (R-96) zone on a 4.03 acre portion of an 89.98 acre un-platted parcel of land described as the N1/2NE1/4, SWNE1/4 in Section 31, Township 1 North, Range 25 East. A concurrent annexation of the 4.03 acre parcel has been submitted. Tax ID: D04647.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 review criteria for **Special Review #941**.

PROPOSED CONDITIONS:

1. The special review approval is for the construction of an LDS Meetinghouse of 16,558 square feet with a future addition of 2,510 square feet and a 191-space parking lot.
2. The approval is limited to a 4.03 acre portion of an 89.98 acre un-platted parcel of land described as the N1/2NE1/4, SWNE1/4 in Section 31, Township 1 North, Range 25 East as shown on the submitted site plan.
3. Increases in the size of the meetinghouse and its future addition or the number of parking spaces by more than 10% of what is shown will require an additional special review.
4. The site will be developed in substantial conformance with the submitted site plan. Minor modification are acceptable.
5. The applicant will provide a screening wall around each mechanical pad as shown on the site plan to reduce noise and provide continuity with the adjacent building. The screening wall will be compatible in color and materials to the adjacent building.
6. All outdoor light fixtures shall be no taller than 15 feet from grade and have full cut-off shields so no part of the fixture or lens projects below the shielding. Entryway lights shall be recessed within the ceiling of the canopy so no part of the fixture or lens projects below the ceiling.
7. The landscaping including the enclosures for the dumpster, satellite dish and power transformer shall be installed as shown on the submitted site plan. The enclosures shall be constructed of similar or complementary materials as the church. No reflective building materials shall be used for the enclosures.
8. There shall be no construction activity after 8 pm or before 7 am daily.
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.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

Discussion

Chairman Wagner called for questions and discussion from the members of the Commission. Commissioner Larson asked if the traffic concerns and updates are outside of this Commission's zoning purview. Ms. Cromwell stated those conditions may be included in the annexation process, or possibly as part of the building permit. Commissioner Larson asked about SD2 owning the property to the South. Ms. Cromwell stated it was owned by SD2, but is not any longer. It now belongs to the City, to be Cottonwood Park and is waiting on funds for improvements and site development.

The plans indicate this new building to be 24 feet high, with the exception of the steeple at 64 feet high.

Commissioner Boyett asked if there will be required landscaping on 54th and whether this is different than any other. Ms. Cromwell stated it will be standard landscaping requirements for a non-residential use in a residential area. What is maximum height of house if built? The maximum house height is 34 feet, plus 10 percent if your roof pitch is greater than 7/12. How close is the entrance to the meeting house to the entrance of Mont Vista. Good traffic planning looks as if it is directly across. What are the hours of usage of this facility. Ms. Cromwell stated Mr. Nielson has all those specifics and will address them when he testifies. Commissioner Ulvestad asked if there would be any turning lanes? Ms. Cromwell answered it might be possible in the future, depending on the growth in traffic volume. Traffic issues may be addressed if they are known at the time of zoning. Right now a traffic study has been submitted and not yet been approved or accepted by the city traffic engineer. A citizen requests a Google view of this area because he finds it odd the presentation included every direction except the direction of the homes directly affected. Ms. Cromwell points out the "empty lot" at the edge of Sweetgrass Lane is currently subdivided but is not yet built.

Applicant/Agent

Chairman Wagner asked for presentation by the applicant.

Scott Nielson, Architect, 990 John Adams Parkway, Idaho

Mr. Nielson brought some presentation boards of proposed structures. The proposed building is very similar to the existing LDS building on Monad. If growth is sufficient, office spaces would be necessary. There will be 3 wards meeting on Sunday. The hours of use would be 9-12, 11-2, 1-4. Commissioner Ulvestad, how many stakehouses in this building. Mr. Nielson stated if the congregation grows the building could become one stakehouse.

The landscaping of 4 acres was sufficient but City Engineering advises more area for stormwater control. A Surrounding Property Owners meeting was held. There were 10 attendees. The West End Task Force and Rimrock Neighborhood Task Force were invited but did not attend stating they had no interest. Lighting is not on the exterior of the building and is spot. Regarding the lighting, an 18 foot light is standard but they are willing to use a 15-foot. They do not wish to over light the area. The lights are on timers at the entry way and go on at dusk and off at dawn. The parking lot lights go on at dusk and turn off at 11pm.

Commissioner Larson asked about landscaping. Specifically the northern section along Trail Creek. The types of trees were in question. Deciduous trees, 2 trees every 40 feet, will be planted.

This site presents the best availability and meeting of City conditions. Please consider our attempt to meet earlier conditions.

Blaine Poppler, 5403 King Ave West, Billings, Mt

Mr Poppler is the realtor and agent for Bruce Carlson who helped the LDS church to find a piece of property to meet the requirements of the church and the city. Mr. Poppler pointed out the distance between homes and the new meeting house being 450 feet. He also addressed the use of a gravel road. 10 sites were reviewed in Billings and this site was selected to meet the LDS Church needs and the cities stated concerns with the previous site.

Tamara Zaccardi, Annandale Road

Ms. Zaccardi stated she serves in the church in public affairs and community outreach. Her argument is the LDS church is a good neighbor. The property is well maintained. Good things will happen and bring good things to the neighborhood. Up to 900 persons would receive the good as a result.

Chairman Wagner asked if the contractors hired for construction will be local. She replied this has not been considered yet but local contractors would certainly be encouraged.

Ken Peterson, Attorney

Mr. Peterson stated he was the co-chairman when the LDS Temple was approved in 1997. He stated this will be a quality building with all promises kept and well maintained. Traffic should not be a problem. There are none at the temple and should not be any here. The traffic study will deal with the traffic issue.

Commissioner Mariska inquired about the size of the LDS building at Ave D and 6th. This is a 300 person capacity building. He then asked what size the LDS meetinghouse at Belvedere is. Mr. Peterson stated it is a stake center with a 1200 person capacity.

Stewart Kirkpatrick, 5930 Canyon Drive, Billings, MT

Mr. Kirkpatrick stated this is a mixed use area now. The meeting house has a good community purpose and presence.

Rick Leuthold, Sanderson Stewart

Mr. Leuthold stated the traffic study indicates no need for additional turn lanes or deceleration lanes. Contributions to nearby intersections are inevitable. LDS will be responsible for frontage improvements. He stated while it is not possible to prevent neighborhood traffic through the county gravel roads it is not likely. As a professional, an avoidable impediment on 54th would probably push traffic to gravel at 58th. Building height is a concern. The grade differential is addressed to the south. He speaks from a technical standpoint.

Opposed

Carl Gunn, 5435 Sweetgrass Drive

He is very concerned about the traffic and dust on Sweetgrass Drive. The vacant area is not developed and there is a considerable amount of wildlife in the area and enjoyed by the neighborhood. Why not build the church at 54th and Grand there are 8 acres of CC zoning there? He contends there are better sites. He is a Lutheran pastor and is sympathetic to the neighborhood and the struggles of church siting.

Monty Bonawitz, 5513 Sweetgrass Drive

Mr. Bonawitz stated his house faces the church. He is concerned about the traffic flow. Being 58th will take you to Grand Ave he is concerned people will use the gravel road for egress. He submitted a copy to each commissioner of a petition against the LDS meeting house. He suggests 2 residences are on septic and the drain fields exist across the road. Traffic from the church on Sweetgrass Creek may damage these drainfield connections

Dave Ryckman, 5415 Sweetgrass Drive

Mr. Ryckman stated he is concerned about his view. He likes the wide open space and wildlife, commenting several times about the albino deer "Abby".

Glen Korf,

Mr. Korf stated this is a commercial development. A 16,000 plus building is not complimentary to the single family area. He has no objections to a LDS meeting house but his preference would be an LDS meeting house someplace else. He stated if this is approved the applicant should be required to improve Sweetgrass Creek Road as well. Commissioner Larson asked if his home is located in the county. Mr. Korf stated he is a county resident. Commissioner Larson confirmed Sweetgrass Creek is a county road. Mr. Korf stated during the annexation Trail Creek would be included in the annexation. He asked the Commission to place a condition on the approval requiring the church to improve the county roads in their subdivision.

Bill Felton, 5427 Sweetgrass Drive

We have a nice neighborhood with a single family residential area. He feels a commercial area added here could affect property values in the future.

Rebuttal

Mr. Nielson provided rebuttal testimony. He stated Sunday will have the most use. There will be occasional boy scouts and other events such as wedding receptions, and youth programs with 3 different age groups. The weekday activity is minimal. Mr. Nielson has 45 years in the business as an architect for the LDS Church. All of the LDS buildings are in residential areas. There is opposition whenever a new LDS Church is proposed. Mr. Nielson asked the Chairman for a 5 minute work session. Chairman Wagner allows 5 minutes. During the work session Mr. Nielson asked Ms. Cromwell to present the site plan so he may propose some solutions. One solution may be to ask the LDS Church to consider moving the building further south, so they could have 2 accesses on 54th St West and close the one on Trail Creek Drive. Ms. Cromwell reminded Mr.

Nielson about the required 600 feet of street frontage for 2 accesses on an arterial street. Commissioner Larson says he hears the concerns and they need to be ready to address the City Council. Churches are seen as an enhancement not a detriment to a residential area. A surrounding property owner asked why not build down the road where it is already City and properly zoned. Commissioner Larson stated the Zoning Commission has the ability to say yes or no to this proposal, nothing else.

Glen Korf asked the Commission to be open to improving the county road to the north. Mr. Leuthold addressed the development of the road. He talked about annexation and Special Improvement Districts both in the County and the City.

Public Hearing:

Chairman Wagner closed the public hearing and called for a motion for **City Special Review #941.**

Motion

Commissioner Larson made a motion to recommend conditional approval and Commissioner Ulvestad seconded the motion.

Discussion

Chairman Wagner called for discussion on the motion.

Commissioner Larson urged the surrounding property owners to bring their thoughts to the City Council meetings. Commissioner Mariska stated he is sympathetic to the citizens view but you don't own the land around you. He stated in 11 years he lived next to an LDS meeting house the only sound he heard were car doors in the parking lot. He stated there was never a problem with the members. Commissioner Ulvestad is impressed with the previous buildings and appreciated the effort the church made to locate another piece of property.

Chairman Wagner called for a verbal vote.

The motion carried with a verbal vote, 5-0.

Public Hearing adjourned at 7:55pm.

Other Business:

The next meeting is scheduled for Tuesday, May 3, 2016.

Adjournment: The meeting adjourned at **7:59 p.m.**

DRAFT: Approved by a motion: **May 3, 2016.**

ATTEST:

Robbin Bartley, Administrative Assistant I

