

## City of Billings Zoning Commission Meeting Minutes December 6, 2016

The City of Billings Zoning Commission met on Tuesday, December 6, 2016 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.

Chairman Wagner called the meeting to order at 4:30 p.m. The City Council has designated **Monday January 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	11/01/2016	12/06/2016
Dan Wagner	Chairman	1	1	-	1	1	1	1	1	1	1	1	1
Dennis Ulvestad	Commissioner	1	1	-	1	1	1	1	1	1	1	1	1
Mike Boyett	Vice Chairman	E	1	-	1	1	E	E	1	1	1	1	1
Michael Larson	Commissioner	1	1	-	1	1	1	1	A	1	A	1	1
James Mariska	Commissioner	1	1	-	1	1	1	1	1	1	1	1	1
Candi Millar	Director, Planning & Community Services	-	-	-	-	-	-	-	-	-	-	-	-
Wyeth Friday	Division Planning Manager	-	-	-	-	-	-	-	-	-	-	-	-
Nicole Cromwell	Planner Zoning Coordinator	1	1	-	1	1	1	1	1	1	1	1	1
Tammy Deines	Planning Clerk	-	-	-	-	-	-	-	-	-	-	-	-
Dave Green	Planner II	1	-	-	-	-	-	-	1	1	1	-	1
Karen Husman	Planner I	1	1	-	-	-	-	-	-	-	-	-	-
Robbin Bartley	Administrative Support	1	1	-	1	1	1	1	1	1	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	11/01/2016	12/06/2016	TOTAL
Zone Change	1	0	-	1	0	0	1	0	1	1	1	1	7
Special Review	2	1	-	4	1	1	1	2	2	1	0	2	17

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

**In Attendance:** James Ouren, Toni Donahue, James Healow, Corey Welter, Ed Jorden, Sabra Stene, Gerry Voto

**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: November 1, 2016**

Chairman Wagner called for approval of the November 1, 2016 meeting minutes.

**Motion**

Commissioner Boyett made a motion and Commissioner Mariska seconded the motion to approve the November 1, 2016 meeting minutes.

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 4-0.**

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

**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		

**Disclosure of Outside Communication** Staff introduced a letter regarding SR #951.

<b>COMMISSIONER</b>	<b>Yes</b>	<b>No</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner		<b>X</b>		
Mike Boyett		<b>X</b>		
Dennis Ulvestad		<b>X</b>		
Mike Larson				<b>X</b>
James Mariska		<b>X</b>		

**Public Hearings:**

Chairman Wagner reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience that this would be heard by the City Council on January 9, 2017. He then asked Nicole Cromwell to review the first agenda item.

Nicole Cromwell presented:

**City Zone Change 951 – 533 S 24<sup>th</sup> St West** – A zone change request from Residential 7,000 (R-70) to Neighborhood Commercial (NC) on the east ½ of Lot 2 and Lot 3, Block 5 of Amended Block 2, Valley View Acres Subdivision, a 14,400 square foot parcel of land. A pre-application neighborhood meeting was held at the subject property on October 12, 2016. Tax ID: A28338M

Commissioner Larson arrived at 4:34pm, during this presentation.

**RECOMMENDATION**

Planning Staff recommends approval of the zone change to NC based on the 10 criteria for zone changes.

**Discussion**

Commissioner Boyett asked if split zoning is common. Staff explained it was common in the 80’s and early 90’s for the City Council to restrict the amount of a lot zoned for commercial usage where it was adjacent or nearly adjacent to residential properties on the same street. Code at the time, did not require much landscaping, screening or lighting restrictions. Therefore they would split the zoning.

Commissioner Boyett then asked about lighting. Staff explained about the “Neighborhood Manners” code. It has been in effect for the last 4 years. It says that whenever you have a Neighborhood Commercial adjacent to Residential your outdoor lighting is restricted to a 15 foot maximum height and must be shielded.

Chairman Wagner asked for the applicant of **City Zone Change 951**.

**Steve Kuehn, 4925 Chevelle Drive, Billings**

Mr. Kuehn and his wife own Caring Hands and wish to extend the off street parking in this area, thus the Zone Change request. Street parking is an issue now and they wish to accommodate the parking needs of their tenants.

Chairman Wagner asked what the results of your neighborhood meeting were. One neighbor had concerns about what was planned. His concerns were addressed. Chairman Wagner confirmed the meeting was informational rather than confrontational.

**Opposed**  
NONE

Chairman Wagner asked for a motion.

Commissioner Ulvestad made a motion and Commissioner Mariska seconded the motion to approve **City Zone Change 951**.

<b>Commissioner</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner	X			
Mike Boyett	X			
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

**The motion carried with a unanimous verbal vote of 5-0.**

Dave Green presenting:

**City Special Review 950 – 3122 Lynn Avenue** – A special review request to construct a public parking lot for employees and tenants of the Central Avenue Center in a Residential 9,600 (R-96) zone, on Lot 11, Block 5 of Central Acres Subdivision, 5<sup>th</sup> filing, a 10,418 square foot parcel of land. The property is proposing vehicle access only from the alley and not on Lynn Avenue. Tax ID: C01867A

**RECOMMENDATION**

The Planning Division recommends conditional approval based on the 3 criteria for special review.

**Discussion**

Commissioner Boyett mentioned that this issue is coming up regularly and asked if the Commission is failing on zoning, not requiring enough parking property. Staff replied there is no way to anticipate usage.

Commissioner Mariska asked, if the lot was not available, what would they do? Staff explained that future possible tenants would be limited due to parking limitations.

Commissioner Ulvestad asked for clarification regarding the northern part of the parking lot conditions. Staff explained it would be treated as if it is a residential area, the intent is to have a maximum 4 foot fence, picketed, open to view. This enclosure would hopefully restrict the area and activities to parking.

Commissioner Boyett asked if the alley is paved. Staff indicated the applicant will be required to pave it. He then asked what the store hours are now. This question was deferred to the applicant.

Commissioner Mariska asked if the zoning can revert back to residential if this is approved? Staff replied in the affirmative, if the property were sold. Commissioner Mariska asked it would have an effect on the current uses of the property. There is nothing to stop the zoning from being changed back.

Commissioner Ulvestad asked if that lot be open at night. Staff indicated there are no gate requirements to restrict entry 24 hours a day.

Chairman Wagner asked for the applicant of **City Special Review 950**.

**Ed Jorden, agent**

Commissioner Ulvestad stated, you approached the owner of the house to the east to buy it, have you approached them again with the idea to buy the home and put in a parking lot? Mr. Jorden replied that the owners do want them to buy the house however it is cost prohibitive to buy it, demolish the house and put a parking lot there versus buying a vacant lot. He further stated he has tried to contact the owner of a vacant lot next to that house but has had no response so he has decided to go with this plan. There currently is enough parking but as the businesses grow and expand there may not be.

Commissioner Boyett asked again what the general hours of business are. They are ranging from 7-9am to 7-8pm.

Commissioner Mariska asked what control do you have of someone parking for extended periods of time? Staff would suggest appropriate signage. Staff also advised the Commission of City Ordinances regarding extended parking.

**Gerry Voto, 3128 Lynn Ave, Bilings**

We have known the owners and are very pleased with the way they accommodate the neighbors requests. He is not in favor of the 4 foot fence condition on Lynn Ave because no other properties have a fence that close to the road but he is in favor of the alley access. He also has concerns about the fence that will be on the side of his house because it limits his access. Currently he is using a foot or more of this property to access the side of his house.

Commissioner Larson asked for clarification on his issue with the fence. Mr. Voto explained using the available photographs. The fence starts 30 feet from the property line and he does not want a fence out front.

Commissioner Mariska asked what would prevent someone from jumping the curb on Lynn Ave and accessing the parking lot. There is nothing, he would advocate for shrubbery.

Commissioner Ulvestad asked if a parking lot is installed, do you think it will bring the value of your house down? Mr. Voto said absolutely and that he intends to protest his next tax appraisal. He then asked what would you want there. Mr. Voto is in favor of the parking lot.

Commissioner Ulvestad expressed his after-hour concerns. Mr. Voto is very aware of what is going on in his neighborhood.

## **Opposed**

### **James Ouren, 590 Garden Ave, Billings**

Mr. Ouren is disappointed that Mr. Wagner has not recused himself and is happy that more than one person listened to the presentation this time. Mr. Ouren then read thru the application and disputed several points comparing this Special Review to his previous application for a zone change. He claims to have been in contact with a neighbor, Ms. Foos, that will not appreciate a parking lot. He also stated that zoning does not allow for commercial delivery and an opening has been cut in and deliveries are being made. He continued to speak about what he had proposed for the lot when he owned it. Chairman Wagner asked him to speak only in regards to his opposition of this Special Review. Mr. Ouren expressed that Ms. Foos wants all regulations to be strictly followed. At the end of Mr. Ouren's statement, Chairman Wagner advised him that his recusal was not necessary until the vote.

### **Toni Donahue, 24 31<sup>st</sup> Street W, Billings**

Ms. Donahue is against the parking lot. I would rather have a building than a parking lot. She currently has no front access to her house and allowing access thru the alley will be a problem for her access. Currently she pays for snow removal and alley maintenance. She asked why the only access is from the narrow alley and not from Lynn Ave. Staff replied that the applicants made the choice for alley access. There are restrictions for off alley parking which state that only employees and tenants, not customers may park there. Ms. Donahue then asked how will the parking lot be monitored. Where will snow be stored? What does a parking lot do to property values? She also advised the Commission the approach to alley is very steep and it must be accessed very slowly. She also expressed concerns about lighting and how it would affect her windows.

### **James Ouren**

Mr. Ouren also advised the Commission there is a 10 foot electrical easement in the alley.

## **REBUTTAL**

Mr. Jorden stated they are trying to keep everyone happy, the owners and existing residents. They have no preference to the access. He asked if shrubbery would be okay in place of the 4 foot fence condition. Staff explained the fence post placement must be considered because of the electrical easement. The fence on Lynn Ave is to prevent casual pedestrian traffic and access to parked vehicles and is thought to be more of a protection than landscaping and shrubbery. The Commission has the ability to alter that condition. Mr. Jorden advised everyone the snow storage will be in a couple of the parking spots. Drainage will be a boulder pit via a French drain.

### **Gerry Voto**

Mr. Voto stated he wants parking for neighborhood parties.

Commissioner Boyett advised him the Commission is not making a recommendation based on his need for party parking. Staff advised that a pedestrian gate could be included.

Commissioner Larson asked why he was opposed to Lynn Ave access? Mr. Voto replied he has no idea why there is so much traffic on Lynn Ave but does not want to add to it. He believes that the narrow width alone will slow traffic down and also suggested speed bumps.

Chairman Wagner asked for a motion and recused himself from the voting.

Commissioner Boyett made a motion and Commissioner Larson seconded the motion to approve **City Special Review 950 so the discussion could be started.**

**Discussion**

Commissioner Boyett stated there needs to be some amendments to this Special Review, one being necessary signage on the property indicating it is private property for employees and tenants only. Commissioner Ulvestad agrees there is a need for amendment and agrees with Commissioner Boyett.

Commissioner Larson asked if the only amendment is signage, what about the fence issues?

Commissioner Boyett asked Staff if there is any requirement to have fences. Staff answered, no.

Commissioner Ulvestad asked Chairman Wagner if speed bumps would be required. The Chairman anticipated speed bumps might be added at a later time, but asked Mr. Jorden to respond to this. Staff inserted they don't like to impose conditions of approval that involve the City's Public Right of Way. City engineering is not yet involved and might have other ideas.

Commissioner Larson recommended removal of the north fence condition, allowing landscaping on Lynn Ave.

Commissioner Boyett asked if there should be discussion regarding access on the alley and Lynn Ave.

Commissioner Larson stated that after review of the Staff report, there is nothing indicating the designation of entrance and exiting. Staff pointed to the Site plan for these designations. It will be the discretion of the applicant as to where the accesses are. This will also need to be addressed at the City Council meeting.

**In addition to the motion, two friendly modifications were suggested to accompany the motion to approve.**

- 1. The north fence on Lynn Ave and 20 feet on the East and West Side is not necessary.**
- 2. Proper signage in the parking lot would be posted indicating who should park there.**

<b>Commissioner</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner			x	
Mike Boyett	x			
Dennis Ulvestad	x			
Mike Larson	x			
James Mariska	x			

**The motion carried with a unanimous verbal vote of 4-0.**

Dave Green Presenting:

**City Special Review 951 – 805 24<sup>th</sup> St West – Suite 1** – A special review request to locate a beer and wine license with gaming in a 1,563 square foot tenant space (Suite 1) in a multi-tenant building, in a Community Commercial (CC) zone, on the North 408.375 feet of the

South 544.5 feet of Lot 21, less the West 10 feet, Arnold Subdivision, 2<sup>nd</sup> filing, a 1.43 acre parcel of land. Tax ID: A02522.

**RECOMMENDATION**

The Planning Division recommends conditional approval based on the 3 criteria for special review.

**Discussion**

Commissioner Mariska asked how many square feet is this building. Staff replied 1,563.

Chairman Wagner asked what is east of this building. Staff replied townhomes.

Commissioner Ulvestad confirmed access is only from the rear and there are residences behind.

Chairman Wagner asked for the applicant of **City Special Review 951**.

**James Healow, 312 Clark, Billings**

Mr. Healow is the agent for Corey Welter. Mr. Welter intends to move the business license of the Alpine Casino here. This is a much better location in that 22,000 cars each day pass by.

There will be no significant impact or increased burden on anything. This casino will be quiet and low profile.

Mr. Healow strongly disagrees with the letter of opposition. He submits this is a prime location for this business and requests the approval be granted.

Commissioner Ulvestad asked about food service at this location. There will be none.

Chairman Wagner asked what the operating hours will be. They anticipate 8am-Midnight.

**Opposed**

NONE

Chairman Wagner asked for a motion.

Commissioner Larson made a motion and Commissioner Ulvestad seconded the motion to approve **City Special Review 951**.

**Discussion**

<b>Commissioner</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner	X			
Mike Boyett	X			
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

**The motion carried with a unanimous verbal vote of 5-0.**



**Other Business:**

Next meeting will be January 3, 2017.

**Adjournment:** The meeting adjourned at 6:04 p.m.

**DRAFT:** APPROVED by a motion: **January 3, 2017.**

**ATTEST:**

**Robbin Bartley, Administrative Assistant I**

