

**City of Billings Zoning Commission Meeting
July 1, 2008**

The City of Billings Zoning Commission met on July 1, 2008 in the City Council Chambers at 210 N. 27th Street, 2nd Floor.

Leonard Dailey, Jr., Chairman called the meeting to order at 4:28 p.m. **Chairman Dailey** said the recommendations of the Zoning Commission on the items heard tonight will be forwarded to the City Council to be heard at their meeting during a public hearing scheduled for **Monday, July 28, 2008** at 6:30 p.m.

Commission and Staff		01/02/2008	02/05/2008	03/04/2008	04/01/2008	05/06/2008	06/03/2008	07/01/2008	08/05/2008	09/02/2008	10/07/2008	11/05/2008	12/02/2008
Barbara Hawkins	Commissioner	1	1	1	1	1	1	1					
Thomas Grimm	Commissioner	1	1	A	1	1	1	1					
Michael Larson	Vice-Chair	1	1	1	1	A	1	1					
Edward Workman	Commissioner	1	1	1	1	1	A	1					
Leonard Dailey, Jr.	Chairman	1	1	1	1	1	1	1					
Candi Beaudry	Director	-	-	-	-	-	-	-					
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	1	1	1	1					
Elizabeth Allen	Clerk	1	1	1	1	1	1	1					
Wyeth Friday	Planning Division Manager	-	-	-	-	-	-	-					
Juliet Spalding	Planner II	-	-	-	-	-	-	-					
Aura Lindstrand	Planner II	-	1	-	-	-	-	-					
Lora Mattox	Planner II	-	-	-	-	1	-	-					
Dave Green	Planner I	1	-	1	1	1	1	-					

Total Number of 2008 Applications	01/02/2008	02/05/2008	03/04/2008	04/01/2008	05/06/2008	06/03/2008	07/01/2008	08/05/2008	09/02/2008	10/07/2008	11/05/2008	12/02/2008	Total
Zone Change	3	5	1	1	2	2	2						
Special Review	0	3	0	2	3	3	2						

Chairperson Cimmino introduced the Planning Department Staff and Commission:
 Nicole Cromwell, Planner II/Zoning Coordinator
 Elizabeth Allen, Planning Clerk

Public Comments:
 There were none.

Commissioner Hawkins and Commissioner Workman arrived at 4:34 pm

Approval of Minutes:
On a motion by Commissioner Larson, seconded by Commissioner Grimm and approved with a 4-0 voice vote the minutes of June 3, 2008 were approved.

Public Hearings:

Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted.

Item #1: City Zone Change #845 – 203 Monroe Street – A zone change from Residential 9,600 (R-96) to Residential 6,000 (R-60) on a .85 acre parcel of land on the south east corner of the intersection of Monroe Street and Madison Avenue, legally described as the North 147.55 feet of the E1/2NWSNW1/4 – West of the Drain in Section 10 of Township 1 South, Range 26 East, Tax ID D01648. Daniel Dimich and Patricia Rodriquez, owners and Charles Hamwey is the agent.

Ms. Cromwell read the legal description and gave a brief power point presentation to the commission. Staff recommendation is approval.

Discussion:

Commissioner Workman asked for clarification on the parcel requested for the zone change.

Ms. Cromwell clarified the map for the Board.

Applicant:

Charles Hamwey, 1010 Grand Ave, the applicant is looking for financing on this property and they bank will not finance public zoning. Planning staff has been helpful in rectifying this map error. He

is unsure if the property owners to the south are interested in a zone change as well. They feel that R-60 will match the surrounding zonings.

Proponents:

There were none.

Opponents:

There were none.

Rebuttal:

Public hearing closed at 4:40 p.m.

Motion:

On a motion by Commissioner Larson, seconded by Commissioner Hawkins and approved with a 5-0 voice vote a recommendation of approval of Zone Change #845 will be forwarded to the City Council on its meeting of July 28, 2008.

Item #2: City Zone Change #846 – 1702 Colton Boulevard – A zone change from Residential 9,600 (R-96) to Residential Professional (RP) on a 16,843 square foot parcel of land on the south west corner of the intersection of 17th Street West and Colton Boulevard, legally described as Lots 1 & 2 of Block 20, Kober Subdivision 4th Filing, Tax ID A09916. Sunday Creek Land Company, LLC, owner and Ronald Scariano is the agent.

Ms. Cromwell read the legal description and gave a brief power point presentation to the commission. Staff recommendation is denial.

Discussion:

Commissioner Hawkins asked for the zoning across 17th St.

Ms. Cromwell explained that it is a R-60 zone and developed with one duplex.

Applicant:

Heather McDowell, from Crowley Law Firm as representative of applicant. She presented a slide show of photos to the zoning commission. This property does not make a good residence. It is currently rented out to property. She presented a map of all the businesses in the area. She feels that this is a great area for a Residential Professional zone because of the business of the property. She feels that the denial recommendation is an arbitrary standard. This property has been used as an office from 1969 until 2000. Having renters living in this area 24/7 creates more vehicle trips than a residential professional zone. This does fit the area and would be a good development for the property. She feels that some of the information in the staff report is arbitrary and does not affect the zone change in any way. She feels that the case presented by the Planning Division, Little v. Flathead County, does not apply to this case because it is not a large property and is not proposed for a high impact commercial use. This proposal furthers the growth policy because it is a mixed use property. It will not increase the congestion, it will enhance the neighborhood character, increase the tax base for the area and has the most appropriate use for the property.

Commissioner Grimm asked for some clarification on how this does not fit the criteria for spot zoning.

Heather McDowell doesn't feel that this property meets the three criteria. There are other properties in the area that are zoned RP. If this property meets the criteria for spot zoning than all those other properties meet spot zoning as well.

Proponents:

Len Ventling, 3114 17th St West, member of Assembly of God Church. He feels that this will be the best use of this property. This is not a good property to have a home on. There isn't enough room. He had an office at 5th and Broadwater for 25 years and they did a zone change on that property because it used to be a duplex and that zone change helped to increase property values in the area. He believes that the owner has some good ideas and this property will be well developed and this type of development makes sense.

Opponents:

Meredith Cox, 1908 Colton Blvd. All of the other office that have been mentioned are below Colton. Colton is a busy street and the speeds at that street are very fast. This would be a dangerous location for a lot of traffic because of the intersection. This would be the wrong location for a business. She feels that if this was a single person office it might be ok.

Wall Stadlin, 1740 Mariposa Lane, Colton has become a very high traffic area now that it has been improved. He is concerned that this property owner is planning to use the property around the canal. He is concerned that there will not be enough parking on this property. He also feels that this will increase the amounts of traffic in the area. The other properties that have been changed to RP in the area were all grandfathered in. For use as church offices this property was ok, but he feels that this will increase traffic in this area substantially. He is also concerned other property owners in the area will ask for zone changes and more commercial will be developed in the area if this is approved.

John Lenny, 1726 Colton, has lived in this area since 1963. He is concerned that once this property is rezoned this property will allow for anything. He feels that the property owner just wants a rezone so that he can sell this property because it was a bad purchase. He is very concerned that there is no requirement that the property owner landscape this property. The owner told him that if this property hasn't wasn't rezoned the way he wanted he would rent it to loud college students and that is what he has done. The property is under very bad disrepair. The only way that the weeds get cut is if the surrounding property owners call the city.

Scott Emmerick 1736 Colton, he is concerned about the proposed zone change and he is against it. He does not want to see more commercial zoning encroaching up 17th or onto Colton. The ditch currently acts a buffer to this neighborhood. This property could be developed as residential. He has some reservations as the intents of the property owner. He feels that there have been some strong arm tactics by the owner, with renting out the property to college students who are loud and not caring for the property. He feels that the owner would use Solomon Ave as an access and that would increase traffic and make Solomon Ave more dangerous. He doesn't believe that the city will allow the vacation of Solomon Ave.

Bruce Klein, 1734 Mariposa, is opposed to the zone change because it will increase the encroachment of commercial in the neighborhood and decrease his property values. He also feels that this could be a nice residential home.

Rebuttal:

Heather McDowell, when this was originally proposed the applicant wanted to put in his own Edward Jones Office. At this time the property owner is ill and he is not planning to move his home

onto this area. The property owner is planning on updating this property and selling it. She understands that this causes uncertainty in the application. He has been looking into having this developed as financial institution or accounting office. She feels that having an office space in the area would reduce traffic and would also raise the tax base and improve the property. Having a sustainable office in the area would be a benefit to those in the neighborhood.

Commissioner Grimm asked if the property owner plans to access on Solomon.

Heather stated that they would like to use Solomon as a parking area and not as an access. She doesn't believe that an access from Solomon would ever be an issue.

Public hearing closed at 5:51 p.m.

Motion:

On a motion by Commissioner Workman, seconded by Commissioner Hawkins and approved with a 3-2 voice vote a recommendation of approval of Zone Change #846 will be forwarded to the City Council on its meeting of July 28, 2008.

Commissioner Workman made this motion because he looks at the map and sees corner locations developed commercially. This property is an island into itself. The traffic makes this an area that is smart for office development. The lot is already developed in that way. He feels that the improvements in the landscaping would improve the appeal of the neighborhood. He also feels that most of the complaints were about the current rental use and if this remains at this zoning it will remain a rental.

Commissioner Larson asked if the property would have to be reviewed if the zoning is changed.

Ms. Cromwell stated that since this is already developed it would require a review of parking and building codes. If they wanted to vacate Solomon Ave they would have to go before City Council. If the building was expanded by 25% or more, landscaping would be required.

Commissioner Larson stated that he has been involved with this property 4 times. He was on the City Council when the first three denials were issued on this property. He is going to vote for this motion but this is a very difficult piece of property and he doesn't know what to do with it.

Commissioner Hawkins asked how long the traffic light has been at the intersection. **Ms. Cromwell** stated that she doesn't know but there has been no substantial increase in traffic on 17th or Colton in the last 15 years.

Ms. Cromwell made some clarification on spot zoning for the commission and explained that spot zoning is subjective and only an opinion until decided by a judge.

Commissioner Dailey stated that he is concerned about spot zoning. During the June meeting there was a question of spot zoning. He is concerned that this might be spot zoning and he will be voting against this motion. He is concerned that this might cost the city money. He assumes that the city attorney will review this application as a spot zoning.

Commissioner Grimm is also concerned about spot zoning.

Item #3: City Special Review #863 – 1101 South 32nd Street West – All Aboard Casino – A special review request to allow the location of a beer and wine license with gaming on a 42,148 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 4A, Studer Acreage Tracts Subdivision. Tax ID A27836, George Frank, owner, and Design Lab Architects, agent.

Ms. Cromwell read the legal description and gave a brief power point presentation to the commission. Staff recommendation is conditional approval.

Discussion:

Commissioner Grimm asked about the PUD to the west of the property. He asked if all of the residents of the mobile home court were informed. **Ms. Cromwell** stated that all mobile home owners and property owners within 300’.

Commissioner Dailey asked how many improvements to the street the property owner will be required to make.

Ms. Cromwell stated that they would be required to put in street, curb and gutter as well as storm drainage.

Commissioner Workman asked what the current number of gaming establishments in Billings is and if the gaming commission has guidelines as to the amount of gaming allowed.

Ms. Cromwell explained that the gaming commission regulates liquor licenses in regards to population.

Applicant:

Proponents:

Opponents:

Meredith Cox, 1908 Colton Blvd, also a property owner in Golden Meadows. Golden Meadows trailer park has been cleaned up in the last 5 years by the property owners. There are about 300 units in the trailer park and there are only about 100 rentals in the area. She doesn’t feel that the City noticed property owners in the correct way. There are a lot of children in this area. George Frank, property owner, has lied to the city. He is the owner of the Doc and Eddies. He has also put up an unlicensed employment agency in the other empty building. He wants to put live poker into the empty building. She doesn’t believe that this will bring employment to the area and she is afraid that this area is going to become a gambling strip and there are already enough casinos in the area. There will prostitution and drugs if this is approved. She is also concerned that the drunks from the casino will be parking in the mobile home park.

Rebuttal:

Public hearing closed at 6:08 p.m.

Motion:

On a motion by Commissioner Grimm, seconded by Commissioner Larson and approved with a 5-0 voice vote a recommendation of approval of Special Review #863 will be forwarded to the City Council on its meeting of July 28, 2008 with the following conditions:

1. The special review approval shall be limited to Lot 4A, Studer Acreage Tracts Subdivision located at 1101 South 32nd Street West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.

3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. Applicant must install all street improvements on Cel Avenue required by City Engineering.
8. Applicant must meet the current storm water management requirements of the City of Billings on their site.
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.

Commissioner Workman asked if this will be two Doc and Eddies in the same area.

Ms. Cromwell stated that the property owner does own Doc and Eddies. He is un-stacking his liquor licenses because the State no longer allows for stacked liquor licenses.

Commissioner Grimm feels that conditional approval is appropriate to this application. He would also like to recommend that the City Council continue looking at the casino overlay district to give the board direction.

Commissioner Larson feels that churches, schools, and playgrounds are protected from casinos, because of that the casinos become concentrated in one area. They have no ability to deny this application based on the criteria.

Item #4: City Special Review #864 – 2850 King Avenue West – former Krispy Kreme - A special review request to allow the location of an all beverage liquor license with gaming on a 38,072 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 6A, Block 3 of Midland Subdivision, 4th Filing. Tax ID A28360, Eagle-Fairview Investment Company, LLC, owner, and Montana Stewards, LLC (Town Pump), agent.

Ms. Cromwell read the legal description and gave a brief power point presentation to the commission. Staff recommendation is conditional approval.

Discussion:

Commissioner Dailey asked about the condition for the removal of the drive thru and how it will be enforced.

Ms. Cromwell stated that it will be enforced during the building permit stage.

Applicant:

Rick Leuthold, 1300 N Transtech Way, they are converting the old Krispy Kreme building. There is a high demand for casinos and this is a good area for a casino. Town Pump runs a good clean operation. They will be removing the drive thru and the existing patio will be removed.

Commissioner Dailey asked if there has been a study on the increasing demand for casinos. Rick stated that the study was done in house by the Town Pump Casino Marketing Division.

Proponents:

Opponents:

Rebuttal:

Public hearing closed at 6:25 p.m.

Motion:

On a motion by Commissioner Larson, seconded by Commissioner Hawkins and approved with a 5-0 voice vote a recommendation of approval of Special Review #864 will be forwarded to the City Council on its meeting of July 28, 2008 with the following conditions:

1. The special review approval shall be limited to Lot 6A, Block 3, of Midland Subdivision, 4th Filing, located at 2850 King Avenue West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. The existing drive-up lane on the west side of the building must be blocked or removed. The drive-up window on the west side of the building must be removed.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. All new exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
8. 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.
9. 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.

Other Business:

Adjournment:

The meeting was adjourned at 6:29 p.m.

Leonard Dailey, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk