

City of Billings Zoning Commission Meeting October 5, 2010

The City of Billings Zoning Commission met on Tuesday, October 5, 2010 in the City Hall Council Chambers at 210 N. 27th Street, 2nd Floor.

Chairman Leonard Dailey, Jr. called the meeting to order at 4:30 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, October 25, 2010**, at 6:30 p.m. in the City Council Chambers.

Commission and Staff		01/05/2010	02/02/2010	03/02/2010	04/06/2010	05/04/2010	06/01/2010	07/06/2010	08/03/2010	09/07/2010	10/05/2010	11/02/2010	12/07/2011
Leonard Dailey, Jr.	Chairman	1	1	1	-	1	1	1	1	1	1		
Matt Krivonen	Commissioner	1	1	1	-	A	A	1	1	1	E		
Barbara Hawkins	Commissioner	1	E	E	-	1	1	E	1	1	1		
Dan Wagner	Commissioner	-	-	1	-	A	1	1	1	1	1		
Edward Workman	Commissioner	1	1	1	-	1	1	1	1	1	1		
Candi Beaudry	Director, Planning & Community Services	-	-	-	-	-	-	-	-	1	-		
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	-	1	1	1	1	1	1		
Tammy Deines	Planning Clerk	1	1	1	-	1	1	1	1	1	-		
Wyeth Friday	Planning Division Manager	-	-	1	-	-	-	-	-	1			
Juliet Spalding	Planner II	-	-	-	-	-	-	-	-	-			
Lora Mattox	Planner II	1	-	-	-	-	-	-	-	-			

Total Number of 2009 Applications	01/05/2010	02/02/2010	03/02/2010	04/06/2010	05/04/2010	06/01/2010	07/06/2010	08/03/2010	09/07/2010	10/05/2010	11/02/2010	12/07/2010	Total
Zone Change	1	2	4 (2-return items)	0	0	3	0	0	2	0			10
Special Review	1	0	0	0	1	0	2	2	2	2			10

Chairperson Dailey introduced the Planning Department Staff and Commission:
Nicole Cromwell, Planner II/Zoning Coordinator

Public Comments:

Chairman Dailey called for public comment at 4:43 p.m. There was none. Chairman Dailey closed the public comment portion of the meeting.

Approval of Minutes August 3, 2010

On a motion by Commissioner Workman, seconded by Commissioner Wagner and approved with a 5-0 voice vote, the minutes of September 7, 2010 are approved as submitted.

Disclosure of Conflict of Interest

There was no disclosure of any conflict of interest by the members of the Commission.

Disclosure of Outside Communication

There was no disclosure of any exparte communication. Nicole Cromwell pointed out the notebook containing copies of letters that were received pertaining to S.R.#886 and S.R. #887 and stated that they are available for the public to review. She stated that there is a sign-in sheet available for those who wish to speak during the public hearing so that the information may be made part of the public record.

Public Hearings:

At 4:45 p.m. Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted. Nicole Cromwell read aloud the legal description below and opened a PowerPoint presentation. She indicated that the applicant is requesting a waiver from the 100-ft separation requirement from 2111 4th Ave North. She commented on a letter that was received to ask for Staff consideration of exchanging the conditional requirement for fencing and landscaping for construction of a stamped concrete block wall.

Item #1: City Special Review #886 –900 2nd Ave North - A special review request to place one (1) new wireless communications tower of 60 feet in height in a Controlled Industrial (CI) zone on a portion of Lots 19-21, Block 2, Industrial Subdivision 1st Filing, a 2,400 square foot leased portion of land at 1001 2nd Ave North. Tax ID A09325A Green Leaf Land and Livestock, owner and Kevin Howell – Digital Skylines, agent.

REQUEST

This is a request for a special review for the location of a 60-foot wireless communication support structure for Verizon Wireless in the 900 block of 2nd Ave North. The proposed lease area within the 1.14 acre parcel is 2,400 square feet. The parcel is owned by Green Leaf Land and Livestock, is zoned Controlled Industrial (CI), and has one existing building and a gravel parking lot. The subject property is legally described as Lots 14-26, Block 2, Industrial Subdivision. The wireless facility is planned for a portion of Lots 19, 20 and 21. The location will require a waiver of the 100 foot separation from this location and another wireless communication tower at 2111 4th Ave North that is approximately .94 miles to the west of this location.

RECOMMENDATION

The Planning Division is recommending conditional approval.

1. The special review approval shall be limited to the 2,400 square foot leased area shown on the site plan for a portion of Lots 14-26, Block 2, Industrial Subdivision located in the 900 block of 2nd Avenue North.
2. Any expansion of the proposed ground equipment building, relocation to another area on the property, or the addition of tower height more than 10% of the proposed 60-foot height will require an additional special review approval.
3. The development of the wireless communication tower and ground equipment shall be in substantial conformance with the submitted site plan with any exceptions noted in the conditions.
4. All new site lighting on the building and within the fenced lease area shall have full cut-off shields so lighting is projected to the ground and not on to adjacent properties. Lighting on the tower structure shall conform to all FAA/FCC standards that apply.
5. The owner shall provide a fence of at least 8 feet in height around the lease area with three strands of barbed wire on top of the fence. If no barbed wire is proposed, a 7-foot fence may be installed.
6. The owner shall install a continuous evergreen hedge on the outside of the perimeter fence with the exception of the access gate on the west side of the enclosure. The hedge shall be a minimum of 4 feet in height at the time of planting.
7. The footing and foundation pad under the equipment enclosure shall be elevated above current grade to prevent to the maximum extent possible any street or parking area flooding from equipment damage or disruption of service.
8. The applicant shall submit a building permit for the facility within 6 months of this approval and complete the construction project within 12 months of approval. The City Council has the options of granting one (1) 6-month extension of time to start construction. A failure to

- begin or complete the project as approved will void the approval and require a new application for this location.
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:

At 4:50 p.m., Chairman Dailey asked the members of the Commission for questions and discussion. Commissioner Workman pointed asked if the condition for fencing and landscaping would be negated should the applicant erect a stamped concrete wall. Nicole Cromwell responded that Planning staff is amenable to exchanging the fencing and landscaping for a stamped concrete block wall. In response to a question by Commissioner Dailey, Nicole Cromwell said that the elevation of the equipment shed does not affect the height of the tower.

**Written testimony was received from Converse Properties, a surrounding property owner. Cliff Hansen of 1251 Lonesome Pine, a surrounding property, also provided testimony to the Zoning Commission.

Proponents:

At 4:51 p.m., Chairman Dailey called for proponents for City Special Review #886.

Applicant

Kevin Howell, Billings, Montana

Kevin Howell, agent for the landowner and applicant, stated the city requirement for a 1-mile separation was a reasonable regulation 10 years ago when a boom was occurring in wireless communications. Current loading of existing towers and their locations throughout a community can lead to capacity issues and this area does not provide seamless coverage for handling calls from other Verizon equipment. Mr. Howell stated each Verizon tower can handle about 200 calls at a time and is limited in its capacity. Mr. Howell stated the engineers for Verizon have determined that a 50-foot tower height is not as effective as a 60-foot height at this location. Mr. Howell stated each tower installed is an infrastructure investment of about \$600,000 to \$750,000 and Verizon intends to install up to 4 new towers in the Billings area and 12 new towers in the Bozeman area within the next year just to handle its capacity challenges. Mr. Howell stated he would like to change the condition for perimeter landscaping around the proposed chain link fence to a split-face block wall. He stated Verizon would not object to landscaping however maintenance of the landscaping is not a strong point for his company. Mr. Howell stated the back-up power generator for the ground equipment was initially designed for diesel fuel but high groundwater in the area may make propane a more appropriate fuel choice and the equipment

location may move 3 to 4 feet to comply with fire codes. Mr. Howell stated he was amenable to the proposed conditions.

Discussion

In response to a question from Commission member Ed Workman, Mr. Howell stated the electromagnetic field generated by the equipment should not have any health effects on the surrounding property owners or the people working in the area. Mr. Howell stated the federal government has reviewed the health effects and Verizon will comply with all FCC regulations pertaining to this issue. In response to another question from Mr. Workman, Mr. Howell stated a 60-foot height was supported by the Verizon engineers for radio frequency capacity concerns and the additional 10% height allowed after approval was intended to provide flexibility for other other carriers to co-locate on new towers but not necessarily for the original applicant.

In response to a question regarding the noise from the back-up generator, Mr. Howell stated Verizon specifies a "whisper" type generator. The daily noise from the facilities is from the air conditioning units - in this case two 5-ton units. Mr. Howell stated a 5-ton air conditioning unit is typically used in larger single family homes. The back-up generator would be exercised once-per-week for 20 minutes to ensure it is operating. Mr. Howell stated with the perimeter block wall, additional noise in the area would not be noticeable. In response to a question from member Dan Wagner, Mr. Howell stated Verizon did not believe lighting the tower would be necessary. Mr. Howell stated the daytime strobe lights on taller towers can be a nuisance to surrounding owners. Mr. Howell stated if local information indicated a need to light the tower, Verizon would have no objection. Mr. Howell stated in his 10+ years working with Verizon he has helped install over 1,000 towers and each one has distinct local conditions. In response to a question from Chairman Dailey, Mr. Howell stated air rights are not regulated by the local City Code. Mr. Howell stated a full title report was provided that outlined surface rights to the property. Mineral rights should not be affected by the tower installation. In response to a question from Chairman Dailey, Mr. Howell stated Verizon has not experienced a lot of vandalism at its facilities. The perimeter fencing or block walls are a deterrent but a determined person could get inside. Mr. Howell stated the equipment enclosures are made to withstand unauthorized access and attempts to damage the equipment. Mr. Howell stated the newer equipment enclosures are hardened steel. Mr. Howell stated Verizon will likely begin the building permit process in the 1st quarter of 2011.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against City Special Review #886.

Cliff Hansen, 1251 Lonesome Pine, Billings, Montana

Cliff Hansen stated he does not object to the location of the cell tower but he was concerned Cliff Hansen stated he does not object to the location of the cell tower but he was concerned that adequate conditions are put in place to protect surrounding properties. Mr. Hansen urged the Commission to not require any lighting on the tower especially the daytime strobe light. He

said this would seriously impact future hospitality uses such as restaurants and hotels. Mr. Hansen was concerned the power of the radio frequency signal would over-power competitors' signals and cause coverage limitations. Mr. Hansen stated he thought the waiver of the 1-mile radius separation was appropriate in this case. Mr. Hansen stated he was concerned about the lack of landscaping and he asked the Commission to require much taller trees around the site such as 20 to 30 foot evergreen trees. He was concerned the tower should be visually obscured in this gateway area.

Chairman Dailey asked if there was anyone else wishing to speak against City Special Review #886. There was none. Chairman Dailey closed the public hearing at 4:52 p.m. and called for a motion.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Wagner to forward a recommendation to City Council of conditional approval of City Special Review #886 as presented by staff and to approve the waiver of the separation distance. This motion includes modification of the fencing and landscaping condition to allow a 7-foot split face block wall and to place a red light on the tower to operate during non-daylight hours.

Discussion

Chairman Daily called for discussion on the motion. The members of the Board concurred that this seems to be a logical request.

Motion carries, 4-0.

The City Council has designated **Monday, October 25, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

Item #2: City Special Review #887 – 711 Mattson Lane, 712 & 716 Lambrecht Lane -
A special review request to allow two (2) 4-plexes and one (1) 5-plex (total of 13 dwelling units) in a Residential 6,000 (R-60) zone on Lots 14A, 14B and 14D of Mattson Acres Subdivision, a 28,902 square foot parcel of land at 711 Mattson Lane and 712 and 716 Lambrecht Lane. Tax ID C01234, Richard and Mary Chapman, owners and Ben Nistler, agent.

REQUEST

This is a request for a special review to allow Three (3) new multi-family buildings including one (1) 5-plex and two (2) 4-plex buildings for a total of 13 dwelling units in a Residential 6,000 (R-60) on a 28,902 square foot parcel. The subject property is legally described as Lots 14A, 14B and 14D of Mattson Acre. The property is generally located at 711 Mattson Lane just west of the intersection of Bench Boulevard and Mattson Lane.

RECOMMENDATION

The Planning Division is recommending conditional approval.

PROPOSED CONDITIONS

1. The special review approval shall be limited to Lots 14A, 14B and 14D of Mattson Acres Subdivision, generally located at 711 Mattson Lane.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
3. The development of the two (2) 4-plex buildings and the one (1) 5-plex shall be in substantial conformance with the site plan dated September 27, 2010.
4. All site lighting on the buildings, in parking areas or under covered porches shall have full cut-off shields so lighting is projected to the ground and not on to adjacent properties.
5. The solid waste dumpster shall be enclosed with a sight-obscuring fence on three (3) sides and a sight-obscuring gate. The enclosure will be a minimum of 6 feet in height and constructed of material similar in style and compatible with the residential structures.
6. A pedestrian crossing sign shall be posted at the drive approach on Mattson Lane. This sign will alert drivers exiting to watch for pedestrians on the public sidewalks.
7. The applicant will apply for a Master Site Plan Approval as required by Section 27-622 of the Unified Zoning Regulations.
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.

**The Zoning Commission received written testimony from Larry Gerek, owner of property at 764 Jacque Lane, and Linda Thomson, resident of 764 Thomson Lane.

Proponents:

Chairman Dailey called for proponents for City .Special Review #887.

Ben Nistler, NHB, LLC (no address given)

Mr. Ben Nistler testified in favor of the application. Mr. Nistler stated the units would be marketed to entry and mid-level market renters. Mr. Nistler stated this is a good area for an in-fill project and the neighborhood plan supported higher density housing in this area between Bench Boulevard and Main Street. Mr. Nistler acknowledged that parking will need to be assigned to the residents to prevent blocked or unauthorized parking in the development. Mr. Nistler stated he recently held a neighborhood meeting to discuss the development and received input from 3 property owners. He stated he will ensure the enclosed garage spaces

are not used for storage other than vehicles. Mr. Nistler stated the development would be the most efficient use of the city's existing infrastructure in Mattson Lane and would provide a better property value than either a single or two family developments. In response to questions from Commissioner Ed Workman, Mr. Nistler stated that the only area to expand parking is currently set aside to handle the stormwater drainage. This is a requirement of the City Code to retain all added storm water on site prior to discharging to the city's system. Mr. Nistler said that it may be possible to get one additional parking space on the north end of the existing parking lot.

Opponents:

Chairman Dailey called for opponents of City .Special Review #887.

Terri Lasich, 643 Mattson Lane, Billings, Montana

Terri Lasich of 643 Mattson Lane testified in opposition to the application. Ms. Lasich stated all the property along Mattson Lane were single family homes on large lots - 9,000 square feet or more. Ms. Laich stated that even lots zoned Highway Commercial have single family homes. Ms. Lasich said the R-60 does not mean there has to be multi-family dwellings. Ms. Lasich stated that her preference would be for one single family home on each of the lots. Ms. Lasich said that no one in the neighborhood was in favor of this many units on this property. She stated the city services were already over capacity, and there was no alley. She said that the residents did not want to look at a garbage enclosure out in front and there was not nearly enough parking on the plan.

Joe Clevenger, 707 Mattson Lane, Billings, Montana

Joe Clevenger of 707 Mattson Lane testified in opposition to the plan. Mr. Clevenger stated that parking was a "big deal" on Mattson Lane, especially since the Heights WalMart was built and the city did not stripe the travel lanes or the parking lanes. Mr. Clevenger stated that there is no parking on the side of Mattson adjacent to WalMart but "people do it all the time, because the city did not install "No Parking" signs. Mr. Clevenger was concerned about the small setback for the 5-plex directly adjacent to this home and the proposed 2nd floor deck. Mr. Clevenger said that people on the deck would have a nice view of his bedroom and that the access drive should go through to Lambrecht Lane for safety reasons. He voice concern about the lack of sidewalks on Lambrecht Lane. He stated that he was told the lighting from the new WalMart would not be a problem on his property but he hardly ever turns on lights after dark as the WalMart lighting gives off enough light to is property to see. He said he wondered how this application was accepted since the Planning staff denied a duplex just tow doors down from this property. He stated that many existing residents use the on-street parking and commented that putting a new fire hydrant in front of this apartment complex would eliminate more parking.

Ms. Brenda Bowles, 649 Mattson Lane, Billings, Montana

Ms. Brenda Bowles of 649 Mattson Lane testified in opposition to the application. She stated the neighborhood was all single family residential and the proposal did not fit in with the neighborhood. Ms. Bowles stated there have been traffic problems on Mattson Lane since the Heights Walmart opened and the added traffic from 13 new dwellings on this small lot would

make it worse. She stated it was sometimes difficult to get out of her driveway waiting for traffic to clear. She asked the Commission to recommend denial and let the builder put in single family or two-family homes. She stated the lot was not large enough for 13 dwellings. She stated their property value took a big hit when Walmart went in and this apartment complex would further depress their property value. Ms. Bowles stated traffic at Wicks and Main is already backed up at any time of the day. Ms. Bowles was concerned about dust generated from Lambrecht Lane if the developer was not required to take care of the gravel street. She stated she was concerned about truck traffic into the property and how that would affect Mattson Lane.

Dallas Lasich, 643 Mattson Lane, Billings, Montana

Dallas Lasich of 643 Mattson Lane testified in opposition to the application. Mr. Lasich stated Mattson is only one block long but it gets a lot of speeders and he hears near collisions all the time. He stated more traffic from the apartments would create more problems on Mattson.

Mark Boyd, 1925 Lake Elmo Drive, Billings, Montana

Mark Boyd of 1925 Lake Elmo Drive testified in opposition to the proposal. He stated the neighborhood was all single family and the development would be out of place. He stated the pedestrian traffic from the development could result in traffic conflicts since everyone going to Walmart would cross mid-block. He stated it would be preferable to have sidewalks on Lambrecht Lane installed.

Donna Boyd, 6249 Mattson Lane, Billings, Montana

Donna Boyd of 649 Mattson Lane testified in opposition to the application. She stated the development is out of character and she did not want to look at a dumpster out in front on Mattson Lane.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against Special Review #887. There was none. Chairman Dailey closed the public hearing and called for rebuttal.

Rebuttal

Ben Nistler, NHB, LLC (no address given)

In response to the comments from the surrounding property owners, Ben Nistler stated property values should not be affected by his development. He stated there are many manufactured homes in the area that would not increase in value in any case. The proposed multi-family development would add a lot of property value and be an efficient use of the land. Mr. Nistler stated he was interested in providing more housing choice in the area. He stated there were similar multifamily developments previously approved on Bench Boulevard in R-60 zoning districts also surrounded by existing single family and duplexes. Mr. Nistler stated that if an owner purchased a home assuming the R-60 district was a single-family only district, then the purchaser was mistaken. Mr. Nistler stated the R-60 zoning specifically considers multi-family

uses by special review approval. Mr. Nistler stated Mattson Lane is fully developed as a local street access and should be able to physically accommodate the additional traffic. Mr. Nistler stated the development would bring more tax dollars to the school system than a single family development and would help support other local city services more effectively than a single family development. Mr. Nistler stated the sidewalk out to Lambrecht Lane and out to Mattson Lane was in response to a Planning staff concern about safe travel from the apartments to the adjacent city streets. Mr. Nistler stated the lot coverage is 28% as proposed and is well below the allowed 40% limit in the R-60 zoning district. Mr. Nistler stated the privacy fence and hedges were provided to buffer adjacent property and to provide privacy to the new residents. In response to a question from Chairman Dailey, Mr. Nistler stated the proposed structures were two-story of about 27 feet in height. The buildings would not have a full basement but would have crawl space foundations.

Motion

Commission member Dan Wagner moved for conditional approval with an added condition to increase the off-street parking to 21 from the 20 shown on the site plan. The motion was seconded by member Ed Workman. Member Wagner proposed the Commission also consider conditions related to setbacks and number of dwelling units. Motion died for lack of a second.

Discussion

Commissioner Workman stated that he would not vote in favor of the motion to conditionally approve this submittal based on the addition of 1 parking space. He said that although the development met all of the requirements for the zoning it was not an appropriate location for a multifamily development. Members Wagner and Hawkins voted in favor of conditional approval and members Workman and Chairman Dailey voted against the motion.

The Zoning Commission is forwarding no recommendation to the City Council.

The City Council has designated **Monday, October 25, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

Other Business:

There was no other business.

Announcements:

- The next City Zoning Commission meeting will be held on Tuesday, November 2, 2010, at 4:30 p.m. in the City Council Chambers

Adjournment:

The meeting was adjourned at 7:15 p.m.

ATTEST:

Chairman Dailey, Chairman

Nicole Cromwell, Zoning Coordinator