

City of Billings Zoning Commission Meeting January 3, 2012

The City of Billings Zoning Commission met on Tuesday, January 3, 2011 in the Parmly Billings Library Small Conference Room located on the 4th floor of the Parmly Billings Library, 510 North Broadway, Billings, Montana.

Chairman Leonard Dailey called the meeting to order at 4:30 p.m. The City Council has designated **Monday, January 23, 2012**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against this zone change application.

Commission and Staff		01/03/2012	02/07/2012	03/06/2012	04/03/2012	05/01/2012	06/05/2012	07/03/2012	08/07/2012	09/04/2012	10/09/2012	11/06/2012	12/04/2012
Leonard Dailey, Jr.	Chairman	1											
Matt Krivonen	Commissioner	A											
Barbara Hawkins	Commissioner	E											
Dan Wagner	Commissioner	1											
Bill Ryan	Commissioner	1											
Candi Beaudry	Director, Planning & Community Services	-											
Nicole Cromwell	Planner II, Zoning Coordinator	1											
Tammy Deines	Planning Clerk	1											
Wyeth Friday	Planning Division Manager	-											
Juliet Spalding	Planner II	-											
Lora Mattox	Planner II	-											
Karen Miller	Planning Assistant	-											

Total Number of 2009 Applications	01/03/2012	02/07/2012	03/06/2012	04/03/2012	05/01/2012	06/05/2012	07/03/2012	08/07/2012	09/04/2012	10/02/2012	11/06/2012	12/04/2012	TOTAL
Zone Change	2												
Special Review	1												

Chairman Leonard Dailey introduced the Planning Department Staff and Commission:
Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk

Others in Attendance: Allen Greene, 640 St Johns, Billings, Montana; Pat Naglich, 1146 Parkhill Drive, Billings, Montana; Theresa Jenkins 5629 Billy Casper Drive, Billings, Montana; Linda & Jerry Jackson, 2010 12th St W, Billings, Montana; Jill & Scott Lindell, 5630 Billy Casper Drive, Billings, Montana; Peter Stanley, 3860 Ave. B Ste C, Billings, Montana, Dick Clark; Bill Stene

Public Comments:

Chairman Leonard Dailey called for public comment at 4:33 p.m. There was none. Chairman Leonard Dailey closed the public comment portion of the meeting.

Approval of Minutes: December 6, 2011

Chairman Dailey called for approval of the December 6, 2011 minutes.

Motion

On a motion by Commissioner Wagner seconded by Commissioner Ryan and approved with a 4-0 voice vote, the minutes of December 6, 2011.

Disclosure of Conflict of Interest

Chairman Dailey called for disclosures of conflict of interest. There was none.

Disclosure of Outside Communication

Chairman Dailey called for disclosure of ex parte communication. Commissioner Ryan stated he represents MMK Inc. and the 1-800 Casino. Commissioner Ryan will recuse himself from the public hearing on Special Review #896. Ms. Cromwell noted action may have to be delayed if Commissioner Krivonen does not arrive. Planning Clerk attempted to contact Mr. Krivonen by phone but was unsuccessful.

Ms. Cromwell stated staff received a letter of protest against Special Review #896 from Betty J. Reid, 2311 Custer, Billings, Montana.

Public Hearings:

At 4:33 p.m. Chairman Leonard Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open first agenda item.

Item #1: City Zone Change #880 – 1146 Parkhill Drive – A zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 16, Block 6, Suncrest Acres Subdivision, a 10,600 square foot parcel of land. The existing parcel has a side-by-side duplex constructed prior to the current zoning and is a nonconforming use in the R-96 zoning district. Tax ID: A16123, Patrick Naglich, owner.

Nicole Cromwell gave a short presentation of the staff report.

REQUEST

This is a zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 16, Block 6, Suncrest Acres Subdivision, an 11,600 square foot parcel of land. The existing parcel has a side-by-side duplex constructed prior to the current zoning and is a nonconforming use in the R-96 zoning district. The owner conducted a pre-application neighborhood meeting on November 27, 2011, at 1:00 pm at the Granary at 1500 Poly Drive.

RECOMMENDATION

The Planning Division is recommending approval.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Leonard Dailey commented on a similar zone change application heard by this Commission during last month's meeting. He asked if the request been heard by City Council and if Staff received any input on the recommendation from the City Attorney's office. Nicole Cromwell stated the zone change will be heard on January 23, 2012, and to date she has not received comments from City Attorney Brent Brooks. Leonard Dailey asked Nicole Cromwell why a zone change would be preferred over a variance to address this request. Nicole Cromwell explained a variance would be more complicated than a zone change, as a variance would be needed for the lot area and a second for a "0" side setback for each lot created. Leonard Dailey said this process perfects the thinking of the 1972 Master Zoning Plan and provides a way of getting the proper zoning for a two-family property. Nicole Cromwell agreed and gave further explanation of the mapping colors used to depict R-9600 and R-7000 properties. In response to a question by Leonard Dailey, Nicole Cromwell said one-family and two-family structures considered the same under the building and development codes.

Applicant

Chairman Leonard Dailey called for the applicant's presentation.

Patrick Naglich, 1146 Parkhill Drive, Billings, Montana

Mr. Naglich stated he is requesting this zone change to allow him to rebuild a duplex. In response to a question by Bill Ryan, Mr. Naglich said this would be requested in a refinancing situation. Leonard Dailey said this situation has happened more often with the stricter lending guidelines. Mr. Naglich said the refinancing company notified him of the need for a zone change.

Discussion

Chairman Leonard Dailey called for discussion and questions by the members of the Board. There was none.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #880-1146 Parkhill Drive, Billings, Montana. There were none. Chairman Dailey closed the public hearing and called for a motion.

Motion

Commissioner Wagner made a motion and it was seconded by Commissioner Dailey to forward a recommendation of approval to City Council of City Zone Change #880-1146 Parkhill Drive as presented by staff.

Discussion

Chairman Leonard Dailey called for discussion on the motion. Members of the Commission commented this is a trend that seems to be moving forward; and it is a reasonable request.

Chairman Dailey called for a vote on the motion. **Motion carried unanimously, 4-0.**

Item #2: City Zone Change #881 – 640 St Johns Avenue – Scotts Lawn Service - A zone change request from Residential 6,000 (R-60) to Community Commercial (CC) on Lot 1, Block 4 and all of Block 1, Central Avenue Addition, 2nd Filing, a 27,101 square foot parcel of land. The existing parcel has a commercial building constructed prior to the current zoning, is a nonconforming use in the R-60 zoning district and the current use is restricted by a previous special review approval (SR #837). Tax ID: A04402, AG Holdings, owner and Allen Greene, agent.

Nicole Cromwell gave a short presentation of the staff report. She said several letters of support were included with the application and incorporated in the staff report. No outside citizen comments were received by staff.

REQUEST

This is a zone change request from Residential 6,000 (R-60) to Community Commercial (CC) on Lot 1, Block 4 and all of Block 1, Central Avenue Addition, 2nd Filing, a 27,101 square foot parcel of land. The existing parcel has a commercial building constructed prior to the current zoning, is a nonconforming use in the R-60 zoning district and the current use is restricted by a previous special review approval (Special Review #837). AG Holdings is the owner and the agent is Allen Greene. The owner conducted a pre-application neighborhood meeting on November 2, 2011, at 640 Saint Johns Avenue.

RECOMMENDATION

The Planning Division is recommending approval.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Leonard Dailey asked if staff prefers the community commercial zoning designation due to the predictability of the potential land use. Nicole Cromwell pointed out a lawn service is an allowed use in community commercial zoning, but not allowed in neighborhood commercial or neighborhood professional zoning. Leonard Dailey noted the applicant's letter to the neighborhood which indicates the R-6000 zoning provides for median density for multi-family uses. Nicole Cromwell said multiple two-unit buildings could be done on the site or four duplexes with a lot area variance of 900 square feet. Leonard Dailey concluded more density may be done with a special review, and there is a procedure for changing the land use through a special review request. Nicole Cromwell said it would be more difficult for the applicant to expand its existing use if the zone change is not approved.

Applicant

Chairman Leonard Dailey called for the applicant's presentation.

Allen Greene, 1627 Glen Haven, Billings, Montana

Mr. Greene said the building is designed with three indoor parking bays and he has several vehicles parked outside. He said would like to add on to the west side of the building to create additional covered parking, and the building itself needs additional repairs. Mr. Greene said he wants to know this is a long term position prior to investing more money in the building.

Discussion

Chairman Leonard Dailey called for discussion and questions by the members of the Board. In response to a query by Dan Wagner, Mr. Green explained the gable construction of the proposed addition. Leonard Dailey applauded the applicant's tenacity in notifying his neighbors as Mr. Greene reported going door-to-door. Leonard Dailey remarked the business has been a this location since 2008. He asked Mr. Green how the business is doing. Mr. Greene said the business is doing alright; he has maximized his storage space; and expanded the business to include a program to hang Christmas lights. Mr. Greene stated this property is paid for and financing is not an issue.

Public Hearing

At 5:06 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #881-640 St. Johns Avenue. Chairman Dailey closed the public hearing at 5:07 p.m. and called for a motion.

Motion

Commissioner Ryan made a motion and it was seconded by Commissioner Wagner to forward a recommendation of approval to City Council for Zone Change #881-640 St. Johns Avenue as presented by staff.

Discussion

Chairman Leonard Dailey called for discussion on the motion. Leonard Dailey commented this has been used as a commercial property all along. He said this zone change gives more clarity for the property owner, the neighbors, and the lending agencies.

The motion carried unanimously, 4-0.

****At 5:13 p.m., Nicole Cromwell left the room to consult City Code regarding the procedures for a public hearing in the absence of a Commission member. Planning Clerk Tammy Deines attempted to contact Commissioner Krivonen by phone but was unable to reach him.**

Nicole Cromwell returned to the meeting and pointed out the section of the City Code regarding advisory boards and meeting protocols was amended in 2009. Ms. Cromwell stated Commissioner Ryan cannot participate in the deliberation due to his conflict of interest but his disqualification does not put this Commission into a no quorum situation. She explained one option is for the Commission to forward the zone change request to City Council with no recommendation since there are only three members or the Commission could entertain an applicant's request to delay action 30 days and re-advertise the request. Ms. Cromwell noted she is aware of time constraints the applicants may have with this request.

Further clarification was given to Attorney Peter Stanley by Nicole Cromwell who stated there has to be a quorum of three voting members to forward a recommendation. Since Commissioner Ryan cannot deliberate a vote, there cannot be a recommendation.

Mr. Stanley said it is his understanding that under Robert's Rules there has to be a request for a quorum and meetings can proceed if no one makes a demand for a quorum. Nicole Cromwell replied the City Council requires a quorum.

Former Councilman Dick Clark explained this application could be forward to the City Council without the recommendation; and City Council would review the substance of the request. Mr. Stanley stated they prefer to go forward with this special review request to City Council with no recommendation from the Zoning Commission. Staff and members of the Commission agreed to proceed with the meeting.

Item #3. Special Review #896 – 525 24th Street West – One 800 Casino – A special review request to locate a beer and wine license with gaming in a Community Commercial (CC) zone on Lots 1-10, Block 13 and Tract A1, B and B1 less west 10 feet for street, Gorham Park Subdivision, a 4.73 acre parcel of land. The suite will be about 3,490 square feet within an existing 58,285 square-foot multi-tenant building. Tax ID:A07997, M & K, Inc., owner and Jill Lindell, agent.

Nicole Cromwell gave a short presentation of the staff report.

REQUEST

This is a request for a special review to allow the location of a beer and wine license with gaming in a Community Commercial (CC) zone on Lots 1-10, Block 13, and Tract A1, B and B1 less the west 10 feet for street, Gorham Park Subdivision, a 4.73 acre parcel of land. The suite will be about 3,490 square feet within an existing 58,285 square-foot multi-tenant building. The One 800 Casino is currently located in Rimrock Mall and is moving. The location will not require a waiver of the 600 foot separation from this location as there are no churches, schools or public parks with playground equipment within 600 feet of this property.

RECOMMENDATION

The Planning Division is recommending conditional approval.

1. The special review approval shall be limited to Lots 1-10, Block 13 and Tract A1, B and B1 less the west 10 feet for street, Gorham Park Subdivision
2. Any expansion of the proposed interior space greater than 400 square feet will require an additional special review approval.
3. There shall be no outdoor public address system or outside announcement system of any kind.
4. 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.
5. 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

Chairman Dailey called for questions and discussion from the members of the Commission. Dan Wagner asked how long the construction period would take. Nicole Cromwell stated this would be addressed with a building permit and an interior remodel. Leonard Dailey asked how the 600-foot radius map for this property was calculated. Nicole Cromwell explained City Code requires a 600-foot separation distance, and the mapping software calculates the radius distance from the outside boundary of the lot. She said Staff checks the tax roles for the church property ownership. She commented at times a “windshield survey” is needed due to instances when properties may be privately owned but leased to a church.

Applicant

Chairman Leonard Dailey called for presentation by the applicant.

Peter Stanley, Attorney at Law, 3860 Ave B, Ste. C, Billings, Montana

Mr. Stanley stated he is representing Jill and Scott Lindell, and property owner Ms. Theresa Jenkins is present. Mr. Stanley stressed the importance of noting this is another business moving to another location and they are not increasing the number of licenses. He said he has worked with the Lindells since 20 years ago, when they moved into the Rimrock Mall location. Mr. Stanley stated they do not expect any change in the way the business will be run and the business owners will keep a clean location. Mr. Stanley said property owner Ms. Jenkins holds a security agreement with a local security company. He commented this request is consistent with the City's Growth Plan as it is infill development, and they are making use of an existing structure. Mr. Stanley said this business will contribute to the neighborhood's vitality by filling a shop. He observed rebuilding an existing structure is more economical than building new. He said the conditions of approval proposed by Staff are acceptable. Mr. Stanley stated the applicants hope to establish a successful business and improve the shopping center by generating more use.

Jill Lindell, 5630 Billy Casper Drive, Billings, Montana

Ms. Lindell said the building plans will take 60-75 days if everything moves smoothly. She said they have 21 years experience in the casino business. They have trained their staff to highest of expectations and are in full compliance with State standards. Ms. Lindell noted the shopping center is located at a busy corner and will work extremely well for them. She said they are looking forward to moving their business and their business will upgrade the entire shopping center.

Dan Wagner asked regarding exterior lighting for this business. Ms. Lindell stated they contracted with Epcon Signs, and the signs would be extremely tasteful.

Leonard Dailey referred to the citizen's letter of opposition and their reported concerns with the rear entrance. Ms. Lindell said the front end of the property will be used as the main entrance and the back for loading purposes. She pointed out two entrances are required to meet the Fire Code. She said the rear concrete pad may be used for a "smoking pad". The hours of operation will be from 8:00 a.m.-12:00 a.m., week days; and 8:00 a.m.-2:00 a.m., Fridays and Saturdays. Ms. Lindell said they do not cater to a "rowdy crowd" and are extremely conservative with all levels of service. She submitted to the members of the Commission a section of the November 26, 2011 Billings Gazette containing a notice listing businesses who successfully passed or failed recent "liquor stings", and pointed out their business had passed the review. She noted that all of their employees are tip certified. Regarding the general tenor of the clients, Ms. Lindell said they cater to an older crowd, who are primarily coffee and pop drinkers. She stressed they are not a bar. I

In response to a question by Leonard Dailey, Ms. Lindell said their current clientele will follow them to the new location as they have several long term customers.

Dan Wagner asked if the smoking area will be covered or secluded. Ms. Lindell said their business located at Southgate Drive has an enclosure for this purpose. She stressed they are not in the business to offend anyone. She said they have the “eyes of owners” and will make sure any refuse is removed from the property.

Theresa Jenkins, 5629 Billy Casper Drive, Billings, Montana

Ms. Jenkins stated she is the president of M & K, Inc., the property owner; and they look forward to having the casino as a part of the center. She commented previous tenants included a grocery store and Harts Furniture. She said the larger portion of the building is occupied by a lighting company but the adjacent section is empty. She commented filling this section with the casino would work well, and allow an opportunity for another business as well. Ms. Jenkins stated there is plenty of parking area, and the rear of the property is buffered with fencing and greenery. She said they have hired people to take care of weeds and overgrowth, and contracted with Sundown Security to secure the site. Ms. Jenkins said this will be a plus to the neighborhood as a whole. Leonard Dailey noted the site map and asked about the rear of the property. Theresa Jenkins said there is employee parking located at the rear of the building. Leonard Dailey said the letter in opposition indicates past instances when people congregated in this area for a number of reasons. Teresa Jenkins said they have contracted with Sundown Security for at least 20 years, and they were obtained to address kids congregating in this area. She said she is not aware of any of these types of incidents recently.

Discussion

Chairman Leonard Dailey called for discussion and questions by the members of the Board. He asked for a sample of the form letter sent to the property owners. Nicole Cromwell pointed out it was included as an exhibit in the staff report.

Public Hearing

At 5:46 p.m., Chairman Dailey closed the public hearing.

Chairman Dailey announced the Zoning Commission will forward no motion or recommendation to City Council for Special Review #896 due to the instances of having three attending voting members and Commissioner Ryan’s recusal for a conflict of interest.

Other Business

- A. Membership:** Chairman Dailey welcomed Bill Ryan to the Zoning Commission, who was appointed to fill Ed Workman’s position. Dan Wagner and Barbara Hawkins were appointed to another term.

- B. Announcement: The next meeting will be held on February 7, 2012.**
Nicole Cromwell stated agenda items will include the Zoning Commission’s election of officers; and consideration for a formal initiation of several text amendments to the Code. Nicole Cromwell explained several public hearings will follow the formal initiation. She

said Staff will go to the Yellowstone County Zoning Commission for consideration of several County related amendments.

Adjournment:

The meeting was adjourned at 5:54 p.m.

ATTEST:

Leonard Dailey, Chairman

Tamara L. Deines, Planning Clerk