

City of Billings Zoning Commission Meeting March 6, 2012

The City of Billings Zoning Commission met on Tuesday, March 6, 2012 in the City Council Chamber, 2nd Floor City Hall 210 N 27th Street, Billings, Montana.

Chairman Leonard Dailey called the meeting to order at 4:30 p.m. The City Council has designated **Monday, March 26, 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	1	1									
Matt Krivonen	Commissioner	A	A	E									
Barbara Hawkins	Commissioner	E	E	1									
Dan Wagner	Commissioner	1	1	1									
Bill Ryan	Commissioner	1	1	1									
Candi Beaudry	Director, Planning & Community Services	-	-	1									
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1									
Tammy Deines	Planning Clerk	1	1	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	2	8										12
Special Review	1	0	1										2

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

Others in Attendance:

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: February 7, 2012

Chairman Dailey called for approval of the February 7, 2012 minutes.

Motion

On a motion by Commissioner Wagner seconded by Commissioner Ryan and approved with a 3-0 voice vote, the minutes of February 7, 2012.

Motion passes with a unanimous voice vote.

Disclosure of Conflict of Interest

Chairman Dailey called for disclosures of conflict of interest.

Disclosure of Outside Communication

Chairman Dailey called for disclosure of ex parte communication. There was none at this time. Following her arrival to the meeting, Barbara Hawkins disclosed a phone call received from Bill Iverson regarding Zone Change #885 as noted prior to the public hearing.

Nicole Cromwell announced staff received an informational submittal from Citizen Doug Ruebke regarding Zone Change #885; and noted a July 15, 2010 redacted letter from Zoning Coordinator Nicole Cromwell to W. Scott Green, 2917 2nd Avenue North, Billings, Montana regarding City Code Section 27-607. Copies were distributed to the members of the Commission and made available in the notebook.

**Barbara Hawkins arrived at 4:37 p.m.

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. Ms. Cromwell read aloud the legal notification for City Special Review #897.

Item #1: City Special Review – 501 Hilltop Road-The Vig-All Beverage– A special review request to allow the placement of an all beverage license with gaming and an outdoor patio in a Highway Commercial (HC) zone on Lots 2B and 2C, Block 1, Dicono Subdivision, a 37,750 square foot parcel of land. The applicant received a previous approval and a waiver of the 600 foot separation to a school for a beer & wine license with gaming and an outdoor patio on August 23, 2010 (SR #884). This new request will require a waiver of the 600 foot separation from this location and the Bench Elementary School at 505 Milton Road. Tax ID: A28736A & A28736B; The Vig LLC, owner and Michael Schmechel, agent.

Zoning Coordinator Nicole Cromwell gave a short presentation of the staff report.

REQUEST

This is a request for a special review for the location of an all-beverage license with gaming and an outdoor patio for an existing location approved for a beer and wine license with gaming and a patio at 501 Hilltop Road on a 37,750 square foot parcel of land in a Highway Commercial (HC) zone. The subject property is legally described as Lots 2B and 2C, Block 1, Dicono Subdivision. The location will require a waiver of the 600 foot separation from this location and the Bench Elementary School at 505 Milton Road.

RECOMMENDATION

The Planning Division is recommending conditional approval.

PROPOSED CONDITIONS

1. The special review approval shall be limited to Lots 2B and 2C, Block 1, Dicono Subdivision generally located at 501 Hilltop Road.
2. Any expansion of the proposed patio, building, building occupancy or parking lot greater than 10 percent of existing conditions will require an additional special review approval.
3. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge.
4. A 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. No chain link or wire fencing will be used for sight-obscuring enclosure.

5. 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.
6. 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. Nicole Cromwell commented she was able to hear music from the patio area while posting the sign and she noticed the dumpsters have not been enclosed. She pointed out the sign posting location on the site map. In response to a question to Leonard Dailey, Nicole Cromwell said the older site plan was used, as there has been no change since the previous application. Leonard Dailey asked if there is vehicular or pedestrian traffic on Montgomery Street. Nicole Cromwell stated there is no sidewalk and she did not observe any traffic coming in from Milton Road while there. She said children coming from the school to this property is unlikely.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Special Review #897-501 Hilltop Road.

Michael Schmechel, Billings, Montana

Mr. Schmechel is the agent for the owner, The Vig, LLC, and he expressed his appreciation for the Commission's consideration of this application. He said up until he purchased this property he was unaware of the school, and there is no visual line between the two properties. He stated he does not feel there is any issue with school traffic. Mr. Schmechel said they will enclose the dumpster that belongs to them and pointed out the other dumpster belongs to a storage business. He commented on the opportunity to purchase the license. Dan Wagner asked if only enclosing one dumpster will be an issue. Mr. Schmechel pointed out there is an access road to the storage side and the dumpster is not part of their lot. Leonard Dailey asked about staff's position, and Nicole Cromwell stated they would only be responsible for the dumpster they own.

Chairman Dailey opened the public hearing asked if there was anyone wishing to speak in opposition to City Special Review #897. There was none. At 4:49 p.m., Chairman Dailey closed the public hearing and called for a motion.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Wagner to forward a recommendation of approval to City Council of City Special Review #897 with the conditions presented by staff.

Discussion

Chairman Leonard Dailey called for discussion on the motion. Barbara Hawkins said the establishment is further than the required 600 feet from the school.

Chairman Dailey called for a vote on the motion.

Motion carried with a unanimous voice vote.

Item #2: Zone Change #883 – Text Amendment – Vertical Siding Section 27-310(i) – A zone change to the Unified Zoning Regulations regarding the requirement that all detached accessory structures within the city limits have horizontal siding. The amendment will allow some detached accessory structures to have vertical siding where principal uses have vertical siding or a mixture of vertical and horizontal siding. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-310(i)9 of the Billings, Montana, City Code (BMCC) regulating the types of siding allowed on detached accessory residential structures. The proposed amendment will allow property owners to match existing vertical or mixed vertical and horizontal siding on homes with proposed new detached garages or sheds over 200 square feet. The amendment still meets the intent of the original ordinance to limit application of vertical siding. Council Member Pitman initiated this amendment on June 9, 2008 and the Council unanimously approved the initiative.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave a short presentation of the staff report.

BACKGROUND

The current code was amended in 2006 to address issues of over-built detached garages in Billings' neighborhoods. At the time, vertical metal siding on pole barns in some Billings neighborhoods was a concern. Since 2006, the new regulation has required several property owners to pursue variances to match vertical siding on existing homes to new detached garages or sheds over 200 square feet.

The proposed amendment would allow new detached accessory structures to place vertical siding on the structure if the principal dwelling also has vertical siding or a mixture of vertical and horizontal siding. Matching the siding of accessory buildings with the homes will eliminate the need for these property owners to obtain a variance from the regulations.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Dan Wagner said it makes common sense to be able to match the existing siding on the property. In response to a question by Leonard Dailey, Nicole Cromwell explained the instance which triggered the original amendment for vertical siding. She pointed out another amendment was forwarded at the time to regulate the height of accessory building.

Public Hearing

At 4:56 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #883 – Text Amendment – Vertical Siding Section 27-310(i). There was none.

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 #883 – Text Amendment – Vertical Siding Section 27-310(i) as presented by staff.

Discussion

Chairman Leonard Dailey called for discussion on the motion. It was the concurrence of the members of the Commission that this amendment is sensible.

The motion carried with a unanimous voice vote.

Item #3: Zone Change #884 – Text Amendment - Public and Private Correctional Facilities; Section 27-201 (Definitions); Section 27-305 (Residential Uses); and Section 27-306 (Commercial and Industrial Uses) – A zone change to the Unified Zoning Regulations regarding the definition of rehabilitative centers, community residential facilities and amending where public and private correctional facilities may be located. The City Council initiated this amendment on April 9, 2007.

REQUEST

This is a zone change that will amend several sections of the Billings, Montana City Code (BMCC) regarding definitions for community residential facilities and regulating where correctional facilities – public and private – may or may not be located. The proposed amendments to definitions will update the regulations to mirror the state law definitions for community residential facilities and eliminate a conflicting definition of rehabilitation centers, a definition that dates to 1972. The amendments to Sections 27-305 and 27-306 will change where public and private correctional facilities may be located. Council Member Ulledalen initiated this amendment on April 9, 2007, and the Council approved the initiative.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave a short presentation of the staff report.

BACKGROUND

Community Residential Facilities

The current code has been amended several times over the years to address specific requirements of state law for community residential facilities. The state law protects these uses because they provide essential home-based services for individuals that may be disabled or provide other essential home-based services for children or older persons. These facilities are protected under MCA 76-2-411 and 76-2-412 from being “zoned out” of residential areas or more stringent requirements placed on where such facilities can be located. State law does allow communities to require a conditional use (special review) for facilities that provide services to more than 8 individuals. While state law has been updated periodically, the local regulations and definitions have not kept pace. The amendments will align our local regulations with state law.

The zoning regulations contain a definition that pre-dates the state law definitions in this area. The code currently has a definition of a “rehabilitation center” that overlaps and does not align with state law definitions and has caused confusion for enforcement and administration of the code. The definition of a “rehabilitative center” has been in the zoning code since 1972. The definition of a “rehabilitative center” remained in the code after definitions for community residential facilities were added in 1987. The definition was amended to remove any reference to “drug or alcohol addiction” in 1992 along with changes to the definition of a “community residential facilities”. (Ordinance 92-4896) No other changes have been made since 1992. The amendment proposes to delete this definition from the code since it is duplicative and confusing.

Correctional Facilities – Public and Private

In 2006 and 2007, the City Council was concerned that public and private correctional facilities were being unnecessarily located in one zoning district – the South 27th Street Corridor. The City Council was concerned that a major entryway to the city was being over-utilized for these institutional uses, when other districts were available and perhaps better suited for these uses. Two sections of the Commercial and Industrial Uses matrix found in 27-306 regulate where public and private correctional facilities may be allowed. The current code allows private correctional facilities (SIC 8744) by special review approval in 3 districts – South 27th Street Corridor, Public and Controlled Industrial (CI). Similarly, the code allows public correctional facilities (SIC 9223) by special review approval in the South 27th Street Corridor, Public and CI. Any public correctional facilities can – under provision of MCA 76-2-402 (Land Use Contrary to Zoning) – be located in any zoning district by conducting a public hearing before the Board of Adjustment prior to initiating the project.

76-2-401. Definitions. As used in [76-2-402](#), the following definitions apply:

- (1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.
- (2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

76-2-402. Local zoning regulations -- application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

- (1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local

zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

The proposed amendments would eliminate public or private correctional facilities as a special review use in the South 27th Street Corridor and eliminate public correctional facilities from the CI zone. Existing private correctional facilities could continue in their current locations and could be re-built if damaged or destroyed. However, the amendment would not allow expansion of those existing private correctional facilities or the location of any new private correctional facilities in this zoning district. Halfway houses including supervised release programs operated by organizations such as Alternatives, Inc. would still be an allowed use in all Commercial and Industrial zoning districts. These uses are classified in SIC 83 – Social Services. Private correctional facilities are distinct and separate from these uses and would not be allowed in the South 27th Street Corridor by this amendment.

The Planning Division has worked with the City Attorney to carefully craft these amendments to address the concerns of the City Council and protect the rights of individuals as enumerated in state and federal law.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Clarification was given to Commissioner Ryan regarding the boundaries of the South 27th Street District and Nicole Cromwell pointed out the locations of the current correctional facilities. Nicole Cromwell said City Council did not believe that additional correctional facilities will enhance this entrance to the City of Billings. In response to a question by Bill Ryan, Nicole Cromwell said with this amendment, private correctional facilities would be allowed by special review approval in public or controlled industrial zoned property. Bill Ryan asked for any other examples of requests for these types of facilities outside this corridor. Nicole Cromwell commented there have been some inquiries on properties located in Highway Commercial zones near the interstate; and come Controlled Industrial zones on the west end of Billings. She said the State has not solicited private vendors in recent history so there are no proposals at this time. Leonard Dailey asked regarding input received from the South Side Neighborhood Task Force. Nicole Cromwell stated she has not heard a position but has fielded some questions.

Public Hearing

At 5:14 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #884 – Text Amendment - Public and Private Correctional Facilities; Section 27-201 (Definitions); Section 27-305 (Residential Uses); and Section 27-306 (Commercial and Industrial Uses)

Mary Westwood, P.O. Box 3334, Billings, Montana

Ms. Westwood stated she volunteers at “Passages” and is the Secretary of the South Side Task Force, but she is speaking as a private citizen. She said the zoning regulations of the City of Billings are complicated. She is in support of the possibility of removing additional facilities in the South 27th Street Corridor as in reality they tend to draw a certain element of folk and area crimes are increased. She said she teaches reading and writing to women at “Passages” and has great sympathy with these clients. She stressed the need to have the neighborhood protected and create a good entrance to the City of Billings. She said the South Side Task Force is working on the perception of their neighborhood.

Mike Yackawich, 206 S 32nd Street, Billings, Montana

Mr. Yackawich is the President of the South Side Task Force. He stated he was given ample information by Staff, and will forward it to the Task Force as he has not done so as of yet. He said the neighborhood would like to share correctional facilities throughout the City and not place such a burden on their neighborhood.

Chairman Dailey closed the public hearing at 5:19 p.m. and called for a motion.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Wagner to forward a recommendation of approval to City Council for Zone Change #884 – Text Amendment - Public and Private Correctional Facilities; Section 27-201 (Definitions); Section 27-305 (Residential Uses); and Section 27-306 (Commercial and Industrial Uses) –as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion. Bill Ryan commented on the input received from Ms. Westwood and said it makes sense to share these types of facilities in locations throughout the city.

The motion carried with a unanimous voice vote.

Item #4: Zone Change #885 – Text Amendment – Livestock and Fowl Section 27-607 – A zone change to the Unified Zoning Regulations to clarify that fowl (poultry) as defined by Section 27-201 is not an allowed use within the City of Billings. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-607 of the Billings, Montana, City Code (BMCC) to clarify that both livestock and fowl (poultry) are not allowed uses within the City of Billings. The current code requires consultation of 3 sections of the code to determine whether poultry is an allowed or prohibited use. The proposed amendment will make the prohibition clear within Section 27-607 without requiring a reading of other sections of the code. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave an overview of the staff report and the background information below. She pointed out a submittal received from Citizen Doug Rubke and a copy of a redacted letter from herself to as part of a Code Enforcement case. She pointed out the need to read the code “as a whole” to gain understanding of the definitions. She opened a PowerPoint presentation and gave an overview of the staff report including a history of City Zoning. She noted this clarification amendment is to correct an error in 1997.

BACKGROUND

The current code was unified with the County Zoning Regulations in 1997 and it appears some language was inadvertently deleted at the time. The City Council and the City Zoning Commission considered requests to amend the zoning code to allow poultry (urban chickens) and both the Council and the Zoning Commission declined to initiate those amendments. The clarification of the code will ensure appropriate and accurate enforcement of the prohibition of poultry within the city limits.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. In response to a question by Bill Ryan, Nicole Cromwell stated staff has not received many of these types of complaints in the last six months except those that are self reporting. Leonard Dailey inquired regarding City Council's actions. Nicole Cromwell explained City Council has tabled any further efforts to draft an ordinance to allow chickens within the City limits. She noted that the current definition includes chickens, ducks, and geese. Barbara Hawkins commented that we are here this evening as the word "fowl" was left out of the supplement. Nicole Cromwell stated that the word will not change the current prohibition. Leonard Dailey noted this is a clarification or housekeeping measure.

Public Hearing

At 5:30 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents of Zone Change #885 – Text Amendment – Livestock and Fowl Section 27-607.

Doug Rubke, 110 S. 31st Street, Billings, Montana

Mr. Rubke stated he is a member of the Animal Control Board, but is here on personal interests only. He said his review of the code may warrant further clarification, including the definition of "project animals". He had submitted some drafts to Commission with the language that may be considered in the future. He said he sees no problem with the addition of the word "fowl".

Opponents

Chairman Leonard Dailey opened the public hearing and called for opponents of Zone Change #885 – Text Amendment – Livestock and Fowl Section 27-607.

Carol Braaten, 183 Lexington Drive, Billings, Montana

Ms. Bratton said she is here today as a large group had come before City Council to ask that having chickens would be OK. She stated chickens have been in Billings for a long time; it has not been an issue; and most people are raising chickens for pets and provision of fresh eggs. She said the code is making outlaws of those who are upstanding citizens. Ms. Bratton stated there is no reason to add language to the code in order to force a bigger issue in the City of Billings; issue citizens citations; and have their chickens confiscated. She asked the Commission to consider what this could lead to should the amendment go forward.

Emily Gocke-Smith, 2520 Lake Heights Drive, Billings, Montana

Ms. Gocke-Smith said she is a veterinarian; attended the previous Zoning Commission meeting; and is speaking in favor of having a small number of urban hens. She thanked the Zoning Coordinator for her explanation of the background to this section of code and said she feels the wording is unclear. Ms Gocke-Smith said in the past the City told people that the code is vague so they could get them. She stated passage of this text amendment will make those that already have hens in error. She commented it is not right to say it is not allowed when no final decision has been made. She asked the Commission to consider what they are asking for, consider other places where it works, and make a decision based this.

Kyle Porrett, 3023 Melrose Lane, Billings, Montana

Mr. Porrett spoke in support of keeping and raising a small number of hens. He commented hens are similar to keeping a cat in terms of cleanliness; and there is no noise problem as you would have with dogs in the middle of the night. Mr. Porret stated people have maintained and kept hens due to the vagueness of the code. He said he feels hens are good pets which provide good food.

TJ Wierenga, 2215 Beloit, Hens In The Backyard Group, Billings, Montana

Ms. Wierenga submitted to the Commission a list of major cities allowing urban hens as of March, 2012. She said this issue was brought before this Commission last year as there was no clear answer given by City Staff. She reported contacting the City eight times before a definitive answer was given by City Administrator Tina Volek's office that the City was considering making chickens illegal in the city. She continued and said since 1995, urban food production has become a larger issue and the cities on the list have updated their ordinances to include urban hens. She said they have over 250 petition signatures; proof of hundreds of interested supportive citizens; a relocation program; and their group has been involved with several activities to make this operational in Billings. She stated they are unclear as to make this an initiation when this has basically been unenforced. She asked if the Commission has done research on urban chickens. She stated they were unable to find any other City indicating the animal control workload would be increased. She asked if no problems are reported to the City; no proof that hens are otherwise onerous to the City; why is this amendment is being initiated to make hen owners law breakers.

Leonard Daily stated that this Zoning Commission is charged to address the current agenda items and it is his understanding that Staff's intent is to clarify the ordinance which already states chickens are not allowed within the City. Nicole Cromwell stated they are not creating a prohibition. Leonard Dailey said this amendment is for clarification. He stated he appreciates the testimonies. Bill Ryan said the vehicle for this would be to forward an initiative to City Council and it is not intended to be an enforcement mechanism.

Ms. Wierenga stated their concern is that this will be used as an enforcement mechanism for those that already have chickens.

Karen Sunderland, 529 Ave. B, Billings, Montana

Ms. Sunderland said she spoke at last year's Zoning Commission meeting. She said they have taken this to City Council and it did not work. She read the transcripts and feels there was definite bias on this Commission last year. She thought she would hear dialogue why this would be good for Billings.

Bill Ryan explained legally this would have to be presented to the City Council. She asked who requested the change to the text. Leonard Dailey said was requested by Staff. Ms. Sunderland stated she does not see the personal bias outside this Commission and City Council Chambers. She stated she has read the transcripts and it is frustrating to read this, and is asking why there is so much opposition at the City Commission and the City Council. She said she has not seen a single letter in the newspaper or letters to the City Council in opposition. She expressed her frustration as a citizen and asked why there is so much opposition here. Chairman Daily reiterated this amendment is a clarification of wording in the Zoning Code and thanked Ms. Sunderland for her testimony.

Dan House, 622 S32nd Street, Billings, Montana

Mr. House stated he understands what this Commission tasked to do but he feels that City Council is trying to put this decision on the Zoning Commission so they don't have to make a choice.

Nathan Blanding, 539 Clark Avenue, Billings, Montana

Mr. Blanding stated he is in support of in making chickens allowable to some extent in the neighborhood for homeowners' use. He said this seems to be a reasonable request.

Chairman Dailey reiterated the amendment is proposing insertion of the word "fowl" into the code. Nathan Blending said in the past this has been a grey area up for some interpretation. He suggested a clarification to reword the code to limit and not exclude hens.

Chairman Daily reminded the audience and Mr. Blanding the City Zoning Commission is an advisory committee and a recommendation will be forwarded to City Council. Mr. Blending suggested amending the current law to legally allow chickens. Nicole Cromwell explained the code can be amended so long as issues are not encompassed more than what is publically advertised. Mr. Blanding asked for consideration of reconsidering and shifting the grey area to some legally defined way of having some range of having chickens in people's yards.

Chairman Dailey stated the Commission has heard the citizens' views today and appreciates their testimony. He asked if anyone else wished to speak in favor or against Zone Change #884. There was none. Chairman Dailey closed the public hearing at 5:54 p.m. and called for a motion.

Motion

Commissioner Wagner made a motion and it was seconded by Commissioner Hawkins to forward a recommendation of approval to City Council for Zone Change #885 – Text Amendment – Livestock and Fowl Section 27-607 as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion.

Commissioner Hawkins reminded the Commission she was not present when the chairman requested exparté communications. She reported she received a call from Bill Iverson regarding City Zone Change #885, and he gave her a scathing rebuke for her vote on this item at the last Zoning Commission meeting. She said she was told how urban chickens are a good source of food. She stated she has heard testimony this evening that these are pets. She said although it is outside of what the Commission is taxed to do; she commented she is confused as to whether they are considered “pets” or “a food source”.

In response to Bill Ryan’s query regarding enforcement, Nicole Cromwell stated this has always been enforced, and the code is clear when read in a complete fashion. She stated since at least 2010, it has always been interpreted that livestock and chickens are not allowed in the City of Billings. She said she is unsure who has made an assumption, or what City staff they have talked to and were told this is a grey area and they can have chickens, but it was not her or any of the Code Enforcement Staff.

In response to a question by Barbara Hawkins, Nicole Cromwell stated City Council makes the decision and this amendment does not forestall any future decisions to allow backyard chickens. She stressed today’s amendment is only to make language amendments. Leonard Daily requested clarification on how these types of violations are addressed as it his understanding they are handled on a complaint basis. Nicole Cromwell said there are two officers. When a complaint is received, the officer goes to the location, and if no evidence can be seen from a public right-of-way it case ends there. A complaint has to be received as the officers do not patrol. In response to Dan Wagner, Nicole Cromwell there has been a few self reported complaints.

Chairman Dailey announced this item will be heard by City Council on March 26, 2012.

The motion carried with a unanimous voice vote.

**** At 6:01 there was a brief delay in the meeting while the chairman has a discussion exparté.**

Item #5: Zone Change #886 – Text Amendment – Lot Area Calculations for Residential Uses – Section 27-305 (Residential Uses); Section 27-308 (Residential Area, Yard and Height Requirements); Section 27-617 (Zero Lot Lines); Section 27-618 (Illustrations) – A zone change to the Unified Zoning Regulations to clarify the lot area requirements when two (2) or more dwellings exist on a single lot; elimination of references to townhomes; and deletion of references to zero lot lines. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend several sections of the Billings, Montana, City Code (BMCC) regarding lot area requirements for dwelling units, elimination of references to townhomes or townhouses, deleting the requirement for additional side setbacks in the Residential 5,000 (R-50) zone and removing the zero lot line references. The current code can cause confusion in interpretation when multiple dwelling units exist on undivided lots. Past interpretation is that each detached “dwelling unit” requires the minimum lot area even though the detached units are not separated by a lot line. There are many unit ownership developments in Billings. Several of those developments consist entirely of single detached dwelling units and in some cases 2 single detached dwelling units on 1 undivided lot. The proposed amendments to Section 27-305 would allow the lot area for attached or detached dwelling units to remain the same for the “two units” configuration. The amendment proposes to eliminate references to townhomes or townhouses as a specific use in response to recent legislative changes. The amendment also removes the requirement for additional side setback – 10 feet – in the R-50 zone if no alley exists. There are very few R-50 zoning districts and this additional side setback is unnecessary if the lots are well designed. The amendment proposes to eliminate allowances for zero lot lines because these are only used in reference to townhomes. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell opened a PowerPoint presentation; gave the background below; and an overview of the staff report. She commented on the numerous lot area variances that have been considered due to the tightening of lending laws.

BACKGROUND

Lot Area for Residential Dwelling Units

The current code has caused confusion in interpretation in particular where 2 dwelling units exist on a single undivided lot. For example, a unit ownership development such as the Hampton Place Patio Homes east of Zimmerman Trail is located in a Residential 8,000 (R-80) zone. The development consists of 20 detached dwelling units. Under current interpretation, each unit would require 8,000 square feet of land area. Under the proposed interpretation every 2 units would require 10,000 square feet of land area rather than 16,000 square feet if they exist on an undivided lot. The Hampton Place site is 145,141 square feet in undivided lot area. The proposed amendment would allow up to 28 dwelling units. This proposed amendment strongly supports the recently adopted Infill Policy since it allows land owners more efficiency in unit development and could open several vacant parcels in the R-80, R-70, R-60, R-50, RMF and RMF-R to development that may not be cost effective under current code. The proposed amendment also supports need for a variety of housing types throughout Billings since a land owner could build a combination of single dwelling units – attached or detached – without devoting additional area for the detached units.

Townhouses and Townhomes

In 2011, the legislature amended the unit ownership act to allow townhomes as a type of ownership. The primary difference between a townhome and condominium is the townhome owns the land below and the air above the dwelling unit and a condominium does not have this land and air ownership. Zoning regulations are not designed to regulate ownership but to regulate uses and structures such as building height and setback. The current definition of townhome is more aligned to an architectural style and not related to ownership. Since we cannot regulate ownership through zoning, the Planning Division proposes to eliminate

townhome or townhouse as a use type in Section 27-305 and eliminate zero lot line references since these only apply under the current definition. The definition of townhome or townhouse will be updated in a future zone change (April 2012) when other legislative changes are considered for zoning code updates. Elimination of the reference to a zero lot line would not disallow a zero side setback but would require a property owner to seek and obtain a side setback variance.

Addition Side Setbacks – R-50 zone

The proposed amendments would eliminate the need for any additional side setbacks in the R-50 zone – a zone that allows single dwellings on a 5,000 square foot lot or two units on an 8,000 square foot lot. The additional side setback is required where R-50 subdivisions are platted without an alley. The additional side setback – to 10 feet on one side – was likely adopted to accommodate public utility infrastructure to run between dwelling units or to encourage R-50 subdivisions to plat alleys where utilities can be easily located. The minimum side setback of 5 feet on each side lot line is sufficient to accommodate most utilities. Many private utility companies now prefer to run adjacent to or within the street right-of-way. A well designed 5,000 square foot lot does not need additional side setback to prevent overcrowding of a lot.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Clarification was given to Leonard Dailey regarding the lot area requirements for R-6000 and R-7000.

Public Hearing

At 6:13 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #886 – Text Amendment – Lot Area Calculations for Residential Uses – Section 27-305 (Residential Uses); Section 27-308 (Residential Area, Yard and Height Requirements); Section 27-617 (Zero Lot Lines); Section 27-618 (Illustrations). There was none.

Chairman Dailey closed the public hearing at 5:07 p.m. and called for a motion.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Ryan to forward a recommendation of approval to City Council for Zone Change #886 – Text Amendment – Lot Area Calculations for Residential Uses – Section 27-305 (Residential Uses); Section 27-308 (Residential Area, Yard and Height Requirements); Section 27-617 (Zero Lot Lines); Section 27-618 (Illustrations) as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion. Barbara Hawkins said this amendment makes sense. Leonard Dailey commented it seems that Staff and the Planning Department have moved toward a better understanding of use of common sense within government. Nicole Cromwell thanked him for his comment.

The motion carried with a unanimous voice vote.

Item #6: Zone Change #887 – Text Amendment – References to Application Fees – Section 27-1704 – A zone change to the Unified Zoning Regulations to eliminate any reference to dollar amounts for application fees. Fees are set by the City and County by resolution. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-1704, of the Billings, Montana, City Code (BMCC) to eliminate reference to specific fees for zoning application. Zoning application fees are set by resolution of the City Council and the Board of County Commissioners. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave the background information below.

BACKGROUND

The current code was amended in 2003 to update application fees. Since 2003, it has been determined that fees can and should be set through resolution by the governing bodies rather than through an ordinance amendment.

The proposed amendment would leave the language referring to setting fees but would remove the actual fees from the ordinance. The City Council and Board of County Commissioners update fees on a regular basis usually every 2 years. A proposed update of fees will be brought forward for consideration during the FY2013 Budget process based on the cost to process various zoning applications.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. There was none.

Public Hearing

At 6:16 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #887 – Text Amendment – References to Application Fees – Section 27-1704. There was none.

Chairman Dailey closed the public hearing at 6:17 p.m. and called for a motion.

Motion

Commissioner Ryan made a motion and it was seconded by Commissioner Dailey to forward a recommendation of approval to City Council for Zone Change #887 – Text Amendment – References to Application Fees – Section 27-1704as presented by staff.

Discussion

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

The motion carried with a unanimous voice vote.

Item #7: Zone Change #888 – Text Amendment – Detached Accessory Structures – Section 27-310(i) – A zone change to the Unified Zoning Regulations to create separate sections for City and County requirements for detached accessory structures. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-310 of the Billings, Montana City Code (BMCC) to create two subsections that regulate detached accessory buildings in residential zones. The existing code has a single subsection that applies inside and outside the city limits. The proposed amendment will separate the requirements for construction inside the city limits from the requirements outside the city limits. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave the background information below and an over view of the staff report. Staff is proposing separate subsections for the City and the county to eliminate confusion.

BACKGROUND

The current code was unified with the County Zoning Regulations in 1997. In 2006, the City Council adopted major amendments to the code that only apply within the city limits. Although carefully written, the code is confusing to interpret. The amendment will create an additional subsection to separate the requirements for the city and county.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Nicole Cromwell explained what constitutes a “detached accessory building”. Discussion followed on uses. Nicole Cromwell stated it has to be a secondary use and not a principle use in that district.

The County will hold a public hearing next week and the recommendation will be forwarded to the Board of County Commissioners on this proposal.

Public Hearing

At 6:21 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #888 – Text Amendment – Detached Accessory Structures – Section 27-310(i). There was none. Chairman Dailey closed the public hearing at 6:22 p.m. and called for a motion.

Motion

Commissioner Wagner made a motion and it was seconded by Commissioner Hawkins to forward a recommendation of approval to City Council for Zone Change Zone Change #888 – Text Amendment – Detached Accessory Structures – Section 27-310(i) as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion. Leonard Dailey make it easier for the public and plan reviewers to understand.

The motion carried with a unanimous voice vote.

Item #8: Zone Change #889 – Text Amendment – Shiloh Corridor Overlay Zone – Section 27-1404 through 27-1424 – A zone change the Unified Zoning Regulations to clarify and correct language in the Shiloh Corridor Overlay zoning district. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-1401 through 27-1424 of the Billings, Montana City Code (BMCC) to correct reference errors and amend sections regulating signage for assembly uses in residential zones. The existing code has numerous small reference errors and issues with regulating signage for churches, schools, and similar assembly uses and needs to be updated. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell gave the background information below and further explanation of the proposed changes listed in the staff report.

BACKGROUND

The current code was originally adopted in 2004 and included a provision to review the regulations on continual basis to make amendments after the initial implementation. Although carefully written, the code has numerous small reference errors that need to be addressed so designers and administrators of the code can correctly interpret and implement the code. The signage issue is directly related to a federal law – the Religious Land Use and Institutionalized Persons Act or RLUIPA – that protects religious land uses from more stringent or burdensome land use regulations than what is applied to a similar non-religious assembly land use. For example, land use regulations applied to schools must be equal to or less burdensome for religious land uses. The Shiloh Corridor Overlay District regulations has less stringent sign regulations for schools, hospitals, police and fire stations, post offices and public golf courses than it applies to churches and other religious land uses. The amendment will eliminate the enumeration of assembly type uses and treat all such uses equally.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Leonard Dailey the attorney's office has reviewed this request and have not waved any "red flags"

Public Hearing

At 6:30 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #889 – Text Amendment – Shiloh Corridor Overlay Zone – Section 27-1404 through 27-1424. There was none

Chairman Dailey closed the public hearing and called for a motion.

Motion

Commissioner Ryan made a motion and it was seconded by Commissioner Dailey to forward a recommendation of approval to City Council for Zone Change #889 – Text Amendment – Shiloh Corridor Overlay Zone – Section 27-1404 through 27-1424 as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion.

The motion carried with a unanimous voice vote.

Item #9: Zone Change #890 – Text Amendment – South Shiloh Corridor Overlay Zone – Section 27-1429 through 27-1451 - A zone change the Unified Zoning Regulations to clarify and correct language in the South Shiloh Corridor Overlay zoning district. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-1429 through 27-1451 of the Billings, Montana City Code (BMCC) to correct reference errors and amend sections regulating signage for assembly uses in residential zones. The existing code has numerous small reference errors and issues with regulating signage for churches, schools and similar assembly uses needs to be updates. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

Nicole Cromwell explained the boundaries of the South Shiloh Overlay District.

BACKGROUND

The current code was originally adopted in 2005, 1 year after the North Shiloh Corridor Overlay District, and included a provision to review the regulations on continual basis to make amendments after the initial implementation. Although carefully written, the code has numerous small reference errors that need to be addressed so designers and administrators of the code can correctly interpret and implement the code. The signage issue is directly related to a federal law – the Religious Land Use and Institutionalized Persons Act

or RLUIPA – that protects religious land uses from more stringent or burdensome land use regulations than what is applied to a similar non-religious assembly land use. For example, land use regulations applied to schools must be equal to or less burdensome for religious land uses. The Shiloh Corridor Overlay District regulations has less stringent sign regulations for schools, hospitals, police and fire stations, post offices and public golf courses than it applies to churches and other religious land uses. The amendment will eliminate the enumeration of assembly type uses and treat all such uses equally.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission.

Public Hearing

At 6:32 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #890 – Text Amendment – South Shiloh Corridor Overlay Zone – Section 27-1429 through 27-1451.

Chairman Dailey closed the public hearing at and called for a motion.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Ryan to forward a recommendation of approval to City Council for Zone Change #890 – Text Amendment – South Shiloh Corridor Overlay Zone – Section 27-1429 through 27-1451 as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion.

The motion carried with a unanimous voice vote.

Other Business

- A. The next City Zoning Commission meeting will be held on April 3, 2012, at 4:30 p.m., in the City Council Chambers.
- B. Nicole Cromwell voiced concern with Commissioner Krivonen’s attendance as he has missed three meetings. She said Mr. Krivonen sent an e-mail was sent to the Planning Clerk explaining his absence this evening was due to his work situation. It was the consensus of the Commission to give Mr. Krivonen opportunity to consider attending. Chairman Dailey offered to contact him as Mr. Krivonen has given good input during meetings and staff would like to have him continue.

C. 2012 Elections

Motion

A motion was made by Dan Wagner and it was seconded by Barbara Hawkins nominate Leonard Dailey as Zoning Commission Chairman.

The motion carried with a unanimous voice vote.

Motion

A motion was made by Leonard Daily and it was seconded by Dan Wagner to nominate Barbara Hawkins as Zoning Commission Vice Chairman.

The motion carried with a unanimous voice vote.

Adjournment:

The meeting was adjourned at 6:40 pm.

ATTEST:

Leonard Dailey, Chairman

Tamara L. Deines, Planning Clerk