

**City of Billings Zoning Commission
Meeting Minutes- July 2, 2013**

The City of Billings Zoning Commission met on Tuesday, July 2, 2013 in the City Council Chambers, 2nd Floor City Hall 210 N 27th Street, Billings, Montana.

Chairman Leonard Daily called the meeting to order at 4:30 p.m. The City Council has designated **Monday, July 22, 2013**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		01/02/2013	02/05/2013	03/05/2013	04/02/2013	05/07/2013	06/04/2013	07/02/2013	08/06/2013	09/04/2013	10/01/2013	11/06/2013	12/03/2013
Leonard Dailey, Jr.	Chairman	1	1	1	-	1	E	1					
Barbara Hawkins	Commissioner	E	1	1	-	1	1	1					
Dan Wagner	Vice Chairman	1	1	E	-	1	1	1					
Bill Ryan	Commissioner	1	E	E	-	1	E	E					
Mike Boyett	Commissioner	1	1	1	-	1	1	1					
Candi Beaudry	Director, Planning & Community Services	-	-	-	-	-	-	-					
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	-	1	1	1					
Tammy Deines	Planning Clerk	1	1	1	-	1	1	-					
Wyeth Friday	Planning Division Manager	-	-	-	-	-	-	-					
Juliet Spalding	Planner II	-	-	-	-	-	-	-					
Lora Mattox	Planner II	-	-	-	-	-	-	-					
Karen Miller	Planning Assistant	-	-	-	-	-	-	1					

Total Number of 2013 Applications	01/02/2013	02/05/2013	03/05/2013	04/02/2013	05/07/2013	06/04/2013	07/02/2013	08/06/2013	09/04/2013	10/01/2013	11/06/2013	12/03/2013	TOTAL
Zone Change	0	1	1	-	1	3	2						8
Special Review	1	0	0	-	3	1	2						7

Chairman Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; and Karen Miller, Planning Assistant.

Public Comment

Chairman Dailey called for public comments. There were no public comments. Chairman Dailey closed the public comment portion of the meeting.

Approval of Minutes: June 4, 2013

Chairman Dailey called for approval of the June 4, 2013 minutes.

Motion

On a motion by Commissioner Boyett seconded by Commissioner Wagner and approved with a 4-0 voice vote, the minutes of June 4, 2013.

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.

Cromwell provided copies of communications received from property owners regarding the application for Special Review #907 and Special Review #908 provided copies to the Members and stated all of communication is available for public review.

Public Hearings:

Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open the next agenda item.

Ms. Cromwell read aloud the legal notice and gave a short presentation of the staff report.

Item #1: Special Review #907 – 1525 Broadwater – Patio Expansion – A special review request to allow the expansion of an existing outdoor patio from 1,200 square feet to 1,575 square feet in a CC zone on Lots 2-4, Block 1 Van Ornum Subdivision, a 1.079 acre parcel of land. Tax IDs: A17346A and A17345. Jeff & JoLynne Flatness and Paul DeVerniero, owners and A & E Architects, agent.

REQUEST

This is a special review request to allow the expansion of an existing outdoor patio from 1,200 square feet to 1,575 square feet in a CC zone on Lot 2, Block 1; the south 150 feet of the east 52 feet and the west 96 feet of Lot 3, Block 1; and the south 150 feet of the west 23 feet of Lot 4, Block 1, Van Ornum Subdivision. The lot is 1.079 acres and is generally located at 1525 Broadwater Avenue. The property is currently occupied by the Squire Lounge. The owners are Jeff & JoLynne Flatness and Paul DeVerniero, and A & E Architects is the agent.

RECOMMENDATION

The Planning Division is recommending conditional approval.

PROPOSED CONDITIONS

1. The special review approval shall be limited to Lot 2, Block 1; the south 150' of the east 52' and the south 150' of the west 96' of Lot 3, Block 1; and the south 150' of the west 23' of Lot 4, Block 1, Van Ornum Subdivision, generally located at 1525 Broadwater Avenue.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan show additional patio area greater than 10% of the total approved patio area of 1,575 square feet, or a building addition greater than 10% of the existing building or new parking areas will require 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. All new exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
5. The patio shall have a minimum of a 4 foot tall fence enclosing the patio. Access to the patio shall be from the interior of the existing building. There shall be an emergency exit gate from the patio to the parking lot.
6. The applicant must provide drawings at the time of building permit submittal showing the property can meet the required parking for the existing business and new patio area of 375 square feet, and meet all requirements of site development and zoning.
7. 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.

8. 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 apply.

Discussion

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

Member Boyett commented on the access to the property and concerns regarding the alley and fire access.

Ms. Cromwell stated the Fire Department had no concerns with the application regarding access.

Chairman Dailey asked for clarification with regard to the distance requirement for arterial streets.

Ms. Cromwell explained the arterials are classified by the City Traffic Engineer. Broadwater is an arterial as well as 15th and 16th Streets. She clarified the difference between principle arterial and minor arterial streets. All three streets are considered arterial streets due to the amount of traffic they carry.

Chairman Dailey asked why staff would consider waiving the separation requirement due to view and sight distance rather than the arterial.

Nicole said the condition/criteria for waiving the requirement where there is an intervening arterial street would be there is no pedestrian signalized intersection close to the property. Both 15th and 16th Streets have pedestrian signal crossings for Broadwater Avenue.

Chairman Dailey called for presentation by the applicant.

Applicant:

A & E Architects, Billings, Montana

Mr. Dusty Eaton is the local representative for the owners Jeff & JoLynne Flatness and Paul DeVerniero. Mr. Eaton did not have anything to add to the report by staff except he had visited with the Fire Department to address any concerns they may have we access around the building. Mr. Eaton stated the Fire Department had no concerns at this time. He said the applicants were primarily interested in adding some seating area and buffering this particular space with fencing and landscaping.

Member Hawkins asked if the purpose of the addition was to keep people from driving between the patio and the existing garage.

Mr. Eaton clarified the proposed area is to add to the area for seating.

Member Wagner asked how they would justify the additional noise would be generated from the patio addition.

Mr. Eaton explained the proposed landscaping would be the best noise mitigation and there is a wall on the back side of the patio to buffer the neighboring areas from noise. He pointed out the area on the aerial photo where the wall exists. He did not feel the additional seating would increase the noise level significantly and there would be no music from the outside of the building.

Chairman Dailey asked when construction would begin.

Mr. Eaton said approximately the last week of August.

Discussion

Chairman Dailey called for questions and discussion from the Commission.

Public Hearing

Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #907. There was none. Chairman Dailey closed the public hearing at 4:45 p.m. and called for a motion.

Motion

Member Boyett made a motion and it was seconded by Member Hawkins to recommend conditional approval of Special Review #907 with the conditions recommended by staff and adopt the findings of the ten criteria.

Discussion

Chairman Dailey called for discussion on the motion. Commissioner Wagner expressed concern with the music and noise would still be a problem.

Ms. Cromwell clarified the noise concern expressed in a letter received from a neighboring property owner. She stated there may be events in the parking area that are outside the scope of the special review for the patio. The patio noise will be addressed with conditions. The music will be inside the building and contained to some extent. Events in the parking lot would be controlled through issuance of a noise waiver with possible conditions from the Police Department.

The motion carried with a voice vote, 3-1.

Member Wagner opposed.

Item #2: Special Review #908 – 111 (aka 109) S 24th St West Suite #14 – A special review request to locate a beer and wine licensing with gaming in a proposed CC zone on Lots 1 through 8 (including Lots 6 & 7 in C/S 1716) , Block 15, Central Heights Subdivision 5th Filing. Suite #14 is

2,000 square feet of floor area for the proposed Jack Rabbit Red's Casino. The applicant is requesting a waiver of the 600-foot separation to a school (Central Heights Elementary). Cromwell reviewed the letters of objection regarding the waiver request. She reviewed the denied waivers for the area in the vicinity of this location. Ms. Cromwell stated specific businesses may be affected by the approval of this waiver.

REQUEST

This is a special review request to allow the location of a beer & wine license with gaming in a CC zone on Lots 1 through 8 (including Lots 6 & 7 of C/S 1716), Block 15, Central Heights Subdivision 5th Filing in Suite 14, a 2,000 square foot tenant space (currently vacant Hawaiian BBQ). The property is generally located at 111 S 24th Street West and is known as the Rimrock Mini-Mall. The proposed business will be Jackrabbit Red's Casino. The property is within 600 feet of Central Heights Elementary School and will require a waiver of this separation distance. The owner is Rimrock Mini-Mall, LLC and the agent is Blueline Engineering.

RECOMMENDATION

The Planning Division is recommending denial.
Ms. Cromwell explained the reasons for the recommendation.

Discussion

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

Chairman Dailey asked for clarification regarding the waivers indicated in the mall.

Ms. Cromwell clarified the information on file for waivers from the required distance from Stewart Park for alcohol service businesses within the Rimrock Mall.

Chairman Dailey questioned the other waivers approved for the mall locations and why they would be granted and this request should not.

Ms. Cromwell clarified the previous waivers were under a different criteria because the locations were inside the Rimrock Mall and had no direct customer access to the west side of the mall where Stewart Park is located. There was no "back door" access to Stewart Park.

Public Hearing-5:05pm

Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #908.

Applicant:

Marshal Phil, Blueline Engineering, is the agent for the owner, Rimrock Mini-Mall, LLC.

Mr. Phil said they did not agree with the Planning Departments determination for the denial of this Special Review application. He said the use previously was a restaurant and the new use will be an eating place with the addition of gambling with beer and wine. The alley would not be used as a public access and the primary use of the alley would be for trash pickup and supply delivery. The homes on Pueblo are buffered by the vegetation and fences to block the view of the rear of the structure. The structure does not have any access or signage from the alley. He provided photos and clarified each photo for the board. He said the applicant and owner were in attendance and are available to answer questions as well.

Chairman Dailey asked how they had determined the distance to the school.

Mr. Phil stated they used a measure wheel and measured 800 feet to the entrance to the school via the shortest walking route between the door of the restaurant and the west entrance of the school.

Proponents:

Rob Veltkamp, 2971 Spring Meadow Court, property manager for the Rimrock Mini-Mall. He said the mall had previously had a lot of building maintenance issues and they have spent significant time addressing them. He said the applicants for the project have spent more than a million dollars to update and upgrade the building. He stated tenant space for the restaurant would also help bring in more tenants. He said the Hawaiian BBQ had previously been at this location but it has been vacant for several months. He said they had turned down several applicants who wanted to bring in just a bar or casino in order to find the appropriate tenant for this space. This applicant would be providing a food venue, and this is what the area is in need of. He clarified the use of the alley is not for access to the new restaurant but primarily for deliveries and collection of trash. He said they maintain the alley and keep it clean. In addition, there is no employee parking or customer parking in the alley. He said he felt there was a sufficient barrier from the school and residents. He stated he was in favor of the Special Review application and for granting the waiver to the 600-foot separation.

Stuart Elison, 11 West Main, Belgrade, owner of the restaurant. Mr. Elison was in favor of the application. He said they have been in this business for 50 years and felt it was an important part of their business to be good neighbors. He reiterated the location would be more restaurant than casino and they had a beer and wine license only. He said they do not promote sale of beer and wine it was more important to promote the restaurant. He said they are very proactive in preventing loitering.

Opponents:

Kay Brown, 116 Pueblo, said her home is not a barrier or a shield as it had been called in a previous statement. Mrs. Brown stated it is a home where she and her children live. She expressed concern the businesses would operate until 2 am. She did not agree with the restrictions on the alley use and had witnessed traffic and loitering in the alley as well as trash and debris collecting in the alley and around the building. She said there was a lot of noise generated in the alley by the adjacent businesses. She was concerned with the safety of the children and felt the business would adversely affect the neighborhood and would promote more crime. She agreed with the aesthetics

on the front of the building but said the alley side of the building is not as pretty as the front and it was not aesthetically pleasing to look at. Not all of the properties along the alley have sight obscuring fences. She encouraged the board to deny this request.

Jamie Gradney, 214 Pueblo Drive, said her children walk to meet the school bus and must cross 24th to get to the bus stop. There are a lot of children who walk along 24th to get to and from school and bus stop destinations. She did not agree the area buffering was sufficient from a casino and was concerned about the bar-casino location. She stated the person who cleans the alley uses a blower rather than picking up and removing debris it ends up blowing into the neighboring yards.

Margie Narum, 2248 Alamo Dr., said she did not feel there was adequate parking in front for the number of seats they are proposing. She expressed concern this business would devalue her property. She was mostly concerned with the safety of the children and the families who live in close proximity to the building. She was also concerned with preserving the integrity of the neighborhoods and asked the Commission to deny the request.

Darlene Vincelette, 140 Pueblo Dr., said she has lived in her home for 50 years. She did not think it was accurate for them fair to say they just want to sell burgers. She had concerns with the graffiti and the drive areas and alley. She said her fence has been knocked down 4 times due to increased traffic from the mini mall. She said the transients use the alley for refuge and was concerned with this use increasing activity in the alley. She concurred with previous statements and hoped the Commission would deny the application.

Rebuttal

Marshal Phil responded to the concern about adequate parking and said the regulations will not allow a facility to be developed as a restaurant without the adequate parking. He said the proposal meets the City Code for parking. He said they are also concerned with child safety, they are not advertised as a bar and do not sell liquor only beer & wine.

Discussion

Chairman Dailey called for questions and discussion from the Commission. There was none. Chairman Dailey closed the public hearing at 5:35 pm and called for a motion.

Motion

Member Wagner made a motion and it was seconded by member Hawkins to recommend denial of City Special Review #908 and adopt the findings as recommended by staff.

Discussion

Chairman Dailey called for discussion on the motion. There was discussion regarding the use and close proximity of the school. The letter received from the Superintendent of Schools in opposition of the application was noted as an important letter of opposition. The Chairman noted it was unusual to hear from the school district, and this indicated significant concern with regard to child

safety.

The motion carried with a unanimous voice vote, 4-0.

Item #3: Zone Change #913 –441 Josephine Drive – A zone change request from Community Commercial (CC) to Residential Manufactured Home (RMH) on Lot 13, Kuhlman Subdivision. A pre-application neighborhood meeting was conducted on May 22, 2013, at the subject property. Tax ID: A09952, Duane and Carol Long, owners and Heather Long, agent.

REQUEST

This is a zone change request from Community Commercial (CC) to Residential Manufactured Home (RMH) on Lot 13 of Kuhlman Subdivision, an 8,832 square foot parcel of land. The property is owned by Duane and Carol Long (Long Brothers Trucking) and the agent is Heather Long. The property is 1 lot in multiple lots used by Long Brothers Trucking for storage of materials and repair of trucks. Lot 13 has had a manufactured home in the past but the last manufactured home was removed more than 1 year ago and another manufactured home cannot be re-established except through a zone change. The owners conducted a pre-application neighborhood meeting on May 22, 2013, at the subject property.

RECOMMENDATION

The Planning Division is recommending approval.

Discussion

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

Chairman Dailey asked what constitutes spot zoning.

Ms. Cromwell explained the definition and criteria for “spot zoning”. She said the new zoning would have to be significantly different to the area existing zoning and uses. The impact is not significant to the surrounding zoning and technically it would look like one spot of zoning when there are actually more issues to consider when determining whether it is a spot zoning. She said the term “spot zoning” would indicate it only affects one lot. She explained other nearby lots that were recently re-zoned for manufactured homes and the presence of manufactured homes in the surrounding RMF-R and HC zones. So the existing uses are similar although the zoning in the area is variable.

Public Hearing

Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #913. Chairman Dailey called for presentation by the applicant. There was none.

Applicant:

Heather Long, the representative for the owners Duane and Carol Long. Was not present for a presentation and sent her regrets. Staff was informed they agreed with the recommendation.

Proponents

There were none.

Opponents

There were no opponents.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against City Zone Change #913. There was none. Chairman Dailey closed the public hearing and called for a motion.

Motion

Member Hawkins made a motion and it was seconded by Member Wagner to recommend approval of City Zone Change #913 and adopt the findings of the ten criteria.

Discussion

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

The motion carried with a unanimous voice vote, 4-0.

Item #4: Zone Change #914 –Falcon Ridge Subdivision 2nd Filing – A zone change request from Residential 9,600 (R-96) to Residential 8,000 (R-80) on proposed Lot, Block 4, Falcon Ridge Subdivision 2nd Filing, a 1.67 acre parcel of land. A pre-application neighborhood meeting was conducted on May 23, 2013, at the Yellowstone Country Club, 3200 Paul Allen Way. Tax ID: None assigned, Falcon Ridge II, LLC, owner and Dennis Buscher, agent.

REQUEST

This is a zone change request from Residential 9,600 (R-96) to Residential 8,000 (R-80) on proposed Lot 1, Block 4, Falcon Ridge Estates Subdivision 2nd Filing, a 1.67 acre parcel of land. The property is owned by Falcon Ridge II, LLC and the agent is Dennis Buscher. The owners conducted a pre-application neighborhood meeting on May 23, 2013, at the Yellowstone Country Club.

RECOMMENDATION

The Planning Division is recommending approval.

Discussion

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

Member Hawkins recused herself from voting because she is affiliated with the applicant.

Public Hearing-

Chairman Dailey opened the public hearing and called for proponents of City Zone Change #914.

Applicant:

Dennis Buscher, is the agent for the owner, Falcon Ridge II, LLC. He stated they would like to continue developing the townhome units on this parcel. They would be allowed to build 6 units with the existing zoning and would like to build 8. He said the neighborhood meeting had a few of the neighboring property owners in attendance and they seemed excited for the development to continue.

Chairman Dailey asked what type of occupants/homeowners they were targeting for this development.

Mr. Buscher said they were owner occupied and mostly retired.

Chairman Dailey asked if there would be a road connecting the Copper Ridge, Reflections at Copper Ridge to the Falcon Ridge?

Mr. Buscher provided a copy of the proposed connection to the new area, stating the plans to connect the two areas.

Chairman Dailey asked what the time frame was for development.

Mr. Buscher said they intended to start on the road development by July 15, with the anticipated construction starting by August.

Chairman Dailey inquired as to if there had been much demand for the units they were developing.

Mr. Buscher said the first part of the development was a little slow but the last year had picked up and they were getting significant inquiries for the new units.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against City Zone Change #914. There was none. Chairman Dailey closed the public hearing at 6 p.m. and called for a motion.

Motion

Member Boyett made a motion and it was seconded by Member Wagner to recommend approval of City Zone Change #914 and adopt the findings of the ten criteria.

Discussion

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

The motion carried with a unanimous voice vote, 3-0-1.

Member Hawkins abstained.

Other Business

A. The next City Zoning Commission meeting will be held on Tuesday, August 6, 2013

B. Notice: The Planning and Community Services Department will be moving from August 19-23, 2013 and will have limited services during this time. Our new physical address is 2825 3rd Avenue North, 4th Floor, Billings, MT 59101.

The meeting was adjourned at 6:15 p.m.

ATTEST: DRAFT. TO BE APPROVED BY A MOTION ON AUGUST 6, 2013

Leonard Dailey, Chairman

Karen Miller, Planning Assistant