

**City of Billings Zoning Commission Meeting
June 3, 2008**

The City of Billings Zoning Commission met on June 3, 2008 in the City Council Chambers at 210 N. 27th Street, 2nd Floor.

Leonard Dailey, Jr., Chairman called the meeting to order at 4:28 p.m. **Chairman Dailey** said the recommendations of the Zoning Commission on the items heard tonight will be forwarded to the City Council to be heard at their meeting during a public hearing scheduled for **Monday, June 23, 2008** at 6:30 p.m.

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

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

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

Public Comments:
 There were none.

Approval of Minutes:
On a motion by Commissioner Larson, seconded by Commissioner Hawkins and approved with a 4-0 voice vote the minutes of May 6, 2008 were approved.

Public Hearings:

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

Item #1: City Zone Change #837 – Mont Vista/Krutzfeldt Ranch Planned Development – Southeast corner of Rimrock Road and 54th Street West – A zone change request from Residential 9,600 (R-96) to Planned Development (PD) with multiple underlying zoning districts on Tract 1 & 2 of C/S 2054 a 64 acre parcel of land, Tax IDs D04700 & D04701. Krutzfeldt Ranch, LLC is the owner and Tom Llewellyn is the agent.

Ms. Cromwell read the legal description and gave a brief power point presentation to the commission. **Ms. Cromwell** explained to the commission that she has received a letter from the applicant asking for withdrawal of this application because the applicant wishes to redesign the project. **Ms. Cromwell** recommends that the board hold the public hearing because the hearing was advertised. Staff recommendation is denial.

Discussion:

Applicant:

Tom Llewellyn 3936 Ave B, STE D, representative of applicant. They request withdrawal of this application. There are some changes that they would like to make to this application before going through the process.

Proponents:

Opponents:

Carla Mayzell, 2811 Carla Lane, they are against the zoning change as it has been put forth. The land owner has mentioned the riparian area as a park but the city is unwilling to consider more parkland in this area. This riparian area is mixed between cottonwood and Russian olive and is prime habitat area for birds. She presented the commission with a list of different species that live in the area.

Rebuttal:

Public hearing closed at 4:44 p.m.

Motion:

On a motion by Commissioner Larson, seconded by Commissioner Hawkins and approved with a 4-0 voice vote the commission accepted the withdrawal of the application.

Item #2: City Zone Change #844 – 5900 Block Rimrock Road – A zone change from R 9,600 (R-96) to Residential Multi-family-Restricted (RMF-R) on a 5.35 acre parcel of land directly west of Mared Street south of Yellowstone Club Estates, on the West ½ of Lot 5, Sunny Cove Fruit Farms Subdivision, Tax ID D04651. Thomas Romine, owner and Blaine Poppler is the agent.

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

Discussion:

Applicant:

Tom Romine, 1128 N 32nd St, owner. He purchased this property in 1979 and has farmed this property all that time. This area has changed because this property now has city services and the taxes have been raised to about \$1300 a year. They have met with the neighbors and have made some changes to the development. This would be the beginning of a development in this area that would include his 80 acres as well as some other properties owned by others. The NW Shiloh plan calls for denser development between intersections of major arterials. He doesn't believe that this is spot zoning, there have been other zonings like this in the area and this will be beneficial to Billings.

Blaine Poplar, 5403 King Ave W, agent to the applicant. They feel that this is an appropriate area to build one bedroom rental properties that include a garage. In 2005, property 3 blocks away was zoned in the same way. This would offer a variety of housing types that would give housing to people who would like to rent on the west end of Billings. They feel that this zoning will encourage

the best use of the land. They feel that the rezone in 2005 is very similar to this zoning and yet they have received a recommendation of denial while

Proponents:

Travis McDoundal, 3383 , ATE Architecture. They believe that the TAS over estimates the amount of traffic that will be generated from this project. They have revamped these units to meet the concerns of the neighbors and they

Cal Kunkel, 3310 Laredo, in Billings from the Rimrocks to King and from 66th St West to Shiloh there are no apartments and there are close to 10,000 people living in this area. The RMF in the area will not be developed in the near future because it is up for sale right now. It is a large parcel, 19 acres, and it will take a lot to buy and develop that property. The rest of the RMF in the area will be built as patio homes that will be for sale individually. This project will help to create balance in this area. On the issue of spot zoning, he believes that this project will benefit more than just the owner. This will benefit not only the owner but the developers, builders and eventually the people who live on this property.

Opponents:

Jim Boyer, highly against this project. He lives adjacent to this property. He is concerned about his investment in his home. He feels that RMF-R would help to devalue his home between 25-30%. This would increase the people and the traffic in the area. His biggest concern is that his investment will be devalued whereas the owners will gain.

Janet Lutcbagger, 2616 58th St W, at first she was in favor of this project. Now that she has thought about this project she is concerned about the thought that this will have 62 units that will be essentially low income apartments. The roads in the area are not in good shape and it is too far out because you have to drive about 5 miles to get groceries and gas. The people living in Popp's Meadows all have 1 acre lots.

Monica Carter, 5818 Marred, at first she was for this project, she lives right next to the Ag in the area. She doesn't want to live next to the farm anymore because the Ag has been nothing but problematic. This is, however, a double edge sword. She can see where both the applicant and the agents and the neighbors are coming from and she so she is undecided on this application.

Rebuttal:

Blaine Poplar feels that the values of these properties will be more affected by what is going on in front of this property than this development. As far as density goes, they are one acre lots in the county. They are planning about 11 units per acre and they have decreased the density and increased the unit size to help appease the neighborhood. Rimrock Rd is a principle arterial and it has been upgraded since 2005. Three blocks from this property is a huge chunk of CC zoning that will be developed once there is more population in the area. Blaine then addressed the concerns brought forth in the letter from Mrs. Perrier, he feels that this is a better fit with R-96 that Ag-O is. This is not urban sprawl because all of the services are available. This property has already been annexed into the city. They also do not believe that this will create an undo load of traffic on roads. This is affordable housing, not low income or rent subsidized and to call these low income rentals sounds like discrimination.

Commissioner Hawkins asked what they are planning to rent the units for.

Blaine stated that they would like to rent these units at around \$750.00 plus utilities.

Public hearing closed at 5:26 p.m.

Motion:

On a motion by Commissioner Grimm to deny died without a second.

On a motion by Commissioner Hawkins, seconded by Commissioner Larson and voted upon with a 2-2 voice vote the application will go forward with no recommendation to the City Council on its meeting of June 23, 2008.

Commissioner Hawkins has looked at the properties along Rimrock and some of the homes are not well maintained and new construction will help to revitalize this area. \$750.00 a month is not low income.

Commissioner Larson feels that this is a hard decision. There is RMF-R within 3 blocks of this property and so he is not sure that this is a spot zone. This type of housing is going to be in high demand in this area. The only way that there will be amenities in this area would be to increase the population in this area.

Commissioner Dailey asked if there has been a legal recommendation as to whether this is spot zoning.

Ms. Cromwell stated that the recommendation will be forwarded to the Council and it will be looked at it at that time.

Commissioner Grimm feels that there is a huge difference between this development and the Falcon Ridge development. There is no buffer between the R-96 zoning and this much denser RMF-R.

Item #3: City Special Review #860 – 5435 Midland Road –Maui Nites Casino – A special review request to allow the addition of an outdoor patio to an existing location of an all-beverage alcoholic beverage license on a 31,493 square foot parcel of land in a Highway Commercial (HC) zone, on Lot 1, Block 1 of Vaquero Subdivision. Tax ID C07319, Manny 422, LLC, owner, and Roger Tuhy, agent.

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

Discussion:

Commissioner Larson asked about the requirement of the lighting on the palm trees. He asked if the primary reason for that condition is public safety.

Ms. Cromwell stated that was the primary reason.

Commissioner Dailey asked if the traffic safety people were consulted. **Ms. Cromwell** stated that Engineering had no comments regarding this application. **Commissioner Dailey** asked about condition #6 and how the 6 year deadline was decided upon. **Ms. Cromwell** explained the Planning Division staffs recommendation and the EMD sign code regulations.

Applicant:

Roger Tuhy, 216 Normandy Dr, they have done extensive work on this property both inside and outside. They would like to add this patio, the fence will be made of the same artificial stone they use on the outside of the building. They think this will be a nice addition to the property.

Commissioner Larson asked if they will be able to comply with the conditions.

Roger Tuhy stated that they knew that would be conditions on the sign when they applied for this special review. The trees flashing and changing colors he feels should have been brought up when the trees were first installed. They are part of the theme and he doesn't believe that they are a distraction. He doesn't think that the ROI on the sign will be obtained within the 7 year timeline. These signs are not cheap and the costs will be hard to recoup.

Proponents:

Opponents:

Rebuttal:

Public hearing closed at 5:55 p.m.

Motion:

On a motion by Commissioner Grimm, seconded by Commissioner Larson died when the substitute motion passed.

On a substitute motion to approve with all the conditions except condition 10 (regarding the artificial palm trees) by Commissioner Larson, seconded by Commissioner Hawkins and approved with 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of June 23, 2008 with the following conditions:

1. The special review approval shall be limited to Lot 1, Block 1, Vaquero Subdivision as shown on the site plan submitted with the application.
2. This special review approval is for an outdoor patio lounge and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan submitted. Deviations from the approved site plan that change the location of structures, parking lot access or parking areas will require additional special review approval.
4. Any expansion of the gross floor area of the patio or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
5. The owner shall provide a sight obscuring fence of at least 4.5 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
6. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is defined as amplified music and must not be audible beyond the outdoor patio lounge.
7. There shall be no outdoor public address system or outside announcement system of any kind.

8. 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.
9. The existing Electronic Message Display (EMD) sign does not conform to the current City Sign Code for size and operation of an EMD sign. On or before June 23, 2014, the sign owner will bring this EMD sign in to conformance with the then existing City Sign Code. Until that time, the owner shall be required to adequately maintain and operate the sign according to all applicable zoning regulations.
10. 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.
11. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
12. 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 regulations that apply.

Item #4: City Special Review #861 – 543 Milton Road – A special review request to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-family (RMF) zone, on Lot 4, Block 1 of Keller Subdivision. Tax ID A20491, First Interstate Bank, owner, and Jeff Essman, agent.

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

Discussion:

Commissioner Larson asked for clarification on the accesses that will be allowed.

Mr. Green clarified.

Applicant:

Jeff Essman, 3130 McMasters Rd, owner and agent of property. They don't have sufficient parking for food uses on this property. He would like to have food uses in his mall and so this would allow him to have enough parking for that type of use. He would ask the commission to review two of the conditions. He would like the commission to review commission #2 and #6. He doesn't feel that #2 should limit his building expansion. This road is not an arterial and so he doesn't feel it is practical to have the conditional limiting his accesses.

Proponents:

Opponents:

Rebuttal:

Public hearing closed at 6:13 p.m.

Motion:

On a motion by Commissioner Larson, seconded by Commissioner Hawkins and approved by a 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of June 23, 2008 with the following conditions:

1. The special review approval shall be limited to Lot 4, Block 1, of Keller Subdivision addressed at 543 Milton Road, .55 acres west of the intersection of Main Street and Milton Road.
2. Any expansion of the building, building occupancy or parking lot greater than 10 percent of what is shown on attachment C of this report will require an additional special review approval as per BMCC 27-613(c).
3. The development of Lot 4, Block 1, of Keller Subdivision shall be in complete accordance with all provisions of Section 27-1100 Landscaping.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. All parking lot lighting shall be bollard lighting, no overhead lighting, with the exception of sign lighting, so light is near the ground plain and not spilling onto adjacent property.
6. The access shown for the new parking lot addition shall not be allowed. All traffic must enter and exit out of existing access points for the retail mall.
7. The proposed fence shown on Attachment C of this report between the existing duplex and the new parking lot must be a maximum height of 3 feet for the first 20 feet of fencing from Milton Lane as required by Section 27-604 (c) BMCC.
8. The sidewalk curb and gutter must be installed the entire length of the frontage along Milton Lane for this property, to connect existing sidewalk curb and gutter from the retail mall to the sidewalk curb and gutter on the Bench Elementary School property.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Commissioner Larson asked about term of the proposed conditions. The 10% condition is part of the standard conditions for special review.

Item #5: City Special Review #862 – 1911 King Avenue West – A special review request to modify the condition of approval for SR #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision. Tax ID A20590, KRP, LLC, owner, and Blueline Engineering, agent.

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

Discussion:

Applicant:

Marshall Phil, Blueline Engineering, representative of applicant. This should help with the parking lot and the traffic in that parking lot. They have met with the police department and they have approved of this plan. They don't have any problems with the proposed conditions except #6. The owner has a 2 rail vinyl fence that they would like to install instead of the bollards.

Proponents:

Opponents:

Rebuttal:

Public hearing closed at 6:35 p.m.

Motion:

On a motion by Commissioner Grimm, seconded by Commissioner Hawkins died when the substitute motion was approved.

Commissioner Hawkins asked if condition #6 could be amended. The bollards were meant to dissuade traffic but a fence would keep motorcycles and 4-wheelers from driving through.

Commissioner Dailey asked what the reluctance towards bollards would be. Marshall explained that a fence would look nicer and the bollards would also squeeze the amount of driving and parking area.

On a substitute motion by Commissioner Hawkins to add to condition #6 that a fence or bollards would be allowable, seconded by Commissioner Larson and approved with a 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of June 23, 2008 with the following conditions:

1. The special review approval shall be limited to Lots 11A and 12A, of Block 1, of CBH Industrial Park Subdivision for a parking lot addition on Lot 11A-2, Block 1, CBH Industrial Park Subdivision as shown on the site plan that is Attachment C in this staff report.
2. Development of the site shall be in substantial conformance with the site plan that is Attachment C in this staff report. Deviations from the approved site plan that change the location of the proposed parking lot, the parking lot circulation, layout and access will require additional special review approval.
3. Directional signs shall be installed in the proposed parking lot south of Perkins Restaurant to direct traffic from the parking lot behind the building on the subject property, Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision, that they must turn right to exit to South 20th Street West.
4. All 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. Landscaping shall be provided in the new parking lot area as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations.

6. There shall be permanent bollards or a fence provided from the northwestern corner of the existing building at 1911 King Avenue West installed along the back of curb of the new parking lot addition every 5 feet going west. The final bollard or fence shall be installed directly across from the center of the first angled parking stall in the proposed additional parking to discourage cut-through traffic from the Holiday property or from the new parking lot being proposed.
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 that apply.

Other Business:

Ms. Cromwell asked the Board to look at the packet that was passed out to the board from the Mayor and the City Council and report their thoughts back to her.

Adjournment:

The meeting was adjourned at 6:30 p.m.

Leonard Dailey, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk