



Cole Law Firm

PLLC

February 3, 2015

Zoning Commission of the City of Billings
2825 Third Avenue North
Billings, MT 59101

Re: Zone Change #932

Dear Zoning Commission Members:

I represent Fred and Jean Pierce, the owners of a 1.5 acre parcel located at 824 Grand Avenue. The Pierce property (Lot 4) sits immediately adjacent to and west of the parcel at 808 Grand Avenue (Lots 2 and 3) that is the subject of Zone Change #932. The developers of 808 Grand Avenue are requesting a zone change from Residential 7000 (R-7000) to Community Commercial (CC) for 36,000 square feet of land located on the southwest corner of Grand Avenue and Eighth Street West. The developers recently acquired the property from First Church of the Nazarene. None of the adjacent properties are zoned CC with the exception of land on the north side of Grand Avenue. Unfortunately I will not be able to attend the Zoning Commission's public hearing on February 3, 2015 due to another commitment in Helena so I am submitting this letter in the alternative.

My clients' parcel has a long and unique history as residential property and will be adversely impacted by intensive commercial development if the zone change is approved. Fred Pierce grew up in the white house on the property that is the subject of the zone change application. In 1939 Fred's father built a stately Tudor-style house next door at 824 Grand Avenue, which is where Fred and Jean live today. An early photograph of the Pierce home is included with this letter. Taken when Grand Avenue was still a dirt road, it shows a verdant landscape surrounding the home complete with a quaint access bridge, rock garden, willow trees, flower beds, and a large manicured lawn. All told the Pierce family has lived on these two properties for well over 75 years.

In 1991, after Fred's father died, Fred and his siblings sold the eastern portion of their property (adjacent to 8th Street West) to the Nazarene Church, which converted the original white house to a parsonage. At that time the Pierces specifically reserved a 30' access easement from 8th Street West to their home at 824 Grand Avenue going across the church property roughly 75' south of Grand Avenue. That was the only way to access their home since traffic and other factors made the original access from Grand Avenue unfeasible. Although tall trees

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and other landscaping have now grown up all around the historic Pierce family home place, making it an oasis along one of the busiest streets in Montana, it remains almost as it was when it was built three-quarters of a century ago.

The zone change from R-7000 to Community Commercial threatens the unique Pierce property in numerous ways. Community Commercial zoning would permit the maximum level of high-density, high-noise, high-traffic, high-impact development even though all of the adjacent property on the west, south, and east side of the subject property is zoned R-7000 or Neighborhood Commercial (only on the east side immediately adjacent to Grand Avenue). Although the Pierces appreciate that the Grand Avenue of today is not the Grand Avenue of 1939 and that much of the street to the west is zoned CC, they reject the proposition that that means all of Grand Avenue inevitably must be zoned CC and that the landscaped, residential character of most of this unique block, which acts as a buffer for residential areas to the south and NC-zoned areas to the east on Grand Avenue, must be destroyed to make way for more-of-the-same parking lots, blockish commercial buildings, and giant electronic signs. In terms of the zone-change criteria, the requested zone change will not “promote . . . general welfare” (#3), “promote compatible urban growth” (#7), is not compatible with “the character of the district and the peculiar suitability of the property for particular uses” (#8), and will not “encourage the most appropriate use of land” (#10). The developers purchased the subject property knowing that the Pierce parcel and the church property next door have been a haven of residential green along Grand Avenue since before there was any commercial development at all in this area, so it would not be unfair for the Zoning Commission to recommend to the City Council that the subject property stay that way and that the Council not create an isolated CC parcel which, if approved, would be surrounded on three sides by parcels zoned R-7000 and NC.

The Pierces also submit that the subject property is unfit for commercial development for two additional reasons. First, when the Pierces sold part of their land to the church the parties contemplated that neither property would be developed for commercial purposes. The written easement by which the Pierces reserved a 30' roadway easement for access from 8th Street West to their house expressly states that the easement “shall be of no force and effect if at anytime said Lot 4 [the Pierce property] is used for commercial purposes.” Although that prohibition only explicitly covers commercial development on the Pierce land, that is because it was considered a foregone conclusion that the church property would not be developed for commercial use. The developers have been cooperative and forthright in acknowledging their obligation to honor the Pierce access easement even if the property is rezoned, but that does not change the fact that commercial use would run counter to what was originally contemplated.

Second, there is a freshwater, underground spring that surfaces in the northwest corner of the Pierce property and then runs easterly and generally parallel to Grand Avenue along the frontage of the Pierce property and the church property until it flows to the south toward Alderson Avenue and Burlington Avenue where it regains the surface at several locations. According to Fred Pierce, the City directed the spring into a culvert when it widened Grand Avenue and is separate from the VanBramer Drain that the City piped and buried under Grand Avenue at the

same time. This spring water has been used for many decades by the Pierces and by other landowners along its course. There is limited space to develop the subject parcel between the Pierce access easement referenced above and the City's mandatory setback from Grand Avenue, and although the exact location of the culvert and underground spring is unknown to the Pierces, it likely lies somewhere in this narrow "development zone." Again the developers have been quick to acknowledge their obligation to not interfere with the free flow and established course of this spring, but as long as its exact location remains undetermined and the developers' ability to conduct commercial-scale excavation in this area is uncertain, there is an unacceptable risk to the public and its natural water resources. Or, stated with reference to the zone-change criteria, the requested zoning is not "designed to secure from fire and other dangers" (#2), will not promote "public health, public safety and general welfare" (#3), will not "facilitate the adequate provision of . . . water, sewerage, . . . and other public requirements" (#4), will not "promote compatible urban growth" (#7), does not consider "the character of the district and the peculiar suitability of the property for particular uses" (#8), and does not "encourage the most appropriate use of land" (#10).

Under these circumstances Fred and Jean Pierce respectfully request that the Zoning Commission recommend that the City Council deny Zone Change #932.

Very truly yours,

Handwritten signature of William A. Cole in cursive script. Below the signature, the initials "WAC" are written in a smaller, less legible script.

William A. Cole

enclosure

cc: Fred and Jean Pierce