

City of Billings Zoning Commission Meeting Minutes June 5, 2018

The City of Billings Zoning Commission met on Tuesday, June 5, 2018 in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North, Billings, Montana.

Chairman Wagner called the meeting to order at 4:30 p.m. The City Council has designated **Monday June 25, 2018** 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		01/03/2018	02/06/2018	03/06/2018	04/03/2018	05/01/2018	06/05/2018	07/10/2018	08/07/2018	09/04/2018	10/02/2018	11/06/2018	12/04/2018
Dan Wagner	Chairman	1	1	1	1	1	1						
Dennis Ulvestad	Commissioner	1	1	E	1	1	1						
Mike Boyett	Vice Chairman	1	1	1	1	1	E						
Michael Larson	Commissioner	1	1	1	E	1	1						
James Mariska	Commissioner	1	1	1	1	E	1						
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	-						
Monica Plecker	Division Planning Manager	-	-	-	1	1	-						
Nicole Cromwell	Planner Zoning Coordinator	1	1	1	1	1	1						
Tammy Deines	Planning Clerk	-	-	1	1	-	-						
Dave Green	Planner II	-	-	-	-	-	-						
Karen Husman	Planner I	-	1	1	1	-	1						
Robbin Bartley	Administrative Support	1	1	-	-	1	1						

Total Number of 2018 Applications	01/03/2018	02/06/2018	03/06/2018	04/03/2018	05/01/2018	06/05/2018	07/10/2018	08/07/2018	09/04/2018	10/02/2018	11/06/2018	12/04/2018	TOTAL
Zone Change	2		1	2	0-R	2							7
Special Review	1	1	1	1	0	3							7

Chairman Wagner introduced the Planning Division Staff and Commission: Attending Staff were Karen Husman, Planner, Nicole Cromwell, Zoning Coordinator and Robbin Bartley, Administrative Support.

In Attendance: Marty Connell, David Goodridge, Orville Kurtz, Connie Wardell, Kevin Howell, Barbara Mulwaney, Gordon Olson, Barry & Marcie Willson, Judy Johnson, Jacque Stannebein, Pete Castellano, John Atkinson, Mark Olson, Sue Cozzens, Jim Wise, Karen Freeman, Jade Fuhrman, Cary & Susan Smith.

Public Comment

Chairman Wagner called for public comments.

Chairman Wagner closed the public comment portion of the meeting.

Approval of Minutes: May 1, 2018

Chairman Wagner called for approval of the May 1, 2018 meeting minutes.

Motion

Commissioner Larson made a motion and **Commissioner Ulvestad** seconded the motion to approve the May 1, 2018 meeting minutes.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner	x			
Mike Boyett				x
Dennis Ulvestad	x			
Mike Larson	x			
James Mariska	x			

The motion for approval then carried with a unanimous voice vote 4-0.

Chairman Wagner called for disclosures of conflict of interest. There were none.

Disclosure of Conflict of Interest

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner		x		
Mike Boyett				x
Dennis Ulvestad		x		
Mike Larson		x		
James Mariska		x		

Disclosure of Outside Communication

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner		x		
Mike Boyett				x
Dennis Ulvestad		x		
Mike Larson		x		
James Mariska		x		

Nicole Cromwell stated she had received an email from Mike Boyett, concerning Special Review 965. An email is in the ex parte notebook.

Public Hearings:

Chairman Wagner reviewed the rules and the procedures by the City Zoning Commission public hearings are conducted and advised the audience this would be heard by the City Council on June 25, 2018. He then asked Nicole Cromwell to review the first agenda item.

Nicole Cromwell presented:

City Zone Change 966 – 21 N 15th St – Kairos Center – A zone change request from EBURD- Industrial Sanctuary (EBURD-IS) to EBURD Central Works (EBURD-CW), on Lots 1 through 24 of Block 122; Lots 1 through 24 of Block 123, less a portion of Lot 19 of Block 123 deeded to the State of Montana, Billings Original Town, together with abandoned streets and alleys, a 5.64 acre parcel of land generally located between N 13th St and N 15th St on the south side of 1st Avenue North. Tax ID: A00876

RECOMMENDATION

Planning Staff recommends approval based on the findings of the 10 criteria for Zone Change 966.

Questions for Staff:

Commissioner Mariska asked if the residential changes are for all marked properties. Staff pointed out the applicable lots.

In favor

Marty Connell, 2903 Radcliffe Drive, owner

Mr. Connell states this property was purchased 20 years ago and has been reclaimed from the homeless. Currently the back side of the property is 50 percent complete. He wishes to offer work from home professional services and retail opportunities in the building. The code only allows caretaker or employee housing units. For every 10,000 square feet in building area we may have a caretaker or employee dwelling unit.

Commissioner Ulvestad asked how many units are being proposed. Mr. Connell stated 14-15 units, approximately 1500 square feet each.

Opposed

NONE

REBUTTAL

Public Hearing was closed at 4:47pm.

Discussion

Chairman Wagner asked for a motion.

Commissioner Larson made a motion and Commissioner Ulvestad seconded the motion to recommend approval and adopt the findings of the 10 criteria for **City Zone Change 966**.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	x			
Mike Boyett				x
Dennis Ulvestad	x			
Mike Larson	x			
James Mariska	x			

The motion carried with a unanimous verbal vote to deny, 4-0.

Nicole Cromwell presented:

City Zone Change 967 – 430 Josephine Drive – A zone change request from Residential Multi-family (RMF) to Community Commercial (CC) on Lot 15 of Josephine Subdivision, a 1.724 acre parcel of land generally located on the south east corner of the intersection of Lake Elmo Drive and Josephine Drive. Tax ID: A09457

RECOMMENDATION

Planning staff is recommending approval based on the findings of the 10 review criteria as required by BMCC 27-1502 for Zone Change 967.

Questions for Staff:

Commissioner Mariska asked what will be achieved with this zone change, will there be cleanup ? Staff replies this is an underdeveloped street in Billings. It was annexed like it is. At any time the property owners on Josephine can petition the City for build out of the street. If a new owner were to change the use of this property, the City will require a site development permit and building permits. Those applications would trigger site and street improvements. Any improvements would have to meet current City standards. Engineering makes the improvements for City streets.

In favor

Dave Goodridge, 811 N 31, Agent

Mr. Goodridge states Community Commercial is the only zoning available to allow commercial and residential to share the same property. Alcohol is not allowed because of the location of the school (~195 feet south). He stated the existing property is currently a legal non-conforming use. The new owner would like to live in the house, run his cab business and rent dry storage . The zone change can clear up zoning cloudiness.

Chairman Wagner asked the distance to school. 195 feet.

Commissioner Ulvestad asked if the buy sell agreement depends on the zone change approval. Mr. Goodridge stated it is not a contingent sale.

Opposed

Judy Johnson, 429 Lola Lane

Ms. Johnson is concerned about her property value. Community Commercial lowers her property value.

Commissioner Mariska asked when she purchased this property. Ms. Johnson stated she purchased about 45 years ago.

Sue Cozzens, 416 Lola Lane,

She states she has the same concerns as Ms. Johnson.

REBUTTAL

Mr. Goodridge explained from a real estate perspective he does not anticipate any changes. He cannot control future uses. Lake Elmo is now a collector and is going to become much busier. His opinion is it should not effect property value.

Staff added a neighborhood manners code has been adopted in the last 5 years, effecting noise, lights, signs, and solid waste containers where commercial uses are adjacent to residential zones.

Public Hearing was closed at 5:11pm.

Discussion

Chairman Wagner asked for a motion.

Commissioner Larson made a motion and **Commissioner Mariska** seconded the motion to recommend approval and adopt the findings of the 10 criteria for **City Zone Change 967**.

Commissioner Larson spoke to the property value issue. This is a regular concern. He explained his experience has been when a zone is created where improvements can occur, property values improve rather than diminish. He is encouraged by the now in place neighborhood manners code. The potential to clean up this area and improve it seems likely with this zone change.

Commissioner Mariska agrees the property is not being used to its highest potential and this may be the beginning of improvement.

Chairman Wagner agrees the neighborhood manners code and new zoning will improve the overall area.

Commissioner Ulvestad asked how many residents are included in the surrounding area. Staff explained all property owners within the 300 foot radius are notified, renters are not notified. The current buy/sell agreement is with City Cab.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett				X
Dennis Ulvestad		X		
Mike Larson	X			
James Mariska	X			

The motion carried with a verbal vote to approve 3-1

Karen Husman presented:

City Special Review 964 – 3415 Grand Avenue - north west corner of Grand Avenue & Zimmerman Trail – A special review request to allow the location of an all-beverage liquor license with gaming (bar & casino) as part of a new Town Pump gas station, convenience store and liquor store in a Community Commercial (CC) zone on Lot 1, Block 5 of Zimmerman Home Place Subdivision a 3.39 acre parcel of land. Tax ID: A36266

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for special Review 964.

Questions for Staff:

Commissioner Mariska asked why there is not a designated right turn onto Grand Ave (westbound from Zimmerman Trail). He insists the traffic flow will be a problem at Zimmerman & Grand, drivers will cut through the Town Pump property. He expressed his concerns with the new round-about at Zimmerman and Highway 3 funneling the traffic southbound and clogging up at this intersection. He wants the record to reflect in writing, there will be a huge traffic problem here.

Commissioner Ulvestad agrees with Commissioner Mariska’s concern.

Chairman Wagner agrees this is happening all over town.

Commissioner Mariska believes the City has missed the boat on traffic planning for Zimmerman.

Staff reiterated specific existing traffic issues are not part of the special review process.

Staff assured Commissioner Mariska City Engineering will be advised of his concerns.

In favor

Mark Olson, 434 Constitution, Agent (AT Architecture)

This is a preliminary plan. The building is approximately 18,000 square feet including a lounge of 900 square feet and a Casino of 2,100 square feet approximately. The rest is a Convenience Store and storage in the back. It will resemble the Heights new Town Pump, 26 gas pumps, totally landscaped to meet the zoning requirements. Town Pump is a good neighbor, it will end up looking very nice.

Chairman Wagner asked if this is the same size as the Heights store. Mr Olson stated it is larger. Commissioner Mariska explained there is one on the corner of King Ave and 32nd St West and asked where the next closest Town Pump is. Mr. Olson stated there is one at Grand and Shiloh and has a liquor store and lounge.

Opposed

Susan Smith, 6133 Timber Cove Drive

Ms. Smith stated she is opposed to all of it. She has traffic concerns, there are 5 casinos just a few blocks away. She states there are too many casinos, gas stations, and liquor stores in the area. She went on to provide state statutes to the Board, explaining the statute provides the ability to pass ordinances to prohibit the the number of casinos in an area.

Karen Freeman, 5120 Amherst Drive

The City should take responsibility. Currently there is 1 gaming facility every 1,000 feet on Grand Ave, 21 casinos in 4 miles, also a right turn lane needs to be created before developing this property.

Tiffany Wardell, 1309 Daybreak Drive

Ms. Wardell is not opposed to the gas pumps, but is opposed to another casino. The casinos are over running other businesses in the area, second only to banks.

Speaking from a mother's perspective, could Town Pump consider some other options for the space? Perhaps something might include an indoor play space for children? Casinos should not be the defining character of Billings.

Chairman Wagner asked Staff if there are codes limiting the amount of casinos in an area. Staff stated the State of Montana has ultimate control over all gaming in the State. The Legislature has determined gaming is attached to liquor license. The City can, through local ordinances, determine where those licenses can go. The local Zoning Code differentiates between a liquor license with and without gaming attached. The all beverage license with gaming attached requires a Special Review. Staff does not believe we have the legal authority to ban gaming in the City Limits.

Connie Wardell, 514 64th St WMs. Wardell lives on 64th Street West. There are 5 casinos in one half mile and 3 gas stations. Please limit the casinos on Grand Ave. 32nd Street West is a disaster and traffic is atrocious. She feels they have more than our share of alcohol related accidents in the area.

Carey Smith, 6133 Timber Cove Drive

Mr. Smith is the Senator for this area and is opposed to another Casino/Liquor Store. Can we restrict the numbers- NO- but we can determine where they are located. The ordinances provided, determine what powers local authority has. The City could change the ordinances regarding hours of operation etc. He has concerns about too many liquor stores and too many casinos. Signing could also be reeled in.

Commissioner Ulvestad -Can the number of licenses be limited or changed at the State level? Mr. Smith explained the difficulty in Legislative changes due to the immense amount of revenue affected. We can do something locally.

Gordon Olson, 5141 Ironwood Drive

There are about 150 liquor licenses in Yellowstone County, most are located in Billings. The crime associated with Casinos is a concern. The additional officer calls, the robberies. Commissioner Larson asked if a steakhouse would be a liquor licensed business.

Pete Castellano, 2101 Avalon Rd

Mr. Castellano asked if this is a review for all beverage. Staff answered this is an all beverage license with gaming.

It is zoned CC, Walgreens, Ace Hardware, Medical facilities. He has no issue with the Town Pump however the liquor brings more activity. The reaction is different in the consumption of hard liquor opposed to beer and wine. This brings a lot of noise to the community. 50 acres above is zoned Residential. A huge community is being impacted. The liquor license is not contributing to the goodness of the community.

Jim Wise, 2202 Avalon Road

Mr Wise has no problem with Town Pump however he believes the community is going to be adversely affected.

REBUTTAL

Mr. Olson believes the land is set up to be in conformance with the surrounding areas. Most of the time there is not more than 10 people in the casinos and he is not aware of any issues.

Chairman Wagner stated he does not understand why Town Pump needs so many stations so close together.

Commissioner Ulvestad asked how was the liquor licensed obtained, agent does not know. Staff explained the quota system used by the State to determine licensing.

Commissioner Mariska asked if there is any representative of the Town Pump business in the audience. The agent replied they will attend the City Council meeting.

Public Hearing was closed at 6:05pm.

Discussion

Chairman Wagner asked for a motion.

Commissioner Ulvestad made a motion and **Chairman Wagner** seconded the motion to recommend denial of **City Special Review 964**.

Staff asked Chairman Wagner to have Commissioner Ulvestad state a basis for the denial motion, based on the 3 criteria for review.

A discussion ensued regarding how this may be approved or denied. Commissioner Mariska stated the Special Review could be approved as a Gas Station, a Gas station with liquor license or a liquor with gaming. Staff explained the list of conditions possibly imposed with Board recommendation of approval. The motion is not to approve, but to deny Special Review 964.

Commissioner Larson interjected traffic concerns as an ongoing concern. Additionally, the City Growth Policy states these types of intersections are approved for Community Commercial zoned areas. Town Pump wants to be there to take advantage of the traffic, not add to it. The additional traffic will be miniscule. A traffic study will not tell you there is un-mitigatable traffic impact on Zimmerman or Grand. The only improvement occurs through development. Stopping development does not improve the traffic flow. Community Commercial of some sort is going in this area. He does not think it possible to use traffic as justification to shut this project down.

Staff suggested “Ingress and Egress cannot be mitigated with conditions of approval.”

Commissioner Larson questioned the logic of stating the gas station and convenience store will not impact the traffic, but the addition of the liquor store and Casino will? While he states he does not gamble or frequent Casinos, or particularly like them, he is appalled at some of these arguments, stating “we are torturing logic” to deny this particular project of a lawful activity in the State of Montana. In short, he doesn’t like the plan either but these are legal businesses in the State and until changes are made in the local ordinances or in the state law, zoning cannot be used to upset the planning of lawful business. If you don’t like Casinos and gambling, go fight the legislature in Helena. He also asked if Drug Stores should be shut down with Zoning law, based on the opioid problems nationwide.

A citizen argues the “much desired” concept. Commissioner Larson responds the reason there are so many Casinos is they are obviously “desired” and making someone money.

Commissioner Ulvestad wants to protect the local citizens who are protesting this as they are the ones living there.

Chairman Wagner moved the question.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner		X		
Mike Boyett				X
Dennis Ulvestad	X			
Mike Larson		X		
James Mariska		X		

The motion failed with a verbal vote to 3-1

Commissioner Larson motions to recommend conditional approval and adoption of findings of the 3 criteria for City Special Review 964. **Commissioner Mariska seconded**, reiterating his traffic concerns.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett				X
Dennis Ulvestad		X		
Mike Larson	X			
James Mariska	X			

The motion to approve Special Review 964 with conditions carried with a 3-1 verbal vote.

Karen Husman presented:

City Special Review 965 – 2512 Shiloh Road – Wireless Communication Camouflage Facility – A special review request to allow a 50-ft camouflage wireless facility – a faux tree – next to a detached garage in a Residential Professional (RP) zone on Lot 4A2 of Blue Meadow Acreage Tracts, a 1.085 acre parcel of land. The ground equipment cabinet will be in an enclosure next to the garage. Tax ID: C01757.

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for **Special Review 965**.

Questions for Staff:

Commissioner Mariska asked if there will be a light on the tree. This question will be answered by the agent.

IN FAVOR

Kevin Howell, agent

Verizon is behind in providing data capacity in Montana. This site is necessary because of the height difference. This site will serve 3/4 miles to the the south. There will be a light on the tree if the FFA requires it.

Opposed

NONE

REBUTTAL

Public Hearing was closed at 6:32pm.

Discussion

Chairman Wagner asked for a motion.

Commissioner Ulvestad made a motion and **Commissioner Larson** seconded the motion to recommend conditional approval and adoption of the findings of the 3 criteria for **City Special Review 965**.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett				X
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

The motion carried with a unanimous verbal vote to approve, 4-0.

Karen Husman presented:

City Special Review 966 – 2202 Central Avenue – A Drive Through Food Service – A special review request to locate a drive through food service restaurant across an alley from a Residential zone in a Community Commercial (CC) zone on Lot 1B, Block 1 of Central Heights Subdivision, 2nd Filing, a 21,211 square foot parcel of land. Little Caesar’s Pizza is proposing a new location at this address. Tax ID: A04409

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria as required by BMCC 27-1503 for Special Review 966.

Questions for Staff:

Commissioner Larson stated the window is intended for pickup so is the use is limited? Staff replied a condition could be added.

In favor

Robert Zarbock, owner

The drive-up is intended **only** for pickup and to accommodate handicapped persons. It will facilitate online orders, not as a drive up order window.

Commissioner Ulvestad asked if they intend to deliver. Mr. Zarbock stated this is a carry out establishment.

Commissioner Mariska asked how will you handle drive up customers. Mr. Zarbock stated there will be signage to indicate pick up only.

John Atkinson, agent

A traffic study has been done, considering peak hours. The maximum que is 6 cars. Chairman Wagner - difference in peak times, week days verses week ends.

Dennis Farr

He is in favor of a pizza place here to improve the property. He is concerned about traffic driving into the subdivision as a route to exit. He does not want the traffic patterns changed. He would like to see a left turn only to exit.

Opposed

NONE

REBUTTAL

Public Hearing was closed at 6:51pm.

Discussion

Chairman Wagner asked for a motion.

Commissioner Ulvestad made a motion and **Commissioner Larson** seconded the motion to recommend conditional approval and adoption of the findings of the 3 criteria for **City Special Review 966**.

Commissioner	YES	NO	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett				X
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

The motion carried with a unanimous verbal vote to approve, 4-0.

Other Business:

The next meeting will be July 10, 2018.

Adjournment: The meeting adjourned at **6:52p.m.** **Mike Larson will not be here.**

DRAFT: Approved by a motion July 10, 2018.

ATTEST: Robbin Bartley, Administrative Support

