

## City of Billings Zoning Commission Meeting Minutes October 1, 2019

**The City of Billings Zoning Commission met on Tuesday, October 1, 2019 in the Miller Building  
1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.**

Chairman Wagner called the meeting to order at 4:30 p.m.

Commission and Staff		01/03/2019	02/05/2019	03/05/2019	04/02/2019	05/07/2019	06/04/2019	07/02/2019	08/06/2019	09/03/2019	10/01/2019	11/05/2019	12/03/2019
Dan Wagner	Chairman	-	E	1	-	1	-	-	-	1	1		
Dennis Ulvestad	Commissioner	-	1	1	-	1	-	-	-	1	1		
Mike Boyett	Vice Chairman	-	E	1	-	1	-	-	-	E	1		
Michael Larson	Commissioner	-	1	1	-	1	-	-	-	1	1		
James Mariska	Commissioner	-	1	1	-	E	-	-	-	1	A		
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	-	-	-	-	-		
Monica Plecker	Division Planning Manager	-	-	-	-	-	-	-	-	-	-		
Nicole Cromwell	Planner Zoning Coordinator	-	1	1	-	1	-	-	-	1	1		
Tammy Deines	Planning Clerk	-	1	-	-	-	-	-	-	1	1		
Dave Green	Planner II	-	-	-	-	-	-	-	-	-	-		
Karen Husman	Planner I	-	1	1	-	1	-	-	-	-	-		
Robbin Bartley	Administrative Support	-	-	1	-	1	-	-	-	-	-		

Total Number of 2019 Applications	01/03/2019	02/05/2019	03/05/2019	04/02/2019	05/07/2019	06/04/2019	07/02/2019	08/06/2019	09/03/2019	10/01/2019	11/05/2019	12/03/2019	TOTAL
Zone Change	0	-	-	-	-	0	0	0	0	1			1
Special Review	0	1	1	-	2	0	0	0	2	1			7

Chairman Wagner introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, and Tamara Deines, Planning Clerk.

**In Attendance:** James & Georgia Somer, Greg Price, Amanda Nations, Jason Hanson, Ronda Carlson, Matt Robertson, Scott Aspenlieder, Performance Engineering, Mike Irwin, Taylor Irwin, M. Ed Melcher, Robin Dangerfield

**Public Comment**

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

**Approval of Minutes:**

Chairman Wagner called for approval of the May 7, 2019 meeting minutes.

**Motion**

**Commissioner Larson made a motion and Commissioner Ulvestad seconded the motion to approve the September 3, 2019 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.**

**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 Boyett disclosed that he and Commissioner Ulvestad attended the Rimrock Task Force meeting where the applicant gave a presentation on his proposed project for Zone Change #973.

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

\*\*Planner Husman provided a copy of an e-mail dated Tuesday, October 1, 2019 from Ronda Carlson who is in opposition to Zone Change #973.

**Public Hearings:**

Chairman Wagner reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience that this would be heard by the City Council on October 28, 2019.

**Item #1**

Zoning Coordinator Nicole Cromwell read aloud the legal notice for this application:

**City Special Review 979 – 702 Dunham Ave. - Location on an existing Cell Tower – A special review request to allow co-location on an existing cell tower resulting in 66’ tower height, on Lot 1, Block 4, Cloverdale Subdivision, Cell TWR Site @ Cloverdale Subd., Block 4, Lots 1,2, on the cell site of 900 sf of a 43,913 sf parcel of land. Tax ID: A05110.**

Planner Husman opened with presentation of the staff report. She stated staff conversed with the applicant's agent regarding removal of Condition of Approval #2 for screening and fencing requirements. Staff is in agreement with this request.

### **RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the three criteria for Special Review 979.

Special Review applications are reviewed using BMCC Section 27-1503 criteria referenced in the Alternatives Analyzed section of this memo. Special Reviews do not require an ordinance for approval, are not zone changes on property; rather, are tied to specific uses that are allowed in a given zoning district but are subject to a review by the City prior to the use being allowed. Special Reviews, unlike zone changes, may be conditioned to mitigate possible impacts from the use on the subject property or surrounding properties.

The Planning Division recommends conditional approval and adoption of the findings of the three criteria for Special Review #979.

Recommended conditions:

1. A special review request to allow an increase on an existing 50 foot tower to allow a 66-foot tower for co-location to the facility on Lot 1, Block 4, Cloverdale Subdivision, leased wireless site of 900 square feet on the 43,913 square foot parcel of land. No other use is intended or implied.
2. The ground equipment cabinet and shelter must be buffered with screening or an enclosure so that it cannot be seen from the neighboring properties. The current chain link fence is not a sight-obscuring fence.
3. The existing fence must meet the current requirements for fence height of 8 feet for barbed wire to be attached above (the 8 feet). If it does not currently meet this requirement, it must be updated.
4. 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.
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, leaseholders, heirs and assigns.

### **Discussion**

Chairman Wagner called for questions and discussion from the Board. Per Commissioner Boyett's request, Ms. Husman stated staff's reasoning for removing Condition of Approval #2 for a site obscuring fence is that there are no neighboring properties that will be negatively impacted.

### **Public Hearing**

Chairman Wagner opened the public hearing and asked for presentation by the applicant.

**Amanda Nations, 1505 Westlake Ave #800, Seattle, Washington, 98105**

Ms. Nations represents the applicant, “T-Mobile”. She stated she is in agreement with the staff presentation. She responded to a question by Commissioner Boyett and stated she is unable to disclose the current customer for this tower

Chairman Wagner asked if there is anyone wishing to speak in opposition of Special Review #979. There was none. Chairman Wagner asked if there is anyone wishing to speak in favor of Special Review #979. There was none. Chairman Wagner closed the public hearing and called for a motion.

**Motion**

**Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation of conditional approval and adoption of the findings of the three criteria for Special Review #979; and remove Condition of Approval #2 as recommended by Staff.**

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 4 - 0 vote. A recommendation of conditional approval of Special Review #979 will be forwarded to City Council on** The City Council has designated **Monday, October 28, 2019 at 5:30** p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

**Item #2**

Nicole Cromwell stated a neighborhood pre-application meeting was held regarding Zone Change #973 on August 26, 2019. She read aloud the legal notice for this application:

**City Zone Change 973 – 2335 Lewis - from RP to NC -** A zone change request from Residential Professional (RP) *to* Neighborhood Commercial (NC), on Lot 7A Am, S150’ of Lots 6 & 7 of the Arnold Subdivision 2<sup>nd</sup> Filing, an 30,772 square foot parcel of land. A pre-application neighborhood meeting was held on August 26, 2019, at 6:00 pm, at 1335 Lewis Ave. Tax ID: A02435.

Planner Karen Husman opened with presentation of the staff report. She explained that the applicant’s proposal is to remove the existing church building and construct a new business. She

explained that this request is for a zone change only and the applicant will be required to submit an application for a special review if they wish to move forward with a car wash business.

## **RECOMMENDATION**

Planning staff recommends approval and adoption of the findings of the ten criteria for Zone Change #973.

### **Discussion**

Chairman Wagner called for questions and discussion from the Board. Commissioner Ulvestad asked what the timeframe is for demolition of the church building. Commissioner Larson clarified and stated that this application is for a zone change, and the Commission has no ability to discuss noise restrictions, traffic, etc. for the particular use. Commissioner Boyett asked if the zone change is approved what types of businesses are allowed in Neighborhood Commercial zoning districts. Nicole Cromwell said there are several options, including restaurants, retail services, day care facilities, and multi-family dwellings.

### **Public Hearing**

Chairman Wagner opened the public hearing and called for presentation by the applicant.

### **Scott Aspenlieder, Performance Engineering, 608 N 29<sup>th</sup> Street, Billings, Montana**

Mr. Aspenlieder is the applicant's agent. He stated the applicant has been transparent with the public and the neighborhood about their intent to construct a car wash. He said this request is not out of line. He said they have had numerous communications with the City of Billings traffic engineer and presented a lot of data. Mr. Aspenlieder said the City Public Works Department does not have issue with the proposed use. He said this zoning fits the surrounding area. He pointed out that this is a target location for businesses in our community and it fits within the realm of the 2016 Growth Policy. There were no questions from the Board for the applicant's agent.

Chairman Wagner asked if there is anyone wishing to speak in favor of City Zone Change #973. There was none. Chairman Wagner asked if there is anyone wishing to speak in opposition of City Zone Change #973.

### **Opposition**

### **Don Amos, 1123 Dennis Drive, Billings, Montana**

Mr. Amos voiced concern with the intersection located at the northeast corner of 24th St West and Lewis. He pointed out the location of Burlington School and underscored potential issues with traffic and safety. Mr. Amos stated he uses this intersection often and commented on the traffic backup within the interchange. His primary concern is children's safety at the school crossing for Burlington School, as the students meander three blocks from the school to this intersection. He feels if this application is approved, it will be spot zoning and the beginning of the deterioration of

the neighborhood. He voiced concern with other potential allowable uses with this zone change as a massage parlor and alcohol could be allowed at this location.

**Jason Hanson, 2320 Lewis, Billings, Montana**

Mr. Hanson is opposed to this zone change. He feels the proposed use of a car wash is noisy, unattractive, and does not promote health and safety of the schoolchildren. He commented on the potential for the additional water and sewer lines taxing the existing older infrastructure. He stated this is a very busy intersection and the proposed use is not compatible with the existing zoning and neighborhood. He pointed out there are several professional buildings in this neighborhood and the criterion for zoning suitably does not take in account the surrounding neighborhood impacts. Mr. Hanson feels the biggest issue is if approved, the zoning will be in place even if the special review fails, and the special review impact should weigh on tonight's decision. Commissioner Larson asked Mr. Hanson if his concern is the inability to predict future neighbors. Mr. Hanson stated he would object to the zone change even if the car wash were not proposed. He feels that Residential Professional, (RP), is a better fit for this neighborhood.

**Ronda Carlson, 2320 Hanson, Billings, Montana**

Ms. Carlson read aloud the definition of (NC)-Neighborhood Commercial zoning. She and stated the proposed use would be detrimental to the neighborhood and should be prevented. She said this applicant provided a traffic study and not a noise study. She cited the regulations and stated car washes are allowed in six other zones; and only considered under Neighborhood Commercial zoning through approval of a special review. She pointed out the residences under R-7000 zoning are located one parcel away from this property. She said the Building ordinance points to car washes as an industrial use. She commented on the noise ordinance requirements for lower decibels and said this use may not be able to meet this criterion. Ms. Carlson stated it does not make sense to approve the zone change when the intent is known to build a car wash. She said both requests are related and should not be separated for consideration.

**M. Ed Melcher, 2331 Lewis Avenue, Edm@Fismt.com, Billings, Montana**

Mr. Melcher owns the office located at 2331 Lewis Avenue. Mr. Melcher stated he has owned the building since 1984 and worked with the church to be a good neighbor. Mr. Melcher said he is in favor of growth but is concerned with approval of the zone change when they do not know what is going into this parcel. Mr. Melcher said he is aware of the potential noise with a car wash and asked if there is a better location. He concurred with the comment that the students walk down this side of the street. He asked if the noise from the proposed car wash will affect his insurance business and said this use does not fit the neighborhood.

**Rebuttal**

Chairman Wagner called for rebuttal from the applicant.

**Scott Aspenlieder, Performance Engineering, 608 N 29<sup>th</sup> Street, Billings, Montana**

Mr. Aspenlieder said the traffic engineering statistics were dealt with during the neighborhood meeting. The applicant is willing to put up a fence and a row of trees along the eastern boundary to buffer noise from the business.

**Mike Irwing, Rocky Mountain Car Wash, 26 Hay Meadow Drive, Pinedale, Wyoming, 82941**

Mr. Irwing stated he owns and operates eight facilities that are located adjacent to neighboring houses. He proposed noise mitigation by placing fencing and trees outside of the building. He explained the utilization of dryer housing plastic to limit noise resonance. The entry door is closed which has significant impact on blocking the sound. In response to question by Chairman Wagner, he said the eight facilities are located outside of Billings. Commissioner Ulvestad inquired about the operation hours and Mr. Irwin stated the business is open 24 hours. He said they submitted data pointing to the majority of business takes place between 7 a.m. and 7 p.m. Commissioner Ulvestad said he is concerned with the potential for additional traffic during school hours.

**Scott Aspenlieder, Performance Engineering, 608 N 29<sup>th</sup> Street, Billings, Montana**

Mr. Aspenlieder stated car washes are capture facilities and do not add traffic as they are not destination locations. He said this applicant has to follow site-engineering requirements that take into account pedestrian safety, including site lines and walkways. Mr. Aspenlieder does not feel this facility will make this a more dangerous intersection. Zoning Coordinator Nicole Cromwell pointed out there are many other uses that have drive-through traffic. She asked the Commission to consider the existing zoning along 24th Street West, and the fact that the majority of properties are zoned (CC)-Community Commercial and (NC)-Neighborhood Commercial. She stated this request would not be spot zoning and it fits within the dynamics of the neighborhood.

**Jason Hanson, 2320 Lewis, Billings, Montana**

Mr. Hanson stated the proposed car wash business would have dryers that blow at 89 decibels, and the sound will affect the residents on Dennis Avenue. He said the trees will act as a partial buffer and there is no need for noise pollution.

Chairman Wagner asked if there is anyone else wishing to speak in favor or against City Zone Change #973. There was none. Chairman Wagner closed the public hearing at 5:21 p.m. and called for a motion.

**Motion**

**Commissioner Boyett made a motion to forward a recommendation to City Council of denial of City Zone Change #973 based on Criterion #8 as he does not feel this zoning meets the character of the district and the suitability of the property for the proposed use. Motion failed for lack of a second.**

Commissioner Larson called for a point of order and clarification of the motion. Discussion followed.

**Commissioner Boyett made a motion and it was seconded by Commissioner Larson to forward a recommendation to City Council to approve the staff recommendation of approval and adoption of the findings of the ten criterion for Zone Change #973.**

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

**The motion fails 0-4. A recommendation of denial of City Zone Change #973 will be forwarded to City Council on Monday, October 28, 2019 at 5:30 p.m. in the City Council Chambers to hear testimony for or against the zoning applications.**

**Other Business**

- The next City Zoning Commission meeting will be held on Tuesday, November 5, 2019.
- Zoning Coordinator Nicole Cromwell asked Commission members regarding availability for attending a potential Project Recode public hearing on November 19, 2019.

**Adjournment: The meeting adjourned at 4:45 p.m.**

**DRAFT: Approved by a motion November 5, 2019.**

