



**City of Billings Zoning Commission
Meeting Minutes July 6, 2021**

The City of Billings Zoning Commission met on Tuesday, July 6, 2021 at 4:30 p.m., 2825 3rd Avenue North in the Miller Building 1st Floor Conference Room. The public may attend in person or watch the meeting live on Facebook (see below). The Public may call in during specific Public Comment periods at **(406) 237-6165**. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary. Comments may be sent to **Board via email before 1:00 PM on Tuesday, July 6, 2021**. All e-mails received prior to this time will become part of the record for the public hearing. Live coverage can be viewed on the City of Billings Facebook page here; <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>

Chairman Larson called the meeting to order at 4:30 p.m. **The City Council has designated Monday, July 26, 2021, at 5:30 p.m.** as the date and time to receive the Zoning Commission recommendation on **Special Review 990 and conduct a public hearing. The City Council hearing will be held on the 2nd Floor of City Hall at 210 N 27th Street. The public is invited to attend in person.**

Commission and Staff		01/05/2021	02/02/2021	03/02/2021	04/06/2021	05/04/2021	06/01/2021	07/06/2021	08/03/2021	09/04/2021	10/05/2021	11/02/2021	12/07/2021
Mike Larson	Chairman	1	1	E	1	1	1	1					
Daniel J. Brooks	Commissioner	1	1	1	1	1	E	1					
Jack King	Commissioner	1	1	1	1	1	1	1					
Greg McCall	Vice Chairman	E	1	E	E	E	E	1					
Trina White	Commissioner	1	1	1	A	1	1	1					
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	1	-					
Monica Plecker	Division Planning Manager	-	-	-	-	-	-	-					
Nicole Cromwell	Planner Zoning Coordinator	1	1	1	1	1	1	1					
Tammy Deines	Planning Clerk	-	-	-	-	-	-	1					
Dave Green	Planner II	-	-	-	-	-	-	-					
Karen Husman	Planner I	1	1	1	-	-	1	1					
Robbin Bartley	Administrative Support	1	1	1	1	1	1	-					

Total Number of 2021 Applications	01/05/2021	02/02/2021	03/02/2021	04/06/2021	05/04/2021	06/01/2021	07/06/2021	08/03/2021	09/04/2021	10/05/2021	11/02/2021	12/07/2021	TOTAL
Zone Change	-	2	1	1*	1	2	0						7
Special Review	2	0	0	0	0	0	1						3

Chairman Larson introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I and Tammy Deines, Planning Clerk (Virtually)

Attending: Scott Aspenlieder, Performance Engineering; John Atkinson, AT Architecture

Public Comment

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

Approval of Minutes: May 4, 2021, and June 1, 2021

Commissioner White made a motion and Commissioner Brooks seconded the motion to approve the May 4, 2021 meeting minutes as submitted. The motion carried with a unanimous voice vote.

Commissioner White made a motion and Commissioner Brooks seconded the motion to approve the June 1, 2021 meeting minutes as submitted. The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson		x		
Daniel J. Brooks		x		
Jack King		x		
Greg McCall		x		
Trina White		x		

Disclosure of Outside Communication

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson		x		
Daniel J. Brooks		x		
Jack King		x		
Greg McCall		x		
Trina White		x		

Public Hearings:

Special Review 990 – King Ave West and Shiloh Rd – Town Pump Bar and Casino – A request to relocate an existing all beverage liquor license to operate a bar and casino for Town Pump, Inc. The subject property is described as Lots 1B-1 to Lots 1B-5, Block 20 of Olympic Park and is generally located on the vacant property on the north east corner of the intersection of King Ave West and Shiloh Road. The property is within the Olympic Park Planned Development zone with underlying zoning of Community Commercial (PD-CC). The parcel is 6.196 acres in area. Tax IDs: A29258, A29259, A29260, A29261 & A29262

Introduction

Zoning Coordinator Nicole Cromwell opened this agenda item with an explanation that the new zoning code has a variety of considerations and findings before a special review use can be considered acceptable at a particular location. She continued with the staff report. Chairman Larson asked regarding the density of the existing Shiloh Glenn Apartments. Nicole Cromwell presented the site plan and gave further explanation of the layout and the proximity of the apartment complex. Both access points from King Avenue are right-in right-out only, and the round-about are designed to handle semi-trucks. The building is about 28,000 square feet. There will be curbing around the improved properties. Elevation plans were provided and referenced in the proposed conditions. Signage will be reviewed through the sign permitting process. A photometric plan was provided to depict lighting spread throughout the property. There should be no glare from the lighting that will affect the apartments. Staff identified ideal locations for pedestrian access from Shiloh Glenn to this property. Ms. Cromwell reviewed the required separations for casinos and bars which will be allowed due to the underlying zoning in Olympic Park subdivision.

Staff Recommendation:

Planning staff is recommending conditional approval based on the findings of the nine review criteria (BMCC 27-1623.D). Staff recommends the following conditions of approval based on the

above findings and the applicant's stated intent. These conditions will be related to the listed categories but may include other issues specific to the use for a bar and casino.

1. This special review approval is for the development and operation of a bar and casino located on Lots 1B-1 to 1B-5, of Block 20 of the Amended Olympic Park Subdivision generally located on the northeast corner of the intersection of King Ave W and Shiloh Road.
2. The bar and casino will be located in a common structure with a gas station, convenience store and liquor store but will not exceed 10,000 square feet or one-third of the total building gross floor area, whichever is less.
3. The building will be located as shown on the submitted site plans dated 5-7-2021 and 6-22-2021 as prepared by Performance Engineering and attached to these conditions of approval.
4. The building design and elevations will be as substantially shown on the drawing dated 6-07-2021 as prepared by AT Architecture. The signs shown on this elevation plan are specifically excluded.
5. The north property line that abuts the Shiloh Glen apartments will be treated with a sight-obscuring fence of six feet height. The fence need not be constructed on the shared property line and can be setback to avoid underground utilities. The fence may be constructed of any normal fencing material however, any vinyl fencing will have a matte finish to diminish light reflection. Two pedestrian access points will be provided for the residents of the Shiloh Glen apartments. These access points will have two bollard style lights installed - one on the Shiloh Glen side of the fence and one on the Town Pump side of the fence. The access will be by off-set fencing, so there is no break in the visual barrier between the properties. The two approximate locations are shown on a Planning staff site plan exhibit dated June 28, 2021. The pedestrian way from the fence opening to the Town Pump parking lot will be a paved sidewalk with an access ramp provided at the curb line on the north side of the parking lot/drive aisle.
6. The applicant will install and maintain a row of mixed evergreen and deciduous shrubs or trees along the inside of the north property line fence. This will be shown on the overall landscaping plan designed and stamped by a landscape architect.
7. The applicant will show on the site plan submitted for Building Permit the area planned for snow storage.
8. The applicant will reduce the length of the parking lot landscape islands so that each one is 4-feet shorter than the adjacent parking stall as required by Section 27-1205.B. No parking stall shall be more than 132 feet from a required landscape parking island. No turf grass is allowed in landscape islands and each landscape island requires one tree. Deciduous trees in landscape islands are encouraged. All landscaped areas required a minimum of 75% organic material.
9. The applicant will show on the landscape plan submitted with the Building Permit, the following: 18 street trees on the north side of the sidewalk along King Ave West; 10 street trees along the Shiloh Road street frontage between the property line and the parking lot curbing, screening for all ground or roof-mounted mechanical equipment, the solid waste dumpster screening including materials for the enclosure and 75% organic material in all landscaped areas.
10. All landscaping shall be installed and maintained free of debris and trash on a regular basis. Dead plant material will be replaced with like materials as expeditiously as possible. All irrigation systems will be maintained in proper working order.

11. Pavement markings shall be provided to show direction of vehicle travel within the site, pedestrian crossings from parking areas to the sidewalk on the building perimeter, and stop lines and signs at the access points on to King Avenue West and Shiloh Road.
12. There shall be no internally illuminated fascia on the building and all exterior lighting mounted on the building shall have full cut-off shields so no part of the lens or fixture is visible below the shield.
13. All parking lot light standards shall have full cut-off shielding so no part off the lens or fixture is visible below the shield. The maximum height of the light poles - including the base and fixture - is 25 feet above grade.
14. There will be no exterior building wall signs on the north and northeast building facades. Window signs are allowed on the entry doors.
15. Any signs on the site including attached building signs, freestanding signs and temporary signs will comply with the City Sign Code that applies to Corridor Mixed Use 2 (CMU2) zone districts at Section 27-1407.C.
16. The applicant will submit a Building Permit within 1 year of City Council conditional approval and will complete the site development within 2 years of the issuance of a Building Permit. Failure to submit or complete the approved project within this time frame will void the conditional approval.
17. Modification of the approved special review use is allowed with the following limitations: 10% or less expansion of the gross floor area, 10% or less increase in the number of potential building occupants, and 10% or less new parking stalls. Expansions also require conformance with all other requirements of the Zoning Regulations and other City of Billings code requirements.
18. The cessation of the special review use for more than 6 consecutive months, shall extinguish this conditional approval and the use may not be re-established except through a new special review approval of the City Council
19. The City Council reserves the right to re-open the conditional approval of this use at this location based on one or more of the following conditions:
 - 1) failure to respond to a notice of noncompliance with the specific conditions of approval;
 - 2) high levels of calls for public safety services verified by the Chief of Police;
 - 3) a significant violent crime has occurred at the location; or
 - 4) significant reports from any public safety officials related to the over-serving of alcohol, sales to minors or allowing minors into the casino. The City Council will notify the owner of its intent to re-open the Special Review at least 60 calendar days ahead of any public hearing on the matter.
20. These conditions run with the land use and are binding upon and must be adhered to by the property owner and any successors, transferees or assigns. 21. The right of building and occupancy permits are contingent upon the fulfillment of all conditions imposed by this approval.

Discussion

Chairman Larson called for questions and discussion from the members of the Board. Commissioner Brooks asked who would handle disturbance reports. Nicole Cromwell stated that it may be reported to City Council and a public discussion would be needed make the determination. She is unaware that Town Pump has this kind of issue at their locations. In response to a commissioner, Nicole said this facility may resemble the one at Grand Avenue and Zimmerman.

Chairman Larsen referred to Condition #10 and the required landscaping and asked who is responsible to ensure the ongoing responsibility of the plantings. Nicole Cromwell said this will be enforced with an approved landscaping plan and the Code Enforcement Division will enforce the plan.

Applicant Presentation

Chairman Larson called for presentation by the applicant.

Scott Aspenlieder, Performance Engineering, 609 N 20th Street, Billings, MT

Mr. Aspenlieder is the agent or applicant Town Pump Inc., (Town Pump-Shiloh Facility). He reported they are in agreement with the staff recommended conditions. He commented on the work needed on the utility lines that service the apartments. He said the applicant voiced concern with Condition #19, because as a business they wish to have assurances in their investment. They are concerned a council in future could circumvent their business. Nicole Cromwell said the condition is not intended to shut the business down but instead allow for a reopening of the discussion. She explained that this is now a conditional use and not an allowed use. If the concern with the conditions arise, City Council has the right to reopen the conditional approval. The Zoning Commission has the option of excluding Condition #19 in their recommendation if needed. Scott Aspenlieder asked that if this condition is applied it needs to be applied in perpetuity. He said he doesn't feel this is the direction businesses want to go and they will deal with the condition as needed. He stated the applicant hopes to have the condition removed.

Public Hearing: 5:14 PM

Chairman Larson opened the public hearing and called for anyone wishing to speak in favor or against Special Review #990. There were none.

Motion

Commissioner King made a motion and Commissioner White seconded the motion to approve City Special Review #990 excluding Condition of Approval #19.

Discussion

Commissioner King said there are other avenues to address the conditions pointed out in Condition #19. Commissioner White concurred and pointed out this property is an entryway to north Billings. Commissioner Brooks reviewed the items listed in Condition #19 and suggested wordsmithing the condition. Commissioner Larson said the current language allows for interpretation. He voiced concern that there is another entity that enforces these issues and said to have City Council is "double dipping". He said he likes the concept but he would have a hard time supporting Condition #19. He said if the State is responsible for enforcement it doesn't need to be done by City Council.

Motion

Commissioner Brooks made a substitute motion and Commissioner McCall seconded the motion to conditionally approve Special Review #990 with the conditions presented by staff and amending Condition of Approval #19 by removing point #3 and #4. The phrase,

“exceptionally high levels of calls for public safety services verified by the Chief of Police” will be added to point #2.

To read:

19. The City Council reserves the right to re-open the conditional approval of this use at this location based on one or more of the following conditions: 1) failure to respond to a notice of noncompliance with the specific conditions of approval; or 2) exceptionally high levels of calls for public safety services verified by the Chief of Police. The City Council will notify the owner of its intent to re-open the Special Review at least 60 calendar days ahead of any public hearing on the matter. Commissioners recommended that the City Attorney’s office review this language.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson	1			
Daniel J. Brooks	1			
Jack King		1		
Greg McCall	1			
Trina White		1		

The Motion carried to approve City Special Review #990 with a 3-2 vote.

Other Business: The next Zoning Commission meeting is scheduled for Tuesday, August 3, 2021.

Adjournment: The meeting adjourned at 5:25 PM.

Approved by a motion August 3, 2021
--Tamara L. Deines, Planning Clerk