

## City of Billings Zoning Commission Meeting September 2, 2008

The City of Billings Zoning Commission met on September 2, 2008 in the City Council Chambers at 210 N. 27<sup>th</sup> Street, 2<sup>nd</sup> 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, September 22, 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	1	1	1			
Thomas Grimm	Commissioner	1	1	A	1	1	1	1	1	A			
Michael Larson	Vice-Chair	1	1	1	1	A	1	1	1	1			
Edward Workman	Commissioner	1	1	1	1	1	A	1	1	1			
Leonard Dailey, Jr.	Chairman	1	1	1	1	1	1	1	1	1			
Candi Beaudry	Director	-	-	-	-	-	-	-	-	-			
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	1	1	1	1	1	1			
Elizabeth Allen	Clerk	1	1	1	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	-	-	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	2	1	2				
Special Review	0	3	0	2	3	3	2	0	3				

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

**Public Comments:**

**Approval of Minutes:**

*On a motion by Commissioner Larson, seconded by Commissioner Workman and approved with a 3-0 voice vote the minutes of August 5, 2005 were approved.*

**Public Hearings:**

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

**Return Item #1: City Zone Change #847 – 5816 Grand Avenue** – A zone change from Residential 9,600 (R-96) to Residential 6,000-Restricted (R-60-R) on a portion of a 75.751 acre parcel of land south of Grand Avenue and west of 56<sup>th</sup> Street West, legally described as Tracts 1 & 2 of C/S 3139, Tract 1-B of C/S 2379 and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East, Tax IDs D00376, D00376A, D00376B & D12829. The eastern 150 feet of these parcels that adjoin 56<sup>th</sup> Street West and the southern 105 feet of these parcels that adjoin Broadwater Avenue and C/S 3146 Tracts 1 & 3 are not included in the proposed zone change. Dorn-Wilson Development, Douglas & Deborah Frank, and Ronald Frank, owners and Engineering, Inc. is the agent.

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

**Discussion:**

**Commissioner Workman** asked for **Ms. Cromwell** to review the possible future location for a future school in this area.

**Ms. Cromwell** pointed out the property and stated that it maybe some day developed as a middle school.

**Commissioner Workman** clarified that this subdivision would be within easy walking distance of the location.

**Applicant:**

**Rick Leuthold**, 1300 North Transtech Way, agent for applicant. They have reworked this project during the 30 day delay. He showed the commission a visual on the new concept. He explained some of the new features regarding their new plan including an R-96 buffer, an open space buffer, other open space that will be part of the drainage system and the Bierly Drain which will remain open space. They have met with the school district and they are supportive. To address the agricultural area he explained that there is a lot of commercial in the corner and other amenities in the area allow for development in this density.

**Commissioner Workman** asked how many lots would be allowed under the R-96 zoning. Rick responded that this would allow 260 units. **Commissioner Workman** asked how many homes would be allowed with the new zoning plan. Rick responded that this would allow 293 units.

**Chairman Dailey** asked what the overall tenor of the second neighborhood meeting was. Rick explained that the neighbors have concerns regarding development in the area and the accesses. There were neighbors at the meeting who were satisfied and those who left the meeting, still unsatisfied.

**Rod Wilson**, 422 Shamrock Lane, one of the owners of the property. He is open to any questions that the board might have. They have continued to have discussions with neighbors along Broadwater. They will be able to build nice homes on lots this size, 1300 to 1500 sq foot homes with 2 car garages and plenty of open space. They believe that the market wants smaller homes on smaller lots and they would like to offer that to buyers in Billings. The lots are all about 6700 sq ft and include nice view shed and over a mile of trails proposed.

*Commissioner Hawkins arrived at 4:41 p.m.*

**Proponents:**

**Fred Rodgers**, 2003 Beverly Hill Blvd. He is in favor of this development. He feels that this is a good proposal. The proximity to schools is good and this will help to meet the City's goal of density. This is not high density but it will help.

**Opponents:**

**Greg Smith**, 909 56<sup>th</sup> St W. He doesn't feel that this meets the 12 criteria for zone changes and the City's plan targets this area for transition from Agricultural to Urban. He doesn't feel that this proposal fits in with this area. He is opposed to having R-60-R in this area and he feels that this will increase traffic congestion and he is concerned about that. He would also like the Board to know that more neighbors have added their names to the protest petition.

**Barbara Willsig**, 56<sup>th</sup> St., this is not a good area for lower income housing because it is so far from the city. All of the development that has taken place in this area has screwed up the water table and the ability to irrigate. People need to protect farm land.

**Bonny Vickler**, 839 56<sup>th</sup> St W., understands that this property will be developed at some time. She looked at the long range plans for this area of Billings and she agrees with those plans. She doesn't agree with this zone change. If all sorts of traffic is dumped onto 56<sup>th</sup> St it will devalue her property and other properties in the area.

**Mike Camen**, 580 58<sup>th</sup> St W., signed a protest against this zone change. How can someone remove their name from the petition? They have spoken to the owner and some of their concerns have been

addressed. They would like to know how to guarantee that the changes they have been promised will be upheld.

**Ms. Cromwell** stated that she will need a letter in writing in order to remove names from the valid protest petition. The property will go through the subdivision process and neighbors should attend that process as well.

**Rebuttal:**

**Rick Leuthold** feels that this area is a transitional area and this zoning is appropriate for this property. The lots will be over 6000 sq ft. During the subdivision process a TAS will be submitted and traffic will be handled at this time. Depending on if they have to pay for the development of Broadwater they may ask for one or more accesses on to Broadwater. They are looking for singular accesses onto the principal arterials. A commercial center is being developed on the corner of 52<sup>nd</sup> and Grand. He would appreciate support of this application.

**Rod Wilson** feels that Billings is growing in this direction. 24<sup>th</sup> St used to be “the commercial street” in Billings. Now, Shiloh is replacing 24<sup>th</sup> St. as “the commercial street”. This development is only 16 blocks from Shiloh. There is a lot of residential and commercial development in this area and they feel that this is appropriate.

*Public hearing closed at 5:08 p.m.*

**Motion:**

***On a motion by Commissioner Workman, seconded by Commissioner Hawkins and approved with a 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of September 22, 2008.***

**Commissioner Workman** feels that there is a fire station, an area for a new school and a need for this type of housing in Billings.

**Commissioner Hawkins** feels that there will be more traffic if people have to bring their children to school. This will help keep traffic down. This is affordable housing.

**Commissioner Larson** appreciates it when a developer works with the surrounding neighborhood. He feels that this area with the school development. He also doesn't think that R-60-R will make a large difference in the amount of housing on this property. There is still a valid protest against this application and that will have to be addressed by the City Council.

**Chairman Dailey** feels that the commission has a good idea as to the concerns of the neighbors and those of the developer. He feels that this zoning fits this area.

**Item #2: City Zone Change #848 – 3144 Grand Avenue** – A zone change from Agriculture Open-Space (A-1) to Planned Development with underlying zoning of Commercial and Multi-family Residential on a 46.099 acre parcel of land south of Grand Avenue, west of 30<sup>th</sup> St West and on the south east and south west corners of the intersection of Grand Avenue and Zimmerman Trail, legally described as Tracts 6A & 7A of C/S 2314, Tract 1A of C/S 2701, less deeded ROW along Zimmerman Trail, Tax IDs D11423, D11422 & a portion of D11869. Yegen Grand Avenue Farm, Inc. and Engineering, Inc. is the agent.

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

**Discussion:**

**Commissioner Larson** asked about the provisions for Special Review for any restaurant, regardless of beer, wine or liquor license. This property would not really allow for a beer/wine or all beverage liquor license because the whole property is within 600' of a school.

**Applicant:**

**Rick Leuthold**, 1300 North Transtech Way, agent for owner. He feels that **Ms. Cromwell's** presentation covered all of the important points. They have spoken with the school and other neighbors in the area. The Yegan's have master planned their entire property and they are sensitive to the concern of the neighbors. The reason that they have asked for a PD agreement is to keep control of the land and the development.

**Charlie Yegan** explained that this property was acquired by his grandfather in 1890. They have been unable to farm the way they used to and so they would like to present a project to Billings that they can be proud of and that will help Billings. They have been in talks with the Transportation Department and they are planning on building a walk way across Zimmerman to help facilitate non motorized transportation. This is a large project overall and they are proud of it.

**Chairman Dailey** asked if the underpass will also accommodate scooter or mopeds. Charlie feels that in the future it might be used by those types of transport.

**Bill Cole**, agent for the applicant. He gave the board some proposed changes to the PD agreement and explained those changes. He feels that this is a great proposal for this area.

**Proponents:**

There were none.

**Opponents:**

There were none

**Rebuttal:**

*Public hearing closed at 5:36 p.m.*

**Motion:**

***On a motion by Commissioner Larson to recommend approval with the addendums to the PD agreement that have been submitted, seconded by Commissioner Workman and approved 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of September 22, 2008.***

**Item #3:** **City Special Review #865 – 2323 Azalea Lane –Fortin Mansion** - A special review request to allow Commercial Recreation for the rental of the existing grounds and building for special events on a 20,620 square foot parcel of land in a Residential 9,600 (R-96) zone, on Lots 7 & 8, Block 2 of Graham Subdivision. Tax ID A08063, Jim & Debbie Eliason, owners, and Daniel Horman, Don Lohrenz, Nicholas Okon and Mary Okon, agents.

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

**Discussion:**

**Applicant:**

**Joe Gerbase**, representative of the applicants. He is concerned that some people may not have been notified who are within the 300' radius. They have tried to work with the concerns of the neighbors.

The primary concerns from the neighbors where parking concerns, use of the street for parking, danger at night when driving, neon lights and uses. They have written up a set of restrictions and covenants that would keep this property in conformance with the neighborhood. They would be shuttling people from an outside parking lot. There would be no on street parking.

Mary Joswick Okon, neighbors of the property, prospective owners of the property. This property has been on the market for over a year. They would like to be able to do something positive with this property that has a long Billings history. This is an expensive property; it has property taxes of \$10,000 a year and utilities of over \$1000 a month. They have also spoken to First Presbyterian Church and Highland School for parking. They would have a limo shuttle service. This property is not a single family home, it is not an affordable home but it is a property that can be used for good. They would offer the property for free use to those in the community.

**Dan Horman**, 1148 N 31<sup>st</sup> St, agent for the prospective purchasers. He has had multiple talks with the Okon's and they have tried to work out a way for this idea to work for the community. They want to keep the property exactly as it is. This would not be a daily use of the property, more like weekend use.

**Don Lorenz**, 1705 60<sup>th</sup> St West, agent for the property owners. The owners would like to see this home used and enjoyed by the community.

**Tom Hinthorn**, 122 Wyoming, they have a catering business that is for parties under 500. This property is designed to entertain, not as a family home. The entertaining that would go on in this property would need to go on inside. He would love to be able to cater a party at this property. This is a wonderful property and it is being under utilized.

**Richard Brown**, 2207 North Place, he feels that there are procedures in place that will keep from compromising the beautiful neighborhood that they have. If the C&R are obeyed he feels that this will not compromise the neighborhood and he feels that they should be given a chance.

**Proponents:**

**Opponents:**

**Earl Hansen**, 2301 Azalea Lane, 3 doors south of the Fortin Mansion. This property was built while he was in high school. This area was called the Graham Sub and it only allowed homes in the area. Many of the people in the area have been in this area for a very long time. He has been asked by some of his neighbors to express their concerns. They are concerned about an increase in traffic in this neighborhood, traffic, a concern that this neighborhood would decline with people going in and out of the neighborhood and a decline in property value.

**Susan Gilberts**, 850 Delphinium, This neighborhood has a large amount of pedestrians, especially in the evening. She feels that there is a problem with the parking plan. She is also concerned that the Covenants because they are a civil responsibility and the only way to have them enforced is to sue your neighbor. She does have some sympathy for the owners.

**Robert Writemeyer**, 735 Parkhill Dr. He has submitted his objections in a letter to the zoning commission. He feels that this project does not fit in with the Highland Neighborhood Plan. He also feels that the parking will be very problematic and he is concerned that this will change the neighborhood.

**Allan Jarrett**, 2313 Azalea Lane. He is against this proposal. This home could be a single family home and it is a million dollar home. It will be on the market for a while because it is so expensive. Changing this property use would lower the property values in the neighborhood.

**George Rosenfield**, 2316 Azalea Lane. Even though this is not a zone change it would cause this property to be used as a commercial use. The current covenants allow for only single family homes.

**Jim Eckenroad**, 1010 O'Malley. He is in the business of decoration and working for events. All of the places in town that do private parties have a lot of work to do once the party is over, there is trash, glass, noise and other concerns. He feels that people will park in front of the property no matter what the rules are. The proposal sounds good but it will not be what is expected.

**Jim VanOrn**, 2201 North Place. He loves this area because of its uniqueness and is against this proposal.

**Tammy Eckenroad**, 1010 O'Malley Dr. There are no street lights in this area. She is very concerned that this will be a safety concern considering that there are no sidewalks in the area.

**Barbara VanOrn**, 2201 North Place. She feels that with having 8-10 functions per month is too many for this property.

**Chairman Dailey** asked for all those who are opposed but do not wish to speak to raise their hands and be counted, There were 32 people present who are opposed to the proposal.

**Rebuttal:**

**Joe Gerbase**, agent. He presented a letter to the Board from the First Presbyterian Church regarding parking. The covenants and restrictions are tied into the million dollar bond being put up for this home. They will also keep this property open to not for profits and others in the community. They will need to change the covenants of this neighborhood in order to allow this type use. The new covenants will allow the Council or the neighborhood to take the owners to court and shut them down. They are working very hard to find away for this to work in this neighborhood.

*Public hearing closed at 6:37 p.m.*

**Motion:**

*On a motion by Commissioner Hawkins to deny, seconded Commissioner Workman and approved with a 4-0 voice vote a recommendation of denial will be forwarded to the City Council on its meeting of Septemper 22, 2008.*

**Commissioner Hawkins** feels that the original covenants need to be changed before they can try to do this.

**Commissioner Workman** asked if there is a valid protest against the application.

**Ms. Cromwell** stated that there is a protest petition but the wording on the front of the petition does not accurately represent the proposal.

**Commissioner Larson** asked if there is a time limit on when this property could re-submit if denied.

**Ms. Cromwell** responded that if the application is withdrawn before the City Council hearing they would be unable to put in a new application for four months. If the application is denied by the City Council then they would be unable to reapply for one year.

**Commissioner Larson** feels that the application cannot go forward without changing the original covenants first.

**Item #4: City Special Review #866 – 1525 Broadwater Avenue – The Squire Lounge - A special review request to add an outdoor patio to the location of an existing all-beverage alcoholic beverage**

license with gaming on a 25,650 square foot parcel of land in a Community Commercial (CC) zone, on the South 150 feet of the East 52 feet and the South 150 feet of the West 96 feet of Lot 3; and the South 150 feet of the West 23 feet of Lot, Block 1, Van Ornum Subdivision. Tax ID A 17346A, Roger and Thomas Hougen, owners and A & E Architects, 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:**

**Commissioner Workman** asked how soon the property will be purchased. **Mr. Green** stated that he has a letter from the applicant that shows he is ready to purchase contingent on this Special Review approval.

**Chairman Dailey** asked if condition 6 is needed. Would the building department require the ADD compliance?

**Applicant:**

**Dusty Eaton**, A&E Architects, agent. They owner would like to develop this in such a manner that it will raise his property values and the surrounding property values.

**Chairman Dailey** asked what timeframe they are looking at.

**Dusty Eaton** stated that the owner wanted to get this process underway and shoot for construction next spring.

**Proponents:**

There were none.

**Opponents:**

There were none.

**Rebuttal:**

*Public hearing closed at 7:00 p.m.*

**Motion:**

***On a motion by Commissioner Workman, 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 September 22, 2008 with the following conditions:***

1. The special review approval shall be limited to Lot 3, Block 1, the South 150' of the East 52' and the South 150' of the West 96' of Lot 3, and the South 150' of the West 23' of Lot 4, Block 1, Van Ornum Subdivision, located at 1525 Broadwater Avenue.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations and as shown on the site plan submitted with this application and shown in the staff report.
5. 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.
6. The patio area shall meet ADA accessibility requirements.
7. The patio shall have a minimum of a 4 foot tall fence enclosing the patio. Access to the patio shall be from the interior of the existing building. There shall be an emergency exit from the patio to the parking lot.

8. To comply with parking requirements for the use of the subject property, the applicant must verify the purchase of the property to the west, addressed as 1545 Broadwater, legally described as Lot 2, Block 1, Van Ornum Subdivision, for use as additional parking, or execute a parking agreement with another property owner to meet the parking requirements. Proof of the purchase of the adjacent property or execution of a parking agreement must be submitted with the submittal for a building permit.
9. The applicant must provide drawings at the time of building permit submittal showing the property can meet the required parking for the existing business and new patio, and meet all requirements of site development and zoning.
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. 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.

**Item #5: City Special Review #867– 1423 Main Street** - A special review request to locate an all alcoholic beverage license with gaming and a future outdoor patio in an existing building on a 33,036 square foot parcel of land in a Highway Commercial (HC) zone, on Lot 9 of Winemiller Subdivision. Tax ID C01597, HOBS, owners and Al Koelzer, 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:**

**Chairman Dailey** asked if there is existing lighting on the building.

**Mr. Green** stated that there is some in the parking lot.

**Applicant:**

**Scott Peterson**, 3700 Brook St. Also owns Hudson's and the Lucky Diamond. This license used to be located at 24<sup>th</sup> and Grand when it was owned by JB's. This is a casino area and there are no churches or schools in the area. They will clean up this property and it will look very nice.

**Chairman Dailey** asked what the project time line is. Scott Peterson stated that they are looking to begin in November with a 6 week construction time frame. They would like to open before the end of the year.

**Kristin Omvig**, Crowely Law Firm, they would like to have background on the patio; they do not feel that it would affect any of the neighbors and would ask the Board to change that condition.

**Proponents:**

There were none.

**Opponents:**

There were none.

**Rebuttal:**

*Public hearing closed at 7:11 p.m.*

**Motion:**

***On a motion by Commissioner Larson, seconded by Commissioner Workman and approved with a 4-0 voice vote a recommendation of approval will be forwarded to the City Council on its meeting of September 22, 2008 with the following conditions:***

1. The special review approval shall be limited to Lot 9, Block 1, of Winemiller Subdivision, located at 1423 Main Street.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional square footage on the outdoor patio, parking lot access or parking areas will require additional special review approval.
3. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge. There shall be no amplified announcement system outside the building or on the outdoor patio shown on the site plan.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. The existing drive-up lane on the north side of the building must be blocked or removed. The drive-up window on the north side of the building must be removed.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations and as shown on site plan submitted with this application and shown in the staff report.
7. The patio area shall meet ADA accessibility requirements.
8. The patio shall have a minimum of a 4 foot tall fence enclosing the patio with an emergency exit to the parking lot. Access to the patio shall be from the inside of the building.
9. 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.
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. 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.

***On an amendment to the motion by Commissioner Hawkins, seconded by Commissioner Workman and approved with a 4-0 voice vote to change condition 3 to allow background music.***

**Commissioner Larson** asked about the condition regarding background music and if there is standard condition that would allow background music.

**Ms. Cromwell** stated that Planning has a condition that would allow for background music.

**Other Business:**

**Adjournment:**

***The meeting was adjourned at 7:30 p.m.***

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**Leonard Dailey, Chairman**

**ATTEST:**

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**Elizabeth Allen, Planning Clerk**

