

**City of Billings Zoning Commission Meeting
March 1, 2011**

The City of Billings Zoning Commission met on Tuesday, March 1, 2011 in the City Hall Council Chambers at 210 N. 27th Street, 2nd Floor.

Chairman Leonard Dailey called the meeting to order at 4:37 p.m. These items will be heard by City Council on Monday, March 28, 2010.

Commission and Staff		01/04/2011	02/01/2011	03/01/2011	04/05/2011	05/03/2011	06/07/2011	07/05/2011	08/02/2011	09/05/2011	10/04/2011	11/01/2011	12/06/2011
Leonard Dailey, Jr.	Chairman	1	E	1									
Matt Krivonen	Commissioner	1	1	1									
Barbara Hawkins	Commissioner	1	1	1									
Dan Wagner	Commissioner	1	E	1									
Edward Workman	Commissioner	1	1	1									
Candi Beaudry	Director, Planning & Community Services	-	-	-									
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1									
Tammy Deines	Planning Clerk	-	-	1									
Wyeth Friday	Planning Division Manager	1	1	-									
Juliet Spalding	Planner II	-	-										
Lora Mattox	Planner II	-	-										

Total Number of 2009 Applications	01/04/2011	02/01/2011	03/01/2011	04/05/2011	05/03/2011	06/07/2011	07/05/2011	08/02/2011	09/05/2011	10/04/2011	11/01/2011	12/06/2011	TOTAL
Zone Change	2	1	1										4
Special Review	0	0	1										1

Chairman Leonard Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Planner II/Zoning Coordinator; and Tammy Deines, Planning Clerk.

Public Comments:

Chairman Leonard Dailey called for public comment at 4:35 p.m. There was none. Chairman Leonard Dailey closed the public comment portion of the meeting.

Approval of Minutes February 1, 2011

Motion

On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved with a 5-0 voice vote, the minutes of February 1, 2011 are approved as submitted with corrections.

Disclosure of Conflict of Interest

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

Disclosure of Outside Communication

Chairman Dailey called for disclosure of ex parte communication. Commissioner Krivonen disclosed that lives in the Poly Drive neighborhood and that he spoke with Mr. Ming Cabrera who dropped off a letter at his house regarding City Zone Change #873. Nicole Cromwell noted that resident L. Nordstog picked up some valid protest forms from the Planning office today, but she is unaware of what this pertained to.

Public Hearings:

At 4:37 p.m. Chairman Leonard Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted. Nicole Cromwell read aloud the legal description for the proposed zone change.

Item #1: City Zone Change #873 – 1648 Poly Drive – Rocky Mountain Planned Development Amendment – A zone change from Planned Development (PD) with underlying zoning of Neighborhood Commercial (NC) with restrictions to PD with underlying NC without the restrictions on Lot 4, Block 2 Rocky Village Subdivision, a 25,600 square foot parcel of land, Tax ID A21124; Rocky Mountain College, owner and Thomas E. Smith, Moulton Bellingham, agent.

REQUEST

This is a zone change request from Planned Development – Neighborhood Commercial with Restrictions to Planned Development – Neighborhood Commercial without the restrictions on a 25,600 square foot parcel of land described as Lot 4, Block 2, Rocky Village Subdivision located generally at 1648 Poly Drive. The property is owned by Rocky Mountain College and is represented by Thomas Smith of Moulton Bellingham. The owner conducted a pre-application neighborhood meeting on December 27, 2010 and a preliminary review meeting was held by city staff on January 26, 2011.

RECOMMENDATION

The Planning Division is recommending approval with adjustments to the Planned Development agreement.

Nicole Cromwell gave a short presentation of the staff report. She explained that the Planning Division has reviewed this application and is recommending approval with adjustments to the draft Planned Development agreement. Nicole Cromwell pointed out the modifications to the proposed PD as listed in the staff report. She noted they include exclusion of “drive-up” type businesses, lighted signs, and requires full shielding of all exterior lights. She explained the lighting is not to go outside of the shielded area. She said exclusion of lighted or message signs are included due to the adjacent residential uses. She stated this does not allow for administrative changes for additional allowed uses; reduction of open space greater than 2%; or changes in setbacks, maximum lot coverage, or height. She explained in this case the standard setbacks would apply for a Neighborhood Commercial (NC) zone. She stated the applicant intends to offer the property for professional lease or sale.

Discussion:

At 4:47 p.m., Chairman Leonard Dailey asked the members of the Commission for questions and discussion. Commissioner Krivonen asked for clarification on PD Article IV. Nicole Cromwell explained that this is standard language for all of these agreements and it was included for consistency. Commissioner Workman asked where the building would be located on the lot. Nicole Cromwell stated the building would have to meet the setbacks but the applicant has not presented a plan. She explained the site development rules require a 15-foot setback when adjacent to a residential use; and would be required for this property. Leonard Dailey noted the multi-family property to the east of this property and asked regarding the height of the structures. Nicole Cromwell said it is approximately 30-34 feet tall from the sidewalk. Chairman Dailey commented this would be an accurate representation of nearly a 34-foot building height as represented by the

zone change application. He asked when the sign was posted on the property. Nicole Cromwell replied it was posted on February 11, 2011.

Applicant

Chairman Leonard Dailey called for presentation by the applicant.

Thomas E. Smith, Moulton Bellingham, agent, 27 North 27th Street, Suite 1900, Billings, Montana

Mr. Smith is representing the property owner, Rocky Mountain College. He stated he has prepared the application and they appreciated the assistance received from the Planning Department. He said they concur with the suggested changes to the PD. He gave a brief history of this parcel, including the request for the 17th Street Station. He said the current height requirement of 16 feet was agreed to at the time in 1992 but should have been more forward looking as it limits the uses for this property. Mr. Smith said Rocky Mountain College does not have a design for the building nor to a plan to build the building. In response to a question by Ed Workman, Mr. Smith stated they are seeking the zone change to increase the marketability of the property. He explained they can only offer a use as a restaurant and are seeking the highest and best use for this property. In response to a question by Ed Workman, Mr. Smith said their properties have been on long term leases or sold. He reiterated they have no set plan for this property. He mentioned the building and parking plans have to be approved by their review committee before a building is built. He said the height would have to be no higher than 34 feet.

Mr. Smith said they have been approached by attorneys, accountants, and medical practitioners regarding this property. He stated bars, casinos, and fast food establishments are not allowed under the zoning. In response to a question by Dan Wagner, Mr. Smith stated he is unaware of any anticipation of increasing traffic. Leonard Dailey pointed out any use that generated more than 500 trips per day would require a traffic analysis.

Mike Mace, 1511 Poly Drive, Billings, Montana

Mr. Mace is the President of Rocky Mountain College. Mr. Mace said they have been adamantly aggressive about cleaning up areas around the neighborhood and have recently moved south of Poly Drive with these projects to improve an office building. Mr. Mace commented the corner on Poly Drive has become an eyesore; and Rocky Mountain College has a responsibility to maintain their property and keep it in good conditions. He said the best approach for this property is to look at the property as a future facility or adhere to requests for lease or sale. He said all of the requests have come from accountants, attorneys, real estate, or professional uses, which would typically have business hours from 8:00 a.m.-5:00 p.m. Leonard Dailey asked if their Board will go through private restrictions for those interested in development. Mr. Mace stated they wish to maintain the character of the campus, and would require the Building, Grounds, and Master Plan Committees to review requests for architectural design conformity with the campus. Mr. Smith stated they will meet the requirements of the zoning requested, and it would be to their advantage to have a building to their standards.

Brad Anson, 1327 Crawford Drive, Billings, Montana

Mr. Anson said that he is Vice President of Student Life and is familiar with the campus properties. In response to a question by Leonard Dailey, Mr. Anson said the Shadowwood Development is long term leased through 2043 and there are additional properties with long term leases to the east. He stated Rocky Village is owned by apartment unit owners.

Ed Workman asked if there any other development plans to convert the baseball field on Lot 5A as it is a benefit to the community. Mr. Nason said he knows of no plans other than the field. He explained the Master Plan allows for development in the future but there is no current thinking for other development. In response to a question by Leonard Dailey, Mr. Nason said the campus proper is approximately 60 acres with an estimated of 70-100 acres of leased property along Poly Drive. Mr. Mace clarified and stated the campus property is 68 acres and there are 86 acres located south of Poly Drive. He stated he supports keeping the baseball field for community use.

Discussion

Chairman Leonard Dailey called for discussion and questions by the members of the Board.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #873-1648 Poly Drive-Rocky Mountain Planned Development Agreement Amendment.

Sandra Rickett, 1748 Poly Drive, Billings, Montana

Ms. Rickett stated they have lived in the neighborhood for over thirty years and love their home. She commented on the desirability of this location. She said we should want to clean up our town, including this property. Ms. Rickett said she recognizes the differences in opinions depending on individual motivations, and those that live in the neighborhood are in favor of improving and maintaining the property values. Ms. Rickett stated she is opposing the zone change to Neighborhood Commercial without restrictions. She said she feels there is not enough information to support this request, and the decision for support would not be looking forward. She stated they are not taking into consideration all of the other development involved and suggested when a plan is available the applicant get together with the neighborhood for a review. In response to a request by Commissioner Hawkins, Ms. Rickett pointed out her residence is on Lot 3 on the posted plat map.

Julie Lindberg, 2513 Augusta Lane, Billings, Montana

Ms. Lindberg stated it is the responsibility of the City Zoning Commission, and planning to enforce public nuisance codes such as noise and lighting and these issues need to be addressed before any zone change is made. She said the approval of the Morledge building has drastically changed her life. In response to a request by Dan Wagner, she said she cannot use her back yard as the Morledge building generator does not meet code, and the decibels is above what is allowed. She said her property is located on the East side of Augusta Lane, adjacent to the Morledge building. In response to a question by Ed Workman, Nicole Cromwell stated no zone change was required for those buildings.

Lois Nordstog, 1711 Iris Lane, Billings, Montana

Ms. Nordstog said it has been a challenge as the neighborhood has been invaded with commercial projects. She noted several unfulfilled assurances to the neighborhood from Rocky Mountain College including the gas station reverting to residential zone; and a petition for a green spot that was sold. Ms. Nordstog said, "It seems they come up with a better mouse trap and none of it works well". She said this is a lovely neighborhood with homeowners that have invested a lot in their property. She stressed they do not need any more traffic or hazards. In response to a request for clarification of her objection by Commissioner Krivonen, Ms. Nordstog stated her primary objection is the hazardous traffic and the commercialization of the neighborhood.

Larry Leininger, 1726 Poly Drive, Billings, Montana

Mr. Leininger said he is sure it is impossible to sell his house due to the business across the street. He stated he is opposed to the zone change, but if they came with a plan he would consider it. He stated he has lived in this area for 40 years and this is not right. Nicole Cromwell pointed out the location of Mr. Leininger's property on the posted map.

Ming Cabrera, 1734 Poly Drive, Billings, Montana

Mr. Cabrera reiterated the story of how Long Island was sold for \$24.09 and promises of trinkets. He said in this case they are faced with promise of trinkets. He said the building adjacent to this property was built down to meet the 34-foot height. He turned to the audience and passionately stated that Rocky Mountain College has disregarded height variances across from his house. He said he is unable to sell his house. He said they had promised a park and a bus stop. Chairman Dailey interjected and asked Mr. Cabrera to address the Zoning Commission.

Mr. Cabrera asked the Commission understand his passion. He stated he has had to use his weekends to address these issues. He said he would love to work with Rocky. Mr. Cabrera said Poly Drive has been the heart of the west end and now has commercialization. He said he is unable to live with it. Commissioner Workman noted a neighborhood community meeting was held on December 27, 2011. Mr. Cabrera stated he was not informed of this meeting until he heard on January 27, 2011 that they had met. Nicole Cromwell explained that Mr. Cabrera and Ms. Rickett were outside of the 300-foot radius notification area but when Staff was notified of their concerns they were added to the list. Mr. Cabrera said most of the commercial entities were notified but most residents were not notified. Ed Workman reminded Mr. Cabrera the Zoning Commission is an advisory board to the City Council. He said this request will be heard again at City Council which will give him an opportunity for this passion going forward. Mr. Cabrera stated the neighborhood did not know about it. Leonard Dailey stated Staff has followed standard operation procedures and Mr. Cabrera can feel satisfied his passions have been heard.

Paul Nordstog, 1711 Lois Lane, Billings, Montana

Mr. Nordstog stated the idea of a zone change without any specifics is disingenuous. He said they need some idea of what to expect if this zone change is approved as they have been blindsided in the past. He commented that the Rocky Village apartment buildings were to have enough parking for tenants of the parking buildings and have tenants parking on Poly Drive.

Rebuttal

Chairman Dailey asked Mr. Smith for rebuttal and noted the concerns of property values, noise, traffic, broken promises, and commercialization of the neighborhood.

Thomas E. Smith, Moulton Bellingham, agent, 27 North 27th Street, Suite 1900, Billings, Montana

Mr. Smith said Rocky Mountain College did not develop the apartment building or the medical building as they are not the owners of the lands to the west of Poly Drive and 17th Street West. He noted although there is no design for the property the Neighborhood Commercial zoning has restrictions. He said the exact design of the building will depend on the exact use and the required parking spaces. He said the issue of traffic flow has been considered by Staff and the College has agreed not to have a drive-through business that tends to pull traffic in and out. Mr. Smith said he lives about two blocks away from this property. He said his client's point of view regarding property values is this property is currently a drag on the value of the area. He noted washers, dryers and trash have been dumped on the lot. He said the zoning sign had been posted but was thrown down and put on the ground. He commented this area has changed in the last 15-20 years. He stated they do not want to increase traffic flow or deteriorate the neighborhood. He said this will be some sort of commercial enterprise as no one is interested in a café unless a drive through is permitted.

Chairman Leonard Dailey asked if there was anyone else wishing to speak in favor or against City Zone Change #873-1648 Poly Drive-Rocky Mountain Planned Development Agreement Amendment. There was none. At 5:44 p.m., Chairman Dailey closed the public hearing and asked for a motion.

Motion

Commissioner Workman made a motion and it was seconded by Commissioner Hawkins to forward a recommendation of approval to City Council of City Zone Change #873-1648 Poly Drive-Rocky Mountain Planned Development Amendment as presented by staff along with Attachment "G".

Discussion

Chairman Leonard Dailey called for discussion on the motion. Ed Workman said he recognizes commercial uses are a good fit for the south part of Poly Drive. He said this zone change will improve the neighborhood. He pointed out the applicant is currently restricted to a restaurant which will not work there, and they need to improve the zoning to obtain the highest and best use for the property. Mr. Workman stated he believes Rocky has been a good neighbor. Dan Wagner

commented to leave the property in its present condition would be a mistake. Matt Krivonen suggested amending the proposal as he feels a 34-foot tall building would do more damage to the corner. He stated it would be wise to limit the height to a single story building. Barbara Hawkins noted a 34-foot house is allowable within the RP zoning. She stated she doesn't feel the height is as much of a deterrent as having the current building there. She pointed out several restaurants have failed and stated she is in favor of this zone change request. Leonard Dailey commented this property seems to be drawing interest from good types of businesses which should work well with this area.

Motion

Matt Krivonen made a motion to amend the motion to limit the proposed building height to a single story building.

The motion dies for a lack of a second.

Chairman Dailey called for a vote on the original motion.

Motion carries on a 4-1 vote with Commissioner Krivonen opposing.

Chairman Dailey asked Nicole Cromwell to open this agenda item. Nicole Cromwell followed with a PowerPoint presentation and the staff report. Regarding Condition #4, Nicole Cromwell stated the applicant may request deletion of this condition as he does not intend to allow alcohol or any type of service on the patio.

Item #2: City Special Review #888 – 1214 Main Street – Former Diamond Jubilee Casino – A special review request to allow the location of an all beverage license with gaming in a Highway Commercial (HC) zone on Lot 1, Cipech Subdivision and Tracts C, D & U of C/S 59 a 17,808 square foot parcel of land generally located at 1214 Main Street. Tax ID: D05301, Joseph Womack, Trustee for the owner and Bob Pulley, Elite Realty, agent.

REQUEST

This is a request for a special review to allow the location of an all beverage license with gaming in a Highway Commercial (HC) zone on Lot 1, Cipech Subdivision and Tracts C, D & U of C/S 59 a 17,808 square foot parcel of land generally located at 1214 Main Street. The former Diamond Jubilee Casino is currently vacant and no previous special review was approved for this location by the City Council. The location will not require a waiver of the 600 foot separation from this location as there are no churches, schools or public parks with playground equipment within 600 feet of this property.

RECOMMENDATION

The Planning Division is recommending conditional approval.

PROPOSED CONDITIONS

1. The special review approval shall be limited to Lot 1, Cipech Subdivision and Tracts C, D & U of C/S 59 generally located at 1214 Main Street.
2. Any expansion of the proposed patio, building, building occupancy or parking lot greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
3. All new site lighting on the building, in parking areas or outdoor patio shall have full cut-off shields so lighting is projected to the ground and not on to adjacent properties. This condition does not apply to existing or restored neon lighting on the building.
4. The owner shall provide a fence of at least 4 feet in height around the outdoor patio. The fence shall have at least one gate to provide access.
5. 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.
6. There shall be no outdoor public address system or outside announcement system of any kind.
7. 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.
8. 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 apply.

Discussion:

At 4:47 p.m., Chairman Leonard Dailey asked the members of the Commission for questions and discussion. He asked how long the building has been vacant, and Nicole Cromwell replied, "Not quite a year". In response to further questioning, Nicole Cromwell clarified the accesses to the property and noted there is a raised median on Main Street. She pointed out the location of the proposed fencing on the outdoor patio and explained it would be a standalone fence would not be connected to the building, as it would enclose the primary access to the building. She stated there is no parking on the Main Street side of the property. She explained Conditions 5-6 are to keep music and public address sound on the site as the motel to the south would be more of a direct recipient of what is going on in the parking lot. She said she supposed the business hours for the casino would be 12:00 p.m.-2:00 a.m.

Applicant

Chairman Leonard Dailey called for presentation by the applicant.

Bernie Harrington, 4032 Palisades Park Drive, Billings, Montana

Mr. Harrington explained he purchased the building subsequent to the initial review and he gave Nicole Cromwell the updated ownership information at the beginning of this meeting. He said he purchased the building a week ago Friday. He stated the previous owner had a patio table intended to accommodate smokers. Mr. Harrington stated Staff has been very helpful in the process and he

commended Nicole Cromwell for taking the photos and placing the sign in the weather. Mr. Harrington stated there will be no outside alcohol sales or services. He said he would like to return with a plan to accommodate smokers in the future and may send smokers to a front area. He pointed out the main entrance is located in the back of the building off of the parking lot and stated he does not wish to clutter the back area with a fence. He said the location was closed in September after Mr. Keith filed for bankruptcy. In response to a question by Leonard Dailey, Mr. Harrington said they are planning for a small package liquor space, gaming machines, and a small space for drinks. He said the operating hours will be from 8:00 a.m.-2:00 a.m. but if business wanes, they may close at midnight. Leonard Dailey asked about reviews for future building plans. Nicole Cromwell said any type of smoking shelter would be under building code review, and Planning would issue a fence permit; but it would not return to this Commission. Ed Workman asked if they plan to rename this new venture. Mr. Harrington said they plan to capitalize on the positive history and leave the name as is for now. Dan Wagner asked if they have plans for construction. Mr. Harrington stated there will be no major changes to the outside of the property other than repairs to the lighting, landscaping, and painting. He stated the interior would be remodeled as it is dated.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for opponents or proponents of City Special Review #888-1214 Main Street, Billings, Montana. There was none. Chairman Dailey closed the public hearing and asked for a motion at 6:09 p.m.

Motion

Commissioner Hawkins made a motion and it was seconded by Commissioner Wagner to forward a recommendation of approval to City Council of City Special Review #888 as presented by staff with the elimination of Condition #4 concerning the fencing.

Discussion

Chairman Leonard Dailey called for discussion on the motion. He said this property is a “diamond in the rough”. He commented he had visited Riley Lane and would like to see this in the hands of a good entrepreneur. Ed Workman stated this gets rid of a vacant building that is blighted and gives the owner to an opportunity to improve the neighborhood.

Motion carries unanimously, 5 -0.

Other Business/Announcements:

- The next City Zoning Commission meeting will be held on April 5, 2011.

Adjournment:

The meeting was adjourned at 6:15 p.m.

ATTEST:

Leonard Dailey, Chairman

Tamara L. Deines, Planning Clerk