

## City of Billings Zoning Commission Meeting December 6, 2011

The City of Billings Zoning Commission met on Tuesday, December 6, 2011 in the City Council Chambers located on the 2<sup>nd</sup> floor of City Hall, 210 N 27<sup>th</sup> Street, Billings, Montana.

Chairman Leonard Dailey called the meeting to order at 4:35 p.m. The City Council has designated **Monday, January 9, 2012**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against these special review applications. The City Council has designated **Monday, January 23, 2012**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against this zone change application.

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

<b>Total Number of 2009 Applications</b>	<b>01/04/2011</b>	<b>02/01/2011</b>	<b>03/01/2011</b>	<b>04/05/2011</b>	<b>05/03/2011</b>	<b>06/07/2011</b>	<b>07/05/2011</b>	<b>08/02/2011</b>	<b>09/05/2011</b>	<b>10/04/2011</b>	<b>11/01/2011</b>	<b>12/06/2011</b>	<b>TOTAL</b>
<b>Zone Change</b>	2	1	1	1	0	2	1	1	0	0	0	1	10
<b>Special Review</b>	0	0	1	1	0	0	1	2	1	0	0	2	8

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

**Others in Attendance:** Marshal Phil, Blueline Engineering; Alex Tommerup, AT Architecture; Bob Pulley; Chris Garcia; Jeff Romans

**Public Comments:**

Chairman Leonard Dailey called for public comment at 4:32 p.m. There was none. Chairman Leonard Dailey closed the public comment portion of the meeting.

**Approval of Minutes: September 6, 2011**

Chairman Dailey requested updating the vote count throughout these minutes from 4-0 to 3-0.

**Motion**

**On a motion by Commissioner Workman, seconded by Commissioner Wagner and approved with a 4-0 voice vote, the minutes of September 6, 2011.**

**Disclosure of Conflict of Interest**

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

**Disclosure of Outside Communication**

Chairman Dailey called for disclosure of ex parte communication. There was none.

\*\*Barbara Hawkins arrived at 4:36 p.m.

**Public Hearings:**

At 4:33 p.m. Chairman Leonard Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open first agenda item.

**Item #1: City Special Review #894, 4519 Grand Avenue-Billings Christian School expansion**  
**Special Review #894 - 4519 Grand Avenue – Billings Christian School expansion** – A special review request to allow the expansion of an existing school (elementary and high school) in a Residential 9,600 (R-96) zoning district on Lot 3, Block 1, Cornerstone Subdivision a 3.6 acre parcel of land. Tax ID: A31535, Cornerstone Community Church, owner and AT Architecture, agent.

Nicole Cromwell gave a short presentation of the staff report.

### **REQUEST**

This is a request for a special review to allow the expansion of an existing school (elementary and high school) in a Residential 9,600 (R-96) zoning district on Lot 3, Block 1, Cornerstone Subdivision a 3.6 acre parcel of land located at 4519 Grand Avenue. The property is owned by Cornerstone Community Church and is represented by Alex Tommerup, AT Architecture.

### **RECOMMENDATION**

The Planning Division is recommending conditional approval with the following proposed conditions:

1. The special review approval shall be limited to Lots 3 (as amended), Block 1, Cornerstone Subdivision, generally located at 4519 Grand Avenue.
2. The special review approval is for the construction of a new school building of 46,640 gross square feet and no other use is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the parking or outdoor play areas shall be 20 feet above grade.
5. The site plan will be modified to show an 18 foot setback from the existing Lenhardt Lane easement.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. No construction or demolition activity will occur before 8 am or after 8 pm daily.
8. Any new sign will require sign permit approval from the Planning Division. The proposed monument sign will comply with the sign code requirements in place at the time of application.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building location.
10. The applicant will retain all existing healthy trees along Lenhardt Lane. Trees lost through damage or disease will be replaced with the same species within 1 year of final construction.

11. 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.
12. 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.

### **Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. Ed Workman asked if there were any issues raised from the neighborhood meeting. Nicole Cromwell explained neighborhood meetings are not required for a special review but Staff received no comments via e-mail or phone. In response to a question by Leonard Dailey, Nicole Cromwell stated the 3.6 acre parcel size includes the amended lot area, and the access easement goes along the east 30 feet of this lot. Discussion followed on Condition of Approval #10 requiring the applicant to retain all existing healthy trees along Lenhardt Lane. Nicole Cromwell stated the new building will be three stories tall and the retention of the trees will help to buffer the structure from the adjacent residential uses. Leonard Dailey asked about the life expectancy for this type of tree and noted there is no timeframe on the tree loss. Nicole Cromwell stated the Board may amend the condition to state the applicant would be responsible for replacement of the trees for up to a year following the construction of the school.

### **Applicant**

Chairman Leonard Dailey called for presentation by the applicant.

### **Alex Tommerup, AT Architecture, Billings, Montana**

Mr. Tommerup stated he is representing Cornerstone Community Church and Billings Christian School. He said the new facility may be a phased project and he agrees with the proposed amendment to Condition of Approval #10. Mr. Tommerup said Billings Christian School currently houses 100 elementary through high school students and 20 preschool students; and hopes to accommodate 300 students with the new building. The plan is to include a gymnasium with a small spectator section. In response to a question by Dan Wagner, Mr. Tommerup explained the construction is dependent on the applicant's capital income. Matt Krivonen asked regarding the project timing. Mr. Tommerup said the plan would be to construct part of the project that will work within the school's schedule. He said the desire is to construct a gym and a school but at this time, the classroom area is more important than the gym. Mr. Tommerup said they are agreeable to the conditions and it would be helpful to amend Condition of Approval #10.

### **Discussion**

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

### **Public Hearing**

At 4:54 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Special Review #894-4510 Grand Avenue. There was none.

Chairman Dailey closed the public hearing at 5:01 p.m. and called for a motion.

**Motion**

**Commissioner Wagner made a motion and it was seconded by Commissioner Workman to forward a recommendation of conditional approval to City Council of City Special Review #894-4519 Grand Avenue as presented by staff.**

**Discussion**

Chairman Leonard Dailey called for discussion on the motion. Ed Workman suggested changing the language in Condition of Approval #10, to read, "The applicant will retain all existing healthy trees along Lenhardt Lane. Trees lost through damage or disease will be replaced with the same species. This condition is not to be extended beyond one year after completion of the construction.

**Motion**

Ed Workman made a motion to amend the original motion to modify the language in Condition of Approval #10 by striking the word disease and adding that the condition is not to be extended beyond one year after completion of the construction.

Chairman Dailey called for a vote on the amended motion. **Motion carried unanimously, 5-0.**

Chairman Dailey called for a vote on the original motion. **Motion carried unanimously, 5-0.**

**Item #2: City Special Review #895-1911 King Avenue West-Asian Sea Grill**

**Special Review #895 – 1911 King Avenue West – Asian Sea Grill** – A special review request to locate an all-beverage license (gaming attached) in a Controlled Industrial (CI) zone on Lot 11A-1, Block 1, CBH Industrial Park Subdivision, a 2.3 acre parcel of land. Tax ID:A20590, KRP, LLC, owner and Bob Pulley, agent.

Nicole Cromwell gave a short presentation of the staff report.

**REQUEST**

This is a request for a special review to allow the location of an all beverage license (gaming attached) in a Controlled Industrial (CI) zone on Lot 11A-1, Block 1, CBH Industrial Park Subdivision, a 2.3 acre parcel of land generally located at 1911 King Avenue West. The Asian Sea Grill currently operates in Suite 4 & 5 with a beer and wine license that does not have gaming attached to the license. The owners obtained an all-beverage license at a recent auction and the license has gaming attached. The Asian Sea Grill does not intend to offer gaming at this time but would like to use the all-beverage license and expand into an adjacent suite (Suite 3) to accommodate its current business. 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 with the following proposed conditions:

1. The special review approval shall be limited to Lot 11A-1, Block 1 CBH Industrial Park.
2. Any expansion of the proposed interior space greater than 10 percent of 5,000 square feet (Suites 3, 4 & 5), 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. There shall be no outdoor public address system or outside announcement system of any kind.
4. 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.
5. 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.

Nicole Cromwell gave a short presentation of the staff report.

### **Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. Ed Workman asked if the applicant could use gaming in the future with this license. The applicant's agent Bob Pulley replied from the audience and stated they could not.

### **Applicant**

Chairman Leonard Dailey called for presentation by the applicant.

### **Bob Pulley, 321 Glee Place, Billings, Montana**

Mr. Pulley said this was formerly the Silver City Casino and it is now vacant. The applicant plans to move into this space with the restaurant. He said the applicant has no desire for gaming with this business.

### **Discussion**

Chairman Leonard Dailey called for discussion and questions by the members of the Board. He noted the applicant's letter and the space previously occupied by the Silver City Casino is now vacant. Mr. Pulley explained the applicant currently has a cabaret license. He said they have a "non-compete" clause stating that there will be no more gaming in this mall. This applicant prefers not to have gaming, as they are a food related business. Discussion followed by members of the Board and Mr. Pulley on the affects of the new smoking regulations and the current economy on casino properties.

### **Public Hearing**

At 5:06 p.m., Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Special Review #895-1911 King Avenue West. Chairman Dailey closed the public hearing at 5:07 p.m. and called for a motion.

### **Motion**

**Commissioner Wagner made a motion and it was seconded by Commissioner Workman to forward a recommendation of conditional approval to City Council for Special Review #895 1911 King Avenue West as presented by staff.**

### **Discussion**

Chairman Leonard Dailey called for discussion on the motion. There was none.

**The motion carried unanimously, 5-0.**

### **Item #3: City Zone Change #879-2302 Meadowood Street**

**Zone Change #879 – 2302 Meadowood Street** – A zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 8, Block 1 Meadowood Subdivision, a 9,836 square foot parcel of land. The existing parcel has a side-by-side duplex constructed prior to the current zoning and is a nonconforming use in the R-96 zoning district. Tax ID: A10940, Mark Dawson, owner and Blueline Engineering, agent.

Nicole Cromwell gave a short presentation of the staff report.

### **REQUEST**

This is a zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 8, Block 1 of Meadowood Subdivision located at 2302 Meadowood Street. The property is owned by Mark Dawson and Blueline Engineering, represented by Marshall Phil, is the agent. The owner and agent conducted a pre-application neighborhood meeting on May 31, 2011, at 6:00 pm at the Century 21 office at 1605 Shiloh Road.

### **RECOMMENDATION**

The Planning Division is recommending approval.

Nicole Cromwell gave a short presentation of the staff report. She pointed out this is the second application for this property. She stated since the application was first heard, Planning Staff has done further research and discovered three zone changes to change from R-96 to R-70 that were previously approved but are closer to downtown in location. She further explained the staff recommendation and discussed a 2006 Supreme Court case and newer court cases that she found on the issue of illegal spot zoning.

### **Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. In response to a question by Ed Workman, Nicole Cromwell stated Staff's approval recommendation is different from the last application in terms of the research done in regard to spot zoning. Leonard Dailey asked regarding staff's criteria for consideration of a neighborhood. Nicole Cromwell said she generally looks for similar properties and uses a section map, and typically similar developed property tends to use the 600-foot radius of the property. Nicole Cromwell explained she looked at areas where the City had applied one type zoning to broad areas. In response to Leonard Dailey, Nicole Cromwell commented the 2006 Supreme Court case stated the residential zoning does not lead to spot zoning. She said the same criterion is applied from structural and engineering points of view. She said the source data in the staff report is taken from the Department of Revenue taxable values for the buildings and land. Leonard Dailey asked for an explanation of the term "disinvestment". Nicole Cromwell said duplexes located in neighborhoods with single family zoning tend to not be maintained; property owners have been turned town for rebuild letters; and have no financial backing to invest in the property improvements. She pointed out this is starting to happen in several of these neighborhoods due to the way they are zoned. Nicole Cromwell gave further clarification. Leonard Dailey commented on the maturation of Staff's thinking. Nicole Cromwell stated her recommendation is based on her research, and a lot of discussion took place to come to this recommendation. She pointed out the zoning is an expression of the goals and policies of the City's Growth Plan. She commented the broad brush used in 1972 is not the brush that should be used in 2011. She said the applicants reached out to the neighborhood, and the neighborhood sent letters directly to Nicole Cromwell's attention at the office. Leonard Dailey said he foresees potential for a number of properties to go through this process to become conforming to increase sale ability. Dan Wagner agreed and stated this is a big issue with financing.

### **Applicant**

Chairman Leonard Dailey called for presentation by the applicant.

### **Marshal Phil, Blueline Engineering, 2110 Overland Ave., Billings, Montana**

Mr. Phil is representing the owner, Mark Dawson. He stated last year's application was not put together very well. He said there were no attendees at the neighborhood meeting so they distributed the letter requesting a response. Mr. Phil explained the owner would like to finance the property; continue with its current use; and possibly modify it to be used as a condominium.

### **Discussion**

Chairman Leonard Dailey called for discussion and questions by the members of the Board. He asked for a sample of the form letter sent to the property owners and Nicole Cromwell pointed out it was included as an exhibit.

### **Public Hearing**

At 5:36 p.m. Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #879 – 2302 Meadowood Street.



**Mark Dawson, 1605 Shiloh Road, Billings, Montana**

Mr. Dawson, the applicant, stated he would like to split the property into townhomes and live in half of the building while constructing a new home. He said obtaining FHA financing for the townhome would be a factor, and the impact of this approval would make it necessary to make improvements to the property. Mr. Dawson said he wishes to have a legal use and two owners for this property instead of two renters. He explained the feasibility is greater and financing is available if the property is legal and conforming. In response to a question by Leonard Dailey, Mr. Dawson explained the FHA standards, which includes criterion such as no peeling or chipping paint on the exterior and extending sidewalks to the street. Chairman Dailey closed the public hearing at 5:40 p.m. and called for a motion.

**Motion**

**Commissioner Wagner made a motion and it was seconded by Commissioner Workman to forward a recommendation of conditional approval to the City Council for Zone Change #879 as presented by staff.**

**Discussion**

Chairman Leonard Dailey called for discussion on the motion. Ed Workman said he feels this falls under “Garage Logic 101”, as assisting an applicant in reversing the disinvestment of neighborhood properties is a wonderful thing. Dan Wagner stated he agrees and this is certainly a step in the right direction. Leonard Dailey said he is comfortable this is not “spot zoning”, and asked if there is any exposure to liability. Nicole Cromwell stated the more facts and information provided to support a particular decision, the better it is going forward. She said the City Attorney will review the City Zoning Commission’s recommendation, and only a court and a judge can determine if an illegal spot zoning has occurred. She stated she does not feel that this is one of those areas. Leonard Daily expressed the need to do what is good as a whole for the community.

**Motion carried unanimously, 5-0.**

**Other Business**

- A. Membership:** Nicole Cromwell thanked Ed Workman for his service to the City Zoning Commission from January 2004 through December 2011 and presented with him a certificate of appreciation. Ed Workman stated he enjoyed the opportunity to learn more about zoning. He complimented staff and said they are easy to work with and obtain the answers needed.

Dan Wagner and Barbara Hawkins were appointed to another term. Bill Ryan was appointed to fill Ed Workman’s position. The appointments will be made at the December 12, 2011 City Council meeting.

- B. Announcement:** Due to the New Years Day holiday observed on January 2, 2012, the January 3, 2012 Zoning Commission meeting will be held at the Parmly Billings Library as City Council will be meeting in the City Council Chambers.

**Adjournment:**

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

**ATTEST:**

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**Leonard Dailey, Chairman**

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**Tamara L. Deines, Planning Clerk**