

A G E N D A R E P O R T

DATE January 20, 2004

ITEM Public Hearing – Ordinance No. 2868 to Rezone Lots 6 and 7, Block 244, Original Townsite

INITIATED BY Bruce and Melinda Morison, Property Owners

ACTION REQUESTED Conduct Public Hearing and Approve or Deny Ordinance No. 2868

PREPARED BY Bill Walters, Senior Planner

APPROVED & PRESENTED BY Ben Rangel, Acting Planning Director

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RECOMMENDATION:

After conducting the public hearing, it is requested the City Commission approve or deny Ordinance No. 2868 on final reading without a recommendation from the Planning Board.

MOTION:

1) "I move the City Commission adopt Ordinance No. 2868."

or

2) "I move the City Commission deny Ordinance No. 2868."

SYNOPSIS:

If approved on final reading, Ordinance No. 2868 will rezone Lots 6 and 7, Block 244, Original Townsite, addressed as 626 4th Avenue North and located within the Great Falls Central Place Revitalization Plan Area, from its present R-E Residential-Existing to R-O Residential-Office zoning classification.

BACKGROUND:

A petition has been received from property owners Bruce and Melinda Morison to rezone subject Lots 6 and 7 from Residential-Existing (R-E) District to Residential-Office (R-O) District to allow the existing single-family residential structure on the premises to be converted for office use. Please refer to the attached vicinity zoning map.

The City-County Planning Board on December 9, 2003, conducted a public hearing on the Revitalization Plan Amendment. Individuals speaking in support of the rezoning were: Pete Fontana, 28 Treasure State Drive; Marjie McClellan, 612 4th Avenue North; John Kunz, 2 Volk Terrace; Sara Sexe, 3105 Kingwood Court; Melinda Morison, owner, P. O. Box 1714, Whitefish, MT 59937; and Wayne Dean, 2625 Central Avenue. Individuals speaking in opposition to the rezoning were: Colette Longin, 617 4th Avenue North; Caroline Carter, 1124 4th Avenue North; David Fritschen, 317 3rd Street North; Kyle Larson, 601 4th Avenue North; and Nancy Sinclair, 617 3rd Avenue North.

In addition, numerous petitions and letters expressing both support and opposition to the rezoning have been submitted and are attached.

During Planning Board discussion of the application, some Board members thought the property would be difficult to sell as a single family residence and that conversion for office use would not be detrimental to the neighborhood. Other members thought approval would result in a spot zoning and would establish precedence for similar applications and conversions that would, over time, transition the neighborhood into additional nonresidential uses.

At the conclusion of the hearing, the Board voted 3 to 3 on a motion to recommend the City Commission deny Ordinance No. 2868. As a result of the deadlock vote, the President announced the application would be forwarded to the City Commission with no recommendation from the Planning Board.

Attached is a copy of the Planning Staff Report and Recommendation with attachments including Ordinance No. 2868 and the Planning Board Hearing Minutes.

Attach: Planning Staff Report and Recommendation, dated Dec. 3, 2003, including Ord. No. 2868
Minutes of Planning Board Hearing held Dec. 9, 2003
Numerous petitions and letters

cc w/o attach: Ladawna Nelson, 608 2nd St S
Bruce and Melinda Morison, P O Box 1714, Whitefish MT 59937

GREAT FALLS CITY-COUNTY PLANNING BOARD

MINUTES OF THE PUBLIC HEARING ON
GREAT FALLS CENTRAL PLACE REVITALIZATION
PROGRAM AMENDMENT TO REZONE
LOTS 6 & 7, BLOCK 244, ORIGINAL TOWNSITE,
FROM RESIDENTIAL EXISTING (R-E) DISTRICT TO
RESIDENTIAL OFFICE (R-O) DISTRICT (MORISON)
December 9, 2003

The public hearing on the Great Falls Central Place Revitalization Program Amendment to Rezone Lots 6 and 7, Block 244, Original Townsite, from Residential Existing (R-E) District to Residential Office (R-O) District was called to order at 3:03 p.m. in the Commission Chambers of the Civic Center by Planning Board President Bill Bronson.

ROLL CALL & ATTENDANCE

Planning Board Members present:

Mr. Bill Bronson
Mr. John Harding
Mr. John Kelly
Mr. Fay Lesmeister
Mr. Rolland Leitheiser
Dr. Greg Madson (abstained)
Mr. Joe Summers

Planning Board Members absent:

Two Board positions vacant

Planning Staff Members present:

Ms. JoAnn Painter, Admin. Asst.
Mr. Ben Rangel, Acting Planning Director
Mr. Bill Walters, Senior Planner

Others present:

Mr. Dave Dobbs, City Engineer

A copy of the attendance list as signed by those present is attached and incorporated by reference.

ABSTENTIONS

Mr. Bronson asked if any Board Member was recusing themselves from this hearing. Dr. Madson said he was and took a seat in the audience.

EXPLANATION OF HEARING PROCEDURES

Mr. Bronson advised the audience that agendas were available on the table at the back of the room and the agenda will be followed. There is also an attendance list on the back table and requested everyone present sign the list and provide the information requested. Following this explanation of procedures, he will ask if there is a request for the reading of the public notice of this hearing. After that, the Planning staff will make its oral presentation of its report and recommendation. The petitioner will then be allowed to make a presentation, after which there will be an opportunity for proponents and opponents to speak. There will also be a time for public comments. Anyone intending to speak, should come forward to the rostrum, speak directly into the microphone, state your name, address, and name of organization, if you are representing an organization. At the conclusion of the public comment section, the Board will discuss this matter and take action. The decision of the Planning Board is advisory only. The Board's recommendation will be forwarded to the appropriate governing body, which in this case is the City Commission. The City Commission will make the final decision. He asked that cell phones and other electronic devices be turned off for the duration of the hearing.

READING OF PUBLIC NOTICE

As there was no response to Mr. Bronson's question on whether anyone present wished to have the public notice read, the public notice was not read.

PLANNING STAFF REPORT & RECOMMENDATION

Mr. Walters said this public hearing involves a zone change request in the Revitalization Area. The legal description of the property under consideration is Lots 6 and 7, Block 244, Original Townsite. The property is presently owned by Bruce and Melinda Morison. They are represented by Cogswell Real Estate. The address of the subject property is 626 Fourth Avenue North. It has been requested that the property be rezoned from its current R-E Residential Existing zoning classification to R-O Residential Office. The purpose of the rezoning is to allow the three story single-family residential structure on the premises to be converted for office use.

Posted on the easel was a zoning vicinity map.

Mr. Walters distributed additional communications received since the mailing of the report. Copies are attached and incorporated herein by reference. Communications were expressing both support and opposition to the zone change.

After reviewing the staff report and recommendation, Mr. Walters said he would be glad to respond to any questions from the Board.

PETITIONER'S PRESENTATION

The petitioner deferred speaking now and said she would speak later during the hearing.

PROPONENTS OPPORTUNITY TO SPEAK

Mr. Pete Fontana, 28 Treasure State Drive, said he was a professional licensed appraiser with the State of Montana. He spoke supporting the zone change from his appraisal viewpoint. He said that typically the life cycle of a neighborhood is growth, stabilization, decline and then revitalization. The large three story houses in older neighborhoods do not sell well because they are so large for residential use and the utility bills are high. That is why a lot of these properties become bed and breakfast establishments or apartments, which is more detrimental to the neighborhood than turning them into a professional office setting such as a law firm. There are several law firms that occupy these houses in town. Some of those buildings are gorgeous and have enhanced the value of the neighborhood. In his opinion, changing the zoning of this property to allow a law office would not diminish the value of the surrounding residences. Most of the properties that surround the law firms have increased in value. That's based on the phenomenon called "progression" which means that particular building has been remodeled to the point that it stands out and brings the value of the properties around it up. On the other hand, if this single family house is allowed to turn into a seven unit dwelling or foster care house, you will have the opposite. You will probably see some regression which will drag the values of the surrounding residences down. He was highly in favor of changing the zoning on this property.

Ms. Marjie McClellan, 612 Fourth Avenue North, did not have a problem with lawyers moving in on the corner. You just learn to live with that. She cited another example of an absolutely beautiful home in the neighborhood that was turned into a business – the Charlie Russell Manor, owned by Channing Hartelius. People attending functions there park along Fourth Avenue North and the Heisey's parking lot. She did not mind that, you just learn to live with that. She worked part of last summer in a group home. She was concerned when she heard that this house might possibly be turned into a group home. A lot of the kids in a group home are there because they ran away or don't have somebody who cares about them. But, some of the kids are there for very disturbing reasons. The kids are allowed to leave the group home for jobs, but don't always have to report when they get to their job. So, it is not always known where they were for eight hours a day. There are a lot of little kids in her neighborhood and the idea of having a group home in the neighborhood bothered her. It was also frightening to have an apartment complex. She worked for the census in the 80s checking addresses. She had to check the addresses at this house when it was an apartment complex. She described the building as dark, unpleasant smelling, and not having very nice apartments.

Mr. John Kunz, 2 Volk Terrace, owner of Coldwell Banker Cogswell Real Estate, said he grew up in this neighborhood and was familiar with the neighborhood. When growing up, most of the residential structures were single-family homes. At that time, families had many children and a home of this size was appropriate.

Since that time, family structure has changed to where the average family now has only a couple of children. So, it is difficult to market a home this large in this neighborhood. The staff report speaks about possible increased traffic and parking problems. He felt that a professional law office as proposed would have minimal traffic and the 12 parking spots would be sufficient for the attorneys, staff and clients. He thought there was more of an impact to the neighborhood from the traffic and parking from people attending functions at the Charlie Russell Manor. He has attended some of the functions with 80 or 90 people present. There wouldn't be that kind of traffic with a law office. Referring to the objectives of the Great Falls Central Place Revitalization Program, he said that a professional law office in this building would: provide opportunities for new and private investment, thereby increasing the tax base; encourage the highest and best use of the land; eliminate slums and blighting influences as well as inappropriate land uses; provide a method and incentive for the adaptive reuse of sound, but functionally obsolete buildings for commercial or residential use; and to ensure a pleasant atmosphere for residents and visitors alike. He felt that having a professional office at this location would definitely be in line with the objectives of the revitalization program.

Ms. Sara Sexe, 3105 Kingwood Court, said she was a lawyer with Marra, Sexe & Evenson, the law firm proposing to purchase this building. They believe the home would be a nice office for them, their staff and clients. They want to maintain the integrity of the home and neighborhood as much as possible. They do not intend to make significant changes in the home and would like to become good neighbors. They support this zone change.

Ms. Melinda Morrison, petitioner and owner of the property, spoke about the history of the property. The house was 100 years old. From 1963 through the 1980s, it was a seven unit apartment complex. Then someone purchased the property and did a fabulous job turning it into a successful bed and breakfast. She and her husband purchased the home in 1995. In the last 40 years, only the last 8 years has a single family actually lived in the house. When she and her husband placed the house on the market, they worked hard to sell it to another family. However, they ran into roadblocks. The few families that were interested in the property didn't make any offers because they said the house was too big and too costly to maintain. It is not a practical house for a single family. Another reason it is difficult to sell to a single family is the location. It is located across the street from the Heisey and St. Ann's Cathedral. It is a unique piece of property. When they bought the house in 1995, the appraiser went to Helena for comparable houses. So, when they received the offer from Marra, Sexe & Evenson, they were thrilled because the historical architecture and integrity of the house would be maintained. It is not financially feasible for her and her husband to hold onto a house for 2 or 3 years waiting for a single-family purchaser. If the house is sold to be converted to apartments, the structure will change significantly. If for some reason a law firm sells the house, it could easily go back to a single-family house, but if it became an apartment house, it could not be converted back. She and her husband sent over 200 letters to the neighbors discussing this rezoning. She contacted many immediate neighbors and had a list of people who said they were in support of the rezoning and would sign a petition. She was traveling here from Whitefish last night and her car broke down and did not arrive in time to get the signatures. She submitted the list of people she personally spoke with on the phone and had given her permission to use their names as supporters.

She said one of the objectives of the Revitalization Program is to maintain and expand the vitality of the city and support its role as a focal point of urban life. She submitted to the Board that the neighborhood at 626

Fourth Avenue North is an urban neighborhood. It is not a suburban neighborhood and is not purely residential. If someone wants to move into a purely residential neighborhood, they move to Fox Farm. The reason people move into this neighborhood is to enjoy the versatility and vitality of all the things that a downtown neighborhood has to offer. It is unrealistic to expect this neighborhood to remain purely single family homes. If this home is rezoned to R-O, there is not going to be a flood of office buildings in the neighborhood. This home is very unique and there are not a lot of other homes in the neighborhood that would survive this application procedure. This home is on a double lot and can provide off-street parking. The size of the home and the location all provide the amenities for an office. She hoped the Board takes these into consideration and recommends approval of her application.

Mr. Wayne Dean, 2625 Central Avenue, said there was not going to be a flood of offices in the neighborhood. Since about 1967 there have only been about a half dozen attorney offices in the area. That is not a rapid growth. This property won't support an apartment house with the present economy. The first two houses that Teddy Roosevelt rented in Washington, D.C., are still standing and have been converted to office space.

OPPONENTS OPPORTUNITY TO SPEAK

Ms. Colette Longin, 617 Fourth Avenue North, purchased their home about two years ago. It had been turned back into a single family residence from five apartments. She felt that allowing nonresidential commercial uses on Fourth Avenue North was inappropriate for several reasons. Commercial use typically increases vehicular traffic and parking problems. Spot zoning would open the property to various future commercial uses which are more conflicting than the proposed law office. It was stated that the law firm would protect the historical integrity of the house and it could easily be turned back into a single family home. But, nobody knows the future. The law practice may expand or it may not be there in five years. She was concerned about the precedent that could be set for further encroachment of commercial property onto Fourth Avenue North, which is residential except for the bed and breakfasts. But, the owners of the bed and breakfasts live there and are there in the evening and weekends. She knew of two homes that are at least the size of Morison's that are currently being renovated into single family dwellings. One is the home next to her and the other is on Third Avenue North and Third Street. She believed that is the way the neighborhood is headed. When the Revitalization Plan was written, people didn't want to live in a historical neighborhood. They wanted new homes in Fox Farm, Riverview and Bel View. Part of the Revitalization Plan was written so these older homes could become something else. Functionally obsolete is the word used. She didn't believe this home was functionally obsolete. She also believed that a lot of young couples are moving into the historic homes and maintaining them as single-family homes. She opposed this rezoning and asked the Board to recommend that the City Commission deny the Zoning Plan Amendment request.

Ms. Caroline Carter, 1124 Fourth Avenue North, said her home is almost 5,000 sq. ft. and on a corner lot with a lot of traffic from the Russell Museum. This rezoning would open a can of worms. There is a very large home on a corner lot across from the Russell Museum that is for sale and this rezoning would set a precedent. This would be spot zoning. This is not done in Fox Farm or Bel View Additions. Why should the residents on the north side, who take such pride in their homes, have to have this sort of thing? She felt the downtown is starting to encroach on the residential part of their neighborhood. She also noticed that the

parking lot of the Heisey Center or Whittier School provides an area for skateboarding. If there aren't residents there in the evening, there's nobody to stop the skateboarding. This rezoning would open the door.

Mr. David Fritschen, 317 Third Street North, purchased this home because he wanted to live in a traditional and historic area. He was concerned that this rezoning would open the door and other residential structures would be converted to office spaces. He was against the rezoning.

Mr. Kyle Larsen, 601 Fourth Avenue North, said he was an attorney with the Larsen law firm at the Old Tribune Building. He purchased his 100 year old house in 2000. Prior to that, he lived in the Blackstone Apartments. He knows exactly how much traffic a three attorney, three staff litigation law firm produces. It is quite a lot, and he doesn't want that on his street. He too is worried about the precedent that will be set by allowing commercialism where it hasn't existed. He was insulted by the comment that he had to move to Bel View or Fox Farm to get the protections of zoning that the people there enjoy. For these reasons and the reasons he enumerated in his letter he opposes this plan amendment.

Ms. Nancy Sinclair, 617 Third Avenue North, had concerns about the parking lot. She faces the alley where the parking lot would be located. They spent several thousand dollars rehabbing their backyard so their two small children could play there and they could have a garage. But, there have been occasions where people go up and down the alleys looking for places to party. She just toured St. Ann's Cathedral's rehab efforts last Saturday and the area between the Cathedral and the Heisey Center has been cordoned off and turned into a formal garden. Father Oliver said the reason was because they had too many people in there doing drugs and partying. So, now that area is unavailable and the parking lot of this proposed law firm could become available. She had grave concerns about her children playing in the backyard. There would be an absentee landlord who is not there in the evening.

PUBLIC COMMENTS

There were no public comments.

PLANNING BOARD DISCUSSION & ACTION

Mr. Summers complimented those who spoke, both the proponents and opponents. There have been some excellent points brought up both for and against the zone change. He felt that a lot of the neighbors would like to see somebody move in and maintain the property. He thought that perhaps those who are against the attorneys locating there, may be panicking over something that may not be a problem. However, he felt this was a definite example of spot zoning and for that reason, he intended to vote against the rezoning.

Mr. Harding said that it would be sad if that building turned back into an apartment building or any other multifamily use. The philosophy of live, work, and play in the neighborhood is hard to do when there is no place to work. On the other hand, he felt this rezoning may set some precedents. There are a lot of houses in the neighborhood that are 5,000 sq. ft. or larger and what would stop those owners from saying their

building has a greater real estate value because it is now a potential office building. He thought rezoning this property was spot zoning and would have no choice but to vote no.

Mr. Kelly asked what permitted uses in an R-O classification would be detrimental to the neighborhood. Mr. Walters replied that it would be a personal judgmental call on what one may consider objectionable or not. A clinic is a permitted use in the R-O district and as mentioned in the staff report, you could have significantly more traffic associated with that type of operation than an office. There are some of the uses allowed in the R-O that aren't allowed in the R-E that would be more objectionable to the neighborhood and probably even more so than a professional office used by attorneys. But, if the property is rezoned to R-O, any of these allowable uses could be permitted on the property.

Mr. Harding said he thought the main objection was the spot zoning situation. He asked if there was a way to get around the definition of spot zoning such as placing conditions on the rezoning.

Mr. Walters said that staff wouldn't advocate or support conditioning the rezoning to limit the use to a lower traffic generator because of the difficulty in policing and tracking the conditions through time. Staff's main concern is that if the property is rezoned to R-O, it would establish a precedent. If you've got one approved in the neighborhood, then another one could certainly be requested and similar consideration would have to be given. But, conditioning the rezoning is an option the Board has.

Mr. Lesmeister said he too would like to thank those who spoke today. The proponents and opponents have made compelling presentations. Having lived in the Great Falls area all of his life, he has seen the lower north side decline and deteriorate then progress to something the community can be proud of. The Board faces the issue of spot zoning and that is a vital concern. At this point he didn't know how he would vote. He had strong feelings for what the financial interests of a law firm could do for this property that perhaps a single family could not. On the other hand, wealthy people could purchase it and have unlimited resources and have the same ability as a law firm. He didn't feel that a law firm would increase the traffic in the area. He was trying to weigh all the pros and cons and taking into consideration all of what has been said, he was not certain how he would vote.

Mr. Bronson said that because of the unique problems this proposal raises and some of the questions that arose after reading the staff's report and recommendation, the Board asked staff to research the reasons why the other law offices in the general vicinity are allowed. Those reasons may or may not have a bearing on the Board's decision. For example, Mr. Connor's law office at 520 Third Avenue North is located along a block that even though it is zoned R-E, an R-O use is permitted. So, he's allowed to have a law office without a zone change. The Lewis & Slovak firm at 725 Third Avenue North is located in a building that was previously an office building and would be considered a nonconforming use. Mr. Stuart Lewin's office at 615 Third Avenue North is in his home and is allowed as a home occupation. Third Avenue North appears to be a dividing line. That raises a question and concern as to whether it would be appropriate to consider branching into Fourth Avenue North and setting a precedent. There is a lot on Third Avenue North at Fifth Street that had been rezoned R-O twelve years ago. Interestingly, staff advised him that in researching that lot, it appears there was a split decision by the Planning Board, three in favor and three opposed, in recommending rezoning.

Mr. Bronson also commented on the zoning code being rewritten by a consultant hired by the City. He and another Planning Board Member are on the advisory committee for the rewriting of the zoning code. There has been some preliminary discussion about the Revitalization area but there has not been any final decisions. He was concerned about making a decision today that could end up being different than the public policy choices that the City Commission may make within the next year.

Mr. Walters commented further about R-O zone change requests in the area. One was a request about five years ago to change the zoning from R-E to R-O on property further west on Third Avenue North. This involved a five-unit apartment that had been converted into a single family residence. The owners had trouble selling the property and petitioned for a zone change. The request was denied by the Planning Board and the City Commission. A more recent one was off the northwestern corner of the Courthouse block. The property contained an office building occupied for many years by Chicago Title. The property was zoned R-E and considered a nonconforming use. A law firm purchased the property and was interested in expanding it. The only way they could do that was through a zone change process. It was approved, but it was a situation where the building had been used as office use for many years and the zoning accommodated a slight expansion of that building.

Mr. Leitheiser said he has not made his decision yet. To own property and to not be able to do anything with it is sad. He thought the property would be difficult to sell as a single family residence. To change that building back to apartments would be more of a crime than turning it into a law office. He felt that applying conditions would satisfy everybody. He didn't feel this was spot zoning or that the rezoning would change the integrity of the neighborhood. Having seven apartments or changing it into low income housing would definitely be worse.

MOTION: That the Planning Board recommend the City Commission **deny** Ordinance No. 2868.

Made by: Mr. Summers

The motion died for lack of a second.

Mr. Harding felt further discussion on the spot zoning issue was needed. That was a big issue as well as it was worrisome to set a precedence. He wondered whether the Board had to take action.

Mr. Bronson said the Board needs to take some type of action in order to forward it to the City Commission. The Board can accept the staff's recommendation to deny or it can reject staff's recommendation and approve the rezoning. The Board can also approve it with some type of conditions and there would have to be a motion to that affect. You have heard staff's concerns with respect to attaching conditions on the rezoning, but the Board is free to make its own decision. Also, bear in mind that we have two vacant positions and one member recused himself. There are six Board Members to vote. If the vote is split three to three, that in essence says we are voting not to make a recommendation and it will go to the City Commission for final decision.

Mr. Summers felt it was spot zoning. If there was a way to get around that, he would be in favor of the rezoning.

There was a brief discussion about spot zoning as defined in the staff report.

MOTION: That the Planning Board recommend the City Commission **deny** Ordinance No. 2868 based on the fact that it is spot zoning.

Made by: Mr. Harding
Second: Mr. Summers

There was a further lengthy discussion about whether this was spot zoning, what constitutes spot zoning, adding conditions, and the criteria of a home occupation permit.

Vote: 3 - 3
Roll Call Vote: Yes: Mr. Bronson, Mr. Harding, Mr. Summers
No: Mr. Kelly, Mr. Leitheiser, Mr. Lesmeister

Mr. Bronson reported that the application will go to the City Commission with no recommendation from the Planning Board because of the split vote. The City Commission will make the final decision.

Mr. Walters said that the advertisement for this public hearing as well as the City Commission's has already been published. The first reading of the rezoning ordinance will be before the City Commission at its meeting January 6 and the scheduled public hearing on January 20 when final action will be taken.

ADJOURNMENT

The hearing adjourned at 4:32 P.M.

PRESIDENT

ACTING SECRETARY

DATE December 3, 2003

AGENDA ITEM 1.F.

HRG. DATE December 9, 2003

GREAT FALLS CITY-COUNTY PLANNING BOARD

PLANNING STAFF Report and Recommendation

REGARDING Planning Board Hearing Scheduled for December 9, 2003

SUBJECT: Amendment to Great Falls Central Place Revitalization Program,

Ordinance No. 2868 to Rezone Lots 6 & 7, Block 244,

Original Townsite, from Residential-Existing (R-E) District to

Residential-Office (R-O) District (Morison)

GENERAL INFORMATION:

| | |
|---------------------------|---|
| Owner and Applicant: | Bruce and Melinda Morison |
| Applicant Representative: | Ladawna Nelson, Cogswell Real Estate |
| Property Location: | 626 Fourth Avenue North |
| Parcel Size: | Two lots each 50 ft. x 150 ft. (Total 15,000 sq. ft.) |
| Existing Zoning: | Residential-Existing (R-E) |
| Requested Action: | Amend Revitalization Plan to rezone Subject Lots 6 and 7 to Residential-Office (R-O) District |
| Purpose: | To allow the structure on the premises to be converted for office use |
| Existing Land Use: | Three story single-family residential structure |

Surrounding Zoning and Land Uses:

| <u>Direction</u> | <u>Legal Description</u> | <u>Zoning Classification</u> | <u>Existing Land Use</u> |
|------------------|--------------------------|------------------------------|--|
| North | Blk 193, Lots 8 & 9 | Residential-Existing (R-E) | Multi-unit Residential Structure (5-7 units) |
| East | Blk 243, Lot 1 | Residential-Existing (R-E) | Heisey Center & parking lot |
| South | Blk 244, Lots 8 & 9 | Residential-Existing (R-E) | Single Family Structure and a 2-unit Residential Structure |
| West | Blk 244, Lot 5 | Residential-Existing (R-E) | Single Family Structure |

Attached are:

Plan Amendment Application & Site Plan

Vicinity Map with existing zoning

Objectives of the Central Place Revitalization Program

Excerpt from Chapter 17.90.070, OCCGF, pertaining to the Residential-Existing (R-E) District

Permitted Uses, Building and Parking Requirements in the Residential-Office (R-O) District

Memo dated 11/17/03 from Joe LaForest, City Zoning/Parking Supervisor

SPECIAL INFORMATION:

1. Subject Lots 6 and 7 are zoned Residential-Existing (R-E) District. As the structure on the premises contained seven dwelling units when the Revitalization Plan was adopted in 1977, the parcel is subject to the R-4 High Density Residential building requirements.
2. Subject Lots 6 and 7 are occupied by a three story single-family residential structure. Since 1977 the seven unit residential structure was converted to a bed and breakfast with the current owner having used the premises for a single family dwelling the last several years.
3. According to the Revitalization Plan regulations, in order for the property to be converted to office use, it would first have to be rezoned from Residential-Existing (R-E) District to Residential-Office (R-O) District.
4. The party interested in purchasing the property intends to convert the main level (1,865 sq. ft.) and second story (1,899 sq. ft.) of the structure for office space. The third floor and basement would be used for storage.

5. The type of office use that may occupy the premises has a significant bearing on the number of daily vehicle trips that may be generated. Based upon a 3,764 square foot office building, the following figures are provided by the Institute of Transportation Engineers.

General Office Building 12.3 trips/1,000 sq. ft.
 $3.8 \times 12.3 = 47$ trips/day

Medical Office Building 54.6 trip/1,000 sq. ft.
 $3.8 \times 54.6 = 208$ trips/day

6. Off-street parking requirements for subject Lots 6 and 7, based upon a 3,674 sq. ft. office use, would total:

$3,764 \text{ sq. ft.} \times 1 \text{ space per } 300 \text{ sq. ft.} = 12.5 \text{ spaces}$

A 10-space parking lot is proposed to be constructed at the rear of the property with access from 4th Alley North. A 2-car garage also exists at the rear of the property. The City Zoning/Parking Supervisor has indicated 12 spaces for a low pedestrian volume professional office of 3,764 sq. ft. is sufficient off-street parking.

7. Notice of Public Hearing was published in the Great Falls Tribune on November 23 and 29, 2003. A copy of the Notice was also mailed to all property owners (1,658) within the Revitalization Area on November 21, 2003. A sign containing copies of the Notice of Public Hearing was placed on subject Lots 6 and 7 on December 1, 2003. At the time of writing this report, staff had received three communications regarding the rezoning: one from Pro Se Properties, LLP, and one from Devine Bros. Distributing, Inc., supporting the rezoning and one from Penthouse Salon, opposing the rezoning.

PLANNING DEPARTMENT ANALYSIS:

Purpose and intent of the Revitalization Program: The objectives of the Great Falls Central Place Revitalization Program are attached to this staff report. These objectives contain general language about upgrading property values, providing opportunities for private investment, elimination of slums and other blighting influences, and providing a pleasant atmosphere for both residents and visitors. Staff concludes that the proposed project is in basic accord with these overall program objectives.

On the other hand, language describing the R-E District (copy attached) expressly states that R-O uses and requirements may apply to portions of certain blocks, mostly along 2nd Avenue North. This indicates that R-O uses were not considered appropriate in other areas of the R-E District.

Spot Zoning: According to a ruling issued by the Montana Supreme Court in 1981, all of the following elements are usually present when impermissible spot zoning occurs: (1) the zoning allows a use which differs significantly from the prevailing use in the area, (2) the zoning applies to a small area or benefits a small number of separate landowners, and (3) the zoning is designed to benefit only one or a few

landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation. It is possible for illegal spot zoning to occur in the absence of these elements.

On paper, approving this request would appear to be an obvious spot zone; two lots zoned R-O in the midst of a large R-E District. However, if the R-O zone were to be properly conditioned to eliminate the uses and characteristics of uses which would be most detrimental to R-E, the distinction becomes less clear.

If conditions imposed upon rezoning to R-O limited office space to 3,764 square feet of floor area and disallowed high traffic generators such as medical and real estate, there would be little difference between the R-O and R-E Districts.

Permitted Uses in the R-O District: Attached is a list of the permitted uses in the R-O District. Although conversion of the structure on subject Lots 6 and 7 to certain types of office use could be unobtrusive and of minimal impact on the neighborhood, there are a number of permitted uses including apartments (higher density), lodging/boarding house, nurseries, clinics, and even certain types of office uses that could change the character of the immediate neighborhood with more significant impacts. To avoid these potential impacts while still allowing an office use, the R-O District would need to be conditioned as discussed above.

Growth Policy Application: One of the primary goals stated in the land use element of the recently adopted Growth Policy is: "To preserve and enhance the character, quality, and livability of existing neighborhoods." Arguments can be made the rezoning to an R-O District will lead to encroachment of nonresidential use into subject neighborhood. On the other hand, some neighborhood residents will consider the proposed office use of subject property as less obtrusive than potential apartments.

CONCLUSION:

While staff acknowledges there may be cyclical difficulties in marketing an older three-story single-family structure, exceeding 5,000 sq. ft. in floor area, attempting to resolve this difficulty through rezoning creates other potential neighborhood area problems. As noted earlier, the request has elements of spot zoning and approval could set precedents which are potentially detrimental to the Revitalization Plan and to the character of the neighborhood.

The Residential-Existing (R-E) District, comprising most of the lower north side, contains a variety of residential densities, as well as structure and dwelling unit sizes. There are many large residential structures in the vicinity of subject Lots 6 and 7, some of which are used as single-family dwellings and others as apartments. If this rezoning request were approved, any subsequent similar requests in the vicinity would have to be given the same consideration. This could lead to changing the residential character of the neighborhood by gradually transitioning it into nonresidential uses.

Under current zoning and R-4 density, there are still options available for "reasonable use" of the subject property. The structure on the property is currently arranged as a single-family dwelling unit. The property could be converted to multiple dwelling units similar to what existed when the Revitalization Plan was adopted in 1977. However, this conversion would at least continue to perpetuate a residential use and not trigger a possible transition of the neighborhood into nonresidential uses, which staff feels would be contrary to the intent of the R-E District when it was created.

RECOMMENDATION:

Based upon the reasons presented in the Conclusion, it is recommended the Planning Board recommend the City Commission **deny** Ordinance No. 2868.

Attach: As noted hereinabove
Letter from Pro Se Properties, LLP
Letter from Penthouse Salon
Letter from Devine Bros. Distributing, Inc.
Ord. No. 2868

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