



## **Montana's Sunrise City**

115 2nd Street S.E., Sidney, Montana - 406-433-2809

### PLANNING STAFF REPORT

Jensen Zone Change Request

October 30, 2023

Applicant:

Hilltop Shop LLC  
Troy and Janelle Jensen  
PO Box 652  
Sidney MT 59270

Application Submitted: October 19, 2023

Zoning Commission Date: November 8, 2023

City Council Date: November 15, 2023

Legal Description: Lots 1 and 2 Block 1, Anderson Subdivision, Section 30, Township 23 North, Range 59 East P.M.M., City of Sidney, Richland County, Montana

Background: The properties included in this rezone petition were annexed and assigned zoning in 2015 as areas wholly surrounded by the City of Sidney. At the time of annexation, the owner of the property pointed out that the existing use of the property was most compatible with Commercial Light Manufacturing (CLM) and requested that the zoning assignment be CLM.

The recommendation from the City Planner at the time was that B-2 was “more flexible to accommodate more types of businesses.” The owner questioned types of businesses that would and would not be acceptable and was told, “there would be another opportunity to settle the zoning for this area.”

The Zoning Commission accepted the recommendation of the Planner, and that recommendation was affirmed by the City Council and the Zoning was assigned as B-2 at the time of annexation. There is no record of the owner exercising the ‘opportunity’ to settle or change the zoning until this request in 2023.

The owner submitted a request in September 2023 to change the zoning from B-2 to CLM, this request was withdrawn by the owner following the Zoning Commission hearing and recommendation to deny the request.

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Subsequently, the owner submitted this current request to change the zoning from B-2 to B-1. The B-1 is currently assigned to property adjacent to the subject property and the B-1 provides a wider array of uses when compared to the B-2.

Discussion: The use of the property at the time of annexation was storage, the use of the property has not changed. Storage, by definition, is an Industrial Use. By assigning B-1 to the property, the existing and continued use is nonconforming, and while protected and allowed to continue, the continuation is subject to the Non-Conforming Use Section of the Sidney Zoning Regulations. It is important to remember that the intent of the Non-Conforming Use Section is to provide time for the use to transition to a conforming use. In most instances, the protections afforded by non-conforming use section provide the security and assurance to owners that their rights, privileges, and investments will be protected. In most instances the only time those protections are questioned is at refinance or sale.

As we learned during the request for CLM, the owner is desirous of selling a portion of the property and is looking to provide opportunities that are compatible with the zoning of the property. It also provides greater flexibility than the continuation of the non-conforming use and the limitations imposed on said non-conforming uses.

From the Sidney Zoning Regulations, what follows is the purpose and intent, as well as the use regimen of the existing and proposed zoning:

Existing Zoning: Neighborhood Business (B-2).

Purpose and Intent

The purpose and intent of the B-2 Zoning District is to provide for such retail and service activities that are frequented by nearby residents on a day to day basis, while reducing the hazards of local traffic by limiting the kinds of retail activities to those which deal directly with consumers and produce-only goods that are sold on the premises including restaurants.

Allowed Uses B-2		
Permitted		
Bakery	Home Occupation See Section <b>Error! Reference source not found.</b>	Day Care, Group See Section <b>Error! Reference source not found.</b>
Day Care, Family See Section <b>Error! Reference source not found.</b>	Public Parks & Recreation	Barber & Beauty Shops
Professional Office	Florist	Pharmacy
Grocery Store	Funeral Home	Self Service/ Automatic Laundry
Restaurant	Government Buildings, Facilities	Worship Facility
Medical Office	Theatre; No Drive-In	
Conditional		

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School	Wireless Communication Facility	Tavern
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Proposed Zoning: Community – Highway Business (B-1)

Purpose and Intent

The purpose and intent of the B-1 Zoning District is to provide for retail and service functions for broad community areas of the city and for travelers coming through the city. Hotels, motels, shopping centers, and similar activities requiring automobile access are provided for in this district. This district shall accommodate large-scale commercial services typically found along major corridors into the city.

Allowed Uses		
B-1		
Permitted		
Retail Sales & Services	Auto, R.V. & Marine Sales and Service	Bowling Alley
Building Materials Sales, wholesale	Restaurant	Financial Institutions
Liquor Stores/Sales Off Premise Consumption of Alcohol	Convenience Stores Including Motor Fuel Sales	Hotels & Motels
Public Buildings	Automobile Washing	Health & Exercise Clubs
Tavern, Bar, Night Club Premise Consumption of Alcohol	On Theaters	Veterinarian Clinic
Medical Offices		Laundry Facilities; Dry-Cleaning
Conditional		
Electrical substation	Multi-household Dwellings; Townhomes, Duplexes, & Single Household	Worship Facility
Library	School	Bed & Breakfast; See Section <b>Error! Reference source not found..Error! Reference source not found.</b>
Day Care, Group; <b>Error! Reference source not found.</b>	See Mini-warehouse storage	Cemeteries
Wireless Communication Facility	Assisted Living, >8 Persons Served	Fire, Police or Public Utility Buildings

**FINDINGS OF FACT**

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The City of Sidney is an incorporated City within the State of Montana with powers established by the City Charter. The power and processes for the City to establish zoning regulations are found in §76-2-301 et. seq. M.C.A.

In the State of Montana, all jurisdictions proposing to zone or rezone property or to adopt or revise their zoning regulations must issue findings of fact on a twelve-point test that constitutes the rational nexus/legal basis for the adoption of or amendments to a zoning district or zoning regulations.

I. Is the zoning in accordance with the growth policy;

- The proposed zoning is a generally applicable district assignments under the Sidney Zoning Regulations.
- The Growth Policy encourages the grouping together of like and compatible land uses and imposing performance standards to ensure future compatibility.
- The B-1 is an assigned District adjacent to the subject property.
- The B-1 is closer to compliance with the 2015 Growth Policy, and the existing and anticipated use of the property.
- The fact that the use of the property predates both the Growth Policy and Zoning and should be factored into the decision making process.

Finding: The proposed zoning is in accordance with the Growth Policy and other adopted rules and regulations of the City of Sidney.

II. Is the zoning designed to lessen congestion in the streets;

- 22<sup>nd</sup> Avenue NW is a city collector street serving a mixture of uses.
- The existing zoning encourages compact walkable development in most every district as well as expand opportunities within existing lots.
- The proposed zoning encourages compact urban development and multi-modal approaches to travel.
- It is plausible that the proposed zoning may have a detrimental impact on 22<sup>nd</sup> Avenue NW. That said, the use and development of the property preexists zoning designations by the City.

Finding: The proposed zoning is designed to lessen congestion in the streets by ensuring orderly growth and development of the property.

III. Is the zoning designed to secure safety from fire, panic, and other dangers;

- The proposed zoning is a generally applicable district within the City of Sidney. The district provides setbacks, density and other development standards that provide safety from fire panic and other dangers.
- Generally applicable districts provide for consistency in development along with provision of police and fire protection.

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- The proposed zoning has restrictions on lot coverage, grading and development on steep slopes and other areas that are potentially hazardous.

Finding: The proposed zoning is intended to provide safety to residents and visitors to the city from fire, panic and other dangers.

IV. Is the zoning designed to promote health and the general welfare;

- The rules within the proposed zoning imposing setbacks, height limits and building restrictions will remain unchanged.
- The existing zoning groups together like and consistent uses within existing neighborhoods and this amendment is consistent with the intent of the Zoning.
- The existing zoning is a generally applicable districts assigned within the City of Sidney.

Finding: The extension of multi modal transportation systems along with the grouping together of like and consistent uses promotes the health and general welfare of all citizens of the City of Sidney. Further, the proposed zoning is substantially consistent with the land use in the neighborhood.

V. Is the zoning designed to provide adequate light and air;

- The existing zoning is a generally applicable districts within the City of Sidney.
- The proposed zoning imposes building setbacks, height limits, limits on the number of buildings on a single parcel, and reasonable area limits on new development.

Finding: The proposed zoning ensures the provision of adequate light and air to residents of the City through various development limitations.

VI. Is the zoning designed to prevent the overcrowding of land;

- The proposed and existing zoning are commercial in nature. These types of districts rarely overcrowd land in terms of population density.
- The zoning regulations impose minimum lot size, use regulations and other limitations on development.

Finding: The proposed zoning will prevent the overcrowding of land.

VII. Is the zoning designed to avoid undue concentration of population;

- The proposed and existing zoning are commercial in nature. These types of districts rarely overcrowd land in terms of population density.
- The proposed zoning is a generally applicable districts within the City of Sidney. They are part of the holistic approach to land use regulation for the entirety of the City and is not focused on any single special interest.

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- The proposed zoning takes advantage of areas that were created and intended as suitable for a healthy mixture of uses.
- The proposed zoning imposes minimum lot sizes, reasonable use restrictions on the subject property, fencing limitations and setback standards.

Finding: The proposed zoning is intended to and will prevent the undue concentration of population by encouraging the most appropriate use and development of property within the City of Sidney.

VIII. Is the zoning designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;

- The proposed zoning along with other regulations established by the City Council establish minimum standards for the provision of infrastructure such as roads, sidewalks, water sewer, wire utilities and storm water management.
- The proposed zoning encourages compact urban scale development and groups together similar uses that will not detract from the quality of life expected in Sidney while providing the economies of scale to extend water, sewer, streets, parks, quality schools and other public requirements.

Finding: The standards of the proposed zoning and other adopted standards of the city will ensure the adequate provision of transportation, water, sewerage, school, parks and other public requirements.

IX. Does the zoning give reasonable consideration to the character of the district and its peculiar suitability for particular uses;

- The proposed changes do not impact any of the adopted district standards that were established to ensure that the regulations provide for land uses that are compatible with existing uses and neighborhood characteristics.
- The existing and proposed zoning groups together like and consistent uses and is consistent with the existing zoning in the neighborhoods.
- The proposed zoning is consistent with existing zoning adjacent to the subject property. In general, the B-1 should have been the assignment at the time of annexation rather than an island of B-2 or CLM as was requested.

Finding: The proposed zoning gives due consideration to the character of the existing neighborhoods, within the City as well as suitability for the particular uses.

X. Does the zoning give reasonable consideration to the peculiar suitability of the property for its particular uses;

- The proposed changes do not impact any of the adopted district standards that were established to ensure that the regulations provide for land uses that are compatible with existing uses and neighborhood characteristics.

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- The proposed zoning groups together like and consistent uses and is consistent with the existing zoning in the neighborhoods.
- B-1 is expected to be compatible with the residential properties to the east and south of the subject property. The B-1 is adjacent to many residential districts in the City.
- The subject property has been used for storage, which is and industrial use, predating the annexation and initial zoning in 2015.

Finding: The proposed zoning gives due consideration to the suitability of the property for particular uses.

XI. Will the zoning conserve the value of buildings;

- The decision to include or exclude specific uses has the potential to serious positive and negative impacts on the value of buildings within the city.
- The proposed zoning groups together like and consistent uses and is consistent with the existing zoning in the various neighborhoods of the City of Sidney.
- The subject property has been used for storage, which is and industrial use, predating the annexation and initial zoning in 2015.

Finding: The proposed zoning along with the other protections afforded in the balance of the Sidney Zoning Regulations will conserve or in many cases enhance the value of buildings.

XII. Will the zoning encourage the most appropriate use of land throughout the municipality?

- The subject property has been used for storage, which is and industrial use, predating the annexation and initial zoning in 2015.
- The proposed zoning provides for grouping like and compatible uses.
- The city recognizes that the impacts of certain land uses stretch well beyond property boundaries and that the benefits of the new use may be offset by adverse impacts to other properties. We believe that these regulations accomplish this delicate balancing act.

Finding: The proposed zoning implements land use opportunities within the city while providing reasonable performance standards to ensure that this review criterion is addressed.

**RECOMMENDATION:**

1. Both the B-1 and CLM are legitimate assignments for the property in question. At our last meeting it was determined that CLM was potentially impactful to the surrounding neighborhood.

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2. The Zoning Commission, following a lengthy Public Hearing considered the following motions:
  - a. To sever the request B-1 on Lot-1 and leave the B-2 on Lot-2. This motion passed 4-0.
3. APPROVE the requested Zone Change based on the Planning Staff Recommendation and analysis of the Rational Nexus for the assignment. On a ROLL CALL vote the motion FAILED on a 2-2 vote of the Zoning Commission. The matter cannot be remanded back to the Zoning Commission as a member of the Zoning Commission had a conflict of interest on the matter and could not participate in the decision.

Reviewed and submitted by:

Forrest Sanderson, AICP, CFM  
City of Sidney, Contract Planner