



ZONING COMMISSION RECOMMENDATION
Jensen Zone Change Request
October 12, 2023

Applicant:

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

Application Submitted: September 5, 2023

Zoning Commission Date: October 11, 2023

City Council Date: October 16, 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.

Copies of the minutes from the Zoning Commission meeting and action by the City Council in 2015 are attached to this report for your reference.

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-2 to the property, the existing and continued use is nonconforming, and while protected and

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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.

When one looks at the value of real properties within a city, residential is the least valuable and industrial is the most valuable. This is due primarily to the fact that areas suitable for industrial development are limited by the amount and type of infrastructure necessary to support the use coupled with the rate of return on the investment anticipated upon the acquisition of said property.

While Zoning Commission does not know for certain, it is reasonable to assume that the B-2 zoning was applied due to a concern with Spot Zoning. Spot Zoning is a situation where only one property or property owner is benefited by the assignment. While this point has some merit, a deeper look into the CLM district results, in Zoning Commission opinion, a HYBRID district allowing both commercial and limited industrial uses. The spot zone claim is not as clear cut where there is additional commercial opportunities that are adjacent to the subject property.

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 Error! Reference source not found.	Day Care, Group See Section Error! Reference source not found.
Day Care, Family See Section Error! Reference source not found.	Public Parks & Recreation	Barber & Beauty Shops
Professional Office	Florist	Pharmacy
Grocery Store	Funeral Home	Self Service/ Automatic Laundry
Restaurant	Government Buildings, Facilities	Worship Facility

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Medical Office	Theatre; No Drive-In	
Conditional		
School	Wireless Communication Facility	Tavern

Proposed Zoning: Commercial – Light Manufacturing (CLM)

Purpose and Intent

The purpose and intent of the CLM Zoning District is to provide for the community’s needs for wholesale trade, storage and warehousing, trucking and transportation terminals, light manufacturing, outdoor advertising businesses and similar activities. Such use should be related to the City’s major transportation facilities and be so organized that they can be efficiently operated and yet create a minimum of traffic or other adverse effects to the residential neighborhoods of the city. Residential uses are expressly prohibited in this district.

Allowed Uses		
CLM		
Permitted		
Animal Hospital & Veterinarian Clinics	Automotive, Boat &recreational Vehicle Sales & Service	Automotive Tires Sales, Service & Repair
Automotive, Boat & Recreational Vehicle Repair	Beverage Manufacturing	Building & Plumbing Contractor Establishments
Building Materials, Retail & Wholesale	Cabinet Shop	Dairies & Dairy Products & Processing Plants
Data Processing Service	Dry Cleaning Plant & Laundry	Gasoline Service Stations
Industrial Vocational Training Schools	Machine or Blacksmith Shops	Warehousing
Government Buildings, Facilities	Worship Facility	Vehicle Sales & Service
Screened Outdoor Storage	Outdoor Advertising Business	Paint Shops
Sign Shops	Truck & Rail Terminal Facilities	Vehicle Repair Garages
Conditional		
Wireless Communication Facilities		

FINDINGS OF FACT

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;

- Both the existing zoning and the proposed zoning are generally applicable district assignments under the Sidney Zoning Regulations. While there is some overlap the differences in their applicability clearly indicate the assignment of one over another.
- The Growth Policy encourages the grouping together of like and compatible land uses and imposing performance standards to ensure future compatibility.
- Of the two choices, B-2 is closer to compliance with the 2015 Growth Policy, but the use of the property predates both the Growth Policy and Zoning and should be factored into the decision making process..

Finding: The existing zoning as well as the proposed amendments are 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;

- 22nd Avenue NW is a city collector street serving a mixture of uses.
- The proposed and existing zoning encourages compact walkable development in most every district as well as expand opportunities within existing lots.
- Both the existing and 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 22nd Avenue NW. This is due to some of the uses that are allowed in the CLM.

Finding: Both the proposed and existing zoning are 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;

- Both the existing and proposed zoning are generally applicable districts within the City of Sidney. Each has been determined, where applicable, to provide setbacks, density and other development standards that provide safety from fire panic and other dangers.
- Each generally applicable district provides for consistency in development along with provision of police and fire protection.

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

Finding: Both the proposed and the existing zoning are 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 existing and proposed zoning imposing setbacks, height limits and building restrictions will remain unchanged.
- The proposed and existing zoning groups together like and consistent uses within existing neighborhoods and this amendment is consistent with the intent of the Zoning.
- Both the proposed and existing zoning are 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 existing zoning and to a similar extent 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 proposed and existing zoning are generally applicable districts within the City of Sidney.
- The existing and 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: Both the existing and 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/industrial 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 text amendments do not impact this review criterion. The standards of the existing zoning will prevent the overcrowding of land.

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

- The proposed and existing zoning are commercial/industrial in nature. These types of districts rarely overcrowd land in terms of population density.
- The existing and proposed zoning are 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.
- The existing zoning takes advantage of areas that were created and intended as suitable for a healthy mixture of uses.
- The existing and proposed zoning imposes minimum lot sizes, reasonable use restrictions on the subject property, fencing limitations and setback standards.

Finding: The proposed text amendments will not directly impact the concentration of population. The existing standards of the zoning are 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 prevailing and 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 prevailing and 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 existing 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.
- With the exception of the residential properties to the east and south of the subject property both the proposed and existing zoning are compatible.

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

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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.
- The existing and proposed zoning groups together like and consistent uses and is consistent with the existing zoning in the neighborhoods.
- With the exception of the residential properties to the east and south of the subject property both the proposed and existing zoning are compatible.
- The subject property has been used for storage, which is an industrial use, predating the annexation and initial zoning in 2015.

Finding: The existing zoning and 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 existing 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 an industrial use, predating the annexation and initial zoning in 2015.

Finding: The existing and 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 an industrial use, predating the annexation and initial zoning in 2015.
- The existing and 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 and existing zoning implement land use opportunities within the city while providing reasonable performance standards to ensure that this review criterion is addressed.

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RECOMMENDATION:

1. Both the B-2 and CLM are legitimate assignments for the property in question. As such, the final decision is discretionary.
2. The Zoning Commission Recommendation is that the City Council DENY the proposed Zoning Change, based on the following concerns:
 - a. The 2015 Growth Policy is split on the issue, some sections support the change while others conflict with the proposed assignment.
 - b. 22nd is not constructed to support the addition of industrial uses. It is narrow, without sidewalks, functions as a collector street but is built to rural standards.
 - c. There are concerns about conflict with traffic, pedestrians and other lawful users of 22nd. The addition of unrestricted industrial traffic is highly problematic.
 - d. We recognize that at the time of annexation there was discussion of revisiting the issue but after eight (8) years we question the urgency or desire for a CLM designation with the exception of facilitation of a sale or conveyance of the property.
 - e. Zoning assignment CANNOT be conditioned and there are significant public concerns related to impact on surrounding properties (noise, dust, hours of operation light pollution), property values, marginalizing a residential neighborhood, inadequate infrastructure to support the proposed and existing uses.
 - f. Other than the applicant, no one at the public hearing supported the proposed zoning assignment and their expressed concerns are valid.
 - g. The citizens of Sidney have participated in the amendment of the Zoning Regulations and the testimony provided to the Zoning Commission is reflected in the minutes of our meeting conducted on October 11, 2023.
 - h. The Non-Conforming Use Section of the Sidney Zoning Regulations provides an avenue that provides protection for the neighborhood along with the rights of the property owner by evaluating the existing impacts of the current use of the property with the anticipated impacts of a new use. The assignment of CLM does not provide these protections.
3. The Zoning Commission voted 4-0 to recommend DENIAL of the requested zone change.

For the Sidney Zoning Commission

Reviewed and submitted by:

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

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