



## COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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### CONDITIONAL USE STAFF REPORT

**Agenda Item:** Conditional Use Request for Tavern/Nightclub and Casino at 3760 Mullan Road

**Report Date:** October 19, 2022

**Case Number:** 2022-MSS-BRD-00009

**Case Planner:** Lauren Stevens, Senior Planner, CPDI

**Report Reviewed & Approved By:** Cassie Tripard, Planning Supervisor, CPDI

**Public Meetings & Hearings:**

City Council Consent Agenda: 10/24/2022

City Council Public Hearing: 11/7/2022

LUP Post-Public Hearing Informational Item: 11/9/2022

City Council Final Consideration: 11/14/2022

**Applicant & Owners:**

MMW, LLC.

PO Box 17754

Missoula MT, 59803

**Representative:**

Tori MacPherson

Paradigm 3 Architecture

125 ½ W Main Street

Missoula, MT 59802

**Location of Request:** 3760 Mullan Road (retired 3720 & 3770 Mullan Road). Tract A of Halling Farms, Tract 1, an amended subdivision plat on record in the records of Missoula County, Montana, at Book 38 Plats, Page 98, located in the Northeast Quarter of Section 18, Township 13 North, Range 19 West, P.M.M.

**Geocode:** 04-2200-18-2-02-13-0000

**Legal Notification:** The legal ad was published in the Missoulian on 10/16/22 and 10/23/22. The site was posted on 10/7/22. Adjacent property owners within 150 feet of the subject property were notified by mail on 10/5/22.

**Growth Policy:** The applicable regional plan is the Our Missoula City Growth Policy 2035.

**Zoning Designation:** C1-3 Neighborhood Commercial

**Surrounding Land Uses**

North: Multi-dwelling residential, Vacant

South: Construction Sales and Services, Manufacturing

East: Financial Services, Bank, Entertainment and Spectator Sports (Movie Theater)

West: Multi-dwelling residential

**Surrounding Zoning**

North: B2-2 Community Business, C1-3 Neighborhood Commercial

South: M1-2 Limited Industrial  
East: C1-4 Neighborhood Commercial  
West: B2-2 Community Business

## **I. RECOMMENDED MOTION**

### **10/24/2022: Consent agenda**

Set a public hearing for City Council on November 7th, 2022 and refer the item for discussion at Land Use and Planning Committee on November 9th, 2022.

### **11/14/2022: Final Consideration**

**Approval** of the Tavern and Casino conditional use request located at 3760 Mullan Road, in accordance with Missoula City Zoning Ordinance, Title 20, Sections 20.10.020.D, 20.40.040, 20.85.070, and 20.105.040.I.2 and X.1, based on the findings of fact in the staff report and subject to one condition of approval.

## **II. CONDITION(S) OF APPROVAL**

1. The Tavern and Casino conditional uses at 3760 Mullan Road shall comply with all applicable portions of the Title 20 Zoning Ordinance. Plans submitted at the time of building permit application shall substantially conform to the plans submitted at the time of conditional use review, subject to review and approval by Development Services prior to building permit approval.

## **III. INTRODUCTION**

The City of Missoula Development Services has received a conditional use request from Tori MacPherson of Paradigm 3 Architecture on behalf of MMW, LLC. for Tavern and Casino conditional uses at 3760 Mullan Road. The conditional uses will be located on the southeast corner of the parcel within in a new proposed commercial building that will also contain Restaurant and Food and Beverage Retail Sales uses.

The subject property is zoned C1-3 Neighborhood Commercial. According to Title 20, Section 20.10.020, both Tavern and Casino uses require conditional use approval to operate in the C1-3 Neighborhood Commercial zoning district. Title 20, Section 20.105.040 defines a Tavern use as, “an establishment that is primarily engaged in serving alcoholic liquor for consumption on the premises and in which the serving of prepared food and meals constitutes less than 65% of the establishment's gross income. Taverns and nightclubs may offer live entertainment and dancing,” and defines a Casino use as, “any establishment that offers legalized gambling authorized under MCA Title 23, Chapter 5, Part 1 et seq., and where any one of the following characteristics applies: a. The establishment is referenced as a ‘casino’ or ‘gambling establishment’, or makes any reference to legalized gambling by signage, advertisement or by name; b. Five or more gambling machines are on the premises; or c. A card table is on the premises.” The proposed Restaurant and Food and Beverage Retail Sales uses are permitted as-of-right in the C1-3 Neighborhood Commercial zoning district.

## **IV. APPLICABLE ZONING REGULATIONS IN TITLE 20**

Title 20 Zoning Ordinance, Section 20.85.070.H outlines the review criteria for review of conditional use applications. According to the Zoning Ordinance, “not all review criteria will apply in every case... [and] only the applicable review criteria need to be met.” Uses that require conditional use approval may be approved by the City Council only when Council determines that the proposed uses meet all the applicable review criteria. Section 20.85.070.I “Factors to be Considered” states that in determining whether all applicable review criteria have been satisfied, the City Council may specifically consider agency and public testimony.

## **V. CONDITIONAL USE REVIEW CRITERIA**

### **Findings of Fact:**

#### **General**

1. The property is located at 3760 Mullan Road. Retired property addresses include 3720 and 3770 Mullan Road.
2. The subject property is legally described as Tract A of Halling Farms, Tract 1, an amended subdivision plat on record in the records of Missoula County, Montana, at Book 38 Plats, Page 98, located in the Northeast Quarter of Section 18, Township 13 North, Range 19 West, P.M.M.
3. The property was annexed in 2020 by City Resolution #8447, subject to 8 conditions of approval.
4. The subject property has frontage on Mullan Road and Clark Fork Lane. Mullan Road is functionally classified as a Minor Arterial and Clark Fork Lane will be functionally classified as a Local Street upon completion.
5. The subject property is within the Missoula Urban Transportation District, the Utility Services Area Boundary, the Urban Growth Area, and the Air Stagnation Zone. The building will be required to connect to City water and sewer.
6. The subject property is within an established service area for Missoula hospitals and the City Fire and Police Departments.

#### **Proposed Development**

7. The subject parcel previously contained two detached single-dwelling residential structures and four accessory structures.
8. The proposed conditional uses, along with Food and Beverage Retail Sales and Restaurant uses, will be contained within one proposed new commercial building located on the southeast corner of the parcel. The new building will be assigned an address at the time of building permit submittal.
9. There is one proposed commercial building located on the southwest corner of the parcel that was issued a building permit on March 16, 2022. The new commercial building will have four commercial units and will require eighteen parking spaces.
10. There is one proposed future building to be located on the northeast corner of the parcel. Compliance with the Title 20 zoning ordinance and all other applicable City codes will be reviewed at the time of building permit submittal.

11. Title 20, Section 20.40.040 states casinos must be located on parcels with frontage on an arterial street. The subject property has frontage on Mullan Road, a minor arterial street, and complies with Title 20.

### **Growth Policy and Zoning**

12. The applicable regional plan is the Our Missoula 2035 City Growth Policy. The subject property has a land use designation of Community Mixed Use on the western half of the parcel and a land use designation of Regional Commercial and Services on the eastern half of the parcel.
13. Areas designated as Community Mixed Use are for high intensity commercial uses that serve general community needs. High density residential development (up to 43 dwelling units per acre) is also permitted in all of the zoning districts corresponding to this land use designation. The current relatable Title 20 zoning districts for lands designated as Community Mixed Use are: C1 Neighborhood Commercial, C2 Community Commercial, and M1R Limited-Industrial Residential.
14. Areas designated as Regional Commercial and Services are for commercial uses that serve the needs of the broader region and often require larger land areas. High density residential development (up to 43 dwelling units per acre) is also permitted in most zoning districts corresponding to this land use designation. The current relatable Title 20 zoning districts for lands designated as Regional Commercial and Services are: C1 Neighborhood Commercial, C2 Community Commercial, M1R Limited-Industrial Residential, and OP3 Public Lands and Institutions.
15. The subject property is zoned C1-3 Neighborhood Commercial.
16. Pursuant to Table 20.10-1 "Uses Allowed in Business and Commercial Districts" of the Title 20 zoning ordinance, Tavern and Casino uses require conditional use approval to operate in the C1-3 Neighborhood Commercial zoning district.
17. Parcels to the north of the subject property are zoned B2-2 Community Business and C1-3 Neighborhood Commercial. Parcels to the west of the subject property are zoned B2-2 Community Business. South of the subject property parcels are zoned M1-2 Limited Industrial. Parcels to the east of the subject property area zoned C1-4 Neighborhood Commercial.
18. Surrounding uses include multi-dwelling residential, financial services (bank), construction sales and services, manufacturing, and entertainment and spectator sports (movie theater). The parcel to the north is currently vacant.
19. There is no minimum parcel area or building setback requirements in the C1-3 Neighborhood Commercial zoning district unless the parcel abuts a residential district. This parcel does not abut a residentially zoned parcel. The maximum height permitted in the C1-3 zoning district is 65 feet.
20. The new Tavern and Casino uses will be required to meet all Missoula Municipal Code requirements at the time of building permit approval, per the recommended condition of approval.

### **Parking and Access**

21. Title 20.60.020, Table 20.60-1 provides the required parking ratio for each use classification. The parking requirement for both the Tavern and Casino uses is one space per four seats + one space per two employees + one space per billiard table + one space per two gambling machines. The parking requirement for a Restaurant use is one space per four seats + one space per two employees. The parking requirement for a Food and Beverage Retail Sales use is one space per 480 square feet. Parcels containing more than one use must provide parking in an amount equal to the total of the requirements for all uses.
22. A total of seventy-seven parking spaces are required for the new proposed commercial building containing the four proposed uses. The parking requirement for this building is met.
23. The proposed parking lot on the subject property intends to provide parking for all three planned buildings. Total parking required for the subject property will be determined by the parking requirements for the various use classifications across the three buildings combined. The parking lot will contain one-hundred and one parking spaces.
24. The new commercial building that is in progress will have four commercial units and will require eighteen parking spaces. The proposed third building on the property does not have proposed uses at this time, therefore a parking requirement cannot be provided. Proposed uses will be required to supply parking that meets the required minimum, and will be reviewed for at the time of building permit.
25. Title 20, Table 20.60-2 outlines the bicycle parking requirements for commercial uses. One short term bicycle parking space is required per ten motor vehicle parking spaces and one long term bicycle parking space is required per five employees.
26. The proposed building will require eight short term bicycle parking spaces and four long term bicycle parking spaces.
27. Eight short term bicycle parking spaces are proposed on the north side of the building by the main entrance area. Four long term bicycle parking spaces are proposed north of the building adjacent to the parking area and sidewalks connecting to Clark Fork Lane. Compliance with bicycle parking design standards of Title 20, Section 20.60.090.C & .D will be reviewed for at the time of building permit per the recommended condition of approval.
28. Vehicle access to the subject property will be provided by a proposed driveway from Clark Fork Lane on the north side of the parcel, subject to review and approval by Public Works & Mobility.
29. Pedestrian access to the subject property is from Clark Fork Lane and Mullan Road. Right-of-way improvements on Mullan Road and Clark Fork Lane are required by the annexation conditions of approval.

### **Annexation Conditions**

30. The subject parcel was annexed into the City in 2020 subject to eight conditions of approval.

31. The first condition of approval required the applicant to dedicate 25 feet of right-of-way for Mullan Road and to construct half street improvements meeting minor arterial standards adjacent to the subject property. Right-of-way has been dedicated and there is an improvements agreement in place to ensure completion of half street improvements.
32. The second and third conditions of approval required dedication of right-of-way for Clark Fork Lanes at varying widths and improvements to the road. Right-of-way has been dedicated and there is an improvements agreement in place to ensure completion of street improvements.
33. The fourth condition of approval required an access easement through the subject property. However, this condition was met through alternative means by aggregating two proposed parcels into one parcel to provide legal access. This condition of approval is met.
34. The fifth and sixth conditions of approval required extension of a water main within Mullan Road and installation of a fire hydrant. There is an improvements agreement in place to ensure completion of water and hydrant installation. The Fire Department will require adequate coverage to be provided prior to combustible construction.
35. The seventh condition of approval required approval of a boulevard landscaping plan and installation of boulevard landscaping on Mullan Road and Clark Fork Lane. An approved boulevard landscaping plan is included in an improvements agreement ensuring installation of boulevard landscaping.
36. The last condition of approval required the applicant to petition into the Missoula Urban Transportation District. This condition of approval is met.

#### **Conditional Use Review**

37. Title 20, Section 20.85.070.H outlines criteria for the review of conditional uses, which include whether the proposed uses: are in the interest of public convenience; will not have a significant adverse impact on the neighborhood or community; will not impede the orderly development and improvement of surrounding properties for uses permitted in the district; have compatible operating characteristics with the surrounding area in terms of hours of operation, outdoor lighting, noise, and traffic generation; will not have a significant adverse impact on traffic safety and comfort for motorized and non-motorized modes; is in accordance with the Growth Policy and other adopted plans; the site addresses open space, light, and protection of natural features; and that the uses are compatible with adjacent properties in terms of physical elements.
38. The Tavern and Casino uses will comply with all applicable Title 20 regulations. Compliance with zoning, engineering, fire and building code will be confirmed prior to building permit approval per the recommended condition of approval.
39. The proposed design of the building addresses the requirements of Title 20, Section 20.40.170, which outlines site and building standards for commercial uses that do not exceed 30,000 square feet of gross floor area. Final design will be reviewed at the time of building permit, and must substantially comply with the design in the conditional use application, per the recommended condition of approval.

40. The Tavern and Casino uses, along with the Restaurant and Food and Beverage Retail Sales, proposed in this location are in the interest of public convenience by providing more services adjacent to an arterial street. Entertainment uses and a variety of dining options, including take-and-bake meals, are proposed. The proposed uses would serve residents in the Mullan area, including the abutting multi-dwelling residents, while reducing the need for trips to and beyond Reserve Street. The proposed uses are not anticipated to have a significant adverse impact on the neighborhood.
41. The proposed Tavern and Casino is not anticipated to impede the development and improvement of surrounding properties. The proposed building is the second of three proposed structures on the subject property, and its construction will not have an adverse effect on the design and development of the other two structures. Site design elements such as parking and landscaping have been designed to accommodate all three buildings.
42. The proposed uses on the subject property have operating characteristics that are compatible with the surrounding area. Tavern and Casino uses are located on nearby parcels to the east, in addition to other commercial uses such as a movie theater and bank. The proposed hours of operation for the Casino and Food and Beverage Retail Sales uses are from 10 am to midnight, and 11 am to midnight is proposed for the Tavern and Restaurant uses. Adjacent properties contain businesses with a range of operating hours from 9 am to 12:30 am, with some open 24 hours. Outdoor site lighting will be provided for safety and will comply with all City codes, including the Dark Skies Ordinance. No excessive noise is anticipated from the property, and all activity will be contained inside the building.
43. Increased traffic generation is anticipated during business hours, but the completion of Clark Fork Lane will provide an additional north-south route through the area and reduce congestion for motorized and non-motorized modes of transportation. Additional improvements to Mullan Road are required per the conditions of annexation approval, improving access to and from the site for all modes of transportation.
44. Vehicular access to the site will be provided from one drive access on Clark Fork Lane, which is the street of lowest classification. Safe pedestrian and bike access to the site is provided at multiple locations on Mullan Road and Clark Fork Lane and do not conflict with the vehicular access point. Vehicular parking is located behind the building and does not conflict with pedestrian or vehicular access.
45. Review for compliance with the growth policy occurred at the time of annexation. The C1-3 Neighborhood Commercial zoning district applied at the time of annexation was determined to be relatable to the land use designations of the Our Missoula 2035 City Growth Policy. The proposed uses of Tavern and Casino comply with the Community Mixed Use and Regional Commercial and Services land use designations which aim to provide commercial uses that serve the needs of the general community and broader region.

46. The proposed project will comply with all applicable Title 20 landscaping standards per the recommended condition of approval and will properly address open space for the commercial site.
47. The proposed building is approximately 34 feet in height, which complies with the maximum 65-foot building height requirement of the C1-3 zoning district. The structure is located on the southeast corner of the site, away from the abutting multi-dwelling development and will not impact light availability for nearby residents.
48. There are no significant natural features on or near the subject property.
49. The subject property is required to provide a landscaped buffer along the western property line where it abuts residential uses. The proposed building is required to comply with Title 20, Section 20.40.040 and Section 20.40.170.
50. Any signage associated with this project will be required to meet all applicable standards as outlined in Title 20, Chapter 20.75 and will be reviewed for at the time of sign permit.

### **Conclusions of Law**

- 1. Is in the interest of the public convenience and will not have a significant adverse impact on the neighborhood or community;**
  - a. The proposed Tavern and Casino uses at the subject property are located to the west of a major commercial corridor containing similar uses with similar operating characteristics.
  - b. There will be a landscape buffer provided on the subject property where it abuts residential uses.
  - c. The proposed project will provide services to nearby residential development, increasing public convenience.
  - d. The Tavern and Casino uses are in an area that is already served by City Police and City Fire.
  - e. The Tavern and Casino uses in this location will not compromise public convenience or the general welfare of the neighborhood or community.
- 2. Will not impede the orderly development and improvement of the surrounding properties for uses permitted in the district;**
  - a. The proposed building was designed to be compatible with the other two proposed buildings on the subject property. The Tavern and Casino uses will not impede the orderly development and improvement of the surrounding properties for uses permitted in the district.
- 3. Has operating characteristics that are compatible with the surrounding area in terms of hours of operation, outdoor lighting, noise, and traffic generation;**
  - a. The proposed Tavern and Casino uses will have similar operating hours to nearby businesses to the east.
  - b. Outdoor lighting will be compliant with City codes.



- c. Noise generated by the use will be required to conform with the regulations for a commercial zone, as established in the Missoula Municipal Code, Chapter 9.30.040.
  - d. The parcel is adjacent to a minor arterial road and abuts high intensity commercial and residential uses. Traffic generation will be similar to adjacent uses.
  - e. The proposed Tavern and Casino uses have operating characteristics that are compatible with the surrounding area in terms of hours of operation, outdoor lighting, noise, and traffic generation.
- 4. Will not have a significant adverse impact on traffic safety or comfort, including all modes of transport (non-motorized and motorized), and will be functional and safe in terms of pedestrian, bicycle and vehicular access, parking, loading and servicing;**
- a. Vehicular access is provided from the street of lowest classification and does not conflict with pedestrian or bicycle access to the site.
  - b. As part of the annexation, improvements to Clark Fork Lane and Mullan Road are required to serve the development.
  - c. Multiple pedestrian and bicycle access points are provided from both Mullan Road and Clark Fork Lane. The parking lot is located behind the structure and does not conflict with pedestrian and bicycle access to the site.
  - d. The proposed Tavern and Casino uses will not have a significant adverse impact on traffic safety or comfort, including all modes of transport, and will be functional and safe in terms of pedestrian, bicycle, and vehicular access, parking, loading, and servicing.
- 5. Is in accordance with the Growth Policy and other relevant adopted plans;**
- a. The C1-3 zoning district was applied to the subject parcel at the time of annexation in 2020. The zoning was applied based on compliance with the Growth Policy.
  - b. The proposed Tavern and Casino uses comply with the Community Mixed Use and Regional Commercial and Services land use designations which call for commercial uses that serve the general community and broader region.
  - c. The proposed Tavern and Casino uses are in accordance with the Growth Policy.
- 6. That the site properly addresses open space, light, and protection of natural features;**
- a. The proposed project must comply with all applicable Title 20 landscaping standards per the recommended condition of approval, properly addressing open space for the site.
  - b. The proposed project properly addresses light access by siting the 34-foot-tall structure away from abutting residential uses.

- c. There are no significant natural features on or near the subject property.
  - d. The site properly addresses open space, light, and protection of natural features.
- 7. That uses are compatible with adjacent properties and uses in terms of physical elements such as open space design, screening and buffering, any applicable use-specific standards and any other elements considered important by the City Council.**
- a. The structure must comply with the design standards of Title 20, Section 20.40.170 for commercial uses not exceeding 30,000 square feet per the recommended condition of approval.
  - b. The proposed Casino use is located on an arterial street as required by the use-specific standards of Title 20, Section 20.40.040.
  - c. A landscape buffer is required along the western property line to protect abutting residential development.
  - d. The site and building design are compatible with existing commercial uses to the east. The three-story multi-dwelling structures to the west are similar in scale to the proposed Tavern and Casino structure.
  - e. The uses are compatible with adjacent properties and uses in terms of physical elements such as open space design, screening and buffering, and the Casino use-specific standards.

## **VI. COMMENTS FROM CITY AGENCIES**

**Fire Department:** No comment received at the time of this report.

**Police Department:** No comment received at the time of this report.

**Missoula City-County Health Department:** No comment received at the time of this report.

**Parks and Recreation:** There is a planned shared use path at this project location. The civil site plan does appear to reflect the most authoritative, up-to-date plans for the 10' Mullan Trail as shown on the Mullan Build 30% drawings (page 7 here:

[https://www.mullanbuild.com/files/uqd/570f64\\_f951851c8fd44b66884c39a7251bfb4a.pdf](https://www.mullanbuild.com/files/uqd/570f64_f951851c8fd44b66884c39a7251bfb4a.pdf))

**Missoula Urban Transportation District:** No comment received at the time of this report.

**City Public Works and Mobility – Engineering:** No comments from Public Works. They have progressed with annexation conditions, but still have a ways to go. All infrastructure is secured with an Improvement Agreement. They have just asked to delay sidewalk adjacent to the corner building and we will allow that request.

**City Public Works and Mobility – Transportation:** No comment received at the time of this report.

**City Public Works and Mobility – Utilities:** No comments.

**Wastewater Treatment Plant:** No comments.

**Missoula Redevelopment Agency:** No comment received at the time of this report.

**Office of Emergency Management:** No comment received at the time of this report.

**Montana Department of Transportation:** This area is within the City of Missoula maintained portion of Mullan Road. I have no highway related comments.

**Montana Department of Revenue:** No comments.

**Neighborhood Council:** No comment received at the time of this report.

## VII. ATTACHMENTS

A. Application Packet

## VIII. EXHIBIT A: LEGAL MAP

