



COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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STAFF REPORT & REFERRAL

Agenda item:	Rezone 2520 Schilling Street and 2134 Dearborn Avenue, located at the northeast corner of the intersection of Schilling Street and Dearborn Avenue, from RM2.7 Multi-Dwelling to B2-2 Community Business.
Report Date(s):	10/7/2021
Case Planner:	Kaitlin McCafferty, Associate Planner
Report Reviewed & Approved By:	Dave DeGrandpre, Planning Supervisor
Public Meetings & Hearings:	<p>City Council (CC) 1st reading: 11/1/2021</p> <p>Planning Board (PB) hearing: 11/2/2021</p> <p>City Council (CC) hearing: 11/15/2021</p> <p>Land Use & Planning (LUP): 11/17/2021</p> <p>City Council (CC) final consideration: 11/29/2021</p>
Applicant & Fee Owner:	<p>D&C, LLP and Lower Construction c/o Dennis Lower 2520 Schilling Street, Ste. A Missoula, MT 59803</p>
Location of request:	The subject property is located at 2520 Schilling Street and 2134 Dearborn Avenue at the northeast corner of the intersection of Schilling Street and Dearborn Avenue in Franklin to the Fort Neighborhood Council and Ward 5.
Legal description:	Lots 20-24 of Carline Addition Block 34 and Lots 18B, 6286 square feet of Lots 17, 18 & 19 of Carline Addition #3 Block 34; All located in Section 32, Township 12 North and Range 19 West P.M.M.
Legal ad:	The legal ad was published in the <i>Missoulian</i> on September 26, 2021 and October 3, 2021. The site was posted on September 27, 2021. Adjacent property owners and the physical addresses within 150 feet of the site were sent notification by first class mail on September 3, 2021.
Zoning:	RM2.7 Multi-Dwelling
Proposed Zoning:	B2-2 Community Business
Growth Policy:	The applicable regional plan is Our Missoula: City Growth Policy 2035 which recommends a land use designation of "Community Mixed-Use", with a density greater than 43 Dwelling Units per acre.



STAFF RECOMMENDATION

Approve the request to rezone Lots 20-24 of Carline Addition Block 34 and Lots 18B, 6286 square feet of Lots 17, 18 & 19 of Carline Addition #3 Block 34; All located in Section 32, Township 12 North and Range 19 West from RM2.7 Multi-Dwelling to B2-2 Community Business.

RECOMMENDED MOTIONS

PB p/h:	APPROVE the request to rezone Lots 20-24 of Carline Addition Block 34 and Lots 18B, 6286 square feet of Lots 17, 18 & 19 of Carline Addition #3 Block 34 from RM2.7 Multi-Dwelling to B2-2 Community Business.
CC first reading:	[First reading and preliminary adoption] Set a public hearing on November 15, 2021 and preliminarily adopt an ordinance rezoning Lots 20-24 of Carline Addition Block 34 and Lots 18B, 6286 square feet of Lots 17, 18 & 19 of Carline Addition #3 Block 34; All located in Section 32, Township 12 North and Range 19 West from RM2.7 Multi-Dwelling to B2-2 Community Business and refer this item to the Land Use and Planning Committee for presentation on November 17, 2021
CC p/h:	[Second reading] Discussion Only
LUP:	Discussion only- post-public hearing
CC final consideration:	[Final reading and consideration] (Adopt/Deny) an ordinance to rezone Lots 20-24 of Carline Addition Block 34 and Lots 18B, 6286 square feet of Lots 17, 18 & 19 of Carline Addition #3 Block 34; All located in Section 32, Township 12 North and Range 19 West from RM2.7 Multi-Dwelling to B2-2 Community Business.

I. INTRODUCTION

Development Services has received a request from Paul Forsting of IMEG Corp., representing Lower Construction and D&C, LLP, to rezone the subject property located at 2520 Schilling Street and 2134 Dearborn Avenue, located at the northeast corner of the intersection of Schilling Street and Dearborn Avenue, from RM2.7 Multi-Dwelling to B2-2 Community Business. This rezoning will result in a standard zoning district under Title 20 which can't be conditioned.

Staff has reviewed the applicant's rezoning submittal packet and bases the recommendation of approval on the following findings of fact:

II. Rezoning review criteria

Findings of fact: General

1. The subject property has frontage on Schilling Street, Dearborn Avenue, and an alley. Schilling Street and Dearborn Avenue are functionally classified as local streets.
2. The subject properties are approximately 21,649 square feet combined. 2520 Schilling is currently occupied by a warehouse used for auto and industrial equipment sales. As of this writing, 2134 Dearborn has a residential camper on the property.
3. The subject property is inside the Urban Growth Area, the Wastewater Facilities Service Area, the Air Stagnation Zone, and is served by City Water and Sewer.
4. These properties are part of City Council Ward 5 and the Franklin to the Fort Neighborhood Council.
5. The subject property is located within an established service area for Missoula hospitals and the City Fire and Police Departments.
6. Missoula Mountain Line routes 8 and 6 are available within a quarter mile of the subject properties.
7. The subject properties are less than one mile from Rosauers and WinCo grocery stores, both on South Reserve Street.

8. Montana Rail Link Park is roughly a half mile away and accessible via the Bitterroot Branch Trail, which can be accessed at the east end of the subject property's block and across South Avenue West.
9. City Parks and Recreation has identified a Siberian Elm located at 2134 Dearborn that is a City of Missoula public tree and is required to be preserved during construction per Code 12.32. The tree is one of Missoula's slowest growing species, and holds a high value for its climate resilience, its carbon and water sequestration potential, high pollution reduction index, dense shade and aesthetic value.

Growth Policy:

10. The applicable regional plan is the *Our Missoula: City Growth Policy 2035*, which recommends a land use designation of Community Mixed-Use which supports a broad range of commercial uses and high density residential.
11. Areas designated Community Mixed-Use are identified as areas providing basic employment and services integrated with main transportation corridors including public transit and active transportation system, where city services and infrastructure are readily available. The City Growth Policy indicates that the following districts are most closely aligned with this residential density: C1-4 Neighborhood Commercial, C2-4 Community Commercial, and M1R-2 Limited Industrial and Residential. These three zoning districts permit residential density up to 43 dwelling units per acres.
12. The subject property is surrounded by residential units, and therefore applying a more transitional zone than the Commercial and Industrial zones that correspond to the property's land use designation is recommended. The requested City zoning upon annexation is B2-2 Community Business. This district allows for residential multi-dwelling (1 dwelling unit per 1,000 square feet or up to 43 dwelling units per acre), and commercial uses that are lower intensity such as offices and restaurants and retail while eliminating higher intensity uses such as construction, hotel, and motor vehicle sales and repair businesses. The planned use is multi-dwelling building. Staff supports this rezoning request, as it substantially complies with the Growth Policy while considering the existing residential uses surrounding the property.
13. Given the approximate 21,649 square foot size of the subject property, the requested B2-2 zoning would allow up to 21 dwelling units. The B2-2 district permits detached dwellings, two-unit dwellings, multi-dwelling building, multi-dwelling house, and townhouses.
14. As described in the zoning section of this report below, the requested zoning of B2-2 more closely aligns with the Growth Policy's recommended density than the current RM2.7 zoning district.
15. The City Growth Policy calls for a focus inward approach to encourage infill development in the urban core where infrastructure already exists, and promotes mixed-use, increased density, and enhanced connectivity while limiting sprawl and promoting efficient use of existing infrastructure.
16. The *Housing* section of the City Growth Policy describes the Focus Inward approach to development as one that provides opportunities by designating appropriate areas for higher density and housing near existing infrastructure and services. Such development has added benefits, including decreasing household expenses like transportation.
17. The *Safety and Wellness* section of the City Growth Policy encourages healthy lifestyles by promoting a complete active transportation network to increase safety for all transportation systems including vehicular and active transportation.
18. The City Growth Policy identifies many goals and objectives related to housing in the City of Missoula. The introduction to the *Housing* chapter identifies that within the next 20 years the population projections indicate the urban area will grow by 18,500, which presents a need for approximately 9,000 new housing units.

Zoning

19. The current zoning on the subject properties is RM2.7 Multi-Dwelling, which requires a minimum lot size of 3,000 square feet and a minimum parcel area per unit of 2,700 square feet. The combined area of the subject

properties is 21,649 square feet so under the current zoning, the subject properties could accommodate a maximum of 8 dwelling units.

20. The setbacks in the RM2.7 Multi-Dwelling zoning district are: 20-foot front and rear setback, 10-foot street-side setback, and 5-foot interior side setback. The maximum building height permitted in this district is 30 feet, or up to 35 feet with a roof pitch steeper than 8 in 12.
21. The RM2.7 Multi-Dwelling zoning district corresponds to a land use of Residential Medium High, allowing between 12 and 23 dwelling units per acre. This is lower than the up to 43 dwelling units per acre density that the Growth Policy recommends.
22. The requested zoning of B2-2 Community Business permits single purpose residential development on a minimum parcel area of 3,000 square feet and a minimum parcel area per unit of 1,000 square feet. The combined area of the subject properties is 21,649 square feet, therefore under the current zoning, the subject properties could accommodate a maximum of 21 dwelling units.
23. The B2-2 Community Business zoning district permits all residential building types including detached house, two-unit house, and multi-dwelling, along with some commercial uses.
24. There are no required setbacks in a B2-2 zoning district unless the site abuts a residential zoned district on the same street. The subject properties, if rezoned, will abut a residential district (RM2.7 Multi-Dwelling) on the north side of the western parcel and east side of the eastern parcel, and are therefore subject to the required front and side setbacks of the neighboring residential zoning district. This is according to Table 20.10-2 in the zoning code, supplemented by footnotes [1] & [2]. A rear setback is required as well, either equal to 25% of the parcel depth or 20 feet, whichever is less, per Table 20.10-2.
25. The maximum building height limit permitted by the B2-2 zoning district is 50 feet. However, for parcels zoned B2-2 abutting residential districts that have a maximum allowed building height of 35 feet or less (such as RM2.7 Multi-Dwelling), the maximum building height at the point of the minimum setback line is 35 feet. Height may be increased above 35 feet by up to one foot (vertical) for each six inches of building setback or upper floor step-back. The subject properties, if rezoned as proposed, will abut a residential district to the north and east and therefore have a maximum height of 35 feet at the setback lines, but will be allowed increases based on setback or upper floor step-back.
26. Any new development on the subject properties will be required to meet all applicable portions of Title 12 & Title 20, as required by the Missoula Municipal Code.

Transportation

27. There are sidewalks on Dearborn Avenue and Schilling Street and throughout the area.
28. The subject property is within the Missoula Urban Transportation District. Routes 6 and 8 travel on South Avenue a short distance to the north.
29. A bike trail is located on Bitterroot Trail at the east end of the site's block.
30. If future development is projected to add over 200 trips per day, the City Public Works & Mobility Department may require a traffic impact analysis that looks closely at impacts to the transportation system and identifies mitigations to ensure the continued safe, comfortable, and convenient travel along both Schilling and Dearborn by people walking and biking.

Spot Zoning

All of the land surrounding the subject property is zoned RM2.7 Multi-Dwelling so it is important to consider whether this rezoning would constitute illegal spot zoning and be prohibited based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions. Below are the three spot zoning criteria and an evaluation of whether rezoning the property to B2-2 would constitute illegal spot zoning. Generally, for illegal spot zoning to occur, all three factors would have to be met.

1. Is the requested use (or zoning) significantly different from the prevailing use in the area?

1. No - The prevailing land use in the area is residential, primarily detached and two-unit homes as well as multi-dwelling. The applicant is proposing a multi-dwelling residential use for the subject property. The existing RM2.7 Multi-Dwelling and proposed B2-2 Community Business zoning districts both permit all residential building types including detached houses, two-unit houses, and multi-dwellings, along with some commercial uses.
 2. Based on this information, the requested use (or zoning) does not appear to be significantly different than the prevailing use in the area.
- 2. *Is the area in which the requested use is to apply rather small with regard to the number of separate landowners benefited by the proposed change?***
1. Yes – only the applicant would benefit from the proposed rezoning.
- 3. *Would the requested change amount to special legislation or preferential treatment designed to benefit only one or a few persons at the expense of the surrounding landowners or the general public?***
1. No – although the rezoning would benefit only the applicant, the City Growth Policy calls for this area to be developed with medium density housing at a scale of up to 43 dwelling units per acre. The subject property is surrounded by residential units, and therefore applying a more transitional zone than the Commercial and Industrial zones that correspond to the property's land use designation is recommended. The requested City zoning upon annexation is B2-2 Community Business. This district allows for residential multi-dwelling (1 dwelling unit per 1,000 square feet), and commercial uses that are lower intensity such as offices and restaurants and retail while eliminating higher intensity uses such as construction, hotel, and motor vehicle sales and repair businesses. The planned use is multi-dwelling building. Therefore, the proposed zoning is recommended with surrounding land owners in mind, is aligned with the City's Growth Policy, and would not be made at the expense of surrounding land owners or the general public.

Conclusions of Law:

1. Whether the zoning is made in accordance with a growth policy;

1. The City Growth Policy calls for Community Mixed-Use. The corresponding zoning districts are C1-4 Neighborhood Commercial, C2-4 Community Commercial, and M1R-2 Limited Industrial and Residential. These three zoning districts permit residential density up to 43 dwelling units per acres.
2. The proposed zoning, B2-2 Community Business, provides less intensive commercial uses and equal housing density as compared to the zoning districts listed as applicable to the Community Mixed-Use designation in the Growth Policy. As consideration to the parcels' abutting residential uses, the B2-2 zoning district is supported by City staff because it is a district that is consistent with the density of the corresponding zoning districts while simultaneously prohibiting the more intense commercial uses that could disturb surrounding residents.
3. The rezoning complies with many of the focus inward goals and objectives of the growth policy.

2a. Whether the zoning is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; 2b. Whether the zoning considers the effect on motorized and non-motorized transportation systems;

1. The rezoning facilitates the adequate provision of public services, including transportation, water, schools, parks, and other public requirements, because the area is inside the Urban Growth Area and the Sewer Service Area, and is served by water, sewer, motorized and nonmotorized infrastructure.
2. The rezoning gives reasonable consideration to the effect on motorized and non-motorized transportation systems because the property is adjacent to Schilling Street and Dearborn Avenue, both classified as urban local streets that include sidewalks. Additionally, the property is within the Missoula Urban Transportation District and is served by public transit facilities and bicycle facilities that are lined with sidewalks.

3. Whether the zoning considers the promotion of compatible urban growth;

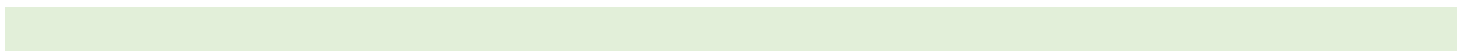
1. The rezoning reflects compatible urban growth because it permits compatible residential and community business development in an area that includes both residential and commercial uses. The site could be developed with limited commercial activity, allowing residents to access services without the need to rely on automobile travel, and it also allows for an increase in allowed residential density in an area that also includes residential uses and infrastructure to serve residents.
2. The rezoning promotes compatible urban growth because it implements the focus inward goal of the City Growth Policy and provides for increased density while promoting efficient use of existing infrastructure.

4a. Whether the zoning is designed to promote public health, public safety, and the general welfare; 4b. Whether the zoning is designed to secure safety from fire and other dangers; 4c. Whether the zoning considers the reasonable provision of adequate light and air; 4d. Whether the zoning conserves the value of buildings and encourages the most appropriate use of land throughout the jurisdictional area;

1. The rezoning will promote public health, public safety, and the general welfare by providing for residential uses in an area with access to sewer, public water, emergency services, streets, bicycle facilities, and other urban services.
2. Emergency services are available to the site. Law enforcement personnel and procedures are available to address potential problems of noise, property damage, or personal injury. Fire protection is also available to the site.
3. This rezoning should not adversely impact the provision of adequate light and air as all future development will meet required internal and external building code and zoning code setbacks.
4. This rezoning conserves the value of buildings and encourages the most appropriate use of the land because it applies the B2-2 Community Business zoning designation with a less intensive array of permitted commercial uses and equal housing density as compared to the zoning districts listed as applicable to the Community Mixed-Use designation in the Growth Policy. This will provide a more compatible suite of development options than the more intensive C1-4 Neighborhood Commercial, C2-4 Community Commercial, and M1R-2 Limited Industrial and Residential provide.

5. Whether the zoning considers the character of the district and its peculiar suitability for particular uses;

5. The rezoning to B2-2 is suitable for the subject property and considers the character of the district because B2-2 zoning district permits the same residential building types as that on all parcels surrounding the subject property.
6. The rezoning considers the location and character of the property, which has easy access to urban infrastructure and services in Missoula.



V. EXHIBITS:

Application
Agency Comment
Public Comment