

Minutes
Zoning Commission Work Session
May 11, 2021, 6:00 p.m.
Via ZOOM Virtual Platform

Commission Members Present:

Rebecca Harbage, *Chair*
Kim Wilson
Mark Ophus

Members of the Public Present:

Bridget Butler
Chris Purvis
Tyler Warne
Susan Butler

Staff Present:

Sharon Haugen, Community Development Director
Michael McConnell, Planner II
Ellie Ray, Planner II & Grants Coordinator
Stefani Reinhardt, Administrative Assistant III

<u>Topic</u>	<u>Time</u>	<u>Description</u>
<i>Call to Order & Staff Introduction</i>	<i>(01:10)</i>	Meeting began at 6:01 pm with a brief introduction.
<i>Public Hearing: Item 1</i>	<i>(03:38)</i>	Planner II, Michael McConnell presented a power point staff report (Attachment A) on his findings with Item 1: Consider a Resolution for a Conditional Use Permit per Section 11-2-3 of City Code to allow a Sexually Oriented Business in the Commercial Light Manufacturing (CLM) zoning district for a property addressed as 3540 Centennial Dr. with a legal description of Lot 14 in Block 6 of Inter-City Commercial Subdivision first addition, City of Helena, Lewis and Clark County, Montana.
	<i>(10:27)</i>	As of May 11, 2021, five (5) public comments were received regarding the CUP. Four of which were in opposition to the application and one expressed indifference.
	<i>(11:21)</i>	Staff is recommending conditional <u>Approval</u> of a Resolution granting a conditional use permit to allow a sexually oriented business use in the CLM (Commercial Light Manufacturing) District for a property with a legal description of Lot 4, Block 6 Intercity Commercial Sub, of the City of Helena, according to the official map or plat on file and of record in the office of the County Clerk and Recorder of Lewis and Clark County, Montana, with an address of 3540 Centennial Drive, Helena, MT 59601.
		<u>Condition #1:</u> Stripe all parking spaces within the existing paved area including a van accessible ADA space.
		<u>Condition #2:</u> No future expansion of use or structure will be allowed as part of this permit.

<i>Questions for Staff by the Commission</i>	(12:37)	Chair Harbage asked Mr. McConnell if he knew whether two existing signs in the vicinity were at the maximum height of thirty-five (35”) feet. He stated he would expect them to be, however he did not inspect their individual sign permits prior to the meeting.
<i>Applicant Addressed the Commission</i>	(15:19)	Applicant for Item 1, Tyler Warne presented a power point to the Commission (Attachment B).
<i>Questions for the Applicant by the Commission</i>	(20:41)	<p>Commissioner Ophus asked the applicant if he had any considerations such as lowering the sign height in regard to the single-family housing southeast of the CLM vicinity.</p> <p>Mr. Warne stated they had not addressed anything specifically to that neighborhood, however he did point out the use of similar billboards around the state were less sexually oriented in nature. The proposed exterior of the building is also not intending to show anything “risqué.” For example, the sign for Adam & Eve in Bozeman only shows a women’s face. Mr. Warne asked Commissioner Ophus if there was a specific concern that he knew of.</p> <p>Commissioner Ophus confirmed there was not a specific concern that he was aware of. However, he acknowledged the few public comments that were received in opposition.</p> <p>Mr. Warne stated the height of thirty-five (35”) feet was average when it came to billboard signs.</p>
	(25:46)	Commissioner Wilson acknowledged through the Zoom chat feature that he did not have any questions for the applicant.
<i>Item 1 – Public Comment</i>	(26:32)	Owner of Sierra Custom Homes and neighbor to the proposed property, Chris Purvis spoke in opposition to the CUP. Mr. Purvis cited the proposed business would take away from their company’s professional image. It was his fear that the company would lose clients and revenue due to the proximity of the two businesses.
	(28:14)	Commissioner Ophus asked Mr. Purvis if his concerns were specifically directed at the appearance or the general use of the proposal. Mr. Pervis stated he thought the use would decrease their property value when they go to sell citing, they also owned the condos next door. Specifically, the Adam & Eve sign could have a negative impact as potential customers arrive at Mr. Pervis’s business.
	(29:22)	Commissioner Ophus questioned if a more discrete sign was an option for either the applicant or if the Commission could apply a third condition to the CUP. Commissioner Ophus stated he would

entertain the additional condition and cited preserving the character of the neighborhood as supportive for the condition.

- (30:27) Chris Purvis spoke in favor of the added condition to reduce the proposed thirty-five (35”) foot sign.
- (31:10) Chair Harbage asked the applicant, Tyler Warne, if he knew where the proposed pole sign would be located on the property. Mr. Warne explained the sign permit was a separate process and their proposed pole sign was within the allowed size for that district. He went on to explain they chose the subject property because of its discrete nature as well as it is high traffic. The applicant could not speak to whether the proposed business owners would agree to a smaller sign at this time, however stated he was sure they would be willing to work with everyone to find a solution.
- (33:57) City Planner II, Michael McConnell explained the proposal would require two permits – 1) a building permit for the internal remodels and 2) a sign permit for the pole sign. Mr. McConnell informed the Commission that now would be the time to put any additional conditions in place in regard to the sign citing if the applicant were to submit for their sign permit without those conditions, then they would be allowed to apply for the maximum height allowed in that district which is 300 sq ft. In conclusion, Mr. McConnell encouraged the Commission to use their review criteria when outlining their added condition(s).
- (35:00) Commissioner Wilson circled back to Mr. Purvis’s earlier statement regarding his condo buildings in the vicinity and cited he was not aware of any residential property when he reviewed the materials. He acknowledged Mr. Purvis’s concerns and added this area was well established as a commercial area.
- (35:49) City Planner II, Michael McConnell clarified Mr. Purvis’s business was located in one of several commercial condos. Mr. McConnell confirmed they were not residential condos.

***Item 1 - Commission
Discussion***

- (36:30) Commissioner Ophus and Chair Harbage discussed how to include an additional condition to the recommended motion. The question of which aspect they should restrict such as the sign being allowed as a pole sign or restricting the overall size of the sign.
- (37:58) Commissioner Ophus suggested relaying the condition back to the character of the area and expressed public opinion.
- (38:33) Chair Harbage thanked Commissioner Ophus for his suggestions and stated after looking at the area, there were some billboards but it did not appear there were many pole signs. Chair Harbage

expressed her concern for the potential sign to be out of place when compared to the existing character of the area.

(39:40) The applicant, Tyler Warne proposed reducing their signage proposal to 200 sq ft.

(41:48) Commissioner Wilson asked staff what the current sign limitation is in that district, to which Michael McConnell confirmed was 300 sq ft for both the wall sign(s) and any free-standing sign.

(45:00) Commissioner Ophus suggested limiting the sign to a monument sign rather than a pole sign and asked staff if they were aware of a maximum height for a monument sign for this district.

Planner II, Michael McConnell confirmed the maximum height for a monument sign was not to exceed six (6") feet with a maximum area of 300 sq ft.

(46:21) Commissioner Ophus made a recommendation to add another condition related to the signage and asked the applicant if he found this to be acceptable.

(47:01) Tyler Warne stated he believed the property owners would find the conditional signs acceptable: 1) a sign on the front of the business, as well as 2) a monument sign of approximately 200 sq ft.

(48:41) Chair Harbage asked the neighboring property owner, Chris Purvis if the proposed condition would satisfy his concerns. Mr. Purvis argued the proposed 200 sq ft monument sign was still going to devalue the area and added that if the sign was backlit, it would be visible to traffic coming from East Helena. He went on to say that the Mountain View Meadows Subdivision to the southeast is projected to have restaurants and hotels with increasing traffic on Highway 12.

(50:46) Chair Harbage asked if it would be possible to reference the size of the banner sign that is currently attached to the building as part of the condition. Director Sharon Haugen recommended the Commission be specific when they define the dimensions of the sign.

In addition, Director Haugen reminded the Zoning Commission that they are just an advisory board to the City Commission. So, their job was to use the information presented in front of them to best determine the conditions that would mitigate any impacts. Alternatively, Director Haugen informed the Commissioners that they also had the option to deny the CUP. As a reminder, there

will also be a hearing on this matter in from of the City Commission with an additional opportunity for further consideration. So long as the Commissioners could compose their condition(s) so they relate back to any impact it has on their neighborhood, they may consider limiting the size of the sign as part of their recommendation.

(53:27) Commissioner Ophus expressed his support for adding a condition that prohibits any pole mounted signage but would allow a monument sign not to exceed 200 sq ft.

Item 1 - Motion

(54:00) Commissioner Ophus made a motion to recommend conditional **Approval** of a Resolution granting a conditional use permit to allow a sexually oriented business use in the CLM (Commercial List Manufacturing) District for a property with a legal description of Lot 4, Block 6 Intercity Commercial Sub, or the City of Helena, according to the official map or plat on file and of record in the office of the County Clerk and Recorder of Lewis and Clark County, Montana, with an address of 3540 Centennial Drive, Helena, MT 59601.

Condition #1: Stripe all parking spaces within the existing paved area including a van accessible ADA space.

Condition #2: No future expansion of use or structure will be allowed as part of this permit.

Condition #3: No pole mounted signage.

Condition #4: Limit the total square footage across all signs on the property to no more than 200 square feet.

(56:50) Commissioner Wilson seconded the motion.

***Item 1 –
Further Discussion:***

(57:03) Commissioner Wilson stated he was mindful of Mr. Purvis's concerns as well as the continued growth of Mountain View Meadows. However, this area is zoned to allow commercial uses. Commissioner Wilson also acknowledged it was a good goal to reduce a large or unsightly adult bookstore sign citing it would be one of the first things people saw driving into Helena.

(58:32) Chair Harbage added that given the planned residential expansion in this vicinity, she did not support any new pole signs in the neighboring CLM District. Furthermore, the Chair spoke in favor of continuing the conversation around general use of pole signs in the CLM District in the near future.

(59:35) Commissioner Ophus concurred with the statements of the other two Commissioners.

- Item 1 – Vote** (01:01:37) The motion was approved with a 3:0 vote.
- Public Hearing: Item 2** (01:02:00) Planner II, Ellie Ray presented a power point staff report (Attachment C) on her findings with Item 2: Consider a Resolution for a change in zoning district to change the zoning district from Downtown (DT) to Transitional Residential (TR) for a property addressed as 739 Getchell Street with a legal description as described in Certificate of Survey number 3130567 found in Book M36 Page 7122.
- Questions for Staff by the Commission** (01:13:01) Chair Harbage asked Ellie Ray if Transitional Zones were limited to townhomes and Ms. Ray confirmed the zone was not restricted by type and would also allow for single-family housing.
- Applicant Addressed the Commission** (01:13:47) The applicant, Bridget Butler spoke on behalf of her proposal at 739 Getchell Street. Ms. Butler argued that by changing this zone to a Transitional zone would be inline with the 2019 Growth Policy in encouraging diverse housing.
- Questions for the Applicant by the Commission** (01:14:53) Commissioner Wilson asked the applicant to expand on the type and layout of apartment building she was proposing. The applicant explained they were proposing a mix of townhomes with multiple stories for each as well as some commercial
- Item 2 – Public Comment** (01:16:01) There was no public comment.
- Item 2 - Commission Discussion** (01:17:15) Chair Harbage spoke in general about the residential area located near Park Ave and Getchell Street that was not rezoned as part of the rezoning effort that took place in 2019. The Chair spoke in favor of seeing this area more developed than it is currently.
- (01:18:45) Commissioner Ophus stated he would generally be opposed to this sort of zone change, however in this instance he felt this was a unique area that was directly adjacent from permanent massing such as the park and the Helena Civic Center. Considering the amount of thought that went into developing the code around the transitional zone still allows for a greater development and he did not feel the proposed zone change would not prevent further development in this area nor would it limit the directive of the Growth Policy.
- (01:20:26) Commissioner Wilson concurred with the comments made by both the Chair and Commissioner Ophus.

- Item 2 - Motion*** (01:21:32) Commissioner Wilson moved to **APPROVE** a passage of an Ordinance amending the official zoning map for the City of Helena, for a zone change from DT (Downtown) District to TR (Transitional Residential) District for a property addressed as 739 Getchell Street, Helena, Montana, with a legal description as described in Certificate of Survey number 3130567 found in Book M36, Page 7122.
- (01:22:01) Commissioner Ophus seconded the motion.
- Item 2 – Vote*** (01:23:02) The motion was approved with a 3:0 vote.
- Public Comment*** (01:24:28) There were no public comments.
- Next Meeting*** (01:25:14) The next meeting is scheduled for Tuesday, June 8, 2021.
- Staff informed the Commission there would be another CUP brought forward for their consideration. However, due to lack of quorum for the regular meeting, the Zoning Commission proposed to postpone the next meeting until **Tuesday, June 15, 2021.**
- The Commission also decided to hold a work session at 5:00 PM prior to the meeting on June 15th.
- Adjournment*** (01:30:42) The meeting adjourned at 7:30 PM.

The background features abstract, overlapping green geometric shapes in various shades of green, creating a modern, layered effect on the left and right sides of the slide.

Conditional Use Permit

3540 Centennial Drive

Zoning Commission: May 11, 2021

CUP Review Criteria

CC 11-3-4.A

- ▶ The proposed conditional use, as conditioned, will not adversely impact public health, safety, or general welfare
- ▶ The proposed conditional use, as conditioned, will not adversely impact the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located.

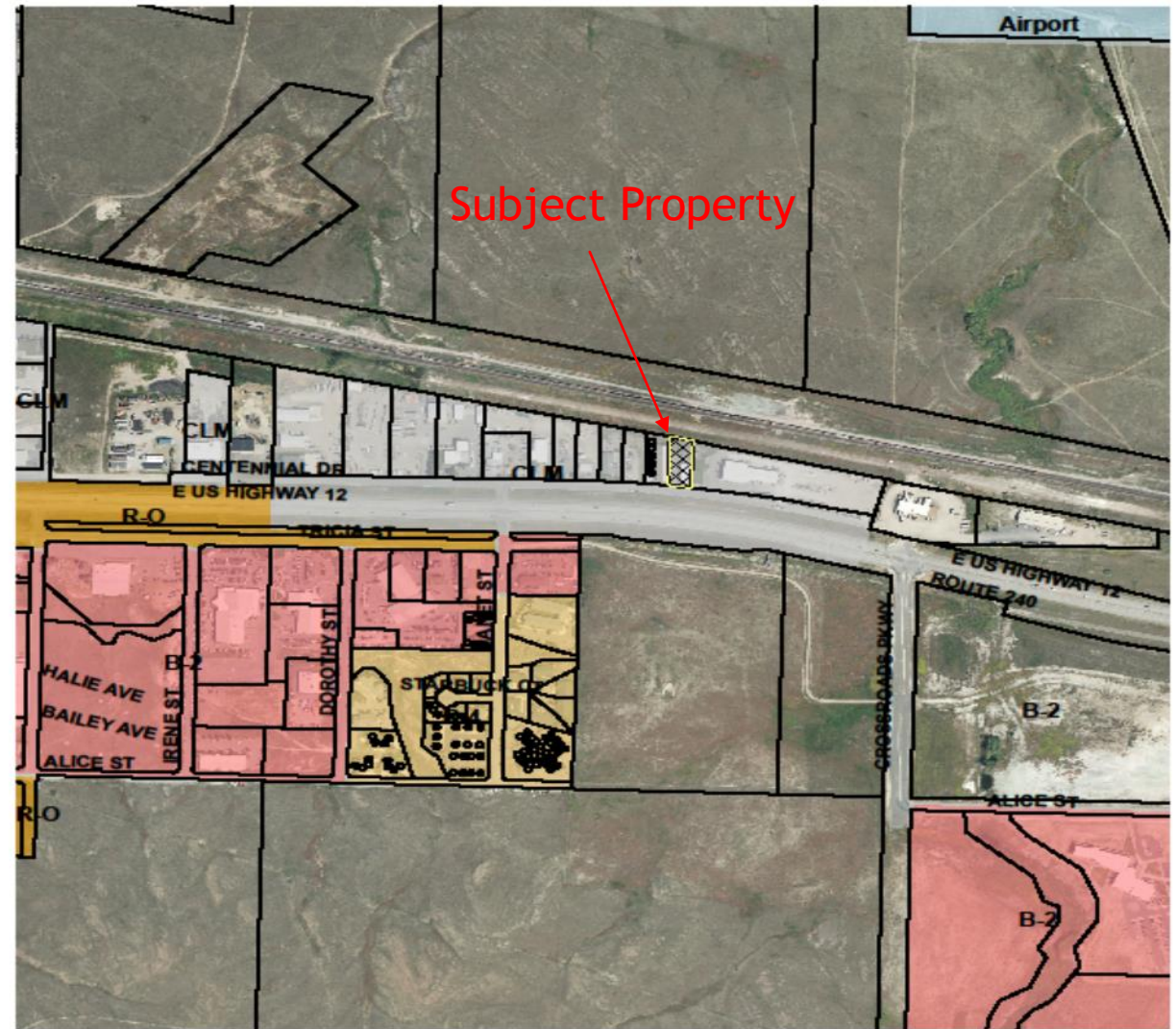
CC 11-3-4.B

- ▶ Location, character & natural features of subject property as it currently exists
- ▶ Type & size of proposed structures
- ▶ Historic uses & patterns, recent changes & trends in the neighborhood
- ▶ Conformity with neighborhood plans
- ▶ Ingress, egress & circulation (all types)
- ▶ Consistent with the climate change action plan
- ▶ Meets zoning dimensional standards
- ▶ Hours of operation
- ▶ Noise, Glare, Odor
- ▶ Expressed public opinion related to factors identified above

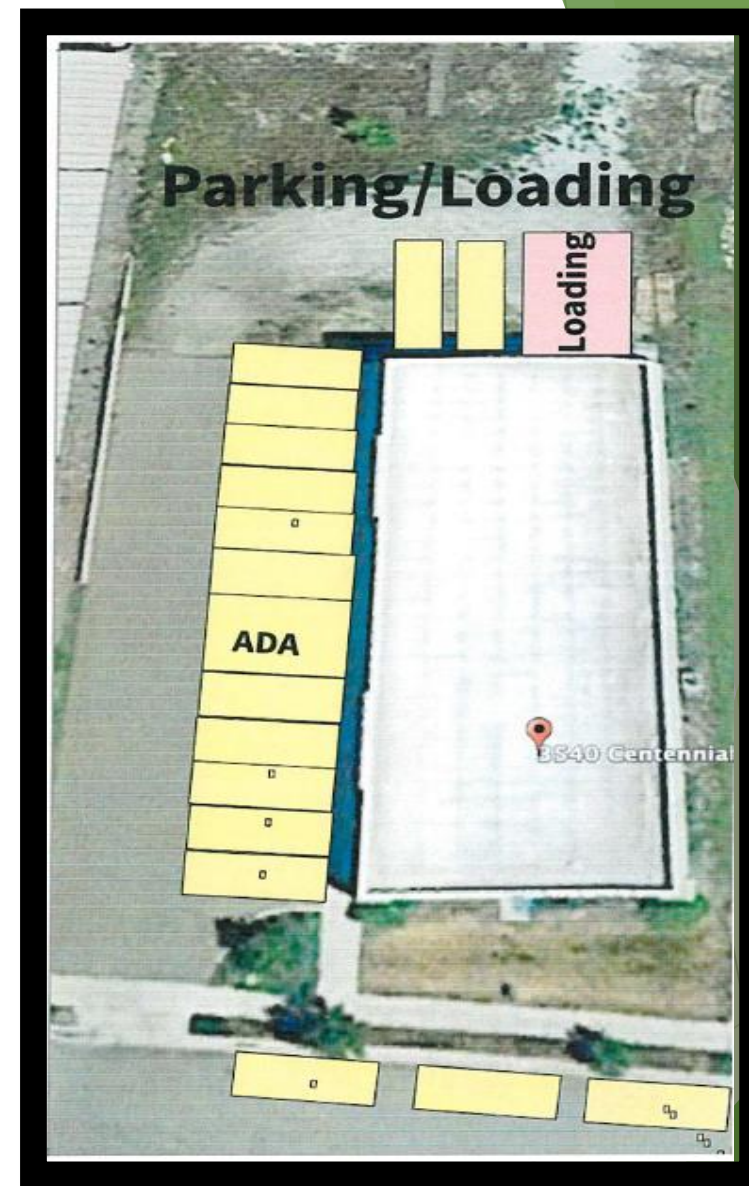
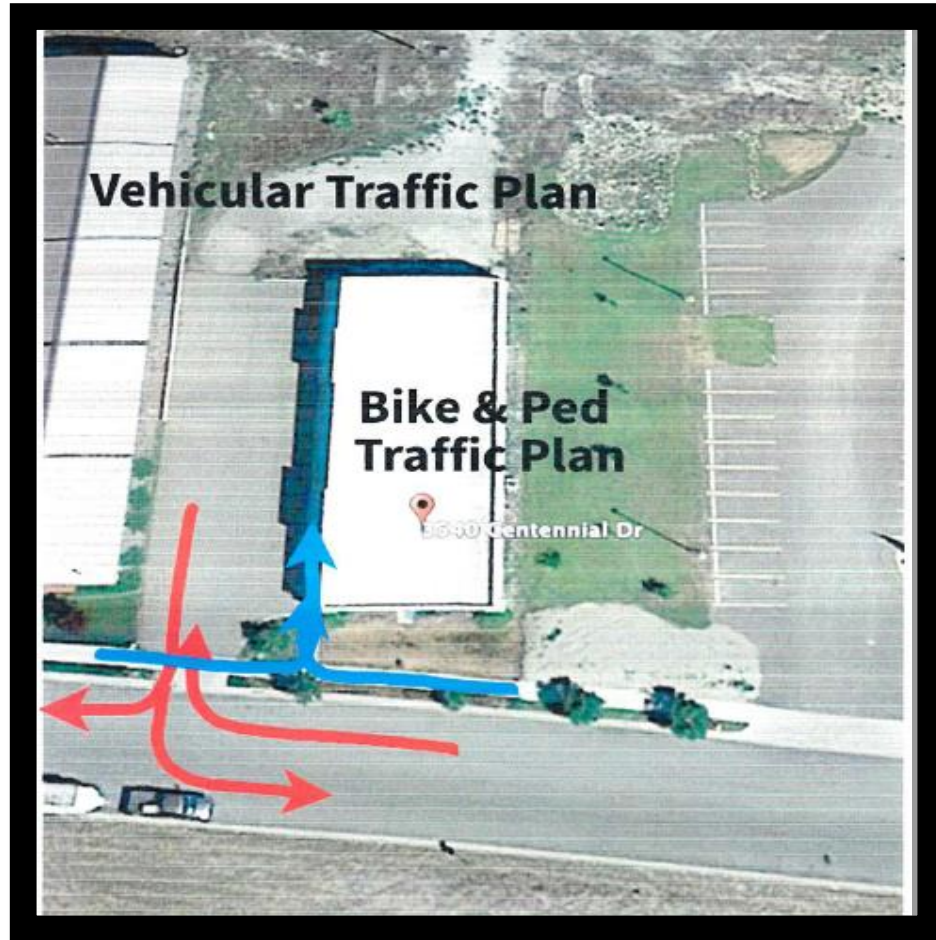
General Information

- ▶ Address: 3540 Centennial Drive
- ▶ Applicant: Adam & Eve Stores
- ▶ Land Use Classification: Sexually Oriented Business
- ▶ Application: Conditional Use Permit
- ▶ Current Zone: CLM
- ▶ Current Use: Fitness Studio
- ▶ Adjacent Use: North - Railroad
South - Industrial
East - Industrial
West - Industrial
- ▶ No proposed changes to existing structure
- ▶ No proposed changes to land
- ▶ No changes to existing zoning

3540 Centennial Drive - Vicinity Map



CUP Analysis - Parking & Access



- ▶ Ingress, Egress & Circulation will not change
- ▶ # of spaces required: 3 spaces/1,000 sf gfa = 15 spaces, 1 Van ADA
- ▶ Spaces proposed: 14 on site 3 on street, 1 Van ADA

CUP Analysis - Signage, Landscaping & lighting

- ▶ 1 wall mount sign + 1 pole sign
200 sf each
 - ▶ No description included for the pole sign
 - ▶ Separate sign permit required
- ▶ Minimal landscaping currently, no changes proposed.
- ▶ No screening requirements
- ▶ No changes proposed to existing lighting



CUP Analysis -Review Criteria & Comments

- ▶ No adopted neighborhood plans
- ▶ Meets current zoning dimensional standards for CLM district
- ▶ Hours of operation - 10am - 10pm, adjusted situationally
- ▶ Noise - It is expected that the proposed use will create less noise than the current use
- ▶ Glare - applicable glare impacts are not expected to change with this new use
- ▶ Odor - applicable odor impacts are not expected to change with this new use
- ▶ No public comment received that was related to the stated review criteria
 - ▶ 5 comments were received. Community comments for this application are included as exhibit 1 of the application regarding this proposed CUP. There are 3 that reference opposition based on morals, one on perceived devaluing of property and 1 expressing indifference.
- ▶ No comments were received through the internal review process which included the HCC.

Proposed Conditions & Recommendation

- ▶ Recommending Conditional **Approval** of a Resolution granting a conditional use permit to allow sexually oriented business use in the CLM (Commercial Light Manufacturing) District for a property with a legal description of Lot 4, Block 6 Intercity Commercial Sub, of the City of Helena, according to the official map or plat on file and of record in the office of the County Clerk and Recorder of Lewis and Clark County, Montana., with an address of 3540 Centennial Drive, Helena, MT 59601.
- ▶ **Condition #1:** Stripe all parking spaces within the existing paved area including a van accessible ADA space.
- ▶ **Condition #2:** No future expansion of use or structure will be allowed as part of this permit.

CUP Application

3540 Centennial Dr, Helena, MT 59601

Adam and Eve Stores

- Adult store with locations in 4 other cities across the state and many more across the Nation.
 - Going concern, experienced with navigating offering the scope and type of products, while maintaining professionalism.
 - Display and proposed store layout limits exposure to products that are designated for people over 18.
 - Physical location of this business has limited foot traffic.
 - Not by any schools, churches or other gathering places that would have a high concentration of youth.
-

Interior photo of existing store



Exterior photo of existing store



Exterior photo of existing store



Adam and Eve in Helena

- The nationwide name with social equity is a benefit to an unknown shop.
 - The store has national guidelines from the franchises that helps to establish rules that prevent un-authorized eyes from seeing explicit materials.
 - Owners will bring the parking up to city recommendation. Building is ADA compliant.
 - Owners have more similar businesses across the state. They maintain professional relationships with other municipalities.
 - The new owners have a viable business and will be contributing to the tax base.
 - Location, signage and layout prevent people who may not know about the business from mistaking it, while still maintaining a tasteful and not explicit ad.
-



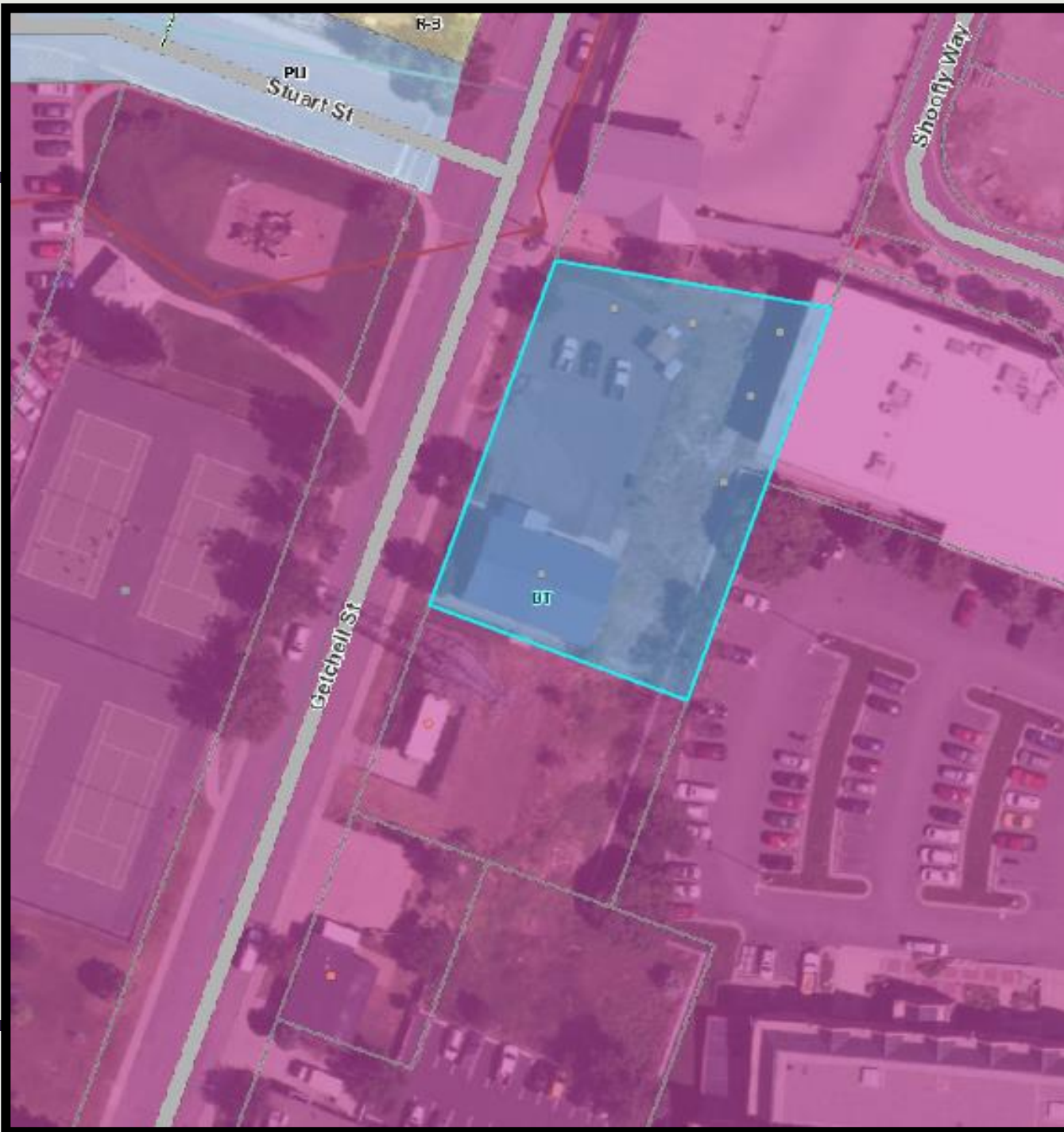
739 GETCHELL ST. ZONE CHANGE APPLICATION

Helena Zoning Commission

May 11, 2021

DT District to TR District Zone Change Request

Consider passage of an Ordinance amending the official zoning map for the City of Helena, for a zone change from DT (Downtown) District to TR (Transitional Residential) District for property addressed as 739 Getchell Street, Helena, Montana, with a legal description as described in Certificate of Survey number 3130567 found in Book M36, Page 7122.



VICINITY MAP



Proposal Overview

- Property is ~22,200 sf parcel located between Neill and Stuart on east side of Getchell
- Currently developed with general retail sales use
- Applicant is requesting zone change to TR District to allow higher density development of ground-level residential uses and compatible commercial uses
- Proposed change would serve as a transitional buffer to type/intensity of uses found in nearby R-3 District neighborhood to the northwest



SITE PHOTOS

Views to the north, northeast and northwest (Getchell Garage, Great Northern Town Center/Cinemark, nearby R-3 Residential District)

SITE PHOTOS

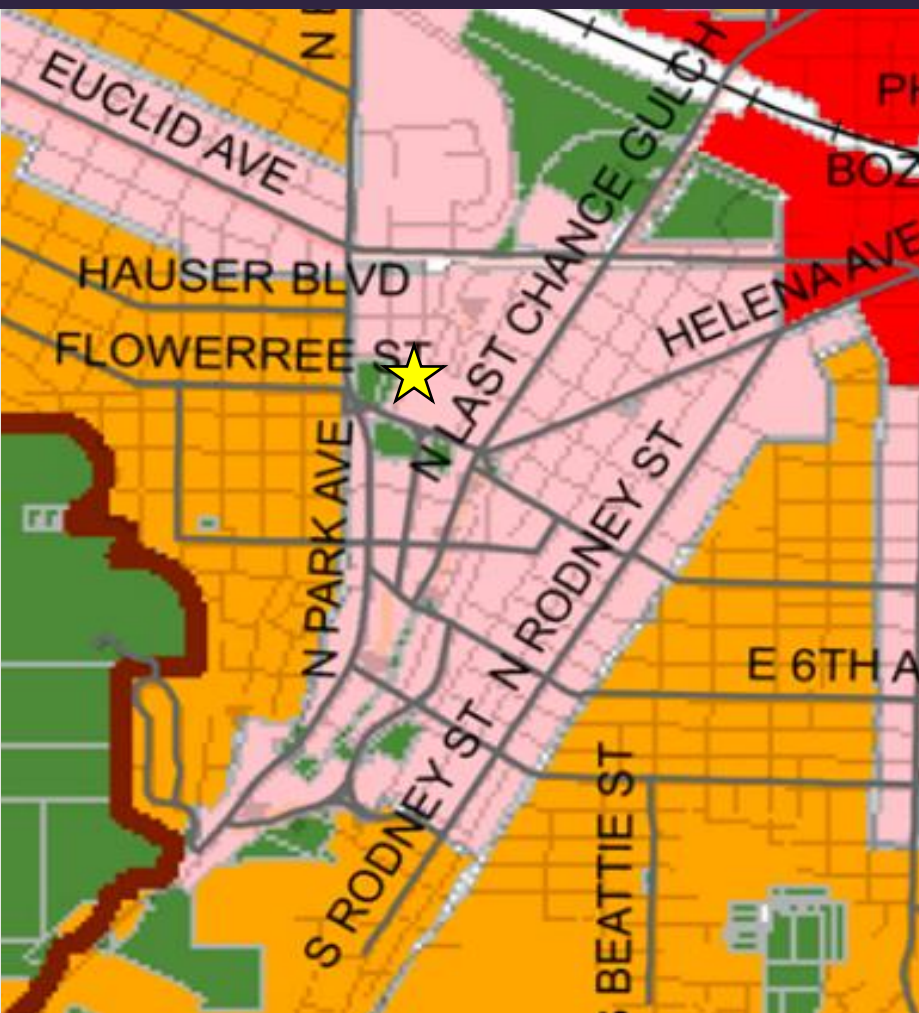
Views to the west and southwest (Kay McKenna Park, Scribner Memorial Tennis Courts)



SITE PHOTOS



Views to the south and east
(cellular tower and offices of
Stone Ranch Montana Wagyu to
the south, glimpse of the
Federal Reserve Bank to the
east)



Growth Policy Land Use Designations:

Red = Commercial Pink = Mixed Use
Green = Open Space Gold = Urban

Growth Policy Conformance

- **MCA Section 76-2-304 (1)(a) states that zoning regulations must be made in accordance with a growth policy**
- The 2019 Helena Growth Policy Land Use Chapter and Future Land Use map identifies the proposed rezone area and as mixed use along with adjacent properties (exception: municipally-owned parkland to west)
- *Mixed use: areas where “people can work, live, and play and learn,” typified by complementary uses, well-integrated uses, dense development, walkability*
- **DT and TR Districts both intended to “encourage the creation and preservation of mixed-use development opportunities, including a wide range of housing options serving a wide range of incomes and demographics …” in conformance with the 2019 Growth Policy**

MCA Criteria & Guidelines for Zoning Regulations

MCA Section 76-2-304(1)(b), Criteria and guidelines for zoning regulations:

- (1)** Zoning regulations must be **(b)** designed to:
 - (i)** secure safety from fire and other dangers;
 - (ii)** promote public health, public safety, and the general welfare; and
 - (iii)** facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

MCA Section 76-2-304(2)(a) thru (e) states:

- (2)** In the adoption of zoning regulations, the municipal governing body shall consider:
 - (a)** reasonable provision of adequate light and air;
 - (b)** the effect on motorized and non-motorized transportation systems;
 - (c)** promotion of compatible urban growth;
 - (d)** the character of the district and its peculiar suitability for particular uses; and
 - (e)** conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

MCA Criteria & Guidelines for Zoning Regulations (*Cont'd*)

- Property will continue to be served by municipal services, both infrastructure and emergency services
- Public health, safety, general welfare will continue to be promoted through dimensional limitations, design standards, and allowed uses in the district
- Chief differences between the TR and DT Districts are as follows:

	DOWNTOWN	TRANSITIONAL RESIDENTIAL
Building Height	22 ft. minimum No maximum height	22 ft. minimum 36 ft. maximum height
Residential Off-street Parking Allowance	Max 1 space/dwelling unit	Max 2 spaces/dwelling unit
Uses	<ul style="list-style-type: none">• Permits casinos with CUP• Medical marijuana dispensaries permitted• Bus terminals permitted	<ul style="list-style-type: none">• Casinos not permitted• Medical marijuana dispensaries not permitted• Bus terminals not permitted

MCA Criteria & Guidelines for Zoning Regulations (*Cont'd*)



Impact on transportation systems in vicinity anticipated to be less with TR District zoning due to overall lowered density potential from height limitations



Non-motorized modes of travel in surrounding area to remain well-served by existing facilities



Future redevelopment of the parcel is anticipated to be consistent with surrounding developments and promote compatible urban growth (near identical uses and design/dimensional standards)

Public Comment

- Legally noticed in Helena IR on April 25, 2021
- **As of Tuesday, May 11, 2021, one public comment has been submitted expressing support for the proposed zone change**
- Jeff Downhour, Mosaic Architects, stated the following:
 - 1) Slope and access issues → development impeded by ~30 ft. grade change and sole access from Getchell
 - 2) Neighborhood → Getchell predominantly residential, low-density
 - 3) Zoning → area is functionally more of a transitional area from GNTC to neighborhood
 - 4) Appropriateness → residential street is the “perfect edge condition” for downtown
 - 5) Viability → smaller scale of residential uses much more suited to the small, complicated site
 - 6) Encourage Downtown → Will be harder to redevelop site under DT for above reasons; need to encourage downtown housing to support the district

Conclusion

Staff concludes this proposal is consistent with the 2019 Helena Growth Policy and Montana zoning criteria

Recommendation

Move to recommend APPROVAL for the passage of an Ordinance amending the official zoning map for the City of Helena, for a zone change from DT (Downtown) District to TR (Transitional Residential) District for property addressed as 739 Getchell Street, Helena, Montana, with a legal description as described in Certificate of Survey number 3130567 found in Book M36, Page 7122.



QUESTIONS?