

MISSOULA COUNTY ZONING BOARD OF ADJUSTMENT MINUTES

October 18th, 2023 – 6:00 p.m. MST

Hybrid Meeting held in the Sophie Moiese Rm of the Missoula County Courthouse
and virtually over Microsoft Teams

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	APPLICANTS PRESENT
Ryan Schumacher Andy Mefford Babak Rastgoufard	Jonathan Haber Swarna Reddy	Zach Jones Tim Worley Karen Hughes Jennie Dixon Heather Powers Rachel Manning	Shane Lowman Keaton Lappin, Trichome Valley

Application materials, staff reports, written comment, and meeting video are available for review at Missoula County Planning, Development & Sustainability (PDS). An administrative fee is required for photocopies. Digital agendas and corresponding documents may be found on the main board page: [Zoning Board of Adjustment](#)

I. CALL TO ORDER

Mr. Rastgoufard, Chair, called the meeting to order at 6:03 p.m.

II. ROLL CALL

Ms. Manning called the roll. Three regular members were present.

III. APPROVAL OF MINUTES

Mr. Mefford moved and Mr. Schumacher seconded approval of the August 16, 2023, minutes, as written. The motion passed unanimously.

IV. PUBLIC COMMENT ON NON-AGENDA ITEMS

There was no public comment.

V. STAFF ANNOUNCEMENTS

Mr. Worley stated due to the holiday season and upcoming projects, the December meeting may occur on December 13, 2023, in lieu of the regularly scheduled meeting on December 20, 2023.

VI. PUBLIC HEARINGS

7890 Thornton Drive Special Exception and Variance Request

This is a Special Exception and Variance Request from Shane Lowman & Keaton Lappin, Trichome Valley.

Case Planner: Zach Jones, Planner I, Department of Planning, Development and Sustainability

STAFF PRESENTATION

Property Overview

Located near the Wye, off Hwy 10 W.

Variance Request from the landscaping requirements in Section 6.4 of the Missoula County Zoning Regulations

- No public comment received.
- North property line has a steep slope and no build zone.
- Meeting the landscaping and screening requirements would not accomplish goal of screening the use for the CC zone to the north.
- Property is the only one in the vicinity with such a steep slope.

Variance Criteria

1. The proposed variance will not amount to a change in the use of the property to a use that is not permitted in the zone.
 - The use of the property is currently high-intensity agriculture (cannabis cultivation).
 - The proposed variance will maintain the same use of the property.
2. Special conditions exist that are unique to the property, such as size, shape, topography, or location, which do not apply to other lands in the same zoning classification.
 - The property has a steep hillside on the northside of the property, created from site grading before the applicant owned the property.
3. Literal enforcement of the provisions of the regulations will result in unnecessary hardship that is not of the applicant's own making.
 - Meeting the landscaping and screening requirements for this zoning district would be impractical because of the steep slope which is a safety hazard.
 - The steep slope was created by previous property owners and not the applicants.
 - Meeting the requirements would not accomplish the goal of screening the property in the neighboring CC (Commercial Center) zone.
 - This property is the only one in the nearby vicinity with such a steep slope.
4. Granting the variance will be in harmony with the general purpose and intent of the regulations and the Missoula County Growth Policy and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - a. The location, character, and natural features of the property and surrounding properties.
 - Granting of this variance to remove landscaping requirements in the rear of the property is in harmony with the purpose of the ICL district and the unique site design considerations.
 - b. Non-economic situations which prevent the utilization of the property for the full range of uses allowed in the zone.
 - There are no identifiable situations that prevent the utilization of the property for the full range of uses allowed in the ICL Zoning District.
 - c. The use conforms generally to the objectives of the adopted comprehensive plan (growth policy) and to the purposes of the zoning regulations.

- The 2019 Land Use Element, an amendment to the 2016 Missoula County Growth Policy, recommends Industrial Center on this property. The proposed size of the greenhouse at 4,200 square feet is within the recommended intensity of 1,000 to 150,000 square feet, and is sited away from any streams, riparian corridors and wetlands, as recommended by the Land Use Element.
- d. The use meets the overall density, setback, height, and other requirements of the zone in which it is located.
- Staff reviewed the space and bulk requirements that apply.
- e. The use will not adversely affect nearby properties or their occupants.
- Surrounding properties include industrial properties and a gas station to the north.
 - None of the surrounding properties will be affected by the lesser landscaping allowed by the granting of this variance, due to the topography surrounding the proposed greenhouse location blocking visibility from the adjacent Commercial Center (CC) district.
- f. The availability of public utilities and services.
- The existing cannabis cultivation facility on the property is served by City of Missoula sewer and an existing well, this will not change with this project.
 - The applicants will apply to connect to city sewer for the proposed greenhouse. The existing well system will support the expansion of the proposed project.
5. The request for the variance is not based on monetary factors or potential economic gain.
- Granting the variance avoids disturbance of the steep slope.

Staff recommends approval of the requested variance based on the findings of fact and conclusions of law presented in the staff report, subject to one standard condition of approval:

All necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative prior to filing the record of zoning variance. These permits may include but are not limited to, building, electrical, mechanical, approach, and sanitation permits.

Special Exception – Expanding a use permitted by Special Exception

- ICL district allows for cannabis cultivation (considered high intensity agriculture use) if permitted by special exception.
- An expansion of the use requires a special exception.
- Multiple principal uses are allowed in ICL, there are future plans to develop an extraction facility, which would be allowed as a permitted manufacturing use.
- There are minimal anticipated impacts to traffic, or parking. The location is not accessible to the public.
- The proposed greenhouse will not require any changes to the right-of-way or street, though new street trees will be planted near Thornton Drive. There are currently no sidewalks on Thornton Drive.

- The proposed greenhouse will not create any lighting outside lighting impacts. Odor will be limited by using fans connected to carbon filters, and noise created by the fans will not exceed the allowed 70 decibels in the ICL district.

Special Exception Criteria

1. The proposed use or development will be compatible with and will not substantially injure the value of adjoining property.
 - The impacts from construction/installation of the proposed greenhouse are anticipated to include ground disturbance and installation of new facilities and landscaping.
 - Applicants will block light used in the greenhouse with a black out covering. Inline fans hooked to carbon filters will minimize odor, and the fans will not produce noise over the allowed 70 decibels in the ICL district.
2. The proposed use preserves the character of the district, and the property is suitable for the use proposed (e.g., can meet the bulk and dimensional standards without requiring a variance).
 - The application shows expansion of the cannabis cultivation use on the east side of the property by building a new greenhouse.
 - The proposed expansion will meet all required building setbacks, height, and lot coverage requirements of the zoning district.
3. The proposed use promotes the purpose and intent of the TIF special district, where applicable.
 - Not applicable.
4. Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.
 - The site landscaping plan meets the requirements of section 6.4 of the Missoula County Zoning Regulations, except for the screening requirements on the north side of the property, which the applicants have applied to receive a variance from.
 - The proposed project must meet the Cannabis-Related Uses design standards of Section 5.8.C of Missoula County Zoning.
5. Review Criteria Listed in Section 11.6.D.1.a-m of the Missoula County Zoning Regulations.
 - There are minimal impacts to traffic or parking.
 - The greenhouse will not require changes to right of way or streets.
 - No impacts to utilities and services are anticipated.
 - The proposed location will not hinder surrounding properties and has minimal anticipated impacts.
 - Recreation opportunities and natural resource protections are not an issue.
 - Pending approval of the variance, landscaping requirements for the north side of the property will be removed.
 - There will be no illuminated outside signage. Inside lighting will be compliant with approved DLC Horticultural lighting.
 - The greenhouse will not create any lighting outside lighting impacts. Odor will be limited by using fans connected to carbon filters, and noise created by the fans will not exceed the allowed 70 decibels in the ICL district.

Staff outlined the following agency comments:

Missoula City-County Health Department

"GIS data shows city sewer runs adjacent to the southeast corner of the property. In the submitted materials, the owner states, 'We will be applying to hook into city sewer for proposed building. The current building is already connected to city sewer. The well system that is existing will support the expansion of the proposed project.' As this property has an existing well and the project will be supported by city sewer, our office has no comment." - Kevin Howe, Environmental Health Specialist, SIT

Missoula County Air Quality Program:

"The Air Quality Program supports any reasonable measures taken to mitigate odor produced by agricultural practices. We support the use of inline fans with carbon filters to minimize odors." – Kerri Mueller, Air Quality Specialist

Staff Recommendations and Conditions

Staff recommends approval of the requested Special Exception, based on the findings of fact and conclusions of law presented in the staff report, subject to one standard condition of approval:

All necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative prior to filing the record of zoning variance. These permits may include but are not limited to, building, electrical, mechanical, approach, and sanitation permits.

Staff recommends approval of the requested variance based, on the findings of fact and conclusions of law presented in the staff report, subject to one condition of approval:

All necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative prior to filing the record of zoning variance. These permits may include but are not limited to, building, electrical, mechanical, approach, and sanitation permits.

BOARD DISCUSSION ON VARIANCE REQUEST

Mr. Mefford clarified that the special exception is part of the Wye 2 TEDD (Targeted Economic Development District), which is a new TIF (Tax Increment Financing) district. He stated that the TIF criteria might be applicable.

Mr. Worley stated he was unsure if it was within the boundaries.

Mr. Mefford stated he believed it needed to be addressed if it was within the boundaries. He had pulled up the information on his phone.

Mr. Jones asked if he could pull up the boundary information on the property information system.

Ms. Hughes stated the Wye 2 TEDD boundary information is posted on the Missoula County Voice page. It is a proposed project and would not be on the property information system. She stated Mr. Mefford was correct, if it is in the Wye 2 TEDD the criteria needed to be addressed.

Mr. Jones pulled up the information on the Missoula County Voice page.

Mr. Mefford stated Thornton Drive was in the proposed area for the Wye 2 TEDD.

Ms. Hughes stated the Wye 2 TEDD is expected to be adopted and in effect by the end of the year. She asked for the related criteria to be read again.

Mr. Rastgoufard read the related criterion: “where applicable how the proposed use addresses the purpose of the TIF special”.

While Ms. Hughes was reviewing information relative to the TIF criterion, Mr. Rastgoufard asked if the applicant wanted to add anything to the record or staff report for Board consideration.

The applicant declined.

Mr. Rastgoufard asked if the findings related to the TIF district was only for the special exception and not for the variance request.

Mr. Jones confirmed.

Mr. Rastgoufard stated the items needed to be voted on separately. He asked the Board if there were any comments on the landscaping variance request.

Mr. Mefford asked to better understand the bordering properties.

Mr. Jones brought up the property information system and described surrounding properties.

Mr. Schumacher asked to understand a specific piece of property.

Mr. Jones explained the area in question was split zoned with commercial center and industrial zoning.

Mr. Mefford confirmed the variance was to avoid landscaping the steep area to the north.

Mr. Jones confirmed stating the zoning code would have triggered the screening landscaping because of the adjacent commercial center district to the north.

Mr. Mefford clarified on the expansion and asked for a more in-depth explanation about compliance.

Mr. Jones confirmed stating several properties in that area currently don't meet the zoning landscaping standards because they existed before the zoning adoption in 2022.

Mr. Mefford stated he supported the variance.

Mr. Schumacher echoed the support.

Board Motion:

I move to approve the Variance Request to deviate from section 6.4.C.3 of the Missoula County Zoning Regulations, as presented in the proposed application, subject to the recommended condition as presented.

MOTION: Mr. Mefford moved, and Mr. Schumacher seconded the Variance.

Motion passed unanimously by voice vote.

BOARD DISCUSSION ON SPECIAL EXCEPTION

Regarding amending the finding for #3, which states, the proposed use promotes the purpose and intent of the TIF district, Ms. Hughes stated the findings should indicate that the current use that is proposed for expansion is for an existing use, it provides raw materials that could be used in secondary value-added industry. In addition, the applicant had stated an intent to add processing, which would be considered secondary value-added processing. She stated the proposal is consistent with the proposed targeted economic development district.

Mr. Worley stated it seemed consistent with that criterion and if approved it would be captured in the approval letter.

Mr. Rastgoufard stated he supported the Special Exception request.

Board Motion:

I move to approve the Special Exception Request to allow expansion of the High-Intensity Agriculture Use, permitted by Special Exception per section 2.4, Table 5 of the Missoula County Zoning Regulations, as presented in the proposed application, subject to the recommended condition as presented.

MOTION:

Mr. Schumacher moved & Mr. Mefford seconded the Special Exception.

Motion passed unanimously by voice vote.

VII. COMMUNICATIONS & SPECIAL PRESENTATIONS

There were no communications or special presentations.

VIII. COMMITTEE REPORTS

There were no committee reports.

IX. OLD BUSINESS

There was no old business.

X. NEW BUSINESS

There was no new business.

XI. COMMENTS FROM BOARD MEMBERS

Ms. Hughes thanked Mr. Mefford for paying close attention and catching the error in the staff report.

Mr. Rastgoufard thanked Ms. Hughes for reviewing the proposed Wye 2 TEDD and aiding with the information.

XII. ADJOURNMENT

The meeting adjourned at 6:45 p.m.

*Respectfully submitted,
Rachel Manning, Administrative Assistant, PDS
Please send any document requests to pds@missoulacounty.us*