

PLANNING BOARD RECOMMENDATION
JENNY AND MICHAEL MUIRHEAD
Application for a Design Review and Conditional Use Permit
Staff Report RLDR-16-1
Staff Report RLCU-16-1
January 13, 2015

Applicant:

Jenny and Michael Muirhead
PO Box 886
Red Lodge, MT 59068

Date of application:

December 11, 2015

Property description:

The property is located on the Northeast corner of the intersection of Broadway Avenue and 8th Street and is zoned C-1 Central Business Transition Zoning District. The property may be described as: Red Lodge Original Plat Lots 7 and 8, Block 51, Section 27, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

Property size:

6,250 Square Feet

Applying for:

- Conditional Use Permit – Secondary/On-site Alcohol of Beer/Wine consumption for a Restaurant.
- Design Review – for a “seasonal” tent enclosure

The decision maker on the request is the Red Lodge Planning Board and Zoning Commission for the Conditional Use and Design Review component.

Notice provided:

Per the City of Red Lodge Zoning Regulations 4.9.50 and 4.9.60 Landowner Procedures for Public Notice: Red Lodge Building and Development Permit Types and Application Process, notification was given at least (15) fifteen days prior to hearings via:

- First Class mail to all property owners of adjoining lots;
- Published in the Carbon County News;
- Posted in City Hall, Carnegie Library and the Post Office.
- The application was made available at City Hall for public review on December 23, 2015.

Schedule/procedure:

Public Hearings are scheduled for:

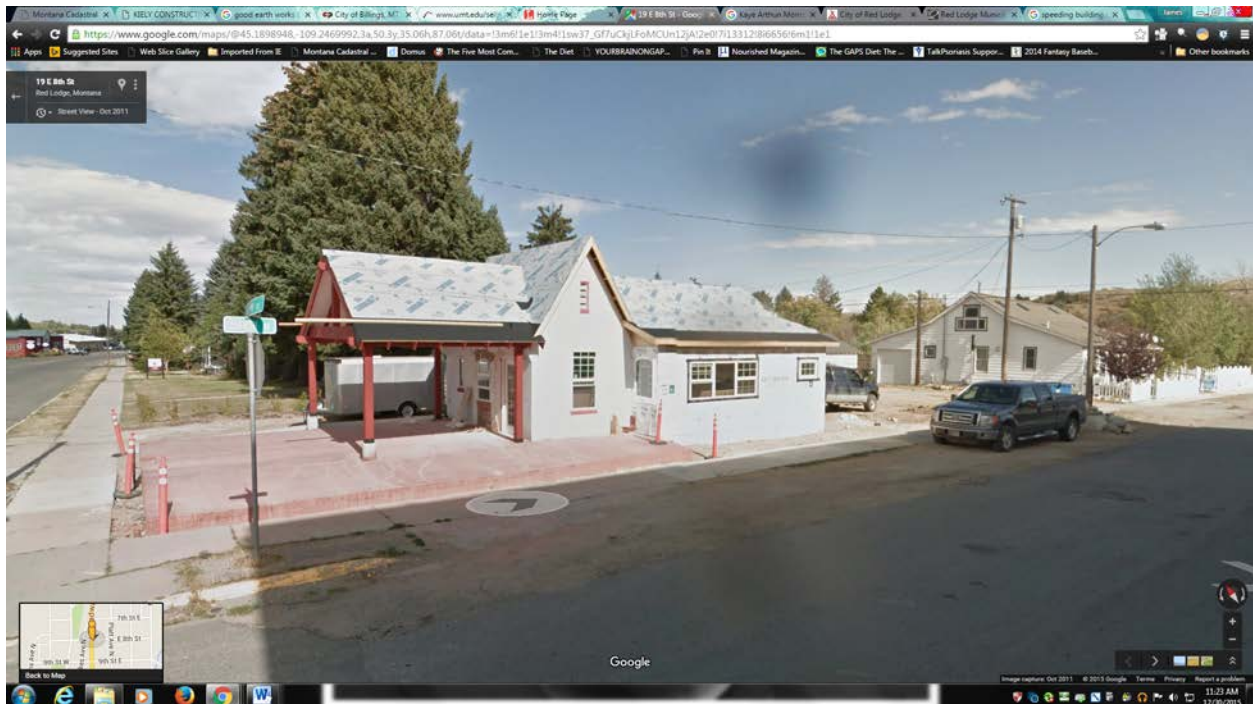
The Planning Board/ Zoning Commission Meeting is scheduled for Wednesday January 13, at 5:30 pm

Summary of Project

Michael and Jenny Muirhead are proposing Secondary/On-site Alcohol of Beer/Wine consumption in the C-1 District (Central Business Transition Zoning and a canvas/vinyl “seasonal” tent enclosure of approximately ~198 square feet under their existing awning to expand their seating for the winter months. Their existing business, Mas Tacos, is located at 304 North Broadway Avenue.

The project will need approval by the Planning Board on the following Zoning Issues:

- Conditional Use Permit – Secondary/On-site Alcohol of Beer/Wine consumption for a Restaurant.
- Design Review in the Red Lodge Commercial Historic District Overlay.

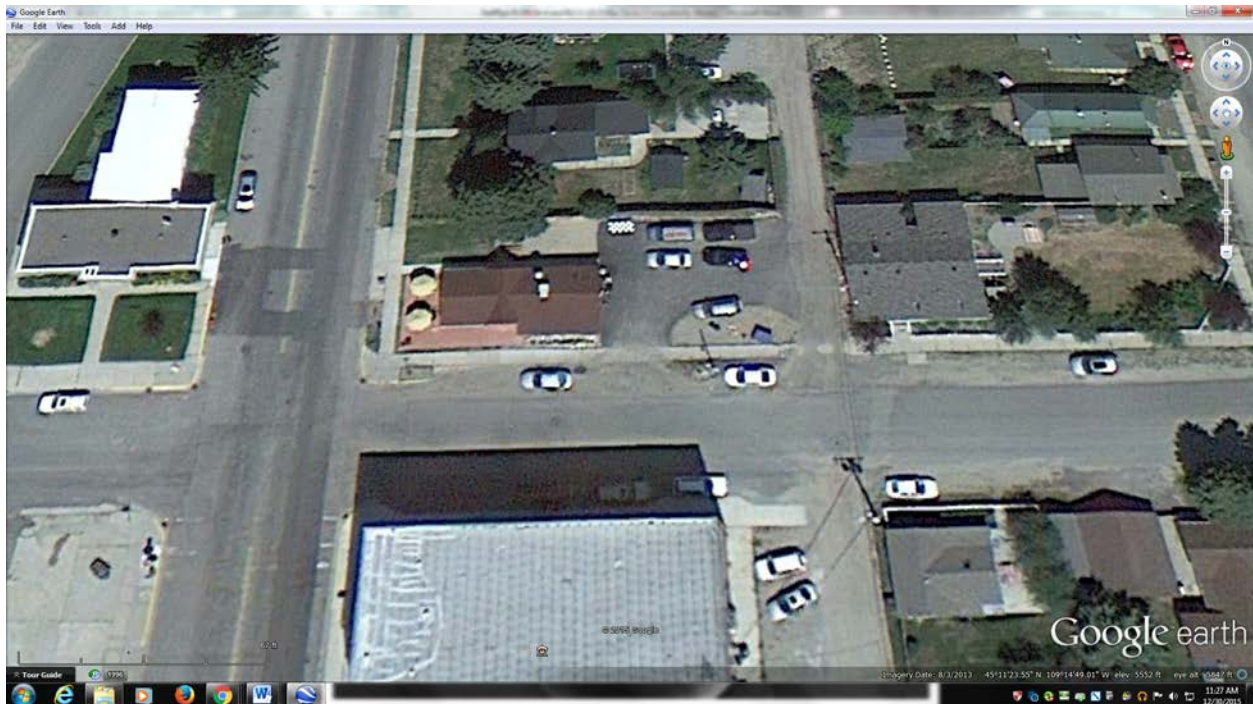


Growth Policy

The proposed development appears to be consistent with the Red Lodge Growth Policy. Specifically, the expansion project is consistent with the goals and policy statement of the Central Business Transition sections of the 2015, Growth Policy.

Zoning:

As provided for in the Red Lodge Zoning Ordinance: *“The purpose and intent of the C-1 Zoning District is to permit a mix of commercial and residential uses while maintaining a residential character. This district provides a buffer between the central business district and residential areas and is intended to minimize conflicts between commercial and residential neighborhoods. The C-1 District promotes the continued occupancy and rehabilitation of existing structures by allowing residential structures to be converted to low intensity commercial uses such as professional offices and art galleries.”*



Design Review Criteria: Standards of General Applicability (Chapter 4.5)

Section 20 Hillside Developments: The site is flat with slopes less than 8%. As such this Section of the Code is not applicable.

Section 30 Environmental Regulations:

Sub-Section:

31 Wet Lands. The property is not mapped as having regulated wetlands.

32 Water Quality. Proposed changes will not impact water quality.

33 Air Quality: The Red Lodge Zoning Regulations requires the use of asphalt or concrete for all parking and driving surfaces. There are no changes proposed, all roads have been built and all driveways/parking areas are paved. The application, as submitted, complies with this requirement.

34 Subsidence: The area is not in an area mapped as having the potential for mine subsidence.

35 Rock Creek, Floodplain: The property is not located in the Rock Creek Corridor and the Floodplain Map No. 30009C0692D does not indicate floodplain on the subject property.

Section 40 Parking and Loading Standards:

Off-street parking is required in the C-1 District. There is no proposed change to the existing parking lot.

43 The amount of the current off-street parking spaces are sufficient for the existing indoor seating. However, the amount of off-street parking does not

comply with the zoning code (1 space / 3 seats) when the existing outdoor seating is considered.

49 Bicycle parking standards are currently being met.

Section 50 Intersection Visibility:

Sub-Section:

53 A clear vision triangle is required at any approach. The clear vision triangle shall be based on a 25 mile per hour speed limit. This standard is being met.

Section 60 Landscaping:

The C-1 Zoning District requires landscaping and strives to maintain a residential appearance. The property currently lacks trees and shrubs/ornamental grasses. It is recommended that shrubs/ornamental grasses be added to along the periphery of the patio and at least one tree be added along the northwest portion of the property to soften visual and noise impacts associated with the intensity of this commercial use.

Section 70 Lighting.

Sub-Section:

76 There is no new lighting associated with the development, however lighting requirements must be met if the development adds lighting in the future.

Any future lighting additions or modifications shall comply with Red Lodge Zoning Regulations as amended.

Section 80 Infrastructure.

All infrastructure is installed and there are no proposed increases of usage.

Sub-Section:

83 The project is currently served by public water and wastewater systems.

84 All private utilities are currently installed.

85 The property will continue to use its existing approaches from 8th Street.

86 All sidewalks are currently installed and will remain unchanged throughout the development process.

87 No public improvements or public infrastructure is required for the development.

Section 90 Storm Water Management.

Sub-Section:

95 The property has been served by the municipal storm water collection system and will continue to do so.

Section 100 Operational Performance Standards.

Sub-Section:

Air quality, combustibles and explosives, hazardous material storage, odors and gasses and noise levels are not issues that have occurred in the past at Mas Tacos. All applicable city codes will be enforced if non-compliance were to become an issue.

B. Other City Codes:

4.3.104 Specific District Standards

The following standards shall apply to development in the C-1 Zoning District:

B. Screening

Service areas associated with non-residential uses, such as dumpsters, and parking lots larger than four (4) parking spaces shall be screened from adjoining residential uses with a solid wood fence or vegetation at least six (6) feet in height.

There are currently two dumpsters on the property and neither is screened with fencing or other screening material. A six (6) foot fence should be required to encompass all four sides of the dumpsters. The owner/applicant shall coordinate with Republic Services to ensure a gate is placed on the enclosure in a position that ensures adequate access for trash removal.

1. Minimum Front Yard Setback 20 Feet. The minimum front yard setback for properties in the C-1 is 20 feet.

Analysis: The existing awning is a permanent addition to the building while the “seasonal” tent enclosure being proposed is temporary. The C-1 District requires that all structures meet a minimum 20-foot front yard setback in keeping with the appearance of a ‘residential district.’ The district regulations are currently not being met in this regard, but a temporary structure *may* be interpreted as not adding to the nonconformity.

2. Exterior Materials. The lower half of tent enclosure is proposed to be a reddish (rust colored) canvas that match the current colors of the building. The upper half of the tent enclosure is proposed to be clear vinyl.

Table 4.3.103 Dimensional Standards C-1	
Lot Standards	
Lot Area, min. square feet	NA
Lot Frontage, min. feet	NA
Minimum Setbacks (feet)	
Front	20
Side	6
Rear	10
Building Standards	
Building Height	30

Analysis: The proposed exterior materials are temporary in nature. Should the PB determine that the appearance lacks adequate residential character, this permit could be conditioned to require that the tent enclosure have window designs or architectural elements that appear more residential in nature.

3. Entry Door. The proposed tent enclosure would need two places of entry per Fire and Building Code. The doors must be clearly marked per the Fire Department, be of a “permanent nature” and have framed doors.

Analysis: The proposal does not clearly identify the materials of doors or framing of the doors. Conditions of Approval, Fire Code and Building Code will ensure codes are adhered to. (e.g. zippered / hoop & loop doorways not acceptable).

Section 4.6 Outdoor Advertising:

No new outdoor advertising is being requested for the development.

Standards For Specific Uses:

The following criteria must be addressed for all conditional uses (Section 4.4.10 Red Lodge Zoning Regulations):

This section addresses all Conditional Use requests associated with this project.

A. Consistent with Growth Policy. The conditional use is consistent with the policies, goals, objectives and strategies of the Red Lodge Growth Policy.

Findings:

- The 2015 Red Lodge Growth Policy contemplates the facilitation of the transition between the Central Business District and residential districts primarily through conversion of existing residential structures where such uses will not generate nuisances affecting adjoining homes, or result in the gradual deterioration of the neighborhood due to land use conflict.
- The Growth Policy discourages sprawl and several Policy statements and Goals encourage limited mixing of compatible uses and infill development provided that the existing residential development is protected.
- The buffer zones are intended to minimize conflicts between businesses and homes as the uses transition from residential to commercial. This is done by permitting the conversion of existing residences to low-intensity commercial uses, such as professional offices and art galleries.

Conclusion:

- ✓ The Growth Policy provides clear and definitive guidance as to the acceptability of commercial development at this location. This project, as recommended with an enhanced residential enclosure design, added landscaping and additional fencing, should provide an appearance more conjunction with a residential appearance.
- ✓ During the creation of the Zoning Regulations, discussion and debate about “acceptable” use regimens in the various zoning districts were conducted by the Planning Board and City Council. Staff concludes that the discussions regarding Secondary/On-Site Alcohol of Beer/Wine Consumption for a Restaurant during the of the creation of the 2014 Zoning Regulations meets

this review criteria. The adopted use regimens as well as the permit processes to evaluate certain uses are supported by the Growth Policy.

- ✓ The subject property is clearly located within a long standing commercial district and commercial development has occurred on the property for many years.
- ✓ All construction on the property shall be governed by the development application as modified by the Conditions imposed by the Planning Board Table 4.3.103 (Dimensional Standards C-1).
- ✓ Subject to the above noted modifications to be addressed via conditions of approval, the proposal to add a temporary tent enclosure on the subject property meets the requirements of this review criterion.

B. Compatibility. The Conditional Use is compatible with the character of the immediate vicinity including the bulk, scale, and general appearance of the neighboring buildings and uses; subject to the noted modifications to be addressed via the conditions of approval.

Findings:

- The surrounding land uses to the subject property are:
North: Commercial and Residential; C-1.
South: Commercial; C-4.
East: Residential; R-3.
West: Commercial; C-4.
- The nearest platted single family residential lot lies directly to the north of the property. The proposed tent enclosure and Secondary Use of Alcohol will not be closer than the existing patio used for outdoor seating.
- The proposed structure is to be used as part of a one story commercial property which consists of the temporary, or more specifically seasonal, expansion of the building.
- The scale of the building is consistent with other commercial development, however the proposed tent enclosure is not a design element used on other commercial businesses in the area.

Conclusion:

- ✓ The proposal for the tent enclosure at the site may meet the requirements of this review criterion. A seasonal tent enclosure can be viewed as compatible with surrounding land uses while encroaching within setbacks. Secondary Use of Alcohol does meet the requirements of this review criterion.

C. Minimizes Adverse Impact. The design, development, and operation of the Conditional Use minimizes and mitigates adverse effects, including visual impact of the proposed use on adjacent lands.

Findings:

- The proposal is to have a ~198 square foot seasonal tent enclosure while not changing the use of the property. The building is smaller than in comparison to other nearby commercial and residential properties.

- The property was zoned C-1 by the City to allow low impact commercial development and to enhance our Central Business Transition District by prohibiting typical strip mall types of development.
- Increased landscaping will bring the development into compliance of Section 4.5.64. Screening of the dumpsters will bring the development into compliance of Section 4.3.104 B.

Conclusion:

- ✓ The proposal does not change the use of the property and it would be comparable in size and consistent with other development in the C-1 zoning district.
- ✓ The proposal avoids typical strip mall development which is a main pillar of C-1 zoning.
- ✓ The proposal through Landscaping and Screening can mitigate surrounding impacts on the property which has a long history as a commercial property.

D. Minimized Adverse Environmental Impact. The development and operation of the proposed Conditional Use minimizes adverse environmental impacts. Environmental resources to be assessed included, but are not limited to, wetlands, riparian areas, steep slopes, mature vegetation and the floodplain.

Findings:

The subject property and proposed conditional uses are not located in areas of the City of Red Lodge with identified wetlands, riparian areas, mature vegetation, steep slopes or within the 100 year floodplain.

Conclusion:

- The subject property and proposed conditional uses are not located in areas of the City of Red Lodge with identified wetlands, riparian areas, mature vegetation, steep slopes or regulated floodplain.

E. Impact of Public Facilities and Services. The Conditional Use does not have a significant adverse impact on public facilities and services, including transportation systems, potable water and wastewater facilities, storm drainage, solid waste and recycling, parks, trails, sidewalks, schools, police, fire, and emergency medical.

Findings:

- The uses immediately adjacent to the subject property have a long history of commercial and residential uses.
- The property is located along routes that are currently part of routine patrolling by the Police and Fire Departments. As such, the development of the property will not have an adverse impact on these services.
- The necessary public services discussed in this review criterion either exist/are available on/to the property or can be readily extended to serve the proposed use.

Conclusion:

- ✓ The ~198 square foot tent enclosure and Secondary Use of Alcohol will not adversely affect this review criterion.

- F. **Hazard, Nuisance.** The proposed Conditional Use will not create a hazard to persons or property nor will it create a nuisance arising from, but not limited to: traffic, noise, smoke, odors, dust, vibration or illumination. The necessary public services discussed in this review criterion either exist/are available on/to the property or can be readily extended to serve the proposed use.

Findings:

The proposal for a tent enclosure and Secondary Use of Alcohol should not generate dust, fumes, smoke or odors detectible to the normal senses at the property line. Alcohol consumption can impact noise levels, but can be mitigated by landscaping.

- The hours of operation are anticipated be typical of a restaurant and is not expected to expand beyond current hours of operation.
- Traffic impacts are currently moderate, but due to a location on Highway 212 do not appear to impact neighboring properties significantly.

Conclusion:

- ✓ The seasonal tent enclosure and Secondary Use of Alcohol is not expected to create Hazard or Nuisance issues beyond what has appeared to be a generally accepted level for the site.

- G. **Other Codes.** The Conditional use complies with all applicable City codes and ordinances.

Findings:

- The proposed tent enclosure and Secondary Use of Alcohol are subject to regulation under various City and State permits. These items include but are not limited to: State of Montana Alcohol Regulations, Building Permits, Fire Inspection and Fire Permitting. If approved, the applicant would be required to obtain the necessary permits, inspections and licenses from the various County, State and Federal agencies regulating the activity.

Conclusion:

- ✓ The developer must satisfactorily meet all development requirements.

- H. **Run with the Land.** An approved CUP shall run with the land and may be transferred to another owner.

Findings:

- Once approved, conditional use permits run with the land, but are subject to the terms and conditions imposed by the permit issuing authority as well as the limitations contained in the development application.
- The C-1 Zoning District is a Commercial Zoning District that provides for a moderate variety of Commercial development. Should the developer desire to convert all or a portion of the structure to a use that is not permitted by the C-1 Regulations, additional zoning approvals would be required.

Conclusion:

- ✓ One of the main objectives of the 2014 zoning ordinance was to insure the transferability of variances and conditional use permits.

- ✓ Staff does not feel that there should be a need to impose a review on the transfer of the permits to a third party.
- ✓ The seasonal tent enclosure and Secondary Use of Alcohol at this location subject to the imposition of conditions to mitigate impacts meets the requirements of this review criterion.

I. Expiration, Discontinuance or Abandonment. An approved CUP shall expire on the one (1) year anniversary date of approval if the permit is not put to use, unless an alternative timeline is established in the development approval. If a Conditional Use is operationally discontinued or abandoned for a period of more than twelve (12) consecutive months, regardless of the removal or non-removal of furniture/equipment or any intention to resume such activity in the future, the Conditional use may not be reestablished or resumed. Any subsequent use of the site shall conform to this Ordinance.

Findings:

- This is standard language of the 2014 Zoning Regulations.

Conclusion:

- ✓ This standard should be place on each and every conditional use permit issued by the City of Red Lodge.
- ✓ The seasonal tent enclosure and Secondary Use of Alcohol at this location subject to the imposition of conditions to mitigate impacts meets the requirements of this review criterion.

Carbon County Historic Preservation

The project would not impact the historical integrity of the site according to the Carbon County Historical Society. They do however feel that a wooden fence along the patio has more residential character than the proposed pipe rail fence.

Design of the Structure:

The materials and look of the tent enclosure is not similar to those associated with the existing pattern of development in the C-1, but is not intended to be a permanent structure. The development of the property is subject to the limitations imposed by Table 4.3.103 of the 2014 Red Lodge Zoning regulations. The design of the structure with conditions warrants approval.

Conditional Use Permits:

The proposed Secondary Use of On-Site Alcohol for Beer and Wine are consistent with the Red Lodge Growth Policy. The Conditional Use proposed on the property subject to the imposition of conditions to mitigate the operational impacts of Secondary Use of On-Site Alcohol for Beer and Wine can be determined to comply with the Red Lodge Zoning Regulations. As such, the requested Conditional Use Permits warrant approval.

Suggested form of motion:

- A. I move to adopt Staff Report RLDR-16-1 and RLCU-16-1 as findings of fact.
- B. I move to approve the Design Review Permit for Red Lodge Original Plat Lots 7 and 8, Block 51, Section 27, Township 7 South, Range 20 East, P.M.M., Carbon

County, Montana, from the dates of _____ to _____ of every year subject to the following conditions:

C. I move to recommend approval of the following Conditional Use Permit:

- o To allow Secondary Use of On-Site Alcohol for Beer and Wine at 304 North Broadway Avenue (Mas Tacos) subject to the following conditions:

The property owned by Whitebark Holdings LLC (Mas Tacos) may be described as Red Lodge Original Plat Lots 7 and 8, Block 51, Section 27, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana, subject to the following conditions:

1. That the use, operation and development of the property be in accordance with the plans, specifications and documents submitted for review except as modified by these conditions.
2. That the developer shall obtain a building permit from the City of Red Lodge and comply with all requirements including obtaining a certificate of occupancy prior to opening or conducting any of the activities discussed in the application.
 - That the developer shall submit the building plans and use specifications to the Red Lodge Fire Department for review and approval at the time the application for a building permit is submitted. Any and all issues identified by the Fire Department, including any egress issues, shall be resolved prior to the use and occupancy of the structure. Both doors for the tent enclosure shall be of a “permanent style” and hard framed (e.g. zippered / hoop & loop doorways not acceptable).
3. All construction on the property shall be governed by Table 4.3.103 (Dimensional Standards C-1).
4. That any future lighting additions or modifications associated with the project shall comply with Red Lodge Zoning Regulations as amended.
5. That if any additional private utilities are necessary, they shall be extended underground.
6. That the storage of hazardous materials beyond what is typical and in accordance with building and fire codes at a restaurant is prohibited.
7. That the developer shall install a minimum of one (1) understory trees. The required tree(s) shall meet the requirements of Section 4.5.64.
8. A vegetation plan shall be submitted to the Zoning Administrator prior to installation for approval that complies with Section 4.5.60.
9. Should the developer desire to convert all or a portion of the structure to a use that is not permitted by the C-1 Regulations, additional zoning approvals shall be required.

10. That the solid waste receptacles remain at their current location within the subject property. Further, the waste receptacle shall be screened with fencing that is six (6) feet in height with a gate opening that is approved by Republic Waste.
11. That unless specifically exempted by the Red Lodge Zoning Regulations §4.5.106, all noise measured at the property line generated by the use of the property shall be limited to 60 dBA from 10:00 p.m. to 6:00 a.m. and 70 dBA at other hours.
12. That the approved Conditional Use Permit shall expire on the one (1) year anniversary date of approval if the permit is not put to use, unless an alternative timeline is established in the development approval. If a Conditional Use is operationally discontinued or abandoned for a period of more than twelve (12) consecutive months, regardless of the removal or non-removal of furniture /equipment or any intention to resume such activity in the future, the Conditional use may not be reestablished or resumed.

Documents Referenced and Available for Review in the Planning Office

Red Lodge Zoning Regulations, 2014
Red Lodge Growth Policy, 2015
Development Application, Muirhead.