

**Red Lodge-Commercial Development  
Conditional Use Permit Application  
Staff Report RLCU-23-02**

DATE: January 5, 2024  
TO: Red Lodge Planning Board  
Al Bloomer, Chair  
FROM: Cody Marxer, Great West Engineering, Contract Planner  
RE: Boggios Brew Coffee & More

Project Files: CU 2023-02

OWNER / APPLICANT:	AUTHORIZED REPRESENTATIVE:
Fred Brewer	Kristin Marshall
3 Bridal Path Drive	PO Box 1643
Park City, MT 59063	Red Lodge, MT 59068

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<b>PLANNING BOARD HEARING:</b>	<b>January 10, 2024</b>
<b>CITY COUNCIL HEARING:</b>	<b>Not Applicable</b>

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**Property Description:**

The property is described as RED LODGE NORTH ANNEXATION, S22, T07 S, R20 E, RL '84 ANNEX TR 1-A-2 COS 1285 4<sup>TH</sup> AM LESS HWY ROW. The general location of the property is on the west side of Broadway Avenue North/US Highway 212, south of Robinson Lane and Ronning Auto. Located in the Community Entrance Zoning District 3 (C-3-N), the property is currently developed with a small existing structure adjacent to Broadway Avenue North/US Highway 212, which is proposed to house the coffee kiosk, and other unassociated structures.

**Property Size:**

~105,182 Square Feet (~2.47 acres)

**Notice Provided:**

Per the City of Red Lodge 2022 Zoning Regulations, notification was given at least (15) fifteen days prior to the public hearing via:

- Published in the December 28, 2023, edition of the Carbon County News
- Adjacent landowners received public notice via USPS

**Executive Summary of Project**

The applicant is proposing to re-establish a drive-through coffee kiosk at 1125 Broadway Avenue North. The proposal qualifies for a Conditional Use Permit as a drive-through facility in the C-3-N District. Design Review is not required per 4.3.124(I) of the City of Red Lodge Zoning Regulations, as the kiosk will be developed in an existing structure with no proposed increase to the gross floor area. The project location and structure were previously utilized as a drive-through coffee business. Proposed improvements include structure façade, landscaping, and traffic pattern/flow and paving.

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

1. Conditional Use in the C-3-N Zoning District for drive-through facilities.

**Request:**

- A. To allow for the re-establishment of a drive-through coffee kiosk within the Red Lodge Commercial Entrance (C-3-N) Zoning District.

**Suggested Form of Motion:**

- A. I move to adopt/deny the Staff Report RLCU 23-02 as findings of fact.
- B. I move to approve/deny the Conditional Use Permit for the property legally described as RED LODGE NORTH ANNEXATION, S22, T07 S, R20 E, RL '84 ANNEX TR 1-A-2 COS 1285 4<sup>TH</sup> AM LESS HWY ROW subject to the following conditions:

\*If motion is to deny, list reasons for denial.

**Conditions of Approval:**

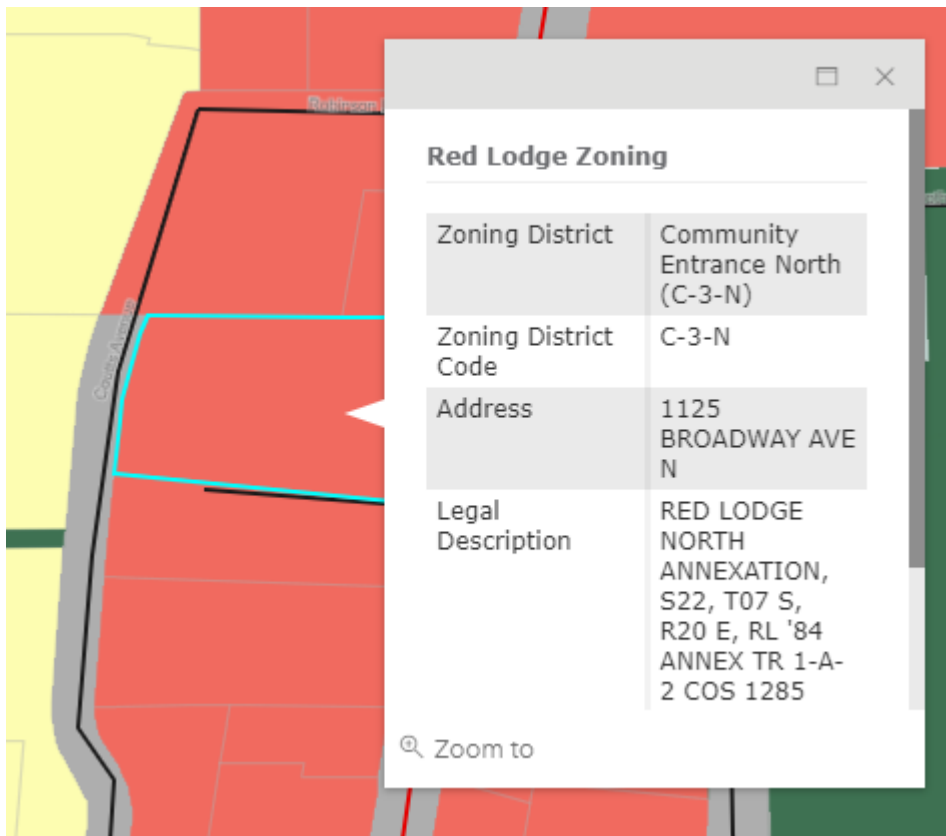
1. The use, operation, and improvements of the property must be in accordance with the plans, specifications, and documents submitted for review, except as modified by these conditions.
2. The applicant shall obtain a building permit from the City of Red Lodge for improvements and comply with any/all requirements including obtaining a certificate of occupancy prior to opening or conducting any of the activities discussed in the application.
3. The applicant shall submit the improvement 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 shall be resolved prior to the use and occupancy of the structure.
4. Improvements to the structure and business area should be limited to those identified within the application.

5. If artifacts are uncovered at any point during improvements, the Carbon County Historic Preservation Officer is to be contacted immediately.
6. Staff parking and a loading/unloading area should be designated and located on the side or rear of the principal structure and are prohibited between the structure and the highway.
7. All additions, modifications, or replacements of more than 20% of existing outdoor lighting fixtures shall meet the requirement of RLZR 4.5.70.
8. A Sign Permit shall be obtained by the City of Red Lodge, prior to the installation or modification of any outdoor advertising associated with the proposed conditional use.
9. If any additional private utilities are necessary, they shall be extended underground and in accordance with City of Red Lodge building codes and ordinances.
10. Service areas, such as dumpsters and parking lots larger than four (4) parking spaces, shall be screened from adjoining rights-of-way and uses. Screening shall include an opaque wall and/or fence at least six (6) feet in height, along with vegetation.
11. Any trash containers shall be screened from view.
12. Unless specifically exempted by the Red Lodge Zoning Regulations §4.5.105, all noise measured at the property line generated by the use of the property shall be limited to 70 dBA from 12:00 a.m. to 7:00 a.m. and 80 dBA at other hours.
13. 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 review process. 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.
14. The Conditional Use Permit may be transferred to another party or user without prior express written consent of the City of Red Lodge, provided that the conditions of this approval are binding upon all heirs, successors, or assigns and is of similar use.

**Adjacent Zoning/Land Uses:**

	ZONING	LAND USE
<b>NORTH</b>	C-3-N	Healthcare, Commercial
<b>SOUTH</b>	C-3-N	Commercial, Residential
<b>EAST</b>	P-1 and C-3-N	Commercial, City lot
<b>WEST</b>	R-2	Residential, Wooded lot

**Red Lodge Zoning District Map:**



**Site Characteristics**

The site is located adjacent to US Highway 212 and is commercial in nature and is currently developed with a small existing structure, proposed to house the coffee kiosk, and other unassociated structures. Surrounding uses to the north, east and south are primarily commercially developed. The site is generally flat with no water or riparian areas contained within the property boundaries.

**Site Area Aerial Photos and Street View Imagery**





**BACKGROUND / PROJECT DESCRIPTION:**

The site is currently developed with an unoperated coffee kiosk structure, and formerly functioned as a drive-through coffee facility/business. The proposal is to operate a drive-through coffee kiosk business, Boggios Brew, within the existing structure with no proposed increase to the gross floor area or square footage. Proposed improvements include structure façade, landscaping, and traffic pattern/flow and paving.

**PROCESS:**

A CUP application shall be processed pursuant to Title 12 - Development, Chapter 4 – Zoning, Articles 4 and 5 - Standards for Specific Uses / Standards of General Applicability, of the Red Lodge Municipal Code, which establishes standards and required findings of fact. The purpose of the CUP is to allow uses that may be suitable in some, but not all, locations within a specific zone district in which they are conditionally allowed or require special consideration because of unusual operational or physical characteristics or must be designed and developed with conditions to otherwise ensure compatibility.

The CUP may be granted only for a use listed as a “conditional use” in the City Municipal Code for the specific zone district in question; and only after the Planning Board/Zoning Commission has made affirmative findings of fact for the conditional use along with confirmation that the CUP complies with all standards of general applicability, as well.

**PUBLIC / REFERRAL AGENCY COMMENTS:**

**A. Public Comments:**

As of January 4, 2024, no public comments have been received.

**B. Building Division**

The Red Lodge Building Inspector will need to review improvement plans to ensure that the structure complies with International Building Codes and to issue building permits.

**C. Fire Protection**

The City of Red Lodge Fire Department will need to review improvement plans to ensure that the structure complies with Fire Codes.

**D. Police Services**

The Red Lodge Police Department provides police protection to the property; no comment received as of January 4, 2024.

**E. Water / Sanitation**

The site is served by the City of Red Lodge. Water and sanitary sewer systems at the property are adequate and should be minimally impacted.

#### **F. Utilities**

NorthWestern Energy provides Gas and Electric service to this site.

#### **G. Historic Preservation**

No comment received as of January 4, 2024.

#### **Run with the Land – 4.4.13**

*“An approved CUP shall run with the land and may be transferred to another owner.”*

Once approved, a CUP runs with the land, and is subject to the terms and conditions imposed by the permit issuing authority as well as any condition attached to the approval. Staff does not feel that there is an ability to impose a further review on the transfer of the permits to a third party.

#### **Expiration, Discontinuance or Abandonment --- 4.4.14**

*“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.”*

#### **STAFF ANALYSIS: CU 2023-02**

As required by the City Zoning Regulations for Conditional Use Permits; the Standards for Specific Uses Section (4.4.0) shall apply.

#### **A. Consistent with the Red Lodge 2020 Growth Policy**

*“The conditional use is consistent with the policies, goals, objectives and strategies of the Growth Policy.”*

#### **Findings:**

- The subject property is not located within a recognized Historic District.
- This site is not identified in the Active Transportation Plan for future trail connectivity.
- This proposal serves to revitalize an existing structure and type of business.

#### **Conclusion:**

- ✓ The subject property is located within a long-standing commercial area and where commercial development has been contemplated.
- ✓ The proposal is consistent with the goals of the Growth Policy.

#### **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.”*



Findings:

- The area has a mixed use of commercial and residential properties.
- No structural changes to the existing structure are proposed, although façade changes are proposed.
- Special planning to accommodate a drive-through facility/business, in accordance with Montana Department of Transportation (MDT) requirements, has been included in the application.

Conclusion:

- ✓ The proposed color and materials of the structure are consistent with other commercial and residential properties in the vicinity.
- ✓ The proposal is to re-establish the operation of a drive-through coffee kiosk facility/business in an existing structure/location.
- ✓ The scale and bulk of the proposal is compatible with the surrounding commercial development.

**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 property is zoned C-3-N by the City to provide a mix of uses and promote aesthetically compatible, multi-modal approaches to the City.
- Zoning District C-3-N is intended to encourage high-density residential, commercial, and light industrial uses in an urban context that is consistent with Red Lodge’s historic image.
- Zoning District C-3-N is intended to avoid typical strip commercial development, ensure controlled highway access, and promote multi-modal transportation.
- Landscaping in the front is proposed to break up the visual impact of the structure and business.
- The proposal is to re-establish the operation of a drive-through coffee kiosk facility/business in an existing structure/location.
- Increased traffic from the proposed use is likely.

Conclusion:

- ✓ The proposal complies with the zoning requirements of the property.
- ✓ The proposal promotes infill, investment, and revitalization of commercially zoned property.
- ✓ Increased traffic should be a Board/Commission consideration, specific to whether or not increased traffic flows will impact adjacent commercial and residential uses.

**D. Minimized Adverse Environmental Impact**

*“The development and operation of the proposed Conditional Use minimizes adverse environmental impacts. Environmental resources to be assessed include but are not limited to wetlands, riparian areas, steep slopes, mature vegetation and the floodplain.”*

Findings:

- The subject property and proposed conditional use are not located in the area of the City of Red Lodge with identified wetlands, riparian areas, principal wildlife corridors, steep slopes, or within the Special Flood Hazard Area.
- The subject property is currently developed with a structure for commercial purposes.

Conclusion:

- ✓ The subject property and proposed conditional uses are compliant with this environmental impact criteria and no adverse impacts are anticipated.

### **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 property is located along routes that are routinely patrolled by the Police and Fire Departments. As such, the development of the property should not have an 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 expanded to serve the proposed use.
- The proposal is to re-establish the operation of a drive-through coffee kiosk facility/business in an existing structure/location.

Conclusion:

- ✓ The proposal is not anticipated to have a negative impact on public facilities or services.

### **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.”*

Table 4.5.105 Noise Levels		
Zoning District in Which the Sound Is Generated	Maximum Sound Level	Quiet Hours Unless Exempted by 4.5.105(B)
R-1, R-2	65 dBA	Reduce to 55 dBA from 10:00 p.m. to 6:00 a.m.
R-3, R-4, C-1	70 dBA	Reduce to 60 dBA from 10:00 p.m. to 6:00 a.m.
C-2, C-3	80 dBA	Reduce to 70 dBA from 12:00 a.m. to 7:00 a.m.
C-4	85 dBA	Reduce to 75 dBA from 12:00 p.m. to 7:00 a.m.
P-1, P-2	80 dBA	Reduce to 70 dBA from 10:00 p.m. to 6:00 a.m.

Findings:

- Noise or hazard complaints are on file for business that are currently or have previously been located on the subject property.
- The proposal should not generate dust, fumes, smoke or noxious odors detectible to the normal senses beyond the property line.
- The hours of operation should be those of a typical commercial business and should not result in adverse impacts to the residential uses located in the adjacent area.

Conclusion:

- ✓ The proposal should not generate any additional noise or hazard issues.
- ✓ Increased traffic should be a Board/Commission consideration, specific to whether or not increased hazards associated with traffic are relevant.

**G. Other Codes**

*“The Conditional Use complies with all applicable City codes and ordinances.”*

Findings:

- The proposed conditional use is subject to regulation under various City and State permits. These include but are not limited to 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:

- ✓ When all required permits are obtained, the project will comply with this aspect of the City, State, and Federal code.

**SPECIFIC DESIGN STANDARDS: C-3-N ZONING DISTRICT**

**Parking Lots**

The project location and structure are not changing use or being expanded; therefore, parking standards are not applicable (RLZR Section 4.5.12. However, it is unclear what previous parking standards were enforced. Because of the nature of the conditional use (drive-through coffee kiosk), customer parking should not be necessary, but staff parking and a loading/unloading area should be designated and located on the side or rear of the principal structure and parking is prohibited between the structure and the highway.

### **Controlled Access**

Access to US Highway 212 shall be consistent with Resolution 3228, Controlled Access Plan, and comply with RLZR Section 4.5.45. The application includes communications between the applicant and Montana Department of Transportation (MDT), detailing that as long as there are no physical changes to the right-of-way and the site layout provides adequate queue storage to prevent vehicles from backing up onto US Highway 212, no permitting is required. As demonstrated in the application, the traffic flow plan has been revised to address these concerns.

### **Sidewalk**

RLZR Section 4.5.86 has been suspended and is, therefore, not applicable.

### **Rock Creek Views**

Not applicable.

### **Screening**

Service areas, such as dumpsters and parking lots larger than four (4) parking spaces, shall be screened from adjoining rights-of-way and uses. Screening shall include an opaque wall and/or fence at least six (6) feet in height, along with vegetation.

### **Street Wall Length and Shape**

Not applicable, as no structural changes to the existing structure are proposed in the application.

### **Roof Standards**

Roofs shall be of a color and design that are compatible with the rest of the building. Roofs shall have varying pitches, parapets, angles and other acceptable styles that prevent the monotony of roofs. All roof penetrations shall be ganged and screened to the maximum extent practicable.

### **Historic Character**

The application proposal is to utilize an existing structure and not expand the gross floor area; therefore, this standard is not applicable and has been waived. The application does include exterior paint colors, which appear to be consistent with Red Lodge historic design standard colors.

### **Design Review Required**

A Design Review is required for any designs and plans for new buildings and expansions to existing buildings that increase gross floor area 20% or more. This application does not include any new construction or expansions and a Design Review is, therefore, not required and has been waived.

### **Non-Residential Uses**

Commercial uses that propose to construct or expand an area by 2,000 square feet or more are required to comply with RLZR Section 4.4.10 and Section 4.5. This application does not include any new construction or expansions and, therefore, this standard has been waived.

## **ADDITIONAL APPLICABLE STANDARDS**

### **Outdoor Advertising**

A Sign Permit shall be obtained from the City of Red Lodge, prior to the installation or modification of any outdoor advertising associated with the proposed conditional use. All outdoor advertising shall comply with the standards set forth in the RLZR Section 4.6.0.

The maximum allowable signage on commercial properties is 120 square feet with no individual sign exceeding 40 square feet. Sign luminance for operation between sunset and sunrise shall not exceed 700 candelas per square meter and illumination should be dimmed or extinguished completely at business closing. Flashing, blinking, or moving signs are prohibited.

### **Parking Standards**

The project location and structure are not changing use or being expanded; therefore, parking standards are not applicable (RLZR Section 4.5.12). However, it is unclear what previous parking standards were enforced. Because of the nature of the conditional use (drive-through coffee kiosk), customer parking would not be necessary, but staff parking and a loading/unloading area should be designated and located on the side or rear of the principal structure and parking is prohibited between the structure and the highway.

### **Lighting**

Per RLZR 4.5.73(D), street lighting along State highways is exempt from lighting standards, as they follow the jurisdiction of Montana Department of Transportation (MDT) lighting standards. Any pre-existing lighting, if installed after June 10, 2022, is also exempt from lighting standards. All additions, modifications, or replacements of more than 20% of existing outdoor lighting fixtures shall meet the requirement of RLZR 4.5.70.