



HEARING EXAMINER

AGENDA

Thursday, August 26, 2021 5:30 p.m.

911 N. Seventh Avenue, City Council Chambers

Limited in-person attendance is allowed, but due to COVID-19 guidelines, strict social distancing measures are in place.

MASKS/FACE COVERINGS ARE REQUIRED.

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Skyler Beebe at sbeebe@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

The Hearing Examiner provides professional review and makes decisions on matters involving variances, conditional use permits involving 1.5 acres or less and sign exceptions.

The following is the official agenda of the Hearing Examiner. Discussion and action will be limited to those items on the agenda. Any citizen who wishes to address the Hearing Examiner shall first be recognized by the Hearing Examiner, and shall give his/her name and address for the record. If a citizen wishes to read documentation of any sort to the Hearing Examiner, he/she shall first seek permission from the Hearing Examiner. Oral testimony may be restricted to no more than 3 minutes per person.

AGENDA ITEM 1: DISCLOSURE OF CONFLICT OF INTEREST, EX-PARTE CONTACT AND SITE VISIT.

Disclose who was talked to, the basic substance of the conversation, and whether the conversation had any influence.

Disclose if there is anything personally or professionally that would not allow an impartial or unbiased decision.

Disclose if a site visit was done, location(s) of the visit, and what was seen.

AGENDA ITEM 2: PUBLIC HEARING – CONDITIONAL USE PERMIT

Nathan and Kristie Israelsen have submitted a request for a Conditional Use Permit seeking expansion of a legal nonconforming use of a duplex to a triplex in the Commercial General (CG) zoning district. The subject property is located at 707 & 709 South 5th Avenue. **(ACTION ITEM)**



Planning & Development Services

PLANNING SERVICES NEIGHBORHOOD & COMMUNITY SERVICES
911 NORTH 7th AVENUE | PO BOX 4169 | POCATELLO, IDAHO 83205-4169 | 208.234.6184 | <https://www.pocatello.us>

AGENDA ITEM NO. 2

**POCATELLO HEARING EXAMINER
AUGUST 26, 2021
STAFF REPORT**

APPLICANT/REPRESENTATIVE: Nathan & Kristie Israelsen
LOCATION OF REQUEST: 707 & 709 South 5th Avenue
ZONING: Commercial General (CG)
CITY STAFF ASSIGNED: Greg Cleary, Assistant Planner
HEARING DATE: August 26, 2021

REQUEST: Nathan and Kristie Israelsen have submitted a request for a Conditional Use Permit seeking expansion of a legal nonconforming use of a duplex to a triplex in the Commercial General (CG) zoning district. The use of a duplex is not permitted in the CG zoning district, however, the use was established prior to the adoption of current zoning regulations (1981) and as a result is considered legal nonconforming. Use is defined as any purpose of any activity, arranged, intended, maintained, or occupied on a site.

Existing nonconforming uses may be expanded by up to fifty percent (50%) of the original building or land area or density through the conditional use permit process regardless of the underlying zoning district. Any site modifications that could change or intensify a nonconforming use such as, but not limited to, parking spaces, traffic circulation, ingress/egress, curb cut location, landscaping removal, or similar items of change will require a conditional use permit (17.01.170.A.3). If the structure housing a legal nonconforming use is destroyed by fire or some other calamity, not intentionally caused by the owner, it may be replaced and the use continued. In such case, the replacement structure shall not exceed nor the use intensify beyond the original dimensions, density, or operational characteristics, unless through the expansion or change process outlined in subsection A3C of Title 17.01.170.

PHYSICAL CHARACTERISTICS OF THE SITE: The property is currently built and functioning as a triplex, however, is legally designated as a duplex dwelling unit as verified in the 1960 POLK directory. The property located at 707 & 709 South 5th Avenue, Parcel number RPOC190800, is within the Commercial General (CG) zoning district as is located within the Original Townsite Overlay (OTO). The parcel makes up approximately .19 acres. The CG zoning district permits multi-family housing only when ground floor store front commercial uses are maintained. The City's Utility Billing Department records show that the property has been billed for two units since 1994. Records do not indicate a third unit at the subject property.

NOTIFICATION: The application is scheduled to be heard before the City of Pocatello Hearing Examiner on August 26, 2021 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512. Notice of public hearing was mailed to all property owners within three hundred feet (300') of the external boundaries of the land being considered on August 10, 2021, in order that they may provide comment on the proposed application. On August 10, 2021, notice was also published in the Idaho State Journal and signage was posted on the subject property. All notices herein described have been provided at least fifteen (15) days prior to the public hearing or as otherwise required by Idaho State Code. No public comment has been received at the time of completion of this report.

AUTHORITY TO GRANT: Per City Code 17.02.130 & 17.02.300 the Hearing Examiner shall hold a public hearing and render a decision on conditional use permit for applications less than 1.5 acres. The applicant may file an appeal to be heard by the Pocatello City Council, followed by district court as necessary.

The hearing body may approve, approve with conditions, or deny an application for a conditional use permit. The decision may be appealed by the applicant or other affected persons (according to the provisions of Idaho Code section

67-6521) to the city council, using the process outlined in section 17.02.400, "Appeals", of this chapter. The hearing body may impose any conditions necessary to accomplish the following:

1. Minimize potential adverse impacts on other developments and surrounding land use;
2. Control the sequence and timing of development;
3. Control the duration of the construction period;
4. Assure that development is maintained properly;
5. Designating the exact location and nature of development;
6. Require the provision for on site or off-site public facilities or services;
7. Require more restrictive standards than those generally required in this title;
8. Require mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction; and
9. Require that studies addressing demographic, economic, fiscal, traffic, engineering, geologic, and environmental effects and any aviation hazard as defined in Idaho Code section 21-501(2), be conducted prior to granting approval.

2015 COMPREHENSIVE PLAN:

Staff finds the following components of the 2015 Pocatello Comprehensive Plan to be applicable to this application:

- **Chapter 5: Land Use** addresses "Future Growth" and the need for development patterns that address population growth while avoiding and mitigating impacts to natural resources and urban sprawl. Chapter 5 continues to place emphasis on infill and redevelopment and the creation of new compact neighborhoods.

CONDITIONAL USE PERMITS (CUP): 17.02.130.A DEFINITION: Conditional uses are uses that are allowed within a zoning district provided that certain standards (or "conditions") are met that will enhance the compatibility of the proposed use with other surrounding uses. Often conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of a specific proposal for a particular location. Application for a conditional use permit affords the city an opportunity to review the location, design, configuration, and potential impact of the proposed use on surrounding land uses.

SUMMARY & CONDITIONS:

In consideration of the application, staff finds that the proposal is compliant with all applicable standards of City Code 17.02.130 Conditional Use Permits assuming the recommended conditions are met:

1. All applicable standards of the City of Pocatello Municipal Code Title 17 Zoning Regulations not herein listed and applicable shall apply;
2. Any activity requiring a separate development or building permit shall comply with applicable regulations;
3. The basement unit shall be brought into compliance with current ingress/egress requirements prior to renting/leasing the unit;
4. All applicable standards of the of the Original Townsite Overlay (OTO) section 17.04.220 shall apply;
5. All outdoor lighting shall meet the requirements as provided under Municipal Code Section 17.05.420; and
6. Improvements or modifications shall bring the property into compliance with current Building and Fire Code, including entry and exit ways, egress windows, and other applicable improvements as determined by the responsible department.

ATTACHMENTS:

- A. Application & Supporting Materials
- B. Applicant Narrative
- C. Site Layout

17.02.130. D CRITERIA FOR REVIEW: The hearing body shall review the facts and circumstances of each proposal in terms of the following standards and determine whether there is adequate evidence showing that the requested use at the proposed location.

Table 1. Conditional Use Permit Analysis

REVIEW CRITERIA (17.02.130. D):				
Compliant			City Code and Staff Review	
Yes	No	N/A	Code Section	Analysis
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.1	Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this code unless modified through the CUP process.
			Applicant Response	“The use of this structure as a triplex is not currently permitted within the commercial zoning under which it is zoned. This request is that the legal nonconformance that has been granted (allowing this property to be used as a duplex) be expanded by 50% to allow the use of this structure as a triplex.”
			Staff Analysis	As the applicant has noted, a duplex or triplex is not a permitted use in the Commercial General (CG) zone. The CG zone permits multi-family housing only when ground floor store front commercial uses are maintained. However, the property is considered legal nonconforming due to the fact the duplex (use) was established prior to the adoption of zoning regulations in 1981. City Code Section 17.01.170 A3b Administrative Provisions explains that “to expand existing nonconforming uses by up to a total of fifty percent (50%) of the original building or land area or density may be sought through the conditional use permit process regardless of the underlying zoning district. Further, any site modifications that could change or intensify a nonconforming use such as, but not limited to, parking spaces, traffic circulation, ingress/egress, curb cut location, landscaping removal, or similar items of change will require a conditional use permit.”
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.2	Is consistent with the goals and policies of the comprehensive plan of the city.
			Applicant Response	“The “Future Growth” section of chapter 5 in the Comprehensive Plan lists a desire to resist urban sprawl and to increase infill. While this change in allowances from a duplex to a triplex doesn’t infill by developing any land, it does make the neighborhood more compact and slightly reduce the need for outward expansion of the city.”
			Staff Analysis	The City’s Comprehensive Plan (Chapter 5: Land Use) addresses “Future Growth” and the need for development patterns that address population growth while avoiding and mitigating impacts to natural resources and urban sprawl. Chapter 5 continues to place emphasis on infill and redevelopment and the creation of new compact neighborhoods. Although this is not a true infill development project, the proposal does encourage a compact neighborhood while reducing impacts on the natural environment and urban sprawl.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.3	Is compatible with existing and permitted land uses within the general area.

			Applicant Response	“Directly adjacent to this property on the SE are the West Campus Apartments. Across the street to the NW is another multifamily housing structure. There appear to be a mixture of uses in other structures within a 300-foot radius from this structure, some of which are commercial and some of which appear to be residential. As land uses are mixed, including multiple housing units that house greater than three groups of individuals, it doesn’t seem that the use of this structure as a triplex would disrupt the existing and permitted land uses.”
			Staff Analysis	The property is zoned Commercial General (CG) as it fronts South 5 th Avenue. However, as the applicant has noted, within the general area there are a number of residential units including apartment complexes and single-family residences. In addition, the property abuts a residential zoning district to the southwest via the alley way. Staff has determined the proposed use at 707 & 709 S. 5 th Avenue is compatible with existing and permitted land uses within the general area.
☒	☐	☐	17.02.130 D.4	Could be adequately served by public facilities and services such as thoroughfares, transportation facilities, police and fire protection, drainage, refuse disposal, water/sewer and schools, to ensure that the proposed use would not be detrimental to public health, safety, and welfare.
			Applicant Response	“As this structure has been used, seemingly recently, as a triplex, a pretty good estimation of the impact its continued use as a triplex would have has already been experienced. There are no known problems with public facilities with the use of the structure as a triplex and the building inspection, including imaging of the sewer, didn’t suggest any problems with overloading. However, in an interest of full disclosure, this building is being purchased from an estate and we are therefore unable to verify with the previous owner that the structure was adequately served by public facilities and was not detrimental to public health, safety, and welfare. Hopefully anyone in the nearby area with complaints will feel empowered to bring them forward as they have been notified of this proposed CUP in a mailing.”
			Staff Analysis	Adequate public facilities and services are existing and available to the subject property. The proposed use will not be detrimental to the public health, safety, and welfare. The applicant shall coordinate with the necessary City of Pocatello Departments such as Fire, Public Works/Engineering, WPC, Sanitation, Water, and Building prior to the submittal of a building permit to address improvements that may be required. Staff proposes that improvements or modifications bring the property into compliance with current Building and Fire Code, including entry and exit ways, egress windows, and other applicable improvements as determined by the responsible department. (see Condition #6)
☒	☐	☐	17.02.130 D.5	Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.
			Applicant Response	“As no changes are being proposed with the building itself, no change in the harmony of the area are anticipated.”
			Staff Analysis	The proposal does not intend to alter or modify the scale, mass, coverage, density, or intensity beyond what is existing on site. Although building

				improvements and modifications are proposed, the proposal will have minimal effect on the surrounding area.
☒	☐	☐	17.02.130 D.6	Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
			Applicant Response	“Many factors affect the environment, people being one of the largest. Perhaps it can be argued that increasing the allowed number of tenants in this property by 50% could have an impact on the environment, simply by living and therefore producing things such as garbage, sewage, etc. However, the change in impact from a duplex to a triplex isn’t anticipated to be very significant to the overall community, especially when considering the tenants would arguably be producing garbage and sewage, etc. wherever they live in Pocatello. Also, there are several other multifamily structures around and the increase in tenancy in this structure isn’t likely to produce a noticeable difference.”
			Staff Analysis	The proposed use will not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
☒	☐	☐	17.02.130 D.7	Would not be detrimental to the public interests, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics.
			Applicant Response	“No known conflicts exist with public interest, health, safety, or welfare of the city. The location, size, design, and operating characteristics of this property will remain unchanged as the proposal would take it from one allowance of a residential structure to a second allowance of a residential structure and no changes to the building and lot are being proposed.”
			Staff Analysis	The proposed uses at the site will not be detrimental to the public interest, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics. The general area offers a variety of residential and commercial uses.

Attachment A

Application

Hearing Examiner
August 26, 2021



PLANNING & DEVELOPMENT SERVICES
PO Box 4169, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184 FAX (208)234-6586
planning@pocatello.us

CONDITIONAL USE PERMIT APPLICATION

Staff Received on: 7.20.2021 Hearing Date: 8.26.21 Application #: 21-2309
Plan Review Approved by: GC Receipt Date: 7.22.21

Dates for a public hearing will not be scheduled until application is deemed complete.

Filing Fee: \$510.00 + (37 address(s) x \$3.00 per address = \$ 111) = Total Due \$ 621

Applicant:

Name: Nathan and Kristie Israelsen

Street address: 180 Andrews Lane

City, ST, Zip: Providence, UT, 84332

Phone: 435-232-7187

Email: Nathan.Israelsen@gmail.com

Representative:

Name: _____

Street address: _____

City, ST, Zip: _____

Phone: _____

Email: _____

Project Information:

Street Address: 707, 709^S 5th Ave, Pocatello Idaho, 86201 Project occupies 1.5 acres or more? NO
Zoning: CG

Legal Description (attach documentation—see C, below): LOTS 1 AND 2, BLOCK 302, POCATELLO TOWNSITE, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, FILED IN

THE OFFICE OF THE COUNTY RECORDER OF BANNOCK COUNTY, IDAHO, SAID REAL PROPERTY IS ALSO ASSOCIATED WITH THE PHYSICAL ADDRESS OF: 707 AND 709 SOUTH 5TH AVENUE, POCATELLO, BANNOCK COUNTY, IDAHO 83201, AND FOR THIS REASON IS PROVIDED

Brief Description of Proposed Project: Seeking expansion of legal non-conformance from duplex to triplex units. Current property is built as a Triplex but is legally designated as a duplex unit. We are in the process of purchasing this property, Please see purchase contact attached.

THE FOLLOWING INFORMATION MUST ACCOMPANY EACH APPLICATION TO BE COMPLETE

- A. All necessary filing fees and other specified plans and descriptions must be paid and/or filed accompanying your application.
- B. A title report, property deed, or other legal documentation of ownership of the site in question, whether freehold, option, or lease.
- C. The complete and accurate legal description for the subject property shall be submitted. This can be obtained from the Bannock County Assessor by requesting a copy of the controlling document for the subject site or address. A copy of this document shall be submitted with this application.
- D. **Two sets of typed**, gummed mailing labels with all of the names and addresses of the property owners within a 300 foot radius of the subject property. A charge of \$3.00 per property owner is required. A signed Affidavit of Mailing List must also be submitted (attached).
- E. Two (2) site plans, one (1) measuring 8-1/2" x 11" and one (1) 18" x 24" (or larger), which describe the proposal and contain the following information:
 - 1. Drawn to scale.
 - 2. Building spacing (including setbacks for front yards, side yards and rear yards).
 - 3. A detailed layout of the parking area and landscaping of that area.
 - 4. Pattern and dimensions of all sidewalks on the parcel.


5. Proposed containment of on-site storm drainage.
 6. Type, quantity and size of proposed landscaping on-site (or separate landscape plan).
 7. Location of curb cuts and access to streets and alleys.
 8. Screening or fencing to be provided (type and height).
 9. Any easements or restrictions on the property.
- F. One (1) set of complete design plans or written description of the proposed structure or additions including elevations and finished details (including material type and color).
- G. A written analysis of your request must accompany your application. It should detail the request as well as the reasons a conditional use permit is needed. Studies may be included and all steps being taken to ease the effect of this conditional use should be outlined. The written analysis must fully address each of the following standards (contained in Section 17.02.130 of the Zoning Ordinance):
1. Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of the Zoning Ordinance unless modified through the CUP process.
 2. Is consistent with the goals and policies of the Comprehensive Plan of the City.
 3. Is compatible with existing and permitted land uses within the general area.
 4. Could be adequately served by public facilities and services such as thoroughfares, transportation facilities, police, and fire protection, drainage, refuse disposal, water/sewer and schools, to ensure that the proposed use would not be detrimental to public health, safety, and welfare.
 5. Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.
 6. Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
 7. Would not be detrimental to the public interests, health, safety, or welfare of the City in its proposed location, size, design, and operating characteristics.
- H. If a representative will be submitting the application, an affidavit, power of attorney, or other document evidencing the right of the representative to appear and submit items on behalf of the property owner.

The approval of this application does not permit the violation of any federal or state codes, any section of the Building Code, or other Pocatello Municipal Codes as adopted. Approval of this land use permit does not exempt applicant from the provisions of the federal Fair Housing Act or ADA requirements. Further, other conditions, requirements, etc. may be imposed as part of the building permit process.

A conditional use permit must be established within one (1) year of the granting of the use permit. Actual construction of the permitted building shall constitute such establishment. This period may be extended by Planning and Development Services staff for an additional one (1) year upon request at least 30 days prior to expiration of the initial 1-year period and provided the applicant demonstrates good cause for the delay.

This application shall not be considered complete (nor will a hearing before the Hearing Examiner or Planning and Zoning Commission be scheduled) until all required information has been submitted and verified.

I hereby acknowledge that I have read this application and state that the above information, including all submitted materials, is correct and I agree to the above terms and conditions. I further agree to abide by any and all conditions Hearing Examiner or Planning and Zoning Commission may impose on my use of this site. I also understand that non-conformance with these conditions in a timely manner will result in automatic forfeiture of my permit. I am also aware that the applicant or a representative must be present at the public hearing and that the decision on this request will be recorded in the official records of Bannock County.

Applicant's Signature: 

Date: 16 Jul 2021

Representative's Signature: _____

Date: _____

***A sign giving public notice will be posted at the proposed site during the course of these proceedings.**

Attachment B

Applicant Narrative

Hearing Examiner
August 26, 2021

Point G: Analysis of Request

The standards included in the city code for CUP are included prior to the paragraph answering them for ease of reading.

1. *Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this code unless modified through the CUP process;*
 - a. The use of this structure as a triplex is not currently permitted within the commercial zoning under which it is zoned. This request is that the legal nonconformance that has been granted (allowing this property to be used as a duplex) be expanded by 50% to allow the use of this structure as a triplex.
2. *Is consistent with the goals and policies of the comprehensive plan of the city;*
 - a. The “Future Growth” section of chapter 5 in the Comprehensive Plan lists a desire to resist urban sprawl and to increase infill. While this change in allowances from a duplex to a triplex doesn’t infill by developing any land, it does make the neighborhood more compact and slightly reduce the need for outward expansion of the city.
3. *Is compatible with existing and permitted land uses within the general area;*
 - a. Directly adjacent to this property on the SE are the West Campus Apartments. Across the street to the NW is another multifamily housing structure. There appear to be a mixture of uses in other structures within a 300-foot radius from this structure, some of which are commercial and some of which appear to be residential. As land uses are mixed, including multiple housing units that house greater than three groups of individuals, it doesn’t seem that the use of this structure as a triplex would disrupt the existing and permitted land uses.
4. *Could be adequately served by public facilities and services such as thoroughfares, transportation facilities, police and fire protection, drainage, refuse disposal, water/sewer and schools, to ensure that the proposed use would not be detrimental to public health, safety, and welfare;*
 - a. As this structure has been used, seemingly recently, as a triplex, a pretty good estimation of the impact its continued use as a triplex would have has already been experienced. There are no known problems with public facilities with the use of the structure as a triplex and the building inspection, including imaging of the sewer, didn’t suggest any problems with overloading. However, in an interest of full disclosure, this building is being purchased from an estate and we are therefore unable to verify with the previous owner that the structure was adequately served by public facilities and was not detrimental to public health, safety, and welfare. Hopefully anyone in the nearby area with complaints will feel empowered to bring them forward as they have been notified of this proposed CUP in a mailing.
5. *Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses;*
 - a. As no changes are being proposed with the building itself, no change in the harmony of the area are anticipated.

6. *Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established;*
 - a. Many factors affect the environment, people being one of the largest. Perhaps it can be argued that increasing the allowed number of tenants in this property by 50% could have an impact on the environment, simply by living and therefore producing things such as garbage, sewage, etc. However, the change in impact from a duplex to a triplex isn't anticipated to be very significant to the overall community, especially when considering the tenants would arguably be producing garbage and sewage, etc. wherever they live in Pocatello. Also, there are several other multifamily structures around and the increase in tenancy in this structure isn't likely to produce a noticeable difference.
7. *Would not be detrimental to the public interests, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics.*
 - a. No known conflicts exist with public interest, health, safety, or welfare of the city. The location, size, design, and operating characteristics of this property will remain unchanged as the proposal would take it from one allowance of a residential structure to a second allowance of a residential structure and no changes to the building and lot are being proposed.

Point F: Complete Design Plans

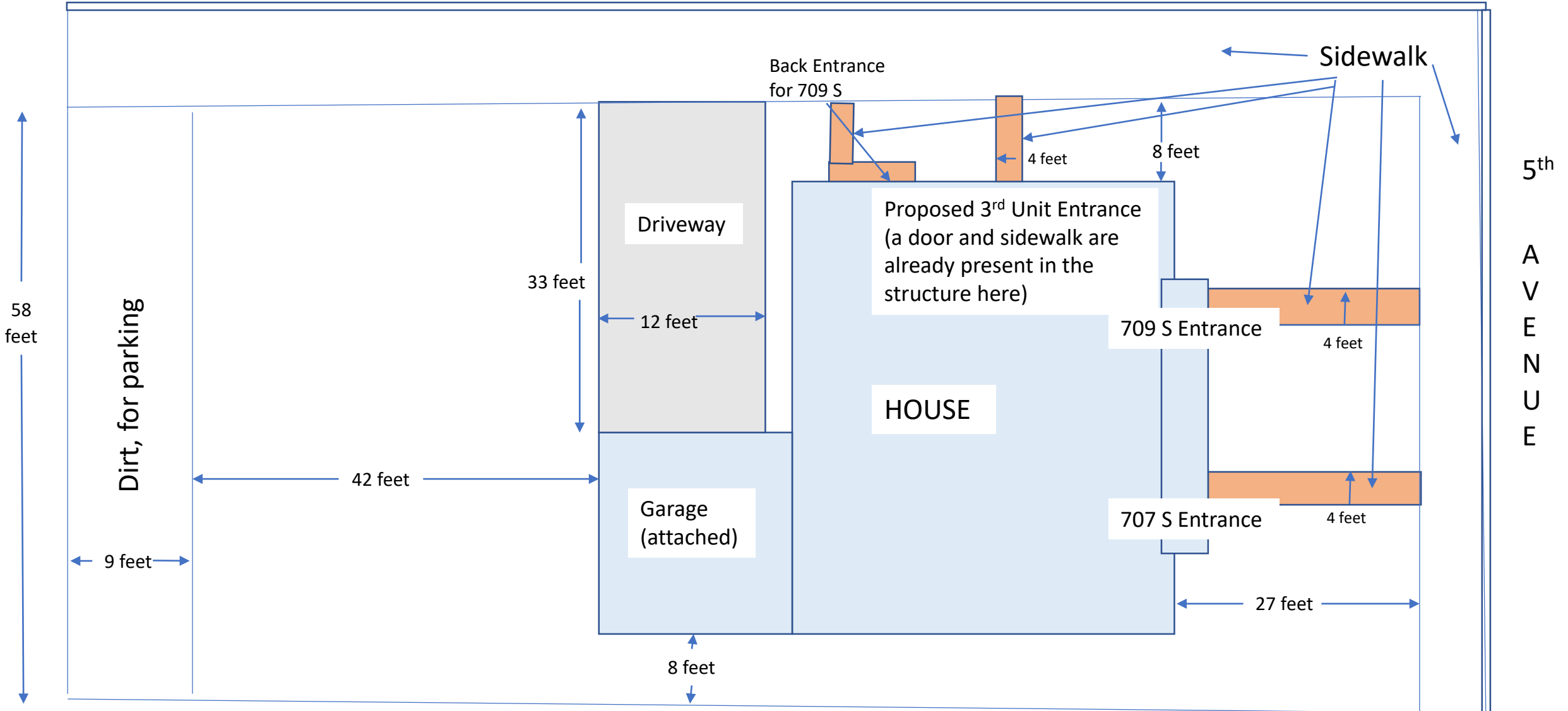
No changes to the structure are currently being proposed. The current proposal is to use this property to its highest and best use as it has already been built into a triplex. It is proposed that unit 709 will remain unchanged, as both an upstairs and downstairs unit. It is proposed that unit 707 be split into two separate units, one upstairs and one downstairs. As the building has already been used for the purpose of a triplex, the necessary upgrades to support this use are currently in place—separate entrances for each of the units, locked doors inside the structure separating each of the three units, appropriate egress windows in the basement, kitchens/baths for three units, and parking on the property for tenants. As no physical upgrades are needed, there are no proposed changes in finishing materials, colors, or elevations.

Attachment C

Site Plan

Hearing Examiner
August 26, 2021

Carter Street




5th
A
V
E
N
U
E

Owner: Pending sale to Nathan and Kristie Israelsen

Address: 707 and 709 S 5th Ave

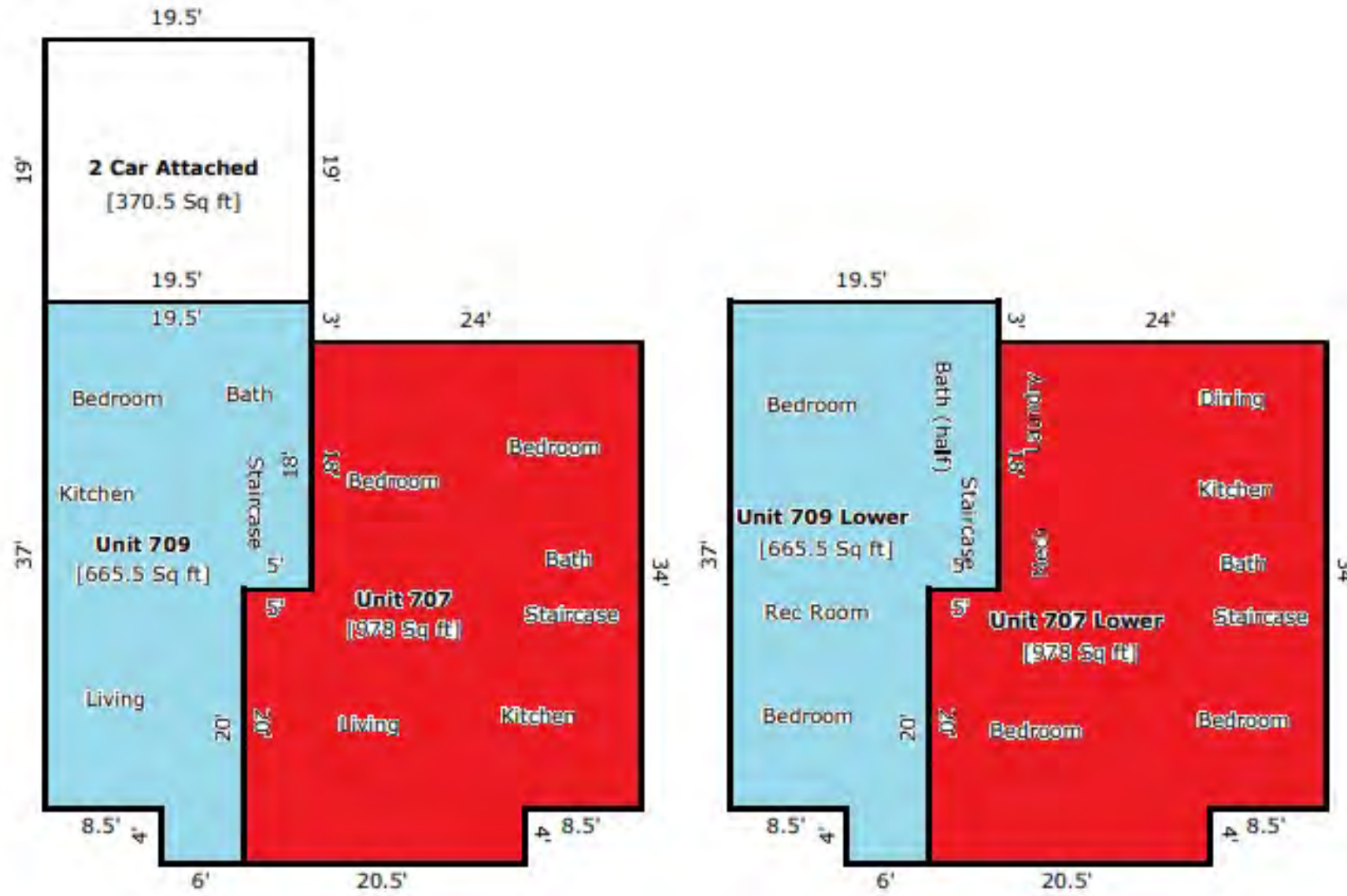
Legal Description: Lots 1 and 2, Block 302, Pocatello Townsite, Bannock County, Idaho

Parcel: RPRPPOC190800

 707 S 5th Ave



Current Unit Configuration:



Proposed Unit Configuration:

