



# Planning & Development Services

PLANNING SERVICES NEIGHBORHOOD & COMMUNITY SERVICES

911 NORTH 7<sup>TH</sup> AVENUE | P.O. Box 4169 POCATELLO, IDAHO 83205-4169 208.234.6184 WEB <https://www.pocatello.us>

HEARING EXAMINER

AGENDA

Thursday, September 12, 2019

5:30 p.m.

City Council Chambers  
911 N. Seventh Avenue  
Pocatello, ID

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](mailto:sbeebe@pocatello.us); 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

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HEARING EXAMINER: James Mullen

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1. 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.
2. Tiny Dreams Childcare and Preschool, LLC, represented by Ivie Tonks, requests a conditional use permit to allow a commercial childcare facility at 285 Jefferson Avenue. The property is located within a Residential Medium Density Single Family zoning district. Municipal Code 17.01.160 allows for twenty or fewer children in a structure that was not initially constructed for residential purposes in a residential zoning district. Increased numbers may be conditionally permitted. **(ACTION ITEM)**

**Hearing Examiner  
Staff Report  
Conditional Use Permit**



Hearing Date: September 12, 2019

File #:19-2187

**OWNER:**

Tiny Dreams Childcare and Preschool, LLC  
758 Birch Street  
Pocatello, ID 83201

**REPRESENTATIVE:**

Ivie Tonks  
758 Birch Street  
Pocatello, ID 83201

**REQUEST:** The applicant is requesting a conditional use permit to allow expansion of a commercial childcare facility at 285 Jefferson Avenue from 20 children to 44 children.

**LEGAL DESCRIPTION:** Lots 1 through 7, Block 3, Fairview Townsite, Bannock County, Idaho

**SITE CHARACTERISTICS:** Zoning designation: Residential Medium Density Single Family  
Property size: The lot measures 22,385 square feet (more or less)  
Existing structures: Commercial building

**SURROUNDING LAND USES AND ZONING:**

North: Vacant commercial building, residence and a commercial business in a Residential Medium Density Single Family zoning district

South: Residential dwellings in a Residential Medium Density Single Family zoning district

East: Residential dwellings in a Residential Medium Density Single Family zoning district

West: Residential dwellings in a Residential Medium Density Single Family zoning district

**COMPREHENSIVE PLAN LAND USE MAP DESIGNATION:** Mixed Use

**PROCEDURES AND NOTICES:**

1. In accordance with Municipal Code §17.01.160(B)(1)(g), §17.02.130, §17.02.300 and Idaho Code §67-6512, a complete conditional use permit application was filed with the Planning and Development Services Department at least four weeks prior to the public hearing.
2. The application was scheduled to be heard at the September 12, 2019 Hearing Examiner at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
3. Notice of the public hearing was in accordance with Municipal Code §17.02.130 and Idaho Code §67-6512.
  - a. Notices were provided to political subdivisions on August 27, 2019.
  - b. Notices to property owners of record within 300 feet of the subject site were mailed on August 27, 2019.
  - c. Legal notice was published in the Idaho State Journal on August 27, 2019.
  - d. Signs were placed on the properties on August 29, 2019.
  - e. The agenda and supporting documentation were posted to the City's website on September 5, 2019.

**APPLICABLE LAWS AND PLANS:**

1. Municipal Code §17.01.160, §17.02.130 and §17.02.300

2. 2015 City of Pocatello Comprehensive Plan
3. Idaho Code §67-6512

Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application.

Municipal Code §17.02.130(E), "Authority to Grant: 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 Municipal Code Section §17.02.400, Appeals, of this title.

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. Require the provision for on site or off site public facilities or services;
6. Require more restrictive standards than those generally required by this title;
7. Require mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction;
8. Require that studies addressing demographic, economic, fiscal, traffic, engineering, geologic, and environmental concerns be conducted prior to granting approval.

Municipal Code §17.02.300 states that conditional use permits less than 1.5 acres shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

#### **CONDITIONAL USE PERMIT ANALYSIS:**

Municipal Code §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:

1. Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of the code unless modified through the CUP process.

Applicant's response: "The current land use table doesn't directly address daycare uses for caring for over 20 children. We do believe we meet the land use mission statement, to "enhance the quality of life in Pocatello...[and] should benefit and facilitate the basic elements of the community including residents, commerce, industry, government, education, and recreation" (Ch. 5-Land Use, pg. 42). Adding a daycare to this area will greatly help the residents in this area, especially providing their children with a place for early education."

Staff analysis: This use is conditionally permitted in Residential zoning districts. The applicant is a currently licensed childcare facility. Currently, the parking is adequate with 10 spaces, however if an increase to 44 children is approved 1 space per 7 children and 1 space per employee is required. Municipal Code §17.05.570 states up to 50% of required parking spaces may be provided off-site in a city-approved parking lot which is located within a 500-foot radius of the subject site. The applicant will need to show they have adequate parking either on-site or off-site with a signed parking agreement prior to a new license for increased numbers is approved.

2. Is consistent with the goals and policies of the comprehensive plan of the city.

Applicant's response: "Yes, this is consistent with the goals and policies of the Comprehensive Plan of the City. The City's Comprehensive Plan shows their goal for this area to be a Mixed Use area. "The Mixed Use designation is intended to support zoning districts that allow a mixture of compatible...or integrated uses within a structure or development" (Ch. 5-Land Use, pg. 50). By using an existing structure that has previously been used for past permitted commercial space we feel we are achieving the City's goals."

Staff analysis: Staff finds the application is consistent with the following goal and policy of the Comprehensive Plan:

Land Use Goal 3. *Land uses should be as compatible as practical and/or possible with adjoining and surrounding uses.*

*Objective 3.1 Promote aesthetically pleasing neighborhoods and communities.*

*d. Encourage citizen participation in the land use planning process, especially when the proposed changes impact a residential district.*

*e. Encourage non-residential developments to be compatible with neighboring residential districts.*

3. Is compatible with existing and permitted land uses within the general area.

Applicant's response: "Yes, this is compatible with existing and permitted land uses within the general area. Goal 3 in Chapter 5-Land Use states, "Develop and implement zoning designations and regulations that promote land uses and developments that complement the surrounding vernacular while utilizing the unique context and opportunities of each designated area" (Ch. 5-Land Use, pg. 55). The addition of our daycare would complement the surrounding area with a business that is just across the street, an insurance agency in the same building as us, and commercial space just a couple of blocks away. Having a day care in this space would fit in nicely with these existing businesses and would benefit the residents who live nearby."

Staff analysis: The day care would be compatible with the existing and permitted land uses within the area since there is a mix of commercial and residential uses in the general vicinity. Permitted uses include residences and churches. The commercial uses pre-date the zoning ordinance and are therefore, legal non-conforming 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.

Applicant's response: "Yes, this could adequately be served by the public facilities and services. It has been used as a commercial space for years, and with all the other businesses close by the current city services that service them would be more than enough for our addition to the area."

Staff analysis: The property is at the intersection of two existing streets and in a developed neighborhood that are already served by public facilities and services. Jefferson and Maple curbs are both painted yellow, therefore loading and unloading will take place in the parking lot and not on the street. The increase in traffic may make it necessary to require the customers of the day care to enter off Maple and exit with a right turn on Jefferson to avoid traffic congestion.

5. Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.

Applicant's response: "Yes, it is harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses. We are not changing anything on the exterior of the building. The only exterior addition would be adding a fenced playground in the already existing parking lot, which would be an improvement to the building and area."

Staff analysis: The only change to the exterior of the building is the fence for the playground in the back of the building, therefore it will be harmonious in scale, mass, coverage and density with all adjacent permitted land uses. The use has the potential of being more intense by creating a larger amount of traffic than existing neighboring land uses during drop-off/pick-up times on an already busy street. Assuming compliance with conditions of approval to address traffic concerns the use can be harmonious with the adjacent land uses.

6. Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.

Applicant's response: "Yes, this would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established."

Staff analysis: The building was built prior to 1981 as office/retail space. The use as a daycare with 44 children will not adversely affect the environment more than if the property were leased as an office or retail space.

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's response: "Yes, this would not be detrimental to the public interest, health, safety, or welfare of the City. Our proposed use is more consistent with the surrounding zoning than past permitted uses have been. We ultimately feel like we will be a great benefit to the surrounding area."

Staff analysis: The proposed use will not be detrimental to the public interests, health, safety or welfare of the city if the recommended conditions are met to address traffic concerns.

**PUBLIC COMMENTS:** No comments either in support of in or opposition to the application have been received as of the completion of this report.

**STAFF CONCLUSION:** Assuming compliance with the recommended conditions of approval staff finds the request meets the standards for a conditional use permit. If the Hearing Examiner should choose to approve the request staff recommends the following conditions:

1. The applicant shall provide adequate parking either on-site or off-site with a written agreement with the property owner (Municipal Code §17.05.570) providing the off-site parking.
2. The applicant shall require customers to enter with a right turn off Maple and exit with a right turn onto Jefferson.
3. All other applicable City Code requirements not herein stated shall be met.

**REPORT BY:** Terri Neu   
[tneu@pocatello.us](mailto:tneu@pocatello.us)  
208.234.6500

**REPORT DATED:** September 5, 2019

**ATTACHMENTS:** Application materials



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

**CONDITIONAL USE PERMIT APPLICATION**

Submittal Date: 8.6.19 Hearing Date: 9.12.19 Permit #: 19-2187  
Plan Review Approved by: TN Receipt #: 8.7.19 Receipt Date: \_\_\_\_\_

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

Filing Fee: \$510.00 + (51 address(s) x \$3.00 per address = \$ 153) = Total Due \$ 663.00

**Applicant:**

Name: Trny Dreams Childcare and Preschool LLC  
Street address: 768 Birch Street  
City, ST, Zip: Pocatello, ID, 83201  
Phone: 208-339-4411  
Email: turnivie@isu.edu

**Representative:**

Name: Ivie Tonks  
Street address: 768 Birch Street  
City, ST, Zip: Pocatello, ID, 83201  
Phone: 208-339-4411  
Email: turnivie@isu.edu

**Project Information:**

Project occupies 1.5 acres or more? NO

Street Address: 285 Jefferson Ave, Pocatello, ID 83201 Zoning: Residential, Medium Single Family  
Legal Description (attach documentation—see C, below): S23-T6S-R34E Lots 1 Thru 7  
Block 3 Townsite of Fairview  
Brief Description of Proposed Project: Applying for the use of a daycare with more than 20 kids.

**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: 8-6

Representative's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

To Whom It May Concern,

We are requesting for a conditional use permit for our Tiny Dreams Childcare and Preschool at 285 Jefferson Ave, Pocatello, ID 83201. The current zoning only allows us to care for 20 children. We currently care for up to 44 children. We would ask that this space be granted the conditional use permit so we could care for up to 44 children. We may in the future lease out the additional unit in this building and this would allow us to care for up to another 25 children. We are also asking for this potential expansion into the second unit to be a part of this conditional use permit. This location has been used as commercial space for over 20 years and we believe granting us a conditional use permit won't adversely affect the area. We believe it will be a benefit to the area. We also believe we meet the criteria the city is looking for to approve this conditional use permit.

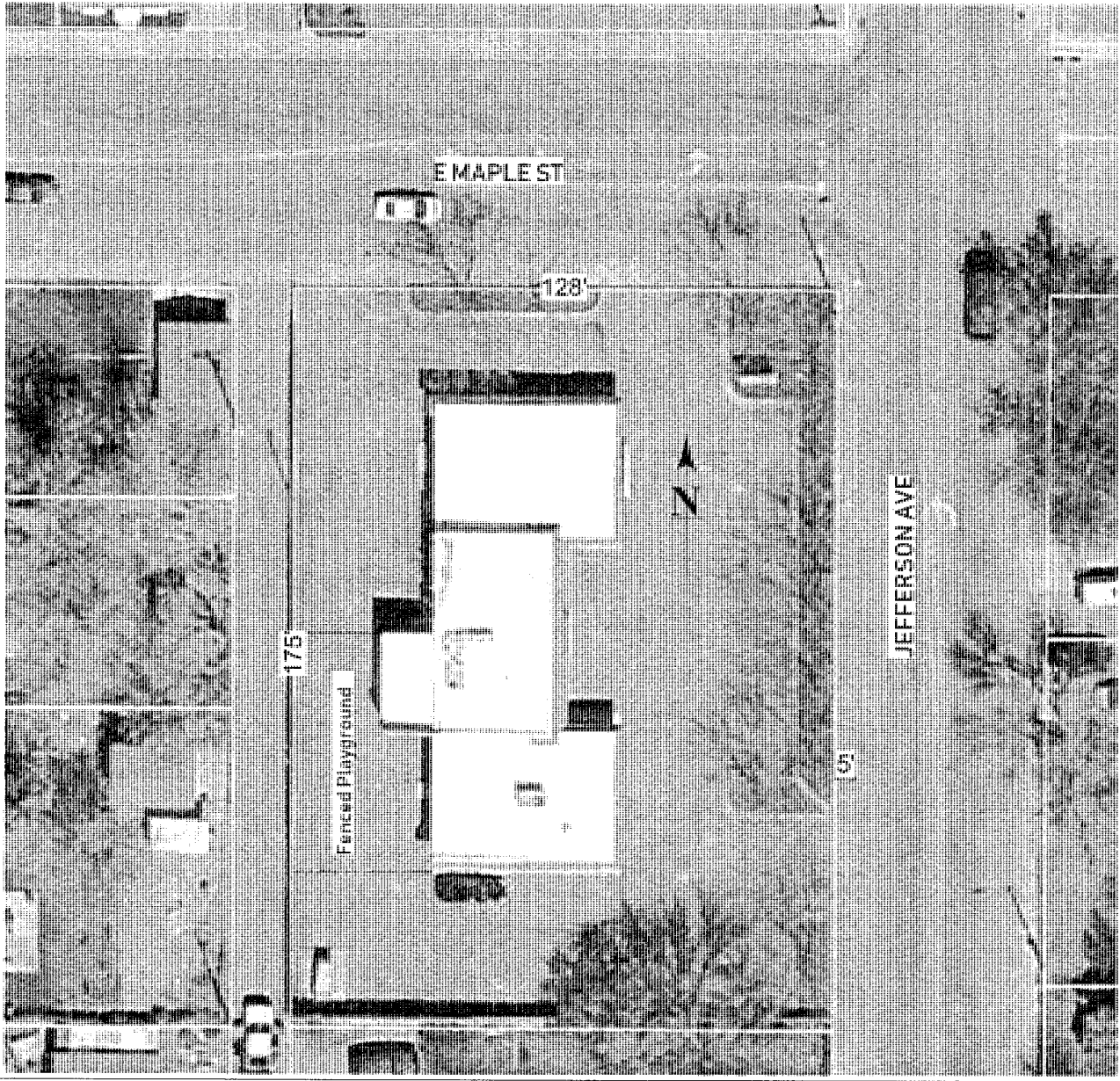
1. The current land use table doesn't directly address daycare uses for caring for over 20 children. We do believe we meet the land Use mission statement, to "enhance the quality of life in Pocatello... [and] should benefit and facilitate the basic elements of the community including residents, commerce, industry, government, education, and recreation" (Ch. 5-Land use, pg. 42). Adding a daycare to this area will greatly help the residents in this area, especially providing their children with a place for early education.
2. Yes, this is consistent with the goals and policies of the Comprehensive Plan of the City. The City's Comprehensive Plan shows their goal for this area to be a Mixed use area. "The Mixed Use designation is intended to support zoning districts that allow a mixture of compatible... or integrated uses within a structure or development" (Ch. 5-Land use, pg. 50). By using an existing structure that has previously been used for past permitted commercial space we feel we are achieving the City's goals.
3. Yes, this is compatible with existing and permitted land uses within the general area. Goal 3 in Chapter 5-Land Use states, "Develop and implement zoning designations and regulations that promote land uses and developments that complement the surrounding vernacular while utilizing the unique context and opportunities of each designated area" (Ch. 5- Land use, pg. 55). The addition of our Daycare would complement the surrounding area with a business that is just across the street, an insurance agency in the same building as us, and commercial space just a couple blocks away. Having a day care in this space would fit in nicely with these existing businesses and would benefit the residents who live nearby.
4. Yes, this could adequately be served by the public facilities and services. It has been used as a commercial space for years, and with all the other businesses close by the current city services that service them would be more than enough for our addition to the area.
5. Yes, it is harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses. We are not changing anything on the exterior of the building. The only exterior addition would be adding a fenced playground in the already existing parking lot, which would be an improvement to the building and area.
6. Yes, this would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.



7. Yes, this would not be detrimental to the public interest, health, safety, or welfare of the City. Our proposed use is more consistent with the surrounding zoning than past permitted uses have been. We ultimately feel like we will be a great benefit to the surrounding area.

Thank you,

Ivie Tonks  
Tiny Dreams Childcare and Preschool LLC  
208-339-4411



1" = 25'

DRAWING #  
Layout

Lot 1-7 Block 3  
TOWNSITE OF  
FAIRVIEW

SHEET TITLE  
PLOT PLAN

285 JEFFERSON AVE  
RESIDENCE

DATE:  
7/29/2019

SCALE:  
SHEET:

**A-1**