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Hearing Examiner's Report
Conditional Use Permit 18-3552

RECORDED AT REQUEST OF
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CITY OF POCA TELLO

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DATE: January 10, 2019

APPLICANT NAME: Shane and Jennifer Pickering

MAILING ADDRESS: 934 Park Avenue

PROPERTY OWNER: Shane and Jennifer Pickering

LOCATION OF REQUEST: 2085 Magellan Loop

LEGAL DESCRIPTION: Lot 25, Block 2, Trail Creek Estates Division 1

TYPE OF REQUEST: Conditional Use Permit

I. REQUEST

The applicant is requesting a conditional use permit to allow construction of an accessory dwelling unit in the proposed single family dwelling at 2085 Magellan Loop.

II. FINDINGS OF FACT

1. The Hearing Examiner disclosed that he visited subject site via Google Earth map prior to the Hearing Date to observe the physical character and relationships to the subject property. No ex-parte communication took place with anyone prior to the public hearing or during the writing of this report beyond information gathered or requested at said public hearing.
2. Public Hearing: A noticed Public Hearing on this request was scheduled on January 10, 2019 at 5:30 PM in the City Council Chambers at Pocatello City Hall.
3. In accordance with Municipal Code §17.02.130, §17.02.300(A)(3), §17.06.100 and Idaho Code §67-6512, a complete conditional use permit application was filed with the City of Pocatello's Planning and Development Services Department at least four weeks prior to the public hearing
4. Public Notice: Notice of the public hearing was in accordance with Municipal Code §17.02.130 and Idaho Code §67-6512.
 - a. Notices were mailed to political subdivisions on December 24, 2018.
 - b. Notices to property owners of record within 300 feet of the subject site were mailed on December 24, 2018. Staff did note that the incorrect address was given in the letter stating the address of concern was 2805 rather than the correct 2085.

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- c. Legal notice was published in the *Idaho State Journal* on December 25, 2018.
 - d. Signs were placed on the property on December 26, 2018.
 - e. The agenda and supporting documentation were posted to the City's website on January 3, 2019.

5. Staff Analysis: Terri Neu, Assistant Planner, presented the staff report.

- a. The property is located at 2085 Magellan Loop and has a Zoning designation of Residential Low Density (RL). The lot size measures 12,000 square feet (more or less).
- b. The surrounding properties to the South, East, and West are Residential dwellings and bare ground in a Residential Low Density zoning district. The properties to the north are bare ground in a Residential Low Density Zoning District.

6. Public Input:

- a. Public Comment: Prior to the Public Hearing, one written letter was received by the City.
- b. Public Hearing:

The Public Hearing was opened at approximately 5:37 PM.

- No comments were received in opposition to the application
- Two comments were received and deemed neutral to the application and were seeking clarification to the application.
- One comment was received in favor of the application

The Public Hearing was closed at approximately 5:43 PM.

7. Hearing Examiner noted that the decision would be available to public on January 15, 2019 by 12:00 PM.

Idaho Code Section 67-6521 allows the applicant and/or other affected persons who do not agree with the decision of the Hearing Examiner to appeal in writing to the City Council within ten (10) days from the date of the Hearing Examiner's decision. At that time, additional fees may be required and a new timeline may be established for the City Council consideration of the appeal.

III. MUNICIPAL CODE/COMPREHENSIVE PLAN

Municipal Code 17.02.130 defines conditional use permits as: "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

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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.”

Municipal Code Section 17.01.170(A)(3)(c) outlines the standards by which conditional use permits for expansion of legal non-conforming uses are to be reviewed.

IV. CONDITIONAL USE PERMIT FINDINGS

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.”

Municipal Code 17.02.130(D)(1) 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. The use 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.**

Accessory dwelling units are allowed through the conditional permit process in all residential zoning districts. The application as presented meets the provisions as outlined below:

Accessory Dwelling Standards:

1. Accessory Residential Unit: An accessory residential unit is a second dwelling unit either within or added to an existing detached single-family dwelling, or constructed as a separate accessory structure on the same lot as the single-family dwelling. The accessory unit functions as a complete, independent living facility, with provisions within the unit for a separate kitchen, bathroom, and sleeping area. All standards of this code shall be met, except as modified herein.

The accessory dwelling unit is to be constructed within the proposed single family dwelling and will be a complete, independent living facility.

2. Density: One accessory residential unit may be allowed through the conditional use permit process as an accessory use to a primary single-family dwelling on any residential lot that meets the minimum lot size of the applicable residential district. Accessory dwelling units will not be counted in density calculations.

The applicant is requesting one accessory dwelling unit and the lot meets minimum lot size standards, therefore the request meets this standard.

3. Unit Size: An accessory residential unit shall not exceed seven hundred fifty (750) square feet in size and shall not have more than one bedroom or sleeping room.

The accessory dwelling unit is proposed to be 600 square feet (more or less) with one bedroom.

4. Off Street Parking: If on street parking is available adjacent to the primary dwelling and off site parking standards are met for the primary dwelling, only one additional off street parking space

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shall be required for the accessory residential unit. If on street parking is not available for the primary structure, two (2) off street parking spaces shall be provided for the accessory dwelling unit.

On street parking is available. A three-car garage with the associated driveway is proposed where two off-street parking spaces are required, therefore this standard has been met.

5. Building Height: The height of the accessory residential unit shall not exceed the height of the main structure or as permitted by the underlying zoning district, whichever is less.

The accessory dwelling unit will be contained within the single family dwelling therefore this standard does not apply.

6. Orientation and Access: For accessory residential units in structures other than the primary dwelling on a lot, a walkway shall be provided from the unit to the street on which the primary dwelling fronts. The walkway shall be a minimum of three feet (3') wide and shall be finished with a hard, all weather surface. On corner lots, the accessory residential unit may be oriented to a different street than the primary dwelling, and the walkway may be provided to a street other than the front street. If the entrances to both the primary and accessory dwelling unit face the same street, the entrance to the accessory dwelling unit shall be minimized in appearance.

The accessory dwelling unit will be contained within the primary dwelling therefore this standard is not applicable.

7. Design Compatibility: In order to maintain an exterior consistent with the primary dwelling, the accessory dwelling unit shall have siding, roofing materials, exterior paint colors, window trim, and roof style that match that of the primary dwelling unit, unless a case can be made for alternative designs.

The accessory dwelling unit will be contained within the primary dwelling therefore this standard is not applicable.

8. Utility Hookups: Shared or separate utility hookups must comply with City requirements.

The site plan provided by the applicant indicates the utilities are to be shared. Building permits shall be obtained to ensure the utility hookups meet City requirements.

9. Deed Restriction: A deed restriction shall be recorded requiring that either the primary unit or the accessory unit be owner occupied.

A deed restriction will be placed on the property indicating that either the primary unit or accessory unit shall be owner occupied.

10. Substandard Lots Prohibited: Subdivision or other lot split into substandard lots shall be prohibited.

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This accessory dwelling unit is to be located in a newly developed subdivision in which the lots are standard size.

- 1. The use sought is consistent with the goals and policies of the Comprehensive Plan of the City.**

Chapter 12: Housing

Goal 2: Adopt zoning districts and development regulations that allow for a variety of housing types responsive to the needs within the community.

Objective 2.1: Encourage the development of housing for those with special needs including but not limited to the elderly, mentally ill and disabled.

Policy a: Provide opportunities for accessory dwellings in residential zones by applying development standards that address architectural design, parking and separate entrances for accessory dwellings.

- 2. The use sought is compatible with existing and permitted land uses within the general area.**

If accessory dwelling units comply with the standards set forth in code they are compatible with permitted uses.

- 3. The use sought could be adequately served by public facilities and services such as thoroughfares, transportation facilities, police, 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.**

The property is in a newly developed subdivision and can be adequately served by public facilities and services.

- 4. The use sought would be harmonious in scale, mass, coverage, density and intensity with all adjacent permitted land uses.**

The accessory dwelling unit will be contained in the same structure as the primary dwelling therefore will be harmonious in scale, mass, coverage, density and intensity

- 5. The use sought would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.**

This use will not adversely affect the environment more than if the property were developed without an accessory dwelling unit.

- 6. The use sought would not be detrimental to the public interests, health, safety or welfare of the City in its proposed location, size, design and operating characteristics.**

The proposed use will not be detrimental to the public interests, health, safety or welfare of the City.

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V. CONCLUSIONS AND DECISION

Based on the review of the application, staff analysis, site visit, and public comment, it is the opinion of the Hearing Examiner that the application for a Conditional Use Permit (CUP 18-3552) for subject facility meets the requirements as set forth in municipal code and ordinances and is specifically allowed by definition. As Hearing Examiner, I hereby approve the Conditional Use Permit as requested subject to the following conditions:

1. A deed restriction shall be recorded on the property requiring that either the primary unit or the accessory unit be owner occupied.
2. Approved building permits must be obtained and the home must meet appropriate standards according to current building codes.
3. All life safety issues must be addressed according to current building codes.
4. All other applicable City Code requirements not herein stated shall be met prior to occupancy of the buildings.

RESPECTFULLY SUBMITTED this 15th day of January 2019,

James P. Mullen, P.E.
Hearing Examiner

STATE OF IDAHO)
)
) ss:
County of Bannock)

On this 15th day of January, 2019, before me, the undersigned, a Notary Public in and for the State, personally appeared James P. Mullen, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Hailey Hansen
NOTARY PUBLIC FOR IDAHO
Residing in Power County
My commission expires: April 10, 2024