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Hearing Examiner's Report
Conditional Use Permit 19-201

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RECORDED AT REQUEST OF
FEE DEPUTY

METAL RECORD BK#
SHIMMICK COUNTY IDAHO

CITY OF POCATELLO

2019 MAR -5 A 11:00

21902900

DATE: February 28, 2019

APPLICANT NAME: RMES, J. Mitchell Greer

MAILING ADDRESS: 600 E. Oak Street, Pocatello, ID 83201

PROPERTY OWNER: Rio Properties, Jody Breeding, 4670 Kim Drive, Pocatello, ID 83204 and Adam T. Waldron, 546 N. Hayes Ave., Pocatello, ID 83204

LOCATION OF REQUEST: 535 W. Haden Street

LEGAL DESCRIPTION: Lots 18, 19 and 20, Block 507, Pocatello Townsite

TYPE OF REQUEST: Conditional Use Permit

I. REQUEST

The applicant is requesting a conditional use permit to allow an accessory dwelling unit at 535 W. Hayden Street.

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 February 28, 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 February 12, 2019.
 - b. Notices to property owners of record within 300 feet of the subject site were mailed on February 12, 2019.

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- c. Legal notice was published in the *Idaho State Journal* on February 12, 2019.
- d. Signs were placed on the property on February 13, 2019.
- e. The agenda and supporting documentation were posted to the City's website on February 21, 2019.

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

- a. The property is located at 535 W. Hayden Street and has a Zoning designation of Residential Medium Density Multi-Family (RMM) with an Original Townsite Overlay
- b. Property size: The lots measure 12,627 square feet (more or less)
- c. The surrounding properties to the North, South, East, and West are Residential dwellings in a RMM zoning district.
- d. The Comprehensive Plan Land Use Map Designation is Residential.

6. Public Input:

- a. Public Comment: Prior to the Public Hearing, one telephone call was received by the City. A local historian, Arlen Walker, asked questions regarding the history of the structure and advised that it may be a historical rail home.
 - i. Upon questioning, City Staff indicated that this is not a criterion for consideration.

b. Public Hearing:

The Public Hearing was opened at approximately 5:40 PM.

- No comments were received in opposition to the application
- No comments were received neutral to the application
- One comment was received in favor of the application
 - Comment stated that Owner is seeking for as much latitude as possible in paint color and occupancy.

The Public Hearing was closed at approximately 5:44 PM.

7. Hearing Examiner noted that the decision would be available to public on March 5, 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.

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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 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.**

The accessory dwelling unit as it current exists on the property of 554 N. Hayes Avenue is considered legal, nonconforming. 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 an existing structure at 535 W. Hayden Street and will be a complete, independent living facility. It is detached from the primary unit at 554 N. Hayes Avenue but on the same parcel. The applicant shall submit a short plat application which will have the accessory dwelling unit associated with 546 N. Hayes Avenue rather than 554 N. Hayes Avenue.

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

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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 with a property line adjustment, the lots will meet 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 500 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 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. There is a single-car garage and driveway associated with 554 N. Hayes Avenue and there could possibly be parking off the alley for 546 N. Hayes Avenue and 535 W.

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 is an existing single-story structure that does not exceed the height of the main structure.

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 is oriented toward a different street than the primary dwelling. According to the drawing provided by the applicant, it appears that a walkway exists that is finished with a hard, all-weather surface.

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.

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The accessory dwelling unit is an existing structure. Any colors used shall correspond with the primary dwelling unit.

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

Utility hookups will be transferred to the new owner and will need to meet City requirements at time of transfer.

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.

This accessory dwelling unit is located in an established neighborhood. The property line adjustment that is required will not create any substandard lots.

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

Chapter 11: Special Areas & Sites

Goal 1: Promote and preserve historic buildings, structures, districts and significant ecological and archaeological features

Objective 1.3: Encourage the rehabilitation of historic or architecturally significant structures for continued use or appropriate adaptive reuse.

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.

- 3. 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.

- 4. 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.**

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The property is in an established neighborhood, therefore it is adequately served by public facilities and services.

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

The accessory dwelling unit is an existing structure that is harmonious in scale, mass, coverage, density and intensity

6. **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.

7. **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.**

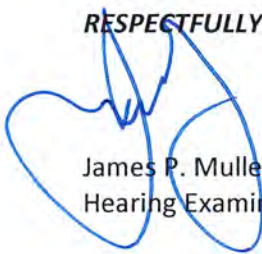
The proposed use will not be detrimental to the public interests, health, safety or welfare of the City.

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 19-201) 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. Complete a short plat to re-plat the lots.
2. Record a deed restriction on the property requiring that either the primary unit or the accessory unit be owner occupied and restricting the accessory dwelling unit from being subdivided and sold separately from 546 N. Hayes Avenue.
3. Provide separate water and sewer hook-ups for 535 W. Hayden Street that meet City requirements.
4. Provide exterior colors that correspond with the primary dwelling unit.
5. Obtain approved building permits. Structure must meet appropriate standards according to current building codes.
6. Address all life safety issues according to current building codes.
7. Meet all other applicable City Code requirements not herein stated prior to occupancy of the buildings.

RESPECTFULLY SUBMITTED this 5th day of March 2019,


James P. Mullen, P.E.
Hearing Examiner

