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**Hearing Examiner's Report and Findings**

**DATE:** June 26, 2020

**APPLICANT/OWNER NAME:** Ivie Tonks

**MAILING ADDRESS:** 758 Birch St, Pocatello, ID 83201

**LOCATION OF REQUEST:** 285/289 Jefferson Ave., Pocatello, ID 83201

**ZONING:** Residential Medium Density Single-Family (RMS)

**REQUEST:** Ivie Tonks of Tiny Dreams Childcare & Preschool, LLC, has submitted an application for a conditional use permit to allow for an increased capacity of 24 children, allowing up to 68 total children at the subject property. To accommodate this increase in children, the applicant will be expanding operations into the adjacent commercial unit.

**PHYSICAL CHARACTERISTICS OF THE SITE:** The subject property is zoned Residential Medium Density Single-Family (RMS) and is approximately .51 acres in size. The subject property is currently developed with a legal-nonconforming commercial structure.

**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.

**I. CONCLUSIONS AND CONDITIONS:**

Based on review of the Application for the conditional use permit, analysis of the staff report, applicants' presentation, and no public comment, the Hearing Examiner **approves the conditional use permit to allow for an increased capacity of 24 children, allowing up to 68 total children at the subject property, with the following conditions:**

1. The applicant shall provide documentation of and shall maintain adequate parking either on-site or off-site (within 500-foot radius of the facility) 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 Street and exit with a right turn onto Jefferson Avenue and shall provide appropriate and approved signage indicating such. Signage shall be approved in writing by City's Engineering Department.
3. All other applicable City Code requirements not herein stated shall be met.

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**II. FINDINGS OF FACT**

1. The Hearing Examiner discloses that she visited the site to observe the physical character and relationships of the subject property and surrounding area. No ex-parte communications took place with anyone prior to the public hearing or during the writing of this report beyond the information gathered or requested at said public hearing. The Hearing Examiner has no personal or professional interest that would not allow an impartial or unbiased decision.
2. A public hearing was held on Thursday June 25, 2020 beginning at approximately 5:31 p.m. and closing at approximately 5:44 p.m.

**III. PROCEDURES AND NOTICES:**

1. 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 Planning and Development Services department at least four weeks prior to the public hearing.
2. The application was heard at a public hearing on June 25, 2020 before the Hearing Examiner in accordance with Municipal Code 17.02.300 and Idaho Code §67-6521.
3. Notice of the public hearing was in accordance with Municipal Code 17.02.130 and Idaho Code 67-6512.
  - a. Notices to property owners of record within 300 feet of the subject site were mailed on June 9, 2020.
  - b. Legal notice was published in the Idaho State Journal on June 9, 2020.
  - c. A sign was placed on the property on June 9, 2020.
  - d. The agenda and supporting documentation were posted to the City's website on, 2020.

**IV. APPLICABLE LAWS AND PLANS:**

- a. Municipal Code §17.02.130, §17.02.170, §17.02.300, §17.01.150, §17.03.340, and §17.05.500
- b. 2015 City of Pocatello Comprehensive Plan
- c. Idaho Code §67-6512

**HEARING EXAMINER AUTHORITY TO GRANT:** The hearing examiner may approve, approve with conditions, or deny an application for a conditional use permit and/or variance. 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. Applicable regulations include the following:

Municipal Code §17.02.130(E), "Authority to Grant: The hearing examiner may approve with conditions, or deny an application for a variance. 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 pursuant to the process outlined in Municipal Code Section 17.02.400, Appeals, of this chapter.

Municipal Code 17.02.300 (b) states that conditional use permits shall be heard and

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 decided on by the Hearing Examiner with an appeal to City Council.

Municipal Code §17.02.130(E), "Authority to Grant: The hearing examiner 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 A) states that conditional use permits shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

#### V. **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 this code unless modified through the CUP process;**

**Applicant's Response:** "The current land use table doesn't directly address daycare use 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, 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:** Pocatello Municipal Code Section 17.01.160 allows 20 children in a structure that was not initially constructed for residential purposes within a residential zoning district and an increased number of children may be conditionally permitted. Currently, the parking meets the required 1 space per 7 children and 1 space per employee. If the requested increase in children is approved and if the daycare increased their employees to 7 individuals, there would need to

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be 17 available parking spaces. There are currently 20 parking spaces which are sufficient for the increase in children as proposed.

In September 2019, the applicant sought a conditional use permit to increase the number of children cared for from 20 to 44. The Hearing Examiner at that time approved the request with the following conditions:

1. The applicant shall provide documentation of and shall maintain adequate parking either on-site or off-site (within 500-foot radius of the facility) 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 Street and exit with a right turn onto Jefferson Avenue and shall provide appropriate and approved signage indicating such. Signage shall be approved in writing by City’s Engineering Department.
3. All other applicable City Code requirements not herein stated shall be met.

**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 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 of development’ (Ch. 5-Land use, pg. 55). By using an existing structure that has previously been used for past and permitted commercial space, we feel that we are achieving the City’s goals.”

**Staff Analysis:** The proposed project is consistent with the goals and policies of the Comprehensive Plan. The 2015 Comprehensive Plan identifies the subject property to be Mixed Use (MU). The property is currently zoned Residential Medium Density Single Family (RMS) which is not consistent with the 2015 Comprehensive Plan (17.01.130).

In addition to the mixed-use designation as described above, staff finds the application is also consistent with the following goals and policies of the Comprehensive Plan:

Chapter 4. Economic Development:

Objective 3.2: Allow for and encourage the development of a variety of retail and service businesses that are pleasant places for people to shop, work, walk and congregate.

Policy a. Encourage mixed-use and infill development in key locations throughout the community.

Policy b. Encourage the location of commercial services and areas of employment within walking or biking distance from residences.

**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 a 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

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 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, and a 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."

**Staff Analysis:** As proposed, the use is compatible with existing and permitted land uses within the general area. As stated above, Pocatello Municipal Code Section 17.01.160 allows 20 children in a structure that was not initially constructed for residential purposes within a residential zoning district and an increased number of children may be conditionally permitted. Existing uses within a 300' buffer surrounding the proposed development site include a mix of commercial and residential uses. The commercial use of the subject property pre-dates the current zoning ordinance and is therefore considered a legal-nonconforming use.

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 serve 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 Ave. and Maple St. 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 proposed increase in use has the potential of increased intensity 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

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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 68 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.

**SUMMARY & CONDITIONS:**

In consideration of the application, staff concludes that the application for a conditional use permit is compliant with Pocatello Municipal Code Section 17.02.130. Should the Hearing Examiner approve the request, staff recommends the following conditions:

1. The applicant shall require customers to enter with a right turn off Maple Street and exit with a right turn onto Jefferson Avenue and shall provide appropriate and approved signage indicating such; and
2. All other applicable City Code requirements not herein stated shall be met.
3. All signage, including but not limited to wall, window, and ground signs shall be approved under a separate permit.

Respectfully submitted this 26<sup>th</sup> day of June, 2020,

Kathleen Lewis  
Hearing Examiner



# Easy Peel Labels

Use template 8667™



Hold here



Pull back

Separate at Perforation

Détachez suivant le pointillé

See Back for Details  
Voir détails au verso



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*Mailed 1st class  
on June 26, 2020  
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