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Hearing Examiner's Report and Findings

CUP 19-1576

DATE: July 1, 2019

APPLICANT/OWNER NAME: Tom Hughes

MAILING ADDRESS: 620 Galaxy Court
Pocatello, ID 83204

REPRESENTATIVE: Mark Farnes

MAILING ADDRESS: 148 Abraham
Chubbuck, ID 83202

LOCATION OF REQUEST: 620 Galaxy Court
Pocatello, Idaho 83204

LEGAL DESCRIPTION: Lot 6, Block 1, City Creek Estates, Division 1, Bannock County

REQUEST: The applicant is requesting a conditional use permit to allow construction of an accessory dwelling unit behind and attached to a new garage.

SITE CHARACTERISTICS:

Zoning designation: Residential Estate

Property size: The lot measures 31,906 square feet (more or less)

Existing structures: Single family residence.

SURROUNDING LAND USES AND ZONING:

North: Residential dwellings in a Residential Estate zoning district

South: Residential dwellings in a Residential Estate zoning district

East: Residential dwellings in a Residential Estate zoning district

West: Residential dwellings in a Residential Estate zoning district

COMPREHENSIVE PLAN LAND USE MAP DESIGNATION: Residential

I. CONCLUSIONS AND CONDITIONS:

Based on review of the Application for the variance, analysis of the staff report, applicants' presentation, no comments in favor of the variance, no neutral comments

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and one comment opposing the request, the Hearing Examiner **approves the conditional use permit**. The following terms and conditions derived from the City Staff Report are required: (bold text, if any, indicates hearing examiner modifications to City Staff conditions.

1. A deed restriction shall be recorded at the Bannock County Clerk's office requiring that either the primary unit or the accessory unit be owner occupied.
2. Approved building permits must be obtained and the structure 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.

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. She noted that the area is occupied by single family dwellings in Residential Estate zoning. 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 states that there is nothing personally or professionally that would not allow an impartial or unbiased decision.
2. City Staff did receive one comment in opposition to the application and one phone call requesting information.
3. A public hearing was held on Thursday June 27, 2019 beginning at approximately 5:30 p.m. and closing at approximately 5:40 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 27, 2019 before the Hearing Examiner 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 June 12, 2019.
 - b. Notices to property owners of record within 300 feet of the subject site were mailed on June 12, 2019.
 - c. Legal notice was published in the Idaho State Journal on June 11, 2019.
 - d. Signs were placed on the property on June 11, 2019.
 - e. The agenda and supporting documentation were posted to the City's website on June 20, 2019.

IV. APPLICABLE LAWS AND PLANS:

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1. Municipal Code 17.01.130, 17.02.300 and 17.06.100
 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 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 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 the code unless modified through the CUP process.

Applicant's response: "The request is conditionally permitted within the subject land use district and complies with all of the applicable provisions of the zoning ordinance.

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

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Accessory Dwelling Standards:

- a. **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.

Staff analysis: The accessory dwelling unit is to be constructed behind and attached to an attached garage that is under construction.

- b. **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.

Staff analysis: The applicant is requesting one accessory dwelling unit; therefore the request meets this standard. The lot meets minimum lot size for the zoning district. The zoning district requires 15,000 square feet and this lot is 31,906 square feet (more or less).

- c. **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.

Staff analysis: The applicant has supplied a plan for the accessory dwelling unit. The unit will be roughly 1,008 square feet with one bedroom; therefore, the accessory dwelling does not meet this standard. However, given the large lot size, the location of the accessory dwelling unit and access to it, staff finds this acceptable.

- d. **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.

Staff analysis: On street parking is available for the property. There is a two-car garage and associated driveway in addition to the attached one-car garage and associated driveway that is under construction. Therefore, this standard has been met.

- e. **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.

Staff analysis: The accessory dwelling unit is to be behind and attached to the garage that is under construction. It will be single story and will not exceed the height of the main structure.

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- f. **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.

Staff analysis: The accessory dwelling unit will be contained behind and attached to an attached garage. Access to the dwelling unit will be through the garage and onto a patio at the rear of the home, therefore, this standard does not apply.

- g. **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.

Staff analysis: The accessory dwelling unit will be contained behind and attached to an attached garage and will match the primary dwelling unit.

- h. **Utility Hookups:** Shared or separate utility hookups must comply with City requirements.

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

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

Staff analysis: A deed restriction will be placed on the lot indicating that either the primary unit or accessory unit shall be owner occupied.

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

Staff analysis: The accessory dwelling unit is to be located on an existing lot with a home and a detached garage; no subdivision or lot split will be done.

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

Applicant's response: "This project is consistent with the goals and policies of the comprehensive plan of the city."

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

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the Comprehensive Plan:

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

Applicant's response: "This project is compatible with existing and permitted land uses within the general area."

Staff analysis: If accessory dwelling units comply with the standards set forth in code they are compatible with permitted 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: "This project can be adequately served by public facilities and services."

Staff analysis: The property is on an existing street and in a developed neighborhood that are already served by public facilities and services.

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

Applicant's response: "This project would be harmonious in scale, mass, coverage, density and intensity with all adjacent permitted land uses."

Staff analysis: The accessory dwelling unit will be behind and attached to an attached garage that is under construction. The new garage will add a third bay to their existing garage which is not out of character in the neighborhood where many homes have 3 and 4 garage bays. The accessory dwelling unit will be on the back of the garage and won't be highly visible from the street.

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: "This project will not adversely affect the environment to a greater degree than had it a use permit outright had the ordinance been established."

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Staff analysis: The use will not adversely affect the environment more than if the property were developed without an accessory dwelling unit.

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: "This project will not be detrimental to the public interests, health, safety or welfare of the city in its proposed location, size, design and operating characteristics."

Staff analysis: The proposed use will not be detrimental to the public interests, health, safety or welfare of the city.

APPLICANT NOTICE:

Notice is hereby given that this 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 pursuant to Idaho Code Section 67-8003 within 10 days after this Decision.

Respectfully submitted this 1st day of July, 2019,



Kathleen Lewis
Hearing Examiner

STATE OF IDAHO)
County of Bannock)
SS

On this 1 day of July, 2019, before me the undersigned, personally appeared Kathleen Lewis, known to me or proved to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she 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.



Jerrin Neu

NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
Commission Expires: 1/18/2025

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