

Hearing Examiner's Report and Findings

DATE: August 30, 2021

APPLICANT/OWNER NAME: Nathan and Kristie Israelsen

MAILING ADDRESS: 180 Andrews Lane
Providence, UT 84332

Instrument # 22119532
Bannock County, Pocatello, Idaho
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Deputy: vhall

LOCATION OF REQUEST: 707 & 709 S. 5th
Pocatello, Idaho 83201

REQUEST: Nathan and Kristie Israelsen have submitted a request for a Conditional Use Permit seeking expansion of a legal nonconforming use of a duplex to a triplex in the Commercial General (CG) zoning district. The use of a duplex is not permitted in the CG zoning district; however, the use was established prior to the adoption of current zoning regulations (1981) and as a result is considered legal nonconforming. Use is defined as any purpose of any activity, arranged, intended, maintained or occupied on a site.

Existing nonconforming uses may be expanded by up to fifty percent (50%) of the original building or land area or density through the conditional use permit process regardless of the underlying zoning district. Any site modifications that could change or intensify a nonconforming use such as, but not limited to, parking spaces, traffic circulation, ingress/egress, curb cut location, landscaping removal or similar items of change will require a conditional use permit (17.01.170.A.3). If the structure housing a legal nonconforming use is destroyed by fire or some other calamity, not intentionally caused by the owner, it may be replaced and the use continued. In such case, the replacement structure shall not exceed nor the use intensify beyond the original dimensions, density, or operational characteristics, unless through the expansion or change process outlined in subsection A3C of Title 17.01.170.

PHYSICAL CHARACTERISTICS OF THE SITE: The property is currently built and functioning as a triplex, however, is legally designated as a duplex dwelling unit as verified in the 1960 POLK directory. The property located at 707 & 709 South 5th Avenue, Parcel number RPPOC190800, is within the Commercial General (CG) zoning district as is located within the Original Townsite Overlay (OTO). The parcel makes up approximately .19 acres. The CG zoning district permits multi-family housing only when ground floor store front commercial uses are maintained. The City's Utility Billing Department records show that the property has been billed for two units since 1994. Records do not indicate a third unit at the subject property.

NOTIFICATION: The application is scheduled to be heard before the City of Pocatello Hearing Examiner on August 26, 2021 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512. Notice of public hearing was mailed to all property owners within three hundred feet (300') of the external boundaries of the land being considered on August 10, 2021, in order that they may provide comment on the proposed application. On August 10, 2021, notice was also published in the Idaho State Journal and signage was posted on the subject property. All notices herein described have been provided at least fifteen (15) days prior to the public hearing or as otherwise required by Idaho State Code. No public comment has been received at the time of completion of this report.

AUTHORITY TO GRANT: Per City Code 17.02.130 & 17.02.300 the Hearing Examiner shall

hold a public hearing and render a decision on conditional use permit for applications less than 1.5 acres. The applicant may file an appeal to be heard by the Pocatello City Council, followed by district court as necessary.

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 section 17.02.400, "Appeals", of this chapter. 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. Designating the exact location and nature of development;
6. Require the provision for on site or off-site public facilities or services;
7. Require more restrictive standards than those generally required in this title;
8. Require mitigation of effects of the proposed development upon service delivery by any political subdivision,
including school districts, providing services within the planning jurisdiction; and
9. Require that studies addressing demographic, economic, fiscal, traffic, engineering, geologic, and environmental effects and any aviation hazard as defined in Idaho Code section 21-501(2), be conducted prior to granting approval.

2015 COMPREHENSIVE PLAN:

The following components of the 2015 Pocatello Comprehensive Plan are applicable to this application:

- **Chapter 5: Land Use** addresses “Future Growth” and the need for development patterns that address population growth while avoiding and mitigating impacts to natural resources and urban sprawl. Chapter 5 continues to place emphasis on infill and redevelopment and the creation of new compact neighborhoods.

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, no comments were received regarding this variance application. The Hearing Examiner **approves the Conditional Use Permit**, finding the application does meet the standards for approval under Chapter 17.02.130 of Pocatello Municipal Code. 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. All applicable standards of the City of Pocatello Municipal Code Title 17 Zoning Regulations not herein listed and applicable shall apply;
2. Any activity requiring a separate development or building permit shall comply with applicable regulations;
3. The basement unit shall be brought into compliance with current ingress/egress requirements prior to renting/leasing the unit;
4. All applicable standards of the of the Original Townsite Overlay (OTO) section 17.04.220 shall apply;
5. All outdoor lighting shall meet the requirements as provided under Municipal Code Section 17.05.420; and
6. Improvements or modifications shall bring the property into compliance with current Building and Fire Code, including entry and exit ways, egress windows, and other applicable improvements as determined by the responsible department

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 subject site has an existing duplex. 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 not receive any comments.
3. A public hearing was held on Thursday August 26, 2021 beginning at approximately 5:31 p.m. and closing at approximately 5:41 p.m.

II. 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 August 26, 2021 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 August 10, 2021.
 - b. Notices to property owners of record within 300 feet of the subject site were mailed on August 10, 2021.
 - c. Legal notice was published in the Idaho State Journal on August 10, 2021.
 - d. A sign was placed on the property on August 10, 2021.

III. APPLICABLE LAWS AND PLANS:

1. Municipal Code 17.02.170, 17.02.300 and 17.03.240
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 A) states that conditional use permits shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

IV. CODITIONAL 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:

REVIEW CRITERIA (17.02.130. D):					
Compliant			City Code and Staff Review		
Yes	No	N/A	Code Section	Analysis	
			17.02.130 D.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.	
			<i>Applicant Response</i>	"The use of this structure as a triplex is not currently permitted within the commercial zoning under which it is zoned. This request is that the legal nonconformance that has been granted (allowing this property to be used as a duplex) be expanded by 50% to allow the use of this structure as a triplex."	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Staff Analysis</i>	As the applicant has noted, a duplex or triplex is not a permitted use in the Commercial General (CG) zone. The CG zone permits multi-family housing only when ground floor store front commercial uses are maintained. However, the property is considered legal nonconforming due to the fact the duplex (use) was established prior to the adoption of zoning regulations in 1981. City Code Section 17.01.170 A3b Administrative Provisions explains that "to expand existing nonconforming uses by up to a total of fifty	

				percent (50%) of the original building or land area or density may be sought through the conditional use permit process regardless of the underlying zoning district. Further, any site modifications that could change or intensify a nonconforming use such as, but not limited to, parking spaces, traffic circulation, ingress/egress, curb cut location, landscaping removal, or similar items of change will require a conditional use permit.”
☒	☐	☐	17.02.130 D.2	Is consistent with the goals and policies of the comprehensive plan of the city.
			<i>Applicant Response</i>	“The “Future Growth” section of chapter 5 in the Comprehensive Plan lists a desire to resist urban sprawl and to increase infill. While this change in allowances from a duplex to a triplex doesn’t infill by developing any land, it does make the neighborhood more compact and slightly reduce the need for outward expansion of the city.”
			<i>Staff Analysis</i>	The City’s Comprehensive Plan (Chapter 5: Land Use) addresses “Future Growth” and the need for development patterns that address population growth while avoiding and mitigating impacts to natural resources and urban sprawl. Chapter 5 continues to place emphasis on infill and redevelopment and the creation of new compact neighborhoods. Although this is not a true infill development project, the proposal does encourage a compact neighborhood while reducing impacts on the natural environment and urban sprawl.
☒	☐	☐	17.02.130 D.3	Is compatible with existing and permitted land uses within the general area.
			<i>Applicant Response</i>	“Directly adjacent to this property on the SE are the West Campus Apartments. Across the street to the NW is another multifamily housing structure. There appear to be a mixture of uses in other structures within a 300-foot radius from this structure, some of which are commercial and some of which appear to be residential. As land uses are mixed, including multiple housing units that house greater than three groups of individuals, it doesn’t seem that the use of this structure as a triplex would disrupt the existing and permitted land uses.”
			<i>Staff Analysis</i>	The property is zoned Commercial General (CG) as it fronts South 5 th Avenue. However, as the applicant has noted, within the general area there are a number of residential units including apartment complexes and single-family residences. In addition, the property abuts a residential zoning district to the southwest via the alley way. Staff has determined the proposed use at 707 & 709 S. 5 th Avenue is compatible with existing and permitted land uses within the general area.
☒	☐	☐	17.02.130 D.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.
			<i>Applicant Response</i>	“As this structure has been used, seemingly recently, as a triplex, a pretty good estimation of the impact its continued use as a triplex would have has already been experienced. There are no known problems with public facilities with the use of the structure as a triplex

				and the building inspection, including imaging of the sewer, didn't suggest any problems with overloading. However, in an interest of full disclosure, this building is being purchased from an estate and we are therefore unable to verify with the previous owner that the structure was adequately served by public facilities and was not detrimental to public health, safety, and welfare. Hopefully anyone in the nearby area with complaints will feel empowered to bring them forward as they have been notified of this proposed CUP in a mailing."
			<i>Staff Analysis</i>	Adequate public facilities and services are existing and available to the subject property. The proposed use will not be detrimental to the public health, safety, and welfare. The applicant shall coordinate with the necessary City of Pocatello Departments such as Fire, Public Works/Engineering, WPC, Sanitation, Water, and Building prior to the submittal of a building permit to address improvements that may be required. Staff proposes that improvements or modifications bring the property into compliance with current Building and Fire Code, including entry and exit ways, egress windows, and other applicable improvements as determined by the responsible department. (see Condition #6)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.5	Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.
			<i>Applicant Response</i>	"As no changes are being proposed with the building itself, no change in the harmony of the area are anticipated."
			<i>Staff Analysis</i>	The proposal does not intend to alter or modify the scale, mass, coverage, density, or intensity beyond what is existing on site. Although building improvements and modifications are proposed, the proposal will have minimal effect on the surrounding area.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.6	Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
			<i>Applicant Response</i>	"Many factors affect the environment, people being one of the largest. Perhaps it can be argued that increasing the allowed number of tenants in this property by 50% could have an impact on the environment, simply by living and therefore producing things such as garbage, sewage, etc. However, the change in impact from a duplex to a triplex isn't anticipated to be very significant to the overall community, especially when considering the tenants would arguably be producing garbage and sewage, etc. wherever they live in Pocatello. Also, there are several other multifamily structures around and the increase in tenancy in this structure isn't likely to produce a noticeable difference."
			<i>Staff Analysis</i>	The proposed use will not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.130 D.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.
			<i>Applicant Response</i>	"No known conflicts exist with public interest, health, safety, or welfare of the city. The location, size, design, and operating

			characteristics of this property will remain unchanged as the proposal would take it from one allowance of a residential structure to a second allowance of a residential structure and no changes to the building and lot are being proposed.”
		<i>Staff Analysis</i>	The proposed uses at the site will not be detrimental to the public interest, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics. The general area offers a variety of residential and commercial uses.

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 30th day of August 2021,

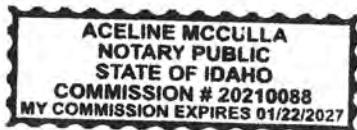
Kathleen Lewis
Hearing Examiner

STATE OF IDAHO)
)
) ss
County of Bannock)

On this 30th day of August, 2021, 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.

(SEAL)



NOTARY PUBLIC FOR IDAHO
 Residing at: Pocatello, Idaho
 Commission Expires: _____

