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CLAYTON BROWN  
BANNER COUNTY IDAHO

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CITY OF POCATELLO

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2019 SEP 17 A 9:57

**Hearing Examiner's Report  
Conditional Use Permit 19-2187**

**DATE:** September 16, 2019

**APPLICANT NAME:** Ivie Tonks representing Tiny Dreams Childcare and Preschool, LLC

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

**PROPERTY OWNER:** Tiny Dreams Childcare and Preschool, LLC

**LOCATION OF REQUEST:** 285 Jefferson Avenue, Pocatello, ID 83201

**LEGAL DESCRIPTION:** Lots 1 through 7, Block 3, Fairview Townsite, Bannock County, Idaho

**TYPE OF REQUEST:** Conditional Use Permit

**I. REQUEST**

The applicant is requesting a conditional use permit to allow expansion of a commercial childcare facility at 285 Jefferson Avenue from 20 children to 44 children.

**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 September 12, 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 August 27, 2019.
  - b. Notices to property owners of record within 300 feet of the subject site were mailed on August 27, 2019.

- c. Legal notice was published in the *Idaho State Journal* on August 27, 2019.
- d. Signs were placed on the property on August 29, 2019.
- e. The agenda and supporting documentation were posted to the City's website on September 5, 2019.

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

- a. The property is located at 285 Jefferson Avenue.
- b. Property size: The lots measure 22,385 square feet (more or less)
- c. The surrounding properties to the North are vacant commercial building, residence and a commercial business in a Residential Medium Density Single Family Zoning District. Properties to the South, East, and West are residential dwellings in a Residential Medium Density Single Family Zoning District.
- d. The Comprehensive Plan Land Use Map Designation is Mixed Use.

6. Public Input:

- a. Public Comment: No public comment was received prior to the Hearing.

- b. Public Hearing:

The Public Hearing was opened at approximately 5:42 PM.

- No comments were made in opposition to the application
- One comment was made neutral to the application.
  - Comment indicated that there has not been a traffic problem in the area and is does not anticipate one with the increase of the number of children.
- No comments were made in favor of the application

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

- 7. Hearing Examiner noted that the decision would be available to public on September 17, 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 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."

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Municipal Code §17.02.300 states that conditional use permits less than 1.5 acres shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

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. CONITIONAL 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.**

*This use is conditionally permitted in Residential Zoning Districts. The applicant is a currently licensed childcare facility. Currently, the parking is adequate with 10 spaces, however if an increase to 44 children is approved 1 space per 7 children and 1 space per employee is required. Applicant must provide adequate parking to maintain operation. Municipal Code §17.05.570 states up to 50% of required parking spaces may be provided off-site in a city-approved parking lot which is located within a 500-foot radius of the subject site. The applicant will need to demonstrate they have adequate parking either on-site or off-site with a signed parking agreement prior to a new license for increased numbers is approved.*

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

*The application is consistent with the following goal and policy of the Comprehensive Plan:*

*Land Use Goal 3. Land uses should be as compatible as practical and/or possible with adjoining and surrounding uses.*

*Objective 3.1 Promote aesthetically pleasing neighborhoods and communities.*

*d. Encourage citizen participation in the land use planning process, especially when the proposed changes impact a residential district.*

*e. Encourage non-residential developments to be compatible with neighboring residential districts.*

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

*The Childcare and Preschool would be compatible with the existing and permitted land uses within the area as there is a mix of commercial and residential uses in the general*

vicinity. Permitted uses include residences and churches which are similar uses to Childcare and Preschool facilities. The commercial uses pre-date the zoning ordinance and are therefore, legal non-conforming 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.

*The subject property is located at the intersection of two existing streets and in a developed neighborhood that are already served by public facilities and services. Jefferson Avenue and Maple Street curbing on both streets are painted yellow, therefore loading and unloading will not be allowed for on street drop off and pick up parking areas. These activities 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 Street and exit with a right turn on Jefferson Avenue to avoid traffic congestion.*

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

*The only change to the exterior of the building is the fence for the playground in the back of the building, therefore the facility remains as is and is considered to be harmonious in scale, mass, coverage and density with all adjacent permitted land uses. The traffic use will increase in intensity and will have 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 it is anticipated that the use can be harmonious with the adjacent land uses.*

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.

*The building was built prior to 1981 as office/retail space. The use as a Childcare and Preschool Facility with 44 children will not adversely affect the environment more than if the property were leased as an office or retail space.*

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.*

