HEARING EXAMINER
AGENDA
Thursday, September 22, 2016
5:30 p.m.
City Council Chambers
911 N. Seventh Avenue
Pocatello, ID

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Dave Hunt at dhunt@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

HEARING EXAMINER: Keeven Shropshire

1. Disclosure of ex parte communication and site visit. Disclose who was talked to, the basic substance of the conversation and whether the conversation had any influence. Disclose if a site visit was done, location(s) of the visit and what was seen.

2. Barry Dutton of Nel's Bi-Lo requests a conditional use permit to place a 40 foot storage container in the back yard of 1542 E. Lander Street to be used for storage for Nel's Bi-Lo at 333 N 15th Avenue. The property is located within a Residential Medium Density Multi-Family (RMM) zoning district with an Original Townsite Overlay (OTO). Municipal Code 17.01.170(A)(3)(b) allows expansion of nonconforming uses by up to a total of 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.

AGENDA ITEM NO. 2

STAFF REPORT
CONDITIONAL USE PERMIT

APPLICANT: Barry Dutton of Nel's Bi-Lo
PROPERTY OWNER: Todd Nelson
LOCATION OF REQUEST: 1542 E. Lander Street
LEGAL DESCRIPTION: W 70', Lots 7 to 10, Block 50, Pocatello Townsite
MEETING DATE: September 22, 2016
ASSIGNED STAFF: Terri Neu

DESCRIPTION OF REQUEST

Barry Dutton of Nel's Bi-Lo (mailing address: 333 N. 15th Avenue, Pocatello, ID 83201) requests a conditional use permit to place a 40 foot storage container in the back yard of 1542 E. Lander Street to be used for storage for Nel's Bi-Lo at 333 N 15th Avenue. The property is located within a Residential Medium Density Multi-Family (RMM) zoning district with an Original Townsite Overlay (OTO). Municipal Code 17.01.170(A)(3)(b) allows expansion of nonconforming uses by up to a total of 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.

PROJECT REVIEW

The subject site is located within a Residential Medium Density Multi-Family zoning district with an Original Townsite Overlay. The lot is developed with a single family residence.

The uses surrounding the property are a mix of residential (high and medium density) and commercial. Directly across 15th Avenue is an apartment complex and to the south of that is a church with a large day care operation located in it. To the south, west and north are residential properties; and there is a funeral home one block to the north.

Site Plan Review. The submitted site plan shows the existing home and store with the proposed storage container and cooler on a concrete pad.

Parking. The parking in the existing parking lot won't be affected. This expansion is not increasing the floor area of the store and doesn't require additional parking spaces.

STAFF RECOMMENDATION

Based on a review of the application materials, site, Municipal Code standards, and Comprehensive Plan goals and objectives, Planning Division staff recommends **approval** of the request with the following conditions.

1. A property line adjustment application shall be required by the property owner of 1542 E. Lander Street prior to placement of the storage unit and freezer.
2. All Building and Fire Code requirements as deemed applicable by the Building Official shall be adhered to.
3. Any standards/regulations not herein noted but applicable to commercial development shall be adhered to.

MUNICIPAL CODE PROVISIONS

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.

PUBLIC NOTICE

Notice of this application was published in the Idaho State Journal, sent to property owners within a 300 foot radius of the subject site, and a sign was posted on the property giving notice of the hearing. As of the date this staff report was completed (9/15/16), no comments either in support or in opposition have been received.

CONDITIONAL USE PERMIT ANALYSIS

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(A)(3)(c) 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 lot or parcel was legally created.**

Staff analysis: The lots were legally created as part of the original townsite. If the property owner of 1542 E. Lander Street applies for a property line adjustment

2. **New development shall comply with the current standards set forth by this code, except as specifically varied through this process.**

Staff analysis: The proposed expansion will comply with current standards.

3. **The proposed expansion or change shall be designed to minimize potential impacts on public health, safety, and general welfare and shall be within the following parameters:**

   A. **The degree of noise, vibration, dust, odor, fumes, glare, or smoke created by the use will not be increased.**

Staff analysis: The noise, vibration, dust, odor, fumes, glare, or smoke will not be increased with the addition of the storage unit and freezer.

B. The number and kinds of vehicular trips associated with the use shall not be changed so as to cause additional impacts on surrounding properties unless mitigating measures are taken.

Staff analysis: A change in vehicular trips should not be to the extent that it will cause impacts on surrounding properties.

C. The amount and nature of outside storage, loading, and parking shall not be changed so as to cause increased adverse impacts.

Staff analysis: Adding a storage container and freezer for the market would not cause increased adverse impacts for the surrounding neighborhood. The applicant has designed the proposal so the storage container will blend with the fence and it will be fenced off from the home at 1542 E. Lander Street.

D. The visual appearance of the development shall be designed to be compatible with the adjacent and surrounding architecture and site development patterns.

Staff analysis: The applicant has designed the proposal so the storage container will blend with the fence and it will be fenced off from the home at 1542 E. Lander Street.

E. The hours of operation shall not be increased unless specifically altered through this process and adverse impacts minimized.

Staff analysis: The hours of operation are not changing, they are expanding the storage area for the market.

CONCLUSION

Staff finds the proposal meets the criteria for a conditional use permit.

PLANNING & DEVELOPMENT SERVICES
PO Box 4169, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184 FAX (208)234-6586

16-2071

A MUNICIPAL CORPORATION OF IDAHO

APPLICATION FOR CONDITIONAL USE PERMIT

received 8/26/16 am 4:00pm

Application Submittal Approved by: TN

Plan Review Approved by: TN

Receipt #: 174225

Date: 9.7.16

Dates for a public hearing will not be scheduled until application is deemed complete.

Filing Fee: $494.00 + 75 x $3.00 per address = $ 75 **Total Due $** 569

Applicant: Nels Bilo Market
Name/Firm

333 N. 15th Ave
Mailing address

232-5724 317-3694
Phone (work/cell/home)

Representative: Barry Dutton
Name/Firm

same
Mailing address

same
Phone (work/cell/home)

Project Information:

Project occupies 1.5 acres or more? No

Street Address: 333 N. 15th Ave

Zoning: _____

Legal Description (attach documentation—see C, below): Lots 5-6; E 70' Lots 7-10 Block 50 Pocatello Townsite

Brief Description of Proposed Project: Add cement pad to adjacent back yard with a storage container (40ft).

THE FOLLOWING INFORMATION MUST ACCOMPANY EACH APPLICATION TO BE COMPLETE

A. All necessary filing fees and other specified plans and descriptions must be paid and/or filed accompanying your application.

B. A title report, property deed, or other legal documentation of ownership of the site in question, whether freehold, option, or lease.

C. The complete and accurate legal description for the subject property shall be submitted. This can be obtained from the Bannock County Assessor by requesting a copy of the controlling document for the subject site or address. A copy of this document shall be submitted with this application.

D. **Typed**, gummed mailing labels with all of the names and addresses of the property owners within a 300 foot radius of the subject property. A charge of $3.00 per property owner and resident is required. A signed Affidavit of Mailing List must also be submitted (attached).

E. Two (2) site plans, one (1) measuring 8-1/2" x 11" and one (1) 18" x 24" (or larger), which describe the proposal and contain the following information:

1. Drawn to scale.
2. Building spacing (including setbacks for front yards, side yards and rear yards).
3. A detailed layout of the parking area and landscaping of that area.
4. Pattern and dimensions of all sidewalks on the parcel.
5. Proposed containment of on-site storm drainage.
6. Type, quantity and size of proposed landscaping on-site (or separate landscape plan).
7. Location of curb cuts and access to streets and alleys.
8. Screening or fencing to be provided (type and height).
9. Any easements or restrictions on the property.

F. One (1) set of complete design plans or written description of the proposed structure or additions including elevations and finished details (including material type and color).

G. A written analysis of your request must accompany your application. It should detail the request as well as the reasons a conditional use permit is needed. Studies may be included and all steps being taken to ease the effect of this conditional use should be outlined. The written analysis must fully address each of the following standards (contained in Section 17.02.130 of the Zoning Ordinance):

1. Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of the Zoning Ordinance unless modified through the CUP process.
2. Is consistent with the goals and policies of the Comprehensive Plan of the City.
3. Is compatible with existing and permitted land uses within the general area.
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.
5. Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.
6. Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.
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.

H. If a representative will be submitting the application, an affidavit, power of attorney, or other document evidencing the right of the representative to appear and submit items on behalf of the property owner.

The approval of this application does not permit the violation of any federal or state codes, any section of the Building Code, or other Pocatello Municipal Codes as adopted. Approval of this land use permit does not exempt applicant from the provisions of the federal Fair Housing Act or ADA requirements. Further, other conditions, requirements, etc. may be imposed as part of the building permit process.

A conditional use permit must be established within one (1) year of the granting of the use permit. Actual construction of the permitted building shall constitute such establishment. This period may be extended by Planning and Development Services staff for an additional one (1) year upon request at least 30 days prior to expiration of the initial 1-year period and provided the applicant demonstrates good cause for the delay.

This application shall not be considered complete (nor will a hearing before the Hearing Examiner or Planning and Zoning Commission be scheduled) until all required information has been submitted and verified.

I hereby acknowledge that I have read this application and state that the above information, including all submitted materials, is correct and I agree to the above terms and conditions. I further agree to abide by any and all conditions Hearing Examiner or Planning and Zoning Commission may impose on my use of this site. I also understand that non-conformance with these conditions in a timely manner will result in automatic forfeiture of my permit. I am also aware that the applicant or a representative must be present at the public hearing and that the decision on this request will be recorded in the official records of Bannock County.

Applicant's Signature: _____ Representative's Signature: _____

Date: 8/19/16 Date: 8/19/16

A sign giving public notice will be posted at the proposed site during the course of these proceedings.

City of Pocatello

Planning & Development Services

911 N 9th Ave

Pocatello, Idaho 83205

Plan Submission for:

Nels Bilo Market

333 N 15th Ave

Pocatello, Idaho 83201

TO WHOM IT MAY CONCERN:

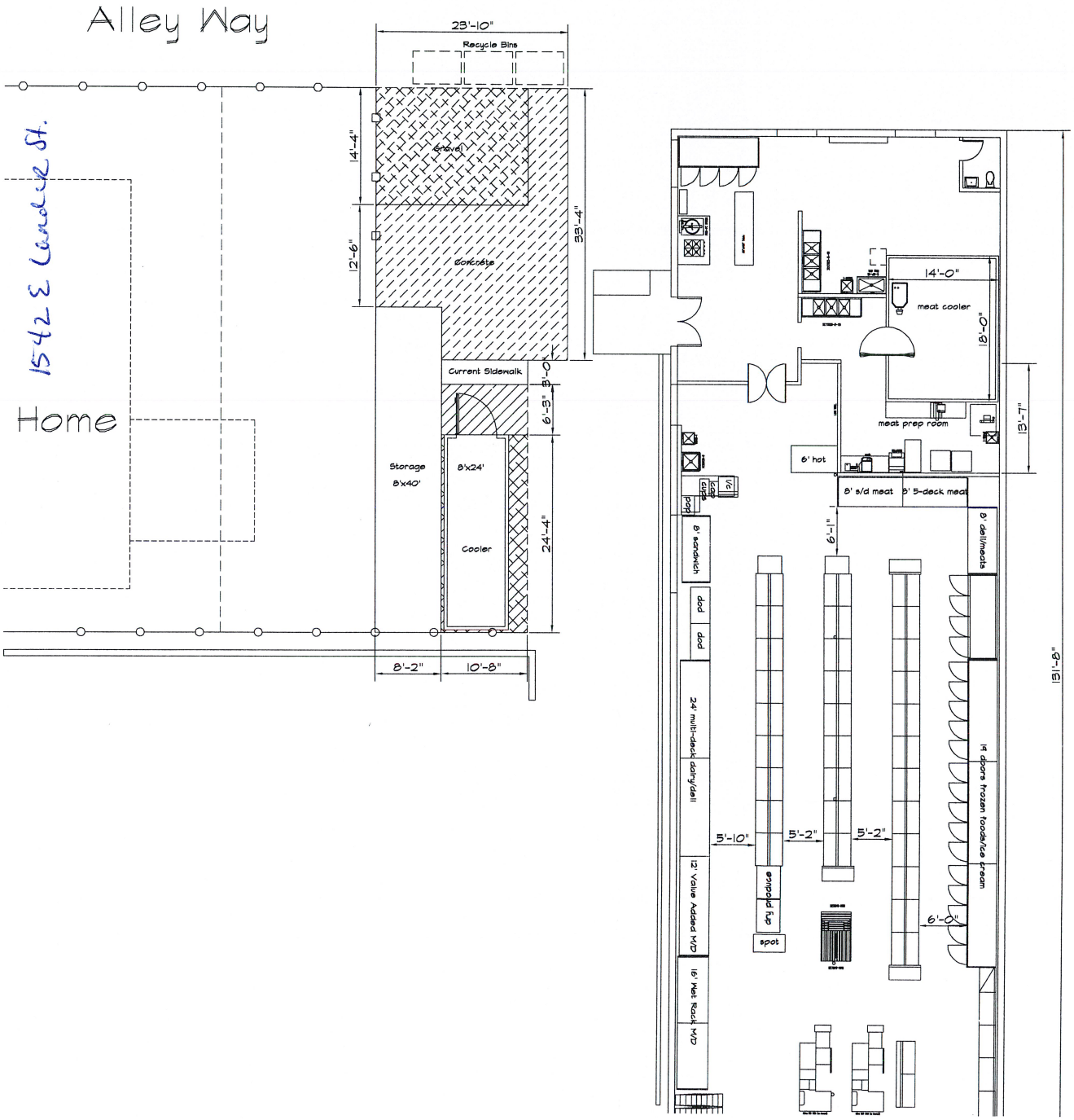
Nels Bilo is resubmitting for a CUP for another version of this storage addition to our business. We have attempted a few versions of this concept to add a freezer and cooler but none have come to fruition. Currently we are using the garage attached to 1542 E Lander as storage. That option has been exhausted so we have secured a 40ft storage container in that back yard for our storage use. There will be a fence constructed to separate the property along with the storage container for use by Nels Bilo Market. The house on Lander will maintain minimum lot requirements will the separation of the yard as outlined.

We are seeking approval to tear down the current fence on the north side and a portion on the west side by the alley for store access. The recycling bins by the north side fence will be moved to the alley for easier pick up access. Concrete will be poured to allow a forklift access to the shipping container. The container will be painted the same color as the redwood fence to blend into the current landscape.

Looking forward we would like to add a second container on the north side next to the current container and convert it to a cooler/freezer. This will not take place at this time but want to get approval while we are going through this process. This would significantly add to our much needed refrigeration needs at a fraction of the cost compared to what we have attempted to do in the past. This will make our operation have more function and we feel that it won't compromise any appeal to neighbors since this project will be relatively unnoticed other than from the alley behind our store.

Thank you,

Barry Dutton

Owner Nels Bilo Market

Nel's Bi-Lo Proposed-2
Pocatello, Id