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No. 21613682
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CITY OF POCATELLO
Date: 9-27-16 Time: 9:45 a.m.
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HEARING EXAMINER REPORT
CONDITIONAL USE PERMIT

DATE: September 27, 2016
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

I. REQUEST

The Applicant 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.

II. FINDINGS OF FACT

1. Your Hearing Examiner discloses that he 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.
2. City Staff did not receive any comments, written or oral, for or against the application.
3. There were no public comments at the public hearing.
4. The Applicant did not show up for the public hearing therefore the Hearing Examiner relied on information provided by City Staff and from the previous CUP request of April 19, 2011 which was heard by the same Hearing Examiner.
5. The single family dwelling to the south at 1542 E. Lander Street is owned by the father of the applicant.
6. The encroachment to the residential property by the request will allow a legal minimum lot size to remain for the residence if the residential property were to be sold separately. Staff indicated permission had been granted by the father of the applicant for a property line adjustment application so that the storage container could be enclosed on the grocery store property. Staff also indicated that the property line adjustment is a recent modification to the code
7. Staff had proposed the applicant could have two options in consideration of their request for the 40 foot storage container. The first option would be to utilize a rezoning of the parcel to RCP that the City is considering already or the second option would be the CUP, which the applicant decided to go the route of the CUP.
8. Staff indicated they had talked with Sanitation who addressed they prefer the dumpster and recycling containers be placed in the alley.
9. Staff indicated they had talked with the applicant who agreed to cleaning up the alley and removing all the clutter and debris like old shelving, pallets, etc.

III. CONCLUSION AND CONDITIONS

Based on review and analysis of the application material, subject site and surrounding area, applicable Municipal Code sections and goals of the City's Comprehensive Plan, your Hearing Examiner find that this proposal does meet the standards for a Conditional Use Permit with the stated

Conditions. Therefore your Hearing Examiner respectfully determines that the requested Conditional Use is **Approved**. The following terms and conditions derived from City Staff Report are required: (bold text, if any, indicates hearing examiner modifications to City Staff 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.

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.

IV. APPLICANT NOTICE:

Notice is hereby given that the applicant has the right to challenge this Decision and request a regulatory taking analysis pursuant to Idaho Code Section 67-8003 within 28 days after this Decision.

RESPECTFULLY SUBMITTED this 27th day of September, 2016.

R. Keeven Shropshire
Hearing Examiner

STATE OF IDAHO)
ss:
County of Bannock)

On this 27 day of September 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared Keeven Shropshire, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that he 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.

TERRI NEU
NOTARY PUBLIC
STATE OF IDAHO

Terri Neu

NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
My commission expires: 1/18/2019