HEARING EXAMINER
A G E N D A
Thursday, February 28, 2019
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 Skyler Beebe at sbeebe@pocatello.us; 208.234.6248 or 5615 South 5th Avenue, Pocatello, ID.

HEARING EXAMINER: James Mullen

1. Disclose who was talked to, the basic substance of the conversation, and whether the conversation had any influence. Disclose if there is anything personally or professionally that would not allow an impartial or unbiased decision. Disclose if a site visit was done, location(s) of the visit, and what was seen.

2. Jody Breding of Rio Properties and Adam T. Waldron, represented by RMES, requests a conditional use permit for an accessory dwelling unit at 535 W. Hayden Street. The property is located within a Residential Medium Density Multi-Family zoning district with an Original Townsite Overlay. Accessory dwelling units are allowed through the conditional use permit process. (ACTION ITEM)
Hearing Date: February 28, 2019

OWNER:
Rio Properties
Jody Breding
4670 Kim Drive
Pocatello, ID 83204

OWNER:
Adam T. Waldron
546 N. Hayes Avenue
Pocatello, ID 83204

REPRESENTATIVE:
RMES
J. Mitchell Greer
600 E. Oak Street
Pocatello, ID 83201

REQUEST: The applicant is requesting a conditional use permit to allow an accessory dwelling unit at 535 W. Hayden Street.

LEGAL DESCRIPTION: Lots 18, 19 and 20, Block 507, Pocatello Townsite

SITE CHARACTERISTICS: Zoning designation: Residential Medium Density Multi-Family (RMM) with an Original Townsite Overlay
Property size: The lots measure 12,627 square feet (more or less)

SURROUNDING LAND USES AND ZONING:
North: Residential dwellings in a RMM zoning district
South: Residential dwellings in a RMM zoning district
East: Residential dwellings in a RMM zoning district
West: Residential dwellings in a RMM zoning district

COMPREHENSIVE PLAN LAND USE MAP DESIGNATION: Residential

PROCEDURES AND NOTICES:
1. In accordance with Municipal Code §17.02.130, §17.02.300, §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 is scheduled to be heard at the February 28, 2019 Hearing Examiner at a public hearing 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 mailed to political subdivisions on February 12, 2019.
   b. Notices to property owners of record within 300 feet of the subject site were mailed on February 12, 2019.
   c. Legal notice was published in the Idaho State Journal on February 12, 2019.
d. Signs were placed on the property on February 13, 2019.
e. The agenda and supporting documentation were posted to the City’s website on February 21, 2019.

APPLICABLE LAWS AND PLANS:
1. Municipal Code §17.02.130, §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 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, 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.

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 purpose of this project is to transfer the ownership of the “Mother-in-Law” cottage at 535 N. Hayes Avenue (correct address is 535 W. Hayden Street) from 554 N. Hayes Avenue to 546 N. Hayes Avenue. All residences are currently existing. The only construction needing to take place will be to transfer the water and sewer services to the new owner.”

Staff analysis: The accessory dwelling unit as it current exists on the property of 554 N. Hayes Avenue is considered legal, nonconforming. Accessory dwelling units are allowed through the conditional permit process in all residential zoning districts. The application as presented meets the provisions as outlined below:

Accessory Dwelling Standards:
1. 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 an existing structure at 535 W. Hayden Street and will be a complete, independent living facility. It is detached from the primary unit at 554 N. Hayes Avenue but on the same parcel. The applicant shall submit a short plat application which will have the accessory dwelling unit associated with 546 N. Hayes Avenue rather than 554 N. Hayes Avenue.

2. 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 and with a property line adjustment, the lots will meet minimum lot size standards, therefore the request meets this standard.

3. 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 accessory dwelling unit is proposed to be 500 square feet (more or less) with one bedroom.

4. 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. There is a single-car garage and driveway associated with 554 N. Hayes Avenue and there could possibly be parking off the alley for 546 N. Hayes Avenue and 535 W. Hayden Street but it is difficult to tell due to the snow.

5. 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 an existing single-story structure that does not exceed the height of the main structure.

6. 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 is oriented toward a different street than the primary dwelling. According to the drawing provided by the applicant, it appears that a walkway exists that is finished with a hard, all-weather surface.

7. 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 is an existing structure and the applicant has not supplied style and colors. Therefore, the applicant shall provide that information and the colors shall correspond with the primary dwelling unit.

8. Utility Hookups: Shared or separate utility hookups must comply with City requirements.

Staff analysis: The applicants have stated in their application that the water and sewer services will be transferred to the new owner. They will need to meet City requirements at that time.

9. 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 property indicating that either the primary unit or accessory unit shall be owner occupied.

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

Staff analysis: This accessory dwelling unit is located in an established neighborhood. The property line adjustment that is required will not create any substandard lots.

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

Applicant’s response: “This project will allow the residence at 535 N. Hayes Avenue (correct address is 535 W. Hayden Street) to be rehabilitated by the new Owner and therefore could be considered an infill or re-development project, although no new residences will be constructed.”

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

Chapter 11: Special Areas & Sites
  Goal 1: Promote and preserve historic buildings, structures, districts and significant ecological and archaeological features
    Objective 1.3: Encourage the rehabilitation of historic or architecturally significant structures for continued use or appropriate adaptive reuse.

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 proposed project is just a boundary line adjustment. The residences are currently existing. The current zoning designation of Residential Medium Density Multi-Family (RMM) requires the minimum lot size to be 8,000 square feet for a two-family lot. This proposed project would need a conditional permit to allow this two-family lot to be around 6,600 square feet."

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: "Being that all residences that are a part of this project are currently constructed, public facilities and services are available in this area, and there will be no detriment to public health, safety and welfare."

Staff analysis: The property is in an established neighborhood, therefore it is adequately 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: "There will be no visible changes in the relationship of this project with adjacent permitted land uses."

Staff analysis: The accessory dwelling unit is in an existing structure that is harmonious in scale, mass, coverage, density and intensity.

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: "Historical use of this site is remaining the same. We will start with three residences on three Original Pocatello Townsite lots, and will finish with three residences on two redefined lots."

Staff analysis: This use will not adversely affect the environment.

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: "There will effectively be no change from the current conditions."

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

PUBLIC COMMENTS: One telephone call from Arlen Walker, a local historian, was received. He asked questions regarding this history of the structure and advised it may be a historic rail home.
STAFF CONCLUSION: Staff finds the request meets the standards for a conditional use permit. If the Hearing Examiner should choose to approve the request staff recommends the following conditions:

1. A short plat is required to re-plat the lots.
2. A deed restriction shall be recorded on the property requiring that either the primary unit or the accessory unit be owner occupied and restricting the accessory dwelling unit from being subdivided and sold separately from 546 N. Hayes Avenue.
3. Separate water and sewer hook-ups for 535 W. Hayden Street that shall meet City requirements.
4. The applicant shall provide the exterior colors shall correspond with the primary dwelling unit.
5. Approved building permits must be obtained and the home must meet appropriate standards according to current building codes.
6. All life safety issues must be addressed according to current building codes.
7. All other applicable City Code requirements not herein stated shall be met prior to occupancy of the buildings.

REPORT BY: Terri Neu
tneu@pocatello.us
208.234.6500

ATTACHMENT: 
A. Photos of the accessory dwelling unit
B. Application materials

REPORT DATED: February 21, 2019
PLANNING & DEVELOPMENT SERVICES
PO Box 4169, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184    FAX (208)234-6586

CONDITIONAL USE PERMIT APPLICATION

Submittal Date: 1·24·19       Hearing Date: 2·28·19       Permit #: 19-201
Plan Review Approved by: 7N       Receipt #:                   Receipt Date: 1·29·19

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

Filing Fee: $510.00 + (_65 address(s) x $3.00 per address = $ _195_____ ) = Total Due $ _705_____

Applicant:
Name: Rio Properties INC. – Jody Breeding
Street address: 4670 Kim Dr.
City, ST, Zip: Pocatello, Idaho 83204
Phone: (208) 244-1010
Email: RioPropLLC@gmail.com

Representative:
Name: RMES – J. Mitchell Greer P.E., P.L.S.
Street address: 600 E. Oak St.
City, ST, Zip: Pocatello, ID 83201
Phone: (208)234-0110
Email: Mitch@rmes.biz

Project Information:
Street Address: 535, 546 & 554 N. Hayes
Zoning: RMM – OTO

Brief Description of Proposed Project: Boundary line adjustment to transfer ownership of 535 N. Hayes from 554 N. Hayes to 546 N. Hayes. ADU

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. Two sets of 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 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: __________________________________________________________________________
Date: 1-18-19

Representative's Signature: _____________________________________________________________________
Date: _________________________________________________________________________________________

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

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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.
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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.

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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.

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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: ____________________________
Date: 7/16/19
Representative's Signature: ____________________________
Date: ____________________________

*A sign giving public notice will be posted at the proposed site during the course of these proceedings.
PROJECT: Hayden / Hayes Subdivision

APPLICANTS: Rio Properties Inc. – Jody Breding
4670 Kim Dr.
Pocatello, ID 83204

Adam T. Waldron
546 N. Hayes Avenue
Pocatello, ID 83204

ENGINEER: RMES, L.L.C.
600 East Oak Street
Pocatello, Idaho 83201

ANALYSIS OF REQUEST – CONDITIONAL USE PERMIT

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.
The purpose of this project is to transfer the ownership of the “Mother-in-Law” cottage at 535 N. Hayes Avenue from 554 N. Hayes Avenue to 546 N. Hayes Avenue. All residences are currently existing. The only construction needing to take place will be to transfer the water and sewer services to the new owner.

2. Is consistent with the goals and policies of the Comprehensive Plan of the City.
This project will allow the residence at 535 N. Hayes Avenue to be rehabilitated by the new Owner and therefore could be considered an infill or re-development project, although no new residences will be constructed.

3. Is compatible with existing and permitted land uses within the general area.
This proposed project is just a boundary line adjustment. The residences are currently existing. The current zoning designation of Residential Medium-Density Multi-Family (RMM) requires the minimum lot size to be 8,000 square feet for a two-family lot. This proposed project would need a conditional permit to allow this two-family lot to be around 6,600 square feet.

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.

Focused on Solutions

Civil ♦ Environmental ♦ Transportation ♦ Planning ♦ Land Development ♦ Municipal ♦ Surveying
Being that all residences that are a part of this project are currently constructed, public facilities and services are available in this area, and there will be no detriment to public health, safety and welfare.

5. **Would be harmonious in scale, mass, coverage, density, and intensity with all adjacent permitted land uses.**
   There will be no visible changes in the relationship of this project with 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.**
   Historical use of this site is remaining the same. We will start with three residences on three Original Pocatello Townsite lots, and will finish with three residences on two redefined lots.

7. **Would not be detrimental to the public interests, health, safety, or welfare to the City in its proposed location, size, design, and operating characteristics.**
   There will effectively be no change from the current conditions.