

**Hearing Examiner's Report  
Conditional Use Permit 22-1174**

**DATE:** May 12, 2022

**APPLICANT NAME:** Johnathon Hunt, Delphic Properties

**MAILING ADDRESS:** 1490 Delphic Way, Pocatello, ID 83201

**PROPERTY OWNER:** Delphic Properties

**LOCATION OF REQUEST:** 1800 Garret Way, No. 47 (Parcel 2)

**LEGAL DESCRIPTION:**

**TYPE OF REQUEST:** Conditional Use Permit

**Instrument # 22208694**  
Bannock County, Pocatello, Idaho  
05/16/2022 02:36:37 PM No. of Pages: 7  
Recorded for: CITY OF POCATELLO  
Jason C. Dixon Fee: \$0.00  
Deputy: vhall

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**I. REQUEST**

Applicant requests a conditional use permit to allow for a drug and alcohol recover center to be operated as group living supervised, in the Commercial General (CG) zoning district.

**II. FINDINGS OF FACT**

1. The Hearing Examiner disclosed there were no ex-parte communications regarding this request.
2. The Hearing Examiner disclosed that he visited the site via GoogleEarth prior to the Public Hearing to observe the physical character and relationships to subject property.
3. The Hearing Examiner disclosed that he does not have any conflicts of interest regarding this application.
4. Public Hearing: A noticed Public Hearing on this request was scheduled on May 12, 2022 at 5:30 PM in the City Council Chambers at Pocatello City Hall.
5. 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
6. Municipal Code 17.02.130.A, defines Conditional Uses as 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.

7. Public Notice: Notice of the public hearing was in accordance with Municipal Code §17.02.300. A.3.b and Idaho Code §67-6512.
  - a. Notices to property owners of record within 300 feet of the subject site were mailed on at least 15 days prior to the Public Hearing.
  - b. Legal notice was published in the *Idaho State Journal* at least 15 days prior to the Public Hearing.
  - c. Signs were placed on the property on at least 15 days prior to the Public Hearing.
  
8. According to Municipal Code Section 17.02.130 E., The hearing body [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 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.
  
9. Staff Analysis: Carl Anderson, Senior Planner, City of Pocatello, presented the staff report.
  - a. The property is located at 1800 Garrett Way No. 47
  - b. Property size: The lot encompasses 0.2 acres more or less
  - c. The proposed use has been categorized as group living supervised is conditionally permitted in the Commercial General (CG) zoning district. The use was considered group living supervised as group living supervised because the applicant is not considered a public, nor nonprofit organization, and tenancy has been stated to be longer than one month. Both group living supervised and transitional housing are conditionally permitted in the CG zoning district.

- d. Group living supervised is defined as “Living facilities for groups of unrelated individuals which include at least one person residing on the site who is responsible for supervising, managing, care, training or treatment of residents. Group living facilities may also be characterized by monitoring, and/or providing shared facilities for eating, hygiene, and/or recreation. Examples include, but are not limited to, nursing/convalescent homes, residential care or treatment facilities; and convents or monasteries. Tenancy is longer than one month. Does not include detention and post-detention facilities (see subsection B5c, "Detention Facilities", of this section). (17.01.160.B.1.c).
- e. Transitional housing is defined as “Public or nonprofit living facilities with the same characteristics as group living, supervised but with tenancy generally less than one month. Examples include, but are not limited to, homeless shelters, drug/alcohol treatment facilities. Excludes private, profit making short term housing (see subsection B3a, "Commercial Lodging", of this section), and detention and post-detention facilities (see subsection B5c, "Detention Facilities", of this section). (17.01.160.B.1.d).

10. Public Input:

- a. Public Comment:
  - i. Multiple letters and emails were provided prior to the public hearing. Concern over the application was expressed due to proximity of the proposed facility to multiple businesses and specifically those where children are present and a veterinary clinic that has medical drugs on its premises.
- b. Public Hearing:

The Public Hearing was opened at approximately 5:46 PM.

- Multiple comments were made in opposition to the application the comments are summarized below.
  - Parking would not be allowed outside of property owned by applicant.
  - Questions were raised as to number of problems in other areas.
  - Concern over the application was expressed due to proximity of the proposed facility to multiple businesses and specifically those where children are present and a veterinary clinic that has medical drugs on its premises.
  - Believe this facility is needed but not at this area.
- No comments were made neutral to the application.
- Multiple comments were made in favor of the application the comments are summarized below.
  - Business is needed and will be beneficial to the community. Owner’s want to make sure it is a safe facility.

The Public Hearing was closed at approximately 6:11 PM.

c. Applicant Rebuttal/Clarification:

- The Applicant indicated they will work with Owner's of Westwood Mall to identify and mitigate concerns
- Applicant indicated they would develop policies and procedures to keep clients off property not associated with Applicant.
- Applicant indicated they would do their best to weed out bad clients

11. Hearing Examiner noted that the decision would be available to public on May 17, 2022 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."

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. CONDITIONAL 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.**

*Hearing Examiner finds that the applicant requests a conditional use permit for a drug and alcohol recovery center to be operated as a group-living supervised facility in a Commercial General (CG) zoning district.*

*The proposed use has been categorized as group living supervised is conditionally permitted in the Commercial General (CG) zoning district. The use was considered group living supervised because the applicant is not considered a public, nor nonprofit organization, and tenancy has been stated to be longer than one month. Both group living supervised and transitional housing are conditionally permitted in the CG zoning district.*

*Group living supervised is defined as "Living facilities for groups of unrelated individuals which include at least one person residing on the site who is responsible for supervising, managing, care, training or treatment of residents. Group living facilities may also be characterized by monitoring, and/or providing shared facilities for eating, hygiene, and/or recreation. Examples include, but are not limited to, nursing/convalescent homes, residential care or treatment facilities; and convents or monasteries. Tenancy is longer than one month. Does not include detention and post-detention facilities (see subsection B5c, "Detention Facilities", of this section). (17.01.160.B.1.c).*

*Transitional housing is defined as "Public or nonprofit living facilities with the same characteristics as group living, supervised but with tenancy generally less than one month. Examples include, but are not limited to, homeless shelters, drug/alcohol treatment facilities. Excludes private, profit making short term housing (see subsection B3a, "Commercial Lodging", of this section), and detention and post-detention facilities (see subsection B5c, "Detention Facilities", of this section). (17.01.160.B.1.d).*

*This Hearing Examiner believes the applicant to be compliant with this criterion.*

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

*Hearing Examiner finds that the proposed project is not consistent with the existing zoning of Commercial General (CG).*

*However, the following goals and policies are applicable to the proposed use.*

*Ch. 8 Public Services, Facilities, Utilities: Goal 7 Health and Welfare Services. Promote the provision of health and welfare services by qualified agencies and entities within the community. Objective 7.1 Support programs that provide for the needs of people within the community during times of distress, including shelter, safety, nourishment and counseling. Policy a. Provide a compassionate environment for agencies and entities that provided needed services to the community.*

*Ch. 12 Housing: Goal 5. Support public-private entities and programs that provide emergency shelter and support services for victims of domestic violence, substance abuse recovery and the homeless. Objective 5.1. Work with agencies and entities to maintain an adequate supply of quality shelter facilities and transitional housing and provide counseling programs. Policy a. Continue to support legitimate programs that provide needed facilities and services.*

*However, this Hearing Examiner believes the following goals and policies are not applicable to the proposed use.*

*Chapter 5 Land Use: Goal 3. Develop and implement zoning designations and regulations that promote land uses and developments that complement the surrounding vernacular while utilizing the unique context and opportunities of each designated area. Objective 3.1. Develop zoning districts and regulations that focus on relationships between developments based on form, scale and function*

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

*Hearing Examiner finds that as proposed, the use is unique for the area and is not compatible with existing and permitted land uses within the general area. The general area offers a variety of services that are commercial in nature and not consistent with the proposed application.*

**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.**

*Hearing Examiner finds that 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 as described above.*

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

*Hearing Examiner finds that this proposal does not intend to alter or modify the scale, mass, coverage, density, or intensity beyond what is existing on site.*

**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.**

*Hearing Examiner finds that the proposed use will not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.*

**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.**

*Applicant did not provide sufficient documentation to satisfy Hearing Examiner that the proposed uses at the site would not be detrimental to the public interest, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics.*

**V. CONCLUSIONS AND DECISION**



**Hearing Examiner's Report  
VAR 22-1251**

**DATE:** May 12, 2022

**APPLICANT NAME:** Gene Staggs

**MAILING ADDRESS:** 370 McKinley Avenue, Pocatello, ID 83201

**PROPERTY OWNER:** Gene Staggs

**LOCATION OF REQUEST:** 370 McKinley Avenue, Pocatello, ID, 83201

**LEGAL DESCRIPTION:** See Application

**TYPE OF REQUEST:** Variance

**Instrument # 22208693**  
Bannock County, Pocatello, Idaho  
05/16/2022 02:36:37 PM No. of Pages: 5  
Recorded for: CITY OF POCATELLO  
Jason C. Dixon, Fee: \$0.00  
Deputy: vha11

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**I. REQUEST**

The applicant requests a variance from Pocatello Municipal Code section 17.03.600 which requires a twenty (20) foot rear yard setback. The applicant seeks to expand the existing home which does not conform to the current setback standards. The applicant is proposing that the expansion have a rear yard setback of twelve (12) feet.

**II. FINDINGS OF FACT**

1. The Hearing Examiner disclosed there were no ex-parte communications regarding this request.
2. The Hearing Examiner disclosed that he visited the site via GoogleEarth prior to the Public Hearing to observe the physical character and relationships to subject property.
3. The Hearing Examiner disclosed that he does not have any conflicts of interest regarding this application.
4. Zoning designation: Residential Medium Density Single Family (RMs)
5. The existing dwelling unit in which the applicant is seeking to expand is considered a legal nonconforming building.
6. The existing dwelling unit in which the applicant is seeking to expand is considered a legal nonconforming building. Pocatello Municipal Code §17.01.170: Administrative Provisions, addressed situations regarding nonconforming situations. §17.01.170.2b states that



“Permits to replace or expand existing nonconforming structures by up to a total of fifty percent (50%) of the original building area may be sought through the variance process regardless of the underlying zoning district. Any modification to bulk or placement of a nonconforming structure, including increased building height or decreased setbacks, will require a variance.” Further, §17.01.170.2c sets out the following criteria for variances regarding the expansion of a nonconforming structure:

- a. The lot or parcel was legally created.
- b. All bulk and placement standards such as height, setbacks, etc., shall be met, except as specifically varied through this process.
- c. The proposed development shall not adversely impact the public's health, safety, or general welfare and the visual appearance of the development will not produce an effect inconsistent with adjacent and surrounding architecture and site development patterns.

7. Property size: 0.27 acres (11,761 square feet)
8. In accordance with Municipal Code §17.02.300 and Idaho Code §67-6512, a complete variance application was filed with the City of Pocatello Planning and Development Services Department at least four weeks prior to the public hearing.
9. The application was scheduled to be heard before a Hearing Examiner at the City of Pocatello City Council Chambers on May 12, 2022 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
10. Notice of the public hearing was in accordance with Municipal Code §17.02.170 and Idaho Code §67-6512. 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. There was no public comment received prior to the completion of this report.
  - a. Notices to adjoining property owners were mailed on April 22, 2022.
  - b. A sign was placed on the property on April 26, 2022.
11. Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application. 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.
12. Municipal Code §17.02.300 states that variances shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

Municipal Code Section §17.02.170(A) defines variances as: “A variance is a modification of the bulk and placement requirements of this ordinance as to lot size, lot coverage, lot width, lot depth; front yard, side yard rear yard setbacks; parking space requirements, height of buildings, or other ordinance provisions adversely affecting the development or use of property. A variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of the characteristics of the site and that the variance is not in conflict with the public interest. **G.** The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances. **H.** The burden of proof that the proposed variance

complies with all of the variance criteria as described under subsection F of Title 17, Chapter 17.02.170, is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

13. Applicant Presentation: The Applicant, presented the purpose of the application. Details of which are outlined in the actual application.
14. Staff Analysis: Jim Anglesey, Long-Range Senior Planner, presented the staff report.
15. Public Input:
  - a. Public Comment: There were no written comments received by the City of Pocatello prior to this Hearing.
  - b. Public Hearing:

The Public Hearing was opened at approximately 6:27PM.

No comments were heard in opposition to the application.

No comments were heard neutral to the application.

No comments were heard in favor of the application.

The Public Hearing was closed at approximately 6:27 PM.
16. Hearing Examiner noted that the decision would be available to public on Tuesday, May 17, 2022 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. VARIANCE FINDINGS

Findings for how the proposed use complies with standards for a variance (Section 17.02.170) are as follows:

1. The applicant shall have taken all reasonable steps to comply with the strict terms of the ordinance from which he or she requests the variance.

*It is this Examiner's opinion that, as proposed, the application meets the criteria as outlined above to expand a legal non-conforming building. These criteria supersede the general criteria regarding variances.*

2. The variance sought must be the result of unusual physical characteristics of the site in question.

*It is this Examiner's opinion that the site has unusual physical characteristics. The subject property is a rectangular lot that is eighty-one (81) feet wide and one hundred forty-five (145) feet deep. The single-family dwelling unit located on the subject property is situated near the north-east corner of the parcel and is considered a legal nonconforming building due to its setbacks not meeting the current setback standards as identified in Pocatello Municipal Code §17.03.600. To expand a legal nonconforming building, Code requires that the applicant secure the approval of a variance.*

3. The circumstances surrounding the variance request shall be due to an undue hardship as related to the characteristics of the land, and the applicant shall show that, absent a variance, he/she would be deprived of rights commonly enjoyed by other properties in the identical zoning district under the terms of this title.

*It is this Examiner's opinion that the request is due to an undue hardship related to the narrow characteristics of the lot in question. Furthermore, where the applicant seeks to expand a non-conforming structure, it is required by Code that the applicant receives approval through the variance process. The criteria as presented in staff review regarding 17.02.160.F1 supersede the general criteria regarding variances.*

4. The undue hardship cited as the basis of a variance request did not result from the actions of the applicant, or the current, or a prior landowner, or any of their agents.

*The building was constructed prior to the adoption of current setback standards, which, in the opinion of this Examiner presents an undue hardship which did not result from the actions of the applicant, or the current, or prior landowner, or any of their agents.*

5. The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.

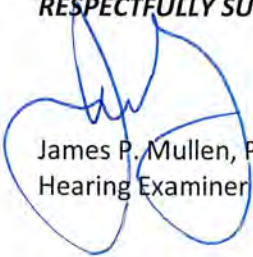
*In the opinion of this Examiner, the proposed variance does not affect adjacent or nearby property as the proposed expansion and twelve (12) foot setback is less of an impact than the current setbacks for the legal non-conforming building.*

**V. CONCLUSIONS AND DECISION**

Based on the review of the application, staff analysis, and site visit, it is the opinion of the Hearing Examiner that the application for a Variance (VAR 22-1251) for subject facility complies with the standards of Pocatello Municipal Code §17.01.170(A)(2)(c) and as set forth in other municipal code and ordinances. As Hearing Examiner, I hereby approve the Variance as requested subject to the following conditions:

1. Applicant shall obtain an approved building permit prior to construction
2. Any standards/regulations not herein noted but applicable to the proposed development shall be strictly adhered to

**RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of May 2022,**



James P. Mullen, P.E.  
Hearing Examiner

STATE OF IDAHO )

ss:

County of Bannock )

On this 16<sup>th</sup> day of May, 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared James Mullen, 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 James Mullen 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.



Jamie Kerbs  
 NOTARY PUBLIC FOR IDAHO  
 Residing in Pocatello, ID  
 My commission expires: 7/2/2027