

Planning & Zoning Minutes

September 18, 2008

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CITY OF
REXBURG
America's Family Community

Commissioners Attending:

Winston Dyer – Chairman
David Stein Dan Hanna
Ted Hill Thaine Robinson
Mike Ricks Randall Porter
Richie Webb Mary Ann Mounts

City Staff and Others:

Rex Erickson – City Council Liaison
Gary Leikness – Planning Administrator
Elaine McFerrin - Secretary

Chairman Dyer opened the meeting at 7:02 pm.

Roll Call of Planning and Zoning Commissioners:

Richie Webb, Ted Hill, Dan Hanna, Thaine Robinson, Winston Dyer, David Stein, Randall Porter, Mike Ricks

Charles Andersen was excused.

Minutes:

1. Planning and Zoning meeting – September 4, 2008

Thaine Robinson motioned to approve the Planning & Zoning minutes for September 4, 2008.

David Stein seconded the motion.

Mike Ricks abstained for not having been present.

None opposed. **Motion carried.**

Public Hearings:

Chairman Dyer briefly explained the procedure that is followed for a public hearing.

7:05 pm – Conditional Use Permit – Hemming Properties –
144, 140, 130, & 124 West 1st South – Parking lot

Richie Webb recused himself due to direct conflict of interest.

Johnny Watson, 1152 Bond Ave., representing Hemming Properties, presented the proposal to extend the church parking lot on the north side of West 1st South. An image of the property was projected on the overhead screen. This proposal would be an exchange of properties – the LDS

Church would be offered a trade for the parking that it now has across West 1st South. All church parking areas would then be located on the same side of the street, allowing the other side of the road to be used for further Hemming Properties development. They are applying for the Conditional Use Permit for the use of a parking lot on the 4 parcels specified.

Mr. Watson clarified for **Chairman Dyer** that he is representing Hemming Properties and not the LDS Church. There will be another access point provided on 1st South, which was pointed out on the overhead screen. They can move it further east if that location is a concern. They are agreeable to the staff recommendation that they hold to the Hemming PRO Zone landscaping standards. The front yard setback would be wider than the standard width, with quite a bit of green space; they would prefer to continue the setback as it currently exists. A 6 foot chain link fence with vision slats will surround the entire area of the parking lot (except for the front yard).

Thaine Robinson asked what the number of parking spaces was for this new lot - Johnny Watson said 68 spaces would be provided; the existing church parking lot has 59 spaces. They have discussed the land swap with the LDS Church, but nothing formal has taken place. It was suggested that the conditional use permit process be done first.

Mary Ann Mounts arrived at 7:15 pm.

Johnny Watson stated that the number of parking spaces far exceeds the amount required in regard to the occupancy of the building. Two of the homes will remain (124 and 130 W.1st S.) as residences. The privacy fence will border these residences.

Mike Ricks asked if there are plans to widen West 1st South.

At this time the primary focus is to make the land swap, but some revisions to the street may be made as more development occurs.

Per **Chairman Dyer's** request, Gary Leikness gave his input to help clarify the proposal for the Commission. He reiterated that the applicant does not represent the LDS Church. They want to secure land use approval of a church parking lot through obtaining a conditional use permit, so that the anticipated land swap will move smoothly. He stated his staff report addressed the concerns and gave proposed conditions. The parking lot cannot be constructed until the LDS Church submits the property transfer agreement to the City's Community Development Department, to be reviewed by the Planning and Zoning Administrator. Regarding the two lots that are proposed to have dwelling units – if the parking demand cannot be satisfied for 124 W.1st S. and its proposed dormitory use, then the property should revert back to being a single family home.

Randall Porter asked in terms of total square footage, if the land swap is somewhat equal or if the Church gains or loses some footage.

Gary Leikness said the LDS Church may lose some square footage, but in overall terms of making sense they are gaining from the proposed swap. If the LDS Church does not agree with the land swap, the proposed plan cannot proceed. Arranging the swap is between Hemming Properties and the LDS Church.

Chairman Dyer opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed: None

Written Input: None

Chairman Dyer closed the public input portion of the hearing.

Gary Leikness presented his staff report. From a planning perspective this Conditional Use Permit makes sense. The proposed conditions include observing Hemming PRO Zone landscape standards, as they are very clear in what needs to be used. The LDS Church would have to agree to the land swap for any construction to occur.

Chairman Dyer asked Johnny Watson if the proposed conditions of approval are acceptable to the applicant.

Mr. Watson answered yes.

The Commission discussed the proposal.

Mike Ricks felt that the proposal is a good one. He thought the parking lot access to the right-of-way should be moved further east to give just a little more room.

Thaine Robinson stated there are conditions of approval that would address that the land transfer agreement be in place between the LDS Church and the applicant before any construction can begin; therefore, he would support this proposal.

Mary Ann Mounts motioned to approve the request for Hemming Properties for a Conditional Use Permit for a parking lot to include all of the proposed conditions listed in the Planning staff report(See final conditions of approval below). **Dan Hanna** seconded the motion.

Regarding the proposed condition #5 – **Chairman Dyer** wanted to amend the wording to include **unless and** to “No construction of the parking lot shall occur **unless and** until a purchase or property transfer agreement is entered into with the LDS Church for the trading of the lots on the south of W. 1st South (currently addressed as 155 and 149 W. 1st South).”

Mary Ann Mounts amended the motion to include this change in the wording of condition #5.

Dan Hanna seconded the motion.

None opposed. **Motion carried.**

Conditions of Approval

1. A site plan reflecting all conditions of approval and incorporating all City standards, e.g. landscaping, parking, etc. shall be submitted and approved by the City prior to the issuance of a conditional use permit.

2. Commercial lighting standards per the City's development code shall be adhered to. Lighting plan shall be submitted to the Public Works/Engineering Department for review and approval prior to installation.
3. The following landscaping standards shall apply:
 - a. Surface Parking lots (single level)
 - i. Provide ten (10) percent landscaping/snow storage for total area of impervious surface, may be interior landscaping or perimeter.
 1. Provide one (1) tree per 500 square feet (2 inch caliper minimum)
 2. Provide one (1) shrub per 50 square feet (3 gallon minimum).
 - ii. Ground cover shall primarily be live plant material (e.g. grasses versus rock).
 - b. Perimeter of all parking areas adjacent to public right-of-way
 - i. Regardless of building setbacks, provide twenty (20) foot landscape strips running parallel to right-of-way.
 1. Provide one (1) tree per 20 lineal feet of road frontage (2 inch caliper minimum).
 2. Provide one (1) shrub per 5 lineal feet of road frontage (5 gallon minimum) and/or shall be sufficient in size to create desired screening within two years of planting.
 - ii. Ground cover shall primarily be live plant material (e.g. grasses versus rock).
 - c. Landscaped areas shall utilize an automatic, low volume, irrigation system to insure maturation and maintenance.
4. The two lots that are proposed to have dwelling units (130 and 124 W 1st South) shall observe the following:
 - a. Any proposed lot line adjustment or property transfer of any kind shall first be reviewed by City staff to insure all minimum lot requirements are met.
 - b. Should the lots be reduced in size through any form of property ownership transfer which reduces the size of the existing lots, than those newly created lots with dwelling units shall not fall below the minimum lot sizes of 4500 square feet.
 - c. It shall be shown that all parking requirements for single family, multi-family, and dormitory style housing are met.
 - d. Parking areas proposed to meet the requirements of the dwelling units shall not include parking spaces that are located within the required front yard (20-feet from property line, or 25-feet from back of sidewalk), except as allowed by ordinance which allows single family homes to have some parking in the front yard.

- e. Front yards shall not include more than 40% of hardscape surfaces, including driveways and sidewalks.
 - f. Should the parking demand not be satisfied for 124 W 1st South, the owner at the time agrees to discontinue the use as a dormitory style home and re-establish a single family home.
5. No construction of the parking lot shall occur unless and until a purchase or property transfer agreement is entered into with the LDS Church for the trading of the lots on the south of W 1st South (Currently addressed as 155 and 149 W 1st South). Evidence of this agreement shall be submitted to the Community Development Department, and shall be reviewed by the Planning and Zoning Administrator to insure this condition has been met. Construction shall not begin until this condition is satisfied.
 6. The access point to the public right-of-way (W 1st South) as shown on the submitted plans is not necessarily approvable as depicted, and must therefore be reviewed and approved by the City Engineer prior to construction.

Unfinished/Old Business: None

New Business: None

Compliance: None

Non controversial Items Added to the Agenda:

1. Ryan Orme – Storage units at 322 West 4th South – distance of gate from right-of-way

Ryan Orme, 3737 Taylor Lane, representing Rexburg Storage. He addressed the Commission regarding the condition of a 50 foot setback from the gate to the road and the fact that its construction was not what was agreed to in their Conditional Use Permit (originally approved at the September 6, 2007 Planning & Zoning meeting). He said that the 50 foot distance created an unsafe situation where the gate could slide over open space into vehicles or people accessing their storage units. As it is currently constructed, the distance is approximately 40 feet from the gate to the road. . He is requesting their conditional use permit be changed to let them have the access as they have it now, where the gate opens along the fence over landscaping. The gate opens very quickly in a matter of seconds. They have a temporary certificate of occupancy. The clients have mostly cars or other small vehicles. Most of the clients are students. The storage units are small. Mr. Orme stated it is felt that the storage units as constructed provide a safe environment and adequate room to approach the units from the road. The gate works well at its current location.

Chairman Dyer asked Gary Leikness if the request tonight is a discussion of the issue, or if this is an official variance request.

Gary Leikness stated that this request tonight is not a variance request; it is an interpretation of the condition stated in the applicant's conditional use permit. Normally, a change to the conditions would call for the conditional use process again, or an interpretation of the condition could be made.

Ryan Orme said the gate was installed by subcontractors and was not installed at the 50 foot specification. The gate opens along the front fence.

Chairman Dyer wondered if someone made a judgement call, without consulting City staff. Mr. Orme said he was not familiar with how the decision was made. **Chairman Dyer** asked if Ryan Orme was aware of the lengthy discussion at the original Conditional Use Permit hearing, which included the concerns of the Commission. Mr. Orme said he was present at the meeting and was aware of the discussion.

Ryan Orme stated the picture the applicant submitted of a pickup truck attached to a horse trailer represents the extreme in size.

The Commission discussed the issue.

Mike Ricks stated that the applicant knew they were going against what was stated as a condition of their conditional use permit, as a building inspector had told them they were out of compliance.

Mr. Orme said the storage units are constructed and ready to be rented. The 50 foot distance of the gate from the road was taken as a recommendation. They feel there is plenty of room to get vehicles off the road. The buildings were built according to the site plan. They feel the gate is at a safe location although it is not at the 50 feet specified, and they are asking for approval of its current location.

Mike Ricks said they could have appealed the specified conditional use permit conditions, but they accepted them and then ignored them.

Mary Ann Mounts stated some mistakes were made. In her original motion for this conditional use permit, she had been referring to emergency vehicle access rather than just distance from the road to the entrance gate. She had listened to the tapes from the Planning & Zoning meeting of September 6, 2007. She felt confusion between herself and the amendments that were made to the original motion. She feels frustration that the applicants did not make this case which they have brought here tonight at the original hearing.

Ryan Orme stated that a 50 foot emergency vehicle can maneuver through the storage units without any problem, according to the site plan they followed which was designed to allow such a large vehicle.

Thaine Robinson stated the storage unit location is on an extremely busy road; public safety was a major issue that the Commission considered at the time the Conditional Use Permit was granted. He feels the number one issue is public safety and believes a deal is a deal.

Discussion continued.

Chairman Dyer stated that at the storage units' entrance, there now is not enough room for a large vehicle to pull off the street and not hang out.

David Stein said he was trying to understand the sequence of events. He was concerned with setting a precedent and felt there was not enough information to make a decision

Ryan Orme said he was not the owner but was representing them. He was not familiar with the sequence of the events leading up to the gate's location.

Jeremy Bingham 767 South E. 1200 N., Shelley, ID-owner of the project. He stated that the project went through 6 fence contractors before one committed to the job. When the building inspector came to the sight the mud was already in the ground for the controller (6 yards of concrete). The fence contractor called him at that time and told him the gate was supposed to be back further. They are basically begging for mercy; they made a mistake. Neither he nor Mr.Orme was there when the gate area was prepped. They are way over budget. They are begging for forgiveness. They were not aware that the gate was going to be 40 feet long. It was an honest mistake. Mr.Bingham feels they have met the conditions for safety.

Chairman Dyer thanked Jeremy Bingham for his candor.

The Commission discussed the issue.

David Stein wondered how the decision was made to put the gate at its location – was a site plan followed?

Jeremy Bingham said the distance was measured between the 2 buildings, and it was built and installed.

Ted Hill stated that the agreement was for 50 feet. The burden is upon the developer and the builder to get those distances right, no matter the cost or the number of contractors. The Commission needs 50 feet.

Ryan Orme wondered at the distance amount of 50 feet that was stated for adequate room off of the road and what determined this distance. Was it scientific or off the cuff? He realizes mistakes have been made in that the gate is not at the distance as it was stated in the conditional use permit conditions.

Mike Ricks said that 4th South is a major arterial into this City. Pulling off into the units from the road creates a traffic hazard. The specified distance was in case people do come in with trailers (21' pickup, 16' trailer, 5' tongue). The condition of 50 feet (behind the sidewalk) was agreed upon because of this safety issue so that a traffic hazard would be avoided.

Jeremy Bingham said he could not talk about the conditions at the time of the original hearing for this CUP because the public discussion was closed so the Commissioners could reach a decision.

Dan Hanna said what was decided by the Commission was a condition, not a recommendation. The applicant could have appealed the decision concerning the conditions.

Mary Ann Mounts asked for clarification about the building inspector visits and if it was made clear to the applicant that the gate was being put in the wrong spot.

Mr. Bingham said the inspector came after the mud was in place for the controller. The contractor was told by the inspector that they were putting the gate in the wrong spot. Mr. Bingham understood they had made a mistake with the gate's location.

Chairman Dyer said the concrete should not have been poured without an approving inspection.

There was further discussion.

Randall Porter asked about the general contractor. The general contractor was Ryan Orme Construction.

Chairman Dyer said for the record he is often involved in helping people move in and out of storage units, using horse trailers, etc., no matter what the size is of the storage unit. He stated it is not the Commission's job to resolve the problem. They need to tell the applicant that he does or does not meet the condition. If the applicant does not meet the condition, then the applicant needs to come up with a resolution.

Chairman Dyer acknowledged everyone's frustrations and thanked them for their patience. He said the question before the Commission is if a change in the conditional use permit shall be granted. He asked for direction from Gary Leikness.

Gary Leikness clarified that the Commission would not be changing the condition, which would call for another public hearing. The Commission would just be saying if the condition had been met. The applicant has a right to come in and request an amendment to the CUP that would alter or remove that condition.

Mary Ann Mounts said the intent of her motion for the Conditional Use Permit (September 6, 2007 P & Z meeting) was that it be safe for emergency vehicles.

Discussion continued.

Mike Ricks motioned that the condition agreed upon for this Conditional Use Permit was not met by the applicant. **Ted Hill** seconded the motion.

Mary Ann Mounts made a substitute motion that the intent of the original conditions has been met. **Dan Hanna** seconded the motion.

The motion to use the substitute motion carried (5 to 4 vote).

The substitute motion takes the place of the first motion.

Mary Ann Mounts amended the substitute motion to say the intent of the condition for safety with the fence has been met. **Dan Hanna** seconded this motion.

There was more discussion.

Yes vote:

Mary Ann Mounts, Dan Hanna, David Stein

No vote:

Mike Ricks, Ted Hill, Thaine Robinson, Winston Dyer, Randall Porter, Richie Webb

The motion did not carry. It was determined by the Commission that the intent of the condition for safety through increasing the gate distance from the street to 50-feet was not met.

Dan Hanna and **Mary Ann Mounts** were excused from the meeting

The public safety issue needs to be addressed.

Chairman Dyer suggested that the applicant come back with some proposals to show that intent was met. They could talk with the City Engineer. The Commission is most concerned about public safety.

Gary Leikness suggested another option would be that they could come forward with an amendment to the Conditional Use Permit to show that intent was met.

The applicant was instructed to look at the situation and formulate a request for an amendment to the conditions.

2. Stephen Zollinger – discussion on reduced student parking – POSTPONED

The Commission briefly noted the copies of the letters they received, from the mayors of Sugar City and Teton regarding an Industrial overlay and the community concerns for the possibility of more gravel pits.

Thaine Robinson asked about the status of the Development Code 926.

Gary Leikness stated the list of changes for Development Code 926 was given to the planning consultants, who were waiting to come before the Commission after the Comprehensive Plan document is adopted. Only the Comprehensive Plan map has been approved at this time. Tonight the Commissioners received copies of the new map.

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

1. David Stein, Planning & Zoning Commissioner – Recognition of Service
2. Conditional Use Permit – Family Fun Center - College Ave.
3. Stephen Zollinger – discussion on reduced student parking

Chairman Dyer adjourned the meeting at 9:43 pm.