



Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

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Planning Division Staff Report

File Number	DRH08-00067
Appellant	Susan Graham and the North End Neighborhood Association, Inc. (NENA)
Applicant	YMCA-Treasure Valley / David Duro
Property Address	1102 W. Hays Street
Public Hearing Date	May 12, 2007
Heard by	Historic Preservation Commission
Analyst	Sarah Schafer
Checked By	

Public Notification

Radius notices mailed to adjacent properties: **April 25, 2007**
Staff posted notice on site on: **April 25, 2007**

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1. Project Data and Facts

Appellant	Susan Graham and the North End Neighborhood Association, Inc. (NENA)
Applicant/Status	YMCA-Treasure Valley / David Duro - Lessee
Architect/Representative	Erstad Architects / Andy Erstad
Location of Property	1102 W. Hays Street
Size of Property	±1.75 Acres
Present Zoning and Land Use	R-3HD/CD (Multi-Family Residential with Historic Design Review and Conservation District)
Historic District	Hays Street Historic District and Near North End Conservation District
Date of Construction	None
Style	None
Status	None
Square Footage of Existing House	None

Description of Applicant's and Appellant's Request

The applicant is seeking a Certificate of Appropriateness to construct a temporary off-site parking lot with landscape improvements. The appellant is appealing staff's determination that the change in use of the property should be allowed.

2. Land Use

Description and Character of Surrounding Area

The property is generally located at 1102 W. Hays Street. The undeveloped site is bounded by Fort Street to the north, 11th Street to the east and 12th Street to the west. The property is located within the boundaries of the North End / East End Planning area as designated on the Land Use Map of the Boise City Comprehensive Plan and within the North End Neighborhood Association.

Site Characteristics
The site is undeveloped. On the southwest corner of the site there is a paved parking area. The remainder of the site is vacant.
Special Considerations
This project will be required to obtain approval of a special use exception from Boise City Council because the zone of the land is a residential zone in a conservation overlay district and a surface parking lot is a prohibited use.
The property is located within the Hays Street Historic District as well as the Near North End Conservation District.
History of Previous Actions
CUP02-00095 – Denial of a request to construct an infill mixed-use PUD consisting of 139 residential units and a three-level, 417 space parking facility on a ± 1.75 acres in an R-3D/CD zone.
CUP08-00027 – Special Exception for a temporary off-site parking lot.

3. Project Proposal

Site Design

Land Use	Existing	Proposed
Percentage of the site devoted to gravel surfacing:	0%	93%
Percentage of the site devoted to paving:	0%	4%
Percentage of the site devoted to landscaping:	0%	3%
TOTAL	0%	100%

Setbacks

Yard	Required	Proposed for Building	Proposed for Garage
North	NA (bldg.) 20' (parking)	NA	20'
South	NA (bldg.) 15' (parking)	NA	0'*
East	NA (bldg.) 20' (parking)	NA	20'
West	NA (bldg.) 20' (parking)	NA	20'

*As part of the Special Exception the applicant is requesting a variance from the setback along the alley.

Fencing	
There is no fencing proposed with this application.	

Structure(s) Design	
Number and Proposed Use of Buildings	There are no structures proposed with this application.
Maximum Building Height	NA
Number of Stories	NA

4. Ordinance / Standards

Section	
11-04-04.01	General Standards
2-18-09	Historic Preservation Ordinance
4.1	Guidelines for Residential Historic Districts

5. Analysis/Findings

Section 2-18-9 (A) (1) (c) Confirmation of Classification

The property is a non-contributing property as there are no structures.

When this application came in for the staff level Certificate of Appropriateness, staff reviewed the Change in Use findings and determined the application met the Findings and issued the Certificate of Appropriateness. The following are the Findings and Staff's analysis of those Findings.

Section 2-18-11.03 Change in Zoning Classification of Change in Use-Findings

Finding 1. *That the request supports the Boise City Comprehensive Plan goals, objectives and policies contained within Chapter 5/Parks, Recreation and Cultural Resources, and the applicable neighborhood plans.*

The objectives of Chapter 5 in the Boise City Comprehensive Plan relating to Historic Preservation are as follows:

Objective 1 *Identify, study and designate the city's historic and culturally significant buildings and sites.*

***Objective 2** Protect, enhance and preserve Boise's designated historic Landmarks, properties and districts.*

***Objective 3** Promote public understanding and appreciation for Boise's historic heritage.*

***Objective 4** Coordinate with other government entities and private groups and persons to integrate historic preservation and urban conservation into Boise's public planning process.*

This application for the use of the property located at 1102 W. Hays Street is not in conflict with the Boise City Comprehensive Plan. The property proposed for the temporary parking lot is a non-contributing property as there are no structures on the property and no important historic events have happened at this location. The property will be enhanced through the addition of perimeter landscape and irrigation which, as part of the recommendation to City Council through the Special Exception (CUP08-00027), the owners of the property will be required to maintain once the temporary use has been removed.

Objectives 1, 3, and 4 are not relevant to the proposed use of property. The proposal will not hinder or help the City in obtaining these objectives if the temporary use is allowed to be installed at this location.

***Finding 2** That the request will be congruous with the historical, architectural, archeological, educational or cultural significance of the district.*

If the off-site temporary parking lot were to be a permanently improved surface parking facility, staff believes the request would be incongruous with the District. However because of the temporary nature of the facility, the conditions to remove the improvements which would denote the area as a parking lot and the installation of the perimeter landscape which would be required to be maintained once the parking improvements are removed, Staff believes the temporary request for parking would be congruous with the District. The landscape being installed will provide some screening of the parcel from the adjoining properties. The parcel will be cleaned up from the dirt and weeds currently existing on the site. The current landowner has signed the affidavit of legal interest stating they will comply with any requirements on the property.

Currently the vacant lot is extremely detrimental to the Historic District. The proposed use would give some vibrancy and life to the area with pedestrians walking through the neighborhood to get to the YMCA. Upon final development of the lot, the structure will be of new construction and will be required to go through the public hearing process for approvals. Staff is anticipating the area will be developed as residential units which will provide the life and vibrancy needed in the area.

Furthermore, there are currently no development application proposals into the City for the development of this property at this time. This temporary use will not hinder future permanent development of the property.

Staff believes the applicant has met the change in use Findings as set forth.

Discussion on the appeal.

This application is for a temporary off-site parking lot for the downtown YMCA. Based on the temporary nature of the off-site parking lot and the need for the project to obtain a special exception with approvals from City Council, Staff believed processing the application for the Certificate of Appropriateness at the staff level would be appropriate as the decision matrix does not discuss the longer term temporary uses.

The staff level decision has been appealed and is the topic of this staff report.

Appeal Discussion

Ground for Appeal: Determination is clearly erroneous and is form of favoritism.

Appellant's supporting information: There was no additional information submitted by the appellant further discussing this item.

Staff's Analysis: If the request by the applicant had been for a permanent parking lot on this site, Staff's determination of the appropriateness of the lot would have been much different. The use of the site is for a temporary lot and the applicant is placing perimeter landscape on the lot to soften the impact on the surrounding use. This proposal will add some vibrancy to the neighborhood and provide additional pedestrian circulation in the area. This will be beneficial to the neighborhood because it will provide additional sets of eyes on the area versus the blank lot currently sitting unused.

In evaluating the change in use, who the applicant is, is irrelevant. Staff is unsure as to how the approval of a temporary parking lot shows any form of favoritism.

Ground for Appeal: Determination is arbitrary and capricious and violates Boise City Code 11-02-06.4 and 11-02-06.5 and 11-02-08 and BCC 2-18-9 is an unlawful delegation of legislative authority by City Council.

Appellant's supporting information: There was no additional information submitted by the appellants in support of their appeal.

Staff's analysis:

Idaho Code gives City Council the authority to establish Boise City Code 2-18-9 establishing and ordinance to guide the decisions of the Historic Preservation Commission. The ordinance is written to aid the City in

...Preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or natural features in the Historic District which would be incongruous with the historical, architectural, archeological or cultural aspects of the District

as required by Idaho Code.

Idaho State Code gives the City the ability to appoint a Historic Preservation Commission through I.C. 67-4603. The sections states:

The governing body of any county or city is hereby authorized to establish a historic preservation commission hereinafter referred to as "the commission," to preserve, promote, and develop the historical resources of such county or city in accordance with the provisions of this act. The commission shall consist of not less than five (5) and not more than ten (10) members, who shall be appointed by the governing body with due regard to proper representation of such fields as history, architecture, urban planning, archeology and law. All members of the commission shall serve terms not to exceed three (3) years, being eligible for reappointment as shall be specified by the governing body. The commission may employ such qualified staff personnel as it deems necessary.

Further, I.C. 67-4604 (h) states:

Recommend ordinances and otherwise provide information for the purposes of historic preservation to the county or city governing body.

BCC Section 11-02-06.4 states:

The Historic Preservation Commission shall review all development proposals within the "HD" overlay district as hereinafter provided. The Commission shall meet monthly to review such development proposals. A designated staff member from the Planning Division shall serve as the technical staff for the Commission. A quorum of the membership is required for the conduct of the Commission's business but a public hearing is not required.

BCC Section 11-02-06.5 states:

After the designation by ordinance of a historic district, property or landmark, no exterior feature of any building or other structure (including walls, fences, light fixtures, steps and pavement or other appurtenant features), above ground, utility structure or any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such designated area until after an application for a certificate of appropriateness as to the exterior features has been submitted to and approved by the Historic Preservation Commission in accordance with Sections 2-18-9 and 2-18-10 of the Boise City Code. The application form and fee for a Certificate of Appropriateness application shall be as provided for by the Commission.

BCC 11-02-08 states:

The Boise City Council shall be the final legislative authority on all zoning and land use decisions within the City. The Planning Division Staff and all commissions and committees function at the direction of the Council. Planning and zoning duties and authority of the Council are as follows:

- A. *The Council must confirm the Mayor's appointments to the memberships of the Planning and Zoning Commission, the Design Review Committee, the Historic Preservation Commission and the position of Hearing Examiner.*
- B. *After receiving a recommendation from the Planning and Zoning Commission, the Council must decide the following applications: amendments to the Comprehensive Plan, amendments to the Zoning Ordinance, annexations, rezones, special exceptions and subdivision plats.*
- C. *The Council shall hear and decide appeals of decisions of the Planning and Zoning Commission and the Historic Preservation Commission.*

Boise City Code allows for some applications to be given to staff to process. The Decision Matrix as adopted by the Historic Preservation Commission and City Council does not address the longer term, temporary uses. It does state that the seasonal uses may be processed at a staff level.

Even if the Commission believes that they should have been the decision maker on this application, it is being appealed to them for a determination. Therefore, the appellant will have full due process and the opinion of the entire Commission on this matter.

Ground for Appeal: Proposed use is illegal and is form of spot zoning and is prohibited by Idaho Land Use Planning Act.

Appellant's supporting information: The appellant presented no supporting information in regards to this ground for appeal.

Staff's analysis:

Though the use is not outright allowed in the zoning ordinance table listed in BCC 11-04-03.05, BCC 11-06-08 allows for a Special Exception.

Additionally, this is a zoning issue that will be taken up by City Council. What is before the Historic Preservation Commission is solely if a change in use of the property is appropriate per the findings in Title 2 Chapter 18. These Findings are listed above.

Ground for appeal: Process employed by Boise City violates due process of law.

Appellant's supporting information: The appellant presented no supporting information in regards to this ground for appeal.

Staff's analysis:

BCC 2-18-9 C states:

Any change in zoning classification or change in use that requires a Conditional Use Permit or Administrative Review as set forth in Title 11, Chapter 4, Boise City Code (Zoning) or a Record of Survey as required by Title 9, Chapter 20 (subdivision) within a designated Historic District or Historic District – Residential shall first require approval of a Certificate of Appropriateness.

Prior to any final decision being issued on the Special Exception as required for this permit under BCC 11-08-07, Historic Preservation staff issued a Certificate of Appropriateness. Within two calendar days of the issuance of the staff level decision, the applicant, property owners, residents adjacent to the parcel, and the registered neighborhood association were informed of the action taken and their right to appeal. This is as outlined in Section 2-18-10 (C) (2).

The appeal of the staff level decision was accepted in accordance with BCC 2-18-10 and is being processed in a timely manner. In fact, the appeal was set for a special date and time in front of the Historic Preservation Commission in order for any additional appeals to be processed along with the Special Exception in front of City Council. This will allow City Council to know the Historic Preservation Commission's decision along with staff's decision prior to taking up the Special Exception.

6. Conclusion and Recommended Conditions

Pursuant to Boise City Code 2-18-9 A and B of Boise Municipal Code, the request to construct a temporary off-site surface parking lot is congruous with the historical, architectural, archeological, educational or cultural aspects of the Historic District because:

The Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 Edition), the Boise City Design Guidelines for Residential Districts, the North End Plan and the Boise City Comprehensive Plan are references often utilized by the Historic Preservation Commission to determine whether a change is congruous with the historic and architectural qualities of the Historic District.

1. In order for the Commission to approve the request they must find the project complies with Section 2-18-11.03 which are the change in use Findings.

The project is not in conflict with the goals and policies of the Boise City Comprehensive Plan. The project is congruous with the District.

2. The Staff did not error in their decision and were not arbitrary or capricious in their decision.

Site Specific Conditions of Approval

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received March 4, 2008.
 - a. The applicant shall comply with all conditions of approval of CUP08-00027.

Standard Conditions of Approval

2. The applicant shall comply with the Boise City Fire Code.

3. Prior to a Building Permit and prior to any construction on the site, an Erosion and Sediment Control Permit must be obtained from the Building Division of the Planning and Development Services Department.
4. No change in the planned use of the property by the applicant shall be valid unless in writing and signed by the applicant or his authorized representative and an authorized representative of the City of Boise. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon the City of Boise.
5. Any change in the planned use of the property by the applicant shall require the applicant to comply with all rules, regulations, ordinances, plans or other regulatory and legal restrictions in force at the time the applicant or successors in interest advise the City of intent to change the planned use of the property described herein unless a variance in said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.
6. If the applicant does not act on the Certificate of Appropriateness through the commencement of construction, or extended pursuant to the Boise City Code, within eighteen months, it will become null and void without further notification from this department.
7. The applicant shall be required to obtain a Building Permit prior to the start of construction.