

MEMORANDUM

TO: Mayor and Boise City Council

FROM: Hal Simmons
Planning Director
Boise City Planning and Development Services

DATE: June 18, 2008

RE: DRH08-00067 (Appeal) / 1102 W. Hays Street

The following application has been scheduled for **July 8, 2008**:

YMCA – Treasure Valley is appealing the Historic Preservation Commission's denial to change the use of the property from undeveloped land to a temporary off-site parking lot on property located at 1102 W. Hays Street in an R-3HD/CD (Multi-Family Residential with Historic Design Review and Conservation District Overlay) zone.

PUBLIC NOTIFICATION

Radius notices on staff level decision sent: April 11, 2008
Radius notices for Historic Preservation Commission hearing: April 25, 2008
Site posting for Historic Preservation Commission hearing: April 25, 2008
Newspaper publication for City Council: June 20, 2008
Radius notices for City Council: June 23, 2008
Site posting for City Council: June 20, 2008

HISTORY OF PROPERTY

The applicant met with staff to discuss the process for the project. Staff determined that because the application was for a temporary use that would be removed, and because the Decision Matrix adopted by the City Council for a Certificate of Appropriateness does not address the longer term temporary uses allowed by the zoning ordinance, the review of the application could be done at staff level. The temporary use of the parcel as a off-site parking lot would not have any long term effect on the property or the surrounding neighborhood, and therefore was similar to a minor modification and would not require commission level action but would still require a Certificate of Appropriateness because of the landscape changes to take place on the site.

Timeline

April 15, 2008 – Staff issued the Certificate of Appropriateness
April 21, 2008 – Appeal from Susan Graham and the North End Neighborhood Association, Inc (NENA) was received.
May 12, 2008 – Historic Preservation Commission denied the application and upheld the appeal.
May 19, 2008 – Historic Preservation Commission adopted the findings for denial of the application.
May 28, 2008 – YMCA – Treasure Valley appealed the Historic Preservation Commission's denial of the application.
June 13, 2008 – Receipt of written memorandum from Michael R. Jones, representative of Ms. Graham and NENA.

ACTION BY THE BOISE CITY HISTORIC PRESERVATION COMMISSION

After reviewing the evidence, and hearing all testimony, the Historic Preservation Commission found the applicant's proposal to establish a temporary change in use of the property from undeveloped land to a temporary off-site parking lot to be incongruous with the district. This decision upheld the appeal of Susan Graham and the North End Neighborhood Association, Inc. (NENA). The Commission denied the application at the May 12, 2008 public hearing with the Findings adopted at the May 19, 2008 meeting.

APPEAL

The appellant contends the Historic Preservation Commission's denial was in error. Two grounds were included in the appeal. Each ground has been summarized below, along with staff's response. Note that the Appellant did not elaborate on any of the grounds for appeal.

1. The current conditions of 1102 West Hays fails to meet BCC Section 2-18-11.03 standards.

The appellant has provided no information regarding why they felt this information was relevant to the appeal.

Response: BCC Section 2-18-11.03 Change in Zoning Classification or Change in Use – Findings states:

The Commission's decision in regard to Certificates of Appropriateness for a change in zoning classification or a change in use as described in 2-18-09 (C) above shall be based on the following findings:

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.

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

The applicant/appellant is correct that the current site does not meet the requirements of the Boise City Comprehensive Plan or any applicable neighborhood plans. However, this ordinance was not in place at the time the site changed from single-family residential structures to undeveloped land. This section was published October 1, 2007.

If the current site were to be evaluated based on these findings, they would fail to meet the objectives.

In Staff's initial report to the Commission they felt the argument could be made that the proposed application for a temporary off-site parking lot would bring the site more into compliance with the goals of the Boise City Comprehensive Plan and the North End Plan. Although the appellant's intent with this appeal item is unclear, the applicant/appellant may mean that the improvements they would be placing on the site with the landscape and removal of the weeds would bring it more into compliance with these overall goals and objectives.

In Mr. Jones' memoranda of June 13, 2008 he points out page 17 in the North End Plan, which states the following:

The proposed use or design of the property should reflect the character of the adjacent neighborhood and be compatible with it.

Staff would additionally point out one of the goals on page 16 of the North End Plan is:

To meet the service needs of the residents of the North End for commercial facilities.

As part of the applicant's testimony to the Commission, David Duro stated:

One of the questions I heard is why we need extra parking when there's a significant remodel that took place at the downtown YMCA in about 2000. Since that time we have about tripled our membership. There are 14,000 members at the downtown YMCA and in January we had 63,000 visits in the month to that facility.

Additionally he stated:

In fact, we've been serving the North End, the City of Boise and the community of the Treasure Valley since 1891 so we think we are an important part of the fabric of what happens in the community.

The temporary parking for the YMCA could meet both of these goals, as a portion of the block is already constructed in permanent surface parking and this would be a temporary addition to the area. This area is utilized as a transition zone between residential properties and office/downtown, and the temporary use of the site along with the permanent landscape improvements would provide a service to the North End and other City residents. Additionally, the placement of these improvements would reflect the character of the surrounding area by placing the needed landscape along the streets. When the applicant/appellant stated that the current site doesn't meet requirements he may have meant that the proposal will enhance the existing appearance for the neighborhood.

2. Motion and approval by the Historic Preservation Commission was to deny a change of use on the referenced parcel. Application is not for a zoning change of use.

The appellant presented no additional information along with the appeal to further elaborate on this ground for appeal.

Response:

While a Certificate of Appropriateness is needed for the site improvements to the historic district's portion of this application, the applicant/appellant is questioning whether the findings for a change in use needed to be made to obtain the Certificate of Appropriateness. The definition of change in use from the Historic Preservation Code specifically cites Title 11, Chapter 4 of the Zoning Code for whether a Certificate of Appropriateness is required. The special exception being processed by the current planning staff is under Title 11, Chapter 6. If the code is taken, based on face value, then the uses or processes allowed by Chapter 6 or any other chapter of the Zoning Code would not fall under the definition of the Historic Preservation Commission's change in use. The applicant/appellant is correct that a permanent change of use of the lot is not being requested through the Zoning Ordinance. There is no rezone. There isn't a proposal to change the use of the lot from vacant property to parking on a permanent basis. They are requesting to use a currently unused lot for a short period of time. However the Commission did not feel there was enough evidence to distinguish between and temporary and a permanent parking lot for the purposes of granting a Certificate of Appropriateness under the change in use findings.

BCC Section 2-18-09 (C) Change in zoning classification or change in use in historic districts or historic districts-residential [Historic Preservation Code] 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.*

BCC Section 11-01-03.01[Zoning Code] gives the following definitions:

Use: The purpose, for which land or a building thereon is designed, arranged or intended or for which it is occupied, maintained or leased.

Use, Temporary: Any activity on a site approved by the Director for a limited time of operation. Such uses include seasonal or holiday sales of products or placement of temporary structures on a lot incidental to construction occurring on the lot, outdoor display of garden and related supplies, and/or any other uses which the Director may deem as able to function without permanent permits for a short time as allowed by this code.

The Zoning Code makes a distinction in their definitions between a “Use” and a “Use, Temporary”. Through this distinction the Director can allow the temporary use to function without permanent permits for a short time.

In staff’s initial report to the Historic Preservation Commission and in their presentation they made the distinction between a temporary and permanent use of the property for an off-site parking lot stating the only permanent improvements to be installed would be perimeter landscape with the wheel restraints, lighting and gravel having the potential to be removed through the conditions of approval.

The Historic Preservation Commission felt that for their purposes of issuing a Certificate of Appropriateness whether the use was temporary or not was irrelevant. Commissioner Sewell states as part of deliberations:

Staff’s indicated as a temporary parking lot it could be congruous. If it was a permanent it would not be congruous. Unfortunately, there’s nothing in our Ordinance under temporary...the definition that indicates or includes parking lots. We deal with other types of features. Based on the criteria that we have in our Ordinance, I cannot support the temporary parking lot at this location. (May 12, 2008 minutes page 25 of 28)

Commissioner Stevens further states:

I have a hard time understanding the logic of a permanent parking lot not being congruous but a temporary parking lot being congruous. That doesn’t make sense to me. For me it’s about the use and so it’s not so much about the paving or landscaping. It’s about the use, which is, cars being parking on open space. I can’t support staff’s findings that one is okay and the other isn’t. It doesn’t make sense to

me logically. I think it's very clear that a permanent parking lot is not okay in this spot. (May 12, 2008 minutes page 26 of 28)

Commissioner Dawson went on to state:

I will concur with the other four Commissioners. I don't see that there is a whole lot of difference between a parking situation that's temporary and one that's permanent. (May 12, 2008 minutes page 27 of 28)

The appeal by Susan Graham and the North End Neighborhood Association as set forth did not specifically address whether they were objecting to the design of the site or the change in use of the property. During their presentation to the Historic Preservation Commission this was clarified and noted that it relates to the change in use of the property. The Historic Preservation Ordinance does refer to any change in use of the property without clarifying whether there is a difference between a permanent change in use or a temporary change in use. Also the Historic Preservation Ordinance requires a Certificate of Appropriateness be issued prior to a decision on any Conditional Use Permit. However, it states that the Certificate of Appropriateness shall be issued prior to a Conditional Use Permit as it relates to Title 11, Chapter 4, not other chapters which may allow for a conditional use permits in the Zoning Ordinance.

In regards to the findings the Commission needed to make for the Change in Use in a historic district, Commissioner Stevens stated:

In our Guidelines we have a definition for congruous that I'm going to read into record. It's long, so I'm just going to read the first sentence. "The sensitivity of a development proposal and maintaining the character of existing development." I want to put that in everybody's thoughts. ...If we look at the definition of congruous in our guidelines and you look at Chapter 4 of our Comp Plan...contrary to Staff's Findings, I can't support a parking lot. I don't believe that a parking lot supports any of the things in Chapter 5 of the Com Plan... "Promotes public understanding and appreciation for Boise's Historic areas..." or any of the objections that were read into the record earlier.

PROCEDURE

Arguments can be made in both directions as to whether the Historic Preservation Commission should be considering this application as a change in use or as a site improvement application. Either way, a Certificate of Appropriateness is required to be issued prior to any final decision on any zoning related application. Action on this application will have to be taken by City Council prior to any final decision on the Special Exception request. The Planning and Zoning Commission made a recommendation to City Council on the Special Exception request thereby still providing a process which follows ordinance requirements for the Certificate of Appropriateness as no final decision has been made on any related zoning applications. See BCC Section 2-18-09 (A) (1) (b).

ADOPTED REASON STATEMENT

Section 2-18-11.03 Change in Zoning Classification or Change in Use – Findings

The Commission's decision in regard to Certificates of Appropriateness for a change in zoning classification or a change in use as described in 2-18-09 (C) above shall be based on the following findings:

Finding 1:

A. BCC Section 2-18-11.03(1) states that the request shall support the Boise City Comprehensive Plan goals, objectives and policies contained within Chapter 5/Parks, Recreation and Cultural Resources, and the applicable neighborhood plans. New development within the North End/East End shall be designed to reflect elements of the historic architecture and design that exist in the area. (Boise City Comprehensive Plan, Policy 7, pg 8-33)

The Commission finds that the new parking lot does not reflect the elements of the historic architecture and design that exists in the area. The area includes historic residential structures and small parking structures. The parking lot is very different from those elements.

B. Another goal of the Comprehensive Plan is to protect, enhance and preserve Boise's designated historic landmarks, properties and districts. (Boise City Comprehensive Plan, Objective 2, page 5-16)

Because the parking lot is visually incompatible and does not reflect the surrounding architectural and historic characteristics of the district, it will adversely affect the district and will not protect, enhance or preserve the designated district or its properties.

C. Another goal of the Comprehensive Plan is that the proposed use or design of the property should reflect the character of the adjacent neighborhood and be compatible with it. (North End Plan, p. 17)

The proposed parking lot will not reflect the character of the adjacent historic residential neighborhood. Neither will it be compatible with it, because of the amount of traffic it will produce and the general nature of surface parking lots.

D. Another goal of the Comprehensive Plan is to preserve the character of the North End, the housing type and mix, the placement and number of trees, the vistas and ambient environment provided by the grid street patterns. (North End Plan, p. 16)

The parking lot will not preserve the character of the North End, the housing types and mix, the vistas or the ambient environment. It will provide an appearance that is very different than anything that is around it and will adversely affect this character.

Looking at Finding 1 as a whole, the Commission found nothing within the plan or anything within the proposed application that supports the objectives outlined in the Comprehensive Plan.

Finding 2:

In regards to Finding 2, that the request is congruous with the historical, architectural, archeological, educational, or cultural significance of the District...BCC Section 2-18-11.03(2) states that the request will be congruous with the historical, architectural, archeological, educational or cultural significance of the district. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend "Designing required new parking so that it is as unobtrusive as possible, thus minimizing the effect on the historic character of the setting." (pg. 108)

The new parking lot will not be unobtrusive. It will take an entire block. This will have an adverse effect on the historic character in the setting.

A. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend against "Introducing new construction into historic districts that is visually incompatible or that destroys historic relationships within the setting." (pg.108)

The setting is a historic residential neighborhood with single and small multi-family dwellings. The new parking lot is visually incompatible with this setting. Even if it is a temporary use you set a precedence that this could happen in other situations.

B. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend against "introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color and texture; which destroys historic relationships on the site; or which damages or destroys important landscape features." (pg. 105)

The new parking lot is incompatible in terms of materials including the gravel lot and concrete parking strips and in design. Staff's indicated as a temporary parking lot it could be congruous. If it was permanent it would not be congruous. Unfortunately, there's nothing in our Ordinance under temporary...the definition that indicates or includes parking lots. We deal with other types of features. The Commission did not support staffs logic of a permanent parking lot not being congruous but a temporary parking lot being congruous. The Commission's focus was on the use and not the length of time. They stated that it's very clear that a permanent parking lot is not okay in this spot. The Commission was concerned that focusing on the temporary nature would allow this to become a slippery slope, which is exactly what we don't want there which is parking.

The Commission focused on the definition for congruous, the first sentence reads. "The sensitivity of a development proposal and maintaining the character of existing

development.” The Commission found that the definition of congruous in their guidelines does not support a parking lot.

STAFF RECOMMENDATION/REQUIRED MOTIONS

In reviewing the grounds for overturning the Commission’s decision as stated in B.C.C.11-03-07.2, staff does not believe the appeal indicates any error in the approval by the Historic Preservation Commission. However, should Council determine an error was made, the approval may be modified or overturned. If the decision of the Historic Preservation Commission is overturned or modified, staff should return with revised reasons for the decision and conditions of approval.

ZONING ORDINANCE

11-03-07 - Quasi-judicial Appeals; Form; Content:

Any administrative, committee or Commission level decision may be appealed to the appropriate Commission, or Council in accordance with the procedures established herein. All such appeals must be written, accompanied by the appropriate fee and submitted to the Planning Director prior to the deadlines set forth herein. If the appeal deadline falls on a weekend or holiday the appeal period is automatically extended to the next workday. Each appeal must clearly state the name, address and phone number of the person or organization appealing and specify the issues, items or conditions that are being appealed.

11-03-07.2: Quasi-judicial Appeals to City Council of Decisions of the Planning & Zoning Commission, Hearing Examiner and Historic Preservation Commission

7. The City Council may find error on the following grounds:

- (a) The decision below is in violation of constitutional, State or City provisions. An example would be that the review body's decision would be a taking or failed to comply with mandatory notice required under the local planning act.
- (b) The review body's decision exceeds its statutory authority. An example would be when there is no authority for the decision in federal or Idaho law, local ordinance or the Comprehensive Plan. Because the decision-makers below are experts in their substantive areas, the City Council shall give due consideration to a reasonable interpretation of a City Ordinance adopted by the review body.
- (c) The decision below is made upon unlawful procedure. An example would be if inadequate notice of the hearing was provided.
- (d) The decision below is arbitrary, capricious or an abuse of discretion. For the City Council's actions to be deemed arbitrary or capricious, it must be shown that that its actions were done without rational basis; or in disregard of the facts and

circumstances presented; or without adequate determining principles. Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.

- (e) The decision below is not supported by substantial evidence.

CERTIFIED PUBLIC ACCOUNTANT

ATTORNEY AT LAW

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Attention:

Mr. Bruce Chatterton, Director

RE: Block 75 BCOT DRH 08-00067

RECEIVED

JUN 13 2008

DEVELOPMENT
SERVICES

Memorandum

Dear Mr. Chatterton;

Enclosed herewith is NENA's and Ms Graham's memorandum in support of the Historic Preservation Commission's Decision.

Sincerely,

Michael R. Jones, PLLC



Michael R. Jones
Attorney at Law

Enclosure

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Attorneys for Susan Graham and the North End Neighborhood Association, Inc.

BEFORE THE BOISE CITY COUNCIL

An Appeal of the May 12, 2008 Decision of the Boise City Historic Preservation
Commission; DRH08-00067

MEMORANDUM IN SUPPORT OF DECISION OF COMMISSION

Susan Graham and the North End Neighborhood Association, Inc., by and through their attorneys identified above, hereby submit this Memorandum in support of the May 12, 2008 Decision of the Boise City Historic Preservation Commission.

RELEVANT FACTS

On May 12, 2008, at a duly convened Historic Preservation Public Hearing, the Historic Preservation Commission denied applicant's request to change the use of the property located at 1102 West Hays Street from undeveloped land to a temporary off-site parking lot. This property is zoned R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District). It is located within the national Fort Street Historic District, the Near North End Conservation District and the Hays Street Historic District. These Districts are intended to continue residential use, protect historical and

architectural character of the neighborhood using adaptive reuse methods and to provide a transition between the downtown and the North End.

In denying applicant's request for a change of use, the Commission made two separate determinations, either of which supports its ultimate conclusion to deny a Certificate of Appropriateness to the applicant. Firstly, the Commission determined that the requested parking lot failed to support, indeed violated, the goals, objectives and policies of the Boise City Comprehensive Plan and the applicable Neighborhood Ordinance. Secondly, the Commission determined that this change-in-use application is not congruous with the historical, architectural, archeological, educational and cultural significance of the Historical District. The Commission, therefore, refused to issue a Certificate of Appropriateness.

APPLICANT'S GROUNDS OF APPEAL

On May 28, 2008, applicant filed its appeal of the Commission's May 12, 2008 decision. In doing so, the applicant has stated in its "Application for Appeal" the following, and solely the following, as its two "Grounds for Appeal of the Commission's May 12, 2008 Determination:"

"1. The current condition of 1102 West Hays fails to meet BCC section 2-18-11.03 standards.

2. Motion and Approval by the Historic Preservation Commission was to deny a change of use on the referenced parcel. Application is not for a zoning change of use."

In point of fact, however, the first ground of applicant's appeal is wholly irrelevant. The "current condition of 1102 West Hays" is not at issue. Further, the second ground asserted by applicant is wholly erroneous. A new parking lot within the Conservation District is certainly a "change of use" ("You really need to focus on...the change in use for the Historic District...you get to decide if the change in use is appropriate at all" - May 12, 2008 Hearing Minutes, p.7, Counsel Teresa Sobotka speaking). Of equal or even greater importance, it is also a prohibited use ("The Boise City Code, the Near North End Conservation District...prohibits new parking lots in the Near North End of any type or nature" - May 12, 2008 Hearing Minutes, p.14, Michael Jones speaking). It must also be noted, however, that the two asserted "grounds of

appeal” are not properly before this Council in any event because, “If the findings of fact upon which the original decision was based are supported by substantial evidence, the City Council shall accept those findings.” Boise Municipal Code §11-03-07.5 G.1. In the instant case, the May 12, 2008 findings of the Historic Preservation Commission are supported by substantial evidence and applicant has not contended otherwise. On this basis alone, this appeal must be denied, especially given the mandate of Boise Municipal Code §11-03-07.5 G.7 specifically providing that the Commission’s findings are to be given deference.

THE FINDINGS OF THE COMMISSION

In denying applicant’s request for a Certificate of Appropriateness allowing a temporary off-site parking lot, the historic Preservation Commission determined that “the change in use did not comply with the comprehensive plan [Finding 1] and was not congruous [Finding 2].” Those findings should not be disturbed, nor do either of the two enunciated grounds of applicant’s appeal suggest otherwise.

FINDING 1: In reaching four separate Findings that “the change in use did not comply with the comprehensive plan,” any one of which Findings is sufficient to sustain the Commission’s determination to deny applicant’s request to change the use of the property located at 1102 West Hays Street from undeveloped land to a temporary off-site parking lot, the Commission determined that the proposed change of use did not support, indeed affirmatively conflicts with, the goals of the Boise City Comprehensive Plan. As stated by attorney Jones, “The Near North End Conservation District has made the determination that parking lots in this neighborhood are detrimental. It’s not my opinion, it is the opinion of the City Council and the adoption of their ordinance. Parking lots are detrimental to residential use and detrimental to public safety...[In this District], it’s clearly a prohibited use” - May 12, 2008 Hearing Minutes, pp.14 and 24). The Commission agreed. In particular, the Commission found:

Finding 1A: “[T]he new parking lot does not reflect the elements of the historic architecture and design that exist in the area. The area includes historic residential

structures and small parking structures. The parking lot is very different from those elements.”

Evidence in support: Before reaching its first Finding, the Commission was instructed by its legal counsel that “Your job is to see what works in historic preservation” - May 12, 2008 Hearing Minutes, p.9, Teresa Sobotka speaking. It then did so and, in reaching Finding 1A, the Commission noted the requirement of Boise Municipal Code §2-18-11.03(1) that requests of the instant nature “shall support the Boise City Comprehensive Plan goals, objectives and policies outlined within Chapter 5/Parks, Recreation and Cultural Resources, and the applicable neighborhood plans. New development within the North End/East End shall be designed to reflect elements of the historic architecture and design that exist in the area” (citing Boise City Comprehensive Plan, Policy 7, pages 8-33). The Commission determined that the requested parking lot did not meet these requirements.

Finding 1B: “Because the parking lot is visually incompatible and does not reflect the surrounding architectural and historic characteristics of the district, it will adversely affect the district and will not protect, enhance or preserve the designated district or its properties.”

Evidence in support: With respect to this issue, attorney Michael Jones presented evidence that the proposed parking lot was “not an appropriate use for a historic district” - May 12, 2008 Hearing Minutes, p.13. In reaching Finding 1.B, the Commission agreed, noting Boise City Comprehensive Plan, Objective 2, pages 5-16, in particular its goal “to protect, enhance and preserve Boise’s designated historic Landmarks, properties and districts,” concluding that the requested parking lot would not support that goal.

Finding 1C: “The proposed parking lot will not reflect the character of the adjacent historic residential neighborhood. Neither will it be compatible with it because of the amount of traffic it will produce and the general nature of surface parking lots.”

Evidence in support: In reaching Finding 1C, the Commission again found support in the Boise City Comprehensive Plan (in particular, the North End Plan @ page 17), noting “that the proposed use or design of the property should reflect the character of the adjacent neighborhood and be compatible with it,” and concluding that the requested parking lot did not meet either of these requirements. “I can’t support a parking lot. I

don't believe that a parking lot supports any of the things in Chapter 5 of the Comp Plan" - May 12, 2008 Hearing Minutes, p.26, Commissioner Stevens speaking.

Finding 1D: "The parking lot will not preserve the character of the North End, the housing type and mix, the vistas or the ambient environment. It will provide an appearance that is very different than anything that is around it and will adversely affect this character."

Evidence in support: In reaching Finding 1D, the Commission again supported its finding with the Boise City Comprehensive Plan (in particular, the North End Plan @ page 17), noting that another of the Plan's goals "is to preserve the character of the North End, the housing type and mix, the placement and number of trees, the vistas and ambient environment provided by the grid street patterns," and concluding that the requested parking lot did not meet these requirements. "I personally can't support that in that location" - May 12, 2008 Hearing Minutes, p.26, Commissioner Burry speaking.

Conclusion as to Finding 1 A-D: In reaching the above four findings, the Commission volunteered that the issue was not a "close call," that it found no need to balance valid competing interests to reach its conclusions, that "Looking at Finding 1 as a whole, the Commission found **nothing** within the plan or **anything** within the proposed application that supports the objectives outlined in the Comprehensive Plan" [emphasis added]. As stated by Commissioner Sewell, "In reviewing the criteria that we have to evaluate this Finding 1, that it supports the Boise City Comp Plan, I cannot find anything within the plan or anything within the proposed application that supports the objectives outlined in the application" - May 12, 2008 Hearing Minutes, p.25.

FINDING 2: In reaching two separate Findings that "the proposed change in use is not congruous," either of which Finding is sufficient to sustain the Commission's determination to deny applicant's request to change the use of the property located at 1102 West Hays Street from undeveloped land to a temporary off-site parking lot, the Commission determined that this change of use "is incongruous with the historical, architectural, archeological, educational or cultural significance of the District" (citing Boise Municipal Code §2-18-11.03(2)) and, additionally, contra to the Secretary of the Interior's Standards for the Treatment of Historic Properties (specifically pages 105 and

108). The Commission's legal counsel advised it that their focus was to be quite direct in this regard, *i.e.* "You will need to address change in use, period. You say if it's congruous or incongruous. You can either say we think it's congruous. We think it's incongruous" - May 12, 2008 Hearing Minutes, p.24, Teresa Sobotka speaking. Attorney Jones introduced evidence as to the incongruity. "The Near North End Conservation District is in Title 11, Chapter 20 of Boise City Code, Section 11-20-03 states, 'The following restrictions and allowances beyond the requirements of the R-3 Zone shall apply within the Near North End Zone...New off-site parking lots.' It's clearly a prohibited use...It's incongruous with the Historic District" - May 12, 2008 Hearing Minutes, p.24. The Commission agreed. "I don't think it's congruous and I don't think it fits with the Comp Plan, so I won't be supporting the application" - May 12, 2008 Hearing Minutes, p.26, Commissioner Stevens speaking

Finding 2A: "The setting is a historic residential neighborhood with single and small multi-family dwellings. The new parking lot is visually incompatible with this setting. Even if it is a temporary use you set a precedence that this could happen in other situations."

Evidence in support: In reaching Finding 2A, the Commission noted the recommendation of the Secretary of the Interior's Standards for the Treatment of Historic Properties (in particular page 108) against "Introducing new construction into historic districts that is visually incompatible or that destroys historic relationships within the setting," concluding that the proposed parking lot would violate these guidelines. As stated by attorney Michael Jones, "Once you allow this prohibited use, you are at the beginning of the end of historic preservation areas of town" - May 12, 2008 Hearing Minutes, p.25). The Commission agreed. "I worry about the temporary nature of this becoming a slippery slope which is exactly what we don't want there, which is parking" - May 12, 2008 Hearing Minutes, p.27, Commissioner McFadden speaking).

Finding 2B: "The new parking lot is incompatible in terms of materials including the gravel lot and concrete parking strips and in design. Staff's indicated as a temporary parking lot it could be congruous. If it was permanent it would not be congruous...there's nothing in our Ordinance under temporary...The Commission did not support staff's logic of a permanent parking lot not being congruous but a temporary parking lot being

congruous. The Commission's focus was on the use and not the length of time. They stated that it's very clear that a permanent parking lot is not okay in this spot...The Commission focused on the definition for congruous...'The sensitivity of a development proposal and maintaining the character of existing development.' The Commission found that the definition of congruous in their guidelines does not support a parking lot."

Evidence in support: In reaching Finding 2B, the Commission accepted the admission of the Staff report that, had a permanent parking lot been requested, it would unequivocally and undeniably be incongruous. "If the offsite temporary parking lot were to be a permanently improved surface parking facility...the request would be incongruous with the [Historical] District as it would...conflict with the adjacent residential properties" - May 12, 2008 Hearing Minutes, p.3, Sarah Schafer speaking. The Commission then heard the evidence of attorney Jones that the temporal quality of an incongruous use cannot make it congruous ("This is in the Near North End Conservation District where parking lots are prohibited. It's a prohibited use. There's no temporal time frame on it" - May 12, 2008 Hearing Minutes, p.12) and agreed with the same ("Staff's indicated...if it was permanent it would not be congruous...there's nothing in our Ordinance under temporary...I cannot support the temporary parking lot at this location" - May 12, 2008 Hearing Minutes, p.26, Commissioner Smith speaking). Commissioner Dawson agreed. "I don't see that there is a whole lot of difference between a parking situation that's temporary and one that's permanent. It almost seems that someday down the road there's going to be an end around trying to get a more permanent parking situation and I think that's a concern that many of us have even if we may not say it" - May 12, 2008 Hearing Minutes, p.27.

The Commission also noted the recommendation of the Secretary of the Interior's Standards for the Treatment of Historic Properties (in particular page 105) against "introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color and texture, which destroys historic relationships on the site, or which damages or destroys important landscape features," concluding that the proposed parking lot is incompatible in terms of materials. The Commission was instructed by its legal counsel that "I need all of you to focus on whether or not the application...the change in use is congruous or incongruous with the

Historic District...That's what the whole focus is on. Whether or not it's congruous with the Historic District. Is it going to be detrimental to the Historic District, *i.e.* incongruous, or is it going to be congruous" - May 12, 2008 Hearing Minutes, pp.18 and 20. The answer was provided most eloquently by Commissioner Stevens, who stated that, "In our Guidelines, we have a definition for congruous that I'm going to read into the record. It's so long I'm just going to read the first sentence, 'The sensitivity of a development proposal and maintaining the character of existing development.' If we look at the definition of congruous in our Guidelines and you look at Chapter 4 of our Comp Plan...I can't support a parking lot. I don't believe that a parking lot supports any of the things in Chapter 5 of the Comp Plan ...'Promotes public understanding and appreciation for Boise's Historic areas...' or any of the objections that were read onto the record earlier. I have a hard time understanding the logic of a permanent parking lot not being congruous but a temporary parking lot being congruous...I can't support a temporary parking lot going in there...I don't think it's congruous and I don't think it fits with the Comp Plan so I won't be supporting the application." May 12, 2008 Hearing Minutes, p.26.

Conclusion as to Finding 2 A-B: In reaching the above two findings, the Commission found and determined that the proposed parking lot was incongruous with its neighborhood ("The new parking lot will not be unobtrusive. It will take an entire block. This will have an adverse effect on the historic character of the setting") and visually incompatible, either of which violate the express requirement of Boise Municipal Code §2-18-11.03(B) that "the request will be congruous with the historical, architectural, archeological, educational or cultural significance of the district." No evidence whatsoever was submitted to the Commission, nor could it be, that the proposed parking lot was somehow "congruous" with the "historic residential neighborhood" into which applicant sought to foist it.

SCOPE OF REVIEW

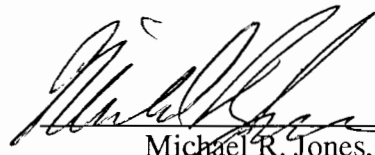
It is not the proper function of the City Council to now substitute its judgment for that of the Historic Preservation Commission. Neither is it the lawful responsibility of the City Council to determine if the Commission was "right" in its ultimate conclusion. Instead, as provided by Boise Municipal Code §11-03-07.5 G.1: "If the findings of fact

upon which the original decision was based are supported by substantial evidence, the City Council **shall** accept those findings” [emphasis added]. Further, in making that determination, the City Council must be mindful of Boise Municipal Code §11-03-07.5 G.7 providing that “Because the decision makers below are experts having recognized expertise in their substantive areas, the City Council shall give due consideration to a reasonable interpretation of a City Ordinance adopted by the review body.” Such should now occur in the instant case.

Applicant has raised only two grounds of appeal, firstly that “the current condition of 1102 West Hays fails to meet BCC section 2-18-11.03 standards” and secondly that its “Application is not for a zoning change of use.” Its first ground has absolutely nothing to do with this appeal. It is irrelevant in the extreme and merits no consideration, whatever consideration could otherwise be given to it. As for the application on appeal not being for a “change of use,” this assertion is wholly erroneous. As stated by the Commission’s legal counsel, the application was very much for a change of use – “You really need to focus on...the change of use for the Historic District...You get to decide yourselves if the change in use is appropriate at all” - May 12, 2008 Hearing Minutes, p.7. The Commission did so. It is not for this City Council to now substitute its judgment for theirs, but rather to give “due consideration” to the decision that was made only after a full public hearing and deliberation on the matter.

The City Council must deny the instant appeal.

DATED this 11th day of June, 2008


Michael R. Jones, PLLC
by Michael R. Jones

cc David Duro 1050 W. State Street Boise Idaho



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Application for Appeal

Fee: \$ 174

I (we) YMCA-TREASURE VALLEY, hereby appeal the decision of the Boise City:

- ☐ Planning & Zoning Commission ☐ Hearing Examiner ☐ Design Review Committee
☒ Historic Preservation Commission ☐ Planning Director

File Number: DRH08-00067

Address: 1102 WEST HAYS STREET

Specific Action Being Appealed:

The decision of the Boise City Historic Preservation Commission to ratify an appeal regarding issuance of a Certificate of Appropriateness (DRH08-00067).

Grounds for Appeal

1. The current condition of 1102 West Hays fails to meet BCC section 2-18-11.03 standards.
2. Motion and Approval by the Historic Preservation Commission was to deny a change of use on
3. the referenced parcel. Application is not for a zoning change of use.
- 4.

Appeal Contact Person: YMCA-TREASURE VALLEY / DAVID DURO

Address: 1050 W. STATE ST

Home Phone: _____

Work Phone: 344-5502

Appeals

- ☐ Appeal of an Administrative Decision to the Planning & Zoning Commission or Design Review Committee (non-refundable fee).
☐ Appeal of a Design Review Committee Decision to the Planning & Zoning Commission.*
☒ Appeal of a Planning & Zoning or Historic Preservation Commission decision to City Council.*
☐ Appeal of a Hearing Examiner decision to City Council.*

* Portion of fee is refundable if appeal is successful.

Notes

- If the reasons for the appeal are resolved prior to the appeal hearing, please contact the Planning Staff at 384-3830.
- The only topics which may be discussed during the appeal hearing are the specific reasons for the appeal as stated in the application.
- Neighborhood groups are encouraged to elect a spokesperson for appeals that are supported by numerous residents of the project to avoid a duplication of testimony.
- Section 11-3-7.2 of the Zoning Ordinance provides that an appeal to Council may not be withdrawn without the consent of Council.

Signature of Appellant/Representative: Weston Schutte / Weston Schutte Date: 28 MAY 08

For Staff Use Only:

If the appellant is not the applicant, the applicant must be contacted immediately following the acceptance of this appeal.

Applicant contacted on _____ by _____ ☒ Appeal is by applicant

DRH08-00067



Bruce D. Chatterton
Director

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Mayor
David H. Bieter

City Council
President
Elaine Clegg

Council ProTem
David Eberle

Vernon L. Bisterfeldt
Maryanne Jordan
Alan W. Shealy
Jim Tibbs

Planning & Development Services

May 20, 2008

North End Neighborhood Association, Inc. (NENA)
Kevin McGowan, President
1207 W. Fort Street, #213
Boise, ID 83702

Susan Graham
1005 W. Fort Street
Boise, ID 83702

RE: ***DRH08-00067 / 1102 West Hays Street***

Dear Applicants,

This letter is to inform you that the Boise City Historic Preservation Commission, at their hearing of May 19, 2008, ratified the Findings for which your appeal was upheld.

Enclosed is a copy of the Reason Statement under which the Commission based their decision.

The decision or any of the conditions attached may be appealed to the Boise City Council within ten (10) days from the date of issuance of this decision. The appeal must be written, accompanied by the appropriate fee and submitted to the Planning and Development Services Department prior to the deadline set forth herein. Appeal application forms are available in the Planning and Development Services Department or online under Applications at:

www.cityofboise.org/pds or <http://64.77.8.212/pds/apps.asp>.

In the event that application is appealed and the City Council makes a final decision regarding said appeal, the landowner may request a regulatory taking analysis for that decision and/or conditions within 28 days following such final decision in accordance with Section 67-8003 of the Idaho Code.

If you have any questions, please contact me at 384-3830.

Sincerely,

Sarah M. Schafer
Manager, Design Review and Historic Preservation
BOISE CITY PLANNING & DEVELOPMENT SERVICES

SMS/nh

cc: Michael R. Jones / Michael R. Jones, PLLC / P.O. Box 7743 / Boise, ID 83707
YMCA / David Duno / 1050 West State Street / Boise, ID 83702
Andy Erstad / Erstad Architects / 420 West Main Street, Ste. 202 / Boise, ID 83702

Enclosures

- Reason Statement



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MEMORANDUM

MEMO TO: Historic Preservation Commission

FROM: Sarah Schafer
Design Review and Historic Preservation Guru
Boise City Planning and Development Services

DATE: May 19, 2008

RE: **DRH08-00067 / 1815 North 10th Street**
Susan Graham and the North End Neighborhood Association

At the May 12, 2008 Historic Preservation Public Hearing, the Commission voted to uphold the appeal of staff's decision to approve the change in use, thus denying the applicant's request to change the use of the property from undeveloped land to a temporary off-site parking lot. The following information reflects the background and reasoned decision of the Commission.

Request: SUSAN GRAHAM AND THE NORTH END NEIGHBORHOOD

ASSOCIATION, INC (NENA) appealed a staff level approval for a temporary parking lot on property located at 1102 W. Hays Street in an R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District) zone.

Background: The property in question is a block that is bounded by Fort Street to the north, 11th Street to the east and 12th Street to the west. This block was once populated with single family houses. However, the owner of the block, the First United Methodist Church, razed the block.

The YMCA is seeking a Certificate of Appropriateness to construct a temporary parking lot with landscape improvements on this site. The application is to utilize the land as a parking lot for two years. Thereafter, the applicant could request up to three, one year extensions. However, if the use is approved, the actual length of time could be limited as deemed appropriate.

Staff recommended approval because: (1) the temporary nature of this parking lot, (2) because of the landscape improvements, (3) because all parking lot related materials will be removed when the Certificate of Appropriateness expires and (4) because the temporary use will add more vibrancy to the historic district then the current vacant block is adding, the application was granted at the Staff Level.

Susan Graham and the North End Neighborhood Association, Inc. (NENA) disagreed with staff's determination that the change in use of this space complied with the comprehensive plan and was congruous and appealed the decision to the Historic Preservation Commission (HPC). The HPC determined that the change in use did not comply with the comprehensive plan and was not congruous. NENA argued that they were going to have offsite traffic through the neighborhood that it's going to be impacting.

The Applicant argued that the benefit of having it on a temporary basis outweighs any detrimental affect to the neighborhood. The benefit of the YMCA far outweighs any detrimental affect to the neighborhood the 15 months or less of parking could do.

Staff thought a temporary use might be appropriate for the area.

Because the temporary use will have a minimal affect on the District and it's not anything that's going to be permanently at this location. It will provide some activity for the area on a temporary basis. No more than two years. Eventually there will hopefully be some kind of residential development here whether it be single-family or whether it be multi-family development but there will be activities in this area on this vacant lot albeit it will be different than the activity that we're proposing for the temporary use. It will be intensification in this area. Currently if we maintain the lot in its vacant condition we're going to have the vacant ground with a little bit of weeds growing up which is something that Code Enforcement can take care of. The only landscaping that we have on this parcel are the two evergreen trees that are of questionable health and safety. One of them is leaning very drastically. With this application we would be obtaining perimeter landscaping for the neighborhood as well as various conditions that could be placed on the project...saying this landscape needs to be maintained in a healthy and attractive manner until a permanent application comes forward before this Commission.

NENA's reasoning as to whether or not the use was congruous with the neighborhood because it was temporary is as follows:

What we have here is not an application for...let's see we have a vacant lot let's put in for a very short period of time a Christmas Tree lot for the Christmas season. We're talking about up to a five year period for a temporary parking lot. That's what this Ordinance allows and that would be what they could do and come back in on a special extension and once you have it with the YMCA I

don't know how City Council or anybody is going to stop Boise High School, the Methodist Church or anybody else from using that property for a parking lot or any other unallowed prohibited use in the North End or the East End. It's not congruous with the Historic District as the purpose of a Conservation District. We had to expand on the Conservation District by adopting historic preservation areas in the Near North End, North End, Harrison and East Boise because of the wholesale demolition and destruction of housing. I personally have clients come to me wanting to know how they can put in housing on Harrison. Knock down historic structures (houses) and put in parking...they want to put in apartment houses and condos. I have not done that, but they said they can go in with a plan and if they can get a special exception like anybody else can we can put in a half-way house or we can put in low income housing, have it subsidized, we can flip it, have it there for a short period of time and change it. Once you allow this prohibited use you at the beginning of the end of historic preservation areas of town because you start once and...15 months. We're talking about a 900 and some parking lot eight stories high...as high as Boise Cascades' existing building is going to be constructed in 15 months...I don't believe that in a day. It's never going to get completed in 15 months. Building permits are still in the planning process. They're now just putting up the fence and they only have a permit for demolishing the trees that are down there. It's going to be more than 15 months. If the YMCA believes that they can build an 8-story office building in a congested area of downtown Boise I'll just have you look at what happened to Hampton Suites and how long it took them to do that construction in BoDo.

NENA argued that Due Process had not been followed. In response, staff explained that they decided to do a staff level decision versus bringing this application to the Commission.

As you know we have the decision matrix that was adopted by the Historic Preservation Commission and was recommended to the City Council and adopted by City Council for inclusion for how we handle applications. Unfortunately the decision matrix does not address temporary uses. Staff had made the determination that we would address a temporary use at a staff level because this application would be going on having a recommendation made by the Planning & Zoning Commission with a final determination visa via made by City Council already. The temporary use would be an appropriate decision to be made at staff level. It wasn't anything permanent that was going change the permanent landscape of the Historic District which is something that we do always forward on to the Historic Preservation Commission. This is a de novo hearing tonight so that you are actually making the change in use Findings tonight on the record. Staff made the initial determination and after we had made the initial determination to approve the application Staff then followed City Code in sending out our Notice of Determination which I have included for you in your packet. I

is on Page 23 of your packet and on the last page of your packet shows the map of who we sent that to. We sent it to everyone within 300 ft. as required by our code as well as the registered neighborhood association. Staff's determination is not made final until that appeal period ends. If we do receive an appeal within the appeal period that determination is not a final determination. It then comes before the Historic Preservation Commission for a determination. That determination is not final either until the appeal period ends or the appeal is heard by City Council. No final determinations have been made on this project yet. Like I said, Staff did notification of that initial staff level decision...sent out the notice that you have in your packet to the people on the map. Again, when we scheduled tonight's hearing we also sent out notices within 300 ft. and to the registered neighborhood association so we gave an additional notice in regards to this project. Additionally in reviewing an application such as this there's actually two separate processes that are taking place. There is the P&Z process which is the special exception process which has different Findings than what you're looking at. The special exception process is taking into consideration that Conservation District overlay.

NENA argued that the application did not meet the comprehensive plan requirements because: the Near North End Conservation District is in Title 11, Chapter 20 of Boise City Code, Section 11-20-03 states, "The following restrictions and allowances beyond the requirements of the R-3 Zone shall apply within the Near North End Zone". "New off-site parking lots, except on parcels demonstrated to have been vacant on or before the effective date of the ordinance. This prohibition shall not preclude the use of existing on-site parking lots as "for rent" of off-site parking. It's clearly a prohibited use. It's clear that it's not an allowed use. It's incongruous with the Historic District. It was established that way by the Boise City Ordinances and when they adopted the Near North End Conservation District... I can go through the history of the adoption of the Near North End Conservation District and the reasons why that was occurring in the Near North End because of the demolition of the historic houses in the near North End for parking lots for Boise City. Boise High School, the YMCA, the United Methodist Church and the Baptist Church. There's a reason why the neighborhood and the City Council and everybody that got out because they did not want to see the Near North End turn into a parking lot. Then it would be servicing the commercial core for Downtown Boise. They wanted and CCDC wanted the commercial core to be south of State Street and that's where the parking was designated to be by CCDC. It's in the Master Plan for the Commercial District. Parking is an obligation of CCDC and the commercial center. Parking is not part of the Comprehensive Plan for the Near North End or the North End or the East End.

Motion: DENY STAFF'S RECOMMENDATIONS FOR A CHANGE USE FROM A VACANT LOT TO A PARKING LOT AT 1102 W. HAYS STREET IN AN R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District) ZONE, AND UPHOLD THE APPEAL OF DRH 08-00067.

Reasoned Statement:

Section 2-18-11.03 Change in Zoning Classification or Change in Use – Findings

The Commission's decision in regard to Certificates of Appropriateness for a change in zoning classification or a change in use as described in 2-18-09 (C) above shall be based on the following findings:

Finding 1:

- A. BCC Section 2-18-11.03(1) states that the request shall support the Boise City Comprehensive Plan goals, objectives and policies contained within Chapter 5/Parks, Recreation and Cultural Resources, and the applicable neighborhood plans. New development within the North End/East End shall be designed to reflect elements of the historic architecture and design that exist in the area. (Boise City Comprehensive Plan, Policy 7, pg 8-33)

The Commission finds that the new parking lot does not reflect the elements of the historic architecture and design that exist in the area. The area includes historic residential structures and small parking structures. The parking lot is very different from those elements.

- B. Another goal of the comprehensive plan is to protect, enhance and preserve Boise's designated historic Landmarks, properties and districts. (Boise City Comprehensive Plan, Objective 2, page 5-16)

Because the parking lot is visually incompatible and does not reflect the surrounding architectural and historic characteristics of the district, it will adversely affect the district and will not protect, enhance or preserve the designated district or its properties.

- C. Another goal of the comprehensive plan is that the proposed use or design of the property should reflect the character of the adjacent neighborhood and be compatible with it. North End Plan, (p. 17).

The proposed parking lot will not reflect the character of the adjacent historic residential neighborhood. Neither will it be compatible with it. because of the amount of traffic it will produce and the general nature of surface parking lots.

- D. Another goal of the comprehensive plan is to preserve the character of the North End, the housing type and mix, the placement and number of trees, the vistas and ambient environment provided by the grid street patterns. (North End Plan, p. 16)

The parking lot will not preserve the character of the North End, the housing type and mix, the vistas or the ambient environment. It will provide an appearance that is very different than anything that is around it and will adversely affect this character.

Looking at Finding 1 as a whole, the Commission found nothing within the plan or anything within the proposed application that supports the objectives outlined in the Comprehensive Plan.

Finding 2:

In regard to Finding 2, that the request is congruous with the historical, architectural, archeological, educational, or cultural significance of the District...BCC Section 2-18-11.03(2) states that the request will be congruous with the historical, architectural, archeological, educational or cultural significance of the district. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend "Designing required new parking so that it is as unobtrusive as possible, thus minimizing the effect on the historic character of the setting. (pg. 108)

The new parking lot will not be unobtrusive. It will take an entire block. This will have an adverse effect on the historic character in the setting.

- A. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend against "Introducing new construction into historic districts that is visually incompatible or that destroys historic relationships within the setting. (pg.108)

The setting is a historic residential neighborhood with single and small multi-family dwellings. The new parking lot is visually incompatible with this setting. Even if it is a temporary use you set a precedence that this could happen in other situations.

- B. The Secretary of the Interior's Standards for the Treatment of Historic Properties recommend against "introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color and texture; which destroys historic relationships on the site; or which damages or destroys important landscape features." (pg. 105)

The new parking lot is incompatible in terms of materials including the gravel lot and concrete parking strips and in design. Staff's indicated as a temporary parking lot it could be congruous. If it was permanent it would not be congruous. Unfortunately, there's nothing in our Ordinance under temporary...the definition that indicates or includes parking lots. We deal with other types of features. The Commission did not support staffs logic of a permanent parking lot not being congruous but a temporary parking lot being congruous. The Commission's focus was on the use and not the length of time. They stated that it's very clear that a permanent parking lot is not okay in this spot. The Commission was concerned that focusing on the temporary nature would allow this to become a slippery slope which is exactly what we don't want there which is parking.

The Commission focused on the definition for congruous the first sentence reads. "The sensitivity of a development proposal and maintaining the character of existing development." The Commission found that the definition of congruous in their guidelines does not support a parking lot.



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Historic Preservation Commission

Hearing Minutes of May 19, 2008

Commission Members Present Christopher Pooser, Chair, Cathy Sewell, Betsy McFadden, Bonnie Burry, Stephen Smith

Members Present Sarah Schafer, Julie Archambeault, Teresa Sobotka, Nicki Heckenlively

DRH08-00067 / Susan Graham & North End Neighborhood Association, Inc. (NENA)

Location: 1102 W. Hays Street

Discussion and ratification of Findings for approval. (*The appeal was upheld at the May 12, 2008 hearing.*)

SARAH SCHAFFER: Today were here to adopt the Findings for DRH08-00067 which is the Susan Graham and the North End Neighborhood Association appeal of the YMCA's application for a temporary offsite parking lot at 1102 West Hays Street. The information was sent out yesterday and again today because evidently not everything got attached. The minutes were sent out last Friday as well so you have those to refer to. If you'll take a minute or two to read through everything and make sure it is as you would like it and how you'd like it to go out to the applicant and possibly City Council if there is an appeal on the application.

COMMISSIONER SMITH: I was the only descender and I intend to continue to be the descender. Would it be procedurally appropriate at this point to vote against this particular Finding?

SARAH SCHAFFER: You could do that. The other way that we've sometimes had members go is to say, "Yes, these Findings accurately reflect the discussion that was had". Sometimes it goes either way, but you can vote against the Findings if that's what you'd like to do.

ACTING CHAIRMAN POOSER: It's just a approval of the minutes so you're not necessarily saying, "I would have voted different during the hearing". It's just that these accurately reflect...I wasn't at the hearing but I have read the minutes and I believe I can at least vote on the Findings and that they accurately reflect the discussion we had.

SARAH SCHAFFER: That's correct.

ACTING CHAIRMAN POOSER: I found a couple of typos in the minutes. On Page 2, objective 1, is that right, "The identities have been identified"?

SARAH SCHAFFER: No.

ACTING CHAIRMAN POOSER: There are more typos on Page 4, four sentences down in the middle, "I have gone through and sited the section", but should read "cited".

SARAH SCHAFFER: On Page 8, Commissioner Chandler stated, "there would be some physical restraint put in place", change the spelling of "physical". Also I found on Page 3, seven lines down, it states, "the wheel strips as well as the removal of the on-site lining for the parking area", that should read "on-site lighting".

COMMISSIONER SEWELL MOVED TO APPROVE THE MINUTES OF MAY 12, 2008 FOR DRH08-00067 AS AMENDED.

COMMISSIONER SMITH SECONDED THE MOTION.

ALL IN FAVOR. MOTION CARRIES.

FINDINGS

ACTING CHAIRMAN POOSER: I have one question of Page 6 of 7. At that very top it talks about Finding 1 and whether or not the Comprehensive Plan supports the application and then, still on Page 6 of 7, the last phrases I can't find for that (*inaudible*). It just doesn't seem to be correct.

SARAH SCHAFFER: (*Inaudible*) I believe. The part in Staff's report is a quote so that needs to be dropped down. On Page 25 of 28 in Staff's report they get into the special exceptions. We don't have any special exceptions or any criteria to evaluate just from strictly using the Comp Plan 5.4 I can't find where that supports that. If you're alright with the paraphrasing and the information we could just say that the Commission couldn't find where the information presented by the applicant was supported by Comp Plan 5.4.

ACTING CHAIRMAN POOSER: Would the applicant to the application be the appellant.

SARAH SCHAFFER: It would be the applicant because we are looking at whether or not the initial application which is the temporary offsite lot is supported by the chapter or maybe we just need to provide more of the text from Commissioner Sewell, which is the other way we could do it.

ACTING CHAIRMAN POOSER: I thought that was supposed to be a summary of what the Commission found versus an actual quotation from the discussion.

SARAH SCHAFFER: It's just that last sentence. That's a direct quote.

COMMISSIONER SEWELL: It seems like, in reading the minutes, that a few things in the proposed application that supports the objectives in the Comp Plan 5.4 that's at least what I would say. Especially with the special exception. That was something that was in the P&Z Ordinance which we don't have any special exceptions in our Ordinance whatsoever.

SARAH SCHAFER: So just delete that last sentence in Staff's report that get into the special exceptions and leave it at looking at the Finding on the whole the Commission found nothing in the plan or anything within the proposed application that supports the objectives?

ACTING CHAIRMAN POOSER: As outlined in the Comp Plan.

SARAH SCHAFER: As outlined in the Comp Plan?

ACTING CHAIRMAN POOSER: Yes. Then delete that last sentence.

SARAH SCHAFER: At that bottom of Page 5 of 7 it says, "Looking at Finding 1 as a whole the Commission found nothing within in the plan or anything within the proposed application that supports the objectives outlined in the Comp Plan. Then get rid of the rest.

COMMISSIONER MCFADDEN MOVED TO APPROVE THE FINDINGS FOR DRH08-00067 WITH FINAL CHANGES 1. PART D, AT THE BOTTOM OF THE PAGE LOOKING AT FINDING 1 AS WHOLE THE COMMISSION FOUND NOTHING WITHIN THE PLAN OR ANYTHING WITHIN THE PROPOSED APPLICATION THAT SUPPORTS THE OBJECTIVES OUTLINED IN THE COMPREHENSIVE PLAN STRIKING THE LAST TWO SENTENCES.

COMMISSIONER BURRY SECONDED THE MOTION.

MOTION CARRIES 4:1 WITH COMMISSIONER SMITH VOTING AGAINST.



Bruce D. Chatterton
Director

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Planning & Development Services

May 13, 2008

North End Neighborhood Association, Inc. (NENA)
Kevin McGowan, President
1207 W. Fort Street, #213
Boise, ID 83702

Susan Graham
1005 W. Fort Street
Boise, ID 83702

RE: ***DRH08-00067 / 1102 West Hays Street***

Dear Applicants,

At the hearing on May 12, 2008, the Historic Preservation Commission upheld your request for appeal of the staff level approval of a temporary parking lot on property located at 1102 W. Hays Street.

The Reason Statement under which the Commission based their approval will be ratified at the May 19, 2008 Historic Preservation Commission Hearing.

The decision or any of the conditions attached may be appealed to the Boise City Council within ten (10) days from the date of issuance of this decision. The appeal must be written, accompanied by the appropriate fee and submitted to the Planning and Development Services Department prior to the deadline set forth herein. Appeal application forms are available in the Planning and Development Services Department or online under Applications at:

www.cityofboise.org/pds or <http://64.77.8.212/pds/apps.asp>.

In the event that application is appealed and the City Council makes a final decision regarding said appeal, the landowner may request a regulatory taking analysis for that decision and/or conditions within 28 days following such final decision in accordance with Section 67-8003 of the Idaho Code.

If you have any questions, please contact me at 384-3830.

Sincerely,

Sarah M. Schafer
Manager, Design Review and Historic Preservation
BOISE CITY PLANNING & DEVELOPMENT SERVICES

SMS/nh

cc: Michael R. Jones / Michael R. Jones, PLLC / P.O. Box 7743 / Boise, ID 83707
YMCA / David Duno / 1050 West State Street / Boise, ID 83702
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Historic Preservation Commission

Hearing Minutes of May 12, 2008

Commission Members Present Jennifer Stevens, Chair, Scott Chandler, Cathy Sewell, Barbara Dawson, Betsy McFadden, Bonnie Burry, Stephen Smith, Katherine Forsythe

Members Present Sarah Schafer, Julie Archambeault, Teresa Sobotka, Nicki Heckenlively

DRH08-00067 / Susan Graham and the North End Neighborhood Association, Inc. (NENA) / 1102 W. Hays Street

Appealing a staff level approval for a temporary parking lot on property located in an R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District) zone.

SARAH SCHAFFER: This application before you is an appeal by Susan Graham and the North End Neighborhood Association on the YMCA's request to place a temporary offsite parking lot on property located at 1102 West Hays Street which is located in an R-3 HD CD District which is a Multi-Family Residential with Historic Design Review and Conservation District overlay which means it has a lot of different regulations. The application property is located between 11th and 12th Streets and between Hays and Fort. The portion of the site that is within the Historic District is this northern portion. They're also proposing to develop this portion of the block as well with temporary offsite parking. I'm going to go through some site photos first so we're all familiar with the area. This is standing on the middle of the site on the paved alley looking towards the north so you can see the homes on the north side of Fort Street and a portion of the vacant lot which will be developed into the temporary parking. These are the other homes across Fort and the remainder of the vacant lot. As you can see there are currently "No Parking" signs up so that we're not getting any parking on this portion of the lot at this time. You can see the development of the multi-family residential on the block adjacent. This is a single-family structure that is south of that multi-family. This would also be west. The church that is looking towards the south of the structure and this is the remainder of the block which would also be developed as temporary offsite which is not a portion of the Historic District. This is the site. It would be all of this that would be developed. Looking at the intersection of 12th and Fort. Looking west along the alley. This is just to show that there's currently (*inaudible*) in place. There are overhead utility lines. There's no site lighting currently at this location. However, there is site lighting on...the portion of the block not being developed is temporary offsite parking. It currently has a paved parking lot on it. It does have vegetation and lighting for the property. This is looking at the

intersection of 11th and Fort. This is looking south on 11th Street. Looking at the proposal of the applicant they are looking at constructing a temporary offsite parking lot. It will be placing parking off of the alley as required by ACHD. Any time we have a gravel lot they do require a 30 ft. apron for driving so that hopefully that gravel is left on that 30 ft. apron and not within the public right-of-way. So at the locations where we're entering the site we have those portions of pavement as would be required by the Ada County Highway District parking. They are looking at saving an evergreen that's not in very good condition, but it's one of the only ones contributing on the site. They also have one here that is completely overgrown and it's not in a healthy condition. Staff is recommending approval to remove so we can get spaces in there. As part of the application they're looking at putting in perimeter landscaping along with the irrigation to maintain that landscaping. They're will be some site lighting that would be involved with the application as well as wheel restraints. This drawing looks a little bit at how the site drainage would work. Because they are putting in gravel there's a lot less concern. If it was paving there would be a lot more information on the sloping of the pavement and how all of that water would be treated. Because this was an appeal of a staff level decision this hearing tonight is open for discussion on everything. The Commission gets to make their own Findings in regards to the application. Staff reviewed the application for you as a change in use application. When looking at a change in use in the Historic District there are two Findings that you need to make. The first Finding is that the request supports the Boise City Comprehensive Plan, goals, objectives and policies that are contained in the Chapter 5 which is the Parks, Recreation and Cultural Resources and the applicable Neighborhood Ordinance. The objectives of Chapter 5 for the Boise City Comprehensive Plan relating to Historic Preservation are:

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, private groups and persons to integrate historic preservation and urban conservation into Boise's Comp Planning process.

Staff believes Objectives 1, 3 and 4 are not relevant to the proposed use of the property. However, the use of the property located at 1102 West Hays is not in conflict with the Boise City Comprehensive Plan. The property is proposed for a temporary parking lot and the lot is non-contributing as there are no structures on the property. The property will be enhanced through the addition of perimeter landscaping and irrigation as part of the recommendations to City Council through this Conditional Use Permit which Staff has provided you copies of. To step back a little bit from this application, this application is also going through a special use exception through the Planning and Zoning Commission up to City Council. On a special exception the Planning and Zoning Commission only makes a recommendation to City Council who gives the final approval on a project. That does not come from the Planning and Zoning Commission. As part of that in our Ordinance we require that before any approvals of any other application are given that the Certificate of Appropriateness be issued. Therefore,

we are here tonight to issue the Certificate of Appropriateness prior to this application going to...to issue it or not issue it based on what your recommendation is prior to this application going to City Council. As part of that recommendation the Planning and Zoning Commission has recommended conditions of approval. One of those recommended conditions of approval to City Council is that the perimeter landscaping be maintained once the temporary parking lot use is removed. As part of the removal of that temporary use you will see the removal of the wheel strips as well as the removal of the on-site lighting for the parking area. The second finding that the Historic Preservation Commission needs to make in regards to the change in use application is that the request will be congruous with the historical, architectural, archeological, educational and cultural significance to the District. If the offsite temporary parking lot were to be a permanently improved surface parking facility Staff believes the request would be incongruous with the District as it would provide permanent improvements that would conflict with the adjacent residential properties. Because the property is of temporary nature for the facility the conditions to remove the improvements which would denote the area as parking and the installation of perimeter landscaping that would be required through the Condition Use permit or through the Certificate of Appropriateness, Staff believes that the temporary request for parking would be congruous with the District and that the landscaping would provide some screening of the parcel which is currently not there as well as improvements which would help the neighborhood. Currently the vacant lot is more detrimental to the Historic District than the proposed use which would add some vibrancy to this specific parcel providing additional foot traffic to the neighborhood allowing some additional visibility of the area. Upon final development of the lot the structure will be of new construction which will be required to go through the public hearing process and through approvals with the Historic Preservation Commission. Staff is anticipating that the area will be developed as residential units which would provide additional life and vibrancy to the area. Furthermore there are currently no development application proposals into the City for development of this property. The temporary use would not hinder any future permanent uses that could go on the property. Staff believes that the applicant has met the requirements for the change in use findings as set forth in our Ordinance. Additionally this application is before you because it is an appeal item. The items that the applicant has submitted for appeal is that Staff's determination is clearly in err and is a form of favoritism. There was no memorandum submitted as part of this appeal so Staff had to analyze this ground for appeal fully on the sentence that the applicant has submitted. Staff believes that the determination for the Certificate of Appropriateness for the lot would have been different if the lot was a permanent lot. However, because of its temporary nature and the fact that it would bring some vibrancy to the neighborhood by additional pedestrian circulation in the area Staff does believe it would be beneficial to the neighborhood. In evaluating the change in use, who the applicant is, is irrelevant. We don't look at who the applicant is to make our determination on whether a project is approvable or not. We base that off the findings and the guidelines we have in place. Staff is unsure of how the approval of the temporary parking lot would show any form of favoritism. The second ground for appeal was that the determination is arbitrary, capricious and violates Boise City Codes 11-02-06.4, 11-02-06.5, 11-02-08 and Boise City Code Section 2-18-9 and is unlawful delegation of the legislative authority to the City applied City Council. No additional information was submitted by the appellant on this item. Staff starts her analysis with information from Idaho Code. It gives the City Council the authority to establish Boise City Code 2-18-9 allowing us to establish the Historic Preservation Commission as well as the Ordinance to guide the decisions of the Historic Preservation

Commission. Staff has also submitted additional information which talks about what the governing body is made up of and to recommend ordinances and otherwise provide information for the purpose of historic preservation to the County or the City government bodies. I have also gone through and cited the section which they believe we are in violation of. Staff believes Boise City Code allows for some applications to be given to Staff and to process the decision matrix was adopted by the Historic Preservation Commission and the City Council, but it does not address the longer term temporary uses. It does state that seasonal uses may be processed at the Staff level. Even if the Commission believes that they should have been the decision makers on this application this application is now being brought before you for a determination and because it is a fully new hearing you do have that ability now. Therefore, the appellant will have full due process and the opinion of the entire Commission will be taken into consideration. A third ground for appeal is that the proposed use is illegal and is a form of spot zoning and is prohibited by the Idaho Land Use Planning Act. Though the use is not outlined allowed by the Zoning Ordinance, Boise City Code 11-06-08 does allow for special exceptions. Additionally this zoning issue will be taken up by Boise City Council. The fourth ground for appeal is that the process employed by the City violates due process of law. Staff cited Boise City Code Section 2-18-9 C, which states that some applications can be processed at the Staff level and any changes in zoning classification or change in use shall be issued a Certificate of Appropriateness. Prior to any final decision being made on a special exception as Certificate of Appropriateness will be acted on by this Historic Preservation Commission. Also when Staff issued their decision to issue the Certificate of Appropriateness a radius notice and a notice of decision was sent out per the Boise City Code. I have included a copy of that in your documents. It states that when the appeal period ends...which is how we had actually received the appeal and this document. Staff has complied with all due process requirements of the Boise City Code. In conclusion Staff believes that the application for the temporary offsite parking lot does meet the change in use findings that are set forth in Boise City Code and that the appeal should be denied based on the fact that there were no errors made by Staff and that Staff did follow due process and that the use proposed for the lot is not illegal.

COMMISSIONER DAWSON: Who actually owns this property? We don't have an affidavit of interest in our packet.

SARAH SCHAFER: The property is actually owned by the church and they have signed an affidavit of legal interest to allow the YMCA to process the application on the site.

CHAIRMAN STEVENS: I have a question about your report in regards to whether or not this is a permanent versus a temporary use? Your statement in the report, as well as just now, is that if this had been a permanent request that it would not be congruous. With a permanent use it's still the same use so I'm not sure what your objection is to a permanent use that you don't have the same objection as a temporary use.

SARAH SCHAFER: A permanent use would take away the ability for this parcel to ever be utilized as residential which is what we've always perceived for this area. Because we currently don't have any development applications in the process to provide that residential use in this area, allowing the property which is currently weeds and bare dirt to be utilized as a temporary parking lot with conditions and with improvements being made to the site...Staff

felt that was very appropriate. It wasn't taking away further development that maybe a more permanent parking lot with asphalt, paving and drainage would.

CHAIRMAN STEVENS: So it's not the parking that you're objecting to?

SARAH SCHAFER: It would be the temporary versus permanent nature of the parking that I stated I'd be objecting to. The more permanent asphaltting or concreting would be a concern in taking away that additional development that may come down the line.

CHAIRMAN STEVENS: So it would be the rezone you'd be objecting to...if it was permanent it would be basically rezoning it...correct?

SARAH SCHAFER: I believe with all the ordinances that are in place we would have to rezone it and use the ordinance amendments to allow a permanent parking lot in this area.

MS. SOBOTKA: Rezone is Planning and Zoning and you folks for the change in use.

CHAIRMAN STEVENS: I'm trying to understand how temporary parking is congruous but permanent parking isn't.

MS. SOBOTKA: I'm fine with that, but you jumped over...

COMMISSIONER SEWELL: Sarah, if this temporary lot is approved then would that whole block section become parking?

SARAH SCHAFER: That is correct. This whole block for the temporary term of the parking would all be parking.

COMMISSIONER SEWELL: Does the YMCA have plans in place to provide...it looks like there are 122 stalls that they're adding. Are there plans to construct some kind of parking facility?

SARAH SCHAFER: The reason this application came forward is because the offsite parking lot the YMCA currently has approval to use is owned by the Boise Cascade building. They are in the process of constructing a parking structure. In order for them to build the parking lot they have a surface lot which they have to move their employees from and take back the lease on this property for the duration of the construction of the parking structure. Therefore, displacing the YMCA's offsite parking...and the need for the YMCA to find some temporary use. That's why it's just for the shorter term. Once the parking structure is built the YMCA can have their current offsite parking lot back and the temporary lot can go away. That's how the YMCA came to need to find some offsite parking.

CHAIRMAN STEVENS: In reading through the P&Z hearing and the things that they outlined one of the things that they said was that the YMCA needs this offsite parking to operate or something along those lines. It wasn't too terribly long ago that the YMCA only had the parking lot that's adjacent to the structure that the YMCA operates in. When there was temple across the street and they didn't have that lot and it was only a few years ago that

they started using the Boise Cascade lot. I'm curious from a City standpoint is there...am I hearing you say that if they don't have offsite parking they have to shut down or aren't they because it's grandfathered in or does it have to comply with some sort of parking requirements that I'm not aware of? It didn't before so I'm curious.

SARAH SCHAFER: I am unsure as to how or why they came about using the lot that belongs to Boise Cascade. I don't know if it was a requirement of the City that they find additional parking to be able to actually support the needs of their facility or if it was something they did voluntarily. I don't know how that came about. It is my understanding that the City does have concerns with the fact that if we can not find additional offsite parking that there are going to be problems with the use of that structure. I don't know exactly how that is supposed to be working out at this point.

COMMISSIONER SMITH: Is the lot only going to be used by employees of the YMCA or is it to be used by patrons also?

SARAH SCHAFER: It's supposed to be used by both.

COMMISSIONER SMITH: Is the lot going to be used on Sunday by the First United Methodist Church?

SARAH SCHAFER: It is not supposed to be. It is supposed to be solely used for the members of the YMCA.

COMMISSIONER SMITH: Is there any chance of it being used by students of Boise High School to park?

SARAH SCHAFER: It's not supposed to.

COMMISSIONER SMITH: Is there going to be any enforcement?

SARAH SCHAFER: That's something that the Planning and Zoning Commission debated quite a bit. Staff has actually spoken with the applicant a lot about different ways that they could do reinforcement. I do believe they are going to have a YMCA staff member patrol the area and try to make sure that it isn't students that are parking in the area and that it's not church members that are parking in the area. We tried discussing ideas like tags so that if you didn't have a tag in your window then they'd know it wasn't a YMCA member however, because there were a lot of protocol issues with that as well. Do you require them to walk over to the YMCA, grab a tag, walk back to the parking lot, put the tag in and walk back to the YMCA to workout...walk back and forth? Do you just issue that to certain members because then you have to over issue? There were a lot of problems with how the tag system would actually work and be something that would be productive for the area.

COMMISSIONER DAWSON: The little blank space over there in the lower left hand corner is currently a parking lot and that belongs to the church...does it?

SARAH SCHAFER: That is correct.

COMMISSIONER DAWSON: How do they monitor who goes there and who doesn't go there?

SARAH SCHAFER: I don't know how the church monitors that. All I know is that when I was out today I saw that they had a sign that was for the church parking. I'm not sure that they monitor it would be my guess.

COMMISSIONER BURRY: How long is the temporary use?

SARAH SCHAFER: The Ordinance allows for a possible two-year use with three one-year time extensions. However Condition of Approval number 2. recommended from the Planning and Zoning Commission to the Boise City Council is a term of 15 months from the date of Council's approval or until the time that alternative parking becomes available whichever is shorter.

COMMISSIONER BURRY: If within that 15 month period a project came in line with that could that effectively bump that out...do they have rights to 15 months no matter what?

SARAH SCHAFER: My understanding from this Condition of Approval is something that City Council could always change but the intention is that its 15 months period. There's no time extensions allowed and that's what you get. However, they could always go back to the Planning and Zoning Commission or City Council for the request.

COMMISSIONER BURRY: For the time extension?

SARAH SCHAFER: They could go back to City Council and ask for the extension.

COMMISSIONER BURRY: Could we give a recommendation to City Council?

TERESA SOBOTKA: This is frustrating because there are apples, oranges, pears, apricots and all sorts of things here. You really need to focus on the apple which is the change in use for the Historic District. Now regarding the question and condition though you bring up an excellent question because Staff just said, "Go with what Planning and Zoning said". If you feel this is a change in use and in doing that you have to look at what you mean by temporary use and do you feel what would be congruous if anything. In deciding what's congruous if anything you need to look at what conditions you would put on. Maybe you would say a 3-day approval...I don't know. You're having to look at change in use and what conditions you feel are appropriate. Planning & Zoning Conditions...she's telling you what Planning & Zoning would recommend to City Council. You get to decide yourselves if the change in use is appropriate at all and then deciding it would only be appropriate with the following conditions where put on. You may agree with what she recommended...you may disagree.

COMMISSIONER CHANDLER: Assuming that this moves forward and it's approved for 15 months and in 15 months this, for whatever reason, comes back in to be approved again...an extension...would it go through the exact same process as far as through the various

Commissions? Would we be hearing it again under the same circumstances or is an extension going to be something that just follows into place.

TERESA SOBOTKA: Again, that depends what conditions you put on it. If you just say follow whatever conditions Planning & Zoning does then it probably would just follow in place. If you say we'll only approve this for 15 months and then if they want extensions then they'd have to come back to you. The Code says that you're actually first in line. Any change of use has to come to you first. That's the reason it's critical for you all to decide whether you want to agree with the change in use and what conditions you'd want to put on before it ever went to City Council at all. You can go first it just happens that they held the recommendation first but in actuality you have to be first.

COMMISSIONER CHANDLER: It was stated earlier that the United Methodist Church is not planning on using this on Sundays under any circumstances?

SARAH SCHAFER: They are supposed to be. It's supposed to be a temporary offsite parking lot for the YMCA.

COMMISSIONER CHANDLER: So there would potentially be some sort of physical restraints put in place so it doesn't become a defacto church parking lot on Sundays?

SARAH SCHAFER: I don't know the YMCA's hours, but if the YMCA is open on Sundays then they'd utilize the parking lot.

CHAIRMAN STEVENS: The church has its first service at 9:00 and the YMCA doesn't open until 10:00.

SARAH SCHAFER: We could put a condition in place for that.

CHAIRMAN STEVENS: Since I happen to belong to the YMCA I know their hours. I'm there a lot. I wanted to ask Sarah and I hope you don't take this as argumentative...I understood your argument on it but I didn't know where it came from with regard to the Comp Plan. On Page 10 you talk about the vibrancy and life to the area with pedestrians walking through the neighborhood to get to the YMCA...I'm just wondering if there's any place in our Comp Plan that comes from or if that was something that you think or is it based on something that I don't see in our Comp Plan.

SARAH SCHAFER: Objective number 2 in our Comp Plan under Chapter 5 was to protect, enhance and preserve Boise's designated landmarks, properties and districts. Staff felt that with some kind of use in that area and providing the pedestrian circulation to the area that would come from people walking from their cars to the YMCA and back. People stopping and chatting that it would help enhance that area a little more than just a blank site. That was Staff's determination and thought process for saying that it did meet the Comp Plan.

COMMISSIONER SEWELL: So Boise Cascade currently owns the lot that the YMCA uses and they have plans that are in place going through the process to put in some kind of...

SARAH SCHAFER: They're about to if they haven't already obtained a building permit.

COMMISSIONER SEWELL: Once that project is complete then the YMCA gets to utilize that parking as it does now...the same amount of stalls?

SARAH SCHAFER: That is Staff's understanding.

COMMISSIONER SEWELL: You also mentioned that the temporary lot...the timeline...you indicated something about the applicant can see alternative parking locations?

SARAH SCHAFER: That they can seek alternative locations for the temporary lot?

COMMISSIONER SEWELL: Let me step back for a second. I guess my concern with putting a temporary lot here is that it's primarily a residential neighborhood and that there are a number of surface parking lots south of the YMCA...I'm not sure who owns them or what their hours of operation are but those are more appropriate locations for cars than on Hays and Fort which are already fairly busy. My question was whether or not any other alternative locations had been looked at?

TERESA SOBOTKA: Planning & Zoning did look at other ones and you're welcome to review their minutes if you so desire. Whether there are alternatives out there are not before you. It's just simply where you can get this application. There may or may not be alternatives that work for them or don't work for them. That's their problem. Your job is to see what works in historic preservation.

Commission Disclosures

COMMISSIONER SMITH: I am a member of the YMCA. I know Mr. Erstad from Lacrosse but we have never discussed this issue and yes I can be fair. I have also driven by the lots four times a day for months.

COMMISSIONER BURRY: I was a member of the YMCA. It seems like I joined and then I never go. I have not talked with anyone about this. In fact, I'm embarrassed that I know so little about it. I can absolutely be objective.

COMMISSIONER MCFADDEN: Like Commissioner Burry I am a member of the YMCA and never go. You always go (*referring to Chairman Stevens*). I do know Cliff. We worked together. I helped consult a little bit on a project we did together. That was a couple years ago. I feel like I can be completely impartial as I know very little about the issue. I can be impartial but understanding the issues is another matter. I have not spoken to anybody about this particular application.

CHAIRMAN STEVENS: I'm a member of the YMCA and that's the easy one. I also used to sit on the Board of the North End Neighborhood Association and chaired the Historic Preservation Committee of the North End Neighborhood Association. I want to say I was a member of that board from 2002 until 2005. In addition to that, my husband works with the current President of the North End Neighborhood Association Board which doesn't have any

impact on anything other than I want to disclose it for the record. I have not had any discussions with that President, but so it is. I actually testified in front of Planning & Zoning back in, whatever year it was that this came before Planning & Zoning. I'm not entirely sure if I testified in front of City Council regarding the structure that was proposed for that lot by the Church. All of that said I do believe I can be fair and objective in this situation. I think it's a very different situation than we were facing back in 2003. I feel I can be fair and objective but I look to my fellow Commissioners to make a motion allowing me to participate in tonight's hearing.

TERESA SOBOTKA: What about the fact that you're a regular member of the YMCA...does that affect you in anyway?

CHAIRMAN STEVENS: I would say that my equal participation in both sides makes me about as fair and objective as a person can get. I don't feel that impacts my opinion. In fact I feel very unopinionated about this.

TERESA SOBOTKA: You haven't talked to anybody on either side?

CHAIRMAN STEVENS: I have not.

COMMISSIONER CHANDLER MOVED TO ALLOW CHAIRMAN STEVENS PARTICIPATION IN THE DISCUSSIONS AND VOTE ON THIS ITEM.

COMMISSIONER SEWELL SECONDED THE MOTION.

ALL IN FAVOR. MOTION CARRIES.

COMMISSIONER CHANDLER: My family is members of the YMCA and I wish I used the YMCA a lot but I don't. My wife is an employee of the YMCA as a preschool teacher. She knows absolutely nothing about this. I've not discussed it with anybody at any point. I do feel like I can be impartial as far as the discussion on this. I'm very familiar with the property having driven by it for years and drove by it again just yesterday. I'm familiar with the variety of the people involved and do feel as though I can be impartial.

TERESA SOBOTKA: Your wife receives money from the YMCA?

COMMISSIONER CHANDLER: She is a preschool teacher at the YMCA and she does not know anything about this application. The reason I can state that is not because I've asked her but because I know if there were a parking issue that was to come up she'd tell me about it if she knew anything.

TERESA SOBOTKA: I need to tell you that if her financial interests are tied to the YMCA that probably puts you in a direct conflict of interest.

COMMISSIONER CHANDLER: She hardly gets paid anything.

TERESA SOBOTKA: There are many types of conflict of interest but the most direct one that can catch you is if someone from your family is receiving financial benefit. It does greatly concern me. You can decide if it is de minimis and if you do decide its de minimis you need to really articulate it because I think you're on the line here.

COMMISSIONER CHANDLER: I have no problem recusing myself from it. I would like to participate in the discussion but either way it's not a problem. The last thing I want to do is to have it be an issue as far as the decision that's made here. I would have absolutely no problem recusing myself if that is the recommendation of council.

TERESA SOBOTKA: Unfortunately it is the recommendation.

COMMISSIONER CHANDLER: I'm recused.

COMMISSIONER SEWELL: I am a member of the YMCA and I go. I bike and drive. I knew nothing of this project. I must say I've never had to utilize the adjacent lot across the street so the outcome of tonight's hearing and this application will not have any bearing on my use of the YMCA or anything like that. I have had no contact with anyone in regards to the application.

TERESA SOBOTKA: Does that fact that you are a member of the YMCA and use it regularly influence you in any way.

COMMISSIONER SEWELL: No.

COMMISSIONER DAWSON: I'm not now nor have I ever been a member of the YMCA. I have no acquaintance with anyone who belongs to the YMCA except my fellow Commissioners...who some use and some don't. I don't believe that I've spoken to anybody about this issue. I did go to the site and look at the ground. I did look at the yellow tapes around there. I don't feel that there's any issue as far as my being fair in determination.

MICHAEL JONES (Attorney representing Susan Graham and the North End Neighborhood Association): We come here because the neighborhood has an issue. I've listened to the disclosures that everybody has made and I'm going to ask you to rethink your disclosures because I'm not going to tell you what I'm going to do because I filed suit today against the City of Boise to stop this project. I talked to counsel and we're going to go ahead with this hearing. I'm here mostly for a special appearance to preserve the record on appeal if this administratively goes forward. If you think you have any conflicts and don't want hear this, this is the time to recuse yourself because it may become an issue on court review.

COMMISSIONER SMITH: Why's it going to be an issue?

MICHAEL JONES: Because I might make it an issue.

COMMISSIONER SMITH: That's not my question. My question is tell me why it's an issue.

MICHAEL JONES: I'm just asking you to...

COMMISSIONER SMITH: No. You just said something to the Board. I want an answer as to why it's an issue.

MICHAEL JONES: Because I'm taking you at your word that you can be fair and impartial. That's not been demonstrated to me yet by the City of Boise and that the City of Boise, in this process, can be fair and impartial.

COMMISSIONER SMITH: We are an independent board of citizens last time I checked. If you want to make a statement that we are not impartial I would like specifics please. Otherwise, I think you need to withdraw your statement because it's improper.

CHAIRMAN STEVENS: We're not in court. I know we have two lawyers that want to do that...

MICHAEL JONES: I'm making my record for an appeal and that's my job. It's not here to be argumentative. It's to present my case.

TERESA SOBOTKA: The Chair asked you if you had any objections. Do you have any objections?

MICHAEL JONES: At this point and time with the Commission disclosures I have no objections. I'm just asking if you have any objections and have further disclosures then please do so. Based on what I've had before me I have no objections to the Commission being fair and impartial. Again, I'm here not to be argumentative but here to protect the neighborhoods and the historic districts within the neighborhoods. This is not an issue about the YMCA. This is not an issue about the First United Methodist Church and parking in the Near North End Conservation District. This is about process and due process within the City of Boise. This application is unlawful and it's a special exception. This is in the Near North End Conservation District where parking lots are prohibited. It's a prohibited use. There's no temporal timeframe on it. It is a prohibited use. It's not a special exception. Under Idaho Code special exceptions are only allowed when there is a conditional use approved for that area or allowed. Parking lots in the Near North End Conservation District of any duration are prohibited uses...unlawful use...illegal. Second point is that the YMCA is requesting a variance for the 600 ft. setback continuancy area for the parking lot which is not allowed by Idaho Code as a variance. Not one of the delineated items for a variance so it is again an unlawful use. Unlawful application...we believe that this undue form of favoritism and that this came and pressure or influence was applied from the Mayor's Office to the Planning Director to accept this application after he had originally rejected it. Discovery will determine the true nature of that. The determination that the City has made is arbitrary and capricious. They said it was a special exception. They, in our opinion, purposely went through the special exception process to avoid this coming to the Historic Preservation Commission first. City Code says this application should have been before you first. The Certificate of Appropriateness first did not happen. It only came to you for a hearing based upon the appeal. Planning & Zoning in their determinations which has no jurisdiction over historic appropriateness made a finding of fact and determination that this would be a staff level

determination. That's wrong. So we've got a process that's out of character for what I understand the City's policies, statutes and ordinances to be. It violates due process as outlined in Boise City Code as far as the notice requirements go. The mailing to the North End Neighborhood Association was misaddressed and misdelivered.

COMMISSIONER SMITH: And the harm was what? You keep saying...making very broad statements about violations of due process, arbitrary and capricious...what's the harm? We're here. Make your presentation. I would like to hear something on the merits instead of...

CHAIRMAN STEVENS: Let's let him finish and we can ask him specific questions.

MICHAEL JONES: As I say I'm trying to lay the record out for my administrative review and court action Mr. Smith.

COMMISSIONER SMITH: I understand that, but we're here to make a decision not your record.

MICHAEL JONES: I appreciate that.

CHAIRMAN STEVENS: He has 20 minutes so let's let him have his 20 minutes.

MICHAEL JONES: I do not have to demonstrate harm at the Historic Preservation Commission. All I have to demonstrate is not an allowed use in the Historic Preservation Commission. It doesn't satisfy the Historic Preservation Commissions guidelines, policies, and practices that a Conservation District of the Near North End is encompassed as part of the Comprehensive Plan and prohibits this type of use within the neighborhood. It is detrimental to the surrounding neighborhood. Parking is not an allowed use. We're going to have offsite drive-thru through the neighborhood that it's going to be impacting. The traffic analysis is inadequate at best. I cannot find it in the record. It's cited by ACHD but I've not been able to find it in the record. The harm is that it's going to be detrimental to the Historic District and the process that the City's employed by circumventing Historic Commission review after they've already had it through Planning & Zoning it's going to be detrimental to all the rest of the historic districts. The special exception, particularly when it can allow prohibited uses is detrimental to the neighborhood. This would allow any type of use upon a finding that there's no harm and citizens can't afford that. They can't afford to hire attorneys to review every application that comes before the City. With that in mind on my determination I believe the Findings of Staff are clearly erroneous. It's a prohibited use. The determination is arbitrary and capricious because of how it is being processed. It's a form of spot zoning because it allows a use that otherwise wouldn't be allowed within the zone. It's allowing a parking lot where a parking lot is not allowed by code. It's allowing a use for a special use for a special agency which is, "good for the community" which we don't know what that means because there are no standards in place by City Code. It's clearly illegal. It's not a special exception...it's a prohibited use. It's not an appropriate use for a historic district. The process is flawed and the neighbors and the neighborhood find it as a conflict to their quiet use and enjoyment of their property. With this type of process in place other uses that are now clearly prohibited could be allowed upon the right application or special circumstances

which we have not been able to find because of inadequate standards in City Code. With that I conclude my remarks and will sit for questions.

COMMISSIONER SMITH: You have made a couple statements that the parking lot is detrimental to the neighborhood. That's a very broad statement. Please specify for me exactly how it's going to be detrimental.

MICHAEL JONES: The Near North End Conservation District has made that determination that parking lots in this neighborhood are detrimental. It's not my opinion it is the opinion of the City Council and the adoption of their ordinance. Parking lots are detrimental to residential use and detrimental for public safety.

COMMISSIONER SMITH: So you're saying that all parking lots in the Near North End Conservation District are detrimental. Is that what you're telling me?

MICHAEL JONES: Yes I am.

COMMISSIONER SMITH: So all of them should go away?

MICHAEL JONES: No. The ones that are permitted...we're talking about new unlawful prohibited parking lots that are detrimental.

COMMISSIONER SMITH: So the new parking lots are detrimental, but other parking lots are not detrimental?

MICHAEL JONES: That's by City Code. Yes sir.

COMMISSIONER SMITH: I'm asking if it is your organizations opinion that the other ones are okay. That they are not detrimental?

MICHAEL JONES: That's not part of my argument and that's not part of position with you. I am asking you to enforce the Boise City Code, the Near North End Conservation District that prohibits new parking lots in the Near North End of any type of nature. Parking lots is a use. There's no temporality based upon the definition of land use in the Boise City Code. It is the use that is prohibited. Parking lots in the Near North End Conservation District that are new, nonconforming are not prohibited. That's been a finding by the City that those are detrimental to the neighborhood.

CHAIRMAN STEVENS: I understand your comments about the due process due to the staff level application that was granted. I want to know for the record if you feel you are getting due process now?

MICHAEL JONES: I have not seen the determination yet. I believe you're having a process and it's an after the fact process that has been created to alleviate or allow because there was an objection. We could have had the neighborhood had we had proper notice that an application was pending before the Historic Preservation Commission initially.

CHAIRMAN STEVENS: So you have a problem with the process? But are you getting the time you need now to state your objection?

MICHAEL JONES: I can state my objections but the reason I can state the objections is because I saying there's a denial of due process. To grant due process properly you would have to provide notice to the people within 300 ft. of this area that you're having a Certificate of Appropriateness review, have a proper neighborhood meeting where they can attend and where the neighborhood association has some ability to get them to come here and participate. It's not at the appeal process where you're getting the due process. Now you're putting the finger in the dike...or laying on the track to stop what's already cleaned out of Planning & Zoning. It was scheduled and the public notice was in the newspaper for a public hearing before City Council when we filed the appeal. They had already filed the notice of public hearing before the appeal process had ended. I don't think that's due process. And they rescheduled it. Yeah.

CHAIRMAN STEVENS: If you could address the change in use and your thoughts on the change in use regarding it going from a vacant empty field which is what it is today to a temporary use.

MICHAEL JONES: When we had the objections to the demolition of the historical structures on the house that that would be never be used as parking. It would be a grassy park area that would be irrigated with grass, flowers and landscaping so it would be attractive to the neighborhood. That was the presentation the Methodist Church presented to the neighborhood. That never happened.

CHAIRMAN STEVENS: If you could start out by stating if you have any objections to the disclosures that the Commissioners have put on the record.

DAVID DURO (Representative for the YMCA): I do not. I'm I limited in scope of my testimony or what I say?

CHAIRMAN STEVENS: Absolutely not. It is entirely up to you how you spend your 20 minutes.

DAVID DURO: I'm going to do my best to give you a little background information that I think the Commission might be lacking about the project itself. I realize this is a question about process. I'm not familiar with the process. I'm not an attorney and I'm not a developer so I don't really know the process. I do know the YMCA and I do know how important this temporary parking is to us. One of the questions I heard is why do we need extra parking when there's a significant remodel that took place at the downtown YMCA in about 2000. Since that time we have about tripled our membership. There are 14,000 members at the downtown YMCA and in January we had 63,000 visits in the month to that facility. What that illustrates to me is there's a great need for programs for families and kids in the North End. In fact, we've been serving the North End, the City of Boise and the community of the Treasure Valley since 1891 so we think we are an important part of the fabric of what happens in the community. We don't want to have this application in front of you, in front of Planning & Zoning or in front of City Council because we really don't want to build parking lots.

We're forced into this by a lease that we lost and at this place it is 98 of our total 232 parking spaces. Roughly that's a lot of parking places. For us to not have those spaces we feel like it is going to have a very detrimental if not catastrophic affect on our business and our ability to serve the community. The YMCA is 501 C3 not for profit organization. Nobody but the community benefits from our activities. No one is ever denied access to the YMCA due to inability to pay. We're there for everyone whether they pay or not and we think when people come to the YMCA good things happen. The project Cathedral placed in 2002...it was not our project it was the First United Methodist Church. We didn't have anything to do with it. We did hear that there was going to be underground parking as part of it. We're very interested in that because we recognize that parking in the Downtown area and North End area is going to be tough and we're trying to address that on a long term basis so that we're not back asking for anything but conforming uses for parking in the future. As we have had these discussions we have been told that's it's a 10 month construction project for Rafanelli & Nahas which is the interest who owns the old Boise Cascade building which is now Boise Plaza. They are the ones constructing the garage and they told us it was 10 months. We knew that this process through Planning & Zoning that there was a 24 month limitation that was our original ask so we that we wouldn't have to come back. Planning & Zoning in their hearing said 15 months or until other parking is available. That's great for us because we don't want to park over there. It's not convenient for our members. They will park there. We think we're an important service. We think people will park and walk to get to the YMCA but it's not as easy as where we are now. If there was any other plan we would definitely be pursuing it. I feel like we have turned over every stone, looked behind every tree to find alternative parking. We currently share parking. We share parking with the First United Methodist Church with Boise High, and with the First Presbyterian Church because we think parking lots aren't the greatest thing for the North End either. We want to maximize their use. As long as they are constructive let's have everybody use them and share them. We think that's the way to be a good neighbor. Nobody pays rent to one another in any of those circumstances by the way. Monitoring is important and has proven effective. You can bet since this project has come up we have increased our monitoring of our lot. Both the lot that we lease and the lot immediate adjacent to our building and we've towed a few people. You're thinking...Boise High students...we have towed some Boise High students. We've also towed some adults who have parked there and walked to their business location. They don't park there anymore because it's fairly expensive to get your car out of a towing situation. We think that face to face talking to the violator is a good way to go that's consistent with our business ability relationships with one another. We like to talk to them and let them know their in violation before we tow their car. This whole thing about the North End Neighborhood Association and the First United Methodist Church...I have personally been to two different North End Neighborhood Association meetings. One before anything was heard by any City body and one afterwards trying to really talk about how this lot is very important to us, how it's a temporary use, how we're very committed to that. The YMCA really wants to be a good neighbor. We've been here since 1891. We don't think the need for YMCA's is going away. We think it's increasing. We can read the paper and I think we'd all agree that the need for organizations like the YMCA is increasing. We're going to be working with a lot of different bodies including our neighbors and City for a long time to come. We want to make sure we do things right. The YMCA did commission a meeting between the North End Neighborhood Association or representatives of including Mr. Plum in the back of the room, the President, Kevin McGowan, and Molly Leary, a board member at

large and members of the First Methodist Church, including their head pastor and a member of their Board of Trustees and the person in charge of their future development to try and talk about how we can make this project of benefit to the entire community. We drafted an agreement that started with the church agreeing with some things that they were going to do in case this temporary parking comes to pass. Even some things that they would do in case the temporary parking doesn't come to pass. One of the things we agreed upon or talked about doing and all three organizations were willing to work towards was a community garden in the landscape buffer. I really don't think that has anything to do with this application or this process or lack of process. What I do think it has to do with is when people want to make their community better organizations and people can work together to make that happen. When it takes those people talking together and willing to work together and willing to work to make their community a better place to live...those kind of solutions are out there. I wish everybody thought that way. All we can do is try to bring people together. Someone said they rode their bike to the YMCA. I wanted to mention that we're big fans of alternative transportation. We sponsor our employees to ride the bus and pay for their bus passes. We have a ton of bike parking that gets used by us and Boise High School and others. We love that. In fact, if it wasn't for alternative transportation to our location we'd really be out of luck. The YMCA of the USA recommends that we have 382 parking spaces for a membership or building our size. We have 232 and the only way we get by is encouraging to walk and really asking our staff to work together. Staff does not park in the lots. We have parking that we trade with the Presbyterian Church on 14th and Hays and our staff park there and walk in to the location. This parking lot is costing us \$100,000. That is the first bid we've got on doing the work. We'd much rather spend that \$100,000 somewhere else. If we could get away without the lot we'd be doing it. It's a big expenditure for us. It's very important to us that we're good stewards with that money because it's not our money it's the community's money. We'd much rather sponsor more kids to go to camp or to childcare or families that could come to the YMCA that couldn't afford it. Without losing that percentage of our parking lot and our ability to park patrons it will have a much greater financial effect than \$100,000. Our membership income revenue size is almost 3 million dollars. If we take a third or half of the parking and we start to erode that membership base it will significantly impact the resources we have to serve the community. With that I'd be glad to answer questions if that's next in the process.

CHAIRMAN STEVENS: I don't believe you had any other parking other than the lot adjacent to the structure until three years ago. I'm wondering what's changed other than this raise in membership which you said was kind of a result of the 2000 remodel. What's changed? Has the City put some sort of onerous on you to get more parking spots or what exactly has occurred there that you feel like you need to have 232 spots.

DAVID DURO: The membership has grown and these numbers are going to be a little off so forgive me that, but we've more than doubled the number of members. One of the things that we did is we really listened to the members and listened to the community and in 2004 when we significantly changed our pricing structure so that membership came much more affordable to middle income. We always did a great job serving the low income because we provide all kinds of financial assistance and in fact in the Treasure Valley we'll provide 4 Million dollars worth of financial assistance this year alone. That change in our membership fees really made the YMCA more accessible to more people. We thought that was very

important for a number of different reasons. Not the least of which are our values which we try to champion and model and incorporate to everyone, which are honesty, respect, and responsibility. The other thing the YMCA is a part of a collaborative across the nation working to help people become more fit. As you all know obesity and the health care crisis...the way Americans are living their lives are actually killing them. The YMCA is really trying to step in and make sure that more people have access to preventative health practices.

CHAIRMAN STEVENS: I need to stop this because believe it or not, Commissioner Chandler's disclosure about his wife being an employee nor Mr. Jones' scare of additional disclosures out of us didn't do the trick...it wasn't until Mr. Duro came up and started talking about the YMCA's mission that I recalled that I used to be an employee. Oddly enough. I haven't been for a long time but I don't know if that changes Legal's opinion.

TERESA SOBOTKA: How long is a long time?

CHAIRMAN STEVENS: About 2003 I want to say. I worked there for about a year.

TERESA SOBOTKA: And you have received no financial benefits at all? You don't get reduced membership?

CHAIRMAN STEVENS: No, nothing. I apologize that I didn't remember. I'm surprised you didn't say something (*directed at Mr. Duro*). Maybe you don't remember either.

TERESA SOBOTKA: The fact that you worked there would not influence your decision whatsoever?

CHAIRMAN STEVENS: No more than having been on the North End Neighborhood Association Board and argued against this at P&Z. My history with this is obviously very complex.

TERESA SOBOTKA: I think you need to ask your fellow Commissioners whether they feel that's de minimus or not. You need to ask Mr. Jones how he feels about it. The other thing is I need all of you to focus on whether or not the application...the change in use is congruous or incongruous with the Historic District.

CHAIRMAN STEVENS: I apologize. Your thoughts on my working with the YMCA?

COMMISSIONER BURRY: I don't have a problem with it all. You have an open mind and you've certainly had experiences on both ends of this which would make you very fair.

COMMISSIONER MCFADDEN: I agree with Commissioner Burry. I think that pretty soon we could all be recused. It wouldn't be too hard when I think about...already we've lost Scott who's a wonderful sounding board.

CHAIRMAN STEVENS: It doesn't sound like the Commission has any addition and I'm very sorry to do this during the middle of your testimony.

TERESA SOBOTKA: I need a specific motion.

COMMISSIONER MCFADDED MOVED THAT CHAIRMAN STEVENS PAST EMPLOYMENT WITH THE YMCA IS DE MINIMUS AND SHE SHOULD BE ALLOWED TO VOTE ON THIS APPLICATION.

COMMISSIONER SMITH SECONDED THE MOTION.

ALL IN FAVOR. MOTION CARRIES.

TERESA SOBOTKA: Let these guys finish their testimony and then let's bring Mr. Jones back before you start deliberating.

DAVID DURO: Chairman Stevens, can I ask you for a clarification. I think I've heard you say a couple of times that you were on the North End Neighborhood Board and argued against this.

CHAIRMAN STEVENS: I argued against something on this property. Which was obviously a very different situation than what we have proposed tonight.

DAVID DURO: Thank you for that clarification.

Commissioner Burry: If this land was not available to you what would you do? This could very well not be available because its use is for many different things and if the economy was a little better it wouldn't be so what would you do if it weren't there for a temporary use?

DAVID DURO: That's a great question. I hope we're not going to find the answer to that. We've got a communication piece prepared to go to our members that talks about this process and this availability. We have among the different things we've tried to do is lease additional parking at above market rates. We've got a plan that we would participate in that elevates the football field and track at Boise High School and puts parking underneath it. That's about a 10 million dollar project. Just as a guess...really want I think we would do is we wouldn't just test the patience of our members and see what comes out. We do annually we survey our members. Randomly we hire a research firm and parking is always the number one dissatisfier of our members...lack of parking. As I said, I apologize for being here and keeping everyone so late. If there is a different answer we have not found it. We do have a drawing that's in front of ACHD that vacates the right-of-way at 11th Street and we'd remove sidewalks and landscape in that area and expand across. That nets us 29 spots. We don't really like the plan as well. It removes landscapes and sidewalks and we really don't want to be in that business either. We are as we said trying to turn over every stone.

Chairman Stevens: I'll ask you this and I don't expect that the answer is going to be yes but with regard to parking that far away isn't there ample street parking if you're going to get that far from...I went to Boise High and I know that parking there can be difficult but if you're getting as far away as the block between Fort and Hays on 11th and 12th it seems to me that there's ample street parking there if your members are going to have to go that far.

DAVID DURO: I believe that's regulated parking. I wouldn't be able to say that factually, but I know the whole surrounding area is residential permit parking only. It's Zone 1 and Zone 2 so it's really not an allowable use. One of our concerns frankly is that if we don't go forward with this project and we've eliminated 98 out of 232 spots and we don't have a process for how those are going to be used we're going to have a lot of people out on a lot of different streets in the North End driving around looking for parking. That will attrite we believe as people drop their memberships and quit consuming services and those kind of things we think it will be detrimental to that entire area if we don't have a designated place where people can go and park because we'll have people surfing throughout the whole neighborhood trying to find a place on the street in a lot in a non-conforming use. For a number of years we had a dirt lot that is where the house was removed for some reason and it might have been the lot that Boise High actually that we use which is immediately west of 11th Street. That is a Boise High owned lot and it was dirt parking and it was not controlled and people just parked everywhere. Students, teachers...it was kind of a mad house. We do have some experience with folks looking for a place to park.

CHAIRMAN STEVENS: Do you believe that parking in a residential district and having another parking lot is detrimental to a historic neighborhood?

DAVID DURO: I believe that it's a complex decision. My own belief is the benefit of having it on a temporary basis outweighs any detrimental affect to the neighborhood. When I try to objectively evaluate what the YMCA does for people on an everyday basis and weigh that against 15 months or less of parking there the benefit of the YMCA far outweighs any detrimental affect to the neighborhood. The last North End Neighborhood Association meeting I was at...the first presentation was from the neighborhood officer on graffiti. There was quite a bit of concern from the neighbors on graffiti and other illegal activities in the neighborhood. My thought was, "Boy, if a big part of the YMCA goes away and graffiti will be the least of your worries".

TERESA SOBOTKA: I need to make sure that you're comfortable that you have enough for making a Finding on whether or not this is congruous with the District.

COMMISSIONER MCFADDEN: Staff's recommendation for this says, "Approval with conditions". They're not saying to approve the appeal? The application is for the appeal? It's one of those double-negative things were I'm not quite sure. I'm confused.

TERESA SOBOTKA: They recommended a change in use be made from...

COMMISSIONER MCFADDEN: "They" meaning Staff?

TERESA SOBOTKA: "They" meaning Staff from blank lot with nothing at all in them to a temporary parking lot. That is what has been appealed to you. If you agree with Staff then there will be a change in use and you will find it congruous with the Historic District. If you disagree with Staff...why did you find that congruous with the Historic District? That's what the whole focus is on. Whether or not it's congruous with the Historic District. Is it going to be detrimental to the Historic District or i.e. incongruous or is it going to be congruous? Mr.

Jones made a few reasons why it would be incongruous and Ms. Schafer made a few reasons why it would be congruous and I'm suggesting before you go much further make sure that you have plenty from your applicant on those issues.

PUBLIC TESTIMONY

WESTON SCHWETTE (Erstad Architects): I'll retract my signature.

MICHAEL JONES: I want to apologize if I made the comment that I had scared everybody...that wasn't my intent.

CHAIRMAN STEVENS: I didn't mean it that way.

MICHAEL JONES: I'm disclosing about the law suit. I want to have a disclosure if there's anything else that the Commissioners have forgotten so I'm not surprised later. It didn't work. People took offense. Everybody's on edge. As far as I know from all the disclosures that everybody on the Commission has made I don't have any problem sitting and deliberating in a fair and impartial manner. As long as everything that you've disclosed is true and accurate and there's nothing you're hiding from me I'm fine. I don't have any problem with that.

CHAIRMAN STEVENS: Thank you.

ANDY ERSTAD (Applicant / Erstad Architects): I'm actually identified as the applicant but Mr. Duro is so much more eloquent than I. There are two things I want to make sure everyone is clear on. The overriding umbrella ordinance has a provision in its structure that allows for special exceptions for situations such as this. A special exception is an exception to the ordinance and the provisions in the ordinance...any portion of that ordinance that allows any of the governing bodies to make a determination on a temporary basis that something, while it may not be consistent under a special exception with a time limit is an allowable and acceptable use. I know that's under dispute, but the ordinance has to have a relief valve. Otherwise we would have a totally black and white community. There would be no questions. I want to make sure that everyone is comfortable under the fact that you do need to understand or look at the temporary use on this parcel of property which I believe is actually congruous and know that within the special exception of the ordinance those provisions you are able to make such Findings. As David Duro indicated the YMCA is not in the business of spending hundreds of thousands of dollars...in this case \$100,000 to approve a parking lot unless it is absolutely necessary. We have no other options at this point. The North End Neighborhood Association suggested that we go and negotiate and approach all of the various churches...that was done long before NENA even came out with that suggestion. In fact that was done in order to not even to have to be in this position. Somebody suggested that you should force them into that type of relationship. This is America. You can not force somebody into leasing you parking or letting you use their ground if they do not want to. Each of the churches that we talked to and approached looked at their needs and rightfully so must protect their needs and didn't feel they could give an open ended lease on those parking spaces. The YMCA has bent over backwards in all good faith and stewardship of their funds and their patrons to try and make this thing go away. It's not going away. The First United

Methodist Church was approached and they felt that it was a temporary basis and a reasonable request and agreed to allow the YMCA to do that.

STAFF REBUTTAL

SARAH SCHAFER: There are a couple of additional things I'd like to put on the record for you tonight. First, Staff decided to do a staff level decision versus bringing this application to the Commission. As you know we have the decision matrix that was adopted by the Historic Preservation Commission and was recommended to the City Council and adopted by City Council for inclusion for how we handle applications. Unfortunately the decision matrix does not address temporary uses. Staff had made the determination that we would address a temporary use at a staff level because this application would be going on having a recommendation made by the Planning & Zoning Commission with a final determination visa via made by City Council already. The temporary use would be an appropriate decision to be made at staff level. It wasn't anything permanent that was going change the permanent landscape of the Historic District which is something that we do always forward on to the Historic Preservation Commission. As you know this is a de novo hearing tonight so that you are actually making the change in use Findings tonight on the record. Staff made the initial determination and after we had made the initial determination to approve the application Staff then followed City Code in sending out our Notice of Determination which I have included for you in your packet. It is on Page 23 of your packet and on the last page of your packet shows the map of who we sent that to. We sent it to everyone within 300 ft. as required by our code as well as the registered neighborhood association. Staff's determination is not made final until that appeal period ends. If we do receive an appeal within the appeal period that determination is not a final determination. It then comes before the Historic Preservation Commission for a determination. That determination is not final either until the appeal period ends or the appeal is heard by City Council. No final determinations have been made on this project yet. Like I said, Staff did notification of that initial staff level decision...sent out the notice that you have in your packet to the people on the map. Again, when we scheduled tonight's hearing we also sent out notices within 300 ft. and to the registered neighborhood association so we gave an additional notice in regards to this project. Chairman Stevens initially started asking me why Staff thought a temporary use might be appropriate for the area. Because the temporary use will have a minimal affect on the District and it's not anything that's going to be permanently at this location. It will provide some activity for the area on a temporary basis. No more than two years. Eventually there will hopefully be some kind of residential development here whether it be single-family or whether it be multi-family development but there will be activities in this area on this vacant lot albeit it will be different than the activity that we're proposing for the temporary use. It will be intensification in this area. Additionally in reviewing an application such as this there's actually two separate processes that are taking place. There is the P&Z process which is the special exception process which has different Findings than what you're looking at. The special exception process is taking into consideration that Conservation District overlay.

CHAIRMAN STEVENS: Where is the Conservation District overlay information in our Zoning Ordinance?

SARAH SCHAFER: It's the Near North End Conservation District chapter clear to the end. What the Historic Preservation Commission needs to make their determination is the change in use. It's very important that we concentrate on the change in use language. How it complies with the Comprehensive Plan, Chapter 5 and if it's congruous with the Historic District. Lastly I would also like to mention the landscaping that's for the project. Currently if we maintain the lot in its vacant condition we're going to have the vacant ground with a little bit of weeds growing up which is something that Code Enforcement can take care of. The only landscaping that we have on this parcel are the two evergreen trees that are of questionable health and safety. One of them is leaning very drastically. With this application we would be obtaining perimeter landscaping for the neighborhood as well as various conditions that could be placed on the project...saying this landscape needs to be maintained in a healthy and attractive manner until a permanent application comes forward before this Commission. That's a condition that this Commission could easily place on the application as it moves forward. With that I've covered everything I need to cover as part of my rebuttal and I can stand for any questions.

COMMISSIONER SEWELL: There's no criteria within our Ordinance to make some kind of special exception to a use or anything like that.

SARAH SCHAFER: In the Historic Preservation Commission's decision you are not looking at special exceptions. You are solely looking at change of use under those two Findings.

COMMISSIONER SEWELL: If the project is built as a temporary lot the YMCA eventually gets some more permanent parking back in place. There are no plans from the church to develop this property for who knows how long. That will sit as a lot with the perimeter landscaping and it will not be allowed to be used as a temporary lot?

SARAH SCHAFER: That is Staff's understanding of the recommendation put forth by the Planning & Zoning Commission. Staff actually suggests to you that if that is something that is of great concern to the Historic Preservation Commission you can place your own conditions on the property and that if it is temporarily used as a parking lot the next 15 months or whatever you determine that you require the removal of the wheel restraints and require removal of the lights and that there is no parking on it. If you wanted to suggest some kind of security in the area you could do that...and maintenance. Those are all possible conditions that you could place on the Historic Preservation application for the change in use.

CHAIRMAN STEVENS: Correct me if I'm wrong, but that first set of stuff that you said is in the CUP conditions, number 5, "Upon vacating a temporary parking lot the applicant shall remove all wheel stops and light fixtures from the premises".

SARAH SCHAFER: That is in the CUP. However, if you specifically want to address it as part of your Historic Preservation application in your change in use you can do that.

CHAIRMAN STEVENS: So simply going with Staff's recommendation to support this isn't enough you think that it would be also wise if we were to approve this to add that as a condition regarding a change of use?

TERESA SOBOTKA: You will need to address change in use period. You say if it's congruous or incongruous. You can either say we think it's congruous. We think it's incongruous. What Sarah did is she recommended it is congruous only if you put on those specific conditions of approval that Planning & Zoning put on which she is telling you now that if you want to say it's congruous you can say yes we think it's congruous with these certain conditions. We agree with those conditions that Planning & Zoning recommended and we also would incorporate those into our decision. Or you could come up with any other conditions. These plus 50 others. Forget those and go with 50 others...whatever you want to do. If there's anyway...maybe you only want to do a 3 month appeal. Whatever you want. You get to decide. It would only be congruous, if at all, under the following conditions.

COMMISSIONER SEWELL: I believe it was...I'm not sure who mentioned it but back when this house was removed and the lot became vacant someone mentioned that there were some conditions placed that the church had to maintain...provide additional landscaping and I wonder if you could shed some light on that or if you know anything about that?

SARAH SCHAFER: Staff in reviewing the demolition permits...the demolition permits were given out. Staff did not find any conditions of approval that the City Council had adopted as far as the maintenance of the property.

APPEAL APPLICANT REBUTTAL

MICHAEL JONES: The Near North End Conservation District is in Title 11, Chapter 20 of Boise City Code, Section 11-20-03 states, "The following restrictions and allowances beyond the requirements of the R-3 Zone shall apply within the Near North End Zone". "New off-site parking lots, except on parcels demonstrated to have been vacant on or before the effective date of the ordinance. This prohibition shall not preclude the use of existing on-site parking lots as "for rent" of off-site parking. It's clearly a prohibited use. It's clear that it's not an allowed use. It's incongruous with the Historic District. It was established that way by the Boise City Ordinances and when they adopted the Near North End Conservation District... I can go through the history of the adoption of the Near North End Conservation District and the reasons why that was occurring in the Near North End because of the demolition of the historic houses in the near North End for parking lots for Boise City. Boise High School, the YMCA, the United Methodist Church and the Baptist Church. There's a reason why the neighborhood and the City Council and everybody that got out because they did not want to see the Near North End turn into a parking lot. Then it would be servicing the commercial core for Downtown Boise. They wanted and CCDC wanted the commercial core to be south of State Street and that's where the parking was designated to be by CCDC. It's in the Master Plan for the Commercial District. Parking is an obligation of CCDC and the commercial center. Parking is not part of the Comprehensive Plan for the Near North End or the North End or the East End. What we have here is not an application for...let's see we have a vacant lot let's put in for a very short period of time a Christmas Tree lot for the Christmas season. We're talking about up to a five year period for a temporary parking lot. That's what this Ordinance allows and that would be what they could do and come back in on a special extension and once you have it with the YMCA I don't know how City Council or anybody is going to stop Boise High School, the Methodist Church or anybody else from using that property for a parking lot or any other unallowed prohibited use in the North End or the East

End. It could go for drive-thru's or any number of prohibited uses that are clearly prohibited by statute. I disagree greatly with Mr. Erstad's comments that you would have a black and white world if you didn't have this special exception. Well that's what we have. We have allowed uses, we have conditional uses and we have prohibited uses. Boise City Code says it's not an allowed use, not a conditional use. It's a prohibited use. All uses that are not allowed are prohibited. This is not an allowed use. It's clearly set forth in Code that it's a prohibited use. It's not congruous with the Historic District as the purpose of a Conservation District. We had to expand on the Conservation District by adopting historic preservation areas in the Near North End, North End, Harrison and East Boise because of the wholesale demolition and destruction of housing. I personally have clients come to me wanting to know how they can put in housing on Harrison. Knock down historic structures (houses) and put in parking...they want to put in apartment houses and condos. I have not done that, but they said they can go in with a plan and if they can get a special exception like anybody else can we can put in a half-way house or we can put in low income housing, have it subsidized, we can flip it, have it there for a short period of time and change it. Once you allow this prohibited use you at the beginning of the end of historic preservation areas of town because you start once and...15 months. We're talking about a 900 and some parking lot eight stories high...as high as Boise Cascades' existing building is going to be constructed in 15 months...I don't believe that in a day. It's never going to get completed in 15 months. Building permits are still in the planning process. They're now just putting up the fence and they only have a permit for demolishing the trees that are down there. It's going to be more than 15 months. If the YMCA and Mr. Erstad believe that they can build an 8-story office building in a congested area of downtown Boise I'll just have you look at what happened to Hampton Suites and how long it took them to do that construction in BoDo.

CHAIRMAN STEVENS: If we can keep an eye on when we're deliberating that we're only discussing change in use and that the two Findings that we need to make are:

1. Whether or not this supports Comp Plan, Chapter 5, objective 2 in particular.
2. Whether or not the change of use is congruous with the District.

COMMISSIONER DAWSON: I sometimes wonder if this issue isn't moot. If there is in fact a law suit being filed we all know how slowly the courts crawl and the 15 months time period may have come and gone by the time something works its way through court.

CHAIRMAN STEVENS: That might well be true. We still need to act.

COMMISSIONER SEWELL: In reviewing the criteria that we have to evaluate this...Finding 1, that it supports the Boise City Comp Plan...I cannot find anything within the plan or anything within the proposed application that supports the objectives outlined in the application. In Staff's report they get into the special exceptions which we don't have any special exceptions or any criteria to evaluate just from strictly reading the Comp Plan, 5.4, I can't find where that supports that. In regard to Finding 2, that the request is congruous with the historical, architectural, archeological, educational, or cultural significance of the District...Staff's indicated as a temporary parking lot it could be congruous. If it was permanent it would not be incongruous. Unfortunately, there's nothing in our Ordinance

under temporary...the definition that indicates or includes parking lots. We deal with other types of features. Based on the criteria that we have in our Ordinance I cannot support the temporary parking lot at this location.

COMMISSIONER BURRY: I would have to agree with Commissioner Sewell. Even if it is a temporary use you set a precedence that this could happen in other situations. I hate the thought of the maintenance of it. There are a lot of issues that we aren't dealing with right now but they're there and I personally can't support that in that location.

CHAIRMAN STEVENS: I'm going to read a couple of things. In our Guidelines we have a definition for congruous that I'm going to read into record. It's long so I'm just going to read the first sentence. "The sensitivity of a development proposal and maintaining the character of existing development." I want to put that in everybody's thoughts. I'm going to state the same thing that Commissioner Sewell stated earlier. I don't doubt that the YMCA perceives themselves as facing a hardship right now. I've been going to the YMCA every since I moved back in 2002 and there's probably been three times total that I've had to park in a lot not right adjacent to the building. I have some pretty strong feelings about our parking situation period in Boise. And that is that anybody who's lived in a city even approaching a real size city knows that we do not have a parking problem in Boise. End of discussion. That's the way I view things and if we do want to encourage alternative transportation the last thing in the world we should be doing is encouraging parking lots. That's where I come from with this. If we look at the definition of congruous in our guidelines and you look at Chapter 4 of our Comp Plan...contrary to Staff's Findings I can't support a parking lot. I don't believe that a parking lot supports any of the things in Chapter 5 of the Comp Plan... "Promotes public understanding and appreciation for Boise's Historic areas..." or any of the objections that were read into the record earlier. I have a hard time understanding the logic of a permanent parking lot not being congruous but a temporary parking lot being congruous. That doesn't make sense to me. For me it's about the use and so it's not so much about the paving or landscaping. It's about the use, which is, cars being parking on open space. I can't support Staff's Findings that one is okay and the other isn't. It doesn't make sense to me logically. I think it's very clear that a permanent parking lot is not okay in this spot. Therefore, I can't support a temporary parking lot going in here. I do agree that we do need more people here. Having a vacant lot here is a travesty no matter if there are cars on it or not. I really hope that the YMCA, the high school, the church, the North End Neighborhood Association can get together to encourage something happening on this lot that isn't parking. I've watched it sit there...almost 5 years or however long it's been and I think it's a travesty that it's there. I think the YMCA does wonderful work in this community and I'm a huge supporter of the organization and I appreciate very much your consensus building. The community would be lost without you. Please don't see my lack of support on this as being somehow against what your organization does, but I just don't think it's appropriate and I don't think it's congruous and I don't think it fits with the Comp Plan so I won't be supporting the application. I will be supporting the appeal.

COMMISSIONER SMITH: I take a completely different approach than the three comments so far. This is an appeal that we are considering the "NO" vote when I find a complete failure on the part of the North End Neighborhood Association to present any evidence whatsoever that is contrary to the Findings of Staff. I understand that we as independent Commissioners

must review this de novo but as for the appeal part of a de novo appeal requires the presenting of some contrary evidence in favor of the appeal. There's been none presented in the case. Therefore, all we have before us on this record is the recommendations of Staff and with all due respect we are substituting our own judgments on a complete lack of record for what I view as the only evidence before us. If the North End Neighborhood Association had decided to present some opposing evidence or brief or something besides Mr. Jones' arguments I might have a different opinion. As of right now the only evidence before us on this appeal from a decision of the Staff is this three lines of statement and his argument. From my perspective that is no evidence at all. Therefore with respect I'm going to vote to deny the appeal because when the North End Neighborhood Association is represented by counsel and counsel has elected for whatever reason not to present us any additional evidence I see no basis for upholding the appeal. I will dissent from the other three Commissioners who have expressed their opinion. There has been a huge argument made tonight about our process is wrong and that a suit has been filed and counsel is only doing this to make his record. Well, if that is correct, he had the opportunity, the same opportunity to be part of a process and to take part in the process...he elected not to for whatever reason and you can't have it both ways in my view so I dissent.

CHAIRMAN STEVENS: I'm going to ask Legal a question regarding Commissioner Smith's comment. Obviously any of us can vote however we want to but should we be taking into consideration whether or not a records been made on the appeal or is this a discussion about whether or not the use is congruous in a District.

TERESA SOBOTKA: I'm comfortable with your discussion all together. I agreed with what Commissioner Smith states, but I also agree with what everyone else has stated. You need to analyze your Ordinance and this application and decide what you're deciding.

COMMISSIONER MCFADDEN: It's too bad...like you were saying that we can all get together and get along and give each other some parking for temporary use...common sense says why not. At the same time I have to look to my fellow Commissioners and how they're analyzing the parking lot and I worry about the temporary nature of this becoming a slippery slope which is exactly what we don't want there which is parking. For that reason I'm going to be in support of the appeal even though I do understand all of the issues regarding the need for parking.

COMMISSIONER DAWSON: I will concur with the other four Commissioners. I don't see that there is a whole lot of difference between a parking situation that's temporary and one that's permanent. It almost seems like someday down the road there's going to be an end around trying to get more a permanent parking situation and I think that's a concern that many of us have even though we may not say it. I will be supporting the appeal.

CHAIRMAN STEVENS: It looks like we're moving toward a consensus.

COMMISSIONER DAWSON MOVED TO DENY STAFF'S RECOMMENDATIONS FOR A CHANGE USE FROM A VACANT LOT TO A PARKING LOT AND UPHOLD THE APPEAL OF DRH 08-00067.

COMMISSIONER BURRY SECONDED THE MOTION

ROLL CALL VOTE 5:1. MOTION CARRIES WITH COMMISSIONER SMITH VOTING AGAINST AND COMMISSIONER CHANDLER RECUSED.



Planning & Development Services

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Website: www.cityofboise.org/pds

4

Summary for DRH08-00067

Staff's Recommendation

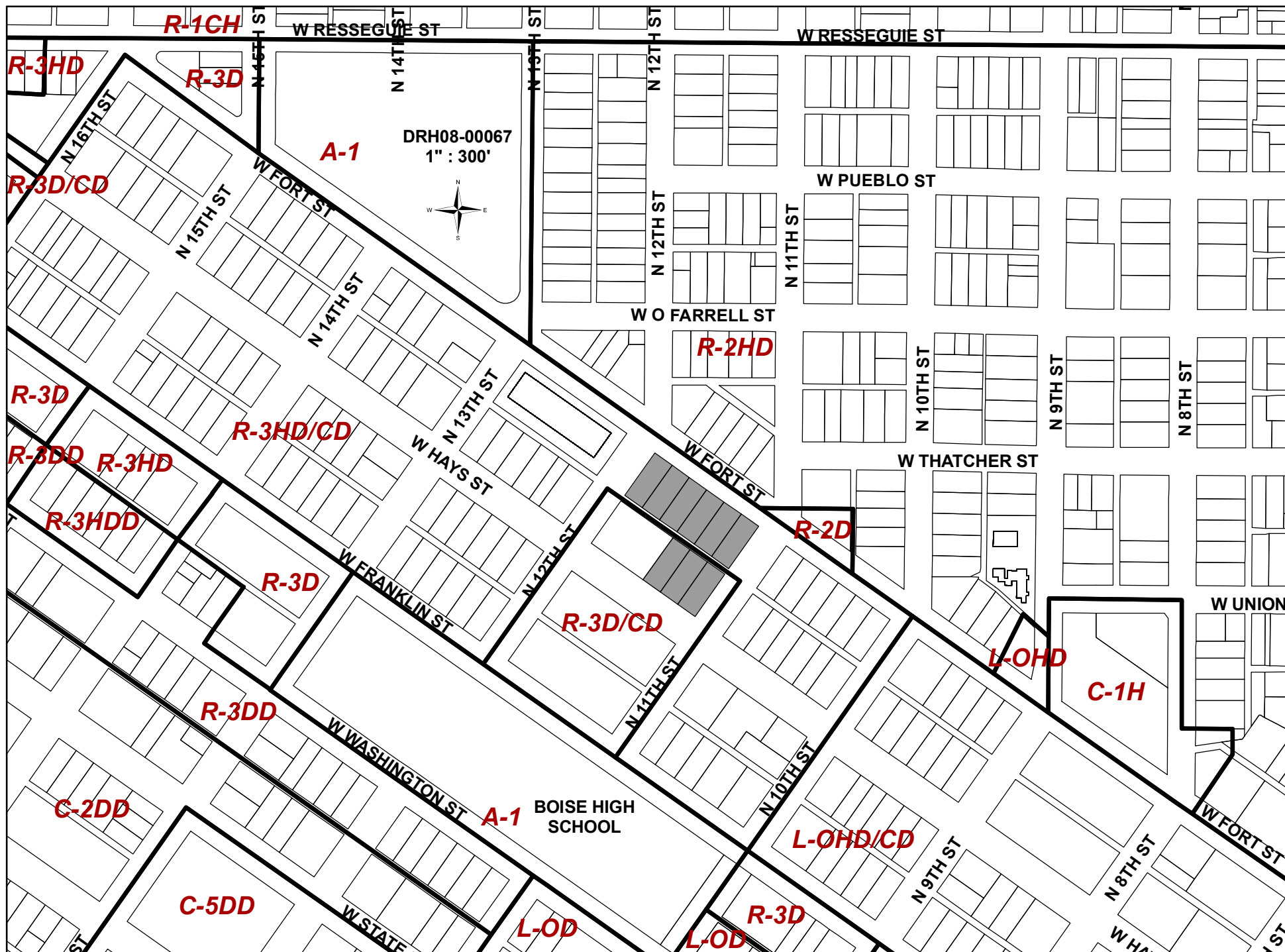
Approval with conditions.

Summary

SUSAN GRAHAM AND THE NORTH END NEIGHBORHOOD ASSOCIATION, INC (NENA) are appealing a staff level approval for a temporary parking lot on property located at 1102 W. Hays Street in an R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District) zone.

The staff report lays out the change in use Findings as reviewed by Staff for the Certificate of Appropriateness. There are two Findings that need to be made for the change in use, the project can not be in conflict with Chapter 5 of the Boise City Comprehensive Plan and the project must be congruous with the historical, architectural, archeological, educational or cultural significance of the District. Staff believes the Findings can be made for the project and therefore recommends approval.

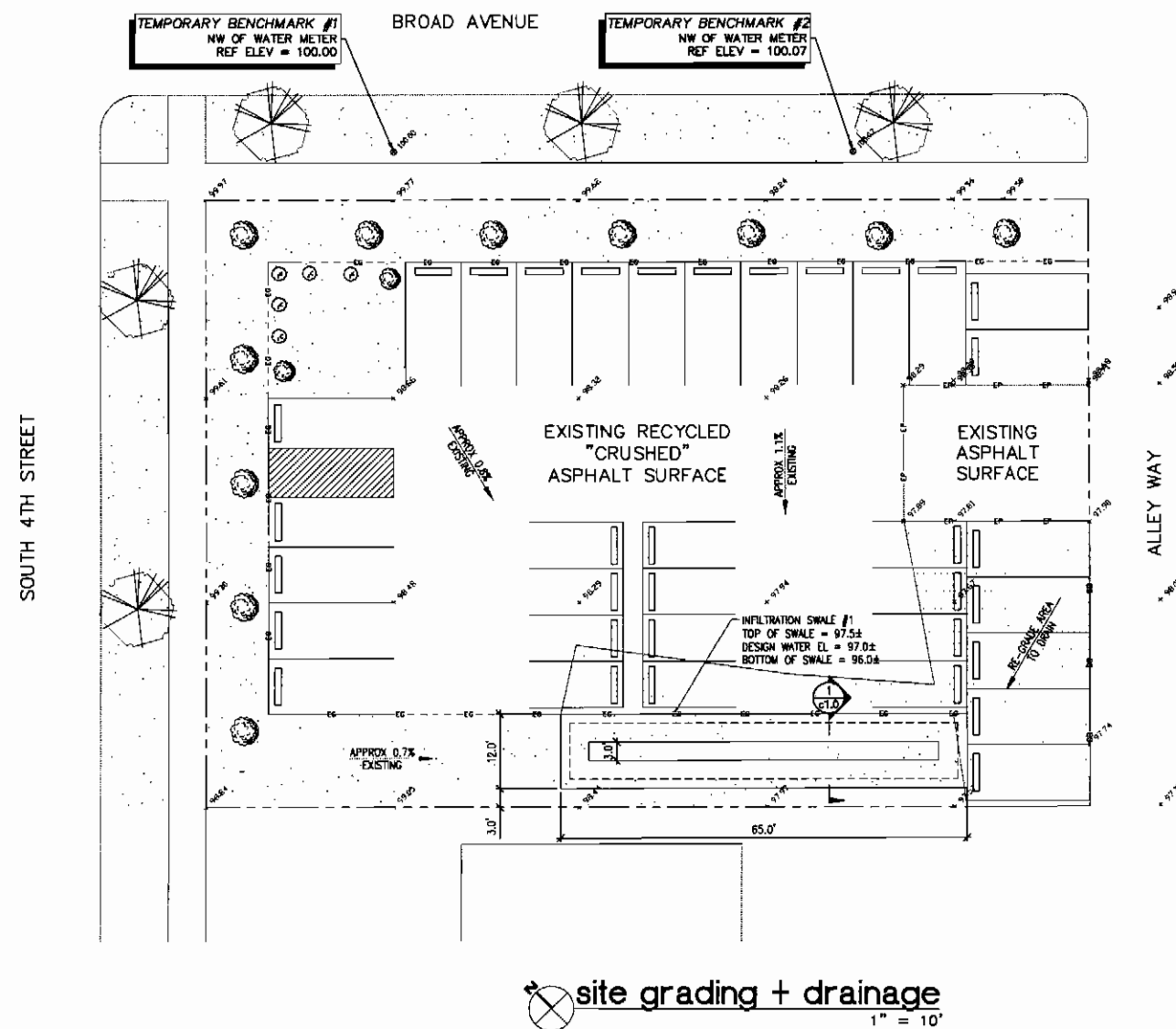
Additionally, there is discussion in regards to the appeal submitted by Susan Graham and the North End Neighborhood Association. Staff has addressed each item of the appeal as part of the staff report. Staff believes the appeal should be denied and the approval of the Certificate of Appropriateness upheld.



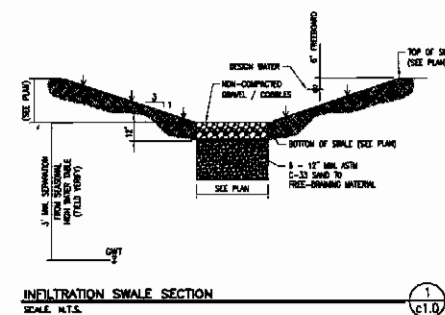
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site grading + drainage
1" = 10'



GENERAL NOTES

1. THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE MANNER ONLY. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE INCURRED TO EXISTING UTILITIES AND PROTECTIVE AND ALL UTILITIES. ALL UTILITIES SHALL BE PROTECTED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE INCURRED TO EXISTING UTILITIES AND PROTECTIVE AND ALL UTILITIES. ALL UTILITIES SHALL BE PROTECTED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
2. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE CURRENT EDITION OF THE ROAD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (RSPWC) AND THE AISC SUPPLEMENTARY SPECIFICATIONS. NO EQUIPMENT TO EXISTING POLICE, FIRE, AND THE SPOKE SHALL BE ALLOWED. INSTEAD, SPECIFICALLY AND PROHIBITORY APPLICABLE IN WRITING BY AISC.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE INCURRED TO EXISTING UTILITIES AND PROTECTIVE AND ALL UTILITIES. ALL UTILITIES SHALL BE PROTECTED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CONSTRUCTION TESTS FOR SUBGRADE AND FINISHED.
5. ALL NON-COMPACTIBLE MATERIALS SHALL BE REMOVED PRIOR TO CONSTRUCTION OF FINISHED.
6. THE CONTRACTOR SHALL OBTAIN ALL APPLICABLE CONSTRUCTION PERMITS.
7. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CURRENT EDITION OF THE ROAD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (RSPWC) AND THE AISC SUPPLEMENTARY SPECIFICATIONS. NO EQUIPMENT TO EXISTING POLICE, FIRE, AND THE SPOKE SHALL BE ALLOWED. INSTEAD, SPECIFICALLY AND PROHIBITORY APPLICABLE IN WRITING BY AISC.
8. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE EXISTING UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE INCURRED TO EXISTING UTILITIES AND PROTECTIVE AND ALL UTILITIES. ALL UTILITIES SHALL BE PROTECTED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
9. ALL ACCESSIBLE PARKING SPACES SHALL NOT EXCEED THE SLOPE IN ANY DIRECTION.
10. SEE ARCH. DRAWING FOR HORIZONTAL CONTROL, NOT SHOWN ON THIS DRAWING.

4th and broad interm parking
313 broad st
boise, id 83702

revision:

project: 08031
date: 03.03.2008
drawn: fgh
checked: dlm

permit
documents

site grading
+ drainage

c1.0



DAVID L. SMITH
PROFESSIONAL ENGINEER
STATE OF IDAHO
LICENSE NO. 12888
BOISE, IDAHO 83702



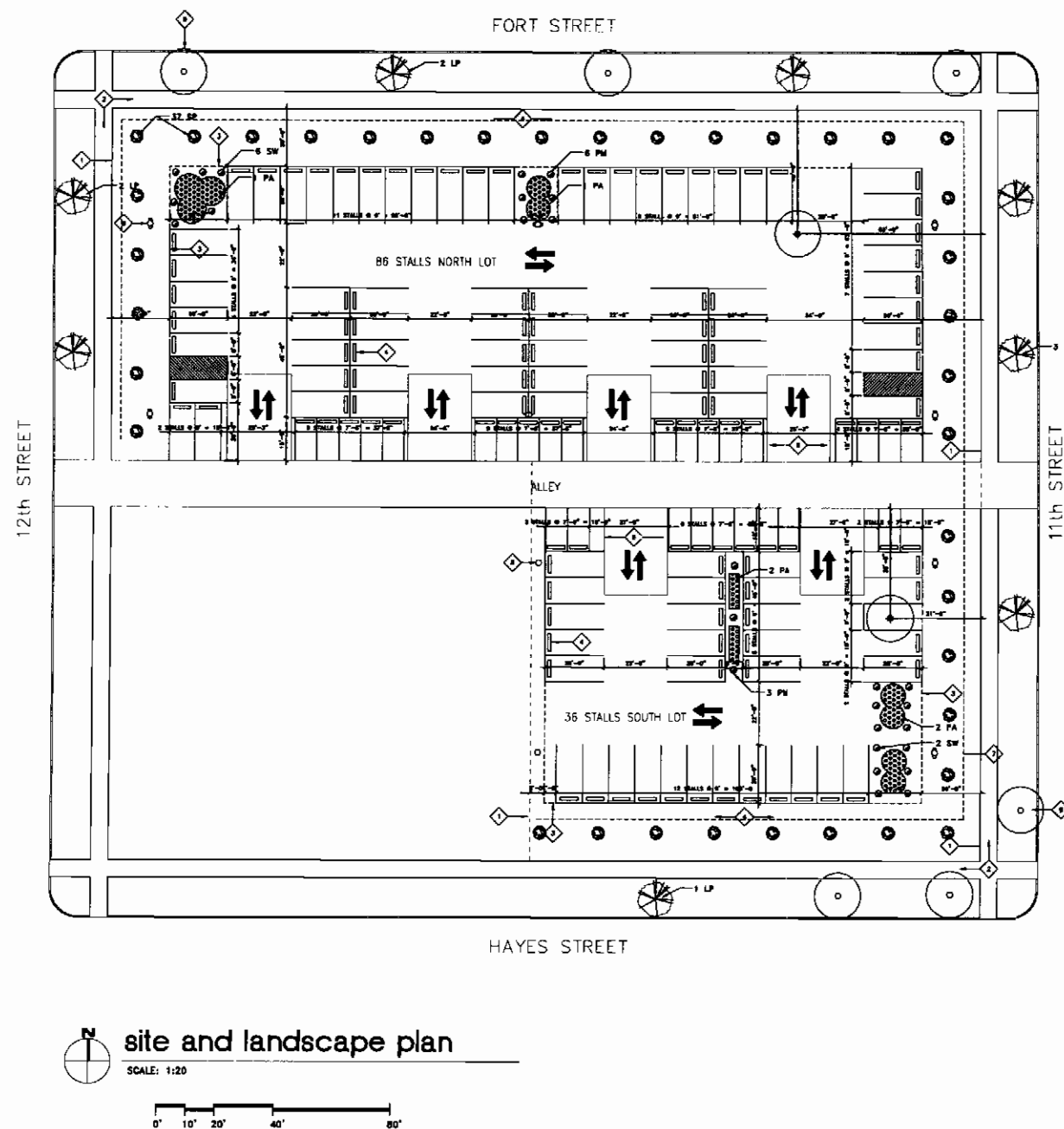
DAVID L. SMITH
PROFESSIONAL ENGINEER
STATE OF IDAHO
LICENSE NO. 12888
BOISE, IDAHO 83702

DRH 08 00067

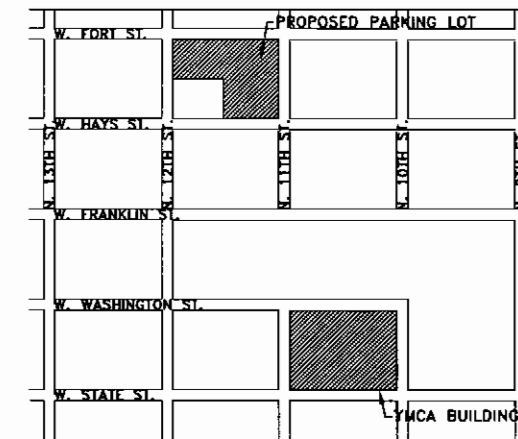
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site and landscape plan
SCALE: 1:20



vicinity map
n.t.s.

plant schedule

KEY	BOTANICAL NAME	COMMON NAME	SIZE
DE	DECIDUOUS SHADE TREE		
LP	PLATANUS x HISPANICA	LONDON PLANE	2"
SH	SHRUBS/PERENNIALS/ORNAMENTAL GRASSES		
PM	PIKE MUDD "SLOWGROW"	SLOWGROW MUDD PINE	#2
SW	PHYSCARPUS OPULIFOLIUS "SEWARD"	SHAMROCK WHEATBARK	#3
PA	PENNYCILLUS ALPINEUS	HAMELI DWARF FOUNTAIN GRASS	#1
SP	SPREA X BIMALDA	GOLD FLAME SPREA	#1

legend

FESCUE MIX GRASS

general notes:

- DO NOT SCALE DRAWINGS
- EXISTING VEGETATION TO REMAIN
- UNDERGROUND IRRIGATION TO BE DESIGN BUILD BY CONTRACTOR
- TOTAL GRAVEL AND PAVED AREA 38,000 S.F. TOTAL LANDSCAPE AREA 2,900 S.F.

keynotes:

- PROPERTY LINE
- EXISTING SIDEWALK
- SETBACK LINE
- LANDSCAPING SEE LEGEND FOR TYPE
- WHEEL STOP
- 30" PAVED ENTRANCE
- IRRIGATION SYSTEM: SEE GENERAL NOTES
- POLE MOUNT SITE LIGHTING
- EXISTING TREE

NOT FOR
CONSTRUCTION

architect: [illegible]
[illegible]
[illegible]

ymca temporary parking lot
1102 w. hays street
boise, id 83702

revision:

project: 080208
date: 02.26.08
drawn: wfa
checked: ooe

conditional
use permit

site and
landscape
plan
a1.11

DRH 08 00067



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

Application for Appeal

Fee: \$ 101.00

Susan Graham and the

I (we) North End Neighborhood Association, Inc (NENA), hereby appeal the decision of the Boise City:

- ☐ Planning & Zoning Commission ☐ Hearing Examiner ☐ Design Review Committee
☒ Historic Preservation Commission ☒ Planning Director

1102-1110 W. Hays St. and

File Number: DRH08-00067

Address: 1101-1123 W. Fort St.

Specific Action Being Appealed: Issuance of Certificate of appropriateness

Grounds for Appeal

1. Determination is clearly erroneous and is form of favoritism
2. Determination is arbitrary and capricious and violates Boise City Code 11.02.06.4 and 11.02.06.5
3. and 11.02.08 and BCC 2-18-9 is an unlawful delegation of legislative authority by City Council
4. Proposed use is illegal and is form of spot zoning and is prohibited by Idaho Land Use Planning Act
Process employed by Boise City violates due process of law.

Appeal Contact Person: Michael R. Jones of Michael R. Jones, PLLC

Address: P. O. Box 7743 Boise, ID 83707-1743

Home Phone: _____

Work Phone: (208) 385-7400

Appeals

- ☐ Appeal of an Administrative Decision to the Planning & Zoning Commission or Design Review Committee (non-refundable fee).
☐ Appeal of a Design Review Committee Decision to the Planning & Zoning Commission.
☒ Appeal of a Planning & Zoning or Historic Preservation Commission decision to City Council.*
☐ Appeal of a Hearing Examiner decision to City Council.*

* Portion of fee is refundable if appeal is successful.

Notes

1. If the reasons for the appeal are resolved prior to the appeal hearing, please contact the Planning Staff at 384-3830.
2. The only topics which may be discussed during the appeal hearing are the specific reasons for the appeal as stated in the application.
3. Neighborhood groups are encouraged to elect a spokesperson for appeals that are supported by numerous residents of the project to avoid a duplication of testimony.
4. Section 11-3-7.2 of the Zoning Ordinance provides that an appeal to Council may not be withdrawn without the consent of Council.

Signature of Appellant/Representative: _____

Date: 4-21-08

For Staff Use Only:

If the appellant is not the applicant, the applicant must be contacted immediately following the acceptance of this appeal.

Applicant contacted on 4/21/08 by Colleen Carroll ☐ Appeal is by applicant

CERTIFIED PUBLIC ACCOUNTANT

ATTORNEY AT LAW

April 21, 2008

MICHAEL R. JONES PLLC

Boise City Hall, 2nd Floor
Planning and Development Service
150 N, Capitol Blvd
P. O. Box 500
Boise, ID 83701-0500

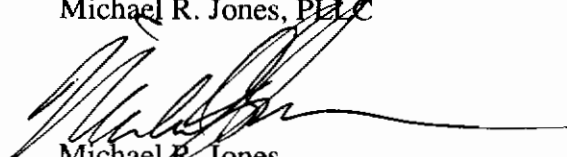
RE: Block 75 BCOT DRH08-00067 and CUP 08-00027

Dear City Officials:

Enclosed is Notice of Appeal filed on behalf of the North End Neighborhood Association, Inc. and Ms Susan Graham a resident within 300 feet of the proposed use.

The Certificate of Appropriateness has been issued without notice and without compliance with Boise City Code. The Appeal should be granted and a hearing held before Boise City Council. Failure to grant a hearing before Boise City Council is considered further denial of due process of law.

Sincerely,
Michael R. Jones, PLLC



Michael R. Jones
Attorney at Law

Cc clients
Enclosure Appeal Notice and Fee

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DRH 08 00067

From: Suezann Yorita
To: Planning & Zoning
Date: 4/21/2008 2:57 PM
Subject: APPEAL REC'D DRH08-00067 4/21/2008

We, North End Neighborhood Association Inc (NENA), hereby appeal the decision of the Boise City Historic Preservation Commission & Planning Director.

File #: DRH08-00067

Action being appealed: Issuance of Certificate of Appropriateness

Grounds for appeal: 1. Determination is clearly erroneous and is form of favoritism. 2. 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. 3. Proposed use is illegal and is form of spot zoning and is prohibited by Idaho Land Use Planning Act. 4. Process employed by Boise City violated due process of law.

Analyst: Julie Archambeault



Planning & Development Services

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Fax: 208/384-3753
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Website: www.cityofboise.org/pds

4

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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3. Project Proposal	3
4. Ordinance / Standards	4
5. Analysis / Findings	4
6. Conclusion and Recommended Conditions	4

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.



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

Certificate of Appropriateness - Commercial Historic District Application

Please fill out all sections of this application. Only complete applications will be accepted. If deemed incomplete by the Historic Preservation Commission, the application may be denied. If a question does not pertain to your request, please mark it N/A.

This box for office use only

File #: DRH08-00067

Fee: \$4700

Cross Referenced File(s): CU08-00027

Zone(s): R-30/CD

This application is a request to construct, add or change the use of the property as follows:

Temporary parking at 11th & Fort

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Applicant Information

Applicant: YMCA-TREASURE VALLEY / DAVID DURO

☐ Owner ☐ Purchaser ☐ Lessee

Phone: 344-5502

Applicant's Mailing Address: 1050 W. STATE ST

Zip: 83702

Applicant's E-mail Address: _____

Agent/Representative: ERSTAD ARCHITECTS/ ANDY ERSTAD

Phone: 331-9031

Agent/Representative's Mailing Address: 420 MAIN ST. SUITE 202

Zip: 83702

Agent/Representative's E-mail Address: acerstad@erstadarchitects.com

Contact Person (if different from above): _____

Phone: _____

Address of Subject Property: 1102 W. HAYS ST.

Mapping Division must initial here _____ to signify address verification.

Which Historic District is the property located in? NEAR NORTH END

Have you reviewed the City's Historic Guidelines? ☒ Yes ☐ No

Property description (Lot, Block & Subdivision name or recorded deed with a metes and bounds description):

LOTS 4-12 OF BLK 75 OF B C O T

Parcel Number: _____

Quarter: _____

Section: 10

Township: 3N

Range: 2E

r1013005115, r1013005120, r1013005125, r1013005130, r1013005135,
r1013005140, r1013005110, r1013005105, r10130051000

10/06

DRH 08 00067

-16-

A. Development Information

1. **Size of Lot:** 1.68 ACRES **Dimensions:** (NORTH LOT) 300'x122'
(SOUTH LOT) 150'x122'
- Footprint of structures:** N/A- NO EXISTING STRUCTURES
2. **Description of Site** (see brochure): VACANT LOT
3. **Description of Setting** (see brochure): VACANT LOT

4. **A. This application is a request to construct, add or change the following:**
(Check all that apply)

	Add	Change	Demolish	N/A
Roof	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Walls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fascia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Windows/Doors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Trim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Porch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (describe)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> TEMPORARY PARKING LOT

B. Fully explain the nature of your request: UTILITZE THE EXISTING VACANT LOT FOR YMCA TEMPORARY PARKING LOT

5. **Does the application propose a change in use?** ☒ Yes ☐ No

If yes, what is the new use? TEMPORARY PARKING LOT

B. Building Information

The following information needs to be indicated below and clearly referenced on plans submitted.

1. **Number of structures:** N/A TEMPORARY PARKING LOT

Business: _____ **Residential:** _____ **Outbuildings:** _____

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2. **For restaurants, taverns or lounges: Number of seats:** N/A TEMPORARY PARKING LOT

DRH 08 00067

3. Square footage of existing structures: N/A VACANT LOT

<u>Floor</u>	<u>Gross Square Feet</u>	<u>Net Leasable Square Feet</u>
First:	_____	_____
Second:	_____	_____
Third:	_____	_____
Other:	_____	_____

4. Square footage of proposed structures or additions: N/A TEMPORARY PARKING LOT

<u>Floor</u>	<u>Gross Square Feet</u>	<u>Net Leasable Square Feet</u>
First:	_____	_____
Second:	_____	_____
Third:	_____	_____
Other:	_____	_____

5. Square footage of existing structures (or part thereof) to be removed: N/A VACANT LOT

<u>Floor</u>	<u>Gross Square Feet</u>	<u>Net Leasable Square Feet</u>
First:	_____	_____
Second:	_____	_____
Third:	_____	_____
Other:	_____	_____

6. Existing Height to Building Eave: N/A VACANT LOT

Existing Height to Building Peak: N/A VACANT LOT

Proposed Height to Building Eave: N/A TEMPORARY PARKING LOT

Proposed Height to Building Peak: N/A TEMPORARY PARKING LOT

Existing Height to Building Parapet: N/A TEMPORARY PARKING LOT

Proposed Height to Building Parapet: N/A TEMPORARY PARKING LOT

Number of Stories: N/A TEMPORARY PARKING LOT

7. This existing building is a: N/A VACANT LOT

☐ Residential ☐ Office ☐ Commercial ☐ Restaurant ☐ Mixed Use

8. Exterior Building Materials and Colors: N/A TEMPORARY PARKING LOT

	<u>Existing</u>
Roof:	_____
Walls:	_____
Doors:	_____
Fascia, Trim, etc.:	_____
Other:	_____

<u>Proposed</u>
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Windows (Existing) N/A VACANT LOT

Existing Material: _____

Existing Sill Depth: _____

Existing Type: ☐ Casement ☐ Slider ☐ Double Hung ☐ Single Hung
☐ Fixed ☐ Divided light: How many? _____ (e.g. 4 over 1, 3 over 1)
 Even site lines? ☐ Yes ☐ No
 Brick molding? ☐ Yes ☐ No

Windows (Proposed) N/A TEMPORARY PARKING LOT

Proposed Material: _____

Proposed Sill Depth: _____

Proposed Type: ☐ Casement ☐ Slider ☐ Double Hung ☐ Single Hung
☐ Fixed ☐ Divided light: How many? _____ (e.g. 4 over 1, 3 over 1)

For proposed divided lights, please describe grid, including width, whether it is flat or contoured: _____

Will the exterior trim remain on the replacement windows? ☐ Yes ☐ No

C. Site/Landscape Information

1. Fencing NONE

	<u>Existing</u>	<u>Changes Proposed</u>
Type:	_____	_____
Size (Height):	_____	_____
Location	_____	_____

2. Mechanical Units: (Commercial or Multi-Family) NONE

Number and Location of Units: _____

Type/Height: _____

Proposed Screening Method: _____

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SERVICES

3. Trash Receptacles: (Commercial or Multi-Family) NONE

Proposed Screening Method: _____

4. Are there any prominent trees or areas of vegetation on the property? If yes, what is the type, size, and general location?

(TREE 1) 43' SOUTH OF NORTH PROPERTY LINE, 63' WEST OF EAST PROPERTY LINE

(TREE 2) 84' NORTH OF SOUTH PROPERTY LINE, 31' WEST OF EAST PROPERTY LINE

Does this application propose to remove any of these prominent trees or vegetation? If so, which?
EXISTING VEGETATION TO REMAIN


D. Additional Information

Are there other changes not yet covered? ☐ Yes ☒ No

If yes, please explain: _____

Any revisions to this application request must be received 14 days prior to the hearing date, or your application will be deferred to the next meeting. The staff will determine whether the application can still be heard on the scheduled date, which depends on the degree of modification.

Note: When an application has been submitted, it will be reviewed in order to determine compliance with application requirements. A hearing date will be scheduled only after an application has been accepted as complete.


 Signature of Applicant/Representative

03/04/08
 Date

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MAR 05 2008

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 SERVICES

DRH 08 00067



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

Historic Preservation Certificate of Appropriateness

File Number	DRH08-00067
Property Address	1102 West Hays Street
Historic District	North End
Applicant	YMCA-Treasure Valley / David Duro
Address	1050 West State Street
Phone	344-5502
Agent	Andy Erstad / Erstad Architects
Address	420 West Main Street, Suite 202
Phone	331-9031

Proposed Change to Structure or Site
Install temporary parking at 11th Street and Fort Street.

Code Requirements


Section 2-18-9 of the Historic Preservation Ordinance specifies that a Certificate of Appropriateness shall be required for alterations or changes in use in historic districts, properties or landmarks.

Historic Preservation Commission

This is to certify that the proposed changes to the historic property described above are in compliance with Historic Preservation criteria and have been approved by the Historic Preservation Commission or Planning and Development Services Department. All other applicable requirements of the Boise City Historic Preservation Ordinance and Zoning Ordinance shall be met.

Conditions of Approval

Any relevant conditions on reverse side.


Julie Archambeault
Historic Preservation Planner

April 15, 2008

Date

Conditions of Approval

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 Certificate of Appropriateness is not fulfilled or extended 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.
8. Any condition(s) of this Certificate of Appropriateness may be appealed to the Historic Preservation Commission within ten (10) days from the date of issuance. All appeals of this Certificate of Appropriateness must be filed by **5:00 p.m., April 21, 2008**. The Appeal must be written, accompanied by the appropriate fee and submitted to the Planning and Development Services Department prior to the deadline set forth herein. Appeal application forms are available in the Planning and Development Services Department located on the 2nd floor of City Hall.



Planning & Development Services

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

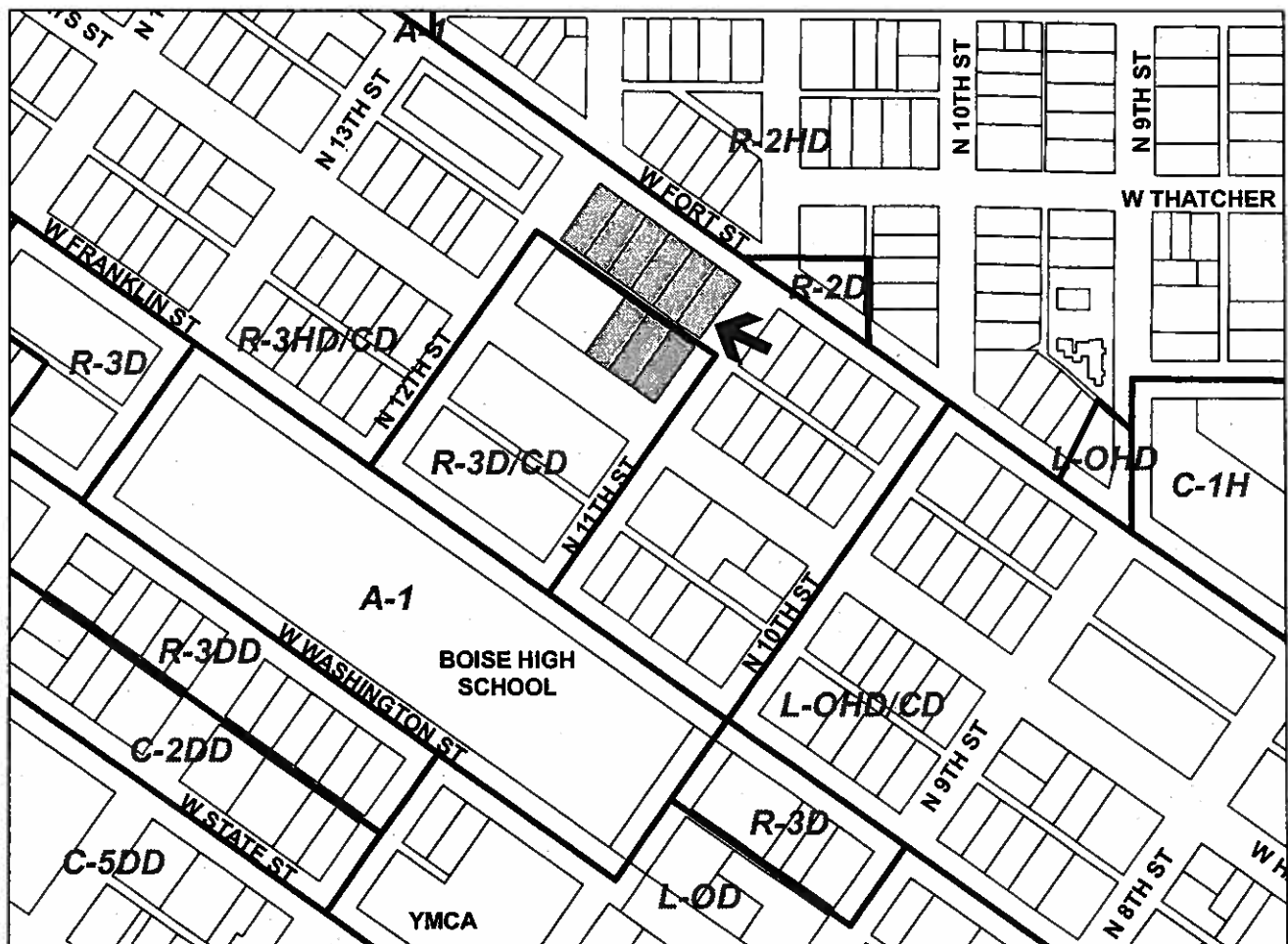
Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

Notice of Approval

The YMCA-Treasure Valley and David Duro request Historic Preservation approval to install a temporary parking lot on property located at North 11th Street and Fort Street in an R-3HD/CD (Multi-Family Residential with Historic Design Review Overlay and Near North End Conservation District) zone.

This request has been reviewed and approved by the Boise City Planning Division in accordance with the Boise City Zoning Ordinance. Any questions regarding this item should be directed to **JULIE ARCHAMBEAULT** at **384-3830** or at jarchambeault@cityofboise.org. Please identify file number in subject heading if sending an e-mail. Conditions of approval and plans are available for review at the Boise City Planning Division, second floor of Boise City Hall, between the hours of 8:00 a.m. and 5:00 p.m. weekdays. In all correspondence concerning this item, please refer to file number: **DRH08-00067**.

You may appeal this decision to the Boise City Planning and Zoning Commission by filing an appeal form with the Planning Division no later than **5:00 P.M., APRIL 21, 2008**. A fee of \$101.00 is charged for any appeal.





April 8, 2008

YMCA-Treasure Valley
David Duro
1050 W. State Street
Boise, ID 83702

Re: **CUP08-00027 & CVA08-00008 / 1102 W. Hays Street**

Dear Mr. Duro:

This letter is to inform you of the action taken by the Boise City Planning and Zoning Commission on your request of approval of a Special Exception for a temporary off-site parking lot located at 1102 W. Hays Street in an R-3D/CD (Multi-Family Residential with Design Review and Near North End Conservation District) and R-3HD/CD (Multi-Family Residential with Historic Design Review and Near North End Conservation District) zone. The request also included a variance to exceed the 600' minimum distance required for the parking lot.

The Boise City Planning and Zoning Commission, at their meeting on April 7, 2008 **recommended** to the Mayor and the Boise City Council, **approval** of the request based on the attached Reasons for the Decision and Conditions of Approval.

This application will be considered by the Boise City Council to establish a public hearing date. You will be notified of the established hearing date.

If you have any questions, please contact this department at (208) 384-3830.

Sincerely,

Susan Riggs
Planning Analyst II
Boise City Planning and Development Services Department

SR/bjc

Attachment

cc: Erstad Architects / Andy Erstad / 420 Main St., Ste. 202 / Boise, ID 83702
NENA / Burnie Clark / P.O. Box 1235 / Boise, ID 83701

Reasons for the Decision

Special Exception

Based on the temporary nature of the off-site parking lot and with special consideration to the landscaping and design; the proposed off-site temporary parking lot may benefit the immediate community. The YMCA provides an enormous amenity to the Downtown and the North End Neighborhood. The parking lot will create an equal or lesser impact than uses permitted in the district and that it will be compatible with the neighborhood. The parking lot will not immediately abut any residential property. The site is bounded by Fort Street to the north, Hays Street to the south, 11th Street to the east and 12th street to the west. The Cathedral of the Rockies is located south of the site with a surface parking lot located in the southwest corner of the subject site. Residential properties are located north, east and west of the site.

With the recommended conditions of approval regulating the design, circulation, lighting, and parking lot hours, the temporary lot may be a desirable use in the zone under the special exception. The parking lot will produce an equal or reduced impact upon the site or neighborhood than an allowed use would. The 1.68 acre site could allow up to 73 dwelling units requiring anywhere from 109 to 146 parking spaces.

The site is of sufficient size to accommodate the use and access to the parking lot and internal circulation will be safe and convenient for Y members. Two way circulation is proposed throughout the parking lot with required 22' of back up space provided for all vehicles. The natural features and existing trees will be appropriately preserved and integrated with the project. No landscape is proposed to be removed and the applicant is proposing additional trees and landscaping.

The site is appropriate for the proposed temporary parking lot and staff finds that proper zoning for the proposed use of the property is not available in the general neighborhood. This has been substantiated by the Y's exhaustive search for available parking within a walk able distance to the Y. The approval of this special exception will not provide precedent for any other parcel in the City.

The following are special circumstances associated with this proposal:

- The parking lot is only temporary and will be removed within 15 months.
- The YMCA has done an exhaustive search and attempted several negotiations with owners of existing parking lots and has not been able to secure reliable parking within a reasonable distance to the Y.
- Landscaping of the existing vacant lot will provide a reasonable buffer to the neighborhood.
- The YMCA is an amenity for the entire community and needs the parking to maintain its operations.

Variance

There is an exceptional circumstance relating to the intended use of the property, which is not generally applicable to property or permitted uses in the district. The fact that the Downtown and surrounding neighborhoods are mostly built out and that and after an extensive search, the Y has not been able to secure reliable parking within 600' constitutes a special circumstance. The applicants search for parking closer to the Y is well documented and has been unsuccessful. The fact that the parking is only temporary (10 to 24 months), makes the additional 200' that the Y members will have to walk to the facility less of a concern.

The granting of the variance will not be in conflict with the spirit and intent of the Comprehensive General Plan for the City, and will not effect a change in zoning. The site will maintain is present zoning. The temporary parking lot will ensure the services and amenities which the YMCA provides will continue by allowing a temporary parking which is convenient, visually pleasing and properly integrated and designed into the neighborhood. The short term use of the site will not be detrimental to the conservation of the North Ends historical identity. The YMCA provides desired services in close proximity to where people live and the variance is necessary to continue those services to members that are in need of reliable parking which is easy to locate.

The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements. The applicant has agreed to the attached conditions of approval that require all existing and new landscaping remain once the site is vacated and that all landscaping be properly irrigated and maintained. The site will be left in a more enhanced state than it is currently, and no parking will be allowed once the YMCA vacates the site.

Conditions of Approval**Site Specific:**

1. Construction, use and property development shall be in compliance with plans and specifications on file with the Boise City Planning and Development Services Department date stamped received on March 18, 2008 except as may be modified by the Boise City Historic Design Review Staff or expressly modified by the following conditions:
2. The parking lot is approved for a maximum of 15 months from the date of Council's approval or until alternative parking becomes available, which ever is shorter.
3. All parking areas shall be provided with approved wheel restraints, and shall be designed and laid out to conform to the minimum standards required by the Boise City Zoning Ordinance.
4. Exterior lighting fixtures must be designed and located so as to prevent glare or direct light from falling onto adjoining properties or streets.

5. Upon vacating the temporary parking lot, the applicant shall remove all wheel stops and light fixtures from the premises.
6. Signage is required restricting the parking lot to YMCA use only.
7. Upon vacation of the parking lot, the applicant shall place no parking signs at the 11th and 12th Street entrances to the site.
8. Upon vacation of the site, the applicant shall block off access to the parking lot with bollards and connecting chains or some other device that secures the site from illegal parking.
9. All light fixtures shall be set on an automatic timer. The lights shall not go on before 6:30 a.m. or remain on after 9:00 p.m.
10. A landscaped area of five percent (5%) of the lot's total area is required. Removable planters are acceptable.
11. All new deciduous trees shall have a minimum caliper of 2" and evergreen trees shall be a minimum of 6' in height at the time of planting.
12. Existing mature landscaping shall not be displaced by the parking lot unless prior written staff approval is received.
13. A detailed grading and drainage plan shall be submitted for review and approval by the Ada County Highway District and the Boise City Public Works Department before a Building Permit is issued.
14. An adequate temporary irrigation system to maintain the temporary landscaping in a healthy condition, as approved by Staff shall be provided.
15. All landscaping shall be maintained in a healthy and attractive condition and shall be irrigated by an appropriate underground irrigation system.
16. The parking lot shall contain gravel surfacing.
17. Prior to the issuance of a Building Permit, a with a written maintenance plan for dust control measures for the parking lot and access road shall be submitted for review and approval by the Public Works Department..
18. Prior to the issuance of a building permit and prior to the commencement of any construction on-site, an Erosion and Sediment Control (ESC) permit must be obtained from the Planning and Development Services Department. No grading, demolition or earth disturbing activities may start until an approved ESC permit and the associated site work or grading permits have been issued.

19. The applicant shall stripe the YMCA on-site parking lot for one additional handicap parking space. The accessible space shall be a minimum of 8' in width plus a 5' wide adjacent access aisle. No handicap parking spaces are necessary in the off site temporary parking lot.
20. Prior to the issuance of a Building Permit, the applicant shall submit a bond for one hundred ten percent (110%) of the cost for removal of the parking lot. The bond shall include the cost of the removal of all wheel restraints, the two (2) no parking signs to be placed on 11th and 12th street entrances (materials & installation), and bollards with connecting chains to be placed at locations necessary to prevent any vehicle from parking on the gravel lot.
21. Three months from the date of the approval of this Special Exception, the applicant shall submit a monitoring report to staff for review by the Planning and Zoning Commission at a scheduled work session. The monitoring report shall include any neighborhood complaints, problems with non YMCA members using the lot and any other details or concerns that may have arisen in that time span. A reclamation plan indicating how the site will be restored after the removal of the parking lot shall also be submitted for review by the Commission.

General

22. This project is in a Historic Design Review District and shall be subject to staff review for a Certificate of Appropriateness.
23. All of the Ada County Highway District conditions of approval related to the development of the subject property shall be complied with per staff report dated March 5, 2008.
24. Vision Triangles as defined in Section 11-01-03 and Section 11-10-04.4G. of the Boise City Zoning Ordinance shall remain clear of all sight obstructions.
25. The applicant or his/her contractor shall obtain a right-of-way permit from the Ada County Highway District prior to any construction in the public right-of-way.
26. The applicant shall comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, street lights and subdivisions per Department requirements dated March 13, 2008. Please contact BCPW at 384-3900. All items required by BCPW shall be included on the plans/specifications that are submitted for a Building Permit. Please note that any changes or modifications by the owner to the approved plans must be submitted to the Public Works Department for approval.
27. This approval does not include approval of any signage. A separate Sign Permit will be required from the Boise City Planning and Development Services Department prior to installation of sign(s).

28. No change in the terms and conditions of this approval 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.
29. Any change by the applicant in the planned use of the property which is the subject of this application, 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 its successors in interest advises the City of its 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.
30. Construction, use and property development shall be in conformance with all applicable requirements of the Boise City Code.
31. Failure to abide by any condition of this approval may be grounds for revocation by the Boise City Planning and Zoning Commission.