

November 2, 2010

Persimmon II, LLC
Rudy Kadlub
44292 S. El; Macero Drive
El Macero, CA 95618

Re: **CUP10-00059 & CVA10-00032 / 1511 W. Bannock Street**

Dear Mr. Kadlub:

This letter is to inform you of the action taken by the Boise City Planning and Zoning Commission on your request for a special exception to construct an 1,800 sq. ft. retail building and a conditional use permit for a \pm 25,000 sq. ft. stand-alone grocery store on \pm 1.8 acres located at 1511 W. Bannock Street in an R-ODD (Residential Office with Downtown Design Review) zone. The application includes a request to exceed the maximum number of allowable parking spaces and variances from front and street-side setbacks for the parking lot and buildings.

The Boise City Planning and Zoning Commission, at their hearing of November 1, 2010, **approved** your conditional use and variance requests and recommended to the Mayor and City Council approval of the special exception, based on compliance with the attached Reasons for the Decision and Conditions of Approval. Findings may be reviewed at the PDS department. A regulatory takings analysis may be requested by the landowner.

The special exception has been forwarded to the Boise City Council to establish a public hearing date. You will be notified of the established hearing date

May we also take this opportunity to inform you of the following:

1. The conditional use and variance will not take effect until after the appeal period has lapsed.
2. The decision of the Boise City Planning and Zoning Commission may be appealed to the Boise City Council within ten (10) calendar days from the issuance of this decision. The Appeal must be written, accompanied by the appropriate fee, and submitted to the Boise City Planning and Development Services Department prior to the deadline set forth herein. Appeal application forms are available in the Planning Department or online under Applications at:
www.cityofboise.org/pds/
or **<http://www.cityofboise.org/pds/index.aspx?id=apps>**

3. All appeals of these permits must be filed by **5:00 P.M., on November 12, 2010.**
4. If this conditional use and variance is not acted upon within eighteen (18) months, it will become null and void without further notification from this Department.

This letter constitutes your Variance Permit. If you have any questions, please contact this department at (208)384-3830.

Sincerely,

Susan Riggs
Planning Analyst
Boise City Planning and Development Services Department

SR/bjc

Attachment

cc: CSHQA / Danielle Weaver / 250 S. 5th St. / Boise, ID 83702
DBNA / Walt Sledzieski / 199 N. Capitol Blvd., #705 / Boise, ID 83701
DBA / Karen Sander / 720 W. Idaho St. / Boise, ID 83702
CCDC / Jon Cecil / 121 N. 9th Street, #501 / Boise, ID 83702

Reasons for the Decision

Conditional Use Permit

The project is compatible with other development in the neighborhood. The area currently supports a variety of uses including retail, commercial, office, and residential. The site is unique in that it consists of an entire city block and abuts four streets. The grocery store will add diversity and help achieve an active, 24-hour presence in the neighborhood. With approval of the variance, the site is large enough to accommodate the proposed use without adversely affecting other properties in the vicinity. The development is similar in intensity and operating characteristics to the variety of uses in the vicinity. The building complies with the height and floor area requirements of the proposed zone. Traffic counts provided by the Ada County Highway District (ACHD) indicate the abutting roadways each operate at an acceptable Level of Service "C" in regard to average daily traffic.

Based upon information provided by ACHD, the multiple alternative modes of transportation that are readily accessible, and the site's location within the City's downtown core, the development will not create an undue burden on the transportation system. The waiver for the 93 parking spaces is justified as a grocery typically requires additional parking beyond the minimum standards and no parking structures are located within vicinity. The development is in compliance with the goals and objectives of the Comprehensive Plan. *Goal 8.1* strives for a city that minimizes suburban sprawl, and that provides basic services and facilities in close proximity to where people live. *Goal 7.2* and Objective 8.1.3 encourage a compact city comprised of a central Downtown with surrounding neighborhoods that have a center focus combining residential, commercial, and employment. The grocery will occupy a city block that has been vacant for a number of years. The grocery will be an anchor to Westside Downtown and provide a focus for the neighborhood as well as generating employment opportunities. It will help spawn new development and will serve as an amenity for the existing and future urban residential developments.

Special Exception

The Zoning Ordinance does not list stand alone retail as an allowed use in the R-O zone. This area of the Westside Urban Renewal District is envisioned to develop as a residential neighborhood with building heights between four to six stories. However, due to the economic downturn in the market, it may be some time before the city sees a residential project of that scale. The site's location on the western edge of the downtown with the Linen District to the south and residential to the north makes this a desirable use in the zone. The facility will produce an equal or reduced impact on the site and neighborhood than an allowed use. The proposed 1,800 square foot retail building will produce an equal or reduced impact upon the site than the allowed grocery. The location of the proposed use is compatible with other uses in the general neighborhood. The site is located adjacent to commercial, office and residential uses. The retail use will provide an amenity for the residents and local businesses in the area. Correspondence received from commenting agencies indicates the proposed use will not place an undue burden on transportation or other public services in the vicinity. With approval of the variance to locate the building to the property line on 15th Street, the site is of sufficient size to accommodate the retail use. A large landscaped plaza is proposed adjacent to the site that will provide useable open space, for outdoor dining and neighborhood gatherings. Although appropriate zoning for the use is available in the general neighborhood, the retail building will bring additional vitality to the site, providing a more comprehensive activity node in the neighborhood. More significantly, maintaining the R-O (Residential Office) zoning of the site will support

residential development of an appropriate scale and intensity on the site in the future. Safe access is provided to the site, The Ada County Highway District has approved three access points; one off 15th, 16th and Bannock Street. The Bannock Street driveway allows right turns as an exit only. Sidewalks are provided on all streets that abut the site and are generally designed to meet the Downtown Boise Streetscape Standards. Approval of the special exception is unique to this site based on the allowed grocery store and the vitality that a retail use can bring to this area. The ordinance does not anticipate that a retail use, when constructed in conjunction with a grocery, can add vitality and interest to the overall development.

Variance

The granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan. *Goal 7.2* and *Objective 7.2.5* encourage services and amenities that are convenient, visually pleasing and properly integrated with surrounding development. This development is located in downtown where buildings are encouraged to be constructed to the property line. The proposed setbacks are similar those of in the vicinity, specifically the commercial building on the south side of Idaho Street. The placement of the building provides greater separation from the residential properties to the north. There are unique circumstances that justify reducing the setbacks. The site is bordered by four streets. There is an existing sewer line that traverses east to west through the middle of the site splitting it into two sections and forcing the buildings to one side of sewer line and parking to the other. The variances are further justified as the site located in the downtown, which encourages new urbanism with buildings constructed at the sidewalk's edge. There will be no privacy impacts as buildings are not adjacent to residential dwellings. There will not be any adverse impacts on the surrounding properties. The site consists of an entire city block with adjacent uses being separated by principal arterials and collector streets. All the adjacent uses are zoned C-2 (General Commercial) and the residential neighborhood on the north side of Bannock Street is located across a ±80 right-of-way.

Conditions of Approval

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received September 28, 2010 (applications) and October 14, 2020 (all drawings) except as expressly modified by the Design Review Committee, staff, or the following conditions:
2. **Planning**
 - a) ~~Provide a five foot landscape buffer adjacent to the parking lot on 15th Street, similar to the one on 16th Street.~~
 - b) Provide a minimum two foot tall screen and/or fencing and landscaping along Bannock Street to help screen the parking lot from Bannock Street **unless otherwise approved by Design Review.**

- c) Building B shall support a use or uses that activate the plaza such as a restaurant, coffee shop or pedestrian oriented retail intended to support residents and employees in the area.
- d) ~~Providing a corner entrance to the grocery that wraps the northeast corner and allows the customer a direct access to the plaza.~~
- e) **Staff recommends the applicant** widen Bannock Street to a 46-foot street section, back-of-curb to back-of-curb, by rebuilding the curb and gutter abutting the site. **This recommendation is subject to approval by ACHD.**
- f) **Staff recommends the applicant** work with ACHD Traffic Services Department to re-stripe the street as follows: parking abutting the north curb, bike lane, two travel lanes, bike lane (five foot minimum width excluding gutter). There is space to transition the centerline at 15th Street, due to the driveway(s) at the northwest corner of 15th and Bannock. The applicant shall submit plans to Boise City verifying the required cross section before submitting construction plans to ACHD. **This recommendation is subject to approval by ACHD.**
- g) ACHD requires the reconstruction of the broken curb and gutter on 16th Street. **Staff recommends the applicant** incorporate a five foot wide bike lane on 16th Street within this reconstruction (do not include the gutter in the bike lane width). This can be accomplished by shifting the curb line to the east or altering the lane striping; work with ACHD Traffic Services to determine which option to apply. The applicant shall submit plans to Boise City verifying the required cross section before submitting construction plans to ACHD. **This recommendation is subject to approval by ACHD.**
- h) ACHD requires the reconstruction of the broken curb and gutter on 16th Street. **Staff recommends** the street section shall not be narrower than the existing 46 foot street section, which accommodates an existing 6 foot bike lane, on-street parking, and travel lanes. The applicant shall submit plans to Boise City verifying the required cross section before submitting construction plans to ACHD. **This recommendation is subject to approval by ACHD.**
- i) The Streetscape on 15th, 16th, Bannock, and Idaho Street shall be constructed in accordance with the Downtown Boise Streetscape Standards.
- j) Phase II of the development requires detailed conditional use approval.
- k) The plaza proposed between the two buildings on the southeast corner of the site shall be designed with an emphasis on pedestrian amenities such as public art, a fountain, benches and tables and landscaping.
- l) This approval allows the applicant to exceed the maximum number of parking spaces to the extent all other conditions of this permit are met.
- m) All signage associated with the development requires a separate approval by Planning and Development Services prior to installation.

Revised plans indicating compliance with the above conditions shall be submitted to Planning Staff for approval prior to application for any construction permits

Responsible Agencies and Other Boise City Departments

3. A Building Permit approval is contingent upon the determination that the site is in conformance with the Boise City Subdivision Ordinance. Contact the Planning and Development Services Subdivision Section at 384-3998 regarding questions pertaining to this condition.
4. A Building Permit is contingent upon approval from Boise City Community Forestry for tree planting within right-of-ways, per Title 9, Chapter 16, Section 09-16-05.2. Contact Boise City Community Forestry at 384-4083 with questions regarding this condition.
5. The applicant shall comply with the Boise City Fire Code as outlined in department comments dated October 25, 2010.
6. The applicant shall comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, Solid Waste/Ground Water Manager, and street lights per the memo dated October 1, 2010. 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 Storm Water Plan must be resubmitted to BCPW for approval.
7. Compliance with requirements as requested of Boise City Solid Waste per the attached comments dated September 30, 2010.
8. Compliance with requirements as requested by the Ada County Highway District (ACHD) per the attached comments dated October 25, 2010.
9. All landscaping areas shall be provided with an underground irrigation system. Landscaping shall be maintained according to current accepted industry standards to promote good plant health, and any dead or diseased plants shall be replaced. All landscape areas with shrubs shall have an approved mulch such as bark or soil aid.
10. All landscape trees shall be pruned in accordance with the American National Standards Institute's Standard Practices for Tree Care Operations (ANSI A300 - latest edition). No trees on the site shall be topped, headed back, rounded over or otherwise disfigured. Contact Boise City Community Forestry at 384-4083 for information regarding tree care operations.
11. Swales/retention/detention areas shall not be located along the streets, unless it can be shown that landscaped berms/shrubs will screen the swales.
12. Vision Triangles as defined under Section 11-1-3 and Section 11-10-4.4G of the Boise City Code shall remain clear of sight obstructions.

13. In compliance with Title 9, Chapter 16, Boise City Code, anyone planting, pruning, removing or trenching/excavating near any tree(s) on ACHD or State right-of-ways must obtain a permit from Boise City Community Forestry at least one (1) week in advance of such work by calling 384-4083. Species shall be selected from the Boise City Tree Selection Guide.
14. Any outside lighting shall be reflected away from adjacent property and streets. The illumination level of all light fixtures shall not exceed two (2) footcandles as measured one (1) foot above the ground at property lines shared with residentially zoned or used parcels.
15. Trash receptacles and on-grade and rooftop mechanical fixtures and equipment shall be concealed from public view by use of an approved sight-obscuring method. All screening materials shall be compatible with the building materials/design.
16. Utility services shall be installed underground.
17. Loading facilities shall be provided in conformance with Section 11-10-05 of Boise City Code and located so as not to interfere with required parking or fire lanes. These areas shall provide adequate maneuvering area for trucks and be located to minimize the visibility of loading activities from public view.
18. An Occupancy Permit will not be issued by the Planning and Development Services Department until all of these conditions have been met. In the event a condition(s) cannot be met by the desired date of occupancy, the Planning Director will determine whether the condition(s) is bondable or should be completed, and if determined to be bondable, a bond or other surety acceptable to Boise City will be required in the amount of 110% of the value of the condition(s) that is incomplete.
19. 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 Boise City. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Boise City.
20. 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 successors of interest, advise Boise 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.
21. Failure to abide by any condition of this Conditional Use Permit shall be grounds for revocation by the Boise City Planning and Zoning Commission.
22. This Conditional Use Permit shall be valid for a period not to exceed eighteen (18) months from the date of approval by the Planning and Zoning Commission.

23. Within this period, the holder of the permit must acquire construction permits and commence placement of permanent footings and structures on or in the ground. The definition of structures in this context shall include sewer lines, water lines, or building foundations.
24. Prior to the expiration of this conditional use, the Commission may, upon written request by the holder, grant a one-year time extension. A maximum of three (3) extensions may be granted.
25. All development authorized by this Conditional Use approval must be completed within 5 years (60 months) from the date of the Commission's approval or the applicant will be required to submit a new conditional use application.

Construction Site Requirements

26. The practices required below are intended to mitigate the impact and disturbance of residential property owners during the construction of adjacent buildings or structures. The following conditions apply to all construction-related activities ranging from grading and demolition activities to final occupancy on any land or parcel falling under the proprietary ownership of the permit applicant.
 - a) 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.
 - b) Measures shall be taken to manage construction debris and trash on the construction site and efforts shall also be made to provide reasonable controls to minimize fugitive dust on the construction site. Such measures shall include, but are not limited to:
 - Provide suitable containers for solid waste generated by construction activity;
 - Wet demolition of existing buildings;
 - Watering of driving surfaces and earth moving activities;
 - Installation of wind screening around property and each open floor above grade; and
 - Daily broom cleaning of above grade floors, adjacent streets and sidewalks.
 - c) A minimum height of six foot (6') rigid security fencing, either wood or metal, shall be installed around the construction site within 30 days of the date when the first city permit is issued on projects where construction activity shall exceed 90 days.
 - d) Exterior lighting and other illuminating equipment or materials shall be positioned, shielded, directed and located to not reflect or impact adjacent residential property and streets.
 - e) Applicant shall comply with Boise City Fire Department requirements for water, access, and/or other requirements as determined by the Fire Marshal.

- f) Any conditions to be enforced during construction shall remain posted at each street abutting the construction site for the duration of the project. In addition to the posted conditions the permit holder shall also post an 11"x 17" laminated sign containing a project contact phone number, name of project contact and the Boise City contact number, 384-3845, to address issues as they arise. Failure to abide by any conditions set forth shall be grounds for revocation of Conditional Use Permit and/or Building Permits and may be subject the owner or owner's agents to fines and criminal citations