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## Planning & Development Services

October 10, 2016

Deborah E Nelson  
Givens Pursley LLP  
601 W Bannock St  
Boise, ID 83702

**Re: Appeal / PUD16-00005 / 6781 E. Warm Springs Avenue**  
**In conjunction with CAR16-00002 & SUB16-00006 Ben's Crow Inn**  
**Subdivision**

Dear Appellant(s):

This letter is to inform you of the action taken by the Boise City Council on your appeal of the Planning and Zoning Commission's denial of a conditional use permit for a 24-unit planned residential development on 4.2 acres located at 6781 E. Warm Springs Avenue in proposed R-1B/DA (Single Family Residential with Development Agreement) and R-2D/DA (Medium Density Residential with Development Agreement) zones.

The Boise City Council, at their hearing of **September 20, 2016**, **approved** your appeal, and overturned the decision of the Planning & Zoning Commission based on the Reason for the Decision and attached Conditions of Approval formally adopted by the Boise City Council on **October 4, 2016**.

**This final decision by the Boise City Council includes the notice to the applicant of the applicant's rights to request a regulatory taking analysis pursuant to Idaho Code 67-8003.**

If you have any questions, and to inquire about the applicable refund, please contact Susan Riggs in this department at (208) 384-3736.

Sincerely,

Hal Simmons  
Planning Director  
Boise City Planning and Development Services

HS/wm

cc: Jim Conger / DevCo, LLC / [jim@congergroup.com](mailto:jim@congergroup.com) (sent via email)  
Marcel Lopez / Conger Management Group / [marcel@devco.land](mailto:marcel@devco.land) (sent via email)  
Clavis B. Hamilton / Ben's Crow Inn / [clungard@arthurberry.com](mailto:clungard@arthurberry.com) (sent via email)  
Barber Valley Neighborhood Association / Attn: Mike Reineck / [hvnaboise@gmail.com](mailto:hvnaboise@gmail.com) (sent via email)  
Southeast Neighborhood Association Inc. / Attn: Fred Fritchman / [ffritchman@msn.com](mailto:ffritchman@msn.com) (sent via email)  
Warm Springs Mesa Neighborhood Association / Attn: Donna Burns / [president@warmsspringsmcsa.org](mailto:president@warmsspringsmcsa.org) (sent via email)

## **Reason for the Decision**

### **Planned Unit Development**

The project is compatible with the variety of uses in the neighborhood and those reasonably expected to develop. The area is comprised primarily of residential development of a similar form and density to the proposed project. The project is consistent with the Comprehensive Plan. *Principles NAC7.1, CC1.1 and GDP-N.3* encourage a mix of housing in neighborhoods and infill development that does not require the costly extension of infrastructure. The applicant has exceeded the requirement of providing two amenities with the addition of a paved public parking lot on Lot 26. All utilities and infrastructure are readily accessible. The site is large enough to accommodate the proposed use without adversely impacting other properties in the vicinity and zoning standards are met. Parking will be provided within enclosed garages. Comments from public agencies confirm the project will not place an undue burden on the transportation system or other infrastructure.

## **Conditions of Approval**

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **February 22, 2016** and revised site and landscape plan submitted **September 15, 2016** except as expressly modified by the following conditions:
2. **Site Specific**
  - a. The following minimum setbacks apply:

Front: 15 feet living space / 20 feet parking  
Street Side: 15 feet living space / 20 feet parking  
Interior Side: 5 feet  
Rear: 30 feet
  - b. All fencing shall comply with the requirements and standards of Idaho Fish and Game.
  - c. Construct a 6-foot-tall sight obscuring fence along the rear lot lines of Lots 23-26 where none is existing.
  - ~~d. Provide landscaping along the rear lot lines of lots 23-26. A landscaping plan shall be submitted to Planning and Development Services prior to issuance of the first building permit.~~
  - d. *Provide a 5' wide landscape buffer between the alley and property line. A landscape plan shall be submitted to Planning and Development Services prior to the issuance of the first building permit.*

- e. Provide a minimum 10-foot-wide landscape buffer in front of the homes on Lots 23-25.
- f. Provide a minimum 8-foot-wide landscape buffer in front of the parking lot on Lot 26.
- ~~g. The public parking lot shall provide a minimum of 6 spaces.~~
- ~~h. A signed agreement with Boise City Parks and Recreation and approved design for the parking lot shall be submitted prior to submittal of final plat.~~
- h. Prior to donating the proposed parking lot to Boise City Parks and Recreation, the lot shall be paved and completed by the developer with a design that has been approved by Parks. Once completed, the parking lot will be deeded to the City and thereafter, Boise City Parks and Recreation shall maintain it.*
- i. Language regarding the availability of the Harris Ranch/Brighton Transit Management Association ride sharing program shall be made available to residents through the CC&R's.
- j. The applicant shall work with the Harris Ranch Wildlife Mitigation Association to provide new homeowners with information regarding wildlife in the area, trail closure dates, and any areas off limits to human activity.
- ~~k. Amenities shall be comprised of drought tolerant landscaping, ±18.11% common open space and public access to the Boise Greenbelt as described in applicant's letter dated February 22, 2016 and signage visible to the public shall placed at the entrance to the pathway indicating a public pathway to the Boise Greenbelt.~~
- k In addition to the public parking lot on Lot 26, amenities shall be comprised of drought tolerant landscaping, a minimum of 10 % common open space and a 17-foot-wide ADA compliant, stubbed pathway extending from the sidewalk on Warm Spring Avenue to the western boundary of the subdivision located at the entrance to the Boise Greenbelt per the revised site plan submitted on September 15, 2016. Signage visible to the public shall be placed at the entrance to the pathway indicating a stubbed pathway to the Boise Greenbelt.*
- l. A sign permit is required for all signage.
- m. The public pedestrian pathway shall be a ADA Accessible and a minimum of 17 feet wide. This includes a 7-foot-wide path way with 5 feet of landscaping on each side.

- n. Portions of the site are located in the floodplain. Compliance with Boise City Code 11-08 is required. No building permits will be issued until CFH16-00009 has been approved.
- o. Portions of the site contain slopes steeper than 25%; compliance with Boise City Code 11-07 is required.
- p. Provide dark sky lighting fixtures that minimize light trespass and reduce night glow.
- q. The development agreement restricts the maximum number of units to 24 detached single-family homes. The agreement shall also reference Planning's Site Specific Condition of Approval and include as Exhibits the site, landscape and fencing plan and elevations.
- r. Upon approval of the annexation, the applicant shall submit a final revised copy of the development agreement for review and ordinance passage.
- s. Within one year from the date City Council approves the development agreement shall be recorded. The three required readings of the ordinance will not be scheduled until recordation has occurred. Failure to record the development agreement within the one-year time frame shall automatically render this approval null and void.
- t. The development shall become part of the Harris Ranch Wildlife Mitigation Association. In addition, residents shall be required to pay annual homeowner's association fees to the Harris Ranch Wildlife Mitigation Fund.
- u. The applicant shall submit the signed and notarized agreement to the City for final review by the Planning Director, Legal Counsel and Mayor. The City Clerk will then record the document with the Ada County's Records Office at which time the development agreement will become final.
- v. *No more than 50% of the homes on lots 1-15 and 17-22 shall be three-story.*

### 3. Subdivision

- a. A note on the final plat shall designate Lot 16 as a 10-foot-wide public access pathway.
- b. A note on the face of the Final Plat shall state: *"The development of this property shall be in compliance with the Boise Development Code or as specifically approved by PUD16-00005."*

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- c. A note on the face of the final plat shall designate that any common lots shall be owned and maintained by the BCI Subdivision Homeowner's Association. These lots cannot be developed for residential purposes in the future. The common lots shall be designated by lot and block.
  - d. A note on the face of the Final Plat shall state: *"The development of this property shall be in compliance with the Boise Development Code or as specifically approved by PUD16-00005."*
  - e. *The applicant shall verify the accuracy of the property boundaries with Ada County prior to the recordation of the final plat.*
  - f. A 5-foot-wide detached concrete sidewalk and 10-foot-wide landscape buffer shall be constructed along Warm Springs Avenue as indicated on the preliminary plat.
  - g. No building permit for the construction of any new structure shall be accepted until the Final Plat has been recorded pursuant to the requirements of the B.C.C. 11-09-04.1. If a Non-Building Agreement is approved by Boise City Fire Department, no building permits shall be submitted until a "Satisfaction of Non-Building Agreement" is recorded.
  - h. The name, **Ben's Crow Inn Subdivision**, is reserved and shall not be changed unless there is a change in ownership, at which time, the new owner(s) shall submit their new name to the Ada County Engineer for review and reservation. Should a change in name occur, applicant shall submit, in writing, from the Ada County Engineer, the new name to the Department of Planning and Development Services and re-approval by the Council of the "revised" Final Plat shall be required. Developer and/or owner shall submit all items including fees, as required by the Planning and Development Services Department, prior to scheduling the "revised" Final Plat for hearing.
  - i. Developer shall provide utility easements as required by the public utility providing service (B.C.C. 11-09-03.6).
  - j. All irrigation ditches, laterals, canals, and drains, exclusive of natural waterways, intersecting, crossing, or lying adjacent to an area being subdivided shall be covered or fenced with a chain link fence at least six feet in height to deter access to said ditch or canal.
  - k. Prior to submitting the Mylar of the Final Plat for the City Engineer's signature, all the conditions of approval must be satisfied. Approvals must be provided on agency letterhead.

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- l. The Mylar shall include the following endorsements or certifications: signatures of owners or dedicators and acknowledgment, certificate of the surveyor, certificate of the Ada County Surveyor, certificate of the Central District Health Department, certificate of the Boise City Engineer, certificate of the Boise City Clerk, signature of the Commissioners of the Ada County Highway District and the Ada County Treasurer (I.C. Title 50-17). The signatures of the owners or dedicator, certificate of the surveyor, certificate of the Central District Health Department and acceptance of the Commissioners of the Ada County Highway District must be executed prior to submittal of the Mylar for the City Engineer's signature.
  - m. Developer shall comply with B.C.C. 11-03-04.4 which specifies the limitation on time for filing and obtaining certification. Certification by the Boise City Engineer shall be made within two years from date of approval of the Final Plat by the Boise City Council.
  - n. The developer may submit a request for a time extension, including the appropriate fee, to the Boise City Planning and Development Services Department for processing. Boise City Council may grant time extensions for a period not to exceed one year provided the request is filed, in writing, at least twenty working days prior to the expiration of the first two-year period, or expiration date established thereafter.
    - (1) If a time extension is granted, the Boise City Council reserves the right to modify and/or add condition(s) to the original preliminary or Final Plat to conform with adopted policies and/or ordinance changes.
    - (2) The Final Plat shall be recorded with the Ada County Recorder within one year from the date of the Boise City Engineer's signature. If the Final Plat is not recorded within the one-year time frame it shall be deemed null and void.
  - o. Covenants, homeowners' association by-laws or other similar deed restrictions which provide for the use, control and maintenance of all common areas, private streets, shared access and shared parking, and which shall be consistent with the Fair Housing Act of 1968, as amended from time to time, shall be reviewed and approved by the Boise City Attorney. After recordation of the final plat and CC&R's, no building permit shall be accepted until a copy of the recorded CC&R's have been submitted to the Boise City Attorney.
  - p. Prior to the City Engineer's Certification of the Final Plat and/or prior to earth disturbing activities, an **Erosion and Sediment Control (ESC)** permit must be obtained. An ESC plan conforming to the requirements B.C.C. 8-17, is to be submitted to the ESC Program Manager for review and approval. No grading or earth disturbing activities may start until an approved ESC permit has been issued.

- q. An individual who has attended the Boise City Responsible Person (RP) certification class, or has obtained Interim Certification for the RP shall be identified for this project. A permit will not issue until such time as the name and certification number of the RP has been provided to Boise City. This information can be faxed to 388-4735 or e-mailed to [ejenkins@cityofboise.org](mailto:ejenkins@cityofboise.org).
- r. The developer shall make arrangements to comply with all requirements of the Boise City Fire Department and verify in one of the following ways:
  - 1. A letter from the Boise City Fire Department stating that all conditions for water access, and/or other requirements have been satisfied;

OR

- 2. A Non-Building Agreement has been executed and recorded with a note on the face of the Final Plat identifying the instrument number.

**NOTE:**

"No Parking" signs and curb painting shall be required on streets having a width less than 36-feet, back of curb to back of curb. Contact the Boise City Fire Department for sign placement and spacing. Developer may either construct prior to final platting or post bond in the amount of 110% of the estimated costs with the Boise City Planning and Development Services Department.

- s. A letter from the appropriate **school district** is required stating, "The Developer has made arrangements to comply with all requirements of the School District."
- t. A letter of acceptance for **water service from the utility** is required (B.C.C. 11-09-04.3).
- u. Developer shall provide a letter from the **United States Postal Service** stating, "The Developer and/or Owner has received approval for location of mailboxes by the United States Postal Service."

Contact: Dan Frasier, Postmaster  
770 S. 13th St.  
Boise, ID 83708-0100  
Phone No. (208) 433-4341  
FAX No. (208) 433-4400

## **Agency Requirements**

4. Comply with requirements of the Ada County Highway District (ACHD) as outlined in their **March 15, 2016** approval.
5. The applicant shall comply with all conditions of the Boise Fire Department as per the letter dated **March 10, 2016**. Any deviation from this plan is subject to Fire Department approval. For additional information, contact Romeo Gervais at (208) 570-6567.
6. Compliance with Boise City Plan Review comments dated February 25, 2016.
7. Comply with requirements of Central District Health Department as outlined in comments dated **March 3, 2016**.
8. Comply with requirements of Boise Project Board of Control as outlined in comments dated **March 21, 2016**.
9. Comply with requirements of Idaho Transportation as outlined in comments dated **March 3, 2016**.
10. Comply with requirements of Idaho Fish and Game as outlined in comments dated **March 25, 2016**.
11. The applicant shall comply with the requirements of the **Boise City Public Works Department (BCPW)** for:
  1. Municipal sewer in a memo dated February 25, 2016.
  2. Street lighting in a memo dated February 24, 2016.
  3. Grading and Drainage in a memo dated February 24, 2016.
  4. Solid Waste collection in a memo dated February 25, 2016.

Contact BCPW at 208-384-3900 for specific comments or questions. All requirements of the BCPW shall be completed or bonded for prior to submittal of the Final Plat for the signature of the Boise City Engineer.

## **Standard Conditions of Approval**

12. 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 (208) 384-3830 regarding questions pertaining to this condition.



13. 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 approved mulch, such as bark or soil aid.
14. Swales/retention/detention areas shall not be located along the streets, unless it can be shown that landscaped berms/shrubs will screen the swales.
15. 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 (208) 384-4083. Species shall be selected from the Boise City Tree Selection Guide.
16. Deciduous trees shall be not less than 2" to 2 1/2" inch caliper size at the time of planting, evergreen trees 5' to 6' in height, and shrubs 1 to 5 gallons, as approved by staff. All plants are to conform to the American Association of Nurseryman Standards in terms of size and quality.
17. Utility services shall be installed underground.
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. All amenities, landscaping, fencing, sidewalks and underground irrigation shall be installed or bonded for prior to the issuance of a building permit. For bonding, the applicant is required to provide a minimum of two bids for the amenities, landscaping materials and the installation. The bond shall be for 110% of the highest bid and submitted to the Subdivision desk on the 2<sup>nd</sup> floor of City Hall. For additional information, please call (208) 384-3998.
20. 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.
21. 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.

22. Failure to abide by any condition of this conditional use permit shall be grounds for revocation by the Boise City Planning and Zoning Commission.
23. This conditional use permit shall be valid for a period not to exceed twenty-four (24) months from the date of approval by the Planning and Zoning Commission. 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 the PUD permit, the Commission may, upon written request by the holder, grant a two-year time extension. A maximum of two (2) extensions may be granted.
25. To reduce the noise impact of construction on nearby residential properties, all exterior construction activities shall be limited to the hours between 7:00 a.m. and 7:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. for Saturday and Sunday. Low noise impact activities such as surveying, layout and weather protection may be performed at any time. After each floor of the structure or building is enclosed with exterior walls and windows, interior construction of the enclosed floors can be performed at any time.