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City of Boise
Planning & Development Services
150 N. Capitol Boulevard
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**RE: Conditional Use Permit/Variance Application for SEC 17th Street and State Street
SB Matter No. 23418.3**

We are submitting an application for both a Conditional Use Permit ("CUP") and a Variance for the property located at the Southeast Corner of 17th Street and State Street ("Site") for our client TMC Northwest, LLC ("Applicant"). The Site is an assemblage of multiple parcels fronting on both State Street and Jefferson Street on the western half of the block. The Applicant proposes developing the Site with a CVS Pharmacy that has approximately 15,000 square feet on the main floor and mezzanine, with a drive through and a total of 48 parking spaces.

A. Background

The Applicant requests a CUP for the approval of the drive up window pursuant to Boise City Code, Section 11-06-05.3(2)(a), and approval of the number of proposed parking spaces, to the extent that such is required under Boise City Code, Section 11-07-03.1.A(4). Additionally, the Applicant requests a variance as certain design and structural features that project into the applicable setbacks. In light of the existing zoning, urban location, and the adjoining high volume roadway, we believe that all of these are appropriate and request approval of such.

The Site is an assemblage of multiple parcels that are located between State Street and Jefferson Street adjacent to 17th Street. The Site is zoned C-2D, is designated as Mixed Use on the Land Use Map of Blueprint Boise, and is within the Downtown Planning Area. In the immediate vicinity of the Site are a mixture of residential and commercial uses south across Jefferson Street. North across State Street is a large commercial strip center anchored by Albertsons that occupies four city blocks. To the east of the Site is a bank with drive through facilities that also spans the block. A RiteAid pharmacy in a former grocery store is located east of 16th Street.

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Immediately to the southeast of the Site is a residence which will remain. The Applicant has worked closely with that owner to mitigate the impact of the development of the Site and to develop a site plan that is acceptable to that owner. Specifically, the Applicant has agreed with the owner of the residence that they will:

- Provide enhanced screening for the residence from the parking lot including a fence in the form specified by the adjoining owner;
- Provide additional landscaping adjacent to the residence;
- Jointly undertaking certain other improvements to the residential parcel;
- Select and identify lighting fixtures and bulbs that will minimize light intrusion from the parking lot;
- Locate, screen and buffer the garbage enclosure in the alley;
- Bury utilities in the existing alley and provide connection to the adjoining residence;
- Improving and replacing existing sidewalks;
- Retaining, to the extent possible existing trees along Jefferson Street and 17th Street; and
- Jointly supporting certain requests to ACHD and Boise City regarding the operation of parking and drainage on Jefferson.

We will now turn our attention to the elements of the CUP and Variance applications.

B. Relevant Standards for Evaluation of the CUP

The inclusion of a drive through as an element of the development of this proposed CVS Pharmacy requires a CUP. Pursuant to Boise City Code, Section 11-03-03.4, the following criteria are relevant to consideration of this application:

- i. The location is compatible to other uses in the general neighborhood;
- ii. The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;
- iii. The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;
- iv. The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;
- v. The proposed use is in compliance with the Comprehensive Plan.

Pursuant to Boise City Code, Section 11-06-05.3.A(2)(a), drive through windows are subject to these general requirements:

- (2) Approvals by the Planning and Zoning Commission

(a) General Requirements

- i. The location shall not cause an increase of commercial traffic in nearby residential neighborhoods, or cause significant adverse impacts in the vicinity;
- ii. Drive-up aisles should be located behind the building and circulation should provide for pedestrian access to and from the establishment's entrance;
- iii. Waiting lane(s) are of sufficient length to accommodate average monthly peak volumes;
- iv. Lights are designed and located to prevent glare on adjoining properties. Screening of lights may be required as a secondary measure of mitigation;
- v. Landscaping should screen drive-up aisles from the public right-of-way and minimize the visual impact of vehicular lights, readerboard signs, and directional signs;
- vi. Drive-up lanes shall be setback at least ten feet from residentially zoned or used property. Landscape and sound abatement walls may be required when appropriate; and
- vii. Communication systems shall not exceed 55 decibels at any property line adjoining or across the alley from residential zones or uses.

C. CUP Analysis

We will first address the general conditional use permit requirements associated with this permit pursuant to Boise City Code, Section 11-03-04.6.C(7)(a). Of the conditions set forth therein, neither (vi) relating to multifamily buildings or (vii) relating to the C-5 District are relevant to this Application.

1. *The proposed use is compatible to other uses in the general neighborhood.* The drive through is compatible with other uses within the surrounding neighborhood. The property immediately to the North across State Street is an intensive retail and commercial development. The bank to the east of the Site currently has drive through facilities and has undergone a significant remodel. There is a residence that will remain on the block with this Application. The Applicant has worked closely with the owner of that residence to address buffering and impact upon its property. There are other residential uses to the south and west of the Site. It is important to note that the property is designated by the Boise City Code as C-2D as is the property across Jefferson to the south. This building on the Site is replacing certain existing commercial and retail uses. Although there are residential buildings on Jefferson on this Site and across the street, many of them have been converted to commercial use consistent with the underlying C2-D zoning.

2. *The proposed use will not place an undue burden on transportation and other public facilities in the vicinity.* As noted elsewhere, this Site is immediately adjacent to an existing major arterial, State Street. The proposed drive through has been designed to have a minimal impact on transportation or public facilities. The applicant is proposing eliminating existing curb cuts onto State Street and to enlarge and reconfigure a shared access with the adjoining bank. The drive through has been designed to facilitate all of its stacking on the interior of the Site. It is anticipated that there will be no additional impact upon the existing transportation system as a result of the inclusion of the drive through at this Site.

3. *That the site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls and fences, parking, loading, landscaping and such other features as are required by this title.* The site is large enough to accommodate the drive through and other project elements. With the addition of the drive through facilities, there is no significant impact upon the larger site and what would be required to permit this use.

4. *That the proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity.* The proposed drive through will not adversely affect other property in the vicinity. The drive through facilities are oriented to the interior of the Site away from the existing residence and towards the bank to the east that also has drive through facilities.

As discussed above, there has been significant discussion and work with the remaining residence on the block to configure the landscape areas, drive through, and alley so as to minimize impact upon that property. The drive through should not adversely affect other property in the vicinity. The drive through lane is located away from the other residential elements in the neighborhood. The project also incorporates substantial landscaping and screen walls along each street frontage not occupied by the building to further reduce impacts.

5. *The proposed use is in compliance with and supports the goals and objectives of the Comprehensive Plan.* Significant consideration has been given to the design of the various improvements and the use to ensure that the relevant goals and objectives of the Comprehensive Plan are met. The Site is within the Downtown Planning Area. As such the Application satisfies the goals of Blueprint Boise as follows:

(a) Mixed Use Project

The Site is designated on the Land Use Map element of Blueprint Boise as "Mixed Use." This application furthers the mixed use goals for the Downtown Planning Area. DT-CCN 1.2 of Blueprint Boise encourages the development of "a vibrant mix of uses in Downtown" including retail and services. Additionally, as set forth in DT-CCN 1.4(a) of Blueprint Boise regarding Urban Building Forms, this Application will replace several existing buildings that are not necessarily pedestrian oriented, with a new building that furthers the goal of "urban building forms where typically buildings are placed at the sidewalk and create a street wall, street level

space is activated with people-oriented uses, and building entrances and openings are oriented to public sidewalks rather than to parking lots.” Additional attention has been paid to orienting the building on the Site consistent with the existing street grid to preserve the alley and existing site configuration in accordance with the goal of avoiding “full-block mega-buildings or ‘superblocks’” as set forth in DT-CCN 1.4(b).

(b) Parking

The Site and its parking field have been designed with the considerations of the parking elements of Blueprint Boise. Although DT-PKG 1.5 of Blueprint Boise anticipates reducing parking in the Downtown area, two factors exist here that merit attention and deviation from the strict limitations of the Boise City Code. First, the Site is on the extreme western edge of the P-3 Parking District. Immediately adjacent to it are a large retail center to the north and a large former grocery store, now drug store, both of which park at a much higher ratio than proposed by the Applicant at this Site. With Albertson’s and RiteAid located in the immediate vicinities and their large parking lots located immediately between their buildings and State Street, this is an area that attracts a lot of vehicular traffic already. Significantly underparking this Site in light of those factors is not advised. Second, as set forth in DT-PKG 1.8 of Blueprint Boise, care is to be taken to “protect neighborhoods in and surrounding Downtown from parking spillover.” The proposal for 48 parking spaces strikes this balance. With significant vehicular traffic already in the vicinity, an inadequately sized parking lot would push vehicles onto the neighboring streets competing for parking with the residential and commercial uses that are south of Jefferson Street and west of 17th Street. The proposed parking solution balances these considerations in an appropriate and reasonable manner.

(c) Connectivity/Integration with Neighborhood

The Site encourages and enhances the goals of Blueprint Boise regarding connectivity in the Downtown. The Connectivity policies in Blue Print Boise encourage “a network of safe, attractive pedestrian routes in Downtown to encourage walking as a transportation mode and as an enjoyable part of the Downtown experience.” DT-C1.6 Blueprint Boise. On this Site, the Applicant has brought the building to the Street and oriented it with an entrance at the street corner. This is in furtherance of (a) DT-CCN 1.4 Blueprint Boise regarding urban building forms, and (b) DT-C 2.1 Blueprint Boise as preserving the traditional street grid. The Applicant proposes enhancing the existing alley while preserving its location and function. This ensures the preservation of the traditional block pattern in this area as encouraged in DT-C 2.1 Blueprint Boise. We believe that the orientation of the building, preservation of the existing grid, and enhancement to the alley and sidewalk areas all further these goals. Even with the placement of the building at the street, the Applicant has proposed significant improvements to the larger streetscapes adjacent to the Site over the existing sidewalk which currently has no planting strip and no separation from State Street. DT-C 2.3 Blueprint Boise.

(d) Public Services/Facilities

The Application also takes into consideration enhancing existing infrastructure with the location of trash facilities to the interior of the Site accessible from the alley. The Applicant is

working with the adjoining property owners to ensure that the alley is retained, widened, and utilized for necessary service and access. The enhancements to the alley and the provision for garbage collection from the alley are consistent with DT-PSF 1.3 Blueprint Boise regarding ensuring adequate space for trash collection and retrofitting alleys, as well as DT-PSF 1.4 Blueprint Boise regarding the preservation and expansion of alleys.

(e) Internal Access Drives and Facility Configuration.

In designing this Site, care has been given to comply with the provisions of Blueprint Boise regarding encouraging pedestrian facilities and integrating vehicular improvements in a manner consistent with its goals. The design that we proffer furthers the following goals: (a) DT-CCN 1.4(b) Blueprint Boise to respect the traditional pattern of lots within blocks to avoid "superblocks"; (b) DT-CCN 1.4(a) Blueprint Boise to bring the buildings to the street orienting them towards the public sidewalks; (c) DT-CCN 1.5 Blueprint Boise to avoid strip commercial development; (d) DT-C 2.1 to embrace the traditional street grid or facilitating elements that approximate the traditional street grid as set forth in Blueprint Boise. The drive through facilities have been integrated interior to the Site to further these goals.

D. Drive Through Regulation Analysis

We believe the information provided above generally satisfies the requirements not only for the conditional use permit but also the drive through specific items.

With respect to the general drive through requirements, the Applicant has addressed each of those provisions as follows.

1. The location shall not cause an increase of commercial traffic in nearby residential neighborhoods, or cause significant adverse impacts in the vicinity.

The Site is adjacent to State Street, which has an average daily traffic count of approximately 25,000 trips per day at this Site. Immediately to the north, west, and east are commercial and retail facilities that generate significant traffic. Due to the nature of the service retail use proposed on the Site by the Applicant, it is anticipated that there will be minimal net impact on the larger neighborhood as pharmacy uses are recognized as capturing a significant percentage of existing pass-by trips. Efforts have been made to further screen the remaining residential uses on the block and across Jefferson Street. There is an entrance to the parking area on Jefferson Street, but it is anticipated that the bulk of the trips will enter and exit the Site at the entrance on 17th Street and the new consolidated entrance on State Street. Boise City Code, Section 11-06-05.3.A(2)(a)(i).

2. Drive-up aisles should be located behind the building and circulation should provide for pedestrian access to and from the establishment's entrance.

The drive through facilities are located north and east of the building, which is to the rear of the existing residential use and across the existing alley. The building itself screens the drive through from eastbound traffic on State Street. The building itself is positioned on the Site so

that its entrances and primary windows oriented towards 17th Street and State Street. Boise City Code, Section 11-06-05.3.A(2)(a)(ii).

3. *Waiting lane(s) are of sufficient length to accommodate average monthly peak volumes.*

The drive through facility has been sized to accommodate peak volumes. With the window located on the northern portion of the eastern wall of the building, there is sufficient vehicle stacking within the proposed site. The stacking area does not affect any public street and is integrated with the other improvements so that it does not affect vehicles entering the Site creating conflicts on the public streets adjoining the Site. Boise City Code, Section 11-06-05.3.A(2)(a)(iii).

4. *Lights are designed and located to prevent glare on adjoining properties. Screening of lights may be required as a secondary measure of mitigation; and Landscaping should screen drive-up aisles from the public right-of-way and minimize the visual impact of vehicular lights, readerboard signs, and directional signs;*

Lighting, landscaping, signage, and screening have all been proposed to ensure screening from adjoining properties. Additionally, all mature trees on Jefferson Street are proposed to remain. In fact with the orientation of the drive through facilities, the bulk of the impact is upon the adjoining commercial use to the east and the Applicant has worked with the owner of the adjoining residence to the south of the drive through to address the impact upon the property. Boise City Code, Section 11-06-05.3.A(2)(a)(iv)-(v).

5. *Drive-up lanes shall be setback at least ten feet from residentially zoned or used property. Landscape and sound abatement walls may be required when appropriate; and Communication systems shall not exceed 55 decibels at any property line adjoining or across the alley from residential zones or uses.*

As noted above, efforts have been taken to ensure that the impact upon the residential use to the south across the alley has been addressed. The drive through lane is located across the alley from that use and the stacking area is sized to comply with the requirements of the Boise City Code. The communications systems will comply with the requirements of the Boise City Code as well. Boise City Code, Section 11-06-05.3.A(2)(a)(vi)-(vii).

E. Parking Waiver Analysis

As depicted on the Site Plan, the Applicant is proposing 48 parking spaces. The Site is located within the P3 Parking District which typically anticipates .5 parking spaces per 300 square feet of Gross Floor Area. Based upon the approximate gross floor area of 15,000 square feet for the building, minimum parking requirement would provide for approximately 25 parking spaces. Boise City Code, Section 11-07-03.1.A(4) provides that where more than 20 parking spaces are required, the total number of parking spaces shall not exceed 1.5 times the amount set forth in Table 11.07.1, which in this instance would be 38 parking spaces. Boise City Code, Section 11-

07-03.3.D(3)(b) however, provides for a waiver to exceed the parking maximum pursuant to a conditional use permit. The necessary findings can be made to justify such a waiver in this instance to permit 48 parking spaces on the Site.

The existing retail uses in the neighborhood park at a much higher ratio than is proposed at this Site. Due to the significant traffic that already exists in the neighborhood, an inadequate sized parking field may very well cause spillover parking into the streets in the surrounding neighborhood. The design that is proposed for the Site clearly seeks to balance the number of parking spaces with the other goals of the Boise City Code and Blue Print Boise. This is consistent with the requirements of Boise City Code, Section 11-07-03.3.D(4)(a).

To facilitate necessary Site circulation, as well as an increased buffer to the residential property located to the southeast of the Site, there is a specific amount of property that is required. As this Site is an assemblage of existing parcels, the Applicant has not proposed any more parking than is absolutely necessary. The parking field's size reflects a reasonable configuration that meets these goals. A reduction in parking would not reduce the total area of the Site, as the additional parking spaces in excess of the requirements of the Boise City Code are all within a parcel that is entirely needed for landscape buffering and for Site circulation. This is consistent with the requirements of Boise City Code, Section 11-07-03.3.D(4)(b).

With the placement of the parking areas to the south and to the east of the building on the Site, there is no injury to Site circulation or pedestrian access by the slightly larger parking field. Two points of customer access are provided on the Site, both pedestrian friendly. Access at the primary intersection is provided and an entry for customers is provided directly to the parking area located to the south of the building across the alley. The additional parking does not detract from or conflict with the pedestrian access points or the Site circulation elements. Additionally, with this configuration pedestrians are not impeded in their access to the building and they do not have an increased travel distance. This is consistent with the requirements of Boise City Code, Section 11-07-03.3.D(4)(c)-(d).

Significant attention has been paid to ensure that there is adequate pedestrian access as set forth in Boise City Code, Section 11-07-03.3.D(4)(e)i.A-C. Great care has been taken to ensure that the pedestrian experience is not hindered by the parking. First, the building and its entrances have been oriented toward existing pedestrian facilities. The building has been brought to the corner so it sits at the intersection of 17th Street and State Street, and an entrance is located at that location. The second entrance has been placed adjacent to the parking field so that it is clear and unambiguous where customers can enter the building. Boise City Code, Section 11-07-03.3.D(4)(e)i.A. Additionally, the traditional sidewalk pattern around the periphery of the Site has been preserved. There has been a consolidation of vehicle entrance points along State Street and the existing alley is utilized for access from 17th Street. Boise City Code, Section 11-07-03.3.D(4)(e)i.B. Landscaping has been preserved and will be enhanced around the periphery of the Site to further separate the parking fields from the sidewalks. Boise City Code, Section 11-07-03.3.D(4)(e)i.C.

Finally, as noted above, the bulk of the additional parking has been placed upon the eastern edges of the Site. Whether the extra parking is adjacent to the existing residence or adjacent to the drive through between the building and the existing bank to the east, the additional parking does not adversely affect the pedestrian experience. Care has been taken to define the pedestrian entrances, to preserve the existing sidewalk configuration around the Site, and to enhance the existing commercial configuration of the Site. This is consistent with the requirements of Boise City Code, Section 11-07-03.3.D(4)(e).

F. Analysis of Variance Requests

Due to the urban nature of this Site and the desire to locate the building at the street, certain variances will be required to permit such development. Specifically, pursuant to this Application, we are requesting the following variances from certain provisions and requirements of the Boise City Code, specifically:

1. Variance from Section 11-04-05.2 requiring a front yard and side yard setback of 10 feet for the corner entrance at 17th Street and State Street; and
2. Variance from Section 11-04-05.2 requiring a rear yard setback of 10 feet and side yard setback of 10 feet where the Site abuts a residential use for the placement of the garbage enclosure in the alley and other improvements adjacent to the residential use.

As depicted upon the site plan, the columnar elements of the entrance at 17th Street and State Street project into the 10 foot setback. They do not project into the public right of way. In light of the requirements associated with ensuring a pedestrian access at this location, we believe these elements are appropriate. Similar projecting columns define the southern entrance but it does not appear that Section 11-04-05.2 requires similar rear setbacks in this instance. These structural elements are intended to provide visual relief, architectural interest, and definition and identification of the entrances.

Additionally, the Applicant has worked closely with the owner of the adjoining residential use. As such, they have developed a plan for placement of the trash enclosure. It has been placed on the Site within the property and north of the alley and for the construction of screening along the common property boundary. Its placement and screening have been approved by the adjoining owner. Moreover, they have also reached an agreement about the placement of certain landscaping, improvements, and fencing along their common boundary that may intrude into the side setback. Based upon the parties' efforts to cooperate and to afford adequate flexibility in the future in addressing these issues, it is appropriate to grant a variance from the side setback requirement as well. In the interest of proposing a building that addresses the goals of Blueprint Boise and in light of the efforts of the Applicant to work with the neighboring property owner in developing a site plan that satisfies such owner, we believe that a variance should be granted from the rear and side setback requirements as part of this CUP Application.

Boise City Code 11-03-04.14 authorizes variances being granted upon showing of undue hardship because of characteristics of the site, unique circumstances relating to the desired use, and that are not in conflict with the public interest. The unique considerations related to the need for these signs are discussed in detail below.

- (1) There is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property that is not generally applicable in the district.**

The requested variances arise from constructing a building within an urban setting that is consistent with the desired design standards. We believe that this represents the exceptional circumstance requirement, as it is our proposal that the alley be enlarged and the building be pushed to the street, which results in this placement on the Site and the encroachment of the columnar elements into these setbacks. The enlargement to the alley precludes us from shifting the building any farther to the south and the columnar elements provide definition to the entrances.

The trash enclosure is in fact more than 20 feet from the existing residential use, however, it is less than 10 feet from the rear property line of the Site. Its location has been established to ensure that it is to the rear of the existing residential use. The only other potential locations would all have significantly more impact on the adjoining residential uses, would adversely affect Site circulation, and would affect trash pickup. In light of the goals set forth in Blueprint Boise we believe that this is the best and most desirable location for the enclosure.

- (2) Granting of the variances will not be in conflict with the Comprehensive Plan and will not affect a change in zoning.**

The evaluation of Blueprint Boise has been set forth above in detail. These requested variances are in furtherance of the comprehensive plan and will not affect a change in zoning. As a practical matter someone viewing the Site would be unable to identify the impact that the requested variances have on the design or functionality of the property.

- (3) Granting of the Variances will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvement of other property owners, or the quiet enjoyment thereof.**

Nothing requested herein will have any impact on public health, safety, or welfare to others, nor will it have an impact on the use or enjoyment of adjoining properties. The columnar elements enhance the design and functionality of the Site. The placement of the trash enclosure has been undertaken to minimize impact upon the adjoining property owner. The elements for which the variances are sought provide for the very type of development and improvement sought in Blueprint Boise and the Boise Downtown Design Standards and Guidelines.

G. Conclusion.

We believe that this proposed design for the Site is consistent with the requirements of the Boise City Code and Blueprint Boise and satisfies the requirements for the approval of the CUP and variances.

In support of this Application we have provided the following:

- Site Plan
- Landscape Plan
- Floor Plan
- Elevations, Perspectives, and Materials for the Building
- Color Photographs of the Site and Site Perspectives
- Affidavit of Legal Interest
- Neighborhood Meeting Information

We look forward to presenting this Application to the Commission.

Sincerely,



Geoffrey M. Wardle
GMW:g