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June 28, 2018

Via Email: ttucker@cityofboise.org

Todd Tucker, Sr. Planner
Planning and Development Services
City of Boise
150 N. Capitol Blvd.
Boise, ID 83702

Re: *Conditional Use Application for Parking Reduction for 3047 Bown Way, Permit No. CUP18-00037*

Dear Mr. Tucker,

We write in opposition to the Application for a Parking Reduction, Permit No. CUP18-00037 on behalf of our client, St. Alphonsus Regional Medical Center, which operates a medical clinic adjacent to the proposed development requesting the parking reduction in Bown Crossing.

Bown Crossing does not have enough on-street parking to justify the requested 24-space parking reduction, and off-street parking cannot be considered without a valid joint parking agreement. The application should be denied for four main reasons: 1) the applicant has not obtained a joint parking agreement and so the adequacy of off-street parking is irrelevant; 2) the application for a parking reduction is missing key components; 3) the parking study was not conducted to meet industry standards, and, therefore, could not function as intended; and 4) even *if* the application was complete and the parking study was adequate, the conditional use permit could not be granted because it does not meet the required criteria for obtaining a conditional use permit.

The submitted application conflates the requirements of two different applications: the application for joint use of parking facilities under BCC 11-07-03-3-D(2) and the application for a parking reduction under BCC 11-07-03-3-D(3). This mistake blurs the concepts and creates a hybrid standard that does not comply with the Boise City Code ("Code"). An application for joint use of parking facilities requires consideration of the adequacy of off-street parking for all uses based on specific agreement. An application for a parking reduction must be based on a

documented “reduced need for parking” based on an analysis of peak parking events, public transit, and on-street parking.¹

For the legal and equitable reasons discussed below, a parking reduction is not proper and the application should be denied.

1. The applicant has not obtained a joint parking agreement with the other parking lot users as required by the Code and thus the adequacy of off-street parking is irrelevant.

The applicant is not applying for joint use of common facilities, but the requirements of joint use are implicated since the applicant relies significantly on the off-street parking of other Bown Crossing developments to meet its own parking needs. Since the applicant has failed to obtain a joint parking agreement with the other members of the development, they cannot rely on the off-street parking of other Bown Crossing developments, and the application must be denied. To share parking in a mixed use development, the Code requires an applicant to apply for joint use of parking facilities *and* submit a separate application for a parking reduction.² Under BCC 11-07-03-3-D(2), an application for the joint use of parking facilities shall include:

- i. A detailed site plan identifying the proposed parking space counts and distance to the parking using traditional walking patterns.
- ii. The location of a sign on the premises indicating the location to the additional parking.
- iii. *A parking study demonstrating sufficient off-street parking for all uses.*
- iv. *A joint parking agreement in a form to be recorded for off-street parking facilities.*³

Besides the deficiencies in the parking study—described below in section 3—joint use of parking facilities is not proper because the other members of the development have *not* entered into a joint parking agreement as required by this subsection. To the contrary, members of this development oppose this application.

The requirement for a joint parking agreement in the Code is consistent with, and based on, guidance provided by the Institute of Transportation Engineers (ITE), which emphasizes that “[t]he individual developments must . . . be mutually agreeable to the terms of shared parking.”⁴ Both Boise City and the Ada County Highway District rely on ITE recommendations and

¹ See Exhibit A for a diagram showing how the parking standards for common facilities for joint and mixed uses fits in the code.

² BOISE CITY CODE 11-07-03-D.

³ BOISE CITY CODE 11-07-03-3-D(3)(c).

⁴ VERGIL G. STOVER AND FRANK J. KOEPKE, INSTITUTE OF TRANSPORTATION ENGINEERS, *Transportation and Land Development*, 9-7, Publication No. TB-015 (2002). The Institute of Transportation Engineers (ITE) is a professional association that prescribes standards for conducting parking studies that are relied on by public and private traffic engineers in Idaho.

studies.⁵ Based on the plain language of the Code “to be recorded,” along with the ITE guidance, new joint parking agreements are required for each application for joint use of parking facilities.

The applicant has incorrectly implied that the Master Declaration of Covenants, Conditions, Easements, and Restrictions for Bown Crossing Mixed Use Community (“CC&Rs”) serves doubly as a joint parking agreement. The CC&Rs provide that:

subject to the terms contained in [the CC&Rs], a perpetual, non-exclusive easement for the passage and parking of vehicles on, over and across the parking and driveway areas of those portions of each lot designated as Marketplace West Common Area . . . as the same may from time to time be constructed and maintained for such use for the benefit of each Lot within the Marketplace West Parcel and for the use of the Owners thereof and their Permittees, in common with others entitled to use the same.

Pursuant to the CC&Rs, each member of the development will construct and maintain their share of parking. The customers of each business may then park in any lot so they do not have to move their vehicle when visiting multiple businesses. The CC&Rs *do not* provide for parking subsidies to developments with parking deficiencies. Bown Crossing already faces parking shortages during peak parking events and has no surplus space available. Each member of the development is expected to contribute appropriately to the shared “pool” of parking spaces in a manner that does not overburden or adversely affect other locations in the community.

The joint parking agreement required by the Code is independent of the CC&Rs and provides the parties to the agreement the opportunity to review the facts and circumstances specific to a proposed application to see if there is even enough parking to consider such an agreement. If the parties are confident in the sufficiency of parking supply, then they may express mutual agreement by signing the joint parking agreement. By claiming the CC&Rs constitute a joint parking agreement, the applicant misrepresents that the other members of Bown Crossing consent to the parking reduction, which is not the case. Bown Crossing does not have enough parking to support the requested parking reduction.

It would be inequitable and inappropriate for the City to grant the application for parking reduction when such a decision would essentially require an involuntary parking subsidy to the new development. Taking property from one private property owner for the use of another without just compensation constitutes an unconstitutional taking. Even if the CC&Rs did provide what the applicant erroneously claims, it is not the city’s place to enforce private covenants over the objections of the affected landowners and users.

⁵ See e.g., Boise City Memo regarding permit no. CUP15-00055 dated September 14, 2015. “The methodology of the parking survey was based on the recommendation of the Institute of Transportation Engineers (ITE) publication for Parking Occupancy Data Collection.” See also, ACHD decision dated September 28, 2016 regarding Cimarron Apartments / BOI13-0333 / CAR 16-00024 / PUD 16-00023 wherein ACHD bases parking determination on ITE recommendation.

Since the CC&Rs do not constitute an agreement to provide parking subsidies to developments with parking deficiencies, and since no joint parking agreement exists, the application does not meet the required criteria for the joint use of parking facilities in BCC 11-07-03-3-D(2).

2. The application for parking reduction is incomplete and incorrect.

Under BCC 11-07-03-3-D(3), an application for a parking reduction requires 1) a parking study *documenting a reduced need for parking*; 2) a list and schedule of major parking events; 3) a detailed site plan and parking space count; 4) a description of available public transit services; and 5) a description of available *on-street* parking.⁶ While the third requirement seems to be satisfied, the application is missing the second and fourth criteria, and the first and fifth criteria were completed incorrectly.

The first requirement in the application for a parking reduction is a “parking study documenting a reduced need for parking.” We briefly summarize here, and discuss more fully in section 3 below, that the study methodology was flawed and did not identify peak parking times. It inappropriately relied on *off-street* parking to document the reduced need required by the application for a parking reduction; however, no off-street parking is available without a joint parking agreement. The study does not demonstrate a reduced need for parking based on available on-street parking. Even if off-street parking were available, the study did not collect enough data at enough critical dates and times to create accurate parking profiles for determining compatibility for joint use.

The applicant did not provide a list and schedule of major parking events as per the Code’s second requirement. This requirement is intended to anticipate peak parking times so parking adequacy can be determined. Parking supply that is adequate during times of average patronage could be inadequate during peak parking times. The applicant fails to consider events such as the Annual Bown Crossing Summer Block Party and the weekly East End Market at Bown Crossing each Sunday from May to October—just to name a few. Without a list and schedule of major parking events as required by the Code, the application is incomplete and parking adequacy cannot be determined. Accordingly the application should be denied.

The submitted application also lacks a description of available public transit services, which is the fourth requirement for an application for a parking reduction. This Code requirement is consistent with the ITE recommendation that limitations on parking supply should only be considered where an adequate quantity and quality of alternative travel modes exists.⁷ Here, the applicant did not describe available public transit services as required to determine whether public transportation supports a parking reduction.

⁶ BOISE CITY CODE 11-07-03-D(3)(c) (emphasis added).

⁷ VERGIL G. STOVER AND FRANK J. KOEPKE, INSTITUTE OF TRANSPORTATION ENGINEERS, *Transportation and Land Development*, 9-7, Publication No. TB-015 (2002).

The fifth requirement calls for a description of available on-street parking. The parking study identifies some on-street parking, but incorrectly characterized 37 spaces as off-street parking even though it occurs along S. Bown Way and East River Walk Dr.⁸ This mischaracterization of on-street parking as off-street parking artificially inflates the number of available parking spaces to be shared. The study does not establish “a reduced need for parking” based solely on available on-street parking.

Since the application for a parking reduction is missing two components, and two of the requirements were completed inadequately, the application fails and should be denied.

3. The parking study design and methodology were not properly conducted to function as intended.

The parking study required for the application for a parking reduction under BCC 11-07-03-3-D(3) is different than the parking study required for an application for joint use under BCC 11-07-03-3-D(2). An application for a parking reduction requires a study “documenting a reduced need for parking” based on major events, public transit, and on-street parking; a joint use application requires a study “demonstrating sufficient off-street parking for all uses.”⁹ The parking study completed by Thompson Engineering, Inc. and submitted with this application focuses on off-street parking, as if for a joint use application, but that is not applicable here absent a valid shared parking agreement.

Further, the submitted parking study was not carried out according to industry standards. The study fails to accurately predict whether parking supply will adequately meet parking demand during periods of peak parking if the parking reduction is granted and, thus, does not “document a reduced need for parking.” Accordingly the application should be denied.

According to the ITE,

“[p]arking is a major concern of communities, property owners, land developers and the working and shopping public. Its adequacy is essential for a viable and progressive environment . . . High priority must be given to customer service, convenience and safety. . . **Insufficient parking can cause a development to fail. Retail and service businesses are especially vulnerable to inadequate parking.**”¹⁰

Parking studies are designed to address these objectives by identifying whether parking supply can meet future parking demand.¹¹ To do this, peak parking times must be determined so they can be compared for compatibility. Parking reductions are only appropriate where shared

⁸ See Region 5 and accompanying description in parking study.

⁹ See Exhibit A for a diagram showing the requirements for a joint parking application and the requirements for an application for a parking reduction.

¹⁰ VERGIL G. STOVER AND FRANK J. KOEPKE, INSTITUTE OF TRANSPORTATION ENGINEERS, *Transportation and Land Development*, 9-1, 9-7 Publication No. TB-015 (2002) (emphasis added).

¹¹ INSTITUTE OF TRANSPORTATION ENGINEERS, *TRAFFIC ENGINEERING HANDBOOK*, 79 (James L. Pine ed., 4th ed., 1992).

parking spaces between mixed land uses have parking demand timeframes that do not coincide: “In a mixed use development, if the parking accumulation for one land use drops off before the parking accumulation of a different land use begins to increase . . . the same parking space can be used by each development.”¹²

Recommendations for conducting parking studies are provided by ITE. In fact, Thompson Engineering, Inc. usually conducts its studies using ITE standards,¹³ but failed to do so in this study. ITE-recommended methods are designed to measure peak demand, but this study measured average occupancy without identifying peak demand. Additionally, ITE calls for using a more robust sampling size, but, here, the parking study is based on samples collected during a total of two hours on a Wednesday in January and two hours on a Friday in February. This is not consistent with the industry recommendations provided by ITE:

Off-street space occupancy can [] be obtained by counting the number of vehicles parked at regular intervals. . . . Generally, one count every hour is sufficient, but a higher frequency may be necessary if sharp fluctuations in parking demand exist.¹⁴ [I]t is important to consider seasonal and day-of-week variations as well as hourly fluctuations. Residential uses peak between 1:00 a.m. and 5:00 a.m. Restaurants peak at noon [] or early evening []. Offices have the heaviest demand Monday morning at 10:00 a.m.¹⁵

Based on these recommendations, the parking study should have included more observations during different seasons, different days of the week—especially weekends—and different times of the day. Conducted in this manner, peak parking demand for each use could have been identified and compared to see whether peak parking coincided between uses or whether peak parking demand occurred at different times. This would determine whether parking could be appropriately and efficiently shared.

We emphasize that no properly conducted parking study can rely on off-street parking without a valid joint parking agreement. The parking study can only rely on available parking to document a reduced need for parking.

The submitted parking study did not confine its analysis to available parking, but considered unavailable off-site parking. It also did not properly sample or analyze the data needed to identify peak parking demand. Therefore, the study failed to demonstrate a reduced need for parking as required by the Code, and the application should be denied.

¹² VERGIL G. STOVER AND FRANK J. KOEPKE, INSTITUTE OF TRANSPORTATION ENGINEERS, *Transportation and Land Development*, 9-8, Publication No. TB-015 (2002).

¹³ See e.g., Boise City Memo regarding permit no. CUP15-00055 dated September 14, 2015. “The methodology of the parking survey was based on the recommendation of the Institute of Transportation Engineers (ITE) publication for Parking Occupancy Data Collection.”

¹⁴ INSTITUTE OF TRANSPORTATION ENGINEERS, *TRANSPORTATION AND TRAFFIC ENGINEERING HANDBOOK*, 457 (John E. Baerwald ed., 1976).

¹⁵ INSTITUTE OF TRANSPORTATION ENGINEERS, *TRAFFIC ENGINEERING HANDBOOK*, 84 (James L. Pine ed., 4th ed., 1992).

4. The conditional use permit cannot be granted because the application does not meet the required criteria.

Boise City Code 11-03-04-6-C(7) requires applicants for a conditional use permit to meet seven requirements. Here, the applicant cannot meet at least three of the criteria. In particular, the applicant cannot establish that 1) the proposed use *will not* place an undue burden on transportation and other public facilities in the vicinity; 2) the site *is* large enough to accommodate the proposed use and all parking as required by the Code; and 3) the proposed use *will not* adversely affect other property in the vicinity.¹⁶

A parking reduction could increase site circulation. Site circulation is traffic created by patrons looking for parking when parking is limited. This can discourage consumers and create unsafe conditions.

A parking reduction would negatively impact one of the closest neighbors to the new development: the medical clinic operated by St. Alphonsus. The patients visiting St. Alphonsus are likely to be more vulnerable to increases in site circulation or more sensitive than typical retail customers to parking and walking a greater distance from the main entrance of the clinic. This would be especially true if the patient was ill or injured.

The current tenants only provide a snapshot of parking needs. Future impacts to the other properties could be even greater than current impacts. If a new tenant with a more intensive use replaces the medical clinic, the parking shortage would be perpetuated. A similar effect would follow if any of the building owners expanded the size of their building.

The applicant has also failed to establish that the site *is* large enough to accommodate the proposed use and all parking as required by the Code. Based on the Code, a development of this size—approximately 7,000 square feet—requires 38 parking places; however, the development only proposes 14. This large discrepancy in parking is compelling evidence that the site is *not* large enough to accommodate the proposed use and all parking as required by Code.

Without a more robust parking study the applicant cannot reasonably represent that public facilities and other properties nearby—especially the health clinic—will not be unduly burdened or adversely affected. Neither can the applicant claim that the site is large enough to accommodate the proposed use and all parking as required by Code. These deficiencies in the application for a conditional use permit are grounds for denial and the conditional use permit should not be granted.


¹⁶ BOISE CITY CODE 11-03-04-6-C(7)(a)(ii)-(iv).

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Conclusion

The application fails at multiple levels to meet the requirements for a parking reduction. As discussed herein, 1) the applicant has not obtained a joint parking agreement; 2) the application is missing key components; 3) the parking study was not conducted to meet industry standards and, therefore, could not function as intended; and 4) the conditional use permit does not meet the required criteria for obtaining a conditional use permit. Approval of the applicant's request would adversely impact healthcare delivered to the community. For these reasons, we respectfully request that the application be denied.

Sincerely,


Deborah E. Nelson

cc: Clients
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EXHIBIT A: Diagram showing how the parking standards for common facilities for joint and mixed uses fits in the code.

