

Recording requested by:

Boise Caddis, LLC
1038 Trowbridge Rd.
East Lansing, MI 48823

DEVELOPMENT AGREEMENT
(CAR _____)

This Development Agreement (“Agreement”) is entered into by and between Boise City, an Idaho municipal corporation (“City”) and Boise Caddis, LLC, an Idaho limited liability company, the owner of the real property described herein and the Applicant for Boise City Rezone number CAR_____ (“Developer”). The “Effective Date” of this Agreement shall be the date of its recording in the records of Ada County, Idaho.

RECITALS

- A. Developer has applied to the City for a conditional rezone to C-5DD of the real property in Boise City, Ada County, Idaho, legally described in Exhibit A shown on Exhibit B (“Property”) for a mixed-use project that includes, but is not limited to, municipal parking, residential, and retail uses.
- B. The City, pursuant to Boise City Code Section 11-03-04.2 and Idaho Code §67-6511A, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific purpose to proceed in a specific area for a specific purpose or use which is appropriate in the area, but for which the requested zoning may not be consistent with the Idaho Code and Boise City Code.
- C. The City’s Planning & Zoning Commission and City Council have held public hearings as prescribed by law with respect to the zoning and planned development of the Property and this Agreement.
- D. It is the intent and desire of the parties hereto to proceed with the rezone as provided herein, subject to the terms and conditions of this Agreement and the amendments hereto, and conditioned upon Developer’s and the Property’s compliance with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the mutual consideration as reflected in the covenants, duties and obligations herein set forth, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Description and Location of Property; Size of Property; Present Zoning. This conditional C-5DD zone shall apply to the Property specifically described in Exhibit A. The Property was formerly zoned by Boise City as R-ODD.

2. Development Plans. The Property will be developed as conceptually illustrated on the plans attached as Exhibit B (collectively "Development Plans"). Minor changes to the Development Plans can be approved through the Design Review process. Significant changes to the Development Plans, as determined by the City's Planning Director, shall be approved by Boise City Council and documented in a signed and recorded amendment to this Agreement. Minor changes include less square footage, fewer parking stalls, and/or less than a 10% increase in square footage or parking stalls. Developer intends to obtain approval to either vacate the alley and/or obtain an Air Rights Easement from ACHD to allow for this development and will obtain the requisite municipal approvals to accomplish same.

3. Permitted Uses. This Agreement and the conditional rezone permits all uses in the C-5DD zone on the Property as specified in the Boise City Code, including the following uses currently proposed by the Developer:

- a. Structured Parking;
- b. Multi-Family Residential;
- c. Office / Retail; and/or
- d. Accessory Uses, i.e. dog park, bike parking, etc.

4. Height Limitation. The maximum building height on the Property may not exceed ninety-five (95) feet, as measured in accordance with Boise City Code; provided, however, rooftop enclosures (such as elevator, stairway and mechanical penthouses), mechanical equipment (and any related screening elements) may exceed the foregoing height limitation to the extent permitted by the Boise City Code.

5. Sustainability Features. The Property will be developed in a manner that incorporates sustainability features. Developer presently intends to incorporate the following sustainability features (or their equivalents): (a) Storm water detention system to capture the project's storm water runoff; (b) bike rooms will meet or exceed Boise bike storage requirements in order to enhance the convenience of bicycles as an alternative mobility option and to prominently feature and to encourage bike commuting within the area; (c) electric vehicle charging stations will be provided in the parking garage to promote the use of low/no emission vehicles; and (d) the use of sensible "green" features in the design of the project, such as LED lighting throughout the building, EnergyStar® rated appliances, low-flow plumbing fixtures, garbage/recycling chutes. Further, Developer agrees to studying the feasibility of incorporating solar panels on the roof of the project, installing a "green roof or wall" within the project, and connecting the central hot water heating system to the City's geothermal service; provided, however, Developer will not be obligated to incorporate any studied sustainability feature unless Developer concludes that the application of that sustainability feature makes economic sense for this project.

6. Change in Use. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Boise City Code. In the event the Developer changes or expands the use permitted by this Agreement without the approval required by this Agreement, the Boise City Code, and Idaho Code § 67-6509, the Developer shall be in default of this Agreement.

7. Construction of Use in Conditional Zone. Any new construction shall comply with this Agreement, Boise City Code, Idaho law, and all other applicable laws.

8. Default. In the event the Developer, its/her/his heirs or assigns or subsequent owners of the property, or any other person acquiring an interest in the property, fails to faithfully comply with all of the terms and conditions included in this Agreement, the City shall have the following non-exclusive and cumulative remedies, upon the City's compliance with the requirements of the Boise City Code, Idaho Code § 67-6511A, and this Agreement, after notice to Developer and an opportunity to cure.

a. In the event the Boise City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and the Developer shall comply with the amended terms. Developer's failure to comply with the amended terms shall result in default; and

b. In the event the Boise City Council, after compliance with the requirements of the Boise City Code, determines that this Agreement shall be terminated as a result of the default, the zoning of the Property shall revert to R-ODD as provided in Idaho Code § 67-6511A. In such event, all uses of the Property which are not consistent with R-ODD zoning or otherwise approved by the City of Boise shall immediately cease; and

c. In the event of a default by Developer, the City shall additionally have any and all remedies available to it in law or equity.

Notwithstanding the foregoing, in the event of a default under this Agreement or the breach of any of its terms or conditions, the party alleging default or breach shall give the other party not less than 30 days notice of the default or breach in writing, unless an emergency exists threatening the health and safety of the public. If such an emergency exists, written notice shall be given in a reasonable time and manner in light of the circumstances. The notice shall specify the nature of the alleged default or breach and, where appropriate, the manner and period of time during which the default or breach may be satisfactorily cured. During a period of cure, the party charged with a default or breach shall not be considered in default for the purposes of termination or zoning reversion or the institution of legal proceedings. Further, if the default or breach is cured, the party that alleged the default or breach shall take no further action.

A waiver by the City of any default by the Developer of any one or more of the covenants or conditions hereof shall apply solely to the default waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

9. Consent to Reversion of Zone. By entering into this Agreement, Developer does hereby agree that in the event Developer defaults in the terms and conditions of this Agreement in connection with the Property, Developer consents to any reversion of the zoning on the Property to R-ODD zoning district.

10. Notices. Any and all notices required to be given by either of the parties hereto shall be in writing and be deemed delivered upon personal service, if hand-delivered, or when mailed in the United States mail, certified, return receipt requested, addressed as follows:

To the City:

Director, Community Planning and Development Department
City of Boise City
P.O. Box 500
Boise, Idaho 83701-0500

To the Developer:

Boise Caddis, LLC
Attn: Kevin T. McGraw
1038 Trowbridge Rd.
East Lansing, MI 48823

Either party shall give notice to the other party of any change of their address for the purpose of this section by giving written notice of such change to the other in the manner herein provided. Developer expressly agrees to notify any successors and assigns of the need to provide City with a current address. In the event any successor or assign fails to provide an address, City obligations of mailing shall be deemed accomplished by use of the address on file with the Ada County Tax Assessor.

11. Attorneys' Fees. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall apply to any default, termination or forfeiture of this Agreement.

12. Time Is Of The Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

13. Binding Upon Successors; Agreement Runs with the Land. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This

Agreement shall run with the land and shall benefit and be binding on the Developer and all subsequent owners of the Property, who shall be considered a "Developer" as used herein.

14. Requirement for Recordation. The Developer shall record this document, including all the exhibits, in conjunction with the formal adoption of CAR_____ by the Boise City Council, and immediately provide a recorded copy to the City. Failure to comply with this Section shall be deemed a default of this Agreement by the Developer.

15. Effective Date. This Agreement shall not be effective until CAR_____ has been approved by the City and has been recorded in the records of Ada County, Idaho.

16. Entire Agreement. This Agreement is the entire agreement of the parties regarding the subject matter hereto.

17. Recitals and Exhibits. The recitals herein and exhibits attached hereto are hereby incorporated by reference.

18. Modification or Termination. This Agreement may only be modified and/or terminated as follows: (a) by mutual agreement of Developer and the City; and/or (b) unilaterally by the City, so long as it complies with Boise City Code and Idaho state law. Any modification and/or termination shall be recorded in the records of Ada County, Idaho.

19. Authority. Developer represents and warrants to the City that the person signing this Agreement has the authority to sign the Agreement on behalf of Developer. The Developer represents and warrants to the City that the Developer owns the Property and that this Agreement is binding and enforceable on the Property.

20. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

[End of Text]

EXECUTED EFFECTIVE as of the Effective Date.

BOISE CITY

By: _____
David H. Bieter, Mayor

Date: _____

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on _____, 2018, by DAVID H. BIETER as Mayor of the CITY OF BOISE.

NOTARY PUBLIC

My Commission Expires:

DEVELOPER

BOISE CADDIS, LLC,
an Idaho limited liability company

By: _____

Name: Kevin T. McGraw

Its: Member

Date: _____

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on _____, 2018, by KEVIN T. MCGRAW as a Member of BOISE CADDIS, LLC.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT A
PROPERTY LEGAL DESCRIPTION



Page 1 of 2

THE LAND GROUP, INC.

August 16, 2018
Project No. 118111

2nd & MYRTLE
PORTION OF BLOCK 6 CENTRAL SUBDIVISION

A parcel of land being all of lots 1-16 and the southwesterly one half of lot 17 in Block 6 of Central Subdivision, according to the official plat thereof, filed in Book 1 of Plats, Page 7, Records of Ada County, Idaho, located in a portion of Government Lot 3, Section 10 Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho, more particularly described as follows:

BEGINNING at the southerly corner of said block 6, from which a brass cap monument marking the centerline intersection of West Myrtle Street and South 2nd Street, bears South 09°47'35" East, 56.55 feet;
Thence on the southwesterly boundary line of said block 6, North 54°48'28" West, 299.88 feet, from which a brass cap monument marking the centerline intersection of West Myrtle Street and South 3rd Street, bears South 80°13'30" West, 56.60 feet;
Thence leaving said southwesterly boundary line, North 35°15'27" East, 167.51 feet, on the northwesterly boundary line of said block 6;
Thence leaving said northwesterly boundary line, South 54°48'23" East, 157.89 feet, to a point on the southeasterly alley boundary line of said block 6;
Thence on said southeasterly alley boundary line, North 35°14'22" East, 92.50 feet, to a point on the northeasterly boundary line of said block 6;
Thence on said northeasterly boundary line, South 54°48'14" East, 141.86 feet, to the easterly corner of said block 6;
Thence on the southeasterly boundary line of said block 6, South 35°13'17" West, 260.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

A strip of land being a portion of platted alley in Block 6 of Central Subdivision, according to the official plat thereof, filed in Book 1 of Plats, Page 7, Records of Ada County, Idaho, located in a portion of Government Lot 3, Section 10 Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho, more particularly described as follows:

EXHIBIT A
PROPERTY LEGAL DESCRIPTION



THE LAND GROUP, INC.

COMMENCING at the southerly corner of said block 6, from which a brass cap monument marking the centerline intersection of West Myrtle Street and South 2nd Street, bears South 09°47'35" East, 56.55 feet;
Thence on the southwesterly boundary line of said block 6, North 54°48'28" West, 141.94 feet to the POINT OF BEGINNING;

Thence continuing on said southwesterly boundary line, North 54°48'28" West, 16.00 feet;
Thence leaving said southwesterly boundary line, North 35°14'22" East, 167.51 feet;
Thence South 54°48'23" East, 16.00 feet;
Thence South 35°14'22" West, 167.51 feet, to the POINT OF BEGINNING.

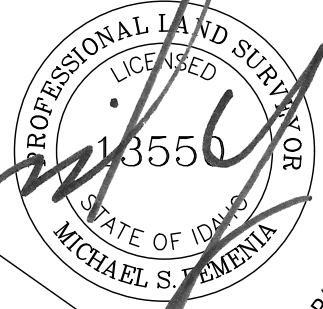
The above described parcel of land contains 1.393 acres more or less, subject to all existing easements and rights-of-way of record.

THE LAND GROUP, INC.
Michael S. Femenia

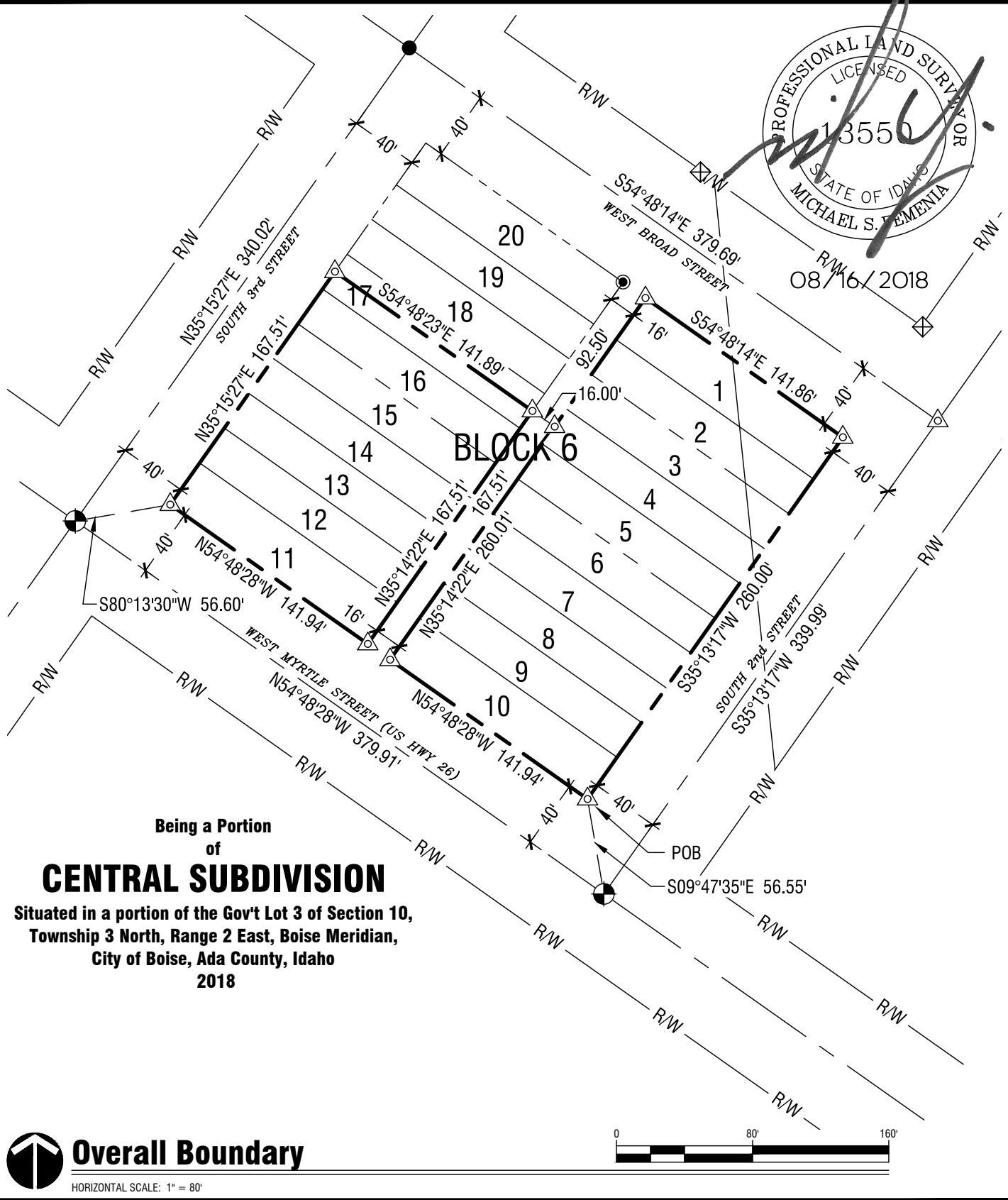


08/16/2018

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**



08/16/2018



Being a Portion
of
CENTRAL SUBDIVISION
Situating in a portion of the Gov't Lot 3 of Section 10,
Township 3 North, Range 2 East, Boise Meridian,
City of Boise, Ada County, Idaho
2018



**THE LAND GROUP
INCORPORATED**
462 East Shore Drive, Suite 100
Eagle, Idaho 83616
Phone 208.939.4041 • Fax 208.939.4445

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Sheet Title:
**Central Subdivision
Portion of Block 6
NW corner Myrtle & 2nd**
Boise Idaho

Project No.:	118111
Date of Issuance:	August 16, 2018
Designed by:	MSF
Checked by:	STAFF
Sheet No.:	1

File Location: g:\2018\118111\cad\survey\topo & alia\118111_bndy 2nd & myrtle 1808 16.dwg
 Last Plotted By: mke femenia
 Date Plotted: Thursday, August 16 2018 at 02:40 PM

Exhibit B Development Plan

The 3rd & Myrtle project seeks to increase the residential density over what is currently zoned. This change follows the city's masterplan housing goals for the downtown area. To ensure that the project maintains a sense of scale agreeable to pedestrians and the surrounding context, building massing is modified to reduce the perceived size. The residential portion of the building is broken into multiple building masses. These masses are rotated or set back from the edge of the building below to create an intermediate step along the vertical surface of the building.

The façade along W Myrtle St is broken up at ground level with the inclusion of amenity spaces and a central alley which splits the first two floors. Residential areas above the garage are split into multiple distinct masses. The masses in the center of the building are stepped back to provide a mid-level roof deck and to reduce building height from the street. The mass on S 2nd Street is separated from the other masses by a circulation space to provide visual relief and to create the impression that it is a distinct structure. The mass on 3rd Street extends full height from the ground floor to the top of the building. This links the residential portion to the ground plane and creates an object of appropriate size to be recognizable to drivers along W Myrtle.

Along W Broad St. Building massing is split into two major forms, each extending to ground level. The main residential mass that borders S 2nd and S Broad St is rotated to expose space for possible roof decks along the vertical surface and to provide for human scale moments along the vertical façade. Massing along the first two levels will explore potential options for retail to create multi-layered vertical space along what is understood to be a pedestrian-centric road as development continues.

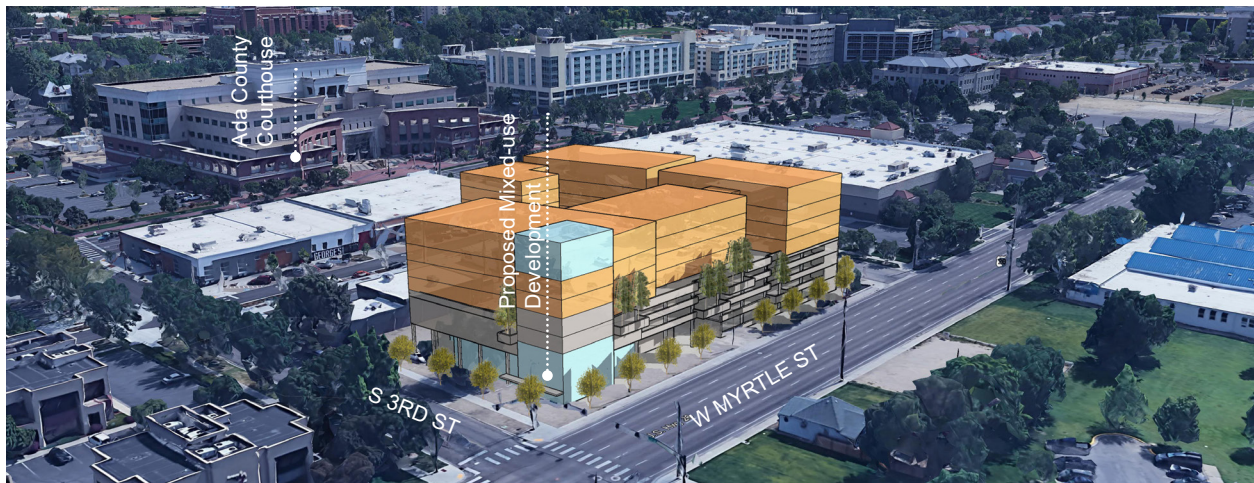
Along S 2nd Street, The residential massing is split into two, with the split continuing into the garage below. The split is conceptually anticipated to include a feature tree as an integral feature to the design.

To further reduce overall building mass and to encourage connection between the ground plane and the residential levels, planters containing landscaping extend from the garage at various levels. These planters carve away at the garage massing, and the landscaping they contain serve as a screen for the structure. This occurs on S 2nd St, S 3rd St, and along W Myrtle St.

The massing perspective below conceptually illustrates the presently anticipated bulk and massing of the development, but the actual bulk and massing will be as approved by the City through the Design Review process.



- Residential
- Amenity or Residential as feasible
- Retail as feasible
- Parking



- Residential
- Amenity or Residential as feasible
- Retail as feasible
- Parking