



MINUTES
TWIN FALLS CITY PLANNING & ZONING COMMISSION
August 23, 2016 6:00 PM
City Council Chambers
305 3rd Avenue East Twin Falls, ID 83301

PLANNING & ZONING COMMISSION MEMBERS

CITY LIMITS:

Danielle Dawson Tom Frank Kevin Grey Gerardo “Tato” Muñoz Ed Musser Christopher Reid Jolinda Tatum
 Chairman **Vice-Chairman**

AREA OF IMPACT:

Ryan Higley Steve Woods

ATTENDANCE

CITY LIMIT MEMBERS

PRESENT

Dawson
 Frank
 Grey
 Muñoz
 Musser
 Tatum

ABSENT

Reid

AREA OF IMPACT MEMBERS

PRESENT

Higley
 Woods

ABSENT

CITY STAFF: Carraway-Johnson, Nope, Spendlove, Strickland, Vitek, Wonderlich

I. CALL MEETING TO ORDER:

Chairman Frank called the meeting to order at 6:00 P.M. He then reviewed the public meeting procedures with the audience, confirmed there was a quorum present and introduced City Staff.

II. CONSENT CALENDAR:

1. Approval of Minutes from the following meeting(s): **None**
2. Approval of Findings of Fact and Conclusions of Law: **None**

III. ITEMS OF CONSIDERATION:

1. Reconsideration of the **Initiation of the Revocation** of Special Use Permit #1313 granted on April 22, 2014 to Mark Gordoski dba Marky’s Supertow to operate an automotive impound facility on property located at 198 Gem Street. c/o City of Twin Falls (app. 2616)

Staff Presentation:

In March 2016 of this year, staff received a complaint regarding the status of the SUP conditions of approval. Over the ensuing month letters and other correspondence was sent to Mr. Gordoski informing him of the non-compliance. No response was made by Mr. Gordoski until staff scheduled an item on the May24, 2016 P&Z Agenda. Prior to the meeting Mr. Gordoski made contact, and he attended the meeting to explain his case.

During the meeting, Mr. Gordoski agreed to accomplish the conditions of the SUP. The Commission placed a date of July 12th to reconsider this item and to receive an update on the progress.

Between May 24th and July 12th, Mr. Gordoski submitted a Building Permit to construct the 8 ft fence. That permit is in the process of being reviewed. Due to the height of the fence, Engineering calculations are required. Mr. Gordoski has expressed the timeframe for his Engineer to work on such a small project has pushed him behind other larger projects. He indicated all the materials have been purchased and he is simply waiting for the fence plan to be drawn so he can re-submitt them to the City Building Department for review.

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During the July 12th meeting, the commission discussed this issue and motioned to have an update on August 9th. Due to the number and nature of the items scheduled for the August 9th meeting, staff elected to postpone the update to August 23 in order to give the requisite time on the agenda for this item to be discussed.

Since July 12th, Mr Gordoski has provided a Stormwater Plan to City Staff. The Engineering department has reviewed and approved that plan, thus accomplishing one of the requirements of the SUP. The only outstanding items as of August 19th are, the 8ft fence and the fluid/chemical management plan.

The commission is tasked with reviewing the facts and circumstances of this case and vote for one of the following: initiate the process for revocation, table the item and bring it back at another public meeting, or not initiate the revocation process.

Applicant Presentation:

Mr. Gordoski explained he has submitted everything and is awaiting an approved permit. The process has taken longer due to the fence requiring engineered plans.

PZ Questions/Comments:

Commissioner Grey asked if staff will follow this permit once issued.

Planner I Spendlove stated that there will be inspections required for the storm water retention as well as the installation of the fence. Once the final inspections are completed a letter of completion will be issued to the applicant.

Commissioner Musser asked if the issues with the appropriate use of the property have been resolved. Planner I Spendlove explained that through this process it has been clarified with the applicant what portion of the property will be fenced and used for the impound yard. The applicant is aware of the allowed use and has addresses staffs concerns.

Deliberations Followed:

Commissioner Woods stated that the issues seem to have been addressed and that the required information has been submitted to finish up this process.

City Attorney Wonderlich explained to the Commission that a motion is not necessary for this item, if no motion is made the request is void and will not appear again unless staff has a problem.

[Request for Initiation of Revocation Has Been Withdrawn](#)

IV. PUBLIC HEARINGS:

1. Request for a **Special Use Permit** to replace a legal non-conforming use with a different non-conforming use on property located at 1040 Shoshone Street East [c/o Jim Woodland on behalf of Vista View, LLC](#) (app. 2806)

Applicant Presentation:

Jim Woodland, Keller Williams, representing the applicant, stated Brenden Taylor is the owner of Burnt Lemon Grill and has multiple franchises throughout Idaho. Twin Falls is the headquarters for the Burnt Lemon Grill located on Addison Avenue East. Due to the success over the past six years they need to relocated to a larger facility. Brenden Taylor has solicited the help of Vista View, LLC to assist him in this endeavor. His other restaurants that are located throughout Idaho are very upscale and his goal is to provide the same experience here in his hometown. He displayed on the overhead photos of his other restaurants located throughout Idaho. Brenden has looked at several locations the subject property has been on the market for over a year and a half. There have only been two offers and both have been

restaurants. His presentation addresses City Code 10-3-4 regarding the portion stating “the applicant must show that the existing building cannot reasonable be converted to a conforming use”. He explained that the building has an open floor plan that tends to lead to some difficulty when remodeling the space for an office. Combine the projects remodeling along with the purchase price would not attract an investor. Twin Falls has a surplus of office space with a 20% vacancy rate which reflects the reason for the lack of offers on this property.

Burnt Lemon Grills hours of operation would be 10:30 AM to 9:00 PM, Monday – Saturday. The business is closed on Sundays and during the hours of operation it is staffed by two shifts consisting of 4 employees from 8:00 am to 10:00 pm. The applicant estimates 75-100 vehicles per day, with the peak time being 11:30 – 2:30 PM and 6:00 – 8:00 PM serving 7-10 customers. The applicant has claimed the previous user; Washington Federal Savings and Loan, served 120 – 140 cars per day which would result in a higher vehicle count compared to their proposed use of a restaurant. This has not been verified by staff. The applicant declares the restaurant will not have a typical “drive –thru” window. Rather, it will be a pick-up window only, for call ahead or online orders. As such, no order board will be installed, and no intercom system used. The applicant claims only effect on the neighboring properties will be “the sweet aroma of barbecue”. To eliminate trash odors, they have their canisters emptied twice a week. The applicant feels this use will have less of an impact to the adjacent properties compared to the previous use.

Brenden Taylor, owner of Burnt Lemon, stated that he grew up on Twin Falls and has four daughters. He has six locations with the Twin Falls location opening in 2010. The economy was bad at the time so they chose a location that was economically feasible at the time since then they have outgrown the current location. They have a lot of loyal customers and as the economy has picked up properties are beginning to rise in cost and he has found this location which would keep his cost down for the customers.

Staff Presentation:

In 1976, a Conditional Use Permit was granted by Ordinance 1800 to permit a Savings and Loan Bank including a drive-thru, to be constructed and operated on the property. No further zoning history is known at this time. City utility billing records indicate there has only been a financial institution operating from this property. The property was vacated within the last 5 years.

The property is located at 1040 Shoshone St E and is zoned R4 PRO; residential with a professional office overlay. The R4 PRO zoning allows medium density residential uses and professional services by special use permit. The applicant has submitted a request to operate a restaurant with a drive-up window. The narrative details the proposed operation of the restaurant.

Per City Code 10-3-4: ... “A legal nonconforming use involving a building may be resumed or replaced by another nonconforming use by special use permit if said legal nonconforming use has not been discontinued for more than five (5) years. In addition to the General Standards, 10-13-2.2(D), applicable to special uses, the applicant must show that the existing building cannot reasonable be converted to a conforming use. (Ord. 2555, 7-21-1997)”

The previous use as a Bank was considered legal non-conforming due to being established prior to current code which now requires Planning & Zoning Commission approval by Special Use Permit. The Zoning of R-4 on the property permits Residential Single Family and Duplex’s outright, and other Cultural or Public Assembly type uses with a special use permit. The PRO allows various office/professional uses through a

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special use permit. It is the applicant's responsibility to show that the existing building cannot be reasonably converted to one of these possible conforming uses.

During this process, the Commission should look at the added standard listed above for reasonable conversion of the building. Additionally, the Commission should look at all impacts the proposed land use may incur on the surrounding area.

Per City Code 10-10: Restaurants have a parking requirement of one (1) parking space per one hundred (100) square feet of the associated structure, and outside seating. The building is listed at approximately 2600 square feet, which equals a minimum of twenty-seven (27) parking spaces. In addition, Drive-thru's are required to have a minimum of 5 stacking spaces from the first order board/window/stopping point. City Code does not make a distinction between drive-thru's and pick-up windows.

The Commission should look at all impacts the proposed land use will incur on the surrounding area and propose mitigating conditions if applicable.

Per City Code 10-11-1 thru 8: Required improvements include streets, water and sewer, drainage and storm water. These required improvements would be evaluated and all applicable code requirements will be enforced at the time of building permit submittal if applicable.

If this request is granted the property shall be required to obtain a Certificate of Occupancy for a change of use and to meet current minimum required improvements. The commission may wish to evaluate this project for any improvements it feels are necessary to mitigate any impacts that could occur.

The change from a Bank to a Restaurant with a drive-thru (pickup window) will have impacts on neighboring properties. Typically, these impacts include noise from comings and goings of customers, suppliers and employees. Light infiltration from the parking lot and security lighting. Lastly, the odors of cooking food can permeate to nearby properties.

The traffic increase will be modest considering it is near the intersection of Shoshone St and Blue Lakes Boulevard. This intersection sees some of the highest traffic counts in the City. The real impact will be noticed beyond which the hours the bank operated, particularly early in the morning and later in the evening. The property will be active earlier, and later in the day which could be impactful to some neighboring properties.

Assistant City Engineer Vitek explained a pick-up window is a great idea, but it has not happened very often here in Twin Falls. They may be very successful and it may work exactly as planned however without evidence that it will work the Engineering Department is requesting a condition be placed on the Special Use Permit that will allow staff to address complaints and require possible mitigation measures.

The light infiltration impact is not being considered greatly impactful. The bank had security lighting for the building and the parking area. A condition could be placed on the permit requiring light sources to be shielded from nearby residential properties.

The odor from cooking food is unavoidable for restaurants. Since a change of use of the building will occur, all cooking facilities will be installed to current building code standards. These include dissipating kitchen odors through ventilation.

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The impact of a pick-up window is different than the impact of a drive-thru. It would be appropriate to limit the use of the drive-up window to pick-up only.

The Commission is tasked with determining whether the applicant has shown that the existing building cannot reasonable be converted to a conforming use.

Planner I Spendlove stated upon conclusion should the Commission determine a professional office cannot reasonably be operated from this existing building the Commission shall evaluate the impacts of the proposed land use on the surrounding area and put forward mitigating conditions they feel are applicable if any. If approved, as presented, staff recommends the following conditions:

1. Subject to the site plan amendments as required by Building, Engineering, Fire, and Zoning Officials to ensure compliance with applicable City Code Requirements and Standards.
2. Subject to no outdoor audio or announcement system being utilized on this property.
3. Subject to no order board or menu being displayed for the drive-up window.
4. Subject to light source for security and parking areas being shielded from view of neighboring residential properties.
5. Subject to mitigating measures being installed by the applicant, per the City Engineer to maintain traffic safety and to reduce the impacts of the drive-thru window.

PZ Questions of Comments:

- Commissioner Woods asked about other pick-up windows recently being built and if they have been required to have an exit lane.
- Planner I Spendlove stated they would have to comply with the code and the most recent pick-up window he knows of was designed with the exit lane.
- Commissioner Woods asked if there have been complaints about odors from the nearby neighbors at the current location on Addison Avenue East.
- Commission Grey asked the applicant if his other restaurants have drive-thru or pick-up windows only.
- Mr. Taylor explained that his Jerome facility has a drive-thru window they are trying to move away from this type of service because they don't operate like a fast food and have the orders prepared in a couple of minutes. It takes approximately 8 to 10 minutes per order and currently they have customers that order ahead use the drive-thru aisle to pick up the order and get stacked up in line behind people that have just ordered from the menu board. They can better accommodate their customers with counter service, phone and text orders.
- Commissioner Frank clarified that the parking is non-conforming also.
- Planner I Spendlove stated they would be replacing a non-conforming use with a non-conforming use the drive-thru is not conforming, the land use is non-conforming and the parking would be non-conforming. If this were approved, it would have to operate as presented replacing one use for the other.
- Commissioner Frank asked if the neighborhood streets were to start filling up with cars from customers and employees is there any recourse for the neighbors.
- City Attorney Wonderlich stated if this is a concern for the Commission a condition would have to be added to the Special Use Permit requiring customers and employees to park on-site.
- Commissioner Frank stated that is a concern for him because of previous experiences with such things a coffee shops.
- Commissioner Grey asked if this type of condition would be permissible or feasible.

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- City Attorney Wonderlich explained this use would ordinarily require 27 parking spaces to operate. They don't have 27 spaces and they are adjacent to a residential neighborhood so in granting this potential impacts to the neighborhood should be considered. As a result of this business the cars get parked along the residential streets then that is a change of conditions for the neighbors. If the condition requires all parking to remain on-site this give the Commission a mechanism to address the problem if it this becomes an issue for the neighbors. A violation of a condition listed on the permit would allow for revocation to be considered.
- Commissioner Munoz ask what is the Comprehensive Plan designation for this area.
- Planner I Spendlove stated the designation is Townsite which is essentially a mixed use type of plan.
- Commissioner Munoz asked if the Special Use Permit can be restricted to this applicant for this use.
- Commissioner Woods asked how many sit down customers does the applicant expect on an average day.
- Mr. Taylor stated the occupancy for the space would be approximately 72 but realistically it will be closer to about 30 at a time.
- Commissioner Woods asked about the number of parking spaces at his current location.
- Mr. Taylor stated there are 8 spaces at the current location.
- Commissioner Grey asked when this building was constructed if it met the parking requirements for the use.
- Planner I Spendlove explained yes the parking met the code requirements for the use.

Public Hearing: **Opened**

Fran Florence, Kimberly, ID stated Westerra Real Estate has this property listed and has been listed for two years. When this property was listed the thought was that it would most likely be a property that would need to be repurposed. He thinks this is a great repurpose of an existing building in a neighborhood that could use some new energy. This would create a connection between downtown and five points. This entrepreneur had created his own brand and he would encourage the Commissions support.

Public Hearing: **Closed**

Closing Statements:

Mr. Woodland stated the applicant doesn't think parking is going to be an issue. This is a local homegrown business trying to continue to expand and grow.

Deliberations Followed:

- Commissioner Dawson agreed that she doesn't think the parking is going to be an issue. She would also recommend that when the motion is made that a condition be added that the drive through is for a pick-up only. Stacking should not be an issue if it is pick-up only, the issue is when people have to stop to give an order and wait for the food to be prepared.
- Commissioner Munoz is very conflicted with this request because of the use regulations listed in the R-4 and Professional Office Overlay. Some of the impacts and changes that he is concerned with have not been expressed by the neighbors, which is who he would expect feedback from. He wants to make sure that the conditions help it to fit in the area with minimal impacts. This is more of a commercial use it needs more parking, requires delivery to the site for products if this were to be approved he would like a condition restricting the permit to this applicant for this use.
- Commissioner Frank stated he is for this, he has been to the current location and it is very difficult to get in and out of so this will be an improvement for the customers. The City works on a complaint

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based system so there needs to be potentially a condition addressing the parking, so the neighbors have recourse for complaints.

- Commissioner Grey stated there is letter of support from approximately 300 signatures of support, which is probably why people are not here.
- Commissioner Frank stated he wants to protect the neighbors and has concerns with approving something that seems ok up front and then becomes an issue like a past coffee shop that came in previously.
- Commissioner Woods stated the other concern is having this building stay vacant longer and become an eyesore that is at one of the main intersections of town.
- Commissioner Grey stated there is no way to know if this will work without trying.

Motion:

Commissioner Grey made a motion to approve the request, as presented, with staff recommendations. Commissioner Tatum seconded the motion.

Discussion of the Motion:

Commissioner Munoz stated he would like to amend the motion to add that customer and employee parking remain on premise and to add that the permit is restricted to this use by this applicant. Commissioner Tatum seconded the motion.

Discussion of Proposed Amendments:

- Commissioner Woods would like the condition for parking to state mitigation measures be implemented if it becomes a problem.
- Commissioner Munoz explained the motion is recommended to help the neighbors have recourse if the parking becomes a problem for the neighbors. Parking on the street is allowed, without this condition on the permit there is no means for the addressing the issue.
- Commissioner Woods stated he doesn't understand why staff can't look at the parking and enforce mitigating measures like they would with the stacking in the drive-through.
- Assistant City Engineering explained without a parking condition on the permit staff will not address public parking along the streets.
- City Attorney Wonderlich explained these are two different issues, the stacking can create a traffic safety issue. Commissioner Munoz is concerned about staff and customers taking up spaces along the street that the neighbors area usually available to them. The street is public and allows for anyone to park along the street however people are very possessive of the parking in front of the houses. Staff will hear about this if the staff and customers begin to use these spaces even though it is totally legal.
- Commissioner Dawson explained that parking along the street is legal so there is not really a valid complaint unless they are blocking a drive-way which is a legal issue.
- Commissioner Munoz explained if the site had the number of required spaces for this use on-site he would not be as concerned but in this case we would be allowing a use that is non-conforming for the zoning and non-conforming for the parking.
- Commissioner Woods has a concern with compliance and proof that the parking issue is because of the staff or customers affiliated with the business.
- Commissioner Munoz stated the person complaining would have to provide the evidence.
- Commissioner Grey stated if the neighbors were concerned they would have been here to bring up their concerns. He thinks the neighbors should be responsible enough to speak to the business if it becomes an issue.

Motion Amendment Vote #1: Restricting Permit to Applicant

- All members present voted in favor of adding this amendment to the conditions.

[Motion for Amendment Passed 7-0](#)

Motion Amendment Vote #2: Parking On-site Only

- Commissioners Munoz and Commissioner Frank voted in favor of the motion. Commissioners Tatum, Grey, Woods, Dawson and Musser voted against the motion.

[Motion for Amendment Failed 5-7](#)

Original Motion Vote:

All members present voted in favor of the motion.

[Approved, As Presented, With The Following Amended Conditions](#)

1. Subject to the site plan amendments as required by Building, Engineering, Fire, and Zoning Officials to ensure compliance with applicable City Code Requirements and Standards.
2. Subject to no outdoor audio or announcement system being utilized on this property.
3. Subject to no order board or menu being displayed for the drive-thru.
4. Subject to light source for security and parking areas being shielded from view of neighboring residential properties.
5. Subject to mitigating measures being installed by the applicant, per the City Engineer to maintain traffic safety and reduce impacts of the drive-through window.
6. Subject to the permit being limited to Burnt Lemon only, change in ownership requires a new Special Use Permit.

V. GENERAL PUBLIC INPUT: None

VI. ITEMS FROM THE ZONING DEVELOPMENT MANAGER AND/OR THE PLANNING & ZONING COMMISSION: None

VII. UPCOMING PUBLIC MEETINGS: (held at the City Council Chamber unless otherwise posted)

1. Work Session- **September 7, 2016- Joint Comprehensive Plan TAC and P&Z Commission**
2. Public Hearing-**September 13, 2016**

VIII. ADJOURN MEETING:

Chairman Frank adjourned the meeting at 7:05 pm.

Lisa A Strickland
Administrative Assistant
Planning & Zoning Department