

BOARD of ADJUSTMENT



Joe Bazzoli
Commission Chair

~Meeting Minutes~
February 26, 2019

Leah Carlson
Staff Liaison

boa@ci.moscow.id.us

208.883.7095

<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

The meeting was called to order at 7:02 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Annette Bieghler, Steve Bush, Laurene Sorensen, Tim Thomson (arrived at 7:18)

MEMBERS ABSENT: Marshall Comstock, Mark Monson

STAFF IN ATTENDANCE: Leah Carlson, Mike Ray, Anne Peterson

1. Approval of Minutes from January 24, 2019.

Sorensen moved approval of the minutes as presented.

RESULT:	ACCEPTED
MOVER:	Sorensen
SECONDER:	Bieghler
ABSENTIONS:	Bazzoli

Motion carried by acclamation.

2. Public Hearing: Proposal for a Conditional Use Permit for a Type 2 Accessory Home Occupation at 816 Hathaway Street – LUP2018-0039

Carlson presented the application for a massage therapy accessory home occupation with clients anticipated 2-5 times per week for 60-90 minutes each. Clients will be encouraged to park in the driveway although there is also on-street parking on both sides of the street. Staff recommended approval of the application with no conditions.

Bazzoli asked about ADA compliance requirements and Cash said it would not apply because the therapy space is less than 10% of the entire structure. Bazzoli opened the public hearing at 7:09 pm.

Jennilyn Hall, 816 Hathaway, introduced herself as a trained and licensed massage therapist and full-time mom who would like to open a part-time therapy business in her home. She has been providing massage in clients' homes for several years. She has recently gained clients who are Washington residents, and since she isn't licensed to practice in Washington she'd like to have the option of seeing clients in her home. Her niece, who has been living with her family for several years, is moving out in May and her bedroom will be converted to a dedicated massage room.

Sorensen asked how many clients she planned to serve per week. Hall reiterated that she doesn't expect to exceed five per week. Sorensen asked if there are regulations governing the laundering process for her linens and whether her home laundry could handle it. Hall said she had already addressed all health requirements. Bush asked if Hall anticipated moving *all* client work to her home and Hall replied she would continue providing massage off-site for those clients who prefer that, with a \$10 travel fee.

No one else spoke in favor of the application.

Larry Makus, 705 Vista Street, opposed the application because the Vista neighborhood is a residential neighborhood and he thought allowing business use would change the character of the neighborhood. His interpretation of the Zoning Code was that the allowed uses in the R-2 zone are those for the public good, such as schools and daycares, but this was a private service. He added that the Vista Addition has Covenants and Restrictions that prohibit commercial use. (Copy of Covenants entered for the record.)

Chad Farrell, 817 Hathaway, opposed the application because parking is already very limited on Hathaway Street. He often can't park in front of his own house because the Halls park all around their house and his. Sorensen said the applicant planned to have clients park in her driveway so she questioned the impact to on-street parking. Farrell said the Halls have five cars.

Mario Reyes, 822 Hathaway, reiterated there are already five vehicles at the applicant's home and a single car driveway. He said they park all over, including in his driveway once last week. He said the photo of one car in the Applicant's driveway is not an accurate depiction of reality. With the current snow berms the parking is even worse. As a business professor, Reyes said he supports new business, but only when it's done correctly. Sorensen thought the concerns about current parking conflicts weren't relevant to the Conditional Use Permit application because the use hadn't even begun yet. Reyes said his greatest concern was how this use would increase the problem.

Carlson offered two letters of testimony mailed to the office. The one from Claudine Zender, 803 Hathaway, was received within the stated timeframe so was read into the record (attached). The letter from Norman Pendegraft was not considered by the Board.

Bazzoli asked whether the City was aware of the neighborhood Covenants and Restrictions. Ray replied that the City is not party to those private agreements and said the Board must only consider City Zoning Code in its decision making. The homeowner's association would need to address any violations to the CCRs on their own.

Applicant Rebuttal:

Hall acknowledged her neighbors have been concerned about parking. Two of the vehicles belong to her niece who will be leaving in May, and Hall currently has three cars but one is for sale. One is parked to the side of their garage and the driveway can accommodate two vehicles. She stated there have been previous issues with her neighbor when her niece or guests parked in front of his home, and she always addressed them promptly. She, too, wants her neighborhood to remain a nice residential area and said this part-time business bringing in only a few visitors per week will not change the nature of the neighborhood. Thomson asked the hours she would be providing service and Hall said she limits herself to one 60-90 minute appointment between 9am and noon on Wednesdays, Thursdays, or Fridays. On Tuesdays and Wednesdays she can take one appointment between 7-9pm. Her husband's car is gone all day Monday-Friday, so as soon as the niece moves and they sell their extra car, there will only be two cars at the home during the day. Bazzoli presumed most clients seeking therapeutic treatment would want to park in the driveway to shorten their walk. Sorensen asked what the regulations are regarding on-street parking and Bazzoli replied that no one owns on-street parking, It is public parking, first-come first-served.

Bazzoli closed the public hearing at 7:41pm.

Sorensen thought the Covenant restricting all business use may be an unconstitutional restraint on commerce. Bush said commercial use within the neighborhood would be a violation of the Covenants so

the applicant should obtain consensus from the developer/neighborhood to appeal or amend Covenants. Ray pointed out that everyone within 600 feet of the subject property had been notified of this hearing, and reminded the Board that private covenants cannot be taken into consideration in this deliberation. The homeowner's association would need to bring civil action to address any violations. Sorensen agreed the Board could not debate the validity of private CCRs, and added that hundreds of people work from home without affecting the character of the neighborhood.

Sorensen moved approval of the application.

RESULT:	APPROVED
MOVER:	Sorensen
SECONDER:	Thomson
AYES:	Bieghler, Bazzoli, Sorensen, Thomson
NAYS:	Bush

Motion carried.

Sorensen moved to direct staff to draft the Relevant Criteria and Standards.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bieghler
SECONDER:	Thomson

Motion carried.

Chair called for a five-minute break.

3. Public Hearing: Proposal for a Conditional Use Permit for a Police Services Facility at 155 Southview – LUP2019-0007

Carlson presented the application for a new police station containing Administration/Operations space, storage and evidence processing outbuilding, plus public and secure parking spaces onsite. Access to the property will be from Southview Avenue and Myrtle Street. Subject property is within the Motor Business zoning district; property to the east is zoned R-4 and all other surrounding properties are zoned Commercial. This proposal meets an objective within the Comprehensive Plan which specifically calls for efficient and effective delivery of emergency services. Development of this parcel will trigger a requirement within the Development Agreement for Indian Hills 9th Addition to complete the currently undeveloped Myrtle Street including underground utilities and sidewalks. Carlson outlined the project's planned uses and building layouts. A Type-B landscape buffer will be required on the eastern edge of the parcel where it is adjacent to R-4 zoning. Staff recommended approval of the application with no conditions.

Sorensen and Thomson asked what "develop" meant with regard to Myrtle Street, and who would pay for it. Carlson reiterated it would include underground facilities, paving and sidewalks. Ray added that responsibility would fall to the underlying subdivision developer, and his understanding was the property owner has agreed to pay for it. Sorensen said a resident had asked her why the police station was being considered at a location so far from the City Center, and would that increase response time to many areas of town. Carlson said there were very limited options that met the space requirements.

Bazzoli opened the public hearing at 8:08 pm.

Tyson Berrett, 2635 Wildrose, Captain for the Moscow Police Department, was present to answer any questions. Regarding the response time question, Berrett said it should improve (particularly to the south) because they will be able to exit Southview directly to a 4-lane highway and head either direction. Currently, leaving from the station they are sometimes blocked in on Washington and the only other option is a one-

way alley. He added that officers are generally out patrolling rather than responding from the station. With regard to parking, he noted that the Police are currently taking up 22 dedicated parking spaces in the core of downtown, so relocating the Police Station will increase availability of premium parking spaces. Berrett noted the Recycling Center location was also considered but citizen preference was to leave it alone. The Dumas Seed site was too small, and the Federal Building option did not work out with Gritman. He noted the pricing was astronomical for all downtown properties. Bazzoli asked him to provide perspective on the Police Department's special needs. Berrett replied that as the City grows, the Department will need to grow and detectives are already sharing desks, computers overheat in tiny offices, and they have very little storage options so 8800 pieces of property are spread across four locations throughout town. The proposed facility is designed to last for 50-60 years or more, and is large enough to provide the space required as the City and Department continue to grow. Bieghler asked if any of the City Shop uses would move to the new location and Berrett said much of their vehicle parking would move. Bieghler noted differences in parking numbers within the packet. Ray explained the differences came from needs assessments on two different locations. Bush asked what was planned for the current Police Department building and Berrett said it would be repurposed for other City staff use. Bush then said the parking spaces Berrett had mentioned as opening up when the Police Department moved from downtown would actually be used by other City staff, but Berrett said those staff are already downtown and would probably continue to park at City Hall. Bush commented on the residential use near the proposed station and Berrett said silent deployment is used when officers leave the station, using lights only just to clear traffic. He also stated a three-month average for emergency calls showed 65% are between the hours of 8am and 6 pm.

Justin Rasmussen, 1435 Borah and owner/broker at Palouse Commercial Real Estate, affirmed Berrett's earlier statement that there were no better commercial sites in terms of pricing, location and usability.

Written testimony from Victoria Seever was read into the record (attached).

Bazzoli closed the public hearing at 8:25 pm.

Thomson thought the reason for not being downtown had been adequately explained. He thought it was important to remember proposal is projected to be in use for 50+ years, so given additional growth of the City, this location will eventually not look so "far away." Thomson asked if municipal buildings were required to be LEED certified in Idaho. Ray said no, but the City does have a Green Building program, and added the building was specifically oriented to facilitate solar installations in the future. Bazzoli said many buildings are constructed to LEED standards but not officially certified simply to save that cost, and added that solar panels have a very long payoff period. He also agreed that with more growth, the proposed location would soon feel more centralized.

Thomson moved approval of the application as presented.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Thomson
SECONDER:	Sorensen

Motion carried by acclamation.

Bush moved to direct staff to draft the Relevant Criteria and Standards.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bush
SECONDER:	Sorensen

Motion carried by acclamation.

4. Announcements

The RCS approval meeting was scheduled for Monday, March 4, at 5:30pm in the Mayor's Conference Room.

Adjournment

The meeting adjourned at 8:35 pm.



Joe Bazzoli, Chair

3/4/2019
Date

Nov 28, 1984

340880

AGREEMENT TO COVENANT, CONDITION AND RESTRICT

This Agreement is entered into pursuant to a plan for the protection and benefit of all property in Vista Addition to the City of Moscow, Latah County, Idaho, according to the recorded plat thereof ("Vista Addition"), and of all persons who may now own or hereafter become owners of any property in Vista Addition, for the purpose of insuring the use of said property for attractive residential purposes only, to prevent nuisances, commercial uses and other uses not compatible with the family orientation and residential character of Vista Addition, and to preserve property values and the full benefit and enjoyment of each owner's home, by and among the undersigned owners of property within Vista Addition, and as a part of the consideration for this Agreement, the undersigned owners provide that each lot herein described opposite the signatures of the undersigned owners is subject to the covenants, conditions and restrictions which must be adhered to by all persons who may now own and/or possess or hereafter become owners and/or possessors of such property, as follows:

1. No lot shall be used except for residential purposes and by a family of one or more persons related by blood, marriage or adoption or a group of not more than six (6) persons not related by blood or marriage, living together as a single housekeeping unit. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling originally constructed thereon not to exceed two stories in height, excluding daylight basement, with at least two off street parking places, provided however, a dwelling may have a detached garage and/or an outbuilding used for storage purposes only. [No store, commercial establishment, hospital, sanitarium, place for institutional care or treatment of the sick or disabled, physically or mentally, or mobile home, shall ever be erected or use therefor permitted upon any of the lots or any part thereof.]

2. No dwelling shall be erected, placed or altered on any lot unless said dwelling shall have a minimum fully enclosed ground floor area devoted to living purposes, exclusive of porches, terraces and garage of 1,250 square feet; except that where the said dwelling is a 1-1/2 or two story dwelling, the minimum may be reduced to 800 square feet of ground floor area, providing that the total living area of the 1-1/2 or 2 floors is not less than 1,500 square feet.

3. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

4. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

5. No oil drilling development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

6. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

7. No building shall be erected, placed or altered on any lot unless in compliance with all requirements of the City of Moscow, Idaho, in effect on the date of recording of this Agreement in the real property records of Latah County, Idaho, and any additional requirements set forth herein.

The covenants, conditions and restrictions contained herein shall operate as covenants running with the land for the benefit of any and all persons who now may own or who may hereafter own property in Vista Addition, and all such persons are specifically given the right to enforce these covenants through any proceedings, at law or equity, against any person or persons violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation hereof.

The lawful use and construction of any lot or building existing at the time of recording of this Agreement in the real property records of Latah County, Idaho, may be continued even though it does not conform to the requirements of this Agreement. Any change, expansion, alteration or enlargement of any existing lawful use shall be subject to all requirements of this Agreement.

RECEIVED

FEB 14 2019

City of Moscow

Claudine C. Zender
803 Hathaway Street
Moscow, ID 83843
208-827-1361

February 11, 2019

City of Moscow
Board of Adjustment
Community Development Department
221 E. 2nd Street
Moscow, ID 83843

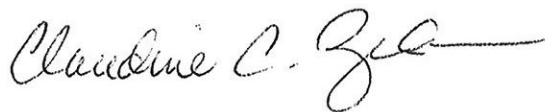
Re: Permit Application LUP2018-0039

Greetings:

We are neighbors of 816 Hathaway Street, for which a conditional use permit has been requested.

This letter is to advise you that we have no objection to the operation of a massage therapy business at this location. We have spoken with the Halls and understand the nature of the business, which we believe will not be detrimental to the neighborhood.

Sincerely,

A handwritten signature in cursive script, reading "Claudine C. Zender", followed by a horizontal line.

Claudine C. Zender

NOTICE OF PUBLIC HEARING

Proposal for Conditional Use Permit at 155 Southview Ave Permit Application
LUP201 9-0007

Written Testimony from Victoria Seever, 121 N. Lilly, Moscow

I am a member of the Sustainable Environment Commission which is meeting at 7:15 pm on February 26 and therefore cannot attend this hearing in person, which I would otherwise happily do.

I have reviewed the packet. I have attended many City Council meeting regarding a new police station, including recent presentations leading up to the Board's meeting on February 26. I saw no negative issues in the proposal's packet. Should any arise during the meeting, I won't be there to take that in; however, as extensively as this proposal has been considered, I do not expect any notable problems to arise, if any at all.

I whole-heartedly support the Proposal for Conditional Use at Southview Ave for a new Police Service Facility and trust the Board to tweak anything needed if there should be anything. I am excited to see this much-needed project on an excellent site moving forward.

Additionally, I'll take the opportunity here to state that I would be over the moon if solar panels were to be installed on the facility, especially given its southern exposure, and would urge full consideration be given for that implementation. If that is something the Board might want to make note of during deliberation, I am not aware of any potential concerns and would support solar power for the facility.

Respectfully,

Victoria Seever, 121 N. Lilly, Moscow