



July 11, 2023

Slade Smith
SA Smith LLC
490 Christiansen Loop
Hermiston, OR 97838

Re: **Notice of Decision** - Site Plan Approval
Change of Occupancy Existing Salon and Day Spa
945 S Highway 395

The City of Hermiston has reviewed and conditionally approved your application for a change in occupancy of the existing salon and day spa at 945 S Highway 395 into a Soda Shop with interior service and drive-up service. The property is described as 4N 28 14BB Tax Lots 300, & 102.

Assignment of Addresses

The new soda shop will retain the address of 945 S Highway 395. Additional tenants will be assigned suites as needed.

General Notes

The city finds that the site plan as submitted meets the minimum requirements to satisfy the municipal code. However, the site plan has the potential to raise operational issues which the city wishes to make you aware of as you finalize business planning.

- There is a utility pole located at the northeast corner of Tax Lot 102. Southbound turning movements from NE 4th Street into the driveway may have difficulties negotiating this turn without clipping the utility pole or trespassing onto Tax Lot 301.
- The existing building has nine parking spaces. Constructing a retail soda fountain of 750 square feet, with no interior seating, requires four parking spaces per §157.176 of the Hermiston Code of Ordinances. Using this parking ratio, it is possible to establish only a service business such as a nail salon or beauty parlor as an additional tenant in the building. A service business requires one space per 600 square feet and can be accommodated with three spaces for the remaining 1,750 square feet. Adding a retail use or office use will increase the parking requirement to the level where reconfiguring the parking lot and/or acquiring additional parking within 500 feet as permitted by §157.178(E) of the Hermiston Code of Ordinances is required.

PLANNING DEPARTMENT

- The 10-foot one-way drive up from SE 4th Street meets the minimum width requirement for parking lot design in §157.150 of the Hermiston Code of Ordinances. However, customers utilizing full-size trucks with extra wide mirrors may find it difficult to navigate this driveway.

As part of the public notice process, the city received comments from the Oregon Department of Transportation regarding the status of the existing driveway approach to Highway 395. ODOT agrees with the site plan utilizing SE 4th Street as a one-way entrance and using Highway 395 primarily as an exit. However, when the vacant portion of the building is proposed for a new tenant, ODOT will want to review the access plan again. The district permit specialist, Tom Lapp, will make a determination of the existing driveway's permit status. A copy of communications with ODOT are attached.

The city also received comments from Laura Lee of 900 SE 4th Street. Ms. Lee notes that 900 SE 4th Street is a duplex with the entirety of the access for the lower duplex unit being served from the rear of the property. Historically, this access has utilized Tax Lot 102 as a driveway and accessing private parking crossing Tax Lot 300. The city cannot adjudicate private access rights between property owners and was able to locate only existing utility easements and no existing access easements in the county records. However, you may wish to consult with your attorney regarding prescriptive easement or adverse possession claims which may arise. Ms. Lee is also concerned about the proposed driveway width on Tax Lot 102 and how her property will be affected as traffic increases with the new development. She has testified that 10 feet is not adequate to accommodate additional traffic. A copy of the testimony received is attached.

Conditions of Approval


1. Approval is for the site plan as submitted, additional tenants within the building shall require an additional site plan review.
2. Applicant shall comply with all provisions of §92.12 of the Hermiston Code of Ordinances (relating to the control of blowing dust) during all phases of development.
3. All storm water shall be retained on-site. The City Engineer will review and approve the storm water management plan.
4. All areas for the standing and maneuvering of vehicles shall be paved as shown on the site plan prior to occupancy. Specifically, Tax Lot 102 shall be paved and drainage improvements installed to comply with parking and vehicle maneuvering requirements in §157.179(A).
5. The city engineer has reviewed the driveway approach to SE 4th Street and determined it is currently functional but will be inadequate in the future. At the time a second tenant is proposed, a new approach to SE 4th Street will be required.

PLANNING DEPARTMENT

6. The drive-up entrance on SE 4th Street shall be painted as “One Way” or “Entrance Only” and have directional arrows painted on the surface indicating appropriate vehicular direction.
7. Where vehicles exit the drive-up lane on Tax Lot 300 shall be painted as “Do Not Enter” or “Exit Only” and appropriate signage shall be installed in the landscape area between Tax Lot 300 and 200 to indicate that the drive-up area is one way only.
8. Parking lot lighting shall be installed and designed with hoods or shielding to avoid projection of glare on adjacent residential dwellings.
9. Business signage shall be installed consistent with the requirements of 155.37 of the Hermiston Code of Ordinances.
10. Consistent with §157.179(B) of the Hermiston Code of Ordinances, fencing shall be installed on the south line of Tax Lot 102 and east line of Tax Lot 300 to minimize residential disturbance. Per this section, residential disturbance is minimized “by the erection between the uses of a sight-obscuring fence of not less than five or more than six feet in height except where vision clearance is required.” The driveway entrance to SE 4th Street requires vision clearance conformance and fencing in excess of three- and one-half feet may not be erected in the vision clearance area. The property has not been surveyed, making the proposed fencing location difficult to analyze for compliance. Fencing shall extend along the north line of the dwelling/south line of Tax Lot 102 where practicable given the existing planter location.
11. A covenant not to sell separately shall be required for Tax Lots 102 and 300 as long as Tax Lot 102 provides the primary one-way access for the drive-up facility.

You may now submit your plans to the building department to obtain the necessary permits to begin construction of your facility. Site grading, drainage, and public improvements require review and approval by the city engineer. Additionally, all participants in the land use process have the right to file an appeal of the city’s decision. An appeal must be filed within 12 days of the date this letter is mailed. If no appeal is filed by 5 pm on July 24, 2023, the city’s decision is considered final.

Sincerely,



Clinton Spencer
City Planner

- C: Joshua Lott, Anderson Perry
Byron Smith
Development Staff
Building Department
Tom Lapp, ODOT

Heather LaBeau

From: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>
Sent: Wednesday, June 21, 2023 4:17 PM
To: Clinton Spencer; Heather LaBeau; tearafarrowferman@ctuir.org; LANI Richard
Cc: STACEY Addie; BOYD David W
Subject: RE: Site plan notice
Attachments: RE: Site plan notice

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Clint,

I did some research on these soda shops and see they are prevalent and quite popular in other western states, so this may be similar in nature to those shops.

Thus far with the information we have the new business does not constitute a change of use for the property in relation to the existing highway approach. We will need to get our access control research back first, but this could likely result in the **Presumed to be Permitted** status if it passes the criteria.

I spoke with David about the site today and his concern is for how the drive up window will function with the highway approach. Also for the any new additional business that may fill in the remaining 900 square feet of the building. It appears that if the entrance from 4th street to the window is controlled with signage then vehicle entry from US395 has enough room to circulate and park for the indoor service counter. If the remaining space is occupied by a different business then this may impact the US395 approach, but we don't know yet.

Thanks,

Thomas Lapp
District 12 Permit Specialist
1327 SE 3rd Street
Pendleton, OR 97801
Ph (541)278-3450
Fax (541)276-5767

From: Clinton Spencer <cspencer@hermiston.or.us>
Sent: Wednesday, June 21, 2023 3:58 PM
To: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>; Heather LaBeau <hlabeau@hermiston.or.us>;
tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Tom,

I'd be interested in the region engineer's opinion on this too before the end of the comment period. If we need to get more information from Mr. Smith, I'd like to get the appropriate request out there in plenty of time. His contact information is

Slade Smith slade4623@gmail.com

Clinton Spencer
Planning Director
(541) 567-5521
cspencer@hermiston.or.us



Where Life is Sweet

From: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>
Sent: Wednesday, June 21, 2023 3:06 PM
To: Heather LaBeau <hlabeau@hermiston.or.us>; tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: Clinton Spencer <cspencer@hermiston.or.us>; STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Thanks Heather!

Thomas Lapp
District 12 Permit Specialist
1327 SE 3rd Street
Pendleton, OR 97801
Ph (541)278-3450
Fax (541)276-5767

From: Heather LaBeau <hlabeau@hermiston.or.us>
Sent: Wednesday, June 21, 2023 2:35 PM
To: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>; tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: Clinton Spencer <cspencer@hermiston.or.us>; STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Here is the building size info from the property owner.
The sides are 24'. 1500 square foot footprint. Second floor is approximately 900' for a total of 2400
Thanks,

Heather La Beau
(541) 667-5025 option 1
City of Hermiston
hlabeau@hermiston.or.us
Where Life is Sweet

From: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>
Sent: Wednesday, June 21, 2023 1:52 PM
To: Heather LaBeau <hlabeau@hermiston.or.us>; tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: Clinton Spencer <cspencer@hermiston.or.us>; STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Heather,

Thanks for the additional information. This is a unique business we have not seen before.

Thomas Lapp
District 12 Permit Specialist
1327 SE 3rd Street
Pendleton, OR 97801
Ph (541)278-3450
Fax (541)276-5767

From: Heather LaBeau <hlabeau@hermiston.or.us>
Sent: Wednesday, June 21, 2023 9:01 AM
To: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>; tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: Clinton Spencer <cspencer@hermiston.or.us>; STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Good Morning.

We have asked the applicant for clarification on the size of the building. The application stated 1500 sq ft, the tax assessor says 2491 sq ft.

They do intend to lease out the remainder of the building to other tenants in the future. A walk-up counter inside the building is proposed along with the drive-thru window for the soda shop, but no indoor seating.

Additional material was submitted by the applicant and is attached.

Thanks,

Heather La Beau
(541) 667-5025 option 1

City of Hermiston
hlabeau@hermiston.or.us
Where Life is Sweet

From: LAPP Thomas <Thomas.Lapp@odot.oregon.gov>
Sent: Wednesday, June 21, 2023 7:59 AM
To: Heather LaBeau <hlabeau@hermiston.or.us>; tearafarrowferman@ctuir.org; LANI Richard <Richard.LANI@odot.oregon.gov>
Cc: Clinton Spencer <cspencer@hermiston.or.us>; STACEY Addie <Addie.STACEY@odot.oregon.gov>
Subject: RE: Site plan notice

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Heather & Clint,

The existing US395 approach is not permitted for use so I am doing the research to see if the Department can move it from an unpermitted/unresolved Inventory record to Status: Presumed to be Permitted, and this will be for the ongoing legal use of the approach for the new use of the building site.

I am evaluating the notice based on the use of the existing highway approach and I need some additional information about the new use if you can provide it.

In my Change of Use evaluation I have the previous use as a salon/ day spa so I will compare the trip generation for a spa vs a drive thru coffee business with one window and no indoor seating. I have no ITE land use for a drive thru soda business so coffee sales is our default use.

Will the balance of the 2500 square foot building be used for a separate business use? If this does occur in the future the Department will do need to evaluate the site for COU again.

A 2nd concern is how the drive-up window will function if customers try to access from US395 instead of from 4th street via tax lot 102. Will the building be open for walk in customers as well as drive-thru?

Thanks,

Thomas Lapp
District 12 Permit Specialist
1327 SE 3rd Street
Pendleton, OR 97801
Ph (541)278-3450
Fax (541)276-5767

From: Heather LaBeau <hlabeau@hermiston.or.us>
Sent: Tuesday, June 20, 2023 11:37 AM
To: tearafarrowferman@ctuir.org; LAPP Thomas <Thomas.Lapp@odot.oregon.gov>; LANI Richard <Richard.LANI@odot.oregon.gov>
Subject: Site plan notice

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Good Morning. Attached is a notice being mailed today.
Thanks,

Heather La Beau
(541) 667-5025 option 1
City of Hermiston
hlabeau@hermiston.or.us
Where Life is Sweet

Dear Mr. Spencer/ To whom it may concern(lawyer),

June 28th, 2023

My name is Laura Lee and I currently reside at 900 SE 4th St. and I am writing this letter to share my concerns and questions regarding the Land Use Action Proposal put forth by Amy Stanton and Slade Smith (SA Smith LLC) which proposes making the easement a one way drive thru entering from 4th street and exiting on hwy 395. I have lived in this house since 2000 and purchased the property a few years later. The easement property lot 102, along with lot 300 (the state farm / more recently beauty salon Simply Divine and my house lot 301 all belonged to Bill Elfering. When I moved here I rented the home from him and later on purchased it. While all of it was owned by Bill Elfering & Bill Jamison it was at one time split in two – the top floor and half the downstairs of the state farm bldg. was the State Farm Agency and the the other portion of the downstairs (on the side closest to the restaurant/Safeway) housed a branch of the Community First Credit Union (under another name). According to Bill Elfering it never had a drive thru. When Mrs. Stanton and Mr. Smith first told me of their plans they told me they could make it a drive through and one way because of the prior history of it being a having been a bank with a drive thru in the past.

Concerns/Questions:

1. What was the original intent of the easement for lot 102? The easement was obtained by Bill Jamison & Bill Elfering in order for his business and home to have access to 4th street in 1976 and as time progressed and his home became a rental home the tenants had use of it as well. My lot is 100' by 70' and is 16 tenths of an acre. Lot 300 has 31 tenths of an acre plus 3 tenths of an acre for the easement lot 102. On my paperwork from my refinance in 2009 lot 102 also has the number 135 circled – what does this mean? I do not see this number on the proposal.

This house is actually a duplex and had been/was grandfathered in as a residence in a commercial district. When I moved in the downstairs tenant had been living here for over 15 yrs. Both she and I parked in the back of the house right in front of her entryway to her home. She remained a tenant for another 19 yrs. Currently the apartment is vacant and being fixed up to rent again. Ever since I have lived on this property the easement has always been accessible to myself and the other tenant and the customers for the business/public on lot 300– 24hrs a day/7 days a week from both directions – hwy 395 and 4th street. My tenant almost always entered from 395 so she did not have to back in to her space. Both the upstairs and downstairs have entry/exits on the back of the building right next to the easement. The ability for my tenant, myself and my daughter to have access to the back entrances is important for many reasons here are a few.

- A. Moving furniture in and out – some of the furniture in my home had to be brought in from the back door as it wasn't possible to get it in from the front door/porch.

- B. Safety for everyone – needing to be able to exit the bldgs. and get out of the yard quickly.**
- C. A place for first responders to be able to access the back of the house/downstairs apartment.**

2. The easement goes right next to my home and alongside my home & easement is a long brick flower bed which contains the natural gas and electrical lines for both domiciles. I am very concerned about the safety of these devices. The proposed business wants to make the easement one way – accessing the shop via 4th st which will mean a major increase in traffic including late evening traffic. I am concerned about this for the following reasons:

- a. For the past 23 years the easement has been utilized by a relatively small number of vehicles throughout the day – all gone by 7PM or earlier. The owners and employees and their customers who came for appts, stayed 5min – a couple hrs then left. The new business will have owners and employees and a lot more customers. Since they will not be going inside they will not be staying for hrs...so more traffic will be the result. This will greatly increase the potential for vehicular crashes and for other damage to my property, my gas & electrical lines & meters, my flower bed and home (which has happened before...details to follow later in this letter). High volume traffic especially during morning and evening high volume commutes, and the late evening hrs (until 10PM) increases chances of speeding, reckless and or under the influence drivers. It will also bring a host of inexperienced and in a hurry teenager drivers during the lunch hours and after school hrs. This will bring an increased chance of crashes and defacing of property and litter on my property. Who will repair my gas/electrical if it gets damaged and if my gas line gets hit – there is an extreme possibility of an explosion or fire – especially if anyone is smoking while in the drive through.**
- b. Noise and fumes – health risks for my daughter and I and future tenants...The easement is next to the main bedroom / office area and having idling cars with people smoking (legal and illegal things) outside the bedroom windows all day including when I am trying to sleep in the evening. I believe that will likely mean I will not be able/willing to open the windows because their will not be fresh air and it will be loud. I will also be faced with losing my privacy because depending on the size of vehicle – I will be visible to the traffic while they are sitting waiting for the line to move or I will have to lose not just the fresh air but also the sunlight and keep the drapes closed when I am home. Rite aid is my neighbor and their delivery trucks do not sit idling while they load/unload and when the drive through pharmacy became very busy during the pandemic and had long lines those vehicles were at least 20+ ft from my bedroom windows versus 3-5 ft and there were times I couldn't open my**

windows however it was not 6 days a week and the pharmacy closes by 7 so it never impacted my ability to sleep or cool my room with fresh air at night.

- c. Mrs. Smith and Mr. Slade have offered to put a 6 foot fence up between our properties but they want to bring it out to the edge of my house and take away the tenant parking / my backdoor parking without a gate and another 4 foot fence on the side of the house closest to 4th street alongside the easement to separate the easement from my property hopefully without impeding my view to exit my garage and enter the street (the 4ft fence is not labeled in their plan that was sent to me in the mail).

Extending the fence means that I lose a lot of incentive/monetary value on my rental. I have had access and a parking space for 23 yrs not counting all the years before I moved here that access was allowed. The rental is my business and as a business I believe I have the right to access from both directions and parking for my tenant or for any small business that may choose to work from that location at some future date. The tenant should be able to park there and their clients/customers would have to use the street parking. There is not a lot of street parking when the restaurant is busy so if the tenant has to park on the street as well it will hinder business access. There is not enough room for foot traffic on the easement if there is a steady stream of cars. Over the past 23 years the traffic has been minimal. Three to 4 cars would arrive for work and park and then customers with appts would arrive sporadically throughout the day, park for a while and then leave. This is very different than a line of cars moving through all the time.

I am currently typing at my computer and watching mid-full size pickups hauling trailers turning right from 4th onto the easement and they are having to go very slowly and carefully to do so – it is so tight.

What are the land rules for fence placement between properties. Does the fence go right on the property line? Should the fence be on the business owner's side so they will be responsible for repairing it when it gets hit or damaged? Whose responsibility will be replacing the fence ? Will it be on their easement line or on my property?

Who will be responsible for accidents, damage and / or defacing of my property, home and/or fence? Are they including the 4ft one or not. Will they agree to put in metal posts with brackets or not? maybe instead of a gate? Who is the fencing contractor?

What are the egress laws for the duplex – only 1 gate vs 2 for both units out of yard and does the gate location matter?

- d. Delivery trucksSince I have lived here in 2000 – almost all large delivery vehicles such as UPS, Water delivery trucks, and garbage trucks have all accessed the businesses on lot 300 from hwy 395. There have not been many large trucks but I

will never forget the semi truck that attempted to make a delivery to the Simply Divine 5 or 6 six years ago and made a right turn from 4th st onto the easement. There is a power pole very close to the street between Rite Aid's driveway and the easement lot 102 (this is not mentioned/listed on the proposed land use action drawing) and when making a right turn from 4th into the easement it is a very tight turn for all vehicles. This particular semi driver focused so much on missing the telephone pole that he didn't see the overhead lines that hang down too low for semis to pass under nor the closeness of the flower bed with my utility meters and lines. He missed the power pole but the top of this cab caught the power line, hit the flower bed with the front left of the semi AND the trailer hit my HOUSE damaging the roof. I had to have that side replaced and he had to be towed away. None of it was my fault yet between his insurance and mine I still had to pay a couple thousand dollars to get the roof fixed and could not repair the flowerbed due to the bricks not being made anymore. I dread further incidents of this nature. I believe there is a good chance that large delivery trucks coming from the other direction (the light at 4th and 395) and making a left into the easement are going to be going over/ hitting the curb or going over part of my property to make it. The proposed business is a soda shop – soda is delivered by semis. Unless they are getting permission to use Rite Aid's driveway. And when those deliveries happen how will their customers get through? Are these deliveries going to happen after they close or early in the morning before they open? It is not a large enough space for two lanes or to get by when someone is at the drive thru window area unless they are removing all the bushes next to Rite Aid's dumpster area...but the proposed land use action letter has a site plan that says "proposed bioswell (or is it a bioswale?) engineered drawing attached" but there was no drawing sent to me so I do not know what this means. Semi's should not be going from 4th onto the easement and out onto hwy 395 in my opinion –it is not safe.

- e. Garbage trucks...The proposal shows the trash being located on the back left of the bldg. in lot 300 (the side closest to the restaurant) however the trash has been located on the back right side of the building by the back door (nearest to Rite Aid) the entire time I have lived here (since 2000). My garbage can and the rental's have been located at the corner of my current fence for that length of time as well and the garbage truck has always come from hwy 395 and picked up the garbage at both places – we just pulled them to the edge of the easement. The proposed one way going the other direction will remove all placement and pick up location for the garbage cans for my home & rental. I do not have an issue with having to take the cans to the curb but am concerned about where the Soda Craze people will be placing theirs on pick up day (blocking the easement or in front of my property?) and where do I place my cans the rest of the time? There is a lot of walking traffic in front of my property and I feel that trash cans out front is going to encourage passerby to put their trash in my cans or have people rummaging through my trash.

- f. Right to access from hwy 395 and SE 4th st has been in existence for over 50 yrs – 1976 – present with property owners Bill Jamison, Bill Elfering and Amy Stanton/Slade Smith. Does this qualify as Eminent Domain based on the prior years of use for this house and the people residing in it as tenants and a homeowner?**

Heather LaBeau

From: Laura <lauraleemartin2003@yahoo.com>
Sent: Wednesday, July 5, 2023 3:43 PM
To: Planning
Subject: Re: Proposal of Land Use - Lots 300, 301, and 102

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Please add the following to my list of concerns.

Where and what type of signage is going to be put up to advertise the location, access and exit points to Soda Craze. Will one way signs be posted as well? If so where? Will the Soda Craze signs be lighted on the 4th street side?

Will lights be being added to the easement/driveway to the drive thru and at the drive through? How bright will they be and where will they point? Will there be flashing lights anywhere?

What will the front parking spaces be for - employee/staff parking only since there is no inside public access or will people be allowed to park and go to the door or another window for service?

Would this business be allowed to be open past 10PM in the future and do they plan to have inside seating/ service down the road? Do they hope to have customer parking in the back down the road?

How will the utility lines be accessed after a fence has been put up since many of the existing lines pass beneath my property should the need repairs made at a later date - especially since the proposed fence does not include any gate for access? I do understand they are not being touched right now and we're just marked for fence installation purposes.

Again, thank you for your consideration of these concerns.

Sent from my iPhone

> On Jul 3, 2023, at 10:47 AM, Laura Lee <lauraleemartin2003@yahoo.com> wrote:

>

>

> <Letter of Concerns for proposed land use action 2023.docx>