



Where Life is Sweet

Mayor and Members of the City Council
STAFF REPORT
For the Meeting of August 28, 2023

Title/Subject

Appeal of Planning Department Decision- SA Smith LLC 4N2814BB TL 102 & 300- 945 S Hwy 395

Summary and Background

Slade Smith has filed an appeal of certain portions of the planning department's administrative approval of a site plan review for property located at 945 S Highway 395. The site plan approval was issued on July 11, 2023, and approved a change in occupancy for the existing building. The proposed change in occupancy changed a portion of the building from a beauty salon to a soda fountain. Both uses are permitted in the C-1 zone.

The staff approval of the site plan was subject to 11 conditions of approval. A site plan review is considered a limited land use decision under the §157.166 of the Hermiston Code of Ordinances. A limited land use decision made by planning staff or planning commission may be appealed to the city council. Only those who participate in the limited land use decision are eligible to appeal. Mr. Smith was the applicant in this process and filed an appeal on July 23, 2023. The appeal was filed within 12 days of the date of the July 11 decision and eligible for consideration by the city council.

The appellant has appealed three items (one general note and two approval conditions) in the staff approval and asks the city council to reconsider these items.

Appeal 1: A general note in the approval states:

- *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.*

Appeal 2: Condition #5 states:

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.*

Appeal 3: Condition #8 states:

8. *Parking lot lighting shall be installed and designed with hoods or shielding to avoid projection of glare on adjacent residential dwellings.*

A copy of the administrative approval and appeal is attached.

Grounds for Appeal

The appeal cites specific grounds for challenging the staff approval.

The general note regarding the utility pole location is appealed on the basis that the pole is not located specifically on the appellant's property and therefore not in conflict with the existing driveway. The appellant asks that the statement be modified or removed.

Condition #5 is a requirement to rebuild the driveway approach from SE 4th Street to the site. The appellant states that the driveway is currently functional and approved by the city. The appellant asks that the condition be removed.

Condition #8 is a requirement that parking lot lighting be shielded to avoid glare onto nearby residential property. The appellant states that additional parking lot lighting is not necessary or planned and asks that the condition be removed.

Process

As an administrative land use decision, the development, in this case a change in occupancy, is reviewed and approved by planning staff following a 14-day public comment period. Parties participating in the land use process were the applicant, Laura Lee of 900 SE 4th Street, and the Oregon Department of Transportation. The site plan approval was subject to eleven conditions of approval. Staff also made general notes about potential operational issues. These operational issues are not specific to the approval standards but may or may not have been considered by the applicant.

An appeal to the city council is an on the record procedure. Only those who participated in the original land use decision process are eligible to participate in the appeal. However, those who did participate may be represented at the hearing. Evidence is limited only to that evidence which was presented as part of the original limited land use decision and is contained in the project file. Evidence which clarifies existing evidence is admissible but new evidence and new participants are not permitted.

The criteria that are applicable are contained in the Hermiston Zoning Code, Title XV, Chapter 157. Specifically, Sections 157.040 (Central Commercial Zone), 157.160 through 166 (Development Standards), and 157.175 through 179 (Off-Street Parking and Loading) all apply. However, all sections of the development code may be considered applicable within the city limits.

Basis for Staff Decision

As noted, the appellant has appealed three items in the site plan approval.

General Note 1.

The first appeal is of a general note in the approval noting the location of the utility pole adjacent to the driveway onto SE 4th Street. This note is an operational comment provided by the city

noting that the pole is directly adjacent to the driveway cut. In reviewing the site plan, Hermiston Energy Services and Anderson Perry both visited the pole and agreed that it does not require relocation in order to use the driveway. However, any vehicle which is unable to successfully negotiate the turn into the driveway may strike the pole. As a matter of courtesy, staff included this note as it may assist employees in the future if a customer informs them that the pole has been struck.

The pole itself is not located on the applicant's property, nor on Rite Aid's property. It is located within the public right of way for SE 4th Street. A photo of the pole showing its location and the location of the driveway is attached to this report. As shown in the photo, the pole is situated within the driveway's north wing.

The city council may choose to uphold the note, strike the note, or amend the notation. As it is part of the project file, discussion of the pole will remain in the project record. **Staff recommends the notation be removed from the approval.**

Approval Condition #5.

The second appeal is of approval condition #5. Condition #5 builds upon an unappealed note in the site plan noting that the site has adequate parking to allow a retail use of a portion of the building as a soda fountain, but that this use only occupies a portion of the building and any additional use of the building for retail or dining purposes will not be able to provide all required parking on-site. Additionally, ODOT will want to review any additional tenants and traffic generated by a second tenant occupying the remainder of the building. Staff reviewed the existing driveway approach to SE 4th Street with the city engineer. The city engineer determined that the driveway does not meet the driveway standard in the public works standards adopted by the city council in January of 2023.

Conversion of a portion of the building from its most recent use as a beauty salon to a soda fountain constitutes a change in occupancy¹ as listed in 157.163(F) and is an implementing action for the development standards in the development code. When there is a change in occupancy or any development triggering the development standards, 157.164(C) requires that sidewalks in conformance with city standards are required to be constructed to the extent that curb and gutter exist. Although it is true that the driveway has been historically approved by the city, it is not in compliance with the 2023 public works standards and shall therefore be upgraded.

The current driveway standard is established in ST-05 of the city's public works standards. ST-05 is intended to facilitate ADA travel along the sidewalk. Driveway wings and cross slope are compliant with existing ADA requirements. The existing driveway does not meet ADA standards for slope and the transition from sidewalk to driveway is also not compliant.

In an effort to create a business-friendly environment, and in recognition of the expense involved in rebuilding a driveway, which may require pole relocation, staff deferred reconstruction of the driveway to such time that the remainder of the building is occupied. The intention of the deferral is to allow the applicant time to budget and set aside funding from business operation to cover

¹ The city historically has interpreted a change in occupancy as being a change in the category of land use, not necessarily a change in the occupant of a building. As an example, a conversion of a building from a retail store to a restaurant would be a change in occupancy, but a change from a clothing store to a book store would not. As a general rule, when a use changes to a higher parking classification, this is interpreted as a change in occupancy, but changing to a lower parking classification does not. Where a higher parking standard is required, the city requires evidence that the higher parking standard can be met under 157.178(A)(2).

these expenses and to give the applicant control over the timing of the improvement. If no additional tenant enters the building, then no improvement is required.

It is true that the site plan approval did not give plans or specifications for driveway reconstruction. The site plan approval is a land use approval and not an engineering approval. Planning staff do not provide construction plans. The public works standards are available for review on the city's website and the applicant is working with a civil engineer.

The city council may choose to uphold the condition, strike the condition, or amend the condition.
Staff recommends that the city council uphold the condition.

Approval Condition #8.

The third appeal is of approval condition #8. Condition #8 is a requirement that parking lot lighting be shielded to avoid glare onto nearby residential property. This condition is based upon the city's parking lot design standards in 157.179(D) of the Hermiston Code of Ordinances which states, "*Glare from lighting prohibited. Artificial lighting which may be provided shall not create or reflect substantial glare in a residential zone or on any adjacent dwelling.*" This condition is a general condition placed upon all site plan reviews. It is not a requirement that parking lot lighting be installed, but a requirement that if parking lot lighting is installed, it shall be shielded. No lighting plan was provided with the site plan application and thus the condition is imposed as insurance that the code provision will be met. In the appeal, the appellant states that no light poles are proposed and that the building will have wall mounted lights to illuminate the parking lot and driveways. This is acceptable and meets the intent of the code. However, wall mounted lights illuminating the parking lot shall also be shielded to avoid residential glare.

The city council may choose to uphold the condition, strike the condition, or amend the condition.
Staff recommends that the condition be modified to state, "Where parking lot lighting is installed, whether building or pole mounted, such lighting shall be installed to not create or reflect substantial glare in a residential zone or on any adjacent dwelling."

Tie-In to Council Goals

Not applicable. An appeal of a limited land use decision is part of the regular ministerial duties of the city council.

Fiscal Information

Not applicable. No financial impact will result from this appeal.

Alternatives and Recommendation

Alternatives

The city council may choose to:

- Affirm the site plan approval as originally prepared by staff
- Modify the site plan approval conditions and notation
- Remove the site plan approval conditions and notation
- Remand the site plan approval conditions and notation to staff for revision

Recommended Action/Motion

Motion to strike general note #1

Motion to uphold Condition #5

Motion to amend Condition #8 to state, “Where parking lot lighting is installed, whether building or pole mounted, such lighting shall be installed to not create or reflect substantial glare in a residential zone or on any adjacent dwelling.”

Submitted By:

Clinton Spencer, Planning Director