

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On June 15, 2009 the Hailey Hearing Examiner considered an application submitted by Terry and Kathy Roth, represented by Amanda Norton, for a Conditional Use Permit for Spirit 'N Motion, an indoor cheerleading, dance, and tumbling instruction facility, located at 4031 Glenbrook Drive, Unit B. The property is within the Light Industrial (LI) District, and Section 4.8.3 of the Hailey Zoning Ordinance #532 lists indoor recreational facilities primarily for instruction, as a conditional use within that district. The Hearing Examiner, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

Notice

Notice for the public hearing on June 15, 2009 was published in the Idaho Mountain Express and mailed to property owners within 300 feet on May 27, 2009, and notice was posted on the property on June 8, 2009.

Application

Terry and Kathy Roth, represented by Amanda Norton, has submitted a Conditional Use Permit application for an indoor cheerleading, dance, and tumbling instruction facility, on Lot 37, Block 42, Woodside Subdivision 10 (4031 Glenbrook Drive, Unit B). The property is located in the Light Industrial (LI) zoning district, and indoor recreation facilities, primarily for instruction may be allowed under the Conditional Use Permit process.

Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. For each applicable standard (in bold print), the Hearing Examiner makes the following Findings of Fact:

Standards of Evaluation

8.2 Signs.

The applicant is hereby advised that a sign permit is required for any signage exceeding four square feet in sign area. Approval of signage areas or signage plan in Design Review does not constitute approval of a sign permit.

8B.4. Outdoor Lighting Standards.

8B.4.1 General Standards

- a. **All exterior lighting shall be designed, located and lamped in order to prevent:**
 1. **Overlighting;**
 2. **Energy waste;**
 3. **Glare;**
 4. **Light Trespass;**

5. Skyglow.

- b. All non-essential exterior commercial and residential lighting is encouraged to be turned off after business hours and/or when not in use. Lights on a timer are encouraged. Sensor activated lights are encouraged to replace existing lighting that is desired for security purposes.**
- c. Canopy lights, such as service station lighting shall be fully recessed or fully shielded so as to ensure that no light source is visible from or causes glare on public rights of way or adjacent properties.**
- d. Area lights. All area lights are encouraged to be eighty-five (85) degree full cut-off type luminaires.**
- e. Idaho Power shall not install any luminaires after the effective date of this Article that lights the public right of way without first receiving approval for any such application by the Lighting Administrator.**

No new lighting is proposed. All existing lighting shall comply with Hailey's Outdoor Lighting Ordinance.

9.4 Parking Space Requirements.

9.4.2 Commercial, Professional, Service, Recreation and Entertainment. All commercial, professional, service, recreation and entertainment uses shall provide improved parking in the amount of one parking space for every 1000 square feet of gross building area; except as follows:

n. Fitness centers, health clubs, exercise/aerobics studios: 1 space for every 250 square feet of usable studio space, plus 1 space per racquetball/squash/handball court.

The applicant has expressed that parking in excess of the spaces provided is not necessary because all students are dropped off and parent spectators are discouraged. The nature of the proposed use is not considered a typical fitness center use and therefore it is reasonable to calculate the required parking at the 1 space for every 1,000 square feet, in accordance with 9.4.2. Each of the two units within the Warming Trend Warehouse is 2,200 square feet. Five parking spaces are required for Unit A (warehouse use) and Unit B (proposed use). Five parking spaces are provided on-site, to benefit both units. In order to minimize parking conflicts, the hours of operation and parking requirements should be addressed to ensure that traffic and parking does not create adverse impacts for neighboring properties and surrounding uses. It is a condition of approval that parking be restricted to on-site only, excluding the monthly parent meetings, which shall not be conducted between the hours of 7am and 7pm. It is a condition of approval that a 6 month parking review occurs around December 2009. The applicant shall be responsible for any fees associated with this review. It is a condition of approval that the parking area be stripped to show the five (5) parking spaces, one of which is to be designated as an ADA space.

11. Conditional Use Permits

11.4.1 The Commission or Hearing Examiner shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and, if approved, shall find adequate evidence showing that such use at the proposed location:

The applicant proposes a business instructing children in cheerleading, dance, and tumbling. Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. The Hearing Examiner made findings related to each of the items (a) through (i).

a) Will, in fact, constitute a conditional use as established for the zoning district involved;

In accordance with Section 4.8.3, Light Industrial Conditional Uses, of the Hailey Zoning Ordinance, indoor recreational facilities primarily for instruction are required to obtain a Conditional Use Permit.

b) Will be harmonious with and in accordance with the general objectives or any specific objective of the Comprehensive Plan and requirements of this Ordinance;

The Hearing Examiner should consider how the proposed use relates to the various policies and implementation items of the Comprehensive Plan, particularly the following:

Section 6.1

Policy: Identify business areas and types of uses which can be mixed in order to create a more dynamic and useable marketplace. Promote the use of Conditional Use Permits to provide for appropriately mixed uses in all commercial districts.

Section 6.2

Goal: Provide for sufficient area, appropriately located, to accommodate the demand for services, offices and industries which, due to their nature, do not readily fit the fabric of either the Central Business District or neighborhood location. Encourage a balanced mix of appropriate uses on that property.

Section 4.1

Goal: To create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands for the community of Hailey in order to provide diverse recreation opportunities for Hailey residents.

Section 4.1

Policy: Promote recreation opportunities within walking distance of the greatest number of residents.

c) Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;

The proposed use would occur in Unit B of the Warming Trend Warehouse. To the south of the subject property is Woodside RV/Motorsports and Fisher Appliances. To the north is Unit A, in the Warming Trend Warehouse, which is used to store materials associated with Warming Trend's business. The applicant has stated that the proposed use requires a warehouse like facility with a large open space and high ceilings.

d) Will not be hazardous or disturbing to existing or future neighboring uses;

No industrial hazards are associated with this use. However, parking and traffic may be a concern for neighboring uses. Five parking spaces are provided on-site, to benefit both units. The applicant has expressed that parking in excess of the spaces provided is not necessary because all students are dropped off and spectators are discouraged. In order to minimize parking conflicts, the hours of operation and parking requirements should be addressed to ensure that traffic and parking does not create adverse impacts for neighboring properties and surrounding uses. It is a condition of approval that parking be restricted to on-site only, excluding the monthly parent meetings, which shall not be conducted between the hours of 7am and 7pm and that a six (6) month review, starting with the approval date of these findings, is conducted by the Hearing Examiner.

- e) **Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, and drainage structure. Agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;**

It is not anticipated that the proposed use will change the adequacy of service for public services and facilities.

- f) **Will not create excessive additional requirements at public cost for public facilities and services;**

It is not anticipated that the proposed use will impact the public cost for public facilities and services.

- g) **Will not involve uses, activities, processes, materials, equipment, or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water or air pollution, or safety hazards;**

It is not anticipated that the proposed use would be detrimental in anyway, aside from the possibility of increased traffic.

- h) **Will have vehicular approaches to the property, which shall be designed so as not to create an interference with traffic on surrounding public thoroughfares;**

The vehicular approach to the property is direct and requires vehicles to exit the parking spaces in a backward motion. This is a typical parking configuration for this area.

- i) **Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature.**

No natural, scenic, or historic features are within the vicinity of the proposed use or would be damaged by the proposed use.

CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Hearing Examiner makes the following Conclusions of Law and Decision:

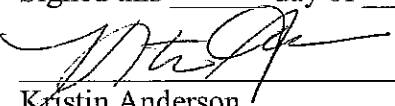
1. Adequate notice, pursuant to Section 11.3 of the Hailey Zoning Ordinance and

Idaho Code Section 67-6512, was given for the public hearing.

2. The application is in accordance with the Comprehensive Plan, Sections 4.1, 6.1, 6.2.
3. Upon compliance with the conditions stated below, the application substantially meets all criteria (a) through (i) set forth in Section 11.4 of Zoning Ordinance No. 532.
4. The applicant shall receive a Conditional Use Permit, subject to the following conditions:
 - a) All Fire Department and Building Department requirements shall be met.
 - b) Parking shall be restricted to on-site only, excluding the monthly parent meetings, which shall not be conducted between the hours of 7am and 7pm.
 - c) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
 - d) All exterior lighting shall comply with Section 8B.4. Outdoor Lighting Standards.
 - e) The Conditional Use Permit shall be reviewed approximately 6 months from the date of these Findings, at the applicant's expense. At that time, additional conditions may be placed if necessary to further mitigate hazardous and/or disturbing parking or vehicular traffic generated by this use.
 - f) The five (5) on-site parking spaces shall be striped according to City Standards and shall include one (1) ADA van accessible space.

All Conditional Use Permits are subject to review and revocation pursuant to Section 11.9 of the Hailey Zoning Ordinance.

Signed this 26 day of June, 2009.



Kristin Anderson
Hailey Hearing Examiner

Attest:



Becky Mead, Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June, 2009, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

- U.S. Mail
- Via Facsimile
- Hand Delivered
- ELECTRONIC MAIL

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CITY OF HAILEY

By Becky Mead
Becky Mead, Deputy Clerk