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DEPARTMENT: Planning & Zoning
DATE: December 3, 2024
TYPE OF ITEM: Administrative Action

SUMMARY:

The Commission will review a proposed revision to the Conditional Use Permit issued to 339 Spruce Street in November of 2020.

BACKGROUND:

The applicant has an active building permit for a garage and a home. This permit was issued on 7/12/2021. Before that, the applicant received approval for a Conditional Use Permit (CUP) on 11/17/2020. That CUP Staff Review is attached and referenced below. New plans were submitted to the building department in late 2021 that changed both the site plan and the design of the home. The revised site plan from that time is attached and was approved by the Planning Commission as part of a CUP amendment on December 7, 2021. Ultimately, construction on site has not proceeded precisely consistent with the site-plan approved for the CUP in December 2021.

The applicant has submitted a new application to revise his CUP that includes a fuel storage shed onsite as well as asking for permission to park one of the two large pieces of equipment on the east driveway, east of the house. Furthermore, the applicant would like to be able to fuel his equipment outside, next to the fuel shed. The submitted site plan reflecting what has taken place and what the applicant is asking for the Planning Commission to approve is attached. The new site plan now includes a fuel shed 10 feet from the home/garage and shows a driveway running along the west side of the property which was previously slated for undisturbed vegetative screening.

Conditions of the Original CUP dated 11/17/2020 were:

1. The applicant will construct a single-family residential structure with a large garage sufficient to store recreational vehicles. The structure will be strictly consistent with all requirements for a single-family residential structure, which will be its ongoing primary use.
2. The Conditional Use Permit is not effective until a Certificate of Occupancy is obtained.
3. Only 2 pieces of heavy equipment are allowed (parked inside a garage).
4. Screening will be applied for all equipment.
 - a. Screening: All outdoor storage of machinery and equipment shall be screened from the public view as seen from any public roadway. Existing trees and landscaping along with building orientation (according to site plan included in Exhibit A) are acceptable methods to minimize the adverse visual impacts.
 - b. Any change to orientation of the buildings from site plan in Exhibit A must be reviewed by Planning Commission to ensure sufficient screening remains.

5. Equipment cannot exceed an idle time of 5 minutes between 10pm and 7am, and no backup alarms will be used on premises.
6. Maintenance, fueling, and repairs to equipment will be done inside the garage.
7. Applicant will not damage snowmobile trail with equipment.
8. Equipment will yield to snowmobile traffic on Spruce.

On 12/7/2021 the Planning Commission reviewed this CUP again because of design changes to the building and site plans. The alteration to the site plan at that time took the main living area, which had been separate from the garage connected by a breezeway, and placed it on top of the garage, reducing the footprint of the structure. Part of the analysis at that time included the following:

“After obtaining a building permit and preparing the garage pad, the applicant realized that the cabin would eliminate too many trees to the south of the property. There is currently an open gap for the power line and eliminating the trees will leave the applicant with no privacy.”

The Findings of Fact at that time were as follows:

1. The single-family home meets the zoning and design guidelines for a single-family residential lot.
2. The property is in the buffer area between Single-family and Light Industrial zones.
3. The home still meets the Land Management Code for Single-family Residential zoning.
4. The home and the undisturbed trees will provide screening to the west and south, while also leaving trees to the east.
5. All conditions of the original Conditional Use Permit still apply.

On December 7, 2021 the Staff recommended and the Planning Commission approved the home to be built on top of the garage. The Staff commented that this is a normal building orientation for single-family homes and the undisturbed trees offer additional screening.

A public hearing for this revision was advertised for November 4 & 5, 2024, and was held on each of those dates. The Planning Commission heard comments from the public and made a site visit to see some of the issues first hand. The Commission tabled the item at that time.

Since November 5, staff has been working with applicant and some of the neighbors to modify the proposed site plan and conditions to try to satisfy the needs of each. The attached proposed CUP represents the outcome of that informal negotiation process.

ANALYSIS:

Staff have reviewed all previous revisions to this CUP, and the current Findings of Fact as they relate to the original CUP are:

1. The home is consistent with all requirements for a single-family residential structure and that will be its ongoing primary use. – **Currently Conforming**
2. The CUP is not effective until a Certificate of Occupancy is obtained. – **Indeterminate.** There has been a code enforcement complaint levied that the applicant has been operating his business from the property during construction, which has continued over the past couple of years. The applicant denies this claim and maintains that all equipment on the property is for the purpose of construction. It is difficult for staff to ascertain if the applicant is using equipment on site for construction or for water hauling and snow removal.

3. Only 2 pieces of heavy equipment are allowed on site, and they must be parked inside the garage. See discussion on condition #2. There have been more pieces of equipment on site, but it is reasonable to believe that such equipment has been used for ongoing construction. However, applicant is now asking to be able to park one of these pieces of equipment on the east driveway, behind the fuel shed and behind the house. After visiting the site, it is staff's opinion that it would be screened from both the neighbors and the public road.
4. Screening will be applied for all equipment. – Currently this is an issue. Since the last review by the Planning Commission on 12/7/2021 most of the trees have been removed from the west side of the property. The property corners have now been marked and it is apparent that all of the trees on the west side of the property have been removed. One reason for this is that the driveway that now encircles the home is not on the original site plan. The new portion on the west is within the defensible area surrounding the home (30' per WUI, first 15' cleared except for shorter bushes/shrubs, next 15' thinned). Furthermore, the new site plan shows this as the snow storage area. Applicant has committed to planting large 6 foot tall trees along the west property line at the front property line and at the gap behind the house. The applicant has also suggested using fake trees to enhance the screening.
5. Equipment cannot exceed an idle time of 5 minutes. – Currently the Town has not had any complaints about idle time.
6. Maintenance, fueling, and repairs to equipment will be done inside the garage. – Storing fuel in a garage that is under a home does not meet the building code. Because of this, the applicant built a shed for the storage of the fuel. This shed is shown on the new site plan and is another reason for the amendment to this CUP. The shed did not require a building permit since it is smaller than 200 square feet. The applicant is now asking to change the CUP to allow that the fueling happen outside, next to the fuel shed.
7. Currently conforming
8. Currently conforming

STAFF RECOMMENDATION:

Given that the applicant proceeded with development inconsistent with the CUP, it may be appropriate to revoke the CUP all together. The Town is only required to allow a conditional use to proceed if the applicant is willing to abide by reasonable conditions mitigating foreseeable detrimental impacts of the use. By developing inconsistent with the CUP approved site plan, the applicant has displayed an unwillingness to abide by the conditions. According to §9-11-2(D) of the LMC, "the violation of any condition, safeguard, or commitment of record by the applicant shall be sufficient grounds for revocation of conditional use approval." In this case, the removal of trees which were slated on the approved site plan to be screening for the conditional use without modifying the site plan and receiving approval from the commission ahead of time would be a clear violation of the CUP and grounds for revocation.

Alternatively, the Commission may consider granting a revised CUP (or new CUP if the existing one is considered expired) if the Commission determines that the reasonably anticipated detrimental impacts can still be effectively mitigated via new conditions. If this is the case, Staff recommends the conditions in the attached proposed revised CUP.

PROPOSED MOTION:

I move to approve the revised conditional use permit for winter-only snow removal home occupation at 339 Spruce St with conditions as presented by staff.

ATTACHMENTS:

A - Proposed revised Conditional Use Permit

B - Revised site plan from 2024