



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT ADDENDUM

BOUNDARY COUNTY BOARD OF COUNTY COMMISSIONERS APPEAL HEARING CONTINUATION

FILE #24-0076, MAVERICK, LLC

MODIFICATION OF CONDITIONAL USE PERMIT #05-07 - MANUFACTURING BUSINESS EXCEEDING 8,000 SQUARE FEET

STAFF SUMMARY, DATED DECEMBER 04, 2024

PREPARED BY TESS VOGEL, ASSOCIATE CONTRACT PLANNER, AND CLARE MARLEY, SENIOR PLANNER, RUEN-YEAGER & ASSOCIATES, INC.

**This staff summary is to be used in conjunction with the staff report for the October 09, 2024, staff report included in the staff report packet provided to the Boundary County Board of Commissioners.*

BACKGROUND

Maverick, LLC filed a request for a modification of conditional use permit file #05-07 for a manufacturing business, Panhandle Door & Drawer, exceeding 8,000 square feet on a 17.2-acre parcel in the Agriculture/Forestry zone where an increase in the number of employees was requested. The parcel is located at 168 Pot Hole Road and is identified as Assessor's Parcel RP61N01E291201A in Section 29, Township 61 North, Range 1 East, B.M. The site is currently served by the Cabinet Mountains Water District, individual septic system, and the Paradise Valley Fire District. The Boundary County Planning & Zoning Commission voted unanimously to approve the request at their July 25, 2024, public hearing.

On August 05, 2024, and August 20, 2024, two sets of appeals were submitted to the Boundary County Board of Commissioners, who accepted the August 5th appeal on August 14, 2024, stating the appeal to be submitted on August 20th would also be included. The appeals were filed by Don Jordan, Kathy Konek, Kelly Martin, Jeffery Steinborn, and Jim Dewberry, who advised that the decision of the Planning & Zoning Commission was arbitrary and capricious and caused undue adverse impacts to neighboring property owners. A public hearing for the appeal was held on October 09, 2024, but continued until November 06, 2024, to allow for specific additional information to be provided. Due to scheduling conflicts the hearing was rescheduled to December 11, 2024.

CONTINUATION REQUEST/RESPONSES

The following is a list of the additional information requested by the Board of County Commissioners and the responses received:

1. Clarification on ventilation hazards.
 - a. **Applicant:** *Panhandle Door has an air quality permit issued by the Idaho DEQ [Department of Environmental Quality] and we meet all DEQ's requirements for the way we operate and vent our painting room and spray booths. All the air venting out of the spray room passes through an approved filter wall. The filter media is EPA [Environmental Protection Agency] approved and has an efficiency rating of 99%. We also use baghouse filters to capture the sawdust and then return the air back into the building. (11/19/24 email response)*
 - b. **Staff:** Staff provided a copy of the applicant response to DEQ.
2. Tests for air quality.
 - a. **Applicant:** *DEQ has rules about how we apply our finish products. Due to the limited amount of product we use, they do not require us to do air quality testing. I'm also not aware that Boundary County has any air quality standards other than those required by DEQ. At the request of Boundary County Planning & Zoning we have taken numerous air quality tests at the property line between our building and our neighbor. All of these tests have shown air quality to be good, with the TVOC [total volatile organic compounds] being less than 0.002 mg/m.*

- b. **Staff:** Planning staff followed up with DEQ to determine whether testing of the facility could be performed by the State. DEQ advised that it does not do independent testing and gave the names of local companies who might be able to perform the testing. DEQ could review the third-party test findings. For the type and size of this facility, DEQ has no specific standards for emissions. (10/16/24 phone call.)
 - c. **Staff:** Planning Staff followed up with the applicant to discuss arrangements to allow a third party to conduct testing. The applicant declined to allow the testing unless minimum emission standards of testing were provided to him and after consultation with his attorney. No testing by an independent party has taken place. (Phone call, 10/29/24).
3. Clarifications from the Idaho Transportation Department (ITD) on access.
- a. **Applicant:** *We have applied to ITD for a new driveway approach. They replied saying they will issue a permit for a new driveway based on a set of engineered drawings that include turning lanes per their approval. HMM Engineering is currently working on the engineering for the application and we will submit those as soon as they are completed. We would expect construction to be started in the spring as soon as the weather permits.*
 - b. **Staff:** District 1 Traffic Manager Lee Bernardi stated in emails between November 1st and 27th that a new approach permit had been submitted and either a traffic impact study or a complete set of engineered plans is required to move forward in the approach permit review. The applicant states he is currently having the engineered plans created.

Boundary County provided public notice of the continued hearing to all landowners within 300’ of the subject site and affected agencies and notice was published in the Bonners Ferry Herald. The notice advised that written comment regarding the new information for this file that is longer than 1 page must be submitted to the Planning Office at PO Box 419, Bonners Ferry, ID 83805 no later than 5:00 P.M. December 5, 2024. Anyone wishing to speak during the public portion of the hearing may do so in compliance with the public hearing procedures.

AUTHORITY

- Idaho Code §67-6512, Special Use Permits, Conditions, and Procedures
- Boundary County Land Use Ordinance, Section 2, Definitions
- Boundary County Land Use Ordinance, Section 7, Conditional Use Permits
- Boundary County Land Use Ordinance, Section 10, Standards for Specific Uses
- Boundary County Land Use Ordinance, Section 15.9., Agriculture/Forestry Zone
- Boundary County Land Use Ordinance, Section 13.2., Appeals
 - The appeal process is set forth at Section 13 of Boundary County land use code. Section 13.2.5. establishes that the hearing is to be conducted using quasi-judicial procedures, meaning the hearing will be conducted like a court proceeding and will follow the due process procedures adopted by Boundary County Board of Commissioners. The hearing will be “de novo” with the applicant, appellants, and public allowed to submit new testimony in accord with the rules of public hearings adopted by the county.
 - Section 13.2.6 Decision: Upon conclusion of the appeal hearing, the board shall, within 30 days, render a written decision, providing a reasoned analysis of the facts and findings used to reach the decision. The board may, but is not limited to:
 - **Uphold the appeal, overturning the initial decision that prompted the action.**
 - **Deny the appeal, upholding the initial decision.**
 - **Modify the decision so as to mitigate the grievance.**

STANDARDS OF REVIEW

Conditional Use Permits –

- **7.7. Considerations:** When considering a conditional use application, it should be determined at a minimum:
 - **7.7.1.** Whether the application, site plan and additional documentation provided by the applicant sufficiently demonstrate the full scope of the used proposed.

- **7.7.2.** Whether the proposed use conforms to all applicable standards established by this ordinance.
- **7.7.3.** Whether there is sufficient land area to accommodate the use proposed, and whether development is so timed and arranged so as to minimize adverse effects on surrounding properties and uses.
- **7.7.4.** How the impacts of the use proposed compare with the impacts of existing uses within the zone.
- **7.7.5.** Whether concerns raised by other departments, agencies or by the providers of public services, including but not limited to road and bridge, water, electricity, fire protection, sewer or septic, can be adequately addressed.
- **7.7.6.** The potential benefit to the community offered by the use proposed.
- **7.7.7.** Whether specific concerns aired through the public hearing process have validity and whether those concerns can be adequately addressed.
- **7.7.8.** Whether the use proposed would constitute a public nuisance, impose undue adverse impact to established surrounding land uses or infringe on the property rights of surrounding property owners, and whether terms or conditions could be imposed adequately to mitigate those effects.
- **7.7.9.** Whether the use proposed would unfairly burden Boundary County taxpayers with costs not offset by the potential benefits of the proposed use.

AGENCY/STAFF COMMENTS

Idaho Transportation Department: In emails between the applicant and the Idaho Transportation Department (ITD) dated between November 01, 2024, and December 02, 2024, information is provided that an approach permit, #1-25-053, has been submitted by the applicant to ITD which is under review pending engineered approach plans. The applicant notes that HMM Engineering is working on the engineered plans that will be submitted to ITD. ITD states that nothing else is required until the engineered plans are submitted.

Idaho Dept. of Environmental Quality: On October 29, 2024, the applicant provided his initial responses for 1) clarification on ventilation and 2) testing for air quality to the Boundary County Planning & Zoning Department. The response was provided to the Idaho Department of Environmental Quality (DEQ) on November 12, 2024, and requested a response to the provided information.

PUBLIC COMMENTS

As of the date of this report, 11 public comments have been submitted to the record – eight in favor of the approval of the conditional use permit, two in opposition of the approval of the conditional use permit and one neutral to the project. The new comments did not specifically address the requested information from the continuation of the hearing held on October 09, 2024.

DRAFT FINDINGS FOR DISCUSSION/ADOPTION

****Modified or new findings are in RED***

1. The applicant is requesting a conditional use permit for a modification of conditional use permit file #05-07 for a manufacturing business, Panhandle Door & Drawer, exceeding 8,000 square feet.
2. The proposed modifications from conditional use permit #05-07, that currently exist, include:
 - a. Expansion of the existing primary building in size.
 - b. **Any signs on site to be shown on the site plan.**
 - c. Increasing the hours of operation from 6:00am-2:30pm Monday-Friday to 6:00am-10:00pm Monday-Friday.
 - d. Increase number of employees from 6-8 to 85 people.
 - e. Increase vehicle trips per day from 6-8 to 200 trips.
3. The primary building's setbacks conform with current Ag/Forestry zone requirements and the 10-foot setback for the side yard, permitted at the time of file #05-07 per Boundary County Land Use Ordinance #99-06 (Instrument #192414).
4. The subject parcel has a comprehensive plan land use and zoning designation of Ag/Forestry.
5. High-Occupancy and Land-Intensive uses require a conditional use permit in the Ag/Forestry zone (**15.9.5.2.**).

6. Manufacturing, warehousing and distribution buildings greater than 8,000 square feet is considered to be a Land-Intensive Use (15.6.6.).
7. Commercial uses are defined as, "A use, activity, structure or group of structures on a single parcel or lot intended primarily to provide a location to attract clients or customers for the conduct of wholesale or retail trade or the provision of services. This definition incorporates the manufacture and/or storage of products or goods which is subordinate to the offering of services or goods" (2.8.).
8. Industrial uses are defined as, "A use, structure or group of structures on a single parcel or lot intended primarily for the manufacture, assembly, production, warehousing and/or storage of a product or component, or the production, refinement, processing and/or packaging of a natural resource or raw material" (2.29).
9. Primary structure is defined as, "An addressable structure establishing and defining the highest use of a lot or parcel, such as agricultural, residential, commercial or industrial. There can be more than one primary structure on a parcel or lot, and each may be supported by accessory structures, though each must be established by issuance of the appropriate county permit" (2.63.3.).
10. An active zoning violation, file ZV0002-24, was opened due to the unpermitted expansion of the use under conditional use permit #05-07. The approval of this conditional use permit, file #24-0076, and the issuance of the required commercial placement permits for the sign(s) and building expansion, would abate and close out violation ZV0002-24.
11. The expected number of employees is 85, per the application.
12. No customers are proposed to visit the site, according to the application.
13. Hours of operation are proposed to be increased from 6:00am-2:30pm Monday-Friday to 6:00am-10:00pm Monday-Friday.
14. 20 vehicle trips per day are anticipated.
15. There are two (2) exterior security lights.
16. The site is served by the Cabinet Mountains Water District, septic system, and the Paradise Valley Fire District.
17. The site is currently accessed off Pot Hole Road, a private easement that encroaches from Highway 95 but is proposed to be accessed from a new approach directly from Highway 95.
18. The site is not within any area of city impact, Airport Overlay Area, mapped wetlands, or special flood hazard areas.
19. The Boundary County Planning & Zoning Commission held a public hearing on June 27, 2024, and continued the file to the July 25, 2024, public hearing to allow for additional information on proposed fencing and specific locations of the fencing on the site plan, average vehicle trips, widening of Pot Hole Road, and access information from the Idaho Transportation Department.
20. The applicant provided a map and narrative regarding proposed fencing.
21. The applicant provided exhibits and a narrative on highway access and trip generations.
22. The applicant provided additional information on the potential to widen Pot Hole Road.
23. The Boundary County Planning & Zoning Commission voted unanimously to approve the file at the July 25, 2024, public hearing.
24. Two appeal requests from Jim Dewberry, Jeff Steinborn, & Kelly Martin and Don Jordan & Kathleen Konek were received on August 05, 2024, and August 16, 2024.
25. A notice of appeal request determination from the Boundary County Board of Commissioners was provided to the appellants and original applicant on August 14, 2024, accepting the appeal request.
26. The appeal public hearing, was held on October 09, 2024, with the Boundary County Board of Commissioners and continued to November 06, 2024, requesting the following additional information:
 - a. Clarification on ventilation.
 - b. Testing for air quality.
 - c. Clarification from the Idaho Transportation Department on access.
27. The November 06, 2024, continuation was rescheduled for December 11, 2024, due to scheduling conflicts, and further public notice in accord with state and local laws was given.

28. The applicant provided official responses to the requested information on October 29, 2024, and November 19, 2024, to the Boundary County Planning & Zoning Department. The responses were provided to the Idaho Department of Environmental Quality and Idaho Transportation Department.
29. The Idaho Transportation Department provided a response to the request information, stating an approach permit, #1-25-053, has been applied for and engineered approach plans are required.
30. Staff followed up with the Idaho Department of Environmental Quality on testing criteria and options for third-party testing. No further response was given to the information provided by the applicant as requested by the Board of County Commissioners.

DRAFT CONDITIONS OF APPROVAL FOR DISCUSSION/ADOPTION

****Modified or new conditions are in RED***

1. The conditional use permit will run with the land to which it is attached, and continue in effect for the life of the use established (**Section 7.3.**).
2. The approved conditional use permit will be deemed to lapse if work to establish the use has not begun within two (2) years of the date of approval, or when a use established by the conditional use permit is discontinued for a period of two (2) consecutive years. The owner of a property subject to a conditional use permit may request termination of the conditional use permit at any time by notifying the administrator in writing (**Section 7.4.**).
3. Prior to the issuance of this conditional use permit, the applicants shall reimburse Boundary County for first class mailings and advertisements required for public notification.
4. Upon issuance of the permit, the application, as modified by standards, terms, or conditions imposed by the conditional use permit will become the controlling plan for the property and shall not be changed or expanded without application for a new conditional use permit. (**Section 7.2.**).
5. The use shall provide and maintain a minimum of 85 parking spaces, to provide sufficient area to accommodate the highest number of employees on shift at any one time, to include shift change.
6. The following modifications of conditional use permit #05-07 shall apply:
 - a. Expansion of the existing primary building to the current square footage of 31,000 square feet.
 - b. A sign, that meets the standards of **Section 10.3.**, at the approach of Pot Hole Road and Highway 95.
 - c. Hours of operation from increased from 6:00am-2:30pm Monday-Friday to 6:00am-10:00pm Monday-Friday.
 - d. Number of employees increased from 6-8 to 85 people.
 - e. Vehicle trips per day increased from 6-8 to 200 trips.
7. All other conditions of conditional use permit #05-07, other than those modified in conditions #6a-e, shall still apply to the use on site.
8. Any signs, beyond those approved through conditional use permit #24-0076, are prohibited per **Section 10.3.**
9. A commercial placement permit, as complying with the standards of **Section 10.3.** Signs, shall be required for each applicable and permissible sign on the subject site.
10. A commercial placement permit shall be required for the expansion of the primary building on site.
11. All standards of 10.1., 10.2. and 10.3. shall be adhered to for the life of the uses.
 - a. 10.1. Standards for Commercial, Light Industrial and Industrial Uses
 - b. 10.2. Off-Street Parking
 - c. 10.3. Signs
12. The following conditions regarding air quality shall be met for the life of the use:
 - a. The applicant is subject to the standards of Boundary County land use code **Section 10.1, Hazardous Materials**, which provides for the following: "Any commercial or industrial activity involving the use or storage of hazardous materials, including but not limited to: flammable, explosive, corrosive, poisonous or radioactive materials shall provide for the safe storage and handling of these materials in compliance with current state and federal regulations so as not to threaten public safety. Such materials shall be stored or kept for disposal in areas secure from public trespass."
 - b. Boundary County shall defer to the Idaho Department of Environmental Quality for regulatory compliance and intervention.

- c. Fugitive Dust – All reasonable precautions shall be taken to prevent particulate matter (dust) from becoming airborne, as required in IDAPA 58.01.01.651.
 - d. Open Burning – Open burning of trade waste is not an allowable form of open burning as defined by IDAPA 58.01.01.600. Trade waste includes any waste generated in the manufacturing process.
 - e. Air Quality Permits – Panhandle Door, Inc. has an active air quality permit with DEQ. The landowner, applicant, or agents of the landowner or applicant shall follow all DEQ permitting requirements, including following their current permit and updating the permit as needed.
13. The applicant shall construct a new approach from Highway 95 to the facility at a location and design approved by the Idaho Transportation Department. The approach shall be completed to the satisfaction of ITD no later than December 31, 2025. The applicant may request to the Board of County Commissioners a one-year extension of the access completion date. The Board of Commissioners may grant the extension upon a showing that circumstances beyond the applicant’s control warrant the extension. Once legal access from Highway 95 is permitted and constructed, Pot Hole Road shall be not be used thereafter for facility access, except for emergency access.
14. No placement permit shall be issued prior to construction approval from the Idaho Transportation Department for the new legal access to Highway 95.

DECISION BY THE BOARD OF COUNTY COMMISSIONERS – CONDITIONAL USE PERMIT APPEAL	
Motion to Uphold Appeal	I move to uphold the appeal request and overturn the Boundary County Planning and Zoning Commission approval of the conditional use permit for the modification of CUP #05-07 for a manufacturing business exceeding 8,000 square feet, File #24-0076, finding that the conditional use permit proposal IS NOT in accord with the standards of Idaho Code and Section 7 of the Boundary County Zoning & Subdivision Ordinance, based upon the findings as written [<i>or amended – list amendments</i>]. [<i>state which findings do not meet the standards</i>] and based upon the following reasons [STATE REASONS]. This action does not result in a taking of private property.
Motion to Table	I move to table or continue the hearing to [<i>insert date, time and place not to exceed thirty (30) days</i>] to allow further consideration of the proposed application [<i>state specifically what is to be reviewed</i>] or to allow review and approval of written findings and decision.
Motion to Deny Appeal	I move to deny the appeal request and uphold the approval of the conditional use permit by the Boundary County Planning and Zoning Commission for the modification of CUP #05-07 for a manufacturing business exceeding 8,000 square feet, File #24-0076, finding that the conditional use permit proposal IS in accord with the standards of Idaho Code and Section 7 of the Boundary County Zoning & Subdivision Ordinance, based upon the findings and conditions as written and based upon the following reasons [STATE REASONS]. This action does not result in a taking of private property.
Motion to Modify	I move to modify the approval of the conditional use permit for the modification of CUP #05-07 for a manufacturing business exceeding 8,000 square feet, File #24-0076, finding that the conditional use permit proposal IS in accord with the standards of Idaho Code and Section 7 of the Boundary County Zoning & Subdivision Ordinance, based upon the findings and conditions as amended to mitigate the grievances [<i>list all amendments of the findings and conditions to the original decision</i>] and based upon the following reasons [STATE REASONS]. This action does not result in a taking of private property.