

**Before the Caldwell Hearing Examiner
City of Caldwell, Idaho
Public Hearing Held September 15, 2020**

Subject: Case No. SUP-20-07 (Gepner Storage R02190 & R02190013)

The following Land Use Action is the primary feature of this application:

- **Special-Use-Permit request for a contractor shop with outdoor storage on parcel R02190 and outdoor storage on parcel R02190013**

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I COURSE OF PROCEEDINGS

- 1.1 The Caldwell Planning and Zoning Department issued a notice of Public Hearing on application SUP-20-07 to be held before the Caldwell Hearing Examiner on August 18, 2020. Public notice requirements set forth in Idaho Code, Chapter 65, Local Planning Act, were met. On, or before, August 4, 2020, notice was published in the Idaho Press Tribune, and on, or before, July 31, 2020, notice was mailed to all political subdivisions providing services to the site and to all property owners within 300 feet of the project site; and on, or before, August 7, 2020 notice was posted on the site.
- 1.2 On August 18, 2020 the Hearing Examiner forwarded this case to a date certain: Sept. 15, 2020.
- 1.3 Files and exhibits relative to this application are available for review in the Planning and Zoning Department, 621 Cleveland Boulevard, Caldwell and at applicable public hearings.

II GENERAL FACTS

- 2.1 APPLICANT: Mark Gepner, 922 N. 1st Ave. , Caldwell, ID 83605
- 2.2 REQUEST: A request by Mark Gepner for a special use permit for a contractor shop [proposed sign shop] with storage yard on parcels R02190, and outdoor storage on R02190013 located at 216 W. Madison Street, Caldwell. The subject properties are zoned C-3 (Service Commercial) and are being utilized for storage of trailers, building materials, vehicles and construction equipment which requires a special use permit. The property lies within a mapped AE Flood hazard area.
- 2.3 ZONE DESIGNATION: C-3 (Service Commercial). Outdoor Storage is permitted with a special use permit in the C-3 zone.

2.4 FLOOD HAZARD AREA: AE (100 year special flood hazard area)

FLOOD DAMAGE PREVENTION §12-15-03: Definitions

DEVELOPMENT: Any manmade change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

DEVELOPMENT ACTIVITY: Any activity defined as development which will necessitate a floodplain development permit; such as: the construction of buildings, structures, or accessory structures; additions or substantial improvements to existing structures; bulkheads, retaining walls, piers, and pools; the placement of mobile homes; or the deposition or extraction of materials; the construction or elevation of dikes, berms and levees.

ENCROACHMENT: The advance or infringement of uses, fill, excavation, buildings, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

FLOOD PROTECTION ELEVATION (FPE): The base flood elevation plus the freeboard.

(1) In "special flood hazard areas" where base flood elevation (BFEs) have been determined, this elevation shall be the BFE plus one foot (1') of freeboard;

NEW CONSTRUCTION: For floodplain management purposes, a structure for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. Any construction started after May 2, 1975 and before the effective start date of this article is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within one hundred eighty (180) days of permit issuance.

RECREATIONAL VEHICLE: A vehicle that is:

- (1) Built on a single chassis,
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection,
- (3) Designed to be self-propelled or permanently towed by a light duty truck, and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

STRUCTURE: A walled and roofed building, including a gas or liquid storage tank that is principally aboveground, as well as a manufactured home.

ACCESSORY STRUCTURE (APPURTENANT STRUCTURE): A structure on the same lot or parcel as a principal structure, the use of which is incidental and subordinate to the principal structure.

OUTDOOR STORAGE OF VEHICLES: All vehicles have to be "mobile, licensed, and ready for highway use" in the floodplain.

12-15-05: GENERAL PROVISIONS:

(1) **Lands To Which This Article Applies**: This article shall apply to all special flood hazard areas within the jurisdiction of the City of Caldwell. Nothing in this article is intended to allow uses or structures that are otherwise prohibited by the Zoning Ordinance. (Ord. 2875, 5-16-2011, eff. 5-24-2011)

(3) **Establishment Of Floodplain Development Permit**: A floodplain development permit shall be required in conformance with the provisions of this article prior to the commencement of

any development activities within special flood hazard areas determined in accordance with the provisions of subsection [12-15-07\(3\)](#) of this article.

- (4) Compliance: No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

12-15-09: PROVISIONS FOR FLOOD HAZARD REDUCTION:

- (2) Specific Standards: In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in subsection [12-15-05\(2\)](#) of this article or subsection (4) of this section, the following provisions, in addition to the provisions of subsection (1) of this section, are required:
 - B. Non-Residential Construction: New construction, substantial improvements, and development of any commercial, industrial, or other non-residential structure shall have the lowest floor, including basement, elevated no lower than the flood protection elevation, as defined in section [12-15-03](#) of this article. Structures located in Zones A, AE, AH, AO, and A1-30 may be floodproofed to the flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AH and AO Zones, the floodproofing elevation shall be in accordance with subsection (6)B of this section. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in subsection [12-15-07\(3\)C](#) of this article.

2.5 BACKGROUND:

Mr. Gepner inquired regarding constructing a sign and embroidery shop on parcel R02190. The proposed sign and embroidery shop would be an allowed use in the "C3" zone. However, the property is currently being utilized for outdoor storage of construction equipment, materials, recreational, passenger and commercial vehicles, trailers, cars, junk vehicles, semi-trailers, connex unit(s) which would minimally require a special use permit for outdoor storage. The property is not in compliance with the Flood Damage Prevention Ordinance and FEMA regulations. Mr. Gepner indicated to staff that the majority of the construction materials will be utilized for constructing the new building. Staff has concerns that much of the material or other stored items will not be removed or located within the "sign and embroidery shop".

This area of the city is comprised of traditional neighborhoods, medium density residential zoning, and some commercial and industrial properties. Many of the properties contain older homes and several of the properties are in a state of disrepair in the immediate vicinity of the subject properties. There is 'blight' in the area. There is also a well-kept development along the eastern boundary of subject property parcel R02190013. Storage of materials in excess of six feet in height including campers, RV trailers, semi-truck trailers, that cannot be obscured by a six foot site obscuring fence may not be compatible with the immediately adjacent medium density residential zoning district and use as a residential subdivision, Commuter Estates.

The subject properties are also located on the corner of Centennial Way, classified a collector and principal arterial roadway. Centennial Way transitions into W. Madison Street also classified as a collector roadway. Centennial Way provides for access to and from the Interstate and is a well-

traveled route for citizens of the City of Caldwell. The Gepner property is fenced with 6 foot tall open chain link with additional security barbed wire. The east boundary appears to have site obscuring tan slats installed. It is currently maintained in a weed free condition. The fencing and grounds are maintained. There is no landscaping currently on the property or within the right of way along Madison and Centennial Way. Semi-truck trailers, truck boxes, and connex unit(s) are currently being utilized to sight obscure the west property from the vehicle traffic/passers-by. There are currently no special use permits or business licenses on file for the current uses of the property.



Applicable ordinance definitions that may apply to the property or current use of property, staff notes will be shown *in italics*:

JUNK VEHICLE: Partially dismantled, wrecked, discarded or otherwise non-operating motor vehicles or parts thereof. Also includes, but is not limited to, trucks, mobile homes, trailers, travel trailers, coaches, farm vehicles and machinery and/or bodies or major parts. (§07-11-01)

AUTOMOTIVE STORAGE, OUTDOOR: Any use of premises, excluding fully enclosed buildings, on which two (2) or more vehicles are standing more than thirty (30) days. Vehicles may or may not be in operating condition. This definition does not apply to those businesses that meet the definition of new or used automotive sales. [*Automotive tow yard requires a special use permit, both automobile storage and tow yards must comply with FEMA regulations in the AE flood zone*]

AUTOMOTIVE WRECKING/SALVAGE YARD: Any use of premises, excluding fully enclosed buildings, on which two (2) or more vehicles not in operating condition are standing more than thirty (30) days, or on which used vehicles, or parts thereof, are dismantled or stored. [*this use is NOT allowed in the "C3" zone*]

AUTOMOTIVE SALES, USED: A lot or parcel used for the sale of used passenger vehicles or motorcycles. All passenger vehicles or motorcycles for sale shall be easily accessible and shall be in operating condition. [*this use requires a special use permit*]

CONTRACTOR'S SHOP/STORAGE YARD: Any area of land or building used by a contractor for storage, maintenance, or processing incidental to the business of building, hauling, excavation, demolition, or similar activity and including any area of land or building used for the incidental repair of machinery used for any of the above listed activities. *[requires a special use permit in the "C3" zone]*

JUNKYARD: Any lot, land, parcel, building, structure, or part thereof, used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk. *[this use in NOT allowed in the "C3" zone]*

OUTDOOR STORAGE: The keeping, in an unenclosed area, of any goods, junk, material, or merchandise in the same place for more than twenty-four (24) hours. Such items shall be stored within a sight obscuring fence as defined in this section. *[requires a special use permit]*

TRAILER: A mobile structure mounted on a chassis and wheels, towed or hauled by another vehicle, and used for carrying of materials, goods, or objects, or as temporary offices. Use of a trailer as a temporary office shall comply with the temporary use ordinance, section 10-02-13 of this chapter.

10-02-07: FENCING REGULATIONS:

(2) General Provisions:

A. For the purposes of this section, walls, latticework, and screens shall be considered to be fences (and shall be used interchangeably) and shall be built and maintained in compliance with the provisions herein. Landscaping, shrubs, plants, etc., are not considered fences and do not need to comply with the provisions contained in this section but must comply with all provisions contained in articles 7 and 8 of this chapter. Fence posts, gates, and other fencing materials installed on a property shall also be in compliance with the provisions herein, including but not limited to height, setback, and material.

H. Fences are not required anywhere in the City except as may be necessary for sight obstruction. Certain uses may be declared by the City to possess characteristics such that sight obstruction is required to prevent damage, hazard, nuisance or other detriment to the public health, safety, or welfare.

1. The following uses, at the discretion of the Planning and Zoning Director, may be declared as requiring a sight obstructing fence:

Junkyard.

Recycling operation.

Sanitary landfill.

Storage businesses.

Wrecking/salvage yard.

Other uses not specifically listed above but determined by the Planning and Zoning Director to be similar in nature to the aforementioned uses.

2. Requirements for sight obstructing fences:

(A) Shall be solid or nonvision.

(B) The solid or nonvision portion shall be no less than six feet (6') in height as measured from the ground on which the fence is to be placed

(C) Shall completely obscure from outside view the use requiring site obstruction.

[Staff Note: The use of 'trailers' to obscure the sight is not in conformance with the sight obscuring fence code]

2.6 COMPREHENSIVE PLAN DESIGNATION: The Caldwell Comprehensive Plan Map designation for the site is **Commercial and Services**

COMPREHENSIVE PLAN COMPONENTS APPLICABLE TO THE REQUEST:

Land Use: The subject property is conditionally zoned M-1 (Industrial) and is surrounded by the following land uses:

<u>Direction</u>	<u>Zone</u>	<u>Comprehensive Map</u>	<u>Use</u>
Site	C-3	Commercial and Services	Outdoor Storage
North	C-3/R-2	Traditional Neighborhood (TN)	Residential
South	R-2	TN & Commercial & Services	Residential
East	R-2	Traditional Neighborhood (TN)	Residential
West	C-3/R-2	TN, Com&Ser, Environmentally Sensitive	Boise River/Interstate

2.6.1 Transportation/Connectivity: The subject property has frontage onto W. Madison extension from Centennial Way.

2.6.2 Public Services, Utilities and Facilities: The engineering department, fire marshal, building department, police department, Canyon Highway District No. 4, Black Canyon Irrigation District, and ITD, were all sent a request for comment on July 21, 2020.

The engineering department indicated the following:

- Owner shall obtain an approved sign permit prior to the placement of any permanent signage. All other requirements will be addressed at time of structure development.

The floodplain administrator commented applicable to both parcels as follows:

- Any buildings need to meet the elevation requirements: The base flood elevation (BFE) is 2360.2 ft. City of Caldwell will require finished floor (FF) to be 1 foot above that. So FF needs to be 2361.2 ft.
- All electrical appurtenances such as furnace, air conditioner, outlets, etc must be placed above 2361.2. All building materials below 2361.2 must be water resistant.
- Building may be elevated on fill or on stem-wall concrete foundation with flood venting.
- Outdoor storage of vehicles: All vehicles have to be “mobile, licensed, and ready for highway use,” in the floodplain as FEMA says.

Staff Note: Ashley Newbry, City of Caldwell Engineering department conducted a field visit with Deb Root, Senior Planner and met with the property owners onsite to discuss the storage currently at the location. Ashley clarified that the recreational vehicles (RV) and RV trailers had to be mobile, licensed, and ready for highway use. The other stored materials, trailers and vehicles were indicated to be acceptable in the AE zone.

2.6.3 Landscaping: The subject property should be landscaped in accordance with the City of Caldwell Landscaping Ordinance. There is a 15 foot street landscape buffer required for the frontage along W. Madison, a designated collector street. The applicant/property owner is also required to install and maintain the undeveloped right of way to the curb/sidewalk along the street.

§10-07-08 (4): Buffer Width Reduction: Buffer width reductions may be granted at the discretion of the City's landscape plan review based upon existing conditions, lot size, right-of-way requirements, topography and geography of the site. Buffer width reductions shall not be granted

based upon financial or economic reasons. Appeals to the landscape plan reviewer's decision may be made to the Council.

The subject property due to the construction of Centennial Way and required improvements to W. Madison Street has a significant amount of unutilized right-of-way frontage measuring approximately 0.31 acres (13,500 sq. ft.) between the sidewalk and the Gepner property line. Currently the installed chainlink fence is in great repair and there is a concrete curbing installed under the fence. Per the ordinance an additional 15 foot landscape buffer would be required inside the fenced lots.



The Senior Planner, P&Z Director, and City Engineer met to discuss the option of only requiring the right of way to be landscaped in accordance with the requirements of the ordinance with a plan approved by the Director for a mix of hardscaping and live trees/shrubs. The City Engineer approved the right-of-way being utilized as the landscape buffer due to the size and location of the right of way that will not be improved in the foreseen future. W. Madison is not a through street although it does intersect with Boise Ave. and serves a small group of residential properties. This large right of way places an undue burden on the property owner if additional internal landscaping were to be required.

Conditions should be placed to ensure that the applicant work with the Planning and Zoning department to gain approval of a landscape plan. This plan must be in place and landscaping installed prior to any additional development and/or increased storage on the property.

III PUBLIC TESTIMONY

3.1 Before the Hearing Examiner, **September 15, 2020**

Reserved for the Hearing Examiner

IV APPLICABLE LEGAL STANDARDS

- 4.1 City of Caldwell Zoning Ordinance No. 1451, as amended
- 4.2 City of Caldwell Comprehensive Plan, as amended
- 4.3 Idaho Code, Title 67, Chapter 65, Local Planning Act

V COMPREHENSIVE PLAN ANALYSIS

The Caldwell Hearing Examiner accepts the Comprehensive Plan Components as listed below.

5.1 The request was found to be consistent with the following Comprehensive Plan Components:

GOALS AND POLICIES – Property Rights

Goal 1: *Ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of the property.*

Policy 1-1: Establish a sound basis for land use and environmental regulations through comprehensive planning and adopted policies and ordinances.

Policy 1-2: Identify potential takings of private property prior to a regulatory or administrative action on specific property.

GOALS AND POLICIES – Economic Development

GOAL 1: *Promote economic development initiatives relating to housing, business, jobs, schools, recreational opportunities, infrastructure systems, public utilities and facilities, and public services.*

Policy 1-3: Encourage development that generates new job opportunity.

GOALS AND POLICIES – Land Use

GOAL 1: *Establish land-use management policies that protect property rights and the environment, maintain a high quality of life, provide adequate land for all types of development, and adequately buffer non-compatible uses.*

Policy 1-2: Encourage commercial and industrial uses in areas that are readily accessible to regional and principal arterials and/or public transit.

GOALS AND POLICIES – Hazardous Areas

GOAL 1: **Prevent or limit development activity in areas considered hazardous.**

Policy 1-1: Lessen the threat of harm to people and damage to property.

Policy 1-2: Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards.

Policy 1-3: Control the alteration of natural flood plains, stream channels and natural protection barriers, which help accommodate or channel flood waters.

Policy 1-4: Prevent or regulate the construction of flood barriers, which will unnaturally divert flood water or which may increase flood hazards in other areas.

Policy 1-5: Enforce standards that prohibit construction in floodways and establish construction elevations in flood plains.

Staff Note: Conditions shall be placed to comply with Flood Hazard area requirements.

5.2 The request as Conditioned was not found to be inconsistent with any of the Comprehensive Plan Components.

All adopted city ordinances, standards and codes were used in evaluating the application.

VI FINDINGS OF FACT

6.1 The Caldwell Hearing Examiner accepts the facts outlined in the staff report, public testimony and the evidence list. All adopted city ordinances, standards and codes were used in evaluating the application. The proposed use is conditionally permitted by the terms of the ordinance and is subject to conditions of approval.

VII CONCLUSIONS OF LAW

7.1 The Caldwell Hearing Examiner has the authority to hear this case and order that it be approved or denied. The public notice requirements were met and the hearing was conducted within the guidelines of applicable Idaho Code and City ordinances.

VIII ORDER OF DECISION

- 8.1 Based on the Findings of Fact and Conclusions of Law, the Caldwell Hearing Examiner hereby orders that Case Number SUP-20-07, a request by Mark Gepner, for a special use permit to locate and operate a contractor shop [Sign & Embroidery Shop] with outdoor storage on parcel R02190 and outdoor storage on R02190013 is **approved/denied** with the following conditions of approval (**if approved**):
- 8.2 Comply with the all applicable city codes, ordinances, policies, and standards.
- 8.3 All requirements of federal, state and local laws, rules and regulations in place at the date of submittal of any applications shall be adhered to in development of the subject property.
- 8.4 FLOODPLAIN COMPLIANCE: The site, parcels R02190 & R02190013, is subject to City Code 12-15 Flood Damage Prevention because the site is located inside the 100 year floodplain. The applicant shall obtain a floodplain development permit for the storage of materials and construction or development of buildings on the properties prior to construction/development.
- 8.5 LANDSCAPING: The applicant shall work with the Planning and Zoning department staff and Director to gain approval of a landscape plan for the frontage along West Madison and Centennial Way where it abuts the subject property. The City Engineer in concert with P&Z staff has approved the use of the existing right of way (approx. 0.31 acres) as the street landscape buffer in lieu of requiring the right of way and an additional 15 foot landscape buffer internal to the property. This plan must be in place and landscaping installed prior to any development and/or increased storage on the properties.
- 8.6 The applicant(s) shall work with staff and shall have an approved landscape plan no later than four (4) months from the date of the signed order of decision for case No. SUP 20 07 and/or prior to issuance of a building permit on the subject properties if a permit is desired prior to the end of the four month period.
- 8.7 Irrigation shall be provided by the applicant to keep the landscaping in weed-free living condition once installed. Applicant may work with city engineer to determine availability of irrigation to the subject properties.
- 8.8 Signage shall only be installed in accordance with Caldwell City Code §10-02-06 Sign Schedule.
- 8.9 OUTDOOR STORAGE is defined as the keeping, in an unenclosed area, of any goods, junk, material, or merchandise in the same place for more than twenty-four (24) hours. Such items shall be stored within a sight obscuring fence as defined in this section (provided below).
Requirements for sight obstructing fences:
(A) Shall be solid or nonvision.
(B) The solid or nonvision portion shall be no less than six feet (6') in height as measured from the ground on which the fence is to be place
(C) Shall obscure from outside view the use requiring site obstruction.
- Site obscuring fencing (or landscaping as approved by the Director) shall be installed prior to development of the property. The existing storage on the property shall be removed or the required fencing/landscaping installed by March 31, 2020. The fencing and storage yard shall be maintained in a weed free and orderly manner. No construction debris shall be brought to/stored/piled on the site.
- 8.10 There shall be a minimum 15 foot wide landscape easement/setback buffer along the east boundary of parcel R02190013 (approximately 223 feet) in accordance with differing land use

requirements §10-07-10 of the city landscape code. For the existing storage, all stored items shall be located a minimum of 15 feet away from the boundary fence and shall be relocated within 60 days of the signed order of decision. At such time as development of the property occurs, installation of a living landscape buffer shall be required.

- 8.11 The approval of a special use permit for a contractor's shop with outdoor storage on parcel R02190 and outdoor storage on R02190013 shall be limited to the current property owners of record Mark and Emily Gepford and immediate family. Transfer of ownership will necessitate the requirement for the new property owner to obtain land use approval for new or for ongoing use as an outdoor storage facility.