

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an Appeal of a Planning Director)	Case File No.
Decision Approving an Application for Design)	Z0233-20-D Appeal
Review for an Office and Warehouse Building.)	(Eleven Engineering)

A. SUMMARY

1. The applicant is Eleven Engineering and Design. The owner is Adam Lowery.
2. The appellant is Gary Knepper.
3. The subject property is located at 14667 Southeast Anderson Road, Damascus, OR. The legal description is T2S, R3E, Section 08A, Tax Lot 500, W.M. The subject property is approximately .89 acres and is zoned RC – Rural Commercial.
4. On November 17, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was closed.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing on this application on November 17, 2020. The public hearing was conducted virtually on the Zoom platform due to the corona virus. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the Planning Director’s decision, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, county planner Melissa Ahrens discussed the Planning Director's decision and recommended that the decision be affirmed.
3. Nate Carter, Brian Lee, Adam Lowry, and Dustin Webbinger testified in favor of the application.
4. Gary Knepper and John Peterson testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

C. FACTS

This case involves the appeal of a Planning Director decision approving design review for a 7749 square-foot office and associated warehouse storage building for a landscape company. A design review application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the design review application.¹ This appeal followed.

The subject property is located at 14667 (on the west side of) Southeast Anderson Road (Anderson Road) to the south of Highway 212 in the Damascus area. The proposed building would be used as offices for the property owner's landscaping business. The proposed building would replace an existing residential structure on the property. The area is developed with a mix of light industrial, commercial, and rural residential uses. The proposed predominantly cement lap siding building would be located in an RC zone, in between two residential properties and down the street from a rural commercial shopping center. The Damascus School, which is nearby, is a designated Historic Landmark. Before the Planning Director there were concerns expressed about potential impacts to the Historic Landmark. Those concerns appear to have been adequately addressed by conditions of approval in the Planning Director's decision. The appellant lives next door to the subject property and has longstanding complaints about the use and upkeep of the property. There is also a boundary line dispute between the appellant and the property owner.

D. DISCUSSION

The proposed office and warehouse is a permitted use in the RC zone. The application is for design review of a permitted use. There are numerous applicable approval

¹ Under ZDO 1307.03(B), the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

criteria that the Planning Director’s decision finds are satisfied. Most of those findings are not challenged by opponents. It would be a waste of the County’s money and resources to review and repeat all of the unchallenged findings. I have reviewed the Planning Director’s decision, and I agree with her findings. Therefore, I adopt and incorporate the Planning Director’s findings and conclusions in this decision, except as discussed further.

1. Design Review Approval Criteria

Clackamas County Zoning and Development Ordinance (ZDO) Chapter 1005 provides the Design Review ordinances. ZDO 1102.03 provides the approval criteria for design review. The only applicable approval criterion is ZDO 1102.03(A), which provides: “The proposed development shall be subject to Section 1000 * * * and the standards of the applicable zoning district.”

a. Surface Water Management

ZDO1006.06 provides in pertinent part:

“The following surface water management and erosion control standards apply:

- “A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.
- “B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply.
- “C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
 - “1. The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the

preliminary statement of feasibility.

“2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

“D. Development shall be planned, designed, constructed, and maintained to:

“1. Protect and preserve existing natural drainage channels to the maximum practicable extent;

“2. Protect development from flood hazards;

“3. Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;

“4. Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeding, and phasing of grading; and

“5. Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.”

The appellant, who lives immediately to the west of the subject property, argues that the added impervious surfaces from the proposed development would increase surface water runoff on his property. According to the appellant, part of the subject property drains towards his property, and the proposed development would only increase that runoff. As ZDO 1006.06 sets forth, an applicant must provide positive drainage and adequate conveyance of surface water to an appropriate discharge point. There are also detailed requirements for the surface water management plan. In order to demonstrate compliance with ZDO 1006.06, however, the only requirement is for the applicant to provide a preliminary statement of feasibility from the applicable surface water management regulatory authority. The statement must verify that “adequate surface water management, treatment and conveyance is available to serve the development or can be made available

through improvements completed by the developer or the system owner.” The applicable surface water management regulatory authority in this case is the Clackamas County Department of Transportation and Development (DTD). The applicant submitted a surface water management plan, and DTD provided a statement of feasibility. There is a proposed condition of approval requiring the surface water management plan to satisfy ZDO requirements. The applicant’s engineer discussed the surface water management plan at the public hearing and explained how it will adequately convey and drain all surface water for the property. In particular, the applicant’s engineer explained that surface water plan will not result in increased runoff onto the appellant’s property. The applicant’s engineer was very persuasive, and I do not see that there is any contrary evidence to dispute the applicant’s engineer’s testimony. The applicant has provided the required statement of feasibility and has further demonstrated the feasibility of the surface water management plan.

ZDO 1006.06 is satisfied.

b. Boundary Line Dispute

There is apparently a boundary line dispute between the applicant and the appellant, who share a boundary on the western edge of the subject property. The boundary line extends north from the end of the subject property along another parcel owned by the applicant (but not part of this application) that also borders the appellant’s property. According to the applicant, the property has been surveyed and while the survey indicated that the boundary along the applicant’s northern parcel (not part of this application) should be moved to the appellant’s benefit, the boundary line on the subject property is correct. In any event, the only approval criterion that might be impacted by the boundary dispute would be the dimensional standards for the RC zone. Table 513-2 requires a minimum side yard depth – the applicable set back between the applicant and the appellant’s boundary line – of ten feet. The applicant proposes to have the minimum ten foot setback from the property line. Although the survey shows the proposed location to meet the ten foot set back, even if something occurs subsequently that shows that the property line is incorrect, there is plenty of room for the applicant to move the building to the east and still satisfy all applicable setbacks.

All of the applicable approval criteria are satisfied.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** the application for design review in Z0233-20-D, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

A. General Conditions:

1. Conditioned approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on June 24th, 2020 as part of the response package to the County’s incomplete letter. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the recommendation described herein.
2. The decision is valid for four years from the date of the final written decision. If the County’s final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved design review project. A “major development permit” is:
 - A building permit for a new primary structure that was part of the design review approval; or
 - A permit issued by the County for parking lot or road improvements required by the design review approval.
3. This Design Review approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

B. Planning and Zoning Conditions:

4. PRIOR TO ISSUANCE OF BUILDING PERMIT, The applicant shall submit a revised site plan demonstrating compliance with the revised setback of 15 feet along the southern border of the property adjacent to 14711 Se Anderson Rd (Tax lot 23E08A 0500).
 5. PRIOR TO ISSUANCE OF BUILDING PERMIT, The applicant shall submit a revised landscaping plan demonstrating compliance with the following:
 - a. Landscaping of the unimproved area between the west lot line and the improved portion of an adjacent road right-of-way to include a 5-foot wide landscape strip with street trees.
 - b. Screening of the ground mounted mechanical equipment
 - c. Buffering, to be fencing, landscaping, or a combination of the two, along the southern property lines bordering the adjacent Historic Landmark on 14711 Se Anderson Rd (Tax lot 23E08A 0500).
 6. PRIOR TO ISSUANCE OF BUILDING PERMIT, the applicant shall submit plans that bring the current refuse enclosure up to the standards described in ZDO 1021.03 and 1021.04. The applicants shall work with Clackamas County's Sustainability & Solid Waste Staff, Emily Murkland, to finalize plans that comply with design standards.
- C. **Development Engineering Conditions of Approval:**
7. PRIOR TO ISSUANCE OF BUILDING PERMIT, The applicant shall dedicate approximately 7 feet of additional right-of-way along the entire site frontage of SE Anderson Road site frontage and verify by a professional survey that a 27-foot wide, one-half right-of-way width exists.
 8. PRIOR TO CERTIFICATE OF OCCUPANCY, The applicant shall construct improvements along the entire site frontage of SE Anderson Road to local roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:
 - a) Up to a minimum 16-foot wide, one half street improvement, as measured from the right-of-way centerline to face of curb. The

structural section shall comply with Standard Drawing C100 for a local roadway.

- b) Standard curb, or curb and gutter if curblin slope is less than one percent.
 - c) A minimum 5-foot wide landscape strip with street trees shall be provided along the site frontage. Street trees shall be planted at 25-40 spacing, based on tree species.
 - d) The applicant shall provide and maintain adequate sight lines for minimum intersection sight distance of 280 feet at the driveway intersection with SE Anderson Road.
 - e) A 5-foot wide unobstructed sidewalk, per Standard Drawing S960.
 - f) Curb ramps shall be constructed at the north and west ends of the sidewalk, per applicable ODOT Standard Drawings (RD755, RD756 and RD757).
 - g) A minimum 28-foot wide concrete driveway approach, per Standard Drawing D600.
9. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit to Clackamas County Engineering Office:
- a) Written approval from the Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b) Written approval from Sunrise Water Authority for adequate water supply source to serve the development. The approval shall be in the form of utility plans stamped and signed by the Water District representative.
 - c) A set of street and site improvement construction plans, including a striping and signing plan, for review, in conformance with Clackamas County Roadway Standards Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

- i. The permit will be for road, driveway, curb, sidewalk, drainage, parking and maneuvering area, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
 - iii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp the construction plans for all required improvements.
10. PRIOR TO CERTIFICATE OF OCCUPANCY, Substantial Completion shall be met, per Roadway Standards Section 190.2. For any other unfinished improvements required by conditions of approval, a performance surety shall be provided per Roadway Standards Section 190.3, based on an Engineer's cost estimate. The estimate shall be submitted for review and approval of quantities of asphalt concrete, aggregates, curbs, sidewalks and any other required improvements and associated construction costs.

SECTION 3- ADVISORY CONDITIONS

1. A Fire Access and water supply plan shall be provided for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide fire flow tests per NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.
2. Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf

plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc.

3. Drainage facilities for the site and street improvements shall be constructed in conformance with Clackamas County Roadway Standards Chapter 4.
4. All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County Roadway Standards.
5. The applicant shall design and construct on-site parking and maneuvering areas as follows:
 - Adequate on site circulation shall be provided for the parking and maneuvering of all vehicles anticipated to use the site. All parking and maneuvering areas shall be paved and constructed per Standard Drawing R100.
 - Parking spaces shall meet minimum dimensional requirements of ZDO Section 1015, and Roadway Standards Drawing P100 or P200, as applicable. The plans shall list the number of parking spaces required and the number of parking spaces provided.
 - All curbs shall typically be type "C", or curb and gutter if curb line slope is less than one percent, if they carry, direct or channel surface water. Alternative curbs will be considered when it is determined by the Clackamas County Department of Transportation and Development that type "C" curbs or curb and gutter are not appropriate. Extruded curbs for carrying, directing or channeling surface water, or used as a vehicle wheel stop, shall not be allowed.
 - The applicant shall show the paths traced by the extremities of anticipated large vehicles (delivery trucks, fire apparatus, garbage and recycling trucks), including off-tracking, on the site plan to insure adequate turning radii are provided.

- All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the Manual on Uniform Traffic Control Devices and relevant Oregon supplements.

DATED this 8th day of December, 2020.


Fred Wilson
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of the decision (which date appears above my signature).