

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application by the North Clackamas Parks and Recreation District for a Conditional Use Permit to Use a Portion of the Former Concord School Building as Offices and Recreation Facilities, including for Classes and Sport Club Activities.

Case File No: Z0390-22-C
(NCPRD)

A. SUMMARY

1. The subject property is an approximately 5.9 acre parcel that is the site of the former Concord Elementary School located at 3811 SE Concord Road, Milwaukie, OR 97267, also known as T2S, R1E, Section 12AD, Tax Lot 2900. The property is now owned by the North Clackamas Parks and Recreation District (NCPRD). The site is located in the community of Oak Grove in unincorporated Clackamas County (not actually within the City of Milwaukie) and has an existing 46,400 square foot, two-story building with a covered playground that is known as the Concord School building. This location is north of SE Concord Road directly west of SE Olive Street, with SE Spaulding Street terminating on the east side of the site. The site is approximately 600 feet east of McLoughlin Blvd. (Highway 99E) and approximately 5 miles north of Interstate 205. The property is zoned Urban Low Density Residential (R7), Urban Low Density Residential (R8.5), and Open Space Management (OSM). There are no mapped wetlands or water quality resources on the subject property.
2. The property was first used as a school for the Oak Grove community as early as 1890. The existing school building was built in 1936 and served as a school until 2014. The current Concord School building was constructed from a design by prominent Oregon Architect F.M. Stokes, was partially funded with a Federal Emergency Administration of Public Works grant, and is considered a good example of WPA-era construction and the only such example standing in the Oak Grove Community. Applicant states that the building is eligible to be on the National Register of Historic Places but is not listed at this time. There is a great deal of local community interest in preserving this building and maintaining the public use of the site, including using the site for a public library.
3. The applicant is Jason Varga, Project Manager for the NCPRD. The NCPRD does not propose to make any changes to the site or the building with this application. The applicant reports future plans to also use a portion of the property as a library (a new structure separate from the existing structure), but such use is not proposed with this application. The property has two existing parking lots providing 43 additional parking spaces.
4. On December 1, 2022, the Hearings Officer conducted a public hearing to receive testimony and evidence about the NCPRD's proposal for a conditional use permit to use a portion of this existing building as offices, and another portion for indoor recreation facilities, including classes and sport club activities. The Hearings Officer approved the application, subject to conditions of approval.

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B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the December 1, 2022 public hearing about this application and during a subsequent open record period, including submittals identified as Exhibits 1-11. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the corona virus. At the beginning of the hearing, 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 County's staff report, 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 Lord discussed the staff report and related exhibits, providing a presentation and related discussion, and recommended approval of the application.
3. Ms. Lord explained that the NCPRD is proposing to move their district offices into a portion of the existing building on the site. Ms. Lord noted that the NCPRD is a public entity, the use proposed is "government uses" which necessitates a conditional use permit in the R7 and R8.5 zone ("recreation uses, government owned").¹ Ms. Lord shared a slide of the proposed building use showing use of certain portions of the existing former school building, also showing no changes to the site or the building are proposed by the applicant. Ms. Lord reviewed and discussed the relevant approval criteria for this application and recommended conditions of approval. In particular, Ms. Lord discussed the requirements of Clackamas County Zoning and Development Ordinance (ZDO) Sections 1005.02(D)(5) Walkways; 1007 Roads and Connectivity; 1015.03 Bicycle Parking; and, 1021 Solid Waste and Recycling.
4. Ms. Lord shared additional slides related to specific recommendations for required conditions of approval to improve access to the building, such as addressing an existing wheel stop/raised curb, recommended pedestrian walkways and crossing zones (including painted crosswalk), improvements to the existing bike racks, requirements for solid waste and recycling, and requirements for the driveway approach and ADA accessibility.
5. Debbie Cleek, Principal of the Bookin Group, appeared and provided testimony and advocacy on behalf of NCPRD's application. Michael Bork, Director of NCPRD, also appeared and provided testimony and advocacy on behalf of NCPRD's application. They each point to present plans to use the existing building for NCPRD offices and programs without proposing modifications to the building or site. They assert that the NCPRD is working on plans for future major upgrades to the site that will likely require them to essentially tear up and redo construction required by certain of the County's proposed conditions of approval, and contend certain requirements and/or proposed conditions of approval should be modified or delayed.
6. Ms. Cleek provided specific examples, pointing to proposed conditions of approval 5 and 6 requiring pathway improvements along Concord and Spaulding adjacent to the property, asserting that these improvements will require significant grading to meet ADA requirements. Ms. Cleek notes that the building itself has numerous concrete steps to its front entry and is not ADA accessible. Ms. Cleek pointed to proposed condition of approval 11's requirements for improvements to the driveway, and notes the future plans for the site involve moving this

¹ See Clackamas County Zoning and Development Ordinance Section 315, Table 315-1.
Hearings Officer Final Order
Z0390-22-C
NCPRD CUP

- driveway altogether. Ms. Cleek notes with respect to the bike rack and trash enclosure requirements that these things can be later moved to accommodate future plans.
7. Ms. Cleek asserts that the proposed recreational use of the site is an existing use, and should be allowed outright, leaving the only change in use or “new use” of the site the office use proposed by the NCPRD. Ms. Cleek notes that the NCPRD’s proposed office space use involves eight employees, only three of whom will actually be on site. She proposes considering other mechanisms to ensure compliance with the referenced ZDO sections, including use of a phased development, such as designing the required improvements and posting a bond, or requiring a deadline of meeting the required improvements in three years, or requiring a covenant of development agreement.
 8. Liz Manser of OPSIS Architecture, also appeared and provided testimony and advocacy on behalf of NCPRD’s application. Ms. Manser noted that the current application proposal is part of a long project that was initiated in 2017 that will result in major site upgrades, including a park and a library on the subject property. Ms. Manser shared that these plans are roughly 50% through design and development, anticipating completing the planning stage in the fall of 2023.
 9. Martha Fritzie, Principal Planner for Clackamas County, explained that County staff are very aware of the NCPRD’s ultimate plans for the Concord site, and very supportive of the two phases of the proposal. Ms. Fritzie asserts, however, that the current proposal is not just for office space use of the existing building, but also provides for public recreational use of the space, and the majority of the proposed conditions of approval relate to safe, accessible access for the public. Ms. Fritzie references discussion from the most recent pre-application conference concerning these same issues, noting that the County’s recommendations are not to require all improvements, but rather a few smaller improvements to provide minimum safe access.
 10. Ken Kent, Clackamas County Engineering Division, explained that the initial review of the proposal considered requiring bonding, but the issue remains that safe access must be made available prior to the NCPRD’s use of the building.
 11. Gwendolyn Reyes-Illg is a member of the local community, and a neighbor of the site. She expressed concerns about doing construction at the site just to later undo it, as well as the overall earth moving required for the project.
 12. Thelma Haggenmiller is a member of the local community, stating she has been involved in the project from the beginning, lobbying to keep this former school property for public use. Ms. Haggenmiller is in support of the application, but states she did not understand that the NCPRD would move its actual offices to the site. She also expressed concern with “stranded investment” money in the project, with requirements for construction that would later be changed.
 13. At the conclusion of the public hearing, the Hearings Officer left the record open for 7 days for the purpose of allowing all parties the opportunity to submit additional evidence, arguments, or testimony for consideration in this matter, an additional 7 days to provide all parties an opportunity to respond to any new evidence submitted during the initial open record period, and a third 7 day period for the applicant to submit a final written argument.

C. PREHEARING COMMENTS, SUBMITTALS, FACTS

1. The application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The

application also includes a description of the proposed use and vicinity map. The application was submitted on August 11, 2022. Following submission of additional requested information the application was deemed complete August 11, 2022. The subject property is located inside an urban growth boundary. The 120-day deadline established by state law for processing this application is February 10, 2023.

2. The County requested responses to the application from: Department of Transportation and Development (DTD), Development Engineering; Department of Transportation and Development (DTD), Transportation Engineering; Department of Transportation and Development (DTD), Sustainability; Oak Lodge, Water and Sewer District; Oregon Department of Land Conservation and Development; Metro (Metropolitan Planning and Organization for the Portland region); Clackamas Fire District #1; Oak Grove Community Planning Organization (CPO); and, Property Owners within 300 feet.
3. The County received written comments from Markus Mead on behalf of the Oak Lodge Water Services District, with agency comments and requirements incorporated into the County's staff report, and included as Advisory Notes.
4. The County received written comments from Kenneth Kent, Clackamas County Development Engineering Division, with agency comments and requirements incorporated into the County's staff report, and included as proposed conditions of approval.
5. The County received written comments from Tenille Beseda, Clackamas County Sustainability & Solid Waste, with agency comments and requirements incorporated into the County's staff report, and included as proposed conditions of approval.

D. POSTHEARING COMMENTS, SUBMITTALS, FACTS

1. The NCPRD submitted updated plans on December 8, 2022, with a Memorandum dated December 7, 2022. This Memorandum references the December 1, 2022 hearing and follow-up discussions, and submitted proposed approaches to meeting the intent of the conditions of approval attached to the conditional use, with supporting diagrams and Site Improvement Plans. [Exhibit 10]
2. County staff reviewed the updated plans submitted by the applicant on December 8, 2022, and submitted a December 8, 2022 Staff Memorandum to the Hearings Officer. This Memorandum notes that County staff continue to recommend approval of the Conditional Use permit for government uses subject to conditions, providing additional comments related to the original findings and recommended conditions of approval in the initial staff report. [Exhibit 11]
3. In subsequent email correspondence, the applicant reported having reviewed this staff memo and determining it can meet the requirements of the updated conditions of approval provided in Exhibit 11, waiving the period for final written argument.

E. FINDINGS AND DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The

Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 315, 702, 1005, 1006, 1007, 1009, 1010, 1015, 1021, 1203, 1307; and the Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions: *[These findings and conclusions were reviewed, modified, and/or adopted by the Hearings Officer, with comments denoted by boldface type in italics.]*

1) PROJECT OVERVIEW:

Background: The applicant is requesting the review and approval of a conditional use permit to have the North Clackamas Parks and Recreation District offices operate within the existing building of the former Concord Elementary School. In addition to the office use, a portion of the existing building will be used for indoor recreation (e.g. recreational classes and sports club activities). The majority of the building will remain un-used (a “shell”). The applicant does not propose to make any changes to the site or the building.

A pre-application conference was held with the applicant on June 7, 2022 to discuss the preliminary proposal (reference file ZPAC0065-22).

Site Description: The subject property is approximately 5.9 acres in area and is currently developed with a 46,400 square foot, two-story building (former school) and a covered playground. There are two existing parking lots providing 43 parking spaces. The property was first used as a school for the Oak Grove community as early as 1890. The applicant’s research shows that the building on site now was built in 1936 and served as a school until 2014.

There are no mapped wetlands or water quality resources on the subject property.

2) ZDO SECTION 1203.02 CONDITIONAL USES:

A. 1203.02: Submittal Requirements

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on August 11, 2022 and additional materials received were on September 8 and September 13, 2022. Following submission of additional requested information, the application was deemed complete on September 13, 2022.

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- B. 1203.03(A):** The use is listed as a conditional use in the zoning district in which the subject property is located.

Finding: *The subject property is zoned Urban Low Density Residential - R7, Urban Low Density Residential - R8.5, and Open Space Management (OSM). Section 315 of the ZDO controls land uses in the underlying R7 and R8.5 zoning districts; Table 315-1 lists "Government Uses" as a conditional use and "Recreation Uses, Government Owned" as a permitted use.*

The North Clackamas Parks and Recreation District is a public entity. The portion of the building that will be used for the Parks and Recreation District offices is within the R7 and R8.5 zoning district. Table 315-1 specifies that "government uses" is a conditional use, therefore a conditional use permit is necessary. The recreation facilities, such as classes and sport club activities, are a permitted use in the zoning district.

*Section 702 of the ZDO controls land uses in the OSM district. The parking lot that supports this use is located on the portion of the property in the OSM district. Pursuant to Subsection 702.05(A) and (F), a parking lot accessory to indoor recreation facilities, meeting rooms, and other similar uses are a conditional use. The parking lots supporting the public recreation use and supporting staff offices are customarily accessory to the use and therefore can be allowed with a conditional use permit. This criterion is met. **The Hearings Officer concurs in these findings.***

- C. 1203.03(B):** The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

Finding: *In addition to the findings made in the applicant's narrative. Staff adds the following:*

The subject property is approximately 5.9 acres in size. The submitted site plans and narrative demonstrate the property is of sufficient size to accommodate the proposed office and recreational uses, along with necessary parking and circulation. The subject property has direct vehicular access onto Concord Rd and Spaulding Ave, and is located between the McLoughlin Blvd and SE Oatfield Rd. on Concord Rd.

The property is generally regular in shape and is flat with a modest slope. It intersects with SE Concord Rd, SE Olive Ave, and SE Spaulding Ave, but the applicant states that the Olive Ave and Spaulding Ave rights of way are not open to vehicle traffic. The site is currently developed with a 46,400 square foot, two-story building (former school), a covered playground and two parking lots. The building (former school) has been on the property since the 1930s. Combined with size, the shape of the property does not present any significant limitation to the proposed use of the site. There are no mapped protected natural features on the property.

*The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed office use for the Parks and Recreation District (i.e. government use). When considering the characteristics of the subject property, staff finds that this criterion is met. **The Hearings Officer concurs in this analysis and these findings.***

- D. 1203.03(C):** The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

Finding: Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below.

- E. 1203.03(D):** The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

Finding: The site is in the R7, R8.5 and OSM zoning districts and is surrounded by other properties in R7, R8.5 and General Commercial (C-3) zoning districts. Primary uses of the R7 and R8.5 zoning districts are included in ZDO Section 315, and primary uses in the C-3 district are in ZDO Section 510.

Land use in the surrounding area is primarily a mix of single-family detached dwellings and commercial development along the McLoughlin Blvd corridor. Physical and visual characteristics of the surrounding area will not be changing with this proposal; there are no changes proposed to the exterior of the building or site. The building is well established in the neighborhood and is part of the characteristics of the area, since it has been there since the 1930s. The school has not been operating at this site since 2014, and so this application is not necessarily a “change in use”, rather is it a new use. The proposal involves using the existing driveways, access roads, parking and vehicles circulation areas that are already on site. The County’s Transportation Engineering division has reviewed this application and the traffic impact study provided in the application materials and have concluded that the existing transportation facilities are adequate to serve this use. The proposed “government use” (i.e. offices for the Parks and Recreation District) will not alter the character of the area in a manner that would substantially limit, impair or precludes the uses of the surrounding area. **The Hearings Officer concurs in this analysis and these findings.**

- F. 1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding: The applicant addresses the Comprehensive Plan in their submitted narrative and details how the proposed use is consistent with the residential goals of the Plan, although they reference the incorrect Comprehensive Plan designation policies in their findings. The subject property is designated Low Density Residential (LDR) and Public and Community Use Open Space (PCU) on the Comprehensive Plan map. The R7 and R8.5 zoning districts implement the goals and policies of the LDR plan designation and the OSM zoning district implements the PCU designation. The building that the offices will be located in is within the LDR designation.

- a. Chapter 4, Residential – Low Density Residential Policies – 4.R

The low density residential policies include having adequate provisions for recreational facilities because they are integral parts of residential neighborhoods. The review of this permit, and the recommended conditions of approval are intended to ensure adequate design and safety, particularly with regard to vehicular and pedestrian access. This criterion is met. **The Hearings Officer concurs.**

b. Chapter 5, Transportation – Access Standard Policies – 5.Q

5.Q.5 Access Standards shall be implemented through the Zoning and Development Ordinance and the County the County Roadway Standards. Where access management standards are adopted by the County in Special Transportation Plans, those standards shall apply.

As specified under ZDO section 1007, development applications are required to provide adequate access to current County standards, which may include right-of-way dedication, frontage improvements, on-site access and parking.

SE Concord Road is classified as a minor arterial roadway (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for arterial roads. The existing right-of-way varies along the SE Concord Road frontage from 60 to approximately 67 feet. The standard cross section for an urban arterial roadway, per Roadway Standards Drawing C140 includes a 70-foot wide public right-of-way. Although, the existing right-of-way is not consistent with the standard cross section, it is adequate to serve the proposed use.

The frontage of SE Concord Road is improved with bike lanes, pull-out areas previously used by buses, and curb-tight sidewalk. Based on limited additional traffic generated by the proposed use, reconstructing the full SE Concord Road site frontage to current standards, that would include pavement widening, new curb, landscape strip and sidewalk is not proportional to the scale of the development and will not be required. However, with the existing curb-tight sidewalks along the SE Concord Road frontage, the two existing driveway approaches do not meet current standards for ADA access for those traveling on the sidewalk across the driveway approaches. As mitigation for additional impacts on the transportation system, staff recommends a condition of approval to require adequate pedestrian access along the site frontage and either remove and replace the existing driveway approaches or construct a sidewalk behind the approaches, providing ADA accessibility across the driveways.

In order to ensure compliance with access standards, if approved, the following conditions have been suggested:

- *The applicant shall obtain a development permit from Clackamas County department of transportation and development prior to the initiation of any construction activities associated with the project.*
- *All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County roadway standards.*

The Hearings Officer concurs in the above findings and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]

- G. 1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, and Section

1000 Development Standards.

Finding: Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below.

3) **ZDO SECTION 1000 DEVELOPMENT STANDARDS**

Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

- A. **1005.02 Site Design, 1005.03 Building Design, 1005.04 (A) Outdoor Lighting** establishes standards for the sites of commercial, industrial, and multifamily developments and addresses standards for the placement and orientation of buildings, on-site pedestrian circulation, the placement and orientation of building entrances. These sections provide standards for building facades, entrances roof design, exterior building materials, the screening of mechanical equipment; and, standards to ensure that onsite lighting is compatible with the site and surrounding uses while preventing light trespass and pollution along with other use- and zone-specific standards.

Finding: *There are no proposed changes to the existing building or exterior site with this proposal. The proposal includes only the change of use of a former school to government offices and indoor recreational facilities.*

The structure has public entries that face the street; there is visual interest due to the presence of architectural features such as building modulation, trim, and varying roof lines. The building has existing facades with a degree of transparency on street-facing facades due to the existing windows. Exterior building material is brick. The roof-mounted mechanical equipment is not currently screened and is visible from the main parking lot area off of Concord Rd; any changes to the mechanical equipment in the future may be required to comply with the screening standards of this Section.

The existing lighting on site can be generally described as floodlights or spot lights that are mounted to the exterior of the building, at a high height. The lighting illuminates both parking lots. The building's exterior wall-mounted lights were directed downward; and there are existing lantern-style light fixtures that light up the parking lot area near Concord Rd which are not down-lighting. Any future lighting added to the subject property or on buildings on site will require compliance with Section and will be reviewed for compliance at that time.

There is no pedestrian walkway within the Concord Rd parking lot or adjacent to it to connect pedestrian to the public building entrance. The Concord Rd parking lot has 35 parking spaces, and there is no hard-surfaced pedestrian pathway to the building entrance. There is a loose gravel type of path along the edge of the parking area to the building entrance, but it is not hard surfaced, and tapers in width, narrowing to nearly nothing as approaches the sidewalk along Concord Rd. and does not comply with the standards for walkways of this subsection. A condition of approval is recommended to ensure compliance with this Subsection.

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Figure 1 Photo taken March, 2022 by Google Maps

There is insufficient ADA accessibility from the only ADA designated parking space in the Spaulding Ave parking lot to the nearest building entrance. There exists no clearly marked walkway through the parking area to the existing walkway outside of the parking lot. A condition of approval is recommended to ensure adequate and safe ADA accessible routes to the public building entrance from the Spaulding Ave parking lot, specifically from the designated Accessible parking space.

Based upon the findings above, and the applicant's submitted narrative, staff finds that these standards can be met with conditions of approval.

The Hearings Officer concurs in the above findings and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]

- B. 1006.03 Water Supply and 1006.04 Sanitary Sewer Service. Approval of a development that requires public or community water service and sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the service provider(s).

Finding: *A statement of feasibility from Oak Lodge Water Services District was provided by the applicant and confirmed that there is adequate sewer and water services for the proposed use. Oak Lodge reviewed the application and found that the proposed conditional use proposed no immediate utility demand beyond what is existing. A formal determination of the demand will be evaluated during the Oak Lodge utility permit application process through a combination of water supply demand and wastewater strength and volume statements supplied by the owner on Oak Lodge forms. This criterion can be met with a condition of approval. **The Hearings Officer concurs.***

- C. **1006.06 Surface Water Management and Erosion Control.** 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.
 - i. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility
 - ii. 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.

Finding: *Oak Lodge Water Services District is the surface water management authority for the area including the subject site. The statement verifies that adequate surface management, treatment, and conveyance is available to serve the development or can be made available. This criteria can be met with a condition of approval. The Hearings Officer concurs.*

- D. 1007.01(A and B) Roads and Connectivity – General Provisions.** The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Finding: *The Clackamas County Development Engineering division reviewed the application materials and provide the following comments:*

- *ZDO Subsection 1007.07 requires that there is an adequate transportation system in place at the time of a development. Under Roadway Standards Section 295.2(b), a traffic impact study is generally required when a development will generate more than 20 peak*

hour vehicle trips. Although, the proposed change of use from school to office and community center use was not anticipated to increase vehicle trips significantly, a traffic study was required to assess the number of vehicle trips historically generated by the school use in relation to the proposed use. The applicant has provided a Transportation Impact Analysis (TIA) by Global Transportation Engineering, dated August 10, 2022 addressing trip generation, on-site circulation and intersection sight distance. The proposed conditional use will result in a net increase of 20 morning peak hour trips, 24 evening peak hour trips, and 247 weekday daily trips. The TIA finds that with the proposed use, roadways and intersections within the influence area of the site will operate within adequate capacity and safety standards. Traffic and Development Engineering staff concur with the Traffic Assessment findings. The roads serving the project site have adequate capacity, and engineering staff finds that the roadways will continue to operate within standards with the additional traffic generated by the proposed development. **The Hearings Officer concurs in this finding.**

- ZDO Section 1007.02(F), specifies that developments improve the roadway frontage of the project site to current urban roadway standards. In addition, ZDO Section 1007.04(C) requires pedestrian and bicycles facility along the frontage of institutional developments. SE Concord Road is classified as a minor arterial roadway (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for arterial roads.
- The existing right-of-way varies along the SE Concord Road frontage from 60 to approximately 67 feet. The standard cross section for an urban arterial roadway, per Roadway Standards Drawing C140 includes a 70-foot wide public right-of-way. Although, the existing right-of-way is not consistent with the standard cross section, it is adequate to serve the proposed use. **The Hearings Officer concurs in this finding.**

The frontage of SE Concord Road is improved with bike lanes, pull-out areas previously used by buses, and curb-tight sidewalk. Based on limited additional traffic generated by the proposed use, reconstructing the full SE Concord Road site frontage to current standards, that would include pavement widening, new curb, landscape strip and sidewalk is not proportional to the scale of the development and will not be required. However, with the existing curb-tight sidewalks along the SE Concord Road frontage, the two existing driveway approaches do not meet current standards for ADA access for those traveling on the sidewalk across the driveway approaches. As mitigation for additional impacts on the transportation system, the applicant will be required to provide adequate pedestrian access along the site frontage and either remove and replace the existing driveway approaches or construct a sidewalk behind the approaches, providing ADA accessibility across the driveways. **The Hearings Officer concurs in the above findings and analysis and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]**

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- E. **1007.02(F):** Developments shall improve the roadway frontage of the project site to the current urban Roadway Standards. In addition, ZDO Section **1007.04(C)** requires pedestrian and bicycles facility along the frontage of institutional developments.

***Finding:** SE Concord Road is classified as a minor arterial roadway (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for arterial roads. The existing right-of-way varies along the SE Concord Road frontage from 60 to approximately 67 feet. The standard cross section for an urban arterial roadway, per Roadway Standards Drawing C140 includes a 70-foot wide public right-of-way. Although, the existing right-of-way is not consistent with the standard cross section, it is adequate to serve the proposed use. The frontage of SE Concord Road is improved with bike lanes, pull-out areas previously used by buses, and curb-tight sidewalk. Based on limited additional traffic generated by the proposed use, reconstructing the full SE Concord Road site frontage to current standards, which would include pavement widening, new curb, landscape strip and sidewalk, is not proportional to the scale of the development and will not be required. However, with the existing curb-tight sidewalks along the SE Concord Road frontage, the two existing driveway approaches do not meet current standards for ADA access for those traveling on the sidewalk across the driveway approaches.*

*As mitigation for additional impacts on the transportation system, staff recommends a condition of approval requiring that the applicant provide adequate pedestrian access along the SE Concord Rd site frontage and either remove and replace the existing driveway approaches or construct a sidewalk behind the approaches, providing ADA accessibility across the driveways. As conditioned, this criterion can be met. **The Hearings Officer concurs in the above findings and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]***

- F. **1007.07 Transportation Facilities Concurrency.** Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.

***Finding:** Under Roadway Standards Section 295.2(b), a traffic impact study is generally required when a development will generate more than 20 peak hour vehicle trips. Although, the proposed change of use from school to office and community center use was not anticipated to increase vehicle trips significantly, a traffic study was required to assess the number of vehicle trips historically generated by the school use in relation to the proposed use. The applicant has provided a Transportation Impact Analysis (TIA) by Global Transportation Engineering, dated August 10, 2022 addressing trip generation, on-site circulation and intersection sight distance. The proposed conditional use will result in a net increase of 20 morning peak hour trips, 24 evening peak hour trips, and 247 weekday daily trips. The TIA finds that with the proposed use, roadways and intersections within the influence area of the site will operate within adequate capacity and safety standards. Traffic and Development Engineering staff have reviewed the TIA*

*and concur with the Traffic Assessment findings. The roads serving the project site have adequate capacity, and engineering staff finds that the roadways will continue to operate within standards with the additional traffic generated by the proposed development. **The Hearings Officer concurs in the above analysis and findings.***

G. 1009 Landscaping.

Section 1009 seeks to ensure that sites are design with appropriately selected, designed, installed, and maintained landscape materials and that landscaped areas are used for appropriate purposes

Finding: *Based upon the application materials submitted and the findings made in the applicant's written narrative, staff finds this criterion is met. **The Hearings Officer concurs.***

H. 1010 Signs; 1010.08 Signs for Service, Recreational, Institutional, and Governmental Uses. In residential and natural resource zoning districts, the following standards shall apply to signs for recreational vehicle camping facilities regulated by Section 813, other uses regulated by Section 813 prior to June 1, 2015, and institutional uses.

Finding: *There are no new signs proposed with this conditional use permit. For the purposes of determining the applicable sign criteria, the proposed use is an institutional use. Future signage must comply with this section. This standard is not applicable.*

I. 1015 Parking and Loading. Inside the Portland Metro UGB, parking, loading, and maneuvering areas shall be hard-surfaced, unless a permeable surface is required for surface water management pursuant to the regulations of the surface water management authority or in order to comply with Subsection 1006.06. Off-street parking areas are governed by Subsection 1015.02(A) and minimum automobile parking space requirements for the proposed uses provided in Table 1015-1. The minimum number of bicycle parking spaces listed in Table 1015-3 are required. If a listed use is located with the UGB, it shall have a minimum of two bicycle parking spaces or the number required by Table 1015-3, whichever is greater.

Finding: *The applicant provides a detailed analysis of on the proposal complies with the minimum number of vehicle parking spaces necessary for the proposed uses, pursuant to Table 1015-1. Staff concurs with the findings made by the applicant, and adds the following:*

Office uses (including government office) requires a minimum of 2.7 vehicle parking spaces. The applicant proposes to use 4,746 square feet of the building for offices. For indoor recreational uses, a minimum of 4.3 parking spaces per 1,000 square feet is necessary. The building will include 6,812 square feet of recreational uses. There are two existing parking lots that will support the proposed use; off of Concord Rd is a lot with 35 parking spaces, and off of Spaulding Ave is a lot with 8 parking spaces.

Pursuant to Subsection 1015.03, staff make the following findings:

Current bicycle rack is located adjacent to the Spaulding Ave parking lot. The rack is located within close proximity of the building entrance, however its location blocks ADA access from the designated ADA parking space.

Subsection 1015.03(B) states that the bicycle rack must hold bicycles securely by the frame and be securely anchored; “the rack(s) must accommodate both:

- i. Locking the frame and one wheel to the rack with a high-security U-shaped shackle lock; and*
- ii. Locking the frame and both wheels without removal of wheels to the rack with a chain or cable not longer than six feet.”*

The existing bicycle rack on site does not comply with this standard. Figure 2 and Figure 3, below, are included to demonstrate this noncompliance. A condition of approval is recommended to require the applicant to install a new bicycle rack that complies with the standards of this section.



Figure 2 Photo taken in July, 2012 by Google Maps



Figure 3 Photo of bicycle rack taken on November 22, 2022 by M. Lord

A minimum of 2 bicycle parking spaces is required for the office use, per 2,500 square feet, up to 50,000 square feet. One bicycle parking space per 40 seats or per 40 persons of design capacity, whichever is greater, are required for the recreational uses (theaters, auditoriums, public assembly places). The design capacity of the recreational areas of the building were not provided by the applicant, and so staff is unable to determine the

number of bicycle parking spaces required to meet the minimum standard. As conditioned, this criterion can be met.

The Hearings Officer concurs in the above findings and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]

- J. **1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

Finding: *The requirements and standards of Section 1021 are applicable to this proposal. The existing recycling and waste area is located on the southeast side of the building, and is located on pavement. The receptacles (dumpsters) are visible from SE Concord Rd. and they are not located within an enclosure. Staff recommends a condition of approval to ensure that compliance with this section is achieved.*

The Hearings Officer concurs in the above findings and adopts related conditions as recommended in the updated recommended conditions of approval submitted in the December 8, 2022 Staff Memorandum. [Exhibit 11]

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. Oak Lodge Water Services District, Markus Mead, Markus@OLWSD.org, 503-353-4205
 - a. The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surface water and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.
 - b. The proposed conditional use proposed no immediate utility demand beyond what is existing. The proposal is effectively a tenant improvement type of application. This demand shall be evaluated during the Oak Lodge utility permit application process through a combination of water supply demand and wastewater strength and volume statements supplied by the owner on Oak Lodge forms.
 - c. The proposed conditional use constitutes an occupancy change and may include a need for additional public utility connections for fire supply, water supply and/or wastewater disposal per Oak Lodge code. These connections are to be installed at the owner's expense.
 - d. The application will be reviewed by the rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.
 - e. No utility demand information for fire or domestic water, wastewater or stormwater has been submitted for this land use application. The feasibility statement for related application Z0015-21 was signed with the condition that the eventual design review

application would estimate utility demand so Oak Lodge could evaluate utility capacity and availability. As there will be no design review application, Oak Lodge reserves the right to require and review a quantitative utility demand estimate and evaluate Oak Lodge's utility capacity following land use application and may not be able to provide utilities.

- f. If more than 500 square feet of soil is disturbed, the property owner shall apply for an erosion and sediment control permit from OLWSD.
- g. Property owner shall apply for a utility permit from OLWSD prior to building permit or occupancy issuance.
- h. The proposed conditional use constitutes an occupancy change. Sanitary sewer and/or water System Development Charges will be assessed during the utility permit application.
- i. All fees and charges shall be paid before the utility permit is issued. All costs associated with the design, construction and testing of any applicable utility shall be provided by and at the sole expense of the owner and performed prior to permit approval. The utility permit is a prerequisite to the County's building permit and/or occupancy.
- j. A water service backflow device for both domestic and fire supply all be installed and inspected by Oak Lodge for utility permit issuance.
- k. Depending upon design, the property owner may need to complete a public sanitary sewer and potable water main line extension. Public main lines shall be contained in a public right-of-way or public easement per Oak Lodge Water Services standards.
- l. Depending on design, property owner may be required to grant a public easement to Oak Lodge Water Services District for sanitary sewer and water utility lines. The easement shall be a minimum width of 20 feet.

F. CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

I reviewed and considered the entire record in this matter, including the original staff report, original proposed conditions of approval submitted by staff, the arguments advanced by the NCPRD concerning alternatives, comments from members of the public concerning the application and impacts of additional construction requirements related to "re-doing" this work. I also reviewed and considered the pre-hearing materials submitted, including the application, agency and public comments received prior to the public hearing, and post-hearing submittals including the post-hearing staff memorandum proposing certain changes to the proposed conditions and additional comments related to the original findings and recommended conditions of approval from the initial staff report, and the applicant's

acceptance of the County's proposed conditions of approval as revised. Upon review, I find the following conditions are designed to ensure that the requirements of this Conditional Use permit are met, adopting the following:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on August 11, 2022 and additional materials received on September 8, September 13, 2022, and December 8, 2022. 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 decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). 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 conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a) A building permit for a new primary structure that was part of the conditional use approval, or
 - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval
3. The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surface water and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.
4. Any outdoor lighting [ZDO 1005.04] shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
5. Prior to commencement of use, a minimum 5-foot wide pedestrian walkway shall be constructed along the northeast edge of the parking lot off of SE Concord Rd and meet the standards of ZDO Section 1005.02(D)(5).
6. Prior to commencement of use, a crossing zone to make walkways identifiable to motorists shall be painted to ensure adequate and safe access from the most westerly parking space in the Spaulding Ave parking lot to the nearest public building entrance shall be designed pursuant to Section 1005.02(D)(5).
7. Prior to commencement of use: The applicant shall install a bicycle rack that complies with the design standards of Subsection 1015.03.
8. Prior to commencement of use: The applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.clackamas.us under "Garbage & Recycling." [Reference Section 1021; exception made to Section 1021.03(A)]

9. All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County Roadway Standards.
10. The applicant shall obtain a Right of Way Permit from Clackamas County Department of Transportation and Development prior to initiation of any construction activities associated with the project, and initiation of the proposed use.
11. Prior to commencement of the use the applicant shall design and construct the following on the SE Concord Road frontage:

The applicant shall provide a 7-foot wide striped ADA accessible route behind the existing westerly driveway approach on SE Concord Road. The ADA route shall provide a continuous connection from the public sidewalk across the driveway.

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- l. Depending on design, property owner may be required to grant a public easement to Oak Lodge Water Services District for sanitary sewer and water utility lines. The easement shall be a minimum width of 20 feet.

G. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0390-22-C for a Conditional Use permit for governmental uses on the subject property, subject to conditions of approval.

Dated: January 10, 2023



Carl D. Cox
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 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 is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.