

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

Regarding an Application for a Conditional Use	)	<b>Case File No.</b>
Permit to Expand an Existing Head Start	)	<b>Z0021-19-C</b>
Preschool Facility.	)	<b>(Head Start)</b>

**A. SUMMARY**

1. The applicant and owner is Head Start Clackamas County Children's Commission.
2. The subject property is located at 16518 Southeast River Road, Milwaukie, OR 97267. The legal description is T2S, R1E, Section 13BA, Tax Lot 300 W.M. The subject property is approximately three acres and is zoned R-10 – Urban Low Density Residential.
3. On March 7, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on March 7, 2019. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. 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 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 planners Clay Glasgow and Deana Mulder discussed the staff report and recommended approval of the application.
3. Sue Elder and Tim Richard testified in support of the application.
4. No one testified in opposition to the application.

5. At the conclusion of the public hearing, the Hearings Officer closed the record.

### **C. FACTS**

The subject property is a 3-acre parcel zoned R-10. The property is located at 16518 Southeast River Road, Milwaukie, OR 97267, on the east side of Southeast River Road between Southeast Vineyard Road and Southeast Concord Road. The property is located in an area of single family residential homes, and there is a grade school just north on Southeast River Road. The preschool is located in a former church that was converted in 2002. In 2006, the preschool received approval for a major modification to add 9200 square feet to the facility, of which 6005 square feet were added. The proposed development involves expanding the existing preschool 3855 square feet for an additional classroom.

### **D. DISCUSSION**

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. Most of the findings in the staff report are not challenged.<sup>1</sup> It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report and agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.

The only opposition to the application is a letter from Joseph Edge (Edge). Initially, Edge argues that the section of Southeast River Road (River Road) along the preschool is very wide and that employees park along the road in the bicycle lane. Edge suggests that a condition of approval be imposed to add "No Parking" signs or provide additional striping to discourage such parking. While the applicant does not have authority to implement such changes, a condition of approval is warranted requiring the applicant to work with the Department of Transportation and Development (DTD) to provide one of those alternatives.<sup>2</sup>

Edge also argues that the proposed development does not comply with ZDO 1005.03(D)(5)(b, c & e), which provide site design requirements:

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<sup>1</sup> An amended staff report was produced that includes additional testimony from the Department of Transportation and Development regarding traffic impacts. All references are to the amended staff report.

<sup>2</sup> The DTD representative explained that it is not possible to do both "No Parking" signs and additional striping.

“Standards for walkways through vehicular areas:

“\* \* \* \* \*

“b. Where walkways are adjacent to driveways, they shall be separated by a raised curb, bollards, landscaping or other physical barrier.

“c. Inside the Portland Metropolitan Urban Growth Boundary (UGB), if the distance between the building public entrance and street is 75 feet or greater and located adjacent to a driveway or in a parking lot, the walkway shall be raised, with curbs, a minimum four-foot-wide landscape strip and shade trees planted a maximum of 30 feet on center.

“\* \* \* \* \*

“e. Walkways bordering parking spaces shall be at least seven feet wide or a minimum of five feet wide when concrete bumpers, bollards, curbing, landscaping, or other similar improvements are provided which prevent parked vehicles or opening doors from obstructing the walkway.”

There is walkway that is adjacent to the parking lot on the southeastern portion of the property near River Road, but it is neither raised nor accompanied by the various measures described in ZDO 1005.03(D)(5)(b, c & e). Edge argues that these measures must be provided. DTD responds, and I agree, that: (1) ZDO 1005.03(D)(5)(b) does not apply because the walkway is not “adjacent to driveways” – the walkway is adjacent to a parking lot not a driveway; (2) ZDO 1005.03(D)(5)(c) does not apply because the walkway is not “located adjacent to a driveway or in a parking lot” – the walkway is, as discussed, not adjacent to a driveway, and the walkway is adjacent to the parking lot not “in a parking lot;” and (3) ZDO 1005.03(D)(5)(e) does not apply because the walkway is not “bordering parking spaces” – the walkway is bordering the parking lot, but not where there are any parking spaces. Therefore, the proposed development does not violate the site design requirements of ZDO 1005.03(D)(5).

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** application Z0021-19-C, with the following conditions of approval.

## **F. CONDITIONS OF APPROVAL**

### **I. General Conditions:**

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s). No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Deans Mulder, Clackamas County at (503) 742-4710 or at [deanam@co.clackamas.or.us](mailto:deanam@co.clackamas.or.us)
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi Coryell can be contacted at (503) 742-4657 or [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us) The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) If approved, the conditional use is valid for four (4) 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 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.
- 5) These Conditional Use and Design Review approvals are 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.

- 6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

**II. Planning and Zoning Conditions:** Clay Glasgow, (503) 742-4520,  
[clayg@clackamas.us](mailto:clayg@clackamas.us)

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Building setbacks cited in Section 315 of the ZDO to be satisfied.
- 3) **Prior to building permit approval**, outdoor lighting [ZDO 1005.05(A) and (B)] 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.
- 4) **Prior to building permit approval**, All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. Get approval of any required permits.
- 4) **Prior to building permit approval**, the applicant shall submit a final landscape plan to the County's Planning and Zoning Arborist, for review and approval prior to planting, illustrating the location of the vegetation and a legend, per ZDO Section 1009, including subsections 1009.02, 1009.03, Table 1009-1, 1009.04, 1009.05 and 1009.11 requirements, to be planted within and around the proposed structure and parking lot.
- 5) **Prior to Occupancy**, the developer shall submit a signed maintenance contract, or provide a financial guarantee, covering the landscape maintenance costs during the guarantee period.
- 6) **Prior to Occupancy**, the proposed landscaping shall be installed and inspected.

- 7) **Prior to final occupancy permit issuance:** the applicant shall contact Clay Glasgow, Planning & Zoning Division, 503-742-4521, [clayg@clackamas.us](mailto:clayg@clackamas.us). He can provide the necessary information about size of service trucks and appropriate containers. She also must sign off on behalf of the service provider(s). Detailed information, including ZDO 1021, is available on the county web site [www.co.clackamas.or.us](http://www.co.clackamas.or.us) under "Garbage & Recycling." Note: Roofs over trash / recycling enclosures are not allowed.

**Prior to Occupancy:** the acceptable trash / recycling enclosure shall be installed and inspected.

**III. Building Code Division Conditions:** Richard Carlson, (503) 742-4769, [richardcar@co.clackamas.or.us](mailto:richardcar@co.clackamas.or.us)

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and receive final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

**IV. Engineering Division Conditions:** Deana Mulder, (503) 742-4711, [dmulder@clackamas.co](mailto:dmulder@clackamas.co)

1. The proposed site plan shows the existing and proposed improvements and they do not trigger any additional permitting from Engineering unless planning requires a parking lot expansion.
2. The applicant will work with the Engineering Division to install "No Parking" signs or provide additional striping on Southeast River Road if possible.
3. The fire district has previously approved the circulation so unless they need to change it we do not require additional fire approval for the circulation. However, we will add an advisory condition of approval to maintain a minimum of 13.5' of vertical clearance above the parking lot and loop drive aisle. It appears that the large trees would need to be maintained to provide the vertical clearance.

DATED this 12<sup>th</sup> day of March, 2019.

  
Fred Wilson  
Clackamas County Hearings Officer

## **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## **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 mailing (which date appears on the last page herein).