

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

Regarding an Application for a Conditional Use	)	<b>Case File No.</b>
Permit to Establish a Transitional Shelter	)	<b>Z0548-17-C</b>
Community.	)	<b>(Veterans Village)</b>

**A. SUMMARY**

1. The applicant is Clackamas County Health, Housing, and Human Services. The owner is the Clackamas County Development Agency.
2. The subject property is located at the terminus of Southeast 115<sup>th</sup> Avenue, Clackamas, OR 97015. The legal description is T2S, R2E, Section 15A, Tax Lots 1200, 1500, and 1700, W.M. The subject property is approximately 19.03 acres and is zoned GI – General Industrial.
3. On November 30, 2017, 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 November 30, 2017. 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 Planning Director Mike McCallister discussed the staff report and recommended approval of the application.
3. The applicant’s representative and members of groups supporting homeless and veterans organizations testified in support of the application.

4. Tim Wimset and Rebecca Henry 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 an approximately 19.03-acre parcel zoned GI. The property is located at the terminus of Southeast 115<sup>th</sup> Avenue, Clackamas, OR 97015 approximately 600 feet south of Southeast Jennifer Street. The property is located just north of the Clackamas River. The property is relatively flat on the northern portion where the proposed development would occur and slopes down to the river. The property is currently vacant. Properties to the north are generally zoned light industrial. Property to the west is a concrete supply company. Property to the east is vacant and zoned industrial. To the south, separated by Carli Creek and a ravine, is a landscaping service and a site for a future industrial park. The proposed transitional shelter community, which would be named Veterans Village, would include up to 30 sleeping pods, that would not have electricity or water, and a number of community buildings, including an office, restrooms, kitchen and eating facilities, storage, and a shop. The current proposal seeks to provide shelter for veterans, but there is nothing in the application that would require the shelter to be exclusively restricted to veterans.

### **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. 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.

Opponents did not identify any specific approval criteria that they believed the application did not satisfy, but I will try to address their concerns. Tim Wimset (Wimset), who owns property to the southwest that might be used for rock crushing in the future, expressed concern that complaints from Veterans Village could restrict the use of his property. As the staff report thoroughly explains, and the Planning Director elaborated on at the public hearing, adjacent uses that otherwise comply with the applicable zoning could

not be required to restrict their activities due to impacts on Veterans Village. While Wimset's concern is certainly understandable, any future use of his property would not be subject to restrictions due to Veterans Village.

Rebecca Henry (Henry) argued that the proposed use should not be exempt from transportation concurrency requirements. As the staff report explains in detail, the subject property is located in a specifically described geographic area that the Clackamas County Zoning and Development Ordinance (ZDO) exempts from the transportation concurrency requirements. *See* ZDO 1007.09(C)(1). There is no dispute that the subject property is in the geographic area described in ZDO 1007.09(C)(1). Therefore, the proposed use is exempt from transportation concurrency requirements.<sup>1</sup>

Wimset and Henry both expressed concern that the shelter might not be restricted to veterans. The applicant explained that while the proposal was intended to be for the benefit of veterans that some non-veterans may use the proposed shelter and that in the future the shelter might not be restricted to veterans. Even assuming that the proposed shelter was made available for non-veterans, opponents do not explain how that would affect compliance with the applicable approval criteria, and I do not see that it does.<sup>2</sup> Opponents' arguments do not provide a basis to deny the application.

Finally, Wimset expressed concern about residents using heaters in the pods which could cause fires, using the outdoors rather than the restroom facilities, and using drugs. While Wimset did not identify any applicable approval criteria, these arguments could be construed to implicate ZDO 1203.03(D), which provides:

“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.”

As discussed, the primary uses of surrounding properties are industrial uses. The residents would be prohibited from using heaters in the pods, and there is no electricity for

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<sup>1</sup> Even if the transportation concurrency requirements applied, the proposed use is not expected to generate very many trips.

<sup>2</sup> Henry argued that the notice was inadequate because it described the proposed shelter as being for veterans. According to Henry, if the public had known non-veterans might use the shelter there would have been more opposition. Even if this is true, Henry cannot raise procedural issues on behalf of other people. Henry attended the public hearing and made her arguments. Therefore, her substantial rights were not prejudiced.

the pods. I therefore do not see that potential fires are such a substantial threat as to substantially limit, impair, or preclude surrounding industrial uses. Similarly, even if some drug use or some use of the outdoors for restrooms occurs, I do not see that that would rise to the level of substantially limiting, impairing, or precluding surrounding industrial uses. ZDO 1203.03(D) is satisfied.

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 Z0548-17-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 approval authorizes implementation of either Site Plan Alternative A, B or C.
- 3) 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 Wendi Coryell, Clackamas County at (503) 742-4657 or at [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us).
- 4) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Diedre Landon in the Clackamas County Engineering Division. Diedre Landon can be contacted at (503) 742-4411 or [dlandon@co.clackamas.or.us](mailto:dlandon@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 two 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 two 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) This Conditional Use 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.
- 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:** Mike McCallister, (503) 742-4522, [mikem@clackamas.us](mailto:mikem@clackamas.us)

- 1) Development of the subject property is subject to the provisions of ZDO Section 1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to Subsection 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) Outdoor lighting shall be located and designed so that it does not shine onto adjacent properties or right-of-ways.
- 3) The operator of the transitional shelter community shall obtain approval from the Director of the County Health, Housing and Human Services (H3S) in consultation with the County Administrator.
- 4) Shelter units shall be stick-built structures or prefabricated structures but may not have fabric walls or roofs (e.g., tents, yurts, and membrane structures). Shelter

units may not be vehicles, residential trailers, or manufactured dwellings. Each shelter unit shall be detached from any other shelter unit.

- 5) The maximum building floor space for each shelter unit is 200 square feet.
- 6) Bathrooms and kitchens are prohibited in the shelter units. Instead, common bathroom and kitchen facilities shall be provided for the residents.
- 7) Water service, sanitary sewer service, natural gas service, and generators are prohibited in the shelter units but are permitted in common facilities.
- 8) No outdoor storage is permitted. Residents shall be provided with enclosed, secure storage facilities for their belongings.
- 9) The transitional shelter community shall be fenced with sight-obscuring fencing a minimum of six feet in height.
- 10) The minimum rear and side yard depth is five feet. The minimum front yard depth is 20 feet.
- 11) All structures shall be separated from one another by a minimum of 10 feet.
- 12) Submittal and approval of a Construction Management Plan (CMP) pursuant to Section 706.08 is required prior to issuance of any development permits.
- 13) Installation of refuse and recycling facilities in compliance with Section 1021 of the ZDO.
- 14) All signs shall comply with Section 1010.09 of the ZDO.

**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 received final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

**IV. Engineering Division Conditions:** Ken Kent, (503) 742-4708, [kenken@co.clackamas.or.us](mailto:kenken@co.clackamas.or.us)

- 1) 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.

- 2) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with *Clackamas County Roadway Standards*.
- 3) Access from SE 115th Avenue shall meet the following requirements:
  - a. A paved driveway approach, 20-foot wide by 20-foot deep shall be constructed from the existing terminus of SE 115<sup>th</sup> Avenue, per Roadway Standards, Drawing D500.
  - b. A temporary construction easement or access easement shall be provided where driveway construction is less than 2 feet from a property line.
- 4) The applicant shall design and construct on-site parking and maneuvering areas as follows:
  - a. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. 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, to insure adequate turning radii are provided for the anticipated large vehicles maneuvering on the site.
  - b. A minimum of 8 off-street parking spaces shall be provided in compliance with Section 1015. Parking spaces shall meet minimum ZDO section 1015 dimensional requirements. Parking layout geometry shall be in accordance with ZDO Table 1015-1 and Figure 1015-1. The parking lot and drive aisles shall be screened gravel or better, per Standard Drawing R100.
  - c. ADA parking spaces shall be paved, and a minimum 5-foot wide, unobstructed, hard surfaced walkway shall be provided to at least one public entrance of the building(s).
  - d. 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.
- 5) Prior to certificate of occupancy, the applicant shall provide an Engineer's cost estimate to Clackamas County Engineering for any unfinished improvements required by conditions of approval. 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.

- 6) Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:
  - a. Written approval from the Fire District 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 Clackamas River Water Authority for adequate water supply source to serve the development.
  - 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 Deana Mulder in Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

**V. Clackamas River Water District**

- 1) Development will require main extensions per Clackamas River Water Rules and Regulations.
- 2) Water services will be provided only from pipes or mains located within public street, alleys or rights of way, or within easements furnished to CRW, and to property or premises with frontage to such mains. No person shall furnish water to other buildings or premises without the written approval of the Board, which may be granted in the sole discretion of the Board, and then only under the specific terms of an agreement approved by CRW.
- 3) Fire hydrant number and distribution shall be in accordance with the Oregon Fire Code C105.1. Placement of fire hydrant systems shall be in accordance with the Oregon Fire Code 507.5.1
- 4) Unless noted on the plans or specified otherwise, all construction and backflow devices are to be in accordance with the most recent version of Clackamas River Water standards and the Oregon Administrative Rules (OAR), Chapter 333.
- 5) All water facilities design, construction, testing and maintenance, where applicable, shall conform to the latest adopted revision of the Oregon State Health Division administrative Rules, chapter 333 on Public water system except where provisions outlined in the Clackamas River Water rules and regulations.
- 6) Any substantial deviation from the approved construction plans must have prior approval of the Water District.
- 7) Easements for water facilities shall be provided and designated on the final plat or separate recording as deemed necessary by the Water District.



- 8) Resale of water purchased from the Water District will not be permitted. No user shall resell or permit resale of water directly to any person, or for any use.

## **VI. Water Environment Services Conditions**

- 1) Applicants proposing sanitary sewer extension, connection to the sanitary sewer system, and/or surface water management plans shall be governed by the District's Rules and Regulations (R&R), and Standards and shall submit the plans, reports, studies, and information as required by District Regulations. All submittals shall be reviewed and approved by the District. (*R&R, Section 11.1 and 12.2*)
- 2) All costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite and offsite improvements and easements shall be provided by, and at the sole expense of the applicant/developer/property owner(s).
- 3) All properties connecting to the sanitary and/or storm sewer systems are subject to applicable fees and charges and shall be paid before building permits will be issued. District charges and fees are subject to change without notice to the applicant(s) of this planning application. For current rates, see <http://www.clackamas.us/wes/development.html>

### **Sanitary:**

- 4) A separate and independent service connection shall be provided for each taxlot, including any necessary easements. (*Sanitary Standards, Section 5.5.5*)
- 5) A point of connection to the public sanitary sewer shall be made via a new 6" lateral in SE 115<sup>th</sup> Ave. (*Sanitary Standards, Section 3.2*)
- 6) All food preparation facilities that prepare food onsite shall install grease interceptors, per Oregon plumbing code. In addition, the property owner will be responsible for cleaning and maintaining these interceptors at a frequency to be determined by the manufacturer and District. (*R&R, Section 10.2*)
- 7) A District Non-Residential Wastewater Questionnaire (NRQ), which provides an estimate of all proposed wastewater discharges to the public sanitary sewer system, shall be due with the first plan submittal.
- 8) This development is subject to a Sanitary Sewer Plan Review Fee (4% of the cost of the sanitary construction or \$400.00 minimum, whichever is greater). The minimum plan review fees shall be paid with the first plan submittal.
- 9) Sanitary System Development Charges shall apply per District rules and rates at the time of building permit application. The current estimate is \$22,796.30. (*R&R, Section 4.1*)
- 10) A Collection Sewer Charge shall not apply. (*R&R, Section 4.4.1*)

## **Stormwater Management:**

- 11) All development that results in **more than 5,000 square feet** of new impervious surface and/or a modification of existing impervious surfaces shall submit a Surface Water Management Plan (SWM Plan). The plan shall explain how the development will conform to all District stormwater standards, including detention, water quality, and infiltration. (*SW Standards, Section 5.1.1*)
  
- 12) The SWM Plan shall document how the development will meet the District's stormwater standards, including:
  - a. **Water Quality Standard** – On-site water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24 hour storm event prior to discharge from the site. (*SW Standards, Section 5.2*)
  - b. **Infiltration Standard** - Infiltration systems shall be sized with sufficient capacity to accommodate the runoff volume from the first ½ inch of runoff in a 24-hour period. (*SW Standards, Section 5.3*)
  - c. **Detention/Flow Control Standard** – On-site detention facilities shall be designed to capture, detain, and release runoff as follows: Reduce the 2 year, 24-hour post-developed runoff rate to ½ of the 2 year, 24-hour pre-developed discharge rate. (*SW Standards, Section 5.4*)
  
- 13) The SWM Plan shall verify the condition and capacity of the stormwater conveyance system to accommodate all post-developed runoff, including all upstream flows entering the site, all flows onsite, and all downstream flows leaving the site: (*SW Standards, Section 5.4.1*)
  - a. All stormwater facilities shall have a suitable point of discharge, as approved by the District. (*SW Standards, Section 1.2*)
  - b. All stormwater facilities shall provide an emergency overflow pathway in the event of any stormwater facility failure or bypass. The overflow pathway shall be contained in a tract, common area, or public right-of-way. (*SW Standards, Section 1.2*)
  - c. Downstream conveyance analysis (if required) shall demonstrate adequate conveyance capacity to the distance where the project site contributes less than 15% of the upstream drainage area or 1500 feet downstream of the project, whichever is greater. (*SW Standards, Section 5.4.4.4*)
  - d. The stormwater conveyance system shall be sized and installed to meet the future ultimate development of the upstream basin. At a minimum, the

system shall safely convey the 25-year, 24-hour design storm. (*SW Standards, Section 5.4.1*)

- 14) Infiltration testing conducted by a qualified professional shall be required. (*SW Standards, Appendix E.1*)
- 15) If infiltration is not feasible the design engineer shall submit a modification request in accordance with *CCSD#1 Standards Section 1.6* with an equivalent alternative design which can accomplish the same design intent as provided in these standards. (*SW Standards, Section 5.3*)
- 16) A 'Private Storm Drainage Facilities Maintenance Plan', which describes the perpetual maintenance of the stormwater infrastructure, shall be submitted to the District prior to final plan approval. (*SW Standards, Section 5.5.10*)
- 17) Surface Water System Development Charges shall apply per District rules and rates at the time of building permit application. The current estimate is \$979.23.00. (*District R&R, Section 4.1*)
- 18) This development is subject to a Surface Water Plan Review Fee (4% of the cost of the stormwater system construction or \$400.00 minimum, whichever is greater). The minimum plan review fees shall be paid with the first plan submittal.

**Water Quality and Flood Management Areas:**

- 19) A Sensitive Area Certification shall not be required.
- 20) The approval of the land use application does not include any conclusions by the District regarding acceptability by the DSL or COE of the wetland delineation. This decision should not be construed to or represented to authorize any activity that will conflict with or violate the DSL or COE requirements. It is the applicant's responsibility to coordinate with the DSL or COE and (if necessary) other responsible agencies to ensure that the development activities are designed, constructed, operated and maintained in a manner that complies with the DSL or COE approval.

**Erosion Control:**

- 21) An erosion control permit and \$460.00 fee shall apply. An erosion control plan shall be submitted for review prior to building permit approval. No grading or construction activity disturbing more than 800-sqft on the property shall commence until the erosion control plan is approved and the permit is issued. (*SW Standards, Section 6.2.3*)

DATED this 6<sup>th</sup> day of December, 2017.



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).