

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director
Decision Denying an Application to Renew
Temporary Dwelling for Care.

Case File No: Z0433-21-STC
(Temporary Dwelling for Care)

A. SUMMARY OF FINDINGS, HEARING, AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the February 3, 2022 public hearing about this application. 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 coronavirus, with the County providing an explanation for virtual participation. 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 Sr. Planner Melissa Ahrens discussed the staff decision and related exhibits. Ms. Ahrens provided relevant background information concerning the application, the County's review, and the County's decision. Ms. Ahrens noted that the applicant is proposing to renew a permit for a Temporary Dwelling for Care to continue to authorize the temporary placement of a manufactured dwelling, in addition to the primary dwelling, in the provision of care to Robert and Pamela Purcell. Robert and Pamela Purcell, who require care, as determined by a licensed health care professional, would continue to reside in the temporary dwelling. The care provider, Jennifer Jennings (applicant/appellant) would continue to reside in the primary dwelling. This temporary dwelling has been on the property since 2008 (first approved with land use file #Z0488-08-STC when the property was in different ownership).
3. County Sr. Planner Melissa Ahrens explained that the renewal application submitted by the applicant was incomplete, leaving a section blank and not providing a site plan. Staff attempted to contact the applicant via phone and email on multiple occasions with no response. Staff concluded that the application did not have enough information to confirm that the circumstances that provided the basis for the previous approval in terms of the occupants in the main home remain the same. Staff could not make findings that the previous conditions that prevented the care recipients from residing in the existing main residence remain the same, and therefore the Planning Director¹ denied the application.
4. The applicant/appellant submitted an appeal of the Planning Director's denial. This appeal included the information that was originally missing from the application. County staff

¹ ZDO 1307.3(B) provides that the Planning Director includes "Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." Senior Planner Melissa Ahrens acted in this capacity.

recommended renewal of the permit following review of the additional information submitted with this appeal. The applicant/appellant affirmed her agreement with this recommendation. The County did not receive any comments with respect to the application for renewal of this permit, and the County did not receive any comments with respect to this appeal. No one opposed the renewal of this permit for temporary dwelling for care.

5. The hearings officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant affirmed that she wished to waive the period for final written argument. The hearings officer approved the application and closed the record.

B. FINDINGS AND DISCUSSION

This case involves the appeal of a Planning Director decision denying an application for renewal of a Temporary Permit. An application for a Temporary Permit is subject to a Type II procedure, whereby the Planning Director makes the decision. The Planning Director² denied the application, and this appeal followed.

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1204. The application was initially processed by the County under ZDO Section 1307 as a a renewal of a temporary permit for a Temporary Dwelling for care, as Type II procedure whereby the Planning Director is the initial decision review authority, and the Hearings Officer is the appeal review authority.³ The appeal discussed below is reviewed subject to the appeal procedures contained in ZDO 1307.13. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

Section 1204.04 TEMPORARY DWELLING FOR CARE

Section 1204 of the ZDO, Temporary Permits, sets forth the process, standards and requirements for reviewing an application to renew a permit for a Temporary Dwelling for Care. The proposed renewal of a Temporary Dwelling for Care is subject to the criteria and standards of Section 1204 that are outlined below:

1204.04 TEMPORARY DWELLING FOR CARE

- C. A temporary permit for a dwelling for care may be approved for a period not to exceed two years in the EFU, TBR, and AG/F Districts and for a period not to exceed three years in any other zoning district. The permit may be renewed, subject to review as a Type II application pursuant to Section 1307, for a period not to exceed two years in the EFU, TBR, and AG/F

² ZDO 1307.3(B) provides that the Planning Director includes “Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO].” Senior Planner Melissa Ahrens acted in this capacity.

³ See Table 1307-1: Land Use Permits by Procedure Type.

Districts and three years in any other zoning district. A temporary permit for a dwelling for care may be renewed an unlimited number of times.

*Finding: The Temporary Dwelling for Care is located in the AGF Zoning District, and was previously approved for a period not to exceed 3 years. The permit is being renewed subject to this review as a Type II application pursuant to Section 1307. **The hearings officer concurs in the conclusion by staff that this criterion is met.***

D. In lieu of Subsections 1204.04(A) and (B), a renewal application shall be subject to the following standards and criteria:

- 1) The circumstances that provided the basis on which the previous permit was granted remain substantially similar.

Finding: Staff has evaluated the submitted renewal application materials, and finds that the circumstances that provided the basis on which a previous permit was granted (under File No.Z0462-15) do not continue to remain substantially similar. The applicant left number 8 in the application blank, which is a question asking for an explanation as to why the existing home cannot accommodate the care recipients. In the last application submitted in 2015 the applicant explained that there were two adults and two teenagers living in the home and that was why there was not enough space for the care recipients. Staff attempted to contact the applicant via phone and email on multiple occasions with no response and do not have enough information to confirm that the circumstances that provided the basis for the previous approval in terms of the occupants in the main home remain the same. Staff cannot make findings that the previous conditions that prevented the care recipients from residing in the existing main residence remain the same. If the reasoning is based on insufficient space then we would need to have supporting details (such as the size of the home and the number of bedrooms and bathrooms in the existing house) in a detailed floor plan. That has not been provided in the application. Additionally, in the 2015 application Robert Purcell was documented to require food preparation, this is no longer the case in the 2021 application. Staff therefore concluded that this criterion is not met.

*In her appeal, applicant/appellant submitted the missing information, including site plan and this answer to question number 8 in the application: "Permanent dwelling is a 3 bedroom home/2 bath. 3 adults live in the home, no room for Pamela & Robert to reside in residence. Jennifer – caretaker - Daily medication, food preparation for Robert & Pamela Purcell. See attached site plan of permanent dwelling X – 3 bedroom – 3 adults living in home O – 2.1 bathroom 1,711 Sq. Feet. Staff reviewed this additional information provided by the applicant/appellant in her appeal, and determined this information supports finding that the circumstances that provided the basis on which the previous permit was granted remain substantially similar. Specifically, the previous conditions that prevented the care recipients from residing in the main residence remain the same. **The hearings officer concurs in the recommended finding by staff that this criterion is met.***

- 2) A renewal application shall be accompanied by a signed statement from a licensed healthcare provider. The statement shall be dated within 90 days preceding the date the application is submitted and shall identify the care recipient and substantiate that the level of assistance required is substantially similar to, or greater than, the level required when the previous permit was granted.

*Finding: The applicant has provided a signed statement from Danielle Woodruff, a licensed healthcare provider, dated 9/15/21. The statement identifies that Pamela and Robert Purcell have medical conditions that continue to require the same, or greater, level of assistance that was required when the previous permit was granted. **The hearings officer concurs in the conclusion by staff that this criterion is met.***

- E. An application shall be evaluated as a renewal application rather than a new application if the permit is requested for the same lot, parcel, or tract and the same care recipient as the previous permit.

*Finding: The application is being evaluated as a renewal of a permit for a Temporary Dwelling for care, rather than a new application, because the permit is requested for the same lot as the previous permit and the care recipients, Pamela and Robert Purcell, are the same care recipient as the previous permit. The temporary dwelling will continue to be occupied by Pamela and Robert Purcell, who are receiving care from/to Jennifer Jennings. The permanent dwelling will continue to be occupied by Jennifer Jennings who is to provide care to Pamela and Robert Purcell. **The hearings officer concurs in the conclusion by staff that this criterion is met.***

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. Approval of this land use permit is based on the submitted land use application for Temporary Dwelling for Care and associated attachments filed with the County on 9/20/2021, as supplemented by the Appeal Form and associated attachments filed with the County on 12/29/2021. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

1. The temporary dwelling shall be connected to a sanitary sewer system or to an on-site wastewater treatment system approved by the County. The temporary dwelling shall use the same on-site wastewater treatment system used by the permanent dwelling, if that system is adequate to accommodate the additional dwelling. An exception may also be granted if more than one lawfully established on-site wastewater treatment system exists on the subject lot of record or tract. (ZDO Section 1204.04(C)(1))
2. The temporary dwelling shall comply with the minimum yard depth standards for primary buildings in the applicable zoning district. (ZDO Section 1204.04(C)(2))
3. All water, electricity, natural gas, and sanitary sewer service for the temporary dwelling shall be extended from the permanent dwelling services. No separate meters for the temporary dwelling shall be allowed. An exception may be granted if the utility provider substantiates that separate service is required or if more than one lawfully established service exists on the subject lot of record or tract. (ZDO Section 1204.04(C)(3))
4. The temporary dwelling shall use the same driveway entrance as the permanent dwelling, although the driveway may be extended. An exception may be granted if more than one

lawfully established driveway entrance to the subject lot of record or tract exists. (ZDO Section 1204.04(C)(4))

5. The temporary dwelling shall be located within 100 feet of the permanent dwelling. This distance shall be measured from the closest portion of each structure. This distance may be increased if the applicant provides evidence substantiating that steep slopes, significant natural features, significant existing landscaping, existing structures, other physical improvements, or other similar constraints prevent compliance with the separation distance standard. The increase shall be the minimum necessary to avoid the constraint. An exception may also be granted if the temporary dwelling will be sited in the same or substantially similar location as a previous, lawfully established temporary dwelling for care. (ZDO Section 1204.04(C)(5))
6. A written statement shall be recorded in the County deed records recognizing that a dwelling approved pursuant to Subsection 1204.04 is temporary and that the temporary permit is not transferable when the property is conveyed to another party. (ZDO Section 1204.04(C)(6))
7. The temporary dwelling shall not be a source of rental income. (ZDO Section 1204.04(C)(7))
8. If the temporary dwelling is a manufactured dwelling or residential trailer, it shall be removed from the subject property when the permit expires or the need for care ceases, whichever first occurs. An exception to this provision may be granted if a temporary manufactured dwelling is converted to a permanent dwelling. Such a conversion shall be allowed only if the temporary dwelling complies with all applicable standards of this Ordinance for a permanent dwelling, including any that limit the number of dwelling units permitted on the subject property. If the temporary dwelling is a recreational vehicle, it shall be removed from the subject property or placed in a stored condition when the permit expires or the need for care ceases, whichever first occurs. A recreational vehicle shall be deemed to be placed in a stored condition when it ceases to be used for residential purposes and is disconnected from any on-site wastewater treatment system and all utilities other than temporary electrical connections for heating necessary to avoid physical deterioration. Storage of a recreational vehicle shall comply with all other applicable requirements of this Ordinance. (ZDO Section 1204.04(C)(8))

C. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0433-21-STC (Renewal of Temporary Dwelling for Care), subject to conditions of approval.

Dated: February 8, 2022



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.