

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

Regarding an Application for a Conditional Use)	Case File No.
Permit for an Expansion of a Memory Care)	Z0522-18-C
Facility.)	(Mapleview Manor)

A. SUMMARY

1. The owner is Raluca Vlad. The applicant is Edward Radulescu.
2. The subject property is located at 7100 Southeast Lake Road, Milwaukie, OR 97267. The legal description is T2S, R2E, Section 05CA, Tax Lot 2000, W.M. The subject property is approximately .92 acres and is zoned R-10 – Urban Low Density Residential.
3. On December 20, 2018, and February 7, 2019, the Hearings Officer conducted public hearings to receive testimony and evidence about the application.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearings about this application on December 20, 2018, and February 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 hearings, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the 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 hearings, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Raluca Vlad, Eugene Vlad, and Edward Radulescu testified in support of the application.
4. No one testified in opposition to the application.

5. At the conclusion of the public hearing on December 20, 2018, the public hearing was continued to February 7, 2019. At the conclusion of the public hearing on February 7, 2019, the Hearings Officer left the record open three weeks for the submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

C. FACTS

The subject property is an approximately .92-acre parcel zoned R-10. The property is located at 7100 Southeast Lake Road, Milwaukie, OR 97267. There is an existing five bed, which is permitted for up to 15 bed, memory care unit that has been operating on the property for some time. Surrounding properties are mostly in single family residential use. Properties to the north are in office commercial use, and further west there are more office commercial uses and a school. The property is narrow and rectangular running north to south. The building is in the northern part of the property along Southeast Lake Road (Lake Road). The property also has access from the south on Southeast Estella Avenue (Estella Avenue). The Lake Road access is the primary access for the memory care facility. The proposal seeks to extend the approval for up to 20 beds, but no expansion of the building is required – only interior modifications.

D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. 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.

The only issue in this case is access to the facility.¹ Under County Road Standards, access to such facilities should be taken from the road with a lesser classification, in this case Estella Avenue to the south. The current access to the facility, which is in the northern portion of the property, is from Lake Road. The applicant seeks to continue taking access from Lake Road. The applicant sought a design modification to continue using the Lake Road access. That design modification was denied by the Department of Transportation

¹ This is the reason the original public hearing was continued and the record was left open.

and Development (DTD). The applicant appealed the DTD design modification decision, and the DTD decision was reversed by Mike Bezner:

“The reason that County standards require changing access to the lesser classified road is for safety and mobility on the higher classified road. Although the applicant originally requested approval for 30 beds, their current parking lot can only accommodate a facility with 20 beds, so they have reduced their request to 20. Since the applicant is already approved for 15 beds, and are only asking to increase it by 5 more, they claim that there is no traffic impact since the number of staff remains the same whether there are 15 or 20 beds. I agree that the resulting traffic impact would be insignificant and this change would not affect the traffic mobility on Lake Road. In addition, the safety impact is negligible as well given the insignificant increase in daily trips, especially when weighted with the significant added cost to move the access.”

Given that the only issue was the location of access to the proposed expansion and that issue has been settled by the design modification appeal, there are no bases to deny the application.

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 Z0522-18-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 Deana Mulder, Clackamas County at (503) 742-4710 or at 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 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 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) This Conditional approval 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

- 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) **Prior to final occupancy permit issuance:** Acceptable trash / recycling enclosure shall be installed and inspected. Developer shall contact Clay Glasgow, Planning & Zoning Division, 503-742-4521, clayg@clackamas.us. He can provide the necessary information about size of service trucks and appropriate containers. He 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 under “Garbage & Recycling.” Note: Roofs over trash / recycling enclosures are not allowed.
- 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 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.

III. Water Environment Services Conditions: Erik Carr, ekarr@clackamas.co

- 1) The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Standards (“RR&S/Rules”) for sanitary sewer services and surface water management. The applicant shall procure all required plans approvals and permits and shall be subject to applicable fees and charges, in accordance with WES RR&S.
- 2) The applicant shall submit a Non-Residential Questionnaire to WES with an estimate of the development’s discharge load and volume to the public sanitary sewer system.

- 3) Based on previous development, the property owner has paid SDC's on the first 15 beds of this facility. Therefore, the additional 5 beds will be charged new SDC's at a rate of 1 EDU per 2 beds.
 - a. ESTIMATE: 5 additional beds = 2.5 EDU's * \$7,615.00 = \$19,037.50
- 4) A \$400 plan review fee shall apply.
- 5) All fees and charges shall be paid before certificate of occupancy will be approved, and are subject to change without notice to the applicant(s). All costs associated with the design, construction and testing of the sanitary sewer or storm system shall be provided by and at the sole expense of the applicant.
- 6) 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.
- 7) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

IV. Engineering Division Conditions: Kaylin Hangartner, (503) 742-4711, khangartner@clackamas.co

1. All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County Roadway Standards.
2. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of construction activities associated with the project. The minimum fee is \$1,600. The total fee is 8.83% of the public road improvement plus 5% of the onsite transportation improvements project cost estimate.

Issuance of a Development Permit is dependent upon formal approval by Engineering staff, of a set of plans in compliance with Roadway Standards section 140. These plans shall also illustrate road or street frontage features for a distance of 200 feet beyond the limits of the property lines, and the plans shall be signed and stamped by a Professional Engineer registered in the State of Oregon.

3. The applicant shall dedicate approximately 5 feet of right-of-way on the SE Lake Road site frontage and verify by a professional survey that a 35-foot wide, one-half right-of-way width exists.
4. 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. The applicant shall dedicate right-of-way as necessary to provide a 40 foot wide right-of-way width across tax lot 2000 to the common boundary between tax lot 2000 and 1900.
6. Prior to the Development Permit being issued, the right-of-way dedication and sidewalk public utility easement shall be provided to Clackamas County DTD, Engineering, for review and recording.
7. The plans shall list the utilities serving this site and their phone numbers.
8. The applicant shall provide and maintain adequate intersection sight distances the driveway approach intersection with both Lake Road and Estella Ave. No plantings at maturity, retaining walls, embankments, fences, and other objects shall be allowed to obstruct vehicular sight distance.
9. Before the County issues a Development Permit, the applicant shall submit a construction vehicle management and staging plan for review and approval by the County DTD, Construction and Development Section, if the public road right-of-way is planned to be used for construction staging. That plan shall show that construction vehicles and materials will not be staged or queued-up on public streets and shoulders without specific authority from DTD. If the public road right-of-way is not planned to be used for construction staging, a note shall be added to the construction drawings stating that the public road right-of-way will not be used for construction staging.

V. Building Division Conditions: Richard Carlson, rcarlson@clackamas.co

- 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.

DATED this 19th 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).