



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
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MULTNOMAH COUNTY
PLANNING SECTION

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions.

January 5, 2001

Case File: **CU 0-9**

Proposal: A request for approval of a Conditional Use (CU) for a pediatric therapy business on the subject property.

Property Address: 7925 SE Orient Drive

**Assessor's
Map Description:** T1S, R4E, Section 20, Tax Lot 141

Applicant: Bobbi Culter

Owner: Bobbi and Alan Culter
30714 SE Dodge Park Blvd
Gresham, OR 97080

Zoning Designation: The site is located in the Rural Center (RC) zone.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

3. 150-Day Time Line Issue

The application was deemed complete on November 10, 2000. Therefore this is the 56th day of the 150-day clock.

4. Applicant's Proposal and Site Information

This property was purchased to operate a small medical business. There are numerous businesses along Orient Drive including other medical care facilities. The large family room/playroom end of the house is going to be used for operation of the business Pediatric Therapy Services, Inc. for treating clients. Originally, the applicant proposed that the house end was going to be inhabited by a childcare and child respite care provider. The applicant changed the plans, indicating that no formal daycare services would be provided at the site.

The pediatric therapy treatments will initially be physical and occupational therapies. Hopefully expansion to add speech therapy will occur and the building may be added on to. Horse riding therapy for handicapped kids is also planned to be done at this property.

This property has been permitted for childcare historically. The impact of usage on the neighborhood should be similar to that of a childcare center.

Applicant amended description of proposal

Our proposal is to develop 7925 SE Orient Drive into a business & residence duplex structure. My original plan to coordinate the two sides has been changed by who it turns out to be the renter or resident of the house (not who I thought it was going to be). Any childcare done for the convenience of the business will have to be "on-site" on the business side and nothing like

full daycare. Therefore our application is to change from residence to business/residence duplex – both sides to be rented out, but part of the resident's rent will still be ground maintenance.

Hours: Monday – Friday, approximately 8:30 am to 5:30 pm

of Patients per day: 12-13 with appointments usually occurring 2/hr

of employees: 6 all working part time, two therapist employees work per day, but since all are part time 5 therapists are distributed over the week to equal the equivalent of 2 full time positions. One office worker works 2 days per week

5 therapists

1 office

6 employees

Horses: One or two horses would be used for individual therapy.

A floor plan of proposed office and residential and new office space is attached.

The addition would be all for business adding an additional 16' onto the end of the existing "playroom"....This would allow enough room for 2 large treatment areas, a separate fine motor area, an office space for office worker and therapists paperwork area and a waiting room. The addition would be completed within 2 years.

The attached site plan shows the 2 existing outbuildings North of the existing house. These will remain as outbuildings for use of the residence as they are now.

The attached plan has drawn in the 16' x 34.3' addition to the south end of the house that would be office addition and planned to be completed in 2 years.

The plan shows a proposed pole building for office use south of the main structure. This structure should have a phased in timeline as it may not be constructed within the 1st 2 years, depending on finances. The maximum size this building would be is 30' x 60', it may be smaller. The phased timeline is requested to be 3 years from the conditional use approval date (1 year added please).

Applicant amended description of pole barn proposal on 12/1/00

The proposed pole barn associated with business use at 7925 SE Orient Drive would have the above general plan. (see *Exhibit 10*) It is associated with the office only in being a physical hippotherapy (horse riding/handling therapy). No other office related tasks would be housed or performed there.

Applicant's Submittal on 10/16/00

The proposed horse therapy use of the property will include horses being kept at the property, and horses will not be transported to and from the site. The offering of horse therapy is

planned to not have a significant impact on increasing staff or client size, it is only to increase the spectrum of available services. There is a proposed resident on the non-business side of the building, and in that this resident will have grounds keeping and maintenance tasks, no new employees will be needed to care for the horses. The therapists currently working for the business will be performing the horse therapy duties.

Applicant's testimony at hearing on 12/20/00

At the hearing, the applicant testified that the hippotherapy was an integral part of the therapy program proposed for this conditional use application. The applicant also testified about a lack of alternative sites. There are no suitable sites for such a use within urban areas.

Staff:

Proposed Development and Site Characteristics:

Proposed Use	Location	Use Category
Pediatric therapy services (contained within the existing single family structure)	Within existing single family structure & proposed addition	Conditional Use
Accessory daycare as a service to the therapy business only	Within the area occupied by therapy business only	Accessory Use to Conditional Use
Residential use consisting of a single-family dwelling (contained within the existing single family structure)	Within existing single family structure	Primary Use
Use of Livestock for Therapeutic treatment (1-2 horses would be used for individual therapy)	Within Proposed Pole Barn	Part of Conditional Use
Signage	None proposed at this time, but applicant wishes to hold the right	Accessory use under MCC 11.15.2254

A residential use consisting of a single family dwelling constructed on a lot is a primary use in the Rural Center zone (MCC 11.15.2248). It is included in the above description as it is part of the applicant's proposal and may need to be considered in various criteria, such as Lot Sizes for Conditional Uses (MCC 11.15.2264).

The following physical improvements/modifications are proposed on-site:

- 1) Approximately 1053 square feet of the existing residence will be converted to the therapy use, and
- 2) A 16 ft by 34.3 ft (approx. 549 square ft) addition is proposed to the existing structure for the therapy office, and

- 3) The existing detached garage on the property will be converted to business storage use (720 sq. ft) and will be attached to the main structure by the building addition; and
- 4) A new 30 ft by 60 ft (1800 square ft) pole barn for hippotherapy (horse riding/handling therapy).

Total building area for office use is 2322 square ft and 1800 square ft for the hippotherapy use. The subject parcel on Orient Drive has approximately 350 feet of linear frontage according to the Assessment and Taxation map on file at the Land Use Planning office (1S45E Section 20, Tax Lot 141).

One building permit card is on file at the Multnomah County Land Use Planning office for the subject property. It specifies a permit for a single family dwelling for 1S4E Section 20, Tax Lot 141. In 1977, CS 2-77 was approved for a 17 children day care center for the subject property.

The property owner, Bobbi Culter filed the Conditional Use application on October 16, 2000. The application was deemed complete on November 10, 2000. Staff visited the site on December 6, 2000. A list of exhibits is attached within this Staff Report.

Lot of Record:

The 1.37 acre parcel currently satisfies the minimum lot size of the RC zone. MCC 11.15.2262(A) is the applicable lot of record criteria. This parcel has been in its current lot configuration prior to 1966 and met the minimum lot size and street frontage when created.

Site Plan Details:

The Applicant's submitted site plan (received 11/6/00) illustrates the layout for the proposed use. In addition, a detail was submitted on 8/30/00 showing that parking can be accommodated on the site. If the conditional use permit is approved, the applicant will need to provide detailed, scaled drawings showing compliance with all development standards and design review criteria.

5. Testimony and Evidence Presented

- A. Staff Planner Lisa Estrin gave the staff report for the County. Staff reviewed the County Staff Report and pre-hearing exhibits, as listed on the attached Exhibit "A", which exhibit is incorporated by this reference herein.
- B. Applicant Bobbi Culter spoke in support of the application, and discussed her plans for the proposed pediatric therapy business on the subject property.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

Multnomah County Code 11.15.2252 Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(B) The following Conditional Uses pursuant to the provisions of MCC .7005 through .7640:

(1) Limited rural service commercial uses such as local stores, shops, offices, repair shops and similar uses;....

Applicant: The business, Pediatric Therapy Services provides therapy for children in the local area Sandy to Gresham. This is a local service in that Gresham and Sandy patients would have to be transported to Central Portland for services if this local provider was not available. This business' intent is to be a local therapy provider and not attract business from further regions, inquiry from patients not in the local area are referred to Portland clinics or to a clinic in Oregon City that serves Pediatrics.

At least 11 of the neighboring businesses cited within approximately 1.5 miles of 7925 SE Orient Drive have the same (or very similar) area scope of clientele and some are also the only provider of their services for a further scope than Gresham-Sandy. They are checked in green on pgs 6 & 7 (See Exhibit 3).

Staff: Guidance as to the type of uses allowed under the limited rural service commercial use may be attained by looking at the introduction to Policy 7: Rural Center Island Area of Multnomah's Comprehensive Plan. It states "The purpose of the Rural Center Land Area Classification is to provide for rural service centers located outside the Urban Growth Boundary which contain limited commercial, community service, industrial and residential uses. Public sewer service is not available, and other support services are usually limited. The intensities and types of uses located within these centers must be appropriate to the character of the rural area. *The intent of the Rural Center Classification is to provide rural services for the residents and businesses located in the rural areas of the County*, (emphasis added by staff) and is not intended to encourage growth of centers as dense communities.

The applicant indicates that the area that she will be drawing patients from ranges from Gresham to Sandy. The Cities of Gresham and Sandy are incorporated and have urban growth boundaries. Both of these areas are urban, not rural. The proposed extent of the service area for the therapy use appears to make it a regional office versus a limited rural service commercial use. Staff is unable to determine that the above use is a limited rural service commercial use at this time.

Testimony at Hearing: At the hearing, staff stated that the proposed use appeared to be more of a regional use, rather than a limited service use appropriate in a rural center.

Staff appeared to be basing its recommendation for denial in substantial part on the statement in the application indicating that the applicant would be drawing patients from the area from Gresham to Sandy. Accordingly, staff felt that the use was a regional use, rather than a limited rural service use.

The applicant testified that she had been looking for a site for the hippotherapy aspects of the pediatric therapy use, for more than two years. The hippotherapy aspect of the proposed use makes it unsuitable for an urban area. The applicant also testified that the hippotherapy was an integral part of her proposed use and was a very valuable therapy tool in dealing with the severely handicapped. The applicant submitted Exhibit "D-5", a list of county residents who currently use the applicant's pediatric therapy services. The list was submitted to verify that the pediatric therapy service does provide service to rural citizens, and is a unique service and a convenience for rural families.

In response to a question of the hearings officer, staff indicated that there was no alternative zone or area in the county, where such a use could be located.

Hearings Officer Analysis: The purpose of the Rural Center land area classification is to provide for rural service centers located outside the Urban Growth Boundary which contain limited commercial, community service, industrial and residential uses. Public sewer service is not available, and other support services are usually limited. The intensities and types of uses located within these centers must be appropriate to the character of the rural area.

I find that the proposed use is a use that is appropriate to the character of the rural area. I also find, based on the applicant's testimony at the hearing, that the proposed use would provide services for residents located in the rural areas of the county. The proposed use is not likely to encourage the growth of this rural center as a "dense community".

Accordingly, I do find that the proposed pediatric therapy use with the integral component part of hippotherapy, is a limited rural service commercial use.

11.15.2264 Lot Sizes for Conditional Uses

The minimum lot size for a Conditional Use permitted pursuant to MCC .2252, except subpart (C) thereof, shall be based upon:

- A. The site size needs of the proposed use;**
- B. The nature of the proposed use in relation to its impact on nearby properties; and**
- C. Consideration of the purposes of this district.**

Staff: The 1.37 acre parcel exceeds the minimum lot size of one acre for the Rural Center district. Based upon the applicant's submittal, it appears that the site is adequate to contain all of the applicant's proposed uses. There is some uncertainty regarding the size and placement of the septic system at this time. Unless it can be shown that all facilities can be situated on the site without conflicts, this criterion has not been met.

Testimony at Hearing: At the hearing, the applicant presented evidence that the size was adequate to contain all of the applicant's proposed uses. The applicant also presented evidence in the form of Exhibit "D-3", which indicated that the subject site had in fact been approved for a septic system.

Hearings Officer Analysis: The primary reason stated by staff for its concern regarding the lot's ability to accommodate the proposed use, was the fact that the septic system had not been approved. Since the time of the staff report, the applicant had received approval for a septic system. Accordingly, I do find that the size of the subject site both meets the minimum lot size for the rural center, and is adequate to accommodate the proposed use.

Conditional Use (CU) 11.15.7105 Purposes

Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.

11.15.7110 General Provisions

- (A) Application for approval of a Conditional Use shall be made in the manner provided in MCC .8205 through .8280.**

Staff: The application has been submitted by the applicant and the applicant representative in the manner required by the Multnomah County Code.

- (B) The Approval Authority shall hold a public hearing on each application for a Conditional Use, modification thereof, time extension or reinstatement of a revoked permit.**

Staff: The application, CU 0-9, is to be reviewed by the Approval Authority at a public hearing scheduled for December 20, 2000.

- (C) Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:**

- (1) The project is completed as approved, or**
- (2) The Approval Authority establishes an expiration date in excess of the two year period, or**

- (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:
- (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
 - (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
 - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
 - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).
 - (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
 - (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

[Amended 1990, Ord. 643 § 2]

Staff: As provided for in MCC .7110(C)(2), the applicant has requested a modification to the 2 year time limit to establish all of the proposed CU use. The applicant has requested that the time limit be extended for 1 year for the establishment of the hippo therapy and the construction of the pole barn on the site. As proposed by the applicant, the remainder of the proposed use would be established within the 2 year window. Staff finds this to be a reasonable request.

Hearings Officer: I concur with staff on this issue. As a condition of approval, the applicant will be given three years to construct the pole barn and establish the hippotherapy portion of the proposed use.

11.15.7120 Conditional Use Approval Criteria

- (A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:
- (1) Is consistent with the character of the area;

Applicant: Limited commercial use including offices is listed as a conditional use of the zoning code RC for this property. This business use is consistent with the character of the area as there are several other small businesses in the local area. For example here are businesses along Orient Drive that have road signs (There are also several Nurseries that are not listed here):

- a. Traveling south from our property are
 - i. @0.1 mi. Gresham Door and Cabinet
 - ii. @ 1.1 mi. Osteopathic medical office and home combination – now for sale with sign on road for Office, Shop and 3 bedroom home on 2.84 acres
 - iii. @ 1.1 mi. Clemmers Furniture Store
 - iv. @ 1.2 mi. Church
 - v. @ 1.4 mi. Gem and Lapidary Shop
 - vi. @1.6 mi. Chester Drawers Small Engine and Tool Repair
- b. Traveling North from our property are
 - i. GTE service building next door
 - ii. @ 0.2 mi. is the town of Orient with
 - 1. Flatcreek Garden retail sales
 - 2. Orient Barbershop
 - 3. Orient Industries and Gresham Pool Sales
 - 4. Lanai Salon
 - 5. Orient Country Grocery Store and Gas
 - iii. @ 0.3 mi. Orient Grade School and Nursery Retail Sales
 - iv. @ 0.5 mi. Stop Buy and Save lumber store
 - v. @ 0.6 mi. Orient Feed and Farm Supply Store
 - vi. @ 0.9 mi. Loop Hiway Towing, and a Auto wrecking yard and a Fertilizer, Chemical and Seed Supply Store
 - vii. @ 1.1 mi. Tractor Sales Store and Jackpot food mart with gas, and Orient Drive Café
 - viii. @ 1.3 mi. Columbia Equine Hospital and Ed Days' used Appliance Repair
 - ix. @ 1.5 mi. N.W. Appraisal and Inspection office – This building was a Chiropractic Office (for more than 20 years) up until approx. 1½ years ago

Staff: The applicant's proposal is located near the southeastern edge of the Orient Rural Center district. The applicant is using a 3 miles stretch of Orient Drive, from just outside of the City

of Gresham to Clackamas County to define the area for this criterion. The Rural Center along Orient Drive has 3 areas of clustered commercial uses (See Exhibit 18).

Staff would recommend using a smaller portion of the Orient Rural Center to define the area (South of the Intersection of Bluff and Orient, south along Orient Drive) (See Exhibit 20). The zoning in the staff defined area is a mix of Rural Center and Multiple Use Agriculture. The closest clustered commercial uses to the site is to the north of the proposed use and consist of retail nurseries, a barber shop, a beauty salon, country store and other commercial enterprises. Five of the various uses are nonconforming. Two have conditional use permits and for 1 of the businesses, staff could not determine the status from County records (See Exhibit 19). Directly adjacent to this site is a GTE service building, which has a community service designation and does not have customers coming to the site. Gresham Door, a retail establishment, is a few properties to the south of the subject parcel. Staff was unable to determine the status of this business from our records.

The combination of land uses for the defined area are 12 single family residences, 7 multi-family uses (duplex, triplex & apartments), 5-6 parcels in some type of farm use, 3 vacant parcels, 1 miscellaneous use, 1 community service use and 1 commercial facility (See Exhibit 20). Except for the GTE building, the properties immediately adjacent to this parcel to the north, south, east and west are in residential or farm use. A number of properties in the immediate area are in farm deferral and appear to be actively farmed. Based upon the above information, the proposed pediatric therapy use does not appear to be consistent with the character of the area as there are no other similar uses in the vicinity.

Hearings Officer: The applicant has taken a straight-forward approach in addressing these criteria. The proposed use is to be sited on Orient Drive. The applicant has looked at other uses on a three-mile stretch of Orient Drive.

The staff is recommending that "the area" be redefined. Staff has also indicated that a number of uses in the area may be non-conforming. However, the non-conforming uses are existing uses and help determine the character of the area.

In addition, staff has included a number of areas that are zoned Multiple Use Agricultural, and have included a large parcel on Bluff. Several of the vacant parcels in farm deferral do not access Orient Drive. I do not find it appropriate to include those within the "area". I do agree with staff that a three mile stretch of Orient Drive is too large for a comparative area.

Staff has also indicated that there are no similar uses in the vicinity. The pediatric therapy use involving hippotherapy is a rather unique service. I would not expect there to be a similar use in the area. That is not part of the approval criteria set forth in this section. I do find it to be consistent with the character of the area. Immediately north of the subject site is a GTE service building, and 0.1 mile south from the subject site is Gresham Door and Cabinet.

I find the proposed use to be consistent with the character of the area.

(2) Will not adversely affect natural resources;

Applicant: This business will not adversely affect natural resources.

Staff: Based on the distance from Johnson Creek and the fact that the property is not located on the Big Game Wildlife Habitat map, Staff finds the proposed development will not adversely affect natural resources.

Hearings Officer: I concur with staff. The application meets this criterion.

(3) Will not conflict with farm or forest uses in the area:

- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
- (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

Applicant: There is not farm or forest use in this immediate area. Within a few miles of Orient Drive there are plant nurseries. Three residential dwellings and a commercial GTE building border this property. One of the residences does have a private horse pasture, and their pasture is continuous by way of a gate with the horse pasture on this (our) property. The horse pasture is planned to be continued as a horse pasture with the business development. Since actual farming practices are not adjacent to this property they will not be in anyway affected.

Staff: Within a 500 ft radius from the property, there are 6 properties currently being utilized for nursery stock production (Tax Acct's R994191970, R994191980, R994191670, R994201070, R994201130, R994201820). A sixth property has been utilized in the past for nursery stock production, but presently is not in farm deferral (R994191790). In addition, there are two more parcels in farm deferral that staff was unable to determine the agricultural product being produced (R994190360 & R994191180) (See Exhibit 22).

Hearings Officer: I find that the proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The evidence did indicate that there were farm uses in the area. The proposed use is consistent with a farm use. The proposed use will not generate excessive traffic. The proposed use in fact involved a horse, in the use of hippotherapy. There is no indication in the record that there would be any interference or increase in the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. I find the applicant has met with criterion.

(4) Will not require public services other than those existing or programmed for the area;

Applicant: The new use of this property does not require special public services currently not in existence.

Staff: The applicant has provided a signed Fire District form, the Certification of On-Site Sewage Disposal form requiring a new septic system be installed prior to building permits, and a Certification of Water Service form indicating no water service improvements will be necessary. The Transportation Division has indicated that no additional right of way will be necessary along Orient Drive. In addition, a deed restriction has previously been recorded for the property's participation in the improvement of Orient Drive, if the roadway is ever brought up to County standards.

Hearings Officer Analysis: Since the staff report was drafted, the applicant did receive approval from the County Sanitarian for a new septic system utilizing a 1500 gallon septic tank. Accordingly, I find that the applicant has demonstrated that the use would not require public services other than those existing or programmed for the area.

(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Applicant: The property is not located in big game winter habitat.

Staff: A copy of the big game winter habitat area map has been included in the case file and indicates that this property is located outside of the habitat.

Hearings Officer: The applicant has demonstrated that the proposed use is located outside of a big game winter habitat.

(6) Will not create hazardous conditions; and

Applicant: The business will not create hazardous conditions.

Staff: The proposed use and structures are not within the floodplain of Johnson Creek. No slope hazard area exists on the site. Comprehensive Plan Policy #14, Developmental Limitations, also provides findings on soil type, slope, and other potential developmental limits of a property. The applicant has not indicated whether any chemicals or biohazards are generated by the proposed use. The sanitation issue specified under criterion 4 above may also be a concern under this criterion. The Sanitarian has indicated that certain medicines may affect sand filter systems. Since the Sanitarian has withdrawn its approval at this time, staff is unsure whether hazardous conditions may be generated by this use.

Hearings Officer: Since the time of the staff report, the applicant has received septic approval. The applicant has submitted testimony or evidence indicating that there are no chemicals or biohazards generated by the proposed use. The sanitarian has accepted and approved the use of the septic system. Accordingly, I find that the proposed use will not create hazardous conditions.

- (7) Will satisfy the applicable policies of the Comprehensive Plan.

The Comprehensive Plan Policies are addressed below.

11.15.7130 Conditional Use Permit

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

11.15.7140 Conditional Uses Permitted

Except as otherwise provided in each district, the following conditional uses may be permitted in any district when approved under this Chapter.

The uses listed as conditional uses within each district, subject to the findings, criteria and standards stated therein.

Staff: Limited rural service commercial uses such as local stores, shops, offices, repair shops and similar uses are a listed Conditional Use in the Rural Center zoning district.

Comprehensive Plan Policies

POLICY 7: RURAL CENTER ISLAND AREA

Introduction • Policy • Strategies

Introduction

The purpose of the Rural Center Land Area Classification is to provide for rural service centers located outside the Urban Growth Boundary which contain limited commercial, community service, industrial and residential uses. Public sewer service is not available, and other support services are usually limited. The intensities and types of uses located within these centers must be appropriate to the character of the rural area.

The intent of the Rural Center Classification is to provide rural services for the residents and businesses located in the rural areas of the County, and is not intended to encourage growth of centers as dense communities.

Hearings Officer: This issue was discussed earlier in this opinion.

POLICY 13 Air, Water and Noise Quality

Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, if a land use proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan: *[Amended 1999, Ord. 933 § III]*

1. **Building placement on the site in an area having minimal noise level disruptions.**
2. **Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

[Amended 1999, Ord. 933 § III]

Applicant: The pediatric therapy business does not have impact in these ways. Air and water pollution are not contributed to. The noise level is less than that of a daycare center in that children are worked with individually rather than in groups. Also most of the care is provided indoors.

Hearings Officer: Hearings Officer concurs with the applicant's statement. This policy has been given appropriate consideration.

POLICY 14 Developmental Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations, except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

- A. **Slopes exceeding 20%;**
- B. **Severe soil erosion potential;**
- C. **Land within the 100 year flood plain;**
- D. **A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**
- E. **A fragipan less than 30 inches from the surface;**
- F. **Land subject to slumping, earth slides or movement.**

Applicant: This property does not have a slope exceeding 20%. It does not have soil erosion areas. It is not within the 100-year flood plain. It has a very gentle slope and therefore probably does not have a high water table, but this would require verification. None of the land is subject to slumping, earth slides or movement. Finally, I cannot find the definition of "frangipani" (*sic*).

Staff: Staff references the Soil Survey of Multnomah County, OR for these standards. The Soil Survey provided the following information. The two soil types are Powell silt loam, 0 to 3 percent slopes (34A) and Powell silt loam, 3 to 8 percent (34B). The hazard of erosion is slight for both 34A and 34B. Typically for both soil types, the surface layer is dark brown silt loam about 8 inches thick. The subsoil is brown, mottled silt loam about 8 inches thick. The substratum is a brown mottled, silt loam fragipan to a depth of 60 inches or more. No evidence has been submitted to argue that the fragipan is deeper than 30 inches in depth. The Soil Survey states that the water table for both soils is at a depth of 18 to 24 inches from December through April. The land is not within the 100 year floodplain for Johnson Creek.

Based upon the slight slopes for both of these soil types, it does not appear that the soil is subject to slumping, earth slides or movement (See Exhibit 17). Applicant has not addressed the presence of a high water table within 24 inches of the surface or the fragipan situation.

Hearings Officer: At the hearing, the applicant submitted evidence that the property does not have a high water table. In addition, evidence was submitted at the hearing that the fragipan is more than 30 inches from the surface. Accordingly, I find that the proposed area of development does not have the development limitations specified in Policy 14.

POLICY 37 Utilities

[Amended 1999, Ord. 933 § III]

Water and Disposal System

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or *[Amended 1999, Ord. 933 § III]*
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or *[Amended 1999, Ord. 933 § III]*
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or *[Amended 1999, Ord. 933 § III]*
- D. Shall have an adequate private water system and a public sewer with adequate capacity. *[Amended 1999, Ord. 933 § III]*

Drainage

- E. Shall have adequate capacity in the storm water system to handle the run-off; or *[Amended 1999, Ord. 933 § III]*
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and *[Amended 1999, Ord. 933 § III]*
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands. *[Amended 1999, Ord. 933 § III]*

Energy and Communications

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and *[Amended 1999, Ord. 933 § III]*
- I. Communications facilities are available.

Furthermore, the County's policy is to continue cooperation with the Department of Environmental Quality for the development and implementation of a groundwater quality plan to meet the needs of the County.

Applicant:

Water and Disposal System

1. Septic review is in the process of being completed for formal application purposes.
2. The water source is Bull Run water. The water system review is in the process of being completed for formal application purposes.

Drainage

Water run off can be handled on the site for the current structure. There is planned to be added square footage of roof that should not exceed drainage capacity of the acreage of this property. There are not adjacent streams, pond or lakes adjoining this property.

Energy and Communications

Energy and communications systems are in place for the residence and are adequate to serve the new use.

Staff: The applicant has submitted the Certification of Private On-Site Sewage Disposal. The Sanitarian has indicated that a new septic tank and drainfield will be necessary to service a 4 bedroom house or a 3 bedroom house with small medical practice. Staff contacted the Sanitarian to verify that the proposed uses for the property are considered a small medical practice. The Sanitarian indicates that the use of the property as a rental unit and therapy office (approximately 2300 square ft) is not consistent with his sign-off and that the location of the pole barn may interfere with the approved septic location. (See Exhibit 21)

The applicant has indicated that all water run-off will be handled on site. To ensure that the on-site water disposal system design is adequate to handle all impervious surfaces, a condition of approval is recommended requiring any system be engineered by a licensed professional

Hearings Officer: The staff had contended that the applicant did not meet the portion of this policy which addressed sewage disposal. However, since the time of the staff report, the applicant has received an updated site evaluation report from the sanitarian. That report indicates that the subject site is approved for a septic system, utilizing a 1500 gallon septic tank with 500 lineal feet of drain lines. Accordingly, the issue of sewage disposal has been addressed, and I find that all utilities necessary to serve the subject property are available at site.

POLICY 38 Facilities

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure: *[Amended 1999, Ord. 933 § III]*

Fire Protection

- B. There is adequate water pressure and flow for fire fighting purposes; and**
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

Applicant: The Fire District Review for this formal application is completed and attached

Staff: The Deputy Fire Marshall for the Gresham Fire & Emergency Services district indicates that fire hydrants or tankers are available and that the existing access to the proposed development is adequate.

Hearings Officer: I find that the requirements of this plan policy have been met.

11.15.7115 Conditions and Restrictions

Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335, the approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed. [Amended 1990, Ord. 643 § 2]

Hearings Officer: The staff has listed eight proposed conditions to be imposed as conditions of approval if this use is approved. I concur with staff on all issues except Condition 6. The applicant indicated that there would be six employees, some of them part-time. I feel that staff's proposed condition is a little bit more restrictive than called for, based on the information stated in the application. In addition, because of the nature of the hippotherapy portion of the proposed use, the business may need more than two therapists on site at a particular time. The applicant also asked that the number of patients to be seen daily be increased to 20. The septic approval itself, Exhibit "D-3", indicated that the septic system had been approved for a business with a maximum of 15 employees. It appears that the septic approval would allow more intensive use than envisioned by this condition. I am not going to approve the number of patients that the applicant requested for the hearing, because the issues raised by the increase in the number of employees has not been addressed in any of the application materials, or at the hearing. Staff has not had an opportunity to review that potential effect. Accordingly, condition 6 will be revised to read as follows:

"The physical therapy business may have a maximum of six employees on site at any time, and shall be conducted within an enclosed building or buildings (MCC 11.15.2252 (B)), with the exception of that portion of the physical therapy practice related to hippotherapy, which may be conducted in the field. No more than 15 patients may be seen daily."

CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for Conditional Use for a pediatric therapy business satisfies all applicable approval criteria provided that the conditions of approval are complied with. Accordingly, the

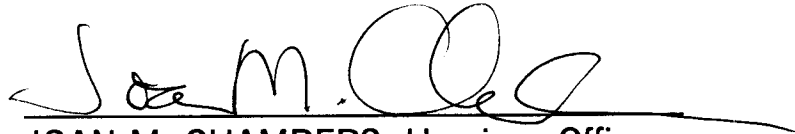
Conditional Use application is hereby approved subject to the conditions of approval contained herein.

CONDITIONS OF APPROVAL:

1. A Grading and Erosion Control (GEC) Permit will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards.
2. All water from impervious surfaces shall be maintained on-site and not dispersed to the public right of way or adjoining properties unless the adjoining property owner chooses to permanently accept the water. Any water infiltration system, such as a french drain or soakage trench shall be engineered by a licensed professional.
3. This Conditional Use approval is based on the submitted written narrative and plans, and shall be specific to the use(s) described together with the limitations or conditions as determined herein. Any subsequent change of use or modification of limitations or conditions shall be subject to approval by the approval authority and may require a public hearing. The applicant may change the location of the horse barn on the site plan, subject to review and approval of staff.
4. Prior to building permit approval, as required under MCC 11.15.7125, the applicant/owner is to obtain design review approval of all proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing, and exterior structural design. Site work shall not proceed until required Design Review approvals are obtained. Specific design features represented in this application shall be reflected in plans submitted for design review.
5. Off-street parking and loading improvement standards (MCC 11.15.6132), design standards (MCC 11.15.6138), and landscaping/screening criteria (MCC 11.15.6140) are detailed requirements, to be satisfied with Design Review.
6. The physical therapy business may have a maximum of six employees on site at any time, and shall be conducted within an enclosed building or buildings (MCC 11.15.2252 (B)), with the exception of that portion of the physical therapy practice related to hippotherapy, which may be conducted in the field. No more than 15 patients may be seen daily.
7. Prior to issuance of building permits the property owner shall provide documentation from the City of Portland that the property may be served by a septic and/or sand filter system.

8. **Approval of this Conditional Use shall expire three years from the date of the Board Order unless** "substantial construction" has taken place in accordance with MCC 11.15.7110 (C) or the subject proposal is completed as approved.

IT IS SO ORDERED, this 5th day of January, 2001.



JOAN M. CHAMBERS, Hearings Officer