



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

01/27/2014

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Eugene Plan Amendment
DLCD File Number 016-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, February 13, 2014

This amendment was submitted to DLCD for review prior to adoption with less than the required 35-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Becky Taylor, City of Eugene
Gordon Howard, DLCD Urban Planning Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 016-13 (20094)
[17739]
Received: 1/23/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Eugene

Local file no.: **Z 13-9**

Date of adoption: January 3, 2014

Date sent: 1/23/13

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11/19/13

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No **X**

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Becky Taylor

Phone: 541-682-5437

E-mail: becky.g.taylor@ci.eugene.or.us

Street address: 99 West 10th Avenue

City: Eugene

Zip: 97401

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------|----|--------|--|
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from R-1	to R-2	Acres: 3.43
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address): 18-03-07-12/300, 400, 500, 700, 800 - 2926 Portland, 65 W. 29th Pl., 53 W. 29th Pl.

List affected state or federal agencies, local governments and special districts:

City of Eugene

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

Cascade Manor (Z 13-9) 18-03-07-12/00300, 00400, 00500, 00800



Change in zoning from R-1 Low Density Residential to R-2 Medium Density Residential



- C-2 Community Commercial
- PL Public Land
- R-3 Limited High-Density Residential
- R-1 Low Density Residential
- Subject Site
- R-2 Medium Density Residential



**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

ZONE CHANGE AND ADJUSTMENT REVIEW REQUEST

INTRODUCTION

Application File Name (Number):

Cascade Manor (Z 13-9 and ARA 13-13)

Applicant's Request:

Zone change from R-1 Low-Density Residential to R-2 Medium-Density Residential and Adjustment Review Approval to minimum setback requirement and upper story building entrance requirement.

Subject Property/Location:

Tax Lots 300, 400, 500, 700, and 800 of Assessor's Map 18-03-07-12, located at the northwest corner of West 29th Place and Portland Street.

Relevant Dates:

Application submitted on September 16, 2013; application deemed complete on October 29, 2013; public hearing held on December 4, 2013.

Applicant's Representative:

Colin McArthur of Cameron of Cameron McCarthy Landscape Architects represented the applicant.

Lead City Staff:

Becky Taylor, Associate Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on December 04, 2013. The Hearings Official stated he had no conflicts of interests and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Becky Taylor (Taylor), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearings. Taylor presented the staff report at the public hearing, recommending approval of the zone change and adjustment review requests.

Colin McArthur explained the nature of the proposed zone change and development and stated that he agreed with the staff report. One citizen testified that he was neutral towards the applications but that he was concerned about additional traffic in the area. The applicant provided rebuttal regarding traffic issues. At the conclusion of the public hearing, the Hearings Official closed the record.

FACTS

Cascade Manor Retirement Community is an existing assisted care facility that abuts the west boundary of the subject property and encompasses 4.75 acres extending to West 29th Avenue to the north and West 30th Avenue to the south. The subject property is approximately 1.22 acres that is bordered by the existing retirement facility to the west, West 29th Place to the south, Portland Street to the east, and commercial development to the north. Adjacent properties are zoned C-2 Community Commercial to the north, R-3 Limited High-Density Residential, R-2/SR Medium-Density Residential with Site Review Overlay, and R-1 Low-density Residential to south, and R-2 Medium-Density Residential to the west. The subject property's plan designation is Medium Density Residential, but it is currently zoned R-1 Low-Density Residential. The applicant requests a zone change from R-1 Low-Density Residential to R-2 Medium-Density Residential.

The subject property is currently developed with three dwellings that front on West 29th Place. Most of the property, between Portland Street and the existing retirement facility, is a gravel parking lot. Although not necessary for the zone change application, the applicant has provided specific design plans for the proposed development. The application envisions 32 independent living units with each having access from the exterior of the building. The proposed building is a two and three story freestanding building that will be connected to the existing retirement facility by a covered walkway. One reason the applicant submitted detailed development plans for the property is that the applicant, in addition to the requested zone change, seeks adjustment review approval to reduce the minimum front yard setback requirement and the requirement that upper story units' entrances be from the interior of the building.

DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL

I have considered all of the documents in the planning file for the proposed zone change and adjustment review approval (Z 13-9 and ARA 13-13) as well as the testimony provided at the public hearing.

ZONE CHANGE ANALYSIS

Eugene Code (EC) 9.8865 provides the criteria for approval of a zone change:

“Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- “(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- “(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.

- “(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.
- “(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:
 “* * * * *
- “(f) EC 9.2735 Residential Zone Siting Requirements. * * * * *
- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

EC 9.8865(1)

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation for the property is Medium Density Residential. The property is currently mis-zoned as R-1 Low-Density Residential, and the proposed zone change to R-2 Medium Density Residential will bring the property into compliance with the plan designation. Therefore, the proposed zone change is consistent with the plan designation.

The application identified a number of potentially applicable plan policies and provided findings demonstrating compliance with those policies. The staff report agreed with those findings while noting that none of the policies appeared to be mandatory approval criteria. There was no evidence or testimony arguing that the plan policies were not satisfied or that EC 9.8865(1) was not satisfied. I agree with staff’s conclusion that none of the identified policies are mandatory approval criteria and with the applicant’s findings that the policies are furthered by the application. As there is no opposition, I do not believe it would serve any purpose to review all of the policies. Therefore, I incorporate and adopt the applicant’s proposed findings. Applicant’s Narrative 21-34. Based on the proposed zone change bringing the property into compliance with the plan designation and the applicant’s findings regarding the plan policies, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

EC 9.8865(2)

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the subject property is within the boundary of the South Hills Study Area, but those plan policies only apply to properties with an elevation of 500 feet or higher. There is no dispute that the subject property is below 500 feet in elevation. Thus, there are no applicable refinement plan policies that the application need be consistent with. Therefore, I find that the proposed zone change is consistent with the provisions of the applicable refinement plan and that EC 9.8865(2) is satisfied.

EC 9.8865(3)

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools.

The uses and densities allowed by R-2 Medium-Density Residential zoning are broader than the specific development plan submitted in the application. R-2 Medium-Density Zoning generally allows between 10 and 28 units per acre. As the subject property is approximately 1.22 acres, the applicant could request up to 34 dwelling. The applicant's development proposal is for 32 units, which results in 26 dwelling units per acre. Both the public works referral memo and the staff report state that such densities can be served by the orderly extension of key urban facilities and services.

The only issue regarding key facilities and services appears to be stormwater facilities. The application acknowledges that there is a downstream stormwater capacity constraint in the public stormwater system. The City's master plan includes a future capital project that should alleviate that constraint, but until that improvement occurs the applicant will be required to detain post-development stormwater runoff to pre-development levels. Because the applicant is also seeking Adjustment Review Approval, there is a detailed development plan, and that plan includes stormwater detention and pollution reduction facilities that will keep stormwater runoff to pre-development levels. Based on the evidence in the public works memo, staff report, and the applicant's testimony, I agree that the proposed uses and densities can be served through the orderly extension of key urban facilities and services. Therefore, I find that EC 9.8865(3) is satisfied.

EC 9.8865(4)

EC 9.8865(4) requires that the proposed zone change be consistent with certain applicable siting requirements, in this case EC 9.2735, which provides:

“Residential Zone Siting Requirements. In addition to the approval criteria of EC 9.8865 Zone Change Approval Criteria, a property proposed for the R-1.5 zone shall not exceed the area needed to accommodate up to 8 rowhouse lots and shall be located at least 500 feet, as measured along existing street public right-of-way, from any other property zoned R-1.5”

The proposed zone change is from R-1 Low-Density Residential to R-2 Medium-Density Residential and not R-1.5. Thus, EC 9.2735 is not applicable to the current application. Therefore, I find that EC 9.8865(4) is satisfied.

EC 9.8865(5)

EC 9.8865(5) requires that certain arrangements must be made with the City when an NR Natural Resource zone is applied based on EC 9.2510(3). The proposed zone change does not include any NR Natural Resource zoning, so this criterion does not affect the application. Therefore, I find that EC 9.8865(5) is satisfied.

Transportation Planning Rule

Oregon Transportation Planning Rule (TPR), OAR 660-012-0060(1) provides:

- “(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
- “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - “(b) Change standards implementing a functional classification system; or
 - “(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
 - “(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - “(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
 - “(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. An applicant for a zone change may avoid the analysis of OAR 660-012-0060(1) if it qualifies for an exception under OAR 660-012-0060(9), which provides:

“Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

- “(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;
- “(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and
- “(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.”

As discussed above, the proposed R-2 Medium-Density Residential zoning for the property is consistent with the existing comprehensive plan Medium Density Residential designation, and the amendment does not change the comprehensive plan map. Thus, OAR 660-012-0060(9)(a) is satisfied.

The City’s acknowledged Transportation System Plan (TSP) is TransPlan. When TransPlan was adopted in 2001, the subject property was designated Medium Density Residential and the designation has remained unchanged. Thus, the proposed zoning is consistent with the TSP, and OAR 660-012-0060(9)(b) is satisfied.

The subject property was not exempted from the TPR at the time of an urban growth boundary agreement. Thus, OAR 660-012-0060(9)(c) is satisfied. Therefore, the proposed zone change does not significantly affect a transportation facility for purposes of the TPR and therefore complies with the TPR.

OTHER CHALLENGES

There was no evidence submitted prior to the hearing or testimony at the public hearing in opposition to the application. Bob Larson (Larson) stated that he was neutral towards the application, and testified that he was concerned that the proposed zone change would lead to increased traffic in the area. Larson also testified that he was concerned about the appearance of the potential buildings to be constructed. While Larson initially stated that he was neutral regarding the application, his testimony could be construed to be in opposition to the application. While there may be an increase in traffic, the Medium Density Residential plan designation envisions these kinds of uses and the associated traffic, and there was no evidence that the existing streets are inadequate to serve the subject property as required by EC 9.8865(3). There was evidence in the staff report and public works memo that there are indeed adequate streets to serve the property. Furthermore, the applicant testified that retirement facilities do not generate as many vehicle trips as other uses with the same amount of dwellings would. While the applicant may not be bound by the specific development proposal submitted in the application, the proposed building is not the kind of high-rise structure that Larson was concerned about. I do not see that Larson’s concerns about traffic or

appearance provide a basis to deny the application.¹ The staff report did not identify any other potential obstacles to approving the application, and I do not see that there are any. Therefore, I approve the zone change request.

ADJUSTMENT REVIEW APPROVAL ANALYSIS

EC 9.8015 provides that the purpose of adjustment review is to “[e]ncourage design proposals that respond to the intent of the code and creatively meet or exceed the specific development standards” and “[a]llow adjustment to the development standards in an efficient and effective manner.” The applicant requests adjustment review to the minimum building setback requirements of SC 9.5500(4)(a)² and the upper story building entrance requirements of EC 9.5500(5)(c).³ EC 9.8020 provides that “[a]djustment review is available only where [the] land use code provides that a specific standard may be adjusted.” EC 9.5500(4)(c) and 9.5500(5)(d) specifically provide that adjustments are available for these requirements.

EC 9.8030 provides:

“Adjustment Review – Approval Criteria. * * * Approval or conditional approval shall be based on compliance with the following applicable criteria:

*** ** *

“(2) **Setback Standards Adjustment.** Where this land use code provides that the setback standards applicable to specific zones may be adjusted, the standards may be adjusted upon finding that the proposed setback is consistent with the following applicable criteria.

“(a) **Minimum and Maximum Front Yard Setback Adjustment.** The minimum or maximum required front yard setback may be adjusted if the proposal achieves all of the following:

- “1. Contributes to the continuity of building facades along the street.
- “2. Creates an attractive pedestrian environment along all adjacent streets.
- “3. Is compatible with adjacent development.

*** ** * (Underlining and bold in original.)

The required minimum front yard setback in the R-2 Medium Density Residential zone is 10 feet. The applicant seeks an adjustment to allow a minimum front yard setback of 5 feet along West 29th Place in order to construct a wraparound porch. The reduced setback would contribute to the continuity of the building façade along West 29th Place because it will create the building façade along the street, as it will include the entire frontage along West 29th Place. The wraparound porch will also serve to connect the new building to the elevated walkway connecting to the existing retirement facility. This satisfies EC 9.8030(2)(a)(1). The proposed

¹ Larson stated that he had no objection to the Adjustment Review Approval request.

² EC 9.5500(4)(a) provides that required setbacks “are those required in the applicable base zone.” The required setback in the R-2 Medium-Density Residential zone is 10 feet.

³ EC 9.5500(5)(c) provides in pertinent part that the “main entrance of upper story units shall be provided from the interior of the building or from an exterior walkway that serves no more than 2 units.”

design of a multi-level wraparound porch will create an attractive pedestrian environment along West 29th Place as it will provide a safe, accessible, and appealing pedestrian environment that will allow the residents to safely travel between the new and older portions of the retirement facility. The design of the wraparound porch adds variation in building height, material, and color to make the porch more visually appealing. This satisfies EC 9.8030(2)(a)(2). Finally, the wraparound porch is compatible with the adjacent development because it emphasizes the use of porches to create interaction among the residents and is compatible with the other porches planned for the development and seamlessly connects the new development to the older facility. This satisfies EC 9.8030(2)(a)(3). Therefore, I approve the adjustment review request for a reduced minimum setback of 5 feet along West 29th Place consistent with the applicant's proposed design.

EC 9.8030(4) provides:

Building Orientation and Entrance Standards Adjustment. Where this land use code provides that building orientation and entrance standards may be adjusted, the standards may be adjusted upon finding that the proposal complies with one of the following:

- “(a) Promotes compatibility with adjacent property.
- “(b) Creates building orientations and entrances that achieve all of the following:
 - “1. Support and augment the building setback, massing and architectural details.
 - “2. Achieve an attractive streetscape with a strong building presence on existing and future streets.
 - “3. In the case of multi-family developments, provides socialization benefits to residents.” (Bold and underling in original.)

The upper story building orientation and entrance standards require that the main entrance of the upper story units be provided from the interior of the building or from an exterior walkway that serves no more than two units. The proposed design is for each unit to have an exterior entrance. The proposed design promotes compatibility with adjacent property because adjacent properties have similar exterior entrances and thus the proposed design will not be out of place. This satisfies EC 9.8030(4)(a) which is enough to allow the adjustment. Further, the proposed exterior entrances will support and augment the building setback, massing, and architectural details by having residents enter the dwellings from the south near adjacent low-density dwellings whereas parking and vehicle access will be from the north closer to commercially zoned properties. I agree with staff that the proposed design will achieve an attractive streetscape with a strong building presence. Finally, the connected porches and covered walkway to the older portions of the retirement facility will provide socialization benefits to the residents. This satisfies EC 9.8030(4)(b) and provides another basis for allowing the adjustment. Therefore, I approve the adjustment review request for adjustment of the upper story building orientation and entrances requirement.

DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a zone change from R-1 Low-Density Residential zoning to R-2 Medium-Density Residential zoning. The Hearings Official also approves the applicant's request for Adjustment Review Approval for adjustment of the minimum front yard setback and upper story building orientation and entrances requirement.

Dated this 18th day of December, 2013.

Mailed this 19 day of December, 2013.



Fred Wilson
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS