

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

PROPERTY OWNERS/APPLICANTS:

Thomas D. Clark and Kimberly L. Hudson

FILE NO:

LU 18-0015

APPLICANT'S REPRESENTATIVE:

Creighton Architecture

STAFF:

Evan Fransted, Associate Planner

LOCATION:

4250 Haven Street

TAX MAP/LOT REFERENCE:

21E17BC05301

DATE OF REPORT:

April 3, 2018

120-DAY DECISION DATE:

July 10, 2018

COMP. PLAN DESCRIPTION:

R-7.5

ZONING DESIGNATION:

R-7.5

NEIGHBORHOOD ASSOCIATION:

Bryant

I. APPLICANTS' REQUEST

The applicants are requesting approval of a Development Permit for a Secondary Dwelling Unit (SDU) to be constructed in a new accessory structure.

II. DECISION

Approval of LU 18-0015, with conditions. The complete listing of conditions is provided below.

A. Prior to Issuance of any Building Permit, the Applicants/Owners Shall:

1. Submit a "Notice of Development Restriction" for staff review and approval containing the following restrictions:
 - a. The property owner shall occupy one of the two dwelling units on the property at all times and the use of the property is subject to compliance with the City of Lake Oswego's secondary dwelling unit requirements [LOC 50.03.004.1.b.vi].

2. Record the "Notice of Development Restriction" required by Condition A(1), above, with the Clackamas County Clerk's Office, and provide a copy of the recorded Notice of Development Restriction to staff.
3. Submit a fire access plan that shows fire access within 150 feet of all portions of the dwelling or that the building is equipped throughout with a sprinkler system to the satisfaction of the Fire Marshal.
4. Submit a design for stormwater roof runoff disposal in conformance to the Plumbing Code and to the satisfaction of the Building Official.

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development Permit for the SDU approved by this decision shall expire three years following the effective date of the Development Permit, and may be extended by the City Manager pursuant to the provisions of this section.

Note:

1. Development plans review, permit approval, and inspections by the City of Lake Oswego Development Review Section are limited to compliance with the Lake Oswego Community Development Code, and other applicable codes and regulations. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, e.g., Americans with Disabilities Act, Endangered Species Act. City staff may advise the applicant of issues regarding state and federal laws that the City staff member believes would be helpful to the applicant, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

III. APPLICABLE REGULATIONS

A. City of Lake Oswego Community Development Code [LOC Chapter 50]:

LOC 50.03.004.1.b.vi	Secondary Dwelling Unit
LOC 50.04.001.1	Residential Low Density Zones Dimensional Standards
LOC 50.06.001.2	Structure Design-Residential Zones
LOC 50.06.002	Parking
LOC 50.06.003.2	On-Site Circulation – Driveways and Fire Access Roads
LOC 50.06.006.3; 50.07.004.1	Stormwater Management
LOC 50.06.007.2.C	Maximum Shade Point Height Standard
LOC 50.06.008; 50.07.004.11	Utilities
LOC 50.07.003.1	Application Procedures, Burden of Proof
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decisions

B. City of Lake Oswego Utility Code [LOC Chapter 38]:

LOC 38.25	Stormwater Management Code
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C. City of Lake Oswego Streets and Sidewalks [LOC Chapter 42]:

LOC 42.03.130

Sight Distance at Roadway Intersections, Private Streets and Driveways

IV. **FINDINGS**

A. Background/Existing Conditions:

1. The site is approximately 12,125 square feet in size and is located on Haven Street, a local street (Exhibit E1).
2. The site is zoned R-7.5 and is developed with a single family dwelling. Surrounding properties are also zoned R-7.5 and developed with single family dwellings.
3. The site is relatively flat with an elevation of 136 feet along the east property line to approximately 138 feet towards the center of the lot (Exhibit E2). There are four trees located on the site that are six inches in diameter or more. The site plan (Exhibit E3) shows the removal of a 5-inch diameter tree for the construction of the proposed secondary dwelling unit. Trees less than six inches in diameter do not meet the definition of a tree per LOC 55.02.020 and do not require a permit for removal.

V. **REVIEW AND APPROVAL PROCEDURES**

A. Neighborhood Meeting

No neighborhood meeting was required by LOC 50.07.003.1.f.

B. Public Notice to Surrounding Area

The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003.

Two public comments in opposition were received during the comment period (Exhibits G200 and G201). The issues raised were as follows:

- The property owner at 17478 Lake Haven Street is opposed to “changes that invoke more traffic, noise, lesser privacy and sight lines.”

Staff Response: The property owner does not provide further details on why she believes that the proposed SDU will cause those impacts. These issues will be addressed under the Secondary Dwelling Unit and Sight Distance standards, below.

The property owner also expresses concern regarding the possibility that the proposed SDU may be converted into a chicken coop in the future, which would have noise impacts on the surrounding neighbors.

Staff Response: The application is for an accessory structure to be used as a secondary dwelling unit. If the structure were to be converted into a chicken coop, LOC Chapter 31 regulates the keeping of fowl.

- The property owner at 4311 Haven Street expressed opposition to the SDU, citing Section 1 in their 1940 Declaration of Covenants, Conditions and Restrictions (CC&Rs) for the Lake Haven Acres Subdivision, which the owner states restricts use of a platted lot to a detached single family dwelling and a private garage for not more than two cars.

Staff Response: CC&Rs are private restrictions between private property owners, and an owner may have legal defenses against enforcement of a CC&R provision. Compliance with private CC&R provisions are not part of the City's regulatory development criteria under LOC 50.07.003.14.d.ii and the City does not enforce privately imposed restrictions. (The property owner may wish to consult their private attorney to determine their legal rights and remedies under the CC&Rs.)

C. Burden of Proof

Per LOC 50.07.003.1.b, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicants have provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

VI. MINOR DEVELOPMENT

A. Classification of Application

LOC 50.07.003.14.a.ii(5) designates the review of an SDU as a minor development.

B. Criteria for Review of Application

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

1. The requirements of the zone in which it is located;

Residential Use of Property [LOC 50.03.002]

The R-7.5 zone is a low density residential zone. The uses permitted are stated in Table 50.03.002-1, and include single-family dwellings (outright permitted) and secondary dwelling units (accessory uses).

Accessory Structures and Uses [LOC 50.03.004]

Secondary Dwelling Units [LOC 50.03.004.1.b.vi]

An SDU may be allowed in conjunction with a single family dwelling by conversion of an existing space, by means of an addition, or as an accessory structure on the same lot with an existing dwelling, when the standards below are met.

1. *The site is large enough to allow one off-street parking space for the secondary unit in addition to the required parking for the primary dwelling.*

One off-street parking space is required for each dwelling unit. The SDU will be located in an accessory structure behind the existing single family dwelling. As shown on

Exhibits E3 and F1, two parking spaces are provided as the existing single family dwelling contains a 2-car garage. This standard is met.

2. *Public services are to serve both dwelling units.*

The existing dwelling is connected to public water, sewer, and electric services. The applicant's narrative states that new and separate utility line will be installed for the SDU accessory structure (Exhibit E3 and F1). This standard is met.

3. *The maximum size of the secondary dwelling unit is limited to 800 sq. ft. gross floor area (GFA).*

As shown on Exhibit E5, the total size of the SDU is 666 square feet in area per LOC 50.10.003.2 "Gross Building Floor Area". This standard is met.

4. *No more than one additional unit is allowed.*

As shown in Exhibits E3 and F1, only one SDU is proposed on the site. This standard is met.

5. *The unit is in conformance with the site development requirements of the underlying zone including any adjustments and additions listed in the base zone, is located within a lawful nonconforming structure, or the zone requirements have been varied or excepted pursuant to LOC Article 50.08 (provided, however, that any variance for the structure was not obtained solely to locate a secondary dwelling unit on the site; the inability to site a secondary dwelling unit on a parcel is not an unnecessary hardship).*

The proposed accessory structure SDU meets all R-7.5 zone dimensional standards as discussed, below. This standard is met.

6. *One unit shall be occupied by the property owner. The owner shall be required to record a declaration of restrictive use in the appropriate County Clerk deed records prior to issuance of a building permit for the secondary dwelling unit on the lot. The declaration shall state that use of the parcel is subject to compliance with the City of Lake Oswego's secondary dwelling unit requirements, including the requirement that one of the dwellings on the lot be occupied by the property owner to permit usage of a secondary dwelling unit on the lot.*

The applicants state in the narrative that the property owner will continue to occupy the primary dwelling and the SDU will be occupied by a relative of the owner (Exhibit F1). To assure that this standard is met, the applicants will be required to record a Notice of Development Restriction with the Clackamas County Clerk's Office to put future property owner(s) on notice of the SDU restrictions. As conditioned in Condition B(1), this standard is met.

7. *The reviewing authority may impose conditions regarding height modifications, landscaping, buffering and orientation of the secondary unit to protect privacy of the neighbors.*

The property owner at 17478 Lake Haven Street expresses concerns for potential privacy impacts on surrounding properties (Exhibit G200). The letter does not provide details for the reasons the proposed SDU would create privacy impacts. The abutting

property owners did not submit comments on this application.

The SDU is to be located within a new accessory structure that meets all setbacks and height standards (see Dimensional Standards discussion, below). Staff finds that compliance with these standards will meet the privacy expectations for uses within the R-7.5 zone, as evidenced by the absence of comment by the immediately abutting property owners. (Staff also notes that there is an existing bamboo thicket that will screen the SDU from the south.) For these reasons, staff finds that no additional conditions of approval are necessary. This standard is met.

Staff finds that the proposed unit meets, or can be conditioned to meet, all of the SDU standards and may be approved.

Dimensional Standards [LOC 50.04]

Development must comply with the zone dimensional standards (LOC 50.004.001.1). The development in question is the establishment of the secondary dwelling unit (SDU) within an accessory structure.

Residential Low Density Zones [LOC 50.04.001.1]

The site is zoned R-7.5. This standard prescribes site dimensional requirements (e.g. setbacks, lot coverage and height) for new development.

R-7.5 Accessory Structure Site Limitations & Proposed Compliance		
	Required	Proposed
Setbacks		
Front	25 feet	134.88 feet
Side Yards	5 feet	37.75 feet (east)/ 7 feet (west)
Rear	10 feet	18 feet
Height	24 feet or height of primary structure, whichever is less	18 feet and is less than existing primary structure, which is approximately 26 feet in height
Lot Coverage	25% or 3,031 sq. ft.	2,045 sq. ft. (primary and secondary structures combined, including the existing greenhouse)
Floor Area Ratio	4,801 sq. ft.	3,630 sq. ft. (primary and secondary structures combined)
Accessory Structure Size	800 sq. ft. if ≤ 18 feet in height	666 sq. ft.

As shown in the matrix above and in Exhibits E3 and F1, the proposed SDU complies with the above R-7.5 zone standards. This standard is met.

2. The Development Standards applicable to minor developments;

Structure Design – Residential Zones [LOC 50.06.001.2]

Street Front Setback Plane

The front profile of a structure is required to fit behind a plane that starts at the front setback line and extends upward to 20 feet in height, sloping towards the rear of the lot at a 6:12 pitch, up to the maximum allowed height of the structure (Subsection 2.b.i).

The proposed SDU is approximately 109.88 feet from the front yard setback and is well behind the front setback plane (Exhibit E3). This portion of the standard is met.

Side Yard Setback Plane

The side profile of a structure is required to fit behind a plane that starts at the side property line and extends upward to 12 feet in height, sloping toward the center of the lot at a 12:12 pitch (Subsection 2.e).

The proposed SDU is 18 feet in height and is set back seven feet or more from all property lines (Exhibits E3 and F1). As shown on the site plan and north building elevation plan, the structure fits behind the side yard setback planes without any projections (Exhibit E3 and E4). This portion of the standard is met.

Side Yard Appearance and Screening

This standard requires features that minimize the appearance of side wall planes; at least one of the design treatments specified in Subsection 2.f must be applied: 1) a maximum plane of 750 square feet or less; 2) specific side wall features including offsets, minimum eaves, and minimum fenestration requirements; and, 3) screening through specific landscape options.

The SDU has a side wall plane of 265 square feet on each side, complying with design treatment 1 (Exhibit E4). This portion of the standard is met.

Parking [LOC 50.06.002]

This standard requires one off-street parking space per dwelling unit. As shown on Exhibit E3, there are at least two off-street parking spaces on the site that are provided in the existing garage. This standard is met.

On-Site Circulation – Driveways and Fire Access [LOC 50.06.003.2]

This section is applicable to all development proposing a new use or an increased use on a site when the development will result in the construction of, or the increased use of private streets, driveways, or parking lot aisles. This subsection also prescribes standards for constructing driveways and to ensure adequate emergency vehicle access.

The existing residence is accessed by an existing driveway; no modifications to the driveway are proposed. The SDU is located more than 150 feet from a fire apparatus access road and a fire hose could not reach all portions of the dwelling. The applicants have two choices to meet the fire access requirements: locate the SDU closer to the street to provide access within 150 feet of all portions of the dwelling or install approved fire sprinklers (Exhibits F2). The applicants will be required to provide adequate fire access per Condition A(1), above, at the time of building permit submittal. As conditioned, this standard can be met.

Stormwater Management [LOC 50.06.006.3]

Stormwater management requirements are applicable to all development where [Subsection 3.a]:

- i. Greater than 1,000 square feet of impervious surface is created; or
- ii. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft.; or
- iii. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact.

If applicable, the applicant must demonstrate that, based upon LOC Article 38.25, Stormwater Management Code, the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can be provided [Subsection 3.b].

The Engineering staff finds that the new impervious area will be 616 square feet, which is less than 1,000 square feet; therefore, no performance standards will be required to be demonstrated according to the provisions of this standard and LOC Article 38.25. The Engineering staff notes that at the time of building permit submittal, the applicants shall demonstrate that the stormwater runoff from any new impervious surface areas be directed to an approved point of discharge, per the Plumbing Code. The Engineering staff notes that in the submitted application the roof drains are proposed to discharge to a splash block. Prior to building permit issuance, the applicants shall submit the stormwater disposal design in conformance with the Plumbing Code for review and approval, to the satisfaction of the Building Official. As conditioned with Condition A(2), this standard is met.

Maximum Shade Point Height [LOC 50.06.007.2.C]

Staff has reviewed the submitted plans for compliance with maximum shade point height standard [LOC 50.06.007.2.c]. The proposed SDU is located 134.33 from the north property line and is below the maximum shade point height at that distance from the north property line (Exhibit E3). The SDU meets the maximum shade point height standard.

Utilities [LOC 50.06.008]

The existing house is served by water, electric, phone, and sanitary sewer services. The applicants will connect the SDU to these services (Exhibit F1).

Undergrounding of Utilities: Per LOC 50.06.008.4.d, utilities shall be installed underground [unless exempted by the City Manager (staff)]; this applies to both new on-site utilities and existing utilities along the frontage of the development.

Any new utilities leading to the development will be required to be installed underground. The Director of Planning and Building Services has exempted (3/28/18) secondary dwelling units from the requirement to underground existing site frontage utilities.

3. **Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application;**

Sight Distance Standards [LOC 42.03.130]

This standard requires that no vegetation, fence or signage higher than 30 inches be located within a "clear sight triangle" [Subsection 4.b]. The triangles for private streets and

driveways is formed by the intersection approach legs of the roadway and driveway and a straight line drawn diagonally across the corner, connecting those lines at the various distances per AASHTO guidelines [Subsection 3.c].

The Engineering staff notes that the site plan (Exhibit E3) shows the existing driveway approach will be utilized and that 10-foot by 10-foot clear sight triangles will be available in each direction along Haven Street. This standard is met.

4. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.

There are no outstanding conditions of approval that affect the subject property.

VII. CONCLUSION

Based upon the materials submitted by the applicants and findings presented in this report, staff concludes that LU 18-00015 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

VIII. ACTION TAKEN

Approval of LU 18-00015, subject to the conditions identified on pages 1-2.

Prepared by:




Evan Fransted, AICP
Associate Planner

4/3/18

Date

Reviewed by:

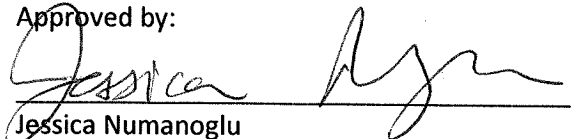


Evan Boone
Deputy City Attorney

4/3/18

Date

Approved by:



Jessica Numanoglu
Planning Manager

4/3/18

Date

EXHIBITS

A-D [No current exhibits; reserved for hearing use]

E. GRAPHICS/PLANS

E1 Location Map

- E2 Existing Feature Map
- E3 Site Plan
- E4 Elevations
- E5 Floor plans

F. WRITTEN MATERIALS

- F1 Applicant's Narrative, dated February 22, 2018
- F2 Fire Marshal Comments
- F3 Engineering Department Comments

G. LETTERS

Neither for nor Against (G1-99):

None

Support (G100-199):

None

Opposition (G200+):

- G200 Email from Kim Kress, dated March 26, 2018
- G201 Letter from James A. Moehling, received March 26, 2018

Date of Application Submittal: February 22, 2018

Date Application Determined to be Complete: March 12, 2018

State Mandated 120-Day Rule: July 10, 2018