

BEFORE THE DEVELOPMENT REVIEW COMMISSION
OF THE CITY OF LAKE OSWEGO

~~Approved~~

APPROVAL OF DEVELOPMENT REVIEW AND) LU 12-0016-1788
CONDITIONAL USE PERMITS AND A HARDSHIP) LAKE OSWEGO SCHOOL DISTRICT
VARIANCE TO CONSTRUCT PORTABLE CLASSROOMS) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of the following:

- A Conditional Use Permit (CUP) for expansion of the River Grove Elementary School in order to place eight 896 square-foot portable classrooms at the site.
- A Development Review Permit in order to construct up to eight portable classrooms.
- A Hardship Variance to the provisions of LOC 50.06.001.5.g, which requires new structures to be located within 30 feet of a public street.

The site is located at 5850 McEwan Road (Tax Lot 300 of Tax Map 21E 19 BA).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of July 2, 2012.

The following information was presented to the Commission at the July 3, 2012, hearing and added into the record:

Exhibit G-200 Letter from Tamara DiVergilio, dated June 29, 2012

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan*:

- Goal 2 Land Use Planning
- Goal 11 Public Facilities and Services
- Goal 12 Transportation

* Staff submits that there are no *regulatory* Comprehensive Plan policies in these Goal sections applicable to the project.

B. City of Lake Oswego Community Development Code:

LOC 50.01.003.2.d	Interpretation of Approvals
LOC 50.03.002	Special Purpose Districts Use Table (PF)
LOC 50.02.003	Site Development Limitations –PF Zone
LOC 50.06.001	Building Design
LOC 50.06.002	Parking
LOC 50.06.003.1	Access
LOC 50.06.003.2	On Site Circulation-Driveways and Fire Access Roads
LOC 50.06.003.3	On-Site Circulation-Bikeways, Walkways, Accessways
LOC 50.06.003.5	Transit
LOC 50.06.004	Lighting Standard
LOC 50.06.004 and 50.06.010	Landscaping, Screening and Buffering
LOC 50.06.005	Park and Open Space
LOC 50.06.006.3; 50.07.004.1	Drainage Standard for Minor Development

1	LOC 50.06.008	Utilities
2	LOC 50.07.003.1.b	Burden of Proof
3	LOC 50.07.003.5	Conditions of Approval
4	LOC 50.07.003.14	Review of Minor Development Applications
5	LOC 50.07.003.15	Review of Major Development Applications
6	LOC 50.07.003.7.b and c	Appeal of Minor and Major Development Decisions
7	LOC 50.07.003.6	Effect of Decision
8	LOC 50.07.005 and 50.03.003	Conditional Use Permits
9	LOC 50.07.003.10	Certificate of Occupancy
10	LOC 50.08.002 and 50.08.003	Variances

11
12 C. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]

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14 LOC 42.08.400 - 42.08.470 Streets and Sidewalks

15
16 D. City of Lake Oswego Tree Code [LOC Chapter 55]:

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18 LOC 55.08.020 Tree Protection Plan Required
19 LOC 55.08.030 Tree Protection Measures Required

20
21 **CONCLUSION**

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23 The Commission concludes that LU 12-0016 can be made to comply with all applicable criteria by the
24 application of certain conditions.

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26 **FINDINGS AND REASONS**

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28 The Commission incorporates the June 22, 2012, Staff Report (with all exhibits attached thereto), as support
29 for its decision, supplemented by the further findings and conclusion set forth herein. In the event of any
30 inconsistency between the supplementary matter herein and the staff report, the matter herein controls. To
31 the extent they are consistent with the approval granted herein, the Commission adopts by reference its oral
32 deliberations on this matter.

33
34 Following are the supplementary findings and conclusions of this Commission:

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36 1. Conditional Use:

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38 A. Frontage Sidewalk (Pathway)

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40 The Commission received oral testimony from the Rosewood Neighborhood Association Chair, supported
41 by separate written testimony (Exhibit G-200), that the requirement to construct a pathway at the
42 frontage of the site is reasonable to offset the street and pedestrian impacts of the increased enrollment
43 at the school as a result of the additional student enrollment permitted by the up to eight additional
44 portable classrooms.

45
46 The applicant requested that the requirement for the frontage sidewalk be deferred until (1) permanent
47 classrooms were constructed to replace the portable classrooms, and (2) that a Waiver of Remonstrance
48 for a Local Improvement District (LID) could be used, so that upon later construction of a sidewalk along
49 portions of McEwan Street, the Waiver of Remonstrance would not permit the District to remonstrate
50 against the formation of the LID.

51
52 The Commission finds that there will be a significant increase in students at the school and, based on the
53 applicant's Traffic Report, traffic will increase by 44% on McEwan Road. The Commission further finds

1 that approval of the eight additional classrooms would result in additional pedestrian and vehicle traffic
2 to the school, regardless of whether the classrooms were of permanent or modular construction. The
3 new Pilkington Pathway will come to the northeast corner of the school site and be partly located on the
4 school frontage; there will be no gap in the sidewalk except at the driveway entrance and exit. The
5 Commission; therefore, finds that a five –foot wide asphalt sidewalk at the frontage is needed to offset
6 the overall transportation impact and to accommodate the additional users, and that there is no reason
7 to defer installation of the sidewalk to a later date or as part of a LID. The School District is projecting an
8 enrollment increase of 100+ students for the River Grove School starting in September 2012 and the
9 frontage sidewalk is needed to offset the impacts of those additional students when they attend the
10 school.

11
12 The Commission takes note that the applicant indicated on the site plan that it had intended to pave
13 informal pathways on site on either side of the parking lot. At the public hearing, the applicant
14 requested to be relieved of the obligation of paving the interior pathways. The Commission finds that
15 the school site is already compliant with the Code’s interior walkway requirement and therefore there is
16 no criterion for approval of the CUP which necessitates paving the interior pathways as shown by the
17 applicant’s site plan. The applicant can choose to pave them or not, as the applicant desires; this is
18 reflected in the conditions of approval.

19 20 B. Enrollment Cap

21
22 The Commission received oral testimony from Mark Bachman that the staff’s calculation to determine
23 the maximum student capacity, based on the additional eight classrooms, could be substantially higher if
24 the “average students per classrooms” figure is 27, rather than 20. The Commission notes that staff
25 conceded that the actual number of students per classroom could be greater than 20. The Commission
26 finds that the applicant’s traffic analysis was based upon 433 students. Regardless of the estimate used
27 for the number of students per classroom, the Commission finds that the conditional use impacts
28 analysis by the applicant and staff were based on a maximum student enrollment of approximately 460
29 students. Because the impacts analysis for this CUP application was based upon that approximate
30 maximum student enrollment, it is reasonable to establish a cap of 460 as the student enrollment. If the
31 applicant wishes to increase the maximum student enrollment above 460, the applicant can apply for a
32 modification of the enrollment cap and additional analysis can then occur on the impacts of the
33 additional enrollment.

34
35 The applicant cited LOC 50.07.003.11 Modification of an Approved Permit to request that any future
36 increase in enrollment beyond 460 students be reviewed by the City Manager. The Commission finds
37 that:

38
39 (1) The applicant was relying upon a prior version of the code provision that classified
40 modifications as “major” and “non-major”, and allowed the City Manager to approve non-
41 major modifications if there were no additional impacts resulting from the modification.
42 Although the Commission could impose a condition for review similar to the prior version of
43 LOC 50.07.003.11, the Commission finds that a public review of the impacts of student
44 enrollment above 460 would be beneficial to the public and the applicant in determining
45 whether the conditional use criteria for the additional student enrollment were met. The
46 Commission; therefore, declines applicant’s request for a condition of approval that would
47 authorize the City Manager (staff) to approve an increase in enrollment above 460.

48
49 (2) The code section applies only to ministerial or minor development applications. A
50 Conditional Use request is a major development.

51
52 The Commission finds that with the staff-recommended conditions of approval for an enrollment cap and
53 construction of the pathway at the frontage are necessary to assure that the proposed development is

1 and remains reasonably compatible with uses in the vicinity and mitigates the development's impacts
2 upon the street and sidewalk system. Therefore, the criteria of LOC 50.07.005, for a CUP are met, as well
3 as LOC 50.07.003.5.a.iii (Conditions on Development).
4

- 5 2. Development review: The Commission finds that the height, materials, and colors of the proposed
6 portable classrooms are complementary in character to the residential uses in the vicinity of the site and
7 complementary with the existing school structure. The Commission finds, therefore, that the proposal
8 meets the criteria of LOC 50.06.001.
9
- 10 3. Hardship Variance: The Commission finds that although LOC 50.45.010(7)(b), requires new structures to
11 be located within 30 feet of a public street to encourage pedestrian access, the portable classrooms are
12 not for general public use and anyone entering the site would enter at the main school building first.
13 Located at 30 feet from the street, the portable classrooms would be located at an inconvenient distance
14 from the rest of the school which would reduce the function of the classrooms and create an
15 unnecessary hardship. The portable classrooms meet the zone requirements; therefore, they will not be
16 injurious to the neighborhood. Therefore, the Commission finds that the criteria of LOC 50.08.003 for a
17 hardship variance are met.
18

19 **ORDER**

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21 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**

- 22
- 23 1. LU 12-0016 is approved, subject to compliance with the conditions of approval set forth in Subsection 2 of
24 this Order.
25
- 26 2. The conditions for LU 12-0016 are as follows:
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- 28 **A. This development permit for construction of four portable structures (for a total of eight**
29 **classrooms) shall be valid for a period of four years from the final date of this Order. No structure**
30 **approved under this development permit shall be constructed thereafter.**
- 31
- 32 **B. The maximum student population at the River Grove Elementary School shall be limited to a total**
33 **of 460 students.**
- 34
- 35 **C. Prior to Issuance of any Building Permit , the Applicant/Owner Shall:**
- 36
- 37 1. Submit final site and building plans for review and approval of staff that are the same or
38 substantially similar to the site plans, floor plans, and building elevations illustrated on Exhibits
39 E-4 through E-14, to the satisfaction of staff, with the following revisions and modifications:
40
- 41 a. Submit drawings for the rain garden design for review and approval by the City Engineer.
42 The rain garden shall meet a minimum setback of 10-feet from building foundations and
43 five feet from property lines and shall not have an impervious liner. The rain garden shall
44 have a positively graded overflow leading to an approved point of disposal.
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- 46 b. Submit engineered drawings for the public pathway improvements along the site frontage
47 on McEwan Road for review and approval by the City Engineer, and obtain a permit to
48 construct public improvements. All plans shall conform to the latest edition of the City's
49 CAD standards and design requirements. Street improvement shall consist of a 5-foot wide
50 asphalt pathway along the entire site frontage, from the west side of the east exit driveway
51 approach to the west property line of the site.
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- 53 c. The Building Permit application for Option 3 shall illustrate additional landscaping along the

1 east property line as shown on Exhibit E-12.

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3 d. Paving of internal pathways as shown on the site plan (Exhibit E-14) is at the discretion of
4 the applicant.

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6 2. Submit a final tree protection plan, for the review and approval of staff, as required by LOC
7 55.08.020 and 55.08.030. The Tree Protection Plan shall be attached to the construction
8 documents or printed on the construction site plans, and shall include:

9
10 a. As required by LOC 55.08.030(7), no construction, excavation, root pruning or
11 other activity shall occur within the tree protection zone unless directed by an
12 arborist present on site and approved by the City.

13
14 b. The location of temporary tree protection fencing, consisting of a minimum 6-
15 foot high cyclone fence secured by steel posts, shall be around trees where
16 their dripline is within the construction zone. The protective fencing shall be
17 placed at the tree protection zone, which is the zone required to protect the
18 critical root area necessary for the continued health of the tree. The applicant
19 shall propose the tree protection zone for each tree, for review and approval
20 by City staff, on site. The City's Arborist may waive the requirement for tree
21 fencing based on site conditions. If waived, the contractor shall work with the
22 City's Arborist to ensure compliance with the protection measures imposed by
23 the City Arborist.

24
25 c. A note stating that no fill or compaction shall occur within the root zones of any of
26 the trees.

27
28 d. A note that clearly informs all site contractors about the necessity of preventing
29 damage to the trees, including bark and root zone. The applicant and contractor
30 shall be subject to fines, penalties and mitigation for trees that are damaged or
31 destroyed during construction.

32
33 e. A sign shall be attached to the tree protection fencing, which states that inside the
34 fencing is a tree protection zone, not to be disturbed unless prior approval has
35 been obtained from the City Manager and project arborist.

36
37 3. Obtain a street opening permit prior to connecting the portable classrooms to the
38 public sanitary system.

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40 **D. Prior to any Construction or Grading Activity on the Site, the Applicant/Owner Shall:**

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42 1. Install the tree protection measures, as required by Condition C(2), above.

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44 **E. Prior to Final Building Inspection or Occupancy of any Structures, the Applicant/Owner Shall:**

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46 1. Submit an Operations and Maintenance Plan for the on-site rain garden for review and
47 approval by the City Engineer. The Plan shall also be recorded with a Declaration of Covenant
48 for Operation and Maintenance of Surface Water Management Facilities with the Clackamas
49 County Recorder's Office.

50
51 2. Complete pathway improvements along the site frontage and submit certified "as-built"
52 drawings complying with the City standards for record drawings.

1 3. For Option 3, install additional landscaping along the east property line as shown on Exhibit E-12.
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3 **Notes**
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6 1. Development plans review, permit approval, and inspections by the City of Lake Oswego
7 Planning and Building Services Department are limited to compliance with the Lake Oswego
8 Community Development Code, and related code provisions. The applicants are advised to
9 review plans for compliance with applicable state and federal laws and regulations that
10 could relate to the development, e.g., Americans with Disabilities Act, Endangered Species
11 Act, etc. City staff may advise the applicants of issues regarding state and federal laws that
12 the City staff member believes would be helpful to the applicants, but any such advice or
13 comment is not a determination or interpretation of federal or state law or regulation.
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1 DATED this 16th day of July, 2012.
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4 Don Richards /s/
5 Don Richards, Vice-Chair
6 Development Review Commission
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8
9 Janice Reynolds /s/
10 Janice Reynolds
11 Administrative Support III
12

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14 **ATTEST:**
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16 **ORAL DECISION – July 3, 2012**

17 AYES: Richards, Needham, Peck, Johnson
18 NOES: None
19 ABSTAIN: None
20 ABSENT: Creighton, Rossi, Ahrend
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22 **WRITTEN FINDINGS – July 16, 2012**

23 AYES: Richards, Needham, Peck, Johnson
24 NOES: None
25 ABSTAIN: None
26 ABSENT: Creighton, Rossi, Ahrend
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