

BEFORE THE DEVELOPMENT REVIEW COMMISSION
OF THE CITY OF LAKE OSWEGO

Approved

APPROVAL OF DEVELOPMENT REVIEW, HISTORIC) LU 12-0028-1797
REVIEW, CONDITIONAL USE PERMIT, AND HARDSHIP) LAKEWOOD CENTER FOR THE ARTS
VARIANCES TO CONSTRUCT A REHEARSAL HALL) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of the following:

- A Conditional Use Permit to expand an existing institutional use;
- A Development Review Permit to construct a new 2,280 sq. ft. building (rehearsal hall);
- A Minor Alteration to a site containing a Historic Resource (the existing Lakewood Center is designated a Historic Landmark);
- Three Hardship Variances, two to the required front yard setbacks for the new building and one to the required 16-foot setback for the existing parking lot;
- A modification to an approved Development Permit's conditions of approval [CU 4-80/DR 31-80(Mod 3-89)]; and,
- The removal of three trees to accommodate the proposed development.

The site is located at 368 S. State Street (Tax Lots 10200, 10300, and 10400 of Tax Map 21E 10AD).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of November 5, 2012.

The following information was presented to the Commission at the November 5th hearing and added into the record:

- | | |
|---------------|---|
| Exhibit E-17 | Additional Site Photos |
| Exhibit G-1 | Letter Neither for nor Against, Jan Nansen, President, State Street Condominium HOA, dated October 22, 2012 |
| Exhibit G-2 | Email Neither for nor Against, Kasey Holwerda, HRAB Chair, dated October 31, 2012 |
| Exhibit G-100 | Letter (Fax) in Support, John Bradshaw, dated November 5, 2012 |
| Exhibit G-200 | Email in Opposition with Photos Presented at the Public Hearing, Jeff Michelson, dated November 5, 2012 |

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

- | | |
|---------|--|
| Goal 2 | Land Use Planning |
| Goal 5 | Open Spaces, Historic, and Natural Resources |
| Goal 12 | Transportation |

B. City of Lake Oswego Community Development Code (Chapter LOC 50):

- | | |
|-------------------|---------------------------|
| LOC 50.02.001 | Residential Districts |
| LOC 50.03.002 | Use Table |
| LOC 50.03.003.3.b | Conditional Use Standards |

1	LOC 50.04.001	R-0 Zoning Dimensional Table
2	LOC 50.04.002	Special Street Setbacks
3	LOC 50.06.001.5	Building Design
4	LOC 50.06.002	Parking
5	LOC 50.06.003.1	Access
6	LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
7	LOC 50.06.003.3	On-Site Circulation - Bikeways, Walkway and Accessways
8	LOC 50.06.003.5	Transit System
9	LOC 50.06.004.1	Landscaping, Screening, and Buffering
10	LOC 50.06.004.2	Fences
11	LOC 50.06.004.3	Lighting
12	LOC 50.06.005	Park and Open Space
13	LOC 50.06.006.3	Drainage Standards
14	LOC 50.06.008	Utilities
15	LOC 50.06.009	Historic Preservation
16	LOC 50.06.011	Vision Clearance
17	LOC 50.07.003.1.b	Burden of Proof
18	LOC 50.07.003.1.f	Neighborhood Meeting
19	LOC 50.07.003.3	Public Notice/Oppportunity for Public Comment
20	LOC 50.07.003.5	Conditions of Approval
21	LOC 50.07.003.7.a	Review by Hearing Body/Notice of Public Hearing
22	LOC 50.07.003.7	Appeal of Development Decision
23	LOC 50.07.003.11	Modification of Development Permits
24	LOC 50.07.003.14	Minor Development Decision
25	LOC 50.07.003.15	Major Development Decision
26	LOC 50.07.005	Conditional Uses
27	LOC 50.08.003	Hardship Variances
28	LOC 50.09.002.5	Compliance with Approved Permit

29

30 C. City of Lake Oswego Tree Chapter [LOC Chapter 55]:

31

32	LOC 55.02.010 - 55.02.080	Tree Removal
33	LOC 55.02.084	Mitigation Requirements
34	LOC 55.08.020	Tree Protection Plan Required
35	LOC 55.08.030	Tree Protection Measures Require

36

37 D. Prior Approvals:

38

39 CU 4-80/DR 31-80(Mod 3-89)

40

41 **CONCLUSION**

42

43 The Commission concludes that LU 12-0028 can be made to comply with all applicable criteria by the
 44 application of certain conditions with the exception that the Hardship Variance request to the 16-foot south
 45 side yard setback to retain existing parking is denied. The Commission further concludes that as the Hardship
 46 Variance to the south side yard setback is denied, so should the request to modify the approved Development
 47 Review Permit condition of approval that imposed the setback [CU 4-80/DR 31-80(Mod 3-89)].

48

49 **FINDINGS AND REASONS**

50

51 The Commission incorporates the October 26, 2012, Staff Report (with all exhibits attached thereto), as
 52 support for its decision, supplemented by the further findings and conclusion set forth herein. In the event of
 53 any inconsistency between the supplementary matter herein and the staff report, the matter herein controls.

1 To the extent they are consistent with the approval granted herein, the Commission adopts by reference its
2 oral deliberations on this matter.

3
4 Following are the supplementary findings and conclusions of this Commission:

5
6 1. Conditional Use:

7
8 A. Use Restriction

9
10 The Commission received oral testimony from Andrew Edwards (Applicant) and Trish Nixon (Applicant's
11 Representative) requesting that staff's recommendation to require a Notice of Development Restriction
12 limiting use of the new rehearsal hall to only those uses accessory to the main theater and to specifically
13 prohibit performances that would draw public attendance be removed. The applicant submitted that
14 flexible use of the space was necessary to respond to unforeseeable needs.

15
16 The Commission finds that the restriction is reasonable given that the applicant asserted that the new
17 space was proposed to house an existing use and not generate any additional traffic. The staff-
18 recommended condition of approval for a use restriction is necessary to assure that the proposed
19 development is and remains reasonably compatible with uses in the vicinity and to mitigate the
20 development's impacts upon the existing parking lot, adjacent neighborhood, and street and sidewalk
21 system. Instead, the Commission modified the restriction to allow the space to function as an emergency
22 performance space should one of the existing stages within the Lakewood Center become unavailable.
23 Conditions A and B(1)(a) should be modified as follows:

24
25 The use of the Rehearsal Hall shall be limited to those uses directly tied to the existing
26 Community Theater, such as but not limited to production rehearsals, staging, and stage
27 prop creation and storage. The Rehearsal Hall shall not be used as a public performance
28 space unless and for the period of time that an alternative public performance space in the
29 Center is damaged and not available for public performance.

30
31 As modified, the criteria of LOC 50.07.005, for a CUP are met, as well as LOC 50.07.003.3.b (Criteria for
32 this Specific Conditional Use).

33
34 B. Impacts on Abutting Residences

35
36 The Commission received testimony that the existing parking lot and approved uses on the site
37 negatively impact abutting residential neighbors with regard to privacy, noise, and lights. The
38 Commission finds that the scope of the proposal, and therefore the review of applicable conditional use
39 criteria, includes only the new rehearsal hall and associated improvements (rain garden, landscaping,
40 tree removal, etc). A representative from the northerly abutting State Street Condos HOA raised general
41 concerns regarding potential off-sites impacts from the proposed stormwater management plan for new
42 impervious surfaces (a rain garden and several options for managing potential overflow). The
43 Commission finds that the stormwater management plan as proposed, and as conditioned to be refined
44 at the time of building permit review, is sufficient to address runoff from all new impervious surfaces. As
45 proposed and conditioned, the Commission also finds that, with approval of the Hardship Variance to the
46 State Street R-0 zone and CUP yard setbacks, the proposed rehearsal hall can be made to be reasonably
47 compatible with abutting residential properties with regards to noise, privacy, and lights.

1 2. Hardship Variances:

2
3 A. State Street R-0 zone and CUP Yard Setbacks.

4
5 The Commission received testimony from the applicant that the two Hardship Variances to the yard
6 setback requirements on State Street (resulting in an overall 13-foot front yard setback as measured
7 from the east property line) were necessary to mitigate impacts on abutting residences to the rear of the
8 site and to alleviate impacts on long term on-going fundraising events staged in the open space and
9 parking lot at the rear of the site. No opposition testimony with regard to the Hardship Variance criteria
10 was provided. Please see the discussion, below, regarding the Historic Resources criteria and the 13-foot
11 setback.

12
13 B. 16-foot South Yard Setback and Existing Parking.

14
15 The applicant testified that one parking space at the south entrance of the site was non-compliant to the
16 16-foot yard setback required per prior approval but that the space should be retained as it was not a
17 safety hazard. The Commission found that although the parking space had been in use for many years,
18 the issue must be rectified (either by removal of the parking space or approval of a variance and
19 modification of the initial condition of approval) as a part of the current application. The Commission
20 adopts the staff analysis regarding the Hardship Variance and therefore finds that the Hardship Variance
21 request fails to meet the applicable criteria, and the request to modify the prior approval is denied.
22

23 3. Historic Resources review:

24
25 The Commission received testimony from the applicant that the staff-recommended conditions of
26 approval to refine the proposed brick color variation and modify the proposed gable returns should be
27 removed. The applicant stated that the color variation for the brick was the most accurate mix possible.
28 In addition, the horizontal element of the gable return was specifically designed not to replicate the
29 existing gable element on the Center to reduce future maintenance issues. Testimony from the Historic
30 Resources Advisory Board (HRAB) Chair supported staff's recommended conditions of approval. The
31 Commission finds that the recommended conditions are necessary to ensure compliance with the first
32 criterion applicable to the design of a new structure on a site containing a historic landmark (LOC
33 50.06.009.8.c.i). Otherwise, the proposed design (with regards to architectural elements, height, mass,
34 and style) complements the Classical Revival style of the Center.
35

36 The Commission also received testimony from HRAB that the proposed location of the new structure (13
37 feet from the east property line and five feet offset from the front façade of the Center) does not meet
38 the second criterion per LOC 50.06.009.8.c.ii. The proposed location of the rehearsal hall would obscure
39 the view of the Center's north wing, specifically the important architectural elements on the north
40 facade. HRAB requested that the hall be further offset from the front façade of the Center in order for
41 the historic landmark to remain visually and physically the most prominent structure as viewed from
42 State Street. The Commission concurs with HRAB's recommendation and finds that further offsetting the
43 proposed structure by an additional five feet (for a total of an 18-foot front yard setback as measured
44 from the east property line) is needed to meet the criterion by reducing the mass and perceived
45 presence of the rehearsal hall along that frontage. This will be made a condition of approval.
46

47 **ORDER**

48
49 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**

- 50
51 1. LU 12-0016 is approved, subject to compliance with the conditions of approval set forth in Subsection 2 of
52 this Order, with the exception that the Hardship Variance to the 16-foot south side yard setback to retain

1 existing parking is denied and the request to modify the approved Development Review permit condition
2 of approval is denied.

3
4 2. The conditions for LU 12-0016 are as follows:

5
6 **A.** The use of the Rehearsal Hall shall be limited to those uses directly tied to the existing Community
7 Theater, such as but not limited to production rehearsals, staging, and stage prop creation and
8 storage. The Rehearsal Hall shall not be used as a public performance space unless and for the
9 period of time that an alternative public performance space in the Center is damaged and not
10 available for public performance.

11
12 **B. Prior to Issuance of any Building Permit , the Applicant/Owner Shall:**

13
14 1. Submit a “Notice of Development Restriction” containing the following restriction, which must
15 be recorded against the site, for review and approval of staff:

16
17 a. The use of the Rehearsal Hall shall be limited to those uses directly tied to the existing
18 Community Theater, such as but not limited to production rehearsals, staging, and stage
19 prop creation and storage. The Rehearsal Hall shall not be used as a public performance
20 space unless and for the period of time that an alternative public performance space in
21 the Center is damaged and not available for public performance.

22
23 2. Notarize and record the approved Notice required by Condition B(1), above, at the Clackamas
24 County Recorder’s Office and provide a copy to staff.

25
26 3. Submit final site and building plans for review and approval of staff that are the same or
27 substantially similar to the site plans, floor plans, and building elevations illustrated on
28 Exhibits E4, E6 through E8, and E16, to the satisfaction of staff, with the following revisions
29 and modifications:

30
31 a. Review the proposed color variation to confirm the percentage of dark red, reddish
32 orange, and tan colored bricks most compatible with the Center.

33
34 b. Construct the two quoins of cast concrete or another stone-like material. In addition, the
35 width of the quoins shall match the width of the proposed gable returns, similar to the
36 quoin width and gable return ratio and pattern on the Center. The horizontal element of
37 the gable return shall extend through to the outer eave.

38
39 c. Remove the southeastern most parking space(s) to comply with the 16-foot south side
40 yard setback and convert the area to additional landscaping.

41
42 d. Submit a storm water disposal plan for the proposed rain garden for review and approval.
43 The emergency overflow shall be directed to an approved point of disposal. Minimum
44 setbacks are five feet from property lines, and ten feet from building foundations. If the
45 overflow is directed to the existing catch basin in State Street, the storm plans shall be
46 accompanied with ODOT approval. Connections made to the existing catch basin also
47 require a permit from ODOT.

48
49 If no ODOT approval is obtained, connect the storm line to the existing catch basin in
50 State Street and provide a complete performance analysis indicating sufficient drywell
51 capacity for overflow. Provide DEQ approval to allow overflow into an underground
52 injection control (UIC) device. If the overflow is not directed to the existing onsite

1 drywell, then the emergency overflow shall be directed to an approved point of disposal,
2 subject to staff approval.
3

4 e. Modify the proposed building location (and associated elevated walkway as necessary) to
5 comply with an 18-foot front yard setback as measured from the east property line (the
6 proposed front façade shall be offset 10 feet from the Lakewood Center's State Street
7 front façade).
8

9 4. Apply for and obtain a verification tree removal permit for the three trees approved by this
10 application. The verification tree removal application submittal shall include an 8½" x 11" copy
11 of the tree removal plan and a mitigation plan showing replacement trees on a 1:1 basis.
12 Replacement trees shall not be dwarf or ornamental varieties and shall be at least two inches
13 in caliper if deciduous or at least 6-8 feet tall (excluding the leader) if evergreens.
14

15 5. Submit a final landscape plan for review and approval of staff. The landscape plan shall be the
16 same or substantially similar to Exhibit E9 with the following modifications:
17

18 a. Illustrate a variety of deciduous and evergreen shrub and ground cover species with
19 different mature heights, textures, and colors to ensure a rich and visually engaging
20 landscaped area between the existing retaining wall, proposed structure, and the Center.
21

22 b. The location, size, and species of landscaping appropriate to sight distance and vision
23 clearance standards in the area of the removed parking space.
24

25 6. Submit a final tree protection plan, for the review and approval of staff, as required by LOC
26 55.08.020 and 55.08.030. The Tree Protection Plan shall be attached to the construction
27 documents or printed on the construction site plans, and shall include:
28

29 a. As required by LOC 55.08.030(7), no construction, excavation, root pruning or other
30 activity shall occur within the tree protection zone unless directed by an arborist present
31 on site and approved by the City.
32

33 b. The location of temporary tree protection fencing, consisting of a minimum 6-foot high
34 cyclone fence secured by steel posts, shall be around trees where their dripline is within
35 the construction zone. The protective fencing shall be placed at the tree protection zone,
36 which is the zone required to protect the critical root area necessary for the continued
37 health of the tree. The applicant shall propose the tree protection zone for each tree, for
38 review and approval by City staff, on site. The City's Arborist may waive the requirement
39 for tree fencing based on site conditions. If waived, the contractor shall work with the
40 City's Arborist to ensure compliance with the protection measures imposed by the City
41 Arborist.
42

43 c. A note stating that no fill or compaction shall occur within the root zones of any of the
44 trees. The note shall clearly inform all site contractors about the necessity of preventing
45 damage to the trees, including bark and root zone. The applicant and contractor shall be
46 subject to fines, penalties and mitigation for trees that are damaged or destroyed during
47 construction.
48

49 d. A sign shall be attached to the tree protection fencing, which states that inside
50 the fencing is a tree protection zone, not to be disturbed unless prior approval has
51 been obtained from the City Manager and project arborist.
52
53

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

- 2
- 3 1. Install the tree protection measures, as required by Condition B(6), above.
- 4

5 **D. Prior to Final Building Inspection or Occupancy of the Structure, the Applicant/Owner**
6 **Shall:**

- 7
- 8 1. Install all mitigation trees as required by Condition B(4), above.
- 9
- 10 2. Install all landscaping as required by Condition B(5), above.
- 11
- 12 3. Provide a one-year guarantee (one 12-month growing season from the date of installation) for
- 13 all landscape materials, including mitigation planting, pursuant to LOC 50.06.010.2. The
- 14 guarantee shall consist of a security in the amount of five percent of the total landscaping
- 15 cost.
- 16

17 **Notes**

- 18
- 19 1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the approval of LU 12-0028 shall
- 20 expire three years following the effective date of the development permit, and can be extended
- 21 by the City Manager pursuant to the provisions of this section.
- 22
- 23 2. Development plans review, permit approval, and inspections by the City of Lake Oswego
- 24 Planning and Building Services Department are limited to compliance with the Lake Oswego
- 25 Community Development Code, and related code provisions. The applicants are advised to
- 26 review plans for compliance with applicable state and federal laws and regulations that could
- 27 relate to the development, e.g., Americans with Disabilities Act, Endangered Species Act, etc.
- 28 City staff may advise the applicants of issues regarding state and federal laws that the City
- 29 staff member believes would be helpful to the applicants, but any such advice or comment is
- 30 not a determination or interpretation of federal or state law or regulation.
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53

1 DATED this 19th day of November, 2012.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

Don Richards /s/
Don Richards, Chair
Development Review Commission

Janice Reynolds /s/
Janice Reynolds
Administrative Support III

ATTEST:

ORAL DECISION – November 5, 2012

AYES: Richards, Creighton, Needham, Peck, Johnson, Rossi, Ahrend
NOES: None
ABSTAIN: None
ABSENT: None

WRITTEN FINDINGS –November 19, 2012

AYES: Richards, Creighton, Needham, Peck, Johnson, Rossi, Ahrend
NOES: None
ABSTAIN: None
ABSENT: None