

**STAFF REPORT**  
**CITY OF LAKE OSWEGO**

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**PLANNING DIVISION**

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APPLICANT/OWNER:

City of Lake Oswego

FILE NO:

LU 16-0013

TAX LOT REFERENCE:

Tax Lot 4400 of 21E10AD

STAFF:

Leslie Hamilton, AICP

LOCATION:

40 Wilbur Street

DATE OF REPORT:

July 6, 2016

COMP. PLAN DESCRIPTION:

R-0

120-DAY DECISION DATE:

October 25, 2016

ZONING DESIGNATION:

R-DD

NEIGHBORHOOD ASSOCIATION:

Old Town

**I. APPLICANT'S REQUEST**

The applicant is requesting approval of the following:

- A Conditional Use permit in order to allow an institutional use in a historic landmark;
- A Minor Variance to reduce the required yard for an institutional use from 13.33 feet to 12 feet on the west side;
- A minor alteration of a historic landmark for the construction of a fence, light pole and parking area; and
- The removal of one tree to construct site improvements.

**II. RECOMMENDATIONS**

**Approval** of LU 16-0013, with conditions. The complete listing of recommended conditions is provided on pages 15-16 of this report.

**III. APPLICABLE REGULATIONS**

A. City of Lake Oswego Comprehensive Plan\*

Land Use Planning	Policies A-1, A-2
Community Culture, Civic Engagement	Policy 1
Community Culture, Historic Preservation	Policies 2 and 3

\*Staff has not identified any of the policies under the listed goals as regulatory policies but the Applicant has nevertheless addressed policies to the extent they could later be determined to be regulatory.

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

LOC 50.03.003.4.b	Conditional Use Standards for Institutional Uses
LOC 50.04.001.2	Residential Medium Density Zones
LOC 50.05.006.1-8	Old Town Neighborhood Design Standards
LOC 50.06.002	Parking
LOC 50.06.003.2	On-Site Circulation – Driveway and Fire Access Roads
LOC 50.06.004.1	Landscaping, Screening and Buffering
LOC 50.06.004.2	Fences
LOC 50.06.004.3	Lighting Standard
LOC 50.06.005	Park and Open Space
LOC 50.06.006.1	Weak Foundation Soils
LOC 50.06.006.3.b	Drainage Standards for Major Development
LOC 50.06.009.1-10	Historic Preservation
LOC 50.06.008	Utilities
LOC 50.07.003.1	Application for Development, Burden of Proof
LOC 50.07.003.5	Conditions of Approval
LOC 50.07.003.7	Appeal of Minor and Major Development Decisions
LOC 50.07.003.14	Review Criteria for Minor Development
LOC 50.07.003.15	Review Criteria for Major Development
LOC 50.07.005	Conditional Use Permit
LOC 50.08.002	Minor Variances

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

LOC 42.03.130	Sight Distance at Roadway Intersections, Private Streets and Driveways
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D. City of Lake Oswego Tree Code [LOC Chapter 55]:

LOC 55.02.010-55.02.135	Tree Removal
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E. Prior Approvals

LU 12-0049

#### **IV. FINDINGS**

##### **A. Background/Existing Conditions:**

1. The site is 5,000 square feet in size and is developed with the Worker's Cottage, a local and national historic landmark. The site is located in the Old Town Design District.
2. The site is located on Wilbur Street, a local street (Exhibit E1), and is zoned R-DD. Abutting properties to the east, west, and south are also zoned R-DD and are developed with single family dwellings and duplexes. To the northwest, the adjacent property is zoned East End Commercial (EC) and is developed with the Lake Place Shopping Center.
3. There are five trees on the site that are five inches in diameter or greater (Exhibit E4).
4. The site is proposed to be used by the Lake Oswego Preservation Society, an Oregon nonprofit domestic corporation, for the following uses: small museum for Lake Oswego historic items and photographs, a small community meeting room, and programs for community and cultural awareness.

#### **V. PUBLIC NOTICE OF APPLICATION AND APPLICANT'S BURDEN OF PROOF**

##### **A. Neighborhood Meeting:**

The applicant held a neighborhood meeting on January 27, 2016. The minutes of the meeting are included in this report as Exhibit F9.

##### **B. Public Notice to Surrounding Area:**

The City has provided adequate public notice and opportunity to comment on this application as required by LOC 50.07.003. A letter of support was submitted from the Old Town Neighborhood Association (G100).

##### **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 applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end of this report.

#### **VI. LOC 50.07.003.14 – MINOR AND MAJOR DEVELOPMENT (Development Review; Conditional Use, Minor Variance)**

##### **A. Classification of Application:**

The alteration of a historic landmark and a minor variance are minor development [LOC 50.07.003.14.a.ii(2) and (16)]. An institutional use in a historic landmark is a conditional use, and is therefore a major development [LOC 50.07.003.15.a.ii].

B. Criteria for Review of Land Use Application:

A conditional use must address the Major Development criteria of LOC 50.07.003.15.d.ii.

**1. Any applicable regulatory policies of the Lake Oswego Comprehensive Plan (CUP only);**

Applicable regulatory Comprehensive Plan policies must be addressed as part of the request for a CUP for the subject site.

Staff has reviewed the cited Comprehensive Plan policies, as well as the Comprehensive Plan policies generally, to determine if they are “regulatory” and has found that none of them are regulatory with regard to this application. However, even if the cited Comprehensive Plan policies are regulatory, the applicant has adequately addressed these policies in the narrative (Exhibit F1) and staff would find that the applicant has shown that they are met.

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

**R-DD Institutional Use [Table 50.03.002-1, Public, Institutional, and Civic Uses; LOC 50.03.003.4.b]**

“Institutional Use” is “Private educational, cultural, religious or social welfare facilities.” LOC 50.10.003.2. The structure is proposed to be occupied by the Lake Oswego Preservation Society (LOPS). LOPS is a “mission-driven ... 501(c)(3) non-profit organization. [Its mission is] to support Lake Oswego’s historic fabric through [historic preservation] advocacy and education.” [www.lakeoswegopreservationsociety.org](http://www.lakeoswegopreservationsociety.org) (6/9/16). The use of the site will be for LOPS office purposes, a small museum for Lake Oswego historic items, photographs, and community and cultural awareness, and a small community meeting site within the museum. [See Exhibits F5, F6 and F8]. The proposed use qualifies as a “private educational, cultural, .... facilities.” If the proposed use complies with the conditional use criteria, including the criteria in LOC 50.03.003.4.b (see Conditional Uses – General Standards [LOC 50.07.005] discussion below), the use is permitted in the zone. As discussed below, staff finds that the conditional use criteria are met, and thus the proposed use is permitted in the zone.

**R-DD Dimensional Standards [LOC 50.04.001.2]**

The site is zoned R-DD. The applicant does not propose any alterations to the Worker’s Cottage. The matrix below illustrates compliance with the R-DD zoning standards using the platted lot dimensions and size.

<b>R-DD Zone Standards</b>		
	<b>Standard</b>	<b>Proposed</b>
Setbacks		
Front	10 ft.	14.6 ft.
Side	10 ft.	16 ft. (east), 12 ft. (west)
Rear	10 ft.	45.5 ft.
Height	28 ft.	20 ft.
Lot Coverage	35% or 1,750 sq. ft.	15.7% or 783 sq. ft.
Impervious Surface	60% or 3,000 sq. ft.	24% or 1,226 sq. ft.

As illustrated on Exhibit E4 and summarized in the matrix above, the Worker's Cottage complies with all R-DD dimensional standards. This existing structure's placement and height, although not applicable to this conditional use application, complies with the above standards.

### **Old Town Neighborhood Design [LOC 50.05.006]**

The site is located in the Old Town Neighborhood Design District. The purpose of this overlay is to support and reinforce the Old Town styles. The Worker's Cottage was erected on the site around 1880 and no alterations are proposed to it. The standards applicable to the design of new or remodeled structures, siting and massing on site, and building design and materials do not apply to this conditional use application. However, the fencing and landscaping standards apply to proposed site improvements.

*When fencing is included in the front yard, it shall be used in an ornamental or symbolic way rather than as a visual barrier. The maximum height of fencing within the front yard setback is four feet. [§7b].*

As shown in Exhibit E6, the applicant proposes a picket fence in the front yard that is 3'6" in height. This standard is met.

*All fencing located within the street-facing setback shall be a minimum of 50% transparent. [§7b].*

As shown in Exhibit E6, the picket fence is 50% transparent.

*Mature trees or tree groves shall be preserved and incorporated into the site plan for new development. [§7.c.i] Two trees for every 50 ft. of street frontage are required within 10 ft. of the right-of-way for new structures. New street trees shall be selected from the City of Lake Oswego Master Plant List, Approved Street Trees – Old Town Neighborhood Design. [§7.c.ii].*

No new structures are proposed and there are no mature trees or tree groves on the site. The existing street trees were not planted as a requirement for the construction of the Worker's Cottage, as the construction predates this standard. Accordingly, this standard is not applicable to the conditional use application. Further, the existing street trees are not required to be maintained for compliance with this standard. (The applicant is requesting removal of the two street trees and proposes to mitigate them with Alleghany Service berry trees, which are approved for the Old Town Neighborhood. The Tree Removal criteria are addressed under Chapter 55 below.

### **Conditional Uses – General Standards [LOC 50.07.005]**

A conditional use is an activity that is permitted in a zone but which, because of some characteristics that are not entirely compatible with other uses in the zone, cannot be permitted outright. In order for a CUP to be approved for an institutional use in a historic landmark, it must be shown that:

*The requirements of the zone are met [§3.a.i];*

As indicated in the discussion above, the applicant has provided sufficient information to determine that the site improvements and the proposed use, upon approval of this

conditional use application, would comply with the R-DD zone requirements. (Exhibits E4 and E10). This standard is met.

Special conditions [listed code sections] if applicable, are met [§3.a.ii]; and

No special conditions found in the listed code sections are applicable.

The site is physically capable of accommodating the proposed use [§3.a.iii]; and

The site is 5,000 square feet in area, and the Worker's Cottage, built circa 1880, is 783 square feet in size. The site is physically capable of accommodating the use. The proposed development will comply with all zoning regulations as previously outlined in this report. The structure meets the minimum required zone yard setbacks and open space/landscaping standards (Exhibit E4). The applicant proposes sufficient vehicle and bicycle parking on site. Additionally, the stormwater analysis (Exhibit F1) demonstrates that impacts from the proposed development will be managed on-site or through connections to existing utility systems. This standard is met.

The functional characteristics of the proposed use are such that it can be made reasonably compatible with uses in the vicinity [§3.a.iv].

Per LOC 50.07.005.3.a.iv, the functional characteristics of the use shall be made to be reasonably compatible with the uses in the vicinity. The historic society will generate approximately 30 vehicle trips per week, which is less than a typical single family dwelling permitted outright in the zone (Exhibit F4). This standard is met.

#### **Specific Standards for Institutional Uses [LOC 50.03.003.4.b]**

The proposal includes a conditional use permit for an institutional use in a historic landmark, which is a conditional use in any zone; therefore, the standards under LOC 50.03.003.4.b must be met as follows:

- a. *Utilities, streets or other necessary improvements to the public facility shall be provided by the agency constructing the use.*

As discussed under the Utility Standard [LOC 5006.008] below, all utilities are available at the site. As discussed under the Streets and Sidewalks chapter [LOC Chapter 42] below, a sidewalk will be constructed by the applicant along the site's Wilbur Street frontage. The applicant (City) will also provide lighting and parking on the site in accordance with applicable standards. This standard is met.

- b. *When located in a residential zone, access should be located on a collector street if practical. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of traffic on the capacity of the street system which would serve the use. A traffic study is required to identify the projected average daily trips to be generated and their distribution pattern. Uses which are estimated to generate fewer than 20 trips per week shall be exempted from this requirement.*

The site abuts Wilbur Street, which is a local residential street. However, vehicular access is provided by the alley at the rear of the site. As identified in Exhibit F4, the institutional use will generate approximately 30 vehicle trips per week, which is fewer

trips than a typical single-family dwelling. The majority of these trips will be generated on Highway 43 and Wilbur Street, and about eight weekly trips will be generated on the alley. Wilbur Street is paved and sidewalks are provided on both sides of the street. The intersection of Wilbur Street and Highway 43 is controlled with a stop light; the street system has sufficient capacity for the proposed institutional use.

- c. *When located in a residential zone, lot area shall be sufficient to allow required yards which are at least two-thirds the height of the principal structure.*

The Worker's Cottage is 20 feet tall, which requires setbacks of at least 13.33 feet on all sides. As analyzed in the R-DD standards above, the front, rear and east side setbacks exceed 13.33 feet, but the west side setback is 12 feet [Exhibits E4 and E8]. This standard is not met. The applicant is requesting a minor variance to reduce this setback; the variance request is addressed under LOC 50.08 below.

- d. *The height limitation of a zone may be exceeded to a maximum height of 50 ft.*

The Worker's Cottage is 20 feet in height. This standard is met.

- e. *Noise generating equipment shall be sound buffered when adjacent to residential uses.*

The properties surrounding the site are zoned and developed with residential and commercial uses. No noise-generating equipment is proposed. This standard is met.

- f. *Lighting shall be designed to avoid glare on adjacent residential uses.*

The site is adjacent to residential uses to the south, east and west. The applicant proposes a light pole near the parking lot at the rear of the property (Exhibit E4) to illuminate the parking lot in accordance with the Lighting Standards, LOC 50.06.004.3. The parking lot light pole is seven feet in height and will have a 70-watt LED bulb (Exhibit E8). The light is centered on the site and is approximately 30 feet from the rear property line of the residential lot on the south side of the alley. The light is shielded and will not have an exposed bulb. This standard is met.

- g. *Levels of operations shall be adjusted to avoid conflict with adjacent uses where practical.*

The site abuts residential uses and is adjacent to commercial uses to the north. The proposed levels of operation will have a minimal impact on nearby users. The applicant states that the cottage will be open twice per week for three hours, and one weekend per month for three hours, as described in the Lease Agreement (Exhibit F8)<sup>1</sup>. The cottage could also be used for neighborhood and community meetings, group tours or school groups, subject to occupancy restrictions that would limit attendance to around 10 people (Exhibit F2). The small size of the cottage (750 square feet) will therefore be a limiting factor to its use, and will ensure that the cottage will not create conflicts with the surrounding mixed use neighborhood. Parking will be provided in the rear of the building to reduce the need for parking on Wilbur Street. The functional characteristics

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<sup>1</sup> The lease is a private agreement. The lease terms are not necessarily incorporated into the conditions of approval; if it were necessary to meet this criterion by limiting the hours of operation, a condition of approval would be required. As found, however, no condition of approval limiting the use to the same hours as stated in the lease is required.

of the proposed institutional use is similar to adjacent residential uses. This standard is met.

**Conclusion:** The conditional use standards are met, except the required western side yard setback. However, the applicant is requesting a minor variance to the setback requirement; this is addressed immediately below.

**Minor Variances [LOC 50.08.002]**

Minor variances are small changes from the Code requirements that will have little or no effect on the adjacent properties or users. The applicant is requesting a minor variance to reduce the required 13.33-foot side yard setback to 12 feet for an institutional use in a residential zone. (The residential zone / institutional use setback requirement under LOC 50.03.003.4.b expands the side yard setback; it is not a separate setback.) Minor variances can be approved provided:

1. *The granting of the variance will not be detrimental to the public health or safety [§3a.i];*

The proposed setback reduction of 1.33 feet will not be detrimental to public health or safety as it will not impede vision clearance for vehicles exiting the site. The Fire Marshal and the Building Division have determined that the use of the Worker's Cottage for an institutional use will not violate any fire or building regulations. Staff therefore finds that the proposed variance will not be detrimental to public health or safety. This standard is met.

2. *The granting of the variance will not be materially injurious to properties or improvements within 300 feet of the property [§3a.ii];*

In determining whether the requested variance will be materially injurious to nearby properties or improvements, the potential impact to properties within 300 feet of the site are technically considered; the impact to neighboring property that would be directly affected by the variance is most particularly considered. There are approximately 20 properties within 300 feet of the site's boundaries. These properties are developed with one- and two-story dwellings (single family, duplex and multi-family), retail commercial and a park. In determining the potential scope of material injury regarding a reduced setback, the impact on the neighbors abutting the property to the west is the primary focus.

The cottage has been used for over 100 years as a small dwelling. The applicant is not proposing any external alterations to the cottage, and therefore it will visually appear as a small residence, and not an institutional use, under the proposed lease by the Preservation Society. The Preservation Society will use the cottage for office work, operation and maintenance of the cottage, event planning and internal meetings; these uses are internal and are therefore not noise-producing. The cottage could also be used for neighborhood and community meetings, group tours or school groups, subject to occupancy restrictions that would limit attendance to around 10 people (Exhibit F2). The small size of the cottage (750 square feet) is a limiting factor to the proposed institutional use, and will ensure that the use is not materially injurious to nearby properties. When examining whether a setback reduction for an institutional use in a residential zone is or is not materially injurious to properties within 300 feet, and most particularly the abutting side neighbor, the absence of comment itself is substantial evidence that the proposed use is not likely to have material injury. No public comment

in opposition to the request was received on this application; one letter in support was received (Exhibit G100).

Absence some evidence of impact on the surrounding area, and particularly absence of comment by the abutting side neighbor when considering a reduced setback, staff finds that the potential impacts to surrounding properties are not material. Staff therefore finds that the proposed variance would not be materially injurious to neighboring properties. This standard is met.

3. *The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character) [§3a.iii];*

The existing cottage has been on the site for approximately 136 years and no exterior alterations are proposed to it; therefore, there is no change to the streetscape environment. This standard is met.

4. *The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone [§3a.iv].*

As stated above, the existing cottage has been on the site for approximately 136 years, and no exterior alterations are proposed to it; the reduced setback for an institutional use in a residential zone does not affect the historic integrity of the cottage or the site. There are no steep slopes or designated natural resources on the subject property. The reduced setback for an institutional use in a residential zone will not impact any abutting property's ability to use solar devices any more than would occur if the development met all zone and conditional use requirements because the dwelling meets the solar access standards. The property does not abut Oswego Lake. This standard is met.

#### **Historic Preservation [LOC 50.06.009]**

The Worker's Cottage is designated as a Historic Landmark and is also on the National Register of Historic Places. The applicant is not proposing any alterations to the cottage, but development of the site for an institutional use will require site improvements including the construction of a sidewalk in the Wilbur Street right-of-way, a new fence at the front property line, the addition of a pervious-paver parking lot at the rear of the property where gravel parking is provided currently, and the addition a parking lot light. As identified in the Cultural Resources Inventory Field Form (Exhibit F2), no site feature or structure except for the cottage was historically significant.

In order to approve minor modifications to a historic landmark at least one of the following criteria shall be met:

- *There is no change in the appearance or material of the resource as it exists, or*
- *The proposed alteration duplicates or restores the affected exterior features and materials as determined from historic photographs, original building plans, or other evidence of original features or materials, or*

- *Through an ESEE analysis, it can be shown that the benefit to the community of preserving the resource outweighs the benefit to the community of preserving the resource in its present condition.*

As identified in the Cultural Resource Inventory Field Form (Exhibit F2), no site feature or structure except for the cottage was historically significant. The proposed site improvement – a new fence, pervious-paver parking, and a new light pole, do not change the appearance or material of the resource as it exists. The new picket fence along the front lot line replaces an existing picket fence; the new fence is less than four feet in height, is 50% transparent, and will be located 15 feet from the cottage. The pervious-paver parking spaces will be located at the rear of the lot, where gravel parking currently exists; minimal ground disturbance will be required to install the pavers. The light pole will be positioned approximately 27 feet from the rear of the cottage and will illuminate the parking spaces. The proposed site improvements do not change the appearance or materials of the resource as it exists today; their height and distance (fence and light pole) do not obscure the cottage from view, and the parking lot will be installed at existing grade. This standard is met.

### **3. The Development Standards applicable to minor and major developments;**

#### **Building Design for Institutional Structures [LOC 50.06.001.5]**

This standard is applicable to development involving institutional uses and prescribes standards for the design and orientation of buildings and associated elements and site features, preservation of natural land forms and vegetation, screening of mechanical equipment, and minimization of noise impacts.

No new structures or noise-producing elements are proposed. The new fence is not a listed element associated with the building, and thus need not be complementary. [§b.iv]. These standards are not applicable.

#### **Off-Street Parking, Loading and Bicycle Access [LOC 50.06.002]**

This standard is applicable to all development that generates a parking need. The total number of parking spaces shall be the sum of the various uses computed separately, or may be established by a parking study. [§a.ii]. The institutional use proposed on the site – a part-time office, small museum, and small community meeting room for a historic preservation society – is most similar to a museum or art gallery, which requires 1.88 spaces per 1,000 gross sq. ft., plus one space per two employees at the peak shift. The cottage is approximately 700 sq. ft. in size. The minimum parking for peak shift is 2.31 spaces, which is rounded to three spaces. As shown in the site plan (Exhibit E4), three parking spaces will be provided at the rear of the property. This standard is met.

Bike Parking: Like vehicle parking, bike parking requirements are based on use and are the sum of the various uses computed separately. [§b.ii, v]. The proposed use generates the need for two bike spaces. As shown in the site plan (Exhibit E4), two bike spaces are provided on site. This standard is met.

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

This standard requires that driveways for institutional uses shall not exceed 15 percent grade [§b.iii] or 5 percent cross-slope [§b.iii(5)]. No new driveways are proposed on the

site. (As shown in the contour map (Exhibit E3), the site is relatively flat, with the exception of the grade change at the front of the lot, and the impervious parking lot at the rear of the site will have a slope of less than 5% in any direction.) This standard is not applicable.

#### **Landscaping, Screening and Buffering [LOC 50.06.004.1]**

This standard requires institutional uses to provide a minimum of 15% of the gross land area in landscaping and/or open space; 750 square feet of landscaping must be provided on the site. [§b.i]. Screening and buffering is required to mitigate noise and lighting, to screen parking lots, and as a separation between dissimilar uses. [§b.vi(1)]. Development abutting streets shall provide street trees at the proper spacing for the species. [§b.iv].

As shown in Exhibit E4, the site provides at least 3,000 square feet of landscaping. There are four large trees on the site that are proposed to remain – one fir and three maples. As is typical for residential development, the site is landscaped with lawn, which the applicant proposes to retain. There is no noise-producing equipment proposed, nor outdoor storage. The existing gravel parking spaces at the rear of the lot will remain but will be improved with pervious pavers. This standard is met.

#### **Fences [LOC 50.06.004.2]**

Fences, walls and retaining walls in a residential zone shall not exceed six feet in height and any fence over six feet in height must be screened by an evergreen hedge. [§b.iv] The applicant proposes a 3'6" picket fence along the front and side property lines, and between the parking lot and the rear lawn (Exhibit E6). This standard is met.

#### **Lighting [LOC 50.06.004.3]**

On-Site Lighting: This standard is applicable to all major developments which result in increased use of public or private streets [§3.a], and includes lighting standards for open air parking lots [§3.b.ii].

The applicant proposes a new light to illuminate the small parking lot at the rear of the property. The light will be mounted at seven feet, which is less than the maximum mounting height of 22 feet. The light is roughly centered between the east and west property lines, and is 30 feet from the rear property line. The light is shielded and does not have a bare bulb, so will not directly illuminate abutting properties. The applicant states that the bulb will be 70-watt LED light (Exhibit F1). This standard is met.

Street Lighting: Wilbur Street is classified as a local street. Street lighting is required only at intersections along local streets. [§v. Table 50.06.004-6]. There is already an existing street light at the intersection of Wilbur Street/State Street.

#### **Park and Open Space [LOC 50.06.005]**

This standard applies to all conditional uses and requires that 15% of the gross land area be provided as open space. [§3.a.i]. As discussed in the Landscaping analysis above, and shown in the site plan (Exhibit E4), over 60% of the site is devoted to open space and landscaping. This standard is met.

### **Drainage Standard for Major Development [LOC 50.06.006.3.b]<sup>2</sup>**

The determination of whether the drainage management measures comply with the requirements of this standard is under the authority of the City Engineer. This standard requires that new development shall be conducted in such a manner that alterations of drainage patterns do not adversely affect other properties. All drainage systems shall include engineering design features to minimize pollutants such as oil, suspended solids, and other objectionable material in stormwater runoff. The City Engineer has made the following findings and recommendations:

The applicant's narrative indicates that the proposed rear parking area will be constructed using pervious pavers with a permeable brick access aisle in order to meet ADA standards. In 2011, drain lines were installed along the roof drip lines to collect surface water and roof runoff; gutters were not installed in order to maintain the historic integrity of the Worker's Cottage. The drain lines will also handle water from the brick pathway to be installed along the east side of the cottage. The Engineering staff finds the proposed stormwater management will be in compliance with LOC 50.06.006.3.b, because with the installation of the pervious pavers for the parking area and utilizing the existing drain lines on the site, the development will not be altering any drainage patterns that will adversely affect other properties. Any alternative design that provides the equivalent compliance with the stormwater management standards shall be approved by the City Engineer.

This standard is met.

### **Utilities [LOC 50.06.008.1-6]**

This standard is applicable to all development requiring connection to utilities. Utilities are available or can be made available as follows:

Sanitary Sewer: There is an 8" public sewer located in Wilbur Street, to which the Worker's Cottage is already connected.

Water and Hydrants: The City has an existing 2" public water main located in the alley to which the Worker's Cottage is already connected. Hydrant location and flow are sufficient (Exhibit F7).

Storm Drains and Approved Points of Disposal: Stormwater management will be required for the impervious surface areas. Please see comments above regarding this issue.

Streets: Wilbur Street is classified as a local street. See additional comments under LOC Chapter 42, below.

Sidewalks: Currently, there are no sidewalks along the site frontage on Wilbur Street, but the applicant will construct a sidewalk along the site frontage as part of this project. See discussion under Chapter 42, Streets and Sidewalks, below.

Other utilities: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications and cable TV. New utilities shall be installed underground.

Compliance with this standard will be assured at the time of building permit application.

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<sup>2</sup> This section is amended by Ord. 2695, adopted on Feb. 16, 2016, and effective on March 17, 2016. Because the application was filed prior to the effective date of the ordinance, to wit: February 29, 2016, the standards in existence at the time of filing are applied. ORS 227.173.

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

**City of Lake Oswego Street and Sidewalks Code [LOC Chapter 42]**

This Chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site specific factors into consideration.<sup>3</sup> The City Engineer's comments are included for the review of the overall understanding of the project. The City Engineer's conditions of approval are included, as they must be included in the decision, to find that the application will comply with this Article.

The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvement policies and Transportation System Plan (TSP), and provides the following observations and recommendations.

As part of the conditional use, a new sidewalk extending across the front of the property is required. As indicated in the applicant's narrative (Exhibit F1), the cottage, Wilbur Street and adjacent properties were all originally close to the same elevation. Today, the street and new developments on the abutting properties have been raised such that the cottage is now much lower than the street and abutting development. The front of the cottage lot facing Wilbur currently slopes up to the street, especially on the west side. To accomplish its raised height, the abutting property on the west side constructed a retaining wall that extends to the street, which further impacted the site.

The new sidewalk along the street frontage will impact the original site by requiring steeper slopes and a smaller level yard for the cottage. To best minimize the impacts of the higher street grades, the sidewalk needs to be constructed adjacent to the curb. The slope behind the sidewalk will be 3H:1V on the west side of the site with less slope along the east side. The sidewalk will transition to the existing sidewalk abutting the west side of the site as illustrated on the site plan (Exhibit E4).

The institutional use will have less impact (30 vehicle trips per week) upon the street system than would an outright permitted single-family residence (70 vehicle trips per week). No mitigation measures of impact upon the street system is warranted.

**Sight Distance [LOC 42.03.130]**

This standard requires that no vegetation, fence, or signage be located higher than 30 inches within a "clear sight triangle." [§4.b.] The clear sight triangle is that area enclosed by the lines formed by the intersection approach legs of roadways, private streets and driveways and a straight line drawn diagonally across the corner, connecting those lines at the various distances per AASHTO guidelines. [§3.c.] The applicant's site plan (Exhibit E4) demonstrates that the sight distance for the approaches from the alley to the parking spaces will comply

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<sup>3</sup>To meet the review criteria for a major development, the applicant must comply with "any additional ... Lake Oswego Code provisions which may be applicable to the specific major development application, such as ... the Streets and Sidewalks Ordinance." LOC 50.07.003.15(d)(ii)(d). The determination of whether or not the application meets the requirements of LOC Chapter 42, Streets and Sidewalks, is under the review authority of the City Manager or City Engineer; the requirements of this Chapter are not under the review authority of a hearing body, other than to find whether or not the City Engineer or City Manager has found that the application complies with LOC Chapter 42, or whether conditions of approval are required for compliance with this Chapter.

with the provisions of this standard. This standard is met.

### **City of Lake Oswego Tree Code [LOC Chapter 55]**

This Code is intended to preserve trees and requires a tree removal permit for removal of any tree five inches in diameter or greater, and prescribes protection measures for trees to remain during construction. Only those trees that must be removed in order to site proposed improvements will be granted tree removal permits. There are five trees on the property that are five inches in diameter or greater and two street trees along the Wilbur Street frontage that are less than five inches in diameter and are therefore not regulated by this Chapter (the applicant proposes to remove the street trees, which does not require a permit).

#### **Tree Removal**

The applicant is requesting to remove one 12" tree on the site in order to make site improvements (Exhibit E4). Trees proposed for removal in conjunction with major or minor development can be granted tree removal permits if the following four criteria are met:

*(1) The removal is for development purposes pursuant to the City Code;*

The applicant is requesting the removal of a 12" Clerodendron for landscaping purposes in order to provide better visual access to the cottage. This standard is met.

*(2) The removal will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

The removal will not have a significant negative impact on erosion, soil stability, or flow of surface waters because the site is relatively flat, and there are no streams or wetlands on or near the site. The five trees on site are dispersed, and the Clerodendron tree is relatively small (12"); its removal will therefore not have an impact on existing windbreaks.

*(3) The removal will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood, except where alternatives to tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone; and*

The proposed tree removal will not have a significant negative impact on the character, aesthetics or property values of the neighborhood because the tree is relatively small – 12" DBH. The largest trees on the site – Douglas firs and maples – are not proposed to be removed (Exhibit E4). The Clerodendron tree is located between the cottage and the western lot line – due to the distance from the street and the drop in grade of four feet from the Wilbur Street frontage to the grade at the cottage, removal of this tree will not impact the character of the neighborhood. This standard is met.

*(4) The removal is not for the sole purpose of providing or enhancing views.*

The tree is not being removed for view enhancement because its removal will not improve any views.

For the reasons outlined above, staff concludes that the tree removal request for the 12" Clerodendron tree complies with the applicable criteria and may be approved. This standard is met.

Mitigation

Any tree approved for removal under the Type II analysis shall be mitigated at a minimum 1:1 ratio. Mitigation trees shall have a minimum 2-inch caliper diameter for deciduous trees and a minimum 6-8 foot height (excluding leader) for evergreen trees. As shown in the Tree Removal plan (Exhibits E4), the applicant proposes two new street trees along the Wilbur Street frontage; however, no mitigation is identified for the regulated Clerodendron tree. As a condition of approval, the applicant will be required to submit a revised landscaping plan that shows a mitigation ratio of 1:1. As conditioned, this standard is met.

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

There are not outstanding conditions of approval that affect the subject property.

**VII. CONCLUSION**

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 16-0013 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

**VIII. RECOMMENDATION**

Staff recommends **approval** of LU 16-0013, subject to the following conditions:

**A. Prior to Issuance of any Grading or Building Permits, the Applicant/Owner Shall:**

1. Submit final site plans for review and approval of staff that are the same or substantially similar to the site plan as illustrated on Exhibit E4.
2. Apply for and obtain a verification tree removal permit for the 12" Clerodendron tree approved for removal to construct the improvements. The verification permit submittal shall include an 8½" x 11" copy of the tree removal plan and a mitigation plan showing replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental varieties and shall be at least two inches in caliper if deciduous or at least 6-8 feet tall (excluding the leader) if evergreens.

**B. Prior to any Construction Activity on the Site, the Applicant/Owner Shall:**

1. Install all tree protection measures as required by the Code Requirement 2, below. The tree protection fencing shall be inspected and approved by City staff prior to commencing any construction activities.
2. Obtain a street opening permit for any work in the public right of way, including underground utility installation.

3. Apply for and obtain an erosion control permit, and install all erosion control measures.

**Code Requirements:**

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the development approved by this decision shall expire three years following the effective date of the development permit, and can be extended by the City Manager pursuant to the provisions of this section.
2. **Tree Protection:** Submit a tree protection plan and application prepared by a certified arborist as required by LOC 50.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:
  - a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.
  - b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
  - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
  - d. A sign shall be attached to the tree protection fencing, which states that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and project arborist.
3. **Sign Code:** Obtain all necessary sign permits. The applicant/owner shall submit sign plans and elevations in accordance with the Sign Code for review and approval of staff. Colors and materials shall be compatible with the architectural details and colors of the cottage.

**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 related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., 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.

**EXHIBITS**

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

**E. GRAPHICS/PLANS**

- E1. Tax Map
- E2. Vicinity Map
- E3. Contour Map
- E4. Site Plan and Tree Removal
- E5. Floor Plan
- E6. Fence and Grading Plan
- E7. Lighting Plan and Specs
- E8. Elevations

**F. WRITTEN MATERIALS**

- F1. Applicant's Narrative, dated June 24, 2016
- F2. Worker's Cottage Cultural Resources Inventory
- F3. Worker's Cottage – Historic Photos and Background
- F4. Traffic Study
- F5. Worker's Cottage Rehabilitation Plan
- F6. Worker's Cottage Public Access Plan
- F7. Fire Department Memorandum
- F8. Lease Agreement
- F9. Neighborhood Meeting Documentation

**G. LETTERS**

Neither for nor Against (G1-99)

None

Support (G100-199)

G100 Letter from Old Town Neighborhood Association, dated June 20, 2016

Opposition (G200+)

None

Date of Application Submittal: June 24, 2016

Date Application Determined to be Complete: June 27, 2016

State Mandated 120-Day Rule: September 26, 2016