

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

PROPERTY OWNER/APPLICANT:

Kenneth and Sandra Jernstedt

FILE NO:

LU 07-0089

TAX LOT REFERENCE

Tax Lot 500 of Tax Map 21E 04 BA

STAFF:

Debra Andreades

LOCATION:

12800 Goodall Road

DATE OF REPORT:

November 9, 2007

COMP. PLAN DESCRIPTION:

R-7.5

NEIGHBORHOOD ASSOCIATION

Forest Highlands

ZONING DESIGNATION:

R-7.5

120-DAY DECISION DATE:

N/A

I. APPLICANT'S REQUEST

The applicant is requesting that the City Council adopt an ordinance approving a proposed Development Agreement pursuant to ORS 94.508 to develop the subject property. If adopted, the Development Agreement would authorize the process for minor development review of a Master Plan (consistent with the preliminary plan, Exhibit B of the Development Agreement), with a series of major and minor partitions over a period of three years. The partitions are proposed to be reviewed ministerially. The Development Agreement would permit single-family residential use and accessory structures associated with single family use on the subject site, with an ultimate maximum density of 18 lots.

II. DETERMINATION OF COMPLIANCE

Approval of development pursuant to a Development Agreement is a matter of discretion for the City Council. ORS 94.504. **Staff finds that if the City Council elects to approve the Development Agreement, by adoption of an ordinance, it would comply with applicable City regulation pursuant to ORS 94.058(1).**

III. APPLICABLE REGULATIONS

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

LOC 50.08.010- 50.08.040	R-7.5 Zone Description
LOC 50.21.005	Vision Clearance
LOC 50.22.035	Special Street Setback
LOC 50.40.005-50.40.030	Drainage Standard for Minor Development
LOC 50.43.005-50.43.035	Hillside Protection
LOC 50.47.005- 50.47.030	Landscaping, Screening and Buffering
LOC 50.55.005- 50.55.025	Off-Street Parking, Loading, Bicycle and Access
LOC 50.57.005-50.57.035	Access
LOC 50.58.005-50.58.035	On-Site Circulation-Driveways and Fire Access Roads
LOC 50.63.005-50.63.010	Street Lights
LOC 50.64.005-50.64.030	Utilities
LOC 50.77.007	Burden of Proof
LOC 50.79.025	Review Criteria for Minor Developments
LOC 50.79.040	Conditions of Approval
LOC 50.81.005-50.84.005	Review of Minor Development Applications; Appeal
LOC 50.86.005-50.86.020	Effective Date of Decision
LOC 50.87.005-50.86.030	Compliance with Approved Permit

B. City of Lake Oswego Streets and Sidewalks Ordinance (LOC Chapter 42)

LOC 42.08.400 - 42.08.470 Sidewalks

C. City of Lake Oswego Tree Ordinance (LOC Chapter 55):

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

D. City of Lake Oswego Solar Access Ordinance (LOC Chapter 57):

LOC 57.04.020	Design Standard
LOC 57.04.025	Exceptions from Design Standard
LOC 57.04.030	Adjustments to Design Standard
LOC 57.04.035	Protection from Future Shade

E. Oregon Revised Statutes

ORS 94.504 – 94.528 Development Agreements

IV. BACKGROUND/EXISTING CONDITIONS

1. The site is approximately 7.35 acres in size (Exhibit E-1) and contains an existing structure that eventually will be removed (Exhibit E-3). There are mature conifers along the perimeter of the site and a cluster of mature deciduous trees adjacent to the existing house on the north portion of the site.
2. The site slopes down towards the south at between 12-20% and is located at the northeast corner of Knaus Road and Goodall Road, both of which are classified as neighborhood collectors (Exhibit E-2).

3. The site is zoned R-7.5, as are the properties to the south across Knaus Road and the southwest across Goodall Road (Exhibit E-2). Properties to the east and west are part of unincorporated Clackamas County. Properties to the north are in the City of Portland and/or Multnomah County. All surrounding properties are developed with single family homes.
4. A land division of the site into three parcels, consistent with the proposed Master Plan, was recently approved (LU 07-0063).

V. **PUBLIC CONTACT**

A. Neighborhood Meeting:

ORS 94.518(2)¹ does not require a neighborhood meeting prior to the City Council's consideration of adoption of an ordinance approving a development agreement. (If the Development Agreement is approved, the Master Plan will be reviewed in the manner provided for partitions, and a neighborhood meeting will then be required.)

However, since the applicant first presented a proposal for a 28-lot Planned Development on the site, numerous meetings with the neighborhood have been conducted over a period of a year, that have resulted in the neighborhood's support for the proposed Development Agreement (Exhibit F-2).

B. Public Notice to Surrounding Area.

The City has provided adequate public notice of the public hearing before the City Council, as required by ORS 94.518. Prior to mailing the public notice, the City received a letter in support of the Development Agreement from the Forest Highlands Neighborhood Association (Exhibit F-2).

C. Burden of Proof:

The development agreement must comply with local regulations:

ORS 94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

Per LOC 50.77.007, 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 a document outlining the Development Agreement process; evidence that enables staff to perform a thorough evaluation to determine future compliance with applicable criteria, listed on page 2 of this report. These documents are listed as exhibits that accompany this report.

¹ "Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement." ORS 94.518(2).

VI. Oregon Revised Statutes

Per ORS 94.504 – 94.528, a city or county may enter into a development agreement with any person having a legal or equitable interest in real property for the development of that property. Outlined below are the elements that a development agreement shall specify, followed by the terms, in brief, proposed by the applicant in Exhibit F-1:

- a. The duration of the agreement
5 years.
- b. The permitted uses of the property
Single family development.
- c. The density or intensity of use
18 lots.
- d. The maximum height and size of proposed structures
Compliance with city standards as they exist on the effective date of the agreement.
- e. Provisions for reservation or dedication of land for public purposes
Exhibit B of the Development Agreement indicates three streets. This will be reviewed during the Master Plan review.
- f. A schedule of fees and charges
To be determined by the City Council.
- g. A schedule and procedure for compliance review
The Master Plan will indicate the proposed “serial partitions” for each of the next three years, a final plan indicating final build out and public infrastructure and a development schedule for other permits, including building permits. Under the terms of the Development Agreement, the Master Plan will be reviewed and it must be shown to be consistent with all land use regulations in effect which will be vested at the time of approval. Compliance will be deferred to review of the Master Plan for the Serial Partition process, to be submitted within 60 days of approval of the Development Agreement.
- h. Responsibility for providing infrastructure and services
The applicant agrees to construct all required public infrastructure in compliance with City standards. This will be reviewed during the Master Plan review..
- i. The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy.
Attempt to honor the remainder of the Agreement so long as it does not prejudice the substantial rights of either party. If this be the case, the parties shall negotiate in good faith to revise the Agreement consistent with the original intent).
- j. Remedies available to the parties upon a breach of the agreement
60 days to remedy a breach that will not constitute a default so long as the breaching party diligently proceeds to a remedy.
- k. The extent to which the agreement is assignable
The Agreement cannot be assigned without the City’s written consent.
- l. The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement
Not applicable; the property is already annexed to the City of Lake Oswego.

The Development Agreement (Exhibit F-1) specifies that the Master Plan shall be reviewed as a Minor Development with public comment and notice pursuant to LOC 50.79 and 50.81, and demonstrating compliance with all applicable criteria. (The City Manager anticipates referring the minor development application for approval of the Master Plan to the Development Review Commission for public hearing and decision. LOC 50.81.005.)

Following approval of the Master Plan, subsequent partitions are proposed to be reviewed as ministerial developments (rather than minor developments), and must be shown to be in compliance with the approved Master Plan. Any proposed amendments to the Master Plan shall be reviewed as a minor development, although modifications of the development schedule shall not be considered a modification of the Master Plan so long as the applicant sends written notice of any schedule modifications to the Community Development Director and Chair of the Forest Hills Neighborhood Association.

The approval or amendment of a development agreement is a land use decision under ORS chapter 197. If approved, the development agreement is binding on the City for the duration specified in the agreement.

Per ORS 94.528, no later than 10 days after the execution of a development agreement the City shall cause the agreement to be recorded at the office of the Clackamas County Clerk. This will be made a condition of approval.

VI. COMMUNITY DEVELOPMENT CODE

As noted above, the Development Agreement would authorize the submission of a Master Plan for “serial partitions” to be filed over a period of three years. The Master Plan will be reviewed against the applicable Lake Oswego Code provisions, including those set forth in Section III above. If the Master Plan for the partitions is found to comply with the applicable regulations, the partitions filed pursuant to the Master Plan would be ministerially reviewed for compliance with the Master Plan. Accordingly, Development Agreement, which requires the later submission of a Master Plan for partitions as a minor development, and the requirement that the Master Plan itself comply with the applicable Lake Oswego Code provisions, can therefore be found to be in compliance with the applicable Lake Oswego Code provisions because determination of compliance is deferred to review of the Master Plan.

VII. CONCLUSION

Based upon the information provided by the applicant and the findings presented within this report, staff concludes that LU 07-0089 complies with all of the applicable criteria and standards or can be made to comply through the imposition of conditions.

VIII. RECOMMENDATION

Approval of development pursuant to a Development Agreement is a matter of discretion for the City Council. ORS 94.504. If the City Council elects to enter into the proposed Development Agreement, staff suggests the following condition:

- A. **Within 10 days of Approval of the Development Agreement**, the applicant shall record the Agreement at the office of the Clackamas County Clerk.

EXHIBITS:

A. Notice of Appeal:

(No current exhibits; reserved for hearing use)

B. Findings, Conclusions and Order:

(No current exhibits; reserved for hearing use)

C. Minutes:

(No current exhibits; reserved for hearing use)

D. Staff Report:

(No current exhibits; reserved for hearing use)

E. Graphics/Plans:

E-1 Tax Map

E-2 Vicinity Map

E-3 Site Survey with Existing Conditions

F. Written Materials:

F-1 Development Agreement with Site Plan

F-2 Letter from the Forest Highlands Neighborhood Association

G. LETTERS

Neither for nor Against: G-1-99

None

Support: G-100-199

None

Opposition: G-200

None