

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

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4 A DEVELOPMENT REVIEW PERMIT TO CONSTRUCT A) LU 15-0043 - 1889
5 A 2-STORY ADDITION AND REMODEL A VET HOSPITAL) AMY TONGUE, DVM
6 IN THE DRDD, A DESIGN VARIANCE, AND THE) FINDINGS, CONCLUSIONS & ORDER
7 REMOVAL OF FIVE TREES.)
8

9 **NATURE OF APPLICATION**

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11 The applicant is requesting approval of a Development Review Permit to remodel an existing
12 veterinary hospital and construct 2-story addition within the Downtown Redevelopment Design
13 District (DRDD). The applicant is also requesting a design variance to the DRDD storefront
14 window standards and the removal of five trees.
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16 **Location of Property:** 590 3rd Street (Tax Lot 100 of Tax Map 21E 03DC).
17

18 **HEARINGS**

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20 The Development Review Commission (Commission) held a public hearing and considered this application at
21 its meeting of March 7, 2016. The following information was presented to the Commission at its hearing and
22 added into the record:
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- 24 Exhibit G100 Letter in Support, FA-FH NA, dated March 4, 2016
- 25 Exhibit G200 Letter in Opposition, James Schroder, dated March 3, 2016
- 26

27 **CRITERIA AND STANDARDS**

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

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- 31 LOC 50.01.003.4 Development Permits Restricted for Unlawful Uses
- 32 LOC 50.03.002.3 Commercial Uses
- 33 LOC 50.04.001.4 Commercial, Mixed Use & Industrial Zone Standards
- 34 LOC 50.05.004 Downtown Redevelopment District Design Standards
- 35 LOC 50.06.002 Parking
- 36 LOC 50.06.003.1 Access/Access Lanes (Flag Lots)
- 37 LOC 50.06.003.2 On-Site Circulation – Driveways & Fire Access Roads
- 38 LOC 50.06.004.1 Landscaping, Screening & Buffering
- 39 LOC 50.06.004.3 Lighting
- 40 LOC 50.06.005 Park and Open Space
- 41 LOC 50.06.006.1 Weak Foundation Soils
- 42 LOC 50.06.006.3 Drainage for Major Development, Partitions, Subdivisions, &
43 Certain Structures
- 44 LOC 50.06.008 Utilities
- 45 LOC 50.07.003.1 Application for Development, Burden of Proof
- 46 LOC 50.07.003.5 Conditions of Approval
- 47 LOC 50.07.003.7 Appeal of Minor Development Decisions
- 48 LOC 50.07.003.14 Review Criteria for Minor Developments
- 49 LOC 50.08.003 Design Variances
- 50

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

LOC 42.03.005 – 42.08.470 Streets & Sidewalks

C. City of Lake Oswego Sign Code (LOC Chapter 47):

47.10.412 Permanent Signage Allowed in the EC Zone

D. City of Lake Oswego Tree Code (LOC Chapter 55):

LOC 55.02.010 – 55.02.135 Tree Removal & Mitigation

FINDINGS AND REASONS

The Commission incorporates the February 26, 2016, Staff Report, (with all exhibits attached thereto), as support for its decision, supplemented by the further findings and conclusions, below. If there is any inconsistency between the supplementary findings and the Staff Report, the supplementary findings control. To the extent they are consistent with the decision herein, the Commission adopts by reference its oral deliberations on this matter.

Following are the supplementary findings and conclusions of this Commission:

1. The Commission received testimony in opposition from a neighbor regarding the animal boarding offered by the Oswego Veterinary Hospital in violation of the allowed uses in the EC zone. (Note: Animal boarding does not include overnight stays incidental to medical care.) The neighbor requested that the Commission either deny the Development Review permit or condition approval upon revision of the floor plan to assure that there was no space useable for animal boarding. The applicant stated that she would discontinue animal boarding and that the designed space was functional for veterinary services.

An application for a development permit is to be approved if it complies with the applicable criteria or conditions of approval can be imposed that will bring the application in compliance with the applicable criteria [LOC 50.07.003.4.g.i]. As noted in the Staff Report, pg. 3, the existing animal boarding use is not compliant with the zone. LOC 50.01.003.4 prohibits issuance of a development permit *unless* the violation is rectified. LOC 50.07.003.5a.i allows conditions of approval to be imposed if necessary for an application to meet the applicable criteria. The Commission finds the existing condition of approval [Condition A(1)] that requires written evidence that the animal boarding use has been discontinued prior to issuance of any building permits to be sufficient to rectify the violation.

CONCLUSION

The Commission concludes that LU 15-0043 can be made to comply with all applicable criteria by the application of certain conditions.

ORDER

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

- 1 1. LU 15-0043 is approved, subject to compliance with the conditions of approval set forth in Subsection
- 2 2 of this Order.
- 3
- 4 2. The conditions for LU 15-0043 are as follows:
- 5

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

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- 8 1. Submit written evidence that the animal boarding facilities are no longer offered as a
- 9 service on this site.
- 10
- 11 2. Submit final site and building plans for review and approval of staff that are the same
- 12 or substantially similar to the approved plans, illustrated on Exhibits E4-E13, to the
- 13 satisfaction of staff, with the following modifications:
- 14
- 15 a. Revise the north and west elevations to incorporate the proposed “stacked slate”
- 16 stone veneer siding on a minimum of 50% of the ground floor facades.
- 17
- 18 3. Submit a final landscape plan substantially similar to Exhibit E12, except modified to
- 19 show the following information, for review and approval of staff:
- 20
- 21 a. Ensure all new street trees are located in 4-foot by 4-foot tree wells that comply
- 22 with the City Engineer/LORA specifications for tree grates, spacing, planting, root
- 23 barriers, irrigation, and lighting.
- 24
- 25 b. Relocate the proposed bench from private property to the 4-foot street
- 26 furnishing zone on the new C Avenue public sidewalk.
- 27
- 28 c. Relocate the proposed art pedestal to the curb extension at the intersection of
- 29 3rd Street and C Avenue, to the satisfaction of the City Engineer/LORA.
- 30
- 31 d. A note stating that all burlap and/or cages shall be removed from all trees,
- 32 shrubs, and plants prior to planting.
- 33
- 34 e. Submit a landscape maintenance and monitoring plan.
- 35
- 36 4. Submit a photometric plan that demonstrates whether additional street lights will be
- 37 necessary to meet minimum street light illumination levels. If new street light(s) are
- 38 necessary, submit an updated street light plan (Exhibit E8) that illustrates the style
- 39 and location(s) of the poles, to the satisfaction of the City Engineer/LORA.
- 40
- 41 5. Submit engineered construction drawings for the public improvements for review
- 42 and approval by the City Engineer. Drawings shall conform to the City’s most current
- 43 design standards and the drafting specifications. All final engineering design
- 44 drawings and as-built plans submitted for the creation of public facilities (street,
- 45 wastewater, water and surface water) shall be vertically controlled by the City Datum
- 46 (NGVD’29) and horizontally controlled by the Oregon State Plane coordinate system
- 47 (NAD 83/91). The plans shall include the following:
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Along the C Avenue frontage:

- a. Design to remove the existing head-in parking along the northwest corner of the site and install a new standard concrete curb along the entire site frontage, terminating at the curb of the alley. The location of the curb shall be 20 feet from the center of the right-of-way. The improvements shall accommodate the existing utility pole and guy wire at the intersection curb return. It does not appear that any right-of-way dedication will be required.
- b. Construct a new 9.5-foot sidewalk (measured from face of curb to back of walk) along the site frontage. The sidewalk shall contain 4-foot by 4-foot tree wells/grates, the street bench, and concrete scoring per City Engineer/LORA specifications.
- c. Install a 2-directional ADA ramp at the intersection of 3rd Street and C Avenue, and a new ADA ramp across the street at the northwest corner of the intersection of 3rd Street and C Avenue.
- d. Install an ADA ramp on the east side of the alley parallel to C Avenue.
- e. Construct a new catch basin at the west side of the curb return bump-out at the intersection of 3rd Street and C Avenue. Install a public storm conveyance line in C Avenue to the existing storm main located at the intersection of the alley and C Avenue. A downstream analysis (to the intersection of 3rd Street/B Avenue) shall be provided to ensure there is adequate capacity in the existing storm conveyance system to accept the runoff from the new catch basin, or provide mitigation as necessary if any deficiencies are determined.
- f. Location and details of additional street light(s), if applicable. Any new pole(s) shall also include hanger arms for hanging flower baskets.

Along the 3rd Street site frontage:

- g. Design of new brick accent panels, to the satisfaction of the City Engineer/LORA.
- h. Location and details of additional street light(s), if applicable. Any new pole(s) shall also include hanger arms for hanging flower baskets.

Along the alley:

- i. Remove the existing parking spaces along the west side of the alley and install a "no parking" sign.
6. Construct all public improvements as required by Condition A(5), above, or submit a financial guarantee for all required public improvements, per LOC 50.87.020. The financial guarantee shall be based on an engineer's estimate that is in turn is based on construction plans that are far enough advanced to support the materials and quantities found in the estimate.
 7. Submit a copy of the geotechnical report with the building permit.

8. Submit a final site plan, utility plan, stormwater plan and drainage report for the on-site stormwater facilities, prepared by a registered engineer. Driveway and parking lot runoff cannot be directed to a subsurface infiltration disposal system without Department of Environmental Quality (DEQ) approval. Infiltration facilities shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Any emergency overflow shall be conveyed to an approved point of disposal.
9. Pay all applicable System Development Charges pertaining to the development.
10. Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit.
11. Apply for and obtain a verification tree removal permit for the five trees approved for removal to construct the improvements. The verification tree removal 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 the Final Building Inspection or Occupancy of any Building, the Applicant/Owner Shall:

1. Provide certification from the engineer of record that the stormwater facilities for the development were constructed according to the design and are functioning properly.
2. Submit for review and approval of staff an Operations and Maintenance Plan for the private on-site storm facilities and record a Declaration of Covenant for Operation and Maintenance of Surface Water Management Facilities.
3. Complete all public improvements, including installation of required street furniture and art pedestal, and submit certified "as-built" drawings of public improvements conforming to the City's standards for record drawings.
4. Complete the construction of all private utility services, including water, storm, sanitary, and franchise utilities.
5. Install all landscaping/mitigation plantings as illustrated in Exhibit E12, and modified by Condition A(3), above.
6. Provide a one-year guarantee (one 12-month growing season from the date of installation) for all landscape materials, pursuant to LOC 50.06.010.2. The guarantee shall consist of a security in the amount of five percent of the total landscaping cost (including materials and labor). The applicant/owner shall also submit a landscape maintenance plan for review and approval of City staff.

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 may 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. **Erosion Control:** Per LOC Chapter 52, apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit. These measures shall remain in place throughout the development period.

Notes:

1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department 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

1 development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the
2 applicant of issues regarding state and federal laws that staff member believes would be helpful
3 to the applicants, but any such advice or comment is not a determination or interpretation of
4 federal or state law or regulation.
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1 DATED this 21st day of March, 2016.

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Brent Ahrens /s/

Brent Ahrens, Chair
Development Review Commission

Jean Hall /s/

Jean Hall
Administrative Support

ATTEST:

TENTATIVE DECISION – MARCH 7, 2016

AYES: Ahrens, Melendez, Poulson, Pritchard, Rabbino, Shearer, and Smith
NOES: None
ABSTAIN: None
ABSENT: None

WRITTEN FINDINGS – MARCH 21, 2016

AYES: Ahrens, Poulson, Prichard and Shearer
NOES: None
ABSTAIN: None
ABSENT: Melendez, Smith and Rabbino