



TO: Development Review Commission

FROM: Debra Andreades, Senior Planner

SUBJECT: LU 13-0047, Appeal of Staff Decision of a Development Review Permit at 5930 Jean Road

DATE: February 21, 2013

ACTION

Hold a public hearing and issue a tentative decision on LU 13-0047.

APPLICANT'S REQUEST

The applicant is requesting a modification of a Development Review Permit (DR 9-80) to construct a 4,800-square foot covered storage area behind the existing commercial/industrial building on site that fronts on Jean Road.

FINAL STAFF DECISION / REQUEST FOR HEARING AND APPEAL

On January 24, 2014, staff approved the applicant's request for a Development Review Permit as described, above. On February 10, 2014, Lisa Volpel, Rosewood Neighborhood Co-Chair, filed an appeal of the decision and request for a public hearing (Exhibit A-1).

FINDINGS

Background

Per LOC 50.07.003.11, modifications to an approved development permit are classified as the same type of development as the original permit (in this case, DR 9-80) and shall be reviewed under the applicable review criteria for that classification of development, except that the review criteria shall be limited to those criteria that are affected by the requested modification.

Compliance with Applicable Review Criteria

The written request for a hearing filed by the appellant does not specify the reason for the appeal (Exhibit A-1); however, the appellant had submitted written comments in opposition to the application as a private citizen (Exhibit G-1) and the other co-chair, Peter Klæbe, had submitted comments in opposition on behalf of the Rosewood Neighborhood Association (Exhibit G-2). The issues raised in both letters were discussed in the Staff Report dated January 24, 2014 (Exhibit D-1).

Discussion

Outlined below are the issues that were raised during the comment period, followed by staff's response, found in the January 24, 2014 Staff Report:

1. Both Exhibit G-1 and G-2 requested that a condition of approval be imposed that the new covered area only be used for storage and not manufacturing.

Staff Response: The applicant's request is for approval of a new covered storage structure. If the new structure were to be used for manufacturing purposes, the applicant would be in violation of the Code, LOC 50.01.002.2.b.iii. Therefore, no condition is necessary.

2. The comments received in both Exhibits G-1 and G-2, indicated that the site should include Tax Lots 3200 and 4000 because they are under the same ownership and they are used to support the existing industrial uses (storage of products) on the site.

Staff Response: Staff found that all five tax lots are operating as a single development site and has imposed a condition of approval that a Unified Site Plan be recorded for all five lots [Exhibit D-1, Condition A(1)].

3. Exhibit G-2 contains a request that the landscape plan from a previous request (LU 11-0039) "be completed" and materials not be stored and vehicles not parked in the landscaped area.

Staff response: If materials are stored and vehicles parked in the landscaped area, it is a violation of the prior approval. The present request requires additional landscaping. As a condition of approval, a landscape plan must be submitted showing the additional landscaping. In addition, staff has imposed a condition of approval that prior to final building inspection, staff will inspect the landscaping to ensure that all plant materials for *both* LU 11-0039 and the present case are planted correctly according to the approved landscape plans [Exhibit D-1, Conditions A(2)(a) and B (1) and (2)].

4. Exhibits G-1 and G-2 contained requests that a condition of approval be imposed that surface water from the larger site (beyond the area of the proposed structure) be retained and treated on site. In addition, Exhibit G-2 contained a request that the oil/water separator be replaced if it is not functioning.

Staff Response: The public comments note that there is an existing storm water runoff problem on the site and request that it be remedied as a condition of approval. The Engineering staff has not found that a violation of the Code exists that is causing the stormwater runoff problem. It appears that the cause of the storm water runoff is due to site conditions, which at the time of prior development of the site, were not required to be addressed. The proposed development application is limited to construction of a 4,800 square foot covered storage area, and the Drainage Standard requires that the application address drainage from that development. The applicant is not obligated, nor can a condition of approval be imposed, to address storm water runoff that is not caused by the proposed development.

However, staff has imposed a standard condition of approval on this development application that requires, prior to issuance of a building permit, that the applicant submit evidence that the runoff generated from the *new* roof area will be managed on site by the existing drywell [Exhibit D-1, Condition A(2)(b)]. The Engineering staff also noted that drywells are regulated under the Oregon

Department of Environmental Quality (DEQ) Underground Injection Control (UIC) program, and runoff directed to subsurface facilities shall meet the requirements of DEQ.

CONCLUSION

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 13-0047 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

RECOMMENDATION

Staff recommends **approval** of LU 13-0047, subject to the following conditions:

A. Prior to Issuance of a Building Permit, the Applicant/Owner Shall:

1. Submit a Notice of Development Restriction – Unified Site Plan for review and approval of the Planning staff, and following approval record the Notice with the Clackamas County Recorder's Office, in order for Tax Lots 3200, 3400, 3500, 3800 and 4000 to be considered a unified development site.
2. Submit final building permit plans for the review and approval of staff, that are the same or substantially similar to the building elevations and sample illustrated on Exhibits E-4 through and E-8 with the following modification:
 - a. Submit a final landscape plan showing additional landscaped areas in the amount of 780 square feet on the site, including information on plant species, density and size. In addition, the plan shall show an evergreen hedge in front of the 8-foot high fence along Lakeview Blvd., which shall be of a size and spacing so as to provide a six-foot high, dense screen within three years of the date of planting, per LOC 50.06.004.2.b.iv.
 - b. Submit a storm water disposal plan to the satisfaction of the City Engineer. All runoff from the new roof area shall be managed on site. Subsurface disposal systems shall also comply with DEQ regulations. Any alternative storm water design shall be reviewed and approved by the City Engineer.

B. Prior to Final Building Inspection of the Storage Structure, the Applicant/owner Shall:

1. Install all plant materials as required by the approved landscape plan for LU 11-0039 and Condition A(2)(a), above.
2. Request an inspection by the Planning staff to ensure all plant materials required by Condition B(1), above, are planted correctly according to the approved landscape plans.

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development Review permit 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.

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 other applicable codes and regulations. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, e.g., Americans with Disabilities Act, Endangered Species Act. City staff may advise the applicants of issues regarding state and federal laws that the City staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.
2. Any change of the use authorized by this development permit requires additional review and approval.

EXHIBITS

A. NOTICE OF INTENT TO APPEAL

A-1. Letter of intent to appeal the staff decision submitted by Lisa Volpel, Co-Chair of the Rosewood Neighborhood Association, dated February 10, 2014

B-C. [No current exhibits; reserved for hearing use]

D. STAFF REPORTS

D-1 Staff Report, dated January 24, 2014

E. GRAPHICS/PLANS

- E-1 Tax Map
- E-2 Vicinity Map with Zoning
- E-3 Site Plan
- E-4 Elevations/Sections
- E-5 Roof and Footing Plans
- E-6 Cut Sheet for Light Fixture
- E-7 Photos of Existing Fence and Area for Storage Building (3 pages)
- E-8 Photos of Roof and Siding Color (2 pages)

F. WRITTEN MATERIALS

- F-1 Applicant's Narrative
- F-2 Applicant's Addendum

G. LETTERS:

Neither for nor Against: (G1-99)

G-1 Letter from Lisa Volpel and Mark Kimball, received December 23, 2013

G-2 Letter from the Rosewood Neighborhood Association, received December 21, 2013

Support: (G100-199)

None

Opposition: (G-200-)

None

Date of Application Submittal: September 17, 2013

Date Application Determined to be Complete: December 4, 2013

State Mandated 120-Day Rule: April 3, 2014