



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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Date: March 25, 2014
To: Interested Person
From: Andrew Gulizia, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has denied a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-203896 AD

GENERAL INFORMATION

Applicant: Thomas Burton / 503-875-6563 / Burton Engineering
8401 NE Halsey St #104 / Portland, OR 97220

Property Owner: Aris Paguio / Senior Haven Residential Care Facility
12140 SE Foster Rd / Portland, OR 97266

Site Address: 12140 SE Foster Rd

Legal Description: LOT 24 EXC PT IN ST, FOSTER VILLAGE
Tax Account No.: R293801550
State ID No.: 1S2E15DD 03000 **Quarter Section:** 3642, 3643

Neighborhood: Pleasant Valley, contact Linda Bauer at 503-761-2941.
Business District: Foster Area, contact Seth Richardson at 503-771-1737.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin – South Subdistrict
Zoning: CG – General Commercial
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

This site is located within the South Subdistrict of the Johnson Creek Basin Plan District, where no more than 50% of any site may be developed with impervious surface (Zoning Code Section 33.537.140.D). The property is developed with a residential care facility that was completed in 2012. After construction was completed, it was found that 71.5% of this site is covered with impervious surface. The applicant is requesting an Adjustment to increase the maximum impervious surface limit for this site from 50% to 71.5%.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 18,000 square-foot site is located on the south side of SE Foster Road, between SE Foster Place and SE 122nd Avenue. The site is developed with a one-story residential care facility that was completed in 2012. Neighboring properties near the intersection of SE Foster Road and SE 122nd Avenue are developed with a variety of commercial uses, and single-dwelling homes predominate in the areas surrounding the commercial district.

Zoning: The site is designated with the CG (General Commercial) zone. Commercial zones generally seek to promote uses and developments that will enhance the economic viability of both the City and neighborhood. The CG zone in particular is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed February 25, 2014. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering;
- Water Bureau;
- Fire Bureau; and
- Bureau of Parks-Forestry Division.

The Bureau of Environmental Services (BES) responded with comments in opposition to the proposal, which are discussed in the findings for approval criterion A, below. Exhibit E-1, part of the archived public record for this application, contains additional details.

Neighborhood Review: Two written responses from the public were received in response to the Notice of Proposal.

One response, from a notified neighbor, recommends denial of the application on the grounds that the proposal does not equally meet the purpose of the regulation and that no mitigation is proposed. The neighbor also points out two properties in the vicinity of the site which were required to comply with the 50% impervious surface limit through the code enforcement process.

The second response was submitted by the Land Use and Transportation Committee of the East Portland Neighborhood Associations. This letter also recommends denial on the grounds that the proposal does not equally meet the purpose of the regulation and that no mitigation is proposed.

Staff Response: As discussed in detail in the findings below, staff concurs that the applicant’s proposal to increase the maximum impervious surface limit for this site to 71.5% does not meet the approval criteria for Adjustments.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant is requesting an Adjustment to the 50% maximum impervious surface limit in the South Subdistrict of the Johnson Creek Basin Plan District. The purpose of the development standards for the South Subdistrict is stated in Zoning Code Section 33.537.140.A:

***Purpose.** These regulations mitigate the negative impacts that may result from the development of areas where flooding and landslides are common. The impermeable clay soils of the steep-sided Boring Lava hills to the south of the creek contribute to rapid stormwater runoff in the winter, and contribute to flooding. Unlike the flatter areas north of the creek, in the South subdistrict there are numerous small streams that can quickly carry stormwater runoff to Johnson Creek. The extensive tree canopy on these hillsides helps to slow stormwater runoff. Limitations on development density, tree removal, and impervious surface area reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect watershed health while allowing the safe and efficient development of unconstrained lands.*

BES reviewed the applicant's proposal but does not support approval because of anticipated negative impacts to stormwater runoff and water quality. BES' response (Exhibit E-1) reads, in part:

BES does not support the applicant's proposal to exceed the 50% impervious area limit for this site by 21%. The impervious area should be reduced to achieve as close to the 50% impervious limitation as is feasible. Any increase in the impervious area limit will exacerbate flooding in the area, further impair the water quality in Johnson Creek, and potentially put public health and private property at risk.

Johnson Creek floods on average every two years, affecting commuters, residents and businesses in the floodplain. The flooding is caused in part by the extensive stormwater system that drains into Johnson Creek. The stormwater facilities on the applicant's site were designed to infiltrate stormwater for a storm event with a 10-year reoccurrence interval, as required by the 2008 SWMM. This means that any storm event greater than the 10-year event will result in untreated and unmanaged stormwater flowing directly into the right of way and into Johnson Creek. Historic records from the US Geologic Survey stream flow gage at Sycamore show the area has had a minimum of nine flood events larger than the 10-year flood since 1942, six of which occurred in the last 35 years.

Based on BES' analysis, the applicant's proposal for a higher impervious surface limit for this site does not equally meet the intent of the regulation to reduce stormwater runoff and protect water quality. Therefore, this criterion is not met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Because the site is located in the CG zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Street Classifications

The site fronts on SE Foster Road. The classifications of this street, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

Traffic	Transit	Bikeway	Pedestrianway	Freight
Major City Traffic Street	Major Transit Priority Street	City Bikeway	City Walkway	Local Service

Because the Adjustment only applies to the impervious surface limit for a developed site, the application would result in no changes to the density or intensity of any land use and would result in no changes to traffic levels or demand for transit, bike, pedestrian, or freight facilities. Therefore, this aspect of the approval criterion is not applicable.

Desired Character of Area

The “desired character” of an area is defined in Zoning Code Section 33.910.030 as the preferred or envisioned character based on the purpose statement or character statement of the base zone and any adopted area plans. The subject site is located within the CG base zone and within the boundaries of the adopted Pleasant Valley Neighborhood Plan.

The character statement for the CG zone in Section 33.130.030.G reads:

The General Commercial (CG) zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

A residential care facility was recently constructed on this site in compliance with the development standards of the CG zone. This proposal relates specifically to impervious surfaces and not to the types of factors listed in the above character statement. Therefore, the proposal is not inconsistent with the desired character of the area as expressed in the character statement of the CG zone.

Only one of the Policies in the Pleasant Valley Neighborhood Plan is found to be relevant to this application:

Policy 2, Environment: *Preserve the ecosystem and diverse character of Pleasant Valley.*

Objectives:

- 1. Preserve and enhance the current quality of life and retain the area's diversity through careful land use planning, protecting environmentally sensitive areas, such as steep slopes, landslide areas, floodways, floodplains, and wetlands.*
- 2. Monitor the implementation and enforcement of all existing environmental regulations, permit conditions, master plans and adopted studies.*
- 3. Maintain the scenic and natural resources of the Johnson Creek Basin and the present location of Johnson Creek.*

4. *Stimulate environmental awareness through information programs.*

As discussed above, BES finds that increased impervious surface on this site will, during storm events greater than those the site's stormwater facilities were designed to handle, exacerbate flooding in the area and impact water quality in Johnson Creek (Exhibit E-1). Therefore, since one of the objectives listed above is to protect the floodway, the applicant's proposal is not consistent with Policy 2 of the Pleasant Valley Neighborhood Plan.

Summary

The classifications of adjacent streets are found to be irrelevant and the proposal is not inconsistent with the character statement of the CG base zone. However, the proposal is found to be inconsistent with Policy 2 of the Pleasant Valley Neighborhood Plan. Therefore, this criterion is not met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is being requested, this criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: Again, BES finds that increased impervious surface on this site will, during the largest storm events, exacerbate flooding in the area and impact water quality in Johnson Creek. Because the applicant has proposed no mitigation for these impacts, this criterion is not met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has not demonstrated that the proposal to increase the maximum impervious surface limit for this site from 50% to 71.5% meets the approval criteria for Adjustments in Zoning Code Section 33.805.040. Therefore, the proposal must be denied.

ADMINISTRATIVE DECISION

Denial.

Staff Planner: Andrew Gulizia

Decision rendered by: _____ **on March 21, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 25, 2014

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on September 11, 2013, and was determined to be complete on February 20, 2014.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 11, 2013.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: June 20, 2014.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 8, 2014**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within

21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

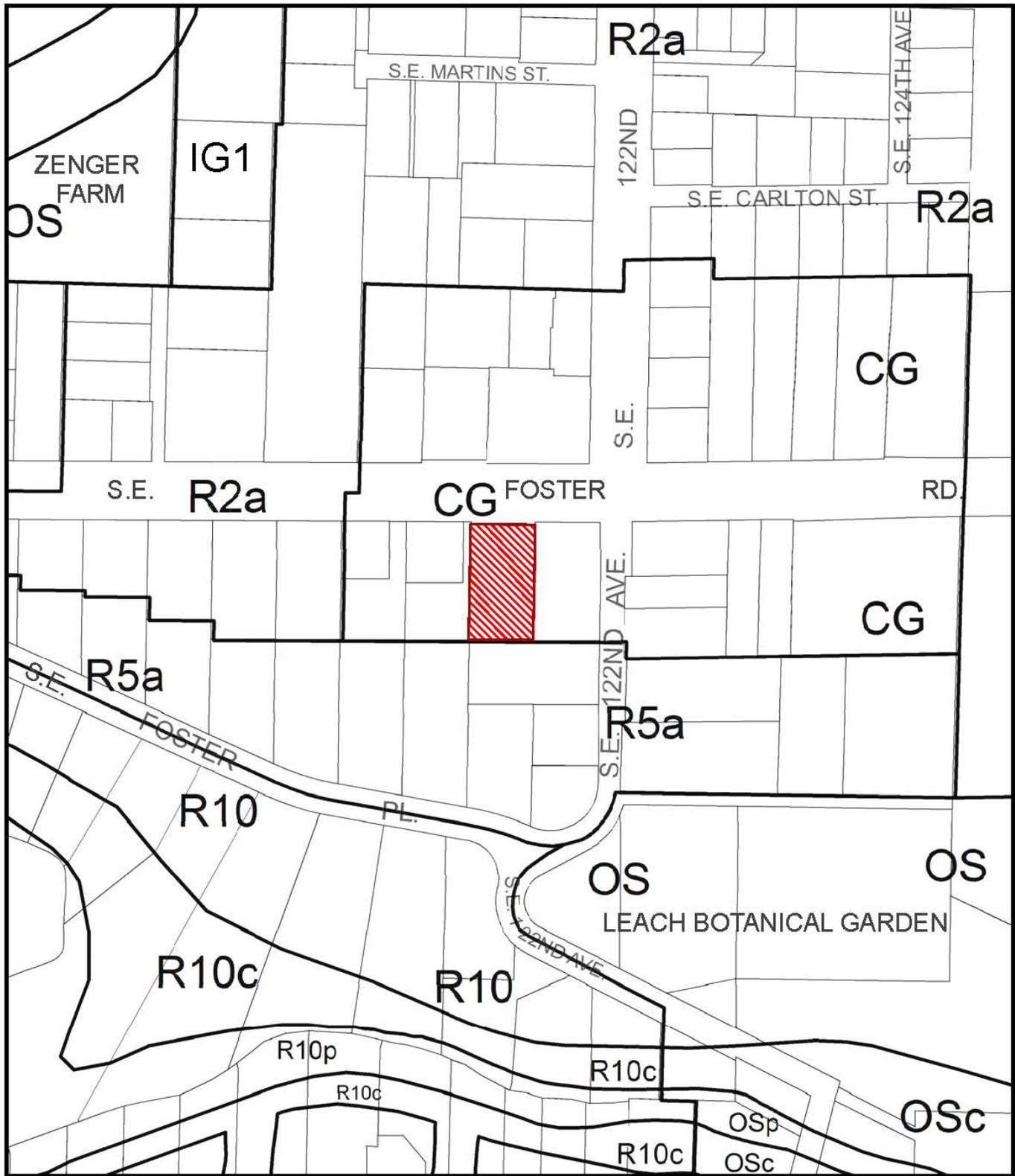
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Correspondence in opposition from Linda Bauer, received 3/15/2014
 - 2. Correspondence in opposition from East Portland Land Use and Transportation Committee, received 3/18/14
- G. Other:
 - 1. Original LU Application
 - 2. Incompleteness determination letter, dated 9/23/2013

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT SOUTH

File No. LU 13-203896 AD
 1/4 Section 3642,3643,3742,3743
 Scale 1 inch = 200 feet
 State_Id 1S2E15DD 3000
 Exhibit B (Sep 13,2013)

