

CITY OF PENDLETON PLANNING COMMISSION  
**MFD Conditional Use Staff Report and Recommendation**



**File No.:** CUP22-04  
**Deemed Complete:** March 24, 2022  
**Prepared by:** Julie Chase  
**Date:** March 29, 2022  
**Hearing Date:** April 14, 2022  
**120-Day Limit:** July 22, 2022

**Applicant(s)** **Jesse & Misty Seckman**  
 520 NE 35<sup>th</sup> St  
 Pendleton, OR 97801

---

**Owner(s):** **Jesse & Misty Seckman**  
 520 NE 35<sup>th</sup> St  
 Pendleton, OR 97801

**Site Location:** 520 NE 35<sup>th</sup> St  
**Description:** Tax Lot 01800,  
 Map 2N-32-01DD  
**Zoning:** R-2 Medium Residential



**Proposal:** Conditional use request to install a 1998 manufactured dwelling.  
**Attachments:** Application and supplemental materials

**SUMMARY:**

Applicant requests the Planning Commission consider a conditional use to install a 1998 Fleetwood 27'x52' manufactured dwelling as a secondary dwelling on a lot in the Medium Density Residential zone. A 1680 square foot stick-built single-story dwelling and a 480 square foot garage currently occupy the site.

**APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:**

**NOTE: UPDATED UNIFIED DEVELOPMENT CODE AMENDMENTS ARE NOT IN EFFECT UNTIL APRIL 16, 2022. APPLICATIONS RECEIVED PRIOR TO THIS DATE FALL UNDER THE 2021 UDC.**

**Unified Development Code No. 3845**

- Article III. Residential Zones Sections 3.03, 3.09 and 3.05 Manufactured Dwelling Standards on Residential Lots**
- Article XI. Zoning and Related Decisions Section 11.06 Conditional Use Permits**
- Article XIII. Land Use Application Procedure**

**STAFF RECOMMENDATION:**

1. This dwelling shall obtain a sewer tap permit and connect to the sewer line in NE 35<sup>th</sup> Street. The sewer connection shall serve this dwelling only. Shared utility lines are not allowed.
2. A city standard driveway shall be installed for access to the secondary dwelling.
3. An easement within the driveway for the secondary dwelling shall be recorded for the utility lines to the secondary dwelling so that the utility lines will be in a known location if and when the secondary dwelling land is separated from the parent parcel. All utility lines shall be placed within this easement unless above ground.
4. The dwelling shall be repainted, including all trim parts, railings, and porches, a compatible color to the existing neighborhood.

5. The Owner shall sign a Development Agreement to participate in a Local Improvement District for the installation of city standard street, curb, gutter, and sidewalk when then LID is enacted.
6. A Home Inspector shall inspect the dwelling. His report shall be submitted to the Planning Department. Any issues shall be rectified prior to occupancy. (See Non-Discretionary Conditions #4)
7. If the Planning Commission determines that T1-11 is not the same as or aesthetically compatible with lap siding, then lap siding shall be installed on the dwelling prior to occupancy. See UDC 3.05.1K
8. Either a garage or carport shall be constructed/installed prior to the final inspection of the dwelling.

#### **NON-DISCRETIONARY CONDITIONS OF APPROVAL**

1. The manufactured dwelling shall have a minimum wall width, as defined by the roofline, of 20-feet, and a total square footage of 1,000 square feet or more. UDC 3.05.1A
2. A permanent foundation shall be constructed prior to placement of the dwelling, and the foundation must meet the minimum requirements per Section 3.05.1(Ord. 3845) and Pendleton's adopted building codes. UDC 3.05.1B/J
3. The manufactured dwelling shall have a minimum pitched roof with a nominal pitch of three feet in height for each twelve feet in width. UDC 3.05.1C
4. Utility connections shall meet Oregon Department of Commerce requirements. 3.05.1D
5. Any repairs necessary to make the manufactured dwelling able to be occupied and considered in a good condition as per the Home Inspector must be completed prior to occupancy. 3.05.1E
6. No equipment, pieces of equipment, furniture, appliances are permitted outside of the dwelling. Storage is permitted within a fully enclosed garage. UDC 3.05.1F/H6
7. The siding and roofing materials must be from the approved list of Section 3.05.1(Ord. 3845), and any accessory structures must also meet said list and be compatible, including paint color, with the dwelling. UDC 3.05.1I
8. At a minimum, a single car garage or carport must be built accessory to the manufactured dwelling. UDC 3.05.1M
9. A driveway approach, minimum of 14 feet wide, including the first twenty feet of the driveway must be poured concrete, asphalt, or installed pavers; and shall be installed prior to occupancy. UDC 9.05.10 & 9.05.11
10. The Owner shall sign a Waiver for One-Year Limitation for Annexation. This will delay annexation for more than one year. Property does not abut city limits and cannot be annexed at this time. State Law limits annexations to occur within one year of development unless a waiver is signed. UDC 15.12 & ORS 222.173

#### **APPROVAL RESTRICTIONS AND BURDEN OF PROOF**

1. **Limitations:** Failure to file a complete application for a Final Plat within the two-year approval period, including submittal of all engineering Construction Documents, fees, required Consent forms and bonds or other assurances, will cause the tentative approval to expire. UDC 10.06
2. The approval granted herein is limited to those items specifically addressed in this report. Approval of this request does not grant nor imply approval for any other land use action (variance, conditional use, etc.). Issues including, but not limited to (approval of) such non-discretionary matters as ROW improvements, floodplain development standards, impervious surface/storm water runoff, Development Permit(s), Building Permits and/or construction, are likewise not addressed.
3. **Burden of Proof:** The applicant bears the burden of proof for all approvals. Should an appeal arise, the applicant shall be responsible for all costs pursuant to the standards and limitations contained in §13.6 of the UDC.

4. **Validity Timeline:** Approval of a land use action shall be void after two years pursuant to the standards contained in §15.4 of the UDC. Pursuant to §15.5 of the UDC, the Planning Director may extend a permit for one additional period of two (2) years upon written request.

## **FINAL DECISION: PAGES 9-11**

The proposed development must comply with applicable provisions contained in Chapter 10 of the General Ordinances of the City of Pendleton, and the City of Pendleton Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the General Ordinances it is considered consistent with the Comprehensive Plan. Additional criteria and standards as contained in Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR) and the most current State Building or Specialty Code may supersede local code.

### **APPLICABLE CRITERIA AND STANDARDS:**

The specific criteria applicable to this request are contained in Article III of the 2021 Pendleton Unified Development Code (UDC; Ord. No. 3845), which contains the standards for uses within the subject zone. The criteria for approval of a Conditional Use are contained in Article XIII; the procedure for a Type III land use action, Section 13.04. The full text of the UDC is available on the Planning Department page of the City of Pendleton web site. Additional criteria and standards contained in Oregon Revised Statutes (ORS), and the most current State Building or Specialty code may supersede local code.

### **1. LOCATION:**

#### **ZONING MAP**

The site is an interior lot in the Medium Density Residential zone, R-2. The neighborhood consists of single-family dwellings and their outbuildings. The application is to install a manufactured dwelling older than six years, built before 1976 through the conditional use process.

#### **FINDINGS:**

1. The Zoning Map shows this area to be within the R-2, Medium Density Residential zone.
2. A conditional use application was received on March 4, 2022.

**CONCLUSION: Criteria are met.**

### **2. ZONING:**

#### **ZONING – UDC SECTION 3.03, 3.09**

Uses allowed within the Medium Density Residential (R-2) zone are single-family, two-family dwellings, two single-family dwellings on one lot, manufactured dwellings, townhouses, and residential care facilities. Conditional uses listed may allow bed and breakfasts, churches/clubs, social services, multi-family, health services, and neighborhood commercial establishments. A manufactured dwelling older than six years and post-1976 is considered a conditional use. The General Provisions requires yard setbacks of 15 feet for the front setback, 20 feet for the face of the garage, four feet on the sides, and five feet on the rear. Density is four units per acre to 18 units per acre. Minimum lot size is 5,000 square feet. Maximum building height is three stories or 40 feet, and Maximum Lot Coverage is 40%.

**FINDINGS:**

3. The proposal is to install a 1998 Manufactured Dwelling within the R-2, Medium Density Residential zone. Single-family dwellings are permitted within this zone. Two-family dwellings or two single-family dwellings on one lot are permitted within this zone.
4. The request requires Conditional Use approval as the manufactured dwelling is more than six years old and post-1976.
5. The density would be two units on 33,977 square feet. Density would be met with four to ten units; however, this is a pre-existing development inherited under County zoning control. The addition of a second dwelling would bring it closer to density standards.
6. Lot coverage would be met at 3564 square feet of roofed structures on 33,977 square feet of land, which equals 10%. If the secondary dwelling were to be divided from the main residence, the applicant has indicated it would be placed on an 8000 square foot lot.
7. The proposed Manufactured Dwelling is a single-story structure and would meet Maximum Height Limits.

**CONCLUSION: Conditional Use approval is necessary to meet criteria.**

### **3. CONDITIONAL USE CRITERIA: ZONING AND RELATED DECISIONS – SECTION 3.05**

Manufactured Dwellings are permitted on residential lots provided their narrowest width is 20-foot wide or wider as defined by the roofline. The dwelling must also have a square footage of 1,000 square feet. The dwelling shall have a permanent foundation, with no more than 12-inches of exposed material. The home shall exhibit a 3:12 roof pitch, have the utilities connected, and be in good repair free of structural, electrical, mechanical and plumbing defects. The exterior yard shall be kept free of equipment, furniture, appliances. The exterior siding and roofing material and color shall be similar to other dwellings within the community. Siding materials allowed are: horizontal painted aluminum, horizontal vinyl lap, cedar/wood, wood grain, stucco, brick or stone, or some other compatible material. Roofing shall be composite shingles, shake shingles, tile, or some other compatible material. Manufactured dwellings that are over six years old, and newer than 1976, require conditional use approval. Criteria for conditional use approval:

1. All construction shall consist of 2" x 6" exterior wall construction and be verified by a certified independent construction inspector;
2. Roof, paint, siding condition and all other areas of aesthetics are in good condition;
3. The value of the property, once completed, with the proposed Manufactured Dwelling, is equal to or greater than the previous home, if any;
4. Compliance with any and all construction rules or neighborhood covenants;
5. Neighboring property values are not adversely affected;
6. No pieces of equipment, furniture, appliances (excepting lawn furniture and fuel storage units) be allowed on the property outside the Manufactured Dwelling unless it is within a fully enclosed structure approved by the Planning Commission; so long as the property is used as a Manufactured Dwelling site;
7. Proof of compliance with the Manufactured Housing Construction and Safety Standards Code of June 15, 1976, for Manufactured Dwellings shall consist of the Housing and Urban Development placard referencing the Oregon State located within the Manufactured Dwelling.



**FINDINGS:**

8. The dwelling is a 1998 Fleetwood, which requires conditional use approval prior to placement as it is more than six years of age and constructed after 1976.
9. The proposed Manufactured Dwelling is a 1998 Fleetwood 27'x52' home with 1,404 square feet. A home inspector report was not submitted with the application.
10. Two photos have been submitted that demonstrate the dwelling's exterior walls are 2"x6" single wall construction.
11. The City has not received a building application for the foundation of this dwelling. A building permit is required for a permanent foundation.
12. Pictures submitted with the application show a 3:12 pitch to the roof.
13. The water, natural gas, and sewer lines are installed in NE 35<sup>th</sup> Street. This home would need to connect to the lines in NE 35<sup>th</sup> Street, independent of the existing dwelling. There is no Home Inspection Report on the electrical, plumbing or mechanical systems of this dwelling.

**3. CONDITIONAL USE CRITERIA:****ZONING AND RELATED DECISIONS – SECTION 3.05 (CONTINUED)**

Manufactured Dwellings are not allowed adjacent to any historic structure or within any historic district. Floodplain development requires strict adherence to floodplain management. To be occupied as a caretaker's dwelling, an applicant must obtain a conditional use approval as such prior to installing a manufactured dwelling on a lot occupied with a business.

**FINDINGS:**

14. A 1680 square foot stick-built single-story dwelling and a 480 square foot garage currently occupy the site. The assessed value of this property is \$153,620.
15. The Umatilla County Assessor's office shows the 1998 Fleetwood dwelling to have an assessed value of \$37,540.
16. The addition that incorporates this property does not have a home owner's association or covenants enforced.
17. Staff has compiled a list of the property values within the neighborhood, the notice map area, from the 2021 Assessor Reports for those properties. There are 25 properties within the notice area, including the subject property. The average value is \$108,046. The addition of this dwelling to the neighborhood will lower the average value of the area to \$105,334. Therefore, this dwelling will reduce the overall average value of the neighborhood by \$2,712.00.
18. No Home Inspector Report has been provided on the proposed Manufactured Dwelling.
19. The Manufactured Dwelling appears to have three different sidings. The front has horizontal siding that may or may not be T1-11, the back siding is vertical T1-11, and the sides are paneled T1-11.
20. The door trim does not appear to be in good condition. There is damage to the front door lock area and a hole near the back door. The windows are vinyl framed, double-glazed. The paint appears as weathered and the Commission may require repainting.

**FINDINGS:**

21. The roof was not inspected and appears to be brown composite shingles. There appears to be skylight on the back side of the roof.
22. The subject area is not within a historic district. The six neighboring properties are stick-built single-family dwellings.
23. The area is not subject to floodplain management.
24. The proposal is not for a caretaker's dwelling.

**CONCLUSION: Conditions are required to meet criteria.**

#### **4. CONDITIONAL USE CRITERIA:**

##### **ZONING AND RELATED DECISIONS – ARTICLE XI UDC**

Article XI – UDC. Pre-application conferences are encouraged for land use actions. A Development Permit is required for all land use actions prior to operation, placement, installation, or construction of any structure or use. Depending on the land use action, a transportation impact study may be required to determine the traffic impact the proposed use will have on the neighborhood and City as a whole. The Commission must review conditional use requests against these criteria to determine if the proposal will have complimentary or negative impacts to the surrounding area or City as a whole.

##### **Applicant's Statements**

**Adequate Site Size:** All setbacks are within parameters of the building codes. The lot size is more than adequate for parking, carport and easements. The size of the property is 0.78 acres. 8000 square feet for the manufactured home with yard. We will have 0.6 acres, 25976 square feet for the main house and yard.

**Adequate Traffic Relations:** 35<sup>th</sup> has no log trucks coming thru. 35<sup>th</sup> Street has very amount of traffic. It is a thru road not the main road. 20 feet for driveway width. Flag pole wide enough for fire truck.

**Mitigation of Negative Impacts:** Single family allowed. Typical house, fencing for privacy.

**Preservation of Historic, Scenic or Cultural Resources:** There are no historic or cultural at this site.

The Planning Commission may impose, in addition to regulations and standards expressly specified in this ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

- A. Increasing required lot size, yard dimensions, open spaces or buffer areas.
- B. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area.
- C. Requiring landscaping and maintenance thereof.
- D. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress.
- E. Requiring means of pedestrian/bicycle access pathways to serve the property.
- F. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas.
- G. Limiting size, location and number of signs.

- H. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property.
- I. Limiting or prohibiting openings in sides of buildings or structures.
- J. Enclosure of storage areas and limitation of outside display and/or storage of merchandise.
- K. Requiring maintenance of grounds.
- L. Regulation of noise, vibration, odors, etc.
- M. Regulation of time for certain activities.
- N. Establishing a time period within which the proposed use shall be developed.
- O. The requirement of a bond for removal of such use within a specified period of time.
- P. Increase the size, type or capacity of any or all utility services, facilities or appurtenances.
- Q. Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed.
- R. The Planning Commission may require that an applicant furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards; or an irrevocable consent to participate in an LID for those improvements has been executed.
- S. **And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Section.**

Variances to the Code may not be granted through Conditional Use applications. A variance requires a separate action by both the applicant and the Planning Commission.

**FINDINGS:**

**25. Site is Adequate in Size and Shape:** The applicant did not request a Pre-Conference meeting. Staff has reviewed the site plan. The site is 33,977 square feet. The proposed building will occupy 8,000 square feet of that space. The site is approximately 100 feet wide by 310.86 feet deep. Staff found the lot adequate in size with respect to the placement of the structure and the number of required parking spaces. If proposed for a land division, the 8000 square feet assigned to the secondary dwelling is within the minimum lot size standards. The Site Plan shows a driveway along the north property line. The driveway width is 20-feet wide, adequate for a fire road. The driveway leads into the proposed carport, which is shown in the northeast corner of the property. The secondary dwelling will be placed next to the carport. The home would be provided a yard and two sheds, which are existing. A fence is proposed to separate the secondary dwelling site from the main dwelling site.

**26. Site Relates Well to Streets and Highways:** The Riverside area was an inherited development from the County. The land divisions and road layouts were constructed under County regulations for a farming area. Hence, the area lacks proper road layout and has limited through roads. Riverside Avenue and 35<sup>th</sup> Street act as the only through streets in the area. Both function as collector streets; however, Riverside is the main collector street. 35<sup>th</sup> Street provides the secondary fire access, which is required for residential developments that exceed 35 homes. The access from 35<sup>th</sup> Street onto Highway 11 is too narrow and steep, with a sight-obscuring angle for semi-trucks. The only traffic within the area is residential as Riverside area has no commercial establishments outside of mini-storage and rental properties. The subject property has a 90° access with NE 35<sup>th</sup> Street and is established for residential traffic.

**FINDINGS:****27. Negative Impacts Mitigation:**

- a. Fencing. The typical living style of the Riverside area involves spacious lots with an expectation of domestic animals and livestock. Livestock is not allowed within the R-2 zone at this time; however, Riverside was developed from large livestock lots and farming plots. The introduction of a secondary dwelling in the back of a large lot may be seen as interfering with the neighbors. A fence is proposed but not required. However, the Commission may require a fence to establish privacy from the existing neighbors and the main dwelling given the neighborhood.
- b. Landscaping (street trees). Because Riverside area was inherited from the County under County regulations, no street trees have been planted as a concerted effort. This site does not have any street trees. Most of the lots along 35<sup>th</sup> Street do not have street trees.
- c. Parking. A dwelling requires one off-street parking space. Manufactured dwellings require a garage or carport. The applicant indicates a carport. The Commission may want to require that the carport is permitted and constructed/installed prior to final inspection of the manufactured dwelling. Building Codes does not issue an occupancy certificate for manufactured dwellings as they come from factories ready for occupancy.

**28. Historic, Scenic, or Cultural Preservation:** the site is not known to exhibit any historic, scenic, or cultural resources or attributes. The site is a developed residential lot.

**CONCLUSION: Conditions are or may be required to meet criteria: fencing, landscaping, and parking.**

**5. PUBLIC NOTICE AND COMMENTS:**

On March 22, 2022, staff sent out 25 notices to the neighboring property owners within 250 feet of this proposal. This application requires a public hearing and has an appeal period of 14 days from the Planning Commission decision. Hearing date for this proposal is April 14, 2022.

**FINDINGS:**

1. The applicant has submitted a conditional use application to install a 1998 Manufactured Dwelling.
2. A public hearing has been scheduled for April 14, 2022 on this matter.
3. The Commission must determine if the criteria for a conditional use have been met.

**CONCLUSION: The Planning Commission must determine if this application to install a 1998 manufactured dwelling at this location meets the conditional use criteria.**



## 6. APPLICATION OF THE CRITERIA:

### SUMMARY FINDINGS:

- The Zoning Map shows this area to be within the R-2, Medium Density Residential zone.
- The proposal is to install a 1998 Manufactured Dwelling within the R-2, Medium Density Residential zone. Single-family dwellings are permitted within this zone. Two-family dwellings or two single-family dwellings on one lot are permitted within this zone.
- The request requires Conditional Use approval as the manufactured dwelling is more than six years old and post-1976.
- The density would be two units on 33,977 square feet. Density would be met with four to ten units; however, this is a pre-existing development inherited under County zoning control. The addition of a second dwelling would bring it closer to density standards.
- Lot coverage would be met at 3564 square feet of roofed structures on 33,977 square feet of land, which equals 10%. If the secondary dwelling were to be divided from the main residence, the applicant has indicated it would be placed on an 8000 square foot lot.
- The proposed Manufactured Dwelling is a single-story structure and would meet Maximum Height Limits.
- The dwelling is a 1998 Fleetwood, which requires conditional use approval prior to placement as it is more than six years of age and constructed after 1976.
- The proposed Manufactured Dwelling is a 1998 Fleetwood 27'x52' home with 1,404 square feet. A home inspector report was not submitted with the application.
- Two photos have been submitted that demonstrate the dwelling's exterior walls are 2"x6" single wall construction.
- The City has not received a building application for the foundation of this dwelling. A building permit is required for a permanent foundation.
- Pictures submitted with the application show a 3:12 pitch to the roof.
- The water, natural gas, and sewer lines are installed in NE 35<sup>th</sup> Street. This home would need to connect to the lines in NE 35<sup>th</sup> Street, independent of the existing dwelling. There is no Home Inspection Report on the electrical, plumbing or mechanical systems of this dwelling.
- A 1680 square foot stick-built single-story dwelling and a 480 square foot garage currently occupy the site. The assessed value of this property is \$153,620.
- The Umatilla County Assessor's office shows the 1998 Fleetwood dwelling to have an assessed value of \$37,540.
- The addition that incorporates this property does not have a home owner's association or covenants enforced.
- Staff has compiled a map of the values within the neighborhood, the notice map area, from the 2021 Assessor Reports for those properties. There are 25 properties within the notice area, including the subject property. The average value is \$108,046. The addition of this dwelling to the neighborhood will lower the average value of the area to \$105,334. Therefore, this dwelling will reduce the overall average value of the neighborhood by \$2,712.00.
- No Home Inspector Report has been provided on the proposed Manufactured Dwelling.
- The Manufactured Dwelling appears to have three different sidings. The front has horizontal siding that may or may not be T1-11, the back siding is vertical T1-11, and the sides are paneled T1-11.

**SUMMARY FINDINGS (CONT'D):**

- The door trim does not appear to be in good condition. There is damage to the front door lock area and a hole near the back door. The windows are vinyl framed, double-glazed. The paint appears as weathered and the Commission may require repainting.
- The roof was not inspected and appears to be brown composite shingles. There appears to be skylight on the back side of the roof.
- The subject area is not within a historic district. The six neighboring properties are stick-built single-family dwellings.
- The area is not subject to floodplain management.
- The proposal is not for a caretaker's dwelling.
- **Site is Adequate in Size and Shape:** The applicant did not request a Pre-Conference meeting. Staff has reviewed the site plan. The site is 33,977 square feet. The proposed building will occupy 8,000 square feet of that space. The site is approximately 100 feet wide by 310.86 feet deep. Staff found the lot adequate in size with respect to the placement of the structure and the number of required parking spaces. If proposed for a land division, the 8000 square feet assigned to the secondary dwelling is within the minimum lot size standards. The Site Plan shows a driveway along the north property line. The driveway width is 20-feet wide, adequate for a fire road. The driveway leads into the proposed carport, which is shown in the northeast corner of the property. The secondary dwelling will be placed next to the carport. The home would be provided a yard and two sheds, which are existing. A fence is proposed to separate the secondary dwelling site from the main dwelling site.
- **Site Relates Well to Streets and Highways:** The Riverside area was an inherited development from the County. The land divisions and road layouts were constructed under County regulations for a farming area. Hence, the area lacks proper road layout and has limited through roads. Riverside Avenue and 35<sup>th</sup> Street act as the only through streets in the area. Both function as collector streets; however, Riverside is the main collector street. 35<sup>th</sup> Street provides the secondary fire access, which is required for residential developments that exceed 35 homes. The access from 35<sup>th</sup> Street onto Highway 11 is too narrow and steep, with a sight-obscuring angle for semi-trucks. The only traffic within the area is residential as Riverside area has no commercial establishments outside of mini-storage and rental properties. The subject property has a 90° access with NE 35<sup>th</sup> Street and is established for residential traffic.
- **Negative Impacts Mitigation:**
  - Fencing. The typical living style of the Riverside area involves spacious lots with an expectation of domestic animals and livestock. Livestock is not allowed within the R-2 zone at this time; however, Riverside was developed from large livestock lots and farming plots. The introduction of a secondary dwelling in the back of a large lot may be seen as interfering with the neighbors. A fence is proposed but not required. However, the Commission may require a fence to establish privacy from the existing neighbors and the main dwelling given the neighborhood.
  - Landscaping (street trees). Because Riverside area was inherited from the County under County regulations, no street trees have been planted as a concerted effort. This site does not have any street trees. Most of the lots along 35<sup>th</sup> Street do not have street trees.
  - Parking. A dwelling requires one off-street parking space. Manufactured dwellings require a garage or carport. The applicant indicates a carport. The Commission may want to require that the carport is permitted and constructed/installed prior to final inspection of the manufactured dwelling. Building Codes does not issue an occupancy certificate for manufactured dwellings as they come from factories ready for occupancy.

**SUMMARY FINDINGS (CONT'D):**

- **Historic, Scenic, or Cultural Preservation:** the site is not known to exhibit any historic, scenic, or cultural resources or attributes. The site is a developed residential lot.

**CONCLUSION: The Planning Commission must determine if this application to install a 1998 manufactured dwelling at this location meets the conditional use criteria.**

**7. SUMMARY CONCLUSIONS:**

**NOTE: UPDATED UNIFIED DEVELOPMENT CODE AMENDMENTS ARE NOT IN EFFECT UNTIL APRIL 16, 2022. APPLICATIONS RECEIVED PRIOR TO THIS DATE FALL UNDER THE 2021 UDC.**

1. The request complies with the UDC criteria for the R-2 Medium Density Residential zone. The proposal is to place a secondary dwelling on a residential lot.
2. The request requires Conditional Use approval because the proposed dwelling is a manufactured dwelling older than six years but built after 1976.
3. The proposed Manufactured Dwelling does not demonstrate an assessed value that increases the average assessed value of the neighborhood.
4. The Planning Commission needs to state findings that this request complies with the criteria for a Conditional Use and that the home meets the criteria for manufactured dwellings aged 6+ years and post-1976 or can comply subject to certain specific non-discretionary conditions of approval.

As noted in §13.06, the burden is on the applicant to prove that a proposed land division meets all development criteria and standards. A request for tentative plat approval may not be granted unless all applicable decision criteria and standards are found met. In this case, staff was able to make findings and conclusions that all criteria are met or can be met through specific conditions of approval.

**SIGNS:**

Approval of this Land Use Decision does not constitute sign permit approval. Signs are reviewed through a separate permit application procedure. Signs must comply with all applicable Oregon codes and City of Pendleton ordinances.

**8. DECISION:****SUGGESTED MOTIONS FOR APPROVAL / DENIAL**

**For approval** *(may be modified subject to summary findings and conclusions):*

1. I move that the Commission adopt the findings and conclusions prepared by staff (and as amended by the Commission), as set forth in action **CUP22-04** above.
2. *I move that the Commission adopt these amendments as agreed upon by the Commission at this hearing: (list amendments).*
3. I move that the request for a Conditional Use to install a 1998 Manufactured Dwelling within the R-2 Medium Density Residential zone, as set forth in action **CUP22-04** be **APPROVED**, based on the information, findings and conclusions set forth above *(and amended by the Commission, if applicable)*, subject to the conditions of approval as recommended by staff *(and agreed upon by the Commission, if applicable)*.

**For denial** *(may be modified subject to summary findings and conclusions):*

1. I move that the Commission adopt the findings and conclusions made by the Commission at this hearing, specifically showing that the proposal set forth in action **CUP22-04** DOES NOT meet the applicable approval criteria *(must note criteria cited)*.
2. I move that the request for a Conditional Use to install a 1998 Manufactured Dwelling within the R-2 Medium Density Residential zone, as set forth in action **CUP22-04** be **DENIED**, based on the information, findings and conclusions made by the Commission at this hearing.

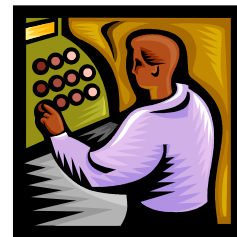
SUGGESTED MOTIONS FOR MODIFICATION**For modification** *(may be modified subject to summary findings and conclusions):*

1. I move that the request for a Conditional Use to install a 1998 Manufactured Dwelling within the R-2 Medium Density Residential zone, as set forth in action **CUP22-04** be **returned to the applicant for modification and that this hearing be continued until such time as the application has been resubmitted for the Commission's review, provided that such resubmission is received within 60 days of tonight's hearing.**

Reviewed by George Cress, City Planner

**8. CODES SPECIFIC TO APPLICATION****UNIFIED DEVELOPMENT CODE ORDINANCE NO. 3845****3.05 Manufactured Dwelling Standards on Residential Lots**

It is the purpose of this Section to regulate Manufactured Dwellings by establishing minimum standards governing the location, construction, and maintenance of dwellings on residential lots.

**3.05.1 Manufactured Dwelling on Residential Lots Structural Standards**

A Manufactured Dwelling meeting ORS 446.003, and shall:

- A. Be no less in width than 20-feet wide at its narrowest wall, as defined by the roofline, and enclose a floor area of not less than 1,000 square feet as a primary residence or 999 square feet or less as an accessory dwelling;
- B. Be placed on an excavated and back-filled foundation, enclosed at the perimeter with no more than twelve (12") inches of the enclosing material exposed above grade. Where the building site has a sloped grade, no more than twelve (12") inches of the enclosing material shall be exposed on the uphill side of the home. If the Manufactured Dwelling is placed on a basement, the twelve (12") inches limitation will not apply. Or on an enclosed solid perimeter wall made of either concrete blocks or concrete pour;
- C. Have a pitched roof with a nominal pitch of three (3') feet in height for each twelve (12') feet in width;
- D. Have utilities connected in accordance with manufacturer's specifications and Oregon Department of Commerce requirements;
- E. Be in good repair and free of structural, electrical, mechanical, and plumbing defects, any of which must be corrected prior to placement;
- F. No pieces of equipment, furniture, appliances (excepting lawn furniture and fuel storage units) be allowed on the property outside the Manufactured Dwelling unless it is within a fully enclosed structure;
- G. Manufactured Dwellings six (6) years or newer are regarded as conforming and are permitted as an outright use;
- H. Manufactured Dwellings over six (6) years old and newer than 1976, with the approval of the Pendleton Planning Commission, may be granted a Conditional Use permit for siting.

Criteria for Conditional Use approval:

1. All construction shall consist of 2" x 6" exterior wall construction and be verified by a certified independent construction inspector;
2. Roof, paint, siding condition and all other areas of aesthetics are in good condition;
3. The value of the property, once completed, with the proposed Manufactured Dwelling, is equal to or greater than the previous home, if any;
4. Compliance with any and all construction rules or neighborhood covenants;
5. Neighboring property values are not adversely affected;

6. No pieces of equipment, furniture, appliances (excepting lawn furniture and fuel storage units) be allowed on the property outside the Manufactured Dwelling unless it is within a fully enclosed structure approved by the Planning Commission; so long as the property is used as a Manufactured Dwelling site;
7. Proof of compliance with the Manufactured Housing Construction and Safety Standards Code of June 15, 1976, for Manufactured Dwellings shall consist of the Housing and Urban Development placard referencing the Oregon State located within the Manufactured Dwelling.



- I. Have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the City;
- J. Permanent Foundation with Enclosed Perimeter. A Manufactured Dwelling requiring a permanent foundation with perimeter enclosure must be set onto an excavated area, with foundations, footings and crawl space or basement walls constructed in accordance with the City's adopted Manufactured Dwelling building code standards. The space between the floor joists of the dwelling and the excavated underfloor grade shall be completely enclosed with the permanent perimeter enclosure (except for required openings).
- K. Siding for Manufactured Dwellings. The following siding materials are approved for usage on Manufactured Dwellings:
  1. Residential horizontal painted aluminum lap siding,
  2. Residential horizontal vinyl lap siding,
  3. Cedar or other wood siding,
  4. Wood grain, weather resistant, press board siding,
  5. Stucco siding,
  6. Brick or stone siding
  7. Other approved siding materials which are aesthetically compatible.
- L. Roofing for Manufactured Dwellings. The following roofing materials are approved for usage on Manufactured Dwellings:
  1. Composition shingles on a roof pitched according to the design specifications of the shingles,
  2. Shake shingles on a roof pitched according to the design specifications of the shingles,
  3. Tile materials on a roof pitched according to the design specifications of the tiles,
  4. Other approved roofing materials which are aesthetically compatible.
- M. All Manufactured Dwellings shall have a either a garage or carport with exterior materials matching the Manufactured Dwelling.

### 3.05.2 Manufactured Dwelling on Residential Lots Placement Standards

- A. Must not be sited adjacent to any historic structure or within any district designated by the Pendleton Comprehensive Plan as a historic district or residential land immediately adjacent to a historic landmark;
- B. No Manufactured Dwelling shall be permitted in any National Register Historic District;
- C. When located within the flood plain, shall be installed in compliance with the zoning and building codes adopted for floodplain development [as determined from the Federal Emergency Management Administration (FEMA) Flood Insurance Rate Map (FIRM) for Umatilla County Oregon and incorporated areas]; and the foundation shall meet building codes standards for floodplain development, and shall be on an enclosed solid perimeter wall made of either concrete blocks or concrete pour;
- D. Permitted conditionally as a caretaker's dwelling:
  1. Subject to the same regulations as caretaker's dwellings;
  2. Limited to one caretaker's dwelling per lot or parcel;
  3. Shall exhibit the same set-up as Vacation Trailers (RVs);
  4. Must occupy space behind the place of business;
  5. Must be removed upon cessation of the specific business for which the caretaker's dwelling was allowed.

## R-2 Medium Density Residential

**3.03.1 Description and Purpose.** To provide for land areas to be used predominately for dwellings of varying types within a moderate density range, together with related uses.

Within the Central Mixed Use Plan Designation, the R-2 zone also provides opportunities for adaptive re-use of historic structures and for expansion of existing commercial and light industrial uses.

Within a designated Opportunity Area, land within the R-2 zone is suitable for the range of urban land uses authorized by a Master Development Plan approved by the City pursuant to the Opportunity Area Subdistrict in Article 7.

**3.03.2 Permitted Uses.** The following uses and their accessory uses are permitted:

- A. City Park

- B. Dwelling, duplex; or two single family dwellings on a minimum lot size of 5,000 square feet (subject to the provisions of Table 3.1), provided the distance between principal buildings is a minimum of ten feet.
- C. Dwelling, single family (attached or detached)
- D. Manufactured Home, Class A provided that it is located within a Class A or Class B Manufactured Housing Subdistrict, and Class B, provided that it is located within a Class B Manufactured Housing Subdistrict, subject to the requirements of Section 3.07 of this Ordinance.
- E. Residential Homes and Residential Facilities (see ORS [197.660-670](#))
- F. Townhouse
- G. Manufactured Home Park, Manufactured Home Subdivision, Vacation Trailer Park (Individual Conditional Use permits not required for each unit within approved parks or subdivisions)
- H. Within the Central Mixed Use Plan Designation, adaptive commercial or industrial re-use of an historic structure if approved by the Historic Preservation Commission.
- I. Within a designated Residential or Mixed Use Opportunity Area, conditional uses listed in Section 3.03.3 shall be permitted when authorized by an approved Master Development Plan.
- J. Within a designated Mixed Use Opportunity Area, other urban uses shall be permitted when authorized by an approved Master Development Plan.
- K. Transportation uses consistent with the adopted Transportation System Plan and OAR 660-012-0045, and not otherwise identified as conditional uses, pursuant to 3.03.3 (M).

**3.03.3 Conditional Uses.** The following uses and their accessory uses are permitted when authorized in accordance with the provisions of Article 11 of this Ordinance:

- A. Bed and Breakfast
- B. Cemetery
- C. Church, lodge, private club or other assembly area
- D. Day Nursery, Social Services
- E. Dwelling, Multi-family
- F. Governmental Structure or land use, public and semi-public use or structures
- G. Home Occupation
- H. Health Services
- I. Neighborhood Commercial (see Section 3.08 for details)
- J. Schools and Colleges
- K. Transportation and Communication Facilities (Railroads, general warehouse/storage, air transportation, pipelines except natural gas, packing and crating, communication facilities by wire or airwave, electric/gas/sanitary services)
- L. Within the Central Mixed Use Plan Designation, expansion of existing, lawfully established commercial or light industrial uses on the same or adjacent property
- M. The following uses:
  - (1) park-and-ride/rideshare facilities
  - (2) transit centers
  - (3) transportation warehousing

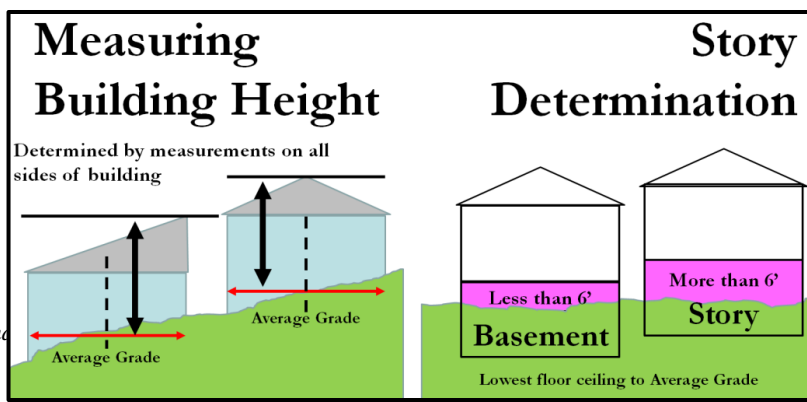
### 3.09 General Provisions for Residential Zones

This Section sets forth development standards that apply within Residential zones. However, in designated Opportunity Areas, the dimensional standards may be modified by an approved Master Development Plan (MDP) pursuant to the Opportunity Area Subdistrict in Article 7.

**3.09.1 Density.** In all of the residential zones, the minimum and maximum residential densities shall be as shown in Table 3.1.

**3.09.2 Lot Size.** In all of the residential zones, the minimum lot sizes shall be as shown in Table 3.1.

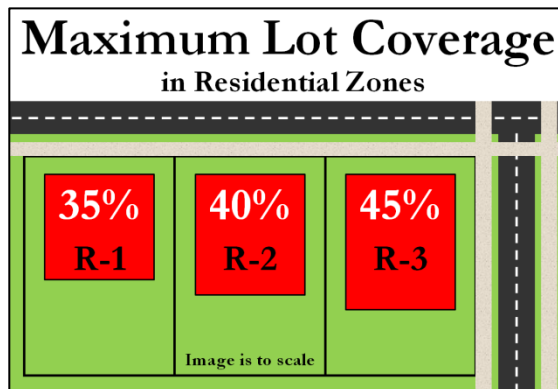
**3.09.3 Maximum Lot Size.** The maximum lot size that may be approved administratively shall not exceed twice the minimum lot size under the corresponding zone and slope. Mapped constraints may be removed from the maximum lot size calculation.



**3.09.4 Maximum Height.** In all of the residential zones, the maximum height shall be as shown in Table 3.1. Building height shall be determined by measuring all sides of a building relative to average grade. Building stories located more than six feet above average grade shall be counted as a full story; those less than six feet above average grade shall be counted as a basement.

**3.09.5 Exceptions to Height limits.** The height limits of this Ordinance shall not apply to church spires, belfries, cupolas, and domes not for human occupancy, monuments, water towers, observation towers, transmission towers, windmills, chimneys, smokestacks, derricks, conveyors, flagpoles, radio towers, masts, aerials, solar energy collectors and equipment used for the mounting or operation of such devices, and any other on-site energy generating device.

**3.09.6 Maximum Lot Coverage.** In all of the residential zones, the maximum lot coverage shall be as shown in the adjacent diagram and Table 3.1.



**3.09.7 Miscellaneous Lot Provisions.**

- A. Building Lots must abut a public right of way or other public access. No residential, commercial, or industrial building shall be erected on a lot which does not abut at least one street. Where there is a residence constructed, as of the date of this Ordinance, on an interior lot not abutting on a public street, such property shall continue unaffected except that in the case of reconstruction of such a structure, as provided in Section 11.07 of this Ordinance, nothing more than a single family dwelling and accessory buildings may be constructed upon such interior lot, and then only when easements for ingress and egress are recorded.
- B. The primary access shall be via a street that is improved or will be improved to City standards prior to occupancy of any unit, unless otherwise approved by the Planning Commission.
- C. Parking, Storage or Use of Recreational Equipment. No equipment shall be used for living, employment, sleeping or housekeeping purposes, nor connected to utilities, when parked or stored on a residential lot, or in any location not approved for such use. Recreational vehicles may be used for guest accommodation for a maximum of 14 days within a three month period.
- D. Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially used property other than in completely enclosed buildings.

**3.09.8 Yard (Setback) Regulations – Primary Structures**

- A. Front Yard: The minimum front setback shall be as shown in Table 3.1.
- B. Side Yard: The minimum side setback shall be as shown in Table 3.1, except on corner lots, where ten (10) feet are required on the side abutting the street, and in the case of attached single-family dwellings, where a zero lot line is allowable (with the provision of common “party” wall construction);
- C. Rear Yard: The minimum rear setback shall be as shown in Table 3.1, except in the case of attached single-family dwellings, where a zero rear lot line is allowable (with the provision of common “party” wall construction).
- D. Garage or carport face: 20 feet from any property line. The front wall of a garage, and any portion of a carport, shall not be permitted less than twenty (20) feet from a property line for primary and accessory structures.
- E. The required front yard depths may be reduced in any residential zone as follows:
  1. If there are dwellings on both abutting lots with front yards of depths less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots;
  2. If there is a dwelling on one abutting lot with a front yard of less depth than the required depth for the zone, the front yard for the lot need not exceed a depth one-half way between the depth of the abutting lot and the required front yard depth:



3. In determining the depth of a front yard, the required depth shall be measured at right angles to the nearest street right-of-way, except as provided in subsection (F) below.
- F. No building shall be erected on a lot which fronts upon a street having only a portion of its required width dedicated (as set forth in the Comprehensive Plan), unless the yards provided and maintained in connection with such building have a width and/or depth needed to complete the street right-of-way width plus the width and/or depth of the yards required on the lot by this Ordinance.
- G. Only under adverse topographical circumstances will a variance be granted for a front yard setback less than ten (10') feet.
- H. Projecting Building Features: The following building features may project into the required front yard no more than five (5') feet, and into the required interior yards no more than two (2) feet, provided that such projections are no closer than three (3) feet to any interior lot line:
  1. Architectural features such as gutters, flues, eaves, cornices, belt courses, sills, awnings, buttresses, or similar features;
  2. Chimneys and fireplaces.

### 3.09.9 **Setbacks – Accessory Structures, Fences and Walls**

- A. The front wall of a garage or carport shall not be permitted less than twenty (20) feet from a property line fronting an existing street or a future street as shown in the Transportation System Plan. Garages and carports on alley frontages shall have a minimum setback of five (5) feet.
- B. In any zone, open work fences, hedges, guard railings or other landscaping or architectural devices for safety protection around depressed ramps, stairs or retaining walls, may be located in required yards, provided such devices are not more than three and one-half feet (42") in height. Only stairs and protective railings may be located within the first ten (10') feet of the required front yard.
- C. Accessory Structure: In the interior rear and/or side yards, an accessory structure may be located so that its walls and/or projecting features shall be no closer than three (3) feet to the property line.
- D. Solar energy collectors and equipment used for the mounting or operation of such devices, and any other on-site energy generating device shall be exempt from the interior yard requirements.
- E. Satellite dish antennas shall not be located in the front yard (setback) of a dwelling.
- F. Porches, patios, decks and associated covers, and unattached solar energy systems shall be permitted with a minimum ten (10') foot front yard setback. Such structures shall not be enclosed to extend the living areas of the house.
- G. Stairs and other means of access to side and/or rear decks and patios may project into the minimum side and/or rear setback provided they are permitted in accordance with all applicable Structural, Fire or other codes.
- H. Fences and Walls. In any residential zone, a sight obscuring fence or wall, not exceeding six (6) feet in height, may be located or maintained within the required interior yards, except where the requirements of vision clearance apply. Such fences or walls may be placed in front or side yards abutting a street, provided such fences or walls do not exceed three and one-half (3.5') feet in height. Non-sight obscuring fences of six (6') feet or less in height may be erected within any required yard. This Section does not apply to retaining walls.
- I. Retaining walls. Retaining walls, steps, ramps and other associated elements associated with site grading are exempt from setback standards but must observe all other applicable permitting requirements.

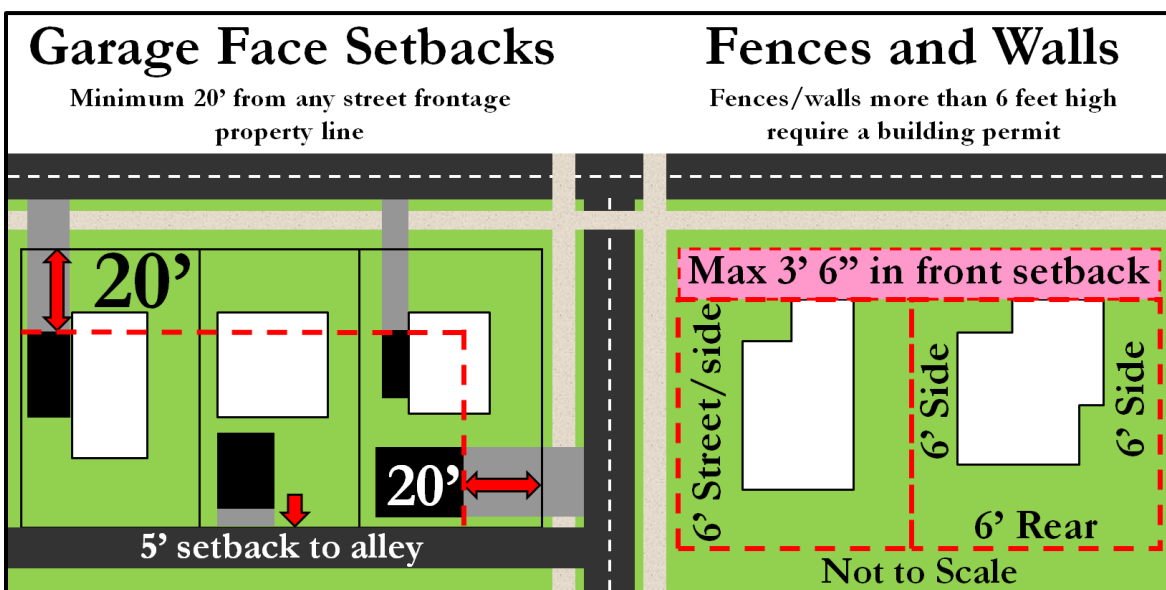
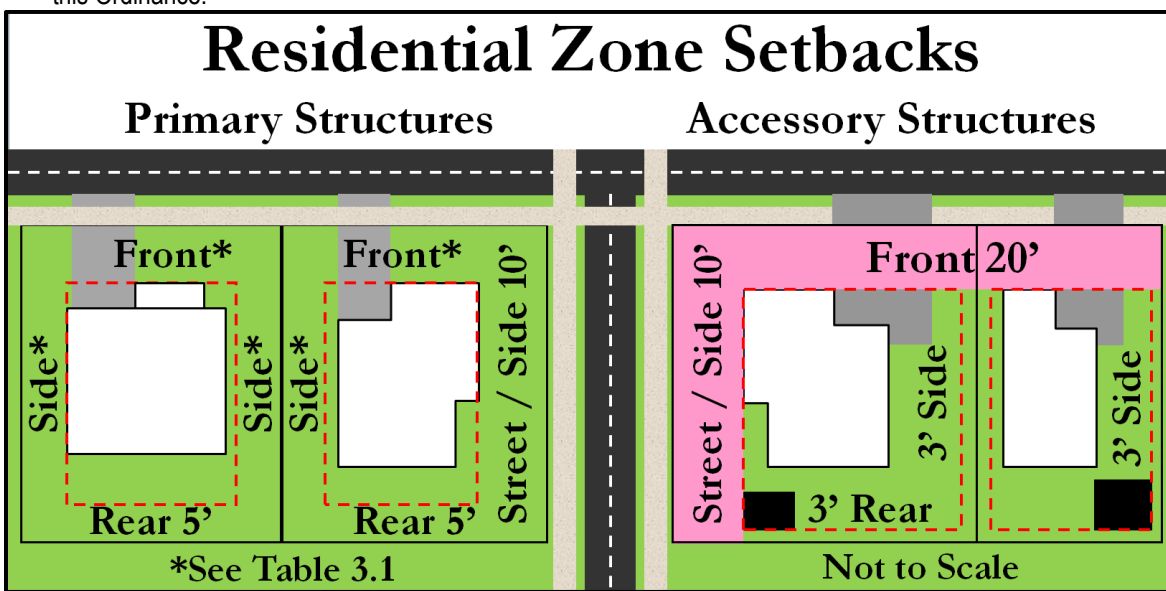
### 3.09.10 **Portable Storage Containers (PSC).** Any box-like container which is transported by truck or trailer to a desired location for drop off and which is otherwise stored at an offsite location.

- A. The maximum allowable area of a PSC shall be 160 square feet with no dimension exceeding 20 feet.
- B. Not more than one PSC shall be placed on any lot at one time.
- C. PSCs shall not be placed or unloaded on any street within the City.
- D. PSCs shall be placed no closer than 10 feet to a front property line and shall comply with the side and rear lot setback requirements and Vision Clearance standards for structures in the applicable zone.
- E. PSCs shall only be placed on a hard surface and shall not be located in any required open space, landscaped area, on any sidewalk or trail, or in any location that blocks or interferes with any vehicular and/or pedestrian circulation, and shall be located in accordance with all applicable building and fire code regulations for the purpose of ensuring safe ingress and egress to dwellings, access to utility shut-off valves, and for fire protection.
- F. During a construction project under an active Building Permit, PSCs and trailers may be used to store tools and materials on site. All such storage facilities must be removed within 30 days of completion or cessation of construction.
- G. Notwithstanding (F) above, no PSCs shall be placed for a total of more than 180 days.





- 3.09.11 **Neighborhood Commercial Uses.** Neighborhood Commercial Uses are intended to provide for a concentration of a limited range of commercial uses needed to meet the daily convenience shopping and service needs of residents in the immediate area, rather than large stores of a supermarket nature, or uses designed to serve the entire City or larger market area. Such uses should be provided, whenever possible, in a business island, rather than on several sites scattered throughout the neighborhood, or in strip developments. Neighborhood Commercial uses shall comply with the following standards:
- A. **Uses Allowed.** The City Planner shall determine if a particular use is allowable as a Neighborhood Commercial use based on the statement of intent above. The City Planner's decision may be appealed to the Planning Commission as set forth in Article 13 of this Ordinance.
  - B. **Building Design.** A Neighborhood Commercial use shall not exceed the building height, lot coverage or setback regulations of the zone in which it is located.
  - C. **Minimum Lot Size.** A Neighborhood Commercial use shall occupy a site of not less than 10,000 square feet.
  - D. **Hours of Operation.** Neighborhood Commercial uses shall operate no earlier than 7:00 a.m. or later than 8:00 p.m. unless otherwise approved by the Planning Commission.
  - E. **Signs.** Ordinance No. 2775 (Sign Code) requires a Conditional Sign Permit for a principal Neighborhood Commercial sign.
  - F. **Parking.** Neighborhood Commercial uses shall comply with the parking, landscaping and other provisions of Article 8 of this Ordinance.



<b>Table 3.1 Development Standards in Residential Zones</b>			
<b>Lot size and Density</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>
Minimum Density (DU/acre)	1	4	10
Maximum Density (DU/acre)	9	18	35
Minimum Lot Size (<10% slope)	6000sf	5000sf	5000sf
Single Family attached	3000sf	3000sf	3000sf
Minimum Lot Size (10-20% slope)	7000sf	7000sf	6000sf
Single Family attached	3500sf	3500sf	3500sf
Minimum Lot Size (>20% slope)	9000sf	8000sf	7000sf
Single Family attached	4000sf	4000sf	4000sf
Planning Commission approval required for any lot or parcel more than 2X the minimum - see Section 3.08			
Maximum height (feet / stories)	30 / 2	40 / 3	50 / 5
Maximum lot coverage (%)	35	40	45
<b>Setbacks (feet)</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>
Front	15	15	10
Front (unenclosed elements)	10	10	10
Side	5	4	3
Rear	5	5	5
Street/Side	10	10	10
Garage/Carport Face all sides	20	20	20
Front - accessory structure	20	20	20
Side - accessory structure	3	3	3
Rear - accessory structure	3	3	3
Street/Side - accessory structure	10	10	10
<b>Permitted and Conditional Uses: Residential</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>
Single Family Detached	P	P	X
Single Family Attached	P	P	P
Duplex or two SFD on one lot	P	P	P
Townhouse	P	P	P
Multi-Family Dwelling	CU	CU	P
Manufactured Home Park/Subdivision	CU	P	X
Vacation Trailer Park	CU	P	X
Home Occupation	CU	CU	CU
Residential Care Facility	P	P	P
Boarding and Lodging House	X	X	P
<b>Permitted and Conditional Uses: Non-Residential</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>
Animal Clinic, Kennel or Hospital	CU	X	X
Agricultural Production and Services	CU	X	X
Business and Professional Offices/Services	X	X	CU
Cemetery	CU	CU	X
Church, Lodge, Club, General Assembly	CU	CU	CU
City Park	P	P	P
Day Nursery, Social Services	CU	CU	P
Government Structure or Land Use	CU	CU	CU
Hospital, Nursing Care Facility	CU	X	X
Health Services, general	X	CU	CU
Light Industrial	CU	X	X
Neighborhood Commercial	CU	CU	CU
Schools, Colleges	CU	CU	CU
Transportation & Communication Facilities	CU	CU	CU

## 9.05 Access to Lots or Parcels

9.05.10 **Width of Driveway Approach Apron.** The width of driveway approach aprons shall not exceed the following dimensions:

- A. For residential driveways, 14 feet for single driveways and 22 feet for double driveways. No more than one driveway shall be permitted for lots having frontages of 60 feet or less.
- B. For commercial driveways, when one or more driveway approaches serve a given property frontage, no single apron shall exceed 30 feet in width if the property abuts a street where the speed limit is 25 miles or less per hour; or 35 feet in width where the speed limit is in excess of 25 miles per hour.
- C. A safety island of full height curb shall be provided between driveway approaches serving any one property frontage. Whenever possible, this safety island shall be 22 feet in length and in no case shall it be less than 10 feet in length.
- D. In no case shall single driveways serving more than one property be combined to allow greater widths than stated above.
- E. Deviations not to exceed 50%, of the maximum Driveway Approach Apron width limitations may be considered for Type II Minor Variance approval.

#### 9.05.11 Driveway Surfaces.

- A. Driveway surfaces shall be designed for all weather conditions (paved or compacted gravel). Vehicle driveway and storage areas will not be allowed to be dirt or vegetation. For grades over 8 percent, paved driveway surfaces are required. All portions of the driveway within the public right-of-way, and at a minimum of the first 20 feet behind the curb or sidewalk shall be paved as an apron to control gravel.
- B. For residential driveways, including private roads, the maximum slope of any portion of the driveway shall be 20 percent, with an overall average grade of less than 15 percent along the entire length of the driveway. The maximum grade change in any given 10 feet of driveway shall be 12 percent for a crest situation and 16 percent for a sag situation. The maximum number of houses served by a driveway or private road is three.

#### 11.06 Conditional Use Permits

- 11.06.1 **Purpose.** In all zones, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this ordinance and their effect on surrounding properties.

The Planning Commission shall have the authority to approve, approve with conditions, disapprove or revoke conditional use permits subject to the provisions of this Section. Changes in use, expansion or contraction of site area, or alteration of structure or uses classified as conditional and existing prior to the effective date of this ordinance shall conform to all regulations pertaining to conditional uses.

- 11.06.2 **Allowances.** Those uses specifically identified as Conditional Uses in this Code may be considered for approval. This Code cannot anticipate every potential development proposal; uses that are similar in nature and impact to those that may be considered under the Conditional Use procedure, pursuant to a formal interpretation by the Planning Commission, may be processed and considered for approval under these standards.

- 11.06.3 **Findings of fact.** In order to grant any conditional use, the Planning Commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

- A. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.
- B. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
- C. Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.
- D. In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.

- 11.06.4 **Conditions of approval.** In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

- A. Increasing required lot size, yard dimensions, open spaces or buffer areas.
- B. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area.
- C. Requiring landscaping and maintenance thereof.

- D. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress.
- E. Requiring means of pedestrian/bicycle access pathways to serve the property.
- F. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas.
- G. Limiting size, location and number of signs.
- H. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property.
- I. Limiting or prohibiting openings in sides of buildings or structures.
- J. Enclosure of storage areas and limitation of outside display and/or storage of merchandise.
- K. Requiring maintenance of grounds.
- L. Regulation of noise, vibration, odors, etc.
- M. Regulation of time for certain activities.
- N. Establishing a time period within which the proposed use shall be developed.
- O. The requirement of a bond for removal of such use within a specified period of time.
- P. Increase the size, type or capacity of any or all utility services, facilities or appurtenances.
- Q. Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed.
- R. The Planning Commission may require that an applicant furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards; or an irrevocable consent to participate in an LID for those improvements has been executed.
- S. And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Section.

11.06.5 **Limitations.** A conditional use permit shall not grant variances to regulations otherwise prescribed by the Development Code. Variance application(s) may be filed in conjunction with the conditional use application, and both applications may be reviewed at the same hearing.

11.06.6 **Procedure.** Conditional Use applications shall be processed according to the standards for a Type III application contained in Article 13.

11.06.7 **Appeal.** Appeal of a Conditional Use shall be processed according to the standards for appeal of a Type III decision contained in Article 13.

11.06.8 **Alterations.** The Commission may establish standards under which any future enlargement or alteration of the use shall (or shall not) require a new or modified Conditional Use application.

11.06.9 **Revocation.** Upon a determination that there are sufficient grounds, the Planning Commission may at any time initiate a review of the operation of any Conditional Use. A review shall be initiated if the Planning Director receives three documented and unresolved complaints within six months that a conditional use has not complied with the applicable conditions of approval or the applicable standards of this Section. If a review is initiated, the Commission shall hold a public hearing to determine whether the use is in compliance with applicable standards and conditions. Review of an existing Conditional Use shall be processed as a Type III procedure consistent with the standards for a new Conditional Use. At the conclusion of the hearing, the Planning Commission shall adopt findings of compliance or non-compliance for the conditional use. Upon adoption of findings of non-compliance, the property owner(s) shall submit a compliance schedule documenting that compliance will be achieved within forty-five (45) days or a shorter period of time if the Commission determines there is a cause for emergency action. Receipt of further documented and unresolved complaints will result in revocation of the conditional use permit.

## 11.07 Pre-Existing, Non-Conforming Uses and Developments

11.07.1 Non-Conforming Uses are existing uses or development that do not comply with the Code. The standards for non-conforming uses and development are intended to provide some relief from code requirements for uses and developments that were established prior to the effective date of this Code and do not comply with current standards. Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Ordinance. No unlawful use of property existing at the time of passage of this Ordinance shall be deemed a non-conforming use.

- 11.07.2 **Continuation of Nonconforming Uses.** Where at the time of adoption of this Code a use of land exists which would not be permitted by the regulations imposed by this Code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:
- A. Expansion Prohibited. No such nonconforming use may be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land;
  - B. Location. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
  - C. Discontinuation or Abandonment. The nonconforming use of land is not discontinued for any reason for a period of more than 12 months. For purposes of calculating the 12-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
    1. On the date when the use of land is physically vacated;
    2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
    3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
    4. On the date a request for final reading of water and power meters is made to the applicable utility districts.
  - D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use district in which such land is located.
- 11.07.3 **Non-conforming Development.** Where a development exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot or other requirements concerning the development; and the development was lawful when constructed, the development may remain on the site so long as it remains otherwise lawful, subject to the following provisions:
- A. Alterations. No such nonconforming development may be enlarged or altered in a way that increases its nonconformity, but any development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its nonconformity;
  - B. Destruction. Should such nonconforming development or nonconforming portion of development be destroyed by any means to an extent more than 50 percent of its current value as assessed by the Umatilla County Assessor, it shall be reconstructed only in conformity with this Code;
  - C. Roadway Access. The owner of a non-conforming access connection (i.e., street or highway access) may be required to bring the non-conforming access into conformance with this Code and other applicable standards as a condition of the City or other roadway authority approving a new access connection permit, or a change in land use.
  - D. Relocation or Removal. Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code.
- 11.07.4 **Nonconforming Lots of Record.**
- A. In any zoning district in which single family dwellings are permitted, a single family dwelling and accessory buildings may be erected on any single lot of record in existence on the date of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.
  - B. This provision shall apply even though such lot fails to meet the requirements for area that are applicable in the zoning district, provided that yard dimensions and requirements other than those applying to area of the lot shall conform to the regulations for the zoning district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Planning Commission.
  - C. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on the date of this Ordinance, and if all or part of the lots do not meet the requirements established for lot areas, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot size requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with a size below the requirements stated in this Ordinance.
- 11.07.5 **Alterations or Repairs of a Non-Conforming Use.**
- A. Alterations or repairs of a non-conforming use may be permitted to continue the use in a reasonable manner subject to the provisions of this Ordinance. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.
  - B. Any proposal for the alteration or repair of a non-conforming use may be permitted to reasonably continue, restore or replace the use.

- C. As used in this Section, "alteration" of a non-conforming use includes, as determined by the City Manager:
  - 1. A change in the use of no greater adverse impact to the neighborhood; and
  - 2. A change in the structure or physical improvements of no greater adverse impact to the neighborhood.
- D. A non-conforming use may be altered only insofar as it applies to the zone in which it is located. Once altered to conforming use, no building or land shall be permitted to revert to a non-conforming use.

#### 11.07.6 **Restoration of a Non-Conforming Building, Structure or Lot.**

- A. A non-conforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored, and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction, may be resumed, provided that the restoration is commenced within a period of one (1) year and is diligently prosecuted to completion.
- B. The restoration or reconstruction of a non-conforming building or structure may not create a greater non-conformance than existed at the time of damage or destruction.
- C. Nothing in this Ordinance shall be construed to prevent the reconstruction or replacement of a pre-existing building or structure conforming as to use on a non-conforming lot, so long as such lot did not become non-conforming in violation of the provisions of this Ordinance.

#### 11.07.7 **Creation of a Non-Conformance through a Land Use Action Prohibited**

- A. No action shall be approved that would result in the creation or increase of a non-conformance with this or any other City of Pendleton ordinance and all applicable Oregon State Specialty Codes, unless expressly permitted by same.
- B. For any proposed land division, boundary line adjustment or replat, the City shall require as a condition of approval that any violation or non-conformance be remedied prior to submittal of a final plat.
- C. Non-conformances created as a result of right-of-way dedication or condemnation are exempt from this prohibition.

### **Article XIII. Land Use Application Procedure**

#### **13.04 Type III Procedure (Quasi-Judicial)**

- 13.04.1 **Pre-application Conference.** A pre-application conference is not required for Type III applications but is highly recommended.
- 13.04.2 **Neighborhood Meetings.** There is no legal requirement to conduct neighbor-developer meetings. However, applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. The City can provide the same list used for mailed notices to the applicant if he/she wishes to provide additional notification and/or schedule a community meeting.
- 13.04.3 **Application Requirements.**
  - A. Application forms. Type III applications shall be made on forms provided by the Community Development Department; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
  - B. Submittal Information. When a Type III application is required, it shall:
    - 1. Include the information requested on the application form;
    - 2. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making;
    - 3. Be accompanied by the required fee.
- 13.04.4 **Notice of Hearing.**
  - A. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:
    - 1. At least 20 days before the hearing date, notice shall be mailed to:
      - a. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
      - b. All property owners of record within 100 feet of the site;
      - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.

- d. Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
  - e. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
  - f. Any person who submits a written request to receive notice;
  - g. For appeals, the appellant and all persons who provided testimony in the original decision; and
  - h. For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
2. The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
  3. Notice of the hearing shall be printed in a newspaper of general circulation in the City at least 7 business days before the hearing. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
- B. Content of Notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:
1. The nature of the application and the proposed land use or uses that could be authorized for the property;
  2. The applicable criteria and standards from the development code(s) that apply to the application;
  3. The street address or other easily understood geographical reference to the subject property;
  4. The date, time, and location of the public hearing;
  5. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
  6. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
  7. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Pendleton City Hall at no cost and that copies shall be provided at a reasonable cost;
  8. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
  9. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
  10. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Pendleton Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

#### 13.04.5 Conduct of the Public Hearing.

- A. At the commencement of the hearing, the hearings body shall state to those in attendance:
  1. The applicable approval criteria and standards that apply to the application or appeal;
  2. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
  3. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised in person or by letter not later than the close of the record or following the final evidentiary hearing on the proposal before the local government. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
  4. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a continuance), or by leaving the record open for additional written evidence or testimony per subsection B.
- B. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
- C. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.

1. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
  2. An extension of the hearing or record granted pursuant to this section is subject to the limitations of ORS 227.178 ("120-day rule"), unless the continuance or extension is requested or agreed to by the applicant;
  3. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence;
  4. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
  5. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
  6. The review authority shall retain custody of the record until the City issues a final decision.
- D. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
1. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
  2. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
  3. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
  4. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
  5. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.
- E. Ex parte communications.
1. Members of the hearings body shall not:
    - a. Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per subsection D above;
    - b. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
  2. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:
    - a. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
    - b. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
    - c. A communication between City staff and the hearings body is not considered an ex parte contact.
- F. Presenting and receiving evidence.
1. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
  2. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in subsection C;
  3. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.



#### 13.04.6 Recess of Hearing.

The Planning Commission may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposed action. Upon recessing for this purpose, the Commission shall announce the time and date when the hearing will be resumed.

#### 13.04.7 The Decision Process.

- A. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
- B. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
- C. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection B, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
- D. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten business days after the close of the deliberation;
- E. Notice of Decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
- F. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.

#### 13.04.8 Appeal. A Type III decision may be appealed to the City Council as follows:

- A. Who may appeal. The following people have legal standing to appeal a Type III Decision:
  1. The applicant or owner of the subject property;
  2. Any person who participated in the proceeding by submitting written comments to the Planning Commission.
  3. Any person who participated in the proceeding by providing oral testimony to the Planning Commission at the hearing(s).
  4. The City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. This review shall be conducted in accordance with appeal procedures specified herein.
- B. Appeal filing procedure.
  1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures;
  2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
  3. Content of notice of appeal. The Notice of Appeal shall contain:
    - a. An identification of the decision being appealed, including the date of the decision;
    - b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
    - c. A statement explaining the specific issues being raised on appeal;
    - d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
    - e. Filing fee.
- C. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be a hearing de novo before the City Council. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Planning Commission review. The City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
- D. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type III Appeals;

- E. Further Appeal. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

### 13.06 Burden of Proof

The following language shall be included with all decisions for Type II, III and IV actions.

The specific findings made in granting a Permit shall be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the Permit. If no evidence is produced by the applicant concerning any of the findings, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings relating to approval or denial of an application.

- A. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.
- B. If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.
- C. The applicant shall notify the City Manager within five (5) days from City's receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.
- D. In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.
- E. In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant's right to retain independent counsel in making their own legal appearance upon appeal.
- F. If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to \$500 plus one-half the actual costs over \$500.

## Article XV. Administrative Provisions

### 15.05 Permit to Run with the Land

A Permit granted pursuant to the provisions of this Section shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this Section.

### 15.06 Limitations

No building or other permit shall be issued in any case where a Permit is required by the terms of this ordinance until after the applicable appeal period of the decision. An appeal from an action of the Planning Commission shall automatically stay the issuance of a building or other permit until such appeal has been completed. In the event the council acts to grant said Permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit.

### 15.07 Permit Expiration

Any permit granted pursuant to this Ordinance shall become void two (2) years after approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises.



### 15.08 Permit Extension

The Planning Director may extend a permit for one additional period of two (2) years, subject to the following requirements:

- A. The request is made in writing; and
- B. The request is received prior to permit expiration.

It is the responsibility of the permit holder to submit a request for extension. No more than one such extension may be granted. Development standards that apply at time of approval shall remain valid for the original term of approval, and shall not exceed four years from the original date of approval in the event of an extension.

**15.09 Vested Rights**

Land use approvals granted under this Ordinance shall be effective only when the exercise of the right granted therein is commenced within the approval period of that decision. In case such right has not been exercised or extension obtained the approval shall be void. Nothing contained in this Ordinance shall:

- A. Require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Ordinance, provided the structure, if non-conforming or intended for a non-conforming use, is completed and in use within two (2) years from the time construction was commenced.
- B. Be construed to limit the sale, transfer, or other conveyance of property on which exists a non-conforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Ordinance.

**15.10 Illegal Occupancy**

Any use of a premise or building which deviates from or violates any of the provisions of this Ordinance shall be termed an illegal occupancy and the person or persons responsible therefore shall be subject to the penalties herein provided.

No final approval or certificate of occupancy shall be issued by the City until such time as the applicant has complied with all requirements of this Ordinance. Final approval or certificate of occupancy shall not be issued if there is any major deviation from an approved land use action, including a Development Permit.

**15.11 Contract Purchasers Deemed Owners**

A person or persons purchasing property under contract, for the purposes of this Ordinance, shall be deemed to be the owner or owners of the property covered by the contract; the City Planning Commission or the City Council may require satisfactory evidence of such contract of purchase.