



MEMORANDUM

To: The Honorable Mayor and City Commission
From: Mario De La Rosa, Contract Development Engineer
Wendy Marshall, Development Projects Manager
Diliana Vassileva, Assistant Planner
Laura Terway, Community Development Director
Re: Planning File AP 16-02: Appeal of the Community Development Director's November 9, 2016 approval with conditions of Type II Planning file DP 16-03: Detailed Development Plan for a new medical office building and associated parking lots.
Date: March 6, 2017

Background

On November 9, 2016 the City of Oregon City staff, through a Type II decision, granted conditional approval of a Detailed Development Plan and Lot Line Adjustment for Providence Health and Services ("appellant") to construct a two-story, approximately 30,000 sq. ft. medical office building on the west side of Division Street, consistent with the Master Plan CP 11-01 approved March 1, 2012, and Amendment to the Master Plan CP 15-02 approved April 11, 2016. The proposal additionally included construction of associated parking lots and a lot line abandonment to combine eight properties into a single lot.

On November 22, 2016 the appellant appealed the decision asking that the City revise two of the conditions of approval imposed as part of the DDP that are summarized as follows:

- Condition of Approval #1: requires full depth pavement restoration on Division Street, 15th Street, and 16th Street to be completed during the current phase of development, and
- Condition of Approval #5: requires evaluation and potential replacement of undersized pipes and other downstream capacity issues in the stormwater system.

Decision Summary

The appellant and city staff have agreed to revisions to Conditions #1 and #5 which fully resolve the appellant's concerns. These revisions are based on the provision of additional evaluation of the condition of the pavement on Division Street, 15th Street and 16th Street. These revisions, again in sum, provide:

- Condition of Approval #1: requires full depth pavement restoration to be completed on or before October 31, 2018.
- Condition of Approval #5: identifies other options for addressing downstream capacity, including on-site retention consistent with the City's stormwater standards.

As discussed in greater detail below, staff recommends that the existing approval be modified and this appeal resolved.

OCMC 17.50.190.B *A notice of appeal of any Type II, III or IV decision must be received in writing by the planning division within fourteen calendar days from the date notice of the challenged decision is provided to those entitled to notice. Late filing of any appeal shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.*

Finding: Complies as Proposed. The appeal was filed on November 22, 2016, within 14 days of the November 9, 2016 decision.

OCMC 17.50.190.C.1-5 *The following must be included as part of the notice of appeal:*

1. *The city planning file number and date the decision to be appealed was rendered;*
2. *The name, mailing address and daytime telephone number for each appellant;*
3. *A statement of how each appellant has an interest in the matter and standing to appeal;*
4. *A statement of the specific grounds for the appeal;*
5. *The appropriate appeal fee. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed. If a city-recognized neighborhood association with standing to appeal has voted to request a fee waiver pursuant to Section 17.50.290C., no appeal fee shall be required for an appeal filed by that association. In lieu of the appeal fee, the neighborhood association shall provide a duly adopted resolution of the general membership or board approving the request for fee waiver.*

Finding: Complies as Proposed. The applicant provided the necessary information to process an appeal.

OCMC 17.50.190.D.1 Standing to Appeal

For Type II decisions, only those persons or recognized neighborhood associations who have standing pursuant to ORS 197.175(10)(a)(C) may appeal a planning manager decision. The city commission shall hold a de novo hearing on the appeal. New evidence and new issues be raised at the hearing before the city commission.

OCMC 17.50.120(E)(6) *-For appeal hearings, only those persons who participated either orally or in writing in the decision or review or who have standing pursuant to ORS 197.175(10)(a)(C) will be allowed to participate either orally or in writing on the appeal.*

Finding: Complies as Proposed. The appellant is the site owner and applicant and through their written application has standing to appeal the decision. As the property owner, the appellant has standing to appeal pursuant to ORS 227.175(10)(a)(C). Further, only one party, a representative from Tri-Met, submitted written testimony during the 14-day period before staff issued a decision. Therefore, the appellant and Tri-Met are the only parties who have standing to participate in this appeal.

OCMC 17.50.190.E *Notice of the Appeal Hearing. The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B. Notice of the appeal hearing shall contain the following information:*

1. *The file number and date of the decision being appealed;*
2. *The time, date and location of the public hearing;*
3. *The name of the applicant, owner and appellant (if different);*
4. *The street address or other easily understood location of the subject property;*
5. *A description of the permit requested and the applicant's development proposal;*
6. *A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;*
7. *A statement that the appeal hearing is confined to the issues raised in the notice of appeal;*
8. *A general explanation of the requirements for participation and the city's hearing procedures.*

Finding: Complies as Proposed. This appeal hearing has been noticed in accordance with this requirement.

Analysis of Specific Grounds for Appeal

Condition #1 – Right-of-Way Improvements

Public Works Development Services applied conditions of approval of DP 16-03 to ensure street frontage improvements were completed in accordance with applicable sections of 12.04 of the Municipal Code, namely sections 12.04.170 through 12.04.180, which address the cross-sectional requirements; and also in accordance with conditions of approval of the Master Plan, CP 11-01 and amendment to the Master Plan, CP 15-02.

Development Services staff analyzed the Conditions of Approval of the Master Plan, CP 11-01, existing street sections, and current public improvement standards, and determined that the application DP 16-03 could satisfy Master Plan requirements and Public Works standards and policies with application of, among others, the following Condition #1:

1. *Right of Way improvements to be as follows: (DS)*
 - a. *Division Street: 4' wide dedication to provide 34' ROW from Centerline. Improvement shall be from centerline: 26-ft wide to face of curb with 0.5-ft curb, 7-ft wide sidewalk and 0.5-ft monument strip. Tree wells to be provided with minimum dimensions of 3-ft X 6-ft adjacent to curb. A striping plan for Division Street shall be submitted. Full depth pavement restoration will be required to centerline. Improvements will also include street lights, street trees, and undergrounding of utilities per City standards.*
 - b. *15th Street: Full depth pavement restoration will be required to centerline. Improvements will include 6-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards. 15th Street will be signed as a bike route.*
 - c. *16th Street: Full depth pavement restoration will be required to centerline. Improvements will include 5-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards.*

The appellant challenged this condition arguing that the condition of these roadways is a pre-existing deficiency and therefore, full pavement restoration may not be required. Notwithstanding this assertion, during a meeting with the appellant representatives and city staff, it became clear that the appellant was concerned about the timing for full-depth pavement replacement obligations rather than their extent. The appellant provided city staff with core samples and recommendations for the timing of pavement restoration, as set forth in a letter from GeoDesign, Inc. dated January 19, 2017. Public Works has reviewed and approved the recommended pavement sections.

The appellant anticipates obtaining occupancy of the building by March 2018, and has requested a deferral of completion of the full pavement restoration until October 2018. The Municipal Code allows the public improvements to be deferred by provision of a surety. The appellant and Public Works staff concur that utilizing the mechanisms in place in the Code regarding sureties appropriately allows the deferral of completion of pavement restoration until October 2018.

The appellant has stated that they intend to comply with the conditions of the Master Plan CP 11-01 by providing full depth pavement restoration to 10 feet beyond centerline of each street fronting the development. In order to comply with the City's Pavement Cut Standards, the pavement restoration will need to be extended to the nearest travel lane.

The appellant and Public Works concur that the following revised Condition #1 will satisfy relevant sections of the Municipal Code and ensure adequate street frontage improvements required to serve the proposed development:

1. *Right of Way improvements to be as follows: (DS)*
 - a. *Division Street: 4' wide dedication to provide 34' ROW from centerline. Improvement shall be from centerline: 26-ft wide paving to face of curb with 0.5-ft curb, 7-ft wide sidewalk and 0.5-ft monument strip. Tree wells to be provided with minimum dimensions of 3-ft X 6-ft adjacent to curb. Improvements will also include street lights, street trees, and undergrounding of utilities per City standards. A striping plan for Division Street shall be submitted. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.*
 - b. *15th Street: Improvements will include 6-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards. 15th Street will be signed as a bike route. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.*
 - c. *16th Street: Improvements will include 5-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.*
 - d. *Prior to occupancy, the applicant shall provide pavement patching adequate to accommodate traffic loads, and patching shall be maintained in good condition until permanent full depth street section reconstruction is completed per subsections a, b, and c of this condition, per the City's pavement standards, and per recommendations of the January 19, 2017 report by GeoDesign, Inc. Full depth street section reconstruction shall be completed by October 31, 2018.*

Condition #5 – Stormwater Improvements

Public Works Development Services applied a condition of approval to DP 16-03 to ensure stormwater management and conveyance measures are provided in accordance with Chapter 13.12 of the Municipal Code, and the Oregon City Stormwater and Grading Design Standards:

5. *Final stormwater report shall be submitted with public facilities construction plans, and shall fully address replacement of undersized pipes and other downstream capacity issues in accordance with Oregon City Stormwater Grading Design Standards, dated 2015. (DS)*

The appellant argued that the language of this condition did not provide clarification that replacement of undersized downstream pipes is only one of several potential remedies for capacity issues within the public system. Public Works staff concurs that the language of the condition can be revised as follows to clarify that other stormwater solutions are available in compliance with the Municipal Code and Stormwater and Grading Design Standards and ensure capacity issues within the public stormwater system are addressed in the final Drainage Report, which will be reviewed and approved concurrently with the public facilities construction plans:

5. *Final stormwater report shall be submitted with public facilities construction plans and shall respond to identified downstream capacity issues through compliance with any of the solutions authorized by the Oregon City Stormwater Grading Design Standards, dated 2015, which may include, but are not limited*

to, replacement of undersized pipes or on-site detention and maximum infiltration so as not to contribute any additional flows.

CONCLUSION AND STAFF RECOMMENDATION:

Staff recommends the City Commission approve the Appeal (AP 16-02) and amend condition of approval #1 and #5 to:

1. Right of Way improvements to be as follows: (DS)
 - a. Division Street: 4' wide dedication to provide 34' ROW from centerline. Improvement shall be from centerline: 26-ft wide paving to face of curb with 0.5-ft curb, 7-ft wide sidewalk and 0.5-ft monument strip. Tree wells to be provided with minimum dimensions of 3-ft X 6-ft adjacent to curb. Improvements will also include street lights, street trees, and undergrounding of utilities per City standards. A striping plan for Division Street shall be submitted. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.
 - b. 15th Street: Improvements will include 6-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards. 15th Street will be signed as a bike route. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.
 - c. 16th Street: Improvements will include 5-ft wide sidewalk placed 0.5-ft from right of way. Improvements will also include street lights, street trees, and undergrounding of utilities per standards. Full depth street section reconstruction, proposed to extend 10 feet beyond centerline, will need to be modified to extend to the edge of adjacent travel lane.
 - d. Prior to occupancy, the applicant shall provide pavement patching adequate to accommodate traffic loads, and patching shall be maintained in good condition until permanent full depth street section reconstruction is completed per subsections a, b, and c of this condition, per the City's pavement standards, and per recommendations of the January 19, 2017 report by GeoDesign, Inc. Full depth street section reconstruction shall be completed by October 31, 2018.

5. Final stormwater report shall be submitted with public facilities construction plans and shall respond to identified downstream capacity issues through compliance with any of the solutions authorized by the Oregon City Stormwater Grading Design Standards, dated 2015, which may include, but are not limited to, replacement of undersized pipes or on-site detention and maximum infiltration so as not to contribute any additional flows.

The City Commission's decision is the City's final decision and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final by those with standing. The procedures that govern the hearing will be posted at the hearing and are found in OCMC 17.50. The appeal hearing will be confined to the issues raised in the Grounds for Appeal above. Only the applicant and those persons who submitted written comments prior to the decision will be allowed to participate either orally or in writing in this appeal.

EXHIBITS

1. AP 16-02 Appellants' Submittal
2. DP 16-03 Staff Report and Notice of Decision