

December 3, 2021

Lauren Russell
City of Beaverton - Planning Division
12725 SW Millikan Way
Beaverton OR 97076

Re: NSW Corporation: Planning Director's Interpretation Application

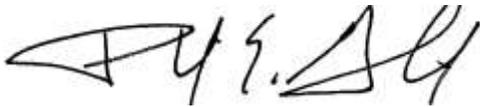
Dear Lauren,

Enclosed are the revised application materials for the NSW Corporation application that was filed online on September 24, 2021. I've enclosed a copy of the Application, Written Statement, and signed Hold Harmless Agreement for your reference.

Please get in touch with my assistant, Amber, at 971.226.4841 with any questions.

Sincerely,

Davis Wright Tremaine LLP



Phillip E. Grillo
PG/ab

Applicant's
Requested Director's Interpretation Narrative

Pursuant to BDC 40.25.15 (1)(A), the applicant requests that the Director interpret the Development Code in writing to answer the question presented below. In the narrative below, the applicant has provided its' proposed interpretation of specific provisions in the Development Code that are relevant to the question presented, along with the applicant's analysis, conclusion, and response to the relevant approval criteria in BDC.25.15(1)(C).

A. Question Presented: Upon and after annexation, can existing development continue to rely on Washington County's existing parking minimums and maximums (See WCDC 413-6 Minimum and Maximum Off-Street Parking Standards) and the county's allowed parking reductions (See WCDC 413-8 Reduction of Minimum Off-Street Parking), when new development occurs on site.

B. Proposed Interpretation: Upon and after annexation, existing lawfully established parking will become lawfully established nonconforming development, to the extent it does not conform to the City's off street parking standards in Section 60.30. Such parking may continue to rely on the applicable Washington County off-street parking standards, but new development on site must conform to the City of Beaverton's off-street parking standards.

C. Analysis and Conclusion: The requested Director's Interpretation involves the consideration and interpretation of three provisions in the Beaverton Development Code.

First, BDC 10.40.1 provides that:

“Any area annexed to the City shall retain the zoning classification of its former jurisdiction until changed by the City. In the interim period, the City shall enforce the zoning regulations of the former jurisdiction along with any conditions, limitations or restrictions applied by the former jurisdiction as though they were part of this Code, except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulation regulations in force in the former jurisdiction at the time of annexation.”

Second, BDC 10.40.4 provides that:

“Development, uses or both which have received approval from the former jurisdiction shall continue to be approved and subject to the conditions of approval established by the former jurisdiction, if any. After the effective date of the Annexation Related Zone Change application, any change to any development or uses annexed into the City shall be subject to the City zoning regulations in effect at the time of the proposed change.”

Third, with regard to Nonconforming Parking, Loading, Signs and Other Characteristics of Use, BDC 30.40, specifically provides that:

“If the characteristics of a use, such as signs, off-street parking, off-street loading, lighting or other matters required by this ordinance in relation to specific uses of land, water areas, structures or premises, are not in accord with the requirements of this ordinance, no change shall be made in such characteristics of use which increases nonconformity with such requirements. Change shall be permitted in the direction of conformity with such requirements. Non-conforming signs may be subject to additional conformance standards as described in Section 60.40 of the Development Code.”

Taken together, these three provisions create a logical regulatory structure that requires new uses and development to conform with the provisions of the BDC upon annexation. See BDC 10.40.1. Uses and development which have received approval from Washington County continue to be approved and subject to any conditions of approval required by the county. See BDC 10.40.4. Specifically, with regard to existing off-street parking that was approved by the County, new development is permitted by the BDC without affecting the lawfulness of the existing off-street parking for the existing approved development, so long as any new development brings the site further into conformity with current City parking requirements. See BDC 30.40. In other words, after annexation, when new development occurs, it will be required to conform with the then-existing off-street parking provisions in the BDC, and will thereby bring the entire development closer to conformity with regard to the City’s off-street parking requirements, as required by BDC 30.40.

For all of these reasons, relevant provisions in the BDC support the applicant’s proposed interpretation that the provisions of the Washington County Development Code will continue to apply to the existing approved off-street parking associated with existing development upon, and after annexation to the City of Beaverton. As new development occurs after annexation, that development will be subject to the then-existing BDC use and development regulations, thereby bringing the overall off-street parking in the development closer to conformity with regard to the City’s off-street parking requirements, as required by BDC 30.40.

D. Applicant’s Response to the Relevant Approval Criteria (BDC 40.25.15(1)(C) (1)-(6):

1. “The proposal satisfies the threshold requirements for a Development Interpretation application.”

Applicant’s Response: The applicant has requested that the Director interpret the Development Code, in writing, to answer a land use question regarding off-street parking requirements that will apply to existing development upon annexation into the City of Beaverton, from Washington County. This request satisfies the threshold requirement in BDC 40.25.15(1)(A)(1), because it requests a Development Code interpretation in writing. This criterion is therefore met.

2. “All City application fees related to the application under consideration by the decision-making authority have been submitted.”

Applicant's Response: A check in the amount of \$1,109.52 has been submitted along with this application, which is fee required for a Director's Interpretation, as listed on the City's website. This criterion is therefore met.

3. "That the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code"

Applicant's Response: For the reasons discussed above, the proposed interpretation is consistent with relevant provisions in the City's Development Code, namely BDC 10.40.1, BDC 10.40.4 and BDC 30.40. No specific comprehensive plan goals or policies speak directly to the issue presented in this interpretation, or to the proposed interpretation itself. However, the following provisions in the comprehensive plan are supportive of the applicant's proposed interpretation, for the following reasons:

a. Comprehensive Plan Goal 3.4, Policy 2, states that it is the policy of the City to: "Recognize planning work done by Washington County when applying city policies and development regulations as annexation occurs." This applicant's proposed interpretation supports this policy because the County conducted extensive planning work to establish parking standards for development that occurred in the unincorporated portions of the County, and applied those standards to development through an approved planning and development review process.

b. The Washington County-Beaverton Urban Planning Area Agreement (last updated 2019), is part of Chapter Five of the City's Comprehensive Plan, and was further adopted as BCC 18-1325. Section V. (D) (Annexation of partially completed development... such as apartment complexes.) states that:

"When partially completed development such as residential subdivisions, apartment complexes, industrial parks, retail or office center, etc., are annexed to the CITY, after receiving development approval from the COUNTY, the City may, at its discretion, continue to apply the COUNTY'S development standards relating to setback, lots sizes, lot coverage and heights for buildings and accessory structures for any new construction taking place after annexation."

This provision in the planning area agreement has been implemented, in part, by the provisions in the BDC cited above, namely BDC 10.40.1, 10.40.4 and 30.40. Those provisions taken together and read in context with both the planning area agreement and Comprehensive Plan Goal 3.4, Policy 2 cited above, provide a logical regulatory context that requires new uses and development to conform with the BDC upon annexation, but allows existing uses and development that were approved by the County to continue to be approved under the standards and conditions required by the County. For all of these reasons, the applicant's proposed interpretation is consistent with the City's Comprehensive Plan and the relevant portions of the BDC, which implement the City's plan.

4. "When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code".

Applicant's Response: Not Applicable

5. "The proposal contains all applicable application submittal requirements as specified in BDC 50.25(1), of the Development Code".

Applicant's Response: Pursuant to BDC 50.25(1), the Applicant has submitted:

- A. A completed application form and Application Checklist has been completed and signed by the Applicant
- B. A written statement supported by substantial evidence, addressing the relevant approval criteria, has been submitted by the Applicant.
- C. Not Applicable.
- D. Not Applicable.
- E. The need for a Director's interpretation was discussed by the Applicant's ongoing conversation with the City concerning annexation, and future development of the site. The notes regarding this pre-application conference have been submitted by the Applicant.
- F. Not Applicable.
- G. The Application Fee of \$1,109.52 has been submitted by the Applicant.

For all of the above reasons, the applicant's proposed Director's interpretation contains all of the applicable submittal requirements in BDC 50.25(1). This criterion is therefore met.

6. "Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence".

Applicant's Response: Not Applicable



PRE-APPLICATION - HOLD HARMLESS AGREEMENT FORM
Applicable only to Type 2 Applications

Pursuant to Section 50.20.1 of the Beaverton Development Code, a Pre-Application Conference is required for all proposals which require Type 2, Type 3 or Type 4 applications. A Pre-Application Conference is optional for Type 1 applications. The purpose of the pre-application conference is to acquaint the City and outside agencies and service providers with a potential application, and to acquaint the applicant with the requirements of the Development Code, the Comprehensive Plan, and other relevant criteria and procedures for submitting a complete land use application.

By signing this form, the applicant has elected to not hold a Pre-Application Conference with City staff. By making such choice, the applicant understands that the City staff will not provide a detailed list of application submittal requirements before the applicant files a land use application with the City. The applicant accepts responsibility for submitting a complete application and holds the City harmless from identifying additional application submittal requirements during the completeness review of the submitted land use application.

Please note: There is an option to forgo the Pre-Application Conference only if the proposal is subject to a Type 2 application. If your proposal requires Type 3 or has the potential for Type 3 application, the Pre-Application Conference is required and this option is not available. The only exception for a Type 3 application, subject to the approval of the Director, is in the instance where a Type 3 application is identified as a required application after completeness.

Please respond to the following:

1. Below, please check the appropriate application(s) filed or to be filed with the City:

- Adjustment (Minor - Type 2)
Conditional Use (Admin or Minor Modification)
Design Review (Type 2)
[X] Director's Interpretation
Flexible Setback (Type 2)
Other Application Type
Home Occupation (Type 2)
Land Division (Partition or Subdivision)
Loading Determination
Parking Determination
Tree Plan (Type 2)

2. Below, please sign and date in response to the following statement:

I, Robert Deng, as the applicant or legal representative of the applicant applying for:
(P R I N T N A M E)

(APPLICATION DESCRIPTION)
hereby announce my intention to forgo the Pre-Application requirement identified by the City of Beaverton Development Code. By signing this form, I voluntarily assume all risks, liabilities and damages and shall further hold harmless the City of Beaverton against any and all risks, liabilities and/or damages that may arise from the final action(s) issued by the City in response to the application(s) identified above.

Signed by: [Signature] Date: 11/21/2021