



November 28, 2022

The City of Beaverton
Community Development Department
The Beaverton Building at The Round
12725 SW Millikan Way
Beaverton, OR 97076

RE: Modification Application
Oregon Worsted Co.
10700 SW Allen Blvd (tax lots 100, 200, 400, and 500 map 1S122AA)

Dear Staff,

Please find attached information in conformance with the City's Modification Application submittal requirements. This application relates to Oregon Worsted Co's proposal to modify a condition of prior approval LD2021-0002 for 10700 SW Allen Boulevard (tax lots 100, 200, 400, and 500 of map 1S122AA).

This request relates to Brittany Gada's (city planner) email on November 11, 2022, regarding the conflicting conditions of case files DR2021-0027 and LD2021-0002. To rectify the conflicting conditions and allow for both the site and building permits to be issued for the hotel building, a Type 3 modification of conditions for LD2021-0002 is being requested. A preapplication meeting (PA2022-0053) regarding this issue was held on November 23, 2002.

The existing conditions of approval, approved on February 16, 2022, for LD2021-0002 state, "B. Prior to the issuance of a site development permit, the applicant shall: 2. Have recorded the final plat in County records and submitted a recorded copy to the City." This is in direct conflict to conditions D.51 through D.53 under DR2021-0027 which require construction of the site development to commence before recording of the plat.

The proposed modification requests changing LD2021-0002 B from "*Prior to issuance of a site development permit*" to "*Prior to issuance of occupancy for any building approved under DR2021-0027*".

40.45.15 Application

2. Replat One.
 - A. Threshold. An application for Replat One shall be required when any of the following thresholds apply:
 1. The reconfiguration of lots, parcels, or tracts within a single existing plat that decreases or consolidates the number of lots, parcels, or tracts in the plat;
 2. The creation of a plat for land that has never been part of a previously recorded plat where no new lots or parcels are proposed.

RESPONSE: The original approval, LD2021-0002, was for consolidation of multiple lots into a single parcel. This modification requests a change in condition language associated with that consolidation but does not request a change to the process.

- B. Procedure Type. The Type 1 procedure, as described in Section [50.35](#). of this Code, shall apply to an application for Replat involving only the consolidation of lots and not triggering any of the thresholds in Section 40.45.15.3.A.1. through 40.45.15.3.A.3. The decision making authority is the Director.

RESPONSE: While the original replat was processed as a Type 1 it was approved in conjunction with multiple Type 3 applications including Design Review thus the requested modification must be processed as a Type 3.

- C. Approval Criteria. In order to approve a Replat One application, the decision making authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria are satisfied.

1. The application satisfies the threshold requirements for a Replat One.

RESPONSE: The application meets the threshold of a Replat One as detailed above. This criterion is therefore met.

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

RESPONSE: All fees will have been paid. This criterion will therefore be met.

3. The proposed Replat does not conflict with any existing City approval, except the City may modify prior approvals through the Replat process to comply with current Code standards and requirements.

RESPONSE: As detailed in the above narrative, the conditions for DR2021-0027 and LD2021-0002 are conflicting regarding the recording of the plat and how it relates to issuance of the site permit. This application is for modification of the conditions for LD2021-0002.

4. The application is consistent with applicable requirements of CHAPTER 20 and CHAPTER 60, unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application.

RESPONSE: The application is consistent with all applicable requirements of Chapter 20 and Chapter 60. This criterion is therefore met.

5. Oversized lots or parcels ("oversized lots") resulting from the Replat shall have a size and shape that facilitates the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed lots and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be

created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot.

RESPONSE: As noted in the original application the large lot resulting from the replat is a size and shape that will allow it to be divided in the future. This application is only for the modification of the approval conditions of the replat from “*prior to site development permit*” to “*prior to occupancy*”. This modification will not affect the consolidated site’s ability to be partitioned or divided in the future. This criterion remains met.

- 6. If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provides for necessary public improvements for each phase as the project develops.

RESPONSE: There is no phasing required with this application. This criterion does not apply.

- 7. The proposal will not eliminate pedestrian, utility service, or vehicle access to the affected properties.

RESPONSE: The proposal is only for modification of the approval conditions and does not change the plans previously approved. This proposal will therefore not eliminate pedestrian, utility service, or vehicle access and this criterion will be met.

- 8. The proposal does not create a parcel or lot which will have more than one (1) zoning designation.

RESPONSE: The proposal is only for modification of the approval condition and does not change the previously approved consolidated lot. The original approval did not create a lot with more than one (1) zoning district and this proposal will not change that. This criterion is therefore met.

- 9. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

RESPONSE: All required applications and documents will be submitted to the City in proper sequence. This criterion will be met.

D. Submission Requirements.

- 1. An application for a Replat One shall be made by the owner(s) of the subject property or the owner’s authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section [40.47.](#), the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The Replat One application shall be accompanied by the information required by the application

form, and the information required by Section [50.25](#). (Application Completeness), and any other information identified through a Pre-Application Conference. [ORD 4584; June 2012]

RESPONSE: An application for a Replat One, signed by the property owner, has been provided. This criterion has therefore been met.

50.95 Modification of a Decision

1. An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

RESPONSE: The existing conditions of approval, approved on February 16, 2022, for LD2021-0002 state, “B. Prior to the issuance of a site development permit, the applicant shall: 2. Have recorded the final plat in County records and submitted a recorded copy to the City.” This is in direct conflict to conditions D.51 through D.53 under DR2021-0027 which require construction of the site development to commence before recording of the plat.

This proposal for modification requests changing LD2021-0002 B from “Prior to issuance of a site development permit” to “Prior to issuance of occupancy for any building approved under DR2021-0027”.

2. An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

RESPONSE: A preapplication meeting (PA2022-0053) was held on Wednesday, November 23, 2022, at 11:30 a.m. via zoom. This submittal is for completeness review then full review. This criterion will therefore be met.

3. An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

RESPONSE: It is understood that filing an application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings.

4. Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

RESPONSE: LD2021-0002 was conditionally approved on February 16, 2022. This criterion is therefore met.

5. Expedited Land Divisions and Preliminary Middle Housing Land Divisions are not eligible for modification of a decision.

RESPONSE: LD2021-0002 or any of the associated land use applications approved at the same time were not expedited land divisions or a preliminary middle housing land division. This criterion is therefore met.

6. An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

RESPONSE: Per the Preapplication Meeting discussions, while a Replat One is typically a Type 1 review, because the Replat conditions being modified were approved under concurrent review with several Type 3 reviews, the modification will be a Type 3 review before the Planning Commission.

7. The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in CHAPTER 40. In all cases, regardless of the thresholds listed in CHAPTER 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision making authority determines any one of the following:
 - A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
 - B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
 - C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
 - D. A new or modified condition would better accomplish the purpose of the original condition.

RESPONSE: Per the Preapplication Meeting discussions, while a Replat One is typically a Type 1 review, because the Replat conditions being modified were approved under concurrent review with several Type 3 reviews, the modification will be a Type 3 review before the Planning Commission.

This modification is to correct conflicting conditions between LD2021-0005 and DR2021-0027. The existing conditions of approval, approved on February 16, 2022, for LD2021-0002 state, "B. Prior to the issuance of a site development permit, the applicant shall: 2. Have recorded the final plat in County records and submitted a recorded copy to the City." This is in direct conflict to conditions D.51 through D.53 under DR2021-0027 which require construction of the site development to commence before recording of the plat. As such, subsection B above is met because the condition could not be implemented for reasons beyond the control applicant and the modification will not require a significant modification of the

original decision. This proposal for modification requests changing LD2021-0002 B from “Prior to issuance of a site development permit” to “Prior to issuance of occupancy for any building approved under DR2021-0027”. This also meets subsection D above as the modified condition will better accomplish the purpose of the original condition by allowing the replat to be recorded after the permit issued and work is complete to ensure that the required right-of-way dedication and utility easements are accurate. This criterion is therefore met.

We trust that this submittal will be to your satisfaction, and we look forward to hearing from you in the near future.

Sincerely,



Jennifer L. Rinkus, Planner
Baysinger Partners Architecture
503.546.1623 (p)

cc: Oregon Worsted Co LLC
File