

Specific Beaverton Development Code Analysis
Planning Commission Presentation – annotated August 18, 2022
Non-Conforming Characteristics and Lighting Design Guidelines added

3950 SW Laurelwood Avenue

Application for Conditional Use Approval for a Residential Care Facility

Design Review Approval for (A) Parking for a Residential Care Facility, (B) Waste Management Requirements for a Residential Care Facility, (C) Adding a Required Landscape Buffer and Fence for a Residential Care Facility in an Existing Detached Dwelling

CHAPTER 90 - DEFINITIONS

Development. *The act of bringing about growth;*

to construct or alter a structure,

to make a change in use or appearance of land,

to divide land into parcels,

or to create or terminate rights of access. [ORD 4111; July 2000]

Development. *Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard. [ORD 3563; May 1987]*

A plain reading of the definition(s) of “development” must honor the commas in the sentence and cannot add commas where they are not in the definition. In the supplemental memo (8-17-2022) Staff wrongly parsed the third phrase in the first definition, and thus completely changed the meaning. By taking the time to physically separate the phrases as punctuated and reading them as properly phrased, the correct meaning of the word is clear.

An English professor wrote the words: "A woman without her man is nothing" on the chalkboard and asked his students to punctuate it correctly.

All the MALES in the class wrote :
"A woman, without her man, is nothing"

All the FEMALES in the class wrote :
"A woman: without her, man is nothing"

(punctuation is powerful)

CHAPTER 30 - NONCONFORMING USES

30.05. Purpose.

30.10. Pending Building Permits and Certain Existing or Approved Nonconforming Uses.

30.15. Nonconforming Lots of Record.

30.20. Nonconforming Uses.

30.25. Nonconforming Structures.

30.30. Repairs and Maintenance.

30.35. Uses Under Conditional Use Provisions Not Nonconforming Uses.

30.40. Nonconforming Parking, Loading, Signs or Other Characteristics of Use.

30.45. Determination of Nonconforming Status.

30.05. Purpose.

1. Within the districts established by this ordinance or amendments that may later be adopted there are lots, structures, uses of land and structures, and *characteristics of uses that were lawful when*

established, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance. [ORD 4696; December 2016]

2. Nonconforming uses are declared by this ordinance to be incompatible with Permitted uses in the district involved.

30.40. Nonconforming Parking, Loading, Signs or Other Characteristics of Use

*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 specified 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.*

The existing driveway off SW Brentwood is considered **non-Conforming**, because it is 35 feet wide as allowed by Washington County Road Standards. The existing garage is a conforming portion of the existing building per the permit issued by Beaverton Building Department. The memo from Naomi Vogel dated 8-10-2022 mandates a condition of approval requiring application, receipt of an access permit and construction of an "access" (which is the driveway approach in the ROW) to Washington County standards. Please note that SW Brentwood Street is a Washington County maintained Neighborhood Route. **The City of Beaverton agencies have NO authority relative to access, width of access, or the number of vehicles backing out onto the county-maintained neighborhood route.**

Washington County Department of Land Use and Transportation has reviewed the above noted development application for a residential senior care facility for up to 12 residents within an existing dwelling. The facility will utilize an existing residential driveway on SW Brentwood Street, a county-maintained Neighborhood Route.

CONDITIONS OF APPROVAL

I. PRIOR TO APPROVAL OF A BUILDING PERMIT BY THE CITY OF BEAVERTON:

A. Obtain a **Washington County** Right-of Way Permit(s) from the Operations Division (503.846.7623) via the **Public Permitting and Services Portal** (WashCoORACA.com) for the following:

- a. Reconstruct access to SW Brentwood Street to County standard detail 1081 (commercial access). Sight Distance must be met per County standards.

The existing parking, the driveway and the access in the ROW are non-Conforming characteristics of the site. They are non-conforming because these characteristics are lawful and were lawful at the time they were established. They will continue to be lawful as demonstrated by the memo from Ms. Vogel who represents Washington County DLUT. The **proposed parking layout and driveway/access of 30 feet** brings the driveway **towards conformity** by reducing the number of parking spaces down from 4 spaces to 3 spaces including a HC van space. The vehicle parking will be "pulled away" from the east property line to lessen the impact on the adjacent property. Staff makes the arcane argument that *BDC 60.30.10.10.B groups of more than two parking spaces shall be so located and served by an access that their use will require no backing movements or other maneuvering within a street or right-of-way...* restricts

the site to two parking places because backing more than two cars into a city street from a “commercial use” is prohibited. While the property (lot) is in Beaverton, the ROW and the access are controlled Washington County, who has no such restriction. By turning the discussion around, Washington County regulations **ALLOW** three vehicles to back out onto the county-maintained street **and** the use of the building is of no consideration. Washington County also has no prohibition to the tandem parking condition with the use of the existing garage for vehicle parking. The existing condition, and the **future condition** with the acquisition of the County access permit, will be (1) a 30-foot-wide driveway access, (2) a 30-foot-wide existing driveway, and (3) a two car garage with space for 2 passenger vehicles, 3 or more bicycles, and 7 or more Waste Management garbage, recycling, and glass storage containers. Staff argues that three of the five parking spaces are “invisible” based on their reading of the BDC because they can’t back out onto a city street. That position is illogical because staff also maintains a theoretical opinion of “support” for the application and makes no use of a portion of the BDC that easily allows them to “recognize” five existing parking spots onsite. That position is staff’s prerogative. **However, the existing and future configuration will provide 5 vehicle parking spaces in THE REAL WORLD. The five parking spaces will be used by the staff and visitors at 3950 SW Laurelwood Avenue.**

40.20. Design Review

40.20.05. Purpose.

The purpose of Design Review is to promote Beaverton's commitment to the community's appearance, quality pedestrian environment, and aesthetic quality. It is intended that monotonous, drab, unsightly, dreary and inharmonious development will be discouraged. Design Review is also intended to conserve the City's natural amenities and visual character by ensuring that proposals are properly related to their sites and to their surroundings by encouraging compatible and complementary development. To achieve this purpose, the Design Review process is divided into two major components; Design Standards and Design Guidelines. Both standards and guidelines implement Design Principles, which are more general statements that guide development of the built environment. The Design Standards are intended to provide a "safe harbor" approach to designing a project. Depending on the design thresholds, designing a project to the standards would result in an administrative review process. However, the applicant may elect to bypass design review under the Design Standards and go straight to Design Review under the Design Guidelines, where review is subject to a public hearing at the applicant's option. [ORD 4584; June 2012]

*An applicant for Design Review approval can address design review requirements through a combination of satisfying certain Design Standards, and in instances where it elects not to utilize Design Standards, satisfy applicable Design Guidelines. **In such a case, the public hearing and decision will focus on whether or not the project satisfies the requirements of the applicable Design Guidelines only.***

*Because the Design Standards are a "safe harbor", there is no penalty for not meeting the Design Standards. Rather, the public hearing process would be required to consider the project by relying solely on the Design Guidelines which correspond to the Design Standards but are intended to allow more flexibility and originality. Design Guidelines are also intended to recognize unique circumstances where corresponding standards are found to be unnecessary or undesirable. Where Design Guidelines apply, the project proponent will simply be required to demonstrate how the project meets these Guidelines at a public hearing. **The decision making authority must make findings how the guidelines are met or if they apply to the proposal.***

The purpose of Design Review as summarized in this Section is carried out by the approval criteria listed herein.
40.20.10. Applicability.

1. The scope of Design Review shall be *limited to the exterior of buildings, structures, and other development and to the site on which the buildings, structures, and other development are located.* [ORD 4584; June 2012]
2. Considering the thresholds for the Design Review Compliance Letter, Design Review Two, or Design Review Three applications and unless exempted by Section 40.20.10.3. (Design Review) approval shall be required for the following: [ORD 4584; June 2012]
 - A. *All uses listed as Conditional Uses in the R10, R7, and R5 zoning districts.* [ORD 4584; June 2012]
 - B. *All uses listed as Permitted and Conditional Uses in the R4, R2, and R1 Residential zoning districts.* [ORD 4584; June 2012]
 - C. *All uses listed as Permitted and Conditional Uses in all Commercial, Industrial, and Multiple Use zoning districts.*
 - D. *Site grading.*
3. Design Review approval shall not be required for the following:
 - A. *All uses listed as Permitted Uses in the R10, R7 and R5 Residential zoning districts.* [ORD 4584; June 2012]
 - B. *Detached dwellings and related residential accessory structures in any Residential or Commercial zoning district.* [ORD 4542; June 2010]
 - C. *Existing detached dwellings in Industrial and Multiple-Use zoning district.* [ORD 4782; April 2020]
 - D. *Maintenance of a building, structure, or site in a manner that is consistent with previous approvals.*
 - E. *Painting of any building in any zoning district.*
 - F. *Wireless communication facilities.*
 - G. *Food Cart Pods.* [ORD 4662; September 2015]
 - H. *Uses, activities, and structures located on a private parking lot and approved pursuant to the Open Air Beaverton program*
4. Design review approval through one of the procedures noted in Section 40.20.15. will be required for all new development where applicable. The applicable design standards or guidelines will serve as approval criteria depending on the procedure. *Existing developments, and proposed additions, demolitions and redevelopments associated with them, will be treated according to the following principles:*
 - A. *Development constructed or approved prior to December 15, 2004 is not subject to Design Review standards and guidelines, and is considered fully conforming to the approvals issued at the time the development was approved by the City. Existing developments constructed prior to December 15, 2004, are not considered nonconforming if they do not meet design standards. If existing development is structurally damaged or destroyed by casualty, replacement shall occur as follows:*
 1. *If structural damage or destruction is less than or equal to fifty percent (50%) of the existing gross floor area of the existing development, the area of damage or destruction can be replaced as legally existed on the site before the casualty loss.*
 2. *If structural damage or destruction is more than fifty percent (50%) of the existing gross floor area of the existing development, the area of damage or destruction must meet the*

provisions of this Code in every regard unless otherwise authorized by the provisions of this Code.

- B. Proposed new free-standing building(s) within an existing development will be subject to all applicable design standards.
- C. Proposed redevelopment of **existing structures** and project site area is subject to all applicable design standards or guidelines to the extent where redevelopment of existing building or site area is proposed. **Only that portion of existing building or site area that is proposed for redevelopment is subject to design review standards or guidelines as determined applicable.** [ORD 4531; April 2010]

A plain reading of this section of the Development Code clarifies that Design Review of the application is required because the USE is a Conditional Use in the Residential District where it's located. However, as stated repeatedly throughout the applicant's findings and supplemental documents the BUILDING is a detached dwelling, and there is no request or desire to modify, alter, redevelop or otherwise CHANGE any portion of the building or the site. **Even if the building somehow changes from a residential building to a commercial building,** (which doesn't appear to conform with the state building codes) (see e-mail to Beaverton Building Department staff attached), or a residential **use** to a commercial **use** as BDC chooses to view a RCF, there are still no proposed CHANGES to any portion of the building or the site. The only proposed addition to the site is the construction of a new fence along the north property line. The fence is necessary to comply with the requirement for a solid fence as a part of the B3 buffer necessary between the subject property and the adjacent residence to the north. The only proposed alteration to the site is the planting (addition) of fifty (50) plants along the northern 20 feet of the site and the northeastern portion of the east property line to comply with the requirement for substantial vegetative screening between the subject site and the two adjacent residences.

There is no proposed change to the existing building or hardscape, the existing landscaping, the existing fencing, or the existing lighting.

CHAPTER 60 - SPECIAL REQUIREMENTS

60.05. Design Review Design Principles, Standards and Guidelines

60.05.30. Lighting Design Standards.

Unless otherwise noted, all standards apply in all zoning districts.

1. Adequate on-site lighting and minimal glare on adjoining properties. [ORD 4584; June 2012]
 - A. **Lighting shall be provided at lighting levels for development and redevelopment** in all zoning districts consistent with the City's Technical Lighting Standards.
 - B. Lighting shall be provided in vehicular circulation areas and pedestrian circulation areas.
 - C. Lighting shall be provided in pedestrian plazas, if any developed.
 - D. Lighting shall be provided at building entrances.
 - E. Canopy lighting shall be recessed so that the bulb or lens is not visible from a public right-of-way.
2. Pedestrian-scale on-site lighting.
 - A. Pole-mounted Luminaires shall comply with the City's Technical Lighting Standards, and shall not exceed a maximum of:

1. Fifteen (15) feet in height for on-site pedestrian paths of travel.
2. Twenty (20) feet in height for on-site vehicular circulation areas for residential uses in Residential zoning districts.
3. Thirty (30) feet in height for on-site vehicular circulation areas in non-residential zoning districts.
4. Fifteen (15) feet for the top deck of non-covered parking structures.
5. The height of the poles for on-site pedestrian ways and on-site vehicular circulation areas shall be measured from the site's finished grade.
6. The height of the poles on the top deck of non-covered parking structures shall be measured from the finished floor elevation of the top deck.
7. The poles and bases for pole-mounted luminaires shall be finished or painted a non-reflective color.

B. Non-pole-mounted luminaires shall comply with the City's Technical Lighting Standards.

C. Lighted bollards when used to delineate on-site pedestrian and bicycle pathways shall have a maximum height of forty-eight (48) inches.

A plain reading of this section of the Development Code clarifies that Design Review of the application is subject to all applicable design standards or guidelines to the extent where redevelopment of existing building or site area is proposed. *Only that portion of existing building or site area that is proposed for redevelopment is subject to design review standards or guidelines as determined applicable.* The CHAPTER 60 - SPECIAL REQUIREMENTS, 60.05. Design Review Design Principles, Standards and Guidelines and specifically: 60.05.30. Lighting Design Standards state "Unless otherwise noted, all standards apply in all zoning districts" with "Adequate on-site lighting and minimal glare on adjoining properties" and

- A. Lighting shall be provided at lighting levels for *development and redevelopment* in all zoning districts consistent with the City's Technical Lighting Standards.

However, as stated repeatedly throughout the applicant's findings and supplemental documents the BUILDING is existing, and there is no request or desire to modify, alter, redevelop or otherwise CHANGE any portion of the building or the site. There is no proposed change to the existing building or existing hardscape, the existing landscaping, the existing fencing, or the existing lighting. The application is not subject to the Lighting Design Standards because the building is an existing building and no changes to the lighting are proposed or required by the Conditional Use Approval Criteria. Staff has clearly determined that regardless of any alternate viewpoint of BDC code language the Lighting Design Guidelines must be addressed. So be it.

60.05.50. Lighting Design Guidelines.

Unless otherwise noted, all guidelines apply in all zoning districts.

1. Lighting should be utilized to maximize safety within a development through strategic placement of pole-mounted, non-pole mounted and bollard luminaires. (Standards 60.05.30.1 and 2)

There are no pole mounted or bollard luminaires on the property. There are a variety of building-installed or building-mounted lights on the building. There are several architectural feature lights on the south (front) façade. There are entry lights above the front door. The lights on the front of the building are strategically placed to accent the architectural features

and illuminate the front door and garage door. The lights, when switched on, provide adequate illumination to maximize safety for visitors without casting light beyond the front yard and driveway. All exterior lighting is switched as is typical for a residential style building, so most, if not all, exterior lights are turned off by 9 PM.

2. Pedestrian scale lighting should be an integral part of the design concept except for industrial projects. Poles and fixtures for pole-mounted lighting should be of a consistent type throughout the project. The design of wall-mounted lighting should be appropriate to the architectural design features of the building. (Standard 60.05.30.2)

There are no pole mounted luminaires on the property. There are a variety of building-installed or building-mounted lights on the building. There are several architectural feature accent lights on the south façade. There is a front porch light, pedestrian scale landscape lighting along the east walkway (detailed in the lighting analysis) and various lights on the building in the center courtyard. As stated in the previous finding the lights on the front of the building are strategically placed to accent the architectural features and illuminate the front door and garage door. As shown in the photo below, the dominate accent wall-mounted lighting is appropriate to the prairie-style features of the addition. The west façade has exterior lighting from the original house construction (1940s). Those lights have period-correct glass covers. All exterior lighting is switched as is typical for a residential style building, so most exterior lights are turned off by 9 PM.

Fixture used for various exterior locations – architecturally correct for building



3. Lighting should minimize direct and indirect glare impacts to abutting and adjacent properties and streets by incorporating lens shields, shades or other measures to screen the view of light sources from residences and streets. (Standards 60.05.30.1 and 2)

There are a variety of building-installed or building-mounted lights on the building. The lighting on the south façade incorporates shields, shades and locational strategies to avoid view of the light source (bulb). The west façade has exterior lighting from the original house construction (1940s). Those lights have period-correct glass covers.

4. On-Site lighting should comply with the City's Technical Lighting Standards. (Standards 60.05.30.1 and 2.) Where the proposal does not comply with Technical Lighting standards, the applicant should describe the unique circumstance attributed to the use or site where compliance with the standard is either infeasible or unnecessary. [ORD 4531; April 2010]

There is no proposed change to the existing lighting. Compliance with the standard is unnecessary in applicants' opinion because the building is not subject to Design Review. Even if lighting fixtures were found to violate some lighting standard, the "determination of

a violation” and any required “compliance remedy” is NOT under the purview of Staff or the Planning Commission. That responsibility is assigned to the Beaverton Code Compliance Program. Further, with all the comment letters reviewed, no one made any comment about building lighting.

Compliance is infeasible because the existing detached dwelling was constructed originally in the 1940s and the addition was constructed approximately five years ago as an Adult Foster Home, not subject to the Technical Lighting Standards. Inquiry has been made to the project architect and the City building official and neither person has any record of the luminaire selection. Not surprisingly.....there are no available records detailing the make, model, serial number or design details for ANY of the residential exterior lighting, so it is infeasible to gather the requested iso-grid or photometric data for the existing fixtures.

The application includes “as-built” lighting information for the specific demonstration that modifying the southern 90 feet of the required eastern B3 landscape buffer will not result in any impact to the adjacent property owner. Staff expressed nominal concern with the three small battery powered motion-trigger emergency lights on the stairwell exiting the second story deck. The concern was the potential for branches to trigger the small battery-powered lights. Since they are of staff concern and are easily removed, the applicant has taken them off the stairwell structure. This eliminates the need to write a condition of approval requiring their removal.

60.30.05. Off-Street Parking Requirements.

3.Bicycle Parking. [ORD 3965; November 1996] Bicycle parking shall be required for quadplexes, townhouses (with 4 or more units), cottage clusters, multi-dwellings, all retail, office and institution developments, and at all transit stations and park and ride lots which are proposed for approval after November 6, 1996. The number of required bicycle parking spaces shall be provided according to Section 60.30.10.5. All bike parking facilities shall meet the specifications, design and locational criteria as delineated in this section and the Engineering Design Manual. [ORD 4397; August 2006] [ORD 4822; June 2022]

B.Bicycle Categories. The required minimum number of short-term and long-term bicycle parking spaces for each land use is listed in Section 60.30.10.5.

- 1. Short-Term parking. Short-term bicycle parking spaces accommodate persons that can be expected to depart within two hours. Short-term bicycle parking is encouraged to be located on site within 50 feet of a primary entrance, or if there are site, setback, building design, or other constraints, bicycle parking shall be located no more than 100 feet from a primary entrance in the closest available area to the primary entrance as determined by the decision-making authority*
- 2. Long-Term parking. Long-term bicycle parking spaces accommodate persons that can be expected to leave their bicycle parked longer than two hours. Cover or shelter for long-term bicycle parking shall be provided. School buildings are exempted from the requirement to cover long-term bicycle parking.*

Ratios. In calculating the required number of vehicle and bicycle parking spaces, fractions equal to or more than 0.5 shall be rounded up to the nearest whole number. In calculating the required number of vehicle and bicycle parking spaces, fractions less than 0.5 shall be rounded down to the nearest whole number. [ORD 3965; November 1996]

	Long Term	Short Term
Residential Care Facilities (based upon maximum capacity)	1 space per 100 beds	1 space per 50 beds

A plain reading of this section of the Development Code clarifies that there is NO MINIMUM required number of Bike parking spaces for Residential Care Facilities and there is no requirement for any Bicycle Parking Facilities for the *subject application* since the RATIO or fraction of a space would be less than .50 space for Short Term (12 beds = .25 spaces) and less than .50 space for Long Term (12 beds = .125 spaces) Parking.

As a minor point of note – when a clear and objective standard is stated in the BDC and there are clear numerical criteria, LUBA has overwhelmingly determined (over the last 30+ years of case law) that there is no opportunity for “*accepted staff interpretation*”.

Nonetheless, the submitted plan for the Planning Commission Hearing demonstrates that three bike parking spaces can be provided in the garage.

<https://www.oregon.gov/lcd/LAR/Pages/CFEC.aspx>

Climate-Friendly and Equitable Communities Rulemaking

Oregon is off track in its work to meet our statutory goals and policy to reduce climate pollution, particularly pollution from transportation. To course correct, the Land Conservation and Development Commission (commission) has updated Oregon's Transportation Planning Rules and related administrative rules.

Staff are now implementing the rules, including working to provide technical assistance and grant support for local governments.

Visit the [implementation web page](#) to find those resources.

The commission adopted temporary rules at its May 19, 2022 meeting. ([Fact sheet about the temporary rules](#)).

The commission adopted permanent rules at its July 21-22 meeting. The department filed those rules August 17, 2022. Find them here:

- [Interpretation of Goal 10 Housing](#) (OAR 660-008)
- [Transportation Planning](#) (OAR 660-012)
- [Metropolitan Greenhouse Gas Reduction Targets](#) (OAR 660-044)

The commission initiated rulemaking in September 2020. The rulemaking focused on significantly strengthening Oregon's administrative rules about transportation and housing planning in Oregon's eight urban areas with populations over 50,000 people (Albany, Bend, Corvallis, Eugene/Springfield, Grants Pass, Medford/Ashland, Portland Metro, Salem/Keizer). No significant rule changes will occur for communities outside those areas.

Staff held 12 meetings with a Rulemaking Advisory Committee, focusing on meeting our climate pollution reduction goals while increasing housing choice and creating more equitable outcomes for community members on the ground.

The committee has helped ensure the commission and DLCDC hear from a broad group of community members, including representatives from historically marginalized communities and people experienced in equity issues.

 [Here is a summary](#) of many of the meetings and engagement for this rulemaking.

[Click to subscribe](#) to email updates about this rulemaking effort and implementation.

[A plain language summary of the rules](#)

[Secretary of State Filing Notice \(Feb 24, 2022\)](#)

Rules Topic Summaries

 [Six-Page Overview of the Rulemaking](#)

 [One-Page Summary of the Rulemaking](#)

 [Climate-Friendly Areas](#)

 [Transportation Planning Rules Update](#)

 [Regional Planning for Climate Pollution Reduction](#)

 [Parking Reform and Electric Vehicle Charging](#)

[Video of Commission Work Session Jan 25, 2022](#) with a rulemaking overview

[Anti-Displacement Toolkit](#) (and [more background and details](#))

 [March 2022 Commission hearing comments, with staff responses](#)