



Community Development Department
Planning Division
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Beaverton, OR 97006
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www.BeavertonOregon.gov

To: Interested Parties
From: City of Beaverton, Community Development Department
Date: September 16, 2019
Subject: **DI2019-0001 Director's Interpretation for Enclosed Uses in the Community Service Zoning District**

Please find attached the Notice of Decision for the Director's Interpretation concerning Enclosed Uses in the Community Service (CS) Zoning District, case file number DI2019-0001. Pursuant to Section 50.40.11.E of the Beaverton Development Code (BDC), the decision for DI2019-0001 Enclosed Uses in the CS Zoning District is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the BDC. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DR2019-0001 is 4:30 p.m., September 30, 2019.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed at the Beaverton Planning Division, Community Development Department, 4th Floor, Beaverton Building/City Hall; 12725 SW Millikan Way between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. For more information about the case file, please contact Sambo Kirkman, Senior Planner, at (503) 526-2557.



**NOTICE OF DECISION
DIRECTOR'S INTERPRETATION
ENCLOSED USES IN THE COMMUNITY SERVICE ZONING DISTRICT**

DECISION DATE: September 16, 2019

TO: All Interested Parties

FROM: Cheryl Twete, Community Development Director

CASE FILE NO: **DI2019-0001 Enclosed Uses in the Community Service Zoning District**

LOCATION: The site is located at 10700 SW Allen Boulevard, specifically identified as Tax Lots 100, 200, 400, and 500 on Washington County Tax Assessor's Map 1S122AA.

SUMMARY: The applicant's representative, Kimley-Horn, requests a Director's Interpretation on zoning requirements in the Community Service district. Specifically the Director will interpret Development Code Section 20.10.35 which reads:

Uses shall be subject to the following (excludes food cart pods, parks and playgrounds):

1. *Activity is conducted wholly within an enclosed structure, except for outside play areas.*

The Director will interpret whether the requirement to wholly enclose a structure applies to permitted uses such as Recreational Facilities. Specifically, whether this requirement applies to a driving range with a 180-yard out-field.


APPLICANT: Jennifer Rinkus
Baysinger Partners Architecture
1006 SE Grand Avenue #300
Portland, OR 97214

APPLICANT'S:
REPRESENTATIVE Brandon McDougald
Kimley Horn
215 South State Street, Suite 400
Salt Lake City, UT 84111

APPLICABLE
CRITERIA:

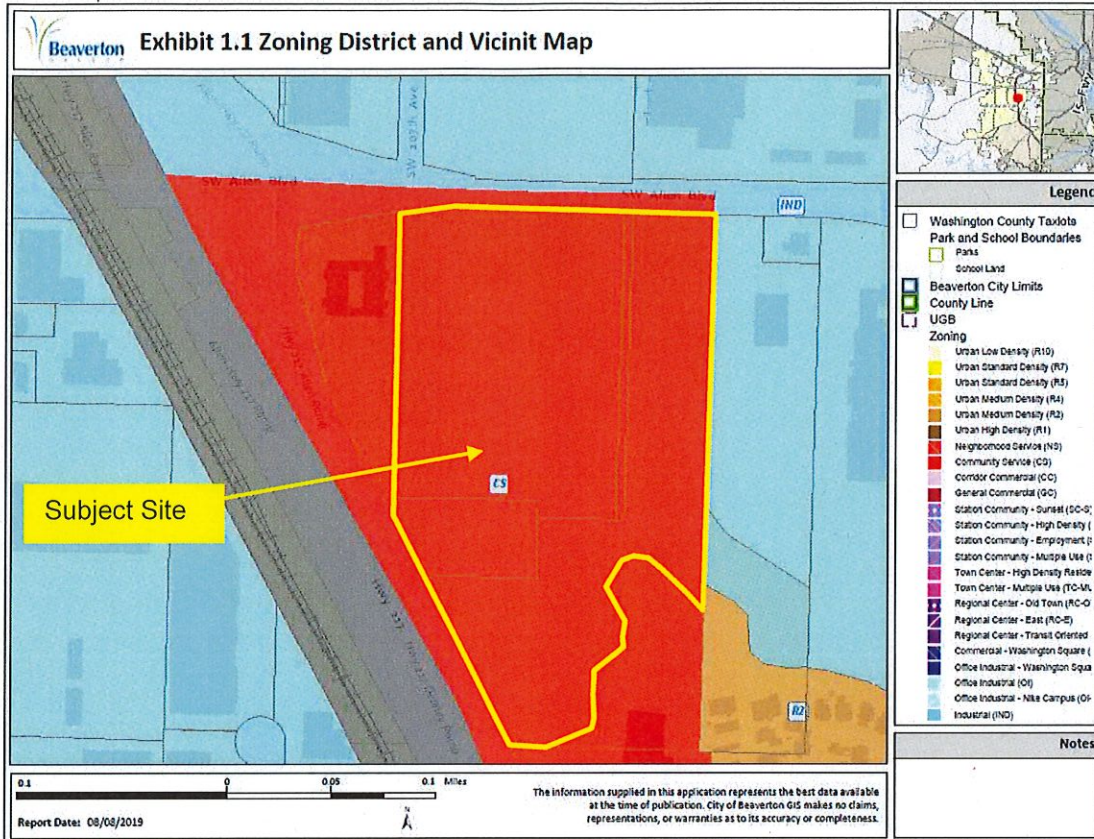
Director's Interpretation - BDC Section 40.25.15.1.C

AUTHORIZATION:



Cheryl Twete
Community Development Director

ZONING/VICINITY/AERIAL MAP



BACKGROUND

Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>120th Day*</u>	<u>365th Day**</u>
DI2019-0001	April 19, 2019	June 26, 2019	October 24, 2019	April 19, 2020

* Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application was determined to be complete or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise.

** Pursuant to ORS 227.178, the total of all extensions may not exceed 245 calendar days after the initial 120 calendar days. This is the latest date by which a final written decision on the proposal can be made.

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Attachment A – Analysis and Findings for Director Interpretation

EXHIBITS

Exhibit 1. Materials submitted by Staff

- Exhibit 1.1 Vicinity Map (page SR-3 of this report)
- Exhibit 1.2 Aerial Map (page SR-3 of this report)
- Exhibit 1.3 Text Amendment Staff Report (TA3-83)

Exhibit 2. Public Comment

No Comments

Exhibit 3. Materials submitted by the Applicant

- Exhibit 3.1 Application Packet

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
DI2019-0001**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications.

The approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant has requested that the Director interpret the Beaverton Development Code (BDC) in writing, regarding the supplemental requirements in Section 20.10.35.1 that states:

Uses shall be subject to the following (excludes food cart pods, parks and playgrounds):

- 1. Activity is conducted wholly within an enclosed structure, except for outside play areas.*

Specifically whether the requirement to wholly enclose a structure applies to permitted uses such as Recreational Facilities. The Director finds the request to be consistent with threshold number one.

Therefore, the Director finds that the proposal meets the criterion for approval.

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

The City of Beaverton received the appropriate fee for a Director's Interpretation application.

Therefore, the Director finds that the proposal meets the criterion for approval.

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

The applicant submitted proposed findings addressing this criterion with the land use application on (June 3, 2019) (Exhibit 3.1). The Director will discuss Comprehensive Plan and BDC provisions relevant to this application below. The discussion will consider the definition of the use in question, as well as the history, purpose, and intent of the BDC section requested to be interpreted.

The BDC Chapter 90 defines Recreational Facilities as:

Facilities that are intended to provide amusement to the user, with limited allowance for spectators. This use includes, but is not limited to: theaters, health clubs, golf courses, non-motorized bicycle tracks, skateboard parks, swimming clubs or pools, tennis or handball or racquet clubs, bowling alleys, dance halls, skating rinks, indoor soccer fields, laser tag, paintball, or other similar uses.

The Director finds that based on this definition, a driving range meets the definition of Recreational Facility. Furthermore, it can reasonably be expected that Recreational Facilities such as driving ranges be located outdoors, since uses explicitly identified in the definition such as golf courses, non-motorized bicycle tracks, skateboard parks, swimming pools, tennis/handball/racquet clubs, and paintball uses are predominately, if not exclusively, located outdoors.

However, the definition of Recreational Facility, which is a permitted use in the CS zone, does not align clearly with the provision of BDC section 20.10.35.1 which requires uses to be wholly enclosed. To evaluate the applicability of the wholly enclosed provision to driving ranges, the Director will review the purpose and intent of the wholly enclosed provision of BDC section 20.10.35.1 by looking at the legislative history of this code provision and language of the current code.

Earlier versions of commercial zoning districts have contained this “wholly enclosed” provision or a minor variation thereof. The Corridor Commercial (CC) and Neighborhood Service (NS) zoning districts have nearly identical provisions¹. In reviewing the history of this provision in the evolution of commercial zoning districts overall, it has appeared consistently over time.

Changes to the use of the “wholly enclosed” provision were identified in a 1983 BDC text amendment (TA-3-83). The 1983 Amendment added the exclusion for parks and playgrounds, as well as outdoor play areas for day care and school facilities:

2. *Uses shall be subject to the following conditions (exclude parks and playgrounds):*
 - 2.1 *Activity is conducted wholly within an enclosed structure, except for outside play areas for day care and school facilities and as allowed in Section 2.3 below*

The reasoning for the modification to the text given by staff (Exhibit 1.3 pp. 5-7) in the 1983 text amendment staff report was to clarify the ordinance intent of the wholly enclosed provision to differentiate other types of outdoor uses, such as parks and playgrounds, from other uses/activities allowed in commercial districts that may have outdoor display and storage uses. The wording of the provision has remained relatively unchanged in the intervening 36 years, while other provisions of the BDC have evolved significantly. The Director concludes that the legislative intent in excluding parks/playgrounds/outdoor play areas was to differentiate between uses that include outdoors sales/display/storage/service from those that do not.

¹ See BDC sections 20.10.30 and 20.10.40

The Director notes that structures to wholly enclose Recreation Facilities such as driving ranges and similar sporting facilities would likely exceed maximum permitted height and other standards in the CS zoning district. This provides further evidence that the wholly enclosed requirement was not intended to apply to Recreation Facilities.

Section 10.20.6 of the BDC, subsection C, states:

This code shall be interpreted reasonably, reading questioned regulations in relation to other sections such that an interpretation most fully effectuates the intent and purpose of the regulations.

As established above, the purpose and intent of the “wholly enclosed” provision is to regulate to outdoor sales and storage uses, not recreation facilities.

Following the mandate in BDC Section 10.20.6 quoted above to interpret the code reasonably and holistically, the Director finds that Section 20.10.35.1 is not intended to limit outdoor uses that are associated with Recreational Facilities (pools, golf courses, skate parks, etc.) Rather, it is intended to limit outdoor storage and sales activities. Therefore the proposed driving range is not required to be wholly enclosed.

Similar findings were brought to the Planning Commission as part of another application addressing enclosing a Recreational Facilities in the Corridor Commercial district and to City Council on an appeal of this project in which both City Council and Planning Commission affirmed these findings (AP2019-0002).

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. When interpreting that a use not identified in the Development Code is a permitted, a 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.**

The Director’s Interpretation is not requesting that a use not identified in the Development Code be determined to be substantially similar to another use identified in the Development Code. The Director’s Interpretation is to provide clarity regarding the supplemental requirements in Section 20.10.35.1.

Therefore, the Director finds that the approval criterion is not applicable.

- 5. The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.**

All applicable submittal requirements for the Director’s Interpretation application have been submitted. The application was deemed complete by the city on June 26, 2019.

Therefore, the Director finds that the proposal meets the criterion for approval.

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

While the applicant proposes development of the subject site, associated Design Review, Conditional Use applications are not being reviewed concurrently and will be reviewed at a later time. The necessary documents related to the Director's Interpretation have been submitted.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated herein, the Community Development Director hereby makes the interpretation that the requirements in Section 20.10.35.1 that the use is wholly enclosed do not apply for Recreational Facilities, a permitted use in the CS zone.