



MEMORANDUM

City of Beaverton

Community Development Department

To: Interested Parties
From: City of Beaverton Planning Division
Date: June 1, 2021
Subject: *Notice of Decision for DI2021-0001 One Medical Director's Interpretation*

Please find attached the Notice of Decision for **DI2021-0001 One Medical Director's Interpretation**. Pursuant to Section 50.40.11.E of the Beaverton Development Code (BDC), the decisions for DI2021-0001 and are 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 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 DI2021-0001 One Medical Director's Interpretation is 4:30 p.m., June 14, 2021.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed by contacting the project planner, Sambo Kirkman at skirkman@beavertonoregon.gov. Note: The City of Beaverton has declared a State of Emergency due to COVID-19 and the Community Development Department is closed to the public until further notice. The Community Development Department is evaluating temporary changes to processes and procedures to respond appropriately to the COVID-19 State of Emergency and is committed to ensuring that the land use review process continues to fulfill the

requirements of state and local law while protecting the health and wellbeing of the community. For more information about the case file, please contact Sambo Kirkman, Senior Planner, at (503) 526-2557.

Accessibility information: *This information can be made available in large print or audio tape upon request. Assistive listening devices, sign language interpreters, or qualified bilingual interpreters can be made available at any public meeting or program with 72 hours advance notice. To request these services, contact **Sambo Kirkman** by calling 711 **503-526-2557** or email skirkman@beavertonoregon.gov*



NOTICE OF DECISION DIRECTOR'S INTERPRETATION

Decision date: June 1, 2021

Application/project name: One Medical Director's Interpretation

Application Numbers: DI2021-0001

Proposal: The applicant, One Medical, requests the Director interpret the Beaverton Development Code (BDC) specifically clarifying the reference to small dental and medical offices in the definition of Service Business/Professional Services. The applicant requests that small dental and medical offices cover facilities that are less than 5,000 square feet in size.



Proposal location: 2865 SW Cedar Hills Boulevard, also identified as Tax Lot 3500 on Washington County Tax Map 1S109AD. The interpretation applies to all zones in which Service Business/Professional Service is a permitted or conditional use.

Applicant: One Medical
1 Embarcadero Center Floor 19
San Francisco, CA 94111

Contact information:
City staff representative: Sambo Kirkman, Senior Planner
503-526-2557
skirkman@BeavertonOregon.gov

Applicant's Representative: Permit Advisors
8370 Wilshire Boulevard #330
Beverly Hills, CA 90211

Property owner: CE John
Seth GaRey
1701 S.E. Columbia River Dr.
Vancouver, WA 98661

Authorization: Cheryl Twete
Cheryl Twete, Community Development Director

Existing conditions

Zoning: Community Service (CS)

Site conditions: The site is a freestanding building which is part of the Cedar Hills Crossing center, a multi-tenant shopping center.

Site Size: Approximately 1.4 acres

Location: 2865 SW Cedar Hills Boulevard.

Neighborhood Association Committee: Central Beaverton NAC

Table 1: Surrounding Uses

Direction	Zoning	Uses
North	CS	Retail Eating and Drinking Establishment
South	CS	Retail Eating and Drinking Establishment
East:	CS	Retail Eating and Drinking Establishment
West:	CS	Medical Facility Retail Eating and Drinking Establishment

Application information

Table 2: Application Summaries

Application	Application type	Proposal summary	Approval criteria location
DI2021-0001	Director's Interpretation	Clarify small medical offices in the definition of Service Business or Professional Services.	Development Code Section 40.25.15.1.C

Table 3: Key Application Dates

Application	Submittal Date	Deemed Complete	120-Day*	365-Day**
DI2021-0001	January 26, 2021	March 23, 2021	August 20, 2021	March 23, 2022

* The original 120-day final decision date was July 21, 2021; however, the applicant submitted a continuance request for 120 days extending the final written decision date to August 20, 2021.

** Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Exhibit 1.1: Zoning and Vicinity Map

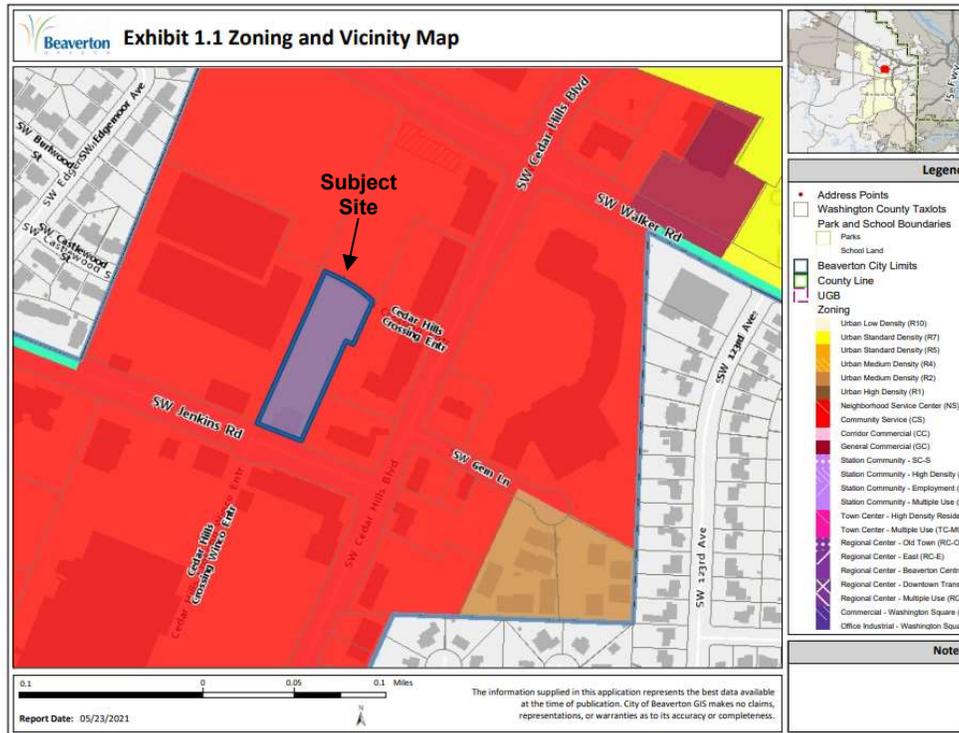


Exhibit 1.2: Aerial Photo

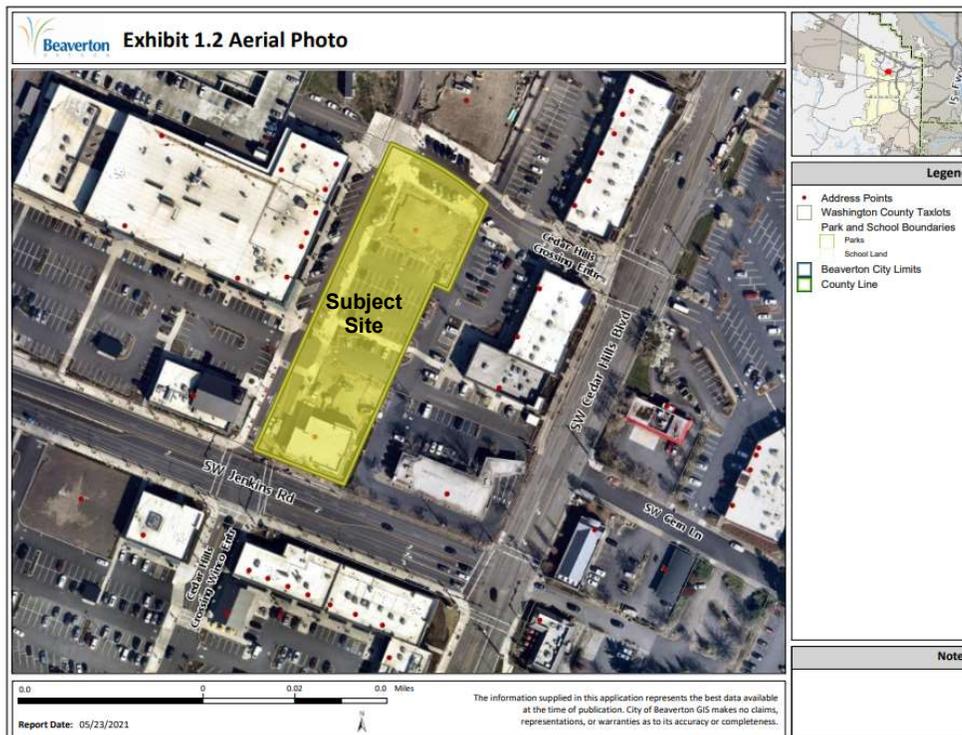


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Exhibits

Exhibit 1. Materials submitted by Staff

Exhibit 1.1 Zoning and Vicinity Map (page 4 of this report)

Exhibit 1.2 Aerial Photo (page 4 of this report)

Exhibit 2. Public Comment Summary

None provided

Exhibit 3. Materials Submitted by the Applicant

Exhibit 3.1 Applicant Submittal Package

Attachment A: DI2021-0001

ANALYSIS AND FINDINGS FOR DIRECTOR'S INTERPRETATION APPROVAL

Director's Interpretation: Based on the following facts and findings, the Community Development Director interprets that the Service Business/Professional Services uses includes dental and medical offices that are less than 5,000 square feet in size.

The Beaverton Development Code addresses medical office use in two different and partially conflicting ways. In Chapter 90 as Medical Clinics, and also within the Chapter 90 definition of Service Business or Professional Services. The uses in Chapter 90 are not conflicting as such, but these uses are not treated identically in Chapter 20 which determines where each uses are Permitted, Conditional, or Prohibited. This Director's Interpretation concludes that medical offices up to 5,000 square feet is size may be considered a Service Business or Professional Services use, while medical offices over 5,000 square feet shall be considered a Medical Clinic.

Section 40.25.05 Purpose:

The purpose of the Director's Interpretation is to address new uses which may come into existence over time that are not addressed specifically in the Code or some of the terms or phrases within the Code which may require further interpretation. The Director's Interpretation is established for resolving Code interpretation issues in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein.

Standards for Approval:

Section 40.25.15.1.C of the Development Code provides standards to govern the decisions of the Community Development Director as they evaluate and render decisions on Director's Interpretations. The Community Development Director will determine whether the application as presented, meets the approval criteria. In this portion of the report, staff evaluates the application in accordance with the criteria for a Director's Interpretation.

In order to approve the application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.25.15.1.C.1

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

FINDING:

The applicant requests the definition of "Service Business or Profession Services" be interpreted to clarify what qualifies as a small medical and dental offices. The applicant requests that a square footage threshold for a small medical and dental office be provided and requests that threshold to be 5,000 square feet. Alteration of the definition would require a text amendment approval; however, as stated in Criterion No. 1, the Director may provide a written determination on a use. BDC Section 10.20.2 states:

The Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this Code. The City Council shall have the final authority to interpret all terms, provisions and requirements of this Code. Other persons requesting such an interpretation in writing

The applicant's request for clarity in the definition of Service Business/Professional Services is consistent with this process as the project has triggered Threshold 1 for the Director's Interpretation which reads:

1. *A request that the Director interpret the Development Code in writing.*

Conclusion: Therefore, the Director finds the proposal meets the criterion for approval.

Section 40.25.15.1.C.2

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

FINDING:

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

Conclusion: Therefore, the Director finds the proposal meets the criterion for approval.

Section 40.25.15.1.C.3

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

FINDING:

The applicant states the proposed use of the building is a medical office. The subject building is approximately 4,500 square feet designed to accommodate a maximum of 11 patients at a time. Business hours are expected to be 9 am to 5 pm Monday through Friday with the potential for hours and days to increase depending future needs. Activities associated with the primary care practice, detailed by the applicant, include but are not limited to drawing blood, outpatient procedures, laboratory services and ancillary office use, with adult, family, and pediatric services.

The Director cites the following Comprehensive Plan provisions as applicable to the proposed interpretation of dental and medical offices as a “service business / professional service” use:

Policy 3.7.3.a) Allow commercial uses at a range of scales, including large-format retail, to address community needs.

The Community Service zoning district has medial facilities that range in size and scale of operation from the Virginia Garcia and Legacy Medical Clinic (approximately 13,000 square feet) to smaller immediate care facilities like Zoom Care (approximately 2,300 square feet). The applicant’s proposal is for a medical office that is less than 5,000 square feet, a smaller scale operation than facilities like the Legacy Medical Clinic. Establishing the size threshold for dental and medical offices in the “Service Business/Professional Services” use expands the opportunity for more varying scale of operation, for medical use, in the CS zoning district thus meeting the intent of this policy. Further the size of the facility is consistent with other Service Business uses listed in the Chapter 90 definition. Within the shopping center where the proposed medical office would be located, there are several other tenant spaces of less than 5,000 square feet that fall within the Service Business/Professional Services definition (i.e. Bouffant Hair Salon, Club Pilates, Fidelity Investment). The Director finds the policy is met.

Policy 3.7.3.d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking.

Medical Clinic is a Conditional Use in the CS zoning district. The Conditional Use permit process addressing the potential impacts to the surrounding area associated with traffic and noise from larger scale medical offices is reasonable. However, dental and medical offices that are less than 5,000 square feet would have significantly less impact than large-scale medical clinics. Activity associated with dental and medical offices are conducted wholly indoors and the size of facility would limit the noise and traffic impacts to the area. As part of an overall shopping center parking is shared among the complex, therefore adverse impact are not expected with this proposal. The Director finds that the interpretation that small medical and

dental offices less than 5,000 square feet are Service Business/Professional Services are consistent with this policy.

Beaverton Development Code (BDC)

Section 10.20.6 states that where it is unclear whether or in what manner sections of this Code apply to a given situation, or if the terms or sections are ambiguous or vague, terms defined in Chapter 90 (Definitions) shall have specifically stated meanings unless the context clearly requires otherwise and terms not defined in Chapter 90 (Definitions) shall have the meaning set forth in Webster's 1993 *Third New International Dictionary*.

Chapter 90 of the BDC defines "Service Business/Professional Services" as the following:

Uses engaged in providing services to the general public: such as small dental and medical offices, real estate, insurance, administrative facilities, personal care, business; professional, and similar services {emphasis added}

The portion of the definition in question is "small dental and medical office." Clarity is not provided as to what the scale of an operation warrants the use of this term "small" versus the classification of Medical Clinic.

Chapter 90 defines "Medical Clinic" as the following:

A facility, independent or part of a hospital or medical school, that is devoted to the diagnosis and care of outpatients. The establishment may be run by several specialists working in cooperation and sharing of the same facility for either a single-focus or general-purposes of the entire facility, such as cardiac clinic or pediatric clinic.

As noted above the BDC does not identify a specific size threshold between a 'small dental and medical office' under the Service Business/ Professional Service use and a Medical Clinic use. The City does have a definition for office which specifically exclude dental offices from its definition and refers to dental office as a Service Business/Professional Service use. The BDC does not define Medical or Dental. Alternately Webster's 1993 Third New International Dictionary does not contain a definition for 'small dental office' or 'small medical office'.

As noted above BDC Section 10.20.2 states:

The Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this Code. The City Council shall have the final authority to interpret all terms, provisions and requirements of this Code. Other persons requesting such an interpretation in writing

In the absence of specific definitions in the BDC or Webster's dictionary it falls to the Director to determine what the difference is between a small medical office under the Service Business/Professional Service use category and the Medical Clinic use. In doing so the director must review the relevant code provisions and the impacts of the proposed interpretation for consistency with the BDC.

The first point of review is the definition and the associated uses listed under the Service Business/Professional Service use category. The first portion of the definition states that "Uses engaged in providing services to the general public" the proposed business provides medical services to the general public, satisfying this portion of the definition.

The second part of the review of the definition is to compare the impacts and characteristics of the other associated uses listed under the Service Business/Professional Service category which are: "small dental and medical offices, real estate, insurance, administrative facilities, personal care, business' professional, and similar services." These associated uses by their nature vary in size and intensity. The only category which is limited by the "small" qualifier are medical and dental office, no size restrictions exist on the other associated uses.

In looking at the remaining uses the 'personal care' category would include services like salons, day spas, massage parlors, estheticians, and barber shops which can provide personal care services to persons on an appointment or walk-in basis and serve multiple clients at one time at different stations or rooms, similar to a medical/dental office. The use characteristics are similar for the proposed medical office which has a maximum of 11 patient rooms which limits the number of patients that can be seen at one time to 11. The impacts of a facility with a maximum patient capacity of 11 are not significantly different from a salon, day spa, barber shop or other personal care business also permitted under the 'Service Business/Professional Service' use. Thereby making dental and medical offices, less than 5,000 square feet, compatible with the definition of Service Business/Professional Service.

In reviewing the applicability Medical Clinic definition, the first portion focuses on possible associations of the facility with a hospital or medical school, while not necessarily requiring the association, the reference does suggest a higher intensity and larger scale facility or network relationship. The proposed medical office is not associated with a medical school or hospital or other larger facilities in the area. The second portion of the definition focuses on the facility operating with several specialists. The applicant's proposal does allow for multiple specialists which is consistent with the definition of a Medical Clinic.

As the applicant's proposal has the potential to be classified as either a Service Business/Professional Service or Medical Clinic the next step is to review how the use categories have been applied with the City. In the last five (5) years there have been four (4) approved Conditional Use applications for Medical Clinics; Kaiser Permanente

at Western Avenue (98,000 square feet), Virginia Garcia at Cedar Hills Crossing (36,000 square feet), Legacy at Cedar Hills Crossing (14,000 square feet) and the CRM Clinic on 105th Avenue (11,000 square feet). These Medical clinics range from approximately 11,000 square feet to 98,000 square feet, substantially larger than the 4,500 square feet proposed by the applicant.

A number of smaller medical offices operate throughout the City as Service Business/Professional Service uses for example Zoom Care Scholls Ferry & Cedar Hills (2,300 and 2,500 square feet respectively), Thomas Family Dentistry (3,400 square feet), Matt Hellickson Dental (4,700 square feet), and Legacy Go Health (3,500 square feet). These uses range in size from just over 2,000 square feet to almost 5,000 square feet in size. This size range is typical for a tenant space in a multi-tenant building or a small freestanding building. The applicant's proposed facility falls into this size category with a lease space of approximately 4,500 square feet.

It is clear by the inclusion of small dental and medical offices in the definition of Service Business/Professional Service that the BDC intends for there to be a differentiation between Service Business/Professional Service and Medical Clinic, based on size and intensity. There appears to be an upper size limit on the surveyed existing Service Business/Professional Service medical and dental offices of around 5,000 square feet. This is a size in which the number of patients that can be seen at one time is limited significantly by the size of the facility. These spaces are also often location in shopping centers or strip retail facilities as tenant spaces. The Director finds that the size limit of 5,000 square feet is reasonable to differentiate Service Business/Professional Service 'small dental and medical offices' from Medical Clinics.

Conclusion: Therefore, the Director finds the proposal meets the criterion for approval.

Section 40.25.15.1.C.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.

FINDING:

The applicant asserts that the request is not to permit a use that is not identified in the Development Code but to clarify whether the use is permitted based on the proposed size of the operation as a Service Business/Professional Service or Medical Clinic use. As the applicant does not request a determination for a new use this criterion is not applicable

Conclusion: Therefore, the Director finds the criterion for approval is not applicable.

Section 40.25.15.1.C.5

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

FINDING:

The application package for this submittal contained all the applicable submittal requirements specified in Section 50.25.1 of the Beaverton Development Code.

Conclusion: Therefore, the Director finds the proposal meets the criterion for approval.

Section 40.25.15.1.C.6

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

FINDING:

The necessary documents related to the Director's Interpretation have been submitted.

Conclusion: Therefore, the Director finds the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated above, the Community Development Director interprets small dental medical offices identified under the Service Business/Professional Services are limited to a facility that is less than 5,000 square feet in size. By establishing a size for this specific use ensures the impacts associated with "small dental and medical offices" are similar to the other "Service Business/Professional Services" uses listed in Chapter 90 Definitions, in the BDC.

CONDITIONS OF APPROVAL

No conditions of approval are being proposed with DI2021-0001 One Medical Director's Interpretation.