



Marion County OREGON

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MEMORANDUM

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To: Fred Wilson, Marion County Hearings Officer

From: Ryan Dyar, Associate Planner, Marion County Building and Planning Division

Subject: Supplemental Response to Conditional Use 21-004/YWAM

Date: April 26, 2021

This memorandum supplements Marion County Planning's responses to questions raised during the land-use hearing held on April 1, 2021 for Conditional Use #21-004, a conditional use to expand an existing church campus on a 31.72 acre parcel in an AR (Acreage Residential) zone, located at 7085 Battle Creek Road SE, Salem (T8S; R3W; Section 25B; Tax lots 100, 300,400, 500, 600,700, 800, 1001).

During the hearing, testimony was presented about existing uses on the property, the adequacy of the site plan provided, and whether the application was in harmony with the purpose and intent of the AR zone, as required by Marion County Code (MCC) 17.128.040. It was requested that staff provide additional comments to add context and clarify how Planning interprets the requirements of the code with respect to these issues.

Unpermitted uses

Concerns were raised that the applicant is using the property in two ways that are not permitted uses in the AR zone:

1. Operating a commercial ropes course;
2. Operating a commercial recreational vehicle park.

Ropes Course

A review of previous land-use approvals indicates the ropes course first appeared on an approved site plan for Zone Change/Comprehensive Plan Amendment/Conditional Use/Lot Line Adjustment #01-02. The course appears to be pre-existing and is not mentioned in the case. It is possible the course was approved in 1999 concurrent with Adjustment/Site Plan

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Amendment #99-1. In the case, the applicant proposed adding a climbing wall to supplement an existing outdoor leadership training course, and requested an adjustment to build the wall taller than the maximum height standard of 35 feet. Adding a climbing wall was approved and the adjustment was denied. The ropes course was never explicitly mentioned in that case. At the time, staff might have understood the ropes course to be a component of the training course. However, the findings of fact in that case indicate the training course was intended for training missionaries residing on the property. The case states that “adding the climbing tower to the property will not expand the number of persons using the property or increase the capacity of the facility”. The understanding that the use would not attract new users is supported by the fact that the application was allowed to be processed as a site plan amendment with the understanding that the proposed use was minor or technical in nature and would not have any potential material or use impact.

Marion County Code (MCC) 17.128.020 and 17.128.030 do not explicitly list a ropes course as outright permitted or conditional uses in the AR zone. Planning believes it is plausible that an outdoor physical activity—such as a ropes course—could be conceived as furthering the religious mission of the organization, and therefore could be a “reasonable use of real property for activities customarily associated with the practices of the religious activity” (MCC 17.110.472). However, the details of how the course is currently being used, and the history of approval, are both important to consider in determining whether the use is permitted. The evidence suggests that if a ropes course was approved, it was approved as an accessory use to the training of missionaries. Planning does not believe the course was approved as a commercial activity to serve the general public. Consequently, Planning believes the current ropes course to be an unapproved use of the property.

Recreational Vehicle Park

Recreational Vehicle (RV) spaces are not listed as a permitted or conditional use in the AR zone. However, MCC 17.126.020 (A) (13), allows for one residential RV space in all zones, subject to the requirements in MCC 17.126.040. Under this provision, the applicant is permitted one residential RV space as an accessory use to a dwelling. Planning interprets the provision to allow for only one space, notwithstanding the total number of legal dwelling units on the property. This is because MCC 17.110.467 considers a lot upon which two or more RV spaces are located to be a recreational vehicle park, which are not permitted in the AR zone.

Despite the above finding, a review of the land-use approval history for the applicant’s property shows that six recreational vehicle spaces were included as part of the site plan approved by the Marion County Hearings Officer in Conditional Use #81-15. A Marion County Planning Director note to the file, dated May 19, 1982, shows that the spaces were permitted to be relocated a maximum of 90 feet further west than was originally proposed. Considering these findings, Planning considers the RV Spaces to

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be a nonconforming use of the property. Nonconforming uses are subject to the limitations in MCC 17.114.000. Expansion of nonconforming uses must meet the criteria in MCC 17.114.150. Planning does not believe that the application to expand the Youth With a Mission campus includes adequate findings to satisfy the expansion of the recreational vehicle park as an expansion of a nonconforming use.

Site plan

Opponents of the expansion raised concerns that the applicant's site plan was inadequate to determine compliance with the County's zoning code. The Planning Division will review setbacks on site plans before granting approval to develop the use. However, due to the scale and complexity of the proposal, Planning believes it is appropriate for the applicant to provide a site plan illustrating how the proposed improvements are consistent with the County's development standards. The elements below were specifically cited at the hearing as areas of concern.

Stream Setbacks

MCC 17.113.140 (B) requires a twenty foot special setback from perennial rivers and streams, measured horizontally and perpendicular from the line of nonaquatic vegetation, or ordinary high waterline, whichever is furthest from the waterway. The applicant has provided a site plan with a 50 foot buffer from the channel. It is unclear if this is meant to represent the stream setback, or the Special Flood Hazard Area around Battle Creek. Notwithstanding this uncertainty, it appears that the proposed development is appropriately setback from the waterway, or is allowed as an exemption under MCC 17.113.140 (B). Nevertheless, to demonstrate compliance and promote clarity, Planning believes the applicant should depict the required 20 foot stream setback on the site plan.

Accuracy of Floodplain Map and Base Flood Elevation

Opponents of the expansion have raised concerns about the accuracy of the FEMA Special Flood Hazard Area map for Battle Creek. The concern is with a section of the waterway that crosses the northern boundary of 083W25B000400 and runs across the property with the address 6935 Battle Creek Road SE (083W25B001100). The river and flood map diverge here. The special flood hazard area runs straight across the property, while the river runs to the east. Waterways do change course over time, and the FEMA mapping process is not without limitations. A more accurate map would likely relocate the Special Flood Hazard Area onto 083W25B000300 and potentially even a portion of 083W25B000100.

It is important to establish an accurate floodplain, especially since the applicant has proposed multifamily housing on Tax Lot 300. When base flood elevation data have not been provided by the applicant, MCC 17.178.030 does provide guidance. It reads: "the

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zoning administrator shall have the authority to determine the location of the boundaries of the floodplain where there appears to be conflict between mapped boundary and the actual field conditions”.

It appears that the mapped boundaries of the floodplain conflict with actual field conditions. The applicant should provide a map that enables Planning to determine adequate setback and development standards. The applicant should provide base flood elevation data for the property, and will potentially need to meet the other requirements found in MCC 17.178.060 (G) for developments generally as well as other applicable standards in the floodplain code depending on the type of development proposed.

Special Setbacks from Resource Zones

MCC 17.128.050 requires any proposed dwelling in the AR zone that abuts a resource zoned property to be setback 100 feet from farm uses and 200 feet from timber operations. Adjacent properties to the north and west are zoned SA (Special Agriculture). Historically, Planning has only applied this special setback when the adjacent property is currently in farm or timber use. This is determined by analyzing the use on the ground through aerial photographs, and checking the Marion County Tax Assessor's records to see if the property is specially assessed for farm use.

The Tax Assessor's records indicate that the property to the north, 6915 Battle Creek Road (083W24C000700), is specially assessed for farm use, and Planning records indicate the parcel is zoned SA. Additionally, the large unaddressed parcel to the west (083W25B001300) is also zoned SA and is specially assessed for farm use. Consequently, Planning would require any proposed residential development to be setback a minimum of 100 feet from these properties. The SA zoned parcel immediately to the west of the applicant's property with the address 6935 Battle Creek Road SE is not specially assessed; therefore, the special setback provision would not apply. This is also the nearest parcel geographically to proposed residential development on the property. MCC 17.128.050 indicates that Planning does have some discretion in applying this standard, subject to the conditions in MCC 17.128.050 (A) (1-4). When applicable, Planning believes the applicant should show these required setbacks on their site plan.

In harmony with the purpose and intent of the zone

Concerns about the proposed expansion were raised regarding whether the conditional use as described by the applicant is in harmony with the purpose and intent of the AR zone, as required by MCC 17.128.040 (A). As stated during the hearing, Planning historically has interpreted the requirement to be met if the criteria in 17.128.040 (B) – (F) are satisfied. It is reasonable to argue that 17.128.040 (A) is listed separately and therefore should be considered independent of the other criteria. However, without explicit guidance specifying what constitutes rural character, the division has hesitated

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to be prescriptive. Planning has instead relied upon the permitted and conditional uses included in MCC 17.128.000 to place sideboards on the types of uses. A church with conference and residential facilities is a listed conditional-use in the AR zone. To limit the scale of development, Planning has relied upon the development standards and the ability to provide adequate services.

Non-approved uses, nonconforming uses, noncompliance with previous conditions of approval

During the hearing, Planning was asked how the code addresses nonconforming uses, issues of noncompliance with previous conditions of approval, and non-approved uses.

Per MCC 17.110.405, a nonconforming use is "a building, structure, vehicle, or land was lawfully put at the time the ordinance codified in this title became effective and which does not conform with the use regulations of the district in which it is located". As indicated in the above discussion about the RV spaces, nonconforming uses are regulated by MCC 17.114. So long as the use has not ceased since the adoption of the MCC, the use can be continued. Any expansion of the use must comply with the criteria in MCC 17.114.050.

Regarding noncompliance with the maximum residential capacity approved in Conditional Use #90-114, Planning believes that any condition of approval for a subject property can be subsequently amended, replaced, or removed through subsequent land-use approvals. Consequently, while Planning has concerns about the proposed number of residents and users of the property, Planning believes that this previous condition is not grounds for denial by itself. Planning has found no evidence that the residential population at any given time exceeded this 200 person limit.

With regards to existing non-approved uses of the property, per MCC 17.110.680, any property that is in violation of the provisions in the MCC shall be denied land use or building permit approval. Planning believes that the commercial nature of the ropes course is not permitted. Although this violation is minor, Planning believes it should be weighed against the totality of evidence for either approving or denying the applicant's request in this case.

**RFC INTERNAL MEMO (2nd REVISION)
H/O OPEN-RECORD PERIOD ENDING APRIL 29TH**

DATE: April 27, 2021
TO: Ryan Dyar, MCPW - Planning
FROM: John Rasmussen, MCPW-LDEP
CASE: CU21-004; YWAM Phased Expansion
ADDRESS: 7085 Battle Creek Road SE, Salem

This revised memo supersedes PW Engineering's initial revised Memo, dated March 19, 2021. The change here is deletion of a Condition requiring a Proportional Share contribution towards an intersection safety project.

ENGINEERING REQUIREMENTS

- A. Driveways must meet sight distance, design, spacing, and safety standards. The following numbered sub-requirements pertain to access:
 - 1) At the time of application for building permits an Access Permit will be required.
 - 2) Any new access or modification to an existing access to Battle Creek Road will need to be reviewed and approved for meeting PW Engineering standards.
 - 3) Natural and ornamental roadside vegetation may not impede adequate Intersection Sight Distance from the Battle Creek Road driveway connections.
- B. Stormwater detention is required for development / redevelopment of 0.5-acre or more. Water quality treatment is not required.
- C. Submission of a detailed civil-engineered Master Site Plan, including grading elements for review and approval is required prior to application for building permits.
- D. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs).
- E. Utility work within the Battle Creek Road right-of-way requires permits

from MCPW Engineering.

ENGINEERING ADVISORY

- F. DEQ is the regulatory authority for cumulative ground disturbances of 1.0-acre or more.

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