

# City of Brookings

## SPECIAL MEETING AGENDA

### CITY COUNCIL

**Monday, August 31, 2020, 7:00pm**

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

### CITY COUNCIL

#### A. Call to Order

#### B. Pledge of Allegiance

#### C. Roll Call

#### D. Staff Reports/Public Hearings/Ordinances/Resolutions/Final Orders

1. APP-1-20/CUP-2-20 – Final Order for a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley. [PW/DS Pg. 2]
  - a. City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20 [Pg.4]
  - b. Council Agenda Report (CAR-APP-2-20/CUP-2-20) presented on August 24, 2020 [Pg. 12]

#### E. Remarks from Mayor and Councilors

#### F. Adjournment

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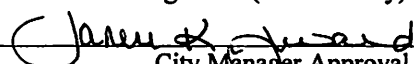
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# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: August 31, 2020

Originating Dept: PW/DS

  
Signature (submitted by)  
  
City Manager Approval

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**Subject:** APP-1-20/CUP-2-20 – Final Order for a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley.

**Recommended Motion:**

1. Motion to approve the Final Order regarding file **CUP-2-20**, based on the findings and conclusions stated in the staff report and subject to the conditions of approval.

**Financial Impact:** None

**Background/Discussion:**

Planning Staff presented application CUP-2-20, a Conditional Use Permit for a 14 bed residential elderly care facility in an R-1-6 zone, to the Planning Commission on July 7, 2020. The Planning Commission passed a motion to deny the application by a vote of 5-2. The applicant filed an appeal to City Council (APP-1-20) on July 24, 2020.

Staff then presented the appeal application (APP-1-20) to City Council on August 24, 2020 whereby Council overturned the decision of the Planning Commission to deny CUP-2-20 by a vote of 3-2. Council in its motion requested the Final Order be drafted and presented at a special meeting on August 31, 2020 with the following conditions added and/or clarified.

1. Require that applicant complete the other half street improvements originally intended for West Cliff Drive.

It is staffs opinion that the completion of the other half of West Cliff Drive to meet current standards is feasible. That is because if the owners of West Cliff Drive refuse to negotiate, the City could condemn the property. However, the condemnation process, if challenged, which seems likely, could drag out for several years or more. It is not likely that the applicant could wait that long to complete the development.

Staff's original position was that the 15-foot panhandle driveway is adequate to meet the needs of the proposed development. The anticipated traffic generation, determined by industry standards, from the project falls below the amount that would even trigger a transportation impact analysis. The City of Brookings Fire Chief Jim Watson has testified the 15ft driveway meets the fire code, is sufficient for emergency vehicles and the conditions of approval state the applicant must submit plans that conform to any requirement set forth in Condition#3. The opponents have not provided any expert testimony that would contradict the expert opinion that the 15 ft driveway is adequate.

2. Restrict emergency vehicles from using sirens and lights when entering the applicant's property during an emergency.

It is staffs opinion that this is an unreasonable request upon emergency service providers, particularly as it is a condition that the applicant has no control of. Staff did confirm with local emergency service providers that rarely are sirens used in residential neighborhoods.

3. Require the conditions of approval state the applicant will operate an "elderly" only care facility

It is staffs opinion that the term "62 years of age and older" be used in lieu of "elderly" and identified in Condition #7

4. Require the applicant to verify that the site can accommodate sufficient space for vehicular ingress/egress, loading and unloading and emergency vehicle access.

It is staffs opinion that Condition #3 already meets this request.

5. Restrict the facility to 14 beds maximum.

It is staffs opinion that this is a reasonable condition and added to Condition #7

6. Fire Drills to be executed on weekdays between the hours of 9am to 5pm.

It is staffs opinion that this is a reasonable condition and added Condition #8

7. Require the applicant provide a drainage plan to be reviewed by the City Engineer.

It is staffs opinion that this condition is already addressed in Condition #19

8. Recommend the applicant attempt to enter into an agreement with the Church of Christ for additional parking

It is staffs opinion that this is an unreasonable condition and that a representative from the Church of Christ verbally opposed any cooperation with the applicant. The applicant in their plans have provided the required off street parking and this section of Passley Road can accommodate overflow parking of visitors on occasion.

Staff has prepared the Final Order and Conditions of Approval for your review and approval.

#### **ATTACHMENTS**

- A. City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20
- B. Council Agenda Report (CAR-APP-2-20/CUP- 2-20) presented on August 24, 2020

**BEFORE THE CITY COUNCIL  
CITY OF BROOKINGS, COUNTY OF CURRY  
STATE OF OREGON**

**As amended by City Council on August 31, 2020**

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION FILE NO. CUP-2-20; AN APPLICATION FOR APPROVAL OF A CONDITIONAL USE PERMIT TO ESTABLISH A 14-UNIT RESIDENTIAL CARE FACILITY AT 17212 S. PASSLEY; BRETT KEMP, OWNER AND APPLICANT. APPEALED BY FILE NO. APP-1-20, APPLICANT, BRETT KEMP**

**ORDER reversing the Planning Commission denying an application for a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential).**

**WHEREAS:**

1. The City Council duly accepted the appeal filed in accordance with the Brookings Municipal Code, pursuant to Chapter 17.152; Chapter 17.136; Chapter 17.20 Sections 17.20.040(C) and 17.20.090; Chapter 17.124 Section 17.124.100; and Chapter 17.172 Section 17.172.061 of the Brookings Municipal Code (BMC); and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings City Council duly considered the above described appeal as a de novo hearing on August 24, 2020; and
4. The appeal was presented by the Planning Director in the form of a Council Agenda Report, by oral presentation, evidence and testimony by the applicant, appellant, and the public at the public hearing; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, reversed the Planning Commission denial of the subject application and approved the application for a Conditional Use Permit and directed staff to amend the Conditions of Approval; and
6. At a following City Council meeting on August 31, 2020 City Council after consideration approved the amended Conditions of Approval and directed staff to prepare a Final Order and Findings of Fact to that affect.

**THEREFORE, LET IT BE HEREBY ORDERED** that the application for the Conditional Use Permit on the subject property is **APPROVED**. This approval is supported by the following findings and conclusions:

**CRITERIA, FINDINGS, AND CONCLUSIONS**

**BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)**

On appeal the City Council has the authority to affirm the Planning Commission decision and deny the application or reverse the Planning Commission decision and approve the application with conditions. In order to grant any conditional use, the City Council must find that the application meets the requirements of the following criteria, which is listed in Section 17.136 – Condition Use Permits of the Brookings Municipal Code, Land Development Code.

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Applicant has provided findings. Staff has provided analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 square feet in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. Per BMC 17.20.060 Lot Coverage Requirements, rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15 feet wide by 140 feet long. The proposed parking area is large enough to accommodate six vehicle parking spaces. The subject property is sufficiently large enough to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Criterion 1 is met.

Criterion 2 - Relation of streets

The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use:

S. Passley Road

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units.

The Planning Commission's denial based on failure to satisfy this approval criterion provides that the street width does not meet standards for commercial vehicles. This was based on testimony from neighbors who assumed that the project would generate "commercial traffic." The applicant stated numerous times before the Planning Commission, orally and in writing, that no large delivery trucks or transit vehicles (buses) would be utilized. There will be an occasional emergency vehicle (ambulance) and occasional visitors, but only a reasonable number of visitors that would not exceed a number you might find at a neighbor's home while have a birthday party or on holidays. The section of Passley Road at this particular location and to the south allows for parking on both sides of the street and is a public right of way. At the time this area was subdivided, the roadway was dedicated to the City and was developed to allow parking on both sides of the road for visitors to residents along this road.

In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, Fire Chief Jim Watson has determined that S. Passley Road is adequate. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered through-out the day rather than concentrated into one period. In conclusion, S. Passley Road is adequate to accommodate the level of traffic to be generated by the proposed development.

#### Driveway

With regard to the driveway, the Planning Commission found that the 15-foot wide panhandle was not sufficient to accommodate the traffic to be generated by the proposed facility. Fire Chief Jim Watson provided expert testimony that the 15 foot driveway width was adequate for emergency vehicles and reiterated that the fire code allows a reduction to 15 feet in driveway width if the building is equipped with a fire suppression system (sprinklers). The proposed building will be equipped with a fire suppression system. While the 15-foot driveway is adequate for purposes of this approval criterion, the City believes it would make more sense for the proposed development to share access with the development directly to the south, as explained below.

The subject property was approved with a 15-foot panhandle in 1992. In 2003, the City approved a subdivision on the property directly south of the subject property, West Cliff Subdivision (SUB-1-03). As part of that approval, the City required the property owner to improve half of the width of the private street – West Cliff Drive. West Cliff Drive runs east-west just south of the pan handle portion of the subject property. The findings of that approval make clear that the intention was that the other half of the street would be improved if and when the subject property was developed. However, the City failed to require the developer to dedicate West Cliff Drive to the City. Accordingly, West Cliff Drive remains a private road, is owned jointly by the property owners of the West Cliff Subdivision, and is maintained by the property owners.

The Council discussed that it would be inefficient and poor planning to require the applicant in this case to develop a separate access along the panhandle mere feet from the existing private West Cliff Drive. One solution discussed by Council involved combining the access from West Cliff Subdivision with the access along the panhandle of the subject property. This option would require the applicant to negotiate with those residents of West Cliff Drive for combined access. If such negotiations fail, the City could use its condemnation authority to condemn West Cliff Drive so that access to the subject property can be shared with the residents of West Cliff Subdivision. However, the condemnation process, if challenged, which seems likely, could drag out for several years or more. It is not likely that the applicant could wait that long to complete the development. Other developments in the future could trigger condemnation of West Cliff Drive. Council has considered and accepts the expert testimony that the 15 ft driveway is adequate for the purposes of this development.

#### Criterion 3 – Impact on adjoining properties

Criterion 3 refers to “adjoining” (as defined in BMC 17.08.010) properties. The impact on adjoining properties is the primary issue. Elderly adult residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have some impact on adjoining properties as every development will have some impact on adjoining properties. There is one residence to the east, a church currently allowed under a CUP to the north with a large open field adjacent to the applicants property, West Cliff Subdivision with five residential homes to the south and three residential lots in the Oceanside Estates Subdivision to the west.

There is clear evidence in the record that the traffic will not exceed the capacity of the streets or the access road. The testimony from the neighbors appears to be based only on speculation and fears of the worst case possible scenario. Fears regarding bad actor occupants can be addressed through the limitation to 14 beds, and the limit to occupants aged 62 and older. Testimony regarding the disturbance from visitors and ambulance calls appears to be overstated, as the bed limitation will necessarily keep that type of conflict to a minimum. This approval criterion must be interpreted in this case in the context of the federal Fair Housing limitations, which aims to facilitate development of group care facilities for the elderly population, and to curb local denials based on neighborhood fears of unlikely impacts. The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Staff believes criterion 3 has been met.

**Criterion 4 - Historic, scenic or cultural attributes**

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Criterion 4 is met.

**Criterion 5 - Comprehensive Plan**

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Criterion 5 is met.

**BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.040 Conditional Uses**

Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100 are permitted subject to a conditional use permit.

**BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.060 Lot Coverage Requirements**

Rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%

Proposed building footprint meets the setback requirements for a flag lot and lot coverage is calculated at 37%.

**BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.090 Parking**

Off-street parking shall be provided in accordance with Chapter 17.92 BMC.

**BMC Ch. 17.92 Parking**

No development permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be fulfilled and that property is and will be available for the exclusive use as off-street parking and loading space. Residential care facilities parking requirements are one parking space per five residents. Unless otherwise provided, required parking and loading spaces shall not be located in a required front yard, but parking space may be located within a required side or rear yard.

Flag lot location will require off street parking. For a 14 unit residential care facility a minimum of three on-site parking spaces for residents is required. The proposed development plans include five on-site parking spaces and one single car parking garage for a total of six parking spaces. As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

**BMC Ch. 17.124 - Sec. 17.124.100 Churches, Hospitals, Other Religious or Charitable Institutions**

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts.

The parking area located on site will be fenced and or screened with landscaping or order to reduce visibility into the parking area from neighboring properties.

**BMC Ch. 17.172 – Land Divisions – Section 17.172.061 Rear Lot Partitions**

Development Standards for rear lots require an access way with a minimum width of 20 feet and a maximum length of 200 feet. Setback requirements require no building be erected within 10 feet of any property line.

The subject parcel was partitioned in 1992 (file number M3-9-92) creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.

The proposed building to be constructed on the lot will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.

**CONCLUSIONS**

1. The proposed residential care facility will occupy 37% of the subject .59 acre site. The design of the facility includes a ten foot setback from the westerly property line, 18 foot setback from the northerly property line, 24 foot setback from the southerly property line and 38 foot setback from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50 foot right of way, the 15 foot wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.



6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated.

**The following Conditions of Approval are hereby made a part of this Final Order.**

**CONDITIONS OF APPROVAL**  
**APP-2-20 (CUP-2-20)**  
**17212 S. Passley Road - Residential Care Facility**

**General Conditions**

1. Approval of this Conditional Use Permit will expire two years from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the request of the applicant.
2. The final construction plans shall be in substantial conformance with the submitted preliminary site plan and as approved by the City Council.
3. Improvement work shall not be commenced until construction plans meet the approval of the City Engineer and Building Official for conformance to all applicable City of Brookings Engineering Standards and Specifications and Building Codes.
4. If needed, all costs of plan checks and inspections by the City Engineer shall be paid by the applicant to the City.
5. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoin properties.
6. All buildings shall meet the requirements of the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and other applicable provisions of the Land Development Code.
7. This approval is for the proposed 14 bed (max) 62 and older residential care facility as shown on the provided plot plan. If in the future the applicant desires to change the use of the building, a minor change must be requested and approved according to Section 17.136, Conditional Use Permits of the Land Development Code.
8. Facility emergency evacuation drills are to be performed on weekdays between 9am and 5pm and the execution of the drills are required to be in compliance with all local and State regulations.

**Street Conditions**

9. The existing Deferred Improvement Agreement #96 (Inst. #92-6113) will remain in place on the property. No street improvements along the S. Passley Road frontage are required at this time.
10. Prior to start of street construction, including grading the applicant shall submit construction plans to the City Engineer for review and approval.
11. Prior to start of construction, the existing mailboxes located within the access way of the property may be removed provided that a notice in writing, 30 days in advance of the start of construction, is given to all residents occupying the mailboxes.

**Parking, Landscaping and Screening**

12. The applicant shall provide no less than six parking spaces as shown on the approved plot plan. The parking area and access way shall be paved and striped. The design of the parking area shall be in accordance with Section 17.92, Off-Street Parking and Loading Regulations of the Land Development Code.
13. The applicant shall provide landscaping area within or around the parking areas equal to a least 7% of the total parking area.

14. The applicant shall provide either a sight obscuring fence or landscaping around the proposed parking area. This fence or landscaping shall be high enough to prevent automobile head lights from shining onto the adjoining property.
15. The applicant shall landscape the project as shown on the preliminary plot plan. To the extent possible the applicant shall use native and drought resistant plants in the landscaped areas. The applicant shall submit a landscaping plan showing the type of plants used and proposed irrigation system to the City Planning Department for review.
16. Outdoor trash containers shall be screened from view with a decorative fence and gate at least six feet high. The applicant shall consult with Curry Transfer and Recycling as to the type of gating of the trash container fence.
17. The applicant shall construct a paved walkway around the building for use of the residents and entry to the back of the building for fire protection purposes.

#### **Water, Sewage and Drainage**

18. The proposed building shall be connected to the City's water and sewer system at the applicant's expense.
19. The applicant shall complete and submit drainage plans to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the subject lot shall be engineered in a manner that protects all adjoining properties.
20. The applicant shall consult with the City Fire Marshal, City Building Inspector and City Engineer as to the water requirements for the proposed building for both domestic and fire suppression purposes.
21. The applicant shall bear the cost to relocate the existing fire hydrant at the entry of the property near S. Passley Road.

Dated this 31st day of August, 2020

ATTEST:

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Jake Pieper, Mayor

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Janell K. Howard, City Recorder

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: August 24, 2020

\_\_\_\_\_  
Signature (submitted by)

Originating Dept: PWDS

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City Manager Approval

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Subject: APP-1-20/CUP-2-20 - Appeal of the Planning Commission denial of a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley.

Recommended Motion:

1. Motion to reverse the Planning Commission denial of File CUP-2-20 and approve File No. CUP-2-20, a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential), based on the findings and conclusions stated in the staff report and subject to the conditions of approval.
2. Motion to approve the Final Order regarding file **CUP-2-20**, based on the findings and conclusions stated in the staff report and subject to the conditions of approval.

Financial Impact: None

Background/Discussion:

Planning Staff presented application CUP-2-20, a Conditional Use Permit for a 14 bed residential elderly care facility in an R-1-6 zone, to the Planning Commission on July 7, 2020. The Planning Commission passed a motion to deny the application by a vote of 5-2. The applicant filed an appeal to City Council (APP-1-20) on July 24, 2020.

The subject property for the proposed Conditional Use Permit is an undeveloped level flag lot, .59 acre in size and located on the west side of S. Passley Road. The property will be accessed from S. Passley Road by a flag lot driveway which is approximately 15 feet wide by 140 feet long and adjacent to West Cliff Drive (**Attachment B**).

The subject parcel was partitioned in 1992 (file number M3-9-92) per BMC 17.172 Land Divisions and 17.172.061 Rear Lot Partitions, creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion in 1992 was that the applicant should not be penalized by the requirement of the Land Development Code which tied division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot.

S. Passley Road is a paved travel way with an approximate 50 foot right of way at or near the subject property. Public Improvements have been made as property has been developed on the East and West sides S. Passley Road near the subject property.

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size). Surrounding development in the area consists of single family homes. Directly West of the property are residential lots accessed by Oceanside Drive and north of the property is Brookings Church of Christ. East of the property is a single family residence accessed off S. Passley Road.

Adjacent and South of the property is West Cliff Drive, a 25 foot wide private street with five residences developed with sidewalks and gutters on the South side.

## **PROPOSED CONDITIONAL USE PERMIT**

The applicant is requesting a conditional use permit per BMC 17.20.040 Conditional Uses in an R-1-6 zone, to establish a 14 bed residential assisted living home to serve elderly residents with disabilities. Specific standards that apply to a facility of this type can be found in BMC Chapter 17.124 Conditional Use Permit, Section 17.124.100 Churches, Hospitals, other Religious and Charitable Institutions. The facility will consist of a 9,588 sq ft single story building. The building will contain 14 residential rooms each with a private bathroom. Common spaces include a living area, dining area, library, kitchen, office, laundry, and storage spaces. The private residential rooms range in size from 319 to 587 sq. ft. and are arranged around the central living area. There will be two outdoor covered patios, one on the north side and one on the west end (**Attachment B**).

Off-street parking will be provided in accordance with BMC Chapter 17.92 which only requires a 14 unit residential care facility to have a minimum of three on-site parking spaces (1 per 5 beds) due to the fact that the residents don't drive. The proposed parking area will consist of a total of six parking spaces, three located at the east end of the building, two located at the front of the building and one parking space in the single car garage.

Access to the parking area will be from S. Passley Road. The parking area will be fenced and or screened with landscaping to reduce visibility into the parking from neighboring properties (**Attachment B**). Per BMC Chapter 17.92 Parking, The R-1-6 zone allows for hospitals, rest, nursing and convalescent homes with an approved Conditional Use Permit. Standards for hospitals, rest, nursing and convalescent homes are found in Brookings Municipal Code (BMC) section 17.124.100. These criteria will be required as Conditions of Approval if approved. The applicants' findings **Attachment B** discuss their plans in regard to these standards. Conformation of utilities is found in **Attachment B**.

## **ANALYSIS AND FINDINGS**

### **BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C) Findings of Fact**

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Planning Commission denied the application, based on several of the approval criteria cited above. The basis for denial are discussed below. The applicant has provided their findings (**Attachment B**) for the original CUP-2-20 application to the Planning Commission, and a Statement in Support of Appeal of Planning Commissions Decision (**Attachment A**) to Council. Staff has provided a summary of the Planning Commission's order and staff's analysis of the criteria as follows:

#### Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 sq. ft. in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. Per BMC 17.20.060 Lot Coverage Requirements, rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15 feet wide by 140 feet long. The proposed parking area is large enough to accommodate six vehicle parking spaces. The subject property is sufficiently large to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Staff believes Criterion 1 has been met.

Planning Commission's finding of denial on this approval criterion is based on neighbor complaints that the building is too large for the site (over 40% lot coverage) The code section referenced in the complaint is 17.172.061(A)(3) which states that the access way square footage can't be used in order to create a minimum lot size. That provision addresses the size a flag lot must be when the lot is being created. This has no correlation to maximum lot coverage of a building on a flag lot. In fact the definition of lot coverage in the code as it is referenced in 17.20.060 says *"Lot coverage" means that percentage of the total lot area covered by structures.*

#### Criterion 2 - Relation of streets

The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use:

##### S. Passley Road

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units.

The Planning Commission's denial based on failure to satisfy this approval criterion provides that the street width does not meet standards for commercial vehicles. This was based on testimony from neighbors who assumed that the project would generate "commercial traffic." The applicant stated numerous times before the Planning Commission, orally and in writing, that no large delivery trucks or transit vehicles (buses) would be utilized. There will be an occasional emergency vehicle (ambulance) and occasional visitors, but only a reasonable number of visitors that would not exceed a number you might find at a neighbor's home while have a birthday party or on holidays. The section of Passley Road at this particular location and to the south allows for

parking on both sides of the street and is a public right of way. At the time this area was subdivided, the roadway was dedicated to the City and was developed to allow parking on both sides of the road for visitors to residents along this road.

In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, S. Passley Road is adequate. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered through the day rather than concentrated into one period. In conclusion, S. Passley Road is adequate to accommodate the level of traffic to be generated by the proposed development.

### Driveway

With regard to the driveway, the Planning Commission found that the 15-foot wide panhandle was not sufficient to accommodate the traffic to be generated by the proposed facility. Fire Chief Jim Watson assured staff in an email (Attachment F) that the 15 foot driveway width was adequate for emergency vehicles. In addition, the fire code allows a reduction to 15 feet in driveway width if the building is equipped with a fire suppression system (sprinklers). The proposed building will be equipped with a fire suppression system. While the 15-foot driveway is adequate for purposes of this approval criterion, the city believes it would make more sense for the proposed development to share access with the development directly to the south, as explained below.

The subject property was approved with a 15-foot panhandle in 1992. In 2003, the City approved a subdivision on the property directly south of the subject property. West Cliff Subdivision (SUB-1-03). As part of that approval (exhibit \_), the City required the property owner to improve half of the width of the private street accessing the subdivision—West Cliff Drive. West Cliff Drive runs east-west just south of the pan handle portion of the subject property. The findings of that approval make clear that the intention was that the other half of the street would be improved if and when the subject property was developed. However, the City failed to require the developer to dedicate West Cliff Drive to the City. Accordingly, West Cliff Drive remains a private road, is owned jointly by the property owners of the West Cliff subdivision, and is maintained by the property owners.

The City finds that it would be inefficient and poor planning to require the applicant in this case to develop a separate access along the panhandle mere feet from the existing private West Cliff Drive. The City finds it can satisfy this approval criterion where there are feasible solutions to identified problems, and (1) imposing conditions along with findings that establish that fulfillment of the condition of approval is not precluded as a matter of law, and (2) ensure, in imposing the condition of approval, that the condition will be fulfilled prior to final development approval or actual development. See Butte Conservancy, LUBA No. 2006-084, September 15, 2006. One of those solutions is set forth above, with the 15-foot wide driveway.

Another solution involves combining the access from West Cliff Subdivision with the access along the panhandle of the subject property. The applicant may negotiate with those residents for combined access. If such negotiations fail, the City could use its condemnation authority to condemn West Cliff Drive so that access to the subject property can be shared with the residents of West Cliff Subdivision. If the applicant is able to negotiate a solution with the owners of West Cliff Subdivision, then condemnation may not be necessary.

Staff recommends Council add a condition that the applicant will improve the panhandle along with the property underlying West Cliff Drive to the minimum 20 feet of paving to provide

The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50 foot right of way, with a 15 foot wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.
6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated (**Attachments C, D & E**).

## **CONDITIONS OF APPROVAL**

The proposed conditions of approval are attached to and made a part of this report (**Attachment H**).

## **RECOMMENDATION**

Staff recommends the reversal of the Planning Commissions denial of CUP-2-20, based on the findings and conclusions stated in the applicant's findings, applicants statement in support of appeal, the staff report, and subject to the Conditions of Approval.

Staff has prepared a FINAL ORDER to be considered at this meeting (**Attachment H**).

## **ATTACHMENTS**

- A. APP-1-20 Appeal Application (includes Appeal Statement, Land Use Attorney Letter of Support, Fair Housing Act and ADA guideline summarization)
- B. Planning Commission Staff Report (includes Map, Facility Plans, Utility Confirmation, Applicant Findings, Resident Oppose Letter, Proposed Final Order & Conditions of Approval)
- C. Supplemental Planning Commission Packet #1 (includes Amended Staff Report, Letters of Opposition, Residents Petition, Land Use Attorney Letter of support, Applicant Letter of Support)
- D. Supplemental Planning Commission Packet #2 (includes Letters of Opposition, Applicants Informational Letter to Neighbors, Fair Housing Act and ADA guideline summarization, Letter of Support, Fire Department Response addressing CUP Proposal)
- E. Additional Letters of Support and Opposition
- F. Fire Department Provisions
- G. Planning Commission Minutes of July 7, 2020
- H. City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20
- I. Age Friendly Inclusive Community Tool Kits



access to the proposed development. Such improvements shall be complete prior to issuance of an occupancy permit. With the proposed condition, staff finds that it is feasible to satisfy this approval criterion.

### Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood. One residence is located in front of the flag lot and the driveway will abut their garage. Five homes located on West Cliff Drive will face the property. Elderly adult residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have little to no adverse impact on the surrounding neighborhood. Traffic generated by the facility, although light, will cause an incremental amount of noise in the general area, however, residential development on the same lot would have the potential of adding as much, if not more, traffic to S. Passley Road.

The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Staff believes criterion 3 has been met.

In the presentation to the Planning Commission, the applicant alleged possible violations of federal laws aimed at protecting housing for individuals with disabilities. Those laws target local land use laws that provide extremely discretionary approval criteria, such as this one, that allow neighbors and local decision-making bodies to block proposed housing for the disabled. Staff believes that denial of the proposal based on this approval criterion could be subject to challenge by the applicant for violation of one or more federal fair housing laws.

### Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Staff believes Criterion 4 is met.

### Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Staff believes criterion 5 is met.

The Planning Commission found the facility is inconsistent with the adjoining R-1-6 zoning when in fact it is allowed in this zone under a conditional use permit. This alone makes the project compatible with conditions. The Planning Commission also relied on neighbors' concern that Passley Road will not be able to accommodate additional traffic. Staff believes it is not reasonable that the applicant be required to provide a traffic impact study when they have stated multiple times that traffic would be minimal and there would be no commercial traffic i.e. delivery trucks or large transit vehicles.

## CONCLUSIONS

1. The proposed residential care facility will occupy 37% of the subject .59 acre site. The design of the facility includes a ten foot setback from the westerly property line, 18 foot setback from the northerly property line, 24 foot setback from the southerly property line and 38 foot setback from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city.