

RESOLUTION NO. 412-00

A RESOLUTION DENYING THE APPLICATION FOR
CONDITIONAL USE PERMIT NO. 114-99 OF LEON OLIVER,
ON BEHALF OF SAM CARE CENTERS, INC. TO SITE AND
CONSTRUCT A FIFTEEN BED RESIDENTIAL CARE
FACILITY IN THE EAST KNOLL ESTATES SUBDIVISION

WHEREAS, the Planning Commission conducted a public hearing on January 20, 2000, to consider the application for Conditional Use Permit No. 114-99 of Leon Oliver, on behalf of SAM Care Centers, Inc., to site and construct a fifteen bed residential care facility in the East Knoll Estates Subdivision; and

WHEREAS, prior to the close of the evidentiary hearing on January 20, 2000, legal counsel for the applicant requested the record be kept open for seven days to allow an opportunity to respond to issues raised by opponents of the proposed conditional use;

WHEREAS, the Planning Commission voted to allow the record to remain open for the receipt of additional argument and evidence, to be presented in written form, until January 27, 2000; and

WHEREAS, on February 17, 2000, the Planning Commission voted to reopen the record until noon on February 25, 2000, to allow the opponents an opportunity to submit written material in rebuttal to new evidence contained in the Staff Analysis dated February 14, 2000; and

WHEREAS, on March 9, 2000, the Planning Commission met to commence deliberations upon the requested application, and voted 3 to 2 to deny the application for Conditional Use Permit No. 114-99, based upon findings of fact; and

WHEREAS, the Planning Commission directed staff to prepare a Resolution denying the application, and setting forth the findings of fact and conclusions of law made by the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission adopts the following findings of fact:

1. The subject property is a vacant lot located at 445 East Knoll Drive, within the East Knoll Estates Subdivision. The property is further described as Assessor's Map 1N 13E 1BD, Tax Lot 1200. The Comprehensive Plan designation and zoning classification for the parcel is "R-L" Low Density Residential. The owner of the property is SAM Care Centers, Inc..

The application, submitted by Leon Oliver on behalf of the owner, requests approval for the siting and construction of a fifteen bed residential care facility upon the property.

2. East Knoll Estates Subdivision is located West of Fremont Street, East and North of Highway 197. The subdivision has been and is continuing to be developed with site constructed stick built homes with attached garages. Currently, 56% of the platted lots in the subdivision have been developed. Development of the subject property would bring the total percentage of developed lots to 61%. Paul Hoffman, counsel for the East Knoll Homeowners Association, testified the typical home in the subdivision was a three bedroom, two bath home with approximately 1,600 to 1,700 square feet on the first level. Mr. Hoffman also testified the two existing two-story houses in the subdivision were considerably smaller in size on the first level.

3. A series of private covenants, conditions, and restrictions have been adopted by the East Knoll Homeowner's Association. The Association is responsible for enforcement of these covenants. The City has not adopted the covenants, conditions and restrictions. Article VI, Section 6.1 of the covenants provides that all dwellings on Lots 5 to 13 and on Lot 16 of Block I shall contain a minimum of two thousand square feet. The covenants do not contain any language setting a maximum square footage which dwellings cannot exceed. The covenants provide that no building can be built except for a detached single family dwelling including a garage, which cannot exceed the City's height requirements and not exceed three stories in height in any event.

4. Residential care facilities are licensed by the State of Oregon. These facilities provide residential care, training, or treatment for six to fifteen individuals who need not be related. This number does not include staff who work in the facility.

5. In order to receive a license from the State to operate a residential care facility, an applicant must comply with numerous construction and design criteria, which include requirements concerning the maintenance of trash, garbage, and toxic or combustible material on the property, and requirements which directly impact the exterior appearance of the facility. State requirements include windows for each bedroom, which must meet specific dimensional standards for fire safety and escape reasons. When viewed from the exterior of a structure, these windows tend to convey an institutional appearance due to the regularity of window sizes, location, and distance above the ground.

6. Interior requirements adopted by the State of Oregon specify a certain amount of square footage and bed spacing standards. The applicant's proposal was for a mix of single room and double room occupancies. Each of the rooms provides a water closet. Shared bath facilities are located at key points throughout the structure. A review of the floor plan submitted by the Applicant showed no kitchenette facilities in any of the single or double rooms. Kitchenette facilities are not required by State law.

7. Mr. Hoffman, counsel for the Homeowner's Association, presented graphic information to the Commission showing the footprint of the proposed structure was approximately 5,000 square feet. Mr. Hoffman submitted other graphic documents that indicated the scale of the footprint of the Applicant's proposed facility was similar in size to the footprint of the Senior Center. The graphic information was apparently intended to show the footprint of the proposed facility (which is similar to the Senior Center, a building with an institutional use) was much larger in size when compared to the footprint of a typical existing residential structure in the neighborhood.

8. The staff report prepared by Bob Paul, Senior Planner, noted the proposed facility had many features which could be considered harmonious with the abutting properties and the surrounding neighborhood, including the single story design of the facility, the use of differing materials, varying and numerous roof pitches, and depth relief of varying projections and the roof design, which combine to provide visual stimulus. Mr. Paul's report noted there was one architectural element of the facility which was not harmonious with the other architectural elements in the neighborhood, which was the parking layout. The reasons for this conclusion were the impervious parking surface and the absence of landscaping to buffer the structure.

9. The staff provided a copy of graphic information to the Commission showing the percentage of coverage for individual lots in the East Knoll Subdivision which have structures, and the lot upon which the proposed facility was to be constructed. The percentages shown in the graphic information reflected the relationship between the size of the residential structures and the size of the lots. The value of the lot for the proposed care center was 25%, which appears generally consistent with the percentages for the other lots with the existing homes. The lot coverage figure of 25% does not include the proposed driveway, walkways and parking area. That figure is estimated to be 43%.

10. The opponents presented testimony expressing a concern about the potential impact of the facility upon parking and traffic in the neighborhood. The opponents argued the facility would generate a significant impact upon parking and traffic, generated by the number of employees, delivery trucks, and visitors traveling to and from the facility. The Applicant submitted a parking analysis based upon the shift practices commonly used at its other facilities. The information indicated a minor shift overlap occurred approximately 1% of the total hours shown during the two week period. The applicant presented testimony that the laundry would be done within the facility, and no delivery trucks would be used to deliver supplies to the facility, as the employees would do the shopping for food and other supplies. The Applicant submitted testimony projecting the total trip generation for the facility to be 14.4 trips per day. Contacts with staff representatives in other cities with similar residential care facilities appears to confirm the Applicant's contention that residents of long term care facilities tend to receive fewer visitations from family and friends, than residents of other types of care facilities.

11. The opponents submitted a letter from Ben Beseda, a registered professional engineer with Tenneson Engineering Corporation, questioning the feasibility of the Applicant's

proposed method of using a basin to collect storm water runoff, and allow the runoff to infiltrate into the ground. In response, the Applicant submitted a detailed explanation of the proposed storm water management plan, including an analysis of the soil and evidence of calculations supporting the Applicant's contention that the soil had sufficient permeability characteristics to effectively collect and dispose of the storm water runoff.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMISSION ADOPTS THE FOLLOWING CONCLUSIONS OF LAW:

1. The application for Conditional Use Permit No. 114-99 of Leon Oliver, on behalf of SAM Care Centers, Inc., to site and construct a fifteen bed residential care facility in the East Knoll Estates Subdivision, is denied.

2. Subgoals No. 1 and No. 3 of Goal 10, Housing, of the City's Comprehensive Plan provide as follows:

1. Promote and provide an adequate supply of safe, healthy and affordable housing for all members of the community in a variety of housing types recognizing the needs and desires of the community's residents.

3. Promote the development of housing that is complementary with the environment and the surrounding land uses.

Policy No. 3 of Goal 10 provides as follows:

"Areas for low density residential development shall be at higher elevations along the Gorge bluff and where streets and other public facilities have limited capacity."

A. Mr. Hoffman, counsel for the Homeowner's Association, argued the proposed application violated certain provisions of the City's Comprehensive Plan. The Commission concurs with the City Attorney's interpretation that the above-referenced provisions from the City's Comprehensive Plan are not standards of approval for this particular land use application, as the provisions are written in general, nonmandatory language, expressing general principles which guide the City's implementing land use regulations, and should not be interpreted as providing approval criteria applicable to a conditional use permit application.

B. The Commission concludes the proposed application is consistent with the City's Comprehensive Plan. ORS 197.663(4) provides under State policy, residential care facilities shall be considered a residential use of property for zoning purposes. Section 5.010.010 of the City's Land Use and Development Ordinance (LUDO) provides for a density range of 0 to 6 single family dwelling units per gross acre for the "R-L" Low Density Residential District. Section 2.030 of the LUDO defines "dwelling unit" as "One or more rooms, with bathroom and

kitchen facilities, designed for occupancy by one family.” Section 2.030 of the LUDO defines “Family” as follows:

“An individual or two or more persons related by blood, adoption or marriage, or a group of not more than five adults unrelated by blood or marriage, living together in a dwelling unit. As used in this Ordinance, “family” also refers to unrelated physically or mentally handicapped, elderly, or drug or alcohol dependent persons receiving treatment, and resident staff persons engaged in their care.”

Under these definitions, the Commission concludes the residents and staff of the proposed residential care facility would be classified as a “single family”, and the proposed structure would appear to qualify as a single dwelling unit, which means the facility would appear to qualify as “low density residential development” that is to be located at the higher elevations along the Gorge bluff, as set forth in Policy No. 3 on page 35 of the Comprehensive Plan.

3. Sections 3.010.040, 3.020.050, and 3.050.030 of the City’s LUDO set forth certain procedural requirements which an application for a conditional use permit must satisfy. As set forth in the staff report prepared by Bob Paul, Senior Planner, the Commission concludes that these requirements have been satisfied. The application was deemed to be complete on December 16, 1999. A staff report was prepared setting forth the applicable criteria and standards, and summarizing the basic findings of fact. The initial public hearing was held on January 20, 2000, and the required notice of the hearing has been mailed to affected property owners, and published in the newspaper.

4. Section 3.050.040 of the City’s LUDO sets forth the review criteria for a conditional use permit.

A. Subsection A, Permitted Conditional Use, requires the proposed conditional use to be conditionally permitted in the zone district where it is proposed to be located.

1. The Commission concludes this criteria is satisfied, as Section 5.010.030, which sets forth conditional uses for the low density residential district, allows for Residential Care Facilities as a conditional use.

B. Subsection B, Standards, requires that the proposed use conform to all applicable standards of the zone district where the use is proposed to be located.

1. The Commission finds that this criteria has been satisfied, based upon the following table which lists the standards and indicates whether or not the standards have been met.

Low Density Residential	Standard	Proposal	Meets Requirements
Lot Size	5000 square foot Minimum	Approximately 21,344 square feet	Yes
Setbacks	Front = 15 feet (garage = 20 feet), rear = 10 feet, sides = 5 feet.	53 feet front (67 feet garage) 44 feet rear, 5 feet both sides	Yes
Building Height	30 feet	22 feet	Yes
Lot Coverage	60% Maximum	43%	Yes
Building Orientation	The front building line shall be parallel to the street or private accessway.	Oriented toward East Knoll Drive	Yes
Off-Street Parking	Auto @ 1 per 4 beds minimum with no maximum and bicycle @ 1 per 6 beds. Requires 4 car and 3 bicycle spaces.	4 auto spaces including 1 accessible space. Unspecified number of bicycle spaces.	Yes for auto and yes, with condition that bicycle rack be capable of securing 3 bicycles.
Accessory Uses, Buildings and Structures	Per Section 6.030	None proposed	Not applicable
Driveway locations	24 foot maximum width. 10 foot separation.	24 foot width. 5 feet from property line. No development on adjacent lot	Yes

C. Subsection C, Impact, provides the location, size, design, and operating characteristics of the proposed use shall be made reasonably compatible with, and have minimal adverse impact on, the legal development of abutting properties and the surrounding neighborhood, with consideration given to:

1. Harmony of scale, bulk, building coverage, and density.
2. The availability of public facilities and utilities.
3. Any harmful effects on desirable neighborhood characteristics and livability.
4. Traffic generation and the capacity and safety of surrounding streets and alleys.
5. Bicycle and pedestrian circulation, access and safety.
6. Any other impacts of the development deemed relevant by the Commission.

C(1) Concerning the second factor of availability of public services and utilities, the Commission concludes that this criteria has been satisfied. The staff report prepared by Bob Paul, Senior Planner, indicates the project site is served by City sewer and water. The Commission finds the detailed analysis, concerning the storm water basin plan proposed by the Applicant, is credible and sufficient to support the Applicant's assertion that the proposed method of collecting and disposing of storm water runoff will work in an efficient and satisfactory manner. Additionally, verification of this method is addressed during detailed construction plan review. Mr. Paul's staff report noted that gas and electric utilities can be provided to the subject property. The Commission concludes that public facilities and utilities are adequate to serve the proposed residential care facility.

C(2) Regarding the fourth factor of traffic generation and the capacity and safety of surrounding streets and alleys, the Commission finds that this criteria has been satisfied. Mr. Paul's staff report noted the capacity of the existing street in the neighborhood is adequate to accommodate current and future increases in traffic. The opponents argued the proposed use would generate significant impacts in terms of traffic and parking, resulting from delivery trucks, employees and visitors traveling to and from the site. This testimony appears to be based upon the opponent's belief that employee's vehicles will not be capable of delivering goods and supplies to the site, that the staffing levels proposed by Applicant are insufficient and additional employees will likely have to be hired to adequately provide services, and that the actual number of visitors and friends traveling to the site will be higher than the Applicant claims.

C(2)(a) The Applicant submitted testimony that employees would use their own vehicles to deliver goods and supplies to the site. This practice is apparently consistent with the method used by Applicant to operate similar residential care facilities. The Applicant submitted testimony indicating the proposed staffing level was consistent with the State guidelines, and consistent with staffing levels used by the Applicant for other existing facilities. The Applicant provided information projecting the expected trip generation for the proposed facility to be 14.4 trips per day. Data supplied by the Applicant from the ITE Trip Generation Manual indicated a typical single family residence generated 9.57 trips per day. Research gathered by City staff from other cities with similar care facilities confirmed the Applicant's assertion that the longer a resident stays in a facility, the fewer the number of trips that are generated by friends and family traveling to see that patient. The Commission concludes the testimony and evidence submitted by the Applicant, which is based upon actual experience of operating similar residential care facilities, is more credible and is sufficient to establish the traffic to be generated by the proposed facility will not have a negative impact upon the capacity or safety of the surrounding streets.

C(3) Concerning the fifth factor, bicycle and pedestrian circulation, access, and safety, as set forth in Mr. Paul's staff report, the Commission concludes that this factor is not relevant to the proposed use.

C(4) Concerning the first factor, particularly the factors of harmony and scale, and bulk, the Commission concludes the criterion set forth in Section 3.050.040(C) has not been satisfied.

C(4)(a) The evidence in the record establishes the average footprint for the existing residential structures in the East Knoll Estates Subdivision measures between 1,600 to 1,700 square feet. Evidence in the record establishes the footprint of the proposed structure measures 5,000 square feet. The proposed structure is significantly larger in scale and in bulk when compared to the existing residential structures in the neighborhood, and the Commission finds this discrepancy in scale and bulk does not render the structure reasonably compatible with the development upon abutting properties and other property in the neighborhood.

C(4)(b) In terms of factor of harmony, although the proposed structure appears to have some architectural features which may be similar to certain features traditionally used for a single family dwelling, the Commission believes that the dominant exterior feature of the structure is of an institutional nature. This institutional appearance is dictated in part by the need to comply with State licensing requirements, which apparently cannot be modified to give the structure a more traditional "residential" appearance.

C(5) In terms of the third factor, concerning harmful effects upon desirable neighborhood characteristics and livability, the Commission notes the existing residences in the neighborhood consist of site built structures, typically three to four bedrooms, with attached garages; and they are built in a style which reflects traditional single-family dwellings. Although the City has not formally approved or adopted the set of covenants, conditions and restrictions established by the Homeowner's Association, the Commission concludes there was an expectation on the part of prospective homeowners in the subdivision (as evidenced by Clark Riley's letter which was read into the record) that structures built in the subdivision would be built with an architectural style and scale that is associated with a traditional single-family dwelling. The photographs submitted by Mr. Hoffman, as part of his supplemental response to the record established during the January 20, 2000, hearing, reflect that a sense of identity has developed in the neighborhood resulting from the uniform development associated with the single-family dwellings with attached garages. The Commission concludes that the proposed residential care facility, with its institutional appearance, which cannot be mitigated due to State licensing requirements, will have a substantial negative


impact upon the legal development of traditional single-family dwellings upon abutting properties and adjacent lots in the neighborhood.

APPEALS, COMPLIANCE, AND PENALTIES

Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals must be made according to Section 3.020.080 of the Land Use and Development Ordinance, and must be filed with City Clerk within ten (10) days of the date of resolution.

The Secretary of the Commission shall (a) certify to the adoption of the Resolution; (b) transmit a copy of the Resolution along with a stamped approved/denied site plan or plat to the applicant.

APPROVED AND ADOPTED THIS 14TH DAY OF MARCH, 2000.



Bruce Lavier, Vice-Chairman
Planning Commission

I, Bob Paul, Secretary to the Planning Commission of the City of The Dalles, hereby certify that the foregoing Resolution was adopted at a special meeting of the City Planning Commission, held on the 14th day of March, 2000.

AYES: Lavier, Wilson, Peters, Payne, Moser
NOES: None
ABSENT: None
ABSTAIN: Walter Hoffman, Jim Coggins

ATTEST: 

Secretary, Planning Commission