

RESOLUTION NO. 99-009

A RESOLUTION AFFIRMING THE PLANNING COMMISSION'S DECISION
TO APPROVE CONDITIONAL USE PERMIT NO. 109-98 TO USE A SINGLE
FAMILY RESIDENCE AS A DAY USE MENTAL HEALTH TRAINING
FACILITY

WHEREAS, the Planning Commission of the City of The Dalles adopted Resolution No. PC 407-98 on November 19, 1998, approving Conditional Use Permit No. 109-98 of the Mid-Columbia Center for Living and Kris and Bob McFadden to use an existing residence for a day use mental health program; and

WHEREAS, Mike and Jody Jensen filed a Notice of Appeal of the Planning Commission decision on December 3, 1998; and

WHEREAS, the City Council conducted a public hearing on January 18, 1998, to consider the appeal; and

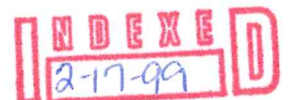
WHEREAS, a staff report was presented to the City Council and public testimony was received during the hearing; and

WHEREAS, following the close of the public hearing, the City Council deliberated and voted 4 to 0, with one abstention, to affirm the Planning Commission's approval of the application of the Mid-Columbia Center for Living for Conditional Use Permit No. 109-98, based upon findings of fact and conclusions of law; and

WHEREAS, the City Council directed staff to prepare a Resolution denying the appeal, and setting forth the findings of fact and conclusions of law made by the City Council;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of The Dalles adopts the following findings of fact:

1. The subject property is a single family house located at 223 East Tenth Street, and is described as Assessor's Map No. 1N 13 3CB, Tax Lot 9500. The zoning for the property is "RH" High/Medium Density Residential. The owners of the property are Kris and Bob McFadden. The applicant, Mid-Columbia Center for Living, proposes to use the residence as a day use mental health training facility. The application seeks approval for the project as a conditional use with a community facility overlay.
2. The applicant submitted a narrative summary concerning the proposed program, which is designated as the "Millcreek" program. The program was established as a psychiatric rehabilitation program by the applicant in 1995. The program is designed to serve persons with psychiatric syndromes. The narrative states "the



mission of the program is to enhance the person's ability to function independently within the Community through intensive skills training and development."

3. The narrative describes the types of activities in which clients receiving training and instruction, including cooking, cleaning, yard work, hygiene, relationships, and communications. The narrative also indicates the program provides intensive case management services, with the philosophy of keeping people in the community. Persons with psychiatric syndromes are educated and monitored on medication compliance, symptoms, appropriateness within the community, and upkeep with activities of daily living.
4. Representatives from the Center for Living testified before the Planning Commission and the City Council that the Millcreek program has screening criteria which excludes predators, sexual deviants, or persons who would intentionally cause harm to another person, from participating in the program. The narrative supplied by the applicant indicates the staff for the program included two rehabilitation specialists and one case manager. Sharon Guidera, Director for the Center for Living, testified in her opinion, the staff was well qualified to manage the program, and that the program had been operating for three years with no documented incident of aggressive or violent behavior by a client participating in the program. Todd Jacobsen, representing the applicant at the Planning Commission, testified the program had previously operated in the basement of the First United Methodist Church, which is located in the neighborhood, for approximately four to five years.
5. The narrative indicates the applicant has a van, which will be used for transportation of clients to the residence; so there was little need for parking. The narrative states there were three clients who drove vehicles. The applicant submitted a copy of a parking utilization agreement with the First United Methodist Church, allowing the applicant to use four parking spaces in the church's parking lot during normal business hours. In response to a question from Greg Hughes, Tom Boyatt, Acting Planning Director, advised the Council the parking inside the garage was designed for handicapped accessibility, and there were two parking spaces behind the garage.
6. The applicant's narrative indicates on a typical day, 15 to 20 clients will attend the program, with 15 being the most at any one time. Mr. Jacobsen testified before the Planning Commission that the program was scheduled for three days a week from 10:00 AM to 3:00 PM. He also testified the program could meet at other times of the day or evening.
7. Bob McFadden, one of the owners of the subject property, testified in his experience, there had not been any problems with students from The Dalles High School, which is located across the street from his property, congregating by his house and causing problems. Mr. McFadden, who is a real estate agent, testified

that home values in a neighborhood where a similar use had been placed (the Rose Garden Apartments on East Ninth Street) had actually increased in value. In his response to the Notice of Appeal, Mr. McFadden emphasized the outward appearance and the footprint of the home would not be changed.

8. The testimony presented to the Planning Commission and City Council reflected a variety of concerns presented by neighborhood residents concerning potential impacts of the proposed day use mental health facility. One concern focused upon a potential loss in property values of adjacent single family dwellings. Although some opponents asserted the proposed use would cause a loss in the property value of their residence, there was no specific factual data offered by the appellants or other adjacent property owners to establish or support their claim of lost property value, or to establish a connection between the presence of a mental health facility and a subsequent loss in property values.
9. Testimony from the appellants and neighborhood residents asserted the presence of the proposed use and persons with severe and persistent mental illnesses would have a harmful effect upon desirable neighborhood characteristics. Several of the neighbors expressed a concern for the safety of children and residents in the area, and a concern for the clients of the facility itself who might be harassed by students attending school. Concerns were raised as to whether the applicant had sufficient staff to monitor the behavior of clients attending the program. Testimony concerning violent incidents by other persons with psychiatric problems attending similar programs was presented to the Council. Much of the testimony expressed a concern that the proposed use would not fit in with the “residential” nature of the neighborhood, and that there must be a “better location” for the proposed facility. Certain neighbors asserted that with so many neighbors opposing the project, it could not be in harmony with the surrounding neighborhood.
10. Another major concern of the appellants and surrounding neighbors concerned traffic congestion and parking. Several persons testified the traffic volume on Tenth Street was already heavy; and in their opinion, the proposed use would only contribute to the traffic congestion. Concerns were raised there was not sufficient off-street parking provided by the proposal, and that employees and clients of the program would be competing with school students and local residents for the available on-street parking spaces. Concerns were also raised about the project contributing to increased traffic and parking congestion in the alley behind the subject residence.

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

1. The appeal of the Planning Commission’s approval of Conditional Use Permit No. 109-98 of Kris and Bob McFadden and the Mid-Columbia Center for Living, is denied, with a

modification to the list of conditions imposed by the Planning Commission in Resolution No. PC 407-98, to add a second condition, which shall read as follows:

2. Within one year from the date of adoption of Resolution No. 99-009 by the City Council, the Planning Commission shall schedule a hearing to review the operation of the mental health facility, and shall impose any necessary conditions to ensure the safe and lawful operation of the facility.
2. In point 2 of their notice of appeal, the appellants assert the Planning Commission erred by failing to define the terms “quasi-public institutional use” and “substantial public purpose” in LUDO Section 5.100.010, as required by state law. The Council disagrees with appellants’ assertion that the purpose section of Section 5.100.010 establishes mandatory approval criterion. This section sets forth general objectives only and does not purport to apply as an independent approval standard. There was no need for the City to define the terms “quasi-public institutional use” or “substantial public purpose”, nor was the City required to adopt any findings addressing this section. Beck v. City of Tillamook, 18 Or LUBA 587 (1990), 20 Or LUBA 178 (1990).
3. In points 3 and 4 of the Notice of Appeal, the appellants assert the Planning Commission erred when it failed to define terms “public and private school facilities” in LUDO Section 5.100.020(J), and in failing to explain how the proposed use qualified under this definition. The Council concurs with the staff’s position that Section 5.100.020(J) does not set forth any mandatory approval criteria for the proposed use, and as such, there was no requirement for the Planning Commission to adopt findings concerning this section. See Beck v. City of Tillamook. The approval criteria is set forth in Sections 5.100.030 which provide that community facilities shall be reviewed as conditional uses per the provisions of Section 3.050, Conditional Use Permits, and in Section 5.100.040, Development Standards.

Concerning the alleged failure of the City to define the terms “Public and Private Schools and Facilities” in Section 5.100.020(J), Oregon law provides that the Land Use Board of Appeals or an appellate court should defer to an interpretation of the local governing body, unless it can be shown that the interpretation is clearly wrong. Clark v. Jackson County, 313 Or 508 (1992), 836 P2d 710; Zippel v. Josephine County, 128 Or App 458, 876 P2d 854 (1994).

Chapter 2 of the LUDO contains provisions for definitions of words in the LUDO. Section 2.010 Meaning of Words Generally provides as follows:

“All words and terms used in this Ordinance have their commonly accepted, dictionary meaning unless they are specifically defined in this Ordinance, or the context in which they are used clearly indicates to the contrary.”

In point 3 of the written response filed by Bob McFadden to the Notice of Appeal(see pages 2-3 of documents submitted for the record), he quotes from a narrative summary

prepared by the Mid-Columbia Center for Living, that “The mission of the program is to enhance the person’s ability to function independently within the community,” and that the applicant would “...like to see our program expand into a more comprehensive program focusing further on employment and skills development.”

Mr. McFadden points out that the dictionary definition of a school is “noun, an institution for teaching or learning; or verb, to teach, train, drill.” The narrative provided by Mid-Columbia Center for Living states as follows:

“Millcreek works with people on ADL’s (Activities of Daily Living). We instruct them on cooking, cleaning, yard work, hygiene, relationships, communication, etc.. We also provide intensive case management services.”

The Council finds there is substantial evidence in the record which shows the proposed day use mental health facility is a facility that will treat and instruct mentally disabled members of the public, and it does qualify under the definition in Section 5.100.020. As shown in Findings 4 to 13 below, the proposed project complies with all other applicable provisions of the City’s zoning ordinance. Under these circumstances, and since the City’s interpretation of the ordinance cannot be shown to be clearly wrong, the City’s interpretation is sufficient and should be deferred to, pursuant to ORS 197.829.

4. Section 5.100.030(A) provides Community Facilities shall be reviewed as conditional uses per the provisions of Section 3.050: Conditional Use Permits. This criteria has been satisfied through the submission of an application for a conditional use permit. The applicant has participated in the required pre-application conference under Section 3.010.030; the application has been deemed complete by City staff pursuant to Section 3.010.040(B); the required staff report has been submitted pursuant to Section 3.020.050(3)(B); the required number of copies of the site plan have been supplied pursuant to Section 3.050.030(A); and the concept site plan has been reviewed and approved by staff pursuant to Section 3.050.030(B)(2), and no detailed landscaping plan or construction plan is required.
5. Section 3.050.040 sets forth the review criteria for a conditional use permit. The section provides as follows:

3.050.040 Review Criteria

A conditional use permit shall be granted if the Commission finds that the proposed use conforms with, or can be made to conform with through added conditions, any related requirements of this and other City Ordinances and all of the following criteria:

1. Permitted Conditional Use. The proposed use is conditionally permitted in the zone district where it is proposed to be located.

2. Standards. The proposed use conforms to all applicable standards of the zone district where the use is proposed to be located.
3. Impact. 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 and 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.
4. Nuisance. The use shall not generate off-site nuisance conditions including, but not limited to, noise, glare, odor, or vibrations.
6. Concerning Subsection A, the Council concludes this criteria is satisfied. Community Facilities are allowed conditional uses in the “RH” High/Medium Density Residential zone district.
7. In point 7 of the Notice of Appeal, the appellants assert the Planning Commission’s decision did not contain the findings of fact or substantial evidence to establish compliance with Section 3.050. In particular, appellants claim there were no findings addressing Section 5.020.050 or 5.020.060, concerning design standards. Appellants are incorrect in their assertion that the sections set forth the applicable development standards.

The applicable development standards for a CFO-Community Facilities overlay are set forth in Section 5.100.140. The following table lists the standards, and indicates whether or not the standards have been met:

CFO Community Facilities Overlay	Standard	Proposal	Standard Met
Lot Size, Width, Depth	No Minimum	No Change	Yes
Setbacks	No minimum, except that vision clearance on Corner Lots shall meet the requirements of <i>Section 6.100: Vision Clearance</i>	No Change	Yes
Building Height	Limited to the requirements of the underlying zone, except that the Commission may exempt certain structures from the height limitation as part of the conditional use review process	No Change	Yes
Off Street Parking (Bicycles and Vehicles)	<i>See Chapter 7 - Parking Standards</i>	See Below	Yes
Landscaping	<i>See Section 6.010: Landscaping Standards</i>	No Change	Yes
Access Management	<i>See Section 6.050: Access Management</i>	No Change	Yes

8. In Mr. McFadden's response to the Notice of Appeal, he asserts the proposed use is exempt from the provisions of Chapter 7, relating to parking standards, because the proposed use does not involve development. Mr. McFadden asserts that because the application does not increase the building footprint by more than 20%, it does not constitute development. The Council concurs with staff's position that Mr. McFadden's interpretation of Section 7.202.010 is incorrect.

Section 2.030 defines development to include "making a material change in the use of a structure." The Council concludes that the proposed use of the residential structure for a day use mental health facility is a material change in use from the previous single family residential use of the property, which triggered the requirements of Section 6.150 requiring a land use application and review. Section 7.020.010 provides that it applies to all permit and development applications, including but not limited to new development and/or additions or modifications to existing development which increases the building(s) combined total footprint area by more than 20%.

The off-street parking requirement for the particular use is 3 spaces. Two of the required three off-street parking spaces are proposed to overhang the existing Washington Street right-of-way by several feet, as the parking spaces on the site have done historically. A condition of approval addresses possible future conflicts with right-of-way access to Washington Street itself, and the intersecting alley north of, and adjacent to, the site.

9. In point 6 of the Notice of Appeal, the appellants allege the decision failed to address the following language from Section 7.010 concerning the purpose of parking standards in the LUDO.

“Vehicle access and circulation related to off-street parking and loading areas shall encourage smooth traffic flow with minimum hazards to pedestrian, bicycle, and other traffic.”

The Council concludes the language sets forth general objectives only, and does not purport to apply as an independent approval standard, and does not require the preparation of detailed findings of fact. Beck v. City of Tillamook.

10. Concerning landscaping standards, a detailed landscaping plan is not required under Section 6.010.030(A) since the proposal does not contemplate an expansion of the existing building footprint.
11. Concerning access management, in point 8 of the Notice of Appeal, the appellants assert the site plan was deficient in that it failed to indicate existing easements and rights-of-way, and did not indicate whether the alley provided legal access. Section 3.030.030(A)(19) does require a concept site plan to show the location of existing utilities, easements, and rights-of-way.

The proposed project has the required legal frontage on East Tenth Street. The concept site plan did show the location of the existing residential structure in relationship to East Tenth Street. If there are any utilities or easements that are not within the right-of-way of East Tenth Street, they need to be shown on a revised site plan. The access management standards in Section 6.050.040 do not apply, because no access point exists on East Tenth Street, nor is one proposed for this application.

12. In points 1 and 5 of the Notice of Appeal, the appellants allege the application did not comply with all the applicable standards of the zone district, because there was not substantial evidence to establish that there were “adequate urban services available to all development.” In support of their argument, appellants rely upon the language of Section 5.020.010, defining the purpose of the RH High/Medium Density Residential District. Appellants also assert the applicants failed to address the provisions of Section 3.030.040(B).

The Council concludes that language which is included in a section defining the purpose of a land use provision, which reflects a general objective, and which does not purport to establish an independent standard of approval, does not have to be addressed by detailed findings of fact. Beck v. City of Tillamook. Furthermore, the record reflects that the project was reviewed by the City’s Site Team, and that the conclusion of the Site Team was that the public facilities for the proposed project were adequately met, except for a few minor comments which were addressed in the condition of approval.

Concerning the applicability of Section 3.030.040(B), regarding public facilities capacity, the review criteria for a community facility overlay is governed by the provisions of Section 3.050.040, concerning conditional use permits. Section 3.050.040(C)(2) lists the availability of public facilities and utilities as one of the factors to consider when

determining the impact of the proposed conditional use. Public facilities already exist for the subject property, and they provide adequate capacity for water, sanitary sewer, storm sewer, streets, and sidewalks.

13. In point 9 of the Notice of Appeal, the appellants allege the Planning Commission erred when it failed to address the provisions of Section 6.150. Section 6.150.010, defining the purpose of this section, provides as follows:

The purpose of this Section is to clarify the degree of structural or use changes proposed for a particular site, property or development which triggers a land use process. For the purposes of this Section, a land use process means either bringing the development into conformance with the current requirements of this and other City Ordinances or the filing of an application for a ministerial permit, planning action, or legislative action with the Department, or both.

The applicant has submitted a conditional use application for a community facility overlay. This application for a planning action under Section 3.010.040 is sufficient to trigger the land use process contemplated by Section 6.150. Section 6.150 has no further relevance to the proposed application.

14. Concerning the impact of the proposed project under Section 3.050.040(C), although the Notice of Appeal does not define the “desirable neighborhood characteristics” which would allegedly be impacted by the proposed use, it appears from the testimony before the Planning Commission that some of those characteristics would include a safe, quiet neighborhood where residents could be free from the fear of violent outbursts or attacks from persons in the neighborhood.

Although the City Council should not automatically dismiss the concerns of the appellants and their neighbors for the safety of the neighborhood, the Council finds that many of these fears are based upon conjecture and speculation, and not upon actual encounters with clients who will be using the services of the facility. The applicant presented testimony to the Planning Commission that the program had operated in the neighborhood, in the basement of the First United Methodist Church, located on Washington Street, one-half block from the proposed site, for approximately four to five years. The program has restrictions on the types of clients who participate. According to narrative information submitted by the applicant, no predators, sexual deviants, or persons that would intentionally cause harm to another, are admitted to the program. Todd Jacobsen testified on behalf of the applicant that the clients of the facility presented more of a danger to themselves, than to members of the public, and that in the eight years he had been involved with the program, he had never witnessed a violent outburst or aggressive act. Sharon Guidera, Director of the Center for Living, testified the program had been operating for three years with no incidents of aggressive or violent behavior.

The appellants and opponents raised concerns as to the ability of the applicant’s staff to monitor and control the behavior of the program’s clients, and cited case histories of violent acts committed by individuals in similar psychiatric programs. The applicant

presented testimony outlining the methods and techniques used to monitor the client's behavior, and the safeguards applied to ensure the safety of clients participating in the program, as well as the general public. In view of the applicant's training and experience in working with clients with psychiatric symptoms, the Council believes it is appropriate to defer to the applicant's assessment of the level of risk presented by clients who will participate in the program.

Based upon testimony indicating the behavior of the facility's clients is non-violent in nature, and evidence of safeguards built into the program, it is reasonable to conclude the safety of neighborhood residents and school students should not be jeopardized. The City Council finds the proposed facility will not adversely impact the desirable neighborhood characteristic of a safe neighborhood.

15. Another concern cited in the Notice of Appeal focused upon potential traffic congestion and parking problems. East Tenth Street, which runs directly in front of the proposed facility, is currently classified as an arterial street and is scheduled to be classified as a major collector in the near future. The residential nature of the neighborhood is impacted by the volume of traffic using East Tenth Street. The narrative for the program indicates the Center for Living has a van which will be used for transportation, which will reduce the need for off-street parking. Many of the clients of the program do not drive and request to be picked up. The narrative indicates that of the three clients who do drive, there has not been an incident when all three have arrived at the program at the same time.

The record appears to indicate that the projected number of average daily trips (ADT's) for the proposed facility will be minimal. Although the traffic volume on East Tenth Street is heavy, it is currently classified as an arterial street, and is capable of handling the additional minimal number of ADT's expected to be generated by the proposed facility. Although there may be difficulty finding on-street parking on East Tenth in the vicinity of the proposed use, it appears much of this problem may be attributed to the presence of the high school. The off-street parking included on the proposed site plan should be adequate to address the needs of the staff and clients of the facility. The applicant submitted a copy of a parking agreement to use the parking lot of the First United Methodist Church, adjacent to the residence, should the need arise for additional off-street parking. The Council finds the proposed use will have minimal adverse impact in terms of traffic congestion or parking problems in the surrounding neighborhood.

16. In terms of characteristics of livability in the surrounding neighborhood, one of the most important factors is the presence of the existing high school. Many of the neighbors expressed concern over traffic congestion, noise, and vandalism or other criminal activity in the neighborhood, much of which can be attributed to the presence of the high school. The proposed facility is expected to operate three days per week between the hours of 10:00 AM and 3:00 PM. The narrative indicated that additional evening hours and one day on the weekend, between 10:00 AM and 2:00 PM could be added. The narrative indicates that 15 clients attend the program on an average day.

Contrasting the number of clients participating in the program, the hours of operation, the projected number of average daily trips, the history of a successful operation in the neighborhood with no documented acts of violence or property damage to surrounding neighbors, with the traffic volume and neighborhood complaints generated by the high school use, the Council finds the proposed facility should have a minimal adverse impact in terms of the livability of the surrounding neighborhood.

17. Other factors which can affect the compatibility of the proposed use with the existing surrounding neighborhood concern the harmony of scale, bulk, building coverage, and density. The outside appearance of the residential structure will remain unchanged. In terms of harmony of scale, bulk, and building coverage, the footprint of the building will not be enlarged. The residential structure has been used as a residential dwelling for several years, and its design in terms of scale and bulk is consistent with other residential dwellings in the area. In terms of density, the property will retain its zoning designation of "RH" High/Medium Residential Density. Many of the proposed activities which will occur inside the facility are similar to activities which occur in other residential dwellings throughout the neighborhood. The Council should find that given the location, size, design, and operating characteristics of the proposed use, it will be reasonably compatible and have a minimal adverse impact upon the legal development of adjacent properties and the surrounding neighborhood.
18. Regarding the potential for nuisance conditions in Section 3.050.040(D), the Council finds this criteria is satisfied, as there is no expectation the use will generate any nuisance conditions.

PASSED AND ADOPTED THIS 8TH DAY OF FEBRUARY, 1999.

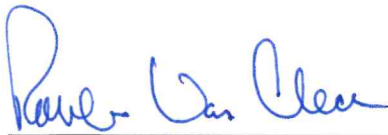
Voting Yes, Councilor: Davison, Wasser, Davis, Gosiak

Voting No, Councilor: None

Absent, Councilor: None

Abstaining, Councilor: Broehl

AND APPROVED BY THE MAYOR THIS 8TH DAY OF FEBRUARY, 1999.



Robb Van Cleave, Mayor

Attest:



Julie Krueger, CMC/AAE, City Clerk