



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, April 7, 1998
7:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes - March 3 and March 17, 1998**
- 3. Agenda Review**
- 4. Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
- 5. Consent Agenda:** No items scheduled.
- 6. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
 - A. SUB 98-2 Woodhaven Phase 7B Preliminary Plat:** (cont'd from March 3, 1998) a request by Genstar for approval of a 47-lot subdivision. Tax Lot 100, Map 2S 1 31.
 - B. PA 98-1 Plan Text Amendment:** to allow special care facilities are a permitted use in High Density Residential (HDR) and as a conditional use in the Retail Commercial (RC).
- 7. Other Business**
- 8. Adjourn**

**ITEMS NOT COMPLETED BY 11:00 PM WILL BE CONTINUED
TO THE NEXT REGULARLY SCHEDULED MEETING**

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
April 7, 1998

1. Call to Order/Roll Call

Chairman Whiteman called the meeting to order at 7:00 PM.

Commission Members present:

Susan Claus
Scott Franklin
Dave Heironimus
Keith Mays
Angela Weeks
Bill Whiteman

Staff:

Sue Engels, Development Director
Jason Tuck, Assistant Planner
Roxanne Gibbons, Recording Secretary

New Commission Members - Dave Heironimus and Keith Mays

Chairman Whiteman asked Jason Tuck to introduce the two new Commission members. Mr. Tuck introduced Keith Mays, whose term will expire in 2000 and Dave Heironimus, whose term will expire in 2002. Mr. Mays said he has been a resident of Sherwood for about 1-1/2 years and is a credit analyst for a firm in Tigard. Mr. Heironimus said he has been a resident for about 2 years and has been active in the YMCA planning and TSP process.

Chairman Whiteman welcomed the new members on behalf of the Commission.

2. Minutes of March 3, 1998 & March 17, 1998 Regular Meeting

Jason Tuck referred the Commission to a letter dated April 7, 1998 from Robert James Claus. Mr. Claus had some concerns with the minutes of March 3 and March 17, 1998. He was unable to attend tonight's meeting, but he had some comments he would like to make prior to the minutes being approved by the Commission.

Scott Franklin moved the Planning Commission defer approval of the March 3 and March 17, 1998 Planning Commission minutes to the April 21, 1998 Commission meeting. Seconded by Keith Mays.

Vote for Passage of Motion: 5-Yes, 0-No, 1-Abstain (Claus)

3. Agenda Review

There were no additions or changes to the agenda.

4. Community Comments

Chairman Whiteman called for comments from the audience. There were no community comments.

5. Consent Agenda

There were no items scheduled.

6. Public Hearings

6A. SUB 98-2 Woodhaven Phase 7B Preliminary Plat

Chairman Whiteman advised that Staff is recommending SUB 98-2 be continued. Sue Engels reported the Planning Commission has made specific requests for information from Staff regarding this application. Staff felt they would be better prepared to present this information at the next regular Commission meeting.

Bill Whiteman moved the Planning Commission continue SUB 98-2 Woodhaven Phase 7B Preliminary Plat to the April 21, 1998 Regular Commission meeting, as recommended by Staff. Seconded by Angela Weeks.

Vote for Passage of Motion: 6-Yes, 0-No, 0-Abstain

Chairman Whiteman read the hearings disclosure statement and requested that Commission members reveal any conflict of interest, ex-parte contact or bias regarding any issues on the agenda.

There were no disclosures.

6B. PA 98-1 HDR/RC Special Care Facilities Plan Text Amendment

Chairman Whiteman opened the public hearing on PA 98-1 and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated March 31, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The request is a City-initiated Plan Text Amendment which proposes code revisions to allow special care facilities as permitted uses within the High Density Residential (HDR) zone and as a conditional use in the Retail Commercial (RC) zone.
- Currently, assisted living facilities require a conditional use permit within all of the residential zones and are prohibited in the RC zone. The need for the allowance of assisted living facilities as a permitted use was expressed by the City Council. Both the City Council and Planning Commission have recommended that a change to the Code should be made.
- Staff has received numerous inquiries from both developers and citizens regarding assisted living facilities.
- Allowing assisted living facilities as a permitted use in the HDR zone is an attempt to reduce additional subjective review of the facilities. Allowing assisted living facilities as a conditional use in the RC zone allows the City to place additional conditions on a development to ensure the compatibility with surrounding uses.
- The permitting of the use in the HDR zone will not overly restrict development which may create negative secondary effects to the eventual residents. By having the facilities as a conditional use within the RC zone maintains the integrity of retail uses and allows the City to ensure compatibility with the surrounding retail uses.

- He reviewed the criteria for plan text amendments in the Comprehensive Plan.
- The population of the state and the nation is aging. The Comprehensive Plan indicates there will be a changing demographic composition within the City in the next few years. Housing and care of the elderly within the Sherwood community will soon become a greater need. The proposed text amendment is the first step in positioning the City to be able to provide for special care facilities without creating overly burdensome approvals and processes.
- The Comprehensive Plan states the City shall provide housing and special care opportunities for the elderly. The proposed amendment will facilitate more opportunities for assisted living facilities and special care facilities to locate within the City.
- The proposed text amendment will bring the Development Code into alignment with the Comprehensive Plan policy by providing increased opportunities for special care facilities for the elderly.

In conclusion, based upon the findings of fact and Comprehensive Plan criteria, Staff recommends approval of PA 98-1 Plan Text Amendments as stated in the Staff Report.

Chairman Whiteman asked if there was a definition for “special care facilities”. Mr. Tuck said the Code does not have a specific definition for special care facilities. There are other regulations for foster care homes or group homes which are regulated by the State of Oregon. Chairman Whiteman recommended that “special care facilities” be defined as a part of this plan text amendment. He referenced the two letters, dated January 15 and January 21, 1998, from Robert Simon, which discussed assisted living facilities (ALFs). These letters were made a part of the record. The Commission agreed there should be a definition in the Code.

Chairman Whiteman asked if there was anyone who wished to speak in favor of PA 98-1 Plan Text Amendment.

Robert Simon, 712 Main Street, Oregon City, Oregon 97045, addressed the Commission. Mr. Simon said he is a land use attorney. He previously provided information on PANDA in November 1997. In November 1997, he testified as to the legal requirements to remove barriers to the disabled. His client is Pacific Anti-Discrimination Advocates (PANDA). He noted:

- PANDA in a joint venture with NSP Development and Mr. Langer, construct what are called “Assisted Living Facilities” or ALFs.
- ALFs create another housing option for people who have disabilities. There are two sets of housing opportunities. There are housing opportunities for people with disabilities and then there are all the other ones. Congress adopted amendments to the Fair Housing Act in 1988 in an effort to create a more even set of choices for people who have disabilities.
- By amending the zoning code, the City is saying it wants to facilitate this too. We want the people with disabilities to have equally as much choice in housing as anyone else.
- There are two definitions in the Code, one for residential care facilities and one for residential care homes. A decision was made that specialty care facilities include other than these two terms.
- As a proponent of ALFs, PANDA has no quibble about simply saying assisted living as opposed to specialty care facilities.

- The definition for a residential care facility is a facility licensed by and under the authority of the Department of Human Resources. This would be an adult foster care facility or a licensed facility.
- The definition for a residential care home is a residence for five or fewer unrelated, physically, mentally handicapped persons.
- A State statute governs facilities with up to ten individuals. There are Federal laws which discuss group homes of twelve and fewer. He cited some of the Case Law.
- Everything else that is not either a residential care facility or residential care home would be treated as a specialty care facility. The City could adopt its own definition for a specialty care facility.
- PANDA would suggest that the ALF or specialty care facility would be one where the residents have assistance 24-hours a day. This means it is a staffed residence. This is how they would be distinguished.
- ALFs engage in the theory of aging in place. He discussed some examples of this.
- ALFs which are constructed by Mr. Miller would have a community dining room. This would be like a sit down restaurant, not a cafeteria. That is why they looked at the RC zone. This is not something you would traditionally see in the HDR zone.
- ALFs have a mixture of uses that allow people, as they are injured or get older and need more help, to stay living in one building, but to receive more and more assistance.
- He did not know if an on-site manager would be the same as a skilled nursing assistant, under the definitions. Rather than trying to define this tonight, the Commission could use their enforcement vehicle. He provided an example.
- The 24-hour assistance would be provided by shift workers. This would not be provided by someone living on-site. Those offering assistance would most likely live off-site.
- The Commission could adopt a definition which states a special care facility is something other than the residential care home or residential care facility, and which has 24-hour, on-site assistance.
- The demographics and size of ALFs are governed by the market. The BOCA and CABO standards regulate the size and number of individuals living in facility. The Federal Fair Housing Act and the State Residential Landlord Tenant Act contain occupancy requirements.
- Mr. Miller could address some of the activity functions of the ALFs.
- If the ALF wanted to locate in the HDR zone and it had a commercial element to it, this would be reviewed by the Commission as a conditional use.
- The City needs to have one zone where ALFs are allowed outright. Another option would be to allow them outright in the RC zone and as a conditional use in the HDR zone.
- If the Commission was too restrictive in the definition for an ALF, it may be over-regulated and not allow the flexibility to design the ALF to meet the population make-up.
- He would provide the Commission copies of the law which implements this, 42 US 604, Section F3, which states you will provide reasonable accommodation of your ordinances, variants and laws so the disabled can live in these facilities.

Mr. Simon said Rick Miller could answer more specific questions about ALFs from the Commission.

Rick Miller, President, Genesis Health Care, 20383 SW Tremont Way, Aloha, Oregon 97007, addressed the Commission. Mr. Miller said Genesis operates long term care facilities. He noted:

- In Oregon, there are currently 92 licensed Assisted Living Facilities (ALFs) with 22 under development. It is fairly easy to define assisted living. There is an Oregon Administrative Rule (OAR) which defines assisted living. He could FAX the definitions to the City Staff.
- They operate skilled nursing facilities in Oregon and Washington. Over the last 2-3 decades there have been a lot of problems with the way senior health care has been delivered. A lot of this has been related to skilled nursing facilities or nursing homes.
- Nursing homes are built more on a medical model versus a social model. There are several persons per room and the focus has been on people going to their bed and following facilities rules. In the mid-eighties, Karen Brown-Wilson invented the first assisted living facility in Pendleton.
- An ALF is a facility that is designed more on a social model of care. He is not trying to bad-mouth nursing homes because there is a definite need and a lot of great operators in skilled nursing facilities, but there are some very large differences.
- Everyone living in an ALF has a private apartment. This is mandated. In order to operate an ALF you have to comply with the Senior and Disabled Services Division of the State of Oregon. In the application process, you submit the plans which indicate the number of apartments in the building. You are granted a license for the number of residents that you have in the facility. This is defined as the number of apartments, assuming one person per apartment. The second number, which is usually higher, is designed for double occupancy, only in the instance of families.
- The State protects the issue of independence, privacy and dignity.
- It is easy to define assisted living and occupancy.
- They would present a proposal for the number of apartments with an estimate of the licensed capacity for the building. In Sherwood, they are going to propose approximately 60 apartments. They based this on demographic data.
- The facility must be licensed as an ALF and cannot be used for any other use.
- The fastest growth segment of the population is those 85 years and older. There is a rapidly developing industry which is being driven by the senior population that don't want to go to a nursing home and would be better served in an ALF.
- In Oregon you need a Certificate of Need to build a nursing home. Because the State is very supportive of ALFs, it is very easy to license. The ALF must have a licensed administrator.
- There would be some commercial facilities in the ALF. These could include a beauty salon on site, with access directly outside. These businesses would be operated independently as a leased operation. The businesses could be used by the general public.
- Different types of ALFs are being built. The OAR defines the number of square feet you must have per resident and defines some of the services which are expected in an ALF.
- The average age of an ALF resident is 83 years old, typically a female, and requiring assistance with one or two activities of daily living (grooming, bathing, dining, or medications).
- The ALF works with each resident to maintain as much independence as possible for as long as the resident desires. To enforce this, the same agency which surveys nursing homes, now surveys ALFs.

- The Commission or City would be relieved of the enforcement issue because the State of Oregon does the surveys. The surveys are done every two years.
- The restaurant is not really a true commercially viable operation. It is a very nice dining area, but it is provided for the residents of the ALF.
- The ALF may have a small market or mart which would be operated independently in a leased space. The majority of use is going to be available for the ALF residents.
- The ALF would have surveillance cameras and other security. Access to the commercial facilities would be limited to certain hours. The primary or sole purpose of the ALF is to support the independence of the population of the facility.
- The ALF could provide medical care, ranging from none to turning or positioning individuals in bed. At times, hospice care may be provided.
- There would be at least one licensed nurse employed by the facility. When they are not on-site, they would be on-call 24-hours a day. Twenty-four hours a day on staff will be served by nursing assistants.
- There could also be a pharmacy and nurses station to deliver medications and document delivery if required.
- The difference between an ALF and congregate care facility is the licensing. In ALFs you would see aging in place occur to a higher level, more staff, and greater level of service provided.
- The concept of aging in place is as a person's needs change, rather than changing the environment, the services change to meet the needs within the same environment. This is the beauty of assisted living. It is not the answer to everyone's health care needs. There will be times when the ALF is not able to meet certain health care needs of certain individuals and they would be discharged to skilled nursing facilities.
- Genesis started by running skilled nursing facilities and they do that well. Now they are expanding to the assisted living facility systems. There is even a more specific definition for the skilled nursing facility.

Mr. Miller said he would send the City Staff the definition of each of these systems, skilled nursing, the OAR definition for specialty care facility which is licensed by the State as an assisted living facility. The majority of the newer ALFs in Oregon are being established in the high density residential zones. Most are two to three levels, primarily being driven by the cost of land. There some which an only one level. He thanked the Commission.

Mr. Simon said they would provide the Commission with the OARs which define the various types of care facilities that are licensed, and information on the Housing Act which addresses the "bending of the rules" discussed by Mr. Simon.

Chairman Whiteman asked if there was any further proponent testimony for PA 98-1. There was no further proponent testimony. Chairman Whiteman asked if there was any opponent testimony. There was no opponent testimony. Chairman Whiteman dispensed with the rebuttal portion of the hearing and closed the public hearing for discussion by the Commission.

Angela Weeks said there should be specific definitions for each use stated in the Development Code. Chairman Whiteman said he agreed. The Commission discussed possible definitions for convalescent homes, assisted living facilities and special care facilities.

Sue Engels said care facilities could be defined as a whole and then broken down into the individual categories, i.e., convalescent home, special care facility, assisted living facility, hospital, sanitarium. Currently, special care facilities are allowed as a conditional use in the HDR zone and not permitted in any other zone. Staff is recommending special care facilities be allowed as an outright use in the HDR zone and as a conditional use in the RC zone.

Chairman Whiteman said there are two questions:

- Should special care facilities be allowed outright in the HDR and as a conditional use in the RC zoning districts, as recommended by Staff.
- Does the Commission need more information on the definition of an assisted living facility.

He did not have any problem with allowing assisted living facilities in the zones as recommended by Staff. He would like to receive more information regarding the specific definitions. The Commission concurred.

Scott Franklin pointed out that hospitals are an allowed use in the HDR zone and there are gift shops, barber shops, or some other type of commercial uses in these facilities.

Bill Whiteman moved the Planning Commission continue PA 98-1 Plan Text Amendments for special care facilities in the HDR and RC zones to the April 21, 1998 Regular Commission meeting, pending receipt of additional information on the definitions for the various types of special care facilities. Seconded by Susan Claus.

Vote for Passage of Motion: 6-Yes, 0-No, 0-No

The Commission agreed to place PA 98-1 Plan Text Amendment as the first agenda item for the April 21, 1998 meeting. Mr. Miller said he would FAX a definition of the various facilities to the City Staff.

7. Other Business

Chairman Whiteman advised that the Bond's Automotive matter is in Municipal Court. Mr. Mays and Mr. Heironimus have received copies of the background information on this matter. Ms. Engels said there are several issues involved, some of which are purely nuisance violations. The only role the Commission would play is if the applicant files an application for a conditional use permit or zone change.

Chairman Whiteman asked that Mr. Mays and Mr. Heironimus be provided with as much background information as possible regarding Woodhaven Phase 7B. Staff will provide this information.

Sue Engels discussed the procedures for holding a quasi-judicial land use hearing. She distributed information from the City Attorney regarding quorums, requests for continuance of a land use application and the 120-day rule.

Sue Engels advised the Commission that Metro will hold a hearing on the Urban Functional Plan Title 3 on May 7, 1998. Metro will adopt some language, a model ordinance and a map. The City will have 18 months from the date of Metro's adoption to incorporate these things into the City Code. The Commission asked if an informational workshop for the public could be provided by Metro prior to this date. They recommended the last week of April. Staff will schedule a presentation by Metro for this purpose. This presentation will not be in conjunction with a particular Commission or Council meeting.

There being no further business to discuss, the meeting was adjourned at 8:35 PM.

Respectfully submitted,

Planning Department