



# NOTICE OF DECISION

**TAX LOT:** 2S130DA2700 and 2200

**CASE NO:** LU 2021-009 MM Cedar Creek Plaza Multifamily

**DATE OF NOTICE:** May 31, 2022

## Applicant

Deacon Development, LLC  
901 NE Glisan St., Suite 100  
Portland, OR 97232

## Owner

DD Sherwood Two, LLC  
901 NE Glisan St., Suite 100  
Portland, OR 97232

## NOTICE

You are receiving this notice because you are the applicant or because you provided testimony on the application. **On May 24, 2022, the Sherwood Planning Commission denied land use application 2021-009 MM Cedar Creek Plaza Apartments.** The denial is for a 67-unit multi-family building and associated site improvements located at 16864 SW Edy Rd. in the Retail Commercial zone.

**INFORMATION:** The full land use record can be viewed at:

<https://www.sherwoodoregon.gov/planning/project/lu-2021-009-mm-cedar-creek-multifamily-development>  
or can be obtained by contacting Eric Rutledge, Associate Planner, at 503-625-4242 or [rutledgee@sherwoodoregon.gov](mailto:rutledgee@sherwoodoregon.gov)

## APPEAL

Pursuant to Sherwood Zoning and Community Development Code Section 16.72.010.B.3.d, the Sherwood City Council is the Appeal Authority for Type IV land use decisions. The applicant and any person who testified before the Planning Commission at the public hearing or who submitted written comments prior to the close of the record may appeal the Planning Commission's decision, no later than 14 days from the date of this notice. Full details on the City's land use appeal procedures are located in SZCDC § 16.76. **An appeal of this decision must be filed no later than 5:00 PM on June 14, 2022.**

I, Eric Rutledge, for the Planning Department, City of Sherwood, State of Oregon, in Washington County, declare that the Notice of Decision LU 2021-009 MM was placed in a U.S. Postal receptacle, or transmitted via electronic mail, on May 31, 2022 before 5pm.

Eric Rutledge, Associate Planner  
City of Sherwood Planning Department

**CITY OF SHERWOOD  
MAY 24, 2022  
PLANNING COMMISSION FINDINGS**



**Cedar Creek Plaza Multifamily  
Major Modification to an Approved Site Plan  
LU 2021-009 MM**

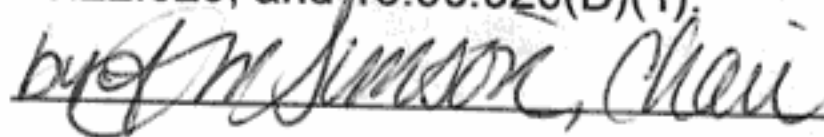
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Pre-App Meeting:	February 18, 2021
App. Submitted:	May 5, 2021
App. Complete:	August 3, 2021
Initial Evidentiary Hearing:	January 25, 2022
Second Hearing Date:	May 24, 2022
Continued Hearing Dates:	September 14, 2021 / October 12, 2021 / December 14, 2021 / February 22, 2022 / March 22, 2022
120-Day Deadline:	August 3, 2022

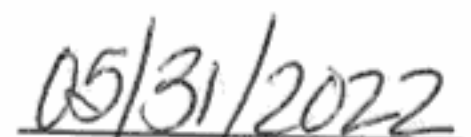
**HEARING SUMMARY:** The City of Sherwood Planning Commission (Commission) held the initial evidentiary hearing on the subject application on January 25, 2022. At the initial hearing the Commission heard presentations by City staff and the applicant, followed by testimony from the general public. During the applicant presentation, the applicant requested a continuance to a date certain of February 22, 2022. The February 22, 2022 hearing was continued two times at the request of the applicant to a date certain of May 24, 2022.

On May 24, 2022 the Commission held the continued hearing. The Commission heard presentations by City staff and the applicant, followed by testimony from the general public. The Commission then closed the record and deliberated on the application. The deliberations focused on ORS 197.307 and the requirement that only clear and objective standards be applied to the application. The Commission stated support for needed housing but determined that the manner in which the applicant interpreted and applied the dimensional requirements for multi-family housing in the Retail Commercial zone did not demonstrate compliance with the code. In addition, the access easement on Lot 2 was not removed from the lot area calculations prior to determining lot area.

The Commission denied the application with a unanimous vote and adopted findings of non-compliance in the staff report dated May 17, 2022 including SZCDC § 16.12.030, 16.22.020, and 16.90.020(D)(1).

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Jean Simson, Planning Commission Chair

 \_\_\_\_\_

Date

**PROPOSAL:** The applicant is proposing a Major Modification to an Approved Site Plan for a new 3-story, 67-unit multi-family building located in the Cedar Creek Plaza Shopping Center. The building will be located on an existing vacant lot within the commercial center, identified as Tax Lot 2S130DA02200. In order to meet the minimum lot area requirements for the 67-unit building, the applicant is proposing to utilize the residential lot area entitlements from Tax Lot 2S130DA02700 within the commercial center. The units will be for rent and include 10 studio, 63 one-bedroom, and 11 two-bedroom units. Amenities including an outdoor pet area, central courtyard, covered patio, and bike storage are proposed. A total of 90 new vehicle parking stalls are proposed for a total of 596 stalls within the Cedar Creek Plaza center. Access to the site is proposed from the existing driveways along SW Edy Rd. and Hwy 99W. The original Site Plan approval for the Cedar Creek Plaza Shopping Center was issued under Land Use Case File SP 16-10 / CUP 16-06 / VAR 17-01.

**REVISED PROPOSAL:** The applicant submitted a revised application on March 21, 2022 that removed Lot 3 from the application and reduced the number of proposed units in the building from 84 to 67. Under the revised proposal, the site plan and building plan will remain the same but portions of the building will be reduced in height to account for the reduction in units. Revised architectural drawings, parking calculations, and traffic analysis were provided by the applicant. The revised application was re-routed to affected agencies for comment and the staff recommendation, findings, and conditions of approval have been updated based on the revised proposal.

## **I. BACKGROUND**

A. Applicant: Deacon Development, LLC  
901 NE Glisan St., Suite 100  
Portland, OR 97232

Owner: DD Sherwood Two, LLC.  
TL 2200 901 NE Glisan St., Suite 100  
Portland, OR 97232

Owner: DD Sherwood One, LLC.  
TL 2700 901 NE Glisan St., Suite 100  
Portland, OR 97232

B. Location: 16840 and 16864 SW Edy Rd. (Tax Lots 2S130DA2700 and 2200). West corner of Hwy 99W and SW Edy Rd. (Cedar Creek Plaza)

C. Current Zoning: Retail Commercial (RC)

- D. Review Type: Type IV Major Modification
- E. Public Notice: Notice of the application was provided in accordance with § 16.72.020 of the Sherwood Zoning and Development Code (SZDC) as follows: notice was distributed in five locations throughout the City, posted on the property, and mailed to property owners within 1,000 feet of the site on or before August 25, 2021, January 5, 2022, and May 4, 2022. Newspaper notice was also provided in a newspaper of local circulation on August 19, 2021, September 9, 2021, December 30, 2021, January 20, 2022, May 5, 2022 and May 19, 2022. The application was re-noticed in January 2022 in order to update the hearing procedure and participation requirements pursuant to House Bill 2560. The application was re-noticed in May 2022 in response to the revised application.
- F. Review Criteria: Sherwood Zoning and Community Development Code (SZCDC) Chapter 16.12 Residential Land Use Districts; Chapter 16.22 Commercial Land Use Districts; Chapter 16.50 Accessory Structures, Architectural Features and Decks; Chapter 16.58 Clear Vision and Fence Standards; Chapter 16.60 Yard Requirements; Chapter 16.72 Procedures for Processing Development Permits; Chapter 16.90 Site Planning; Chapter 16.92 Landscaping; Chapter 16.94 Off-Street Parking and Loading; Chapter 16.96 On-Site Circulation; Chapter 16.98 On-Site Storage; Chapter 16.106 Transportation Facilities; Chapter 16.108 Improvement Plan Review; Chapter 16.110 Sanitary Sewers; Chapter 16.112 Water Supply; Chapter 16.114 Storm Water; Chapter 16.116 Fire Protection; Chapter 16.118 Public and Private Utilities; Chapter 16.142 Parks, Trees, and Open Spaces; Chapter 16.146 Noise; Chapter 16.148 Vibrations; Chapter 16.150 Air Quality; Chapter 16.152 Odors; Chapter 15.154 Heat and Glare; Chapter 16.156 Energy Conservation
- G. History and Background: The Sherwood Providence Medical Plaza received Site Plan approval from the City in 2004 for a 42,000 SF medical office building (SP 04-04). In 2017 the medical center property and two other adjacent properties were redeveloped to create the Cedar Creek Plaza Shopping Center (Exhibit GG - SP 16-10 / CUP 16-06 / VAR 17-01). The resulting development was 13.17-acres and contained three commercial lots owned by Quarto LLC, Providence Health & Services – Oregon, and DD Sherwood One LLC (Deacon Development). The Quarto property is now occupied by The Ackerly Senior Living, the Providence property is occupied by Providence, and the Deacon property is occupied by various commercial tenants. A lot line adjustment was approved to reconfigure the three lots in 2017 (Exhibit HH – LLA 17-02). The 6.38-acre Deacon property was subdivided in 2017 (Exhibit II - SUB 17-02) into

seven (7) new commercial lots known as the Cedar Creek Plaza subdivision (Exhibit BB). Five of the seven lots in the Cedar Creek Plaza subdivision have been sold to new owners, with Deacon Development retaining ownership of two lots (Lots 2 and 7). Deacon Development is now proposing a new 67-unit multi-family building on Lot 2 of the Cedar Creek Plaza subdivision, utilizing residential lot area entitlements from Lots 2 and 7 to achieve the required minimum lot size requirements. Lot 2 is currently vacant while Lot 7 is improved with commercial buildings, parking, and landscaping.

- H. Existing Conditions: Cedar Creek Plaza is an existing 13.17-acre commercial shopping center with a variety of commercial buildings and uses. The development includes a 42,000 SF medical office building, 138 room senior care facility, and 47,500 SF of mixed commercial uses including retail, fitness, and restaurant. The commercial center contains eight (8) buildings, 506 parking stalls, vehicle and pedestrian ways, landscaping, and underground utilities. Access to development is provided via a fully signalized intersection at SW Borchers Rd. / SW Edy Rd. and a right-in only driveway from Hwy 99W. The proposed multifamily building will be located on Lot 2 of the Cedar Creek Plaza subdivision which is currently vacant.

Tax Lot 2200 (1.73 AC) – vacant, two parking stalls at west corner  
Tax Lot 2700 (0.70 AC) – commercial building, 33 parking stalls

- I. Surrounding Land Uses: The site abuts two public streets including SW Edy Rd. to the north and Hwy 99W to the south. The zoning to the north is Retail Commercial (RC) and Medium Density Residential High (MDRH), to the south / southeast is General Commercial (GC), and to the west is High Density Residential with a Planned Unit Development Overlay (HDR-PUD).

## **II. AFFECTED AGENCY AND PUBLIC COMMENTS**

- A. Notice of the application was sent to affected agencies via email on August 16, 2021 and April 26, 2022. The following responses were received:
1. City of Sherwood Engineering Department provided revised comments dated April 29, 2022 (Exhibit T) and an Internal Memorandum dated December 6, 2021 (Exhibit TT). The comments address traffic and transportation, public utilities (water, sanitary sewer, storm water), and

other engineering requirements. The comments and Conditions of Approval are incorporated throughout the report under each applicable code section. The Internal Memorandum provides analysis on the expected trip generation demand of the previously proposed 84-unit apartment building (proposal now for 67-units) versus a 94-room hotel. The analysis concludes the AM peak hour, PM peak hour, and average daily trips will with the proposed apartment building than the previously proposed hotel.

- a. Revised comments were received and are included as Exhibit T.
2. City of Sherwood Police Department provided comments dated August 17, 2021 (Exhibit U). The comments express concern regarding parking management and enforcement, noise and privacy between the existing neighborhood and proposed development, and traffic congestion at SW Edy Rd. and SW Borchers Drive. The comments conclude that police services and responses will increase as a result of the development.
  - a. Revised comments were not received.
3. Washington County Land Use and Transportation provided comments dated August 27, 2021 (Exhibit V). The comments state the County concurs with the Trip Generation Memo provided by the applicant.
  - a. Revised comments were not received.
4. Tualatin Valley Fire and Rescue provided comments during the completeness review process which are dated May 7, 2021 (Exhibit W). The comments are in regard to fire hydrants, water supply, and fire apparatus access. Final compliance with the fire marshal's letter and all fire code regulations is required as a condition of approval.
  - a. Revised comments were not received.
5. The Oregon Department of Transportation provided comments dated May 21, 2021 (Exhibit X). The comments state no significant impacts to the state highway will occur as a result of the development. The anticipated traffic trips generated by the multi-family building is lower than the traffic trips generated by the hotel that was assumed in the original Transportation Impact Analysis (TIA).
  - a. Revised comments were not received.
6. Clean Water Services provided a memorandum dated August 31, 2021 (Exhibit Y). The memorandum provides Conditions of Approvals related to CWS regulations for stormwater and erosion control. The applicant has provided also a Sensitive Area Pre-Screening Site Assessment (Exhibit N) that indicates a no site assessment or service provider letter is required.
  - a. Revised comments were not received.

7. Pride Disposal Company – Pride Disposal provided comments dated August 30, 2021 (Exhibit Z). The applicant is required to comply with Pride Disposal standards for trash enclosure design and vehicle access.
    - a. Revised comments were not received.
  8. The Oregon Department of Transportation Outdoor Advertising Sign Program provided comment dated August 17, 2021 (Exhibit AA). The comments referred the property owner and developer to the Oregon Revised Statutes (ORS) Chapter 377 regarding signage visible to a state highway for any future signs on the property.
    - a. Revised comments were not received.
- B. Notice of the application was provided in accordance with SZCDC § 16.72 for a Type IV hearing. The following public testimony was received:

1. Harold Cox submitted testimony dated August 31, 2021 and December 3, 2021 (Exhibit LL - 16852 SW Edy Rd.) – Mr. Cox owns Lot 1 of the Cedar Creek Plaza subdivision which is currently occupied by Planet Fitness. The testimony states Mr. Cox is opposed to the Major Modification because the developer represented that Lot 2 would be developed with a compatible commercial use. The testimony expresses concern over the development's potential to reduce property values in the commercial center and impact loans which are based on the current CC&R's.

The comments also raise concerns about the actual number of existing parking stalls compared to what is stated in the staff report and application, the restrictions on parking stated in the CC&R's, the parking study created by Kittelson and Associates, the City's parking ratios, and the application procedures for a Major Modification,

Staff Response: The proposed multi-family residential use is permitted in the Retail Commercial zone. The impact of property values as a result of any new development is not an applicable development code standard or approval criteria.

Staff concurs with Mr. Cox that the actual number of existing parking stalls on the site is different than described in the applicant's original submittal. To clarify the number of parking stalls within the Cedar Creek Plaza development, staff conducted its own analysis using GIS and a web service called CONNECTExplorer. Exhibit QQ shows the actual number of parking stalls on the site. The number of existing parking stalls is 506. The applicant is proposing an additional 90 parking stalls on Lot 2 for a total of 596 proposed parking stalls within

the entire Cedar Creek Plaza development. The applicant's revised Narrative (Exhibit S) and revised Final Parking Study (Exhibit UU) incorporate the corrected parking counts provided by staff.

The comment also raises a concern regarding the City approving a Major Modification which proposes something different than what was anticipated or represented at the time of the original land use approval. While Lot 2 was not a part of the original land use approval, a Major Modification is being pursued because the original approval met the City's development code through a shared approach to parking, landscaping, and vehicle access and circulation, etc. In order to receive approval for the Major Modification, the applicant is required to show how all of the applicable development code standards and approval criteria have been met including for public improvements, traffic, parking, and loading.

2. Mark Light submitted testimony dated September 1, 2021, September 19, 2021, October 6, 2021, January 13, 2022, March 31, 2022, and April 24, 2022 (Exhibit JJ / AM / AO – 17117 SW Robinwood Place) - Mr. Light lives in the adjacent townhomes to the south/west of the proposed development. The testimony raises issues with the development as it relates to egress, carbon footprint, logistical concerns with regard to fire access and public safety, and general inconveniences to the surrounding residents as a result of the development.

The comments also raise concern about the compatibility of the proposed multi-family building with the CC&R's recorded against the Deacon tract in 2019. The comments state that CC&R's state the development is intended to be a commercial use and that prohibited uses include any of those which are objectionable to the development as a high quality retail and/or commercial center. The comments also raise concerns related to traffic assumptions, trash, and ownership type of the new units.

The comments also raise concerns about the number of new parking stalls needed to accommodate the proposed development and indicates the applicant's Parking Study is not accurate based on a site visit and photos completed Mr. Light.

Staff Response: The proposed multi-family building will be located in an existing commercial center with approved egress at the fully signalized intersection of SW Edy Rd. and SW Borchers Dr. The development complies with the Energy Conservation, Noise, Odor,



and other environmental impact standards in SZCDC § 16.146 - .156, as discussed in this report. The development will also be required to meet fire access requirements prior to receiving occupancy, per Condition of Approval G11.

The proposed multi-family residential use is permitted in the Retail Commercial zone, subject to the dimensional requirements of the High Density Residential zone. The City is not responsible for interpreting, implementing, or enforcing the CC&Rs and cannot adjudicate many of the specific issues raised. The City can only consider the existing and proposed private agreements as they relate to specific development code standards and approval criteria. The sections of the development code that require evidence of private agreements are addressed in this report under each applicable section.

Specifically, the findings and conditions of approval in the following sections demonstrate the application conforms to the required development regulations under each section:

- SZCDC § 16.106.080 Traffic Impact Analysis
- SZCDC § 16.94 Off-Street Parking and Loading
- SZCDC § 16.116 Fire Protection

As discussed in this report, the application has not demonstrated compliance with all applicable standards and approval criteria in the following sections:

- SZCDC § 16.90 Site Planning
- SZCDC § 16.12 Residential Land Use Districts
- SZCDC § 16.22 Commercial Land Use Districts

The testimony also raises concern about the number of parking stalls provided and the parking ratio proposed by the developer. As demonstrated in the applicant's Revised Final Parking Study (Exhibit UU) and this staff report, the applicant has demonstrated compliance with the City's minimum parking requirements in SZCDC § 16.94. The testimony from Mr. Light does not address specific parking standards in the City's code and how the minimum requirements have not been satisfied.

3. Bruce Bebb provided testimony dated September 6, 2021 (Exhibit LL – 21233 SW Houston Drive) – Mr. Bebb lives in the adjacent residential neighborhood to the west of the proposed development.

The testimony is in opposition to the application and raises concern about traffic at the intersection of SW Borchers Rd. and SW Edy Rd. During both the rush hours (AM / PM) and sometimes mid-day, the intersection is blocked with traffic heading east on Edy Rd. towards Hwy 99W.

Staff Response: The original land use application for Cedar Creek Plaza development included a Transportation Impact Analysis (TIA) for the entire commercial center including Lot 2. The TIA assumed that Lot 2 would be developed with a 94-room hotel generating 768 daily trips. The applicant has provided a Revised Trip Update Letter (Exhibit L) that shows the daily trips generated by the 67-unit multi-family building is 452. Therefore, at build-out of Lot 2, the proposed 67-unit residential building will result in a reduction of 316 daily trips compared to the 94-room hotel. Agency comments provided by the Oregon Department of Transportation (Exhibit X), Washington County Land Use & Transportation (Exhibit V), and City of Sherwood Engineering (Exhibit T and TT) concur with the trip generation report provided by the applicant.

4. Julia Light provided testimony dated September 21, 2021 (Exhibit KK) 17117 SW Robinwood Place) - Ms. Light lives in the adjacent townhomes to the south/west of the proposed development. The testimony raises concerns related to traffic, moving trucks, emergency vehicle access, vehicle emissions, trash, pets, architectural design, and the rental nature of apartments.

Staff Response: The Sherwood Zoning and Community Development Code covers many of the topics raised as concerns including traffic, loading, emergency vehicle access, waste, building design, and land use. Issues raised that are not requirements of development cannot be considered (e.g. residents leaving the property to walk dogs on public property in the Maderia neighborhood). Outside agencies including Pride Disposal, Tualatin Valley Fire and Rescue, and the Oregon Department of Transportation have all reviewed and provided comment on the application.

The findings and conditions of approval in the following sections demonstrate the application conforms to the required development regulations under each section:

- SZCDC § 16.106.080 Traffic Impact Analysis
- SZCDC § 16.94 Off-Street Parking and Loading

- SZCDC § 16.116 Fire Protection

As discussed in this report, the application has not demonstrated compliance with all applicable standards and approval criteria in the following sections:

- SZCDC § 16.90 Site Planning
- SZCDC § 16.12 Residential Land Use Districts
- SZCDC § 16.22 Commercial Land Use Districts

5. Bob Barman provided testimony dated December 3, 2021 (Exhibit OO) – 16826 SW Edy Rd, Suite 137) - Mr. Barman owns the Hops n Drops property located in the Cedar Creek Plaza development and the testimony is in opposition to the proposed development. The comments state that a hotel was originally planned for Lot 2 and that a hotel was clearly represented to Planning Commission during the original hearing in May 2017. The testimony also raises concerns about the traffic assumptions and parking study and concludes the development will result in spill over impacts to the adjacent residential neighborhood.

Staff Response: Mr. Barman is correct that the owner and developer of Lot 2 intended to construct a hotel on the property, however, the City did not approve any development for Lot 2 in the 2017 approval. In order to provide a complete picture of the final traffic counts for the commercial center, the applicant included traffic counts and implemented traffic mitigation measures for a 94-room hotel. Under this approach the developer was able to identify all of the required traffic mitigation measure for the entire development upfront, instead of re-studying and potentially re-constructing recently completed road improvements. The applicant has provided an updated trip analysis for Lot 2 (Exhibit L) that indicates the apartment project will result in less daily trips than the previously proposed hotel. Regarding the parking impacts and potential spillover to adjacent neighborhoods, the applicant has provided a Revised Final Parking Study (Exhibit UU) that demonstrates the City's minimum parking requirements have been satisfied. The testimony provided by Mr. Barman does not specify how the City's minimum parking requirements in SZCDC § 16.94 have not been satisfied.

6. Chris Koback provided testimony dated December 3, 2021, December 7, 2021, and February 21, 2022 (Exhibit NN / AJ – 1331 NW Lovejoy St., Suite 950) - Mr. Koback represents three property

owners in the Cedar Creek Plaza center. The testimony is in opposition to the application and expresses concern that residential apartments are not a permitted use, that the proposal does not meet off-street parking requirements, and that the proposed parking is not on the lot or development as the residential use.

The testimony states that as part of the original 2017 approval the City placed a Condition of Approval on the application that Lot 2 be developed with a hotel and that the current application is proposing to remove that condition without addressing the required criteria.

Staff Response: Many of the issues raised by Mr. Koback are related to interpreting the CC&R's that bind the private parties in the commercial center. The City is not responsible for interpreting, implementing, or enforcing the CC&Rs and cannot adjudicate many of the specific issues raised. The City can only consider the existing and proposed private agreements as they relate to specific development code standards and approval criteria. The sections of the development code that require evidence of private agreements are addressed in this report under each applicable section.

#### *Off-Street Parking Requirements*

SZCDC § 16.94.010(E)(1) requires residential off-street parking to be located on the "same lot or development" as the residential use. Mr. Koback's testimony states that the word "development" is not defined in the context of this code section and application, and in this instance the City should define development as "Lot 2". Mr. Koback's argument ignores other sections of the parking code that clearly permit residential uses to share parking with other uses including those on other lots and in other developments. The narrow definition proposed in the testimony does not take into account the parking rights in the CCRs related to shared parking on adjacent lots. If the City agreed with the analysis in Mr. Koback's testimony, the City's findings related to parking would be in conflict with other portions of the City's development code that permit shared parking.

Mr. Koback's testimony also argues that the proposed multi-family building requires 92 additional spaces that are not located on the Deacon Tract. To support this argument the testimony states the Deacon Tract is currently lacking 51 stalls based on the existing uses and required parking minimums. This approach assumes that all users of the Deacon Tract including commercial customers are required to park on the Tract. The 2017 CC&Rs allow shared parking

across all three Tracts for customers and guests. Because customers and guests of the Deacon Tract can park on the other two Tracts, the calculations provided in the testimony are incomplete and inaccurate.

Mr. Koback's testimony also argues that by approving the application, the Ackerly's Conditional Use permit for an assisted living facility may fall out of compliance because the original application stated the facility would host approximately 85-90 employees. While the application did make this statement, the application also provided a letter clarifying the demand for parking for the assisted living use specifically to determine parking requirements under the code. The letter (Exhibit RR) states approximately half of the 98 stalls would be used for residents and the other half would be split between employees and guests. This evidence was accepted by the City at the time of the original approval in order to determine minimum parking requirements.

Finally, Mr. Koback's testimony raises the fact that employees are required to park on the Tract which they are associated based on the parking restrictions in the 2017 CCRs. The first staff report released on the application did specifically raise this issue. Staff agrees that the CC&R's provide clear restrictions for employee parking. The applicant has provided a revised, Revised Final Parking Study dated February 9, 2022 that takes into account all of the restrictions in the 2017 and 2019 CCRs, including those for employees. Staff concurs with the conclusions of the Final Parking Study that the City's minimum parking requirements have been met.

The second piece of testimony from Mr. Koback raises concern about a specific Condition of Approval related to a hotel use being changed by the Major Modification application but does not specify which Condition of Approval from SP 16-10 is being changed. The application is going through the Major Modification review process which permits changes to the original approval and any specific Conditions of Approval placed on the application including those related to use, traffic, and parking. The applicant narrative and staff report address all of the Major Modification criteria and find the approval criteria have been met.

8. Richard Jaffe (Exhibit PP) – Mr. Jaffe owns Lot 5 of the Cedar Creek Plaza subdivision where IHOP and Sherwood Eye Health are located. The testimony raises concern about the amount of parking

being provided by Lot 2 and the potential impact to customer parking. Mr. Jaffe states up to two (2) stalls should be required per unit.

Staff Response: The comment raises concern about the amount of parking being proposed on Lot 2 and suggests a minimum parking standards per unit. The City's Development Code contains clear minimum parking standards that all applicant's are required to comply with. The applicant has provided a Final Parking Study (Exhibit UU) that demonstrates how the Cedar Creek Plaza development will meet the City's applicable parking code requirements. The testimony from Mr. Jaffe does not address specific parking standards in the City's code and how the minimum requirements have not been satisfied.

### **III. ADOPTED FINDINGS**

#### **Chapter 16.22 - COMMERCIAL LAND USE DISTRICTS**

##### **16.22.010 – Purpose**

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- C. Retail Commercial (RC) - The RC zoning district provides areas for general retail and service uses that neither require larger parcels of land, nor produce excessive environmental impacts as per Division VIII.**

##### **16.22.020 - Uses**

- A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.**
- B. Uses listed in other sections of this code, but not within this specific table are prohibited.**
- C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.**
- D. Additional limitations for specific uses are identified in the footnotes of this table.**

\*\*\*(*Abbreviated table*)

Uses	RC Zone
Multi-family housing, subject to the dimensional requirements of the High Density Residential (HDR) zone in <u>16.12.030</u> when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings. <sup>2, 3</sup>	P

<sup>2</sup> The residential portion of a mixed use development is considered secondary when traffic trips generated, dedicated parking spaces, signage, and the road frontage of residential uses are all exceeded by that of the commercial component and the commercial portion of the site is located primarily on the ground floor.

<sup>3</sup> Except in the Adams Avenue Concept Plan area, where only non-residential uses are permitted on the ground floor.

**ANALYSIS:** The applicant is proposing a new 67-unit multifamily building in the Retail Commercial (RC) zone. Multifamily housing is a permitted use in the zone, subject to the dimensional requirements of the High Density Residential (HDR) zone when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings.

The multifamily building will be located on Lot 2 of the Cedar Creek Plaza subdivision (Exhibit BB) which is located behind the existing commercial buildings in the Cedar Creek Plaza development. As shown in the applicant's Aerial-Vicinity Map (Exhibit B), the proposed residential building will be screened from SW Edy Rd. and Hwy 99W by one or more commercial buildings including the Providence medical office building at the corner.

Because the commercial use table references § 16.12.030 as setting forth "Dimensional Standards", as contrasted with the "density standards" as articulated in § 16.12.010, all of the development standards included under § 16.12.030 apply to multifamily housing in the RC zone. As part of the amended application, the applicant concedes that § 16.12.030 is applicable.

**FINDING:** The commercial use table requires multi-family housing in the Retail Commercial zone to meet the dimensional requirements in SZCDC § 16.12.030. The application has not demonstrated compliance with the dimensional standards in SZCDC § 16.12.030 and this standard is not met.

## **16.12.030 - Residential Land Use Development Standards**

### **A. Generally**

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Chapter 16.84. (Variance and Adjustments)

**B. Development Standards**

Except as modified under Chapter 16.68 (Infill Development), Section 16.144.030 (Wetland, Habitat and Natural Areas) Chapter 16.44 (Townhomes), or as otherwise provided, required minimum lot areas, dimensions and setbacks shall be provided in the following table.

**C. Development Standards per Residential Zone**

<b>Development Standard</b>	<b>HDR</b>
<b>Minimum lot area (multifamily, first 2 units)</b>	<b>8,000 SF</b>
<b>Minimum lot area (multifamily, each additional unit after first 2)</b>	<b>1,500 SF</b>
<b>Minimum Lot width at front property line</b>	<b>25 ft.</b>
<b>Minimum Lot width at building line<sup>[1]</sup> (multifamily)</b>	<b>60 ft.</b>
<b>Lot depth</b>	<b>80 ft.</b>
<b>Maximum Height<sup>[2]</sup></b>	<b>40 or 3 stories</b>
<b>Front yard setback<sup>[4]</sup></b>	<b>14</b>
<b>Interior side yard (multifamily, over 24 ft. height)</b>	<b>§ 16.68 infill</b>
<b>Rear yard</b>	<b>20</b>

<sup>1</sup>Minimum lot width at the building line on cul-de-sac lots may be less than that required in this Code if a lesser width is necessary to provide for a minimum rear yard.

<sup>2</sup>Maximum height is the lesser of feet or stories

<sup>3</sup>Some accessory structures, such as chimneys, stacks, water towers, radio or television antennas, etc. may exceed these height limits with a conditional use permit, per Chapter 16.62 (Chimneys, Spires, Antennas and Similar Structures).



**<sup>4</sup>Reductions in front yard setbacks for architectural features as described in 16.50.050 are not permitted in the MDRL, MDRH, or HDR zoning districts.**

**ANALYSIS:** The applicant is proposing a 67-unit multifamily building to be located on Lot 2 of the Cedar Creek Plaza subdivision. The applicant is proposing to meet the minimum lot area by including Lots 2 and 7 of the Cedar Creek Plaza subdivision (Tax Lots 2S130DA2200 and 2700) in the lot area calculations. The applicant's revised narrative (Exhibit S, p. 11) references the City's definition of "lot" in SZCDC § 16.10 in support of utilizing more than 1 lot to achieve the minimum lot area. The definition is included below for reference.

**SZCDC 16.10 Definitions**

*Lot: A parcel of land of at least sufficient size to meet the minimum zoning requirements of this Code, and with frontage on a public street, or easement approved by the City. A lot may be:*

- A. A single lot of record; or a combination of complete lots of record, or complete lots of record and portions of other lots of record.*
- B. A parcel of land described by metes and bounds; provided that for a subdivision or partition, the parcel shall be approved in accordance with this Code.*

While the definition of "lot" may allow "a combination of complete lots of record" to be defined as a lot<sup>1</sup>, when this definition is read in the context of the City's code, it is clear that those lots would need to be contiguous and undeveloped—which is not the case for Lots 2 and 7.

Moreover, the definition of "lot" is not controlling. The more specific and applicable definition of "lot area" is: "The total horizontal area within the lot lines of a lot, exclusive of streets and access easements to other property." The reference in this definition to "area within the lot lines" is premised on the idea that the area in question would be surrounded by a single set of lot lines.

Further, the purpose of maintaining minimum development standards is to establish a floor amount of space necessary to accommodate a development. That minimum area is not available if it is not abutting the area slated for development and has otherwise been assigned to and developed for another use. If the applicant is able to borrow lot area from other developed, non-contiguous parcels, it could do so again and again, frustrating the minimums required by code.

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<sup>1</sup> Note that staff believes that the meaning of the term "parcel" as referenced in the definition of "lot" is similar to the term "tract" as used in ORS 215.010(2), which includes "one or more contiguous lots or parcels under the same ownership."

Additionally, the definition of “lot” also requires a lot to be “a parcel of land”. Lots 2 and Lot 7 of the Cedar Creek Plaza subdivision are not a parcel of land because they are not contiguous and do not form a single polygon that could be described through a singular metes and bounds description as a single parcel. As shown in Exhibit EE, Lot 2 is located at the north corner of the subdivision while lot 7 is located at the southern corner of the subdivision and developed commercial center. Lots 2 and 7 do not form a singular parcel of land because they are separated by 3 different lots under separate ownership.

If, as the applicant claims, “lot” includes both Lots 2 and 7 for purposes of “minimum lot area,” this same “lot” would control for the remainder of the applicable development standards which would not make sense in the case of non-contiguous lots. For example, the minimum lot width requirements cannot be achieved by proposing development on a 10’ wide lot of record but borrowing an addition 15’ from a commonly owned lot located on the other side of town. The minimum lot width at the front or from building lines or depth is entirely frustrated if it were construed to apply in the case of non-contiguous lots. The applicant and City cannot choose which dimensional standards to apply when multiple lots are included under the City’s definition of “lot”. Under the applicant’s proposal “minimum lot area” would apply but not the other development standards. Applying such a malleable definition of the term “lot” interjects a value-laden policy judgment which would violate the clear and objective decision-making obligations for needed housing as prescribed by ORS 197.307(4).

Because including Lot 7 solely for purposes of establishing the “minimum lot area” frustrates the City’s obligation to process the application in a clear and objective manner and because lots 2 and 7 cannot be used together to form a single “parcel of land”, the application cannot include Lot 7 to meet the minimum lot area requirements of the zone.

When only using Lot 2 to meet the minimum lot area requirements as the area where development is proposed, a maximum of 46 units are permitted on the vacant lot prior to removing the lot area dedicated for shared access. Per the definition of “lot area”, access easements to other properties are required to be excluded from the final calculations. The application has not removed the access easement on Lot 2 of the Cedar Creek Plaza subdivision from the lot area calculations (Exhibit BB – Sheet 3, Note 4). The size of the easement appears to be approximately 2,000 SF and after removing this area from the lot area calculations, the final permitted unit count on the property is likely lower than 46 units.

The applicant is proposing 67 units which exceeds the number of units allowed on Lot 2.

### Number of Residential Units Permitted Based on Lot Area

Lot	Lot Area	Lot Area Used for Residential Units	Units	Remaining Lot Area Not Used for Residential
Lot 2	75,359 SF*	8,000 SF (first 2 units) 66,000 SF (next 44 units)	46**	1,359 SF

*\*Includes access easement on Lot 2 of the Cedar Creek Plaza plat that cannot be counted towards the minimum lot area*

*\*\*Actual unit count is lower depending on the size of the access easement*

### Required and Proposed Development Standards

Development Standard	HDR	Proposed (Lot 2)*
Minimum lot area (multifamily, first 2 units)	8,000 SF	See above
Minimum lot area (multifamily, each additional unit after first 2)	1,500 SF	See above
Minimum Lot width at front property line	25 ft.	294 ft.
Minimum Lot width at building line (multifamily)	60 ft.	294 ft.
Lot depth	80 ft.	245 ft.
Maximum Height	40 or 3 stories	3 stories, 36 ft. 5 inches
Front yard setback	14	287 ft. from Hwy 99W

Development Standard	HDR	Proposed (Lot 2)*
Interior side yard (multifamily, over 24 ft. height)	§ 16.68 infill**  Final building height is 36.5 ft., requiring a 11.20 ft. interior side yard setback**	13 ft. (south / west)  56.6 ft. (north / west)
Rear yard	20	68 ft.

*\*The application does not address dimensional standards for Lot 7*

**\*\*16.68.030 - Building Design on Infill Lots**

*Structures exceeding twenty four (24) feet in height shall conform to the following standards:*

- B. Interior Side Setback and Side Yard Plane. When a structure exceed twenty four (24) feet in height:*
  - 1. The minimum interior side setback is five (5) feet, provided that elevations or portions of elevations exceeding twenty four (24) feet in height shall be setback from interior property line(s) an additional one-half (½) foot for every one (1) foot in height over twenty four (24) feet (see example below)*

$$36.41 \text{ ft.} - 24 \text{ ft.} = 12.41 \text{ ft.}; 12.41 \text{ ft.} \times 0.5 \text{ ft.} = 6.20 \text{ ft.}; 6.20 \text{ ft.} + 5 \text{ ft.} = 11.20 \text{ ft.}$$

In addition to the residential building, the applicant is proposing carport structures for the rear parking aisle along the west property line. Building permits are required for the accessory structures, as conditioned below.

**FINDING:** The applicant is proposing a total of 67-units which exceeds the number of units permitted on Lot 2 by a minimum of 21 units. In addition, the applicant has not removed the access easement on Lot 2 from the lot area calculations as required by the definition of “lot area”. The applicant has not been conditioned to lower the unit count based on the analysis above because the design of the site and building may change and the application would need to be revised to show compliance with the applicable standards. This standard is not met.

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## Division V. - COMMUNITY DESIGN

### Chapter 16.90 – SITE PLANNING

#### 16.90.030 - Site Plan Modifications and Revocation

##### A. Modifications to Approved Site Plans

##### 1. Major Modifications to Approved Site Plans

a. **Defined.** A major modification review is required if one or more of the changes listed below are proposed:

- (1) A change in land use (i.e. residential to commercial, commercial to industrial, etc.);
- (2) An increase in density by more than ten (10) percent, provided the resulting density does not exceed that allowed by the land use district;
- (3) A change in setbacks or lot coverage by more than ten (10) percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district;
- (4) A change in the type and/or location of accessways, drives or parking areas negatively affecting off-site traffic or increasing Average Daily Trips (ADT) by more than 100;
- (5) An increase in the floor area or height proposed for non-residential use by more than ten (10) percent;
- (6) A reduction of more than ten (10) percent of the area reserved for common open space; or
- (7) Change to a condition of approval that was specifically applied to this approval (i.e. not a "standard condition"), or a change similar to items identified in Section 16.90.030.A.1.a.(1)—(2) as determined by the Review Authority.

**ANALYSIS:** The applicant is proposing a new 67-unit multi-family building in the existing Cedar Creek Plaza development. The original land use approval (SP 16-10 / CUP 16-06 / VAR 17-01) did not include a multi-family housing use as identified in the commercial use table under SZCDC § 16.22.020. The 138-assisted living and memory care facility was approved as a "Residential care facility. The proposed 67-units represent an increase in the density in the development by more 10%."

	Lot Size	Multifamily dwelling units	Density per acre	% Increase in Density
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<b>Original approval</b>	13.17 AC	0	0	
<b>Proposed (Cedar Creek Plaza Commercial Center)</b>	13.17 AC	67	5.08	100%
<b>Proposed (Lots 2 and 7 only)</b>	2.43 AC	67	27.57	100%
<b>Lot 2 only</b>	1.73	67	38.72	100%

The proposal does not represent an increase in Average Daily Trips (ADT) by more than 100 because the original TIA for the development assumed a greater daily trip count than the multi-family building will create (Exhibit L – Trip Update Letter).

**FINDINGS:** The proposed development will increase density on Lots 2, 7, and within the Cedar Creek Plaza center at-large by more than 10%. As such a Major Modification approval is required.

- b. **Approval Criteria. An applicant may request a major modification as follows:**
  - (1) **Upon the review authority determining that the proposed modification is a major modification, the applicant must submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The review authority may require other relevant information, as necessary, to evaluate the request.**
  - (2) **The application is subject to the same review procedure (Type II, III or IV), decision making body, and approval criteria used for the initial project approval, except that adding a Conditional Use to an approved Type II project is reviewed using a Type III procedure.**
  - (3) **The scope of review is limited to the modification request and does not open the entire site up for additional review unless impacted by the proposed modification. For example, a request to modify a parking lot requires site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping.**

- (4) Notice must be provided in accordance with Chapter 16.72.020.
- (5) The decision maker approves, denies, or approves with conditions an application for major modification based on written findings of the criteria.

**ANALYSIS:** The original land use application was processed under the City's Type IV procedure with the Planning Commission as the decision-making body. The proposed Major Modification is being processed as a Type IV application as required by the criteria above. Notice has been provided in accordance with SZCDC § 16.72.020 including mailed notice to property owners within 1,000 ft. of the site. The applicable sections of the City's development code are addressed throughout this report. The proposal meets or is conditioned to meet all of the applicable criteria.

**FINDINGS:** These criteria are met.

#### **16.90.020 - Site Plan Review**

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##### **D. Required Findings**

**No site plan approval will be granted unless each of the following is found:**

1. **The proposed development meets applicable zoning district standards and design standards in Division II, and all provisions of Divisions V, VI, VIII and IX.**

**ANALYSIS:** The Cedar Creek Plaza commercial center is located in the RC zone and is required to all applicable zoning district and community design standards. The RC zone requires multifamily housing to meet the dimensional requirements of the HDR zone. As discussed in the findings for SZCDC § 16.12.030, the application has not demonstrated compliance with the dimensional standards for the multifamily building.

**FINDINGS:** This criterion is not met.

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#### **IV. EXHIBITS\***

- A. Tax Map
- B. Aerial-Vicinity Map
- C. Zoning Map
- D. Survey
- E. As-Built Plans

- F.** Civil Plans
- G.** Landscape Plans
- H.** REVISED Architectural Plans
- I.** Architectural Perspective Renderings
- J.** Neighborhood Meeting Materials
- K.** Geotech Report
  - 1. Geotech Report Addendum
- L.** REVISED Trip Update Letter
- M.** Arborist Report and Tree Survey
- N.** Service Provider Letter (Clean Water Services)
- O.** Stormwater Report and Calculations
- P.** Covenants, Conditions, and Restrictions (CC&Rs)
- Q.** Title Reports
- R.** REVISED Signed Land Use Application Forms
- S.** Applicant Narrative
- T.** REVISED City of Sherwood Engineering Department Comments
- U.** City of Sherwood Police Department Comments
- V.** Washington County Land Use and Transportation Comments
- W.** Tualatin Valley Fire and Rescue Comments
- X.** Oregon Department of Transportation Comments
- Y.** Clean Water Services Comments
- Z.** Pride Disposal Comments
- AA.** ODOT Outdoor Advertising Sign Program Comments
- BB.** Cedar Creek Plaza Subdivision Plat
- CC.** Staff Photo – Site Perimeter Landscaping
- DD.** Staff Photo – Site Perimeter Landscaping
- EE.** Cedar Creek Plaza Property Ownership Map
- FF.** Staff Photo – Ackerly Reserved Parking
- GG.** Notice of Decision SP 16-10 / CUP 16-06 / VAR 17-01
- HH.** Notice of Decision LLA 17-02
- II.** Notice of Decision SUB 17-02
- JJ.** Testimony from Mark Light dated 9-1-21, 9-19-21, 10-6-21, 1-13-22
- KK.** Testimony from Julia Light dated 9-21-21
- LL.** Testimony from Bruce Bebb dated 9-6-21
- MM.** Testimony from Harold Cox dated 8-31-21 and 12-3-21
- NN.** Testimony from Chris Koback dated 12-3-21 and 12-7-21
- OO.** Testimony from Bob Barman dated 12-3-21
- PP.** Testimony from Richard Jaffe dated 12-9-21
- QQ.** Existing Parking Stall Count Exhibit from Staff dated 12-6-21
- RR.** Letter from LeisureCare on Ackerly Staff and Parking
- SS.** Final Site Plan Narrative from Original Decision (SP 16-10 / CUP 16-06 / VAR 17-01)



- TT.** Internal Memorandum “Analysis of Traffic Count Impacts to TIA due to Change of Use” from Bob Galati, City Engineer dated December 6, 2021
- UU.** REVISED Cedar Creek Plaza Parking Review and Management Plan from Kittelson & Associates dated 2-9-22
- VV.** Letter from Applicant (Brad Kilby) to Planning Commission dated 12-9-21, “Cedar Creek Plaza Testimony – LU 2021-019”
- WW.** Letter to Planning Commission from Applicant (Steve Deacon) dated 1-13-22, “Cedar Creek Plaza Multi-family Project”
- XX.** 120 Day Extensions from Applicant
- YY.** Testimony from Todd Fisher dated January 23, 2022
- ZZ.** Testimony from Chris Koback dated January 24, 2022
- AB.** Email from Applicant (Brad Kilby) dated January 25, 2022
- AC.** Letter from Applicant (Steve Deacon) dated January 25, 2022
- AD.** Exhibit from Kittelson & Associates dated January 25, 2022
- AE.** Testimony from Gabriel Zapodeanu dated January 25, 2022
- AF.** Testimony from Mark Light dated February 8, 2022
- AG.** 120-Day Extension from Applicant
- AH.** Letter from Applicant (Brad Kilby) dated February 16, 2022
- AI.** Testimony from David Petersen dated February 18, 2022
- AJ.** Testimony from Chris Koback dated February 21, 2022
- AK.** 120-Day Extension and Continuance Request from Applicant
- AL.** 120-Day Extension and Continuance Request from Applicant
- AM.** Testimony from Mark Light dated March 21, 2022
- AN.** Deeds for Tax Lots 2200 and 2700
- AO.** Testimony from Mark Light dated April 24, 2022

*\*The complete application materials are available in the paper project file at City Hall.*