

April 26, 2012

TESTIMONY TO CITY COUNCIL – EPNO LAND USE & TRANSPORTATION
COMMITTEE, BONNY MCKNIGHT (representative and appellant)

LAND USE HEARING OFFICER DECISION APPEAL
LU 11-146609 CU AD
2027 SE 174th (Centennial Association of Neighbors)

We have appealed this decision because it fails to fully respond to the Zoning Code Approval Criteria as stated in 33.815.010, fails to properly address the SFR7 stipulations regarding the two types of residential uses allowed, and fails to consider the requirements of 33.229.10 regarding Senior and Disabled Housing Regulations.

In order to best explain why we are appealing this proposed private nursing home it is important to understand we are not arguing against the fair treatment of people who will live there. This is not about NIMBY. Rather, it is to further ratify changes that have been made to Federal, State, and Multnomah County law that better protects a full quality of life for those who must live in such facilities.

Chapter 33.229 of the City zoning code, Elderly and Disabled High Density Housing, responds to that moral requirement of public policy making by stating in its purpose statement:

“These regulations provide opportunities to integrate housing for elderly and disabled citizens with other types of housing, and to increase the ability of the elderly and disabled to live independently and close to where services are generally available. The regulations allow increased density with special design and development standards in R3 through RH, C, IR, and EX zones. The regulations are intended only for new developments and projects that involve major remodeling.”

What follows in this code section is 5 pages of operational, physical, and treatment requirements for that housing which must be met when the higher than allowed density is permitted.

We have appealed the facility proposed today because it is attempting to build additional density for this same group of people in a zone where it is not allowed by using a definition that can be found in 33.229 for higher density housing.

The proposal before you is not a group home nor a group living facility. Instead it is an institution for elderly and disabled residents which is not allowed in the zone, even as a conditional use, and which fails to guarantee any quality of life protections for the 39 elderly and disabled residents it would hold.

Chapter 33.229 brings clarity to this appeal but it is not the only way to understand why this facility cannot be built under the code requirements of 33.110 SFR 7 portion of the zoning code.

The zone for this facility is SFR 7:

SF	Single family
R	Residential
7	Dwelling units 7,000 ' apart

The zone provides two types of residential use:

Household
Group Living

Household is defined in code as a single family. Household formerly meant people related by blood

The Federal Fair Housing Act of 1988 further expanded the definition of "Household" as allowing a group of 5 or fewer unrelated adults living in the same dwelling with the property owner. That definition is accepted by both the State of Oregon and Multnomah County, and used by City land use code.

In the SFR 7 code language it is shown as "group living", the second type of residential use allowed outright in the zone.

This type of "household" residential use is called a group home or adult foster care home and is licensed by Multnomah County. City code accepts that definition and by the latest report there are 419 licensed group homes in Multnomah County, 81% of those in the City of Portland. 75% of those licensed homes in the City are in East Portland and 60 of them are in the Centennial Association of Neighbors boundaries, where this facility seeks to be built. (summary chart provided of ACH distribution and numbers)

Centennial Association of Neighbors obviously is not opposing group homes by appealing this decision. Rather they are protecting the integrity of the concept of maximizing the quality of life for the most fragile and economically dependent residents of the city who need housing.

The proposed facility meets neither of the definitions of residential use allowed outright in the zone. The only other residential use of the zone is stipulated as being under "conditional use" criteria for institutions. The institutions allowed are listed in the SFR7 zone as well and do not include private nursing homes, which is what this facility would be.

Conditional Uses for Institutions in the SFR 7 zone.

The other type of residential situation allowed in the SFR7 zone are defined in Table 110-1 as “conditional uses” – that is, with certain special conditions they may be added into the single family zone without violating the single family integrity of the zone. The table shows those Conditional Use categories for Basic Utilities; Community Service; Parks and Open Area; Schools; Colleges; Medical Centers; Religious Institutions; and Daycare.

This proposed facility fits none of these categories and thus is not an allowed residential use in this zone, even as a conditional use.

The proposal fails to meet the approval criteria because it is simply not allowed in this zone.

OTHER CONSIDERATIONS

Code Requirements for This Elderly & Disabled Group Living Facility

To further define this group living facility it is necessary to look at 33.229 Elderly and Disabled High Density Housing Code.

This code does allow increased densities for Seniors and Disabled persons in such a facility. However, It specifically does not allow this type of facility in the R7 zone. This group living facility would be allowed in R3, R2, and R1 Residential zones as well as RH, EX and Commercial zones but requires that specific conditions be met. The conditions provide for a variety of building and staffing guarantees in order to serve the adults living in the facility.

This proposal has no such guarantees and would have to meet those City code stipulations in order to be permitted in even the more dense Residential zones or EX and Commercial zones.

The proposed group living facility cannot be sited under even this code for special density in Residential zones because the additional density cannot be used in R5 and R7 zones.

Given the description of this proposed group living facility and who it will serve, it is simply not allowed either by 33.110 SFR 7 zoning code as an Institution or by the increased density allowance for Elderly and Disabled High Density Housing which is disallowed under 33.229 in an R7 zone.

The proposal fails to meet the approval criteria because it is not allowed in this zone.

Finally, this proposal should not be allowed because it violates the adopted Centennial Community Plan and thus fails to meet the Approval Criteria for Conditional Uses as stated in Approval Criteria Definition for Conditional Uses (33.815)

The Conditional Use Approval Criteria in 33.815 repeatedly require that “The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.”

This proposal fails to meet the policy guidance provided by the adopted Centennial Community Plan – Adopted January 31, 1996 by City Council Ordinance NO. 169763 and Resolution 35491 (Outer Southeast Community Plan)

It also violates Goal 3 - Neighborhoods of the City’s Comprehensive Plan which specifically references the Centennial Community Plan as one of those adopted Neighborhood Plans that must be recognized under Policy 3.6 Neighborhood Plan, “Maintain and enforce neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by Council.

Among plan segments, the Centennial Neighborhood Plan (page 28) states that “Residents of the neighborhood indicated their preference, during two workshops, to (1) retain the single-family character of the neighborhood as it grows, 2) see future new housing enjoy good continuity with the design and character of existing housing to ensure market appeal and value of the neighborhoods, ... 4) encourage any future multi-family growth to occur along the major east-west arterial streets where currently zoned.” Residents favor protecting established single-family housing areas rather than rezoning to multi-family because the removal of sound housing neither enhances nor preserves the neighborhood. Redevelopment would change the look and feel of the area, altering our sense of place and identity.”

This proposal would not support that policy and thus fails to meet the requirements specifically stated in Goal 3 Neighborhoods Policy 3,6 of the adopted Portland Comprehensive Plan.

We ask you to deny approval of the Hearing Officer decision to allow this facility in this zone for all the reasons we noted in this statement.

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CONCLUDING COMMENTS

This appeal is not about keeping something from a neighborhood nor just another NIMBY argument. It is about much more.

We have shown three specific code requirements that prove this 39 bed group living facility is simply not allowed in an R7 Single Family zone. But we also have provided you information that our area of East Portland has accepted 75% of the Multnomah County licensed Adult Care Homes in the City of Portland.

The key difference here is why public policy and even City code definitions have specifically changed to define Adult Care Homes to be the method of choice to build in the best possible living conditions for the most powerless people who live in our City.

This movement has been fully adopted by the State of Oregon and Multnomah County is becoming ever more vigilant about the Adult Care Homes it licenses in order to assure a quality of life for those who lack a personal or social network to help them deal with physical limitations beyond their own control.

The movement away from large institutions such as nursing homes and into smaller, more personal settings is an attempt to find caring property owners in single family residential zones who offer their homes to unrelated adults needing that extra level of care. It is obvious that the approach is widely accepted and that Centennial has proven that by having the second largest number of Adult Care Homes in the entire City.

The proposal today is for a group living facility that not only does not belong in the SFR7 zone for the reasons stated above but also repudiates the efforts to move away from such large, unregulated facilities.

39 residential beds in arguably the least served part of the city with deficient transportation and no nearby amenities such as safe pedestrian ways, transit access, parks, shopping, medical services, and small commercial areas seems to indicate little if any possibility for the quality of life we should expect as a resident of the City.

Even had the code been met by this proposal, the question that is raised by the proposed group living facility is the most important for this Council to answer.

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This appeal is about more than the specific language in the code and how to use it. It is much more about how the code supports the premise that every resident of the City deserves the best quality of life possible, regardless of whether they are low income, elderly, disabled, and personally isolated from a support system of their own.

This is not about the Applicant and their proposed facility. It is about opening a much broader way of

In this instance, the code will not allow this group living facility to built where it is proposed.

The larger question for this Council is how we can make sure as a City that a similar facility is carefully defined in those zones where it might be built and that the best possible quality of life is guaranteed for anyone living in it.

**SUMMARY OF MULTNOMAH COUNTY LICENSED ADULT CARE HOMES IN CITY
OF PORTLAND BY GEOGRAPHICAL DISTRIBUTION**

<u>TOTAL LICENSED HOMES*</u>	419
LICENSED HOMES IN CITY OF PORTLAND (81% OF LICENSED HOMES)	342
LICENSED ADULT CARE HOMES IN EAST PORTLAND (75% OF LICENSED HOMES IN ENTIRE CITY)	258

LICENSED ADULT CARE HOMES IN WILKES, RUSSELL, PT. GLENFAIR, HAZELWOOD, ARGAY (33% OF E PORTLAND TOTAL)	85
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LICENSED ADULT CARE HOMES IN CENTENNIAL (23% OF E PORTLAND TOTAL)	60
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43% of LICENSED ADULT CARE HOMES IN ENTIRE CITY

*Multnomah County licenses adult care homes in single family neighborhoods. They are single family residences/dwellings and may have 5 or fewer unrelated adults in addition to a member of the homeowners family.

Attached - 2 page summary chart shows geographical distribution by zip code and Neighborhood Association within the City of Portland as well as number of County Licensed Homes as reported in the most recent Registry report dated 10/17/2011

Multnomah County Licensed Adult Care Homes

# AFC Homes	zip code	Portland	E. Portland	Neighborhood Associations
5	97221	Y	N	Bridlemile, Hayhurst, Sylvan Heights
5	97218	Y	N	Cully
3	97217	Y	N	Arbor Lodge, Bridgeton, Hayden Island, Humboldt, Kenton, Overlook, Piedmont
3	97213	Y	N	Center, Grant Park, Hollywood, Montavilla, Rose City Park, Roseway
3	97203	Y	N	Cathedral Park, Portsmouth, St. Johns, University Park
2	97227	Y	N	Boise, Eliot, Overlook
1	97239	Y	N	Healy Heights, Homestead
1	97232	Y	N	Sullivan's Gulch, Kerns, Laurelhurst, Lloyd Center
1	97214	Y	N	Buckman, Kerns, Hosford/Abernathy, Laurelhurst, Richmond, Sunnyside
1	97212	Y	N	Alameda, Beaumont/Wilshire, Eliot, Grant Park, Hollywood, Irvington, King, Sabin
1	97210	Y	N	Hillside, Linnton, NW, NW Industrial

Multnomah County Licensed Adult Care Homes

# AFC Homes	zip code	Portland	E. Portland	Neighborhood Associations
85	97230	Y	Y	Wilkes, Russell, Argay - Pt. Glenfair, Hazelwood
60	97233	Y	Y	Centennial
39	97236	Y	Y	Pleasant Valley, Powellhurst-Gilbert
30	97266	Y	Y	Lents
29	97206	Y	N	Brentwood, Foster-Powell, Mt. Scott/arleta, Richmnd, S Tabor, Woodstock
26	97220	Y	Pt	Madison S, Parkrose, Parkrose Heights, Sumner, Woodland Pk
18	97216	Y	Y	Hazelwood, Mill Park
9	97211	Y	N	Concordia, East Columbia, King, Sabin, Vernon, Woodlawn
8	97219	Y	N	Arnold Creek, Ash Creek, Collins View, Corbett/Terilliger, Crestwood, Far SW, Hillsdale, Maplewood, Markham Hill, Marshall Park, Multnomah, S Burlingame, West Portland Park
6	97215	Y	N	Mt. Tabor
6	97202	Y	N	Brooklyn, Creston-Kennilworth, Eastmoreland, Reed, Sellwood-Moreland

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NEIGHBORHOODS

GOAL:

- 3 Preserve and reinforce the stability and diversity of the City's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses and insure the City's residential quality and economic vitality.**

POLICIES & OBJECTIVES:

3.1 Physical Conditions

Provide and coordinate programs to prevent the deterioration of existing structures and public facilities.

3.2 Social Conditions

Provide and coordinate programs to promote neighborhood interest, concern and security and to minimize the social impact of land use decisions.

3.3 Neighborhood Diversity

Promote neighborhood diversity and security by encouraging a diversity in age, income, race and ethnic background within the City's neighborhoods.

3.4 Historic Preservation

Preserve and retain historic structures and areas throughout the city.

3.5 Neighborhood Involvement

Provide for the active involvement of neighborhood residents and businesses in decisions affecting their neighborhood through the promotion of neighborhood and business associations. Provide information to neighborhood and business associations which allows them to monitor the impact of the Comprehensive Plan and to report their findings annually to the Planning Commission.

3.6 Neighborhood Plan ¹

Maintain and enforce neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by City Council.

¹ The following plans are included under this policy:

- a) Downtown Plan (adopted 1972, updated 1980) incorporated into plan by Ordinance No. 150580
- b) Corbett-Terwilliger-Lair Hill Policy Plan (1977) incorporated into plan by Ordinance No. 150580
- c) Cully/Parkrose Community Plan (1986) Ordinance No. 158942; Cully portion superseded by Cully Neighborhood Plan (1992) Ordinance No. 164922
- d) Kerns Neighborhood Action Plan (1987) Ordinance No. 159894
- e) Sullivan's Gulch Neighborhood Action Plan (1987) Ordinance No. 159897
- f) Wilkes Community and Rockwood Corridor Plan (1987) Ordinance No. 160174
- g) Hosford-Abernethy (HAND) Neighborhood Action Plan (1988) Ordinance No. 160471
- h) Buckman Neighborhood Plan (1991) Ordinance No. 164489
- i) Brooklyn Neighborhood Plan (1992) Ordinance No. 163982; Readopted by Ordinance No. 167767
- j) Cully Neighborhood Plan (1992) Ordinance No. 164922
- k) Brentwood/Darlington Neighborhood Plan (1992) Ordinance No. 165071
- l) Arbor Lodge Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- m) Boise Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- n) Concordia Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- o) Eliot Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- p) Humboldt Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- q) Irvington Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- r) Kenton Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054; amended by Ordinance No. 175210
- s) King Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- t) Piedmont Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- u) Sabin Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- v) Woodlawn Neighborhood Plan (1993) Ordinance No. 166786; Readopted by Ordinance No. 167054
- w) Richmond Neighborhood Plan (1994) Ordinance No. 168280
- x) Woodstock Neighborhood Plan (1995) Ordinance No. 169488
- y) Centennial Neighborhood Plan (1996) Ordinance No. 169763
- z) Foster-Powell Neighborhood Plan (1996) Ordinance No. 169763
- aa) Lents Neighborhood Plan (1996) Ordinance No. 169763
- bb) Mt. Scott-Arleta Neighborhood Plan (1996) Ordinance No. 169763
- cc) Mill Park Neighborhood Plan (1996) Ordinance No. 169763
- dd) Montavilla Neighborhood Plan (1996) Ordinance No. 169763
- ee) Outer Southeast Business Plan (1996) Ordinance No. 169763
- ff) Pleasant Valley Neighborhood Plan (1996) Ordinance No. 169763
- gg) Powellhurst-Gilbert Neighborhood Plan (1996) Ordinance No. 169763
- hh) South Tabor Neighborhood Plan (1996) Ordinance No. 169763
- ii) Downtown Community Association Residential Plan (1996) Ordinance No. 170347
- jj) Bridgeton Neighborhood Plan (1997) Ordinance No. 171238
- kk) Hillsdale Town Center Plan (1997) Ordinance No. 171699
- ll) Sellwood-Moreland Neighborhood Plan (1997) Ordinance No. 171849
- mm) Creston Kenilworth Neighborhood Plan (1998) Ordinance No. 172365
- nn) Sunnyside Neighborhood Plan (1999) Ordinance No. 173725
- oo) Hollywood and Sandy Plan (2000) Ordinance No. 174325
- pp) Southwest Community Plan Vision, Policies and Objectives (2000) Ordinance No. 174667
- qq) Portsmouth Neighborhood Plan (2002) Ordinance No. 176614
- rr) Marquam Hill Plan (2002) incorporated into plan by Ordinance No. 176742; readopted by Ordinance No. 177739 (2003)
- ss) South Waterfront Plan (2002) Ordinance No. 177082
- tt) St. Johns/Lombard Plan (2004) Ordinance No. 178452

- D. Foster the Eliot Neighborhood through the adoption of the Eliot Neighborhood Plan as a part of Portland's acknowledged Comprehensive Plan. Through implementation of these plans ensure Eliot's growth as a vital and diverse community in the heart of Portland, an exciting and attractive place to live, work and play. Use the Eliot Neighborhood Plan to guide City actions within Eliot; including land use decisions, community development programs, urban renewal programs and the development of capital improvement projects.
- E. Showcase the Humboldt Neighborhood as a historic and educational center. Maintain ties between Humboldt's present and past through preservation of historic development patterns and structures. Promote a neighborhood that is known for housing choice, livability and public safety through the implementation of the Humboldt Neighborhood Plan.
- F. Ensure that Irvington remains a lively, appealing urban neighborhood whose residents continue to be diverse but share common values of neighborliness, respect for others and concern for the preservation of the neighborhood's distinctive residential character. Through the implementation of the Irvington Neighborhood Plan encourage residents and business owners to continue their involvement in community life and to work to achieve the goals for the Irvington Neighborhood.
- G. Enhance the identity of Kenton as a stable, pleasant residential community strongly connected to its historic past, its abundant natural resources and its industrial neighbors. Use the Kenton Neighborhood Plan to guide decisions on land use, capital improvement projects and community development activities within Kenton.
- H. Ensure the King Neighborhood's improvement and growth as a vital neighborhood in the heart of Portland's Albina Community. As the King Neighborhood physically improves also improve economic condition for King's residents. Use the King Neighborhood Plan to guide decisions on land use, capital improvement projects, urban renewal and community development activities within King.
- I. Reinforce Piedmont as one of Portland's premier residential neighborhoods. Protect the neighborhood's heritage of historic structures and sites. Improve the neighborhood's livability while fostering the diversity of its residents. Use the Piedmont Neighborhood Plan to guide decisions on land use, capital improvement projects, urban renewal and community development activities within Piedmont.
- J. Foster Sabin as a diverse, affordable, stable residential community that nurtures its residents and builds a spirit of caring and pride in the community. Use the Sabin Neighborhood Plan to guide decisions on land use, capital improvement projects, and community development activities within Sabin.
- K. Strive to make Woodlawn a safe and attractive place to live. Ensure that Woodlawn continues to be a truly diverse neighborhood. Encourage the development of a variety of types of affordable homes in the Woodlawn Neighborhood. As the neighborhood continues to grow, ensure through the implementation of the Woodlawn Neighborhood Plan and the Albina Community Plan, that public safety, housing and economic problems of the neighborhood are reduced.

3.9 Outer Southeast Community Plan Neighborhoods and Business Plan ⁷

Include as part of the Comprehensive Plan neighborhood and business plans developed as part of the Outer Southeast Community Plan. Neighborhood and business plans developed as part of the Outer Southeast Community Plan are those for Centennial, Foster-Powell, Hazelwood, Lents, Mt. Scott-Arleta, Mill Park, Montavilla, Outer Southeast Business Coalition, Pleasant Valley, Powellhurst-Gilbert, and South Tabor. Use the Neighborhood Plans to guide decisions on land use, transportation and capital expenditures, community development programs, where applicable.

⁷ Added by Ordinance No. 169763, January 1996

The Centennial community actually is comprised of several well defined sub-neighborhoods. These neighborhoods are primarily defined by the major arterials and cross streets. Grade schools are conveniently located within these neighborhoods and are situated near the north-south collector streets.

Residents of the neighborhood feel it is close to being fully developed, with the exception of an area south of Powell Boulevard and east of Powell Butte. Other vacant sites within the neighborhood will be developed as sewer service becomes available.



Farmhouse for Meadowland Dairy next to Powell Butte

Residents of the neighborhood indicated their preference, during two workshops, to 1) retain the single-family character of the neighborhood as it grows, 2) see future new housing enjoy good continuity with the design and character of existing housing to ensure market appeal and value of the neighborhoods, 3) encourage growth to occur through infill on vacant sites, and 4) encourage any future multi-family growth to occur along the major east-west arterial streets where currently zoned. Residents favor protecting established single-family housing areas rather than rezoning to multi-family because the removal of sound housing neither enhances nor preserves the neighborhood. Redevelopment would change the look and feel of the area, altering our sense of place and identity.