

ORDER No. 2008-0010

**AN ORDER APPROVING A CONDITIONAL USE PERMIT TO
ALLOW TWO SINGLE-FAMILY HOMES ON ONE LOT IN THE R-1
DISTRICT AT 402 DAYTON AVENUE AND AFFIRMING THE
PLANNING COMMISSION'S DECISION**

RECITALS:

1. On December 3, 2007, Victor McKay submitted an application requesting conditional use permit approval for a second dwelling located at 402 Dayton Avenue.
2. The property is within the R-1 District (Low Density Residential). In this district, the placement of two single-family homes on one lot requires a conditional use permit.
3. On January 10, 2008, the Newberg Planning Commission held a hearing to consider the request. Staff recommended approval with certain conditions. After hearing testimony both for and against the proposal, the Planning Commission approved the request subject to conditions.
4. On January 24, 2008, the Newberg City Council submitted an appeal application. The appeal application stated, "*The City Council would like to examine the policy implications of the Planning Commission's decision. The City Council needs to consider the housing needs of the community, and also evaluate the compatibility of the housing with the surrounding neighborhoods.*"
5. On March 17, 2008, the Newberg City Council held a hearing to consider the request. Staff recommended approval with certain conditions. After hearing testimony both for and against the proposal, the City Council voted to affirm the Planning Commission decision and approve the conditional use permit.

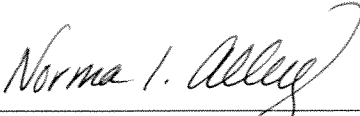
THE CITY OF NEWBERG ORDERS AS FOLLOWS:

The City Council finds that the conditional use permit request meets the Newberg Development Code criteria. The City Council adopts the findings, which are attached hereto as Exhibit "A" and incorporated herein by reference. The conditional use permit is hereby approved, subject to the conditions shown in Exhibit "B".

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: March 18, 2008.

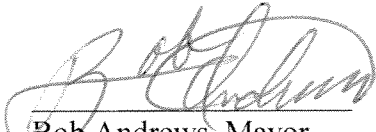
ADOPTED by the City Council of the City of Newberg, Oregon, this 17th day of March, 2008.

AYES: 6 NAYS: 1 (Larson) ABSTAIN: 0 ABSENT: 0



Norma I. Alley, City Recorder

ATTEST by the Mayor this 20th day of March, 2008.



Bob Andrews, Mayor

QUASI-JUDICIAL HISTORY

By and through Planning Commission Committee at 1/10/2008 meeting.

- Exhibits:
Exhibit "A": Findings
Exhibit "B": Conditions of Approval

EXHIBIT A: FINDINGS
CUP-07-003

Exhibit A

Conditional Use Permit – 402 Dayton Ave.

I. General Conditional Use Permit Criteria – Type III NDC § 151.210: *The Planning Commission may grant or deny the application, or may require such changes or impose such reasonable conditions as are in their judgment necessary to ensure conformity to the conditional use permit criteria. A conditional use permit may only be granted if the proposal conforms to the following:*

(A) *The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.*

Finding: The principal requirement of criterion “A” is that development is, or can be, “...reasonably compatible” with the surrounding neighborhood. “Compatibility” is not explicitly defined in the Newberg Development Code, although the issuance of a conditional use permit is dependent on determining compatibility. For all practical purposes residential development can not achieve exact compatibility; however, it may be more or less compatible with neighboring development.

One way to determine compatibility is by analyzing elements of the development that are similar and dissimilar with development in the surrounding neighborhood. If the analysis shows more elements that are similar, then the conclusion may be that this development is compatible (or at least more compatible). If the analysis shows less elements that are similar, then the conclusion may be that this development is not compatible (or at least less compatible). Where dissimilarities are found with surrounding development, conditions may be placed to increase the compatibility.

Information was gathered during a site visit, conducted by staff, regarding the building design elements of surrounding properties. Information regarding density, home size, number of stories, and lot coverage were obtained from the City’s land use database. For the purposes of this report adjacent properties are those that share a common property line with 402 Dayton Avenue. The neighborhood boundary is defined as those properties within 500 feet from 402 Dayton Avenue. This definition is used to provide consistency with the public noticing requirement for land use applications. Properties that are vacant, apartment complexes, or that are City owned were excluded from the analysis.

Table I below lists a site characteristic (i.e. density) followed by a summary of how the second single family home at 402 Dayton Avenue is similar and dissimilar to neighboring properties. Where dissimilarities are found, recommendations are offered to increase the compatibility with the surrounding neighborhood.

TABLE I. NEIGHBORHOOD COMPATIBILITY MATRIX, 402 DAYTON AVENUE

<i>Characteristic</i>	<i>402 Dayton Ave.</i>	<i>Similarities</i>	<i>Dissimilarities</i>	<i>Recommendation</i>
Location	Setbacks: to main house = 25 ft. to interior yards = 9, 45, and 72 ft. respectively	The setbacks to property lines exceed typical setbacks and are conforming.	N/A	No recommendation. The location of the building is typical.
Dwelling Size	Primary dwelling = 900 sq. ft. Second dwelling = 800 sq. ft.	The size of the second dwelling is about half of the average neighborhood home size. Neighborhood = 54% are single story.	Neighborhood homes (average = 1,900 sq. ft., median = 1,780 sq. ft.) Adjacent properties homes (average = 2,460 sq. ft., median=2,370 sq. ft.)	No recommendation. The Development Code does not require a minimum dwelling size.
Design Elements	Pitched roof, wood siding, Ranch style architecture, single story, and gravel driveway, fencing	Adjacent properties = 80% are single story dwellings. Many neighboring homes have Ranch style architecture, patio, pitched roof, and wood siding.	No stairs, porch, or awning over entrance; no distinctive or historical features; no dedicated carport or garage for the dwelling, most driveways are paved.	Construct pitched roof porch over main entrance; and pave driveway.
Operating Characteristics	Single-family, renter occupied dwelling	Most properties in the neighborhood are single-family dwellings.	Neighborhood occupancy status (=32% rental, 68% owner) Adjacent property occupancy status (=20% rental, 80% owner)	No recommendation. Renting a single family home is allowed by the Development Code.
Scale	Two single family homes with below average lot coverage for the area. The second dwelling is single story.	The combined footprint of both homes is equivalent to the average home footprint in the neighborhood. 80% of the adjacent properties are single story.	Individually each dwelling is smaller than the average home size in the neighborhood.	No recommendation. Scale of development does not exceed the proportions of surrounding development.
Lot Coverage	Total site lot coverage = 11%	N/A	Neighborhood lot coverage average = 27 % lot coverage median = 24% Adjacent properties lot coverage average = 25% lot coverage median = 19%	No recommendation. The site has less lot coverage than the average single-family residential property in the neighborhood, and is below the maximum allowed lot coverage for the R-1 District.
Density	1 unit per 7,600 sq. ft. (2 units on one 15,200 square foot lot)	Neighborhood lot area per unit average = 8,600 sq. ft. Adjacent lot area per unit average = 10,260	N/A	No recommendation. R-1 District minimum = 1 unit per 7,500 sq. ft.
Infrastructure Availability	City water and sewer available on Dayton Ave.	Other development in the surrounding neighborhood is on City sewer and water as well.	N/A	Require permit for water and sewer laterals connecting to second dwelling.
Traffic Impact	Parking is currently available on site. One two stall carport and a gravel driveway.	Residences in neighborhood have off- street parking available.	N/A	Pave driveway and dedicate two paved off-street spaces for each unit.
Other: Home Value	Estimated value of second single family dwelling = owner estimates about \$80,000-100,000	Neighborhood home value average = \$109,000	N/A	No recommendation.

The development is most similar to neighboring properties in regard to setbacks, density, infrastructure availability, home value, and traffic impact.

The second dwelling is setback from the primary home by about 25 feet. The interior yard setbacks are 9, 45, and 75 feet respectively. The setbacks are found to provide a substantial buffer between adjacent properties and exceed typical setback distances for development in the R-1 District. The development site's density of 1 unit per 7,600 square feet of lot area is comparable to the neighborhood site density average of 1 unit per 8,600 square feet of lot area. The adjacent properties have a slightly lower density average of 1 unit per 10,260 square feet of lot area. Water, sewer, and electric infrastructure are available for this property and for the neighborhood properties. Although no appraised value is available, the property owner estimates the value of the second dwelling between \$80,000 and \$100,000, which is comparable to the average neighborhood home value of \$109,000. Value of the home was used as a proxy for comparing dwelling quality.

Traffic impacts will be nominal. According the Newberg Transportation System Plan, Dayton Avenue has a weekday p.m. peak hour traffic volume of 235 and a weekend p.m. peak hour traffic volume of 110. The ratio of traffic volume to capacity (v/c) of the road, in this case a major collector, is used to determine the level of service. The intersection at Fifth Street and Dayton Avenue currently has a level of service of "B" ("A" being complete free flow of traffic and "F" having the most delay) and a v/c ratio of about 0.5. This level of service indicates that half of the available capacity is being used at peak times. Upon review of this data minimal traffic impacts are expected to occur by the addition of a second dwelling along Dayton Avenue.

The development is least similar to other properties in regard to dwelling size, operating characteristics, scale, and lot coverage. The second dwelling is 800 square feet, well below the average neighborhood home size of 1,900 square feet, and the average adjacent property home size of 2,460 square feet. Both dwellings on site are rental units; although not uncommon, renter occupied units are the minority for the neighborhood. 32% of the neighborhood dwellings are renter occupied, while 20% of the adjacent dwellings are renter occupied. Regarding the scale of the development; the combination of a single story, small footprint, and large lot make the scale of the development relatively small in comparison to other properties in the neighborhood. Although the scale is much smaller than other development it is not viewed as a negative characteristic.

The design of the structure has several similar and dissimilar elements. Photographs of the second dwelling at 402 Dayton Avenue can be viewed in Exhibit "D". Photographs of neighboring properties can be viewed in Exhibit "E". The photos of neighboring homes were taken along Dayton Avenue, and Fifth and Blaine Street. Similarities include Ranch style architecture, pitched roof, patio, wood siding, and single story. 54% of the neighborhood dwellings and 80% of the adjacent dwellings have a height of one story. Dissimilar elements include the absence of stairs and porch at the entrance, the absence of distinctive or historical features, gravel driveway, and no dedicated off-street carport or garage. Adding a porch with a pitched roof at the dwelling's main entrance, paving the driveway, and providing dedicated parking would make this site more similar to other residences in the neighborhood.

Overall, the second dwelling is found to have few dissimilar elements, and is considered compatible with existing residential development in the neighborhood.

The Norton's concerns regarding noise in a residential neighborhood can be addressed by the City's existing nuisance ordinances. Persons who believe a violation of City ordinance exists

should submit a formal noise complaint to the Newberg Police Department or Code Enforcement Officer. The complaint will then be investigated by the officer and appropriate action will be taken according to standard operating procedure. However, under § 151.212 (Exhibit "A" section II of this report) the hearing body may impose more strict conditions than the existing nuisance ordinance to ensure the applicable conditional use criteria are met. Restricting frequent visitors through the conditional use process may be difficult to implement and enforce by Planning Division Staff. If neighbors have concerns regarding suspicious activity a formal complaint should be submitted to the Newberg Police Department.

As mentioned in the beginning of the staff report a neighboring property owner, Mr. Woodruff, had concerns regarding the following items:

- There are few rental properties in the R-1 zone surrounding 402 Dayton Avenue. This type of development is more appropriate for the R-2 or R-3 District.
- The house is small, lacks architectural detail, is out of character with the surrounding development, and the quality of construction seems to be poor.
- The homes look crowded on site and detract from the look, feel, and livability of an R-1 District neighborhood. A deck is placed between the home and property line leaving no room for any landscaping or screening. Furthermore, the location of the deck allows for persons to congregate up to the neighboring property.
- The property is poorly maintained. Inoperable vehicles are parked in front of the property for long periods of time and dogs owned by the tenants have damaged a fence along the property line by digging holes.
- Accessibility to the second dwelling is difficult for Newberg Police and Animal Control.
- The development should meet applicable City codes.

Most of Mr. Woodruff's concerns have been addressed in the findings of this report. Where the development proposal is found to not meet applicable criteria the proposed conditions of approval help to ensure increased design and use compatibility in the neighborhood. The concerns regarding maintenance and inoperable vehicles can be best addressed through code enforcement procedures by contacting the Newberg Code Enforcement Officer. However, under § 151.212 (Exhibit "A" section II of this report) the hearing body may impose conditions regarding off-street parking and site maintenance.

(B) The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.

Finding: Upon completion of the recommended conditions of approval, the site will be convenient, functional, and attractive as a typical single-family home in the surrounding neighborhood. Features that make this as convenient and functional as other homes include: availability of water and sewer service, electrical service, frontage improvements (sidewalk and driveway approach), provision of two decks, one wood and one concrete, off street parking, open space, and screening from adjacent properties with trees and fencing. The second dwelling seems to be in good condition with no visual defects. The siding, windows, and decking have been repaired or installed within the past 5 years and are found to be in good condition. The attractiveness of the site could be improved by paving the driveway, adding a porch with peaked roof at the main entrance, and adding dedicated parking spaces.

(C) *The proposed development will be consistent with this code.*

Finding: Upon completion of the recommended conditions of approval the development site will be consistent with Newberg Development Code, Comprehensive Plan, Fire Code, Building Code, and the policies of the Public Works Department.

1. Newberg Development Code: The existing development is found to be consistent with all applicable sections of the Newberg Development Code with the exception of driveway improvement, landscape, and zoning standards. The site is non-conforming by having a gravel driveway whereas the Development Code requires asphalt or Portland cement concrete; and by having bark dust in the frontage planter strip, whereas the Development Code requires grass or ground cover plants. A second dwelling on a single lot in the R-1 District is a conditional use. Upon approval of the conditional use permit the development will be consistent with the Zoning District Standards of the Code.

2. Newberg Comprehensive Plan: Approval of this development and recommended conditions listed in Exhibit "B" will ensure conformity with the following 1999 Newberg Comprehensive Plan policies:

- HOUSING. POLICIES (3) Mix Policies (j).
The City shall encourage innovation in housing types and design as a means of offering a greater variety of housing and reducing housing costs.
- HOUSING. POLICIES (3) Mix Policies (k).
The City shall encourage an adequate supply of rental housing dispersed throughout the City to meet the needs of renters.
- HOUSING. POLICIES (3) Mix Policies (m).
Within the urban area, land use policies will attempt to provide a broad range of residential uses and encourage innovative development techniques.
- URBAN DESIGN. POLICIES (1) General Policies (l).
The City shall encourage compatible architectural design of new structures in the community.
- URBAN DESIGN. POLICIES (1) General Policies (o).
The City shall encourage flexibility in design review and interpretation of policies and regulations by ensuring that functional design and community benefit remain as the principal review criteria. Consider variance procedures where interpretation of regulations impede fulfillment of these criteria.
- URBAN DESIGN. POLICIES (1) Residential Area Policies (b).
The City will evaluate and encourage various innovative and alternative approaches to zoning, including but not limited to the following; zero lot lines, cluster and density zoning, planned unit developments, performance standards and condominiums.

3. Fire Code: Currently a fence and carport restrict fire truck access to the second dwelling. As a condition of approval, the existing fencing and carport shall be removed to allow for a fire truck access drive. The access drive is required to have a minimum paved width of 12 feet.

4. Building Code: To grant occupancy, the Building Department requires that the applicant take the following actions:

- a. Verify the size and type of sewer and water supply. A permit is required for any non-permitted service.
- b. Verify the building footing and foundation size.
- c. Verify crawl space requirements (i.e. vents, vapor barrier and clearances).
- d. Expose indoor plumbing. The location will be determined by the Building Division upon site inspection.
- e. Provide interconnected smoke detectors per the Oregon Residential Specialty Code.
- f. Obtain an electrical permit through Yamhill County.
- g. Submit an application for and obtain a permit for building, mechanical and plumbing work that has been completed without permits.
- h. All inspections must be requested and all corrections must be made as required by the Building Division inspection process.

5. Public Works Department Policies: If the lot at 402 Dayton Avenue is partitioned or subdivided in the future the Public Works Department requires separate utility services and applicable system development charges to be paid.

II. Conditions NDC § 151.212:

The hearing body shall designate conditions in connection with the conditional use permit deemed necessary to secure the purpose of this chapter and the general conditional use permit criteria and require the guarantees and evidence that such conditions will be complied with. Such conditions may include:

- (A) Regulation of uses.
- (B) Special yards, spaces.
- (C) Fences and walls.
- (D) Surfacing of parking areas to City specifications.
- (E) Street dedications and improvements (or bonds).
- (F) Regulation of points of vehicular ingress and egress.
- (G) Regulation of signs.
- (H) Landscaping and maintenance thereof.
- (I) Maintenance of the grounds.
- (J) Regulation of noise, vibration, odors or other similar nuisances.
- (K) Regulation of time for certain activities.
- (L) Time period within which the proposed use shall be developed.
- (M) Duration of use.
- (N) Such other conditions as will make possible the development of the City in an orderly and efficient manner in conformity with the Newberg Comprehensive Plan and this Newberg Development Code.

Exhibit B

EXHIBIT B: CONDITIONS OF APPROVAL CUP-07-003

Conditional Use Permit – 402 Dayton Ave.

1. **The current occupant shall be evicted. The unit shall not be occupied until all of the conditions below are met.**
2. **The applicant must provide the following information for review and approval prior to occupancy of the second dwelling at 402 Dayton Avenue.**
 - a. **Revised Site Plan:** Provide a revised site plan that shows the following:
 - i. Ground cover in planter strip. Approved types of ground cover plant material include; grass, greening juniper, cotoneaster, minor Bowles, English ivy, Hypericum, and the like. Existing street trees are already along the frontage of the property.
 - ii. Fire access drive to second dwelling. The paved width shall be no less than 12 feet. The existing carport and fence will have to be removed to allow for the fire access drive. The design of the drive and parking areas shall be approved by the Fire Department.
 - iii. Two paved off street parking spaces for each dwelling (4 total).
 - iv. All driveway and parking areas paved with asphalt or Portland cement concrete.
 - v. A porch with pitched roof at the main entrance to the second dwelling.
 - vi. The deck on the east side of the building shall be removed. Any replacement deck shall be not less than 5 feet from the property line.
 - vii. An arbor vitae or similar hedge shall be placed between the structure and the eastern fence.
 - b. **Utility Plan:** Provide a utility plan that shows the following:
 - i. Existing size and type of sewer and water service on site.
 - c. **Building Plans:** Provide building plans that show the following:
 - i. Footing and foundation size.
 - ii. Crawl space size, vents, vapor barrier, and clearances.
 - iii. Interconnected smoke detectors per the Oregon Residential Specialty Code.
 - iv. Building elevations.
 - v. Structural details.
3. **The applicant must complete the following prior to occupancy.**
 - d. **Design Review Conditions:** Contact the Planning Division (537-1240) to verify that all design review conditions have been completed.
 - e. **Building Division Requirements:** This project is subject to compliance with all Building Division standards. This includes obtaining all applicable building, plumbing, mechanical, and electrical permits.
 - f. **Fire Department Requirements:** This project is subject to compliance with all Fire Department standards relating to access and fire protection.
 - g. **Engineering Division Requirements:** This project is subject to compliance with all Engineering Division standards. If the lot at 402 Dayton Avenue is partitioned or subdivided in the future the Public Works Department requires separate utility services and applicable system development charges to be paid.

- h. Substantially Complete the Construction Improvements:** Prior to issuance of an occupancy permit, construction improvements must be made substantially complete and secured for in accordance with city policy.

- i. Site Inspection:** Contact the Building Division (537-1240) for Building, Mechanical, and Plumbing final inspections. Contact the Fire Department (537-537-1260) for Fire Safety final inspections. Contact Yamhill County (538-7302) for electrical final inspections. Contact the Planning Division (537-1240) for landscaping final inspections.