

RESOLUTION NO. 773

A RESOLUTION TO AFFIRM AND ADOPT THE PLANNING COMMISSION'S INTERPRETATION REGARDING PRIMARY OPEN SPACE LOCATED ON TAX LOT 3700, T3S-R1W, SECTION 24A, CLACKAMAS COUNTY, OREGON - TERRY B. LYONS, APPLICANT.

WHEREAS, Terry Lyons has submitted an application for a Conditional Use Permit to site a single-family dwelling in accordance with the procedures set forth in Sections 4.161 and 4.174 of the Wilsonville Code; and

WHEREAS, the Wilsonville Planning Commission held a public hearing on May 14, 1990 to review the Staff Report, consider planning exhibits prepared by the applicant and to gather public testimony; and

WHEREAS, all interested and affected parties have had an opportunity to offer testimony and be heard on this subject after public notice had been posted, legal notice was published, and surrounding property owners were notified; and

WHEREAS, the Commission duly considered all reports, exhibits and testimony and approved a Conditional Use Permit for a residence and a detached garage on May 14, 1990; and

WHEREAS, the applicant demonstrated that an actual conflict existed between the Comprehensive Plan Map and the Comprehensive Plan text and policies concerning designated "Primary Open Space" on the subject property; and


WHEREAS, the Planning Commission found that the "Primary Open Space" designation on the Lyons parcel need not be reflected in the site development where the proposed garage would be located and that the proposed development would be in conformance with the Comprehensive Plan Policies regarding open space; and

WHEREAS, the City Council has the final authority for the interpretation of the Comprehensive Plan text and/or map.

NOW, THEREFORE, BE IT RESOLVED that the Wilsonville City Council does hereby affirm and adopt the interpretation of the Planning Commission regarding the Primary Open Space shown to be located on Tax Lot 3700, T3S-R1W, Section 24A. Further, the Council adopts the Staff Report attached hereto as Exhibit "A", along with the


findings and Conditions of Approval contained therein as modified by the Planning Commission.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 18th day of June, 1990, and filed with the Wilsonville City Recorder this same date.



JOHN M. LUDLOW, Mayor

ATTEST:



VERA A. ROJAS, CMC, City Recorder

SUMMARY of Votes:

Mayor Ludlow	<u>AYE</u>
Councilor Edwards	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Clarke	<u>AYE</u>
Councilor Dant	<u>AYE</u>

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

NOTICE OF DECISION

Project Name: TERRY B. LYONS

Applicant / Owner: TERRY B. LYONS

Proposed Action: Conditional Use Permit to site a single-family dwelling in an area designated as Secondary Open Space.

PROPERTY DESCRIPTION:

Map No: 24A Tax Lot No: 3700

Address: _____

Location: South of Wilsonville Road, east of I-5

On June 18, 1990, at the meeting of the City Council, the following decision was made on the above-referenced Proposed Development Action:

Approval Approval with Conditions Denied

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this 20th day of June, 1990 and is available for public inspection. The date of filing is the date of the decision. Any appeal(s) must be filed with the Land Use Board of Appeals (LUBA) in accordance with ORS Chapter 197.

Written decision is attached

Written decision is on file and available for inspection and/or copying.

For further information, please contact the City Recorder at City Hall or phone 682-1011.

Attachments: Applicable Conditions, if any.

"Serving The Community With Pride"

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Wayne Sorensen
DATE: June 18, 1990
RE: Planning Commission Recommendation regarding Primary
Open Space Interpretation for Terry Lyons

Mr. Terry Lyons submitted an application for a Conditional Use Permit to place a single-family residence within an area designated as Secondary Open Space. This request was approved by the Planning Commission on March 14, 1990. As part of his request, Mr. Lyons also requested an interpretation of the actual location of Primary Open Space on the property in order to locate a detached garage on the parcel. The final authority to approve such an interpretation rests solely with the City Council. The Planning Commission has recommended to the Council that the area proposed as the site for the garage not be considered nor classified as primary open space. The attached Resolution supports the Commission's interpretation and I recommend that the Council adopt it.

ws:jme



Wilsonville

30000 S.W. Town Center Loop E
P.O. Box 220 / Wilsonville, Oregon 97070-0220
503 / 682-1011

NOTICE OF DECISION

Project Name: TERRY B. LYONS File No: 90PC14

Applicant / Owner: Terry B. Lyons

Proposed Action: Conditional Use Permit to site a single-family dwelling
in an area designated as Secondary Open Space.

Property Description:

Map No: 24A Tax Lot No: 3700 Site Size: _____

Address: _____

Location: South of Wilsonville Road, east of I-5

On May 14, 1990, at the meeting of the Planning Commission,
the following decision was made on the above-referenced Proposed
Development Action:

 Approval XX Approval with Conditions Denied

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this 22nd day of May, 1990, and is available for public inspection. The date of filing is the date of the decision. Any appeal(s) must be filed with the Planning Department by 5:00 p.m., on June 6, 1990.

XX Written decision is attached

 Written decision is on file and available for inspection and/or copying.

This action, if approved, will expire on May 14, 1991 unless development commences prior to the expiration date.

For further information, please contact the Wilsonville Planning Department at City Hall or phone 682-1011.

Attachments: Approved Resolution
Applicable Conditions, if any

FILED 5-21-90
Jine

PLANNING COMMISSION
RESOLUTION NO. 90PC14

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS OF APPROVAL FOR A CONDITIONAL USE PERMIT FOR THE DEVELOPMENT OF A SINGLE-FAMILY DWELLING AND DETACHED GARAGE IN PRIMARY OPEN SPACE WITHIN AN AREA DESIGNATED IN SECONDARY OPEN SPACE - TERRY B. LYONS, APPLICANT - LOCATED ON TAX LOT 3700, T3S-R1W, SECTION 24A

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008(4) and 4.139(1), (2), and (3) of the Wilsonville Code, and

WHEREAS, the Planning Director has prepared a report on the above-captioned subject which is attached hereto as Exhibit "A", and

WHEREAS, said planning exhibits and staff report were duly considered by the Planning Commission at a regularly scheduled meeting conducted on May 14, 1990, at which time said exhibits, together with findings and public testimony, were entered into the public record, and

WHEREAS, the Commission has duly considered the subject and the recommendation(s) contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Wilsonville does hereby adopt the staff report attached hereto as Exhibit "A", with the findings, recommendation(s), and Conditions of Approval contained therein and further authorizes the Planning Director to issue a:

CONDITIONAL USE PERMIT

consistent with said recommendation(s).

ADOPTED by the Planning Commission of the City of Wilsonville at a regular meeting thereof, this 14th day of May, 1990, and filed with the Wilsonville City Recorder this same day.


Chairman, Planning Commission

Attest:



Judge Emerson, Planning Secretary

PLANNING COMMISSION
CONDITIONS OF APPROVAL

1. Time limit on a Conditional Use Permit - authorization of a conditional use shall be void after twelve months unless substantial construction pursuant thereto has taken place. However, the Planning Commission may, in its discretion, extend authorization for an additional six months upon request.
2. Obtain the City Council's interpretation for the development of a detached garage within an area presently designated Primary Open Space.

**MOTION FROM PLANNING COMMISSION MEETING OF
MAY 14, 1990:**

Terry B. Lyons - Conditional Use Permit

Mike Williams moved to approve the Staff Report for a Conditional Use permit.
Helen Burns seconded the motion which passed 7-0.

**PLANNING DEPARTMENT
STAFF REPORT**

DATE: May 14, 1990

TO: Planning Commission

PREPARED BY: Blaise Edmonds

**REQUEST: 90PC14 Terry B. Lyons - Conditional Use Permit
for the development of a single-family residence and
garage within an area designated Secondary Open Space**

SUMMARY:

Though the property is zoned RA-1, the Comprehensive Plan designates the property in Secondary Open Space and Primary Open Space. The proposed homesite is within the Secondary Open Space area. Any development within the Secondary Open Space is subject to special development standards and is evaluated through a conditional use process.

The proposed single-family residential development will not conflict with the natural and scenic qualities of the surrounding areas designated in Secondary Open space. Therefore, all requirements for single-family development within the Secondary Open Space are respected for conditional use approval.

The applicant is seeking a Planning Commission interpretation for the purpose of resolving an ambiguity between the Comprehensive Plan Map and Comprehensive Plan Policy 4.5.1.b. Then the "Primary Open Space" designation shown on the proposed garage location need not be reflected in the site development and the proposed garage development would be in conformance with the City's Comprehensive Plan.

RECOMMENDATION: Approve the Conditional Use to permit the construction of a single-family residence on property designated in Secondary Open Space. Advance an affirmative recommendation to the City Council that will resolve the "Primary Open Space" interpretation for a detached garage development. Conditions of Approval area attached herein.

PROPOSED FINDINGS

1. To facilitate the City of Wilsonville's approval of this proposal, the applicant has caused the following applications to be prepared:
 - A. Minor partition approved pursuant to 89AR16.
 - B. Secondary Open Space Conditional Use Permit for construction of a single-family dwelling.
 - C. Interpretation of Primary Open Space boundary for construction of a detached garage.

2. The subject property has two separate Comprehensive Plan designations as follows:
 - A. Secondary Open Space:

The majority of the subject parcel is designated Secondary Open Space which includes the proposed homesite.
 - B. Primary Open Space:

Primary Open Space is generally found along the west side of the property adjoining Boeckman Creek. This area is intended by the Comprehensive Plan to be undeveloped and preserved in a natural habitat. Under the proposed Site Plan, the garage will encroach the Primary Open Space. This being the case, the Primary Open Space as delineated on the Comprehensive Plan Map shall be observed, unless the Planning Commission resolves the conflict of use through a Comprehensive Plan text interpretation. The operative legal guideline in the interpretation of a Primary Open Space boundary is Policy 4.5.1(b)(1 through 4). The City Council would then render a final interpretation of the Primary Open Space boundaries.

Primary Open Space Review

3. In a meeting with City staff, the Plan Map conformity with the Plan's policy regarding primary open space was discussed. Policy 4.5.1.b, on page 81 of the City's Comprehensive Plan defines the types of areas that constitute primary open space as follows:
 - A. 100-year floodway
 - B. Slopes greater than 20%
 - C. Significant stands of trees, including all trees and vegetation within 150 feet of the banks of the Willamette River, but not including orchards
 - D. Major natural drainage channels

4. That the proposed garage site did not fall within the Plan's policy definition of primary open space. As a result, a conflict exists between the Plan's policy defining primary open space and the plan map which designates the garage site on the property as primary open space.

5. The City's Comprehensive Plan, on page 3 under "PROCEDURES", recognizes a procedure to relieve conflicts between Plan Policies and the Plan Map:

"When any ambiguity or conflict appears to exist, Goals shall take precedence over objectives, Policies, text and map; Objectives shall take precedence over Policies, text and map; Policies shall take precedence over text and map. The land use map is only a visual illustration of the intent of the Plan." (emphasis added)

This procedure acknowledges the ability of the City to resolve conflicts through the interpretation of the text and map and allows adjustments when the policies of the plan are in conflict with the map. As a result, this procedure authorizes resolution through an interpretation and does not require an amendment to the Plan when a conflict exists.

6. Therefore, it is appropriate for the Planning Commission to evaluate the garage site with respect to the criteria of Policy 4.5.1.b. Following are findings with respect to these criteria:

Criteria A "100-year Floodplain"

7. The Federal Emergency Management Agency Flood Insurance Map (Panel no. 410025-0002-B) which covers the subject area, does not indicate any 100-year floodplain in the vicinity of the site.

Criteria B "Slopes Greater than 20%"

8. The topographic survey map prepared by the garage site and included in the Planning Commission materials shows that slopes in the designated open space area are substantially less than 20%.

Criteria C "Significant Stands of Trees"

9. Although there are trees on the site, they are not in the designated garage site area.

Criteria D "Major Natural Drainage Channels"

10. The proposed garage site will not encroach Boeckman Creek which is a major natural drainage channel.

Conclusion

11. Therefore, it is concluded that the subject garage site does not meet the criteria of Policy 4.5.1.b. Under these circumstances, with the policy taking precedence over the plan map (pursuant to the "procedures" section), the primary open space designation would not have to be reflected in the site development in order to be consistent with the City's Comprehensive Plan. This is the case with the site development drawings accompanying this narrative.

Secondary Open Space Review

12. The Comprehensive Plan designates the site in Secondary Open Space. It is the underlying intent of the Comprehensive Plan to reconcile site development and the integrity of open space areas. The following Plan Policy shall be observed for development proposed within secondary open space areas:

13. Plan Policy 4.5.1(c):

"Secondary open space is intended to serve as a buffer to primary open space areas. They may be developed in accordance with special development standards and shall be evaluated through a conditional use and design review process, except when the proposal is a part of a planned development.

These areas include the following:

- A. Land within the Willamette River Greenway Boundary, but beyond the 150-foot line.
- B. High voltage powerline easements.
- C. The 100-year flood plain fringe.
- D. Slopes between 12% and 20%.
- E. Designated historic sites.
- F. Small stands of trees and heavily vegetated areas adjacent to primary open space areas.

14. Secondary Open Space is intended to serve as a buffer to Primary Open Space areas. They may be developed in accordance with special development standards and shall be evaluated through a conditional use and design review process, except when the proposal is part of a planned development.

Applicant's Response Findings to A and B above

- 15. The property is zoned RA-1 and the Comprehensive Plan designates the property as Secondary Open Space and Primary Open Space. The homesite is entirely within the Secondary Open Space, however, the garage is within both the Secondary and Primary Open Space designations.
- 16. In view of the fact that the garage encroaches upon primary open space, I would like to point out that the line delineating the boundary follows no logical change in the property characteristics at this point. The land, slopes and vegetation are identical between these two designations. Should it be necessary, we could relocate the garage, however, there are placement restrictions due to the sewer line easement through the property.

Criterion A

Land within the Willamette River Greenway Boundary, but beyond the 150-foot line.

Applicant's Finding:

- 17. The subject property is not within the Willamette River Greenway Boundary.

Criterion B

High voltage powerline easements.

Applicant's Finding:

18. The subject property is not within the Willamette River Greenway Boundary.

Criterion C

The 100-year flood plain fringe.

Staff Finding:

19. The subject property is not prone to 100-year flooding. However, Boeckman Creek is subject to a 500-year flood hazard. The City does not administrate any special requirements for flood proofing for properties within the 500-year flood hazard.

Criterion D

Slopes between 12% and 20%.

Applicant's Finding:

20. The slopes of the property vary between 3% and 22%, however, the building site is only approximately 3%.

Criterion E

Designated historic sites.

Staff Finding:

21. The Comprehensive Plan does not identify the subject site as an historic site.

Criterion F

Small stands of trees and heavily-vegetated areas adjacent to primary open space areas.

Staff Finding:

22. The Comprehensive Plan notes that in vegetated areas the visual impact of the trees, etc. is to be preserved. Any clearing of trees for development should be from the interior of the stand.

Applicant's Finding:

23. There will be no removal of trees to accommodate the building. There are extensive fir trees and deciduous trees on the western end of the parcel which will not be disturbed.

PLANNING COMMISSION
CONDITIONS OF APPROVAL

1. Time limit on a Conditional Use Permit - authorization of a conditional use shall be void after twelve months unless substantial construction pursuant thereto has taken place. However, the Planning Commission may, in its discretion, extend authorization for an additional six months upon request.
2. Obtain the City Council's interpretation for the development of a detached garage within an area presently designated Primary Open Space.

EXHIBITS

The following Exhibits are hereby entered into the public record by the Planning Commission as confirmation of its consideration of the application as submitted.

- A. Findings and Conditions of Approval
- B. City of Wilsonville Comprehensive Plan
- C. Chapter 4 of the Wilsonville Code, including Section 4.162
- D. Applicant's submittal documents - Site Plan and Response Findings
- E. Primary and Secondary Open Space Map

The property is zoned RA-1 and the Comprehensive Plan designates the property as Secondary Open Space and Primary Open Space. The homesite is entirely within the Secondary Open Space, however the garage is within both the Secondary and Primary Open Space designations.

The subject property is not within the Willamette River Greenway Boundary.

There are no high voltage powerline easements across or near the property.

The portion of the property intended for the building sites lies entirely out of the flood plain.

The slopes of the property vary between 3% and 22%, however the building site is only apx. 3%.

There are no known designated historic sites to my knowledge.

There will be no removal of trees to accomodate the building. There are extensive fir trees and deciduous trees on the Westren end of the parcel, which will not be disturbed.

In view of the fact that the garage enroaches upon primary open space, I would like to point out that the line delineating the boundary follows no logical change in the property characteristics at this point. The land, slopes, and vegetation are identical between these two designations. Should it be necessary we could re-locate the garage, however there are placement restrictions due to the sewer line easment through the property.

Enclosed please find the plot map, completed application, and the list of all property owners within 250 ft of the subject.

Thank You

Terry B. Lyons

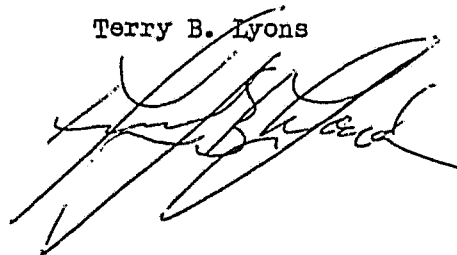
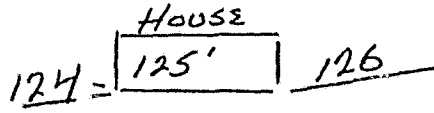
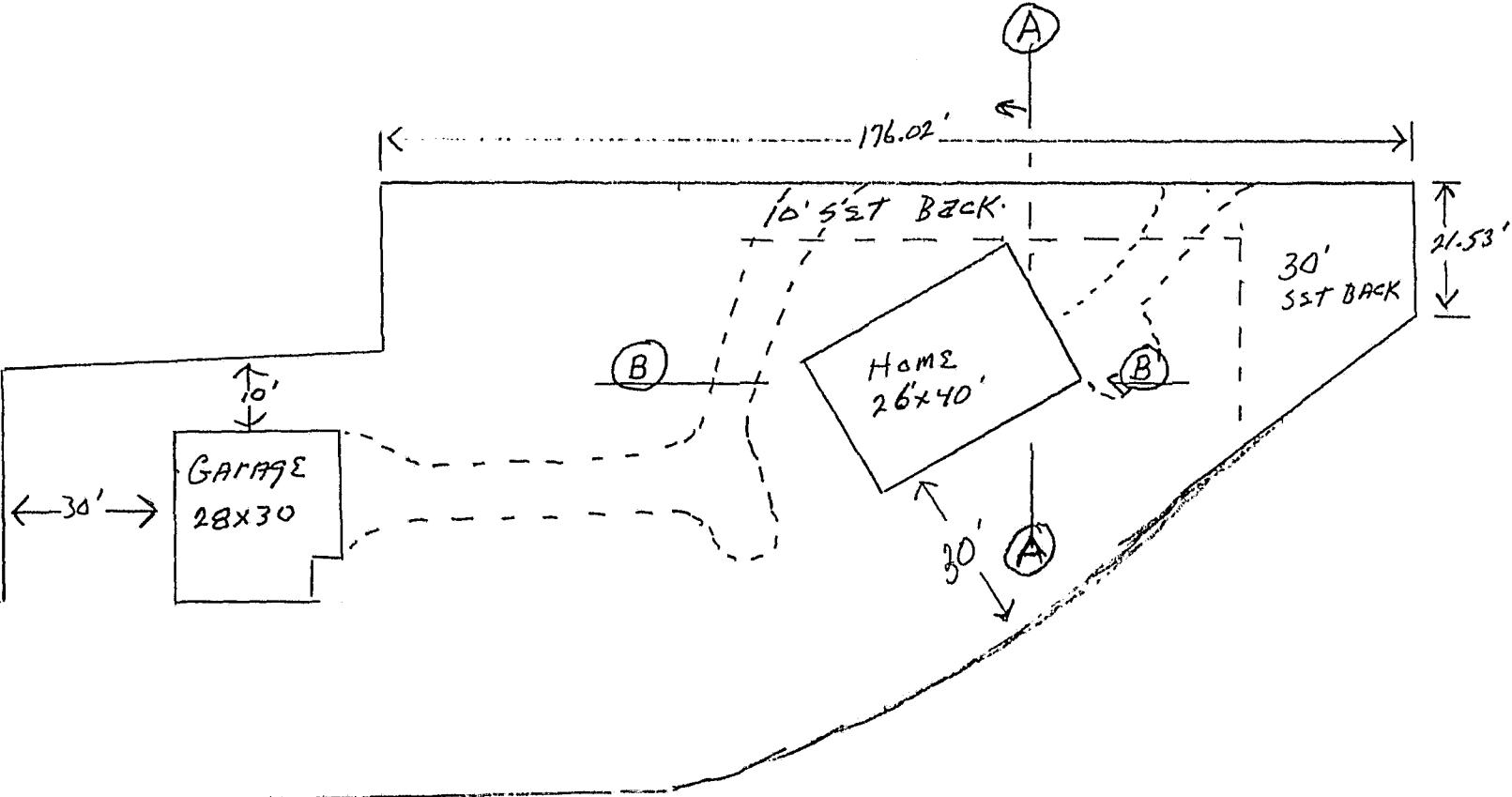
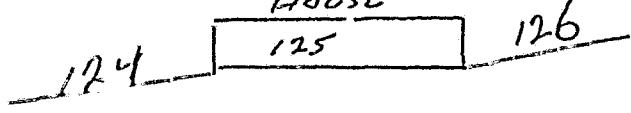


EXHIBIT D



SECTION A-A
HOUSE



SECTION B-B

Scale 30:1
Drawn by _____

TERRY R LYONS