



Code Interpretation

Subject: CI 06-13: Code Interpretation of Section 9.9850(17): Jefferson/Far West Refinement Plan policy regarding Low- to Medium-Density Residential Area 15

Background

On August 16, 2006 the City Council directed the City Manager to initiate a code interpretation of a policy pertaining to a portion of the Jefferson/Far West Refinement Plan (JFW Plan). The JFW Plan includes policies which address various subareas of this neighborhood. The policy in question addresses Area 15 of the JFW Plan, and reads as follows:

EC 9.9850. Jefferson/Far West Refinement Plan Policies.

(17) Land Use Element, Jefferson, Residential Areas, Low-to-Medium Density

Residential Area. This area shall be recognized as a low- to medium-density residential area. The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area. Residential densities beyond ten units per acre shall be allowed, subject to an approved block plan or rezoning to R-2 in conjunction with site review. The City shall encourage block planning, infilling and shared housing, in this area. Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals. The City shall encourage the rehabilitation of the existing housing stock through both public and private reinvestments.

The Metro Plan currently designates Area 15 as Medium-Density Residential. The JFW Plan currently designates Area 15 as Low –to Medium-Density Residential. Although the JFW Plan designated Area 15 as Low –to Medium-Density Residential over 20 years ago, the area has seen only limited requests for rezoning to R-2 (Medium-Density Residential). As such, the vast majority of the neighborhood remains zoned R-1 (Low-Density Residential). For context, R-1 allows up to 14 dwelling units/net acre, while R-2 zoning allows from 10 – 28 dwelling units/net acre.

The Jefferson Westside Neighborhood (JWN) has expressed concern that future rezoning of properties in Area 15 to R-2 (Medium-Density Residential) and the subsequent multi-family development that could occur, will result in significant impact to the neighborhood. In addition to this code interpretation, the Council also initiated a Metro Plan, Refinement Plan and Code Amendment to consider formal redesignation of Area 15 to low-density residential. However, the JWN requested Council initiation of this interpretation in hopes of putting an interim measure in place while the formal amendment process is considered.

Following Council's action to direct the City Manager to interpret this code section, representatives from the JWN requested the opportunity to submit information prior to the issuance of this interpretation. A letter from the Co-chairs of the neighborhood was submitted on October 3, 2006 and has been considered in this decision.

Findings

For any code interpretation it is important to understand the purpose of this tool, and perhaps as importantly, its limitations. Land Use Code Section 9.0040 authorizes the Planning Director to interpret the Land Use Code. This tool is provided as a means to clarify or define specific code language which is not reasonably clear as written. However, it is not a tool that can be used to evaluate the merits or effectiveness of a particular code provision, nor is it a tool that can be used to establish new policy. In addition, the Planning Director's authority is limited to interpretations of Chapter 9 (Eugene Land Use Code). As such, this interpretation is limited to the policy statement listed above, as it is the only portion of the JFW Plan (addressing Area 15) included in Chapter 9.

As noted above, the primary purpose of this interpretation is to clarify how EC 9.9850(17) would be applied to future land use decisions, in particular, zone change applications. The policy contains two key statements which would apply to a future land use application. They read as follows:

This area shall be recognized as a low- to medium-density residential area.

Residential densities beyond ten units per acre shall be allowed, subject to an approved block plan or rezoning to R-2 in conjunction with site review.

The first statement above recognizes Area 15 as eligible for zoning designations ranging from low to medium density residential. Under current code provisions, this would enable both low and medium density zoning (R-1 and R-2 respectively), resulting in a density range from 0-28 units per net acre.

The second statement above clearly enables requests for residential development to extend beyond 10 units per acre in Area 15. However, it does so with certain provisions. Either an approved block plan for the area shall be in place, or rezoning to R-2 must be accompanied by a site review overlay. This statement supports the first statement (regarding the ability to accommodate medium-density residential development), by specifically enabling rezonings to R-2.

One element of this statement that is not clear is whether 10 units per acre refers to "gross" or "net" acres. Given this uncertainty, staff has looked for other relevant information which would provide specific direction. Much like the neighborhood's findings, there is no specific information that confirms the intent one way or another. However, given that the code has referenced "net" density for many years, it is plausible to assume that this policy statement intended to use a similar approach. Furthermore, by virtue of being codified, this policy can more easily be read in context with other code provisions which speak to net density. Therefore, a reasonable interpretation of this statement would conclude that any land use application that would enable a density beyond 10 units per net acre would trigger the requirement for an approved block plan or site review.

It should also be noted that this reading of the policy supports past zone change decisions issued in Area 15. Five zone changes to R-2 have been approved in Area 15 since adoption of the JFW Plan in 1983.

Four of those included the site review overlay (/SR), while one case included a density limit of 10 units per acre (R-2/10), thereby not invoking the site review provision as described in the policy. The remaining statements in EC 9.9850(17) read as follows:

The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area.

The City shall encourage block planning, infilling and shared housing, in this area. Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.

The City shall encourage the rehabilitation of the existing housing stock through both public and private reinvestments.

These statements all have two important characteristics in common. First, they are statements directed to the city and not a future applicant; and second, they contain language that is aspirational in nature. These two issues are critical as it relates to their relevance in future land use decisions. The three statements above direct the city, not future applicants, to “explore” or “encourage” additional infill strategies (such as block planning, shared housing, etc.). Also as important is the fact that these statements are clearly aspirational, as evidenced by the terms “explore” and “encourage”. As aspirational statements, the city cannot legally rely on these as a basis for issuing a land use decision even if they were directed at future applicants.

The JWN provided substantial discussion about these statements, with particular emphasis on the first statement’s reference to neighborhood character. This testimony asserts that the first statement imposes a requirement that any action which allows an increase in density must maintain the character of the area. It also suggests the establishment of specific criteria regarding the “character of the area”. As discussed above, the aspirational language, by its very nature, is not intended to serve as a mandate or requirement, which also helps explain why the city cannot rely on such statements as the basis for a land use decision. Furthermore, the statements do not speak to any action which allows an increase in density. Rather, they are directed at distinct city efforts to explore or encourage other methods of infill strategies. While the points raised by this testimony offer valuable insight into the concerns and objectives of the neighborhood to ensure sensitive infill, such discussion is beyond the bounds of this interpretation and is appropriately addressed as part of a formal amendment process. The current Metro Plan, Refinement Plan and Code Amendment process for this neighborhood is an example of the appropriate forum for this discussion.

The JWN testimony also provides extensive background on changes in the R-2 zone that have occurred since the adoption of the neighborhood plan. In particular, the testimony asserts that the maximum density for R-2 was lower in 1983 and as such, should form the basis for establishing a cap on the allowable density today. The testimony concludes that EC 9.9850 (17) should be interpreted to restrict density to no more than 10 units per net acre.

Given the plain reading of the EC 9.9850(17), the policy clearly enables densities beyond 10 units per acre through rezonings to R-2 and includes no language that would otherwise limit the density allowable under R-2. Likewise, there is no other code section that provides any explicit exemption or exclusion from the allowable density range. Although the density standards were different in 1983 when this policy was adopted, the fact is that many elements of land use regulations change over time. As Eugene has periodically updated its land use code, it makes conscious decisions through formal public proceedings to

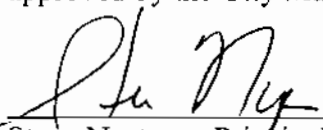
consider specific changes which balance the impacts and benefits to the community. In the case of density, the city has periodically changed its maximum (and minimum) density limits to reflect the desired direction of the community, as exercised by the City Council. The process to do so includes the opportunity to weigh community concerns such as those raised by JWN here. In many cases, these amendments in the code reflect a deliberate shift in the policy direction of the city. Once adopted, these new standards form the basis from which future decisions must be made. For these reasons, this policy cannot be interpreted to revert back to the density in place at the time of the refinement plan adoption. As noted above, the points raised by JWN provide helpful background and understanding of the circumstances at the time of adoption of the JFW Plan, which could prove useful in the context of reconsidering the policy direction for this neighborhood. Again, that discussion is most appropriately addressed in a plan or code amendment.

Conclusion

Based on the findings described above, it is concluded that EC 9.9850(17) shall be applied as follows: First, it identifies Area 15 as appropriate for low to medium density residential development, which under current standards, would allow 0-28 units per net acre. Second, it explicitly enables densities above 10 units per acre, which is interpreted to mean 10 units per net acre, through one of two methods: 1) An approved block plan, or 2) Rezoning to R-2 with the application of site review (/SR overlay). Finally, the reference to R-2 rezonings is read to enable the full range of provisions related to the R-2 zone as identified in the Land Use Code, including maximum density, based on the standards in place at the time of submittal of a given land use application. Under the current standards, this would enable a maximum density of 28 units per net acre.

Appeal

According to Eugene Code Section 9.0040, appeals of a Planning Director interpretation of the Land Use Code shall be heard by a Hearings Official in the manner set out in EC 9.7600-9.7635. The decision may be appealed within 12 days of the date the interpretation was mailed and shall be submitted on a form approved by the City Manager and accompanied by the applicable fee.



Steve Nystrom, Principal Planner
For Eugene Planning Director

11/15/06

Date