



## Director's Interpretation Staff Report, Decision, and Conditions of Approval Case File DI 2022-02 Trout

**Date:** January 12, 2023

**Case File:** DI 2022-02 Trout

**Project Contact:** Randy Trout

**Property Owner:** Jennifer L. Fowler and Keith L. Fowler

**Site Address:** 2864 NE Lake Dr

**Location:** Between NE Lake Dr to west and Devils Lake to east, approximately 285 feet north of NE 28<sup>th</sup> St

**Tax Map and Lot:** 07-11-11-AB-00700-00

**Comprehensive Plan Designation:** Medium-Density Residential District (R-7.5)

**Zoning District:** Single-Unit Residential (R-1-7.5) Zone

**Site Size:** 5,662.80 square feet (per Lincoln County Assessor)

**Proposal:** Request for director's interpretation on minimum setback requirements for a structure with more than one story

**Surrounding Land Uses and Zones:** North: Houses; R-1-7.5  
South: Houses; R-1-7.5  
East: Devils Lake  
West: NE Lake Dr, Hospital; PC

**Authority:** Table 17.76.020-1 of Lincoln City Municipal Code (LCMC) 17.76.020 lists a director's interpretation application as a Type I or II procedure with the Planning and Community Development Director (Director) listed as the review authority.

**Procedure:** The application was received on November 23, 2022. The application was deemed complete on December 7, 2022. On January 13, 2023, pursuant to LCMC 17.76.040(E), the Planning and Community Development Department mailed a notice of application to property owners within 250 feet of the subject property.

<b>Applicable</b>	LCMC Section 17.08.010 Definitions
<b>Substantive</b>	LCMC Chapters 17.16 Single-Unit Residential (R-1) Zone
<b>Criteria:</b>	LCMC Section 17.76.040 Type II Procedure
	LCMC Section 17.77.080 Director's Interpretation

## **BACKGROUND**

The subject property (site) is addressed as 2864 NE Lake Dr. The tax lot number is 07-11-11-AB-00700-00, and the assessed site size is 5,662.80 square feet. The site is developed with an existing dwelling and a boat house, both of which were built in 1962. A boat dock was added in 1992, and a covered porch and detached garage were added in 2005. The site's east boundary is Devils Lake and the west boundary is NE Lake Dr. Houses are to the north and south of the site. Across NE Lake Dr to the west is the hospital. The site is in the R-1-7.5 zone, the properties to the north and south are zoned R-1-7.5, and the property to the west is zoned Professional Campus.

Lincoln City's GIS mapping shows the site does not contain bluff erosion hazards, trails, aesthetic resource, floodway, or natural resource overlays. The eastern portion of the site does contain AE flood hazard area.

The property owners desire to convert the existing single-story structure to a two-story structure. The conversion involves the new construction addition of a second story over the existing first story, as well as an enlargement of the structure by expanding the southwest building corner to the south. A building permit application was submitted on July 22, 2022. The description of work on the application states: "Remodel: adding 2<sup>nd</sup> story, no change in footprint." On July 27, 2022, the applicant was notified that the permit application was on hold because additional items were needed to complete the application, consisting of payment of the plan review fee, a site plan, the Public Works Combined Checklist, and the Pre-Submittal Checklist. The plan review fee was paid, but the site plan and checklists were still outstanding as of October 20, 2022, when a reminder email was sent to submit the previously requested checklists and site plan. The checklists and site plan were received on November 4, 2022, and the building permit technician was able to deem the building permit application complete and move it forward for review.

Lincoln City Public Works review the application for compliance with Public Works Design Standards on November 14, 2022. The application was missing several items, and the applicant was notified accordingly on November 14, 2022. To date, the missing items to satisfy Public Works Design Standards have not been received.

The associate planner reviewed the application for compliance with LCMC Title 17 on November 17, 2022. The associate planner found several items out of compliance and notified the applicant accordingly on November 17, 2022. One of the non-compliant items involved setbacks. The comment from the associate planner states: "Setbacks need to be revised. The addition of the 2<sup>nd</sup> story turns the home from a 1 story to a two story home. All new additions must meet the setbacks for a 2 story structure which is 7.5 ft. no addition footprint may be added to the home, even on the 1<sup>st</sup> story, unless it meets the 7.5 ft setback."

A series of emails between the applicant and the associate planner regarding the minimum setback requirement resulted in the submittal of an application for a director's interpretation. The application for a director's interpretation was submitted on November 23, 2022. The applicant states the following:

"The proposed addition to the existing residence consists of single story sections and a new second level. It has been carefully planned so that the single story portions of the addition fall within the 5' setbacks for 'one story structures' and the two story portions of the addition fall within the 7'-6" setbacks for structures 'more than one story.' This accomplishes a step-back building form consistent with the intent of the graduated set-back rules."

“Plan review comments include revising setbacks so that all addition footprints are within the 7’-6” setbacks for ‘more than one story.’ The reason given is that the ‘addition of the 2<sup>nd</sup> story turns the home from a 1 story to a two story home.’ ”

The applicant continues with an outline of reasons why the minimum 7 ½-foot setback requirement for a two-story structure should not be imposed on the project.

### **COMMENTS**

No comments were received.

### **ANALYSIS**

#### *Chapter 17.76 Procedures*

#### *17.76.040 Type II procedure*

- A. *General Description. Type II procedures apply to administrative permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.*
- B. *When Applicable. Table 17.76.020-1 identifies Type II applications. Applications not listed in Table 17.76.020-1 may be identified as Type II by the director based on the general description in this section.*
- C. *Pre-Application Conference. A pre-application conference is not required for Type II procedures.*

**Finding:** A pre-application conference is not required.

- D. *Application Requirements. Type II applications shall:*
  - 1. *Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
  - 2. *Be accompanied by the required fee as adopted by city council resolution.*
  - 3. *Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*

**Finding:** The required application forms and materials were submitted, along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110(D) and (E).

- E. *Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.*
  - 1. *After a Type II application has been accepted as completed under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
    - a. *The applicant and applicant’s representative;*
    - b. *The owners of record of the subject property;*
    - c. *Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor’s office as provided to the city to determine property owners of record; and*
    - d. *Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*

**Finding:** The Planning and Community Development Department mailed the public notice of a complete application to the parties noted in LCMC 17.76.040(E)(1)(a) through (d).

- 2. *The written public notice shall include the following:*

- a. *A brief description of the request;*
  - b. *The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);*
  - e. *The name of a department staff member to contact and the telephone number where additional information may be obtained; and*
  - f. *Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*
3. *The failure of a property owner to receive notice does not invalidate the land use action if the notice was sent.*
  4. *Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.*

**Finding:** The written public notice contained all the information required in LCMC 17.76.040(E)(2)(a) through (f). The written public notice included the written comment period of 14 days.

*F. Review Authority. The review authority for Type II applications shall be the director.*

**Finding:** The Director reviewed the submitted Type II application.

*G. Decision.*

1. *Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.*

**Finding:** The relevant approval criteria are addressed in this staff report. No written comments were received.

2. *The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:*
  - a. *The applicant and applicant's representative;*
  - b. *The owners of record of the subject property;*
  - c. *Any person, group, agency, association, or organization who submitted written comments during the comment period; and*
  - d. *Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.*

**Finding:** Within seven days after the Director has issued the decision, the notice of that decision shall be mailed by the Planning and Community Development Department, pursuant to LCMC 17.76.040(G)(2).

3. *The notice of the decision shall include the following:*
  - a. *A brief description of the request;*
  - b. *A statement of the decision and the applicable approval criteria used in making the decision;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;*

- e. *The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;*
- f. *A statement that the complete file is available for review; and*
- g. *The name of a department staff member to contact and the telephone number where additional information may be obtained.*

**Finding:** The Planning and Community Development Department will issue the notice of decision that shall contain all the information noted in subsection 17.76.040(G)(3)(a) through (g).

*Chapter 17.77 Applications*  
*17.77.080 Director’s Interpretation*

- A. *Purpose.*
- B. *Director’s Authority to Initiate an Interpretation.*
- C. *Director’s Authority to Decline an Application.*
- D. *Procedures. A director’s interpretation not specific to a particular property or circumstance is subject to the Type I procedure, as described under LCMC 17.76.030. A director’s interpretation for a particular property is subject to the Type II procedure, as described in LCMC 17.76.040.*

**Finding:** The request is for a specific site, so the request is subject to the Type II procedure pursuant to LCMC 17.77.080(D).

- E. *Submittal Requirements. Type I application submittal requirements are set forth in LCMC 17.76.030. Type II application submittal requirements are set forth in LCMC 17.76.040. More specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.*

**Finding:** The required documents and completed application forms were submitted.

- F. *Standards for Assignment of a Use.*

**Finding:** This is not applicable. The request is not to determine if a use is allowed.

- G. *Standards for Interpretation. An interpretation of terms, intent, or meaning shall be as consistent as possible with the standards listed below. Not all of the standards need to be met for an interpretation to be issued.*
  - 1. *The proposed interpretation is consistent with the common mean of the words or phrases at issue.*

**Finding:** LCMC Section 17.08.010 provides the following definitions:

*Setback means the minimum or maximum distance required between object and another point. Typically, a setback refers to the minimum or maximum distance from a building or structure to a specified property line.*

*Story means that portion of a building included between a floor and the ceiling above.*

*Structure means, except as provided by applicable building codes, any object constructed in or on the ground.*

LCMC 17.16.070 states the following required minimums for setbacks:

*Front Setback 5’ for one-story structures*

	<i>7 ½' for structures more than one story</i>
<i>Side Setback</i>	<i>5' for one-story structures</i> <i>7 ½' for structures more than one story</i>
<i>Street Side</i>	<i>5' for one-story structures</i> <i>7 ½' for structures more than one story</i>
<i>Rear Setback</i>	<i>5' for one-story structures</i> <i>7 ½' for structures more than one story</i>

The code does not provide a separate requirement for split-level structures, nor does it provide any relief for minimum setback requirements for split-level structures. The code does not provide a separate setback requirement for each level of a multi-level structure. Rather, the code provides a minimum setback requirement for one-story structures and a more restrictive minimum setback requirement for structures more than one story. The applicant notes that the project “accomplishes a set-back building form consistent with the intent of graduated set-back rules.” However, LCMC 17.16.070 does not provide any provisions for step-back building forms or for graduated setbacks. Rather, LCMC 17.16.070 clearly lists a minimum 5-foot setback requirement for one-story structures and a 7 ½’-foot setback requirement for structures more than one story.

The applicant states: “I cannot find anything in the zoning code that supports defining single story portions of an addition as two story structures simply because the building is two story.” LCMC 17.16.070 clearly provides a minimum setback requirement for one-story structures and a separate minimum setback requirement for structures more than one story. Either the structure is a one-story structure or it is a structure with more than one story, with the minimum setback requirements applying accordingly. The applicant’s building permit application specifically notes in the description of work that the project is adding a second story. The addition of a second story to a single-story structure makes the structure a structure with more than one story.

As stated by the applicant, the existing single-story building footprint does not conform to the minimum 5-foot setback for a single-story structure. LCMC 17.64.020(A) notes:

*Alteration of a Nonconforming Structure. A nonconforming building or structure may be enlarged or altered to the extent that such alteration or enlargement conforms to current regulations.*

LCMC 17.16.070 requires a minimum setback of 7 ½ feet for structures more than one story. The structure is currently a single story. Accordingly, any enlargement or alteration is allowed, but only to the extent that such alteration or enlargement conforms to current regulations. As stated in LCMC 17.16.070, the current regulations require a minimum setback of 7 ½ feet for a two-story structure. The addition of the second story converts the entire structure to a two-story structure. All portions of the addition, enlargement, or alteration must conform to the current regulation of a 7 ½-foot minimum setback for a two-story structure. LCMC 17.64.020 does not allow for the enlargement or alteration to the existing structure as proposed because it will not be able to conform to current regulations; namely, the proposed enlargement does not meet the 7 ½-foot setback requirement for a two-story structure.

The applicant references a tight and small site and a “proposed design” that “is not unreasonable.” The size of the site is not applicable to the interpretation of the setback requirement in LCMC 17.16.070. Whether the proposed design is reasonable or not is not applicable to the interpretation of the setback requirement in LCMC 17.16.070.

The applicant cites the “inferred intent of the graduated setbacks” where there are no inferred intents. The requirement is very clear – a 5-foot setback for single-story structures and a 7 ½-foot setback for structures with more than one story.

- 2. *The proposed interpretation is consistent with relevant policy direction from official city documents such as the comprehensive plan and its supporting documents.*

**Finding:** Other than the municipal code, the Director is not aware of any relevant policy direction regarding interpretation of single-story versus multi-story and the minimum setback requirement for each.

- 3. *The proposed interpretation is consistent with the interpretation of other portions of this title.*

**Finding:** The interpretation is consistent with the interpretation of the minimum setback requirements for single-story and multi-story structures in all zones other than the applicant’s R-1-7.5 zone.

- 4. *The proposed interpretation is consistent with regional, state, and federal laws and court rulings that affect the words or phrases at issue.*

**Finding:** The Director is not aware of any laws or court rulings that affect the interpretation of the code requirement for a minimum 5-foot setback for single-story structures and a minimum 7 ½-foot setback for multi-story structures.

*H. Limitations on Director’s Interpretation.*

**Finding:** The decision is not a legal opinion or interpretation of case law. The decision does not establish precedent and does not bind any review authority in current or future decisions regarding the site or application or similar properties or applications. The decision does not run with the land unless the development is substantially consistent with the description in the director’s interpretation.

- 1. *Expiration of a Decision. A director’s interpretation does not expire unless superseded by a subsequent director’s interpretation, comprehensive plan amendment, or ordinance amendment.*

**Finding:** A director’s interpretation does not expire as noted above.

- J. *Appeal of a Decision. Refer to LCMC 17.76.180.*

**Finding:** The required notice of decision was given as required by LCMC Chapter 17.76 to afford opportunity for appeal.

**DECISION**

Per LCMC 17.16.070, the Director concludes that the minimum setback for a single-story structure in the R-1-7.5 zone is 5 feet, and the minimum setback for a structure that has more than one story in the R-1-7.5 zone is 7 ½ feet. The applicant is proposing to convert a single-story structure to a two-story structure by adding a second story to the existing single-story structure. LCMC 17.16.070 requires a minimum setback of 7 ½ feet for structures that have more than one story. The Director concludes that the minimum setback requirement is clearly stated in LCMC 17.16.070, and all portions of the enlargement and conversion to a two-story structure must meet the minimum setback requirement of 7 ½ feet for a structure with more than one story.

Approved by:

**Anne Marie Skinner**

Digitally signed by Anne Marie Skinner  
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Date

## Planning and Community Development