

**ORDER ON APPEAL: DEVELOPMENT REVIEW BOARD RESOLUTION NO. 429**  
(Transcribed from Council President Akervall's Oral Order):

WHEREAS, on October 30, 2023, the City received an application for Class I Review to confirm the status of the existing use and the structure at 29400 SW Town Center Loop West (the "Location") from applicant/appellant Dan Zoldak, of Lars Andersen & Associates, Inc. ("Appellant"), requesting a Class I Review to confirm the status of the existing *non-conforming* use at the Location (this application is referred to as docket no. ADMN23-0029 in City records and hereinafter referred to as the "Application"); and

WHEREAS, on December 28, 2023, the Planning Director issued a Notice of Planning Director Determination (the "Planning Director's Decision"); and

WHEREAS, Appellant submitted a notice of appeal of the Planning Director's Decision to the Development Review Board (the "DRB") on January 10, 2024 (this appeal is referred to as docket no. DB24-0002 in City records and hereinafter referred to as the "DRB Appeal"); and

WHEREAS, the DRB held a public hearing for the DRB Appeal proceeding on February 26, 2024 (the "DRB Hearing"); and

WHEREAS, the DRB closed the public hearing on February 26, 2024, but kept the written record open to allow the submission of evidence and legal arguments, and reconvened to address the appeal on March 14, 2024; and

WHEREAS, on March 14, 2024 the DRB unanimously adopted Resolution No. 429, which was a written decision regarding all issues reviewed during the DRB Hearing; and

WHEREAS, on March 27, 2024, the Appellant submitted the document titled "Appellant's Notice of Appeal" to the City (the "Notice of Appeal") within the prescribed appeal period; and

WHEREAS, pursuant to the Notice of Appeal (*see* Notice of Appeal, p. 2), Appellant challenges the following DRB actions:

1. Rejection of certain materials and information from the record on March 14, 2024;
2. Adoption of the staff report presented to it in preparation for the February 26, 2024 meeting; and,
3. Finding that the legally established non-conforming use at the Location is "a 159,400 square-foot electronics-related retail store" (together, the "Challenged Actions"); and,

WHEREAS, on April 1, 2024, City Council adopted an order establishing the scope of this appeal proceeding and the procedure that City Council would follow during this appeal proceeding on April 1, 2024 (the "Procedural Order"); and,

WHEREAS, City Council held an appeal proceeding to address this matter on April 15, 2024 in accordance with the Procedural Order.

FINDINGS:


1. June 5, 2019 is the date of restrictive zoning (i.e., the point in time when the use of the Location must be evaluated to determine what uses are protectable as non-conforming uses).
2. Appellant asked City Council to recognize a non-conforming use for either a “commercial retail center” or “retail, office, warehouse, manufacturing, and service store” use (the “Proposed Scope of Non-Conforming Use”). Appellant has the burden of proof in this appeal to establish the nature and extent of the actual use of the Location as of June 5, 2019: Appellant must prove that the actual use of the Location as of June 5, 2019 supports the recognition of the Proposed Scope of Non-Conforming Use. City Council finds that Appellant has not satisfied its burden of proof.
  - a. Appellant has not provided any evidence that City Council deems relevant to the determination of the Proposed Scope of Non-Conforming Use. Furthermore, Appellant requested recognition of different types of uses throughout this Class I review process – initially from “retail, office, warehouse, manufacturing, and service store” in its Application to “commercial retail center” in its DRB Appeal.
  - b. City Council deems the 1991 Decision irrelevant to this decision. Appellant’s position that the 1991 Decision is the controlling authority is not supported by any legal authority, and it is contrary to extensive legal authority presented by City staff.
  - c. City Council deems the zoning regulations in place in 1991 irrelevant to this decision. This includes, but is not limited to, what uses were allowable in the Planned Development Commercial zone.
  - d. City Council deems evidence, information, and testimony regarding Home Depot, or any proposed or future occupant, of the Location, irrelevant to this decision. This includes, but is not limited to, the letter dated March 4, 2024 from Lars Andersen & Associates, Inc. regarding “Home Depot, Wilsonville, OR . . .” and the Memorandum dated March 4, 2024 from Amy Wasserman and Chis Forster, P.E. of Transportation Engineering Northwest.
  - e. City Council deems any argument regarding an alleged taking irrelevant to this decision.
3. DRB followed correct procedures, and in particular, the DRB did not err when it adopted the staff report dated February 15, 2024, and rejected certain materials and evidence from the record. But for clarity, the record for any appeal of this order to the Land Use Board of Appeals shall be the unredacted record reviewed by City Council.
4. The City Council finds relevant Appellant’s admission that a “Fry’s Electronics” operated at the Location from 1991 to 2021. *See* Attachment 3 (in the City Council Record), p. 84. The City Council further finds relevant certain descriptions of electronics retail uses

occurring at the Location, as consistent with an electronics-related retail store. Also found on page 84.

- 5. Assuming, for the sake of argument only, that consideration of the 1991 Decision is determined to be relevant by future reviewing body or bodies, the City Council finds that the facts described in point 4 above are consistent with the 1991 Decision’s adopted staff report, which describes, on the first page, that the approved development is “a 159,400 square foot electronics-related retail store.” Attachment 3 (the City Council Records), p. 98.


IT IS THEREFORE ORDERED, by the City of Wilsonville City Council, at its regular meeting on this 15th day of April 2024, that the Development Review Board decision in Resolution No. 429, determining the scope of the legally established non-conforming use at the Location is “a 159,400 square-foot electronics-related retail store,” is affirmed, and further, that this was correct and appropriate decision made based on applicable laws, policies, and standards. The Appeal is therefore respectfully denied.

DATED this 15th day of April 2024.

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 JULIE FITZGERALD MAYOR

This Order may be appealed to the Oregon Land Use Board of Appeals, within the allowed time frame and in accordance with the requirements set forth by the Oregon Land Use Board of Appeals.

ATTEST:

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 Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Excused
Councilor Berry	Yes
Councilor Dunwell	Yes