

MINUTES
Regular City Council Meeting
July 8, 2019
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MINUTES
REGULAR CITY COUNCIL MEETING MINUTES
OF

July 8, 2019
5:30 p.m.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Rich Mays

COUNCIL PRESENT: Russ Brown, Linda Miller, Darcy Long-Curtiss, Tim McGlothlin,
Rod Runyon

COUNCIL ABSENT: None

STAFF PRESENT: City Attorney Gene Parker, City Clerk Izetta Grossman, Finance
Director Angie Wilson, Community Development Director Steve
Harris, City Engineer Dale McCabe, Police Captain Jamie Carrico,
Human Resources Director Daniel Hunter, Assistant to the City
Manager Matthew Klebes

Number of public present: 15

CALL TO ORDER

The meeting was called to order by Mayor Mays at 5:30 p.m.

ROLL CALL

Roll call was conducted by City Clerk Grossman, all Councilors present.

PLEDGE OF ALLEGIANCE

Mayor Mays invited Councilor Brown to lead the audience to join in the Pledge of Allegiance.

Councilor Brown asked the audience to join them in the Pledge of Allegiance.

APPROVAL OF AGENDA

Mayor Mays added Presentation Item #5.

It was moved by Long-Curtiss and seconded by Runyon to approve the agenda as amended. The motion carried, 5 to 0; Long-Curtiss, Runyon, Brown, Miller and McGlothlin voting in favor.

PRESENTATIONS/PROCLAMATIONS

Sister City International Day Proclamation

Mayor Mays introduced Amber Tilton and Corliss Marsh of the Sister City Association. He read the proclamation.

Amber Tilton, President of The Dalles Sister City Association thanked the City for their support of the Sister City Association.

Corliss Marsh, Treasurer of The Dalles Sister City Association said the delegation was in Miyoshi City and would be returning tomorrow.

AUDIENCE PARTICIPATION

Carolyn Woods, 709 Liberty Way, The Dalles said she had come before the Council in January to ask if the funds designated for the Mural maintenance had been used. She said she was following up on the subject.

Mayor Mays said \$15,000 had been in the fiscal year 2018-19 City Budget for use by the Mural Society (now joined with Fort Dalles Fourth group). He said they had given \$9,000 to the art effort. He said he would be meeting with the Fort Dalles Fourth group to get their plans for fiscal year 2019-20.

Woods said the City would need to stay on top of the maintenance of the Murals. She said she felt the Murals were an asset.

Councilor Long-Curtiss said she was surprised to hear funds had been used for something other than maintenance of the murals, as directed by City Council. She said it was her understanding that these funds were reimbursement funds for work done. She asked for follow up on the issue.

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Councilor Brown said he was also surprised to hear the funds were used for another art effort. He said Council specifically said the funds were for maintenance of the existing murals.

Lorene Hunt, PO Box 81, The Dalles said she wanted to resubmit comments regarding the proposed Short Term Rental Operating License revision to The Dalles Municipal Code. See attached.

CITY ATTORNEY REPORT

City Attorney Gene Parker gave an update on the Girl Scout house. He said the Girl Scouts had decided to exercise the option to purchase for \$1. He said the deed was prepared and was being recorded. He said a local real estate firm was working with the Girl Scouts to deal with the outside appearance of the property.

Mayor Mays said he thought they were continuing the lease, but as long as it was within the terms he was ok with the purchase.

CITY COUNCIL REPORTS

Councilor McGlothlin reported attending:

- CAP meeting working on homeless issues

Councilor Miller reported:

- Household Hazardous Waste meeting – Hood River had a positive outcome; their comingling was going to Portland for recycling
- Great Fireworks display – would like to see noise ordinance enforced afterward

Councilor Runyon reported attending:

- 6/27 City welcome of Columbia Gorge Auto
- 7/1 NWCPUD & Port of The Dalles ceremony regarding new electrical infrastructure at Marina
- 7/1 Council Rules Review Committee
- 7/8 Mid-Columbia Veterans Memorial Committee

CONSENT AGENDA

It was moved by Brown and seconded by Miller to approve the Consent Agenda as presented. The motion carried, 5 to 0; Long-Curtiss, Runyon, Brown, Miller and McGlothlin voting in favor.

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Items approved by Consent Agenda were: 1) June 24, 2019 Regular City Council Meeting Minutes; 2) B. Approval of Amendment No. 12 to Operations Management International (OMI, now Jacobs) Agreement to Operate the Wastewater Treatment Plant for Fiscal Year 2019-20.

PUBLIC HEARING

Remand Hearing for City Council's Decision Approving the Planning Commission's Decision Approving Adjustment #18-037 Reducing the Minimum Size Parcel Located at West 13th and Perkins Streets

Mayor Mays read the rules for the Public Hearing, attached.

Mayor Mays asked if any members of Council had any ex parte contacts, conflicts of interest, or bias, which would not allow them to render an impartial decision on the matter. No Council member excused themselves.

Mayor Mays asked if any member of the audience wished to challenge the qualifications of any Councilor. No member of the audience challenged Council qualifications.

Community Development Director Harris reviewed the staff report.

Councilor Long-Curtiss asked Harris if on page 83 lot sizes were reduced the same as the lot in question.

Harris said assumed corner lot adjustment. Long-Curtiss asked if it had been run without that assumption. Harris said it had not.

Councilor Brown said HB 2001 would change things within the next 12 months.

Harris said HB 2001 mandates duplexes on interior lots as well as corner lots.

Brown said he wasn't a fan of high density housing. He said HB 2001 will mandate duplexes.

Mayor Mays reminded everyone the only issue to be addressed during the hearing was interpretation of Section 10.3.080.020(B)(6) which provides that adjustments are prohibited if they allow an increase in density in the R-L Low Density Residential Zoning District.

Jonathan Blum, 403 East 8th Street, Applicant said the wording in the Code for RL Zone is 3 to six units per gross acre. He said the proposed use was still lower than prescribed for the zone.

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He said any development would increase density. He said the question is density of the Zone. He said the intent of the ordinance was to keep low density low, 3 to 6 units per gross acre.

Mayor Mays asked for questions from Council. Hearing none, he asked for other testimony in support. Hearing none, he read letter of support from Alan and Sue Borton (attached).

Mayor Mays for testimony from the petitioner.

Lorene Hunt, PO Box 81, Petitioner said HB 2001 wasn't immediately in effect. She said there was an error in the report that stated she appealed to the City. She said her husband appealed to the City Council. She said she appealed to the State.

Ms. Hunt said the consultant (APG) was not impartial. She said she invited them to her neighborhood and they did not come to look at the neighborhood.

City Attorney Parker reminded Ms. Hunt to address only the item before the Council.

Ms. Hunt provide Council copies of her testimony (attached).

Ms. Hunt asked the Council to keep the hearing open for 7 to 14 days.

City Attorney Parker said there was no provision for keeping a remand hearing open.

Councilor Long-Curtiss asked Ms. Hunt if you could give her reasoning why despite Community Development Director Harris' clarification at this meeting as to how the density was calculated, she still felt the RL Zone density would be increased.

Ms. Hunt said words were being added to 10.3.080.020 (B) (6) to come to the conclusion Mr. Harris had.

Mayor Mays asked for testimony from others opposed to the application.

Ted Pitt, 804 West 13th said last June only Perkins was considered. He asked what it would look like if only Perkins was considered now.

Harris said Perkins was zoned high density, not low density.

Steve Hunt, PO Box 81 said the issue had been remanded back to the City Council for better explanation. He said the question implied it had not been adequately explained before.

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He said 10.3.080.020 (B) Adjustments are prohibited for the following: (6) to allow an increase in density in the RL zone. He said the adjustment should not be allowed because it increased density.

Jonathan Hunt, PO Box 81 reviewed his written testimony (attached). He asked that the hearing be held open for 7 days.

Alex Mia, 1601 19th Street said in plain language increase in density was not an allowable adjustment. He said using the City's explanation; hypothetically a developer could put a number of homes on one large lot and not increase density.

Mayor Mays asked applicant for rebuttal.

Mr. Blum said the implication that APG was not impartial just because they didn't come out to the neighborhood was not true.

Blum said if you take (B)(6) as simple language not looking at the intent, no building could ever happen.

He said Mr. Mia's testimony was looking at one part of the Code, and was not a reasonable case. He said APG's study was a reasonable look at density.

Mayor Mays closed the hearing, and asked for Council deliberation.

Councilor Runyon said one question was before Council – LUBA asked for a better explanation of no increased density. He said that had been done and LUBA would let the City know if it was satisfactory.

Councilor Brown said the Hunt's interpretation was narrow. He said he believed the Council had followed the rules.

Councilor Long-Curtiss asked if the issue would go before LUBA again.

City Attorney Parker said only if another appeal was filed.

It was moved by Miller and seconded by Brown to direct staff to prepare a resolution modifying Finding of Facts to support approval of Adjustment No. 18-037. The motion carried 4 to 1; Runyon, Brown, Miller and McGlothlin voting in favor; Long-Curtiss opposed.

CONTRACT REVIEW BOARD ACTION

Award Contract No. 19-007 2019 ADA Improvement Project

City Engineer Dale McCabe reviewed the staff report.

Councilor Brown said the bid seemed high.

McCabe said as contractors become more comfortable with the requirements he anticipated costs would come down.

It was moved by McGlothlin and seconded by Long-Curtiss to authorize the City Manager to enter into contract with Van Nevel Concrete and Curb for the 2019 ADA Improvement Project, Contract No. 2019-007, in an amount not to exceed \$136,986.25. The motion carried, 5 to 0; Long-Curtiss, Runyon, Brown, Miller and McGlothlin voting in favor.

Authorize Contract to Complete Wastewater Treatment Plant Electrical Upgrade

Resolution No. 19-020 Exempting the Public Contract For the Wastewater Treatment Plant Electrical Upgrade Phase 2 Project from Competitive Bidding Requirements

City Engineer Dale McCabe reviewed the staff report.

Councilor Brown stated a potential conflict of interest as Mr. Roderick, owner of the electrical company was a friend of his.

City Attorney Parker said friendship did not constitute a conflict.

Councilor Runyon asked the City Attorney if the reasoning was adequate for exemption.

Parker said it was.

It was moved by Miller and seconded by Runyon to adopt Resolution No. 19-020 exempting the contract for the Wastewater Treatment Plant Electrical Upgrade Phase 2 project from competitive bidding requirements, and authorize award of the contract to East Cascade Electric in an amount not to exceed \$235,000. The motion carried, 5 to 0; Long-Curtiss, Runyon, Brown, Miller and McGlothlin voting in favor.

ACTION ITEMS

Additional Funding for Airport Apron Rehabilitation Project

Airport Manager, Aryn Rassmussen reviewed the staff report.

Rassmussen said the match funds would be split between Klickitat County and the City of The Dalles.

She said the upgrades were needed to support the larger jets that were coming to the airport.

She said she wanted to have Council approval in place in anticipation of the FAA giving additional funding to the Airport for the project.

Councilor Runyon asked Finance Director Wilson what line item the matching funds would come from – Contingency or Reserved for Future Projects.

Finance Director Angie Wilson said there would need to be a supplemental budget to receive the grant from the FAA and then to take funds from Contingency and move into the Airport Fund. She said Reserved for Future Projects was unappropriated funds for future use; Contingency was the appropriate place to draw from for the matching funds.

It was moved by McGlothlin and seconded by Miller to conditionally approve an additional \$415,000 in funding from the FAA for the Apron Rehabilitation project with the understanding the airport will be responsible for an additional \$46,667 in match money. The motion carried, 5 to 0; Long-Curtiss, Runyon, Brown, Miller and McGlothlin voting in favor.

ADJOURNMENT

Being no further business, the meeting adjourned at 7:40 p.m.

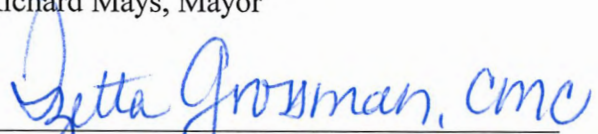
Submitted by/
Izetta Grossman, CMC
City Clerk

SIGNED:



Richard Mays, Mayor

ATTEST:



Izetta Grossman, CMC, City Clerk

Resubmitted July 8, 2019 - Audience Participation

For City Council meeting June 24, 2019:

June 24, 2019

As I understand it, the City Council has or will be receiving a recommendation to strike the entire section of Title 10.6.040 from the City Code, and this will be an item on your agenda at your next meeting. To assist in your preparation for the coming discussion about the City Code, the following information is offered to use in preparation for something as important as city code changes. A short term rental license (Chapter 5.10) developed in accordance with land use regulations (3 pages from Title 17 - equivalent to Title 10 in The Dalles) is presented, passed in 2016 in Hood River and updated in December 2017, the material demonstrating immense respect for its citizens with safeguards, the most important of which are noted in highlighted sections (most important) and others (marked), the entire document noteworthy:

Looking at the Chapter 5.10 section of code called "Short-Term Rental Operating License":

p. 1 - 5.10.020: A. All items retained after the Dec. 2017 review are considered Reasonable and Necessary...focus is on the word **NECESSARY**.

A. 5. Note provisions on this page and others in the code carefully **protecting residents and neighborhoods from influences of BBVs (or STRs)**.

p. 5 - 5.10.080 B. "To receive approval, an applicant must demonstrate that all approval criteria listed below has been satisfied:

B.1. Zoning. The property is in compliance with requirements of HRMC Title 17 (Zoning) (the 3 pages are a part of Title 17), parts circled and highlighted with equivalent code provisions in The Dalles Code listed in blue – it is **critical that these be found in any replacement code provision**

B.2. Contact information and B. 3 Notice to Neighbors assures neighbors a quick recourse when necessary, a high regard for residents indicated – it is **critical that these be found in any replacement code provision**

To know Reasonable and Necessary Conditions of a Short Term Rental License having been tested and revised, supported by Title 17 (or Title 10 code provisions in the case of The Dalles) is a gift to The Dalles, presenting a Short Term Rental License that provides **Reasonable and NECESSARY PROTECTIONS for ALL residents in ALL zones**. At the very least, a proposed replacement code provision should have been vetted to include the items highlighted as critically necessary, marked items important also – the whole document showing much thought and work to serve residents of a sister city with the utmost respect. Compare a proposal draft to this one and determine whether a proposed replacement includes **Necessary protections/provisions**. The possibility of adding a license to Title 8 while retaining 10.6.040 in Title 10, as was done in Hood River adding Chapter 5.10 while retaining comparable land use code in Title 17, should be carefully considered, land use code (Title 17) retained, respected, and referred to in the added license (Chapter 5.10 – Short Term Rental Operating License). To add a license respecting current city code is one thing: to propose removing current city code a very different proposition.

It is important to citizens that even one sentence removed or replaced from the city code be very carefully vetted before such an action, the city code relied upon and respected by citizens. To remove a whole section of city code for replacement deserves very careful research and substantiation as to the risks and benefits to residents of The Dalles with the proposed replacement before such an undertaking. Citizens depend on you for this.

Lorene Hunt
PO Box 81
The Dalles OR 97058

Izetta F. Grossman

Public Hearing

From: Steve Harris
Sent: Monday, July 01, 2019 4:41 PM
To: Izetta F. Grossman
Cc: Gene Parker; Julie Krueger
Subject: FW: ADJ 18-037 APL 32-18

Izetta,

Written comments for the July 8th City Council hearing.

Thanks,

Steven Harris, AICP | Director
Community Development Department
City of The Dalles | 541.296.5481 x1151
313 Court Street | The Dalles, OR 97058
www.thedalles.org

PUBLIC RECORDS LAW DISCLOSURE:

This email is a public record of the City of The Dalles and is subject to public inspection unless exempt from disclosure under Oregon Public Records Law. This email is also subject to the City's Public Records Retention Schedule.

From: Sue Borton [<mailto:sue97058@gmail.com>]
Sent: Monday, July 1, 2019 3:16 PM
To: Steve Harris <sharris@ci.the-dalles.or.us>; Jonathan Blum <blumjonathan@gmail.com>
Subject: ADJ 18-037 APL 32-18

To The Dalles City Council attn: Steve Harris

From: Alan and Sue Borton
724 E. 16th Pl.
The Dalles, OR 97058
Property owners of 1203 Perkins, The Dalles, OR

RE: Remand of City Council's affirming the Planning Commission's approval on May 3, 2018 of Adjustment 18-037, Jonathan Blum, to reduce the minimum lot size from 9,000 sq. ft. to 7,475 sq. ft. an adjustment of 16.9 percent.

This email serves as written comment to show our continued support for the property owner, Jonathan Blum, in his effort to move forward with his sensible plan to build a duplex on his property at W. 13th and Perkins. We have read the Memorandum from Jamin Kimmell and Matt Hastie, Angelo Planning Group and fully support the City's findings that with Jonathan Blum's duplex, the density falls well below the maximum of 6 units/gross acre allowed by the Comprehensive Plan.

We are asking once again that you deny the appeal by the Hunt's. They have wasted a whole year and many tax payer dollars on these appeals. We believe that a duplex on the corner of 13th & Perkins will be an asset to the neighborhood and provide much needed housing in The Dalles .

Sincerely,

Alan Borton
Sue Borton



Virus-free. www.avast.com

This hearing is the culmination of decisions, hearings, appeals, and research lasting more than a year, both the city and citizens spending significant time and funds in the process. What will be addressed are matters relating to finding #7 because LUBA decision was that "[r]emand is required for the city to better explain its conclusion that the adjustment will not 'allow an increase in density in the RL Zone.' LUDO 10.3.080.020(B)(6)." (bottom of p. 55).

The first pages you have are the pages of city code related to adjustments (**Article 3.080 Adjustments**), which is what was applied for and is being considered. The very first page states the Purpose in article 10.3.080.010. The last line states..."allowing the LUDO to continue to provide **certainty and rapid processing for land use applications.**" Just looking at the purpose, it is undeniable that the purpose of the LUDO has not been met or maintained in this case – more than a year is not "rapid processing" and the city spending \$1400 to arrive at an "interpretation" that meets the criteria is not a matter of "certainty". So what has been the reason for the inability to provide "certainty" and "rapid processing?" Turn the page to **10.3.080.020 Applicability**. The very first sentence states:

- A. Unless listed in subsection B of this section, all regulations in the LUDO may be modified using the adjustment review process.**
- B. Adjustments are prohibited for the following items:**
 - 1.....
 - 2.....
 - 3.....
 - 4.....
 - 5.....
 - 6. **To allow an increase in density in the RL zone."**

The first 5 conditions do not apply to the adjustment application in question, but the 6th applies a very clear and objective standard. The remand was required for the city to show that this clear and objective standard has been met, the requirement concerning clear and objective standards found in ORS 197.307(4). The word "density" is clearly defined in 10.2 as "the number of dwelling units per acre". Two dwelling units (included in the definition of a duplex) instead of one (a single family home) is simple math: the number of dwelling units are increased by one dwelling unit. An acre is an acre no matter where you draw the lines. What must be true is that the lines are drawn in the RL zone...so where the lines are drawn is not the issue as long as they are drawn in the RL zone. What is at issue is the number of dwelling units in any acre, no matter where the lines are drawn

– if dwelling units increase, the density is increased per the definition, and the adjustment is prohibited. That means the city cannot go beyond (B) (6) to use C and D nor any other provision in this section on adjustments – that means **not** using 10.3.080.040 Review Criteria (the next page) because the adjustment allows an increase in density and is prohibited, in clear, objective, defined language. (**According to ORS 174.010, it is a "principle that an....ordinance should ordinarily not be interpreted to 'insert what has been omitted'" - so this provision must mean what is says – no additions or subtractions in wording.**

How is it that the City did not meet conditions of **certainty and rapid processing** in this case? Use of (B) (6) is the key. The **adjustment application** reached the city, the "**proposed duplex**" clearly stated at the bottom in the "**Brief Explanation**". The very next step before proceeding would be to ascertain whether the adjustment meets city code found in 10.3.080.. **10.3.080.010 Purpose** speaks to **certainty and rapid processing**. **10.3.080.020 Applicability** includes (B) (6), the **adjustment allowing an increase in density in the RL zone clearly prohibited**, the adjustment denied at that point, no further action allowed or necessary.

What happened instead? The very first **staff report** in which the adjustment is considered is key. The only mention of 10.3.080.020 is on p. 2, section D, which is not applicable since (B) (6) prohibits any consideration of the adjustment. Section B, which comes before Section D, is not mentioned, nor any justification given as to how the city met the conditions in that specific one-sentence prohibition. Careful examination of the Adjustment Section of city code 10.3.080.020 would have required mention of it in the staff report and justification for proceeding

The city's use of any other standard by which it will attempt to satisfy the wording in (B) (6) may not "insert what has been omitted". The clear and objective language in (B) (6) must be satisfied, directly speaking to conditions to be met before allowing an Adjustment. Use of another standard with other wording not in 10.3.080: (1) must be consistent with the wording in (B) (6) and (2) must be clear and objective (ORS 197.307(4), and ((3) "may not insert what has been omitted" (**ORS 174.010**). The very fact that the City hired APG to address this issue demonstrates that "clear and objective" are not "clear and objective" in the City's approach. We are concerned citizens presenting clear and objective city code, clearly and objectively stated.

Another item to consider is ORS197.829:

The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, **unless** the board determines that the local government's interpretation:

- (a) is **inconsistent** with the **express language** of the comp. plan or **land use regulation**;
(the city's "interpretation" is inconsistent with express language of land use regulation in 10.3.080.020 (B) (6), also not using clear and objective standards
(Court of Appeals Case A155860 addresses this – not detailed here)
- (b) is **inconsistent** with the **purpose** for the comp. plan or **land use regulation**;
(the city's "interpretation" is inconsistent with the purpose of land use regulation in 10.3.080.010, not providing **certainty** and **rapid processing, specific to Adjustments**)

A last item:

The City Council is urged to keep the record open for at least 7 days (14 preferred), the

(1) ~~section in 1st section~~ reasons being:

(1) At the last Planning Commission meeting, Mr. Harris stated that ZOA99-19 would go to the City Council at their next meeting, stating the date of July 8, July 8th also the date written in the first page of the staff report and expected by citizens. The remand being on the agenda instead was not expected.

(2) In addition and most importantly, the week of July 4th is one of the worst in the year for finding persons at home, much less available, to participate in very important city matters, families out of state, one person flying back today that will participate. I have been asked to request that the record be kept open for at least 7 days (until the next meeting preferred), allowing for citizen participation at a reasonable time. Having taken more than a year, is there any reason this cannot be left open, allowing 2 more weeks before a decision? Allowing reasonable time for citizen participation? Thank you very much.

Lorene Hunt
P.O. Box 81
The Dalles, Or 97058

(Error in background info on p. 56: Ms. Hunt did not appeal this case to the City; Mr. Hunt did.)
Please correct.

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The regulations of the LUDO are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the City's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the LUDO may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the LUDO regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the LUDO to continue to provide certainty and rapid processing for land use applications.

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The Dallas Planning Code

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[Title 10 LAND USE AND DEVELOPMENT](#)

[Chapter 10.3 APPLICATION REVIEW PROCEDURES](#)

[Article 3.080 Adjustments](#)

10.3.080.020 Applicability

A. Unless listed in subsection B of this section, all regulations in the LUDO may be modified using the adjustment review process.

B. Adjustments are prohibited for the following items:

1. To allow a primary or accessory use that is not allowed by the regulations.
2. As an exception to any restrictions on uses or development which contain the word "prohibited";
3. As an exception to a threshold for a review. An example is Section 10.3.050.110. That provision states that an increase in the gross floor area of more than 10% or in excess of 1,000 square feet requires a major modification process. An adjustment could not be granted to allow an increase of 1,100 square feet as a minor modification;
4. As an exception to a definition or classification. An example is a family day care which is defined as care of 12 or fewer children. An adjustment could not be granted to change the number of children within that definition to be 13;
5. As an exception to the procedural steps of a procedure or to change assigned procedure;
6. To allow an increase in density in the RL zone.

C. The administrative adjustment procedure may be used to change the following:

1. Up to 33% reduction of standard setback requirements.
2. Up to 10% reduction in lot width or depth requirements, but not less than a minimum width of 35 feet in a residential zone and a minimum depth of 50 feet in a residential zone.
3. Up to 10% reduction in required minimum lot area.
4. Up to 10% increase in the maximum lot coverage area.
5. Up to 10% increase in maximum height requirements for accessory structures, but height cannot exceed the height of the primary structure.
6. Up to 25% reduction in off-street parking requirements, however no adjustment is allowed for parking requirements of 20 or more spaces.

D. The quasi-judicial adjustment process may be used to change the following items:

1. Up to 50% reduction in standard setback requirements.
2. Up to 20% reduction in lot width or depth requirements, but not less than a minimum width of 35 feet in a residential zone and a minimum depth of 50 feet in a residential zone.
3. Up to 20% reduction in required minimum lot area.
4. Up to 20% increase in the maximum lot coverage area.
5. Up to 20% increase in maximum height requirements for accessory structures, but height cannot exceed the height of the primary structure.
6. Up to 50% reduction in off-street parking requirements, however no adjustment is allowed for parking requirements of 20 or more spaces.
7. One- and two-family dwellings may qualify for a quasi-judicial adjustment exempting them from meeting the requirements of Section 10.5.010.060. Factors to be considered include the following: lots exceeding the minimum size; difference in elevation between building site and street; slope of lot; setback from street; difficult access from the street, and other relevant factors. If approved, the Planning Commission may require additional landscaping, among other conditions, to reduce the effect on the view from the street.

The Dalles Municipal Code

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[Title 10 LAND USE AND DEVELOPMENT](#)
[Chapter 10.3 APPLICATION REVIEW PROCEDURES](#)
[Article 3.080 Adjustments](#)

10.3.080.040 Review Criteria

- A. An adjustment will be approved if the review body finds that the applicant has shown that either approval criteria 1 through 5 or 6 through 8 below, has been met.
1. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area.
 2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and
 3. City-designated scenic resources and historic resources are preserved; and
 4. Any impacts resulting from the adjustment are mitigated to the extent practical; and
 5. If in an environmental sensitive area, the proposal has as few detrimental environmental impacts on the resource and resource values as is practicable, or
 6. Application of the regulation in questions would preclude all reasonable economic use of the site; and
 7. Granting the adjustment is the minimum necessary to allow the use of the site; and
 8. Any impacts resulting from the adjustment are mitigated to the extent practical.
- B. Additional Criteria. If the applicant meets the approval criteria of subsection A above, then the approving authority may also take into consideration, when applicable, whether the proposal will:
1. Result in a more efficient use of the site;
 2. Provide adequate provisions of light, air, and privacy to adjoining property;
 3. Provide for accessibility, including emergency vehicles, per City standards;
 4. Result in a structure that conforms to the general character of the neighborhood or zone district;
 5. If a reduced number of parking is requested, provide adequate parking based on low demand users, or supplement on-site parking with joint use agreements.

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PLANNING COMMISSION STAFF REPORT CITY OF THE DALLES

PLANNING DEPARTMENT

Adjustment No. 18-037

Jonathan Blum

Prepared by:	Garrett McAllister, Planner
Procedure Type:	Quasi-Judicial
Hearing Date:	May 3, 2018
Assessor's Map:	Township 2 North, Range 13 East, Map 33 CC
Tax Lot:	2801
Address:	Not addressed
Comprehensive Plan Designation:	"RL" Residential Low Density
Zoning District:	"RL" Residential Low Density
Request:	Applicant is requesting a 17% reduction to the minimum size of a corner lot in the City's Residential Low Density (RL) zone in order to allow for the development of a duplex on the subject property. The current standard is 4,500 square feet per dwelling unit, which is 9,000 square feet total for duplex development. The adjustment would reduce the lot size from 9,000 square feet to 7,475 square feet (3,737.5 per dwelling unit).

NOTIFICATION

Property owners within 300 feet, City Departments and Franchise Utilities.

COMMENTS RECEIVED

No comments were received as of April 25, 2018.

RECOMMENDATION

Staff recommends approval with conditions, based on the following findings of fact.

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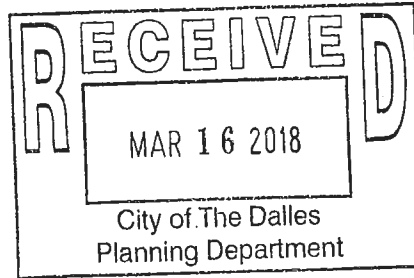
* 235th PAID

ADJUSTMENT APPLICATION

CITY OF THE DALLES

Planning Department

313 Court Street
The Dalles, OR 97058
(541) 296-5481, ext. 1125
Fax (541) 298-5490
www.ci.the-dalles.or.us



Date Filed 3/16/18

File# ADJ 18-037

Date Deemed Complete _____

Hearing Date _____

Approval Date _____

Permit Log # _____

Other Cross Reference# _____

Receipt # 245536
PAID 3/15/18

APPLICANT

Name Jonathan Blum

Address 403 E 3rd St
The Dalles, OR 97058

Telephone # 541-206-2744

E-Mail jblumjonathan@gmail.com

LEGAL OWNER (If Different than Applicant)

Name Victor Blum

Address 814 W 35th Pl
Eugene, OR 97405

Telephone # 541-484-9616

E-Mail blumvictor@gmail.com

*If applicant is not the legal owner, attach either [1] owner consent letter,
or; [2] copy of earnest money agreement, or; [3] copy of lease agreement.

PROPERTY INFORMATION

Address Corner 13th + Perkins St.

Map and Tax Lot 2N 13E 33CC 2801

Size of Development Site 0.17 acres, 652' x 115', 7475 sq. ft.

Zone District/Overlay RL

Comprehensive Plan Designation RL

REQUEST

☐ New Construction ☒ Expansion/Alteration ☐ Change of Use ☐ Amend Approved Plan

Brief Explanation: Requesting adjustment to min. lot size for
proposed duplex, reducing from 9000 sq. ft. to 7475 sq.
ft., an adjustment of 16.9%.

Good evening. We know the city council is mindful of the legal implications of its criteria and decisions, as of course it should be, so I'd like to share with you some in-depth analysis regarding certain key aspects of finding no. 7.

In the Oregon Revised Statutes, ORS 197.307 subsection 4 states "[e]xcept as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing..." I'd like to highlight the words clear and objective, as they will be important to the following discussion.

The substance of this case involves The Dalles city code provision 10.3.080.020(B)(6), which as you are no doubt aware states that "[a]djustments are prohibited for the following items... [t]o allow an increase in density in the RL zone." Density is defined in 10.2 as "[t]he number of dwelling units per acre." The standard introduced by (B)(6) is clear and objective as required by ORS 197.307(4), but it must be applied properly.

I will first offer a method for applying this provision which is clear and objective: when an adjustment is proposed in the RL zone, check to see if it increases density. If it does, the adjustment should be prohibited according to the code provision. I will provide a few examples of how this method may be applied to the adjustment in question.

The property is a corner lot measured at 7,475 square feet in area. Without adjustment, the property would be appropriate for a single-family dwelling. This would produce a density on the lot of 1 DU / 7,475 square feet. The adjustment proposed is for a duplex on the same lot, duplex defined in 10.2 as "two dwelling units located on a single lot or development site..." This would give the lot a density of 2 DU / 7,475 square feet. Even without converting the area from square feet to acres (which could of course be done), it should be evident that this adjustment doubles the density on the lot, so the density has increased.

Next, consider the findings in the staff report for this meeting. A passage on page 56 (of the packet for this July 8 meeting) states "[t]he resulting increase in density for the study area, with the development of a duplex (two dwelling

units) on the subject property, rose from 1.88[sic, 1.87 on page 81 and 82] dwelling units/gross acre to 1.91 dwelling units/gross acre." So the conclusion here is that an increase in density for the study area was found, and we note that the study area is entirely contained within the RL zone.

Finally, consider the density of the entire RL zone. Because density is defined as the number of dwelling units per acre, the density of RL may be represented as:

$$(\text{number of dwelling units in RL}) / (\text{number of acres in RL})$$

The density of RL with one added dwelling unit on the lot would be:

$$[(\text{\# of DU's in RL}) + 1] / \text{\# of acres in RL}$$

...and the density of RL with a duplex (two DU's) on the lot will be:

$$[(\text{\# of DU's in RL}) + 2] / \text{\# of acres in RL}$$

Comparing the above, we find that adding two DU's to the lot instead of only one will result in an increase in density of one dwelling unit over the number of acres in the RL zone, a clear and objective, if perhaps small, increase in density.

So, what's wrong with the method on which the staff report is based, the analysis from APG? The difficulty is that the APG analysis lacks clarity and objectivity as required by ORS 197.307(4). It introduces subjectivity by choosing an area in RL, so density calculations then depend on the area chosen (in contrast, determining whether an increase in density occurs due to an adjustment is essentially independent of the area chosen for the calculation).

The APG analysis also includes a significant portion of undeveloped land in the study area, the excessively low resulting density calculation showing again the importance of having clear and objective standards applied to development on vacant land. As if to compensate for this, a new calculation is made according to quite a few assumptions regarding potential development (arriving at a projected density of 4.63 on page 83), but the analysis fails to explain the relevance of this calculation (though it states that 4.63 is below 6, which of course is true). We

note that if different assumptions were to be made regarding potential development, the calculated density could easily be changed, so it remains unclear what this portion of the analysis is actually supposed to show.

Returning to the staff report, on page 56 it is stated that “[u]nder both study scenarios, the resulting residential densities are consistent with the Low Density Residential Zoning District classification which implements the Low Density Residential Comprehensive Plan Land Use designation (0-6 units/gross acre).” No doubt many scenarios could be constructed under which the calculated density falls between 0 and 6 dwelling units per acre, but these two scenarios are insufficient to show that residential density in the study area (or anywhere else in RL) cannot stray above 6 dwelling units per acre, which appears to be what the APG analysis is attempting to do.

Page 56 continues “[t]herefore, based on the density analysis performed by APG, staff is of the opinion that the reduction in lot size, as approved by City Council Resolution 18-021, is consistent with both the Comprehensive Plan Land Use designation and Zoning District classification of Low Density Residential.” We assert that this opinion is incorrect and further note that it appears to avoid the main issue, which is the city’s compliance with the land use regulations that implement the comprehensive plan as required by ORS 197.175(2)(d).

Now, let’s take a moment and think back to the issue to be addressed upon remand. At the bottom of page 55, “[r]emand is required for the city to better explain its conclusion that the adjustment will not ‘allow an increase in density in the RL Zone.’ LUDO 10.3.080.020(B)(6).” We ask the city council to carefully consider whether the staff report and findings as well as accompanying APG analysis has adequately explained the conclusion above, keeping in mind the requirement for clear and objective standards in ORS 197.307(4).

Jonathan Hunt

PO Box 81

The Dalles, OR, 97058