

RESOLUTION AND ORDER No. 2277  
AP-CC-09-01 and AP-CC09-02

Affirming Warrenton Planning Commission's Decision's Denying Northwest Housing Authority's  
Parking Variance (V 09-02) and Site Design (SDR 09-1)

AND

ADOPTING FINDINGS OF FACT, CONCLUSION OF LAW AND DECISION

WHEREAS, the Warrenton Planning Commission denied Northwest Oregon Housing Authority's  
Site Design and Variance to Parking Standards Applications on May 14, 2009; and

WHEREAS, Northwest Oregon Housing Authority, appealed the decision of the Planning  
Commission through Ron Wright, the applicant, within the time allotted by the Warrenton  
Development Code. The Commission heard the appeal on July 28, 2009; and

WHEREAS, the City Commission reviewed the testimony, submittals, and staff report,  
including the record before the Warrenton Planning Commission and found that the Parking  
Variance and Site Design applications were not in compliance with all the applicable criteria  
in the Warrenton Development Code.

NOW, THEREFORE, be it resolved and ordered by the Warrenton City Commission that:

Section 1: The Warrenton City Commission hereby affirms the Planning Commission's decision  
of denial for SDR 09-01 and V 09-02 based on the information provided in the public hearing  
held on July 28, 2009.

Section 2: The Warrenton City Commission hereby denies the appeals of the Site Design (AP-  
CC-09-01) and Variance to the Parking Standards (AP-CC-09-02) applications.

Section 3: The Warrenton City Commission hereby adopts the Resolution and Order No. 2277  
with the Findings of Fact, Conclusion of Law and Decision attached as Exhibit "A".

Section 4: This resolution is effective immediately upon its passage.

Adopted by the Warrenton City Commission on this 25<sup>th</sup> day of August, 2009.

APPROVED



Gilbert Gramson, Mayor

ATTEST



Linda Engbretson, City Recorder

**City of Warrenton**  
**File Nos.: AP-CC-09-01 of Site Design (SDR 09-1)**  
**and AP-CC-09-02 of Parking Variance (V 09-02)**

**In the matter of appeals of the Planning Commission's Denial of Northwest Oregon Housing Authority's applications on Site Design and Parking Variance for property located on Clatsop County Assessor's Map Number Tax Lot 8-10-21AC-3800**

**Findings of Fact, Conclusion of Law and Decision**

**1. Summary**

These appeals of the Planning Commission's denial of site design review (City File No. SDR 09-1) on a two-story 12 unit multi-family structure and a variance to the parking requirement from 13 to 8 spaces (V 09-2) came before the City Commission on July 28, 2009. The Planning Commission, also denied the variance to eliminate the requirement for a carport (V 09-3), which was not appealed, and approved a variance to increase the density from 10 units to 12 units (V 09-4). The applicant Ron Wright, an architect, submitted the appeal applications on behalf of the Northwest Oregon Housing Authority. The site is located at the corner of SW 2<sup>nd</sup> Street and SW Alder Avenue. The Clatsop County Assessor's Map number is 8-10-21AC-3800. The zoning is Residential High Density.

**2. Procedural Status**

Following notice of a public hearing as required by the applicable Warrenton Development Code section and ORS Chapter 197, the Planning Commission held a public hearing on May 14, 2009. Oral and written testimony was received by the Applicant. Oral testimony was also presented by some of the neighbors.

The Planner issued a staff report on May 7, 2009, which included approval criteria, applicable Warrenton Development Code standards, Comprehensive Plan policies, and several attachments including the Applicant's narrative, drawings, and exhibits.

The Staff Report recommended approval for the applications on site design (SDR 09-01), a variance to increase density (V-09-04), and a variance to reduce parking standards (V-09-02) and recommended denial for a variance to eliminate the requirement for a carport (V 09-4).

On June 3, 2009, Northwest Oregon Housing Authority, through Ron Wright, the Applicant and architect, filed a Notice of Appeal of the denial of the Site Design and Parking Variance Applications. Following notice of a public hearing required by the applicable Warrenton Development Code sections and ORS Chapter 197, the City Commission held a public hearing on July 28, 2009 to consider the appeals. The Planner issued an appeal report which responded to the issues in the applicant's appeal. At the conclusion of the public hearing and upon due deliberation, the City Commission unanimously voted to deny the appeals and directed staff to prepare findings and conclusions.

### **3. Findings on Response to Raised Issues**

Mr. Wright claims that the Planning Commission's decisions are in error for three reasons.

1. The Planning Commission did not focus on the six criteria for a variance in Chapter 5.1.

***Criterion 1: The hardships not created by the person requesting the variance.***

Ron Wright, the applicant, stated that they met with the City almost two and half years ago. He said: "The size of the project has changed slightly due to requirements from the funding for the project that has dictated some of the issues regarding the size of the building". Wright stated that the State of Oregon has minimum sizes for "particular units", consequently the Oregon State Architect requested changes which resulted in the present configuration of the building. The applicant stated that it was always the intention to build 12 units at the site.

Although the property was not purchased for the project, the size of the property was known at the time the project was conceived. A pre-application conference two and a half years ago doesn't address current codes.

***Criterion 2. The request is necessary to make reasonable use of the property. There will be an unreasonable economic impact upon the person requesting the variance if the variance is denied.***

The applicant stated that the size of the project has "changed slightly" due to requirements of the funding for the project. The applicant did not elaborate further.

***Criterion 3. The request will not substantially be injurious to the neighborhood in which the property is located. The variance will not result in physical impacts, such as visual noise, traffic or increased potential for drainage, erosion and landslide hazards, beyond those impacts that would typically occur with the development in the subject zone;***

One neighbor stated that the property is too small for the project. Another one was concerned about the drainage. There was concern about parking on a busy street.

***Criterion 4. The request is not in conflict with the Comprehensive Plan;***

This project complies with the Comprehensive Plan; the proposal is for a multi-family structure which is a permitted use in the Residential High Density Zone (R-H).

**Criterion 5. The request is not in conflict with the Development Code. No variance may be granted which will result in a use not permitted in the applicable zone or which will increase the allowable residential density in any zone with the exception of individual lot size;**

Future concerns were voiced if the variance to the parking standards were granted and the project doesn't materialize, and the structure is sold, then this apartment building would have inadequate parking. Even with a deed restriction for 60 years no one knows what will happen in the future; some tenants may have cars and the restriction could be removed.

***Criterion 6. Physical circumstance(s) related to the property involved preclude performance with the standard to be varied.***

The configuration of the lot is nonrectangular which limits where a building can be sited. The majority of the property is zoned residential high density; a strip of commercial is located on the eastern boundary. Residential structures cannot be located in the commercial zone. This commercial strip of land is being used to meet the landscaping and open space requirements.

**2. The Planning Commission based their decision on an arbitrary 50 percent which was not identified in the Warrenton Development Code.**

The Commissioners felt that 50% (from 13 to 8 spaces is actually 61.5%) of the required spaces) was too high a reduction in the parking standards. Land use applications are discretionary decisions. Therefore the Planning Commission can make a determination whether the percentage of a requirement is too large, too small or other considerations.

**3. The Planning Commission based their deliberations and decision upon their personal biases regarding the nature of the proposed residents rather than factual data regarding the resident population.**

The Chair said that 60 years down the road, most of them wouldn't be here; it is a tough issue and that's why they were tough on these variances because it opens up a Pandora's Box if they are not. All of the commissioners stated that this is a worthwhile project.

## **Appeal of Site Design Application (AP-CC-09-01)**

The Warrenton City Planning Commission unanimously denied the Northwest Oregon Housing Authority's Site Design Review's application submitted by Ron Wright, the applicant and architect, for a two story multi-family housing because the application did not meet criteria of the parking standards of Chapter 3.3.3.A3-Multi-family Dwelling nor the standards for a carport in Chapter 3.16 as stipulated in the *Warrenton Development Code, Chapter 2.4-High Density Residential District (R-H), Section 2.4.110.J, Permitted Uses*. The Planning Commission stated that they liked the look of the project but it was overly ambitious for the size of the site; the site is not large enough for the project.

This application was reviewed by the Planning Commission under the procedures, standards and criteria of Chapter 2.4-High Density Residential, Chapter 3.0-Design Standards, Section 4.1.4G-Appeal. & H., Section 4.1.5-Type III Procedure-Quasi-Judicial, and Chapter 4.2-Site Design Review from the *Warrenton Development Code*.

Mr. Wright claims that the Planning Commission erred in denying the entire Site Design based upon two earlier decisions (City File V09-2-Parking Standards) and City File V 09-03-Carport), and instead should have approved the Site Design with conditions associated with the two denied variances. For instance, the parking requirements could be met by purchasing additional property adjacent or near the project site.

This option of purchasing additional property adjacent or near the project was not presented at the hearing before the Planning Commission. Neither the applicant nor the appellant requested an appeal for the denial of the variance to eliminate the requirement for a carport. Therefore any discussion of the carport cannot be used as evidence and thus not applicable to this appeal. After the Planning Commission hearing, Ron Wright called the Planning Department to inquire whether purchasing adjacent property for parking could meet the parking standard. Staff replied that this could meet the parking standards pursuant to Section 3.3.3B.2-Parking Location and Shared Parking.

A new site design, that meets the parking standards and carport, would entail a major revamping of the building footprint and parking layout. This exceeds the scope of the function of Conditions of Approval; it requires a new site design rather than additions to the project. A reconfiguration of the footprint of the building, location of the parking spaces, and the inclusion of a carport would be needed to comply with all the standards. The denial of the Site Design Application does not preclude resubmitting another site design to be heard before the Planning Commission. The appellant or the property owner has the opportunity to present another site design application that complies with the Development Code.

The Planning Commission offered alternatives to resolve the issues of this site design: to appeal, to meet with the Planning Department to make the project work or to find

another property in which this project could be built without variances. The Planning Commission felt that the footprint is too big for the lot.

### **City Commission Findings and Decision**

The City Commission did not want to approve the site design without meeting the City's parking standards. A major issue that is being addressed in the Urban Renewal District project is parking. To grant a variance to parking standards the Commission felt would contribute to inadequate parking in this area.

Commission Mark Kujula made the motion to reaffirm the findings of the Planning Commission denying the appeals. This motion passed unanimously. Commissioner Terry Ferguson made a motion to deny the appeal of the Site Design Application (AP-CC-01) and to deny the appeal of the variance to the Parking Standards (AP-CC-02). The motion passed unanimously.