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Planning Commission Meeting
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MINUTES

PLANNING COMMISSION MEETING

February 17, 2022

5:30 p.m.

VIA ZOOM

PRESIDING: Cody Cornett, Chair

COMMISSIONERS PRESENT: Karly Aparicio, Alan Easling, Philip Mascher, Mark Poppoff, Maria Pena

COMMISSIONERS ABSENT: Linda Miller

STAFF PRESENT: Director Alice Cannon, City Attorney Jonathan Kara, Senior Planner Dawn Hert, Associate Planner Joshua Chandler, Assistant Planner Kaitlyn Cook, and Secretary Paula Webb

CALL TO ORDER

The meeting was called to order by Chair Cornett at 5:32 p.m.

PLEDGE OF ALLEGIANCE

Chair Cornett led the Pledge of Allegiance.

APPROVAL OF AGENDA

Chair Cornett suggested the “Staff Comments” and “Commissioner Comments” be addressed after the public hearings.

It was moved by Cornett and seconded by Easling to approve the agenda as amended. The motion carried 6/0; Aparicio, Cornett, Easling, Mascher, Pena and Poppoff voting in favor, none opposed, Miller absent.

APPROVAL OF MINUTES

It was moved by Easling and seconded by Aparicio to approve the minutes of January 20, 2022 as submitted. The motion carried 6/0; Aparicio, Cornett, Easling, Mascher, Pena and Poppoff voting in favor, none opposed, Miller absent.

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PUBLIC COMMENT

None.

QUASI-JUDICIAL PUBLIC HEARING

ADJ 055-22, Anne and Ben Wring, 801 E. Second Street, 1N 13E 3 AC tax lot 2200

Request: The applicant is proposing a reduction in required parking from twelve spaces to seven spaces for a mobile food-vending pod.

Chair Cornett read the rules of a public hearing. He then asked if any Commissioner had ex parte contact, conflict of interest, or bias which would prevent an impartial decision.

Commissioner Aparacio stated as the Board Chair of Wonderworks Children's Museum she had a conversation with the Applicant regarding possible use of the Museum's parking lot. Aparacio stated she could make a decision without any conflict of interest.

Chair Cornett opened the public hearing at 5:43 p.m.

Associate Planner Chandler presented the staff report.

Commissioner Mascher asked City Attorney Kara if approval would create legal liability for the City. Kara and Director Cannon both stated they saw no liability.

Ben Wring, 3443 Columbia View Drive, The Dalles

Mr. Wring urged the Commission to consider approval to allow him to continue development.

Eric Gore, 2126 E. 16th Street, The Dalles

Mr. Gore stated he was against the application. Chair Cornett noted Mr. Gore's earlier comments referred to application on W. 16th Street. Mr. Gore said he was mistaken and held his comments for the next public hearing.

Chair Cornett closed the public hearing at 6:03 p.m.

Commissioner Mascher said he was in favor of the staff's recommendation.

Commissioner Poppoff noted the downtown area was exempt from parking requirements. Associate Planner Chandler replied although some portions of downtown are exempt, this parcel was outside the exempt area.

Commission consensus was in favor of staff's recommendation.

It was moved by Easling and seconded by Poppoff to approve Adjustment 055-22. The motion carried 6/0; Aparacio, Cornett, Easling, Mascher, Pena and Poppoff voting in favor, none opposed, Miller absent.

APL 032-22, Kenneth Whiteman, 2206 E. 16th Street, 1N 13E 11 BA tax lot 700

Request: Appeal of the January 13, 2022 Administrative Decision denying a request to partition one lot into three lots (MIP 401-21). The applicant is requesting Planning Commission review of the appeal and the original three-lot partition request.

Chair Cornett read the rules of a public hearing. He then asked if any Commissioner had ex parte contact, conflict of interest, or bias which would prevent an impartial decision.

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Commissioner Mascher stated he and Mr. Whiteman were brokers in the same agency. Mascher had not discussed it with Mr. Whiteman. Mascher stated he could make an unbiased decision.

Chair Cornett stated he was also a realtor, but had not spoken about the application. Cornett stated he could make an unbiased decision.

Chair Cornett opened the public hearing at 6:17 p.m.

Associate Planner Chandler presented the staff report.

Ken and Molly Whiteman, 2 Montello, Hood River, Oregon, 97031

Mr. Whiteman requested the definition of a development plan. Associate Planner Chandler replied the partition itself; staff would consider any parcel in the overall plan. In the event of multiple parcels, the total density of all parcels is considered.

Mr. Whiteman stated he is the founder of pFreim Family Brewers in Hood River; affordable housing has been an issue for employees.

Mrs. Whiteman stated she has been a realtor over ten years, and is very familiar with the subject neighborhood. She recognized this lot as a great place for affordable housing.

Mr. Whiteman stated the goal is to develop two small, high-efficiency homes within the \$400,000 range. The lot is naturally graded in three tiers with old growth trees.

Mr. Whiteman stated in discussions with staff prior to purchase, he was told if setbacks were maintained it could be partitioned into three lots. The Fire Marshal stated fire access was acceptable. Mr. Whiteman contacted Ben Beseda who determined each lot was over 5000 SF. Based on this input, Mr. Whiteman purchased the property.

Mr. Whiteman stated he “sailed” through the Site Plan Review (SPR) and expected approval without any issues. He explained he was surprised when informed the application would be denied based on density requirements he claims had never been discussed previously.

Mr. Whiteman requested staff review partition applications within the past 10 years. He stated staff was unable to provide a single partition that was denied based on density. The agenda packet includes a list of approved applications that are nonconforming. In conversation, Director Cannon acknowledged the applications were nonconforming. Mr. Whiteman stated, “This code is new to the point the planners don’t even know about it.” Mr. Whiteman continued to express his frustrations with the process.

Mr. Whiteman stated he carefully selected the property as a test bed for affordable housing in The Dalles and hopes to extend that effort into the future through other developments. Mr. Whiteman asked the Planning Commission to approve the application as he claims CDD indicated they would from the outset; in the alternative, Mr. Whiteman asked the Planning Commission and CDD staff to improve communications with surveyors and developers to ensure future projects do not run into similar issues.

Linden Bayley, 2216 and 2218 E. 16th Street, The Dalles

Mr. Bayley stated he had not met either applicant. Mr. Bayley disagreed with the proposal, and said he felt like he was being bullied into this situation, and he would be very interested in talking to the Applicant.

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Chair Cornett noted those who testify must hold their testimony to the decision criteria.

Eric Gore, 2126 E. 16th Street, The Dalles

Mr. Gore agreed with Mr. Bayley's comment and expressed the property location is too tight an area to develop. Mr. Gore appreciated the intent to increase housing, but said Mr. Whiteman's application is just an unacceptable want.

Ken Whiteman, 2 Montello, Hood River, Oregon, 97031

Mr. Whiteman said he did not wish to go against the opponent's statements and stated he is happy to reach out and talk to the neighbors.

Commissioner Poppoff asked Mr. Whiteman if he planned to build houses or just subdivide the land. Mr. Whiteman replied he planned to build the houses.

Chair Cornett clarified the application was to divide the lot, not build homes.

Commissioner Mascher said it sounded as if the process was unclear. He asked if Mr. Whiteman's explanation of the process was correct or if there was a different view from the Planning Department.

Director Cannon replied she did not want to enter process discussions at the Commission meeting because there is an application with applicable criteria before the Commission for their consideration while process is a customer service issue CDD will improve on in the future; ultimately, it is not relevant to the decision.

Commissioner Mascher said his understanding was this density provision of the Code has not been applied before.

City Attorney Kara stated it was incorrect to say this code had not been used before in enforcing density throughout the RL zone specifically. Staff contacted the City Attorney prior to denial of MIP 401-21 for an opinion on this question (included in the staff report). The City Attorney conducted research and concluded the subject of this appeal. In conducting this research, the City Attorney found the City of The Dalles (COTD) had already been through this process in the 2018 case of *Hunt v. COTD* which analyzed this specific provision of this Code, and where the Land Use Board of Appeals (LUBA) ruled in favor of the City's interpretation.

The City Attorney stated the Code authorizes both the Community Development Director and the City Attorney to make discretionary decisions on certain matters, and both positions are afforded a significant amount of discretion and deference when it comes to the way City Code and Comprehensive Plan are interpreted. The City Attorney explained he is the chief legal officer of the City and one aspect of the position of City Attorney is to interpret City Code. The City Attorney explained one aspect of Director Cannon's position as the Community Development Director is to implement the City's Land Use and Development Ordinance in the way she sees fit and subject to the Code, so long as it is supported by clear and objective standards. In this case, the City Attorney's opinion is it appears the Code's standards are clear and objective and staff's interpretation of those standards are plausible and entitled to significant deference.

Mr. Whiteman stated he submitted a public records request asking for any application denials issued in the past 10 years citing that Code. The City replied with an official letter saying this had never been used before to deny an application.

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Commissioner Mascher asked if applying that Code is at the discretion of the Director and City Attorney, and our overall goal is to increase density, then, if this lot was divided into two lots, would there be nothing to stop construction of two duplexes, one on each lot?

Director Cannon replied she doesn't find any part of this Code discretionary. Cannon said she applied the code and interpreted it correctly. Further, state law and the City's Code allows for duplexes to be developed anywhere that single family homes can be developed.

Commissioner Mascher stated he was not trying to imply there was discretion in application of the Code, or discretion about that. His understanding implementation of that Code is at the discretion of the Director. Director Cannon replied, no.

The City Attorney stated Director Cannon was correct: there is no discretion in application review and clarified his opinion addressed staff's interpretation of Code. The City Attorney explained the discretion to make interpretation is fundamentally different than the discretion to apply it, and the Code must be correctly applied equally to everyone.

The City Attorney explained the 2018 *Hunt v. COTD* case; addressing Mr. Whiteman's statement on whether section 10.5.10.10 was applied in the past, the answer is yes, it was applied in *Hunt v. COTD*. The City Attorney clarified no application in the last ten years appears to have been denied in the RL zone because of 10.5.10.10, but the Code provision was nonetheless applied and litigated and the LUBA found for the City in *Hunt*.

Director Cannon emphasized that she applied the Code properly in this case. The Code has been applied consistently during her tenure with the City since 2020.

Commissioner Easling stated in the Section 10.5.10.060, the Code states 5,000 SF minimum. An 18,000 SF lot would provide three 5,000 SF minimum lots. He asked why there were two different things in the Code.

Director Cannon replied both standards apply here. A 5,000 SF minimum lot size is required for a single family detached dwelling. Density standards outlined in Section 10.5.010.010 are also required.

The City Attorney added the discussion before the Planning Commission is a distinction between minimum and maximum density, and the position of the City is the partition will split a 0.48 gross acre parcel into three parcels which will exceed the maximum density of the zone, which prescribes three to six single family dwelling units per gross acre limit.

Chair Cornett asked if dwelling units and lot sizes are two different things. The City Attorney replied affirmatively. Cornett then asked how the unit restriction to lot size can be applied if the units do not exist. Director Cannon replied staff must assume some density when applying the Code; the assumption in a single-family zone is that there will be at least one unit on each lot.

Chair Cornett asked if there is anything in the Code that says a vacant lot must be developed. Director Cannon replied, in this case, the property is in a low density residential zone and so CDD must assume one dwelling unit at a minimum and at a maximum.

Associate Planner Chandler provided additional context by explaining the purpose statement of Chapter 10.9 states, "The purpose of the Land Divisions Chapter is to ensure that building sites

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are sufficient for their intended use and that lots to be created are within the density ranges permitted by the Comprehensive Plan...”. Associate Planner Chandler provided this section of Code essentially implies each lot has a density connected to it and not that each lot being created is without a unit calculation.

Commissioner Mascher asked the City Attorney if the process applied here opened the City up for liability. The City Attorney replied that question would not be the subject of discussion; this is a quasi-judicial public hearing that should interpret the Code as presented in the agenda staff report and in the record.

Chair Cornett invited rebuttal from the applicant.

Mr. Whiteman said there is a written record of questions that were asked and the fact he did not receive a response, this Code is not clear, and the implementation is flawed. The City Attorney said Section 10.5.010.010 was used in 2018, but then said nothing was denied based on the Code. Mr. Whiteman said there were nine approved applications that did not conform to Code. He asked how the City can say it has been used when it has never been used to deny something.

Mr. Whiteman continued to vent frustration and disappointment about the process and Code interpretation. He thanked the Commission for their time and encouraged the Commission work to make the Code clearer for future developers.

Chair Cornett said he appreciated the Mr. Whiteman’s motivation to bring this to the Commission to allow discussion.

Chair Cornett closed the public hearing at 7:41 p.m.

Deliberations:

Commissioner Aparacio shared her frustration with the situation. She stated the Commission spent a significant amount of time reviewing the Code and there were two “north stars” the Commission continued to hear. One of those was clear and objective code. She believes this projects illustrates a situation where the Code is not clear and objective. The other part was affordable housing. She felt the Commission was in direct conflict with the two north stars. She believes the Commission needs to continue discussion and continue to push forward on “clear and objective” with the ultimate goal of creating more affordable housing. She emphasized that the City’s boundaries are not going to grow. The City needs to be judicious in creating housing opportunities for those that work and want to live here in The Dalles. Chair Cornett agreed with Commissioner Aparacio, stating there were some oversights.

Commissioner Easling also shared his frustration and expressed he felt he should be able to read the Code and interpret the number of lots possible and he had had similar issues with wording, contributing to his position on the Commission today. He thanked the applicant for bringing it to the Commission. Commissioner Easling indicated the City Attorney’s memorandum was clear and stated he thought staff’s denial was correct.

Commissioner Poppoff said the Code seemed unclear and provided his opinion: if in the past higher density was allowed, the Planning Commission must be consistent and apply that here. Considering duplexes are two units each, Mr. Whiteman would have one less unit than if the lot

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was divided in half with a duplex on each lot. Commissioner Poppoff indicated Mr. Whiteman seems he did his due diligence

Commissioner Mascher said Commissioner Aparicio clearly defined what he thought the Commission was feeling – the frustration of Code clarity and housing but also density. Commissioner Mascher indicated he struggled with the same back and forth sense of what is right compared to what is written or applied.

Chair Cornett stated his opinion this decision was difficult for the entire Planning Commission and that a great deal of time was spent to improve the Code with the Housing Code Amendments in 2020, but cases like this expose Code revision oversights. Chair Cornett indicated the Commission will have an opportunity to fix this oversight but it will be at a later date and said he felt he had to vote to deny Mr. Whiteman’s application due to the Code’s perceived ambiguity. If the Commission were to approve the appeal, citing inconsistencies with staff’s finding of unmet criteria, the Planning Commission would have to reference the criteria which allows this determination and Chair Cornett stated he does not have a singular criterion that would plainly and without question validate with absolute approval the appeal.

Commissioner Pena stated this was complicated and she shared the Mr. Whiteman’s frustration, and the City needs more affordable housing. Commissioner Pena concluded that, following the Code, she could not say yes at this point to Mr. Whiteman’s application.

It was moved by Commissioner Easling and seconded by Commissioner Poppoff to adopt Resolution 601A-22 denying Mr. Whiteman’s appeal.

Chair Cornett stated the motion was moved and seconded to deny Appeal 032-22 and affirm the administrative denial of Minor Partition 401-21. Chair Cornett confirmed the Commission was voting to accept staff’s denial of the appeal, affirming staff’s denial of MIP 401-21, based upon the findings of fact and conclusions of law set forth in the agenda staff report.

The motion carried 4/1; Commissioners Aparicio, Cornett, Easling, and Mascher voting in favor. Commissioner Poppoff opposed. Commissioner Pena abstained. Commissioner Miller absent.

STAFF COMMENTS / PROJECT UPDATES

Senior Planner Hert shared the following comments:

Comprehensive Plan Amendment:

- Employment Buildable Lands Inventory/Economic Opportunities Analysis – Based on the Planning Commission’s recommendation (11/19/2020) and the City Council’s discussion, staff was directed to move forward with text amendments and adoption of ancillary documents to the Comprehensive Land Use Plan.
- A public hearing for Comprehensive Plan amendment will be scheduled for the April 21, 2022 Planning Commission meeting.

Zoning Ordinance Amendment:

- Total Maximum Daily Load (TMDL) – The Planning Commission recently recommended City Council approve the TMDL as an ancillary document to our Comprehensive Plan; this

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addition is complete. The next step will create code amendments to detail, and make modifications to, our stream corridor, specifically looking at safe harbor stream corridor setback modifications and hardship adjustments.

- Staff will ensure these modifications align with the Department of Land Conservation and Development (DLCD) requirements, and requirements included in our agreement with the Department of Environmental Quality (DEQ).
- A discussion item is planned for the March 3, 2022 Planning Commission meeting, followed by the public hearing planned for the April 21, 2022 meeting.

Director Cannon stated the following topics will be discussed at a future meeting:

- Discussion on downtown ground floor commercial requirements
- Code clarifications and revisions
- Code amendment for removal of off-street parking for outdoor seating of restaurants

COMMISSIONER COMMENTS / QUESTIONS

Chair Cornett noted that while this was a difficult meeting he believes “we are all on the same team, going for the same things.” He is excited for more opportunities to make things better.

Commissioner Poppoff stated in when a fraction results from determining density, it would make more sense to round downward if it is one-half or less of a unit, and round upward if it is more than one-half. Director Cannon replied there are other cities that use this method.

Commissioner Mascher mirrored Chair Cornett’s statements. There is no blaming or opposition that is driving this conversation; it’s about better understanding the context and the situation to make the right decision. Sometimes what code of law writes will go against what makes sense from a rational perspective, and these situations become very difficult.

RESOLUTION

Resolution PC 600-22: Approval of ADJ 055-22, Ben and Anne Wring

It was moved by Cornett and seconded by Mascher to approve Resolution PC 600-22 based on findings of fact and two conditions of approval. The motion carried 6/0; Aparicio, Cornett, Easling, Mascher, and Poppoff voting in favor, none opposed, Miller absent.

Resolution PC 601A-22: Denial of APL 032-22, Kenneth S. Whiteman

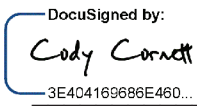
It was moved by Cornett and seconded by Aparicio to approve Resolution PC 601A-22 based on findings of fact. The motion carried 4/0; Aparicio, Cornett, Easling, and Mascher voting in favor, Poppoff opposed, Pena abstained, Miller absent.


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ADJOURNMENT

Chair Cornett adjourned the meeting at 8:10 p.m.

Submitted by/
Paula Webb, Secretary
Community Development Department

SIGNED: 
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Cody Cornett, Chair

ATTEST: 
Paula Webb, Secretary
Community Development Department
