

## PLANNING COMMISSION MINUTES

January 10, 2008

7:00 p.m. Regular Meeting  
Newberg Public Safety Building  
401 E. Third Street

*APPROVED AT THE JANUARY 24, 2008 PLANNING COMMISSION MEETING*

**I. WORKSHOP: Planning Commissioner Training** took place from 6:00 – 7:00 PM.

### **II. ROLL CALL:**

Present:	Thomas Barnes	Matson Haug	Phil Smith
	Cathy Stuhr (Chair)	Nick Tri	Lon Wall
	TeAnna Rice		

Resigned: Marcia Mikesh

Staff Present: Barton Brierley, Planning & Building Director  
Steve Olson, Associate Planner  
David King, Recording Secretary

### **III. OPENING:**

**Chair Stuhr** opened the meeting at 7:05 PM.

### **IV. OATH OF OFFICE:**

**Norma Alley**, Newberg's City Recorder, initiated new terms of service by swearing in Nick Tri and Thomas Barnes. Barton Brierley also introduced TeAnna Rice as the new student representative, a freshman from NHS.

### **V. ELECTION OF CHAIR AND VICE-CHAIR:**

Annually a new Chair and Vice-Chair are elected. Barton Brierley compiled a service record of current commissioners (see Agenda Packet P23). **Commissioner Haug** added that his experience over 14 years was that the election of officers usually followed some sense of seniority. Ultimately, the commissioners agreed to this general guideline, and also reconfirmed the process of nomination and election to give each commissioner an opportunity to serve as vice-chair and chair.

**Motion #1: Smith/Tri** to elect Cathy Stuhr as Chairman (6 Yes/0 No , Absent 0).

**Motion #2: Smith/Tri** to elect Lon Wall as Vice-Chair (6 Yes/0 No , Absent 0).

## **VI. CONSENT CALENDAR:**

**Motion #3: Tri/Haug** to approve the minutes from the Planning Commission meeting of December 13, 2007 (6 Yes/0 No , Absent 0).

## **VII. COMMUNICATIONS FROM THE FLOOR:**

**Chair Stuhr** invited the 11 guests to bring forth any new topics for the agenda. No additional issues were asked to be added to the agenda.

## **VII. QUASI-JUDICIAL PUBLIC HEARINGS:**

1. **APPLICANT:** Initiated by Newberg City Council  
**REQUEST:** Annex six parcels (3.55 acres) along Alice Way and change the comprehensive plan designation/zoning designation to Medium Density Residential/R-2.  
**FILE NO.:** ANX-07-005/CPA-07-004  
**RESOLUTION:** 2007-246

**Chair Stuhr** first read ORS 197.763. She then explained public testimony procedures and time limits. Lastly, Chair Stuhr asked for any commissioners who needed to abstain, declare biases, or mention any previous involvement with this development.

**Commissioner Haug** told the commissioners that he had taken four pictures of the homes/properties on Alice Way to clarify some issues of the hearing. His pictures related to the aerial photograph included on Agenda Packet P54ff, and were presented to the Planning Commission.

### **Staff Report:**

**Steve Olson** presented the staff report by beginning with the location of Alice Way, and then restated the request, which is asking for a Comprehensive Plan change from Industrial to MDR, and a zone change from county VLDR-1 to R-2 (see P37). It is currently an island of county land well inside the city limits of Newberg.

The residents of Alice Way have been in contact with the city about an LID for sewer and water services to the property. A condition of the LID is that all the residents apply for annexation. All of them have consented to annexation. One problem facing the annexation is that the current IND comprehensive plan designation would make the existing residences non-conforming uses and require their eventual removal, hence the need to change the zoning so the families can stay on the properties. Mr. Olson then showed the zoning for the

area, as well as stream corridor nearby to the west of Alice Way and other neighbors to the property. Two Aerial photographs showed the neighborhood and surrounding area.

Criteria for an annexation is that it must be inside the UGB and contiguous to city property. Both of these criteria are met. A nonconforming issue with city regulations involves a second residence on one property currently being allowed by the county as a temporary hardship dwelling. The city is willing to carry forward the existing county conditions as annexation conditions and review the conditional use permit on a regular basis.

Urban sewers, especially water and sewer need to be installed within three years, though this is covered in the LID. Storm water and street improvements are not required with the annexation, but these would be the responsibility of the developer if the area redevelops. There are currently adequate police, fire, parks, and school services. Any financial impact of the annexation on the city will be very minimal.

With the city pinched for industrial land, it might seem counterproductive to let go of industrial zoned land, but the lots are small, half of them have steep slopes and are unlikely to be developed as industrial sites.

Staff recommendation is to approve the annexation with a Comprehensive Plan change to MDR, and a zone change to R-2 w/SC.

**Commissioner Haug** asked about the recent annexation of the Thorne property on Mountainview Dr. and its zoning. This was a recent annexation, according to Mr. Olson, and it is zoned R-1. Mr. Haug also asked about two lots to the south—do they have city services? Mr. Olson said they are already within the city and are going to be included in the LID.

**Commissioner Smith** asked if the two lots to the south are changing their zoning. Mr. Olson said that they will stay zoned as industrial even though they have residents on them already. One property has a cell tower on it, which would be non-conforming if the zoning changed to residential, and the other is owned by the Austins, but contiguous to other land they own.

**Commissioner Wall** asked what percentage of existing undeveloped industrial land in Newberg this land represents. Mr. Olson guessed it is only a percentage or two. Mr. Wall also asked when this land was zoned industrial. **Barton Brierley** believes it was 1980. Finally, Mr. Wall asked about island annexations, and the new requirements for them. **Barton Brierley** said this annexation is being done as a consent annexation, not an island annexation, since all the residents want this annexation.

**Commissioner Haug** wasn't clear about the rationale about the hardship case(s) for the extra dwelling. He wanted to know the rationale for granting an on-going conditional use permit (CUP). **Mr. Olson** responded that the city is not obligated to do so, but does think it fair to the residents already living there.

**Chair Stuhr** then followed up with a question about the hardship dwelling—is it compliant with R-2 zoning? Mr. Olson said that without a site plan, the city is not sure to date what condition the home is in until they see the CUP.

**Commissioner Wall** asked if the house could become a permanent dwelling if annexed into the city. **Barton Brierley** said it is unlikely that it would meet the standards of the city for manufactured homes.

**Chair Stuhr** referenced exhibit F, P54, and that the label box for the city needs to change the label from R-1 to R-2.

#### **Public Testimony:**

None of the eleven citizens were present to discuss the issue, either pro or con. There were no late correspondences. The staff summarized their approval recommendation for this annexation and comprehensive plan change.

**Commissioner Haug** asked for a separate list of the conditions. Mr. Olson referred to them being listed on the bottom of the PC resolution.

**Haug/Tri** moved to adopt Resolution 2007-246.

#### **Deliberation:**

**Commissioner Smith** gladly approves of the R-2 zoning and the flexibility it affords the owners to develop their land.

**Chair Stuhr** this property also makes a nice buffer with the spring corridor between R-1 and the industrial lands to the east.

**Commissioner Haug** stated his approval of the rationale involved for the CUP.

**Commissioner Wall** reminded the commissioner that the city is short of industrial land, and would like to see future staff reports to show the percentage of industrial land related to the 20 year supply.

**Commissioner Barnes** pointed out that northeast lot adjacent to Mountainview Dr. (Lot #100) often seems to have a commercial use to it, and is excited to see R-2 standards required of the lot.

<p><b>Motion #4 Haug/Tri</b> to adopt Resolution 2007-246 with the stated conditions (6 Yes/0 No , Absent 0).</p>
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**Barton Brierley** added that this annexation will go before City Council at the February 19, 2008 meeting.

2.   **APPLICANT:**   Victor McKay  
      **REQUEST:**    Conditional use permit to allow two single family homes on  
                          a single R-1 parcel.  
      **FILE NO.:**    CUP-07-003  
      **RESOLUTION:** 2007-245

**Chair Stuhr** first asked if ORS 197.763 needed to be read out loud again. No one indicated that it needed to be recited again. Mrs. Stuhr then asked for any commissioners who needed to abstain or declare any previous involvement with this development. Again **Commissioner Haug** took pictures of the area in light of some confusion. These pictures were shared with all the commissioners, with some explanation of the perspectives of each picture.

#### **Staff Report:**

**Barton Brierley** told of the history of the property (see P108). The request would allow two detached, single family dwellings on an R-1 parcel in an R-1 district. An aerial photograph showed the size and scale of the property as well as the existing structures on the property. Other photos showed the structures present and the size and scale of the backyard.

Criteria for CUP asks if 1) Is the development compatible with the neighborhood, 2) Does the development provide a functional living environment, and 3) Is the development consistent with city codes?

To address 1) the compatibility with the neighborhood, Mr. Brierley read from P112, and then discussed the characteristics listed on P113. The far right column of *Recommendations* on P113 are initially the conditions for a CUP.

To provide a functional living environment a paved driveway is being required with two off-street parking spots. The staff recommendation is to adopt 2007-245 with recommended conditions.

**Commissioner Haug** asked if the two homes on the lot would still fit the R-1 density. Barton Brierley said yes.

#### **Public Comment:**

Victor R. McKay, owner of the 402 Dayton Ave. property, as of 2003, and is more than willing to maintain the property properly and plans to live in the 1900 classic house in the front once his wife retires.

He has had problems with the people renting the back home. There have been problems with the dogs of the renters, for both the McKays and the neighbors. The problems have escalated to the point where the McKays have court date set for January 15, 2008 to evict them.

**Commissioner Wall** wanted to know what his previous vocation was (computer software sales), and whether he lives in Newberg. Victor R. McKay currently lives in Beaverton but wants to move to this property when his wife retires next year. Mr. McKay will gladly comply with the requirements recommended by the city.

**Commissioner Haug** asked if there were tenants in the front house right now. Victor R. McKay said there were tenants—friends—in the front house as well.

Bob Woodruff said that he lives next door to the 402 Dayton Ave. property, he and his wife (with a young daughter) moved in Aug. 2006, and they are concerned about their property value. He is concerned with the small size of the rental house in the back, and how it detracts from the typically R-1 housing. Mr. Woodruff's comments are summarized in his letter on P127.

Bob Woodruff is concerned with the precedent that could be set by the city if developers see this as an excuse to get away with this kind of development.

**Commissioner Wall** asked how much construction has taken place since the Woodruffs moved in. Bob Woodruff said that when they moved in they only saw a framed structure.

**Commissioner Smith** knows that the city encourages rentals in every zoning area. Mr. Smith wanted to know why Mr. Woodruff thinks rental property in an R-1 is wrong. Bob Woodruff said that the zoning has changed. Mr. Smith clarified that the zoning is staying the same, and only the use of this one lot is (possibly) changing. Bob Woodruff then said the concern is over the CUP and whether this house would have been built accordingly if the owners had followed proper procedures.

**Chair Stuhr** asked if anything currently about the property is violating criteria. The real issue before the Planning Commission is how to move forward in light of what has taken place. Bob Woodruff said that site design issues, like the deck that comes to the property line, obviously violates set back limits, but has been allowed to exist because of the way it was built haphazardly.

**Commissioner Haug** asked Mr. Woodruff believes the livability of his neighborhood has deteriorated. Bob Woodruff totally agreed, and believes the neighborhood could go one of two directions. The neighborhood has some house gems that he would like to see improved.

Leslie Woodruff, wife of Bob Woodruff, came forward to discuss livability issues. It currently is hard as a neighbor or citizen to access the house in the back because of the dogs, which make it dangerous. As a member of the community—she participates on the Traffic Safety Commission and Art Walk—she likes to participate in community affairs.

They want their daughter to grow up in a community that supports livability and standards established by the citizens and not the developers. She asks the commissioners directly to deny this request.

**Commissioner Smith** asked, assuming that the house is not removed, for clarity on the access of the house. Leslie Woodruff clarified that she would like to see better access to the house. Mr. Smith also commented that the deck brings their living right up to the property line. She agreed.

**Chair Stuhr** wanted to know if Mrs. Woodruff would be happy with the conditions that are proposed tonight. Leslie Woodruff believes that the conditions are just a minimum, and certainly wouldn't exceed the standards already in the neighborhood.

**Commissioner Haug** wanted to know what Mrs. Woodruff believes will happen to her property value. Leslie Woodruff said there is potential for it to go down if this CUP is permitted.

**Commissioner Wall** wanted to know if the compatibility with the neighborhood (item #1) is the major issue for the Woodruffs. She agreed that it is.

**Chair Stuhr** wanted to know about the deck situation—would it help livability if the deck was not present. Leslie Woodruff would be happy if the deck had been sited in the large backyard. Unfortunately, it was sited right next to their property.

Victor R. McKay pointed out that when he bought the parcel in 2003 he did take off the rotten siding to replace it with new siding and apply new coat of paint. It was an existing structure that he did not build. He knows that the fine print holds him culpable for permits, but he just assumed everything was done correctly with the city. He also believes some of the problems will be addressed when the current renters are dismissed. He will gladly begin meeting the requirements asked of him, and will even replace the fence with a higher one, if that would help.

**Commissioner Haug** clarified the use of the back house at the time of purchase. Victor R. McKay reported that when they purchased the house, the previous owners said the unit in the back was not being used as living quarters.

**Commissioner Barnes** asked when he will occupy the front house. Victor R. McKay said in a year when his wife retires.

**Commissioner Wall** wanted to know from staff where he ran afoul with the city. Barton Brierley said doing structural work without building permits is improper procedure for the remodeling that took place. Mr. Wall then asked about Mr. McKay's rental experience. Victor R. McKay has other properties he rents in Newberg and a few in California. Mr. Wall then asked how Mr. McKay might be able to afford the requirements. Victor R. McKay admitted that it would be hard all at once, but believes that he can do it over time.

**Barton Brierley** gave the staff recommendation as adopting Resolution 2007-245 with the recommended conditions. The options for the Planning Commission are to deny it, approve it, or approve it with extra conditions, which could include changes to the deck.

#### **Deliberation:**

**Haug/Wall** moved to deny CUP-07-003/Resolution 2007-245.

**Commissioner Haug** believes that this request deteriorates the neighborhood, leaving a negative impact on the neighborhood. He believes that livability in this R-1 area will be impacted by this urban crowding.

**Chair Stuhr** believes that McKay has the right to improve the situation. The conditions/requirements being asked of him in this resolution would make this parcel very livable with a new driveway providing access, as well as the other required changes. Mr. Haug points out that densification of urban property should have owner occupied properties. **Commissioner Smith** added the city standard policy is to encourage rental housing in all the zoning areas in order to have affordable housing in Newberg. Mr. Haug said that this property would fail miserably the point system for R-1 housing. He also asked how fair it is for the neighbors to live with the work done by a family member of the McKays, and who is a contractor, but didn't abide by city codes, standards and permits. **Chair Stuhr** brought the issue back to the case at hand—what is the impact on the neighborhood of this request.

**Commissioner Wall** wonders why this is a Conditional Use Permit issue. Mr. Wall also wonders where it was stated that the city is really pushing high density and abundant rentals. In light of the major discussion about affordable housing, maybe the density issue hasn't been codified. **Barton Brierley** did read from the Comprehensive Plan policies that do promote an adequate supply of rental properties.

**Commissioner Stuhr** also wanted Barton Brierley to answer why this is a CUP, and whether this structure could be built this way today. **Barton Brierley** had not answered before **Commissioner Wall** clarified that since this is a CUP hearing, Mr. Wall knows that the commissioners don't have to approve the staff recommendation. **Barton Brierley** agreed with Mr. Wall's summary.

**Commissioner Tri** wanted everyone to know that the structure already existed prior to Mr. McKay buying the property, and this hearing is simply about Mr. McKay improving the property.

**Commissioner Haug** believes that which started as a storage area/garage, it isn't fair for the neighbors now that it has become living quarters.

**Chair Stuhr** wondered if it was a grandmother in the back structure, would it be more acceptable to the commissioners and neighbors. **Commissioner Haug** still believes that the livability of the neighborhood has changed because of the use of the back building.



Furthermore, Mr. Haug doesn't believe that all the requirements being asked of McKay will be brought about in such a way to guarantee an improved livability for the neighborhood.

**Commissioner Barnes** asked about the compatibility matrix on P113ff. If all of the conditions were perfectly met, would the house qualify for being a legitimate flag lot? **Barton Brierley** said it would be close but not entirely.

**Commissioner Wall** somewhere in the process the commissioners have to ask if the criteria will be met. There is a gray area where commissioners have to decide if the requirements will be met in a satisfactory way. Certain evidence tonight could be construed in a negative way for the projects still to come. Mr. Wall also stressed that many cases like this are going to be coming before the Planning Commission in the future. How they vote tonight therefore is very important.

**Commissioner Haug** believes that the Planning Commission could approve just about anything if they approve this request. He strongly urges livability standards to be upheld.

**Commissioner Smith** says this is not a typical case. Many nuisance issues exist that the applicant wants to remedy. The design is not ideal, but tearing down the house and building a new one better located on the property is not financially feasible for the owner. The design issue(s) can be partially remedied by staff recommendations, and this is the best for the situation at hand.

**Commissioner Haug** wonders if the rental home should be vacated until the recommendations are established. If the house is not used as a rental until improvements are met, then Mr. Haug would be more amendable to the resolution. **Barton Brierley** believes this is already established in the language of the resolution. **Chair Stuhr** wants these conditions to improve livability.

**Commissioner Wall** pointed out there was a disagreement earlier about whether McKay had done structural work. The clearness of the issue from the City's point of view was not clear to Mr. McKay.

<p><b>Motion #5 Haug/Wall</b> to deny Resolution 2007-245 (2 Yes/4 No , Absent 0).</p>
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**Commissioner Smith** proposes to adopt Resolution 2007-245, and added that 1) the east side deck be removed and any substitute/replacement put in shall meet staff approval, R-1 design standards, and be no closer than five feet from the property line, 2) the current tenant shall be evicted and the unit shall not be occupied until conditions are met, and 3) arbor vitae or similar hedge material shall be placed between the structure and eastern fence.

**Motion #6 Smith/Haug** to adopt Resolution 2007-245 with the stated conditions (5 Yes/1 No, Absent 0).

**Barton Brierley** said that any appeal needs to be done in 14 days.

**VI. ITEMS FROM STAFF:**

Barton Brierley updated the commissioners that the County Commissioners are going to have their second meeting on URA and SE Transportation Plan on January 17, 2008.

The next meeting is January 24, 2008 with a continued hearing on affordable housing density. The meeting will be held at the Newberg Public Library.

**VII. ITEMS FROM COMMISSIONERS:**

**Commissioner Haug** says that Rate Review group needs additional members.

**Chair Stuhr** shared cowboy wisdom. *"Solving problems is like throwing cattle. Dig your heels in on the big ones and catch the little ones around the neck."* Texas Bix Bender

**VIII. ADJOURN:**

**Chair Stuhr** adjourned the meeting at 9:43 p.m.

**Approved by the Planning Commission this 24th day of January, 2008.**

**AYES:**

6

**NO:**

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**ABSENT:**

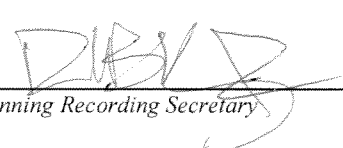
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**ABSTAIN:**

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(List Name(s))

(List Names(s))

  
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Planning Recording Secretary

  
\_\_\_\_\_  
Planning Commission Chair

  
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Date