

NEWBERG PLANNING COMMISSION MINUTES
February 14, 2019
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Edwards called the meeting to order at 7:00 p.m.

ROLL CALL

Members Present: Allyn Edwards
Jason Dale
John Wuitschick
Zach Pelz
Sharon Capri
Jeffrey Musall

Members Absent: Robert Ficker, excused
Capri Wheaton

Staff Present: Doug Rux, Community Development Director
Cheryl Caines, Senior Planner
Keshia Owens, Assistant Planner
Kristin Svicarovich, Engineering

PUBLIC COMMENTS: None

CONSENT CALENDAR

1. Approval of the January 10, 2019 Planning Commission meeting minutes.

MOTION: PC Wuitschick/PC Dale moved to approve the January 10, 2019 PC Meeting Minutes. Motion carried (6 Yes/0 No).

QUASI-JUDICIAL PUBLIC HEARING (complete registration form to give testimony - 5-minute maximum per person except for principals, unless otherwise set by majority motion of the Planning Commission).

1. **Vacation Rental** – Consider an application for a Conditional Use Permit for a Vacation Rental Home at 208 N. College Street, Yamhill County Tax Lot R3219AA 02000.
APPLICANT: Michael and Heidi Pender (owners)
FILE NO.: CUP18-0007 ORDER: 2019-01
CRITERIA: Newberg Development Code Section: 15.220.030, **15.225.060, 15.445.300-350, and 15.505.030.**

CALL TO ORDER:

Chair Edwards called the hearing to order at 7:02 p.m.

CALL FOR ABSTENTIONS, BIAS, AND EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION: None

LEGAL ANNOUNCEMENT: Read by Chair Edwards.

STAFF REPORT: The staff report presentation was given by Assistant Planner Owens. This was a request for a Conditional Use Permit for a vacation rental home at 208 N College Street. This was an existing three bedroom single family dwelling unit. The lot was zoned R-2 Medium density residential. She described the subject site and how the house had been updated by the applicant to better fit in with the neighborhood. This location was near downtown and was similar to a residential use in design and characteristics. There were two off street parking spaces already provided. The applicant would register the vacation rental with the City and pay the required tax. The maximum occupancy would be six guests. The applicant would also post standards and contact information by the front door.

PUBLIC TESTIMONY

Applicant: Michael Pender said this was his first vacation rental. He lived nearby this home.

PC Wuitschick thought vacation rentals were a good idea to allow people to come see what Newberg had to offer. Mr. Pender agreed there were many draws to Yamhill County.

Proponents: None

Opponents and Undecided: None

CLOSE OF PUBLIC TESTIMONY:

Chair Edwards closed the public testimony portion of the hearing at 7:12 p.m.

FINAL COMMENTS FROM STAFF AND RECOMMENDATION:

AP Owens said staff recommended approval of the application.

PLANNING COMMISSION DELIBERATION AND ACTION:

PC Musall also thought it was a good idea, especially to take advantage of the burgeoning wine industry and introduce people to the area.

MOTION: PC Dale/PC Pelz moved to approve CUP 18-0007. Motion carried (6 Yes/0 No).

2. **Mather Stream Corridor Variance:** Consider a stream corridor variance application to construct a single-family residence in the stream corridor overlay at 1904 N Birch Lane.

APPLICANTS: Richard and Nancy Mather (owners)

FILE NO.: MISC318-0003

ORDER: 2019-03

CRITERIA: Newberg Development Code Sections: 15.342.100(B) and 15.342.140(B).

LEGAL ANNOUNCEMENT: Read by Chair Edwards.

CALL FOR ABSTENTIONS, BIAS, AND EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION:

PC Pelz said his employer participated in the preparation of this application and he recused himself from the hearing.

CALL TO ORDER:

Chair Edwards called the hearing to order at 7:18 p.m.

STAFF REPORT: The staff report presentation was given by Senior Planner Caines. This was a request for a stream corridor variance to construct a single family residence at 1904 N Birch Lane. The proposed encroachment was 1,800 square feet. This was currently a vacant site and was zoned R-1. The stream corridor overlay district was on a portion of the site. The adjacent uses were single

family residences. The stream corridor was a tributary to Hess Creek. The stream was not actually on the site, but was on an adjacent site also owned by the applicant. The stream report stated that the stream corridor was in a degraded, marginal condition. It was mostly on the southern portion of the site and had non-native vegetation. The northern portion of the site had Maple and Ash trees. The wildlife that was observed was birds, squirrels, and crayfish. An enhancement plan was proposed as part of the project including planting native trees and shrubs. There were no other alternative layouts in the application. She then reviewed the findings for the criteria. One criterion was on balance the proposed development was supposed to bring an equal or greater functional value to the site. Staff had looked into another option where the house could be put on the portion of the site that was not in the stream corridor. It seemed like this option would have less of an impact and was not considered by the applicant in the application. Staff thought that the criterion that the development would bring comparable or better value to the site had not been met. Another criterion was the remaining resource values in the corridor should be protected and enhanced. There would be no stream alteration and the proposed native plantings would improve wildlife function. Staff thought this criterion had been met. The criteria for the fill was that it would be made of natural materials, would be the minimum required to achieve the project, would not impact the flood storage capacity, the grading would not be significantly increased, and it would not affect stream turbidity. There was not much information about the fill in the application. The placement of the home was in the flatter portion of the site. Staff thought this criterion had not been met. The final criterion had to do with tree removal and the applicant was proposing to remove five trees within the stream corridor. If they considered the alternative site plan where less of the structure would be put into the stream corridor, there might be a way to minimize even further the number of trees that would be removed. Staff found that there were other options where fewer trees could be removed and that criterion had not been met. Staff recommended denial of the application.

Chair Edwards asked how the width of the stream corridor had been determined. It did not seem like it needed to be such a vast expanse. Community Development Director Rux explained how the stream corridor had been evaluated and approved. He had been told that part of the corridor was drainage that came from the high school. He did not know why the corridor started at Birch Lane, but the documentation showed these were the boundaries. The corridor did not prohibit activity or some level of encroachment but they had to go through the regulations and produce the findings. In this situation, there was another layout that would minimize the encroachment substantially.

PC Capri asked if the soil was not fit for a structure. CDD Rux responded he had not seen any geotechnical report on the soil. When the corridors were adopted, they were also looking at the wildlife associated with the streams. For this location, the consultant identified an area to the north that had habitat value in the 1990s and drew the line at that location.

Chair Edwards said there was a lot of construction in the 1990s and there might have been more habitat here. Overtime things had changed and the property was sold. The applicant planned to improve the property and he thought that met the criteria. SP Caines responded that the application met some of the criteria, but there would be a permanent impact to the corridor. There were other alternatives that would not have the same impact and staff found that some of the criteria had not been met.

PUBLIC TESTIMONY

Applicant: Caleb Leonard, attorney for the applicant, requested a continuance of the hearing to gather additional evidence for the Commission. He said the proposed location was the best placement on the property geographically. It was the least amount of excavation and disturbance to the property. The amount of rejuvenation of the area in the stream corridor would be substantial. Staff thought the stream turbidity and site fill were not properly addressed. There would not be

much site fill needed for the area they proposed to use for the house. They would use best practices and all natural fill. Regarding the lack of an alternative site, it was a valid point but he gave reasons for the proposed location including the required 10 foot setbacks. The house would touch the stream corridor no matter where it was put. They could not move it to the northwest section of the property as the land went up substantially. It would require extreme excavation, which would impact the corridor more than the proposed location. The proposed location would have the least amount of impact on the property as a whole and adding the amount of rejuvenation that was intended for the property would counterbalance the intrusion into the corridor. If the Commission wanted, they could continue the hearing for the applicant to do a geotechnical report to determine how much of an impact the alternative site would have. This location had always been planned to be used to build a house. It had the least amount of impact and the improvements would make this scrub lot into a very lovely lot that would enhance the neighborhood and natural resources on the lot.

PC Capri asked if they could grandfather in the original plan for the property since it was bought and planned before the stream corridor was imposed. CDD Rux responded there were no provisions in the regulations for grandfathering.

Chair Edwards asked since this was an older subdivision, why was this lot never developed.

Dick Mather, applicant, explained the person who originally owned the property was going to build a retirement home there, but decided to sell it instead. When he bought it, he had cleaned it up to build a retirement home on it. Now his daughter needed a home and he was trying to get permission to build a house. He did not know it was in the stream corridor until he had started this process.

PC Musall asked what they were planning for the improvement to the corridor. Mr. Leonard discussed the improvements that were planned. The goal was to have all native plants to attract native wildlife to the area. Because of the slope of the property, if they used a different location, the amount of digging would be intensive and could potentially destabilize the area and affect the surrounding lots.

PC Capri suggested putting the house on stilts. Mr. Leonard responded they would still have to do substantial excavation to dig down for the foundation.

Proponents: None

Opponents and Undecided: None

CLOSE OF PUBLIC TESTIMONY:

Chair Edwards closed the public testimony portion of the hearing at 8:02 p.m.

FINAL COMMENTS FROM STAFF AND RECOMMENDATION:

SP Caines said staff recommended denial of the application.

PLANNING COMMISSION DELIBERATION AND ACTION:

PC Dale was sympathetic to this application, however he did not think there was evidence to override staff's recommendation. He suggested continuing the hearing so the applicant could do a geotechnical report. This would be a good project to beautify the lot and improve the neighborhood, but they had to back it up with data and findings.

PC Wuitschick was torn between what they had to do and what they wanted to do. He thought a geotechnical report needed to be done as well. He asked if that report would also evaluate the soil.

Engineer Kristen Svicarovich commented that it would evaluate the soil conditions and would help determine what kind of foundation was needed.

Chair Edwards said even though they were encroaching on the stream corridor, there would be substantial improvements made to the property. The encroachment was not impeding the functionality of the stream corridor. He thought it met the criteria and no finding needed to be stated. CDD Rux said staff thought that some of the criteria had not been met. The applicant had suggested a continuance to bring back additional information.

Chair Edwards asked what was the most important criterion that had not been met, and would it be met with a geotechnical report. SP Caines reviewed the criteria that staff thought had not been met. There was information missing in the stream corridor impact report.

Chair Edwards asked what the process would be to modify the stream corridor. CDD Rux explained the process.

PC Capri was in support of continuing the hearing until March and allowing the applicant to submit the additional information.

PC Musall asked if a continuance to March would be enough time for the geotechnical report.

Chair Edwards did not think a geotechnical report was necessary, but staff needed the time to change the findings if the Commission wanted to approve the application.

Chair Edwards reopened the public testimony at 8:22 p.m.

Mr. Leonard had an alternative site map that showed the only feasible alternative which would still encroach into the corridor. There was a statement in the report that the house could not be placed outside this zone. There was no place the house could be put that it would not go into the stream corridor zone. He thought the re-beautification would counteract the fact that the house was in the corridor. Geotechnical reports were expensive and he thought the criterion was already met. He had another supplemental document that addressed stream turbidity. The site fill would be all natural and there would be very little excavation on the site. He entered Exhibit 8, regarding stream turbidity, and Exhibit 9, alternative site map, into the record.

Chair Edwards asked if this information would support findings for approval. Mr. Leonard responded that was correct. He thought they would satisfy the minimum requirements of the code. Whether they were persuasive enough was up to the Commission.

Chair Edwards closed the public testimony at 8:28 p.m.

Chair Edwards suggested continuance of the hearing to March to allow staff time to go through the submitted information. The Commission liked the spirit of the application. They understood that there was criteria in question and there would be some sort of encroachment, but it was understanding how much of an encroachment and how tolerant they would be of that encroachment. They would like staff to review the information that had been submitted to see if it addressed the concerns to reconsider the recommendation for denial.

MOTION: PC Dale/PC Musall moved to continue the hearing for Order 2019-03 until March 14, 2019 at 7:00 p.m. Motion carried (5 Yes/0 No).

ITEMS FROM STAFF

1. Update on Council items was given by CDD Rux including appointments to advisory committees, initiation of Development Code amendments to address duplexes and triplexes in R-1, the vertical housing program, parking regulations in downtown, and development on 2nd Street, community visioning update, and Riverfront Master Plan.
2. Anticipated schedule of Planning Commission activities for upcoming meetings was discussed by CDD Rux.
3. Next Planning Commission meeting: March 14, 2019

ITEMS FROM COMMISSIONERS

PC Pelz reported on the Mountainview middle school visit.

PC Wuitschick appreciated staff's work.

PC Capri commented about the information for tonight's meeting which was a lot of dry reading and she asked about the process.

Chair Edwards clarified the Commission could visit the sites, but would have to disclose that at the hearings. Commissioners were not to discuss the applications with others as that would be considered ex parte contacts.


Chair Edwards thought they should schedule a meeting with the City attorney for land use training.

ADJOURNMENT

Chair Edwards adjourned meeting at 8:50 p.m.

Approved by the Newberg Planning Commission this March 14, 2019.


Chair Edwards, Planning Commission Chair


Bobbie Morgan, Office Assistant II