

CITY OF WEST LINN
PLANNING COMMISSION

Minutes of May 6, 2009

Members present: Chair Michael Babbitt, Vice Chair Robert Martin, Michael Jones and Christine Steel.

Staff present: Chris Kerr, Acting Planning Director; Peter Spir, Associate Planner; and Timothy Ramis, City Attorney

Members absent: Shawn Andreas, Valerie Baker and Dean Wood

CALL TO ORDER

Chair Babbitt called the Planning Commission meeting to order at 7:00 p.m. in the Council Chambers of City Hall.

APPROVAL OF MINUTES

Jones **moved** to approve the Minutes of, 2009. Martin **seconded** the motion and it **passed** 4:0.

PUBLIC COMMENTS (None)

PUBLIC HEARING

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

CDC-09-04 Proposal of two-year extension of original land use approvals, code amendments to CDC Chapters 24, 55, 60, 75, 85 and 89 (Continued from April 15, 2009)

Chair Babbitt opened the public hearing. The staff suggested the Planning Commission continue it and hold a work session.

Motion

Jones **moved** to continue CDC-09-04 to May 20, 2009. Steel **seconded** the motion and it **passed** 4:0.

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ZC-08-02/MIP-08-04 Zone Change and 2-Lot Minor Partition at 22810 Weatherhill Road

Chair Babbitt opened the public hearing and explained the applicable criteria and procedure. He asked the Commissioners to declare any conflict of interest, bias or site visit. Jones, Martin and Babbitt each reported they had made a site visit. Steel reported she had driven by the site. No one challenged the ability of any individual Commissioner or the Planning Commission to hear the matter.

Staff Report

Peter Spir, Associate Planner, presented the staff report (see Planning Department Staff Report dated March 27, 2009). He described the surrounding zoning and uses and presented aerial photographs to show how the parcel would be divided and where the new house would be. He

advised the code assumed that R-40 zoning was for land that was distant from services and might have some environmental constraints; and R-20 zoning was for land that had access to urban services and on which trees and slopes would be respected. He said the applicant proposed to protect the trees and the steep slopes with a conservation easement. He concluded that the application was consistent with Comprehensive Plan policies and he recommended it be approved subject to conditions of approval to make half street improvements on Weatherhill Road; install a sidewalk on Salamo Road; and pay fee in lieu to relocate PGE equipment.

During the questioning period, Spir confirmed for Martin that each application package had to include all submittals and the current package contained early versions of submittals that had subsequently been revised. He said the staff would try to better identify which were the final versions in future application packages.

Applicant

Lisa Barker, 307 NW 16th Avenue, Battleground, Washington, 98604; and William Dehning, 22810 Weatherhill Rd., each testified they had no comments to add. However, when the Commissioners observed the plans called for a 17% driveway slope even though the CDC limited it to 15%, the applicants' engineer, Mel Jones, 7535 SW Hood Ave., Portland, Oregon, explained the applicant had planned it to satisfy the fire department, because they assumed those were the most stringent standards. He said fire trucks would be able to access it and the house would be sprinklered. When asked if he could design the driveway to meet the 15% CDC standard he said he could, but a lot of fill would be necessary and it would raise the entire site and have more impacts. The staff agreed the proposed plan would have less impact. But the Commissioners observed they had to apply the code. So they had to deny the application, or condition it on a driveway that met the code; or the applicant had to ask for a variance to driveway grade. They asked Spir to check to be sure the code limited driveways to 15%.

Steel wanted assurance drainage around the new house would not be a problem. Mel Jones said the flow in the old drainage ditch had already been redirected to a public system and the applicant would work with the Engineering Department to design drainage for the house. He said the applicant did not expect any drainage issues because of the nature of soils in that area. Babbitt asked if the staff had done an analysis to show the proposed fee in lieu of improvements was justifiable. The City Attorney advised that was not necessary if the city and the applicant were in clear agreement about the cost.

Mel Jones commented that it was very late in the process to hear that the application was not complete. He stressed the applicant had made concessions to protect trees, move utility equipment and install a sidewalk. Babbitt advised it was the applicant who bore the burden of proving the application was consistent with the code. Mel Jones then confirmed the applicant could bring in fill and limit the driveway to 15% along the segment of it that was 17%. Spir advised the last 18 feet of driveway could not be more than 12% and Mel Jones confirmed that part of the driveway met the code. There was no other public testimony.

Deliberations / Motions

Chair Babbitt closed the public hearing and opened deliberations. Jones suggested adding a condition to ensure the driveway met the code. The staff revised Condition 2 to require the applicant to enter into an agreement to pay for the costs of underground PGE service

replacement. Babbitt asked if the applicants agreed to those changes in conditions and he observed they indicated they did.

Motion

Jones **moved** to approve ZC-08-02/MIP-08-04, subject to Condition 1 as stated in the staff report; Condition 2 modified to require the applicant to enter into an agreement to pay for the costs of underground PGE service along the site frontage; and new Condition 3: "The driveway shall meet all applicable standards of the West Linn Community Development Code." Martin **seconded** the motion and it **passed** 4:0.

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Var-09-04/VAR-09-05/VAR-09-06 Class II Variances at 2981, 2982 and 2998 Winkle Way

Chair Babbitt opened the public hearing and explained the applicable criteria. He asked the Commissioners to declare any conflict of interest, bias, ex parte contact or site visit. Martin reported he had visited the site and found the first two houses, but instead of house #28 he had found another house with a sign that indicated it was under review. Jones and Steel each reported they had driven by the site. When invited by the chair, no one present challenged any individual Commissioner's or the Planning Commission's ability to hear the matter.

Staff Report

Chris Kerr presented the staff report (see Planning & Development Staff Report dated April 22, 2009). He said it had been discovered after the subject houses were constructed, or nearly constructed, that they encroached into the front setback. The mistake that the developer made had been found and "redlined" by the staff on the initial plans, but both the developer and the staff had overlooked that the correction had not been made in the final plans. A fourth house also encroached into the front setback, but by a small enough amount that the Planning Director could grant a Class 1 variance for it. The sign that Martin referred to was on that lot. The circumstances for all the lots were the same, so the staff and the applicant had chosen to present the variance requests at the same time. But the Commission was to hold a separate vote on each variance request.

Kerr showed an aerial photograph of the subdivision, which he clarified was a straight subdivision - not a Planned Development - so all the lots were required to have a 20-foot front setback. The subject lots encroached into the front setback by 3.5 to 4.5 feet. He said the house on Lot 1 was already occupied. He recommended approval. He said the variance would not adversely impact the neighborhood because the lots were interior lots. The developer would not benefit from it because the houses were no larger than they would otherwise have been - they were just closer to the front of the lot. He said planners typically preferred to see this kind of articulation in front setbacks. He said the applicant proposed to mitigate for the encroachment by installing a bench and landscaping amenities that would benefit the community. He said none of the houses would be closer to the street pavement than 25 feet and all the garages would meet the 20-foot front setback. He recommended the following condition of approval apply to the each of the two lots with unoccupied homes: "Prior to the issuance of a certificate of occupancy for the home the applicant shall make all the associated improvements, including those in Tract A, as proposed in the April 13, 2009 letter from Mr. Jimmy Luker to the City of West Linn." He explained the landscape improvements would soften the impact of allowing the houses to be a few feet closer to the street.

Applicant

Michael Robinson, 1120 NW Couch Street, 10th Floor, Portland, Oregon, 97209-4128, asked Kerr to confirm that the entire Planning Commission file was before the Commissioners and Kerr confirmed it. Robinson said the applicant agreed with the recommended conditions of approval. He acknowledged the developer had made a mistake. He said the variances would correct it and the developer would gain no benefit from that. They paid a cost in terms of the cost of the variance process; the cost of delay in selling homes; and the cost of the mitigation. Adjacent homebuyers would be told about the variances on the subject lots. The houses were no larger than they otherwise would have been. He said the front encroachments were all less than five feet, which was a small percentage of the total footprint, and the rear setbacks were now larger than they otherwise would have been. He pointed out the lots were internal to the subdivision. He said the Ernes had purchased and occupied Lot 1. He recalled a local newspaper article had stated the houses were within the right-of-way, but that was incorrect. He said the applicant had asked the Parks and Recreation director for his opinion and he was satisfied with the proposed mitigation landscaping. He said this was not a case of rewarding a code violation. The lot lines could not be adjusted and there was no other way to abate it. The applicant had instituted internal procedures to avoid making the same mistake in the future.

During the questioning period Jim Luker, Division President, D R Horton, 3570 SW Riverfront Parkway, Unit 201, Portland, Oregon, pointed out Exhibit 2 described the applicant's new procedures. Luker added that the applicant had also just decided to have a third party civil engineer certify that foundation forms met the setback requirements before a foundation was poured.

Proponents

Alice Richmond, 3939 Parker Road had submitted written testimony. Jones read it aloud for the record. Richmond had written that she supported the staff recommendation; she did not want to see the houses removed; she felt it was reasonable to allow a few feet variance; and she felt the variety of frontages broke the monotony along the street.

Karen and James Erne, 2998 Winkle Way, testified that they wanted to be involved in the plant selection and placement at their home.

Rebuttal

Mr. Robinson said the applicant would allow the Ernes to participate in plant selection and placement.

Deliberations / Motion

Chair Babbitt closed the public hearing and announced a five-minute recess to allow staff to return with copies of a letter they had received that day (see May 6, 2009 letter in opposition from Karie Oakes, 1125 Marylhurst Dr.) He asked for and received confirmation that each Commissioner and the applicant had received and read their copy.

Martin asked what the City staff was doing to avoid the mistake in the future. Kerr said the staff would now call an applicant to alert them that something had been redlined and the Planning staff would double check surveys and that redlined areas were corrected on final plans. He related that it had been a City inspector who had discovered the mistake.

Jones asked staff if there should be a condition of approval requiring a written agreement between the applicant and the Ernes. Kerr explained the City had no way of enforcing it because there was no need for any more permits on that lot. Babbitt observed the applicant had testified they would let the Ernes participate in the mitigation and that was on the record. Jones asked the Ernes if it was satisfactory to them to rely on the fact that the public record showed that the applicant would let them participate in the mitigation around their home rather than a condition of approval? They confirmed they found it satisfactory. Kerr then clarified which variances applied to which lots.

Vote on Lot 3

Jones **moved** to approve VAR-09-04 subject to the following condition: "Prior to the issuance of a certificate of occupancy for the home the applicant shall make all the associated improvements, including those in Tract A, as proposed in the April 13, 2009 letter from Mr. Jimmy Luker to the City of West Linn." Martin **seconded** the motion and it **passed** 4:0.

Vote on Lot 28

Jones **moved** to approve VAR-09-05 subject to the following condition: "Prior to the issuance of a certificate of occupancy for the home the applicant shall make all the associated improvements, including those in Tract A, as proposed in the April 13, 2009 letter from Mr. Jimmy Luker to the City of West Linn." Steel seconded the motion and it passed 4:0.

Vote on Lot 1

Jones **moved** to approve VAR-09-06. Martin **seconded** the motion and it **passed** 4:0.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION (None)

ITEMS OF INTEREST FROM STAFF

Kerr recommended the Planning Commission continue CDC-09-04 and they did (see above).

ADJOURNMENT OF PLANNING COMMISSION

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 8:20 p.m. Then the Planning Commission then began a Special Work Session to consider a proposal (CDC-09-04) to extend land use approval expiration dates and construction bonding options (see separate Work Session minutes of May 6, 2009).

APPROVED:



Michael Babbitt, Chair

6-3-09

Date