



CITY OF
West Linn

PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT

Minutes of October 13, 2010

Members present: Chair Robert Martin, Vice Chair Michael Jones and Commissioners, Michael Babbitt, Laura Horsey, Christine Steel
Members absent: Dean Wood
Staff present: John Sonnen, Planning Director; Zach Pelz, Special Projects Planner; Khoi Le, Civil Engineer; and William Monahan, City Attorney

CALL TO ORDER

Chair Martin called the Planning Commission meeting to order in the Council Chambers of City Hall at 7:30 p.m.

APPROVAL OF MINUTES (N/A)

PUBLIC COMMENTS

David Rittenhouse, 2101 Greene St., President of the Savannah Oaks Neighborhood Association questioned whether MISC-10-14 was a *de novo* hearing. City Attorney Monahan advised it was a *de novo* (open) hearing on the question of whether the development approval met the applicable criteria for an extension of time. The Planning Commission would not reconsider the development review approval.

Alice Richmond, 3939 Parker Rd., invited people to donate children's toys for a benefit event.

PUBLIC HEARINGS

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

MISC-10-14, Lot line adjustment and extension of previously approved 289,000 sq. ft. office campus and parking structure near 1870 Blankenship Drive

Chair Martin opened the public hearing and outlined the applicable criteria and procedure. He asked the Commissioners to declare any conflict of interest, bias *or ex parte* contact. All the Commissioners present had visited the site. Commissioners Jones and Babbitt served on the Planning Commission when it decided the original application. Commissioners Horsey and Steel each reported an *ex parte* contact. When invited by the Chair, no one in the audience challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

Staff Report

Zach Pelz, Special Projects Planner, presented the staff report (see Planning Staff Report dated October 13, 2010). In 2007 the City Council had heard an appeal of the Planning Commission decision to approve the development and upheld the decision after adding more conditions of approval. The staff found the approval qualified for a two-year extension to March 23, 2012. Extension provisions in CDC Chapter 99 called for making the proposal consistent with current code and correcting for errors, omissions or changes in fact since approval. But the City could not reverse previous judgment calls.

Pelz described the development. It was to be constructed in two phases. The approval required the developer to make street improvements. One improvement was to install a new traffic signal where the driveway intersected with Blankenship Road. The original lot line adjustment had been approved by the Planning Director in a separate review process, but never recorded, so it needed to be approved in the current process. Since the development had been approved the City had adopted new standards related to right-of-way and curb cut width, and ADA parking and signage. The current review dealt with those aspects and other things that had not been considered during the original approval process, including the location of bicycle parking, drainage across a walkway, and the location and amount of carpool and van pool parking. It also considered changes in surrounding properties. The applicant had modified the location of the access across from Tannler East. That met recommended Condition 5, Access Spacing. The staff had added Condition 7, Lot Line Adjustment, so the proposed lot line between lots 801 and 200 would be composed of straighter segments than the applicant proposed. The staff revised Condition 3(a) so it did not call for bumper guards. Interior sidewalks were wide enough that no bumper guards were required. Condition 4 was necessary to ensure the applicant corrected a situation where drainage crossed a walkway.

During the questioning period, Pelz confirmed that part of the proposed lot line adjustment was along infrastructure, but staff was recommending a different, straighter, demarcation because the code called for generally straight segments. He explained the new traffic signal was to be where the driveway met Blankenship Road because ODOT did not want it to be at the Tannler/Blankenship intersection where it might cause traffic to back up and block another intersection. He was not sure in which phases the street improvements would be constructed.

Applicant

Reece Conrad, Group Mackenzie, 1515 SE Water Ave. Ste. 100, Portland, Oregon 97214, stated that the applicant had no objection to the staff-recommended conditions of approval as long as the typographical error in Condition 3(b) was corrected to refer to "CDC Section 46.090(H)." During the questioning period Conrad indicated the applicant was willing to work out a straighter lot line adjustment that eliminated a zigzag, but they preferred to keep the segment they proposed along the driveway. He clarified that the applicant did not yet know how they would phase the roadway improvements. They would likely start with the traffic mitigation improvements associated with the building on the lower part of the hill because they planned

to build that building first. He clarified that the applicant did not know exactly when they would start the project because they had not yet found an occupant. But they had so much invested in the development already that they wanted to reach the point of “substantial construction” before the extension expired. He clarified the property owner and the City still had to work out how who would own the conservation easement area. He explained the applicant had not recorded the originally approved lot line adjustment because they had failed to keep track of that requirement.

Brent Ahrend, Group Mackenzie, the applicant’s traffic engineer, anticipated that the signal at the driveway exit would cause the largest percentage of drivers to choose to exit there. Trip generation estimates were that if all 830 parking spaces were occupied, almost half of those drivers would exit the site during the PM Peak hour. The signal and turn lane were designed to accommodate that. Babbitt questioned the conclusion that traffic volume had decreased significantly between the 2006 and 2010 studies. Ahrend explained that 2006 study projections had factored in future volume generated by future new development in the area that had now been built. While traffic volume on Tannler had not changed much, traffic volume on Blankenship was lower now, likely because of the economy. The left turn from Tannler onto Blankenship was rated Level of Service (LOS) F because the delay there was greater than 50 seconds. But the signal at the site driveway would create more gaps in traffic on Blankenship and give drivers turning left onto Blankenship from Tannler more opportunities to make that turn.

Proponents

Alice Richmond, 3939 Parker Rd., observed that the extension was necessary due to the economic crisis. The applicant’s representatives had explained how they would control traffic. She was not concerned about a 50-second delay at the intersection because the development would place offices and businesses where West Linn residents could patronize them without having to drive to another city. It would also generate tax revenue.

Opponents

David Rittenhouse, President of the Savannah Oaks Neighborhood Association, explained the neighborhood was concerned about traffic, an inadequate noise study, drainage/slope issues, the proximity of Building A to Blankenship Road, and the underground catch basin. He observed that the applicant did not propose any improvements to the Tannler/Blankenship intersection, which was failing. He questioned whether a “one-day study” of traffic was adequate. He suggested the proposed traffic mitigation was much less likely to be adequate now and when the economy improved than when the application was approved. He based that conclusion on the traffic study the applicant had submitted four years ago that anticipated a 3% annual growth rate in traffic and on the fact that traffic improvements had been made in a couple of other places along the corridor since then that improved the flow. He observed the proposed signal was across from an Albertson’s center entrance and would cause congestion problems there as more and more drivers opted to turn at the signal rather than at the

Tannler/Blankenship intersection. He contended the noise study was inadequate because it did not offer proof that noise would meet the code standard. He said the application did not meet the code that called for looking for ways to preserve the existing topography. He advised the code called for all offsite improvements to be completed before any building permit was issued – it should not be allowed to be done in stages. He objected to allowing deferred compliance with the conditions of approval. He held that Building A was too tall and too close to Blankenship Road. The resulting “canyon” effect would affect pedestrians and the ambiance of the area. He advised the underground catch basin should be open because the City preferred such facilities to be outside where they were easier to monitor and maintain.

Rittenhouse testified that he had just received a packet containing many conditions of approval that neither he nor the Willamette Neighborhood Association had time to examine. But during the questioning period, he explained he would not ask for a continuance because that would extend the process another two weeks. Babbitt advised that the conditions of approval that the staff was recommending that related to the current extension request were in the staff report. The others Rittenhouse was referring to were likely the conditions of approval of the development application that had been in the record for several years since the original development application hearing and appeal. He recalled the development review process had addressed the issues that Rittenhouse raised. The original application contained a noise study that concluded the development met the code. The Planning Commissioners had initially been inclined to locate the signal at the Tannler/Blankenship intersection, but they had agreed to locate the signal at the driveway because ODOT did not want it at the intersection (where it would cause queuing issues). Rittenhouse served on the Tenth Street Task Force. He recalled the Task Force had considered alternatives and then recommended realigning Tannler to the west, through the complex. He explained he was not fighting the theory of having a light where it was proposed, but he was opposed to the actual application because the street that was to go through the complex was not a public street. He did not think it would work as ODOT said it would.

Ed Schwarz, 2205 Tannler Dr., asked the Commissioners to deny the extension and allow the “flawed” project to die so the applicant would have to submit a better application. His main concerns were that Building A would loom over Blankenship Road and that the application did not sufficiently mitigate traffic. He perceived that traffic was worse than it was three years ago, especially with the additional traffic generated by the new vet clinic. He held that a project the size the applicant proposed should have a much more extensive public and staff review. It was “the wrong project in the wrong place at the wrong time.” He advised that the code allowed the Commission to deny it because it said the Planning Commission “may” grant an extension. He recalled the expert the Savannah Oaks Neighborhood Association had hired to review the applicant’s noise study had found it inadequately demonstrated the development would meet the code.

Roberta Schwarz, 2206 Tannler Dr., pointed out the applicant had conducted the traffic study about a week before the vet clinic opened. She reported that the lot line adjustment had never been presented to the Savannah Oaks Neighborhood Association. She reasoned that because

the proposed development was worse than a similar, earlier, development that people disliked, the City did not intend to allow developments as large as the applicant's project to have an extension of approval time. She stressed that the applicant would build a seven-story building right next to the sidewalk. She stressed that the intersection had a Level of Service F and would continue at that rating. Her own experience was it had gotten harder to make a left turn there. She questioned why the City should make it harder for residents to get in and out of their homes in return for empty office space. The applicant did not have anyone ready to move in and did not know when they would have an occupant. She asked the Planning Commission to deny the application.

Rebuttal

Conrad recalled the previous development approval process had examined noise and drainage so those issues were not pertinent to the extension hearing. The building along Blankenship complied with all the height and setback requirements and the applicant had used terracing and landscaping to minimize its appearance. Ahrend said traffic volume had decreased since the 2006 study. He clarified that the May traffic count did include vet center traffic. The center had actually opened in April, but the opening ceremony was not until June. Even if it had not been counted, that use would generate about 20 Peak Hour trips, which would not be enough to bring the volumes back up to where they were in 2006. He observed that Rittenhouse had testified that he and the Tenth Street Task Force liked the alternative that directed traffic through the site, but he did not want it there because it came out at the Albertson's driveway. He pointed out that one condition of approval of the development permit was that the applicant would work with the City to change their traffic mitigation plan if the City and ODOT found a better way to mitigate traffic in the Tenth Street corridor.

Mike Robinson, Perkins Coie LLC, 1120 N.W. Couch Street, Portland, Oregon 97209-4128, advised that the application met Chapter 99 criteria for an extension and the applicant agreed with the staff report and recommendations. The applicant was seeking to preserve their investment in a bad economy. The extension ordinance was being properly used. There was nothing in the record of City Council approval of the extension ordinance that showed they intended it to only apply to small projects. The City had had three years to write code to ensure a development like this could not be approved again, but it had not done that. The development met the applicable approval criteria three years ago and still did. No one had proved otherwise. Staff had done a thorough analysis that looked at every new CDC criterion that had been adopted since the original development approval. The fact that Rittenhouse was able to say everything he wanted to say that night showed the hearing was a *de novo* hearing. He held the application met the applicable criteria and it was the Planning Commissioners' duty to approve the extension.

During the questioning period, Robinson advised that if the project reached the point of "substantial construction" before the extension period expired the developer was allowed to continue and finish the project. The entire project did not have to be finished and occupied by the expiration date. He pointed out the CDC defined "substantial construction." Pelz

projected the code definition onto the large meeting room screen for all to read. It said any of the following had to have taken place to be “substantial construction:”

- Utilities installed to serve the project
- Approved grading had been undertaken representing at least 25% of all the required preliminary grading
- Foundation excavation had occurred
- Foundation or building construction had occurred
- Street improvements were being installed, or,
- Major physical improvement required as part of the approved permit had clearly begun.

When asked, Pelz said he understood that reaching “substantial construction” by the extension expiration date would vest the entire development, not just one phase of it. He observed the original development approval did not establish any time limits for phasing and the Section 99.325 extension provision did not mention phasing. Monahan confirmed that once vested, the developer had an indefinite time in which to finish the development.

Horseley observed the City Council approval record showed they talked about the phases. Section 99.125 required an applicant to set the scope of phases. She suggested the Planning Commission require the applicant to tie each of the street, sidewalk, trail, landscaping, lighting and other improvements called for in the conditions of approval to a phase. Monahan and Sonnen pointed out that the Council decision imposed Condition 9, which connected some improvements to phases.

Condition 9. Prior to occupancy of the lower building on the site, the applicant shall have completed all street and traffic improvements listed as “Phase I mitigation” in the application, particularly, the November 3, 2006 letter from the applicant's traffic engineer, including the recommendations from city traffic consultant Carl Springer in his memorandum dated October 30, 2006, and the recommendations of the Oregon Department of Transportation (ODOT) contained in their letters of November 21, 2006. Prior to occupancy of either of the two upper buildings on the site, the applicant shall have completed all improvements listed as “Full Development Mitigation” in the application, as stated in the same letter as above, and as modified or amended by the recommendations of Carl Springer and ODOT dated October 30, 2006 and November 21, 2006 respectively. All improvements must be coordinated with and approved by the City, and ODOT in their areas of responsibility.

Horseley suggested there might be an omission in the application itself to be addressed in the extension hearing, because it did not conform to Section 99.125 requirements that an applicant who proposed a project in phases had to set forth the timing of each phase in the application. Pelz recalled that appellants had based part of their appeal (AP 07-01) on a contention of improper phasing. The Findings explained why the Council had dismissed that argument. Horseley asked how the staff connected improvements to phases in practice. Sonnen explained they were guided by Section 99.125 regarding project phasing: “Each phase shall also install all necessary improvements to serve the development within that phase. “ Anything necessary to support the demands of what was to be built in each phase would also have to be built. That would include stormwater facilities and offsite work. **Khoi Le, Engineering Department**, pointed out that Condition 9 required Phase 1 mitigation (the major traffic improvements) to be done prior to occupancy of Building A. He advised that the City typically

required the other street, lighting and sidewalk improvements connected with it to be done as well. Robinson said he thought the applicant would not only do what Condition 9 required but would work with the staff to do everything that fit the lower stage before the building was occupied.

Babbitt asked for clarification that each individual phase had to reach the point of "substantial construction." Robinson said that was not his understanding. A staged development had been approved and an extension would extend the multiphase development approval. So if the project reached the point of substantial construction within the extension period, both phases were vested. That was consistent with Oregon vesting law. After vesting the developer had as much time as they needed to build Phase 1 and Phase 2. Monahan confirmed that. Robinson distinguished between how the code treated land divisions and other applications, such as design review. Land divisions had to be platted and recorded by the approval expiration date. Since the City did not allow bonding, all the improvements had to be installed by that date because a plat could not be recorded without the related improvements. But design review was different. The applicant just had to substantially complete the development (not each phase) before the expiration date. Then they could do their staged development. In this case there was no land division.

Pelz confirmed that the findings in West Linn City Council Final Decision Notice AP 07-01 addressed every issue that Rittenhouse had raised in his testimony that night. Among them were findings that the applicant's noise analysis was adequate; phasing of the development was appropriate; the underground detention tank was appropriate; and the applicant's traffic mitigation measures were appropriate. He acknowledged that the staff report did not include a copy of the Planning Commission decision or the minutes of the Planning Commission hearing.

Babbitt asked how the City would handle the situation if the Albertson's site were redeveloped and that applicant had to make street improvements, but the current applicant's site was still undeveloped and they had not made their street improvements. Monahan advised the City could only look at each individual application and apply rough proportionality to determine what level of improvements that applicant should be required to make.

Deliberations

Chair Martin closed the public hearing and polled the Commissioners. Babbitt indicated he did not feel his questions had been adequately answered. He was concerned about partial completion of only one phase. His personal feeling was that traffic in the area of the site had gotten worse. Steel indicated that her questions had been answered and she believed the application met Section 99.325 requirements for granting an extension. She observed that the hearing had ranged far afield from the applicable criteria. Commissioner Jones observed the Commissioners had spent much of the hearing discussing the original application, which had been approved, and issues that were not relevant to the extension decision. He had heard that traffic had not increased and there was no evidence to the contrary; and that the original conditions of approval were not "omissions." He had heard nothing that demonstrated the

extension should not be granted. He said it should be granted. Horsey related that she was inclined to approve the extension. She liked the way the plan used open space to buffer the nearby residential area. She accepted that the issues of noise, drainage, building height and setback were not pertinent to the extension decision. She appreciated that the applicant was willing to work with the City if a new solution for Tenth Street corridor traffic was found. But it was not clear enough which improvements were going to be connected to which phase and she was wrestling with the prospect that the development would reach the minimum necessary for vesting and then remain unfinished for an indefinite period. Chair Martin was not completely convinced there was less traffic now. When the economy rebounded traffic would become worse. The intersection was at LOS F. (LOS F represents forced flow - more vehicles are attempting to use the highway than can be served, resulting in stop-and-go traffic) ODOT and the Tenth Street Task Force had not yet determined how to fix that, but the applicant had testified a signal at the driveway would improve the flow. That was the practical thing to do to bring about a better traffic situation. He saw no reason not to grant the extension. The applicant had done all they could to mitigate the traffic problem. To deny the extension and force the applicant back to the drawing board was not ethical and they would likely not be able to solve the traffic problem.

Commissioner Jones **moved** to approve MISC 01-04/LLA -10-03 with the modifications recommended by the staff and with the reference in Condition 3(b) corrected to "CDC Section 46.090(H)." Steel **seconded** the motion and discussion followed. Babbitt confirmed that he did not see anything in the code that would address the issue that once vested, the project could remain unfinished for a very long time. Horsey shared his concern. The vote was conducted and the motion **passed** 4:1. Babbitt voted against.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Babbitt and Horsey suggested the Planning Commission schedule a work session to discuss issues the extension hearing had raised, including, what was "substantial construction" and how should it be related to phased development? Horsey suggested the CCI should look into the notice issue that Rittenhouse had raised. Babbitt suggested the minutes of the Planning Commission development approval hearing should be should be part of the record in an extension application because they showed how the Commissioners had resolved issues.

ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at 10:42 p.m.

APPROVED:



Robert Martin, Chair

12/8/2010

Date