



Memorandum

To: Planning Commission

From: Chris Kerr, Acting Planning Director

Date: August 5, 2009

Subject: Specific language in Chapter 28 of the CDC related to a 20' wide trail on single-family zoned property

On September 22, 2008, the City Council approved an Ordinance that made substantial changes to Chapter 28 of the Community Development Code (CDC). Chapter 28 regulates activities along the Willamette and Tualatin rivers. Last month, a Planning Commissioner, who was very actively involved in the code revision process, raised a specific concern that some of the language in this Chapter of the adopted CDC did not comport with the language that was ultimately approved by the City Council. I have spent time reviewing the official record, videos, meeting minutes, and documents prepared for this matter and spoke with the lead planner on this project and have prepared the following information and recommendations.

Background

In early versions of the Chapter 28 code re-write, there were no specific trail requirements or dimensions proposed adjacent to single family homes. This reflected the position of the Citizen's Task Force. Consequently, Section F "Access and Property Rights" which starts out with a declaration respecting private lands is simply balanced by a statement that public access rights also need to be respected.

In contrast, lands zoned for higher density or intense uses, such as general industrial, which are expected to see mixed use development in the future, had explicit standards proposed. Staff recommended a 24 foot wide trail in these non-single family zones. An increased building height allowance or satisfying PUD requirements for shared or common outdoor space was included as an incentive to encourage providing the wider trail. If the developer did not want these bonuses the language provides a narrower trail or path.

The Planning Commission's final recommended version, which then went to City Council, included a 24 foot wide path for non-single family zones. There was, in the version recommended by the Planning Commission, no discussion about trails in single family zoned areas.

There were several City Council worksessions and hearings on Chapter 28 and Staff, over the course of two months, prepared numerous versions of different Code language for the Council to consider; including the Task Force's recommendations, the Planning Commission's recommendations, and comments raised at Council worksessions.

Of particular interest regarding the 20 foot trail – at the City Council work session on September 15, 2008, there was considerable discussion questioning the need for a 24 foot wide path. The issue was raised by Councilor Burgess. He thought it was too wide. Staff explained that similarly dimensioned trails are very popular in Portland, Seattle, and Vancouver B.C. and that if multi modal users: pedestrians, runners, bicyclists, roller bladers etc. are to be safely accommodated then a wide path is needed. Councilor Burgess then stated that if a wide path is appropriate in the non-residential zone then we should have similar language for the single family zone too. Councilor Burgess also provided staff with a punch list of questions and possible corrections to make for the Council to consider.

Between that work session and the City Council hearing staff generated several versions of the Code language. Importantly, one version that City Council received was dated September 17, 2008 (9-17-08).

The 9-17-08 version included the addition of a paragraph responding to Councilor Burgess' idea that a path should be part of the criteria for single family zoned lands.

9-17-08 Version

5. *Legal access to, and along, the riverfront in single family residential zoned areas shall be encouraged and pursued especially when there are reasonable expectations that a continuous trail system can be facilitated. The City recognizes the potential need for compensation where nexus and proportionality tests are not met. Fee simple ownership by the City shall be preferred. The trail should be dimensioned and designed appropriate to the terrain it traverses and the user group(s) it can reasonably expect to attract. The City shall be responsible for signing the trail and delineating the boundary between private and public lands or access easements.*

On September 22, 2008, prior to the Council meeting, Staff distributed another revised version to City Council (dated 9-22-08) intended to better respond to Councilor Burgess' recommendations. These changes included (1) adding a 20 foot dimension for the trail based on staff's understanding that all trails should be similarly dimensioned regardless of the zone (a 20' path is discussed in other districts under this Chapter) and (2) adding a statement that would exempt the repair of existing paths from that section from having to obtain a permit.

9-22-08 Version

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Also, 28.040(W): **"Maintenance and repair of public paths are exempt.**

Staff proposed the above language for the Council's consideration as a result of Councilor Burgess' prompting that the City should pursue trail development in all sections of the riverfront, including lots in the single-family zoning district. Staff added the dimensional standards to match the other districts. Interestingly, the actual sentence that Staff proposed applies only to *mixed use and multi-family development* along the river. No such zones currently exist along the river and certainly do not exist in single family zoned areas. Consequently the impact of this sentence on single family homeowners would essentially be zero. It is also worth noting that since this language was adopted in to the Code last September (including the 20 foot path) it has not been applied to any property owners in the City.

Staff proposed the exemption for the repair and maintenance of existing paths to exclude benign or harmless projects from the time consuming permitting process. This is standard language throughout the entire CDC.

September 22, 2008 Council meeting

After viewing the videotape of the September 22, 2008 City Council hearing it is clear that: Councilor Burgess made the motion adopting the amendments using version 9-17-08. (No reference was made to the 9-22-08 version.) The motion was seconded.

Councilor Burgess then moved to amend the motion to include the responses by staff to an earlier version (9-10-08). "*We can adopt all those (responses) where the staff has agreed to modify.....we haven't seen the language.*" Thus all changes submitted by Staff would be added. These changes included notations referred to as P3 and P7.

Mayor King interjected that “*the only thing that is a little hard with the motion: you have to know what was agreed with.*” Councilor Jones asked Councilor Burgess for clarification. Councilor Burgess restated that the motion would include P8, P9, paragraph 2 of P14, P3, and P7 (these notations refer to staff recommendations from a 9-10-08 version of the document). Put to a vote, the amendment passed unanimously.

After the meeting, Staff prepared the final adopting ordinance and text of the approved amendment. Staff assumed that the motion included two items from the 9-22-08 version, thinking they were the staff responses Councilor Burgess had referred to earlier. The final version was then added to the Ordinance, which was signed by the Mayor on October 13.

It’s important to note that the codified language (the version found in our CDC) is identical to the language found in the adopted Ordinance approved by the City Council on September 22, 2008.

Recommendations

Upon reviewing the videotape of the hearing, it is clear that that the City Council intended to include the changes proposed in the 9-17-08 version in their motion, plus minor changes that are referenced in a previous version. In light of this fact, I would recommend removing the two sentences in the 9-22-08 version from the CDC (see attached). Since Staff is currently preparing a CDC regulatory package for the Planning Commission to review, this can be included with the other CDC changes. This will allow the Planning Commission and the City Council to specifically review these two sentences and determine if they want them to be included or deleted from the CDC after having received public testimony at noticed public hearings.

Attachment

ATTACHMENT 'A'

The following revisions are proposed to the CDC in order to be consistent with the formal motion made by the City Council at the time of its adoption into the CDC.

28.110(F)(5)

Legal access to, and along, the riverfront in single family residential zoned areas shall be encouraged and pursued especially when there are reasonable expectations that a continuous trail system can be facilitated. The City recognizes the potential need for compensation where nexus and proportionality tests are not met. Fee simple ownership by the City shall be preferred. The trail should be dimensioned and designed appropriate to the terrain it traverses and the user group(s) it can reasonably expect to attract. ~~Where there is sufficient space such as at a riverfront mixed use or multi-family development the desired path way width shall be at least 20 feet and constructed of all weather material.~~ The City shall be responsible for signing the trail and delineating the boundary between private and public lands or access easements.

28.040(W)

Low impact public or private outdoor recreation facilities including, but not limited to, multi-use water permeable paths and trails to a maximum width of four feet, picnic areas, interpretive displays, benches. Gazebos or similar structures must be out of the HCA areas to be exempt. No more than 500 square feet of new lot coverage allowed under this provision. ~~Maintenance and repair of public paths are exempt.~~



Memorandum

TO: Planning Commission
FROM: Peter Spir, Associate Planner
DATE: August 5, 2009
SUBJECT: Code amendments (CDC-08-03)

As part of the CDC regulatory package, staff proposes the following amendments to Chapter 28 of the Community Development Code whereby deletions are struck through and additions are highlighted and underlined:

28.110(F)(5)

Legal access to, and along, the riverfront in single family residential zoned areas shall be encouraged and pursued especially when there are reasonable expectations that a continuous trail system can be facilitated. The City recognizes the potential need for compensation where nexus and proportionality tests are not met. Fee simple ownership by the City shall be preferred. The trail should be dimensioned and designed appropriate to the terrain it traverses and the user group(s) it can reasonably expect to attract. ~~Where there is sufficient space such as at a riverfront mixed use or multi-family development the desired path way width shall be at least 20 feet and constructed of all weather material.~~ The City shall be responsible for signing the trail and delineating the boundary between private and public lands or access easements.

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28.110

E. Hardship Provisions and Non-Conforming Structures

1. For the purpose of this chapter, non-conforming structures are existing structures whose building footprint is completely or partially on HCA lands. Any additions, alterations, replacement, or rehabilitation of existing non-conforming non-water-related structures (including decks), roadways,

driveways, accessory uses and accessory structures shall avoid encroachment upon the HCAs, especially high HCAs, except that:

- a. A 10 foot lateral extension of an existing building footprint is allowed if the lateral extension does not encroach any further into the HCA or closer to the river or water resource area than the portion of the existing footprint immediately adjacent.
- b. An addition to the existing structure on the side of the structure opposite to the river or water resource area shall be allowed. There will be no square footage limitation in this direction except as described in item "c" below.
- c. The same allowance for the use of, and construction of, 5,000 square feet of total impervious surface for sites in HCA's per section 28.110(B) (ii-iv) shall apply to lots in this section.
- d. Vertical additions are permitted including the construction of additional floors.
- e. The provisions of CDC Chapter 66: Non Conforming Structures shall not apply.
- f. ~~Access and Property Rights~~

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