

## Memorandum

Date: May 11, 2009  
To: Chris Jordan, City Manager  
From: Chris Kerr, Acting Planning Director  
Subject: Correspondence from Councilor Kovash

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Attached is correspondence given to fellow councilors and to staff by Councilor Kovash. Staff received this approximately 3 PM Friday, May 8, 2009. It was not included in the previous correspondence memo packet.

## HOLIDAY INN ANALYSIS

1. Applicant is applying for 5000 square feet of development within the transition area under the HARDSHIP provision of the Water Resources Area permit.

### 32.050 C. Approval Criteria.

“Development shall be conducted in a manner that will minimize adverse impact on WRAs. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first.”

Applicant states; “to provide an economically feasible project, we have some unavoidable adverse impacts. We have researched all alternatives to minimize the impact of development on the water resource area.”

What alternatives might those be? What alternatives besides the hotel were considered?

32.090... pg p-15. The purpose of CDC 32.09 is to ensure that compliance with Chapter 32 does will not cause UNREASONABLE HARDSHIP.

32.090 B. Lots located partially inside the WRA. A reduction to avoid the LOSS OF ALL ECONOMICALLY VIABLE use .....Development SHALL NOT DISTURB MORE THAN 5,000 sq ft of WRA.

The applicant must show that “without the proposed reduction, the applicant would be denied economically viable use of the subject property. To met this criterion, the applicant MUST SHOW that no other application could result in permission for an economically viable use of the subject property.”

“Evidence to meet this criterion shall include a list of uses allowed on the subject property.”

The property has 19,176 sq ft of developable land or .45 acres. The inclusion of the 5000sq ft would then allow 24,176 sq ft of land for development or about .57 acres.

It should be noted that the in the GC zoning (pg 19.5) the average minimum dimensions equal a 4,500 sq ft lot. It is therefore hard to argue that a 19,000 sq ft lot , let alone a 24,000 sq ft is not adequate to establish a viable business.

I asked the planning department to prepare the table comparing the applicants' proposed development area with other existing commercial properties. As we see, it was not hard to find business that are viable and occupy less area than the applicants 19,176 sq ft. Thus we have the applicant's first failure to meet the standards of the code. Applicant "must show that no other application could result in permission for a economically viable use of the subject property."

If it is thought that a 5,000 sq ft increase is not unreasonable then .....

2. While 5,000 sq ft is the maximum allowed variance under the hardship provision, the applicant is applying for a Class II variance to develop an additional 16,569 sq ft in the WRA. That is a total variance of 21,569 sq ft. more than 4 times the maximum allowed under the hardship provision. The applicant maintains that this amount of land is necessary to make the property **ECONOMICALLY VIABLE**.

The applicant is applying (pg P-2) for a Class II Variance to avoid the regulations in 32.090 that require development on a site partially within the transition area to stay at 5,000 sq ft or less and to keep a 15 ft setback from the wetlands." The purpose of CDC 75 is to "provide standards for the granting of variances from the applicable zone requirements" included in these zone requirements are such things as building height. This applicant is asking for a variance with a multiple of 4. CDC 75.000 address such zoning regulations as set backs and building heights. For example, the maximum building height for R-7 is 35 feet. If we were to grant a variance in multiple of four, such as is requested by the applicant, we would be obliged to grant

permission for a 140 foot tall structure. That would give a whole new meaning to the word variance not to mention an astounding precedent.

75.060 APPROVAL CRITERIA FOR CLASS II VARIANCE.

The approval authority shall approve a variance request if ALL THE FOLLOWING CRITERIA ARE MET ..... The approval authority SHALL deny the variance if ANY of the criteria are not met. There are 6 criteria.

I will discuss the 1<sup>st</sup>, 2<sup>nd</sup> and the 4<sup>th</sup>.

1<sup>st</sup> criteria..

75.060.1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally ....or other circumstances over which the applicant has no control.

In finding 47, pg. P-37 the staff adopt's the applicants findings regarding the variance to develop more than 5,000 sq ft of WRA and breach the 15 foot setback from the wetland. The variance is needed due to the shape of the site and the percentage of the site comprised of WRA and it is also needed to fulfill parking requirements. And the applicant further maintains that "It would be impossible to develop the site viably while disturbing only 5000 sq ft or less of the transition areas as required by the hardship provisions in Chap, 32.

"Impossible to develop" is a high hurdle and there is no evidence presented to substantiate such a conclusion and there is no reason given why the shape of the property is a problem or how this particular parking plan is relevant to this criteria.

This criteria is not met because the applicant fails to show that exceptional or extraordinary circumstances apply nor do they demonstrate that any other business cannot be viable

2<sup>nd</sup> criteria...

75.060.2. The variance is necessary for the preservation of a property right of the applicant, which is substantially the same as a right possessed by owners of other property in the same zone or vicinity.

Finding No. 48, pg P-37. The variance for the amount of square footage gives applicant the right to develop this property using more than a small amount of land of the property. Allowing more than a small amount of land for development is the norm on the GC zoned properties around the City and has occurred on many of the surrounding and nearby GC zoned properties around the City and has occurred in many of the surrounding and nearby GC parcels on Willamette Falls Drive and 8<sup>th</sup> court.....NOTE: no qualitative information is given for the amount of land, just "small amount."

If it can be demonstrated that businesses that have similar sq footages, and are viable, then the applicant's argument fails and the application must be denied ..... 32.090 b. 1. sets the criteria that "the applicant must show that NO OTHER APPLICATION could result in permission for an economically viable use of the subject property." If other viable business utilize about 24,000 sq ft., then the applicant's argument fails and the application must be denied.

4<sup>th</sup> criteria.

75.060.4. The variance request is the minimum variance, which would alleviate the exceptional and extraordinary circumstances.

Finding No. 50, pg P-40. Staff adopts the applicant's findings for the transition area sq footage variance and finds that this is the minimum variance....



This criteria is not met as we have seen that no variance is necessary to make this site suitable for a viable business.

What are the exceptional and extraordinary circumstances? None are listed in the finding.

This is the criteria in the CDC that must be proven or the application shall be denied: CDC 75.060 1. PG 75.3. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, topography or other circumstances over which the applicant has no control.

But again, no exceptional or extraordinary circumstances have been presented.

Handwritten calculations: 75,000 sq ft. and a subtraction problem: 75,000 - 53,431 = 21,569.

Mitigation plan.

To mitigate the loss of 21,400 sq ft of WRA the applicant will revegetate multiple small “disturbed” areas in West Linn’s High Bridge Park. I note that there will be am net loss of 21,400 sq ft of WRA. It would seem to me that a net loss of WRA is not acceptable and that we would require the creation of a like amount of WRA. The city can replant the park.

This application fails because:

They did not research all alternatives to minimize the impact of development on the WRA.

32.090. The applicant did not show that “without the proposed reduction, (of 5,000 sq ft) the applicant would be denied economically viable use of the subject property.”

In asking for a variance of 16,569 sq ft under

75.060.1 the applicant failed to demonstrate that exceptional or extraordinary circumstance apply to the property. Properties of similar or less size (19,000 to 24,000 sq ft) are adequate for viable businesses.

75.060.2. The applicant failed to show that 40,000 sq ft of developable land including the variances totaling 21,569 sq ft is necessary for the preservation of a property right of the applicant. because other business owners have viable businesses on less than 20,000 sq ft of land.

75.060.4. The applicant failed to show that the variance requested is the minimum variance which would alleviate the exceptional and extraordinary circumstances. The circumstances do not apply to the developable land on the property and the developable land is demonstrably adequate for a viable business.