

CITY OF WEST LINN
PLANNING COMMISSION

Minutes of May 20, 2009

Members present: Chair Michael Babbitt and Commissioners Michael Jones, Christine Steel and Dean Wood

Staff present: Peter Spir, Associate Planner; and William Monahan, City Attorney

Members absent: Vice Chair Robert Martin and Commissioners Shawn Andreas and Valerie Baker

CALL TO ORDER

Chair Babbitt called the Planning Commission meeting to order in the Council Chambers of City Hall at 6:58 p.m.

APPROVAL OF MINUTES

Jones moved to approve the Minutes of April 15, 2009. Steel seconded the motion and it passed 4:0.

PUBLIC COMMENTS (None)

PUBLIC HEARINGS

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

VAR-09-07 Class II Variance to permit a 7-foot structural encroachment into side street setback at 4410 Grant Street

Chair Babbitt opened the public hearing, explained the applicable criteria and procedure, and announced the time limits for testimony. He asked the Commissioners to declare any conflict of interest, bias, or ex parte contacts (including site visits). Each Commissioner present reported he/she had visited the site. 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

Peter Spir, Associate Planner, presented the staff report. (See Planning & Building Department Staff Report dated April 27, 2009). He reported that the applicants planned to rebuild and expand the house because a tree had fallen on it earlier this year and damaged it. They asked to be allowed to build an addition seven feet into the required 15-foot Leonard Street setback. That part of the Leonard Street right-of-way was not improved and the City Engineer never intended to develop it due to steep slopes. Staff found variance approval criteria were met based on the exceptional circumstance of tree damage and the never-to-be improved street right-of-way. They recommended the two conditions of approval in the staff report and a third condition requiring the applicant

to submit a licensed survey to ensure the required five-foot setback on the north side of the house was met if they built another addition on that side.

During the questioning period, Wood asked why the City would keep ownership of right-of-way it would never use. Spir advised the City owned many miles of undeveloped right-of-way to protect underground utilities, set aside land for trails and open space, and reserve land for future use. He advised that property owners could apply for a street vacation, but the applicants did not have time to wait six months for that process because they wanted to put on a new roof and complete construction this summer. He confirmed the proposed addition would meet all Code requirements, including .45 FAR. He clarified the applicant had not submitted a stormwater management plan. He explained the second addition to the north side of the house was not firmed up yet, but that addition would have to meet the required five-foot setback on that side, and if the applicant added over 500 sq. ft. of new impervious surface they had to provide stormwater treatment. That could be a swale. Steel understood why the staff found the tree damage was an exceptional circumstance, but she asked how that justified allowing an addition. Spir advised the other exceptional circumstance was that the code called for a 15-foot setback from the street, but there was no street there that met the code definition, "street," and the situation did not fit the rationale for a side street setback, which was to buffer impacts from traffic on that side of the house.

MOS
6-17-09
changes
made

MOS

Applicants

Helen Pevzner and Ray Austin, 4410 Grant Street, said they could not currently reside in the damaged structure. They believed this was a good opportunity to expand the structure because they had to replace the entire roof and north wall. Their insurance company asked them to rebuild within a specific period of time. Adding seven feet to the house on the west side by using part of the street right-of-way would not impact anyone around them and the rebuilt house would add quality to the neighborhood. During the questioning period, the applicants clarified they did not have firm plans for the north side addition yet, but they anticipated that the total square footage of their additions would be less than the 500 sq. ft. threshold to the requirement to provide stormwater treatment facilities. They clarified that they had not provided the staff with final plans. After the Planning Commission approved the variance they planned to have an architect design the house with the limitations in mind.

Babbitt wanted to be assured there were follow-up procedures in place to ensure that if the applicants expanded the impervious surface area by more than 500 sq. ft. appropriate stormwater facilities would be installed. Spir confirmed if the building plans showed the combined total area of the additions was more than 500 sq. ft. they would be required to do that. Building Department staff would inspect the property to ensure the facility had been installed properly. He advised that requirement applied in all residential zones. He clarified that the variance request was for the west side addition. There was no other public testimony.

Deliberations / Motions

Babbitt closed the public hearing and opened deliberations. **Jones moved** to accept VAR-09-07 subject to the three conditions of approval recommended by staff. **Steel seconded** the motion and it **passed** 4:0.

City Attorney Monahan suggested the Commissioners clarify in their findings that the extraordinary circumstance was not the fact that a tree damaged the house, and the application

was approvable without that statement. Otherwise tree damage might be considered valid criteria in a future application.

Jones moved to add an additional finding that was to include Spir's explanation of the extraordinary circumstance that the right-of-way would never be used for a street due to topography and clarify that the variance was approvable even without the tree damage to the house. Steel seconded the motion and discussion followed. Wood wanted to know if the staff believed the stormwater treatment facility would fit on the site and where they thought it might be located. Spir anticipated a swale could be located in a rockery on the site. He pointed it out on slides. **The vote was conducted and the motion passed 4:0.**

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CDC-09-04 Proposal of two-year extension of original land use approvals, code amendments CDC Chapters 24, 55, 60, 75, 85 and 89

Chair Babbitt opened the public hearing, explained the applicable criteria and procedure, and announced the time limits for testimony. He asked the Commissioners to declare any conflict of interest. None were declared.

Staff Report

Peter Spir, Associate Planner, presented the staff report. (See Planning & Building Department Staff Report dated March 30, 2009; and Second Addendum to Staff Report dated May 7, 2009). He said developments had to be built in three years or the approval was voided. He suggested the proposed two-year extension could be offered to address the delays in finishing developments and remodeling projects created by the current financial crisis and economic uncertainty. The process was to submit an application for an extension for a Planning Commission hearing. The public would have an opportunity to testify. If no substantive changes had been made to the CDC since approval the extension could be approved. Otherwise it would be denied. The Planning Commission could add conditions to the extension approval to make the development comply with new requirements such as TVF&R requirements. He recalled at the Planning Commission work session the Commissioners had generally agreed that loss of lots as a result of new environmental standards was not a "substantive" change. They had suggested adding a "sunset clause," so the ordinance would expire January 2012. An extension would not be granted automatically. An applicant could not use it to dodge new code requirements. If there had been substantive code changes since approval the extension could be denied. Extension hearings were not to be used to "rehear" the entire, original, application. Only one extension would be allowed. Spir said the staff recommended approval based on a demonstrated need.

During the questioning period, Babbitt recalled testimony in the record and asked the staff to clarify whether or not other cities offered five-year approvals. Spir explained that most other nearby jurisdictions extended their approval period by allowing the developer to bond the improvements, record the plat, and make the improvements in subsequent years. The bond offered the guarantee. However, if West Linn added the possibility of a two-year extension to the current three-year approval period, the City could use the extension process to ensure the development conformed to the current CDC. He clarified that how long the bonding was in effect depended on the jurisdiction and the time period specified in the bonding document. Jones recalled the Commissioners had agreed at the work session that they would not

recommend a change to allow bonding at the same time they recommended the extension process so the City Council was not faced with deciding multiple policy issues at the same time.

Michael Robinson, Perkins Coie LLP, 1120 NW Couch St, Tenth Floor, Portland, Oregon, 97209 represented the interests of Jeff Smith, 23600 Salamo Rd, who was also present. He distributed additional copies of his emailed response to comments submitted by Edward Schwartz. He advised that other Portland area jurisdictions allowed more time for development after approval. The Portland Planning Commission had just recommended allowing a three-year extension that would increase the total time to five years. Most required the final plat to be submitted by the deadline. Yamhill County had just allowed a client to have the final plat approved and use a bond and public improvement agreement to delay construction of a 50-lot subdivision for five years. Many communities used the bonding process to assure the improvements would be made. West Linn was unique because the City required the improvements to be constructed and accepted by the City and the plat to be recorded within three years. That was challenging enough in good economic times, but now it was hard for developers to get the necessary construction loans for it and sell accumulated inventory. He suggested changing the staff proposal to reflect what he thought he had heard during the Commissioners previous work session when he sensed that the Commissioners had been primarily concerned about environmental- and engineering-related changes to the CDC. So he suggested removing the words, "and other changes" so the parties would not have to address every CDC change since approval. Other than that he agreed with the proposed ordinance.

During the questioning period Robinson and Babbitt confirmed the proposed changes would also benefit homeowners because they would apply to approvals related to all types of discretionary approvals, such as variances related to remodeling.

Staff comments

Spir suggested if the Commissioners decided to limit the scope of CDC changes that affected an extension they should at least say the criteria included changes to, "engineering, planning and environmental standards" so design review code changes and changes to programs such as the Transportation System Plan could be considered. Babbitt agreed the scope should not be limited to only engineering- and environmental-related CDC changes. He explained those had been examples the Commissioners had thought of at the work session. He pointed out that each CDC chapter referred to "other applicable code," or "other amendments to the CDC that are applicable to the application." That meant an extension hearing would not be a "wild goose chase." Spir agreed and said to just say that the applicant shall demonstrate just cause was too broad and vague to use to decide whether or not to grant an extension.

Steel suggested referring to applicable code changes "such as engineering, environmental or planning." That highlighted what the Commissioners felt was important and left room to consider unknown future changes that might be significant. The other Commissioners indicated they could agree to that because they saw no difference between that language and the staff drafted language. Spir agreed to incorporate that language in the next draft.

Deliberations / Motions

Chair Babbitt closed the public hearing and opened deliberations. Steel suggested the code refer to an "electronic submittal," instead of CDs. in case prevalent technology changed. The staff could determine what an appropriate format was. Babbitt was concerned that if multiple formats were allowed, some formats would not serve as a dependable archive and an applicant

might claim the staff had altered their submittal. He strongly encouraged the City to specify a specific format for a digital submittal. Spir suggested the requirement be to "submit material in an acceptable electronic format." The staff would decide what that was and communicate it to the applicant at the preapplication conference. When asked, Monahan advised the City had to keep a permanent record that could be accessed by the public, but the staff also needed a copy that could be manipulated and included in their reports. He said he assumed a legal record would be both paper and electronic. He suggested the Planning and IT staff could work out what an appropriate electronic format was. Jones agreed with Steel and said the staff could determine what an appropriate format was. Steel suggested removing references to "lots" in CDC chapters that had nothing to do with development and subdivisions. Spir agreed.

Chair Babbitt summarized that the Commissioners had reached consensus to forward the draft CDC amendments with the changes the Commissioners had discussed during deliberations to refer to applicable code changes in each CDC chapter and use the language, "such as engineering, environmental and planning standards." They also wanted to replace references to CDs with, "acceptable electronic format" and remove references to "lots" in chapters that were not associated with land divisions. Spir confirmed the staff was prepared to make those changes.

Jones moved to recommend that the Planning Commission forward CDC-09-04 to the City Council for approval after a final review of the drafted changes by Chair Babbitt. **Steel seconded the motion and it passed 4:0.**

ITEMS OF INTEREST FROM STAFF

A presentation by the Finance Director was postponed to June 3, 2009. The Sustainability Advisory Board was asking each City board and commission to send one representative to participate on the SAB. Babbitt indicated that he would volunteer if their schedule worked for him.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

The Commissioners agreed to go over Planning Commission rules and guidelines and suggest any changes at their next meeting. Jones asked the staff to research whether state policies defined "quorum."

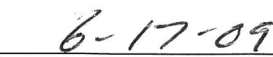
ADJOURNMENT OF PLANNING COMMISSION

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 8:10 p.m.

APPROVED:



Michael Babbitt, Chair



Date