



PLANNING COMMISSION

Minutes of June 16, 2010

- Draft -

Members present: Chair Robert Martin, Vice Chair Michael Jones and Commissioners Michael Babbitt, Laura Horsey, Christine Steel, Dean Wood and Jennifer Tan.

Members absent: None

Staff present: John Sonnen, Planning Director; Peter Spir, Associate Planner; Tom Soppe, Associate Planner; Sara Javoronok, Associate 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 7:32 p.m.

APPROVAL OF MINUTES

Steel **moved** to approve the Minutes of April 21, 2010. Babbitt **seconded** the motion and it **passed** 6:0. Steel **moved** to approve the Minutes of May 5, 2010. Jones **seconded** the motion and it **passed** 5:0:1. Horsey abstained.

PUBLIC COMMENTS (None)

PUBLIC HEARINGS

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

CUP-10-01/DR-10-02/MISC-10-05/VAR-10-03, Conditional Use, Design Review Variance and Alteration of a Non-conforming Structure for a Library Expansion and Renovation at Cedaroak Primary School

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. Each of the Commissioners reported a site visit. Jones and Babbitt had children who previously or currently attended Cedaroak School and Jones served on the District's Long Range Planning Committee, but had not been present when they discussed the application. Both confirmed they could decide the application without bias. Tan and Martin each reported that school employees had pointed out where the changes were going to be made. 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, Senior Planner, presented the staff report (See Planning & Building Department Staff Memorandum dated June 2, 2010). He presented a map, the site plan and aerial photograph of the site. He advised conditional use requirements had been met. The site was large enough to mitigate impacts and the amphitheater was tucked behind the building and about 1,000 feet from the nearest homes in that direction. Design review requirements were met. The proposed design was much more attractive than the current design and offered more opportunities for those inside to monitor the parking area and school busses. The applicant had added six more parking spaces in May 2010 even though they were only required to add two more spaces for the proposed improvements. The staff found that with the new spaces the proposal did not increase the existing nonconformity. The staff did not see a need for the variance, but the applicant had requested it anyway. The staff recommended approval subject to the conditions of approval listed in the staff report.

During the questioning period, the staff confirmed the Planning Commission could approve the application without the variance if they found the variance was not necessary because the applicant had already added six parking spaces and that did not make the site more nonconforming. Spir explained the staff had inserted the condition to prohibit amplified sound at the amphitheater in order to be considerate of neighbors. Le explained the staff recommended requiring a street lighting plan along Cedaroak Drive that would make the pickup and drop-off area safer.

Applicant

Tim Woodley, 2755 SW Borland Rd., Tualatin, Oregon 97062, Director of Operations, West Linn-Wilsonville School District, and architect, Corrina Ruiz, represented the applicant. Woodley confirmed that the applicant could agree to the prohibition against amplified sound and the requirement to submit a lighting plan. During the questioning period, Woodley explained the applicant had asked for the variance to eliminate any uncertainty. They wanted to avoid any possibility they would find out during the current hearing that they needed a variance. They had improved the parking lot earlier to solve drainage and circulation problems and in anticipation of the library project.

Neither for nor Against

Kevin Bryck, 18840 Nixon Ave., recalled the Robinwood Neighborhood Association had been told the applicant would address concerns regarding pedestrian safety at the Trillium/Cedaroak intersection and the visibility of the portable toilets that were positioned near Cedaroak in this phase of the project. But he noted they had not addressed them.

Rebuttal

Woodley related the District had been working with the City Arborist and planned to propose some improvements and signage for that corner of the site, but they were not yet ready to

submit that proposal. He agreed it was a good idea to create a screened location for portable toilets that community athletic groups brought in. The applicant would take that under advisement.

Questions of staff

Spir advised that the staff had determined that a Class II design review was appropriate for the current application because the applicant proposed modest changes that were less than 5% of the square footage.

Deliberations

Chair Martin closed the public hearing and polled the Commissioners. Steel suggested giving teachers more flexibility by adding language to Condition 4 to clarify that activities using amplified sound were not allowed except to facilitate instruction during regular school hours. Jones agreed the variance was unnecessary because the six new parking spaces did not make the nonconformity any worse. Horsey supported the project, but she observed a need to tighten the site plan and set of conditions so downstream officials would know exactly what the Planning Commission intended. She pointed out that the documents inconsistently used the terms, "rain garden" and "bioswale," and "outdoor classroom" and " amphitheater." She observed staff had not followed current practice to specify the expiration date of the approval.

Tan agreed the application met approval criteria and that adding six parking spaces did not make the nonconformity worse. She appreciated that the lights would be muted so they did not disturb the neighborhood. Wood reasoned that parking was not an issue because the new library would not draw additional traffic and the applicant had installed six more spaces. Babbitt would have preferred to see a street lighting plan in the application, but he could support it anyway. He observed that on the Landscaping plan the "bioswale" was a part of a the larger "rain garden." He agreed that the parking was adequate, but he reasoned that a variance was still necessary for two reasons: 1) The Planning Commission had historically been advised that it had to consider each application for each phase of a project separately, even when the applicant and the site were the same; and 2) Additional classroom space triggered additional bike parking requirements beyond the additional 12 spaces the applicant proposed. He noted the neighborhood association minutes reported the District planned to turn cafeteria space into "learning space." Martin indicated he liked the design and "learning commons" concept.

Jones **moved** to approve CUP-10-01/DR-10-02/MISC-10-05/VAR-10-03 subject to the staff-recommended conditions of approval, but with Condition 4 modified as Steel had suggested:

Condition 4: The amphitheater shall not be used for activities using amplified sound except to facilitate instruction during regular school hours.

In addition, if the Planning Commission approved the motion the staff was to fashion findings that supported Var-10-03. Steel **seconded** the motion and discussion followed.

Horsey **moved to amend** the motion to ask the staff to enhance the language in Conditions 2 and 5, and strengthen the site plan. Jones was reluctant to incorporate the amendment into his motion because he did not yet know what those specific changes would be. Horsey recalled the Commissioners wanted a site plan and conditions of approval that adequately conveyed the intent of the Planning Commission to the staff who were involved in overseeing the next phases of the development, in order to avoid errors in the field. Spir advised the site plan was adequate, but the Commissioners could include a reference to Landscaping Plan L-1.0 to make it even clearer which layout the Planning Commission approved. He advised that Condition 5 was not necessary because the development would have to be built in compliance with TVF&R requirements anyway. Le advised that a rain garden was just a bigger version of a bioswale, but he agreed it would be better to be consistent in use of terms. He advised the Commissioners to make a street lighting plan a condition of approval and let the lighting study determine what was the appropriate amount of lighting. Horsey stressed the City should be consistent in the practice of putting an expiration date on an approval. Sonnen agreed and advised that would not affect an applicant's ability to take advantage of the opportunity to have an extension.

Babbitt **amended the motion** to add a reference to Landscape Plan L-1.0 to Condition 1 and to strike Condition 5. Jones and Steel **accepted** the amendment. The Planning Commission took a ten-minute break and reconvened. The vote was conducted and the **amendment passed 7:0. The vote was conducted on the motion and it passed 7:0.**

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CUP-10-02/DR-10-03/MISC-10-06/VAR-10-04, Conditional Use, Design Review , Variance and Expansion of a Non-Conforming Structure for a Library Expansion and Interior Remodel at Bolton Primary School

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. Jones reported he served on the West Linn-Wilsonville School District's Long Range Planning Committee, but he had left the room when they discussed the application and he could make an unbiased decision. Horsey reported her daughter had attended the school. Martin declared a conflict of interest and recused himself. Vice Chair Jones became the presiding officer. Each of the Commissioners who remained to hear the case reported making a site visit. When invited by the Chair, no one in the audience challenged the jurisdiction of the Planning Commission or the ability of any individual Commissioner to hear the matter.

Staff Report

Tom Soppe, Associate Planner, presented the staff report. (See Planning & Building Department Staff Report dated June 2, 2010). He showed the zoning map, aerial photograph,

and site plan. He pointed out the surrounding uses, including a park. He pointed out the location of the proposed library addition and amphitheater. He noted the circa 1950's school was on a relatively small site. It was nonconforming in terms of parking and lot coverage. Maximum allowable lot coverage was 35%, but the existing coverage was 37% and the addition would increase it to 38.8%. The staff accepted that because they reasoned it would allow the subject school to enjoy the same level of school amenities as other schools on much larger sites and the improved facility would better serve its neighborhood. The applicant was to add two more parking spaces, per a proposed condition, and more bike parking. The resulting total spaces would be fewer than the code required, but the staff accepted that because it would not increase the degree of nonconformity. Soppe recommended approval and discussed the recommended conditions listed in the staff report. He advised the provision for a swinging gate in #2 was not necessary because a swinging gate was already installed. He pointed out #6 specified that the approval would expire in three years.

During the questioning period, Soppe confirmed that the staff found only two more parking spaces were necessary. He observed that the site plan did not label the rain garden, but it did show it as a horseshoe-shaped area. It was called a water quality basin on the landscape plan. He confirmed that the code allowed shared parking agreements in certain circumstances, but he was not aware if the applicant had such an agreement to share the park parking lot. But the staff was satisfied that two more spaces on the site resulted in the right amount of parking there.

Applicant

Tim Woodley, 2755 SW Borland Rd., Tualatin, Oregon 97062, Director of Operations, West Linn-Wilsonville School District, and architect, Corrina Ruiz, testified for the applicant. Woodley confirmed the applicant could agree with the recommended conditions of approval and to adding the same amplified sound language as had been applied in the Cedaroak application. He stressed the school was on a very constrained site and it did not have a lot of parking space, so parking historically overflowed to the park. There was no formal agreement to share parking.

Neither for nor Against

Bob Martin, 2017 Maple Terr., expressed his concern that the space that was freed up after the new library was built would be used for as many as two additional classrooms. That would create a potential need for more parking.

Rebuttal

Ruiz testified that building space would be adjusted so there was no net gain in classrooms.

Deliberations

Acting Chair Jones closed the public hearing and polled the Commissioners. Tan indicated she could support the application. She indicated that parking appeared to be an issue, but it did not worsen the nonconformity. Wood supported the application. Horsey supported the application. She indicated that the proximity of the park counterbalanced the additional nonconformity. The fact that the site plan omitted the rain garden should be addressed. Babbitt supported the application. He recommended correcting the reference to the site plan in Condition 1 and adding a reference to the landscaping plan. He suggested striking Condition 2 because it just reiterated the boilerplate requirements in the letter from TVF&R in the record. He suggested Conditions 5 and 6 could be eliminated because they just restated code requirements. Condition 7 should specify that the amphitheater was not to be used for activities using amplified sound except for instructional purposes during school hours. Steel supported the application and agreed with Babbitt's suggestions. Jones supported the application and agreed with Babbitt's suggestions, except for eliminating #5. Soppe advised the Commissioners to keep #2 because it listed some requirements that were not boilerplate TVF&R requirements.

Babbitt **moved** to approve CUP-10-02/DR-10-03/MISC-10-06/VAR-10-04 subject to the conditions recommended by the staff, but modified as follows:

- Condition 1: Replace the reference to site plan PC-6 with references to the site plan C-1.01 and landscape plan L-1.0
- Condition 2: Strike the language after "(Exhibit PC-3, pages 33-35)"
- Conditions 3, 4 and 5: As recommended in the staff report
- Condition 6: Strike
- New Condition 6: Renumber recommended condition 7 as Condition 6 and revise it to read, "The amphitheater shall not be used for activities using amplified sound except for instructional purposes during school hours."

Horsey **seconded** the motion and it **passed** 6:0. The Planning Commission took a three-minute break and reconvened.

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CDC-10-01, Review of Historic Review Board Establishment

Chair Martin opened the hearing. **Sara Javoronok, Associate Planner**, presented the staff report (see Memorandum, "Establishment of a Historic Review Board," dated May 27, 2010). The proposed amendments to the Municipal Code and Community Development Code would create a new Historic Review Board (HRB). The new board would hear West Linn applications the Clackamas County Historic Review Board was currently authorized to hear and it would replace the Historic Resource Advisory Board (HRAB). The HRAB had vetted the proposal. The criteria for designation of historic landmarks and historic districts were fashioned to reflect criteria similar to those used by the National Register of Historic Places. During the questioning period, Javoronok clarified a quorum would be four members, and when a member's term expired he/she could continue to serve until the City Council refilled the position. The Clackamas County HRB was the body that was currently authorized to approve West Linn

design review applications. The County HRB had reviewed about four or five applications per year. Appeals of its decisions were to the City Council.

The proposed language for 99.060 (D) listed what the HRB would have authority to do. It gave the HRB the authority to review and make recommendations to the City Council regarding designation of landmarks and land divisions, conditional uses and zone changes involving property containing a landmark or within a historic district. The Planning Commissioners were concerned the amendments did not describe the Planning Commission's role in the process clearly enough. The Planning Commission was involved any time a CDC change was proposed. Javoronok agreed that Planning Commission authority could be clarified in the amendments. The staff assured the Commissioners that landmarks and historic districts were currently designated in the Comprehensive Plan and controlled by the CDC, which was under the purview of the Planning Commission. Until a future code update the HRB would not technically have the authority to approve such applications and the HRB would make recommendations to the Planning Commission.

Javoronok clarified the new language in CDC 25.050(A) that listed Criteria for Historic District Designation reflected National Register criteria. Babbitt suggested the staff look again at the use of "shall" and "may" in 26.020, Area of Application. However, Jones indicated he thought they were appropriately used to convey that a landmark that was on the National Register "shall be designated a Historic Landmark" and that "may also be designated" referred to the list below it. Although the staff did not believe it was likely that significant new development would occur on a landmark site, they would clarify how the Purpose under 26.060, Alteration and Development Criteria related to development on those properties. The staff related they were considering how to establish a process in which the HRB could review the historic aspects of an application and the Planning Commission would then review the rest of it.

When asked, Javoronok clarified the HRB would be a subset of the Planning Commission regarding the things listed under 99.060(D)(2) which included designation of landmarks and land divisions, conditional uses and zone changes involving property containing a landmark or within a historic district. But the HRB would have approval authority over the things listed under 99.060(D)(1) and those decisions would be appealable to the City Council, just as County HRB decisions were appealable to the City Council. The Planning Commission would review anything in those applications that was subject to some other part of the code. Sonnen clarified that the currently proposed amendments were narrow, interim, "fixes" intended to facilitate the establishment of the new HRB in the current code. In the future the staff would propose a broader scope of code and changes. They might suggest putting historic districts and landmarks in a separate code document. In that case the HRB could send its recommendations directly to the City Council without going through the Planning Commission.

The staff explained the proposed change to address expiration of terms of board and commission members would apply to all City boards and commissions. It addressed a Council concern that the other bodies could not achieve quorums when there were unfilled vacancies.

*Jones left the meeting. Wood held that how to deal with expired terms was a City Council policy decision, but the Council could be more proactive in filling vacancies by advertising and starting to fill vacancies a few months in advance of expiration. He found the proposed language too vague. It would allow indefinite extension of someone's expired term if the Council took no action. The staff explained the practical problem was that vacancies happened and Councilors were concerned that City bodies could not act for lack of a quorum if the Council could not refill vacancies in a timely manner. Horsey suggested putting a three-month limit on the extension of service in an expired position. Babbitt said he could agree to the proposed provision because it would allow time for a newly elected Council to decide who was to fill vacancies. Martin recalled instances where a vacancy remained unfilled for lack of applicants for the position. Horsey recalled the Planning Commission had already addressed the problem by relaxing their quorum requirement so it could operate with vacancies.

When asked, Javoronok advised that Heritage Trees were not Landmarks.. She confirmed the proposed amendments required that the majority of HRB members be City residents. The Council allowed some outside appointments if that was necessary in order to have an experienced board. If there were not enough applicants the City would have to start a recruiting effort.

Martin observed the Planning Commission was responsible for reviewing an application to see if it complied with the entire code and Comprehensive Plan, but the HRB perspective was limited to historic preservation. There could be a conflict in approval authority if, for example, a historic building would be affected by an expansion of Highway 43. Javoronok said her intent had been to change current approval authority as little as possible when she reorganized what the HRB could approve or deny into CDC 99.060 into (D)(1) (a and b). She suggested moving the Willamette Falls Drive Commercial Overlay District from that list to the (D)(2) list and specifying that the HRB had authority to make recommendations to the Planning Commission regarding changes in the Willamette Falls Drive Commercial Overlay District. Martin encouraged her to make the process very clear. He did not want developers choosing which board they had the best chance of getting approval from. He suggested that the first step in the process related to action on a property such as the house that had to be moved for the Bolton fire station should be HRB approval. Then it would come to the Planning Commission, which would look at the non-historic aspects of it.

The Commissioners agreed to continue to discuss the proposed changes at a work session on July 7. Since there was no consensus on term limit extension they specifically deferred consideration of that to July 7. The staff offered to provide them with a revised draft of the proposed amendments. When asked, they were advised the Willamette Marketplace would not have been affected by the amendments because it was not located in the Willamette Falls Drive Commercial District.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION (None)

ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at 11:20 p.m.

APPROVED:

Robert Martin, Chair

Date