WEST LINN PLANNING COMMISSION

FINAL DECISION AND ORDER

DR-15-11, LLA-15-01

IN THE MATTER OF A CLASS II DESIGN REVIEW FOR A MULTI-USE DEVELOPMENT OF 180 MULTI-FAMILY DWELLING UNITS WITH COMMERCIAL SPACE AND A PROPERTY LINE ADJUSTMENT

I. Overview

CON AM Properties, LLC (Applicant), filed its application in July 2015, and it was deemed complete on July 20, 2015. The approval criteria for the applications are found in Community Development Code (CDC) Chapters 21, 34, 38, 41, 42, 44, 46, 48, 52, 54, 55, and 85. The hearings were conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the initial evidentiary hearing on August 26, 2015. The hearing commenced with a staff report presented by John Boyd AICP, Planning Manager. Rob Morgan, CON AM Properties, LLC; Michael C. Robinson, Perkins Coie LLP; and Brent Ahrend, Mackenzie; presented for the applicant. The initial hearing was continued to September 2, 2015, for additional evidence and public testimony. At its September 2 hearing the Commission left the written record open until September 9, 2015, at noon, and it continued the hearing to September 9, 2015, for rebuttal and deliberations. The Commission heard public testimony from approximately 50 individuals over the course of the first two meetings and accepted many written submissions. The vast majority of the testimony was opposed to the application.

The hearing was closed on September 9, 2015, and a motion was made by Commissioner Knight and seconded by Commissioner Walvatne to deny the applications and direct staff to prepare a Final Decision and Order adopting findings consistent with the Commission's decision that specifically addressed the issue of mixed use under CDC 21.050. The motion passed unanimously to deny the application for the Class II Design Review of the seven structure mixed use development consisting of multiple-family dwelling units and commercial units and the property line adjustment.

II. The Record

The record was finalized at the September 9, 2015, hearing. The record includes the entire file for DR-15-11 and LLA-15-01, including submissions received by noon on September 9.

III. Findings of Fact

1) The Overview set forth above is true and correct.
2) The applicant is CON AM Properties, LLC.
3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report; application; public comment; and the evidence in the whole record, including any exhibits received at the hearings.

IV. Findings

The Commission is denying DR-15-11/LLA-15-01 because the development does not meet the prescribed conditions for mixed use in the Office Business Center Zone (OBC Zone). CDC 21.050 sets forth uses and developments permitted in the Office Business Center Zone under prescribed conditions. The Commission finds that the prescribed conditions in CDC 21.050(2) are not met for two reasons: 1) the CDC requires commercial use on the entire first floor and part of the first floor contains residential parking garages, and 2) residential parking garages are part of the multiple-family units, which are prohibited on the first floor.

First, the Commission finds that CDC 21.050(2) requires the entire first floor to be used for commercial purposes. CDC 21.050(2) allows "[m]ultiple-family units, as a mixed use in conjunction with commercial development, only above the first floor of the structure." This is an unambiguous requirement. Moreover, requiring the entire first floor to be retained for commercial use is consistent with the purpose of the OBC Zone, which is to "provide for groups of business and offices in centers" because it would result in a number of businesses located adjacent to one another on the first floor. It also provides opportunities for larger commercial spaces and a wider variety of commercial uses.

The Commission understands the Applicant's reading of CDC 21.050(2) to be that some commercial space on the first floor satisfies the condition that multiple-family units are "only above the first floor". However, the Commission disagrees with this reading of the prescribed condition because it is inconsistent with the plain meaning of the text and it could lead to an absurd result. For example, under the Applicant's interpretation the installation of a vending machine on the first floor would meet the prescribed condition that there is some commercial use on the first floor, but such a limited commercial use would not serve the purpose of the OBC zone. Therefore, the Commission finds that the CDC 21.050(2) requires the entire first floor to be comprised of commercial space.

The application proposes to build seven mixed use structures, each containing multiple-family dwellings above the first floor; the application only reserves a small portion, approximately 300 square feet, of the first floor of each of the seven mixed used buildings for commercial uses. The remainder of the first floor consists of residential parking garages, which are not a commercial use. The Commission finds that the application does not meet the requirement that the entire first floor is reserved for commercial use because a majority of the first floor

consists of residential parking garages, and residential parking garages are not a commercial use.
Second, in the alternative, the Commission finds that the application fails to meet the prescribed condition that multiple-family units are allowed "only above the first floor of the structure" because the residential parking garages serve the multiple-family units; therefore, the residential parking garages are essentially part of the multiple-family units, and the garages cannot be located on the first floor of the structure.

The Commission finds that either one of the reasons stated above is sufficient to deny this application for failure to meet the prescribed conditions in CDC 21.050(2). The Commission finds that the application cannot be conditioned to be approved because requiring the Applicant to provide commercial space on the entire first floor would substantially change the application because parking would have to be relocated and the trip generation counts would be different due to the increase in commercial space.

V. Order

The Commission concludes that DR-15-11 and LLA-15-01 are denied based on the Record, Findings of Fact and Findings above.

RYERSON SCHWARK, CHAIR
WEST LINN PLANNING COMMISSION

DATE 9/16/2015

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of $400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.

Mailed this 17th day of September, 2015.

Therefore, this decision becomes effective at 5 p.m., October 1, 2015.