

Mollusky, Kathy

From: Axelrod, Russell
Sent: Friday, October 16, 2015 4:08 PM
To: Thornton, Megan; Boyd, John
Subject: FW: ConAm Application

Megan and John,
I am forwarding correspondence considered potential ex parte contact related to the CONAM application.

Thanks,
Russ

Russell Axelrod

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From: A Sight for Sport Eyes [sporteyes@yahoo.com]
Sent: Friday, October 16, 2015 1:54 PM
To: City Council
Subject: ConAm Application

Dear City Council,

There is no place on the website that shows where testimony should go to. I hope this gets to you. I was part of a group of residents that got together to express our concerns with ConAm project. Since we had a long testimony, and I'm not sure how much council gets to review the previously submitted testimony, I wanted to give a quick overview of our concerns. Full details are in the original testimony if that is accessible to you.

- ❖ As planning commission agreed, while multi-family is an option in this zone, the code clearly states only "above the first floor". The garages are for residential use, not commercial, thus, this does not meet the "above the first floor" criteria. As Chair Ryerson pointed out, a simple vending machine in the bottom floor would meet ConAm's definition of "above the first floor" which is absurd.
- ❖ The new EOA adopted by planning commission states we have a "deficit of 16.2 acres of to meet the expected level of commercial job growth for West Linn". Since this application is almost entirely for residential use, and only an estimated 1% is being used for commercial purposes, West Linn will be at an even larger deficit of needed commercial land.
- ❖ If the commercial floor is the first floor or "story", why are building heights measured from "above grade" part of the building and not from the first floor/story? It is a "basement" or below grade when it suits ConAm in regards to measuring building height. But it is a first floor or "story" when referring to commercial space (per "above

the first floor” criteria above). ConAm changes the definition of the floors/stories to suit their needs. If a consistent definition of a “floor” is used, the application either doesn’t fit Design Review II criteria in regards to building heights (too tall) or doesn’t meet the “above the first floor” criteria (residential units would be in the first floor). Commissioner Walvatne brought up this concern at the last meeting .

- ❖ The equivalent of one hotel room (300 sq ft) PER building does not meet the State’s definition of “mixed use” which defines “mixed use” as having commercial and residents “well integrated” with each other. 2000 total commercial square feet for a 7 acre parcel is not “well integrated”. It also doesn’t meet Metro’s definition of mixed use (pedestrian friendly, promotes less automobile use). I live in Historic Willamette which is a good example of mixed use. We have storefronts on the entire bottom floor, residences above the first floor.
- ❖ The State of Oregon defines what mixed use should look like in “corridors”, which is what this parcel is designated per its proximity to I-205. It states no more than 50% of the bottom floor should be for “residential use”. The garages are for residential use so again, this design doesn’t meet the state criteria for mixed use in this “corridor” type zone.
- ❖ This is OBC (Office Business Zone). This application does not meet the purpose of this zone.
 - 21.020(A) , it states that any use that is not an “outright” use is subject to Chapter 80 of the CDC. Mixed use is a “prescribed” use, not an “outright” use so I still believe Chapter 80 can be applied. Chapter 80.050(B) states that an approval standard shall be based on whether or not the use is consistent with the “intent and purpose” of the zone. 80.50(C) also states “The use is similar to and of the same general type as the uses listed in the zone”. All uses are business/commercial in the zone. No residential use outside the mixed use criteria are listed. Thus, this application is not similar to or the same general type as the zone.
 - While this may be a “gross misreading” per ConAm’s attorney, I believe ConAm’s interpretation of “above the first floor” criteria is likewise a gross misreading of the code. Thus, it is not unreasonable to think that Chapter 80 could apply to this application. I also think it is important point out that our code does reference the “intent and purpose” of the zone as being criteria in which other possible uses in this zone can be judged. Thus, the code shows clear intention that the “purpose” is meaningful when interpreting the OBC zone code.
- ❖ The Secretary of State says that implementation of ORS197.307 is to be based on certain definitions. “Buildable Land” per the state means “**residentially designated**” and “necessary for residential uses”. This parcel is not on any of the city’s plans for residential development. It is in the City of West Linn’s EOA and Comprehensive Plan as commercially zoned property, not mixed use. Thus, the land is not “residentially designated” so not “needed. Metro maps also show there is no need for high density housing in West Linn.
- ❖ Statewide goals for Economic Development (Goal 9) should be applied to a commercially zoned parcel, not the Statewide Goals for Housing. Economic Development applies to commercially zoned lands, so this should take priority over Housing which is an incidental use in the zone.
- ❖ Likewise, since this is zoned commercial, the commercial sections of the Comp plan should be used, not the residential parts of the Comp Plan that ConAm refers to in their application.
 - WL Comp plan describes Commercial areas and uses Metro’s definition of “mixed use”. This project fits neither definition.
 - LUBA ruled a city can deny an application based on inappropriate uses for the zone
- ❖ In our first testimony submission, we came up with a good alternative option for this parcel which would meet West Linn’s need for some lower end housing but also meet the commercial requirements for the zone. This would be a retirement village. I believe the existing plans with some adjustments could be easily converted into

this type of community. The existing garages could be changed to commercial spaces. The commercial spaces would then be large enough to accommodate things like a café, hair salon, alternative medicine, massage therapists, fitness centers, doctor's offices, etc. that are typical to these type of communities. Those in retirement communities are less reliant on automobiles as all their needs and services can be handled within the complex and via public transit. Thus, this alleviates the traffic concerns other neighbors have. While I understand that you can't judge an application on other uses, I wanted to be on record with the property owner that there is a way to use this property so that it fits the code and the existing plans don't need to be entirely tossed.

Thank you for your time.

Shannen Knight, 1291 11th St.(residence address)

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M E M O R A N D U M

To: West Linn City Council
From: Jeffrey L. Kleinman
Date: October 19, 2015
Re: Appeal of ConAm Properties, LLC – File No. DR-15-11/LLA-15-01

I. Introduction

I represent Concerned Citizens of West Linn (“CCWL”), a citizen group organized in opposition to ConAm’s proposal and for the purpose of preserving the integrity of the city’s Comprehensive Plan and Development Code. CCWL fully supports the unanimous decision made by your Planning Commission following due deliberation after two lengthy evidentiary hearings.

CCWL has described ConAm’s application as a second, camouflaged attempt at the applicant’s unsuccessful and withdrawn application for rezoning, dressed in sheep’s clothing. The proposed apartment complex is by no means an “Office Business Center” under the express language of CDC Chapter 21.

The Planning Commission read the relevant code provisions correctly. ConAm's grounds for appeal are without merit.

II. The Planning Commission correctly read and applied the plain language of CDC 21.050(2). That language does not support ConAm's proposed reading.

CDC 21.050(2) provides:

"21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS.

The following uses are allowed in this zone under prescribed conditions:

2. Multiple-family units, as a mixed use in conjunction with commercial development, only above the first floor of the structure."

(Emphasis added.)

Contrary to the applicant's contention, this language does not state or mean simply that "the commercial development must, at a minimum, be located on the first floor of each structure." It states that multi-family residential units are allowed in the OBC Zoning District only if they are a mixed use as part of a commercial development, and that *no* multi-family residential uses are permitted on the first floor of any of the proposed structures. Your Planning Commission did not rewrite anything. It read the Code as it its written. Only the applicant distorts its meaning.

We refer the members of the City Council to the applicant's August 5, 2015 Plan Set Resubmittal. We suggest starting with Sheet A1.0 at page 17 of 36 of the PDF in the city's file. This sheet discloses tiny, useless "commercial" spaces amidst 146 parking spaces for residential units, located on the first level of the proposed structures. The "commercial" areas are darkly shaded on this sheet. The "1's" are residential parking spaces located on the first floor of the

structures. Then, for further detail confirming the above, please see Sheet A1.1, and the architectural elevations at Sheets A3.1A, A3.1B, A3.2A and especially, Sheets A3.2B, A3.3B , A3.4B, A3.5B, A3.6B, and A3.7B. Also, for the clearest view in color of the lesion-like bogus commercial spaces, please take a look at Sheet A4.0. The supposed commercial spaces are significantly smaller than any apartment, and are not feasible of actually being used or rented for any of the commercial uses permitted in the OBC Zoning District¹. In size, they resemble ice-machine rooms one finds on every floor of most motels.

The first floor of each and every one of the proposed structures is almost entirely devoted to enclosed parking spaces allocated to and *part and parcel of* the residential units. These garages are not some sort of previously uncategorized, extraterrestrial category of use which somehow gives rise to compliance with the Code. They are inherently components of the multiple-family units, and prohibited by CDC 21.050(2).

¹Pursuant to CDC 21.030, these are as follows:

1. Business equipment sales and services.
2. Business support services.
3. Communications services.
4. Cultural exhibits and library services.
5. Family day care.
6. Financial, insurance and real estate services.
7. Hotel/motel, including those operating as extended hour businesses.
8. Medical and dental services.
9. Parking facilities.
10. Participant sports and recreation, indoor.
11. Personal services and facilities.
12. Professional and administrative services.
13. Utilities, minor.
14. Transportation facilities (Type I).

The legislative history of this Code provision does not help ConAm’s argument. While the City Council originally considered limiting residential use to no more than 25 percent of the area of a site in the OBC Zoning District, it was clearly satisfied that the purpose of the legislation would be satisfied by the language which remains in effect, requiring that residential use be located only above the first story of any structure. This would still provide for ample commercial development—a typical modern design of offices and stores below, with apartments above. In selecting the language it chose to adopt, the City Council intended to fulfill the purpose of OBC zoning. It did not intend for applicants to flaunt the very nature of the OBC Zoning District through the designation of mere fingernails—cuticles in this case—of “commercial” space. After all, what was the point of the first floor limitation in the first place? It was certainly not to allow a backdoor rezone.

In direct contravention of the language of CDC 21.050(2), the proposed multi-family units (1) include and fully dominate the first floor of each apartment building, and (2) are not to be constructed or used in conjunction with anything that could be termed “commercial development.” Only the applicant’s reading of this provision would add to or subtract from its express language under *Craven v. Jackson County*, 136 Or App 250, 898 P2d 809 (1995).

The Planning Commission’s decision was correct, and ConAm’s appeal must be denied.

III. The Planning Commission’s decision is consistent with CDC 21.010(B).

For the reasons explained above, the specific use proposed by the applicant is not permitted under the prescribed conditions of CDC 21.050. Accordingly, the decision of the Planning Commission could not have violated CDC 21.010(B).

IV. The “prescribed conditions” under CDC 21.050 do prohibit the specific use of the first floor of each structure proposed by the applicant.

CDC 21.050 would presumably permit garages which are part of the office or other commercial use of a structure in the OBC Zone. That is not what is proposed here. Similarly, the applicant does not propose “parking spaces.” It proposes enclosed garages which provide internal entry to individual apartments; they are hence integrated elements of those apartments—and subtract dramatically from the possibility of office or other commercial development.

The argument developed by the applicant under the definitions contained in Chapter 2 of the CDC does not withstand scrutiny. CDC 21.050(2) does not make reference to “dwelling units,” but to “multiple-family units.” CDC 2.030 in turn defines “multiple-family residential units” as a “structure containing three or more attached dwelling units in any vertical or horizontal arrangement.” (Emphasis added.) This definition is not constrained by the definition of “dwelling unit” as “one or more rooms” designed for occupancy for living purposes. It refers to the entire structure. We reiterate: In this case, the first floor of each structure is dominated by residential parking garages. Moreover, since the applicant’s structures fall within the above definition of “multiple-family residential units,” each of the proposed structures in its entirety is a multiple-family unit and is expressly prohibited under CDC 21.050(2).

Finally, as the applicant’s own plan sheets make clear, we are not talking about simple “parking spaces” here but actual garages. The cited Code provisions relating to parking spaces are irrelevant here.

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V. The Planning Commission did not apply the purpose language of CDC 21.010 as an approval standard, but used it appropriately as a guide in interpreting the directly applicable language of the Code.

CDC 21.010 sets out the purpose of the Office Business Center Zoning District. The City Council adopted this language for a reason—to provide context and guidance in the interpretation and application of the operative provisions which follow. The Planning Commission correctly made use of CDC 21.010 as the Council intended. It did not derive an independent approval standard from this provision.

We set out the content of CDC 21.010 here, as it so plainly confirms the Planning Commission’s reading of the substantive provisions of CDC 21.050(2):

“The purpose of this zone is to provide for groups of business and offices in centers, to accommodate the location of intermediate uses between residential districts and areas of more intense development, to provide opportunities for employment and for business and professional services in close proximity to residential neighborhoods and major transportation facilities, to expand the City’s economic potential, to provide a range of compatible and supportive uses, and to locate office employment where it can support other commercial uses. The trade area will vary and may extend outside the community. This zone is intended to implement the policies and criteria set forth in the Comprehensive Plan.”

No element of the applicant’s proposal complies with CDC 21.050(2) or is consistent with the purpose of the OBC Zoning District. Simply stated, this project is anything but an “Office Business Center.”

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VI. The applicant sets out no basis for reversal of the Planning Commission's denial of the requested property line adjustment.

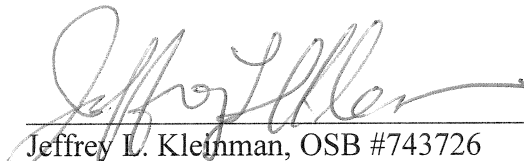
ConAm's proposed property line adjustment is inextricably linked to its application for design review of a very specific development proposal. (As described in the August 26, 2015 staff report this was an application for "Class II Design Review and Property Line Adjustment.") ConAm has not presented any reasoning to justify reversal of this portion of the Planning Commission's decision.

VII. Conclusion

For the reasons set out by the Planning Commission and expanded upon above, the applicant did not meet the required burden of proof on the record before you. Similarly, the applicant has failed to meet its burden of proving that the Planning Commission misapplied the approval criteria as required by CDC 99.250(3)(a).

ConAm's appeal should be denied and the decision of the Planning Commission should be sustained.

Respectfully submitted,



Jeffrey L. Kleinman, OSB #743726
Attorney for Concerned Citizens of West Linn