

## WEST LINN PLANNING COMMISSION

### FINAL DECISION AND ORDER

CUP-15-03, DR-15-17, VAR-15-01, VAR-15-02, VAR-15-03

#### IN THE MATTER OF THE REPLACEMENT OF THE SUNSET PRIMARY SCHOOL AT 2351 OXFORD STREET AS A CONDITIONAL USE-SCHOOL, TYPE II DESIGN REVIEW, AND THREE CLASS II VARIANCES FOR PARKING DISTANCE AND BICYCLE PARKING DISTANCE

##### I. Overview

The West Linn-Wilsonville School District (Applicant) filed its application in November 2015 and it was deemed complete on February 1, 2016. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 38, 41, 42, 44, 46, 48, 52, 54, 55, 60, 75, 92, 96, and 99. The hearings were conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the initial evidentiary hearing on March 16, 2016. The hearing commenced with a staff report presented by Darren Wyss, Associate Planner. Tim Woodley, Applicant, and B. Karina Ruiz, Dull Olson Weekes – IBI Group Architects, Inc., presented for the applicant. The initial hearing was continued to April 6, 2016, for additional written evidence and public testimony. At its April 6 hearing the Applicant offered to withdraw VAR-15-03, and the Commission approved the withdrawal of the variance. The Commission then closed the hearing, granted seven days, until noon on April 13, 2016, for written responses to new evidence, and it continued the hearing to April 13, 2016, for deliberations. The Commission heard public testimony from approximately 15 individuals over the course of the first two meetings and accepted many written submissions.

After deliberations on April 13, 2016, a motion was made and seconded to deny the application. The motion failed. Then a motion was made by Commissioner Knight and seconded by Commissioner Myers to approve the applications with 12 conditions of approval and direct staff to prepare a Final Decision and Order. The motion passed with four votes in favor and two votes opposed.

Some of the community concerns raised at the public hearing include:

1. Loss of Sunset park space,
2. Poor design of stormwater detention/treatment facility,
3. Impact of construction activities on school children,
4. Large size of the 900 page supplemental submittal by Applicant,
5. Risk to trees from stormwater infiltration on the site,
6. Failure of applicant to propose rain gardens and permeable paving,

7. Need for additional time to work with the School District on solutions to citizen concerns,
8. Improper use of stormwater models ,
9. CDC 55.130.B. and CDC 92.010.E. not being met by the current location and design of the stormwater facilities,
10. Use of Ballot Measure 3-358 as criteria to deny the application,
11. Perceived redesign of stormwater detention/treatment facility after initial application,
12. CDC 75.050.E. allows only two Class II Variances in a 12-month period, and
13. Off-site landslide hazard risk increased by stormwater detention/treatment facility.

## **II. The Record**

The record was finalized at the April 13, 2016, hearing. The record includes the entire file from CUP-15-03, DR 15-17, VAR-15-01, VAR-15-02, and VAR-15-03.

## **III. Findings of Fact**

- 1) The Overview set forth above is true and correct.
- 2) The applicant is the West Linn-Wilsonville School District.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; Supplemental Staff Report and attached findings; public comment; and the evidence in the whole record, including any exhibits received at the hearings.

## **IV. Findings**

The Commission adopts the March 16, 2016, Staff Report and the March 30, 2016 Supplemental Staff Report for CUP-15-03, DR-15-17, VAR-15-01 VAR-15-02, and VAR-15-03 with attachments, including specifically the Addendum dated March 16, 2016, and the Applicant's Submittals, including without limitation the narratives, as its findings, which are incorporated by this reference.

### **KEY CONCERNS**

The Commission heard several concerns repeatedly throughout this process. Some of the concerns related to applicable criteria and some did not. Before turning to the applicable criteria the Commission wishes to address the repeated concerns and explain the Commission's perspective.

#### **Loss of park space**

The West Linn Parks Director submitted two letters clarifying the partnership between the Applicant and City to provide park and recreation opportunities at Sunset Park and the Sunset Primary School cooperatively. The existing playground on the Applicant's property will be replaced by a playground at Sunset Park. The City is currently working with the community on a new design for Sunset Park and the opportunity for input is available to everyone.

#### Poor design of stormwater detention/treatment facility

The only requirement of the Applicant was to provide a preliminary stormwater report showing no adverse off-site impacts from increased intensity of runoff from a 10-year and 100-year storm. The Applicant clearly provided factual data showing reduced runoff from current conditions after the construction of new stormwater facilities.

#### Impact of construction activities on school children

The number one concern and priority of the Applicant is the safety of the children who attend their schools. All parents entrust their children with the Applicant from the point they arrive at school until they leave for the day. The Applicant has outlined the precautions they will undertake to limit impacts to the learning environment and to ensure the safety of the school children. The Applicant also clearly outlined why the decision was made to construct a new primary school adjacent to the existing school and the Commission feels this is the best option.

#### 900 page supplemental submittal by Applicant

The Commission found there was no new significant information outside of the process dating back to 2007 that led to the decision to submit this application and spoke to the amount of opportunities for input from the community.

#### Risk to trees from stormwater infiltration

The Commission relies on the Applicant's Arborist Report and the City Arborist and reports that the trees will be protected to the extent possible with appropriate measures. The stormwater report also show less off-site runoff from the new stormwater facilities.

#### Alternative use of rain gardens and permeable paving

The use of rain gardens would not eliminate the need for a detention facility onsite. Whether permeable paving may work is not relevant as there is no criteria to mandate its use.

#### Need more time to work on a solution to citizen concerns

The City has 120 days to make a final decision on the complete application. The Commission finds the community had ample opportunity to submit comments and testimony. The Conditions of Approval are straight forward and clearly relate to code requirements.

#### Stormwater model used to design detention facility

The PAC model was not used to design the detention component of the stormwater facility. This was addressed by the Applicant sufficiently at the April 6, 2016, public hearing.

#### Use of Ballot Measure 3-358 as criteria to deny the application

The Commission finds any legal challenges to with the ballot measure are outside the jurisdiction of the Commission. Those challenges must be brought in a court of competent jurisdiction.

#### Redesign of stormwater detention/treatment facility after initial application

The Applicant definitively answered size and function of the stormwater facilities and made it clear that the facilities have not changed since the application was submitted.

### **SUPPLEMENTAL FINDINGS**

The Commission addressed the applicable criteria challenged during the public hearing process and Staff offers the following additional findings.

#### *CDC 55.130 GRADING PLAN*

*B. A registered civil engineer shall prepare a plan and statement that shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm.*

#### *CDC 92.010 Public Improvements For All Development*

*E. Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements.*

The Commission finds both are application submittal requirements, not approval criteria. These submittal requirements were satisfied by the applicant after review by West Linn Engineering.

Even if these requirements were approval criteria, the Commission finds the testimony and evidence provided by KPFF Engineering, including the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohney, Engineering Geology Program Leader for the Oregon Department of Transportation, to be substantial evidence that there will not be any adverse offsite impacts due to the development. The Commission finds the report and the testimony of KPFF Engineering adequately refutes the testimony of Malia R. Kupillas, and that there is no persuasive evidence that there will be any adverse impacts from increased infiltration on the site, such as the potential impact to trees and downslope landslide hazards due to the development.

#### *60.070 APPROVAL STANDARDS AND CONDITIONS*

*A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*

*3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.*

The Commission finds the replacement of the Sunset Primary School is consistent with the overall needs of the community for the following reasons:

1. There will be no loss of park space or amenities as a result of the application. Ken Worcester, West Linn Parks & Recreation Director, submitted two letters outlining the partnership between the City and Applicant to cooperatively program recreational opportunities. Mr. Worcester also outlined the current process to redesign Sunset Park, including community input opportunities, and the desire to replace the playground equipment that will be removed during the school replacement project.

2. The Commission relies on the Applicant's Arborist and the City Arborist, and associated reports that trees will be protected to the extent possible with appropriate measures. The Commission rejects the testimony submitted by Darek Czokajlo, Ph.D. as lacking substantive facts to support the assertion that the removal of 12 Douglas Fir trees will create a vulnerable environment for the remaining Douglas Fir trees on and off-site. CDC 55.100.B(2)(b) is met with the Applicant proposal to retain 77 percent of significant tree canopy on-site.

3. The Commission relies on the testimony by KPFF Engineering and the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohney, Engineering Geology Program Leader for the Oregon Department of Transportation, and finds there is no persuasive evidence to draw the inference that there will be any impacts from increased infiltration at the stormwater detention/treatment facility location. The Applicant has provided factual data showing off-site stormwater discharge will be reduced from current levels for the 2-year, 5-year, 10-year, 25-year, and 100-year storm events.

The Commission relies on Applicant's experts to remove any hazardous materials in the existing school in accordance with State and Federal Building Regulations. Replacement of the primary school without disruption to the children through bussing to new locations and the potential need for portable classrooms is in the best interest and overall needs of the community.

*55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW*

*B. Relationship to the natural and physical environment*

*4. The structures shall not be located in areas subject to slumping and sliding. The Comprehensive Plan Background Report's Hazard Map, or updated material as available and as deemed acceptable by the Planning Director, shall be the basis for preliminary determination.*

The Commission finds, based on the West Linn Comprehensive Plan Background Report's Hazard Map, that structures will not be built in areas subject to slumping or sliding.

The Commission concludes that there is substantial evidence in the record demonstrating that all of the required approval criteria are met.

## V. Order

The Commission concludes that CUP-15-03, DR-15-17, VAR-15-01 and VAR-15-02 are approved based on the Record, Findings of Fact and Findings above. The Commission concludes all of the required approval criteria are met subject to the following conditions of approval:

1. Site Plans. With the exception of modifications required by these conditions, the project shall substantially conform to all Tentative Plan Sheets.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to the City Engineer's review, modification, and approval. These must be designed, constructed, and completed prior to the issuance of the final building certificate of occupancy.
3. Street Improvements. The applicant shall complete full street improvements, including pavement improvements, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage for those portions of Oxford Street and Bitter Street abutting the subject properties, per Staff Findings 143 and 144. Construction of the half street improvements and storm drainage improvements on the west side of Bittner Street and the south side of Oxford Street shall be reimbursed by the City of West Linn.
4. Overhead Utilities. All existing overhead utilities and associated services must be removed and placed underground per Staff Finding 99. This must be completed prior to the issuance of the final building certificate of occupancy.
5. Carpool Spaces. The applicant shall identify four parking spaces closest to the building entrance for carpools, per Staff Finding 15, and provide signage reading "*Reserved – Carpool/Vanpool Before 9:00 a.m.*"
6. Parking Lot Design. The applicant shall reconfigure the parking areas to meet group of 12 parking design requirements per Staff Finding 25, while maintaining a total of 88 total parking spaces. The new configuration must also meet the 50 percent maximum compact space requirements.
7. Curb Cuts. The applicant shall redesign the three vehicle accessways to comply with the maximum curb cut requirements of 36 feet, per Staff Finding 43, and to also meet West Linn Public Works Standards.
8. No Parking Signs. The applicant shall install signs, per Staff Finding 40, reading "No Parking – Fire Lane" on both sides of the fire access drives. The signs shall be 12 inches

wide by 18 inches high and shall have red letters on a white reflective background. The signs shall be installed with a clear space above grade level of 7 feet.

9. Tree Protection. The applicant shall provide appropriate root zone protections, per Staff Finding 70, for the 14 significant trees that are proposed to be retained and identified in the Arborist Report as needing monitoring. The applicant shall consult with both the project arborist and the City arborist to utilize the most effective measures. This includes the required protection fencing.
10. Tree Conservation Easement. The applicant shall provide a tree conservation easement, per Staff Finding 70, for all significant trees that are retained on site and not already protected by required setbacks. The easement shall extend outwards to the tree dripline plus 10 feet. The easement shall include a legal description and a map of the area. The easement shall be recorded with the County and a copy of the recorded easement shall be provided to the City of West Linn prior to the issuance of the final building certificate of occupancy.
11. Fire Flow. The applicant shall perform a fire flow test, per Staff Finding 91, and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present prior to the issuance of the final building certificate of occupancy.
12. Sanitary Sewer Improvement. The applicant shall install sanitary sewer improvements to serve Sunset Primary School by either:
  - a. Installing approximately 450 feet of sewer main with the associated manholes and sewer laterals along Bittner Street to the connection point on Long Street in accordance with Exhibit PC-6 and Staff Finding 92, and the City will reimburse the applicant for approximately 175 feet of sewer main, associated manholes, and 12 sewer laterals pursuant to Exhibit PC-6; or
  - b. Connecting the existing sanitary sewer main at Sunset Primary School to the Oregon City Loop sanitary sewer main.

  
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MICHAEL BABBITT, CHAIR  
WEST LINN PLANNING COMMISSION

4-14-16  
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DATE

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 (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearing(s), or signed in on an attendance sheet or testimony form at a hearing(s), 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 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 14<sup>th</sup> day of April, 2016.

Therefore, this decision becomes effective at 5 p.m., April 28, 2016.