

DEVELOPMENT REVIEW APPLICATION

For Office Use Only

STAFF CONTACT <i>John Boyd</i>	PROJECT NO(S). <i>AP-19-01</i>	
NON-REFUNDABLE FEE(S) <i>400-</i>	REFUNDABLE DEPOSIT(S)	TOTAL <i>400-</i>

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input checked="" type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Lot Line Adjustment (LLA) */** | <input type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Appeal of: DIRECTOR'S INTERPRETATION CDC 01.060

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address:

Northwest corner of Tannler Drive and Blankenship Road:
2444, 2422, and 2410 Tannler Dr

Assessor's Map No.: **21E35C**

Tax Lot(s): **00100, 00102, 00200**

Total Land Area: **Approx. 11.41 acres**

Brief Description of Proposal: Request for Planning Director's Code Interpretation pursuant to CDC Sections 01.060 and 99.060.A.2.

Applicant Name: Zoe Lynn Powers

Phone: 971-634-0215

(please print)
Address: 111 SW Columbia Street, Suite 700

Email: zpowers@radlerwhite.com

City State Zip: Portland, OR 97201

Owner Name (required): Jeffery I. Parker and Diane Wilt,
(please print)

Phone:

as tenants in common

Email:

Address: 1800 Blankenship Road, Suite 200

City State Zip: West Linn, OR 97068

Consultant Name: N/A

Phone:

(please print)
Address:

Email:

City State Zip:

1. All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. **Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.**
One (1) complete set of digital application materials must also be submitted on CD in PDF format.

If large sets of plans are required in application please submit only two sets.

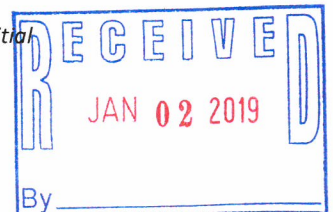
* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.


Applicant's signature

12/31/18
Date

Note: Owner's signatures provided with initial application being appealed.

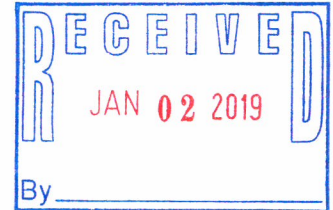


Zoe Lynn Powers
zpowers@radlerwhite.com
971-634-0215

January 2, 2019

VIA EMAIL AND PERSONAL DELIVERY

City Council of West Linn
C/o John Boyd, Planning Manager
City of West Linn
22500 Salamo Road, #1000
West Linn, OR 97068
Jboyd@westlinnoregon.gov



RE: Notice of Appeal of Planning Commission's Code Interpretation (MISC-18-07)

Mayor Axelrod and City Councilors,

This letter is submitted as a notice of appeal of the City of West Linn ("City") Planning Commission's Final Decision and Order in the Matter of a Request to Interpret the Community Development Code for MISC-18-07 (the "Decision") related to the approximately 11.41-acre site located at the northwest corner of Tannler Drive and Blankenship Road (the "Property"). This appeal is made pursuant to Community Development Code ("CDC") section 99.160(C)(1) and 99.170(G)(1), as appropriate. I qualify as a party of standing, as provided by CDC 99.140, because I appeared before the Planning Commission at the December 12, 2018 hearing, both orally and in writing, and provided my name and address and signed the testimony form provided at the hearing. An application for appeal and the appeal fee of \$400.00 are enclosed.

The Property is located in the Office Business Center ("OBC") zone, where the following use is allowed under prescribed conditions:

"Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor." CDC 21.050.

We are asking that you modify the Planning Commission's Decision to:

- Define "first floor" to mean "the lowest story with square footage equal to a story which includes the entire perimeter of the structure" and
- To clarify that the "work" portion of a live-work unit, if otherwise a use allowed in the OBC zone, would be considered a commercial development of the first floor.

1 "FIRST FLOOR" SHOULD MEAN THE SAME PERCENTAGE OF THE BUILDING ON A FLAT OR SLOPED SITE

This case is a good example of how important it is to provide the opportunity to request a director's interpretation of the code. As a land use attorney, my job is frequently to read the zoning code of a local jurisdiction and apply it to a particular property. When the code is ambiguous, it is very difficult to give an answer for architects and engineers to rely on in designing a project. That design work can cost a considerable amount, so you can imagine that I do not want to provide an answer that is not what the jurisdiction intended.

{00858703;1}

This is exactly why we applied for a director’s interpretation of CDC 21.050, and the process so far illustrates the difficulty of ambiguous provisions.

1.1 The Staff’s Interpretation Required 50% of the First Floor

First, we consulted with staff on the meaning of the term “first floor” when applied to a sloped site, such as the Property. As shown in the Staff Report For the Planning Commission (the “**Staff Report**”), staff looked to a similar definition – of the term “Story, First” – and concluded that first floor was intended to mean the same thing, which is the “extent of the lowest habitable floor that is not more not more than four feet below grade, for more than 50 percent of the total perimeter, or more than eight feet below grade, at any point.” Staff Report, page 4.

Had we stopped with the staff interpretation, the architects and engineers would have anticipated that the commercial space needed to occupy the entirety of the bottom floor which was at least 50% of the total perimeter of the structure, within the grades provided.

1.2 Planning Commission’s Interpretation Requires “Entire Perimeter” at “Highest Level”

Fortunately, we decided to ask the question in a more formal manner through this application for a Director’s Interpretation, because the interpretation has been different than what staff anticipated and recommended.

The Planning Commission’s Decision interprets the undefined term “first floor” in CDC 21.050 to mean “including the entire perimeter of the structure at the highest level.” I believe that Planning Commission’s intent was to ensure that the entire perimeter – that is, 100% of one full floorplate – was included in commercial use. The issue was confused, however, by a drawing we were using to illustrate staff’s 50% interpretation:

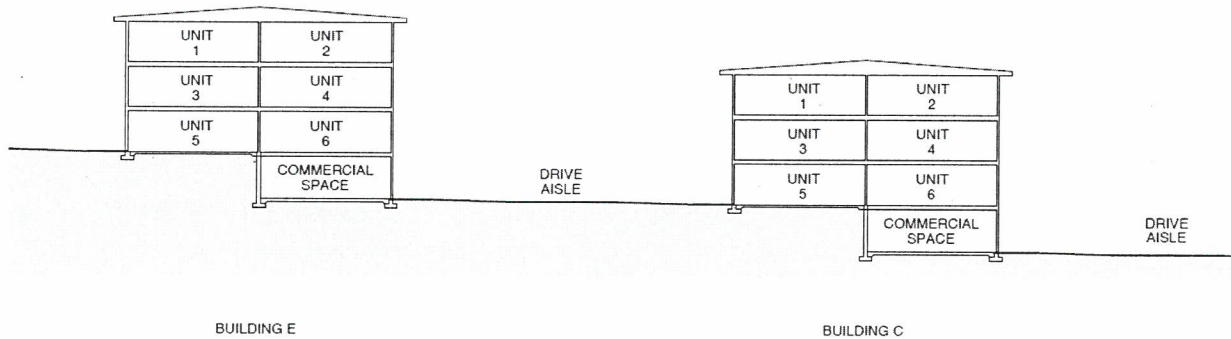


ILLUSTRATION 1

The Planning Commission included “at the highest level” to make clear that the requirement was for one full floorplate, which, on this drawing, is on the uphill side.

However, the “highest level” is not tied to the slope of a site, and is therefore ambiguous, and could mean the top floor (the highest floor) rather than the uphill side. The Decision’s interpretation creates more ambiguity than it resolves.

Additionally, because CDC 21.050 requires that “[m]ultiple-family units” be built “only above the first floor,” the Decision has the paradoxical effect of creating *two floors* which are the *singular* “first floor”: one full floorplate (units 5 and 6) plus the downhill 50% floorplate. It is implausible that the drafters of the code intended that the requirement on a sloped site be for 150% of a floorplate, where on a flat site it would be only 100% of a floorplate.

Most importantly, this interpretation requires that the commercial spaces face *uphill*, away from the main road, Blankenship, and *towards the residential neighborhood*. Retail will be more successful where it can be seen from a major road and the only major road bordering the Property is Blankenship. Rather than facing the road where customers travel, the commercial spaces would face single-family homes and neighbors would be subjected noise and light from cars and other adverse impacts during business hours.

1.3 Define “First Floor” To Mean “The Lowest Story With Square Footage Equal To A Story Which Includes The Entire Perimeter Of The Structure”

Therefore, we ask that you modify the Decision to define “first floor” to mean “the lowest story with square footage equal to a story which includes the entire perimeter of the structure.”

This proposed interpretation would clarify that the requirement is for there to be *a full floorplate of commercial space*. If a building were built with a half floorplate, as shown in Illustration 1 above, this modified language has the *same effect* that the Planning Commission intended: the lowest floor with a full floorplate (marked as Unit 5 and Unit 6) would be required to be in commercial use.

However, the modified language clarifies that if a slope allows a building to be dug out or terraced, the full floorplate could face the major road and customers rather than the neighborhood. In this way, the modified interpretation requires the same thing – 100% of one full floorplate – that would be required on a flat site in the OBC zone.

This drawing illustrates how a sloped site could be the same as a flat site under the modified interpretation of “first floor”:

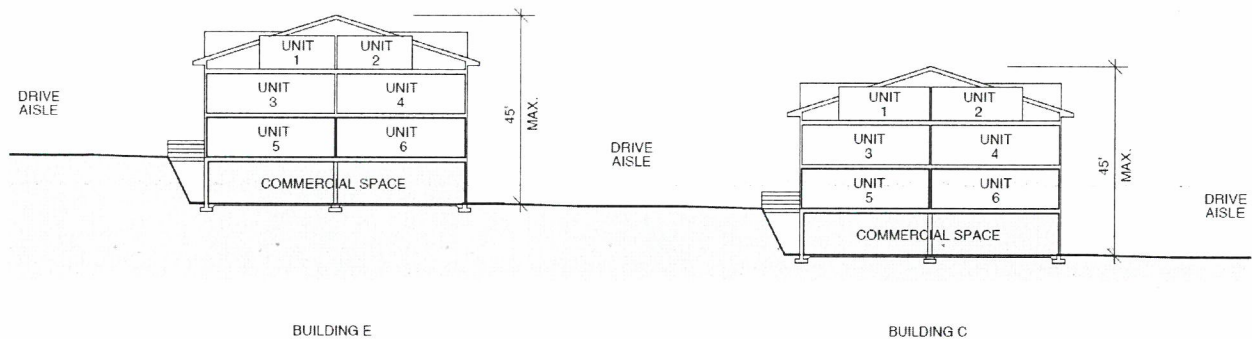


ILLUSTRATION 2

City Council of the City of West Linn
December 31, 2018
Page 4

2 "WORK" PORTION OF LIVE-WORK UNITS SHOULD BE COMMERCIAL USE

The Planning Commission's Decision defined "commercial" to be those "uses listed in the OBC zone." This is a clear, unambiguous interpretation that we propose that you uphold.

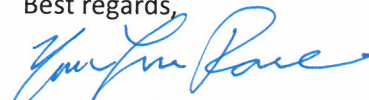
However, the Planning Commission did not reach the issue of live-work units specifically. Rather, they relied on the Staff Report, which concludes that live-work units would be Home Occupations under CDC Chapter 37, and that such Home Occupations are not allowed in the OBC zone. That conclusion is based on a flawed premise: Home Occupations *are allowed in the OBC zone*, in CDC Section 21.050 .5: "Home occupations, subject to the provisions of Chapter 37 CDC."

With this understanding in mind, and consistent with the Planning Commission's interpretation of "commercial" to be those "uses listed in the OBC zone," please advise on if the "work" portion of a live-work unit, if otherwise a use allowed in the OBC zone, would qualify as a commercial development of the first floor.

In addition, please advise whether there are any building code or other requirements for the commercial "work" space that would impact the design of a building. For example, if the entire first floor of a unit (of multiple in the building) is a tax professional's office, would the office space need to be separated from the living space above? Could there be an internal circulation system, such as stairs, to connect the "work" and "live" spaces without the need to go outside? Would the office space need to have separate restrooms from the residential space?

I appreciate your time and attention to this request.

Best regards,



Zoee Lynn Powers

Enclosures:

- Check for Appeal Fee (\$400)
- Signed Appeal Application