

# WEST LINN PLANNING COMMISSION

## FINAL DECISION AND ORDER

MISC-18-07

### IN THE MATTER OF A REQUEST TO INTERPRET THE COMMUNITY DEVELOPMENT CODE

#### I. Overview

At its meeting of December 12, 2018, the West Linn Planning Commission ("Commission") held a public hearing to consider the request by Attorney Zoe Lynn Powers, applicant, for an interpretation of the Community Development Code on the following two issues:

- 1 ON A SLOPED SITE, WHAT CONSTITUTES THE "FIRST FLOOR OF THE STRUCTURE"?
- 2 WHAT CONSTITUTES A "COMMERCIAL" USE OR DEVELOPMENT?

In addition, the applicant provided four examples for consideration in the analysis of "COMMERCIAL" use or Commercial Development.

- 2.1 *The "Work" Portion of Live-Work Units*
- 2.2 *Parking Spaces, Garages, or Bike Parking*
- 2.3 *Self-Storage Units*
- 2.4 *Non-Private and Non-Profit Uses*

This interpretation will not change the CDC text but could improve the understanding of the CDC. The applicable criteria for an interpretation request are found in Chapter 1, 2, 5, 21, 41 and the review of the interpretation was referred to the Planning Commission subject to Chapter 99 Procedures for Decision Making: specifically Section 99.060.A.3, 99.060.B and 99.160.A of the Community Development Code (CDC). The evaluation of this interpretation was benefited by a review of the Comprehensive Plan and additional sections of the CDC: Chapter 18, 19, 59 and 80. The hearing was conducted pursuant to the provisions of CDC Chapter 98.

#### 1) Commission Jurisdiction

The hearing commenced with a challenge by Commissioner Mathews of the Planning Commission's authority to hear the matter. He cited CDC 99.060.A.3 which is the Director's authority to make initial interpretation of the code and CDC 99.060.B.5 which is the Planning Commission's authority to review appeals of the Director's interpretation. That section says the Director shall have initial authority and responsibility to interpret all terms, provisions and requirements of this code. The Director's interpretation may be appealed to the Planning Commission pursuant to 99.060.B.5. Commissioner Mathews also cited 99.160.A in which the Director is authorized to make specific decision with exceptions. Those exceptions include a

director's interest in the decision, including involvement with the applicant or in the property, and cannot make an impartial decision.

Commissioner Mathews offered his opinion that the Director had not provided a clear basis for the exemption. Lacking that information, he stated his opinion that the Commission lacks authority under the code to hear the request for interpretation and stated the decision should be referred back to the Director. He pointed out that if the Director does articulate a conflict that met the exemption, then it would exclude the Director from future involvement in the process. He asked the Planning Commission to consider his request.

The Planning Commission deliberated on the matter and asked clarifying questions. Planning Manager Boyd clarified he is the Director's designee and noted he participated in a collaborative process with Community Development Director Williams and City Attorney Ramis. He referred to citizen written testimony attached to the staff report that spoke to staff preference for development. In addition, the contents of the staff report were reviewed related to the complicated history for this site.

Planning Manager Boyd then reported on the Planning Director review process. The code allows for notice only to the applicant (CDC 99.080.E). He explained that the Director, Planning Manager and City Attorney considered the City Council goals for citizen involvement, providing a notice and the opportunity to speak on significant land use issues, along with the goals of the planning commission to promote citizen involvement and concluded by noting the process meets the intent of the ordinance by recognizing the input received from citizens in this process and all concurred the best process would be to refer this review to the Planning Commission.

City Attorney Ramis concurred that Commissioner Mathews has identified all the correct CDC sections applicable to the jurisdiction question. The question for the Planning Commission is whether they want to accept the review for this code interpretation. He summarized the criteria for review and then noted a weakness in the CDC Director's interpretations process because it only provided notice to the applicant. He concluded that the Planning Commission is being asked to accept jurisdiction.

Planning Manager Boyd reviewed the staff report findings on the issue of referring the interpretation to the Planning Commission. He cited Findings 3, 24, 25, 27 and 28 that addressed citizen concerns on staff preference for development and explained the complex history at this site. The Planning Commission had additional discussion evaluating the exemption in 99.160.A to refer the matter to the Planning Commission. Planning Manager Boyd explained that Director Williams was open from the onset of this application to make a decision. The reason for the referral was a detailed review of the process showed lack of public involvement, the lack of notice and limited opportunity to appeal in the director decision process. That, in addition to the sensitive nature of the site, caused the request to refer the decision to the Planning Commission. The Planning Commission was asked to consider not the literal review of the code but the best process for that discussion when considering the referral

to the Planning Commission. He concluded that the referral to the Planning Commission allowed City Council, who adopts the code, to be the final arbiter of the review appeal.

The Planning Commission considered the information received and Commissioner Mathews moved to "Reject the hearing of MISC 18-07 based not addressing requirements of the Community Development Code to make referral to the Planning Commission." The motion was seconded by Commissioner Relyea. The motion failed (vote: 4 against to 2 for the motion).

## **2) Continuation of the Public Hearing on the Code Interpretation**

The public hearing continued with a staff report presented by John Boyd, Planning Manager. Zoe Lynn Powers, Attorney presented on the applicant's behalf.

Public input on the issue was reviewed. Elizabeth Rocchia requested written party status and provided written comments expressing the need to protect commercial lands that were read into the record. Pat Rushton and Stephen Rushton, Richard and Judy Hunter, and Julia Simpson requested party status but did not testify. Gail Holmes provided oral testimony to clarify the property is in Willamette NA and expressed a concern on the limited amount of Office Business Center lands remaining. Kathy Halicki provided oral testimony expressing a concern about changing the definition and the potential city-wide impact if the interpretation was approved for the zone. She supported acceptance of staff recommendations to be consistent with the existing code language. Roberta Schwarz and Karen Park testified together and referred to a Memorandum to the Planning Commission dated 12/4/18 and read from the multipage document. She summarized by objecting to the proposal by the applicant and objected to any interpretation of the code.

The applicant, Attorney Zoe Lynn Powers, provided rebuttal comments for the public testimony provided. She clarified key points but noted her review was contained in information provided by the applicant's submittal or exhibits or was addressed in the staff report. The Planning Commission asked clarifying questions on the definitions in CDC 2.030 "story", "story, first", "habitable floor" and "grade". The commission also considered Chapter 21 and specifically "21.050.2 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." The Commission considered non-defined terms such as "main access" and "main entrance" but found it was not defined in the code.

The hearing was closed and a motion was made by Commissioner Mathews and seconded by Commissioner Relyea to 1) accept the findings contained in staff report with a modified interpretation of "first floor" as used in Chapter 21 (Section 21.050.2) as "including the entire perimeter of the structure at the highest grade" and 2) approved the recommendations of staff for the interpretation for "Commercial Development" along with the four uses proposed sub-items under the "Commercial Development."

Under discussion of the motion, the Planning Commission considered the area below the first floor can be other uses.

The motion was passed unanimously (6-0).

## **II. The Record**

The record was finalized at the December 12, 2018, hearing. The record includes the entire file from MISC-18-07.

## **III. Findings of Fact**

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Attorney Zoe Lynn Powers.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record, including any exhibits received at the hearing.
- 4) The Planning Commission considered the definition of "Story, First" and the term "first floor" as applied in 21.050.2 and approved their "Planning Commission interpretation."
  - i. The Planning Commission interpreted "first floor" based upon the findings and criteria contained in the staff report, and adopted a modified interpretation (contained in the motion), to provide a better understanding of the term "first floor" applied in Section 21.050.2.
  - ii. The Planning Commission motion provided their interpretation of "first floor" as applied in Section 21.050.2 as "including the entire perimeter of the structure at the highest grade."
    1. For example on a slope, the Commission discussed the potential for an uphill access and downhill side access.
    2. The Commission was concerned the downhill side would only use 50% of the perimeter of the structure. They discussed a goal to use the entire perimeter.
    3. The decision was based upon the first floor being the entire perimeter of the structure which considered only the use of the uphill side (highest grade) access.
- 5) The Planning Commission approved the recommendations of staff for the interpretation for "Commercial Development" along with the four uses proposed sub-items under the "Commercial Development."
  - i. The adopted staff recommendation, the term "commercial development" was not a use but a prescribed condition that the first floor contain commercial development.
  - ii. The four uses considered were also not adopted as proposed interpretations based upon the findings in the staff report.
    1. The project may have multiple family units above the first floor commercial development. The project may promote living in an apartment and working in the first story portion of the project that has commercial uses listed in the

Occupations does not provide an option to live and work in the same unit in this commercial zone.

2. The definition considers excluding any required parking lots within the same lot of record. A parking facility or garage that provides vehicle or bicycle parking and does not serve the required vehicle or bicycle parking needs of the development is a permitted commercial use in the OBC zone.
  3. Storage units are not commercial uses allowed in the OBC zone. However, if a commercial unit (an attorney or accountant office) has an office design that contains records storage, that type of storage may be considered accessory to the primary and allowed commercial use.
  4. The fourth sub question addresses non-private and non-profit uses and asked if a post office or any government facility related to transmission of mail would qualify. The OBC Zone lists as conditional uses: Postal services, Public safety facilities and Public support facilities. The definition addresses both government service and private USPS-type operations. While conditionally allowed in the zone, a separate conditional use permit review would be required.
- iii. Staff asserted in the staff report and the Planning Commission adopted staff's recommendation for "Commercial Development" and the consideration of the four sub uses. The Commission found that an interpretation of the sub-questions is not required. Each of the uses proposed by the applicant are uses defined in the CDC and are either listed in the OBC zone or listed in other zones. Specifically, only those commercial uses listed in the OBC zone may be considered as applicable uses.

#### **IV. Applicability Of This Interpretation Decision**

- 1) This interpretation by the Planning Commission was limited only to Chapter 21.
  - i. Specifically, 21.050.2 "2. *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.*"
- 2) The Planning Commission motion provided their interpretation of "first floor" as applied in Section 21.050.2 as "including the entire perimeter of the structure at the highest grade."
- 3) Therefore, any future development in the OBC zone that proposes multi-family units pursuant to section 21.050.2 shall address the requirements of this interpretation.

#### **V. Findings**

The Commission adopts the Staff Report for December 12, 2018, with attachments, as its findings, which are incorporated by this reference. The Commission concludes that all of the required review criteria and review references were considered in completing the interpretation request.

**VI. Order**

The Commission concludes that MISC-18-07 approved a modified interpretation of "First Floor" as it applies to Chapter 21 and accepted staff recommendations for the term "commercial development" along with the four sub-questions based on the Record, Findings of Fact and Findings above.

  
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GARY WALVATNE, CHAIR  
WEST LINN PLANNING COMMISSION

December 18, 2018  
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.

Mailed this 19<sup>th</sup> day of December, 2018.

Therefore, this decision becomes effective at 5 p.m., January 2, 2019.