

**STAFF REPORT
FOR THE PLANNING COMMISSION**

FILE NUMBER: MISC-18-07

HEARING DATE: December 12, 2018

REQUEST: Code Interpretation request from Zoe Lynn Powers, Attorney representing the property owner at 2444, 2422 and 2410 Tannler Drive

APPROVAL CRITERIA: The hearing is conducted as a legislative action pursuant to the rules of Chapter 98.070 to 98.160 for an interpretation decision. The review was referred to the Commission pursuant to Sections 99.060.A.3, 99.060.B and 99.160.A. The review criteria are found in Community Development Code (CDC) 1.060, 2 Definitions, 5 General, 21 Office Business Center, 41 Building Height, Structures On Steep Lots, Exceptions, and information from the Comprehensive Plan and the uses described in Chapter 18 Neighborhood Commercial, 19 General Commercial, 59 Willamette Neighborhood Mixed Use Transitional Zone, and 80 Unlisted Uses.

**STAFF REPORT
PREPARED BY:** John Boyd, Planning Manager

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GENERAL INFORMATION

OWNER/

APPLICANT/CONSULTANT: Zoe Lynn Powers
111 SW Columbia Street Suite 700
Portland, OR 97201

OWNER: Jeffery I. Parker and Diane Wilt, as tenants in common
1800 Blankenship Road Suite 200
West Linn, OR 97068

SITE LOCATION: 2444, 2422 and 2410 Tannler Drive

LEGAL DESCRIPTION: Assessor's Map 21E35C Tax Lots 00100, 00102, 00200

SITE SIZE: 11.41 acres

ZONING: OBC, Office Business Commercial

COMP PLAN DESIGNATION: Commercial

PUBLIC NOTICE: Public notice was mailed to the all neighborhood associations and property owners in the OBC Zone on November 20, 2018. The property was posted with a notice sign on November 20, 2018. The notice was published in the West Linn Tidings on November 29, 2018. The application was posted on the City's website. The notice requirements of CDC Chapter 98 have been met.

EXECUTIVE SUMMARY

This proposal has ***no site plan*** or ***no proposed development***. The applicant, on behalf of the owners of a site located at the northwest corner of Tannler Drive and Blankenship Road, seeks an interpretation pursuant to CDC 01.060 that was referred to the Planning Commission for review pursuant to Chapter 99.060.A.3, 99.060.B and 99.160.A. The hearing is processed as a legislative action pursuant to Section 98.070 through 98.160. ***This interpretation will not change the CDC text but could improve the understanding of the CDC.***

The applicant's submittal raises two core questions as follows:

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

On the first question the applicant asks for a determination if the first floor can be considered to meet the criteria of “utilizes the entire first floor” and provides an “Exhibit A” that depicts an example where the lowest floor is open on one side but underground on the other side. Staff asserts the term “utilizes the entire first floor” is addressed by the definitions of “Story” and “Story, First.” These definitions contain criteria that provide the following specific guidance. The term, “Story, First” is defined in part, as a portion of a structure that is not more than 4’ below grade for more than 50% of the total perimeter or more than 8’ below grade at any point. This provides clear guidance for the Planning Commission to consider in this request.

On the second question, “What Constitutes a "Commercial" use or Development?” the OBC Zone use under consideration reads “Multi-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.” Staff asserts the term “commercial development” is not a use but a prescribed condition that the first floor contain commercial development.

Staff also asserts that the “commercial development” are those commercial uses contained in Chapter 21 Office Business Center. The Planning Commission may include this clarification in its interpretation review.

As part of the second question, the applicant asks four sub questions. The first sub question asks about a live work unit. Chapter 37 Home Occupations clarifies in the purpose section they are limited to residential zones. As further support for that position, Chapter 21 OBC does not reference Chapter 37 in the 21.090 “Other Applicable Development Standards.” 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 OBC zone. Chapter 37 Home Occupations does not provide an option to live and work in the same unit in this commercial zone.

The second sub-question addresses parking spaces, garages or bike parking. The CDC defines parking facilities to include garages or lots. The definition considers excluding any required parking lots within the same lot of record. A parking facility or garage that provides bicycle parking and does not serve the required bicycle parking needs of the development is a permitted commercial use in the OBC zone.

The third sub question addresses self-storage units. 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.

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 UPS operations. While conditionally allowed in the zone a separate conditional use permit review would be required.

Staff asserts 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.

The staff report outlines the applicable approval criteria include: Chapter 1, General; Chapter 2 Definitions; Chapter 5 General; Chapter 21 Office Business Center; and Chapter 41 Building Height, Structures On Steep Lots, Exceptions.

The staff report outlines that the review of this Interpretation was referred to the Planning Commission subject to: Chapter 99 Procedures for Decision Making: Quasi-Judicial and specifically: Section 99.060.A.3; Section 99.060.B and Section 99.160.A.

In the evaluation of this interpretation review, staff considered the Comprehensive Plan and these specific sections of the CDC: Chapter 18 Neighborhood Commercial (NC); Chapter 19 General Commercial (GC); Chapter 21 Office Business Center (OBC); Chapter 59 Willamette Neighborhood Mixed Use Transitional Zone (MU); Chapter 80 Unlisted Uses.

Public comments:

Staff has received three public comments (Attached as PC-5 Public Comments) from Ed Schwarz, Shannen Knight and Rebecca Adams. All parties testifying to express concerns for the need of a CDC interpretation and in support of the existing CDC. Ms. Adams also included a concern about a staff bias toward development in her testimony. These were the only submittals as of the publishing of this Staff Report.

RECOMMENDATION

Staff recommends the Planning Commission consider the request as two separate interpretation reviews. The first considers, for a structure constructed on a slope, what percentage of the first floor must exist to meet the requirement of the section and the second considers “commercial use of the first floor”.

For the first item, **staff recommends** the Planning Commission define first story as being 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.

For the second item, **staff recommends** the Planning Commission accept an alternate interpretation from the applicant. The applicant contends the term “Commercial Development” was not defined. Staff recommends the planning commission confirm 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*” be interpreted to mean those commercial uses provided in Chapter 21 OBC.

This recommendation for File MISC-18-07 is based on: 1) the findings submitted by the applicant, which are incorporated by this reference and 2) supplementary staff findings included in the Addendum below. With these findings, the applicable approval criteria for the request are met.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
December 12, 2018

**STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE CODE CRITERIA**

I. COMPREHENSIVE PLAN COMMERCIAL

Chapter Two (Land Use Planning) of the Comprehensive Plan provides background information for the plan development of Residential, neighborhood commercial, mixed use commercial and industrial land use. This section considered differing commercial centers located in the City including the Tanner Basin portion located near the I-205/10th Street area. The Comprehensive Plan Map is found in Figure 2.1 at the end of Chapter Two. The map identifies the subject property as containing the Commercial Plan designation.

Chapter Nine (Economic Development) of the Comprehensive Plan provides additional information on the city's commercial and industrial areas containing commercial uses.

In the submitted application, the applicant's narrative (on Page 2) notes:

"Commercial" is not defined in the Code. Words not specifically defined in the Code "have the meaning specified in Webster's Third New International Dictionary of the English Language, Unabridged." CDC 02.010.D. Unfortunately, the official Webster's definition of "commercial" - provided as Exhibit B- gives only a general sense that "commercial" means "of, in, or relating to commerce".

FINDING 1.

The Comprehensive Plan Designation of the subject property is Commercial. The Community Development Code implements the provisions of the Comprehensive Plan.

FINDING 2.

The Comprehensive Plan Commercial designation is implemented in the (commercial) zoning districts identified in table 5.020 Classification of Zones. Those zones in the Commercial Plan designation are required to have a listing of uses that are intended to be compatible with the adjacent area. Upon acknowledgement of the plan, the Community Development Code and zoning map were adopted. The CDC contains a specific listing of uses that are found to meet the purpose and intent of each zone and meet the goals and policies of the plan designation.

II. CHAPTER 1 specifically 1.060

01.060 INTERPRETATION. (A.) The Planning Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this code. A request

for an interpretation shall be made in writing to the Planning Director. The Director's interpretation may be appealed to the Commission as provided by CDC 99.060(B). (B.) The Director may develop guidelines to aid in the implementation and interpretation of the provisions of this code.

FINDING 3.

The Planning Director reviewed this application and has referred the request for interpretation to the Planning Commission pursuant to Section 99.160.a. Additional findings address the applicability of Section 99.160.a.

III. CHAPTER 2 Definitions

02.010 INTERPRETATION - For the purpose of this code, certain terms or words used herein shall be interpreted as follows.

- A. The word "shall" is mandatory, the word "may" is permissive.*
- B. The words "used" or "occupied" shall include the words "intended, designed, or arranged to be used or occupied."*
- C. The word "lot" or "parcel" includes the future tense, the singular number includes the plural, and the plural number includes the singular.*
- D. Words not specifically defined herein shall have the meaning specified in Webster's Third New International Dictionary of the English Language, Unabridged. (Ord. 1604 § 1, 2011; Ord. 1636 § 2, 2014)*

02.030 SPECIFIC WORDS AND TERMS -For the purpose of these regulations, the following terms or words are defined as follows.

FINDING 4.

PD -3 Staff Exhibit Commercial Zone Uses contains all uses listed in each commercial zone. These uses were reviewed and identified by those uses that have a corresponding definition found in CDC 2.030 Definitions. Staff concludes that not all commercial uses contain differing commercial zones have a definition found in Chapter 2.

IV. CHAPTER 5 General

05.010 PURPOSE *The purpose of the zoning provisions of this code is: to implement the Comprehensive Plan; to provide rules, regulations, and standards governing the use of land and structures; to carry out the development pattern and plan of the City; to promote the public health, safety, and general welfare; to lessen congestion in the streets; to secure safety from fire, flood, pollution, and other dangers; to provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage, and drainage; and to encourage the conservation of energy resources.*

05.020 CLASSIFICATIONS OF ZONES All areas within the corporate limits of the City of West Linn are hereby divided into zone districts, and the use of each tract and ownership of land within the corporate limits shall be limited to those uses permitted by the zoning classification applicable to each such tract as hereinafter designated. The zoning districts within the City of West Linn are hereby classified and designated as follows:

Zoning District	Zone Designation	Dwelling Units per Net Acre	Lot Size per Unit in Square Feet
...			
Commercial			
Neighborhood Commercial	NC		
General Commercial	GC		
Office Business Center	OBC		

FINDING 5.

The purpose of Chapter 5 General is to outline how the Comprehensive Plan designations are addressed within specific zoning districts and lists those zones. It is important to note that the last update to the CDC to add Willamette Neighborhood Mixed Use Transitional zone (Chapter 59) neglected to also update the name of this zone in the table above (CDC Section 5.020) under the Commercial designations. Chapter 59 MU zone purpose section is consistent with other commercial zones that reference the policies of the Comprehensive Plan and addressing how the uses listed were selected to mitigate the impacts to adjacent area.

FINDING 6.

PC-3 Staff Exhibit provides a table comparing all Commercial zoning district uses listed by type (P-Permitted; S-Permitted with standards; C-Conditional Use Permit). The uses listed in the table that are highlighted are also defined in the CDC. Staff found that all uses listed do not have a corresponding definition found in Section 2.030. The applicant appears to assert, Commercial Development was an unlisted use. For unlisted uses, the Planning Commission has the authority to consider additions to the listing as a land use action. Refer to findings for Chapter 21 OBC and to the consideration of Chapter 80 and the findings related to that section.

V. COMMERCIAL ZONING CHAPTERS

A. CHAPTER 18 Neighborhood Commercial

18.010 PURPOSE - The purpose of the neighborhood commercial zone is to provide for convenience goods and services within a cluster of stores. Convenience goods are goods which are bought frequently, at least weekly, and for which people do not engage in comparison shopping. The range of uses is limited to those uses which can be supported by a limited trade area. Uses in this district are intended to meet neighborhood needs as

opposed to community-wide needs. This zone is intended to implement the policies and locational criteria set forth in the Comprehensive Plan.

B. CHAPTER 19 General Commercial

19.010 PURPOSE - The purpose of this zone is to provide for the concentration of major retail goods and services at centers. The intent is to provide for the provision of a variety of goods and services and for comparison shopping, to accommodate new businesses and employment opportunities, to promote a suitable mix of commercial uses, to contribute to community identity and to assure that the commercial development is scaled to blend with nearby residential areas, and that the residential areas are protected from noise, glare of lights, traffic congestion and other possible adverse effects. This zone is intended to implement the policies and locational criteria set forth in the Comprehensive Plan.

C. CHAPTER 21 Office Business Center

21.010 PURPOSE - 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.

D. CHAPTER 59 Willamette Neighborhood Mixed Use Transitional Zone

59.010 PURPOSE - The purpose of the mixed use/transitional zone is to provide for a transitional area between commercial and residential zones with a desirable mix of residential land uses with limited commercial land uses. The limited commercial uses allowed in this district are selected for their compatibility with residential uses and their ability to meet the needs of the neighborhood. Uses in this district are intended to be compatible with the design and aesthetic qualities of the adjacent neighborhood. This zone is intended to implement the Willamette neighborhood plan as authorized by the policies set forth in the Comprehensive Plan. (Ord. 1515, 2005; Ord. 1547, 2007)

FINDING 7.

Each of the plan designations within the Comprehensive Plan have a zoning district that implements the Plan policies and goals. Each Commercial CDC Zoning district has a listing of uses that are intended to be compatible with the adjacent area. Upon acknowledgement of the plan, the Community Development Code was adopted along with a zoning map. Each zone was created with a specific listing of uses subject to the purpose of each zone and pursuant to the plan designation.

FINDING 8.

As noted in the previous findings, the site is designated as Commercial in the Comprehensive Plan. The CDC Commercial Zones (NC, GC, OBC, and MU) are designed to implement the plan and follow Plan policies and goals. The CDC policies and intent are used to create a listing of uses that are intended to be compatible with the adjacent area.

FINDING 9.

As part of the 1983 adoption of the CDC (acknowledged in 1984), the City was required to update their code to assure the uses in each zone were reviewed by the City and decisions made to assure the goals, policies and intent of the plan was met. The CDC was adopted in 1983 and acknowledged to be consistent with the Statewide Planning Goals in 1984. The CDC gave recognition to the potential outcome that oversights or omission of uses could occur and provides a process in Chapter 80.

VI. Consideration of CHAPTER 21 OFFICE BUSINESS CENTER and Amendments to Chapter 21.

In the application for Interpretation review, the applicant asks the City to:

“Please provide a determination as to whether the following uses would be considered a "commercial development" or use under the City's Code and, in particular, for the first floor of structures on the Property with multiple-family units above pursuant to CDC 21.050 (the "Project").”

On the first page of the narrative the applicant cites CDC 21.050(2) as follows:

"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."

Attached to this report are staff exhibits, Exhibit PC-4 is the full version (Ch. 21 only) of the 1983 CDC CHAPTER 21 OFFICE BUSINESS CENTER Zone.

In 1983, Section 21.050.2 read as follows:

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

Ordinance 1647 approved on August 8, 2016 amended the CDC in part as follows:

SECTION 2. Amendment. West Linn CDC Section 21.050 is amended as follows:
21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

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

- 1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.*
- 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, only above the first floor of the structure.

3. Signs, subject to the provisions of Chapter 52 CDC.

4. Temporary use, subject to the provisions of Chapter 35 CDC.

5. Home occupation, subject to provisions of Chapter 37 CDC.

6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.

7. Eating and drinking establishments, subject to the following limitations:

a. The use shall constitute no more than 20 percent of the total floor area of the building in which it is located.

b. The use shall not include any drive-through facilities

FINDING 10.

Prior to this change in 2016, CDC Section 21.050.2 contained the same language as when it was adopted in 1983 and acknowledged by DLCD in 1984. A copy of the 1983 CDC is attached to this report as Staff Exhibit PC-4 STAFF EXHIBIT – 1983 CDC CHAPTER 21 OBC.

FINDING 11.

The change in 2016 and identified above, to CDC Section 21.050.2 re-organized the terms of the use and clarified the commercial development must utilize the entire first floor.

As it reads today, the use under consideration is as follows:

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 uses contained within each zone were specifically designed to comply with plan policies and the plan designation. The applicant's assertion that the term "commercial" or "commercial development" used in CDC 21.050(2) is undefined has been reviewed and in this report. The term is not a use in the commercial zones. The purpose of the term in 21.050.2 is to generally define those uses that must utilize the first floor. This report will also assert that those uses are deemed to be those commercial uses within the OBC zone.

FINDING 12.

Based upon the findings and information provided in this report The applicant's assertion that the term "commercial" or "development" in CDC 21.050(2) is not defined in the code is not supported by the by the findings contained in this report. The CDC was adopted to implement the City's Comprehensive Plan including the goals and policies. The purpose section contained in each commercial zone provides clear direction that the uses allowed, allowed with standards or conditionally allowed were constructed to be consistent with the plan policies and to minimize impacts with the adjacent areas.

FINDING 13.

Section 21.050(2) is "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 applicable term is "Multi-family" that must be above the first floor. The secondary term

“commercial development” is a descriptor that identifies the use that utilizes the entire first floor.

FINDING 14.

There are no “commercial” or “commercial development” uses used as a primary use in any Comprehensive Plan designation of commercial or implemented in a zoning district. Staff asserts this is a secondary term and supports that primary uses (multi-family units above ...) that meet that criteria in each zone provided that are permitted, permitted with standards or conditionally permitted. The term “commercial development” in 21.050.(2) has been in the code to describe the general use of the first floor to the specific land use “multi-family units” above the first floor since adoption in 1983 and acknowledgement in 1984.

VII. Consideration of CHAPTER 2 DEFINITIONS, CHAPTER 21 OFFICE BUSINESS CENTER and CHAPTER 41 BUILDING HEIGHT, STRUCTURES ON STEEP LOTS, EXCEPTIONS

Chapter 41 considers methods to measure building height in all zones. The zone provides differing methods to measure height on flat sites to steep sites.

The purpose for this review is to consider the constraints to a structure. The number of stories built are limited to the height of the building. This is the basis of the “Story, First” question.

In their application, the applicant has provided Exhibit A on page six that is used to illustrate their question:

“On a sloped site such as the Property, it is unclear if the “first floor of the structure” means the downhill space, fully exposed on one side but underground on the other, or if it means both the downhill and uphill spaces- with the uphill space actually being on the second floor of the structure, although it is the ground floor on that uphill side. This is illustrated by the drawing on Exhibit A. Please provide a determination as to whether the configuration shown on Exhibit A “utilizes the entire first floor’ as required by CDC 21.050”

CDC 2.030 Definitions

Basement. Any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

Floor area. The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Attic spaces and unfinished basements shall not count for the purpose of determining parking requirements.

Floor area ratio (FAR). The FAR is that percentage of the total lot size that can be built as habitable space. A FAR of 0.45 means that the square footage of the lot is multiplied by 0.45 to yield the total habitable

square footage of the house including accessory dwelling units. For example, on a 10,000-square-foot lot, an FAR of 0.45 will allow a 4,500-square-foot house (10,000 X 0.45 = 4,500). The FAR does not include or apply to attached garages. The FAR does not apply to detached garages, accessory dwelling units and accessory structures except that these detached structures may not individually exceed the height or square footage of the principal dwelling. The FAR does not include basement areas that average less than 50 percent of the basement perimeter exposed above grade. Uninhabitable space such as crawlspaces, attics, and spaces designed under the Flood Management Area Permit program to allow the passage of floodwaters are also exempt.

Grade. The finished ground level adjoining the building at all exterior walls.

Habitable floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Mixed use development. A combination of different types of uses that are complementary and integrated. This refers to allowing residential and businesses to be located in the same area (e.g., apartments over shops or other businesses or apartments adjacent to grocery stores or other commercial establishments).

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or unused under floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter, or is more than 12 feet above grade as defined herein at any point, such basement or unused under floor space shall be considered as a story.

Story, first. The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter, or more than eight feet below grade, as defined herein, at any point.

Story, half. A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

FINDING 15.

The definition of basement, floor area, habitable floor, and story are important to consider when reviewing the “story, first” definition. These definitions all consider the term floors, consider only floors habitable areas and exclude storage areas (as basements) or courtyards from living and working spaces.

FINDING 16.

The definition of “story, first” explains “. . .the floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter. . .”.

FINDING 17.

The Code definitions provide the best direction for the applicant’s question of the extent of the first floor; that area is more than 50% of the perimeter of the structure.

21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

A. *Except as may be otherwise provided by the provisions of this code, the following are requirements for uses within this zone:*

6. *The maximum building height shall be two and one-half stories or 35 feet for any structure located within 50 feet of a low or medium density residential zone and three and one-half stories or 45 feet for any structure located 50 feet or more from a low or medium density residential area.*

FINDING 18.

The OBC Zone supports the premise of the term story and “Story, First” for use in the review of first floor. The building height is based upon the stories contained in the structure; the lowest habitable floor is the first story.

VIII. CHAPTER 41 BUILDING HEIGHT, STRUCTURES ON STEEP LOTS, EXCEPTIONS

The applicant’s submittal asked “On a sloped site such as the Property, it is unclear if the “first floor of the structure’ means the downhill space, fully exposed on one side but underground on the other, or if it means both the downhill and uphill spaces . . .” The applicant also provided an Exhibit A showing a configuration of a development on a slope.

Staff notes there is ***no site plan and no development is proposed with this request for interpretation review.*** The purpose of reviewing Chapter 41 is to seek the guidance for development on steep slopes.

41.005.A.2 For steeper lots where there is more than a 10-foot difference in grade between the front and rear of the building, the height of the building is measured from grade at a point five feet out from the exterior wall on the lowest side (front or rear) of the building. One then measures vertically to the peak or ridgeline of the roof to determine the height.

Staff provided information on “story” and “story, first” that spoke to “. . . such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter, or more than eight feet below grade, as defined herein, at any point.”

Both the question of the “story, first” and the Ch. 41 Structures on Steep Lot criteria address grade. For this interpretation, the Planning Commission must consider the definition of story, first. There is no proposed design or development proposal under consideration. Just questions for interpretation review and a conceptual Exhibit. Staff asserts previously and repeats here, the definition of “story, first” provides the best guidance, that the configuration is acceptable based upon the premise that those conditions in the definition are met: the first

story will be entirely commercial uses, is 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.

FINDING 19.

The story, first as depicted in the Applicant’s Exhibit A is an acceptable configuration only when those conditions in the OBC zone, and the definition are met: the first story will be entirely commercial uses, is 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.

IX. CHAPTER 80 UNLISTED USES

80.010 PURPOSE - It is not possible to contemplate all of the various uses which will be compatible within a particular zone. Therefore, unintentional omissions occur. The purpose of these provisions is to establish a procedure for determining whether certain specific uses would have been permitted in a zone had they been contemplated, and whether such unlisted uses are compatible with the listed uses. (Ord. 1339, 1993)

80.040 LIMITATION - The Commission shall not authorize an unlisted use in a zone if the use is specifically listed in another zone as either a permitted use or a conditional use. (Ord. 1339, 1993)

80.050 APPROVAL STANDARDS - Approval or denial of an unlisted use application by the Commission shall be based on findings that:

- A. The use is consistent with the Comprehensive Plan;*
- B. The use is consistent with the intent and purpose of the applicable zone;*
- C. The use is similar to and of the same general type as the uses listed in the zone;*
- D. The use has similar intensity, density, and off-site impacts as the uses listed in the zone; and*
- E. The use has similar impacts on the community facilities as the listed use. (Ord. 1339, 1993)*

To avoid confusion during this review, the report notes in multiple instances there is no site plan or proposed development under consideration. In addition, there has not been a request for an Unlisted Use application. Staff has conducted a review of this Chapter 80 to consider the insights it provides on the thoroughness of the CDC, how it defines uses, and how uses may be included in each zone. The potential for oversight, if that oversight occurs, how the uses within the Ordinance could be updated.

In their application, the applicant requested an interpretation based upon an undefined component for one of the uses in Chapter 21 OBC Zone (CDC 21.050(2)). The applicant has asserted that the use “commercial” is not defined in the code and requires an interpretation to better understand the intent.

Staff has asserted in the previous findings, the applicant's interpretation is better served by considering the uses clearly listed in commercial zones of the code included the OBC zone. The Planning Commission may consider an interpretation to clarify code by noting the secondary term "commercial development" applies to the uses in the OBC zone.

FINDING 20.

The Comprehensive Plan contains a commercial plan designations and the Land Use Chapter of the Plan provides the policies for the implementation of commercial plan uses in that designation. The role of the CDC is to implement the plan and to assure that the uses listed address the plan designations, and are carefully selected as to minimize the impact adjacent properties.

***80.010 Purpose** It is not possible to contemplate all of the various uses which will be compatible within a particular zone. Therefore, unintentional omissions occur. The purpose of these provisions is to establish a procedure for determining whether certain specific uses would have been permitted in a zone had they been contemplated, and whether such unlisted uses are compatible with the listed uses. (Ord. 1339, 1993)*

***80.050 APPROVAL STANDARDS** Approval or denial of an unlisted use application by the Commission shall be based on findings that:*

- A. The use is consistent with the Comprehensive Plan;*
- B. The use is consistent with the intent and purpose of the applicable zone;*
- C. The use is similar to and of the same general type as the uses listed in the zone;*
- D. The use has similar intensity, density, and off-site impacts as the uses listed in the zone; and*
- E. The use has similar impacts on the community facilities as the listed use. (Ord. 1339, 1993)*

Understanding that a Chapter 80 Unlisted Use Application **has not been submitted**, the Planning Commission's Role in Chapter 80 review would be to consider the proposed unlisted use and complete a process similar to those reviews at the time of acknowledgment. The Planning Commission would then look at the Comprehensive Plan use, determine if that unlisted use is consistent with the intent and purpose of the applicable zone, is similar to the use listed in the zone and if the use has the same intensity, density and off-site impacts as uses listed in the zone.

This staff report has evaluated the purpose of each commercial zone. Staff then reviewed the zoning designations and how each of the listed uses in each zone were consistent with the Commercial Plan designation.

The applicant asserted that "commercial" or "commercial development" was not defined by the code and staff addressed this interpretation question by responding those are not uses in the code but a descriptor of the required commercial uses for the first floor below multi-family units in an OBC zone. In conclusion, staff has considered the remaining applicant's questions

regarding “live-work units” and found the work units must be commercial uses allowed in the OBC zone and utilizing the entire first floor. For the applicants question on parking or garages, that use is allowed in the OBC zone (with specific conditions). The applicant’s question on storage units found that was not a use permitted in the zone but noted that storage accessory to a commercial use may be incorporated into the commercial space design. Finally, the non-private and non-public uses proposed (post office) where found to be conditional uses in the zone. The conclusion of this analysis is these proposed uses are listed in the CDC. By the requirements of Chapter 80 they would not meet the criteria to be considered unlisted uses.

FINDING 21.

The term “Commercial development” as used in Section 21.050.2 is a descriptor of the uses allowed in the OBC zone. The term does not exist in the code and would not meet the requirement of an unlisted use. The applicant has proposed potential “commercial development” and the uses proposed are already allowed in the zone or are listed in other zones and thus would not meet the criteria for a Chapter 80 Unlisted Review.

FINDING 22.

The purpose section refers to “unintentional omissions” regarding the consideration that not all future uses can be anticipated. The approval standards note that any unlisted use must be consistent with the plan and consistent with the intent and purpose standards of each zone.

FINDING 23.

The applicant has requested an interpretation of code and has not requested an unlisted use. Those uses considered by the applicant as not defined or as proposed uses are specifically listed in the OBC zone or listed in other zoning districts and are not applicable in the OBC zone. Staff concluded the proposed uses were listed in the CDC and therefore do not meet the test of an unlisted use pursuant to the limitations of CDC 80.040.

X. CHAPTER 99 PROCEDURES FOR DECISION MAKING

A. Section 99.060.A.3

99.060 APPROVAL AUTHORITY This section explains the authority of the Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

A. Planning Director Authority. The Planning Director shall have the authority to:

...

3. Make initial interpretations of the provisions of the code.

FINDING 24.

The Planning Director (designee) has referred this request for interpretation to the Planning Commission. See Findings related to 99.160.A.

B. Section 99.060.B

B. Planning Commission authority. The Planning Commission shall have the authority to:

...

5. An appeal of the Planning Director's interpretation of the code pursuant to CDC [01.060](#).

FINDING 25.

The Planning Commission review of this Interpretation request under 99.160.A requires a hearing (Findings related to 99.160.A.) The Planning Director (designee) has referred this request for interpretation to the Planning Commission. The Planning Commission interpretation of this request, allows for the review, submittal of evidence, taking of testimony and rebuttal. This legislative process does not change the code, but could provide a greater understanding of the code. The decision by the Planning Commission if appealed would supersede the Planning Commission authority under Section 99.060.B.5 and transfer authority for that appeal to the City Council.

C. Section 99.060.C.3

C. *City Council authority. The Council shall have the authority to:*

...

3. *Consider an appeal or review of a decision made by the Planning Commission or Historic Review Board whether on the Council's own motion, or otherwise as provided by CDC [99.240](#).*

FINDING 26.

If the review of the interpretation by the Planning Commission is appealed; that action would fall under the authority of City Council pursuant to 99.060.C.3

D. Section 99.160.A.

99.160 DECISION BY DIRECTOR

A. *Pursuant to CDC 99.060(A), the Director is authorized to make certain decisions, and no hearing shall be held except where the Director has an interest in the outcome of the decision, due to some past or present involvement with the applicant or other interested persons or in the property or surrounding property, and cannot render an impartial decision. In such cases, the application shall be reviewed by the Director's designee, and in the event the designee cannot render a decision, the application shall be subject to the jurisdiction of the Planning Commission.*

FINDING 27.

This site has been subject to three land use actions along with the consideration of a fourth action over the past four years.¹ One public submittal (Ms. Adams) expressed concerns with examples of decisions where staff displayed a bias towards development.

FINDING 28.

Using the provisions of CDC 99.160.A, the Director recognized the sensitive and complex nature of this request and chose to refer this decision to the Planning Commission for review.

¹ A Plan Amendment/Zone Change ZC-14-01/PLN-14-01 that was withdrawn, a Class II Design Review and lot line adjustment DR-15-11/LLA 15-01, that was denied and an appeal to City Council (AP-15-01 upheld the Planning Commission decision on appeal). Another proposed action, a Development Agreement, was withdrawn prior to the any action taken on an application.

PC-1 AFFIDAVIT AND NOTICE PACKET

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. MISC-18-07 Applicant's Name Zoe Lynn Powers
Development Name _____
Scheduled Meeting/ Decision Date 12-12-18

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 11-20-18 (signed) V. Skoyev
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) 11-20-18 (signed) V. Skoyev
- E. Affected neighborhood assns. (date) 11-20-18 ALL (signed) V. Skoyev
- F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 11-29-18 (signed) V. Skoyev
City's website (posted date) 11-20-18 (signed) V. Skoyev

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) 11/20/18 (signed) [Signature]

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.

Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) 11-30-18 (signed) V. Skoyev

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN PLANNING COMMISSION
PUBLIC HEARING FILE NO. MISC-18-07**

**TO CONSIDER A REQUEST FOR A COMMUNITY DEVELOPMENT
CODE INTERPRETATION TO CHAPTER 2, 5, 21 and 41**

The West Linn Planning Commission will hold a public hearing on Wednesday, **December 12, 2018, starting at 6:30 p.m.** in the Council Chambers in City Hall, 22500 Salamo Road, West Linn, to consider a Request for Code Interpretation by Zoe Lynn Powers, Attorney for a site within the Office Business Center Zone and listed at 2444, 2422 and 2410 Tannler Drive, West Linn Oregon 97068. The Interpretation considers the uses described in the Comprehensive Plan; and uses found in the Community Development Code (CDC) Chapter(s) 1.060, 2 Definitions, 5 General, 18 Neighborhood Commercial, 19 General Commercial, 21 Office Business Center, 41 Building Height, Structures On Steep Lots, Exceptions, 59 Willamette Neighborhood Mixed Use Transitional Zone and 80 Unlisted Uses.

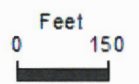
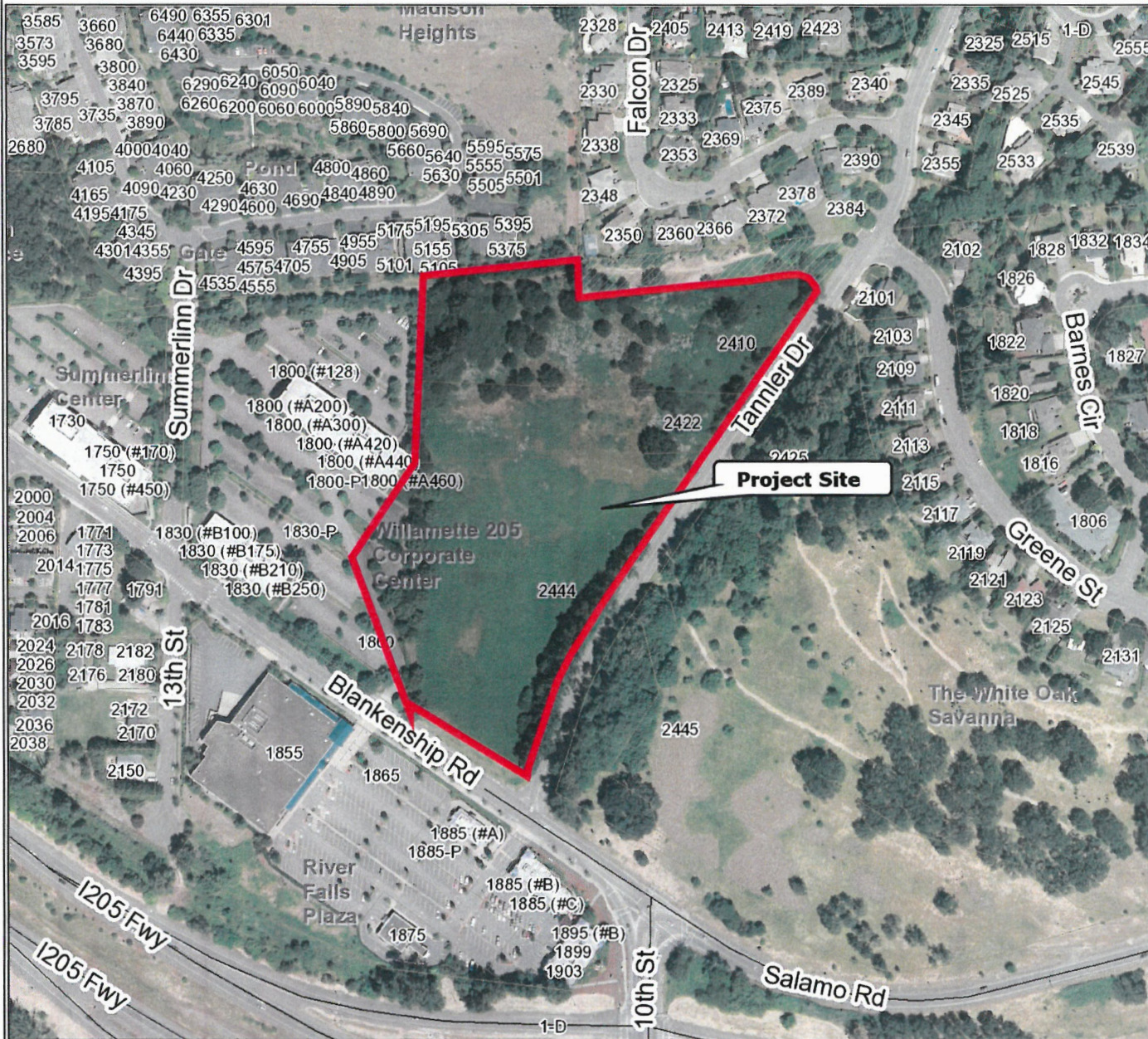
The hearing will be conducted in accordance with the rules of CDC Chapter 98. The decision was referred to the Planning Commission subject to 99.A.060(3) and 99.160.A. The Planning Commission decision will be based upon its interpretation of the applicable criteria. At the hearing, it is important that comments relate specifically to the interpretation and applicable criteria.

The interpretation will not change the CDC text but could improve the understanding of the CDC. The complete application for MISC-18-07 is available for inspection at no cost at City Hall or via the City of West Linn's website at <https://westlinnoregon.gov/planning/2444-2422-2410-tannler-drive-code-interpretation>. Printed copies of these documents may be obtained at City Hall for a minimal charge per page.

Anyone wishing to present written testimony on this proposed action may do so prior to, or at the public hearings. Oral testimony may be presented at the public hearings. At the public hearing, the Planning Commission will receive a staff presentation, and invite both oral and written testimony. The Commission may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the interpretation as provided by CDC. Failure to raise an issue in person or in writing at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

At least ten days prior to the hearing, a copy of the staff report will be available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact John J. Boyd, Planning Manager at City Hall, 22500 Salamo Road, West Linn, OR 97068, jboyd@westlinnoregon.gov, or 503-**742-6058**.

2444, 2422, 2410 Tannler Drive



Scale 1:3,600 - 1 in = 300 ft
Scale is based on 8-1/2 x 11 paper size



Map created by: SSHROYER
Date Created: 13-Nov-18 10:45 AM

WEST LINN GIS

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Map scale is approximate. Source: West Linn GIS (Geographic Information System) MapOptix.



CITY OF
West Linn

**CITY OF WEST LINN
NOTICE OF UPCOMING
PLANNING COMMISSION PUBLIC HEARING**

**PROJECT # MISC-18-07
MAIL: 11/20/18 TIDINGS: 11/29/18**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

PC-2 COMPLETENESS LETTER



CITY OF West Linn

November 19, 2018

Zoe Lynn Powers, Attorney
Radler White Parks & Alexander LLP
111 SW Columbia Street Suite 700
Portland, OR 97201

RE: Completeness check – MISC 18-07 Code Interpretation

Ms. Zoe Powers:

On October 29, 2018 submittal materials were provided for a proposed code interpretation without an application sheet. As applicant, you were made aware of that oversight on November 2, 2018. The City confirmed receipt of the received signed application submitted on November 9, 2018. That document was processed by the Planning Department and on November 13, 2018 was deemed **complete**.

The City now has 120 days to exhaust all local review; that period ends on March 13, 2019. Please be aware that a determination of a complete application does not guarantee a recommendation of approval from staff for your proposal as submitted – it signals that staff believes you have provided the necessary information for the Planning Commission to render a decision on your proposal.

We are determining with our Planning Commission, the best date for which to schedule this project for a public hearing. You will receive written notice of the actual hearing date at least 20 days prior to the hearing. Please contact me at 503-742-6058, or by email at jboyd@westlinnoregon.gov if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "John J. Boyd".

John J. Boyd AICP
Planning Manager

PC-3 STAFF EXHIBIT – COMMERCIAL ZONE USES

ZONE USE COMPARISONS BY PERMITTED (P), PERMITTED STANDARDS (S), CONDITIONAL (C)					
#	USE	NC	GC	OBC	MU
1	<i>Agricultural sales</i>		P		
2	<i>Agricultural services</i>		P		
3	<i>Amusement enterprises</i>		C		
4	<i>Animal sales and services, grooming</i>		P		
5	<i>Animal sales and services, kennels</i>		S		P
6	<i>Animal and services, veterinary (no outside runs)</i>		S	S	S
7	<i>Automotive and equipment</i>		C		
8	<i>Bed and breakfast</i> lodging				P
9	<i>Building maintenance services</i>		P		S
10	<i>Business equipment sales and services</i>		P	P	
11	<i>Business support services</i>		P	P	P
12	<i>Certified child care center</i>				C
13	Children's day care center	C	C	C	
14	<i>Community Building</i>				C
15	<i>Communication services</i>		P	P	
16	<i>Consumer repair service</i>	C	P		S
17	<i>Construction sales and service</i>		C		C
18	<i>Convenience sales and personal service</i>	C	P	C	
19	Convenience grocery store	P			
20	<i>Cultural exhibits and library services</i>	P	P	P	P
21	<i>Drive-through restaurants</i>		P		
22	<i>Eating and drinking establishments</i>		P		C
23	Eating and drinking establish (not more 20% of total floor area)			S	
24	<i>Extended hour business</i> (new or expanded)	C	C		
25	Extended hour business in existing structure		P		
26	<i>Family day care</i>	P	P	P	P
27	<i>Financial, insurance</i> and real estate service	C	P	P	S
28	<i>Food and beverage retail sales</i>	C	P	C	C
29	<i>General retail services</i>		P		P
30	<i>Heliports</i>		C	C	
31	<i>Home Occupation</i>		S	S	S
32	<i>Hospitals</i>		C		
33	<i>Hotel/motel</i> including extended hour businesses		P	P	C
34	<i>Household hazardous waste depot</i>		C		
35	<i>Laundry services</i>		P		
36	Light industrial – manufacturing		C		
37	Light industrial – finished product		C		
38	<i>Lodge, fraternal community center</i>		P		
39	Lodge, fraternal community center not listed as permitted		C		
40	<i>Medical and dental service</i>	C	P	P	P
41	<i>Multiple Family</i> dwelling				P
42	Multiple Family units above first floor			S	
43	<i>Nursery</i>	C			C

#	USE	NC	GC	OBC	MU
44	Park and <i>open space</i>				C
45	<i>Parking facilities</i>		P	P	C
46	<i>Participant sports and recreation</i>		P	P	
47	<i>Personal service facilities</i>	C	P	P	P
48	<i>Postal services</i>	C	C	C	
49	<i>Professional and Administrative services</i>	C	P	P	P
50	Public agency administration		C		
51	<i>Public safety facilities</i>	C	C	C	C
52	<i>Public support facilities</i>	C	C	C	C
53	<i>Recycle collection center</i>		C		
54	<i>Religious institution</i>		P		C
55	Religious institution not listed as permitted		C		
56	<i>Research services</i>		P	C	
57	<i>Residential home</i>				P
58	Residential use of the second floor				P
59	<i>Schools</i> under 200 students		C		
60	<i>Senior Center</i>		P		C
61	<i>Signs</i>	S	S	S	S
62	Single family common wall				P
63	<i>Single family detached</i>				P
64	Single-family homes, NC structures and damaged, exceed 50% replacement cost		C	C	
65	Single-family residential unit above a permitted use.	P	S		
66	Special Use Area			P	
67	<i>Super store</i>		C		
68	Spectator sport facilities		C		
69	<i>Temporary Use</i>	S	S	S	S
70	<i>Transportation facilities (Type I)</i>	P	P	P	P
71	<i>Transportation facilities (Type II)</i>	C	C	C	
72	<i>Utilities, major</i>	C	C	C	
73	<i>Utilities, minor</i>	P	P	P	P
74	<i>Vehicle fuel sales</i>		C	C	
75	<i>Wholesale storage and distribution</i>		C		
76	<i>Wireless Communication Facilities</i>	S	S	S	S

Bold and Italics – defined in CDC Chapter 2

PERMITTED (P), PERMITTED STANDARDS (S), CONDITIONAL USE (C)

PC-4 STAFF EXHIBIT – 1983 CHAPTER 21 OBC ZONE

**COMMUNITY DEVELOPMENT CODE
CITY OF WEST LINN, OREGON**

**ADOPTED DECEMBER 14, 1983
ORDINANCE NO. 1129**

The preparation of this Code was financed in part through a Comprehensive Planning Grant from the State of Oregon, Department of Land Conservation and Development.

21.000 OFFICE - BUSINESS CENTER, OBC

21.010 PURPOSE

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.

21.020 PROCEDURES AND APPROVAL PROCESS

- A. A use permitted outright, section 21.030, is a use which requires no approval under the provisions of this code. If a use is not listed as a use permitted outright, it may be held to be a similar unlisted use under the provisions of chapter 80.
- B. A use permitted under prescribed conditions, section 21.030, is a use for which approval will be granted provided all the conditions are satisfied; and
 - 1. The Planning Director shall make the decision in the manner provided by 99.060A2, Administrative Procedures, except that no notice shall be required; and
 - 2. The decision may be appealed by the applicant to the Planning Commission as provided by section 99.240A.
- C. A conditional use, section 21.060 is a use, the approval of which is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in chapter 60, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of chapter 80.
- D. The following code provisions may be applicable in certain situations:

1. Chapter 65, Non-conforming Uses in Structures.
2. Chapter 66, Non-conforming Structures.
3. Chapter 67, Non-conforming Uses of Land.
4. Chapter 68, Lots of Record.
5. Chapter 75, Variances.

21.030 PERMITTED USES

The following uses are uses permitted outright in this zone:

1. Business equipment sales and services.
2. Business support services.
3. Communications services.
4. Cultural exhibits and library services
5. Financial, insurance and real estate services.
6. Lodge, fraternal & civic assembly.
7. Medical and dental services
8. Parking facilities.
9. Participant sports & recreation: indoor
10. Personal services and facilities.
11. Postal services
12. Professional and administrative services.
13. Public safety facilities.
14. Public support facilities
15. Utilities: minor.

21.040 ACCESSORY USES

Accessory uses are allowed in this zone as provided by chapter 34.

21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

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

1. Animal Sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple family units: as a mixed use in conjunction with commercial development, only above the first floor of the structure.
3. Signs, subject to the provisions of chapter 52.
4. Temporary use, subject to the provisions of chapter 35.

21.060 CONDITIONAL USES

The following uses are conditional uses which may be allowed in this zone subject to the provisions of chapter 60, Conditional Use.

1. Childrens day care center.
2. Convenience sales and personal services.
3. Food and beverage retail sales.
4. Heliports.
5. Research services.
6. Transient lodging.
7. Utilities: major.
8. Vehicle fuel sales.
9. Religious Assembly.

21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS.

A. Except as may be otherwise provided by the provisions of this Code, the following requirements are the requirements for uses within this zone:

1. The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.
2. The average minimum lot width shall be 35 feet.
3. The average minimum lot depth shall not be less than 90 feet.
4. The minimum yard dimensions or minimum building setback area from the lot line shall be:
 - a. For the front yard, 25 feet;
 - b. For an interior side yard, 7½ feet;
 - c. For a side yard abutting a street, 15 feet;
 - d. For a rear yard, 25 feet; however, where the use abuts a residential district, the setback distance of the residential zone shall apply and

- in addition, a buffer of up to 50 feet may be required.
5. The maximum lot coverage shall be 50 percent.
 6. The maximum building height shall be two and one-half stories or 35 feet for any structure located within 50 feet of a low or medium density residential zone and three and one-half stories or 45 feet for any structure located 50 feet or more from a low or medium density residential area.
- B. The requirements of 1 through 5 in Subsection A of this section may be modified for developments under the planned unit development provisions of Chapter 24.

21.080 DIMENSIONAL REQUIREMENTS CONDITIONAL USES

Except as may otherwise be established by this code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in section 60.070 (1) and (2).

21.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

- A. The following standards apply to all development including permitted uses:
1. Chapter 34, Accessory structures.
 2. Chapter 36, Temporary Uses.
 3. Chapter 38, Additional Yard Area Required, Exceptions to Yard Requirements, Storage in Yards and Projections into Yards.
 4. Chapter 40, Building Height Limitations and Exceptions.
 5. Chapter 42, Clear Vision Areas.
 6. Chapter 44, Fences; Screening of Outdoor Storage.
 7. Chapter 46, Off-street Parking and Loading.
 8. Chapter 48, Access.
 9. Chapter 52, Signs.
 10. Chapter 54, Installation and Maintenance of Landscaping.
- B. The provisions of chapter 55, Development Review apply to all uses except detached single family dwellings.

PC-5 PUBLIC COMMENTS

Boyd, John

From: Ed Schwarz <ed.schwarz@gmail.com>
Sent: Monday, November 19, 2018 6:54 AM
To: Boyd, John
Cc: Williams, John; Cummings, Teri; Sakelik, Richard; Axelrod, Russell; Perry, Brenda; Martin, Bob; Savanna Oaks Neighborhood Association
Subject: Development Review Application - MISC-18-07 - 2444,2422, and 2410 Tannler Drive

Dear Mr. Boyd,

I submit this email as a public citizen. Please include this communication in the record for the above-referenced application.

I am writing regarding the subject Development Review Application submitted on November 13, 2018 by Zoe Lynn Powers on behalf of the owners of the property located at the northwest corner of Tannler Drive and Blankenship Road.

The property is zoned for Office Business Center (OBC).

In her letter accompanying the application, Ms. Powers requests that you make certain determinations as to the intent of the Community Development Code as related to:

1. what constitutes the “first floor” of the proposed structure on a sloped site and
2. what constitutes a “Commercial” use or development of the property.

This is far from the first attempt by this property owner to bend our city codes to meet his desired uses of this property. Savanna Oaks Neighborhood Association has already made clear in numerous meetings with representatives of the property owner, and with the property owner himself, what uses of the property it prefers. Our CDC is already very clear in answering these two questions. There is no need for any additional determinations to be made.

First Floor

The Community Development Code states, as related to multiple-family dwelling units:

“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 (Emphasis added)

Ms. Powers asks you to make a determination if the code applies to the uphill or downhill side of the proposed buildings. It is very clear that there is a first floor on **BOTH** the uphill and downhill sides of the building and, therefore, the above code (“entire first floor”) applies equally to both sides of the proposed buildings. In keeping with CDC 21.050, there must be commercial development on the **entire first floor** on both sides of the buildings.

The phrase “entire first floor” is very clear in its meaning. Referring to Webster’s Dictionary, “first floor” is defined as:

first floor

noun

Definition of *first floor*

1: GROUND FLOOR_SENSE 1

2chiefly British : the floor next above the ground floor

(<https://www.merriam-webster.com/dictionary/first%20floor>)

The definition includes a reference to “ground floor.” Continuing our search through Webster’s takes us to the definition of “ground floor.”

ground floor

noun

Definition of *ground floor*

1: the floor of a building most nearly on a level with the ground— compare **FIRST FLOOR**

2: a favorable position or privileged opportunity usually obtained by early participants — used especially in the phrase *in on the ground floor*

(<https://www.merriam-webster.com/dictionary/ground%20floor>)

As can be seen from this definition, the “ground floor” of a structure is the floor most nearly on a level with the ground. No distinction is made between sides of a building on a slope either in the CDC definition or by Webster’s.

No code interpretation is required here. CDC 21.050 makes it clear that there must be commercial development on the “entire first floor” of the proposed buildings – this includes both the **uphill and downhill** sides of the buildings.

Commercial Use

In her letter, Ms. Powers also asks you to make a determination as to what constitutes a “commercial” use or development of the subject property. Again, as above, our code is clear as to what uses are allowed in the OBC zone. For you to make an additional determination would be to change the Community Development Code as written.

CDC 21.030 lists fifteen uses which are permitted outright in the OBC zone. CDC 21.050 lists an additional seven uses permitted under prescribed conditions. Lastly, CDC 21.060 lists twelve conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Use.

In all, the three CDC sections referenced above list thirty-four uses allowed, or conditionally allowed, in this zone. The CDC is very clear in this regard. For you to make a determination to add additional types of uses would be to modify the very clear uses already delineated in the CDC. There is no need to do this as the code already allows ample examples of uses which are allowed.

Summary

I request that, in your response to Ms. Powers, you confirm what is already clearly stated in the CDC. First, that the **entire first floor** of the proposed structures must be used for commercial purposes and second, that the allowed uses are already listed in CDC 21.030, 21.050, and 21.060.

There is no need to interpret or in any way modify our existing CDC for this request.

Respectfully submitted,

Edward Schwarz
2206 Tannler Drive
West Linn
(503) 723-5015

To Planning Commission

I am writing in regards to public hearing file # MISC-18-07.

I am a member of EDC and president of Historic Willamette Main Street but I am speaking as a citizen on this matter, not as a member of these groups.

As you may know, I was chair of the committee that help worked on some zoning issues recently, so I do believe I have a good grasp of the code and the intent of the code.

My biggest concern is that we have limited commercial land left in the city. This is why I worked hard to change some of our mixed use zoning rules and allow for more business use. We are out of business space right now. As president of Historic Willamette Main Street, we take calls all the time from potential business owners looking to find space in Willamette. Until the new buildings are developed, we just don't have space to put businesses that want to come here.

Therefore, all development in commercial land areas, in my opinion, need to be developed for mostly commercial uses. While I understand OBC code allows for mixed use with housing on top of commercial, the definition of commercial zoning, to me, means the majority or at least 50% of the development should be dedicated to commercial uses.

While I understand this is just a request for a definition, I have some concerns that the developer is looking for ways to minimize commercial space and maximize residential space based on how the questions were phrased. Mixed use is an allowable use in OBC, but I believe this use was simply added to give some flexibility to the use. I do not believe that those that created this zone wanted residential use to be maximized. If you look at the purpose of the zone it says this:

21.010 PURPOSE

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.

The purpose of the zone clearly tells me that is mainly for commercial use. It says "groups of businesses" not a single standalone business. All the other underlined lines again speak to business and employment and does not mention residential uses at all. It states uses "between residential districts" but nowhere does it say it is for residential use. If those creating the zone wanted it to be more of a true mixed-use zone, the "purpose" would read more like our mixed use zone code reads:

59.010 PURPOSE

The purpose of the **mixed** use/transitional zone is to provide for a transitional area between commercial and residential zones with a desirable mix of residential land uses with limited commercial land uses. The limited commercial uses allowed in this district are selected for their compatibility with residential uses and their ability to meet the needs of the neighborhood....

You can see that the mixed-use zone was designed with residential being the favored type of development in this zone. But again, this land is not zoned "Mixed Use". It is zoned "OBC" which is "office business centers". Thus, office and business type developments are what the majority of the square footage should be developed as. I was hoping that when the OBC code was reviewed last time that this would be made clearer. Perhaps the code needs more work to make sure that commercial use is maximized.

Let's move on to what they are asking for. First, I think the ground floor is both the downslope and the upslope. Anywhere there is a "main" entrance, road, parking lot, sidewalk, etc. where the public can enter should be considered the first floor.

For instance, if you look at the Market of Choice development. This is built on a slope. You have the businesses on the street across from the post office (eye glass shop, flower shop, pet supply store, etc.). These are on the "first floor" because they are at street level. But the businesses that are located above these businesses are also on the "first floor" of the upslope side of the building (503, sushi place, etc.). There is a parking lot there at "ground level" which is what people consider the "first floor". People walking in to this level think they are on the first floor. People walking into the level below think they are on the first level. So, the answer is both. Anytime there is a street, parking lot, sidewalk or other public access, it should be considered the first floor.

If you look at the commercial building directly next door to this land, it is on a slope and again has an entrance on one side of the building which seems like it is the "first floor". But you can also enter at the back of the building (upslope) and when you enter the building, you may not technically be on the first floor, but the "customer" thinks it is the first floor. Again, since the zone is designed to be built for business and consumers, we must address it from that frame of mind. Whatever level the customer enters on, I believe, the code tells us should be what is commercial use. Therefore, I would interpret the code to be wherever there is a street, parking lot, sidewalk, etc. that a "customer" would enter from, this is considered the first floor.

In their Exhibit A drawing, it looks like they have a driveway or something on the upslope side. In my interpretation of first floor, unit 5 and 6 would need to be commercial use as a person entering here would assume this is the "first floor". All the other units would be allowable as residential use.

I will add that I would be ok with a situation where stairs to those residential units were accessible from street level if units 5 and 6 were commercial. (stairs on side of building or in between two commercial units similar to how mixed-use units are accessible in the Willamette area). I would also allow some type of "lobby" like the building next door where you enter and unit 5 and 6 had a few commercial offices at ground level with stairs/elevator leading to the residential units above.

Bottom line, the purpose of the zone is to provide office business space. Anyone entering the property should feel like development is mostly for commercial use and the residential use is secondary. If we

look like good mixed-use projects like Orenco Station or the new development in Lake Oswego where Wizers used to be, the general public should not even realize there are living spaces above. It should feel like it is a commercial development and those living in the units above benefit from having businesses and services within a few steps from their home. This is what I believe is the intent of this zone.

On to #2. I think everyone knows what “commercial” is and doesn’t require a definition. By asking to define it tells me that what they want to propose may be a gray area. If it is a gray area, then it probably does not meet the definition of commercial. The list of items they list: “a shop, boutique, artist's or other design studio, salon, dance or personal trainer studio, or offices for various professionals, including consultants, accountants, architects, attorneys, computer related professionals, internet-based companies or resellers, engineers, designers, home-based office workers, insurance, real estate, and travel agents, one-on-one instructors, photographers, and similar occupations” are obvious commercial uses.

Things like a garage or storage spaces are not “commercial” usages. I don’t think they need defining. The first group of items create “commerce” or result in the individual that owns the “business” located in the space is generating income in some way by selling their goods or services to the **general public**.

If we look at the attorney’s attached definition of “commerce” from Webster’s, it says:

com-mer-cial

adjective \ka- 'mar-shal\

1 : of, in, or relating to **commerce**: such as a : occupied with or engaged in **commerce**

So then we must also go to Webster’s definition of “commerce”:

commerce

noun

com·merce | \ 'kä-(,)mərs

2: the exchange or buying and selling of commodities **on a large scale** involving transportation from place to place

“Large scale” tells me that for commerce to be taking place, products or services are being offered to the public at large, not just for the people within a certain complex. “From place to place” also mean that the goods are leaving the area, and not just staying on site.

Another developer came to some members of the neighborhood association for development of the old Albertson’s building. Their concept was a retirement facility with what they thought could be “commercial” on the bottom floor and retirement residences on top. But the “commercial” services would only available to the retirement home residents and not all the residents of the rest of West Linn. For this reason, the neighbors involved with this early process determined that doesn’t meet the criteria of “commercial”.

I believe the Webster's definition of commerce clearly supports the neighborhoods position on the other potential development. To be commercial, the goods/services need to be sold to the public at large and must "leave" the complex.

Similarly, it seems that the developer is trying to make the argument that the leasing of a garage or office space may be considered "commerce". The only way I think this would meet the code if the land was developed to be a full storage facility. Take for instance the storage facility that is being created on Willamette Falls Dr. This is commerce because the building is housing a "business" and the "business" will be in selling storage space to the general public. If a public storage facility were to be built on this property, it would meet the "commerce" requirement. But this would mean that the facility sells public storage, not sells storage/garage space to those that live or work in the complex. In order to be "commerce", sales and services need to be offered to the general public, not to a select group of residents.

Thus, if the developer wanted to make garages or storage units available to the public, I would assume the public renting such units would want such storage units to be only accessible to those that are paying to store goods (fenced in some way) like most storage facilities are. I would also assume that someone would not really want to live above a public storage facility as this means strangers would be coming in and out of the building underneath them presumably nosily moving things in and out of the unit. Thus, I have serious doubts that what this developer is looking to do is build a true storage facility. They are looking for ways to "rent" a garage or storage space to someone living in the residential units for "extra" income. This would not then not meet the definition of "commerce". There would also need to be some assurances in this scenario that the storage/garages remain public. I could see a scenario where the property is sold, and the garages/storage became privatized. Once built, this is not controllable. Thus, I would make it clear in the definition that storage/garage would only be considered "commerce" if it is a standalone business with no residential use on top.

As to live/work units, this does meet the criteria of the code. However, I would say that commercial development would most likely need to meet the other parts of the commercial development code in regard to public access to restroom facilities, etc. My guess is that the commercial unit would be required to have a restroom open to the public in the commercial space itself, not in the residence portion of the live/work space. I do not see any issue, though, with stairs to the residential unit being inside the commercial unit. My concern would be future "policing" of the units. What is to stop someone from just turning that space into living area and not using it as a commercial space? I know our commercial code dictates that this area cannot be used for residential use. But is the code clear when the unit is a work/live situation? Do we have code stating that lower level must be commercial in a mixed-use type of development? Do we have staff to police this should units become more a residential use and not commercial anymore? My guess is that these units just eventually become living units and we lose the commercial parts again ruining the purpose of this zone. While I like the idea of this, I'm not sure long term this best honors the OBC zone.

As to government/non-profit uses, I would say yes these qualify as commercial in most cases. Postal service is a "conditional use" in this zone so would be subject to a conditional use permit. Non-profit would depend on what the non-profit does but most non-profits fall under an office type use. As long as it is an allowed or conditional use that is already listed in the OBC zone, it would be allowed type of business in the development.

Overall you can see that my goal is to protect the commercial zones we have left in the city. I hope that the planning commission also sees the purpose of the zone is important and does its best to protect what I think the zone was created for.

Thanks for taking the time to read all my comments. I know this is a little long and sometimes off topic so I appreciate the time.

Shannen Knight

From: R Adams [<mailto:radams014@gmail.com>]

Sent: Wednesday, November 21, 2018 10:54 PM

To: City Council

Subject: CDC Definitions of the first floor (a floor is a "story" and a basement might be a "story" or not depending on measurements)

Dear Council,

I notice that Mr. Parker's lawyer is requesting an official code interpretation regarding his Tannler Property. Please do not leave this solely in the hands of the Planning Staff without the professional advice of City Officer Attorney Ramis. On various occasions staff has acted as if they have an unofficial policy of encouraging densification of the city and the occasional incidents of "technical inadequacy" have at times caused such misery and expense for the population.

It was only a year ago around the holidays that so much disruption and stress was put upon citizens by that Governmental Agreement application worked on by Staff and Mr. Parker behind everyone's back. I hope you remember that Governmental Agreement: the upfront backroom deal which threatened to turn our entire land-use process on its head? Or the ConAm Debacle where the application appears to have been incorrectly deemed complete as if it was okay from a transportation point of view when it was not? Or the Metro Town Center project with its trumped up citizen engagement process? Or the Sunset mix up over the buried tank? How will the city ever hold on to good young planners if things like that keep happening? Look at all that has happened in relation to the Tannler Property and ask yourselves is it wise to allow the very same Planning Director to handle this precedent setting code interpretation given what has gone before? How about having Mr. Williams and Ms. Arnold handle it, with Ramis doing a review? Make it fail-safe.

This review is an opportunity to clarify the intent of the code and help the applicant understand how the easiest way to move a proposal forward is to meet both the details of the code as written and *the stated purpose of the zone*. The inquiry includes a potentially tricky diagram with a basement with three residential stories stacked up, and the extra time to address how such a configuration may meet or contradict both the purpose of the zone and the details of the requirements would be good. If that diagram represents what he wishes to build, it is only fair to clarify the sizeable parking requirements for such an idea, as well as the subtlety of how height is measured on slope, and how height is the practical limiting factor for stories.

If the code interpretation is mishandled, that will further aggravate the ongoing general misery that has been reaped upon the citizens. We all have had a chance to observe how the property owner is driven to capitalize upon a "residential zone profit" of a property which he knowingly bought having Office Business Commercial zoning. Please consider that when he bought it, it would have been much more expensive if it had been Residentially zoned, therefore his various attempts to forward an overwhelmingly residential plan on the last large parcel of OBC in the city really amounts to asking for a special exception to the intent of the OBC zone, the purpose of which is defined as follows:

21.010 PURPOSE 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.

I did review his lawyer's recent inquiry and it is hopeful that they have asked about post office use and medical facility use, but I noticed it seemed very specific in trying to establish loopholes to the overall *purpose* of the zone. As the code reads, OBC makes perfect sense for this exact location as a transitional buffer between the more intense Commercial used across Blankenship and the less intense residential beyond the Parker property. Because the applicant has tried to exploit loopholes before, I hope you will take an active role in getting Ramis involved, and also take a look at some of the definitions below, the meaning of which will become painfully important to many people if a solid interpretation is not produced. The inquiry includes some specific questions about mixed use, but the code definition reads this way **" Mixed use development. A combination of different types of uses that are complementary and integrated."** *Complementary and integrated uses have been the key missing element in all the Parker proposals thus far*, as the Residential Apartment use has been grotesquely dominant rather than being complimentary or auxiliary to the intended primary commercial/business use.

I know there is a question about what a "First Floor" is, but it is defined in our code by a series of related definitions which you all should understand. **Our code uses the words "floor" and "story " interchangeably and to know the "first floor" one must first know what a "story" is, and second know when a "basement" is and is not a story.** A basement shall be considered a story if it is six feet above grade for 50% or more of its perimeter, or if it is twelve feet high at any point even if it looks like a basement and is reached by the "b" button on the elevator. So it is a structural measurable definition, and if the basement is the lowest qualifying story, it is the first story, but if it is not qualifying then the next layer up is the first story. By this way of reckoning, our code produces only one "First Floor" per building, and the key questions are how buried is the basement and how tall is it at the tallest point. It is quite possible that as written our OBC code does not do enough to preserve Commercial use given the way that the first story/floor is defined and that multifamily residential might be put on top of it, possibly up to a height of 45 feet from grade on a flat slope but measured in a very specific way on a slope.

The successful Gramor design at West Linn Central Village shows how a two level commercial complex can have a lot of attractive commercial/office synergy on a steeper grade, and can avoid an ugly downside of raw parking, thus enhancing the entire value of what is built, not that the code requires this. Also it is going to be important to clarify that Parking in and of itself is not a

commercial use, as it is an ongoing obligation that comes with all uses. Parking in OBC is an obligation, not a cheap way to rack up commercial square footage. And the parking requirements for any residential embedded in OBC are going to be substantial.

Of course this all comes at a time where Public Works has put out a bid for proposals an alteration to the 10th street area curiously looks to be a potential multimillion dollar Bond revenue give away to Mr. Parker with the closing of Tannler and the rerouting small replacement route through the Parker Property. The great misery this kind of undesirable alteration will cause has been discussed partially in the ConAm hearing, but for some reason the disruption to the park and to so many nearby streets has never been subject to real citizen review. So far Public Works seems to be plowing ahead with the odd configuration in the bid request, which may seriously aggravate the Salamo side of the 10th street intersection by diversionary traffic. I hope some sort of common sense can be brought to this muddying to the plan to improve 10th street with the Bond which voters generously approved to improve things, not aggravate things.

The Comprehensive Plans and the Purposes of the zones really do reflect both the will of the people and the guiding vision by which the city is meant to be operated. It is a great disappointment to see the degree to which the purpose and intent of the zones are skirted. Please do what you can to make sure the applicant's lawyer's inquiry is handled in a way that is true to and respectful of our code and its intent.

In a normal city one would not need to ask for such a simple thing.

Thank you,

Rebecca Adams
Address on file

West Linn CDC Chapter 02

DEFINITIONS (partial list related to this topic)

Basement. Any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

Dwelling unit. One or more rooms designed for occupancy by one family for living purposes providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure

is not built so as to render the structure in violation of the applicable non-elevation design requirements of Chapter [27](#) CDC.

Habitable floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Home occupation. Any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling unit. Standards for home occupations are set forth in Chapter [37](#) CDC.

Mixed use development. A combination of different types of uses that are complementary and integrated. This refers to allowing residential and businesses to be located in the same area (e.g., apartments over shops or other businesses or apartments adjacent to grocery stores or other commercial establishments).

Multiple family residential units. A structure containing three or more attached dwelling units in any vertical or horizontal arrangement.

Principal structure. The structure that represents the main use of the property; to which all other structures on the property serve an incidental or subordinate purpose.

Reasonable use. Uses, similar in size, intensity and type, to uses allowed on other properties in the City, that have the same zoning designation as the subject property.

Business. A commercial, office, or industrial development of one or more buildings on one or more tax lots in which there may be shared facilities such as parking, pedestrian mall, or common ownership of real property upon which the development is located.

Business center. A commercial or industrial area planned and built as a unit containing two or more commercial or industrial establishments on a fully developed site of four acres or more in size, associated by common agreement or under common ownership, which comprise a single commercial or industrial unit with common parking, limited access, and a minimum frontage of 200 lineal feet. A large independent store or business on a fully developed site greater than 10 acres in size may also be considered as a shopping center for the purpose of outdoor advertising.

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or unused under floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter, or is more than 12 feet above grade as defined herein at any point, such basement or unused under floor space shall be considered as a story.

Story, first. The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter, or more than eight feet below grade, as defined herein, at any point.

Story, half. A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

Unlisted use. A use that is not listed as either a use permitted outright or a conditional use in a particular zone.

Use. The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

PC-6 APPLICANT'S SUBMITTAL

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT: <i>John Boyd</i>	PROJECT NO(S): <i>MISC-18-07</i>	
NON-REFUNDABLE FEES: <i>850-</i>	REFUNDABLE DEPOSIT(S)	TOTAL: <i>850-</i>

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANN) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input 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 | | |

X 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
(please print)
Address: 111 SW Columbia Street, Suite 700
City State Zip: Portland, OR 97201

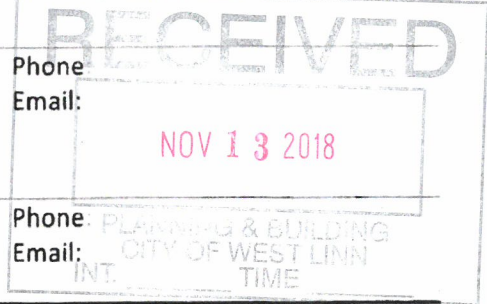
Phone: 971-634-0215
Email: zpowers@radlerwhite.com

Owner Name (required): Jeffery I. Parker and Diane Wilt,
(please print) *as tenants in common*
Address: 1800 Blankenship Road, Suite 200
City State Zip: West Linn, OR 97068

Phone:
Email:

Consultant Name: N/A
(please print)
Address:
City State Zip:

Phone: PLANNING & BUILDING
Email: CITY OF WEST LINN
INT. TIME



- All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- 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.

[Signature]
Applicant's signature

[Signature] 11/7/18
Owner (Parker) Signature (required) Date

[Signature] 10/30/18
Date

[Signature] 11-7-18
Owner (Wilt) signature (required) Date

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

October 25, 2018

VIA CERTIFIED MAIL

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

RE: Fee for Request for Planning Director's Code Interpretation Pursuant to CDC 01.060

Mr. Boyd,

I submitted a request on October 19, 2018, for a Planning Director's Code Interpretation pursuant to CDC 01.060 on behalf of the owners of the approximately 11.41-acre site located at the northwest corner of Tannler Drive and Blankenship Road.

As we discussed on the phone, enclosed is a check (check # 22720) in the amount of eight hundred and fifty dollars (\$850.00) to pay the fee for "9.3 Code Interpretation" as provided in the Master Fees and Charges Document adopted June 18, 2018.

Please do not hesitate to contact me if you have any questions or concerns about this request.

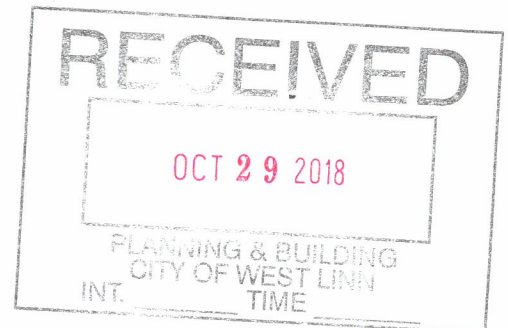
Best regards,



Zoe Lynn Powers

Enclosures

{00840781;1}



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

October 19, 2018

VIA EMAIL AND CERTIFIED MAIL

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

RE: Request for Planning Director's Code Interpretation Pursuant to CDC 01.060

Mr. Boyd,

I am writing on behalf of the owners of the approximately 11.41-acre site located at the northwest corner of Tannler Drive and Blankenship Road (the "Property") to request an interpretation of the West Linn ("City") Community Development Code ("CDC" or the "Code") pursuant to CDC Section 01.060 and Section 99.060.A.2.

1 ON A SLOPED SITE, WHAT CONSTITUTES THE "FIRST FLOOR OF THE STRUCTURE"?

In the Office Business Center ("OBC") zone, 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.

The Property is located in the OBC zone.

On a sloped site such as the Property, it is unclear if the "first floor of the structure" means the downhill space, fully exposed on one side but underground on the other, or if it means both the downhill and uphill spaces – with the uphill space actually being on the second floor of the structure, although it is the ground floor on that uphill side. This is illustrated by the drawing on Exhibit A.

Please provide a determination as to whether the configuration shown on Exhibit A "utilizes the entire first floor" as required by CDC 21.050.

{00838532;4}

2 WHAT CONSTITUTES A “COMMERCIAL” USE OR DEVELOPMENT?

In various zones, the City’s Code provides that a “commercial” use of some kind is allowed. *See e.g.*, CDC 19.050.1; CDC 22.060.B. As noted above, in the OBC zone a commercial use is allowed as a prescribed condition: “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.

“Commercial” is not defined in the Code. Words not specifically defined in the Code “have the meaning specified in Webster’s Third New International Dictionary of the English Language, Unabridged.” CDC 02.010.D. Unfortunately, the official Webster’s definition of “commercial” – provided as Exhibit B – gives only a general sense that “commercial” means “of, in, or relating to commerce”.

Please provide a determination as to whether the following uses would be considered a “commercial” development or use under the City’s Code and, in particular, for the first floor of structures on the Property with multiple-family units above pursuant to CDC 21.050 (the “Project”).

2.1 The “Work” Portion of Live-Work Units

In a recent meeting with the Willamette Neighborhood Association, a neighbor suggested that we develop live-work units – that is, a single unit with separate spaces designed for residential and working uses. We were told by the neighbors anecdotally that 60% of all businesses in the City are home occupations, indicating that there is a high demand for live-work spaces.

Live-work units would fulfill a number of the goals in the City’s comprehensive plan, including creating “districts that blend housing and commercial uses” in order to “increase employment opportunities, reduce dependence on services outside of the City, and promote energy-efficient travel and land use patterns[.]” City of West Linn Comprehensive Plan, updated 7/31/2017, page LU-7.

The “work” portion of a live-work unit could be a shop, boutique, artist’s or other design studio, salon, dance or personal trainer studio, or offices for various professionals, including consultants, accountants, architects, attorneys, computer related professionals, internet-based companies or resellers, engineers, designers, home-based office workers, insurance, real estate, and travel agents, one-on-one instructors, photographers, and similar occupations.

Please advise on if the “work” portion of a live-work unit would qualify as a commercial development for the first floor of the Project.

In addition, please advise whether there are any building code or other requirements for the commercial “work” space that would impact the design of the Project. 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?

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2.2 Parking Spaces, Garages, or Bike Parking

The Project could instead or additionally provide commercial parking on the first floor. This could be enclosed (similar to a garage) or open (similar to a car port, but under the building). It could either be rented on an individual basis separately from any other rental property in the development or could be rented as commercial parking serving other commercial uses on the first floor. Some of the space could be used for bike parking.

Please advise on if parking spaces, garages, and/or bike parking could qualify as a commercial use for the first floor of the Project and, if so, if there are any requirements such as an enclosed or open space or individual rental agreements.

2.3 Self-Storage Units

The Project could instead or additionally have self-storage units on the first floor, rented on an individual basis separately from any other rental property in the development or rented in conjunction with other commercial uses on the first floor. Please advise on if this would qualify as a commercial use for the first floor of the Project.

2.4 Non-Private and Non-Profit Uses

Neighbors also expressed the need for a post office space. Please advise on whether a public use, such as a post office, or any government facility related to the transmission of mail, would qualify as a commercial use for the first floor of the Project. Similarly, please advise on whether a non-profit use of the space, such as community organizations, schools, or hospitals, would qualify as a commercial use for the first floor of the Project.

We appreciate your time and attention to this request.

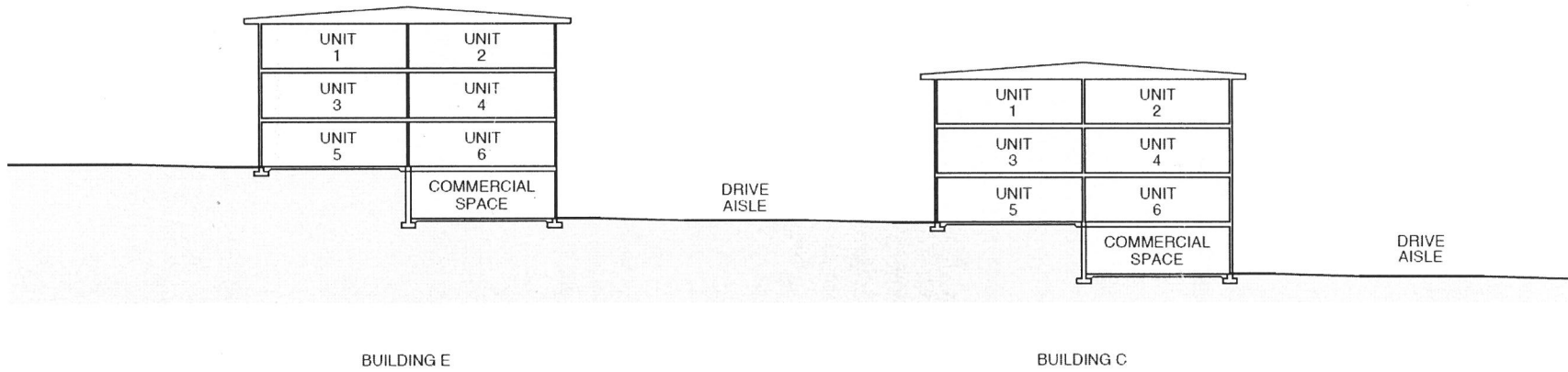
Best regards,



Zoe Lynn Powers

Enclosures

EXHIBIT A
"First Floor of the Structure"



{00838532;4}

EXHIBIT B
Webster's Definition of "Commercial"

com·mer·cial

adjective \kə-'mər-shəl\

1

: of, in, or relating to commerce: such as

a : occupied with or engaged in commerce<a *commercial* establishment><the *commercial* world><*commercial* aviation><Birds are bad news at airports. Hit by planes, they cause \$25 million to \$40 million in damage to *commercial* aircraft every year and, in rare cases, threaten passenger safety. — Eric Schmitt, *The New York Times*, 8 Feb. 1987>

b : related to or dealing with commerce<*commercial* treaty>

c — used in or characteristic of commerce<*commercial* weights><*commercial* language><*commercial* ethics>

d : suitable to or adequate for commerce<found oil in *commercial* quantities>

e (1) : of the kind or quality used in commerce (2) : of an average or inferior quality<*commercial* oxalic acid><*commercial* grade of beef>— compare TECHNICAL

f : produced or producible in large quantities for commerce<relying on a balanced diet rather than *commercial* vitamin concentrates>

2

a : from the point of view of profit : having profit as the primary aim<*commercial* success><*commercial* failure><*commercial* aspect>

b : sacrificing artistic principles for qualities that bring financial success<*commercial* drama><*commercial* music>

3

of a school, a course, or a curriculum : emphasizing skills and subjects considered useful in business occupations — compare BUSINESS EDUCATION, GENERAL

4

: paid for by an advertiser — used especially of a radio or television program

Webster's Third New International Dictionary, Unabridged, s.v. "commercial," accessed October 16, 2018, <http://unabridged.merriam-webster.com>.