

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
AP-21-01**

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION APPROVAL OF
A CLASS II DESIGN REVIEW, WATER RESOURCE AREA PERMIT, AND CLASS II
VARIANCE AT 5665/5639 HOOD STREET
(DR-20-07/WAP-20-03/VAR-20-02)**

I. Overview

Matt Grady, on behalf of West Linn Shopping Center Associates, LLC, filed a land use application on August 5, 2020 and it was deemed complete on October 20, 2020. The proposal was to construct/replace the existing Post Office building with a new Post Office building or retail building with a shared parking area at 5665 and 5639 Hood Street. The approval criteria for the application are found in Community Development Code (CDC) Chapters 19, 32, 46, 48, 54, 55, 75, 92, and 99.

The West Linn Planning Commission (Commission) opened the public hearing on December 2, 2020 and continued the hearing to a date certain of December 16, 2020. The December 16, 2020 hearing commenced with a staff report presented by Jennifer Arnold, Associate Planner. Matt Grady presented on the applicant's behalf with assistance from Planning Consultant Ken Sandblast. The Bolton Neighborhood Association and Bob Wells submitted written testimony. Diana Cubbage, Erich Kunrath, and Bob McCarthy presented oral testimony. The December 16, 2020 public hearing is considered the initial evidentiary hearing because no information or testimony was allowed to be given at the December 2, 2020 continued hearing.

The hearing was closed and the Commission deliberated. A motion was made by Commissioner Pellett and seconded by Vice Chair Mathews to approve the application as presented with the staff proposed conditions of approval. The motion passed 6-0-1 with Chair Walvatne, Vice Chair Mathews, and Commissioners Pellett, Kelly, Metlen, and King voting in favor with newly appointed Commissioner Erwin abstaining from voting.

On January 5, 2021, Erich Kunrath on behalf of the Bolton Neighborhood Association (Appellant) filed a timely appeal of the Commission decision. The appeal hearing was held by the City Council on February 8, 2021. The hearing commenced with a staff report presentation and oral argument from the Appellant. This was followed by oral argument from the Applicant and then public testimony. Rebuttal by both the Appellant and the Applicant was heard. Council closed the public hearing and after deliberations, Councilor Relyea moved to deny the appeal and modify the Commission decision to approve DR-20-07/VAR-20-02/WAP-20-02 with one additional condition of approval. Councilor Bialostosky seconded the motion and the motion passed four votes in favor and none opposed.

II. The Record

The record was finalized at the February 8, 2021 appeal hearing. The record includes the entire file for DR-20-07/VAR-20-03/WAP-20-02 and AP-21-01.

III. Procedural Issues and Scope of Review

The Appellant and Applicant agreed that the scope of the hearing was *de novo*.

IV. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Matt Grady on behalf of West Linn Shopping Center Associates, LLC
- 3) The Appellant is Erich Kunrath on behalf of Bolton Neighborhood Association
- 4) The Council finds that it has received all information necessary to make a decision based on the Agenda Report; appeal application; the Appellant's oral argument; the Applicant's oral argument; oral argument by the public; and evidence in the whole record.

1. Introduction.

A. Approval of the Application by the West Linn Planning Commission.

The West Linn Planning Commission approved the Application (the "Decision") on December 16, 2020 by a vote of 6-0 with one abstention.

B. Filing of Timely Appeal of the Decision.

The Bolton Neighborhood Association (the "Appellant") filed a timely appeal (the "Appeal") of the Decision on January 5, 2021 meeting the requirements for an appeal under West Linn Community Development Code (the "CDC") Chapter 99.240 and 250.

C. Scheduling and Notice of the Appeal Hearing.

The City scheduled a *de novo* quasi-judicial hearing on the Appeal before the West Linn City Council (the "City Council") on February 8, 2021 after providing timely notice of the public hearing on the appeal to those persons entitled to notice no later than January 19, 2021.

D. Appeal Hearing Announcements and Disclosures.

The City Council's four members were present, constituting a quorum, and all four members participated in the public hearing.

The Mayor opened the public hearing, described the quasi-judicial hearing process and described the particular hearing process and time allowed for testimony.

The City Attorney read the notice required by ORS 197.763(5) for quasi-judicial hearings. The City Attorney asked the City Council members to disclose potential or actual conflicts of

interest, bias, site visits and *ex parte* contacts. No City Councilor disclosed a conflict of interest or bias. City Councilors Relyea and Baumgartner disclosed site visits and Mayor Walters disclosed *an ex parte* contact but said that she would be unbiased in deciding the appeal of the Decision. The City Attorney asked each City Councilor if they learned anything through the site visits that was substantially different from the information in the record. Each City Councilor said no. The City Attorney asked if anyone wanted to challenge the City Council's jurisdiction to hear the appeal or rebut the site visits or *ex parte* disclosures. No one requested an opportunity to rebut the *ex parte* contacts.

E. No Procedural Issues Raised or Continuance or Open Record Period Requested Before the Close of the Public Hearing.

No one raised any procedural issues regarding the conduct of the public hearing. No one requested that the public hearing be continued or the written record held open.

F. 120-Day Period.

The Applicant extended the 120-day period in ORS 227.178(1) from February 15, 2021 to February 17, 2021 in writing on February 11, 2021. The City Council's final decision is issued within the extended 120-day period.

G. Conduct of the Appeal Hearing.

The City Council followed its announced hearing procedure and testimony timelines. After hearing the staff report and all persons who wished to testify (the Appellant, the Applicant and one member of the public) and the Applicant's rebuttal and the Applicant's and the Appellant's surrebuttal, the City Council closed the public hearing and record and deliberated to a tentative decision.

The Applicant did not assert its right to final written argument and the City Council finds that it waived final written argument.

H. The Record.

The record consists of all documents physically before the City Council prior to the close of the hearing on February 8, 2021. The City Council did not reject any document from the record.

2. City Council Decision on the Appeal.

Following the close of the appeal hearing and record, Councilor Relyea moved to reject the appeal and approve the Application (thus affirming the Planning Commission's Decision) with the Decision's six conditions of approval and a seventh condition of approval as provided for in the Supplemental Staff Report dated February 8, 2021 (the "Supplemental Staff Report").

Councilor Bialostosky seconded the motion.

The City Council adopted the motion by a vote of 4-0 and included the Decision's six conditions of approval in its final decision and a seventh condition of approval as provided for in the Supplemental Staff Report.

3. City Council Findings Approving the Application and Rejecting the Appeal.

The City Council hereby adopts the following Findings supporting approval of the Application and rejecting the Appeal based on the Incorporated Findings and the Application's Substantial Evidence.

A. The City Council incorporates the nine page Staff Report to the City Council (the "City Council Staff Report") available on January 29, 2021, the Planning Department staff report Power Point presentation (the "Power Point") presented at the February 8, 2021 appeal hearing and the four page Supplemental Staff Report containing the recommended seventh condition of approval requiring a continuous seven-foot pedestrian walkway from the Market of Choice to the new retail development shall that is constructed with visually contrasting material and is either grade-separated or textured.

B. The City Council incorporates the thirty eight page Staff Report to the Planning Commission (the "Planning Commission Staff Report") available on November 22, 2020.

The incorporated Planning Commission Staff Report, the Power Point, the Supplemental Staff Report and the City Council Staff Report are collectively referred to as the "Incorporated Findings."

If there is a conflict between these Findings and the Incorporated Findings, these Findings shall control.

C. Findings on the Four Appeal Issues.

a. Parking and Transportation Studies.

The City Council finds based in the Incorporated Findings and the Application's substantial evidence that the relevant approval criteria in the West Linn Community Development Code (the "CDC") do not require either a parking or a transportation study. The City Council also finds that substantial evidence in the record demonstrates that the average daily vehicle trips under the two Plans results in either a *de minimus* increase in average daily vehicle trips, or a substantial decrease in average daily vehicle trips and neither alternative development plan results in an increase in large truck trips.

The City Council rejects this basis for the Appeal.

b. Additional Off-Site Street Connections.

The City Council finds based on the Incorporated Findings and the Application's substantial evidence that additional off-site street connections are not required by the Application's impacts, are not required by the relevant CDC approval criteria, are not shown in or required by

the City's Transportation System Plan and are not physically possible because of ownership and riparian area issues.

The City Council rejects this basis for the Appeal.

c. Hood Street Improvements.

The City Council finds based on the Incorporated Findings and the Application's substantial evidence that Hood Street improvements are not required by the Application's impacts and are not required by the relevant CDC approval criteria. Further, the Application proposes to make all required on-site street improvements, including half-street frontage improvements to Hood Street.

The City Council rejects this basis for the Appeal.

d. The Bolton Neighborhood Plan (the "Plan").

The City Council finds based on the Incorporated Findings that the Plan is not a relevant approval criterion because it is not implemented by the CDC and, in any event, the Plan is described as aspirational and not mandatory.

The City Council rejects this basis for the Appeal.

4. Conclusion.

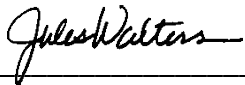
For the reasons contained herein, the City Council hereby rejects the appeal, affirms the Planning Commission decision and approves the Application based on the Incorporated Findings and subject to the seven conditions of approval.

1. Site Plans. With the exception of modifications required by these conditions, the project shall substantially conform to all submitted drawings (sheet A1.1 "Option A" and A1.1 "Option B").
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite storm water, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. All improvements must be designed, constructed, and completed prior to the issuance of occupancy permits.
3. Mitigation and Re-Vegetation. Prior to the final approval of the site development permit, all on-site mitigation and re-vegetation shall be completed per the Schott & Associates 'Natural Resource Assessment' dated June 2020.
4. Covered Bicycle Parking. The applicant shall cover 50% of the proposed bicycle parking spaces per CDC 46.150(D)(3).

5. Parking Easement. The applicant shall record a parking easement for the shared parking area and submit it prior to issuance of the site development permit.
6. Curb Cut Width Option A. The width of the curb cuts shall comply with the standards of CDC 48.060(B).
7. Pedestrian Walkway. The seven-foot pedestrian walkway from Market of Choice to the new development shall be continuous, be constructed with a visually contrasting material, and be either grade separated or textured.

V. Order

The Council concludes that AP-21-01 is denied. The Council upholds the Planning Commission approval of DR-20-07/VAR-20-02/WAP-20-03 based on the entire Record, Findings of Fact, and Findings above.



 JULES WALTERS, MAYOR
 WEST LINN CITY COUNCIL

2-17-21

 DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this 17 day of February, 2021.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m.,
March 10, 2021, 2021.