

AGENDA 9 - 14

1. Approval of Minutes: August 21, 2014

2. **Public Hearing (Legislative)**

◆ Docket G 1-14

Request: The City of McMinnville is proposing amendments to the McMinnville Zoning Ordinance that, if adopted, would make bed and breakfast and vacation home rental uses subject to an administrative review (Director's Review with Notification), rather than a public hearing before the Planning Commission, as currently required.

Applicant: City of McMinnville

3. **Old/New Business**

4. **Adjournment**

## MINUTES

Members Present: Chair Butler; Commissioners Chroust-Masin, Drabkin, Hall, Hillestad, Stassens, Thomas, Tiedge

Members Absent: Commissioner Morgan

Staff Present: Mr. Pomeroy, Ms. Kindel

### **1. Approval of Minutes: July 17, 2014**

Chair Butler called the meeting to order at 6:30 p.m., and called for action on the Planning Commission minutes from the July 17, 2014, meeting. Commissioner Stassens MOVED to APPROVE the minutes as presented; SECONDED by Commissioner Chroust-Masin. Motion PASSED unanimously.

### **2. Public Hearing (Quasi Judicial)**

#### **◆ Docket CU 8-14**

Request: Approval of a conditional use permit to allow for the operation of a vacation home rental establishment within an existing residence.

Location: 310 NE Oregon Street, and is more specifically described as Tax Lot 4300, Section 21AC, T. 4 S., R. 4 W., W.M.

Applicant: Denny and Lucetta Elmer

Chair Butler opened the public hearing at 6:33 p.m., and requested disclosures, abstentions, or objections to jurisdiction. Commissioners Stassens and Chroust-Masin both disclosed that they were acquainted with the applicants, but stated that fact would not affect their decision on the application request. There were no other disclosures, and Chair Butler called for the staff report.

Mr. Pomeroy said the conditional use permit application met the applicable criteria, and staff had recommended approval, subject to one condition.

Chair Butler called for the applicant's testimony.

The applicant, Denny Elmer, said he agreed with the staff report and findings, and had nothing further to add.

There was no proponent testimony, and Chair Butler called for opponent testimony.

Glen Rice said he was not really in opposition to the application request, but had questions. He explained that he lived next door to the subject site, and asked whether approval of the use would devalue the properties in the vicinity.

Commissioner Butler said that he was not aware of any property devaluation because of the establishment of a vacation home rental, and speculated that neighborhood values would actually increase because the condition of such establishments was generally improved and well maintained in order to attract clientele.

Mr. Rice asked whether the vacation rental would be subject to the conditions of the noise ordinance.

Chair Butler said that the noise ordinance would apply to every residence in the city; so if guests at the vacation rental were too loud, he could contact the police department to complain. In addition, he explained that approval of a vacation home rental establishment required that a contact person live within the city limits and be available to address any complaints.

There was no further testimony from opponents, and Mr. Pomeroy affirmed that no public agencies had provided comments after the staff report had been completed.

Mr. Elmer informed the Planning Commissioners that he had talked to Mr. Rice and assured him they would be available to immediately address any issues associated with the establishment, should they arise. He waived the seven-day time period allowed for submission of final written arguments in support of the application.

There was no further testimony, and Chair Butler closed the public hearing at 6:41 p.m.

Commissioner Hillestad asked if the treasurer or assessor had accumulated any information with regard to possible declining values of properties adjacent to vacation rentals.

Mr. Pomeroy advised that would be a question for the county assessor's office; and in response to a question from the Chair, said staff was not aware of any devaluation.

There was no discussion of the application request by the Planning Commissioners and Commissioner Hall MOVED, based on the findings of fact, the conclusionary findings for approval, and the material submitted by the applicant, to APPROVE CU 8-14, subject to the condition of approval as provided in the staff report; SECONDED by Commissioner Chroust-Masin. Motion PASSED unanimously.

### **3. Old/New Business**

Mr. Pomeroy advised the Commissioners that they would have a request to consider at the September meeting for a conditional use permit to operate a waste transfer station with an expanded recycling facility. If time allowed, he said the meeting would also include a public hearing on the zoning ordinance text amendment for the review process for vacation home rental and bed and breakfast facilities.

#### **4. Adjournment**

Commissioner Hall **MOVED** to adjourn the meeting; **SECONDED** by Commissioner Chroust-Masin. Motion **PASSED** unanimously, and Chair Butler adjourned the meeting at 6:44 p.m.

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Doug Montgomery  
Secretary



**DATE:** August 10, 2014  
**TO:** McMinnville Planning Commission  
**FROM:** Planning Department Staff  
**SUBJECT:** PROPOSED ZONING ORDINANCE AMENDMENTS  
*Review Process for Bed and Breakfast and Vacation Home Rental Uses*

On July 17, 2014, the Planning Commission conducted a work session for the purpose of discussing the current review process used for bed and breakfast and vacation home rental applications. Based upon the information collected and shared with the Commission regarding these types of applications, and in particular their history of use in McMinnville, staff had recommended the Commission consider amending the current process to make them subject to an administrative review rather than a public hearing, as has been the practice for the past several years.

At the conclusion of the Planning Commission's discussion, staff was directed to prepare amendments to the McMinnville Zoning Ordinance that, if adopted, would make bed and breakfast and vacation home rental uses an administrative review, while still providing notice to adjoining property owners and allowing for a public hearing to be held, should it be requested by an affected party. Consistent with this direction, draft amendments have now been prepared and made available for public review. A hearing on these draft amendments has been scheduled for the Commission's September 18, 2014, hearing at which public testimony will be invited. Notice for this hearing has been provided to the Oregon Department of Land Conservation and Development, as is required when considering amendments to a city's comprehensive plan or implementing ordinances. Notice was also published in the *News Register*.

In summary, if adopted, these amendments would make bed and breakfast proposals for two or fewer guest sleeping rooms, and vacation home rentals subject to the "Director's Review with Notice" review process, as currently provided in Section 17.72.110 of the McMinnville Zoning Ordinance.<sup>1</sup> This is the same review process used

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<sup>1</sup> Bed and breakfast use proposals for three or more guest sleeping rooms would remain a conditional use permit in the R-4 (Multi-Family Residential) zone, and the O-R (Office-Residential) zone. Staff recommends this provision remain in order to provide an appropriate public review process for larger bed and breakfast proposals, the scale of which for some may require discretionary judgment to determine their compatibility and impact on adjoining properties and neighborhood.

for such land use applications as administrative variances, classification of unlisted uses, downtown design review, large format commercial development variations, tentative partitions, tentative subdivisions of less than 10 lots, Three Mile Lane design review issues, and transitional parking permits.

The proposed amendments are provided below. For purposes of providing further context and understanding, brief summaries are offered for each group of related amendments. Please note that, where appropriate, new text is indicated in bold and underlined font; text to be deleted is shown in strike-through font.

**Summary Action** – *The following amendments would move bed and breakfast use and vacation rental use from the conditional use section of each of the City’s four residential zones, and Office-Residential zone to their respective permitted use section.*

1. Move Sections 17.12.020 (P) and (R) to Sections 17.12.010 (N) and (O), respectively.
2. Move Sections 17.15.020 (N) and (P) to Sections 17.12.020 (N) and (O), respectively.
3. Move Sections 17.18.020 (N) and (P) to Sections 17.18.010 (P) and (Q), respectively.
4. Move Section 17.21.020 (S) to Section 17.21.010 (T).
5. Move Section 17.24.030 (H) to Section 17.24.020 (U).

**Summary Action** – *The following amendments would establish that bed and breakfast and vacation home rental uses (see amendments above) are subject to the Director’s Review with Notification process, in addition to the standards currently in place.*

6. Amend Sections 17.12.010 (N), 17.15.010 (N), and 17.18.010 (P) to read as follows:  
“Bed and breakfast establishments, ~~provided~~ **subject to the provisions of Section 17.72.110 and the following standards: [ . . . ]**”
7. Amend Sections 17.12.010 (O), 17.15.010 (O), 17.18.010 (Q), 17.21.010 (T), and 17.24.020 (U) to read as follows:  
“Vacation home rental, ~~provided~~ **subject to the provisions of Section 17.72.110 and the following standards: [ . . . ]**”

**Summary Action** – *“Housekeeping” amendment to correct a reference.*

8. Amend Section 17.24.030 (G) to reference 17.21.020 (Q), rather than (R).

**Summary Action** – *Amends the list of applications subject to “Director’s Review with Notification” by adding “bed and breakfast” and “vacation home rental.”*

9. Amend Sections 17.72.090 and 17.72.110 as follows:
  - a. Add “Vacation Home Rentals” and “Bed and Breakfast” to the list of applications subject to Director’s Review with Notification.

**Summary Action** – *“Housekeeping” amendment to clarify that any application for which a hearing has been requested is subject to the provisions of 17.72.120, requiring at least one public hearing before the Planning Commission.*

10. Amend Section 17.72.120 by adding the following text to the list of applications:
  - **Any application listed in Section 17.72.110 for which a public hearing is requested.**

## **RECOMMENDATION**

Staff recommends the Planning Commission hold a hearing for the purpose of taking public testimony on the draft amendments. Should the Commission find that adequate opportunity for public testimony has been provided, the hearing should be closed to allow Commission deliberation of the testimony received, and recommendation of staff. The Commission should then take one of the following actions:

1. Move to recommend the City Council adopt the amendments to the zoning ordinance as proposed by staff;
2. Move to recommend the City Council adopt amendments to the zoning ordinance as proposed by staff and modified as follows [note the specific provisions that require modification];
3. Move to recommend the City Council deny the proposed amendments.



**DATE:** July 7, 2014  
**TO:** McMinnville Planning Commission  
**FROM:** Doug Montgomery, Planning Director *DM*  
**SUBJECT:** PUBLIC WORK SESSION RE: REVIEW PROCESS FOR VHR/B&B

At the Planning Commission's June 17, 2014, meeting, staff was directed to schedule a work session for the purpose of providing an opportunity for Commission members to consider alternatives to the current process used to review vacation home rental and bed and breakfast applications.<sup>1</sup> This memorandum is provided as background for that work session, and to stimulate thought and discussion.

### **Current Situation**

For context, staff offers the following "factoids" and observations.

#### ***Bed and Breakfast –***

- The ordinance regulating bed and breakfast use was adopted in July of 1984. In summary, the ordinance permits such use in each of McMinnville's three lower density residential (R-1, R-2, and R-3) zones, subject to approval of a conditional use permit and compliance with standards specific to a bed and breakfast establishment. It is a permitted use in the R-4 (Multiple-Family Residential) zone, unless the proposal is for three or more beds, in which case it is conditionally permitted. They are also permitted in the City's commercial zones.
- Since adoption of the ordinance, eight bed and breakfast applications that involve residential zoned land have been proposed and approved (this number does not include the two that are scheduled for the Commission's July hearing). These approvals occurred in 1989, 1991, 1994 (no longer in operation), 1995, 1999, 2005, 2006, and 2014 (one in each of these years), and are geographically distributed with two in northeast McMinnville, three in northwest McMinnville, and three in the southeast.

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<sup>1</sup> The purpose of the work session is limited to the review process and is not intended to be a forum for discussing other aspects of the current ordinance. If the Commission wishes to discuss issues other than the current review process, a subsequent work session would need to be scheduled.

***Vacation Home Rental –***

- The ordinance regulating vacation home rental use was adopted in 2008 and amended in November 2012 (deleted provision requiring 660-foot separation between vacation home rentals).
- Since adoption of the ordinance, 15 vacation home rental uses have been proposed and approved. The first of these occurred in 2009 (no longer in operation), followed by two in 2011 (of which only one is still in operation), three in 2012, six in 2013, and three in 2014. Five of these uses are located in northeast McMinnville, two in the northwest, two in the southwest, and six in the southeast.

***Other Observations –***

- At the time of the 2010 US Census, McMinnville had 12,389 housing units, of which 6,767 were owner-occupied. Vacation home rental and bed and breakfast use therefore accounted for approximately one-tenth of one percent of all housing units in McMinnville, and some two-tenths of one percent of owner-occupied units.
- In the time the bed and breakfast and vacation home rental ordinances have been in effect (30 years and six years, respectively), there have been no complaints received by the Planning Department regarding any of the approved uses.
- Of the 23 public hearings held for the currently approved bed and breakfast and vacation home rental uses, 16 had no public testimony; while four hearings included testimony from a total of five proponents who provided testimony in support of the application. Of the three remaining hearings, testimony was received from a total of five individuals who expressed concerns primarily related to traffic, on-street parking, and loss of “neighbor” hoods. Of further note, three of those five individuals submitted written comments related to a single application.
- Applications for bed and breakfast and vacation home rental uses require review and approval by the Planning Commission at a public hearing. None of the approvals granted to date have included conditions other than those “standard” conditions provided in the adopting ordinances (e.g., there were no conditions added related to hours of operation, accommodation of pets, additional off-street parking, etc.).

### **Review Process Discussion**

As the Commission is aware, the current review process for both bed and breakfast and vacation home rental use requires the submittal of an application for a conditional use permit to the McMinnville Planning Department that is then scheduled for a public hearing before the Planning Commission. The application fee for this application and review is \$1,000. This fee increases each year based upon the 2<sup>nd</sup> quarter Portland-Salem consumer price index (CPI-W). An annual renewal fee of \$25 is also charged.

This same conditional use permit review process (public hearing before Commission with, in some cases, referral to the City Council) is used for variances, subdivisions (involving more than 10 lots), annexations, zone changes, planned development amendments, and legislative map and text amendments. This type of process is most appropriately used where the land use issues are typically more involved and/or complex. Also, for these public hearing items the criteria for approval are subjective and require greater judgment and discretion be applied to the decision making process. Applying this process to bed and breakfast and vacation home rental applications, as the City currently does, requires the Commission find that all of the conditional use permit criteria have been satisfied<sup>2</sup>, and the standards applicable to the bed and breakfast or vacation home rental have been met (e.g. adequate off-street parking is available, there is a local contact for emergencies, signage is limited, etc.).

In addition to the public hearing process, the McMinnville Zoning Ordinance provides two other avenues of review: Director's Review; and Director's Review with notification. The former process is used for the review of home occupation permits, model home permits, recreational vehicle park permits, property line adjustments, and temporary living units. The review criteria for each of these permit applications are clear and objective and require no discretion (i.e., the standard has either been met or the request is denied; there is no ability to condition the approval).

The Director's Review with notification process is similar but, as its name implies, includes notification to adjoining property owners and 14-day opportunity to comment or request a public hearing be held prior to the Director issuing a decision. This process applies to slightly more complex issues and is used for administrative variances, land partitions, downtown design review, and subdivisions (up to 10 lots in size). The review criteria for these applications are also clear and objective.

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<sup>2</sup> In summary, these criteria include: 1) The proposal will be consistent with the Comprehensive Plan and the objectives of the zoning ordinance; 2) that the location, size, design, and operating characteristics are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties; 3) That the development will cause no significant adverse impact on the livability, value, or appropriate development of abutting properties or the surrounding area when compared to the impact of permitted development; 4) That the location and design for the proposal will be as attractive as the nature of the use and its setting warrant; 5) The proposal will preserve environmental assets of interest to the community; and 6) The applicant has an intent and capability to develop and use the land as proposed.

### **Planning Staff Recommendation**

Specific to the review process discussion, staff would suggest the Commission give consideration to amending the process currently used. Specifically, we believe both the bed and breakfast and vacation home rental use should be reviewed using the Director's Review with notification process. Here's why:

- There is no evidence to suggest these uses require discretionary review. A number of Oregon communities – coastal, valley, and Eastern – regulate these uses through simple, administratively reviewed business license registration processes, most of which require no notification at all.
- The current “double-pronged” review test (i.e., satisfy conditional use permit criteria and development standards) seems onerous and not commensurate with the scale and impact of the proposed use. The “clear and objective” standards provided in the ordinance appear more than adequate to address neighborhood issues of impact and compatibility. Such standards can – by law and experience – be administered by staff.
- The process affords the opportunity for public review before the Planning Commission, should there be a request from an adjoining neighbor or unique situation that warrants such additional scrutiny.
- The Planning Commission is able to apply its time to other, arguably more complex and important community issues.
- Public opposition to past applications, as measured by those that have participated at public hearings, has been negligible and public complaints regarding these approved establishments have been zero.

### **Attachments:**

1. Map of current VHRs and B & B's
2. Director's Review with Notification review process (Section 17.72.110)
3. Vacation Home Rental standards (Section 17.12.020 (R))
4. Bed and Breakfast standards (Section 17.12.020 (P))

17.72.110 Applications – Director’s Review with Notification. The following applications shall be submitted as stated above in Section 17.72.020 and shall be reviewed by the Planning Director or designee.

- Administrative Variance
  - Classification of an Unlisted Use
  - Downtown Design Review
  - Large Format Commercial Development (variation to standard)
  - Tentative Partition
  - Tentative Subdivision (up to 10 lots)
  - Three Mile Lane Design Review
  - Transitional Parking Permit
- A. Notice of the request shall be provided to owners of property within 100 feet of the site for which the application is made. For applications involving classification of an unlisted use, the only notification provided shall be that published in a newspaper of general circulation a minimum of 14 (fourteen) days prior to a decision being rendered. Notices for applications listed in Section 17.72.110 shall:
1. Provide a 14 (fourteen) day period for submission of written comments prior to the decision;
  2. State that issues which may provide the basis for an appeal to the Land Use Board of appeals (LUBA) shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
  3. List, by commonly used citation, the applicable criteria for the decision;
  4. Set forth the street address or other easily understood geographical reference to the subject property;
  5. State the place, date and time that comments are due;
  6. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
  7. Include the name and phone number of a local government contact person;
  8. Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and
  9. Briefly summarize the local decision making process for the land use decision being made.
- B. During the 14 (fourteen) day comment period, a person who has received notice may request a public hearing following the procedure as outlined in Section 17.72.120.

The Director or designee shall make a decision for the above applications within 30 (thirty) days following the close of the 14 (fourteen) day comment period. The Director’s decision may be appealed as outlined in Section 17.72.170.

17.12.020 Conditional uses. In an R-1 zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapters 17.72 and 17.74:

[...]

R. Vacation home rental, provided:

1. That the structure be designed for and occupied as a single-family residence. The structure shall retain the characteristics of a single-family residence.
2. That a minimum of one off-street parking space be provided for each guest room.
3. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
4. That the duration of each guest's stay at the residence be limited to less than 21 (twenty-one) consecutive days.
5. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3397.
6. That the property owner shall live within the city limits or shall provide contact information of a person living within the city limits who shall be available to respond immediately to any emergency or complaint related to the vacation home rental.
7. Permits may be renewed for one-year periods upon request of the applicant by filing a renewal application with the Planning Department and upon payment of a \$25 fee, provided that the permit has not been terminated under the provisions of Section 17.12.020(R)(8) below. Complaints on conditions 1 through 7 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the vacation home rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

17.12.020 Conditional uses. In an R-1 zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapters 17.72 and 17.74:

[...]

- P. Bed and breakfast establishments provided:
1. That the structure be designed for and occupied as a single-family residence. The structure shall retain the characteristics of a single-family residence.
  2. That the establishment be owner-occupied.
  3. That no more than two guest sleeping rooms are provided on a daily or weekly basis for the use of no more than a total of five travelers or transients at any one time.
  4. That a minimum of one off-street parking space be provided for the two permitted guest sleeping rooms. The required off-street guest parking may be provided on an existing parking lot located within 200 feet of the bed and breakfast establishment.
  5. That signing be limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three square feet of face area.
  6. That the duration of each guest's stay at the bed and breakfast establishment be limited to no more than seven consecutive days and no more than fifteen days in the 30-day period.
  7. That smoke detectors be provided as per the requirements for "lodginghouses" in Ordinance No. 3997 of this code;
  8. Permits may be renewed for one-year periods upon request of the applicant by filing a renewal application with the Planning Department and upon payment of a \$25 fee, provided that the permit has not been terminated under the provisions of Section 17.12.020(P)(9) below.
  9. Complaints on conditions 1 through 8 above will be reviewed by the Planning Commission at a public hearing. The Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the bed and breakfast establishment is found to be in violation of the criteria, the Planning Commission may terminate the use.