



City of McMinnville
Planning Department
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MINUTES

August 19, 2021
Planning Commission
Regular Meeting

6:30 pm
Zoom Online Meeting
McMinnville, Oregon

Members Present: Roger Hall, Robert Banagay, Gary Langenwalter, Sylla McClellan, Brian Randall, Beth Rankin, Lori Schanche, Dan Tucholsky, and Sidonie Winfield

Members Absent: Ethan Downs – Youth Liaison

Staff Present: Heather Richards – Planning Director, Amanda Guile-Hinman – City Attorney, and Tom Schauer – Senior Planner

1. Call to Order

Chair Hall called the meeting to order at 6:30 p.m.

2. Approval of Minutes

- **July 15, 2021**

Commissioner Banagay moved to approve the July 15, 2021 minutes. The motion was seconded by Commissioner Langenwalter and passed 9-0.

3. Citizen Comments – None

4. Public Hearings:

A. Quasi-Judicial Hearing: Minor Partition (MP 6-20)

(Continued from June 17, and July 15, 2021 PC Meetings)

Request: Approval to partition an approximately 7.22-acre parcel of land into three (3) parcels, approximately 6.43, 0.31, and 0.48 acres in size to allow for residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.

Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M.

Application: Steve and Mary Allen, property owners

Chair Hall opened the public hearing and asked if any Commissioner had new ex parte contacts to declare.

Commissioner Schanche said she visited the site earlier today.

Staff Report: Planning Director Richards entered into the record public testimony from David Koch and corrections to the decision document. She reviewed the minor partition request. This was usually a Type II decision, however the Planning Department received a request for a public hearing. The approval criteria for the petition remained the same. A public hearing was held on June 17, and the applicant requested a continuance to provide additional information requested by oppositional testimony. Another hearing was held on July 15 and the applicant requested another continuance for a topographical study. For this hearing, a new title report, new survey maps, and additional findings had been provided. The issue submitted by Walt Gowell on behalf of his client had been resolved. She showed a map of the applicant's proposal to create three parcels. The zoning for Parcels 2 and 3 would be R-2 and the zoning for Parcel 1 would be R-3. She explained the site location and context, past land-use decisions to partition the lot, access easement to the southern property by the owners of the northern property, and how the partition plat was approved in 2000 which included the access and utilities easement. The current proposed partition utilized the easement for proposed Parcel 2. There was oppositional testimony submitted by David Koch on behalf of his clients claiming that the private access easement was not legitimate as it did not conform with current code. However, the City Council passed an ordinance requiring the access rights be provided and the partition was approved with the proposed access rights. The time to appeal that land-use decision had long since passed. The partition plat referenced a recorded instrument which included the Driveway Construction and Maintenance Agreement as the governing document for the access and utilities easement. There was oppositional testimony submitted by Walt Gowell on behalf of his clients wanting to ensure that the Driveway Construction and Maintenance Agreement was still valid. The City received an email from Walt Gowell on August 4, 2021, stating that they were comfortable with the proposed language in Condition of Approval #1.

Planning Director Richards discussed the review criteria. Parcel 1 met the size requirements for minimum lot size and depth, the access easement provided access from Hilary Street, and utilities were available from Hilary Street. Parcel 2 also met the minimum lot size and depth. Access would be from Fellows Street via private easement and undeveloped right-of-way. Water and electric were installed in the easement from Fellows Street. Sewer was available from the adjacent main. Minimal right-of-way improvements were required. Parcel 3 met the minimum lot size. The existing dwelling continued to meet the setbacks of the R-2 zone. There was existing access from Hilary Street and all existing utilities were from Hilary Street. The parcels met the clear and objective criteria for partitioning. Both written and oral testimony provided the following issues: loss of trees from the right-of-way and Parcel 2, increased traffic on existing private driveway, emergency vehicle access to Parcel 2, increase in safety issues on Fellows Street, impact of development on the floodplain, decreased property values, incomplete submittal, outdated title report, and need to extract park land. Regarding the concern about the loss of trees, some trees were likely to be removed to accommodate the driveway in the right-of-way and residential development on Parcel 2. There was no zoning code that prevented development of Parcel 2 to preserve the trees. Tree removal requests were subject to Chapter 17.58—Trees and replacement trees could be conditioned by the Landscape Review Committee. Recommended Condition #2 required review of the tree removal requests and to limit approvals to poor condition or severe impact by development. Regarding the concern about increased traffic, minimum standards for access easements were 15 feet wide with a 10 foot paved surface width. The existing access easement was 22 feet wide with 12-13 feet of paved surface width. Terms of the private easement agreement were for a 15 foot driveway width prior to occupancy of Parcel 2. The access easement/driveway was previously approved by the City to serve future additional lots and the Engineering and Fire Departments had the opportunity to comment on the current application. Regarding the concern about impact on the floodplain/sensitive lands, the City did not allow development in the floodplain and relied on state/federal agencies for regulatory authority of wetlands and other sensitive natural features. Conditions #8 and #10 required compliance with

all state/federal environmental permitting agency requirements. Regarding the concern about decreased property values, consideration of property value was not a regulatory criterion for land-use decisions. Per ORS 227.175, only clear and objective criteria could be used for housing land-use decisions. The subject site was designated residential on the City's Comprehensive Plan and was intended for development. Regarding an incomplete submittal, the title report was updated. Survey maps were updated to include: contour lines related to city datum and having minimum intervals of two feet, location and direction of water courses, location of natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards, and slopes greater than 25%. A future development plan had also been provided. Oppositional testimony discussed the potential presence of moderate and high landslide soils on the subject site that would render the new parcels unbuildable. The City did not yet have an adopted inventory of maps for landslide hazards nor did it have any policies or codes that stated soils with moderate or high landslide potential were not buildable. The West Hills was developed on high landslide soils. She discussed the City's addendum to the Yamhill County Natural Hazards Mitigation Plan and how the City was developing an action plan for landslides. Condition #3 said if any development was proposed for a slope of 15% or greater, a geotechnical report would be required to mitigate the potentiality of landslide hazards and any resulting recommendation of that report would need to be incorporated into the construction project. Regarding exacting park land for the Cozine Creek Trail, the City could not afford to move forward with the development of the trail at this time. There were some Commission questions, such as whether the twelve months for recording a final plat was a standard timeframe. The answer was yes. Another question was if they were approving a future Parcel 4 with this decision. The answer was no. Another question was if there were emergency vehicle provisions for the private access easement for Parcel 2. The answer was in the previous land-use decision, the Fire Marshal required that an emergency vehicle turnaround be constructed. There was also a letter from the Fire Marshal dated July 2019 that stated if the dwellings were sprinkled, no other improvements would be required. A condition of approval had been drafted requiring fire sprinklers be installed in all residential dwellings on Parcel 2. At this time, the findings for the clear and objective criteria supported approval of the application with conditions.

Questions: Commissioner Schanche asked if the Fire Marshal had already approved the emergency vehicle turnaround. Planning Director Richards said yes, for the partition that was approved in 2000.

Commissioner McClellan asked about the inventory and policies for landslide areas. If the City adopted a policy that development could not go on high landslide soils, what happened to the lots that had entitlement to development that were in that situation. City Attorney Guile-Hinman would have to research that.

Planning Director Richards noted that was not a current standard and the Commission did not have any authority to make a decision on whether something was buildable or not based on those policies. Some of the property was not in the high landslide soils.

Commissioner Randall asked if the neighbors would be notified when this went to the Landscape Review Committee. Planning Director Richards said the request would be a Type I application which did not require notice. It could be added as a condition of approval.

Commissioner Randall asked if they could add a condition to require an easement for the future Cozine Creek Trail. City Attorney Guile-Hinman thought they should steer away from requiring easements as there was no analysis for a finding to show how the development related to parks and the access and need for parks. The City did not have the funds to compensate the property owner for the easement.

Commissioner Schanche noted the property owner could donate the easement. She then suggested expanding Condition #3 to say the driveway would not be more than 15% slope.

Commissioner Rankin said currently garbage was picked up on Fellows Street and the garbage truck was not going onto the driveway.

Commissioner Tucholsky asked about lighting requirements for the driveway, especially for fire or police vehicles. Planning Director Richards said the City did not have any lighting requirements. The design of the driveway could be a question for the applicant.

Commissioner Winfield said there were mitigations to handle steep slopes for development and people could haul their garbage to the end of the driveway.

Applicant's Testimony: Steve and Mary Allen, property owners, said this application was not any different from what had been built in the City in regard to slope. Regarding the lighting, they could install a lighted driveway sign with the address. The driveway would be located on top of the property on flat ground. The house would have sprinklers. The turnaround was over halfway up the driveway and there was a fire hydrant at the driveway. They could see the possibility for the Cozine Creek Trail in the future. They did not want to remove any trees that did not have to be removed and would save what they could. It would be a safe home built to code.

Public Testimony:

Proponents: None

Opponents: David Koch, attorney representing three neighbors, said in prior testimony he had pointed out several deficiencies in the application. He reviewed what the applicant submitted and agreed that the deficiencies had been addressed. However, the application still did not meet all of the criteria. Significant portions of the upland area in Parcel 2 were on slopes greater than 25%. There might not be an adopted inventory of natural hazards, but this was a landslide area. They needed to consider not what had been done in the past, but what was being proposed for the future. Parcel 4 was not part of this application, but if they approved Parcel 2 they would be setting a precedent for Parcel 4. He agreed the easement was legitimate and the City had no authority over the agreement between the private parties. It was one thing to preserve an existing right of access through a private easement to a property, but it was quite another to say it created a blanket variance to allow any number of future parcels to be partitioned off the west side of the property. He thought a variance should be required in order to provide access to more than the existing number of parcels. Also the application did not meet Comprehensive Plan Policy 99 regarding the adequate level of public services related to the streets and Comprehensive Plan Policy 80 regarding building on slopes greater than 25% and on landslide soils. This was a heavily wooded area and a unique natural feature that the code intended to protect. The opposition was focused on Parcel 2 and whether the steep slope was suitable for development and if it met the purpose of the code. He did not think that it did.

Commissioner Winfield said if the Commission questioned the easement to the driveway, did that nullify all the other past easements they had in the City?

Mr. Koch said three accesses were allowed for an easement per code. Going beyond three required a variance. He thought they had misinterpreted the decision in 2000. It was not a land-use decision for this property to have access to an unlimited number of future parcels. The code required a variance after three accesses and no variance had been applied for.

Rebuttal: Mr. Allen said the land-use decision was approved 21 years ago. No one living on the driveway was objecting. All of the objections were coming from people in the neighborhood. The

house would be put in a safe place. The fourth partition was required to be on the shadow map because of the square footage. They also had two lots in their front yard that they never planned to develop but had to be put on the shadow map because of the square footage available. If another partition was requested, it would be addressed at that time. Regarding the landslides, the neighbors opposed were on the same type of land.

Opponents: Earl Anderson, McMinnville resident, said a petition went around 20 years ago to develop the property, but the neighbors did not sign it and thought that was the end of it. Many did not know that this property was going to be developed and some thought it was City land and protected. They bought their houses believing it would not be developed. This private drive was not finished to the extent that it did not extend through Parcel 3. A road still had to be created and on many occasions people had to back out of the driveway towards Fellows Street. He was concerned that it would be a safety hazard and two more houses would be built in the future. Adding more cars to this driveway would be a safety issue. It was dark at night and there was no space for emergency vehicles.

Cheryl Lambright, McMinnville resident, said the neighbors did not know about the decision 21 years ago and did not know to appeal. She was in strong opposition.

Carole Hansen, McMinnville resident, said Parcel 2 was directly behind her back fence. She was concerned about the road and the trees.

Rebuttal: Mr. Allen said he had tried to get neighbor consent for a vacation of the property, but was not trying to develop at that time. Ms. Lambright had talked to them about the trees before she bought her house and they told her that if there were dangerous trees or they wanted to build, some would have to be removed.

Chair Hall closed the public hearing.

The applicant waived the 7 day period for submitting final written arguments in support of the application.

Deliberation: Commissioner Schanche asked if the private access easement provided access to four different parcels. Planning Director Richards said yes, it did.

Commissioner Tucholsky clarified no variance was required. City Attorney Guile-Hinman said the land-use decision in 2000 allowed for four parcels to have access, one which was the Allen property.

Commissioner Langenwalter clarified there were no standards for landslide areas to give them a legal basis to deny the application. Planning Director Richards said that was correct. The whole parcel was not in a landslide area or on a slope. There was nothing in the City's code that stated they could not develop on landslide property or steep slopes. The floodplain area was considered a natural hazard and it was protected by the floodplain zone.

Commissioner Schanche asked if the Commission agreed to amend Condition #3 to include the driveway.

There was consensus to amend Condition #3.

Commissioner McClellan asked if the Commission agreed to amend Condition #2 to notify neighbors of any tree removals.

Commissioner Schanche suggested adding that the site would be inspected by staff before any trees were removed.

There was consensus amend Condition #2.

Based on the findings of fact, conclusionary findings for approval, materials submitted by the applicant, and evidence in the record, Commissioner Langenwalter MOVED to APPROVE MP 6-20 subject to the conditions of approval as amended. The motion was seconded by Commissioner Rankin and PASSED 8-0-1 with Commissioner Tucholsky abstaining due to technical difficulties.

5. Discussion Items

- **G 2-21, City Center Housing Proposed Code Amendments**

Senior Planner Schauer presented on the proposed code amendments. A public hearing on these amendments was scheduled for September 16. It would be a legislative hearing which would: allow existing single family dwellings as a permitted use in the C-3 zone, establish a City Center Housing Overlay Zone and associated provisions within the overlay (C-3 density, parking number and location, nonconforming setbacks), and allow temporary use of RVs during home construction. Currently single family dwellings were not a permitted use in the C-3 zone. The intent was to limit proliferation of lower density housing development and/or subdivisions on land designated for commercial use at appropriate locations. Existing single family dwellings were a nonconforming use in the C-3 zone and could not be expanded, such as adding a bedroom. Existing single family dwellings were not inherently in conflict with C-3 uses. The proposed amendment would designate existing single family dwellings in C-3 as a permitted use, subject to the following: lots for these uses would be limited to their current size and could not be expanded, the dwelling must not cease its residential use for more than a year or it lost its permitted use status, and short-term rentals and owner-occupied short-term rentals were considered residential use for purposes of determining continuation of residential use. A question to consider was should this also apply to existing duplexes in the C-3 zone.

Commissioner Langenwalter thought duplexes should be included.

Commissioner Randall asked if a single family home in C-3 could be modified to be a duplex. Senior Planner Schauer said no, a single family home would have to remain as a single family home.

Commissioner Randall asked if the house was torn down and rebuilt if that was considered a continuation. Planning Director Richards said yes, as long as the rebuild was within the year. If the use existed today, it was an outright permitted use into the future until it was not continued for a year.

Chair Hall thought allowing rebuilding of the housing would encourage long term skirting of the original intention of the rules.

Commissioner Tucholsky agreed. There would be people taking down old houses and rebuilding them to maximum size. He did not think it was the intent.

Commissioner Randall suggested limiting the size of the expansion, such as no more than 20% of the current footprint.

There was discussion regarding the intent of the C-3 zone, continuing the single family dwellings as nonconforming uses, not allowing expansion, limiting the size of expansion, and inventory of how many residences were in the C-3 zone.

Senior Planner Schauer said the code amendments would also establish a City Center Housing Overlay Zone. The City Center Housing Strategy recommended creating the overlay to potentially

increase and incentivize more housing within the city center area and the surrounding higher density residential zones where there might be more capacity for additional housing opportunities. The proposed amendments established the overlay where provisions applied and implemented initial action items that removed barriers, which would make a difference to housing development/redevelopment. He showed a map of the proposed overlay zone. The overlay zone and associated provisions would: establish boundary/applicability, the specific density provisions of the R-4 zone would not apply to multi-family or condominiums in the C-3 zone, reduce off-street parking to 1 space per dwelling unit, allow residential parking within 500 feet of the property vs. on-site with a recorded binding parking agreement, and allow nonconforming multi-family structures that were destroyed by a calamity to be replaced based on C-3 rather than R-4 setbacks without the current restriction of limiting to the same number of units.

Commissioner McClellan suggested less parking for some apartment complexes for people who did not have cars.

Commissioner Randall said people would still have to drive to work. He thought they should look at options for on-street parking. He did not think people would park 500 feet away.

Commissioner Winfield said she lived in an area where people did park further away because there was no available parking. She did not think the City was ready for no parking because there was not enough public or private transportation options. She suggested as it got more dense going into the corridor, to require less parking spots and increase the number as it went out a couple of blocks.

Commissioner Rankin thought they should allow four story construction and parking garages with roof gardens for recreation space instead of surface parking.

Senior Planner Schauer said the study area boundary included small low-density areas by Lafayette and 5th Street. This was in the NE Gateway Overlay and Urban Renewal District. Should this area be retained in the overlay zone or removed?

Commissioner Winfield thought that might be an area where the dwelling units would be turned into duplexes. She suggested keeping the area in the overlay zone.

Commissioner McClellan did not see any reason to change it.

Commissioner Randall suggested talking with the School District about their property in that area.

Senior Planner Schauer showed an example of the 500 feet for off-street parking.

Commissioner McClellan wanted to limit asphalt and come up with other alternatives.

Commissioner Randall asked if an on-street parking survey had been done. Planning Director Richards said in 2018 they did a parking utilization study. It showed hot spots where close to 85% capacity was being used on areas of 3rd Street, but the rest was still looking good, about 40-60% utilization.

Commissioner Schanche suggested allowing shared driveways.

Senior Planner Schauer said the code amendments would also allow temporary use of an RV as a residence on a property while a home was being constructed or a manufactured home was being installed on the same property. It would be cost-effective to be on one property during construction and allowed move out of previous housing making it available for others to occupy. It would be subject to certain requirements: intended to ensure it could only be occupied if there was no other occupied dwelling on the property, timeliness with a maximum of 18 months during construction, 6

months for manufactured home installation, and if it was not self-contained and connected on-site to sewer and water, the RV would need to be on compacted gravel or a paved portion of the site during the temporary use. He asked if the requirement for gravel or paved surface was too onerous.

Commissioner Langenwaller asked why they were limiting it to an RV. Why not a fifth wheel or trailer? Senior Planner Schauer said those would also be allowed.

Commissioner Randall thought if they were going to be there longer than 30 days, they should connect to the sewer. Planning Director Richards suggested finding out how other cities addressed connecting to services.

Commissioner Banagay thought the requirement for gravel or paved surface was reasonable.

Senior Planner Schauer reviewed questions and considerations that had been submitted in advance. These included clarification on removing properties with low-density zoning from the boundary not removing the housing, off-site parking, RVs could not be considered ADUs, enforcing the time limit on completing construction, and the economic impact of the reduced parking requirement.

Planning Director Richards suggested allowing an extension on the time limit for construction. Regarding parking downtown, there was historic housing that had been transferred to lodging. The City did not require parking for lodging which made some people opt to do lodging because of that.

- **G 3-21, Annexations Proposed Code Amendments**

This item was postponed to the public hearing on September 16.

6. Commissioner Comments

None

7. Staff Comments

Planning Director Richards discussed the Associate Planner recruitment process. A candidate was selected and he would begin work on October 1.

8. Adjournment

Chair Hall adjourned the meeting at 10:00 p.m.



Heather Richards
Secretary