

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, NOVEMBER 22, 2005

COMMISSIONERS PRESENT

Donald Hammang, Chair
Teresa Bresaw
Catherine Brinkman
Jeff Klein

STAFF PRESENT

John Gessner,
Planning Director
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Brent Carter
Dick Newman

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA -- None.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at
www.cityofmilwaukie.org

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

6.1 Applicant: City of Milwaukie
Owner: N/A
Location: N/A
Proposal: Adopt zoning amendment prohibiting resubmission of
denied land use applications and zoning determinations, if
not appealed.
File Numbers: ZA-95-01
NDA: All

Chair Hammang opened the legislative hearing for Zoning Amendment ZA-05-01 to consider amendments to the City of Milwaukie Zoning Ordinance. He asked if there were any conflicts of interest or ex-parte contacts to declare. There were none.

STAFF REPORT

John Gessner reviewed the staff report with the Commission. At the last worksession staff was given direction with specific provisions that have been incorporated into proposed regulations. The purpose of the regulations is to prohibit the repeat submission of the same application when denied and not appealed.

Should a party making an application not exercise their appeal rights, they do not have the ability to come back. It is hoped that this sends a strong message through the regulations that care must be taken to get the application right the first time, not after the fact.

A phone call was received from a citizen that the City of Milwaukie might be overly regulatory by limiting the right to individuals to a second review; these regulations do not in any way impair existing appeal rights. It is saying that the applicant must exercise those appeal rights at the appropriate times, which can include changes to the application; changes to the code which are major quasi-judicial actions which changes the Zoning Ordinance or the Comprehensive Plan; legislative actions which are code amendments; text amendments of the Comprehensive Plan; or change in City Council. The City Council is the legislative body and the composition of the Council has a lot to do with policies adopted or rejected; a change on the council may result in a subsequent change of policies.

Mr. Gessner reported that the application complies with Section 900 and 1000 of the Milwaukie Zoning Ordinance concerning zone amendments and procedures for zoning amendments.

If the Planning Commission adopts the recommendation for City Council adoption, this matter will be heard first at the December 6th City Council worksession to give the final language report of the Planning Commission's recommendation. The final City Council adoption hearing will be heard on December 20, 2005.

There was no public testimony on this issue. There was no audience tonight.

Chair Hammang closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Commissioner Bresaw moved to forward the recommendation to the City Council in support of Zone Amendment ZA-05-01, the proposed code amendment that prohibits the resubmission of the same application when denied and not appealed. Commissioner Klein seconded the motion.

Ayes: Bresaw, Brinkman, Klein, Hammang

Nays: None

The motion carried 4-0.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS

John Gessner reported that staff has contracted with a copy editing service to get minutes prepared for approval.

John Gessner reported that staff has completed the review of zoning violations of the tinted windows and signage at Foxies and will be taking action after the Thanksgiving holiday.

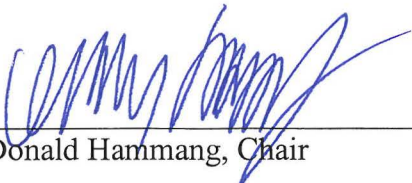
10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

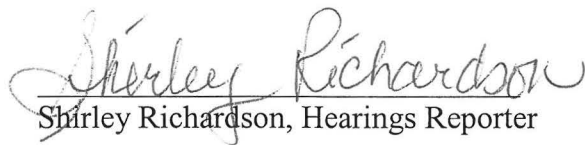
11.0 NEXT MEETING -- December 13, 2005

Commissioner Klein moved to adjourn the meeting of November 22, 2005. **Commissioner Bresaw** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 6:50 p.m.



Donald Hammang, Chair



Shirley Richardson, Hearings Reporter

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, NOVEMBER 22, 2005 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters Please turn off all personal communication devices during meeting. Thank You.	
3.0	Planning Commission Minutes No minutes are available at this time. Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings Type of Hearing: Legislative Applicant: City of Milwaukie Owner: N/A Location: N/A Proposal: Adopt zoning amendment, prohibiting resubmission of denied land use applications and zoning determinations, if not appealed. File Numbers: ZA-95-01 NDA: All Staff Person: John Gessner	Discussion and Motion Needed For These Items
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0 10.1 10.2	Other Business/Updates Matters from the Planning Director Design and Landmark Committee Report	Information Only Review and Comment
11.0	Next Meeting: December 13, 2005 Gramor Development Tri-Met Park and Ride The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

Forecast for Future Meetings:

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions from you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Brent Carter, Vice Chair
Teresa Bresaw
Catherine Brinkman
Jeff Klein
Dick Newman

Planning Department Staff:

John Gessner, Planning Director
Lindsey Nesbitt, Associate Planner
Susan Shanks, Associate Planner
Brett Kelter, Assistant Planner
Jeanne Garst, Office Supervisor
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission

From: John Gessner, Planning Director *JG*

Date: November 22, 2005

Subject: Zoning Ordinance Amendment ZA-05-01
Limitations on Repeat Submission of Applications

Action Requested

Forward a recommendation to the City Council in support of the proposed code amendment that prohibits the resubmission of the same application when denied and not appealed.

Background

The Planning Commission and City Council has directed staff to prepare a code amendment that limits the resubmission of substantially the same application when it has been denied and not appealed.¹ There are no such code provisions in effect today. The amendment creates certainty about the land use process including formal determinations made by the Planning Director and facilitates efficient governmental practices.² The proposal maintains existing city and state laws regarding procedures for submitting applications and existing appeal provisions.

Key provisions of the code amendment include:

1. Planning Director determinations are final if not appealed.
2. Denied applications may be resubmitted only if one or more of the following conditions are met:
 - A. Two years have passed since the denial.

¹ Final Commission direction was given at its November 8, 2005 meeting.

² Repeat submission of a denied application that has not been appealed or modified so that it can be approved wastes city resources and creates undue uncertainty for neighbors.

- B. Substantial changes have been made to the application and those changes resolve all findings of the original denial.
- C. Code changes adopted following the denial, resolve the reasons for original decision.
- D. Proposals may be resubmitted when there is a substantial change in City Council compositions for denials on legislative and policy actions.

Policy & Code Explanation

2-year Wait

On November 8, 2005, the Planning Commission found that a 2-year wait is a reasonable period to prohibit resubmission in cases where substantive changes were not made to the application. The Commission noted that the wait period would provide incentive to applicants to perfect their applications on the first submission.

Code and Application Changes

The provisions regarding changes in the application or changes in the code ensure fairness to the applicant. Staff believes these provisions are appropriate and are consistent with the intent of the regulation.

Changes in City Council Membership

Actions including code amendments, Comprehensive Plan amendments, and zoning amendments are typically policy driven. In these cases the City Council is the final decision maker. The City Attorney has recommended the code allow for reconsideration of such policy decisions upon a subsequent and substantial change in the composition of the City Council, since individual Councilors contribute to city policy through individual voting.

Decision Making Process

Zoning Ordinance amendments are legislative actions governed by Milwaukie Municipal Code Sections 900 and 1000. The Planning Commission makes recommendations to the City Council, which has the final decision. If approved by the Planning Commission, the City Council will hear the matter on December 20, 2005.

Compliance with Approval Criteria

The following is a summary describing how the proposal complies with substantive provisions of the Milwaukie Zoning Ordinance.

Section 904.1 Requirements for Zoning Text Amendments

1. Procedures outlined in Section 1003, which detail the manner in which applications must be made, have been followed.
2. Reasons for the request are detailed in this report.
3. The proposed amendments supplement existing authorities within Zoning Ordinance Section 1000 Administrative Provisions. There are no known inconsistencies with other existing code provisions.

Section 905 Approval Criteria for All Amendments

1. Consistency with the Comprehensive Plan, the Urban Growth Management Functional Plan, and applicable regional policies is required. There are no known policies within the mentioned documents that are affected by the proposed amendment.
2. Proposed amendments must meet applicable state, federal, and regional policies. There are no known state or federal policies. The amendment process is consistent with state policies that govern public involvement.
3. Section 905(D) applies to code and zoning changes that affect the transportation system. Section 905(B) and 905(C) apply to area rezonings. The proposal does not affect these sections.

Conclusion

Staff believes the proposal is consistent with policy direction provided by the Planning Commission and is consistent with applicable provisions of the Zoning Ordinance. It is recommended the Commission forward a recommendation to the City Council in support of the amendment.

Attachment

Proposed Adoption Ordinance

ORDINANCE NO. _____

MILWAUKIE OREGON

AN ORDINANCE OF THE CITY OF MILWAUKIE OREGON AMENDING THE MILWAUKIE ZONING ORDINANCE BY ADDING A NEW SECTION LIMITING THE RESUBMISSION OF ZONING INTERPRETATIONS AND LAND USE APPLICATION WHEN DENIED AND NOT APPEALED

WHEREAS, the City Council desires to amend Milwaukie Zoning Ordinance to improve administrative provisions that limit the resubmission of requests or applications when denied and not appealed to improve overall certainty about the land use and zoning process and to reduce the potential waste of city resources; and

WHEREAS, legal and other notices have been provided as required by law; and

WHEREAS, on November 22, 2005, the Milwaukie Planning Commission conducted a public hearing as required by Zoning Ordinance Section 1011.5 and adopted a motion in support of the amendment; and

WHEREAS, on December 20, 2005, the Milwaukie City Council conducted a public hearing as required by law, heard and considered all testimony, and found that the proposal is consistent with applicable section of Zoning Ordinance Sections 900 and 100 that govern text amendments to the Zoning Ordinance; and

WHEREAS, the Milwaukie City Council finds that the proposed amendment is in the public interest of the City of Milwaukie,

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Zoning Ordinance is hereby amended by creating the new "Section 1004 Limitations" as shown in Attachment 1 effective February 19, 2006.

Read the first time on _____, 2005, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____, 2005.

Signed by the Mayor on _____, 2005.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan LLP

Pat Duval, City Recorder

City Attorney

Ordinance No. _____

Attachment 1

***Milwaukie Zoning Ordinance
Text Amendment
File ZA-05-01***

Section 19.1004 Limitations.

- A. The purpose of this section is to promote efficient practices for the review of zoning and land use decisions while recognizing the appeal rights of property owners and applicants. Prohibitions on repeat submissions of denied applications fosters a greater sense of certainty on behalf of the community, property owners, and applicants in preparing and responding to city decisions on zoning and development proposals. Relief from provisions of this section may not be granted under Section 700.
- B. An interpretation or determination made by the Planning Director in accordance with Sections 19.809 Determination of Nonconforming Situations, 19.1001.1 Authority, and 1001.4 Planning Director Determinations is final if not appealed. The Planning Director's decision to reject a request for a repeat determination or interpretation is not subject to appeal.
- C. If an application for a land use approval has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:
 - 1. 2 years have passed since the denial became final;
 - 2. Substantial changes are made to the application;
 - 3. Standards and criteria relative to the findings of the original denial have changed and now support the application; and/or
 - 4. For legislative and major quasi-judicial decisions only, where the City Council was the final decision-maker and there has been a substantial change in the composition of the Council.
- D. For purposes of this section, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal.
- E. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.

- F. A substantial change in the composition of the City Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.
- G. An application that was denied solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this section.

~end~



To: Planning Commission

From: John Gessner, Planning Director *YG*

Date: November 8, 2005

Subject: Prohibit Repeat Submission of Denied Applications

Action Requested

Review proposed language implementing a code provision prohibiting repeat submission of denied applications.

Background

The Planning Commission previously reviewed this matter and directed staff to proceed. Final draft language is attached for Commission review prior to the November 22, 2005, public hearing for recommendation to City Council. There are no such code provisions in effect today. Key provisions of the code amendment follow:

1. Planning Director interpretations and determinations are final if not appealed.
2. Denied applications may be resubmitted only if one or more of the following conditions are met:
 - A. Two years have passed since the denial.
 - B. Substantial changes have been made to the application and those changes resolve all findings of the original denial.
 - C. Code changes adopted following the denial, resolve the reasons for original decision.
 - D. Proposals may be resubmitted when there is a substantial change in City Council compositions for denials on legislative and policy actions.

Policy & Code Explanation

2-year Minimum Wait

The proposed code specifies that there should be a two-year minimum before accepting a repeat application in the absence of some other qualifying condition. There are few precedents that assist the Commission in evaluating the appropriateness of that time period. The Cities of West Linn and Tigard both use a one year time period. The Commission's recommendation on this matter is purely discretionary: the question is "what makes sense for Milwaukie"?

Code and Application Changes

The provisions regarding changes in the application or changes in the code ensure fairness to the applicant. Staff believes these provisions are appropriate and are consistent with the intent of the regulation.

Changes in City Council Membership

Actions including code amendments, Comprehensive Plan amendments, and Zoning Amendments are typically policy driven. In these cases the City Council is the final decision maker. The City Attorney has recommended the code allow for reconsideration of such policy decisions upon a subsequent and substantial change in the composition of the City Council, since individual Councilors contribute to city policy through individual voting.

Next Steps

The Commission's public hearing for recommendation to the City Council is scheduled for November 22, 2005. The City Council adoption hearing is scheduled for December 20, 2005.

**Milwaukie Zoning Ordinance
Text Amendment
File ZA-05-01**

**New Zoning Ordinance Section 19.1004 Resubmittal of
Application Following Denial.**

- A. The purpose of this section is to promote efficient practices for the review of zoning and land use decisions while recognizing the appeal rights of property owners and applicants. Prohibitions on repeat submissions of denied applications fosters a greater sense of certainty on behalf of the community, property owners, and applicants in preparing and responding to city decisions

on zoning and development proposals. Relief from provisions of this section may not be granted under Section 700.

- B. An interpretation or determination made by the Planning Director in accordance with Sections 19.809 Determination of Nonconforming Situations, 19.1001.1 Authority, and 1001.4 Planning Director Determinations is final if not appealed. The Planning Director's decision to reject a request for a repeat determination or interpretation is not subject to appeal.
- C. If an application for a land use approval has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:
 - 1. 2 years have passed since the denial became final;
 - 2. Substantial changes are made to the application;
 - 3. Standards and criteria relative to the findings of the original denial have changed and now support the application; and/or
 - 4. For legislative and major quasi-judicial decisions only, where the City Council was the final decision-maker and there has been a substantial change in the composition of the Council.
- D. For purposes of this section, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal.
- E. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
- F. A substantial change in the composition of the City Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.
- G. An application that was denied solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this section.

~end~



TO: PLANNING COMMISSION PACKET RECIPIENTS

FROM: PLANNING DEPARTMENT

RE: NOVEMBER 22, 2005 PLANNING COMMISSION MEETING

Please disregard the meeting cancellation notice you received concerning the November 22 Planning Commission meeting.

There is a hearing scheduled for that meeting. The agenda and report for that hearing are enclosed.

If you have any questions concerning the meeting cancellation or the scheduled hearing please contact John Gessner at 503-786-7652.