

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, September 14, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Lisa Batey
Teresa Bresaw
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner

COMMISSIONERS ABSENT

Nick Harris, Vice Chair
Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 July 13, 2010

Commissioner Gamba moved to accept the July 13, 2010, Planning Commission meeting minutes as presented. Commissioner Bresaw seconded the motion, which passed 4 to 0 to 1 with Commissioner Batey abstaining. Chair Klein and Commissioner Wilson were not present at the July 13, 2010.

3.0 Information Items

Katie Mangle, Planning Director, said she was sad to receive the email about Commissioner Bresaw's resignation, but would enjoy Commissioner Bresaw's involvement on the Commission for the remainder of the month.

- She noted City Councilor Greg Chaimov's presence in the audience and explained she had invited Councilor Chaimov to listen in on the meeting following discussion at the last Commission training session about the disconnect between City Council and Planning Commission. Having a Councilor stop by from time to time could help improve the Commission's work program and communication between Council and the Commission.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings– None

6.0 Worksession Items

6.1 Summary: Land Use and Development Review Process Tune-Up: Continuation of discussion about variances and nonconforming uses and structures
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, presented the staff report with these additional comments:

- She assured that the proposed restructuring of the entire Code to make it more user-

friendly did not involve any policy changes, but would change the chapter outline formats for the City's existing Code so that all applications and overlay zones were consolidated in one place, and the zones themselves would follow a logical order.

- A draft version of the restructuring approach was included in the last meeting packet; a better draft would be available in the future.
- The chapter reorganization would allow the City to incorporate a new development review chapter, which was currently a missing piece in the Code.
- Restructuring would also make it easier for applicants to understand the process.
- Staff was still researching Commissioner Batey's question about why the Amendments Chapter was in the middle of the Title.
- The draft Code would be presented in a hybrid version of draft codes showing a table outlining the chapter outline format relocation changes, along with underline and strikeouts for actual content changes to help avoid confusion.

Discussion by the Commission and staff regarding the Code amendment proposals for variances and nonconforming uses and structures was as follows:

Variances – Type III Applicability

The proposed Type II Variances would address those staff saw most frequently that allow people to maintain their existing home. The general approach was to allow for some very limited Type II variances that essentially do no harm; that have indiscernible impacts, such as to nearby natural resources areas and adjacent property owners. The first table on 6.1 Page 5 Attachment 2 demonstrated how 10% frontage variances would affect those living in an R-10 or C-L zone.

- According to the proposed Type II Approval Criteria, the Gary Michael and Carolyn Tomei project, for example, would not have been eligible for a variance because it would have interfered with future improvements. However, the argument could have been made that the street would never have future improvements.
- **Ms. Shanks** did not believe they would have concluded that the project would have interfered with future improvements because that right-of-way is 60-ft wide and the maximum the City would ask for is 50 ft for right-of-way improvements. The City would probably never design that as a reasonable improvement to that street.
 - In this case, if that applicant had asked for that variance, staff would have agreed that the project did not interfere with future plan improvements. Such improvements must be in the Transportation System Plan (TSP) or Capital Improvement Plan (CIP) or reflected in some kind of planned document.
- The 25% variation to the front setback was definitely a concern; the rear and side setbacks were not problematic. The statement "will not preclude or interfere with future improvements to any public transportation facility" was noted.
- Most people believe River Rd, for example, should have sidewalks, curbs, and places for people to wait for buses, and that need would only increase with a light rail station and people crossing to Riverfront Park. Many houses were built much closer to the right-of-way and to the property line than would be allowed under current Code.
- While it may not preclude building a sidewalk, the fact that the sidewalk would be 5 or 7 feet from people's front porch had all those neighbors agitated 4 or 5 years ago during the conversation about sidewalks on River Rd.
- It was a mistake to allow future development to prolong that alteration of setback. Houses should be moved further back so that the opposition to sidewalks would be less. This is probably an issue in other neighborhoods.
- Not allowing people to vary their front yard setback is good public policy.

- The variance allows people to vary their setback, but then they complain about public improvements being too close to their house. The homeowners knew where the right-of-way was and still asked for a variance.
- The City's approach should be to follow the Code, period. The City must stand firm and continue with the improvements to achieve its goals for street design. Denying variance requests was a necessity because the City's goal is to do improvements to all these streets.
 - Most houses on River Rd are 50 years old, and the residents are not the original owners. The City may not have had the setback standard when they were built, so the structures may have been grandfathered.
- The right-of-way has always been there. However, many people are not savvy about considering the actual property line dimensions when purchasing a house.
- The 25% variance could be decreased a bit, though everything would play out in different ways for different streets. Staff had considered what other codes allowed and included those figures in the draft. Staff sought direction from the Commission about the variation amount.
- Was the Commission concerned that allowing a variance to a front yard setback would set up a domino effect in terms of precluding sidewalk improvements in the future? Or was it concerned that the City would not be tough enough to install the sidewalk even though it was closer to the home due to the requested variance?
- **Chair Klein** replied in part, adding if having a variance put a house too close to the right-of-way or on a street that gives someone more of a voice to say that improvements should not be done, the City should be adopting a plan stating that the City is going to make pedestrian and bicycle access a priority on residential streets in the city. They might get the variance, but showing applicants where a proposed house will sit, as well as the sidewalk's location, would be an important future step to avoid issues.
- Staff would not allow encroachments into the right-of-way through the variance process. Through this process, staff would ensure an approved variance would not set up a future scenario where the City could not make improvements or had to buy back property. All setback standards occur on private property and all improvements should be in the public right-of-way, so unless the right-of-way is not sufficient, there should not be a conflict.
- Most front yard setback standards are either 15 ft or 20 ft, which would result in 11.25 ft and 15 ft when calculated at 25%, respectfully. The 25% variation would not put the house clear to the right-of-way, but would give the applicant a few feet to play with.
- The provision for averaging for nonconformance was flawed and needed to be revisited.
- While there is a relationship, the Variance chapter needed to stand on its own, and staff needs to track such things in terms of how they relate to each other. When doing the residential design standards project, the Commission would consider whether to still allow averaging for nonconformance as an exception.
- The front yard setback should be considered more strictly than the rear and side yards. As discussed, if no opposition is received after notice to the neighbors, then the variance should remain a Type II. Any opposition would result in a Type III Review, and then neighbors who believe there is an impact could speak up.
- Those not as familiar with the issues as the Commission were less likely to perceive a harm with the front yard setback because it would not extend onto any one person's property.
- 'Front yard' could easily be removed from the 25% variation list in Attachment 1, if desired.
- The front yard is really important. It is in the public realm and is really for everybody. A tiny bit of variation might be acceptable on certain streets.
- Setback variation requests are made for side, rear, and front yard setbacks, and apply to

new construction, additions, porches, etc. Most front yard setbacks are either 15 ft or 20 ft, so a 10% variance would allow a 13.5-ft or 18-ft setback potentially. Applicants requesting variances would still have to meet the approval criteria; approval would never be a rubber stamp. Staff would evaluate the right-of-way width, whether an approved variance would interfere with future public improvements, etc.

- The front yard setback is measured from the property line to the face of the building or any portion of the front façade that is 18 in high, such as steps, pillars, or the front of a porch. Stairs should be outside the setback. Eaves are allowed to extend into a setback up to a certain number of feet in the rear, front, and side yard setbacks.
- **Ms. Mangle** advocated allowing for a small variation. Many variance applications come from homeowners in the process of renovating who need to go a foot into the setback to meet Building Code.
- **Commissioner Gamba** believed the 25% setback variation was acceptable.
 - Examples and photos or drawings were requested to demonstrate where the City has run into these issues in the past.
- Variance approval is not a rubber stamp; the criteria must still be met. Other than the Type II variances listed in the Applicability Section on 6.1 Page 3, all other variances would be a Type III review.
- If front yard setbacks were excluded, applicants would still be eligible to apply for a Type III variance, which requires a hearing before the Commission. Type III variances cost from \$1,500 to \$1,700 due to the amount of process involved. Type II variances cost \$900 and still involve a process, including notification of neighbors.
- A well-founded objection to a variance would go into staff's impact evaluation with regard to surrounding properties and the right-of-way. Staff is protective of the right-of-way and supportive of the TSP improvements. The approval criteria about not precluding future improvements were added as a result of staff's concerns.
 - Excluding front yard setbacks would not preclude a Type III variance for a 1-ft front yard setback variance, but that would involve a lot of process; 10% seemed like a better compromise.
- Perhaps, the Neighborhood District Association (NDA) Land Use Committees (LUCs) could review minor improvement projects that are in the best interest of beautifying the city. This process would not be as expensive as the normal Type II process and could benefit everybody. The \$900 fee could be eliminated or reduced to something more manageable for smaller projects.
 - Type II is already designed for that level of process, focusing more on the neighbors. Staff could consider how to involve the NDAs in the Type II process.
 - Having NDAs review projects raised concern about putting neighbors in the position of judging their neighbors, creating an uncomfortable atmosphere.
 - **Ms. Mangle** stated that approach would be considered almost a Type I adjustment, which would have to be very clear and objective for the NDA. She was not sure this approach would fit with land use law. A Type I review would be the rubber stamp approach, and based on the Commission's discussion that was not the direction they wanted. If directed, staff would investigate the NDA, rubber-stamp approach.
 - The idea of NDA involvement was good; however, one concern was that the NDA LUCs were not fully staffed, and member attendance was sporadic.
 - Bad feelings between neighbors could interfere with a project. Hopefully, staff would be more objective. The NDA is always included in the process for both Type II and Type III variances as far as getting a referral.

- Essentially, the only criterion for a current Non-Conforming Structure Alteration is that the project does not hurt one's neighbor. Staff encourages people to get support from their NDA or neighbors to help their case, although staff may conclude the project is not detrimental even without such support.
- Making NDA review mandatory created unease because of human nature.
- Though a proposed project might only exceed the setback by 6 in, the project would not be allowed because of the current Code's objective standards. Requiring a \$1,500 process for a \$1,500 project seemed ridiculous.
- The actual variation numbers or percentages that are implemented but found not to work can be adjusted through a series of Code amendments. The Commission decided to wait to determine a set number until they could see some visual examples of how certain variations might affect certain lots.
 - Most city streets, even those unimproved, are wide enough that putting a structure 2 ft closer to the right-of-way would not be an issue for 75% of the houses in Milwaukie.
 - Seeing examples of sidewalks and street improvements superimposed on Stanley St, Lake Rd, and other streets was requested, as well as an example of a cul de sac.
- Nonconforming situations would be handled completely differently. The variances would not allow existing nonconforming structures to go any further out of conformance than the maximum tier. The 25% variance would not apply to what exists; it is 25% of the standard. If that standard has already been exceeded, the applicant goes to a Type III review.
 - Staff wants to stop allowing nonconforming structures from being able to do more alterations than people with conforming structures. Nonconforming structures would be more limited by this Code in some ways.

Type II Variance Approval Criteria

Some language was taken from the existing Home Improvement Exception Code. Staff wants to remove some language so applicants get funneled through the same variance process as everyone else. Staff borrowed language from other cities' codes in terms of cumulative impact, which should be considered if applicants are asking for more than one variance to the objective standards. Staff wanted simple criteria that focused on the minimum necessary so staff could feel comfortable approving something that met all the criteria.

- In the absence of any objection from neighbors, it seemed it would be difficult for staff to deny such a request. It seemed variances would be granted 99% of the time.
 - Staff wanted to make variances attainable, but reasonable and limited. The criteria were not quantifiable, but were fairly objective. Applicants were either near a natural resource or not. With a simple check, staff could determine whether to allow minimal variances.
- "Interfere" is a loose term as opposed to "preclude." When or where does public access of a sidewalk interfere with one's expectation of privacy for their front porch or windows?
 - The actual Code would be drafted by consultants, and wordsmithing to address clarifying language would occur upon reviewing that draft. Problems will occur with the verbiage because of the flexibility desired. Staff ultimately wanted enough guidance to make good professional judgments.
 - Staff was comfortable making such decisions because it is done in other realms. Minor modifications involving the Community Service Use (CSU) Code are similar, and ask if the variance will intensify the use of the site or be potentially damaging to natural resource areas or open space. While the proposed Code is not exactly black and white, the criteria provide staff with enough guidance.
- The Director will sign all the variance decisions. Concern about one staff person making a decision and not consulting other staff was a valid concern, but unlikely to occur.

- Was staff covering the right types of things in the criteria? When doing the analysis, would the right things be controlled?
 - Staff believed the currently proposed criteria were achievable. Any impacts could be mitigated. Staff would have the opportunity to make conditions if needed. The variances would be relatively minor and staff would be comfortable granting such variances, but wanted the Commission to feel the same.

Chair Klein stated that his philosophy was to have Code that does not contradict itself and is easier for an applicant to understand. He was not concerned about the final numbers, as long as the Code was consistent and the Commission could make fixes along the way. After looking at the examples of the front yard variances, there could be some tweaking, but overall the provided framework was a positive direction.

Type II Variance - Applicability

- Concern was expressed about the height variances, which have been a sensitive item in various settings. Massing was also an issue to address.
 - Staff reminded that Phase II of this Code amendment project was to look at better design standards that address compatibility issues, which is the next step.
 - The new compatibility design standards may require a setback for structures built to a certain height. The variance chapter would then allow someone to vary the setback standards. It would not be based on the current standards. Height variance requests would be applied to the additional set of design standards addressing larger issues.
 - At present this Code still stands alone, but staff intends to work in conjunction with the upcoming Residential Design Standards project.
- The Commission cited several examples of projects where height was an issue. Comments included:
 - The Immovable Foundation Church has a spire. Spires are allowed to be higher.
 - Height is something that could be easily found to be detrimental to surrounding properties.
 - Most houses in Milwaukie were not built out to the height standards of 2½ stories or 25 ft. If so, Milwaukie would look completely different. The standard is always whichever is less.
- The compatibility standards really needed to be addressed. The Commission consented to remove the height variance from Type II, keeping it as a Type III review. This variance could be added as a Type II review as a single line item once the compatibility standards were determined.
 - Height variance requests rarely occur in residential zones. They are mainly seen on school projects.
 - The standards were not just residential, but apply to the entire city including commercial and manufacturing zones. No height variance requests have been submitted for those zones either.

Type III Variance Approval Criteria

The City has economic hardship approval criteria, but not criteria for discretionary relief, which would allow applicants requesting a variance to do an alternative analysis to show that a better project could be built with the variance. This would provide more flexibility for the applicant, Commission, and the community to get better projects.

- **Commissioner Batey** liked the idea generally, but expressed concern about creating code that would essentially grant a variance because some public benefit is evident.

- Perhaps a cost benefit test is needed, similar to the public benefits test in the CSU. Many projects have public benefits, but when is it enough to grant a variance?
- Could the Commission's decision to deny a variance application be overturned by LUBA if the Commission has imposed a cost benefit test that is not in the Code?
 - **Ms. Shanks** noted the language stating, "The proposed variance was determined to be the best approach because it avoided and/or minimized impacts." The applicant could not count entirely on public benefit for approval and not address impacts or respond to the natural environment.
- The language provided the Commission discretion in considering Type III Variances. Often the Commission ends up making bad decisions because they are so boxed in by rules. The desire was to have the opportunity to use logic.
- A more detailed discussion could occur after the actual draft Code language is received from the consultants, and the lawyers have reviewed it to see if the approval criteria are too broad and leave the Commission open for challenges.
- **Ms. Shanks** had reviewed a lot of other variances, especially from small California cities, which were often cited by Commissioner Churchill. Some codes only had one kind of variance for economic hardship; other codes included language saying they would consider granting a variance if the applicant could prove that a better project could be built. The proposed Code language reflected other cities' approaches.
 - She would provide examples regarding front yard setbacks when she returns with the actual chapter to review.

Chapter 19.800 Nonconforming Situations (August 24, 2010 6.2 Page 8 Attachment 1)

This chapter, created in 1946, allows someone to maintain and repair an existing nonconforming use or structure, alter the structure and/or use, and rebuild a structure if accidentally destroyed. Because Milwaukie was already somewhat developed, the City had to find a way to allow pre-existing situations to continue to exist. The current Code allows people to alter their nonconforming structures and/or uses if they go through a process.

- Staff proposed to not allow people to alter their nonconforming structures through the nonconforming chapter, but use the variance chapter for equity reasons. Currently, someone with a nonconforming structure can do more to that structure than someone with a conforming structure.
- A nonconforming structure should not be allowed to be rebuilt even if it was an accidental destruction. Some codes require conformance at that point.
 - Milwaukie's Code was intentionally developed to allow people to rebuild as a policy decision, though that particular policy could be changed. The approach was to give people the right to rebuild what they had.
- Conformance should be required. Rebuilding a nonconforming structure should not be a rubber stamp approval. Making such changes is the only way the City would be able to move forward with trying to make things work as they should. Applicants should have to build the new building to current Code.
- A nonconforming structure that encroaches into the right-of-way is different and could not be rebuilt in the right-of-way. This falls outside the nonconforming chapter. The Engineering Director steps in and identifies it as a safety issue.
 - Nonconforming structures generally regard structures on one's property that do not meet the setback(s).
- Milwaukie has developed over time and has such a variety of lot and building shapes that staff definitely does not understand all the nonconformities. If some people are not allowed to rebuild in this way, they may not be able to rebuild at all because some lots are so funky

or narrow that they could not actually meet the standards. Examples were requested.

- One could argue that is why the variance process exists; applicants can come in and ask for a variance. There should not be a rubber stamp for them to rebuild some horrible building just because it was there before.
- The Code would allow them to rebuild the footprint and massing. They would still have to build to the current Building Code. The structural aspects, the setbacks, and the physical form the building occupies could be built the same as the nonconforming structure.
- One application was discussed where the nonconforming house was completely destroyed by fire, which is rare. The applicant wanted to make some slight changes but was not allowed to extend the nonconformity. Ultimately, a new conforming structure was built on the property, releasing their rights to the nonconformity.
- No disadvantages seem to exist in not allowing someone to rebuild a nonconforming building. Perhaps the variance process could be made less expensive.
 - Having to rebuild after a catastrophe is stressful enough and many people do not know about their responsibility to notify the City about rebuilding a nonconforming structure. They may just want to rebuild instead of trying to figure out a new house plan or how they may do something differently.
 - The history of the Code reflects empathy toward someone who has truly lost their structure accidentally and not intentionally. If the Commission believes this is something they want to pull back on, it would just be a policy change.
- Destruction is defined as 50% of the assessed value of the structure. While not an unusual standard, it could be hard to implement. Staff has not seen anything better in terms of where to draw the line for what is destroyed versus what is not.
 - Staff uses the assessors' records to determine the home's worth and compare to what the property owner provides as cost of the damages.
 - Questions arose as to whether the amount of the damages was the cost to reconstruct the structure. Rebuilding some houses, or portions of a home, would be more expensive than the value of the house.
 - The issue does not come up a lot with homes, but has come up more often with garages and old sheds built right on the property line. The costs are less on simpler structures.
 - Staff has also struggled with the issue of 50% of the assessed value.
- At this time, the Code does not address situations where applicants might want to recreate the nonconformity to retain some historical value.
 - The Commission agreed that having the latitude for the Commission to make that decision would be better than having a rubber stamp that says "if it was nonconforming before, it can be nonconforming now."
 - **Ms. Mangle** offered to develop 2 alternatives, because such a change would be a significant policy shift. It would be worth probing and investing some specific examples in light of 2 parallel options so everyone could really understand that change.
- The nonconformity chapter dates back to 1946 and now, 70 years later, most of those structures have fallen down.
 - Every time the Code is changed, more things become nonconforming. Buildings that have not fallen down are now historic resources and structures. Almost every building in the older pre-war neighborhoods is probably nonconforming.
 - If a structure is nonconforming to some standards that were probably developed for Greenfield development on new sites, is that worth honoring some part of the existing network of the community. This prompted hesitation by staff.
 - That argument could be made before a group of reasonable people. Just rubber stamping it leaves openings for bad things to happen.

- Many structures became nonconforming as recently as 2002, when the City changed its accessory structure design standards. Nonconformities are not just from 1946, but have been incremental over time. Each time the Code changes an objective standard, nonconformities are created.
 - The Commission and staff agreed to explore different examples to compare.
- The Code currently allows nonconforming uses to continue into perpetuity. One major change staff would propose in the draft language is to evaluate whether or not that is appropriate for some uses. The Code currently treats all uses and structures the same.
 - Staff purposely wrote standards to get rid of certain kinds of structures as well as uses. One policy proposal would be to develop a process whereby the City could actually determine whether or not a use is bad and then discontinue bad uses.
 - Staff's proposal would provide the opportunity to go further by not necessarily having to rely on a break in the use to get an obnoxious nonconforming use to go away. The change would not require the City to go further in every situation.
 - Staff felt strongly about making changes regarding nonconforming uses.
- Uses lapse if they are not maintained within a 6-month timeframe, such as Thomason Auto Sales on McLoughlin Blvd that was finally redeveloped.
 - People asked many times to open another car lot there and were denied because the site was in a manufacturing zone. Because the use had lapsed, the rights to that nonconforming use could not be carried over into perpetuity.
- One issue was how to measure or determine when a use has been abandoned. The church next to the Sweet Pea Day Care was discussed as an example.
 - A determination process currently exists where people have to show staff documentation like utility bills to prove that the use did not lapse.
 - Staff can only apply the Code when it comes to their attention through complaints, concerns, or when someone doing their due diligence actually asks about reopening and reestablishing a use.
- The main change staff proposed was to not allow alterations to nonconforming structures through this chapter anymore but have those go through the variance chapter.
 - Staff would now consider not allowing the rebuilding of nonconforming structures, and possibly have that addressed through variances as well.
 - Having the potential to amortize nonconforming uses is a good tool for the City. The process would need to be carefully thought through. The Code needs to be written for the worst case scenario.
 - Staff's goal was to develop the procedures and identify that amortization would be included, but not necessarily the criteria by which an unwanted nonconforming use would be identified.
- Sometimes a conditional use may be the best use for the property. Staff is trying to identify big nonconforming uses. When the draft chapter is presented, a map will be provided identifying the City's nonconforming uses with 80% certainty. Mapping the nonconforming structures would be nearly impossible. Creating rigid rules about something not understood made no sense.
- Rebuilding a nonconforming use or structure would not trigger a transportation review or parking standards unless square footage is added or the use is intensified.

Ms. Shanks reviewed the next steps of the Code project as follows:

- At the next meeting staff would discuss another piece of the Code project: conditional uses, amendments, and development review. This mostly regarded refining the chapters, rather than making big policy changes.

- The big discussion would be a new Development Review Chapter that will attempt to codify existing practices as well as fill the gap in the development review process.
- Staff would then return with drafts of the variances in the nonconforming chapter as well as the procedures chapter.
- She welcomed questions from the Commission and invited Commissioners to speak with her individually. She also requested that the subcommittee, Commissioners Batey and Gamba, meet with her along with former Commissioner Mike Miller to review the draft.

Chair Klein believed having the Commissioners meet individually with staff might result in better policy because while the Commission worked well as a group, they sometimes get into one mind frame and fixate on one particular issue.

7.0 Planning Department Other Business/Updates

7.1 Metro COO Recommendation Overview

Ms. Mangle presented a brief overview of the Community Investment Strategy from Metro's COO via PowerPoint, with the following key comments:

- The Executive Summary was provided in the meeting packet and the full version could be accessed online.
- The Strategy integrated the Urban Growth Boundary (UGB) decision, which would be finalized in December, as well as a Regional Transportation Plan, Regional Transit Plan, land use, community building, etc., all of which are related and vie for the same pools of funding.
- The City is fully responsible for implementing its decisions in terms of land use and development, but must also reflect federal policy with the Clean Water Act and comply with Statewide Planning Goals. Metro, TriMet, and other agencies work at a higher level. Though the City is often focused on current local issues, it must work in and be aware of this bigger context.
 - The 2040 Vision was developed in Milwaukie around 1996 and very schematically set out the vision for the region, which includes Clackamas Town Center, regional centers, and green spaces, which involves the Nature in Neighborhoods Program.
- Metro is required by the State, and was created by the voters, to manage the growth of the region and the UGB, as well as make UGB expansion decisions.
 - Every several years, the State asks Metro to forecast how many people they expect to move into the area and address how they will be accommodated. Metro uses a sophisticated level of modeling, and historically their estimates have been pretty accurate.
- How this population growth is accommodated is pertinent to Milwaukie because the city will only grow out a little bit in controlled ways where the City can afford to build some infrastructure.
 - However, not growing out means investing inside the UGB to accommodate the growth. The real conversation now is about investment, not intensification, because if the region is allowed to sprawl out that means a lot of development, planning, and transportation dollars would go out to the fringes.
 - Milwaukie is the only city, except Maywood Park and maybe King City that does not have to deal with the UGB.
 - Much of the regional policy regards the importance of reinvestment in these existing places and how regional cooperation, policy, and money can be used to strengthen livability in these places.

Chair Klein stated that he does not consider Milwaukie being sensitive to the City's intensification of use, or for bringing in more people. The reality is that reinvestment is needed in these areas because as the city grows, Milwaukie's houses are going to be more in demand, which means that the existing structure and infrastructure, and the services surrounding them, is what will be needed and desired. He views it as investing in the neighborhoods, not intensification.

Ms. Mangle noted special meetings were scheduled for September 29 and September 30 for area planning commissioners and city councilors, and the Commissioners were invited to attend. Other events, including an open house in Oregon City, would be held as well.

8.0 Planning Commission Discussion Items

Councilor Chaimov commented that it was nice to see the Commission working well together.

9.0 Forecast for Future Meetings:

- | | |
|--------------------|---|
| September 28, 2010 | 1. Worksession: South Downtown Concept Plan
2. Natural Resource Overlay project update |
| October 12, 2010 | 1. Public Hearing: AP-10-01 Appeal of Director's Interpretation re: LED signs in Downtown
2. Worksession: Land Use and Development Review Process Tune-Up: Review of Draft Amendments for revised Variances and Nonconforming Situations chapters and new Development Review chapter
3. Worksession: Comp Plan – Thinking About, and Planning For, the Future |

Ms. Mangle reviewed the Forecast with these additional comments:

- Staff would be sharing the South Downtown Plan with City Council next week before presenting the Plan to the Commission. As proposed, the Plan would not be allowed in the City's current zoning, so additional work will be needed.
 - The Plan was being presented to Council prior to the Commission at Council's request and because South Downtown has been Council's project and they initiated the contract. The questions for Council regard the program, future funding, and what it will take to keep the project going, as well as the approval of the Plan at a programmatic level.
 - If the City decides to move forward with the Plan, Council and the Commission must agree to all the additional planning and work needed on the Code.
 - The response from people at the farmers' market was very good. A few people were skeptical, but staff talked with about 60 people and received a positive response. For some, it was their first time really engaging with anything in downtown, and they were just positive about downtown and light rail; some people got more engaged with the material.
 - She was able to talk with Matt McNealy about some of the issues and Carlotta Collette was also able to attend. The farmers' market was a great place to have a public meeting.
- On October 12, 2010, the public hearing on the Director's Interpretation regarded how LED signs are addressed in the Code, specifically the McLoughlin Blvd 76 gas station illuminated LED signs that change.
- She confirmed that September 28th would be Commissioner Bresaw's last Planning Commission meeting.

Meeting adjourned at 8:23 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Stoutenburg, Administrative Specialist II



Jeff Klein, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday September 14, 2010, 6:30 PM

**MILWAUKIE CITY HALL
10722 SE MAIN STREET**

1.0 Call to Order - Procedural Matters

2.0 Planning Commission Minutes – Motion Needed

2.1 July 13, 2010

3.0 Information Items

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda

5.0 Public Hearings – Public hearings will follow the procedure listed on reverse

6.0 Worksession Items

6.1 Summary: Land Use and Development Review Process Tune-Up: Continuation of discussion about variances and nonconforming uses and structures
Staff Person: Susan Shanks

7.0 Planning Department Other Business/Updates

7.1 Metro COO Recommendation overview

8.0 Planning Commission Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings:

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|--------------------|--|
| September 28, 2010 | 1. Worksession: South Downtown Concept Plan |
| | 2. Worksession: Natural Resource Overlay project update |
| October 12, 2010 | 1. Public Hearing: AP-10-01 Appeal of Director's Determination re: LED signs in Downtown |
| | 2. Worksession: Land Use and Development Review Process Tune-Up: Review of draft amendments for revised Variances and Nonconforming Situations chapters and new Development Review chapter |
| | 3. Worksession: Comp Plan – Thinking About, and Planning For, the Future |

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

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Chris Wilson
Mark Gamba

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 13, 2010
6:30 PM

COMMISSIONERS PRESENT

Nick Harris, Vice Chair
Lisa Batey
Scott Churchill
Teresa Bresaw
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Jeff Klein, Chair
Chris Wilson

1.0 Call to Order – Procedural Matters

Vice Chair Harris called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes**2.1 May 11, 2010**

Commissioner Batey replaced the “[inaudible]” on Page 23 Line 747 as follows, “especially in light of the riparian restoration in the plan, it seemed like *promoting goat trails for nonmotorized access was inconsistent with that.*” She verified the application noted on Page 28 Line 915 would formally return to the DLC to review some of the details of the plan because of a condition of approval.

Commissioner Bresaw moved to approve the May 11, 2010, Planning Commission Meeting minutes as amended by Commissioner Batey. Commissioner Gamba seconded the motion, which passed unanimously.

2.2 June 22, 2010

Commissioner Gamba moved to approve the June 22, 2010, Planning Commission meeting minutes as presented. Commissioner Churchill seconded the motion which passed 3 to 0 to 2 with Commissioners Bresaw and Batey abstaining.

3.0 Information Items—None.

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4.0 Audience Participation –This was an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings

5.1 Summary: Pond House Deck and Landscaping
Applicant/Owner: Paul Shirey / City of Milwaukie
Address: 2215 SE Harrison St
File: WQR-10-02, CSU-10-06
Staff Person: Susan Shanks

Vice Chair Harris called the hearing to order and read the conduct of quasi-judicial hearing format into the record.

Susan Shanks, Senior Planner, cited the applicable approval criteria of the Milwaukie Municipal Code (MMC) as found on 5.1 Page 7 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

Vice Chair Harris asked if any Commissioners had a conflict of interest or any ex parte contacts to declare.

Each Commissioner declared they had visited the site. No Commissioners, however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners abstained and no Commissioner’s participation was challenged by any member of the audience.

Commissioner Bresaw declared her neighbor, who was on the Library Board, had spoken briefly with her regarding the deck area at the Pond House and commented that she hoped the Commissioners would look at it in a favorable manner.

- She confirmed that her contact with her neighbor would not affect her judgment. She would not be biased and would be able to participate in this evening’s hearing.

Vice Chair Harris stated he had briefly spoken with Chair Klein but their conversation did not involve anything germane to the application.

Ms. Shanks presented the staff report via PowerPoint, responding to questions and comments from the Commission as follows:

- She noted the application was only to review the impervious improvements; the landscaping improvements were allowed outright by the MMC.
- She clarified the new stairs would be in approximately the same location as the old stairs, which would exit from the back door, turn, and head toward the north of the building. The exit from the stairs would be a 5 to 6 ft wide egress path that would be created between the house and retaining wall.
- She deferred questions about the current condition of the egress to the Applicant, though she believed it was old gravel.
- Staff believed it was desirable to maintain the second egress off the rear deck because the Pond House is a public facility. The Applicant's Water Quality Resource (WQR) consultant indicated a larger disturbance would occur to the WQR area. A different configuration for the stairs would likely require additional footings or extending the stairs further out over an established rock wall and through existing trees due to the required run and rise. Further clarification was deferred to the Applicant.
- Improvements involving the footings and stepping stone path added approximately 39 sq ft of new impervious area. The plantings would total about 525 sq ft which staff believed would mitigate the disturbance to the WQR area.
- The area where the plantings were installed had not been an impervious area, but primarily a grassy and weedy area not considered to be native. Some nuisance plants were removed. Brad Albert, Civil Engineer, had reviewed the application and many of the installed and proposed plants were listed on the stormwater facility list. These plants have a greater benefit of cleaning and managing stormwater before it enters the pond.
- The window for the in-water work period would be July 15 to August 31, 2010.
- Correspondence regarding the Pond House proposal included a letter received tonight from Kay Sweetland Bower, a member of Ledding Library Board and Friends of Ledding Library dated July 8, 2010 in support of the application. Copies of the letter were distributed to the Commission.

Vice Chair Harris called for comments from the Applicant.

Paul Shirey, Public Works Operations Director, stated the Pond House facility maintenance fell under the jurisdiction of the Public Works Department. The Pond House is unlike other City-

owned buildings because of the number of people involved, including the Library Board and the Friends of the Library. The current principal function of the Pond House is to serve as the library book store, which was approved by the CSU, and it is a meeting place for City business and related community functions.

- Following the purchase of the Pond House, the Applicant anticipated that the Booktique application would require constructing the sidewalk to Downtown standards, which they were prepared to do. It was also discovered that the deck was close to collapsing and the decision was made to dismantle it.
- After the approval for the Booktique and learning that not as much money was needed for the sidewalk, the City Manager at the time asked that the deck be replaced. The driveway was effectively closed, providing the opportunity to replace the driveway, apron, and curb.
- The on-call carpenter, Steve Philps, was directed by Mr. Shirey to replace the deck without increasing its size. Mr. Philps determined the original footings were not safe, and poured expanded concrete footings without first consulting Mr. Shirey. This work immediately triggered the need for a Type III Review, delaying the project.
- The application also included small footings for the bench, a small footing for art work, and stepping stones, which would contribute to the overall esthetics of the Pond House.
- The mitigation for the addition of the impervious area was in the form of landscaping that had been completed. He noted the driveway was replaced with impervious pavers, which removed quite a bit of pervious surface, but was not included in the mitigation calculations.

Mr. Shirey, along with consultant team members Anne MacDonald, Rivergrove Environmental Consulting, and Sarah Smith, Landscape Designer, responded to questions from the Commission as follows:

- The recently poured footings had not been engineered and the depths of the footings were unclear; however, they were square, vertical footings, and sufficient to bear the deck's weight. Mr. Philps was licensed and bonded.
- **Ms. Shanks** noted City Building Official, Tom Larsen, was satisfied with the current footings as stated in the attachment.
- The details on the deck style, including the handrails, had not been determined. The deck would be made with artificial decking material, such as Trex, with cedar, 2 ft by 6 ft capped, picket handrails and finishing trim.
- **Ms. Shanks** clarified that Facility Management Coordinator, Willie Miller, confirmed with the Mr. Larsen that the second egress was not required, so it did not trigger ADA accessibility

standards. A greater impact would occur to get the egress ADA accessible based on the house design and height of the second egress. The City's desire was to have the second egress be ADA accessible, however, that was not included in the proposal.

- The purpose of the deck was to provide a second egress and allow users of the Pond House to take advantage of the pond amenities and natural resources surrounding the facility.
- About 6 people could occupy the deck at one time. The deck would be used for egress and entertainment, such as a guitarist performing for events occurring in the yard. The deck space would not provide a comfortable meeting place.
- **Mr. Shirey** clarified where the stairs would terminate onto the deck.
- The area near the water's edge at the rear of the Pond House was important for accessibility, but was not a walk that would be made by choice because the walkway is very narrow; only 40 inches existed between the back of the retaining wall and the foundation of the Pond House.
- The intent was to place gravel along the rear of the house for the walkway, but not along the side of the garage near the existing bookstore. That area along the garage was now just bark dust, and was so shaded grass could not grow.
- The deck would be 8½ ft deep with the 36-in rail height as required by Code.
- The City budgeted \$20,000 for the deck. The Friends of the Library paid for the design, landscaping, and impervious elements. The cost of the deck included encapsulating, or wrapping, the deck's substructure to keep the pressure treated lumber from contaminating the pond. This was a specialized, labor-intensive approach. The artificial decking material was more expensive than wood, including cedar.
- The encapsulation process involved "shrink-wrapping" a stretchy, clinging, heavy-duty material around the deck's substructure.

Commissioner Batey:

- Asked if the long term plans existed for rebuilding the library or expanding the existing building. Her concern was spending City money now for the Pond House if the library intended to vacate its current site.
- **Joe Sandfort, Library Director**, replied that no plans exist to tear down the current library. Plans did exist to expand the library pending City Council and City administration involvement. However, those plans were developed in 2003 and involved the library site itself, not the Pond House. At one time, relocating the library was considered. He had

also heard a discussion about building a walkway over the pond. No discussion existed about tearing down or replacing the Pond House.

- **Ms. Shanks** stated that new construction on the site would definitely be reviewed under the WQR regulations.

- Asked the main reason for constructing the deck.

- **Mr. Sandfort** explained several reasons existed for needing the deck, but ranking them was difficult. The community deserves a building that is competently designed and maintained. People visiting the library could see the current condition of the back of the Pond House, which was an eyesore. The community would be better served with the building completed. The Friends of the Library's idea of having music playing during summer events would be nice for the community. And the deck was needed to function as an egress. It was a very important project for the community.

Commissioner Bresaw asked about the proposed garbage can enclosure's description, which seemed to be a wooden box with a Sunbrella or outdoor equivalent canvas on one side.

- **Mr. Sandfort** replied that the intention was to utilize a trellis; however, the trellis had been stolen which prompted the new design for the enclosure. He deferred to the Applicant's landscape designer for further detail.
- **Sarah Smith, Landscape Designer, The Gardensmith**, explained the intent was to enclose the garbage can screen with wood on 3 sides with the fourth side made of a sliding, fabric curtain to hide the trash cans. The garbage enclosure was very visible to the public, and close to the front door of the Pond House. Swing-type doors would take too much space and the turf-block floor surface was difficult for the wheel-supported door to roll across.

Commissioner Batey:

- Asked the purpose of the path, where would it lead, and who would use it.
- **Ms. Smith** replied there was a nice view along the proposed path's area. The path would lead to the existing stairs allowing access to the lower lawn area, which provides a nice view of the pond. The path would draw people through the landscape to an appropriate spot to view the pond, rather than cutting through across the grass.
- The 2 vine maple trees on each side of the proposed stone path would grow to frame a view of the pond, and the path would draw people in to better experience the landscape.
- The stepping path would provide access from the parking lot.

- Expressed concern about the path encouraging people to cut across the lawn, circumventing the use of the sidewalk.
- **Ms. Smith** said she did not envision the path as a shortcut to the library. The sidewalk was still a much more direct way to the library. She was not aware of any plan to restrict people from walking or using the lawn.
- Noted there was a difference between using the lawn for recreation versus creating a path through the lawn from foot traffic.
- **Ms. Smith** stated she had seen people at the edge of the water and believed they walked down from the sidewalk to access the pond.
- **Mr. Shirey** noted that using the stepping stone path was not a convenient way to reach the library.

Vice Chair Harris called for public testimony in favor of, opposed, and neutral to the application. There being none, he called for additional comments from staff.

Ms. Shanks clarified that questions regarding cost had no Code basis, as cost was not a WQR Code approval criteria. Those criteria regarded whether alternative designs were considered, and if a reasonable design was proposed that minimized and mitigated for its impacts, etc.

Vice Chair Harris confirmed no Commissioners had any further questions for staff and that the Applicant had no rebuttal. He closed the public testimony portion of the hearing on WQR-10-02 and CSU-10-06 at 7:37 pm.

Planning Commission Discussion

Commissioner Batey believed the Pond House would be a nice addition. She initially had concerns that the Pond House would not be a long term fixture, but now understood it would be here for a long time. She had no problem with the proposal.

Commissioner Bresaw said she was glad to see people care by volunteering and getting involved with the improvements.

Commissioner Churchill said he strongly supported the application. It was wise of staff to realize what had been done with the footings and require more appropriate review, but he

believed there was no apparent impact to the WQR zone. It would be inappropriate to leave the Pond House unfinished. It was an asset not just to the library, but to the city of Milwaukie as a whole. Completing the deck would provide the public an area to enjoy Milwaukie's water quality resources.

- He noted a sign posted toward the library on the Harrison St side that stated, "Nature Area Keep Out." It was absurd that people could not be respectful of the water quality resources and enjoy them. He strongly supported the application.

Commissioner Churchill moved to approve WQR-10-02 and CSU-10-06 with staff's recommended findings and conditions of approval as found in Attachments 1 and 2. Commissioner Gamba seconded the motion, which passed unanimously.

Motion passed 5 to 0.

Vice Chair Harris read the rules of appeal into the record.

The Commission took a short recess.

6.0 Worksession Items

- 6.1 Summary: Review Procedures Code Amendment project briefing part 2
Staff Person: Susan Shanks

Katie Mangle, Planning Director, noted that Serah Breakstone worked closely with Mary Dorman of Angelo Planning Group and both were working as consultants for the City on the Code Amendment Project.

Susan Shanks, Senior Planner, stated the first draft of the amended Zoning Code Title 19.1000 was attached to the staff report. This chapter was the essential component for how the City did everything in Development Review, Zoning Administration, and Land Use Review. The Commission would be familiar with this very important chapter because staff cited this chapter during the quasi-judicial process at each hearing.

Ms. Shanks presented the staff report regarding Title 19.1000 amendments via PowerPoint.

Discussion points from the Commission and staff regarding key topics were as follows:

- Table of Contents, Chapter 19.1000 - The proposed Table would be more focused, straightforward, and organized with a section of General Provisions and the 4 types of review processes. Also included would be preapplication conferences, application, public hearings, and appeals.
- Items in the existing Table of Contents would be reorganized, or moved elsewhere but retained.
- Some changes were proposed; for example, changing the number of review processes from 4 to 5, the actual number of City review processes; however, the basic procedural content would remain the same.
- Review types in the draft were organized alphabetically, but the final Code Table of Contents would follow numerical format similar to other jurisdictions.
- Providing examples according to the different types of review would be helpful.

Serah Breakstone, Angelo Planning Group, reviewed key changes proposed for Chapter 19.1000.

Comments and discussion regarding the following items was as follows:

- Time limits on land use approvals.
 - The next set of revisions would address consistency to better define time limits on public notices and notices of decision, and would include clarification on business days versus calendar days.
- Type II reviews will only go to a Type III hearing if appealed; and would no longer be 'bumped up' a level by the Planning Director or others.
 - No criteria exist for making the decision, resulting in a very arbitrary process. Different rules, timelines, costs, and processes were involved, but the criteria for approval were the same.
 - The responsibility should be placed on those appealing the decision or trying to make changes.
 - The appeal process should be clear; even the permitting process can be daunting.
 - The recently adopted fee schedule has 3 appeal fee categories:
 - No charge for Neighborhood District Associations (NDAs) that already have standing.
 - Type I or Type II appeals, involving the Planning Commission, cost \$500.

- 314 • Appeals from the Planning Commission to City Council cost \$1,000, which typically
315 involves staff enlisting the City Attorney's assistance, increasing expenses
316 dramatically.
- 317 • Public Notice. The applicant would be required to post signs at the site and provide an
318 affidavit stating they posted the sign in an appropriate place in a timely manner.
- 319 • The affidavit affirms the applicant had posted a sign a minimum number of days prior to
320 the hearing or decision. It was the onus of the applicant to follow through with this
321 process, ensuring the sign had not blown away, been removed, etc.
- 322 • Not meeting this posting requirement would be treated like not meeting a Code standard.
323 It could be reason for denial or to have the applicant waive the 120-day land use clock.
- 324 • Map Amendments. Proposed changes would result in the Planning Commission making
325 more decisions on map amendments.
- 326 • Because Comprehensive Plan maps are adopted by ordinance, Ms. Breakstone would
327 verify whether small changes would be governed by some type of ordinance.
- 328 • It was discussed that Commission decisions would be the accepted decisions and
329 Council could adopt the ordinance on the Consent Agenda. Council would not redo
330 the hearing, but would review an item for adoption. Council could always pull the
331 item for discussion.
- 332 • Questions regarding how maps are adopted would be clarified for the final
333 amendments.
- 334 • Public noticing in newspapers. Recommended replacing this requirement with more
335 effective practices, such the City's website and bigger noticing signs.
- 336 • The City's website will be used for paying utility bills by next year, creating more
337 common traffic, and providing a more effective public noticing tool.
- 338 • Newspaper noticing was a useful way to get public notices out, but with multiple, lengthy
339 listing requirements and a \$4,000 per year expense, newspaper notices was considered
340 inefficient.
- 341 • Reducing the size of the newspaper notices was suggested, such as the content
342 included on the public notice sign.
- 343 • No changes would be made to Type III and Type IV public noticing. Written notices
344 would still be required to be sent out by mail to property owners within 300 ft of a Type III
345 quasi-judicial and 400 ft for a Type IV legislative procedure. This distance was measured
346 from the outside edge of the property.

- 347 • Legislative Code Changes. The next set of revisions being considered would allow staff to
348 initiate a Type IV application; currently the Code allowed anyone to submit a Type IV
349 application.
- 350 • Applicants that continually run into Code issues could also apply to change it.
- 351 • Concerns were expressed that allowing anyone to initiate a Type IV application could
352 require extensive staff time. However, the current legislative application fee is \$3,500,
353 requiring people to consider the expense of changing the Code if they did not like a City
354 decision.
- 355 • NDAs would be required to pay the fee; however, most NDAs contact the
356 Commission, Council, or staff about a change being a City project.
- 357 • Some applicants were willing to help staff with the legwork involved and pay the fee. No
358 one should be eliminated from proposing a good change for the community.
- 359 • The City would ultimately have control of the actual language adopted. The Commission
360 and Council would still have to approve the change.
- 361 • The applicant would have to demonstrate that a public benefit would result from
362 changing the Code.
- 363 • All applications would still be subject to the approval process, and applicants must
364 address all the applicable criteria. Are the criteria stringent enough to weed out obviously
365 bad ideas?
- 366 • Time Limits for Preapplication (6.1 Page 24). Should the more informal preapplication
367 meeting have an expiration date?
- 368 • The preapplication meeting was a more informal process involving just a staff member
369 with no other City department and did not require written notes; similar to an over-the-
370 counter application meeting.
- 371 • A preapplication meeting would be offered when it was not required to complete a full
372 application or when the City authorized that the preapplication conference be waived.
- 373 • Preapplication conferences (6.1 Page 26, Section 19.106.5) currently had an 18-
374 month time limit.
- 375 • A 1-year maximum time limit was suggested for preapplication conference because
376 standards may change; a sunset should exist.
- 377 • New language under the Purpose Statement was proposed to clarify that if the
378 standards had changed between when an application was submitted and the
379 preapplication conference, the Code in place at the time the application was submitted

would apply. The applicant would be notified of Code changes in advance to assist them in the planning stages.

- Appeal Section (6.1 Page 35) Proposed language was consistent with State law, yet clarified how the appeal process works, who can appeal, and when an appeal can be made.
 - Type II decision can be appealed by the applicant or any party that feels they have been aggrieved by the decision. This language was from the Oregon State statute and would also be a de novo hearing before the Commission.
 - Type III decisions can be appealed by the applicant or any person having official standing, meaning they provided comment during the public comment period or at the initial hearing.
- In Section 19.1009.1.A.2, should the term “party” be defined or clarified?
 - The language probably should be revised, especially for the Type II process where the appellant did not necessarily need to be a party per se; they could be an aggrieved party rather than someone who testified.
 - The Type II appeal process has no hearing, but does have a public comment period. One would not have had to provide comment to be considered an aggrieved person. Appeal must still be based on approval criteria, but a party does not need to be a person of standing to be an aggrieved party.
- The language regarding aggrieved parties should also be carried into the Type III appeal process.
 - Discussion clarified that a legal basis and a formal effort stating a clear objection should be made for a person to be considered an aggrieved party to the appeal process. Comments could be received by letter, email, or even a phone call to staff.
 - All parties affected by an application receive written notice 20 calendar days before the hearing, which describes the appeal rights and the process to appeal. Written notices of decision are mailed out the next day after the hearing.
- The City’s website could be used to notify citizens that an application has been received. The website could include a map indicating land use application sites. The applications should need to be searchable by certain key words.
- The NDAs and Land Use Committees (LUCs) are able to get the word out about applications quickly. The LUC and relevant NDA Chair of where the property is located are notified and receive information within 2 days of an application being deemed complete. A 2-week comment period is allowed for NDAs.
- Staff currently responds to all questions and concerns in any contact format, and informs

those individuals about the requirements to be a person of standing in case of appeal.

- The Oregon State statute was clear about who has standing to appeal for a quasi-judicial procedure. It does not imply a minimum, but any changes would need to be reviewed by legal counsel for ramifications.

- Applications Procedures and Summary Table (6.1 Page 39).

- The Design and Landmarks Committee (DLC) should not be the review authority on Downtown Design Review applications; the DLC reports to the Commission.

- Further clarification about Minor, Moderate, or Major Downtown Design Review was requested.

- One topic for discussion to revisit in the future was how DLC hearings are conducted; staff does public notice for the Commission, but did not want to redo the work done by the DLC, which sets up a strange process.

- The table would be revisited with the Commissioners' suggestions and comments taken into consideration and presented in a more complete form at the next worksession.

- Application time limits and extensions of approvals. Issues associated with land use approvals that do not expire were reviewed (6.1 Pages 2 and 3). Staff sought input from the Commission about:

- Better clarification of the vague term, "substantial construction," which is commonly used but better defined in other jurisdictions' codes. Is "substantial construction" the appropriate threshold?

- What problem was the City trying to solve by limiting or not limiting, extending or not extending approvals for all types of land use approvals? Should current limitations and extensions apply to all applications?

- Should extensions require approval by the Commission, or should straightforward criteria be developed so staff could approve extensions, or should only certain extensions be reviewed by the Commission.

- Time limits would help with applications that have multiple conditions about remedial plantings, for instance. Changes in personnel after such long time lapses create inefficiencies in implementing the application and enforcing conditions of approval, resulting in a project that may not be completed to the Commission's expectations.

- There were reasons to consider not having time limits.

- The Southgate Park and Ride project was a CSU, which have no time limits, and would not have been completed if a 2-year time limit was implemented. The project had to wait to receive stimulus funding. Going through the permitting process would

not have prevented the project from being built because it would not have met the stimulus funding criteria.

- Consideration should be given for the larger public projects, like the Riverfront Park.

Having too stringent of time limits may leave projects without ways to get extensions.

- Establishing unlimited extensions was mentioned. However, the applicant would need to demonstrate an understanding of the conditions and why the extension was needed.

The applicant should be able to do the project as originally envisioned.

- The applicant would have to verify that certain conditions, like traffic or water quality resource areas, have not changed, or that the project would not really impact those items. Some level of review would be needed to verify that the project should proceed.

- Written records should be very clear as to not be affected by a change in staff.

- While engineering conditions of approval are often clear cut, only some planning conditions, such as those regarding setbacks, are clear. Other planning conditions can be unclear, like those involving benefits, mitigation, or intent, even though every effort is made to avoid ambiguity.

- Staff has been diligent about keeping clean records and being disciplined to retain the last, most recently approved plan. Most items can be digitally recorded, but many materials cannot be included in a digital format for the record.

- “Substantial construction.” Legal precedent was found in a case in upstate New York.

The previous definition was not satisfactory to the Commission.

- The definition for “substantial completion” which regarded occupancy was preferred to using “substantial construction.” 10% of construction should not be considered “substantial construction.”

- The term or definition used needs to identify the problem the City was trying solve. Was it to ensure the project was done and ready for occupancy? What if construction is not involved? Was it to prevent unintended impacts?

- “Substantial construction” is difficult to implement even with a clear definition, primarily because removing the applicant’s ability to finish a project could leave a half-finished project. When should a project be stopped?

- The land use application process does not verify proof of the applicant’s ability to fund a project. Generally, the Commission reviews applications that are at 60% completion, so the applicant has a lot more work to do, but wants to get approval before moving forward.

- Applicants should be required to prove that funding was available/in place before any work could be done on the project, like tree removal, grading, etc.
- A mechanism was suggested to deny the occupancy permit if a project did not reach 100% completion after approval is given.
- Some applications involve allowed use permits.
- One approach might be to differentiate between applications that do or do not include structures, or for those involving new construction.
- Sometimes it takes a long time for applicants to submit the required materials for their building permit application, lowering staff's confidence that the project could be constructed in a timely manner. Staff could determine an application has been incomplete too long and the applicant must start over and resubmit a new application. This would occur during the post-approval process.
- Opportunities for extensions or a more generous time period were preferred to using "substantial construction," which is a bad policy idea. The idea is to get projects finished. Having 2- or 4-year time limits with a possible 2-year extension was a consideration; although costs and the process requirements may make applying for an extension less appealing.
- The applicant must prove nothing has changed as far as the original application approval.
- Making Code for extraordinary situations was not desired, but maybe exceptions should be allowed for publicly funded projects; projects involving more than a specific number of acres or dollar amount could involve different time limits.
- Clear and consistent deadlines should be set for at least 80% to 90% of the projects in the city.
- Currently, applicants are subject to the Code in place at the time the application was submitted. If an extension is denied, the application would have to be resubmitted and therefore subject to the most recent Code.
- That process can be quite costly, and not necessarily result in a different conclusion. Both staff and the applicant go through the time, money, and energy of reprocessing the application, but no different analysis results, which is not good public policy.
- Extension requests should consider any Code changes from the initial application submission. There are too many struggles, research efforts, and ramifications on projects being "grandfathered" in.

- Flag lots were subject to special regulations implemented decades ago, creating real challenges for staff. The current Code cannot be applied.
- The extension process did not apply to land divisions, which operate under a separate set of ORS rules.

Commissioner Gamba sought clarification in the future about how an application is categorized as a conditional land use. The term “land use” needs to be clearly defined to consider past and present philosophies for more sustainable lifestyles.

- Staff explained that all zones have a list of allowed and conditional uses that has evolved over time. Some zones having a prohibited use list. Decisions were needed about which uses should and should not be allowed to coexist.
- Future meetings would include further discussion about use zones, including how they related to the Willamette Greenway being an automatic conditional use, the upcoming residential standards project, and a broad consideration of the Comprehensive Plan over the next 2 years.

The Commission consented that it was generally appropriate to have time limits and extensions for all applications, not just conditional uses and variances. Discussion continued as follows:

- “Substantial construction” did not make sense as an appropriate threshold in many situations. Perhaps another type of threshold could be used that was appropriate for all situations.
- Large commercial projects require a completion bond, but this was not appropriate for private development. Currently, the City utilizes completion bonds for public facilities improvements and to allow for temporary occupancy on private projects.
- Again, the goal was to get the project completed or cancel the application.
- Should some applications, like more sensitive CSU projects, be singled out for things like extended deadlines?
- The only real benchmark would be substantial completion, but no milestone existed to tie to completion. Judging the level of completion is difficult; 10% did not seem like enough, but also needed clarification. Was it 10% of the value?
- “Substantial completion” was defined by AIA and essentially meant that a certificate of occupancy could be obtained, which provides time to close out and get a final inspection.

- 548 • In doing variance research and talking with Mr. Larsen, staff discovered that a project
549 could be really close to completion, but still get occupancy. Bonds had been secured for
550 completing a parking lot or water quality resource mitigation.
- 551 • Construction case law involving litigation about substantial completion regarded the
552 ability to get pay applications approved. Connecting substantial completion to the
553 beginning of a construction project was difficult.
- 554 • “Substantial completion” was more palatable than the term “substantial construction.”
 - 555 • Issues arose with Harmony Mini-Storage when substantial completion of one building
556 meant substantial completion of the whole project.
 - 557 • Phasing was an important factor to consider.
 - 558 • If an applicant decided to build only the first building of a multi-building project, they
559 should reapply for the second building.
 - 560 • Perhaps a more abbreviated or less expensive process could be used than the
561 original application process.
- 562 • Development involving multiple parcels or buildings, like a small university, would have a
563 master plan involving phases of completion. Approval of the master plan would occur and
564 then each project/phase of that master plan would be reviewed.
 - 565 • The City was contemplating a master plan application process for the future. Would that
566 process be similar to the master plans adopted for parks, which was a legislative, more
567 policy approach? The applicant essentially returned for individual land use development
568 approvals for each portion of the project, but had some certainty about the approvals
569 given.
- 570 • Phasing was simpler than a master plan. An applicant developing an apartment complex
571 could decide to complete only 2 of 3 buildings. Phasing would allow them to build what
572 made sense for the project without losing their approval because they did not build the third
573 building.
 - 574 • Phasing made sense. Water quality areas, transportation, or other conditions might
575 change, requiring staff review, but that would not necessarily need to come back to the
576 Commission.
 - 577 • Industry standards applied to wetland delineations, which are good for 5 years, and
578 traffic studies, which are good for 3 years.
- 579 • For extensions, staff discussed having a staff level review to confirm that conditions had not
580 substantially changed to allow the applicant to move forward. If new development had
581 occurred or a transportation condition changed, then the applicant would need to return for

582 another approval.

583 • Certain standards are never grandfathered in and applicants are required to comply with
584 current standards, such as the Public Works Standards.

585 • Changing the City's standards so much as to not allow development would affect the
586 development rights of the applicant.

587 • Project changes that might harm the environment were another issue of concern if an
588 applicant was not held to the standard of Code changes.

589

590 **Ms. Shanks** reminded that in addition to revamping the Review Procedures Chapter, Ms.
591 Breakstone and Ms. Dorman already evaluated the Code's basic structure and found missing
592 basic aspects of the review process, such as a clear development review structure and process,
593 and even having development review as an application type to do things like site plan review, or
594 modification of an approved plan. Given these needed changes, potential opportunity existed to
595 change the Code's actual structure similar to the Table of Contents for the Review Procedures
596 Chapter.

597 • The proposal was to essentially overhaul the entire structure of Title 19 in the MMC while
598 retaining most of the content. This restructuring would allow for the appropriate insertion of a
599 development review chapter and application type, while also clearly grouping the City's
600 applications all in one place.

601 • Discussion on the Review Procedures Code Amendment project would continue, and a
602 detailed restructure of Title 19 would be presented to the Commission in late August,
603 particularly regarding development review.

604

605 **7.0 Planning Department Other Business/Updates—None**

606

607 **8.0 Planning Commission Discussion Items—None**

608

609 **9.0 Forecast for Future Meetings:**

610 July 27, 2010 1. Public Hearing: CPA-10-01 North Clackamas Park North Side
611 Master Plan

612 August 10, 2010 1. Worksession: Natural Resources Overlay project update
613 *tentative*

614

615 **Ms. Mangle** reviewed the upcoming meeting schedule with these additional comments:

- She was uncertain whether the July 27th hearing would require a continuance. Some comments had been received. The application was sent to the Lake Road NDA and the Community Planning Organization in Clackamas County, with limited response from either entity. Notice was sent out to those within the 300-ft radius, which resulted in only some clarifying questions. Staff was preparing for a long, complex hearing, but no signs for such were being seen. The application included the area north of Camas Creek and west of the Milwaukie Center.
- Assuming the Master Plan is not continued, the August 10th meeting would include two worksessions, the Natural Resources Overlay project, which was being prepared for public hearing in early fall, and the land use hearings training.

Meeting adjourned at 9:43 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Stoutenburg, Administrative Specialist II

Jeff Klein, Chair



MILWAUKIE

Dogwood City of the West

To: Planning Commission

From: Katie Mangle, Planning Director
Susan P. Shanks, Senior Planner

Date: September 7, 2010 for September 14, 2010 Worksession

Subject: Land Use and Development Review Process Tune-Up
Code Amendment Project Briefing #4

ACTION REQUESTED

None. This is a briefing for informational purposes only. Staff is seeking feedback from the Commission on the proposed chapter reorganization of Title 19 and on the proposed changes to variance and nonconforming situation provisions to guide the development of new draft chapters. This is a continuation of the Commission's August 24 discussion on these matters.

BACKGROUND INFORMATION

Please refer to the August 24, 2010 staff report for more detail.

A. History of Prior Actions and Discussions

- **August 2010:** Briefing #3 on Land Use and Development Review Process Tune-Up Project (formerly Review Procedures Code Amendment Project), with a focus on variances and nonconforming situations.
- **July 2010:** Briefing #2 on Review Procedures Code Amendment Project, with a focus on time limits and extensions of land use approvals.
- **May 2010:** Briefing #1 on Review Procedures Code Amendment Project, with a focus on project goals and the City's code history and current review procedures.
- **March 2010:** Staff provided the Commission with a copy of the intergovernmental agreement between the City and the State of Oregon that commits the City to prepare draft code amendments based on priorities that were identified in the 2009 Smart Growth Code Assessment Final Report.
- **October 2009:** Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.
- **September 2009:** Design and Landmarks Committee held a worksession to discuss the residential design standards element of the code assessment project.

- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 Smart Growth Code Assessment Final Report.
- **August 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.
- **July 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.

B. Discussion Items

Since this is a continuation of the discussion from the Commission's last work session, please read and come prepared to discuss the packet materials from the August 24 session and this session. If you have not already done so, it would also be helpful to read the Variances (Chapter 19.700) and Nonconforming Uses (Chapter 19.800) chapters.

Variances

Based on the discussion at the August 24 work session, staff prepared a draft outline for the new variance chapter (Attachment 1) to facilitate further discussion on specific provisions of the existing variance chapter, specifically Sections 19.701 – 19.704. This outline does not include the remaining sections in this chapter because staff proposes to retain the existing use exception provisions, i.e. Sections 19.705 – 19.706, and delete the home improvement exception provisions, i.e. Sections 19.707 – 19.709. As you will see, some of the language from the home improvement exception provisions has been incorporated into the new draft variance approval criteria. This is because staff proposes to replace the existing home improvement exception process with the new Type II variance process.

To aid in the discussion, staff has also prepared a table (Attachment 2) that shows the base zone development standards that staff proposes could be reviewed through a Type II review process.

Nonconforming Situations

See August 24 staff report and attachments for detail.

Code Reorganization

See August 24 staff report and attachments for detail.

C. Next Steps

Planning Commission to review and discuss Variances, Nonconforming Situations, and Development Review draft chapters in October 2010. Commission to also review minor amendments to the Conditional Use and Amendments chapters at this time.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Variances Draft Chapter Outline (attached)
2. Base Zone Development Standards (attached)

VARIANCES

Draft Chapter Outline

I. Purpose Statement

The purpose of the variance provisions is to provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variances shall not be granted that would be detrimental to public health, safety, or welfare.

II. Review Procedures

Variance proposals to be reviewed through the Type II and Type III review process.

III. Applicability

- Type II review to allow for small variations to base zone development standards up to the percentage or dimension listed below:
 - 10% variation to lot width, depth, and area standard
 - 25% variation to front, rear, and street side yard setback standard
 - 40% variation to side yard setback standard
 - 1/2-story or 5-foot variation to height standard
 - 10% variation to lot coverage and minimum vegetation standard
 - 10% variation to lot area per dwelling unit standard
 - 10% variation to frontage standard
- Type III review to allow for variations to all other development or design standards not allowed through the Type II review process.
- Variances shall not be allowed in the following situations:
 - To allow a use that is not permitted, either city-wide or in a specific zone. Use exceptions may be granted through the Use Exception provisions of this chapter.
 - To adjust any restrictions on development or uses that contain the word “prohibited.”
 - To allow an increase to the residential density of a zone.
 - To adjust a threshold for review such as those contained in applicability sections.
 - To adjust a procedural step or change the required review procedure type.
 - To adjust a definition or classification.
- Statement about how this chapter will coordinate with other variances and adjustments in other code provisions (e.g. Sign Ordinance, Water Quality Resource chapter, and Off-Street Parking chapter) and outright allowed exceptions in the Supplementary Development Regulations chapter.

IV. Type II Variance Approval Criteria

- The proposed variance will not be detrimental to surrounding properties, natural resource areas, or the public health, safety, or welfare.
- The proposed variance will not preclude or interfere with future improvements to any public transportation facility or utility.

- Where multiple variances are proposed, the cumulative effect will be consistent with the intent of the property's zoning designation.
- Where site improvements already exist, the proposed variance will sustain the integrity of or enhance an existing building or site design. A Building Code violation cannot be used to justify the integrity of an existing design.
- Impacts from the proposed variance will be mitigated to the extent practicable.

V. Type III Variance Approval Criteria

Discretionary Relief

- Other alternatives were considered and the proposed variance was determined to be the best approach because it avoided or minimized impacts, had desirable public benefits, and/or responded to the existing built or natural environment in a creative and sensitive manner.
- Where multiple variances are proposed, the cumulative effect will be consistent with the intent of the property's zoning designation.
- Impacts from the proposed variance will be mitigated to the extent practicable.

Economic Hardship

- Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property or a use that is substantially similar to other uses in the surrounding area.
- The proposed variance is the minimum variance necessary to allow for reasonable use of the property.
- Impacts from the proposed variance will be mitigated to the extent practicable.

Base Zone Development Standards

Milwaukee Municipal Code September 2010

Non-Downtown Zones	Minimum Lot Dimensions					Minimum %		Setbacks	Maximum Building Height
	Lot Area	Area/Unit	Lot Width	Lot Depth	Frontage	Lot Cover	Veg	F/R/S/S/SS ¹	
R10	10,000	7,000	70	100	35	30%	35%	20/20/10/10/20	2.5 or 35 ft
R7	7,000	7,000	60	80	35	30%	30%	20/20/10/5/20	2.5 or 35 ft
R5	5,000	5,000	50	80	35	35%	25%	20/20/5+/5+/15	2.5 or 35 ft
R3	5,000	3,000	50	80	35	40%	35%	15/15/5+/5+/15	2.5 or 35 ft
R2.5	3,000	2,500	40	75	35	40%	35%	15/15/5+/5+/15	35 ft
R2	5,000	2,500	50	80	35	45%	35%	15/15/5+/5+/15	3 or 45 ft
R1	5,000	1,400	50	80	35	45%	35%	15/15/5+/5+/15	3 or 45 ft
R1B	5,000	1,400	50	None	35	50%	15%	15/15/5+/5+/15	3 or 45 ft
ROC	5,000	1,400	50	80	35	50%	15%	15/15/5+/5+/15	3 or 45 ft
CN	5,000	NA	50	80	35	40%	20%	15/10/5+/5+/15	2.5 or 35 ft
CL	None ²	None ²	None ²	None ²	35	None	15%	None	3 or 45 ft
CG	None	NA	50	80	35	85%	15%	None	3 or 45 ft
CCS	None	NA	None	None	None	None	20%	Site Specific	3 or 45 ft
M	None	NA	None	None	None	None	15%	F=20; SS=10	45 ft
BI	None	NA	None	None	None	None	15%	F=20; SS=10	3 or 45 ft
PD³	2 acres	None	None	None	None	None	None	Site Specific	None

(1) F/R/S/S/SS = Front/Rear/Side/Side/Street Side

(2) No lot dimension requirements except for residential uses.

(3) Site design and development standards determined on a case-by-case basis during PD adoption process.

Downtown Zones	Lot Area	Veg	Setbacks			Bldg Height	
	Min.	Min.	Front & Street Side		Side & Rear	Min.	Max.
			Min.	Max.			
DS	750	None	0 ft	10 ft	None	35 ft	45-55 ft
DC	10,000	10%	0 ft	50 ft	None	25 ft	55 ft
DO	5,000	None	0 ft	10 ft	None	25 ft	65 ft
DR	750 or 5,000 ¹	15%	0 ft	None	15 ft ²	None	45-65 ft
DOS	None	20%	0 ft	None	None	None	None

(1) Townhouse lots may be as small as 750 sq. ft. All other lots shall be a minimum of 5,000 sq. ft.

(2) Setbacks are required only where the DR zone abuts a lower-density residential zone.