

**CITY OF MILWAUKIE
PLANNING COMMISSION
Milwaukie City Hall
10722 SE Main Street
TUESDAY, September 12, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Sherry Grau
John Burns
Scott Jones
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
Mary Heberling, Assistant Planner
Peter Watts, City Attorney

COMMISSIONERS ABSENT

Adam Argo, Vice Chair

1.0 Call to Order – Procedural Matters*

Chair Hemer called the meeting to order at 6:30 pm and read the conduct of meeting format into the record.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

2.0 Planning Commission Minutes

2.1 May 25, 2017 (postponed to October 10, 2017)

3.0 Information Items

Denny Egner, Planning Director, reminded the Commissioners that there was a Planning Commission training available to them on September 28, 2017.

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

5.1 Summary: Eton Ln Vacation Rental
Applicant/Owner: Karleanne Rogers and Kevin Berigan
Address: 1524 SE Eton Ln
File: CU-2017-001
Staff: Mary Heberling

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

Mary Heberling, Assistant Planner, presented the staff report via PowerPoint and noted the location, zoning, and site elements. The proposal was for a conditional use to allow the house to be used as a vacation rental. The applicants lived out of state for ten months out of the year, therefore it was a vacation rental rather than a short-term rental. The primary intent of the vacation rental was to offset the house cost to the homeowners. The vacation rental had been in use since 2011 but the property owners had not known they needed the conditional use

approval and so now were going through the review process to come into conformance. She reviewed the approval criteria for the conditional use.

Ms. Heberling noted the key issues regarding impact mitigation and if the proposed use would not have unmitigated nuisance impacts. The applicant provided information for the key issues, including that there would be no physical change to the house or property, the home would host 4-6 rentals per year, house rules had been developed, privacy characteristics of the property, and that two local property managers would be available. She reviewed the comments received. Staff recommended approval and reviewed the decision-making options.

Staff answered questions from the Commission:

- A vacation rental did not require the property owner to reside on the property; a short-term rental required the property owner to reside on the property a minimum of 270 days out of the year. Only a vacation rental required a conditional use review.
- A vacation rental required a business registration. The code did not require a building inspection process currently; however, this was an oversight in the short-term rental code amendment process.

Chair Hemer called for comments from the applicant or applicant's representative.

Liz Broderick-Kartye, representative for the applicants, said she and her husband acted as the property managers. She noted that property rules were reviewed with the guests and they had not received complaints from neighbors to date. The property was rented as a 7-day or extended stay rental. She was willing to be the on-call for nuisance or police calls, and a representative to address any issues that arise with the neighbors. She was aware that the neighborhood was quiet and expressed the expectation of respect to the tenants.

Chair Hemer called for public testimony.

Caroline Locherstein, 10131 SE Cambridge Ln, stated she was in support of the application and noted her backyard was closest to the subject property's swimming pool. She was aware of the house rules and quiet times, but would like to have a contact person for when those rules were not followed by renters. In her experience, renters had generally followed the quiet hours.

Kathleen O'Brien, 1520 SE Eton Ln, noted their garden was adjacent to the subject property's backyard and their garden was an oasis for their family. However, this changed when the subject site began to have vacation rentals. The rental parties were often loud and disruptive to the neighborhood, and she was unaware that there was a property manager available. She felt the advantages of the vacation rental benefitted the homeowner and the disadvantages fell on the neighborhood. A vacation rental was a fundamentally different use of property.

Mark Bedau, 1520 SE Eton Ln, wanted to reiterate his wife's statements and noted a few of the approval criteria for the conditional use, particularly to not "adversely change the character of the area or impact the adjacent properties". He gave a few examples of incidents that had occurred in the past of noise after the quiet hours. Rules were difficult to enforce without a property manager. He noted the difference between neighbors and vacationers and their expectations of conduct.

Chair Hemer called for rebuttal from the applicant's representative.

Ms. Broderick-Kartye responded that she would work to reach out to the neighbors so they had a point of contact for any issues.

Planning Commission Deliberation

Commissioner Jones was hesitant to put conditions such as revocation of approval for nuisance violations, etc., and felt that was out of the jurisdiction of the Commission. Although the concerns were legitimate, he felt those issues were more the purview of a neighborhood district association or good neighbor agreements, etc. He encouraged the owners and/or property managers to work on such an agreement.

Commissioner Burns noted that the approval criteria were to consider the identified impacts that were beyond those usually generated by allowed uses, and the concerns raised were typical neighbor issues that would come with a house with a pool, even as a family home. Concerns could be addressed through the noise ordinance. Based on the approval criteria, he would be inclined to approve the application.

Commissioner Hemer noted that the applicant was acting to comply with the code. However, there were concerns that could be addressed through communication between the property manager and the neighbors regarding house rules and a point of contact for complaints.

The Commission discussed the condition regarding information between the renters, property managers, and neighbors that would include house rules, and contact information for complaints. Also discussed was to condition the intended frequency of rentals based on the current average of 4-6 rentals per year.

Commissioner Jones moved and Commissioner Burns seconded to approve land use application CU-2017-001 for 1524 SE Eton Ln with the recommended conditions of approval and the added condition for the applicant or applicant's representative provide neighbors within 250 ft a list of house rules and critical contact information. The motion passed unanimously.

- 5.2 Summary: Project Galaxy Design Review Continued from 8/22/2017
Applicant/Owner: Kurt Schultz, SERA Architects
Address: 2036 SE Washington St
File: DR-2017-001, VR-2017-007
Staff: Denny Egner for Vera Kolias

Chair Hemer called the public hearing to order and read the conduct of the quasi-judicial hearing format into the record, noting the hearing was in the deliberation phase with both the record and public testimony portion closed. He requested the record be opened for staff to present new information requested by the Commission at the last meeting.

Denny Egner, Planner Director, explained that during the meeting on August 22nd, there was a request for the record to be kept open for seven days in order to provide a response to drawings that were submitted to the Commission. Written testimony had been received and was included in the meeting packets. Unless the Commission wanted to reopen the hearing for new evidence and testimony, he believed the record could stay closed.

Mr. Egner reviewed the key issue for the continued hearing regarding the variance request for the 6-ft step back. He displayed the original proposal which included shadowboxes to provide a push-pull effect and break up the bulk and mass of the building. The new drawing submitted

included a shadowbox on the Washington St façade along with additional window improvements on the ground level. He reviewed the comments received regarding the new evidence and those not related to the new materials. He also reviewed the decision-making options.

Mr. Egner answered questions from the Commission as follows:

- The variance was only required for the step back; the other items that did not comply were addressed through the design review guidelines.
- The Downtown Design Guidelines document was adopted around 2003. However, the clear and objective development and design standards were adopted as part of the Moving Forward Milwaukie project in 2015, which included the step back provision for bonus floors above three stories.

Planning Commission Deliberation

Chair Hemer reviewed that the Design and Landmarks Committee (DLC) recommended the previous design without the shadowbox, with a 4-ft setback on the fifth floor. The other option was to deny the variance and require the 6-ft setback on the fourth and fifth floors. The new proposal before the Commission included the shadowbox on Washington St without a step back.

The Commission agreed with the new window facade and mural art proposed to meet the criteria on the lower floor on Washington St.

Chair Hemer asked Commissioner Jones whether he believed the 6-ft step back requirement met the objective of proper scale toward existing buildings.

- **Commissioner Jones** said he believed the requirement met this objective and additionally provided a compatible design for existing and future buildings.
- He said that although it would be the largest building in downtown, the façade features helped to break up the mass.

Chair Hemer asked for the Commissioner's comments.

Commissioner Burns noted that he had spent time walking the area around the building to get a better sense of what this proposal would look and feel like, and concluded that he supported the proposal and variance with the new proposed design.

Commissioner Travis reviewed the previous discussion and testimony, and although she liked the proposal, she struggled with varying standards that had been recently developed through a community process. She questioned if consideration for financial feasibility of development was given when standards were crafted, or was the focus more on aesthetics.

Commissioner Grau concurred with Commissioner Travis regarding the community's efforts on the design standards. However, although the step back standards for the fourth and fifth floors were not being met by the application, the proposal was appealing with the addition of the shadowbox and additional details along the Washington St façade.

Chair Hemer responded to Commissioner Travis' question and stated that issue was raised. Through the Moving Forward Milwaukie process, feedback from developers was that 3-story buildings were not financially feasible with local rents, which raised the question of how to allow additional floors. The Commission at that time wanted to offer incentives for additional floors when developers provided green buildings and residential development. The 6-ft step back was

created as a compromise to have the appearance of a 3-story building and allow for the economic feasibility of a building. Allowing a height variance was allowed for an exceptionally designed proposal. He too liked the proposal but was conflicted with the rule.

Commissioner Jones suggested that the intent of allowing for different review processes was to have more oversight of projects of this type, and part of that occurred through the variance process. The variance process put the onus on the applicant to prove that the good of the proposal outweighed the bad. He believed the applicant provided a proposal that benefited the city.

Commissioner Travis suggested an additional condition for dedicated affordable housing units.

- **Peter Watts, City Attorney**, responded that that was not part of the record and therefore the record would need to be reopened to allow for the applicant to participate and analyze the condition to determine if they could accept that condition. It could cause significant issues.
- **Commissioner Jones** reminded the Commission of the distinction between subsidized and below-market rate housing.
- **Mr. Egner** added that affordable housing was a City Council goal and a long-term process. The 2016 Housing Needs Analysis would come to the Commission as part of the Comprehensive Plan update process.

Commissioner Burns was in support of the variance, and added that the step back request was what was before the Commission today and what was allowed by the process. He believed the proposal would enhance the experience of living in Milwaukie as it was presented. With respect to those that developed the code, as written it left open the opportunity for a variance.

Commissioner Jones noted that the applicant was meeting or exceeding requirements for public art, public space, glazing, and materiality standards. More stormwater management and patios were also gained through this proposal that would not have been included if it was designed with the step back.

Commissioner Burns suggested that through the variance process, the proposal resulted in additional attention to detail and a more appealing building.

Mr. Watts noted that, although he understood the importance of precedent, the purpose of a variance was to look at an individual application and was project-specific. It was to allow for a determination and decision based on the project and the criteria. A proposal that adhered to the code could get approved that was unappealing without the Commission's review.

Mr. Egner noted that the DLC recommendation was for the Commission to review the fifth floor and require a minimum 4-ft setback, or to consider other alternatives or options to reduce massing, specifically on the Washington St and 21st Ave elevations. This left the option to consider other solutions, which the applicant offered with the shadowbox.

Chair Hemer agreed that the proposal went beyond the scope of the design standards and the expectation to allow for the variance, even though there was conflict regarding going against the recommendation of the DLC.

Commissioners Travis and Grau concluded that, regardless of their reservations around the community's intent, the proposal was appealing and there was a need for housing in Milwaukie. Therefore, the proposal should be approved.

It was moved by Commissioner Jones and seconded by Commissioner Burns to approve applications DR-2017-001 and VR-2017-007 and the recommended findings and conditions of approval found in the attachments. The motion passed unanimously.

6.0 Worksession Items

- 6.1 Summary: Comprehensive Plan Update Project Advisory Committee
Appointment Staff: David Levitan/Denny Egner

Mr. Egner noted three Commissioners had expressed interest in the committee position.

Commissioner Grau moved and Commissioner Jones seconded in favor of Commissioner Travis as Planning Commission representative to the Comprehensive Plan Project Advisory Committee (CPAC). The motion passed unanimously.

7.0 Planning Department Other Business/Updates

- 7.1 Planning Commission Supplemental Notebook Pages

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

Chair Hemer reminded that Sellwood-Milwaukie Sunday Parkways was scheduled for September 24, 2017 and noted the community events.

9.0 Forecast for Future Meetings:

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| September 26, 2017 | 1. | TBD - <i>Cancelled</i> |
| October 10, 2017 | 1. | Worksession: North Milwaukie Industrial Area Code Amendments <i>tentative</i> |

Mr. Egner noted the 2018 Planning Commission work program would come to the Commission on October 10th as well and then presented to City Council on October 17, 2017.

Meeting adjourned at approximately 8:55 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Greg Hemer, Chair