



# CITY OF MILWAUKIE

## PLANNING COMMISSION MINUTES

City Hall Council Chambers  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

November 8, 2022

**Present:** Joseph Edge, Vice chair  
Amy Erdt  
Joshua Freeman  
Greg Hemer  
Jacob Sherman

**Staff:** Ryan Dyar, Assistant Planner  
Justin Gericke, City Attorney  
Laura Weigel, Planning Manager

**Absent:** Lauren Loosveldt, Chair  
Robert Massey

(00:08:00)

### 1.0 Call to Order — Procedural Matters\*

**Vice Chair Edge** called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

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

(00:14:08)

### 2.0 Planning Commission Minutes

September 13, 2022, minutes were approved with a 5-0 vote.

(00:14:48)

### 3.0 Information Items

**Laura Weigel** reminded Commission that it is Election Day. **Weigel** announced that city offices will be closed on Friday, November 11<sup>th</sup>, for Veteran's Day. **Weigel** expressed appreciation to all Veterans.

(00:15:13)

### 4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:16:13)

## 5.0 Community Involvement Advisory Committee (CIAC)

**Laura Weigel** stated follow-up items requested from the joint Neighborhood District Association (NDA) / Community Involvement Advisory Committee (CIAC) meeting will be presented during the December 13, 2022, Planning Commission meeting. **Commissioner Hemer** expressed his appreciation to staff and Council for taking a pause and reexamining the public involvement piece related to the Transportation Systems Planning process.

(00:19:16)

## 6.0 Hearing Items

### 6.1 CU-2022-003, 4843 SE Barbara Lynn Way, Conditional Use for a Vacation Rental

**Ryan Dyar** announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC19301, MMC19905 and MMC191006. **Dyar** presented the staff report. **Dyar** gave an overview of the existing site. **Dyar** noted that the house is in the Cereghino Farms Subdivision and the subdivision was annexed into the City of Milwaukie in 2019. **Dyar** stated the property in question is zoned R-MD. **Dyar** clarified the difference between a vacation rental and a short-term rental. **Dyar** reviewed the approval criteria and pointed out the three criteria that are most relevant to the application: (1) operations and physical characteristics of proposed use are reasonably compatible with nearby uses, (2) all identified impacts will be mitigated to extent practicable and (3) proposed use will not have unmitigated nuisance impacts greater than those usually generated by uses allowed outright. **Dyar** specified that staff believe the proposal meets the criteria. **Dyar** summarized specifics to the proposal: no physical alterations are proposed, the rental is marketed towards families, the owner/operator is nearby, cameras are installed to monitor noise levels, and a rental agreement includes restrictions to mitigate potential nuisances in the neighborhood. **Dyar** noted that staff received one opposition to the proposal from a resident of Cereghino Farms Subdivision. **Dyar** explained the four options applicable to the application to the Commission. **Dyar** stated staff recommend the approval of the request and adopt the recommended findings with modifications to finding 6(a)(6) and adopt the recommended conditions of approval. **Dyar** commented on the housing affordability goal within the Comprehensive Plan and the language pertaining to monitoring and regulating vacation rentals to reduce their impact on the availability and long-term affordability of housing. **Dyar** said staff believed the proposal complies with the affordability and vacation rental language within policy 7.2.9 because of the conditional use review process.

**Commissioner Hemer** asked if the city has control over the rental agreement. **Justin Gericke** stated the city would not have any jurisdiction over the specific rental form being used but rather the elements in the rental agreement that are part the conditions for approval. **Commissioner Sherman** asked if the conditional use can be revoked by the city. **Gericke** said the conditional use can be revoked. **Sherman** asked if the conditional use transfers when a new owner takes

over the property. **Gericke** stated he was unsure if the conditional use would transfer. **Vice Chair Edge** asked if the covenants, conditions, and restrictions (CC&Rs) related to this property should be taken into consideration by the Commission. **Gericke** noted that CC&Rs are not part of the approval criteria.

**Justine Syck**, applicant, spoke about her investment into the property and noted that the CC&Rs do not have rental restrictions. **Syck** assured the Commission that someone is always available to address any unexpected needs of the property.

**Lynn Schumacher**, neighbor, directly adjacent to applicant's property, testified that the HOA rules stated that no homeowner shall operate a business out of their home. **Schumacher** noted the presence of many people staying for only a night or two at 4843 SE Barbara Lynn Way. **Schumacher** stated she and her family do not feel safe when new groups of people come and go. **Schumacher** noted that parties have been loud and disruptive and that cars are parked on the street. **Schumacher** explained she is not opposed to the property being used as a long-term rental but opposes the idea of having the property be a vacation rental. **Schumacher** stated the neighbors are close and try to solve problems together. **Schumacher** declared again that she does not feel safe with strangers coming and going. **Commissioner Hemer** asked if Schumacher thought parts of the rental agreement have been violated in the past. **Schumacher** speculated that the lease has been broken in the past, noting that parking three cars in the garage is impossible considering the items that are in the garage.

**Charles Olson**, Milwaukie Resident, asked the Commission why a conditional use permit needs to be obtained. **Vice Chair Edge** explained that the Commission needs to regulate vacation rentals to protect affordability of housing in the city. **Ryan Dyar** stated conditional uses are land uses identified that could be appropriate for a particular zone if certain conditions are met to support the proposed use. **Olson**, asked if a vacation rental is considered residential use. **Dyar** stated in this situation it would be considered more commercial in nature. **Olson** pointed out the CC&Rs restrict commercial use. **Olson** wondered how residents can ensure the CC&Rs are enforced. **Justin Gericke** explained a homeowner can raise concerns with the HOA and often a mediation process can address the area of concern. **Olson** shared that an ad for the property lists the property as sleeping 12 people yet one of the conditions stipulates a maximum of 10 people. **Commissioner Sherman** asked about the fence on the property. **Schumacher** stated the fence is 6ft tall. **Sherman** inquired about the rock retaining wall and any natural screening that is in place. **Syck** stated there is not any additional barrier, but she is happy to add one.

**Justine Syck** stated that legal guidance she sought explained Airbnb rentals are not considered commercial use and are deemed residential use. **Syck** noted House Bill 2534 to take effect December 31, 2022. **Syck** shared the language of the House Bill 2534. **Syck** stated there have been no parties at the property. **Commissioner Erdt** asked **Syck** if she had data about the number of Airbnb homes in the area. **Syck** explained she is a realtor and likes the ability to offer her

clients a place to stay. **Syck** stated she thought there were only 2 comparable Airbnb properties in Milwaukie. **Hemer** inquired about the ad that states the property can accommodate 12 people. **Syck** said she can amend the ad on Airbnb to 10 people.

**Commissioner Sherman** noted that changes to the rental agreement may need to include a change to the no pet policy and a realistic number of parking spaces. **Sherman** stated privacy impacts might need to be addressed. **Vice Chair Edge** asked Justin Gericke his thoughts about the Commissions discretion to apply conditions and adjust the findings. **Justin Gericke** stated the items listed in the lease will be enforceable. **Gericke** explained that if people park on the street, it will violate the lease and a complaint could be made to the city. **Gericke** noted some conditions might not be reasonable. **Gericke** said privacy screening is something commonly dealt with in development. **Gericke** shared that the neighbors and applicant have the choice to continue their discussion to find solutions to meet all needs. **Commissioner Erdt** appreciated the applicant sharing that there are only two other comparable Airbnb rentals in Milwaukie. **Commissioner Hemer** stated a provision that would mitigate the possibility of renters climbing on the neighbor's fence would be reasonable. **Commissioner Freeman** thought more dialogue between applicant and residents was needed. **Edge** offered a 10-minute recess for staff to connect with the applicant to see if a continuance is in the best interest of all or alternatively that the Commission creates some reasonable mitigation measures that can be applied as conditions. The Commission discussed the various conditions of approval that could be addressed.

The Commission unanimously approved a 10-minute recess.

(01:34:55)

**Ryan Dyar** stated staff was able to discuss issues with the applicant and believe staff can recommend approval with some amendments to the findings and conditions of approval. **Dyar** shared the new amendments:

1. Parking – Staff recommend that the rental agreement restrict off street parking. Applicant agrees to use that language in rental agreement.
2. Retaining Wall – Applicant will include signs on retaining wall and fences that state no climbing on wall or fence. Applicant agrees to plant mature vegetation by the retaining wall to deter climbing.

**Commissioner Hemer** asked for clarification around the rental agreement. **Dyar** stated that a sample representation of a rental agreement was submitted with the application. **Dyar** explained that one of the conditions of approval could be for the applicant to adopt the sample agreement, with revisions, as the actual rental agreement to be used. **Hemer** asked if allowing pets was part of the rental agreement revision. **Dyar** stated yes. **Justin Gericke** recommended that staff use the same language on the rental agreement as submitted in the application. **Commissioner Freeman** asked for clarification about signage on the property. **Gericke** explained the proposed placement of “no climbing on the wall” signage throughout the property and the applicant's willingness to put

language, that prohibits climbing on the wall, in the rental agreement.

**Commissioner Sherman** asked for clarification around occupancy and pets in the rental agreement. **Gericke** offered the Commission the opportunity to continue the hearing which would allow time for the rental agreement to be revised and submitted to the Commission. **Sherman** stated he would be most comfortable having the final rental agreement to refer to. **Vice Chair Edge** questioned if spelling out the changes that need to occur to the sample rental agreement, along with making the submittal of the final rental agreement, to the city, one of the conditions, could meet the needs of the Commission. **Edge** also stated the conditions could just as well be tied to the conditions of approval for the permit; the applicant can then revise the rental agreement to follow the approval. **Sherman** reviewed the discrepancies between the sample agreement and the revisions that need to happen. The group discussed the occupancy limits and whether to include children under two as part of the count. **Dyar** recommended using the age of a child to define who not to include in the occupancy count. **Edge** stated he was comfortable with children two and under not counting towards the occupancy limit of 10. **Hemer** stated preference to simply limit occupancy to 10 people. **Justine Syck** agreed to include language in the rental agreement that limits occupancy to 10 people regardless of age. **Dyar** recapped the conditions of approval:

- Modify the sample rental agreement to include language that will meet the conditions of approval.
- The modified sample rental agreement will become the final rental agreement used by the applicant.
- The applicant will add signage on the property to discourage people from climbing on retaining wall and fence.
- Vegetation will be planted to discourage climbing on walls and fence.
- Update language in sample rental agreement to include no on-street parking.
- Update language in sample rental agreement to allow one pet.

CU-2022-003, 4843 SE Barbara Lynn Way, Conditional Use for a Vacation Rental, was approved by a 5-0 vote.

(02:01:10)

## **7.0 Work Session Items**

(02:01:13)

### **7.1 Code Amendments: Climate Friendly Equitable Communities (CFEC)**

**Ryan Dyar**, reminded the Commission of the prior actions that led to the proposed code amendments: Climate Action Plan, Comprehensive Plan, Governor Browns Executive Order, City Council Direction, and the Planning Commission briefing on Climate Friendly Equitable Communities (CFEC). **Dyar** explained that included in the staff report are the removal of vehicle parking requirements, the removal of references to require parking, and minor, and non-

substantive, language changes to keep consistency within code. **Dyar** noted that there is additional opportunity to adjust code language within the rules around large parking lots and bicycle parking. **Dyar** detailed that code language amendments related to large parking lots needs to be adopted by June 30, 2023. **Dyar** noted that changes to the bicycle parking code can align with a major update to the Transportation Systems Plan. **Dyar** explained that currently the number of bike parking spaces is determined and contingent on the number of car parking spaces. **Dyar** shared that removing language around minimum parking mandates from the code creates a situation where an applicant could apply for a new development and not have to provide the number of bicycle parking spaces that the city might like to see.

**Dyar** reviewed the ¼ acre surface parking lot requirements. **Dyar** summarized the three options available to an applicant and stated the applicant must provide one of the three options. **Dyar** noted that the option to install solar panels or pay a \$1,500 fee-in-lieu per parking space is not a current proposal in the staff report and it is unclear if this option will be included in the final proposal due to the lack of clarity around the solar option. **Dyar** continued to outline the two additional options: comply with OAR 330-135-0010 or provide a tree canopy that covers at least 50% of the parking lot at maturity but no more than 15 years after planting. **Dyar** clarified that Oregon Administrative Rule only applies to public projects and a percentage of the project needs to go towards clean energy. **Dyar** said that staff are working to align the residential tree code with the tree canopy option as to have clear and objective criteria that be referred to. **Commissioner Hemer** confirmed a maximum number of parking spots is still a condition to adhere to. **Hemer** inquired about the tree canopy logistics. **Dyar** stated developing standards that support the tree canopy option is complex. **Dyar** explained that Urban Forestry staff have a list of specific trees that may be referred to in support of administration. **Hemer** noted the potential conflict between light standards and tree standards. **Dyar** confirmed there are a lot of design elements to adhere to and more intention might be needed from builders. **Commissioner Sherman** inquired about the issuance of performance standards related to tree canopy. **Dyar** confirmed that performance standards are required. **Sherman** asked about the guidance related to physical space around a tree. **Dyar** stated the rules also require guidance around planting. **Dyar** shared that staff may refer to the Residential Tree Code for that guidance. **Commissioner Erdt** asked about safety. **Dyar** explained the upkeep of property and storm management is addressed in other codes. **Dyar** explained that there is rule that large parking lots incorporate pedestrian infrastructure. **Vice Chair Edge** pointed out that parking design standards for large parking lots should be viewed through the lens of potential future land use and redevelopment and coded as such, to align with Section 8, Policy 8.2.2 of the Comprehensive Plan. **Dyar** said he would seek information on how to align the code in a way that supports future land use and redevelopment.

**Ryan Dyar** shared that new administrative rules apply to bike parking. **Dyar** reviewed the new CFEC bike parking requirements. **Dyar** explained that

amendments to code will be made once the transportation System Plan is updated. **Dyar** stated Milwaukie Municipal Code (MMC) is already in compliance with most of the new administrative rules. **Dyar** pointed out that MMC is not in compliance around the CFEC requirement which ensures sufficient space for cargo/family bike parking. **Dyar** noted staff will be further exploring and addressing this requirement. **Dyar** reiterated that the change related to CFEC is the quantity requirements related to bike parking. **Dyar** called out the non-CFEC related changes: clarification around short vs long term bicycle parking and bicycle rack design improvements. **Dyar** reviewed the various units, that are site specific, that can be taken into consideration for determining the quantity of bike parking along with other various factors to consider. **Dyar** noted that the MMC needs to incorporate clear and objective standards related to short term and long-term parking. **Dyar** expanded on rack design and explained the constraints of the Wave Rack and the School Yard Rack. **Dyar** shared that staff would like to move towards requiring the Inverted -U Rack design.

**Vice Chari Edge** suggested the quantity of bike parking spaces should be tied to the mode split and bike riding goals within the Transportation Systems Plan (TSP). **Laura Weigel** noted that an interim solution is needed prior to the adoption of an updated TSP. **Edge** inquired about policy that supports split targets as per the 2013 adopted TSP. **Weigel** noted that policy might not have been created but that she would investigate **Edge's** inquiry. **Commissioner Sherman** commented that long term bike parking should include charging capability for electric bikes. **Sherman** stated long term bike parking at transit is secure. **Edge** noted that bike parking needs are contingent on a person's route and may change often. **Dyar** noted bike parking within residential, multifamily, and mixed use is determined using current code language, but all other land uses need to be addressed. **Dyar** stated factors like mode share goal, number of employees and business square footage are possible components to determine bike parking goals. **Edge** said a transportation impact analysis, specifically the trip generator metric, could support the overall determination of bike parking spaces per building. **Sherman** asked if additional amenities, like shower facilities, might be considered along with the bike parking requirements. **Edge** agreed that amenities and long-term biking facilities are within the scope of this update. **Weigel** noted that she was going to readjust the hearing date, for bicycle parking, from December 13<sup>th</sup> to either January 10<sup>th</sup> or 24<sup>th</sup>.

(02:50:08)

## 8.0 Planning Department/Planning Commission Other Business/Updates

**Commissioner Hemer** asked if public comment can be reopened on January 24<sup>th</sup>, 2023, for the public art discussion, as it relates to the downtown code. **Laura Weigel** said she would inquire about the process to reopen public comment.

(02:51:21)

## 9.0 Forecast for Future Meetings

December 13, 2022      Hearing Item(s):      1. VR-2022-009 – Alpha Stone Works  
variance to design standards in  
MUTSA zone

Work Session Item(s): 1.Draft Housing Capacity Analysis  
2.Code Amendments: Climate Friendly  
and Equitable Communities

Meeting adjourned at approximately 9:22 p.m.

Respectfully submitted,

Suzanne Couttouw, Administrative Specialist II