

CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 4, 1994

The one thousand six hundred and eighty-sixth meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:03 p.m. at the Milwaukie Center with the following Councilmembers present:

Craig Lomnicki, Mayor	Jean Schreiber
Rick Farley	Bob Knudson
	Rob Kappa

Also present:

Dan Bartlett, City Manager	Maggie Collins, Community Development Director
Charlene Richards, Assistant to the City Manager	Dave Krogh, Associate Planner
Bill Monahan, City Attorney	Pat DuVal, Recorder/Secretary

PUBLIC HEARING

Variance Appeal for File No. VR-93-04 - Knepper

Mayor Lomnicki called the public hearing on the variance appeal to order at 7:04 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider an appeal to allow variance setbacks for a garage, built in 1983 without permits, to avoid the necessity of removing, moving or modifying the existing garage. He reviewed the order of business.

Conflicts of Interest or Ex Parte Contacts: Councilmember Kappa said he drove by the site to view the house and garage, but he did not speak with anyone.

Councilmember Farley said he knew the selling agent and prospective buyers, but he did not believe this would influence his decision.

Bill Monahan, City Attorney, said anyone participating in the meeting would have to address their comments to the criteria. Those testifying who felt there were other applicable criteria would have to address these criteria with specificity in order for Council to consider.

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Mayor Lomnicki said the procedures governing the legislative action were outlined in the staff report. The applicable substantive criteria to be addressed were stated in Section 702 of the City Zoning Ordinance. Any interested party may appeal the decision of the Council to the State Land Use Board of Appeals according to the rules adopted by the Board. He reviewed the conduct of the hearing.

Staff Report: Dave Krogh, Associate Planner, presented the staff report in which the City Council was requested to consider the appeal of a Planning Commission decision. The Applicants, the Kneppers, were appealing the conditions of an administrative approval of setback variances for a garage constructed in 1983.

Krogh said in the process of selling the property located at 11948 SE 28th, it was discovered that the garage was constructed in 1983 without permits. The garage, designed for RV storage, also did not meet R-7 setback requirements that were in effect at the time of construction. The City Building Inspector indicated that standards had not changed since the garage was constructed. The R-7 zone had been effective in this area since the Zoning Ordinance was adopted in 1979.

Krogh said the Kneppers applied for a 25% administrative variance for the rear setback prior to the sale of the property. The application stated that a portion of the garage was pre-existing. Staff processed the application and notified neighbors of the intent to approve the 25% administrative variance. A concerned neighbor, Mrs. Powers, sent a letter to staff indicating that the entire structure was new. Records and the structure itself were checked. It was determined that the pre-existing garage had been demolished except for the original concrete slab which had been expanded for the new structure. These findings changed the criteria being considered by staff.

Krogh showed a series of slides of the Knepper residence and the surrounding properties. These slides showed an area in which homes were built on smaller than R-7 lots. One slide showed that the structure was six inches from the property line. The house and garage were less than six feet apart.

Councilmember Farley asked for a definition of an R-7 lots. Krogh said an R-7 lot is 7,000 square feet with twenty-foot front and rear setback and five-foot side setbacks.

Krogh said the current structure did not meet zoning, building, or fire code requirements. Powers said she had complained about the garage in 1985; however, there was no record of this or any other complaint or concern. The prospective buyers were willing to bring the structure up to building and fire code standards at the administrative

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level. The maximum administrative variance was granted by Community Development Director Collins. Moving or demolishing the garage would be required within the 25% variance.

The Applicant appealed the 25% variance to the Planning Commission. The Planning Commission concluded that although the garage had been built in 1983, the variance criteria were not met by the Applicants' proposal to modify the administrative variance. The Commission felt that none of the variance criteria were met. The appeal of the administrative variance and the additional 90% variance on the north side of the structure and the 50% variance for the house and garage separation was denied. This action did not invalidate the administrative approval of the 25% variance.

Councilmember Farley asked if anyone knew the position of the original garage. **Krogh** said the location of the original structure, which was a single car garage, could only be determined by looking at the concrete slab. The existing side setback was about the same.

Krogh said there were two letters from the Kneppers, who were unable to attend the public hearing, included in the packet material.

Councilmember Kappa asked if a structure of this type was common to the neighborhood prior to 1979. He asked if there was a clear building permit process in 1983. **Krogh** said compared to other garages in the neighborhood, the Knepper's was much larger. He indicated that there was a permit process in effect in 1983.

Councilmember Farley asked if lowering the roof would have any effect on the issue. **Krogh** said lowering the roof would alleviate Powers' concerns with solar access. The proposed firewall would provide some level of safety. Staff also recommended to the Planning Commission that residential siding be installed on all sides of the structure.

Mayor Lomnicki asked if the firewall would be concrete. **Krogh** said it would be constructed of fireproof drywall.

Councilmember Kappa asked how many criteria were being considered. **Krogh** said the findings included a preliminary statement and four criteria.

Mayor Lomnicki asked if there was a statute of limitations. **Krogh** said the Building Inspector was not aware of any.

Correspondence: None.

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Testimony in Support: **Louis Casale**, Milwaukie Realty, 2916 SE Monroe, said he listed the Knepper property in April, 1993. At that time, he asked the Kneppers if there had been a permit to construct the garage. The Kneppers said the contractor had told them that he would take care of the permit. **Casales** said the City had no record of a permit being issued, and he was unable to locate the contractor. There was an earnest money agreement with the prospective buyers, the Langleys, subject to obtaining the variance.

Casale said he received a letter from Community Development Director Collins indicating an intent to approve the administrative variance. Through the months of August and September, he met with City staff regarding the setbacks. It had been determined that the current structure was not an add-on. He said Powers had made comments about the Kneppers at the first Planning Commission meeting that were not accurate. He said the Kneppers believed that the contractor had obtained a building permit and that the original structure was being expanded. They had put their faith in a contractor, and the contractor had built it without a permit. The Planning Commission denied the appeal on November 23, 1993. He said the letter from Mrs. Knepper stipulated that there had been no complaints about the garage until the house was put up for sale.

Casales urged Council to remember that the Kneppers are seniors. The garage has been there for ten years, and there had been no concerns until Powers' recent complaint. The Kneppers were willing to construct a firewall. He explained that the Kneppers were in Colorado and could not attend the hearing.

Councilmember Kappa asked if this type of issue came up often when houses were being sold. **Casales** said many people, especially seniors, were not aware of legislation and had put their faith in the contractor.

Councilmember Knudson asked how far one would have to go back to grandfather something like this. **Krogh** said the rules in effect at the time of construction are usually the determining factor. The current R-7 zone standards are very similar to those in effect in 1979.

Mayor Lomnicki said if this were an old structure, it could be grandfathered. When the property owner tore down the old garage, the newer codes became effective.

Councilmember Schreiber asked if it was possible that the contractor believed he was working with an old structure. **Krogh** said the Zoning Ordinance looks at structures in light of setbacks, and a slab is not considered a structure.

Casales said the property was developed in 1930.

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Councilmember Farley asked the size of the slab. **Casales** said it was about the size of a single car garage. **Krogh** added that it looked like it had been widened about two feet.

Wyatt Langley, purchaser, said the rear setback variance had been granted. What is at issue is the north side setback and the separation between the house and the garage. He discussed the staff memo which indicated that they could not determine a more feasible alternative than to grant the appeal. He said there was also a letter from the Fire Marshal's Office which stated that he had looked at the structure and that construction of a firewall would meet his recommendations.

Testimony in Opposition: None.

Applicants' Rebuttal: None.

Staff Comments: **Krogh** said the issue was the Applicants' appeal to be able to go beyond the 25% administrative approval.

Questions of Clarification: **Councilmember Farley** asked if a precedent would be set if the variance was allowed. **City Attorney Monahan** said each application needs to be considered independently based on approval criteria. Findings could be translated to apply to another situation and could be used as part of an argument both to the Planning Commission and Council.

Krogh said the Planning Commission made it clear that they had a problem seeing the garage not there. **Councilmember Kappa** asked **Krogh** to clarify this statement. **Krogh** said the Planning Commission and staff viewed the criteria somewhat differently.

Pat Lent, Planning Commission Chair, said the Commission viewed this as an illegal building. In order to make a ruling, they chose to view it as if the building were a new development.

Mayor Lomnicki asked how much the property would be devalued if the building were removed. **Casales** said removal would devalue the property about \$10,000 to \$12,000.

Councilmember Farley asked if there would be a problem for future sales. **Casales** said whoever lists the property will have to go through this process.

Councilmember Kappa asked how much it would cost to move the garage. **Casales** said the beams are probably set in cement, and moving them would be very expensive. Lowering the roof and constructing a firewall would cost about \$7,000.

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Councilmember Schreiber asked if the roof height was a City issue. Krogh said there is no limitation to roof height in this zone.

Councilmember Farley asked about the appearance of the metal siding. Casales said the siding looks like aluminum house siding.

Close Hearing: Mayor Lomnicki closed the public hearing at 8:03 p.m.

Councilmember Kappa said he was concerned with the 90% and 50% variance request, particularly since this garage was built after 1979. He was concerned that this would cause future issues in other neighborhoods. He said he believed the property owners did not realize there were no permits issued, but he could not in good conscience uphold the appeal.

Councilmember Knudson asked if there were utilities in the garage. Krogh said there were electrical outlets. Councilmember Knudson said there should have been an electrical permit. Krogh said electrical permits were a County process.

Mayor Lomnicki said the property owner has the responsibility of ensuring that there are building permits.

Councilmember Farley said he was concerned with setting a precedent.

Monahan said the Council may be called to task in the future to use the same criteria on a different type of application.

Bartlett said the Council may uphold the denial based on Planning Commission findings or develop new findings.

Councilmember Schreiber said she favored the November 23, 1993, staff recommendation to the Planning Commission.

Bartlett said staff recommends that Council uphold the 25% administrative variance and deny the appeal of the variance.

Mayor Lomnicki said the administrative variance was an attempt to work with the Applicant and ease the problem.

Councilmember Kappa said it seemed that the Planning Commission had also tried to work with the Applicant.

Monahan said Council must ask if the structure was legal when it was built and what the standards were at the time of construction.

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It was moved by Councilmember Kappa and seconded by Councilmember Farley to uphold the Planning Commission decision to deny the appeal based on the findings adopted by the Planning Commission (attached as Exhibit 1) and the administrative approval, which provides a procedure to correct a nonconforming setback situation.

Councilmember Schreiber said she believed the November 23, 1993, staff recommendation to the Planning Commission was a reasonable combination. The structure has been an accepted and integral part of the neighborhood.

Motion passed 4 - 1 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Kappa, and Councilmember Knudson aye; Councilmember Schreiber nay; no abstentions.

Staff will send notice of decision. Notice of intent to appeal must be filed within 21 days.

AUDIENCE PARTICIPATION

None.

OTHER BUSINESS

Consider Meeting Dates for 1994 - Resolution

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider a resolution continuing the current practice.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the resolution continuing the current practice setting the regular meetings as the first and third Tuesdays of each month. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

RESOLUTION NO. 1-1994:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE.

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Consider Paper of Record - Resolution

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider a resolution which designated the *Clackamas Review* and the *Oregonian* as papers of record for the City of Milwaukie.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the resolution designating the *Clackamas Review* and the *Oregonian* as papers of record for the City of Milwaukie. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

RESOLUTION NO. 2-1994:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE CLACKAMAS REVIEW AND THE OREGONIAN AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

Consider Building Official Classification

Charlene Richards, Assistant to the City Manager, presented the staff report in which the City Council was requested to review the revised classification and recommended salary range for the Building Official with an effective date of January 10, 1994. This would move the Building Official to range 17.0 from range 16.0. When this was reviewed prior to recruitment, it was found that the job description was not updated. The two changes resulted in revisions to the certification requirements and the complexity of decision making and problem solving. This is approximately a 5% increase.

Councilmember Kappa asked how much additional education above a high school diploma is required by the certification program. Richards said the ICBO certification is equivalent to an associates degree. Certification levels can be based on experience or technical training and background work.

Councilmember Kappa asked the length of time it usually takes to earn state certification. Richards said one must be a journeyman level person to meet any of these certifications.

Councilmember Farley asked if this was a duplication of the Code Enforcement Worker. Richards said the Building Official, who is a working supervisor, would supervise the Code Enforcement Worker and administer programs. The funds are available in the Building Division budget. The position has been vacant for three weeks and will be vacant for two

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or three more months, which will help make up the salary increase.

It was moved by Councilmember Schreiber and seconded by Councilmember Farley to authorize the City Manager to revise the 1993-1994 Salary Schedule (Management and Nonrepresented Staff) to include the classification of Building Official at Range 17.0 effective January 10, 1994. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Intergovernmental Agreement with Clackamas County for Interim Chief of Police

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider an Intergovernmental Agreement with Clackamas County Sheriff's Department for interim Police Chief services. This agreement was drafted by County Counsel and reviewed by City staff and attorney.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to authorize the Mayor to sign an intergovernmental agreement with the Clackamas County Sheriff's Department for interim Police Chief services. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Other Information

Councilmember Schreiber commended staff regarding the McLoughlin jughandle and Harrison Street interchange improvements. Bartlett said City Engineer Drechsler, Public Works Director Corbett, and Community Development Director Collins have been working with the State to convey the City's concerns.

CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the Consent Agenda which consisted of the City Council Minutes of December 21, 1993. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

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INFORMATION

Councilmember Farley discussed the cost of speed humps. He said he knew of a contractor that would install five units in one day at a cost of \$1600 - \$2000. **Bartlett** said he would look into the costing methods.

Councilmember Kappa discussed joining FOCUS. He said he had the impression that the Portland State group was advisory and FOCUS was political. **Councilmember Schreiber** said she did not feel Council had received adequate information to make a decision. There was still no agreement available. **Bartlett** said Council had requested an action plan and a list of those who had actually joined. **Councilmember Schreiber** said the City is still involved, but has not made a commitment.

Bartlett discussed the Metro Planning Department Budget Priorities from Andy Cotugno. Metro Managers believed that it would be beneficial to work on programs of this scope as a group. One concern was the voluntary dues program and continued funding. **Mayor Lomnicki** said Metro is going through financial restructuring and considering their fees. It is implied that some jurisdictions could go on a pay-as-you-go basis, while some jurisdictions, such as Milwaukie, may want a whole year's services.

Councilmember Schreiber discussed an upcoming MPAC meeting with jurisdictions outside the Metro boundary but within the regional framework. They are seeking to develop links for future development.

Bartlett discussed the downtown parking permit program. Corbett met with MDDA representatives to discuss the status of the program and consider options.

Bartlett distributed calendars sent from the Mayor of Iwaki, Japan. Staff was directed to prepare a letter of appreciation.

Mayor Lomnicki announced an executive session pursuant to ORS 192.660 to consider personnel matters.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 8:57 p.m.

Pat DuVal

Pat DuVal, Recorder/Secretary

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EXECUTIVE SESSION

Mayor Lomnicki called the executive session to order to consider employment of a public employee and possible employee discipline. In addition to the City Council, City Manager Dan Bartlett and City Attorney Bill Monahan were present.

Bartlett briefed the Council on the status of the Police Chief recruitment. He reviewed the results of the investigation of a citizen complaint against a City employee. He indicated that the department head has taken appropriate action. The employee will be offered training to help ensure that appropriate customer relations are maintained.

Mayor Lomnicki adjourned the executive session at 9:35 p.m.

A handwritten signature in cursive script, reading "Dan R. Bartlett", is written above a horizontal line.

Dan R. Bartlett, City Manager

