



were nonconforming off-street parking and loading spaces, and that certain spaces on the northern side of the building that had recently been relocated no longer are considered off-street parking spaces. The Director Determination also analyzed the required number of off-street parking spaces for the current site and the number of legal off-street parking spaces available on the site and through shared parking agreements.

3. The appeal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1010, Appeals
  - MMC Section 19.903, Code Interpretations and Director Determinations
4. The application has been processed and public notice provided in accordance with MMC Section 19.1010, Appeals. A public hearing was held on October 22, 2013, as required by law.
5. MMC Section 19.1010, Appeals
  - a. MMC 19.1010.1 establishes standards for filing an appeal.
    - (1) MMC 19.1010.1.A. describes the information required for an appeal. The information submitted by the appellant contains the date and case file number of the decision being appealed, documents that the appellant has standing to appeal per MMC 19.1010.4.A as the applicant from the decision being appealed, and identifies the issue in the original decision that the appellant believes was incorrectly identified.
    - (2) MMC 19.1010.1.B requires payment of an application fee at the time of filing, which was submitted by the appellant at the time the appeal was filed.
    - (3) MMC 19.1010.1.C requires the appeal materials to be filed within the 15-day appeal period for the decision being appealed. File #DD-13-04 was issued on July 16, 2013 and its appeal period ended at 5 PM on July 31, 2013. The appellant submitted the information necessary for an appeal on July 31, 2013.

The Planning Commission finds that the appellant has satisfied the standards for filing an appeal of File #DD-13-04.
  - b. MMC 19.1010.2 establishes the procedures for an appeal hearing. The Planning Commission is the appeal authority for File #DD-13-04, which was a Type I Review. On October 22, 2013, the Planning Commission held a hearing per the public hearing procedures in MMC 19.1009. The requirements of this section have been satisfied.
  - c. MMC 19.1010.3 establishes the types of hearing for appeals. The file being appealed was a Type I Review. Per MMC 19.1010.4.C specifies that the hearing for this appeal is an unrestricted de novo hearing. The public hearing allowed presentation of new evidence, testimony, and argument by any party. The Planning Commission considered all relevant evidence, testimony, and argument that are provided at the hearing, and did not limit the scope of the hearing to the issues that were raised on appeal. The Planning Commission's standard of review is whether the initial decision in File #DD-13-04 has findings and/or conditions that are in error as a matter of fact or law. The requirements of this section have been satisfied.
  - d. MMC 19.1010.4 contains specific provisions for appeal of a Type I decision.
    - (a) MMC 19.1010.4.A establishes that the decision may only be appealed by the applicant or the applicant's representative. The appellant was the applicant for the appealed decision.

- (b) MMC 19.1010.4.B requires that at least 20 days prior to the appeal hearing, the City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing. The City mailed this required notice on September 18, 2013. The notice was for a hearing on October 8, 2013, and this hearing was automatically continued to October 22, 2013 due to lack of a quorum at the October 8, 2013 Planning Commission meeting.
- (c) MMC 19.1010.4.C requires that the appeal hearing shall be an unrestricted de novo hearing. The public hearing on October 22, 2013 was an unrestricted de novo hearing per MMC 19.1010.3.A.

6. MMC Section 19.903, Code Interpretations and Director Determinations

- a. MMC 19.903.2.B establishes situations for which a Director Determination can be requested. The Planning Commission finds that the request meets the situation described in MMC 19.903.2.B.4; determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19.
- b. MMC 19.903.3 establishes the review process for Director Determinations. The process for File #DD-13-04 met the process described in this subsection. The current review of the Director Determination is being reviewed under appeal per the procedures in MMC 19.1010.
- c. MMC 19.903.4.B.2 contains the approval criteria for a Director Determination of the Legal Status of a Nonconforming Use or Development. The criteria in this subsection are MMC 19.903.4.B.2.a: "The nonconforming use or development was permitted under applicable regulations at the time it was established", and MMC 19.903.4.B.2.b: "The nonconforming use has been legally maintained over time and has not been discontinued or abandoned".

A 1968 aerial photograph of the site shows loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line

A 1977 aerial photograph of the site shows no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970.

The site plan submitted by the applicant for File #DD-13-04 shows the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly matches configuration of 1977 aerial photo. The appellant has demonstrated that 6 spaces to the east of the truck loading spaces remained in the same location as they were prior to the Portland Milwaukie Light Rail work. The loading spaces and those 6 parking spaces in front of the eastern portion of the building remain in their current configuration. 12 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also

added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking areas.

Portions of these parking areas have been modified from when they were established. The determination of these modifications is as follows: The loading spaces and the 6 westernmost vehicle spaces in front of the building have been maintained in the same general configuration as they were we established, and are considered legally maintained.

The parking area on the east side of the building has been modified as a result of the Portland Milwaukie Light Rail project. The 7 spaces (5 perpendicular and 2 parallel) that remain in this area are determined to have been legally maintained.

The remaining 12 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all of the area of these stalls is within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

- d. The Planning Commission affirms the determination of heading #1: “Status of Parking and Loading Spaces along Mailwell Drive and east side of the subject site” from the Notice of Decision for File #DD-13-04 with Finding 6.c. The Planning Commission finds that the only error as a matter of fact in this heading was an identification of 18 spaces that were shifted further into the right of way, when in fact only 12 spaces were affected. This error of fact also affects the count of off-street parking spaces for the site under heading #2: “Determination that the Off-Street Parking and Loading Spaces meet current requirements” in the same notice of decision. The second table on page 3 of the Notice of Decision for File #DD-13-04 is changed to reflect the site having 6 spaces along Mailwell Drive and a total of 36 off-street vehicle parking spaces.



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Stephen C. Butler, FAICP  
Interim Planning Director  
Community Development Director

cc: Annetta Young, Pendleton Woolen Mills, PO Box 3030, Portland, OR 97208  
William Horning, Western Planning Associates, PO Box 2392, Lake Oswego, OR 97035  
Planning Commission (*via e-mail*)  
Jason Rice, Engineering Manager (*via e-mail*)  
Brad Albert, Civil Engineer (*via e-mail*)  
NDA(s): Site not located in an active NDA  
Interested Persons  
Land Use File(s): AP-13-01, DD-13-04