

Exhibit C

Memo to File

To: Code Interpretations folder
From: Denny Egner, Planning Director
Date: October 4, 2016
Re: Review Process for Planned Development Applications (MMC 19.311)

The last land use application for a Planned Development in Milwaukie was in 1992, so it is not a process that is exceedingly familiar to the Planning Department. Furthermore, the review process outlined in the zoning code is not as clear as would be useful. The intent of this memo is to clarify the Planned Development review process.

Established in Milwaukie Municipal Code (MMC) Section 19.311, the Planned Development (PD) zone is intended to provide some flexibility in residential development on parcels of 2 acres or greater. The PD standards allow for a mix of housing types and land uses, as well as a 20% increase in maximum density, in exchange for creative design, special or oversized utilities (if needed), peripheral yards, and provision of open space. The PD designation is a type of zone and replaces the original zone designation, so the review process involves an application for zone change. In some cases, a PD proposal may also involve land division.

In essence, there are two steps in the PD review process: (1) conditional approval of the preliminary development plan by the Planning Commission; and (2) adoption of an ordinance to apply the PD zone to the subject property as well as approval of the final development plan by the City Council, based on a recommendation from the Planning Commission.

Preliminary Development Plan

MMC Subsection 19.311.6 makes reference to a “meeting” of the Planning Commission for consideration of the preliminary development plan, after which the Commission shall inform the applicant whether it believes the preliminary plan satisfies the provisions of MMC 19.311 or shall advise the applicant of any perceived deficiencies. Continuances or multiple meetings may be needed before the Commission decides that the preliminary plan (with any needed modifications) is approvable. Once the Commission has approved the preliminary plan and any modifications “in principle,” the applicant is free to submit a final development plan and zone change application, and in fact must make that submittal within 6 months.

Although the code does not identify a specific review type for this portion of the process, it seems reasonable to suggest that any related applications should be considered by the Planning Commission as part of the preliminary development plan. For example, if a proposal involves a subdivision and/or an issue such as disturbance of designated natural resources, transportation facilities review, or a variance request beyond the flexibility of the PD standards, those elements of the proposal should be presented for consideration as part of the preliminary development plan. No formal decision on these additional aspects would be issued at this preliminary stage, but the Commission would advise the applicant of any recommended revisions that would make the proposal more approvable “in principle.”

Final Development Plan

MMC Subsection 19.311.10 provides a slightly clearer review path for the final development plan. The applicant would submit the final plan with an application for zone change and any needed subdivision. The Type IV review process (MMC Section 19.1007) would be engaged, with an initial public hearing by the Planning Commission (with public notice to properties within 400 ft, provided 20 days in advance). The Commission would determine whether the final proposal is consistent with the “approved-in-principle” preliminary plan and would also make a recommendation regarding the proposed PD zone change for the subject property.

According to MMC Subsection 19.311.10.B, at this point in the process the Commission would make a decision regarding preliminary plat approval of any proposed subdivision. This could be done if the subdivision application was processed using the procedures for Type III review. Ostensibly, any additional applications for

such issues as natural resource review, transportation facilities review, or variance would also be formally included with the submittal for a subdivision (if needed) and could be decided at the same time, with conditions that require approval of the PD (final development plan and zone change) to become effective.

The final development plan and zone change would proceed through the Type IV process, with a public hearing with the City Council scheduled to consider these items (again, with public notice provided 20 days in advance). The Council would decide whether to adopt an ordinance that would approve the zone change and the final development plan, which would provide the standards for the new PD zone. According to MMC Subsection 19.311.11.D, the Council could also refer the application back to Planning Commission with a recommendation for amendment, or it may choose to reject the proposal and abandon further proceedings.

Standard Process Outline

In an attempt to interpret the intent of the current code language with respect to process, see below for what Planning staff believes is a reasonable process outline, with the preliminary development plan being handled through Type III review and the final development plan handled through Type IV review:

1. Required preapplication conference with City staff (including 2 weeks for preparation and 2 weeks for City to complete meeting notes)
2. Application submittal (Type III) = Including preliminary development plan, proposed zone change, any related subdivision, natural resource review, transportation facilities review, variance request, etc.
3. Completeness review (up to 30 days) = Completeness determination starts a 120-day clock for issuing a decision.
4. Public notice for Planning Commission hearing (Type III) = Once the application is deemed complete, it is referred for comment (to other departments & agencies, neighborhood association, etc.) and a public hearing is scheduled with Planning Commission. Public notice is sent according to Type III process (300-ft notice, 20 days in advance of hearing).
5. Planning Commission hearing (Type III process) = Consideration of preliminary development plan and proposed zone change, including any related subdivision, natural resource review, transportation facilities review, and/or variance requests. The Commission determines whether it can approve the preliminary plan in principle—if so, a Notice of Decision is issued and a 6-month clock starts on the requirement to submit the final development plan in the Type IV process. The Commission can also issue a Type III decision for any subdivision, natural resource review, transportation facilities review, variance request, etc., with conditions requiring approval of the PD (final development plan and zone change) by City Council to become effective.
6. Application submittal (Type IV) = Final development plan and proposed zone change.
7. Completeness review (up to 30 days) = Completeness determination starts a new 120-day clock for the Type IV review process.
8. Public notice for Planning Commission hearing (Type IV) = Once the application is deemed complete, it is again referred for comment (to other departments & agencies, neighborhood association, etc.) and a public hearing is scheduled with Planning Commission. Public notice is sent according to Type IV process (400-ft notice, 20 days in advance of hearing).
9. Planning Commission hearing (Type IV) = The Commission evaluates the final proposal and determines whether it is consistent with the preliminary approval and with the intent and requirements of MMC 19.311. If so, it makes a recommendation for approval to the City Council.
10. Public notice for Council hearing (Type IV) = Additional public notice is sent to properties within 400 ft of the site, at least 20 days prior to Council hearing.

11. City Council hearing = Council could either adopt an ordinance to establish the PD zone and establish the final development plan as providing the standards for the new zone, or refer the matter back to Planning Commission for modifications, or reject the proposal.
12. Final Plat submittal (Type I review)

Alternative for Streamlining the Process

In the interest of moving a proposal through the review process without unnecessary delay but without reducing the opportunities for public participation and input, and, given the current code language, see below for an alternative timeline that would merge the Type III process with the Type IV process:

1. Required preapplication conference
2. Application submittal = Two sets of concurrent applications are submitted. One set has the preliminary development plan and proposed zone change. Another set of includes those for any related subdivision, natural resource review, transportation facilities review, and/or variance request.
3. Completeness review (up to 30 days) = Completeness determination starts the 120-day clock. For this alternative process, the City would request that the applicant provide an initial waiver of the 120-day clock by at least 60 additional days, to allow adequate time for the entire process (including a potential appeal).
4. Public notice for initial Planning Commission hearing = Once the application is deemed complete, it is referred for comment and an initial public hearing is scheduled with Planning Commission. Public notice is sent according to Type IV process (400-ft notice, 20 days in advance of first hearing).
5. Planning Commission hearing #1 = Consideration of preliminary development plan and proposed zone change, including any related subdivision, natural resource review, transportation facilities review, and/or variance requests. If the Commission decides the preliminary plan can be recommended for approval, this initial hearing could suffice as the recommendation hearing required by the Type IV process—and the Commission could make a formal recommendation on what becomes considered as the final development plan.

At this time, the Commission could also issue a Type III decision for any subdivision, natural resource review, transportation facilities review, and/or variance request, with conditions requiring approval of the PD (final development plan and zone change) by City Council to become effective. The standard 15-day appeal period would need to pass before the 20-day public notice would be sent out for the City Council hearing. If an appeal to the Type III decision was filed, the Council hearing could probably serve as the Type III appeal hearing as well as the required Type IV hearing on the final development plan. Note that, in the case of an appeal, the 20-day public notice period may not be adequate time to allow staff sufficient time to prepare the necessary staff report for Council, and additional time between the Commission and Council hearings may be needed.

6. Planning Commission hearing #2 (if needed) = If the Commission recommends modifications to the preliminary development plan, the initial hearing could essentially be continued to a date certain in order to obtain a recommendation for approval on what would be considered the final development plan. No additional 20-day notice would be required, and the second/continued hearing could happen as soon as the next Commission meeting (2-3 weeks, depending on the calendar).
7. City Council hearing (Type IV decision) = Once the Planning Commission recommends approval of the final development plan, a Council hearing could be scheduled and 20-day public notice provided. The Council could either adopt an ordinance to establish the PD zone and establish the final development plan as providing the standards for the new zone, or refer the matter back to Planning Commission for modifications, or reject the proposal.
8. Final Plat submittal (Type I review)