



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday, April 11, 2017, 6:30 PM

**MILWAUKIE CITY HALL
10722 SE MAIN STREET**

1.0 Call to Order - Procedural Matters

2.0 Planning Commission Minutes – Motion Needed

2.1 February 14, 2017

3.0 Information Items

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda

5.0 Public Hearings – No hearings are scheduled

6.0 Worksession Items

6.1 Summary: Land Use Approval Criteria
Staff: Denny Egner

7.0 Planning Department Other Business/Updates

7.1 Second Tuesday Planning Commission meeting start time

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

9.0 Forecast for Future Meetings:

April 25, 2017 1. Worksession: NMIA Review of Framework Plan and Implementation Strategy

May 9, 2017 1. Public Hearing: CSU-2017-002 Harrison St Dance Studio
 2. Public Hearing: WG-2017-001 Riverway Ln Addition
 3. Public Hearing: HR-2017-001 Railroad Ave Demolition

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@milwaukieoregon.gov. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.milwaukieoregon.gov.
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.milwaukieoregon.gov.
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Greg Hemer, Chair
Adam Argo, Vice Chair
Shannah Anderson
John Henry Burns
Sherry Grau
Kim Travis

Planning Department Staff:

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kelter, Associate Planner
Vera Kolias, Associate Planner
Mary Heberling, Assistant Planner
Alicia Martin, Administrative Specialist II
Avery Pickard, Administrative Specialist II

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, FEBRUARY 14, 2017
6:30 PM**

COMMISSIONERS PRESENT

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

STAFF PRESENT

Denny Egner, Planning Director
Tim Ramis, City Attorney
Vera Kolias, Senior Planner
Brett Kelter, Associate Planner

COMMISSIONERS ABSENT

Shannah Anderson
Adam Argo

1.0 Call to Order – Procedural Matters*

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

Chair Hemer welcomed new Planning Commissioner Sherry Grau.

***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 24, 2016
- 2.2 June 14, 2016
- 2.3 June 28, 2016
- 2.4 October 25, 2016
- 2.5 December 13, 2016

Commissioner Barbur stated he was not listed on the December 13, 2016 minutes and should have been listed as a Commissioner present.

It was moved by Vice Chair Barbur and seconded by Commissioner Travis to approve the Planning Commission minutes for May 24, June 14, June 28, October 25, and the December 13, 2016 as amended. The motion passed unanimously.

3.0 Information Items

Denny Egner, Planning Director, announced the second Visioning Town Hall was scheduled for February 15, 2017 at the Waldorf School at 6:00 pm. The focus of the meeting would be to match Action Items with the draft Vision and the goals that have come from the Visioning process. Unlike the last Town Hall, which featured several speakers, there would be time for people to participate during this Town Hall.

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: Harmony Rd Mini-storage
Applicant/Owner: Hans Thygeson
Address: 5945 & 5965 SE Harmony Road
File: CU-2016-001, NR-2016-001, TFR-2016-001, VR-2016-003
Staff: Brett Kelter

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

Brett Kelter, Associate Planner, presented the staff report via PowerPoint, and noted the applicant submitted an updated bridge embankment detail on February 10, 2017, that addressed questions about the length of the bridge span. Staff recommended approval with conditions. He noted the applicant had waived the 120-day land use clock, so continuance was an option if more information was needed. No correspondence had been received.

Staff addressed clarifying questions from the Commission. Key responses related to the application included:

- Several questions were addressed about the Water Quality Resource (WQR) and Habitat Conservation Area (HCA) areas, including the differences in how the areas were measured, an applicant's options for challenging the WQR and HCA boundaries, the City's process for determining the scope of mitigation required, and rules about dumping garbage in the HCA. Staff was not aware of any major issues with the natural resource boundaries in the proposed location.
- Further clarification was provided regarding the construction, structure, and function of the bridge. The bridge's support structures would be on either side of the creek just beyond the ordinary high water mark. The creek would flow freely under the new bridge and not be constrained in a pipe or culvert.
- The existing shared access between the building at 5885 SE Harmony Rd (adjacent to the west) and the applicant's site was intended to allow only right-out turning movements, although space existed for passenger vehicles to make a right turn into that access from Harmony Rd. The access was not constructed to allow the kind of truck-turning movements that access the site from International Way. Approval of the application would result in a wider access to Harmony Rd, with revised access of right-in/right-out movements only. Once the driveway was widened, the easement agreement with the adjacent property would be reestablished so that the wider driveway would still be accessible to the 5885 SE Harmony Rd property.
- The updated document submitted by the applicant of a different type of bridge support system. The latest submittal of the bridge embankment showed a type of construction that appeared to have potentially less impact on the creek, but the final bridge span length was unclear. A condition could be established to have the applicant demonstrate that the bridge span would be long enough to provide a certain degree of separation from the ordinary high water mark to the bridge supports without trying to set a specific length now.
- Mitigation efforts focused on the south side of the creek, which was classified as being in "Poor" condition; the north side of the creek was classified as being in "Good" condition because it had more existing tree canopy. The mitigation required for the development would increase the ecological value or function of the stream, not decrease it. There would be significant changes to the overall site with the development, so assessing the trade-off

was a fair question. Staff had concluded that the proposed mitigation plantings seemed to generally offset the disturbance.

- Regarding public comment from Joseph Edge about not developing within the 100-year floodplain, staff noted that there was no Federal Emergency Management Agency (FEMA) 100-year floodplain designation on this property.
- The trip estimate for the proposed development of just over 1,000 mini-storage units (based on the Institute of Transportation Engineers (ITE) manual) was approximately 250 one-way trips per day (or 125 round trips). One way to consider that was to imagine that just over 10% of the units would be accessed on a given day.
- Adjacent apartments to the east also backed up to the WQR area, with the creek running under an existing unpaved roadway on the adjacent site through a culvert or pipe. The roadway was wide enough to drive on, but it was primarily used for pedestrian access.
- The HCA was intended to protect habitat for all wildlife. The City's designated HCAs generally paralleled the City's WQR areas and tended to be connected corridors. It was unclear why the HCA designation on the map did not follow the stream flowing east from the subject property onto the adjacent apartment property—perhaps it was due to the ephemeral nature of the stream or a lack of evidence of water.
- The wildlife corridors established by the HCA designation were part of Metro's Title 13 work which focused on water resources and wildlife habitat. Initially, under Title 3, Metro focused on wetland areas and streams; later, Title 13 focused on habitat, including for small mammals, fish, and birds. Both the height and expanse of the proposed bridge would minimize impacts to the HCA by allowing for better movement of those animals through the corridor than the culvert to the west.

Chair Hemer called for applicant's testimony.

Hans Thygeson, 2500 Willamette Falls Drive, West Linn, OR, briefly highlighted the application via PowerPoint. He reviewed the accessways into the property, noting that they would be sharing access with the adjacent property to the west. Regarding pinch points for the creek, he stated that to the east there was a roadway across an 18-inch culvert used for the seasonal creek that handled drainage and stormwater from the business park along International Way; to the west, the culvert had less than 12 ft of clearance.

John Lewis, Development Specialist, described the revisions made to the bridge detail based on suggestions from the North Clackamas Urban Watershed Council (NCUWC) to provide a greater clearance under the bridge for larger mammals. A 9-ft vertical clearance was now proposed, which should be more than adequate for the wildlife anticipated along the corridor. Extending the bridge's span would result in a loss of vertical clearance. The applicant did not anticipate any disturbance in the delineated wetland creek bed, although legally, 50 cubic yards of soil could be displaced.

Mr. Thygeson noted the site was reviewed by two natural resource consultants and both concluded that once the applicant corrected some deficiencies and removed nuisance plants and debris in the area, the wetlands and the area would be considerably better. Construction could be done from either side of the creek while staying outside the high water marks. He addressed additional questions from the Commission as follows:

- The proposed bridge was 40 ft long, with about 34 ft between the support structures, and that clearance height was measured from the creek bed.
- The objective of the updated bridge design was to keep the bridge span as short as possible to give it as much vertical clearance as possible. Per the civil engineer, the 40-ft span

should easily keep the bridge out of the delineated creek bed, but the final length could be determined during the permitting process.

Mr. Egner noted that the condition was based on the dimensions on the preliminary plans, which showed an approximate 40-ft distance between the ordinary high water marks for the creek (79-ft elevation), as well as on the applicant's drawing, which implied that a span longer than 40 ft was needed. The condition could be modified to require simply that the applicant stay out of the ordinary high water mark.

Mr. Thygeson responded the scaling was not accurate. Although not the intent, the applicant was allowed to disturb 50 cubic yards. He described the construction process, and noted that the retaining wall would be built from the north side and assured there would be no impacts to the WQR.

Mr. Lewis added that the proposed buildings had been pulled back from the resource area as well. The variance being requested would give the applicant more space from the WQR and allow more landscaping to be provided.

The applicant's team continued addressing questions with these comments:

- Discussions with other property owners to use the existing bridge on the adjacent property to the west had occurred in the past; however, since access to self-storage should be secure and controlled, it would be challenging to share access through the adjacent industrial neighborhood.
- The 250-trip estimate was high traffic for a self-storage facility. Based on the ITE manual, the proposed development met the standard, according to Clackamas County and the applicant's consultant.
- The existing shared access easements were identified on the site plan and the applicant confirmed there was no issue with the access points. Although the easements were recorded, they did not extend back across the creek.
- The applicant noted there would be an onsite manager who would be responsible for maintaining the property and keeping it clean. One dumpster would be located on site, and policies required customers to remove all their trash from the site.
- The existing fence along International Way did not extend into the WQR due to the hill. However, installing a higher fence was not an option due to liability issues. The applicant was not concerned about trash in the creek and reiterated the facility will be fully managed with surveillance cameras onsite.

Mr. Thygeson assured that plans were in place to protect the HCA and WQR, and that he and his consultants understood the complexity of the location. He believed they were prepared to properly protect the site for the long term. He clarified that the Landscaping Plan was not to scale.

Mike Robinson, Land Use Attorney, stated the applicant accepted the recommended findings and conditions of approval, but suggested modifying Condition 1 to reflect the updated bridge detail. He also requested that Additional Requirement Note 7 be modified to allow longer time limits. He believed the evidence provided showed the applicant had met the burden of proof. He asked that the applicant be allowed to provide additional evidence and rebuttal before closing the record.

Chair Hemer called for public testimony.

Chris Runyard, Northeast Portland, OR, NCUWC, opposed to the application.

- He noted his background in wetland, habitat, and upland restoration and his familiarity with the creeks within the city. Although Minthorn Creek was mostly paved or ditched, there were still salmon in the creek. He discussed stormwater facilities and runoff issues and their impact on water quality. He encouraged that all stormwater be kept onsite and suggested installing stormwater swales on the south side of Harmony Rd. He believed surface area water would overflow the two proposed planters.
- Mitigation plantings did not necessarily improve WQRs or alleviate the impacts of fill grading and paving. He noted that the correct native dogwood species should be included in the mitigation planting list.
- He was not in favor of a bridge, but encouraged the applicant to consider wider footings to allow better wildlife passage and suggested that several feet were also needed on the bank under the proposed bridge structure.
- He hoped funding would be provided to remove the plastic silt fences and tree sleeves from the property. He asked if any of the white oaks would be removed for the bridge's construction.
- He feared the Commission believed the plan would improve the watershed; he believed that the proposed development would destroy what remained of the south portion of Minthorn Creek.

Joseph Edge, 14850 SE River Forest Dr, Oak Grove, NCUWC, reviewed the comments submitted by NCUWC. The Council preferred development on the south side of the creek only, with some incentive to add the land on the north side of the creek to HCA inventories. The code allowed variances for added flexibility, such as increased building heights, which would minimize disturbance on the north side. He was unsure why Minthorn Creek was not included in FEMA's floodplain mapping. He believed there should be incentives for an applicant to map additional HCA or WQR areas on their site. He disagreed that some landscaping was sufficient mitigation and clarified that for large mammals, a 10-ft vertical clearance under the proposed bridge would be necessary for a few feet on either side of the ordinary high water mark.

Chair Hemer called for further comments from staff.

Staff noted clarifications for the record and responded to public comment with the following points:

- The applicant had requested to extend the approval expiration to 5 years, with completion within 7 years. (Item 7, Additional Requirements Section).
- The conditions would be revised to allow for staff to confirm whether comments about improving erosion issues from ESA, the City's natural resource consultant, were applicable to the revised bridge embankment detail.
- Regarding bridge clearance and inconsistencies between the drawings from the applicant, a condition was suggested that would provide the applicant some flexibility in demonstrating the necessary length of the bridge span; the bridge-span width would be dictated by the ordinary high water line.
- Staff addressed concerns about additional stormwater runoff coming from the site, and noted the proposed stormwater management scheme would meet the Code. Potential options were discussed to ensure runoff did not drain directly to the creek.
- Regarding comments about the City's discretionary review for mitigation and what was adequate, staff suggested that the Commission could consider a ratio of plantings for area of square footage of disturbance, or could consider designating a portion of the site as a resource buffer area that would be planted and have development restrictions as a trade-off for the bridge disturbance.
- Language should be added requiring that all plantings on the mitigation planting list were in fact species from the Milwaukie Native Plants list.

Chair Hemer called for the applicant's rebuttal.

Mr. Robinson noted that the applicant agreed with all the recommended conditions; however, he did not believe the City's discretion regarding mitigation was as great as suggested, because the Commission's discretion was controlled by the code.

- Regarding the bridge conditions, he questioned why 3 ft was being specified on each side and was leery to accept a condition where additional discretion was required after the hearing.
- The discussion about mitigation was extremely useful, and the applicant agreed with staff suggestions about mitigation.
- He addressed several comments from public testimony, noting that avoiding any impacts to the wetland was difficult due to the constraints of adjacent properties. The Commission could not compel the adjacent property owner to grant an easement. The impacts would be minimized by the proposed mitigation and locating the bridge where presented.
- The preliminary stormwater report addressed concerns about water quality and quantity issues. With respect to the trees, the project complied with the code.
- Regarding the minimum clearance of the bridge, the evidence in the record from Pacific Habitat Services was that primarily only small mammals occupied that riparian area, not large mammals like bear or deer and if so, the 8.5-ft to 9-ft height clearance under the bridge was sufficient. The proposed bridge was reasonable; it was designed to leave a wide area in the riparian corridor for the mammals normally found, and combined with the mitigation and water quality planters, the applicant was improving this site.
- Without the bridge or development on the north side of the creek, there would be no impact to the stream and therefore no mitigation needed, so the degraded condition at the site would remain, as opposed to the plan before Commission, which was to mitigate on the south side and remove invasive species.

Chair Hemer announced that the public hearing for the Harmony Rd Mini-Storage would be continued to a date certain of February 28, 2017, with discussion only on the conditions of approval.

6.0 Worksession Items

- 6.1 Summary: Sign Code Amendments
Staff: Vera Kolias

Vera Kolias, Associate Planner, presented the staff report regarding the proposed Sign Code Amendments, noting the two options proposed for the Commission's consideration. She clarified the definitions of freestanding, roof, and wall signs, and noted one phone call was received regarding the regulation of wall signs. The City hoped to get feedback from the sign industry about the appropriate sizes for signs at the upcoming hearing.

Mr. Egner provided insight regarding the Code Interpretation decision the Planning Commission made a year ago and the background leading to the proposed amendments.

Feedback from the Commission in preparation for the hearing was as follows:

- Having consistent sizes for freestanding and roof signs was reasonable and preferable to matching industry standards.

- Staff was directed to reach out to the sign industry and do further research about appropriate sign sizes.
- People collect rental income from the signs in the North Milwaukie Industrial Area and larger signs were needed to be visible from the highway and frontage road. Reducing the size of the signs would likely eliminate additional large, offsite signage in that area.

Mr. Egner said staff would report back to the Commission about the discussion with Council, and added that sign industry representatives and property owners would likely provide comments at the hearing.

7.0 Planning Department Other Business/Updates

8.0 Planning Commission Discussion Items

Chair Hemer reminded about the Visioning Town Hall on February 15, 2017 at 6:00 pm at Waldorf School.

9.0 Forecast for Future Meetings:

- | | |
|-------------------|---|
| February 28, 2017 | 1. Public Hearing: ZA-2016-003 Sign Code Amendments tentative |
| | 2. Worksession: North Milwaukie Industrial Area (NMIA) |
| March 14, 2017 | 1. Worksession: Variance Training |

The Commission and staff discussed scheduling conflicts with the March 14th meeting and potential changes to the upcoming meeting schedule.

Meeting adjourned at approximately 10:09 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

Greg Hemer, Chair



To: Planning Commission

From: Denny Egner, Planning Director

Date: April 4, 2017 for April 11, 2017, Worksession

Subject: Land Use Approval Criteria - Worksession

ACTION REQUESTED

No formal action is requested. This worksession is intended to provide Commissioners with a common understanding of the Milwaukie Municipal Code (MMC) criteria for making land use decisions.

BACKGROUND

The Commission is charged with holding public hearings and making decisions and recommendations on a variety of land use applications. These decisions are generally made through one of the following types of review procedures as set forth in MMC Chapter 19.1000:

- Type III – Under the Type III process, the Planning Commission has the task of making a quasi-judicial decision after holding a public hearing. Notice is sent to surrounding property owners and neighborhood associations. These are final decisions that are appealable to the City Council. The Type III quasi-judicial process includes decisions for variances, conditional use applications, community service use applications, subdivisions, natural resource review, historic review, certain downtown development review applications, and zone changes when they apply to a small set of properties (i.e. 5 properties and less than two acres).
- Type IV – The Type IV process results in a quasi-judicial decision applying to a limited set of properties and generally involving a Comp Plan map amendment or a change to a Comprehensive Plan inventory. Under this process, the Planning Commission holds a quasi-judicial public hearing to make a recommendation to the City Council. The City Council is charged with making the final decision on a Type IV application. Notice is sent to surrounding properties, neighborhood district associations, Metro, and the Oregon Department of Land Conservation and Development.
- Type V – For the Type V process, the Planning Commission holds a legislative public hearing to make a recommendation to the City Council on a Comprehensive Plan or zoning text amendment or map amendment that applies broadly to numerous properties. As with Type IV decisions, the City Council is charged with making the final decision. Notice is sent to property owners if it is determined that the amendment may have a potential negative

impact on property value. Notice is also sent to surrounding properties, neighborhood district associations, Metro, and the Oregon Department of Land Conservation and Development.

Most criteria under which the decisions and recommendations are made are set forth in MMC Chapter 19.900 except that some types of decisions (e.g. Willamette Greenway review, historic review, and natural resources review) have the criteria embedded in the applicable code section. Listed below are the approval criteria for decisions outlined in MMC 19.900 Land Use Applications, MMC 19.401 Willamette Greenway, and MMC 19.403.7 Historic Preservation (Demolition). Criteria for natural resource review and historic preservation alteration and development are not included here and may be addressed at a follow-up worksession.

A. Comprehensive Plan Text and Map Amendments
MMC 19.902.3 and 19.902.4 - Approval Criteria

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met (*MMC 19.902.4 states that for quasi-judicial map changes, the map amendment shall be approved if the criteria are met*):

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.
2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.
3. The public need is best satisfied by this particular proposed amendment.
4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

B. Zoning Text Amendments
MMC 19.902.5 - Approval Criteria for text amendments

Changes to the Milwaukie Municipal Code may be approved if the following criteria are met:

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.
5. The proposed amendment is consistent with relevant federal regulations.

C. Zoning Map Amendments**MMC 19.902.6 - Approval Criteria for map amendments**

Changes to the Zoning Map shall be evaluated against the following criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
 - a. Site location and character of the area.
 - b. Predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.
2. The need is demonstrated for uses allowed by the proposed amendment.
3. The availability is shown of suitable alternative areas with the same or similar zoning designation.
4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

D. Community Service Uses (e.g., schools, churches, public facilities, etc.)**MMC 19.904.4 - Approval Criteria**

An application for a community service use may be allowed if the following criteria met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;
2. Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met;
3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses;
4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and
5. The location is appropriate for the type of use proposed.

E. Conditional Uses (e.g., senior housing in single family zones, offices in medium and high density zones, commercial parking facility in the downtown; mini-storage in the BI zone)

MMC 19.905.4 - Approval Criteria

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:

1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.
3. All identified impacts will be mitigated to the extent practicable.
4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.
5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.
6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.
7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

F. Downtown Design Review (Type III)

MMC 19.907.5 - Approval Criteria

C. Type III Downtown Design Review

An application for Type III Design Review shall be approved when all of the following criteria have been met:

1. Compliance with Title 19.
2. Compliance with applicable design standards in Section 19.508.
3. Substantial consistency with the purpose statement of the applicable design standard and the applicable Downtown Design Guideline(s) being utilized in place of the applicable design standard(s).

G. Variances

MMC 19.911.4 - Approval Criteria

B. Type III Downtown Design Review

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary Relief Criteria

- a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.
 - b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (1) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (2) The proposed variance has desirable public benefits.
 - (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.
 - c. Impacts from the proposed variance will be mitigated to the extent practicable.
2. Economic Hardship Criteria
- a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.
 - b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
 - c. Impacts from the proposed variance will be mitigated to the extent practicable.

H. Use Exceptions - allows uses that are not allowed outright or conditionally
MMC 19.911.5 – Use Exceptions

C. Approval Criteria

Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application. The Planning Commission may authorize exceptions to uses established by Title 19 upon a determination that all of the following criteria have been met:

- 1. Exceptional circumstances exist on or near the property over which the property owner has no control.
- 2. None of the allowed or conditionally allowed uses for which the property is zoned are practicable.
- 3. The proposed use will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
- 4. Impacts from the proposed use will be mitigated to the extent practicable.

I. Willamette Greenway Conditional Use
MMC 19.401.5 D. Procedure and 19.401.6 Criteria

19.401.5 D. A greenway conditional use is required for all intensification or change of use, or alteration of the vegetation buffer area, or development, as defined in this section. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change in use or intensification. Approval shall be granted only if the criteria in Subsection 19.401.6 are met.

19.401.6 Criteria

The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain or increase views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Advice and recommendations of the Design and Landmark Committee, as appropriate;
- J. Conformance to applicable Comprehensive Plan policies;
- K. The request is consistent with applicable plans and programs of the Division of State Lands;
- L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

J. Historic Preservation – Demolition Review
MMC 19.403.7.D Review Criteria and Findings

In determining the appropriateness of the demolition, as proposed in an application for a building permit, the Commission shall consider the following:

- 1. All plans, drawings and photographs as may be submitted by the applicant;
- 2. Information presented at a public hearing held concerning the proposed work;
- 3. The City Comprehensive Plan, including the economic, social, environmental and energy consequences;
- 4. The purpose as set forth in Subsection 19.403.1;
- 5. The criteria used, and findings and decisions made, in the original designation of the landmark or historic district in which the property under consideration is located;
- 6. The historical and architectural style, design, arrangement, materials, or its appurtenant fixtures; the relationship of such features to similar features of other buildings within the district; and the position of the building or structure in relation to public rights-of-way and to other buildings and structures in the area;
- 7. The effects of the proposed work upon the protection, enhancement, perpetuation, and use of the district which cause it to possess a special character or special historic or aesthetic interest or value;
- 8. Whether denial of the permit would involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this title.

Note: Sections E and F list the decision options for the Commission. Section E states that the Commission may approve the demolition after considering the above criteria. Section F states that Commission may reject the demolition permit if it determines that in the interest of preserving historic values the property should not be demolished in which case the permit may be suspended for a period of 30 days provided there is a program or project underway to preserve the landmark. The suspension can be extended in 30-day increments up to a total of no more than 120 days from the hearing.

DISCUSSION

At the Commission worksession, staff intends to review each of the different land use decisions and criteria that apply. Key discussion points for the Commission include:

1. How much discretion is provided under the criteria? Do the criteria state whether the Commission may approve the application or shall approve the application when the criteria are satisfied?
2. In most instances, all the criteria apply and must be satisfied. In the case of variances, there are two alternative sets of criteria. For Willamette Greenway review and Historic Preservation demolition permits, criteria only need to be considered when reaching the decision.
3. In almost all recent cases, applicants have chosen to address Discretionary Relief Criteria rather than Economic Hardship Criteria when submitting applications for variances. The criteria require the Commission to find that the variance is reasonable and appropriate provided that the proposal: 1) avoids or minimizes impacts to surrounding properties, 2) has desirable public benefits, or 3) responds to the existing built or natural environment in a creative or sensitive manner. What are the types of impacts to surrounding properties that might be reasonable or appropriate?
4. Do Commissioners have other concerns or questions about how to address any of the criteria listed above?

RECOMMENDATION

There is no formal staff recommendation.

ATTACHMENTS

None.