



## PLANNING COMMISSION MINUTES

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

January 24, 2023

**Present:** Jacob Sherman, Chair  
Joshua Freeman, Vice Chair  
Aaron Carpenter  
Amy Erdt  
Greg Hemer

**Staff:** Justin Gericke, City Attorney  
Brett Kelper, Senior Planner  
Vera Kolias, Senior Planner  
Laura Weigel, Planning Manager

**Absent:** Joseph Edge  
Lauren Loosveldt

(00:05:24)

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

**Chair Sherman** 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>.*

(00:07:05)

### 2.0 Planning Commission Minutes

No information was presented for this portion of the meeting.

(00:07:08)

### 3.0 Information Items

**Planning Manager Laura Weigel** informed the group that there are technical difficulties with the livestream.

(00:08:21)

### 4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:09:10)

### 5.0 Community Involvement Advisory Committee (CIAC)

**Commissioner Hemer** thanked all the NDA leaders and attendees for participating and being involved in the community.

(00:10:43)

## **6.0 Hearing Items**

### **6.1 CU-2002-006, Conditional Use for a Vacation Rental in the R-MD Zone, Crystalyn Keating, (applicant's representative), 11611 SE 33<sup>rd</sup> Ave (Continued)**

**Senior Planner Vera Koliass** announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC19.301, MMC19.905 and MMC19.1006. **Chair Sherman** and **Commissioner Erdt** both noted that they were absent last hearing but that they have watched the video of the previous planning commission meeting and have reviewed all the materials. **Koliass** presented the staff report. **Koliass** gave an overview of the existing site. **Koliass** noted the property in question is zoned R-MD and is a single-unit dwelling built in 1967. **Koliass** defined a vacation rental and noted that vacation rentals are allowed in all residential zones as Conditional Use. **Koliass** 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, (3) proposed use will not have unmitigated nuisance impacts greater than those usually generated by uses allowed outright. At this time **Koliass** summarized specifics to the proposal: no physical alterations are proposed, the rental will allow a maximum of 8 guests, management staff is nearby, decibel meters are present in the home to monitor noise during quiet hours, there are four off-street parking spaces provided and a rental agreement includes restrictions to mitigate potential nuisances in the neighborhood. (4) proposed use is consistent with applicable comprehensive plan policies. **Koliass** noted the impact of vacation rentals on housing within the city and that the city is monitoring and tracking how they are affecting the housing stock. **Koliass** noted the code does allow vacation rentals through this process; to date the city has approved 5 vacation rentals. **Koliass** specified the recommended conditions of approval 19.905.9.H.

- Prior to initial occupancy, the building official must verify that building code and fire code standards are satisfied.
- With annual filing of MMC Title 5 Business Tax, the operator must send a notice to neighbors within 300 ft.
- Record the Conditional Use with the county.

**Koliass** noted that a Conditional Use is not changed by ownership per code 19.905.6.D.

**Commissioner Hemer** asked if a new owner procures the property and applies for a business tax would they be required to send out notification to inform the public? **Koliass** responded yes. **Koliass** noted that staff received additional public comments since the last meeting. Of the comments submitted, most were generally about the policy allowing vacation rentals in the city. Staff noted that crime and things of that nature are policy items, not specific to the approval criteria.

Public Comments:

- Paul Hawkins, Lake Road NDA: No objections to the proposal.
- Patty & Julie Wisner, Wister St: Oppose the proposal
- Joan Egloff-Olson, 33<sup>rd</sup> Ave: Oppose the proposal

- Paul Olson, 33<sup>rd</sup> Ave: Oppose the proposal
- Stephen Thorpe, 33<sup>rd</sup> Ave: Oppose the proposal

**Kolias** stated that staff still recommends approval of the requested conditional use and to adopt the recommended Findings and Conditions of Approval. **Kolias** stated again that the City has five vacation rentals and that this would be the sixth. No complaints have been received about the existing vacation rentals in the city. The same code that has been applied to the other five vacation rentals is also applied here, there are no notable differences between those applications and this one that would warrant a different decision for this vacation rental. The applicant has submitted sufficient information showing compliance with the approval criteria. **Kolias** went over the decision options: (1) Approve the application, (2) approve the application with additional modifications, (3) continue the hearing, or (4) deny the application. The 120-day deadline for this application is April 4, 2023.

**Weigel** added that the testimonies had been forwarded to the planning commission prior to this meeting as well as copies of the letters. **Chair Sherman** added that in addition to the testimony on the slide, they also received two written letters from the public. **Sherman** noted that the conditional use being tied to the property for the properties existence is a policy discussion to have with City Council. **Kolias** said yes and that it would require a code amendment process. **Sherman** noted that there are several sentiments in the testimony in favor regarding the property no longer being vacant or overgrown, **Sherman** asked if there has ever been any code enforcement complaints. Staff was not aware of any. **City Attorney Justin Gericke** explained why the conditional use permit continues to live with a property once approved and stated that the use may change depending on who owns the property. **Commissioner Carpenter** asked what would be grounds for revoking the conditional use permit. **Kolias** explained that a change in use, loss of use status (over one year), and not complying with the conditions of approval would pull code enforcement into the process of revoking the conditional use. In addition, **Gericke** explained the code enforcement process. **Sherman** followed up on the conditions of approval and noted that the business tax, notifications, property manager, and police non-emergency line will be involved in oversight. **Sherman** questioned if there will also be code enforcement. **Kolias** clarified that code enforcement is housed within the police department. **Commissioner Hemer** questioned if commercial lodging needs to be ADA compliant. **Kolias** stated that would be part of the building code review. **Carpenter** questioned the comprehensive plan policy 7.2.9, asking how we are tracking that—would we be approaching an inflated housing market specifically as it pertains to vacation rental homes? **Kolias** stated that tracking processes are in place, but there is nothing concrete yet. **Kolias** listed the NDAs where current vacation rentals exist.

Testimony in support: None. Testimony in opposition: **David Derews**, Milwaukie resident, stated concern regarding commercial use within the residential neighborhood. **Matthew Bullard**, Milwaukie resident, also stated concern regarding commercial use within the residential neighborhood. **Vice Chair Joshua Freeman** stated that he has reviewed both written testimonies in opposition and that he has reviewed them in their entirety. **Hemer** questioned what is currently dividing the adjoining properties. **Matthew Bullard** described the existing fence. **Chair Sherman** closed the public testimony portion

of the hearing. **Hemer & Carpenter** requested conditional fence height requirements. **Freeman** opposed the requested conditional fence height requirement. **Freeman** made a motion to approve CU-2002-006.

CU-2002-006, Conditional Use for a Vacation Rental in the R-MD Zone, was approved with a 4-1 vote.

(01:17:39)

## **6.2. ZA-2022-003 – Downtown Design Review Code Amendments (Continued)**

**Senior Planner Brett Kolver** announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC19.902 and MMC19.1008. **Kolver** presented the staff report. The proposal was to revise sections of code related to downtown design review (MMC 19.304, 19.508, 19.907), align design guidelines with design standards and eliminate gaps, establish two review paths for downtown projects (Type I & III), and repeal the separate downtown design guidelines document. The goal was to make the standards architecturally sound so that all new buildings are guaranteed to look good. **Kolver** highlighted the challenges with public art requirements: 1) No jurisdictions in Oregon have clear and objective standards for public art; 2) Fee in lieu of (FILO), construction excise tax (CET), One Percent for Art are not options; 3) "Takings" issues; 4) No authority over content or quality in a clear and objective review process. **Kolver** presented the decision options to the commission and noted that staff recommended approval of the proposed amendments as presented (with recommended findings in support of approval).

**Chair Sherman** thanked staff for all their work on this topic. **Sherman's** initial question was how "takings" relates to public art. **City Attorney Justin Gericke** explained government regulation and law regarding "takings" as it pertains to public purpose. **Elizabeth Decker**, code consultant with JET planning, weighed in on the distinction of the "clear and objective" standards as they pertain to residential and mixed use zoning in downtown Milwaukie. **Commissioner Hemer** asked Design and Landmarks Committee (**DLC**) **Chair Cynthia Schuster** if she worked with the Axeltree developers on how they included art and if it was discussed with the DLC. **Schuster** responded that yes, it was discussed with the DLC as well as recommended to the Planning Commission that they fill in the blank walls with public art. **Commissioner Hemer** opened the discussion with a thank you to the planning staff for their hard work on this. The group discussed a path forward, including the idea of working with members of the DLC and the Arts Committee to draft a letter to City Council in support of promoting public art downtown. **Hemer** made a motion that application ZA-2022-003 be forwarded to City Council for approval, with a recommendation that Council consider ways to incorporate a higher standard of artistic value in design.

The motion to recommend approval of ZA-2022-003 by City Council was approved with a 5-0 vote

(01:55:31)

### **7.0 Work Session Items**

No information was presented for this portion of the meeting.

(01:55:41)

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

**Commissioner Hemer** discussed CIP projects and burying utility lines. **Hemer** thanked KellyBrooks for her contributions to the city. **Hemer** also advertised for the Ledding Library.

**Chair Sherman** inquired about updates regarding the transportation system plan process. **Weigel** provided an update on the TSP timeline and the advisory committee appointments.

(02:02:16)

### **9.0 Forecast for Future Meetings**

February 14, 2023, Hearing Item(s):

- 1.) Code Amendments: Climate Friendly Equitable Communities
- 2.) Code Amendments: Code Fix "Housekeeping"
- 3.) Variance Code Updates

Meeting adjourned at approximately 8:30 p.m.

Respectfully submitted,

Petra Johnson, Administrative Specialist II