



# CITY OF MILWAUKIE

## PLANNING COMMISSION MINUTES

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

November 9, 2021

**Present:** Lauren Loosveldt, Chair  
Joseph Edge, Vice Chair  
Amy Erdt  
Greg Hemer  
Adam Khosroabadi  
Robert Massey  
Jacob Sherman

**Staff:** Justin Gericke, City Attorney  
Vera Koliass, Senior Planner  
Peter Pasarelli, Public Works  
Director  
Natalie Rogers, Climate and  
Natural Resources Manager  
Laura Weigel, Planning Manager

**Absent:**

(00:14:29)

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

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

**Note:** *The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

(00:15:00)

### 2.0 Meeting Minutes

The September 14, 2021 minutes were approved with a 7-0 vote.

(00:15:50)

### 3.0 Information Items

No information was presented for this portion of the meeting.

(00:16:01)

### 4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:17:00)

### 5.0 Community Involvement Advisory Committee (CIAC)

**Commissioner Sherman** noted the resources provided by the International

Association of Public Participation (IAPP) could be useful for staff to consult throughout engagement efforts. **Laura Weigel, Planning Manager**, responded staff does frequently consult IAPP resources and will continue to.

**Commissioner Erdt** noted use of the Milwaukie Chit Chat Facebook page to poll residents about their awareness of which NDA represents them.

(00:22:25)

## 6.0 Hearing Items

(00:22:25)

### 6.1 VR-2021-015, 3521 SE Filbert St

**Vera Kolias, Senior Planner**, shared the staff report, the applicant's proposal is to convert an existing 850 square foot accessory structure to an accessory dwelling unit (ADU). The proposed variance is necessary to permit the conversion of an accessory structure with a building footprint larger than 800 square feet. Staff found the application to have no negative impacts, it meets all minimum setback requirements, and the request is both reasonable and appropriate. Staff recommended approval of the variance with the recommended findings and conditions of approval included in the staff report.

**Commissioner Hemer** asked for clarification on the location of the recommended sidewalk improvements.

VR-2021-015, 3521 SE Filbert St, was approved by a 7-0 vote.

(00:38:33)

### 6.2 ZA-2021-002, Middle Housing and Tree Code, Hearing #3

**Natalie Rogers, Climate and Natural Resources Manager, and Kolias** shared the code review schedule, summary of recommended revisions from the October 12 and 26 Planning Commission meetings, and staff report. The recommended revisions from previous meetings include:

- Allow flag lots and back lots in subdivisions
- Reduce minimum off-street parking for middle housing to 0 spaces per dwelling unit, except cottage clusters.
  - Reduce minimum off-street parking for cottage clusters in the R-MD zone to 0.5 spaces per cottage
- Reduce the minimum lot size for all middle housing types, except cottage clusters and townhouses, to 3,000 square feet
- Reduce minimum setbacks for income-restricted housing

**Commissioner Massey** asked if the Comprehensive Plan Implementation Committee (CPIC) was involved in reducing the proposed required minimum parking spaces from 1 to 0. **Kolias** responded that CPIC was not involved in lowering the required minimum parking spaces. **Chair Loosveldt** noted that CPIC

did not formally vote to recommend 1 required off-street parking space.

**Commissioner Sherman** asked why the City contracted parking consultant recommended 1 parking space per unit. **Kolias** responded that the consultant's recommendation was to conform to state house bill 2001 (HB 2001).

**Rogers** shared the background and goal of the draft private tree code. A 40% canopy goal, informed by the American Forests' recommendation, was created to balance urbanization and natural systems. Rogers noted a significant portion of the City's current canopy is located on private property.

**Commissioner Khosroabadi** asked what change in tree canopy is expected since the 2014 lidar data used in aerial image shown the staff report. **Rogers** responded that the change in canopy is difficult to measure accurately without lidar technology. **Commissioner Hemer** asked how many trees the City needs to reach the 40% tree canopy goal. **Rogers** responded that the number of trees needed to reach the City goal depends on what species are planted. **Passarelli** stressed the importance of diversifying tree species rather than solely planting trees with the large mature canopies.

**Commissioner Sherman** asked what differences experts reported between forested and non-forested lands during the heat dome event in summer 2021. **Rogers** responded that Portland State's Dr. Vivek Shandas wrote about the disproportionate effect of urban heat islands on non-forested urban areas in the Portland metro during the heat dome event. Dr. Shandas' noted that vegetated spaces provided critical shading and cooling benefits.

**Commissioner Erdt** asked what mechanisms will be used to support low-income residents burdened by tree maintenance costs. **Rogers** responded noting the low-income assistance fund which will provide financial aid for tree maintenance and care to low-income residents.

**Commissioner Erdt** raised concerns around residents looking to add solar panels to their homes. **Rogers** responded that residents could choose tree species which are shorter to not preclude the use of solar panels. Additionally, staff is working with utility companies to offer a sustainable energy source which does not require use of solar panels. **Peter Passarelli, Public Works Director**, responded to Commissioner Erdt stressing the importance of the right tree in the right location to mitigate negative implications whether solar panel shading, utility line interference, ice damage, or otherwise.

**Commissioner Erdt** expressed concern for wildfires when expanding tree canopy coverage within the city. **Rogers** responded that proactive maintenance would prevent any unnecessary increase in wildfire risk when expanding the tree canopy.

**Commissioner Sherman** asked whether programmatic permits are targeted at

utility companies. **Rogers** responded that programmatic permits are targeted at utility companies to ensure they are compliant with City guidelines and priorities.

**Rogers** noted the economic, environmental, and health differences between how an owner or tenant may view trees and tree canopy versus a developer. **Rogers** noted the process of developing the draft tree code and involvement of the Tree Board, arborist consultants, the Comprehensive Plan Implementation Committee (CPIC), and staff. The draft tree code is only applicable in residential zones. The residential non-development standards apply to tree removals not related to development. A permit is required for tree removal if the tree is larger than 6 inches diameter at breast height (DBH). There are two permit types, Type I permits require only a permit application, are streamlined, and approval standards for these removals include trees that are invasive species, dead, dying, diseased, or pose unmitigable infrastructure impacts, public safety risks, or a fire hazard. Additionally, needed removal for public transportation right of way (ROW) projects, utility infrastructure or building permits, and one healthy tree less than 18 inches DBH per year is included in Type I permit approval standards. Type II permits apply to multiple tree removals or removals which do not meet Type I approval standards. For Type II removals larger than 18 inches DBH public notice is required. For all removals there are replanting requirements or a fee in lieu of replanting. The draft code does not regulate private tree maintenance, it does not require property owners to plant new trees unless fulfilling removal permit requirements, or a permit to prune trees.

**Commissioner Sherman** asked what fees are associated with Type I removal permits and whether a replanting is required for the one healthy tree removal allowed per year. **Rogers** responded that the only fee associated with Type I removals is the application fee and replanting is necessary for the one allowed healthy tree removal per year.

**Vice Chair Edge** asked why one healthy tree removal was allowed under the Type I permit process. **Rogers** responded it was added to provide flexibility for homeowners. **Passarelli** added that every municipality in the region with a private tree code allows at least one healthy tree removal per calendar year.

**Commissioner Hemer** asked what the International Society of Arboriculture is and are the standards laid out by the organization laid out in our code. **Rogers** responded that the International Society of Arboriculture (ISA) is the certifying authority for arborists, they release best management practices which inform our proposed code.

**Commissioner Erdt** noted support for requiring new tree plantings on new developments but expressed concern in creating a non-development private tree code.

**Commissioner Sherman** asked whether consulting with an ISA certified arborist is necessary when removing the one healthy tree allowed per year. **Rogers**

responded that it is not necessary when removing the one healthy tree permitted per year, consulting an ISA certified arborist is necessary only when removing a tree using an approval criterion which requires a certified arborist's assessment.

**Rogers** presented the proposed private tree code for residential development which applies to land divisions and construction of new residential dwelling units. Key standards established in the residential development tree code include:

- Preservation standards to protect existing trees on site.
- Canopy standards to ensure intentional preservation and planting on development sites.
- Protection standards to ensure preserved trees are protected from development impacts.
- Soil volume standards require appropriate soil volume for new plantings to improve the tree's chance of long-term success.

Preservation standards require payment of mitigation fees if new canopy coverage after development is less than 30% at maturity. The mitigation fees are tiered and increase as total lot canopy coverage after development decreases.

Canopy standards require 40% tree canopy coverage on completed development sites through existing tree canopy and future mature canopy of new plantings. Existing trees receive 100% canopy credit while new plantings receive 75% canopy credit for their predicted mature canopy. New and existing ROW trees receive 50% canopy credit.

Protection standards prevent construction practices which fail to consider trees. The protection standards must be followed to obtain preservation and canopy credits. Protection standards include the development of a tree protection plan, establishment of root protection zones, management of encroachment into root protection zones, and protection fencing requirements. If the prescriptive path is not practicable, the applicant may propose alternative measures and follow a performance path under guidance of an ISA certified arborist.

Soil volume standards require a minimum of 1,000 cubic feet of soil volume per tree planted. A soil volume plan created by an arborist is required and soil volume methods must be consistent with ISA best management practices. The project arborist must verify the soil volume plan was successfully implemented prior to tree planting.

Mitigation standards are established when preservation and canopy standards cannot be met. Mitigation fees are assessed based on the percent of canopy removed and the total canopy percentage needed to meet 40% lot coverage. Applicants may apply for a Type III variance in lieu of a mitigation fee for alternative construction designs and techniques that provide additional sustainability benefits to the site.

**Rogers** shared an overview of potential fees for the proposed private tree code. Non-development fees may include the permit application fee, removal fee, and fee in lieu of planting. The development plan review fees may include minor and major permit review and tree site inspections. The development mitigation fees may include fees in lieu of preservation and canopy standards, threatened or rare tree removal, and enforcement and restoration fees. **Rogers** added the proposed private tree code includes low-income assistance which may exempt property owners from permit, removal, or replanting fees when the owner demonstrates household income at or below 80% area median income for the Portland-Vancouver-Hillsboro metropolitan statistical area.

**Commissioner Hemer** asked if the 33% vegetation code requirement conflicted with the proposed 40% canopy coverage requirement. **Rogers** responded the two do not conflict as vegetation is a ground level landscaping requirement and the canopy coverage is a separate grade.

**Commissioner Hemer** asked whether canopy coverage from trees located on adjacent properties count towards the proposed canopy requirements and whether trees planted on the property line count towards the proposed canopy coverage requirements. **Rogers** responded that only on-site trees count towards the proposed canopy requirements. If a tree's trunk is partially or wholly within the property, the tree is considered an on-site tree and the tree's canopy fully counts towards the proposed canopy coverage requirements. **Commissioner Khosroabadi** noted property owners' responsibility for trimming tree limbs which overhang their property and asked why the overhanging canopy coverage would not count towards the canopy coverage requirement. **Rogers** responded trees whose trunks are wholly on adjacent properties can be removed without the property owner's permission and therefore the coverage provided by those trees are outside of the property owner's control and cannot count towards canopy coverage requirements. **Commissioner Sherman** asked if developers could plant trees along the property line of two adjacent lots being developed simultaneously and have the trees' canopy count for both lots. **Rogers** responded tree canopies from trees partially on a property are only considered when assessing existing tree canopy for preservation standards and cannot be used for new plantings. New plantings must be wholly on-site to count towards proposed canopy coverage requirements.

**Commissioner Hemer** asked whether the soil volume standards apply to every tree. **Passarelli** responded soil volume standards only apply to residential development.

**Commissioner Massey** asked whether the proposed code would include language which establishes standards to ensure new plantings survive. **Rogers** responded bond issuance could be included as a mechanism to ensure new plantings survive although it is not currently in the proposed code. **Chair Loosveldt** recommended that staff include the ability to issue bonds in the proposed code as a mechanism to ensure new plantings survive. **Commissioner**

**Sherman** added that the meeting packet notes outline staff's authority to require a bond issuance for trees to ensure survival.

**Commissioner Sherman** asked whether the required tree root protection fencing signs will include a staff contact for reporting violations. **Rogers** responded the sign language is still in development and staff will consider adding the proposed language.

**Commissioner Hemer** asked how the mitigation fees are used by the City. **Rogers** responded mitigation fees are paid into the City's tree fund which is used for a variety of urban forest preservation, promotion, and maintenance purposes.

**Commissioner Sherman** asked whether the language in the draft code, stating that an applicant must show how the alternative plan provides greater environmental benefits serves as the approval criteria for the preservation and canopy variance. **Justin Gericke, City Attorney**, responded that the language provided in the draft code does serve as the approval criteria for the variance. **Vice Chair Edge** asked whether the proposed approval criteria prevent an applicant from using the hardship criteria to receive variance approval. **Kolias** responded the proposed approval criteria would be added to the existing approval criteria for a Type III variance. **Vice Chair Edge** recommended adding clarity to the code language, so the commission is clear on the variance approval criteria. **Kolias** responded staff will review the proposed code language to reconcile any ambiguities.

**Kolias** noted written testimony received after the meeting packet posted.

**Stephen Lashbrook, a Milwaukie resident**, expressed support for the proposed private tree code and recommended adding clarifying language for how the city manager would review appealed decisions from the City's Urban Forester.

**Neil Schulman**, representing the **North Clackamas Watershed Council**, expressed support for the City's 40% canopy goal and the parking requirements for cottage clusters. Schulman encouraged building ongoing relationships with developers to protect existing trees and raising mitigation fees. Schulman requested the variance process be made more rigorous and that the one allowed healthy tree removal per year be more rigorous to not include trees with 18-inch DBH. **Chair Loosveldt** asked what Schulman would recommend as an alternative to the proposed 18-inch DBH allowed for one healthy tree removal per year. **Schulman** recommended using a 12-inch maximum DBH for the one allowed healthy tree removal per year.

**Micah Meskel, a Milwaukie resident**, noted support for no required off-street parking for middle housing, recommended lowering the allowed maximum DBH for the one allowed healthy tree removal per year, and recommended raising the proposed mitigation fees. **Passarelli** responded that only the types of fees are proposed, no fee amounts have been decided. **Commissioner Sherman** asked

whether the mitigation fee amounts will be decided through staff and budget committee meetings. **Passarelli** responded that the mitigation fees will be established through meetings with staff and the budget committee.

**Renee Moog, a Milwaukie resident**, recommended requiring one off-street parking space per unit. Moog asked whether the middle housing growth predictions from the October 26 Planning Commission predict the city will receive 24 new middle housing units or 24 new lots with middle housing. Additionally, Moog asked whether predictions were 24 units/lots each year or over the 20-year timeframe. Moog asked whether the impact of street improvements on the capacity of on-street parking was considered in the proposed code amendments. **Vice Chair Edge** responded that the predictions were based on the buildable lands inventory number provided by staff, which identified 765 new buildable lots. The market absorption rate of middle housing in low density areas was identified as 3% by the Oregon Department of Land Conservation and Development (DLCDD). The absorption rate resulted from the greenfield modeling which is not applicable to the City but was used in the October 26 hearing to demonstrate that even with a higher absorption rate than applicable to the City, there is still ample capacity for on-street parking. Edge noted with 765 new buildable lots and a 3% absorption rate for middle housing, the City can expect an additional 24 new middle housing units in the next 20 years. **Kolias** responded that street improvements can add, take away, or not effect on-street parking depending on a variety of factors.

**Ted Labbe**, representing **The Urban Greenspace Institute**, expressed support for the proposed code amendments. Labbe recommended removing the language allowing the removal of one healthy tree per year and added support for further restricting the ability if removing it is not possible. Labbe recommended that lower preservation standards for affordable housing be removed from the proposed code amendments.

**Anthony Allen, a Milwaukie resident**, expressed concern for mailbox access with increased on-street parking.

**Chris Ortolano, a Milwaukie resident**, asked whether the cumulative effects of the proposed middle housing amendments and middle housing projects on parking availability has been considered.

**Ronelle Coburn, a Milwaukie resident**, noted a petition with 84 signatories in opposition to the proposed code amendments. Coburn expressed concern with the proposed parking code amendments.

**Elvis Clark, a Milwaukie resident**, expressed concern for the restrictions on trees larger than 6-inch DBH in the proposed tree code. Additionally, Clark expressed opposition for the proposed parking amendments.

**Steve Klingman, a Milwaukie resident**, asked how ample street parking can be



known and expressed opposition to the proposed tree code.

**Michael Anderson, a Portland resident**, noted support for reducing the minimum required parking and added that developers will build parking when necessary.

**Commissioner Sherman** asked for clarification about a chart depicting housing development feasibility which Anderson submitted via written testimony.

**Anderson** responded that the chart shows that in most cases the current building would provide larger profits than redeveloping a lot with middle housing although when prices are high there is a greater demand for housing units such that middle housing may be more profitable. Anderson noted off-street parking requirements for middle housing make development less likely for smaller lots.

**Commissioner Sherman** asked whether the elimination of parking requirements in Tigard had an effect on the on-street parking availability. **Anderson** responded that few middle housing units have been built in Tigard since the elimination of parking requirements and therefore it has had almost no effect on their on-street parking availability. **Vice Chair Edge** asked about the 3% projected market absorption rate of middle housing and whether the City can rely on the figure as an accurate rate. **Anderson** noted 3% was reached during DLCD rulemaking as a plausible upper boundary for market absorption and in the state legislature the rate was used as a mechanism to ensure the urban growth boundary could be expanded if there was a higher market absorption than expected.

**Kolias** reviewed the recommended revisions from the October 12 and 26 Planning Commission meetings. Revisions included:

- Allowing flag lots and back lots in subdivisions
- Reducing minimum off-street parking for middle housing to 0 spaces per dwelling unit for middle housing, except cottage clusters
  - Reduce minimum off-street parking for cottage clusters in the R-MD zone to 0.5 spaces per cottage
- Reduce the minimum lot size for all middle housing types except cottage clusters and townhouses to 3,000 square feet
- Reduce minimum setbacks for income-restricted housing

**Vice Chair Edge** asked to include a recommendation to encourage incentivizing income-restricted affordable housing production in the Planning Commission recommendation to City Council.

**Commissioner Hemer** and **Chair Loosveldt** recommended removing the proposed setback reductions for income-restricted housing noting concerns for stigmatization of tenants in buildings which vary in form from the surrounding built environment. **Vice Chair Edge** noted support for the proposed setback reductions. **Commissioner Khosroabadi** noted support for the proposed setback reductions and noted that the proposed reductions may go unnoticed. **Vice Chair Edge** suggested removing the proposed setback reductions and creating a Type II variance process to allow reduced setbacks for affordable middle housing developments. **Chair Loosveldt**, **Commissioner Sherman**, and **Commissioner Khosroabadi** expressed support for creating a Type II variance

process for setback reductions for affordable middle housing developments.

**Commissioner Hemer** noted public testimony from Milwaukie residents was against the proposed minimum off -street parking reductions for middle housing and recommended revisiting reducing the minimum off-street parking in ten years. **Vice Chair Edge** reiterated the predicted 3% market absorption rate of middle housing and noted the low likelihood of any effect of the proposed amendments on the City's on-street parking availability. **Commissioner Sherman** noted a difference between two tables in the 2021 Residential Parking Study, the table referenced at the October 26 Planning Commission Hearing does not account for the additional parking spaces provided by garage space, the table located in the executive summary of the 2021 Residential Parking Study found that when considering each garage's capacity there is an additional parking space for each property, for a total of 5.4 spaces per property.

Chair Loosveldt polled the commission on the proposed code amendments from the October 12 and 26 Planning Commission meetings with the revisions stated. Commissioners Loosveldt, Edge, Khosroabadi, Sherman, and Erdt were in support and Commissioners Massey and Hemer were in opposition.

**Commissioner Sherman** noted a need to work with the city manager to determine if the appeal process as recommended in the proposed tree code is feasible. Sherman also revisited the variance process for tree removal and requested the economic hardship approval criterion be removed. **Commissioner Hemer** and **Commissioner Khosroabadi** asked why economic hardship should be removed as an approval criterion. **Commissioner Sherman** stated the proposed approval criteria from staff were based on environmental benefits rather than economic hardship but requested that approval criteria be further clarified. **Vice Chair Edge** noted support for clarifying the approval criteria and removing the economic hardship criterion.

Chair Loosveldt polled the commission to recommend a reduced maximum DBH for the one healthy tree removal permitted under the Type I review process per year from 18 inches to 12. Commissioners Loosveldt, Edge, Massey, Sherman, and Khosroabadi were in support and Commissioners Hemer and Erdt were in opposition.

**Chair Loosveldt** revisited the discussion of bond issuance to ensure new plantings grow to maturity. **Commissioner Hemer** requested that staff further explore adding language which permits the City to require bond issuance for new plantings and clarify the process before presenting to City Council.

**Commissioner Hemer** expressed support for the proposed development tree code but opposition to the proposed private non-development tree code.

**Commissioner Erdt** expressed support for the proposed development code and opposition to the proposed non-development code. Erdt asked staff to provide

the cost of the fees which property owners who wish to remove a tree larger than the permitted one 18-inch DBH healthy tree allowed per year will incur in the proposed code. **Rogers** responded that fees have not been set for type II removal. **Commissioner Hemer** stated that property owners would need to hire a certified arborist to assess the tree before removal. **Rogers** clarified that an arborist would not be necessary for type II tree removal of a healthy tree. **Commissioner Erdt** asked what other jurisdictions charge for similar removals. **Rogers** responded that the charges in other jurisdictions range in price from \$35 to \$50 for the permit charge.

**Commissioner Sherman** asked who will be setting the fees and whether community members will have opportunities to participate in the process. **Rogers** responded the fees will be set during the City Council public hearings.

ZA-2021-002, Proposed Code Amendments: Middle Housing, Residential Parking, and Tree Preservation, was recommended to City Council for approval by a 5-2 vote.

(05:04:50)

#### **7.0 Planning Department Other Business/Updates**

No information was presented for this portion of the meeting.

(05:04:50)

#### **8.0 Planning Commission Committee Updates and Discussion Items**

**Vice Chair Edge** announced an upcoming presentation on November 13 by Dr. David G. Lewis and The Oak Lodge Governance Project on the history of the Oak Lodge area before the arrival of European settlers.

(05:08:05)

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

November 23, 2021	Canceled
December 14, 2021	Canceled

Meeting adjourned at approximately 11:27 p.m.

Respectfully submitted,

Will First, Administrative Specialist II