

**MEETING OF THE
WOOD VILLAGE CITY COUNCIL
November 21, 2016
MINUTES**

PRESENT: Mayor Patricia Smith, Council President Tim Clark, Councilors, Bruce Nissen, and Mark Clark, City Manager Bill Peterson, City Attorney Jeff Condit, Public Works Director Scott Sloan, and interested parties.

ABSENT: Councilor Scott Harden, and Finance Director Peggy Minter

MAYOR SMITH CALLED THE MEETING TO ORDER AT 6:00 PM.

PUBLIC HEARING:

- Appeal of the Planning Commission Decision to Permit IHOP to Proceed with Tenant Improvements on Lot 9 of the Wood Village Town Center Without a Parking Variance.
 - H&H Northwest Companies LLC: IHOP Restaurant
 - 22583 NE Glisan St. Wood Village, OR 97060

Peterson presented the staff report and stated that this is a formal hearing on a land use matter. Peterson read a hearings disclosure statement, and asked if there were any ex parte contacts, personal bias, or conflicts of interest. There were none.

Peterson stated that this is an appeal of a Planning Commission decision of a proposal for the old El Pollo Loco building. Peterson explained that structure can have two separate occupancies, and only one side was ever occupied. Peterson stated that the design and construction of the building was in accord with the 1999 Town Center design conditions. Peterson explained that El Pollo Loco never provided the total number of parking spaces required under the code, and instead relied on the common parking area. Peterson stated that the unoccupied portion of the building also relied on the common parking area, and that was in accordance with the master plan.

Peterson stated that the applicant for the variance is H&H development, and their application was filed on August 28th. The appeal was filed on October 19th by Wood Village GARP, and a final decision has to be made by January 2nd.

Peterson presented an aerial photo of the site with adjacent property lines. Peterson explained that the aerial only identifies the subdivided properties, and not all the potential building sites. Peterson explained that H&H Development is representing IHOP, which would like to acquire the building and convert it into a sit-down restaurant. Peterson stated that the City's parking code requires 15 parking spaces per 1,000 square feet of area for restaurants. Peterson explained that the code does not allow for any offsets for storage, kitchen area, or other facilities which will make up about 30% of the building.

Peterson stated that the hearing has to be conducted with the current code, and as a de novo hearing. Peterson explained that while there is a record of the Planning Commission's decision, this is a new hearing and has to be conducted as if it was being heard for the first time. Peterson stated that the Council can modify, affirm, remand, or make an outright decision on the matter.

Peterson stated that GARP had indicated that they are not necessarily opposed to the parking issue, but they want assurances that the overall parking count for the rest of the Town Center will not be reduced. Peterson stated that

GARP's interest in the overall site will not be impacted by this decision. Peterson explained that the Planning Commission relied on the approval of the design review of 2000 and the 1999 Master Plan to make their determination that a variance was not needed. Peterson stated that Wood Village GARP disagrees with the assertion that the common area would be available for any future user, and indicated that they feel that each pad should be able to self-park.

Peterson stated that the public record includes a number of important documents. The documents include the staff report, appeal, correspondence from October 19th from GARP, the original application, and response to the criteria for the variance. Peterson explained that there is also the first notice of decision, original staff report, correspondence from Fred Meyer opposing the variance, as well as a market analysis.

Peterson stated that under the terms of the existing code the Council may grant a variance to the parking standards. Peterson explained that a variance has to show that the action would be consistent with the desired character of the area, would meet the purpose and intent of the regulations, the impacts would be mitigated, and would be consistent with the transportation plans.

Peterson stated that the 2000 design review identified 16 lots with the required parking areas for each pad, and the common parking area. In 2007, El Pollo Loco built on a site with 29 parking spaces. Under the current parking code, the structure should have required 36 spaces, and the vacant section would have needed another 15 spaces. Peterson stated that no one questioned the parking spaces at that time, and the facility relied on the common parking area for the remainder of the spaces.

Smith stated that no one had an issue with the parking spaces in 2007. Peterson stated that is correct, and a variance was not required. Peterson explained that is because the approval was based on the 2000 design review which had two separate restaurants on that pad with 28 parking spaces. What occurred was a single building with slightly smaller total square footage, but with the same number of parking spaces.

Peterson stated that Procopio, the law firm representing GARP indicated that no owner shall reduce the overall number of parking spaces on any other parcel. Petersons stated that nothing in the proposal would reduce the total number of spaces identified in the plan. Peterson stated that the plan was approved over 16 years ago, and the plan has been honored since that time. The approval period for the plan had a timeframe of two years though.

Peterson stated that Buffalo Wild Wings was built in 2008, and would have required 90 spaces. They built the number of spaces identified in the design review, and there were no issues. Peterson explained that the Rock restaurant would have required 92 spaces, and only 30 were developed on the site. Peterson stated that GARP was a proponent of that project, and it also moved forward without a variance. Peterson explained that there are a number of developments in the Town Center that would not have been allowed to occur without a variance or parking agreement, but they did occur because of the design review.

Peterson stated that another key aspect is that there are about 700 parking spaces in excess of current demand in the Town Center. Peterson explained that there are still about 150 excess parking spaces with the build-out of the Town Center. That figure is based on a projection, and does include the common parking area.

Peterson stated that the parking code cannot be changed at this time. The application has to be evaluated with the law that was in place at that time. Peterson explained that the Council can mention that restaurant parking is different in a mall setting with adjacent parking, or in areas that have transit access. Peterson stated that this site meets all those requirements. Peterson stated that parking requirements in other cities can be as low as 4-5 spaces per 1,000 square feet if there is transit access.

Peterson stated that the Planning Commission decided that a variance was not required under the master plan and design review. Peterson explained that decision was appealed, and the staff recommendation is to approve a variance for the development. Peterson stated that this is a formal hearing, and while staff has evaluated the

proposal, it is up to the Council to weigh the evidence and make a determination.

Peterson stated that the condition of approval includes meeting the desired character of the area, and the applicant indicated that this proposal is consistent with the approved master plan. Peterson explained that the opponent indicated that this proposal would unfairly burden adjacent property owners. Peterson stated that Fred Meyer made a similar statement about providing parking without compensation. Peterson stated that the staff finding is the master plan evaluated parking needs at the Town Center, and identified the ability to have shared parking which was the desired character of the development.

Peterson stated that the next condition is that granting the variance would equally or better serve the regulation to be modified. Peterson stated that the regulation is the parking demand, and provides assurance that parking for businesses and land uses can be served. Peterson explained that the applicant indicated that they are trying to minimize the impervious area, and the City of Portland would only require 18 spaces for a development of this size. Peterson stated that opponent indicated that a sit-down restaurant would have a higher parking demand than the former drive-through use. Peterson stated that Fred Meyer also made a similar statement.

Peterson stated that GARP made a written statement that their intent is to not constrain their future development capacity, and offered additional language which indicates that this variance would not impact or limit their future development ability in the Town Center. Peterson explained that staff finds that the variance would not impact GARP's future development, and there is no issue of adding similar language to the variance.

Peterson stated that another criteria is that impacts have to be mitigated to the extent possible. Peterson explained that the applicant has identified a way to add a few more parking spaces on the site. Peterson stated that the last criteria is that the variance must be consistent with the functionality of the roadway system. Peterson explained that the current structure is slightly smaller than what was identified in the master plan, and the improvements would not require a transportation analysis.

Peterson stated that the recommendation is for the City Council to grant a variance to the parking standards subject to the conditions outlined in the staff report which includes the requested language from GARP.

Smith asked for opponent testimony.

John Waters of Wood Village GARP stated that Peterson's approach was impressive, but he does not necessarily agree with all the statements. Waters stated that he is trained as an attorney, but is in the real estate business. Waters stated that parking is the key element in any development. Waters explained that parking counts are critical, especially in mall developments. The parcel in question is a separate parcel from the main Town Center, and is subject to not just the City's code, but a declaration of restrictions as well. Waters stated that the Planning Commission's decision has the effect of taking property from one owner, and providing it to another owner. Waters stated that the Buffalo Wild Wings and the pizza restaurant are subject to the covenants and restrictions, the auto part store built the required number of spaces, and Fred Meyer even bought additional land to make up for the spaces that were consumed from their gas station development. Waters stated that while the former owners of El Pollo Loco had an agreement with the former owners of the Town Center, no such agreement exists now.

Smith stated that there is still excess parking even at the projected buildout. Waters stated that is correct, but those spaces still have value. They can be used for additional development or other business opportunities. Waters stated that the variance is seeking a 50% reduction in spaces which is dramatic and will impact GARP's property.

Tim Clark stated that he appreciated the comments, and asked if having a developed property could further benefit the overall Town Center compared to a vacant site. Waters stated that there is no issue with the use. Tim Clark stated that he understands that the land as value, but having an occupied space that draws people in has value as well. Waters stated that there is always a benefit with more activity, but there is a real value to the

property. Waters stated that the additional language in the variance would solve the issue from GARP's standpoint.

Mark Clark stated that while he understands we cannot revise the parking code right now, but if we had Portland's standards then we would not be in this situation. Mark Clark stated that he also understands Waters viewpoint, and the parking spaces do have real value. Peterson explained that the variance does not obligate any other property owner to do anything. If the variance is granted, the use will only need the 33 identified parking spaces. No additional demands will be placed on any other site.

Condit stated that the Council needs to focus on the code requirements, and if the applicant has met those requirements. Condit explained that the City is not party to the covenants and restrictions, and cannot enforce those terms. Condit stated that the focus tonight is whether or not the applicant has demonstrated that they have met the conditions of the variance.

Tim Clark asked how a variance would impact GARP's property. Peterson stated that the variance language suggests that there would not be any impact on adjacent properties. Peterson explained that the main disagreement is around using the Town Center Master Plan provision for the use of the common parking area.

Smith called for proponent testimony.

Kevin Hepner of H&H NW Properties stated that he appreciates the time that the City has spent with this item. Hepner stated that he agrees with staff's findings, and there was one single property owner when the master plan was adopted. Hepner stated that there are now multiple different owners, and the original parking agreement no longer exists. Hepner explained that his intent is to get an active development at the site.

Mark Clark stated that the current development does not meet the parking code. Peterson stated that is correct. Mark Clark asked Hepner if they are okay with the parking on the site. Hepner stated that peak demand will require about 33-40 spaces for this type of restaurant. Hepner explained that the code requirement of 66 spaces is a lot, and the pad should be able to self-park with 33 spaces. Hepner stated that this parcel originally had a cross parking agreement, but that no longer exists.

Smith opened the floor for neutral public comment.

Planning Commission President Craig Howard stated that this is an interesting situation. There is an empty storefront that now does not have the same rights as it did when it was built. There was a cross parking agreement, but that too has gone away. Howard stated that there are ramifications to granting this variance. Historically, the Planning Commission would look at the overall use, and the common parking area. Howard stated that if this variance is approved, any new development at the Town Center that cannot self-park will need a variance.

Tim Clark asked if the parking code can be revised at a later date to avoid having to have a variance in the future. Peterson stated that can occur once this decision has been completed. Peterson explained that while the revised parking standards may not be low enough to avoid all future variance needs, the standards can be revised.

Smith asked for any rebuttal testimony. There was none.

Smith closed the Public Hearing.

Tim Clark stated that he is happy with the master plan and shared parking concept, but a variance would still be beneficial. Nissen stated that he agrees, especially if it would satisfy all the parties. Mark Clark stated that a variance would set a precedent for the future, especially if the parking code is not revised. Peterson stated granting the variance should not have any long term impact if the parking code is revised. Peterson explained that a variance can still be granted by the Planning Commission, and it would only come to the City Council if it were appealed.

Condit stated that the language in the master plan is ambiguous, but it looks like the intent was to consider parking site wide. Condit explained that another issue is that the property developed in a different manner than what was proposed in the master plan, which could weaken the argument that a variance is not needed if the decision is again appealed.

Mark Clark asked what the consequences would be if the Council decides that a variance is not required. Peterson stated that the opponent could appeal the decision to LUBA, and then the circuit court. Peterson stated that Condit pointed out how there is not a code provision that ties the master plan to the parking standard, and the master plan could be interpreted as expired two years after its adoption. The combination of those elements could put the City in a weak position. Peterson stated that while he agrees with Howard's interpretation of how the Town Center was intended to develop, the City may not be able to make that case if appealed. Condit explained that this issue could be a snap shot in time once the new master plan and parking code is adopted.

Based on findings of fact and the City staff report, and upon motion by Mark Clark, seconded by Tim Clark and passing 4-0, the City Council acted to grant a variance for the reduction of the code required 65 on-site parking stalls to 33 on Lot 9 of the Wood Village Town Center for the tenant improvements proposed by H&H Northwest Properties, LLC for a "sit down" restaurant (not drive through) with the following conditions:

1. Provide detailed, engineered construction plans and ensure that all required permits and plans are approved before construction begins.
2. Meet all Design Review Standards as contained in the approval authorization from the Wood Village Planning Commission Dated October 4, 2016.
3. In no case shall the parking reduction provided for by this decision on File No. VAR/DR 16-06, count against, or otherwise impact or limit future development proposals or land use reviews within the Wood Village Town Center.
4. Revocation: Any departure from approved plans not authorized by the City shall be cause for revocation of applicable building and occupancy permits. Furthermore, if in the City's determination, a condition or conditions of the Planning Commission's approval cannot be satisfied, the Planning Commission's approval or building and occupancy permits shall be revoked.
5. In the event the subject improvements are not completed, this approval is valid for two years.

ADJOURN

With no further business coming before the Council, and upon motion by Nissen seconded by Tim Clark, and passing 4-0 the Council adjourned at 7:36pm.

Timothy Clark
Mayor

Date

ATTEST:

Greg Dirks