

# City of St. Helens Planning Commission

Approved Minutes

July 10, 2018

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**Members Present:** Chair Russell Hubbard  
Commissioner Greg Cohen  
Commissioner Kathryn Lawrence  
Commissioner Sheila Semling  
Commissioner Julie Stenberg  
Commissioner Audrey Webster

**Members Absent:** Vice Chair Cary

**Staff Present:** Councilor Ginny Carlson  
Associate Planner Jennifer Dimsho  
City Planner Jacob Graichen

**Others:** Patty & Bill Conroy  
Rich Bailey  
Al, Kannikar, and Agnes Petersen  
Bud Hickey  
Robert Lucas  
Linda Zahl

- 1) **7:00 p.m. Call to Order and Flag Salute**
- 2) **Consent Agenda: Approval of Minutes**  
2.A Draft Minutes Dated June 12, 2018

Commissioner Semling said that Councilor Carlson was accidentally included in the votes for each motion.

**Motion:** Upon Commissioner Webster's motion and Commissioner Cohen's second, the Planning Commission unanimously approved Draft Minutes dated June 12, 2018 with the removal of Councilor Carlson voting during each motion. Commissioner Semling did not vote due to her absence from that meeting. [Ayes: Commissioner Cohen, Commissioner Lawrence, Commissioner Stenberg, Commissioner Webster; Nays: None]

- 3) **Topics from the Floor: Limited to 5 minutes per topic (not on public hearing agenda)**

**Petersen, Al.** Petersen wanted to bring up the issue of driveway and access spacing. There was a lot of discussion related to the access off of Pittsburg Road during the Emerald Meadows Subdivision decision. He feels that streets and driveways should be viewed differently. One of the main reasons for not allowing that access to be a street was the existing driveway did not meet access spacing standards. One of the Comprehensive Plan goals is a well-connected street network. Streets should have a higher priority than existing driveways. In the Emerald

Meadows Subdivision decision, the existing driveway took priority over long-term planning of the street network. By turning that access into a street, the developer would have solved fire safety concerns and would have increased neighborhood connectedness with a second means of access. Chair Hubbard said the Emerald Meadows Subdivision was frustrating for everyone.

**4) Public Hearings (times reflect earliest start time)**

4.A 7:00 p.m. - Text Amendments to the Development Code - ADUs, Home Occupations, and significant wetland/riparian area upland protection zones

Chair Hubbard opened the Public Hearing at 7:06 p.m. There were no ex-parte contacts, conflicts of interests, or bias in this matter. City Planner Jacob Graichen entered the staff report dated July 2, 2018 into the record.

Graichen described the proposal and recommended conditions of approval, as presented in the staff report. The Commission is to make a recommendation to City Council. He said there are three main topics proposed for text amendments: exemptions to Type I Home Occupations, reductions to the significant Wetland and Riparian upland protection zones, and changes to permitting Auxiliary Dwelling Units (ADUs). He said that Department of Land Conservation and Development commented that the proposed wetland and riparian rule changes require more study to comply with Statewide Planning Goal 5. Graichen recommends postponing these changes until staff can look into it further, since altering them is not as simple as originally anticipated.

Graichen explained that staff is proposing exemptions for Type I Home Occupations because they have no outward appearance of the business. The Commission has no problem with this. Graichen noted the amendments suggest removing home occupations from the Highway Commercial (HC) zone. Commissioner Lawrence thinks they should be allowed outright in the HC zone. The Commission agrees. Commissioner Cohen wanted to be sure that the applicant has to disclose if hazardous materials are being used in home occupation operations.

Graichen said he has never permitted an ADU in his ten years with the City, likely because the existing ADU standards are too burdensome. Senate Bill 1051 (passed in August 2017) stated that cities with a population greater than 2,500 people must allow at least one accessory dwelling unit for areas zoned for detached single-family dwellings, subject to reasonable local regulations. This is, in part, why the City is amending the ADU chapter now.

Graichen went through the recommended ADU text amendments, as presented in the staff report. He asked the Commission how they feel about allowing someone to convert an accessory structure to an ADU. Commissioner Cohen does not feel they should be converted. Chair Hubbard said there are some cases where a shop already has utilities and it would be easy to convert. Commissioner Semling asked about the accessory structures that are built with a second level to be used as a dwelling unit. Graichen said that the amendments, as proposed, would not allow this. Commissioner Lawrence does not have an issue with someone converting a shed into a dwelling unit, provided they can meet all of the other requirements. Chair Hubbard suggested allowing a shop that has been previously legally approved to be converted to an ADU. He noted that building code would ensure it is safe for habitation. The Commission agrees with this.

Commissioner Lawrence asked if an existing structure can be converted, even if it does not meet setbacks. Graichen said yes, they could convert it according to our nonconforming chapter

because it would be considered grandfathered. He noted that, unless they had to demolish the entire structure in order to convert it, the location of the structure would be considered grandfathered in.

The Commission agreed to remove the heated/air conditioned floor area section as a requirement so that a portion of a legal accessory structure could be converted. The Commission would also like to include an exemption for architectural features for legal nonconforming structures.

### **In Favor**

**Petersen, Agnes.** Petersen lives in Deer Island. She has a legal office in St. Helens. She was born and raised in St. Helens. She is in support, but disappointed in some of the proposed ADU restrictions. She said the date by which we are supposed to be complying with Senate Bill 1051 is July 1, 2018. She brought a copy. She does not think handicap and elderly populations should be restricted to a "chicken coop" sized ADU. She said the house she was raised in was 1,500 square feet. With the 50 percent maximum size proposed, the size of the ADU would only be 750 square feet. She feels disabled and elderly populations will be a majority of those applying for ADUs. A new report from Harvard finds that over seven million households have an adult with a disability. According to the U.S. Census Bureau, almost 20 percent of the U.S. population has a disability, many of whom are senior citizens. Most challenges involve mobility and lifting or grasping objects. Petersen said there are design features that help those with mobility challenges: a step free entryway, a single-floor layout, and wide doors and hallways. She talked to a builder who designs handicap-accessible housing. A minimum of 1,050 square feet is needed for a two-bedroom accessible home. She took care of her mother from 1997 to 2005. She thinks that a maximum size of 50 percent of the principal dwelling is too small. She suggested 95 percent or 75 percent. She entered an accessibility and handicap report created by the American Association of Retired Persons (AARP) and a 2013 report written by a doctor of design at Harvard into the record. She also entered into the record a list of other communities with a larger maximum ADU size. Lastly, she thinks residents should be able to convert a portion of an existing structure into an ADU, as long as it meets the size requirement.

**Petersen, Al.** Petersen said he is in favor of the text amendments with a few suggestions. Regarding home occupations, he noted that signage on pickup trucks is an issue in Columbia City. Petersen suggested that Graichen may become the enforcement of signage on vehicles, unless vehicular signage is allowed. He would not get too wrapped up in having applicants disclose hazardous materials because building code addresses it.

Regarding the conversion of an ADU, he said not to worry too much about safety because the building code will address those concerns. Regarding two doors, would a legal non-conforming structure have to move its door? He agrees with exempting the architectural features if the building is already existing. He thinks a maximum of 50 percent of the principal dwelling is not large enough. Seventy-five percent is recommended by the State. He thinks the City should pick a maximum square footage, instead of a percentage. In his research, he said he could not find any ADA-accessible two-bedroom house plan under 1,100 square feet. He suggested making the maximum size at least 1,000 square feet.

**Zahl, Linda.** Zahl lives off of Hankey Road. She moved here over 20 years ago with her elderly parents. An ADU was too difficult to build in the County back then. The City needs more affordable housing, so she is very excited for the City to adopt these new rules. She is in favor

of the text amendments but would like to suggest a larger maximum size. Zahl has an adult child who is handicap, in addition to elderly parents. ADUs are not always used as rentals. Many ADUs are for loved ones who may be handicap or elderly. Fifty percent is too small, especially with lots that have older existing housing, which are traditionally smaller. ADA accessible housing has to have large bathrooms. Zahl is on the fence about parking requirements. She suggests allowing tandem parking because requiring additional parking decreases pervious surface. She noted many ADU dwellers may not need additional parking because they are handicap or do not have vehicles. She asked about architectural variances for situations where the ADU is not visible from the street or neighbors.

### **In Opposition**

No one spoke in opposition.

### **Further Questions of Staff**

Regarding signage on cars for home occupations, Commissioner Cohen suggested exempting vehicular signage. Commissioner Stenberg agreed. For maximum size of ADUs, Commissioner Cohen would like more time to review other examples. Graichen recommended including a size of 1,200 square feet. Chair Hubbard would like to use a flat number, instead of a percentage. Commissioner Webster said ADU creation will still be limited by the size and space available on the lots. The Commission prefers a maximum size of 1,200 square feet, given the testimony regarding ADA standards tonight.

### **End of Oral Testimony**

There were no requests to continue the hearing or leave the record open.

### **Close of Public Hearing & Record**

The applicant waived the opportunity to submit final written argument after the close of the record.

### **Deliberations**

The Commission is in favor of the proposed text amendments as written with the changes as discussed.

**Motion:** Upon Commissioner Cohen's motion and Commissioner Lawrence's second, the Planning Commission recommended approval to City Council of the text amendments to the Development Code with the changes as discussed. [Ayes: Commissioner Cohen, Commissioner Lawrence, Commissioner Semling, Commissioner Stenberg, Commissioner Webster; Nays: None]

4.B            7:30 p.m. - Conditional Use Permit at 100 St. Helens Street - Establish marijuana retailer

Chair Hubbard opened the Public Hearing at 9:05 p.m. There were no ex-parte contacts, conflicts of interests, or bias in this matter. City Planner Graichen entered the staff report dated July 3, 2018 into the record.

Graichen described the proposal and recommended conditions of approval, as presented in the staff report. Graichen described the various testimony received, including a letter from Elliot Michael that was received after the staff report was sent out. He noted that there are two marijuana retailers operating in the City. There was an approved Conditional Use Permit for a marijuana retailer in the Muckle Building, but it was never established. Now the timeframe for establishing the use has lapsed, which left an opportunity for this applicant to apply.

Graichen noted that we have an approved Conditional Use Permit for a childcare facility at the Masonic Building, which is located within the 1,000 foot buffer required between marijuana retailers and childcare facilities. However, the Building Official has not received any permits for that building, which means the use has not been legally established and vested. Graichen said the nearest childcare facility is about 1,300 feet away on Columbia Blvd. Commissioner Lawrence asked about the proximity to the Columbia Theatre where children congregate. Graichen said in the rules, it calls out specific uses where children are known to congregate, but it does not call out theaters. Councilor Carlson asked about the youth programs that occur in the Resonate Church, which is also within 1,000 feet. Graichen said that the principal use of the Resonate Church is religious assembly, not childcare/youth services. Commissioner Stenberg asked about whether or not approval of this Conditional Use Permit would affect the City's ability to receive federal grants. Associate Planner Dimsho said we have received grants from multiple federal agencies since the City has been approving marijuana retailers. There appears to be no effect. Graichen noted allowing marijuana retailers was approved by a majority of the citizens of Columbia County.

### **In Favor**

**Lee, Robert. Applicant.** Lee has been in the cannabis business for about six years, primarily building new marijuana storefronts in Portland. He is building several currently. He has created a high-end marijuana brand. Contrary to what people assume with a cannabis business going into a community, he has seen marijuana businesses improve blight and create positive impacts. The proposed St. Helens location has been vacant for about a year, located right at the entrance to the downtown. They stay away from traditional flashy signage. Lee said he would improve the storefront and add to the vitality of the downtown, not detract from it. A bar is allowed to be within 50 feet of a school, which allows consumption on site. They will be dispensing medicine to patrons, not consuming it. Per state regulations, the state does not allow advertising to children through branding. They want to contribute to the community in a positive way.

**Lucas, Robert. Property Owner.** Lucas is a practicing attorney in Rainier. He has owned the building for about 25 years. It used to be a small restaurant. He expanded it when he bought it. He also put in landscaping when he remodeled. The City complimented him when he completed the remodel. He also remodeled the derelict Muckle Building prior to the current owner. He would not rent his building to anyone who would do damage to his building. Lucas said he did not personally vote for marijuana legalization, but the people of Oregon did. He thinks this use will be an addition to downtown. He noted you do not smoke it on the site, like you would drink at a bar. Lucas feels it is more detrimental to children to see drunken adults leaving bars than it is to see people buying marijuana. He said the Commission has approved three sites, one of which is in the Riverfront District. The proposed tenant is a reputable marijuana company, and this is a good location. He hopes the Commission will not listen to emotional arguments based on shaky facts. Approval of this use will not prohibit the childcare facility from getting occupancy. The City Council did not recommend including a theater in the 1,000 foot buffer. To bring this

idea up now in order to deny this request is wrong. Lucas has no problem with adding car stops. He also noted there used to be two spaces on the side of the building, not just one. He said there are two floodlights, one front door light, and a street light on the corner, so he does not see the need for additional lighting. He said there is no alley behind the building. He also said you cannot see the HVAC units from the street. He does not feel they should be required to do additional landscaping or screening. He said they have received no complaints. He said additional landscaping would be difficult to provide.

## **Opposition**

**Hickey, Bud.** Hickey was born in St. Helens. He has lived here for about 80 years. He has owned the building behind the applicant for about 50 years. He has never had any problems with people damaging his building. He is not familiar with marijuana. He does not know the difference between high-end and low-end marijuana. He is concerned about the security of his building. He does not want this use to create vandalism potential. He does not want mingling or gathering of people that may vandalize his building. He said there are sometimes problems a few blocks down the street, and he does not want this new use to attract problems. He has nothing against marijuana specifically, but if it becomes a problem, how can it be addressed?

**Petersen, Agnes.** Petersen said she pre-dates both Lucas and Hickey. She started practicing law in 1960. Petersen said she is not going to be emotional. She is going to look at codes. Petersen said the Commission has the ability to interpret the code. First, she wanted to explain who she represents. She represents Van Natta & Petersen, a law firm that owns the building kitty-corner from the proposal. She rents the downstairs to a church. She said the pastor would be here if he had not been recently injured. She also represents the Petersen Children Trust, who owns the building across from the proposal. This is the building where Wild Currant Catering and an architecture firm are located. Both Van Natta & Petersen and the Petersen Children Trust are vehemently opposed to this Conditional Use Permit. She asked the Commission to consider that the building is not a suitable location for this use. The intent of the 1,000 buffer is to protect children. She said the Columbia Theatre is incredibly child-friendly. The theater owner has a partnership with the School District to get children to attend the theater. She also mentioned the children who exercise on the street. She said there are two childcare facilities within 1,000 feet from the proposed location. She suggested to the Commission that they interpret the term "lawfully exists" as approval of a Conditional Use Permit by the Commission. She asked what the City is doing to develop the downtown. The community never once said anything about marijuana shops. She entered an item into the record, which includes photos of the Little Spooks Parade, which starts in front of the building. She asked what the purpose of the 1,000 feet buffer is, if it is not to protect children.

**Petersen, Al.** Petersen's office is across the street. He is member of the Petersen Children Trust. Petersen is disappointed that the City decided to sell eight acres of industrial property to a marijuana producer. He is disappointed that, should this decision be appealed, it may go to the City Council, which has already shown their intent. He has been involved in multiple efforts to improve the conditions of the area. He does not see where or how marijuana retailers are a positive aspect that can contribute to redevelopment of downtown. He feels the Council sold out to the marijuana industry. He does not feel the jobs that were promised will materialize. He used to sit on the Planning Commission, and he does not envy the Commission now. He does not want to repeat the same things, but he agrees with the previous testimony, and he is in opposition of this proposal.

## **Rebuttal**

**Lee, Robert. Applicant.** Lee said if we are looking strictly at the criteria for approval, the application should be conditionally approved. He recognizes that he is an outsider coming into a community that has a history and a vested interest. Lee said, as business owner and someone who has seen the positive effects in other communities, he wants to be a part of that. He is not trying to be a nuisance to the community. He wants to respect neighbors. He provides medicine for adults that is consumed in the privacy of their own homes. Public consumption is not allowed. Customers are educated to medicate at home. The OLCC requires that they provide educational materials to all customers. Commissioner Lawrence asked if they will be serving medical and recreational clients. Lee said both. Commissioner Stenberg asked if any establishments have ever received violations. He said no. He said one of his locations was a block away from the North Precinct of the Portland Police Department, and they would stop in regularly to check on things. Councilor Carlson asked if there is any process to control odors. Lee said he will usually replace the existing sheet rock and install a vapor barrier and re-caulk sufficiently. There are also carbon filtration systems. Councilor Carlson noted that there are issues with people smoking out front of the building at other locations. She noted that there are residences adjacent to this building. Lee said when he trains employees, he ensures that they understand medication cannot be consumed on the premises, even in their car on site. Councilor Carlson asked if they spoke to business owners. Lee said no, but he is open to it. His background is urban planning and community development. He would follow up with residents and business owners if they express concerns. Chair Hubbard asked how they handle the cash from sales. Lee said they bank through a credit union in Woodburn, Oregon. They take cash out daily, so there would never be excess cash in the building. Lee said the transactions are like convenience store transactions. There is no congregation of people outside. Regarding saturation, Lee noted that he is developing a brand in a way that the competition may not be. He noted that the OLCC allows marijuana retailers to be open until 10 p.m., but he would likely close at 8 p.m.

## **End of Oral Testimony**

There were no requests to continue the hearing or leave the record open.

## **Close of Public Hearing & Record**

The applicant waived the opportunity to submit final written argument after the close of the record.

## **Deliberations**

Commissioner Cohen requested that the Commission review the Comprehensive Plan economic goals and policies. Commissioner Cohen noted that the General Commercial policy in SHMC 19.12.070 2 (f) to, "preserve areas for business use by limiting incompatible uses within them," seems to apply to this case. Commissioner Webster remembered that Resonate Church said they would be offering childcare and after school programs when they applied for the Conditional Use Permit. Graichen said that was not noted in the application, but it may have been stated during oral testimony. Commissioner Webster said the proposed location is a gathering place for children, between the gym, church, and theater. Commissioner Semling said she did not feel she could approve something so close to the church where childcare is occurring. Graichen said the church's principal use is religious assembly. He asked if the

Commission wants to apply the church's auxiliary use of childcare to the required 1,000 foot buffer.

Commissioner Webster asked how long the approval of the Conditional Use Permit lasts for the childcare facility. Graichen said they have a year and a half, with a one-year time extension to legally establish the use. Commissioner Cohen said a lot of time and effort has been spent on economic development of the downtown area. He would like to look long-term at the commercial potential of the area.

Commissioner Lawrence suggested that required landscaping or hedges may actually increase the possibility for crime and hiding. Commissioner Stenberg suggested a condition about loitering. Graichen said enforcement of such a condition would likely be reactionary, not proactive. Commissioner Cohen wanted to be sure that there is enough lighting, but he thinks that OLCC rules will cover that. He asked if the other approved Conditional Use Permits for marijuana retailers had regulated the hours of operation. Graichen said no, but each location is specific, so that does not mean this location could not have limitations to the hours of operation. Commissioner Cohen suggested closing times to ensure compatibility with the neighborhood.

**Motion:** Upon Commissioner Cohen's motion and Commissioner Stenberg's second, it was moved to approve the Conditional Use Permit as written with the additional condition that the business will close Monday through Thursday at 8 p.m., Friday and Saturday at 9 p.m., and Sunday at 7 p.m. [Ayes: Commissioner Cohen, Commissioner Stenberg; Nays: Commissioner Lawrence, Commissioner Semling, Commissioner Webster] Motion failed.

**Motion:** Upon Commissioner Webster's motion and Commissioner Semling's second, the Planning Commission denied the Conditional Use Permit based on proximity to childcare/daycare facilities and incompatibility with the surrounding land uses based on Comprehensive Plan policies. [Ayes: Commissioner Lawrence, Commissioner Semling, Commissioner Webster; Nays: Commissioner Cohen, Commissioner Stenberg]

**Motion:** Upon Commissioner Cohen's motion and Commissioner Webster's second, the Planning Commission unanimously approved the Chair to sign the Findings & Conclusions once prepared. [Ayes: Commissioner Cohen, Commissioner Lawrence, Commissioner Stenberg, Commissioner Webster; Commissioner Semling; Nays: None]

## 5) **Discussion Items**

### 5.A **Millard Road Property Zoning Discussion**

Graichen said the discussion for Millard Road Property Zoning is not an essential item, so it will be moved to another meeting when there is less on the agenda. The Commission agreed.

## 6) **Acceptance Agenda: Planning Administrator Site Design Review**

- a. Site Design Review (Minor) at 550 Milton Way - Modifications to an existing telecommunications facility
- b. Site Design Review (Minor) at 544 N. 10th Street - ADA and related site improvements
- c. Site Design Review (Minor) at 150 Port Ave. - Modifications to an existing telecommunications facility



**Motion:** Upon Commissioner Cohen's motion and Commissioner Webster's second, the Planning Commission unanimously approved the Acceptance Agenda: Planning Administrator Site Design Review. [Ayes: Commissioner Cohen, Commissioner Lawrence, Commissioner Semling, Commissioner Stenberg, Commissioner Webster; Nays: None]

**7) Planning Director Decisions**

- a. Accessory Structure at 71 West Street - New carport
- b. Sign Permit (Banner) at 2100 Block of Columbia Blvd. - Columbia County Fair & Rodeo
- c. Temporary Use Permit at 735 S. Columbia River Highway - Fireworks stand
- d. Home Occupation (Type I) at 2154 Oregon Street #30 - Home office for painting business

There were no comments.

**8) Planning Department Activity Report**  
8.A June Planning Department Report

There were no comments.

**9) For Your Information Items**

There were no items.

**10) Next Regular Meeting - August 14, 2018**

**11) Adjournment**

There being no further business before the Planning Commission, the meeting was adjourned at 10:57 p.m.

Respectfully submitted,

Jennifer Dimsho  
Associate Planner