

**PLANNING COMMISSION
MINUTES**

August 26, 2024

Meeting held online via Zoom

Commissioners present: Carrie Pak, Gerald Murphy, Tom Peterson, Michael Wilson, Louise Lopes, Tammy Stevens, Brian Lee, Ryan Founds, Jennifer Satter

Commissioners absent: None

Staff present: Martha Fritzie, Jennifer Hughes, Darcy Renhard

Commission Chair Murphy opened the meeting at 6:31 pm.

New Planning Commissioners introduced themselves. Staff and current Planning Commissioners also provided brief introductions.

Chair Murphy asked if there was anyone in the audience who wished to provide public comment on items other than what is on the agenda. There were none.

Chair Murphy opened the public hearing for file numbers Z0197-24-ZAP and Z0198-24-CP. These are for a comprehensive plan map amendment to change one acre on the subject property located at 28712 SW Hwy 212 in Boring from Unincorporated Community Residential to Rural Commercial and for a corresponding zone change from Rural Area Residential One-acre to Rural Commercial. No development is proposed with this application. Any future development would be subject to design review. The property consists of a single 3.8-acre tax lot. Only one acre of the site is proposed for rezoning.

Ms. Fritzie provided the staff report for the proposal. The site is relatively flat and is currently developed with two single family dwellings and several accessory structures. There is a habitat conservation overlay on a portion of the property that affects the southeastern swatch of the property. The area proposed for rezoning is in the northwest corner of the property, so any development done in that area would not impact the conservation overlay area. The surrounding zoning is Rural Commercial and Rural Industrial to the west, and mostly single-family residential developments to the east, north and south.

County staff only received two comments in response to the public notice. The comments were from ODOT and the County's Engineering Division, both of which agreed with the findings in the applicant's transportation analysis.

Several Statewide Planning Goals are applicable, as well as Comprehensive Plan goals and policies. Additionally, there are the zone change criteria found in the Zoning & Development Ordinance (ZDO) that are also applicable. There are four main criteria that we look at under ZDO Section 1202 related to zone changes. The first is that the proposed zone change must be consistent with the applicable goals and policies of the Comprehensive Plan. Chapters 2 and 11 of the Comp Plan contain procedural and coordination policies, which staff has found were followed. In Chapter 5 there is a policy that specifies that any zone change must comply with the Transportation Planning Rule (also Statewide Planning Goal 12). The applicant is required to provide a traffic study and to coordinate with the County's Engineering Division. In this case they are also required to work with ODOT. The traffic analysis provided by the applicant basically said that this zone change would likely violate the Transportation Planning Rule unless there is some sort of mitigation. In this case, that mitigation would be to impose a trip cap on any future development in the Rural Commercial zone.

Comp Plan Chapter 4 lays out the criteria for designation changes, specifically under policy 4.KK. The first criteria is that the land has to be in a non-urban area, which this is. The second criteria is that it must either have a historical commitment to commercial uses (which this property does not) or, if it is within an unincorporated community (which this property is), it must have direct access to a road of at least a collector classification. This property has direct access to Highway 212 which is a principal arterial. The property meets the second criteria. Policy 4.E.2.3 states that the County may not allow new uses in urban reserves unless it meets certain exceptions found in state law (OAR 660-027-0070).. Staff has reviewed all these exceptions and finds that the proposal can meet all the listed exceptions. Therefore the relevant policies under Chapter 4 are met. Staff is recommending that a trip cap of 400 average daily trips be imposed to meet all the transportation system requirements. Both ODOT and the County's Engineering Division concurred with these findings. Staff recommends approval of this proposal subject to the conditions listed in the staff report.

Commissioner Stevens asked if there are a lot of lands within Clackamas County that are unincorporated communities and also within the reserves. Ms. Fritzie replied that there are not. She is fairly certain that the Boring unincorporated community is the only one in an urban reserve. Commissioner Stevens wanted to know if this might be opening the door for other properties in the urban reserves that are not able to do what they want with their properties. Ms. Fritzie explained that the exceptions under state law are pretty limiting and also the county's Comprehensive Plan policies would still need to be met. That would mean there are only two choices for a rural commercial designation: the property would either need to have a historic commitment to a commercial use or be in an unincorporated community. This severely limits the number of properties that would qualify.

Commissioner Pak is concerned that the applicant might divide the property later on and encroach on the wetland that appears to be there. Ms. Hughes replied that there is a maximum square foot disturbance area of 5,000 square feet in the habitat conservation area (HCA). At least for residential development. This does not mean that you can disturb 5,000 square feet of the HCA, it means that you get to disturb 5,000 square feet on the whole property. The disturbance must happen outside the HCA first. It may also vary based on how valuable the habitat is.

Commissioner Lee asked if the trip cap would restrict the development on the property. Ms. Fritzie said that it is a way of naturally limiting the types of businesses or development that could locate on the property. In theory though, anything listed as a use in the rural commercial zone could be allowed on the property. Commissioner Lee also expressed concern that the line for the zone change appears to run through an existing structure and possibly a septic tank and drain field. Ms. Fritzie said that we typically are changing the zoning for an entire property, so it is not one of our submittal criteria. But he is correct, a condition of approval would have to be that the line not go through a structure or sewage disposal system.

Commissioner Lopes asked when land within the County began being designated with HCAs. Ms. Hughes answered that it was in January of 2009. The County was required to adopt these conservation areas to be consistent with Metro's Title 13. They were based on maps that Metro provided, as the County did not have the resources to do the mapping at that time. If you look at Metro's code, specifically Title 13 of what is called the Urban Growth Management Functional Plan, you will see where these conservation areas were applied.

There were no government agencies to provide testimony.

The applicant, Mr. James Kenney, and his consultant provided an explanation of what they wanted to develop within the proposed commercial zone. Mr. Kenney would like to build a drive-through coffee kiosk.

They would avoid all wetland areas, and the proposed development area is set back far enough away from the wetland area that they do not feel it would be impacted at all. They have no plans to partition the 3 lots. The boundary line can be redrawn so that it is not running through a structure. Mr. Kenney understands the importance of habitat conservation and making sure that we take care of our land. When they bought the property in 2011 it required an extensive amount of solid waste to be cleaned up. There is a 1930 farmhouse on the property that is currently uninhabitable, but they have no intention of using it as a dwelling. This proposal will not remove any available housing from the County.

Commissioner Peterson asked why they only wanted to rezone one acre of the property, and why not just rezone the entire property? Mr. Kenney responded that he and his wife live on the property. He does not want any neighbors moving in closer to him, they enjoy their privacy and their garden. There are commercial properties on either side of him, and they would like to just be able to work the little coffee shop and continue living on their property. One acre seems to be sufficient to do that.

Commissioner Lee pointed out that the applicant's materials state that there would be around 180 trips generated per day, but in the staff recommendation the trip cap is 400. Ms. Fritzie explained the 180 daily trips is what comes out of the ITE manual as the average number of daily trips that a coffee kiosk with a drive through window would generate. The 400 comes from the Transportation Planning Rule. So if whatever you are proposing is generating fewer than 400 average daily trips, it is determined by default as not creating a significant impact. Commissioner Lee expressed his concern over the traffic trying to make turns to cross the highway when trying to turn into the property. Is there adequate right of way there, and would ODOT allow the fix? Ms. Hughes said that it would be something that we need to evaluate, because right now it does not look like they have sufficient right of way. Mr. Kenney stated that he has spoken with ODOT, and that they would require him to give them 119 feet by 21 feet of the property for them to make alterations for a center lane, shoulder lane, and bike lane. He would also have to put in a sidewalk along the entire front of the property. Once he has the survey done, it takes 4 months for the State to take it over and another 4 to 6 months for them to actually recognize it as their property.

Lee Brookhart (property owner directly across the street) – Mr. Brookhart is not opposed to the project, but he is concerned about the safety of the road. He would like to know if the added turn lane would creep onto his property.

Ms. Hughes provided follow-up to Commissioner Pak's question on the HCA. There is a percentage of the subject property that can be disturbed up to a maximum. She explained how the calculations work based on the different uses on the property and the category of the HCA (high value, moderate value, etc.).

Commissioner Stevens does not have any concerns with the proposal, although it sounds very complicated. She does not think that this is something that is going to impact the various rural residential areas of Clackamas County within a reserve. There are certainly issues, but they have been brought up this evening.

Commissioner Lee would like to see some modifications to the conditions of approval. He would like a note added that the zone line not go through structures or the septic tank and drain field. He would also like to see the trip cap lowered to 200.

Commissioner Peterson thinks that the conditions that Commissioner Lee recommended seem appropriate. It seems to him that the reason they are only asking to rezone one acre of the property is so that they don't impact the habitat area. He is in support of the proposal with the conditions that Commissioner Lee suggested.

Commissioner Satter agrees with the conditions that Commissioner Lee suggested.

Commissioner Founds is fine with the application as it was with the conditions from ODOT. He would be fine with the proposal either way.

Commissioner Wilson feels that this proposal is fine with the 400 trip cap and does not think it should be reduced.

Commissioner Pak is not in favor of the proposal mainly because of concerns with the conservation area.

Commissioner Lopes is undecided. She has concerns about the conservation area as well.

Commissioner Murphy agrees with Commissioners Peterson, Lee, and Stevens. The road does need improvements, but the conditions discussed would help make that happen.

Commissioner Stevens moved to approve file numbers Z0197-24-CP and Z0198-24-ZAP but with the following modifications: the trip cap would change from 400 to 200 and assure that no part of the current and future drain field of the septic system is crossing over any of the boundaries. Commissioner Lee seconded the motion.

(Ayes=6 Stevens, Peterson, Founds, Satter, Lee, Murphy; Nays=3 Pak, Lopes, Wilson ; Abstain=0. Motion passes)

Commissioner Wilson nominated Commissioner Peterson to be the new Chair and Commissioner Murphy as Vice-Chair. Commissioner Stevens seconded.

Commissioner Peterson as new Chair *(Ayes=9; Nays=0. Motion passes)*

Commissioner Murphy as new Vice-Chair *(Ayes=9; Nays=0. Motion passes.)*

We will have an in-person study session on October 14th or 28th, depending on which date works best for everyone's schedules.

There being no further business, the meeting was adjourned at 9:23 pm.