1. CALL TO ORDER:

Chair Beck called the meeting to order at 7:01 p.m.
Planning Commission Present: Tom Beck, Lisa Nakajima, Dale Smith, Phil Ruder and Sebastian Lawler
Planning Commission Excused: Hugo Rojas; Carolyn Hymes
Staff Present: Jon Holan, Community Development Director; James Reitz, Senior Planner; Cassi Bergstrom, Planning Commission Coordinator

2. PUBLIC MEETING:

2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:

None.

2.2 PUBLIC HEARING:

A. File No. 311-16-000197-PLNG – Site plan approval and design review of Stonewood Center, a proposed commercial and office complex consisting of four buildings totaling 45,280 square feet, a restaurant with drive-through, parking and landscaping, located at 3650 Pacific Ave (Washington County Tax Lots 1S305AB00501 and 1S305AB00504). (A public hearing was previously held on May 1st, and now continued to June 19th, 2017.)

Chair Beck opened the public hearing at 7:04 p.m., read the hearing procedures, and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There were none except for Commissioner Nakajima, who recused herself. Commissioner Nakajima stepped down from the dais and sat with the audience. Chair Beck called for the staff report.

Senior Planner James Reitz summarized a staff report prepared to address Commissioners questions from the May 1st meeting. A slideshow was presented showing the various conditions and concerns that were addressed by staff and the applicant.

An aerial view was shown to reference the location of the project. A revised site plan was presented to show the remedies to the pedestrian sidewalks, perpendicular parking stalls, and the restaurant drive-thru was relocated to the west end of the building to avoid “stacking” onto Pacific Avenue.

A revised landscape plan was presented to show the recommended larger trees in the parking lot, rather than small trees, to cast shade into the parking spots. The landscape aisle was enlarged to accommodate the large canopy trees. More trees were added surrounding the buildings, as suggested, and will be native varieties such as Dogwoods.

A slide of building elevations shows the different color schemes suggested. Service doors will face Pacific Avenue.

Chair Beck questioned the frontage of the building and the different color solution. Mr. Reitz explained that there will also be different materials used as well to give the frontage texture and variance, making it more appealing to the public eye from Pacific Avenue.

Chair Beck asked if the end buildings have windows, and Mr. Reitz confirmed.

Mr. Reitz continued his presentation, going over the conditions. Walkway pedestrian access from Fir Road was shown to Commissioners. The walkways will be widened by 1.5 feet but still allowing for a fully functioning parking stall with no wheel stops. Wheel stops are a tripping hazard and make it easier for cleaning equipment to access the area.

South elevation will have anti-graffiti coating on the building, as discussed at last meeting. Tree spacing will allow for larger canopy trees scattered throughout the parking area and landscape islands to be 16 feet by 6 feet. Bike racks to be installed at southwest corner. A condition requires the fence height shall not exceed four feet on south property line so that neighboring buildings can see in order to prevent graffiti. This condition needs to be discussed further by Commissioners and applicants to conclude.

Mr. Reitz referred back to the staff packet (Page 6, Condition 11 and 12) to discuss building design. Condition 11 states: “Provide at least 25% transparency of Building 1’s Pacific Avenue façade end unit tenant spaces, as well as at least 25% of Building 1’s east and west facades. The 25% requirement shall be measured below the interior ceiling line.” Condition 12 states: “Require additional façade enhancements facing Pacific Avenue be submitted for review and, as approved by staff, be incorporated in the final building design. Such enhancements, as approved by the Community Development Director, shall be the use of brick and other alternative materials, use of additional colors and the continuation of the awnings proposed for the opposite side of the building of the building.” Staff has been working with the architect to come up with color schemes and alternative materials.

Chair Beck requested that Mr. Reitz clarify condition 11.

Mr. Holan stated that these conditions were included in the original staff report. It is not necessary to have glass along the Pacific Avenue frontage per the design, but 3 different elevation options have evolved from that review. From a security standpoint, the condition states the 25% and can be varied by the design guidelines.

Mr. Holan brought up the parking analysis done by a third party engineer group shows the parking requirements.

Chair Beck clarified to the audience that a traffic study was done to analyze how many parking spots would be needed for that area.

Mr. Reitz went on to say that there was a deficit in the parking requirements per the square footage of the buildings, so a code provision would be required. The applicant hired a third party engineer to analyze the traffic and it was proposed that 186 parking spaces be supplied, with an oversupply of space to provide a cushion.

APPLICANT:

Barry Newdelman, Associates Architects, 2340 SE Tamarack Ave., Portland, OR:

Mr. Barry Newdelman stated that staff and applicants have reached a plan that is satisfactory to staff. After reviewing the minutes from last meeting, page 4 stated that the coloring of the building should be further studied with staff. A color consultant with Sherwin Williams will help with blending color schemes.

As far as the landscape plan, staff recommended large trees and larger planters. Mr. Newdelman has no objections to the condition.

Mr. Newdelman requested that the Civil Engineer hired for the traffic study will address the sidewalk proposal.

Mr. Newdelman is concerned about the 4 foot fence recommendation in the back, and thinks the property owner would like the fence higher.

A.C. "Buzz" Avery, Property Owner/Developer, 27752 Country Lane, Laguna Niguel, CA:

Mr. Buzz Avery stated he would like a 6 foot fence to prevent people from going onto the property, and he feels strongly that this needs to be a consideration to eliminate problems.

Commissioner Ruder inquired about what materials will be used for the fence.

Mr. Avery stated is will be cyclone fencing materials with slats.

PROPONENTS:

Mark Nakajima, Neighboring Business Owner, 3602 Pacific Ave., Forest Grove, OR:

Mr. Mark Nakajima stated that parking studies are based upon anticipated usage of the buildings. A high standard of parking will help when businesses grow in the future. Mr. Nakajima has a large parking area, but the last few weeks the area has been full with no room to spare.

Regarding the fence, the concept of a 4 foot fence is understandable but in his opinion it will not reduce criminal activities. It will also be helpful to have some screening from the blank walls from the Villager Apartments.

Commissioner Lawler asked the cause of the full parking lot.

Mr. Nakajima answered that they are a seasonal business, and with the long winter the demand of home improvements during the nice weather has gone up.

Commissioner Ruder asked if "beefing" up enforcement on parking will be an agreement between neighboring businesses.

Lisa Nakajima, Neighboring Business Owner, 3602 Pacific Ave., Forest Grove, OR:

Ms. Lisa Nakajima, answering Commissioner Ruder, stated that is something they will explore and she is in agreeance that the fence should be higher and so is the Villager Apartments.

Employee parking happens in the same space as the public parking, so the maximum spots are needed. The apartments make is so there is never enough parking, so parking for customers will be protected.

Lastly, Ms. Nakajima asked the staff and applicant to consider the color scheme of their business when reviewing the color schemes of the new buildings to make them complement each other.

Chair Beck agreed that the new apartments could be an issue with the parking.

Mr. Mark Nakajima stated that he doesn't expect and overflow due to the distance of the new apartments from the buildings. The residual parking on gravel pad was related to the Villager Apartments and it became a real problem.

Mr. Nakajima stated that they are proponents of this development and want to be good neighbors.

OPPONENTS:
None.

OTHER:
None.

REBUTTAL:
Todd Mobley, Lancaster Engineering, 321 SW 4th Ave., Ste 400, Portland, OR:
Mr. Todd Mobley, Engineer, prepared the parking analysis. The employee parking is based on the assembly use and is covered in the analysis. A cushion of demand versus supply was found, and recommends the cushion stays in place for potential seasonal fluctuation.

Chair Beck closed the public hearing at 7:46 p.m.

COMMISSION DISCUSSION:

Chair Beck opened up the Commissioner discussion.

Commissioner Lawler agreed that the color scheme should complement the surrounding businesses in the area.

Commissioner Smith agreed with the applicant that a taller fence (6 foot) would be better to keep people from going over. Commissioner Lawler agreed, stating that recently he saw graffiti at Villager Apartment sign. Chair Beck recommended removal of the fence limitation all together, and allow for larger than 6 foot fence.

Chair Beck agreed with the civil engineer that the parking should be left at maximum with the cushion in place.

Chari Beck likes condition 11 and 12, and a phrase should be added to condition 11 about the color palette complementing the surrounding area.

Commissioner Phil stated he is happy with the changes.

Mr. Holan wanted clarification on condition 11. Commissioners discussed the 25% glazing and reviewed the elevation slides again. Commissioner Ruder agrees with the way condition 11 reads.

Chair Beck appreciates the work that has been done on this future project and requested a motion for this hearing.

Commissioner Lawler moved a motion that the Planning Commission approves File Number 311-16-000197-PLNG, as amended. Commissioner Ruder seconded.

Roll Call Vote: AYES: Chair Beck, Commissioners Ruder, Smith, and Lawler. NOES: None. ABSENT: Commissioners Rojas, Hymes. MOTION CARRIED 4-0.

Mr. Holan asked for clarification on the fence condition, and it was recommended by the Commission to nix the condition entirely.

B. File No. 311-17-000130-DWL– Appeal to the Community Director's Interpretation of DC §10.12.210(L2)(o) – *Rear Lot Line*
Chair Beck opened the public hearing at 7:54 p.m., read the hearing procedures, and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There were none.

Jon Holan gave a background of the appeal, stating that this appeal is in regards to setbacks questions at a new home construction, property located at 3402 Ivy Crest Court. This property in particular is a 5 sided parcel and setbacks are determined off of a chord in the back of the property (rear yard). The submitted site plan for this project was approved based on what Development Code requires for setbacks. In response, the adjoining property owner (Mr. Jason Jewett) believed there was difference in the application of the setback codes between his house addition in 2010 and the way it was applied now with this new construction. Staff believes this is a clear and objective standard, but in Mr. Jewett's opinion that there is some discretion in the interpretation. This then resulted in a Director's interpretation on this matter and now has been appealed.

James Reitz made the interpretation on the setbacks, and he was asked by Mr. Holan to give his recollection on how these were determined. Mr. Reitz stated he did do the most recent site review on 3402 Ivy Crest Court, and the site review in 2010 for the neighboring property addition at 3403 Ivy Crest Court (owned by Jason and Suzy Jewett). As far as what was said exactly, Mr. Reitz has no recollection of the

conversation back in 2010. All that Mr. Reitz can testify to tonight is the most recent site review for 3402 Ivy Crest Court.

Chair Beck asked Mr. Reitz about the 2010 paperwork provided in the packet, wondering if it is a habit to record the site plan document in file after any sort of alteration. Mr. Reitz states there is no record of conversations, and the final approved site plan is the copy that remains with the city files.

Chair Beck moved on to the applicant's statement.

APPLICANT:
Jason and Suzy Jewett, 3403 Ivy Crest Ct, Forest Grove, OR:
Mr. Jason and Ms. Suzy Jewett came to the stand, and Mr. Jewett stated that in 2010 they did an addition to their home. In initial conversations with the city and Ridge Engineering (their engineer of hire), they were told that the required setback for their rear lot line was 15 feet, and the side setback was still a question mark. They got to the side setback by calculating the peak height of the home.

In 2017, when they saw excavation going on at the neighboring property, they were concerned with the limited setback distance. Mr. Jon Holan came up to the property and would issue an interpretation to allow them to file an appeal, and their home setback set at 15 feet (in 2010) should be set as a precedent in their paperwork.

Ms. Suzy Jewett added that she is concerned with how the lot has been handled, and digging had occurred for 4 days with no permit. They are concerned for the stability of their yard along and the city's involvement with no permits of surveying done on this new lot. Ms. Jewett states that they really want a neighbor, but would like a house that maintains the property value of the neighborhood by fitting on the lot.

Scott Eisenstein, Attorney representing Jewett's, 101 SW Washington St, Hillsboro, OR:
Attorney Scott Eisenstein started by saying that this presents a very novel issue. In his legal research, he has not found a case on point for this particular issue at hand. Staff's report would try to isolate this, but what's relevant to resolve is presuming that the rear setback was determined different in reference to the Jewett property as it is being interpreted now. There is now an established precedent from the 2010 site plan approval on this lot line. The issue presented to Commission is does this establish the rear lot line in relation to two adjoining properties talking about the same line in discussion. This is not consistent with the Director's interpretation. These two properties are unique in that they are 5-sided lots at the end of a cul-de-sac and share the rear lot line.

Attorney Eistenstein indicated that there is no case law directly on point for this particular issue, but there is plenty of case law that talks about review standards and whether or not an agency or Commissions determination is consistent with law, and are treated fairly with an opportunity for notice as to what the issues are that they need to address. The proposal is the Jewett's are not being treated fairly in reference to the interpretation presented. The cases cited by Mr. Graube's (owner of 3402 Ivy Crest Court) attorney are

not relevant to this issue other than the Oregon case with applicants being treated fairly in needing to know what the standards are when making their application.

PROPONENTS:
Chair Beck, referencing off the public hearing sign-up sheet, asked if anyone wanted to speak as a proponent to the appeal. Mr. Ben Cecchini was listed as a proponent, but declined to comment. Chair Beck clarified with Mr. Maris Graube and Daniel Duyck that they were to be listed as opponents. Ms. Holly Parker asked to speak as a proponent.

Holly Parker, Neighbor, 3316 Hillside Way, Forest Grove, OR:
Ms. Holly Parker stated that she lives right behind the empty lot. As far as aesthetically pleasing, Ms. Parker states that this house is so close and the roof line hanging 3 feet over the back garage area is not pretty. Would like the Commissioners to consider what is aesthetically pleasing to the neighbors.

OPPONENTS:
Daniel Duyck, Attorney representing Graube, 1500 SW 1st Ave, Ste 1170, Portland, OR:
Attorney Daniel Duyck stated that it is important to look at the root cause of the problem. You can see by the emails and materials that the root cause of the problem is a property line dispute. Some time ago, the Jewett's built a fence not on their property line and has since created friction. Going back to some of the comments made, Attorney Duyck disagrees with Attorney Eisenstein. Good cases are cited with reference back to the Director's opinion when they do a good analysis like they have. No one has showed how their math is incorrect or the code is not applied appropriately.

Attorney Duyck stated that the remedy is not to have bad rulings throughout the entire neighborhood, the remedy is to take care of their individual problem. Throwing out the code and doing things differently should not be a remedy.

Attorney Duyck stated that the Jewett's have no evidence of their own to support the prior conversations held with the city to prove that they were given different treatment. Mr. Graube had to go through the same process to build his new home. Attorney Eisenstein made a comment that in the staff meeting it created where the lot line is, where staff can't make that determination. They can only determine the setback. The lot line is an issue, and is before the courts right now. Today the Commissioners need to figure out if staff did everything correctly.

Maris Graube, 3270 Valley Crest Way, Forest Grove, OR:
Mr. Graube stated he is the owner of the lot in question. He bought the lot in 2015 and spent a lot of time thinking about what he wanted for a house along with numerous visits with Mr. Reitz and staff to get educated about setbacks. The architect constructed the plan, it was approved and construction was started then suddenly came to stop order.

Mr. Graube would like this situation clarified and "put to bed" so he can proceed with having his house built.

REBUTTAL:

Attorney Eisenstein wanted to point out that a lawsuit pending in Washington County brought up by counsel has absolutely no bearing and should not be brought up. It is not an issue before this Commission. His clients are not interested in stopping Mr. Graube from building a house. They want to make sure the code is applied consistently to each lot.

Chair Beck closed the public hearing at 8:20 p.m.

COMMISSION DISCUSSION:
Mr. Holan introduced City of Forest Grove's Land Use Attorney, Chris Crean, to assist the Commission on deliberating on this matter.

Commissioner Nakajima asked if there has been a change in the setbacks between 2010 and now. Mr. Holan confirmed that is there has not been a change.

Commissioner Ruder is reviewing the site plans in the packet and notices the chord is shown in Graube's site but not the Jewett's. Would like clarification as to the parallel analysis of the chord to get a sense of how that ruling would have gone under the same statute and will help in visualizing the issues.

Mr. Reitz came forward to help in clarifying the two different site plans.

Chair Beck thought Attorney Eisenstein put it out quite clearly, that the code is applied properly or applied differently to accommodate the change to the application of the code in 2010 out of fairness. It is now up to the Commission to determine which rules apply.

Attorney Chris Crean responded that it is up to the Commission to determine whether the Director's interpretation of the setback is correct. If they believe it to be correct, the Commission denies the appeal. If they believe it to not be correct, you would state the correct interpretation. There is good case law that if the city has recognized that it has been misinterpreting its local code, it is not required to keep making that same mistake. That means that you will change an interpretation to something new. The question for the Commission is: Do you believe the current interpretation of the code to be the correct one?

Chair Beck requested the site plans be shown on the projector screen. The rear setback line should be continuous, according to Jewett's, so the site plan needs to be referenced.

Mr. Reitz brought up the packet on the projector. The Jewett site plan (3402 Ivy Crest Court) from 2005 (original house) was brought up, and Mr. Reitz explained how he came up with the chord and applied the setbacks.

Chair Beck explained that there is a line in the back of the property.

Mr. Reitz showed the next door property (3402 Ivy Crest). Chair Beck is clarifying where the back chord line is to be, and are not continuous. Commissioner Nakajima inquired

about the square footage of the new house on the lot being more than the neighboring home. Mr. Holan stated an analysis on that has not been done.

Chair Beck reinstated what Attorney Crean had said, that the interpretation from this year is the way you want the code to be interpreted. It is not sure how the code was interpreted previously. Commissioner Ruder confirmed his reasoning being the same.

Mr. Jason Jewett came to the stand to show the correct lot line in question. The site plan with the addition shows the shared lot line between the two properties. Mr. Reitz clarified that "shared" is not the right word, it should be called the extension. Mr. Jewett went on to say that the 15 foot setback required for their addition is different now versus Mr. Graube's lot was required a 5 foot setback. Attorney Chris Crean stopped the discussion, explaining that this will need to be a reopened public testimony if it continues further.

Chair Beck explained that two different approaches were used, traditional approach and the chord approach, and the code was ignored. Attorney Crean stated that the code was adopted regarding the new approach for 5-sided lots in 2009, Chair Beck stated this analysis was done in 2010. Attorney Crean stated there was a transition period.

Chair Beck went on to say if the Commission agrees with the appeal, then the code needs changed. Commissioner Ruder clarified that it should be what is written in the current code. Chair Beck stated that you can't leave the code the way it is and agree to the appeal.

Attorney Crean stated that whatever interpretation adopted, the Commission needs to be able to point to the specific text in the current code to be applied going forward.

Chair Beck asked if the Commission disagreed that the current code was misapplied and it needs to be changed. Attorney Crean responded that the current interpretation is consistent with the text of the code provision, and the Planning Director set forth one that is consistent as well. Commissioner Ruder stated that there is no wiggle room here.

Commissioner Nakajima questioned if applying the code to the Jewett property now would it be consistent? Mr. Reitz confirmed.

Commissioner Nakajima moved a motion to uphold the Planning Director's interpretation for File No. 311-17-000130-DWL. Commissioner Ruder seconded. Roll Call Vote: AYES: Chair Beck, Commissioners Ruder, Smith, and Nakajima. NOES: None. ABSTAIN: Commissioner Lawler. ABSENT: Commissioners Rojas, Hymes. MOTION CARRIED 4-0.

2.3 ACTION ITEMS:

None.

2.4 WORK SESSION ITEMS:

None.

3.0 BUSINESS MEETING:

3.1 APPROVAL OF MINUTES:

Commissioner Smith made a motion to approve the minutes of the May 30, 2017 meeting. Commissioner Ruder seconded. Motion passed 5-0.

Commissioner Ruder made a motion to approve the minutes of the June 5, 2017 meeting. Commissioner Smith seconded. Motion passed 5-0.

3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:

None.

3.3 DIRECTOR'S REPORT:

Mr. Holan stated that there will be no meeting July 3rd. There will be a meeting July 17th with two items on the agenda. One will be the Smith's Orchard development (off 23rd Ave) and also a work session on the development code.

Mr. Holan went on to say that in August there looks to only be one meeting on the 7th and it will include work on the Pacific University master plan, Cedar Street amendments to change a spot zoning, and an update of the Affordable Housing Ad Hoc committee.

3.4 ANNOUNCEMENT OF NEXT MEETING:

Next meeting will be held on July 17, 2017 at 7 p.m.

3.5 ADJOURNMENT:

The meeting was adjourned at 8:51 p.m.

Respectfully submitted by:
Cassi Bergstrom
Planning Commission Coordinator