

**PLANNING COMMISSION MEETING MINUTES
FOREST GROVE COMMUNITY AUDITORIUM**

March 27, 2017–7:00 P.M.

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1. CALL TO ORDER:

Chairman Beck called the meeting to order at 7:00 p.m.

Planning Commission Present: Tom Beck, Sebastian B. Lawler, Lisa Nakajima, Dale Smith, and Hugo Rojas.

Planning Commission Excused: Phil Ruder, Carolyn Hymes.

Staff Present: Dan Riordan, Senior Planner; James Reitz, Senior Planner; Bev Maughan, Executive Assistant.

2. PUBLIC MEETING:

2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS: None.

2.2 PUBLIC HEARING:

A. Planning Commission review and approval of a conditional use permit for a day care serving up to sixteen children at 3015 18th Avenue (File #311-17-000006-PLNG and Tax Lot 1S306AA07100).

Chairman Beck opened the public hearing, read the hearing procedures, and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There were none, and no challenges from the audience. He called for the staff report.

Mr. Riordan explained that this is a somewhat unique situation, and results from an anomaly in the City's Development Code. He said the request is for a conditional use permit for a child care facility for up to sixteen children operated by a provider not residing in the home. Riordan explained that the daycare takes place in a single-family dwelling, and according to the City's business license records began operating at this location in 2014 with four full time employees. He said no alterations to the site or structure are proposed. The property is zoned single-family residential R-7, and located directly across from Joseph Gale Park near Joseph Gale School. He said 18th Avenue is designated a neighborhood route in the City's Transportation System Plan, and neighborhood routes are intended to carry more traffic than a typical local street, but less than a collector street such as Maple St. (located to the east). Mr. Riordan showed a slide of the site vicinity and surrounding zoning designations.

Mr. Riordan explained that the single-family home was built circa 1956 and has an area of approximately 1600 sq. ft. He said the Building and Planning staff conducted a site visit on February 14, 2017, and determined the home meets building code and state licensing requirements for child care serving up to sixteen children within a single-family residence. Riordan touched briefly on state law related to daycare facilities and zoning. He said in November the State of Oregon Early Learning Division contacted the City with their request for verification of compliance of the daycare center, and specifically with regards to zoning requirements for daycare serving up to sixteen children. Riordan explained that this is where the anomaly in the City's Development Code comes into play. Forest Grove Development Code Section 10.3.120 allows for child care services for more than twelve children in residential zones as a conditional use, and the important number is twelve. He explained that state law allows for day care serving up to sixteen children as a permitted use in all residential zones within the state. Riordan said the State informed the City that state law preempts local zoning designations for day care, but since

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the operator of the facility does not live in the home the City does have a latitude to impose conditions on the operation of the day care facility.

Mr. Riordan said the review criteria is under Section 10.2.220 of the City's Development Code, and addresses several items; physical compatibility based on site size, building scale and style, setbacks and landscaping. Riordan said another criterion for conditional use review is whether or not public services are adequate to serve the site. He said this is an urbanized area and so public services are capable of serving the site. Riordan said a third criterion is livability specifically that the use will not have significant adverse impacts on livability to nearby property. He said the Community Development Department does not have any complaints on file pertaining to the day care. Riordan mentioned that staff received one phone call that morning from a person expressing concern over children climbing on the fence along their yard, and the caller mentioned that she spoke with the day care operator about this concern.

Mr. Riordan stated that the detailed findings are contained in the written staff report, and indicate the use appears compatible with the surrounding area. He pointed out that this child care is characteristic of day care as a home occupation allowed in residential neighborhoods, but since the day care operator does not reside in the home this is technically not a home occupation. He explained that to ensure ongoing compatibility with the facility, staff proposes conditions of approval that would apply to a day care as a home occupation. Riordan read the conditions of approval. In response to a question from Chair Beck, Riordan said generally it is ten average daily trips per dwelling unit, but this site is located on a neighborhood route so it is expected that the neighborhood route (18th Avenue) will incur more traffic than your typical local street.

Chair Beck said what struck him was four employees and sixteen children makes a total of around 40 trips per day, and that seems like a whole lot more than normal.

Mr. Riordan explained that what the whole criteria intends to address in context with home occupations is constant deliveries by vehicles larger than your typical FedEx delivery truck and that type of thing where it is more like commercial traffic (unlike you would see in that neighborhood). He said this site is located near the park and the school, so the day care would likely not have any more of an impact than the park and the school have with people dropping off their children.

Chair Beck said one of the issues for him is the traffic volume, and having the school there actually makes it worse because of the timing of maximum traffic will be in the morning before school. He said if this traffic occurred at 10 a.m. and 2 p.m. it would not be as big an issue, and he did not like to just skip over the amount of traffic the day care generates because it does not meet this criteria.

Mr. Riordan said the only way to respond to that issue is that the City has had no complaints with the operation over the past several years, so this indicated to staff that traffic was not an issue. He said the day care operator can speak more directly about number of cars and children that get to day care by vehicle versus neighbors walking their children to the facility. Riordan said the Planning Commission does have the discretion to impose conditions to mitigate potential impact that this operation could have on the surrounding area providing findings justify the condition.

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Chair Beck asked whether or not the Commission can assume this facility operated illegally for the past several years.

Mr. Riordan said technically that was correct. The City did not know the day care was providing services for up to sixteen children until the State contacted the City for the verification as applies to the zoning. He said there are two reasons for that: the State in 2005 amended the statutes to increase the permissible number of children from twelve to sixteen, and the City received no notification of that change.

Chair Beck said if it was in 2005 that was fine.

Mr. Riordan said the other reason the City did not know the day care was providing services for up to sixteen children is because the City's Business License does not require the listing of changes to the number of children receiving services in the license renewal process, which is something the City may want to look into, so it is known how many children are being served.

The Commissioners agreed this was a good idea.

In response to Commissioner Lawler's request for clarification on Condition # 4, Mr. Riordan explained this condition would be to prevent employees from parking on the street. He said if there are four employees, the driveway provides ample parking for four cars. He said the way staff understands the parking situation it would be unlikely that more than four cars for staff would be on site at the one time, so it does not appear there is a danger of the elimination of required off-street parking throughout the day due to its operation.

Mr. Riordan explained the alternatives the Planning Commission has, and stated that staff recommends the Planning Commission approve the conditional use permit for a child care facility at 3015 18th Avenue providing services for no more than sixteen children, and that the Planning Commission adopt the findings and conditions of approval recommended by staff.

APPLICANT:

Karissa Wold, Owner of Little Turtles Child Care, 42053 Berkshire St., Banks, OR 97106.

Ms. Wold said she wanted to clarify a couple of items. She said the day care is open from 6:30 a.m. to 6:30 p.m. so a lot of their traffic is gone before school is in session at 8:25 a.m. Wold said there are only two staff on site, and explained that the four staff people listed on the business license application included those at another site. She stated that she has been operating for sixteen children in Forest Grove for eleven years at many different locations, and recently downsized to just the current location. She said nothing has changed in any of the business plans, and per state law there are two employees on site for this number of kids. She explained that the day care has before and after school care with some children walking to and from school with a staff person, and many of the parents have more than one child in day care. She said this cuts the number in half as far as traffic goes. Wold said this is run like a small quiet in-home business. She said they have talked to the neighbors to make sure things are going well, and kids do climb the fence from time to time and staff tries to monitor the kids as best they can.

In response to a question from Chair Beck, Ms. Wold stated that the employees do park in the driveway and there is no garage so the driveway is quite wide and long, so at least four parents

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can pull in and drop off at a time. She explained that there were a lot of factors involved in deciding to rent this house and the school was a major factor.

PROPONENTS:

Jennifer Bailey, Owner of Site Property, 45975 NW Levi White Road, Banks, OR 97106.

Ms. Bailey stated that she and her husband own this property and are small business owners themselves, so they care about what is going on at this site. She said they want the property to be well cared for, and in the time the day care has been there the property has been well maintained. Bailey said that because they do not live in the home, it is quiet at night and on weekends, so from a neighborhood aspect there is an advantage. She thanked the Commission for making sure everything is on the up and up, and for caring about the community.

OPPONENTS: None.

OTHER:

Darrin Worthington, 3025 18th Avenue, Forest Grove, OR. Mr. Worthington said he lives next door to the day care, and was neither for nor against the day care facility. He said there were several concerns he wanted to raise, and he appreciated the parking issue being brought up because Joseph Gale School causes big parking problems on 18th Avenue. He said there were many days he did not get his mail because parents park in front of mail boxes. Worthington said the fence is another issue. He said there was a time when a child climbed clear over the fence, and he has had to address the fence climbing issue many times. He said a third issue is the tremendous amount of stuff that is thrown into his yard (toys, rotten apples from a nearby tree) – it is a nuisance thing. Worthington said from his observation the supervision of the children is lacking, and he felt better supervision would help the situation. He said at times there is only one adult sitting in a chair talking on their phone with kids running everywhere. Mr. Worthington said the lot to the north of this site has no barrier, and is not well maintained so there is a lot of brush and trees back there. He knows of raccoon and possum living there, which is a real concern when kids are running around back there unsupervised.

Mr. Worthington said those were the major concerns. He does not mind having kids there, and has never had a big issue other than the repeated fence issue and items in their yard. He explained that he ends up throwing all the toys away because he uses herbicides and fertilizers on his yard so he does not give the toys back.

In response to a question from Chair Beck, Mr. Worthington said the fence is four feet tall on one end going up to five foot. He said it is a cyclone fence, so the kids easily climb it, hang over it, or try to climb over it.

REBUTTAL:

Ms. Wold explained that, like any business, there was a batch of bad stuff that happened so she had to improve the training process to teach the staff exactly what needs to be done. She agreed the fence is an issue, and has thought about building a wooden fence. Wold said it is a huge yard, and she has thought about cutting it in half. She said there is a marsh in back, and the owners are kind enough to clear it out several times a year to contain it so the brush and trees do not grow too

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big. Wold said the State comes out twice a year to make sure the facility meets State guidelines, and for them everything is adequate. She agreed that the fence is an issue, and hopefully with the new manager and staff there will be better supervision going on, and she will talk to her staff about the phone situation. Wold explained that there are cameras on site both inside and outside, and she has access to these cameras 24/7. She said the cameras are a big asset - if situations arise there are recordings.

Chair Beck made the comment that drop-off is an issue with any day care facility, but it would be nice if the cars could pull clear in off the street to drop-off, and asked Ms. Wold if they used the large area of concrete for this purpose.

Ms. Wold said it is used, but the street frontage is quite long so when parents are dropping off they do pull up in front of the day care, but because 18th Avenue is so busy they prefer to pull into the driveway. She said she has never seen one of their parents pull up in front of a mailbox, and it could perhaps have been a school parent, or someone else (she indicated on the photo that the mailboxes were clear to the left and clear to the right of the day care). Wold said she has made it clear to her employees that they need to pull clear forward, so parents can pull in behind them. Ms. Wold stated that drop off times vary greatly.

COMMISSION DISCUSSION:

Commissioner Lawler said with a few minor issues this day care has been operating well for years, but has recently been caught up in bureaucratic parameters. He said he agrees that the fence issue should be worked out between this business and the neighbors. He said it sounds like the business owner and the staff want to operate with as little impact as possible.

Commissioner Nakajima said her one concern was, knowing that things change over time, some provision needs to be made so off-street parking for employees is maintained, because the State may say the day care can have 24 kids with six employees so there needs to be some provision for adequate off-street parking for employees.

Chair Beck said he had concerns about the parking, but it seems there is room for it and it seems to be working all right. He commented that in other residential applications a 6-foot fence is required and it seems reasonable to require one where the children are playing adjacent to neighboring properties. He said they would be well served to have a 6-foot fence for many reasons, and suggested it be added as a condition of approval. The Commission was agreeable.

Mr. Riordan clarified that in the Forest Grove Development Code a 6-foot fence is allowed from the front plane of the house to the back yard. He pointed out that the fence in this case does extend a little bit in front of the house. He said per the Development Code the maximum height in front of the house is about 3-feet.

Chair Beck said the fence only needs to be where the children are in the back yard.

Commissioner Lawler said one complaint that came up again and again was the parking. He said with the wide driveway and available on-street parking the parking issue seems to be manageable. Lawler said the other issue that came up again and again was the fence with children climbing on it as well as throwing toys over it. He said any kind of fence cannot perfectly alleviate the issue,

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the business owner seems agreeable to moving in that direction, so he said he would not be opposed to a good neighbor fence between the properties as a condition.

Chair Beck instructed staff to write a condition that would require a 6-foot fence in the child care area in back on the property lines with no fence required across the front that faces the street.

Ms. Bailey explained that there is a flag lot behind this property, so the grass strip is an easement to that flag lot, but the driveway that is partially gravel and partially concrete could come over a little bit. Bailey explained that before she bought the property someone chopped off the garage and split the property hence the flag lot, so that explains why the driveway apron is as wide as it is. She said if the fence were to be built, it would probably be built on the actual property line for this dwelling – which means there would still be a section of cyclone fence not associated with the day care area that would not be replaced.

Chair Beck instructed staff to word the new condition about the fence to include only the area behind the house where the children play outside.

In response to a request from Chair Beck for wording on off-street parking for employees, Commissioner Nakajima suggested it should state that as long as the dwelling is used as a day care facility, at least two on-site parking spaces need to be provided for employees. Chair Beck instructed staff to include this wording in Condition # 4.

Commissioner Lawler made a motion to approve a conditional use permit for the day care serving up to sixteen children at 3015 18th Avenue (File #311-17-000006-PLNG and Tax Lot 1S306AA07100) as amended by the Commission. Commissioner Smith seconded. Motion passed 5-0.

B. Applicant is requesting a variance to Development Code §10.8.905(F)(2) which requires that a parcel has at least 15 feet of frontage onto a public street. Address – 1919 26th Avenue. The tax lot in question has no street frontage. (File # 311-17-000003-PLNG and Tax Lot 1N331BC03900.)

Chairman Beck opened the public hearing, read the hearing procedures, and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There were none, and no challenges from the audience. He called for the staff report.

Mr. Reitz showed a slide of the site and vicinity. He explained that in 2007 a two-building eight-unit condominium project was started on the site at 1919 26th Avenue. He said the first building, utilities and car park were completed, and this resulted in the creation of several additional tax lots for the four new condo units. Reitz explained that the remaining part of that parcel retained the original tax lot number of 3900. He explained that due to the recession of 2008-09 the developer defaulted on the project before the second building was constructed, so Washington Federal took ownership of the vacant tax lot.

Mr. Reitz showed a slide of the tax map created by the Washington County Department of Tax and Assessment, and explained that a tax map is for tax assessment purposes only. He explained that what it indicates is the taxing areas and improvements. He said there can be “lots of record”, but tax lots and lots of record are not necessarily the same, and in this case they are not the same.

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Mr. Reitz pointed out on the map the tax lot that does not have access to a public street (26th Avenue), and tax lot 3900 in total. He said what is being done tonight is to get it more in line with what the tax lot map now already represents. He explained that the City's Development Code requires that any lot of record have access to a public street. Reitz said the term "street" is key, and the fact that this tax lot fronts onto an alley is not adequate, because it does not meet the Development Code requirement that a lot of record must have access to a public street. He said alleys are intended to be secondary access not primary access.

In response to a question from Commissioner Nakajima about nearby tax lot 5500, Mr. Reitz explained that particular flag lot 5500 does not have a driveway out to Main Street. He explained that the code does not require that the drive access be taken from the street the tax lot fronts upon. He said the site in question has a 20-foot easement out to the street for pedestrian access and utilities with vehicular access through the alley. Reitz said there are a handful of land locked parcels in the city, and most of those predate the Development Code, and the Zoning Ordinance.

Mr. Reitz explained that when the City becomes aware of tax lots that are not a lot of legal record, he reaches out to the parties involved to let them know the tax lot is not a lot of legal record, and that further process will need to take place before any land use approvals can transpire on those properties. He said that in this case staff tried to reach out to the parties involved (letter included in the packet), and the attorney for Washington Mutual (Mr. Valentine) had several discussions with the City's attorney about how to proceed forward, but there was no meeting of the minds. Washington Mutual went ahead and sold their interest in tax lot 3900 as is without it being a legal lot of record, but to Washington Mutual's credit they did obtain a 20-foot wide easement for access and utilities where the paved driveway is located, so tax lot 3900 can get access to 26th Avenue and install their utilities in this easement. Reitz said the bank did make some effort to make this right, but they did not go on to the next step which the City would have preferred. He said the alley is available for access, but this easement was always intended for primary access and added that it does not appear that any further legal paperwork needs to be filed in order to provide access for utilities for the tax lot in question.

Commissioner Nakajima said essentially the only difference between tax lot 5500 and 3900 is it is not a legally platted lot.

Mr. Reitz said that was correct, and it does not have the flag lot portion out to the public street – it will have access only via the easement. He said this really comes down to trying to make the best of the worst situation – everything that could have gone wrong in the formation of this tax lot into a lot of record did go wrong. He said the desired situation would have been a flag lot situation down to 26th Avenue.

Reitz said staff's recommendation is for approval, but there is also another step to take. He said the request before the Commission tonight is for a variance from the lot frontage requirement as tax lot 5500 has, so lot 3900 is not going to have a physical connection down to 26th Avenue. Reitz said even if the Commission should approve the variance for the frontage requirement, it would not be enough of an action, in and of itself, to make 3900 a legal lot of record. He said it would still need to go through the partition process so that this area would be surveyed, monumented, and there would be a partition plat filed with the County that will have the file numbers for this action tonight along with the partition plat file number for easy reference by anyone involved with this property in the future. Reitz said the applicant's attorney has been

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speaking with with the City's attorney and does not necessarily agree with the City's point of view on that, but staff and the City's attorney agree this needs to go through the partition plat process in addition to the variance before the Commission tonight.

Commissioner Nakajima asked if the intent is to have access through the easement, and Mr. Reitz said he believed so.

In response to a question from Chair Beck, Mr. Reitz said this property is in the RMH (high density residential) zone, and formerly the intention was to put another two-building eight-unit condominium on this property, so it is reasonable to expect a multi-family project might be built here. Reitz said four to five units would certainly be possible and as density changes in the future that could go up.

Chair Beck expressed concern about the amount of traffic going in and out of the alley with a multi-family project on this property.

Mr. Reitz said there will have to be access and parking discussions when this property develops.

Commission Lawler said there seems to be only one direction on this in the staff report. He asked if the only access is through the easement on tax lot 90000. He asked, hypothetically, if the variance were to fail what is the recourse – what happens to this lot if it is decided there is not going to be a variance regarding street frontage.

Mr. Reitz replied that if the Commission made that decision, this would probably end up in front of the City Council, but assuming the Council also denied the variance then tax lot 3900, as it is at present, is not a legal lot of record and no building permits could be issued.

Commissioner Lawler asked if there has ever been a public safety study on this lot or lots like it with multi-family development. He commented that if there were a fire, it seems as though there would be a pretty narrow exit route.

Mr. Reitz indicated the access on the slide and said the access is twenty feet wide with a five foot wide landscape area, and in the original concept it was planned to have parking along the curb line that would also allow two-way traffic. He said the people in the condos would have legal recourse if the twenty foot access were blocked other by the cars. Reitz explained that there is a maintenance agreement that states the cost of the upkeep for the access easement would be shared with the condominium project.

APPLICANT:

David Bennett, Applicant's Attorney, 1300 SW 5th Avenue, Suite 3600, Portland, OR 97201.

Mr. Bennett explained that he was present to represent the applicant. Bennett explained that back in 2008 the developer was unable to continue the 8-unit condo project and lost the property to the bank (Washington Federal). He said at that point tax lot 3900 was probably land locked, and Washington Federal negotiated with the owners of the condo units to have the easement granted for access. Bennett said the issue is the Forest Grove Development Code requires that the property have 20-feet of frontage onto a public street in order to be developed. He said if the variance is not granted, then what is left is a 12,000 foot lot that is not useable.

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Mr. Bennett said under State law when the condominium plat was filed there were four lots of record created. He said lot 3900 might not be a lawful lot under State law Chapter 92010, which talks about what a lawful lot is (which is one created by a subdivision, a partition, or a deed given to a property prior to land use laws come into effect or by ordinance or regulation). Bennett said his position was that State law allows the creation of a condominium and when the plat is filed there are four lots of record created and the areas associated with them, and what was left was a legal lot – it may not be buildable because there is no access or the configuration is strange. Bennett said the City’s attorney, Chris Crean, did not agree with him. He said the partition would be a funny thing, because it is a single piece of property and there is nothing to separate it from – it is not part of the condo project property. Bennett said a partition is when you take a piece of property and divide it into two or three lots, so parcel #1 would be the partition plat, but you cannot have the condo project property be parcel #2 – it is kind of a circular thing. He said maybe there will need to be a partition plat filed with the County to make this a lawful lot, which is something staff and the attorneys involved will have to decide. Bennett said in condominium law there is no common area that is owned separately. He said a person owns their unit and has an undivided interest in the undivided elements. He said the tax lots are #1, #2, #3 and #4 along with the common elements that pertain to it, so the easement area would be over the “common elements”.

Mr. Bennett said in order to have a flag lot, which was mentioned by one of the Commissioners, since it is already plated, the existing partition plat would have to be vacated by agreement of all four condo owners and all four mortgagees before it could be done, and that is a very cumbersome process. Bennett said staff was very cooperative in trying to figure out an answer to this issue. He said the Forest Grove Development Code requires 20 feet of deeded access, and that cannot happen in this case, but functionally it is the same and this way the property can be developed instead of just sitting there.

PROPOSERS: None.

OPPOSERS:

Frank Kurlmel, P.O. Box 3091, Hillsboro, OR 97123. Mr. Kurlmel said he was not sure about Forest Grove’s Development Code, but in other cities with a single-family home a 15-foot easement is required, but for each additional unit they need an extra eight feet.

Mr. Reitz explained that Forest Grove code has no such provision.

Mr. Kurlmel said when the condos were built they opened the back alley, and right now the way it is designed there are not enough parking spaces. He said people usually park right in front of the garages because it is convenient for them and the garages are used for storage. Kurlmel said when the back alley was opened traffic went both ways and the front area was filled up with cars – there was no traffic going through the driveway. He said with eight units there will be cars parked where they should not be because there are not enough parking spaces, the traffic is going through this narrow alley and because the alley is so narrow the cars go into the private property which is an apartment building that is children friendly. He said there are more than twenty children from age 1 year on up, and people are going 40 MPH through private property area with total disregard to what is going on there.

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Mr. Kurlmel said he talked to staff about this, and was told that because he did not oppose the project when the condos were being reviewed by the Commission his rights were waived. Kurlmel said he was present this time to state his views in opposition to this, so later on if it is approved he will be on record, because it is very unsafe to have people driving through the back alley. He said it is very unsafe for the children from the apartments playing back there, with eight units and 2-3 cars per unit that is 30 cars going back and forth through private property – accidents are going to happen. Kurlmel said he paid the bank that owned the lot \$750 to put up a fence, because they had major theft issues when it was wide open. He said he is opposed to the variance because people will park in front of the building and use the back alley to go back and forth. He said the alley is just not wide enough to accommodate that kind of traffic, and they drive through the private property.

Commissioner Nakajima asked Mr. Kurlmel if the fence remained would he have the same concerns.

Mr. Kurlmel said he would have no issue if the fence remained, but according to staff there is no way to prevent who ever owns the property from removing the fence. He said as long as the fence remains in place he has no issue, but as soon as they start building they will remove the fence and start driving through the back alley. Kurlmel said the pictures being shown to the Commission were taken during the day when people are at work - they should be taken in the evening when all the cars are parked everywhere.

Chair Beck said he appreciated Mr. Kurlmel's concerns about the alley, but tonight what the Commission is trying to decide is whether or not to allow the applicant access out to the street not to the alley. Beck explained that the Commission had no authority with the variance application to do anything about what eventually will happen on this property. He said when a developer eventually decides to do something on the property that is the time to speak up, but now is a different issue in front of the Commission.

Mr. Kurlmel said he did not believe it was fair to give an easement over such a small space especially when people park cars, unload the cars, etc. it makes the space very narrow – it is a safety issue to allow traffic for eight units to use this small alley. He said that is why other jurisdictions require 15-foot width with an additional 8-feet for any additional units.

Chair Beck said that was an important factor for the Commission to consider, because that does pertain to the easement.

OTHER:

Roger Sohler, 19026 Baker Rd., Bend, OR 97702. Mr. Sohler explained that he was there to find out what is going on with the variance. He said what he is hearing is if the easement was granted past the apartments then why do they not just take that for the fifteen feet, because it does not sound like people in the condos will be able to use it anyway.

Chair Beck explained that was what the Commission would be deciding - whether or not to let the easement count as access to the street. He said for whatever reason the people who own tax lot 3900 did not want to go through the challenge of trying to buy that part of the property. Beck

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explained that this easement is in close quarters and backs up to four garages which is an issue. Beck said the way this is supposed to work is the easement would be the equivalent of a 20-foot road.

REBUTTAL: The applicant's representative declined a rebuttal.

Chair Beck closed the public hearing and brought it back to the Commission for discussion.

COMMISSION DISCUSSION:

Commission Lawler said he personally did not see enough evidence that would lead him to want to render this lot a legal void. He said it is a complex issue, but if the alternative is leaving this entire lot a dead zone he did not see enough evidence to move him in that direction.

In response to a question from Chair Beck as to whether or not this sets a precedence, Mr. Reitz said each variance is unique and uncommon. He said obviously the City does not deal with variances very often – perhaps a half dozen variances over the past 15-20 years. He said there are other tax lots out there that are not lots of record, but there are no others, that he could think of, that are land locked as this one is, so setting a precedent does is not a concern.

Commissioner Nakajima said she understands the Commission cannot attach conditions to the variance.

Mr. Reitz stated that was correct. He said in terms of fencing, access and that sort of thing for anything including and above 3-units that will be a site review process with notice sent out to the neighborhood, and potentially conditions could be attached to that application at that point – a single-family or duplex are permitted by right with no notice to neighbors (Type I process), and conditions would have to pertain to a specific Development Code or Building Code stipulation. Reitz explained that 3-5 units is a staff level review with notice to the neighborhood, 6 units and above comes before the Commission.

Chair Beck said this property will not hold 6 units.

Mr. Reitz said that appears to be correct.

Chair Beck asked, regarding safety, if there was a requirement about how far residents can live from the street access per the fire department.

Mr. Reitz said there is a Fire Code provision, and it is 250-feet or so, and that would be the farthest point of the building from the point of access – so from the 26th Avenue driveway to the farthest point of the building. He reminded the Commission that because of the alley, there is fire access from both sides. Reitz said the alley itself is about 15-feet wide and then there is the additional driveway width back to the apartment. Reitz said the code back under the Zoning Ordinance was for 24-foot wide paved surface, so it is that width plus there is a walkway on the north side of the drive that could also be driven over – so about 30-feet in paved width.

Commissioner Rojas asked if this lot was going to have condos with facilities and access.

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Chair Beck said it was going to have the same access as existing one.

Commissioner Nakajima wanted to go on record that there were some important issues raised that, hopefully, the Planning Division will consider if an application should come before them.

Commissioner Lawler agreed with Commissioner Nakajima's statement.

Chair Beck said the point was made that if the original development had been built, there would be the same basic situation.

Commissioner Lawler made a motion to approve a variance to Development Code 10.8.905(F)(2) which requires that a parcel have at least 15 feet of frontage onto a public street for the property at 1919 26th Avenue. The tax lot in question has no street frontage. (File # 311-17-000003-PLNG and Tax Lot 1N331BC03900.) Commissioner Rojas seconded. Motion passed 5-0 to approve the variance.

C. Site Plan and Design Review of proposed 20,200 sq. ft. three-story commercial building, a 3, 149 sq. ft. day care facility, a coffee kiosk drive-through, and parking at 3424 Pacific Avenue, 1943 Oak Street, and 1954 Poplar Street. (File # 311-16-000200-PLNG and Tax Lots # 1S305BA-300, 500, 501 and 1700.) Continued to the April 3, 2017 meeting per the applicant's request.

2.3 ACTION ITEMS: None.

2.4 WORK SESSION ITEMS: None.

3.0 BUSINESS MEETING:

3.1 APPROVAL OF MINUTES: None.

3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES: None.

3.3 DIRECTOR'S REPORT:

Mr. Reitz stated that next meeting will be a review of the 20,200 sq. ft. commercial building that was postponed tonight.

Mr. Riordan announced that the Westside Planning Project has been delayed and will come before the Commission on May 1st and May 15th.

3.4 ANNOUNCEMENT OF NEXT MEETING: The next meeting will be held on April 3, 2017.

3.5 ADJOURNMENT: The meeting was adjourned.

Respectfully submitted by:

Marcia Phillips

Planning Commission Coordinator