

Minutes
Aurora Planning Commission Meeting
Tuesday, November 01, 2011 at 7:00 P.M.
Aurora Commons Room, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Renata Wakeley, City Planner

VISITORS PRESENT: Richard Harrison, Aurora

1. Call to Order of Planning Commission Meeting

The meeting was called to order by Planning Chair Nick Kaiser at 7:01 p.m.

2. City Recorder Did Roll Call

Chairman, Kaiser - Present
Commissioner, Graupp Present
Commissioner, Gibson Present
Commissioner, Graham Present
Commissioner, Fawcett Present
Commissioner, Braun Present
Commissioner, Schafer Present, late @7:05

3. Consent Agenda

Minutes

- **Planning Commission Meeting** – October 04, 2011
- **City Council** – September 13, 2011

Correspondence

- I. **Oregon Department Aviation, Airport Planning Rule**
- II. **LCDC Meeting Notice November 7th, 2011**

A motion to accept the consent agenda for the October 04, 2011 minutes was made by Commissioner Gibson and seconded by Commissioner Fawcett. Motion Passes Unanimously.

Chairman Nick Kaiser informs the Aurora Planning Commission that this will be his last meeting and is resigning from the Planning Commission.

4. Visitor

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Planning Commission could look into the matter and provide some response in the future.

Richard Harrison, Aurora was only visiting and made no comments.

5. Public Hearing

A. Code Interpretation 11-01 Interpretation of the Aurora Municipal Code (AMC) in regards to AMC 16.48.040 Rivers and Streams Corridors.

Public Hearing opens at 7:16

Chairman Kaiser states that he has had contact with Mr. Harrison prior to the hearing and basically told him to use the system to solve his problem and to get it resolved.

CITY OF AURORA PLANNING COMMISSION

STAFF REPORT: Interpretation 11-01 [INT-11-01]
DATE: October 27, 2011

APPLICANT/OWNER: Richard Harrison

REQUEST: Interpretation of the Aurora Municipal Code (AMC) in regards to AMC 16.48.040 Rivers and Stream Corridors

SITE LOCATION: 21825 Airport Road NE. Map 041W12C Lot 504

SITE SIZE: 56,628 square feet, or 1.30 acres

DESIGNATION: Zoning: Low Density Residential (R1) with a Historic Residential Overlay

CRITERIA: Aurora Municipal Code (AMC) Chapters 16.02 Introductory Provisions, 16.04 Definitions, and 16.48 Protections of Natural Features

ENCLOSURES:

- Exhibit A: Assessor Map
- Exhibit B: Interpretation Application
- Exhibit C: FEMA floodplain map
- Exhibit D: Slope Map
- Exhibit E: Oregon Wetland Determination Report (DSL)
- Exhibit F: Oregon Department of Forestry Fish Presence Report
- Exhibit G: Goal 5 Safe Harbor (ORS 660-023-0090)
- Exhibit H: Department of Land Conservation and Development Goal 5 specialist correspondence
- Exhibit I: John Rankin interpretation requested by Harrison (9/13/11)
- Exhibit J: Supplemental materials from Harrison (10/19/11)

I. REQUEST

Interpretation of the Aurora Municipal Code (AMC) in regards to:

(1) Applicability of minimum separation distances required along rivers or perennial streambeds, and

(2) Whether the fifty (50) foot minimum separation distance applies to the perennial streambed on the subject property.

II. PROCEDURE

Pursuant to 16.02.050, Interpretations are processed as Quasi-Judicial applications when the Interpretation is discretionary and if specific property is involved. Quasi-Judicial applications are processed according to AMC 16.76. Sections 16.02 Introductory Provisions and 16.04 Definitions provide the guidelines to aid in the implementation of Interpretations.

The subject property owner has been in contact with city staff in regards to sale of the subject property over several months. No land use application or application for interpretation was received from the subject property owner. Staff has determined that an interpretation is required from the planning commission as no previous land use decisions provide guidance into the applicability of the river and perennial streambed setback. Staff submitted an application for interpretation on October 11, 2011 and the application was determined complete on October 13, 2011. Notice was mailed to surrounding property owners on October 13, 2011. Notice was also published in the Canby Herald. The City has until **February 9, 2012**, or 120 days from acceptance of the application to approve, modify and approve, or deny the application.

III. APPEAL

Appeals are governed by AMC 16.76.260. An appeal of the Commission's decision shall be made, in writing, to the City Council within 15 days of the Planning Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Interpretations are found in AMC Chapter 16.02.050 Interpretations.

16.02.050 Interpretations

- A. An interpretation is a decision which is made under land use standards that require an exercise of policy or legal judgment. By definition, an interpretation does not include approving or denying a building permit issued under clear and objective land use standards or a limited land use decision.

FINDING: The applicant has not yet submitted a building permit but rather seeks clarification on whether a building permit could be approved based upon clarification (ie. Interpretation) of the Aurora Municipal Code (AMC) prior to submission of their building permit application.

- B. Each development and use application and other procedure initiated under this title shall be consistent with the adopted comprehensive plan of the city as implemented by this title and applicable state and federal laws and regulations. All provisions of this title shall be construed in conformity with the adopted comprehensive plan.

FINDING: The applicant will be required to meet the requirements of AMC 16.48 as well as receive building permit approval from the City of Aurora and Marion County prior to construction on site.

The 2009-2029 Aurora Comprehensive Plan (page 92 of 100), Goal 5, Policy 2 states, "The City will encourage plans for development which include preservation of open spaces, and protection of adjacent natural resources, i.e., riparian greenbelts. The City will consider appropriate 'Safe Harbor' setbacks to protect stream banks and water quality consistent with EPA and DEQ standards. Also included in the Comprehensive Plan under V. Resource Inventories, C. Air, Water and Land Resource Quality, 3. Water Quality (page 71 of 100), the Comprehensive Plan states, "DLCD, in cooperation with

the Division of State Lands, has developed stream bank protection standards known as 'safe harbor' setbacks. The City has incorporated these requirements in the update of the Development Code".

Goal 5 Safe Harbor (ORS 660-023-0090-5) reads as follows: As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5-minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs.

As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

While the Comprehensive Plan identifies the intent of applying a "safe harbor" to the Development Code, staff finds that the intent was to use the FEMA flood maps, as an approved document listed above under ORS 660-023-0090. As such, only those rivers and streambeds under the jurisdiction of the FEMA flood maps would be subject to the "safe harbor" setback of fifty (50) feet.

Planning Commission should determine, or interpret, the intent of the AMC in regards to whether the AMC 16.48.040.B requires:

1. Applying the setback using the safe harbor of "ALL lakes, and fish-bearing streams with average stream flow less than 1,000 cfs... shall be 50 feet from the top of bank"; And if so, as the Dept of Forestry has not listed the subject creek as a fish bearing stream, should the setback apply?

2. "The minimum separation distance necessary to maintain or improve upon existing water quality shall be the required setback for buildings or structures proposed along side of **any** river or perennial streambed... will not be less than **fifty (50) feet** or exceed one hundred fifty (150) feet for uses permitted in the flood plain shown on the FEMA maps. Whether the setback applies to any river or perennial streambed and whether the setback applies to subject rivers and streambeds on FEMA maps only.

The subject property will also be subject to review and approval by the Division of State Lands and Army Corp of Engineers (See Offsite Wetland Determination Report under Exhibit C).

- C. Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by any other provision of this title or of any other ordinance, or resolution, the **most restrictive** or that imposing the higher standard shall govern.

FINDING: The applicant seeks clarification on whether the perennial streambed is subject to the minimum separation distance setback as identified under AMC 16.48.040.B.

Subject to AMC 16.20, the Historic Residential Overlay minimum front yard setback is fifteen (15) feet, the minimum side yard setback is five (5) feet, and the minimum rear setback is ten (10) feet.

Subject to 16.48.040.B. The minimum separation distance necessary to maintain or improve upon existing water quality shall be the required setback for buildings or structures proposed along side of any river or perennial streambed. This distance shall be determined by a site investigation, but will not be less than fifty (50) feet or exceed one hundred fifty (150) feet for uses permitted in the flood plain shown on the FEMA maps. For all other uses, structures shall be sited outside the flood plain shown on the FEMA maps. Investigation shall consider:

1. Soil types;
2. Types and amount of vegetation cover;
3. Bank stability;
4. Slope of the land abutting the streams;
5. Hazards of flooding; and
6. Stream character.

C. All development proposed in flood plain areas shall be governed by provisions of Chapter 16.18.

D. The siting/construction of subsurface sewage disposal fields within the flood plain shown on the FEMA maps or within one hundred (100) feet of any water course is prohibited.

E. The unauthorized diversion or impoundment of stream courses which adversely impact fisheries, wildlife, water quality or flow is prohibited.

Additional documentation for Planning Commission review includes:

- a) FEMA maps (Exhibit C),
- b) Slope Map (Exhibit D)
- c) Information from Dept of Forestry (Exhibit F),
- d) Correspondence with DLCD (Exhibit H)

Staff finds that while the subject property contains a perennial stream, it has not been identified as a fish bearing stream under the approved Goal 5 documentation, including FEMA maps and Dept. of Forestry data. As such, the Goal 5 "safe harbor" criteria could not be used to support implantation of the safe harbor to this property. In addition, the City of Aurora did not inventory which creeks and rivers would be subject to the "safe harbor". Staff finds that, as currently written, the riparian streambed setback should apply to those properties under the 100-year floodplain and those properties outside of the 100-year floodplain shall be subject to the required setback for buildings or structures under the zone map.

APPLICANT's POSITION: See Exhibit J. Staff believes that the planning commission can confirm those items requested in Mr. Harrison's October 19th letter and still make a determination that the streambed setback **does** or **does not** apply. Section 16.48.040.A regarding setbacks for the protection of vegetation along water ways and 16.48.040.B regarding protection of water quality along waterways are separate and distinct setback provisions. This application for interpretation is not requesting an interpretation of 16.48.040.A in regards to protection of vegetation along water ways.

- D. The planning commission shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this title. All requests for interpretations shall be in writing and on forms provided by the city recorder. Upon receipt of such a request, the commission shall schedule the interpretation as a consideration item at the next regularly scheduled meeting.

If the person making the request disagrees with the commission's interpretation, they may appeal it to the city council. The council will hear the appeal as a consideration item at the next month's regularly scheduled meeting. The decision of the council shall be conclusive upon the parties.

FINDING: Staff submitted an application for interpretation subject to AMC 16.02.050 and 16.76 and public hearing notice was sent to property owners within 200 feet of the subject parcel and published in

a paper of general circulation. An appeal of the planning commission's decision shall be made to the Aurora City Council within 15 days of the planning commission's decision.

- E. When an interpretation is discretionary, notice shall be provided and the interpretation processed in accordance with the quasi-judicial process if specific property is involved or the legislative process if no specific property is involved.

FINDING: Staff submitted an application for interpretation subject to AMC 16.02.050 and 16.76 and public hearing notice was sent to property owners within 200 feet of the subject parcel and published in a paper of general circulation. An appeal of the planning commission's decision shall be made to the Aurora City Council within 15 days of the planning commission's decision.

- F. The planning director may develop administrative guidelines to aid in the implementation and interpretation of the provisions of this title.

FINDING: AMC 16.02.050 provides the administrative guidelines for processing Interpretations. Staff has provided applicable definitions and references from the AMC to assist the Planning Commission to assist the planning commission in their Interpretation in the above text. The applicant has submitted materials supporting their request for Planning Commission to determine a covered but unenclosed porch as an "open porch" which under the AMC would be permitted to project into a required yard but shall remain not less than five feet from the property line.

V. CONCLUSIONS AND RECOMMENDATIONS

The Planning Commission has three options as outlined below as part of this Interpretation application. Based upon the findings outlined in the staff report, staff recommends Planning Commission **Action A** as outlined below for the Interpretation application (file no INT-11-01):

Interpretation of the Aurora Municipal Code (AMC) in regards to: (1) Applicability of minimum separation distances required along rivers or perennial streambeds, and (2) Whether the fifty (50) foot minimum separation distance applies to the perennial streambed on the subject property.

VI. PLANNING COMMISSION ACTION

A. Based upon the findings in the staff report, the Planning Commission: **Adopts Action A as made by motion by Commissioner Graupp and seconded by Commissioner Graham. Action A is adopted.**

1. **Adopts the findings in the staff report and determines that the minimum separation distance required along rivers or perennial streambeds is applicable to rivers and streambeds within FEMA floodplain zones only.**

and

2. **The fifty (50) foot minimum separation distance DOES NOT apply to the perennial streambed on the subject property (Map Lot) as neither are located within the FEMA floodplain zone.**

B. The Planning Commission does not agree to the findings in the staff report and determines the following:

1. State how the applicant meets the criteria for a perennial streambed subject to AMC 16.48.040.B. and is subject to the minimum separation distance of not less than fifty (50) feet or exceed one hundred fifty feet (150), based upon a site investigation.

and

2. Based upon this Interpretation, the applicant for the subject property (Map 41W12C Lot 504) must meet the minimum separation distance as identified under AMC 16.48.040.B.

B. Continue the hearing to a time certain or indefinitely (considering the 120 day limit on applications).

- ❖ Harrison did discuss with the Planning Commission the division of his property in 1999 in briefly.

Public Hearing closes at 7:57 and Action/option A is adopted by Planning Commission member Graupp and seconded by Commissioner Graham.

- ❖ There were a few questions from the Commissioners,
 - Commissioner Graupp had a question from exhibit H on adoption of safe harbor and perennial inventory.
 - Commissioner Schaefer explains safe harbor
 - Graupp asked where exhibit E1 discussion came from and it was with the property owner
 - Graham asked if we rule on this will this discussion apply to future applications; it is an interpretation of the code yes.
 - Discussion was brief.
- ❖ Harrison testimony
 - 21825 Airport Rd a legal lot of record created in 1999
 - 21825 Airport Rd is not in the flood plain and is not on the FEMA maps
 - That the subject property is not on the wetland map

6. New Business

- A. **Discussion and or action on Harrison property 21825 Airport Rd.** this has been discussed during public hearing.

7. Unfinished Business

- A. **Discussion and or Action on Historic Review Guidelines,** Councilor Sahlin and City Planner Wakeley had attended the October HRB meeting. Commissioner Schaefer also attended.
 - During the work session 3 areas for administrative review were identified
 - Administrative review was also discussed.
 - Discussion of no administrative review if within 500 feet of contributing historic structure.
 - HRB is still reluctant to have Planning Commission involved and not sure why they are.
 - Community feedback on what they would like to see in the Historic District is discussed.
- B. **Development Code status,** City Recorder Richardson reports that the code update is finished and at the printers.

8. Commission Action/Discussion

- A. **City Planner Activity Sheet (in your packets)
Status of Development Projects within the City: Attached.**

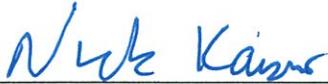
City Planner Wakeley read her report.

Wakeley updated the Commission and read her report.

- Fianza application is now complete upon waiver of annexation fee.
- Street tree Ordinance should have its first reading at the December Council meeting.

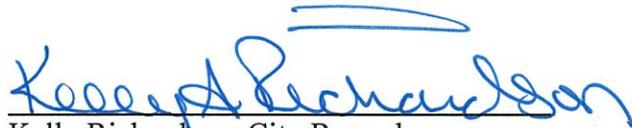
8. Adjourn 8:37 P.M.

A motion to adjourn the November 01, 2011 meeting is made by Commissioner Fawcett and seconded by Commissioner Braun. Motion Passes Unanimously.



Planning Commission

ATTEST:



Kelly Richardson, City Recorder