

- 1-2. CALL TO ORDER AND ROLL CALL.** Vice Chair Bailey called the meeting to order at 7:30 pm at Durham City Hall.
Commissioners Present: Krista Bailey, Pat Saab, Laurie Volm, Julie Atwood, Emily Baker, and Jeffrey Anderson
Commissioners Absent: Brian Goddard
Staff Present: City Administrator Linda Tate, Administrative Assistant Lynn Schroder, and City Planner Carole Connell.
Public Present: Ben Nelson, Beaverton; Stephanie Vaughn, Peters Road, Bill Kalthenthaler, Arkenstone Drive; Gary Paul, Kingfisher Way.
- 3. MINUTES OF THE August 1, 2017 COMMISSION MEETINGS.** Commissioner Saab moved to approve the minutes of the August 1, 2017 meeting. Commissioner Volm seconded the motion. The minutes were approved 6-0. **MO 0905.1-17**
- 4. PUBLIC FORUM – none.**
- 5. VARIANCE APPLICATION 589-17 – 8220 Peters Road.** Vice Chair Bailey closed the regular meeting of the Planning Commission and opened a public hearing on Variance Application 589-17. City Planner Connell read the hearing statement. Connell asked Commissioners to declare any ex parte communications or conflicts of interest. None was declared.

Connell presented the Staff Report and Findings for Variance 589-17. The property is 32,000 square feet and zoned for single-dwelling residential use. The prospective property owner is seeking a reduction from the front yard setback from 20 feet to 15 feet to build a new house on the property. The reduction is necessary to accommodate a 50-foot wide Vegetated Corridor easement on the west side of the property adjacent to the Tualatin River. The Vegetated Corridor easement is imposed by Clean Water Services.

Connell summarized the application Findings. She stated that Tualatin Valley Fire & Rescue and Tigard Water did not respond to the variance notice. Pride Disposal and Comcast did not have any concerns about the proposed variance. She stated that the variance would not require paving or road improvements to Peters Road. However, as a condition of approval, she recommended that the applicant sign a waiver of remonstrance for future improvements of Peters Road.

Connell stated that Clean Water Services provided a Service Provider Letter that outlines requirements for water quality protection for site development. CWS requires that the property owner maintain a 50-foot Vegetative Corridor easement in the backyard along the Tualatin River. The required Vegetative Corridor easement restricts the buildable area of the property and is the reason for the front yard setback variance request. Connell stated that the CWS requirements sufficiently address water quality concerns; however, she stated that the City will require that the developer install a system for on-site storm water disposal.

Connell stated that the applicant has not submitted a final house plan because he wanted to determine the buildable area before finalizing a house plan for the property. The proposed house will be approximately 3,200 square feet with a two-car garage and two parking spaces in the driveway. Tentative plans show the house meeting the side and

backyard setback requirements. If the final building plan requires tree removals, the developer would need a tree removal permit from the City. The City would require that all utilities be placed underground.

Connell stated that the property is a legally created lot. She stated that the application meets the DDC's criteria for a variance because the buildable area of the lot is restricted by natural conditions and the CWS Vegetative Corridor easement. These restrictions are not under the control of the prospective owners. Further, Connell stated that the five-foot reduction of the setback would not alter the character of the neighborhood or affect neighboring properties. She stated that enforcement of the full front yard setback would not provide additional public benefit. Last, she stated that the variance request is the minimum necessary to build the house on the property. Connell stated that the City has not received any comments from the public about the proposed variance.

Based on the Findings outlined in the Staff Report, Connell recommended that the Planning Commission grant the variance subject to eight conditions included in the staff report.

Ben Nelson testified that he and his wife have been considering purchasing the undeveloped property since October 2016. He and his wife hired Garret Custom Homes to build a house for the property because they are an established builder who is familiar with building on custom lots. He stated that he met with CWS and the City of Tigard Water about the lot and its constraints and understands the conditions imposed by CWS. He stated that the buildable area is very constrained and the 5-foot variance is required to build on the lot. He stated that the house will face the street with the driveway approximately 10 feet from the northeast corner of the property.

Stephanie Vaughn of Peters Road testified that her concerns about the house blending into the neighborhood were addressed in previous testimony.

Chair Bailey closed the public testimony for Commission deliberation.

Commissioner Atwood stated that she supported the variance request because the lot was intended to be a buildable lot and that all the criteria for the variance were met. She stated that the property owner could build a smaller house but that the proposed size of the house is similar to other houses on Peters Road. She stated that a new house at the end of Peters Road would make the area more attractive and would be an improvement.

Commissioner Bailey stated that the applicant worked with the City to reduce a larger variance request. She stated that the proposed variance was reasonable.

Commissioner Baker stated that the house is located at the end of Peters Road and would not impact the character of the neighborhood.

Based on the Staff Report Findings, Commissioner Volm moved to approve the setback Variance 589-17 subject to the eight conditions of approval listed in the Staff Report. Commissioner Atwood seconded the motion. The motion was approved 6-0.

MO 0905.2-17

Chair Bailey closed the public hearing and reopened the regular meeting of the Planning Commission.

- 6. JOINT SESSION WITH PARK COMMITTEE.** Park Committee members Bill Kalthenthaler and Gary Paul joined the meeting. City Administrator Tate presented the 2017 Park Survey results. She announced that the City will hold a public meeting on the survey at the October

3, 2017 Planning Commission meeting. There were 61 surveys returned. She noted that the Kingsgate neighborhood had the highest number of surveys returned but Afton Commons had the highest rate of return. Most respondents returned paper surveys in person. Only thirteen responded to the electronic survey. Bill Kaltenthaler stated that approximately 23% of households responded to the survey (excluding household in the multifamily zone). Most respondents were 61 or older and have lived in Durham for more than twenty years.

Atwood noted that maintenance of the play equipment was a main theme.

Baker asked about dog aggression in the park. Atwood stated that it seemed like the issue was more about unwanted dog contact rather than serious aggression. Tate noted that dog aggression and unwanted contact has been an on-going issue in the park. Bailey stated that the issue of dogs in the park is polarizing. She stated that it is difficult to police. She stated that it is challenging to do more to address the issue. She stated that in her experience at the park, the dog issue has improved since the off-leash designation. Gary Paul stated that he is concerned with dogs running outside the off-leash area.

Gary Paul noted that quite a few respondents wanted events in the Park.

The Park Committee discussed a smaller dumpster at the park and picnic tables.

DISCUSSION OF APPEAL OF TREE REMOVAL PERMIT 423-17. Tate provided information about the appeal of Tree Removal Permit 423-17. She stated that a Kingsgate resident appealed the Planning Commission approval to the City Council. The City Council considered the appeal by a de novo hearing and denied the tree removal. Tate provided procedures and criteria from the Development Code to the Planning Commission that addresses the concerns of the City Council. She also provided a draft "frequently ask questions" that provides guidance to citizens about how the criteria are applied. She asked that the Planning commission provide feedback on the guidance.

Volm stated that she attended the appeal hearing. She stated that the City Council expressed concern over procedural errors in the original approval and requested that the Planning Commission followed the Type 2 Decision Process more closely. She stated that their biggest concern is that the Planning Commission did not cite the permit type, DDC criteria, or findings when making a decision.

Atwood stated that, as the tree removal applicant, she felt the process was brutal. She felt that she was not well informed about the appeal process. She did not know that the appeal was a de novo hearing and was not prepared to provide all the evidence required for such a consideration. She thought it was unfair that the appellant was not required to pay an appeal fee. She was also surprised about how strictly the City Council adhered to procedures and applied the criteria of the Tree Removal Code. She stated that she was not able to provide additional evidence once the testimony was closed and the Council deliberated. She stated that her impression was that the City Council did not think that the Planning Commission was doing its job effectively and that the appeal modeled how tree removal permit decisions should proceed. She stated that the City Council requires arborist reports or other documentation to substantiate assertions. The Planning Commission needs to be specific about its findings when considering applications. Atwood stated that draft procedures and standards provided by Tate will help residents navigate the process. Atwood stated that decision-makers need to conduct a site visit to view the proposed tree removal. She did not think it was fair to make a decision without seeing the tree in the surrounding setting.

Bailey stated that she did not feel the Planning Commission had been careless in its decision making. She questioned the appellant's standing to bring the appeal because he did not testify at the original hearing. She stated that the draft procedures were a strong departure from the way the Commission has been considering tree removals. She was concerned that the proposed procedures are too onerous for citizens. She stated that making it harder for citizens to navigate the tree removal process is discouraging and counter to measures taken in other jurisdictions to make the process easier. She stated that the Planning Commission should strive to foster a balance.

Commissioner Saab stated that the Planning Commission needs to identify permit type when approving tree removals.

Volm agreed with Atwood that the formalized procedures will help make the process fairer for applicants. She stated that the Planning Commission needs to have very specific findings on which to base its decision. She stated that applicants should be required to attend the meeting for consideration of their application.

Commissioners discussed the new process, procedures, and guidance. Because applications can address the criteria in writing, Commissioners did not want to require applicants to be present at the PC meeting. Instead, Commissioners strongly recommend that applicants attend the PC meeting. Commissioners discussed the need to view the tree prior to the meeting. Commissioners agreed that it may not be possible to view every tree prior to consideration and Commissioners do not need to recuse themselves if they do not view the tree. Tate stated that she will hand deliver notices of tree removal to all property owners within 300 feet.

7. **COMMISSIONER COMMENTS.** Tate reviewed rules for the public forum portion of the Commission meeting and Roberts Rules of Order. She provided information regarding the complaint at August 1 Public Forum. Tate announced a workshop for Planning Commissioners and offered to send one member of the Planning Commission. Baker volunteered. Tate mentioned that a Planning Commission training manual is available at City Hall to check out.
8. **ADJOURN.** Commissioner Saab moved to adjourn the meeting. Commissioner Volm seconded and the motion passed unanimously (6-0). **MO 0905.3-17**

Vice Chair Bailey adjourned the meeting at approximately 10:00 pm.

Approved: _____
Brian Goddard, Chair

Attest: _____
Linda Tate, City Administrator