



CODE INTERPRETATION

Staff Recommendation

November 8, 2019

FILE NO.: GLUA 19-0006: CI-19-00002: Code Interpretation

HEARING DATE: November 18, 2019

**APPLICANT/
OWNER:** Beaver Creek Road, LLC
Attn: Hans Christiansen
600 University Street, Suite 1708
Seattle, WA 98101

REPRESENTATIVE: Micheal M. Reeder, Attorney
Law Office of Mike Reeder
375 W. 4th Ave., Suite 205
Eugene, OR 97401

REQUEST: Code interpretation for validity of permits/prior reviews for Villages at
Beaver Creek

LOCATION: 19896 Beaver Creek Rd., Oregon City, OR 97045
Clackamas County Map 3-2E-10C, Tax Lot 800

**NEIGHBORHOOD
ASSOCIATION:** Caulfield Neighborhood Association

REVIEWER: Christina Robertson-Gardiner, AICP Senior Planner (503) 496-1564
Laura Terway, Community Development Director

RECOMMENDATION: Approval with Condition of Approval.

PROCESS: Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. Applications evaluated through this process include code interpretations. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet of the subject property. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before

the planning commission, all issues are addressed. The decision of the planning commission is appealable to the city commission within fourteen days of the issuance of the final decision. The city commission hearing on appeal is on the record and no new evidence shall be allowed. Only those persons or a city-recognized neighborhood association who have participated either orally or in writing have standing to appeal the decision of the planning commission. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290.C must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. The city commission decision on appeal from the planning commission is the city's final decision and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final.

CONDITION OF APPROVAL

The application appears to comply with all applicable criteria with the following exception:

1. The request that “Any building permits necessary to construct the project as provided in the Approval cannot be disturbed by subsequent changes to the ... Oregon Structural Specialty Code” cannot be made the Planning Commission and is not included in the approval. Decisions related to the Oregon Structural Specialty Code are considered by the Building Official or the Building Codes Division of the State of Oregon.

I. BACKGROUND:

The subject site consists of 9.7 acres located on Beavercreek Road, identified as Clackamas County Map 3-2E-10C, Tax Lot 800.

Figure 1: Aerial Photo of Subject Site



Permit History

- The City issued approval of a Type II Site Plan and Design Review application for the removal of a dwelling and accessory and construction of a 121-unit multi-family complex and 59 Live-Work Units on November 14, 2014 (Planning file SP 14-01).
- The decision was appealed to the City Commission (Planning files AP 14-01 and AP 14-02). On March 4, 2015, after reviewing all of the evidence in the record and considering all of the arguments made by the applicant, appellant and citizens, the City Commission concluded that the criteria for the approval of the proposed Site Plan and Design Review application had been met with conditions. The City Commission approved revisions to Conditions of Approval #'s 2, 34, and 37. Accordingly, the City Commission voted 4-0 to adopt findings for denial of the two appeals, AP 14-01 and AP 14-02, upholding the Community Development Director's decision to approve file SP 14-01, with amended conditions.
- The City's approval was appealed to the Land Use Board of Appeals, (*Graser-Lindsay v. City of Oregon City* - LUBA 2015-013), which upheld the City's decision on August 8th, 2015. LUBA's decision was not appealed further and became final on August 27th, 2015. Oregon City Municipal Code (OCMC) 17.50.200.C identifies the expiration period begins on the date of final disposition of an appeal (the date when an appeal may no longer be filed).
- A demolition application was submitted to demolish a 1,200 square foot single-family dwelling and a 400 square foot garage onsite in order to accommodate the proposed development. The permit was issued on April 28, 2015 (Building file BB-15-0154).
- An Extension application was approved on May 8, 2017, extending the validity of the Site Plan and Design Review approval to August 27th, 2018 (Planning file EX 17-01) in accordance with OCMC 17.50.210.
- Building permits for all of the proposed structures onsite were submitted in 2017, though none of the building permits have been issued.
- On August 22, 2018 the demolition permit was reinstated before being subsequently extended on October 7, 2019.
- Addresses were issued for the site and the applicant.

- The applicant initiated plan review for construction of public improvements.

Code Interpretation Request

The purpose of this Code Interpretation is to determine if a Site Plan and Design Review application (Planning file SP 14-01) is valid. The applicant's request includes the following:

A Type II land use decision is void within two years of issuance unless an extension is obtained and/or a "building permit" has been issued. Former OCMC Section 17.50.200.A.1 However, an appeal of the land use decision tolls this two-year time limitation.

The term "building permit" is not defined by the OCMC. However, it is the position of both the Applicant and City staff that a "demolition" permit is a "building" permit for purposes of the OCMC generally, and OCMC Section 17.50.200 specifically.

The Applicant hereby requests that the Planning Commission make the following determinations:

- 1. For purposes of OCMC 17.50.200, a "demolition" permit is a "building" permit,*
- 2. That the demolition/building permit issued by the City as BB-15-0154 had the effect of vesting the Approval such that the Applicant, or a subsequent owner of the subject property, may obtain other building permits and any other necessary approvals to develop the subject property according to the Approval, and*
- 3. Any building permits necessary to construct the project as provided in the Approval cannot be disturbed by subsequent changes to the Municipal Code or the Oregon Structural Specialty Code.*

If the Planning Commission finds that the demolition permit does not constitute a building permit or that the Site Plan has not been vested in some way, the 2014 approval becomes void and any development onsite would require a new review process for compliance with the existing Oregon City Municipal Code.

Though the applicant requested a Planning Commission interpretation related to the Oregon Structural Specialty Code, only the State Building Codes Division or the Building Official have the authority to make such a determination.

The standard for which one determines if a permit is valid or expired may be found in chapter 17.50.200 of the Oregon City Municipal Code (OCMC). This provision of the code was changed since the proposed development application was submitted. Though it is clear that the permit would be valid if the existing standards were in effect in 2014 when the Site Plan and Design Review was submitted, the applicant may only choose to utilize the current code if the permit was valid (and had not expired) when the code was amended on August 2, 2019.

2014 Code – Effective During the Submittal of SP 14-01

17.50.200 – Expiration of an approval.

- A. When approvals become void: All Type I—IV approvals, except for zone changes, comprehensive plan map amendments, conditional uses and master plans automatically become void if any of the following events occur:*

1. *If, within two years of the date of the final decision, a building permit has not been issued.*
 2. *If, within two years of the date of the final decision for all land divisions, the activity approved in the permit has not commenced or, in situations involving only the creation of lots, the public improvements and conditions of approval have not been completed or financial guarantee (surety) provided.*
 3. *Annexations become void if a vote of the citizens rejects the application.*
- B. New application required: Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.*
- C. Deferral of the expiration period due to appeals: If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the land use board of appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).*

II. ANALYSIS AND FINDINGS:

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

17.50.030 Summary of the City's Decision-Making Processes.

Finding: Complies as Proposed. The proposed Code Interpretation is being processed as a Type III application per chapter 17.50.030 of the Oregon City Municipal Code.

17.50.090 Public Notices.

Finding: Complies as Proposed. Once the application was deemed complete, the City noticed the application to all neighborhood associations, Citizens Involvement Committee, and posted the application on the City's website. Staff provided email transmittal of the application and notice to affected agencies, the Natural Resource Committee and to all Neighborhood Associations requesting comment. All interested persons have the opportunity to comment in writing or in person through the public hearing process. No comments were received regarding this application.

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B. New application required: Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

C. Deferral of the expiration period due to appeals: If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the land use board of appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

Finding: Complies with condition. This provision identifies that a Site Plan and Design Review approval would expire if “a building permit has not been issued” within two years of the date of the final decision.

As identified above, the decision became final on August 27, 2015 when the Land Use Board of Appeals (LUBA) decision was not appealed. This standard requires that a building permit associated with the Site Plan and Design Review must have been issued within two years of the Site Plan approval on August 27, 2017. A one-year extension was approved prior to expiration of the approval, extending the timeline to issue a building permit associated with the development to August 27, 2018.

A demolition permit associated with the proposed construction was issued on April 28, 2015. The demolition permit consisted of removing a home and accessory structure to allow for the construction of a 121-unit multi-family complex and 59 live-work units. The demolition was included in the Site Plan and Design Review approval.

The first question within this Code Interpretation is if the issuance of the application to demolish the structures onsite qualifies as issuance of a building permit. The rationale for considering a demolition permit the same as a building permit is as follows:

- The demolition request was made on the City's "Building Permit" application form.
- There is not a different application form for demolition. In other words, all demolition applications are required to be on a building permit form. The City has consistently processed demolition requests in this manner.
- The demo permit was given a building permit file number. In other words, all demolition applications are assigned a building permit number. The City has consistently processed demolition requests in this manner.
- There is not separate file type available for demolitions.
- The criteria for which demolitions are reviewed by the Building Department is found within the building code regulations.

From the information identified above, staff believes that the issuance of the demolition permit satisfies the requirement for issuance of a building permit. Staff cannot identify any rationale as to why the issuance of a demolition permit would not qualify as a building permit.

The second interpretation is if the permit is currently valid. As the building permit for demolition was issued April 28, 2015, prior to expiration of the Site Plan and Design Review permit on August 27, 2018, staff believes the permit is still valid. The Site Plan and Design Review would not expire since the requirement for issuing a building permit prior to expiration of the Site Plan and Design Review was satisfied. The applicant may choose to utilize the recently amended code since the permit was valid at the time the code amendments were effective, but does not have to.

The final interpretation is if the building permits necessary to construct the project as provided in the approval can be disturbed by subsequent changes to the Municipal Code or the Oregon Structural Specialty Code. As identified in the second interpretation above, the Site Plan and Design Review is valid and vested and thus is not subject to subsequent code amendments. As only the State Building Codes Division or the Building Official have the authority to make such a determination related to the Oregon Structural Specialty Code and thus this interpretation cannot be made. **Staff has determined that it is possible, likely and reasonable that the applicant can comply with this standard through the Conditions of Approval.**

III. CONCLUSION AND RECOMMENDATION:

Based on the analysis and findings as described above, Staff concludes that the Code Interpretation supports the request confirming that the Site Plan and Design Review approval of Planning file SP 14-01

is valid. Staff recommends the Planning Commission approve file GLUA 19-0006: CI-19-00002 based upon the findings and exhibits contained in this staff report with the condition that interpretation related to the Oregon Structural Specialty Code is not approved, as it is a decision for the Building Codes Division or the Building Official.

IV. EXHIBITS:

1. Applicant's Submittal
2. SP 14-01 Notice of Decision
3. AP 14-01 and AP 14-02 Notice of Decision
4. LUBA 2015-013 Final Opinion and Order
5. EX 17-01 Notice of Decision