

**Rivergrove Planning Commission Minutes  
March 5, 2018**

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**CALL TO ORDER AND ROLL CALL** The meeting was called to order at River Grove Elementary School library at 7:04 p.m.

Present: Chair Andrew Dausman, Commissioners Jonathan Sweet (vice chair), Jennifer Crock, and Jacob McKay. Commissioner Jeff Williams was not present. City Recorder Leanne Moll declared a quorum.

Commissioner Crock shared that the March meeting would be her last meeting as a Commissioner due to health issues. She expressed she has enjoyed the process and was looking forward to the next few years as the Planning Commission develops ordinances. Commissioner Dausman noted that Commissioner Crock is always welcome back if the time is right. He thanked her for her service.

**CONSENT AGENDA**

**1. Minutes from the February 5, 2018 Meeting**

**Motion:** Commissioner Dausman **moved** to approve the Minutes from the February 5, 2018 meeting as presented. **Seconded** by Commissioner Crock The motion **passed 3-0**. Commissioner McKay abstained.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**1. Tree removal permit for a weeping cherry grafted on a cherry tree in the floodplain at 5638 Childs Road, submitted by Councilor Arne Nyberg.**

City Manager/City Recorder Leanne Moll explained that the tree in question is a 40-year old weeping cherry grafted on a cherry tree and in the way of construction and on the decline. It is in the floodplain, but out of the Water Quality Resource Area and is located two feet from Dogwood Drive at the front of the property.

Councilor Arne Nyberg, the applicant, explained that City Arborist Brian French recommended removal because the tree is in the way in the construction. Construction vehicles cannot access the property in another section of the lot because of the placement of a septic system.

Chair Dausman commented that the Planning Commission examines tree removal for development differently than a single tree removal permit. He does not want there to be a precedent for approval of development permits without trees being considered.

Commissioner McKay asked if the tree is dead, dying, or dangerous and asked for clarification as to why the Planning Commission is reviewing a tree removal permit for a single tree.

City Manager/City Recorder Leanne Moll explained that Mayor Heather Kibbey has requested that the Planning Commission review all tree removal permit applications for trees that are located in the floodplain because of the precedent set in the NOAA FEMA lawsuit.

The application will be amended by City staff to clarify that the tree is not dead, dying or dangerous.

**Motion:** Commissioner Dausman **moved** to approve the tree removal permit and require a 1:1 mitigation in the floodplain post-construction and part of the site restoration. The mitigation tree must have two-year survivability, be approved by City staff, and be a native species of the applicant's choosing from Metro's booklet *Native Plants for Willamette Valley Yards*.

**Seconded** by Commissioner McKay.  
**Motion passed 4-0.**

## **2. Discussion of Goals for 2018**

### **Tree ordinance update**

City Manager/City Recorder Leanne Moll read a message from Commissioner Jeff Williams reporting on the Tree Board's progress:

"The Board is working on addressing concerns raised in the previously submitted ordinance by focusing on the permit structure itself for various permit types (i.e., Development, invasive, etc.), and outlining processes to reach a final conclusion. The draft application permits are in a form to be reviewed by Brian French, and we are trying to coordinate schedules with him, but he was ill for a while and this meeting has not yet happened. Based on his inputs, the applications will be revised and then language/intent will then be transferred to an ordinance draft. The goal will be to then have a Public Workshop for community inputs, and then finalize a submission for the Planning Commission. In my opinion, with no offense intended for anyone on the Board, the process is taking significantly longer than it should and I feel that our approach is flawed as demonstrated by the progress made over the time period contemplated. That said, significant work/effort has been invested thus far, so there is no reason to change the approach now. I would estimate we are 45-60 days away from the Public Workshop, and then another 30 days for the PC submission."

Commissioner Dausman asked why the updated ordinance is taking so long and why the Tree Board can't expediate the process.

Chair Dausman requested that City staff notice a public workshop for the updated tree removal ordinance soon. Scheduling a work session could drive the writing of the ordinance by making a deadline. The Planning Commission agreed that a work session could be held prior to the May Planning Commission meeting on Monday, May 7 at 6:00 p.m. at the River Grove Elementary School library.

### **List of exemptions**

Commissioner Dausman asked City Manager/City Recorder Leanne Moll to prepare a list of past exemptions granted by the Planning Commission. [See attached document]. Ms. Moll explained that City Planner, Carole Connell, suggested the Planning Commissioners not consider "Conditional Uses" an exemption. Per her email message:

"The list of past decisions involving an 'exemption' or variance is interesting and good data. For your discussion may I suggest that a Conditional Use to locate a dwelling in the floodplain is not an exemption or a variance, but rather a permitted use that requires rigorous review to assure compliance with FEMA elevation and construction standards. The RLDO is not written to prohibit a dwelling on a lot in the floodplain, nor are the FEMA regulations. If those were removed the list would identify hardship/variance requests."

Commissioner Dausman summarized the findings. Hardship relief for setbacks are the most common variance granted in the last 15 years.

Commissioner McKay noted that the burden to propose hardship relief should be put on the applicant.

Commissioner Crock explained that she believed the Planning Commission could create more issues with hardship variances if the rules were increased. She urged the Commission to maintain ordinances that continue to allow flexibility in interpretation

Commissioner McKay suggested that an architect or engineer should weigh in to validate the hardship relief request, as happens in most jurisdictions.

### **Airbnb**

Commissioner Dausman researched Airbnbs and found some guidelines for cities to manage short-term rentals. He noted that Rivergrove is zoned entirely residential. RLDO 5.120 Section (a) subsection 2 defines occupational use of the home in the following way:

“However, if such sales and/or parties are held more than six times in any calendar year or operate in excess of 24 cumulative days in a calendar year, such sales and/or parties shall be considered a home occupation.”

Commissioner Dausman explained that the Ordinance is not saying a resident can't have an Airbnb short-term rental, but the Planning Commission needs City Planner Carole Connell or City Attorney Bill Kabeiseman to comment.

Commissioner Dausman explained that the Ordinances go on to state that in Section (c) subsection 11, the RLDO states that homes that lodge transient guests must acquire a permit from the City:

“Lodging: Business offering transient lodging shall be allowed only with an approved permit from the City.

Transient is defined in 1.050 definition (s):“Resident’ mens [sic] a person or persons living as a resident for some continuous [sic] period (as distinguished as a transient)”

Currently, there is no process for that permit, but the Planning Commission could establish guidelines and provide an outline for an Airbnb permitting process.

Commissioner McKay offered to draft an Airbnb (transient lodging) permit to present to the Planning Commission next month.

### **Uninhabitable Accessory Structures**

Michael Salch asked the Planning Commission to define the size of an uninhabited accessory structure that does not need a development permit by formally amending RLDO 2.040 subsection (h). Mr. Salch noted various interpretations – 108 square feet, 120 square feet, 200 square feet – and asked the Commissioners to determine if the City will conform to the state building codes (200 feet) as the City Attorney has suggested or define an uninhabited accessory structure that does not need a permit differently.

### **Expiration of Development Permits**

Commissioner Crock noted that when a Conditional Use or Hardship Variance is granted that there should be a “sunset clause” as part of the Hardship Relief. If the build is not executed within a certain timeframe, then the decision should be nullified. City Manager/City Recorder Leanne Moll added that there is no maximum time in which a developer has to finish an approved project and development permits do not expire.

**PUBLIC COMMENT ON NON-AGENDA ITEMS**

None.

**CORRESPONDENCE & REPORTS**

**COMMISSIONERS' REPORTS**

None.

**ADJOURNMENT**

**Motion:** A motion to adjourn was made by Commissioner Dausman.

**Seconded by:** Commissioner Sweet.

**Motion passed 4-0.**

The meeting was adjourned at 8:08 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder

YEAR	APPLICANT	ADDRESS	TYPE OF DEVELOPMENT	TYPE OF EXEMPTION	NOTES
2018	Todd (Maywood Homes)	4620 Dogwood Dr	Single-family home in floodplain	Hardship relief for front setback; Conditional use permit	Front setback reduced 40% (10 ft) to save trees (City Council decision after appeal); development in flood hazard zone
2018	Nyberg	5638 Dogwood Dr	Raise and remodel in floodplain	Conditional use permit	Remodel of home and garage in floodplain
2017	Zagone	5312 Childs Rd	Outdoor living area (deck, roof)	Hardship relief for rear setback	Irregular lot
2016	Zagone	5312 Childs Rd	Garage in floodplain	Hardship relief; Conditional use permit	Irregular lot; development in flood hazard zone
2016	Edelman	4650 Dogwood Dr	Single-family home in floodplain	Conditional use permit	Development in floodplain
2016	Semet	4810 Dogwood Dr	Area accessory development	Conditional use permit	Decommission septic; install sewer in floodway and floodplain
2016	Osborne	6720 Childs Rd	Detached garage in floodplain	Hardship relief for front setback; Conditional use permit	Hardship relief granted to move garage out of floodway; development in flood hazard zone
2015	Edelman	4650 Dogwood Dr	Area Accessory – sewer, fence in floodplain	Conditional use permit	Decommission two septic systems and link to sanitary sewer in floodplain; fence in floodplain

2015	Ruble	4840 Dogwood Dr	Area Accessory Development in floodplain	Conditional use permit	Decommission two septic systems and link to sanitary sewer in floodplain
2015	Harpole	5790 Childs Rd	Area Accessory Development – retaining wall in floodplain	Conditional use permit	Retroactive approval for unpermitted retaining wall in floodplain
2014	Harvey	7170 Childs Rd	Single-family home in floodplain	Conditional use permit	Lot is partially in the Flood Management Overlay Zone
2014	City of Rivergrove	Heritage Park	Bench – concrete slab in floodplain	Conditional use permit	Development in floodplain
2014	Swanson	19379 Riverwood Lane	Single-family home in floodplain	Conditional use permit	Development in flood hazard zone
2014	Harpole	5790 Childs Rd	Accessory bldg. - Greenhouse with plumbing and electricity in floodplain	Conditional use permit	Development in Flood Management Overlay Zone (in floodplain, not floodway)
2013	Renaissance Homes	19302 Riverwood Ln	Single-family home	Hardship relief for side yard setbacks	Irregular lot
2013	Renaissance Homes	19451 Dogwood Ct	Single-family home	Hardship relief for front setback	Hardship relief to save trees
2013	Gerritz	5775 Dogwood Dr	Single-family home in floodplain	Conditional use permit	Development in flood hazard zone

2012	Heller	4660 Dogwood Dr	Home remodeling improvements, including decks in floodplain	Conditional use permit	Development in floodplain
2012	Gumusoglu	5320 Dogwood Dr	Secondary Dwelling unit in floodplain	Conditional use permit	Development in Flood Management Area Overlay Zone
2012	Cottingham	4760 Dogwood Dr	Area Accessory Development in floodplain	Conditional use permit	De-commission of septic tank and installation of sanitary sewer in flood management area overlay zone

2012	Rodenkirch	5400 Dawn St	Addition to a single-family home	Hardship relief for front yard setback	Hardship relief to allow for addition in front; addition could not be built in back due to septic system or side yard due to utility poles/lines
2011	Stonebridge Homes	19487 Dogwood Ct	Single-family home in floodplain	Conditional use permit	Development in Flood Management Area
2011	Stonebridge Homes	19521 Dogwood Ct	Single-family home in floodplain	Conditional use permit	Development in Flood Management Area
2010	Damori	19451 Dogwood Court	Deck	Hardship relief for rear yard setback	Hardship relief to allow a deck to intrude into the rear yard lessening the setback by 6 feet.
2009	Smith	4640 Dogwood Dr	Area Accessory Permit - fill and fencing in floodway	Conditional use permit	Fill and development in floodplain (fill an excavated area and landscape with fencing and native plants).
2009	Cruze Living Trust	"Whispering Oaks"	Subdivision, partially in WQRA and floodplain	Conditional use permit	Conditional use approval for private storm water pre-treatment facilities in the WQRA



2008	Khanh	6280 Childs Rd	House addition in floodplain	Conditional use permit	Conditional use permit approval for development in the Flood Management Area Overlay Zone
2007	Bridgeport Group	19232 and 19262 Pilkington Road (Corner of Pilkington and Childs)	Duplex	Hardship relief	Reduced front and rear setbacks approved; irregular lot. <i>Approved but never developed.</i>
2006	Innovation Construction	5450 Childs Rd	Subdivision in WQRA, wetland, and floodplain	Hardship relief	Allowed a partial vegetated corridor width of approximately 22.6 ft. in lieu of 50 ft. required in the WQRA and to allowed development closer than 25 ft. of a wetland area.
2003	Refvem	5312 Childs Rd	Partition partially in WQRA	Hardship relief	A vegetated corridor width of 40' instead of 50' was approved