

Objection to the Adoption of CM2 Zoning in Multnomah Village in the City of Portland Comprehensive Plan Early Implementation, Task 5

Filed: August 25, 2017

This is an objection filed with the Department of Land Conservation and Development (DLCD) on behalf of the Multnomah Neighborhood Association under Oregon Administrative Rules (OAR) Division 25, Periodic Review. Specifically, this objection conforms with OAR 660-025-0140(2)(a)-(d).

Party of Record

OAR 660-025-0140(2)(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.

The Multnomah Neighborhood Association (MNA) has actively participated orally and in writing throughout the Periodic Review process. Examples of documented MNA participation include:

Testimony by Carol McCarthy, Chair of Multnomah Neighborhood Association, on behalf of the neighborhood can be found in the City of Portland's official Task 5 record in a letter and oral testimony on May 17, 2016 and a letter of October 13, 2016.

It is unclear why the City's Task 5 record does not track testimony on Task 5 issues prior to September 30, 2015, as quite a bit of testimony was submitted earlier that bears directly on the zoning changes proposed in Task 5. Specifically we refer the DLCD to a July 6, 2015 letter from Carol McCarthy from the MNA to

Mayor Hales and City Commissioners regarding a "Proposed 4-story, 71-unit mixed-use development in Multnomah Village," which addresses building heights, setbacks, parking requirements and design review – all of which are Task 5 issues. Similarly, a follow-up letter from the MNA dated July 19, 2015 to the Mayor and City Commissioners reiterates these same Task 5 issues and documents the broad public support for the MNA's position. As described in this objection, the MNA's engagement in the Task 5 Mixed Used Zoning Project goes back quite a bit farther with a great deal of testimony requesting that Village commercial zoning be kept to three stories with CM1 zoning.

Objection

OAR 660-025-0140(2)(b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;

The objection is stated in various parts to focus on the following violations we have identified:

1. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.
2. Failure to perform planning actions in Multnomah Village based on facts and evidence.
3. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.
4. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning efforts.

The applicable statutes, goals and administrative rules are fully cited at the end of the objection.

1. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.

The MNA has been working diligently for many years to achieve reasonable building height limits in the Village. At least as far back as February 18, 2003 the MNA wrote a letter from Martie Sucec, acting Chair, to Mayor Vera Katz and City Commissioners expressing the MNA's concern about a proposed mixed use development at 7838 SW Capitol Highway (#LU 02-132261 DZ). The letter expresses concern about the height of the proposed four-story building and the fact the existing CS zoning does not adequately protect the character of the neighborhood. This letter mentions the problem of changing grade on the property, which has the effect of allowing a taller building from the reference of the lower grade on Capital Highway. The letter urges the City Council to employ design review to address building height as a significant design element.

In a July 6, 2015 letter from MNA Chair Carol McCarthy to Mayor Charlie Hales and City Commissioners, the MNA expressed concern about another new development proposed to be four stories in height and requested that the City meet the intent of the *Southwest Community Plan* and employ design review to help keep the scale compatible with the existing development in Multnomah Village. The letter advocates for a maximum three-story building with a setback on the third story.

The July 6, 2015 letter from the MNA also included initial results from a neighborhood petition begun on June 7, 2015. The petition was conducted online and on paper. The petition asks the Portland City Council to: **“Limit development in Multnomah Village to 2 or 3 stories, and mandate 1 parking space per rental unit.”**

The MNA updated the Mayor and City Council in a letter of July 19, 2015, reporting that the petition had 1,648 signatures and 630 individual comments, which were attached to the letter. The number of signatures gathered in a short span of time, along with the many comments in support of the height limits demonstrates the very strong and unified public sentiment on this topic.

In a September 13, 2015 letter to Mayor Charlie Hales, the Planning and Sustainability Commission (PSC), and other officials, MNA Chair Carol McCarthy specifically requests that the Mixed-Use Zoning Project of the 2035 Comprehensive Plan employ CM1 zoning (35 ft. height limit) to replace existing CS zoning in the Village, rather than using the CM2 zoning (45-55 ft. height)

proposed by the City.

In addition to the direct correspondence from the MNA, and the responses from the petition, the MNA estimates that more than 100 individual letters and emails were sent by residents of Multnomah neighborhood, as well as several visitors from other Portland and regional sectors, to City officials requesting that the more-appropriate CM1 zoning be employed, rather than CM2. Many, but likely not all of these letters and emails are found in the 915-page record of public testimony on the Mixed Use Zones Project of Task 5.

Part of the record of public testimony on limiting building heights in Multnomah Village is in connection with the designation of the Village as a "Neighborhood Center" in Task 4 of Periodic Review. This is described in the formal objection filed by the MNA on this topic.¹

The City did partially respond to public testimony by changing a small area of zoning on Capital Highway from CM2 to CM1. This is specifically addressed in the Mixed Use Zones Project – Recommended Draft of August 2016 on pages 44 and 45 under the heading "Low-rise Commercial Storefront Areas," where it states:

The recommended draft includes new mapping and Zoning Code regulations intended to continue the scale and characteristics of a few older main street areas where low-rise (1 to 2 story) Streetcar Era storefront buildings are predominant. This responds to community interest in preserving the character of these areas, which are often the historic commercial cores of centers, while being applied strategically to retain ample capacity for growth in the majority of mixed use areas. Areas mapped for the new low-rise commercial storefront zoning approach are locations with contiguous concentrations of low-rise Streetcar Era storefront buildings extending for at least a 2-block or 400' length of corridor, and are located in neighborhoods centers, which are intended to have less of an emphasis on growth than larger centers. They are located on portions of the following streets: SE Belmont Street in Sunnyside; SE 13th Avenue in Sellwood; and SW Capitol Highway in Multnomah.

However, it is unclear why the City's response was so limited, leaving most of the Village commercial as CM2. The rationale for "strategically" retaining capacity for growth is not adequately justified.

¹ See: *Objection to the Designation of the Multnomah Neighborhood as a Center in the City of Portland Comprehensive Plan Update*, Filed with the DLCD on May 17, 2017.

The failure of the City to adequately quantify, synthesize, and report public involvement on this topic is a violation of Statewide Goal 1, which requires:

E. FEEDBACK MECHANISM

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

The lack of an adequate response by the City to the extensive public testimony on this topic is also a violation of the Community Involvement Work Program, which requires under "Guiding Principles" that:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

It also violated the Citizen Involvement Objectives of the *Southwest Community Plan*, which states:

4. Identify, strengthen, and use communication links between the Planning Commission, City Council, city staff, and citizens throughout the creation, development, and implementation of the Southwest Community Plan. Ensure that citizens receive responses from policymakers, including the rationale for decisions.

2. Failure to perform planning actions in Multnomah Village based on facts and evidence.

In spite of the extensive public testimony in support of three-story height limits in Multnomah Village and in favor of applying the new CM1 zone to commercial properties, the City has applied higher-density CM2 zoning without adequate justification or factual basis.

While the "Report on Mixed Used Zone Amendments" is shown as being Exhibit J in the record for Ordinance 188177, as of August 19, 2017, it does not appear to be included with the exhibits in the online record at <http://efiles.portlandoregon.gov/record/11087123>. However, the Mixed Use Zones Project – Recommended Draft of August 2016 is available elsewhere on the City's website. On page 10 of this report it provides that apparent justification for the mixed use zone changes under the heading "Why is this important?,"

where it states:

Portland is expected to grow significantly over the next 20 years – in both new households and new jobs. The development produced by this growth, if located and designed correctly, will support and enhance the qualities that help make Portland an attractive place. As Portland’s population grows, its households will also change. In the next two decades the size of households is expected to decrease, and more Portlanders will live alone, and live longer. Accommodating this need, roughly 80% of new housing built over the next 20 years is expected to be multifamily development, much of it in centers and corridors within the mixed use zones.

This does not appear to be adequate justification for applying CM2 zoning to most of Multnomah Village, rather than CM1 requested by the MNA for the following reasons:

First, as noted in the Task 5 Findings, Portland has far more zoned capacity for residential development than required to meet the forecasted growth.² The City has existing capacity for 200,000 new units, while forecasted growth will require an estimated 123,000 new households (units). Therefore, the need for the increased density allowed by the CM2 zone is not justified by the growth forecast.

Second, the MNA and its residents are especially capable of determining the qualities that help make Multnomah Village “an attractive place” to live. They have provided extensive testimony that limiting height to three stories is an essential element for maintaining the character that residents value.

Third, the MNA has filed an official Objection to the Task 4 designation of the Village as a “Neighborhood Center,” rather than the more-appropriate designation as a “Neighborhood Corridor.” The issues raised in this Task 4 Objection are included herein by reference.³ Assuming the DLCDC is supportive of this Task 4 Objection, the proposed intensity of future development in the Village should be adjusted accordingly and would be more consistent with the requested CM1 zoning.

The City cites 11 pages of Comprehensive Plan Goals and Policies that the City

² Further Findings of Fact, page 32 (Ord. 188177, Vol. 1.1.A, page 41).

³ See: *Objection to the Designation of the Multnomah Neighborhood as a Center in the City of Portland Comprehensive Plan Update*, Filed with the DLCDC on May 17, 2017.

considers to support the proposed mixed use zoning in the Mixed Use Zones Project – Recommended Draft. However, many of these Goals and Policies apply to designated “centers” and would not apply to Multnomah Village if it were designated a “Neighborhood Corridor.”

Therefore, the City has failed to comply with Goal 2, which requires a factual basis for planning:

C. PLAN CONTENT

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

- (a) Natural resources, their capabilities and limitations
- (b) Man-made structures and utilities, their location and condition
- (c) Population and economic characteristics of the area
- (d) Roles and responsibilities of governmental units.

3. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.

The Design Overlay Zone that applies to Multnomah Village is described in Title 33, Planning and Zoning Chapter (7/24/15). Under *Section 33.420 Design Overlay Zone*, it states:

33.420.010 Purpose

The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

This code language clearly implies that design review will protect the character of

the area and ensure compatibility. Residents of Multnomah neighborhood believed that the “d” Design Review Overlay protected them from overly tall, bulky, and poorly designed developments that could potentially be constructed under the CS Commercial Storefront zoning. As noted in Section 1 of this objection, the MNA letter of February 18, 2003 requested the City Council use design review to address building height for a proposed 4-story development. The City Council declined to take any action. A similar request from the MNA was made in a July 6, 2015 letter to the Mayor and City Council asking that they apply design review to another four-story development proposal.

The Mayor responded in an August 11, 2015 letter to the MNA in which he consulted the City Attorney and states “State law limits our ability to impose Design Review where there is not already a discretionary review underway.” This response created further confusion for the MNA, since the review for this project was not yet “underway.”

What the City failed to clearly state is that the “needed housing” statute of ORS 197.303 and ORS 197.307 requires “clear and objective” standards for all developments containing “needed housing.” Since the City of Portland has interpreted “needed housing” to mean any housing, all mixed use development will be subject only to the base zone requirements and the Community Design Standards.

The City of Portland failed to provide the public with the facts about the lack of adequacy of “design review” to protect and preserve desirable neighborhood qualities. This includes a failure to inform residents of Multnomah Village, and the general public, about the fact that design review will not apply to mixed use development involving any amount of residential development, unless the developer specifically requests it.⁴ In other words, the design review overlay provides no assurance that the local community will have any influence regarding the nature of future development in the mixed uses zones.

As such, design review cannot be considered to offer value or benefit to local residents of Portland communities, such as Multnomah. Instead it must be viewed as a device for giving developers greater flexibility, if they find they cannot meet the clear and objective code language.

Therefore, the “d” Design Review Overlay in Multnomah Village cannot be viewed

⁴ Central City and Gateway are the only exceptions.

as a response to the extensive public testimony submitted by the Multnomah Neighborhood Association (MNA) and by the highly-supportive public in Portland and beyond.

Since the design review overlay has little or no functional benefit to residents of Multnomah neighborhood and the Village, the City of Portland should have focused on achieving the desired results (as expressed clearly in public testimony) through clear and objective code language that conforms with state law. This could have been accomplished through the Mixed Use Zones Project or through other means, as described in the "Action Requested" section of this objection.

If the public had understood that design review would not play a role in limiting building heights, then it is reasonable to assume that the public input would have been more focused on other solutions to protect the character of Multnomah Village.

The lack of accurate information about design review is a violation of Goal 1, which requires:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

It is also a violation of the Community Involvement Work Program, which requires under "Guiding Principles" that:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition offices and at other locations open to the public. Translations of key documents will be available.

4. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning work.

The *Southwest Community Plan: Vision, Policies and Objectives*, adopted by the City Council in July 2000, provides the most contemporary planning process for the area that includes Multnomah Village. In the *Introduction* to the SWCP, the lengthy process required to adopt the Plan is described. It states:

In endorsing the revised process, the Planning Commission and the City Council believed that successful completion of the policy phase of the *Southwest Community Plan* was a vital prerequisite for continuing on with any subsequent phases of the plan, such as the Comprehensive Plan/zoning map. This set of policies provides the foundation upon which any additional plan components will be built.

While the SWCP process was not fully implemented as a local refinement plan, the Periodic Review process was the logical place to achieve this implementation.

The SWCP envisioned that Multnomah Village would grow, but also that its historical and cultural essence would remain intact. In the Plan's "Vision for Southwest Portland," it states:

Multnomah Village has retained its charm, partially through an historic district designation, even as merchants expand and new businesses begin. The village area has continued to prosper and attract neighborhood and community residents. Local gathering spots offer opportunities for friends and neighbors to meet, providing a small town atmosphere that residents continue to treasure.

The SWCP states under "C. Main Street Objectives:"

Main streets are a part of and provide services to the neighborhoods within which they are located. Generally linear in form, main streets contain buildings whose height, scale, and designs are appropriate for their neighborhoods and uses which are a mix of residential and neighborhood-scale commercial. While main streets typically serve the surrounding community, they may develop a regional specialization. They may have a village or urban character. Their growth and development will occur in tandem with changes to the surrounding neighborhood. Main streets in Southwest Portland are Garden

Home, Macadam, and Multnomah.

The Mixed Use Zone Project was a logical place to implement the SWCP's Vision and Objectives as they relate to Multnomah Village. However the SWCP is not even mentioned in the Mixed Use Zones Project – Recommended Draft.

Therefore, Task 5 failed to address and implement the SWCP in the adopted zoning for Multnomah Village. Specifically, it violated the Citizen Involvement Objectives of the SWCP:

5. Use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.

The historic character of Multnomah Village has made it a top candidate for historic designation and protection in the past. In a 1978 report by the Portland Bureau of Planning titled *Potential Historic Conservation Districts*, Multnomah Village was selected as one of the top 16 sites in the City from an initial group of 50 candidate sites.⁵ The report states:

These areas were selected primarily as collections of individual properties and features, which although often singularly unremarkable, are combined in an ensemble representative of a distinctive period in Portland's history or which typify a unique Portland quality.

Around the same time as the *Southwest Community Plan* was being developed, the MNA was encouraged by the State officials and the City Planning Bureau to pursue the creation of an historic district. However, a proposal submitted by the MNA was ultimately rejected by the Planning Bureau.

The CM2 zoning fails to comply with Statewide Goal 5 (OAR 660-015-0000(5)), which requires protection of historic areas like Multnomah Village. The Goal reads:

⁵ See:

http://www.oregon.gov/oprd/HCD/OHC/docs/multnomah_portland_potentialconservationdistricts.pdf

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces
To protect natural resources and conserve scenic and historic areas and open spaces.**

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

GUIDELINES FOR GOAL 5

A. PLANNING

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

Action Requested

OAR 660-025-0140(2)(c) Suggest specific revisions that would resolve the objection;

The MNA is requesting that Task 5 be partially remanded to include specific actions to protect the character of Multnomah Village through clear and objective standards. These standards should limit building heights to three stories to help assure the compatibility of new development. The Village is on a hillside with a large number of lots with streets on opposite sides. The measurement of height of new development on lots with more than one street frontage, the building height should be measured from the street frontage with the lowest elevation. The City should achieve this through either a plan district or through a base zone that preserves the historic neighborhood character.

Extensive public testimony supports using the new CM1 zone to replace the old CS zoning. The City instead elected to apply CM2 zoning to most of the commercial property in Multnomah Village. We are requesting that all CS commercial storefront in the Village be designated CM1 zoning.

According to Title 33, Planning and Zoning, Plan Districts in General, Section 33.500.010 Purpose: "Plan districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results." Therefore, a plan district could be a suitable alternative to zoning for limiting heights and assuring development is compatible with the neighborhood.

Applicable Statutes, Goals, and Administrative Rules Violated

OAR 660-025-0140(2)(b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;

The specific statutes, goals, and administrative rules which were violated are listed below. This is not a stand-alone section. The highlighted text represents the specific regulations which were violated, as described previously in this objection.

Oregon Revised Statutes 197.250

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission.

Goal 1: Citizen Involvement, OAR 660-015-0000(1)

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

D. TECHNICAL INFORMATION

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

E. FEEDBACK MECHANISM

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

Goal 2: Land Use Planning, OAR 660-015-0000(2)

GUIDELINES

C. PLAN CONTENT

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

- (a) Natural resources, their capabilities and limitations
- (b) Man-made structures and utilities, their location and condition
- (c) Population and economic characteristics of the area
- (d) Roles and responsibilities of governmental units.

Statewide Goal 5 () requires protection of historic areas like Multnomah Village. The Goal reads:

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces, OAR 660-015-0000(5)

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

GUIDELINES FOR GOAL 5

A. PLANNING

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

Community Involvement Work Program (City of Portland)

(Adopted by Council Ordinance No. 184047 on August 11, 2010)

Page 4 under "Guiding Principles" states:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition offices and at other locations open to the public. Translations of key documents will be available.

Decisions will be open, transparent and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least twenty-one days before any Planning and Sustainability Commission or City Council hearing, and these reports will be retained for the life of the plan. All hearings venues will be accessible.

Southwest Community Plan Vision, Policies and Objectives, July 13, 2000

Citizen Involvement

Ensure that the policies and objectives of the Southwest Community Plan are used to guide the collaborative actions of the city and Southwest citizens for the next 20 years. Involve citizens integrally in the Southwest Community Plan from concept through evaluation and revision.

Objectives

1. Create partnerships based on a collaborative, consensus-seeking, community-based approach between community organizations, neighborhood and business associations, city bureaus and officials, all

implementing bodies, and individual citizens when creating, developing, or implementing policies and programs for the Southwest Community Plan or Southwest area.

2. Establish clarity as to the roles, rights, responsibilities, and degree of accountability of the participants, including city officials, bureau directors, staff, citizen leadership, organizations, and individuals for creation, development, and implementation of policies or programs for the Southwest Community Plan or Southwest area.

3. Address community concerns and goals during creation, development, implementation, monitoring, evaluation, and revision of the Southwest Community Plan.

4. Identify, strengthen, and use communication links between the Planning Commission, City Council, city staff, and citizens throughout the creation, development, and implementation of the Southwest Community Plan. Ensure that citizens receive responses from policymakers, including the rationale for decisions.

5. Use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.

6. Engage the Southwest community and all relevant stakeholders in discussion of the economic and demographic factors that could affect the current and future needs of development, business, and in the creation, development and successful implementation of the Southwest Community Plan.

7. Support the activities of recognized organizations when creating, developing, or implementing policies or programs for the Southwest Community Plan or Southwest area.

