



## **CITY OF PHILOMATH**

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**Mission:** To promote ethical and responsive municipal government which provides its citizenry with high quality municipal services in an efficient and cost effective manner.

# **PLANNING COMMISSION**

## **CITY HALL COUNCIL CHAMBERS**

### **980 Applegate Street**

**March 18, 2019**

**6:00 p.m.**

## **MEETING AGENDA**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
  - 3.1 Minutes of March 4, 2019
  - 3.2 Minutes of February 19, 2019, Clarification – Chair Stein
- 4. OLD BUSINESS**
  - 4.1 Annexation Criteria
- 5. PUBLIC HEARING: 7:00 pm**
  - 5.1 File Number: PC19-01  
Applicant: Kathleen Sapp  
Application Type: Type III – Class C Variance  
Location: 115 S. 21st Street (12-6-12DA Lot 3700)
  - 5.2 PC19-01 Discussion & Decision
- 6. ADJOURNMENT**

**NEXT MEETING:**  
**April 15, 2019**  
**6:00 p.m.**

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**PHILOMATH PLANNING COMMISSION  
MINUTES  
March 4, 2019**

1. **CALL TO ORDER:** Meeting called to order at 6:00 p.m.

2. **ROLL CALL:**

**Present:** Commissioners Gary Conner, Joseph Sullivan, Lori Gibbs, Steve Boggs, Jeannie Gay, Peggy Yoder, and Chair David Stein.

**Staff:** Chris Workman, City Manager; Patrick Depa, City Planner; Amy Cook, Deputy City Attorney; and Ashley Howell, Building Permit Clerk.

3. **APPROVAL OF MINUTES:**

**3.1 February 19th, 2019 Minutes –**

**MOTION:** Commissioner Boggs moved, Commissioner Yoder second, to approve the February 19, 2019 meeting minutes. Motion APPROVED 7-0. (Yes: Boggs, Conner, Gibbs, Gay, Stein, Sullivan and Yoder; No: None.)

4. **PUBLIC COMMENT**

Chair Stein addressed the city website calendar. He explained that there is normally a star on the calendar indicating that the meeting is still standing and that was not done for this meeting. City Manager Chris Workman stated not placing the meeting on the City's website calendar was a simple oversight by staff, but confirmed the meeting was noticed to the press and all interested parties via email, and that the agenda had been posted on the website, at City Hall, the police station, library, post office and public works building. City Attorney Amy Cook confirmed the meeting was legally noticed but out of a preponderance of caution, the Commission could choose to cancel the meeting if it felt the public was harmed by the meeting not being on the online calendar. There was discussion about the legalities of continuing with the meeting.

**MOTION:** Commissioner Yoder moved, Commissioner Sullivan second, to continue with the meeting. Motion APPROVED 7-0. (Yes; Conner, Sullivan, Gibbs, Boggs, Gay, Yoder, Stein. No: None.)

Jeff Lamb, Philomath, OR – Mr. Lamb explained that during the last election there was discussion of quality of life and impact of water and traffic. He discussed impact analysis reports and that these reports should be done prior to approval rather than after. He explained that in reviewing the February 19, 2019 meeting minutes, he did not see any discussion around topics or criteria that would improve the quality of life in Philomath, affect infrastructure, and financing of upcoming projects. He stated that he would like to see the city adopt some impact analysis procedures prior to the permitting process.

Chair Stein stated that the Planning Commission did discuss annexation criteria at its last meeting and it is scheduled for discussion again at the March 18<sup>th</sup> meeting.

Catherine Biscoe, Philomath, OR – Ms. Biscoe stated that the meeting was not posted legally. She stated that it was not listed in the city newsletter and the online city calendar. She stated her dissatisfaction with city staff not including municipal code that addresses

1 water treatment and funding. She stated there is a LUBA appeal. She further stated her  
2 dissatisfaction with city staff and claimed they are directing attention to the wrong  
3 matters. Ms. Biscoe requested the committee reconsider holding the meeting because it  
4 had not been properly advertised to the citizens of Philomath.

5  
6 Mark Weiss, Philomath, OR – Mr. Weiss discussed the city website and stated that the  
7 meeting was not posted on the calendar. He requested the meeting be called off.

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9 Sandy Heath, Philomath, OR – Ms. Heath requested the meeting called off.

10  
11 Robert Biscoe, Philomath, OR – Mr. Biscoe explained his disappointment in having to ask  
12 city staff to add public comment to the agendas of appropriate meetings. He explained  
13 that he has had to request to add public comment to meeting agendas several times with  
14 city staff and is becoming discouraged. He requested that the meeting be postponed.

15  
16 Mr. Workman explained that there are certain meetings that do not require public  
17 comment, such as the January work session. He expounded that city staff had prepared  
18 code and annexation that he, the new planner, city attorney and City Council had  
19 identified. All this was presented to the Planning Commission at its January work  
20 session, and staff was directed what to work on and bring back to the Commission for  
21 consideration. He stated that there has never been any intent to stifle the voice of the  
22 public in regard to public comment at meetings and challenged Mr. Biscoe to provide any  
23 evidence to the contrary. He further stated the importance of the municipal code  
24 revisions that are on the agenda to be discussed.

25  
26 Mr. Workman read an email from Ms. Post, City Recorder, stating the statute of  
27 requirements of public notice and/or posting of public meetings. He addressed several  
28 places in which the meeting had been posted and listed the specific time and date for  
29 each of those postings. He repeated that the meeting was legally noticed to the public.

30  
31 Jeff Lamb, Philomath, OR – Mr. Lamb suggested that the committee postpone the  
32 meeting after Commissioner Sullivan's agenda item: Philomath Vision.

33  
34 Mr. Workman expressed concern over canceling one portion of the meeting but not  
35 another when the entire meeting was noticed the same way. He said some members of  
36 the public may not have seen the meeting on the calendar, as suggested by the public  
37 comment, and they would miss out on the vision discussion.

38  
39 **MOTION:** Chair Stein moved, Commissioner Sullivan second, that the committee  
40 postpone discussing Chapter 18 Zoning Amendments for one month and continue this  
41 meeting to discuss Commissioner Sullivan's agenda item: Philomath Vision.  
42 APPROVED 7-0 (Yes; Conner, Sullivan, Gibbs, Boggs, Gay, Yoder, Stein. No; None)

43  
44 Chair Stein called a break in the meeting at 6:50 p.m.

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46 Chair Stein called the meeting back to order at 6:55 p.m.

47  
48 **5. New Business**  
49 **5.1 Philomath Vision, Joseph Sullivan**

50  
51 Philomath Vision -- Commissioner Sullivan explained that his family used to tour around  
52 the country in an RV. He explained that when taking these family trips his parents had a

1 vision and plan. He described that the vision his parents projected to him was their final  
2 destination instead of specific directions such as, left or right.

3  
4 Commissioner Sullivan explained hypothetical visions for the city. He suggested that  
5 eventually the comprehensive plan from 1998 needs to be rewritten. Commissioner  
6 Sullivan asked to form a small sub-committee of the Planning Commission to come up  
7 with some visions for the community. He explained he had reviewed this with the city  
8 attorney's office and asked Ms. Cook to verify that as long as no more than three  
9 members of the Planning Commission were on the committee, it would not need to give  
10 public notice of its meetings.

11  
12 Ms. Cook explained that the meetings would have to be noticed publicly, regardless of  
13 the number of Planning Commission members on the committee or number of people on  
14 the committee, stating any meeting of a city committee is subject to public meeting laws.

15  
16 Mr. Sullivan suggested the committee visit neighboring cities that may be a source of  
17 inspiration, come up with new visions for Philomath, and discuss ways to accomplish  
18 those goals. He requested a motion to volunteered to lead the committee and also do  
19 research on his own to bring to the committee for a new vision for the city of Philomath.

20  
21 In response to a question from Commissioner Yoder, Mr. Sullivan stated he had not  
22 specifically shared his vision idea with the mayor, but that he had shared it with the City  
23 Council, which gave him a thumbs up.

24  
25 In response to a question from Commissioner Gibbs, Mr. Workman stated that the  
26 Charter lays out various committees, but there is nothing in the Charter about a  
27 subcommittee of the Planning Commission, and the City has not had a committee  
28 specific to looking at forming a vision.

29  
30 Mr. Sullivan suggested the Commission make a motion allowing or directing him to  
31 gather information and present ideas and suggestions to the Planning Commission.  
32 Commissioner Gay suggested he didn't need a motion for the Commission to do what it  
33 was he was proposing.

34  
35 After additional discussion, the Commission came to the consensus that Commissioner  
36 Sullivan should pursue data and research for a new vision on his own. Commissioner  
37 Conner suggested to Commissioner Sullivan to keep the committee up to date on specific  
38 vision projects that he is working on.

39  
40 Mr. Workman read from the Philomath Municipal Code, Section 2.30.060 pertaining to the  
41 duties and authority of the Planning Commission. He recommended Mr. Sullivan take  
42 this idea to the City Council for approval, stating what was being suggested seemed  
43 outside of what the City Council appointed the members of the Planning Commission to  
44 do.

45  
46 Ms. Cook explained that the scope of what Commissioner Sullivan is pursuing would  
47 determine whether the Planning Commission of the City Council had the authority to  
48 authorize it. Commissioner Sullivan agreed to check in with the City Attorney as to the  
49 material he will be pursuing and report back to the Planning Commission.

50  
51 Robert Biscoe, Philomath, OR – Mr. Biscoe stated that he would be available to  
52 Commissioner Sullivan should he need any help with the project he is pursuing.

1       **MOTION:** Commissioner Stein moved, Commissioner Sullivan second, to postpone  
2 consideration of the Chapter 18 Zoning Amendments until the committee decides when to  
3 have it. APPROVED 7-0 (Yes; Conner, Sullivan, Gibbs, Boggs, Gay, Yoder, Stein. No;  
4 None.)  
5

6       **6. ADJOURNMENT:**

7       There being no further business, Chair Stein adjourned the meeting at 7:17 p.m.  
8

9       SIGNED:

ATTEST:

10 \_\_\_\_\_  
11 David Stein, Chair  
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\_\_\_\_\_  
Ashley Howell, Clerk

DRAFT

1 Chair Stein noted that he would like to propose another criteria regarding traffic. He  
2 expressed his concern for city traffic and the lack of resources when addressing city  
3 traffic. He noted that he would like to see language requiring developers to be  
4 financially responsible for traffic studies and that the city can pick the surveyors and  
5 oversees management of the study. Commissioner Conner added further the need  
6 for objective criteria pertaining to the level of service. There was discussion regarding  
7 the similarities of Chair Stein's proposal mirroring with the end of line item 12.

8  
9 Mr. Workman explained that at the next meeting staff will bring back code language  
10 addressing annexation criteria and Chair Stein's suggestion.

11  
12 **Motion:** Commissioner Boggs moved; Yoder second. Move to direct staff to prepare the  
13 changes to the Zoning code as discussed during this meeting and to present these  
14 changes to the Planning Commission. Approved 6-0 (Conner, Sullivan, Boggs, Gay,  
15 Yoder, Stein).

16  
17 The committee agreed to discuss the remaining AIS Zone amendment material at the  
18 March 4<sup>th</sup>, 2019 meeting at 6:00 pm.

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22 **1. ADJOURNMENT:**

23 There being no further business, Chair Stein adjourned the meeting at 8:01 p.m.

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25 SIGNED:

ATTEST:

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28 David Stein, Chair

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Ashley Howell, Building Permit Clerk

## PROPOSED CHANGES TO THE ANNEXATION CHAPTER

### **Chapter 18.135 ANNEXATION**

Sections:

- 18.135.010 Purpose.
- 18.135.020 Legislative amendments.
- 18.135.030 Annexations.
- 18.135.040 Record of amendments.
- 18.135.050 Transportation planning rule compliance.

#### **18.135.010 Purpose.**

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this title and the land use district map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law. [Ord. 720 § 7[4.7.1], 2003.]

#### **18.135.020 Legislative amendments.**

Legislative amendments are policy decisions made by city council. They are reviewed using the Type IV procedure in PMC 18.105.060. [Ord. 720 § 7[4.7.2], 2003.]

#### **18.135.030 Annexations.**

A. Process. The process of annexation of land to the city allows for orderly expansion of the city and for the adequate provision of public facilities and services. The City Charter requires that annexation, and/or extension of city services beyond city boundaries may only be approved by a majority vote of the electorate.

B. Annexation Filing Deadlines.

1. Unless mandated by state law, all annexation requests approved by the city council shall be referred to the voters in accordance with the requirements of this title and ORS Division 222.
2. Annexation elections are scheduled for May and November. Applications for annexation shall be filed with the planning department before 5:00 p.m. on the second Thursday of November for a ballot election in May and before 5:00 p.m. on the second Thursday of May for a ballot election in November.

C. Requirements for Applications. Applications to the city for initiation of annexation proceedings made by individuals shall be on forms provided by the planning official and shall include the following material:

1. Written consent to the annexation signed by the requisite number of affected property owners, electors, or both, to dispense with an election within the territory to be annexed, as provided by state law.
2. A legal description of the property to be annexed.
3. A map of the area to be annexed, including adjacent city territory.
4. Sufficient information for city staff to allow for the completion of an impact analysis on city services including: existing water supply and facilities; ~~and~~ existing sewer; drainage; transportation and transit; park ~~and school~~ facilities; and city staffing, including but not limited to police, public works, and city administration.
5. Sufficient information for city staff to allow for the completion of an impact analysis on community partner services including: school facilities; library services; fire services; and emergency medical services.
  - i. If the applicant asks for agency comment before the hearing and no comments are received, capacity will be presumed to exist for that agency.

ii. If the applicant asks for comment before the hearing and the agency comments that there are no capacity concerns, capacity will be conclusive as to that agency.

iii. If the applicant asks for comment before the hearing and the agency comments that capacity does not exist but can exist, the applicant may contract with that agency to achieve capacity.

6. In addition, city staff shall project what additional facilities will be required to serve the development described in the conceptual plan and, if necessary, how such facilities will need to be phased in over time. The application shall provide evidence of the need of the proposal by citing data and statistics that support the annexation.

~~7.5.~~ A statement outlining the method and source of financing required to provide additional facilities.

~~8.6.~~ A conceptual development plan shall be provided by the applicant and shall include the following:

i. A scale drawing of the site showing: the types and intensities of proposed development; existing streets that will be used for access and those streets that may need to be developed for access; the location of watercourses and other significant natural features; location of existing and necessary extension of public water, sanitary sewer, and storm drain facilities; and, existing uses and zoning on adjacent properties.

ii. The conceptual development plan shall contain sufficient detail on the actual or proposed site uses to allow city staff the opportunity to analyze the development's demand for new public infrastructure systems, as well as assess the impact on existing systems. Staff may develop hypothetical site design scenarios or model development at densities other than those proposed by the applicant to assess impact on public infrastructure.

~~9.7.~~ A statement indicating the type and nature of any comprehensive plan text or map amendments or zoning ordinance or zoning map amendments that may be required to complete the planned development.

~~10.8.~~ The application fee established by the city. In addition to the application fee, the planning official shall require a deposit that is adequate to cover any and all election costs.

D. Review of Application. City staff shall review the application and it shall be deemed complete if it contains the material required under this section.

E. Staff Evaluation. City Staff shall prepare a report that considers information submitted by the applicant as well as other sources of relevant information including but not limited to master utility plans, regional and local transportation system plans, and population studies. The report shall include an updated land use inventory with the development status of all other similarly zoned properties. From this information, a finding shall be made that the city has the capacity to provide required utility services in light of commitments already made to other approved developments. The staff evaluation of the application will endeavor to present a report for the public and review bodies that factually evaluate the proposal and may or may not agree with response information provided by the applicant. An annexation request including a future residential development shall be evaluated by city staff at its maximum possible density.

F. Review Criteria. Annexations shall be reviewed by city staff to assure consistency with the purposes of this chapter, policies of the comprehensive plan, all requirements of all city ordinances, and other applicable policies and standards adopted by the city council and state of Oregon. In addition, a finding shall be made that the city is capable of providing services to the subject property(ies) commensurate with the needs of existing approved and proposed developments. Specifically, all applications for annexation must satisfy the following criteria:

1. Property to be annexed must be located entirely within the Urban Growth Boundary (UBG) of the City.

2. Property to be annexed is, or upon annexation will be, subject to the City's comprehensive plan.

3. At least one lot or parcel of the property to be annexed must be contiguous to the city limits or separated from the city limits only by a public right of way or a body of water.
4. Annexation of the property must be of benefit to the City and community of Philomath.
5. If the property to be annexed is or has been zoned or used for industrial or agricultural purposes, an inventory of known contaminants and how they will be abated by the applicant must be provided with the application for annexation at the time the application is filed.
6. If the property to be annexed is or has been zoned or used for industrial or agricultural purposes and the amount of developable land is more than one acre, a Phase I Environmental Assessment by a certified company shall be performed prior to annexation. The company selected by the applicant to perform this study must be approved by the city.
7. When property to be annexed exceeds 30 acres of developable land, development of the land must occur in phases, as specified in an annexation agreement between the applicant and the City.
8. Properties that include existing development must have a safe pedestrian route to school within 18 months of annexation.

Any review criteria that cannot be satisfied at the time the application is filed with the City may be satisfied through an annexation agreement between the applicant and the City. Annexation agreements shall be filed with the Benton County Recorder and shall run with the land.

G. Concurrent Application for comprehensive plan map or zoning map amendments. Application(s) for comprehensive plan map and/or zoning map amendments may be made concurrent with an application for annexation of territory. City approval of map amendments may be made contingent upon approval of the annexation.

H. Annexation by Consent of All Owners of Land. When all the owners of land in the territory to be annexed consent in writing to the annexation of their land in the territory and file a statement of their consent with the city, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.
2. Application for said annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.
3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.
4. Written notice of a requested annexation shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.
5. The public hearing shall be conducted according to the requirements established for Type IV applications.
6. Should the public hearing be continued to a specific date by oral pronouncement prior to the closing of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.
7. Within 45 days following the public hearing, unless a continuance is announced, the commission shall make specific findings of fact. Based on the findings, the commission shall render a decision which shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements above, or be denied.
  - a. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision

and findings of the commission, and any other materials deemed necessary for a decision by the council.

b. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

8. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements for a Type IV application.

9. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures in a Type IV application.

I. Annexation by Non-Unanimous Triple Majority Consent Petition. When more than half, but not all, of the owners of land in the territory to be annexed who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.

2. Application for the annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.

3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.

4. Written notice of a requested change shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.

5. The public hearing shall be conducted according to the requirements established for a Type IV application.

6. Should the public hearing be continued to a specific date by oral pronouncement prior to the close of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.

7. Within 45 days following the public hearing, unless a continuance is announced, the commission

shall make specific findings of fact. Based on the findings, the commission shall render a decision that shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements of subsection (H)(7)(b) of this section, or denied.

8. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision and findings of the commission, and any other materials deemed necessary for a decision by the council.

9. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

10. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements stated for a Type IV application.

11. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures for a Type IV application.

J. Findings and Decision. In the event the city council holds a public hearing on an annexation request, the city council may adopt the planning commission findings for approval or denial of the annexation, supplement the record as appropriate in the circumstances, or reject the findings of the planning commission and adopt new findings.

K. Health Hazard Annexation. The city shall annex those areas constituting a health hazard in accordance with Oregon Revised Statutes, taking into consideration the ability of the city to provide necessary services. Annexation of areas constituting a health hazard are not subject to voter approval.

L. Island Annexation. The following policies are adopted for island annexations:

1. The city shall attempt not to create islands of unincorporated territory within the corporate limits of the city. If such an island is created, the city council may set a time for a public hearing for the purpose of determining if the annexation should be submitted to the voters.

2. Written notice to property owners by first class mail will be made prior to annexation to allow for property owner responses. Failure to receive notice shall not in any way invalidate the annexation procedure that may be subsequently undertaken by the city.

3. Annexation of an island shall be by ordinance, subject to approval by the voting majority of the electorate.

M. Comprehensive Plan and Zoning Designations.

1. The comprehensive plan map designation of the property at the time of annexation shall be used as a criterion to determine whether or not the proposed request complies with the Philomath comprehensive plan. A redesignation of the comprehensive plan map may be requested concurrent with annexation. The proposed redesignation shall then be used to determine compliance with the Philomath comprehensive plan.

2. Simultaneous application for annexation and a zone change is allowed; provided, that the zone change ordinance does not take effect until and unless the property is properly annexed to the city and incorporated within the city limits.

N. Information on Proposed Annexation. The city newsletter shall be used to present an applicant's conceptual plan along with a summary of the city staff's analysis of the development's impact on public infrastructure. Other information to be presented shall include a vicinity map, size of the property, its current zoning and zoning upon annexation, a description of any comprehensive plan text or map amendment or zoning ordinance text or map amendment that is required and any other information that may assist in the explanation of the proposal. Annexation information in the city newsletter and on the election ballot shall include the following disclaimer statement:

The conceptual plan associated with this annexation request may change. Any development proposal on this property shall require review and approval by the planning commission at a public hearing. Any future owner of this property who may propose a different development plan must pass through the same plan review process and public hearing. The city is not speaking in favor or against this conceptual plan.

Annexation requests submitted by the city are not required to contain a disclaimer statement.

O. Election Procedures.

1. Pursuant to ORS 222.130(1), the statement of chief purpose in the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features.

Notwithstanding ORS 250.035, the statement of chief purpose shall not exceed 150 words.

2. Pursuant to ORS 222.130(2), the notice of an annexation election shall be given as provided in ORS 254.095 and 254.205, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.

3. Pursuant to ORS 222.111(7), two or more proposals for annexation of territory may be voted upon simultaneously; however, each proposal shall be stated separately on the ballot and voted on separately.

P. Setting of Boundaries and Proclamation of Annexation. If the annexation is approved, the city council, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation (ORS 222.170(3)).

Q. Submission of Annexation Reports. The city shall report all changes in the boundaries of the city to the county clerk, county assessor, and the state of Oregon as required by Oregon Revised Statutes.

SR. Exceptions. The city council may authorize an exception to any of the requirements of this section. An exception shall require a favorable vote of six or more council members and findings that indicate the basis for the exception. Any exception so approved shall not be in violation of state law or any applicable provisions of the City Charter.

S. Zoning of Annexed Areas. The city council shall designate all areas annexed to the city with a zone or zones. [The zone designated by city council shall not be changed for a period of 20 years.](#) The city council shall provide notice in accordance with a Type IV application and conduct a public hearing prior to designating city zoning for annexed property. Designation of areas annexed by the city shall be subject to one of the following procedures:

1. If the proposed zoning designation corresponds to the comprehensive plan map designation for the property being annexed, the city council shall conduct a public hearing on the proposed zoning designation for the affected property. Notice for the hearing shall be provided for in accordance with a Type IV application, except all published and mailed notice shall be provided 20 days in advance of the hearing. Following the public hearing, the city council shall adopt an ordinance that assigns the zoning designation for the affected property.

2. If the proposed zoning designation does not correspond to the comprehensive plan map designation for the property being annexed, the proposal shall be reviewed by the planning commission as a comprehensive plan map amendment and zoning map designation pursuant to a Type IV application. Following planning commission review, the city council shall conduct a public hearing. Following the hearing, the city shall adopt an ordinance that designates the zoning of the affected properties, adopts approved amendments to the comprehensive plan map, if necessary.

3. The city may approve a comprehensive plan map amendment and/or zone designation for property prior to annexation and may specify that the plan map amendment and zone designation shall not become final unless the property is annexed to the city within a specified time.

[T. The City is under no obligation to condemn, exercise eminent domain, or extend services to an annexed property.](#) [Ord. 720 § 7[4.7.3], 2003.]

#### **18.135.040 Record of amendments.**

The planning official shall maintain a record of amendments to the text of this title and the land use districts map in a format convenient for public use. [Ord. 720 § 7[4.7.4], 2003.]

#### **18.135.050 Transportation planning rule compliance.**

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-012-0060. Significant means the proposal would:

1. Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of “collector” street classification, requiring a change in the classification to an “arterial” street, as identified by the comprehensive plan/transportation system plan; or
2. Change the standards implementing a functional classification system; or
3. Allow types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or
4. Reduce the level of service of the facility below the minimum acceptable level identified in the comprehensive plan/transportation system plan.

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:

1. Limiting allowed land uses to be consistent with the planned function of the transportation facility;
2. Amending the transportation system plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation. [Ord. 720 § 7[4.7.5], 2003.]



## **Staff Report**

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Date:	March 11, 2019
Nature of Applicant:	Variance to allow a six (6) foot fence in a front yard setback
Applicant / Owner:	Kathleen Sapp
Property Address:	115 S. 21 <sup>st</sup> Street
Parcel ID:	Tax Lot 3700 on Assessor Map 12-6-12DA
Applicable Criteria:	Chapter 18.72.030(C) 2 of the PMC, Class C Variance
Zoning Designation:	R-1 (Low Density Residential)
Staff Contact:	Patrick Depa, City Planner
File Number:	PC19-01

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### **VARIANCE REQUESTED:**

The applicant is applying for a two (2) foot variance to allow a six (6) foot fence in a front yard setback. The development code allows a four (4) foot fence in a front yard setback if all vision clearance areas are maintained. The applicant has stated the purpose of the request is for noise abatement and added privacy as the lot is located on the corner of 21<sup>st</sup> Street and Main Street.

### **BACKGROUND:**

1. The lot is located on the SE corner of 21<sup>st</sup> Street and Main Street and is addressed to 21<sup>st</sup> Street.
2. On corner lots, the primary front is determined by vehicle access and the secondary front is the adjacent side.
3. The house's vehicle access is located on 21<sup>st</sup> Street therefore making 21<sup>st</sup> Street its primary front.
4. Front yard setback requirements are applied to the yard adjacent to 21<sup>st</sup> Street and side yard setback requirements are applied where the lot abuts Main Street.
5. No comments were submitted by the close of the comment period.

**FINDINGS OF FACT APPLYING ORDINANCE CRITERIA:**

**18.155.040 Class C Variance.** Class C variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size or shape, topography, sensitive lands, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district).

**Approvals Process and Criteria.** The City shall approve, approve with conditions, or deny an application for a variance based on finding that all of the following criteria are satisfied:

- a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;

**The development code discusses building setbacks being intended to promote human scale design and traffic calming by downplaying the visual presence of garages and fences along the street and encouraging the uses of extra wide sidewalks. Furthermore, the code addresses required setbacks for front yards to encourage public safety and neighborhood security. A six-foot fence in their front yard would create blind spots for pedestrians walking adjacent to 21<sup>st</sup> Street sidewalks. The proposed variance would be in conflict with these standards.**

- b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 2.6), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);

**The applicant's home is located on a corner lot where the primary front of the house faces 21<sup>st</sup> Street. The side or rear yard setback from Main Street is 65' and a front setback from 21<sup>st</sup> Street is 15'. The lot appears to be platted larger than other lots in the subdivision to accommodate the additional setback requirements of a corner lot.**

**There is an approximately two (2) foot difference in grade along the north property line that abuts Main Street however, that difference in grade tapers off to zero along the 21<sup>st</sup> Street property line.**

**The fact that this is a corner lot and does have a slight grade difference does not rise to a level of a hardship to development. The applicant can still install a fence**

**along either property line at a height the development code allows. Therefore, similar circumstances related to the placement of a fence are applicable to other properties in the vicinity as confirmed by the placement of the fence of the house directly across the street at the NW corner of Main Street and 21<sup>st</sup> Street.**

- c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;

**The primary use of this property is a residential home, which will remain as a permitted use and is not affected by this request. The city standard that allows fencing to be installed along property lines will stay intact and permit the reasonable and economic use of the property as a residence.**

- d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;

**This request will have a detrimental effect to the uniformed appearance of the existing streetscape along 21<sup>st</sup> Street. With the proposed fence being placed directly on the property line, it will create blind spots to drivers and pedestrians that cannot adequately distinguish between the private and public property boundaries.**

- e. The hardship is not self-imposed; and

**The proposed placement of a six (6) foot fence directly on the property line in the front yard setback instead of being placed where it is permitted or at a size that is permitted does qualify as “self-imposed”.**

- f. The variance requested is the minimum variance that would alleviate the hardship.

**The city’s development code already allows for a four (4) foot fence in a front yard setback that is more appropriate in a residential neighborhood in which the homes are closer to the road right of way. Two additional feet would not make a significant difference in abating noise levels created by traffic along Main Street or eliminate any automobile or truck headlights any more than what a four (4) foot fence can.**

## **RECOMENDATION/CONDITIONS:**

Staff recommends the variance be denied finding that none of the approval criteria has been met.

However, if the Planning Commission disagrees with the findings it may choose to approve the variance by establishing its own findings to satisfy the criteria. If the planning commission does choose to approve or approve with conditions, planning staff recommends the following conditions:

- 1. That the fence be placed one foot off of the property line and be constructed of vinyl or of a decorative wood material.**
- 2. That the applicant adhere to all vision clearance distances where the fence abuts up to a driveway or walkway to the home.**



Per the development code, a fence can be up to 6' high along Main Street until it reaches the front line of the home facing 21st Street. From there it has to drop down to 4' in height out to the intersection and along the front of the house facing 21<sup>st</sup> Street. .

A fence shall only be 6' above grade in any circumstance and if you wanted to maintain the fence in its current location along Main Street but measure the 6' from the property line you would have to seek a variance. The same applies to a 4' high fence along 21<sup>st</sup> Street.  
  
A variance requires a hardship that may be considered in this case on grade changes and noise abatement if you wanted to apply.

The Code requires a 7.5' corner clearance at this point for adjacent driveways.



## CITY OF PHILOMATH

980 Applegate Street  
PO Box 400  
Philomath, OR 97370  
541-929-6148; 541-929-3044 FAX  
www.ci.philomath.or.us

Agenda Item #5.1  
Meeting Date: 3/18/19

### APPLICATION FOR CLASS C VARIANCE

Fee: \$ 1,080

#### Applicant(s)

Name: Kathleen M. Sapp Bus Phone: \_\_\_\_\_  
Address: 115 S 21<sup>st</sup> St, Philomath, OR Home Phone: 541-609-8620

Name: \_\_\_\_\_ Bus Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Interest in Property (Owner, Purchaser, Agent, etc.): Owner

#### General Property Information

Street Address: 115 S 21<sup>st</sup> St Philomath, OR 97370

Assessor's Map: \_\_\_\_\_ Tax Lot: \_\_\_\_\_ Zoning: R-1

Existing Structures: House, Garage

Current area and use(s) of the Property: Living

Describe the Variance being requested:

Extend height of fence to six feet  
on N.E. side of yard for noise  
abatement and privacy

## **General Information**

The Planning Commission may grant variances from the requirements of the Philomath Municipal Code where the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size or shape, topography, sensitive lands, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district); except that no variances to “permitted uses” shall be granted. In granting a Variance, the Planning Commission may attach conditions which it finds necessary to protect the best interest of the surrounding property or vicinity and otherwise achieve the purposes of the Philomath Municipal Code.

### Class C Variance Applicability

- 1) The variance standards are intended to apply to individual platted and recorded lots only.
- 2) An applicant who proposes to vary a specification standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure.
- 3) A variance shall not be approved which would vary the “permitted uses” of a land use district.

### Class C Variance Approvals Process and Criteria.

- 1) Class C variances shall be processed using a Type III procedure, as governed by Chapter 18.105.050 of the Philomath Municipal Code (PMC), using the approval criteria in subsection 2, below. In addition to the application requirements contained in Chapter 18.105.050 of the PMC, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection 2.
- 2) The City shall approve, approve with conditions, or deny an application for a variance based on finding that all of the following criteria are satisfied:
  - a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;
  - b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);
  - c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
  - d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
  - e. The hardship is not self-imposed; and
  - f. The variance requested is the minimum variance that would alleviate the hardship.

## Required Application Information

**A detailed description of the present use of the property and the proposed variance, including:**

- The current use of the property
- A description of the variance being requested, including a response to each of the applicable criteria that would support the granting of the variance

**A map of the property, drawn to scale, that contains the following information.**

- The property boundaries and the location and use of all buildings and other improvements on the property
- A north arrow and the scale of the map
- Any other information necessary in reviewing the variance for compliance with the criteria

## ADDITIONAL RESPONSIBILITIES OF THE APPLICANT

It is the responsibility of the applicant to determine if wetlands are present on the property and to contact the appropriate state and federal permitting agencies prior to applying for a development permit from the City. If hydric soils are present on the property or if the property contains a wetland designated on the National Wetlands Inventory Map, the applicant must submit documentation to the City that: (1) A permit has been applied for from the Oregon Division of State Lands; or (2) The Division of State Lands has determined that no permit is necessary for the project.

City staff will assist the applicant in determining if the property contains hydric soils or is identified on the National Wetlands Inventory Map, but the City has no responsibility for determining if wetlands are present or if a state or federal permit is required.

## Signature(s)

I hereby certify that the information contained in this application is accurate to the best of my knowledge; and that the proposed use would not violate any deed restrictions attached to the property. This application must be signed by all owners of the property, or a statement authorizing the applicant to act for the owner must accompany the application.

Kathleen Sapp

1-27-2019  
Date

Date

### Processing Information

This application will be reviewed at a public hearing before the Planning Commission. Surrounding property owners will be notified of the application and given an opportunity to submit evidence and testify at the hearing. The City will also send notices of the hearing and final decision to the applicant, affected government agencies, owners of land within 250 feet of the boundaries of the property, and all other persons who participate in the proceedings. If the application is approved, Conditions of Approval specified in the Notice of Decision must be satisfied within the time specified in the approval.

Anyone who submitted written testimony or oral testimony to the Planning Commission may appeal a decision of the Planning Commission to the City Council by filing an appeal application with the City within 14 days of the decision.

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*For Office Use Only*

Date Application Received: 1/28/19 Receipt Number: 53728 By: AH/RP

File Number Assigned: PC 19-01 Date Application Deemed Complete: \_\_\_\_\_

The type of variance we are requesting is a Class C, to extend the height restriction of the fence from 4' to 6' on the front line of the residence along 21st st. The issue is noise abatement, as the volume of traffic in this area is rather high at times, and with the growth in the area, looks to increase. Also, the added privacy for home would be good. The style of fencing that will be placed will be vinyl panel so it will be fully closed and decorative.

Owner  
Kathleen Sapp  
541-609-8620

Contractor  
James Lamb  
LXL Construction  
CCB# ~~2~~15214  
PH 541-974-3111

Model # 73014524 Internet #204832472



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Exclusive

## Veranda

Linden 6 ft. H x 8 ft. W Cypress Vinyl Privacy Fence Panel Kit

★★★★☆ (288) [Write a Review](#)

**\$138<sup>12</sup>** /piece

Color/Finish: **Cypress**



Top Shape: **Flat**





-  Fire Hydrant
-  Comm. Boxes
-  Power Poles
-  Decks
-  Concrete
-  Existing fence
-  Proposed Variance
-   $\frac{1}{4} = 5'$  Proposed Fence

