

ORDINANCE NO. 2071

An Ordinance Approving a Quasi-judicial Zone Change from C-1 (Office Residential) to C-2 (General Commercial) for a 0.46-Acre Parcel (3N 10E 25CD Tax Lots 6501, 6502 & 6500) – Columbia Gorge Capital LLC (Lach Litwer) – with Conditions to Accommodate a Mixed Use, 33 Unit Multifamily Development.

The Hood River City Council adopts the following findings:

WHEREAS, Columbia Gorge Capital LLC (Lach Litwer) as owner and applicant, applied for a quasi-judicial zone change and conditional use permit for the 0.46-acre (19,720 square feet) property (Tax Lots 6501, 6502 & 6500 on map 3N 10E 25CD) from C-1 Office Residential to C-2 General Commercial to accommodate a mixed use, 33 unit multifamily development;

WHEREAS, City provided DLCD with 35-day pre-hearing notice on June 27, 2022 and mailed notice of the proposal and an August 15, 2022 Planning Commission hearing to owners of property within 250 feet of the subject site on July 15, 2022; and

WHEREAS, the initial evidentiary hearing was duly noticed and held before the planning commission on August 15, 2022, continued to September 19, 2022, after which the planning commission approved the requested conditional use permit and recommended Council approval of the rezone request (Exhibit A), subject to conditions; and

WHEREAS, the City Council considered the planning commission's recommendation at a duly noticed de novo public hearing on October 24, 2022, at which time the Council accepted written and verbal public testimony from anyone on any relevant topic, at the end of which the City Council closed the record and continued the matter to November 14, 2022; and

WHEREAS, at the November 14th continued hearing, the Council deliberated and voted 6:1 to approve the zone change application based upon the Planning Commission's recommendation and recommended conditions (Exhibit A).

NOW THEREFORE, the City Council for the City of Hood River ordains as follows:

Section 1. Incorporation of Recitals: The foregoing recitals are adopted and incorporated herein by this reference and made a part hereof in support of the City Council's action taken herein.

Section 2. Rezone Approval and Conditions. The City Council hereby approves the quasi-judicial rezone request for Tax Lots 6501, 6502 & 6500 on map 3N 10E 25CD from C-1 Commercial to C-2 Commercial subject to the following conditions of approval:

1. Based on the analysis and commitment by the applicant, the conditional use and zone change shall not permit the issuance of short-term rental licenses. The restriction shall run

with the land and shall be applicable to the owner, developer, their successors, or assigned.

2. The rezone from C-1 to C-2 shall be conditioned on the development of a multifamily residential development in substantial conformance with the plans and submissions prepared by the applicant for a mixed-use development submitted and designed by Colab Architecture dated 9/30/2021 Sheets C01-A.44.
3. Pursuant to HRMC Ch. 17.24 and Ordinance 2056, and to satisfy the parking requirement a condition of approval is included that the Fee in Lieu be paid prior to the issuance of Building Permit.
4. Exterior lighting within the development shall be shielded and focused to avoid glare on surrounding properties, and this requirement shall be addressed in the building permit submission.
5. Prior to approval of the Site Development Plan, the applicant shall submit an updated landscaping plan to be reviewed and approved by the Planning Director demonstrating conformance with the standards of HRMC 17.17.030 and 17.17.040. The landscaping plan shall identify the number, location, size and species of plant materials, as well as the method of irrigation. The landscaping plan shall feature native trees, shrubs and groundcovers. All plant materials shall be chosen to survive in the climate and soils of the proposed site, and to satisfy the functional objectives of landscaping as detailed in HRMC 17.17 including erosion control, screening, and provision of shade within a reasonable time.
6. Temporary irrigation shall be provided where necessary to establish new trees and plants in the development, but long-term irrigation may be unnecessary depending upon tree and plant species that are selected.
7. Street trees shall be provided along the Cascade and Oak frontage.
8. The Landscaping Plan shall be modified to include measures for removal of invasive species on the site and preservation of mature and native species where feasible.
9. Prior to Certificate of Occupancy the rooftop mechanical screens shall be installed.
10. Prior to site development permits, the applicant shall demonstrate compliance with applicable conditions of approval and compliance with Hood River Municipal Code and Engineering Standards outlined Engineering Comments and included as (Attachment C).
11. Prior to final approval, and unless waived by the City Engineering, frontage improvements, including sidewalks, curb, gutter, planter strips, and street trees shall be installed per City Engineering Standards along Cascade Avenue and Oak Street. Street trees shall be provided at no less than 1 tree per gross lineal feet of frontage in

conformance with HRMC including a minimum caliper size of two inches for proposed trees.

12. The United States Postal Service shall approve plans for mailbox locations.
13. The City shall install all signs for traffic control and/or street names. The cost of new signage will be the responsibility of the developer.
14. The applicant shall be responsible for proportionate share payments to applicable and impacted intersections identified in the revised TAL.
15. A representative of the design engineer, referred to as the Resident Engineer, shall be on site nearly every day throughout the construction of public/ROW improvements in order to perform the duties of the Resident Engineer as described in the Engineering Standards.
16. All utilities shall be placed underground including power, phone, cable television and other telecommunications lines.
17. Prior to submitting improvement plans, a pre-submittal meeting is required.
18. A final stormwater management plan as described in the Engineering Standards will be required for this development. Water quality and quantity treatment requirements apply to all impervious surfaces, new and existing, including runoff from Public Right of Way. The City encourages the use of porous pavements to reduce stormwater management requirements. Roof runoff does not require treatment, but detention requirements must be met. The applicant shall construct adequate stormwater infrastructure per the COHR Stormwater Master Plan
19. Sizing of all pipes must meet the City's Stormwater Utility Capital Facilities Plan (CFP). See City of Hood River Engineering Standards Section 4.5 Stormwater Management for design and submittal criteria. The Oregon Department of Environmental Quality requires a National Pollutant Discharge Elimination System (NPDES) 1200 – C permit for all projects that disturb one acre or more. Contact the Bend regional DEQ office at 541-388-6146 for permit application forms and more information. Prior to any site work a copy of the required DEQ 1200 – C permit shall be provided to the City Engineering Department.
20. City Engineering Standards Section 4.3 A.1 states: Elevation and grades are based on site conditions existing prior to any site work being done and are determined from aerial topographical information on file with the City Engineering Department. Prior to any site work of the development, a site grading and erosion control plan meeting the requirements of the City of Hood River Engineering Standards shall be submitted.
21. Easements for sewers, storm drainage and water quality facilities, water mains, electric lines, or other public utilities shall be dedicated provided for in the deed restrictions. The developer or applicant shall make arrangements with the City, the applicable district, and each utility franchise for the provision and dedication of utility easements necessary to

provide full services to the development. The City's standard width for public main line utility easements shall be fifteen (15) feet unless otherwise specified by the utility company, applicable district, or City Engineer.

22. Construction Plan Approval and Assurances. A construction site permit is required for all public and private improvements subject to this title. No public or private improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements shall be undertaken except after the plans have been approved by the City, permit fee paid, and permit issued. The permit fee is required to defray the cost and expenses incurred by the City for design reviews, construction observation and other services in connection with the improvement. The permit fee shall be set by City Council resolution. The City may require the developer or subdivider to provide bonding or other performance guarantees and warranties to ensure completion and performance of required public improvements.
23. The applicant/property owner is responsible for knowledge of existing easements and property lines. Conflicts are to be resolved prior to issuance of building permits. This approval does not condone nor require interference with existing easements, covenants, deeds or restrictions of record which affect this or adjacent properties.
24. This approval shall be valid for a period of two years from the written notice of the final decision, or the decision on an appeal, whichever is later. A single one-year extension may be granted by the Planning Director prior to the expiration date if the applicant can demonstrate compliance with applicable land division extension standards.
25. Failure to comply with these conditions will nullify this permit.
26. The applicant shall record the final signed ordinance with title to the property with Clerk and Recorder of hood River County.

Section 3. Adoption of Findings. In support of its decision, the City Council hereby adopts the Planning Commission's Findings of Fact and Conclusions of Law attached hereto as Exhibit A and incorporated herein by this reference.

Section 4. Additional Supplemental Findings. The following findings are adopted in response to issues raised by parties to the Council proceeding that were not necessarily or fully addressed in the Planning Commission's recommendation.

Goal 1 – Citizen Involvement and related procedural objections. While no one to this proceeding expressly asserted that the City committed a procedural objection, several people suggested that this matter warranted a broader notice range and more public outreach than the City provided. They argued that failure to provide for broader public involvement violated the City's Goal 1 requirements. We disagree.

Citizen involvement is always applicable to quasi-judicial applications such as this. Goal 1 is met by implementing the notice and public participation provisions of the City's

acknowledged Zoning Ordinance. This application is reviewed by staff, the Planning Commission and the City Council. Through that process, the City provides written/mailed notice to owners of property within 250 feet of the site, the opportunity to comment, at least one neighborhood meeting and two public hearings with full public participation rights. Notice was mailed to surrounding property owners and affected governmental agencies.

We find that the City complied with these code and state law requirements for notice of the Planning Commission's initial hearing, the City County's hearing and all subsequent and continued hearings in this matter. The robust participation by numerous members of the community and voluminous written comments all contradict the argument that public participation was thin. The record before us demonstrates that the City's notice requirements were met and were effective in generating robust public participation. We see no violation of the City's public participation plan or other procedural requirements for this quasi-judicial matter.

Goal 2 – Plan Review and Provisions: Several participants point to the following Goal 2 requirement for comprehensive plan amendments:

“Changes to the Comprehensive Plan may be made at any time. When a revision is proposed, the following procedure will be followed: ... It must be demonstrated that the following conditions exist, when applicable: ... There is not an adequate amount of land designated as suitable for specific uses by the Plan.” Hood River Comprehensive Plan, Goal 2, Plan Review and Revisions.

These witnesses assert that the need for a particular type of housing, *i.e.*, multifamily and affordable housing, do not qualify as a “use” within the meaning of this Goal 2 provision. These participants point-out that the City's Sept 2015 Housing Needs Analysis (“HNA”) concludes that the City has enough land currently zoned to accommodate expected residential needs. We disagree.

As a preliminary point, we disagree with the opponents' narrow interpretation of “use” and what must be shown to justify a zone change under this provision. In this case, the “use” we seek to expand by rezoning this parcel is multifamily residential, which we find is a more affordable housing option than detached single-family residential. While the original C-1 zoning of the site allows some multifamily units on the site, the proposed C-2 zone allows a higher density and thus more of the specific “use” that we seek to promote in the City's urban core. This rezone proposes to increase the city's stock of affordable housing in the urban core as compared to what is possible under C-1 zoning.

What these participants overlook is that the HNA documents that the City has “a very limited supply of land for multifamily housing,” and that the City “has an existing deficit of affordable housing.” The HNA instructs the City to manage carefully its multifamily zones, most notably the C-2 zone, to ensure they maximize housing and employment opportunities. What these participants overlook is that the HNA identifies specific deficits in the City's housing stock, most notably

- Hood River has a very limited supply of land for multifamily development.

- Hood River has an existing deficit of affordable housing

We find that the C-2 zone will allow more apartment units in the applicant's multifamily project, that apartments are more affordable than are detached single-family homes on individual lots, and that a rezone from C-1 to C-2 will increase the number of affordable dwelling units than currently possible at this site under C-1 zoning. Thus, we see no Goal 2 violation, but in fact our decision today responds to the needs identified in the HNA and is consistent with and advances the Conclusions and Recommendations of the HNA and is consistent with the City's Housing Strategy (adopted by Resolution 2022-06). These actions and conclusions are further supported by Goal 10's mandate to provide for identified housing needs. We conclude that increasing urban density to accommodate additional housing, especially apartments that cannot be short-term rented, is an important step toward addressing the deficiencies identified in the HNA and following the adopted Housing Strategy. We specifically reject the interpretation of Goal 2 offered by these opponents and conclude that approval of this zone change proposal is consistent with the City's Goal 2.

Goal 6 – Air and Light. At least one opponent argued that approval of this zone change violates Goal 6 because it will deprive existing homes and buildings around this site of air and light. However, we see no such requirements or priorities in the City's acknowledged Goal 6, which is "[t]o maintain and improve the quality of the air, water, and land resources of the planning area to provide a relatively pollution-free environment." Nothing in the City's enactment of Goal 6 supports this opponent's arguments. Moreover, the zone change in this case will allow, at most, an additional 10 feet of building height, which we do not find will significantly change air and light for the homes and buildings surrounding this site, much less deprive them of air and light. We conclude there is no Goal 6 violation.

Goal 11 – Sanitary sewer capacity. At least one opponent argued that the City's sanitary sewer system lacks adequate availability capacity to serve the higher density that C-2 zoning would allow at this site, which she asserts is a violation of Goal 11. In fact, this zone change proposal will allow an increase from 12 apartment units to 33 apartment units – an increase of 21 apartments. There is no evidence in the record that the City lacks the sanitary sewer system capacity, and even if there were periodic capacity problems, we do not believe that 21 additional apartment units would put the City's wastewater treatment plant over capacity. Moreover, the City's Goal 11 is "[t]o plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development in the City and Urban Growth Area." We conclude that nothing about this zone change proposal, which means a maximum of 33 apartment units (21 units above what is allowed under C-1 zoning), violates Goal 11.

HRMC 17.08.040 – Incompatibility and harm to the surrounding area. This is the fundamental criterion for a quasi-judicial zone change and is already addressed in the Planning Commission's recommendation, which we incorporate by reference. Because of the focused arguments presented to us during the council hearings, we adopt additional

findings on the issue. HRMC 17.08.040(A) provides that “Quasi-Judicial zone or plan changes may be approved if the change will not be unreasonably harmful or incompatible with existing uses.” Many opponents to this project cited multiple impacts that they characterize as harmful and incompatible with the existing surrounding buildings and neighborhoods. We acknowledge that there will be impacts from the redevelopment of this lot with the construction of a 33-unit apartment building, and we acknowledge that this building at a maximum of 45 feet tall will be visible and detectible from near-by existing homes and commercial properties. The zone change will allow only a 10-foot increase in building height over what is allowed in the C-1 zone for purely residential structures. We view the building height and traffic increase as the only tangible impacts on the surrounding neighborhoods implicating this criterion.

We find, however, that these impacts are not “harmful” as envisioned by this provision, and if harmful, are certainly not unreasonably harmful or incompatible with existing uses. The surrounding uses are commercial and residential, and we interpret these references to mean harmful or incompatible so that the existing uses cannot reasonably continue as city zoning would allow. In this case, we see no credible evidence in the record or our observations about urban landscapes generally to suggest that a 10-foot building height increase would render this project incompatible with these existing uses. Some level of impact for sure will be detectable, but this 45-foot tall building will be only 10 feet taller than otherwise allowed in the C-1 Zone, and that increase does not equate to the building being “unreasonably harmful” to the existing surrounding uses or incompatible with them. All of the existing commercial and residential uses will easily be able to continue after this project is developed, and there is no evidence that any of the surrounding uses cannot continue as the underlying zoning would allow them to. Yes, this building will be visible, possibly even conspicuous, and its visual/aesthetic impact detectible from the surrounding properties. We reject the suggestion, however, that that impact of a multifamily residential development and its relatively modest increase (10 feet) over what is allowed in the C-1 Zone will be “unreasonably harmful or incompatible” to the surrounding residential uses. We specifically do not equate merely detectible with “unreasonably harmful or incompatible” especially in this developed urban landscape and conclude that this requirement is met.

Goal 10 – Housing. As a final note on these legal issues raised by several opponents to this project, at best, their arguments illustrate a certain tension between preservation of single-family detached homes and relatively low-density development versus the mandate in Goal 10 and elsewhere in state law and the City Code for increased housing availability and affordability. We are acutely aware of the possible tension between maximizing these competing goals. In this particular case, however, we have already articulated a strong Goal 10 policy objective in the HNA, the Housing Strategy and in our adoption of the missing middle development code amendments last year (2021). We find that the development of 33 apartment units promotes both housing affordability and availability for long-term tenancy, when compared to detached single-family residential homes and units that can be short-term rented. We find that this project advances our housing affordability and availability under Goal 10 that outweighs any relatively minor impact on other policy objectives that are reflected in, or can be inferred from, the City’s Comprehensive Plan. The lack of housing affordability and availability are critical problems in this City, and this project helps to address those high policy priorities in an incremental, yet tangible way. In that light, when

there is a policy conflict between Goal 10 and other stated goals, we will favor achieving Goal 10 policy objectives when feasible and lawful to do so.

Section 5. Notice of Decision. The Planning Director shall issue a written Notice of this decision as required by state law and the Hood River Development Code.

READ FOR THE FIRST TIME on November 28, 2022.

READ FOR THE SECOND TIME and adopted on December 12, 2022. This Ordinance shall take immediate effect upon the second reading and issuance of written notice as prescribed by law.

Kate McBride, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Gray, City Recorder

Daniel Kearns, City Attorney