



**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion on Proposed Ordinance 523, regarding 2009 Zoning Code Amendments.		Meeting Date: October 5, 2009
Department: Community Development	Attachments: 1. <u>Proposed Ordinance No. 523</u> 2. <u>Planning Commission Minutes – 8/25/09</u> 3. <u>Planning Commission Minutes – 9/8/09</u>	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A
Contact: Liz Ockwell, Assistant Planner		
Telephone: (206) 812-7575		
Adopted Work Plan Priority: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Work Plan Item Description: Amend various sections of the zoning code as needed.	
<p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for the City Council to discuss approval of fifteen (15) Zoning Code amendments. No action is necessary at this time.</p> <p>BACKGROUND (Include prior Council action & discussion): The proposed zoning code amendments will revise and add new definitions relating to use, garages, and slope, and correct errors in the Zoning Code relating to parking, landscaping, and interim zoning code references. The proposed amendments will also clarify the master sign plan process, thresholds for nonconforming structures and sizes of residential accessory structures. Finally, the proposed amendments will correct typographical errors in the sign and critical areas code.</p> <p>The Planning Commission discussed the proposed amendments at two public meetings on August 25 and September 8, 2009, and unanimously recommended approval of the proposed amendments following their public hearing on September 22, 2009.</p> <p>OPTIONS (Including fiscal impacts): N/A</p>		
Administrative Recommendation: Hold a discussion and consider placing proposed Ordinance No. 523 on consent agenda for adoption on October 26, 2009.		
Committee Recommendation: N/A		
Advisory Board Recommendation: The Planning Commission unanimously recommended approval of all amendments on September 22, 2009.		
Suggested Motion: None Required		
Submitted by: Liz Ockwell, Assistant Planner Administration 		Mike Martin City Manager 
Today's Date: September 30, 2009		File Code: R:\CC\Agenda Bill 2009\100509- ZonCode Amend.doc

CITY OF BURIEN, WASHINGTON**ORDINANCE NO. 523**

**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,
AMENDING TITLE 19 OF THE BURIEN MUNICIPAL CODE
RELATED TO ZONING, PROVIDING FOR SEVERABILITY, AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, in June, 1999, the City of Burien adopted a new zoning code establishing zoning regulations for the City of Burien; and

WHEREAS, the need to correct typographical errors, add new definitions, and clarify sections of the code have led to the proposed amendments; and

WHEREAS, the Planning Commission held two public meetings on August 25, 2009 and September 8, 2009, to discuss amendments to the zoning code; and

WHEREAS, the Planning Commission held a public hearing on September 22, 2008 to receive citizens' comments on the proposed amendments; and

WHEREAS, the City Council has received recommendations from the Planning Commission regarding the proposed amendments; and

WHEREAS, the City Council held a public meeting on October 5, 2009 to review and discuss the proposed amendments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN,
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: Amendments to BMC Title 19. The City Council of the City of Burien hereby amends BMC Title 19 as shown on Exhibit A incorporated by reference as if fully set forth herein.

Section 2: Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3: Savings. The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 4: Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THIS ___ DAY OF ___, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ___ DAY OF ___, 2009.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Chris Bacha, Interim City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No. 523
Date of Publication:

City of Burien

BURIEN PLANNING COMMISSION MEETING
August 25, 2009
7:00 p.m.
City Council Chamber, Burien City Hall
MINUTES

Planning Commission Members Present:

Janet Shull, Jim Clingan, Brian Bennett, Rachel Pizarro, Joe Fitzgibbon, Stacie Grage, Rebecca McInteer

Absent:

None

Others Present:

Elizabeth Ockwell, assistant planner; Chip Davis, planner

Roll Call

Chair Shull called the meeting to order at 7:10 p.m. At the call of the roll all commissioners were present.

Agenda Confirmation

Motion to approve the agenda as presented was made by Commissioner Clingan. Second was by Commissioner Grage and the motion carried unanimously.

Approval of Minutes

Motion to approve the minutes of July 28, 2009, was made by Commissioner Clingan; second was by Commissioner Grage. The motion carried unanimously.

Election of Chair and Vice-Chair

Commissioner Bennett nominated Commissioner Fitzgibbon as chair; Commissioner Pizarro seconded the nomination. Commissioner Fitzgibbon was elected chair by a unanimous vote. Commissioner Clingan nominated Commissioner McInteer as vice chair; Commissioner Grage seconded the nomination. Commissioner McInteer declined the nomination because of her work schedule. The commissioners then withdrew their nomination. Commissioner Fitzgibbon nominated Commissioner Clingan; second was by Commissioner Grage. Commissioner Clingan was elected vice chair by a unanimous vote. Commissioner Shull then handed the gavel over to newly elected Chair Fitzgibbon.

New Business

Elizabeth Ockwell, assistant planner, introduced 14 proposed zoning code amendments, noting that 11 of the proposed amendments would correct typographical errors in the Zoning Code and three provide clarification of code sections. She then reviewed the proposed amendments with the commissioners.

Chair Fitzgibbon asked what the timetable is for the commission to review the amendments and make a recommendation to the City Council. Ms. Ockwell said she hoped to have a public hearing on Sept. 8th, but that could be pushed back to Sept. 22nd, if necessary; the commission's recommendation should be going to the City Council in October.

Commissioner Shull voiced concern that while the first amendment loosens present code that is probably too restrictive, it does not set an upper limit on the size of a detached single-family garage. She said perhaps the code moves from too restrictive to too lenient. Ms. Ockwell noted that in Zoning Code Chapter 19.17 Miscellaneous there is a section on residential accessory structures stating that residential structures need to be subordinate and incidental to the main use on the site. Staff interprets that as limiting the size of a garage to something smaller than a single-family residence, the main use, even with an accessory dwelling unit included over the garage.

Commissioner Shull expressed concern that by removing the maximum square footage allowed it opened up the possibility of huge garages inappropriate for a single-family neighborhood. Ms. Ockwell explained that Zoning Code Chapter 19.17 Miscellaneous states that residential accessory structures must be subordinate and incidental to the main use on the site, the single-family residence. Also, height, building coverage, impervious surface and setback requirements also will limit the size of an accessory structure. Commissioner McInteer agreed with Commissioner Shull's concern and wondered if there isn't some more specific way of limiting the size of an accessory structure, such as a garage, rather than leaving it open to interpretation.

Mr. Davis said it's difficult to come up with a standard that will fit every situation. Staff works with applicants to come up with a reasonable solution to their garage needs; there have been only a couple of instances of property owners pushing the limits by constructing large buildings. He also noted that the size of accessory dwelling units is limited by code, so a very large garage probably could not include the equivalent-size living space above.

Mr. Davis volunteered that staff could return to the Planning Commission after researching how other cities are handling it. The commissioners agreed. Chair Fitzgibbon asked if saying a garage cannot exceed a certain percentage of the size of the house on the lot would be more restrictive than the proposed amendment; Mr. Davis answered yes.

Commissioner Shull questioned the language of the 14th proposed amendment, concerning nonconforming structures, that defines the extent of "voluntary demolition" when determining whether or not a nonconforming structure can be rebuilt if it is damaged or destroyed. Staff explained that the amendment was triggered by a property owner taking a nonconforming structure to the foundation to rebuild it and a neighbor pointing out to the City that the code does not allow replacement if the structure is removed by voluntary demolition.

Commissioner Shull then asked if the code would apply in areas under shoreline jurisdiction. Mr. Davis answered that the current shoreline code doesn't deal with it, but the new shoreline code that is being created by David Johanson and the Shoreline Advisory Committee will be more specific. Mr. Davis said he assumed that once the new shoreline code is adopted that will be the controlling document in the shoreline areas, regardless of what the City's other regulations say.

Ms. Ockwell explained that she had researched nonconforming code in other jurisdictions and found that the 50 percent value cutoff was the middle of the road between the cities researched. Commissioner Fitzgibbon asked for staff to bring examples of other cities using the 50 percent assessed value cutoff. Ms. Ockwell agreed to bring a list to the next Planning Commission meeting.

Old Business

Chip Davis, planner, presented a follow-up regarding the fee-in-lieu of parking program presentation that the commission received at its July 28th meeting. Three handouts were distributed to the commission. The first was a copy of the fee-in-lieu of parking program draft report, which was distributed at the last meeting, for those members who may have forgotten their copy at home.

The second handout was a letter from the consultant, Steve Nolen with Transportation Solutions, summarizing the reaction of the Burien Business & Economic Development Partnership (BEDP) to his

August 14th presentation. In the letter, Mr. Nolen responded to two questions raised by the BEDP regarding composition of the Public Development Authority Board (PDA) and regarding the current utilization level of parking in Downtown Burien (see handout for details). Mr. Nolen indicated that there were no negative comments regarding the proposed fee-in-lieu of parking program and several of the BEDP members expressed strong support for the program.

The third handout for the commission was a copy of the consultant's August 14th PowerPoint presentation to the BEDP. The presentation was very similar to the one given to the Planning Commission at its last meeting, but included some of the discussion points raised by the commission. Mr. Davis tabbed Page 11 of the handout to focus commission discussion on the consultant's recommendations, which will provide a framework for specific language to be inserted into the Zoning Code to implement Burien's fee-in-lieu of parking program.

Commissioners Bennett, Grage, Fitzgibbon and McInteer had questions regarding Table Appendix C Comparison Fee-in-Lieu of Parking Programs for other cities in the United States. There was some discussion regarding the comparability of various programs to Burien's Downtown and the level of overall success for other cities such as Kirkland, Washington, and Bend, Oregon. Following a brief discussion it was the consensus of the commission for the staff and consultant to use the recommendations on Page 11 of the handout as the basis for drafting specific language to amend the Zoning Code.

Mr. Davis indicated that drafting of code language will take some time and prior to any public consideration of the language it must undergo a 60-day state Department of Commerce (formerly CTED) review, so the earliest presentation would be at the November 10th commission meeting. At that meeting the staff will determine if the commission feels that it is on the right track and if so the commission can set November 24th for a public hearing and possible recommendation to the City Council on the amendments.

Planning Commission Communications

Commissioner Grage will not be attending the September 8th meeting. Commissioners Fitzgibbon and Pizarro will not be attending the September 22nd meeting. Commissioner Schull will not be attending the November 23rd meeting.

Director's Report

None

Adjournment

Motion to adjourn was made by Commissioner Schull; meeting adjourned at 8:00 p.m.

Approved: _____

Joe Fitzgibbon, chair
Planning Commission

City of Burien

BURIEN PLANNING COMMISSION MEETING

September 8, 2009

7:00 p.m.

Miller Creek Room, Burien City Hall

MINUTES

Planning Commission Members Present:

Janet Shull, Jim Clingan, Brian Bennett, Rachel Pizarro, Joe Fitzgibbon, Rebecca McInteer

Absent:

Stacie Grage

Others Present:

Elizabeth Ockwell, assistant planner; Scott Greenberg, Community Development Department director

Roll Call

Chair Fitzgibbon called the meeting to order at 7:00 p.m. At the call of the roll all commissioners were present except Commissioner Grage.

Agenda Confirmation

Motion to approve the agenda as presented was made by Commissioner Shull. Second was by Commissioner Clingan and the motion carried unanimously.

Public Comment

None

Approval of Minutes

It was noted that Commissioner Shull's name was misspelled twice in the August 25, 2009, draft minutes. Motion to approve the minutes as corrected was made by Commissioner Clingan; second was by Commissioner Shull. The motion carried unanimously.

Old Business

Elizabeth Ockwell, assistant planner, said she was returning to the commission with additional information answering questions the commissioners had at their last meeting regarding two of the proposed zoning code amendments.

The first concerns the proposed removal of the 500-square-foot and one-story limitation on detached residential garages. She noted the commissioners' concerns about the possibility of a detached garage being built so large that it dominates the lot and the existing house in scale and/or square footage. Ms. Ockwell said that based on research into how other cities treat the issue – in particular, Kirkland and Marysville -- language has been added regulating the size of residential accessory structures to either 15 percent of the lot area or 80 percent of the footprint of the primary residence, whichever is less, and a height restriction of not more than 10 feet above the existing height of the main residence, or the maximum height for the zone.

Commissioner Bennett said he felt the new language might penalize owners of smaller houses and wondered if there isn't a way to be less restrictive; Ms. Ockwell noted that the current code, BMC 19.17.060, already states that the accessory structure be "subordinate and incidental to the residential use of the property." She explained that regardless of the new language, someone with a smaller house or smaller lot will not be allowed to build as big an accessory building as someone with a larger house or larger lot. She called the commissioners' attention to a handout she supplied of examples of lots in the city and the calculation of the maximum size accessory structure that can be built on each lot. In most cases the size of the single family residence limits the size of the accessory structure, but in one of the examples the lot area was the limiting factor. Commissioner Bennett said he was still disturbed that the owner of a small house would be "penalized" in the size of a garage that could be built.

Commissioner McInteer pointed out that the garage is an accessory use to the single family residence and "penalty" is probably not the word to describe a limit on the size of the accessory use. She asked why they are even considering an amendment to the size limitation; Ms. Ockwell explained that the current trend is larger houses, with three car garages, many with accessory dwelling units above, and the current limitation of 500 sq. ft. and one story just doesn't accommodate people's needs. Mr. Greenberg added that the intent is to add flexibility based on the current market while avoiding construction of accessory buildings that are out of scale with the residence on the property.

Commissioner Shull thanked staff for the additional research and the improved amendment language. She then asked if the "Eighty percent of the footprint of the primary residential structure" meant it would be comparing the footprint of an accessory structure to the footprint of the primary structure and that a second story could be added, making the total square footage greater than the eighty percent footprint. Both Ms. Ockwell and Mr. Greenberg answered in the affirmative.

Mr. Greenberg told the commissioners they will be conducting a public hearing on the proposed amendments at their Sept. 22nd meeting, so they still have time to hear from the public and to deliberate again.

As requested by the commissioners at their Aug. 25th meeting, Ms. Ockwell then presented additional information on nonconforming structure demolition thresholds. Ms. Ockwell reminded the commissioners that the proposed amendment is intended to clarify BMC 19.55.030.3.B, which currently states that a nonconforming structure loses its nonconforming status when it is damaged or destroyed, without giving a threshold, which means that simply removing siding could trigger the requirement that a building be brought into conformance with current codes. The proposed language sets a demolition or destruction threshold of greater than 50 percent. Ms. Ockwell then presented a comparison of how other similarly sized jurisdictions address the issue.

New Business

Mr. Greenberg briefed the commissioners on the Northeast Redevelopment Area (NERA), why staff is bringing proposals to the commissioners and the schedule. The NERA is directly in the flight path of the third runway at SeaTac Airport and therefore is heavily impacted by aircraft operations.

The commissioners received handouts including a map of the natural features of the area, a map of property ownership in the area, a map of aviation-caused constraints on the land, and maps of NERA subareas and conceptual land uses. Mr. Greenberg then explained each map thoroughly.

Mr. Greenberg told the commissioners that beginning with their Oct. 13th meeting staff will be bringing proposed Comprehensive Plan policies and new Comprehensive Plan map and proposed Zoning Code provisions and new Zoning Code map before the commission for review. A joint Planning Commission/Hearing Examiner meeting on Oct. 20 will include a hearing on the NERA draft EIS and the proposed Zoning Code and Comprehensive Plan amendments for NERA. The Planning Commission then would make its recommendation to the City Council on either Oct. 27th or Nov. 10th.

The commissioners discussed the possibility of the local car dealerships moving to an "auto mall" arrangement in the NERA, which then opens the question of what to do on First Avenue South when the car dealerships move.

When asked if the Port of Seattle pays property tax on the parcels it owns, Mr. Greenberg stated no, it doesn't, but it would pay a leasehold tax to the City on any parcels it leases.

In response to a question from Commissioner Bennett, Mr. Greenberg said he would try to get at least one auto dealer to attend the Oct. 20th hearing.

Commissioners Fitzgibbon, Pizarro and Bennett will not be attending the Sept. 22nd meeting; the remaining four commissioners must attend to comprise the quorum necessary to conduct the scheduled public hearing on proposed Zoning Code amendments.

Planning Commission Communications

None

Director's Report

Mr. Greenberg announced that there is now a "How Are We Doing?" form available at the front counter and from the building and electrical inspectors and the City is getting great feedback through the use of the form. Commissioner Pizarro said she just had a central air conditioning unit installed and she was very pleased with her experience with the electrical inspector.

Adjournment

Motion to adjourn was made by Commissioner Schull; meeting adjourned at 8:18 p.m.

Approved: _____

 Joe Fitzgibbon, chair
 Planning Commission

