

Elizabeth LaFleur

From: JAMES THIELE <JRThiele@aol.com>
Sent: Monday, August 22, 2022 1:15 PM
To: Elizabeth LaFleur
Subject: File PLSPR20220416 – Compass Corner

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August 22, 2022

To: Elizabeth LaFleur
Planner for City of Bend Planning File PLSPR20220416 – Compass Corner

From: James Thiele
625 NW Compass Ln
Bend, OR 97703

Hello Elizabeth,

This is my fourth comment letter for the Compass Corner project. In this letter, I am pointing out approval criteria that the applicant failed to meet in it's written Burden of Proof and supporting documents.

Re: the commercial space required for permitted residential space in Zone CC:

Project Number PLSPR20220416 comments:

The BOP fails to establish that the 35,750 square feet of residential can be permitted above the 3,865 square feet of commercial space in the referenced Zone CC lot and the Application should be denied. The BOP further fails to establish that the 10 foot height exception applies and the Application should be denied.

BOP Page 11

Applicant Response: The underlying zoning district (CC) and Comprehensive Plan designation (CC) of the property are commercial; a complete review of the applicable commercial zone is included in *Section IV – Conformance with Applicable Development Standards* below. As detailed in that section, the proposal complies with the applicable setback, use, lot area, lot dimensions, lot coverage, height and other applicable standards of the underlying zoning district (CC). Given compliance with the CC zone standards, the proposal complies with these approval criteria.

BOP Page 21

B. Height. All buildings in the Commercial Districts shall comply with the height standards contained in Table 2.2.400 unless excepted below or in compliance with a variance approval...

1. Residential Exception. The maximum height may be increased by 10 feet above the maximum allowed height when residential uses are provided above the ground floor ("vertical mixed use"), except for buildings along the west side of Brooks Street where the maximum building height is 35 feet regardless of use. The building height increase for residential uses applies only if the top floor is residential and does not apply to buildings that have variance approval to exceed the permitted height.

Applicant Response: As stated above, the proposal is for a vertical mixed use building that contains both commercial and residential uses. Based on the proposed design, which includes commercial uses and parking for commercial uses on the ground floor, the building qualifies under section 2.2.400(B)(1) for an exception to the height, allowing for an additional 10 feet in building height. Therefore, the building is allowed to be 45 feet in height. As detailed on the Architectural Plans – Building Height Diagram, the building is proposed at 42’-7”, which conforms to the building height standards of Table 2.2.400.

BOP Page 54

3.3.300 Vehicle Parking Standards for On-Site Requirements.

All development within the City of Bend shall comply with the provisions of this chapter....

Applicant Response: The proposal includes development in Bend; therefore, the provisions of this chapter apply.

The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in this section.

A. Off-Street Parking Requirements. The number of required off-street vehicle parking spaces shall be determined in accordance with the following standards. Off-street parking spaces may include spaces in garages, carports, parking lots, and/or driveways if vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes).

Table 3.3.300
Required Off-Street Vehicle Parking Spaces

Use

Minimum Requirement

Residential

Multi-unit residential

Studio units or 1-bedroom units – 1 space/unit

Multi-unit Residential

2 bedroom units-1.5 spaces per unit

1 space per 200 square feet of gross leasable floor area

Restaurants and bars (subject to BDC 3.6.300(J)(10))

B. Credit for On-Street Parking.

1. The amount of off-street parking required may be reduced by one off- street parking space for every on-street parking space abutting the development, up to 50 percent of the requirement, except as specified in subsections (B)(1)(a) and (b) of this section.

a. Uses within the CB Zone shall not receive credit for on-street parking, but have the option to pay a fee in lieu of providing off-street parking per BDC 3.3.200.

b. For uses within the MU and MN Zones and in the Bend Central District, the amount of off-street parking required may be reduced by one off-street parking space for every on-street parking space abutting the development, up to 100 percent of the requirement.

Applicant Response: The proposal contains 42 units of multifamily housing, with 36 of the units being one bedroom/studios and 6 being 2 bedrooms, thereby requiring 45 parking spaces for the multifamily portion of the building. In addition to the multifamily units, the building contains 3,865 square feet of commercial space. Assuming a worst case scenario (for parking counts), the applicant is assuming a restaurant, which would require a total of 19.325 spaces. Therefore, under a worst case scenario, a total of 64 spaces are required to serve the site based on the above standards¹. The proposal provide 65 spaces, including 57 on-site and 8 on-street.

Furthermore, while not necessary to meet the 64 space requirement, the Development Code does allow for parking reductions, a 5% reduction (3 spaces), because the development is a mixed-use development and a 5% reduction to the commercial parking space requirement (1 space) because twice as many covered bike parking spaces are proposed (for the commercial use). If/when employing allowed reductions only 60 spaces are required and the proposal exceeds this amount by 4 spaces.

BOP Page 57

5. Shared Parking. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facilities used jointly, to the extent that the owners or operators show that the need for parking facilities does not materially overlap (e.g., uses primarily of a daytime versus nighttime nature, or of a weekday vs. weekend nature); and provided, that the right of joint use is evidenced by a binding agreement that is tied to the land or similar written instrument establishing the joint use. The binding agreement may restrict future changes to use of the property. Shared parking is encouraged.

Applicant Response: The shared parking standards of this section addresses the joint uses of parking spaces by uses or buildings that would utilize a space (or spaces) at differing times. Shared parking is not required to meet a minimum standard and shared parking is not proposed with this application. This section does not apply.

BOP Page 61

G. ADA Accessible Parking Spaces. Accessible parking shall be provided for disabled persons, in conformance with the Federal Americans with Disabilities Act (ADA). Accessible parking is included in the total minimum number of required parking spaces in Table 3.3.300. Accessible parking facilities shall comply with the design requirements of the current building code as adopted by the State of Oregon.

Applicant Response: Based upon the due diligence conducted to date, including review of ADA requirements and conversations with City Building Officials, it is the applicant's understanding that the development requires 2 accessible ADA parking spaces. The required spaces are depicted on the Site Plan and the ADA spaces are included in the total number of spaces required for the development, thus the proposal is in conformance with this section.

BOP Page 75

3. Density. The density standards are intended to ensure efficient use of buildable lands. Residential density standards apply to any portions of the development where ground-floor residential uses are proposed.

Area used to calculate residential density includes all area dedicated to parking and landscaping required for the ground-floor residential uses, but does not include land dedicated to right-of-way.

a. There is no minimum residential density standard for "vertical" mixed use in a Commercial Zoning District.

b. Maximum residential density in a Commercial Zoning District shall be controlled by the applicable lot coverage and building height standards.

c. For “horizontal” mixed use in a Commercial Zoning District, where the site is located within 660 feet of a transit route, the minimum residential density standards of the RM Zone shall apply for the portion of the site dedicated to housing on the ground floor.

Applicant Response: As noted the project is a mixed-use vertical project, resulting in no limits on density. As demonstrated throughout this narrative, the proposed design meets all other standards of the code. Therefore, it can be found that the proposed density meets the above standards.

BOP Page 76

5. The commercial or public/institutional uses shall occupy at least the floor area equivalent to the entire ground-floor area of the development. The commercial or public/institutional uses shall be constructed prior to or concurrently with the residential uses.

Applicant Response: As designed the entire ground floor will be commercial space, including commercial unit space or parking to satisfy the commercial uses. Therefore, this standard is satisfied.

BOP Claims Summary:

1.

Given compliance with the CC zone standards, the proposal complies with these approval criteria. (BOP Page 11)

2.

Based on the proposed design, which includes commercial uses and parking for commercial uses on the ground floor, the building qualifies under section 2.2.400(B)(1) for an exception to the height, allowing for an additional 10 feet in building height. (BOP Page 21)

3.

In addition to the multifamily units, the building contains 3,865 square feet of commercial space. (BOP Page 55)

4.

Shared parking is not required to meet a minimum standard and shared parking is not proposed with this application. (BOP Page 57)

5.

The required spaces are depicted on the Site Plan and the ADA spaces are included in the total number of spaces required for the development, thus the proposal is in conformance with this section. (BOP Page 61)

6.

As designed the entire ground floor will be commercial space, including commercial unit space or parking to satisfy the commercial uses. (BOP Page 76)

BOP Claims Comments:

1.

The proposal does not meet Zone CC zone standards since it includes residential space above more than the commercial space.

2.

The proposed design only qualifies for the height exception “above the ground floor” and the ground floor is the enclosed commercial space ground floor. The design incorporates the height exception above covered parking space too and is therefore noncompliant.

3.

By the applicants own words, “the building contains 3,865 square feet of commercial space” and therefore the residential space would only be only permitted above the 3,865 square feet. Therefore the residential space of approximately 11,500 square feet per floor (35,750 square feet in total as proposed) is not compliant with the applicants description of 3,865 square feet of commercial space.

4.

Understood there will be no shared parking.

5.

The required ADA parking spaces are for the entire development, including the residential portion, and yet they are shown in the ground floor area that is restricted to only commercial use. Therefore this design is not compliant with the required for only commercial use on the ground floor.

6.

The commercial use is the enclosed 3,865 square foot space that is the commercial enterprise (as stated by the Applicants BOP Page 55), and does not include the accessory use parking that happens to be under cover. Parking to satisfy the commercial use is not the commercial enterprise, whether under cover or not. The simple design of covered parking does establish the requisite commercial enterprise enclosed space to then qualify for the residential use exception. The residential use exception is only available above enclosed commercial enterprise space. The entire first floor as proposed is not commercial space, since approximately 8,000 square feet is simply covered parking, and therefore not available for residential use above. The design does not comply with 3.6.200 5 Residential Uses.

Note:

A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of BDC 4.1.412 and this chapter.

B. The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in BDC Chapter 1.2, Definitions), unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day review period as of the date the modification is submitted. The 120-day review period for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.

C. The Review Authority may require that the application be re-noticed and additional hearings be held.

D. Up until the day a hearing is opened for receipt of oral testimony, the Community and Economic Development Director shall have sole authority to determine whether an applicant’s submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Review Authority’s determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application. [Ord. NS-2445, 2022; Ord. NS-2251, 2015; Ord. NS-2122, 2009; Ord. NS-2016, 2006]