



MEMORANDUM

TO: Planning Commission

FROM: Aaron Harris, Senior Planner

DATE: April 5, 2023

SUBJECT: APP2023-0001 Appeal of Organic Milk Exchange (DR2022-0098)

At the April 12, 2023, meeting, the Planning Commission will hear an appeal of the Director's Decision to approve Organic Milk Exchange as conditioned (DR2022-0098). The entire land use record must be provided to the Planning Commission for consideration, which is provided with this Memorandum (Exhibit APP 2.1).

Background Information:

The property is located at 5051 SW Western Avenue. The appellant and appellant representative are both Mr. Peter Grimm, a principal at Scott Edwards Architecture, LLP. The property owners are Bacchus Investors LLC and Bearcat Investment Property LLC. Mr. Grimm's appeal was filed on March 20, 2023.

Scott Edwards Architecture, LLP applied for a Design Review Two application on July 21, 2022. The applicant applied for an associated Parking Determination on July 22, 2022 (PD2022-0003) and an associated Sidewalk Design Modification application on October 17, 2022 (SDM2022-0004). Staff approved the land use decision with conditions and issued the Director's Decision on March 9, 2023.

The appeal period ended on March 21, 2023. A timely appeal of the Design Review Two application was filed by Peter Grimm on March 20, 2023. Staff reviewed and accepted the appeal as valid under the provisions of Beaverton Development Code (BDC) Section 50.65.

In 2018, Keystone Pacific LLC proposed to renovate and expand the building at 5051 SW Western Avenue for use as a food production facility (ADJ2018-0008/CU2018-0021/CU2018-0022/DR2018-0162/SDM2019-0007). The proposal was approved by the Planning Commission on May 30, 2019. Then, following significant changes to the proposal, new land use applications for Organic Milk Exchange were filed in 2022. Although new land use applications were submitted to replace the previous scope of work, the existing site development permit (SD2019-0021) had been issued following the Keystone Pacific land use approval and remained active. On-site work continued under this permit.

As requested by the applicant, the Organic Milk Exchange land use approval was conditioned to allow the applicant to revise the existing site development permit to meet the project's new scope of work instead of requiring a new site development permit. However, the Organic Milk

Exchange Director's Decision, Condition 24, stipulated that the applicant obtain the issuance of the project's revised site development permit prior to issuance of the project's building permit.

Appeal Summary:

Prior to publication of the Director's Decision, the applicant participated in meetings with Site Development staff to discuss the conditions of approval to be included in the Organic Milk Exchange Director's Decision. In part, the intent of these meetings was to coordinate the issuance timing of the revised site development permit and the building permit. One topic of discussion raised by the applicant in these meetings was the following condition of approval that was ultimately included in the Director's Decision as Condition #24:

Prior to building permit issuance, the applicant shall: Submit a complete site development permit and obtain the issuance of site development permit revision from the Site Development Division.

As discussed in the applicant's appeal narrative, the applicant had requested to decouple the site development permit and building permit review processes to allow the two permits to be reviewed independently from one another. The appellant states that the existing site development permit will require significant modifications that may take 6–8 weeks to address while the building permit may be ready in two weeks (Exhibit APP 1.1).

Following publication of the Director's Decision, the applicant again raised concerns to staff regarding the timing of building permit issuance in relation to Condition #24 in the Director's Decision and requested a modification to allow building permit issuance prior to issuance of the site development permit revisions. Site Development staff indicated they were supportive of the revised condition. Planning staff informed the applicant that staff was unable to simply modify the Director's Decision after its publication; the most expeditious way to request the modified condition was for the applicant to choose to appeal the decision.

Section 50.65.3 Appeal of a Type 2 Decision:

Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:

A. The case file number designated by the City.

FINDING:

The appellant identified the Design Review Two (DR2022-0098) application on the appeal form received by the City on March 20, 2023.

Staff finds the appeal contains the required information.

B. The name and signature of each appellant.

FINDING:

The appellant signed the appeal form.

Staff finds the appeal contains the required information.

C. Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.

FINDING:

The appellant has provided written evidence contrary to the decision (Exhibit APP 1.1).

Staff finds the appeal contains the required information.

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

FINDING:

Only one party, Peter Grimm, filed the appeal.

Staff finds this criterion is not applicable.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law, or both, and the evidence relied on to allege the error.

FINDING:

The appellant outlined the alleged errors in their appeal letter, received by the City on March 20, 2023 (Exhibit APP 1.1). Responses to these allegations of error are provided below. Staff finds that the appellant cited a specific condition being appealed, the reasons why they assert that the findings are in error, and the evidence they relied on to allege the errors.

Staff finds the appeal contains the required information.

F. The appeal fee, as established by resolution of the City Council.

FINDING:

The appellant submitted the required fee of \$250.00 for an appeal. The appeal fee was set by the City Council as part of the Planning Division fee schedule.

Staff finds the appeal contains the required information.

Summary of Appellant's Assertions:

The appellant made one assertion in their appeal submittal (Exhibit APP 1.1). In the findings below, staff only responds to the appellant's assertion of errors and does not provide a full re-analysis of the original Design Review Two (DR2022-0098). Additional staff analysis is included in the attached Site Development memorandum, dated April 3, 2023 (Exhibit APP 2.3). Staff incorporates the findings of DR2022-0098 in their entirety and provides references to where analysis of these topics is found within the Director's Decision.

Assertion 1: Staff erred in conditioning the issuance of revised site development permit (SD2019-0021) prior to the issuance of the project's building permit (B2022-5071), as required per Condition 24 in the Organic Milk Exchange Director's Decision, dated March 9, 2023.

The appellant asserts that Condition 24 is inconsistent with agreements made between staff and the applicant prior to publication of the Director's Decision. Staff ought to allow building permit issuance following land use approval, and building permit issuance should not be contingent on the prior issuance of the project's Site Development permit. In order to correct the error, Condition 24 of the Organic Milk Exchange Director's Decision should be revised to decouple the Site Development permit and Building permit to allow each permit to be reviewed and issued independent of one another.

Staff concurs with the appellant's assertion that Condition 24 is inconsistent with agreements made between staff and the applicant prior to the Director's Decision publication. To remedy the staff error, staff recommends that the Planning Commission revise and move Director's Decision Condition 24 as shown in the attached exhibit (Exhibit APP 2.2).

For these reasons, staff finds that staff did err in fact or law by including Director's Decision Condition 24 as written, which requires issuance of the revised site development permit prior to issuance of the building permit.

RECOMMENDATION:

Staff recommends that the Planning Commission **modify the Director's decision and approve Organic Milk Exchange (DR2022-0098)**, with the revised conditions of approval included as Exhibit APP 2.2 to this staff memorandum to the Planning Commission, dated April 5, 2023, **thereby approving the appeal (APP2023-0001).**

EXHIBITS:

Exhibit APP 1 – Appellant Materials:

APP 1.1 Appeal Submittal from Peter Grimm, received March 20, 2023

Exhibit APP 2 – Staff Materials:

APP 2.1 Land Use Record

APP 2.2 Revised Conditions of Approval

APP 2.3 Memorandum from Site Development Division, dated April 3, 2023

Exhibit APP 3 – Public Comment:

No public comments were received related to this application.

Exhibit APP 4 – Agency Comment:

No additional agency comment received to date.