



**CITY OF MOLALLA
PLANNING COMMISSION MEETING REGULAR MEETING
AGENDA**

Civic Center | 315 Kennel Ave
Wednesday, October 2, 2024 | 6:30 PM

NOTICE: Planning Commission Meeting will hold this meeting in-person and through video Live-Streaming on the City's Facebook Page and YouTube Channel. Written comments may be delivered to City Hall or emailed to recorder@cityofmolalla.com. Submissions must be received by 12:00 p.m. the day of the meeting.

[This institution is an equal opportunity employer.](#)

- 1. CALL TO ORDER AND FLAG SALUTE**
- 2. ROLL CALL**
- 3. CONSENT AGENDA**
 - A. Planning Commission Meeting minutes – 9/4/2024
- 4. PRESENTATIONS, PROCLAMATIONS, CEREMONIES**
- 5. PUBLIC COMMENT**
- 6. PUBLIC HEARINGS**
 - A. VAR01-2024 and NUX01-2024 - Extension of Nonconforming Status for a Discontinued, Nonconforming Gas Station (Zinder)
- 7. ORDINANCES AND RESOLUTIONS**
- 8. GENERAL BUSINESS**
- 9. STAFF COMMUNICATION**
- 10. COMMISSIONER COMMUNICATION**
- 11. ADJOURN**



Community Development Department

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Planning Commission Meeting Minutes September 4, 2024

The September 4, 2024, meeting of the Molalla Planning Commission was called to order by Commission Chair Eaglebear at 6:30 pm, followed by the Flag Salute.

COMMISSIONER ATTENDANCE:

Commission Chair Doug Eaglebear – Present
Commissioner Connie Sharp - Present
Commissioner Clint Ancell - Present
Commissioner Martin Ornelas – Present
Commissioner David Potts – Present
Commissioner Brady Rickey – Present

STAFF IN ATTENDANCE:

Mac Corthell, Assistant City Manager - Present
Jessica Wirth, Community Development Tech - Present
Sam Miller, Engineering Sec Manager – Absent
Dan Zinder, Senior Planner – Present

CONSENT AGENDA

- A. Planning Commission Meeting Minutes – August 7, 2024

ACTION:

Commissioner Ancell moved to approve the Consent Agenda; Commissioner Rickey seconded. Motion passed 6-0.

AYES: Sharp, Ancell, Ornelas, Potts, Rickey, Eaglebear

NAYS: None

ABSTENTIONS: None

PRESENTATIONS, PROCLAMATIONS, CEREMONIES

Mr. Zinder did a presentation on Support Commercial (SC) Overlay, included.

PUBLIC COMMENT & WRITTEN COMMUNICATIONS

None.

PUBLIC HEARINGS

None.

GENERAL BUSINESS

Miss Wirth noted Joint Planning commission and City Council Meeting, November 20th, 6:30PM. (Commissioner Sharp will be out of town).

STAFF COMMUNICATION

- Mr. Corthell asked if “6:30pm start time for Commission meetings to begin is best for everyone”, consensus is yes. Mr. Corthell mentioned that Celebrate Molalla was great. He updated everyone with the application for a

subdivision, application status is currently incomplete. Mr. Corthell also updated: the Sidewalk Improvement Program is live, the police department camera is live and posted, Waste Water Treatment Facility received four bids with the lowest being 36 Million and the highest being 48 Million. The contract will be awarded at the 9/11 Council meeting. Mr. Corthell mentioned the pavement assessment is complete, street tree lights have been repaired, Water Intake was awarded to Tetra Tech. He also provided updates in regards to Long Park, Chief Yelkus Park, and Fox Park projects.

- Miss Wirth, no comments.

COMMISSION COMMUNICATION

- Commissioner Potts stated that it makes land more valuable to have the overlay.
- Commissioner Sharp asked if there was a mock-up map of proposed properties. Stated she will be out of town for the joint council meeting November 20th.
- Commissioner Rickey asked what the effect on homes on those properties would be.
- Chairperson Eaglebear stated that it makes sense.
- Commissioner Ancell questioned if the overlay would affect the EOA process, noting that it would be beneficial to property owners to be able to keep it residential.

ADJOURN

Commissioner Ancell made a motion to adjourn the meeting at 7:18pm, seconded by Commissioner Potts. Motion passed unanimously.

PLANNING COMMISSION MEETING CAN BE VIEWED IN ITS ENTIRETY HERE:

<https://drive.google.com/file/d/1FmqhUliC0ikm4hYFCbAKCMVvXMaYUgxm/view?pli=1>

Doug Eaglebear, Planning Commission Chair

Date

Attested by: _____
Mac Corthell, Assistant City Manager

Date



Community Development

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CITY OF MOLALLA STAFF REPORT

Consolidated Review for VAR01-2024 and NUX01-2024 – Re-Establishing the Gas Station at 204 E Main ST

Date: September 25, 2024 for the October 2nd, 2024 Planning Commission Meeting

File Number: Consolidated Review for VAR01-2024 and NUX01-2024

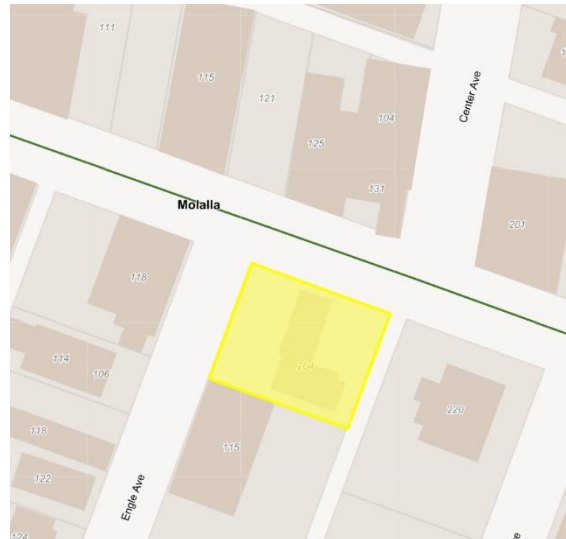
Proposal: Extension of Nonconforming Status for a Discontinued, Nonconforming Gas Station

Location: 204 E Main ST

Tax Lot(s): MAP 52E09CC, LOT 09700

Applicant/Owner: Jassi Akkal
8990 SW Marseilles Drive
Beaverton, OR 97007

Consultant: Kim Johnson
7 Oaks Engineering
345 Westfield ST #107
Silverton, OR 97381



Applicable Standards: Molalla Municipal Code, Title 17, Development Code

Division I, Introduction and General Provisions

Section 17-1.4 Non-Conforming Situations

Division IV, Application Review Procedures and Approval Standards

Section 17-4.7.040 Variances

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- I. Executive Summary
- II. Recommendations
- III. Conditions of Approval

EXHIBITS:

EXHIBIT A: Findings of Fact for VAR01-2024 and NUX01-2024

EXHIBIT B: Consolidated Application Package VAR01-2024 and
NUX01-2024

EXHIBIT C: Molalla Public Works Comments

I. EXECUTIVE SUMMARY

Proposal Summary:

On October 2, 2024, at 6:30 PM the Molalla Planning Commission will conduct a public hearing to consider a consolidated review for a variance and non-conforming use extension to re-establish a discontinued gas station at 204 E Main ST. The gas station use has been discontinued for more than a decade and in 2017 the City adopted a development code that prohibited the establishment of new fueling stations within the C-1 Central Commercial zone. The building and property have been vacant since the gas station use was discontinued. The applicant proposes an extension of the gas station's non-conforming use status per MMC 17-4.1.020 E. A variance is required subject to MMC 17-4.7.040 because the use has been discontinued in excess of the six-month eligibility period for extension.

Site Description:

The subject site is an approximately 0.28 acre parcel located on the corner of OR-211 and Engle Ave. The site is zoned C-1 Central Commercial and has existing non-conforming accesses to both streets Engle Ave and OR-211. The access from Engle Ave is an approximately 50' curb cut where an asphalt ramp cuts through where the sidewalk ought to be. There's a 32' driveway to OR-211 on the north side of the property that does not meet spacing standards but likely cannot given the property's 120' frontage along OR-211.

Surrounding Zoning and Land Uses:

The subject property is surrounded by C-1 Central Commercial zoned land and uses. Current uses include a vacant storefront to the south, a funeral chapel to the east, an eatery and video game store across OR-211 to the north, and an office complex across Engle Ave to the west.

Public Agency Notice & Responses:

Staff circulated notice of the project to the City's Public Works Director, Molalla Fire District, and Oregon Department of Transportation (ODOT) on September 10th, 2024. ODOT and the Fire District Declined to comment. Comments from Public Works are included as Exhibit C and are integrated into this decision as applicable.

Public Notice & Comments:

Per MMC 17-4.1.040, notice of the public hearing was sent to all property owners within 300 feet of the subject properties and to a group of interested parties on September 11, 2024. Notice was published in the Molalla Pioneer on September 18 2024 and online on September 11, 2024. Signage containing public notice information was posted on the property on September 12, 2024. As of September 25, 2024 staff had received no written public comment on the application.

II. Recommendation

Based on the application materials and findings demonstrating present or conditioned compliance with the applicable standards, staff recommends approval of VAR01-2024 and NUX01-2024 subject to the conditions of approval that follow this recommendation. This approval is based on the Applicant's written narrative, site plans, and supplemental application materials.

III. Conditions of Approval

1. Prior to Occupancy, the applicant must apply for either change of use/occupancy, or tenant improvement to determine building code compliance, access improvements, and frontage improvement requirements. The applicant must apply with both the City of Molalla and Clackamas County Building Codes for one of the two application types mentioned above. Building Code compliance will be determined by Clackamas County Building Codes Division through that process.

Per MMC 17-4.7.050, Applicant shall apply within one year of the variance decision for VAR01-2024 and NUX01-2024 becoming final, lest the variance expire.

2. Prior to occupancy, the applicant shall connect to City water and sewer services by applying with the City, and paying all required fees. The applicant will be required to pay off all arears on city utility services whether or not they have been perfected as a lien on the property.
3. Prior to occupancy, the applicant must bring the existing pole sign into compliance with the Molalla Municipal Code Section 18.02.050 (construction and maintenance) by performing maintenance to ensure the sign is in a "state of good repair and is in a safe, neat, clean, and attractive condition.", or replace the existing sign via a sign permit approved by the City of Molalla.

Exhibit A:
*Findings of Fact for VAR01-2024
and NUX01-2024*

17-4.1.020 E Extension of Nonconforming Status for Discontinued Use.

Notwithstanding the provisions of subsection C, a nonconforming use that is discontinued shall not be considered abandoned where, through a Type III procedure, the Planning Commission approves an extension for repair, including as applicable ongoing, active renovation and efforts to lease the subject property. The owner must request the extension within the six-month period of discontinuance.

Staff Findings: While the date of discontinuation is not known, it is accepted by both Staff and the Applicant that the out of service fueling station on the subject site has been out of use for over a decade. This is clearly in excess of the six-month period after discontinuance where an owner/applicant can request an extension to prevent the use from being determined as abandoned. Notably, there is no record of an official determination of abandonment of the use. The Applicant applied for a variance extending the duration in which an extension may be requested to prevent an abandonment determination.

17-4.7.040 Variances

Applicability. *A Variance is similar to an Adjustment, but does not otherwise meet the criteria under Section 17-4.7.030.*

A. **Approval Criteria.** *The Planning Commission through a Type III procedure may approve a Variance upon finding that it meets all of the following criteria:*

1. *The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance;*

Staff Findings: The Applicant's submitted application identifies the prior development and infrastructure of a fueling station as a unique physical characteristic of the subject site. While the current development code restricts the development of fueling stations within the C-1 district, the Comprehensive Plan's guidelines are supportive of the resurrection of a single station. Goal 9's Downtown Development Policies 7 and 8 read as follows:

7. *A concerted effort should be made to revitalize the central business district through rehabilitation or redevelopment of existing areas. Encourage and identify new businesses that enhance the Central Business District.*
8. *The central business district shall provide a variety of services; cultural, recreational, social, professional and governmental activities. The history of Molalla should be a consideration in a redevelopment opportunities as well as even promotion.*

In the decade plus since the fueling station has been discontinued, the City has received multiple inquiries about re-establishing the fueling station. Without a previously identified avenue to do this, the cost burden on otherwise revitalizing the property has been a non-starter for potential buyers. Facilitating the re-establishment of the non-conforming use will allow a new business to revitalize the property thus add value that a vacant property does not. Further, it corresponds with the Comprehensive Plan's emphasis on developing Molalla as a recreation community. Visitors coming to and from the Molalla River Corridor and other recreational destinations may find reason to stop and explore other businesses within the

downtown upon refueling. This provides an opportunity to introduce new visitors to Molalla's downtown community that siting all fueling stations outside of the downtown does not.

The existing development code will prevent a proliferation of new fueling stations, as has occurred in some downtown cores, to ensure that this use simply adds to the variety of downtown uses and never impedes on a greater variety of businesses from developing.

2. *The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;*

Staff Findings: The need for a Variance is required without that extension

3. *The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant);*

Staff Findings: The need for a Variance is not self-imposed as the original fueling station was developed as a conforming use under a previous development code. The development code adopted in 2017 prohibited the development of gas stations in the C-1 zone.

4. *The Variance does not conflict with other applicable City policies or other applicable regulations;*

Staff Findings: Extension of the non-conforming use status is the only code that would be affected by this variance. This standard is met.

5. *The Variance will result in no foreseeable harm to adjacent property owners or the public; and*

Staff Findings: This Variance would serve to re-establish a commercial use in a commercial zone on a property that has sat vacant for over a decade. Staff does not foresee harm to adjacent properties, which could all serve to benefit from this property returning to service.

6. *All applicable building code requirements and engineering design standards shall be met.*

Staff Findings: This standard is met subject to a condition of approval. The property has a non-conforming access and other potential non-conformities with regards to its frontage. Prior to Occupancy, the applicant must apply for either change of use/occupancy, or tenant improvement to determine building code compliance, access improvements, and frontage improvement requirements. The applicant must apply with both the City of Molalla and Clackamas County Building Codes for one of the two application types mentioned above. Building Code compliance will be determined by Clackamas County Building Codes Division through that process.

Per MMC 17-4.7.050, Applicant shall apply within one year of the variance decision for VAR01-2024 and NUX01-2024 becoming final, lest the variance expire.

VAR01-2024 and NUX01-2024 – Extension of Nonconforming Status For the Gas Station at 204 E Main ST

Planning Commission

October 2, 2024



Introduction

Staff submits the written City Staff Report and exhibits into the meeting record.



Application Overview

Applicants wish to re-establish Gas Station at 204 E Main ST. Fueling Station use was discontinued over a decade ago.

2017 Development Code prohibited the following use in the C-1 zone:

Automotive Repair and Service, includes fueling station, car wash, tire sales and repair or replacement, painting, and other repair for automobiles, motorcycles, aircraft, boats, RVs, trucks, etc. (No junking, salvage operations)



Application Overview

After the code changes, a fueling station could only exist in our C-1 zone as a pre-existing, nonconforming use.

Questions:

Does the discontinued fueling station at 204 E Main ST have non-conforming use status or can that status be gained?



Application Overview

Per MMC 17-1.4.020 C Non-conforming use is abandoned after 12 months if:

1. The use of land is physically vacated;
2. The use ceases to be actively involved in the sale of merchandise or the provision of services; for example, as evidenced by the removal of signs, goods, stock, or office equipment, or the disconnection of telephone or utility service;
3. Any lease or contract under which the nonconforming use has occupied the land is terminated;
4. A request for final reading of water and power meters is made to the applicable utility districts;
5. The owner's utility bill or property tax bill account became delinquent; or
6. An event occurs similar to those listed in subsections C.1 through 5, as determined by the Planning Commission.



Application Overview

However, per MMC 17-1.4.020 E an applicant can apply for extension of non-conforming use status within 6 months of discontinuance.

We are also past that point. Hence the need for a variance to extend the duration for when an extension can be applied for.

Use variances are not allowed.



Application Overview

The applicant has thus applied for NUX01-2024 to extend/maintain its non-conforming use status and VAR01-2024 to increase the amount of time in which extension can be applied for to the present. Both applications are Type III.



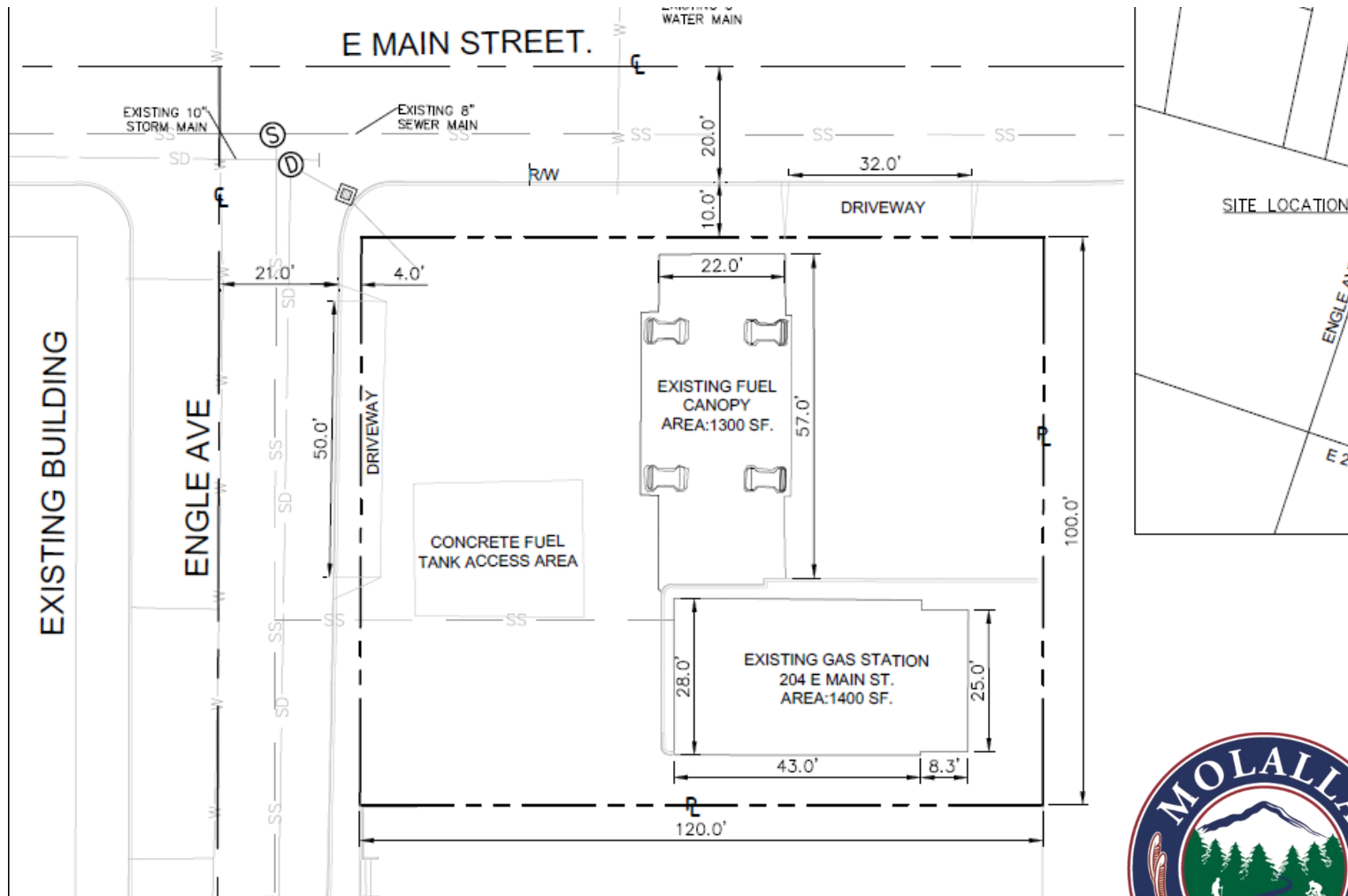
Site Location



Surrounding Zoning And Land Use



Existing Conditions



Completeness

Applications were submitted on August 29, 2024 and deemed complete in accordance with Section 17-4.2.040 on September 4, 2024.



Public Notice and Comment

- Mailed on 9/11/2024
- Posted on the property on 9/12/2024
- Posted in the Pioneer on 9/18/2024

The City received no written public comment on this application.



Approval Criteria

Variance:

17-4.7.040 Approval Criteria;

Extension:

Does not have Approval Criteria



Variance Approval Criteria

1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance;
2. The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;
3. The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant);
4. The Variance does not conflict with other applicable City policies or other applicable regulations;
5. The Variance will result in no foreseeable harm to adjacent property owners or the public; and
6. All applicable building code requirements and engineering design standards shall be met.



Criteria 1 and 5

1. Existing gas station – very expensive use to change
2. Comp Plan support - Goal 9's Downtown Development Policies 7 and 8 call for the City to revitalize the CBD and provide a variety of services.
3. Recreational Community – Molalla Corridor is a vehicular access facility.
4. Fueling station can thus be an asset to surrounding businesses by providing passers through another reason to stop in a way that a vacant lot doesn't.
5. Not a use variance. The allowance of this instance has no bearing on development of future fueling stations. It can't be allowed.



Conditions of Approval



Conditions

- **Applicant to file for COU or Tenant Improvement**
 - **Building code, access, and other compliance issues may be addressed through this process**
- **Connection to City services and payment of all back-fees prior to occupancy**
- **Bring signs into compliance prior to occupancy**
- **Expiry is one year from decision becoming final. Applicant to file additional application within a year of approval to maintain extension.**

Recommendation

Based on the Findings and Conclusions in Exhibit A of the submitted staff report, City staff hereby recommends that the Planning Commission **APPROVE** the Applicant's proposed extension of non-conforming use status (City File #NUX01-2024) and Variance (City File #VAR01-2024) subject to the conditions of approval found in Title III of the Staff Report.

