

PLANNING DIVISION STAFF REPORT

November 27, 2023



PREPARED FOR THE PLAN COMMISSION

Project Address: 4205 Portage Road
Application Type: Conditional Use Major Alteration
Legistar File ID # [80223](#)
Prepared By: Chris Wells, Planning Division
Report includes comments from other City agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

On January 24, 2023, the Plan Commission approved multiple requests related to a proposed residential building complex with 483 apartments in five buildings with pool and clubhouse at 4205 Portage Road. This included three conditional use requests in the Traditional Residential-Urban 1 (TR-U1) zoning district – 1) for multi-family dwellings with more than 60 units; 2) for a residential building complex; and 3) for accessory outdoor recreation. (Legistar File [73382](#)).

Prior to Plan Commission’s review, the Urban Design Commission (UDC) reviewed and provided a final advisory approval recommendation at their January 11, 2023 meeting. (Legistar File [72121](#)). In this type of review, City ordinance specifies that *“The Urban Design Commission shall review the exterior design and appearance of all principal buildings or structures and the landscape plans of all proposed residential building complexes. It shall report its findings and recommendations to the Plan Commission.”* In its consideration of the landscape plan, UDC recommended to the Plan Commission that bark mulch be utilized instead of washed stone.

Based on the recommendation the UDC, the Plan Commission discussed and ultimately approved a motion to approve the residential building complex with the following condition:

The project shall use bark mulch instead of washed stone.

The applicant is now requesting consideration of an alteration to that condition to allow for the use of washed stone. As this was an issue specifically discussed and conditioned by the Plan Commission, this item was required to receive major alteration consideration.

In submitted materials, the applicant notes that stone mulch is allowed by MGO Section 28.142(3)(c). (That section of the code states, *“Mulch shall consist of shredded bark, chipped wood or stone installed at a minimum depth of two (2) inches. If stone is used, it shall be spread over weed barrier fabric.”*) The applicant notes the various differences to wood mulch, such as increased durability and lifespan and increased erosion control. They also note that it is *“pest resistant, mold resistant, allergy friendly, and eco-friendly.”*

As part of this current request, this alteration was presented to the UDC for an advisory opinion on November 8, 2023. The UDC again made an advisory recommendation to the Plan Commission to deny the request to allow for stone mulch and voted uphold the original condition for the use of shredded bark mulch. (Legistar File [80246](#))

As part of this discussion, the UDC members noted that of stone mulch has been recommended in select conditions, such as in areas where there are no plants, such as maintenance edges or strips, or on steep slopes where erosion is a concern. However the Commission mentioned that when stone mulch was supported in the past, it was for a specific reason or limited area of a site, rather than the wholesale replacement across the entire site. They also noted that they have had a long-standing practice of recommending the use of organic mulch materials to support plant life. The meeting report from the November 8, 2023 UDC meeting has been included at the end of this staff report.

Ultimately, the Plan Commission will need to evaluate this request against the conditional use standards, considering the advisory recommendation from the UDC. Among the most relevant standards is #9 which states:

When applying the above standards to any new construction of a building or an addition to an existing building the Plan Commission shall find that the project creates an environment of sustained aesthetic desirability compatible with the existing or intended character of the area and the statement of purpose for the zoning district. In order to find that this standard is met, the Plan Commission may require the applicant to submit plans to the Urban Design Commission for comment and recommendation.

While the use of stone mulch is no longer prohibited by the Zoning Code, it has been long-standing practice for the UDC to recommend the use of organic mulch materials to support plant life.

Recommendation

Careful consideration should be given to the applicant's materials, UDC's recommendation, and the Conditional Use standards. The decision of the Plan Commission shall include findings of fact. If the Plan Commission can find that the standards are met, they should state findings and approve this request subject to comments and conditions recommended from approving agencies and comments from the public hearing. In the alternative, should the Plan Commission not find the standards are met, it should place this request on file, and include findings of fact and list the standard(s) that have not been met and the reasons such standard(s) was not met.

Approval of this alteration should be subject to input at the public hearing, and the recommended condition beginning below/on the following page:

Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

The following conditions of approval have been submitted by reviewing agencies:

Zoning Administrator (Contact Jenny Kirchgatter, (608) 266-4429)

5. Planting beds or planted areas must contain at least seventy-five percent (75%) vegetative cover mulched. Per Landscape Plan and Design Standards Section 28.142(3)(c), mulch shall consist of shredded bark, chipped wood or stone installed at a minimum depth of two (2) inches. If stone is used, it shall be spread over weed barrier fabric.

The Planning Division, City Engineering Division, City Engineering Division – Mapping Section, Traffic Engineering, Fire Department, Parks Division, Parking, Forestry Section, Metro Transit, and Water Utility have reviewed this request and have recommended no conditions of approval.



Agenda Item #: 8

Project Title: 4205 Portage Road - Major Alteration to a Previously Approved Conditional Use to Modify the Landscape Plan Condition of Approval of a Residential Building Complex. (District 17)

Legistar File ID #: 80246

Members Present: Cliff Goodhart, Chair; Jessica Klehr, Shane Bernau, Marsha Rummel, Rafeeq Asad, Wendy von Below, and Russell Knudson

Prepared By: Jessica Vaughn, AICP, UDC Secretary

Summary

At its meeting of November 8, 2023, the Urban Design Commission made a recommendation to the Plan Commission **TO DENY** a major alteration to a previously approved conditional use to modify the landscape plan condition of approval located at 4205 Portage Road and to uphold the original condition for the use of shredded bark mulch. Registered and speaking in support was Nick.

The applicant presented the reasons for the request for stone mulch versus bark mulch, citing durability/longevity, sustainability and maintenance, attracting pests and mold growth, and health concerns related to pets within the development.

The Commission had the following questions for staff and the development team:

- We're talking about not only this project, but potentially other projects depending on the way it goes. We're talking about the benefits versus the issues with the mulch, it has nothing to do with the design of the building.
- I haven't really studied the details of the site, but when you talk about wash-out, are there any steeply sloped areas where there are significant wash-out problems, or are we talking about flat areas versus sloped areas? Or are we talking about every single area on the site?
 - There's multiple grades and slopes but within the landscaping beds there's minimal grade, some grade but minimal. Some of our previous developments where we had issues there was also minimal slope. I provided a photo of where there had been a wash-out of wood mulch.
- Was that at this property or a different property?
 - That was a property downtown.
- Does that have to do with the way drainage is coming off the building or does it have to do with the rain coming out of the sky?
 - Its rain, its wind, its weather in general.
- I'm not an expert on reading landscaping plans but when I saw this application I was not able to determine much information about the stone you're proposing. Could you speak to that? What this stone looks like, what kind of stone is it?
 - This will be a 1 ½" washed stone, I can get some photo examples. Within my submittal I provided a preference imagery, it could be the same stone as another of our projects.
- Is it in your cover letter with the retaining wall?

- Yes, it would be the same washed stone and I can provide some other examples or clearer images if that would help.
- I'm struck by the number of examples in the plants imagery that is actually wood mulch, so that's interesting to me. On L6 all of these example images of plants happen to have wood mulch. That was interesting. So you think that we as a Commission should consider your cover letter images as the precedent direction you're heading.

The Commission discussed the following:

- This is certainly a unique request. I know there's been bait and switch on us, where we have approved wood mulch and stone has been used. So we have to say we appreciate the honest request here.
- I realize all eyes are probably on me for this one, with Christian being gone tonight. I would echo that, I think we appreciate the request and the question, and often times I think it seems like it's one of those clear cut, it's something we've drawn a line in the sand to have bark mulch versus stone mulch. I don't necessarily think that is always the case, and it does come up through Commission projects that we review. I will take this opportunity to explain a few things. There are a handful of situations that I think stone mulch is appropriate and occasionally do come up are when we have a maintenance edge or strip, a buffer zone to the building facade where there's no plants for some of the reasons the applicant mentioned here tonight. It's usually a pretty limited use where there are no plants. Another example is if there's some sort of very intentional design feature, like a gravel garden that uses a PH neutral stone material, which is not what we usually see as a stone mulch around town. They are usually a basic limestone based stone material that doesn't help plant growth. I think as the applicant mentioned, a third condition might be where there are steep slopes, specifically where there is water being directed to a specific channel or corridor where we think that bark mulch is going to keep washing way. I can understand that but I think what we have before us tonight is a wholesale swap of the bark mulch to stone mulch and I realize it is potentially a precedent setting request. I think I'm personally going to struggle to approve that request, the bark mulch holds moisture and it's there to support the plants and really that's what our focus is on, the design quality of the planting scheme and how that translates to the pedestrian experience or better urban design environment. That's some of our reasoning and I think putting planting design first and its impact on the urban design has to take priority in this case over ease of maintenance. I understand the stone mulch lasts and is around forever, so there certainly are benefits with it, but a well planted and a well maintained landscape should fill in over time and really reduce the amount of mulch that is able to wash off because the plant material is there supported by the mulch and it can establish and take hold without as much material washing onto the sidewalks. I do appreciate the question versus the bait and switch approach, but I would still stand behind, for your project using the shredded hard wood mulch.
- I appreciate your comments, particularly where you are saying there could be projects where the applicant says 'here or here we're having a difficult time,' versus completely replacing it. It doesn't sound like we're completely shutting the door on stone mulch, but it has to make sense and it has to be really intentional. Other than that I don't see any reason why we should make an exception to something we've been doing, in the 12 years I've been on the Commission.
- This is asking for completely replacing shredded bark mulch with the stone.

A motion was made by Knudson, seconded by Bernau, for Referral.

Discussion on the motion:

- My motion is to refer the request given our strong recommendation that hard wood bark mulch is better for the longevity of plants, and this particular application hasn't given us any reason to believe that there's a real need for stone versus bark for the operation of the site.

- I appreciate that it's a referral, which means not necessarily closing the door on this issue. It could come back and convince us that there is a place or two that's appropriate.
- My question is exactly what you're talking about, what does referral do? This was already approved, referring it asks them to come back for what reason?
- It would permit them to come back with changes, maybe for stone in a much more limited aspect, but it's not requiring them to come back.
- (Secretary) Ultimately the request is an overall change to the condition to allow the option for either stone mulch or bark mulch on virtually the entire site. I don't know if the Commission is willing to ask the applicant if they are willing to exploring options here they are willing to identify what is stone and what is bark, but I would caution enforceability. At what point in time does it become an enforcement issue which is a very difficult case at that point.
- Mulch and other things with landscaping are difficult enforcement issues as we've discussed on numerous occasions when I happen to be driving around town.
- (Secretary) With that if the applicant is looking for an overall blanket statement, it doesn't do much good to refer. This is a Plan Commission condition and they are looking for an advisory recommendation. So if our advisory recommendation is to consider the use of stone mulch in certain areas, we could write a condition that reflect that if stone mulch is used, it can be used in areas where there is no plant life or in areas where there are steep slopes and when used the stone mulch shall be 1.5" diameter washed stone. Otherwise, I don't think a referral gets us what we're looking for.
- A referral would ensure that it came back, correct?
- (Secretary) Yes, or if we wanted to keep it going forward we could make a positive recommendation to the Plan Commission that recommendation that it has to come back to this body.
- I was thinking about what a referral would mean and thought about what Shane said. Over time plants take over, the balance of power between mulch and plants changes. If I were going to consider a referral it would be over the next growing season. If they could document that nothing got better, but I don't see why we would support referral.
- We do have the motion seconded so we have to vote on that. This could be rather precedent setting. Motion for referral, which means any change or partial change would have to come back. It's advisory so it would go back to the Plan Commission as well.
- (Secretary) If we refer outright it stays with us and we need to ask for specific changes. Then we need to be specific about those changes. Or we recommend to the Plan Commission to refer it back to us but that is really circuitous. If we really want to refer this, the motion is for referral to come directly back to this body without going to Plan Commission first, and we need to be specific about changes that we want to see.
- I understood we're not going to say you're going to put stone in this tree island and stone along that base over here. As a referral it has to come back with areas that can be demonstrated that will not support plant life, mow strips, difficulty with regard to the slope of the site and repeated washouts, but we're not going to take a plan and mark that up.
- I wanted to remind some of us of a recent example, the car wash, they clearly articulated that employees are walking through an area and helped us understand the need for stone mulch. This body has seen good application for it. I'm grateful for the discussion about process. We're looking for the best outcome for us and for the applicant.
- (Secretary) If we're going to make a motion for referral we need to be specific about what we want to see changed. It sounds like the body is moving towards identifying where stone mulch would be acceptable, like in areas of high traffic, steep slopes, where plantings are not anticipated, etc.
- Right, and it needs to be justified, it's not necessarily a rubber stamp but we're trying to maybe meet them a third of the way, we just don't know how many of those areas really exist right now. The project's not completed is it?

The motion failed on a vote of (2-4-1) with von Below and Klehr voting yes; Rummel, Bernau, Knudson, and Asad voting no; and Chair Goodhart non-voting.

A motion was made by Bernau, seconded by Rummel, to recommend that the Plan Commission uphold the original condition for bark mulch.

- I did not vote for that last motion because I think we're applying a rationale that isn't really what was intended. I think if the intent is to outline specific areas for stone mulch, they can come back with that but I was really reading it more as a wholesale swap for maximum flexibility to use what they want wherever they want. So I think in response to that I would make a motion advisory to the Plan Commission that the request not be approved.
- Is that a proper motion?
- (Secretary) I think so, I would like to use the phrase "...uphold the original condition for the use of bark mulch."

Action

On a motion by Bernau, seconded by Rummel, the Urban Design Commission made an advisory recommendation to the Plan Commission **TO DENY** the major alteration request and to uphold the original condition for the use of shredded bark mulch.

The motion passed on a roll call vote of (5-1-1) with Bernau, Rummel, Knudson, Asad, and Klehr voting yes; von Below voting no; and Chair Goodhart non-voting.