

I would like to submit the following to directly address Applicant's assertion that the law demands approval of Applicant's request because it's related to housing and housing is a priority of the state. I'm providing the comments below to refute and clarify the argument. These comments were provided by an attorney and expert, both well versed in wetland law and land use. I hope they are helpful in the Planning Commission's review of the matter.

As a refresher, Applicant stated in it's oral testimony that because this is an application for residential lots, the sole question is whether city code has been met. Applicant stated that because it has met all of the "unambiguous" portions of the city code the application must be approved. Applicant feels the sections of the city code related to trees are ambiguous and therefore can't be a basis for denial. (This discussion was on the heels of testimony from the city arborist advising of significant damage if the application is approved) When asked about the application of the wetland provisions Applicant stated that conditional use applications are subjective and therefore can't be the basis of denial. This assertion was confusing to me, and I assume others, so I reached out to those more knowledgeable for clarification.

A portion of my written correspondence with the experts is provided below. When reading keep in mind that the Applicant has submitted both a Conditional Use and a Partition request.

Expert 1: I listened to the video clip. It is clear that Applicant wants to try and ensure that no discretionary standards are applied. Discretionary decision-making is the heart of the land use system; the very definition of a "land use action" in state law is one that requires discretionary judgment. Thus, a building permit is not a land use decision, because it is just a box check-off exercise.

If this is a conditional use application, which it is, the conditional use standards of Cannon Beach codes apply, and the Applicant cannot escape that. But clearly they are trying.

Expert 2: I agree, however, I think we need to look at ORS 197.307(4) closely.

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

Expert 1: Yes, but note that subsection (4) ALSO allows the city to have an alternative, discretionary process if it meets several criteria, see section (6). I am not sure what Cannon Beach has done with these criteria in their ordinances, but clearly they are relevant to the testimony that was delivered in that video clip.