



CITY OF CANNON BEACH

AGENDA

Meeting: Planning Commission
Date: **Thursday, November 22, 2022**
Time: **6:00 p.m.**
Location: Council Chambers, City Hall

6:00 CALL TO ORDER

6:01 (1) **Approval of Agenda**

6:02 (2) **Consideration of the Minutes for the Planning Commission Meeting of October 27, 2022.**
If the Planning Commission wishes to approve the minutes, an appropriate motion is in order.

ACTION ITEMS

6:05 (3) **Continuation of ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code regarding notice requirements for applications and decisions.**

ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code, Title 17 Zoning, regarding notice and procedural requirements for citizens to receive electronic notifications of application processed by the Community Development Department, administrative decisions, and expanded public notice for permits concerning hazard areas, environmentally sensitive lands, and new roads. The request will be reviewed against the criteria of Municipal Code, Section 17.86, Amendment Criteria.

6: 25 (4) **Continuation of CD 22-01 & CU 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.**

CD 22-01 & CU 22-03, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development subdivision consisting of a seven-lot subdivision containing four single-family dwellings and a six-plex apartment building, with common lots for parking and wetland areas. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

6:45 (5) **Public Hearing and Consideration of V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow for more square residential square footage in a mixed use project at the Cannon Beach Business Park at 368 Elk Creek Rd.**

V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, application for a Conditional Use Permit to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at the Cannon Beach Business Park at 368 Elk Creek Rd. (Tax Lot 00200, Map PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-1581 • TTY (503) 436-8097 • FAX (503) 436-2050
www.ci.cannon-beach.or.us • cityhall@ci.cannon-beach.or.us

51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.24.030, General Commercial Conditional Uses Permitted.

7:05 **(6) Public Hearing and Consideration of SR 22-03, Beach Construction, on behalf of Eric & Rachel Purdy, application to allow a setback reduction to reduce the front yard setback side yard setback**

SR 22-03, Beach Construction, on behalf of Eric & Rachel Purdy, application to allow a setback reduction to reduce the front yard setback from the required 15'0" to 9'10" and the side yard setback from the required 15'0" for a corner lot to 11'0" in order to reduce the number of trees that would need to be removed in conjunction with the construction of a new single family dwelling. The property is located at the corner of Ross Ln. and Spruce St. (Tax Lot 10200, Map 51030DA), and in a Residential Medium Density (R2) Zone. The request will be reviewed against the Municipal Code, Section 17.645.010, Setback Reduction, Provisions Established.

WORK SESSION ITEMS

7:25 **(7) Zoning Considerations for Cannon Beach Elementary School Rejuvenation Project**

(8) Wetlands in Cannon Beach

INFORMATIONAL ITEMS

7:55 **(9) Tree Report**

(10) Ongoing Planning Items:

Planning Project Timelines

(11) Good of the Order

8:00 **(12) ADJOURNMENT**

Please note that agenda items may not be considered in the exact order listed, and all times shown are tentative and approximate. Documents for the record may be submitted prior to the meeting by email, fax, mail, or in person. For questions about the agenda, contact Administrative Assistant, Emily Bare at Bare@ci.cannon-beach.or.us or (503) 436-8054. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.

Posted: November 15, 2022

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Password: 801463

Dial By Your Location:

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**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, October 27, 2022

Present: Chair Clay Newton, Commissioners Barb Knop, and Les Sinclair in person
Commissioners Mike Bates, Charles Bennett, Aaron Matusick, and Anna Moritz via Zoom

Excused:

Staff: Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair, City Manager Bruce St. Dennis, and Recorder Jennifer Barrett

CALL TO ORDER

Chair Newton called the meeting to order at 6:03 p.m.

ACTION ITEMS

(1) Approval of Agenda

Bates said I would like to bring stormwater up to be a regular agenda item. Newton asked what's the difference? Bates replied if you want to make a decision you can't on a work session item. Adams said if you want to take action you can move it to a regular meeting portion.

Motion: Knop moved to approve the agenda as amended; Mortiz seconded the motion.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

Mike asked to move the letter up first as it wont take long, clay said there are people who would like to speak and are expecting it to be later in the meeting.

(2) Consideration of the Minutes for the Planning Commission Meeting of September 22, 2022

Motion: Knop moved to approve the minutes; Bennett seconded the motion.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

(3) Continuation of CD# 22-01 & CU# 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.

David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of five single-family dwellings and a fourplex apartment. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

Chair Newton asked for the Staff Report.

Adams explained the procedure used for this item and read the staff report.

Moritz asked about the deed restrictions on the ADU, Adams said he understood it was not part of it, but we can check with the applicant.

Bennett said we are putting residential units in a commercial area. Would we ever put commercial in residential? Is this common? Adams replied in Cannon Beach we have a few, and it's a conditional use and that's what they are asking for in the commercial zone. Its allowed as a conditional use in our code.

Sinclair asked did you locate what could be the remainder of the wetland delineation report, Adams replied I did not.

Bates said if we go to zoning request for C1 there is a density restriction of 50% of floor area, how do we deal with it? Adams replied that's only for multifamily, giving an overview. Bates asked wouldn't it be better to rezone the property, Adams replied its allowed in the code and the 50% is for used mix. Kabeiseman added this is not a residential in conjunction with the commercial, it's just residential.

Sinclair added I thought Charles comments were about putting residential in commercial, but other half of the block has residential as well.

Newton asked what did we say regarding additional comments, is there time limits, Adams replied I don't recall a time limit.

Persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked if the applicant wished to make a presentation.

David Vonada from Tolovana Architects

I appreciate the time from the Planning Commission to consider the project of affordable housing in Cannon Beach, particularly in downtown. This plan came about from a meeting with Pietka and with residents in Ecola Square, which is mixed use. Due to the topography, they will be the most impacted by project. Vonada gave an history of Ecola Square starting with Mike Clark, noting Clark chose not to develop the property, but considered to as a commercial property. We have enough commercial property development in downtown Cannon Beach. I think developing this as residential use has some major advantages. Since I presented last time have revised the northerly portion of housing development to affordable housing, the other 4 and ADU would not be part of the affordable housing but would be kept small and efficient for the purchaser. The proposal would be to include the 6 plex in the affordable housing

program and David Pietka is willing to put that forward and negotiate with council as well as a 30- year registration on rent. Pietka owns an adjacent parking space in the area which would give space and based on criteria that could be accepted by you. Vonada read a couple sections from the comp plan explaining how they lend support to the development. We have updated the submittals, there were requests last time for additional information. Pietka has gone to the extent of providing Geotech, arborist and wetland delineation. Vonada gave an overview of the site plan and explained how the project will be built per the submitted plans even though there is not a written guarantee but the process essentially guarantees it. Vonada noted we do not have any objections to Adam's conditions of approval.

Bates said you said something about wetland restrictions in another document, Vonada replied it's included in the wetland delineation report which does require mandatory protections.

Mortiz said the 5 foot buffer around wetland it says a berm will it be built or left as is, Vonada replied it will be left as is. A comment was made that a berm would be desirable. All stormwater beyond the five foot buffer would be channeled to the storm sewer system. We hired Adam Daily to do the civil engineering for the project and as part of review with city public works we will be obligated to connect to city system.

Bates said that day the photos were taken there was a lot of standing water. How are you going to deal with it, Vonada replied the property will be graded to drain to the storm sewer. I would venture to guess a lot of Cannon Beach in the winter would have standing water. The stormwater system will be fully engineered to accommodate the water standing on the site. Bates said wouldn't it be better to the put the stormwater back into the wetland. Vonada replied that is subject to approval from a wetland consultant. I rely upon consultants like that for recommendations on that type of things. If that is a recommendation, we would consider it. This will be only the second affordable housing project in Cannon Beach. The city's policy has been in effect quite a while and I heard the fund is somewhere around \$200,000 at this point. I am hoping we can qualify this project for the affordable housing fund. I am working with Pietka, I've been architect for 40 years in Cannon Beach the last 20, I've worked for a lot of developers in my time and Pietka strikes me as someone who has the city in mind with this project. This property could be developed as one big commercial development, but he really has this vision of providing a more compatible use.

Newton asked is it one tax lot, Adams replied yes. Newton said how do you see it being sold off, Vonada replied each single-family dwelling would be on its own lot which is where the cluster development comes in. Newton asked what is the thinking of common areas, Vonada replied I believe Adams is asking for an HOA, a discussion ensued. A discussion ensued regarding options of site being used as apartments only. Vonada added If going that route on 18 apartments you are looking at 23 parking spaces, so a variance of two vs a variance of a dozen would be something to look at.

Bates asked how do we make sure HOA is in place until people start residing, Adams replied we won't sign off on the plat before it is set.

Chair Newton called for proponents of the request.
There were none.

Chair Newton called for opponents of the request.
Lolly Champion PO Box 614, Cannon Beach.

Champion read a prepared letter. A copy is attached to the minutes.

Jan Siebert-Wahrmund, PO Box 778, Cannon Beach

I would just like to say from my heart I don't trust this situation that you're being presented with and just from listening tonight and the bit that I've been studying, I'm very concerned about the whole project. I've tried to write with my husband a number of letters. I hope you've gotten those letters and I just think this needs to be very carefully looked at. I know you all will. I'm very concerned about the drainage brought up tonight. We need to really make sure that the wetlands are nourished, not treated like there's some sort of unimportant feature in this environment. So, I ask you all to please just do your best and I know you will.

Lisa Kerr

I read through the agreement, the deed restriction agreement, Community Housing Development agreement, and I'd like to know what is there to stop the developer from terminating the agreement after five years because they can according to the way the agreement is written. Either side can before the termination of the 30-year period. What's to stop them after five years from terminating it and paying their prorated balance of all the wave fees and system development charges because it pencils out as more profitable to rent the units as short-term rentals and pay off the fees. So, I'm really concerned about that. I do not think the community housing development agreement is sufficient to protect the city at all. The other thing I'm wondering about is you know those there's a on the west side of the property, there's a commercial development with some Galleries and stores. I assume that the parking behind that building not this not the parking underneath the Condominiums but the parking that's being incorporated into this development was parking was the part of the required parking for that commercial development and it is now being incorporated into this new development to satisfy the requirement for the dwellings. So where will the required parking now be for the commercial development? What happens to it? It's no longer there and I'm wondering if anyone can answer the question. How that's going to work?

Staff response:

Adams said we would definitely have Kabeiseman review if someone was trying to default. Kabeiseman said I have focused on the land use aspects, as I understand the city attorney handled the other agreement. We can talk to her and make sure she's aware of these concerns and it's up to Council to determine what the restrictions are. In response to Newton's question does the Planning Commission have a voice, Kabeiseman replied I am not sure. Adams added we never would allow a short-term rental since it's in a commercial zone. Adams read through the conditions of approval.

Chair Newton asked if the applicant wished to make additional statements.

Vonda said I would like to address Lisa's question regarding those 13 spaces. I was actually the architect for the Ecola Square conversion when Mike Clark bought Ecola Square and converted it to the second-floor condominiums. I can attest to the fact that those 13 spaces were always on the easterly parcel. In fact if you look closely there's actually a property line down the center line of the parking lot. There's an agreement between Dave Pietka and the Ecola Square Condominiums for a cross access from one-side of the parking lot to the other. That's why those parking spaces may have been used up to this point by some of the Ecola Square folks. But it's only because the easterly lot had not been developed.

Clay closed the public hearing and moved to consolidation.

Mickey I want to love this project because it does look like a fantastic idea to have affordable housing and am willing to swallow the piece that involves more expensive cottages for lack of a better word in the sense that it would mean that we might get some affordable housing. But I agree with all the comments that there's a trust issue here and I think we should ask ourselves very carefully is there anything that we can recommend that we feel would help strengthen the chance that this will not simply become an abandoned affordable housing project. I think we've all seen it happen too many times. It's a question we've had voiced by a few people tonight and we're voicing. As I look through the penalty in what was structured and I know you've said that necessarily what would use

Newton said the penalty for fees I am guessing is not much and the math would be easy in about 5 years. We would have to figure out a mechanism to make it financially unattractive. For me, I am pulling for this project and am conflicted too. I don't want to minimize the importance of wetlands, but we have conflicting values the city is trying to balance. I am willing to look openly and think about what happened in the past with different projects, noting examples. It would be nice to see one ownership on that site with some configuration of that could work. If had a model to incentive developers to not built a million-dollar house. Newton noted how taxes are used to entice developers. Its not what is on the table, but I wish it were. I am willing to work towards putting it on the table. I don't have any reason to believe Pietka has any of those intentions.

Bates said I hate to sacrifice wetland but we are getting a lot for it. What variances are we offering from this approval. We have to go about it the right way and not sure apartments and cluster development in a commercial zone is the right way to do it. Adams replied the ordinance does not require anything like a density as no density with commercial. Do not require all of the traditional setback issues because it's commercial development. We do not have hard requirements like that. We are not held to the often-dimensional requirements. The 50% is for residential in combination with commercial which is not being done, a discussion ensued. Kabeiseman noted I understand what Bates says. The way you address it is by changing the current code. The code you have allows this under what they are applying for. If you want only commercial use in the commercial zone you will need to change the code, a discussion ensued. Kabeiseman added the code allows with conditional use which is what they applied for, a discussion ensued.

Knop said I agree with most of what you said. There has to be a balance and we need affordable workforce housing and if this is a way to do it we need to move forward.

Sinclair I am inclined to want the house as well. I hear Bates' concern with the cluster development and past issues. A lot of it could have been avoided if an HOA was in place like it was supposed to be. There wasn't an entity to take care of issues that came up. Adams said we'd require an HOA before signing off. Is that a solution to that piece of the problem? Adams added I was not here when that was signed but I have learned as well. Newton added a cleaner way is to rezone the property.

Bennett said the only reason I am considering this is the affordable housing. It bothers me if after a few years when it become economically feasible it could go away. I have a bad feeling if that is a possibility. Adams replied it is 30-year term. Bennett added what I hear is that when it becomes economically feasible the developer can pay the fees and it's not longer affordable. Adams replied no, we would have our attorney put in still penalties with anything that doesn't hit the 30 year. Moritz added we haven't seen it yet and that's where I am uncomfortable. If I can't see it, I don't know what that means. Also I feel

uncomfortable that we could grant these, and the affordable housing can go away by the time it gets to building permit. We don't have enough assurance.

Matusick said I have the same thoughts of everyone in the room. I would like to see the entire development why not have it all affordable, go back to 18 units. It does not financially make sense. Without real incentives there is no way I would sign off without the penalties being stiff. Newton asked Matusick having looked at this from a developer's perspective, if property taxes were reduced, would that have made financial sense as a developer, Matusick replied no, not without the parking being waived, a discussion ensued. Newton asked if you had in front of you the regulatory agreement and a draft of an HOA agreement would you feel different, Matusick replied I would. I would feel a little different about it. Newton said but not about the financial feasibility, Matusick replied correct unless philanthropy is involved and that is not a part of the proposal.

Sinclair said if you attach conditions, the implication is it won't go through unless conditions are met. Some of the distrust is once you set conditions how do you know it happens. We could make a decision tonight with conditions attached, but we would be uncomfortable knowing if those conditions were met. Newton added I feel I heard that from a few members, a discussion ensued.

Moritz said let's remember Vonada gave us the original drawings when the thought was 50/50 and there were 8 apartments in that original project. I would love to see affordable, but if this may not move forward as an affordable project that stays affordable, he could go back to the original plan and yes those would not be rent limited, and since it is in a commercial zone, they can't be short term rentals anyway.

Motion: Bates moved to approve on basis development would be 50% commercial and 50% residential apartment; Bennett seconded the motion.

Moritz confirmed so the motion is to deny the conditional use. Newton said we have an application in front of us, has a proposal we've been asked to say yes or no to. We need to start with that, and if there is some version of what they proposed we need to make that clear. Kabeiseman added there is a motion on the table. The commission can vote or it can be withdrawn. As the chair said you are reviewing as specific application and the idea we are going to approve something that is entire different is problematic.

Bates withdrew his motion

Motion: Bates moved to deny proposal; Bennett seconded the motion.

Vote: Bennett, Bates and Newton voted AYE, Moritz, Sinclair, Knop and Matusick voted NAY; the vote was 3 to 4 and the motion failed.

Moritz said the main issue we haven't fully considered is there some way that we can write a condition that makes this enforceable enough to move forward with an affordable project. I don't feel we have explored enough options to make this work, a discussion ensued.

Sinclair noted it seems to me the key issue is some feeling of assurance that it can't be reversed in a shorter period of time. Adams asked would it satisfy you to continue the hearing and bring back a stricter penalty language, Moritz replied yes. I would be happy to have a docuemnt in front of me that made sure this

remains affordable. Knop that is a good approach. Newton added it doesn't address HOA. Moritz asked can you bring forward an sample HOA agreement, Adams replied yes we can work with Ashley Driscoll.

Knop asked how many HOA's do we have, Adams replied I am not sure a discussion ensued.

Newton asked how we were doing timing wise, Adams replied we are up to January 3rd

Motion: Mortiz moved to continue this matter until the November 22nd meeting so we can review an enhanced deed restriction with greater penalties as well as a sample HOA agreement; Knop seconded.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed.

Take a 10-minute break at 7:37 pm. Reconvened 7:41 pm

(4) Public Hearing and Consideration of ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code regarding notice requirements for applications and decisions.

ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code, Title 17 Zoning, regarding notice and procedural requirements for citizens to receive electronic notifications of application processed by the Community Development Department, administrative decisions, and expanded public notice for permits concerning hazard areas, environmentally sensitive lands, and new roads. The request will be reviewed against the criteria of Municipal Code, Section 17.86, Amendment Criteria.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

Adams summarized his staff report and read the examples Rasmussen provided. These examples are for specific permits, not a blanket request for anything submitted. Adams noted that Roberts submitted their application the day before the new zoning code went into effect, therefore notification was not required. The proof Rasmussen provided is not the same things he is requesting. We do approximately 200 permits a year. We have made the effort by going to an electronic permitting system. You can check every day to see what's going on on that property. We have made the effort to be transparent. The claims made that it will not cost staff time and resources, they are just claims. I know my staff and resources, to just come in and start claiming these things where's any proof of that? I don't see any other documentation entered into the record saying that other departments do this, you know what it is costing them, you know they can handle it easily and I think Moritz asked for you to find one proof of another system that's doing this electronically and maybe that's a way to do it I haven't seen I haven't seen any of that.

Will Rasmussen on behalf of Haystack Rock LLC,

I 100% disagree with the characterization with the code revisions I provided. The first one he said noted that the local jurisdiction will give notice for all decisions anybody who requested it for quasi-judicial land use decisions that might sound like some fancy big thing but that is exactly what the Roberts home approval was. That Adams approved without the Planning Commission or the public getting input. Just asking on behalf of a local long time homeowner asking for notice. I ask for copies of decisions all the time and it's the first time I ever remember uh planning director telling me now I'll only give you a copy if it's required by law. Finally getting hearing. I appreciate the public process. This is just a code requirement. I am sure you looked at criteria applicable and noticed it doesn't have to do if a spreadsheet takes time. The code criteria actually don't apply to the comprehensive plan correctly, giving an overview. I know staff is trying its best here. This proposal meets the criteria to a T. The citizens in the community expect to be involved. This would be a simple spreadsheet. I read all the minutes every month. I guess you are talking about 10 properties a month requesting to be notified. The practical effect of not being notified is what happened with the Roberts, giving an overview of the Roberts case. These meetings cost time and money and these are a burden on the city. If you don't think that decision will end up back here, I'd bet you a beer on it. I am not making up that this would save time resources and money. It forces the interested citizens to be an adverse position with the city. When the city says I won't give you information I feel I have to submit a public records request. This is the only city I do this with. I don't think this fits the character of Cannon Beach. I don't think the character is to tell someone no, I am not going to tell you about that decision.

Moritz said we had this discussion at the work session. Still a little surprised you feel you can't get information now as now they are posted on Acela. Have you had a chance to log onto the system to see if that is what you are looking for, Rasmussen replied I logged on and poked around, not sure how complete it is and how often its updated with decisions. And for the right-of-way, there are a lot of things going on driving and impacting development. This should be in code. I can only count on getting notice if it's in the code, if it's not in the law and we don't do it, there might be no recourse to pulling it back to the planning commission. Moritz replied if I summarize what you said, you don't trust how quickly information is ending up on Acela and you feel you couldn't find rights-of-way on Acela. Rasmussen replied yes, what you said is accurate and having it in the law/ the code is real relevance. Moritz added the way I am trying to balance in my mind, we are going to talk about this in the code audit so if we don't do something now it will happen next year. Can Acela be the stop gap instead of hurrying this along without our having had a chance to bring us their best efforts. you know this may be completely rewritten in the next year even if we did make a suggestion tonight because during code audit process, they may say this is not what we want for our city. There will be a fix, all of us in the city value the notice, want to make sure we are not jumping ahead. Rasmussen replied a year from now is too late for my purposes, noting why.

Adams asked are you saying the ordinance you asked for last year you don't believe a decision made on Roberts is protected on that, Rasmussen replied we will see what LUBA says, a discussion ensued.

Adams added I've said that repeatedly and said earlier if they would have done this a day later you would have gotten notice, and the other party would have done the same thing you are doing, a discussion ensued.

Newton added my concern is in the middle of code audit, there is a lot of time and effort going in, and to do this well will take a lot of time to get it right, or we will have bound our staff with possible rules that they can trip on something really simple. But also respect the concern you have and find something that works. Didn't find it in any of the three you submitted. Rasmussen summarized the three he submitted, a discussion ensued regarding the items submitted and electronic notification. Rasmussen noted all of the decisions I am aware of, all are appealable, a discussion ensued.

Newton asked are there any members in the audience that would like to speak:

Lisa Kerr

I completely sympathize with why the LLC is asking for this. I went back and listened to planning commission meetings until I found the one where the planning commission unanimously decided to deny the stability beam, then found out it was approved administratively, and no one knew about it. That's why this is happening. I want to say I use Acela twice a week for a considerable amount of time for a job to do. I press on land use applications, related documents on each application for Clatsop County, and I get drawings, building plans, geotechnical reports, wetland delineations. When I go for Cannon Beach I get a list of the applications that get put forth, but with not reports included. So I need to a public records request. I don't think the stop gap of Acela as we have now is good enough.

Matusick added I agree with Kerr. I looked around as well. Is the only downside the staff time? Adams replied also the likelihood that something doesn't get noticed that should. Kerr suggested making our Acela work like the counties. Not sure why the city won't do it, and if they can't they should provide notice. Adams replied the county is on electronic plan review and we are not on it. We don't have the resources but are discussing doing it. The next 6 months goal for plan review. St. Clair noted when a planning decision is made, tree removal, etc. the final is attached when it gets pushed out. We have times when only the application is attached to the record. I have a number of records that are waiting for additional information. When I get it, it happens the same time a decision is made and then the record is pushed out complete. Adams noted the publicly noticed decisions is being put on the public notice page. There is so much more available electronically then when I first came here.

Newton asked is anything proposed by Rasmussen that we can make workable? Adams replied what Will provided is not the law/code in any of them. We are going beyond than what he provided for you, a discussion ensued.

Knop suggested you should go through proposal and come back with recommendations. Adams replied I am happy to but getting to here but from what he's proposed is a stretch. Newton added our city staff got put in the box where they were going to lose anyway, and they had to cross every I and dot t and there was no intent to deceive. With that in mind you have a planning commission that supports you in finding a way to protect the interest that we believe you have a real complaint here and we're trying to balance against last few years of a huge issue that we are trying to support our staff in. I think we can do this and protect you and the client. If you come to the conversation Adams, a discussion ensued. Rasmussen noted I understood the chairs request and am wiling to have a conversation with Adams to find something less cumbersome and reach a decision. Knop added I would like Adams and Rasmussen to work together to reach something, the planning commission all agreed.

Motion: Knop moved to continue the hearing until the November 22, 2022 meeting; Moritz seconded.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed.

(5) Public Hearing and Consideration of CU 22-04, Mike Morgan, on behalf of Marilyn Epstein, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization project at 4007 Ocean Avenue

CU 22-04, Mike Morgan, on behalf of Marilyn Epstein, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization. The property is located at 4007 Ocean Ave. in a Residential Moderate Density (R1) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.12.030 Conditional Uses Permitted, 17.42.060 Specific Standards, and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

St. Clair noted the Friends of the Dunes sent correspondence after the additional correspondence was posted at noon. It was emailed and copies are available. The planning commission paused to read it.

St. Clair read his staff report.

Chair Newton asked if there was any additional correspondence. Address above.

Chair Newton called for public testimony.

Chair Newton stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked if the applicant wished to make a presentation.

Mike Morgan, Planning Consultant, PO Box 132

I'll try to respond to some of the comments on the Friends of Dune letter. This is the 5th project of the year. The other 4 have been approved with conditions. The request is clearly stated no more than 50 cubic yards. We have done this many times. 50 cubic yards is adequate and city staff will make an appearance and observe the deposition of the material. We haven't gone through a full year of king tides and major storms; we don't know how exactly these structures work. It is so much easier and less contentious to apply for cobble berm, seems to be in favor with ORCA and Friends of the Dunes. Going through rip rap process unless house is teetering on the edge would take considerable time and funding. We would like to try the

50 cubic yards, giving example of things taking root. Morgan gave an overview of the property and how this would function. Its fairly straightforward and we will have Tom Horning on site. There was confusion with his first report submitted but cleared up with the second report. We did not end up using mulch for the property and brought in clean sand and didn't need the analysis.

Mortiz said there would be no more than 50 cy but application says 50 plus 10 which is over the requirement for an OPRD permit, Morgan replied I don't think the application says that, Moritz replied saying maybe the staff report. Have you had one in place long enough to see how it holds up with king tides, Morgan replied no, in the past we did burritos, but no cobble berms. Moritz added what's the hurry, does it make sense to give king tide season, so we have some knowledge of how these hold up. Morgan replied as Horning said several feet has eroded away, and no one want sot lose two feet of their yard just to see what happens. Cobble berm in benign, not intrusive, planted with willows. I don't think it's appropriate to wait to see what happens. A discussion ensued regarding potentially waiting to proceed. Morgan added when people see their yard falling in that's when McEwan and I get a call. Not sure how to get the word out to property that may be in need.

Chair Newton called for proponents of the request. There were none.

Chair Newton called for opponents of the request. There were none.

Staff response:

St. Clair - Staff recommends approval with conditions, noting the conditions.

Chair Newton asked if the applicant wished to make additional statements.
There were none.

Chair Newton Closed the hearing and moved to discussion.

Motion: Bates moved to approve with the conditions as presented; Bennett seconded.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed.

(6) Review of draft letter to be sent to City Council regarding stormwater discharge on Forest Lawn

Newton said Bates when you asked to move letter up from a work session item into action item the letter you were referencing is the letter that can you please clarify which letter you were referencing there was a letter prepared by a subset of the commission, Lisa Kerr, Mortiz and yourself identifying issues we saw, calling it an overreach by the city staff and dealing with storm water issues on the Forest Lawn development. We are considering the letter that was prepared by the subcommittee of the Planning Commission and Kabeiseman are we good to now talk about this, Kabeiseman replied yes, the appeal went to Council and was upheld, so there is no current application.

Newton said what is behind the letter has a lot of emotion there has been a lot of frustration but I think that we very much focus on being respectful of one another in our conversations so we can come to a positive outcome.

Sinclair said I am struggling with why Planning Commission is proceeding down this path. Newton replied the item of stormwater connection was brought to Planning Commission when the developer for wetland had their conditional use application. Not sure, the owner of 1603 Forest Lawn and other concerned citizens submitted documents in the record that was being created around the application. Sinclair asked the stormwater application or development application; Newton replied the two are co-mingled in a way. That isn't necessarily our normal protocol but those people who submitted information into that process I believe that was appropriate for them to have their voice heard on the session. Planning Commission went back and forth on this issue co-mingling on how to roll into development. A number of times some of our decision considered part of the stormwater, Kabeiseman's advice at the time was to separate. There was a lot of pushback and the compromise was a letter that addressed the concerns and send to council. The letter was drafted by myself, Moritz and Kerr. It was brought to Planning Commission at which point the application had another day and we were told not to talk at risk of jeopardizing the situation. I've heard a number of people say this is not in the planning commission purview, but here we are. Sinclair said the position is valid, but I question whether it is a Planning Commission roll to do it rather than individuals that felt strongly enough to draft it. Anyone can do this, I wondered if it needed to come through Planning Commission. A discussion ensued regarding the letter. Newton added I always believed the intention behind letter was to create a better process for the city. do not want to make a spectacle of any one individual or the city staff in general. I also feel like some mistakes were made and I don't want to see those mistakes made again and so out of respect have not dove into what really is the city's business in as much specific detail as some of the conversations that we've had either as a group or individually in small groups. St. Denis replied I appreciate what you said, would like to get to the point, when this project was being looked at there were two things going and they were separate.

Newton and St. Denis discussed the letter. Bates shared his thoughts. Discussed having a subcommittee and public meetings law. Discussed trust, how to address the storm water. Bates said if we built trust then I don't feel we need to move forward with the letter. Newton asked does the Commission think we should pull back, Knop replied I agree we had a productive conversation. All member agreed to pull back.

Newton asked do we want to form a subcommittee for wetland code language, Sinclair replied lets commission a study, give them what we want and let them get started so that way work is being done should you have something started in case more comes in. Adams replied this would need a budget request through Council, then have to RFP and hire the person, when we are doing the code audit. I understand you want more data, there are also more methods and getting that technical expertise, you may ask crest or somebody from the North Coast to sit on your committee. The process may take 6 months from getting started. Moritz noted the buffer size should be addressed. We have a decent template and have a couple issues with how our regulations work. We can sit down as a group to see what is being done, are other codes working well, for what we want to achieve can we do that with the current standards, and I think the answer is no with what we've been talking about. Newton added some obvious items we can address to make it better as we transition with the code. Newton asked do you want to take full commission on work session, Moritz replied I think that's a good idea. Adams said for this work session item there is nothing that would stop Moritz or Bates from bringing their kind of points forward. Let me know as well and I'll I will pull together kind of a Wetlands 101 of how the ordinance actually functions and then do some GIS work to let you know what properties are currently affected by our code and then how much how many is vacant and things like that. Newton added one thing that that would be really helpful for me are the maps just putting those Maps up on the screen and walking us through right how do you interpret what's the difference between a local Wetland inventory and an effective tax life that sort of a conversation would be so helpful.

Authorization to Sign the Appropriate Orders

Motion: Knop moved to authorize the Chair to sign the appropriate orders; Moritz seconded the motion.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed.

NON HEARING ITEMS

(7) Wetlands Task Force organization

INFORMATIONAL ITEMS

(6) Tree Report
No comments

(7) Ongoing Planning Items

Adams noted the code audit is still going and the TSP will be at City Council. The code audit report should be ready in December.

(8) Good of the Order

St. Denis said thank you and Newton it was a very productive conversation.

ADJOURNMENT

The meeting adjourned at 10:13 pm.

Recorder Jennifer Barrett



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF **ZO 22-01**, WILL RASMUSSEN APPLICATION, ON BEHALF OF HAYSTACK ROCK LLC PROPERTY OWNERS, REQUESTING A TEXT AMENDMENT OF THE CANNON BEACH MUNICIPAL CODE TITLE 17 ZONING REGARDING NOTICE AND PROCEDURAL REQUIREMENTS FOR CITIZENS TO RECEIVE ELECTRONIC NOTIFICATION OF APPLICATIONS PROCESSED BY THE COMMUNITY DEVELOPMENT DEPARTMENT, ADMINISTRATIVE DECISIONS, AND EXPANDED PUBLIC NOTICE FOR PERMITS CONCERNING HAZARD AREAS, ENVIRONMENTALLY SENSITIVE LANDS, AND NEW ROADS. THE REQUEST WILL BE REVIEWED AGAINST THE CRITERIA OF THE MUNICIPAL CODE, SECTION 17.86, AMENDMENT CRITERIA.

Agenda Date: October 27, 2022 &
Continued to November 22, 2022

Prepared By: Staff

GENERAL INFORMATION

NOTICE

Public notice for this October 27, 2022, Public Hearing is as follows:

- A. Notice was posted at area Post Offices on October 7, 2022;
- B. Notice was provided to the Oregon Department of Land Conservation and Development as required by ORS ;

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

ADDITIONAL EXHIBITS

The following Additional Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 24, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

A-2 Will Rasmussen letter, on behalf of Haystack LLC, dated October 26, 2022;

"B" Exhibits – Agency Comments

None at the time of writing

"C" Exhibits – Cannon Beach Supplements

C-2 City of Aurora, Chapter 16.76, Procedures for Decision Making;

C-3 City of Scappoose, Chapter 17.162, Quasi-judicial Decisions;

C-4 Marion County, Chapter 17.111, Public Hearings;

C-5 Draft Notice Requirements, Staff produces;

"D" Exhibits – Public Comment

None at the time of writing

BACKGROUND

Will Rasmussen, on behalf of Haystack Rock LLC, property owners of 1981 Pacific Ave., is requesting an amendment of the notice requirements of the Cannon Beach Municipal Code. The applicant first approached the city in 2021 with an application seeking to extend surrounding property owner notice mainly with regards to development permits. The applicant worked with staff to offer text amendments that would limit the changes to only those access extensions of public rights-of-way in the oceanfront management zones, stream corridors and wetland overlay area, which was approved and adopted August 3, 2021.

This application proposes an email notification process for all requested properties for all permit applications and decisions concerning a lot, regardless of whether official notice is required. The proposed amendment would allow any property owner or anyone else who resides in the city to request notification for any property in the city, with a duration of 60 days.

The ordinances mentioned in Mr. Rasmussen's October 26, 2022, letter are provided as Exhibits C-2, C-3 and C-4, which show that the 'written requests for notification' are for specific applications or decisions and are not for the much broader category suggested by the applicant's proposed amendment language. At the October Planning Commission meeting the PC requested staff work with the applicant to find common ground on amendment language that might satisfy both parties. Staff sent the suggested Draft Notice Requirement language found in Exhibit C-5 to the applicant on November 9th and as of this writing has not received any response.

APPLICABLE CRITERIA

Chapter 17.86 AMENDMENTS

17.86.030 Application

Property owners or local residents who are eligible to initiate an amendment, or their designated representatives, may begin a request for an amendment by filing an application with the city manager, using forms prescribed by the city.

17.86.040 Investigation and Report

The city manager shall make or cause to be made an investigation to provide necessary information on the consistency of the proposal with the comprehensive plan and the criteria in Section 17.86.070. The report shall provide a recommendation to the planning commission on the proposed amendment.

17.86.070 Criteria.

- A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:
 - 1. The amendment is consistent with the comprehensive plan;

PLANNING COMMISSION ACTION

MOTION: Having considered the evidence in the record, based on a motion from Commissioner NAME, seconded by Commissioner NAME, the Planning Commission moves to (approve/approve with conditions/or deny) the Rasmussen application, on behalf of Haystack Rock LLC, for text amendments to Title 17 Zoning, application **ZO#22-01**, as discussed (subject to the following conditions):



William L. Rasmussen
william.rasmussen@millernash.com
503.205.2308 (direct)

October 26, 2022

VIA EMAIL
PLANNING@CI.CANNON-BEACH.OR.US

Cannon Beach Planning Commission
City of Cannon Beach
PO Box 368
163 E Gower St
Cannon Beach, OR 97110

Subject: Please Do Not Exclude the Public and Planning Commission in Matters of Public Interest

Dear Commissioners:

In May, we submitted this code amendment request on behalf of Haystack Rock, LLC, to require notice for certain City decisions of public interest. This proposal results from the lack of notice given from City staff when they approved the Robertses' smaller house. Staff's failure to provide notice excluded the public and Planning Commission from a matter of high public interest. Over 50 people participated in opposition to prior proposals by the Robertses. Indeed, just a few months before staff approved this latest Roberts proposal, the Planning Commission denied the Robertses' request for a stability beam that is included in the now-approved development.

At a prior meeting the Planning Director asked for some examples of local jurisdiction codes that require notice to parties that request it. Examples of such code language can be found at Marion County Zoning Code 17.111.070, Aurora Zoning Code 16.76.100, and Scappoose Zoning Code 17.162.120. It is neither difficult nor rare for a local jurisdiction to give notice of a decision to someone who asks for it.

As you may recall, last year we submitted a code amendment request with new notice and procedural requirements for certain access applications. As part of that process, staff indicated that it would implement a new online protocol for sharing information on land use applications. It implemented this website-based posting related to the Robertses' new smaller-house

4854-5730-9471.10

application, but then inexplicably approved the Robertses' new development with no notice to neighbors and no posting on the website. This resulted in the local appeal period running with zero notice to people who had previously testified, requested notice, and should have been notified.

This omission of notice also resulted in Haystack Rock's appeal of the grant of a permit for the smaller house going directly to LUBA, effectively excluding the public, Planning Commission, and City Council from the decision-making process. This is not how Oregon's land use system is supposed to work. Oregon Statewide Land Use Planning Goal 1 is Citizen Involvement. Including interested citizens in land use decision-making is a hallmark of Oregon's land use planning system.

Following discovery of staff's approval without notice, we immediately requested that the City withdraw the decision for reconsideration. This would have enabled staff to make the same decision (if they wanted to) while allowing the public the opportunity to participate. In my experience, taking public comment results in better decisions. A withdrawal and reissuance of the decision would have also enabled the normal review by the Planning Commission if anyone appealed the staff decision. Staff chose to stand by its decision to omit notice. This affirmed its decision to exclude the public and Planning Commission from participation in the process. This code amendment proposal followed.

The code amendment proposal before you will ensure that interested Cannon Beach citizens and neighboring property owners will have the opportunity to comment on developments. This does not dictate any outcome—just the ability to voice concerns. The proposal will also ensure that applicants and staff cannot skip the Planning Commission and City Council on contentious proposals.

Staff has previously argued that maintaining a list of persons who request notice on specific developments would be too burdensome. While we recognize that maintaining such a spreadsheet or similar list would take some time, almost every other jurisdiction does so and is willing to give notice ~~to~~to of land use decisions to anyone who requests them. Compared to the

time and energy consumed on appeals of decisions where no notice was provided, this is an efficient and effective use of staff time and City resources.

We ask that you please schedule a hearing as soon as you reasonably can on this code amendment. Staff's failure to provide notice, place the decision on the application website, or otherwise make it publicly available undermined significant public interests and prevented the Planning Commission from correcting the errant decision. These circumstances evidence a clear and urgent need for Haystack Rock's proposed code amendments.

Very truly yours,



William L. Rasmussen

cc: Jeff Adams (via email)

Chapter 16.76 PROCEDURES FOR DECISION MAKING—QUASI-JUDICIAL

16.76.010 Purpose.

The purpose of this chapter is to establish procedures for the consideration of development applications, for the consideration of quasi-judicial comprehensive plan or zoning amendments and for appeal of quasi-judicial decisions.

(Ord. 415 § 7.162.010, 2002)

16.76.020 Application process.

- A. The applicant shall be the recorded owner of the property or an agent authorized in writing by the owner.
- B. The applicant shall be required to meet with the Planning Director for a pre-application conference. Such a requirement may be waived in writing by the applicant.
- C. At such conference, the Planning Director shall:
 - 1. Cite the applicable comprehensive plan policies and map designation;
 - 2. Cite the applicable substantive and procedural ordinance provisions;
 - 3. Provide available technical data and assistance which will aid the applicant as provided by the city engineer;
 - 4. Identify other policies and regulations that relate to the application; and
 - 5. Identify other opportunities or constraints that relate to the application.
- D. Another pre-application conference is required if an application is submitted six months after the pre-application conference.
- E. Failure of the Planning Director to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the city nor the Planning Director shall be liable for any incorrect information provided in the pre-application conferences.
- F. Applications for approval required under this title may be initiated by:
 - 1. Motion of the City Council;
 - 2. Motion of the Planning Commission;
 - 3. The Planning Director;
 - 4. A recognized neighborhood planning organization or city advisory board or commission; or
 - 5. Application of a record owner of property or contract purchaser.
- G. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.
- H. The application shall be made on forms provided by the city.
- I. The application shall:

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1. Include the information requested on the application form;
 2. Address appropriate criteria in sufficient detail for review and action; and
 3. Be accompanied by the required fee.
- J. The Planning Director may require information in addition to that required by a specific provision of this title, provided the Planning Director determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.
- K. The Planning Director may waive the submission of information for a specific requirement, provided the Planning Director finds that specific information is not necessary to properly evaluate the application; or the Planning Director finds that a specific approval standard is not applicable to the application.
- L. Where a requirement is found by the Planning Director to be inapplicable, the Planning Director shall:
1. Indicate for the record and to the applicant the specific requirements found inapplicable;
 2. Advise the applicant that the finding may be challenged on appeal or at the hearing or decision on the matter and may be denied by the approval authority; and
 3. Cite in the staff report the specific requirements found inapplicable.
- M. An application shall be deemed incomplete unless it addresses each element required to be considered under applicable provisions of this title and the application form, unless that requirement has been found inapplicable by the Planning Director. The Planning Director shall not accept an incomplete application.
- N. If an application is incomplete, the Planning Director shall:
1. Notify the applicant within thirty (30) days of receipt of the application of exactly what information is missing; and
 2. Allow the applicant thirty (30) days to submit the missing information.
- O. The application shall be deemed complete when the missing information is provided and at that time the one-hundred-twenty day time period shall begin to run for the purposes of satisfying state law.
- P. If the applicant refuses to submit the missing information, the application shall be deemed incomplete on the sixty-first day after the Planning Director first received the application and returned to the applicant.
- (Ord. 415 § 7.162.020, 2002)

16.76.030 Consolidation of proceedings.

- A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.
- B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 16.76.090, in the following order of preference: the Council, the commission, or the Planning Director.
- C. Where there is a consolidation of proceedings:
1. The notice shall identify each action to be taken;
 2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one-hundred-twenty day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the Planning Director shall not be required to consolidate a plan map amendment and a zone change or

other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one-hundred-twenty day time limit prescribed by state law for zone change and permit applications; and

3. Separate actions shall be taken on each application.

D. Consolidated Permit Procedure.

1. When the consolidated procedure is utilized, application and fee requirements shall remain as provided by resolution approved by the Council. If more than one permit is required by this title or other ordinance to be heard by the Planning Commission or City Council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permits by this title or any other ordinance shall be applied in the consolidated procedures to each application.
2. In a consolidated proceeding, the staff report and recommendation provided by the Planning Director shall be consolidated into a single report.
3. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure.

(Ord. 415 § 7.162.030, 2002)

16.76.040 Noticing requirements.

A. Notice of a pending quasi-judicial public hearing shall be given by the Planning Director in the following manner:

1. At least twenty (20) days prior to the scheduled hearing date, or if two or more hearings are scheduled, ten (10) days prior to the first hearing, notice shall be sent by mail to:
 - a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
 - b. All property owners of record or the most recent property tax assessment roll:
 - i. Within two hundred (200) feet of the property which is the subject of the notice where the subject property is wholly or in part within the urban growth boundary;
 - ii. Within two hundred fifty (50) feet of the property which is the subject of the notice where the subject property is outside the urban growth boundary and not within a farm or forest zone;
 - iii. Within five hundred (500) feet of the property which is the subject of the notice where the subject property within a farm or forest zone;
 - iv. If the adjoining property(s) subject to the notice are excessively large lots, the notice of hearing shall be provided to a minimum of two adjoining property owners in each lot side direction;
 - c. Any governmental agency affected by the decision which has entered into an intergovernmental agreement with the city which includes provision for such notice;
 - d. Acknowledged neighborhood planning organizations, if active;
 - e. Any person who requests, in writing; and
 - f. The appellant and all parties to an appeal;

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2. Notice of a hearing on a proposed zone change for a manufactured home park shall be given to tenants of that manufactured home park at least twenty (20) days but no more than forty (40) days prior to the hearing; and
 3. The Planning Director shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.
- C. For all quasi-judicial decisions requiring a public hearing, at least ten (10) days prior to the hearing, notice shall be given in a newspaper of general circulation in the city. An affidavit of publication shall be made part of the administrative record.

(Ord. 415 § 7.162.040, 2002)

16.76.050 Contents of the notice.

Notice given to persons entitled to mailed or published notice pursuant to Section 16.76.040 shall include the following information:

- A. A description of the subject property, the street address if available, and a general location which shall include tax map designations from the county assessor's office;
- B. Except for notice published in the newspaper, a map showing the location of the property;
- C. An explanation of the nature of the application and the proposed use or uses which could be authorized;
- D. The applicable criteria from the ordinances and comprehensive plan that apply to the application;
- E. The time, place and date of the public hearing;
- F. A statement that both public oral and written testimony is invited, a general explanation of the requirements for submission of evidence and the procedure for conduct of the hearing;
- G. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
- H. A statement that all documents or evidence in the file are available for inspection at no cost, or copies at a reasonable cost;
- I. A statement that a copy of the staff report will be available for inspection at no cost, or copies at reasonable cost, at least seven days prior to the hearing;
- J. A statement that failure to raise an issue in the hearing or during the comment period, in person or by letter, or failure to provide sufficient specific detail to give the decision maker or hearing body an opportunity to respond to the issue, precludes appeal to the land use board of appeals on that issue. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue.

(Ord. 415 § 7.162.050, 2002)

16.76.060 Failure to receive notice.

- A. Where either the Planning Commission or Council or both intend to hold more than one public hearing on the same application, notice of several public hearings before both approval authorities may be given in one notice.
- B. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.

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- C. Personal notice is deemed given when the notice is deposited with the United States Postal Service.
 - D. Published notice is deemed given on the date it is published.
 - E. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.
 - F. The records of the Marion County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice.

(Ord. 415 § 7.162.060, 2002)

16.76.070 Time period for decision making.

The city shall take final action on an application for a permit, plan change or zone change, including the resolution of all appeals, within one hundred twenty (120) days after the application is deemed complete, except:

- A. The one-hundred-twenty day period may be extended for a reasonable period of time at the request of the applicant;
- B. The one-hundred-twenty day period applies only to a decision wholly within the authority and control of the city; and
- C. The one-hundred-twenty day period does not apply to an amendment to an acknowledged comprehensive plan or land use regulation.

(Ord. 415 § 7.162.070, 2002)

16.76.080 Approval authority responsibilities.

- A. The Planning Director shall have the authority to approve, deny or approve with conditions the following applications:
 - 1. Determination of parking requirements for unlisted uses;
 - 2. Determination of visual clearance area pursuant to Chapter 16.40;
 - 3. Determination of access, egress and circulation plan (not subject to Planning Commission approval) pursuant to public works design standards;
 - 4. Signs pursuant to Chapter 16.44;
 - 5. Type I home occupation pursuant to Chapter 16.46;
 - 6. Telecommunications facilities pursuant to Chapter 16.50.
- B. The Planning Director may refer any application for review to the Planning Commission.
- C. The Planning Commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:
 - 1. Interpretations subject to Section 16.02.050;
 - 2. Recommendations for applicable comprehensive plan and zoning district designations to City Council for lands annexed to the city;

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3. A quasi-judicial comprehensive plan map amendment except the Planning Commission's function shall be limited to a recommendation to the Council. The Commission may transmit their recommendation in any form and a final order need not be formally adopted;
 4. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment;
 5. Conditional use pursuant to Chapter 16.60;
 6. Variances pursuant to Chapter 16.64;
 7. Permits and variances for applications subject to requirements of Chapter 16.18;
 8. Type II home occupation pursuant to Chapter 16.46;
 9. Site development review for sites subject to the Aurora Design Review Guidelines for Historic District Properties;
 10. Telecommunications facilities pursuant to Chapter 16.50;
 11. Appeal of a decision made by the Planning Director; and
 12. Any other matter not specifically assigned to the Planning Director, or the City Council under this title.
- D. Upon appeal or recommendation, the City Council shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, deny or approve with conditions the following development applications:
1. The formal imposition of plan and zone designations made to lands annexed to the city;
 2. Appeals of quasi-judicial plan and zone amendments;
 3. Matters referred to the Council by the Planning Commission;
 4. Review of decisions of the Planning Commission, whether on the Council's own motion or otherwise.
- (Ord. 415 § 7.162.080, 2002)

16.76.090 Decision by the Planning Director.

- A. Pursuant to Section 16.76.080(A), the Planning Director is authorized to make certain decisions, and no hearing shall be held unless:
1. An appeal is filed; or
 2. The Planning Director has an interest in the outcome of the decision, due to some past or present involvement with the applicant, other interested persons or in the property or surrounding property. In such cases, the application shall be treated as if it were filed under Section 16.76.080(C).
- B. The decision shall be based on the approval criteria set forth in Section 16.76.120 and applicable chapters of this title.
- C. Notice of the decision by the Planning Director shall be given as provided by Section 16.76.100 and notice shall be governed by the provisions of Section 16.76.050 and Section 16.76.060.
- D. The record shall include:
1. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;
 2. All correspondence relating to the application;
 3. All information considered by the Planning Director in making the decision;

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- 4. The staff report of the Planning Director;
 - 5. A list of the conditions, if any are attached to the approval of the application; and
 - 6. A copy of the notice advising of the Planning Director's decision, a list of all persons who were given mailed notice and accompanying affidavits.
- E. Standing to appeal shall be as provided by Section 16.76.240.
 - F. The appeal period shall be computed as provided by Section 16.76.250.
 - G. The method for taking the appeal shall be as provided by Section 16.76.260(A) and the notice of appeal submitted by an appellant shall be as provided by Section 16.76.290.
 - H. The hearing on the appeal shall be confined to the prior record as provided in Section 16.76.270.
 - I. Notice of the final decision on appeal shall be as provided by Section 16.76.220 and Section 16.76.210.
 - J. No decision by the Planning Director may be modified from that set out in the notice except upon being given new notice.
 - K. The action on the appeal shall be as provided by Section 16.76.330.
 - L. A decision by the Commission on an appeal of a Planning Director's decision may be appealed to the Council.
 - M. Re-submittal shall be as provided by Section 16.76.130.
- (Ord. 415 § 7.162.090, 2002)

16.76.100 Notice of a decision by the Planning Director.

- A. Notice of the Planning Director's decision on an application pursuant to Section 16.76.080(A) shall be given by the Planning Director in the following manner:
 - 1. Within five days of signing the proposed decision, notice shall be sent by mail to:
 - a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
 - b. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city which includes provision for such notice; and
 - c. Any person who requests notice in writing.
- B. The Planning Director shall cause an affidavit of mailing to be filed and made a part of the administrative record.
- C. Notice of a decision by the Planning Director shall contain:
 - 1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
 - 2. The address and general location of the subject property;
 - 3. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
 - 4. The date the Planning Director's decision will become final;
 - 5. A statement that a person entitled to notice or adversely affected or aggrieved by the decision may appeal the decision:

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- a. The statement shall explain briefly how an appeal can be made, the deadlines and where information can be obtained, and
 - b. The statement shall explain that if an appeal is not filed, the decision shall be final;
 6. A map showing the location of the property; and
 7. A statement that the hearing on an appeal will be confined to the prior record.

(Ord. 415 § 7.162.100, 2002)

16.76.110 Hearings procedures.

- A. Unless otherwise provided in the rules of procedure adopted by the City Council the presiding officer of the Planning Commission and of the Council shall have the authority to:
 1. Regulate the course, sequence and decorum of the hearing;
 2. Dispose of procedural requirements or similar matters;
 3. Rule on offers of proof and relevancy of evidence and testimony;
 4. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation and rebuttal testimony; and
 5. Take such other action appropriate for conduct commensurate with the nature of the hearing;
- B. Unless otherwise provided in this title or other ordinances adopted by Council, the presiding officer of the Planning Commission and of the Council shall conduct the hearing as follows:
 1. Opening statement. Announce the nature and purpose of the hearing and summarize the rules of conducting the hearing, and if the proceeding is an initial evidentiary hearing before the Planning Commission or the City Council, make a statement that:
 - a. Lists the applicable substantive criteria;
 - b. States that testimony and evidence must be directed toward the criteria described in subdivision (1)(a) of this subsection, or to the other criteria in the comprehensive plan or the code which the apply to the decision;
 - c. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the land use board of appeals on that issue.
 2. Quasi-Judicial Hearing Process:
 - a. Recognize parties;
 - b. Request the Planning Director to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;
 - c. Allow the applicant or a representative of the applicant to be heard;
 - d. Allow parties or witnesses in favor of the applicant's proposal to be heard;
 - e. Allow parties or witnesses in opposition to the applicant's proposal to be heard;
 - f. Upon failure of any party to appear, the approval authority shall take into consideration written material submitted by such party;

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- g. Allow the parties in favor of the proposal to offer rebuttal evidence and testimony limited to rebuttal of points raised;
 - h. Make a decision pursuant to Section 16.76.120 or take the matter under advisement pursuant to Section 16.76.160.
 - C. Unless otherwise provided in this title or other ordinances adopted by the Council, the following rules shall apply to the general conduct of the hearing:
 - 1. The approval authority may ask questions at any time before the close of the hearing, and the answers shall be limited to the substance of the question;
 - 2. Parties or the Planning Director must receive approval from the approval authority to submit questions directly to other parties or witnesses or the Planning Director;
 - 3. A reasonable amount of time shall be given to persons to respond to questions;
 - 4. No person shall testify without first receiving recognition from the approval authority and stating his or her full name and address;
 - 5. The approval authority may require that testimony be under oath or affirmation;
 - 6. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing or removal of persons responsible; and
 - 7. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.

(Ord. 415 § 7.162.110, 2002)

16.76.120 Standards for the decision.

- A. The decision shall be based on proof by the applicant that the application fully complies with:
 - 1. Applicable policies of the city comprehensive plan and map designation; and
 - 2. The relevant approval standards found in the applicable chapter(s) of this title, the public works design standards, and other applicable implementing ordinances, including but not limited to, the Aurora Design Review Guidelines for Historic District Properties.
 - 3. In the case of a quasi-judicial comprehensive plan map amendment or zone change, the change will not adversely affect the health, safety and welfare of the community.
- B. Consideration may also be given to:
 - 1. Proof of a substantial change in circumstances or a mistake in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application; and
 - 2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B)(1) of this section.
- C. In all cases, the decision shall include a statement in a form addressing the Planning Director's staff report.
- D. The approval authority may:
 - 1. Adopt findings and conclusions contained in the staff report;
 - 2. Adopt findings and conclusions of a lower approval authority;
 - 3. Adopt its own findings and conclusions;

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4. Adopt findings and conclusions submitted by any party provided all parties have had an opportunity to review the findings and comment on the same; or
 5. Adopt findings and conclusions from another source, either with or without modification, having made a tentative decision, and having directed staff to prepare findings for review and to provide an opportunity for all parties to comment on the same.
- E. The decision may be for denial, approval or approval with conditions.
1. Conditions may be imposed where such conditions are necessary to:
 - a. Carry out applicable provisions of the Aurora comprehensive plan;
 - b. Carry out the applicable implementing ordinances; and
 - c. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;
 2. Conditions may include, but are not limited to:
 - a. Minimum lot sizes;
 - b. Larger setbacks;
 - c. Preservation of significant natural features;
 - d. Dedication of easements; and
 - e. Conveyances and dedications of property needed for public use.
 3. Changes, alterations or amendments to the substance of the conditions of approval shall be processed as a new action.
 4. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application, may be required to sign and deliver to the Planning Director their acknowledgment in a development agreement and consent to such conditions:
 - a. The Mayor shall have the authority to execute the development agreement on behalf of the city;
 - b. No building permit shall be issued for the use covered by the application until the executed contract is recorded and filed in the county records; and
 - c. Such development agreement shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity.
 5. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed pursuant to this subsection may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.
- F. The final decision on the application may grant less than all of the parcel which is the subject of the application.
- G. If the Planning Commission fails to recommend approval, approval with modification, or denial of an application within sixty (60) days of its first public hearing, the Planning Director shall:
1. Report the failure to approve a recommendation to the Council; and
 2. Cause notice to be given, the matter to be placed on the Council's agenda, a public hearing to be held and a decision to be made by the Council. No further action shall be taken by the Planning Commission.

(Ord. 415 § 7.162.120, 2002)

16.76.130 Denial of the application—Re-submittal.

An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve (12) months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome.

(Ord. 415 § 7.162.130, 2002)

16.76.140 Record may remain open—Admission of new evidence.

- A. Unless there is a continuance, the record shall remain open for new evidence for at least seven days at the request of any participant in the initial evidentiary hearing before the Planning Commission or the City Council, if the request is made prior to the conclusion of the hearing.
- B. When the record is left open to admit new evidence, testimony, or criteria for decision-making, any person may raise new issues which relate to that new material.

(Ord. 415 § 7.162.140, 2002)

16.76.150 Ex parte communications with approval authority.

- A. Members of the approval authority shall not:
 - 1. Communicate, directly or indirectly, with any party or representative of a party in connection with any issue involved except upon giving notice and opportunity for all parties to participate; nor
 - 2. Take notice of any communication, report or other materials outside the record prepared by the proponents or opponents in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed.
- B. No decision or action of the Planning Commission or Council shall be invalid due to an ex parte contact or bias resulting from an ex parte contact with a member of the decision making body, if the member of the decision making body receiving the contact:
 - 1. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
 - 2. Makes a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.
- C. Members of the Planning Commission shall be governed by the provisions of Oregon Revised Statute 227.035 and the provisions of this section.
- D. This section shall not apply to Planning Director decisions made under Section 16.76.080(A).
- E. A communication between the Planning Director or any city employee and the Planning Commission or Council shall not be considered an ex parte contact.

(Ord. 415 § 7.162.150, 2002)

16.76.160 Continuation of the hearing.

- A. An approval authority may continue the hearing from time to time to gather additional evidence, to consider the application fully or to give notice to additional persons.
- B. Unless otherwise provided by the approval authority, no additional notice need be given of a continued hearing if the matter is continued to a date, time and place certain.

(Ord. 415 § 7.162.160, 2002)

16.76.170 Evidence.

- A. All evidence offered and not objected to may be received unless excluded by the approval authority on its own motion.
- B. Evidence received at any hearing shall be of a quality that reasonable persons rely upon in the conduct of their everyday affairs.
- C. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence.
- D. Evidence shall be received and notice may be taken of those facts in a manner similar to that provided for in contested cases before state administrative agencies pursuant to ORS 183.450, except as otherwise provided for in this title.
- E. Formal rules of evidence, as used in courts of law, shall not apply.

(Ord. 415 § 7.162.170, 2002)

16.76.180 Judicial notice.

- A. The approval authority may take notice of the following:
 - 1. All facts which are judicially noticeable. Such noticed facts shall be stated and made part of the record;
 - 2. The Statewide Planning Goals and regulations adopted pursuant to Oregon Revised Statutes Chapter 197; and
 - 3. The comprehensive plan and other officially adopted plans, implementing ordinances, rules and regulations of the city.
- B. Matters judicially noticed need not be established by evidence and may be considered by the approval authority in the determination of the application.

(Ord. 415 § 7.162.180, 2002)

16.76.190 Participation in the decision—Voting.

- A. In addition to the provision of Oregon Revised Statute 227.035 which applies to Planning commission members or Oregon Revised Statutes Chapter 244 which applies to all members of an approval authority, each member of the approval authority shall be impartial. Any member having any substantial past or present involvement with the applicant, other interested persons, the property or surrounding property, or having a financial interest in the outcome of the proceeding, or having any pre-hearing contacts, shall state for the record the nature of their involvement or contacts, and shall either:

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1. State that they are not prejudiced by the involvement or contacts and will participate and vote on the matter; or
 2. State that they are prejudiced by the involvement or contact and will withdraw from participation in the matter.
- B. An affirmative vote by a majority of the qualified voting members of the approval authority who are present is required to approve, approve with conditions, or deny an application or to amend, modify, or reverse a decision on appeal.
- C. Notwithstanding subsections A and B of this section, no member of an approval authority having a financial interest in the outcome of an application shall take part in proceedings on that application; provided, however, with respect to the Council only, a member may vote upon a finding of necessity which shall be placed on the record by the presiding officer.
- D. In an appeal, if there is a tie vote, the decision which is the subject of appeal shall stand.
- (Ord. 415 § 7.162.190, 2002)

16.76.200 Record of proceeding for public hearings.

- A. A verbatim record of the proceeding shall be made by mechanical means (such as a tape recording), and:
1. It shall not be necessary to transcribe testimony except as provided for in Section 16.76.280.
 2. The minutes or (if applicable) transcript of testimony, or other evidence of the proceedings, shall be part of the record.
- B. All exhibits received shall be marked so as to provide identification upon review.
- C. The record shall include:
1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the approval authority as evidence;
 2. All materials submitted by the Planning Director to the approval authority with respect to the application including in the case of an appeal taken pursuant to Section 16.76.240, the record of the Planning Director's decision as provided by Section 16.76.090;
 3. The transcript of the hearing, if requested by the Council or a party, or the minutes of the hearing, or other evidence of the proceedings before the approval authority;
 4. The written findings, conclusions, decision and, if any, conditions of approval of the approval authority;
 5. Argument by the parties or their legal representatives permitted in Section 16.76.270 at the time of review before the Council;
 6. All correspondence relating to the application; and
 7. A copy of the notice which was given as provided by Section 16.76.050, accompanying affidavits and list of persons who were sent mailed notice.

(Ord. 415 § 7.162.200, 2002)

16.76.210 Form of the final decision.

- A. The final decision shall be a decision which is in writing and which has been signed by the Planning Director.

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- B. The final decision shall be filed in the records of the Planning Director within ten (10) calendar days after the decision is made by the approval authority, and notice thereof shall be mailed to the applicant and all parties in the action, and shall be available to the approval authority.

(Ord. 415 § 7.162.210, 2002)

16.76.220 Notice of final decision by the Planning Commission or Council.

- A. Notice of a final decision shall briefly summarize the decision and contain:
1. A statement that all required notices under Section 16.76.040;
 2. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
 3. The date the final decision was filed; and
 4. A statement of whether a party to the proceeding may seek appeal of the decision, as appropriate:
 - a. In the case of a final decision by the Council, the statement shall explain that this decision is final and how appeal may be heard by a higher authority, or
 - b. In the case of a final decision by the Planning Commission, the statement shall explain briefly how an appeal can be taken to the Council pursuant to Section 16.76.260, the deadlines, and where information can be obtained.
- B. Notice of the final decision by the Planning Commission or Council shall be mailed to the applicant and to all the parties to the decision, and shall be made available to the members of the Council.

(Ord. 415 § 7.162.220, 2002)

16.76.230 Amending a decision by the Planning Director.

- A. The Planning Director may issue an amended decision after the notice of final decision has been issued and prior to the end of the appeal period.
- B. A request for an amended decision shall be in writing, and filed with the Planning Director not more than eight days after the notice of final decision has been filed.
- C. A request for an amended decision may be filed by:
1. The recognized neighborhood planning organization affected by the initial decision;
 2. Motion of the City Council;
 3. Motion of the Planning Commission;
 4. The Planning Director;
 5. Any party entitled to notice of the original decision.
- D. The amended decision process shall be limited to one time for each original application.
- E. The Planning Director shall make the determination as to issuance of an amended decision based on findings that one or more of the following conditions exist:
1. An error or omission was made on the original notice of final decision;

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2. The original decision was based on incorrect information and incorrect information may only be considered in administrative actions before the Planning Director;
 3. New information becomes available during the appeal period which was not available when the decision was made which alters the facts or conditions in the original decision. New information may only be considered in administrative actions before the Planning Director.

F. An amended decision shall be processed in accordance with Section 16.76.100.

(Ord. 415 § 7.162.230, 2002)

16.76.240 Standing to appeal.

- A. In the case of a decision by the Planning Director, any person entitled to notice of the decision under this chapter, or any person who is adversely affected or aggrieved by the decision, may file a notice of appeal as provided by Section 16.76.290.
- B. In the case of a decision by the Planning Commission, except for a decision on an appeal of the Planning Director's decision, a person shall be considered a party to a matter, thus having standing to seek appeal, provided:
 1. They are the applicant or owner of the subject property.
 2. They were entitled to written notice of the decision, as determined in this title.
 3. The person appeared before the Planning Commission orally or in writing:

(Ord. 488, § 2(Exh. A), 2019; Ord. 415 § 7.162.240, 2002)

16.76.250 Computation of appeal period.

- A. The length of the appeal period shall be fifteen (15) days from the date of mailing the notice of decision.
- B. In computing the length of the appeal period, the day that notice of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day.

(Ord. 415 § 7.162.250, 2002)

16.76.260 Determination of appropriate appeal body.

- A. All appeals of decisions or interpretations made by the Planning Director may be appealed to the Planning Commission or pursuant to Section 16.76.080 except the Council may, on its own motion, seek to hear the matter by voice vote prior to the effective date of the notice of the decision.
- B. Any decision made by the Planning Commission under this chapter may be reviewed by the Council by:
 1. The filing of a notice of appeal as provided by Section 16.76.290, by any party to the decision by 3:30 p.m. on the last day of the appeal period;
 2. The Council or Planning Commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or
 3. Referral of a matter under Section 16.76.080(D) by the initial hearings body to the Council, upon closure of the hearing, when the case presents a policy issue which requires Council deliberation and determination, in which case the Council shall decide the application.

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- C. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals.

(Ord. 415 § 7.162.260, 2002)

16.76.270 Type of appeal hearing—Limitations of appeal.

- A. The appeal of a decision made by the Planning Director under Section 16.76.080(A) or Section 16.76.090, shall be confined to the prior record and conducted as if brought under Section 16.76.080(B) or (C).
- B. The appeal of a decision of the Planning Commission to the Council shall be:
1. Confined to the record of the proceedings unless Council determines the admission of additional evidence is appropriate;
 2. Limited to the grounds relied upon in the notice of appeal and the hearing shall be conducted in accordance with the provisions of this chapter.
- C. The subject of written and oral argument. Such written argument shall be submitted not less than five days prior to Council consideration; and
- D. Reviews on the record by Council of Planning Commission decisions shall be completed within forty (40) days of when the notice of appeal is filed.

(Ord. 415 § 7.162.270, 2002)

16.76.280 Transcripts.

- A. The appellant shall be responsible to satisfy all costs incurred for preparation of the transcript. An estimated payment shall be made prior to the preparation of the transcript; any additional actual cost shall be paid prior to the hearing or if the actual cost is less than the estimate the remainder shall be returned.
- B. Any party other than the appellant that requests a transcript shall be charged the actual copy costs.

(Ord. 415 § 7.162.280, 2002)

16.76.290 Notice of appeal.

- A. The notice of appeal shall be filed within the appeal period and contain:
1. A reference to the application sought to be appealed;
 2. A statement of the petitioner's standing to the appeal;
 3. The specific grounds for the appeal; and
 4. The date of the final decision on the action or, in the case of a decision by the Planning Director, the date the decision was filed.
- B. The appeal application shall be accompanied by the required fee except as allowed under Section 16.76.300.

(Ord. 415 § 7.162.290, 2002)

16.76.300 Fee waivers.

- A. Fees for land use applications and appeals of a land use decision shall be waived for a recognized neighborhood planning organization (NPO) if all of the following conditions are met:
1. The appeal or land use application must have been supported by a majority vote of NPO members at a public meeting where a quorum of NPO members was present;
 2. A copy of the minutes of the NPO meeting where the appeal or land use application was initiated must be submitted with the appeal or land use application;
 3. The appeal or application will be considered valid when conditions (1) and (2) of this subsection are met and all other filing requirements are met; and
 4. The NPO chairperson or designated representative shall appear at the next available City Council meeting after the application or appeal is filed to request a waiver. The NPO shall work through the City Recorder to schedule the item on a Council agenda.
- B. Council may, on its own motion and by voice vote, waive the appeal fee for other nonprofit organizations.
- (Ord. 415 § 7.162.300, 2002)

16.76.310 Persons entitled to notice of appeal—Type of notice.

Upon appeal, notice shall be given to parties entitled to notice under Sections 16.76.040 and 16.76.240.

(Ord. 415 § 7.162.310, 2002)

16.76.320 Contents of notice of appeal.

Notice shall include those matters provided by Section 16.76.050.

(Ord. 415 § 7.162.320, 2002)

16.76.330 Action on appeal.

- A. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 16.76.120; or
- B. Upon the written consent of all parties to extend the one-hundred-twenty day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial hearing. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:
1. The prejudice to parties;
 2. The convenience or availability of evidence at the time of the initial hearing;
 3. The surprise to opposing parties;
 4. The date notice was given to other parties as to an attempt to admit; or
 5. The competency, relevancy and materiality of the proposed testimony or other evidence.
- (Ord. 415 § 7.162.330, 2002)

16.76.340 Effective date of final action.

- A. Within ten (10) days of the filing of the final order by the Council, the Planning Director shall give notice of the final order to all parties to the proceeding, informing them of the date of filing, the decision rendered, and where a copy may be found.
- B. Action by the appellate authority on appeal shall be final and effective on the day of mailing notice of the final order.

(Ord. 415 § 7.162.340, 2002)

16.76.350 Revocation of approvals.

- A. The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted pursuant to this chapter for any of the following reasons:
 - 1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;
 - 2. A failure to comply with the terms and conditions of approval;
 - 3. A failure to use the premises in accordance with the terms of the approval; or
 - 4. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional.
- B. In the case of a decision made by the Planning Director, the hearing on whether to modify or revoke an approval shall be held by the Planning Commission.
- C. A petition for appeal of a revocation or modification may be filed in the same manner as provided by Section 16.76.260.

(Ord. 415 § 7.162.350, 2002)

16.76.360 Expiration and extension of approvals.

- A. Approvals issued pursuant to this chapter shall be effective for a period two years from the date of approval.
- B. Approval shall lapse if:
 - 1. Substantial construction of the approved plan has not been completed within a two-year period;
 - 2. Construction on the site is a departure from the approved plan.
- C. The Planning Commission may, upon written request by the applicant, grant an extension of the approval period not to exceed one year; provided, that:
 - 1. No changes are made on the original approved tentative plan;
 - 2. The applicant has expressed written intent of submitting a final plat within the one-year extension period; and
 - 3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- D. Written notice of the decision regarding an extension of time shall be provided to the applicant.

(Ord. 415 § 7.162.360, 2002)

Chapter 16.78 PROCEDURES FOR DECISION MAKING—LIMITED LAND USE DECISIONS

16.78.010 Purpose.

The purpose of this chapter is to establish procedures for limited land use decisions.

(Ord. 415 § 7.164.010, 2002)

16.78.020 General policies.

- A. A limited land use decision is a final decision or determination pertaining to a site within the urban growth boundary which concerns: (1) the approval or denial of a subdivision or partition; or (2) the approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright.
- B. A limited land use decision shall be consistent with applicable provisions of the comprehensive plan and this title consistent with ORS 197.195(1).
- C. Such decisions may include conditions authorized by law.
- D. Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(Ord. 415 § 7.164.020, 2002)

16.78.030 Consolidation of proceedings.

- A. Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.
- B. The decision shall be made by the approval authority having original jurisdiction over one of the applications under Section 16.78.060 in the following order of preference: the Planning Commission or the Planning Director.
- C. Where there is a consolidation of proceedings:
 - 1. The notice shall identify each action to be taken;
 - 2. Separate actions shall be taken on each application;
 - 3. In a consolidated proceeding, the staff report and recommendation provided by the Planning Director shall be consolidated into a single report.
- D. Limited land use decisions that are consolidated with quasi-judicial decisions shall be decided under the quasi-judicial decision making process.

(Ord. 415 § 7.164.030, 2002)

16.78.040 Application process.

- A. The applicant for a subdivision or site development review shall be required to meet with the Planning Director for a pre-application conference. Such a requirement may be waived by submission of a written request by the applicant.
- B. At the pre-application conference, if conducted, the Planning Director shall:
 - 1. Cite the applicable comprehensive plan policies and map designation;
 - 2. Cite the applicable substantive and procedural ordinance provisions;
 - 3. Provide available technical data and assistance which will aid the applicant as provided by the public works director and city engineer;
 - 4. Identify other policies and regulations that relate to the application; and
 - 5. Identify other opportunities or constraints that relate to the application.
- C. Another pre-application conference is required if an application is submitted six months after the pre-application conference.
- D. Failure of the Planning Director to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the City nor the Planning Director shall be liable for any incorrect information provided in the pre-application conferences.
- E. Applications for approval required under this title may be initiated by application of a record owner of property or contract purchaser.
- F. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.
- G. The application shall be made on forms provided by the city.
- H. The application shall include:
 - 1. The information requested on the application form;
 - 2. Narrative addressing appropriate criteria in sufficient detail for review and action;
 - 3. The required fee.
- I. The Planning Director may require information in addition to that required by a specific provision of this title, provided the Planning Director determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.
- J. The Planning Director may waive the submission of information for a specific requirement, provided the Planning Director finds that specific information is not necessary to properly evaluate the application; or the Planning Director finds that a specific approval standard is not applicable to the application.
- K. When, within thirty (30) days of receipt of the application, the Planning Director finds an application is complete, the application shall be deemed complete as of the date of submittal.
- L. If an application is incomplete, the Planning Director shall notify the applicant in writing within thirty (30) days of receipt of the application of exactly what information is missing; and allow the applicant to submit the missing information. The application shall be deemed complete:
 - 1. Upon receipt of all missing information; or
 - 2. Upon receipt of some of the missing information and written notice from the applicant that no other information will be provided; or

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- 3. Upon receipt of written notice from the applicant that none of the missing information will be provided.
 - M. On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information and fails to submit a completed application.
 - N. When the missing information is provided, the application shall be deemed complete and at that time the one-hundred-twenty day time period shall begin.
- (Ord. 462 § 1, 2011; Ord. 415 § 7.164.040, 2002)

16.78.050 Time period for decision making.

The city shall take final action on an application for a limited land use decision including the resolution of all appeals within one hundred twenty (120) days after the application is deemed complete, except:

- A. The one-hundred-twenty day period may be extended for a reasonable period of time at the written request of the applicant; and
- B. The one-hundred-twenty day period applies only to a decision wholly within the authority and control of the city.

(Ord. 462 § 1, 2011; Ord. 415 § 7.164.010, 2002)

16.78.060 Approval authority responsibilities.

- A. The Planning Director shall have the authority to approve, deny or approve with conditions the following applications:
 - 1. Property line adjustments and re-establishments pursuant to Chapter 16.68;
 - 2. Partitions pursuant to Chapter 16.70;
 - 3. Accessory dwelling units pursuant to Chapter 16.54;
 - 4. Subdivision final plats pursuant to Chapter 16.72;
 - 5. Temporary uses pursuant to Chapter 16.52;
 - 6. Extensions of time for applications previously approved under this chapter;
 - 7. Site Development Review minor modifications pursuant to Chapter 16.58;
 - 8. Conditional Use Permit minor modifications pursuant to Chapter 16.60.060.
- B. The Planning Commission shall have the authority to approve, deny or approve with conditions the following applications:
 - 1. Subdivision tentative plats pursuant to Chapter 16.72;
 - 2. Site development review pursuant to Chapter 16.58, except site development review for sites subject to the Aurora Design Review Guidelines for Historic District Properties. All applications subject to the Aurora Design Review Guidelines for Historic District Properties shall be processed in accordance with Chapter 16.76;
 - 3. Temporary structures pursuant to Chapter 16.52.
 - 4. Site development review major modifications pursuant to Chapter 16.58.

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5. Alteration or restoration of non-conforming uses or structures pursuant to Chapter 16.62.
- C. The decision shall be based on the approval criteria set forth in Section 16.78.090.
(Ord. 493, § 2(Exh. A), 2021; Ord. 488, § 2(Exh. A), 2019; Ord. 462 § 1, 2011; Ord. 415 § 7.164.010, 2002)

16.78.070 Notice requirements.

- A. For limited land use decisions by the Planning Director, written notice of the administrative decision shall be provided to owners of property adjacent to the entire contiguous site for which the application is made. The administrative decisions shall be final fourteen (14) days following the date of mailing if no written comments are received.
- B. Tentative subdivision plats and site development review shall require notice to owners of property within one hundred (100) feet of the entire contiguous site for which the application is made.
- C. Tentative subdivision plats and site development review shall also require notice to be printed in the local newspaper at least fourteen (14) days prior to the meeting clearly identifying the decision that is pending, stating that there is no public hearing and there is a fourteen-day period for public written comment regarding the pending limited land use decision and including the expiration date for receipt of written comments.
- D. The property owner list shall be compiled from the most recent property tax assessment roll.
- E. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- F. Notices mailed to property owners shall include the following information:
1. A description of the subject property and a general location which shall include tax map designations from the county assessor's office;
 2. A map showing the location of the subject property;
 3. A description of what the application will allow the applicant to do and what the applicable criteria for the decision are;
 4. State that a fourteen-day period for submission of written comments is provided prior to the decision;
 5. State the place, date and time that the written comments are due;
 6. State that copies of all documents or evidence relied upon by the applicant are available for review, the address where copies can be reviewed and that copies can be obtained at cost;
 7. A statement that issues which may provide the basis for an appeal must be raised in writing during the comment period and comments must be sufficiently specific give the decision maker an opportunity to respond to the issue;
 8. A statement that a limited land use decision does not require an interpretation or the exercise of policy or legal judgment, or a public hearing;
 9. A statement that the applicant and any person who submits written comments during the fourteen-day period shall receive notice of the decision.
- G. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.
- H. Personal notice is deemed given when the notice is deposited with the United States Postal Service.

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- I. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.
 - J. The records of the Marion County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice.

(Ord. 415 § 7.164.070, 2002)

16.78.080 Decision procedure.

The Planning Commission limited land use decision shall be conducted as follows:

- A. Request the Planning Director to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;
- B. Allow the applicant or a representative of the applicant discuss the application and respond to the staff report;
- C. Request the Planning Director read all written comments received into the record;
- D. Allow the applicant to respond to all written comments;
- E. Make a decision pursuant to Section 16.78.090 or continue the decision to gather additional evidence or to consider the application further.

(Ord. 462 § 1, 2011; Ord. 415 § 7.164.080, 2002)

16.78.090 Standards for the decision.

- A. The decision shall be based on proof by the applicant that the application fully complies with:
 - 1. The city comprehensive plan; and
 - 2. The relevant approval standards found in the applicable chapter(s) of this title and other applicable implementing ordinances.
- B. Consideration may also be given to:
 - 1. Proof of a substantial change in circumstances; and
 - 2. Factual written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B)(1) of this section.
- C. In all cases, the decision shall include findings of fact addressing all applicable criteria.
- D. The decision may be for denial, approval or approval with conditions. Conditions may be imposed where such conditions are necessary to:
 - 1. Carry out applicable provisions of the Aurora comprehensive plan;
 - 2. Carry out the applicable implementing ordinances;
 - 3. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;

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4. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application may be required to sign and deliver to the Planning Director their acknowledgment in a development agreement and consent to such conditions:
 - a. The Mayor shall have the authority to execute such development agreements on behalf of the city,
 - b. No building permit shall be issued for the use covered by the application until the executed contract is recorded in the county records, and
 - c. Such development agreements shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity;
 5. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.
- E. The final decision on the application may grant less than all of the parcel which is the subject of the application.
- (Ord. 415 § 7.164.090, 2002)

16.78.100 Notice of decision.

- A. All limited land use decisions require a notice of decision.
- B. The applicant and any person who submits written comments during the fourteen-day period shall be entitled to receive the notice of decision.
- C. The notice of decision shall include:
 1. A brief summary of the decision;
 2. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
 3. The date the final decision was made; and
 4. A statement of whether a party to the proceeding may seek appeal of the decision, as appropriate.
- D. Within ten (10) calendar days after the decision is made by the approval authority, the final decision shall be filed in the records of the Planning Director and notice thereof shall be mailed to the applicant and all parties in the action and shall be available to the approval authority.

(Ord. 419 § 18C, 2002; Ord. 415 § 7.164.100, 2002)

16.78.110 Record of proceeding.

The record shall include:

- A. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;
- B. All testimony, evidence and correspondence relating to the application;
- C. All information considered by the approval authority in making the decision;

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- D. The staff report of the Planning Director;
 - E. A list of the conditions, if any are attached to the approval of the application; and
 - F. A copy of the notice advising of the decision which was given pursuant to Section 16.78.100 and accompanying affidavits, and a list of all persons who were given mailed notice.
 - G. The staff report and notice of decision for limited land use decisions by the Planning Director may be combined as one document.

(Ord. 415 § 7.164.110, 2002)

16.78.120 Appeal.

- A. Standing to Appeal. Any person shall be considered a party to a matter, thus having standing to seek appeal, provided the person submitted written comments to the approval authority during the fourteen-day period prior to the decision or the person was entitled as of right to notice prior to the decision to be reviewed.
- B. Computation of Appeal Period.
 - 1. The length of the appeal period shall be fifteen (15) days from the final decision.
 - 2. In computing the length of the appeal period, the day of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day.
- C. Determination of Appropriate Appeal Body.
 - 1. Any decision made by the Planning Director under this chapter may be reviewed by the Planning Commission by:
 - a. The filing of a notice of appeal and payment of required fees by any party to the decision by 5:00 p.m. on the last day of the appeal period;
 - b. The Council or Planning Commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or
 - 2. Any decision made by the Planning Commission under this chapter, may be reviewed by the Council by:
 - a. The filing of a notice of appeal and payment of required fees by any party to the decision before 5:00 p.m. on the last day of the appeal period;
 - b. The Council or Planning Commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or
 - 3. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals.
- D. The notice of appeal shall be filed within the appeal period and contain:
 - 1. A reference to the application sought to be appealed;
 - 2. A statement of the petitioner's standing to the appeal;
 - 3. The specific grounds for the appeal;
 - 4. The date of the decision on the action;
 - 5. The applicable fees.
- E. The appeal hearing shall be confined to the prior record.

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- F. Upon appeal, notice shall be given to parties who are entitled to notice under Section 16.78.070.
- G. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 16.78.090; or upon the written consent of all parties to extend the one-hundred-twenty day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial decision. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:
1. The prejudice to parties;
 2. The convenience or availability of evidence at the time of the initial hearing;
 3. The surprise to opposing parties;
 4. The date notice was given to other parties as to an attempt to admit; or
 5. The competency, relevancy and materiality of the proposed testimony or other evidence.

(Ord. 419 § 18B, 2002; Ord. 415 § 7.164.120 (part), 2002)

16.78.130 Modification and revocation of approvals.

The approval authority may modify or revoke any approval granted pursuant to this chapter for any of the following reasons:

- A. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;
- B. A failure to comply with the terms and conditions of approval;
- C. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional.

(Ord. 415 § 7.164.120(part), 2002)

16.78.140 Denial of the application—Re-submittal.

An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve (12) months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome.

(Ord. 415 § 7.164.130, 2002)

16.78.150 Expiration and extension of approvals.

- A. Approval under this chapter shall be effective for a period of two years from the date of approval.
- B. The approval for a property line adjustment, partition or subdivision shall lapse if:
 1. A property line adjustment map or final plat has not been signed and recorded with the County within a two-year period;

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2. The property line adjustment map or final plat does not substantially conform to the approved tentative plan.
- C. Site development approvals shall lapse if:
1. A building permit has not been issued within two years from the date of approval;
 2. Construction on the site is a departure from the approved plan.
- D. The Planning Director may, upon written request by the applicant, grant a one-time extension of the approval period not to exceed one year provided, that:
1. No changes are made on the original approval;
 2. The applicant has expressed written intent of submitting a final map, plat and/or building permit application within the one-year extension period; and
 3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- E. Following the first one-year extension by the Planning Director, the applicant may submit a request to the Aurora Planning Commission so that the Planning Commission may transmit a recommendation to the Aurora City Council for additional one-year approval extensions.
- F. Applications for Approval Extension
1. The written extension request must be received by the City at least thirty (30) days prior to expiration of the approval.
 2. The Planning Director shall provide notice consistent with the required mailed notice for the original application of the opportunity to comment on the extension request. Written comments from parties who received the notice shall be received by the Planning Director within fifteen (15) days after the notice was mailed.
 3. Written notice of the decision regarding an extension of time shall be provided to the applicant and to parties who submitted written comments within the fifteen-day comment period. The parties who receive a written notice of the decision may appeal the decision to the Planning Commission provided the City Recorder receives a written appeal of the decision within fifteen (15) days after the extension decision was mailed. The written appeal shall state the reasons why the decision is appealed.

(Ord. 462 § 1, 2011)

Chapter 17.162PROCEDURES FOR DECISION MAKING--QUASI-JUDICIALSections:

- 17.162.010 Purpose.
- 17.162.020 Application process.
- 17.162.021 Consolidation of proceedings.
- 17.162.025 Noticing requirements.
- 17.162.030 Contents of notice for public hearings.
- 17.162.040 Failure to receive notice.
- 17.162.050 Time period for decision making.
- 17.162.090 Approval authority responsibilities.
- 17.162.110 Decision by the planner--No hearing required.
- 17.162.120 Notice of decision by the planner.
- 17.162.130 Hearings procedure.
- 17.162.140 Decision process.
- 17.162.150 Denial of the application--Re-submittal.
- 17.162.160 Record may remain open--Admission of new evidence.
- 17.162.170 Ex parte communications with approval authority.
- 17.162.180 Continuation of the hearing.
- 17.162.200 Evidence.
- 17.162.210 Judicial notice.
- 17.162.220 Participation in the decision--Voting.
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- 17.162.240 Form of the final decision.
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- 17.162.270 Standing to appeal.
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- 17.162.330 Fee waivers.
- 17.162.340 Persons entitled to notice of appeal-Type of notice.
- 17.162.350 Contents of notice of appeal.
- 17.162.360 Action on appeal.
- 17.162.380 Effective date of final action.
- 17.162.390 Revocation of approvals.

17.162.010 Purpose. The purpose of this chapter is to establish procedures for the consideration of development applications, for the consideration of quasi-judicial comprehensive plan or zoning amendments and for appeal of quasi-judicial decisions. (Ord. 634 §1 Exh. A (part), 1995)

17.162.020 Application process. A. The applicant shall be required to meet with the planner for a pre-application conference. Such a requirement may be waived in writing by the applicant.

B. The planner will invite city staff from other departments to provide technical expertise applicable to the proposal, as necessary, as well as other public agency staff.

C. At such conference, the planner shall:

1. Cite the applicable comprehensive plan policies and map designation;

2. Cite the applicable substantive and procedural ordinance provisions;

3. Provide available technical data and assistance which will aid the applicant as provided by the public works director;

4. Identify other policies and regulations that relate to the application; and

5. Identify other opportunities or constraints that relate to the application.

D. Another preapplication conference is required if an application is submitted six months after the preapplication conference.

E. Failure of the planner to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the city nor the planner shall be liable for any incorrect information provided in the preapplication conferences.

F. Applications for approval required under this title may be initiated by:

1. Resolution of the city council;

2. Resolution of the planning commission;

3. The planner;

4. A recognized neighborhood planning organization or city advisory board or commission; or

5. Application of a record owner of property or contract purchaser.

G. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.

H. The application shall be made on forms provided by the planner.

I. The application shall:

1. Include the information requested on the application form;

2. Address appropriate criteria in sufficient detail for review and action; and

3. Be accompanied by the required fee.

J. The planner may require information in addition to that required by a specific provision of this title, provided the planner determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.

K. The planner may waive the submission of information for a specific requirement provided the planner finds that specific information is not necessary to properly evaluate the application; or the planner finds that a specific approval standard is not applicable to the application.

L. Where a requirement is found by the planner to be inapplicable, the planner shall:

1. Indicate for the record and to the applicant the specific requirements found inapplicable; and

2. Advise the applicant in writing that the finding may be challenged on appeal or at the hearing or decision on the matter and may be denied by the approval authority; and

3. Cite in the staff report on the application the specific requirements found inapplicable, the reasons therefor and the specific grant of authority.

M. An application shall be deemed incomplete unless it addresses each element required to be considered under applicable provisions of this title and the application form, unless that requirement has been found inapplicable by the planner. The planner shall not accept an incomplete application.

N. If an application is incomplete, the planner shall:

1. Notify the applicant within thirty days of receipt of the application of exactly what information is missing; and
2. Allow the applicant to submit the missing information.

O. The application shall be deemed complete when the missing information is provided and at that time the one hundred twenty-day time period shall begin to run for the purposes of satisfying state law.

P. If the applicant refuses to submit the missing information, the application shall be deemed incomplete on the thirty-first day after the planner first received the application and returned to the applicant.

Q. Referrals will be sent to interested agencies such as city departments, police department, fire district, school district, utility companies, and applicable city, county, and state agencies. Affected jurisdiction and agencies could include the Department of Environmental Quality, the Oregon Department of Transportation, and Columbia County Rider. (Ord. 634 91 Exh. A (part), 1995)

17.162.021 Consolidation of proceedings. A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.

B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 17.164.110, in the following order of preference: the council, the commission, or the planner.

C. Where there is a consolidation of proceedings:

1. The notice shall identify each action to be taken;
2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one hundred twenty-day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the planner shall not be required to consolidate a plan map amendment and a zone change or other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one hundred twenty-day time limit prescribed by state law for zone change and permit applications; and
3. Separate actions shall be taken on each application.

D. Consolidated Permit Procedure.

1. Use of the consolidated permit procedures described in this section shall be at the election of the applicant.

2. When the consolidated procedure is elected, application and fee requirements shall remain as provided by resolution approved by the council. If more than one permit is required by this title or other ordinance to be heard by the planning commission or city council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permit by this or any other ordinance shall be applied in the consolidated procedures to each application.

3. In a consolidated proceeding, the staff report and recommendation provided by the planner shall be consolidated into a single report.

4. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure. (Ord. 634 §1 Exh. A (part), 1995)

17.162.025 Noticing requirements. A. Notice of a pending quasi-judicial public hearing shall be given by the planner in the following manner:

1. At least twenty days prior to the scheduled hearing date, or if two or more hearings are scheduled, ten days prior to the first hearing, notice shall be sent by mail to:

a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

b. All property owners of record or the most recent property tax assessment roll within three hundred feet of the property which is the subject of the notice plus any properties abutting proposed off-site improvements.

c. Any governmental agency or utility whose property, services or facilities may be affected by the decision. The reviewing City Staff shall determine the extent of notice to public agencies or utilities based on perceived interest or impact; noticed agencies may include:

- i. Columbia County Land Development Services;
- ii. Columbia County Road Department;
- iii. Oregon Department of Transportation (ODOT);
- iv. ODOT Rail Division;
- v. Portland & Western Railroad;
- vi. Scappoose Rural Fire Protection District;
- vii. Port of St. Helens;
- viii. Oregon Department of Aviation;
- ix. Scappoose School District;
- x. Columbia County Soil Conservation District;
- xi. Scappoose Drainage Improvement Company; or
- xii. Any other affected agencies as identified

by the planner;

d. Acknowledged neighborhood planning organizations, if active;

e. Any person who requests, in writing; and

f. The appellant and all parties to an appeal.

2. At least thirty-five days before the initial hearing on adoption of any proposal to amend the comprehensive plan map or zoning map, notice shall be sent to the Department of Land Conservation and Development;

3. Notice of a hearing on a proposed zone change for a manufactured home park shall be given to tenants of that manufactured home park at least twenty days but no more than forty days prior to the hearing; and

4. The planner shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.

B. For all quasi-judicial decisions requiring a public hearing, the applicant shall post signs provided by the planner displaying notice of the pending hearing at least fourteen days prior to the date of the hearing. One sign shall be required for each three hundred feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the planner to assure that the information is legible from the public right-of-way. As a precondition to a hearing, the applicant shall file an affidavit of such posting with the planner no less than ten days prior to the hearing.

C. For all quasi-judicial decisions requiring a public hearing, at least ten days prior to the hearing, notice shall be given in a newspaper of general circulation in the city. An affidavit of publication shall be made part of the administrative record. (Ord. 828, 2013; Ord. 634 §1 Exh. A (part), 1995)

17.162.030 Contents of the notice for public hearings. Notice given to persons entitled to mailed or published notice pursuant to Section 17.162.025 shall include the following information:

A. A description of the subject property, the street address if available, and a general location which shall include tax map designations from the county assessor's office;

B. Except for notice published in the newspaper, a map showing the location of the property;

C. An explanation of the nature of the application and the proposed use or uses which could be authorized; D. The applicable criteria from the ordinances and comprehensive plan that apply to the application;

E. The time, place and date of the public hearing;

F. A statement that both public oral and written testimony is invited, a general explanation of the requirements for submission of evidence and the procedure for conduct of the hearing;

G. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

H. A statement that all documents or evidence in the file are available for inspection at no cost, or copies at a reasonable cost;

I. A statement that a copy of the staff report will be available for inspection at no cost, or copies at reasonable cost, at least seven days prior to the hearing;

J. A statement that failure to raise an issue in the hearing or during the comment period, in person or by letter, or failure to provide sufficient specific detail to give the decision maker or hearing body an opportunity to respond to the issue, precludes appeal to the land use board of appeals on that issue. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue. (Ord. 877, 2019; Ord. 634 §1 Exh. A (part), 1995)

17.162.040 Failure to receive notice. A. Where either the planning commission or council or both intend to hold more than one public hearing on the same application, notice of several public hearings before both approval authorities may be given in one notice.

B. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.

C. Personal notice is deemed given when the notice is deposited with the United States Postal Service.

D. Published notice is deemed given on the date it is published.

E. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.

F. The records of the Columbia County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.050 Time period for decision making. The city shall take final action on an application for a permit, plan change or zone change, including the resolution of all appeals, within one hundred twenty days after the application is deemed complete, except:

A. The one hundred twenty-day period may be extended for a reasonable period of time at the request of the applicant;

B. The one hundred twenty-day period applies only to a decision wholly within the authority and control of the city; and

C. The one hundred twenty-day period does not apply to an amendment to an acknowledged comprehensive plan or land use regulation. (Ord. 634 §1 Exh. A (part), 1995)

17.162.090 Approval authority responsibilities. A. The planner shall have the authority to approve, deny or approve with conditions the following applications:

1. Interpretations subject to Section 17.01.050;

2. Determination of parking requirements for unlisted uses;

3. Determination of access, egress and circulation plan (not subject to planning commission approval) pursuant to public works design standards;

4. Sign, sign exception, and sign variance pursuant to Chapter 17.114;

5. Minor variance pursuant to Chapter 17.134;

6. Type I home occupation pursuant to Chapter 17.142;

7. Sensitive land permits (for applications not subject to planning commission approval) pursuant to Chapter 17.84, Chapter 17.85, Chapter 17.86, and Chapter 17.89; and

8. Public land tree removal not associated with timber harvesting and clearing from designated public recreation areas.

9. Type I Food cart pod permits, subject to Chapter 17.126.

B. The planner may refer any application for review to the planning commission.

C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:

1. Recommendations for applicable comprehensive plan and zoning district designations to city council for lands annexed to the city;

2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The commission may transmit its recommendation in any form and a final order need not be formally adopted;

3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment and is subject to 17.160.120(C);

4. Conditional use pursuant to Chapter 17.130;

5. Major variance pursuant to Chapter 17.134;

6. Sensitive land permits and variances pursuant to Chapter 17.84, Chapter 17.85, and Chapter 17.86 for applications requiring planning commission action;

7. Type II home occupation pursuant to Chapter 17.142;

8. Historic overlay district exterior alteration and new construction applications pursuant to Chapter 17.82;

9. Public land tree removal associated with timber harvesting and clearing from designated public recreation areas;

10. Authorization of Similar Use pursuant to Chapter 17.43;

11. Fence or fence/berm combination greater than eight feet in height;

12. Conceptual master plan or modification of conceptual master plan pursuant to Chapter 17.74;

13. Type II Food cart pod permits, subject to Chapter 17.126.

14. Appeal of a decision made by the planner; and

15. Any other matter not specifically assigned to the planner, or the city council under this title.

D. Upon appeal or recommendation, the city council shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, deny or approve with conditions the following development applications:

1. Annexations and the formal imposition of plan and zone designations made to lands annexed to the city;

2. Quasi-judicial plan and zone amendments, including overlay zones;

3. Creation, modification or removal of a historic overlay designation or demolition of a historic site, structure or landmark pursuant to Chapter 17.82;

4. Matters referred to the council by the planning commission;

5. Review of decisions of the planning commission, whether on the council's own motion or otherwise. (Ord. 877, 2019; Ord. 857, 2016; Ord. 828, 2013; Ord. 820 §12, 2012; Ord. 817, 2011; Ord. 736 §1, 2003; Ord. 634 §1 Exh. A (part), 1995)

17.162.110 Decision by the planner--No hearing required. A. Pursuant to Section 17.162.090(A), the planner is authorized to make certain decisions, and no hearing shall be held unless:

1. An appeal is filed; or
2. The planner has an interest in the outcome of the decision, due to some past or present involvement with the applicant, other interested persons or in the property or surrounding property. In such cases, the application shall be treated as if it were filed under Section 17.162.090(C).

B. The decision shall be based on the approval criteria set forth in Section 17.162.140.

C. Notice of the decision by the planner shall be given as provided by Section 17.162.120 and notice shall be governed by the provisions of Section 17.162.030 and Section 17.162.040.

D. The record shall include:

1. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;
2. All correspondence relating to the application;
3. All information considered by the planner in making the decision;
4. The staff report of the planner;
5. A list of the conditions, if any are attached to the approval of the application; and
6. A copy of the notice advising of the planner's decision, a list of all persons who were given mailed notice and accompanying affidavits.

E. Standing to appeal shall be as provided by Section 17.162.200.

F. The appeal period shall be computed as provided by Section 17.162.210.

G. The method for taking the appeal shall be as provided by Subsection 17.162.220(A) and the notice of appeal submitted by an appellant shall be as provided by Section 17.162.250.

H. The hearing on the appeal shall be confined to the prior record as provided in Section 17.162.300.

I. Notice of the final decision on appeal shall be as provided by Section 17.162.250 and Section 17.162.240.

J. No decision by the planner may be modified from that set out in the notice except upon being given new notice.

K. The action on the appeal shall be as provided by Section 17.162.360.

L. A decision by the commission on an appeal of a planner's decision may be appealed to the council.

M. Re-submittal shall be as provided by Section 17.162.150, Denial of Application: Re-submittal.

N. The provisions of Section 17.162.390, Revocation of Approvals apply to a decision by the Planner. (Ord. 634 §1 Exh. A (part), 1995)

17.162.120 Notice of decision by the planner. A. Notice of the planner's decision on an application pursuant to Section 17.162.090(A) shall be given by the planner in the following manner:

1. Within five days of signing the proposed decision, notice shall be sent by mail to:

- a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
- b. All surrounding property owners or record of property within three hundred feet of the property for administrative variances and sensitive lands;
- c. All owners of record of property immediately abutting a site for home occupations and Type I food cart pods;
- d. The applicant for a planner's interpretation or a planner's decision regarding an extension of approval;
- e. The recognized neighborhood planning organization;
- f. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city which includes provision for such notice; and
- g. Any person who requests notice in writing.

B. The planner shall cause an affidavit of mailing to be filed and made a part of the administrative record.

C. Notice of a decision by the planner shall contain:

1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
2. The address and general location of the subject property;
3. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
4. The date the planner's decision will become final;
5. A statement that a person entitled to notice or adversely affected or aggrieved by the decision may appeal the decision:
 - a. The statement shall explain briefly how an appeal can be made, the deadlines and where information can be obtained, and
 - b. The statement shall explain that if an appeal is not filed, the decision shall be final;
6. A map showing the location of the property (planner's interpretations are exempt from this requirement); and
7. A statement that the hearing on an appeal will be confined to the prior record. (Ord. 877, 2019; Ord. 828, 2013; Ord. 634 \$1 Exh. A (part), 1995)

17.162.130 Hearings procedure. A. Unless otherwise provided in this title or other ordinances adopted by council:

1. The presiding officer of the planning commission and of the council shall have the authority to:
 - a. Determine standing;
 - b. Regulate the course, sequence and decorum of the hearing;
 - c. Dispose of procedural requirements or similar matters;
 - d. Rule on offers of proof and relevancy of evidence and testimony;
 - e. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation and rebuttal testimony; and
 - f. Take such other action appropriate for conduct commensurate with the nature of the hearing;

B. Unless otherwise provided in this title or other ordinances adopted by council, the presiding officer of the planning commission and of the council shall conduct the hearing as follows:

1. Opening statement: announce the nature and purpose of the hearing and summarize the rules of conducting the hearing, and if the proceeding is an initial evidentiary hearing before the planning commission or the city council, make a statement that:

- a. Lists the applicable substantive criteria;
- b. States that testimony and evidence must be directed toward the criteria described in subdivision (1) (a) of this subsection, or to the other criteria in the comprehensive plan or the title which they apply to the decision;
- c. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the land use board of appeals on that issue.

2. Quasi-judicial hearing process:

- a. Recognize parties;
- b. Request the planner to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;
- c. Allow the applicant or a representative of the applicant to be heard;
- d. Allow parties or witnesses in favor of the applicant's proposal to be heard;
- e. Allow parties or witnesses in opposition to the applicant's proposal to be heard;
- f. Upon failure of any party to appear, the approval authority shall take into consideration written material submitted by such party;
- g. Allow the parties in favor of the proposal to offer rebuttal evidence and testimony limited to rebuttal of points raised.
- h. Make a decision pursuant to Section 17.162.140 or take the matter under advisement pursuant to Section 17.162.180.

C. Unless otherwise provided in this title or other ordinances adopted by the council, the following rules shall apply to the general conduct of the hearing:

1. The approval authority may ask questions at any time before the close of the hearing, and the answers shall be limited to the substance of the question;
2. Parties or the planner must receive approval from the approval authority to submit questions directly to other parties or witnesses or the planner;
3. A reasonable amount of time shall be given to persons to respond to questions;
4. No person shall testify without first receiving recognition from the approval authority and stating his full name and address;
5. The approval authority may require that testimony be under oath or affirmation;
6. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing or removal of persons responsible; and
7. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing. (Ord. 634 §1 Exh. A (part), 1995)

17.162.140 Decision process. A. The decision shall be based on:

1. Proof by the applicant that the application fully complies with:

a. Applicable policies of the city comprehensive plan; and

b. The relevant approval standards found in the applicable chapter(s) of this title, the public works design standards, and other applicable implementing ordinances.

B. Consideration may also be given to:

1. Proof of a substantial change in circumstances or a mistake in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application; and

2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B) (1) of this section.

C. In all cases, the decision shall include a statement in a form addressing the planner's staff report.

D. The approval authority may:

1. Adopt findings and conclusions contained in the staff report;

2. Adopt findings and conclusions of a lower approval authority;

3. Adopt its own findings and conclusions;

4. Adopt findings and conclusions submitted by any party provided all parties have had an opportunity to review the findings and comment on the same; or

5. Adopt findings and conclusions from another source, either with or without modification, having made a tentative decision, and having directed staff to prepare findings for review and to provide an opportunity for all parties to comment on the same.

E. The decision may be for denial, approval or approval with conditions.

1. Conditions may be imposed where such conditions are necessary to:

a. Carry out applicable provisions of the Scappoose comprehensive plan;

b. Carry out the applicable implementing ordinances; and

c. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;

2. Conditions may include, but are not limited to:

a. Minimum lot sizes;

b. Larger setbacks;

c. Preservation of significant natural features;

d. Dedication of easements; and

e. Conveyances and dedications of property needed for public use.

3. Conditions of approval shall be fulfilled within the time limit set forth in the decision or, if no time limit is set forth, the conditions of approval shall be fulfilled within one year. Failure to fulfill any condition of approval within the time limitations provided may be grounds for revocation of approval, after notice and an opportunity to be heard as a quasi-judicial action;

4. Changes, alterations or amendments to the substance of the conditions of approval shall be processed as a new action;

5. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application, may be required to sign and deliver to the planner their acknowledgment in a development agreement and consent to such conditions:

a. The city manager shall have the authority to execute the development agreement on behalf of the city,

b. No building permit shall be issued for the use covered by the application until the executed contract is recorded and filed in the county records, and

c. Such development agreement shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity;

6. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed pursuant to this subsection may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.

F. The final decision on the application may grant less than all of the parcel which is the subject of the application.

G. If the planning commission fails to recommend approval, approval with modification, or denial of an application within sixty days of its first public hearing, the planner shall:

1. Report the failure to approve a recommendation to the council; and

2. Cause notice to be given, the matter to be placed on the council's agenda, a public hearing to be held and a decision to be made by the council. No further action shall be taken by the planning commission. (Ord. 634 §1 Exh. A (part), 1995)

17.162.150 Denial of the application--Re-submittal. An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome. (Ord. 634 §1 Exh. A (part), 1995)

17.162.160 Record may remain open--Admission of new evidence. A. Unless there is a continuance, the record shall remain open for new evidence for at least seven days at the request of any participant in the initial evidentiary hearing before the planning commission or the city council, if the request is made prior to the conclusion of the hearing.

B. When the record is left open to admit new evidence, testimony, or criteria for decision-making, any person may raise new issues which relate to that new material. (Ord. 634 §1 Exh. A (part), 1995)

17.162.170 Ex parte communications with approval authority. A. Members of the approval authority shall not:

1. Communicate, directly or indirectly, with any party or representative of a party in connection with any issue involved except upon giving notice and opportunity for all parties to participate; nor

2. Take notice of any communication, report or other materials outside the record prepared by the proponents or opponents in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed.

B. No decision or action of the planning commission or council shall be invalid due to an ex parte contact or bias resulting from an ex parte contact with a member of the decision-making body, if the member of the decision making body receiving the contact:

1. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

2. Makes a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

C. Members of the planning commission shall be governed by the provisions of Oregon Revised Statute 227.035 and the provisions of this section.

D. This section shall not apply to planner decisions made under Section 17.162.090(A).

E. A communication between any city employee and the planning commission or council shall not be considered an ex parte contact. (Ord. 634 §1 Exh. A (part), 1995)

17.162.180 Continuation of the hearing. A. An approval authority may continue the hearing from time to time to gather additional evidence, to consider the application fully or to give notice to additional persons.

B. Unless otherwise provided by the approval authority, no additional notice need be given of a continued hearing if the matter is continued to a date, time and place certain. (Ord. 634 §1 Exh. A (part), 1995)

17.162.200 Evidence. A. All evidence offered and not objected to may be received unless excluded by the approval authority on its own motion.

B. Evidence received at any hearing shall be of a quality that reasonable persons rely upon in the conduct of their everyday affairs.

C. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence.

D. Evidence shall be received and notice may be taken of those facts in a manner similar to that provided for in contested cases before state administrative agencies pursuant to ORS 183.450, except as otherwise provided for in this title.

E. Formal rules of evidence, as used in courts of law, shall not apply. (Ord. 634 §1 Exh. A (part), 1995)

17.162.210 Judicial notice. A. The approval authority may take notice of the following:

1. All facts which are judicially noticeable. Such noticed facts shall be stated and made part of the record;

2. The Statewide Planning Goals and regulations adopted pursuant to Oregon Revised Statutes Chapter 197; and

3. The comprehensive plan and other officially adopted plans, implementing ordinances, rules and regulations of the city.

B. Matters judicially noticed need not be established by evidence and may be considered by the approval authority in the determination of the application. (Ord. 634 §1 Exh. A (part), 1995)

17.162.220 Participation in the decision--Voting. A. In addition to the provision of Oregon Revised Statute 227.035 which applies to planning commission members or Oregon Revised Statutes Chapter 244 which applies to all members of an approval authority, each member of the approval authority shall be impartial. Any member having any substantial past or present involvement with the applicant, other interested persons, the property or surrounding property, or having a financial interest in the outcome of the proceeding, or having any pre-hearing contacts, shall state for the record the nature of their involvement or contacts, and shall either:

1. State that they are not prejudiced by the involvement or contacts and will participate and vote on the matter; or

2. State that they are prejudiced by the involvement or contact and will withdraw from participation in the matter.

B. An affirmative vote by a majority of the qualified voting members of the approval authority who are present is required to approve, approve with conditions, or deny an application or to amend, modify, or reverse a decision on appeal.

C. Notwithstanding subsections A and B of this section, no member of an approval authority having a financial interest in the outcome of an application shall take part in proceedings on that application; provided, however, with respect to the council only, a member may vote upon a finding of necessity which shall be placed on the record by the presiding officer.

D. In an appeal, if there is a tie vote, the decision which is the subject of appeal shall stand. (Ord. 634 §1 Exh. A (part), 1995)

17.162.230 Record of proceeding for public hearings. A. A verbatim record of the proceeding shall be made by mechanical means (such as a tape recording), and:

1. It shall not be necessary to transcribe testimony except as provided for in Section 17.162.310.

2. The minutes or (if applicable) transcript of testimony, or other evidence of the proceedings, shall be part of the record.

B. All exhibits received shall be marked so as to provide identification upon review.

C. The record shall include:

1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the approval authority as evidence;

2. All materials submitted by the planner to the approval authority with respect to the application including in the case of an appeal taken pursuant to Section 17.162.270, the record of the planner's decision as provided by Section 17.162.110;

3. The transcript of the hearing, if requested by the council or a party, or the minutes of the hearing, or other evidence of the proceedings before the approval authority;

4. The written findings, conclusions, decision and, if any, conditions of approval of the approval authority;

5. Argument by the parties or their legal representatives permitted in Section 17.162.300 at the time of review before the council;

6. All correspondence relating to the application; and

7. A copy of the notice which was given as provided by Section 17.162.030, accompanying affidavits and list of persons who were sent mailed notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.240 Form of the final decision. A. The final decision shall be a decision which is in writing and which has been signed by the planner.

B. The final decision shall be filed in the records of the planner within ten calendar days after the decision is made by the approval authority and notice thereof shall be mailed to the applicant and all parties in the action, and shall be available to the approval authority. (Ord. 634 §1 Exh. A (part), 1995)

17.162.250 Notice of final decision. A. Notice of a final decision shall briefly summarize the decision and contain:

1. A statement that all required notices under Section 17.162.025;

2. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;

3. The date the final decision was filed; and

4. A statement of whether a party to the proceeding may seek appeal of the decision, as appropriate, to wit:

a. In the case of a final decision by the council, the statement shall explain that this decision is final and how appeal may be heard by a higher authority; or

b. In the case of a final decision by the planning commission, the statement shall explain briefly how an appeal can be taken to the council pursuant to Section 17.162.290, the deadlines, and where information can be obtained.

B. Notice of the final decision by the planning commission or council shall be mailed to the applicant and to all the parties to the decision and shall be made available to the members of the council. (Ord. 634 §1 Exh. A (part), 1995)

17.162.260 Amending a decision by the planner. A. The planner may issue an amended decision after the notice of final decision has been issued and prior to the end of the ten-day appeal period.

B. A request for an amended decision shall be in writing and filed with the planner not more than eight days after the notice of final decision has been filed.

C. A request for an amended decision may be filed by:

1. The recognized neighborhood planning organization affected by the initial decision;

2. Resolution of the city council;

3. Resolution of the planning commission;

4. The planner;

5. Any party entitled to notice of the original decision;

or

6. Any party who submitted comments in writing on the original decision.

D. The amended decision process shall be limited to one time for each original application.

E. The planner shall make the determination as to issuance of an amended decision based on findings that one or more of the following conditions exist:

1. An error or omission was made on the original notice of final decision;

2. The original decision was based on incorrect information and incorrect information may only be considered in administrative actions before the planner;

3. New information becomes available during the appeal period which was not available when the decision was made which alters the facts or conditions in the original decision. New information may only be considered in administrative actions before the planner.

F. An amended decision shall be processed in accordance with Section 17.162.120 of this title. (Ord. 634 §1 Exh. A (part), 1995)

17.162.270 Standing to appeal. A. In the case of a decision by the planner, any person entitled to notice of the decision under this chapter, or any person who is adversely affected or aggrieved by the decision, may file a notice of appeal as provided by Section 17.162.320.

B. In the case of a decision by the planning commission, except for a decision on an appeal of the planner's decision, any person shall be considered a party to a matter, thus having standing to seek appeal, provided:

1. The person appeared before the planning commission orally or in writing:

a. The person was entitled as of right to notice and hearing prior to the decision to be reviewed; or

b. The person is aggrieved or has interests adversely affected by the decision. (Ord. 634 §1 Exh. A (part), 1995)

17.162.280 Computation of appeal period. A. The length of the appeal period shall be fifteen days from the date of mailing the notice of decision.

B. In computing the length of the appeal period, the day that notice of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day. (Ord. 634 §1 Exh. A (part), 1995)

17.162.290 Determination of appropriate appeal body. A. All appeals of decisions or interpretations made by the planner may be appealed to the planning commission or pursuant to Section 17.162.090 except the council may, on its own motion, seek to hear the matter by voice vote prior to the effective date of the notice of the decision.

B. Any decision made by the planning commission under this chapter may be reviewed by the council by:

1. The filing of a notice of appeal as provided by Section 17.162.320, by any party to the decision by three thirty p.m. on the last day of the appeal period;

2. The council or planning commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or

3. Referral of a matter under Section 17.162.090 (D) by the initial hearings body to the council, upon closure of the hearing, when the case presents a policy issue which requires council deliberation and determination, in which case the council shall decide the application.

C. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals. (Ord. 634 §1 Exh. A (part), 1995)

17.162.300 Type of appeal hearing--Limitations of appeal. A. The appeal of a decision made by the planner under Section 17.162.090(A) or Section 17.162.110, shall be confined to the prior record and conducted as if brought under Section 17.162.090(B) or (C).

B. The appeal of a decision of the planning commission to the council shall be:

1. Confined to the record of the proceedings unless council determines the admission of additional evidence is appropriate;

2. Limited to the grounds relied upon in the notice of appeal and the hearing shall be conducted in accordance with the provisions of this chapter.

C. The subject of written and oral argument. Such written argument shall be submitted not less than five days prior to council consideration; and

D. Reviews on the record by council of planning commission decisions shall be completed within forty days of when the notice of appeal is filed. (Ord. 634 §1 Exh. A (part), 1995)

17.162.310 Transcripts. A. The appellant shall be responsible to satisfy all costs incurred for preparation of the transcript. An estimated payment shall be made prior to the preparation of the transcript; any additional actual cost shall be paid prior to the hearing or if the actual cost is less than the estimate the remainder shall be returned.

B. Any party other than the appellant that requests a transcript shall be charged the actual copy costs. (Ord. 634 §1 Exh. A (part), 1995)

17.162.320 Notice of appeal. A. The notice of appeal shall be filed within the appeal period and contain:

1. A reference to the application sought to be appealed;
2. A statement of the petitioner's standing to the appeal;
3. The specific grounds for the appeal; and
4. The date of the final decision on the action or, in the case of a decision by the planner, the date the decision was filed;

B. The appeal application shall be accompanied by the required fee except as allowed under Section 17.162.330. (Ord. 634 §1 Exh. A (part), 1995)

17.162.330 Fee waivers. A. Fees for land use applications and appeals of a land use decision shall be waived for a recognized neighborhood planning organization (NPO) if all of the following conditions are met:

1. The appeal or land use application must have been supported by a majority vote of NPO members at a public meeting where a quorum of NPO members was present;

2. A copy of the minutes of the NPO meeting where the appeal or land use application was initiated must be submitted with the appeal or land use application;

3. The appeal or application will be considered valid when conditions (1) and (2) of this section are met and all other filing requirements are met; and

4. The NPO chairperson or designated representative shall appear at the next available city council meeting after the application or appeal is filed to request a waiver. The NPO shall work through the Planning Division to schedule the item on a council agenda.

B. Council may, on its own motion, waive the land use application or appeal fee for other nonprofit organizations. (Ord. 791 §3, 2007; Ord. 634 §1 Exh. A (part), 1995)

17.162.340 Persons entitled to notice of appeal--Type of notice. Upon appeal, notice shall be given to parties entitled to notice under Sections 17.162.025 and 17.162.270. (Ord. 634 §1 Exh. A (part), 1995)

17.162.350 Contents of notice of appeal. Notice shall include those matters provided by Section 17.162.030. (Ord. 634 §1 Exh. A (part), 1995)

17.162.360 Action on appeal. A. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 17.162.140; or

B. Upon the written consent of all parties to extend the one hundred twenty-day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial hearing. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:

1. The prejudice to parties,
2. The convenience or availability of evidence at the time of the initial hearing,
3. The surprise to opposing parties,
4. The date notice was given to other parties as to an attempt to admit, or
5. The competency, relevancy and materiality of the proposed testimony or other evidence. (Ord. 634 §1 Exh. A (part), 1995)

17.162.380 Effective date of final action. A. Within ten days of the filing of the final order of council, the planner shall give notice of the final order to all parties to the proceeding, informing them of the date of filing, the decision rendered, and where a copy may be found.

B. Action by the appellate authority on appeal shall be final and effective on the day of mailing notice of the final order. (Ord. 634 §1 Exh. A (part), 1995)

17.162.390 Revocation of approvals. A. The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted pursuant to this chapter for any of the following reasons:

1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;

2. A failure to comply with the terms and conditions of approval;

3. A failure to use the premises in accordance with the terms of the approval; or

4. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional.

B. In the case of a decision made by the planner, the hearing on whether to modify or revoke an approval shall be held by the planning commission.

C. A petition for appeal of a revocation or modification may be filed in the same manner as provided by Section 17.162.290. (Ord. 634 §1 Exh. A (part), 1995)

Marion County, Oregon

Title 17 Rural Zoning

Chapter 17.111

PUBLIC HEARING

Sections:

[17.111.010](#) Holding public hearings.

[17.111.020](#) Scheduling.

[17.111.030](#) Notice of quasi-judicial public hearing.

[17.111.040](#) Notice of legislative public hearing.

[17.111.050](#) Publishing notices.

[17.111.060](#) Conduct of hearings.

[17.111.070](#) Decisions and notice of decision.

Prior legislation: Ordinance 331.

17.111.010 Holding public hearings. SHARE

Public hearings, when required by this title, shall be conducted by the hearings officer, planning commission, or board of commissioners in a manner prescribed by state law and this chapter. For the purposes of this chapter, “hearings authority” means the hearings officer, planning commission, or board of commissioners. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 516 § 2, 1978. RZ Ord. § 111.010.]

17.111.020 Scheduling. SHARE

The director shall schedule all hearings before the hearings officer and planning commission. If the applicant for a quasi-judicial land use action requests a different hearing date, the director may reschedule the hearing. If the requested hearing date is later than otherwise would have been scheduled, the director may require the applicant to request an extension of the time limit for making a decision under state law. The director may require the applicant to pay a fee for renotification. If the hearings officer or chair of the planning commission requests a change in the hearing date the director shall reschedule the hearing. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002. RZ Ord. § 111.020.]

17.111.030 Notice of quasi-judicial public hearing. SHARE

Upon the fixing of the time of a quasi-judicial public hearing, notice shall be provided as follows:

A. Notice of hearing shall be mailed to the applicant, the property owners, co-tenants if the subject property is owned by tenants, in common, state and local agencies that may have concerns regarding the request, and as provided in subsection (C) of this section.

B. The notice of hearing shall contain:

1. The date, time and location of the hearing;
2. The nature of the application, and the proposed uses that could be authorized;
3. The address or other easily understood geographical reference to the subject property;
4. A list of the topical headings and numbers of the criteria from the Comprehensive Plan and this title that apply;
5. A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the hearings authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue;
6. The name of the planning director's staff to contact, and the telephone number where additional information may be obtained;
7. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and that a copy will be provided at reasonable cost upon request;
8. A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and that copies will be provided at reasonable cost upon request;
9. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

C. Notices of quasi-judicial public hearings shall be mailed at least 20 days prior to the date of the first evidentiary hearing and 10 days prior to the date of any subsequent hearings. Failure to receive such notice by mail shall not affect the validity of the proceedings. In addition, notices shall also be mailed to an appointed area advisory committee when it exists. The Director of the Department of Land Conservation and Development shall be notified of a hearing involving an amendment to a comprehensive plan or land use regulation 35 days prior to the first evidentiary hearing on adoption. The notice shall be provided to the applicant, the owner(s) of the subject property, and owners of record of property on the most recent property tax assessment roll where the property is located within:

1. Two hundred fifty feet of the property subject to the notice for subject property that is not within the EFU, SA, FT or TC zone; or
2. Seven hundred fifty feet of the property subject to the notice for subject property that is within the EFU, SA, FT or TC zone;
3. Notice shall be sent to owners of a public-use airport of any land use action within 5,000 feet of the side or end of a "visual airport" runway, or within 10,000 feet of an "instrument airport" runway, unless the action involves structures less than 35 feet tall outside the runway approach surface;
4. Notice shall also be provided to any neighborhood or community organization recognized by the board and whose boundaries include the site;

5. Notice of the public hearing on an application for an aggregate site shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 516 § 2, 1978. RZ Ord. § 111.030.]

17.111.040 Notice of legislative public hearing.



Upon the fixing of the time of a public hearing, notice shall be provided as follows:

A. Notice shall be mailed to area advisory committee members, the Oregon Department of Land Conservation and Development; other local, state or federal agencies that are likely to have an interest in the subject of the hearing; and any citizens that have expressed or have been identified as having interest in the subject of the hearing.

B. The notice shall contain a description of the action being considered; the date, time and location of the hearing; a file or case number if one exists, and the name and telephone number of a person who can be contacted for additional information. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 516 § 2, 1978. RZ Ord. § 111.040.]

17.111.050 Publishing notices.



Notices of public hearings to be held by the planning commission, hearings officer or board on legislative amendments to the text of this title, or the Comprehensive Plan, shall be given by publishing notice in a newspaper of general circulation in the county at least once not less than 10 days prior to the hearing. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 516 § 2, 1978. RZ Ord. § 111.050.]

17.111.060 Conduct of hearings.



The following procedures shall be observed in the conduct of all quasi-judicial hearings:

A. At the commencement of a hearing, a statement shall be made to those in attendance that:

1. Identifies the applicable substantive criteria;
2. States that testimony and evidence must be directed toward the identified criteria or other criteria in the plan or this title which the person believes to apply to the decision; and
3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

B. The hearings authority may continue the hearing to a certain date, may close the hearing and keep the hearing record open to a certain date to allow submittal of written testimony, and may reopen the hearing record to admit new evidence or testimony.

C. Prior to conclusion of an initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. If such a request is made, the hearings authority shall:

1. Grant a continuance, in which case the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, and testimony. If new

written evidence is submitted at the continued hearing, any person may request, prior to conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence; or

2. Leave the record open for at least seven days for additional written evidence, arguments, or testimony. Any participant may file a written request with the hearings authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (D) of this section.

D. If the hearings authority reopens the hearing record to admit new evidence or testimony, any person may raise new issues that relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

E. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS [215.428](#) unless the continuance or extension is requested or agreed to by the applicant.

F. Unless waived, the applicant shall be allowed at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS [215.428](#).

G. For the purposes of this section:

1. "Argument" means assertions and analysis regarding satisfaction or violation of legal standards or policy believed to be relevant by the proponent of a decision. "Argument" does not include facts.

2. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002. RZ Ord. § 111.060.]

17.111.070 Decisions and notice of decision.



A. Following the close of the hearing and receipt of all evidence and arguments:

1. The hearings officer shall issue a written order or recommendation. The order shall be transmitted to the board's office. A copy of the order and the file shall be transmitted to the director.

2. For planning commission decisions, the director shall prepare a notice of decision or recommendation.

3. For quasi-judicial decisions, the board shall issue a written ordinance for zone changes and Comprehensive Plan amendments, or a written order for other types of applications. The order or ordinance shall be filed with the county clerk.

B. Notice of the decision of quasi-judicial land use actions shall be mailed to the applicant, the applicant's representative, the owners of the subject property identified in the application, those who testified at the hearing or requested notice in writing, and others as required by law.

C. A decision by the hearings authority shall be effective 15 days from the date the notice of decision is mailed, unless appealed, called up by the board, or further action is required. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002. RZ Ord. § 111.070.]

DRAFT NOTICE REQUIREMENTS

SECTION ONE: Administrative Approvals

17.88.005 Approval authority responsibilities.

- A. The Planning Director shall have the authority to approve, deny or approve with conditions the following applications:
 - 1. Determination of Type II Development Permits pursuant to Chapter 17.92;
 - 2. Determination of Type III Development Permits pursuant to Chapter 17.92;
 - 3. Determination of Tree Removal & Replacement Permit pursuant to Chapter 17.70;
 - 4. Signs pursuant to Chapter 17.56;
 - 5. Type I & II home occupations pursuant to Chapter 17.54;
 - 6. Wireless communication facilities pursuant to Chapter 17.75.

17.88.125 Notice of a decision by the Planning Director.

- A. Notice of the Planning Director's decision on an application pursuant to Section 17.88.005 shall be given by the Planning Director in the following manner:
 - 1. Within five days of signing the proposed decision, notice shall be sent by mail to:
 - a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
 - b. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city which includes provision for such notice; and
 - c. Any person who requests notice in writing.
- B. The Planning Director shall cause an affidavit of mailing to be filed and made a part of the administrative record.
- C. Notice of a decision by the Planning Director shall contain:
 - 1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
 - 2. The address and general location of the subject property;
 - 3. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
 - 4. The date the Planning Director's decision will become final;
 - 5. A statement that a person entitled to notice or adversely affected or aggrieved by the decision may appeal the decision:
 - a. The statement shall explain briefly how an appeal can be made, the deadlines and where information can be obtained, and
 - b. The statement shall explain that if an appeal is not filed, the decision shall be final;

6. A map showing the location of the property; and

7. A statement that the hearing on an appeal will be confined to the prior record.

17.88.130 Notice of decision by a Hearing Body



Cannon Beach Planning Commission

Staff Report Addendum, (November 15, End of Business):

CD 22-01 & CU 22-03, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of four single-family dwellings and a six-plex apartment building. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

Agenda Date: October 27, 2022,
Continued to November 22, 2022

Prepared By: Jeffrey S. Adams, PhD

GENERAL INFORMATION

NOTICE

Public notice for this October 27, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on October 7, 2022;
- B. Notice was mailed on October 7, 2022 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on July 5, 2022 unless otherwise noted.

NOTE: Please note no new materials were received from October 8th through the 14th.

"A" Exhibits – Application Materials

A-9 Dave Pietka response to Planning Commission, dated November 10, 2022;

"B" Exhibits – Agency Comments

No new materials

"C" Exhibits – Cannon Beach Supplements

Cannon Beach Planning Commission | P#22-01 & CU#22-02 Davidspruce LLC

No new materials

“D” Exhibits – Public Comment

No new materials

REVISIONS & NEW MATERIALS

The applicant has provided a response to the additional materials requested at the previous meeting.

It should be noted that the Planning Commission had closed the public comment at the previous meeting, as described below in the Procedural Requirements and any new evidence presented, would require a reopening of the record, triggering re-notice under ORS 197.763(3) & (7).

PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on July 5, 2022 and determined to be complete on July 8, 2022. The applicant provided a written request to extend the 120-day deadline by sixty days to January 4, 2023, by which time the City is required to have a final decision.

The Planning Commission held a hearing on this matter on August 25, 2022. At that time, it closed the hearing, but left the record open consistent with ORS 197.763 for additional evidence. The applicant requested that the public record be re-opened to allow new evidence for CD 22-01 & CU 22-03, the Planning Commission granted the request to reopen the record and accepted new written testimony and evidence for an additional fourteen days, to October 7th, with a second period allowing for responsive evidence accepted until 5:00 PM, October 14th and final written argument by the applicant only, until end of business, 5:00 PM, October 21st. The Planning Commission began deliberations on October 27, 2022 and continued consideration of the matter to November 22, 2022.

RECOMMENDATION

Staff recommends approval with the following conditions.

DECISION AND CONDITIONS

Initial Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moves to (approve/approve with conditions/or deny) the Davidspruce LLC application for a seven-lot Cluster Development Subdivision, CD#22-01, for four single-family residential lots, one multi-family lot and two common space lots, through a Cluster Development Variance, (providing the following exceptions):

1. Shared off-street parking variance request for 13 spaces located on Lot 1 and three off-site;
2. Shared lot access and lot frontage on Lot 1; and,

Second Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moves to (approve/approve with conditions/or deny) the Davidspruce LLC application for a Conditional Use permit for a Cluster Development Subdivision in the Wetland Overlay zone, CU#22-02, as discussed at this public hearing (subject to the following conditions):

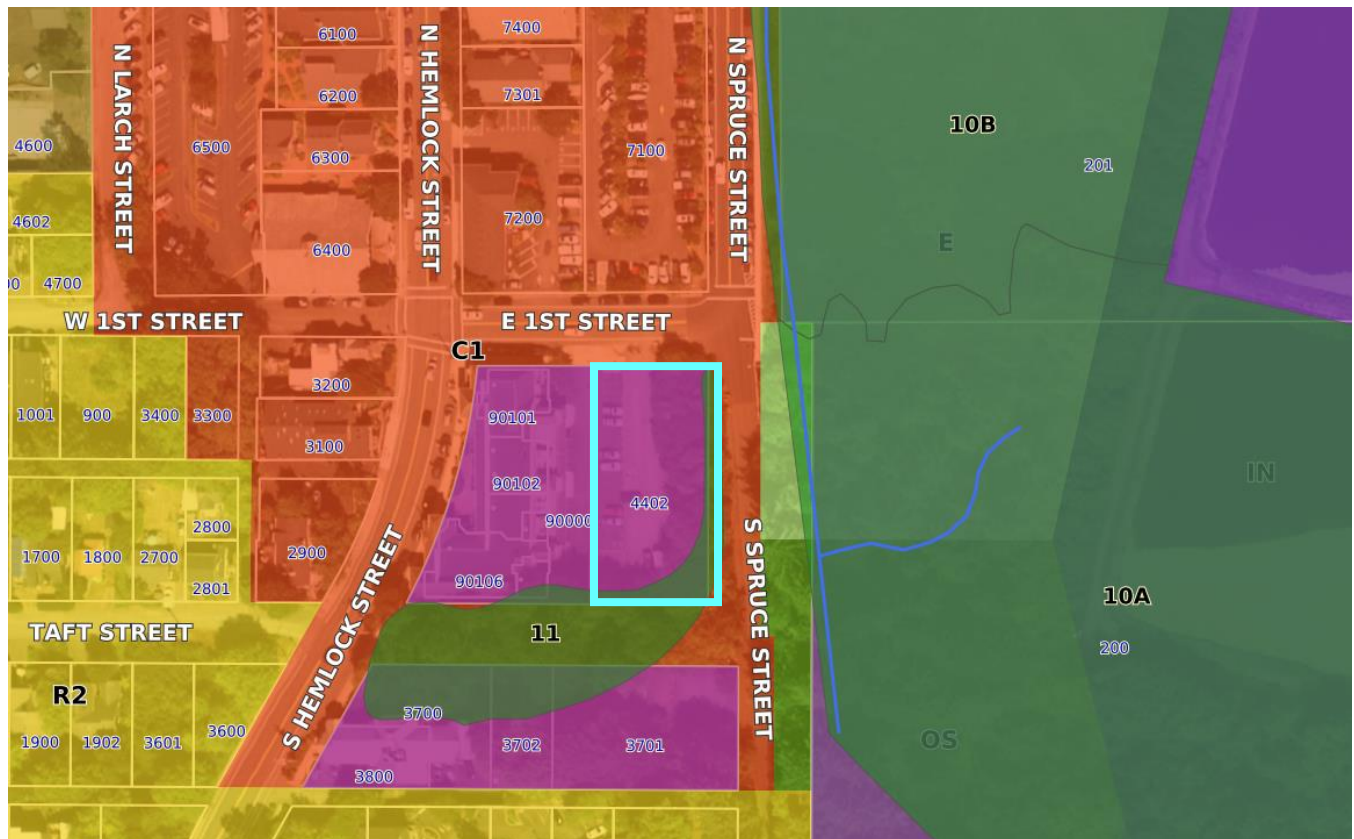
1. Development agreement containing 'affordable' or 'workforce housing' requirements, with penalties that would prohibit early exit from the agreement, approved by City Council and recorded with Clatsop County;
2. Formation of a Home Owners Association, with Covenants, Conditions & Restrictions, describing shared access, parking and common space maintenance agreements, approved by City Council and recorded with Clatsop County,
3. Soils and Geohazard Report approved by the City Building Official prior to construction;
4. Tree removal application, including TPZ protection measures and on-site arborist oversight during excavation, reviewed by the City Arborist and approved by the City, prior to construction;
5. Plat note indicating no intrusions within the delineated wetland area and buffer areas, including accessory structures, fencing or pedestrian or vehicular use;
6. Plat note stating no future partition or subdivision permitted;

Notice of Approval

17.44.140 Final approval expiration.

The final approval of a design review plan shall be void after one year of the date of approval unless a building permit has been obtained. (Ord. 90-3 § 15)

Site Map



November 10, 2022

Jeffrey Adams
Community Planning Director
Cannon Beach Planning Commission
PO Box 368
Cannon Beach, OR 97110

Dear Planning Commission:

RE: First and Spruce Proposal

In response to your motion of October 27, I offer the following comments:

HOA Agreement

I agree to hire an attorney to draft the HOA Agreement. The final agreement will be reviewed by Adams, your city attorney, and the city council. If the planning commission has specific concerns, please share them with your city attorney.

Community Development Agreement

It is too early to negotiate the community development agreement as the impact of the rent restriction is unknown, the length of the rent restriction is not known, cost are not known, and the city waiver of fees and perhaps other contributions are not known. Further, there are various government programs available that could allow rents to be controlled to a greater degree, but the applicability of the programs cannot be determined at this time. I suggest that the PC recommend to city council that they give particular attention to the penalties that are meant to discourage early exit from the agreement and to contribute adequate funds to achieve the objective of six units of work force style housing for a period of 10 to 20 years.

Parking Issues

One reading of the parking code suggests 14 required spaces assuming 1.5 spaces per house is allowed. I have 13 spaces onsite and 1 deeded space off site in the Providence parking lot. Another reading of the code could suggest a need for 16 spaces (if 2 spaces per SF home are required). The cluster housing code, which reflects multiple family use, allows for 1.5 parking spaces per home. Because we are seeking approval as a cluster housing project, and noting the small size of the units and houses, I request that the PC approve the development with 14 parking spaces.

I hope the Planning Commission finds these suggestions acceptable, as they are consistent with the process for approval in the city zoning code for our application.

Respectfully submitted,



David Pietka



Cannon Beach Planning Commission

Staff Report Addendum, Noon November 15th:

PUBLIC HEARING AND CONSIDERATION OF V# 22-01, DAVID VONADA, ON BEHALF OF CANNON BEACH BUSINESS PARK LLC, REQUEST FOR A VARIANCE TO ALLOW A RESIDENTIAL USE FOR APPROXIMATELY 55% OF THE BUILDING FLOOR AREA VS. THE 50% MAXIMUM ALLOWED. THE PROPERTY IS LOCATED AT 368 ELK CREEK RD. (TAXLOT 00200, MAP 51029CA) IN A GENERAL COMMERCIAL (C2) ZONE. THE REQUEST WILL BE REVIEWED UNDER CANNON BEACH MUNICIPAL CODE, SECTIONS 17.24.020, GENERAL COMMERCIAL ZONE, USES PERMITTED OUTRIGHT, 17.78.030, OFF STREET PARKING, DESIGN STANDARDS, AND 17.84.030, VARIANCES, CRITERIA FOR GRANTING.

Agenda Date: November 22, 2022

Prepared By: Robert St. Clair

RENOTICED HEARING

GENERAL INFORMATION

NOTICE

Public notice for this November 22, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on August 30, 2022;
- B. Notice was mailed on August 30, 2022 to surrounding landowners within 200' of the exterior boundaries of the property.

Public notice for the original August 25, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on August 2, 2022;
- B. Notice was mailed on August 2nd to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on July 6, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1** Variance Request Application V#22-01, submitted and stamped July 6, 2022;
- A-2** Preliminary site plan;

“B” Exhibits – Agency Comments

B-1 Oregon Department of State Lands letter, dated March 29, 2022

B-2 US Army Corps of Engineers Wetlands Determination Letter, Kristen Hafer, Chief, Policy and Compliance Section Regulatory Branch, with Enclosure, dated April 14, 2022;

“C” Exhibits – Cannon Beach Supplements

None received as of this writing;

“D” Exhibits – Public Comment

None received as of this writing;

SUMMARY & BACKGROUND

David Vonada, on behalf of the Cannon Beach Business Park, is requesting a variance to municipal code requirements pertaining to a proposed mixed-use development at 368 Elk Creek Rd. The requested variance is to exceed the 50% limitation on residential space in conjunction with commercial uses and remove the requirement to provide a buffer between parking spaces and the proposed structure. The subject property is zoned General Commercial (C2) and is currently occupied by multiple tenants including commercial operations, warehousing, and personal storage. The proposed development would be a two-story structure with seven storage units on the ground level and four apartments on the upper.

A two-story mixed-use structure like the one proposed currently exists in Building 4 at the southeastern corner of the Business Park. The lower level of this building consists of five storage units while the upper level is a mixture of professional spaces and apartments. The existing structure is shown in the photo below:



Although not pertinent to this application, it is noted that the subject property is a wetland lot of record, and the proposed development would be in an area adjacent to a delineated wetland. Due to its nature this project is subject to various types of review, and this application regarding building size and landscaping requirements is only one of them. Final designs have not yet been submitted to the City by the applicant.

During the August 25, 2022 meeting of the Planning Commission this item was continued to the November 2022 public hearing with a request that the applicant provide a copy of the full wetland delineation report and a parking survey of the Business Park. No new materials have been received by the Community Development Department since the August 2022 meeting.

APPLICABLE CRITERIA

General Commercial (C2) Zoning District

17.24.020 Uses Permitted Outright

In a C2 zone the following uses and their accessory uses are permitted outright:

- A. Building materials supply sales;*
- B. Plant nurseries;*
- C. Government buildings and maintenance shops;*
- D. Warehouses or storage establishments;*
- E. Boat building, cabinet or carpentry shops, contractor's shops, machine shops, vehicle repair or storage;*
- F. A manufactured dwelling or recreational vehicle not exceeding three hundred square feet in area used temporarily during the construction period of a permitted use for which a building permit has been issued but not to exceed one year;*
- G. Business office or professional office, up to ten percent of the area of a mixed use development;*
- H. A residential use in conjunction with a permitted use where the residential use does not exceed fifty percent of the building's floor area;*
- I. Claims for Compensation Under ORS 197.352. A specific individual use or structures approved pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352, where the standards of Section 17.90.180 are met.*

Staff Comment: The project meets criteria D and H with the exception that the residential use will exceed 50% of the building's floor area with the applicant's intent to use approximately 60% of the building's floor area for residential use.

Off Street Parking

17.78.030(A)(5,6) Design Standards

- A. The following design requirements shall apply to an off-street parking area consisting of five or more parking spaces:*
 - 5. At a minimum, ten percent of the area of the parking lot shall be landscaped. In determining the area of the parking lot and required landscaping the minimum area separation between the building and the parking lot described in subsection (A)(6) of this section shall not be included. The landscaped area of the parking lot shall contain at least one tree for every one hundred seventy-five square feet of landscaping provided. Areas that contain a tree shall have a minimum width of five feet. Any landscaped area shall have a minimum area of fifty square feet.*

6. *An area with a minimum width of five feet shall separate the exterior wall of a building from the parking lot. The separation between the parking lot and the building can consist of landscaping material, a pedestrian walkway, or a combination of the two.*

Staff Comment: Currently there is no significant amount of landscaping on the interior portions the Business Park, landscaped areas are limited to the Elk Creek Rd. frontage. Additionally, the proposed development will necessitate the removal of trees from the building footprint. Section 17.70.020(G)(2), permit issuance criteria of the Tree Removal and Protection section of the Municipal Code, requires a landscaping plan for the area affected by construction. The site plan shows the placement of two new trees in the parking area, however this is not a landscaping plan. Without a variance the application does not meet the 10% minimum landscaping or one tree for every 175 square feet of landscaping requirements above. If a variance is granted, a condition of approval should be the inclusion of a landscaping plan that maximizes landscaping and tree placement or replacement opportunities across the business park.

Due to the necessity of having unobstructed access to ground level storage units the requirement to have a landscaped separation area between them and the parking area is impractical. The site plan provided by the applicant shows a total of 18 off-street parking spaces that would serve the park with a 24-foot-wide aisle. The proposal does not seek to reduce the size of the access aisles and further review of any development proposal prior to issuance of a building permit would include the Cannon Beach Rural Fire Protection District.

The off-street parking requirements table in 17.78.020(D) provides the following guidance regarding the amount of parking required for residences:

Single-family dwelling, two-family dwelling and multiple family dwelling in condominium ownership: 2 per dwelling unit, except that 1 per dwelling unit is required for residences that are provided in conjunction with a commercial use where those residences constitute no more than 50% of the building area.

Based on this requirement, no fewer than four of the 18 parking spaces must be dedicated to the four proposed dwelling units. Additionally, any apartments in Building 4, shown in Figure 2 below, would each need no fewer than one of the remaining parking spaces. Figure 3 is a recent staff photo showing the area of the proposed development and its current use, in the photo multiple vehicles and trailers can be seen. The applicant provided no information regarding current demand for parking by non-residential tenants of the park, or if the aggregate amount of off-street parking will be sufficient to meet the anticipated total level of demand. The proposal cannot meet these criteria unless a variance exempts their application.

Variances

17.84.030 Criteria for Granting

- A. *Variances to a requirement of this title, with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, decks and walls, and other quantitative requirements, may be granted only if, on the basis of the application, investigation and evidence submitted by the applicant, all four expressly written findings are made:*
 1. *That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of the comprehensive plan; and*
 2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties in the same zone; and*
 3. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the near vicinity; and*

4. *That the granting of the variance would support policies contained within the comprehensive plan.*

B. *Variances in accordance with this section should not ordinarily be granted if the special circumstances on which the applicant relies are a result of the actions of the applicant, or owner, or previous owners.*

Staff Comment: The application states that the Municipal Code does not address use specific attributes of business parks vs. general commercial uses and that the application of requirements regarding separation between parking spaces and the storage unit doors effectively interferes with the functioning of tenant areas by cutting off direct vehicle access. It further states that the proposed development will have a positive impact on the economic health of the community by providing uses that support businesses and provide opportunities for needed housing at a price point that may be accessible to persons who work in the community.

The applicant provides no proposed deed restrictions or development agreements that would guarantee that the housing provided would be 'affordable' or dedicated to 'workforce' housing.

PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on July 6, 2022 and determined to be complete on July 8, 2022. Based on this, the City must complete its review of this proposal by November 7, 2022.

The Planning Commission's August 25th hearing will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to the hearing to request a continuance. The DRB should grant any request for a continuance of this hearing. The Planning Commission's next regularly scheduled hearing date is September 22, 2022.

RECOMMENDATION

Staff recommends approval, with the following conditions.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record and upon a motion by Commissioner (Name), seconded by Commissioner (Name), the Cannon Beach Planning Commission voted to (approve/approve with conditions/or deny) the David Vonada application for a variance, V22-01, as discussed at this public hearing (subject to the following conditions):

1. The applicant shall obtain a Conditional Use Permit from the Planning Commission for any construction or excavation taking place within the delineated wetland buffer area.
2. The applicant shall obtain Design Review Board approval for the proposed multi-family mixed use structure.
3. A landscaping plan shall be developed that maximizes opportunities for softscaping and the placement of trees across the subject property.
4. A building permit shall be obtained before starting construction.
5. Development agreement containing 'affordable' or 'workforce housing' requirements, approved by City Council and recorded with Clatsop County;

Notice of Approval

17.44.140 Final approval expiration.

The final approval of a design review plan shall be void after one year of the date of approval unless a building permit has been obtained. (Ord. 90-3 § 15)

Figure 1: Site Map & Zoning Information

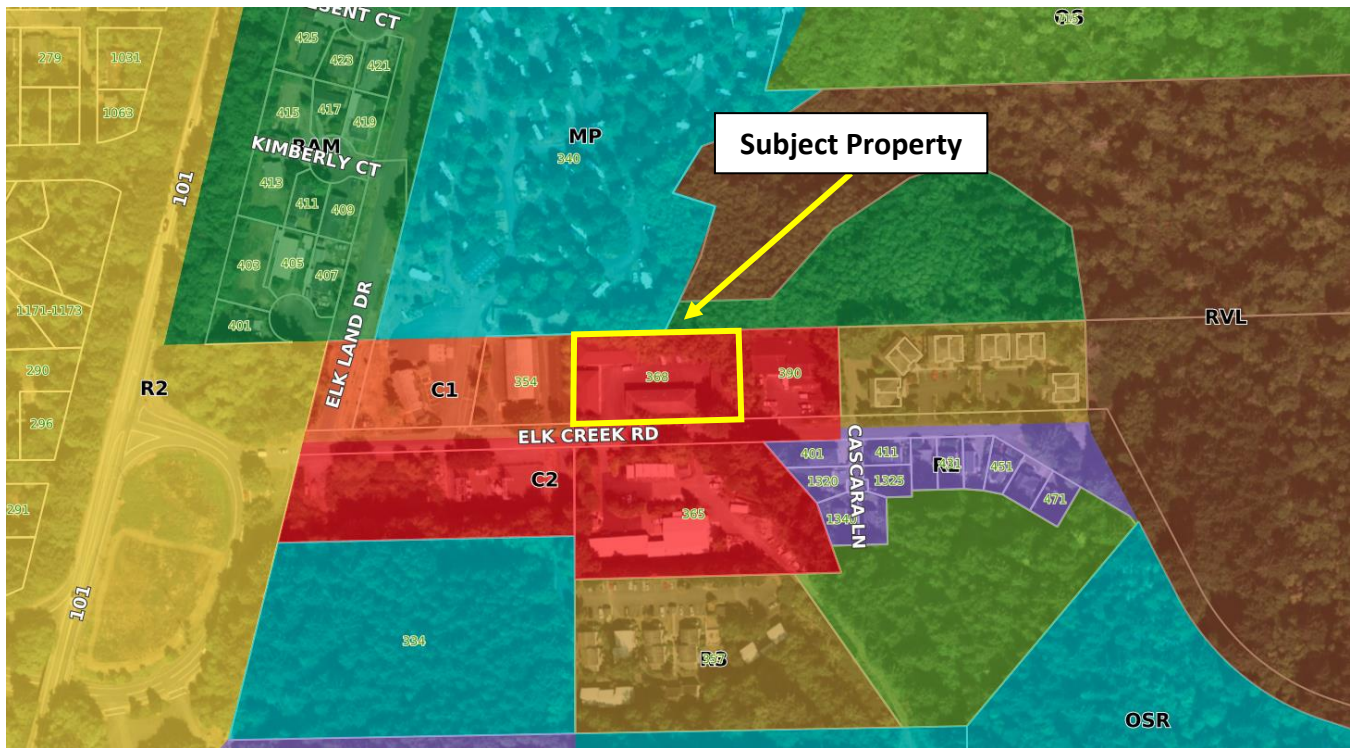


Figure 2: Cannon Beach Business Park and Approximate Project Area

Diagram taken from Clatsop County Assessor's online records

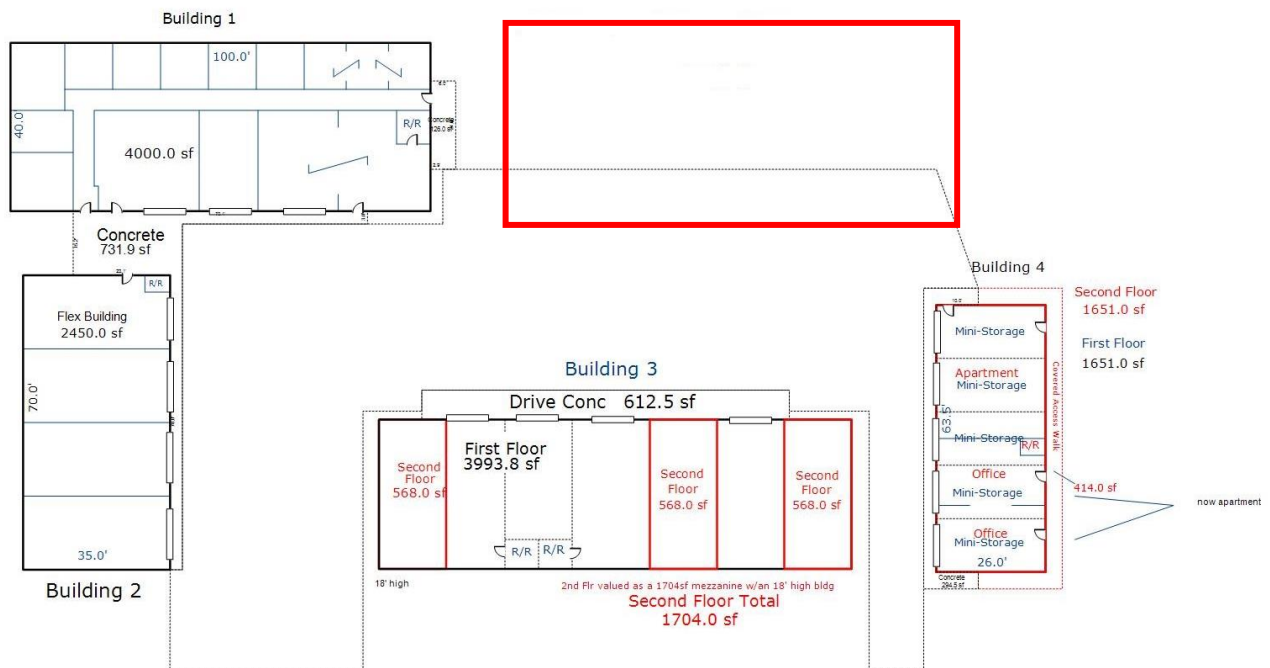


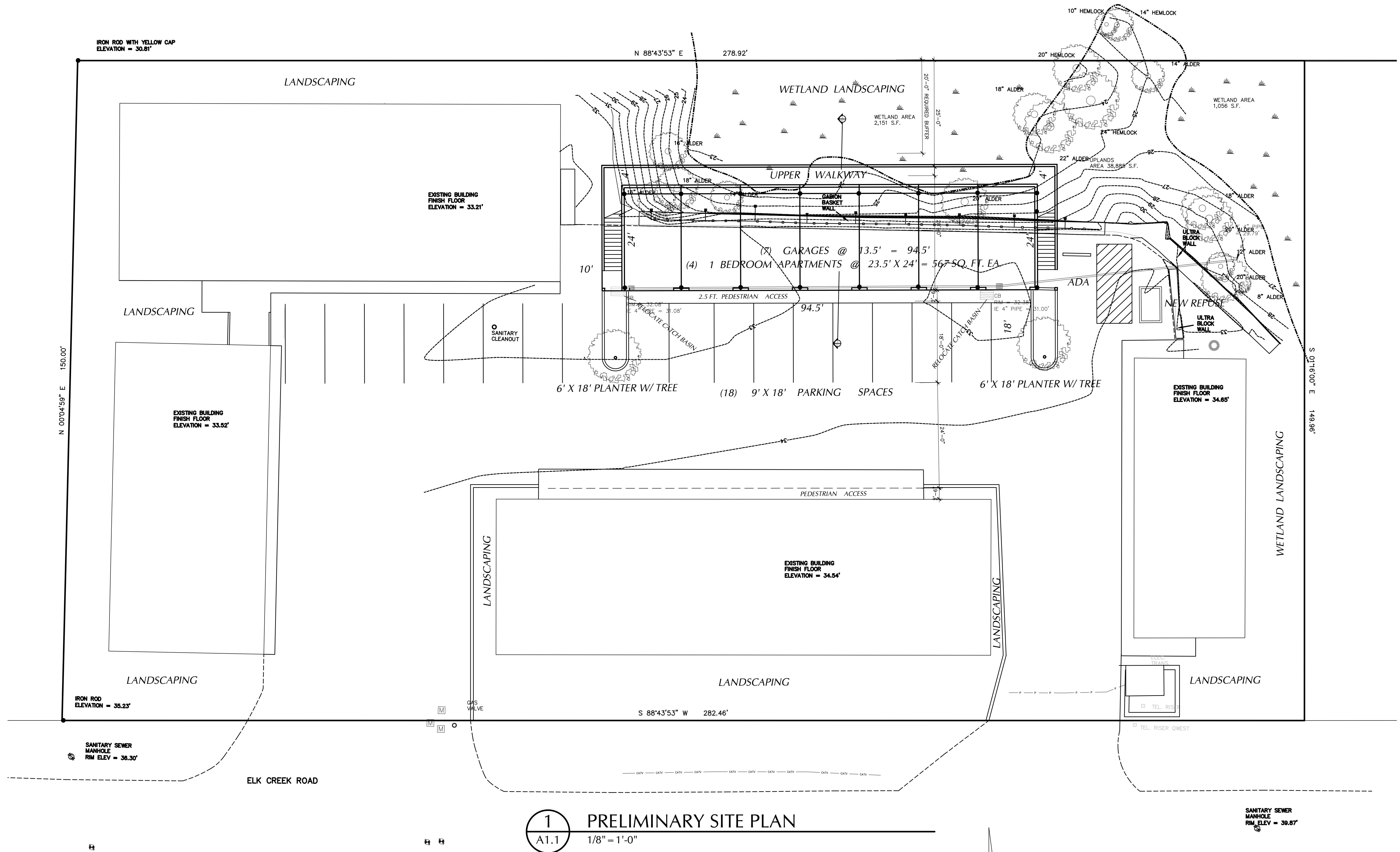
Figure 3: Project Area – Current Conditions

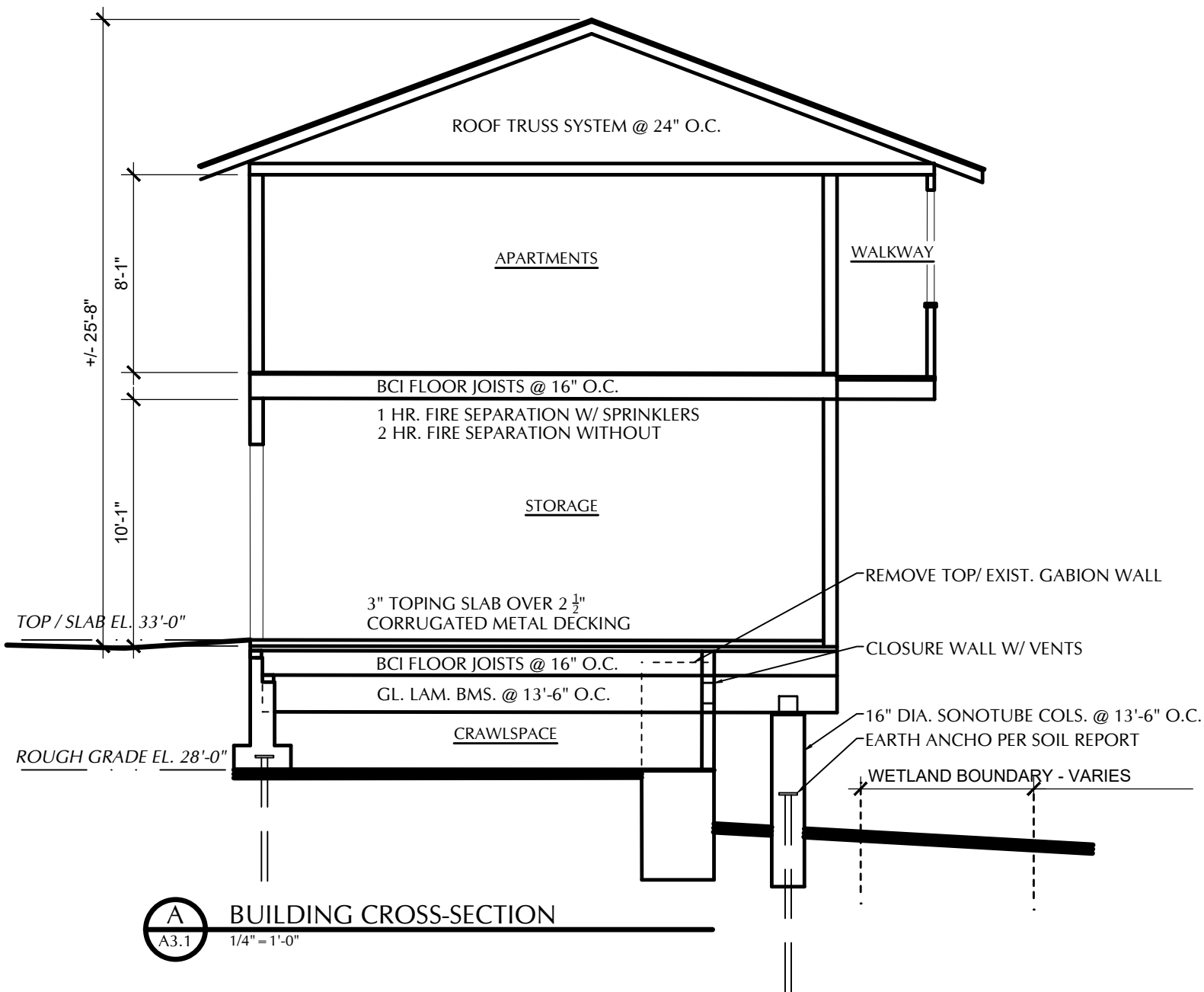




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Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

March 29, 2022

DEC600/63764

TOLOVANA ARCHITECT LLC

ATTN: DAVID VONADA

PO BOX 648

TOLOVANA PARK OR 97145

State Land Board

Kate Brown

Governor

Re: State Application Number 63764-NP
Elk Creek/Wetland, Cannon Beach Business Park

Shemia Fagan
Secretary of State

Dear David:

Tobias Read
State Treasurer

We have received your application to construct a storage unit with second floor residences overhanging wetlands adjacent to Elk Creek with no impacts to wetlands or Elk Creek, Township 5N, Range 10W, Section 29CA, Tax Lot 200, Clatsop County, Oregon. Under the Oregon Removal-Fill Law (ORS 196.800 - 196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of the waters of this state, or any amount within waters designated Essential Salmonid Habitat or State Scenic Waterway, requires a permit from the Department of State Lands. Waters of this state include the Pacific Ocean, rivers, lakes, most ponds and wetlands, and other natural water bodies.

Based on the information provided in your application, it appears that your project does not require a State removal-fill permit because it involves less than 50 cubic yards of removal and/or fill in waters of this state that are not designated as Essential Salmonid Habitat or a State Scenic Waterway.

Please be aware that your project, while exempt from the State Removal-Fill requirements, may be subject to U.S. Army Corps of Engineers regulatory program and/or local planning department permitting process.

if you have any questions, please call me at (503 986-5302).

Sincerely,

Dan Cary
Aquatic Resource Coordinator
Aquatic Resource Management
Oregon Department of State Lands

DEC:bh

cc: Brad Johnson, US Army Corps of Engineers, Portland Office
Cannon Beach Planning Dept.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

April 14, 2022

Regulatory Branch
Corps No. NWP-2022-148

Mr. David Vonada
Tolovana Architect, LLC
PO Box 648
Tolovana Park, Oregon 97145
david@tolovanaarchitects.com

Dear Mr. Vonada:

The U.S. Army Corps of Engineers (Corps) has received your application for a Department of the Army (DA) permit to construct a two-story storage and apartment building. The project is located at 368 Elk Creek Road Cannon Beach, Clatsop County, Oregon at Latitude/Longitude: 45.889192°, -123.953947°. Your application has been assigned Corps No.:NWP-2022-148. Please refer to this number in all correspondence. We have reviewed the application you provided to us pursuant to Section 404 of the Clean Water Act (CWA).

Under Section 404 of the CWA, a DA permit is generally required for the discharge of dredged or fill material into waters of the U.S. The proposed project does not involve a discharge of dredged or fill material regulated under Section 404, therefore a Section 404 DA permit is not required. Based on the submitted project figures (Enclosure) the project would support the building using earth anchors located outside of the wetland boundary and the decks on the second story would overhang the boundary.

Based upon information provided in your permit application, we have determined a DA permit is not required for your proposed project. Although a DA permit is not required, other local, state, or federal requirements may still apply.

Our determination regarding the proposed work is based on the project description and construction methods provided in your permit application. You are cautioned that any change in the location or plans of the work may result in activities that require a DA permit.

Please note, this letter is not an official jurisdictional determination or concurrence of the geographic limits of waters or wetlands at this site.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

If you have any questions regarding our regulatory authority, please contact Mr. Brad Johnson by telephone at (503) 808-4383 or by email at brad.a.johnson2@usace.army.mil.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Hafer".

Kristen Hafer
Chief, Policy and Compliance Section
Regulatory Branch

Enclosure

cc:

Oregon Department of State Lands (Dan Cary, dan.cary@dsl.oregon.gov)

Oregon Department of Land Conservation and Development
(coast.permits@dlcd.oregon.gov)

Oregon Department of Environmental Quality (401applications@deq.oregon.gov)



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF SR 22-03, BEACH CONSTRUCTION, APPLICANT, ON BEHALF OF ERIC & RACHEL PURDY, APPLICATION TO ALLOW A SETBACK REDUCTION TO REDUCE THE FRONT YARD SETBACK FROM THE REQUIRED 15'0" TO 9'10" AND THE SIDE YARD SETBACK FROM THE REQUIRED 15'0" FOR A CORNER LOT TO 11' IN ORDER TO REDUCE THE NUMBER OF TREES THAT WOULD NEED TO BE REMOVED IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW SINGLE FAMILY DWELLING. THE PROPERTY IS LOCATED AT THE CORNER OF ROSS LN. AND SPRUCE ST. (TAXLOT 10200, MAP 51030DA), AND IN A RESIDENTIAL MEDIUM DENSITY (R2) ZONE. THE REQUEST WILL BE REVIEWED AGAINST THE MUNICIPAL CODE, SECTION 17.64, SETBACK REDUCTION, PROVISIONS ESTABLISHED.

Agenda Date: November 22, 2022

Prepared By: Robert St. Clair

GENERAL INFORMATION

NOTICE

Public notice for this November 22, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on November 2, 2022;
- B. Notice was mailed on November 2, 2022 to surrounding landowners within 250' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on September 28, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1 Setback reduction application, received October 25, 2022;
- A-2 Proposed plot plan, received October 25, 2022;
- A-3 Copy of original plot plan, received October 25, 2022;

"B" Exhibits – Agency Comments

None received as of this writing;

“C” Exhibits – Cannon Beach Supplements

C-1 Tree removal permit denial, dated October 7, 2022;

C-2 City Arborist’s report, dated October 5, 2022;

“D” Exhibits – Public Comment

None received as of this writing;

SUMMARY & BACKGROUND

The applicant, Beach Construction, on behalf of property owners Erik & Rachel Purdy, requests a setback reduction on the east and south sides of Taxlot 51030DA10200 located at the corner of Ross Ln and Spruce St. The purpose of the setback reduction is to minimize the number of trees that would need to be removed in conjunction with the construction of a new single-family dwelling on the currently undeveloped lot. On October 7, 2022 the City of Cannon Beach denied a tree removal permit application on the recommendation of the City Arborist who suggested that the site plan be revised with an emphasis on tree preservation.

Applicable Criteria

The Cannon Beach Municipal Code Chapter 17.64.010 establishes the criteria which the Planning Commission shall use when evaluating a setback reduction application. These criteria are:

1. *Total building coverage shall not exceed forty percent;*

Staff Comment: The originally submitted plans conformed to lot coverage and floor area ratio requirements. The proposed reduction will not change the footprint of the dwelling.

2. *Significant views of the ocean, mountains or similar features from nearby properties will not be obstructed any more than would occur if the proposed structure were located as required by the zoning district;*

Staff Comment: There are no significant views of the ocean or mountains from the neighborhood immediately surrounding the subject property.

3. *The proposed building location will not interfere with solar access of buildings on adjoining property;*

Staff Comment: There would be no impacts to solar access on adjoining properties as a result of this proposal.

4. *It is the purpose of setbacks to provide for a reasonable amount of privacy, drainage, light, air, noise reduction and fire safety between adjacent structures. Setback reduction permits may be granted where the Planning Commission finds that the above purposes are maintained, and more or more of the following are achieved by the reduction in setbacks:*

- a. *Tree protection,*
- b. *The protection of a neighboring property’s views of the ocean, mountains or similar natural features,*
- c. *The maintenance of a stream corridor or avoidance of geologic hazards or other difficult topography,*
- d. *The provision of solar access,*
- e. *Permitting construction on a lot with unusual configuration,*
- f. *Rehabilitation of existing buildings where other reasonable alternatives do not exist,*
- g. *Protection of a wetland or wetland buffer area, or*
- h. *Permitting construction on an oceanfront lot where the effect of the application of the oceanfront setback requirements of Section 17.42.050(A)(6) reduces the depth of the lot located within the required setbacks to less than forty percent of the lot’s depth. Under this standard, a reduction in the required setback shall be considered only in the setback opposite of the required oceanfront setback;*

Staff Comment: There are no apparent significant impacts to privacy, drainage, light, air, or noise reduction as a result of this proposal. Any residential development permit application will be reviewed and approved

by the Cannon Beach Rural Fire District in order to ensure fire safety, however it is noted that this proposal would not move the dwelling closer to adjacent structures. The primary objective of this application is to attempt to preserve existing mature trees on the western portion of the property which meets criterion 4a above.

5. *Adjacent rights-of-way have sufficient width for utility placement or other public purposes;*

Staff Comment: There would no impacts to the public rights-of-way on Ross Ln. or Spruce St. as a result of this proposal.

6. *The reduction would not create traffic hazards; or impinge upon a public walkway or trail;*

Staff Comment: Although the reduction would shift the house closer to the intersection, which is atypical for a corner lot, there is no apparent impact to the required clear vision area of the intersection of Ross Ln. and Spruce St. There are no public trails that would be impacted by this proposal.

7. *Any encroachment into the setback will not substantially reduce the amount of privacy which is or would be enjoyed by an abutting property; and*

Staff Comment: There would be no apparent significant impacts to the amount of privacy enjoyed by abutting properties as a result of this proposal.

8. *The proposed building location will not interfere with the ability to provide fire protection to the building or adjacent buildings.*

Staff Comment: Any residential development permit application will be reviewed and approved by the Cannon Beach Rural Fire District in order to ensure fire safety, however it is noted that this proposal would not move the dwelling closer to adjacent structures.

Staff Recommendation

Staff does not make a recommendation as this application is in response to an administrative denial.

Procedural Requirements

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. It was submitted October 25, 2022; and determined to be complete on October 26, 2022. Based on this, the City must make a final decision before February 23, 2023.

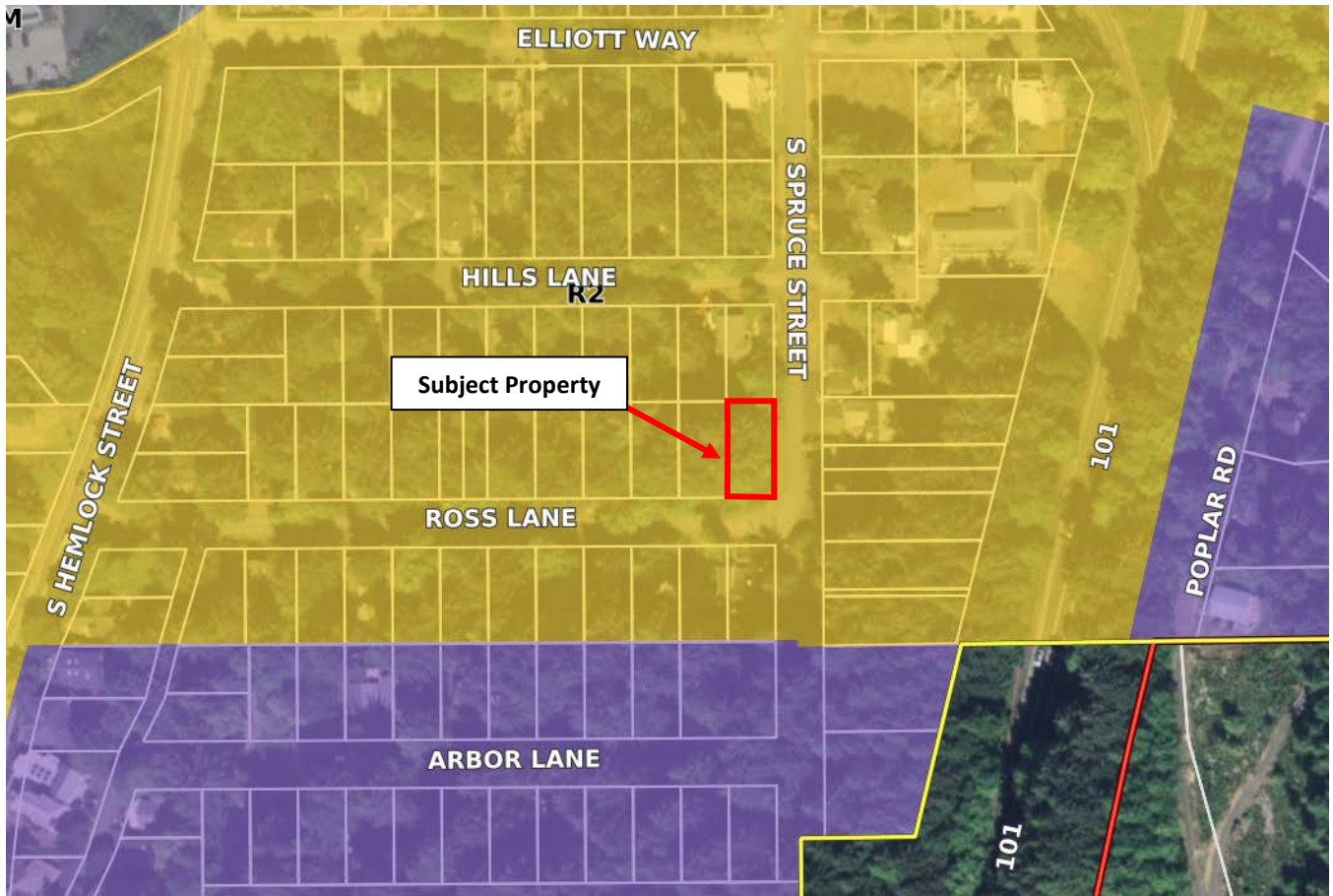
The Planning Commission's November 22nd meeting will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to request a continuance. If such a request is made, it should be granted. The Planning Commission's next regularly scheduled hearing date is Thursday, December 22, 2022.

DECISION, CONDITIONS AND FINDINGS

Motion: Having considered the evidence in the record, based on a motion from Commissioner NAME, seconded by Commissioner NAME, the Planning Commission moves to (approve/approve with conditions/or deny) the Beach Construction application, on behalf of Erik & Rachel Purdy, the setback reduction in conjunction with a single-family dwelling, application **SR# 22-03**, as discussed at this public meeting (subject to the following conditions):

1. The authorization of a setback reduction shall be void after one year unless a building permit has been issued.

Site Location Map



CITY OF CANNON BEACH SETBACK REDUCTION APPLICATION

Please fill out this form completely. Please type or print.

Applicant Name: Beach Construction
 Mailing Address: 3535 HWY 101 N
Gresham, OR 97138
 Telephone: (503) 440-4561
 Property-Owner Name: Erik & Rachel Purdy
 (if other than applicant)
 Mailing Address: 14988 SW Lookout DR.
Tigard, OR 97224
 Telephone: (503) 764-8341
 Property Location: 196 ROSS LN
 (street address)
 Map No.: 51030DA Tax Lot No.: 10200

SETBACK REDUCTION REQUEST:

1. Description of the setback reduction that is being sought.

We would like to reduce the setbacks on the east and south side. South setback 9' and east setback 10'. This would have less impact on tree roots.

2. Description of the proposed building plans pertinent to the setback reduction request.

Site plans (original & amended) along with tree overlay and feedback from arborists on west property tree root systems.

3. Justification of the setback reduction request. Explain how the request meets each of the following criteria for granting a setback reduction.

(a) Total building coverage shall not exceed forty percent;

Reducing the setbacks is not changing the footprint of the home. Only moving the home away from trees on the lot to the west who's roots could be impacted by the homes original location in the original setbacks.

- (b) Significant views of the ocean, mountains or similar features from nearby properties will not be obstructed any more than would occur if the proposed structure were located as required by the zoning district;

NO Views will be impacted, there are no Views in this area.

- (c) The proposed building location will not interfere with solar access of buildings on adjoining property;

home is on a corner lot, the shift of the home & construction will require removal of trees and could benefit solar

- (d) The granting of the setback reduction requires that one or more of the following are achieved by the reduction in setback:

Tree protection - Root systems of trees on adjoining lot.

- The protection of a neighboring property's views of the ocean, mountains or similar natural features,
- The maintenance of a stream corridor or avoidance of geologic hazards or other difficult topography,
- The provision of solar access,
- Permitting construction on a lot with unusual configuration,
- Rehabilitation of existing buildings where other reasonable alternatives do not exist,
- Protection of a wetland or wetland buffer area, or
- Permitting construction on an oceanfront lot where the effect of the application of the oceanfront setback requirement of Section 17.42.050(A)(6) reduces the depth of the lot located within the required setbacks to less than forty percent of the lot's depth. Under this standard, a reduction in the required setback shall be considered only in the setback opposite of the required oceanfront setback.

- e) Adjacent rights-of-way have sufficient width for utility placement or other public purposes;

Still 9' & 10' from property line. the lines on both sides are about 3' from Road.

- f) The reduction would not create traffic hazards; or impinge upon a public walkway or trail;

No Sidewalks, or trails along Property.

- g) Any encroachment into the setback will not substantially reduce the amount of privacy which is or would be enjoyed by an abutting property; and

moving home further from abutting property.



- h) The proposed building location will not interfere with the ability to provide fire protection to the building or adjacent buildings.

moving home closer to street & further from adjacent homes

8. Attach a scale drawing showing the dimensions of the property, adjacent street(s), dimensions of existing structures, and dimensions of proposed development.

Attach additional sheets as necessary.

Setback Application Fee: \$400.00

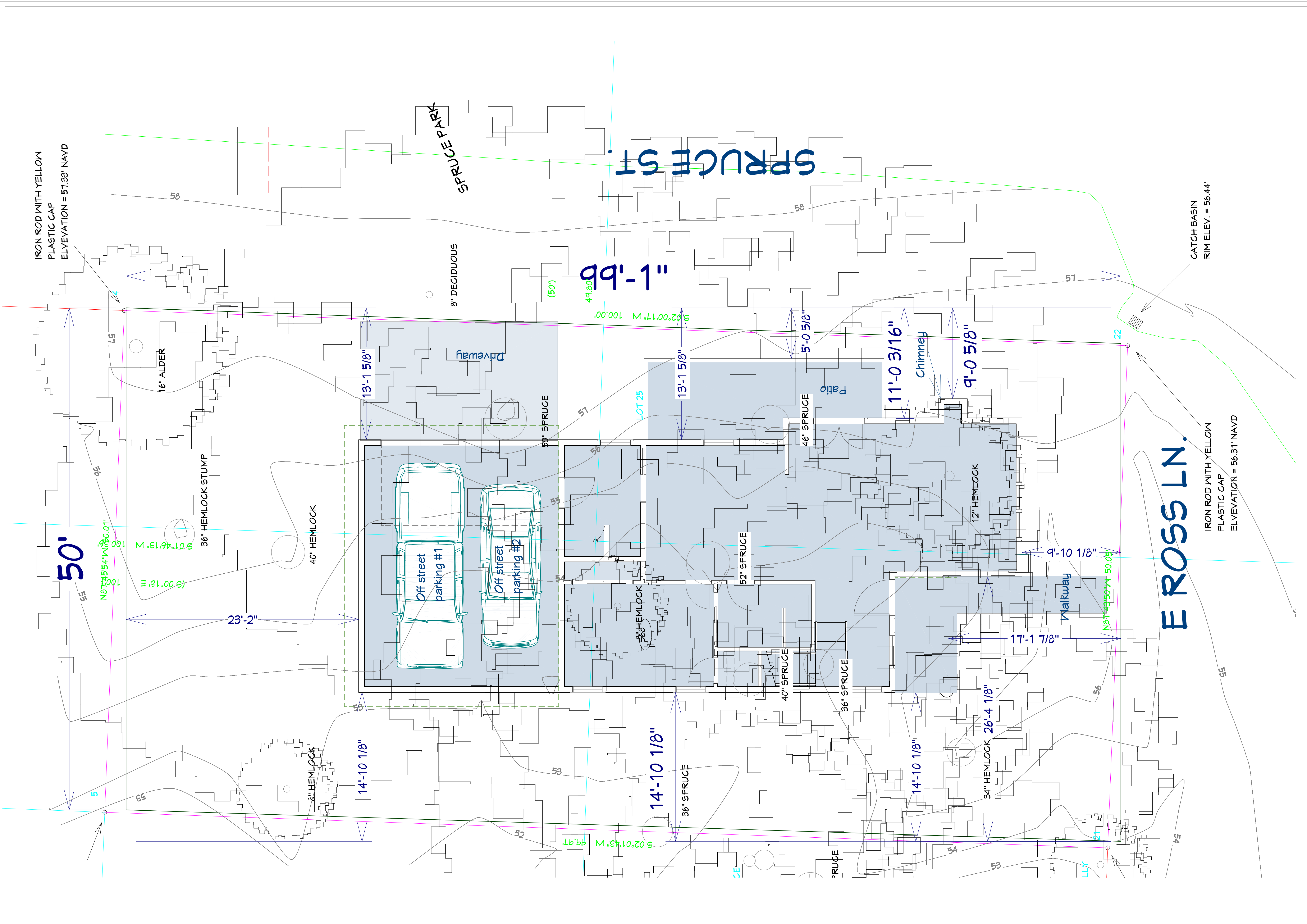
Applicant Signature:  Date: 10-24-22
Property Owner Signature:  Date: 10/24/22

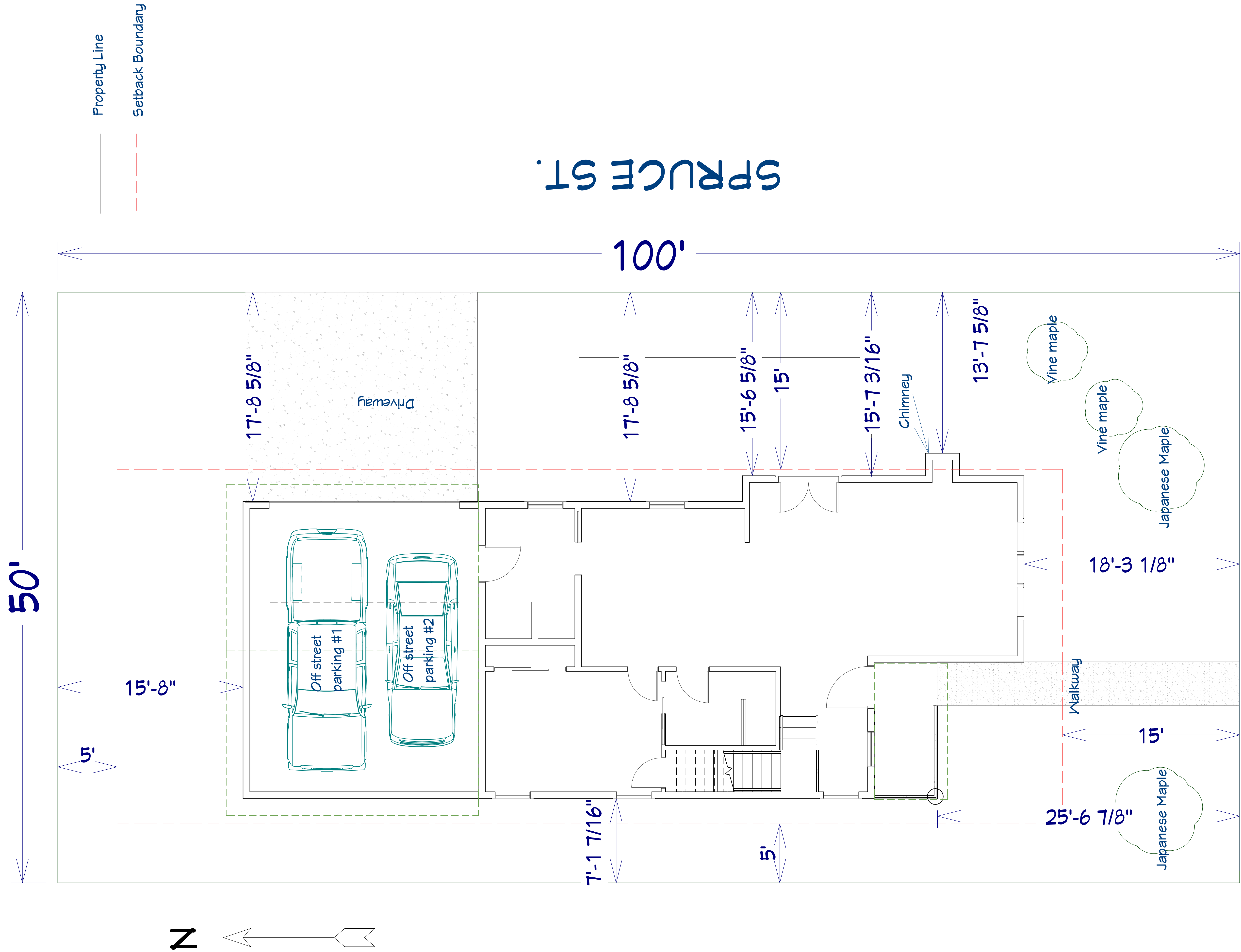
If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owners.

As Property Owner, my signature or an authorized applicant's signature, allows any duly authorized employee of the City to enter upon all properties affected by this permit for the purpose of follow-up inspection, observation, or measurement.

For Staff Use Only:

Received on: _____ By: _____
Fee Paid: _____ Receipt No.: _____





E ROSS LN.

SPRUCE ST.

DRAWINGS PROVIDED BY:

Keystone
Design

DATE:

10/24/22

SCALE:

1/4"

SHEET:

P-8

Plot Plan

Purdy

Tax lot:51030DA10200
Cannon Beach OR

Keystone Design

P.O. Box 927

Long beach WA, 98631

**CANNON BEACH COMMUNITY DEVELOPMENT**

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

October 7, 2022

Erik & Rachel Purdy
14988 SW Lookout Dr.
Tigard, OR 97224

RE: Denial of Tree Removal Permit at 196 Ross Ln.

Dear Mr. & Mrs. Purdy:

The City has denied the application to remove multiple trees in conjunction with proposed residential development on your property at 196 Ross Ln., Taxlot 51030DA10200. This denial is based on the recommendation of the City Arborist who stated that the removal of all large diameter trees from the property would result in a major loss of tree canopy for the neighborhood and the compromising of root systems for trees on the property to the west which may generate hazardous conditions. A copy of the City Arborist's review is included with this letter.

Decisions on the issuance of a tree removal permit may be appealed to the Planning Commission as per Section 17.70.030(H) of the *Tree Removal and Protection* chapter of the Municipal Code. Appeals must be submitted to the City Manager within 14 days of the date the decision was issued.

Please feel free to contact me at (503) 436-8041, if you have any questions concerning this matter.

Regards,

Robert St. Clair

cc: Joe Balden, Balden & Associates Arboriculture Services
Taylor Kemmer, Beach Construction
File



Treescaping Northwest
Jeff Gerhardt, Consulting Arborist
ISA Certified Arborist #PN-5541A



City of Cannon Beach, Planning Department

Attn: Jeff Adams

adams@ci.cannon-beach.or.us

(503) 436-8054

October 5, 2022

Tree Removal Permit Application Review - 196 Ross Lane

Per your request, I reviewed the Tree Removal Permit Application submitted by Beach Construction. I visually inspected the site on October 3rd, and it is my recommendation, the removal request of 11 trees not be granted.

This property is entirely forested with mature Sitka spruce (*Picea sitchensis*) and western hemlock (*Tsuga heterophylla*) trees. The applicant has requested that all large diameter trees on the lot be removed to accommodate new construction. Doing so, would result in a major loss of tree canopy in the neighborhood. Additionally, large trees on the property to the west, will become root compromised and extremely hazardous. I recommend the applicant go back to the drawing board with an emphasis on tree preservation and root protection.

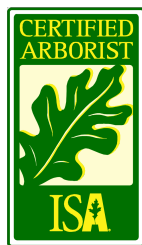
Best regards,

A handwritten signature in black ink, appearing to read "Jeff Gerhardt", is written over a light pink rectangular background.

Jeff Gerhardt

Treescaping Northwest
P.O. Box 52
Manzanita, OR 97130

CCB# 236534
Cell: 503-453-5571
www.treescapingnorthwest.com



Treescaping Northwest
 Jeff Gerhardt, Consulting Arborist
 ISA Certified Arborist #PN-5541A



City of Cannon Beach, Planning Department

Attn: Jeff Adams

adams@ci.cannon-beach.or.us

(503) 436-8054

October 5, 2022

Tree Removal Permit Application Review - 196 Ross Lane

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Best regards,

Jeff Gerhardt

Treescaping Northwest

P.O. Box 52

Manzanita, OR 97130

CCB# 236534

Cell: 503-453-5571

www.treescapingnorthwest.com

Planned construction will not only remove all large trees on the property, but will also create hazardous conditions on property to the west



* Yellow line is approximate western property line

Treescaples Northwest
P.O. Box 52
Manzanita, OR 97130

CCB# 236534
Cell: 503-453-5571
www.treescaplesnorthwest.com



CITY OF CANNON BEACH

November 2, 2022

SR 22-03, Beach Construction, on behalf of Eric & Rachel Purdy, application to allow a setback reduction to reduce the front yard setback from the required 15'0" to 9'10" and the side yard setback from the required 15'0" for a corner lot to 11'0" in order to reduce the number of trees that would need to be removed in conjunction with the construction of a new single family dwelling. The property is located at the corner of Ross Ln. and Spruce St. (Tax Lot 10200, Map 51030DA), and in a Residential Medium Density (R2) Zone. The request will be reviewed against the Municipal Code, Section 17.645.010, Setback Reduction, Provisions Established.

Dear Property Owner,

Cannon Beach Zoning Ordinance requires notification to property owners within 100 feet, measured from the exterior boundary, of any property which is the subject of the proposed applications. Your property is located within 100 feet of the above-referenced property or you are being notified as a party of record.

Please note that you may submit a statement either in writing or orally at the hearing, supporting or opposing the proposed action. Your statement should address the pertinent criteria, as stated in the hearing notice. Statements in writing must be received by the date of the hearing.

Enclosed are copies of the public hearing notice, a description of how public hearings are conducted and a map of the subject area. Should you need further information regarding the relevant Zoning Ordinance, Subdivision Ordinance or Comprehensive Plan criteria, please contact Cannon Beach City Hall at the address below, or call Jennifer Barrett at (503) 436-8052 or email barrett@ci.cannon-beach.or.us.

Sincerely,

Jennifer Barrett
City Recorder

Enclosures: Notice of Hearing
 Conduct of Public Hearings
 Map of Subject Area

**NOTICE OF PUBLIC HEARING
CANNON BEACH PLANNING COMMISSION**

The Cannon Beach Planning Commission will hold a public hearing on **Tuesday, November 22, 2022 at 6:00 p.m.** at City Hall, 163 E Gower Street, Cannon Beach, regarding the following:

CU 22-03, David Vonada, on behalf of Cannon Beach BP LLC, application for a Conditional Use Permit to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.24.030, General Commercial Conditional Uses Permitted.

SR 22-03, Beach Construction, on behalf of Eric & Rachel Purdy, application to allow a setback reduction to reduce the front yard setback from the required 15'0" to 9'10" and the side yard setback from the required 15'0" for a corner lot to 11'0" in order to reduce the number of trees that would need to be removed in conjunction with the construction of a new single family dwelling. The property is located at the corner of Ross Ln. and Spruce St. (Tax Lot 10200, Map 51030DA), and in a Residential Medium Density (R2) Zone. The request will be reviewed against the Municipal Code, Section 17.645.010, Setback Reduction, Provisions Established.

All interested parties are invited to attend the hearings and express their views. Statements will be accepted in writing or orally at the hearing. Failure to raise an issue at the public hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

Correspondence should be mailed to the Cannon Beach Planning Commission, Attn. Community Development, PO Box 368, Cannon Beach, OR 97110 or via email at planning@ci.cannon-beach.or.us. Written testimony received one week prior to the hearing will be included in the Planning Commissioner's meeting materials and allow adequate time for review. Materials and relevant criteria are available for review at Cannon Beach City Hall, 163 East Gower Street, Cannon Beach, or may be obtained at a reasonable cost. Staff reports are available for inspection at no cost or may be obtained at a reasonable cost seven days prior to the hearing. Questions regarding the applications may be directed to Jeffrey Adams, 503-436-8040, or at adams@ci.cannon-beach.or.us.

The Planning Commission reserves the right to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided. The hearings are accessible to the disabled. Contact City Manager, the ADA Compliance Coordinator, at (503) 436-8050, if you need any special accommodations to attend or to participate in the meeting. TTY (503) 436-8097. Publications may be available in alternate formats and the meeting is accessible to the disabled.



Jeffrey C. Adams, PhD
Director of Community Development

Posted/Mailed: 11/2/22

NOTICE TO MORTGAGEE, LIEN-HOLDER, VENDOR OR SELLER:
PLEASE PROMPTLY FORWARD THIS NOTICE TO THE PURCHASER

**CONDUCT OF PUBLIC HEARINGS BEFORE
CANNON BEACH CITY COUNCIL and PLANNING COMMISSION**

- A. At the start of the public hearing, the Mayor or Planning Commission Chair will ask the following questions to ensure that the public hearing is held in an impartial manner:
1. Whether there is a challenge to the jurisdiction of the City Council or Planning Commission to hear the matter;
 2. Whether there are any conflicts of interest or personal biases to be declared by a Councilor or Planning Commissioner;
 3. Whether any member of the Council or Planning Commission has had any ex parte contacts.
- B. Next, the Mayor or Planning Commission Chair will make a statement which:
1. Indicates the criteria which apply to the action;
 2. Cautions those who wish to testify that their comments must be related to the applicable criteria or other criteria in the Comprehensive Plan or Municipal Code that the person testifying believes apply;
 3. States that failure to raise an issue in a hearing, or failure to provide statements or evidence sufficient to afford the decision makers an opportunity to respond to the issue precludes appeal based on that issue;
 4. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The City Council or Planning Commission shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony.
- C. The public participation portion of the hearing will then proceed as follows:
1. Staff will summarize the staff report to the extent necessary to enable those present to understand the issues before the Council or Planning Commission.
 2. The Councilors or Planning Commissioners may then ask questions of staff.
 3. The Mayor or Planning Commission Chair will ask the applicant or a representative for any presentation.
 4. The Mayor or Planning Commission Chair will ask for testimony from any other proponents of the proposal.
 5. The Mayor or Planning Commission Chair will ask for testimony from any opponents of the proposal.
 6. Staff will be given an opportunity to make concluding comments or respond to additional questions from Councilors or Planning Commissioners.
 7. The Mayor or Planning Commission Chair will give the applicant and other proponents an opportunity to rebut any testimony of the opponents.
 8. Unless continued, the hearing will be closed to all testimony. The Council or Planning Commission will discuss the issue among themselves. They will then either make a decision at that time or continue the public hearing until a specified time.

NOTE: Any person offering testimony must first state their name, residence, and **mailing address** for the record. If representing someone else, the speaker must state whom he represents.



Disclaimer:The information contained in this GIS application is NOT AUTHORITATIVE and has NO WARRANTY OR GUARANTEE assuring the information presented to you is correct. GIS applications are intended for a visual display of data and do not carry legal authority to determine a boundary or the location of fixed works, including parcels of land. They are intended as a location reference for planning, infrastructure management and general information only. The City of Cannon Beach assumes no liability for any decisions made or actions taken or not taken by the user of the GIS application. The City of Cannon Beach provides this GIS map on an "as is" basis without warranty of any kind, expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no liability for any errors, omissions, or inaccuracies in the information provided.

ACCOUNT_ID	TAXLOTKEY	SITUS_ADDR	OWNER_LINE	STREET_ADD	PO_BOX	CITY	STATE	ZIP_CODE
5761	51029CB02400	215 Hills Ln	Barta Joseph M/Karen J	10375 SW Cormorant Dr		Beaverton	OR	97007-8408
5762	51029CB02401	247 Hills Ln	Cannon Beach Conser Baptist Ch	PO Box 1068		Cannon Beach	OR	97110
5763	51029CB02402	1655 S Spruce St	Duffy Eugene M	4383 Kraft Ave		Studio City	CA	91604
5764	51029CB02403	1631 S Spruce St	Johnson April B	6607 NE Going St		Portland	OR	97218
5765	51029CB02404		Nelson John D	PO Box 122	122	Cannon Beach	OR	97110-0122
5766	51029CB02405	1637 S Spruce St	Nelson John D	PO Box 122	122	Cannon Beach	OR	97110-0122
5767	51029CB02500	1671 S Spruce St	Silkeborg LLC	14855 NW Northumbria Ln		Beaverton	OR	97006
6287	51030DA10000		Wilson James H/Marilyn R Trustee	760 Largo Ct		Fairfield	CA	94533-1418
6288	51030DA10100		Wilson James H/Marilyn R Trustee	760 Largo Ct		Fairfield	CA	94533-1418
6289	51030DA10200		Purdy Rachel K	14988 SW Lookout Dr		Tigard	OR	97224
6290	51030DA10300	195 Ross Ln	Mills Harold K	17373 SW Kemmer Road		Beaverton	OR	97007
6291	51030DA10400	187 Ross Ln	Picard Dereth A	12210 NW Kearney St		Portland	OR	97229-4942
6292	51030DA10500	179 Ross Ln	Shanelec Kathy	PO Box 2684	2684	Gearhart	OR	97138-2684
6264	51030DA08100	195 Hills Ln	Jones Jeffery C	128 Wilson Ave		Long Beach	NY	11561
6265	51030DA08200	187 Hills Ln	Coughlin Barbara A	8945 Kari Ln NW		Bremerton	WA	98311-9060
6266	51030DA08300		Ratliff Jessica W	3149 NE 57th Ave		Portland	OR	97213
6286	51030DA09900	172 Ross Ln	Misner Patricia A	PO Box 842	842	Cannon Beach	OR	97110-0842



Cannon Beach Planning Commission

STAFF REPORT

CANNON BEACH ELEMENTARY SCHOOL REJUVENATION PROJECT & CURRENT ZONING CONSIDERATION

Work Session Date: November 22, 2022

Prepared by: Staff

BACKGROUND

The CBE Rejuvenation project is in the middle of the Schematic Design Phase. During this phase there were things that came to light that are outside of the city's code requirements (parking) or that would require the city to take back right of way for the benefit of the project and potentially change Beaver street to "One Way". Many of the Schematic design drawings have "placeholders" that show what the design might look like either show the design possibilities with the variance or the current physical properties if the variance is not pursued or granted.

The consultant and staff brought a discussion of the following matters before the City Council for their consideration and direction at the Council's November 8, 2022 work session, where the Council gave direction to move the project forward.

ANALYSIS/INFORMATION

Variance of code requirements for off-street parking

It was recognized early on that meeting the code requirements for parking would result in a very different project than what would meet the public's expectations. To develop the parking requirements on-site would require paving of a significant portion of the Ne'Cus site on the north side on the gym and classrooms. City Staff provided a Zoning Verification Letter to the City and Project Consultant, CIDA, dated October 21, 2022 (Attachment B), which outlines the major zoning constraints, including the off-street parking needs.

Possible mitigation factors currently include the design of a significant cut-out to accommodate a bus stop on Hemlock, pedestrian connections public parking via an existing path from Hemlock to the parking area around the treatment plant and consideration of event management so that the scheduling of events would place a self-imposed limitation on maximum occupancy of the site at one given time. CIDA has provided a Project Memorandum (Attachment C), which explains the rationale for determining the parking impacts around the projected use-loads and facility functions.

Reallocate 15 feet of Beaver Street Right-Of-Way to the school property

Currently the property line ends at a point 5 feet from the south side of the gym. Reallocating 15 feet of the Beaver Street Right-Of-Way to the school property would accommodate more pedestrian traffic around what appears to be the "natural" location of the entrance on the south side of the school property.

It should be noted that the Antler Lodge Plat of 1909 grants and dedicates to the public the “use for ordinary purposes the streets and highways shown...” and would therefore, should not require any vacation or lot line adjustment, as CBMC 17.36.040 of the Institutional Zoning District states, “Existing structures, at the time of adoption of the ordinance codified in this title, shall maintain their setbacks. Where parking occurs in the setback area, such use may continue.”

Re-designating Antler Street and Beaver Street to a single lane and “One Way”

Traffic flow, with or without the 15 feet re-allocated, along the Antler and Beaver Street rights of way might not accommodate two lanes of traffic along with parking, so various options are being considered. Taking into consideration the parking management for the facility, shared uses and on-street and public off-street parking that might be cross-utilized will drive future decisions.

These traffic movement and operation concerns will be considered by the Public Works Staff and Committee as the project develops and more details are known and should not have zoning ramifications.

RECOMMENDATION

Cannon Beach Municipal Code CBMC 17.78.010(B) states that “Requirements for types of buildings and uses not specifically listed herein shall be determined by the planning commission based upon the requirements of comparable uses listed.” This November Planning Commission Work Session provides a forum for the Planning Commission to make a determination of Off-Street Parking requirements for such uses so that the applicant has an understanding of the variance to be requested at a future date.

List of Attachments

- A Project Schematic Maps Exhibits A & B of the CBE project area;
- B Zoning Verification Analysis for the Cannon Beach Elementary School Rejuvenation Project, Memorandum, Staff produced, dated October 21, 2022;
- C Cannon Beach Elementary Rejuvenation Project Requested Variance for Reduction in Off-Street Parking Requirements, Project Memorandum, Dustin Johnson, Project Architect, CIDA, dated November 14, 2022;
- D Cannon Beach Elementary School Off-Street Parking Analysis;





CANNON BEACH REJUVENATION
PROJECT - PHASE 1

EXHIBIT B
REVERSE FLOW

**CANNON BEACH COMMUNITY DEVELOPMENT**

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

MEMORANDUM

October 21, 2022

RE: Zoning Verification Analysis for the Cannon Beach Elementary School Rejuvenation Project, 268 Beaver Ave., Taxlots# 51020CB04000, 51020CB04100, 51020CB04101, 510020CB04200, 510020CB04301, and 51020CB05700

The Community Development Department has been asked to prepare a zoning analysis for Taxlots# 51020CB04000, 51020CB04100, 51020CB04101, 510020CB04200, 510020CB04301, and 51020CB05700, at 268 Beaver Ave., the Cannon Beach Elementary School property. This Zoning analysis applies to the proposed plans, as found in the September 28, 2022, edition, for the Cannon Beach Elementary School, which is in the process of being repurposed for use as a community center by the City. This letter is for informational purposes only and is not a land use decision or a guarantee of outcome for land use or building applications.

Current Conditions

The current property is a 113,510 square foot parcel consisting of six taxlots, which contain Lots 8 through 12 of Block 5, of the Antler Lodge subdivision plat, along with five un-platted parcels. As per the 2020 building evaluation conducted by ZCS Engineering it is currently developed with approximately 12,950 square feet of floor area spread across two structures that comprise the former Cannon Beach Elementary School. These structures include the building housing classrooms and administrative areas, and a separate gymnasium. Additionally, there is a prefabricated modular classroom that was not included in the 2020 evaluation. The property is bordered by a mixture of residential and commercial properties to the south and the stream channel and floodplain of Ecola Creek to the north. It is flanked on the west by three undeveloped parcels in the Ecola Creek estuary that are owned by the City of Cannon Beach and are in a largely natural state and Ecola Creek Park on the opposite side of Fir St.

The property is zoned Institutional (IN) and the repurposing of the school into a community center is a use permitted outright in that zone. At present the property provides three off-street parking spaces. Additionally, there is a 200-foot frontage on Beaver Ave which allows for nine 22 foot long parallel on-street parking spaces.

Zoning Analysis

The IN Institutional zone allows for the existing structures to maintain their existing setbacks and allows parking to be maintained in those setback areas. Where new structures would be required to maintain a twenty-five foot setback from adjoining zones or public right-of-way and no parking in those required yards.

The Community Garden, or Heritage Garden would be required to satisfy CBMC 17.80.155, copied below and would be considered a Conditional Use, along with the proposed Public Park area.

17.80.155 Community garden.

The following specific standards shall apply to a community garden:

- A. A site plan will be provided which indicates the location of all anticipated improvements, including the location of storage sheds, compost bins, fencing, and raised beds.*
- B. Structures such as storage sheds and compost bins shall conform to setback requirements; raised beds may be located in required setback areas as long as they conform to the clear vision area requirements of Section 17.90.040.*
- C. Fences shall conform to the standards of Section 17.54.020(H).*
- D. On-site retail sales are not permitted.*
- E. The land shall be served by a sufficient water supply.*
- F. The community garden shall be managed by an organization which has an established set of operating rules addressing the governance of the community garden.*
- G. The planning commission may specify operating hours for community garden activities based on the location of the community garden.*
- H. Notwithstanding any provision of Section 17.44.020, Applicability, a community garden is not subject to design review, except that any structure of two hundred square feet or more shall be subject to design review as described in Chapter 17.44, Design Review Procedures and Criteria. (Ord. 09-4 § 16)*

Although CBMC 17.80.155(H) doesn't require DRB approval, the Cannon Beach Elementary School Rejuvenation project would be subject to DRB review. In fact, CBMC 17.36.040 provides that the IN zone standards, "shall apply except as they may be modified through the design review process pursuant to Chapter 17.44.

It should be noted that for any site over 30,000 square feet, according to Chapter 17.66 Buffering and Screening Requirements, where government uses and structures abut a residential district of RVL, RL, R1, R2, R3 or RAM, as this property does on the southeastern border, must provide a twenty-foot buffer, which may only be occupied by screening, utilities and landscaping materials. This section of the code gives no guidance for existing facilities, but any new development should incorporate these standards.

Off-Street Parking

Chapter 17.78 of the Cannon Beach Municipal Code requires that all new development or redevelopment projects provide for off street parking. Section D of Chapter 17.78.020 defines off street parking requirements by type, and this project would best be described under the limited available categories, as "meeting room," requiring one parking space per 100 square feet of gross floor area. Based on the 12,950 square footage of the school building and gymnasium, this would equate to a minimum of 130 off street parking spaces if the entire facility was seen in this light. This calculation does not include the modular classroom which currently houses the community food bank, if the modular structure were to be retained its square footage would need to be determined to generate an updated parking requirement calculation. However, it should be noted that CBMC 17.78.020 also states that 'similar uses or aggregate' are 'to be evaluated on a case-by-case basis based on above standards,' where 'retail and office' and 'restaurants, bar or lounge,' which might be more comparable to some of the uses identified in the schematic plans, Cannon Beach Elementary School Rejuvenation Project Zoning Analysis

would require only one space or one and half spaces per 400 square of gross floor area. The range of off-street parking required, depending of course on final plans, would be in the range of 90 to 130 for the project.

CBMC 17.78.010(B) states that “Requirements for types of buildings and uses not specifically listed herein shall be determined by the planning commission based upon the requirements of comparable uses listed.” Other pertinent sections of the Off-street parking regulations, CBMC 17,78,010(C) & (D), copied below, allow for shared uses to be calculated so that cross-utilization of spaces can be considered when times of utilization do not conflict. In other words, if the facility is proposed to be programmed to, under condition of approval, not exceed a certain percentage of space utilization at a given time, such programming should be allowed to inform the Planning Commission’s decision of required spaces for the facility.

17.78.010 Requirements generally.

The following general provisions shall govern the application of off-street parking requirements:

- A. The provision and maintenance of off-street parking is a continuing obligation of the property owner. No building permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking. The subsequent use of property for which the building permit is issued is conditional upon the unqualified continuance and availability of the amount of off-street parking required by this chapter. Should the owner or occupant of a lot or building change the use to which the lot or building is put, thereby increasing required off-street parking, it shall be a violation of this chapter to begin or maintain such altered use until the required increase in off-street parking is provided.*
- B. Requirements for types of buildings and uses not specifically listed herein shall be determined by the planning commission based upon the requirements of comparable uses listed.*
- C. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately, unless evidence is presented to the satisfaction of the city that the various uses will not be used simultaneously, thus not requiring that the required amount of off-street parking be the sum of the requirements of the several uses. Where the city determines that various uses will not be used simultaneously, the city shall determine the amount of off-street parking to be provided.*
- D. Owners of two or more uses, structures or parcels of land may agree to utilize jointly the same parking area where the amount of the off-street parking provided in such a joint use parking area is the sum of the required off-street parking for those several uses and where a deed restriction or covenant for the shared parking between the cooperating property owners is recorded with Clatsop County. The deed restriction or covenant shall be approved by the city and shall contain a provision that it cannot be modified or revoked without the approval of the city.*
{...}

Table 1106.1 in Section 1106, *Parking and Passenger Loading Facilities*, of the Oregon Structural Specialty Code, would require that no fewer than five of those parking spaces meet ADA accessibility standards with accompanying loading zones.

The current amount of parking available is insufficient to satisfy the requirement for 90 to 130 off-street spaces, there are three options available to the City to address this issue:

1. Develop a site plan that provides for the required amount of off-street parking. This would likely require utilizing the majority of the approximately 56,000 square foot open space between the school and Ecola Creek, precluding it from being used as a park or other community accessible open space and disconnecting the community center from the creek. As this is an adaptive reuse project and not new construction, repositioning of the buildings to provide an area for off street parking accessible from Beaver Ave. is not an available option.

Development of a public parking facility is a conditional use in the Institutional zone that would require review and approval by both the Planning Commission and the Design Review Board.

Estimated square footage calculations for the upper-limit of 130 parking spaces and aisles are in the table below. This calculation assumes five aisles with 26 spaces each and two two-directional connecting aisles. It does not include any access drives connecting the parking lot to the public right-of-way. It should be noted that these calculations are estimated approximations and any plans prepared by a design professional may be different.

Parking Angle	Area per Parking Space	Parking Area	Aisle Area	Total Required Area
30°	153 sq. ft.	19,890 sq. ft.	17,370 sq. ft.	37,260 sq. ft.
90°	162 sq. ft.	21,060 sq. ft.	26,351 sq. ft.	47,411 sq. ft.

2. The City may make an application to the Planning Commission to grant a variance to the off street parking requirements. Any variance request must meet the following criteria from Chapter 17.84 of the Municipal Code:

17.84.040 Off-street parking and loading facilities.

- A. *Variances to requirements of this title with respect to off-street parking and loading facilities may be authorized as applied for or as modified by the planning commission if, on the basis of the application, investigation and the evidence submitted by the applicant, all three of the following expressly written findings are made:*
 1. *That neither present nor anticipated future traffic volumes generated by the use of the site or use of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the requirements of this title; or the granting of the variance will protect a wetland or wetland buffer area; and*
 2. *That the granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to materially interfere with the free flow of traffic on the streets;*
 3. *That the granting of the variance will not create a safety hazard or any other condition inconsistent with the general purpose of this title or policies contained within the comprehensive plan.*
- B. *Where a variance request is being reviewed under this section, only the criteria of this section shall be addressed. The criteria of Section 17.84.030 are not applicable. (Ord. 94-29 § 8; Ord. 89-3 § 1; Ord. 79-4 § 1 (8.040))*

3. The City may make an application to the Planning Commission, which would also require Council approval, to grant a text amendment to the off-street parking requirements. Any amendment request must meet the following criteria from Chapter 17.86 of the Municipal Code:

17.86.070 Criteria.

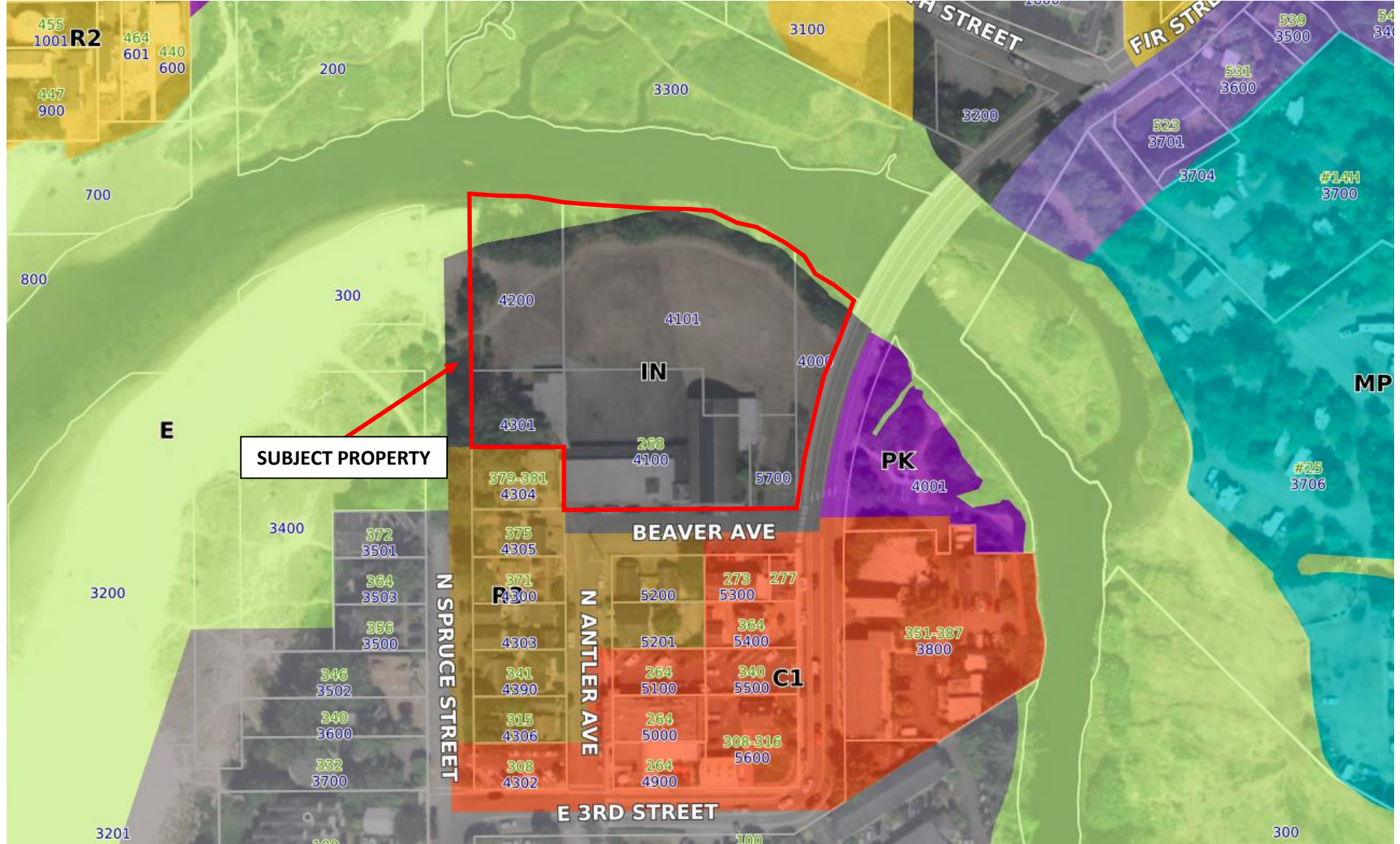
- A. *Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:*
 1. *The amendment is consistent with the comprehensive plan;*
 2. *The amendment will not adversely affect the ability of the city to satisfy land and water use needs.*
- B. *Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:*
 1. *The amendment is consistent with the comprehensive plan;*
 2. *The amendment will either:*
 - a. *Satisfy land and water use needs, or*
 - b. *Meet transportation demands, or*
 - c. *Provide community facilities and services;*
 3. *The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations;*
 4. *Resource lands, such as wetlands are protected;*
 5. *The amendment is compatible with the land use development pattern in the vicinity of the request. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.070))*

Recommended Process

The public review process for the Rejuvenation project could take various routes, as outlined above. Staff, however, recommends that after a final schematic plan is in place, the City apply for a Zoning Determination, under CBMC 17.78.010(B), before the Planning Commission, to determine the number of spaces required for the project.

After this determination is made, the City would request an Off-Street Parking Variance, along with Conditional Use permits for the Public Park and Community Garden, before the Planning Commission.

Figure 1: Subject Property Location and Zoning





Referenced Municipal Codes

Chapter 17.36 Institutional (IN) Zone

17.36.010 Purpose.

The purpose of the institutional zone is to provide for a range of governmental and municipal uses. (Ord. 98-3 § 3; Ord. 79-4 § 1 (3.150))

17.36.020 Uses permitted outright.

In the institutional zone the following uses and their accessory uses are permitted outright:

- A. Community buildings and areas which provide for educational or cultural activities;
- B. Museums;
- C. Reload facility. (Ord. 98-3 § 4; Ord. 79-4 § 1 (3.150) (1))

17.36.030 Conditional uses permitted.

The following uses and their accessory uses may be permitted subject to the provisions of Chapter 17.80:

- A. Public parking facility;
- B. Sewage treatment facility;
- C. Wood waste processing, not including a building;
- D. Public restroom;
- E. Recycling facility;
- F. Public school;
- G. Pump station or other similar facility;
- H. Public park or publicly owned recreation area;
- I. Public works shop or yard;
- J. Dog impound facility.
- K. Community garden, which satisfies the requirements of Section 17.80.155.

(Ord. 09-4 § 14; Ord. 98-8 § 2; Ord. 98-3 § 5; Ord. 79-4 § 1 (3.150) (2))

17.36.040 Standards.

In an IN zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

- A. Setbacks. Structures adjoining another zone or public right-of-way shall be set back twenty-five feet. No parking shall be permitted in this setback. Existing structures, at the time of adoption of the ordinance codified in this title, shall maintain their setbacks. Where parking occurs in the setback area, such use may continue.
- B. Building Height. Maximum height of a structure is twenty-eight feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed thirty-six feet.
- C. Signs. As allowed by Chapter 17.56.
- D. Parking. As allowed by Section 17.78.020.
- E. Access. The provision of consolidated street access points shall be considered in site design. Street access should be located to minimize the impact on adjacent residential areas.
- F. Design Review. All uses shall be evaluated under Chapter 17.44, Design Review Procedures and Criteria. (Ord. 90-3 § 14; Ord. 79-4 § 1 (3.150) (3))

Chapter 17.78 Off-Street Parking

17.78.010 Requirements generally.

The following general provisions shall govern the application of off-street parking requirements:

- A. The provision and maintenance of off-street parking is a continuing obligation of the property owner. No building permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking. The subsequent use of property for which the building permit is issued is conditional upon the unqualified continuance and availability of the amount of off-street parking required by this chapter. Should the owner or occupant of a lot or building change the use to which the lot or building is put, thereby increasing required off-street parking, it shall be a violation of this chapter to begin or maintain such altered use until the required increase in off-street parking is provided.
- B. Requirements for types of buildings and uses not specifically listed herein shall be determined by the planning commission based upon the requirements of comparable uses listed.
- C. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately, unless evidence is presented to the satisfaction of the city that the various uses will not be used

simultaneously, thus not requiring that the required amount of off-street parking be the sum of the requirements of the several uses. Where the city determines that various uses will not be used simultaneously, the city shall determine the amount of off-street parking to be provided.

- D. Owners of two or more uses, structures or parcels of land may agree to utilize jointly the same parking area where the amount of the off-street parking provided in such a joint use parking area is the sum of the required off-street parking for those several uses and where a deed restriction or covenant for the shared parking between the cooperating property owners is recorded with Clatsop County. The deed restriction or covenant shall be approved by the city and shall contain a provision that it cannot be modified or revoked without the approval of the city.
- E. Off-street parking spaces for one or two-family dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located no farther than two hundred feet from the building or use they are required to serve measured in a straight line from the building, except that in the downtown commercial area the provisions of Section 17.22.050(E) apply. For uses where parking is permitted within two hundred feet of the intended use, the parking must be located in a zone which permits the use for which the parking is to be provided.
- F. Required parking spaces shall be available for the parking of passenger vehicles of residents, customers and employees of the use and shall not be used for storage of vehicles or materials.
- G. A plan drawn to scale, indicating how the off-street parking requirements are to be met shall accompany an application for a building permit.
- H. It is unlawful to charge a fee of any kind for the use of off-street parking spaces provided to meet the off-street parking requirements specified in Sections 17.78.020 and 17.22.050(J)(1). Where such a fee was charged prior to the effective date of Ordinance 97-12, an amortization period of four months, from the effective date of Ordinance 97-25, is established. At the conclusion of the amortization period, charging a fee of any kind for the use of off-street parking spaces provided to meet the off-street parking requirement specified in Sections 17.78.020 and 17.22.050 (J)(1) shall be prohibited whether or not a fee was charged prior to the adoption of Ordinance 97-12. (Ord. 08-1 § 48; Ord. 97-25 § 1; Ord. 97-12 § 1; Ord. 89-3 § 1; Ord. 86-17 § 2; Ord. 86-16 § 10; Ord. 86-10 § 9; Ord. 84-10 § 2; Ord. 79-4 § 1 (5.030))

17.78.020 Off-street parking requirements.

- A. At the time a structure is erected or enlarged or the use of a structure or parcel of land changes, off-street parking spaces shall be provided in accordance with this section and Sections 17.78.010, 17.78.030 and 17.78.040.
- B. If parking space has been provided in connection with an existing use, the parking space shall not be eliminated if it would result in less than is required by this section.
- C. Where square feet are specified, the area measured shall be gross floor area, where gross floor area means the sum of the gross horizontal area of all floors of a building, as measured from the exterior walls of a building. Where employees are specified, persons counted shall be those working on the premises including the proprietors, during the largest shift at a peak season.

- D. In determining the number of parking spaces required by this section, all fractions 0.5 or greater shall be rounded to the nearest whole number. (Example, if it is determined that 5.65 parking spaces are required, six off-street parking spaces must be provided. If it is determined that 5.25 parking spaces are required, five off-street parking spaces must be provided.)

Use

Parking spaces required

Retail and office

Downtown

- a. For structures existing as of July 6, 1995, existing off-street parking spaces which were required to meet the off-street parking requirement (1.5 parking spaces per four hundred square feet of gross floor area), as per Ordinance 88-6, shall be retained;
- b. At the time an existing structure containing retail or office use is replaced or enlarged, off-street parking spaces shall be required for the proposed building's gross floor area which exceeds the existing building's gross floor area. The additional required off-street parking spaces shall be provided in accordance with the standard of one parking space per four hundred square feet of gross floor area;
- c. At the time a new structure is erected on a parcel of land which did not contain a commercial use as of July 6, 1995, one parking space per four hundred square feet of gross floor area shall be required;
- d. At the time an existing structure, which was not used for commercial purposes as of July 6, 1995, is converted to retail or office use, one parking space per four hundred square feet of gross floor area shall be required.

Midtown and Tolovana Park

- a. For structures existing as of December 2, 2004, existing off-street parking spaces, which were required to meet the use's off-street parking requirement (1.5 parking spaces per four hundred square feet of gross floor area), as per Ordinance 88-6, shall be retained;
- b. At the time an existing structure containing retail or office use is replaced or enlarged, off-street parking spaces shall

Use**Parking spaces required**

be required for the proposed building's gross floor area which exceeds the existing building's gross floor area. The additional required off-street parking spaces shall be provided in accordance with the standard of one parking space per four hundred square feet of gross floor area;

- c. At the time a new structure is erected on a parcel of land which did not contain a commercial use as of December 2, 2004, one parking space per four hundred square feet of gross floor area shall be required;
- d. At the time an existing structure, which was not used for commercial purposes as of December 2, 2004, is converted to retail or office use, one parking space per four hundred square feet of gross floor area shall be required.

Motels and hotels

1-1/4 per unit and 2 for a manager's unit; 1 for each unit of 400 sq. ft. or less, as long as that unit has only 1 bedroom

Recreational vehicle park and campground

1 per employee

Residences

- a. Single-family dwelling, two-family dwelling and multiple family dwelling in condominium ownership: 2 per dwelling unit, except that 1 per dwelling unit is required for residences that are provided in conjunction with a commercial use where those residences constitute no more than 50% of the building area.

- b. Multiple-family dwellings in other than condominium ownership:

Studio	1 per dwelling unit
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1 bedroom	1.25 per dwelling unit
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2 bedroom	1.5 per dwelling unit
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3 or more bedrooms	2 per dwelling unit
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Use	Parking spaces required
Group housing	1 per sleeping room
Assisted living	1 per 2 residential units
Schools, elementary	1 per employee or teacher
Restaurants, bar, or lounge	<p>Downtown</p> <p>1.5 parking spaces per four hundred square feet of gross floor, except that one parking space per four hundred square feet of gross floor area shall be required for: (1) additions to a restaurant, bar or lounge after July 6, 1995; or (2) a restaurant, bar or lounge on a parcel of land which did not contain a commercial use as of July 6, 1995; or (3) a restaurant, bar or lounge in a structure which was not used for commercial purposes as of July 6, 1995.</p> <p>Midtown</p> <p>1.5 parking spaces per four hundred square feet of gross floor area shall be required.</p> <p>Tolovana Park</p> <p>1.5 parking spaces per four hundred square feet of gross floor area shall be required.</p>
Meeting rooms	One parking space per one hundred square feet of gross floor area shall be required.
Limited manufacturing	1 per employee at the maximum shift.
Transient rental, vacation home rental	Per Section 17.77.040(A)(2)(e).
Similar uses or aggregate	To be evaluated on a case-by-case basis based on above standards.

(Ord. 11-02 § 1; Ord. 08-1 § 49; Ord. 04-11 § 5; Ord. 98-17 § 4; Ord. 92-11 § 69; Ord. 89-3 § 1; Ord. 88-6 § 2; Ord. 86-17 § 1; Ord. 86-16 § 8; Ord. 84-10 § 1; Ord. 79-4 § 1 (5.010))

17.78.030 Design standards.

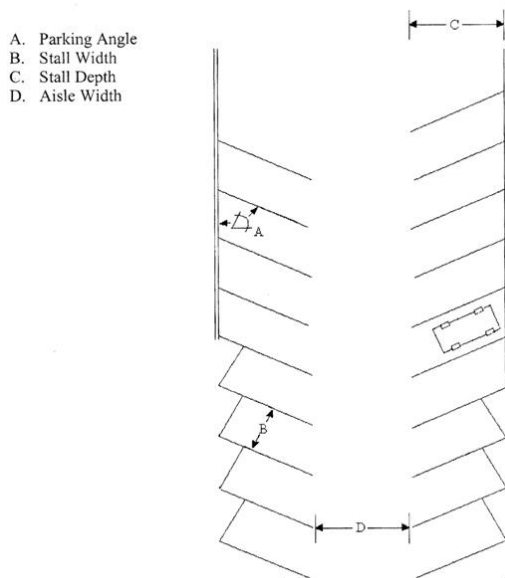
- A. The following design requirements shall apply to an off-street parking area consisting of five or more parking spaces:
 1. Parking area layouts shall provide parking spaces and aisle dimensions that meet the minimum dimensions contained in Figure A, Minimum Design Requirements.
 2. A parking space must be at least nine feet by eighteen feet. Where parallel parking spaces are provided, the minimum dimension is nine feet by twenty-two feet.

3. Parking spaces for disabled persons shall be in accordance with the requirements of the Oregon Structural Specialty Code. These standards control: dimensions of disabled person parking spaces and access aisles; the minimum number of disabled person parking spaces required; location of disabled person parking spaces and circulation routes; curb cuts and ramps including slope, width and location; and signage and pavement markings.
 4. All parking areas must be designed so that a vehicle may enter or exit without having to move another vehicle. Stacked or tandem parking is not permitted.
 5. At a minimum, ten percent of the area of the parking lot shall be landscaped. In determining the area of the parking lot and required landscaping the minimum area separation between the building and the parking lot described in subsection (A)(6) of this section shall not be included. The landscaped area of the parking lot shall contain at least one tree for every one hundred seventy-five square feet of landscaping provided. Areas that contain a tree shall have a minimum width of five feet. Any landscaped area shall have a minimum area of fifty square feet.
 6. An area with a minimum width of five feet shall separate the exterior wall of a building from the parking lot. The separation between the parking lot and the building can consist of landscaping material, a pedestrian walkway, or a combination of the two.
 7. Provide separation and screening of the parking area from the street and abutting property. The separation can be provided by either a fence or a landscaped planting area. Where landscaping is utilized, the planting area shall have a minimum width of three feet. The height of the fence or planting shall be sufficient to screen the parking facility, but without encroaching into the required clear vision area.
 8. When a parking area serving a multifamily, commercial, industrial or governmental use abuts a residential zone, buffering meeting the requirements of Chapter 17.66 shall be provided.
 9. The number of access points from the adjacent public street(s) to the parking area shall be limited to the minimum that will allow the property to accommodate the anticipated traffic. Access points shall be located on side streets or existing driveways wherever possible so as to avoid congestion of arterial or collector streets. The width of the access point(s) to the parking area shall comply with the standards of Municipal Code Section 12.08.040.
 10. Maneuvering space (to prevent backing onto streets) shall be provided for all lots which provide access onto arterial streets (Hemlock Street, Sunset Boulevard, and US Highway 101).
 11. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway center line, the street right-of-way line, and a straight line joining said lines through points fifteen feet from their intersection.
- B. Areas for required off-street parking consisting of fewer than five parking spaces, which serve uses other than single-family dwellings, modular housing, manufactured homes, duplexes or triplexes, shall comply with the standards of Section 17.78.030(A)(1)—(4), (7), (9)—(11).

- C. Areas for required off-street parking associated with single-family dwellings, modular housing, manufactured homes, accessory dwellings, duplexes and limited triplexes, shall comply with the standards of Section 17.78.030(A)(2), (9), (10).

Parking Minimum Design Requirements

Parking Angle	Standards			
	Minimum Stall Width	Minimum Stall Depth	Minimum Aisle Width	
			One-way	Two-way
0°	22'0"	9'0"	10'10"	18'0"
30°	9'	17'0"	12'0"	20'0"
45°	9'	17'4"	12'3"	20'0"
60°	9'	18'10"	14'4"	20'0"
70°	9'	19'2"	16'0"	21'6"
90°	9'	18'	22'6"	22'6"
A	B	C	D	D



(Ord. 08-1 § 50)

* Prior ordinance history: Ords. 86-16, 79-4.

17.78.040 Improvement standards.

A. The following improvement standards shall apply to off-street parking areas, except for those associated with single-family dwellings, modular housing, manufactured homes, accessory dwellings, duplexes and limited triplexes:

1. The surface material shall be an approved hard surface such as asphalt, concrete, or pavers.
2. The parking lot shall be clearly marked as to parking stalls, traffic flow and handicapped spaces.
3. Wheel stops shall be provided for each parking space.
4. Planting areas shall be defined by the use of curbing or other approved material.
5. A stormwater runoff system approved by the public works department shall be installed.
6. No pole mounted lighting shall exceed a height of fifteen feet. All lighting shall be shielded so that direct illumination is confined to the property boundaries of the light source. (Ord. 08-1 § 51)

Chapter 17.80 Conditional Uses

17.80.010 Purpose.

The purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without the restrictions in that district, but would be beneficial to the city if their number, area, location, design and relation to the surrounding property are controlled. (Ord. 79-4 § 1 (6.010))

17.80.020 Authorization to grant or deny.

- A. Uses designated in this chapter as conditional uses may be permitted, enlarged or otherwise altered upon authorization by the planning commission, or denied by the planning commission. This will be done in accordance with the comprehensive plan, standards for the district, standards in Chapters 17.44 through 17.78 and 17.90, additional zoning provisions, and other city ordinance requirements. The burden is upon the applicant to demonstrate that these requirements can be met.
- B. In permitting a conditional use or the modification of an existing conditional use that involves a housing type (e.g., planned unit developments, multifamily, manufactured dwelling park, manufactured dwelling subdivision), the planning commission may impose, in addition to those standards and requirements expressly specified for that use, other conditions which it considers necessary to protect the best interests of surrounding property or the city as a whole. These additional conditions are as follows:
 1. Increasing the required lot size or dimensions;
 2. Reducing the required height and size of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the required off-street parking spaces;
 5. Increasing the required street width;
 6. Limiting the number, size, location and lighting of signs;

7. Requiring diking, fencing, screening, landscaping, berms or other items to protect adjacent or nearby areas;
 8. Designating sites for open space;
 9. Specifying the types of materials to be used;
 10. Specifying the time of year the activity may occur;
 11. Specifying the type of lighting to be used.
- C. In permitting a conditional use, or the modification of a conditional use, other than a housing type, the planning commission may impose, in addition to those standards and requirements expressly specified for that use, other conditions which are necessary to protect the adjacent property, an identified resource, or the city as a whole. Such conditions may include those set out in subdivisions 1 through 11 of subsection B of this section, but are not limited thereto. (Ord. 90-10 § 1 (Appx. A § 47); Ord. 79-4 § 1 (6.020))

17.80.030 Existing conditional uses.

In the case of a use existing prior to its present classification by the ordinance codified in this chapter as a conditional use, any change in use or in lot area or any alteration of a structure shall conform with the requirements dealing with conditional uses. (Ord. 79-4 § 1 (6.030))

17.80.040 Performance bond.

The planning commission may require that the applicant for a conditional use furnish to the city a performance bond up to, and not to exceed, the value of the cost of the required improvements in order to assure that the conditions imposed are completed in accordance with the plans and specifications as approved by the planning commission and that the standards established in granting the conditional use are observed. (Ord. 79-4 § 1 (6.040))

17.80.050 Application—Filing.

A property owner or their designated representative may initiate a request for a conditional use or the modification of any existing conditional use by filing an application with the city using forms prescribed by the city. (Ord. 89-3 § 1; Ord. 79-4 § 1(6.050))

17.80.060 Application—Investigation and reports.

The city manager shall make or cause to be made an investigation to provide necessary information to ensure that the action in each application is consistent with the requirements of this title and shall make a recommendation to the planning commission. (Ord. 89-3 § 1; Ord. 79-4 § 1 (6.060))

17.80.070 Application—Procedure.

The following procedure is followed in the event of an application for a conditional use:

- A. Notice of public hearing shall be in accordance with Sections 17.88.010 through 17.88.040.
- B. The planning commission shall review the conditional use application in accordance with Section 17.88.060.
- C. The planning commission decision shall be in accordance with Section 17.88.110.
- D. Notification of the planning commission decision shall be in accordance with Section 17.88.130.
- E. The decision of the planning commission may be appealed in accordance with Sections 17.88.140 through 17.88.190. (Ord. 89-3 § 1; Ord. 79-4 § 1 (6.070))

17.80.080 Compliance with conditions of approval.

Adherence to the submitted plans, as approved, is required. Compliance with conditions of approval is also required. Any departure from approved plans or conditions of approval constitutes a violation of the ordinances codified in this title, unless modified by the planning commission at a public hearing, pursuant to Chapter 17.80.070. (Ord. 08-1 § 52; Ord. 79-4 § 1 (6.080))

17.80.090 Application—Approval—Time limit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless a building permit has been issued. However, when requested, the planning commission, at a public hearing conducted pursuant to Section 17.80.070, may extend authorization for an additional period not to exceed one year. (Ord. 08-1 § 53; Ord. 79-4 § 1 (6.090))

17.80.100 Application—Refiling limitations.

Applications for which a substantially similar application has been denied shall be heard by the planning commission only after a period of six months has elapsed from the date of the earlier decision. (Ord. 79-4 § 1 (6.100))

17.80.110 Overall use standards.

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

- A. A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.

- B. The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.
- C. The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.
- D. The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.
- E. An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.
- F. The site and building design ensure that the use will be compatible with the surrounding area. (Ord. 20-03 § 3)

17.80.120 Specific use standards.

In addition to the overall conditional use standards, the specific use standards of Section 17.80.130 through 17.80.360 shall also be applied. (Ord. 17.80.120)

17.80.200 Public facilities and services.

The following specific conditional use standards apply to public facilities and services:

- A. Public facilities including, but not limited to, utility substations, sewage treatment plants, stormwater and treated wastewater outfalls, submerged cables, sewer lines and water lines, water storage tanks, radio and television transmitters, electrical generation and transmission devices and fire stations shall be located so as to best serve the community or area with a minimum of impact on neighborhoods, and with consideration for natural or aesthetic values. Structures shall be designed to be as unobtrusive as possible. Wherever feasible, all utility components shall be placed underground.
- B. Public facilities and services proposed within estuarine areas shall provide findings that:
 - 1. An estuarine location is required and a public need exists, and
 - 2. Alternative nonaquatic locations are unavailable or impractical, and
 - 3. Dredge, fill and adverse impacts are avoided or minimized.
- C. Public facilities and services in estuarine areas shall minimize interference with use and public access to the estuary. (Ord. 79-4 § 1 (6.200))

17.80.220 Places of congregation or meeting halls.

The sites of schools, churches, museums, lodges or meeting halls shall be located so as to serve the surrounding area. Traffic will not congest residential streets, the structures will be designed or landscaped so as to blend into the surrounding environment and the activities or hours of operation will be controlled to avoid noise or glare impacts on adjacent uses. (Ord. 79-4 § 1 (6.220))

17.80.270 Public parking facilities.

A public parking facility shall be reviewed by the design review board subject to pertinent criteria in Chapters 17.44 and 17.78 of this title. (Ord. 79-4 § 1 (6.270))

Chapter 17.84 Variances

17.84.010 Purpose.

The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unusual practical difficulties or unnecessary physical hardships on the applicant. Practical difficulties or unnecessary physical hardships may result from the size, shape or dimensions of a site or the location of existing structures thereon; from geographic, topographic or other conditions on the site or in the immediate vicinity or from population densities, street location or traffic conditions in the immediate vicinity. No variance shall be granted to allow the use of a property for a purpose not authorized within the zone in which the proposed use would be located. (Ord. 79-4 § 1 (8.010))

17.84.020 Conditions.

Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this chapter. Guarantees and evidence may be required that such conditions will be and are being complied with. (Ord. 79-4 § 1 (8.020))

17.84.030 Criteria for granting.

- A. Variances to a requirement of this title, with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, decks and walls, and other quantitative requirements, may be granted only if, on the basis of the application, investigation and evidence submitted by the applicant, all four expressly written findings are made:
 - 1. That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of the comprehensive plan; and
 - 2. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties in the same zone; and
 - 3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the near vicinity; and

4. That the granting of the variance would support policies contained within the comprehensive plan.
- B. Variances in accordance with this section should not ordinarily be granted if the special circumstances on which the applicant relies are a result of the actions of the applicant, or owner, or previous owners. (Ord. 79-4 § 1 (8.030))

17.84.040 Off-street parking and loading facilities.

- A. Variances to requirements of this title with respect to off-street parking and loading facilities may be authorized as applied for or as modified by the planning commission if, on the basis of the application, investigation and the evidence submitted by the applicant, all three of the following expressly written findings are made:
1. That neither present nor anticipated future traffic volumes generated by the use of the site or use of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the requirements of this title; or the granting of the variance will protect a wetland or wetland buffer area; and
 2. That the granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to materially interfere with the free flow of traffic on the streets;
 3. That the granting of the variance will not create a safety hazard or any other condition inconsistent with the general purpose of this title or policies contained within the comprehensive plan.
- B. Where a variance request is being reviewed under this section, only the criteria of this section shall be addressed. The criteria of Section 17.84.030 are not applicable. (Ord. 94-29 § 8; Ord. 89-3 § 1; Ord. 79-4 § 1 (8.040))

17.84.050 Applications.

Application for a variance shall be filed with the city on forms prescribed by the city. (Ord. 89-3 § 1; Ord. 79-4 § 1 (8.050))

17.84.060 Investigation and report.

The city manager shall make or cause to be made an investigation to provide necessary information to ensure that the action on each application is consistent with the variance criteria and shall make a recommendation to the city planning commission. (Ord. 89-3 § 1; Ord. 79-4 § 1 (8.060))

17.84.070 Procedure.

- A. Before the city planning commission may act upon a variance request, notice of a public hearing in the manner prescribed in Sections 17.88.010 through 17.88.040 shall be given.

- B. The city planning commission shall review the variance application in accordance with Section 17.88.060.
- C. The city planning commission decision shall be in accordance with Section 17.88.110.
- D. Notification of the planning commission decision shall be in accordance with Section 17.88.130.
- E. The decision of the planning commission may be appealed in accordance with Sections 17.88.140 through 17.88.190. (Ord. 89-3 § 1; Ord. 79-4 § 1 (8.070))

17.84.080 Compliance with conditions of approval.

Compliance with conditions imposed on the variance, and adherence to the submitted plans, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of the ordinances codified in this title, unless modified by the planning commission at a public hearing, pursuant to Section 17.84.070. (Ord. 08-1 § 56; Ord. 79-4 § 1 (8.080))

17.84.090 Time limit for approved variances.

Authorization of a variance shall be void after one year or such lesser time as the authorization may specify unless a building permit has been issued. However, when requested, the planning commission, at a public hearing conducted pursuant to Section 17.84.070, may extend authorization for an additional period not to exceed one year. (Ord. 08-1 § 57; Ord. 89-3 § 1; Ord. 79-4 § 1 (8.085))

17.84.100 Vested interest in approved variances.

- A. A valid variance supersedes conflicting provisions of subsequent rezonings or amendments to the ordinance codified in this chapter unless specifically provided otherwise by the provisions of the section or the conditions of approval to the variance.
- B. Variances shall be automatically revoked if not exercised within six months of the date of approval.
- C. Applications for which a substantially similar application has been denied shall be heard by the planning commission only after a period of six months has elapsed. (Ord. 79-4 § 1 (8.090))

Chapter 17.86 Amendments

17.86.010 Purpose.

Periodically, as local goals and needs change and new information is obtained, the zoning ordinance, as codified in this title, should be updated. The purpose of the zoning ordinance amendment process is to provide a method for carefully evaluating potential changes to ensure that they are beneficial to the city. (Ord. 79-4 § 1 (9.010))

17.86.020 Authorization to initiate.

An amendment to the text of the ordinance codified in this title may be initiated by the city council, planning commission, a person owning property in the city or a city resident. An amendment to a zone boundary may only be initiated by the city council, planning commission or the owner or owners of the property for which the change is proposed. (Ord. 79-4 § 1 (9.020))

17.86.030 Application.

Property owners or local residents who are eligible to initiate an amendment, or their designated representatives, may begin a request for an amendment by filing an application with the city manager, using forms prescribed by the city. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.030))

17.86.040 Investigation and report.

The city manager shall make or cause to be made an investigation to provide necessary information on the consistency of the proposal with the comprehensive plan and the criteria in Section 17.86.070. The report shall provide a recommendation to the planning commission on the proposed amendment. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.040))

17.86.050 Classification of actions.

A. The following amendment actions are considered legislative under this title:

1. An amendment to the text of the ordinance codified in this title;
2. A zone change action that the city manager has designated as legislative after finding the matter at issue involves such a substantial area and number of property owners or such broad public policy changes that processing the request as a quasi-judicial action would be inappropriate.

B. The following amendment action is considered quasi-judicial under this title: a zone change that affects a limited area or a limited number of property owners. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.050))

17.86.060 Procedures.

A. The following procedures shall be followed for amendments determined to be legislative:

1. Notice of public hearings shall be in accordance with Sections 17.88.010 through 17.88.040. However, notice of the hearing need not include a mailing to property owners when the matter at issue does not relate to a specific geographic area. Where such mailing is omitted, the city manager shall prepare a notice program designed to reach persons believed to have a particular interest and to provide the general public with a reasonable opportunity to be aware of the hearings on the proposal.

2. The review of the proposed amendment shall be in accordance with Section 17.88.060. Both the planning commission and the city council shall hold a public hearing on the proposal. After the planning commission hearing, the planning commission shall forward its recommendation to the city council.

B. The following procedures shall be followed for amendments determined to be quasi-judicial:

1. Notice of public hearing shall be in accordance with Sections 17.88.010 through 17.88.040.
2. The review of the proposed amendment shall be in accordance with Section 17.88.060. The planning commission shall hold a public hearing on the proposal. The city council may hold a public hearing on the proposal. After the planning commission hearing, the planning commission shall forward its recommendation to the city council. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.060))

17.86.070 Criteria.

A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the comprehensive plan;
2. The amendment will not adversely affect the ability of the city to satisfy land and water use needs.

B. Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the comprehensive plan;
2. The amendment will either:
 - a. Satisfy land and water use needs, or
 - b. Meet transportation demands, or
 - c. Provide community facilities and services;
3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations;
4. Resource lands, such as wetlands are protected;
5. The amendment is compatible with the land use development pattern in the vicinity of the request. (Ord. 89-3 § 1; Ord. 79-4 § 1 (9.070))

17.86.075 Conditional zone amendment.

Purpose. The purpose of the conditional zone amendment provision is to enable the city council to attach specific conditions to a request for a zone boundary change where it finds that such conditions are necessary to achieve a stated public purpose.

A. The city council shall have the authority to attach conditions to the granting of amendments to a zone boundary. These conditions may relate to any of the following matters:

1. The uses permitted;
2. Public facility improvements such as street improvements, dedication of street right-of-way, sewer, storm drainage, and water;
3. That all or part of the development or use be deferred until certain events, such as the provision of certain public facilities to the property, occur;
4. The time frame in which the proposed use associated with the zone boundary change is to be initiated.

B. Conditions, applied to potential uses other than needed housing types as defined by OAR 660-08-005, may be imposed upon a finding that:

1. They are necessary to achieve a valid public purpose; and
2. They are designed to achieve their intended purpose and are reasonably related to the land or its proposed use.

Conditions applied to property with the potential to be used for needed housing types as defined by OAR 660-08-005 may be imposed upon a finding that:

3. They are necessary to achieve a valid public purpose;
4. They are designed to achieve their intended purpose and are reasonably related to the land or its proposed use; and
5. They shall not have the effect, either singly or cumulatively, of discouraging or preventing the construction of needed housing types.

C. Conditions attached to a zone boundary change shall be completed within the time limitations set forth. If no time limitations are set forth, the conditions shall be completed within two years from the effective date of the ordinance enacting the zone boundary change.

D. The city council may require a bond from the property owner or contract purchasers in a form acceptable to the city in such an amount as to assure compliance with the conditions imposed on the zone boundary change. Such a bond shall be posted prior to the issuance of the appropriate development permit.

E. Conditions shall not be imposed which would have the effect of limiting use of the property to one particular owner, tenant or business. Conditions may limit the subject property as to use, but shall

not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.

- F. Conditions that are imposed under the provisions of this section shall be construed and enforced as provisions of this zoning code relating to the use and development of the subject property. The conditions shall be enforceable against the applicant as well as their successors and assigns.
- G. Requests for modification of conditions shall be considered by the zone amendment application and review procedure of Sections 17.86.010 through 17.86.070 of this code.
- H. Failure to fulfill any condition attached to a zone boundary change within the specified time limitations shall constitute a violation of this section and may be grounds for the city to initiate a change in the zone boundary pursuant to the procedures of Sections 17.86.010 through 17.86.070. (Ord. 92-5 § 1)

17.86.080 Limitations on reapplications.

No application of a property owner or local resident for an amendment to the text of the ordinance codified in this title or to the zone boundary shall be considered by the planning commission within the one year period immediately following a previous denial of such request. The planning commission may permit a new application if, in the opinion of the planning commission, substantial new evidence or a change of circumstances warrant reconsideration. (Ord. 79-4 § 1 (9.080))

17.86.090 Changes of zone for manufactured dwelling parks.

If an application would change the zone of property which includes all or part of a manufactured dwelling park as defined in O.R.S. 446.003, the city shall give written notice by first class mail to each existing mailing address for tenants of the manufactured dwelling park at least twenty days but not more than forty days before the date of the first hearing on the application. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change. (Ord. 90-10 § 1 (Appx. A § 51); Ord. 86-10 § 14; Ord. 79-4 § 1 (9.085))

Proposed Draft Off-Street Parking Text Amendment Language

17.78.025 Parking Alternatives

If a property owner is unable to provide the required parking on-site, the owner may at the discretion of the Director satisfy the parking requirements by one or more alternatives in this section.

A. Off-Site Parking. The location of off-premises parking facilities in relation to the use served are described in this subsection. All distances specified shall be between the closest edge of such parking facilities to the closest edge of the site being served.

1. General to All Zones.

a. Pedestrian access between the use or the site and the off-premises parking area shall be via paved sidewalk or walkway.

b. The owner shall provide a recorded parking agreement reflecting the arrangement with the other site.

c. If the off-premises parking facility is shared, the Director may allow a reduction in the following manner:

(1) The reduction in number of required parking spaces shall be based on a parking demand study. The parking demand study shall be in accordance with established professional practices and may utilize on-street shared parking arrangements where methodology justifies.

(2) The shared parking arrangement shall require a recorded covenant running with the land, recorded by the owner of the parking lot, guaranteeing that the required parking will be maintained exclusively for the uses served and remain for the duration of the use.

d. Required parking may be provided in off-street parking facilities on another property within 1,500 feet of the site proposed for development.

2. Off-site parking facilities for a nonresidential use shall not be located in a residential zone.

B. In-Lieu Fee. The owner of any property upon which a development is proposed may pay an in-lieu parking fee if the City approves it as part of the site plan review. A request to pay the in-lieu fee for more than 10 parking spaces must be approved by the Council. The Council shall make the following findings before approving any in-lieu fee proposal:

1. There is available or planned public parking capacity to offset this demand;

2. The public parking will be made available within a reasonable time period of the approval of this development; and

3. The fee option is available only if an existing or planned parking facility exists within 600 feet of the site, or within a distance set by the Council. The fee shall be the current value of land and parking construction costs per space needed, as determined by an adopted parking management plan.



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Project Memorandum

Project No: 220039.01 **Date:** November 14, 2022

Project Name: Cannon Beach Elementary Rejuvenation Project

Subject: Requested Variance for Reduction in Off-Street Parking Requirements

By: Dustin Johnson, Project Architect (CIDA Architects and Engineers)

To: Cannon Beach Planning Commission

PROJECT OVERVIEW

The Cannon Beach Elementary Rejuvenation Project is an adaptive re-use project aimed at reactivating the former Cannon Beach Elementary School and NeCus Park site for use by Cannon Beach visitors and residents, businesses, and the Clatsop Nehalem Confederated Tribe for a variety of community interests.

The 2.5-acre project site is situated at the north end of Cannon Beach and consists of multiple tax lots zoned 'IN' (Institutional). It is bordered by Ecola Creek to the north, Fir Street to the east, Beaver Street to the south and undeveloped city-owned property with beach access to the west. Zoning adjacent to the property includes 'E' (Estuary) to the north and west, 'PK' (Park Management) to the east and a combination of 'C1' (Limited Commercial) and 'R3' (High Density Residential) to the south.

As the site of the former Clatsop-Nehalem Tribal village of 'NeCus' for generations (perhaps over a thousand years) the site is nationally recognized as culturally significant and is considered one of the last best preserved Native American heritage sites on the West Coast. Given its location on the estuary where Ecola Creek discharges to the Pacific Ocean as well as the diversity of resident and migrating wildlife that frequent the bordering riparian area, the site is also recognized as both geographically and ecologically significant. These unique features and cultural heritage of the project site have inspired significant interest amongst public and Tribal stakeholders who have been actively engaged throughout the Programming and Schematic Design phases of the project.

Site vehicular access is by its frontage with Beaver Street as well as a gravel drive at the southwest corner of the site via N Spruce Street. A small asphalt-paved area exists on-site and is currently used as a vehicle turnaround by patrons of the food bank as well as miscellaneous recreational uses by NeCus Park users. Existing parking for the site is limited to three off-street paved stalls at the site's southeast corner and parallel on-street parking along Beaver Street.

The site contains three existing buildings of various construction types and functions. Two of the existing buildings (Structures 1 and 2 below) were last occupied by Cannon Beach Elementary School and have been vacant since 2013. The third building (Structure 3 below) was also occupied by the elementary school and now supports operations of the Cannon Beach Community Food Pantry. Additional details for each structure are as follows:

Structure 1: Henceforth referred to as the 'Classroom Building' is an approximately 4,520 square foot wood frame structure with slab-on-grade foundation built in 1950. The building currently consists of classrooms, administrative offices and ancillary spaces including a covered walkway on the north side of the building. Proposed uses include classroom, exhibit space and general assembly spaces, without fixed seating.

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Structure 2: Henceforth referred to as the 'Gym Building' is an approximately 7,034 square foot wood framed barrel vault structure with slab-on-grade foundation containing an open vaulted gym space and a 964 square foot classroom mezzanine with cafeteria and ancillary spaces below. The building also contains a 415 square foot addition at the northeast corner formerly housing the school's kitchen. Proposed uses for this space include gymnasium, event space (unconcentrated assembly space), storage, and kitchen space.

Structure 3: Henceforth referred to as the 'Food Bank' is an approximately 3,300 square foot wood framed structure with crawl space foundation. This structure is not incorporated with the current scope of work of the CBE Rejuvenation Project beyond basic site programming. The proposed use will remain a food pantry.

VARIANCE REQUEST

Description of Variance:

Applicant's proposal for the Planning Commission's consideration is to exempt the subject site from meeting the minimum required off-street parking requirements established by Cannon Beach Municipal Code Chapter 17.78.020 in favor of alternate methods of transit and parking described in the next section of this request. There are multiple reasons for requesting this variance, however those of highest priority follow, and are based on a several months of community outreach to understand the priorities of all stakeholders involved in the project and site, including Cannon Beach residents, business owners and visitors, members of the Clatsop Nehalem Tribe and the City of Cannon Beach (Owner):

1. As mentioned in the project introduction above, the NeCus site is one of the best preserved and oldest indigenous villages on the West Coast, currently protected by varying depths of shallow sediment. The existence of the Village of NeCus on this site was documented by the Lewis and Clark Expedition in 1806 and verified in recent years via ground-penetrating radar (GPR) by Portland State University professor and archaeologist Doug Deur (Cannon Beach resident and member of the Clatsop-Nehalem Tribe). The process of installing the infrastructure to support off street parking (storm conveyance system, paving, subgrade structure, etc.) is expected to result in damage to and loss of artifacts of culturally historic significance.
2. An important function of the revitalized Cannon Beach Elementary School is for the site and buildings to be used to educate visitors about the rich history and way of life of the Clatsop-Nehalem people on this site and throughout this region. Part of that education is the importance of the connection between the documented locations of the Tribe's long houses and the Ecola Estuary. This education, which is expected to spread awareness of this significant piece of Pacific Northwest history will be all but impossible to convey if it is altered into a new parking area. It should be noted that the only locations geometrically available to off-street parking would be located between the existing school and the estuary, where much of the way of life of the Tribe's ancestors unfolded.
3. Beyond its historical and archaeological significance, the site is considered sacred to living descendants of Clatsop-Nehalem tribal members currently residing throughout Oregon and Washington, some present in the Cannon Beach community. These living Tribal members use this site to celebrate their ancestors and heritage by hosting Tribal ceremonies, celebrating the annual return of salmon to Ecola Estuary and for personal reflection and solitude. These active members of the Tribe have offered significant hours of design collaboration to date to ensure the project is developed harmoniously with Tribe's values which precludes use of this site for surface parking.
4. NeCus Park is an invaluable local resource for adults and children for outdoor recreation, hiking, bird watching, animal passage, turf sports and beach access among other activities. It is the resounding desire of Cannon Beach residents that this critical function be preserved in its current capacity.

It is important to re-iterate that the above items were discovered during the Programming Phase of the project, not only by meeting with the Clatsop Nehalem Tribe but by community outreach to local residents and business owners, visitors and the City of Cannon Beach. Preservation of



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the site and conveyance of the history of the Clatsop Nehalem people was one of the highest rated priorities amongst all stakeholder groups surveyed.

Quantification of the Proposed Variance

The proposed function of the site incorporates such uses as indoor recreation, classrooms, workshops, meeting rooms, exhibition/event space and associated ancillary spaces. Of the categories listed above, the ordinance lists only 'meeting rooms' for which parking is prescribed at 1 required off street parking stall per 100 square feet, resulting in the following requirement (additional square footage created by potentially reconnecting the two structures is not included):

Classroom Building:	4,675 sf / 100 sf = 46.75 stalls
Gym Building:	7,123 sf / 100 sf = 71.23 stalls
Total Required Parking:	118 stalls

While this calculation represents the full building area to be used for the most intensive use (meeting rooms), the need for parking based on proposed actual use of the building is expected to be less.

Justification of the Proposed Variance:

Specific details of the Applicant's justification of the proposed variance will be submitted to the Planning Commission with a formal request for variance and are currently being developed by the Project Team. That said, details are expected to evolve around the following alternative methods to off-street parking:

- Adjacent rights-of-way including Beaver Street, Antler Street, N Spruce Street and Fir Street in the proximity of the site are identified to currently have low or moderate demand for on-street parking, according to City of Cannon Beach: Parking Data Collection Summary Task 3.1 – Existing Conditions Analysis (Addendum) dated June 4, 2021.
- According to this same survey, there are several nearby businesses whose parking lots are less than 55% occupied during weekday and weekend peak demand hours, and located within 1-2 blocks east and south of the site.
- Site access to the existing trail system;
- Site's location is easily walkable from nearby public parking assets;
- Conversion of Beaver Street and Antler Street to one-way access to provide for additional on-street parking opportunities close to the site.
- Proximity to future shuttle stop (opposite Fir Street from the subject site).
- Potential off-site mitigation for current or future public parking projects.
- Preservation of significant historic value of the site.
- Lastly and perhaps most significantly, the City of Cannon Beach's management of the revitalized buildings and site including scheduling of events and types of events during times and days most easily accommodated by the City's traffic and public parking infrastructure.

End of memo

ARCHITECTURE
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PLANNING
INTERIORS



Cannon Beach Elementary School Off-Street Parking Analysis

City of Cannon Beach							
Building Codes Division							
Tree Permit Applications							
October	2022						

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