

**Minutes of the
CANNON BEACH PLANNING COMMISSION
Tuesday, December 21, 2021**

Present: Chair Daryl Johnson and Commissioner Barb Knop in person; Janet Patrick, Charles Bennett, Lisa Kerr and Joe Bernt via Zoom

Excused: Clay Newton

Staff: Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, Planner Robert St. Clair, and Administrative Assistant Katie Hillenhagen

CALL TO ORDER

Chair Johnson called the meeting to order at 6:00 p.m.
Johnson thanked Joe Bernt for his service on the committee.

ACTION ITEMS

(1) Approval of Agenda

Motion: Knop moved to approve the agenda as presented; Bernt seconded the motion.

Vote: Kerr, Bennett, Knop, Bernt, Patrick and Chair Johnson voted AYE; the motion passed.

(2) Consideration of the Minutes for the Planning Commission Meeting of November 23, 2021

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

Vote: Kerr, Bennett, Knop, Bernt (with an edit to chance since to sense), Patrick and Chair Johnson voted AYE; the motion passed.

(3) Continuation and Consideration of AA# 21-02, Haystack Rock LLC request, for an Appeal of an Administrative Decision to approve a development permit at taxlot 51031AA00600.

Haystack Rock, LLC appeal of the City's administrative decision to approve development permit DP#21-20 for Taxlot 51031AA00600 for stabilization pinning of a geologically hazardous area. The property is a vacant lot located north of Nenana Ave (Tax Lot 00600, Map 51031AA), and is in a Residential Lower Density (RL) zone. The appeal will be reviewed pursuant to Municipal Code, Section 17.92.010, Development Permits, Section 17.62 Grading, Erosion and Sedimentation Control, Section 17.50 Development Requirements for Potential Geologic Hazard Areas and Section 17.88.180, Review Consisting of Additional Evidence or de Novo Review and applicable sections of the zoning ordinance.

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

Adams read his staff report (see staff report in packet for full details). Adams noted that he included a tentative motion for approval with a conditional of approval stating that they could not attach to the stability beam west of the Oceanfront Setback. He noted that he does not think this is necessary because you cannot build anything above 30 inches in the Oceanfront Setback, but it is there if the Commission wants to move forward with that. Adams deferred to Kabeiseman concerning the recent LUBA decision and how it would affect this case.

Kabeiseman reported that last Wednesday LUBA affirmed the City's decision in the Robert's appeal case, affirming the Oceanfront Setback. He noted that there is a chance to appeal to the Supreme Court with a 35-day appeal period, so we will know more in a month.

Kerr thanked Kabeiseman for his work on the case.

Chair Johnson called for public testimony.

Chair Johnson 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 Johnson noted that he will give the appellant and the applicant 10 minutes each to speak.

Appellant, Will Rassmussen on behalf of Haystack Rock, LLC. Rassmussen said that the stability beam is part and parcel of the big house application, which was denied, and should be denied here. He added that if they decide to approve it, they should attach strong conditions of approval, such as a requirement that nothing be attached in the Oceanfront Setback. Rassmussen pointed out that the stability beam is in the Oceanfront Setback where the larger house that has been denied was planned to be built. He also referenced an Astorian article in which Stan Roberts stated that he intends to build a large house and not a smaller house. Rassmussen argued that if it were really a stability beam to stabilize the hillside it would not look the same as the application that was submitted a year ago for a stability beam to go with the larger house, which has been denied.

Chair Johnson called for a presentation by the applicant.

Fred Wilson, on behalf of Stan and Rebecca Roberts, PO Box 159 Lake Oswego OR, 97034. Wilson noted that in light of the appeal decision from LUBA it is not looking good to build the 2,700SF house. He

explained that they filed the stability beam separately from the application materials for the smaller house because they expect opposition to the 1200SF house, even though it is within the Oceanfront Setback. Wilson said that the beam needs to be there no matter what they build on the lot. It will be needed for the 1200SF house as well. It will also keep the lot stable for any future development if they do not build the smaller house. Wilson said that this application is only about the stability beam. He noted that all required documents have been submitted (including Geotech Reports), and the application meets all requirements. Wilson said that having or not having the stability beam has nothing to do with whether or not they can build the larger house. Approving the stability beam would not give them any advantage in getting the 2,700SF house built. Wilson also spoke to the Astorian article and said that someone being frustrated with the City's decision has nothing to do with the approval criteria. He said that they were ok with conditions of approval related to access to do the work. He agreed with Adams that putting having a condition of approval to not attach to the stability beam is not necessary. He also said that there is no contrary evidence that they did not meet the applicable approval criteria.

Kerr asked if they were going to appeal further.

Wilson said that he did not know the answer to that.

Kerr said that they could potentially win and there is no way to tell now.

Wilson said that that is a fight to have somewhere else.

Kerr said that they are connected.

Wilson said that in the best-case scenario it would be used for the larger house, but that is not its only function.

Kerr asked for clarification if the stability beam was in the Oceanfront Setback.

Wilson confirmed that it was.

Bernt thought that the stability beam discussion was premature. He couldn't see why they were talking about it a fourth time. He said that they turned the stability beam proposal down in the past and that decision has been upheld. Bernt said that it has already been turned down.

Wilson said that it was the house that was turned down, not the stability beam. He noted that there is nothing in the City's code that prevents a stability beam from being in the Oceanfront Setback.

Wilson reiterated that the stability beam is not just part of the house but provides stability on the lot in general.

There was no further response from staff.

Chair Johnson closed the hearing and moved to consideration.

Kerr said that there is nothing in the code that speaks to whether or not an application could be applied to piecemeal. She argued that as a matter of practice they should be applied for together. Kerr said that there is no evidence that they want to use the stability beam for anything else than to build the bigger house. She said that the article shows that they do not care about the community. She also said that she thought that the original drawings of the driveway were an architectural middle finger to the City. She thought they should wait to approve the stability beam or anything else until the dust settles and they have all the pieces together. Then Planning can make a comprehensive decision.

Johnson said that he agreed with Kerr. He thought there was a strong likelihood that the LUBA decision would be appealed. He thought they should not make a decision in the middle of the fight.

Patrick agreed.

Motion: Kerr moved to deny the application for the stability beam; Patrick seconded the motion.

Vote: Kerr, Bennett, Knop, Bernt, Patrick and Chair Johnson voted AYE. The motion passed.

(4) Continuation and Consideration of SR 21-06, David Vonada request, on behalf of John Henry, of 1688 S. Hemlock, for a Setback Reduction of the rear-yard setback requirement for a deck-stairs in conjunction with an addition to an existing residence.

SR 21-06, David Vonada, on behalf of John Henry, application to allow a setback reduction to reduce the rear yard setback from the required 15'0" to 11'6" to build a new exit stair onto a reconstructed second floor deck, according to chapter 17.14 Residential Medium Density Zone of the Municipal Code. The property is located at 1688 S. Hemlock St. (Tax Lot 04103, Map 51030DA), and in a Residential Medium Density (R2) zone. The request will be reviewed against the Municipal Code, Section 17.64.010, Setback Reduction, Provisions established.

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

St. Clair read the staff report (see staff report in packet for full details). St. Clair noted that this is simply a continuation and no significant comment had been received since the last meeting.

The Commission discussed the email that was sent by the applicant since the last meeting.

Kerr noted that they asked for more information about why there are no alternatives to the proposed work.

Patrick said that in the email they explained that the staircase would be an exit in case of a fire from the second story of the house.

Orloff explained that this is their option for additional egress in addition to increased access from the second floor. He noted that they submitted drawings showing what they propose to do.

Kerr asked why they did not send something out in writing addressing the criteria.

Orloff said that they are doing it in person in the meeting and have provided drawings rather than a verbal explanation.

Johnson brought up the option of a throw ladder to illustrate that there are options to the proposal that were not given to them.

Orloff said that they are aware that there are other options, but this is what the client wanted to pursue.

Kerr thought that they should have provided a more complete application.

They discussed oral vs diagramed presentations.

Bernt said that they are making assertions but not tying the assertions to the process that Kerr is discussing.

They discussed the timing of the letter coming in from the applicant.

Chair Johnson called for public testimony.

Chair Johnson 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 Johnson asked if there was anything further from the applicant. There was not.

Chair Johnson called for proponents of the request. There was none.

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

There was no further response from staff.

Chair Johnson Closed the hearing.

Patrick thought there was insufficient information in the application.

Kerr agreed.

Knop proposed they continue the application.

Kabeiseman brought up the 120-day rule. He suggested that they ask the applicant if they prefer a continuance if they are close to the 120 days.

Bernt said that it is not the job of the Commission to say that they did not do it well enough so they should get another chance to convince them again.

Kerr said that she agreed with him, but she thought something was amiss, maybe someone got ill. She was willing to give them the benefit of the doubt.

Adams said he agreed with Kabeiseman's guidance. He suggested they ask the applicant if they would like a continuance.

Orloff said that they would request an extension if possible.

Kerr asked if he had authority to do that.

Orloff said that he did. He said they would file a formal request via email in the next couple of days.

(5) Public Hearing and Consideration of CU# 21-04, LBC Trust request, for a Conditional Use Permit for shoreline stabilization at 4664 Logan Ln.

CU 21-04, Mike Morgan, on behalf of The LBC Trust, Mark Smith, Trustee, request for a Conditional Use permit shoreline stabilization. The property is located at 4664 Logan Lane (Tax Lot 03401, Map 41006CB) in Residential Lower Density (RL) and Oceanfront Management Overlay (OM) Zone. The request will be reviewed under Cannon Beach Municipal Code 17.10.030 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 Johnson asked if any Commissioner had any conflict of interest. There were none. Chair Johnson asked if any Commissioner had personal bias to declare. There were none. Chair Johnson asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

St. Clair noted that there was a request for a continuance.

They discussed the request for a continuation from the Friends of the Dunes and it was noted that the PC must grant the first continuance. Kabeiseman suggested that they hold the hearing that was noticed and then continue to the next meeting.

St. Clair read the staff report (see staff report in packet for full details).

Chair Johnson called for public testimony.

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

Mike Morgan, on behalf of The LBC Trust, PO Box 132 Cannon Beach. Morgan said that the applicant, the Planning Department, and Oregon State Parks met at this property, and it was concluded that riprap was not an option at this time. The representative from State Parks suggested that a cobble berm would be a more appropriate way to try to stabilize the dune. He said that it is quite a steep dune face. He discussed the design for the erosion control that would stabilize the dune and prevent people from using it as a slide. He said that there has been a lot of erosion and this area has been hit fairly hard. He said that in his view it is a very natural way to address the problem. He noted that this type of erosion control has been suggested by ORCA for other areas in Cannon Beach. It is not obtrusive and once the willows are established, like the property to the immediate north, it grows in a dense manner.

Johnson said that there are potentially three properties that have similar erosion problems. He asked if there was any discussion about including the surrounding properties.

Morgan said that he and Mike McEwan have not been contacted by surrounding property owners. He is aware of one other property owner, to the north, that is interested. He said that the property owner to the south has a riprap that is already there. Morgan noted that if you have riprap that has been there you can repair it with a State Permit.

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

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

Roberts noted that staff recommended approval and listed the suggested conditions of approval (see staff report for details).

Morgan noted that there is no grading of sand in this application. The stones will be placed at the edge of the sand and sand will be distributed on top of the cobbles to provide a substrate for stabilizing vegetation.

Chair Johnson stated that they must grant the request for continuance so this will be continued to next month's agenda.

Authorization to Sign the Appropriate Orders

Motion: Bernt moved to authorize the Chair to sign the appropriate orders; Patrick seconded the motion.

Vote: Kerr, Knop, Bernt, Patrick, Bennett and Chair Johnson voted AYE; the motion passed

INFORMATIONAL ITEMS

(8) Tree Report

No comments.

(9) Ongoing Planning Items

Kerr asked if Adams was familiar with any view ordinances in other areas. She said that right now there is nothing in the code to stop someone from building something that blocks someone else's view.

Adams noted that the City has that included in standards for things like setback reductions.

Kerr said that she meant for regular building permits for a house that might block views but not need a variance or setback reduction.

Adams said that if someone were to further subdivide land or something like that yes, but not for someone to build without that, he has not seen that. Adams said that he could look into it.

Kabeiseman said that he has seen them, but they tend not to work very well. He noted that what he has seen that works well is view corridors.

Kerr said that she noticed a situation recently where a new house was built that blocked several people's views.

Kabeiseman said that that is why lots get more expensive the closer you get to the ocean.

Bernt said that there are communities that worry about trees and there is the equivalent for ocean views. He thought they could be pretty controversial, like tree issues in Lake Oswego.

Adams said that the Council had their retreat. The code audit will come back in the new year. They are considering a second batch of changes before the full code audit. Council also asked Adams to look into affordable housing solutions. He will hopefully be bringing that before them in February or March.

Patrick asked about the parking in front of the pot shop across from Bruce's Candy Kitchen. She was upset that it is all paved and there is no landscape.

Adams said that this is a perfect example of what their ordinance allows. He said that the owners were denied a parking variance by the Planning Commission. As a result, they had to put that parking

on site. He noted that they could have used something impervious, but they are not required to. Adams said that people think that the code we have leads to the little cottages and village feel that Cannon Beach has. He said that this is not the case, most of those structures are non-conforming. When people come and have to build to code, what happened at the pot shop is what you get.

Kerr asked if the parking was approved by DRB.

Adams said that it was.

Adams clarified that they had no option but to put the parking there. He said that he is also dissatisfied with the outcome, but that is what the ordinance requires. Adams said that he hopes this motivates people to stay involved with the code audit process.

Kerr and Patrick were both very unhappy with the results.

Adams thanked Bernt for his service and wished everyone a happy holiday.

(10) Good of the Order

ADJOURNMENT

The meeting adjourned at 7:26 pm.



Administrative Assistant, Katie Hillenhagen

